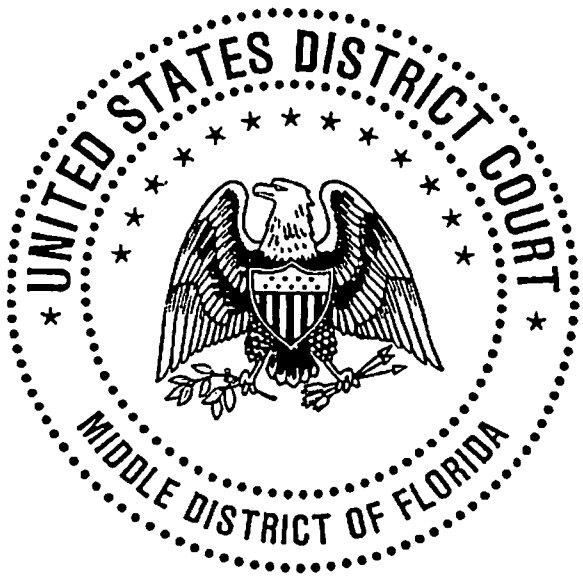
UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA



PLAN TO MINIMIZE UNDUE DELAY AND FURTHER PROMPT DISPOSITION OF CRIMINAL CASES

TABLE OF CONTENTS

I. INTRODUCTORY MATERIAL

(A) Adoption of the Plan

Pursuant to the requirements of the Speedy Trial Act of 1974, 18 U.S.C. Chapter 208, the Judges of the United States District Court for the Middle District of Florida 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.

(B) Members of the 1981 Speedy Trial Planning Group for the Middle District of Florida

Chief Judge George C. Young United States District Court Room 635, U.S. Courthouse 80 N. Hughey Avenue Orlando, Florida 32801 (FTS) 820-6354	Wesley R. Thies Clerk, U.S. District Court Post Office Box 53558 Jacksonville, Florida 32201 904-791-2297 (FTS) 946-2297
Donald Paul Dietrich United States Magistrate Room 526, U.S. Courthouse 80 N. Hughey Avenue Orlando, Florida 32801 305-420-6362 (FTS) 820-6362	Robert E. Lee U.S. Probation Officer Room 519, U.S. Courthouse Orlando, Florida 32801 305-420-6371 (FTS) 820-6371
Gary L. Betz, Esquire United States Attorney Post Office Box 2841 Tampa, Florida 33601 813-228-2135 (FTS) 826-2135	James M. Russ, Esquire 441 First Federal Building Orlando, Florida 32801 305-849-6050

George Grosse United States Marshal Post Office Box 4967 Jacksonville, Florida 32201 904-791-2293 (FTS) 946-2293	Professor Gerald T. Bennett 329 Holland Law Center University of Florida Gainesville, Florida 32611 904-392-0413
Leon H. Handley, Esquire 203 N. Magnolia Avenue Post Office Box 1273 Orlando, Florida 32802 305-843-9500	Robert W. Knight, Esquire Federal Public Defender Post Office Box 3321 Tampa, Florida 32611 813-228-2715 (FTS) 826-2715

C. Availability of the Plan and Planning Group Recommendations for Inspection, Pursuant to 18 U.S.C. 3165(f)

Copies of the Plan and the attached recommendations of the Planning Group are available for public inspection in the Clerk's Office in each division of the Court.

II. TIME LIMITS ADOPTED BY THE COURT

Pursuant to the requirements of Rule 50 of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974, 18 U.S.C. Chapter 208, and the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5036, 5037, the Judges of the United States District Court for the Middle District of Florida 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.

(A) Applicability

(1) Offense

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, the time limits included herein are not applicable to proceedings under the Federal Juvenile Delinquency Act, 18 U.S.C. § 3172.

(2) Person

The time limits set forth in this Plan are applicable to an accused person without regard to whether they have been indicted or informed against. As used within this Plan, the term "defendant" includes such person, unless otherwise indicated.

(B) Priority in Scheduling a Criminal Case

Preference should be given to criminal proceedings as required by Rule 50 of the Federal Rules of Criminal Procedure. The trial of a defendant in custody solely because the defendant is awaiting trial and of a high-risk defendant as defined in section II (F) of this Plan, should be given preference over other criminal cases.

18 U.S.C. § 3164(a).

(C) Time Within Which an Indictment or Information Must be Filed

(1) Time Limit

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 thirty (30) days of arrest or service. 18 U.S.C. § 3161(b).

(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 thirty (30) day period prescribed in subsection (1) above, such period shall be extended an additional thirty (30) days. 18 U.S.C. § 3161(b).

(3) Measurement of Time

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:

(a) is held in custody solely for the purpose of responding to a Federal charge;

(b) is delivered to the custody of a Federal official in connection with a Federal charge; or

(c) appears before a judicial officer in connection with a Federal charge.

(4) Related Procedures

(a) At the time a person who has been arrested for an offense not charged in an indictment or information earliest appears before a

judicial officer, 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.

(D) Procedure at First Appearance

At the time of the defendant's earliest appearance before a judicial officer, the officer shall take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act, 18 U.S.C. § 3006A, and Rule 44 of the Federal Rules of Criminal Procedure. The judicial officer shall also inform the defendant of the defendant's rights under this Plan and pertinent legislation.

(E) Time Within Which Trial Must Commence

(1) Time Limit

The trial of a defendant shall commence not later than seventy (70) days after the last of the following dates occurs:

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

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

(c) The date of the defendant's first appearance before a judicial officer of this district. 18 U.S.C. § 3161(c)(1).

(2) Retrial; Trial After Reinstatement of an Indictment or Information

The retrial of a defendant shall commence within seventy (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 seventy (70) days impracticable. The extended period shall not exceed one-hundred eighty (180) days. 18 U.S.C. § 3161(d)(2), (e).

(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 the plea, 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 becomes final. 18 U.S.C. § 3161(I).

(4) Superceding Charge

(a) 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:

(i) 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;

(ii) 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; or,

(iii) 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 computation. 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. 18 U.S.C. § § 3161(d)(1), (h)(6).

(b) 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 be required if the time limit for commencement of trial is to be satisfied.

(5) Measurement of Time

For the purpose of this section:

(a) If a defendant signs a written consent to be tried before a United States magistrate and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent;

(b) 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;

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

(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.

(6) Related Procedures

(a) The Court shall have sole responsibility for setting a case 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 date certain or listed for trial on a weekly or other short-term calendar. 18 U.S.C. § 3161(a).

(b) 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.

(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 subsection (c) above, the United States Attorney shall give written notice to the Court of that circumstance and of the United States Attorney's position with respect to the computation of the time limit.

(e) 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.

(F) Defendant in Custody and a High-Risk Defendant

(1) Time Limit

Notwithstanding any longer time period that may be permitted under sections II(C) and (E) of this Plan, the following time limits will also be applicable to a defendant in custody and a high-risk defendant as defined herein:

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

(b) The trial of a high-risk defendant shall commence within ninety (90) days of the designation as high-risk. 18 U.S.C. § 3164(b).

(2) Definition of a High-Risk Defendant

A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself, any other person, or to the community.

(3) Measurement of Time

For the purpose of this section:

(a) A defendant is deemed to be in detention awaiting trial when the defendant 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; and,

(c) A trial shall be deemed to commence as provided in sections II(E)(5)(c) and (d) of this Plan.

(4) Related Procedures

(a) 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.

(b) 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 the United States Attorney to be high-risk.

(c) 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 defendant's counsel but shall not be made known to other persons without the permission of the Court.

(G) Exclusion of Time From Computation

(1) Applicability

In computing any time limit under section II(C), (E), or (F), of this Plan, 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 II(L) of this Plan.

(2) Record of Excludable Time

Record keeping for each defendant under the Speedy Trial Act and for appropriate action thereon, remains the sole responsibility of the United States Attorney for the Middle District of Florida.

(3) Stipulation

(a) The United States Attorney and the attorney for the defendant may at any time enter into a stipulation with respect to a calculation of excludable time.

(b) To the extent the amount of time stipulated by the parties does not

exceed an amount recorded in the case 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.

(c) To the extent the amount of time stipulated exceeds an amount recorded in the case, the stipulation shall have no effect unless approved by the Court.

(4) Pre-Indictment Procedure

(a) In the event the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in section II(C) of this Plan, a written motion may be filed 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), a written motion shall be filed with the Court requesting such a continuance.

(b) A motion for a determination of excludable time filed by the United States Attorney shall state the period of time proposed for such exclusion and the basis of the proposed exclusion. A motion for a continuance under 18 U.S.C. § 3161(h)(8), 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) for either a specific period of time or a period to be determined by reference to an event (such as recovery from an 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 light of the facts of the particular case.

(5) Post-Indictment Procedure

(a) At each appearance before the Court, the United States Attorney shall be prepared to provide the Court with a calculation of excludable time. In the event that the Court continues a trial beyond the time limit set forth in section II(E) or II(F) of this Plan, the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h).

(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 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 light of the facts of the particular case.

(H) Time Within Which A Defendant Should Be Sentenced

(1) Time Limit

Ordinarily, sentencing will occur within seventy-five (75) calendar days following the defendant's plea of guilt or nolo contendere, or upon being found guilty.

(2) Related Procedures

If the defendant and defendant's counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

(I) Juvenile Proceeding

(1) Time Within Which Trial Must Commence

An alleged delinquent who is in detention pending trial shall be brought to trial within thirty (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 twenty (20) court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

(J) Sanction

(1) 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 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 Defendant

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 the release conditions automatically reviewed. A high-risk defendant who is found by the Court to have intentionally delayed the trial of the case shall be subject to an order of the Court modifying the nonfinancial conditions of release pursuant to 18 U.S.C. Chapter 207, to ensure the defendant's appearance at trial. 18 U.S.C. § 3164(c).

(3) Discipline of Attorney

The Court may punish counsel as provided in 18 U.S.C. §§ 3162(b) and (c), 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 counsel knows is frivolous and without merit;

(c) makes a statement for the purpose of obtaining a continuance which counsel 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.

(4) Alleged Juvenile Delinquent

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 the juvenile's case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or the juvenile's counsel, or would be in the interest of justice in the particular case.

(K) Person Serving Term of Imprisonment

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

(L) Minimum Period for Defense Preparation

Unless the defendant consents in writing to the contrary, trial shall not commence earlier than thirty (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 seventy (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 II(E)(4) of this Plan, the thirty (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 thirty (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 light of all the circumstances. 18 U.S.C. § 3161(c)(2).

(M) Defendant Information Record

(1) For each defendant charged in this district, the United States Attorney shall file with the Court an A0 257 form when:

(a) The defendant appears before any United States magistrate; or,

(b) The United States Attorney files an indictment or information (except where a form was furnished at previous proceedings and there has been no occurrence of an excludable time event or change in defendant's custody status since that proceeding).

(2) The United States Marshal or a designee in each office shall be responsible for notification to the proper authorities in the following instances:

(a) Such individual in each office shall have the responsibility for preparing a list of those persons in federal custody pending trial or sentencing;

(b) Such individual in each office shall notify the Clerk and the United States Attorney of the district in which a defendant is charged immediately upon the arrest of any such defendant within this district; or,

(c) Such individual in each office shall report immediately to the Clerk and the United States Attorney of this district upon the arrest of a defendant in any district upon process of this district.

(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 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 II(J)(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 the defendant is awaiting trial, the ninety (90) day period under section II(F) shall be computed from that date.

III. SUMMARY OF DISTRICT EXPERIENCE AT THE TIME OF ORIGINAL IMPLEMENTATION

(A) Progress Toward Meeting the Permanent Time Limit

A review of the data presented through the Administrative Office of the United States Courts to the Planning Group for this district indicates a steady, incremental progress toward meeting the permanent time limits imposed under the Act. Study of the time limits from arrest to indictment, for example, the first time limit applicable under the Act, shows that in the year 1976, only 71% of defendants arrested were indicted within the thirty (30) day time period and over 17% of those arrested were not indicted for over forty-five (45) days from the time of arrest. In 1977, the percentage rose to 76.2%, with concurrently, just less than 8% of the cases taking more than forty-five (45) days. In the 1978 figures, we find the percentage of indictments brought within thirty (30) days increasing to a solid 93.7% with no time interval extending beyond forty-five (45) days. And in the last period for which we have data, that of July 1979, to December 1979, we find that 100% of the defendants arrested were indicted within thirty-five (35) days of arrest, but are faced with the somewhat disconcerting fact that indictments were not brought for six (6) of the defendants until after the thirty (30) day period had elapsed. We have been unable to ascertain the reason for the delay in these specific cases, but see no reason for reoccurrence.

In both interim plans submitted to date, the Planning Group recommended abolition of time period from indictment to arraignment as being artificial and impracticable, and the limitation was removed in the latest amendments to the Act. In its place was mandated a single envelope of time in which to try the defendant, a limit of seventy (70) days from indictment to trial. A review of the

statistics shows that this district has achieved almost total compliance with this time limit. In 1976, while the overall time limit was one-hundred twenty (120) days, the district was trying only 61.7% of the defendants within this sixty (60) day period. The following year, the percentage increased to 68.1%, then, in 1978, to 76.4%. The latest statistics supplied by the Administrative Office of the United States Courts indicates that during the period from July 1979, to December 1979, only one (1) defendant was tried in more than the seventy (70) day time limit imposed by the Act. While these figures are somewhat weak in that they may not give a picture of the final disposition of all cases filed during the six (6) month period, they do show a steady progress toward meeting the standards, and indicate no currently insurmountable problems prohibiting compliance with the permanent time limits.

(B) Problems Encountered

In the past, the primary problem encountered by the district has been the significant shortage of judicial manpower, and the thrust of unusually complex cases straining available resources to the limit. With the addition and replacement of four (4) Judges during the year, and the hiring of clerks to work specifically with criminal-post conviction relief motions, this problem has been greatly alleviated. The only other significant problems were those originally caused by the artificial ten (10) day indictment to arraignment time limit. With the latest amendment of the Act, deleting this time limit, those problems have been resolved. In short, no significant or insurmountable problems now appear on the horizon.

(C) Incidence of, and Reason for, Request or Allowance of Extension of Time Beyond the District's Standards, Under 18 U.S.C. § 3161(b)(1), (4)

Throughout the district, there were eight (8) cases involving fourteen (14) defendants in which a request for allowance of extension of time beyond the district's standards was submitted. In four (4) of the cases, involving six (6) defendants, letters rogatory were being awaited from the Canadian Courts. In four (4) cases, involving five (5) defendants, trial was continued because failure to do so would result in miscarriage of justice or stop further proceedings. In one (1) case, involving two (2) defendants, continuance was granted because of the physical incapacity of a co-defendant and in one (1) final case, involving one (1) defendant continuance was granted because of the unavailability of an essential witness.

(D) If There Have Been Cases not in Compliance with the Time Limit for Indictment and Commencement of Trial under 18 U.S.C. § 3161(b) and (c), the Reason Why the Exclusion was Inadequate to Accommodate a Reasonable Period of Delay, Pursuant to 18 U.S.C. § 3167(b)

See responses to A and B above.

(E) Effect on Criminal Justice Administration of the Prevailing Time Limit, Pursuant to 18 U.S.C. § 3166(b)(5)

Comments contained in the original plan are still apropos. The Act has served to make the Criminal Justice System more efficient with no discernible loss of quality. One effect noted by members of the Group was that one reason for the expeditious conclusion of criminal cases has been an emphasis on negotiated pleas and on the United States Attorney taking a more active part in the plea negotiation, particularly by granting more open discovery.

(F) Effect of Compliance with the Time Limit on the Civil Calendar, Pursuant to 18 U.S.C. § 3166(b)(9)

In the words of one of the clerks of the district, "devastating." Because criminal cases take precedence over civil cases, and because of the demands of the criminal calendar, there still exists a substantial backlog of civil cases; long and involved civil cases are virtually impossible to try. Another clerk submitted a slightly more helpful note, however, when he reported that "more civil cases are now being tried than in the past." The outlook is still less than hopeful, however.

(G) Frequency of Use of Sanctions under 18 U.S.C. § 3164 (Release from Custody or Modification of Release Conditions), in Accordance with 18 U.S.C. § 3166(b)(3)

None.

IV. STATEMENT OF PROCEDURE AND INNOVATION AT THE TIME OF ORIGINAL IMPLEMENTATION THAT HAVE BEEN OR WILL BE ADOPTED TO EXPEDITE THE DISPOSITION OF CRIMINAL CASES IN ACCORDANCE WITH THE SPEEDY TRIAL ACT, PURSUANT TO 18 U.S.C. § 3167(b)

No procedures or innovations have been added since the filing of the original plan under the Act in 1981, nor have any been modified or deleted. The changes which had been adopted as of the last plan are as follows:

(A) Change Adopted By The Court

(1) The Court has endorsed the omnibus procedure contemplated by the American Bar Association Standards for Criminal Justice relating to Discovery and Procedure before Trial, and encourages its use in every division of the district to the fullest extent practicable.

(2) As part of the plan submitted under Rule 50 of the Federal Rules of Criminal Procedure, the Court has further directed that, except for good cause shown, the Court will not extend beyond ten (10) days the time for motions after plea under Rule 12(b)(3), Federal Rules of Criminal Procedure. Such direction shall remain in force under this Plan.

(3) Counsel for the government and the defendant are encouraged to engage in plea negotiation, where feasible and appropriate, at the earliest possible time, and to notify the Court of any agreements reached as quickly as possible.

(4) Arraignments will be conducted initially before the United States magistrate and will be so scheduled that they will be completed within the ten (10) day period mandated by the Act. Pleas of guilty, which cannot be taken by the United States magistrate, will be taken after the initial

arraignment at such time as is scheduled by the Judge. In order to implement the arraignment procedure, and to permit the United States magistrate to issue, at time of arraignment, the "Order Pertaining to Omnibus Hearing, Conferences and Trial," or the "Order Pertaining to Motions, Hearings, Conferences and Trials," referred to more fully in subsection 6 below, the United States magistrate will be informed by the Judge of the scheduled trial date, will order at the time of arraignment, and will schedule the case for trial at time of arraignment upon taking the plea of not guilty.

(5) The approval of the Court for deferred prosecution pursuant to 18 U.S.C. § 3161(h)(2) shall be sought by motion of the United States Attorney who shall in such motion set forth the basis for the prosecutorial determination that it is in the best interests of the public to defer such prosecution and the reasons, therefore, that the duration of such deferred prosecution should be excludable under the provisions of the Speedy Trial Act. The motion shall contain a stipulation by the defendant and waiver of Speedy Trial rights.

(6) The use of standard pretrial orders adopted by the Court and issued by the United States magistrate at time of arraignment, shall be continued in this district for discovery. Times for pretrial conferences shall be established as early as possible with full notification thereof to all parties. The form and content of the orders may be altered by the Judges of the entire district, or by any District Judge for cases assigned to that Judge as deemed appropriate by such Judge for the more expeditious handling of his cases.

(B) Change Adopted by the United States Attorney

(1) Record Keeping

Because of the importance of accurate time determinations, the United States Attorney or a designated assistant should maintain a separate record for each defendant in each case, as contrasted to a record of the case only, since each individual case may include multiple defendants with differing time limit requirements. Form JS-3, with some modification, appears most suited to such a record and should be adopted by the United States Attorney so as to best suit the United States Attorney's office.

(2) The United States Attorney should designate and train a specific clerk in each office for Speedy Trial Act record keeping so that final responsibility and final availability of required records will be in a central location within the office.

(3) Whenever gross time in any case or for any defendant approaches the maximum allowable time for any single portion of the criminal prosecution, the responsible Assistant United States Attorney shall be advised of such gross time by the clerk designated in order that the Assistant United States Attorney may take appropriate action to prevent final time limits to run unnoticed.

V. STATEMENT OF ADDITIONAL RESOURCES NEEDED, IF ANY, AT THE TIME OF ORIGINAL IMPLEMENTATION TO ACHIEVE COMPLIANCE WITH THE ACT, PURSUANT TO 18 U.S.C. § 3166(d).

Judgeships

Once the sole remaining judicial vacancy has been filled, no additional judicial manpower is currently required. No other resources are necessary as of this time.

VI. RECOMMENDATION FOR CHANGE IN A STATUTE, RULE, OR ADMINISTRATIVE PROCEDURE AT THE TIME OF ORIGINAL IMPLEMENTATION, PURSUANT TO 18 U.S.C. § 3166(b)(7)(d) and (e)

A. Statute

(1) Speedy Trial Act, 18 U.S.C. § 3161(h)

The designation of certain procedural delays as "excludable" time, with no allowances made for extending the time periods involved is inappropriate in many cases. The delays should result not only in the time being excluded, but should be the basis on which time may be extended beyond that specified in the Act. For example, assuming that a defendant's trial is scheduled for the sixtieth day following indictment and that, immediately before trial the defendant shows signs of a decompensating mental illness, the defendant may then have to be hospitalized until such mental state stabilizes. The hospitalization may be quite extensive. Meanwhile, the trial is held in abeyance, witnesses are no longer under subpoena, and the attorneys become involved in other cases. When the defendant has recovered sufficiently to be tried and is returned to the Court, the defendant then must be tried in the ten (10) days remaining from the original seventy (70) day period. This does not give either party sufficient time to subpoena witnesses (nor the Court time to procure jurors) and to adequately prepare for the trial. The Act should therefore be amended to provide that an additional period be added to the seventy (70) day limit in such situations to permit adequate preparation for trial. While it appears to the Planning Group that § 3161(h)(8) can be used to apply to such situation, we feel that the situation thus arising would be better addressed

by a specific reference to the time involved than by reference to 18 U.S.C. § 3161(h)(8).

(2) It is recommended that the jurisdiction of the United States magistrate be expanded to permit the United States magistrate to receive pleas of guilty in all criminal cases.

B. Rule

Federal Rules of Criminal Procedure, Rules 10 and 43(a)

Rules 10 and 43(a) should be amended to provide that a defendant who has already been personally advised of his rights by a judicial officer and who is represented by counsel may, with the approval of the Court, enter a plea of not guilty in writing without being personally present, and that the entry of such plea constitutes a waiver of the formal arraignment.

VII. INCIDENCE AND LENGTH OF, REASON FOR, AND REMEDY FOR DETENTION PRIOR TO TRIAL, PURSUANT TO 18 U.S.C. § 3161(b)(6)

A review of the data for three (3) years before original implementation of this Plan in 1981, indicates that there has been little change in the incidence and length of pretrial detention. Over this period, pretrial detention has been used in only slightly more than 1/3 of the cases (35.3% to 38.4%). Of those detained, only about 7% have been detained for a period longer than ninety (90) days. A somewhat disturbing fact is that, of those detained, almost 50% were detained for a period longer than thirty (30) days. A review of those reasons for detention, however, is essentially the same as those set forth in prior plans, indicates that the length of detention is necessary and that defendants are not being held because of defect in the court system. In most instances, the reason for detention are still inability of a defendant to comply with those pretrial release conditions which are reasonably necessary to assure the appearance of the defendant for trial. The issue remains that of a defendant whose presence for trial can be assured only by the imposition of a reasonable release condition, the imposition of that condition, and the inability or the refusal of the defendant to meet that condition.

VII. STATISTICAL TABLES

DONE AND ORDERED on behalf of the Court in Orlando, Florida, this 30th day of April, 2004.

PATRICIA C. FAWSETT
CHIEF UNITED STATES DISTRICT JUDGE