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JUN 23 1980

## UNITED STATES COURT OF APPEALS

## FIFTH CIRCUIT

MISCELLANEOUS ORDER NO. 8

JOSEPH McEZEY, JR., CLERK  
BY Pat Spence  
Deputy

On this day, the Reviewing Panel of the United States Court of Appeals for the Fifth Circuit reviewed, pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C., Chapter 208), the Speedy Trial Act Amendments Act of 1979 (P.L. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. § 5036, 5037), the submitted plans which shall become effective July 1, 1980, in the following district courts of the Fifth Circuit:

Northern District of Alabama  
Southern District of Alabama  
Northern District of Florida  
Middle District of Florida  
Southern District of Florida  
Northern District of Georgia  
Middle District of Georgia  
Southern District of Georgia  
Eastern District of Louisiana  
Middle District of Louisiana  
Western District of Louisiana  
Northern District of Mississippi  
Southern District of Mississippi  
Northern District of Texas  
Southern District of Texas  
Western District of Texas

The plans aforementioned, having been fully reviewed by the Reviewing Panel of this Circuit, established in compliance with the Speedy Trial Act, as amended, are hereby found to be in compliance with the time limits, delay and sanction requirements, and related provisions mandated by the Act. The plans are further found to be in compliance with the planning process provisions of the Act; however, the Reviewing Panel is not required to and does not express any opinion on the changes, suggestions, and recommendations of the planning groups stated in various sections of the individual plans.

Five copies of the plan of each district court with a copy of this Order of Approval attached will be filed in the Administrative Office of the United States Courts, and one copy of each district court plan with a copy of this Order of Approval attached will be filed in the office of the clerk of this court, in the office of the clerk of each of the aforementioned district courts, and in the office of the Circuit Executive.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 10th day of June, 1980.

*Thomas H. Reese*

THOMAS H. REESE  
Secretary, Judicial Council  
United States Court of Appeals  
for the Fifth Circuit

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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

**FILED**

JUN 23 1980

AMENDMENTS TO SECTION I AND SECTION II OF THE  
AMENDED PLAN FOR THE  
NORTHERN DISTRICT OF TEXAS  
FOR ACHIEVING PROMPT DISPOSITION OF  
CRIMINAL CASES UNDER RULE 50(b), F.R.Cr.P.  
AND THE SPEEDY TRIAL ACT OF 1974

JOSEPH McELROY, JR., CLERK  
BY M. Crawford  
CHIEF DEPUTY CLERK

MISCELLANEOUS ORDER NO. 8

I.

Pursuant to the requirement of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 17, 1972, and in conformity with the provisions of the Speedy Trial Act of 1974 (18 U.S.C. § 3165(e)(2)), and the Federal Juvenile Delinquency Act as amended (18 U.S.C. §§ 5036, 5037), the Judges of the United States District Court for the Northern District of Texas have adopted the following plan to minimize undue delay and to further the prompt disposition of criminal cases. The provisions of this plan are procedural only. A violation of any provision hereof will not necessarily give rise to a constitutional claim.

The members of the planning group (18 U.S.C. § 3168) for the Northern District of Texas are Chief Judge Halbert O. Woodward, U.S. Magistrate Alex McGlinchey, United States Attorney Kenneth J. Mighell, U.S. District Clerk Joseph McElroy, Jr., U.S. Marshal Clint Peoples, Chief Probation Officer Roger Carroll, Mr. William B. West, III, an attorney experienced in the defense of criminal cases in the Northern District of Texas, and Mr. Andrew Barr, an attorney experienced in the trial of civil cases in the Northern District of Texas, and Reporter Melvin M. Diggs.

Copies of the plan and of the planning group's recommendations are available in each office of the Clerk for the Northern District of Texas.

Copies of the plan may be obtained by paying the fee established pursuant to law.

II.

Pursuant to the requirements of rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the judges of the United States District Court for the Northern District of Texas have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

1. Applicability.

(a) Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this court,\* including cases triable by United States magistrates, except for petty offenses as defined in 18 U.S.C. § 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. [§ 3172]

(b) Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

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\* 18 U.S.C. § 3172 defines offense as "any Federal criminal offense which is in violation of any Act of Congress . . ." The district courts with jurisdiction over offenses created by other legislatures will wish to consider the extent to which Speedy Trial Act standards should be applied to trials for such offenses.

2. Priorities in Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable as required by rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in section 5 should be given priority over other criminal cases. [§ 3164(a)]

3. Time Within Which an Indictment or Information Must be Filed.

(a) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service. [§ 3161(b)]

(b) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the 30-day period prescribed in subsection (a), such period shall be extended an additional 30 days. [§ 3161(b)]

(c) Measurement of Time Periods. If a person has not been arrested or served with a summons on a Federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(d) Related Procedures.

(1) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(2) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

4. Time Within Which Trial Must Commence.

(a) Time Limits. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(1) The date on which an indictment or information is filed in this district;

(2) The date on which a sealed indictment or information is unsealed;

(3) The date of the defendant's first appearance before a judicial officer of this district; or

(4) The date on which a defendant consents in writing to be tried before a magistrate on a complaint.

[§ 3161(c)(1)]

(b) Retrial; Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following

an appeal. If the retrial or trial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. [§ 3161(d)(2), (3)]

(c) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. [§ 3161(i)]

(d) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(1) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. [§ 3161(d)(1)]

(2) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information. [§ 3161(h)(6)]

(3) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge.\* [§ 3161(h)(6)]

If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(e) Measurement of Time Periods. For the purposes of this section:

(1) If a defendant signs a written consent to be tried before a magistrate and no indictment or information charging

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\* Under the rule of this paragraph, if an indictment was dismissed on motion of the prosecutor on May 1, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on June 1, the time remaining for trial would be 20 days from June 1: the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would not count. Although the 30-day arrest-to-indictment time limit would apply to the new arrest as a formal matter, the short deadline for trial would necessitate earlier grand jury action.

the offense has been filed, the time limit shall run from the date of such consent.

(2) In the event of a transfer to this district under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the Clerk.

(3) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(4) A trial in a non-jury case shall be deemed to commence on the date the case is called, provided that some step in the trial procedure immediately follows.

(f) Related Procedures.

(1) At the time of the defendant's earliest appearance before a judicial officer of this district, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(2) The court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. [§ 3161(a)]

(3) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will be ground for a continuance or delayed setting only if approved by the court and called to the court's attention at the earliest practicable time.

(4) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(5) At the time of the filing of a complaint, indictment, or information described in paragraph (4), the United States Attorney shall give written notice to the court and the defendant, if the United States Attorney takes the position that the computation of the time limits is other than as set forth in paragraph (4).

(6) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

5. Defendants in Custody and High-Risk Defendant.\*

(a) Time Limits. Notwithstanding any longer time periods that may be permitted under sections 3 and 4, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(1) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody.

(2) The trial of a high-risk defendant shall commence within 90 days of the designation as high-risk.

[§ 3164(b)]

(b) Definition of "High-Risk Defendant." A high-risk defendant is one designated in writing by the United States Attorney as posing a danger to himself or any other person or to the community.

(c) Measurement of Time Periods. For the purposes of this section:

(1) A defendant is deemed to be in detention awaiting trial when he is arrested on a Federal charge or otherwise held for the purpose of responding to a Federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

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\* If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356-57 n 24 (1978).

(2) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(3) A trial shall be deemed to commence as provided in sections 4(e)(3) and 4(e)(4).

(d) Related Procedures.

(1) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest practicable time of the date of the beginning of such custody.

(2) The United States Attorney shall advise the court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant has been designated to be high risk.

(3) The filing of a "high-risk" designation as a public record may result in prejudice to the defendant, accordingly, the designation shall be sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the court.

6. Exclusion of Time From Computations.

(a) Applicability. In computing any time limit under sections 3, 4, or 5, the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under section 7.

(b) Records of Excludable Time. The clerk of the court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the clerk by the United States Attorney.

(c) Stipulations.

(1) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(2) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(3) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the court.

(d) Pre-Indictment Procedures.

(1) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in section 3, he may file a written motion with the court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. § 3161(h)(8), he shall file a written motion with the court requesting such a continuance.

(2) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of a complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(3) The court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the court shall require one or both parties to inform the

court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(e) Post-Indictment Procedures.

(1) If counsel believes the clerk's records of excludable time are incomplete or inaccurate, counsel shall bring this to the court's immediate attention.

(2) In the event that the court continues a trial beyond the time limit set forth in section 4 or 5, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h).

(3) If it is determined that such continuance is justified, the court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. § 3161(h)(8), the court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances.

The court shall determine the frequency of such reports in the light of the facts of the particular case.

7. Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed pro se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to section 4(d), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. The court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances.

[§ 3161(c)(2)]

8. Time Within Which Defendant Should be Sentenced.

(a) Time Limit. A defendant shall ordinarily be sentenced within 45 days of the date of his conviction or plea of guilty or nolo contendere.

(b) Related Procedures. If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

9. Juvenile Proceedings.

(a) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

(b) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

10. Sanctions.

(a) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or to release from pretrial custody. Nothing in this plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. §§ 3162 and 3164.\*

(b) High-Risk Defendants. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his release conditions automatically reviewed. A high-risk defendant who is found by the court to have intentionally delayed the trial of his case shall be

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\* Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C., Appendix.

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subject to an order of the court modifying his nonfinancial  
conditions of release under chapter 207 of Title 18 U.S.C., to  
ensure that he shall appear at trial as required. [§ 3164(c)]

(c) Discipline of Attorneys. In a case in which counsel  
(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 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 the continuance, or (4) otherwise  
willfully fails to proceed to trial without justification consistent  
with 18 U.S.C. § 3161, the court may punish such counsel as provided  
in 18 U.S.C. § 3162(b) and (c).

(d) Alleged Juvenile Delinquents. An alleged delinquent  
in custody whose trial has not commenced within the time limit set  
forth in 18 U.S.C. § 5036 shall be entitled to dismissal of his  
case pursuant to that section unless the Attorney General shows  
that the delay was consented to or caused by the juvenile or his  
counsel, or would be in the interest of justice in the particular  
case.

11. Persons Serving Terms of Imprisonment.

If the United States Attorney knows that a person charged  
with an offense is serving a term of imprisonment in any penal  
institution, he shall promptly seek to obtain the presence of the  
prisoner for trial, or cause a detainer to be filed, in accordance  
with the provisions of 18 U.S.C. § 3161(j).

12. Effective Dates.

(a) The amendments to the Speedy Trial Act made by Public Law 96-43 became effective August 2, 1979. To the extent that this revision of the district's plan does more than merely reflect the amendments, the revised plan shall take effect on July 1, 1980, and upon approval of the reviewing panel designated in accordance with 18 U.S.C. § 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. § 3162 and reflected in sections 10(a) and (c) of this plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

(b) If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or indictment must be filed shall be determined under the plan that was in effect at the time of such arrest or service.

(c) If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

(d) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section 5 shall be computed from that date.

The judges for the Northern District of Texas have no recommendations for changes in any other provision of the Speedy Trial Act.

This Permanent Plan for the Northern District of Texas is effective pursuant to Section II.12, herein.

Entered this 23 day of June, 1980.

Walker H. Hubbard  
Chief United States District Judge

Don Hill  
United States District Judge

Eden B. Mahon  
United States District Judge

[Signature]  
United States District Judge

Pat F. Harbison  
United States District Judge

Chris O. Beland  
United States District Judge

[Signature]  
United States District Judge

W. Gary Law Johnson  
United States District Judge

Jerry Buchmeyer  
United States District Judge