

U.S. COURTS
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CAMPBELL S. BURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IN THE MATTER OF:)
NEW CRIMINAL PRODECURAL ORDER.) GENERAL ORDER NO. 124
_____)

Based upon ongoing problems with the discovery process and pretrial motions in criminal cases, the Criminal Advisory Committee has voted for the issuance of the attached Criminal Procedural Order in all criminal matters in the District of Idaho. The Procedural Order would be entered by the Magistrate Judge at the initial appearance of the defendant.

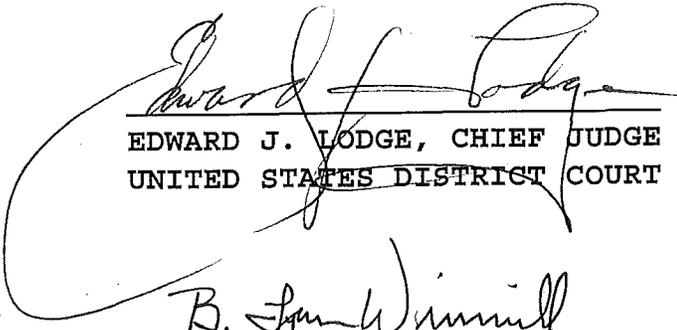
The Criminal Advisory Committee would review the application problems, if any, with the Procedural Order in August of 1996 and will make recommendations for changes to the Procedural Order where appropriate in the Fall of 1996. Finally, it was the intent of the Criminal Advisory Committee

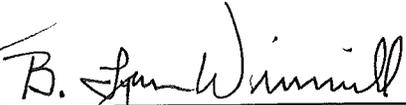
that the Procedural Order become effective on March 17, 1996. However, the United States Attorney's Office has requested that the effective date be April 1, 1996, so that the order will be effective when the new Grand Jury panel begins their service in April.

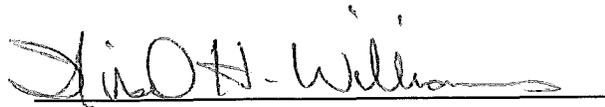
Being fully advised in the premises, the court hereby **ORDERS** that the attached Procedural Order is hereby adopted by the court as the Procedural Order to be entered in all criminal matters in the District of Idaho, and the Procedural Order shall become effective in the District of Idaho on April 1, 1996.

IT IS FURTHER ORDERED that the court clerk is directed to mail a copy of the Procedural Order to all current Criminal Justice Panel Attorneys and to have copies of the Procedural Order available for defense counsel's review at the clerk's office.

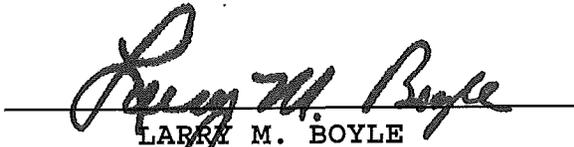
Dated this 26th day of February, 1996.


EDWARD J. LODGE, CHIEF JUDGE
UNITED STATES DISTRICT COURT


B. LYNN WINMILL
UNITED STATES DISTRICT JUDGE



MIKEL H. WILLIAMS, CHIEF JUDGE
UNITED STATES MAGISTRATE COURT



LARRY M. BOYLE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)
) Case No.
 Plaintiff,)
vs.) **PROCEDURAL ORDER**
)
)
 Defendant.)
_____)

A broader discovery by both defense and the prosecution will contribute to the fair and efficient administration of criminal justice by aiding in informed plea negotiations, by minimizing the undesirable effect of surprise at trial, and by otherwise contributing to an accurate determination of the issue of guilt or innocence. The requirements of the Speedy Trial Act further necessitate that such discovery, and the entire pretrial process, be accomplished efficiently and expeditiously. Therefore, in the interest of promoting greater pretrial discovery, pursuant to 28 U.S.C. § 636, the district court judges have designated the magistrate judges to be the judicial officers entering an order regarding discovery and pretrial motions. Accordingly, and for good cause, the following Orders are to be entered routinely and at the time of arraignment on the indictment.

This Procedural Order is the result of many meetings with both the United States Attorney's Office and representatives of the

defense bar in an effort to maximize the efficiency and fairness of the court system and at the same time reduce costs and expenses to the litigants. However, it should be understood by all parties that this Procedural Order is not intended to and does not create any rights that are expressly contrary to either the Federal Rules of Criminal Procedure or established law unless waived by compliance with this Order.

THEREFORE, IT IS HEREBY ORDERED that the attorney for the government shall within **seven (7)** calendar days from the date of arraignment on the indictment, disclose to the defendant and make available for inspection, copying, or photographing all of the following within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and provided, further, that in the event that the existence of the following becomes known to the attorney for the government after the date of such arraignment, the following disclosure and production shall promptly (within seven (7) days) be accomplished by the government:

REQUESTED:

1. Upon request of a defendant, that portion of any written record containing the substance of any relevant oral statement made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged; and the substance of any other relevant oral statement made by

the defendant whether before or after arrest in response to interrogation by any person then known by the defendant to be a government agent if the government intends to use that statement at trial; and where the defendant is a corporation, partnership, association or labor union, the foregoing statements of any witness before a grand jury who (1) was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which the witness was involved.

YES/NO

2. Upon request of a defendant, such copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

YES/NO

3. Upon request of the defendant, books, papers, documents, photographs, tangible objects, buildings or places or copies or portions thereof which are within the possession, custody or control of the government and which are material to the preparation of the Defendant's defense or are intended for use by the government as evidence in chief at the trial or were obtained or belong to the defendant.

YES/NO

4. Results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the government the existence of which is known or by the exercise of due diligence may become known to the attorney for the government and which are material to the

preparation of the defense or intended for use by the government as evidence in chief at trial.

YES/NO

5. A written summary of testimony the government intends to use under rule 702, 703 or 705 of the Federal Rules of Evidence during its case in chief at trial which summary must describe the witnesses opinions, the bases and the reasons therefore and the witnesses qualifications.

YES/NO

6. All documentation submitted to the court in support of or in connection with any search warrant issued in connection with this case, and with regard to any such material filed under seal, such order of seal is hereby withdrawn and such materials shall be deemed unsealed at this moment and the attorney for the government shall make available for inspection and copying any and all such material including but not limited to: applications for search warrants (whether granted or denied), all affidavits, declarations and materials in support of such search warrants, all search warrants and all search warrant returns.

7. All material evidence within the scope of Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976), Kyles v. Whitley, ___ U.S. ___, 115, S. Ct. 1555 (1995) and their progeny.

8. The existence and substance of any payments, promises of immunity, leniency, preferential treatment or other inducements made to prospective witnesses, within the scope of United States v. Giglio, 405 U.S. 150 (1972), and Napue v. Illinois, 362 U.S. 264 (1959, and their progeny.

9. Whether a defendant was identified in any lineup, showup, photo spread or similar identification proceeding, and produce any pictures utilized or resulting therefrom and the names, addresses and telephone numbers of all identifying witnesses.

10. Unless otherwise provided, the names and, if known, the telephone numbers of all witnesses to the actions described in the indictment. In entering this portion of the order the court recognizes that the United States and the defendants shall have equal opportunity to interview witnesses and in that regard neither party shall interfere with that equal opportunity to interview witnesses and all counsel shall make every effort to see that said witnesses are not harassed or intimidated by anyone over whom counsel has control.

11. The criminal record of any and all prior convictions of any alleged informants who will testify for the government at trial.

12. All rough notes of the agents and officers involved in this case as provided by law. The United States shall instruct those agents and officers to preserve all rough notes. In the event that the government is uncertain as to whether certain rough notes must be turned over, the material shall be promptly submitted to the court for in camera inspection, with notice to the defendant. If a government agent with rough notes is expected to testify, the court encourages the government to provide the notes for defense counsel's review in a timely manner which would

otherwise necessitate a delay in the trial so the defense counsel may have sufficient opportunity to review the notes.

13. Inform the defendant of the government's intention to introduce during its case in chief proof of evidence pursuant to Rule 404(b), Federal Rules of Evidence.

14. State whether the defendant was an aggrieved person, as defined by 18 U.S.C. § 2510(11), of any electronic surveillance, and if so, shall set forth in detail the circumstances thereof.

15. Transcribe and provide to the defendant all grand jury testimony of all witnesses who testified in connection with this case, provided that if such testimony is not transcribed as of the date of arraignment, such transcript shall be provided within twenty-eight (28) days from the date of arraignment. The government may at any time prior to the time required for providing transcripts to the defendant, file a motion showing cause why certain transcripts or portions thereof should not be provided to the defendant as provided herein or the government may file a notice with the court indicating that the government is not providing the transcripts.

The United States is hereby authorized pursuant to Rule 6(e), Federal Rules of Criminal Procedure, to disclose the above described grand jury materials to the defendant and defendant's counsel. This limited release allows only the attorneys for the government, the defendant and the defendant's attorney to have access to these grand jury materials. Neither the defendant, nor counsel, are allowed to disclose the grand jury transcripts to

third parties. Any release to individuals and organizations other than those specifically listed in a Rule 6 order is prohibited without a court order allowing such disclosure. United States v. Proctor & Gamble, 356 U.S. at 681.

16. Copies of all latent finger prints or palm prints which have been identified by the United States expert as those of a defendant and copies of any documents alleged to contain defendant's handwriting.

IT IS FURTHER HEREBY ORDERED that if the defendant has triggered reciprocal discovery as provided in Rule 16(b)(1)(A), (B), or (C), the defendant, upon compliance with such request by the government and on request of the government, shall within fourteen (14) days from the date of arraignment on the indictment, from the date of compliance with defendant's requests by the government or from the date of the request of the government, whichever shall last occur, disclose to the government and make available for inspection, copying, or photographing all of the following within the possession, custody or control of the defendant:

REQUESTED:

17. Books, papers, documents, photographs, tangible objects, or copies or portions thereof which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

YES/NO

18. All results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the

particular case, or copies thereof within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witnesses testimony.

YES/NO

19. A written summary of testimony the defendant intends to use under rule 702, 703 and 705 of the Federal Rules of Evidence as evidence at trial which summary must describe the opinions of the witnesses, the bases and reasons therefore and the witnesses' qualifications.

YES/NO

IT IS FURTHER HEREBY ORDERED that the defendant shall provide the following notices of certain defenses to the government within twenty-eight (28) days from the date of arraignment:

20. The government is deemed through this procedural order to make written demand pursuant to Rule 12.1(a) of the defendant's intent to offer a defense of alibi. For the purposes of this demand, the government relies upon the indictment or information and materials to be provided in accordance with this procedural order for stating the time, date and place at which the alleged offense was committed. The court hereby finds that the indictment or information and materials provide such notice to the defendant in accordance with the Rule. If the defendant requires additional specificity in order to respond to said demand, the defendant shall file a motion to that effect within twenty-eight (28) days from arraignment.

21. If the defendant intends to rely on the defense of insanity, or if the defendant intends to introduce expert testimony relating to a mental disease or defect, the defendant must file a written notice of such intention within twenty-eight (28) days from the date of arraignment.

22. If the defendant intends to claim a defense of actual or believed exercise of public authority on behalf of law enforcement, the defendant must file a written notice of such intention within twenty-eight (28) days from the date of arraignment.

IT IS HEREBY FURTHER ORDERED as follows:

23. That all pretrial motions, if any, and accompanying memoranda shall be filed with the clerk of the court on or before the twenty-eighth (28th) day after the arraignment. All response memoranda to pretrial motions, if any, shall be filed with the clerk on or before the fourteenth (14th) day following the filing of any pretrial motion. All reply memoranda to pretrial motion responses shall be filed with the clerk of the court on or before the seventh (7th) day following the filing of such response. An additional copy of all pretrial motions, memoranda, responses and replies and other supporting documentation shall be submitted as a Judge's copy to the clerk of the court at the time of filing the original document.

If the adverse party has no opposition to the motion or application such shall be promptly communicated to the court. In the event an adverse party fails to file any responsive documents provided to be filed under this order in a timely matter, such failure may be deemed by the court to constitute a consent to the sustaining of said pleading or the granting of said motion or other application.

24. No later than fourteen (14) days prior to the date of trial legal counsel shall confer in anticipation of preparation of a written statement to be signed by counsel describing all discovery materials exchanged and of stipulations.

25. No later than fourteen (14) days prior to the date of trial, counsel shall make every possible effort in good faith to stipulate to all facts, the truth or existence of which is not contested, or points of law, the earlier resolution of which will expedite the trial. No stipulation made by defense counsel at the conference shall be used against the defendant, unless the stipulation is reduced to writing and signed by the defendant and defendant's counsel. Any stipulation signed by the defendant and defendant's counsel, together with the written statement describing all discovery materials exchanged shall be filed with the court within seven (7) days following the conference at which time the parties shall notify the court if any motions previously filed are resolved by the stipulation.

26. Unless specific objection to the chain of custody or authenticity of any document, scientific evidence, photograph, book, paper or other tangible object disclosed by the parties and to be used or introduced at trial is made in the parties written statement to the court discussed in paragraph twenty-four (24) or by pretrial motion, it shall be deemed that the requirement of chain of custody and/or authenticity for the introduction of such evidence at trial is waived unless cause can be shown to the contrary by the objecting party.

27. Pretrial statements, requested voir dire, and requested jury instructions shall be submitted to the court on or before the fourteenth (14th) day preceding the trial date, together with

copies as required by Local Rule 30.1. Proposed jury instructions shall also be provided to the judge's chambers on 3 1/2" disks in Wordperfect format. The parties shall notify the court in the pretrial statement if any scientific methodology is going to be objected to or challenged by either party under Daubert v. Merrell Dow Pharmaceuticals, Inc., ___ U.S. ___, 113 S. Ct. 2786 (1993). The court will make a determination if a hearing is necessary regarding the admissibility of the scientific evidence/testimony and will notify the parties if a hearing is scheduled.

28. That on or before the fourteenth (14th) day preceding the trial date the United States shall provide to the defendant an exhibit list and description of exhibits together with a copy of exhibits which exhibit list shall indicate all exhibits that have been stipulated for admission by the parties.

29. That within seven (7) days from the date the United States complies with the foregoing paragraph the defendant shall supply to the United States an exhibit list and description of exhibits together with a copy of the exhibits which exhibit list shall indicate all exhibits that have been stipulated for admission by the parties.

30. That prior to preparation of exhibit lists to be exchanged, counsel shall contact the in court deputy clerk to determine the method for listing and numbering trial exhibits. Ms. _____ is the deputy clerk to the Honorable _____; she may be reached at 334-_____. The

Court will be provided a copy of the exhibit lists and witness lists on or before seven (7) days prior to the date of trial.

31. That on or before the fourteenth (14th) day preceding the trial date in this matter, the United States shall supply to the defendant a list of the names of all witnesses who will testify in the case in chief for the United States and within seven (7) days thereafter the defendant shall disclose to the government a list of the names, addresses and telephone numbers of all witnesses who will testify in the defendant's case in chief.

32. It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this order.

33. Upon written motion properly filed and served and a sufficient showing (in camera if appropriate) the court may at any time order that the discovery or inspection provided for by this order be denied, restricted or deferred, or make such other order as is appropriate.

34. That the jury trial in this case is scheduled to commence on _____, the _____ day of _____, 199__ at _____ o'clock __.m. to continue for _____ days.

35. Pursuant to Local Criminal Rule No. 11.1 the parties shall complete all plea negotiations prior to 48 hours of the scheduled commencement of trial. In particular, the attorney for the government is encouraged to provide in plea negotiations a requirement that government offers to a defendant to plead guilty

must be accepted by the Defendant prior to 48 hours of the
scheduled commencement of trial.

DATED THIS _____ DAY OF _____, 199__.

United States Magistrate Judge