

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI

NO. WM75-34

ORDER

WHEREAS on August 2, 1979, the SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979 went into effect; and

WHEREAS said Act makes fundamental changes to the SPEEDY TRIAL ACT (18 U.S.C. § 3161 et seq.); and

WHEREAS it is necessary that this District's present *Speedy Trial Act Plan for Achieving Prompt Disposition of Criminal Cases* be amended so as to correspond to said changes; and

WHEREAS no Local Rules of Court should be in conflict therewith:

IT IS HEREBY ORDERED AND ADJUDGED that amended Sections I and II of this District's *Plan for Achieving Prompt Disposition of Criminal Cases* be and are hereby adopted as follows:

I. INTRODUCTORY MATERIAL

A. 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 FEDERAL JUVENILE DELINQUENCY ACT (18 U.S.C. §§ 5036 and 5037), and the SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979, the judges of the United States Court for the Northern District of Mississippi have adopted a final plan of time limits and procedures to minimize undue delay to further the prompt disposition of criminal cases within the jurisdiction of the court.

B. The members of the Speedy Trial Planning Group for the Northern District of Mississippi are:

Honorable William C. Keady, Chief Judge  
United States District Court

Honorable Orma R. Smith, District Judge  
United States District Court

Honorable L. T. Senter, Jr., District Judge  
United States District Court

J. David Orlansky  
United States Magistrate

H. M. Ray  
United States Attorney

Norman L. Gillespie  
Clerk of United States District Court

H. Brooks Phillips  
United States Marshal

Gene Gratz  
Chief United States Probation Officer

Arlen B. Coyle  
Speedy Trial Planning Group Reporter

W. P. Mitchell  
Attorney at Law

Grady P. Tollison  
Attorney at Law

C. This plan will be printed and copies will be made available for public inspection in the four offices of the United States District Court Clerk at the United States Courthouses in Oxford, Aberdeen, Clarksdale, and Greenville, Mississippi. Copies may be obtained in person or by mail addressed to the Clerk at any of the four United States Courthouses.

II. AMENDED STATEMENT OF TIME LIMITS ADOPTED BY THE COURT AND PROCEDURES FOR IMPLEMENTING THEM IN ACCORDANCE WITH THE SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979.

A. Applicability.

1. 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.

2. Persons. The time limits are applicable to persons placed under arrest or served with criminal summons who have not been proceeded against on an indictment or information as well as those who have been so proceeded against; the word *defendant* includes all such persons unless the context indicates otherwise.

B. Priorities in Scheduling Criminal Cases.

1. Preference shall be given to criminal proceedings as far as practicable as required in Rule 50(a) of the FEDERAL RULES OF CRIMINAL PROCEDURE; and 18 U.S.C. § 3164 as modified by the SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979.

2. The trial of defendants in custody and high-risk defendants as hereinafter defined should be given preference over other criminal cases.

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

1. 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.

2. 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 C.1. of this section, such period shall be extended an additional 30 days.

3. Measurement of Time Periods.

(a) 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 purposes 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.

(b) A defendant who signs a written consent to be tried before a magistrate shall, if no indictment or information charging the offense has been filed, be deemed indicted on the date of such consent.

(c) 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.

#### 4. Related Procedures.

(a) 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.

(b) 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.

(c) Waiver of Indictment. If at the time of his preliminary hearing before the United States magistrate a defendant indicates a desire to waive indictment and to enter a plea of guilty to one or more of the charges against him, the magistrate will notify promptly the United States Attorney and the appropriate judge, to the end that the case may be heard and disposed of under these circumstances at the earliest practicable time.

(d) Grand Jury. Members of the grand jury shall be drawn from the district as a whole and shall serve for one year unless the life of a particular grand jury is extended beyond twelve months by order of the Chief Judge of this court. Unless otherwise directed, sessions of the grand jury shall be held on the second Tuesday of February, April, June, August, October and December at Oxford or at such place as may be designated by the court. The grand jury shall be subject to recall at any time during its period of service upon order of a judge of this court or call of the foreman of the grand jury. The February session shall constitute the organizational meeting of the grand jury. Reports of the grand jury may be received by any United States District Judge, full-time or part-time United States Magistrate of this district.

(e) 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. The judicial officer will also inform the defendant of his rights under this Plan.

#### D. Arraignment.

1. Arraignment shall be conducted as soon as practicable.

2. An arraignment shall be considered to take place for purposes of the Plan at the time the defendant first appears for the proceedings provided for by Rule 10, FEDERAL RULES OF CRIMINAL PROCEDURE, whether or not a plea is actually

entered at that time. For illustration of magistrate's order when the defendant indicates a desire to plead guilty, see attached Form 6.

#### E. Time Within Which Trial Must Commence.

##### 1. Time Limits and Priority Defendants.\*

(a) The trial of a defendant shall commence within 70 days from the filing date (and making public) of the indictment or information, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried on a complaint before a magistrate, the trial shall commence within 70 days from date of such consent [§ 3161(c)(1)]. Unless the defendant consents in writing to the contrary, the trial shall not commence less than 30 days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se [§ 3161(c)(2)].

(b) The trial or disposition of cases involving (i) a detained person who is being held in detention solely because he is awaiting trial; (ii) a released person who is awaiting trial and has been designated by the attorney for the government as being high risk shall be accorded priority. A high-risk defendant is defined as one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(c) The trial of any person described in subsection (b)(i) and (b)(ii) of this subsection shall commence not later than 90 days following the beginning of such continuous detention or designation of high risk by the attorney for the government. The periods of delay enumerated in § 3161(h) are excluded in computing the time limitation specified in this paragraph.

2. Retrial. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final. If the retrial 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.

3. 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 arraignment with respect to the entire indictment or information shall be deemed to have been held on the day the order permitting withdrawal of the plea becomes final.

4. 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

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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 *United States v. Mauro*, 436 U.S. 340, 356-57 n.24 (1978).

offense, the time limit applicable to the subsequent charge will be determined as follows:

(a) 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.

(b) 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.

(c) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charges, 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.\*\*

(d) The time within which an indictment or information must be obtained on the subsequent charge shall be determined without regard to the existence of the original indictment or information.

5. Measurement of Time Periods. For the purpose of this section:

(a) 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.

(b) 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.

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

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

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\*\*Under the rule of this paragraph, if an indictment was dismissed 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.

## 6. Related Procedures.

(a) 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.

(b) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached whenever possible during the week of original setting. A conflict in schedules of Assistant United States Attorneys or counsel for the defendant will be called to the court's attention at the earliest practicable time, but a conflict will not necessarily be grounds for a continuance or delayed setting except under circumstances approved by the court. Attorneys for the government will familiarize themselves with the scheduling procedures of each judge so as to be ready for trial consistent with the terms and provisions of the SPEEDY TRIAL ACT OF 1974 and as amended in 1979.

(c) 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.

(d) At the time of the filing of a complaint, indictment, or information described in paragraph (c), the United States Attorney shall give written notice to the court of that circumstance and of his position with respect to the computation of the time limits.

(e) All criminal jury trials, unless otherwise specially ordered will be held at Oxford. Multiple voir dire for all cases will be conducted at such time and place as may be fixed by the court.

(f) Request for Discovery and Inspection. Upon employment or appointment, defense counsel shall forthwith make such desired requests as the defendant is entitled to receive, as a matter of right, under Rule 16(a)(1)(A), (B), (C) and (D), FEDERAL RULES OF CRIMINAL PROCEDURE. If the defendant requests and receives any items of discovery under Rule 16(a)(1)(C) or (D), FEDERAL RULES OF CRIMINAL PROCEDURE, then the government shall be entitled to make such requests and receive from the defendant, as a matter of right, the information described in Rule 16(b)(1)(A) and (B). Any such request should be made prior to arraignment, if possible, and without recourse to the court. Rule 16 motions shall not be filed, unless the movant has made requests which have been denied.

(g) Pretrial Motions. All pretrial motions, including but not limited to motions to suppress and motions under Rules 7, 12, 14, 16 and 41, FEDERAL RULES OF CRIMINAL PROCEDURE, shall be filed no later than ten

days after arraignment. Except for good cause shown, the court will not extend the time for pretrial motions beyond ten days after the plea. Such motions shall be heard and ruled upon promptly, and in any event within such time as will not delay the trial. All motions shall be clear and concise and shall state precisely the relief requested; any Rule 16 motion must affirmatively indicate that a request for discovery and inspection has been made and the request denied prior to the filing of such motion. Where the court finds that a motion is frivolous or filed for delay, costs may be assessed against the party or the attorney filing such motion.

(h) Hearing Before Magistrate. Full-time magistrates will hear and dispose of the following types of motions:

(i) Motions under Rule 7, FEDERAL RULES OF CRIMINAL PROCEDURE, to strike surplusage from an indictment or information, to amend an information, or for a bill of particulars;

(ii) Motions under Rule 15, FEDERAL RULES OF CRIMINAL PROCEDURE, to take depositions of witnesses and for production at such depositions of designated books, papers, documents, recordings, or other material not privileged;

(iii) Motions for discovery and inspection and for protective and modifying orders under Rule 16, FEDERAL RULES OF CRIMINAL PROCEDURE;

(iv) Motions under Rule 17(b), FEDERAL RULES OF CRIMINAL PROCEDURE, for issuance and service of defense witness subpoena at government expense and to quash or modify subpoena under Rule 17(c), FEDERAL RULES OF CRIMINAL PROCEDURE.

(i) If such motions have been served on opposing counsel seven days prior to arraignment, or if the opposing party is prepared to reply, the court will hear such motions on arraignment day. All such motions not heard on arraignment day will be set for hearing before the magistrate at a later date to be fixed by the magistrate.

(j) All motions other than those enumerated above will be set for hearing at a later date before the district judge assigned to the case.

(k) All requests for service of witness subpoenas must be made within a reasonable time prior to the date set for trial; and, if reasonably possible before trial, counsel for the parties should ascertain from the marshal, or other process server, whether the issued subpoenas have been served.

(l) Notice of arraignment shall not be sent out by the clerk until the clerk has been advised by the marshal that a warrant has been executed or summons served.



## F. Exclusion of Time From Computations.

1. **Applicability.** In computing any time limit under sections C or E, the periods of delay set forth in 18 U.S.C. § 3161(h) and § 3161(h) as amended by the SPEEDY TRIAL ACT AMENDMENTS ACT OF 1979, shall be excluded.

2. **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.

### 3. Stipulations.

(a) 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.

(b) 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 co-defendant for the limited purposes of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(c) 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.

### 4. Pre-Indictment Procedures.

(a) 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 subsection C. hereof, he may file a written motion with the court for determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. §§ 3161(h)(8), as amended in 1979, he shall file a written motion with the court requesting such a continuance.

(b) 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), as amended in 1979, it shall also state whether or not the defendant is being held in custody on the basis of the 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*.

(c) The court may grant a continuance under 18 U.S.C. § 3161(h)(8), as amended in 1979, 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.

#### 5. Post-Indictment Procedures.

(a) In the event that the court continues trial beyond the time limit set forth in subsection E. hereof, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h), as amended in 1979. In the absence of a need for a continuance, the court will not ordinarily rule on the excludability of any period of time.

(b) If it is determined that a 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 the 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.

6. 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 E(4), 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.

#### G. Time Within Which defendant Should be Sentenced.

1. Time Limits. A defendant should ordinarily be sentenced within 30 days of the date of his conviction or plea of guilty or *nolo contendere*.

2. 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.

## H. Juvenile Proceedings.

1. 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.
2. 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).

## I. Sanctions.

1. Dismissal. 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.
2. 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 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.
3. Discipline of Attorneys. In a case in which counsel (a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (b) files a motion solely for the purpose of delay which he knows is frivolous and without merit, (c) 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 (d) 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).
4. Alleged Juvenile Delinquents. An alleged delinquent in custody whose trial has not commenced within the time limits 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 that particular case.

J. 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 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).

## K. Monitoring Compliance With Time Limits.

1. Responsibilities of District Planning Group. As part of its continuing study of the administration of criminal justice in this district, the district planning

group will pay special attention to those cases in which there is a failure to comply with the time limits set forth herein. From time to time, the group may make appropriate recommendations to prevent repetition of failure.

2. Responsibilities of Clerk. In addition to maintaining such statistical data as is required to be maintained by the Administrative Office of the United States Courts, the clerk will from time to time report to the other members of the planning group each case in which there is a failure to comply with any time limit set forth herein.

3. To assist the clerk of the court in receiving statistical data relative to a criminal action in U. S. District Court, Form AO-257, *Defendant Information Relative To A Criminal Action—In U. S. District Court*, shall be utilized. The responsibility for completing and filing AO-257 with the clerk of the court shall be as follows:

(a) By the U. S. Magistrate—(based upon information elicited from the charging agency representative and the defendant)—where the arrest and the appearance of a defendant before a U. S. Magistrate is on a complaint (in the charging district) or on Rule 20 or Rule 40 proceeding in a non-charging district.

(b) By the U. S. Attorney—after the filing of an indictment or information, except where a Form AO-257 has been furnished by a magistrate as a result of previous proceedings before a magistrate and where there has been no occurrence of an excludable time event or change in a defendant's custody since the magistrate's proceedings.

4. Responsibilities of United States Magistrates. The United States Magistrate shall forward copies of the criminal Docket Sheet to the clerk of the court, U. S. Marshal, U. S. Attorney and U. S. Probation Service, immediately upon completion.

5. Responsibilities of the United States Attorney and United States Marshal

(a) The United States Marshal shall forward forthwith to the United States Attorney at the close of each bi-weekly period a report form listing thereon all persons in custody and indicating the date and place of their detention. Thereafter, within five days of the close of the reporting period, the United States Attorney shall complete the report, indicating the judge to whom each case has been assigned. The *Reason for Detention* column shall include an explanation in any case for which the defendants' status appears to be inconsistent with the time limits set forth in this statement. A copy of the report shall be furnished to each judge of this court.

(b) When a defendant is arrested out of the district on a warrant issued in this court, the United States Marshal shall promptly report the fact of the arrest in writing to the clerk of the court.

(c) 1. When a defendant is to be transferred pursuant to Rule 40, the United States Marshal shall arrange to have the defendant promptly transferred to this district.

2. In proceedings under Rule 40(a) and (e) of the FEDERAL RULES OF CRIMINAL PROCEDURE, upon the order by the judicial officer that the defendant shall be “held to answer” in this district; reasonable travel time, not exceeding ten days, shall be excluded [§ 3161(h)(1)(H)].

(d) The United States Marshal will furnish a written daily report to the clerk stating the names of defendants arrested or served with a summons. He will also furnish a written, daily report to the clerk stating the names of pretrial defendants released from custody of the marshal.

L. Procedures After Affirmance. The clerk shall notify the court, the United States Attorney, United States Probation Service, United States Marshal, the defendant and his counsel immediately upon receipt of the mandate of an appellate court affirming a conviction and the court shall take appropriate action to execute the sentence imposed or take such further action, including review and reconsideration of defendant’s custody or conditional release status, as may be consistent with the interest of justice.

#### M. Expediting Processing of Appellate Proceedings

1. At the time of sentencing the court will:

(a) Inform the defendant and his counsel of the right of defendant to appeal under Rule 4(b), FEDERAL RULES OF APPELLATE PROCEDURE, and, if appropriate, of his right to seek leave to appeal in forma pauperis under FEDERAL RULES OF APPELLATE PROCEDURE 24(a);

(b) Encourage counsel who indicates an appeal is contemplated immediately to order from the court reporter such portions of the record as are to be included in the appellate record and, if less than the entire transcript is to be designated, a statement of issues he intends to present on appeal, under FEDERAL RULES OF APPELLATE PROCEDURE 10(b);

(c) Require appealing counsel to make prompt satisfactory arrangements with the reporter for payment of the cost of the transcript ordered.

2. Wilful refusal of defense counsel to comply with the spirit of this rule shall be grounds for reconsideration of the status of any defendant not in custody pending appeal.

#### N. Effective Date

1. The amendments to the SPEEDY TRIAL ACT made by Public Law 96-43 became effective August 2, 1979. To the extent revision of the district’s plan does more than merely reflect the amendments, the revised plan shall take effect 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 I. 1. and 3. 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.

2. 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.

3. 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.

4. If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under Section E. 1.(c) shall be computed from that date.

ORDERED THIS 11th day of February 1980.

/s/ William C. Keady  
UNITED STATES DISTRICT JUDGE

/s/ Orma R. Smith  
UNITED STATES DISTRICT JUDGE

/s/ L. T. Senter, Jr.  
UNITED STATES DISTRICT JUDGE