

RECEIVED FOR ENTRY

2.06 P.M.

March 6, 1985

PLAN

OF THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE PURSUANT TO THE
CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

~~CLERK~~

Vicki R. Kinkade
~~DEPUTY CLERK~~

Pursuant to the provisions of the Criminal Justice Act of 1964 (18 U.S.C. §3006A) as amended by the Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916), the judges of the United States District Court for the Middle District of Tennessee have adopted the following amended Plan for the adequate representation of any person otherwise financially unable to obtain adequate representation;

(1) who is charged with a felony or misdemeanor (other than a petty offense as defined in Section 1 of Title 18 of the United States Code, unless the defendant charged with a petty offense faces the likelihood of loss of liberty if convicted), or with juvenile delinquency, or with a violation of probation or parole, or

(2) who is under arrest, when such representation is required by law, or

(3) who is in custody as a material witness, or seeking collateral relief, subject to the conditions of 18 U.S.C. §3006A(g) as amended, or

(4) who is facing a parole termination hearing pursuant to 18 U.S.C. §4211, or

(5) who is a person for whom the Sixth Amendment to the Constitution requires the appointment of counsel, or for whom, in a case in which he faces loss of liberty, and Federal law requires the appointment of counsel. Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

I. Provision for Furnishing Counsel

This plan provides for the furnishing of legal services by a Federal Defender Organization when and if approved by the Judicial Council of the Sixth Circuit under the terms of 18 U.S.C. §3006(h)(2)(A) as amended by P.L. 91-447. In addition, this district plan provides for the continued appointment and compensation of private counsel in a substantial proportion of cases.

Insofar as practicable, private attorney appointments will be made in at least 25 per cent of the cases. For the sole purpose of allocation of cases as between such organization and the private bar, a "case" shall be deemed to be each proceeding actually docketed in the United States District Court. An order granting a new trial shall be deemed to initiate a new "case", as set out in 18 U.S.C. §3006A(d)(5).

II. Establishment of the Federal Public Defender Organization

The Court has determined that the use of a Federal Defender Organization as defined in 18 U.S.C. §3006A(h)(2)(A) will facilitate the representation of persons entitled to the appointment of counsel under the Criminal Justice Act of 1964, as amended, and that the Middle District of Tennessee is a district in which at least two hundred person annually require the appointment of counsel pursuant to 18 U.S.C. §3006(h)(1) as amended.

The Court has submitted its recommendation to the Judicial Council of the Sixth Circuit pursuant to 18 U.S.C. §3006A(h)(2)(A) for the establishment of a Federal Defender Office with headquarters in Nashville, Tennessee, capable of rendering legal services on appointment throughout the district. On the appointment of the Federal Defender by the Court of Appeals, and the organization of his office as provided by the act, the said Federal Defender will be available for appointment as provided in the Act [18 U.S.C. §3006A(a)(2)].

The Federal Public Defender Organization shall consist of a Federal Public Defender and assistants. The Federal Public Defender Organization hereby instituted shall be for the Middle District of Tennessee and those portions of the Fort Campbell Military Reservation which are within the Western

District of Kentucky. The Organization shall be supervised by a Federal Public Defender appointed by the Sixth Circuit Court of Appeals, without regard to the provisions of Title 5 governing appointments in the competitive service, after considering recommendations from the District Court. The Federal Public Defender so appointed shall serve for a term of four (4) years unless sooner removed by the Sixth Circuit Court of Appeals for incompetency, misconduct in office, or neglect of duty. Compensation of the Public Defender shall be fixed by the Sixth Circuit Court of Appeals at a rate not to exceed the compensation received by the United States Attorney for the District. The Federal Public Defender may appoint, without regard to the provisions of Title 5 governing appointments in the competitive service, full-time attorneys and other personnel as may be approved by the Sixth Circuit Court of Appeals. The compensation to be paid such assistant attorneys and other personnel of the Organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the office of the United States Attorney in this District and approved by the Director of the Administrative Office. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. The Federal Public Defender Organization shall submit to the Director of the Administrative Office of the United States

Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Federal Public Defender Organization shall each year handle the cases for not more than 75% of the individuals whose defense is being handled pursuant to the Criminal Justice Act, and the balance of such individuals shall be defended by private attorneys appointed pursuant to the Criminal Justice Act under this plan.

III. Selection Process of Private Attorneys

A. Panel of Attorneys

All attorneys in active practice whose names appear on the rolls of this Court are eligible for admission to the Criminal Justice Act panel of attorneys for the Middle District of Tennessee.

Application forms for membership on the panel shall be kept at the Office of the Federal Public Defender and the Clerk's office. Completed applications shall be forwarded to the Office of the Federal Public Defender and shall be reviewed annually by the Panel Selection Committee. The committee shall appoint members of the bar to the Criminal Justice Act panel of attorneys for a three (3) year term, with approximately one third (1/3) of the panel of attorneys being considered for reappointment each year. The committee should meet each year

in December to establish the panel for the following calendar year. Attorneys who have completed their term may seek reappointment for an additional term.

B. Panel Selection Committee

The chief judge of the district shall appoint the Panel Selection Committee to serve without compensation and select the panel members annually as outlined in IIIA. The Federal Public Defender shall be a voting member of the Selection Committee and serve as its permanent secretary. The chair of the committee shall consist of at least two (2) members of the private bar who engage in an active federal court criminal practice. The committee may be expanded from time to time in the discretion of the chief judge. In no event may an attorney for the government be a member of the committee.

The committee shall select panel members based on their proven experience and competence in the field of criminal defense. In addition to applications, the committee should also review recommendations from any interested citizens concerning the fitness of a particular applicant for admission to the panel.

C. Removal of Attorneys From the CJA Panel

Each attorney appointed to the panel will serve a term of three years and is not subject to removal in the interim except for neglect of duty or malfeasance. A charge of neglect of duty or malfeasance will be heard by the Panel Selection Committee upon written notice to the attorney. The committee will conduct a hearing if requested by the attorney involved and submit a written summary of the charges, the hearing and the findings to the chief judge. The decision of the Committee to remove a panel attorney is final and reviewable on the record by the chief judge. There are no appeals beyond the chief judge. A panel attorney may resign from the panel for good cause upon giving notice to the secretary of the panel selection committee. Upon giving such notice, the secretary of the Panel Selection Committee shall notify the chief judge who will then determine whether good cause has been shown to justify resignation of the panel attorney prior to expiration of the attorney's term. No member of the bar has any right to be appointed or reappointed to the CJA panel of attorneys for Middle Tennessee.

D. Appointment of Panel Attorneys

In all cases in which a person qualifies for appointment of counsel under the Criminal Justice Act the appointing court will initially appoint the office of the Federal Public Defender, not any particular member of that office, nor any private attorney. The appointing court will also make an initial determination reflecting whether the person qualifies

for subpoenas for witnesses to be issued at government expense pursuant to Rule 17 of the Federal Rules of Criminal Procedure on the form provided by the Clerk's office for that use.

Personnel in the appointing court will immediately notify the office of the Federal Public Defender by telephone or in person of the fact of the appointment and secure copies of all relevant available material concerning the appointment, the charge, the bond, and any notices of future court appearances.

Personnel from the Office of the Federal Public Defender upon receiving notice of the appointment shall immediately obtain copies of the relevant material and make the decision whether to accept the case or refer the case to a panel attorney, as in the event of schedule conflicts, conflict of interests, unavailability of adequate resources, or achievement of the 25% ratio for cases handled by panel attorneys.

If the decision is made to refer the case to private counsel, personnel in the Office of the Federal Public Defender will select at random the name of a CJA panel attorney and contact him or her by telephone to determine their availability for appointment. When a panel lawyer is available for appointment the Office of the Federal Public Defender will complete the CJA voucher form 20 and submit it to the appointing court for approval.

Counsel appointed to represent a person in custody in the Middle District of Tennessee shall make contact with that person as soon as possible after counsel is advised of the appointment. Counsel shall not accept the appointment if unable to expeditiously meet with the client in custody.

IV. Determination of Need for Counsel

A. When Appearing Before a Magistrate or Court in a Criminal Case

In every criminal case in which the party is charged with a felony or misdemeanor (other than a petty offense not involving the likelihood of loss of liberty upon conviction), or with juvenile delinquency, or with a violation of probation, or who is facing a parole termination hearing pursuant to 18 U.S.C. §4211(c), and appears without counsel, the magistrate or the Court shall advise the party that he has the right to be represented by counsel throughout the case and that counsel will be appointed to represent him if he so desires and if he is financially unable to obtain counsel.

Whenever the party states that he is financially unable to obtain counsel and desires the appointment of counsel, if the case is then pending before a magistrate, it shall be the duty of the magistrate to inquire into and to make a finding as to whether the defendant is financially able to obtain counsel. If the case is not pending before a magistrate, it shall be the duty of a judge to conduct such inquiry and to make such finding (unless the Court by separate written order delegates

the function to the magistrate of making all appointments under the Criminal Justice Act program). An appointment may be made retroactive to include any representation furnished prior to such appointment as is otherwise explained in Subtitle B infra. The Court or the magistrate shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

All statements made by a defendant in such an inquiry shall be either (a) by affidavit sworn to before a judge, a court clerk, or his deputy, a magistrate, or a notary public, or (b) under oath in open court before a magistrate or a judge.

B. Counsel for Person Arrested when Representation is Required by Law.

Where a person has been represented by counsel before his presentation before a judicial officer under circumstances where such representation is required by law, his counsel may subsequently apply to the court, or a magistrate, for approval of compensation. (If such application is made to a magistrate, the magistrate shall submit his recommendation to a judge of this Court for final approval.) If the Court, or the magistrate, finds such person has been and is then financially unable to obtain an adequate defense, and that such representation was required by law, compensation will be made retroactive to cover out-of-court time expended by the attorney during the arrest period, and in addition cover compensation

for services rendered from the time of his initial presentation before a magistrate, or the Court, as the case may be. The Court, or the magistrate, may make retroactive appointment of counsel where such attorney will continue to represent such party in criminal proceedings in this Court. If the person represented is unavailable at the time counsel applies to the Court for approval of compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the court for approval based on the arrestee's financial condition and a showing that such representation was required by law.

C. Other Appointments as of Right

The Court, or the magistrate, may proceed as under Subtitle A above to make an appointment of counsel for a person (1) whom the Sixth Amendment to the Constitution requires the appointment of counsel or (2) for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel.

D. Discretionary Appointments

Any person in custody as a material witness or seeking relief under 28 U.S.C. §§2241, 2254, or 2255 or 18 U.S.C. §4245 may apply to the Court to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially unable to obtain representation. Such application shall be verified and in such written

form as is prescribed by the Judicial Conference of the United States. If the party applicant is not before the Court, the Court may, without requiring the personal appearance of the party for such purpose, act on the basis of the form alone, or the form as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the party. The Court may approve such representation on a determination that the interests of justice so require and that such person is financially unable to obtain representation.

V. Appointment of Counsel

A. The Magistrate

In every criminal case in which a party is charged with a felony or misdemeanor other than a petty offense not involving the likelihood of loss of liberty upon conviction, or with violation of probation, and appears without counsel before a magistrate, it is the duty of the magistrate not only to advise the party of his right to counsel before the magistrate and throughout the case, but also promptly to appoint counsel to represent the party if the magistrate finds that the party is financially unable to obtain an attorney, unless the party waives his right to be represented by counsel. The magistrate shall similarly proceed in any proceeding as described in Subtitle C of Title IV above.

The magistrate shall in appointing such counsel initially appoint the Office of the Federal Public Defender. The party shall not have the right to select his appointed counsel.

Counsel appointed by a magistrate shall, unless excused by order of Court, continue to act for the party throughout the proceedings in this Court. In the event that a criminal defendant is convicted following trial, counsel appointed hereunder shall advise the defendant of his right of appeal and of his right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant unless, or until, he is relieved by the Court of Appeals. If counsel appointed by a magistrate in any proceeding wishes to be relieved, he shall communicate his wish to the magistrate or judge before whom the case is then pending after first advising his client of his intention to do so.

The magistrate before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings before him.

If at any time after the appointment of counsel, the magistrate finds that the party is financially able to obtain counsel or make partial payment for the representation, he may

terminate the appointment of counsel or recommend to the Court that any funds available to the party be ordered paid as provided in 18 U.S.C. §3006A(f).

If at any stage of the trial proceedings, the magistrate finds that the party is financially unable to pay counsel whom he had retained or to obtain other counsel, the magistrate may make an original appointment of that counsel notwithstanding the general procedure set forth in this Plan, which counsel may claim compensation for services rendered pursuant to the act.

Counsel for a defendant charged with a minor offense, other than a petty offense not involving the likelihood of loss of liberty upon conviction, to be tried before the magistrate, may, in an ex parte application to the United States magistrate, request investigative, expert or other services if the defendant is financially unable to obtain them. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the magistrate shall recommend to the Court that counsel be authorized to obtain such services on behalf of the defendant. A claim for any such services shall be reviewed by the magistrate who shall make a recommendation to the judge with respect to the amount to be allowed by the Court in accordance with the statute.

If a party having a right to counsel (i.e., where the appointment is not a matter of discretion) is not represented by counsel before the magistrate and waives his right to have appointed counsel, the magistrate shall present to the party a waiver of right to have appointed counsel. If such party executes the waiver, the magistrate shall certify that fact in the record of the proceedings. If such party waives the right to have appointed counsel but refuses to execute such a waiver, the magistrate shall certify that fact in the record of proceedings. If such party admits or the magistrate finds out such party is financially able to obtain counsel but declines to do so, the magistrate shall certify that fact in the record of proceedings.

B. The Clerk

If counsel has not been appointed by the magistrate or the appointment of such counsel has been terminated by the Court, and the clerk learns from the report of the magistrate, from the United States Attorney, from the party himself, or otherwise, that a party having a right to counsel desires to have counsel appointed for him;

(a) if no affidavit of financial inability to employ counsel has been filed with the clerk, he shall promptly send to the party a form of affidavit, to be filled out by the party and returned to the clerk; or

(b) if the notice to the clerk includes an affidavit of such financial inability to employ counsel, as soon as the clerk receives such an affidavit, the clerk shall promptly communicate with a magistrate or judge of this Court to arrange for the appointment of counsel in the manner provided in this plan. If a party to a proceeding described in Subtitle D of Title IV of this Plan desires to apply for a discretionary appointment of counsel, the clerk shall promptly send such party the appropriate CJA forms to be executed and filed in accordance with said Subtitle D of Title IV.

C. The Judge

Whenever the clerk presents to a judge of this Court a proposed order for the appointment of counsel for a party entitled as of right to counsel and the judge is satisfied that the party does not elect to waive counsel and is financially unable to employ counsel, the judge shall appoint counsel for him.

If a judge, the clerk, the United States Attorney, other law enforcement officer, a Parole Board representative, or an appointed attorney challenges the claimed financial inability of a party to employ a lawyer, the determination of the defendant's right to have appointed counsel shall be made by a judge of this Court or by a magistrate appropriately designated by this Court.

Whenever it shall appear to the presiding judge at the time of arraignment or at any other time, that a party entitled as of right to counsel is not represented by counsel and has not voluntarily waived the assistance of counsel, the judge shall determine whether such defendant is financially able to obtain counsel and, if not, shall appoint counsel for him. The judge may also make a discretionary appointment as provided in Subtitle D of Title IV. If in either situation the judge concludes that counsel should be appointed, he will make an appointment from the panel.

The appointment of such counsel is the province of the judge. The party shall not have the right to select his appointed counsel.

Counsel appointed by a judge shall, unless excused by order of Court, continue to act for the party throughout the proceedings in this Court. In the event that a criminal defendant is convicted following trial, counsel appointed hereunder shall advise the defendant of his right of appeal and of his right to counsel on appeal. If requested to do so by such defendant, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant unless, or until, he is relieved by the Court of Appeals.

A judge may, in the interest of justice, substitute one appointed counsel for another at any stage of any proceeding in this Court.

D. Redetermination of Need

If at any stage of the proceeding, a judge, or magistrate, shall find that a party for whom counsel has not previously been appointed under this Plan but who has retained his own attorney, is financially unable to provide for his continued representation, the judge, or magistrate, may appoint counsel for such party. Ordinarily the same attorney will not be appointed.

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a party, unless such payment is approved by order of Court or except under the circumstances set forth in Subtitle B of Title IV, supra, nor may counsel request the client or anyone on behalf of the client to pay legal fees to himself or any other attorney for representation furnished under the Act.

If at any time after his appointment, counsel should have reason to believe that a party is financially able to obtain counsel or to make partial payment for counsel, he shall advise the Court. The Court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all of the cost of representation defrayed by such defendant.

In such event, the amount so paid or payable by the party shall be considered by the Court in determining the total compensation to be allowed to such attorney.

VI. Investigative, Expert and Other Services

A. Upon Request

Counsel (whether or not appointed under the Criminal Justice Act) for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense in his case may request such services in an ex parte application before a judge, or before a magistrate if the services are required in connection with a matter over which the magistrate has jurisdiction (or if the judge otherwise refers such application to a magistrate for findings and report). Upon finding, after appropriate inquiry in such ex parte proceedings, that the services are necessary and that the person is financially unable to obtain them, the Court, or the magistrate, as the case may be, shall authorize counsel to obtain the services. The judge, or magistrate, may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by 18 U.S.C. §3006A(e)(3).

B. Without Prior Request

Counsel, appointed under the Criminal Justice Act, may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for an adequate defense. The total cost of services obtained without prior authorization, however, may not exceed a maximum of \$150.00 plus expenses reasonably incurred, and no greater amount may be authorized regardless of the number of persons used or the

character of services. A sworn application may be made by counsel to the Court on the appropriate CJA form for the ex parte review by the judge and ratification of such expenses. Such expenditures without prior Court authorization are not favored, and in addition to showing that such expenditures were "necessary for an adequate defense" and that the person was financially unable to obtain them, the application for ratification must show why prior authorization could not have been obtained.

C. Necessity of Affidavit

The statements made by or on behalf of the party in support of the request under Subtitles A or B, supra, shall be made either by affidavit sworn to before the clerk, or other appropriate officer, or under oath in open Court or before the magistrate.

VII. Compensation

A. Individual Payments to Counsel Appointed Under This Plan

Payment of fees and expenses to counsel appointed under this Plan, and payment for investigative, expert, and other services incurred pursuant to Title VI hereof, shall be made in accordance with such rules and regulations and guidelines as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts.

B. Schedule of Maximum Fees for Counsel and Other Services

The following fees are hereby prescribed for this District:

1. Maximum Hourly Rate for Counsel. The maximum hourly rate for attorneys shall not exceed that provided by law for time expended in Court or before a United States magistrate, and that provided by law for time reasonably expended out of Court. In addition, however, such attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the Court or its magistrate.

2. Maximum Amounts for Counsel. For representation of a defendant before a magistrate or this Court, or both, the maximum compensation to be paid to an attorney shall not exceed that provided by law for each attorney in a case. Representation of a defendant on a new trial shall be considered a separate case, and fees shall be paid on the same basis as on the original trial.

The maximum compensation provided for representation in connection with each of the following also shall not exceed that provided by law:

- (a) a post-trial motion made after entry of judgment,
- (b) a probation revocation proceeding,
- (c) a parole revocation proceeding,
- (d) representing a material witness,

(e) representing a person seeking relief under 18 U.S.C. §§2241, 2254, or 2255, or 18 U.S.C. §4245.

3. Waiving Maximum Counsel Fees. Payment in excess of any maximum amount provided in Subpart 2 above, may be made for extended or complex representation whenever the Court in which the representation was rendered, or the magistrate, if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Sixth Judicial Circuit.

4. Payment for Services Other than Counsel.

(a) Previously Approved Services. Where counsel has received prior authorization for services, the maximum which may be paid per person so authorized shall not exceed \$300 exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the Court, or by the magistrate (if the services were rendered in connection with a case disposed of entirely before him), as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the Chief Judge of the Sixth Judicial Circuit.

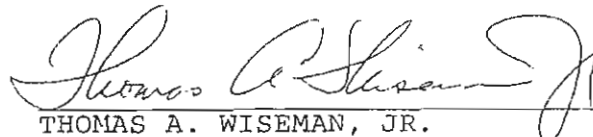
(b) Services Furnished Without Prior Request. The total cost of all services obtained without prior authorization may not exceed a total of \$150 and expenses reasonably incurred. Waiver of such limit is not provided for in this Plan.

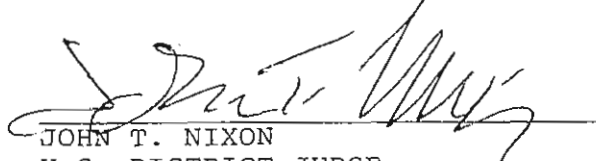
VIII. Forms

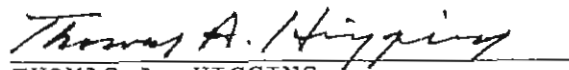
Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof, and have been distributed by the Administrative Office, such forms shall be used by the Court, the clerk, the magistrate, and counsel.

IX. Effective date

This Plan as amended this 3rd day of January, 1985, shall take effect when approved by the Judicial Council of the Sixth Circuit.


THOMAS A. WISEMAN, JR.
CHIEF U.S. DISTRICT JUDGE

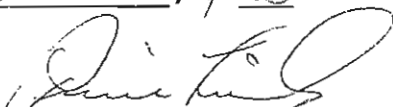

JOHN T. NIXON
U.S. DISTRICT JUDGE


THOMAS A. HIGGINS
U.S. DISTRICT JUDGE

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with 18 U.S.C. Section 3006(A), the foregoing amended plan for the implementation of the Criminal Justice Act of 1964, as amended, has been duly received and approved by the Judicial Council for the Sixth Circuit of the United States.

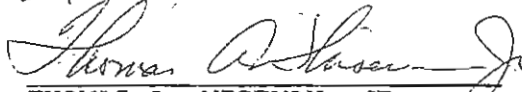
This the 26th day of February, 1985

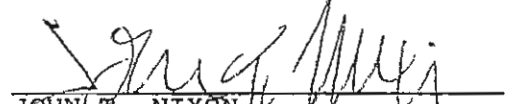

PIERCE LIVELY, Chief Judge
United States Court of Appeals
for the Sixth Circuit

CERTIFICATE OF FILING

This is to certify that, in accordance with 18 U.S.C. Section 3006(A), a true copy of the foregoing amended plan for the implementation of the Criminal Justice Act of 1964, as amended, has been filed with the Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C., by depositing a true copy thereof in the United States mails properly addressed upon this date.

This the 6th day of March, 1985

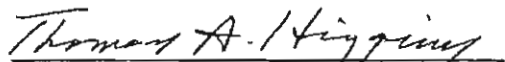

THOMAS A. WISEMAN, JR.
Chief Judge,
United States District Court
Middle District of Tennessee


JOHN T. NIXON
United States District Judge
Middle District of Tennessee

RECEIVED FOR ENTRY

2:06 P.M.
March 6, 1985

BY 
VICKI R. KERKADE
DEPUTY CLERK


THOMAS A. HIGGINS
United States District Judge
Middle District of Tennessee

UNITED STATES DISTRICT COURTS FOR THE
WESTERN DISTRICT OF KENTUCKY
AND THE
MIDDLE DISTRICT OF TENNESSEE

10:40 A.
December 9, 1982

D
B. Bricker Wallace

TEMPORARY AMENDMENT TO THE CRIMINAL JUSTICE ACT PLANS
OF THE WESTERN DISTRICT OF KENTUCKY
AND THE
MIDDLE DISTRICT OF TENNESSEE
RELATING TO PROVIDING REPRESENTATION
ON THE FORT CAMPBELL MILITARY RESERVATION
PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED

Admin Order #38
L.D. # 252

I. The boundaries of the Fort Campbell Military Reservation (the
Reservation) encompass portions of both the Middle District of Tennessee and
the Western District of Kentucky;

II. Certain violations of federal law occurring within the boundaries of
the Reservation result in the requirement for appointment of counsel under the
Criminal Justice Act, 18 U.S.C. §3006A;

III. In the interest of judicial economy these adjacent districts desire
that all matters arising from the Reservation and requiring the appointment of
counsel under the Criminal Justice Act be heard in one location on the
Reservation;

IV. The United States District Court for the Middle District of
Tennessee has established a Federal Public Defender Organization to provide
representation in that District, pursuant to 18 U.S.C. §3006A (h)(1);

DEC 9 1982

V. The annual aggregate number of persons who require appointment of counsel in the Middle District of Tennessee and the Western District of Kentucky is at least two hundred, the minimum number required for the establishment of a Federal Public Defender Organization under 18 U.S.C. §3006A (h)(1);


VI. Since attorneys from the Federal Public Defender Organization for the Middle District of Tennessee are appointed to cases arising in the Middle District of Tennessee portion of the Reservation, it is practical and economically sound for such attorneys to also provide representation to eligible persons charged with offenses arising in the Western District of Kentucky portion of the Reservation;


IT IS THEREFORE ORDERED, that subject to the approval of the Judicial Council of the Sixth Circuit, the plans of the Western District of Kentucky and the Middle District of Tennessee, for providing representation pursuant to the Criminal Justice Act of 1964, are hereby amended to authorize appropriate judicial officers to appoint the Federal Public Defender for the Middle District of Tennessee to provide representation and defense services, pursuant

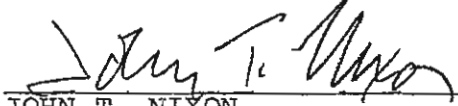
DEC 8 1982

to the Criminal Justice Act, to eligible persons who are charged with offenses arising in the Western District of Kentucky portion of the Reservation, and to continue providing such services in the Middle District of Tennessee.

This Temporary Amendment and the authority granted hereunder shall remain in effect until explicitly revoked.


E. CLURE MORTON
CHIEF U. S. DISTRICT JUDGE


THOMAS A. WISEMAN
U. S. DISTRICT JUDGE



JOHN T. NIXON
U. S. DISTRICT JUDGE

DEC 9 1982

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with 18 U.S.C. § 3006(a), the foregoing amendment to the Criminal Justice Act Plan for the Middle District of Tennessee has been duly received and approved as complying with 18 U.S.C. § 3006(a) by the Judicial Council of the Sixth Circuit.

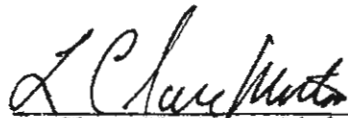
March 21, 1983.


George Edwards, Chief Judge
United States Court of Appeals
for the Sixth Circuit

CERTIFICATE OF FILING

This is to certify that, in accordance with 18 U.S.C. § 3006(a), a true copy of the foregoing amendment to the Criminal Justice Act Plan for the Middle District of Tennessee was filed with the Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C., by depositing a true copy thereof in the United States mails properly addressed upon this date.

This 24 day of March, 1983.


L. Clure Morton, Chief Judge
United States District Court
for the Middle District of Tennessee

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JULIA B. CROSS
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BY


DEPUTY CLERK

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Dec. 9, 1987 M

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

CLERK
BY *V. Kinkade*
DEPUTY CLERK

ADDENDUM TO THE PLAN
FOR THE IMPLEMENTATION OF
THE CRIMINAL JUSTICE ACT OF 1964,
AS AMENDED, 18 U.S.C. § 3006A

WHEREAS, the number of death row inmates who will exhaust their state court remedies and be in a position to seek federal habeas corpus relief in this District is expected to increase;

WHEREAS, representation of persons who have been convicted and sentenced to death requires a specialized knowledge of state and federal appellate procedure, certiorari practice, state and federal habeas corpus procedure, criminal and Eighth Amendment jurisprudence and entails an extraordinary commitment of time;

WHEREAS, this Court is responsible for ensuring the adequate representation of financially eligible persons seeking federal habeas corpus relief when such representation is required in the interest of justice;

WHEREAS, the CAPITAL CASE RESOURCE CENTER OF TENNESSEE [hereinafter referred to as "the Resource Center"] is a non-profit defense counsel service designed to furnish representation, and assistance in connection with the representation of death-sentenced inmates in the State of Tennessee;

WHEREAS, subsection (g) of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A [hereinafter referred to as "the Act"] authorizes the establishment of Community Defender Organizations in adjacent districts in which at least 200 persons annually require the appointment of counsel, and the Eastern, Middle and Western Districts of Tennessee meet that requirement,

IT IS THEREFORE ORDERED, that the Plan for the Implementation of the Criminal Justice Act for the Middle District of Tennessee, (dated March 6, 1985), is hereby amended to provide for the designation of the Resource Center as a Community Defender Organization in accordance with subsection (g)(2)(B) of the Act, and subject to the conditions set forth below:

1. The Resource Center is authorized by this Plan to provide representation, assistance, information, and other

related services to eligible persons and appointed attorneys in connection with federal death penalty habeas corpus cases pursuant to subsection (g)(2)(B) of the Act. As provided in the Criminal Justice Act Plans for the Eastern and Western Districts of Tennessee, the Resource Center also may provide such services in those courts. The by-laws of the Resource Center will be incorporated as part of the plan, when presented, and a copy of said by-laws shall be maintained by the Clerk of Court and attached to the original of this Plan.

2. The Resource Center shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of the sustaining grant, and the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act.

3. The Resource Center shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year.

4. The Resource Center shall furnish to this Court the initial roster of staff attorneys and shall report any changes thereto to the Court.

5. The primary goal of the Resource Center will be to assist the Court in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end the Resource Center will perform the following functions:

(a) The Resource Center shall monitor all capital litigation in the State of Tennessee.

(b) The Resource Center shall screen and recruit qualified members of the private bar who are willing to provide representation in death penalty post-conviction proceedings in federal court and submit a list of such attorneys to the Court for approval as a "Special Death Penalty Habeas Corpus Panel."

(c) In each federal death penalty habeas corpus case in which the Court has determined that counsel shall be appointed, the Resource Center shall provide

to the Court the name of the next available member of the "Special Death Penalty Habeas Corpus Panel." In cases where the interest of justice requires the appointment of more than one attorney, the Resource Center shall furnish the name of two attorneys.

(d) The Resource Center shall be authorized to serve as counsel of record, and shall recommend to the Court those cases in which its appointment as counsel of record is appropriate.

(e) As provided in the Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, upon the request of appointed or pro bono counsel in a federal habeas corpus death penalty case, the Resource Center shall provide consulting services in such areas as, but not limited to, records completion, exhaustion of state remedies, identification of issues, review of draft pleadings and briefs.

(f) The Resource Center will coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.

(g) The Resource Center will maintain a brief bank and clearinghouse of materials to assist lawyers in death penalty habeas corpus cases in federal courts.

(h) The Resource Center will perform such other tasks as may be necessary to ensure that adequate representation is provided to financially eligible persons in federal death penalty habeas corpus proceedings.


6. In order to ensure the effective supervision and management of the Resource Center, its Executive Director or Chief Attorney will be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in that office. Accordingly, the Court will assign cases in the name of the Executive Director or Chief Attorney rather than in the name of individual staff attorneys.

7. The Resource Center may obtain investigative, expert, or other services without regard to the requirements or limitations set forth in the Plan dated March 6, 1985, with respect to procurement of such services by

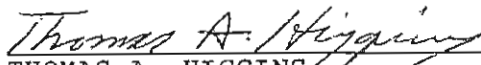
panel attorneys, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

The provisions of the Plan dated March 6, 1985, shall remain in effect except to the extent that they are inconsistent with the provisions of this Addendum, in which case the provisions of the Addendum shall govern.

This amendment shall take effect upon its approval by the Judicial Council of the Sixth Circuit.


THOMAS A. WISEMAN, JR.
CHIEF U.S. DISTRICT JUDGE

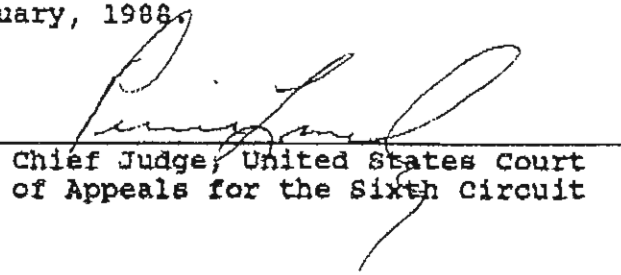

JOHN T. NIXON
U.S. DISTRICT JUDGE


THOMAS A. HIGGINS
U.S. DISTRICT JUDGE

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with The Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, et seq, the foregoing Addendum has been duly received and approved as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said Addendum shall become effective from the date of this approval.

This 20th day of January, 1988.



Chief Judge, United States Court
of Appeals for the Sixth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

RECEIVED FOR ENTRY
Friday, Oct 14, 1988 2:41 PM
OCT 14 1988
BY *[Signature]* CLERK
[Signature] DEPUTY CLERK

IN RE:

ADM. ORDER. NO. 38

ORDER APPROVING THE BY-LAWS OF THE CAPITAL CASE RESOURCE CENTER OF
TENNESSEE, INC., AND AMENDING CJA PLAN

The Board of Directors of The Capital Case Resource Center of Tennessee, Inc., held its first annual meeting on August 24, 1988 in Nashville, Tennessee. During that meeting the Board unanimously approved the By-Laws for the Corporation. These By-Laws must now be approved by the district courts for the Western, Middle and Eastern Districts of Tennessee; and, if approved, each court must amend its CJA Plan accordingly and notify the Sixth Circuit Judicial Council of such approval.

After having reviewed the By-Laws of the Corporation, this Court hereby approves the same and hereby amends its Amended CJA Plan to incorporate the By-Laws of The Capital Case Resource Center of Tennessee, Inc., as part of its Amended CJA Plan approving the Center as a community defender organization.

[Signature]
THOMAS A. WISEMAN, JR.
CHIEF U.S. DISTRICT JUDGE

[Signature]
JOHN T. NIXON
U.S. DISTRICT JUDGE

[Signature]
THOMAS A. HIGGINS
U.S. DISTRICT JUDGE

FILED

THE CAPITAL CASE RESOURCE CENTER
OF TENNESSEE, INC.

AUG 25 1988

BY-LAWS

BY V. Kinkade
CLERK
DEPUTY CLERK

ARTICLE I

OFFICES

The principal office of the Corporation shall be located in Nashville, Davidson County, Tennessee. The Corporation may have such other offices, either within or without the State of Tennessee, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

The registered office of the Corporation required to be maintained in the State of Tennessee by the Tennessee Nonprofit Corporation Act (the "Act") may, but need not, be identical with the principal office in the State of Tennessee; and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II

PURPOSE AND USE OF FUNDS

Section 2.1 Purpose. The purposes of the Corporation are those set forth in its charter of incorporation, as from time to time amended or restated (the "Charter"). Namely, the Corporation is organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"). Specifically, the Corporation is organized for the purpose of improving the efficiency of the criminal justice system, at both the federal and state levels, by improving the quality of legal representation for the capital case defendant at the earliest opportunity and throughout all levels of the judicial process through a support system which will provide training and resources for lawyers involved in capital litigation. In furtherance of such purposes, but not by way of limitation, the Corporation shall endeavor:

(a) To supervise and provide assistance to all attorneys involved in capital litigation, so as to insure the quality of on-going litigation while developing attorneys with expertise in criminal matters for future cases;

(b) To monitor capital litigation at all levels, trial, appellate and post-conviction, in order to insure competent representation of the capital case defendant, and to gather and compile a data base of information on each capital case;

(c) To assist the Sixth Circuit Task Force on Capital Representation (the "Task Force") in establishing and maintaining a panel of competent attorneys to represent persons at all levels of litigation in capital cases, by identifying competent counsel throughout the State of Tennessee, assisting in the appointment process, and offering support for the attorneys so appointed;

(d) To assist attorneys involved in capital litigation in identifying legal issues and preparing appropriate legal documents and arguments on behalf of the capital defendant;

(e) To coordinate resources with other state and national organizations which provide legal assistance to death-sentenced inmates in other states at both the state and federal levels;

(f) To develop specific resources within the State of Tennessee and to coordinate continuing legal education activities concerning capital litigation; and

(g) To provide direct legal representation of the capital case defendant in certain limited circumstances at both the state and federal levels.

Section 2.2 Use of Funds. The Corporation is not formed for financial or pecuniary gain; and no part of the assets, income, or profits of the Corporation is distributable to, or inures to, the benefit of its directors or officers or any other private person, except as provided in Section 4.13 and Section 5.10 as reimbursement for expenses or reasonable compensation for services rendered to the Corporation, and except to make payments and distributions in furtherance of the purposes of the Corporation, as set forth in the Charter and Section 2.1 above.

ARTICLE III

MEMBERS

Section 3.1 Members. The Corporation shall have no members.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1 General Powers. The business and affairs of the Corporation shall be supervised by its Board of Directors, which shall exercise in the name of and on behalf of the Corporation all of the rights and privileges legally exercisable by the Corporation as a corporate entity, except as may otherwise be provided by law, the Charter, or these By-Laws. The Board of Directors, as the governing body of the Corporation, shall have the authority to receive, administer and distribute property on behalf of the Corporation in accordance with the purposes set forth in Article II of these By-Laws.

Section 4.2 Number, Tenure, and Qualifications. The number of directors of the Corporation shall be not less than three (3) and not more than twenty-five (25). However, the number of directors may be increased or decreased from time to time by the Board of Directors by amendment of this By-Law; but no decrease shall have the effect of shortening the term of an incumbent director or reducing the number of directors below three (3). The initial Board of Directors shall be comprised of nineteen (19) persons, who shall be appointed by the incorporator. The initial directors shall be appointed for the following terms of office: six (6) directors shall be appointed for a term of one (1) year; five (5) directors shall be appointed for a term of two (2) years; and five (5) directors shall be appointed for a term of three (3) years. In addition, the president-elect of the Tennessee Bar Association, the Tennessee Association of Criminal Defense Lawyers, and the Tennessee Trial Lawyers Association shall be invited to serve on the Board during their tenure of office notwithstanding other contrary provisions of this paragraph regarding length of term of office. As each initial director's term of office expires, and thereafter, succeeding directors shall be elected for a term of three (3) years by the Board of Directors. Each director shall hold office until his or her term shall have expired and his or her successor shall have been appointed and qualified, or until his or her earlier resignation, removal from office, or death. A retiring director may succeed himself or herself. However, in accordance with Section 48-58-104 of the Act, no director shall serve successive terms that in the aggregate exceed nine (9) years. Directors shall be natural persons who have attained the age of twenty-one (21) years, but need not be residents of the State of Tennessee. No director shall hold a position as a judge, criminal prosecutor, or court administrator during his or her term of office on the Board. In selecting persons to serve on the Board of Directors, consideration should be given to representation from the following: the federal public defenders

in Tennessee, the Tennessee Association of Criminal Defense Lawyers, the state public defender offices, the Tennessee Bar Association, and the three (3) grand divisions of The State of Tennessee.

Section 4.3 Advisory Board. The Board of Directors shall appoint an Advisory Board, which shall consist of judges, legislators and attorneys who are willing to serve the needs of the Corporation at the request of the Board. The primary roles of the Advisory Board shall be to identify needs which can be met through the activities of the Corporation and to aid in the procurement of funds to meet these needs. In addition, the members of the Advisory Board will fulfill the role of emissaries in the community, explaining the function and purpose of the Corporation among the members of their respective professions. The initial Advisory Board shall be comprised of the members of the Task Force, as of the date of the adoption of these By-Laws. Members of the Advisory Board may sit on the Board of Directors but shall have no vote, and shall serve at the pleasure of the Board of Directors.

Section 4.4 Limited Personal Liability of Directors. No person who is or was a director of the Corporation, nor such person's heirs, executors or administrators, shall be personally liable to the Corporation for monetary damages for breach of fiduciary duty as a director; provided, however, that this provision shall not eliminate or limit the liability of any such person (a) for any breach of a director's duty of loyalty to the Corporation, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (c) under Section 48-58-304 of the Act, as amended from time to time. No repeal or modification of the provisions of this Section 4.4, either directly or by the adoption of a provision inconsistent with the provisions of this Section, shall adversely affect any right or protection, as set forth herein, existing in favor of a particular individual at the time of such repeal or modification.

Section 4.5 Annual Meeting. The annual meeting of the Board of Directors shall be held in August, or at such other time and date following the close of the Corporation's fiscal year as shall be determined by the Board of Directors. The purpose of the annual meeting shall be to elect officers and transact such other business as may properly be brought before the meeting. If the election of officers shall not be held on the day herein designated for any annual meeting of the Board of Directors, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Board as soon thereafter as may be convenient.

Section 4.6 Regular Meetings. Regular meetings of the Board of Directors shall be held at least semi-annually, unless postponed by common consent of the Board, for the purpose of the transaction of such business as may properly be brought before the meeting. Regular meetings shall be held at such time, date and place as the Board of Directors shall from time to time determine.

Section 4.7 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman, the President, or at the request of any director with the agreement of two-thirds (2/3) of the Board. The Chairman shall fix the place, either within or without the State of Tennessee, as the place for holding any special meeting.

Section 4.8 Notices. Notice of each annual meeting shall be given at least two (2) weeks prior thereto, and notice of any regular or special meeting shall be given at least five (5) business days prior thereto. The notices provided for in this Section shall be by telegram or written notice delivered personally or mailed to each director at his or her business or home address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. The business to be transacted at, or the purpose of, any special meeting of the Board of Directors must be specified in the notice of such meeting.

Section 4.9 Quorum and Participation in Meeting. A majority of the total number of directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another; and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting. The directors shall be promptly furnished a copy of the minutes of the meetings of the Board of Directors.

Section 4.10 Manner of Acting. Each director shall be entitled to one (1) vote upon any matter properly submitted for a vote to the Board of Directors. The act of a majority of the directors present at a meeting at which a quorum is present shall

be the act of the Board of Directors, except as may otherwise be specifically provided by law, by the Charter, or by these By-Laws. Members of the Board of Directors absent from any meeting shall be permitted to vote at such meeting by written proxies.

Section 4.11 Action Without a Meeting. Any action required or permitted to be taken at a meeting by the Board of Directors, or by any committee thereof, may be taken without a meeting if all voting members of the Board or committee, as the case may be, consent in writing to taking such action without a meeting. If all members entitled to vote on the action shall consent in writing to taking such action without a meeting, the affirmative vote of the numbers of votes that would be necessary to authorize or take such action at a meeting shall be the act of the members. The action must be evidenced by one or more written consents describing the action taken, signed in one or more counterparts by each member entitled to vote on the action, indicating each signing member's vote or abstention on the action taken. All such written consents and actions shall be filed with the minutes of the proceedings of the Board or committee. A consent signed under this Section shall have the same force and effect as a meeting vote of the Board, or any committee thereof, and may be described as such in any document.

Section 4.12 Vacancies. Any vacancy occurring in the Board of Directors, including vacancies created by the removal of directors without cause or for cause, shall be filled by the affirmative vote of a majority of the remaining directors, so long as the requirements of Section 4.2 are met. A director designated to fill a vacancy shall serve for the unexpired term of his or her predecessor in office, or, if there is no predecessor, until the next election of directors. If a vacancy is not filled within ninety (90) days of the event which resulted in there being fewer directors than required by the By-Laws or Charter, any director may apply to a court having equity jurisdiction in the county in which the Corporation has its principal office to have such court appoint a sufficient number of directors so that the Corporation will have the number of directors required by its By-Laws or Charter, whichever number is greater. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the Board of Directors for a term of office continuing only until the next election of directors.

Section 4.13 Compensation and Reimbursement of Expenses. No Director shall receive compensation for his or her services as such. However, each director may be paid his or her reasonable expenses, if any, of attendance at each meeting of the Board of Directors, after submitting substantiation of such expenses to the Corporation. Funds appropriated to the

Corporation from the United States Government pursuant to the Criminal Justice Act may not be used for such purposes. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 4.14 Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any Corporation matter is taken shall be presumed to have assented to the action taken, unless his or her dissent shall be entered in the minutes of the meeting, or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof, or forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 4.15 Removal. Any or all of the directors may be removed for cause or without cause by vote of a majority of the Board of Directors. For purposes of this provision, "cause" shall mean final conviction of a felony, declaration of unsound mind by court order, adjudication of bankruptcy, nonacceptance of office, conduct prejudicial to the interest of the Corporation, or unexcused absence from three (3) consecutive regular meetings. Removal of a director shall also constitute removal as an officer of the Corporation and as a member of all committees of the Board.

Section 4.16 Resignation. A director may resign his or her membership at any time by tendering his or her resignation in writing to the President. A resignation shall become effective upon the date specified in such notice or, if no date is specified, upon receipt of the resignation by the Corporation at its principal place of business. Assumption of a judicial, prosecutorial, or court administration office shall constitute a constructive resignation of membership effective immediately upon assumption of such office.

Section 4.17 Executive Director of Corporation. The Board of Directors shall appoint an Executive Director of the Corporation, pursuant to such arrangements, contractual or otherwise, as the Board of Directors may from time to time deem appropriate. The Executive Director shall be the principal administrative officer of the Corporation and, as such, shall manage all of the business and affairs of the Corporation, including, without limitation, the supervision of its staff. The Executive Director shall serve as an ex-officio non-voting member of the Board of Directors, the Executive Committee and all standing committees. He or she shall be responsible to the Board of Directors, shall report annually to the Board, making budget and program recommendations, and shall perform such other duties

as the Board of Directors may designate from time to time. The Executive Director shall be compensated for his or her services rendered to the Corporation in such amount, and according to such terms and conditions, as shall from time to time be determined by the Board of Directors. The Board of Directors, upon the recommendation of the Executive Director, shall determine the compensation for the other employees of the Corporation.

Section 4.18 Equal Opportunity Employer. The Corporation shall be an equal opportunity employer and shall not discriminate in its employment practices regarding any group or class protected by federal or state employment discrimination laws. The Corporation shall engage in affirmative action employment practices to encourage full participation by all persons without regard to race, sex, national origin, religion, handicap, or other factor not related to the performance of the functions of the Corporation.

ARTICLE V

OFFICERS

Section 5.1 Number. There shall be a President, Vice-President, Secretary and Treasurer of the Corporation, each of whom shall be elected in accordance with the provisions of this Article. The Board may also elect such other officers and assistant officers as the Board may deem necessary or appropriate. Except for the offices of President and Secretary, any two or more offices may be held by the same person.

Section 5.2 Election and Term of Office. The officers shall be elected annually by the Board from among its membership at its annual meeting. Each officer shall hold office for a term of one (1) year, or until his or her earlier death, resignation or removal from office in the manner hereinafter provided.

Section 5.3 President. The President shall be the Chairman of the Board of Directors and principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control the affairs of the Corporation. He or she shall, when present, preside at all meetings of the Board of Directors and the Executive Committee, and shall in general perform all of the duties, and have all of the authority, incident to the office of the chief executive officer of a corporation, and such other duties as may from time to time be prescribed by the Board of Directors. The President may sign, with the Secretary or any other proper officer thereunto authorized by the Board of Directors, deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be

executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or these By-Laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed.

Section 5.4 Vice-President. In the absence of the President, or in the event of his or her death, inability, or refusal to act, the Vice-President shall perform the duties of the President (pending election, if necessary, of a successor pursuant to Section 5.8 below), and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. Any Vice-President shall perform such other duties as may from time to time be assigned to him or her by the President or by the Board of Directors.

Section 5.5 Secretary. The Secretary shall keep the minutes of the proceedings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; be custodian of the corporate records and of the seal, if any, of the Corporation and see that the seal is affixed to all documents, the execution of which is duly authorized on behalf of the Corporation under its seal; keep a register of the post office address of each member of the Board of Directors, which address shall be furnished to the Secretary by each director; and in general perform all duties incident to the office of secretary and such other duties as may from time to time be assigned to him or her by the President or by the Board of Directors.

Section 5.6 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article IX of these By-Laws; disburse the funds of the Corporation in accordance with the directives of the Board of Directors, taking proper vouchers for such disbursements, and render to the Board of Directors, at its annual meeting and at such other times as may be suggested by the Board, an account of all the transactions of the treasurer and of the financial condition of the Corporation; and in general perform all of the duties incident to the office of treasurer and such other duties as may from time to time be assigned to him or her by the President or by the Board of Directors. The Corporation shall pay the premiums on any corporate surety bonds furnished for the Treasurer.

Section 5.7 Removal. Any Board member removed from office pursuant to Section 4.15 shall be automatically removed as an officer. The Board of Directors may remove any officer when, in its judgment, the best interests of the Corporation will be served thereby.

Section 5.8 Vacancies. A vacancy in any office held by a director, because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors after a director's vacancy has been filled for the unexpired portion of the term in accordance with Section 4.12.

Section 5.9 Resignation. An officer may resign his or her office at any time by tendering his or her resignation in writing to the President or, in the case of the resignation of the President, to the Secretary. A resignation shall become effective upon the date specified in such notice, or, if no date is specified, upon receipt of the resignation by the Corporation at its principal place of business.

Section 5.10 Compensation and Expenses. No officer of the Corporation shall receive compensation for his or her services as such. However, reasonable expenses incurred by all of the officers in the course of coordinating the affairs of the Corporation shall be reimbursed by the Corporation upon proper substantiation.

Section 5.11 Voting Securities of Corporation. Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to attend and to act and vote at any meetings of security holders, partnerships, or corporations in which the Corporation may hold securities, and at such meetings shall possess and may execute any and all rights and powers incident to the ownership of such securities which the Corporation might have possessed and exercised if it had been present. The Board of Directors may from time to time by resolution confer like powers upon any other person or persons.

ARTICLE VI

STANDARDS OF CONDUCT

Section 6.1 Standards of Conduct. A director or an officer of the Corporation shall discharge his or her duties as a director or as an officer, including duties as a member of a committee:

- (a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interest of the Corporation.

Section 6.2 Reliance on Third Parties. In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the Corporation who the director or officer reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence; or

(c) A committee of the Board of Directors of which the director or officer is not a member, as to matters within its jurisdiction, if the director or officer reasonably believes the committee merits confidence.

Section 6.3 Bad Faith. A director or officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by Section 6.2 unwarranted.

Section 6.4 No Liability. A director or officer is not liable for any action taken, or any failure to take action, as a director or officer, if he or she performs the duties of his or her office in compliance with the provisions of this Article, or if he or she is immune from suit under the provisions of Section 48-58-601 of the Act.

Section 6.5 No Fiduciary. No director or officer shall be deemed to be a fiduciary with respect to the Corporation or with respect to any property held or administered by the Corporation, including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

ARTICLE VII

EXECUTIVE COMMITTEE

Section 7.1 Membership. The Board of Directors, by resolution adopted by a majority of the entire Board, may designate three (3) or more of its members to serve as an Executive Committee. The designation of the Executive Committee and the delegation of authority thereto shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

Section 7.2 Authority. The Executive Committee, when the Board of Directors is not in session, shall have and may exercise all the authority of the Board of Directors except to the extent, if any, that such authority shall be limited by these By-Laws. All action taken by the Executive Committee shall be subject to ratification by the Board of Directors. However, the Executive Committee shall not have the authority of the Board of Directors with respect to filling any vacancy on the Board; amending or repealing any resolution of the Board of Directors which by its express terms is not so amendable or repealable; amending or repealing the Charter or the By-Laws of the Corporation; adopting a plan of merger or consolidation; selling, leasing, or otherwise disposing of all or substantially all the property and assets of the Corporation other, than in the usual and regular course of its business; or voluntarily dissolving the Corporation or revoking a voluntary dissolution.

Section 7.3 Meetings. Regular meetings of the Executive Committee may be held at such times and places as the Executive Committee may from time to time fix by resolution, upon not less than five (5) business days' notice prior thereto. Special meetings of the Executive Committee may be called by any member with the concurrence of a majority of the members of the Executive Committee upon not less than one (1) business days' notice prior thereto. The notices provided for in this Section shall state the place, date, and hour of the meeting, and the business proposed to be transacted at the meeting. The notices must be written, and if mailed, shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the member of the Executive Committee at his or her business or home address.

Section 7.4 Quorum. A majority of the voting members of the Executive Committee shall constitute a quorum for the transaction of business at any meeting thereof. Action of the Executive Committee must be authorized by the affirmative vote of a majority of all voting members at a meeting at which a quorum is present.

Section 7.5 Action Without a Meeting. Any action required or permitted to be taken by the Executive Committee at a meeting may be taken without a meeting in accordance with the provisions of Section 4.11 of these By-Laws.

Section 7.6 Procedure. The Executive Committee may fix its own rules of procedure, provided such rules are not inconsistent with these By-Laws. The Executive Committee shall keep regular minutes of its proceedings and report its proceedings to the Board of Directors for its information at the next meeting of the Board held after such proceedings.

ARTICLE VIII

COMMITTEES

Section 8.1 Committees of the Board. All committees shall consist of two (2) or more members, shall be under the control and serve at the pleasure of the Board of Directors, shall have charge of such duties as may be assigned to them by the Board or these By-Laws, shall maintain a permanent record of their actions and proceedings, and shall regularly submit a report of their actions to the Board, which shall ratify the actions of each committee. The President, or his or her designee, shall serve on each committee as an ex-officio member; and the Executive Director of the Corporation shall serve on each committee as an ex-officio, non-voting member.

Section 8.2 General Provisions for Standing Committees.

(a) Unless otherwise provided, the Board of Directors shall appoint the members of all standing committees at each annual meeting of the Board, or as soon as practicable thereafter, to hold office for a term of one (1) year, commencing immediately following the meeting at which they are appointed and ending after the close of the next annual meeting of the Board at which their successors are appointed and qualified, or until their earlier death, resignation or removal. Committee members need not be members of the Board of Directors, but shall be selected based on their expertise and familiarity with respect to the subject matter of the committee to which appointed.

(b) The President shall appoint all chairmen of all standing committees from among the membership of the Board of Directors.

(c) A member of a standing committee may resign at any time by giving written notice both to the President of the Board

of Directors and the chairman of the committee from which the member is resigning.

(d) The Board may remove a member of a standing committee when, in its judgment, the best interests of the Corporation will be served by such removal.

(e) The President of the Board of Directors shall fill all vacancies in the chairmanship of standing committees, and the Board shall fill all other vacancies in standing committees, subject to the approval of the Board.

(f) Meetings of standing committees may be called by their respective chairmen or by the President of the Board of Directors. Each committee shall meet as often as is necessary to perform its functions.

(g) Each standing committee may adopt rules for its own governance, provided such rules are not inconsistent with the law, the Charter or these By-Laws.

(h) A majority of the voting members of a committee shall constitute a quorum for the transaction of business at any committee meeting. The act of a majority of the members of a standing committee present at a meeting at which a quorum is present shall be the act of the committee. Unless otherwise provided, a chairman of a standing committee shall be entitled to vote on any question before the committee.

(i) Each standing committee may invite additional individuals with expertise or familiarity in a pertinent area to meet with and assist the committee. Such individuals shall not vote or be counted in determining the existence of a quorum and may be excluded from any executive session of the committee.

Section 8.3 Standing Committees. The Board of Directors shall maintain the following standing committees, and such additional standing committees as it may determine from time to time to be necessary or desirable for its proper functioning:

- (a) _____
- (b) _____
- (c) _____

Section 8.4 Ad Hoc Committees. The Board of Directors may from time to time by resolution create such ad hoc committees as it believes necessary or desirable to investigate matters or advise the Board. Ad hoc committees shall limit their activities to the accomplishment of the tasks for which created and shall

have no power to act except as specifically conferred by resolution of the Board. Such committees shall operate until their tasks have been accomplished or until earlier discharged by the Board.

ARTICLE IX

REPORTS, CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 9.1 Annual Report. In accordance with 18 U.S.C. § 3006A(h)(2)(B), the Board of Directors shall submit to the Judicial Conference of the United States an annual report setting forth the activities and financial position of the Corporation, and its anticipated caseload and expenses for the coming year.

Section 9.2 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract, or execute and deliver any instrument, in the name of and on behalf of the Corporation; and such authority may be general or confined to specific instances.

Section 9.3 Loans. No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name, unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 9.4 Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents, of the Corporation, and in such manner, as shall from time to time be determined by resolution of the Board of Directors.

Section 9.5 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

ARTICLE X

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 10.1 Mandatory Indemnification of Directors and Officers. To the maximum extent permitted by the provisions of Sections 48-58-501, et seq., of the Act, as amended from time

to time (provided, however, that if an amendment to the Act in any way limits or restricts the indemnification rights permitted by law as of the date hereof, such amendment shall apply only to the extent mandated by law and only to activities of persons subject to indemnification under this Section which occur subsequent to the effective date of such amendment), the Corporation shall indemnify and advance expenses to any person who is or was a director or officer of the Corporation, or to such person's heirs, executors and administrators, for the defense of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal (any such action, suit or proceeding being hereinafter referred to as the "Proceeding"), to which such person was, is or is threatened to be made, a named defendant or respondent, which indemnification and advancement of expenses shall include counsel fees actually incurred as a result of the Proceeding or any appeal thereof, reasonable expenses actually incurred with respect to the Proceeding, all fines (including any excess tax assessed with respect to an employee benefit plan), judgments, penalties and amounts paid in settlement thereof, subject to the following conditions:

(a) The Proceeding was instituted by reason of the fact that such person is or was a director or officer of the Corporation; and

(b) The director or officer conducted himself or herself in good faith, and he or she reasonably believed (i) in the case of conduct in his or her official capacity with the Corporation, that his or her conduct was in its best interest; (ii) in all other cases, that his or her conduct was at least not opposed to the best interests of the Corporation; and (iii) in the case of any criminal proceeding, that he or she had no reasonable cause to believe his or her conduct was unlawful. The conduct of a director or officer with respect to an employee benefit plan for a purpose he or she reasonably believed to be in the interest of the participants in, and beneficiaries of, the plan shall be conduct that satisfies the requirements that such person's conduct was at least not opposed to the best interests of the Corporation. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director or officer did not meet the standard of conduct herein described.

Section 10.2. Permissive Indemnification of Employees and Agents. The Corporation may, to the maximum extent permitted by the provisions of Section 48-58-501, et seq., of the Act, as amended from time to time (provided, however, that if an amendment to the Act in any way limits or restricts the

indemnification rights permitted by law as of the date hereof, such amendment shall apply only to the extent mandated by law and only to activities of persons subject to indemnification under this Section which occur subsequent to the effective date of such amendment), indemnify and advance expenses in a Proceeding to any person who is or was an employee or agent of the Corporation, or to such person's heirs, executors and administrators, to the same extent as set forth in Section 10.1 above, provided that the Proceeding was instituted by reason of the fact that such person is or was an employee or agent of the Corporation and met the standards of conduct set forth in Subsection 10.1(b) above. The Corporation may also indemnify and advance expenses in a Proceeding to any person who is or was an employee or agent of the Corporation to the extent, consistent with public policy, as may be provided by the Charter, by these By-Laws, by contract, or by general or specific action of the Board of Directors.

Section 10.3 Non-Exclusive Application. The rights to indemnification and advancement of expenses set forth in Sections 10.1 and 10.2 above are contractual between the Corporation and the person being indemnified, and his or her heirs, executors and administrators, and are not exclusive of other similar rights of indemnification or advancement of expenses to which such person may be entitled, whether by contract, by law, by the Charter, by a resolution of the Board of Directors, by these By-Laws, by the purchase and maintenance by the Corporation of insurance on behalf of a director, officer, employee or agent of the Corporation, or by an agreement with the Corporation providing for such indemnification, all of which means of indemnification and advancement of expenses are hereby specifically authorized. The rights of indemnification and advancement of expenses set forth in this Article X shall also apply, as appropriate, to any person who was an officer, director, employee or agent (or to such person's heirs, executors and administrators) of any association, corporation, partnership or trust which was a predecessor to this Corporation, and to any officer, director, employee or agent of the Corporation (or such person's heirs, executors and administrators) who served in any capacity for another association, corporation, partnership or trust at the request of this Corporation.

Section 10.4 Non-Limiting Application. The provisions of this Article X shall not limit the power of the Corporation to pay or reimburse expenses incurred by a director, officer, employee or agent of the Corporation in connection with such person's appearing as a witness in a Proceeding at a time when he or she has not been made a named defendant or respondent to the Proceeding.

Section 10.5 Prohibited Indemnification. Notwithstanding any other provision of this Article X, the

Corporation shall not indemnify or advance expenses to or on behalf of any director, officer, employee or agent of the Corporation, or such person's heirs, executors or administrators:

(a) If a judgment or other final adjudication adverse to such person establishes his or her liability for any breach of the duty of loyalty to the Corporation, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or under Section 48-58-304 of the Act; or

(b) In connection with a Proceeding by or in the right of the Corporation in which such person was adjudged liable to the Corporation; or

(c) In connection with any other Proceeding charging improper personal benefit to such person, whether or not involving action in his or her official capacity, in which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her.

Section 10.6 Repeal or Modification Not Retroactive. No repeal or modification of the provisions of this Article X, either directly or by the adoption of a provision inconsistent with the provisions of this Article, shall adversely affect any right or protection, as set forth herein, existing in favor of a particular individual at the time of such repeal or modification.

ARTICLE XI

CONFLICTS OF INTEREST

Section 11.1 General. A conflict of interest transaction is a transaction with the Corporation in which a director or officer of the Corporation has a direct or indirect interest. A director or officer of the Corporation has an indirect interest in a transaction if, but not only if, a party to the transaction in another entity in which the director or officer has a material interest, or of which the director or officer is a general partner, director, officer or director. A conflict of interest transaction is not voidable on the basis for imposing liability on the director or officer if the transaction was fair at the time it was entered into, or if the transaction is approved as provided in Section 11.2.

Section 11.2 Manner of Approval. A transaction in which a director or officer of the Corporation has a conflict of interest may be approved if:

(a) The material facts of the transaction and the interest of the director or officer were disclosed or known to the Board of Directors, or to a committee consisting entirely of members of the Board of Directors, and the Board of Directors or such committee authorized, approved or ratified the transaction; or

(b) Approval is obtained from the Attorney General of the State of Tennessee, or from a court of record having equity jurisdiction in an action in which the Attorney General is joined as a party.

Section 11.3 Quorum Requirements. For purposes of Section 11.2, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the Directors on the Board of Directors, or on a committee consisting entirely of members of the Board of Directors, who have no direct or indirect interest in the transaction; but a transaction may not be authorized, approved or ratified under this Article by a single director. A quorum is present for the purpose of taking action under this Article if a majority of the Directors on the Board who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction. The presence of, or vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 11.2(a) if the transaction is otherwise approved as provided in Section 11.2.

ARTICLE XII

WAIVER OF NOTICE

Whenever any notice is required to be given to any director, officer or committee member of the Corporation under the provisions of these By-Laws, the Charter, or the Act, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIII

AMENDMENTS

These By-Laws and the Charter may be altered, amended, or repealed, and a new Charter or By-Laws adopted, upon the affirmative vote of two-thirds (66.6%) of the Board of Directors

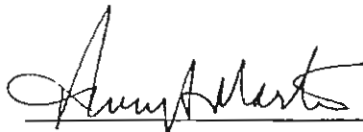
at any annual or special meeting, except to the extent that such alteration, amendment or repeal is inconsistent with Article XIV hereof.

ARTICLE XIV

EXEMPT STATUS

The Corporation has been organized and will be operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and, as such, will be exempt from taxation under Section 501(a) of the Code. The Corporation intends to apply for recognition of its exempt status by filing Internal Revenue Service Form 1023 within the time prescribed under Section 508 of the Code and Treas. Reg. § 1.508-1(a)(2). Any provision of these By-Laws or of the Charter which would in any manner adversely affect the Corporation's tax exempt status shall be void and shall be deleted or modified as necessary to comply with all applicable federal and state requirements for the maintenance of the Corporation's tax exempt status.

Approved by unanimous vote of the Board of Directors, with a majority of the directors present, on the 24th day of August, 1988.



President, Board of Directors

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

JUN 28 1994
Ann Gandy
BY _____
CLERK

IN RE:)	
)	
ADDENDUM TO THE PLAN FOR THE)	
REPRESENTATION OF DEFENDANTS)	
PURSUANT TO THE CRIMINAL)	
JUSTICE ACT, 18 U.S.C. § 3006A)	ADMINISTRATIVE ORDER NO. 38-8
)	
PROVISIONS APPLICABLE IN CASES)	
INVOLVING THE DEATH PENALTY)	

ORDER

1. Capital Cases:

The Judges of the United States District Court for the Middle District of Tennessee hereby adopt the following Addendum to the Criminal Justice Act Plan for this District which will apply in cases involving the death penalty

"Cases involving the death penalty" or "capital cases" include cases in this District wherein the government is seeking the death penalty under federal law including, for example, pursuant to 21 U.S.C. § 848, and cases in this District wherein the penalty of death has been imposed upon an individual who is seeking to set aside or vacate his or her conviction or sentence on direct appeal or pursuant to 28 U.S.C. § 2255, when the sentence was originally imposed in federal court; or, pursuant to 28 U.S.C. § 2254, when the sentence was originally imposed in state court. All such cases shall be referred to in this addendum as "capital cases" regardless of the nature of the proceeding.

2. Death Penalty Resource Center:

(a) The Capital Case Resource Center of Tennessee, Inc (hereinafter referred to as the "Resource Center"), a non-profit defense counsel service designed to furnish representation, assistance, information and other related services to eligible persons and appointed attorneys, in connection with capital cases in the United States District Courts of Tennessee, is authorized by this plan to provide representation as a Community Defender Organization, and shall be eligible to furnish attorneys and receive payments pursuant to 18 U.S.C. § 3006A(g)(2)(B).

(b) The Resource Center shall operate pursuant to the provisions of 18 U.S.C. § 3006A(g)(2)(B), the terms and conditions of the sustaining grant, and the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act, as published by the Administrative Office of the United States Courts.

(c) The Executive Director of the Resource Center shall be authorized to serve as counsel of record in capital cases, if consistent with the resources available to their office. In order to ensure the effective supervision and management of the Resource Center, the Executive Director shall be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in that office. Accordingly, when the Court appoints attorneys from the Resource Center to act as counsel of record, the appointments will be in the name of the Executive Director of the Resource Center rather than in the name of individual staff attorneys.

3. Appointment of Counsel in a Capital Case:

(a) When a person is charged with a federal capital crime and qualifies for appointment of counsel under the Criminal Justice Act, or when a person files a petition under 28 U.S.C. § 2254 challenging a sentence of death and qualifies for appointment of counsel under the Criminal Justice Act, the Court will initially appoint the office of the Federal Public Defender, not any particular member of that office, nor any private attorney. No pre-bail interview or report shall occur prior to the accused's consultation with counsel appointed under this plan. Court personnel will immediately notify the office of the Federal Public Defender by telephone, or in person, of the fact of the appointment and secure copies of all relevant available material concerning the appointment, the charge, and any notices of future court appearances. Personnel from the Office of the Federal Public Defender, upon receiving notice of the appointment, shall immediately obtain copies of the relevant material and select counsel to represent the accused.

(b) Capital Cases Originating in Federal Court:

(i) The Federal Public Defender, after consultation with the Executive Director of the Resource Center, shall decide whether to provide representation within the Office of the Federal Public Defender or, if not, shall select counsel to represent the accused from the Criminal Justice Act panel for this district, or in appropriate situations, may select counsel not on the panel list, including counsel from outside this district. The office of the Federal Public Defender will prepare the appropriate CJA form as to each appointment of counsel outside the staff of the defender office. Each accused eligible for appointment of counsel

under this section shall be entitled to the appointment of at least two qualified attorneys due to the complex, demanding and protracted nature of death penalty proceedings. At least one attorney so appointed must have been admitted to practice in the United States District Courts of the Middle District of Tennessee for not less than five years and must have had not less than three years experience in the actual trial of felony prosecutions in the United States District Courts of Tennessee. At least one attorney must have acquired no less than fourteen hours approved continuing legal education in the defense of capital cases in the preceding two (2) years before the indictment. However, upon recommendation of the Federal Public Defender, after consultation with the Executive Director of the Resource Center, counsel may be appointed whose background, knowledge, or experience would otherwise enable him or her to provide proper representation in a capital case.

(ii) Pending selection of appropriate counsel for an accused entitled to appointment under this section, the office of the Federal Public Defender shall act as counsel of record for the accused. In appropriate situations, including conflict of interest occasions, the Resource Center, with the consent of its Executive Director, may also provide representation for an accused, upon direction of the Federal Public Defender. Such representation may be temporary, or may continue for the duration of the entitlement of counsel.

(iii) Entitlement to counsel under this section arises whenever an accused, who is entitled to representation under the Criminal Justice Act, is accused of the commission of a federal offense for which death may be imposed as punishment, unless prior to the invocation

of counsel rights arising hereunder, the attorney for the government gives written notice that the government will not seek the death penalty. In the event that such notice is subsequently withdrawn, or that a capital offense charge is added to a pending non-capital prosecution, the counsel provisions of this addendum shall be implemented as soon as practicable. In the event that the accused already has counsel, the provisions of this section apply to permit the appointment of additional or substitute counsel, if necessary to comply with this section. If such additional or substitute appointment is made, the accused shall be afforded sufficient opportunity for his counsel to make adequate preparations for trial.

(iv) In the event of a conviction, counsel appointed hereunder shall continue to represent the accused, subject to any contrary order of the District Court or the Court of Appeals, and, unless relieved as counsel, shall take all actions necessary to preserve the accused's appeal rights, including the filing of a timely notice of appeal.

(v) When substitution of counsel is to be made by the Court, the Federal Public Defender, after consultation with the Resource Center, will submit to the Court a proposed order naming substitute counsel. The Federal Public Defender will provide a similar service to the Court of Appeals at the request of that Court, or in accordance with any plan adopted by that Court.

(c) Capital Cases Originating in State Court:

(i) In anticipation of the filing of, upon the filing of, or after the filing of a 28 U.S.C. § 2254 petition, the Executive Director of the Resource Center, after consulting with the Federal Public Defender for the Middle District of Tennessee, may designate counsel to

be appointed by the Court to represent the petitioner. The number and qualification of counsel shall be as described in 3(b)(i) above, with the addition that at least one counsel shall have had competent experience litigating federal habeas corpus petitions. For good cause shown, the Court may otherwise appoint counsel upon the recommendation of the Executive Director of the Resource Center, after consulting with the Federal Public Defender of the Middle District of Tennessee, consistent with the standards set out in 3(b)(i).

(ii) If additional or substitute counsel is recommended by the Resource Center and appointed by the Court, such appointment shall be made sufficiently in advance of hearing or resolution to permit newly appointed counsel an adequate opportunity to prepare with due consideration for the length of the record and the amount of preparation required.

(iii) In the event substitution of counsel is to be made at any time by the District Court, the Resource Center, after consultation with the Federal Public Defender, will submit to the Court names of qualified attorneys, from which the appointment will be made. The Resource Center will provide a similar service to the Court of Appeals at the request of that Court, or in accordance with any plan adopted by that Court.

4. Investigative, Expert and Other Services:

(a) The Court shall set compensation for investigative, expert and other services in an amount reasonably necessary to obtain such services in capital cases without regard to CJA limitations. 21 U.S.C. § 848(q)(10).

(b) Upon a finding in *ex parte* proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant in a capital case,

the Court shall authorize counsel to obtain such services on behalf of the defendant. Upon a finding that timely procurement of necessary investigative, expert or other services could not await prior authorization, the Court may authorize such services *nunc pro tunc*. 21 U.S.C. § 848(q)(9).

(c) *Ex Parte* Applications for services other than counsel shall be heard *in camera*, and the confidentiality of all verbal communications, pleadings and court orders shall be preserved unless expressly waived by the person represented. Such application shall be placed under seal and shall be inaccessible to the government subject to further order of the District Judge or Magistrate Judge, but shall be made part of the record on appeal for the appellate court's, but not the government's, consideration, if relevant to the appeal.

(d) Claims for compensation for the services and necessary expenses of persons providing investigative, expert and other services under the Act shall be submitted on the appropriate form (if federal criminal cases to the Federal Public Defender; if habeas corpus cases to the Resource Center), for review for mathematical and technical accuracy and for conformity with the Guidelines for the Administration of the Criminal Justice Act; and, if correct, the claim form shall be forward to the District Court. Claims for compensation for services rendered and necessary expenses may be made on an interim basis authorized by the Court under such terms as may be set by the Court. The Clerk shall maintain as confidential all financial records relating to payment of such compensation, including but not limited to *ex parte* motions, orders, vouchers and other supporting material. Access to such financial records maintained in the office of the Clerk shall be limited to the Court and to counsel for the petitioner.

5 Payment for Representation by Private Counsel:

(a) In accordance with the provisions of 21 U.S.C. § 848(q)(10), an attorney appointed in a capital case shall be compensated at a rate and in an amount determined by the Court to be reasonably necessary to obtain qualified counsel to represent the defendant in proceedings in federal court, without regard to CJA hourly rates or compensation limitations contained in 18 U.S.C. § 3006A.

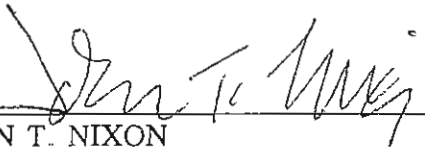
(b) In the interest of justice and judicial and fiscal economy, and in recognition of the uniquely complex and difficult nature of a capital trial, the Court shall compensate counsel at a rate in an amount sufficient to cover appointed counsel's general office overhead plus that necessary to ensure adequate compensation for counsel with due consideration for the lost opportunity for other legal business and the extraordinary responsibilities inherent in death penalty litigation. For services rendered in federal court on, or after, the effective date of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 848, the limitations on compensation and reimbursement contained in 18 U.S.C. § 3006A shall not apply. Compensation shall be no less than the minimum set by the Sixth Circuit Judicial Council.

(c) Due to the complexity of capital cases, counsel may submit periodic interim vouchers for compensation and appropriate expense reimbursement. Such vouchers shall be submitted on the appropriate form (if federal criminal cases to the Federal Public Defender; if habeas corpus cases to the Resource Center) for review as to mathematical and technical accuracy and for conformity with the Guidelines for the Administrator of the Criminal Justice Act. The Federal Public Defender or Resource Center shall then submit the voucher to the

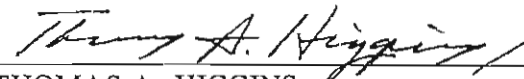
Court for authorization for payment by the Clerk in accordance with existing practice for payment of vouchers. All such vouchers and related documents shall be considered part of the ex parte process and kept confidential and under seal.

This Addendum to the Criminal Justice Act Plan shall take effect upon its approval by the Judicial Council of the Court of Appeals for the Sixth Circuit.

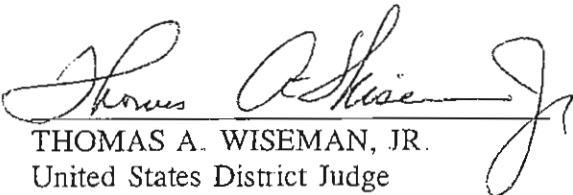
It is so ORDERED.



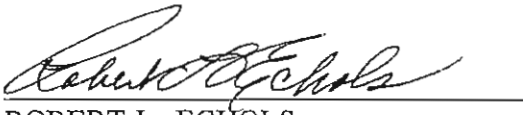
JOHN T. NIXON
Chief Judge



THOMAS A. HIGGINS
United States District Judge



THOMAS A. WISEMAN, JR.
United States District Judge



ROBERT L. ECHOLS
United States District Judge

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. Section 3006A, et seq, the foregoing Addendum to the Criminal Justice Act Plan for the United States District Court for the Middle District of Tennessee has been duly received and approved as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said Addendum to the Plan shall become effective upon the date of this approval.

This 22nd day of September, 1994.



Gilbert S. Merritt
Chief Judge, United States Court
of Appeals for the Sixth Circuit

RECEIVED FOR ENTRY

AM

AUG 24 1995

A. [Signature]
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:)
)
ADDENDUM TO THE PLAN FOR THE)
REPRESENTATION OF DEFENDANTS)
PURSUANT TO THE CRIMINAL)
JUSTICE ACT, 18 U.S.C § 3006A)
)
PROVISIONS APPLICABLE IN CASES)
INVOLVING THE DEATH PENALTY)

AMENDED ADMINISTRATIVE
ORDER NO 38-8

ORDER

Administrative Order No 38-8 entered June 29, 1994, is amended in the following respects:

1 In the first sentence of paragraph 4.(c), page 7, the words "unless expressly waived by the person represented" are deleted, and a period is inserted after the word "preserved "

2 Old paragraph 5.(b) is deleted in its entirety and the following substituted in lieu thereof:

5 (b) In the interest of justice and judicial and fiscal economy, and in recognition of the uniquely complex and difficult nature of a capital trial, the Court shall compensate counsel at a rate *reasonably calculated to insure the procurement of competent counsel*. For services rendered in federal court on, or after, the effective date of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 848, the limitations on compensation and reimbursement contained in 18 U.S.C. §

3006A shall not apply. Compensation shall be no less than the minimum set by the Sixth Circuit Judicial Council


3 A new paragraph 6 is added as follows:

6 Disclosure of Sealed or Confidential Materials:

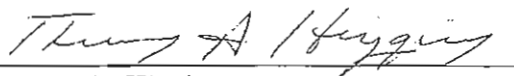
All material placed under seal, or treated as confidential, in accordance with paragraphs 4 (c), 4 (d), 5 (b), and 5 (c), supra, shall be maintained in such status as the Judge before whom the matter is pending deems appropriate

This addendum to the Criminal Justice Act Plan shall take effect upon its approval by the Judicial Council of the Court of Appeals for the Sixth Circuit.

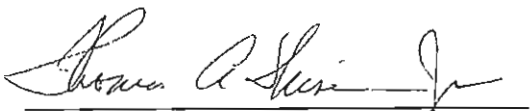
IT IS SO ORDERED



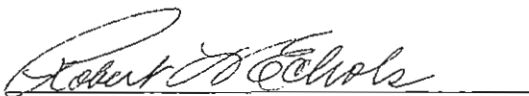
John T. Nixon
Chief Judge



Thomas A. Higgins
United States District Judge



Thomas A. Wiseman, Jr.
United States District Judge



Robert L. Echols
United States District Judge

CERTIFICATE OF APPROVAL

This is to certify that, in accordance with the Criminal Justice Act of 1964 as amended, 18 U.S.C. Section 3006A, et seq, the foregoing Addendum to the Criminal Justice Act Plan for the United States District Court for the Middle District of Tennessee has been duly received and approved as complying with the law by the Judicial Council of the Sixth Circuit of the United States. The said Addendum to the Plan shall become effective upon the date of this approval.

This 22 day of September, 1995.



Gilbert S. Merritt
Chief Judge, United States Court
Of Appeals for the Sixth Circuit

