

JUDICIAL CONFERENCE OF THE
UNITED STATES

LETTER

FROM

THE CHIEF JUSTICE OF THE UNITED STATES

TRANSMITTING

A COPY OF THE REPORT OF THE PROCEEDINGS OF A
SPECIAL MEETING OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES, HELD AT WASHINGTON, D.C.,
JANUARY 13, 1965, PURSUANT TO TITLE 28, U.S. CODE,
SECTION 331



JANUARY 26, 1965.—Referred to the Committee on the Judiciary and
ordered to be printed.

U.S. GOVERNMENT PRINTING OFFICE

42-349

WASHINGTON : 1965

REPORT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

JANUARY 13, 1965

WASHINGTON, D.C.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES,
CHAMBERS OF THE CHIEF JUSTICE,
Washington, D.C., January 25, 1965.

The Honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D.C.

DEAR MR. SPEAKER: In accordance with the provisions of title 28, United States Code, section 331, I am transmitting herewith copy of the report of the proceedings of a special meeting of the Judicial Conference of the United States held at Washington, D.C., January 13, 1965.

Sincerely,

EARL WARREN.

III

THE JUDICIAL CONFERENCE OF THE UNITED STATES
(28 U.S.C. 331)

§ 331. *Judicial Conference of the United States*

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims and a district judge from each judicial circuit to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the judges in the third, sixth, ninth and District of Columbia circuits shall choose a district judge to serve for three years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit. If the chief judge of the Court of Claims is unable to attend the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

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**REPORT OF THE PROCEEDINGS OF A SPECIAL SESSION
OF THE JUDICIAL CONFERENCE OF THE UNITED
STATES, JANUARY 13, 1965**

A special session of the Judicial Conference of the United States to consider the problems arising under the Criminal Justice Act of 1964 was convened by the Chief Justice of the United States on January 13, 1965, and continued in session 1 day. The Chief Justice presided, and the following members of the Conference were present:

- District of Columbia Circuit :
 - Chief Judge David L. Bazelon
 - Chief Judge Matthew F. McGuire, District of Columbia
- First Circuit :
 - Chief Judge Bailey Aldrich
 - Judge Francis J. W. Ford, District of Massachusetts
- Second Circuit :
 - Chief Judge J. Edward Lumbard
 - Chief Judge Sylvester J. Ryan, Southern District of New York
- Third Circuit :
 - Chief Judge John Biggs, Jr.
 - Chief Judge Thomas M. Madden, District of New Jersey
- Fourth Circuit :
 - Chief Judge Clement F. Haynsworth, Jr.
 - Chief Judge Walter E. Hoffman, Eastern District of Virginia
- Fifth Circuit :
 - Chief Judge Elbert Parr Tuttle
 - Chief Judge Bryan Simpson, Middle District of Florida
- Sixth Circuit :
 - Chief Judge Paul C. Weick
 - Judge Ralph M. Freeman, Eastern District of Michigan
- Seventh Circuit :
 - Judge Latham Castle (designated by the Chief Justice in place of
Chief Judge John S. Hastings who was unable to attend)
 - Judge Kenneth P. Grubb, Eastern District of Wisconsin
- Eighth Circuit :
 - Chief Judge Harvey M. Johnsen
 - Judge Richard M. Duncan, Eastern and Western Districts of Missouri
- Ninth Circuit :
 - Chief Judge Richard H. Chambers
 - Chief Judge Gus J. Solomon, District of Oregon
- Tenth Circuit :
 - Chief Judge Alfred P. Murrah
 - Chief Judge Alfred A. Arraj, District of Colorado

Representatives on the Judicial Conference from the Court of Claims and the Court of Customs and Patent Appeals were, at their request, excused from attendance by the Chief Justice.

On invitation of the Chief Justice the following district judge members of the Committee on the Implementation of the Criminal Justice Act of 1964 attended the Conference and participated in the discussions: Robert A. Ainsworth, Jr.; Dudley B. Bonsal; James M. Carter; Wade H. McCree, Jr.; Roszel C. Thomsen; and Homer Thornberry.

Warren Olney III, Director of the Administrative Office of the U.S. Courts; William E. Foley, Deputy Director; and members of the Administrative Office staff also attended the session of the Conference.

CRIMINAL JUSTICE ACT OF 1964

Chief Judge Harvey M. Johnsen, on behalf of Chief Judge John S. Hastings, Chairman of the Committee To Implement the Criminal Justice Act of 1964, presented to the Conference a comprehensive report of the activities of the Committee and its recommendations. The report included, as appendixes (1) standard voucher and other forms for use by the courts; (2) six suggested district court plans for use in districts of varying size and characteristics; and (3) the text of the Criminal Justice Act of 1964, (Public Law 88-455, 78 Stat. 552, approved Aug. 20, 1964).

There were also submitted with the report a copy of the minutes of the Committee meeting of October 17, 1964, which had been previously distributed to all U.S. district judges, and a copy of the report of the Ad Hoc Committee Appointed To Develop Rules, Procedures, and Guidelines for an Assigned Counsel System, approved by the Judicial Conference in September 1964 (Conf. Rept., p. 91).

The Conference, after full consideration and discussion of the report, adopted the following resolutions of authorization and direction to the Director of the Administrative Office of the U.S. Courts, with respect to his duties under the Criminal Justice Act:

In his responsibility for supervision of payments from the appropriations under the Act, the Director of the Administrative Office is authorized to adopt and use a system of central disbursement for all appropriated funds, requiring notification to the Administrative Office of every appointment of counsel and authorization of other services as they are made; the transmission of vouchers to the Administrative Office for payment, containing adequate information as to the nature and extent of services rendered, both in and out of court, and the expenses incurred, and with payments to be made directly from the Administrative Office, rather than locally; and

The Director is further authorized under the supervision and direction of the Committee to Implement the Criminal Justice Act of 1964, to request any other reports from a district court and from a judicial council in such form and at such times as he deems necessary or desirable for statistical information or other purposes under the Act.

The Conference thereupon approved the report of the Committee and the recommendations contained therein and authorized its immediate release to all Federal judges, clerks of court, and other interested parties. The report of the Committee, the appendixes, and other pertinent documents submitted to the Conference are appended to and made a part of this report.

For the Judicial Conference of the United States:

EARL WARREN,

Chief Justice of the United States.

JANUARY 15, 1965.

REPORT OF THE COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE ACT OF 1964

To the Chief Justice of the United States, Chairman, and the Members of the Judicial Conference of the United States:

Your Committee To Implement the Criminal Justice Act of 1964¹ submits the following report.

INTRODUCTION

The appointment of the Committee resulted from a recommendation made to the Conference at its annual meeting in September 1964 by the Ad Hoc Committee Appointed To Develop Rules, Procedures, and Guidelines for an Assigned Counsel System. The activities of your Committee are based, in part, on the work and the report of the Ad Hoc Committee. It seems desirable, therefore, to review, briefly, the salient features of that report, particularly its recommendations and conclusions.

The policy recommendations of the Ad Hoc Committee, approved in principle by the Conference, include (1) the use of a system of central disbursement of funds appropriated to carry out the Criminal Justice Act, and (2) the administration of the act through a framework of boards of advisers to the judicial councils of the circuits, assisted by full-time, compensated officers.

The Ad Hoc Committee also recommended, and the Conference approved—

- (1) Budget estimates for the first year of operation under the act;
- (2) A suggestion that the chief judge of each circuit convene a meeting of the chief judges of the district courts in his circuit to consider the problems of administration under the act, the urgency of developing practical and acceptable plans in each district, ways and means of stimulating the interest and securing the support and cooperation of the bar in every district in the implementation of the act, and to make plans for the appointment from the bar of an appropriate board of advisers to the judicial council;
- (3) The convening of a special session of the Judicial Conference for the exclusive purpose of considering the problems of administration arising under the Criminal Justice Act; and
- (4) A grant of authority to the Chief Justice to supersede the Ad Hoc Committee with a larger committee to implement the Criminal Justice Act, with district judges to be included in its membership.

¹ Public Law 88-455, approved Aug. 20, 1964.

Thereafter, the Chief Justice requested the three members of the Ad Hoc Committee² to continue to serve as members of the new Committee and appointed, as additional members, six district judges. The Chairman of the Ad Hoc Committee was also designated as Chairman of your new Committee. Upon its formation, the Committee held an organizational meeting in San Francisco on October 17, 1964. At that time the report and recommendations of the Ad Hoc Committee were reviewed in detail and fully endorsed, and the problems presented by the new legislation were carefully explored. Arrangements were made for a division of assignments among the Committee members. Each district judge member of the Committee was requested to prepare, in accordance with the provisions of the Criminal Justice Act, a suggested district court plan for possible adoption in a district court having the characteristics of the district in which he was serving.

Thereafter the Committee met in Washington, D.C., on November 14, 1964, and again on December 5, 1964. Meanwhile, the urgent need for the district courts to begin consideration of plans for the representation of defendants in their courts, who are financially unable to obtain an adequate defense, made it important for them to be kept advised of the work of your Committee. Accordingly, the minutes of the Committee meeting of October 17, 1964, were distributed to all district judges on November 5. Following consideration and discussion on November 14 of the six suggested plans for district courts, some of which had undergone numerous drafts, your Committee authorized their release on December 7 to all Federal judges for their information and guidance.

LEGISLATIVE HISTORY

The chronology of events constituting the legislative history of the Criminal Justice Act is set out in the September 1964 report of the ad hoc committee. It is pertinent to note again that the legislative history of the act is extensive in its expression of congressional intent and is replete with ideas and suggestions concerning matters of an administrative nature. Hearings on the legislation were conducted by the Judiciary Committees in both the Senate and House of Representatives,³ formal written reports were filed in both Houses of Congress,⁴ and a separate report was filed by a conference committee.⁵ For the most part, this legislative history is available in published form.⁶

Two specific limitations on the scope and applicability of the new statute are imposed by the terms of the act, or made clear from its legislative history. First, the act does not apply in habeas corpus cases, in proceedings to vacate sentence brought under 28 U.S.C. 2255,

² Chief Judge John S. Hastings, Chairman; Chief Judge Harvey M. Johnsen; and Chief Judge Alfred P. Murrah.

³ Hearings before the Committee on the Judiciary, U.S. Senate, May 13, 20, and 27, 1963; hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, May 22, 1963.

⁴ S. Rept. 346 on S. 1057, 88th Cong., 1st sess., July 10, 1963; H. Rept. 864 on H.R. 7457, 88th Cong., 1st sess., Oct. 24, 1963.

⁵ H. Rept. 1709, 88th Cong., 2d sess., Aug. 6, 1964.

⁶ 1964 U.S. Code Cong. & Adm. News, p. 3044.

or in any other proceeding of a similar character, which is collateral to the original criminal case. The act provides simply that—

A defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States commissioner or court through appeal.⁷

Secondly, the act does not authorize the use of Federal public defenders either on a part-time or on a full-time basis. As originally passed by the Senate the legislation contained a provision permitting the appointment of public defenders; however, when objection was made in the House of Representatives, the Senate receded from its position, and the provision for public defenders was stricken from the bill by the conferees.

In doing so the conferees recommended that the Department of Justice conduct a study and analysis in order to reexamine and reevaluate the need for a Federal public defender system throughout the entire Federal judicial system. In connection with this study, the conferees suggested that the Department of Justice utilize the cooperation of the Judicial Conference of the United States and the judicial councils of the circuits in order to obtain the benefit of the Federal judges' experience in the operation of the Criminal Justice Act. The conferees expressed the hope that a report of the conclusions and recommendations of the Department of Justice will be made to the Congress as expeditiously as proper, after adequate facts and experience afford a sound basis for proper conclusions and recommendations.

Your Committee is of the view that the recommended study ought to be undertaken expeditiously and recommends that the Attorney General be informed that the Judicial Conference is prepared to cooperate with the Department of Justice in its conduct of the survey and study.

DISTRICT COURT PLANS

The matter of formulating plans for the representation of defendants "who are financially unable to obtain an adequate defense," or who, for purposes of appeal, are "financially unable to obtain adequate representation," is by the act made the responsibility of the district courts and the judicial councils, respectively. The Committee is of the view that it is not within its province, or that of the Judicial Conference, to prescribe any specific or model plan or plans for initial adoption by any district court. Indeed, it would hardly be possible to do so in view of the variances in conditions and facilities which exist among the numerous districts.

The Committee has felt, however, that it can be of substantial assistance to the district courts by conveying to them the benefit of its deliberation, experience, and study. In distributing the six suggested plans, originally framed by members of the Committee and modified by discussion, the Committee has provided each district court with a variety of provisions on various problems potentially arising in the administration of the Criminal Justice Act, from which it can benefit in developing plans for its own district.

⁷ 18 U.S.C. 3006A(c).

Your Committee does wish to point out two areas of administration of the act, presenting problems common to all districts, which should be treated uniformly on a national basis. These areas are the determination of "financial inability to obtain an adequate defense" and the maintenance of "continuity in representation."

It is clear from the legislative history of the act that the "test of financial inability" is not the same as a "test of indigency." A defendant need not be destitute to enjoy the benefits of this legislation.⁸ For this reason, the term "indigency" should be avoided in district court plans. The Committee is of the view, however, that every district court plan should specify that "financial inability" will be determined only after appropriate inquiry. A short form of affidavit and order appointing counsel (CJA form No. 1) for use by a U.S. commissioner, a form of order appointing counsel (CJA form No. 2) for use by the district judge, and a form of affidavit of financial status (CJA form No. 3) for use by either the judge or the U.S. commissioner where detailed information concerning financial status is appropriate, have been prepared by the Administrative Office and approved by the Committee.⁹ Modifications in these forms, demonstrated to be necessary by experience, can be made by the Administrative Office with the approval of the Committee. It is recommended that every district incorporate in its plan a requirement that these standard forms be used.

The act¹⁰ provides that "a defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States commissioner or court through appeal." It is important therefore that continuity of representation be maintained. So that a hiatus may be avoided, the Committee recommends that counsel appointed by commissioners should serve until further order of the judge.

Likewise every district court plan should contain a provision stating the point at which the duties of counsel appointed by the district court terminate and the duties of appellate counsel, if separate counsel is provided, are to commence. In this regard, the Committee recommends the inclusion of the following provision in every district court plan:

In the event that a 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, 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.

In its deliberations, the Committee has considered various aspects of questions likely to arise in the administration of a district court plan under the act. Expressions of view on these matters by the Committee are set forth as guidelines to the district courts:

(a) *Expenses of counsel*

Under the provision of the act that an attorney "shall be reimbursed for expenses reasonably incurred" the question arises as to the policy to be followed in dealing with a claim by an attorney for an allocated part of his general office overhead, such as rent, telephone service, and secretarial help.

⁸ Carter and Hauser, *The Criminal Justice Act of 1964*, 36 F.R.D. 67.

⁹ See app. 1.

¹⁰ 18 U.S.C. 3006 A(c).

Conventionally, no charge is made by the lawyer against his client as an allocation of the regular cost of his office and practice. Only special expenses, occasioned by the particular case, are ordinarily made the subject of a distinct charge against a client. Neither the language nor the history of the act contains anything to suggest an intent to depart from this concept and practice as to expenses.

(b) *Payments by the defendant*

It may frequently occur that a particular defendant, although financially unable to obtain an adequate defense, is capable of making a partial payment toward the cost of such a defense. This may become evident from the examination of him by the court or by the U.S. commissioner, or it may arise from an event occurring subsequent to the appointment of counsel. A district court plan may properly place upon appointed counsel the duty of reporting to the court any situation coming to his attention where a defendant appears to be able to finance a portion of his defense.

Subsection (f) of the act gives to the court the control of any payments "from or on behalf of a defendant." The Committee recommends that all payments made by the defendant, particularly to court-appointed counsel, be strictly controlled to the end that total compensation to court-appointed counsel and to others not exceed the maximum permitted by the act.

(c) *Investigative services*

The Committee recommends that the allowances of petitions for investigative services be strictly limited, to the extent possible, to those charges necessary in the strictest sense of the word. A provision may well appear in each plan stating as a matter of policy that applications for the ratification of expenses incurred without court approval are not looked upon with favor except in most unusual situations.

(d) *Submission of claims*

The efficient administration of the Criminal Justice Act of 1964 on a national basis requires that claims for services and expenses be submitted for payment as expeditiously as possible. Provisions relating to the timely submission of claims should be included in every district court plan.

PLANS FOR REPRESENTATION ON APPEAL

The judicial council of each circuit is required by the act to supplement each district court plan with provisions for representation on appeal. Your Committee has thus far given priority of consideration to the district court plans, since they are to be on file with the judicial councils of the circuits by February 20, 1965. The Committee will continue its examination of the problems involved in the development of plans by the judicial councils and will report at the March 1965 session of the Conference. At that time the district court plans will be available. The judicial councils are not required to file their supplemental plans with the Director of the Administrative Office until May 20, 1965.

On preliminary consideration, however, the Committee has concluded (1) that there should be only one plan in each circuit, which is to be made a supplement to all district court plans in that circuit; (2) that there should be a continuity of representation to the end that there will be no hiatus in the availability of counsel in the interval between trial and appeal; and (3) that counsel appointed on appeal should advise the defendant of his right to initiate a further review by the filing of a petition for certiorari, and to file such petition, if requested by the defendant.

Consideration was given to the desirability of automatically continuing the appointment of trial counsel to prosecute the appeal. Mat-

ters of appellate competency, geography, and expense have led the Committee to conclude that this procedure should be left for determination in each circuit.

ADMINISTRATIVE ORGANIZATION

The Ad Hoc Committee recommended, and the Conference approved in principle, the administration of the Criminal Justice Act through a framework of boards of advisers to the judicial councils of the circuits, assisted by full-time, compensated officers. While recognizing the need for a sound organization to assist the district courts in the administration of the Criminal Justice Act, the Committee has deferred consideration of the duties to be performed by a full-time compensated officer. Experience in the operation of district court plans will provide a basis for determining the precise duties that might be assigned to such full-time officers.

The Committee believes, however, that the selection of boards of advisers to the judicial councils by the chief judges of the district courts in the near future would be desirable. Cooperation by the courts with the members of the bar in the early development of district and circuit plans will assure their cooperation in the administration of these plans in the future. In this regard, assistance that can be rendered by legal aid societies is not to be overlooked. The Committee recommends that appointments of lawyers as members of boards of advisers be made for definite terms, that these terms be staggered and that, ordinarily, a board member should not be eligible for reappointment upon the expiration of his term.

DISBURSEMENT OF FUNDS

Subsection (g) of section 2 of the Criminal Justice Act of 1964 provides that the Judicial Conference of the United States may specify the form and the times in which district courts and the judicial councils of the circuits shall submit reports on the appointment of counsel, within its jurisdiction, to the Administrative Office of the U.S. Courts.

Subsection (h) provides that payments from appropriations for carrying out the provisions of the act shall be made under the supervision of the Director of the Administrative Office of the U.S. Courts.

To effectuate the objectives of these subsections and to enable them to serve facilitatingly in the administration of the act, the Committee recommends that the Conference adopt the following resolutions of authorization and direction:

(1) In his responsibility for supervision of payments from the appropriations under the act, the Director of the Administrative Office is authorized to adopt and use a system of central disbursement for all appropriated funds, requiring notification to the Administrative Office of every appointment of counsel and authorization of other services as they are made; the transmission of vouchers to the Administrative Office for payment, containing adequate information as to the nature and extent of services rendered, both in and out of court, and the expenses incurred, and with payments to be made directly from the Administrative Office, rather than locally; and

(2) The Director is further authorized, under the supervision and direction of the Committee To Implement the Criminal Justice Act of 1964, to request any other reports from a district court and from a judicial council in such form and at such times as he deems necessary or desirable for statistical information or other purposes under the act.

The Administrative Office, pursuant to Conference endorsement of the central disbursement of funds appropriated to administer the Criminal Justice Act, has prepared a series of uniform appointment and voucher forms for use nationally. These are set out in appendix 1. Under this system the Administrative Office will be notified promptly of each appointment as it is made and vouchers approved by the court will be submitted directly to the Administrative Office for payment. Each voucher will be audited in advance of payment to determine whether, on its face, it is sufficient to comply with the statute and with the plan approved for the particular district court. All checks will be issued directly from Washington. The voucher forms have received detailed consideration by the Committee and have been approved for use by the Director of the Administrative Office, subject to any necessary approval by the General Accounting Office. Revisions in these forms, as dictated by experience, will be made from time to time, subject to the approval of the Committee. The Committee recommends that each district court plan embody a statement that the disbursement of funds under the act will be in accordance with the plan of central disbursement approved by the Conference and on forms prescribed by the Director of the Administrative Office as approved by your Committee.

APPROPRIATIONS

The carrying out of the intent of the Congress in enacting the Criminal Justice Act is dependent upon adequate appropriations to finance the system. Last September the Judicial Conference, on recommendation of the Ad Hoc Committee, approved a budget request in the sum of \$7,500,000 for the first year of operation under the act. Your Committee believes that this estimate of appropriation requirements is reasonable and recommends that the Conference renew its approval of this appropriation item. Funds to implement the act will, of course, not be available before July 1, 1965, and if the appropriations bill is not enacted until after that date, the funds will not be available until an even later date.

RULES AND REGULATIONS

Subsection (g) of section 2 of the act contains a provision that "the Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section." The language of authorization is as to rules and regulations "governing the operation of plans formulated" and not governing the formulation of plans. The matter of formulating plans is by other provisions of the act made the responsibility of each individual district court, "with the approval of the judicial council of the circuit."

Your Committee, therefore, is of the view that any rules or regulations on the part of the Conference should await a demonstrated need for some express or general direction resulting from the operation of the numerous plans as they have been formulated. While the Committee is not recommending any rules or regulations as to plans for adoption by the Conference at this time, it believes that it would be useful for the Committee to make some general expressions at this preliminary stage, subject to Conference approval.

The Committee believes that it will materially assist the district courts in their task of formulating plans and will contribute greatly to the successful working of such plans, to seek the cooperation of members of the bar and of appropriate bar associations. It should be emphasized that the responsibility of members of the bar to accept appointments and to serve in these cases is the same as it traditionally has been and that the passage of the Criminal Justice Act of 1964 in no way lessens the responsibility of members of the bar to accept these appointments. The payment of compensation to counsel under the act will, in most cases, be something less than compensatory. Service of counsel by appointment under the act will continue to require a substantial measure of dedication and public service.

The Committee further believes that all will agree that the courts in formulating and administering their plans will be particularly scrupulous to safeguard against the opportunity for any charges of fiscal laxity, favoritism, or other abuse which can cast a shadow on the general judicial system. The public funds involved will, of course, be expended with characteristic judicial responsibility.

What is perhaps most important of all to be borne in mind is that the act should be administered so that those accused of crime will not, because they are financially unable to pay therefor, be deprived of any element of representation which is soundly necessary to enable them to have fair opportunity for defense and opportunity for trial. What is sound and reasonably necessary is a matter for the practical and responsible judgment of the court.

CONCLUSIONS AND RECOMMENDATIONS

Your Committee recommends—

- (1) That this report be received and approved by the Conference;
- (2) That the Conference endorse the approval given by the Committee to the appointment and voucher forms submitted with the report;
- (3) That the Director of the Administrative Office be authorized to revise these forms from time to time, subject to the approval of your Committee;
- (4) That the Conference approve the specific recommendations set out in this report that relate to the formulation of plans under the Criminal Justice Act and to the authority delegated to the Director of the Administrative Office in regard to forms of reports and the operation of a system of central disbursement of funds; and
- (5) That your Committee be continued as a permanent Committee of the Conference to advise and assist the courts and the

Director of the Administrative Office in the administration of
the Criminal Justice Act.
Respectfully submitted.

Chief Judge JOHN S. HASTINGS,
Chairman.

Chief Judge HARVEY M. JOHNSEN.

Chief Judge ALFRED P. MURRAH.

Judge ROBERT A. AINSWORTH, JR.

Judge DUDLEY BONSAI.

Judge JAMES M. CARTER.

Judge WADE H. MCCREE, JR.

Chief Judge ROSZEL C. THOMSEN.

Judge HOMER THORNBERRY.

JANUARY 6, 1965.

Attachments:

Appendix 1: Vouchers and other forms.

Appendix 2: Six suggested district court plans.

Appendix 3: Criminal Justice Act of 1964.

APPENDIX 1

VOUCHERS AND OTHER FORMS

INSTRUCTIONS COVERING THE EXECUTION OF VOUCHERS AND OTHER
FORMS FOR ADMINISTERING THE CRIMINAL JUSTICE ACT OF 1964

CJA Form 1: Defendant's Affidavit and Order Appointing Counsel

Execute: Original and five copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For court-appointed attorney.

Copy 3: For court-appointed attorney, for attachment to voucher for fees and expenses (CJA form 4).

Copy 4: For Administrative Office, to establish estimated obligation of appropriation.

Copy 5: For defendant.

This is the order to be entered by the U.S. commissioner appointing counsel for the defendant who has executed the certificate thereon regarding his financial ability to obtain counsel. The indication as to whether the defendant is charged with a felony or a misdemeanor is required in order that the appropriate statutory limitation (\$500 or \$300) may be applied to the attorney's compensation. It will be necessary that the U.S. commissioner execute a CJA form 1 for the appointment of each attorney.

CJA Form 2: Order Appointing Counsel

Execute: Original and five copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For court-appointed attorney.

Copy 3: For court-appointed attorney, for attachment to voucher for fees and expenses (CJA form 4).

Copy 4: For Administrative Office, to establish estimated obligation of appropriation.

Copy 5: For defendant.

This is the order to be entered by a U.S. district judge for the defendant who, in reply to the questions stated thereon, has satisfied the court that he is financially unable to obtain counsel. It should be noted that the court has the alternative to allow the defendant to answer the questions and execute his certificate before a deputy clerk. The indication as to whether the defendant is charged with a felony or a misdemeanor is required in order that the appropriate statutory

limitation (\$500 or \$300) may be applied to the attorney's compensation. It will be necessary that the court execute a CJA form 2 for the appointment of each attorney. If a district judge desires to use the alternate provided on this form to signing the order himself and instead allow such form to be signed by a deputy clerk "by order of the court," he may do so provided a reporter is present in the court and an entry is made in the minutes. The judge himself must make the appointment.

CJA Form 3: Affidavit of Financial Status

Execute: Original and three copies.

Distribute:

Original: For court records.

Copy 1: For defendant.

Copy 2: For court-appointed attorney.

Copy 3: For Administrative Office, for studies.

This is the affidavit of the defendant as to his financial status. It is a much more detailed statement than that contained in CJA form 2 and may be required by the court prior to entering the order (CJA form 3a) appointing counsel.

CJA Form 3a: Order Appointing Counsel

Execute: Original and five copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For court-appointed attorney.

Copy 3: For court-appointed attorney, for attachment to voucher for fees and expenses (CJA form 4).

Copy 4: For Administrative Office, to establish estimated obligation of appropriation.

Copy 5: For defendant.

This is the order appointing counsel to be entered by the U.S. district judge who has required of the defendant an affidavit of his financial status on CJA form 3. The indication as to whether the defendant is charged with a felony or a misdemeanor is required in order that the appropriate statutory limitation (\$500 or \$300) may be applied to the attorney's compensation. If a district judge desires to use the alternate provided on this form to signing the order himself and instead allow such form to be signed by a deputy clerk "by order of the court," he may do so provided a reporter is present in the court and an entry is made in the minutes. The judge himself must make the appointment.

CJA Form 4: Voucher for Compensation and Expenses of Appointed Counsel

Execute: Original and two copies.

Distribute:

Original: To court for approval and to the Administrative Office for payment.

Copy 1: For court records.

Copy 2: For court-appointed attorney or organization which furnished attorney.

This is the voucher to be executed by the court-appointed attorney or by an appropriate representative of the bar association or legal aid agency which made the attorney available. It provides the details of the attorney's time spent before a U.S. commissioner, in open court and in preparing his case out of court as well as an itemization of the attorney's out-of-pocket expenses. The court fixes the compensation within the statutory limitation and approves the items of expense for which reimbursement is claimed.

CJA Form 5: Court's Certificate Allowing Compensation in Excess of Statutory Limitation

Execute: Original and three copies.

Distribute:

Original: For attachment to attorney's original voucher to be submitted to the court for approval and to the Administrative Office for payment.

Copy 1: For court records.

Copy 2: For court-appointed attorney.

Copy 3: For court of appeals.

Section 2(d) of the act provides that in protracted representation, the district court, with the approval of the chief judge of the U.S. court of appeals, may allow compensation in excess of the limitations stated in the act. CJA form 5 is for this purpose.

CJA Form 6: Order Terminating Appointment of Counsel

CJA Form 7: Authorization for Distribution of Available Private Funds

Execute: Original and three copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For defendant.

Copy 3: For Administrative Office.

Section 2(c) of the act provides that if at any stage of the proceedings a court learns that a defendant is financially able to pay counsel, the court may terminate the appointment of the court-appointed attorney or direct distribution of funds of the defendant or other person on behalf of the defendant as provided in section 2(f). CJA forms 6 and 7 are for these purposes, respectively. Also, CJA form 6 may be modified to state any other reason for termination of appointment of counsel.

CJA Form 8: Application and Authorization for Investigative, Expert or Other Services

Execute: Original and four copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For investigator or expert.

Copy 3: For investigator or expert, for attachment to voucher for compensation and expenses.

Copy 4: For Administrative Office, to establish estimated obligation of appropriation.

This form is for the purpose of applying to the court for authority to incur the expense for investigative, expert, or other services, other than counsel, on behalf of the defendant as provided in section 2(e) of the act.

CJA Form 9: Voucher for Compensation and/or Expenses for Investigative, Expert, or Other Services

Execute: Original and three copies.

Distribute:

Original, copy 1, and copy 2: To attorney for the defendant for recommendation (attorney retains copy 2)—to court for approval (court retains copy 1)—original to the Administrative Office for payment.

Copy 3: For records of investigator or expert.

This is the voucher to be executed by a person or organization who has performed investigative, expert, or other services. It is to be executed under oath as provided in section 2(e) and forwarded to the court through the attorney for the defendant.

CJA Form 10: Application and Order for Ratification and Directing Payment of Expenses Previously Incurred

Execute: Original and four copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For investigator or expert.

Copy 3: For investigator or expert, for attachment to voucher for compensation and expenses.

Copy 4: For Administrative Office, to establish estimated obligation of appropriation.

In the event it has been necessary for the attorney for the defendant to obtain investigative, expert, or other services without having time to seek the prior authorization of the court, he should execute CJA form 10 and present it to the court for ratification. The voucher (CJA form 9) should be presented at the same time, if possible.

CJA Form 11: Order Appointing Counsel

Execute: Original and five copies.

Distribute:

Original: For court records.

Copy 1: For court-appointed attorney.

Copy 2: For court-appointed attorney.

Copy 3: For court-appointed attorney, for attachment to voucher for fees and expenses (CJA form 4).

Copy 4: For Administrative Office, to establish estimated obligation of appropriation.

Copy 5: For defendant.

This is the order to be entered by a U.S. circuit judge, on behalf of the court, appointing counsel for an appellant who has satisfied the court that he is financially unable to obtain counsel. The indication as to whether the defendant had been convicted of a felony or a misdemeanor in a U.S. district court is required in order that the appropriate limitation (\$500 or \$300) may be applied to the attorney's compensation. It will be necessary to execute a CJA form 11 for the appointment of each attorney.

CJA Form 12: Voucher for Compensation and Expenses of Appointed Counsel

Execute: Original and two copies.

Distribute:

Original: To court for approval and to the Administrative Office for payment.

Copy 1: For court records.

Copy 2: For court-appointed attorney or organization which furnished attorney.

This is the voucher to be executed by the court-appointed attorney or by an appropriate representative of the bar association or legal aid agency which made the attorney available to represent an appellant. It provides the details of the attorney's time spent in open court and in preparing the case out of court as well as an itemization of the attorney's out-of-pocket expenses. The court fixes the compensation within the statutory limitation and approves the items of expense for which reimbursement is claimed.

The actual size of the forms will be 8½ by 14 inches.

CJA FORM 1
(1-14-65)

UNITED STATES DISTRICT COURT
for the
district of _____

at _____

United States of America
Plaintiff
vs
Defendant

) Docket No. _____
DEFENDANT'S AFFIDAVIT
AND ORDER
APPOINTING COUNSEL

Charge: _____

A Felony Misdemeanor

The defendant, having appeared before the United States Commissioner and having sworn to testify truthfully as to his financial ability to hire counsel, testified as follows:

Is defendant employed?..... Yes No
If yes, state weekly wages..... \$ _____
If self-employed, state average
weekly income \$ _____
Cash on hand and in banks \$ _____
Number of dependents _____
Property owned: _____

I certify the above to be correct.

(Date)

(Signature of defendant)

The United States Commissioner now finds that the defendant is financially unable to obtain counsel, and said defendant not having waived the appointment of counsel;

IT IS ORDERED that the following member of the Bar is hereby appointed to represent said defendant before the Commissioner and in all matters thereafter unless and until relieved by order of the District Court:

Name _____
Address _____
Phone _____

The said attorney or bar association or legal aid agency which made the attorney available is authorized, pursuant to the provisions of the Criminal Justice Act of 1964, to present to the court a claim for compensation and reimbursement for expenses of representation reasonably incurred.

Dated this _____ day of _____, 19 ____.

United States Commissioner

CJA FORM 2
(1-14-65)

UNITED STATES DISTRICT COURT
for the
district of _____

at _____

United States of America
Plaintiff
vs
Defendant

) Docket No. _____

ORDER
APPOINTING COUNSEL

Charge: _____

A Felony Misdemeanor

The defendant having appeared before this court and,
(1) having previously been sworn to testify truthfully as to his
financial ability to hire counsel and having filled out, signed and
sworn to the questionnaire below or
(2) having testified under oath as to his financial ability to hire
counsel as shown in the questionnaire below,

Is defendant employed?..... Yes No
If yes, state weekly wages \$ _____
If self-employed, state average
weekly income \$ _____
Cash on hand and in banks \$ _____
Number of dependents _____
Property owned: _____

I certify the above to be correct.

(Date)

(Signature of Defendant)

and the court being satisfied as a result thereof that the above-named
defendant is financially unable to obtain counsel and said defendant not
having waived the appointment of counsel;

IT IS ORDERED that the following member of the Bar is hereby appointed
to represent the defendant in all matters pertaining to this action in
the district court unless and until relieved by order of the district
court and thereafter unless and until relieved by order of the Court of
Appeals:

Name _____

Address _____

Phone _____

The said attorney or bar association or legal aid agency which made the
attorney available is authorized, pursuant to the provisions of the Criminal
Justice Act of 1964, to present to the court a claim for compensation and
reimbursement for expenses of representation reasonably incurred.

Dated this _____ day of _____, 19 ____.

United States District Judge
or
BY ORDER OF THE COURT

Deputy Clerk

CJA FORM 3
(12-9-64)

Sheet 1 of 2 sheets

UNITED STATES DISTRICT COURT
for the
district of _____

at _____

United States of America

Plaintiff

vs

Defendant

) Docket No. _____

AFFIDAVIT
OF
FINANCIAL STATUS

The above-named defendant, being first duly sworn, deposes and makes under oath the following statement regarding his marital status, residence, employment and financial status:

I. MARITAL STATUS:

a. Single Married Separated Divorced

b. Dependents: Wife Children, No. ____ Others, No. ____ and
Relationship _____

II. RESIDENCE:

Defendant's address: Street _____

City _____ State _____ Phone _____

III. EMPLOYMENT:

Name of employer _____

Address of employer _____

Employer's phone _____

How long has defendant been employed by present employer? _____

Income: Monthly \$ _____ or Weekly \$ _____

What is defendant's job _____

CJA FORM 3a
(1-21-65)

UNITED STATES DISTRICT COURT
for the
district of _____

at _____

United States of America
Plaintiff
vs
Defendant

) Docket No. _____

ORDER
APPOINTING COUNSEL

Charge: _____

A Felony Misdemeanor

Having reviewed the defendant's affidavit of financial status and being satisfied after appropriate inquiry that the above defendant is financially unable to obtain counsel and said defendant not having waived the appointment of counsel;

IT IS ORDERED that the following member of the Bar is hereby appointed to represent the defendant in all matters pertaining to this action in the district court unless and until relieved by order of the district court and thereafter unless and until relieved by order of the Court of Appeals:

Name _____

Address _____

Phone _____

The said attorney or bar association or legal aid agency which made the attorney available is authorized, pursuant to the provisions of the Criminal Justice Act of 1964, to present to the court a claim for compensation and reimbursement for expenses of representation reasonably incurred.

IT IS FURTHER ORDERED that the attorney, _____, previously appointed in this case is relieved of further responsibility.

Dated this _____ day of _____, 19 ____.

United States District Judge
or
BY ORDER OF THE COURT

Deputy Clerk

CJA FORM 4
(12-5-64)

VOUCHER FOR COMPENSATION AND EXPENSES
OF APPOINTED COUNSEL

TO _____
(Name of Payee)

(Address)

Paid By
[]

Pursuant to the authorization contained in the attached copy of the ORDER APPOINTING COUNSEL in the case of the United States of America vs. _____, Commissioner's Docket No. _____ or Court Docket No. _____, claim hereby is made for compensation and expenses of representation.

	Date	Hours
I. TIME SPENT BEFORE UNITED STATES COMMISSIONER	_____	_____
II. TIME SPENT IN OPEN COURT		
(a) Arraignment and Plea	_____	_____
(b) Plea (when separate from arraignment).....	_____	_____
(c) Sentence hearing	_____	_____
(d) Continuances.....	_____	_____
(e) Trial (list time for each day separately)....	_____	_____
(f) Other (specify) _____	_____	_____
III. TIME SPENT IN PREPARATION (OUT OF COURT)		
(a) Interviews with client	_____	_____
(b) Legal research	_____	_____
(c) Investigative work		
Interviews with witnesses	_____	_____
Consultation with prosecuting officials	_____	_____
Consultation with probation officers	_____	_____
Other	_____	_____
IV. EXPENSES OF REPRESENTATION (ITEMIZE)		Amount
_____		\$ _____
_____		_____
_____		_____
_____		_____
V. If compensation and/or reimbursement for representation in this case has been applied for or received, so state: _____		

CLAIM:
Item I _____ hrs.
Item II _____ hrs.
Item III _____ hrs.
Item IV \$ _____

Certified correct.
Payment has not been received and, except as noted in item V, above, no payment or promise of payment has been requested or accepted for representing the above defendant.

(signature of payee)

(title)

Date: _____

ALLOWANCE:
I _____ hrs. @ \$ _____ per hr.. \$ _____
II _____ hrs. @ \$ _____ per hr.. _____
III _____ hrs. @ \$ _____ per hr.. _____
IV

TOTAL\$ _____

Date: _____

United States District Judge

(appropriation)

Check No. _____

CJA FORM 5
(12-5-64)

UNITED STATES DISTRICT COURT
for the
_____ district of _____

This is to certify that the attached claim in the amount of \$ _____
for compensation for representing _____
charged with _____,
a _____, which is in excess of the limitation of \$ _____
(felony/misdemeanor)
contained in the Criminal Justice Act of 1964, represents fair compensa-
tion for protracted representation and, therefore, payment is necessary.

Certified this _____ day of _____, 19 ____.

(Signature)

United States District Judge

Approved:

(date)

(Signature)

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

CJA FORM 6
(12-14-64)

UNITED STATES DISTRICT COURT
for the
district of _____

United States of America

Plaintiff

vs

Defendant

Docket No. _____

ORDER
TERMINATING APPOINTMENT
OF COUNSEL

The court finds that the above defendant, for whom counsel, _____
_____, was appointed on the
_____ day of _____, 19 ____, is financially able to obtain
counsel or to make partial payment for the representation;
IT IS THEREFORE ORDERED that appointment of said counsel is terminated
forthwith.

Dated this _____ day of _____, 19 ____.

United States District Judge

CJA FORM 7
(12-14-64)

UNITED STATES DISTRICT COURT
for the
district of _____

United States of America	}	Docket No. _____
Plaintiff		
vs		AUTHORIZATION FOR DISTRIBUTION OF AVAILABLE PRIVATE FUNDS
Defendant		

The court finds that funds are available from or on behalf of the above defendant for payment of compensation and expenses of his court-appointed counsel;

IT IS THEREFORE AUTHORIZED/DIRECTED that such funds in the amount of \$ _____ be paid by said defendant or _____

- (1) \$ _____ to the court-appointed attorney, to the bar association or legal aid agency which made the attorney available, or
- (2) \$ _____ to _____ authorized to render investigative, expert or other services, or
- (3) \$ _____ to the court for deposit in the Treasury of the United States as a reimbursement to the appropriation, current at the time of payment.

Dated this _____ day of _____, 19 ____.

United States District Judge

CJA FORM 8
(12-14-64)

UNITED STATES DISTRICT COURT
for the
district of _____

at _____

United States of America

Plaintiff

vs

Defendant

Docket No. _____

APPLICATION AND AUTHORIZATION
FOR
INVESTIGATIVE, EXPERT
OR OTHER SERVICES

I, _____, counsel for the above-named defendant, having furnished an affidavit (CJA FORM 3) as to the defendant's financial condition, and a statement of the fees, if any, paid or to be paid by the defendant or on his behalf to me, do hereby apply for authority to incur the expense for the services stated herein as necessary to an adequate defense for said defendant for the following reasons (the reasons may be set forth in a separate statement which may be sealed by the court):

I estimate the cost of such services will not exceed \$ _____, and the expenses reasonably to be incurred in connection therewith will not exceed \$ _____.

Such services are to be rendered by:

(Date) Attorney for the defendant

Upon appropriate inquiry, it having been found that the above described services are necessary and that the defendant is financially unable to obtain them;

AUTHORIZATION hereby is granted said attorney to obtain such services. Said attorney on behalf of the organization or person named above who shall render the services shall present a verified claim to this court for compensation not to exceed \$ _____* and reimbursement for expenses reasonably incurred not to exceed \$ _____ to be paid on behalf of said defendant.

Dated this _____ day of _____, 19____.

United States District Judge

* The Criminal Justice Act of 1964 provides " * * * compensation to be paid to a person for such service rendered by him to a defendant under this subsection [(e) SERVICES OTHER THAN COUNSEL], or to be paid to an organization for such services rendered by an employee thereof, shall not exceed \$300, exclusive of reimbursement for expenses reasonably incurred."

CJA FORM 9
(12-5-64)

VOUCHER FOR COMPENSATION AND/OR EXPENSES
FOR INVESTIGATIVE, EXPERT OR OTHER SERVICES

Paid By

TO _____
(Name of Payee)

(Address)

Pursuant to the attached authorization of the United States District Court,
entered the _____ day of _____, 19 ____, in the case of the
United States of America vs. _____.

Docket No. _____, the following services were rendered for which
claim is made in the amount of \$ _____

Total time expended _____ hrs.

The following items of expense were incurred for which
reimbursement is claimed:

_____ \$ _____

Grand total \$ _____

Except as noted below, no compensation has been received from any other
source nor has payment or promise of payment been requested or accepted
for assisting in the representation of the above defendant.

Total amount claimed.... \$ _____

Sworn before me this
_____ day of _____, 19 ____.

Certified correct.

(Signature of Payee)

(title)

Approval recommended:

(Date)

Approved:

(Date)

Attorney for the Defendant

United States District Judge

CJA FORM 10
(12-14-64)

UNITED STATES DISTRICT COURT
for the
district of _____

at _____

United States of America

Plaintiff

vs

Defendant

Docket No. _____

APPLICATION AND ORDER
FOR RATIFICATION AND DIRECTING
PAYMENT OF EXPENSES PREVIOUSLY
INCURRED

I, _____, counsel for the above-named defendant, do hereby apply for an order for ratification of expenses for services previously rendered and for payment to the organization or person who rendered such services upon filing of a claim on CJA Form 9 for compensation and reimbursement of expenses.

I CERTIFY; That for the reasons set forth in the attached statement; (1) it was not possible to seek prior authorization of the court to incur these expenses; (2) the expenses for services described therein in detail were necessary to the preparation of the defense; and (3) that this application is made at the earliest possible time.

Services were rendered by: _____

(Date)

Attorney for the Defendant

NOTE: If the defendant, or his attorney, has not previously submitted to the court an affidavit of defendant's financial status (CJA Form 3), such affidavit shall be attached hereto.

Upon appropriate inquiry the court finds, in the interests of justice, that the services described are necessary and that timely procurement of the necessary services could not await prior authorization;

IT IS THEREFORE ORDERED that such services are hereby ratified and payment is authorized.

Dated this _____ day of _____ 19 ____.

United States District Judge

CJA FORM 11
(12-14-64)

UNITED STATES COURT OF APPEALS
for the
_____ circuit

at _____

Docket No. _____

Appellant¹

vs

ORDER
APPOINTING COUNSEL

United States of America

Appellee

The court being satisfied after appropriate inquiry that the above appellant is financially unable to obtain counsel and said appellant not having waived appointment of counsel;

IT IS ORDERED that the following member of the bar is hereby appointed to represent (or to continue to represent) said defendant in all matters pertaining to this action before this court:

Name _____

Address _____

Phone _____

The said attorney or bar association or legal aid agency which made the attorney available is authorized, pursuant to the provisions of the Criminal Justice Act of 1964, to present to the said court a claim for compensation and reimbursement for expenses of representation reasonably incurred.

Dated this _____ day of _____, 19 ____.

For the court:

United States Circuit Judge

I. Convicted in the United States District Court for the _____ district of _____ of a

felony misdemeanor

CJA FORM 12
(12-5-64)

VOUCHER FOR COMPENSATION AND EXPENSES
OF APPOINTED COUNSEL

Paid By

TO _____
(Name of Payee)

(Address)

Pursuant to the authorization contained in the attached copy of the ORDER APPOINTING COUNSEL in the case of _____, appellant, Docket No. _____, claim hereby is made for compensation and expenses of representation.

- I. NATURE OF CASE _____
- II. DID YOU REPRESENT SAME PARTY IN DISTRICT COURT? YES NO
- III. THE NUMBER OF PAGES IN THE RECORD OF THE CASE _____
- IV. TIME SPENT IN OPEN COURT

Date	Hour
- V. TIME SPENT IN PREPARATION (OUT OF COURT)
 - (a) Interviews and conferences _____
 - (b) Obtaining and reviewing records _____
 - (c) Legal research and brief writing _____
 - (d) Other (explain) _____

VI. EXPENSES OF REPRESENTATION (ITEMIZE)	Amount
_____	\$ _____
_____	_____
_____	_____

VII. If compensation and/or reimbursement for representation in this case has been applied for or received, so state: _____

CLAIM:
 Item IV _____ hrs.
 Item V _____ hrs.
 Item VI \$ _____

Certified correct.
 Payment has not been received and, except as noted in item VII, above, no payment or promise of payment has been requested or accepted for representing the above defendant.

(signature of payee)

(title)

(date)

ALLOWANCE:
 IV _____ hrs. at \$ _____ per hr..\$ _____
 V _____ hrs. et \$ _____ per hr..\$ _____
 VI\$ _____

Total.....\$ _____

Date: _____

For the court: United States Circuit Judge

Appropriation _____

Check No. _____

APPENDIX 2

SIX SUGGESTED DISTRICT COURT PLANS

APPENDIX 2-A

A SUGGESTED PLAN FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964

Prepared by Judge Dudley B. Bonsal, Southern District of New York

Pursuant to the provisions of section 2 of the Criminal Justice Act of 1964 (Public Law 88-455, approved Aug. 20, 1964; 18 U.S.C. 3006A), the judges of the U.S. District Court for the Southern District of New York have adopted the following plan for the adequate representation, as provided in paragraphs (a), (b), (c), and (d) of section 2, of defendants charged with felonies or misdemeanors (other than petty offenses as defined in 18 U.S.C. 1) who are financially unable to obtain an adequate defense, and for the furnishing of investigative, expert, and other services as provided in paragraph (e) of section 2.

As provided in paragraph (a) of section 2, this plan combines representation by private attorneys and representation by attorneys furnished by a bar association or a legal aid agency.

The Association of the Bar of the City of New York and the county bar associations of each county within this district are designated as the bar associations, and the Legal Aid Society of the City of New York (Legal Aid Society) is designated as the legal aid agency under this plan, pursuant to paragraph (a) (2) of section 2, provided that the names of attorneys furnished by a bar association and by the Legal Aid Society shall be approved by the court before being included in the panel of attorneys available for the representation of such defendants.

I. PANEL OF ATTORNEYS

The bar associations and the Legal Aid Society (with respect to attorneys in its employ) are invited to prepare and to certify to the chief judge not later than May 1, 1965, a list of attorneys who are admitted to practice before this court and who, in the opinion of the bar association or of the Legal Aid Society, are competent to give adequate representation to defendants under the act. Each judge of this court is invited to furnish to the chief judge on or before May 1, 1965, a list of attorneys whom he desires to have included in the panel of attorneys. Each name on a list shall be accompanied by the address and telephone number of the attorney, and brief data as to his experience. From the lists so furnished, the chief judge,

with the approval of the court, shall establish a panel of attorneys on or before June 15, 1965. The panel of attorneys shall list each attorney, his address and telephone number, and brief data as to his experience, and shall be subdivided to show separately the attorneys supplied by the Legal Aid Society, each bar association, and by the judges of the court. Additions and deletions to the panel of attorneys may be made from time to time by vote of the judges of the court or by the chief judge if authorized to do so by the judges of the court. A copy of the original panel of attorneys shall be furnished by the chief judge to each district judge and to each U.S. commissioner not later than June 15, 1965, and the chief judge shall furnish to each district judge and to each U.S. commissioner copies of revised panels of attorneys from time to time, as he shall deem necessary or appropriate.

II. DETERMINATION OF NEED FOR COUNSEL

Each defendant charged with a felony or misdemeanor (other than a petty offense as defined in the Criminal Code) shall be advised at the earliest practicable stage in the proceeding of his right to counsel and shall be asked whether he is financially able to obtain counsel in his defense. Whenever such a defendant states that he is financially unable to obtain counsel, and applies for the appointment of counsel, it shall be the duty of the district judge or the U.S. Commissioner, as the case may be, to inquire into and to make a finding as to whether such defendant is financially able to obtain counsel. All statements made by such defendant in such inquiry shall be either under oath in open court or by affidavit sworn to before the district judge or the commissioner. If, on the basis of such inquiry, the judge or the commissioner finds that such defendant is financially unable to obtain counsel, he shall appoint counsel for such defendant in the manner hereinafter provided in article III hereof.

III. APPOINTMENT OF COUNSEL

A. *In proceedings before a U.S. commissioner:*

1. In all communities wherein the Legal Aid Society of the City of New York maintains an office, the commissioner shall designate and appoint from the panel of attorneys an attorney employed by the said Society and furnished to him for the purpose, as counsel for all defendants whom the commissioner finds are unable to obtain counsel. In communities where the Legal Aid Society does not maintain an office or where the Legal Aid Society is unable to furnish counsel because of conflict of interest or other reason, the commissioner shall designate and appoint from the panel of attorneys an attorney as counsel who has his office in the community where the commissioner is sitting, or in which the defendant resides.

2. To the extent practicable, the commissioner shall appoint the same attorney as counsel for all such defendants appearing before him on the same day.

3. Counsel shall be designated and appointed by the commissioner, and no such defendant shall select his own counsel from the panel of attorneys or otherwise.

4. Counsel appointed by a commissioner shall represent the defendant in proceedings before the commissioner and thereafter until the defendant's first appearance before a district judge.

B. *In proceedings before a district judge:*

1. The district judge shall make his own finding of the need to appoint counsel for any defendant, but he may base such finding upon the affidavit made by the defendant before the commissioner or upon the record, if any, made before the commissioner.

2. The district judge may either reappoint counsel appointed by the commissioner for such defendant, or he may appoint new counsel.

3. Counsel appointed by the district judge at the defendant's first appearance shall continue to act for the defendant throughout the proceedings in this court and through appeal, unless or until he is relieved by the court of appeals.

4. In all communities wherein the Legal Aid Society maintains an office, the district judge shall designate and appoint from the panel of attorneys an attorney employed by the said society and furnished to him for the purpose, as counsel for such defendant, unless the district judge shall determine that other counsel should be appointed. In communities where the Legal Aid Society does not maintain an office or where the Legal Aid Society is unable to furnish counsel because of conflict of interest or other reason, or where the judge determines that other counsel should be appointed, the district judge shall appoint counsel from the panel of attorneys, except that if the district judge shall find that a defendant could be more adequately represented by counsel not on the panel of attorneys, he may request the chief judge to add such counsel to the panel, stating briefly his reasons therefor, and the district judge may appoint such counsel if such counsel is made a member of the panel of attorneys pursuant to article I hereof.

5. Counsel shall be designated and appointed by the district judge, and no such defendant shall select his own counsel from the panel of attorneys or otherwise.

C. *Duration and substitution of appointments:*

As provided in paragraph (c) of section 2, a defendant for whom counsel is appointed hereunder shall be represented at every stage of the proceedings, from his initial appearance before the U.S. commissioner or district judge through appeal. If at any time after the appointment of counsel the district judge finds that the defendant is financially able to obtain counsel or to make partial payment for his representation, the district judge may terminate the appointment of counsel or he may direct that payment be made to the appointed counsel or to the bar association which made such appointed counsel available for appointment, or to the Legal Aid Society. Such payments shall be strictly controlled by the court, to the end that payments to appointed counsel or the bar association or the Legal Aid Society shall not exceed the maximum permitted by the act.

If at any stage of the proceedings a district judge shall find that a defendant for whom counsel has not previously been appointed under this plan is financially unable to pay counsel whom

he has retained, the district judge may appoint the same counsel or substitute counsel in the manner hereinabove provided. The district judge or the U.S. commissioner may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

In the event that a 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, 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.

No counsel appointed hereunder shall seek or accept any fee from the defendant for whom he is appointed. If there should come to the knowledge of such counsel any information indicating that the defendant can make payment in whole or in part for legal services, it shall be his duty to report such information promptly to the court, so that appropriate action may be taken hereunder.

IV. SERVICES OTHER THAN COUNSEL

Counsel (whether or not appointed under this plan) for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request such services in an ex parte application before a district judge. If, after appropriate inquiry (including consultation with the U.S. attorney if he deems it advisable), the district judge shall find that the services are necessary and that the defendant is financially unable to obtain them, he shall authorize defendant's counsel to obtain such services. The statements made by the defendant upon such inquiry shall be made either by affidavit sworn to before the district judge or by statement, under oath, made in open court. If the district judge should find that timely procurement of such services could not await prior authorization, he may, in the interests of justice, ratify such services after they have been obtained, if he shall find that the defendant is financially unable to pay for them, provided that ratification of services previously incurred shall be given only in the most unusual situations.

V. PAYMENT OF COUNSEL FEES AND FOR OTHER SERVICES

A. Payment of counsel fees for counsel appointed under this plan, and for his expenses reasonably incurred, and for expenses for other services incurred pursuant to article IV hereof, shall be made in accordance with such rules and regulations as may be prescribed from time to time by the Administrative Office of the U.S. Courts (Administrative Office).

B. Any counsel appointed under the plan or the bar association or the Legal Aid Society, as the case may be, who made him available for appointment, may apply for payment of his counsel fees and his expenses, reasonably incurred, within 90 days following the conclusion of his services. (Expenses reasonably incurred are limited to out-of-pocket expenses and shall not include any allocations for general office overhead, such as rent, telephone services, or secretarial help.)

C. Any counsel authorized to obtain investigatory, expert, or other services pursuant to article IV hereof (including cases where the obtaining of such services was ratified by the court), or the bar association or the Legal Aid Society, as the case may be, who made him available for appointment, may apply for payment or reimbursement of such expenses within 90 days following the conclusion of his services as counsel.

D. Applications under paragraphs B and C of this article V shall be made *ex parte* to the district judge presiding in Crime, Part I. Each such application shall contain a statement of the services rendered and the amount of time spent by counsel, an itemized list of his expenses, reasonably incurred, or, in applications under paragraph C, an itemized list of expenses incurred which have been authorized for payment or reimbursement. Any such application may be referred by the district judge presiding in Crime, Part I, to the district judge who presided at the trial or to the district judge who appointed the applicant or who authorized or ratified the incurring of the services if the district judge presiding in Crime, Part I, so determines. Upon approval of any such application by a district judge, it shall be forwarded by the clerk to the Administrative Office for payment, except that an application under paragraph B hereof which is approved in an amount in excess of the limits provided in subdivision (d) of section 2 of the Criminal Justice Act because of extraordinary circumstances and in order to provide fair compensation for protracted representation, shall be forwarded by the clerk to the chief judge of the U.S. Court of Appeals, Second Circuit, for his approval prior to being forwarded to the Administrative Office.

VI. AUTHORITY OF ADMINISTRATIVE OFFICE OF THE U.S. COURTS

The authority conferred on the Director of the Administrative Office by the following resolutions of the Judicial Conference of the United States adopted January 13, 1965, is made part of this plan:

(1) In his responsibility for supervision of payments from the appropriations under the act, the Director of the Administrative Office is authorized to adopt and use a system of central disbursement for all appropriated funds, requiring notification to the Administrative Office of every appointment of counsel and authorization of other services as they are made; the transmission of vouchers to the Administrative Office for payment, containing adequate information as to the nature and extent of services rendered, both in and out of court, and the expenses incurred, and with payments to be made directly from the Administrative Office, rather than locally; and

(2) The Director is further authorized under the supervision and direction of the Committee To Implement the Criminal Justice Act of 1964, to request any other reports from a district court and from a judicial council in such form and at such times as he deems necessary or desirable for statistical information or other purposes under the act.

VII. FORMS

The forms prepared and furnished by the Administrative Office, copies of which are annexed (CJA forms 1 to 12, inclusive), shall be used, where applicable, in all proceedings under this plan. Any revisions of said forms or any additional forms that may be prescribed by the Administrative Office under the authority of the Judicial Conference of the United States or of the Committee of that Conference To Implement the Criminal Justice Act of 1964, shall likewise be used, where applicable, in all proceedings under this plan.

VIII. RULES AND REPORTS

The chief judge, on behalf of the court, may promulgate such rules as may from time to time be adopted by the court, and the chief judge, on behalf of the court, shall make such reports as are required under article VI hereof or as may be prescribed from time to time by the Judicial Conference of the United States or by the Committee of that Conference To Implement the Criminal Justice Act of 1964.

IX. AMENDMENTS

Amendments to this plan may be made from time to time by the district judges of the Southern District of New York.

X. EFFECTIVE DATE

This plan shall take effect on the effective date of the Criminal Justice Act of 1964, provided it shall have been approved by the judicial council of this circuit.

APPENDIX 2-B

A SUGGESTED PLAN FOR THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964

Prepared by Judge Robert A. Ainsworth, Jr., Eastern District of Louisiana

PREAMBLE

The judges of the U.S. District Court for the Eastern District of Louisiana, as required by the Criminal Justice Act of 1964, 18 U.S.C. 3006A, with the approval of the Judicial Council of the Fifth Circuit, have adopted the following plan, applicable to both the New Orleans and Baton Rouge divisions, for furnishing representation for defendants charged with felonies or misdemeanors, other than petty offenses as defined in 18 U.S.C. 1, who are financially unable to obtain an adequate defense. The act does not apply in habeas corpus cases, in proceedings to vacate sentence brought under 28 U.S.C. 2255, or in any other proceedings of a similar character, which is collateral to the original criminal case.

Representation under this plan shall include counsel and investigative, expert, and other services necessary to an adequate defense.

The bar has traditionally represented defendants unable to pay for counsel, without compensation. Payment for representation provided by the act obviously does not compensate appointed attorneys in the accepted sense. The bar will continue to perform such services primarily as officers of the court, in keeping with the high traditions of the past, and with the knowledge that such services are rendered toward the realization of a lofty ideal, equality before the law for all men.

1. PANEL OF ATTORNEYS

The clerk of this court, under the direction, supervision, and with the approval of the court, shall prepare and maintain a panel of attorneys, competent to provide an adequate defense to defendants under the act. The clerk shall seek the advice and assistance of local bar associations in preparing the panel. Additions and deletions to the panel of attorneys may be made at any time by the court. A separate panel shall be kept for the New Orleans and the Baton Rouge divisions. Each judge and U.S. commissioner of the court shall be furnished by the clerk with copies of the panels of attorneys and with revisions thereof as made from time to time. The clerk shall also maintain a list of appointments of counsel made by the U.S. commissioner and the judges of this court.

2. APPOINTMENT OF COUNSEL

(a) *Informing defendant of right to representation; determination of financial inability*

In every criminal case in which a defendant is charged with a felony or a misdemeanor, other than a petty offense, and is not represented by counsel, the U.S. commissioner or the court shall promptly advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives the appointment of counsel, the U.S. commissioner or the court shall appoint counsel to represent him from the approved panel of attorneys, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel and upon making a finding to that effect.

Statements made by a defendant in such inquiry shall be either under oath in open court or by affidavit verified by any person empowered to administer oaths.

The judge shall make his own finding of the need to appoint counsel for a defendant, but he may base his finding upon the affidavit made by the defendant before the commissioner. The approved standard forms of the Administrative Office shall be used by the commissioner and the court in such inquiry and for the order appointing counsel.

Where counsel is waived by a defendant, either before the Commissioner or the court, the waiver shall in all instances be made in writing, signed by the defendant, on forms approved by the court.

The commissioner shall inform the defendant that waiver of counsel before the commissioner shall not prevent the defendant from requesting appointment of counsel before the court.

(b) *Representation at every stage of proceedings*

A defendant for whom counsel has been appointed shall be represented at every stage of the proceedings, from his initial appearance before the U.S. commissioner or court, through appeal, if any.

(c) *Separate counsel*

Separate counsel shall be appointed for defendants who have such conflicting interests that they cannot properly be represented by the same counsel, or when other good cause is shown.

(d) *Defendant may not select counsel*

No such defendant shall select his own counsel from the panel of attorneys, or otherwise. The selection of counsel shall be the exclusive responsibility of the U.S. commissioner or the judge, as the case may be.

(e) *Reexamining need for counsel*

The court may reexamine the need for counsel at any time after appointment has been made. If the judge finds that the defendant is financially able to obtain counsel or make partial payment for the representation he shall terminate the appointment or authorize payment as provided in subsection (f) of the act, as the interests of justice may dictate. If the judge finds that a defendant for whom counsel has not previously been appointed is financially unable to pay counsel whom he has retained, the judge shall appoint the same counsel or new counsel as provided in this plan.

(f) *Duration and substitution of counsel*

Counsel appointed by a U.S. commissioner shall represent the defendant in proceedings before the commissioner and until the further order of the judge. The judge may reappoint counsel appointed by the commissioner for such defendant, or may appoint new counsel. Such counsel shall thenceforth continue to represent the defendant throughout the proceedings in district court unless or until relieved by order of the district court, and thereafter through appeal, if any, unless or until relieved by order of the court of appeals. The commissioner or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

(g) *Informing convicted defendant of right to appeal and to representation on appeal*

In the event that a 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, 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.

3 SERVICES OTHER THAN COUNSEL

Counsel (whether or not appointed under this plan) for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them in an ex parte application to the court. Upon finding, after appropriate inquiry, that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on behalf of the defendant. The court may, in its discretion, establish a limit on the amount to be expended for such services. Inquiry should be made, however, to determine if reasonable stipulations may be made to avoid expense. Statements made by a defendant in such inquiry in support of his request shall be made either by affidavit duly verified or under oath in open court. The court may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained, but such applications for the ratification of expenses incurred without prior court approval shall not be looked upon with favor except in most unusual situations.

The Commissioner may not authorize the obtaining of investigative, expert, or other services.

4. PAYMENT FOR REPRESENTATION AND FOR SERVICES OTHER THAN COUNSEL

(a) *Attorneys*

An attorney appointed pursuant to this plan shall, at the conclusion of the representation or any segment thereof, be compensated on submission of his claim in accordance with rules, regulations and forms prescribed by the Administrative Office of the U.S. Courts, and supported by a written detailed and itemized statement specifying the time expended, services rendered, and expenses incurred (but not including any allocated part of general office overhead) while the case

was pending before the U.S. commissioner or court, and the compensation and reimbursement applied for and received in the same case from any other source. The court shall, in each instance, fix the compensation and reimbursement to be paid to the attorney. In extraordinary circumstances, payment in excess of the limits for representation stated in paragraph (d) of the act may be made if the court certifies that such payment is necessary to provide fair compensation for protracted representation, and the amount of the excess payment is approved by the chief judge of the fifth circuit.

(b) *Services other than counsel*

The court shall determine and fix reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source.

(c) *Timely submission of claims*

Because the efficient administration of the act on a national basis requires that claims for services and expenses be submitted for payment as expeditiously as possible, all persons having such claims shall timely submit them for prompt payment.

(d) *Payments from defendant*

Except as authorized or directed by the court, no appointed attorney, and no person or organization authorized by the court to render investigative, expert, or other services, may request or accept any payment or promise of payment for assisting in the representation of a defendant. Appointed counsel shall have the duty of reporting to the court any situation coming to his attention where a defendant appears to be able to make payment in whole or in part for services in connection with his defense.

(e) *Forwarding approved statements for payment*

The clerk shall forthwith forward all approved statements to the Administrative Office of the U.S. Courts for payment.

5. RULES AND REPORTS

The clerk is directed, on behalf of the court, to submit a report on the appointment of counsel to the Administrative Office of the U.S. Courts in such form and at such time as the Judicial Conference of the United States may specify. This plan shall be subject to such rules and regulations of the Judicial Conference of the United States governing the operation of plans under this act, as may be made from time to time. The plan shall also be supplemented by the Judicial Council of the Fifth Circuit with provisions for the representation on appeal of defendants financially unable to obtain representation.

6. EFFECTIVE DATE

This plan shall become effective on _____, after approval by the Judicial Council of the Fifth Circuit.

Adopted by the judges of this court, on _____, 1965.

APPENDIX 2-C

PROPOSED PLAN OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND, PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964 AND SUGGESTED PROCEDURES UNDER THE PLAN

Prepared by Chief Judge Roszel C. Thomsen, District of Maryland

Pursuant to the provisions of section 2 of the Criminal Justice Act of 1964 (Public Law 88-455, approved Aug. 20, 1964, 18 U.S.C. 3006A), the judges of the U.S. District Court for the District of Maryland have adopted the following plan for the adequate representation, as provided in paragraphs (a), (b), (c), and (d) of section 2, defendants in this court charged with felonies or misdemeanors (other than petty offenses as defined in 18 U.S.C. 1) who are financially unable to obtain an adequate defense and for the furnishing of investigative, expert, and other services, as provided in paragraph (e) of section 2.

I. PANEL OF ATTORNEYS

The Bar Association of Baltimore City and the bar associations of the several counties within the district are invited to prepare and to certify to this court, not later than May 1, 1965, and annually thereafter, a list of attorneys who, in the opinion of the certifying bar association, are competent to give adequate representation to defendants under the act, and who are willing to serve.

After considering the lists so furnished and making such other inquiry as the court may deem expedient, the court will establish and approve a panel of attorneys on or before June 15, 1965. Additions to and deletions from the panel of attorneys may be made from time to time by the court, so that there shall be sufficient names on the list to provide adequate representation to indigent defendants and to distribute the work fairly among the members of the bar. In making such additions and deletions, the court shall not be limited to the lists furnished by the several bar associations.

A copy of the original panel of attorneys, with their office addresses and telephone numbers, will be furnished by the court to each district judge and to each U.S. commissioner in this district not later than July 30, 1965, and the court will furnish to each district judge and to each commissioner copies of revised panels of attorneys from time to time, as the court shall deem necessary or appropriate.

II. DETERMINATION OF NEED FOR COUNSEL

In every criminal case in which the defendant is charged with a felony or a misdemeanor, other than a petty offense, and appears without counsel, the commissioner or the court shall advise the defendant 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 if he is financially unable to obtain counsel.

Whenever the defendant states that he is financially unable to obtain counsel and desires the appointment of counsel, if the case is then pending before a commissioner, it shall be the duty of the commissioner 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 commissioner, it shall be the duty of a judge to conduct such inquiry and to make such finding.

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

If, on the basis of such inquiry, the judge or the commissioner finds that such defendant is financially unable to obtain counsel, he shall appoint counsel for such defendant in the manner provided in article III of this plan.

The court may reexamine the need for appointed counsel at any time, in accordance with paragraph (c) of section 2 of the act, and section D, article III, of this plan.

III. APPOINTMENT OF COUNSEL

a. The commissioner

In every criminal case in which a defendant is charged with a felony or misdemeanor, other than a petty offense, and appears without counsel before a commissioner, it is the duty of the commissioner not only to advise the defendant of his right to counsel before the commissioner and throughout the case, but also promptly to appoint counsel to represent the defendant if the commissioner finds that the defendant is financially unable to obtain an attorney, unless the defendant waives his right to be represented by counsel.

The commissioner shall select and appoint such counsel from the appropriate panel approved by the court. The defendant shall not have the right to select his appointed counsel from the panel of attorneys or otherwise.

Counsel appointed by a commissioner shall, unless excused by order of court, continue to act for the defendant throughout the proceedings in this court. In the event that a 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, 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 commissioner wishes to be relieved, he shall communicate his wish to the court.

The commissioner 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 the defendant is not represented by counsel before the commissioner and waives his right to have appointed counsel, the commissioner shall present the defendant a waiver of right to have appointed counsel. If the defendant executes the waiver, the commissioner

shall certify that fact in the record of the proceedings and shall transmit the waiver to the clerk. If the defendant waives the right to have appointed counsel but refuses to execute such a waiver, the commissioner shall certify that fact in the record of proceedings. If the defendant admits or the commissioner finds that the defendant is financially able to obtain counsel but declines to do so, the commissioner shall certify that fact in the record of proceedings.

b. The clerk

If counsel has not been appointed by the commissioner or the appointment of such counsel has been terminated by the court, and the clerk learns from the report of the commissioner, from the U.S. attorney, from the defendant himself, or otherwise, that a defendant desires to have counsel appointed for him, then—

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

(b) If the notice to the clerk includes an affidavit of such financial inability to employ counsel or as soon as the clerk receives such an affidavit, the clerk shall promptly arrange for the appointment of counsel in the manner provided in section C of this article.

C. The judge

Whenever the clerk presents to a judge of this court a proposed order for the appointment of counsel for a defendant, and the judge is satisfied that the defendant desires counsel and is financially unable to employ counsel, the judge shall appoint counsel for him.

If a judge, the clerk, the U.S. attorney, an appointed attorney, or a representative of a bar association challenges the claimed financial inability of a defendant to employ a lawyer, the determination of the defendant's right to have appointed counsel shall be made by a judge of this court.

Whenever it shall appear to the presiding judge, at the time of arraignment or at any other time, that a defendant 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, whether he wishes the judge to appoint counsel for him. If the judge concludes that counsel should be appointed, such appointment will ordinarily be made from the appropriate panel; provided, however, that in extraordinary situations, in the interest of justice, the judge may appoint any member of the bar of this court to represent such a defendant.

The selection of such counsel is the province of the judge. The defendant shall not have the right to select his appointed counsel from the panel of attorneys or otherwise.

A judge may, in his discretion, assign two or more attorneys to represent a defendant or defendants as a team in a particular case, but nothing herein shall require the judge to assign a team of attorneys in lieu of the appointment of an individual attorney.

Counsel appointed by a judge shall, unless excused by order of court, continue to act for the defendant throughout the proceedings in this

court. In the event that a 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, 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 the proceedings in this court.

D. Redetermination of need

If at any stage of the proceeding, a judge shall find that a defendant 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 may appoint counsel for such defendant. The court will ordinarily not appoint the same attorney.

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant, unless such payment is approved by order of court.

If at any time after his appointment counsel should have reason to believe that a defendant 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 defendant with part or all of the cost of representation defrayed by such defendant.

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

IV. Investigative, expert, and other services

Counsel, whether or not appointed under this plan, for a defendant 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. If, after appropriate inquiry, the judge shall find that the requested services are necessary and that the defendant is financially unable to obtain them, he shall authorize defendant's counsel to obtain such services. The judge may establish a limit on the amount which may be expended or promised for such services.

The statements made by or on behalf of the defendant in support of the request shall be made either by affidavit sworn to before the clerk or other appropriate officer, or under oath in open court. In the interest of justice, the judge may direct that such affidavit be sealed and the information withheld from the public and the U.S. attorney.

Applications for the ratification of expenses incurred without prior court approval are not looked upon with favor and will not be approved except in most unusual situations.

V. Payment of fees to appointed counsel and for other services

Payment of fees and expenses to counsel appointed under this plan and payment for other services incurred pursuant to article IV hereof shall be made in accordance with such rules and regulations as may be prescribed from time to time by the Administrative Office of the U.S. Courts.

VI. 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 commissioners, and counsel.

VII. Effective date

This plan shall take effect when approved by the Judicial Council of the Fourth Circuit and shall be applicable to services rendered after August 20, 1965.

[Draft 3 (subject to further consideration by the court)]

PROCEDURES UNDER THE PLAN OF THE U.S. DISTRICT COURT FOR
THE DISTRICT OF MARYLAND PURSUANT TO THE CRIMINAL JUSTICE
ACT OF 1964

I. PANEL OF ATTORNEYS

The panel established and approved by the court shall be subdivided into (1) a general subpanel, which shall contain the members of the panel from Baltimore City and those members from the counties who are willing to be appointed for any defendant; and (2) separate subpanels for each county, which shall include those lawyers who are willing to represent defendants resident in their respective counties or defendants taken before a U.S. commissioner in their respective counties.

In preparing the lists of attorneys called for by article I of the plan, each bar association is requested to include in each list a statement indicating (1) those attorneys who are willing to serve on the general subpanel, and (2) those attorneys who are willing to serve on the subpanel for the county.

II. DETERMINATION OF NEED FOR COUNSEL

In determining the need for counsel, the commissioner shall use the form of affidavit attached hereto as form 1, unless the circumstances indicate that form 3 should be used.

When the charge against the defendant is theft, robbery, or other offense where the defendant might be in possession of illegally acquired property, the judge or commissioner should direct the defendant to state his assets as of the day before the alleged commission of the offense.

III. APPOINTMENT OF COUNSEL

A. The commissioner

After advising a defendant of the charge against him and the nature of the proceeding before the commissioner, and warning him of possible self-incrimination, the commissioner shall advise the defendant of his right to counsel before the commissioner as well as at his trial and of the commissioner's willingness to appoint counsel to represent the defendant if the defendant so desires but is financially unable to obtain counsel.

A defendant may state that he wishes counsel to be appointed to represent him before the commissioner or that he wishes trial counsel

to be appointed to represent him thereafter, or both. If a defendant requests the appointment of counsel for either or both purposes, the commissioner shall obtain from the defendant an affidavit on form 1, attached hereto, or in substantial accordance therewith, unless the circumstances indicate that form 3 should be used.

If the defendant requests the appointment of counsel to represent him before the commissioner, the commissioner shall consider the affidavit and make such further inquiry as he deems necessary or proper. If, on the basis of such inquiry, the commissioner finds that the defendant is financially unable to obtain counsel, he shall appoint counsel to represent the defendant from the general subpanel approved by the court, or from the subpanel for the county in which the commissioner is sitting or the subpanel for the county in which the defendant resides.

The selection of such counsel is the province of the commissioner. The defendant shall not have the right to select his appointed counsel from the panel of attorneys or otherwise.

If counsel appointed by a commissioner wishes to be relieved, he should communicate his wish to the court.

A form of waiver of right to have appointed counsel before the commissioner is attached hereto as form A. A form of certification by the commissioner, if the defendant has executed a waiver of right to have appointed counsel, is a part of form A. A form of certification by the commissioner, if the defendant has waived the right to have appointed counsel but has refused to execute a written waiver, is attached hereto as form B. A form of certification by the commissioner if the defendant admits or the commissioner finds that the defendant is financially able to obtain counsel but declines to do so is attached hereto as form C.

If a defendant indicates to the commissioner that he does not yet know whether he will wish trial counsel to be appointed, the commissioner shall give the defendant two copies of the affidavit, form 3, and shall advise the defendant that if he decides to request the appointment of counsel, he should mail or deliver an executed copy of the affidavit to the clerk of the court.

The commissioner is required by rule 5(c), F.R. Crim. P., to report to the clerk forthwith in writing the names of all defendants whom he has held for action of the grand jury, stating whether they have been released on bail or committed to custody. If the commissioner has appointed counsel for the defendant, he shall attach to his report the original order appointing such counsel. If the defendant waived counsel before the commissioner, the commissioner shall so report to the court and shall attach to his report any waiver which may have been executed by the defendant. If the defendant waived counsel before the commissioner but requested that trial counsel be appointed for him, the commissioner shall attach to his report any affidavit which may have been executed by the defendant.

B. The clerk and the U.S. attorney

The clerk shall use the form of affidavit attached hereto as form 3, provided that when the charge against the defendant is theft, robbery, or other offense where the defendant might be in possession of illegally acquired property, the clerk should direct the defendant to state his assets as of the day before the alleged commission of the offense.

If the U.S. attorney learns that a defendant wishes to have trial counsel appointed for him by the court, he shall promptly communicate this fact to the clerk.

The clerk shall deliver to each appointed counsel a checklist, the form for which is attached to this plan as form D.

A copy of the order appointing counsel shall be delivered promptly to the defendant and to the appointed attorney and shall be accompanied by a direction that if the defendant is on bail or makes bail he shall contact his trial counsel within 3 days, and that failure to do so may result in the forfeiture of his bail and his commitment to custody.

C. The judge

(1) *Appointment of counsel from general subpanel.*—Whenever an unchallenged affidavit discloses that the defendant is financially unable to hire a lawyer and is a resident (a) of Baltimore City or (b) a State other than Maryland or (c) a Maryland county whose bar association is not participating in this plan, the clerk shall, in rotation, select a lawyer to represent the defendant from the general subpanel established pursuant to article I of this plan, after having ascertained the availability of the lawyer he recommends, and shall submit to a judge of this court an order appointing the selected lawyer to represent such defendant. The judge shall have the right to reject any lawyer selected by the clerk. If the judge does so reject, he may appoint any member of the bar of this court to represent such defendant or he may direct the clerk to select the next available lawyer on the subpanel. This procedure shall be repeated, if necessary, until an appointment is made by the judge.

After the order of appointment has been signed, the clerk shall forthwith notify the lawyer named therein, and shall promptly inform the defendant and the U.S. attorney of the name, address, and telephone number of the appointed lawyer.

(2) *Appointment of county lawyers.*—Whenever an unchallenged affidavit discloses that the defendant is financially unable to hire a lawyer and is a resident of a county in this district whose bar association is participating in the plan, the clerk shall, from the subpanel of lawyers for that county, in rotation, recommend to a judge a lawyer to represent the defendant, after ascertaining the availability of the lawyer for appointment. The judge shall have the right to reject the lawyer selected by the clerk. If the judge does so reject, the clerk shall select the next available lawyer on the subpanel. This procedure shall be repeated, if necessary, until an appointment is made by the judge; provided that, in the interest of justice, the judge may appoint any member of the bar of this court to represent such defendant.

After the order of appointment has been signed, the clerk shall forthwith notify the lawyer named therein and shall promptly inform the defendant and the U.S. attorney of the name, address, and telephone number of the appointed lawyer.

D. Redetermination of need

See forms 6 and 7.

IV. INVESTIGATIVE, EXPERT, AND OTHER SERVICES

Inquiry should ordinarily be made whether or not the matter involved in the application for investigative, expert, or other services can reasonably be stipulated, or the information otherwise be made available to the defendant, to save time or to avoid the expense of authorizing such services; provided, however, that in the interest of justice the judge may authorize such services without such inquiry.

Form 8 shall be used unless form 10 is applicable. Applications for the ratification of expenses incurred without prior court approval are not looked upon with favor and will not be approved except in most unusual situations.

A commissioner has no power to authorize a defendant or his counsel to obtain such services. All requests therefor shall be addressed to a judge.

V. PAYMENT OF FEES TO APPOINTED COUNSEL AND FOR OTHER SERVICES

Each appointed attorney shall maintain individual records indicating the time expended on each case, the nature of the services performed, and the expenses incurred. The record should contain the names and addresses of persons interviewed or attempted to be interviewed.

Counsel appointed pursuant to the plan and counsel authorized to obtain investigative, expert, or other services may apply for payment of such counsel fees and/or for payment of or reimbursement for such expenses. Such applications shall be in writing and verified by the person who furnished such investigative, expert, or other services and shall be made to the judge who presided at the trial, the judge who appointed the applicant, or the judge who authorized the incurring of the services. Each such application shall contain a statement of the services rendered and the amount of time spent by counsel, together with an itemized list of any expenses authorized and incurred. In listing the time required for legal research, the application shall state the nature of the legal problems. Upon approval of any such application by a judge, it shall be forwarded by the clerk to the Administrative Office of the U.S. Courts for payment. Forms 4, 5 (if applicable), and 9 shall be used.

Only in exceptional cases will interim allowances be made to attorneys for services performed or expenses incurred, although interim orders may be entered (a) for unusual expenses incurred by attorneys or (b) for investigative, expert, or other expenses necessary for an adequate defense. Ordinarily, orders directing the payment of compensation will be entered upon the conclusion of the services.

Irrespective of the number of attorneys representing a defendant by appointment, only one claim for compensation will be recognized as to any one defendant in a case. Whenever a team of attorneys is designated, they may make their own arrangements with respect to the division of any fee and the nature of the work to be performed by each attorney. The court may resolve any disagreement between attorneys as to the division of compensation.

The commissioner has no authority to authorize the payment of compensation to counsel, expenses, or expert services.

counsel appointed by the commissioner to represent him at a preliminary hearing or otherwise before the commissioner; that he has executed the above waiver in my presence after its meaning and effect have been fully explained to him, this _____ day of _____, 19__.

United States Commissioner

Form B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
 :
 v. : COMMISSIONER'S NO. _____
 :
 _____ : CRIMINAL NO. _____
 :
 _____ :

CERTIFICATION AS TO REFUSAL TO SIGN A WAIVER
OF RIGHT TO HAVE APPOINTED COUNSEL

I hereby certify that the above named defendant has been fully informed of the charges against him, of the nature of the proceedings before the commissioner, of his right to be represented by counsel before the commissioner and throughout the case, and of his right to have counsel appointed by the commissioner to represent him if he is financially unable to obtain counsel; that the defendant has elected to proceed before the commissioner without the appointment of counsel, but has refused to sign a waiver.

United States Commissioner

Dated: _____

Form C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :
v. : COMMISSIONER'S NO. _____
_____ : CRIMINAL NO. _____
_____ :

CERTIFICATION OF DEFENDANT'S ADMISSION
OF FINANCIAL ABILITY TO OBTAIN COUNSEL

I hereby certify that the above named defendant has been fully informed of the charges against him, of the nature of the proceedings before the commissioner, of his right to be represented by counsel before the commissioner and throughout the case, and of his right to have counsel appointed by the commissioner to represent him if he is financially unable to obtain counsel; that the defendant has admitted (or the commissioner has found after a hearing) that he is financially able to obtain counsel but has declined to do so.

United States Commissioner

Dated: _____

6. Motion to sever _____
7. Motion to dismiss _____
8. Motion to inspect (Rule 16) _____
9. Subpoena to inspect or produce (Rule 17c) _____
10. Depositions (Rules 15 and 17f) _____
11. Subpoenas (Rule 17b) _____
12. Jencks Act (18 U.S.C. §3500) _____
13. Reasonableness of bail _____
14. Illegal arrest _____
15. Delay in arraignment _____
16. Unlawful search _____
17. Entrapment _____
18. Coerced confession _____
19. Informer - participating _____
20. Alibi _____
21. Prior record of deft. _____
22. Should deft. testify _____
23. Conflict of interest (multiple defts.) _____
24. Mental illness _____
25. Narcotics addiction _____
26. Request to Govt. for evidence favorable to deft.
on guilt or penalty _____
27. Court or jury trial _____ Recommendation _____
Decision by Deft. _____
28. Possible voir dire questions _____

29. Motion for judgment of acquittal:
a. At end of Govt. case _____
b. At end of entire case _____
30. Motion for new trial _____

- 31. Right of allocution _____
- 32. Deft.'s statement re. offense (Deft. may be requested to write out on separate sheet his statements.) _____

E. Defenses indicated or stated _____

F. Probable Govt. witnesses _____

G. List of defense witnesses furnished by deft. or added by attorney _____

H. Documents _____

I. Right to testify _____ Recommendation _____
Decision by deft. _____

Signature by defendant

J. If plea of guilty or nolo entered:

a. Circumstances re. decision to plead guilty (detail) _____

Signature by defendant

b. Possibility of plea to lesser offense _____

c. Possibility of plea to less than all counts _____

d. Possibility of nolo plea (civil liability pending) _____

e. Plea entered _____; Date _____; Judge _____

f. Sentence _____; Date _____

g. Terms of sentence _____

K. Appeal

a. Deft. informed as to right to appeal _____

b. Notice of appeal filed _____

c. Decision not to appeal:

1. Attorney's advice -- Yes _____; No _____

2. Deft. makes final decision _____

3. Reasons for appealing or not appealing (detail) _____

Signature by defendant

APPENDIX 2-D

A SUGGESTED PLAN FOR A UNITED STATES DISTRICT COURT, PURSUANT
TO THE CRIMINAL JUSTICE ACT OF 1964

Prepared by Judge Homer Thornberry, Western District of Texas

This plan provides for representation by private attorneys, as described in paragraph (a) (1) of section 2 of the act.

Lawyers who are selected to participate in this plan do so in fulfillment of their professional responsibility as officers of the court, and the amount of compensation provided for in no respect diminishes such responsibility.

1. *Panel of attorneys*

A separate panel of attorneys shall be designated for each of the divisions of the U.S. District Court for the _____ District of _____ and shall consist of lawyers who are qualified and competent to provide an adequate defense for defendants under the act. It shall be designated and approved by the U.S. district judge responsible for the particular division to which the panel is furnished. The judge may make additions to and deletions from the panel at any time. The clerk of the court will maintain the panel of attorneys under the direction, supervision, and with the approval of the judge, and will furnish the judge and the U.S. commissioners within the division copies of the panel of attorneys and with revisions thereof as made from time to time.

2. (a) *Right of defendant to counsel*

When it appears to a judge or U.S. commissioner that a defendant is not represented by counsel, the defendant shall be promptly informed by the commissioner or the judge of his right to be represented by counsel at every stage of the proceedings against him, and that counsel will be appointed to represent him if he is financially unable to obtain counsel.

(b) *Determination of need for counsel*

Whenever such a defendant states that he is financially unable to obtain counsel and requests the appointment of counsel, it shall be the duty of the district judge or the U.S. commissioner, as the case may be, to inquire into and to make a finding as to whether such defendant is financially able to obtain counsel. Statements made by such defendant in such inquiry may be under oath in open court or by affidavit sworn to before the district judge or the commissioner.

(c) *Appointment of counsel*

If the defendant in his initial appearance before the commissioner requests appointment of counsel and determination is made that he is entitled to the appointment of counsel, the commissioner shall immediately notify the clerk of the court, who in turn will inform the

judge, and the judge shall appoint counsel from the panel to represent the defendant at all stages of the proceedings against him. In the event the clerk of the court or the judge are not available for any reason, the Commissioner shall proceed without delay to appoint counsel from the panel to represent the defendant in the proceedings before the U.S. commissioner and shall immediately notify the clerk of the court that such counsel has been appointed to represent the defendant.

If the defendant in his initial appearance before the court is without counsel, the judge shall advise the defendant of his right to counsel, in accordance with paragraph 2(a) of this plan, and if the defendant then requests appointment of counsel, the judge shall proceed to make a determination of the defendant's need for counsel in accordance with paragraph 2(b) of this plan. If the judge finds that the defendant is financially unable to obtain counsel, the judge shall appoint counsel from the panel to represent the defendant in all proceedings before the court.

(d) *Duration and substitution of counsel*

When counsel has been appointed by the U.S. commissioner, such counsel will represent the defendant in proceedings before the U.S. commissioner and in all subsequent proceedings until relieved by order of the court. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

In the event that a 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, 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.

(e) *Waiver of right to counsel*

The commissioner shall notify the clerk in writing if the defendant waives his right to counsel. All waivers of counsel before the commissioner shall be in writing and signed by the defendant. Such waivers shall be filed among the papers in the case. If the defendant waives his right to counsel before the commissioner but refuses to sign the written waiver, then the commissioner shall certify in writing to the clerk of the court that the defendant has been informed of all of his rights to counsel in the proceedings against him and has waived such rights but has refused to sign the written waiver.

In the event the defendant waives counsel before the commissioner, the commissioner shall inform the defendant that such waiver will not prevent the defendant from requesting appointment of counsel before the court.

(f) *Defendant may not select counsel*

No defendant shall have the right to select his own counsel under this plan, but such selection shall be the exclusive responsibility of the court or commissioner, as the case may be.

(g) *Separate counsel*

Separate counsel shall be appointed for defendants who have such conflicting interests that they cannot properly be represented by the same counsel, or when other good cause is shown.

(h) *Court may reexamine need for counsel*

The court may reexamine the need for counsel at any time. If at any time after the appointment of counsel, the judge finds that the defendant is financially able to employ counsel, or to make partial payment for his representation, the judge may terminate the appointment or he may direct that such partial payment be made to the appointed counsel as provided in the act.

(i) *Notice to defendant and counsel*

When counsel is appointed to represent a defendant, the clerk shall immediately notify the lawyer and the defendant, and both the lawyer and the defendant will be instructed to contact each other promptly.

3. *Services other than counsel*

If counsel for a defendant believes it necessary to obtain investigative, expert, or other services necessary to an adequate defense and the defendant is financially unable to incur the expense for such services, he shall petition the court for permission to incur such expenses, setting forth the necessity, the person or persons to be engaged, and the estimated amount of such expenses made by the person or persons to be engaged, submitting an appropriate order. The court may order a hearing upon the petition, and upon finding that the services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain such services. Any claim for compensation for such services shall be filed by defendant's attorney and shall be supported by an affidavit by the person or persons furnishing the service, specifying the time expended, services rendered, and expenses incurred on behalf of the defendant. All such claims must be approved by the court.

4. *Compensation of counsel*

When an attorney is appointed by the court to represent a defendant, he shall keep a record of the hours spent in court and out of court in working on his appointed case. At the completion of his case before the U.S. district court, the appointed counsel shall complete all forms required by the court or the Administrative Office of the U.S. Courts and file his claim for compensation and reimbursement. This claim must be supported by a written statement specifying the time expended, services rendered, expenses incurred, and the compensation and reimbursement applied for and received in the same case from any other source, while the case was pending before the U.S. commissioner and the U.S. district court. The court, after this presentation, shall fix the compensation and reimbursement to be paid to the attorney.

Except as authorized or directed by the court, no appointed attorney and no person or organization authorized by the court to render investigative, expert, or other services may request or accept any payment or promise of payment from any other source for representing or assisting in the representation of a defendant.

5. *Forwarding approved statements*

The clerk shall forward all approved statements to the Administrative Office of the U.S. Courts for payment.

The disbursement of funds under the act shall be in accordance with the plan of central disbursement approved by the Judicial Conference, and the standard forms prescribed by the Director of the Administrative Office shall be used in complying with the requirements of the act.

APPENDIX 2-E

A SUGGESTED PLAN FOR A U.S. DISTRICT COURT, PURSUANT TO THE CRIMINAL JUSTICE ACT OF 1964

Prepared by Judge Wade A. McCree, Jr., Eastern District of
Michigan

INTRODUCTION

This suggested plan was prepared at the direction of the Committee of the Judicial Conference To Implement the Criminal Justice Act of 1964 for a district having characteristics similar to those of the Eastern District of Michigan. This draft has been discussed with the judges of that district, but it has not been submitted to them for final approval and adoption.

The relevant characteristics of our district are thought to be the following: The Eastern District of Michigan is a multiple-judge court served by eight judges. The district has a Northern and Southern Division with seven judges serving regularly in the Southern Division and one, by designation, serving in the Northern Division. The principal place of holding court in the Southern Division is Detroit, which is the largest metropolitan area involved. Court is also held in Flint, Mich., a city of approximately 200,000 people, and this Southern Division facility is presided over by the judge designated to sit in the Northern Division. Court is held in the Northern Division in Bay City, Mich., a city approximately half the size of Flint. In the Detroit facility, commissioners are rarely utilized and only on an emergency basis when there are no judges available. Commissioners are utilized to a greater extent at Flint and in the Northern Division, although the judge who presides over those facilities frequently conducts arraignments.

The practice in Detroit is as follows: All criminal cases not at issue and therefore not assigned to a particular judge comprise the miscellaneous criminal docket over which the several judges preside in rotation for 1 week's duration. This docket is heard twice daily at 11 a.m. and 3 p.m. at which hours the regular trial work of the judge involved is interrupted. All arraignments on complaint and warrant and upon indictment or information are handled by the judge at one of these daily sessions. More than 75 percent of all defendants are released on bail without surety with the consequence that we do not have a serious problem of defendants in jail awaiting further proceedings. A weekly jail inventory is furnished by the marshal to each judge so that the court may be advised of persons detained awaiting further criminal proceedings. We have not experienced difficulty in obtaining adequate volunteer counsel under the present system which affords no compensation to the lawyer.

The judge who sits in Flint and in the Northern Division, of necessity, relies to some extent upon commissioners, although he conducts

as many arraignments personally as his availability permits. The same bail philosophy is followed by him, and he has encountered relatively few problems of persons in custody awaiting further proceedings and relatively little difficulty in obtaining volunteer counsel to represent indigent defendants.

Michigan has an integrated State bar which has a standing committee to maintain liaison with local bar associations which are active and interested in participating in a program to implement the Criminal Justice Act of 1964.

1. PANEL OF ATTORNEYS

The several bar associations recognized by the State Bar of Michigan in the counties comprising the Eastern District of Michigan are invited to submit to the chief judge of the district and to the judge designated to sit in the Northern Division, in the case of counties located within such division, a list of lawyers who have been admitted to practice in the U.S. district court and who are desirous of and are deemed qualified to represent defendants who are financially unable to obtain an adequate defense. Such list shall be furnished on the attached form (a) and shall supply the information required thereon. Such list shall be furnished on or before _____, 1965, and shall be supplemented from time to time as requested by the court. From the list so furnished, the court shall establish a panel of attorneys on or before _____, 1965. Additions to and deletions from the panel of attorneys may be made from time to time by the court as the interests of justice require. A copy of the panel shall be furnished to each judge and U.S. commissioner in the district.

2. DETERMINATION OF NEED FOR APPOINTED COUNSEL AND WAIVER OF COUNSEL

The judge or commissioner before whom the defendant first appears in a criminal proceeding shall explain to each defendant not represented his right to counsel and shall make appropriate inquiry as to defendant's desire for appointment of counsel if he professes financial inability to obtain same. If defendant, after such explanation, desires to waive counsel, a written waiver shall be evidenced by form (b). If a defendant who refuses counsel declines to sign a waiver of counsel, the commissioner shall certify to such refusal and the court shall cause a docket entry to be made evidencing such refusal of counsel. If a defendant expresses the desire for appointed counsel, the court shall examine him upon the record concerning his financial ability or the commissioner shall ascertain the pertinent information and cause the defendant to execute an affidavit evidencing same on CJA form 1 or 3, in the appropriate instance. The court or commissioner, if satisfied of defendant's financial inability, shall, without delay, appoint counsel from the panel, utilizing CJA form 1 or 2.

If counsel is desired, a date for preliminary examination will be set and counsel, at the time of appointment, shall be notified of such date so that it may be utilized or waived.

At every succeeding appearance, unrepresented defendants shall again be advised fully of the right to counsel and the procedures set forth above shall be followed in the appropriate instance.

3. DUTIES OF APPOINTED ATTORNEY

Every attorney appointed pursuant to this plan shall represent the defendant at every stage of the proceeding unless permitted to withdraw by order of the court or unless other counsel is substituted for him by the court for good cause.

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

In the event that a 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, 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.

4. SERVICES OTHER THAN COUNSEL

Counsel, whether or not appointed under this plan, for a defendant who is financially unable to obtain investigative services necessary to an adequate defense, may request such services in an *ex parte* application on CJA form 8 but only before a district judge. If after appropriate inquiry the judge shall find that the services are necessary and that the defendant is financially unable to obtain them, the court may authorize counsel to obtain the services on behalf of the defendant and shall establish a limit on the amount which may be expended or promised for such services.

Application for ratification of services obtained without prior authorization shall be made at the earliest possible opportunity after such services have been contracted for, on CJA form 10, supported by affidavit specifying the time expended, services rendered and expenses incurred on behalf of the defendant and the compensation received in the same case or for the same services from any other source. The court may require other and further justification for such services as may be desired for its determination.

5. PAYMENT OF COUNSEL AND FOR SERVICES OTHER THAN COUNSEL

Every request for payment shall be submitted in accordance with such rules and regulations as may be prescribed from time to time by the Administrative Office of the U.S. Courts and shall be approved by the judge before it shall be forwarded by the clerk to the Administrative Office of the U.S. Courts for payment.

6. POLICY

Lawyers who participate in this plan do so in fulfillment of their professional responsibility as officers of the court and the amount of compensation provided herein in no respect diminishes such responsibility.

This plan shall be administered to carry out the purposes of the Criminal Justice Act of 1964.

7. AMENDMENTS

This plan may be amended with approval of the judicial council from time to time to effectuate the purpose of the act.

8. EFFECTIVE DATE

This plan shall take effect on _____, 1965.

EDM Form a

Panel of attorneys, Criminal Justice Act

Attorney's name, address, and telephone	Year admitted to bar	Number of years in practice	Number of criminal trials, circuit court or recorder's court	Number of criminal trials in municipal court or Justice of the Peace court

EDM Form b

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA }
v. } No.
----- }

WAIVER OF ASSIGNMENT OF COUNSEL

I, _____ being the defendant in the above-entitled cause, having been advised by the court of my right to be represented by counsel, and having been asked by the court whether I desire counsel to be assigned by the court, do hereby, in open court, voluntarily waive and relinquish my right to be represented by counsel at the trial of this cause.

(Defendant)

Dated: -----

Witnessed by:

APPENDIX 2-F

A SUGGESTED PLAN FOR REPRESENTATION OF DEFENDANTS IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA UNDER THE CRIMINAL JUSTICE ACT OF 1964 AND SUGGESTED FORMS

Prepared by Judge James M. Carter, Southern District of California

Pursuant to the provisions of section 2 of the Criminal Justice Act of 1964 (Public Law 88-455, approved Aug. 20, 1964, 18 U.S.C. 3006A), there is proposed for the Southern District of California the following plan for the adequate representation, as provided in paragraphs (a), (b), and (c) of section 2, of defendants charged with felonies or misdemeanors (other than petty offenses as defined in 18 U.S.C. 1) who are financially unable to obtain an adequate defense, and for the furnishing of investigative, expert, and other services as provided in paragraph (e) of section 2.

I. PANEL OF ATTORNEYS AVAILABLE FOR APPOINTMENT

A. *Panels of attorneys in Los Angeles, San Diego, and Fresno available for judges and commissioners*

1. *Contribution by the bar.*—The judges recognize that although the Criminal Justice Act provides for limited compensation, there is a great element of public service on the part of attorneys in volunteering to serve on these panels.

Attorneys who participate in this plan do so in fulfillment of their professional responsibility as officers of the court, and the compensation provided for in no respect diminishes such responsibility. The judges are confident that lawyers will respond as usual in the splendid tradition of the American bar.

2. *General panels.*—General panels of attorneys available for appointment by U.S. district judges and commissioners in Los Angeles, San Diego, and Fresno (three places for holding court in the district) shall be initially prepared by the clerk in each of the places of holding court from—

(1) Names supplied by the local bar associations, and/or

(2) Attorneys who file applications to serve on the panels, and/or

(3) Names of attorneys supplied by the judges, and/or

(4) Lists of the clerk of attorneys who have previously represented indigents.

3. *Questionnaire and application for attorney.*—A questionnaire and application will be supplied to each attorney prior to placing his name on a panel.

4. *Clerk to prepare general panels.*—The clerk shall place the attorney's name on the general panel which will summarize the information from his application and questionnaire, and will also have colum-

nar spaces to list the dates of appointments thereafter made and the number and type of the case.

5. *Approval by judge of general panel.*—Such general panel, when prepared by the clerk, shall be submitted for approval, respectively, to the chief judge in Los Angeles and to the judge in Fresno and the judge senior in San Diego for approval.

6. *Additions to and deletions from general panel.*—The chief judge in Los Angeles and the judge in Fresno and the judge senior in San Diego may add names to or strike names from the respective general panels.

No applications will be entertained by the judges. Applicants will apply to the clerk.

7. *Periodic review and revision of general panels.*—Such general panels shall be reviewed and revised periodically by the clerk, at the direction of the judge in charge, to the end that there shall be sufficient names on the list to provide adequate representation to entitled defendants, and so as to fairly distribute the work among the qualified members of the bar.

8. *Advisory panels.*—The respective bar associations in Los Angeles, Fresno, and San Diego shall be requested to set up advisory panels of experienced criminal lawyers who will be available without fee for the purpose of advice and consultation to the regular members of the general panel.

9. *Order of appointment.*—The appointments need not be made in order, but the judge and commissioner will take into account the nature and difficulty of the case and the experience and qualifications of the lawyer to be appointed.

10. *Appointments in habeas corpus and 2255's.*—The Criminal Justice Act does not provide for compensation for counsel in habeas corpus or 2255's. Since in certain cases counsel will still have to be appointed, such appointments shall be made from the general panels set forth in this plan.

B. Panels of attorneys for commissioners elsewhere than in Los Angeles, San Diego, and Fresno

1. *Appointments for commissioners' proceedings.*—Since commissioners (other than in Los Angeles, Fresno, and San Diego) are generally far removed from the places of holding court in the district, the plan proceeds on the premise that if an attorney is requested, in these outlying places for representation before the commissioner, that an appointment of a local attorney will be made by the commissioner for further proceedings before the commissioner, and until relieved by order of the district court, but that trial counsel will be appointed by the district judge from the area or place where the trial will be held.

2. *Commissioner to prepare panel.*—Each U.S. commissioner (except those in Los Angeles, San Diego, and Fresno) shall periodically prepare and/or revise a commissioner's panel of attorneys available for representation of defendants at commissioner's hearings only.

3. *Approval of commissioner's panels.*—The commissioner will submit the commissioner's panel to the chief judge, or to a judge designated by the chief judge, for approval. Names may be added or deleted.

4. *Supplementing commissioner's panel.*—The commissioner's panel may be supplemented from time to time by the order of the chief judge or his designee.

II. ARRAIGNMENT AND PROCEDURE BY COMMISSIONER (ALL PLACES)

1. *Record of proceedings before commissioner*

Since no reporter is present at a commissioner's hearing, minute entries on his docket provide a record of the proceedings.

2. *Arraignment*

On the defendant's initial appearance before a commissioner, he shall be forthwith arraigned whether counsel, available for appointment, is present or not.

An arraignment consists of advising the defendant—

- (a) That he is before a U.S. Commissioner;
- (b) Of the charge against him;
- (c) Of his right not to make any statement;
- (d) Of his right to hire counsel or have counsel appointed for him if, after inquiry, he is found to be unable to hire counsel;
- (e) Of his right to a jury trial and to have witnesses subpoenaed in his behalf;
- (f) Of his right to have reasonable bail fixed;
- (g) Of his right to a preliminary examination as to probable cause on the charge filed.

3. *Certification of arraignment*

The commissioner after conducting the arraignment shall in every case certify to the arraignment by minute order on his docket.

4. *Inquiry as to need of counsel*

The commissioner shall specifically inquire whether the defendant desires and can employ counsel or (a) desires counsel to be appointed in further proceedings before the commissioner or (b) desires trial counsel to be appointed.

5. *Waiver of counsel*

If the defendant states he refuses and waives counsel, (a) at further proceedings before the commissioner and/or (b) before and at the trial of the action, the commissioner shall in every case certify to by minute order the refusal and waiver of counsel.

6. *Defendant states he will try to hire counsel*

It is contemplated that many defendants will waive an attorney before the commissioner but will state they will try to hire their own attorneys for the trial.

In such case the commissioner shall deliver to the defendant two copies of form CJA-3, the affidavit of inability to hire counsel, and inform the defendant that if he decides or finds he cannot obtain counsel and desires counsel to be appointed, that he will fill out the form CJA-3, swear to it before a notary, deputy clerk, or a commissioner, sign it, and mail it to the clerk of the place where trial will be held, which will be stated by the commissioner.

The commissioner shall inform the defendant that his application for counsel on form CJA-3 will be then acted on by a district judge.

The commissioner shall make a minute order in this matter.

Form CJA-2 has an alternative so it may be signed by the district judge or "by order of the court" by the deputy clerk. Form CJA-2 may be signed by a deputy clerk when the court has made an order in court or in chambers, with the reporter present, appointing counsel or has directed the clerk to make an entry in the minutes appointing counsel.

3. *Counsel for commissioner's hearings*

This plan proceeds on the premise that counsel may first be appointed before a U.S. commissioner, if desired, but that such counsel will serve in proceedings before the commissioner and until the further order of the judge.

4. *Trial counsel from city of place of trial*

A further premise is that trial counsel should be appointed from the place of trial as soon as possible to supply counsel for the gap that has formerly existed between the commissioner's hearing and the arraignment of the defendant after indictment.

5. *Counsel appointed by commissioner may be continued as trial counsel*

In the places of holding court, the counsel appointed by the commissioner may be allowed by the district judge to continue as counsel in the case; or trial counsel may be substituted by the district judge.

Form CJA-3 may be used for substitution of attorney.

6. *Appointments in Los Angeles, San Diego, or Fresno*

Appointments of counsel in Los Angeles, Fresno, and San Diego shall be made from the general panels referred to in section I.

7. *Appointments elsewhere*

Appointments of counsel by a commissioner, elsewhere than in Los Angeles, San Diego, and Fresno, shall be made from commissioners' panels referred to in section I.

8. *One attorney may be appointed for several defendants for commissioner's proceedings*

The commissioner at a particular session may appoint the same attorney for several or all the defendants requesting counsel for commissioner's proceedings.

9. *Appointments by commissioner in places of holding court*

The commissioner in Los Angeles, San Diego, and Fresno may designate a member of the general panel to be present for arraignments at such regular hours as the commissioner shall set and at other times as required by the U.S. commissioner, for appointment as counsel before the commissioner if requested by the defendant and on inquiry found proper by the commissioner.

10. *Continuances of commissioner's hearings*

In any place, the hearing before the commissioner may be continued until counsel appointed or to be appointed can be present.

11. *If two attorneys appointed for a defendant*

If in an exceptional case, the judge decides to appoint two attorneys as trial counsel, then the judge shall—

- (a) Order the two attorneys to agree between themselves as to the division of one fee;
- (b) Order if necessary the percentage division of the one fee between the two attorneys.

12. *Attorney appointed for all further proceedings in the trial court, and for appeal unless relieved by circuit court*

In the event that a 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, 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 the defendant after conviction following a trial by court or jury decides not to appeal, the defendant and his attorney shall sign and file a written statement that he has been advised of his right to appeal and does not desire to appeal.

13. *Duty of appointed attorney to contact defendant in jail*

The attorney appointed shall contact the defendant if he is in jail within 3 days of his appointment and proceed with the case.

14. *Duty of defendant on bail to contact attorney*

The defendant, if he is on bond, shall contact his appointed attorney within 3 days of the date of the order, at his office as set forth in the order on the form; and failure to so contact the attorney may result in the forfeiture of defendant's bond.

15. *Failure to comply with order*

Failure of trial counsel to contact the defendant or the defendant to contact trial counsel will be called to the attention of the court immediately.

16. *Copies of order appointing attorney to defendant, counsel, and U.S. attorney*

A conformed copy of the order appointing attorney shall be handed to the defendant if present in court, or if not mailed to him. A copy shall be delivered or mailed to the appointed counsel and to the U.S. attorney.

17. *Defendant dissatisfied; requests change of counsel*

If a defendant is dissatisfied with counsel appointed for him by the commissioner or by the court, the defendant or his appointed attorney may appear before the court and present the matter for the court's consideration. If the interests of justice require the substitution of another attorney, the court will relieve the first appointed attorney and appoint a new attorney.

Changes of counsel will not be encouraged but will be granted when the interests of justice require.

18. *No right of defendant to choose appointed attorney*

The authority to select and appoint the attorney shall rest with the commissioner and the district judge in matters before him as provided by statute.

19. *Reexamination of need for counsel*

The court may at any time examine or reexamine the need for appointed counsel and may at any time require the presence of the defendant and/or a further showing by the defendant as to his lack of financial ability to retain counsel or to secure necessary investigative, expert or other services.

20. *Defendant with some funds available*

If at any time the court is satisfied that the defendant has or can secure funds which may reasonably be applied on account of payment of counsel, or on account of payment of investigative, expert, or other services required by the defendant, the court may require the defendant to pay said available funds for such purpose. Form CJA-7 has been approved by the Judicial Conference for such purpose.

21. *Order terminating appointment where defendant financially able*

Form CJA-6 has been approved by the Judicial Conference for terminating appointment when the court finds the defendant is financially able to secure representation.

22. *Attorneys appointed not to accept moneys*

No appointed attorney shall accept any funds from a defendant for whom he is appointed unless the matter is brought to the attention of the court by letter or petition and the court makes an order on form CJA-7 that the funds may be paid to the attorney or for the purposes indicated.

23. *Conflict of interest*

If an attorney is appointed for more than one defendant in a case, he should at the earliest moment ascertain whether or not there is any conflict of interest in his representation of multiple defendants, and if so, call the attention of the court to the matter and ask to be relieved as counsel for one or more of the defendants he is representing.

24. *Attorney to check and report on financial ability*

Appointed counsel shall have the duty of reporting to the court any situation coming to his attention, where a defendant appears to be able to finance a portion or all of his defense.

IV. THE U.S. MARSHAL; DUTIES

1. *Discovers defendant needs counsel*

Whenever the U.S. marshal or a deputy discovers that a defendant in custody needs or requests trial counsel he shall immediately notify the clerk.

2. *Move defendant to place of trial following commissioner's hearing*

The U.S. marshal at the earliest possible date following the termination of commissioner's proceedings, shall move the defendant who is in custody, to a jail at the place where the case is to be tried.

3. *Notify clerk and U.S. attorney of removal*

The U.S. marshal shall notify the clerk and the U.S. attorney at the place where the case is to be tried of the removal of the defendant to the jail in the place where the case is to be tried.

4. *Notify clerk and U.S. attorney that defendant made bail*

The U.S. marshal shall promptly notify the clerk and the U.S. attorney at the place trial will be had, that the defendant has been released on bail.

V. U.S. ATTORNEY; CLERK; DUTIES

1. *Discovers defendant needs counsel*

Whenever there is called to the attention of the clerk, a deputy clerk, or the U.S. attorney or an assistant U.S. attorney that a defendant is without counsel and desires the court to consider the appointment of counsel, he shall promptly notify the clerk and in each case the clerk shall forward or hand to the defendant two copies of affidavit and application for appointment of counsel (form CJA-3) and shall make a minute order that the forms were so delivered or mailed on the particular date.

2. *Mail copies of indictment returned to defendant*

Upon the return of an indictment, the U.S. attorney shall forthwith mail a copy of the indictment—

- (1) To trial counsel if he has been appointed; or
- (2) To the defendant without trial counsel, at the address shown on his bond papers, if on bond; or
- (3) To the defendant without trial counsel, at the jail in which incarcerated if he has not made bond.

3. *Clerk to present application for counsel to judge*

When the clerk receives from a defendant a completed application for counsel on form CJA-3; or receives from a commissioner form CJA-1 or CJA-3 with a finding of inability to hire counsel, the clerk shall forthwith deliver the documents to the district judge in charge of the criminal calendar for the particular place, together with a proposed order for appointment of counsel on form CJA-3A.

VI. CLAIM FOR ATTORNEY'S COMPENSATION AND REIMBURSEMENT OF EXPENSES

1. *Form CJA-4 approved*

Form CJA-4 has been approved by the Judicial Conference for claim for compensation for legal services, and for reimbursement of reasonable and necessary expenses. The form shall be used in all cases.

2. *Claims for protracted representation*

Form CJA-5 has been approved by the Judicial Conference for claims in excess of the statutory amount for use in connection with protracted representation.

The appointed attorney shall file a detailed statement certifying to the nature and extent of such services.

Form CJA-5 requires the signature of both the district judges and the chief judge of the court of appeals.

3. *Appointed attorneys to keep records*

Each attorney appointed from either panel shall maintain an accurate record and account of the time spent in court on various dates and the time spent out of court in research, investigative or work on the case and a notation of the particular problem researched or investigated, or the particular work done. The record and account so kept will be the basis of his claim to be later filed under form CJA-4.

The court in considering and passing upon a claim, may require the production of the attorney's record of work done in or out of court, referred to above.

VII. EX PARTE APPLICATION FOR INVESTIGATION, EXPERTS AND OTHER SERVICES

1. *Form CJA-8 approved; shall be used*

Form CJA-8 has been approved by the Judicial Conference for application by the defendant's attorney for investigative or other expert services.

The application shall show the name, address, and qualifications of the expert or investigator or the person proposing to render other services, who the attorney desires to employ; and a detailed description of the services required and a showing of how the proposed services are necessary to an adequate defense for the defendant.

The attorney may present his reasons for his application on a separate statement which the court may order sealed.

2. *Form CJA-9 approved; shall be used*

Form CJA-9 has been approved by the Judicial Conference and shall be used in making claim for payment for investigative, expert and other services.

3. *Services secured without prior authorization*

In every instance the attorney should use all reasonable efforts to file an application and secure prior authorization for investigative, expert, or other services alleged to be necessary to an adequate defense. The court will look with disfavor on claims for such services rendered without a prior application and the burden will be upon the counsel for the defendant to show, in the interest of justice, that "timely procurement of necessary services could not await prior authorization."

4. *Form CJA-10 approved; shall be used*

Form CJA-10 has been approved by the Judicial Conference to be used by the attorney to seek ratification for payment of services secured without prior authorization.

5. *Attorney to file claim for expert services, etc., due third parties*

When investigative, expert, or other service is required, the attorney shall petition for authority to secure same on form CJA-8.

The attorney will petition for and certify to such service rendered and make claim for compensation for third parties rendering such services on form CJA-9.

6. *Use community personnel*

Where the application is for the appointment of an expert or person to render a particular service, he shall be selected from the community in the place where the trial is to be held unless a showing is made by counsel for the defendant, that a person qualified to render such service could not be obtained in that community.

7. *Inquiry: Can stipulation avoid expense?*

Before granting the ex parte application (CJA-8) for investigative, expert, or other services, inquiry should be made by the court as to whether by stipulation or otherwise, defendant may attain the desired result and expense be avoided.

VIII. GENERAL

1. *Standard CJA forms to be used*

The Judicial Conference of the United States has recommended that every district plan contain a requirement that the standard Criminal Justice Act forms be used. This set of forms may be supplemented by other local forms approved by the district judges.

2. *Notify Administrative Office of appointments and orders authorizing service*

(a) The Administrative Office shall be notified promptly by the commissioner and the clerk of the court respectively, of each order of appointment of counsel made and each order authorizing the securing of services;

(b) Vouchers and claims shall be submitted to the Administrative Office.

3. *Disbursement of funds*

The disbursement of funds under the act will be in accordance with the plan of central disbursement approved by the Judicial Conference, and on forms prescribed by the Director of the Administrative Office and approved by the committee to implement the Criminal Justice Act of 1964.

4. *Prompt submission of claims*

The efficient administration of the Criminal Justice Act of 1964 on a national basis requires that claims for attorney's fees, expenses, and services be submitted for payment as expeditiously as possible.

The Judicial Conference of the United States has directed that this provision be inserted in all district court plans.

Until good cause is shown, claims for attorney's fees, expenses, and services shall be submitted within 45 days after the termination of the case by verdict of not guilty or sentence in the district court.

If the case is on appeal, claim shall be made within the time set forth above for compensation for attorney's fees, services, and expenses in the district court.

5. *Effective date*

This plan shall become effective on _____.

APPENDIX 3

CRIMINAL JUSTICE ACT OF 1964

[Public Law 88-455, 88th Cong., Aug. 20, 1964]

AN ACT

To promote the cause of criminal justice by providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Act of 1964."

SEC. 2. Title 18 of the United States Code is amended by adding immediately after section 3006 the following new section:

"§ 3006A. *Adequate representation of defendants*

"(a) CHOICE OF PLAN.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for defendants charged with felonies or misdemeanors, other than petty offenses as defined in section 1 of this title, who are financially unable to obtain an adequate defense. Representation under each plan shall include counsel and investigative, expert, and other services necessary to an adequate defense. The provision for counsel under each plan shall conform to one of the following:

"(1) Representation by private attorneys;

"(2) Representation by attorneys furnished by a bar association or a legal aid agency; or

"(3) Representation according to a plan containing a combination of the foregoing.

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for the representation on appeal of defendants financially unable to obtain representation. Consistent with the provisions of this section, the district court may modify a plan at any time with the approval of the judicial council of the circuit; it shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of modifications in its plan.

"(b) APPOINTMENT OF COUNSEL.—In every criminal case in which the defendant is charged with a felony or a misdemeanor, other than a petty offense, and appears without counsel, the United States commissioner or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives the appointment of counsel, the United States commissioner or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. The United States commissioner or the court shall

appoint separate counsel for defendants who have such conflicting interests that they cannot properly be represented by the same counsel, or when other good cause is shown. Counsel appointed by the United States commissioner or a judge of the district court shall be selected from a panel of attorneys designated or approved by the district court.

“(c) DURATION AND SUBSTITUTION OF APPOINTMENTS.—A defendant for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States commissioner or court through appeal. If at any time after the appointment of counsel the court having jurisdiction of the case finds that the defendant is financially able to obtain counsel or to make partial payment for the representation, he may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court having jurisdiction of the case finds that the defendant is financially unable to pay counsel whom he had retained, the court may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States commissioner or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

“(d) PAYMENT FOR REPRESENTATION.—An attorney appointed pursuant to this section, or a bar association or legal aid agency which made an attorney available for appointment, shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$15 per hour for time expended in court or before a United States commissioner, and \$10 per hour for time reasonably expended out of court, and shall be reimbursed for expenses reasonably incurred. A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States commissioner or that court, and to each appellate court before which the attorney represented the defendant. Each claim shall be supported by a written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States commissioner or court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall, in each instance, fix the compensation and reimbursement to be paid to the attorney, bar association or legal aid agency. For representation of a defendant before the United States commissioner and the district court, the compensation to be paid to an attorney, or to a bar association or legal aid agency for the services of an attorney, shall not exceed \$500 in a case in which one or more felonies are charged, and \$300 in a case in which only misdemeanors are charged. In extraordinary circumstances, payment in excess of the limits stated herein may be made if the district court certifies that such payment is necessary to provide fair compensation for protracted representation, and the amount of the excess payment is approved by the chief judge of the circuit. For representation of a defendant in an appellate court, the compensation to be paid to an attorney, or to a bar association or legal aid agency for the services of an attorney, shall in no event exceed \$500 in a felony case and \$300 in a case involving only misdemeanors.

“(e) SERVICES OTHER THAN COUNSEL.—Counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them in an ex parte application. 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 court shall authorize counsel to obtain the services on behalf of the defendant. The court may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained. The court shall determine reasonable compensation for the services and direct payment to the organization or person who rendered them upon the filing of a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and the compensation received in the same case or for the same services from any other source. The compensation to be paid to a person for such service rendered by him to a defendant under this subsection, or to be paid to an organization for such services rendered by an employee thereof, shall not exceed \$300, exclusive of reimbursement for expenses reasonably incurred.

“(f) RECEIPT OF OTHER PAYMENTS.—Whenever the court finds that funds are available for payment from or on behalf of a defendant, the court may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency which made the attorney available for appointment, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for assisting in the representation of a defendant.

“(g) RULES AND REPORTS.—Each district court and judicial council of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

“(h) APPROPRIATIONS.—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

“(i) DISTRICTS INCLUDED.—The term ‘district court’ as used in this section includes the District Court of the Virgin Islands, the District Court of Guam, and the district courts of the United States created by chapter 5 of title 28, United States Code.”

Sec. 3. Each district court shall within six months from the date of this enactment submit to the judicial council of the circuit a plan

formulated in accordance with section 2 and any rules and regulations issued thereunder by the Judicial Conference of the United States. Each judicial council shall within nine months from the date of this enactment approve and transmit to the Administrative Office of the United States Courts a plan for each district in its circuit. Each district court and court of appeals shall place its approved plan in operation within one year from the date of this enactment.

Sec. 4. The table of sections at the head of chapter 201 of title 18 of the United States Code is amended by adding immediately after item 3006 the following:

"3006A. Adequate representation of defendants."

Approved August 20, 1964.

LEGISLATIVE HISTORY

House Report No. 864 accompanying H.R. 7457 (Committee on the Judiciary).

Senate Report No. 346 (Committee on the Judiciary).

Congressional Record:

Volume 109 (1963): August 6, considered and passed Senate.

Volume 110 (1964):

January 15, considered and passed House, amended, in lieu of H.R. 7457.

August 7, House and Senate agreed to conference report.

COMMITTEE TO IMPLEMENT THE CRIMINAL JUSTICE
ACT OF 1964

MINUTES OF THE MEETING OF OCTOBER 17, 1964

The Committee To Implement the Criminal Justice Act of 1964 convened at the call of the Chairman, Judge Hastings, at the Federal courthouse in San Francisco, Calif., on October 17, 1964, at 9 a.m. The following members of the Committee were in attendance:

Chief Judge John S. Hastings, Chairman
Chief Judge Harvey M. Johnsen
Chief Judge Alfred P. Murrah
Judge Robert A. Ainsworth, Jr.
Judge Dudley Bonsal
Judge James M. Carter
Judge Wade H. McCree, Jr.
Chief Judge Roszel C. Thomsen
Judge Homer Thornberry

Warren Olney III, Director of the Administrative Office; James V. Bennett, Director of the Federal Bureau of Prisons, retired; and Joseph F. Spaniol, Jr., of the Administrative Office, were also in attendance.

REMARKS OF THE CHAIRMAN

Judge Hastings reviewed briefly the history of the Criminal Justice Act of 1964 and outlined the recommendations of the Ad Hoc Committee appointed to develop rules, procedures, and guidelines for an assigned counsel system. The policy recommendations of the Ad Hoc Committee, which were approved by the Judicial Conference, included the following:

- (1) The central disbursement of funds.
- (2) The administration of the Criminal Justice Act through a framework of boards of advisers to the judicial councils of the circuits, assisted by full-time, compensated officers. (Judge Hastings noted that the Committee might undertake to define the duties of such a compensated officer and that these duties might include such things as (a) establishing and maintaining rosters of attorneys, (b) the coordination of investigative services, (c) assistance to the Administrative Office, and (d) assistance in enlisting the support of the organized bar.)
- (3) That the chief judge of each circuit call a meeting of the chief judges of the district courts in his circuit to consider the problems of the administration of the Criminal Justice Act, the urgency of developing practical and acceptable plans in each district, ways and means of stimulating the interest and securing the support and cooperation of the bar * * * and to make plans for again convening to act as a panel of judges to appoint from the bar an appropriate board of advisers to the judicial council. (Judge Hastings pointed to the need for

care in the preparation of a plan by each district court and emphasized that the responsibility for developing plans rests with the district courts. He suggested that the Committee should not usurp these powers and responsibilities, but pointed out that the Committee does have the obligation to develop rules and regulations for the consideration of the Judicial Conference. The rules and regulations certainly should contain provisions that would offer protection to the district judge and relieve him insofar as possible from the burden of administration. Judge Hastings noted also that the circuits are now looking to the Committee for guidelines in developing standards and rules to which all district court plans might conform and expect the Committee to be of assistance to the district courts in the development of their plans. Many judges have already made inquiries. He added that any rules developed by the Committee should distinguish between problems such as standards for the determination of indigency or financial inability to obtain an adequate defense, which can be handled on the national level and problems which will vary from court to court and thus can be handled only at the local level.)

APPROPRIATIONS

Judge Hastings explained that upon the recommendation of the Ad Hoc Committee and the Budget Committee, the Judicial Conference had approved a budget request of \$7,500,000 for the first year's operation under the act. This budget contemplates that there will be more appointments of counsel in appropriate cases as a result of the Criminal Justice Act, more trials, and more appointments of counsel at the U.S. commissioner level. Thus the budget request is more than twice the \$3,500,000 cost figure submitted by the Attorney General. Nevertheless, the Budget Committee is optimistic that adequate funds to implement the act will be authorized by the Congress. Funds, however, will not be available before July 1, 1965.

CENTRAL DISBURSEMENT

Mr. Olney explained that a system of central disbursement, under development in the Administrative Office, contemplates the use of appointment and voucher forms similar to the statistical form AO-191 now in use in most districts. The Administrative Office would be notified promptly as each appointment is made and vouchers would be submitted directly to the Administrative Office where they would be audited in advance of payment. All checks would be issued directly from Washington.

Some of the auditing procedures contemplated were discussed briefly by the Committee. It was pointed out that the auditing would consist primarily of an examination to determine whether the voucher form, on its face, was sufficient to comply with both the statute and the plan approved for the particular district court, and that any computations contained therein were mathematically accurate.

The Committee thereupon formally approved the principle of central disbursement.

BOARDS OF ADVISERS

Judge Hastings emphasized the need to obtain the complete cooperation of the bar. This was an important reason for the type of structural organization recommended by the Ad Hoc Committee and approved by the Conference. The Committee considered the recommendation for boards of advisers to the judicial councils and generally approved of this plan.

Initially, several members of the Committee expressed some reservation about the need for a board of advisers on a permanent basis, the need for a salaried officer in each circuit, and how effective he might be. It was pointed out that circumstances vary from circuit to circuit. More than one salaried officer may be required in some circuits and that there may be circuits in which salaried officers are not required. Judge Thomsen emphasized the need for an officer, such as the clerk of court, to assist in the development and maintenance of a plan at the local district court level. He also suggested that the junior bar could render effective assistance.

Judge Johnsen pointed to the need for an overall basic organization for the administration of the act that would produce some measure of uniformity. He noted particularly the need for cooperation with State bar associations, the need for some type of check on complaints that may arise in the administration of any district court plan, and the need to handle other matters that arise. Judges McCree and Carter were impressed both with the need for an overall administrative structure at the circuit level and for some assistance in handling the peculiarly local problems involved in implementing the act.

Judge Murrah pointed to the provisions of the Criminal Justice Act which seem to require some type of administration at the circuit level. It was his thought that the board of advisers to be appointed in the 10th circuit would meet at the time of the annual judicial conference of the circuit. He also thought that the salaried officer would be concerned not so much with the payment of fees to counsel under the act as he would with such matters as travel by attorneys, the use of investigators, and the coordination of these matters among the circuits. The need is for someone who can be contacted on the circuit level. The title "counsel coordinator" was suggested as appropriate for the salaried officer.

On motion of Judge Carter, the Committee approved the administrative structure set out in the Ad Hoc Committee report and authorized the appointment of a subcommittee to work out a statement of the duties and functions of a salaried officer.

RULES AND REGULATIONS

Judge Hastings requested that the Committee consider the scope of any rules and regulations that might be adopted to govern the operation of plans formulated under the act, what approach should be taken in them and any ideas of problems that might be dealt with in rules and regulations.

(a) Indigency

Judge Bonsal suggested the need for a test of indigency, which might be in the nature of an appropriate inquiry. As a matter of policy it was agreed by the Committee that indigency (financial in-

ability to obtain an adequate defense) should be determined by a judicial officer and not by the lawyer. It was further agreed that the question of indigency should be open to inquiry at any time.

Judge Thomsen pointed to the problems that are likely to arise where a particular defendant orders the court to appoint and pay for the services of a lawyer of his own choice. It was Judge Carter's view that a defendant generally should not have a right to select any particular attorney. Several members of the Committee were of the view that the Judicial Conference should not adopt a rule or regulation that in every instance would prohibit the defendant from selecting an attorney. Judge Johnsen suggested that the regulations should list the responsibilities of the district courts under the act, together with pitfalls to be avoided.

Since the district courts generally are looking to the Committee for ideas and suggestions in the formulation of plans under the act, the Committee considered the circulation of some of its ideas and suggestions to the individual district courts prior to the special session of the Judicial Conference. Judge Hastings indicated that it might be advisable to request the Chief Justice to seek the approval of the Advisory Committee of the Conference for the circulation of any Committee recommendations prior to a meeting of the Conference.

(b) *Appointment of counsel*

Judge Bonsal suggested a requirement in the Judicial Conference regulations for the use in every case of an affidavit by every defendant setting forth the need for the appointment of counsel. It was suggested that in many cases the defendant could make such a statement under oath in open court but that in a proceeding before a U.S. commissioner an affidavit might be needed. It was agreed that it would be appropriate to include in the regulations some standards for determining indigency and requiring that there be in the file or record of every criminal action a statement or affidavit supporting a determination of indigency (financial inability) under the statute.

(c) *Investigative services*

Judge Carter suggested that the regulations might make it clear under the statute that ex parte proceedings required for an authorization of investigative and other services does not prohibit an adversary proceeding. Judge McCree suggested that the judge might make an inquiry as to whether the information sought through the investigative procedure could be stipulated.

Judge McCree suggested also that if the court finds that a lawyer has taken all the funds of a defendant for his fee, then investigative services (in a case where counsel has not been appointed by the court) will not be furnished. On the matter of an ex parte hearing to authorize investigative services other than counsel services, Judge Hastings suggested that the regulations should not bind the judge so that he cannot make any further inquiry.

(d) *Panels of attorneys*

Judge Bonsal asked whether a judge must at all times appoint only from the attorneys whose names are listed on the panel. The Committee discussed whether approval of the entire court is required to add the name of an attorney to the approved list. It was suggested that under the act it may be possible for the court to delegate author-

ity to the judges sitting in particular divisions to set up panels in their own areas.

(e) *Responsibility of the bar*

Judge Thornberry pointed out that many members of the bar think that since money is available with which to pay counsel, they may now be relieved entirely from appointments in these cases. Judge Johnsen suggested that the Conference might say that the responsibility of the members of the bar to serve in these cases is the same as it was before, and that the passage of the Criminal Justice Act in no way lessens the responsibility.

The Committee authorized the appointment of a subcommittee to consider these suggestions and to develop draft rules and regulations under the Criminal Justice Act.

RULES AND REGULATIONS BY THE CIRCUIT COUNCILS

The Committee considered the areas in which the judicial councils of the circuits should concern themselves with the promulgation of rules and regulations and concluded that the circuit councils under the act should make no rules and regulations except as to cases on appeal. Judge Murrah suggested that the administration of the act should be primarily the responsibility of the district courts and that the judicial councils of the circuits should review the plans submitted by the district courts only to ascertain that they conform to the rules and regulations promulgated by the Judicial Conference and that they conform to the provisions of the act.

DRAFT PLAN FOR THE SOUTHERN DISTRICT OF CALIFORNIA

At the request of the Chairman, Judge Carter explained in detail the provisions of a plan for the representation of criminal defendants which he had drafted for the Southern District of California. The draft plan, previously distributed to the members of the Committee, would place on the bar associations within the Southern District of California the responsibility for preparing lists of qualified attorneys and certifying the lists to the court. Judge Carter pointed out, however, that the members of the bar, though willing to submit lists of lawyers, appear reluctant to certify as to the ability of any lawyer.

A suggestion was made that the plan should permit the list submitted by the bar to be supplemented by the judges.

The Committee discussed generally the problem of classifying lawyers for use in particular cases and concluded that this is likely to be very difficult. An inquiry was made about appointing two lawyers in a difficult case. Judge Hastings indicated that the statute was not entirely clear and that perhaps this is an item that might be covered by a district court plan or by Conference regulation. Judge Carter indicated that he might appoint experienced counsel in a difficult case and request a junior to assist him without payment.

Judge Hastings pointed out that Judge Carter's plan does not encompass the use of attorneys from legal aid agencies. The subcommittee should consider this.

Judge Carter indicated that he would amend his plan to require the use of an affidavit and that he would require the U.S. commissioner to fill out the affidavit.

APPOINTMENT BY COMMISSIONERS

The Committee discussed the provisions of the act requiring that counsel be furnished to the defendant "from his initial appearance before the commissioner through appeal." It was suggested that this language may not require the presence of counsel at the initial appearance of the defendant before the commissioner, but only at subsequent stages. It was concluded, however, that the legislative history of the act made it clear that counsel must be provided for a defendant at his initial appearance before a commissioner, if requested.

Judge Carter suggested that the commissioner in every case inform the defendant that he may have a lawyer now, or that he may have one later for the trial. In this way a defendant might waive the appointment of an attorney before the commissioner and request the appointment of trial counsel.

Judge Thomsen suggested the need for a prompt notification to the clerk of the court whenever a defendant is confined in jail so that the trial attorney may be appointed for him, if he so desires. It was suggested that under the act there may be the appointment of one attorney to assist the defendant in proceedings before the U.S. commissioner and the appointment of a different attorney to counsel the defendant in proceedings before the court.

SUMMARY

Judge Hastings summarized the discussion thus far by suggesting that the plans developed by the district courts might be divided into these six parts:

- (1) A method for the preparation of panels of lawyers.
- (2) A method to determine the need to appoint counsel.
- (3) A procedure appointing counsel in proceedings before the U.S. commissioner and in proceedings before the court.
- (4) A procedure for authorizing investigative and other services.
- (5) A method for filing claims for reimbursement of expenses other than the services rendered by counsel.
- (6) A checklist for court appointed counsel (see the checklist accompanying Judge Carter's draft plan).

Judge Hastings suggested that each of the six district judges on the Committee, having these items in mind, prepare a plan for their own districts so that their views with respect to the problems involved may be solidified.

OTHER MATTERS

(a) Investigative services

The Committee considered the possibility of establishing a roster of approved investigators, but concluded that the idea was not practical in view of the likelihood of requests by detective agencies to have their agencies added to such a roster.

(b) Other services

Judge Hastings inquired about a provision in each plan for psychiatric services, pointing out that the statute apparently is intended to give to a defendant who is financially unable the same services

that any other defendant might secure. The Committee considered the use of a roster of qualified psychiatrists and concluded that the defendant is entitled to the doctor whom he wants. It was suggested, however, that where practical available public facilities should be used.

(c) *Ratification of expenses incurred*

It was Judge Carter's view that the ratification by the court of any expenses incurred, as permitted under the act, should be discouraged and that any plan should state that "ratification is not looked upon with favor." Judge McCree suggested time limitations on the filing of a motion for the ratification of such expenses.

(d) *Reimbursement for expenses*

It was agreed by the Committee that it should express some policy with regard to the reimbursement of the expenses of counsel.

(e) *Furnishing counsel on appeal*

In considering whether trial counsel should also handle the case on appeal, the members of the Committee noted various problems including (1) the need for experience in handling appeals, (2) the problem of the lawyer who has concluded an appeal would be frivolous and does not wish to proceed, and (3) the desire of the client to have a different lawyer appointed for the appeal. It was agreed that there should be close liaison between the trial and appellate courts in the appointment of counsel on appeal.

THE COMMITTEE REPORT

Judge Hastings suggested that the report of the Committee be in final form by December 15 so that it may be distributed to the members of the Judicial Conference 4 weeks in advance of the special session of the Conference scheduled for January 13. Each of the six district judges on the Committee was requested to prepare, as soon as possible, a model plan for a district court that might be adopted in a district court similar to the one in which he is now sitting.

Judge Johnsen was appointed chairman of a subcommittee to draft suggested rules and regulations for the consideration of the Judicial Conference and to develop a model plan for the appointment of counsel on appeal. Judges Murrah and Hastings were appointed members of the subcommittee.

The appointment of a subcommittee to develop a list of duties for a salaried officer to be appointed by the boards of advisers in each circuit was deferred until the model plans had been developed and some of the meetings of the chief judges of the circuits have been held.

It was agreed that the Committee would meet in the Administrative Office conference room on the ground floor of the Supreme Court Building in Washington, D.C., on November 14, 1964.

A memorandum prepared by Thomas W. Hauser, under the direction of Judge Carter, with respect to the determination of indigency was distributed to the members of the Committee.

Respectfully submitted.

JOSEPH F. SPANIOL, JR., *Attorney.*

REPORT OF THE AD HOC COMMITTEE TO DEVELOP RULES, PROCEDURES AND GUIDELINES FOR AN AS- SIGNED COUNSEL SYSTEM

SUMMARY OF REPORT

The annexed report contains the following recommendations:

1. That the Conference approve in principle using a system of central disbursement of funds appropriated to carry out the Criminal Justice Act.
2. That the Conference approve in principle implementing the Criminal Justice Act through a framework of a board of advisers to each judicial council, assisted by a salaried officer.
3. That the Conference request the chief judge of each circuit to call a meeting as soon as practical of the chief judges of the district courts in his circuit to consider the implementation of the Criminal Justice Act.
4. That the Conference recommend to the Chief Justice that a special session of the Judicial Conference be convened at a date as early in January 1965 as possible for the exclusive purpose of considering the problems of administration under the Criminal Justice Act.
5. That the Conference authorize the Chief Justice to supersede the Ad Hoc Committee with a larger Committee To Implement the Criminal Justice Act with some district judges included in its membership.
6. That the Conference approve budget estimates developed with the Budget Committee for administering the Criminal Justice Act.

To the Chief Justice of the United States, Chairman, and the Members of the Judicial Conference of the United States:

Your Ad Hoc Committee on Representation of Indigent Defendants Accused of Crime in the U.S. Courts has considered preliminarily the problems arising out of the Criminal Justice Act of 1964, Public Law 88-455, approved August 20, 1964, and submits the following report. The problems involved in the implementation of this legislation are unique, and the Committee has therefore considered it important to review, in some detail, the history of the legislation, the problems involved, and the knowledge and experience presently available.

I. HISTORY OF THE LEGISLATION

The Criminal Justice Act of 1963 was originally drafted in the Department of Justice and arose out of a study by the Attorney General's Committee on Poverty and the Administration of Criminal Justice, under the chairmanship of Prof. Francis A. Allen, of the University of Michigan Law School.

The legislation, as originally conceived, embodied a number of features drawn from various sources, including bills previously recommended by the Judicial Conference of the United States. The draft legislation was intended to provide a system of adequate representation in every Federal court, but it left to each court a certain amount of freedom and discretion to devise a plan best suited to its local needs. The options that would have been provided under the legislation as originally proposed include—

1. Representation by private attorneys;
2. Representation by a full-time or part-time Federal public defender and assistants;
3. Representation by attorneys furnished by a bar association, or a legal aid society or other local defender organization; or
4. Representation according to a plan containing any combination of the foregoing.

The criminal justice bill was introduced in the Senate on March 11, 1963, and in the House of Representatives on March 13, 1963. Hearings on the proposed legislation were held before a subcommittee of the Senate Judiciary Committee on May 13, 20, and 27, 1963, and before a subcommittee of the House Judiciary Committee on May 22. The Attorney General, at the request of the committees and as part of his testimony, submitted a detailed cost estimate on the bill totaling, initially, \$3,500,000, one-fourth of which covered the estimated cost of public defender offices in 11 districts. At the time these estimates were prepared, the Administrative Office was asked informally by the Department of Justice for suggestions as to a basis for preparing a cost estimate. The Administrative Office, however, was unable to supply any information at that time that was not already available to the Department.

The proposed Criminal Justice Act passed the Senate on August 6, 1963, substantially in the form in which it was introduced. In September 1963 the Senate bill was endorsed by the Judicial Conference.

On October 24, 1963, the Judiciary Committee of the House of Representatives reported favorably on a bill similar to the proposed Criminal Justice Act, but eliminated any provision authorizing public defenders. The House version of the bill was passed on January 15, 1964. Thus there was a basic difference in the two bills on the question of public defenders.

It was not until August 7, 1964, when the conferees of the House and Senate agreed upon a report, that it was clear there would be no public defenders in the legislation and that sole reliance would be placed on a system of compensating counsel on an individual assignment, or a case-by-case basis, supplemented by provisions for authorizing the services of attorneys furnished by a bar association or a legal aid agency. The Criminal Justice Act was signed by the President and became law on August 20, 1964.

The informal request of the Department of Justice to the Administrative Office in May 1963 produced an awareness of the need to ascertain, on a reliable basis, the amount of time presently being devoted by attorneys to indigent cases and the amount of money actually being expended out-of-pocket by assigned private counsel. Anticipating that some form of legislation authorizing compensation to appointed counsel might be enacted, the Administrative Office set

out to develop statistical material that might be of assistance in devising a scheme for administering an assigned counsel system and in estimating the need for appropriations. With the approval of the chief judges of the 7th, 8th, and 10th Circuits, the district courts in these circuits in July 1963 began the use of a form (AO-191), which court-appointed counsel were requested to file following the completion of their assignments. The information requested on these forms included the number of hours devoted by counsel to particular matters—both in and out of court—and a statement of the approximate out-of-pocket expenses that were incurred. In addition, the forms requested counsel to list any special problems that may have occurred in the preparation or trial of the case. The returns on these forms, though a sample only, constitute the only information presently available on the time and the amount of money actually being expended by assigned private counsel.

II. APPOINTMENT OF THE COMMITTEE

In March 1964 the Director of the Administrative Office brought to the attention of the Judicial Conference various problems that would be presented if, as then appeared imminent, the legislation to authorize payment of compensation to counsel appointed to represent indigent persons accused of crime in the U.S. courts should be enacted.

The Conference at that time discussed various aspects of the problem of administering a system of compensating assigned counsel and, in particular, the recommendations of a special committee of the Association of the Bar of the City of New York and the National Legal Aid & Defender Association. These recommendations, with respect to an assigned counsel system, are:

1. Using rotation to assign qualified counsel;
2. Centralizing assignment in a single administrative unit;
3. Having indigency determined by someone other than the assigned counsel;
4. Providing for the reimbursement of assigned counsel for all expenses incurred; and
5. Compensating counsel adequately.

The Conference suggested that the quoted recommendations be brought to the attention of all circuit conferences, and recommended the appointment of a committee in each judicial circuit to consider the various problems of compensating appointed counsel. The Conference also authorized the appointment of an ad hoc committee to work with the Administrative Office in developing rules, procedures, and guidelines for an assigned counsel system.

Immediately thereafter the Chief Justice appointed a committee consisting of Chief Judge John S. Hastings of the 7th Circuit, chairman; Chief Judge Harvey M. Johnsen of the 8th Circuit; and Chief Judge Alfred P. Murrah of the 10th Circuit. Upon its appointment, and prior to the scheduling of any meeting, the Committee began immediately to compile available information on the use of assigned counsel in the Federal courts and to solicit ideas and suggestions from those who were experienced in this field. Realizing the importance of obtaining full information as to the services of assigned counsel, the Committee arranged to institute the use of forms AO-191 and a

second form for use in courts of appeals (AO-192) on a nationwide basis. A letter was addressed to the chief judge of each circuit asking him to urge the district courts to begin the use of these forms and to commence the use of the forms in the courts of appeals. During the latter part of July and the early part of August 1964, the forms were widely distributed and made available to the individual courts. Inasmuch as the forms are not to be completed until after a criminal case is completely closed, there has been no substantial return to date from this expanded program.

In a further attempt to secure information concerning existing practices and procedures in selecting attorneys for assignment in criminal cases, the Committee addressed a letter to the chief judge of each circuit and to each district judge representative on the Judicial Conference of the United States requesting a general statement on the procedures followed in their courts in assigning counsel for the indigent, with emphasis on such matters as how indigency is determined at the present time; whether panels of lawyers have been established, with or without the cooperation of the bar; whether there is any system for rotating assignments; and whether any effort is made to avoid such things as assigning inexperienced counsel to a difficult trial or assigning a busy, highly experienced lawyer to a routine matter. The Committee also requested any observations or suggestions as to modifications or new procedures that may be thought to be necessary if legislation is passed authorizing fees and reimbursement of expenses to assigned counsel from public funds.

The response to these letters was very generous but the answers received failed to uncover any system now in use that would serve as a model for (1) developing and maintaining systematically a roster of lawyers for appointment by the court, (2) assuring impartial representation by counsel adequately experienced in handling the type of case to which he has been assigned, and (3) coordinating appointments with State and local courts which must look to the same members of the bar to accept assignments in their courts. The replies did show a general lack of appreciation as to the seriousness and complexity of the problems which might be raised by the new legislation. The responses further indicated an initial impression by many judges that a system of payment to assigned counsel could be superimposed on whatever system of assignment may be presently in use.

III. PROBLEMS PRESENTED

In the deliberations of the Committee there were many problems raised which apparently were not fully anticipated or realized at the time the legislation was considered. It is apparent that if the legislation is administered in the manner intended, it will bring about a significant advancement in the administration of Federal criminal justice. It is equally apparent that if the legislation is poorly administered, it could bring adverse criticism upon the courts.

First of all, it must be recognized that there will be more criminal cases in the future requiring the assignment of counsel for the indigent than there have been in the past. Statistical information, compiled in the Administrative Office and used by various witnesses at the hearings on the Criminal Justice Act, indicated that during the fiscal year

ending June 30, 1962, the most recent year for which figures were then available, counsel were assigned to 9,669 criminal defendants whose cases were terminated during the year, or approximately 31 percent. These figures and percentages are not considered by the Committee to be a reliable estimate for the future. First of all, they do not take into consideration the entirely new provision in the act requiring the assignment of counsel at the level of the U.S. commissioner. Nor do they take into account the likelihood that in the future and in order to protect the record, courts and commissioners will be less inclined to accept waivers of counsel by defendants who appear before them.

The most recent statistical compilation covering the 10-month period from July 1963 to April 1964, regarding the assignment of counsel to criminal defendants acquitted or sentenced during this period, is as follows:

Total defendants acquitted or sentenced.....	28,777
Defendants for whom counsel were assigned by the court.....	9,583
Defendants for whom counsel were not assigned:	
Total.....	18,784
Defendants with privately retained counsel.....	9,530
Defendants who waived the appointment of counsel.....	5,944
Defendants for whom counsel were not assigned but information on the waiver of counsel or the appearance of privately retained counsel is not available.....	3,310
Defendants on whom information as to the assignment of counsel is not available.....	410

In attempting to estimate the future from the foregoing statistics, the Committee reasons that the total defendants acquitted or sentenced will remain approximately the same as will the number of defendants with privately retained counsel. The Committee believes the other items in the foregoing table will be vastly different with a very great increase in the number of defendants for whom counsel must be assigned by the court and an equally great decrease in the number of defendants waiving the appointment of counsel and the number for whom information is not available as to whether they did or did not have counsel. The increase in the number of assignments of counsel resulting from the wholly new requirement of requiring the appointment of counsel on appearance before the U.S. commissioner the Committee considers to be completely unpredictable. The decrease in the number of waivers of the appointment of counsel is also hard to predict, although the Committee is convinced the decrease will be very substantial.

In the absence of actual experience, the Committee believes that it is reasonable to estimate the number of defendants for whom counsel must be assigned by the court during the forthcoming year by taking the total defendants, subtracting the number of privately retained counsel, and assuming that counsel will have to be assigned by the court or the U.S. commissioner for the balance. The Committee thinks it probable that such a calculation will make adequate allowance for the appointments by U.S. commissioners and the decrease in the waivers of counsel.

In any case, it seems certain that the Criminal Justice Act will require in the future a very large increase in the number of counsel assigned to indigent persons accused of crime in the Federal courts.

Secondly, recognition must be given to the needs of the State courts. Recent decisions of the Supreme Court of the United States, particularly the decision in *Gideon v. Wainwright*, 372 U.S. 335, make it clear that in the future members of the bar will be called upon more frequently to contribute their talent to the defense of the indigent in criminal cases in all courts of the Nation. The totality of this additional burden placed upon the bar in any one area undoubtedly requires coordination of assignments. The seriousness of this problem is evident in the District of Columbia where, despite the existence of a local Legal Aid Agency, which was established by a 1960 act of Congress and charged with the responsibility of making available attorneys for assignment in certain courts in the District, there exists several different rosters of attorneys and several different methods for the selection and appointment of counsel. The present system, in which each court in effect administers its own assignment system, results in an inordinate number of successive or multiple appointments of many of the same attorneys. Chief Judge David L. Bazelon of the District of Columbia Circuit has written a letter to the Director of the Administrative Office, copies of which were also sent to the members of your Committee, which vividly describes the present confusion and need for coordination of assignments in the District of Columbia. In other areas, where both State and Federal courts must draw upon the same bar, the need for coordination of assignments is no less but the problems of cooperation between the court systems are even greater.

Further complexity arises not only from the necessity of avoiding duplication and conflicts in assignments, but from the need to evolve a plan that will provide counsel that is competent and independent in his approach to his particular assignment. Experienced counsel will be needed for difficult cases and less experienced counsel for less difficult cases, but how this differentiation between lawyers can be made administratively presents a difficult problem.

The Criminal Justice Act in authorizing the reimbursement of bar associations and legal aid agencies for legal or investigative service supplied by them presents additional problems of making arrangements with these associations and agencies that will insure adequate service to the indigent defendant with payment therefor within the framework of the act.

Services other than counsel are also authorized. The act provides in part "counsel for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in his case may request them in an ex parte application." These services may be authorized by the court after appropriate inquiry and finding that they are necessary. The act, however, provides no criteria and no standard, other than that of necessity for the services, and no guidelines for determining "reasonable compensation" for services. There is, however, a limitation of \$300 on the amount that may be paid to any one person or to any organization for services rendered by an employee. To guarantee against possible abuses in the use of investigative and expert services, other than counsel services, a system

for evaluating the need for these services, determining that they have been performed competently, and insuring the reasonableness of payments requested, seems desirable and necessary.

Finally there is the problem of devising a system for disbursing funds appropriated to administer the act. The status of the appropriation must be known at all times lest obligations be incurred that exceed the ability of appropriated funds to sustain them; vouchers and payments made thereunder should be correct in the first instance, for adjustments either for overpayments or underpayments are likely to be difficult; and comparisons of cost from district to district and case to case should be readily obtainable.

The efficient control of appropriations suggests to the Committee in the first instance the need for a scheme for the central disbursement of appropriated funds. Preliminarily, the Administrative Office has recommended a system of central disbursement which involves (1) a prompt notification to the Administrative Office of every appointment as it is made, and (2) the submission of vouchers containing information as to the nature and extent of services rendered both in and out of court and expenses incurred. The submission of vouchers directly to the Administrative Office would permit determining, in advance of the issuance of each covering check, whether the claim covered by the voucher meets the requirements of the statute, the rules and regulations of the Judicial Conference and the judicial council, and is consistent with the plan adopted for the district.

In the formulation of a plan within each district for furnishing representation for defendants who are financially unable to obtain an adequate defense, the Committee is convinced that an approach must be devised that will recognize all the problems described above, as well as others, and provide a solution to them. In addition, all plans should conform to the standards approved by the Judicial Conference at its March 1964 session, as set out above.

Under the statute the responsibility for formulating a plan rests in the first instance on the district court. However, the time schedule in the act, requiring the adoption of a plan in each district within 6 months of the date of enactment (August 20, 1964), with approval by the judicial councils within 9 months and to be effective within 1 year, will require that the plans submitted to the judicial councils, or at least most of them, be acceptable in form and content in the first instance.

IV. PRELIMINARY CONSIDERATIONS

The problems resulting from the new legislation were considered at a Committee meeting in Washington, D.C., on Saturday, September 12, which was also attended by Judge William F. Smith, Chairman of the Judicial Conference Committee on the Administration of the Criminal Law, Warren Olney, Director of the Administrative Office, and members of his staff.

In discussing how acceptable plans could be developed for all 90 Federal districts within the timetable set under the statute, the Committee considered at length the provisions of the District of Columbia Legal Aid Act approved January 27, 1960 (74 Stat. 229). The scheme of organization and administration authorized by this statute has, of course, received congressional approval. The District of

Columbia Legal Aid Act provides for a panel of judges consisting of the chief judge of the U.S. Court of Appeals for the District of Columbia Circuit; the chief judge of the U.S. District Court for the District of Columbia; the chief judge of the District of Columbia Court of Appeals; the chief judge of the District of Columbia Court of General Sessions; the President of the Board of Commissioners of the District of Columbia; and the chief judge of the Juvenile Court of the District of Columbia.

The function of the panel of judges is to appoint a Board of Trustees for the Legal Aid Agency from members of the bar, being seven in number, and serving staggered terms of 3 years. The Board of Trustees is authorized by the statute to appoint a salaried Director of the Legal Aid Agency who is responsible to the Board and is subject to removal by them. The primary responsibility of the Agency under the statute is "making attorneys available to represent indigents" in criminal proceedings in the courts in the District of Columbia. Thus the District of Columbia Legal Aid Agency is administered by an independent board of lawyers selected for the purpose by a panel made up of the chief judges of the courts established in the District. Within the limits of the funds and personnel available to it, the Agency has proven to be practical and successful.

The Committee considers that the District of Columbia Legal Aid Act establishes, or at least suggests, principles and a pattern for administrative organization which, as mentioned above, has received the approval of Congress and believes that it is feasible to adapt the same principles and approximately the same administrative pattern under the Criminal Justice Act of all Federal courts.

The Committee believes that this might be done by establishing a board of advisers to the judicial council of each circuit, the members of which would serve without pay and would be appointed by a panel of judges consisting of the chief judge of the circuit and the chief judges of each of the district courts within the circuit. The total number of members on each board of advisers should be left to the judicial council of each circuit, but should not be less than one member from each State within the circuit and should not exceed a total of nine members on any board. Because the bar is organized on the basis of States rather than Federal districts, it should be required that every board of advisers must include at least one practicing attorney from each State within the circuit, each of whom would be selected by a vote of the entire panel of judges. Members should serve for specified staggered terms.

Further paralleling the District of Columbia Legal Aid Act, the board of advisers to the judicial council in each circuit should be authorized to appoint a compensated, full-time officer to be called by some distinguishing title.

This officer should enjoy considerable stature and prestige. This is necessitated by the importance and delicacy of his functions. Such an officer is needed to stimulate and assist the district judges and the bar in every district in the circuit in formulating and developing plans under the Criminal Justice Act suitable to local conditions and which are in conformity with standards to be approved by the judicial councils and the Judicial Conference of the United States. This is a task that obviously requires great tact, skill, and ingenuity. This work will

involve many personal contacts to obtain the views of the judges in each district, to arouse the interest, cooperation, and assistance of the local bar, to keep all informed concerning similar plans of administration that are being developed in other districts and circuits, and to give advice as to whether plans under consideration conform with rules and regulations that may be recommended by the judicial councils of the circuits and the Judicial Conference of the United States. He will need to consult with and assist the judges and the bar in developing satisfactory and acceptable procedures for compiling and keeping current rosters of attorneys eligible for appointment to the defense of criminal cases, not only in the various places of holding court but also in the additional places where U.S. commissioners are located. He will be needed in every district to work out with the bar and with appropriate State officials some way of coordinating Federal and State assignments so as to avoid repeated or conflicting assignments between Federal and State courts that may place an undue and unfair burden upon some members of the bar. He will be needed to keep in touch with the clerk in every district in order to assist and advise in working out the processing of requests for the appointment of experts and investigators and the procedures for the approval of claims for compensation for legal and other services. He will be needed to help develop and apply administrative procedures at every stage which will provide maximum relief for the judges from administrative detail. He will be needed to receive from each district in the circuit for transmission to the board of advisers to the judicial council all suggestions and complaints from district judges, members of the bar, and others concerning the operation of the system and in connection therewith he will be needed to make such inquiries as the board may direct. He will be needed to act as an agent for the Administrative Office in the field to work out the numerous difficulties that are bound to arise concerning appointments and the processing of claims for compensation.

Initially, the board of advisers to the judicial council should review all the plans submitted by the district courts of the circuit for implementing the Criminal Justice Act and should make recommendations to the judicial council for approval, disapproval, or modification. When the plans are in operation, the board should consider and evaluate all suggestions and complaints about the plans, or their daily operation, made by the bar, the judges, the litigants and others, making recommendations to the judicial council where appropriate. The board should also exercise general supervision and direction over its salaried officer in the performance of his duties.

On the second day of its meeting, Sunday, September 13, the Committee met with the representatives of the Department of Justice, the Legal Aid Agency of the District of Columbia, and the National Legal Aid & Defender Association, as follows:

Department of Justice:

Prof. James Vorenberg, Director, Office of Criminal Justice
Daniel Freed, Deputy Director, Office of Criminal Justice
William E. Foley, First Assistant, Criminal Division
Harold D. Koffsky, Deputy Chief of Research and Legislation, Appeals and Research Section, of the Criminal Division

Legal Aid Agency for the District of Columbia:

Charles B. Murray, Director, Legal Aid Agency for the
District of Columbia

National Legal Aid & Defender Association:

William T. Gossett, President

John W. Cumiskey, Vice President

Junius L. Allison, Secretary and Executive Director

Orison S. Marden, Chairman

Arnold S. Trebach, Administrator

At the Sunday meeting the problems previously mentioned were again discussed at length and the views of all those present were requested as to the practicality and desirability of the administrative scheme, outlined above. It was the view of all those present that the administration of the Criminal Justice Act, through a board of advisers to the judicial council in each circuit, constituted as above described, assisted by a full-time officer, was both practical and desirable, and the most feasible of any alternative for administration that has been suggested. The representatives of the NLADA pledged their support of the proposal.

The Committee then met privately and considered at length the matter of costs and budget for carrying out the Criminal Justice Act. All available statistical information was reviewed upon which estimates might be based of the number of assignments of counsel that might be necessary next year, the average compensation that would probably be allowed, the probable costs of experts and investigators, and the general costs of administration through boards of advisers to the judicial councils of the circuits with a salaried officer for each and with a system for the central disbursement of funds by the Administrative Office of the U.S. Courts. The Committee resolved to submit its tentative conclusions on these matters to the Judicial Conference Committee on the Budget when it meets in Washington on Tuesday, September 22, 1964.

V. CONCLUSIONS AND RECOMMENDATIONS

In the light of the foregoing, your Committee makes the following recommendations:

1. That the Conference approve in principle using a system of central disbursement of funds appropriated to carry out the Criminal Justice Act requiring notification to the Administrative Office of every appointment as it is made, the submission of vouchers to the Administrative Office for payment containing adequate information as to the nature and extent of services rendered, both in and out of court, and the expenses incurred, with payment directly from the Administrative Office rather than locally.

2. That the Conference approve in principle the administration of the Criminal Justice Act through a framework of boards of advisers to the judicial councils of the circuits, constituted as above described, assisted by full-time, compensated officers.

3. That the Conference request the chief judge of each circuit to call a meeting as soon as practical of the chief judges of the district courts in his circuit to consider the problems of the administration of the Criminal Justice Act, the urgency of developing practical and accept-

able plans in each district, ways and means of stimulating the interest and securing the support and cooperation of the bar in every district in the implementation of the Criminal Justice Act, and to make plans for again convening to act as a panel of judges to appoint from the bar an appropriate board of advisers to the judicial council.

4. That the Conference recommend to the Chief Justice that a special session of the Judicial Conference of the United States be convened at a date as early in January 1965 as possible for the exclusive purpose of considering the problems of administration under the Criminal Justice Act.

5. That the Conference authorize the Chief Justice to supersede the Ad Hoc Committee with a larger Committee To Implement the Criminal Justice Act with some district judges included in its membership.

6. That the Conference approve the budget estimates to be developed with the Budget Committee for administering the Criminal Justice Act according to the above described principles and plan.

7. That your Ad Hoc Committee be discharged.

Respectfully submitted.

JOHN S. HASTINGS,
Chairman, Chief Judge, Seventh Circuit.

HARVEY M. JOHNSEN,
Chief Judge, Eighth Circuit.

ALFRED P. MURRAH,
Chief Judge, Tenth Circuit.

SEPTEMBER 18, 1964.

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