

**Circuit CJA Case-Budgeting Attorney
Pilot Project Evaluation (2007–2009)
Appendix**

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Introduction

In June 2004 the Judicial Conference of the United States Committee on Defender Services (the Committee) set as a high priority a cost containment suggestion by the Executive Committee of the Judicial Conference to “[e]stablish a source to provide objective case-budgeting advice for judges, in order to limit the costs of [Criminal Justice Act] representations in capital and large [non-capital] mega cases.”¹ The need for such case-budgeting assistance was driven by the recognition that many judges do not have the time, training, expertise, or tools to assess whether payment claims made by attorneys and service providers are necessary and reasonable.² To further this objective, at its June 2005 meeting, the Committee endorsed a three-year pilot project in which the Defender Services appropriation would fund up to three circuit positions to support the case-budgeting process. The Committee considered cost data showing that the relatively small percentage of Criminal Justice Act (CJA) panel attorney representations eligible for case budgeting (2.6 percent) accounted for a disproportionate amount of the case costs (approximately 33 percent), and that 10 percent of the representations accounted for approximately 57 percent of the case costs.³

The Committee envisioned that the proposed circuit position would provide additional management and accountability for high-cost cases. The Committee expected that enhanced case-budgeting support would limit increases or reduce expenditures in such cases.⁴ Because of the number of high-cost cases, the Committee opted for locating the position within the circuits instead of creating a single position at the Administrative Office of the United States Courts.

1. The suggestion was adopted by the Judicial Conference (Report of the Proceedings of the Judicial Conference of the United States, Sept. 2004, at 6–7). The Judicial Conference encourages courts to require panel attorneys to submit a proposed litigation budget in all capital habeas corpus and capital prosecution representations, and to employ case-budgeting techniques, which may include the submission of a litigation budget, in non-capital representations that appear likely to become or have become extraordinary in terms of potential costs (in excess of 300 attorney hours or total costs in excess of \$30,000 for counsel and service providers for an individual defendant). See paragraphs 640 (Report of the Proceedings of the Judicial Conference of the United States, Mar. 1997, at 23; Report of the Proceedings of the Judicial Conference of the United States, Sept. 1998, at 72) and 230.26 (Report of the Proceedings of the Judicial Conference of the United States, Sept. 2003, at 21) of the Guidelines for Administering the CJA and Related Statutes, Volume 7A, Guide to Judiciary Policy. For purposes of this analysis, the case types will be referred to as “capital,” “capital habeas,” and “mega” cases. For purposes of this report, representations are individuals (not cases) litigated under the CJA.

2. Report of the Proceedings of the Judicial Conference of the United States, Committee on Defender Services, Sept. 2005.

3. *Id.* at 2.

4. Specifically, the Committee discussed responsibilities, including to help control case costs, assist courts with budgeting, serve a national coordinating role in developing materials and policy for case budgeting, and work on case management. *Id.* at 3–4.

The Committee reported to the Judicial Conference that the position could serve the following functions with respect to case budgeting:

1. develop possible compensation standards, including presumptive rates for attorneys and other service providers;
2. maintain statistical databases on case budgeting and monitor the use of case budgeting;
3. help create, plan, and execute training programs and produce relevant education materials on case budgeting;
4. solicit assistance from judges and other judiciary personnel who are experienced in case budgeting to help develop policy guidelines for reviewing case budgets;
5. make recommendations regarding case budgets to be approved by district and appellate judges; and
6. develop cost-containment initiatives on matters affecting case budgeting.

The Committee also noted that the responsibilities and authority of the position could be adapted to the needs of the circuit served.⁵

In approving the pilot project at its September 2005 session, the Judicial Conference stated:

In order to control costs of Criminal Justice Act representations in capital cases and non-capital “mega cases,” the Committee on Defender Services recommended, and the Judicial Conference approved, a pilot project lasting up to three years wherein the Defender Services appropriation would fund up to three circuit positions to support the case-budgeting process. These positions are intended to provide objective case-budgeting advice to judges and enhance management of, and accountability for, the cases most significantly affecting the Defender Services account.⁶

In February 2006, former Administrative Office Director Leonidas Ralph Mecham sent a memo to all chief judges of the U.S. courts of appeals inviting them to apply for participation in the pilot project. Four circuits submitted applications, and the Second, Sixth, and Ninth Circuits were ultimately selected for participation. The three circuits worked with the Administrative Office to refine a draft position description for a “circuit case-budgeting attorney” that had been developed by the Administrative Office and to draft a job announcement. Advertising to fill the positions commenced in the summer of 2006.

The case-budgeting attorneys (CBAs) began their jobs at different points during 2007. Nancy Rutledge started in the Ninth Circuit in January 2007, Jerry Tritz started in the Second Circuit in March 2007, and Robert (“Bob”) Ranz started in the Sixth Circuit in April 2007.

The three circuits participating in the pilot project are very different from each other in terms of the number of districts and the number of cases eligible for budgeting. The

5. *Id.* at 3–4.

6. Report of the Proceedings of the Judicial Conference of the United States, Sept. 2005, at 21.

Second Circuit covers six judicial districts, four in New York and one each in Vermont and Connecticut. Since 1999, 41 defendants were authorized for the death penalty in the Second Circuit out of a possible 361. The Sixth Circuit is composed of nine judicial districts in four states: two districts each in Michigan, Ohio, and Kentucky and three districts in Tennessee. In the Sixth Circuit, 34 defendants were authorized for the death penalty since 1999 out of 132 who were eligible. The Ninth Circuit, by far the largest of the three pilot circuits, has 15 judicial districts in 11 states and territories: Montana, Idaho, Oregon, Nevada, Arizona, Hawaii, Alaska, Guam, and Northern Mariana Islands each have one district; Washington has two districts; and California has four districts. In the Ninth Circuit, 46 defendants were authorized for the death penalty since 1999 out of 276 who were eligible.⁷

The circuits also vary in other important ways relevant to the evaluation of the pilot project. The most important difference is the extent to which other cases eligible for budgeting were budgeted in the circuit prior to the appointment of the CBA. On February 22, 1998, the Ninth Circuit adopted a policy requiring budgeting in all capital habeas cases when a CJA panel attorney is working on them; thus, when the CBAs began their jobs in 2007, they had a working model for case budgeting.⁸ The existence of a case-budgeting program for capital habeas cases in the Ninth Circuit meant that the CBA in the Ninth Circuit was not responsible for budgeting capital habeas cases, unlike the CBA in the Sixth Circuit (the Second Circuit has not had any capital habeas representations for budgeting).

In addition, two of the judicial districts in the Ninth Circuit, California-Central and California-Northern, participated in an earlier pilot project in which judicial districts were authorized to hire CJA supervising attorneys. The CJA supervising attorneys assisted the panel attorneys with cost management of cases, including voucher review.⁹ While the Administrative Office funding for the pilot ended in 2002, both of the district courts in California continued funding the position, meaning that case budgeting of capital prosecutions and/or mega cases was occurring in at least two judicial districts in the Ninth Circuit prior to the appointment of the CBA.

The Ninth Circuit was not the only circuit with some degree of case budgeting prior to the appointment of the CBA, although the process in the Ninth Circuit was far more for-

7. Statistics on the number of defendants authorized for the death penalty were provided by the Federal Death Penalty Resource Counsel Project.

8. E-mail from Robert (“Bob”) Rucker, Assistant Circuit Executive, to Margaret Williams, Research Associate (Mar. 8, 2010, 1:13 EDT) (on file with author).

9. The 1997–2002 CJA supervising attorney pilot project placed an attorney, using centralized funds, in three district court clerk’s offices to assist in CJA panel administration and cost management, including voucher review. In its March 2002 session, the Judicial Conference endorsed the establishment of a CJA supervising attorney position in courts that would find it of value, but decided that the position would be funded using as the sole source decentralized Salaries and Expenses account funding (Report of the Proceedings of the Judicial Conference of the United States, Mar. 2002, at 23). The three pilot districts have retained the position, but only one additional district court (the District of Colorado) hired a CJA supervising attorney. (The District of Colorado left the position vacant when the incumbent was hired as the Ninth Circuit’s case-budgeting attorney under the current pilot in 2007).

mal than that in other circuits. When asked to detail the extent of budgeting the CBAs could find in their circuit, Bob Ranz (Sixth Circuit) said Magistrate Judge Nancy A. Vecchiarelli (Ohio-Northern) required budgeting for all capital habeas cases. Mr. Ranz also noted that another type of budgeting occurred when district judges would approve individual requests for experts and other service providers on a piecemeal basis.¹⁰ This piecemeal budgeting, however, was thought to be common across all circuits, and differed from the work of the CBAs. The differences in the circuits discussed above are an important consideration as we move forward with the evaluation of the pilot project.

In July 2008 the FJC developed a plan for evaluating the pilot project.¹¹ The evaluation methodology addressed two central questions. First, does the pilot help to effectively manage resources available through the Defender Services account while achieving a high quality of defense representation? Second, does the pilot provide objective case-budgeting advice to judges and CJA panel attorneys? The methodology detailed five evaluation stages, including the creation of a baseline description of the day-to-day tasks for the CBAs. The following are the stages of the evaluation:

- Descriptive Evaluation;
- Aggregate Costs of Defense Services;
- Pre-pilot Circuit Culture;
- Cohort Studies/Matched Pairs Analysis; and
- Surveys of Judges and Lawyers.

At its September 2008 session, the Judicial Conference approved a one-year extension of the pilot project to ensure its effective evaluation.¹² With this extension, the FJC's final report was to be considered by the appropriate Judicial Conference committees at their winter 2010/2011 meetings, and by the Judicial Conference at its March 2011 session. This appendix details the evaluation of the case-budgeting pilot project from 2007 to 2009, in some cases comparing the pilot period with the 2002–2006 pre-pilot era.

10. Bob Ranz, Criminal Justice Act Pilot Project Status Report, Jan. 7, 2008, at 3.

11. See the Circuit CJA Case-Budgeting Attorney Pilot Project Evaluation (2007–2009) Technical Appendix, available at <http://cwn.fjc.dcn/fjconline/home.nsf/pages/1315> [hereinafter Technical Appendix].

12. Report of the Proceedings of the Judicial Conference of the United States, Sept. 2008, at 19.

Descriptive Evaluation

Descriptive Evaluation

To gain a better understanding of the impact of the pilot project, it is first necessary to consider the day-to-day duties of the CBAs. This descriptive evaluation is drawn from site visits made by members of the research team and from several sources of information provided by the CBAs: the narrative description of functions, status reports of activities, and daily diaries (reports of actions taken or recommended in individual cases by the CBAs that had a cost impact). From these sources, a list of common responsibilities and differences in the jobs of the CBAs was created. These similarities and differences in the responsibilities of the CBAs are discussed below. In addition to their responsibilities, a number of challenges the CBAs have faced are discussed as well.

Common roles

The CBAs began their work at three different points in the year, each in a circuit with its own needs. Despite these differences, there are some common roles that all three CBAs undertake on a day-to-day basis. The three common roles can be broadly labeled CJA case manager, circuit problem solver, and CJA point person. Each of these three tasks will be discussed in more detail below.

CJA Case Manager

All three CBAs reported that budgeting takes up the greatest majority of their time—over 50% for each of them. The budgeting process involves a number of tasks, all of which take a considerable amount of time. Upon being notified of a potential case for budgeting, the CBA will contact the attorney to discuss the budgeting process. After determining if the case is appropriate for budgeting, the CBA will send the attorney the spreadsheets (discussed below in more detail) and the training materials for the budgeting process.¹³ Upon receipt of these items, the CBA will train the attorney on the budgeting process either in person or over the phone. Every attorney needs to be trained on the use of the spreadsheets, and some prefer individualized training, so a substantial amount of time can be spent on this task alone. (According to the CBAs, efforts to train large groups of attorneys have been less effective for a variety of reasons.) After the initial training there are also follow-up conversations to answer questions as attorneys begin to prepare their budgets. The daily diaries demonstrate the number of conversations required for a budget to be prepared, also indicating that a number of the conversations occur over e-mail.

Perhaps more importantly, these conversations are also an opportunity for discussions and negotiations between the attorney and the CBA over the costs of representation as well as an opportunity for the CBA to give case-budgeting advice to the attorney. All three CBAs provide a start-up budget, or seed-money, for an attorney newly assigned to a capital prosecution. The seed money, including allotments for attorney hours and obtaining service providers such as mitigation experts, allows the attorney to become familiar

13. The Excel spreadsheets are a program that allows attorneys to set forth anticipated attorney and service provider compensation and expenses, including travel.

with the case and begin preparing a defense before he or she needs to submit a budget. The conversations between the CBA and the attorney cover a variety of topics from the general costs of services, such as translation and duplication, to advice about the type of experts necessary for the defense. The CBAs also provide advice to the attorneys about whether a specific cost is likely to be approved by the circuit, given their past experience. All three CBAs approach budgeting in a similar manner: they want to help the attorney get some portion of the request even if the entire amount will not be approved, as long as the request is reasonable. Moreover, all three CBAs work with attorneys to find better rates through alternate service providers, especially for duplication, translation, and litigation support services, which are significant cost drivers.

Circuit Problem Solver

While the budgeting process takes up a substantial part of the day of the CBAs, they have other responsibilities as well. Another important role is that of circuit problem solver. All three CBAs serve as the go-to person for attorneys, court staff, and judges when there is an issue with respect to the CJA. The FJC research team saw this firsthand in the onsite visits with the CBAs. When an attorney complained about slow payment, the presiding judge called the CBA to determine the cause of the delay. The CBA then spent the next hour tracking down the status of the voucher. When an attorney asked the clerk how to get appointed as a CJA lawyer, the clerk called the CBA. When judges have questions about the reasonableness of a requested amount in a non-budgeted case, they call the CBAs. Judges and attorneys call the CBAs regarding the authorization of service providers in non-budgeted matters, including the reasonableness of hourly rates. These requests for assistance come to the CBAs frequently, and the CBA cannot plan for the kinds of questions or requests made in a given day. More importantly, many of these requests require the CBAs to drop what they are working on to deal with the more urgent matter. This responsibility for the CBAs, while not initially envisioned for the position, has become an increasing part of the job.

CJA Point Person

The final task the CBAs undertake on a daily basis is the role of CJA point person. Any questions about the CJA, including where to find the *Guide to Judiciary Policy* and how to get appointed to a case, are funneled to the CBAs. While the calls typically involve straightforward requests for information, they still constitute a substantial demand on the time of the CBA. On occasion, the calls evolve into a more complex task, such as the creation of a CJA panel attorney mentoring program. All three CBAs feel that this is an especially important task because the attorneys have few resources related to the CJA from which they can seek help.¹⁴

Different Tasks

While there are a number of common tasks for the CBAs, there are also a number of differences in their responsibilities. These differences demonstrate how the role of the CBAs has been adapted to the needs of their specific circuit.

14. Important exceptions to this are the CJA supervising attorneys in the California-Northern and Central districts.

Excess Compensation Vouchers

All of the CBAs review the excess compensation vouchers.¹⁵ While the CBAs in the Second and Sixth Circuits submit recommendations to the chief judge of the court of appeals (or delegate judge), the CBA in the Ninth Circuit was tasked with helping the panel who reviews excess compensation vouchers in tracking costs. To that end, she helped to create an Excel program that allows the judges to see how much money has already been approved and spent in the case. Reviewing excess compensation vouchers is weekly work, while creating the Excel program involved a great deal of time up front, and less weekly work (other than program maintenance). Both the Second and Sixth Circuit CBAs also spent a substantial amount of time near the beginning of their tenure clearing the backlog of excess compensation vouchers that existed in their circuits, and are now reviewing only current excess compensation vouchers.

Committee Work

Another difference in the responsibilities of the CBAs is the time they spend on committee work. The CBA in the Ninth Circuit, unlike the CBAs in the other two circuits, is charged with serving on a number of working groups and task forces related to the needs of the circuit. For example, the Ninth Circuit created a working group for discovery costs. The purpose of the working group is to identify ways to lower the costs associated with discovery. In addition to this working group, the CBA is working with the District of Nevada on creating an electronic format for the submission of budgets and vouchers that will be fully integrated with Case Management/Electronic Court Files (hereinafter “CM/ECF”). Both issues take up a substantial amount of time and effort on the part of the CBA. While the other CBAs are also working to eliminate the costs associated with discovery, their work tends to be more case-specific.

Common Work for the Pilot

A final difference in the responsibilities of the CBAs is how they divided up the common work for the pilot. The CBAs divided three major tasks among themselves: the creation of a manual, the creation of a case-budgeting checklist, and the creation of the Excel program for budgeting. The Second Circuit CBA drafted the manual for CJA attorneys. The manual is to be a guide through the case-budgeting process, including resources regarding rates for attorneys and service providers. Although the manual has not been created for the other two circuits, the Ninth Circuit has publicly posted memoranda predating the pilot that address some of the manual contents, such as presumptive or maximum rates for certain service providers. The case-budgeting checklist, drafted by the Sixth Circuit CBA, serves as a step-by-step process for case budgeting that the CBAs use in communicating with attorneys and judges. These checklists attempt to ensure that any future CBA will have a clear budgeting process in place, including policies for attorneys in developing budgets and for judges in reviewing them. The third task involved the creation of the Excel budgeting program and was undertaken by the Ninth Circuit CBA. The CBA, along with staff support, created a program for attorneys to submit a spreadsheet of case costs that allows the CBA to see in a single glance not only requested amounts, but also

15. Excess compensation vouchers are those that, because of the high dollar amount, are reviewed by the chief judge of the court of appeals (or by a delegate judge).

how much has already been spent in the case. Budgeting a case no longer requires going through several pages of narrative budget requests, and the entire cost of the case can be viewed in a single spreadsheet. The program, while loosely adapted from the capital habeas budgeting project in the Ninth Circuit, not only required a considerable investment of time initially, but also requires a great deal of maintenance by Ninth Circuit staff. If any of the CBAs or attorneys have a problem with the program, the Ninth Circuit staff deals with maintaining and correcting the programming.

While there are considerable differences in the tasks of the CBAs, it is important to keep in mind two points. First, the differences in the tasks are a function of the differences in the circuits. The Ninth Circuit is a much bigger circuit than the Second or Sixth, and may simply require more work to be done by committee, for example. The Second and Sixth Circuits, on the other hand, had a large backlog of excess compensation vouchers that needed to be cleared, and the CBA was utilized to help accomplish this task. Thus, envisioning a single role for the CBA, other than the common tasks noted above, is somewhat at odds with the variation seen in the circuits.

A second point to keep in mind is that, while there are differences in the work of the CBAs, all tasks have the goal of leading to more consistent and efficient management of cases. All three circuits use a single person, the CBA, to provide advice to the judges reviewing excess compensation vouchers, though the circuits still differ in the number of judges reviewing excess compensation vouchers. A single source of advice for reviewing claims should result in more consistent review, and should lead to fewer complaints by attorneys about what they regarded as arbitrary reductions in vouchers prior to the appointment of the CBA.¹⁶ Additionally, attorneys now have two sources of information, the manual and the CBAs themselves, about the case-budgeting process, and the CBAs have a checklist to ensure consistency and a spreadsheet to more accurately assess the costs of cases and the use of resources. One could argue the appointment of the CBAs led to a far more streamlined review process, allowing for more effective management of resources under the CJA.

Common Challenges

In addition to the similarities and differences in the responsibilities of the CBAs, there are some common challenges with which the CBAs must deal. The challenges are discussed below to the extent that they may affect evaluation of the pilot, and not with an eye to laying blame or finding a solution.

Late Cases

All three CBAs report that they are often asked to budget a case once it is already well advanced in the litigation process. Late-budgeted cases present two problems, according to the CBAs. First, as noted above, a case budgeted late in the litigation process is more of an administrative burden than early budgeted cases. Service providers and attorneys have grown accustomed to case costs being paid at a particular rate and without the additional burden of creating an electronic budget. When the case moves to budgeting there

16. This is a question that was assessed in the interview portion of the evaluation.

can be resistance by attorneys and service providers to the change. The second problem is that a considerable amount of money is often spent in the case prior to budgeting and is often the impetus for budgeting, so the savings in the case is reduced by the late stage at which budgeting began.

Late budgeting can affect the evaluation in two ways. First, determining the savings in the case will be more difficult because of the money spent prior to budgeting. Second, the surveys of attorneys may reveal more negative attitudes by some about budgeting because of the implementation of budgeting late in the litigation process.

Skeptical Attorneys

The CBAs identified a second challenge related to the first: the skepticism of some attorneys about the budgeting process. The CBAs said that the skepticism of attorneys comes from two sources: a lack of familiarity with Excel and an aversion to change more generally. While training of the attorneys by the CBA helps with their understanding of Excel, it does not completely alleviate the problem. Some attorneys still delay in the submission of a budget and put together a narrative budget after several weeks of delay.¹⁷ The CBAs say that this puts them in a difficult position: either accept additional delay and require the attorney to submit an Excel budget, or move forward with the narrative budget, making it more cumbersome to manage the case. The CBAs differ in the extent to which they chose one path over another.

According to the CBAs, the aversion to change generally is a more substantial problem. In some ways the frustration the attorneys express to the CBA is understandable. Not only do they need to be familiar with the CJA and criminal defense more generally, but they must also know the logistics of submitting the budget in a specific format. Moreover, the budgeting process differs by circuit, and sometimes by district. Some attorneys have expressed to the CBAs that this is yet another area, and another series of requirements, with which they must be familiar, and learning both is a distraction from their primary responsibility of defending the client.

The CBAs say that while attorneys' frustration with the budgeting process is likely to come through in the survey responses of some attorneys, there are some factors that may lessen this frustration. First, to the extent that the CBAs have created a more efficient process for payment of vouchers, attorneys may see a benefit to the new budgeting process. A second factor that may lessen frustration is the turnover in CJA attorneys. Newly appointed CJA attorneys are not aware of another process for budgeting cases, so they may be less likely to complain about the budgeting process. The turnover in CJA counsel, however, raises another consideration. The more cases attorneys have litigated, the wider the range of their opinions on budgeting is likely to be. It will therefore be important to ask attorneys how much litigation experience they have as well as experience with budgeting.

17. A narrative budget is a statement of the request for money written in prose. These statements typically included a description of what resources would be used, but hourly rates, service provider names, and more specific information about case costs were included inconsistently.

Slow Submission of Budgets and Vouchers

The CBAs identified a third challenge, not unrelated to the issue above: the slow submission of budgets and vouchers by counsel. The delay on the part of counsel, while a topic for exploration in the surveys, is most likely the result of a lack of familiarity with the program, a lack of willingness to invest the time in the budget process, and a general lack of available time. Whatever the reason, the slow submission of budgets and vouchers is problematic because without updated information on case costs, the CBAs encounter difficulties in effectively managing resources. The CBAs have the additional burden of tracking down the missing information. The lack of information not only affects the impact the CBA can have on the case, but also makes assessing that impact even more difficult to accomplish.

Paperwork

A fourth challenge that the CBAs say affects the impact of the CBAs is the amount of paperwork involved in budgeting and case management. The substantial amount of paperwork inhibits the ability of the CBAs to budget more cases. Processing and reviewing the budgets and vouchers is already a paper-intensive task, and all three CBAs are receiving administrative help with maintaining up-to-date case files.¹⁸ While administrative help has allowed the CBAs to get caught up on paperwork, the impact of the CBAs was less than it could have been if they had had the help to budget more cases earlier in the life of the pilot.

Death Certification

The CBAs also report that the late notification of death certification by the Department of Justice (DOJ) inhibits the ability of the CBA and the attorney to know the proper way to budget a case. If the case is not certified death, a different set of budgeting forms is used and a different rate is paid in the case, though such cases were rare in the study. Neither the DOJ, the attorney appointed, nor the judge is consistently notifying the CBA about the decision, meaning that once the CBA is notified, the case has advanced, and the CBA will have to catch up the budgeting process to reflect the certification decision. The lack of information from DOJ about death certification, however, is an issue over which the CBAs have little control.

Role Conflict

The final challenge the CBAs identified is the conflicting demands on their time. CBAs must work directly with judges and other court staff, the Office of Defender Services (ODS), and CJA attorneys. At times these three entities or groups may come into conflict with one another, creating role conflict for the CBAs. This conflict can take two forms. First is the fact that there is a finite amount of time in the day to address the needs of these three groups, and the CBAs must decide how to allocate time among them. Second, and perhaps more compelling, the CBAs can be placed in the awkward position of needing to mediate the disagreements between judges and attorneys. For example, when judges reduce the approved amounts for vouchers, attorneys often turn to the CBA for

18. While budgets and vouchers are largely electronic (PDF or Excel files), paper records are maintained for all cases as a backup.

explanation of the reduction. This can create an uncomfortable position for the CBA, who must continue to work with both groups in the current cases, as well as in future cases.

It may be the case that little can be done to manage the conflicting responsibilities and interactions of the CBAs. However, the potential for conflicting demands on their time is something to consider as we move forward in the evaluation.

Conclusions

The descriptive look at the responsibilities of the CBAs points to three important conclusions as the evaluation of the pilot moves forward. First, and perhaps most important, is that, in terms of functions, there are three different CBAs. The tasks of the CBA evolved and adapted to the needs of each circuit. This means that while there are some tasks common to all CBAs, the day-to-day responsibilities of each CBA can be quite different. As the evaluation moves forward, then, it is important to consider variation among pilot circuits as well as variation between pilot and non-pilot circuits.

A second conclusion is related to the process of budgeting itself. Prior to the implementation of the pilot, changes to voucher amounts were made by court staff and judges, and the changes were reflected on the paper vouchers themselves. Now, however, the budgeting process often involves negotiations between the attorney and the CBA, and often these negotiations occur prior to the submission of the Excel budget. This difference is important for two reasons. First, this means that there may be no paper record of the changes made to a budget prior to the submission of the Excel program unless the specific changes are recorded in the daily diaries. Second, the CBAs noted that, when cases stay within their total budgeted amounts, the vouchers used to pay counsel and other service providers are not reviewed in the way they were prior to the appointment of the CBA, consolidating review in the hands of the CBAs and making the pre-budget submission negotiations an important source of information about containing costs. Any estimate of the costs saved in cases must then come from the daily diaries, but the discussion of savings should include appropriate caveats. There is no way to determine how representative the information from the daily diaries is of all conversations about case costs, nor can the accuracy of all of the information be verified. Assessments of cost saving may be more limited in nature than would be ideal for evaluation of the pilot.

A final conclusion to keep in mind is the increasing and unintended importance of the circuit-problem-solver role for the CBAs. Because this aspect of their job was not envisioned initially, the evaluation of the pilot will have to be adapted to ensure that the impact the CBAs are having in this area is included in the evaluation. The survey and interviews should include specific questions related to this task, and the matched pairs analysis should focus on the use of resources within the cases to determine if cases are litigated differently with the help of a CBA.

Pre-Pilot Circuit Culture

Overview of Pre-Pilot Circuit Culture Analysis

To gain a better sense of the practices within circuits regarding changes to CJA vouchers, the FJC drew a random sample of 100 cases with excess compensation vouchers from districts in the Second Circuit.¹⁹ We chose to analyze the data from the Second Circuit both because of its representativeness as a busy circuit and because of the cooperation and generosity of Circuit Executive Karen Milton, who agreed to commit staff resources to assist with the data collection efforts. As a circuit with a substantial number of excess compensation vouchers, the Second Circuit demonstrates how many changes can be made to vouchers by judges who have heavy dockets.²⁰ It is our understanding that changes to CJA vouchers in the Second Circuit before the appointment of the case-budgeting attorney (CBA) may have been modest, given other caseload demands and priorities.

For these 100 cases, the circuit approved payment on 1,143 CJA 20, 21, 30, and 31 vouchers.²¹ The staff at the Second Circuit entered all information available on the vouchers into an Excel database. In total there were 1,062 vouchers for which data could be collected: 305 CJA 20 vouchers, 674 CJA 21 vouchers, 15 CJA 30 vouchers, and 68 CJA 31 vouchers.²²

Below we discuss the preliminary results from these sampled vouchers, including the changes to in-court and out-of-court compensation amounts, travel and other requested amounts, the median time it takes a voucher to work through the review process, and the median number of service days billed. It should be noted that the discussion below does not use the amount the court staff or judge wrote on the voucher (whether it is dollars or hours), but the *difference* between the attorney requested amount and the staff or judge entered amount. Therefore, we discuss changes to vouchers in terms of the adjustments made, either additions to the voucher request or reductions. Ultimately, the four types of vouchers will be discussed in pairs; CJA 20s are compared with 30s, and 21s are compared with 31s, so that similar types are discussed together. Changes made as a result of

19. The cases were sampled from a report generated by staff in ODS. The report listed all vouchers requiring circuit approval. From that list we selected all cases initiated in 2003 and then chose a random sample of 100 cases stratified by district. Using cases initiated in 2003 allows us to have the greatest amount of information on a case while still allowing us to examine changes to the case over the period 2003–2007.

20. See Administrative Office of the United States Courts, *Federal Judicial Caseload Statistics: March 31, 2008*. Washington, D.C., 2008.

21. The CJA-0020 (hereinafter “CJA 20”) form was for the appointment and authority to pay court-appointed counsel. The CJA-0021 (hereinafter “CJA 21”) form was the authorization and voucher for expert and other services. The CJA-0030 (hereinafter “CJA 30”) form was for the appointment of and authority to pay court-appointed counsel in death penalty proceedings. The CJA-0031 (hereinafter “CJA 31”) form was the ex parte request for authorization and voucher for expert and other services in a death penalty proceeding.

22. For 7% of the vouchers in the sample, the staff members were unable to find an electronic or paper copy of the forms. Some vouchers were dropped for additional reasons; see n.23.

withheld amounts, or paying withheld amounts, are not included in the results discussed below.²³

The results shed light on the CJA voucher review processes employed in the circuit prior to the appointment of the CBA. The most informative comparison, however, will require a random sample of CJA vouchers reviewed in the circuit since the appointment of the CBA. Such a comparison is beyond the scope of this analysis.

CJA Forms 20 and 30

In-Court Attorney Compensation Changes by Court Staff²⁴

A useful starting point for comparison is to consider the mathematical/technical and additional review changes by court staff to the in-court compensation amounts attorneys submitted. Table 1 shows any modifications to the vouchers for mathematical/technical reasons.

Table 1: In-Court Compensation: Mathematical/Technical Changes by Court Staff

	CJA 20	CJA 30
Added more than \$300 to voucher	2 (22%)	0
Added between \$201 and \$300 to voucher	0	0
Added between \$101 and \$200 to voucher	2 (22%)	0
Added \$100 or less to voucher	2 (22%)	0
Reduced voucher \$100 or less	1 (11%)	0
Reduced voucher between \$101 and \$200	0	0
Reduced voucher between \$201 and \$300	1 (11%)	0
Reduced voucher more than \$300	1 (11%)	0
Total Number of Vouchers	9	0

Because only 9 of the 248 CJA 20 vouchers and none of the CJA 30 vouchers involved a mathematical/technical adjustment, the conclusions made here are tenuous. Some general patterns do emerge, however. Most mathematical/technical changes to a CJA 20 voucher resulted in an addition to the in-court compensation amount. Across all the CJA 20 vouchers with modifications, the median change was an addition of \$45.00.²⁵ The range of adjustments to vouchers spanned from a reduction of \$585 to an addition of \$1,397. If we split all adjustments into two categories, reductions and additions, separate medians provide a more complete understanding of the outcomes of the mathematical/technical

23. Some courts withhold between 20% and 33% of a grand total from a voucher payment until the end of a case. Instances of withholds and repayments were randomly distributed throughout the sample of CJA 20 vouchers only. The 57 vouchers with these withholds are excluded from the analysis.

24. Anytime a member of the court staff, including judges, wrote in the same amount for review as was requested, the difference calculated was zero. Because this report analyzes changes to vouchers, such amounts are not included in the calculations below.

25. For this stage of the analysis, medians will be reported instead of means because of the small sample size.

changes. The median *reduction* to a voucher was \$283.50, while the median *addition* to a voucher was \$149.70.

It is worth noting that the mathematical/technical changes to a CJA 20 voucher were not always the result of a change in the hours the attorney submitted—only 6 vouchers (out of 248) had any change to the hours, ranging from a reduction of 6.5 hours to the addition of 7.5 hours. The relatively small changes in the hours suggest that the changes to the in-court amounts are the result of changes to the rate of pay or the overall in-court compensation amount more generally.

A second type of change to the in-court compensation amount involved additional review changes by court staff. Table 2 shows the additional review changes made to CJA 20 and CJA 30 vouchers in the sample.

Table 2: In-Court Compensation: Additional Review Changes by Court Staff

	CJA 20	CJA 30
Added more than \$300 to voucher	0	0
Added between \$201 and \$300 to voucher	1 (20%)	0
Added between \$101 and \$200 to voucher	1 (20%)	0
Added \$100 or less to voucher	2 (40%)	0
Reduced voucher \$100 or less	1 (20%)	0
Reduced voucher between \$101 and \$200	0	0
Reduced voucher between \$201 and \$300	0	0
Reduced voucher more than \$300	0	0
Total Number of Vouchers	5	0

Again, the small number of vouchers in each category is reason for caution in the interpretation of these preliminary results. Staff were more likely to add to in-court compensation (4 vouchers saw additions, while 1 was reduced), and the median change to a voucher was an increase of \$31.50. The range of adjustments extended from a reduction of \$10.80 to an addition of \$11,703.50.²⁶ Splitting the additional review changes into those that reduced and those that added amounts to the CJA vouchers is again useful. The single *reduction* to a CJA 20 voucher was \$10.80, while the median *addition* was \$98.25.

Conclusion

The limited conclusions of the changes by court staff to in-court compensation suggest two things. First, both mathematical/technical adjustments and additional review changes increased in-court compensation amounts. Again, the small number of vouchers receiving

26. While the voucher did not say that the payment was for a withheld amount, the addition of over \$11,000 may be payment of a withheld amount. However, because only vouchers that said withheld amounts were being repaid were excluded, this amount is included with the results here.

either kind of change suggests more vouchers need to be sampled and analyzed before this conclusion can be reached with any significant degree of confidence.

This last point suggests another conclusion: mathematical/technical or additional review changes by court staff were a relatively rare method for controlling the use of resources within a case. There are probably two reasons for this. First, in-court compensation is relatively well-defined; both court hours and rates of pay are clearly defined amounts rather than estimates. In considering the out-of-court compensation amounts and changes below, one should expect to see both more changes and more variation in the changes made by court staff, as there is discretion both in requesting the amounts and in changing them. Second, the changes by court staff are only the first stage in the voucher review process; both district and circuit judges are left to provide additional adjustment to in-court compensation. Thus, looking across stages of review, one should expect to see more changes, as well as a greater range of changes, to the vouchers at later stages.

Out-of-Court Attorney Compensation by Court Staff

A second area for evaluating voucher review involves the out-of-court compensation attorneys receive. Unlike the in-court compensation, out-of-court hours saw a fair amount of mathematical/technical adjustment (see Table 3). Fourteen percent of the CJA 20 vouchers and no CJA 30 vouchers had adjustments to out-of-court hours.

Table 3: Out-of-Court Hours: Mathematical/Technical Changes by Court Staff

	CJA 20	CJA 30
Added more than 10 hours to voucher	2 (6%)	0
Added 10 hours or less to voucher	12 (33%)	0
Reduced voucher 10 hours or less	21 (58%)	0
Reduced voucher more than 10 hours	1 (3%)	0
Total Number of Vouchers	36	0

The range of adjustments to the hours of out-of-court compensation extends from a reduction of 15.3 hours to the addition of 30.1 hours.²⁷ The median adjustment to out-of-court hours was a reduction of six minutes. When we compare reductions and additions separately, the median reduction was 36 minutes and the median addition was 35 minutes. The changes to the out-of-court hours, however, do not entirely explain the variation in adjustments to the compensation amounts.

Mathematical/technical changes occurred more often for out-of-court compensation than for in-court compensation, but only 17% of CJA 20 vouchers and no CJA 30 vouchers saw this kind of change (see Table 4). Once again, the relatively small numbers are reason for caution in drawing any definitive conclusions.

27. Three vouchers had the amount of compensation written in for the hours. Those three vouchers were excluded from this discussion.

**Table 4: Out-of-Court Compensation:
Mathematical/Technical Changes by Court Staff**

	CJA 20	CJA 30
Added more than \$100 to voucher	7 (16%)	0
Added \$100 or less to voucher	11 (26%)	0
Reduced voucher \$100 or less	12 (28%)	0
Reduced voucher more than \$100	13 (30%)	0
Total Number of Vouchers	43	0

The majority of the mathematical/technical changes involved close to \$100, either as an addition or as a reduction to the out-of-court compensation amount. The range of mathematical/technical adjustments was quite substantial. The greatest reduction in a voucher was \$1,800, while the largest addition was \$10,613.00. The median change for the mathematical/technical adjustment was a reduction of \$9.00. By splitting the mathematical/technical adjustments into two categories and calculating a median for each group, we find that the median reduction was \$121.50, while the median addition was \$83.65.

Mathematical/technical change of out-of-court compensation amounts was more common than additional review changes by court staff. Only 2% of CJA 20 and no CJA 30 vouchers saw this kind of change (see Table 5).

Table 5: Out-of-Court Compensation: Additional Review Changes by Court Staff

	CJA 20	CJA 30
Added more than \$100 to voucher	3 (50%)	0
Added \$100 or less to voucher	0	0
Reduced voucher \$100 or less	2 (33%)	0
Reduced voucher more than \$100	1 (17%)	0
Total Number of Vouchers	6	0

Again, the range of values for additional staff changes is wide, with the highest reduction cutting \$1,083.60 from out-of-court compensation and the highest addition increasing a voucher by \$10,890.20. The median adjustment for additional review of out-of-court amounts was an addition to the CJA vouchers of \$39.00. Splitting adjustments into additions and reductions provides a better understanding of the changes to vouchers. The median reduction was \$36.00, while the median addition was \$3,957.00.

Conclusion

As expected, out-of-court hours and compensation saw more adjustment than in-court, both in terms of the number of vouchers with this kind of change and the range of adjustments made. However, court staff members are just the first level of review, and one should expect even more adjustments to vouchers at later stages of the review process.

Travel and Other Requested Amounts

Travel and other requested amounts are the final expenses for which CJA attorneys request payment. Most CJA 20s and 30s saw no adjustment for either type of request, and this is true for both mathematical/technical adjustments and the additional review changes (see Table 6). Additional review changes to these requests were, in fact, so rare (three additional review adjustments for travel across CJA 20 and CJA 30 vouchers, four adjustments for other requested amounts on CJA 20 vouchers only, and none on CJA 30s) that a table of adjustments was not needed. Instead, the bulk of this discussion will center on the mathematical/technical adjustments to travel and other requested amounts. Of the CJA 20s, 25 (10%) saw some mathematical/technical adjustment for travel, while one CJA 30 (7%) had such an adjustment for travel.

Table 6: Travel Expenses: Mathematical/Technical Changes by Court Staff

	CJA 20	CJA 30
Added more than \$10 to voucher	6 (24%)	0
Added \$10 or less to voucher	8 (32%)	0
Reduced voucher \$10 or less	8 (32%)	1 (100%)
Reduced voucher more than \$10	3 (12%)	0
Total Number of Vouchers	25	1

The median mathematical/technical adjustment to a travel request was an addition of \$0.40, and the adjustments ranged from a reduction of \$34.90 to an addition of \$1,605.77. It was more common for the mathematical/technical adjustment to add to a travel request and for the additions to be for a greater amount than the reductions. The median addition to a travel request was \$6.68, while the median reduction was \$0.90. The single mathematical adjustment to a CJA 30 voucher was a reduction of \$10.

Of the three CJA 20 vouchers in which additional review changes were made to travel requests, one was a reduction of \$130.25 and the other two were additions of \$10.93 and \$15.55. The single additional review adjustment of a CJA 30 travel amount was a reduction of \$231.02.

Mathematical/technical adjustments to other requested amounts were even less common than those for travel. No CJA 30 vouchers and only 11 CJA 20 vouchers (4%) saw adjustments to other requested amounts (see Table 7).

The range of mathematical/technical adjustments for other requested amounts is from a reduction of \$602.00 to an addition of \$186.18. The median adjustment was an addition of \$10.00. When we break adjustments into two categories, we find that the median reduction was \$576.02 and the median addition was \$30.50.

Table 7: Other Expenses: Mathematical/Technical Changes by Court Staff

	CJA 20	CJA 30
Added more than \$10 to voucher	5 (45%)	0
Added \$10 or less to voucher	3 (27%)	0
Reduced voucher \$10 or less	0 (0%)	0
Reduced voucher more than \$10	3 (27%)	0
Total Number of Vouchers	11	0

The four additional review adjustments for other requested amounts occurred on CJA 20 vouchers only. Three adjustments resulted in reductions ranging from \$0.50 to \$170. One adjustment was an addition of \$856.40. No CJA 30 vouchers had additional review adjustments.

Conclusion

In comparing adjustments to travel expenses and adjustments to other expenses, we can conclude that other requested amounts were reduced by greater amounts than travel requests. This finding makes intuitive sense, as there is more discretion in the request for additional funds not related to compensation or travel, and thus more discretion in the changes to these requests.

Adjustments to Grand Totals by Court Staff

One final area of the voucher that court staff members review before sending it to the district judge is the grand total. Not only do the staff members check the voucher for mathematical/technical mistakes, but they also provide additional review changes to the grand total, allowing them to modify the total amount of a request.

In some ways, one might expect more vouchers to have this kind of change; mathematical/technical adjustments to the grand total can reflect any changes made to compensation, travel, or other amounts discussed above. It is not surprising, then, that 56 CJA 20s (23%) included these types of adjustments. Only one CJA 30 voucher included a mathematical/technical adjustment of the grand total (see Table 8).

Table 8: Grand Total: Mathematical/Technical Changes by Court Staff

	CJA 20	CJA 30
Added more than \$100 to voucher	9 (16%)	0
Added \$100 or less to voucher	20 (36%)	0
Reduced voucher \$100 or less	19 (34%)	1 (100%)
Reduced voucher more than \$100	8 (14%)	0
Total Number of Vouchers	56	1

Not only was mathematical change to grand totals common, but the range of changes was large. The highest reduction to a voucher was \$1,377, while the highest addition was \$965.68. The median change was an addition of \$0.47. When we split the evaluation of mathematical/technical adjustments into reductions and additions we find that the median reduction was \$27.60 while the median addition was \$36.00. The single adjustment to a CJA 30 voucher was a reduction of \$10.

The second type of adjustment made by court staff to the grand totals is the additional review change. Additional review change was less common than the mathematical/technical adjustments discussed above. In fact, it appears from the data that only 14 CJA 20 vouchers (6%) and one CJA 30 voucher included these adjustments (see Table 9).

Table 9: Grand Total: Additional Review Changes by Court Staff

	CJA 20	CJA 30
Added more than \$200 to voucher	2 (14%)	0
Added between \$101 and \$200 to voucher	1 (7%)	0
Added \$100 or less to voucher	4 (29%)	0
Reduced voucher \$100 or less	1 (7%)	0
Reduced voucher between \$101 and \$200	3 (21%)	0
Reduced voucher more than \$200	3 (21%)	1 (100%)
Total Number of Vouchers	14	1

The adjustments ranged from a reduction of \$1,094.40 to an addition of \$847.40, and reductions and additions were equally frequent. The median adjustment to a voucher was a reduction of \$12.08. When we compare additions and reductions separately we find that the median reduction was \$195.00, while the median addition was \$100.00. The single adjustment to a CJA 30 voucher was a reduction of \$231.02.

To better understand the changes made by court staff, we estimated the size of the change as a percentage of the grand total. The median mathematical change to a CJA 20 voucher added less than 1% to the grand total, and the range was from a reduction of 25% to an addition of 11%. Reductions alone ranged from 25% of the grand total to less than 1%, with a median of 1%. Additions made during mathematical review ranged from less than 1% to 11%, with a median of a 1% change to the grand total.

Additional review changes to the grand total ranged from a reduction of 20% to an addition of 16%, with a median change reducing the grand total by less than 1%. Additions ranged from less than 1% to 16%, with a median of 8%. Reductions ranged from 20% to less than 1%, with a median change reducing the grand total by 3%.

For CJA 30 vouchers, the only change for mathematical review reduced the grand total by less than 1%. The only change for additional review to a CJA 30 voucher reduced the grand total by 2%.

Conclusion

While court staff have the first opportunity for adjusting the use of resources in cases, their changes are more likely to be of a limited nature. It is not surprising that out-of-court hours are more likely to be adjusted than in-court hours, but additional changes by court staff overall were uncommon. As stated above, however, this is most likely the result of staff being involved in the first stage of review. Aspects of the evaluation to come may shed light on whether court staff members provide primarily technical review of the CJA vouchers, while judges are more likely to make more significant adjustments following their reviews.

Review by District Judges

Just as court staff members review all types of expenses, district judges also have the opportunity to review vouchers. Discussed below is our analysis of the data from the Second Circuit regarding the changes made by district judges to CJA 20 and CJA 30 vouchers.

In-Court Compensation Amounts

While district judges do not make mathematical/technical adjustments, they do review and adjust the overall requested in-court compensation amounts. Adjustments here are slightly more common than changes by court staff, and the range of adjustments is higher. Of the CJA 20 vouchers, 22 (9%) included these types of adjustments, and 2 CJA 30 vouchers involved these adjustments (see Table 10).

Table 10: In-Court Compensation: Changes by District Judges

	CJA 20	CJA 30
Added more than \$300 to voucher	8 (36%)	2 (100%)
Added between \$201 and \$300 to voucher	3 (14%)	0
Added between \$101 and \$200 to voucher	3 (14%)	0
Added \$100 or less to voucher	5 (23%)	0
Reduced voucher \$100 or less	0	0
Reduced voucher between \$101 and \$200	0	0
Reduced voucher between \$201 and \$300	1 (5%)	0
Reduced voucher more than \$300	2 (9%)	0
Total Number of Vouchers	22	2

The in-court compensation adjustments made by district judges ranged from a reduction of \$600.00 to an addition of \$5,877.55. The median overall adjustment was an addition of \$90.00. The median reduction was \$45.80, and the median addition was \$1,036.00. For CJA 30 vouchers, both adjustments were additions, adding \$3,375 to one voucher and

\$7,812.50 to another. The changes district judges are making may simply echo changes made by the court staff. This possibility will be examined below.

Conclusion

While district judges change in-court compensation amounts slightly more often than court staff do, the changes by district judges result in much more significant adjustments to the CJA vouchers. In part the differences are probably the result of the different types of review at each stage. Court staff are modifying vouchers more often for mathematical/technical reasons, while judges are looking at the overall amount claimed on the vouchers. Thus, the different perspective of each group may prompt different types of scrutiny in review. Surveys and interviews should provide more detail on this point.

Out-of-Court Compensation Amounts

By far the most common adjustments for district judges were changes to the out-of-court compensation amounts. Sixty-two CJA 20 vouchers (25%) and one CJA 30 voucher saw this type of adjustment (see Table 11).

Table 11: Out-of-Court Compensation: Changes by District Judges

	CJA 20	CJA 30
Added more than \$300 to voucher	11 (18%)	0
Added between \$201 and \$300 to voucher	1 (2%)	0
Added between \$101 and \$200 to voucher	2 (3%)	0
Added \$100 or less to voucher	13 (21%)	0
Reduced voucher \$100 or less	15 (24%)	1 (100%)
Reduced voucher between \$101 and \$200	6 (10%)	0
Reduced voucher between \$201 and \$300	3 (5%)	0
Reduced voucher more than \$300	11 (18%)	0
Total Number of Vouchers	62	1

The range of adjustments to CJA 20 vouchers was substantial. The greatest reduction to out-of-court compensation for a CJA 20 was \$5,000.00, while the greatest addition was \$36,834. Reductions were more common for CJA 20 vouchers than were additions, but the additions were of a higher dollar value. The median change for district judges was a reduction of \$4.00. The median reduction was \$141.40, while the median addition was \$180.00. The only district judge adjustment to CJA 30 vouchers was a reduction of \$0.50.

Conclusions

Changes to out-of-court compensation by district judges were more common than changes by court staff, and the changes were more substantial in dollar amounts. The differences here are not all that surprising given that district judges may be more likely than staff to use their discretion in adjusting out-of-court amounts.

Consistent with changes by court staff, however, district judge changes to out-of-court compensation are more common than changes to in-court compensation, and result in bigger changes to dollar amounts.

Travel and Other Requested Amounts

Changes to travel requested amounts were slightly more common among district judges than among court staff. Of the 248 CJA 20 vouchers, 30 vouchers (12%) included district judge changes to these amounts. In contrast, one CJA 30 included these adjustments (see Table 12).

Table 12: Travel Expenses: Changes by District Judges

	CJA 20	CJA 30
Added more than \$10 to voucher	6 (20%)	0
Added \$10 or less to voucher	11 (37%)	0
Reduced voucher \$10 or less	9 (30%)	0
Reduced voucher more than \$10	4 (13%)	1 (100%)
Total Number of Vouchers	30	1

The median adjustment to a CJA 20 travel request was an addition of \$0.65. Additions were more common than reductions, and additions had a higher range. The median reduction was \$0.70, while the median addition was \$5.40. The adjustments ranged from a reduction of \$130.25 to an addition of \$602.84. The single adjustment to a CJA 30 voucher was a reduction of \$231.02.

Other requested amounts were rarely changed by district judges. Only 18 CJA 20 vouchers (7%) and one CJA 30 voucher had this kind of change (see Table 13).

Table 13: Other Expenses: Changes by District Judges

	CJA 20	CJA 30
Added more than \$10 to voucher	10 (56%)	1 (100%)
Added \$10 or less to voucher	3 (17%)	0
Reduced voucher \$10 or less	0	0
Reduced voucher more than \$10	5 (28%)	0
Total Number of Vouchers	18	1

Adjustments to the CJA 20 vouchers ranged from a reduction of \$576.02 to an addition of \$5,492.52. The median adjustment was an addition of \$14.33. The median reduction was \$100.00, while the median addition was \$17.86. The small number of adjustments to other requested amounts, however, suggests that the adjustments should be interpreted with caution. The lone adjustment to a CJA 30 voucher was an addition of \$12.

Conclusions

Consistent with changes by court staff, adjustments by the district judges to travel and other requested amounts are relatively rare. However, district judges were more likely to *add* to the amounts than reduce them for both types of expenses. While little confidence can be placed in such small numbers of vouchers, the pattern is worthy of greater exploration in the future.

Grand Total Amount Review

The final adjustment made by district court judges is to the grand total requested by CJA appointed attorneys. These adjustments were common for CJA 20 vouchers, which is not surprising given they reflect all the adjustments discussed above plus any additional adjustments made by the district judge. Eighty-four CJA 20 vouchers (34%) included adjustments to the grand total. Consistent with the analysis to this point, CJA 30 voucher change was rare; only two vouchers were changed (see Table 14).

Table 14: Grand Total: Changes by District Judges

	CJA 20	CJA 30
Added more than \$200	7 (8%)	0
Added between \$101 and \$200 to voucher	8 (10%)	0
Added \$100 or less to voucher	27 (32%)	0
Reduced voucher \$100 or less	29 (35%)	1 (50%)
Reduced voucher between \$101 and \$200	6 (7%)	0
Reduced voucher more than \$200	7 (8%)	1 (50%)
Total Number of Vouchers	84	2

As Table 14 shows, any adjustment to the grand total, whether reduction or addition, was likely to be \$100 or less. That said, the range of adjustments was substantial, from a reduction of \$3,117.00 to an addition of \$847.40. The median adjustment made was an addition of \$0.60. In splitting adjustments into additions and reductions, we find that the median addition was \$57.00 while the median reduction was \$20.19. The two adjustments to CJA 30 vouchers were both reductions—one for \$10 and one for \$231.02.

To understand the changes made by district judges, we estimated the size of the change as a percentage of the grand total. We found that for CJA 20 vouchers, the median change for a district judge was less than 1%, and the changes ranged from a reduction of 30% to an addition of 15%. For additions alone, the median change was 1% with a range from less than 1% to 15%. For reductions, the median change was 1% of the grand total, while the range was from less than 1% to 30%.²⁸ For CJA 30 vouchers, the changes made by district judges ranged from a reduction of less than 1% to a reduction of 2%, with a median change of 1%.

28. One voucher approved an amount when there was no claimed amount. That voucher is not included in the discussion of percentage change, as it is not possible to divide by zero.

The number of adjustments to grand totals by district judges is a bit misleading. While it may appear as if district judges make even more changes than court staff do, the changes above include when the district judge was agreeing with the change by court staff. To account for the overlap of these changes, and to see how often district judges make changes on their own, we excluded any vouchers in which the district judge and court staff agreed about the change.²⁹ The results are shown in Table 15.

**Table 15: Grand Total: Changes by District Judges
Different from Changes by Court Staff**

	CJA 20	CJA 30
Added more than \$200 to voucher	3 (13%)	N/A
Added between \$101 and \$200 to voucher	2 (9%)	N/A
Added \$100 or less to voucher	4 (17%)	N/A
Reduced voucher \$100 or less	11 (48%)	N/A
Reduced voucher between \$101 and \$200	2 (9%)	N/A
Reduced voucher more than \$200	1 (4%)	N/A
Total Number of Vouchers	23	N/A

The changes by district judges ranged from a reduction of \$3,117.00 to an addition of \$675.00. The median change was a reduction of \$0.10, but splitting changes into separate categories for additions and reductions shows the median reduction was \$3.75 while the median addition was \$200.00. The results show that district judges make a few additional changes to vouchers, even after they approve changes by court staff.

By estimating the change as a percentage of the grand total we can better determine the scope of changes by district judges to the grand total. The median change was a reduction of less than 1%, and the changes ranged from a reduction of 31% to an addition of 15%. Splitting additions and reductions into two groups, we find that the median reduction was less than 1%, and the range was from less than 1% to 31%. For additions, the median change was 1% with a range from less than 1% to 15%.

Conclusion

While district judges made a number of changes to grand totals, they often echoed changes made by court staff. The unique changes made by district judges, however, could be for substantial amounts. It is clear from the above discussion that significant changes to vouchers can come from the review of the grand totals by both court staff and the district judges. Judges, however, tend to follow the lead of court staff in the review process. Moreover, while the range of changes can be substantial, median changes are modest.

²⁹ We excluded any change by district judges that equaled the change by court staff. This resulted in no CJA 30 vouchers with changes by district judges.

Review by Circuit Judges

The final stage in the CJA voucher review process involves changes by the circuit judges. It would be an understatement to say that adjustment of any of the subtotals by circuit judges was quite rare. Only four CJA 20 vouchers included an adjustment to in-court compensation, out-of-court compensation, travel, or other requested amounts.³⁰ Grand totals, however, reveal more substantial adjustments made by circuit judges. The following examination of changes by circuit judges will focus exclusively on modification to the grand totals.

Grand Total Amount Review

Changes to the grand total by the circuit judge were fairly common. Of the 248 CJA 20 vouchers, 61 (25%) included an adjustment to the grand total by a circuit judge (see Table 16).

Table 16: Grand Total: Changes by Circuit Judges

	CJA 20	CJA 30
Added more than \$200 to voucher	11 (18%)	N/A
Added between \$101 and \$200 to voucher	5 (8%)	N/A
Added \$100 or less to voucher	20 (33%)	N/A
Reduced voucher \$100 or less	16 (26%)	N/A
Reduced voucher between \$101 and \$200	3 (5%)	N/A
Reduced voucher more than \$200	6 (10%)	N/A
Total Number of Vouchers	61	N/A

The range of adjustments to grand totals was quite substantial. The highest reduction in a CJA 20 voucher was \$3,117, while the greatest addition to a voucher was \$24,579. The median adjustment to a CJA 20 voucher was an addition of \$1.80. When we split adjustments into additions and reductions, we find that the median reduction was \$85.00 and the median addition was \$63.00.

To better understand the changes made by circuit judges, we estimated the change as a percentage of the grand total. For CJA 20 vouchers, the median change was less than 1% of the grand total, ranging from a reduction of 31% to an addition of 10%. The median addition increased the amount of the grand total by 1%, while the median reduction lowered the total by 1%. Reductions ranged from less than 1% to 30%. Additions, on the other hand, ranged from less than 1% to 10%.

Table 16 accounts for both unique changes made by circuit judges and those in which the circuit judge agreed with a change made initially by court staff. To gain a better sense of the types of changes circuit judges were making on their own, we examined the data

30. These four vouchers had six total changes. No data were entered for review of CJA 30 vouchers by circuit judges.

again after removing any voucher where the change by the circuit judge was the same as the change by the court staff. The results are listed in Table 17.

**Table 17: Grand Total: Changes by Circuit Judges
Different from Changes by Court Staff**

	CJA 20	CJA 30
Added more than \$200	6 (22%)	N/A
Added between \$101 and \$200 to voucher	1 (4%)	N/A
Added \$100 or less to voucher	3 (11%)	N/A
Reduced voucher \$100 or less	10 (37%)	N/A
Reduced voucher between \$101 and \$200	2 (7%)	N/A
Reduced voucher more than \$200	5 (19%)	N/A
Total Number of Vouchers	27	N/A

Table 17 demonstrates that circuit judges were more likely to reduce than add to CJA 20 vouchers, but additions to vouchers did occur. The adjustments ranged from a reduction of \$3,117 to an addition of \$24,579; the median adjustment was a reduction of \$0.31. Splitting adjustments into additions and subtractions, we find the median addition was \$236.95, while the median reduction was \$47.00.

To better understand the unique changes made by circuit judges, we calculated the change as a percentage of the grand total. The median change reduced the voucher by less than 1%, ranging from a reduction of 31% to an addition of 10%. Additions alone ranged from less than 1% to 10% , and the median was 2%. Reductions had a smaller median, less than 1%, but a larger range, from less than 1% to 31%.

Conclusions

As did changes to grand totals by district judges, changes by circuit judges resulted in some significant adjustments to dollar amounts, both as a result of adding to and subtracting from the amount requested by the attorney. One noteworthy difference between circuit and district judges, however, is that changes by district judges occurred more often, but district judges were often echoing changes made by court staff. Both district and circuit judges made few unique changes to grand totals.

Time for Voucher Review³¹

To gain a more complete picture of the voucher review process it is useful to consider the length of time it takes to review a voucher. By looking at the time it took a voucher to work through the review process before CBAs were appointed, we can better understand the practices in the circuit at that time. This discussion would prove particularly useful if the results were compared with a sample of vouchers from the period after the appoint-

31. Ultimately it would be useful to consider the time between the circuit judge’s signature and the actual voucher payment, but such information is not available at this time. Some extreme outliers (over 30,000 days) were removed from the discussion of time.

ment of the CBAs. Such a comparison would give us more information about the impact of the CBAs, but it is beyond the scope of this analysis.

Time Between End of Service Period and Submission

Perhaps one of the more interesting aspects of considering the length of voucher review is how long it takes for a voucher to be prepared and submitted to the court. Of the 248 CJA 20 vouchers, 97 had usable service periods and usable voucher submission dates (see Table 18).³²

Table 18: Days Between the End of the Service Period and Voucher Submission

	CJA 20	CJA 30
Signed the same day	1 (1%)	N/A
Between 1 and 10 days	12 (12%)	N/A
Between 11 and 20 days	11 (11%)	N/A
Between 21 and 30 days	8 (8%)	N/A
Between 31 and 40 days	8 (8%)	N/A
Between 41 and 50 days	4 (4%)	N/A
Between 51 and 60 days	4 (4%)	N/A
Between 61 and 70 days	4 (4%)	N/A
Between 71 and 80 days	3 (3%)	N/A
Between 81 and 90 days	7 (7%)	N/A
Between 91 and 100 days	1 (1%)	N/A
More than 100 days	34 (35%)	N/A
Median No. of Days	64	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	1,402	N/A
Total Number of Vouchers	97	N/A

While there is less to delay the submission of these vouchers to the court than there is with CJA 21 or 31 vouchers, such as the need to consult with service providers, attorneys do not appear to submit vouchers close to the end of the service period. The range of days is substantial, from a minimum of 0 to a maximum of 1,402.³³ The median number of days between the end of service and submission of the voucher is 64 days, over two months. The most commonly occurring category also suggests a long time to voucher submission, over 100 days between the end of the service period and submitting the

32. Because the submission date is from a time stamp, there are many vouchers missing this information. Many courts did not time stamp the vouchers, while others made pdf files of the front of a voucher, when the time stamp was on the back. No CJA 30 vouchers had this information. Any vouchers that did not have two usable dates were excluded from this analysis.

33. Clearly there are substantial delays in the time periods discussed in this section. Additional consideration must be given to the lengthy delays before further explanation can be given.

voucher. Perhaps one of the best ways to speed up the payment process, then, is to encourage attorneys to submit vouchers as soon as the service period ends.

Time Between Attorney Signature and Submission

While we do not have exact information on the date of preparation, the date on which the attorney signs the voucher approximates the time period closest to preparation and therefore can be used to calculate the approximate time necessary to prepare a voucher. While no CJA 30 vouchers included this information, 95 CJA 20s included usable dates for attorney signature and voucher submission (see Table 19).

Table 19: Days Between Attorney Signature and Voucher Submission

	CJA 20	CJA 30
Signed the same day	3 (3%)	N/A
Between 1 and 10 days	59 (62%)	N/A
Between 11 and 20 days	8 (8%)	N/A
Between 21 and 30 days	8 (8%)	N/A
Between 31 and 40 days	3 (3%)	N/A
Between 41 and 50 days	3 (3%)	N/A
Between 51 and 60 days	1 (1%)	N/A
Between 61 and 70 days	0	N/A
Between 71 and 80 days	4 (4%)	N/A
Between 81 and 90 days	1 (1%)	N/A
Between 91 and 100 days	1 (1%)	N/A
More than 100 days	4 (4%)	N/A
Median No. of Days	6	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	1,136	N/A
Total Number of Vouchers	95	N/A

Once again, the time between the attorney signing the voucher and submitting it to the court is longer than one might expect, and the range is similar to the time period discussed above. While the attorney can sign and submit the voucher on the same day, the number of days can range as high as 1,136. The median number of days between attorney signature and submission is 6.

Time Between Attorney and District Judge Signatures

The next time period to consider is that between the attorney signature and the signature of the district judge after review. Most CJA 20 vouchers, 223 (90%), and a substantial majority of CJA 30 vouchers, 10 (67%) included usable dates for this time period (see Table 20).

Table 20: Days Between Attorney and District Judge Signatures

	CJA 20	CJA 30
Signed the same day	3 (1%)	0
Between 1 and 10 days	54 (24%)	5 (50%)
Between 11 and 20 days	65 (29%)	2 (20%)
Between 21 and 30 days	32 (14%)	2 (20%)
Between 31 and 40 days	11 (5%)	0
Between 41 and 50 days	9 (4%)	0
Between 51 and 60 days	7 (3%)	0
Between 61 and 70 days	8 (4%)	0
Between 71 and 80 days	5 (2%)	1 (10%)
Between 81 and 90 days	1 (0%)	0
Between 91 and 100 days	6 (3%)	0
More than 100 days	22 (10%)	0
Median No. of Days	19	13.5
Minimum No. of Days	0	7
Maximum No. of Days	1,477	71
Total Number of Vouchers	223	10

By the time the district judge signs the voucher it has gone through two stages of review: both court staff and the district judge have reviewed the voucher. The range of the days for CJA 20 vouchers is again substantial, from a low of zero to a high of 1,477, but it was most common that the voucher was signed by the district judge within a month of the attorney signing it. Likewise, CJA 30 vouchers were most often signed by the district judge within 10 days, and the range of days was from a low of 7 to a high of 71.

Time Between Submission and District Judge Signature

To better understand the speed at which the court is moving, we considered the time between the submission of the voucher and the signature of the district judge after review. Because CJA 30s did not have submission dates, that comparison is not made here. However, 89 of the CJA 20 vouchers (36%) included usable dates for both submission and district judge signature (see Table 21).

Table 21: Days Between District Judge Signature and Voucher Submission

	CJA 20	CJA 30
Signed the same day	0	N/A
Between 1 and 10 days	29 (33%)	N/A
Between 11 and 20 days	37 (42%)	N/A
Between 21 and 30 days	10 (11%)	N/A
Between 31 and 40 days	5 (6%)	N/A
Between 41 and 50 days	2 (2%)	N/A
Between 51 and 60 days	0	N/A
Between 61 and 70 days	1 (1%)	N/A
Between 71 and 80 days	1 (1%)	N/A
Between 81 and 90 days	0	N/A
Between 91 and 100 days	0	N/A
More than 100 days	4 (4%)	N/A
Median No. of Days	12	N/A
Minimum No. of Days	1	N/A
Maximum No. of Days	1,473	N/A
Total Number of Vouchers	89	N/A

It is clear from Table 21 that if there is a slow time to payment it is not the result of a delay in getting the district judge's signature. The median number of days between the submission of the voucher and the district judge signing it was almost two weeks (12 days). The range demonstrates just how broad the time span is between submission and district judge signature, from a low of a single day to a high of 1,473 days. The most commonly occurring category may be more representative here, given the small number of vouchers with usable dates. Vouchers were most likely to be signed between 11 and 20 days after submission.

Time Between District and Circuit Judge Signatures

The final stage of review is between the district judge's and the circuit judge's signing the voucher. CJA 30s did not include all the information to make a comparison of the time between the two signatures. A substantial number of CJA 20s (122 vouchers, or 49%) did include the relevant information. The median time between signatures is shown in Table 22.

Table 22: Days Between District and Circuit Judge Signatures

	CJA 20	CJA 30
Signed the same day	4 (3%)	N/A
Between 1 and 10 days	7 (6%)	N/A
Between 11 and 20 days	23 (19%)	N/A
Between 21 and 30 days	28 (23%)	N/A
Between 31 and 40 days	29 (24%)	N/A
Between 41 and 50 days	9 (7%)	N/A
Between 51 and 60 days	9 (7%)	N/A
Between 61 and 70 days	3 (2%)	N/A
Between 71 and 80 days	4 (3%)	N/A
Between 81 and 90 days	0	N/A
Between 91 and 100 days	1 (1%)	N/A
More than 100 days	5 (4%)	N/A
Median No. of Days	30	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	1,133	N/A
Total Number of Vouchers	122	N/A

The median number of days here is greater than the time between submission and district judge signature, but it is still a month. The number of days ranged from a low of zero to a high of 1,133. Most often, though, vouchers took between 31 and 40 days to move from the district judge to the circuit judge.

Conclusions

While attorneys may complain about the slow processing of vouchers prior to the appointment of the CBA, the greatest delay appears to be the result of slow voucher submission. In fact, once the voucher is submitted, it goes through review by court staff, district judges, and circuit judges in about 2 months. Of course, we should note that without the information on when the payment was issued, we are unable to comment on whether there is additional delay after circuit judge review. Ultimately, this information would be useful as well. Additionally, by considering a separate analysis of vouchers paid since the appointment of the CBA, one could determine if the review process is even faster now.

Days of Service

One final piece of information to be gleaned from the vouchers we sampled is the median number of days of service for which attorneys are billing. We calculated this median by first determining the total number of days for which an attorney billed, taken from the service beginning and ending dates provided on the voucher. Of the 248 CJA 20 vouch-

ers, 238 had usable days of service. All 15 of the CJA 30s had usable days of service. Table 23 summarizes the information.

Table 23: Days of Service Provided

	CJA 20	CJA 30
Between 1 and 100 days	101 (42%)	13 (87%)
Between 101 and 200 days	22 (9%)	0
Between 201 and 300 days	21 (9%)	2 (13%)
Between 301 and 400 days	29 (12%)	0
Between 401 and 500 days	15 (6%)	0
Between 501 and 600 days	18 (8%)	0
Between 601 and 700 days	10 (4%)	0
Between 701 and 800 days	9 (4%)	0
Between 801 and 900 days	4 (2%)	0
Between 901 and 1,000 days	5 (2%)	0
More than 1,000 days	4 (2%)	0
Median No. of Days	187	30
Minimum No. of Days	1	24
Maximum No. of Days	1,671	237
Total Number of Vouchers	238	15

The range of the total number of days was considerable. The minimum number of days of service billed for a CJA 20 was one, while the maximum number of days billed was 1,671. For the CJA 30s, the minimum number of days billed was 24, while the maximum was 237. The medians for the two types of vouchers differed as well. For CJA 20s, the median number of days was 187, while the median for the CJA 30s was 30. It is clear from the range that some attorneys are waiting to submit vouchers until they are well involved in the case. This slow submission of vouchers is likely to have changed with the appointment of the CBA. Budgets are submitted quarterly in most cases, allowing for prompt payment and helping the attorney maintain case costs.

Conclusions About CJA 20 and CJA 30 Voucher Review

While the results here are preliminary, they do help to guide other aspects of the evaluation. Out-of-court compensation amounts see more frequent adjustment and more substantial adjustment than any other requests for expense payment. The more clearly defined the rules for voucher requests are, the less the adjustments are necessary. This is demonstrated by the contrast between the number and amount of changes to requests for in-court compensation and travel expenses and the number and amount of changes to out-of-court compensation and other requested amounts.

The timing of voucher review also prompts some additional questions to be considered in other aspects of evaluation. The time between the end of a service period and preparation or submission of a voucher is fairly substantial, and often longer than the time it takes a voucher to go through the entire review process. Thus, slow payment may be the result of slow submission of the vouchers.

One potential area in which the CBAs may have a substantial impact is the time to submission. Not only are the CBAs a resource to help attorneys prepare vouchers, but the budgeting process may expedite submission both by making the submission process clearer to CJA attorneys and by CBAs encouraging attorneys to submit vouchers in a timely manner. Such speculation, of course, would have to be tested with the separate sample of vouchers since the appointment of the CBAs but could also be explored with surveys of the CJA attorneys.

In terms of the overall process of voucher review, it appears as if adjustments by court staff may be modest, both in number and amount, while changes by district judges are more common. Circuit judges, however, appear to make changes less often than their district judge counterparts overall, but make more unique changes to vouchers. In the other stages of evaluation, especially the survey and interview process, we can better assess the approach each type of reviewer takes to examining and changing vouchers.

Somewhat surprising was the finding that for many stages of review, additions to voucher requests could be as common as reductions. This finding, above all others, suggests that the voucher review process, even prior to the appointment of CBAs, was not simply about reducing overall costs, but about achieving the best possible management of cases and use of resources from the Defender Services account. That said, the range of many of the adjustments, especially by both district and circuit judges, is worthy of additional consideration. It is possible that the appointment of a single CBA (as opposed to a variety of judges) may lead to more consistent review of vouchers, and thus more consistent requests by counsel. Such a hypothesis, however, can only be confirmed by additional research.

Review of CJA 21 and 31 Vouchers

While there are many similarities between forms 20 and 21 and forms 30 and 31, the differences are substantial enough to require a separate analysis. Experts do not have rates determined by statutory authority, nor is the number of hours required for an investigator to work on a case the same as that for lead counsel. Therefore, not only are the rates requested different for attorneys and experts, but the changes made to such requests are likely to be different as well. Judges may be less familiar with expert services and thus less likely to alter amounts requested for these service providers.

The comparisons below will generally follow the same format as those above, considering changes by court staff first, then those by district and circuit judges. One substantial difference is the fact that experts do not have different in-court and out-of-court compensation rates, meaning the examination below will consider all compensation first, and then look at travel and other expenses.

As the comparisons below will show, changes to CJA 21s and 31s by both court staff and judges are even less common than changes to the CJA 20s and 30s. Later stages of evaluation will have to explore the causes for this as well as whether the culture in the Second Circuit has changed with the appointment of the CBA.

Compensation Review by Court Staff

A useful starting point for comparison is the mathematical/technical and additional review changes made by court staff to the compensation amounts for service providers. Table 24 shows any modifications to the vouchers for mathematical/technical reasons.

Table 24: Compensation: Mathematical/Technical Changes by Court Staff

	CJA 21	CJA 31
Added more than \$300 to voucher	0	1 (100%)
Added between \$201 and \$300 to voucher	0	0
Added between \$101 and \$200 to voucher	1 (50%)	0
Added \$100 or less to voucher	0	0
Reduced voucher \$100 or less	1 (50%)	0
Reduced voucher between \$101 and \$200	0	0
Reduced voucher between \$201 and \$300	0	0
Reduced voucher more than \$300	0	0
Total Number of Vouchers	2	1

The two changes made to CJA 21 vouchers were relatively modest when compared with the changes made to CJA 20 and 30 vouchers. The one reduction eliminated \$85 from a request, while the lone addition added \$200. The single mathematical change to a CJA 31 voucher was an addition of \$500.

A second type of change to the compensation amount involved additional review changes by court staff. Table 25 shows the additional review changes made to CJA 21 and CJA 31 vouchers in the sample.

The overwhelming majority of the changes to CJA 21 vouchers were reductions. The changes ranged from a reduction of \$260 to an addition of \$108 (the only change that resulted in an addition). The median change to a voucher was a reduction of \$92.00. Splitting changes into additions and reductions, we find that the median reduction to a voucher was also \$92.00. There were no changes to the CJA 31 vouchers for additional review of compensation amounts.

Table 25: Compensation: Additional Review Changes by Court Staff

	CJA 21	CJA 31
Added more than \$300 to voucher	0	0
Added between \$201 and \$300 to voucher	0	0
Added between \$101 and \$200 to voucher	1 (7%)	0
Added \$100 or less to voucher	0	0
Reduced voucher \$100 or less	12 (80%)	0
Reduced voucher between \$101 and \$200	1 (7%)	0
Reduced voucher between \$201 and \$300	1 (7%)	0
Reduced voucher more than \$300	0	0
Total Number of Vouchers	15	0

Conclusion

As was found for CJA 20 and 30 vouchers, for CJA 21 and 31 vouchers there were relatively few modifications to compensation amounts either for mathematical/technical review or for additional review. In fact, when comparing the proportion of vouchers with changes across the two groups, we see that CJA 21 and 31 vouchers were less likely to be adjusted (4% of CJA 20s had mathematical review changes and 2% had additional review changes, while less than 1% of CJA 21 vouchers had mathematical review changes and 2% had additional review changes). Additionally, while changes to CJA 20 vouchers usually added to attorneys' vouchers, changes to CJA 21 vouchers almost always subtracted from experts' requests. This result is perhaps even more interesting when we consider that the median request by counsel, whether for in-court or out-of-court compensation, was higher than the median compensation request for experts.³⁴ Further examination of this difference will need to be done in later stages of analysis.

Travel and Other Requested Amounts

The final requests for service providers include those for travel and other requested amounts. It was extremely rare for court staff to make adjustments to either type of request for mathematical or other reasons. Tables 26 and 27 show all changes made to travel and other requested amounts.

Mathematical/technical review adjustments to travel requested amounts for CJA 21 vouchers were made eight times (about 1% of all CJA 21 vouchers). Of those eight adjustments, seven added to the requested amount. The single reduction was for \$1.12, and the highest addition was for \$34.92. The median adjustment for mathematical/technical review added \$13.98 to a voucher. If we remove the single reduction and calculate the median addition to a voucher, we find it to be \$14.00.

34. The median in-court compensation claim for counsel, before adjustment, was \$445.50, and the median out-of-court claim was \$4,374.00. The median compensation request for an expert was \$178.00.

Table 26: Travel Expenses: Mathematical/Technical Changes by Court Staff

	CJA 21	CJA 31
Added more than \$10 to voucher	5 (63%)	0
Added \$10 or less to voucher	2 (25%)	3 (100%)
Reduced voucher \$10 or less	1 (13%)	0
Reduced voucher more than \$10	0	0
Total Number of Vouchers	8	3

For CJA 31 vouchers, all adjustments were additions to the voucher, and they ranged from \$0.48 to \$1.20, making the median adjustment \$0.73.

Additional review changes to travel amounts were as common as mathematical/technical adjustments, and additions were again more common than reductions. The adjustments made to CJA 21 vouchers ranged from a reduction of \$40.50 to an addition of \$91.56. The median adjustment was an addition of \$20.32, but by splitting the adjustments into two groups we find the median reduction to be \$26.17 while the median addition is \$30.92. There were no adjustments made by court staff to CJA 31 vouchers for additional review of travel requests.

Table 27: Travel Expenses: Additional Review Changes by Court Staff

	CJA 21	CJA 31
Added more than \$10 to voucher	5 (63%)	0
Added \$10 or less to voucher	1 (13%)	0
Reduced voucher \$10 or less	0	0
Reduced voucher more than \$10	2 (25%)	0
Total Number of Vouchers	8	0

*Adjustments to Other Requests by Court Staff*³⁵

Adjustments to other requested amounts for either mathematical/technical review or additional review were even more rare than the changes discussed above. Three CJA 21 vouchers had mathematical/technical adjustments (less than 1% of all CJA 21 vouchers), and no CJA 31 vouchers had mathematical/technical changes. Additionally, no CJA 21 vouchers involved additional review changes, and one CJA 31 voucher had an adjustment for additional review. The three mathematical/technical adjustments to CJA 21 vouchers all reduced the voucher by \$14. The single adjustment to the CJA 31 voucher for additional review added \$151.75.

Conclusions

Changes to travel and other requested amounts were less common for CJA 21 and 31 vouchers than for CJA 20 and 30 vouchers. As with the CJA 20 and 30 vouchers, the

35. Because these changes were so rare, a table was not created for them.

changes to travel requests were more likely to add to the requested amount than reduce it. The amounts of the changes, however, are rather small in comparison with those for CJA 20 and 30 vouchers. The reason for these differences is worthy of further explanation in later stages of evaluation.

Adjustments to Grand Totals by Court Staff

The final opportunity for court staff to review voucher requests before sending the vouchers to the district court judges is review of the grand total. As with all requested amounts, the total undergoes mathematical/technical review and additional review.

As with CJA 20 and 30 vouchers, there should be more change to grand totals of CJA 21 and 31 vouchers than any other type of change discussed because grand total changes reflect all other adjustments made to this point, as well as any additional changes by court staff (see Tables 28 and 29). As will be discussed below, while there are few adjustments for mathematical reasons, grand totals saw a modest amount of additional review change.

Table 28: Grand Total: Mathematical/Technical Changes by Court Staff

	CJA 21	CJA 31
Added more than \$100 to voucher	0	0
Added \$100 or less to voucher	1 (50%)	3 (100%)
Reduced voucher \$100 or less	1 (50%)	0
Reduced voucher more than \$100	0	0
Total Number of Vouchers	2	3

For the CJA 21 vouchers, there was one addition for \$6.23 and a reduction for \$85 (less than 1% of the CJA 21 vouchers were adjusted). The median adjustment is a reduction of \$39.39.

For the CJA 31 vouchers, all three adjustments (4% of all CJA 31 vouchers) were additions, ranging from a low of \$0.48 to a high of \$1.20. The median adjustment was an addition of \$0.50.

Table 29: Grand Total: Additional Review Changes by Court Staff

	CJA 21	CJA 31
Added more than \$200 to voucher	1 (4%)	0
Added between \$101 and \$200 to voucher	1 (4%)	0
Added \$100 or less to voucher	5 (22%)	0
Reduced voucher \$100 or less	13 (57%)	0
Reduced voucher between \$101 and \$200	1 (4%)	1 (100%)
Reduced voucher more than \$200	2 (9%)	0
Total Number of Vouchers	23	1

Additional review changes to grand totals were more common, at least among CJA 21 vouchers (3% of CJA 21 vouchers). The median change to a CJA 21 voucher was a reduction of \$85.00, and adjustments ranged from a reduction of \$261.50 to an addition of \$1,170. By splitting the adjustments into two groups, we find the median addition was \$36.19 while the median reduction was \$92.00. The single change to a CJA 31 voucher reduced the grand total by \$128.52.

To gain a better understanding of the changes court staff made to grand totals in CJA 21 vouchers, we estimated the staff change as a percentage of the total request. The two changes for mathematical review changed the grand total by reducing one voucher by 52% and adding less than 1% to another voucher, a substantial range of change.

Additional review changes to CJA 21 vouchers were more common. The median change for additional review reduced the grand total by 12%, and changes ranged from a reduction of 52% to an addition of 1%. Reductions alone ranged from 52% to 1% of a grand total, with a median change of 52%. Additions had a much smaller range, from less than 1% to 1% of a change to the grand total, and a median change of less than 1%.

For CJA 31 vouchers, all three mathematical changes resulted in adding less than 1% to the grand total. The only change for additional review reduced the grand total by 3%.

Conclusion

As with the CJA 20 and 30 vouchers, changes to CJA 21 and 31 vouchers by court staff were rather limited. Court staff modified no more than 4% of CJA 21 vouchers and no more than 3% of CJA 31 vouchers, a notable difference from the portions of CJA 20s and 30s that were modified. For CJA 21s and 31s, court staff were more likely to adjust grand totals through additional review, while for CJA 20s and 30s, mathematical change was more common. On the whole, the low number of changes may be because the court staff are the first to review the vouchers, leaving room for adjustments by district judges.

Review by District Judges

Just as court staff members review all types of expenses, district judges also have the opportunity to review vouchers. Discussed below is our analysis of the data from the Second Circuit regarding the changes by district judges to CJA 21 and CJA 31 vouchers.

Compensation Amounts

While district judges do not make mathematical/technical adjustments to compensation rates, they do review and adjust the overall requested compensation amount. Changes to compensation amounts by district judges were more common than changes by court staff for both CJA 21 and 31 vouchers. Of the CJA 21 vouchers, 5% had this kind of change, while 9% of CJA 31 vouchers had these adjustments (see Table 30).

Table 30: Compensation: Changes by District Judges

	CJA 21	CJA 31
Added more than \$300 to voucher	1 (3%)	0
Added between \$201 and \$300 to voucher	0	0
Added between \$101 and \$200 to voucher	1 (3%)	0
Added \$100 or less to voucher	8 (25%)	2 (33%)
Reduced voucher \$100 or less	20 (63%)	3 (50%)
Reduced voucher between \$101 and \$200	0	1 (17%)
Reduced voucher between \$201 and \$300	0	0
Reduced voucher more than \$300	2 (6%)	0
Total Number of Vouchers	32	6

For the CJA 21 vouchers, the range of adjustments was quite large, from a reduction of \$5,000 to an addition of \$1,013.60. The median adjustment to a compensation amount was a reduction of \$21.50. Splitting the adjustments into two groups, we find the median addition to a compensation amount to be \$18.00 while the median reduction was \$88.50.

For the CJA 31 vouchers, the range of adjustments was much smaller, from a reduction of \$128.52 to an addition of \$0.50. The median adjustment to a CJA 31 voucher was a reduction of \$0.50. Splitting adjustments into additions and reductions shows the median addition was \$0.49 and the median reduction was \$0.50.

Conclusion

Comparing the changes to CJA 21 and 31 vouchers by district judges with changes by court staff, we find that judges are not only making more adjustments to vouchers, but also changing the compensation requests by greater amounts. Both types of change tend to result in the reduction of requests.

Travel and Other Requested Amounts

Changes to travel requested amounts were slightly more common among district judges than court staff. Of the 674 CJA 21 vouchers, 11 vouchers (2%) had district judge changes in these amounts. In contrast, one CJA 31 included these adjustments.

Contrary to changes to compensation requests, changes to travel requests by district judges resulted in additions to the amounts more often than reductions. The adjustments ranged from a reduction of \$1.12 (the only reduction) to an addition of \$59.99. The median adjustment was an addition of \$14.00. Removing the single reduction, we find the median addition is the same. The single reduction to a CJA 31 changed the travel request by \$0.04.

Table 31: Travel Expenses: Changes by District Judges

	CJA 21	CJA 31
Added more than \$10 to voucher	8 (73)	0
Added \$10 or less to voucher	2 (18%)	0
Reduced voucher \$10 or less	1 (9%)	1 (100%)
Reduced voucher more than \$10	0	0
Total Number of Vouchers	11	1

*Other Requested Amounts Review by District Judges*³⁶

Other requested amounts had less change by district judges than travel requests did. Only 3 CJA 21 vouchers (less than 1%) and no CJA 31 vouchers had any change. The adjustments included a reduction of \$500 and two additions, one for \$104.40 and the other for \$0.39.

Conclusions

District judges did not change travel and other requested amounts as often as they did compensation. The frequency of changes district judges made, however, is similar to the frequency of changes made by court staff. Changes were both rare and modest in scope.

Grand Total Amount Review

The final adjustment made by district judges is to the grand total requested for service providers. These adjustments were fairly common for CJA 21 vouchers, which is not surprising given they reflect all the adjustments discussed above plus any additional adjustments made by the district judge. Thirty-six CJA 21 vouchers (5%) included adjustments to the grand total. Consistent with the analysis to this point, CJA 31 voucher change was rare: only six vouchers had such adjustments.

Table 32: Grand Total: Changes by District Judges

	CJA 21	CJA 31
Added more than \$200 to voucher	1 (3%)	0
Added between \$101 and \$200 to voucher	2 (6%)	0
Added \$100 or less to voucher	12 (33%)	2 (33%)
Reduced voucher \$100 or less	18 (50%)	3 (50%)
Reduced voucher between \$101 and \$200	1 (3%)	1 (17%)
Reduced voucher more than \$200	2 (6%)	0
Total Number of Vouchers	36	6

36. Because there were so few adjustments, a table was not created.

The changes made by district judges to grand totals in CJA 21 vouchers ranged from a reduction of \$261.50 to an addition of \$1,170. Reductions were more common than additions, but additions were for larger amounts. The median adjustment was a reduction of \$5.50. Splitting adjustments into two groups, we find that the median addition was \$10.00 while the median reduction was \$92.00.

The changes made by judges to CJA 31 vouchers ranged from a reduction of \$128.52 to an addition of \$0.50. The median adjustment to a CJA 31 voucher was a reduction of \$0.50. The median addition was \$0.49, and the median reduction was \$0.50.

In looking at the changes district judges made to grand total requests as a proportion of the total requested amount in CJA 21s, we find some interesting results. Changes ranged from a reduction of 52% to an addition of 7%, and the median was a reduction of 2%. For additions alone, the median was less than 1%, and the range was from less than 1% to 7%. Reductions had a larger range, from less than 1% to 52%, and the median was 52%.

Changes to CJA 31 vouchers ranged from a reduction of 3% to an addition of less than 1%. The median for additions was less than 1%, and the range was consistently less than 1%. For reductions, the range spanned from less than 1% to 3%, and the median was less than 1% of the grand total.

Once again, the changes to grand totals made by district judges include instances of the district judge signing off on changes to grand totals made by court staff. To gain a sense of the unique changes made to vouchers by district judges, we examined the data again after removing any changes by district judges that were equal to changes by court staff. Table 33 shows the results.

**Table 33: Grand Total: Changes by District Judges
Different from Changes by Court Staff**

	CJA 21	CJA 31
Added more than \$200 to voucher	0	0
Added between \$101 and \$200 to voucher	1 (8%)	0
Added \$100 or less to voucher	6 (50%)	0
Reduced voucher \$100 or less	5 (42%)	3 (100%)
Reduced voucher between \$101 and \$200	0	0
Reduced voucher more than \$200	0	0
Total Number of Vouchers	12	3

The changes made by district judges beyond those made by court staff demonstrate that district judges were slightly more likely to add to a voucher than reduce it. The median change was an addition of \$0.04, while the range of changes was from a reduction of \$92.00 to an addition of \$178.00. Splitting the changes into additions and reductions, we

find the median reduction to be \$4.00 while the median addition was \$5.00. All three CJA 31 changes reduced the voucher by \$0.50.

Considering the change to the grand total as a percentage puts the changes by district judges into greater context. The median change was an addition of less than 1%, with a range from a reduction of 52% to an addition of 7%. Splitting additions and reductions apart, we find that the median addition was 1%, with a range from less than 1% to 7%. For reductions, the median reduction was 1%, with a range from less than 1% to 52%.

Conclusion

Changes to grand totals in CJA 21 vouchers by district judges were more common and for larger amounts than changes to these totals by court staff, but judges often echoed court staff. The results found here are similar to those found for CJA 20 and 30 vouchers. Future stages of evaluation will have to examine whether the difference in changes continues to be a part of court culture.

Review by Circuit Judges

The final stage in the CJA voucher review process involves changes by the circuit judges. It would be an understatement to say that changes to any of the subtotals by circuit judges were quite rare. Only three CJA 21 vouchers included an adjustment to compensation, travel, or other requested amount.³⁷ Grand totals, however, reveal more substantial adjustments made by circuit judges. The following examination of changes by circuit judges will focus exclusively on modification to the grand totals.

Grand Total Amount Review

Changes to the grand total by the circuit judge were fairly common when compared with other types of change for CJA 21 vouchers. Of the 674 CJA 21 vouchers, 26 (4%) included an adjustment to the grand total by a circuit judge (see Table 34).

Table 34: Grand Total: Changes by Circuit Judges

	CJA 21	CJA 31
Added more than \$200 to voucher	0	N/A
Added between \$101 and \$200 to voucher	1 (4%)	N/A
Added \$100 or less to voucher	6 (23%)	N/A
Reduced voucher \$100 or less	16 (62%)	N/A
Reduced voucher between \$101 and \$200	1 (4%)	N/A
Reduced voucher more than \$200	2 (8%)	N/A
Total Number of Vouchers	26	N/A

37. Two compensation changes reduced the requested amount by \$85, and one addition to another requested amount added \$2,795.67. There were no changes to CJA 31 vouchers by circuit judges.

The changes made to CJA 21 vouchers by circuit judges spanned from a reduction of \$261.50 to an addition of \$108. The median adjustment was a reduction of \$88.00, and reductions were over twice as common as additions. Splitting the adjustments into two groups, we find that the median reduction was \$92.00, while the median addition was \$35.21.

In looking at the changes made by circuit judges as a proportion of the total requested amount, we find that the median adjustment made by circuit judges reduced the amount requested by 5%. The changes ranged from a reduction of 52% to an addition of 1%. Reductions alone ranged from 52% to 1%, with a median of 52%. Additions ranged from less than 1% to 1%, with a median of less than 1%.

Once again, it is important to consider the changes circuit judges made to vouchers apart from those in which circuit judges echoed changes made by court staff. Table 35 shows the results for the unique circuit judge changes.

**Table 35: Grand Total Changes by Circuit Judges
Different from Changes by Court Staff**

	CJA 21	CJA 31
Added more than \$200 to voucher	0	N/A
Added between \$101 and \$200 to voucher	0	N/A
Added \$100 or less to voucher	1 (20%)	N/A
Reduced voucher \$100 or less	4 (80%)	N/A
Reduced voucher between \$101 and \$200	0	N/A
Reduced voucher more than \$200	0	N/A
Total Number of Vouchers	5	N/A

Once changes made by court staff are removed, few changes made by circuit judges remain. The changes were more likely to be reductions than additions, and the median change was a reduction of \$6.00. The changes ranged from a reduction of \$92.00 to an addition of \$3.00. The single addition added \$3.00 to a voucher, while the median for reductions was \$49.00.

As a percentage of the grand total, the median change by a circuit judge was a reduction of 2%, with a range from a reduction of 52% to an addition of 1%. Reductions alone ranged from 1% to 52%, with a median reduction of 27%. The only addition to a voucher changed the grand total by 1%.

Conclusions

Changes to CJA 21 vouchers are both less common and for smaller amounts than changes to CJA 20 vouchers. Changes to CJA 31 vouchers are about as uncommon as changes to CJA 30 vouchers. Perhaps lack of familiarity with professions other than the law is driving the difference between changes to attorney vouchers and changes to expert vouchers. Later stages of evaluation can explore this more fully.

*Time for Voucher Review*³⁸

To gain a more complete picture of the voucher review process it is useful to consider the length of time necessary to review a voucher. By looking at the time it took a voucher to work through the review process before CBAs were appointed, we can better understand the practices in the circuit at that time. This discussion will prove particularly useful if a sample of vouchers from the period after the appointment of the CBAs was gathered so that we can compare the time for review for each sample. Such a comparison will give us more information about the impact of the CBAs.

Time Between End of Service Period and Submission

Perhaps one of the more interesting aspects of considering the length of voucher review is when we consider how long it takes for a voucher to be prepared and submitted to the court. Of the 674 CJA 21 vouchers, 209 had usable service periods and usable voucher submission dates (see Table 36).³⁹

Table 36: Days Between the End of the Service Period and Voucher Submission

	CJA 21	CJA 31
Signed the same day	3 (1%)	N/A
Between 1 and 10 days	50 (24%)	N/A
Between 11 and 20 days	30 (14%)	N/A
Between 21 and 30 days	10 (5%)	N/A
Between 31 and 40 days	7 (3%)	N/A
Between 41 and 50 days	5 (2%)	N/A
Between 51 and 60 days	3 (1%)	N/A
Between 61 and 70 days	7 (3%)	N/A
Between 71 and 80 days	3 (1%)	N/A
Between 81 and 90 days	2 (1%)	N/A
Between 91 and 100 days	6 (3%)	N/A
More than 100 days	83 (40%)	N/A
Median No. of Days	50	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	1,187	N/A
Total Number of Vouchers	209	N/A

38. Ultimately it would be useful to consider the time between the circuit judge's signature and the actual voucher payment, but such information is not available at this time.

39. Because the submission date is from a time stamp there are many vouchers without this information. Many courts did not time stamp the vouchers, while others made pdf files of the front of a voucher, whose time stamp was on the back. No CJA 31 vouchers had this information. Any vouchers that did not have two usable dates were excluded from this analysis.

Because of the attorney’s need to obtain the signature of the expert before submitting the voucher, one should expect the time between the end of the service period and the voucher submission to be longer here than the same period for CJA 20 vouchers. However, the median number of days here is two weeks shorter than the same period for CJA 20s, and the range is smaller as well. Similar to the findings for CJA 20 vouchers, the most common category shows vouchers most often submitted more than 100 days after the end of the service period. It is possible, then, that one of the easiest ways to speed up voucher payment is faster submission of vouchers by counsel.

Time Between Attorney Signature and Submission

While we do not have exact information on the date of voucher preparation, the date on which the attorney signs the voucher approximates the time period closest to preparation and therefore can be used to calculate the approximate time necessary to prepare a voucher (see Table 37). While no CJA 31 vouchers included this information, 228 CJA 21s included usable dates for attorney signature and voucher submission.

Table 37: Days Between Attorney Signature and Voucher Submission

	CJA 21	CJA 31
Signed the same day	2 (1%)	N/A
Between 1 and 10 days	78 (34%)	N/A
Between 11 and 20 days	41 (18%)	N/A
Between 21 and 30 days	16 (7%)	N/A
Between 31 and 40 days	10 (4%)	N/A
Between 41 and 50 days	30 (13%)	N/A
Between 51 and 60 days	6 (3%)	N/A
Between 61 and 70 days	8 (4%)	N/A
Between 71 and 80 days	3 (1%)	N/A
Between 81 and 90 days	1 (0%)	N/A
Between 91 and 100 days	9 (4%)	N/A
More than 100 days	24 (11%)	N/A
Median No. of Days	20	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	491	N/A
Total Number of Vouchers	228	N/A

Surprisingly, the time between the attorney signing the voucher and submitting it is relatively short, but not as short as the same time period for CJA 20 vouchers. While the median number of days for CJA 20 vouchers was 6, here the median is 20 days, two weeks longer. The range in the number of days is much smaller here than the 0 to 1,136 days found with the CJA 20 vouchers. These findings suggest that the delay between the end of the service period and the submission of the voucher discussed above is a delay be-

tween the attorney and the expert. This delay could still be caused by the attorney if, for example, the attorney takes a long time to prepare a voucher. This can be explored more if we consider the time between the signature of the expert and submission of the voucher.

Time Between Expert Signature and Submission

Perhaps a better way to understand the time it takes to prepare a voucher is to look at the time between the expert signature and submission of the voucher (see Table 38). If the time between expert signature and submission is lengthy, the delay is between expert and attorney signatures, not in voucher preparation because one would assume experts are not signing vouchers that are not prepared.

Table 38: Days Between Expert Signature and Submission

	CJA 21	CJA 31
Signed the same day	4 (2%)	N/A
Between 1 and 10 days	66 (28%)	N/A
Between 11 and 20 days	39 (17%)	N/A
Between 21 and 30 days	14 (6%)	N/A
Between 31 and 40 days	10 (4%)	N/A
Between 41 and 50 days	11 (5%)	N/A
Between 51 and 60 days	4 (2%)	N/A
Between 61 and 70 days	5 (2%)	N/A
Between 71 and 80 days	2 (1%)	N/A
Between 81 and 90 days	3 (1%)	N/A
Between 91 and 100 days	3 (1%)	N/A
More than 100 days	72 (31%)	N/A
Median No. of Days	27	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	759	N/A
Total Number of Vouchers	233	N/A

In looking at the time between the signature of the expert and the submission of the voucher, we find somewhat of a delay. The median shows it takes about one month for the voucher to be submitted after the expert signs it. The range was also substantial, from a low of 0 to a high of 759 days, over two years. The mostly commonly occurring category was for a delay of over 100 days. The reason for such delays is worthy of additional consideration.

Time Between End of Service Period and Expert Signature

Perhaps the best way to approximate of the time taken to prepare a voucher is to consider the delay between the end of the service period and the signature of the expert. Most CJA

21 vouchers, 617 (92%), and 54 CJA 31 vouchers (79%) included usable dates for this time period (see Table 39).

Table 39: Days Between End of Service Period and Expert Signature

	CJA 21	CJA 31
Signed the same day	391 (63%)	4 (8%)
Between 1 and 10 days	126 (20%)	1 (2%)
Between 11 and 20 days	22 (4%)	22 (42%)
Between 21 and 30 days	20 (3%)	13 (25%)
Between 31 and 40 days	12 (2%)	6 (11%)
Between 41 and 50 days	3 (0%)	3 (6%)
Between 51 and 60 days	3 (0%)	1 (2%)
Between 61 and 70 days	3 (0%)	1 (2%)
Between 71 and 80 days	3 (0%)	0
Between 81 and 90 days	3 (0%)	0
Between 91 and 100 days	2 (0%)	0
More than 100 days	29 (5%)	2 (4%)
Median No. of Days	0	20
Minimum No. of Days	0	0
Maximum No. of Days	1,176	1,154
Total Number of Vouchers	617	53

For CJA 21 vouchers, the most common occurrence by far is for the expert to sign the voucher the same day the service period ends. The median number of days for this time period is 0, with a range from a low of the same day to a high of 1,176 days. For CJA 31 vouchers, the median time between the end of the service period and the expert signature was 20 days, from a low of the same day to a high of 1,154 days. Assuming that the attorney is the person submitting the voucher, the delay in submission of vouchers is between the expert’s signing and the attorney’s submitting. There are two possible reasons for this: either the voucher is sitting on the expert’s desk, waiting to be given back to the attorney, or it is sitting on the attorney’s desk, waiting to be submitted. The source of this delay is outside the bounds of this research.

Time Between Attorney and District Judge Signatures

The next time period to consider is that between the attorney signature and the signature of the district judge after review. Most CJA 21 vouchers, 608 (90%), and CJA 31 vouchers, 60 (88%) included usable dates for this time period (see Table 40).

Table 40: Days Between Attorney and District Judge Signatures

	CJA 21	CJA 31
Signed the same day	4 (1%)	0
Between 1 and 10 days	147 (24%)	21 (35%)
Between 11 and 20 days	175 (29%)	25 (42%)
Between 21 and 30 days	95 (16%)	5 (8%)
Between 31 and 40 days	54 (9%)	4 (7%)
Between 41 and 50 days	25 (4%)	2 (3%)
Between 51 and 60 days	24 (4%)	0
Between 61 and 70 days	15 (2%)	0
Between 71 and 80 days	14 (2%)	1 (2%)
Between 81 and 90 days	5 (1%)	0
Between 91 and 100 days	2 (0%)	0
More than 100 days	48 (8%)	2 (3%)
Median No. of Days	19	14
Minimum No. of Days	0	3
Maximum No. of Days	1,847	1,101
Total Number of Vouchers	608	60

The median number of days between the signatures of the attorney and the district judge for CJA 21 vouchers was 19 days, while CJA 31 vouchers were reviewed even faster (a median of 14 days). The range for CJA 21 vouchers was substantial, from a low of 0 days to a high of 1,847 days, but the most common category was between 11 and 20 days. For CJA 31 vouchers the range was also quite large, from a low of 3 days to a high of 1,101 days, but the most commonly occurring category was also 11 to 20 days, and 77% of the vouchers ranged from 1 to 20 days for this time period.

Time Between Submission and District Judge Signature

To better understand the speed at which the court is moving, we considered the time between the submission of the voucher and the signature of the district judge after review. Because CJA 31s did not have submission dates, that comparison is not made here. However, 220 of the CJA 21 vouchers (33%) included usable dates for both submission and district judge signature.

Table 41: Days Between District Judge Signature and Voucher Submission

	CJA 21	CJA 31
Signed the same day	1 (0%)	N/A
Between 1 and 10 days	65 (30%)	N/A
Between 11 and 20 days	106 (48%)	N/A
Between 21 and 30 days	27 (12%)	N/A
Between 31 and 40 days	5 (2%)	N/A
Between 41 and 50 days	2 (1%)	N/A
Between 51 and 60 days	0	N/A
Between 61 and 70 days	1 (0%)	N/A
Between 71 and 80 days	0	N/A
Between 81 and 90 days	0	N/A
Between 91 and 100 days	0	N/A
More than 100 days	13 (6%)	N/A
Median No. of Days	13	N/A
Minimum No. of Days	0	N/A
Maximum No. of Days	1,841	N/A
Total Number of Vouchers	220	N/A

The median number of days between the submission of the voucher and the review by the district judge is 13 days, about the same as the 12 days found for CJA 20 vouchers. As with the CJA 20 vouchers, the delay in the processing of vouchers is not the fault of the review process by the court. The period between the end of the service period and the submission of the voucher is much longer than the review period by the court.

Time Between District and Circuit Judge Signatures

The final stage of review is the time between the district judge's and the circuit judge's signing of the voucher. Few CJA 31s included all the information necessary to make a comparison of the time between the two signatures; the task was made even more difficult by the fact that there were no CJA 30s with the relevant information. A number of CJA 21s (104 vouchers, or 15%) did include the relevant information. The median time between signatures is shown in Table 42.

(The same period for CJA 20 vouchers had a median of 30 days.) For CJA 21 vouchers, the time between district and circuit judge signatures had a median of 28 days. The range includes some extreme cases, spanning from 0 days to 2,211 days.

Table 42: Days Between District and Circuit Judge Signatures

	CJA 21	CJA 31
Signed the same day	1 (1%)	0
Between 1 and 10 days	3 (3%)	0
Between 11 and 20 days	19 (18%)	0
Between 21 and 30 days	38 (37%)	0
Between 31 and 40 days	13 (13%)	0
Between 41 and 50 days	7 (7%)	2 (100%)
Between 51 and 60 days	5 (5%)	0
Between 61 and 70 days	1 (1%)	0
Between 71 and 80 days	3 (3%)	0
Between 81 and 90 days	0	0
Between 91 and 100 days	1 (1%)	0
More than 100 days	13 (13%)	0
Median No. of Days	28	45
Minimum No. of Days	0	45
Maximum No. of Days	2,211	45
Total Number of Vouchers	104	2

Two CJA 31 vouchers included the relevant information. Both vouchers took 45 days between review by the district judge and review by the circuit judge.

Conclusions

Clearly the delay in review of CJA 21 vouchers is in the time between the end of the service period and the submission of the voucher, mostly between the service provider's signature and the attorney's signature. While this delay clearly merits further explanation, it is perhaps most stark when compared with the CJA 20 vouchers, which were only submitted slightly slower. It takes the coordination of two people to submit a CJA 21 voucher, while CJA 20s take only the work of the attorney. Why there is such a substantial delay and whether the CBA has been able to reduce that delay are questions outside the bounds of this research.

Days of Service

One final piece of information to be gleaned from the vouchers we sampled is the median number of days of service for which experts are billing. We calculated this median by first determining the total number of days for which an expert billed, taken from the service beginning and ending dates provided on the voucher. Of the 674 CJA 21 vouchers, 628 (93%) had usable days of service. Fifty-four CJA 31s (79%) had usable days of service. Table 43 summarizes this information.

Table 43: Days of Service Provided

	CJA 21	CJA 31
Between 1 and 100 days	610 (97%)	51 (94%)
Between 101 and 200 days	9 (1%)	2 (4%)
Between 201 and 300 days	6 (1%)	0
Between 301 and 400 days	1 (0%)	0
Between 401 and 500 days	1 (0%)	0
Between 501 and 600 days	1 (0%)	0
Between 601 and 700 days	0	0
Between 701 and 800 days	0	0
Between 801 and 900 days	0	0
Between 901 and 1,000 days	0	0
More than 1,000 days	0	1 (2%)
Median No. of Days	1	30
Minimum No. of Days	1	1
Maximum No. of Days	501	1,165
Total Number of Vouchers	628	54

The service periods for the service providers are much smaller than those for attorneys. Overwhelmingly these vouchers cover 100 days or less, and while CJA 20 and 30 vouchers were most often billing for that same time period, there were also a number of CJA 20 vouchers billing for over a year's worth of work at once. The median number of days billed for a CJA 21 voucher was one, the minimum was one day and the maximum was 501. For CJA 31 vouchers, the median number of days was 30, while the minimum was one day and the maximum was 1,165 days. Perhaps the difference between attorney and expert vouchers in the number of days of service is due to the fact that once experts have been brought into the case, the counsel have already spent a considerable amount of time preparing the case, a time for which they are slow to bill.

Conclusions About CJA 21 and CJA 31 Voucher Review

It is clear that changes to CJA 21 and 31 vouchers are far more modest, both in frequency and scope, than changes to 20 and 30 vouchers. If there are changes to CJA 21 and 31 vouchers, the changes are overwhelmingly to the grand totals, not compensation, travel, and other requested amounts. CJA 20 and 30 vouchers saw a mix of all amounts being changed. The changes that are made to CJA 21 and 31 vouchers are more likely to be made by district judges than by court staff, but district judges' changes often echo changes by staff, a similarity with CJA 20 and 30 vouchers. Review of CJA 21 and 31 vouchers by circuit judges is more likely to reduce grand totals than add to them. This difference is less of a concern when we consider that the same was true for CJA 20 and 30 vouchers.

Contrary to the changes to the amount, and who was making the changes, the timelines for CJA 21 and 31 vouchers were remarkably similar to those for CJA 20 and 30 vouchers. The time between the end of the service period and the submission of the voucher was two weeks shorter for expert vouchers, and this is true despite the need for attorneys and experts to cooperatively complete CJA 21 and 31 vouchers. The time between the attorney's signature and the submission of the voucher was shorter for CJA 20 vouchers than for 21s, but this is hardly surprising. The median number of days between attorney and district judge signatures is exactly the same across the two voucher types, as are the number of days it takes a voucher to get from submission to the district judge and from the district judge to the circuit judge. While the submission of vouchers, regardless of type, seems to take a substantial amount of time, the processing of vouchers through the court is relatively swift. If CBAs have sped up this time, one has to wonder how much faster the vouchers could be processed. Of course, whether the CBAs sped up the processing of vouchers or not is a question to be left to future analysis. Even if the time to process is not substantially faster, the perception of faster processing may be enough to satisfy counsel, and this can be addressed in later stages of the evaluation.

The differences in the frequency of changes to CJA 21 and 31 vouchers are more difficult to explain. Perhaps the differences are due to the judges' lack of familiarity with the work of experts, requiring additional examination and perhaps consultation with additional service providers to determine a standard rate. The additional work to make such changes may not have been possible for judges with other responsibilities. If this is, in fact, the case, perhaps a list of presumptive rates, or a single reviewing authority, such as the CBA, will eliminate the difference in frequency of change. Other aspects of evaluation will have to explore this possibility more completely.

Pre-pilot Circuit Culture Conclusions

This part of the evaluation was undertaken to shed light on how frequently excess compensation vouchers were changed prior to the start of the pilot. If changes were made, this analysis could answer questions about the scope of the change as well. The first conclusion, then, is that changes were both rare and modest in scope. Neither staff nor judges adjusted excess compensation vouchers often, nor for large amounts. While it may appear judges made a number of changes on the whole, if we exclude judge approval of changes made by court staff, few unique modifications remain. Circuit judges also made fewer changes than district judges did, and relatively few unique changes to excess compensation vouchers as a whole.

The lack of review of excess compensation vouchers was noteworthy. These vouchers were reviewed by circuit judges because they represent high case costs, yet few changes were made along the review process. If changes occurred rarely in vouchers requiring additional review, one has to wonder how common changes were when circuit approval was not required.

The results of this analysis also point to a potentially significant impact for the CBA. All three CBAs are working with their circuit to assist in excess compensation voucher re-

view. If excess compensation vouchers are changed more than 10% of the time as a result of these efforts, one could argue the CBAs have increased voucher review.

An increase in modifications to vouchers was not the only way to have an impact, however. As the CBAs make changes to budgets not only should there be fewer excess requests, because costs have already been reduced, but the principles of case budgeting will become more common in the circuit, reducing the need for any change to a voucher, whether district or circuit. Fewer changes, as well as faster review, should increase attorney satisfaction with the voucher review process. Additionally, judges who are reviewing excess compensation vouchers may have greater confidence in the changes they do make, easing the voucher review process. All of the possible implications for the pilot program were tested in other aspects of the evaluation (see below).

Aggregate Analysis

Aggregate Analysis Overview

One aspect of evaluation for the pilot project is to consider the aggregate costs of defense in cases, both budgeted and not budgeted. While there are more non-budgeted cases than budgeted cases in the period used for this analysis, some general estimates of aggregate costs can be conducted. To that end, we collected data on the amount of money paid out on vouchers annually for each circuit from 2003 to 2009.⁴⁰ The data were broken down by the year in which the case was initiated, the dollars spent per year, and how many representations were included in each yearly amount spent. Additionally, the data were divided by the type of case: capital, capital habeas, or mega. It should be noted at the outset that the case-budgeting attorney in the Ninth Circuit is not responsible for budgeting capital habeas cases.

The data collected allow us to determine both national and circuit trends for each type of case. Discussed below are the trends we found in aggregate dollars spent annually. It should be noted before beginning the comparison that the dollars have been adjusted for inflation. This means any dollar amount discussed is estimated in 2009 dollars. The data, however, have *not* been adjusted for changes in the hourly rate for counsel. This adjustment was not made because the aggregate amounts discussed here cover all types of service providers, not just the costs for counsel. It would artificially inflate the estimates of aggregate dollars if the totals were adjusted for changes in hourly rates across all voucher types.⁴¹

40. The data were provided in a report compiled by staff in the Office of Defender Services. The report was constructed from data extracts from the CJA Payment System. The extracts were to provide an overview of payments made on cases and was updated on a bimonthly basis. Because this is a summary of payments, the data are best examined in the aggregate. The database includes all payments made on all cases from 2003 to 2009, as of the date the data were pulled. As the data are used here, they cannot speak to individual representations.

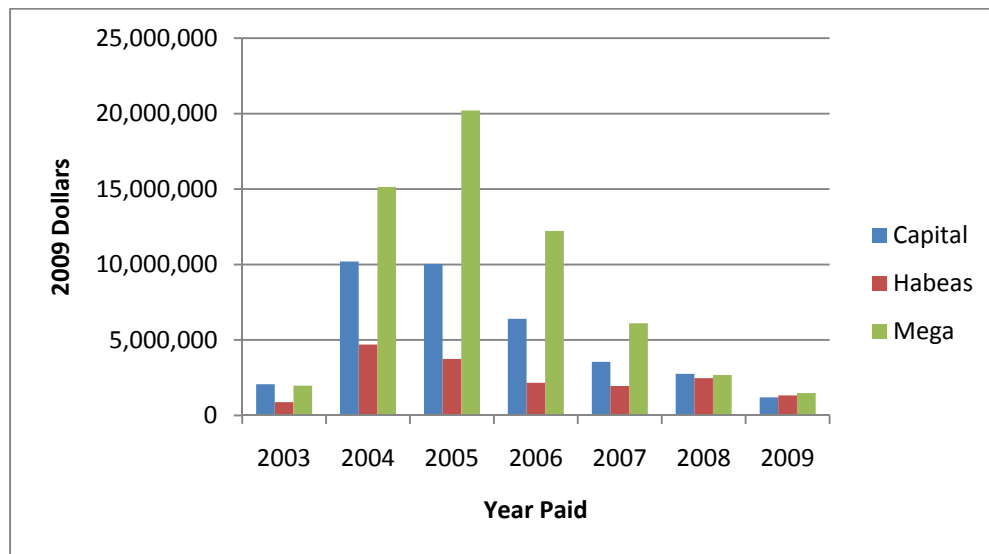
41. In addition to the problems of overestimating costs noted above, there are problems with adjusting for changes in hourly rates that occur even when money spent for attorney hours is examined separately. While rates go into effect on a single day, they can take between three and seven months to be implemented

The purpose of this analysis is to determine what effect, if any, the pilot program is having on aggregate dollars spent in the three pilot circuits. To find the best answer to this question we need to consider the dollars spent in each circuit prior to the pilot and after the pilot was implemented. This will allow for comparison both within circuits across time and across circuits at the same point in time.

National Trends in Aggregate Dollars

As a starting point to consider the aggregate costs of defense prior to the appointment of the CBAs, it is useful to consider how much money is paid out on cases. Figure 1 shows the amount of money paid out between 2003 and 2009 on all cases initiated in 2003, in all circuits.⁴² Cases initiated in 2003 were used because the greatest amount of information was available on those cases.

Figure 1: Aggregate Amount Paid for 2003 Initiated Cases



For all three types of cases the trend is for increasing amounts of money to be spent at the beginning of cases. This is true despite the fact that the dollars were adjusted for inflation. These amounts, however, decrease after the case is in its second or third year. The figure shows total dollars spent, and not average dollars per year. Thus, the high dollar amounts spent for some years are driven in part by larger circuits. In order to gain the best sense of the money spent in each circuit, we calculated separate figures for each circuit.

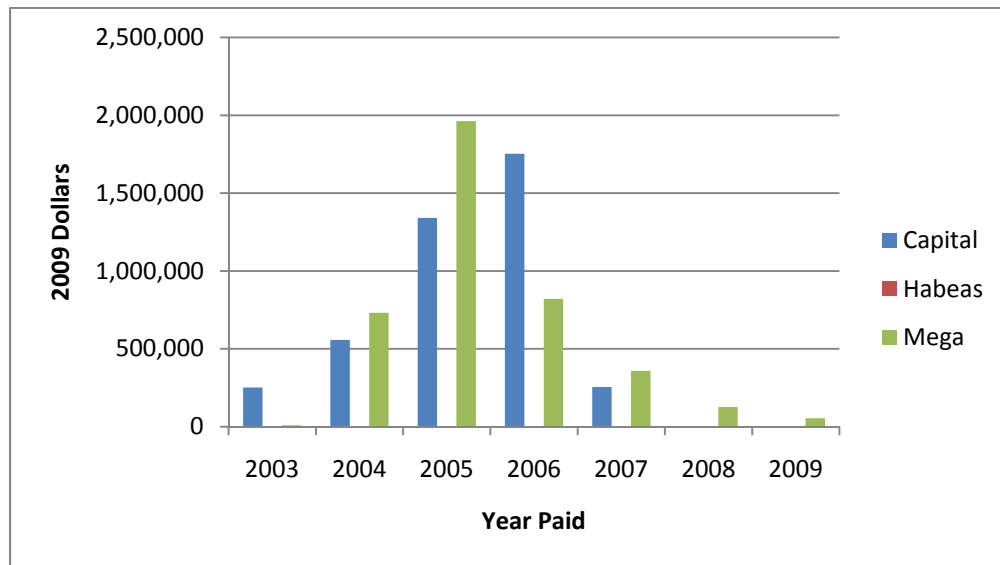
in a case. There is no change at a single point in time for the rates, and thus adjusting rates becomes a representation specific issue, and not an appropriate correction for the aggregate data here.

42. It should be noted that amounts paid in capital habeas cases should be lower overall because there are fewer circuits with capital habeas cases. Mega cases had the most consistent data. For a complete picture of all dollars spent in each circuit for the entire study period, see the technical appendix.

Circuit Trends in Aggregate Dollars

While there are no data available for capital habeas cases in the First Circuit, the trends for mega and capital cases are consistent with the national trends. After an initial increase in the dollars paid for the cases, the dollars spent decrease. The timing of the decrease here is later than the national trends (peaking in year four for capital cases and three for mega cases), but the pattern is the same, suggesting that the First Circuit is not substantially different from the national average (see Figure 2).

Figure 2: First Circuit Aggregate Amount Paid for 2003 Initiated Cases



In the Second Circuit the trends for mega and capital cases are the same as national trends; capital habeas cases, however, show no clear trend. The lack of a clear trend for capital habeas cases is most likely due to the few capital habeas cases in this circuit. The addition of one or two cases paid from year to year can cause greater variability in the trends when there are few cases (see Figure 3).

Conclusions about the trends in the Third Circuit are limited by the absence of payments, especially on capital habeas cases. Payments for capital cases in 2008 and 2009 were also less available, so it is unclear if there will be a decrease in the dollars spent at later stages of the case. Mega cases are consistent with the overall national picture (see Figure 4).

Figure 3: Second Circuit Aggregate Amount Paid for 2003 Initiated Cases

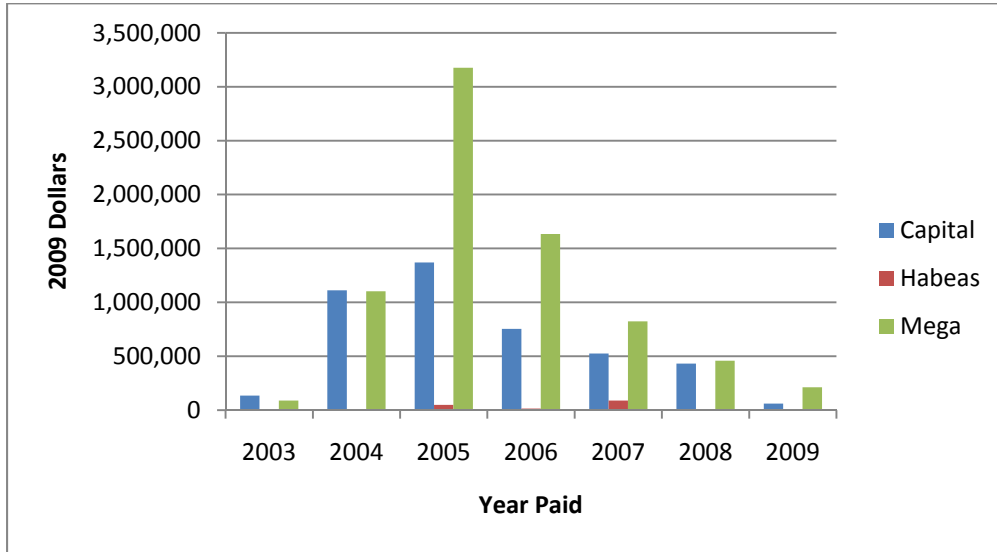
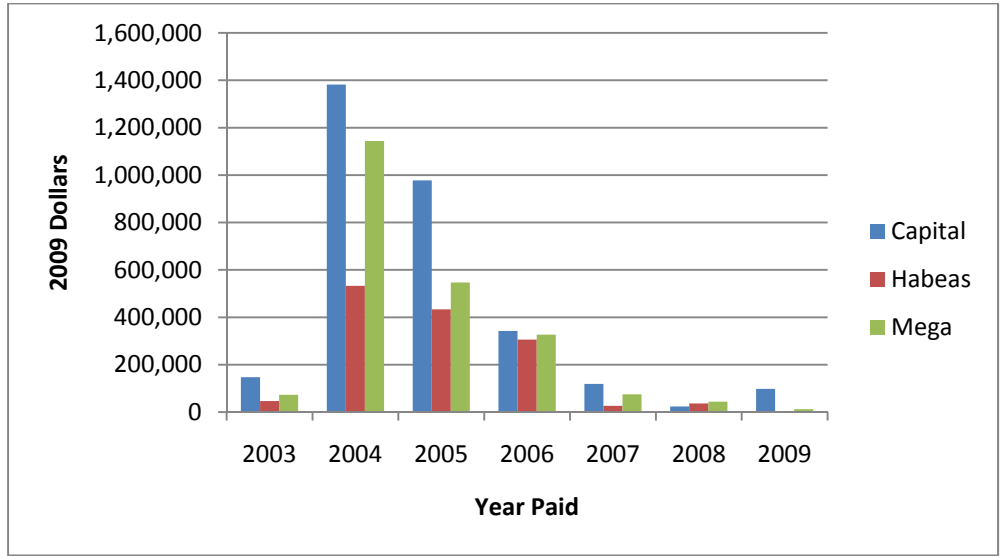


Figure 4: Third Circuit Aggregate Amount Paid for 2003 Initiated Cases



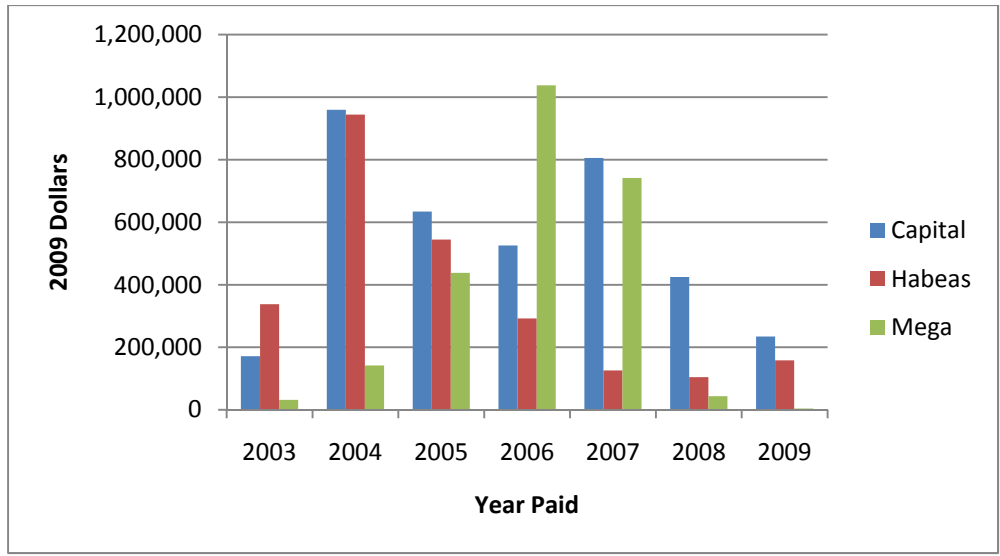
The Fourth Circuit is consistent with the national trend. For all three types of cases, the costs rise after the first year and decline in later years. One difference within the circuit, however, is that capital habeas cases appear to have more of a plateau than the other two types. It takes a few years for the money spent on capital habeas cases to decline after reaching its peak, and the decline is initially slow (see Figure 5).

Figure 5: Fourth Circuit Aggregate Amount Paid for 2003 Initiated Cases



The Fifth Circuit, unlike the Fourth, differs from the national trend. The costs for capital habeas and capital cases rise after the first year. Capital habeas case costs decline slowly over the remainder of the study period, but capital case costs rise again in later years. Mega cases, on the other hand, reach the highest levels of spending in year four, and appear to decline in year five (see Figure 6). Not only is the increase in capital case costs unusual, but the lack of similarity between the circuits suggests that the Fifth Circuit does not fit the national trends. The unusual trends for the Fifth Circuit should be kept in mind as we move to later stages of analysis.

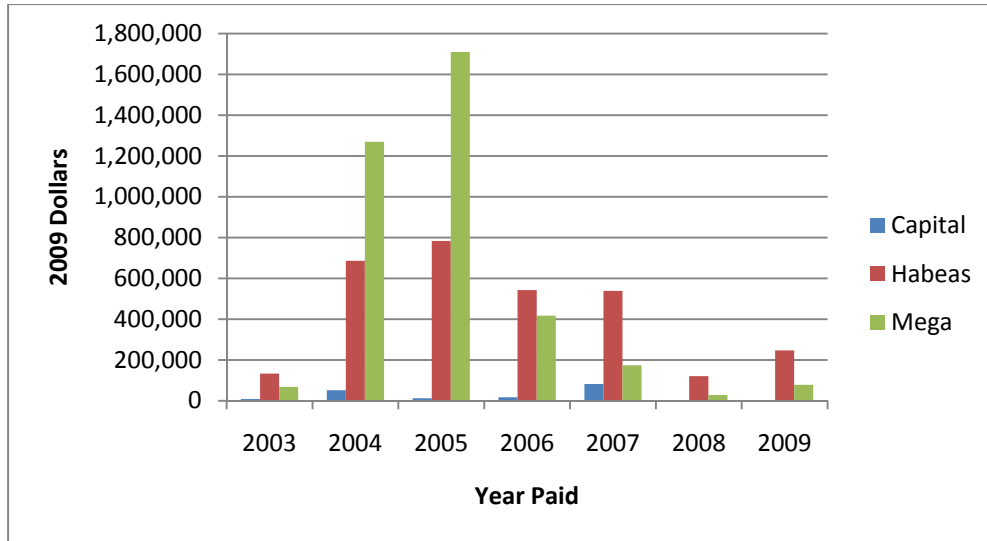
Figure 6: Fifth Circuit Aggregate Amount Paid for 2003 Initiated Cases



Somewhat similar to the Fifth Circuit, the Sixth Circuit is not consistent with the national pattern. The trend for capital cases is indeterminate because of the lack of payment for

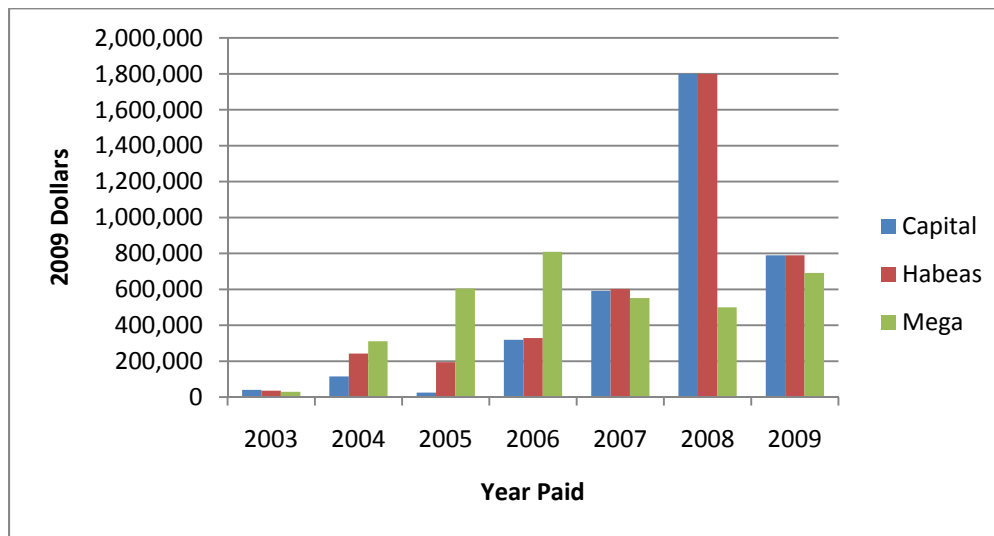
some years in this study. Capital habeas cases are remarkably consistent in costs across almost all years of the study, showing steady spending levels across four of the six years (see Figure 7). Again, while this initial look is merely illustrative, later stages of analysis will have to account for these circuit differences.

Figure 7: Sixth Circuit Aggregate Amount Paid for 2003 Initiated Cases



The Seventh Circuit demonstrates yet another pattern for case costs. While capital and capital habeas cases in this circuit increase in costs toward the end of the study period, mega cases follow a pattern consistent with the national trend, until the final year when costs rise again (see Figure 8).

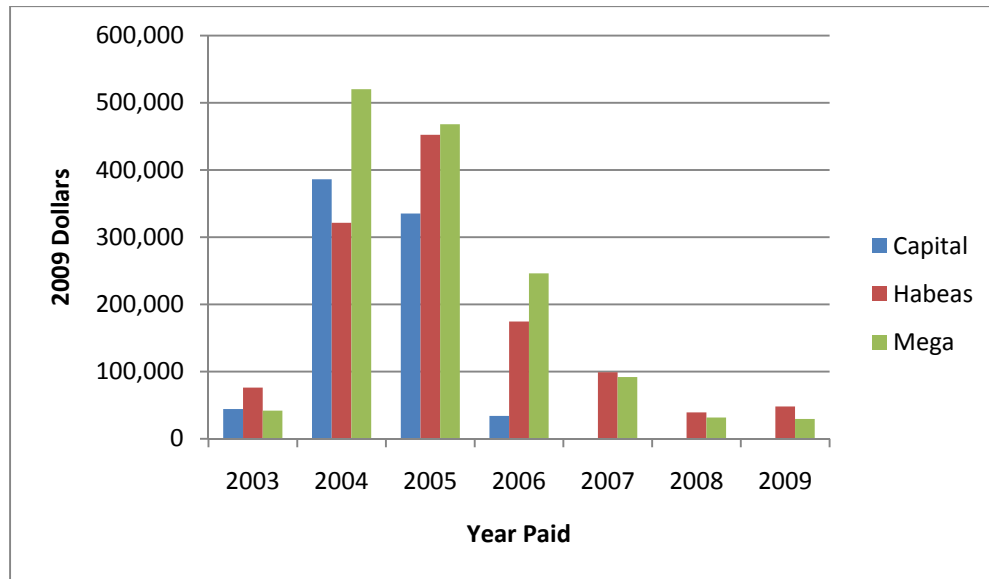
Figure 8: Seventh Circuit Aggregate Amount Paid for 2003 Initiated Cases



While there are no payments in capital cases for later years of the study for the Eighth Circuit, some general trends can be determined. Case costs for all three types of cases

show the same pattern: increasing in earlier years of the case and decreasing later. The number of years before payments in a case reach their peak differs across case types, but the pattern is remarkably consistent both within the circuit and with the national trend (see Figure 9).

Figure 9: Eighth Circuit Aggregate Amount Paid for 2003 Initiated Cases



All three case types in the Ninth Circuit are consistent not only within the circuit but also with national trends, most likely due to the fact that the Ninth Circuit is a substantial portion of the national trend. Costs peak in the second or third year and then decline. Capital habeas cases appear to have substantially lower costs than the other two types of cases (see Figure 10). This is likely to be a result of the budgeting of capital habeas cases in the Ninth Circuit prior to the implementation of the pilot program, and an issue to be examined in later stages of the analysis.

At first blush it may appear that the Tenth Circuit is inconsistent with the national trend. This appearance, however, is due to the absence of payments for some portion of the period of study. Mega cases are consistent with the national trend, and capital cases appear to fit the pattern as well, though additional payments would be needed to confirm this pattern. The only unusual case type is capital habeas, which shows a small and consistent amount of money spent during the period of study (see Figure 11). The within-circuit variation is interesting and should be considered in later stages.

Figure 10: Ninth Circuit Aggregate Amount Paid for 2003 Initiated Cases

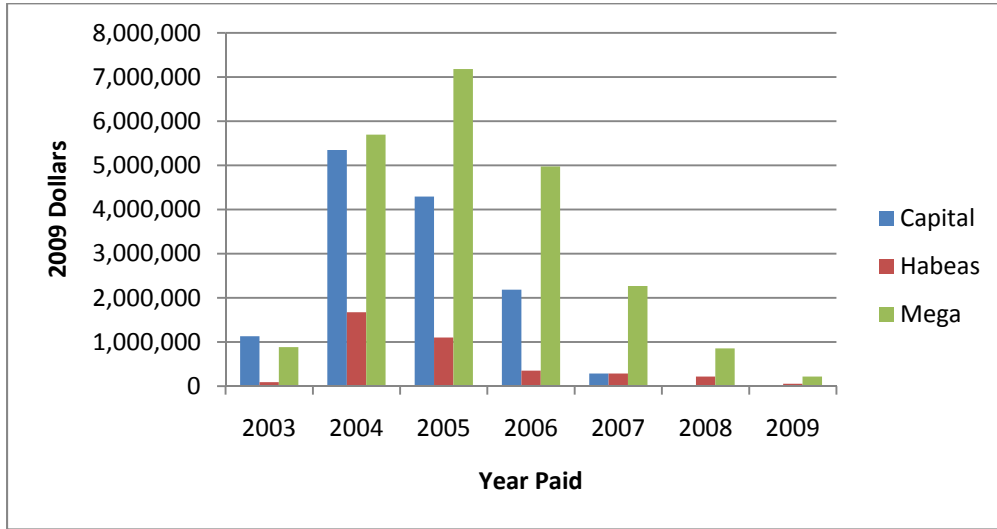
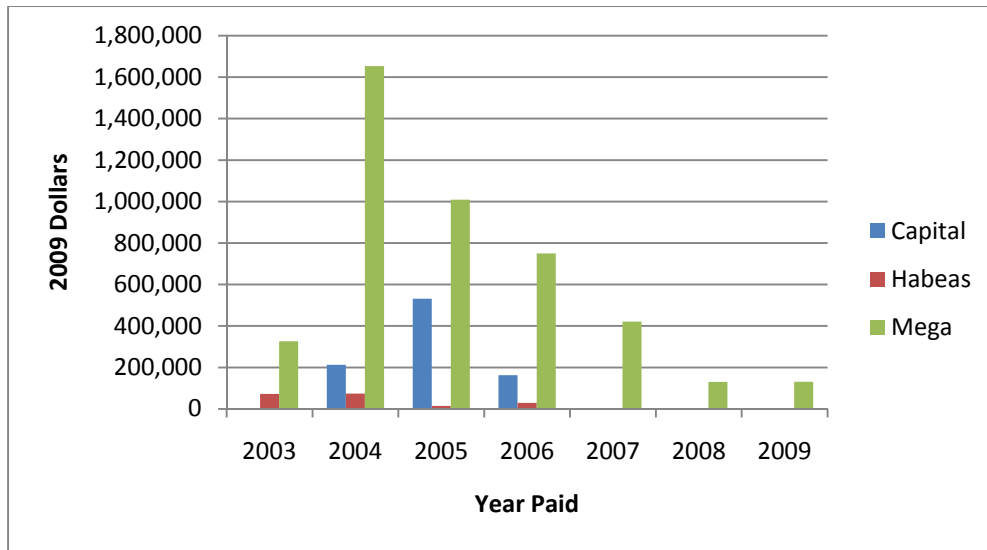


Figure 11: Tenth Circuit Aggregate Amount Paid for 2003 Initiated Cases



The Eleventh Circuit shows considerable variation in the dollars spent for mega cases and those spent for the other two case types. The high point for mega cases is not only substantially higher than that for the other two case types, but dollars spent also stay higher for a longer period of time in mega cases. Capital habeas cases are also unusually consistent across all years of study until 2009 (see Figure 12).

Figure 12: Eleventh Circuit Aggregate Amount Paid for 2003 Initiated Cases

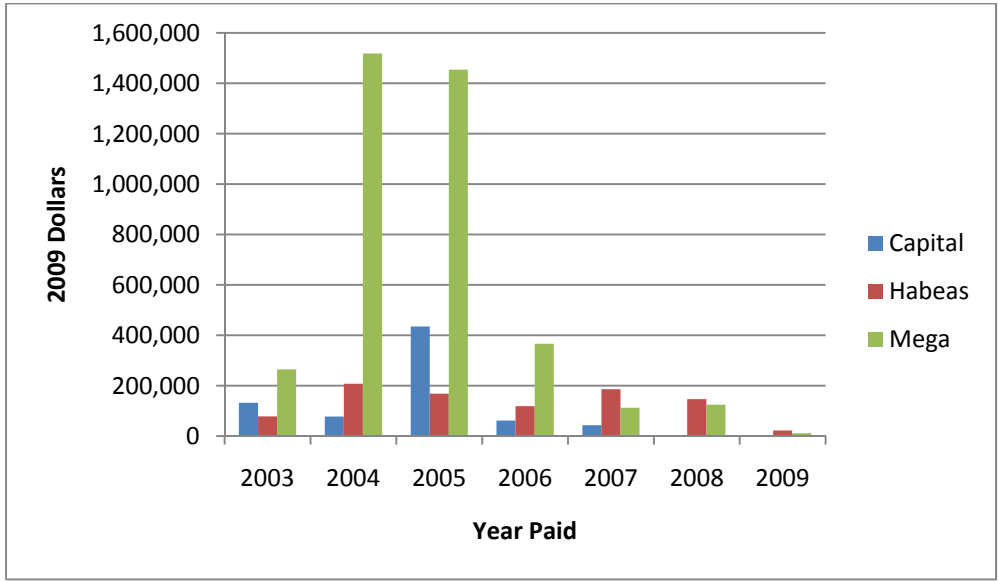
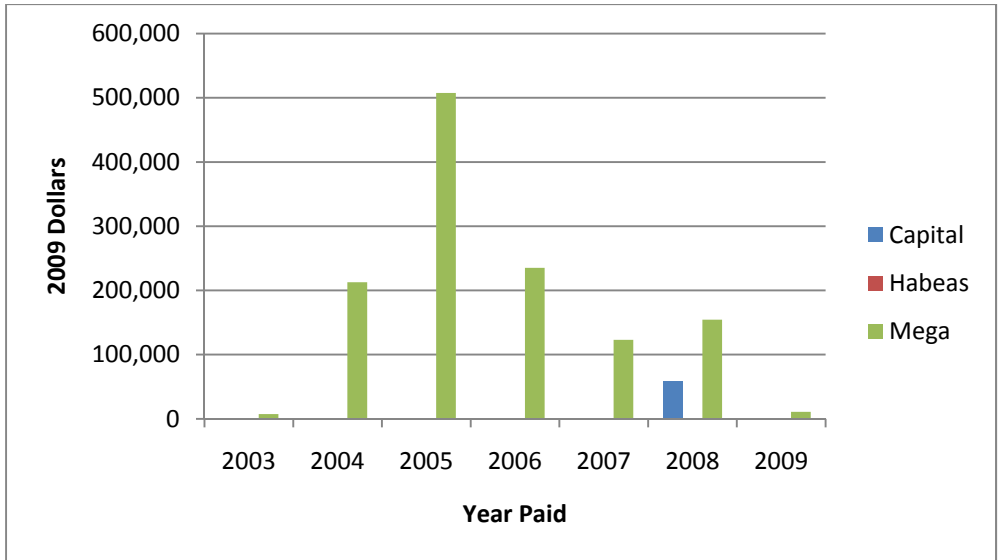


Figure 13: D.C. Circuit Aggregate Amount Paid for 2003 Initiated Cases



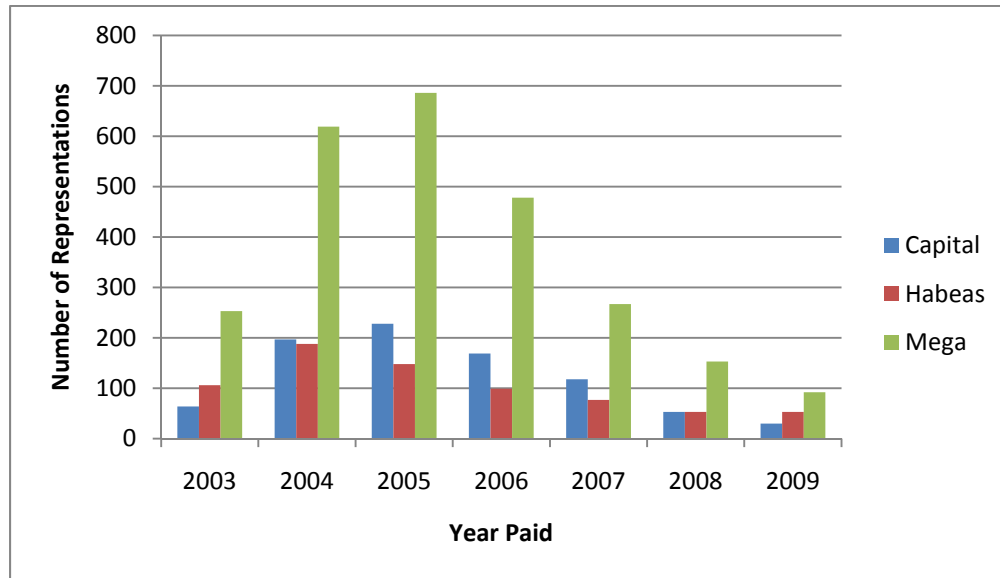
The D.C. Circuit is the most problematic for generalization, as there is only one type of case for which we have consistent information about costs. Mega cases resemble some of those of the other circuits to this point, with a peak in the third year (see Figure 13).

With this initial look at the amount of money spent on each case type in each circuit we find a substantial amount of variation worthy of exploration. The variation in amounts spent undoubtedly has several explanations, one of which is the number of representations during this period. Presumably, the more representations during this period, the higher the overall circuit cost is likely to be. Therefore, it is important for us to examine the number of representations in each circuit for each year of study. Discussed below are the results of this initial look.

National Trends in the Numbers of Representations

The trend overall is fairly consistent for each case type. The number of representations from cases initiated in 2003 reaches its maximum between the second and third years and declines by the end of the study period (see Figure 14). The relationship between the amount paid and the number of representations appears to be fairly strong.⁴³ To explain the variation in representations, we break the data from Figure 14 out by circuit.

Figure 14: Number of Representations from 2003 Initiated Cases



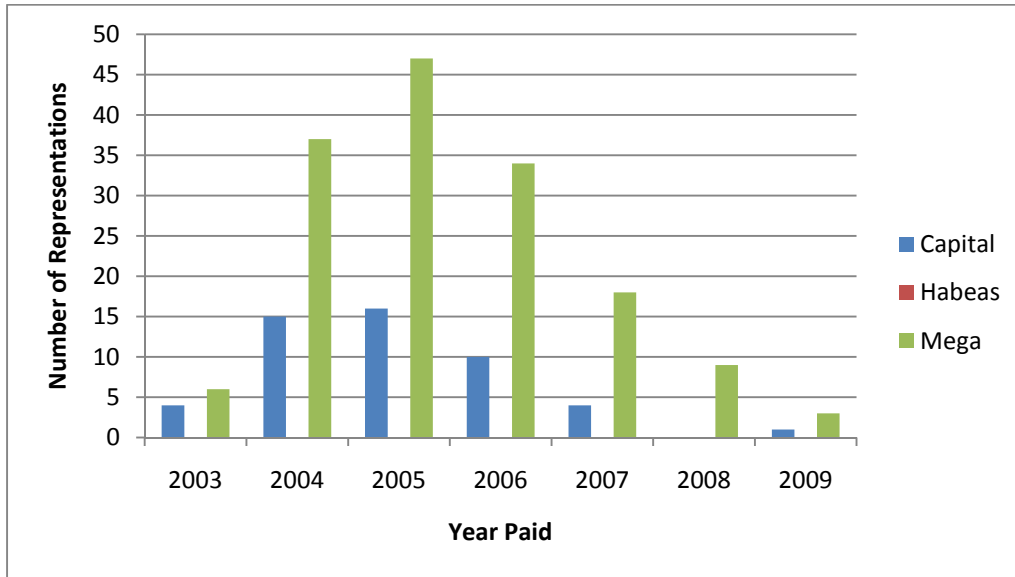
*Circuit Trends in the Numbers of Representations*⁴⁴

The First Circuit exhibits a pattern similar to the overall national picture. The number of representations reaches its peak in 2005 for both capital and mega cases and then declines in later years (see Figure 15). There were no representations paid for capital habeas defendants during this time period in our data set.

43. In fact, we are 99.9% confident that the correlation between the two is 0.8559, suggesting we can explain about 73% of the variance in dollars spent with the number of representations in the circuit.

44. The average number of representations per year by circuit for the entire span of the study across all case types is as follows: First Circuit = 12 representations, Second Circuit = 38 representations, Third Circuit = 14 representations, Fourth Circuit = 15 representations, Fifth Circuit = 15 representations, Sixth Circuit = 12 representations, Seventh Circuit = 10 representations, Eighth Circuit = 8 representations, Ninth Circuit = 63 representations, Tenth Circuit = 16 representations, Eleventh Circuit = 14 representations, and the D.C. Circuit = 12 representations.

Figure 15: Number of Representations from 2003 Initiated Cases in the First Circuit



The Second Circuit is also consistent with the national trend, though like the First Circuit it has few capital habeas representations to consider (see Figure 16). Both capital and mega cases have the greatest number of representations in year three, and decline after that.

Figure 16: Number of Representations from 2003 Initiated Cases in the Second Circuit

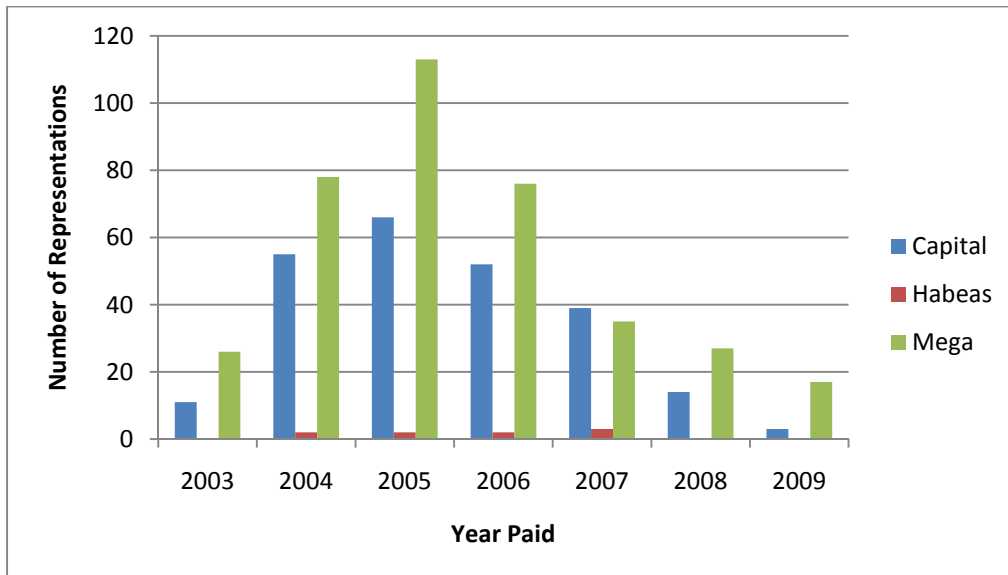
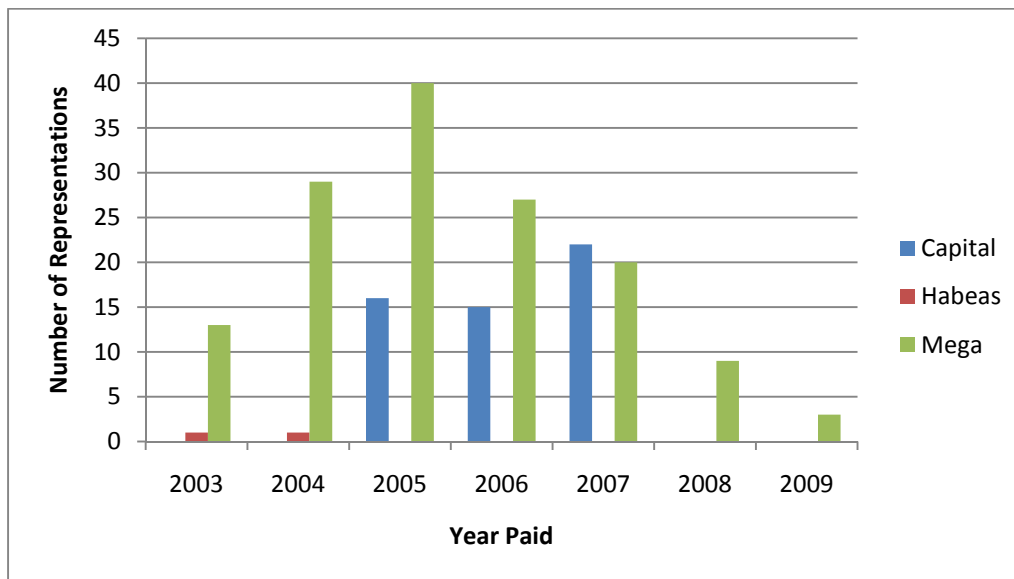


Figure 17: Number of Representations from 2003 Initiated Cases in the Third Circuit



The Third Circuit is less consistent with the national trends than some other circuits are. While mega cases fit the general pattern of the greatest number of representations in 2005, capital cases do not peak until 2007 (see Figure 17). While the conclusions about the Third Circuit are limited by the absence of representations both early and late in the study period, the trend we see here is upward, with no decline during the study period for capital cases. There were few representations for capital habeas cases during this period as well, which also substantially limits our conclusions.

The Fourth Circuit fits the national trend in some ways, but appears unusual in others. While the number of representations for most case types peaks in year two, mega cases show a slower decline than capital habeas or capital cases. Moreover, the number of capital habeas representations is much higher than the national trend (see Figure 18).

Like the Fourth Circuit, the Fifth Circuit has a much higher number of capital habeas representations than the rest of the country. Likewise, capital representations are consistent across most years of the study period, with relatively little decline from year to year. Mega cases show a more normally distributed trend, which, while consistent with the national trend, is inconsistent within the circuit. All three case types suggest that the Fifth Circuit differs from the national trend (see Figure 19).

Figure 18: Number of Representations from 2003 Initiated Cases in the Fourth Circuit

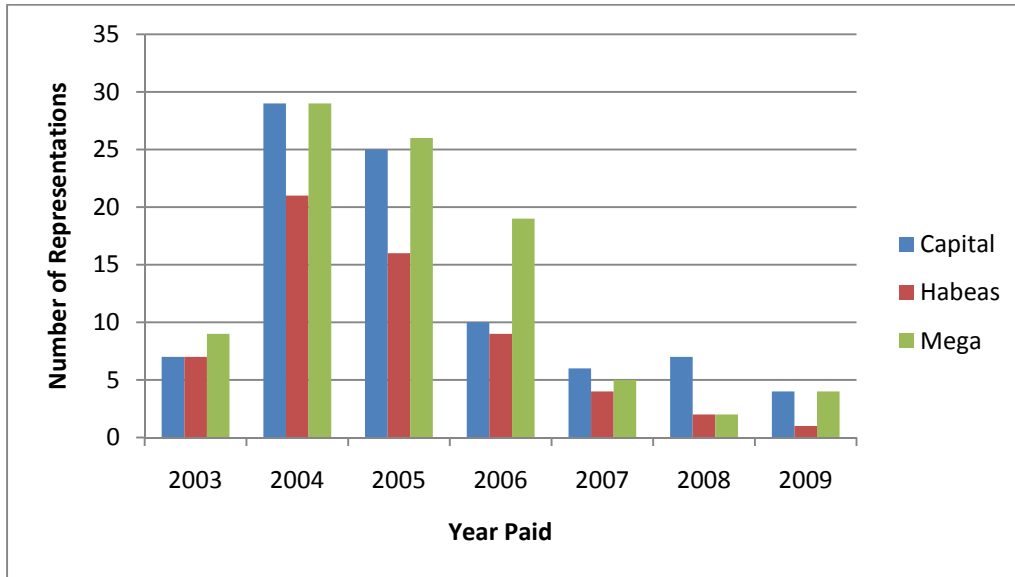
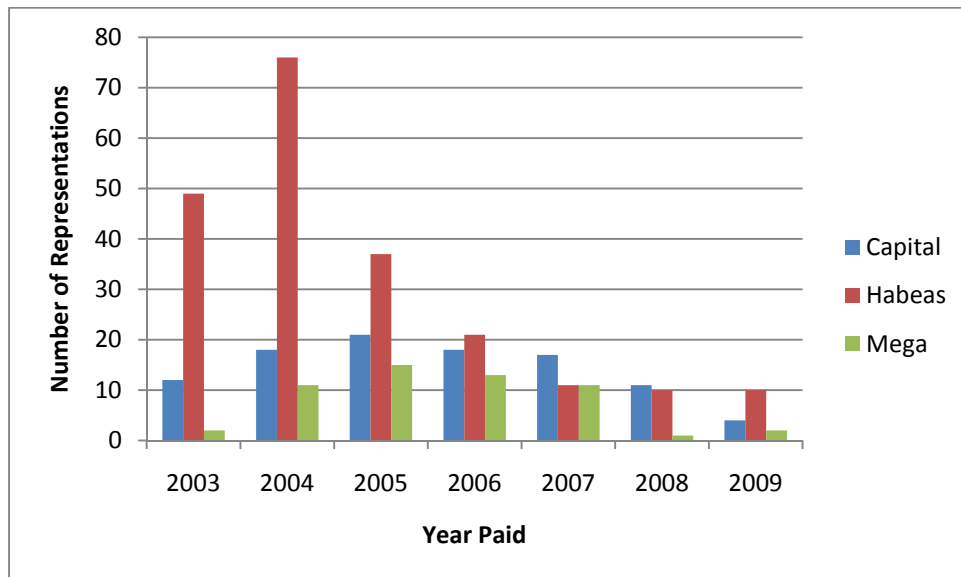


Figure 19: Number of Representations from 2003 Initiated Cases in the Fifth Circuit



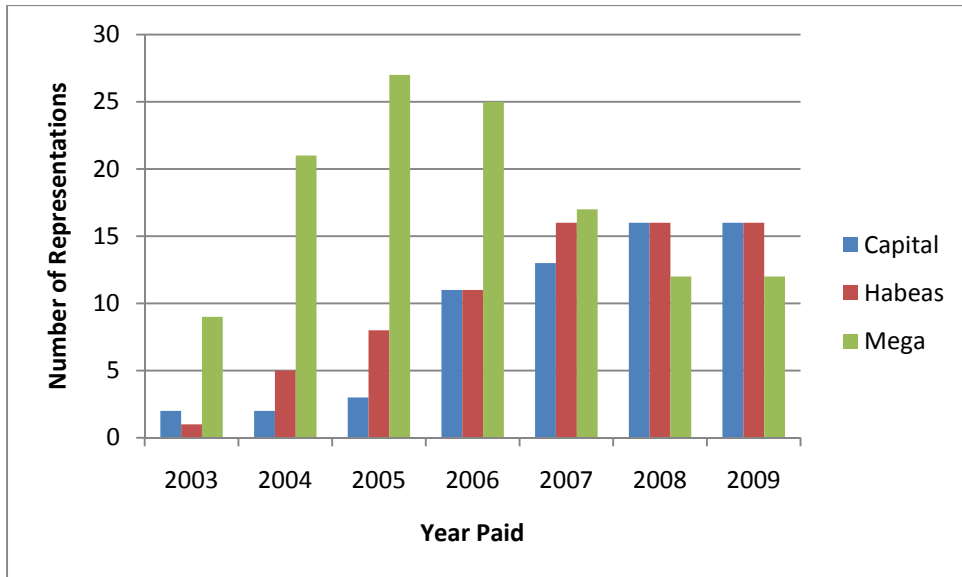
The Sixth Circuit is unusual in that the two most common types of representation here are capital habeas and mega. That said, both types of representation fit the general national pattern of a peak in representations in year two to three, and a steady decline in later years. The increase in the final year is somewhat unusual (see Figure 20).

Figure 20: Number of Representations from 2003 Initiated Cases in the Sixth Circuit



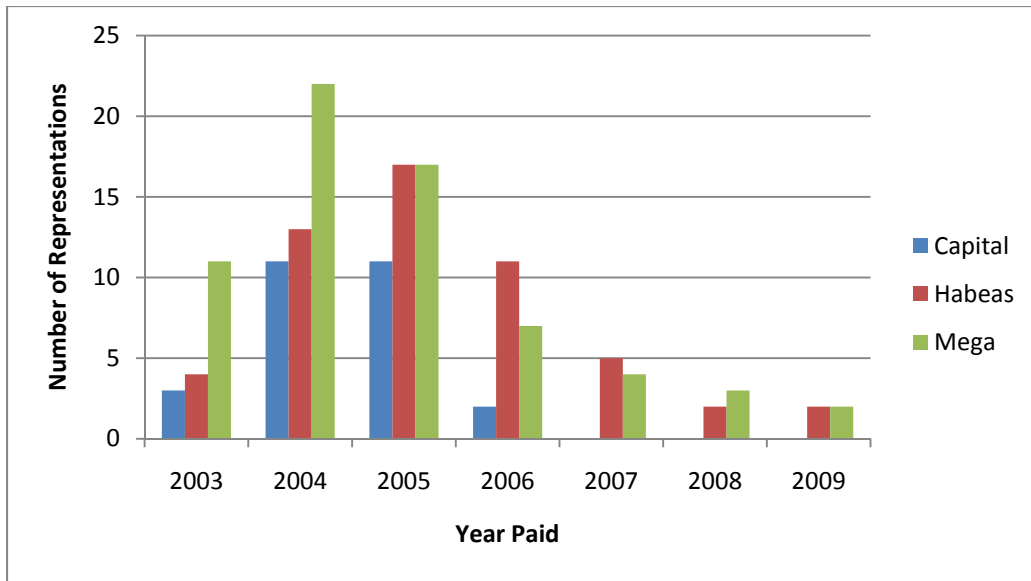
In the Seventh Circuit, representations only fit the national pattern for mega cases. Both capital and capital habeas cases show an increasing trend in the number of representations over time, and no decline in the last years of the study period (see Figure 21).

Figure 21: Number of Representations from 2003 Initiated Cases in the Seventh Circuit



The Eighth Circuit shows a pattern consistent with the national trend, though the absence of capital representations in the last two years of the study may be problematic for comparative purposes in later stages of the analysis (see Figure 22).

Figure 22: Number of Representations from 2003 Initiated Cases in the Eighth Circuit



While the Ninth Circuit fits the general pattern found in the national data for representations, it is important to note here that the scale is much higher for the Ninth Circuit than for any circuit discussed to this point (see Figure 23). Not surprisingly, the national trend is driven by the largest circuit. That said, it may be important to disaggregate the pilot circuits at later stages of the analysis because of the strong trend in representations from the Ninth Circuit.

The Tenth Circuit shows a trend for representations in mega cases consistent with the national trend, though there are few representations for other case types (see Figure 24). The absence of a trend for capital and capital habeas cases in the years in which there were representations suggests that the Tenth Circuit may not be an appropriate category for comparison at later stages of the analysis.

Figure 23: Number of Representations from 2003 Initiated Cases in the Ninth Circuit

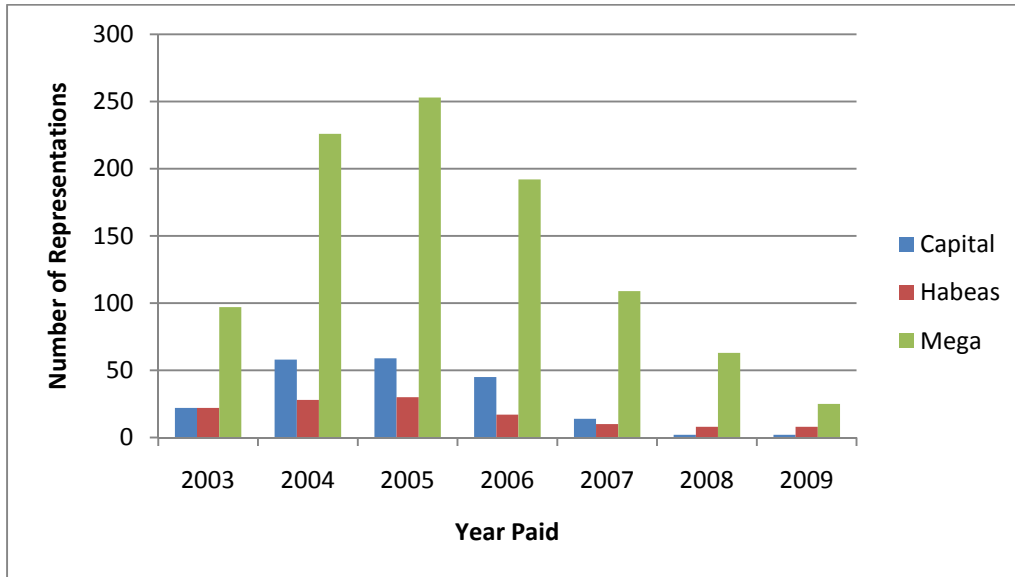
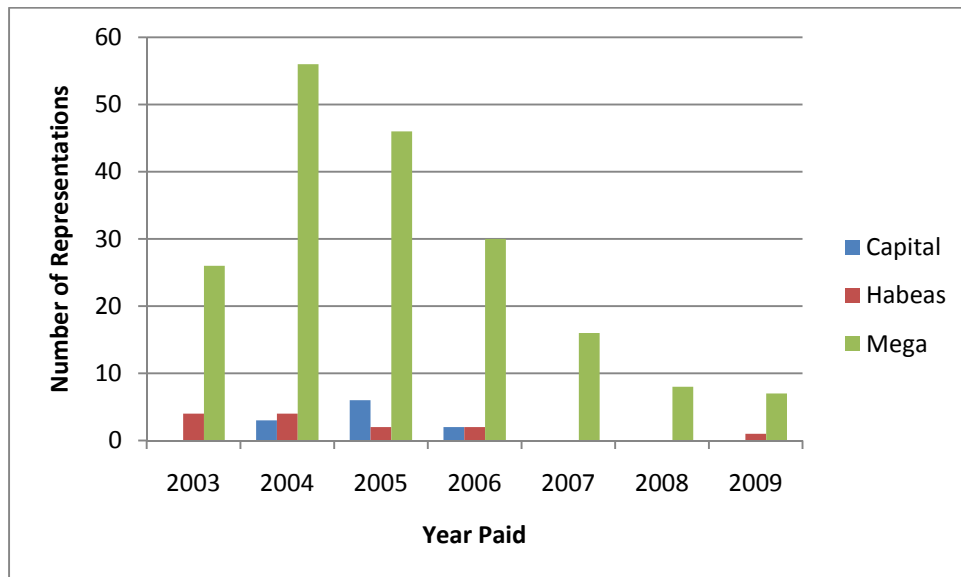


Figure 24: Number of Representations from 2003 Initiated Cases in the Tenth Circuit



The Eleventh Circuit shows a trend consistent with the national pattern for representations in mega cases. The other two case types are consistent in the number of representations across all years of the study period, making it more difficult to discern a trend (see Figure 25).

Figure 25: Number of Representations from 2003 Initiated Cases in the Eleventh Circuit

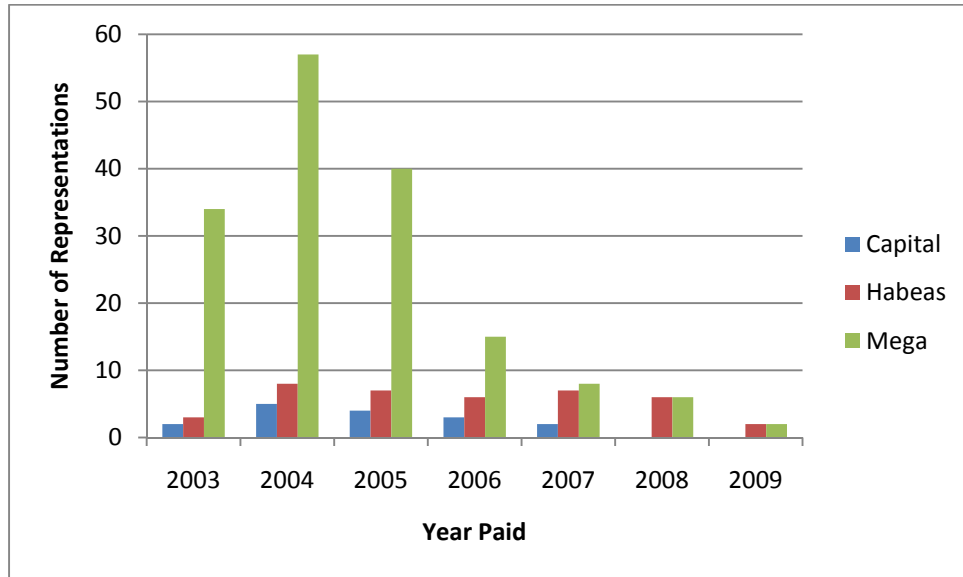
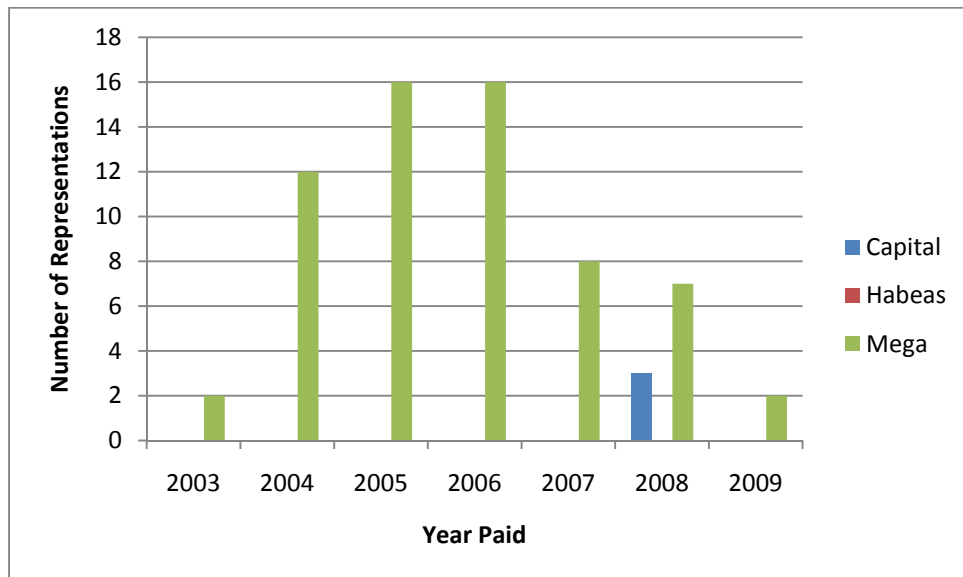


Figure 26: Number of Representations from 2003 Initiated Cases in the D.C. Circuit



The D.C. Circuit fits the national pattern, though there is only one case type with consistent data for this circuit. The number of mega case representations peaks in year four and declines after that (see Figure 26).

While most circuits fit the overall national pattern, the effect of the number of representations on aggregate dollars is something to consider as we move to later stages of analysis. We must keep two caveats in mind. First, while most circuits fit the pattern, the number of representations varies considerably across all circuits. Given the relationship between

representations and costs, it is important to realize that dollars going out the door during the study period are most likely driven by specific circuits with higher than average numbers of representations.

The second caveat to keep in mind as we move to other stages of analysis is the rather obvious conclusion that mega cases cost more and involve more representations. While this is hardly surprising, the type of case, the number of representations, and the differences in the circuits are all factors for which we must control as we move to a consideration of the dollars spent in budgeted and non-budgeted cases.

Explaining the Variation in Aggregate Dollars⁴⁵

Before delving too deeply into comparisons of circuits, it is useful for us to consider the simplest comparison of aggregate dollars for those circuits that do budget cases as part of the pilot program and those that do not. We begin by comparing the average dollars spent per representation for each case type in pilot and non-pilot circuits during our period of study.⁴⁶ Using average dollars allows us to control for any difference between pilot and non-pilot circuits that was the result of differing numbers of representations. Though one of the goals of the pilot program is to better manage the resources for CJA cases, it may be too early to determine the full effect of the pilot. The period of study (2003 to 2009) is weighted toward non-pilot years, meaning that the full impact of the pilot may be too soon to determine at this time. Because of the conflict between the goals of the program and the time period for evaluation it is necessary to use the most rigorous tests and standards available to determine if there is an effect for the pilot.⁴⁷

In looking at the differences in case costs, we find that the average dollars spent per representation in capital cases for pilot circuits and that spent for non-pilot circuits look modestly different, but the results are just beyond typical bounds for statistical significance. The non-pilot circuits averaged \$54,587.55 per representation during the study period, while the pilot circuits spent \$43,675.02 on average. From this we are unable to conclude that the average dollars spent for capital cases during the period by pilot circuits and that spent by non-pilot circuits differed.⁴⁸

In looking at the average dollars spent per representation in capital habeas cases, we find the average for non-pilot circuits to be \$29,245.36, while the average for the pilot circuits

45. Alternate versions of the models below were estimated using Tobit models instead of Ordinary Least Squares (OLS) regression. These alternate models were estimated to account for the fact that the data are left-truncated (one cannot spend less than zero dollars per year in a circuit). The results of the Tobit models are not different from those reported here. OLS coefficients are reported because the models are robust, easier to interpret, and predict within the bounds of the dependent variable, suggesting OLS is an appropriate form for analyzing these data.

46. Because capital habeas cases in the Ninth Circuit are not budgeted as part of the Case-Budgeting Pilot Program, dollars spent on capital habeas cases are not considered to be spent in pilot circuits for purposes of this analysis.

47. For purposes of this analysis, we use a two-tailed test, a more rigorous test, to determine statistical significance of relationships among the variables.

48. The difference of means test conducted on these two groups shows the *p*-value is 0.079, failing to demonstrate a statistically significant difference between the two groups.

is \$22,337.36. The difference is substantively significant, almost \$7,000, but just outside the bounds of statistical significance, suggesting that the average dollars spent per representation for capital habeas cases by pilot circuits does not vary from that spent by non-pilot circuits.⁴⁹

The average dollars spent per representation for mega cases by pilot circuits and that spent by non-pilot circuits do not appear different at first blush, nor is the difference statistically significant. Non-pilot circuits spent on average \$25,234.92 per representation, while pilot circuits spent \$25,077.12. As stated, the two averages are neither statistically nor substantively different, allowing us to be confident in the conclusion that there is no difference between the two groups in average dollars spent for mega cases.⁵⁰

While the differences in average dollars spent by pilot circuits and non-pilot circuits are not significant in any case, there are other factors for which we must control before we can determine if the pilot is having a substantial effect on dollars spent. Discussed below are several different ways to compare the dollars spent across circuits, controlling for circuit characteristics, differences between pilot and non-pilot circuits, the number of representations, and the effect of time.

Our first look at the money spent in the circuit prior to the implementation of the pilot project considers the average dollars spent per representation. Our unit of analysis is the circuit year, and the dependent variable is the net amount spent in the circuit that year. All dollars spent were adjusted for inflation, so dollar amounts are in 2009 dollars. We begin by running separate models for each type of case, and then estimate a model with all case types (see Table 44). We include variables for the effect of the year in which the money was paid, expecting that more money will be spent in later years because later years include cases initiated from all years under study, i.e., 2009 dollars spent include cases from 2003–2009, while 2003 dollars spent include only cases from 2003. We also include variables to determine whether pilot circuits worked differently from non-pilot circuits during the span of our study, and the geographic size of the circuit. While pilot circuits should be spending less than non-pilot circuits, larger circuits should have higher costs. Finally, in the model with all case types, we included variables to control for the differing costs of each type of litigation.

49. The difference of means test conducted on these two groups shows the *p*-value is 0.086, failing to demonstrate a statistically significant difference between the two groups.

50. The difference of means test conducted on these two groups shows the *p*-value is 0.953, failing to demonstrate a statistically significant difference between the two groups.

**Table 44: Averages (in Thousands) Spent per Representation,
Pilot vs. Non-Pilot Circuits**

Variables	Cap. Habeas Model (Standard Error)	Capital Model (Standard Error)	Mega Model (Standard Error)	All Cases (Standard Error)
2003 Paid	-15.436* (5.345)	-26.783* (9.082)	-25.206* (2.593)	-22.917* (3.393)
2004 Paid	-5.466 (4.881)	-20.866* (7.644)	-16.238* (3.122)	-14.618* (3.179)
2005 Paid	-2.258 (4.740)	-9.556 (9.547)	-12.594* (3.112)	-8.598* (3.761)
2006 Paid	-2.090 (4.174)	-8.373 (8.981)	-10.767* (3.120)	-7.487* (3.457)
2007 Paid	3.718 (4.928)	1.691 (10.934)	-5.704 (3.857)	-0.606 (4.125)
2008 Paid	-3.591 (4.223)	-7.045 (7.718)	-4.069 (3.862)	-4.787 (3.202)
Pilot Circuit	-3.547 (2.764)	-15.025* (4.770)	-0.648 (3.207)	-7.238* (2.298)
Size of Circuit	0.000* (0.000)	0.000* (0.000)	0.000 (0.000)	0.000* (0.000)
Cap. Habeas Cases	---	---	---	1.493 (1.719)
Capital Cases	---	---	---	26.419* (3.012)
Constant	25.424* (4.0320)	57.540* (6.566)	31.955* (2.406)	29.636* (2.563)
R-Squared	0.097	0.044	0.087	0.159
No. of Observations	228	281	329	838

Note: Starred values are significant at the 0.05 level or higher.

The baseline for all the case type models are the average dollars spent in 2009 in non-pilot circuits of an average size. In the final column of the table, the baseline for the model is for dollars spent in 2009 in non-pilot circuits of an average size for mega cases. The first conclusion we can make is that these models do not explain a significant amount of the variation in average dollars spent per representation. The models range from explaining 3 percent of the variation to explaining 1 percent of the variation, none of which is a significant improvement over the mean for average dollars spent. The effects for the pilot are well outside the bounds for statistical significance in some of the models, though the effects for participation in the pilot in capital cases and participation in the full model are significant. The model suggests that pilot circuits spend \$15,000 less on average per capital representation than non-pilot circuits do. The 779 capital representations paid in 2009 would then result in a potential savings of \$11,685,000 with case budgeting, all else be-

ing equal.⁵¹ Capital cases overall cost about \$26,000 more per representation than mega cases, which is not surprising given the higher rate of pay in capital cases than in non-capital cases (shown in the final column). The final column shows a savings of \$7,000 per representation in pilot circuits relative to non-pilot circuits. With 1,851 mega representations paid in 2009 alone, the potential savings with case budgeting is almost \$13 million. While larger circuits do spend more money than smaller circuits do, the effect for each additional square mile is fairly small (less than a dollar for each additional 10,000 square miles).

Given the lack of model significance discussed above, we considered alternate specifications to rule out any other factors that might affect dollars spent. Our next set of analyses again examines the average dollars spent per representation, but instead of controlling for pilot circuits generally, we include variables for each circuit, with the Fourth Circuit as our baseline (see Table 45).⁵² The Fourth Circuit was chosen for a baseline because it had the most consistent data available that were also normally distributed across the years of study, allowing for the most accurate comparison. Because geographic size is collinear with circuit effects, the size of the circuit is not included in the analysis below.

51. The \$11,685,000 savings with case budgeting is before the costs of the positions have been considered.

52. A separate set of analyses was estimated to consider the effect of the number of vouchers in the circuit, instead of the number of representations. The results are not substantially different from what is reported here.

Table 45: Average (in Thousands) Spent Per Representation, Circuit Effects

Variables	Cap. Habeas Model	Capital Model	Mega Model	All Cases
2003 Paid	-15.561* (5.019)	-26.970* (8.894)	-25.189* (2.533)	-23.067* (3.337)
2004 Paid	-4.546 (4.459)	-22.438* (8.292)	-16.221* (3.233)	-14.732* (3.241)
2005 Paid	-2.427 (4.694)	-10.310 (9.554)	-12.576* (3.201)	-8.645* (3.777)
2006 Paid	-1.237 (3.930)	-8.748 (8.782)	-10.749* (3.118)	-7.467* (3.475)
2007 Paid	3.474 (4.872)	0.227 (10.839)	-5.687 (3.787)	-0.790 (4.123)
2008 Paid	-3.232 (3.945)	-7.205 (7.709)	-4.051 (3.827)	-4.738 (3.190)
First Circuit	-19.773* (6.052)	24.218* (12.227)	-0.981 (3.712)	7.154 (5.851)
Second Circuit	-13.772* (6.773)	-9.508 (6.203)	0.370 (3.316)	-6.845* (3.290)
Third Circuit	-6.894 (7.582)	9.332 (14.706)	3.944 (4.112)	3.751 (5.733)
Fifth Circuit	-12.927* (5.344)	-0.037 (7.074)	13.225 (7.040)	0.035 (3.808)
Sixth Circuit	-6.211 (5.676)	-3.743 (7.291)	6.805 (7.273)	-0.893 (3.908)
Seventh Circuit	9.643 (7.015)	16.401* (9.520)	1.995 (3.472)	8.559* (3.759)
Eighth Circuit	5.807 (6.703)	16.723 (13.383)	-0.387 (3.462)	6.760 (4.580)
Ninth Circuit	12.461 (7.124)	10.997 (9.624)	3.142 (3.481)	8.973* (4.145)
Tenth Circuit	-2.372 (7.004)	16.155 (13.258)	4.087 (3.512)	5.830 (4.626)
Eleventh Circuit	-8.210 (5.360)	19.839 (18.863)	9.880 (6.270)	6.752 (6.281)
D.C. Circuit	---	-7.292 (9.026)	0.786 (3.810)	-5.097 (4.567)
Cap. Habeas Cases	---	---	---	1.931 (1.978)
Capital Cases	---	---	---	26.615* (3.044)
Constant	30.857* (6.940)	51.047* (6.977)	28.586* (3.408)	27.365* (3.521)
R-Squared	0.205	0.078	0.127	0.167
No. of Observations	228	281	329	838

Note: Starred values are significant at the 0.05 level or higher.

While the models here are performing better than those discussed above, they still do not explain a substantial amount of variation in the average dollars spent per representation per year. Consistent with the expectations above, years earlier in the period of study show fewer dollars spent on average per representation per year. Also consistent with the analysis above, we find that capital cases averaged more money spent per representation per year than mega cases did, the baseline category for the model in the final column.

Somewhat more surprising here is the effect of some of the control variables for circuits. While there was some significant effect for participation in the pilot for the above models, disaggregating the pilot circuits from each other results in some interesting effects. The Ninth Circuit, on average, spends almost \$9,000 more per representation than the Fourth Circuit in all mega cases. It would be misleading, however, to claim that the pilot project is resulting in greater average cost per representation. The Ninth Circuit, like the Seventh Circuit, spends more on average than the Fourth Circuit, while the Second Circuit spends less on average. Thus, while there is a significant amount of variation in the circuits in average dollars spent per representation, it appears to be unrelated to the pilot program per se. Undoubtedly there are factors within each circuit that are driving these differences, including the geographic size of the circuit, found to be significant above.

A third way to consider the variation in dollars spent per year is to examine the aggregate dollar amounts. Because the amount of money spent will increase as the number of representations increases, we include a variable for the number of representations paid in each circuit for each year (see Table 46). We still expect the coefficients for year to have negative signs, indicating lower amounts of money spent in those years relative to the baseline of 2009.

Table 46: Aggregate Dollars (in Thousands), Pilot vs. Non-pilot Circuits

Variables	Cap. Habeas Model	Capital Model	Mega Model	All Cases
2003 Paid	-219.991* (83.746)	-147.539 (89.393)	-598.434* (142.835)	-378.072* (85.767)
2004 Paid	-47.065 (69.543)	-84.416 (145.928)	-519.303* (113.766)	-227.178* (82.645)
2005 Paid	-6.334 (52.675)	-153.866 (141.602)	-402.969* (111.172)	-166.898* (69.116)
2006 Paid	-5.593 (44.368)	-121.467 (103.271)	-407.276* (101.755)	-155.918* (59.056)
2007 Paid	9.874 (44.245)	21.181 (102.750)	-240.025* (102.065)	-50.029 (59.662)
2008 Paid	-17.260 (49.863)	-42.285 (86.384)	-163.710 (97.609)	-72.574 (52.333)
Pilot Circuit	38.914 (37.398)	-192.480* (75.710)	-217.030* (84.932)	-13.066 (49.741)
No. of Representations	19.477* (2.089)	51.258* (5.032)	32.631* (1.295)	30.030* (1.168)
Size of Circuit	0.000* (0.000)	0.000* (0.000)	-0.000* (0.000)	0.000 (0.000)
Cap. Habeas Cases	---	---	---	34.547 (33.482)
Capital Cases	---	---	---	315.917* (47.794)
Constant	24.587 (41.333)	-57.160 (73.397)	234.645* (59.180)	-34.974 (48.633)
R-Squared	0.487	0.666	0.863	0.760
No. of Observations	228	281	329	838

Note: Starred values are significant at the 0.05 level or higher.

While some models perform better than others, there is an overall improvement in model performance in comparison with the models discussed above. For most models, there is significantly less money spent earlier in the study period than later, and the finding is consistent with our expectations. The number of representations is positively related to the dollars spent, but the impact varies by the type of case. While an additional capital habeas representation will result in \$19,477 more being spent in the circuit per year, an additional capital representation costs far more—an additional \$51,258 all else being equal. Another surprising finding is the variation in effect for participation in the pilot. The pilot reduces the overall dollars spent for mega cases by \$217,030 per circuit year and \$192,480 for capital cases per circuit year. For the three circuits participating in the pilot for the last three years, that is a savings of \$3,685,590 for capital and mega cases only. Once again, the size of the circuit affects dollars spent in a relatively small way. Because of the variation among the pilot circuits found in the bar charts presented earlier,

it is important that we disaggregate the pilot circuits to determine if there is a clear pattern for circuit costs.

Consistent with the other models, and with our expectations, the amount of money paid out is lower in earlier years of the study period than in later years (see Table 47). For all three case type models, increasing the number of representations increases the amount of money spent, but by varying amounts depending on the model considered. Capital cases show the higher costs per additional representation per circuit year, and capital habeas cases show substantially less. Each additional capital habeas representation costs about \$25,000 more per circuit year, while the cost for an additional capital representation is \$54,645. Each additional mega representation costs about \$36,000 more per circuit year. The full model, in the final column of Table 47, shows that each additional representation is about \$30,000 more per circuit year. The full model also shows, consistent with all models to this point, that the capital cases continue to result in more circuit dollars spent each year.

The effects for the pilot are more mixed than one might expect. In the Sixth Circuit there appears to be no effect for the pilot across all models, but this is not unexpected. In considering the distribution of cases in the Sixth Circuit, we saw that mega and capital habeas cases dominated the case types, which was different from the national trend. The Sixth Circuit also cleared a large backlog of vouchers during this time period, which may be affecting the results. It is important to keep in mind that while there is no individual effect for the circuit, the pilot overall shows a significant effect (see Table 46).

The Second Circuit shows a more consistent effect, with overall costs reduced in two of the four models above, while the Ninth Circuit reduces overall circuit costs of mega cases only, but the amount of the reduction is over one million dollars each circuit year. For both capital and mega cases, the Second Circuit spends about \$600,000 less per circuit year than the Fourth Circuit, the baseline for comparison. In the full model, the Second Circuit spends about \$500,000 less per circuit year than the Fourth Circuit.

Table 47: Aggregate Dollars (in Thousands), Circuit Effects

Variables	Cap. Habeas Model	Capital Model	Mega Model	All Cases
2003 Paid	-247.296* (88.370)	-151.237 (81.758)	-602.27* (134.203)	-383.118* (85.614)
2004 Paid	-77.293 (62.031)	-107.853 (143.465)	-575.059* (104.016)	-226.440* (82.140)
2005 Paid	-33.222 (51.468)	-172.062 (144.958)	-480.459* (106.434)	-165.914* (69.256)
2006 Paid	-30.077 (43.281)	-137.242 (105.24)	-476.540* (97.268)	-154.111* (59.215)
2007 Paid	-2.816 (43.613)	-11.865 (103.759)	-290.589* (98.828)	-52.407 (59.942)
2008 Paid	-28.080 (45.213)	-49.128 (88.950)	-196.926* (93.953)	-73.400 (52.332)
No. of Representations	24.965* (3.315)	54.645* (5.533)	36.253* (1.602)	29.973* (1.183)
First Circuit	-87.481 (60.040)	140.473 (136.030)	-95.422 (64.893)	-109.351 (64.172)
Second Circuit	-67.215 (56.001)	-495.833* (205.102)	-496.982* (98.273)	-195.297 (90.396)
Third Circuit	-31.239 (58.798)	2.138 (140.512)	0.334 (92.219)	-72.400 (70.462)
Fifth Circuit	-303.143* (70.709)	-76.638 (135.033)	230.365* (88.850)	-165.621* (63.923)
Sixth Circuit	-46.354 (59.260)	-29.654 (124.541)	142.639 (123.765)	-60.574 (66.664)
Seventh Circuit	51.666 (89.985)	132.505 (135.7)	-37.386 (52.506)	-25.967 (58.141)
Eighth Circuit	3.416 (54.953)	139.899 (141.263)	1.550 (51.374)	-36.314 (53.767)
Ninth Circuit	136.017 (82.941)	291.918 (246.896)	-1175.588* (304.529)	131.083 (137.052)
Tenth Circuit	-42.908 (55.387)	4.456 (133.776)	-178.673* (61.598)	-94.131 (55.820)
Eleventh Circuit	-88.336 (50.955)	105.960 (140.740)	19.426 (113.728)	-58.509 (65.516)
DC Circuit	---	-77.879 (131.525)	61.165 (64.287)	-100.516 (64.866)
Cap. Habeas Cases	---	---	---	27.913 (34.898)
Capital Cases	---	---	---	315.485* (47.147)
Constant		-19.850 131.071	129.043 (70.877)	75.175 (57.213)
R-Squared	0.567	0.683	0.878	0.858
No. of Observations	228	281	329	838

Note: Starred values are significant at the 0.05 level or higher

Conclusions

While the conclusions we can reach at this point are tentative, we have learned much about the costs of cases with respect to the pilot program. With a better understanding of this baseline we can assess the impact of the pilot program. As we move to other stages of evaluation for the pilot, especially as we consider the dollars spent in all circuits after budgeting began, we need to keep several important factors in mind. First, there were differences between the pilot and non-pilot circuits before budgeting began, both as a group and as individual circuits. Thus, any comparison of dollars spent will have to include variables for being in the pilot program or for the circuits specifically. Second, the number of representations, while a significant explanation for dollars spent, is not the only factor driving circuit costs. It is useful to include measures for the geographic size of a circuit, which can lead to higher costs overall. Third, the highest cost cases are capital, not mega cases. This finding may illustrate the problems with identifying mega cases, or it may simply be the higher rate for attorneys and absence of a cap on the costs of death cases. Finally, in determining whether the money saved by the pilot outweighs the costs of the positions and staff, we find this analysis points to a tentative yes. While the money saved varies by circuit and case type, the purpose here is to consider the pilot as a whole. In so doing, we find that the estimated \$3,685,590 saved over the life of the pilot (from Table 46, the most modest estimate of pilot savings) outweigh the \$1,725,000 in salary, benefits, and travel for the CBAs and their support staff.⁵³

Survey Analysis

In order to understand the impact the Case-Budgeting Pilot Project was having in each circuit, we constructed surveys of judges and attorneys. The surveys asked each group about the process of budgeting, if budgeting was affecting the quality of representation for clients litigated under the CJA, and about the efforts of the CBAs to help manage cases and resources.

The FJC constructed a potential survey instrument, and both the Office of Defender Services (ODS) and those on the pilot teams had an opportunity to provide their feedback on the survey instrument. Once a final set of questions was established, six final versions of the survey were created—three attorney and three judge surveys—to allow the survey to be tailored to the specific circuit. The final versions of the survey were then programmed into Vovici, an online survey tool used for implementation of the survey through a web platform.

Identifying Survey Respondents

Potential respondents for the survey came from two groups: panel attorneys and judges working in the Second, Sixth, or Ninth Circuits. Lists of CJA panel attorneys for each district in these three circuits were provided to the CBAs by the applicable district court clerk's office or federal defender program.⁵⁴ A comprehensive list of judges from all

53. Estimates of the costs of the pilot were provided by ODS.

54. Two districts, California-Southern and Idaho, did not send in lists, and therefore panel attorneys in those districts were not included in the survey. The district of California-Eastern sent in a list of attorneys

three circuits, including district, magistrate, and circuit judges, was created using the J-Net. The number of potential respondents in each group is detailed in Table 48.

Table 48: Identifying Survey Respondents

Survey Group	Number of Potential Respondents
Second Circuit attorneys	856
Second Circuit judges	165
Sixth Circuit attorneys	1,016
Sixth Circuit judges	166
Ninth Circuit attorneys	1,100
Ninth Circuit judges	318
Total attorneys	2,972
Total judges	649
Total	3,621

Note: ODS estimates that 3,037 attorneys submitted vouchers in the pilot circuits in 2009, which means that the almost 3,000 attorney respondents here should be representative of those in contact with the CBAs.

On January 21, 2010, potential respondents were sent an e-mail from the Director of the FJC, Judge Barbara Rothstein, asking for their participation in the survey. The e-mail explained the purpose of the survey and provided a link to the survey for that group (Second Circuit attorneys, Second Circuit judges, Sixth Circuit attorneys, etc.). Two weeks after the initial e-mail contact, a follow-up reminder was sent to the potential respondents.

On February 23, 2010, two additional steps were taken to increase the response rate for the surveys. First, a list of attorneys who had participated in budgeting, compiled from the budgets themselves, was created. To those attorneys who had budgeted a case *and* received the initial e-mails, but had not yet responded, a phone call was made asking for their participation in the study. Second, a list of attorneys who had budgeted a case but had not received the survey was also created. To those attorneys who had budgeted a case but had not received the initial e-mails, an e-mail from the FJC Director with a link to the survey was sent.

While inclusion of the first group (those who had not yet responded, but were on the panel list) is not problematic for purposes of analysis, inclusion of the second group (those who had budgeted but were not on the panel list) is problematic. Because these attorneys

after the initial contact was made with respondents. The panel attorneys in this district were contacted separately from the other districts. However, because the California-Eastern list was comprehensive, the responses are included with those of all other respondents for purposes of analysis. The number of Ninth Circuit attorneys shown in Table 48 reflects the list from California-Eastern.

were not on the panel list, there is no way to know how representative these attorneys are of all other attorneys. That they are not on the panel list is an important difference, and one that could merit a separate analysis. Only 25 attorneys are in this separate group, and of the 25, only 7 responded to the survey. Therefore, in the results that follow, this supplemental group of respondents is excluded unless otherwise specified.

Response Rates

Data collection ended on March 5, 2010. The response rates, by group, are noted in Table 49.

Table 49: Response Rates

Survey Group	Respondents
Second Circuit attorneys	202 (24%)
Second Circuit judges	85 (52%)
Sixth Circuit attorneys	257 (25%)
Sixth Circuit judges	91 (55%)
Ninth Circuit attorneys	261 (24%)
Ninth Circuit judges	151 (47%)
Total attorneys	720 (24%)
Total judges	327 (50%)
Total	1,047

The lower response rate for attorneys than judges is not uncommon in survey work. Public officials typically respond at a higher rate, and given the cover letter from a fellow judge, the higher response rate is expected. There are, however, sufficient numbers of respondents in each group to allow for some statistical analysis.

In responding to the survey, one of the first questions respondents answered was whether or not they had contact with the CBA in their circuit (see technical appendix for the complete list of survey questions). This question served two purposes. First, it demonstrated how pervasive the Case-Budgeting Pilot Project is within the circuit. Second, it allowed us to eliminate those who were not familiar with case budgeting from participating in the survey. While understanding the perception of budgeting could be useful to the pilot, understanding experiences with budgeting was more important for the evaluation.

Table 50 shows the number of respondents in each category who have had contact with the CBA.

Table 50: Respondents Who Had Contact with the CBA

Survey Group	Respondents
Second Circuit attorneys	96 (48%)
Second Circuit judges	46 (57%)
Sixth Circuit attorneys	69 (27%)
Sixth Circuit judges	23 (25%)
Ninth Circuit attorneys	24 (9%)
Ninth Circuit judges	27 (18%)
Total attorneys	189 (26%)
Total judges	96 (30%)
Total	285

While the total number of respondents in contact with the CBA does not present problems by itself, when we look across the circuits, we see some noteworthy patterns. Judges and attorneys in the Second Circuit had more contact with the CBA than the two groups did in the other two circuits. The differences among the circuits in their contact with the CBA may be a function of the geographic distribution of the circuits. Because the Second Circuit is the most compact of the three, it may simply be more likely that attorneys and judges come in contact with the CBA there. In fact, contact with the CBA is inversely related to the size of the circuit. Alternatively, the location of the CBA within the circuit may explain the amount of contact. The Second Circuit and the Southern District of New York, a busy district in the circuit, are in the same building. Being near the busiest district may explain the differences in contact. Regardless of the reason for the differences in contact, the greater representation of attorneys and judges in the Second Circuit is a factor for which we may need to account as we move forward in the analysis.

After establishing if the judge or attorney had contact with the CBA, we sought to determine the nature of the contact. Of course, first among these issues is whether the contact with the CBA dealt with the case-budgeting process specifically. Case budgeting, however, is not the only work of the CBA, so additional questions were asked about the work of the CBA on voucher approval, cost containment, and other case-management practices. To determine what the relevant series of questions for the respondents was, we first asked them to identify all the types of contact they had with the CBA. The results are listed in Table 51.

Table 51: Types of Contact with the CBA

Survey Group	Budgeting	Discuss Service Providers	Discuss District Vouchers	Discuss Circuit Vouchers	Discuss Cost Containment	Discuss Cost Drivers	Discuss Case Management
Second Circuit attorneys	55 (57%)	53 (55%)	59 (61%)	44 (46%)	39 (41%)	25 (26%)	36 (38%)
Second Circuit judges	29 (63%)	N/A	30 (65%)	8 (17%)	29 (63%)	17 (37%)	16 (35%)
Sixth Circuit attorneys	53 (77%)	23 (33%)	40 (58%)	29(42%)	21 (30%)	15 (22%)	22 (32%)
Sixth Circuit judges	15 (65%)	N/A	13 (57%)	6 (26%)	8 (35%)	6 (26%)	8 (35%)
Ninth Circuit attorneys	15 (63%)	6 (25%)	4 (17%)	1 (4%)	16 (67%)	7 (29%)	13 (54%)
Ninth Circuit judges	11 (41%)	N/A	10 (37%)	4 (15%)	17 (63%)	16 (59%)	11 (41%)
Total attorneys	123	82	103	74	76	47	71
Total judges	55	N/A	53	18	54	39	35
Total	178	82	156	92	130	86	106

Note: Percentages are based on the number of respondents in that category who had contact with the CBA, from the table. Judges were not asked about the use of service providers because the questions were not relevant to the experience of a judge with a case.

As Table 51 shows, the types of contact with the CBA vary considerably, both across circuits and between attorneys and judges. While case budgeting is one of the most common types of contact with the CBA, there are other common interactions as well. A majority of attorneys who had contact with the CBA in the Second Circuit discussed service providers and district vouchers. In the Sixth Circuit, discussion of district vouchers was also common among a majority of attorneys who had contact with the CBA. In the Ninth Circuit, discussions of cost containment and case management were common for attorneys in contact with the CBA.

Judges in contact with the CBA generally discussed similar topics, though a majority of judges responding to the survey in the Ninth Circuit did not report discussing case budgeting with the CBA. Judges in the Second Circuit contacted the CBA to discuss district vouchers and cost containment, while judges in the Sixth Circuit generally contacted the

CBA for district-voucher-related issues. In the Ninth Circuit, contact between the CBA and the judges centered on cost containment and cost drivers.

In order to explain the impact of case budgeting and the work of the CBA in these other areas, we discuss each of these areas in greater detail below.

Case Budgeting

To gain a sense of the types of cases being budgeted, we asked judges and attorneys to identify the types of cases they had budgeted since the start of the CBA's service to their court, allowing the respondent to choose more than one case type. Listed in Table 52 are the frequencies for budgeting each type of case by group, and the total number of respondents who have budgeted is presented in the final column.⁵⁵ Definitions for each type of case were provided at the start of the survey.

There is a significant amount of variation in the type of cases being budgeted by circuit. Because of the variation in contact by case type, it is important to consider the impact of case budgeting by type of case.

55. Percentages are based on the total number of respondents in each group who contacted the CBA to discuss case budgeting. The follow-up question regarding the types of cases budgeted only appeared to those respondents selecting "contact to discuss case budgeting" in the previous question. Attorneys and judges in the Ninth Circuit were not asked about budgeting of capital habeas cases. The CBA in the Ninth Circuit is not responsible for budgeting this kind of case, because of the presence of a program for budgeting capital habeas cases that predated her start.

Table 52: Types of Cases Budgeted

Survey Group	Capital Prosecutions	Capital Habeas Prosecutions	Mega Representations	Contacted CBA to Discuss Budgeting
Second Circuit attorneys	37 (63%)	0	31 (53%)	59
Second Circuit judges	15 (52%)	0	17 (59%)	29
Sixth Circuit attorneys	20 (38%)	10 (19%)	29 (55%)	53
Sixth Circuit judges	8 (53%)	9 (60%)	6 (40%)	15
Ninth Circuit attorneys	2 (13%)	N/A	13 (87%)	15
Ninth Circuit judges	5 (45%)	N/A	8 (73%)	11
Total attorneys	59	10	73	123
Total judges	28	9	31	55
Total	87	19	104	178

Capital Prosecutions

Of those who had budgeted a capital prosecution with the CBA, respondents were asked about the challenges associated with budgeting this type of case. A list of potential challenges was provided to the respondent, with an optional field for the respondent to list additional challenges faced in budgeting capital prosecutions. Respondents were asked whether they thought the issue listed was a challenge to budgeting capital cases, and they could say yes or no to each item. Listed in Table 53 are the frequencies with which respondents agreed that the issue was a challenge for budgeting capital prosecutions. The number of respondents who budgeted each type of case is listed in the column heading, and provides the basis for the percentages listed in the table.

Table 53: Challenges to Budgeting Capital Prosecutions

Agreed This Is a Potential Challenge	Attorneys N = 59	Judges N = 28
Early identification of cases that should be budgeted	8 (14%)	5 (18%)
Estimating the overall case costs	54 (92%)	23 (82%)
Estimating the costs of service providers	36 (61%)	22 (79%)
Establishing rates/fees for service providers	15 (25%)	11 (39%)
Estimating the attorney hours necessary for a defense	49 (83%)	22 (79%)
Responding to changes in charges	5 (8%)	5 (18%)
Responding to changes in counsel	6 (10%)	4 (14%)
Responding to changes in other case circumstances	11 (19%)	6 (21%)
Development of a budget to ensure availability of resources	30 (51%)	10 (36%)
Discovery issues	15 (25%)	5 (18%)
Lack of familiarity of CJA panel attorneys with case budgeting	14 (24%)	6 (21%)

For the most part, attorneys and judges focused on the same challenges for budgeting capital prosecutions. Estimating the overall case costs, the costs of service providers, and the attorney hours necessary for a defense were frequently listed by both groups. Attorneys, however, tended to see more of the potential challenges as problematic than judges did. For instance, more attorneys than judges saw the creation of a budget to ensure available resources as a challenge. Likewise, changing case circumstances, discovery issues, and lack of familiarity with budgeting were all more problematic for attorneys than they were for judges.

Relatively few attorneys and judges took the option to list their own challenges to budgeting capital prosecutions. In fact, only five in each group chose another potential challenge, and attorneys and judges tended to focus on different challenges. Attorneys saw the budgeting process as a challenge: from navigating the spreadsheet to estimating how a request would be received to waiting for judicial approval and finding the time to complete a budget. Judges were more likely to focus their additional comments on the challenge of knowing their role relative to the CBA, understanding the reasonableness and necessity of a fee, and the logistics of preauthorization delay and “unnecessary motions” by counsel.

In addition to asking attorneys and judges about the challenges of budgeting, we asked the respondents about their level of satisfaction with the work of the CBAs to address those challenges. Their responses are listed in Tables 54 and 55. Separate tables were created for attorneys and judges to simplify the interpretation.

Table 54: Attorney Perceptions of the Work of the CBAs to Address Challenges to Budgeting Capital Prosecutions

Attorney Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Early identification of cases that should be budgeted	38 (84%)	4 (9%)	3 (7%)	0	0
Estimating the overall case costs	41 (76%)	7 (13%)	3 (6%)	3 (6%)	0
Estimating the costs of service providers	32 (65%)	11 (22%)	5 (10%)	1 (2%)	0
Establishing rates/fees for service providers	39 (75%)	7 (13%)	5 (10%)	1 (2%)	0
Estimating the attorney hours necessary for a defense	40 (78%)	5 (10%)	2 (4%)	4 (8%)	0
Responding to changes in charges	29 (85%)	2 (6%)	3 (9%)	0	0
Responding to changes in counsel	20 (74%)	3 (11%)	4 (15%)	0	0
Responding to changes in other case circumstances	34 (81%)	3 (7%)	5 (12%)	0	0
Development of a budget to ensure availability of resources	44 (79%)	7 (13%)	3 (5%)	2 (4%)	0
Discovery issues	24 (75%)	3 (9%)	5 (16%)	0	0
Lack of familiarity of CJA panel attorneys with case budgeting	26 (72%)	4 (11%)	5 (14%)	1 (3%)	0

Of those respondents with experience budgeting cases, both judges and attorneys viewed the work of the CBA to address these challenges positively. In fact, for each item listed, substantial majorities of each group are somewhat or very satisfied with the work of the CBA. If any dissatisfaction with the work of the CBA was reported, it was most likely to be with the estimates for costs and hours of the various aspects of the cases.

Table 55: Judge Perceptions of the Work of the CBAs to Address Challenges to Budgeting Capital Prosecutions

Judge Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Early identification of cases that should be budgeted	13 (81%)	0	3 (19%)	0	0
Estimating the overall case costs	14 (70%)	2 (10%)	3 (15%)	0	1 (5%)
Estimating the costs of service providers	17 (74%)	3 (13%)	2 (9%)	0	1 (4%)
Establishing rates/fees for service providers	16 (70%)	4 (17%)	2 (9%)	0	1 (4%)
Estimating the attorney hours necessary for a defense	12 (71%)	2 (12%)	2 (12%)	0	1 (6%)
Responding to changes in charges	6 (60%)	1 (10%)	3 (30%)	0	0
Responding to changes in counsel	5 (71%)	1 (10%)	1 (14%)	0	0
Responding to changes in other case circumstances	7 (58%)	2 (17%)	3 (25%)	0	0
Development of a budget to ensure availability of resources	14 (67%)	4 (19%)	2 (10%)	1 (5%)	0
Discovery issues	5 (63%)	0	2 (25%)	0	1 (13%)
Lack of familiarity of CJA panel attorneys with case budgeting	8 (62%)	2 (15%)	2 (15%)	1 (8%)	0

In addition to the problems associated with budgeting, attorneys and judges were asked questions about the impact case budgeting was having on capital prosecutions. These items were drawn directly from the goals of the pilot project, including understanding the impact on effective case management and the quality of the representation for CJA clients. The responses to these questions are shown in Tables 56 and 57.

Once again, there appears to be a very positive reaction to the impact of case budgeting on capital prosecutions. The majority of respondents to each question strongly agree that case budgeting enhances management of capital cases and promotes a high-quality defense. Respondents also find the CBA to be objective in giving case-budgeting advice, expediting the process of budgeting, and developing consistent budgeting practices.

Table 56: Attorney Perceptions of the Impact of Budgeting Capital Prosecutions

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] provided objective case-budgeting advice in capital prosecutions	49 (83%)	5 (8%)	3 (5%)	1 (2%)	1 (2%)
Case budgeting enhanced the effective management of capital prosecutions	30 (52%)	8 (14%)	13 (22%)	5 (9%)	2 (3%)
Case budgeting helped to promote a high-quality defense for capital prosecutions	30 (53%)	9 (16%)	13 (23%)	3 (5%)	2 (4%)
[The CBA] expedited the budgeting process in capital prosecutions	48 (83%)	4 (7%)	3 (5%)	3 (5%)	0
[The CBA] helped to develop consistent budgeting practices in capital prosecutions	38 (64%)	3 (5%)	18 (31%)	0	0

Table 57: Judge Perceptions of the Impact of Budgeting Capital Prosecutions

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] provided objective case-budgeting advice in capital prosecutions	24 (86%)	2 (7%)	1 (4%)	0	1 (4%)
Case budgeting enhanced the effective management of capital prosecutions	16 (62%)	4 (15%)	4 (15%)	1 (4%)	1 (4%)
Case budgeting helped to promote a high-quality defense for capital prosecutions	17 (65%)	1 (4%)	8 (31%)	0	0
[The CBA] expedited the budgeting process in capital prosecutions	21 (81%)	1 (4%)	3 (12%)	0	1 (4%)
[The CBA] helped to develop consistent budgeting practices in capital prosecutions	16 (67%)	4 (17%)	3 (13%)	0	1 (4%)

Capital Habeas Prosecutions

While capital habeas prosecutions are relatively rare among the respondents to the survey, there are some meaningful patterns to the responses of those with this type of litigation experience as well. Discussed below are the challenges to budgeting capital habeas cases and the work of the CBA to alleviate those challenges.

Table 58: Challenges to Budgeting Capital Habeas Prosecutions

Agreed This Is a Potential Challenge	Attorneys N = 10	Judges N = 9
Early identification of cases that should be budgeted	1 (10%)	1 (11%)
Estimating the overall case costs	8 (80%)	5 (56%)
Estimating the costs of service providers	5 (50%)	4 (44%)
Establishing rates/fees for service providers	4 (40%)	2 (22%)
Estimating the attorney hours necessary for a defense	9 (90%)	5 (56%)
Responding to changes in charges	2 (20%)	1 (11%)
Responding to changes in counsel	2 (20%)	2 (22%)
Responding to changes in other case circumstances	6 (60%)	1 (11%)
Development of a budget to ensure availability of resources	6 (60%)	5 (56%)
Discovery issues	4 (40%)	1 (11%)
Lack of familiarity of CJA panel attorneys with case budgeting	2 (20%)	2 (22%)

Using the same list of potential budgeting challenges as discussed above, attorneys and judges tended to focus on similar challenges to budgeting capital habeas cases. Estimates for the various aspects of litigation, from hours to rates, were listed as being a challenge (see Table 58). Likewise, the creation of a budget was also viewed as a challenge by attorneys and judges, though the percentages here are slightly deceiving, since there are so few people with experience litigating or hearing capital habeas prosecutions.

As they were asked in relation to capital prosecutions, attorneys and judges were asked if there were any additional challenges to budgeting capital habeas prosecutions. Only one judge added anything to the existing list, and the additional challenge echoed a comment for capital prosecutions. The judge who added a challenge to capital habeas prosecutions mentioned the challenge of determining the reasonableness of fees on appeal.

Attorneys and judges were also asked about the work of the CBA to address the problems associated with budgeting capital habeas representations. Their responses are shown in Tables 59 and 60.

Table 59: Attorney Perceptions of the Work of the CBAs to Address Challenges to Budgeting Capital Habeas Prosecutions

Attorney Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Early identification of cases that should be budgeted	4 (80%)	1 (20%)	0	0	0
Estimating the overall case costs	7 (78%)	2 (22%)	0	0	0
Estimating the costs of service providers	5 (83%)	1 (17%)	0	0	0
Establishing rates/fees for service providers	6 (100%)	0	0	0	0
Estimating the attorney hours necessary for a defense	6 (67%)	3 (33%)	0	0	0
Responding to changes in charges	3 (100%)	0	0	0	0
Responding to changes in counsel	3 (100%)	0	0	0	0
Responding to changes in other case circumstances	7 (100%)	0	0	0	0
Development of a budget to ensure availability of resources	8 (89%)	1 (11%)	0	0	0
Discovery issues	5 (100%)	0	0	0	0
Lack of familiarity of CJA panel attorneys with case budgeting	3 (100%)	0	0	0	0

Table 60: Judge Perceptions of the Work of the CBAs to Address Challenges to Budgeting Capital Habeas Prosecutions

Judge Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Early identification of cases that should be budgeted	5 (100%)	0	0	0	0
Estimating the overall case costs	8 (89%)	0	1 (11%)	0	0
Estimating the costs of service providers	6 (86%)	0	1 (14%)	0	0
Establishing rates/fees for service providers	8 (89%)	0	1 (11%)	0	0
Estimating the attorney hours necessary for a defense	9 (100%)	0	0	0	0
Responding to changes in charges	3 (60%)	0	2 (40%)	0	0
Responding to changes in counsel	5 (83%)	0	1 (17%)	0	0
Responding to changes in other case circumstances	4 (67%)	0	2 (33%)	0	0
Development of a budget to ensure availability of resources	6 (86%)	0	1 (14%)	0	0
Discovery issues	3 (75%)	0	1 (25%)	0	0
Lack of familiarity of CJA panel attorneys with case budgeting	5 (71%)	0	2 (29%)	0	0

Again, while there are few attorneys and judges experienced with capital habeas representations, the results tend to show they are generally satisfied with the work of the CBA to address the potential challenges to budgeting capital habeas representations. On the whole, attorneys appear more positive than judges, but judges rated the work of the CBA no lower than neutral.

Like the capital prosecution respondents, those with experience budgeting capital habeas prosecutions were asked about the impact of budgeting on the quality of the representation, and other aspects of case management. The results are shown in Tables 61 and 62.

**Table 61: Attorney Perceptions of the Impact of Budgeting
Capital Habeas Representations**

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] provided objective case-budgeting advice in capital habeas prosecutions	10 (100%)	0	0	0	0
Case budgeting enhanced the effective management of capital habeas prosecutions	4 (40%)	3 (30%)	2 (20%)	1 (10%)	0
Case budgeting helped to promote a high-quality defense for capital habeas prosecutions	4 (40%)	3 (30%)	1 (10%)	2 (20%)	0
[The CBA] expedited the budgeting process in capital habeas prosecutions	8 (80%)	2 (20%)	0	0	0
[The CBA] helped to develop consistent budgeting practices in capital habeas prosecutions	8 (80%)	1 (10%)	1 (10%)	0	0

**Table 62: Judge Perceptions of the Impact of Budgeting
Capital Habeas Representations**

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] provided objective case-budgeting advice in capital habeas prosecutions	9 (100%)	0	0	0	0
Case budgeting enhanced the effective management of capital habeas prosecutions	6 (86%)	0	1 (14%)	0	0
Case budgeting helped to promote a high-quality defense for capital habeas prosecutions	5 (71%)	1 (14%)	1 (14%)	0	0
[The CBA] expedited the budgeting process in capital habeas prosecutions	8 (100%)	0	0	0	0
[The CBA] helped to develop consistent budgeting practices in capital habeas prosecutions	8 (100%)	0	0	0	0

Once again, the respondents favorably rated the budgeting process as well as the CBAs themselves. The respondents generally agreed that budgeting capital habeas cases promotes a high-quality defense and enhances case management. The work of the CBAs has expedited the process and developed consistent practices.

Mega Cases

The final type of case available for budgeting is mega representations. This was the most common type of case listed among those with experience budgeting cases.

As with the other two case types discussed above, the most common challenges for budgeting mega cases are estimating costs and hours for various aspects of the litigation process and developing a budget (see Table 63). Likewise, attorneys tend to see more problems associated with case budgeting than judges do. One unique aspect of mega cases is that attorneys and judges were more likely to report identifying these cases early as a challenge. This, however, is probably because mega cases are determined as the case moves along the litigation process instead of at the beginning. Knowing, in advance, the types of cases that will cost more than \$30,000 per representation is a challenge all three CBAs mentioned, and this challenge was also identified by attorneys and judges.

Table 63: Challenges to Budgeting Mega Representations

Agreed This Is a Potential Challenge	Attorneys N = 73	Judges N = 31
Early identification of cases that should be budgeted	22 (30%)	13 (42%)
Estimating the overall case costs	58 (79%)	28 (90%)
Estimating the costs of service providers	40 (55%)	20 (65%)
Establishing rates/fees for service providers	25 (34%)	17 (55%)
Estimating the attorney hours necessary for a defense	54 (74%)	22 (71%)
Responding to changes in charges	11 (15%)	6 (19%)
Responding to changes in counsel	3 (4%)	9 (29%)
Responding to changes in other case circumstances	15 (21%)	7 (23%)
Development of a budget to ensure availability of resources	42 (58%)	18 (58%)
Discovery issues	27 (37%)	14 (45%)
Lack of familiarity of CJA panel attorneys with case budgeting	21 (29%)	13 (42%)

Attorneys and judges were also asked to discuss any additional challenges to budgeting mega cases. Attorneys were the only group to list additional challenges. While eight attorneys made comments, not all the comments were relevant to budgeting mega cases. Of those attorneys specifically talking about budgeting mega cases, the challenges listed focused on using the budgeting program, the need to convince the court that a substantial number of hours are necessary for mega cases, and the prosecution’s control of the discovery process.

Both attorneys and judges were asked about the work of the CBA to address the potential challenges in budgeting mega cases. The responses to these questions are listed in Tables 64 and 65.

Table 64: Attorney Perceptions of the Work of the CBAs to Address Challenges to Budgeting Mega Representations

Attorney Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Early identification of cases that should be budgeted	46 (73%)	7 (11%)	8 (13%)	0	2 (3%)
Estimating the overall case costs	40 (63%)	12 (19%)	6 (9%)	4 (6%)	2 (3%)
Estimating the costs of service providers	34 (60%)	10 (18%)	9 (16%)	3 (5%)	1 (2%)
Establishing rates/fees for service providers	39 (66%)	8 (14%)	9 (15%)	2 (3%)	1 (2%)
Estimating the attorney hours necessary for a defense	39 (61%)	10 (16%)	9 (14%)	4 (6%)	2 (3%)
Responding to changes in charges	19 (48%)	7 (18%)	12 (30%)	1 (3%)	1 (3%)
Responding to changes in counsel	12 (40%)	2 (7%)	15 (50%)	0	1 (3%)
Responding to changes in other case circumstances	19 (44%)	8 (19%)	14 (33%)	1 (2%)	1 (2%)
Development of a budget to ensure availability of resources	36 (61%)	9 (15%)	10 (17%)	2 (3%)	2 (3%)
Discovery issues	25 (54%)	7 (15%)	10 (22%)	2 (4%)	2 (4%)
Lack of familiarity of CJA panel attorneys with case budgeting	27 (61%)	2 (5%)	13 (30%)	1 (2%)	1 (2%)

Table 65: Judge Perceptions of the Work of the CBAs to Address Challenges to Budgeting Mega Representations

Judge Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Early identification of cases that should be budgeted	17 (81%)	0	1 (5%)	1 (5%)	2 (10%)
Estimating the overall case costs	18 (72%)	1 (4%)	3 (12%)	1 (4%)	2 (8%)
Estimating the costs of service providers	20 (74%)	2 (7%)	3 (11%)	1 (4%)	1 (4%)
Establishing rates/fees for service providers	18 (75%)	2 (8%)	2 (8%)	1 (4%)	1 (4%)
Estimating the attorney hours necessary for a defense	16 (70%)	2 (9%)	3 (13%)	1 (4%)	1 (4%)
Responding to changes in charges	10 (63%)	1 (6%)	4 (25%)	1 (6%)	0
Responding to changes in counsel	10 (63%)	1 (6%)	5 (31%)	0	0
Responding to changes in other case circumstances	12 (67%)	2 (11%)	3 (17%)	1 (6%)	0
Development of a budget to ensure availability of resources	19 (79%)	0	2 (8%)	1 (4%)	2 (8%)
Discovery issues	12 (67%)	1 (6%)	3 (17%)	1 (6%)	1 (6%)
Lack of familiarity of CJA panel attorneys with case budgeting	16 (73%)	1 (5%)	2 (9%)	3 (14%)	0

Like the other respondents to this point, the majority of attorneys and judges budgeting mega cases are very satisfied with the work done by the CBA to address the potential burden of case budgeting. Compared with their responses for the other two case types, judges were slightly more negative about the work the CBA has done to familiarize attorneys with case budgeting. While this is a general pattern, the number of respondents dissatisfied with the work of the CBA is fairly low.

One final aspect of case budgeting addressed by the respondents was the impact budgeting was having on the management of mega cases. The results are shown in Tables 66 and 67.

Table 66: Attorney Perceptions of the Impact of Budgeting in Mega Representations

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] provided objective case-budgeting advice in mega cases	52 (74%)	9 (13%)	6 (9%)	2 (3%)	1 (1%)
Case budgeting enhanced the effective management of mega cases	39 (56%)	10 (14%)	14 (20%)	2 (3%)	5 (7%)
Case budgeting helped to promote a high-quality defense for mega cases	38 (54%)	7 (10%)	13 (19%)	6 (9%)	6 (9%)
[The CBA] expedited the budgeting process in mega cases	49 (69%)	10 (14%)	8 (11%)	1 (1%)	3 (4%)
[The CBA] helped to develop consistent budgeting practices in mega cases	43 (61%)	5 (7%)	18 (26%)	2 (3%)	2 (3%)

Table 67: Judge Perceptions of the Impact of Budgeting in Mega Representations

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] provided objective case-budgeting advice in mega cases	24 (80%)	3 (10%)	0	1 (3%)	2 (7%)
Case budgeting enhanced the effective management of mega cases	15 (54%)	5 (18%)	5 (18%)	1 (4%)	2 (7%)
Case budgeting helped to promote a high-quality defense for mega cases	14 (48%)	4 (14%)	6 (21%)	3 (10%)	2 (7%)
[The CBA] expedited the budgeting process in mega cases	24 (83%)	0	2 (7%)	2 (7%)	1 (3%)
[The CBA] helped to develop consistent budgeting practices in mega cases	23 (77%)	3 (10%)	1 (3%)	1 (3%)	2 (7%)

As noted above, the results here are somewhat different than those for the other two case types, though respondents are generally very positive toward case budgeting for mega cases. While the vast majority of respondents thought that case budgeting promoted a high-quality defense and enhanced case management, attorneys were slightly more negative than they were in their responses for the other case types. The ability of the CBA to expedite budgeting of mega cases and develop consistent budgeting practices was generally viewed positively by both groups again.

Budgeting Before the CBA

To gain a sense of what the budgeting process looked like before the CBAs started their jobs, we asked attorneys and judges if they had budgeted cases prior to their CBA's start date, and what that process was like. Of the 285 respondents in contact with the CBA, 18 judges and 33 attorneys noted they had budgeted cases prior to the appointment of the CBA. In asking these two groups what budgeting was like prior to the appointment of the CBA, we were given a variety of answers. Because some of the responses are lengthy, coding the answer for a single item would be inaccurate. The responses discussed below include all themes in an answer, allowing for more than 33 response options.

Attorneys tended to use phrases such as “haphazard,” “ad hoc,” and “inconsistent” when talking about budgeting cases prior to the appointment of the CBA. They noted that they worked with judges individually or with a member of the court staff to create the budget, but that the budgeting process was a matter of the judge's preference. A few attorneys noted that they were able to budget prior to the appointment of the CBA with the help of the Death Penalty Resource Counsel Project. More than one attorney noted that the budgeting process prior to their CBA's appointment was frustrating.

Judges tended to describe a similar process, often mentioning that budgeting was accomplished through a cooperative effort of counsel, judges, and court staff. While judges did use terms such as “haphazard,” they used them with less frequency than did the attorneys. Judges, however, did mention an aspect of budgeting not listed by the attorneys. When reviewing requests for funding, judges noted that before the appointment of the CBA, they relied on a district fee schedule to determine if a cost was reasonable.

Conclusions on Case Budgeting

In looking across the case types, there are a few conclusions we can reach about case budgeting. Generally speaking, challenges to case budgeting were mentioned more often by attorneys than by judges. While attorneys saw more challenges, the challenges judges saw were also seen by attorneys. Estimating case costs, the costs of service providers, and the attorney hours necessary for a defense were viewed by both groups, across all case types, as a challenge. One difference across case types is that attorneys and judges saw identifying mega cases as more challenging than identifying other case types.

Despite the challenges to case budgeting, both attorneys and judges indicated a high level of satisfaction with the work of the CBAs to address these challenges. Moreover, both groups saw budgeting cases as helping to effectively manage cases and enhancing the quality of the representation. The satisfaction with the work of the CBAs is perhaps most

pronounced when we consider the budgeting process prior to the appointment of the CBA, which was reported to be a more haphazard and inconsistent process.

Service Providers

Attorneys were asked about their experiences in working with the CBA to hire service providers for the case.⁵⁶ For the 82 attorneys in contact with the CBA regarding issues related to service providers, the types of interaction and experience varied. Attorneys were asked how helpful the CBA was in discussing the use of service providers, negotiating rates, suggesting names, and coordinating use. Table 68 shows the results for these questions.

Table 68: Attorneys’ Perceptions of the Helpfulness of the CBA in Dealing with Service Providers

Interactions with CBA	Very Helpful	Somewhat Helpful	Neither Helpful nor Unhelpful	Somewhat Unhelpful	Very Unhelpful
Discussing the use of service providers	45 (76%)	9 (15%)	5 (8%)	0	0
Negotiating rates for service providers	29 (54%)	7 (13%)	17 (31%)	1 (2%)	0
Suggesting names of service providers	28 (52%)	7 (13%)	19 (35%)	0	0
Coordinating the use of service providers	28 (54%)	8 (15%)	16 (31%)	0	0

While the attorneys found the CBAs to be very helpful in discussing the use of service providers, their interactions regarding negotiating rates, suggesting names, and coordinating use were more mixed. Despite the greater variation in opinions, attorney experiences with the CBAs regarding the use of service providers could still generally be called positive. A majority of the attorneys responding found the CBA very helpful in dealing with the process of using service providers.

Initial Voucher Review

One important aspect of understanding the impact of the CBAs is knowing what life was like prior to their appointment. Unfortunately, relatively little information exists on this point. The recollections of people in the circuit, however, can be used to provide insight. While specific information would not be reliable, general memories of an issue would be more useful. Therefore, attorneys and judges were asked about the voucher review process prior to the appointment of the CBA. The questions asked of each group here differed slightly. Judges were asked if they reviewed district vouchers prior to the appoint-

⁵⁶ Judges were not asked these questions because they are not typically involved in the selection of service providers, only seeing the result of such choices on a budget or voucher.

ment of the CBA, and, if so, what that process was like. Attorneys, on the other hand, were asked about the voucher review process from their perspective, the time it took to complete the voucher and how smoothly the process ran for someone waiting for payment. Part of understanding the respondent's perspective comes from knowing if the person dealt with the voucher review process prior to the appointment of the CBA. Table 69 shows how many of the respondents were familiar with voucher review prior to the start of the CBA.⁵⁷

Table 69: Familiarity with Voucher Review Prior to the CBA

	Totals
Judges reviewing vouchers prior to the CBA start date	50 (96%)
Attorneys submitting vouchers for review prior to the CBA start date	99 (75%)

Judges and attorneys were also asked about the impact the CBA was having on the voucher review process (see Table 70). While all respondents answering the battery of questions on voucher review had an opportunity to respond to these items, the focus of this analysis will be on those who were involved in voucher review prior to the start of the CBA.

Table 70: Attorney Perceptions of the Impact of the CBA on Voucher Review

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] reduces the amount of time I wait for vouchers to be reviewed	46 (63%)	16 (22%)	8 (11%)	3 (4%)	0
The assistance of [the CBA] reduces the amount of time I wait for vouchers to be paid	45 (62%)	14 (19%)	12 (16%)	2 (3%)	0
[The CBA] is a valuable resource to me as I submit vouchers for review	55 (75%)	9 (12%)	6 (8%)	2 (3%)	1 (1%)

57. Percentages are based on the number of respondents in each group who contacted the CBA regarding voucher review.

A strong majority of attorneys agreed that the assistance of the CBA is reducing the amount of time for vouchers to be reviewed and paid, issues that were the source of the most consistent complaints noted in the other aspects of the evaluation. Likewise, the attorneys see the CBA as a resource in the voucher review process.

Table 71: Judge Perceptions of the Impact of the CBA on Voucher Review

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] expedites my review of vouchers	28 (57%)	12 (24%)	6 (12%)	1 (2%)	2 (4%)
The assistance of [the CBA] facilitates my decision making in reviewing vouchers	34 (69%)	11 (22%)	1 (2%)	1 (2%)	2 (4%)
The assistance of [the CBA] limits the number of complaints I hear about voucher review	17 (39%)	6 (14%)	14 (32%)	3 (7%)	4 (9%)
The assistance of [the CBA] limits the number of complaints I hear about voucher payment	19 (41%)	3 (7%)	18 (39%)	3 (7%)	3 (7%)
[The CBA] is a valuable resource for me in reviewing vouchers	32 (63%)	14 (27%)	2 (4%)	1 (2%)	2 (4%)

Judges were also positive in their assessment of the impact of the CBA on voucher review (see Table 71). A majority of the judges strongly agreed that the CBA helped to expedite voucher review, facilitated decision making by the judge, and was a valuable resource. Judges were less inclined to strongly agree that the number of complaints about voucher review and payment had been limited, but they were still generally positive about the effect of the CBA in this area as well.

One final question asked of the attorneys and judges was to estimate the time it currently takes to complete voucher review from their perspective. Judges were asked to estimate how much time per week they spend reviewing vouchers. Attorneys were asked to estimate how much time it takes for their vouchers to be reviewed. The average and median times are shown in Table 72.

Table 72: Average Time for Voucher Review

Judges	
Average hours per week spent reviewing vouchers	1 hour
Median hours per week reviewing vouchers	1 hour
Attorneys	
Average weeks for voucher review	5 weeks
Median weeks for voucher review	4 weeks

Judges spend about one hour per week reviewing vouchers. Attorneys, on the other hand, wait a month or more for payment of a voucher. While the review of vouchers appears to be a lighter burden on judges' time than one might think, the review time from the perspective of the attorneys is over a month.

Excess Compensation Vouchers

In addition to asking respondents about the impact of the CBA on district voucher review, we asked attorneys and judges about the review of excess compensation vouchers. In order to get a sense of the breadth of experience with excess compensation vouchers, it was first necessary to determine how many attorneys and judges dealt with excess compensation vouchers prior to the appointment of the CBA. Table 73 shows the percentage in each category.

Table 73: Familiarity with Excess Compensation Voucher Review Prior to the CBA

	Totals
Judges reviewing excess compensation vouchers prior to the CBA start date	16 (89%)
Attorneys submitting excess compensation vouchers for review prior to the CBA start date	60 (81%)

Both groups were asked about the impact the CBA was having on the excess compensation voucher review process. The results are shown in Tables 74 and 75.

Table 74: Attorney Perceptions of the Impact of the CBA on Excess Compensation Voucher Review

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] reduces the amount of time I wait for excess compensation vouchers to be reviewed	38 (64%)	8 (14%)	12 (20%)	1 (2%)	0
The assistance of [the CBA] reduces the amount of time I wait for excess compensation vouchers to be paid	37 (63%)	10 (17%)	11 (19%)	1 (2%)	0
[The CBA] is a valuable resource to me as I submit excess compensation vouchers for review	40 (68%)	11 (19%)	5 (8%)	1 (1%)	2 (3%)

Attorneys once again show a favorable attitude about the work of the CBA to reduce the amount of time taken for excess compensation voucher review and payment. In fact, attorneys were slightly more positive about the work of the CBA on excess compensation vouchers than they were about the CBA's work on the district vouchers (discussed above).

Table 75: Judge Perceptions of the Impact of the CBA on Excess Compensation Voucher Review

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] expedites my review of excess compensation vouchers	11 (79%)	3 (21%)	0	0	0
The assistance of [the CBA] facilitates my decision making in reviewing excess compensation vouchers	12 (80%)	2 (13%)	1 (7%)	0	0
The assistance of [the CBA] limits the number of complaints I hear about excess compensation voucher review	7 (54%)	3 (23%)	3 (23%)	0	0
The assistance of [the CBA] limits the number of complaints I hear about excess compensation voucher payment	8 (62%)	2 (15%)	3 (23%)	0	0
[The CBA] is a valuable resource for me in reviewing excess compensation vouchers	13 (87%)	2 (13%)	0	0	0

Judges, likewise, viewed the work of the CBA on excess compensation vouchers more favorably than they did the CBA’s work on district vouchers. Judges see the work of the CBA as expediting the review process, facilitating their decision making, reducing complaints, and providing an overall resource for the judges.

Finally, we wanted to gain a sense from each group about the time excess compensation voucher review currently takes (see Table 76). As they did with the review of district vouchers, judges were spending about an hour per week reviewing excess compensation vouchers. Attorneys, on the other hand, waited twice as long for an excess voucher as they did for a district voucher. While the amount of time to review these vouchers is less than what was found prior to the appointment of the CBA, it is still a substantial amount of time.

Table 76: Average Time for Excess Compensation Voucher Review

Judges	
Average hours per week spent reviewing vouchers	1 hour
Median hours per week reviewing vouchers	1 hour
Attorneys	
Average weeks for voucher review	10 weeks
Median weeks for voucher review	8 weeks

Cost Containment

Apart from attorneys and judges budgeting cases, others were asked about the impact of the CBA on cost containment. The purpose of these questions was to understand the effect of the pilot on cost containment among the broadest group of respondents. Of the respondents to the survey, 76 attorneys (40% of all attorneys having some contact with the CBA) and 54 judges (56% of those having some contact with the CBA) contacted the CBA regarding cost containment. The two groups were asked similar questions, and one additional question was asked of judges. Their responses are shown in Tables 77 and 78.

Table 77: Attorney Perceptions of Cost Containment

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] helps keep attorneys accountable for the costs of litigation in CJA cases	41 (54%)	20 (26%)	9 (12%)	3 (4%)	3 (4%)
The assistance of [the CBA] helps keep service providers accountable for the costs of litigation in CJA cases	38 (51%)	18 (24%)	15 (20%)	2 (3%)	2 (3%)

Table 78: Judge Perceptions of Cost Containment

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] helps keep attorneys accountable for the costs of litigation in CJA cases	34 (64%)	12 (23%)	5 (9%)	1 (2%)	1 (2%)
The assistance of [the CBA] helps keep service providers accountable for the costs of litigation in CJA cases	30 (59%)	12 (24%)	7 (14%)	0	2 (4%)
The assistance of [the CBA] has improved my confidence in the appropriateness of expenditures in CJA panel attorney cases	32 (60%)	13 (25%)	4 (8%)	2 (4%)	2 (4%)

The majority of attorneys and judges strongly agree that the assistance of the CBA helps to keep attorneys and service providers accountable for the costs of litigation. Judges were also asked about how the assistance of the CBA improved their confidence in the appropriateness of expenditures in CJA cases. Again, a majority of the judges strongly agreed that the assistance of the CBA improved their confidence in the appropriateness of expenditures in CJA cases.

Enhancement of Cost Containment

To better understand the impact of the CBA on cost containment, we asked respondents were asked to differentiate the impact of the CBA by case type. The results for each case type are shown in Tables 79 and 80.

Table 79: Attorney Perceptions of the CBAs' Work to Contain Costs

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] enhanced the containment of costs in capital prosecutions	15 (44%)	13 (38%)	5 (15%)	1 (3%)	0
The assistance of [the CBA] enhanced the containment of costs in capital habeas corpus prosecutions	1 (25%)	2 (50%)	1 (25%)	0	0
The assistance of [the CBA] enhanced the containment of costs in non-capital mega representations	23 (45%)	16 (31%)	7 (14%)	1 (2%)	4 (8%)
The assistance of [the CBA] enhanced the containment of costs in other non-capital representations	23 (37%)	17 (27%)	20 (32%)	1 (2%)	2 (3%)

If we collapse the strongly agree and somewhat agree categories, we find that a majority of the attorneys thought that the assistance of the CBA enhanced the containment of costs in each of the case types. The results, however, do vary by case type, suggesting that CBAs have a more substantial impact on capital and capital habeas prosecutions than they do on other case types.

Table 80: Judge Perceptions of the CBAs’ Work to Contain Costs

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
The assistance of [the CBA] enhanced the containment of costs in capital prosecutions	13 (57%)	5 (22%)	5 (22%)	0	0
The assistance of [the CBA] enhanced the containment of costs in capital habeas corpus prosecutions	3 (100%)	0	0	0	0
The assistance of [the CBA] enhanced the containment of costs in non-capital mega representations	19 (54%)	7 (20%)	8 (23%)	0	1 (3%)
The assistance of [the CBA] enhanced the containment of costs in other non-capital representations	22 (52%)	8 (19%)	12 (29%)	0	0

Judges were somewhat more positive than attorneys in their assessment of the impact of the CBA on cost containment in each case type. Additionally, the responses of judges varied less than those of attorneys. While the number of judges is smaller than the number of attorneys, the trend is largely the same.

At the end of the battery of questions on cost containment, attorneys and judges were given the opportunity to note any additional comments they had about cost containment. Thirty-nine attorneys and twenty-eight judges added their comments to this section. Attorneys generally used the space to praise the CBAs for their work. Compliments such as “helpful,” “valuable,” “excellent,” and “accessible” were used by the vast majority of the attorneys who made comments in this section. Attorneys saw the CBAs as valuable to the budgeting process, both in helping attorneys navigate the new system and in moving the review process along. They saw the CBAs as helping to coordinate a complex litigation process. Attorneys noted that the CBAs made suggestions, without being asked for help, that resulted in cost savings. While not all the comments in this section were positive, those that had a more negative tone focused on whether there is a need to budget cases at all and on the assessment of the work of the CBAs so soon in their tenure. These negative comments, however, were quite rare.

Judges, while also more likely to praise the CBA than discuss problems, also reported a few aspects of cost containment worthy of discussion. Judges frequently mentioned that

the CBA intervenes on behalf of judges, negotiates with service providers, and provides guidance for the judges. Moreover, one judge also noted that the program itself saves money by having the CBA intervene early in a case, instead of cutting a bill after the work is done. The judges saw this as improving the quality of the representations.

Cost Drivers⁵⁸

Attorneys and judges were also given the opportunity to discuss the impact that the CBA was having on cost drivers in the circuit. First, both groups were asked to assess what constituted a cost driver. From a list provided to them, attorneys and judges were asked whether or not they agreed the factor was a cost driver. Respondents could choose more than one factor, and they had the option of creating their own cost driver. The results are shown in Table 81.

Table 81: Identification of Cost Drivers

Cost Driver	Attorneys N = 47	Judges N = 39
Service provider rates	21 (45%)	20 (51%)
Service provider hours	11 (23%)	24 (62%)
Appointed attorney hours	13 (28%)	27 (69%)
Associate attorney rates	1 (2%)	9 (23%)
Associate attorney hours	6 (13%)	19 (49%)
Duplication of discovery costs	18 (38%)	23 (59%)
Review time for discovery	29 (62%)	18 (46%)
Late disclosure of discovery materials	23 (49%)	12 (31%)
Duplicative work by counsel	1 (2%)	20 (51%)
Duplicative work by service providers	5 (11%)	11 (28%)
Late notification of death certification	12 (26%)	8 (21%)
Multidistrict litigation	2 (4%)	2 (5%)
Multidefendant litigation	20 (43%)	21 (54%)

Attorneys and judges appear to have different perspectives on which factors are cost drivers in the circuit. Discovery ranked high for attorneys, and they also listed multidefendant litigation and service provider rates frequently as cost drivers. Judges, on the other hand, focused on attorney and service provider hours, though they also saw multidefendant litigation as driving case costs. Judges tended to see more factors as cost drivers than attorneys did, another noteworthy difference between the two groups.

58. Percentages are based on the number of people from that group in contact with the CBA to discuss cost drivers.

Attorneys and judges were asked to note any additional factors that may serve as cost drivers in a case.⁵⁹ Nineteen attorneys and six judges noted additional cost drivers, though most of the cost drivers they added were already listed. When we remove those “others” that were actually on the list, few additional cost drivers worthy of discussion remained. Attorneys mentioned the number and complexity of charges as a potential cost driver. Additionally, attorneys saw travel-related issues as a concern, both in the cost of travel itself and in the time delay to visit incarcerated clients. Judges echoed the concerns over complexity of the case, but also noted that a change in counsel drives case costs.

To distinguish factors that may be beyond the control of the CBAs from those over which they have some authority, respondents were asked whether or not the potential cost driver was something they thought the CBAs should address. The results are shown in Table 82.

Table 82: Cost Drivers That Should Be Addressed by the CBA

Cost Driver	Attorneys	Judges
Service provider rates	21 (45%)	27 (69%)
Service provider hours	15 (32%)	25 (64%)
Appointed attorney hours	7 (15%)	25 (64%)
Associate attorney rates	7 (15%)	16 (41%)
Associate attorney hours	4 (9%)	20 (51%)
Duplication of discovery costs	23 (49%)	27 (69%)
Review time for discovery	9 (19%)	19 (49%)
Late disclosure of discovery materials	16 (34%)	7 (18%)
Duplicative work by counsel	7 (15%)	25 (64%)
Duplicative work by service providers	8 (17%)	17 (44%)
Late notification of death certification	9 (19%)	3 (8%)
Multidistrict litigation	5 (11%)	2 (5%)
Multidefendant litigation	9 (19%)	10 (26%)

The results are somewhat striking in that the factors driving case costs (from the perspective of each group) are not necessarily viewed as being under the control of the CBA. For attorneys, service provider rates and duplication of discovery costs were most likely to be considered the responsibility of the CBA. Judges, however, see a greater set of responsibilities for the CBA. They see service provider and attorney hours, service provider rates, duplicative discovery, and duplicative work by counsel all as responsibilities of the CBAs.

Attorneys and judges were also given an opportunity to list any additional cost drivers they felt were the responsibility of the CBA to address. Four judges and five attorneys

59. As with the open-ended responses to the prior budgeting process, answers here are not coded into mutually exclusive and exhaustive categories. Answers were coded for as many unique cost drivers as the respondent listed.

took the option to do so. The judges tended to think all the options discussed above were areas of concern for the CBAs. Attorneys, on the other hand, focused on training, but did not specify whom to train.

In addition to being asked to identify cost drivers, judges and attorneys were asked about the work of the CBAs to address the cost driver. The results are shown in Tables 83 and 84, broken down by group.

Table 83: Attorney Perceptions of the CBA’s Work to Address Cost Drivers

Attorney Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Service provider rates	21 (54%)	9 (23%)	8 (21%)	1 (3%)	0
Service provider hours	20 (54%)	8 (22%)	8 (22%)	1 (3%)	0
Appointed attorney hours	28 (67%)	6 (14%)	7 (17%)	1 (2%)	0
Associate attorney rates	16 (52%)	4 (13%)	9 (29%)	1 (3%)	2 (6%)
Associate attorney hours	15 (48%)	1 (3%)	12 (39%)	1 (3%)	2 (6%)
Duplication of discovery costs	16 (47%)	4 (12%)	13 (38%)	1 (3%)	0
Review time for discovery	16 (41%)	5 (13%)	17 (44%)	0	1 (3%)
Late disclosure of discovery materials	15 (41%)	5 (14%)	17 (46%)	0	0
Duplicative work by counsel	15 (44%)	4 (12%)	14 (41%)	0	1 (3%)
Duplicative work by service providers	17 (49%)	2 (13%)	15 (43%)	0	1 (3%)
Late notification of death certification	6 (21%)	2 (7%)	21 (72%)	0	0
Multidistrict litigation	5 (21%)	1 (4%)	18 (75%)	0	0
Multidefendant litigation	13 (36%)	7 (19%)	15 (42%)	0	1 (3%)

Table 84: Judge Perceptions of the CBA’s Work to Address Cost Drivers

Judge Perceptions	Very Satisfied	Somewhat Satisfied	Neither Satisfied nor Dissatisfied	Somewhat Dissatisfied	Very Dissatisfied
Service provider rates	20 (67%)	4 (13%)	5 (17%)	0	1 (3%)
Service provider hours	18 (60%)	3 (10%)	8 (27%)	0	1 (3%)
Appointed attorney hours	20 (67%)	3 (10%)	6 (20%)	1 (3%)	0
Associate attorney rates	13 (57%)	1 (4%)	9 (39%)	0	0
Associate attorney hours	15 (60%)	3 (12%)	6 (24%)	1 (4%)	0
Duplication of discovery costs	21 (70%)	2 (7%)	7 (23%)	0	0
Review time for discovery	15 (58%)	2 (8%)	7 (27%)	2 (8%)	0
Late disclosure of discovery materials	8 (44%)	1 (6%)	9 (50%)	0	0
Duplicative work by counsel	19 (63%)	2 (7%)	8 (27%)	1 (3%)	0
Duplicative work by service providers	14 (58%)	2 (8%)	7 (29%)	1 (4%)	0
Late notification of death certification	7 (47%)	0	8 (53%)	0	0
Multidistrict litigation	4 (31%)	0	9 (69%)	0	0
Multidefendant litigation	15 (65%)	1 (4%)	7 (30%)	0	0

Once again, there is a high level of satisfaction with the work of the CBAs to address cost drivers. In fact, those cost drivers that were the most frequently mentioned by judges and attorneys have some of the highest levels of satisfaction. While judges had slightly higher rates of satisfaction with the work of the CBAs, attorneys were still more likely to be satisfied than dissatisfied.

Case Management

One final aspect of the impact of the Case-Budgeting Pilot Project is the effect it is having on enhancing case management, a key goal of the pilot. Attorneys and judges were asked about their satisfaction with the work of the CBA to enhance case management and the use of resources. Because of the differences in the types of litigation, both groups were asked about the work of the CBA in each specific type of case. The results are shown in Tables 85 and 86.

Table 85: Attorney Perceptions of Case Management

Attorney Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] was a valuable resource to me in managing cases	47 (67%)	9 (13%)	12 (17%)	0	2 (3%)
The assistance of [the CBA] enhanced the management of capital prosecutions	20 (67%)	3 (10%)	6 (20%)	0	1 (3%)
The assistance of [the CBA] enhanced the use of resources of capital prosecutions	17 (59%)	5 (17%)	6 (21%)	0	1 (3%)
The assistance of [the CBA] enhanced the management of capital habeas corpus prosecutions	6 (100%)	0	0	0	0
The assistance of [the CBA] enhanced the use of resources of capital habeas corpus prosecutions	5 (83%)	0	1 (17%)	0	0
The assistance of [the CBA] enhanced the management of non-capital mega representations	30 (63%)	9 (19%)	6 (13%)	1 (2%)	2 (4%)
The assistance of [the CBA] enhanced the use of resources of non-capital mega representations	27 (56%)	8 (17%)	9 (19%)	2 (4%)	2 (4%)
The assistance of [the CBA] enhanced the management of other non-capital representations	31 (56%)	1 (2%)	20 (36%)	1 (2%)	2 (4%)
The assistance of [the CBA] enhanced the use of resources of other non-capital representations	28 (53%)	2 (4%)	20 (38%)	1 (2%)	2 (4%)

Table 86: Judge Perceptions of Case Management

Judge Perceptions	Strongly Agree	Somewhat Agree	Neither Agree nor Disagree	Somewhat Disagree	Strongly Disagree
[The CBA] was a valuable resource to me in managing cases	25 (76%)	4 (12%)	4 (12%)	0	0
The assistance of [the CBA] enhanced the management of capital prosecutions	9 (82%)	1 (9%)	1 (9%)	0	0
The assistance of [the CBA] enhanced the use of resources of capital prosecutions	10 (83%)	1 (8%)	1 (8%)	0	0
The assistance of [the CBA] enhanced the management of capital habeas corpus prosecutions	4 (100%)	0	0	0	0
The assistance of [the CBA] enhanced the use of resources of capital habeas corpus prosecutions	4 (100%)	0	0	0	0
The assistance of [the CBA] enhanced the management of non-capital mega representations	18 (82%)	1 (5%)	3 (14%)	0	0
The assistance of [the CBA] enhanced the use of resources of non-capital mega representations	16 (73%)	1 (5%)	5 (23%)	0	0
The assistance of [the CBA] enhanced the management of other non-capital representations	18 (67%)	3 (11%)	6 (22%)	0	0
The assistance of [the CBA] enhanced the use of resources of other non-capital representations	18 (67%)	4 (15%)	5 (19%)	0	0

A majority of each group reported strongly agreeing that the CBA enhances case management and the use of resources, and this pattern holds true for all four case types. Judges tend to express a higher level of agreement with these items, but both groups can be considered positive in their assessment of the work of the CBA.

Overall Pilot Evaluation

In the final section of the survey, attorneys and judges were asked about their overall evaluation of the pilot program and the work of the CBAs. Unlike the survey sections discussed above, this section of the survey was completed by any judge or attorney who had contact with the CBAs (regardless of the type of contact). The results are shown in Tables 87 and 88.

Table 87: Attorney Perceptions of the Pilot Overall

Attorney Perceptions	Very Positive	Somewhat Positive	Neither Positive nor Negative	Somewhat Negative	Very Negative
What effect do you think the assistance of [the CBA] has had on the quality of your representation for CJA clients?	89 (48%)	40 (21%)	54 (29%)	2 (1%)	2 (1%)
What effect do you think the assistance of [the CBA] has had on your awareness of resources available for defense of CJA clients?	92 (49%)	47 (25%)	47 (25%)	0	0
What effect do you think the assistance of [the CBA] has had on your ability to obtain the necessary resources to provide a quality defense for CJA clients?	99 (54%)	37 (20%)	43 (23%)	5 (3%)	1 (1%)

Table 88: Judge Perceptions of the Pilot Overall

Judge Perceptions	Very Positive	Somewhat Positive	Neither Positive nor Negative	Somewhat Negative	Very Negative
What effect do you think the assistance of [the CBA] has had on the quality of representation for CJA clients?	42 (46%)	21 (23%)	28 (31%)	0	0
What effect do you think the assistance of [the CBA] has had on the awareness of resources available for defense of CJA clients?	46 (52%)	24 (27%)	19 (21%)	0	0
What effect do you think the assistance of [the CBA] has had on the ability to obtain the necessary resources to provide a quality defense for CJA clients?	43 (49%)	21 (24%)	24 (27%)	0	0

Both judges and attorneys see an overwhelmingly positive impact for the Case-Budgeting Pilot Project. In considering the quality of the representation, the awareness of resources available, and the ability to obtain resources, both groups see the assistance of the CBAs as having a positive effect. Again, judges tended to be slightly more positive than attorneys, but the overall assessment by both groups favors the work of the CBAs.

At the end of the survey, all respondents were asked to provide any final thoughts or contributions that they wanted to add to the survey. Eighty-five attorneys and forty-one judges provided comments about the evaluation of the pilot overall. To gain a sense of the overall tone of the comments, we coded responses into one of three categories (positive, neutral, negative), based on the tone of the answer as a whole. For attorneys, 72 out of 85 responses were positive in tone. Attorneys frequently mentioned what an invaluable resource the CBA was. The CBA was called an “asset” to the circuit, an “excellent resource,” and a “reliable source of information.” One of the most common comments from the attorneys was that they liked having a person who was always available for help in the budgeting process.

Only seven of the comments could be considered negative in tone, with words such as “frustrating,” “waste of time,” and “delay,” although the comments were typically about

the budgeting process as a whole, and not the CBAs specifically. Most of the negative comments concerned delays in the district or circuit courts that slowed voucher payment. The remaining six comments were neutral with respect to budgeting and the CBA, as they discussed this type of litigation without referring to the pilot specifically.

Judges were equally positive in their comments on the Case-Budgeting Pilot Project and the CBAs more specifically. The judges noted that the CBA was helpful both to themselves and to counsel. According to the judges, the CBAs brought organization to the process of reviewing vouchers, and they provided an invaluable asset to the judges for information on case management. This is especially true in the voucher review process. There were no negative comments from the judges, and the neutral comments tended to center on the judges' not having enough interaction to make any additional statements about the pilot project.

Conclusions

Overall, the survey results demonstrate a positive evaluation of the Case-Budgeting Pilot Project. While the response rates were stronger among judges than attorneys, the response rates are strong enough to conclude that the two groups view the pilot in the same positive light.

Of those who were in contact with the CBA, 285 out of 1,047 respondents to the survey, their contact was most likely to involve a discussion of case budgeting, review of district vouchers, or a discussion of cost containment. For those with experience budgeting a case, mega cases were those most commonly budgeted.

While there were a number of challenges to budgeting all case types, including estimating hours and costs for attorneys and service providers, identifying mega cases early in the litigation process was a unique challenge for this case type. Attorneys were more likely than judges to list the burden of developing the budget itself. In dealing with these challenges, however, both attorneys and judges were satisfied with the work the CBA had done to address the challenge. Both groups also agreed that they were receiving objective case-budgeting advice from the CBA, and the work of the CBA was enhancing the management of budgeted cases and promoting a high-quality defense. All groups found the CBA to be working to expedite the budgeting process and helping to develop consistent budgeting practices.

While only attorneys were asked about the work of the CBAs to find service providers in a case, a majority of those responding found the CBAs to be helpful. Not only did the CBAs discuss the use of service providers, but they also helped to develop rates for the service provider, suggested names, and coordinated the use of service providers.

In terms of the review of district vouchers, both attorneys and judges saw the CBAs as a resource in the review process. The judges see the CBAs as helping to expedite the review process and generally reducing the number of complaints they hear about voucher review. Likewise, attorneys see the review process going faster because of the efforts of the CBAs. The same is true for excess compensation voucher review.

Both attorneys and judges see the CBAs as helping to keep attorneys and service providers accountable for the costs of cases. The work of the CBAs enhances cost containment efforts across all case types.

Among the attorneys and judges who discussed cost drivers with the CBAs, there was some disagreement as to what aspects of a case drive costs. Attorneys focused more on the review time for discovery, rates for service providers, late disclosure of discovery materials, and multidefendant litigation. Judges, on the other hand, focused on rates and hours for service providers and attorneys, duplication of discovery costs, duplicative work by counsel, and multidefendant litigation. Likewise, attorneys and judges disagreed over which cost drivers should be the focus of the work of the CBAs. Despite disagreement on the factors driving case costs, a majority of both groups was satisfied with the work of the CBAs to address each of these cost drivers.

Overall, a majority of respondents found that the efforts of the CBA enhanced the management of the case, had a positive effect on the quality of the representations, created greater awareness of the resources available, and helped to obtain the resources necessary for a high-quality defense.

Matched Pairs Analysis

To gain an understanding of how budgeting cases has affected the use of resources on a case level, we conducted a matched pairs analysis. The purpose of this analysis is to compare the use of resources in budgeted and non-budgeted cases. We caution that the matched pairs analysis should not be looked at apart from the rest of the evaluation; it is simply another perspective on the pilot, and not definitive in and of itself.

Matching pairs is an increasingly common technique in empirical research to evaluate the effects of a particular state of the world.⁶⁰ Two entities are paired based on characteristics that exist prior to study, and, ideally, they differ only on the factor of interest. For our purposes here, cases were paired based on case characteristics: case type, district, charges, number of defendants, etc., but they differ on whether or not the case was budgeted with a CBA.

To find the pairs for study, one of two approaches can be used, and the choice of technique depends on the size of the sample and the universe from which it is drawn. For small samples or a small universe, a researcher can match observations by hand. For larger studies, a computer program can be used to match cases based on a propensity score, and the score can be calculated based on several characteristics of the observations.⁶¹ For

60. See Donald B. Rubin, *Matching to Remove Bias in Observational Studies*, 29 *Biometrics* 159, 159–83 (1974); Donald B. Rubin, *Matched Sampling for Causal Effects* (2006); Donald B. Rubin, *Estimating Causal Effects of Treatments in Randomized and Nonrandomized Studies*, 6 *J. Educ. Psychol.* 688, 688–701.

61. See Daniel E. Ho, Kosuke Imai, Gary King, & Elizabeth A. Stuart, *Matching as Nonparametric Preprocessing for Reducing Model Dependence in Parametric Causal Inference*, 15 *Political Analysis* 199,

purposes of this study, cases were matched by hand. Matching by hand was the preferred technique for two reasons. First, the number of cases being budgeted when the matches were chosen was relatively small and from a large universe of cases, meaning that the work invested to create a propensity score would have been inefficient. Second, because the circuit law itself has changed, cases needed to be paired within a specific time frame and within a specific circuit. With the case parameters, time parameters, and circuit law parameters all affecting the quality of the pair, it was more precise to find the pairs by hand.

From a list of all cases being budgeted in the fall of 2008, 13 budgeted cases were drawn in a stratified random sample.⁶² The strata were to ensure that all three case types (capital, capital habeas, and mega) were included in the sample (where the cases were available), and all three circuits were represented.⁶³ The cases were then paired by searching PACER for a similar case in the same district during the period 2002–2007. The time frame for finding pairs was limited to cases prior to the creation of the pilot to avoid the possibility that case-budgeting or case-management practices were having an impact in the circuit even in non-budgeted cases. Pairs were limited within the circuit to avoid the potentially confounding issue of variation in circuit law. In fact, in most instances, cases were paired within the same district, though when a pair was not found within the district during the time frame of study, a sibling district was used to find the pair.⁶⁴

In searching through PACER for case matches, we used the following case characteristics for matching: case type, district, number of defendants, number of charges, types of charges, and whether there were multiple jurisdictions involved. To be paired, cases did not have to have the exact same number of defendants or charges, which would be virtually impossible, but had to approximate the number in the budgeted case. The exact terminology for the pairs is non-identical matches.

Once the 13 pairs of cases were selected, all docketing information and CJA payments on those cases were collected. Three of the pairs had to be eliminated at this stage, either because there was no docketing information available or there were no payments under the CJA for one of the two cases in the pair. The remaining 10 pairs included 224 representations, 91 representations in budgeted cases, and 133 in non-budgeted cases. Of the 224 representations, 93 representations from non-budgeted cases had vouchers in the payment system, and 70 representations from budgeted cases had vouchers.

199–236 (2007); Paul R. Rosenbaum & Donald B. Rubin, *Reducing Bias in Observational Studies Using Subclassification on the Propensity Score*, 79 J. Am. Stat. Ass'n, 561, 516–524 (1984); and Paul R. Rosenbaum & Donald B. Rubin, *The Central Role of the Propensity Score in Observational Studies for Causal Effects*, 70 Biometrika 41, 41–55 (1983).

62. Budgeted cases were chosen early so that their progress could be tracked throughout the duration of the pilot.

63. Because capital habeas cases are not being budgeted in the Ninth Circuit, and there are no capital habeas cases in the Second Circuit, only the Sixth Circuit capital habeas cases are included in the sample.

64. Sibling districts are those within the same circuit, and sometimes the same state, as the initial district of interest. Sibling districts share a common workload and cultural identity with the initial district.

These cases are compared not only for their total cost, but also for the types of experts used in the litigation process. The purpose here is to determine whether cases are managed differently now that there is a CBA on staff in the circuit and whether this case management results in a cost savings to the circuit.

In the analysis below, neither cases nor defendants are identified. Budgets come to the court ex parte and under seal. Because many of the budgeted cases are ongoing, revealing information about the use of resources would violate the seal and perhaps identify the litigation strategy of the defense. To protect the litigation strategy, the defendants, and the judges before whom these cases are litigated, all cases are referred to by a generic case identifier.

Examining the Use of Service Providers

To compare the use of resources in budgeted and non-budgeted cases, we begin with a look at the number of representations in each category that used each type of service provider.⁶⁵ In the tables in this section and the next, we placed an asterisk next to the type of service provider if the difference in proportions was statistically significant. Of course, the most common type of service provider used in all representations is counsel.

As table 89 shows, there are no real differences in the use of counsel in budgeted and non-budgeted cases.

Table 89: Use of Counsel

Counsel	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used counsel	90 (97%)	68 (97%)
Representation did not use counsel	3 (3%)	2 (3%)
Total	93	70

Another fairly common service provider used in both types of cases is investigators. Unlike our findings for the use of counsel, however, the difference in use of investigators depended on whether or not the case was budgeted. Representations from budgeted cases were significantly more likely to use an investigator than representations from non-budgeted cases.⁶⁶

65. Because the use of service providers is only available from paper vouchers, those representations without any vouchers are excluded from this portion of the analysis.

66. We used a difference of proportions test to estimate differences between budgeted and non-budgeted cases in the use of each type of service provider. Differences in the proportions were estimated using 95% confidence levels.

Table 90: Use of Investigator

Investigator*	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used investigator	35 (38%)	39 (56%)
Representation did not use investigator	58 (62%)	31 (44%)
Total	93	70

Transcript services were also fairly common across representations from both budgeted and non-budgeted cases. The difference between the two groups, however, is statistically significant. Representations from budgeted cases were more likely to use transcript services than representations from non-budgeted cases.

Table 91: Use of Transcript Services

Transcript Service*	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used transcript service	18 (19%)	32 (46%)
Representation did not use transcript service	75 (81%)	38 (54%)
Total	93	70

The use of paralegals was somewhat less frequent than the use of the two previously described services, but the difference between representations from budgeted cases and those from non-budgeted cases is statistically significant. Representations from budgeted cases were more likely to include the use of paralegals.

Table 92: Use of Paralegals

Paralegal*	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used paralegal	5 (5%)	20 (29%)
Representation did not use paralegal	88 (95%)	50 (71%)
Total	93	70

Interpreters or translators were used more often than paralegals, and the difference between groups in usage is statistically significant. Interpreters/translators were more common among representations from budgeted cases than representations from non-budgeted cases.

Table 93: Use of Interpreters or Translators

Interpreter/Translator*	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used interpreter/translator	10 (11%)	19 (27%)
Representation did not use interpreter/translator	83 (89%)	51 (73%)
Total	93	70

Use of mitigation experts was on par with the use of paralegals, so it is not surprising that the difference between representations from budgeted cases and those from non-budgeted cases is statistically significant. Mitigation experts were more common in representations from budgeted cases than those from non-budgeted cases.

Table 94: Use of Mitigation Experts

Mitigation Experts*	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used mitigation	6 (6%)	20 (29%)
Representation did not use mitigation	87 (94%)	50 (71%)
Total	93	70

The use of duplication services by representations from budgeted cases did not differ substantially from their use by representations from non-budgeted cases, and the difference between the two groups does not reach standard levels of statistical significance.

Table 95: Use of Duplication Services

Duplication Service	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used duplication service	15 (16%)	16 (23%)
Representation did not use duplication service	78 (84%)	54 (77%)
Total	93	70

The final group of service providers examined is the broad category of other service providers. This group includes both the generic label from the CJA payment system and any service provider common to less than ten percent of the observations. Given the broad category of other service providers, the differences in usage are somewhat surprising. Representations from budgeted cases are far more likely to use other service providers, and the differences are statistically significant.

Table 96: Use of Other Service Providers

Other Service Provider*	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Representation used other service provider	5 (5%)	24 (34%)
Representation did not use other service provider	88 (95%)	46 (66%)
Total	93	70

Note: Other service providers is a group containing jury consultants, medical experts, psychiatric/psychological services, computer experts, legal analysts, voice/audio specialists, accountants, and a generic “other service provider” category from the CJA payment system. The above groups were collapsed into a single “other” category because less than 10% of the observations included that type of service provider, regardless of the budgeting status of the case.

Number of Service Providers per Representation

In addition to considering whether or not a representation used a particular type of service provider, we can consider the number of expert service providers paid for each type of representation. The results of the analysis are discussed below.⁶⁷

One of the most dramatic differences in the use of service providers is the difference between the number of attorneys working on representations in budgeted cases and the number working on representation in non-budgeted cases. There is both a wider distribution in the number of attorneys working on representations in budgeted cases and a higher overall average number of attorneys. The difference between the two groups is statistically significant.

Table 97: Number of Counsel

Counsel*	Frequency	
	Representation from Non-budgeted Cases	Representations from Budgeted Cases
0	3	2
1	74	31
2	12	25
3	2	9
4	2	2
8	0	1
Average Number of Counsel	1.204	1.771

As with the number of attorneys, there are also statistically significant differences between representations from budgeted cases and representations from non-budgeted cases

67. For purposes of this portion of the analysis, difference of means tests were conducted to determine if between-group differences were statistically significant.

with respect to investigators. Once again, there is more variation among representations from budgeted cases and the average number of investigators is higher.

Table 98: Number of Investigators

Investigators*	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	58	31
1	30	28
2	3	8
3	1	2
4	1	0
5	0	1
Average Number of Investigators	0.462	0.786

Usage of transcript services shows the same pattern as use of the previous two types of service providers. Representations from budgeted cases have a wider variation and a higher overall average number of transcript services than those from non-budgeted cases. The differences between groups are, once again, statistically significant.

Table 99: Number of Transcript Services

Transcript Services*	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	75	38
1	14	18
2	1	5
3	0	3
4	1	0
5	0	1
6	0	2
8	0	1
10	1	0
11	1	0
15	0	1
16	1	1
Average Number of Transcript Services	0.441	1.329

While the total number of representations using the services of a paralegal is relatively small on the whole, the difference between representations from budgeted cases and those from non-budgeted cases is both striking and statistically significant. The use of

paralegals was more common in representations from budgeted cases than in those from non-budgeted cases.

Table 100: Number of Paralegals

Paralegals*	Frequency	
	Representations from Non-Budgeted Cases	Representations from Budgeted Cases
0	88	50
1	4	12
2	0	8
3	1	0
Average Number of Paralegals	0.075	0.400

Representations from budgeted cases and those from non-budgeted cases did not differ substantially in the number of interpreters or translators used. The average number of interpreters or translators was slightly higher in representations from budgeted cases, but the difference was not statistically significant.

Table 101: Number of Interpreters or Translators

Interpreters/Translators	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	83	51
1	5	11
2	1	2
3	0	2
4	0	2
6	1	2
8	2	0
10	1	0
Average Number of Interpreters/Translators	0.419	0.586

Mitigation specialists, like most service providers discussed so far, are more frequent in representations from budgeted cases than in representations from non-budgeted cases. The variation in the number of mitigation specialists is also larger for representations from budgeted cases, and the difference of means test is statistically significant.

Table 102: Number of Mitigation Specialists

Mitigation Specialists*	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	87	50
1	6	15
2	0	4
3	0	1
Average Number of Mitigation Specialists	0.065	0.371

As with the number of interpreters or translators used in the matched cases, the number of duplication services used is neither statistically nor substantively significant. The variation, however, is somewhat broader for representations from non-budgeted cases than for those from budgeted cases, which is a pattern unique to duplication services so far.

Table 103: Number of Duplication Services

Duplication Services	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	78	54
1	8	15
2	5	1
3	2	0
Average Number of Duplication Services	0.258	0.243

While the amorphous “other” category may not offer much information on the number of service providers in each type, the differences between representations from budgeted cases and those from non-budgeted cases in the total number of other service providers is striking. Other service providers are used in far greater number in representations from budgeted cases. Not only is the variation much larger for representations from budgeted cases, but the mean is substantially higher and statistically significant.

Table 104: Number of Other Service Providers

Other Service Providers*	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	88	46
1	2	8
2	1	3
3	0	4
4	0	5
5	1	0
6	1	0
7	0	1
10	0	2
12	0	1
Average Number of Other Service Providers	0.161	1.214

Global Case Differences

In addition to the differences in the use of particular service providers and how many of those service providers are used, we need to consider broader differences in the representations from budgeted cases and those from non-budgeted cases. There are four main characteristics of the case that need to be considered before we move forward with the comparison. While the differences between budgeted and non-budgeted cases in the total cost of the representations are obviously important to the evaluation, there may be several factors affecting the total cost beyond the budgeting process. Therefore, it is important to consider the complexity of the case (measured in the total number of counts), the number of days a representation has been open, and the number of vouchers paid in a case before considering case costs.⁶⁸

Table 105: Global Case Differences

	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Average number of vouchers	12.065	28.743*
Average number of days running	1052.559	1206.200
Average number of counts	26.215	9.522*
Average dollars spent (2009 dollars)	\$55,807.26	\$217,358.30*

68. Table 105 shows group differences, comparing all 70 budgeted representations with the 93 non-budgeted representations. With the mean for each group calculated, a difference of means test was conducted to determine if the group differences were statistically significant.

Difference of means tests show that the average number of vouchers in, the average number of counts in, and the average amount spent on budgeted representations differ significantly from the same variables for non-budgeted cases. Representations from budgeted cases average significantly more vouchers, fewer counts, and more money than representations from non-budgeted cases do. The higher number of vouchers and dollars could be the result of a single cause in that representations from budgeted cases consistently showed more service providers used, both in number and type, than representations from non-budgeted cases. Therefore, in moving forward with the case comparison it is important to account for both of these differences as we analyze a multivariate model of the use of resources.

Multivariate Results

The variation in the number and type of service providers used over time shows clear differences for representations from budgeted cases and those for non-budgeted cases. Because of the higher number of service providers used today than in the past, assessing the impact of case budgeting on the allocation and use of resources requires an analysis that will account for all potential cost factors. To that end, we estimated two regression models to predict case costs. The first model looks at the differences in whether or not a particular service provider was used in a case, along with variables for the global case differences noted above. The second model considers the number of each type of service provider used as well as the global case differences. The analyses allow us to disaggregate the effects of the pilot from the additional resources used in budgeted cases. The results for each model are shown in Table 106. The standard errors were clustered by case name to account for any within-case correlation in predicting the total dollars spent per representation.

Table 106: Dollars Spent (Type of Service Provider Model)

Variable	Coefficient	Standard Error
Used counsel	27363.52	41330.52
Used investigator	-17883.59	10239.14
Used transcript service	-12168.67	25636.33
Used paralegal	-12343.48	24534.89
Used interpreter/translator	8484.13	45476.32
Used mitigation expert	9590.73	49030.07
Used duplication service	-41420.05	28503.20
Used other service provider	21580.77	33020.82
Days running	2.58	18.88
Number of vouchers	8667.70*	666.28
Number of counts	-683.00	431.93
Case was budgeted with CBA	7336.54	22557.83
Constant	-46316.08	60584.05
R-Squared = 0.899		N = 163

Note: Starred values were statistically significant at the .05 level or higher. All amounts spent were converted to 2009 dollars to allow for comparison across years.

The first model examines the impact of the use of each type of service provider on case costs.⁶⁹ Included in this model are other factors known to affect case costs, such as the number of days a case has been running, the number of vouchers paid, and the number of counts filed against a defendant. Of course, the most important variable of interest considers the impact that case budgeting has on representation costs. While the bivariate analysis suggested that representations from budgeted cases were more likely to use some types of service providers than representations from non-budgeted cases, the analysis here suggests that representations from budgeted cases do not differ significantly from non-budgeted representations for case costs. In fact, the only variable to reach standard levels of statistical significance was the number of vouchers paid on a representation. As the number of vouchers increases so do representation costs.

While there was no significant difference between budgeted and non-budgeted cases in the above discussed analysis, this may be a function of how service providers are being used in the model. It may be the case that we need to account not only for the type of service provider used but also the number of service providers in each category, a factor which also showed differences between representations from budgeted cases and those from non-budgeted cases in the analysis above. The model shown in Table 107 accounts for the variation in the number of service providers.

69. With a high *R*-squared value and few significant coefficients in the model, there is the possibility of collinearity. Diagnostics were run, and some collinearity among the independent variables was found. One way around the problem is to create an index of service providers used. A separate model (not reported) was estimated with the index, but the results were not different from what was reported here. Because the index is more difficult to interpret than the existing model, but did not work any better than the individual variables, it was not reported. A second approach would be to run instrumental variable analysis, but an appropriate instrument could not be identified.

Table 107: Dollars Spent (Number of Service Providers Model)

Variable	Coefficient	Standard Error
Number of counsel	32184.81*	13501.13
Number of investigators	12118.86	15792.83
Number of transcript services	1568.51	6114.85
Number of paralegals	-24217.52	17419.16
Number of interpreters/translators	-14340.31*	5745.21
Number of mitigation experts	-58939.60	28421.47
Number of duplication services	-29879.13*	13583.32
Number of other service providers	30755.07	16568.19
Days running	10.60	11.82
Number of vouchers	7383.15*	1043.82
Number of counts	-637.17*	275.07
Case was budgeted with CBA	-2002.97	18255.52
Constant	-58381.49*	22179.88
R-Squared = 0.928		N = 163

Note: Starred values were statistically significant at the .05 level or higher. All amounts spent were converted to 2009 dollars to allow for comparison across years.

The effects of the number of service providers in each category are far more robust than just the type of service providers used. Surprisingly, while more counsel on a representation increase case costs, higher numbers of interpreters and duplication services decrease case costs. The increased competition among these service providers may actually decrease case costs, which is consistent with the discussion of service providers by the CBAs in their daily diaries. In fact, in the daily diaries, the CBAs often mentioned that high duplication costs were associated with a single shop that had control of the discovery materials. To overcome this problem, the CBA would get one copy from the shop with control of the material and then solicit the help of other shops to find the lowest costs of duplication, increasing competition to decrease costs. The increase in the number of counsel does not appear to be working in the same way, but the increase in counsel is not an attempt to increase competition. Instead, the increase in the number of attorneys is typically the result of changes of counsel, especially complex litigation, or the use of associates. Further examination of the variation in the use of counsel can account for these differences (see Tables 108–115).

Perhaps the most surprising finding from this analysis is the fact that while budgeted cases were more likely to involve higher numbers of service providers, representations from budgeted cases do not have higher case costs than representations from non-budgeted cases do. In fact, there is no statistically significant difference between representations from budgeted cases and those from non-budgeted cases. The fact that representations from budgeted cases use more service providers, both in number and in type, without increasing case costs, however, should not be overlooked. The finding suggests that, from a case-management perspective, representations in budgeted cases use more resources

without increasing case costs, suggesting better case management than existed prior to the creation of the pilot project.

Given the significance of the effect of the number of counsel on dollars spent in each representation, and the fact that charges for counsel are 80% of case costs, it is important to consider the variation in the types of counsel being used in representations from budgeted and non-budgeted cases. The tables below show the differences between representations from budgeted cases and those from non-budgeted cases in the number of total counsel, current counsel, terminated counsel, out-of-state counsel, federal defenders, CJA counsel, retained counsel, and whether or not the defendant pursued a pro se representation. We obtained the information on counsel discussed below from the PACER docket for the case, to capture any changes in counsel made before counsel were paid (found in the information from the vouchers).

Table 108: Total Counsel from PACER

Total Number of Counsel*	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
1	54	23
2	21	24
3	12	14
4	5	5
5	1	1
7	0	1
11	0	1
14	0	1
Average Number of Counsel	1.688	2.429

As with the multivariate analysis discussed above, there is a statistically significant difference between representations from budgeted cases and those from non-budgeted cases in the total number of counsel (see Table 108). Representations from budgeted cases tend to have a higher number of total counsel than those from non-budgeted cases.

While there is a higher total number of counsel for budgeted cases, when considering the number of current counsel, there is no statistically significant difference between representations from budgeted cases and those from non-budgeted cases.

Table 109: Current Counsel from PACER

Total Number of Current Counsel	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	4	1
1	81	35
2	4	24
3	2	7
4	1	2
5	1	0
7	0	1
Average Number of Current Counsel	1.118	1.700

As with the number of current counsel, for the number of terminated counsel, there is no statistically significant difference between representations from budgeted cases and those from non-budgeted cases.

Table 110: Terminated Counsel from PACER

Total Number of Terminated Counsel	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	59	41
1	20	21
2	9	4
3	5	0
4	0	3
10	0	1
Average Number of Terminated Counsel	0.570	0.729

One potential cost driver is the presence of out-of-state counsel. While out-of-state counsel were more common for representations from budgeted cases, the difference between representations from budgeted cases and those from non-budgeted cases was not statistically significant.

Table 111: Out-of-State Counsel from PACER

Total Number of Out-of-State Counsel	Frequency	
	Representations from Non-Budgeted Cases	Representations from Budgeted Cases
0	66	51
1	23	11
2	2	6
3	0	1
4	1	1
5	1	0
Average Number of Out-of-State Counsel	0.387	0.429

The use of federal public defenders was slightly higher for representations from budgeted cases than for representations from non-budgeted cases, but the difference was not statistically significant.

Table 112: Federal Public Defenders from PACER

Total Number of Federal Public Defenders	Frequency	
	Representations from Non-Budgeted Cases	Representations from Budgeted Cases
0	86	65
1	4	2
2	3	1
3	0	1
7	0	1
Average Number of Federal Public Defenders	0.108	0.200

Not surprisingly, there was a statistically significant difference between representations from budgeted cases and representations from non-budgeted cases in terms of the use of counsel appointed under the CJA. CJA counsel were more common for representations from budgeted cases than those from non-budgeted cases.

Table 113: CJA Counsel from PACER

Total Number of CJA Counsel*	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	14	1
1	63	39
2	10	17
3	4	10
4	2	2
8	0	1
Average Number of CJA Counsel	1.108	1.700

The difference between representations from budgeted cases and representations from non-budgeted cases in terms of the number of retained counsel, though slightly higher for representations from budgeted cases, does not reach standard levels of statistical significance.

Table 114: Retained Counsel from PACER

Total Number of Retained Counsel	Frequency	
	Representations from Non-budgeted Cases	Representations from Budgeted Cases
0	56	44
1	30	22
2	6	2
3	1	0
5	0	1
6	0	1
Average Number of Retained Counsel	0.484	0.529

Perhaps one of the most interesting differences, though not a significant difference, was found between representations from budgeted cases and those from non-budgeted cases in terms of the likelihood of the defendant to proceed pro se. Pro se representation was more common among representations from non-budgeted cases than among representation from budgeted cases. The difference between representations from budgeted cases and those from non-budgeted cases is not statistically significant in a two-tailed test, but is just outside the bounds.

Table 115: Pro Se Litigants from PACER

Pro Se Litigants	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Case involved pro se representation	7 (8%)	0 (0%)
Case did not involve pro se Representation	86 (92%)	70 (100%)
Total	93	70

While more counsel are common for representations from budgeted cases than for representations from non-budgeted cases, and CJA counsel are more common for representations from budgeted cases, it would be misleading to assume that CJA counsel are creating higher case costs among representations from budgeted cases. The two models above show no difference between budgeted cases and non-budgeted cases for counsel. Moreover, in a separate multivariate analysis (not reported), variables were included to compare case costs given the number of federal defenders, retained counsel, and pro se litigants, in addition to all the variables discussed above, using the number of CJA counsel as the excluded category.⁷⁰ There were no statistically significant differences in case costs depending on the type of counsel (CJA, federal defender, or retained) used in the case. Pro se litigation by the defendant approached statistical significance, but fell just outside the bounds. While the results for proceeding pro se were not significant, they did suggest that pro se representation may lead to higher case costs.⁷¹ Given the small number of cases involving a defendant proceeding pro se, we would have to add additional observations to better understand this effect. It is worth noting, however, that proceeding pro se only occurred among representations from non-budgeted cases.

Alternate Looks

It is possible that the impact the CBAs have had on case management and cost containment are not across-the-board savings in the case but instead savings within a particular area. For example, the daily diaries and status reports indicate a significant amount of work on coordinating the use of service providers and considering a number of bids for duplication services. The dominance of dollars spent on counsel for the analysis above may be masking the effect that the CBAs are having because attorney rates are determined by statute with little room for negotiation by the CBAs.

To test the possibility that the CBAs are having an impact on the use of a specific type of service provider, we estimated a separate analysis. To estimate the analysis, a separate

70. The effect of counsel was considered using several different variables. Total counsel is a variable that combines current and terminated counsel. Alternatively, the total number of counsel can be thought of as retained plus CJA plus federal defenders. Current and terminated counsel were counted without regard to whether they were CJA, federal defenders, or retained. Likewise, CJA, retained, and federal defenders were counted without regard for whether they were current or terminated. The pro se variable measures whether or not the defendant went pro se at any point in the case.

71. The *p* value for pro se litigation is .052, just beyond the traditional bounds of statistical significance.

data set was necessary. This data set included the dollars spent per service provider type (in 2009 dollars) for each representation. Because the representation was the unit of analysis, there are multiple observations for each. The representations were then aggregated to compare the use of resources in budgeted cases with their use in non-budgeted cases.⁷² Tables 116–118 present the results of this comparison.

Table 116: Capital Case Comparisons

Pair	Service Provider Type	2009 Dollars (Budgeted Cases)	2009 Dollars (Non-budgeted Cases)
Second Circuit Capital Pair 1	Counsel	\$2,609,255.40	\$954,028.46
	Other service provider ⁷³	\$62,715.31	\$60,928.52
	Transcript services	\$45,825.61	\$30,877.54
	Investigator	\$328,325.68	\$45,204.78
	Paralegal	\$204,191.35	0
	Duplication service	\$9,614.54	\$7,992.64
	Interpreter/translator	\$479.78	0
	Mitigation expert	\$97,490.29	\$119,967.04
	Total	\$3,357,897.96	\$1,218,998.98
Second Circuit Capital Pair 2	Counsel	\$713,900.97	\$408,661.82
	Other service provider	\$62,172.10	0
	Transcript services	\$1,753.23	\$10,918.01
	Investigator	\$126,781.51	\$14,239.36
	Paralegal	\$37,868.57	0
	Duplication service	\$1,939.71	0
	Interpreter/translator	0	\$911.07
	Mitigation expert	\$159,434.13	0
	Total	\$1,103,850.22	\$434,730.26
Second Circuit Capital Pair 3	Counsel	\$321,940.72	\$58,110.02
	Other service provider	\$9,798.23	0
	Transcript services	\$1,783.30	\$100.88
	Investigator	\$29,076.74	\$4,074.56
	Paralegal	\$16,750.61	0
	Duplication service	\$1,275.92	0
	Interpreter/translator	0	\$19,874.45
	Mitigation expert	\$75,291.64	0
	Total	\$455,917.16	\$82,159.91

72. Because cases, and not defendants, are paired, aggregating the analysis to the case level was the most appropriate method for comparison.

73. Other includes both the “other” category on vouchers (where attorneys were supposed to specify the type of provider used) and some of the rarely used service providers in the cases under study. Medical professionals such as psychologists and psychiatrists, CALR services, jury consultants, and forensic accountants are all included in the other category for purposes of this section of the analysis.

Table 116: Capital Case Comparisons (Continued)

Pair	Service Provider Type	2009 Dollars (Budgeted Cases)	2009 Dollars (Non-budgeted Cases)
Sixth Circuit Capital Pair 1	Counsel	\$666,487.63	\$209,736.76
	Other service provider	\$26,437.22	0
	Transcript services	\$69.06	0
	Investigator	\$114,340.90	0
	Paralegal	\$20,934.47	\$7,472.32
	Duplication service	0	0
	Interpreter/translator	0	0
	Mitigation expert	\$161,072.68	0
	Total	\$989,341.96	\$217,209.08
Sixth Circuit Capital Pair 2	Counsel	\$778,779.62	\$23,880.58
	Other service provider	\$70,744.94	0
	Transcript services	\$2,409.30	0
	Investigator	\$48,580.87	0
	Paralegal	\$9,532.98	0
	Duplication service	0	0
	Interpreter/translator	0	0
	Mitigation expert	0	0
	Total	\$910,047.71	\$23,880.58
Ninth Circuit Capital Pair 1	Counsel	\$1,280,033.37	\$1,884,848.87
	Other service provider	0	\$79,185.78
	Transcript services	0	\$12,204.82
	Investigator	\$386,373.75	\$772,721.17
	Paralegal	\$275,788.45	\$214,219.93
	Duplication service	0	\$28,941.38
	Interpreter/translator	0	0
	Mitigation expert	\$36,087.00	0
	Total	\$2,123,532.16	\$2,992,121.95

Table 117: Mega Case Comparisons

Pair	Service Provider Type	2009 Dollars (Budgeted Cases)	2009 Dollars (Non-budgeted Cases)
Sixth Circuit Mega Pair 1	Counsel	\$2,434,703.56	\$43,071.07
	Other service provider	\$1,289,908.13	0
	Transcript services	\$96,506.44	0
	Investigator	328518.84	0
	Paralegal	\$44,495.21	0
	Duplication service	\$4,734.37	0
	Interpreter/translator	\$252,304.36	\$2,136.94
	Mitigation expert	0	0
	Total	\$4,451,170.48	\$45,208.01
Sixth Circuit Mega Pair 2	Counsel	\$499,270.57	\$75,960.62
	Other service provider	0	0
	Transcript services	\$3,375.50	\$1,124.20
	Investigator	\$51,777.81	\$12,539.01
	Paralegal	\$27,137.02	0
	Duplication service	\$12,749.76	0
	Interpreter/translator	\$38,439.83	0
	Mitigation expert	\$2,231.97	0
	Total	\$634,982.46	\$89,623.83
Ninth Circuit Mega Pair 1	Counsel	\$621,976.23	\$42,312.29
	Other service provider	\$20,400.79	0
	Transcript services	\$1,257.51	\$68.16
	Investigator	\$83,739.62	\$4,735.07
	Paralegal	\$39,113.10	0
	Duplication service	\$8,461.04	\$257.13
	Interpreter/translator	\$46,029.82	\$626.87
	Mitigation expert	0	0
	Total	\$820,978.11	\$47,999.52

Table 118: Capital Habeas Case Comparisons

Pair	Service Provider Type	2009 Dollars (Budgeted Cases)	2009 Dollars (Non-budgeted Cases)
Sixth Circuit Capital Habeas Pair 1	Counsel	\$85,419.69	\$185,725.60
	Other service provider	0	0
	Transcript services	0	0
	Investigator	0	0
	Paralegal	0	0
	Duplication service	0	0
	Interpreter/translator	0	0
	Mitigation expert	0	0
	Total	\$85,419.69	\$185,725.60

While budgeted cases have a higher case total than non-budgeted cases do, it is important to remember that there are no statistically significant differences between the amount spent in budgeted cases and that spent in non-budgeted cases (as seen in the multivariate analysis above). Additionally, in terms of the resources available to attorneys to defend the client, budgeted cases clearly involve more types of service providers than non-budgeted cases do, as well as a greater number of service providers (as noted above). Putting these items together then, the statistical analysis shows that budgeted cases have more resources than non-budgeted cases do, but at a cost that is not statistically different.

Anecdotal Evidence

To better understand the role of case budgeting in each pair, we turn to more qualitative sources, such as the daily diaries, status reports, and interviews with those involved in the cases. While these sources offer insight into the workings of cases that were budgeted, there is no comparable source of information for the cases that were not budgeted. Daily diaries and status reports are unique to the Case-Budgeting Pilot Project, and interviews with judges and attorneys about specific cases from before the pilot started are not likely to be reliable sources of information given the lapse of time. This is to say that while the information provided below offers information on budgeting, comparisons cannot be made directly to the paired cases that were not budgeted. That said, these sources of information will be used to assess challenges to budgeting cases and the tools used to efficiently budget cases—a general comparison of classes of cases. Follow-up interviews will explore these issues as well as the CBAs’ impact on the quality of representation.

The status reports and daily diaries point to several challenges to budgeting the cases in the matched pairs, though the challenges were not mentioned for all circuits. The first issue raised in these reports, and mentioned earlier in the descriptive analysis, is the difficulty of budgeting cases that are in advanced stages of the litigation process. Typically when cases are in advanced stages, service providers and attorneys have begun to be paid at a particular rate, and that rate may be higher than what becomes the budgeted rate for

the service provider.⁷⁴ While the CBAs often worked to negotiate lower rates with service providers, and were sometimes successful in such negotiations, negotiations are not always successful and often create administrative problems for the CBA.⁷⁵

In addition to the challenge of the CBA being brought into a case at later stages, there were also some case facts that presented challenges to the budgeting process. Both voluminous discovery and superseding indictments made for a more complex budgeting process, according to the daily diaries.⁷⁶ Coordinating the discovery process and bringing new counsel for new defendants up to speed on budgeting were frequently reported by the CBAs.⁷⁷

A final challenge mentioned in the daily diaries and status reports was one of communication. Some of the CBAs mentioned that counsel would go to the judge to submit a budget without first getting the CBA's approval.⁷⁸ Staying a part of the budgeting process was more difficult for the CBA than one might have anticipated given the purpose of the pilot program, creating unnecessary delays in the budgeting process and the need for involvement by the chief judge of the circuit.

The discussion of discovery problems above also points to some of the methods for addressing the use of resources in these cases. Sharing resources, especially the cost of electronic discovery services, was mentioned several times. Moving to an electronic discovery process served as a cost-saving function for two reasons. First, electronic copies were less expensive to reproduce. Second, electronic copies were easier to search and could often be searched by a paralegal instead of a document reviewer.⁷⁹ This, in part, may explain the higher frequency of use for paralegals discussed above.

In addition to sharing the costs and benefits of electronic discovery, the CBAs also noted that they frequently negotiated lower rates with service providers, both before and after service providers had already begun work (as discussed above).⁸⁰ Sometimes the attorney or service provider working on the case was simply not familiar with the practice of resource management. In other instances, the CBA was successful in getting the service provider to agree to a lower number of hours by noting the attorney could always ask for more money at later stages if resources had been exhausted. Model due process orders were drafted to ensure that counsel had an opportunity to dispute any reduction in resources. The principle of starting with a smaller amount of money initially and increasing funds as needed was the heart of the use of seed money, and was a common practice across all the circuits.

74. See cases 2BD1, 2BD3, and 6BM1.

75. See cases 2BD1, 2BD3, 6BM1, and 6BM2.

76. *Id.*

77. See cases 6BD1, 6BD2, 2BD1, 2BD2, 2BD3, 6BM1, 6BM2, 9BD1, and 9BM1.

78. See cases 6BD2 and 6BM2.

79. See *supra* n.77.

80. *Id.*

Perhaps one of the more common practices for addressing the use of resources came from comparisons of the budgets across defendants to determine the reasonableness of budgets. Consistency of rates, hours, and costs could all be examined in multidefendant cases, allowing for the CBAs to use a comparison of the use of resources and use the budgets provided by other counsel as a justification for modifications to budgeted requests. Not only did this keep costs down, but adjustments to the use of resources appeared fair when all counsel were given the same basic resources.⁸¹

Seeing the budget before vouchers were submitted also created two opportunities for the CBA to correct requests that could have created a delay in payment if they had not been caught. By eliminating at the outset what was not covered by the CJA or what was premature for a particular stage in the litigation process, the CBAs avoided later disagreement over the payment of vouchers and provided an explanation for changes in costs that may not have been provided without the CBA.⁸² These changes are discussed in more detail below.

A final method for addressing the use of resources in budgeted cases was to train as many people on budgeting as possible, including law clerks, and coordinating questions on budgeting so that a single answer could be distributed to all counsel in an effective way. The more people trained in budgeting, the more time the CBA had to work on budgeting other cases.⁸³

The challenges discussed in budgeting cases raise the question of what budgeting actually looked like in practice. How many changes were made to budgets submitted in these ten cases and what was the impact of these changes?⁸⁴ To answer these questions, we turned to the budgets themselves. When attorneys budget cases using the Excel budgeting program, both the amounts proposed for service providers and the amounts approved for service providers by the CBA are captured.⁸⁵ While not all the cases included in this matched pairs analysis were budgeted using the Excel program, those that were included a substantial number of service providers for analysis. The cases in the matched pairs included between one and eighteen different types of service providers, and there were 363 total requests for service providers across nine of the ten cases from the matched pairs analysis. The cases involved between one and five budgets for each defendant.

In looking at the differences between the amount requested for the service provider and the approved amount, we could take two approaches. The first is to consider any differ-

81. *Id.*

82. See cases 6BM1, 6BD1, and 9BM1.

83. See *supra* n.77.

84. Information about the case budgets and the modifications to those budgets for many of these cases was verified during the interviews discussed below. While exact dollar amounts were not verified, the use of resources and modifications was discussed in detail.

85. For cases not budgeted using the Excel program, there is no way to capture the exact same information. If there is an existing correspondence between the attorney and the CBA, either paper or e-mail, the changes to budgets can be pieced together. If, however, there is no record, there is no way to verify the changes made to budgets by the CBAs.

ence between the proposed and approved amounts, even if the approved amount was actually blank in the Excel workbook, treating the approved amount as \$0.00. The second approach is to consider differences only if there are amounts included in both the proposed and approved cells, treating blank cells under approved amounts as missing information. Understanding the impact of these changes also presents a challenge. The total cost of a case could be assessed from either the proposed rates and hours or the approved rates and hours, creating differences in how adjustments are estimated.

To look at the changes made to the budgets for the paired cases by the CBA and the impact the changes were having on the use of resources, we estimated the adjustments to budgets in two ways. The first estimate looks at any difference between proposed and approved amounts and uses the proposed rate and hours to determine case costs and the impact of the change.⁸⁶ The second estimate looks only at differences when there were amounts in the cells for both proposed and approved values, and uses the approved rate and hours to determine the impact of the change. The results for each of the estimates are presented in Table 119.

Table 119: Impact of Budget Adjustments by CBA

	Difference between approved and proposed amounts	Difference between approved and proposed amounts
	Using proposed hours & rates to estimate case costs	(Two values required) Using approved hours & rates to estimate case costs
Rate differences	-\$750,769.15	-\$20,210.00
Hours differences	-\$311,791.82	-\$2,508,830.50
Expense differences	-\$160,715.03	-\$144,695.99
Total Impact of Budget Changes	-\$1,223,276.00	-\$2,633,316.49

Clearly, depending on the assumptions made about budget requests, there is a significant amount of variation in the estimate of the adjustments resulting from case budgeting. Depending on the method used, the CBAs reduced the budgeted requests in these cases between \$1.2 million and \$2.6 million dollars. Looking at the differences between proposed and approved amounts, regardless of the way impact is estimated, does require some caveats. First, looking at these differences as a “savings” to the circuit assumes that there would have been few if any changes to the proposed amounts without the CBA. Given the results of the Pre-Pilot Circuit Culture, however, there is some empirical evidence for this assumption. Second, the amounts in Table 119 not only reflect any reductions to

86. The second column in Table 119 estimates the adjustments to vouchers by calculating the rate differences times the proposed hours plus the hour differences times the proposed rates. Empty cells on the budget were treated as zero dollars or hours. The third column estimates the adjustments to vouchers by calculating the rate difference times approved hours plus hour differences times approved rates. Blank cells were treated as missing data.

hourly rates, total hours, or expenses, but also reflect any additions made by the CBA to these amounts. If only reductions to rates, hours, and expenses were considered, the totals above would be higher.

The anecdotal evidence described above suggests that the CBAs are having an impact on the use of resources in budgeted cases. The complete picture of budgeting and its impact is perhaps even more interesting when we consider the two looks at budgeting together. While budgeted cases involve more service providers, in both number and type, than non-budgeted cases do, these additional resources do not significantly increase case costs relative to the costs of non-budgeted cases, and the CBAs are still finding ways to ensure that requests are within reason given the needs of the case. It is possible that the lack of difference in overall case costs, despite a higher number of resources in budgeted cases, is the result of these adjustments. When we put the pieces of information together, one question remains, what do these changes in the use of resources look like to the judges and attorneys who work in the circuit on a daily basis? To answer this question, we turn to interviews of judges and attorneys, both those active in the cases from the matched pairs and those with a more global perspective on budgeting.

Interview Evidence

To create a list of interview subjects, we used two sources. First, case files and PACER records showed the attorneys and judges working on the cases. These interview subjects certainly have a case-level perspective on the impact of budgeting. They may also, however, have a more global perspective on budgeting, given their years of experience working in the circuit. In order to ensure that we had a robust sample of interview subjects who could provide a broad perspective on the pilot program, we asked ODS and the CBAs themselves to provide a list of potential interview subjects. While there is the potential that the lists provided by the CBAs and ODS were biased in favor of the pilot, the sources drawn from the case file offset any potential bias.

During July 2010, 25 interviews were held with attorneys, judges, and court staff. The interviews were a mix of phone and in-person contacts, and each interview lasted between 15 and 90 minutes. Two different interview protocols were developed, though a substantial amount of overlap existed between the two. For those subjects who had budgeted a case with the CBA, specific questions were asked about the process of budgeting cases, challenges of budgeting, the use of resources (including following up on information in the daily diaries), and comparisons of budgeted and non-budgeted cases (generally) in terms of cost containment, case management, and the quality of the representation for CJA clients. Those interview subjects without specific case-budgeting experience were asked about other topics, such as the voucher review process, the non-budgeting work of the CBA in the circuit, life in the circuit before the pilot, and the impact of the pilot on cost containment and quality of representation. All subjects were asked if the money saved since 2007 would have been saved without the efforts of the CBA.

One issue common across the interviews was the level of skepticism the CBAs had to overcome when starting their jobs. Both attorneys and judges expressed that they were initially concerned the positions would serve only to cut costs, without consideration for

the quality of the representation. These fears were fueled by past experience at both the federal and state levels. All but one of the initially skeptical interview subjects had changed their minds about budgeting, now seeing it as an asset to the case. The remaining subject saw other positive benefits for the work of the CBA, even though the person did not support budgeting.

While the majority of the respondents had worked with the CBA on budgeted cases, the subjects were more mixed as to whether they used the resources of the CBA in non-budgeted cases as well. Many of the subjects noted that they would not hesitate to contact the CBA on a non-budgeted case, but they had not had such a need.

Among those who had worked with the CBAs on budgeted cases, both from the matched pairs analysis and otherwise, all subjects saw budgeted cases as being better managed than non-budgeted cases. Both attorneys and judges thought that the budgeting process required attorneys to think through the entire case at an earlier point than they otherwise would. Discussions with the CBA at these earlier stages sometimes prompted new litigation ideas for the attorney to pursue. Attorneys made sure to obtain all the needed experts at an earlier stage in the case, meaning they were not limited by time pressures and did not take service providers who didn't offer the best rate for work. Often the CBA would provide the attorney with a list of service providers used in the past, making approval of those resources even easier for the attorney.

While budgeting cases certainly led to better management, according to the interview subjects, there were also a number of challenges to the budgeting process mentioned by both attorneys and judges. One challenge was the preference for using local experts in cases. Attorneys mentioned that this was sometimes not feasible for a number of reasons. Small communities without experts were common, as were communities so small all experts had conflicts of interest. Related to the absence of a particular expert was the absence of a state death bar, meaning there was little experience with capital litigation in the district, requiring outside resources and additional costs.

In addition to the challenge of finding local experts, attorneys also mentioned the challenge of learning the Excel budgeting program. All attorneys noted that the learning curve was steep, but they agreed the program was now easy to use and helpful in setting up litigation. Attorneys noted that it took between one and three hours to create a budget now that they had experience with the program, and the attorneys were mixed on whether they remembered to bill for that time. A number of attorneys also noted that they used the same program outside of the three pilot circuits when budgeting cases elsewhere. Both attorneys and judges expressed a desire to see more training on the Excel budgeting program and budgeting principles, though no one thought the CBA had the time to do this additional training. All those with experience budgeting cases thought that the adaptability of the budget for issues that arose in the case was one of the greatest benefits of budgeting, and different from some of the state budgeting practices.

Other challenges to budgeting included the variation in the way districts budget, including a preference for all paper copies versus electronic billing, and the number of people

reviewing submitted vouchers. Attorneys especially found the variation challenging, and expressed interest in an entirely electronic review process for budgeted cases.

All of the attorneys and judges with experience budgeting cases thought that the seed money budgets and the efforts at cost negotiation by the CBAs helped to contain costs. The seed money budgets allowed attorneys to “hit the ground running,” giving them time to review the record and set up a defense within a day of getting the case. Judges and attorneys agreed that even late-budgeted cases were better managed with more cost containment than would otherwise be the case.

Overall, the better management, better planning, and availability of resources as a result of budgeting were viewed positively by attorneys and judges alike. Many subjects mentioned that the availability and awareness of resources was having a positive impact on the number of appealable issues in a case. Judges expected to see fewer ineffective assistance of counsel claims because resources are more widely known and accessible. Easing the judges’ minds about these due process issues was considered to be an added benefit of case budgeting. According to one judge, attorneys were getting what they needed without budgeting “trampling on the defense.”

In addition to the benefits of case budgeting in specific cases, other work by the CBAs was discussed with interview subjects. For example, the CBAs have worked a great deal with those judges reviewing vouchers for approval, both at the district and circuit levels. Almost all of the judges expressed concern about the issue of voucher review more generally. Many judges were uncomfortable with the *ex parte* conversations necessary to conduct the review prior to the start of the CBAs, noting that these administrative decisions can have a substantive effect on the case. Judges also expressed concern that they had no context for understanding the reasonableness of requests made prior to the CBAs’ start. This issue was especially prevalent when the judge did not have a background in criminal litigation.

With the assistance of the CBAs, however, judges feel more confident in their review of voucher requests. They see their review as being more consistent because the CBAs can provide a circuit-wide perspective on the reasonableness of the request (comparing representations in one case with another) and have more information to find anomalies. Having more than a case-specific perspective was important to both district and circuit judges reviewing voucher requests. Judges generally agreed their review time for vouchers was shorter now than in the past; review time was cut by half for some judges. One judge likened the review by the CBA to review of bills by independent auditors in the private sector, allowing someone with experience in criminal litigation to review the use of resources. Another judge said, “I can’t imagine anyone reviewing as thoroughly as [the CBA] does.”

Looking at the voucher review process from an attorney perspective, we also found support for the work of the CBA. Attorneys saw review as being faster now, as well as more consistent. The attorneys found the CBA to be a resource when they had questions about adjustments to vouchers, noting it was a lot easier to call one of the CBAs on the phone

than a judge. Several attorneys noted that the up-front conversations about case costs gave them greater confidence their whole request would be approved as long as they stayed within budget. This greater confidence allowed them to focus on the representation issues instead of focusing on being paid. Attorneys also agreed that they were being paid faster now than before the CBA started. One attorney noted an especially important difference with the CBA working on review: Attorneys were no longer arbitrarily cutting their own vouchers to be under the \$20,000 threshold for circuit review. These self-imposed cuts were a function of slow voucher review at the circuit level prior to the creation of the pilot.

In addition to the work of the CBAs to assist with voucher review, attorneys and judges saw a number of benefits to having a CBA in the circuit. Both judges and attorneys saw the CBAs as a resource when they did not have experience with a particular type of litigation. CBAs were especially helpful to solo practitioners who had no other resources to ask about budgeting or litigating cases under the CJA. One attorney noted that the CBA can explain to inexperienced judges why specific service providers may be necessary in a case. Judges also noted that the CBAs help with the CJA panel in the district, recruiting lawyers, managing the panel by identifying high billers, and setting policy. CBAs also provide assistance to attorneys and judges in identifying rare service providers, such as rare language translators, or highly specific experts, such as forensic accountants. The CBAs were universally viewed as a resource to call with any questions about litigation or billing under the CJA, and even those who didn't support the use of budgeting supported the position of the CBA as such a resource. The use of the CBA as a resource is true regardless of the size of a district. As one staff member put it, "even judges in small districts can have big cases and need the help of the CBA." CBAs speak with expertise in the area and the authority of the circuit, making them a trusted source in CJA litigation for both attorneys and judges.

All interview subjects were asked about the impact that the work of the CBA had on the quality of the representation for clients under the CJA. Of the 25 subjects interviewed, 19 said the work of the CBA either improved the quality of the representation or had no negative effect. The remaining 6 subjects had no opinion on the matter. Part of what was improving representation, according to both attorneys and judges, was the forethought that budgeting required of the attorneys. As one attorney put it, "budgeting makes it easier to manage cases, period."

All interview subjects were also asked if the money saved through the work of the CBAs would have been saved without their efforts. Only 7 of the 25 subjects had no opinion on this issue, and the remaining subjects agreed that at least some if not all of the money would not have been saved without the efforts of the CBA. The presence of a circuit-wide perspective allows the CBAs to spot and correct high-billing service providers before any money is spent. The CBAs have also found a number of service providers who do quality work (according to the judges and attorneys) at a reasonable price, saving time and money on the part of counsel looking for service providers to assist with the defense.

Overall, the interviews provided additional information about the use of resources in specific cases as well as a global perspective on the pilot. Not only did the interviews substantiate the other resources, such as the daily diaries, allowing for case-specific assessments of costs, but they also allowed a more in-depth focus on the impact of the pilot. Almost universally the results of the interviews are positive with respect to the pilot. Not only do the subjects see money saved by the pilot, but the cost containment efforts do not hinder, and may improve, the quality of representation for clients under the CJA. In addition to the benefits of budgeting, on which attorneys and judges agreed, the pilot also provides a resource for judges and attorneys litigating cases under the CJA. The enhanced management and faster review and payment of vouchers under the CJA is also improving the professional lives of attorneys and judges.

Conclusions

Overall, the matched pairs analysis shows that budgeted cases typically involve more resources than non-budgeted cases do, with respect to both the type of service providers and the number within each type. This is true for most categories of service providers. A higher number of service providers, not surprisingly, results in more vouchers being paid in budgeted cases than in non-budgeted ones. The higher number of service providers, however, does not result in significantly higher case costs, all else being equal.

The work of the CBAs is likely to be affecting these lower case costs. As the anecdotal evidence suggests, the CBAs are engaging in a number of efforts to reduce case costs, including increasing the number of service providers to find lower estimates. As the multivariate analysis above shows, the higher number of service providers for duplication and translation is lowering case costs.

In addition to finding service providers who will work for a lower rate, the CBAs also work with attorneys to lower budgeted amounts prior to the submission of a voucher. As one judge said, “[the CBAs] are proactive, reducing costs before I ever see a voucher.” These adjustments to budgets result in a substantial amount of change—between \$1.2 million and \$2.6 million dollars in changes before vouchers are even submitted.

Perhaps most interesting about the changes the CBAs are making to the budgets is the fact that neither the attorneys in these cases nor the judges see a negative impact on the quality of the representation for CJA clients. Not only are both groups supportive of the efforts at cost containment, but they also agree that budgeted cases are better managed and may actually result in better representation of the client because budgeted cases are better planned. Both groups also agreed that the money saved in these budgeted cases, as well as other cost containment efforts within the circuit, would not have been saved as easily without the work of the CBA.

Conclusions

The purpose of this evaluation was to assess whether the CJA Case-Budgeting Attorney Pilot Project was meeting its goals of helping to effectively manage the resources available through the Defender Services account while achieving a high quality of defense re-

presentation and providing objective case-budgeting advice to judges and CJA panel attorneys. To determine whether these goals have been met, we drafted and executed a five-stage evaluation plan.

As to the first goal of effectively managing resources while achieving a high-quality defense representation, our results indicate that the pilot is meeting this goal. While cost containment is only a portion of the total pilot project, the CBAs appear to be containing costs. Both the aggregate analysis and the matched pairs analysis demonstrate that the pilot helps to effectively manage resources under the Defender Services account, whether effective management is measured as making more resources available at the same cost as before the pilot or as actually reducing case costs in the circuits. Moreover, the efforts at cost containment outweigh the costs of the pilot, as shown in the aggregate analysis. The efforts at cost containment are noteworthy both for the total dollar savings in pilot circuits and for the adjustments to budgets before vouchers are ever submitted. While the changes made to budgets are unlikely to have been approved wholesale, the Pre-pilot Circuit Culture section demonstrates that few substantial changes would have been made even to excess compensation vouchers prior to the appointment of the CBA. As the surveys and interviews suggest, cost containment would not have occurred in such substantial amounts without the work of the CBAs.

Not only does the pilot achieve cost containment, the first part of the first goal, but it also achieves the second part of this first goal—high-quality representation. In both the surveys and interviews with judges and attorneys, respondents agreed that the pilot project, and the efforts of the CBA, produce a high-quality representation for clients litigated under the CJA. While budget requests are being reduced by the CBA, this is not negatively affecting representation. As both attorneys and judges agreed, budgeting may be enhancing the quality of the representation because cases are planned better as a result of budgeting, for experienced judges and counsel as well as judges and counsel new to this type of litigation. Both judges and attorneys agreed that budgeting and efforts of the CBA outside of budgeted cases result in cases that are better managed. Some judges went so far as to speculate that better managed cases, and greater awareness of resources, may result in fewer ineffective counsel claims. While it is too early in many of the budgeted cases to assess such claims, this may be a measure to consider in the future.

The second goal of the pilot project was to provide objective case-budgeting advice to judges and attorneys. Both the survey and interview results suggest that those working with the CBA feel they are receiving objective advice. The objectivity of the advice is true across case types: 87% to 100% of respondents somewhat or strongly agreed that they were provided objective case-budgeting advice by the CBA. Perhaps the best indication of the value judges and attorneys place on the advice given to them by the CBAs is the fact that they go to the CBAs with questions in cases that are not budgeted as well as in those that are.

The willingness of attorneys and judges to seek the help of the CBA points to other benefits of the pilot project, beyond its two stated goals. The pilot project, and the work of the CBAs specifically, results in faster and more consistent review of vouchers, at both the

district and circuit court levels. Both attorneys and judges see the process as more efficient: judges spend less time reviewing vouchers and attorneys see faster payment. Not only are vouchers moving through the system more efficiently now than before the pilot, but changes to vouchers, when they occur, are understood more easily by counsel. Judges feel more confident in the changes they make, and attorneys have a source they can go to when they have questions about the changes made.

The importance of the CBA as a resource in the circuit should not be overlooked. Judges rely on the CBA not only as they review vouchers, but also in the day-to-day litigation of cases under the CJA. Answering questions about the use of service providers, providing assistance with management of the CJA panel, and finding solutions to circuit-wide problems, such as high billers, have all fallen under the domain of the CBAs. Moreover, much of this work was not specifically about budgeting—the intended focus of the position. The CBAs have worked in the circuit to create a consistent budgeting practice where little or none existed before, and the Excel programs, budgeting checklist, and CJA manuals all work to bring greater consistency to case management under the CJA, as well as more accurate record keeping. Even without these formal efforts to address case management, having the CBA as a single resource in the circuit to call on the phone has been invaluable according to attorneys and judges.

Overall, the pilot project has added a resource for attorneys and judges involved in CJA litigation. The CBAs solve problems in the circuit, answer questions about litigation, and have brought greater consistency and accuracy to the CJA litigation process. All of this additional work has been done while still achieving the twin goals of effectively managing resources and providing objective case-budgeting advice.