

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

United States of America,

Plaintiff,

v.

Case No. 1:0

XX,

Judge Michael R. Barrett

Defendant.

CRIMINAL PRELIMINARY PRETRIAL ORDER

To eliminate unnecessary motions for discovery, to expedite the trial, and to eliminate delays in the presentation of evidence and examination of witnesses in this case, this matter shall precede as follows:

1. Conference. Unless discovery has already commenced, within 10 days from the date of this Order, the United States Attorney or one of his Assistants (hereinafter "Government" or "Government attorney") and each defendant's attorney shall meet and confer, and upon request of defense counsel, the Government shall:

(a) Permit defendant's attorney to inspect and copy or photograph any relevant written or recorded statements or confessions made by the defendant, whether inculpatory or exculpatory, or copies thereof, including oral admissions or statements if they have been reduced to any form of writing, or are known to the Government attorney, which are within the possession, custody or control of the Government or the existence of which is known or may become known to the Government attorney.

(b) Permit defendant's attorney to inspect and copy or photograph any

relevant results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the case, or copies thereof, which are within the possession, custody or control of the Government or the existence of which is known, or may become known to the Government attorney, and which are material to the defendant's case.

(c) Permit defendant's attorney to inspect and copy or photograph any recorded testimony given by the defendant before a grand jury.

(d) Permit defendant's attorney to inspect and copy or photograph 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 or the existence of which is known, or may become known to the Government attorney, and which are material to the defendant's case.

(e) Make known to defendant's attorney the defendant's prior criminal records in the possession of the attorney for the Government.

(f) Make known to the defendant's attorney whether there have been any photographic identifications of defendant by any of the witnesses.

(g) Permit defendant's attorney to inspect, copy or photograph any evidence favorable to the defendant within the meaning of Brady v. Maryland, 373 U.S. 83 (1963) and/or United States v. Agurs, 427 U.S. 97 (1976). A list of the documents and items of evidence so inspected shall be made and this list shall be signed by the attorneys and copies of the items so disclosed shall be initialed or otherwise marked.

2. Disclosure Declined. If it is the judgment of the Government attorney that it would be detrimental to the interests of justice to make any disclosure set forth in

Section 1 which is requested by defense counsel, disclosure may be declined and defense counsel shall be so advised. The declination shall be made or confirmed in writing.

If a defendant seeks to challenge the declination, the defendant may move the Court for relief in the following manner:

(a) The defendant shall file a motion for discovery or inspection no later than five business days from the time the Government declines.

(b) The motion shall set forth: 1) the statement that the prescribed conference was held, 2) the date of the conference, 3) the name of the Government attorney with whom the conference was held, 4) the matters that were agreed upon, and 5) the matters that are in dispute and require determination by the Court.

3. The time required to comply with the Order of Procedure is necessary for the Court and the parties to prepare the case for trial, the delay is necessary to affect a fair trial to the parties and the need to conduct a fair trial outweighs the right of the public and the parties to a speedy trial, therefore, the time to complete these procedures is excludeable time under Title 18 U.S.C. Section 3161, *et seq.*

4. Continuing Duty. Any duty of disclosure and discovery set forth herein is a continuing duty.

5. Discovery by the Government. This Order is not intended to preclude discovery by the Government pursuant to Rules 16(b) or 26.2 of the Federal Rules of Criminal Procedure.

6. Motion Deadline. All motions of any kind, by the defendant or by the government, shall be filed on or before _____. All briefs opposing said motions shall be filed no later than one week after motions are filed. Reply briefs will not be filed. The

moving party shall state in the motion whether an evidentiary hearing is required and shall provide the reasons supporting this request. If the Court agrees, a hearing will be set forthwith.

7. Final Pretrial Conference: **6 weeks after arraignment, Room 815.** The defendant is not required to attend. However, should the defendant wish to change his plea, the final pretrial conference will be converted to a change of plea hearing.

8. Pre-Marking and Listing of Exhibits.

(a) Each party intending to offer exhibits shall mark the exhibits prior to commencement of the trial. Exhibit labels may be obtained from the Courtroom Deputy, Clerk of Courts in advance of trial. The United States shall identify their exhibits with Arabic numbers, and the defendant shall identify their exhibits with letters.

(b) Counsel should provide the original and two copies of exhibits to Chambers, and one copy to opposing counsel, three (3) business days prior to the commencement of trial. The two copies of exhibits to the Court should be three hole punched and placed in notebooks, along with a copy of the exhibit lists **ON THE ATTACHED FORM.**

(c) Exhibits which are introduced for the first time during trial, as in the case of exhibits used for impeachment, should be tendered to the courtroom deputy for marking and then displayed to opposing counsel. Copies must be provided to opposing counsel, the Court and the Court's Law Clerk.

9. Scientific Analysis. When the Government or defense has disclosed the scientific analysis of a proposed exhibit to opposing counsel, and that analysis has been made by an expert in the field of science involved, the results of the scientific analysis of

the exhibit and the opinion of the scientist will be deemed admitted unless opposing counsel files with the Court prior to 10 business days before the date of trial a notice that the scientific analysis of the exhibit will be contested. This notice shall state whether the expert is desired as a witness.

10. Refreshing Memory. Whenever counsel for a party provides a witness with a document to refresh the memory of the witness for the purpose of testifying at trial, the opposing counsel shall be permitted defense counsel to inspect and copy the document, provided that such copy shall not be further duplicated. The document shall remain in the possession of counsel and shall be used only for the purpose of representing the parties in this case.

11. Jury Instructions. Counsel should submit proposed, substantive jury instructions, which indicate the filing party, the supporting authority and shall be numbered. The proposed instructions shall be filed with the Clerk's office at least five (5) business days before the scheduled trial date. Counsel are also required to submit a copy of their instructions by email to barrett_chambers@ohsd.uscourts.gov formatted in WordPerfect. Supplemental requests for instructions during the course of the trial or at the conclusion of the evidence will be granted solely as to those matters that cannot be reasonably anticipated at the time of presentation of the initial set of instructions. Copies also should be served upon opposing counsel..

12. Trial Date (in Cincinnati): **8 weeks after arraignment, Courtroom 836.**

13. Defendant Attendance. The United States Marshal is hereby **DIRECTED** to have any defendant in its custody present at the hearing set in Section 7 and at trial set in Section 12. Defense counsel are hereby **DIRECTED** to have the defendant present at all

settings.

14. The Government attorney shall monitor these proceedings. He or she shall prepare a time line showing the non-excludable and excludable time under 18 U.S.C. Section 3161. The time line shall be filed with the Court. The time line shall be updated as necessary but at least every thirty (30) days and filed with the Court. The Government attorney shall **FORTHWITH** inform the Court of the date trial should begin in this case pursuant to 18 U.S.C. Section 3161 and of any need to change that date to an earlier time. Requests for any continuance of the trial date by a party shall be by motion. The party filing the motion shall explain in the motion the necessity of the continuance and demonstrate that the time added by the continuance to the length of the proceedings is not only necessary but excludable under 18 U.S.C. Section 3161(h)(1)-(9).

The parties shall refer to the Court's web site at www.ohsd.uscourts.gov/judges/htm for further information regarding the trial procedures of this Court.

IT IS SO ORDERED.

bac July 28, 2006

Michael R. Barrett, Judge
United States District Court

