

FILED

SEP 29 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

RE: PLAN FOR PROMPT DISPOSITION OF)
CRIMINAL CASES) GENERAL ORDER NO. 63
)

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure effective October 1, 1972, and in conformity with the provisions of the Speedy Trial Act of 1974 (Chapter 208, Title 18, U.S.C.), and the Federal Juvenile Delinquency Act as amended (18 U.S.C. §§ 5036, 5037), the judges of the United States District Court for the Eastern District of California have adopted the following plan to minimize undue delay and to further the prompt disposition of criminal cases:

1. Priorities in Scheduling Criminal Cases

(a) Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure.

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

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached within five (5) court days of the day of original setting.

2. Time Requirements

Subject to the provisions of Section 3 hereof, the

judges of this court will observe the following time limits, which are deemed to be maximum time limits:

(a) Arraignments. If a defendant is prosecuted on an information or an indictment he shall be arraigned and enter a plea within 20 days if in custody, or within 30 days if not in custody, calculated from the date of the filing of the information or the return of the indictment.

(b) (1) Trial of defendants in custody.

Trial of a defendant held in custody solely for the purpose of trial shall commence within 90 days following the beginning of continuous custody.

(b) (2) Trial of a high risk defendant.

Trial of a high risk defendant shall commence within 90 days of the determination or designation as "high risk".

(b) (3) The trial of any defendant shall commence within 180 days of a plea of not guilty.

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

(d) (1) Where a defendant is apprehended outside of this district and is held in custody, the times set out above shall begin to run:

(i) in cases initially processed under Rule 20 of the Federal Rules of Criminal Procedure, at such time as the defendant rejects disposition under Rule 20, and

(ii) in proceedings under Rule 40(b) of the Federal Rules of Criminal Procedure, upon the finding and recommendation

or order by the magistrate or judge that a warrant of removal shall issue, or upon the defendant's arrest pursuant to a warrant issued on an indictment or information filed in this district.

(d) (2) Where a defendant is apprehended outside of this district and is released pursuant to the provisions of Chapter 207, Title 18, U.S.C., the times set out above shall begin to run when the defendant returns to this district.

(e) The implementation of other sections of this plan will in most cases dispose of a criminal case in substantially less time than the maximums herein set forth.

3. Extension of Time Limits

Except for the time limits prescribed by 2(b) (1) and 2(b) (2), any period of time prescribed by this plan may be extended by the court. Among other reasons, the court may take into consideration:

(a) A reasonable period of delay resulting from other proceedings concerning the defendant, including proceedings for the determination of competency and the period during which he is incompetent to stand trial, extraordinary pre-trial motions, stays, interlocutory appeals, trial of other charges, and the period during which such matters are under consideration.

(b) The period of delay resulting from continuances granted by the Court for persuasive reasons, on application of

the defendant or the prosecution. See Note 1. The Court

NOTE 1:

It is recognized that it is difficult to include all specific reasons for continuances in a stated plan. Such reasons may include but need not be limited to:

(a) The period of delay resulting from a continuance granted by the court at the request of, or with the consent of, the defendant or his counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the Court of his rights under these rules and the effect of his consent.

(b) The period of delay resulting from a continuance granted at the request of a prosecuting attorney if:

(1) the continuance is granted because of the unavailability of evidence material to the government's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or

(2) the continuance is granted to allow the prosecuting attorney additional time to prepare the government's case and additional time is justified by the exceptional circumstances of the case.

(c) The period of delay resulting from the absence or unavailability of the defendant.

(d) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.

(e) The period of delay resulting from detention of the defendant in another jurisdiction, provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.

(f) The period during which the defendant is without counsel for reasons other than the failure of the Court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.

(g) Other periods of delay occasioned by exceptional circumstances.

shall grant such continuances only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges and the interest of the defendant in a speedy trial.

4. Effect of Noncompliance With Time Limits

(a) Upon the expiration of the time limits prescribed by Section 2(b)(1) or 2(b)(2) of this plan:

(1) A defendant in custody solely because he is awaiting trial and whose trial has failed to commence through no fault of the accused or his counsel shall be released subject to such conditions as the court shall impose in accordance with 18 U.S.C. § 3146.

(2) A high risk defendant whose trial has not commenced through no fault of the attorney for the government shall 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 this court modifying his nonfinancial conditions of release under Chapter 207, Title 18, U.S.C., to ensure that he shall appear at trial as required.

(b) Subject to the provisions of 18 U.S.C. § 3146, if the Court finds that a defendant who is not in custody is responsible for failure to comply with the time limits, such defendant may have his release revoked unless there is good cause shown for the failure to comply.

(c) Subject to the power of the court to dismiss

a case for unnecessary delay, the failure to conform with the time limits prescribed in sections 2 and 7 of this Plan shall not require the dismissal of the prosecution.

5. Definition of "Custody"

As used in this plan, "custody" means custody on the federal charge contained in the pertinent complaint, information, or indictment.

6. Procedures Intended to Facilitate Prompt Disposition of Cases

(a) 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.

(b) The Court or the Magistrate at the time of arraignment or at the time of any proceeding preliminary to arraignment shall promptly appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure. If a defendant appears for arraignment without counsel, his arraignment may be postponed not more than one week to permit him to obtain or to consult with counsel. When appropriate, the Court may cause a plea of not guilty to be entered for the defendant. The Court shall take adequate steps to ensure that defendants are represented by counsel.

(c) A trial date shall be set at the time of

arraignement or at the earliest practicable time thereafter.²

(d) Except for good cause shown, the Court may not extend the time for motions under Rule 12(b)(3) of the Federal Rules of Criminal Procedure beyond ten days after plea. Such motions will be heard and ruled upon promptly, so that the trial need not be delayed.

(e) 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.

7. Retrials

Subject to the exclusions provided in 18 U.S.C. § 3161(h), where a new trial has been ordered by the district court or a trial or new trial has been ordered by an appellate court, it shall commence at the earliest practicable time, but in any event, not later than 60 days after the finality of such order. If the defendant is to be retried following an appeal or collateral attack, the court trying the case may extend such period for a total of not to exceed 180 days from the date on which the order occasioning the retrial becomes final, where unavailability of witnesses or other factors

Note 2:

For defendants subject to section (2)(b)(1) or (2)(b)(2) of this plan, it is recommended that the trial be set for not more than 75 days after the beginning of the continuous detention or the designation as high risk. Setting an early trial date would allow for the possibility that trial must be delayed for reasons, such as illness, which would not be attributable to the fault of the accused or one of the attorneys.

resulting from passage of time shall make trial within 60 days impractical.

8. Review of Defendants in Custody and Delinquent Cases

(a) The United States Attorney shall, within five days after the close of the reporting period, furnish the Court with a copy of the biweekly DJ-130 report of persons in custody, on which shall be indicated the judge to whom the case has been assigned. The "reason for detention" column shall include an explanation in any case for which the defendant's status appears to be inconsistent with the time limits set forth in the plan. A copy of such report shall be furnished to each judge of the court and the Federal Defender.

(b) The United States Marshal shall, every month, furnish each judge of the court with a statement of persons in federal custody and the date of such custody according to his records.

(c) At not more than three-month intervals, the court shall review the status of all persons in custody and all cases in which the maximum time limits set forth in section 2 have been exceeded. Cases shall be reassigned as appropriate in order to carry out the purpose of this plan. The United States Attorney shall be informed of any case in which his office appears to be responsible for unnecessary delay.

9. Responsibility of United States Attorney

(a) The Court has sole responsibility for setting and calling cases for trial. A conflict in schedules of

Assistant United States Attorneys will not be ground for a continuance or delayed setting except under circumstances approved by the Court and called to the Court's attention at the earliest practicable time. Each judge will schedule criminal trials at such times as may be necessary to assure prompt disposition of criminal cases. The United States Attorney will familiarize himself with the scheduling procedures of each judge and will assign or reassign cases in such manner that the government will be able to announce ready for trial.

(b) If the United States Attorney knows that a person charged with a criminal offense is serving a term of imprisonment in a federal, state, or other institution or that of another jurisdiction, it is his duty promptly:

(1) to undertake to obtain the presence of the prisoner for plea and trial; or

(2) when the government is unable to obtain the presence of the defendant, to cause a detainer to be filed with the official having custody of the prisoner and request him to advise the prisoner of the detainer and to inform the prisoner of his rights under the Federal Rules of Criminal Procedure and this Plan.

(c) If a defendant is being held in custody awaiting trial, the United States Attorney shall be responsible for advising the court at the earliest practicable time of the date of the beginning of custody.

(d) It is the responsibility of the United States

Attorney to advise the court at the earliest practicable time (usually at the hearing with respect to bail) that the defendant is considered by him to be of "high risk".

10. Definition of "High Risk"

A high risk defendant is:

(a) one whose chances of appearing at his trial or other court proceedings have been judicially determined to be poor; or

(b) one reasonably designated by the United States Attorney as posing a danger to himself or any other person, or to the community.

11. Juvenile Proceedings

An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date upon which such detention was begun.

Upon the expiration of such time limit, on the motion of the alleged delinquent or at the direction of the court, the case shall be dismissed, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel or was consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case.

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).

12. General Order No. 47 Superseded

This plan supersedes the plan for prompt

disposition of criminal cases which became effective January 3, 1973, which is set forth as General Order No. 47 of this court.

13. Effective Date of Plan

Upon approval of the reviewing panel designated in accordance with Rule 50(b) of the Federal Rules of Criminal Procedure, this plan shall become effective September 29, 1975.

DATED: September 3rd, 1975.


CHIEF UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

C E R T I F I C A T E

I, Anthony M. Kennedy, Judge of the United States Court of Appeals for the Ninth Circuit, certify that the attached Plan for the United States District Court for the District of Eastern California for Achieving Prompt Disposition of Criminal Cases (as amended) was approved by the Judicial Council for the Ninth Circuit on September 22, 1975.

This approval, together with the prior approval of Thomas J. MacBride, Chief Judge of said district court, constitutes the approval of the Reviewing Panel as provided by 18 U.S.C. § 3165(c). The said amended Plan shall become effective September 29, 1975.

Dated: September 23, 1975



Anthony M. Kennedy