THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

REVIEWING PANEL --- SPEEDY TRIAL ACT PLAN

The foregoing and attached order, amending the Speedy Trial Act Plan for the Southern District of Texas, having been reviewed by the Reviewing Panel of this Circuit, is approved.

Entered for the Reviewing Panel at New Orleans, Louisiana, this 20th day of October, 1997.

/s/
Gregory A. Nussel
Secretary to the Judicial Council
of the Fifth Circuit

The following judges comprised and acted as the Reviewing Panel:

(a) The Judicial Council of the Fifth Circuit:

Henry A. Politz
Carolyn D. King
Patrick E. Higginbotham
W. Eugene Davis
John M. Duhe
Jacques L. Wiener, Jr.
Harold R. DeMoss, Jr.
Fortunato P. Benavides
Carl E. Stewart
Robert M. Parker
Martin L. C. Feldman
Frank J. Polozola
Donald E. Walter
Neal B. Biggers, Jr.
William H. Barbour, Jr.
Jerry L. Buchmeyer
George P. Kazen
Paul N. Brown
Walter S. Smith, Jr.

(b) United States District Judge:

/s/

George P. Kazen
Chief United States District Judge
Southern District of Texas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Entered October 30, 1997

In the Matter of Amendment	§	
of Speedy Trial Act Plan	§	General Order No. 1997-9

ORDER

The Speedy Trial Act Plan, Section IV, adopted by the Court May 9, 1980, and approved by the reviewing panel under 18 USC § 3165(c) June 20, 1980, effective July 1, 1980, is modified as reflected in the attachment of this Order.

All other provisions of the Speedy Trial Act Plan are unchanged.

Approved by the Court this 28th day of August, 1997.

/s/
George P. Kazen
Chief United States District Judge

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

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 sub- mitted 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 dated 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.

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

I. INTRODUCTORY MATERIAL

A. This Plan was adopted by the court on the 9th day of May, 1980, to become effective on July 1, 1980.

B. The members of the District Planning Group are:

Chief Judge John V. Singleton
United States District Court
Southern District of Texas
United States Courthouse, Room 11144
515 Rusk
Houston, Texas 77002

Mr. Jesse E. Clark
United States District Clerk
Southern District of Texas
Post Office Box 61010
Houston, Texas 77208

Mr. James McCullough
Designee of the Clerk
Post Office Box 61010
Houston, Texas 77208

Mr. J. A. "Tony" Canales
United States Attorney
Post Office Box 61129
Houston, Texas 77208

Mr. Lawrence E. Higgins
Chief Probation Officer
Post Office Box 61207
Houston, Texas 77208

Mr. Roland E. Dahlin,II
Federal Public Defender
Post Office Box 61508
Houston, Texas 77208
Houston, Texas 77208

The Honorable H. Lingo Platter
United States Magistrate
Post Office Box 61408
Houston, Texas 77208

Mr. W. James Kronzer
Attorney at Law
800 Commerce Street
Houston, Texas 77002

Mr. James A. Schlecht
Chief Deputy U. S. Marshal
Post Office Box 61608
Houston, Texas 77208

The Honorable William M. Mallet
United States Magistrate
Post Office Box 1633
Brownsville, Texas 78520

Mr. Morton L. Susman
Attorney at Law
2290 Two Shell Plaza
Houston, Texas 77002

Reporter

Professor Thomas Black

St. Mary's University Law School
One Camino Santa Maria
San Antonio, Texas 78284

C. Copies of this Plan will be available for public inspection in the office of the United States District Clerk in each division of this district.

DONE at Houston, Texas, this 9th day of May, 1980.

/s/
John V. Singleton
Chief Judge

II. STATEMENT OF TIME LIMITS AND PROCEDURES FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES

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 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 Southern 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.

*18 U.S.C. § 3172 defines offense as "any Federal criminal offense which is in violation of any Act of Congress..."

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 preference 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; or

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

[§ 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), (e)]

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 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 nonjury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

*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.

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. Where the same counsel has cases before more than one judge of this court, the judges of the court shall, wherever possible, avoid conflicts so that said counsel can appear in all of his cases so as to avoid, if possible, other counsel having to appear for any defendant, if this can be accomplished without doing violence to the limits set in this Plan. 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 clerk of that circumstance and of his position with respect to the computation of the time limits.

(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 and with the need of counsel to complete discovery and prepare pretrial motions.

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

*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).

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 reasonably designated 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.

(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 is considered by him to be high risk.

(3) If the court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation 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. The periods of delay set forth in 18 U.S.C. § 3161(h) shall apply in computing the time limits for sections 3, 4, and 5. Such periods of delay shall be included 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. Preindictment 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 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.

(3) The court may grant a continuance under 18 U.S.C. § 3161 (h) (8) for either a specific 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. Postindictment Procedures.

(1) At each appearance of counsel before the court, counsel shall examine the clerk's records of excludable time for completeness and accuracy and shall bring to the court's immediate attention any claim that the clerk's record is in any way incorrect.

(2) In the event that the court continues a trial beyond the time limit set forth in sections 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 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 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.

(4) In the event that either the United States Attorney or counsel for the defendant seeks a continuance under 18 U.S.C. § 3161(h)(8), he shall file a written motion with the court. The motion shall state (i) whether or not the defendant is being held in custody on the basis of the complaint, (ii) the period of time proposed for exclusion, and

(iii) the basis of the proposed exclusion. In appropriate circumstances, it may include a request that some or all of the supporting material be considered ex parte and in camera.

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 be released from custody in circ=stances 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 subject to an order of the court modifying his nonfinancial conditions of release under chapter 207 of title 18 of the United States Code to ensure that he shall appear at trial as required. [§ 3164(c)]

c. Discipline of Attorneys. In a case in which counsel (i) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (ii) files

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

a motion solely for the purpose of delay which he knows is frivolous and without merit, (iii) 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 (iv) 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)-(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 Pub. L. No. 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 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, 1980, 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.

III. SUMMARY OF EXPERIENCE UNDER THE ACT WITHIN THE DISTRICT

A. Progress Toward Meeting the Permanent Time Limits.

The statistical tables attached hereto indicate a steady progress during the preceding years toward compliance with the ultimate speedy trial time limits. Current performance statistics indicate substantial compliance with most of the time limits by most of the courts and agencies involved, and it is the consensus of the members of the Planning Group, based upon their observations and experience, that full compliance can be accomplished.

B. Problems Encountered.

1. The United States Attorney has encountered problems in the form of delays in obtaining reports from law enforcement agencies which are necessary to make effective presentations to a grand jury preparatory to

indictment. This, of course, will affect compliance with the 30-day time limit from arrest to indictment.

2. The absence of a full-time speedy trial monitor in multidivision districts has proved to be a problem causing inefficient reporting and ineffective control. This problem is expected to be resolved or at least eased by the use of Courtran computer reporting throughout the district.

3. The communication from district to district has been poor and without uniform standard. There is a need for standardized notification on out-of-district arrests, in order that proper calendaring and notification within speedy trial limits may be made.

4. The burden is on the defendant's counsel to prepare for trial within the 70-day limit in complex or multiple-count criminal cases.

C. Incidence of, and Reasons for, Requests for Allowances of Extension of Time Beyond the District Standards [18 U.S.C. § 3166(b)(1).(4)].

No known requests or allowances to date.

D. If There Have Been Cases Not in Compliance With the Time Limits for Indictment and Commencement of Trial Under 18 U.S.C. § 3161(b) and (c), the Reasons Why the Exclusions Were Inadequate to Accommodate Reasonable Periods of Delay [18 U.S.C. § 3167(b)].

No reasons.

E. The Effect on Criminal Justice Administration of the Prevailing Time Limits [18 U.S.C. § 3166(b)(5)].

The administration of criminal justice has progressed steadily toward the ultimate goals of the Act. The resulting effect has been prompt and efficient movement of criminal dockets as reflected by the attached tables.

F. Effect of Compliance With the Time Limits on the Civil Calendar [18 U.S.C. § 3166(b)(9)].

A by-product has been the negative effect on the civil dockets in the various divisions of this district. Regular civil dockets and the orderly scheduling of civil cases have often been difficult. On occasions civil cases have had to be postponed or tried on a haphazard basis when time becomes available.

G. Frequency of Use of Sanctions Under the "Interim" Time Limits [18 U.S.C. § 3166(b)(3)].

During the administration of the Speedy Trial Act, the exercise of sanctions as provided by 18 U.S.C. § 3166(b)(3) has not been utilized.

IV. STATEMENT OF PROCEDURES AND INNOVATIONS THAT HAVE BEEN OR WILL BE ADOPTED BY THE DISTRICT COURT TO EXPEDITE THE DISPOSITION OF CRIMINAL CASES IN ACCORDANCE WITH THE SPEEDY TRIAL ACT [18 U.S.C. § 3167(b)]

A. Site of Grand Jury, Arraignment, and Trial. (Modified September 1997)

Because of the limited criminal business of the division of this court at Galveston, the judges of this court approve the consolidation of the Galveston and Houston Divisions of

our court, for the purpose of indictment and arraignment. Continuing the practice in effect since July 1, 1976, grand juries sitting in Houston shall be composed of members residing in the Houston and Galveston Divisions. While defendants accused of committing crimes in either the Houston or Galveston Divisions of our court will be indicted by a grand jury from both divisions while sitting in Houston, for the purpose of arraignment, defendants accused of committing criminal acts in the Galveston Divisions will be arraigned in the Houston Division. Those accused of committing criminal acts in the Galveston Division of this court will be tried, if necessary, in the Galveston Division, unless such defendants waive this right in writing.

B. Scheduling of Grand Juries. (Modified September 1997)

Grand juries will be scheduled to meet at least once each thirty days in every division, and more often as required. The United States Attorney must be informed immediately of all arrests by complaint by the arresting agency so that indictments may be sought within thirty days. It is the recommendation of the Planning Group that grand juries meet on a Tuesday and that arraignments be scheduled on a regular basis on Friday of the following week. This will assist the clerk in sending out arraignment notices.

C. Submission of Offense Reports.

Law enforcement agencies should accelerate the submission of case reports to the United States Attorney in

order to comply with the time limit from arrest to indictment.

D. Notice of Actions.

Since the clerk of the court will have the responsibility of keeping the courts informed of all defendants awaiting trial and seeing that the time limits under the Act and this adopted Plan are not violated, it is essential that the clerk receive prompt reporting at all stages beginning with the arrest. In this connection, the magistrates, the United States Attorney, and the United States Marshal are requested to inform the clerk of all actions that they take in connection with any defendant as soon as the action occurs, including the addresses of the defendant and of counsel and other pertinent information, as well as any changes that may occur.

With respect to defendants against whom complaints have already been filed, the United States Attorney, whenever possible, will provide the clerk with a list of those defendants whose names will be brought before a grand jury, so that the clerk can prepare in advance notices of arraignment to be mailed out to those defendants who are in fact indicted. The list furnished by the United States Attorney shall not be filed, and it shall be kept confidential by the clerk. A copy of the grand jury assignment sheet shall be delivered to the Criminal Section of the Clerk's Office upon the concurrence of the grand jury to indict or true bill.

E. Court Calendars.

The Planning Group recommends that court calendars be provided to the office of the United States Marshal at least 24 hours before scheduled court appearances. Court calendars should not be changed within 24 hours of scheduled court appearances except in unusual circumstances.

F. Representation by Counsel.

The Planning Group recommends that in each case as soon after arrest as possible, a determination be made as to whether the defendant has counsel. If a defendant indicates he does not have and cannot retain counsel, he should be taken before a United States Magistrate for a determination of his eligibility for appointed counsel. If a defendant is eligible for appointed counsel, counsel should be appointed immediately. If possible, defendants should be represented by counsel at the initial appearance.

G. Master Docket Control Sheet.

The Planning Group recommends that the United States District Clerk use a master docket control sheet for multipledefendant cases at both the magistrate and district court level.

H. Court Settings.

The Planning Group recommends that the court consult with counsel for the defendant and with counsel for the government before scheduling court appearances and further recommends that counsel be given the maximum time feasible after arraignment for the submission of pretrial motions.

I. Continuances.

The Planning Group recommends that the court exercise the discretion granted by 18 U.S.C.A. § 3161(h)(8) to grant continuances where the facts indicate that the ends of justice will thereby be served. The Planning Group further recommends that there be a presumption that the ends of justice served by granting a continuance outweigh the best interests of the public and the defendant in a speedy trial in (i) tax and other types of fraud cases, (ii) complex multidefendant conspiracy cases, (iii) cases with out-of-town witnesses, (iv) cases in which the evidence includes audio tapes recorded as a result of wiretap, (v) cases with multiple defendants and multiple counts, and (vi) cases involving white-collar crime, so long as the motion for continuance is filed at least 20 days before the expiration of the time limit.

J. Waiver.

The Planning Group recommends that a policy be uniformly applied throughout the district permitting a defendant to waive, in writing and with the concurrence of the United States Attorney, his right to be tried within the Speedy Trial Act time limits.

K. The United States Attorney has adopted a practice of indicting before arrest so as to eliminate problems with the 30-day time interval whenever feasible.

L. Civil Docket.

In all divisions of the district, the court should hold regular civil dockets and try civil cases to the fullest extent possible between priority criminal trials.

V. STATEMENT OF ADDITIONAL RESOURCES NEEDED TO ACHIEVE COMPLIANCE WITH THE ACT [18 U.S.C. § 3166(d)]

A. Magistrates.

There is an immediate need for an additional magistrate in the Houston Division of our court and for making the part-time magistrate in McAllen, Texas, a full-time position.

B. United States Attorney.

1. Three additional Assistant United States Attorneys are needed. Additional attorneys are needed to comply with the Speedy Trial Act and to avoid the need for restricting the number of cases handled by the United States Attorney or the need to defer cases to state prosecution.

2. One additional person with either legal, paralegal, or specialized clinical training, to be located in Houston, Texas, is needed to monitor the status of all defendants in the district, to make certain that the time limits are not running out with respect to any defendant, and to assist in the reports that the United States Attorney must make to the United States District Clerk.

C. United States District Clerk.

1. Personnel.

Five additional deputies are needed. One deputy clerk is needed in the Houston Division, to act as speedy trial monitor on a district-wide basis. One deputy clerk is needed to coordinate the Courtran program throughout the district and to train other deputies in the operation of Courtran terminals. One deputy clerk is needed as a Courtran terminal operator in each of the division offices in Brownsville, Corpus Christi, and Laredo.

2. Computer Access.

The United States District Clerk needs to have district-wide access to the national Courtran system. Four Courtran terminals are needed: one in each current division except Victoria and Galveston. Access to the Courtran system is necessary in order to have sufficient timely information to manage the criminal case load in compliance with Speedy Trial Act time limits.

D. United States Marshal.

1. At least five additional operation deputies are needed in the Houston Division to replace deputies reassigned from Houston to Corpus Christi, Galveston, and McAllen.

2. Since the institution of the Speedy Trial Act, the United States Marshal has found that their overtime payment for salary has increased by 30 percent. The Speedy Trial Act has compelled the United States Marshal to keep deputies in courts during the workweek on a daily basis. This circumstance is forcing the marshal's service to serve process after working hours and to transport prisoners to institutions and provide in-district movement on weekends to keep current and fulfill their mission.

E. Other.

Undoubtedly, the several federal law enforcement agencies will need additional secretarial help in order to prepare their case reports in time for prompt presentation to grand juries. Now, as during the transition period to date, the slowness in obtaining complete offense reports impedes compliance with Speedy Trial Act time limits.

VI. RECOMMENDATIONS FOR CHANGES IN STATUTES, RULES OR ADMINISTRATIVE PROCEDURES [18 U.S.C. § 3166(b)(7), (d)(3)]

A. Speedy Trial Act.

1. The Planning Group recommends that the Speedy Trial Act be amended to provide longer time limits for the following types or classes of cases: (i) tax and other types of fraud cases; (ii) complex multidefendant cases; (iii) cases with out-of-town witnesses; (iv) cases in which the evidence consists primarily of audio tapes recorded as a result of a wiretap; (v) cases with multiple defendants and multiple counts; and (vi) cases involving white-collar crime.

2. The Planning Group recommends that the Speedy Trial Act be amended to allow for excludable time when, in a pending case, the ultimate legal issue involved is pending in another case before the appellate courts and the defendant has no objection to delaying his trial until the issue is determined in the former proceeding.

3. The Planning Group recommends that the Speedy Trial Act be amended to allow a more realistic exclusion of time when a defendant is out of state and must be transported into the district

for trial. Time taken by the United States Marshal to bring a defendant before a judicial officer of the district where the defendant will be tried should be excluded, and the limits of the act should not apply until a defendant is available to the court in the district where the trial will be held.

4. Reasons supporting proposed amendments:

a. The members of the Planning Group favor the amendments proposed above as a result of their collective experience in trying to discharge their respective responsibilities and comply with the Speedy Trial Act during the interim period.

b. The Speedy Trial Act requires that local plans accelerate the disposition of criminal cases consistent with objectives of effective law enforcement and also consistent with fairness to accused persons. It is the experience of defense counsel that they cannot discharge their duties to represent their clients zealously within the bounds of the law and conduct the investigation, preparation, and legal research that representation entails within the stringent time limitations required by the final phase of the Act.

c. After indictment and arraignment in a case that is set for trial, it is difficult for defense counsel to complete discovery in time to file meaningful pretrial motions. It is difficult for the United States Attorney to respond to defense counsel's pretrial motions within the current limits of the act. This lack of response time is especially aggravated in multiple-defendant cases where the United States Attorney must respond in a limited time to many motions submitted by numerous defense counsel.

B. Other Statutes.

Congress should assure that all law enforcement agencies have the necessary personnel in order to perform their duties and to submit complete and accurate case reports promptly to the United States Attorney for prompt presentation of cases to a grand jury.

C. Forms and Reporting Procedures.

1. Forms.

The criminal docket packet used in conjunction with speedy trial reporting is designed for individual defendants. For effective docketing in multidefendant cases, there should be an adoption of a master docket format. This would aid not only the docket clerk but also the appeals clerk if/when more than one defendant appeals. Communication between districts indicates that fragmented and individual initiative has been used to overcome this problem. Certainly, it would appear more realistic to develop a national standardized master docket.

2. Reporting Procedures.

Reporting procedures on a national level are adequate, but in local reporting, adequate monitoring of each judge's case load is difficult. Some thought should be given to the immediate use of Courtran in multijudge and division districts. Immediate response to judicial inquiry could be met, thus eliminating time-consuming individual audits and preparation of intradistrict reports. Also, it would be more effective in allowing immediate and informational review of pending case loads. Additionally, composite reporting from the Administrative Office has frequently been in error, resulting in confusion, delay, and frustration.

VII. INCIDENCE AND LENGTH OF, REASONS FOR, AND REMEDIES FOR DETENTION PRIOR TO TRIAL (18 U.S.C. § 3166(b)(6)]

In our district, a significant number of defendants are detained prior to trial. The number of detainees decrease markedly after the tenth day after initial appearance before the

magistrate. These facts are reflected by Table 3 of the statistical tables in section VIII of the Plan.

The reason for this high initial incidence of detained defendants is inherent in the geographic location of our district. The southern boundary of our district is also the border between the United States and Mexico. Since many of our defendants are aliens here and citizens of a close foreign county, if released before trial they can easily flee the country and the jurisdiction of the court. As indicated by Table 3, however, the cases of these defendants are still being handled within Speedy Trial Act time limits.

Remedy: none.

FOR ATTACHMENTS, PLEASE SEE ORIGINAL GENERAL ORDER ON FILE IN THE CLERK'S OFFICE.