

The CJA Supervising Attorney: A Possible Tool in Criminal Justice Act Administration

*Report to the Judicial Conference Committees on
Defender Services, Judicial Resources, and
Court Administration and Case Management*



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I. Executive Summary

The District of Maryland, the Central District of California, and the Northern District of California have each received special funds to create a position called “Criminal Justice Act Supervising Attorney” on a pilot basis. The purpose of these positions is to assist the courts in carrying out their responsibilities under the Criminal Justice Act (CJA).¹ The purpose of this report is to provide the Judicial Conference and its committees² with information about how having these positions worked. We hope this report will aid in the decision whether to retain these positions and possibly create them elsewhere.³

There is no question that these positions have value. Appointed counsel in these districts appreciate the prompt and reliable reviews of their payment vouchers that the CJA supervising attorneys provide, and the availability of a central, accessible, knowledgeable resource for assistance with CJA issues. Judges appreciate being relieved of tasks many feel they do not have time for, they are not proficient at, and/or it is inappropriate for them to do. Whether these positions’ value justifies their costs is a policy question we leave to the policy makers.

We were not able to determine whether shifting CJA tasks from judges to CJA supervising attorneys resulted in enough savings in CJA expenses to offset the costs of employing the CJA supervising attorneys. The complexity of the system and the unavailability or unreliability of certain data prevented such an analysis. We do think that the pilot positions were as successful as they were in part because cutting costs was not the only goal.

The cost of creating a CJA supervising attorney position is largely just the salary of the incumbent – in the neighborhood of \$100,000 annually – plus benefits, overhead expenses, and any indirect costs of coordination and supervision.

The benefits of the position depend upon what the CJA supervising attorney does, and how well he or she does it. Our observations of the three pilot positions in this study demonstrate many benefits that can result. Using as our guide four key themes – effectiveness, fairness, accountability, and efficiency – the benefits we observed include the following.⁴

¹ The three districts use their positions somewhat differently.

² This report was prepared for the Spring 2001 meetings of the Committees on Defender Services, Judicial Resources, and Court Administration and Case Management.

³ The authors of this report are very grateful to the dozens of judges, hundreds of attorneys, and many court staff members who helped us with this research. We also are grateful to staff at the Administrative Office for four years of close cooperation on this project. Finally, we thank our Federal Judicial Center colleagues – including virtually everyone in the Research Division – for their assistance, review, and advice.

⁴ If a district made different choices in how to use a CJA supervising attorney or whom to hire, the benefits we observed might not result. Indeed, there is the potential for additional “costs” to result. For example, a different CJA supervising attorney in a different district might slow down voucher payment instead of speeding it up, as we observed. Or the CJA supervising attorney’s actions might drive away high-quality attorneys from the panel. It also is the case, of course, that a different CJA supervising attorney in a different district might bring benefits that we did not observe in the three districts in this study.

Effectiveness of Representation. CJA supervising attorneys do not have a direct impact on effectiveness of representation, because they do not provide legal representation. However, they may have indirect positive impacts.

- They can relieve presiding judges of direct supervision of one party's litigation strategies, which alleviates a potential conflict of interest that attorneys might perceive if they think one strategy will help the attorney earn more money but another might be more beneficial to the client.
- CJA supervising attorneys also can contribute to quality of representation by effectively managing CJA panels to ensure that they contain only highly qualified attorneys.
- Another important possible impact on representation effectiveness is the court's ability to attract high-quality attorneys to its CJA panel by paying attorneys reliably and fairly. This is something CJA supervising attorneys can help do.

Fairness to Counsel.

- Centralizing voucher review, so that all vouchers are reviewed by a single attorney hired specifically to perform that task, can improve panel attorneys' impressions of fairness, because the vouchers can be reviewed promptly and consistently.⁵
- There also is the possibility that a CJA supervising attorney who supervises how attorneys are assigned to cases can facilitate attorneys' perceptions of fairness, but this possibility has not yet been fully realized in any of the study districts.⁶

Accountability.

- The CJA supervising attorney can facilitate accountability through his or her central oversight of CJA expenses.
- Moreover, the person selected for the position can be hired to have necessary special skills, such as experience with accounting or criminal defense, which judges may not have.
- Case budgeting is growing in importance as an aspect of accountability. CJA supervising attorneys can relieve judges of budgeting responsibilities, which some judges feel ill-equipped for and which some judges and attorneys – but not all – believe present troubling *ex parte* and role conflict issues.⁷

⁵ As one attorney put it, the CJA supervising attorney “turned a nightmare completely around.”

⁶ In Maryland there still is room for improvement on how misdemeanor cases are assigned – a fraction of the panel receives most of the appointments. In California Central the CJA supervising attorney only began to supervise case assignments in January 2001. In California Northern the CJA supervising attorney has no role in case assignments.

⁷ The *ex parte* issue arises from the attorney's presenting information to the judge to justify the budget that is unavailable to either the government in a prosecution, or the state in a habeas peti-

Efficiency.

- Some judges find some of the micro-managing of criminal defense required by the Criminal Justice Act disruptive to their work. A CJA supervising attorney can relieve judges of some of these burdens.
- And CJA supervising attorneys are paid less than judges.

Structure of this Report. Before we describe the data touching on our key research themes, we present five background chapters. Chapter II describes the Criminal Justice Act and its many facets relevant to this project. Chapter III describes the pilot position under study. Chapter IV summarizes our research methods. Chapter V describes how the Criminal Justice Act is implemented in the three study districts, as well as four others. Chapter VI summarizes how CJA supervising attorneys use their time in each district.

The next four chapters concern each of the key research themes – Chapter VII on effectiveness of representation, Chapter VIII on fairness to counsel, Chapter IX on accountability, and Chapter X on efficiency. A conclusion completes the report.

Information in the four key theme chapters – Chapters VII through X – is based on all of our research, including confidential interviews. In each chapter we summarize what we learned and then provide more detail about results of our surveys and, where relevant, focus groups or analyses of central databases. Many charts accompany these chapters. So that the charts do not overwhelm the text – and because we know that busy readers may want to skim or skip them – we present the text first and then the charts. The charts are grouped thematically and preceded by introductory descriptions titled, “How to Read the Charts.”

tion. The role conflict issue arises from the judge’s serving both as neutral arbiter and one party’s supervisor.

II. The Criminal Justice Act

The Right to Counsel

The Sixth Amendment to the U.S. Constitution guarantees a criminal defendant the right “to have the Assistance of Counsel for his defence.” Since 1790 defendants in federal capital cases have had the right to two court-appointed attorneys upon request.⁸ In 1938 the Supreme Court held that the Sixth Amendment requires the federal government to provide counsel for other federal criminal defendants who are otherwise unable to obtain counsel, unless this constitutional right is competently and intelligently waived.⁹ This holding was codified in 1944 as Federal Rule of Criminal Procedure 44 (now 44(a)).¹⁰

In 1964 Congress enacted the Criminal Justice Act (CJA), codified at 18 U.S.C. § 3006A, which required courts to assume the government’s responsibility to appoint and pay counsel to represent financially eligible¹¹ defendants. The Act provides for the establishment of federal public defender organizations, community defender organizations, and panels of private attorneys who will accept court appointments to represent financially eligible defendants.¹² The appointment of counsel for defendants charged with capital crimes also is governed by 18 U.S.C. § 3005 and the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 848(q).

As a supplement to statutory authority, the Judicial Conference promulgates guidelines for appointment procedures at volume VII (Appointment of Counsel in Criminal Cases) of the *Guide to Judiciary Policies and Procedures*.¹³

According to Judicial Conference guidelines, a defendant is financially eligible for a court-appointed attorney if his or her individual financial resources are not enough to cover bond, necessities of life, and retained counsel.¹⁴ According to

⁸ 18 U.S.C. § 3005; *Federal Criminal Code and Rules* 160 (West 2000).

⁹ *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938). The Fourteenth Amendment imposes a similar obligation on state governments. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

¹⁰ The original Rules of Criminal Procedure for the District Courts were adopted by order of the U.S. Supreme Court on December 26, 1944, transmitted to the Congress by the Attorney General on January 3, 1945, and became effective March 21, 1946. *Federal Criminal Code and Rules* 24 (West 2000).

¹¹ The word “indigent” is sometimes used in this context. It refers to financial inability to retain counsel and not to utter financial destitution. See 1964 U.S.C.C.A.N. 295 (statement of Atty. Gen. R. F. Kennedy) (“The term ‘indigency’ is avoided [in the statute] because of its implication that only an accused who is destitute may need appointed counsel or services.”).

¹² A district, a part of a district, or a pair of adjacent districts or parts of districts may establish a federal public defender organization or a community defender organization if the district makes at least 200 CJA appointments annually. 18 U.S.C. § 3006A(g)(1). A federal public defender organization is supervised by a federal public defender, who is appointed by the court of appeals. *Id.* § 3006A(g)(2)(A). A community defender organization is a local nonprofit defense counsel service designated by the district to provide legal services in accordance with the CJA. *Id.* § 3006A(g)(2)(B). Provisions in the Act for federal public defender and community defender organizations were added by amendment in 1970. Pub. L. 91-447 § 1(a).

¹³ Hereinafter VII *Judiciary Guide*.

¹⁴ *Id.* § A, ch. 2 at pp. 8-9 (provisions 2.04, 2.06).

the Act, financial ability to obtain counsel is determined by the court “after appropriate inquiry.”¹⁵ If financial circumstances change, the court may terminate appointment, require partial reimbursement from the defendant, or initiate appointment for a previously ineligible defendant.¹⁶

Criminal Justice Act Panels

Nationwide, just over half of assigned criminal defense representations are provided by federal public defender organizations or community defender organizations.¹⁷ The other assigned representations are provided by private attorneys appointed by the court on a case-by-case basis from a local “CJA panel.”¹⁸ Private CJA panel attorneys are used in districts without defender organizations and in cases in which the local defender organization has a conflict of interest with the defendant, typically because it represents a co-defendant. In districts with a defender organization, the CJA mandates that a “substantial number” of appointments be of panel attorneys.¹⁹ Judicial Conference guidelines suggest that a substantial proportion be defined as 25% in this context.²⁰

The court has responsibility both for panel management and voucher payment. Panel management includes appointment of private attorneys to a CJA panel and assignment of CJA panel attorneys to individual cases. Voucher payment involves approving compensation and reimbursement vouchers submitted by the assigned attorneys and other service providers. In some circumstances it also involves negotiating a case budget with defense attorneys in advance of litigation.

Judicial Conference guidelines provide that:

The CJA Panel must be designated or approved by the court. The membership of the panel should be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members receive an adequate number of appointments to maintain their proficiency in criminal defense work and thereby provide a high quality of representation. Members should serve at the pleasure of the court.²¹

¹⁵ 18 U.S.C. § 3006A(b).

¹⁶ *Id.* § 3006A(c).

¹⁷ Caroline Wolf Harlow, *Defense Counsel in Criminal Cases* at p. 2 tbl. 1 (Bureau of Justice Statistics Special Report, Nov. 2000); *Report of the Judicial Conference of the United States on the Federal Defender Program 7* (March 1993) [hereinafter 1993 Conference Report].

¹⁸ VII *Judiciary Guide* § A, ch. 2 at 3-4 (provision 2.01.D); *id.* app. G at G-12 to G-18 (“Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys Under the Criminal Justice Act” [hereinafter “Model Plan”]); 1993 Conference Report at 7.

¹⁹ 18 U.S.C. § 3006A(a)(3).

²⁰ VII *Judiciary Guide* § A, app. G at G-8 (“Model Plan” provision VI.C).

²¹ *Id.* ch. 2 at p. 3 (provision 2.01.D).

Criminal Justice Act Appointments

Each district court must prepare “a plan [in accordance with the CJA] for furnishing representation for any person financially unable to obtain adequate representation.”²² According to the Act, the district court’s plan and any modifications to it must be approved by the judicial council of the district’s circuit, which must add provisions for appointment of counsel on appeal.²³

The Act *requires* that the district’s plan provide for appointment of counsel in various enumerated serious circumstances (see box *infra*).²⁴ In addition, Judicial Conference guidelines provide that the plan should provide for appointment of counsel in capital habeas corpus cases.²⁵ The Act also requires that the plan provide that the court *may* appoint counsel in the interests of justice in less serious circumstances.²⁶ For corporate defendants, certain petty offenses, and in other enumerated circumstances, Judicial Conference guidelines provide that the court *may not* provide appointed counsel.²⁷ Judicial Conference guidelines provide that appointed counsel may be reimbursed for “[r]epresentation in an ancillary matter,” but may not be reimbursed for “services of a personal nature” (see box *infra*).²⁸

Judicial Conference guidelines provide that: “A person financially eligible for representation should be provided with counsel as soon as feasible after being taken into custody, when first appearing before a federal judge or magistrate, when formally charged, or when otherwise entitled to counsel under the Act, whichever occurs earliest.”²⁹ If a private attorney is assigned in a noncapital case that is “extremely difficult,” the court may appoint an additional attorney to represent the defendant in the interest of justice.³⁰ (In a federal capital prosecution, the defendant is entitled to the appointment of at least two attorneys, regardless of financial circumstances.³¹) In capital habeas cases, two or more attorneys may be appointed.³²

²² 18 U.S.C. § 3006A(a).

²³ *Id.*

²⁴ *Id.* § 3006A(a)(1).

²⁵ VII *Judiciary Guide* § A, ch. 2 at p. 2 (provision 2.01.A(1)(x)).

²⁶ 18 U.S.C. § 3006A(a)(2).

²⁷ VII *Judiciary Guide* § A, ch. 2 at pp. 4-5 (provision 2.01.E).

²⁸ *Id.* at pp. 5-6, 24 (provisions 2.01.F, 2.28.B).

²⁹ *Id.* at p. 7 (provision 2.03.A).

³⁰ *Id.* at p. 9 (provision 2.11.B).

³¹ 18 U.S.C. § 3005; VII *Judiciary Guide* § A, ch. 6 at p. 1 (provision 6.01.A(1)).

³² 21 U.S.C. § 848(q)(4); VII *Judiciary Guide* § A, ch. 6 at pp. 1-2 (provision 6.01.A(2)).

Types of Representation that May and May Not Be Provided Under the Criminal Justice Act

Types of representation may be classified according to whether they *must* be, *may* be, or *may not* be paid for by the court. Authority for these classifications comes in part from the United States Code and in part from Judicial Conference Guidelines.

Appointments Required in Capital Prosecutions

A defendant charged with a capital crime is entitled to two attorneys, “of whom at least 1 shall be learned in the law applicable to capital cases,” regardless of financial circumstances.³³

Appointments Required in Capital Habeas Corpus Cases

The Anti-Drug Abuse Act of 1988 (ADAA) requires the appointment of counsel for any financially eligible person who is seeking to set aside or vacate a death sentence on writ of habeas corpus.³⁴

Appointments Required By the Criminal Justice Act

Counsel must be appointed for any financially eligible person who:

- (A) is charged with a felony or a Class A misdemeanor;
- (B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in [18 U.S.C. § 5031];
- (C) is charged with a violation of probation;
- (D) is under arrest, when such representation is required by law;
- (E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
- (F) is subject to a mental condition hearing under [18 U.S.C. § 313];
- (G) is in custody as a material witness;
- (H) is entitled to appointment of counsel under the sixth amendment to the Constitution;
- (I) faces loss of liberty in a case, and Federal law requires the appointment of counsel; or
- (J) is entitled to the appointment of counsel under [18 U.S.C. § 4109, concerning transfer of prisoners to other countries].³⁵

(continues)

³³ 18 U.S.C. § 3005; *see also* VII *Judiciary Guide* § A, ch. 6 at p. 1 (provision 6.01.A(1)); and *see* 21 U.S.C. § 848(q)(4)(A) (requiring appointment of counsel for financially eligible capital defendants).

(continued)

Appointments Permitted By the Criminal Justice Act

The court may appoint counsel *in the interests of justice* for a financially eligible person who:

- (A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or
- (B) is seeking relief under [28 U.S.C. §§ 2241, 2254, 2255, concerning the writ of habeas corpus].³⁶

Appointments Permitted By the Guidelines

Other cases or proceedings which may be covered or compensable under the Act include, but are not limited to the following . . . :

- (1) Counsel may be appointed under the Act for a person charged with civil or criminal contempt who faces a loss of liberty.
- (2) Upon application of a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, counsel may be appointed where there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty.
- (3) Counsel may be appointed for financially eligible persons proposed by the U.S. Attorney for processing under a “pretrial diversion” program.
- (4) Counsel may be appointed for persons held for international extradition under [18 U.S.C. § 209].
- (5) Representation may be furnished for financially eligible persons in “ancillary matters appropriate to the proceedings” pursuant to subsection (c) of the Act.

. . .

Representation in an ancillary matter shall be compensable as part of the representation in the principal matter for which counsel has been appointed and shall not be considered a separate appointment for which a separate compensation maximum would be applicable³⁷

(continues)

³⁴ 21 U.S.C. § 848(q)(4)(B); *see also* VII *Judiciary Guide* § A, ch. 2 at p. 2 (provision 2.01.A(1)(x)).

³⁵ *Id.* § 3006A(a)(1).

³⁶ 18 U.S.C. § 3006A(a)(2).

(continued)

Appointments Prohibited By the Guidelines

Although CJA attorneys may be compensated for representing their clients in “ancillary matters,” “services of a personal nature” are not to be paid for with CJA funds. These include services and expenses:

which cannot be considered legal representation, such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, assisting the defendant in executing the conditions of probation, providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant’s arrest, etc.³⁸

In addition:

Cases or proceedings which are not covered by or compensable under the Act include the following:

(1) Petty offenses (Class B or C misdemeanors or infractions), except where confinement is authorized by statute and the judge or magistrate determines that appointment of counsel is required in the interest of justice;

(2) Corporate defendant cases;

(3) Prisoners bringing civil rights actions under 42 U.S.C. § 1983. Care should be taken to ensure that a prisoner is not denied the appointment of counsel due to the mislabeling of his action as “civil rights” when the proceedings could also be considered as seeking relief under 28 U.S.C. § 2254;

(4) Civil actions to protect federal jurors’ employment. The appointment and compensation of attorneys in such actions are under the authority of 28 U.S.C. § 1875, not 18 U.S.C. § 3006A;

(5) Administrative deportation proceedings before the Immigration and Naturalization Service.³⁹

³⁷ VII *Judiciary Guide* § A, ch. 2 at pp. 5-6 (provision 2.01.F). Currently pending is an amendment to the guidelines that permits appointment of counsel in civil forfeiture proceedings to comply with the Civil Asset Forfeiture Reform Act of 2000, 18 U.S.C. § 983(b).

³⁸ VII *Judiciary Guide* § A, ch. 2 at p. 24 (provision 2.28.B).

³⁹ *Id.* at pp. 4-5 (provisions 2.01.E). Note that although “civil actions to protect federal jurors’ employment” are not compensable under the CJA, as the quoted guideline states, they are compensable with Defender Services funds. *Id.* (provision 2.01.E(4)).

Partners and associates of an assigned attorney may render services to the defendant without special authorization.⁴⁰ With approval from the court, an attorney not assigned by the court or affiliated with an assigned attorney's law firm may assist the assigned attorney in rendering compensated services to the defendant.⁴¹ Compensation to non-assigned attorneys counts against the assigned attorney's compensation limits.⁴²

With respect to assignment to specific cases, Judicial Conference guidelines provide that:

Appointments should be made in a manner which results in both a balanced distribution of appointments and compensation among members of the CJA Panel, and quality representation for each CJA defendant. These objectives can be accomplished by making appointments on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations.⁴³

Panel Payments

In noncapital cases, the court uses Administrative Office CJA Form 20 to make the appointment. In capital cases, it uses Form 30. Attorneys then use these same forms as vouchers to request compensation for services. To request authorization for and reimbursement for investigative, expert, or other services, Form 21 is used for noncapital cases and Form 31 is used for capital cases.

Judicial Conference guidelines provide that vouchers should be submitted within 45 days of the case's final disposition,⁴⁴ and the court should act upon the voucher within 30 days of receipt.⁴⁵ Once the court approves payment, the Administrative Office pays the attorney by check.

Generally, the attorney is expected to submit a single voucher at the end of the case. In capital cases, and extended noncapital cases, the attorney may request approval from the court to submit a series of interim vouchers as the case progresses.⁴⁶

If the court approves the use of interim vouchers, Judicial Conference guidelines suggest that the attorney submit the vouchers twice a month.⁴⁷ For noncapital cases, guidelines recommend that the court authorize payment only for

⁴⁰ *Id.* at 9 (provision 2.11.A).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 4 (provision 2.01).

⁴⁴ *Id.* at 12 (provision 2.21(A)).

⁴⁵ *Id.* (provision 2.21(B)); *id.* ch. 3 at p. 4 (provision 3.07); *id.* ch. 6 at p. 6 (provision 6.02.E); *id.* at p. 11 (provision 6.03.F). Note that the time limit on submitting the voucher generally is more enforceable than the time limit on paying the voucher.

⁴⁶ *Id.* ch. 2 at p. 25 (provision 2.30).

⁴⁷ *Id.* app. E at E-3, E-8.

two-thirds of approved compensation for time, but all approved reimbursement for expenses, on each interim voucher.⁴⁸ The court can then authorize payment of withheld payments either on the final voucher or on cumulative vouchers submitted every few months, according to the court’s order authorizing interim vouchers.⁴⁹ For capital cases, guidelines recommend that the court authorize full payment of interim vouchers.⁵⁰ Guidelines encourage the court to take the order authorizing interim vouchers as an opportunity to require prior approval for substantial expenses that do not require prior approval under the statutes.⁵¹ The order authorizing interim vouchers as well as the cumulative and final vouchers should be approved by the circuit’s chief judge in noncapital cases.⁵²

Compensation and Reimbursement Rates

Various rules govern what a panel attorney can charge for an assigned representation.

The attorney’s maximum hourly rate depends upon whether the case is a capital case or not, and, if not, in which district the case is tried. The CJA provides that in noncapital cases, appointed private attorneys and community defenders may be paid up to \$60 per hour for in-court time and up to \$40 per hour for out-of-court time.⁵³ However, the Judicial Conference may authorize a higher rate up to \$75 per hour for specific districts or circuits.⁵⁴ In addition, the Judicial Conference may raise these maximum rates in line with adjustments to the United States General Schedule.⁵⁵

For noncapital cases, CJA panel attorneys are now paid at least \$75 per hour for in-court time and \$55 per hour for out-of-court time.⁵⁶ The Judicial Conference has approved an hourly rate of \$75 for both in-court and out-of-court work for all districts. This rate has been implemented, however, only in nine full

⁴⁸ *Id.* at E-4.

⁴⁹ *Id.*

⁵⁰ *Id.* at E-8 to E-9. Guidelines also encourage courts to work out budgets with appointed counsel in advance in capital cases (both habeas corpus and prosecutions). *Id.* ch. 6 at pp. 6-8 (provision 6.02.F).

⁵¹ *Id.* app. E at E-5, E-9.

⁵² *Id.* ch. 2 at p. 25 (provision 2.30); *id.* app. E at E-1 to E-2.

⁵³ 18 U.S.C. § 3006A(d)(1); VII *Judiciary Guide* § A, ch. 2 at p. 12 (provision 2.22.A(1)). Originally, these rates were \$15 in court and \$10 out of court. Pub. L. 88-455. In 1970 these rates were increased to \$30 in court and \$20 out of court. Pub. L. 91-447 § 1(a). In 1984 these rates were increased to \$60 in court and \$40 out of court. Criminal Justice Act Revision of 1984, Pub. L. 98-473 §§ 1901(1)-(2).

⁵⁴ 18 U.S.C. § 3006A(d)(1); VII *Judiciary Guide* § A, ch. 2 at p. 12 (provisions 2.22.A(1)-(2)). This provision was added by amendment in 1986. Criminal Justice Act Revision of 1986, Pub. L. 99-651 § 102(a)(3)(A).

⁵⁵ 18 U.S.C. § 3006A(d)(1); VII *Judiciary Guide* § A, ch. 2 at p. 12 (provision 2.22.A(3)). This provision also was added by amendment in 1986. Criminal Justice Act Revision of 1986, Pub. L. 99-651 § 102(a)(3)(A).

⁵⁶ Five-dollar raises went into effect in 1996, 2000, and 2001.

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districts⁵⁷ and parts of five others,⁵⁸ because of limits on total funds appropriated for Defender Services. Rates between the \$75/\$55 rate and the \$75/\$75 rate prevail in all or part of two other districts.⁵⁹

In a capital case – where the defendant is charged with a capital crime or is seeking to vacate a death sentence by writ of habeas corpus – the ADAA provides for an hourly rate up to \$125 per hour.⁶⁰

Panel attorney compensation rates have not kept up with inflation very well. The vast majority of attorney hours are spent out of court, so attorney compensation is determined predominantly by the out-of-court rate. The rate of \$10 per hour originally set by the Act in 1964⁶¹ is equivalent to approximately \$55 per hour in 2001 dollars.⁶² The rate of \$20 per hour set by amendment to the Act in 1970⁶³ is equivalent to approximately \$88 per hour in 2001 dollars. The higher alternative rate of \$75 per hour originally authorized in 1986⁶⁴ is equivalent to approximately \$118 in 2001 dollars. The capital rate of \$125 per hour set in 1996 is equivalent to approximately \$142 in 2001 dollars. Figure II-1 shows how these rates have changed over time on a scale of 2001 dollars.

Both the CJA and the ADAA provide that maximum hourly rates for attorneys can be increased by aggregate increases to the General Schedule.⁶⁵ If these aggregate increases were implemented in 2001, the \$75 rate would now be \$111, and the \$125 rate would now be \$145.⁶⁶

⁵⁷ Alaska, California Central, California Northern, California Southern, District of Columbia, Hawaii, New Jersey, New York Eastern, and New York Southern.

⁵⁸ Arizona (Phoenix and Tucson only), California Eastern (Sacramento and Fresno only), Michigan Eastern (Detroit only), New Mexico (Las Cruces only), and Washington Western (Seattle only).

⁵⁹ In the District of Oregon and part of the District of Nevada (Las Vegas and Reno), the rate is \$75 in court and \$65 out of court.

⁶⁰ 21 U.S.C. § 848(q)(10)(A). This rate was set in 1996 by the Antiterrorism and Effective Death Penalty Act of 1996's amendment to the ADAA. Pub. L. 104-132 (Apr. 24, 1996). Judicial Conference guidelines recommend a rate in the range from \$75 per hour to \$125 per hour. VII *Judiciary Guide* § A, ch. 6 at p. 6 (provision 6.02.B(1))

⁶¹ Pub. L. 88-455.

⁶² Computations of 2001 dollar equivalents used a Web site provided by the Federal Reserve Bank of Minneapolis, <http://woodrow.mpls.frb.fed.us/economy/calc/cpihome.html>.

⁶³ Pub. L. 91-447 § 1(a).

⁶⁴ Criminal Justice Act Revision of 1986, Pub. L. 99-651 § 102(a)(3)(A).

⁶⁵ 18 U.S.C. § 3006A(d)(1); 21 U.S.C. § 848(q)(10)(A).

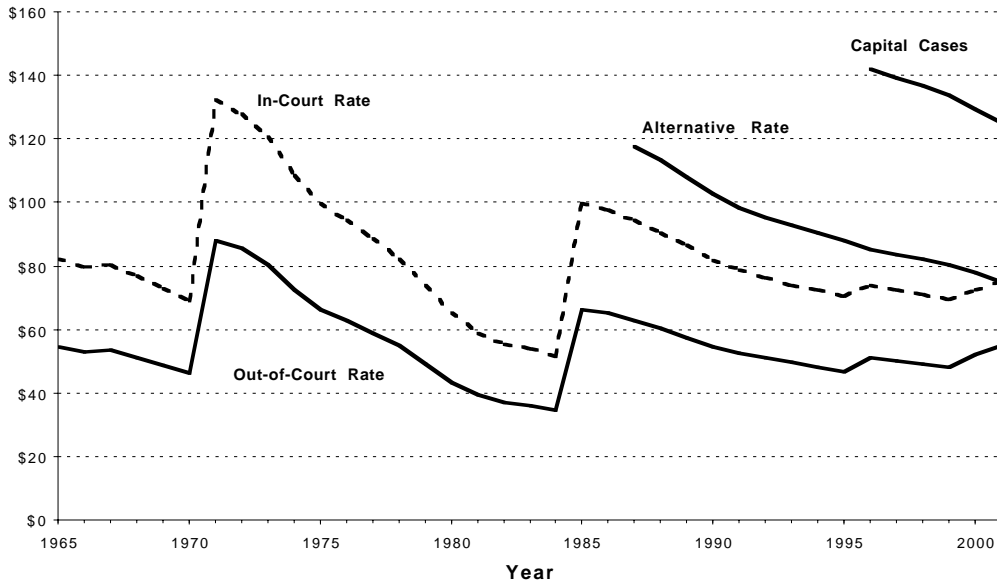
⁶⁶ The judiciary currently seeks funding for an increase in the \$75 rate to \$113, which includes an estimated and anticipated 2% increase in the General Schedule for 2002.

For General Schedule increases through 1998 we relied on *Federal Employees Almanac 1998* at 55. For increases after that we relied on the Office of Personnel Management's Web site, <http://www.opm.gov/oca/payrates>.

The Administrative Office's General Counsel has determined that these aggregate increases cannot include locality adjustments. Locality adjustments to the General Schedule apply in all locations, and now range from 7.68% to 16.98%, depending upon location.

II. THE CRIMINAL JUSTICE ACT

Figure II-1
Criminal Justice Act Hourly Rates in Year 2001 Dollars



The CJA sets presumptive caps on expenditure totals, but these caps can be exceeded upon certification of necessity by the court⁶⁷ and approval by the circuit's chief judge.⁶⁸

In noncapital cases, the presumptive cap for how much an attorney may charge for his or her time is \$5,200 for a felony case and \$1,500 for a misdemeanor case.⁶⁹ Services rendered by unassigned co-counsel, such as partners and associates, are included within these limits.⁷⁰ These limits, however, may be exceeded "for extended or complex representation."⁷¹ Judicial Conference guidelines provide that the attorney must submit a memorandum justifying the time

⁶⁷ Certification by the court means certification by "the court in which the representation was rendered, or the United States magistrate if the representation was furnished exclusively before him." 18 U.S.C. § 3006A(d)(3); *id.* § (e)(3) (similar language); 21 U.S.C. § 848(q)(10)(B) (similar language).

⁶⁸ "The chief judge of the circuit may delegate such approval authority to an active circuit judge." 18 U.S.C. §§ 3006A(d)(3), (e)(3); 21 U.S.C. § 848(q)(10)(B).

⁶⁹ 18 U.S.C. § 3006A(d)(2); VII *Judiciary Guide* § A, ch. 2, at p. 16 (provision 2.22.B(2)). Originally, these rates were \$500 for felony cases and \$300 for misdemeanor cases. Pub. L. 88-455. In 1970 these limits were increased to \$1,000 for felony cases and \$400 for misdemeanor cases. Pub. L. 91-447 § 1(a). In 1984 these limits were increased to \$2,000 for felony cases and \$800 for misdemeanor cases. Criminal Justice Act revision of 1984, Pub. L. 98-473 §§ 1901(4)-(5). In 1986 these limits were increased to \$3,500 for felony cases and \$1,000 for misdemeanor cases. Criminal Justice Act Revision of 1986, Pub. L. 99-651 § 102(a)(3)(B)(i). Current limits were created in 2000. Federal Courts Improvement Act of 2000, Pub. L. 106-518 §§ 210(1)(A)-(B).

⁷⁰ VII *Judiciary Guide* § A, ch. 2 at p. 9 (provision 2.11).

⁷¹ 18 U.S.C. § 3006A(d)(3); VII *Judiciary Guide* § A, ch. 2 at p. 19 (provision 2.22.B(3)).

II. THE CRIMINAL JUSTICE ACT

spent in extended or complex cases.⁷² These limits apply only to the attorney's time; they do not apply to the attorney's expenses.⁷³ There are no statutory limits on total attorney fees in capital cases.⁷⁴

Counsel may be reimbursed for use of computer-assisted legal research so long as counsel can show that such expense "does not exceed the total amount of attorney compensation that reasonably would have been approved if counsel had performed the research manually."⁷⁵ Because this is reimbursed as an out-of-pocket expense, however, it does not count against total compensation limits for the attorney.

Investigative, expert, or other services in addition to service by counsel may also be reimbursed. But services in excess of \$300 will not be reimbursed in non-capital cases without either (1) prior court approval on *ex parte* application, or (2) subsequent "finding that timely procurement of necessary services could not await prior authorization."⁷⁶ The presumptive cap for an individual provider of these services is \$1,000 over the provider's own expenses, but this may be exceeded if the services were "of an unusual character or duration."⁷⁷

In capital cases, the ADAA specifies a presumptive cap of \$7,500 for total investigative, expert, and other expenses, unless such services were "of an unusual character or duration."⁷⁸ Under the ADAA, prior approval is required for all investigative, expert, and other expenditures, and such approval *may not* be requested *ex parte* without a proper showing concerning the need for confidentiality.⁷⁹

⁷² VII *Judiciary Guide* § A, ch. 2 at p. 20 (provision 2.22.C(2)).

⁷³ *Id.* at pp. 15-16 (provision 2.22.B(1)(i)).

⁷⁴ *Id.* ch. 6 at p. 5 (provision 6.02.A(2)).

⁷⁵ *Id.* ch. 2 at p. 26 (provision 2.31.B).

⁷⁶ 18 U.S.C. §§ 3006A(e)(1)-(2). The allowance for services without prior authorization was added in 1970 with a limit of \$150. Pub. L. 91-447 § 1(a). In 1986 the limit for services without prior authorization was increased to \$300. Criminal Justice Act Revision of 1986, Pub. L. 99-651 § 102(a)(4)(B).

Ex parte applications must be reviewed in camera and sealed until final disposition of the case. VII *Judiciary Guide* § A, ch. 3 at p. 3 (provision 3.03).

⁷⁷ 18 U.S.C. § 3006A(e)(3). This maximum originally was \$300. Pub. L. 88-455. It was increased to \$1,000 in 1986. Criminal Justice Act Revision of 1986, Pub. L. 99-651 § 102(a)(4)(C).

⁷⁸ 21 U.S.C. § 848(q)(10)(B). The \$7,500 limit was established in 1996. Pub. L. 104-132 § 903(b). When the ADAA was enacted in 1988 capital habeas cases were exempted from CJA limits and the court was permitted to pay "such rates or amounts as the court determines to be reasonably necessary." Pub. L. 100-690 § 7001. *See also* VII *Judiciary Guide* § A, ch. 6 at pp. 8-11 (provision 6.03).

⁷⁹ 21 U.S.C. § 848(q)(9). When enacted in 1988, the ADAA provided for *ex parte* approval, Pub. L. 100-690 § 7001, but in 1996 the ADAA was amended to prohibit *ex parte* request, Pub. L. 104-132 § 108. *See also* VII *Judiciary Guide* § A, ch. 6 at pp. 8-9 (provision 6.03.A).

III. The CJA Supervising Attorney

The Judicial Improvements Act of 1990 required a comprehensive review of CJA defender services.⁸⁰ A nine-member “Committee to Review the Criminal Justice Act,” appointed by the Chief Justice of the United States, presented 28 recommendations to the Judicial Conference for consideration.⁸¹ Among these was a recommendation “that the CJA be amended to vest local panel attorney administration and voucher review in a local administrator in each judicial district.”⁸² The Judicial Conference determined that, with respect to nationwide adoption: “At a time when costs, particularly administrative costs, must be kept to a minimum, this simply is not a prudent recommendation.”⁸³

Some individual districts, however, are interested in retaining the services of attorneys to assist the court with CJA administration, including voucher review. The District of Maryland, the Central District of California, and the Northern District of California have established CJA supervising attorney positions, with each position involving a different mix of management and payment functions.

The District of Maryland and the Central District of California requested funds for such a position in 1996.⁸⁴ In March 1997 the Judicial Conference approved the recommendation of the Committee on Defender Services to use the Defender Services appropriation to fund CJA supervising attorney positions in these two districts for a two-year pilot program. In 1998 the Judicial Conference shifted funding of these positions from the defender services appropriation to the appropriation for the salaries and expenses of the courts and extended the pilot program to the end of March 2002. Also in 1998 the Administrative Office allocated funds from salaries and expenses to grant the Northern District of California’s request for a position there.⁸⁵

We note that all three districts selected for this study are in the top quarter with respect to number of authorized district court judgeships – we do not yet know how the positions might work in smaller courts. Maryland is the smallest district in this study, with 10 judgeships; California Northern has 14, and California Central has 27. Figure I-1 shows the distribution of judgeship size among the 94 districts.⁸⁶

⁸⁰ Pub. L. No. 101-650 § 318.

⁸¹ 1993 Conference *Report* at 1.

⁸² *Id.* at 19.

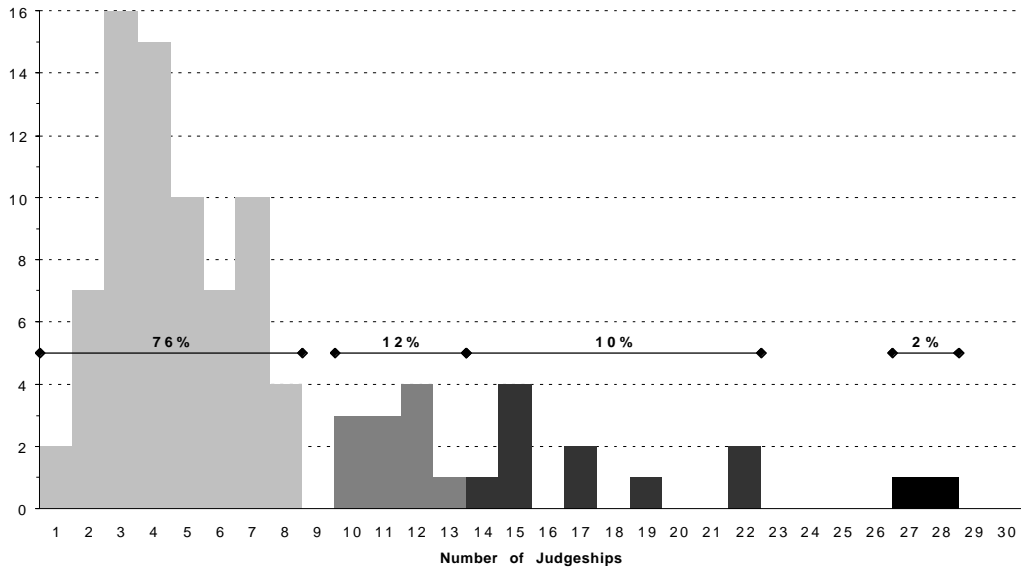
⁸³ *Id.* at 20.

⁸⁴ Letter from Hon. J. Frederick Motz to Hon. Julia Smith Gibbons, Judicial Recourses Comm. Chair, at 2 (Sep. 12, 1996); Letter from Hon. Wm. Matthew Byrne, Jr., to Theodore J. Lidz at 2 (Oct. 22, 1996). Copies of these letters are included in Exhibit C accompanying this report.

⁸⁵ *See* Letter from Hon. Marilyn Hall Patel to Theodore Lidz (Mar. 6, 1998). A copy of this letter is included in Exhibit C accompanying this report.

⁸⁶ The lightest shaded region of the figure corresponds to districts smaller than Maryland. The next lightest shaded region corresponds to districts at least as large as Maryland, but smaller than California Northern. The next lightest shaded region corresponds to districts at least as large as California Northern, but smaller than California Central. The darkest region corresponds to the

Figure III-1
Number of Districts of Each Judgeship Size
 (94 Judicial Districts)



Maryland’s CJA supervising attorney reviews all payment vouchers with signature authority for vouchers under statutory limits. She also negotiates budgets in capital cases and makes approval recommendations to the court. She supervises appointment of attorneys to the panel and assignment of attorneys to cases. In California Central the CJA supervising attorney has signature authority for all vouchers. He does not participate in case budgeting and he only recently began to assume panel management responsibilities. In California Northern the CJA supervising attorney’s primary responsibility is the development and implementation of case budgeting procedures. She reviews some vouchers and makes payment recommendations to the court. Recently she began to supervise mathematical and technical reviews⁸⁷ of all vouchers. She has virtually no responsibilities for panel management. Fuller descriptions of the CJA supervising attorney responsibilities are presented in Chapter V.

Originally these positions were approved to be compensated at a maximum of Grade 15, Step 10 on the Judiciary Salary Plan (now \$111,581 to \$121,218, depending upon location⁸⁸). It turned out, however, that these positions had to be

two districts at least as large as California Central. Percentages in the figure refer to proportion of districts with each level of shading.

In cases where a judgeship is allocated to more than one district, we regarded each district as having a partial judgeship. In the histogram the bar for two judgeships, for example, also includes districts with less than two judgeships, but more than one.

⁸⁷ The expression “mathematical and technical review” refers to making sure that the voucher’s arithmetic computations are accurate, that only authorized services and expenses are included, and that all charges are at the proper rates.

⁸⁸ 2001 Pay Tables of the United States Courts 5, 26-56.

paid on the Court Personnel System salary schedule instead. The three incumbents were hired at levels ranging from Step 25 to Step 60 within Classification Level 31. They now are classified at Steps 37 to 61, with salaries ranging from \$96,661 to \$118,545. Salaries at Classification Level 31, Step 61 now range from \$111,610 to \$121,250, depending upon location.⁸⁹ This is approximately equivalent to Grade 15, Step 10 on the Judiciary Salary Plan. Of course, actual costs would include benefits and overhead in addition to salary.

The courts use local funds to provide the CJA supervising attorneys with support staff. Tasks performed by these support staffs generally are those CJA tasks contemplated in the budget for a Clerk's office, such as mathematical and technical audits of the vouchers and processing of payment.

In 1998 the Ninth Circuit's Judicial Council also received funds to hire a CJA Death Penalty Budget Reviewer.⁹⁰ This position also was approved at a maximum salary of Grade 15, Step 10 on the Judiciary Salary Plan. The Council, however, used these funds to hire a part-time consultant as well as a full-time attorney.

The Ninth Circuit position is not part of this study, but it relates to this study, because two of this study's districts are in the Ninth Circuit. In brief, the circuit council is implementing a requirement that all capital habeas cases in the circuit's district courts be budgeted.⁹¹ This requirement includes cases already filed.⁹² Counsel for petitioner will negotiate a budget with the presiding judge, and the budget will be sent to the circuit council for review.⁹³ It is anticipated that this review will be performed primarily by the four district judge members of the council.⁹⁴ Budgets currently are reviewed by a special CJA Oversight Committee before they are reviewed by the council.⁹⁵

⁸⁹ *Id.* at 63, 87-117.

⁹⁰ See Letter from Hon. Procter Hug, Jr., to Leonidas Ralph Mecham at 3 (Mar. 6, 1998). A copy of this letter is in Exhibit C accompanying this report.

⁹¹ *Id.* at 1.

⁹² *Id.* at 2.

⁹³ *Id.* at 3.

⁹⁴ *Id.* None of the current district judge members has ever had a capital habeas case and two of them do not sit in states with the death penalty.

⁹⁵ The CJA Oversight Committee consists of Hon. Stephen McNamee, chief judge of the District of Arizona; Hon. Barry Ted Moskowitz, district judge in the Southern District of California; Dr. Robert Rucker, an assistant circuit executive and a sociologist with expertise in quantitative analyses; Maria Stratton, the Federal Public Defender for the Central District of California; Joan Anyon, the CJA supervising attorney for the Northern District of California; Cecilia Dennis, the attorney hired by the circuit council to assist in the development of case budgeting procedures; Carla Ortega, a death penalty law clerk for the Central District of California; Maureen Solomon, a court management consultant with a contract to assist the circuit council in the development of case budgeting procedures; Cathy Fujino, a financial administrator for the District of Arizona; and Peter Eckerstrom, an attorney who practices in Tucson, Arizona.

IV. Research Methods

Research Themes. Most of the information in this report is organized around four key themes – effectiveness, fairness, accountability, and efficiency. These themes relate to the courts’ duties under the CJA.

First, of course, the court has a *constitutional* duty to the *defendant* arising from the Sixth Amendment’s guarantee of a right “to have the Assistance of Counsel for his defence.”

Second, the court has a *statutory* duty to both the defendant and the defendant’s *counsel*, which arises from the Criminal Justice Act and related legislation.

Third, the court has an *ethical* duty to the defendant, the defendant’s counsel, and the *taxpayers* to use public funds appropriately in administering the Criminal Justice Act.

Fourth, the court has a *prudential* duty to the defendant, the defendant’s counsel, the taxpayers, and the *court* itself to administer the Criminal Justice Act in such a way as to maximally serve the interests of all four sets of participants in the endeavor.

Another way to conceptualize the court’s duties is according to target of duty rather than source of duty. Looked at this way, the court has a duty of *effectiveness* to *defendants*, a duty of *fairness* to *counsel*, a duty of *accountability* to the *taxpayers*, and a duty of *efficiency* to the *court* itself.⁹⁶ The following table summarizes these duties.

<u>Type of Duty</u>	<u>Source of Duty</u>			
	Constitution	Statutes	Ethics	Prudence
Effectiveness	Defendants			
Fairness	Counsel			
Accountability	Taxpayers			
Efficiency	Court			

We used a variety of methods to collect information for this report.⁹⁷

Site Visits. We made a site visit to each of the study districts in both 1998 and 2000. During these visits we met individually with the chief judge, members of the district’s CJA committee and often other judges, the clerk, the federal public defender, and several panel attorneys.⁹⁸ For purposes of comparison, we also

⁹⁶ This schematic description does not exhaust all nuances of duty. Nor is it the only way to view the court’s duties. For example, we might view the court’s duty of efficiency as also extending to counsel and taxpayers, or we might view such extensions as subsumed within the court’s duties of fairness and accountability, respectively. The purpose of this thematic description is merely to show generally how our research themes relate to the court’s Criminal Justice Act responsibilities.

⁹⁷ John Shapard directed the project at first. Tim Reagan began his employment with the Federal Judicial Center in February 1998 and began to direct the project soon thereafter.

⁹⁸ Our site visits to Maryland and California Central in 1998 did not include as many interviews as our subsequent site visits. A few of our interviews were conducted by telephone.

made site visits to districts that border the study districts – the Eastern District of Virginia, the Eastern District of California, and the Southern District of California. We also visited the District of Arizona, because that district experimented in 1996 with the creation of a position similar to the CJA supervising attorney position we studied.

Focus Groups. In 2000 we conducted a focus group in each district. Focus group participants in each district included two district judges, one magistrate judge, the clerk, the federal public defender, two panel attorneys, and all three CJA supervising attorneys – one from the host district and the other two from the other two districts in this study.

In preparation for each focus group we asked each participant to review the same set of three mock vouchers so that we could compare reviews. The mock vouchers were based on real vouchers submitted to the host district. To prepare these mock vouchers we asked each CJA supervising attorney to send us copies of 60 vouchers which we selected at random from among those paid in 1999. We asked for 15 vouchers each from among those submitted on Form 20 (noncapital attorney), Form 21 (noncapital other service provider), Form 30 (capital attorney), and Form 31 (capital other service provider). One third of these were selected at random from among the most expensive 10% for each form submitted to each district. Two thirds were selected at random from among the remaining 90%. Our report is based in part on a review of these vouchers.

Time Records. To supplement our description of how each district uses its CJA supervising attorney, we asked them to record how they used their work time during six randomly selected two-week periods in 2000.

Central Databases. We also consulted the Administrative Office's payment database and case filing databases for criminal (and habeas cases) filed 1990 and later.

Questionnaire Surveys. Much of the information on which this report is based is from a survey of judges and attorneys in each study district in 1998 and 2000.⁹⁹

In 1998 we surveyed all judges and a sample of panel attorneys in Maryland and California Central. When California Northern received funds to create a CJA supervising attorney position later that year we expanded our survey design to include all panel attorneys in that district. With the 1998 California Northern survey we also started surveying attorneys in the Federal Public Defender's and U.S. attorney's offices. We asked attorneys in these offices only questions about quality of representation provided by different types of attorney. In 2000 we surveyed all judges, panel attorneys, and attorneys in the federal defender's and U.S. attorney's offices in all three districts. The following table shows survey response rates.

⁹⁹ The 1998 questionnaires are Exhibit A and the 2000 questionnaires are Exhibit B accompanying this report.

IV. RESEARCH METHODS

	<u>1998 Survey</u>		<u>2000 Survey</u>	
	Number Surveyed	Response Rate	Number Surveyed	Response Rate
Maryland				
Judges	21	95%	23	96%
Panel Attorneys	100	82%	379	64%
FPD's Office			23	74%
USA's Office			54	94%
California Central				
Judges	49	82%	50	68%
Panel Attorneys	114	67%	198	55%
FPD's Office			54	56%
USA's Office			167	38%
California North- ern				
Judges	30	97%	31	81%
Panel Attorneys	155	63%	177	58%
FPD's Office	17	76%	18	78%
USA's Office	63	73%	84	56%

V. Program Descriptions

In order to understand the value of the CJA supervising attorney position, it is important to understand how the district uses the position and how the district otherwise has implemented the Criminal Justice Act – both before and after the position was created. This chapter presents summary descriptions.

What the CJA supervising attorney does is done in other districts by some combination of district judges, one or more magistrate judges, the federal defender's office, and the clerk's office, depending upon district. To illustrate the variety of possibilities, we found it useful to look at a few districts without CJA supervising attorneys to see how they implement the Criminal Justice Act.

As comparisons we selected one district bordering each of the study districts. We selected as Maryland's counterpart the district on the other side of the nation's capital – the Eastern District of Virginia. We selected as the California districts' counterparts the other two districts in California. We also describe the District of Arizona, because five years ago that district experimented with a position similar to the CJA supervising attorney positions in this study. Because the comparison districts provide context for our descriptions of the study districts, we describe the comparison districts first.

District of Arizona

The District of Arizona has three divisions – Phoenix, Prescott, and Tucson.¹⁰⁰ The court's Phoenix location serves the Phoenix and Prescott divisions and the court's Tucson location serves the Tucson division.¹⁰¹ Twelve judgeships are authorized.¹⁰² The caseload in Phoenix is predominantly civil and the caseload in Tucson is predominantly criminal. Criminal cases in Phoenix include a substantial number of telemarketing fraud cases. Criminal cases in Tucson, which is near the Mexican border, include a substantial number of drug and immigration cases.

¹⁰⁰ D. Ariz. L.R. 1.1. Local rules characterize these divisions as “unofficial.” The Prescott division includes Arizona's five northeastern counties – Apache, Coconino, Mohave, Navajo, and Yavapai. Prescott is in Yavapai County. The Phoenix division includes Arizona's five western and central counties – Gila, La Paz, Maricopa, Pinal, and Yuma. Phoenix is in Maricopa County. The Tucson division includes Arizona's five southeastern counties – Cochise, Graham, Greenlee, Pima, and Santa Cruz. Tucson is in Pima County.

¹⁰¹ *Id.* L.R. 1.1(a), (c). The United States Code specifies that: “Court shall be held at Globe [and] Prescott” as well. 28 U.S.C. § 82. No judge has regular chambers in either of those cities and the Clerk does not have an office in either city either.

¹⁰² 28 U.S.C. § 133(a); Pub. L. 106-553 §1(a)(2) & app. H.R. 5548 § 305(a)(9), (b)(9) (Dec. 21, 2000). One of these judgeships was created in December 2000. There are three vacancies.

Ten district judges, including four senior judges and the chief judge, and three magistrate judges have chambers in Phoenix. An additional magistrate judge has chambers in Yuma, located in Arizona's southwestern corner in Yuma County and the Phoenix division. Another magistrate judge has chambers in Flagstaff, which is in Coconino County and the Prescott division. Five district judges, including two senior judges, and four magistrate judges have chambers in Tucson.

V. PROGRAM DESCRIPTIONS

The district has separate, but substantially identical, CJA plans for its Phoenix and Tucson locations.¹⁰³ Each location has a CJA Panel Selection Committee consisting of a local superior court judge, a federal defender, and an attorney representing each of the following organizations: the state bar, the local county bar association, the local Federal Bar Association, and Arizona Attorneys for Criminal Justice.¹⁰⁴ None of the committee members may be a CJA panel attorney or practice law with a CJA panel attorney.¹⁰⁵ At least twice a year each selection committee makes recommendations to judges at its location concerning appointment of new attorneys to the panel, the removal of attorneys from the panel, and other matters of panel management.¹⁰⁶

There are four panels at each location – one for major felonies (classes A and B), one for all felonies, one for misdemeanors, and one for appeals.¹⁰⁷ The major felony panel is a subset of the felony panel.¹⁰⁸

The federal public defender's office assigns attorneys to cases.¹⁰⁹ Cases are assigned on a rotational basis, taking into account the nature of the case and whether the client needs a Spanish-speaking attorney.¹¹⁰ The federal defender also offers monthly continuing education programs to panel attorneys.¹¹¹

There is no formal panel for capital habeas cases. Death penalty law clerks employed by the court sometimes assist the court in making *ad hoc* appointments by suggesting attorneys.

The hourly rate in this district is \$75 in Phoenix, Prescott,¹¹² and Tucson, and \$75 in court and \$55 out of court in Flagstaff and Yuma. In capital cases the hourly rate is \$125 for lead counsel and \$100 for second counsel.

Voucher review analysts in the clerk's office, who have backgrounds in accounting, review vouchers for mathematical and technical errors. The Phoenix and Tucson locations each have a review analyst. For noncapital cases, these analysts also perform preliminary reasonableness reviews and note any areas of concern when they forward vouchers to the presiding judges. Death penalty law clerks do preliminary reasonableness reviews of capital vouchers.

In 1996 the district conducted a pilot study for the Judicial Conference's Defender Services Committee in which it hired a political scientist/public admin-

¹⁰³ D. Ariz. Phoenix CJA Plan, Gen. Ord. 98-50 (Mar. 5, 1997) [hereinafter "D. Ariz. Phoenix CJA Plan"]; D. Ariz. Tucson CJA Plan, Gen. Ord. 98-50 (Feb. 18, 1997) [hereinafter "D. Ariz. Tucson CJA Plan"].

¹⁰⁴ *Id.* § I.B.1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* § I.B.2.

¹⁰⁷ *Id.* § I.A.2, II.B.

¹⁰⁸ *Id.* § II.B.

¹⁰⁹ *Id.* § II.

¹¹⁰ *Id.* § II.B.

¹¹¹ Arizona attorneys must complete 15 hours of continuing education each year, of which a minimum of 3 hours must be in professional responsibility. Ariz. Sup. Ct. R. 45(a).

¹¹² Although the \$75 rate is approved only for Phoenix and Tucson, it effectively applies in Prescott as well because virtually all representations there are by Phoenix lawyers before Phoenix judges.

istrator and an attorney to do two things: (1) do preliminary reviews of vouchers, and (2) attempt to develop cost benchmarks for various case types. The political scientist/public administrator did the mathematical and technical reviews; the attorney, who had extensive criminal defense experience in Washington, DC, did the preliminary reasonableness reviews. The study did not include capital cases. Cost benchmarks proved to be very difficult to develop, because of surprising variability even among cases of the same type.

The district’s current voucher-review procedures are based on its conclusion that the type of assistance with voucher review that judges need most is not examination by another attorney, but examination by someone with training in accounting.

Eastern District of Virginia

The Eastern District of Virginia is one of two districts in Virginia, and its territory includes Richmond – the commonwealth’s capital – and counties bordering Washington, DC.¹¹³ The district is divided into four divisions – Alexandria, Newport News, Norfolk, and Richmond.¹¹⁴ Eleven judgeships are authorized.¹¹⁵

¹¹³ 28 U.S.C. § 127.

¹¹⁴ *Id.* § 127(a); E.D. Va. L.R. 3(B). The Alexandria Division includes the northernmost territory of the district, including areas bordering Washington, DC – the city of Alexandria, the counties of Arlington, Fairfax, Fauquier, Loudon, Prince William, and Stafford, and any other cities and towns surrounded by those counties. E.D. Va. L.R. 3(B)(1). The Newport News Division includes the southeasternmost territory west of the Chesapeake Bay and north of the James River – the cities of Hampton, Newport News, and Williamsburg, the counties of Gloucester, James City, Mathews, and York, and any other cities and towns surrounded by those counties. *Id.* L.R. 3(B)(2). The Norfolk Division includes Virginia’s portion of the Delmarva Peninsula and eastern territory south of the James River – the cities of Cape Charles, Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach, the counties of Accomack, Isle of Wight, Northampton, and Southampton, and any other cities and towns surrounded by those counties. *Id.* L.R. 3(B)(3). The Richmond Division includes the rest of the district – the cities of Colonial Heights, Fredericksburg, Hopewell, Petersburg, and Richmond, the counties of Amelia, Brunswick, Caroline, Charles City, Chesterfield, Dinwiddie, Essex, Goochland, Greensville, Hanover, Henrico, King and Queen, King George, King William, Lancaster, Lunenburg, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Spotsylvania, Surry, Sussex, Westmoreland, and any other cities and towns surrounded by those counties. *Id.* L.R. 3(B)(4).

¹¹⁵ 28 U.S.C. § 133(a); Pub. L. 106-553 §1(a)(2) & app. H.R. 5548 § 305(a)(9), (b)(9) (Dec. 21, 2000); Pub. L. 105-53 § 3(2) (Oct. 6, 1997); Pub. L. 101-650 § 203(c)(13) (Dec. 1, 1990). One of these judgeships is a temporary judgeship; another was created in December 2000. There is one vacancy.

Six district judges, including two senior judges and the chief judge, and four magistrate judges have their chambers in Alexandria. Three district judges, including one senior judge, and two magistrate judges have their chambers in Richmond. One magistrate judge has his chambers in Newport News. Six district judges, including two senior judges, and three magistrate judges have their chambers in Norfolk.

The district did not have a federal public defender until March 2001. The CJA panel there is open and voluntary. An attorney joins the panel essentially by checking a box on the attorney's application to practice law before the district court. There are no qualification requirements for panel membership.

The clerk's office assigns attorneys to cases. Attorneys closer to the courthouse and better known to the clerk's office staff may receive more assignments.

The hourly rate in this district is \$75 in court and \$55 out of court. Either a deputy clerk or a courtroom deputy, depending upon division, performs the mathematical and technical review of a voucher before forwarding it to the presiding judge for a reasonableness review. Charges for in-court time often are compared against court records and adjusted to conform therewith. Judges in this district are reluctant to authorize payments in excess of statutory caps, which the Fourth Circuit's chief judge has shown reluctance to approve anyway.

Eastern District of California

The Eastern District of California covers 34 northern inland counties.¹¹⁶ Seven judgeships are authorized,¹¹⁷ and the district court sits in two locations – Sacramento and Fresno.¹¹⁸ The county in which the matter arises determines in which location the matter is brought.¹¹⁹

The district has a federal public defender¹²⁰ and a CJA panel for each of its two divisions.¹²¹ Attorneys are appointed to the CJA panels for staggered renew-

¹¹⁶ 28 U.S.C. § 84(b).

¹¹⁷ *Id.* & § 133(a); Pub. L. 105-53 § 3(2) (Oct. 6, 1997); Pub. L. 101-650 § 203(c)(2) (Dec. 1, 1990). One of these judgeships is temporary. There is one vacancy.

¹¹⁸ E.D. Cal. Gen. L.R. 3-120(a). The United States Code specifies that "Court . . . shall be held at . . . Redding" as well, 28 U.S.C. § 84(b), and the local rules specify that "Sessions of Court may be also be held at Redding," E.D. Cal. Gen. L.R. 3-120(a). But no judge has regular chambers there and the clerk does not have an office there. A part-time magistrate judge with chambers in Susanville hears matters in Redding once a month.

¹¹⁹ E.D. Cal. Crim. L.R. 18-402. Matters arising in the 23 northernmost counties – Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trnity, Yolo, Yuba – are brought in Sacramento. *Id.* Matters brought in the 11 southernmost counties – Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, Tuolumne – are brought in Fresno. *Id.* (The local rules actually fail to list Sacramento County in the list of counties served by the Sacramento court, but the clerk's office tells us this is just a drafting error.)

Seven district judges, including three senior judges and the chief judge, and four magistrate judges have their chambers in Sacramento. Two other magistrate judges have their chambers elsewhere in counties served by Sacramento (Susanville in Lassen County and South Lake Tahoe in Alpine County). Four district judges, including two senior judges, and three magistrate judges have their chambers in Fresno. Two other magistrate judges have their chambers elsewhere in counties served by Fresno (Bakersfield in Kern County and Tuolumne Meadows in Yosemite National Park and Tuolumne County).

¹²⁰ E.D. Cal. CJA Plan §§ VI.A-B. "The Federal Public Defender Organization . . . shall maintain full time staffed offices in Sacramento and Fresno, and a seasonally staffed office in Yosemite National Park." *Id.* § VI.A.2.

able three-year terms.¹²² (As a special action all panel attorneys were up for review this past year.) The federal defender has a capital habeas unit¹²³ and the district also has a capital habeas panel.¹²⁴

The federal defender’s office is responsible for assigning panel attorneys to cases and for providing panel attorneys with continuing legal education.¹²⁵ The federal defender offers panel attorneys enough continuing education programs for them to satisfy the California bar’s minimum continuing legal education requirement.¹²⁶ Continuing education sessions are held monthly, except during the summer. Attendance is mandatory, with panel attorneys required to submit explanations for all absences.

In each of the two divisions, case assignment is handled by a CJA panel administrator who works under the supervision of an assistant federal defender. The panel administrator assigns cases on a rotational basis unless special skills are required, in which case her supervisor may recommend specific attorneys for the job.

Local rules provide that payment vouchers be submitted within 15 days of the conclusion of the case.¹²⁷ The panel administrator performs mathematical and technical reviews of all vouchers and then sends the vouchers to presiding judges for reasonableness reviews.¹²⁸ Once a voucher has been approved by the judge, the panel administrator in Sacramento certifies payment. Judges and attorneys in this district tell us that vouchers always are paid promptly.

Although the panel administrators are employed and supervised by the federal defender, their records are generally inaccessible to all attorneys in the federal defender’s offices.

The hourly rate in this district is \$75 in Sacramento and Fresno and \$75 in court, \$55 out of court elsewhere (e.g., Yosemite National Park). By local rule the presumptive hourly rate for attorneys in capital cases is \$110,¹²⁹ although attorneys may be paid up to \$125 by special order.

Local rules specify that: “In a capital case, at least two attorneys should be appointed.”¹³⁰ If a prosecution is death-eligible and the federal defender does not

¹²¹ *Id.* § V.A; *id.* App. I § B.1.

¹²² *Id.* App. I § B.5.

¹²³ E.D. Cal. CJA Plan § VII.A. “[T]he Federal Public Defender shall be appointed as counsel of record in cases where there is no conflict of interest up to a fixed number each year consistent with funding and staffing levels of the Federal Public Defender related to these types of cases.” *Id.*

¹²⁴ E.D. Cal. Civ. L.R. 81-191(d)(1); E.D. Cal. CJA Plan § VII.A.

¹²⁵ E.D. Cal. CJA Plan § VI.C.

¹²⁶ California attorneys must complete 25 hours of continuing education every three years, including a minimum of 4 hours on ethics, 1 hour on substance abuse, and 1 hour on elimination of bias. Cal. Bar MCLE R. 2.1.

¹²⁷ *Id.* App. I § F. Note that this is a month earlier than national guidelines. VII *Guide to Judiciary Policies and Procedures* § A, ch. 2 at p. 4 (provision 2.01).

¹²⁸ E.D. Cal. CJA Plan App. I § F.

¹²⁹ E.D. Cal. Gen. Ord. 255 (Dec. 20, 1989).

¹³⁰ E.D. Cal. CJA Plan § IV.C.1.

take the case, then two panel attorneys who are certified to take capital cases are appointed at the outset and paid at the rate for capital cases. If the government decides not to seek the death penalty, then one attorney is removed from the case and the remaining attorney's hourly rate drops to \$75.¹³¹

Southern District of California

The Southern District of California covers the state's two counties on the Mexican border.¹³² The district court sits in San Diego and eight judgeships are authorized.¹³³

This district does not have a federal public defender. Instead it uses a community defender organization called Federal Defenders of San Diego, Inc. The district has a single CJA panel for criminal prosecutions, to which attorneys are appointed for staggered renewable two-year terms.¹³⁴ Prior to initial appointment, panel attorneys must attend a Criminal Justice Act Seminar presented annually by the community defender organization.¹³⁵ Attorneys are recruited *ad hoc* for capital habeas cases.¹³⁶

Magistrate judges assign attorneys to cases on a rotational basis. Panel attorneys in this district get a large number of cases per year – typically approximately 20. (A large proportion of this district's criminal cases are immigration matters.) Although most districts with a federal defender try to assign approximately 25% of the CJA cases to panel attorneys, this district's target is approximately one third.

Payment vouchers are submitted to the clerk's office, which reviews them for mathematical and technical accuracy and then sends them to presiding judges.

The hourly rate in this district is \$75. By general order, attorneys in capital cases are paid \$125.¹³⁷

District of Maryland

One federal judicial district, with ten authorized judgeships, serves the state of Maryland.¹³⁸ In the mid-1990s it was divided into a Northern Division, with

¹³¹ Attorneys tell us that this financial incentive to keep a case capital does not impair their zealous advocacy of their clients' interests.

¹³² 28 U.S.C. § 84(d). The counties are Imperial inland and San Diego on the coast.

¹³³ *Id.* & § 133(a). Thirteen district judges, including five senior judges and the chief judge, and nine magistrate judges have chambers in San Diego. An additional magistrate judge has his chambers in El Centro, which is in Imperial County.

¹³⁴ S.D. Cal. Gen. Ord. 405-A ¶¶ 3-4 (Oct. 19, 1994). A separate panel represents material witnesses. Attorneys on this panel have specialized knowledge of immigration procedures as well as criminal law.

¹³⁵ *Id.* ¶ 6.5.

¹³⁶ The court tells us that it is not unusual for judges to spend a significant amount of time trying to find counsel competent to represent capital habeas petitioners.

¹³⁷ S.D. Cal. Gen. Ord. 370 (Nov. 29, 1989).

court held in Baltimore, and a Southern Division, with court held in Greenbelt.¹³⁹ The U.S. attorney decides in which division to file a case. The district court receives approximately 1,000 criminal filings each year.

A Criminal Justice Act Committee oversees implementation of the Act in the district.¹⁴⁰ The chief judge appoints members of the committee. The members include district judges, magistrate judges, panel attorneys from each of the district's two divisions, the federal public defender,¹⁴¹ and the CJA supervising attorney.¹⁴²

Maryland maintains two panels of attorneys for CJA assignments¹⁴³ – a Felony Panel and a Misdemeanor Panel.¹⁴⁴ A subset of the Felony Panel is deemed eligible for appointment in capital cases – some of these attorneys are designated to receive only capital assignments – and attorneys are recruited *ad hoc* for individual capital habeas cases. The CJA committee oversees panel membership.¹⁴⁵ Attorneys serve on the Misdemeanor Panel until they resign or are removed. Attorneys serve on the Felony Panel for renewable three-year terms.

Until the mid-1990s there were several hundred attorneys in Maryland who were designated CJA panel members, but many attorneys were not receiving regular appointments. The CJA committee culled the Felony Panel to fewer than 100 attorneys by requiring all attorneys wishing to be on the Felony Panel to submit applications. In reviewing the applications, the committee gave special attention to experience with federal sentencing guidelines. In June 2000 there

¹³⁸ 28 U.S.C. §§ 100, 133(a). This puts the District of Maryland in the 76th percentile for number of judgeships.

¹³⁹ See 28 U.S.C. § 100. The Southern Division serves the two counties surrounding the District of Columbia – Montgomery and Prince George's – and the three southern counties west of the Chesapeake Bay – Calvert, Charles, and St. Mary's. *Id.* § 100(2). Court is held in Prince George's County at Greenbelt, near the Montgomery County line, a few miles northeast of the District of Columbia. *See id.* Three district judges and three magistrate judges have their chambers in Greenbelt. The Northern Division serves the state's remaining eighteen counties – Allegany, Anne Arundel, Baltimore, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico, and Worcester – and the City of Baltimore. *Id.* § 100(1). Eleven district judges, including four senior judges and the chief judge, and five magistrate judges have their chambers in Baltimore. An additional magistrate judge has his chambers in Hagerstown – a few miles northeast of the West Virginia border – and another magistrate judge has his chambers in Salisbury – on the Delmarva Peninsula.

¹⁴⁰ D. Md. CJA Plan § I.E.

¹⁴¹ *See id.* § I.C (recognizing establishment of a federal public defender for the district).

¹⁴² The committee currently is chaired by the chief judge and a magistrate judge – Judge James Bredar – a former federal public defender for the district. The CJA supervising attorney staffs the committee, serves as its counsel, and often directs committee meetings under the chairs' supervision.

¹⁴³ See D. Md. L.R. 201(2) (stating that assignments shall be made according to CJA plan).

¹⁴⁴ See D. Md. CJA Plan § I.E. Because of the large amount of federal land in Maryland, this district gets a substantial number of misdemeanor cases.

¹⁴⁵ *Id.* The committee controls admission to the Misdemeanor Panel. The committee makes recommendations to the court on admissions to the Felony Panel. Eligibility for capital assignments is granted upon recommendation of the federal defender.

V. PROGRAM DESCRIPTIONS

were 95 attorneys on the Felony Panel, with an additional 10 attorneys eligible for capital cases, and 274 attorneys on the Misdemeanor Panel. The CJA supervising attorney now is the primary panel manager.

The district maintains a mentor program where experienced criminal defense attorneys – the mentees – may provide unpaid assistance to federal defenders – the mentors – in the defense of CJA cases as a way of acquiring the necessary federal experience to qualify for Felony Panel membership. The sort of experience mentees generally need is with federal sentencing guidelines.

The federal defender also provides panel attorneys with continuing education programs. Felony Panel attorneys must attend at least one program per year.

Prior to the hiring of a CJA supervising attorney, magistrate judges did most assignments of panel attorneys to cases. In misdemeanor cases, the presiding magistrate judge assigned counsel at the initial appearance from the judge's paper list of panel members. A single magistrate judge sitting in Baltimore, whose docket was exclusively criminal, made most felony assignments.

The federal defender takes virtually all felony cases that his office can, but misdemeanor cases often are given to panel attorneys, even if there is no conflict with the federal defender, in order to provide panel attorneys with a substantial fraction of appointments. The clerk's office now appoints panel attorneys to routine felony cases on a rotational basis. The CJA supervising attorney coordinates appointments in cases requiring judgment or discretion. Magistrate judges generally make appointments in misdemeanor cases. Misdemeanor appointments still tend to go to familiar attorneys; many attorneys on the Misdemeanor Panel have never received an appointment. The district, however, is experimenting with duty day procedures in some magistrate courts to correct this problem.

The district generally coordinates appointments in capital habeas cases with the state court. The district will pay attorneys for working up federal claims in their state petitions. This substantially increases the likelihood that the same attorneys will represent petitioners in both proceedings, which is believed to contain costs overall.

The hourly rate in Maryland is \$75 in court and \$55 out of court. For capital cases the customary hourly rate is \$125 for lead counsel, \$100 to \$110 for second counsel, and \$75 for travel.¹⁴⁶ In prosecutions where the defendant is eligible for the death penalty, two attorneys usually are appointed. Until recently, if the government ultimately decided not to seek the death penalty, then one attorney usually was relieved and the other continued at \$75. On March 30, 2001, however, the court of appeals for the Fourth Circuit ruled that a capital defendant has "an absolute right to two attorneys in cases where the death penalty may be imposed, even when the government does not, in fact, seek the death penalty."¹⁴⁷ The district, of course, will adhere to this ruling, but still usually will pay counsel \$75 per hour after the government decides not to seek the death penalty.

¹⁴⁶ See *id.* § III.C; see also *id.* § V ("The hourly rates of compensation are designated and intended to be maximum rates and to be treated as such.").

¹⁴⁷ *United States v. Boone*, 2001 WL 308965 (4th Cir. 2001).

V. PROGRAM DESCRIPTIONS

Payment vouchers are due within 45 days of the entry of judgment.¹⁴⁸ They formerly were submitted to the clerk's office, but now they are submitted to the CJA supervising attorney. A member of the clerk's office staff used to perform mathematical and technical reviews of all vouchers before sending the vouchers on to presiding judges for reasonableness reviews. Now the CJA supervising attorney's assistant performs mathematical and technical reviews. The CJA supervising attorney reviews all vouchers for reasonableness. She has approval authority for all vouchers within statutory limits and all interim vouchers. For vouchers over statutory limits she makes recommendations to presiding judges. The CJA supervising attorney and her assistant certify the vouchers for final payment.

Just as the CJA supervising attorney was hired, Maryland began to require case budgeting in capital habeas cases. Appointed counsel negotiated a budget with the federal public defender and the chief judge. The district preferred that these cases not be budgeted with their presiding judges so that a judge hearing a case would not become entangled in one party's litigation strategy. Now the CJA supervising attorney negotiates budgets and makes recommendations to the appropriate judge.¹⁴⁹ She monitors vouchers for compliance with budgets and maintains a central database of budgets and expenditures so that judges have access to expenditures in other cases when reviewing expenditures in the cases before them.

The CJA supervising attorney also assists attorneys in locating experts and she does preliminary reviews of expert fee requests.

The District of Maryland hired Donna P. Shearer as its CJA supervising attorney in September 1997. Ms. Shearer majored in political science and philosophy at the University of Maryland, Baltimore County (BA 1979), and received her law degree from the University of Maryland (JD 1982). She practiced law with the state court public defender for Baltimore from 1982 to 1997, including two years as deputy district public defender (1989-1991). Most recently she worked in the Public Defender's Capital Defense Division. She, therefore, was hired from the local defense bar, but her experience was in state, rather than federal, court.

The district's two primary goals in hiring Ms. Shearer were: (1) centralizing management of CJA expenses¹⁵⁰ and (2) relieving the federal public defender of CJA panel responsibilities for ethical reasons.¹⁵¹

¹⁴⁸ D. Md. CJA Plan § V.

¹⁴⁹ The CJA supervising attorney also conducts case budgeting workshops for other districts' judges.

Note from descriptions *infra* that in California capital habeas cases will be budgeted in up to five phases. In Maryland capital habeas litigation is different and the court believes that cases can be budgeted in their entirety.

¹⁵⁰ Letter from Hon. J. Frederick Motz to Theodore J. Lidz at 1 (Nov. 26, 1996). A copy of this letter is in Exhibit C accompanying this report.

¹⁵¹ Letter from Hon. J. Frederick Motz to Hon. Julia Smith Gibbons, Judicial Recourses Comm. Chair, at 2 (Sept. 12, 1996). "[W]e do not believe it is appropriate to delegate to the Federal Public Defender the actual responsibility to make appointments from the CJA panel and to monitor

Ms. Shearer works closely with the CJA Committee to manage the CJA panels. Judges speak very highly of an improvement in panel management that she initiated. At the conclusion of each Felony Panel attorney's representation, Ms. Shearer will send an E-mail message to the presiding judge asking for comments on the attorney's performance. By the time the attorney's term on the panel is up for renewal Ms. Shearer will have a file of contemporaneous evaluations, which have proved to be tremendous improvements over attempts by judges to remember over the past few years how various attorneys have performed.

Central District of California

The Central District of California covers the seven counties in southern California north of the two counties bordering Mexico.¹⁵² One of the largest districts in the country, 27 judgeships are authorized.¹⁵³ The district is divided into three divisions – the Western Division's court sits in Los Angeles, the Southern Division's court sits in Santa Ana, and the Eastern Division's court sits in Riverside.¹⁵⁴ Subject to predetermined maximum numbers,¹⁵⁵ the Southern Division takes all criminal cases where at least one of the crimes charged occurred within the division,¹⁵⁶ and the Eastern Division takes all criminal cases where all of the crimes charged occurred within the division.¹⁵⁷ The district court receives nearly 2,000 criminal filings each year.

The district has a federal public defender¹⁵⁸ and a separate CJA panel for each division.¹⁵⁹ Beginning January 2001 panel attorneys will serve for staggered

fees. In our view the delegation of such power creates problems relating to conflicts of interest or, at least, apparent conflicts of interest.” *Id.* A copy of this letter is in Exhibit C accompanying this report.

¹⁵² 28 U.S.C. § 84(c). The two counties bordering Mexico constitute the Southern District. *Id.* § 84(d).

¹⁵³ *Id.* § 133(a). There are five vacancies.

The Central District of California has the second largest number of judgeships. The Southern District of New York has 28 authorized judgeships. *Id.*

¹⁵⁴ *Id.* § 84(c). The Western Division consists of the four coastal counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura. *Id.* § 84(c)(2). The Southern Division consists of the more southerly coastal county of Orange. *Id.* § 84(c)(3). The Eastern Division consists of the inland counties of Riverside and San Bernardino – known in California as the Inland Empire. *Id.* § 84(c)(1).

Twenty-nine district judges, including twelve senior judges and the chief judge, and thirteen magistrate judges have their chambers in Los Angeles. Two separate courthouses a few blocks apart house these chambers. An additional magistrate judge has his chambers in Santa Barbara, which also is in the Western Division. Three district judges and two magistrate judges have their chambers in Santa Ana. Two district judges and one magistrate judge have their chambers in Riverside. An additional magistrate judge has his chambers in San Bernardino, which also is in the Eastern Division.

¹⁵⁵ C.D. Cal. Gen. Ord. 96-21 §§ 3.B, 4.B (Sep. 20, 1996).

¹⁵⁶ *Id.* § 3.A.i.

¹⁵⁷ *Id.* § 4.A.i.

¹⁵⁸ C.D. Cal. CJA Plan § V.A.1.

renewable three-year terms.¹⁶⁰ They are appointed to their panels upon the recommendation of a Panel Selection Committee,¹⁶¹ which is chaired by the CJA supervising attorney. The other members of the committee are the federal defender and four panel attorneys – two from the Western Division and one each from the Southern and Eastern Divisions.¹⁶² The selection committee makes recommendations to the court’s CJA Committee, which then makes recommendations to the full court by way of the Executive Committee. Appointments are made by the chief judge.

The Federal Defender in this district now has a capital habeas unit, so private attorneys are needed for capital habeas cases only in the case of conflicts with the federal defender or the federal defender’s having a full caseload.¹⁶³ The district has a Death Penalty Attorney Panel for capital habeas cases that the federal defender cannot take.¹⁶⁴ Appointment to this panel is not limited to terms.

Until 2001 there also was an Auxiliary Panel in the Western Division.¹⁶⁵ These attorneys represented defendants at first appearances. Regular Panel attorneys then picked up the case at the Post-Indictment Arraignment (PIA), which always was held on a Monday. There were two advantages to having this panel. First, it meant Regular Panel attorneys did not have to spend so much time in court at first appearances. Second, it provided attorneys who did not have sufficient federal experience to be on the Regular Panel with an opportunity to represent defendants in federal court. Unfortunately, it meant panel-represented defendants did not have the same continuity of representation as federal defender-represented defendants. In addition, Auxiliary Panel experience did not prove to be very helpful in preparing attorneys for positions on the Regular Panel. The Auxiliary Panel was eliminated at the beginning of 2001.

There now are 63 attorneys on the Western Panel (plus an additional attorney who serves on the Panel Selection Committee), 25 attorneys on the Southern

¹⁵⁹ Historically the court permitted some attorneys to be members of more than one panel in order to have sufficient numbers of experienced attorneys in the newer divisions. Current policy is to limit new applicants to the panel in which their office is located.

¹⁶⁰ Plan for the Composition, Administration, and Management of the Panel of Private Attorneys Under the Criminal Justice Act, Gen. Ord. 98-6 [hereinafter “C.D. Cal. CJA Panel Management Plan”] § I.A.5 (Nov. 13, 1998).

¹⁶¹ *Id.* § I.B.

¹⁶² Two of these panel attorneys – one in the Western Division and the attorney in the Southern Division – do not take CJA cases. Their panel participation includes committee responsibilities only.

¹⁶³ C.D. Cal. CJA Plan §VII.A.

¹⁶⁴ *Id.* § VII.B. This panel is overseen by the court’s Death Penalty Committee, *id.* § VII.C, which is different from the court’s CJA Committee. The court’s CJA Committee includes district judges and magistrate judges – all of whom sit in the Western Division – but no panel attorneys.

¹⁶⁵ See C.D. Cal. CJA Panel Management Plan § I.A.1. This panel sometimes was known informally as the “Baby Panel.”

The Auxiliary Panel was created in 1984 in anticipation of a possibly large number of arrests during the Twenty-Third Olympic Games. As it happened, Los Angeles was never so crime-, traffic-, and smog-free as it was during those Olympics.

Panel (plus an additional attorney who serves on the Panel Selection Committee), and 21 attorneys on the Eastern Panel.¹⁶⁶ There are 25 attorneys on the capital habeas panel.¹⁶⁷

Trial attorneys receive their assignments according to a duty day system. Capital habeas cases are assigned *ad hoc*.

The Southern Division's 25 panel attorneys are divided into eight teams of three or four attorneys each. Each team is on duty every eight weeks and team members take as many assignments as they can among all of the court's assignments for the team's week. Members of each team have some discretion how to allocate assignments among themselves, but all panel attorneys are expected to take at least a few cases every year.

Procedures in the Eastern Division are similar. The 21 attorneys there are divided into seven teams of three attorneys each, and each team takes cases every seven weeks.

Procedures in the Western Division are more complicated. There, each attorney has a duty day in magistrate court approximately every 60 court days. The duty-day attorney takes the first one or two conflict cases. Each attorney also has a backup duty day (approximately 30 court days after each duty day) when he or she takes any cases the primary duty-day attorney cannot take. In addition the panel is divided into five teams of 12 or 13 attorneys each. Each team provides additional backup for a full week every five weeks. Team attorneys also take cases where the first appearance is at Monday post-indictment arraignments in district court. The duty schedule is essentially alphabetical, with some adjustments made so that an attorney will not be on duty the same week as his or her team.¹⁶⁸

If the defendant is eligible for the death penalty then the first attorney is selected according to the regular duty-day system and a second attorney is appointed *ad hoc*. The second attorney, of course, must be "learned in the law applicable to capital cases."¹⁶⁹

The hourly rate in this district is \$75 for regular cases and usually \$125 for capital cases.

This district's court has delegated all voucher-review responsibilities to its CJA supervising attorney.¹⁷⁰ The clerk's office assigned him three assistants. One does mathematical and technical reviews of vouchers before the CJA supervising attorney reviews them for reasonableness. A second provides panel management assistance. A third provides secretarial support to the office.

¹⁶⁶ Two attorneys serve on both the Western and Southern Panels; three attorneys serve on both the Southern and Eastern Panels.

¹⁶⁷ Six of these also are on the Western Panel and three also are on the Southern Panel. One of the latter is on the Eastern Panel as well.

¹⁶⁸ It is too soon to tell how well these new procedures will work and, therefore, too soon to know whether the court will change them in any way.

¹⁶⁹ 28 U.S.C. § 3005. Note that in the other two districts in this study greater effort is made to ensure that both attorneys have experience essential to federal capital defense.

¹⁷⁰ Gen. Ord. 00-1 (Jan. 3, 2000), Gen. Ord. 97-7 (Oct. 1, 1997).

The Central District of California hired Randall W. Schnack as its CJA supervising attorney in June 1997. Mr. Schnack majored in history at the University of California, Los Angeles (BA 1982), and received his law degree from Southwestern Law School (JD 1986). From 1990 until his hiring by the district court he worked for the FDIC/RTC, most recently as outside counsel manager (1993-1997). Although he had no criminal-law background and no litigation experience (except for supervision of litigation expenses), he had considerable experience supervising attorney fees.

The district's primary concerns when it hired Mr. Schnack were the need for central management of its three divisions' trial panels and uniformity of voucher review.¹⁷¹ Mr. Schnack's panel management responsibilities did not come to fruition until this year, but he took charge of voucher review immediately and he prepared and distributed written guidelines in March 1998.

In this district the CJA supervising attorney has little involvement with case budgeting. Capital prosecutions will be budgeted, as recommended by the 1998 Spencer Report.¹⁷² Capital habeas cases will be budgeted, as required by the Ninth Circuit's Judicial Council. Death penalty law clerks will assist with capital habeas budgeting.¹⁷³

Northern District of California

The Northern District of California covers fifteen counties along California's northern coast.¹⁷⁴ Fourteen judgeships are authorized,¹⁷⁵ and the district has three divisions – San Francisco, Oakland, and San Jose.¹⁷⁶ Cases are assigned to

¹⁷¹ Letter from Hon. Wm. Matthew Byrne, Jr., to Theodore J. Lidz at 2 (Oct. 22, 1996). A copy of this letter is in Exhibit C accompanying this report.

¹⁷² Subcommittee on Federal Death Penalty Cases (Hon. James R. Spencer, Chair), Committee on Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*, Recommendation 9 at vi, 53-56 (May 1998).

¹⁷³ Mr. Schnack has some administrative responsibility for the death penalty law clerks.

¹⁷⁴ 28 U.S.C. § 84(a).

¹⁷⁵ 28 U.S.C. § 133(a). This puts the Northern District of California in the 88th percentile for number of judgeships.

¹⁷⁶ N.D. Cal. Crim. L.R. 18-1. The four southernmost counties – Monterey, San Benito, Santa Clara, and Santa Cruz – are in the San Jose Division, where five district judges, including two senior judges, and three magistrate judges have their chambers in San Jose and one magistrate judge has his chambers in Monterey. The two counties east of the San Francisco Bay – Alameda and Contra Costa – are in the Oakland Division, where three district judges, including one senior judge, and one magistrate judge have their chambers in Oakland. The other counties – Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, and Sonoma – are in the San Francisco Division, where thirteen district judges, including four senior judges and the chief judge, and six magistrate judges have their chambers in San Francisco and one magistrate judge has his chambers in Eureka. An additional district judge currently serves as director of the Federal Judicial Center.

the division in which the crime occurred.¹⁷⁷ The district court receives approximately 1,000 criminal filings each year.

A CJA Administrative Committee oversees the CJA program.¹⁷⁸ The committee includes at least one district judge from each division, two magistrate judges, a panel attorney from each division, the federal public defender, the clerk of court, and the U.S. Attorney.¹⁷⁹ Judges serve at the pleasure of the chief judge, for up to five years.¹⁸⁰ Attorneys are appointed by the chief judge for renewable terms of three years.¹⁸¹

The CJA Committee manages three panels of attorneys – one for the San Francisco and Oakland Divisions, one for the San Jose Division, and one for the court of appeals.¹⁸² As of June 2000 there were 78 attorneys on the San Francisco/Oakland Panel and 35 attorneys on the San Jose Panel. A separate standing subcommittee oversees each panel.¹⁸³

Absent unusual circumstances, eligibility for panel membership requires: (1) at least five years of criminal practice in state or federal court, or three years as either an assistant federal public defender or assistant U.S. attorney, and (2) five felony jury trials, at least two of which must be in federal court.¹⁸⁴ Attorneys are expected to maintain their offices in the division served by their panel.¹⁸⁵

The federal public defender also administers a mentor program, in which attorneys who have not yet tried two felonies in federal court may acquire federal criminal litigation experience by auditing proceedings handled by regular panel members.¹⁸⁶

Attorneys are appointed to the panels for staggered three-year terms, which begin in July and end in June.¹⁸⁷ Attorneys on the San Francisco/Oakland Panel must sit out a year before being reappointed for a new three-year term, but attorneys on the San Jose Panel may be appointed to consecutive terms.¹⁸⁸ Attorneys are removed from their panels upon the expiration of their terms, upon repeated refusals to accept assignments, or upon showings of cause.¹⁸⁹

The federal defender in this district does not do capital habeas work. Attorneys are appointed to a Special Death Penalty Habeas Corpus Panel by a selection

¹⁷⁷ N.D. Cal. Crim. L.R. 18-1.

¹⁷⁸ N.D. Cal. CJA Plan, Gen. Ord. No. 2 [hereinafter “N.D. Cal. CJA Plan”], § III.A (Feb. 24, 2000).

¹⁷⁹ *Id.*

¹⁸⁰ N.D. Cal. CJA Reg. ¶ C.

¹⁸¹ *Id.*

¹⁸² N.D. Cal. CJA Plan §§ III.A-B.

¹⁸³ N.D. Cal. CJA Reg. ¶ D.

¹⁸⁴ *Id.* ¶¶ F.1-2.

¹⁸⁵ *Id.* ¶ F.

¹⁸⁶ *Id.* ¶¶ F.2, H. A few attorneys accepted into this program as mentees complained that they were never called to help with a representation.

¹⁸⁷ *Id.* ¶ E.

¹⁸⁸ *Id.* San Jose panel members are not required to wait a year between terms because of the greater difficulty in recruiting a sufficient number of qualified attorneys for that panel.

¹⁸⁹ *Id.* ¶¶ I-K.

board consisting of a representative of the California Appellate Project (CAP), a federal defender, a representative of the California Habeas Corpus Resource Center,¹⁹⁰ a representative of the state public defender, and a representative of the private bar.¹⁹¹

Capital habeas cases are assigned *ad hoc*. As of June 2000 the Capital Habeas Panel included 57 attorneys with cases and an additional 19 attorneys who had been approved to take cases but who had not yet been assigned a case. Eleven of these attorneys also were on a CJA trial panel. Most of the approved attorneys without cases have been approved only as second counsel. Many of the others were approved quite some time ago, but have not recently been available to take cases. CAP and the district court tell us that recently it has been *very* difficult to find qualified attorneys willing and able to take capital habeas cases in the district. The primary reason appears to be the intensity of work required that now entails both a long-term time commitment and considerable short-term time pressure.¹⁹²

The federal defender's office assigns trial-panel attorneys to individual cases.¹⁹³ The office maintains two rotational lists of attorneys' names for each panel. One list is known as the "big wheel," and it is used for regular assignments.¹⁹⁴ The other list is known as the "little wheel," because it is used for "little" assignments, such as witnesses or supervised release violations.¹⁹⁵ The purpose of maintaining separate wheels is to prevent small matters from depriving an attorney of eligibility for regular work.

The federal public defender takes all the noncapital cases that he can,¹⁹⁶ so virtually all panel assignments are codefendants in multidefendant prosecutions. About a quarter of the assignments are to panel members,¹⁹⁷ which comports with Judicial Conference guidelines.¹⁹⁸ Panel attorneys typically receive 3 to 4 assignments per year.

Assignments are made from the wheels on a rotational basis,¹⁹⁹ and the two wheels for each trial panel rotate independently. If a case requires special skills,

¹⁹⁰ The Habeas Corpus Resource Center (HCRC) is an agency in California's judicial branch that provides state habeas representation. Cal. Gov't Code § 68661. It also can be appointed by the federal district court to represent federal habeas petitioners. *Id.* § 68661(b). HCRC was created only recently, however, so its federal capital habeas role is not likely to be substantial until its current cases have exhausted state habeas proceedings.

¹⁹¹ N.D. Cal. Habeas L.R. 2254-25(c).

¹⁹² Short-term time pressure results from limitation periods prescribed by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132 (Apr. 24, 1996); *see, e.g.*, 28 U.S.C. § 2244(d)(1) (one-year limitation period). A long-term time commitment is required because these cases often are stayed for state habeas exhaustion.

¹⁹³ N.D. Cal. CJA Plan § III.D.

¹⁹⁴ *See id.*

¹⁹⁵ *See id.* § III.F.

¹⁹⁶ *See id.* §§ II.C-.D.

¹⁹⁷ *See id.* § I.G.2.

¹⁹⁸ VII *Judiciary Guide* § A, app. G at G-8 (provision VI.C).

¹⁹⁹ N.D. Cal. CJA Plan § III.D.

the federal defender may assign an attorney out of rotation. A common justification for out-of-rotation assignment is a particularly difficult client. Attorneys receiving particularly difficult assignments sometimes are rewarded with more desirable assignments later. Some attorneys expressed concern that the federal defender's discretionary assignments may permit favoritism and otherwise are questionable because of inherent conflicts of interest with the federal defender's own clients.

For appointments to San Francisco or Oakland cases, a member of the defender's staff in his San Francisco office calls the first few names on the list until he reaches a sufficient number of willing and able attorneys. Once an attorney accepts a case, he or she moves to the "end" of the wheel. Two persons in the defender's San Jose office share this responsibility for assignment to San Jose cases. In San Jose, assignments are monitored closely by a single magistrate judge – Judge Patricia Trumbull, a former assistant federal public defender with experience in both the San Francisco and San Jose offices.

The hourly rate in this district is \$75. The presumptive hourly rate for lead counsel or co-lead counsel in capital cases is \$125.²⁰⁰ For second counsel the presumptive hourly rate is \$100.²⁰¹ Although it is customary for two attorneys to be appointed in capital habeas cases, appointment of two attorneys is not presumed.²⁰²

A payment voucher must be submitted within 45 days of the conclusion of the case.²⁰³ Judges are supposed to act on the voucher within 30 days of receiving it.²⁰⁴ Judges are notified when they have not acted on a voucher submitted to them within 30 days, and a list of all vouchers in judges' chambers over 30 days is sent to the chief judge periodically.²⁰⁵

An attorney may request permission to submit interim vouchers if the case is "complex or extended."²⁰⁶ Orders approving interim vouchers must be approved by the circuit's chief judge.²⁰⁷ The frequency with which interim vouchers may be submitted is at the discretion of the presiding judge, but two-month intervals are typical in this district.²⁰⁸

Before April 1998 vouchers were submitted to the federal defender's office for mathematical and technical reviews and then forwarded to presiding judges for reasonableness reviews. Then and now district judges in San Jose review only habeas vouchers. Magistrate Judge Trumbull reviews all others.

²⁰⁰ N.D. Cal. Habeas L.R. 2254-25(b). The State of California recently began to pay appellate and habeas counsel \$125 per hour in capital cases. Cal. Gov't Code § 68666(a).

²⁰¹ N.D. Cal. Habeas L.R. 2254-25(b).

²⁰² N.D. Cal. CJA Plan § I.C.1.

²⁰³ N.D. Cal. CJA Reg. ¶ L.

²⁰⁴ N.D. Cal. CJA Guidelines § I at 5. Judicial Conference guidelines provide that judges act on the voucher within 30 days of the *court's* receiving the voucher. VII *Judiciary Guide* § A, ch. 2 at p. 12 (provision 2.21(A)).

²⁰⁵ N.D. Cal. CJA Guidelines § I at 5.

²⁰⁶ *Id.* at 3.

²⁰⁷ *Id.*

²⁰⁸ *See id.*

V. PROGRAM DESCRIPTIONS

The federal defender's office in San Jose processed vouchers more promptly than did the San Francisco office, which processed vouchers for both San Francisco and Oakland. This was true especially for interim vouchers. In order to submit an interim voucher the attorney contacted the appropriate federal defender's office²⁰⁹ and requested a voucher form. In San Francisco the defender's staff typed case information on a voucher form and sent the voucher to the attorney, who entered the cost information. Attorneys were not permitted to fill out the case information because of their history of errors. But the defender's office did not always comply promptly with an attorney's request for a voucher form, and substantial delays sometimes occurred before the attorney even received a "blank" voucher.

In San Jose the defender's staff was able to send out blank interim vouchers to attorneys more promptly. When the court issued an order permitting interim vouchers, the San Jose staff prepared several blank vouchers for the attorney on a memory typewriter and kept them on file. Every time the attorney submitted an interim voucher the San Jose staff sent out the next blank voucher for future use.

Attorneys no longer have to request blank vouchers before they can submit interim vouchers. Because carbon forms are no longer used, they can simply use copies of their original appointment vouchers as blank vouchers.

In 1998 voucher processing was transferred from the federal defender's office to the clerk's office. Two voucher technicians in the Clerk's office took responsibility for sending out blank interim vouchers, receiving all vouchers, and performing the mathematical and technical reviews. As a result San Francisco/Oakland vouchers were processed noticeably more quickly, but San Jose vouchers were processed noticeably less quickly. In 2001 the CJA supervising attorney assumed supervision of the voucher technicians as part of an effort to speed up their preliminary reviews.

The Northern District of California hired Joan Temko Anyon as its CJA supervising attorney in October 1998. Ms. Anyon majored in political science at the University of Pennsylvania (BA 1969) and received her law degree from the University of Denver (JD 1973). She practiced criminal defense in Colorado from 1973 to 1979 and in San Diego, California, from 1979 to 1998. Most recently her practice focused on state-appointed criminal appeals (1992-1998). She, therefore, was hired from the defense bar, but not from the local defense bar. Her recent experience was primarily in state, rather than federal, court.

One of the district's primary concerns when it hired Ms. Anyon was the district's reputation for very high CJA expenses, especially in capital habeas cases.²¹⁰ One of Ms. Anyon's primary tasks during her first few months on the job was preparation of a fine report called "Preserving Excellent Indigent Defense While Managing Costs in the Northern District of California," which she presented to the district's CJA Committee in March 1999.²¹¹ In her report Ms.

²⁰⁹ San Francisco for San Francisco and Oakland cases and San Jose for San Jose cases.

²¹⁰ *E.g.*, Letter from Hon. Marilyn Hall Patel to Theodore Lidz at 1 (Mar. 6, 1998). A copy of this letter is in Exhibit C accompanying this report.

²¹¹ A copy of this report is included as Exhibit J.

V. PROGRAM DESCRIPTIONS

Anyon concluded: “In light of the findings, the first priority for the work of the CJA supervising attorney will be to work with a court committee to initiate case budgeting and other measures in capital habeas cases.”

Ms. Anyon has worked with the Ninth Circuit’s Judicial Council to develop case budgeting procedures.²¹² As a result, her district has taken the lead among all of the circuit’s districts in implementing case budgeting.

Capital habeas cases are budgeted in five phases:²¹³

1. appointment of counsel and assembling of the record,
2. record review and preliminary investigation,
3. preparation of the petition and exhaustion issues,
4. motion for evidentiary hearing and briefing of claims not subject to evidentiary hearing, and
5. evidentiary hearing and final briefing.

The first two phases are budgeted together, but otherwise cases are budgeted only one phase at a time. Pending cases are budgeted as they reach a new phase.

Attorneys work out their budgets with Ms. Anyon, who forwards the budgets on to presiding judges for approval. Approved budgets then are forwarded to the circuit council for review.

Ms. Anyon also helps coordinate multidefendant cases. By staying in contact with counsel for various parties she can help ensure that certain resources are shared and work is not duplicated needlessly.

Unlike the other two districts in this study, the Northern District of California has not yet assigned its CJA supervising attorney the task of reviewing all CJA vouchers for reasonableness.²¹⁴ She was assigned only capital habeas and other high-expense cases. Her review is not final – it results in a recommendation to the presiding judge. She also reviews vouchers at a judge’s request and she offers to review vouchers that have been in chambers for a long time.

²¹² Ms. Anyon is a member of the Ninth Circuit’s CJA Oversight Committee.

²¹³ In other districts within the circuit there may be fewer phases, depending upon state law and customary practice.

²¹⁴ The district, however, is considering such complete delegation. Its funding request stated that its CJA supervising attorney “would perform three major functions – budgeting, coordinating counsel in multiple defendant cases, and voucher review.” Letter from Hon. Marilyn Hall Patel to Theodore Lidz at 2 (Mar. 6, 1998). (*See* Exhibit C.) The district originally planned for the CJA supervising attorney to review all vouchers. *Id.* at 3 (“the CJA Attorney will review vouchers [in death penalty cases]”), 4 (“In . . . mega-cases [and] all other non-death penalty cases, the CJA Attorney will analyze vouchers . . .”).

VI. CJA Supervising Attorney Time

Time records for the three CJA supervising attorneys confirm how differently each district uses the position.

For six randomly selected two-week periods in 2000 we asked the CJA supervising attorneys to record how they spent their time. We asked them to use the following time categories:

1. Panel Management
 - a. Membership: Reviewing applications for membership, monitoring membership; reviewing considerations of removal from panel.
 - b. Administrative: Preparing reports on panel management, attending meetings on panel management, and otherwise working on panel management as a whole rather than with respect to individual members.
2. Case Management
 - a. Assignment: Assigning attorneys to individual cases.
 - b. Funding: Processing requests for experts, transcripts, etc.
 - c. Budgeting.
 - d. Assistance with Individual Cases: Includes assistance with mega-cases in ways beyond what is included in other categories.
 - e. Administrative: Preparing reports on case management, or otherwise working on case management in ways not covered by the above categories.
3. Voucher Review
 - a. Reasonableness Review.
 - b. Processing of Payment.
 - c. Administrative: Preparing reports on voucher review, or otherwise working on voucher review in ways not covered by the above categories.
4. General Administrative: Administrative tasks not covered by other categories.
5. Miscellaneous: Tasks not otherwise covered, which may include such things as professional development, holiday parties, etc.

Obviously the more vouchers a CJA supervising attorney has to review, or the more difficult they are to review, the less time will be available for other tasks. Time records were consistent with this.

Maryland is the smallest district in this study and its CJA supervising attorney has the broadest range of responsibilities. Ms. Shearer reported that she spent about one third of her time on vouchers, about one third of her time on case management, and the remainder of her time split between panel management and other tasks.

California Northern's priority was to get high-ticket case costs under control. Consequently, Ms. Anyon reported that she spent nearly half her time on

VI. CJA SUPERVISING ATTORNEY TIME

case management. She reported nearly a third of her time was spent on general administrative tasks, much of which concerned developing case budgeting procedures for the district and the circuit council, and only about a quarter of her time was spent on vouchers.

California Central processes more vouchers than the other two districts, and its CJA supervising attorney reported spending well over half of his time on vouchers.

Figures VI-1 and VI-2 display summaries of their time records. Figure VI-1 shows how each CJA supervising attorney's time broke down among the five major time categories. Figure VI-2 shows the breakdown among all 12 categories and subcategories.

Figure VI-1
Allocations of CJA Supervising Attorneys' Time

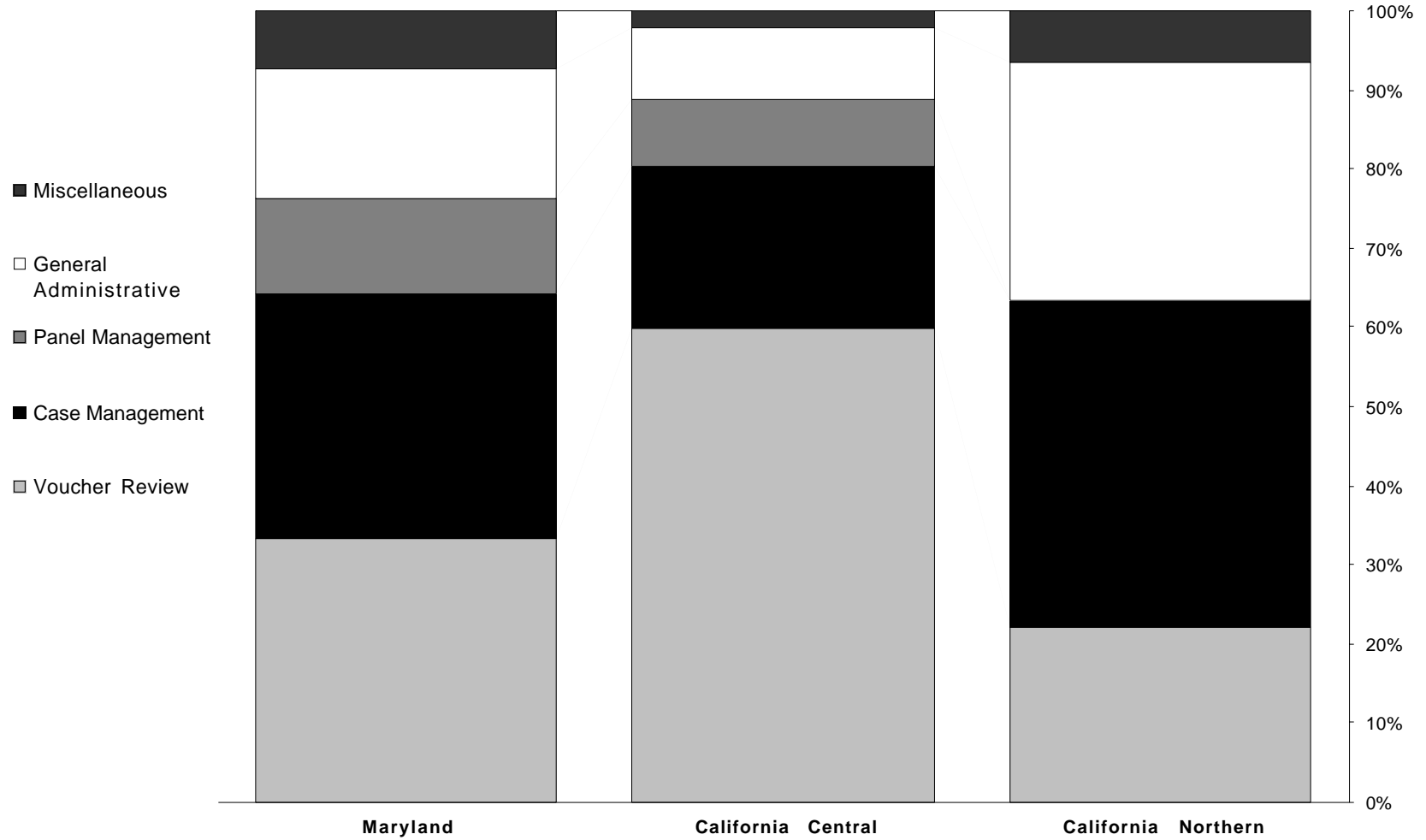
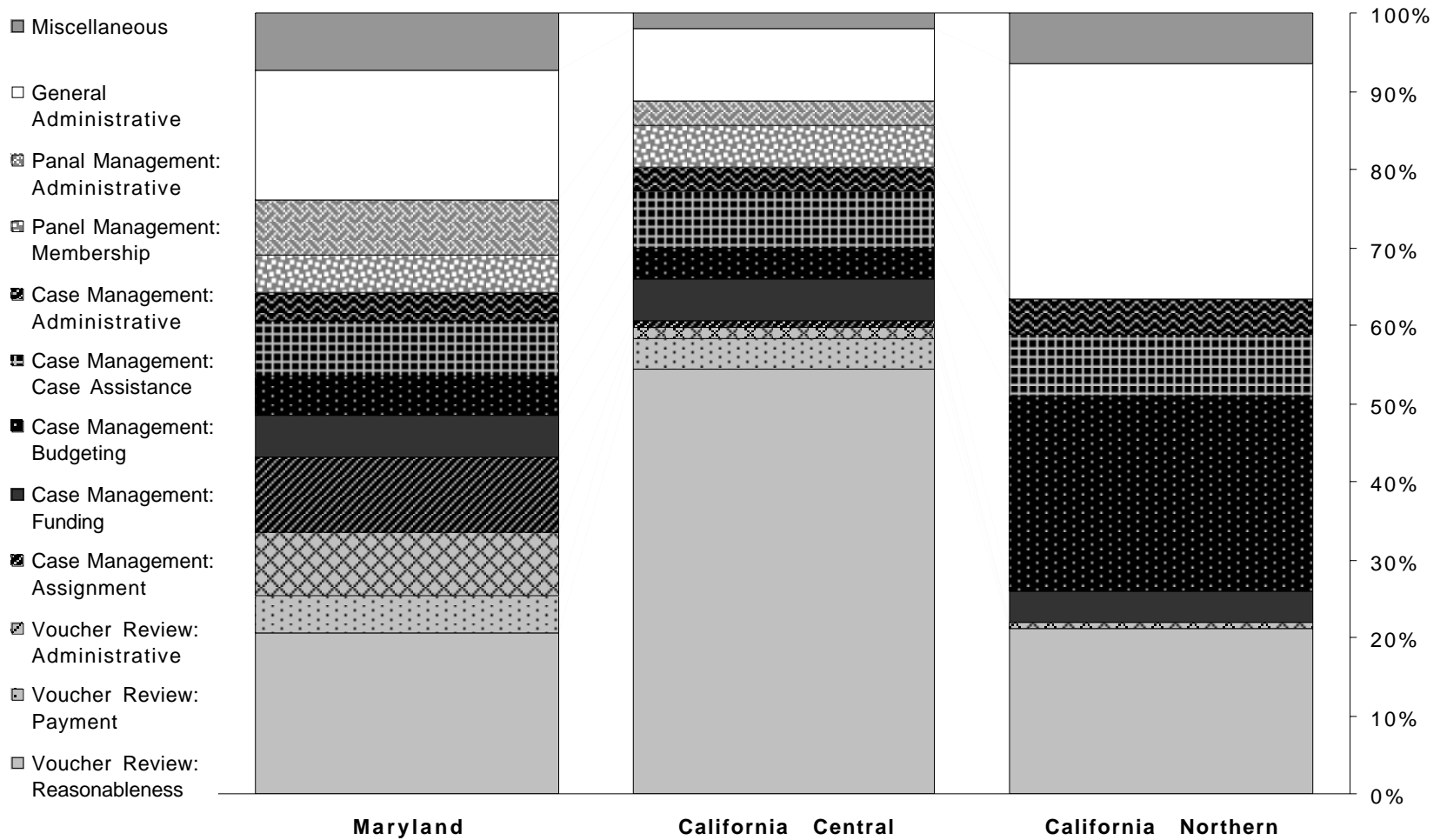


Figure VI-2
Allocations of CJA Supervising Attorneys' Time



VII. Effectiveness of Representation

The essential goal of the Criminal Justice Act is to provide criminal defendants with effective representation in court. The CJA supervising attorney cannot have a direct impact on effectiveness of representation, because he or she does not represent defendants. Nor is creating such a position likely to have a large or rapid impact on representation quality generally. But CJA supervising attorneys may contribute to the effectiveness of representation by helping to manage the panel and ensure that its attorneys are high in quality.

The CJA supervising attorney position also may permit more effective representation to the extent that it disentangles the presiding judge from direct supervision of the defense (or habeas petition). We heard anecdotes of judges using voucher review as an opportunity to punish defense counsel for disfavored litigation strategies. Whether or not these stories are true, attorneys believe that such punishment is possible if judges review their vouchers. This creates a risk – or at least the appearance of a risk – that attorneys will put their own financial interests ahead of their clients’ defense interests.

Panel attorneys in these districts generally are believed to provide their clients with high-quality representation. Survey data suggest, however, that federal defenders²¹⁵ are believed to do even better. That means that the quality of representation provided to a defendant depends upon whom the court decides to assign. The more high-quality attorneys the court can attract to its CJA panels the less this will be an issue. We discuss attractiveness of panel work in the next chapter on fairness to counsel.

The following pages summarize our survey data on effectiveness of representation.

Quality of Representation

Survey responses suggest that panel attorneys usually deliver high-quality representation in these districts, but perhaps not as often as federal defenders do.

We asked judges, panel attorneys, federal defenders, and federal prosecutors to tell us what proportion of each of several types of attorney in their district is excellent, good, fair, and poor. We asked about the following types of attorney, which are listed here in the order of predominant overall quality as reflected by survey responses:

1. Capital habeas attorneys.
2. Federal defenders (attorneys in the federal public defenders’ offices).
3. Federal prosecutors (attorneys in the U.S. Attorneys’ offices).
4. Primary panel.
 - Felony Panel in Maryland.
 - Regular Panel in California Central.
 - San Francisco/Oakland Panel in California Northern.

²¹⁵ By “federal defenders” we mean attorneys in the Federal Defender’s office.

5. Secondary panel.
 - Misdemeanor Panel in Maryland.
 - Auxiliary Panel in California Central.
 - San Jose Panel in California Northern.
6. Retained criminal defense attorneys.
7. Civil litigation attorneys.

We surveyed respondents twice – in 1998 and in 2000. We do not have as much quality-of-representation data from the 1998 survey for Maryland and California Central. We did not survey federal defenders or federal prosecutors in those districts that year, and our panel survey for those districts did not include a quality question. Moreover, the question for judges in those districts asked only about the primary and secondary panels, and about capital habeas attorneys in California Central.²¹⁶

In 2000 the Justice Department asked us not to ask federal prosecutors to rate the quality of their own offices, although Justice had given us permission to do so in California Northern in 1998.

Figures VII-1 through VII-18 display mean proportions excellent, good, fair, and poor for each type of attorney as rated by each category of respondent in each district in each survey year.²¹⁷ The figures also show mean proportion good or better.²¹⁸ If the data have to be summarized by a single number, this may be the best number. Not all attorneys can be excellent, but we can aspire to have as many good ones as possible.

As an alternative way to analyze the data, we also compared how each respondent rated the various attorney types and counted how many times each type was rated more highly than each other type.²¹⁹ Figure VII-19 shows which of these comparisons were statistically significant.

Capital Habeas Attorneys. Ratings for capital habeas attorneys generally were highest. This pattern, however, was more consistent for judge respondents than it was for attorney respondents, and perhaps a fairer conclusion would be that

²¹⁶ After we surveyed judges and panel attorneys in Maryland and California Central in 1998 we decided that for comparison purposes we should ask about types of attorney in addition to those of primary interest, and we decided that we should ask attorneys as well as judges about quality of representation. We made these decisions in time for the 1998 California Northern survey.

²¹⁷ Each respondent stated what proportion of attorneys in the U.S. Attorney's Office, for example, are excellent, good, fair, and poor. A respondent might respond that 10% are excellent, 75% are good, 10% are fair, and 5% are poor, for example. The mean of all respondents' "excellent" responses – the arithmetic average, which is computed by adding up all of the responses and dividing by the number of responses – is the mean proportion excellent. Means are computed for good, fair, and poor in the same way.

²¹⁸ This is the sum of mean proportion excellent and mean proportion good.

²¹⁹ Not all respondents had sufficient experience with all types of attorney to rate them all. This analysis only looks at instances where a respondent rates both of a pair of attorney types and looks at which type the respondent rated more highly. There are cases where one type has a higher mean rating overall, but among those respondents who rated both types the other type actually is rated more highly by more respondents.

capital habeas attorneys are tied with federal defenders for first place. Of the three federal public defender's offices in this study, only California Central's does capital habeas work. Attorneys in that office rated private capital habeas attorneys least highly of all respondents.²²⁰

Federal Defenders. Judges, panel attorneys, and federal defenders in all three districts rated federal defenders more highly than federal prosecutors or private criminal defense attorneys (including both panel attorneys and retained attorneys). Federal prosecutors' ratings were consistent with this pattern in Maryland and California Central. The only time federal prosecutors were asked to rate their own office was the 1998 survey in California Northern, and they rated their own office most highly.²²¹

Federal Prosecutors. Federal prosecutors were rated more highly than private criminal defense attorneys or civil litigators in California Central. This pattern was less clear in the other two districts. In California Northern, judges rated federal prosecutors and panel attorneys about the same, and defense attorneys tended to rate panel attorneys more highly. In Maryland, judges and attorneys tended to rate federal prosecutors and panel attorneys about the same.

Panel Attorneys. We asked respondents in each district to rate two criminal defense panels. In each district one panel may be regarded as the primary panel and the other may be regarded as the secondary panel. The primary panel generally was rated more highly than the secondary panel.

In Maryland the primary panel is the Felony Panel and the secondary panel is the Misdemeanor Panel. (Maryland uses panel attorneys for misdemeanor cases much more frequently than do the California districts.) In California Central the primary panel is the Regular Panel. This actually consists of three panels – one for each of the court's three divisions. California Central also had an Auxiliary Panel at the time of this study, which served only the Western Division, based in Los Angeles. Auxiliary Panel attorneys represented defendants at first appearances and Regular Panel attorneys represented defendants thereafter. This prevented Regular Panel attorneys from having to spend a lot of time at court at the beginning of cases, but denied defendants consistent representation. In California Northern the primary panel is the San Francisco/Oakland Panel, which serves the San Francisco and Oakland Divisions of the court. The secondary panel is the San Jose Panel, which serves the San Jose Division.

Obviously the designations primary and secondary have very different meanings in these three courts. It also is true that asking about California Northern's two panels separately is somewhat inconsistent with our lumping together California Central's three regular panels.

Retained Attorneys. It may appear ironic that "free" counsel came out higher in the ratings than retained counsel, but judges and attorneys tell us that

²²⁰ It is hard to determine whether this is because private capital habeas attorneys in California Central are not as uniformly of high quality as capital habeas attorneys in the federal defender's office, or attorneys in the federal defender's office merely evaluate their own work highly.

²²¹ There was a tendency for attorneys affiliated with an office – U.S. Attorney or federal public defender – to rate other attorneys in that office more highly than other raters did.

some criminal defense attorneys are better at marketing their services than developing their skills. Obviously, some retained attorneys are quite excellent and most panel attorneys also have retained work.

Although judges and panel attorneys tended to rate panel attorneys more highly than retained attorneys, federal prosecutors tended to rate retained attorneys more highly. Federal defenders also rated retained attorneys more highly than Auxiliary Panel attorneys in California Central.

Civil Litigators. Federal defenders and federal prosecutors were not asked to rate civil litigators (because they were thought to have little experience with them), but judges and panel attorneys tended to rate all other categories of attorneys more highly. Judges and attorneys told us that the criminal bar does better in court than the civil bar because criminal litigators have more court experience.

Poor Ratings. It may be impossible to completely eradicate poor representation, but we considered poor representation more than 10% of the time to be worthy of notice. Judges and panel attorneys never rated federal defenders, federal prosecutors, or panel attorneys as poor a mean of more than 10% of the time. Federal defenders rated more than 10% of panel attorneys as poor in Maryland and California Central. There was an inconsistent tendency for federal prosecutors to rate more than 10% of panel attorneys as poor in all three districts. (Note that federal defenders and federal prosecutors tended to give lower quality ratings than did judges or panel attorneys.)

Comparing Survey Years. It would be very peculiar if changing who reviews payment vouchers were to have a measurable impact on a district's overall quality of representation in just two years. In Maryland and California Central, only judges were asked quality questions in both survey years and they rated only panel attorneys in the first year. Their ratings were substantially higher in the second year. We did not see such a pattern for any of the ratings in California Northern, where all respondents rated several types of attorney in both survey years. We think the apparent improvement in Maryland and California Central may be an artifact of how the question was asked. Asking judges to rate other types of attorney in Maryland and California Central may have caused their ratings for panel attorneys to be higher.

Judges' Satisfaction with Panel Appointments and Case Assignments

In Maryland, where the CJA supervising attorney has some responsibility for assigning attorneys to cases, we noticed some improvement in judges' opinions of assignments.

We asked Maryland judges how often case assignments fit the experience level and capabilities of panel attorneys. (See Figures VII-20 and VII-21.) Judges indicated some improvement between surveys. No judge gave us an answer less frequent than "sometimes." For district judges rating Felony Panel attorneys, nearly all responses were "sometimes" or "usually" in the 1998 survey, but nearly all responses were "usually" or "always" in the 2000 survey. For magistrate judges rating Misdemeanor Panel attorneys, all responses were "usu-

ally” in 1998, but two out of ten responses in 2000 were “always.” Seven judges gave higher frequency ratings in the 2000 survey and two judges gave lower frequency ratings.

We did not ask this question of California Central judges, because assigning attorneys to cases was not to be one of the CJA supervising attorney’s responsibilities.

In California Northern we asked judges how satisfied they were with the selection of attorneys for CJA panels (see Figure VII-22) and the assignment of panel attorneys to individual cases (see Figure VII-23). We noticed a slight improvement from 1998 to 2000, with the proportion of judges satisfied or very satisfied increasing from about 75% to about 85%. The CJA supervising attorney, however, has very little responsibility for these matters in this district.

Panel Attorneys’ Satisfaction with Case Assignments

We asked panel attorneys whether they received enough case assignments to maintain familiarity with federal criminal representation. Panel attorneys in all three districts showed an increased level of satisfaction with their case assignments between the 1998 and 2000 surveys. Only the CJA supervising attorney in Maryland, however, really has any responsibility for case assignment, so we may be seeing a more general increase in satisfaction as a result of each district’s overall improvements in its CJA program.

Maryland. Maryland Felony Panel attorneys reported a median of 3 assignments per year in both surveys. (See Figures VII-24 and VII-25.) The number of attorneys saying they received sufficient assignments increased substantially, from 72% in 1998 to 92% in 2000. (See Figures VII-29 and VII-30.)

Our data from Misdemeanor Panel attorneys is complicated by a change in design between the 1998 survey and the 2000 survey. In 1998 we surveyed a random sample of 100 Misdemeanor Panel attorneys from among the 188 who had submitted a payment voucher in fiscal year 1997. In 2000 we surveyed all 274 Misdemeanor Panel attorneys. The Misdemeanor Panel attorneys we surveyed in 1998 reported a median of 3 assignments per year, but the Misdemeanor Panel attorneys we surveyed in 2000 reported a median of half an assignment per year. (See Figures VII-24 and VII-25.) A large proportion of the Misdemeanor Panel is never called to take a case. Consequently, in our 2000 survey, 84% reported that they did not receive a sufficient number of assignments. (See Figure VII-30.)

We also asked Maryland panel attorneys how satisfied they were with the assignments they did receive in light of their individual levels of experience. The number of Felony Panel attorneys very satisfied increased from approximately one third to approximately one half between the 1998 and 2000 surveys, and the proportion dissatisfied dropped from about 10% to about 5%. (See Figures VII-35 and VII-36.) Approximately one quarter of Misdemeanor Panel attorneys reported dissatisfaction in both surveys. (See Figures VII-35 and VII-36.)

California Central. California Central panel attorneys reported different numbers of appointments per year, depending upon which division’s panel they were appointed to. Both Regular Panel and Auxiliary Panel attorneys in the

Western (Los Angeles) Division reported a median of approximately 12 appointments per year, attorneys in the Southern (Santa Ana) Division reported a median of approximately 4 appointments per year, and attorneys in the Eastern (Riverside) Division reported a median of approximately 3 appointments per year. (See Figure VII-26.)

The more appointments per attorney received by a division's panel in California Central, the greater the proportion of attorneys who reported that they received enough. Although the CJA supervising attorney in this district has little responsibility for case assignments, more attorneys reported they received enough in 2000 than in 1998. Among Regular Panel attorneys, from 50% for the Eastern Division to 92% for the Western Division reported enough assignments in 1998, but from 86% for the Eastern Division to 100% for the Western Division reported enough assignments in 2000. (See Figures VII-31 and VII-32.)

California Northern. California Northern panel attorneys reported a median of approximately 2 appointments per year in 1998, but approximately 4 appointments per year in 2000. (See Figures VII-27 and VII-28. There was a dip in prosecutions in that district in 1998.) We asked California Northern panel attorneys how satisfied they were with the number of assignments they received. The proportion satisfied increased from less than half to more than two thirds between surveys. (See Figures VII-33 and VII-34.) Note that the CJA supervising attorney has little to do with case assignments in this district and the increase in number of cases each attorney received may have resulted from more cases' being brought by the U.S. Attorney.

Panel Attorneys' Evaluation of Other Counsel

We asked panel attorneys in Maryland and California Central how often co-defendants' CJA attorneys were appropriately experienced and capable. Most attorneys responded "always" or "usually," few attorneys responded "sometimes," and only one attorney responded "rarely or never."

In Maryland there was a 10% increase between surveys in the number of "always" responses – from about 25% to about 35%. (See Figures VII-37 and VII-38.) In California Central the number of "always" responses by Regular Panel attorneys approximately doubled between surveys in all three divisions, from approximately 30% to approximately 60%. (See Figures VII-39 and VII-40.)

We did not include this question in the 1998 survey of California Northern panel attorneys, because we included the quality rating questions. Recall that we did not include quality rating questions in the 1998 survey of panel attorneys in Maryland or California Central. Although we did include quality rating questions in the 2000 survey of Maryland and California Central panel attorneys, we also included the co-counsel question for comparison with 1998 responses. We did not include the co-counsel question in the 2000 survey of California Northern panel attorneys, because we had not included it in the 1998 survey.

Investigative and Expert Assistance

We only asked the question in California Northern, but San Francisco/Oakland Panel attorneys there reported a *decrease* in the reasonableness of their ability to hire investigative and expert assistance in CJA cases – from 80% always or usually reasonable in 1998 to 67% always or usually reasonable in 2000. (See Figure VII-41.) This did not appear to be a problem for San Jose Panel attorneys. (See Figure VII-42.)

Quality of Representation – How to Read the Charts

Figures VII-1 through VII-18 present the results of our asking judges, panel attorneys, federal defenders, and federal prosecutors to rate the quality of representation provided by up to seven types of attorney in federal court in respondents' districts. We surveyed respondents in 1998 and 2000, but in Maryland and California Central in 1998 we asked this question only of judges, and we asked them only about panel attorneys (including capital habeas attorneys in California Central).

Each figure shows the results for one year's survey of one group of respondents. Respondents were asked what proportion of each type of attorney was excellent, good, fair, and poor. Figures portray mean responses for each group of respondents about each type of attorney with a vertical bar stretching from 0% to 100%. The darkest, lowest portion of the bar represents mean proportion excellent. The less dark portion above that represents mean proportion good. The height of these two bar portions together represents mean proportion good or better (mean proportion good plus mean proportion excellent). To highlight its usefulness as a single numerical summary of quality ratings, the mean proportion good or better is printed on each vertical bar at the top of the portion of the bar for good.

At the top of each bar is the lightest portion representing poor and below that is the next lightest portion representing fair. Above the bar is the number of responses represented by the whole bar. Bars based on 3 or fewer responses are omitted.

VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-1
Maryland Judges' Ratings:
Quality of Representation (1998 Survey)

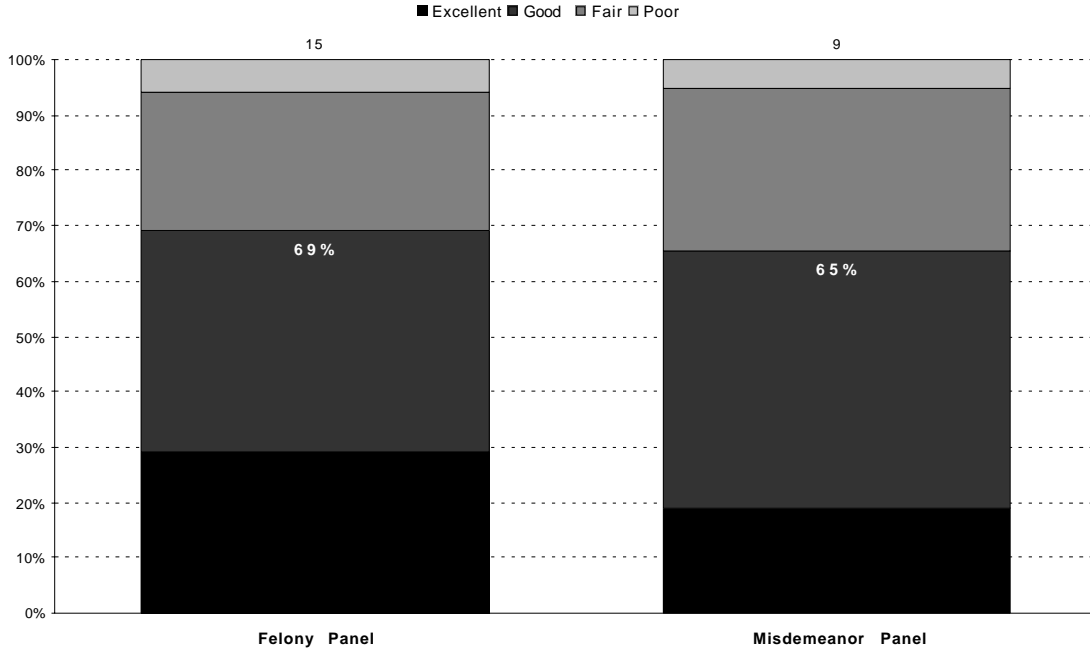
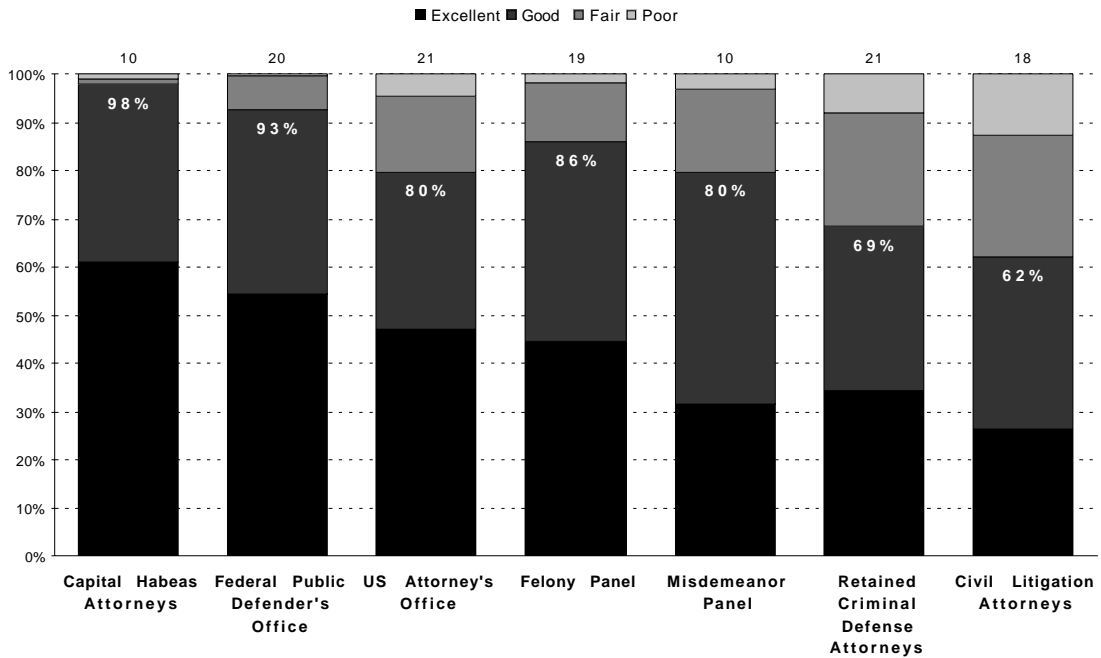
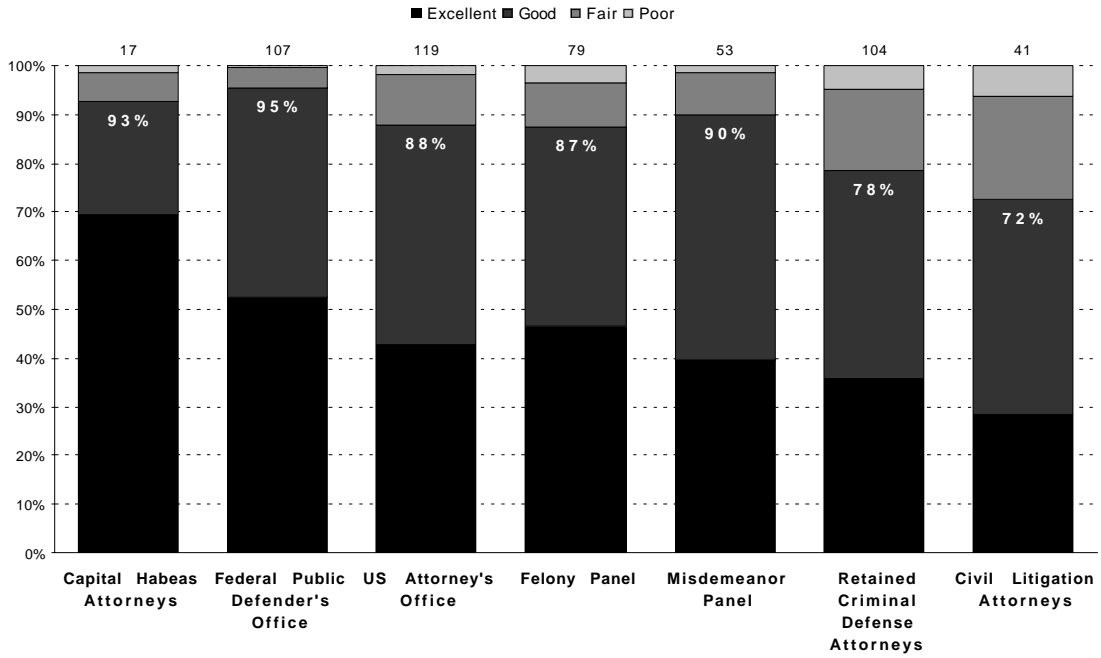


Figure VII-2
Maryland Judges' Ratings:
Quality of Representation (2000 Survey)



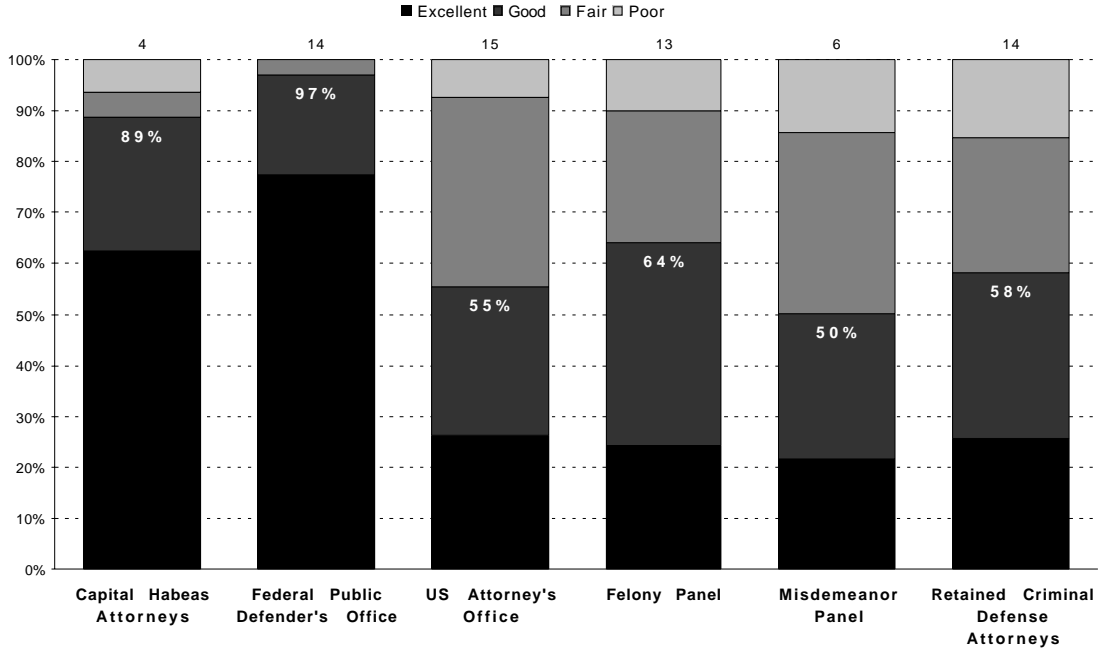
VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-3
Maryland Panel's Ratings:
Quality of Representation (2000 Survey)



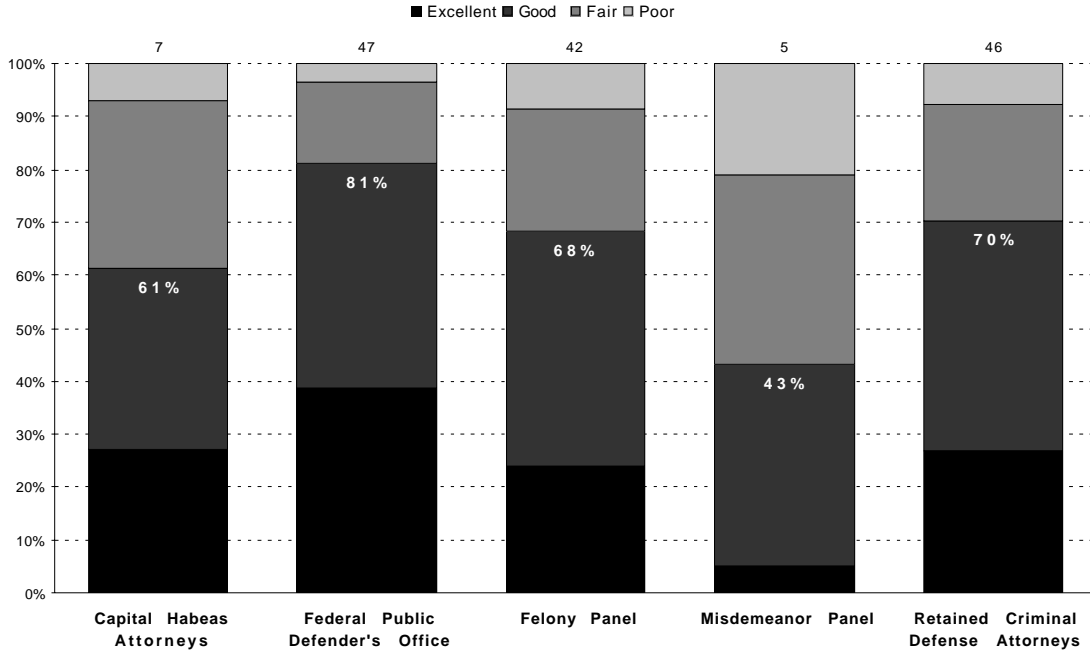
VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-4
Maryland Federal Defender's Office Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-5
Maryland United States Attorney's Office Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-6
California Central Judges' Ratings:
Quality of Representation (1998 Survey)

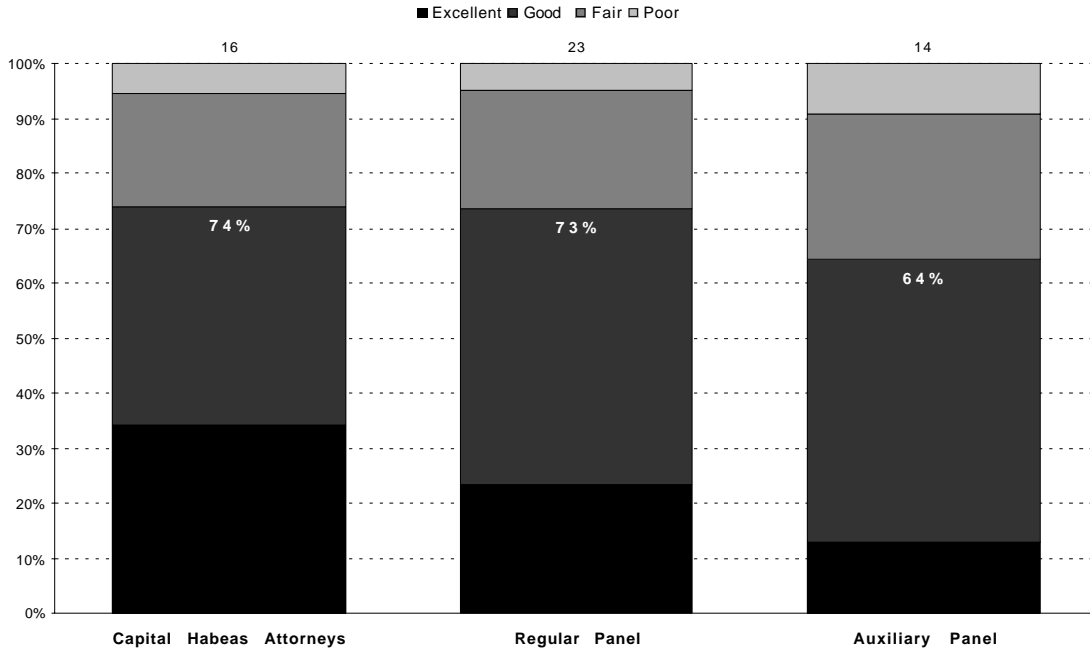
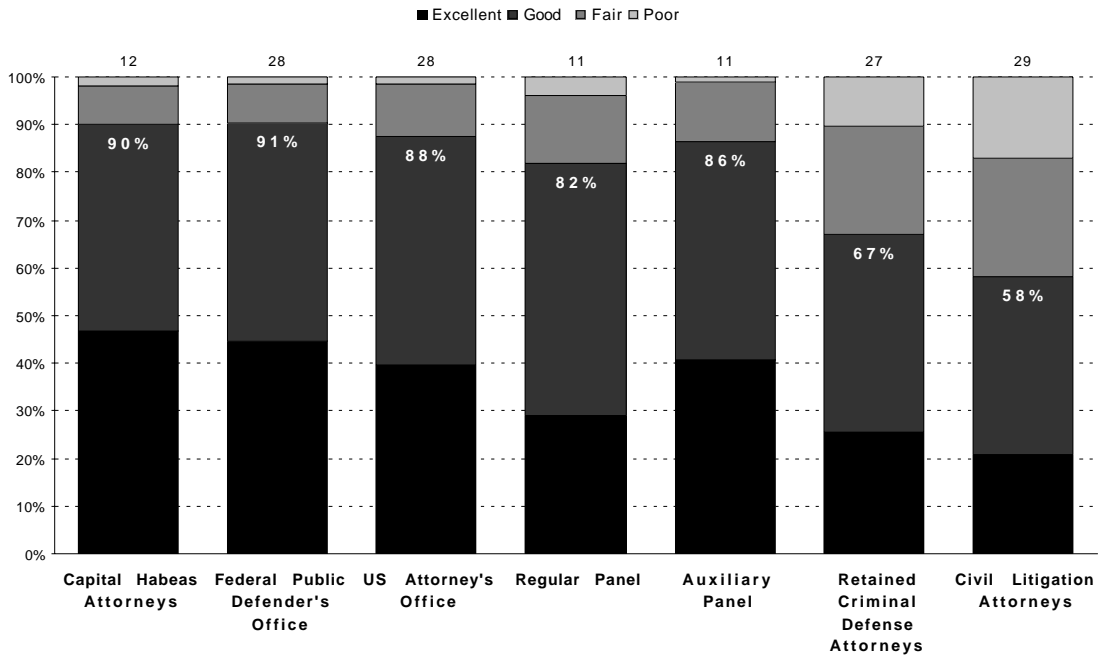
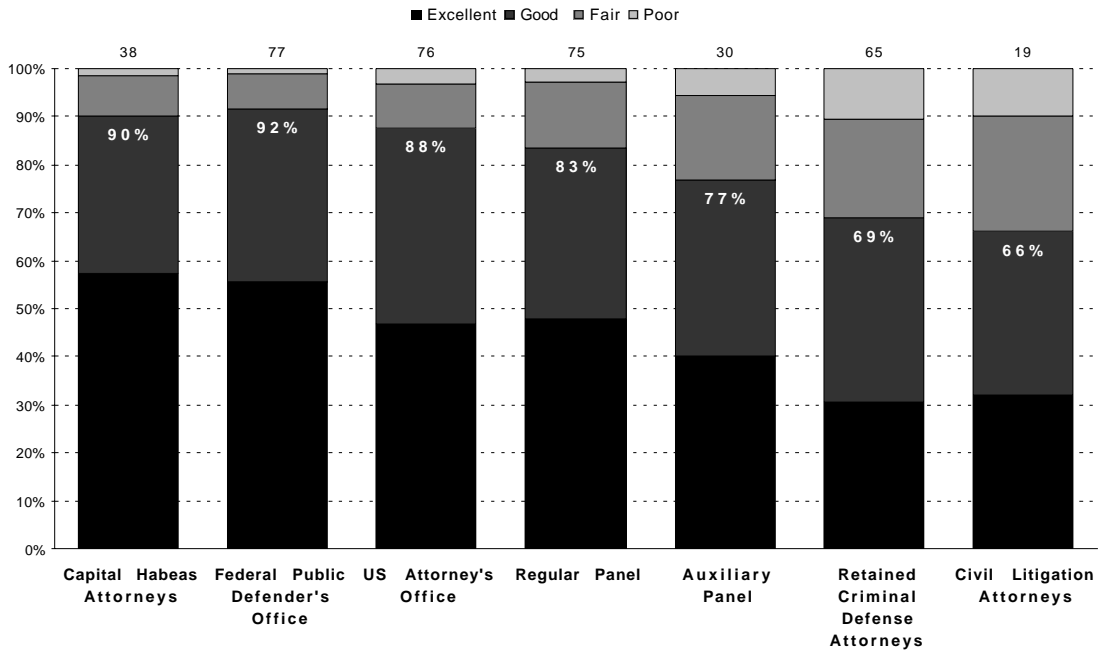


Figure VII-7
California Central Judges' Ratings:
Quality of Representation (2000 Survey)



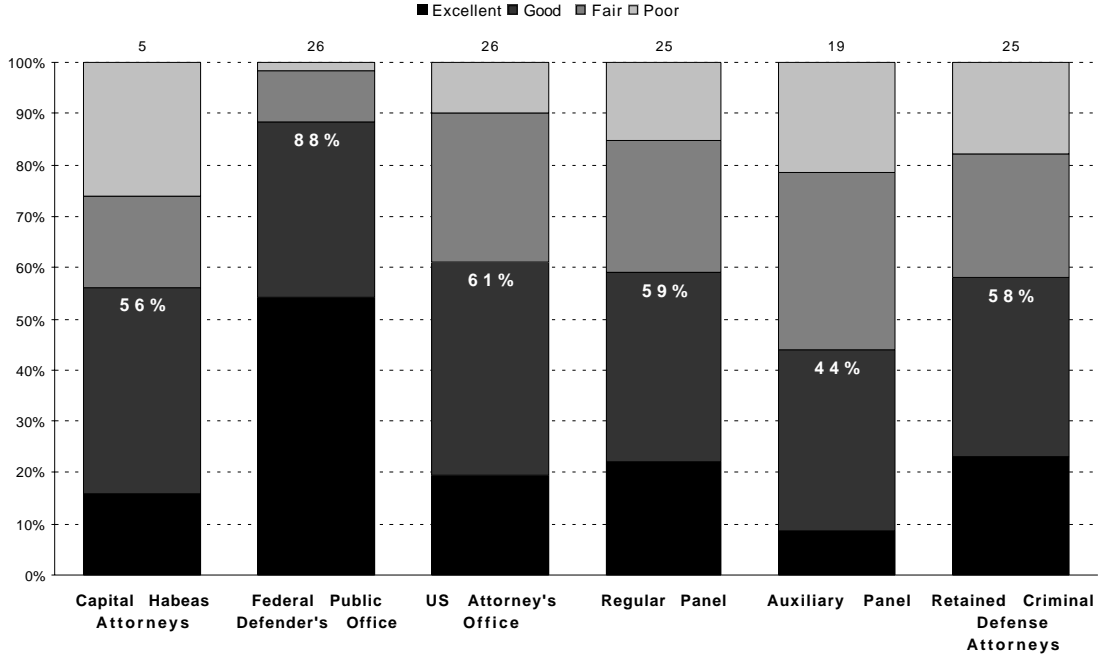
VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-8
California Central Panel's Ratings:
Quality of Representation (2000 Survey)



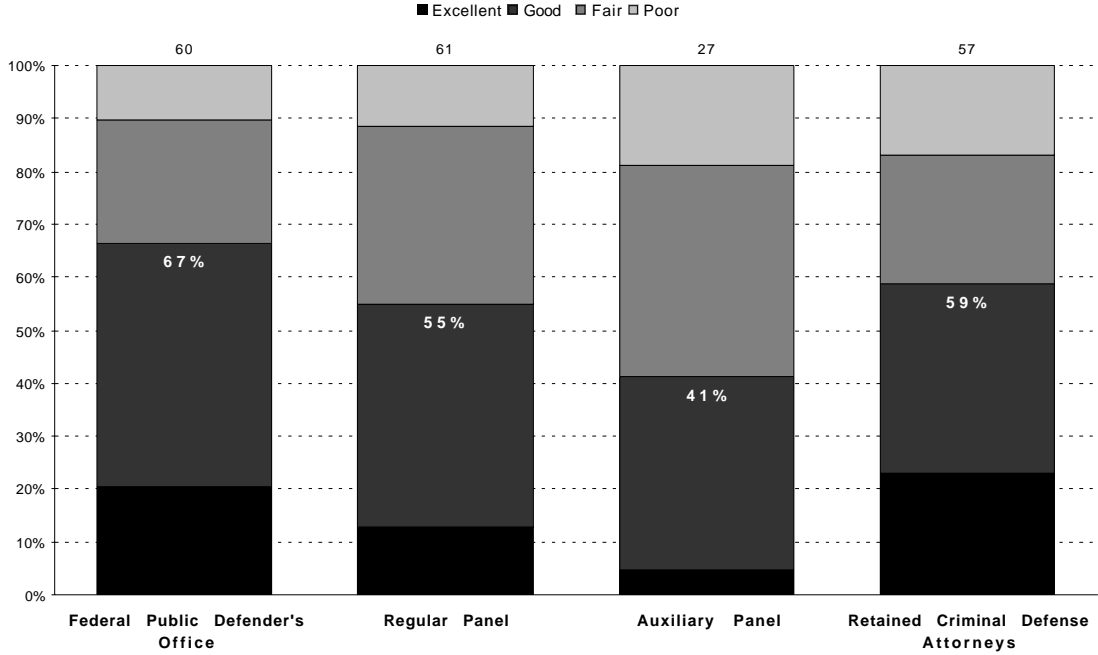
VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-9
California Central Federal Defender's Office Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-10
California Central United States Attorney's Office Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-11
California Northern Judges' Ratings:
Quality of Representation (1998 Survey)

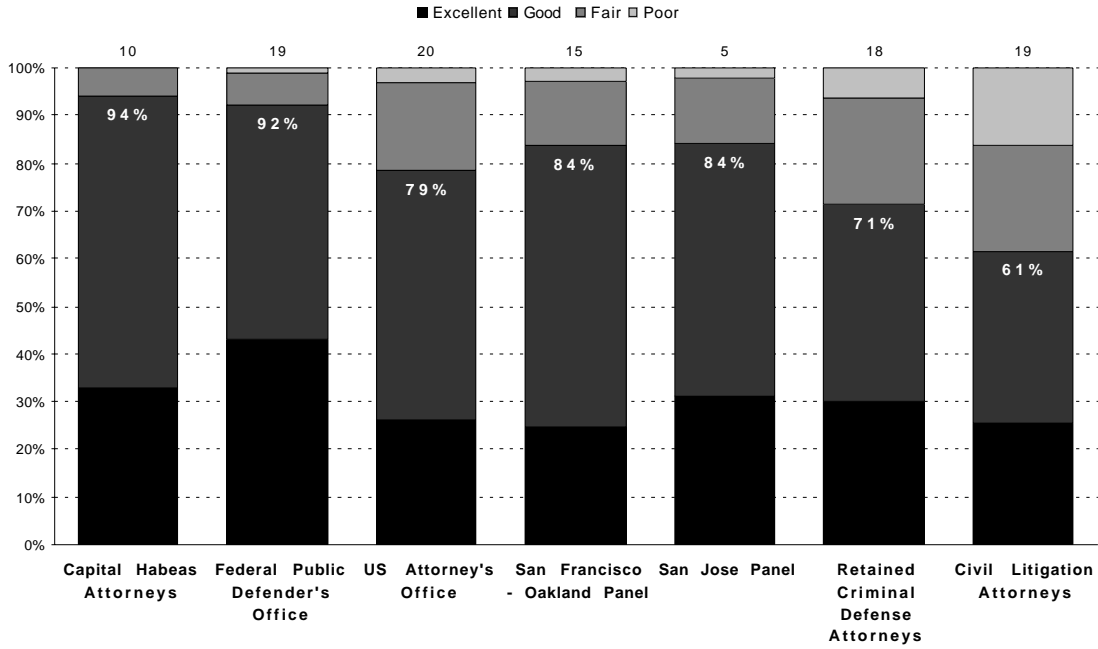
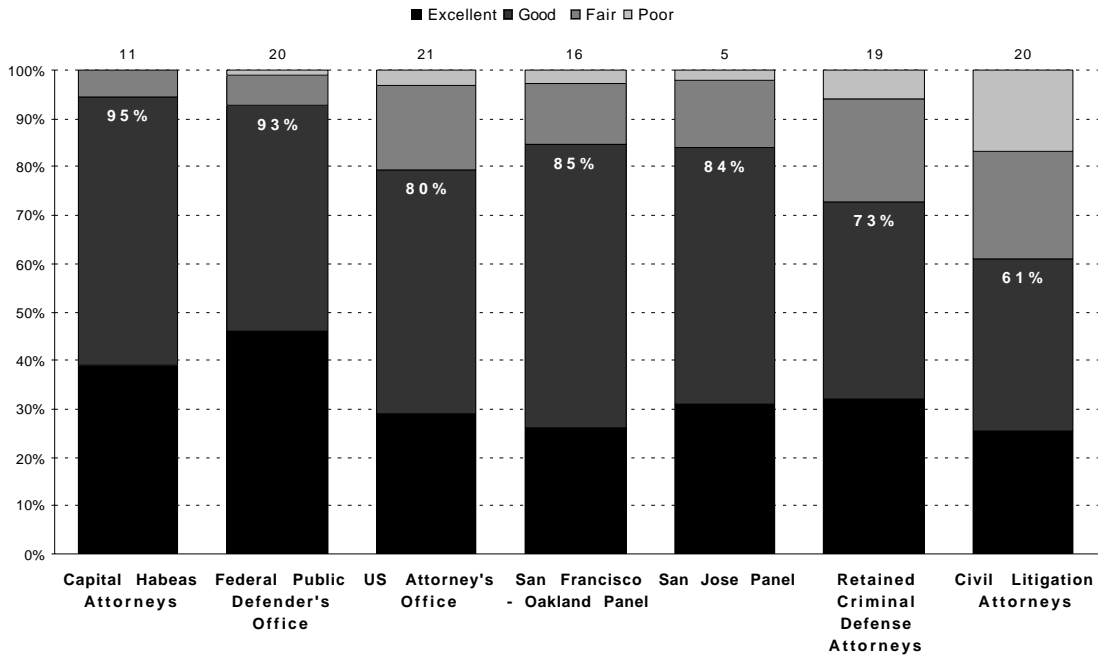


Figure VII-12
California Northern Judges' Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-13
California Northern Panel's Ratings:
Quality of Representation (1998 Survey)

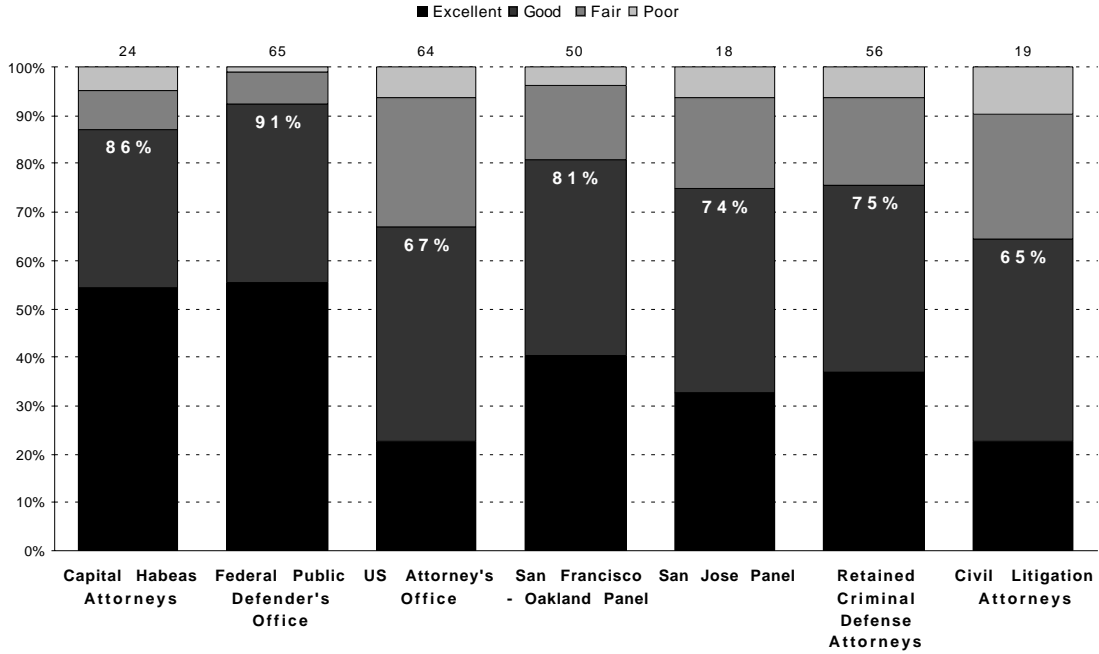
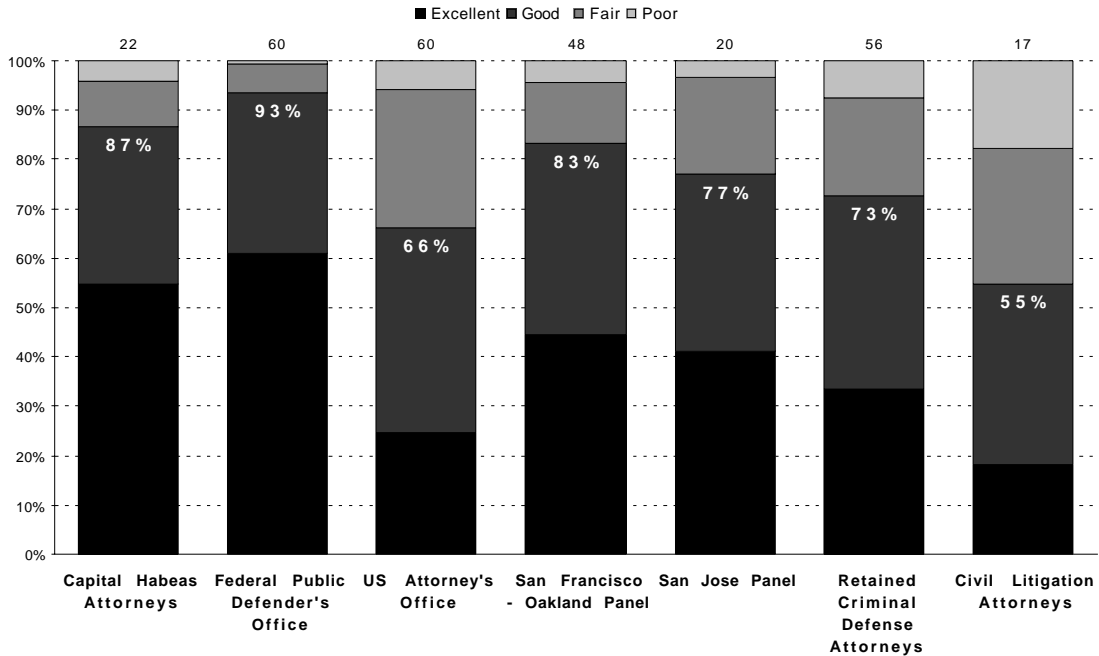


Figure VII-14
California Northern Panel's Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-15
California Northern Federal Defender's Office Ratings:
Quality of Representation (1998 Survey)

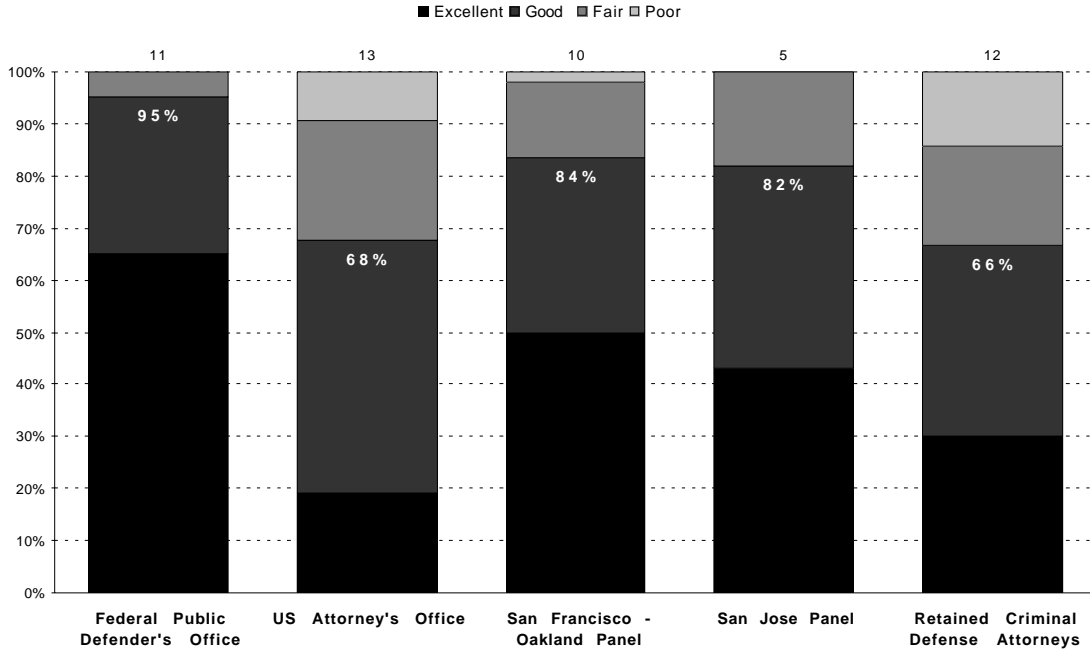
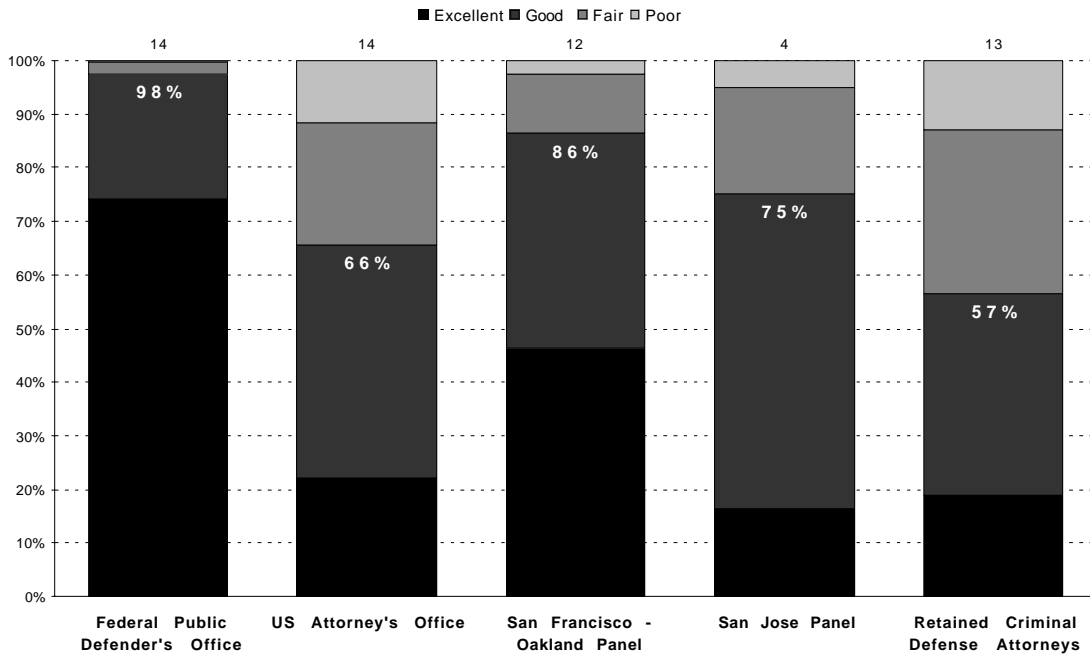


Figure VII-16
California Northern Federal Defender's Office Ratings:
Quality of Representation (2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-17
California Northern United States Attorney's Office Ratings:
Quality of Representation (1998 Survey)

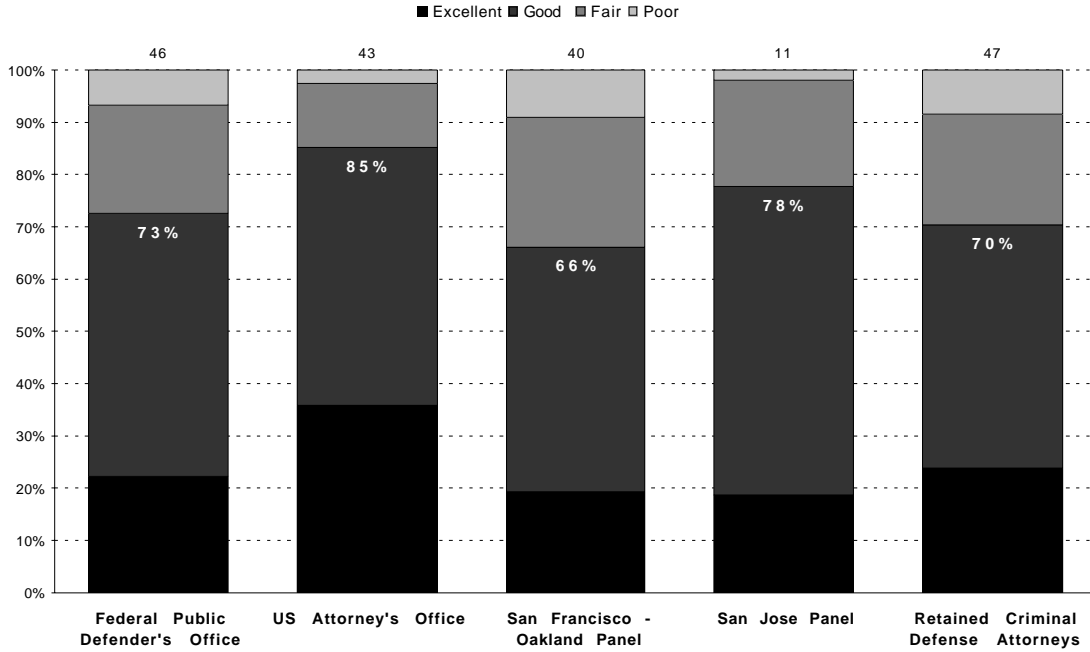
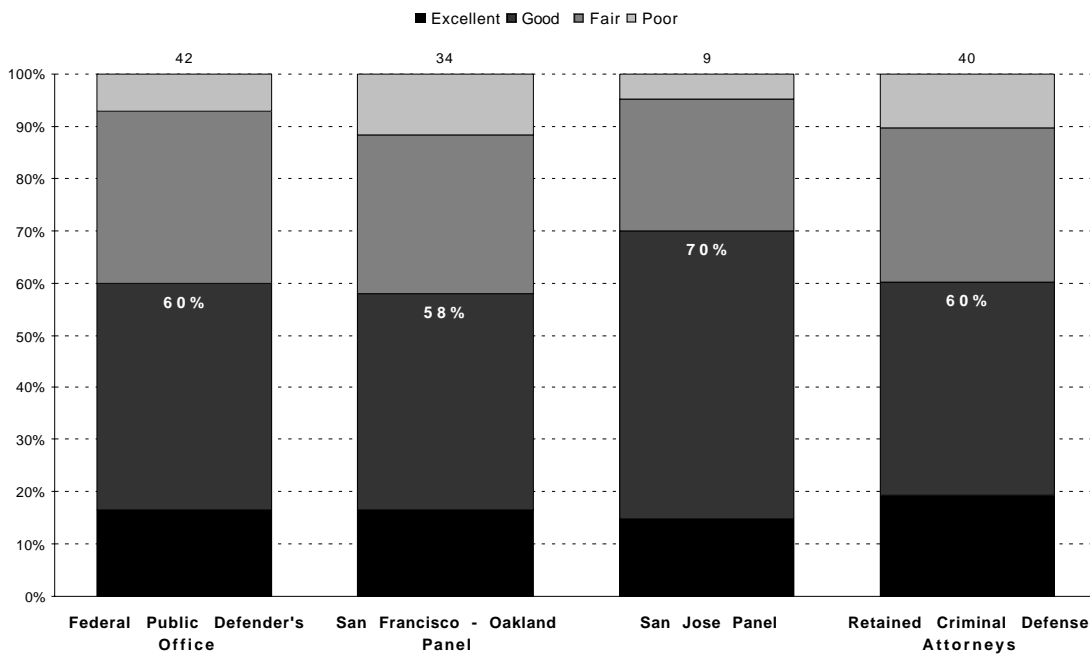


Figure VII-18
California Northern United States Attorney's Office Ratings:
Quality of Representation (2000 Survey)



Relative Quality Ratings – How to Read the Chart

Figure VII-19 is somewhat challenging to read because it summarizes a lot of information about a somewhat complicated analysis. The point of the chart is to show how respondents rated the quality of each of up to seven types of attorney relative to the other types.

We recorded *for each respondent* whether the quality rating for each type of attorney was higher, lower, or the same as the quality rating for each other type. Obviously, because each quality rating consists of four numbers, we had to adopt a rule to determine what constitutes a higher rating. We adopted this rule: First we looked at proportion good or better (proportion excellent plus proportion good). Whichever type of attorney received the higher proportion good or better was deemed to be rated more highly. If these values were the same, then we looked at proportion excellent. If these values also were the same, we broke the tie by looking at proportion poor (which is equivalent to looking at proportion fair or better). If these values also were the same, it was because the four numerical responses were identical for both types of attorney and we had a tie.

For each pairing of types of attorney we counted the number of respondents who rated one type more highly, the number of respondents who rated them the same, and the number of respondents who rated the other type more highly.

If a *group of respondents* rated one type of attorney more highly than another more often than would be expected by chance, then the comparison was *statistically significant*. We adopted a 5% threshold for statistical significance ($p < .05$, two-tailed). That means that if a preference in favor of one group over another at least as far from an even split as that observed would result by chance less than 5% of the time, then the result is statistically significant.

For example, in the 2000 survey of Maryland judges, 18 judges rated both federal defenders and Felony Panel attorneys. Sixteen judges rated federal defenders more highly, one judge rated them the same, and one judge rated Felony Panel attorneys more highly, giving this comparison a score of 16-1-1. To compute statistical significance we ignored ties and did a binomial test on the other two numbers. In essence we were computing the probability of getting a result as far away from even as 16 heads and one tail in 17 tosses of a fair coin. (Results as far away from even include 16 heads, 17 heads, 16 tails, and 17 tails.) This probability is 0.0001, which certainly is less than .05.

Overall, capital habeas attorneys tended to be rated more highly than federal defenders, which tended to be rated more highly than federal prosecutors, which tended to be rated more highly than the district's primary panel, which tended to be rated more highly than the district's secondary panel, which tended to be rated more highly than retained criminal defense attorneys, which tended to be rated more highly than civil litigators.

If a comparison supported this pattern and was statistically significant, it is represented by a black square in Figure VII-19. If a comparison supported this pattern, but was only marginally significant (we used a criterion of $.05 \leq p < .15$, two-tailed), it is represented by a dark gray square in Figure VII-19. If a comparison supported the dominant pattern, but was not even marginally significant (e.g.,

Maryland judges' 9-5-4 preference for retained criminal defense attorneys over civil litigators), it is represented by a light gray square in Figure VII-19.

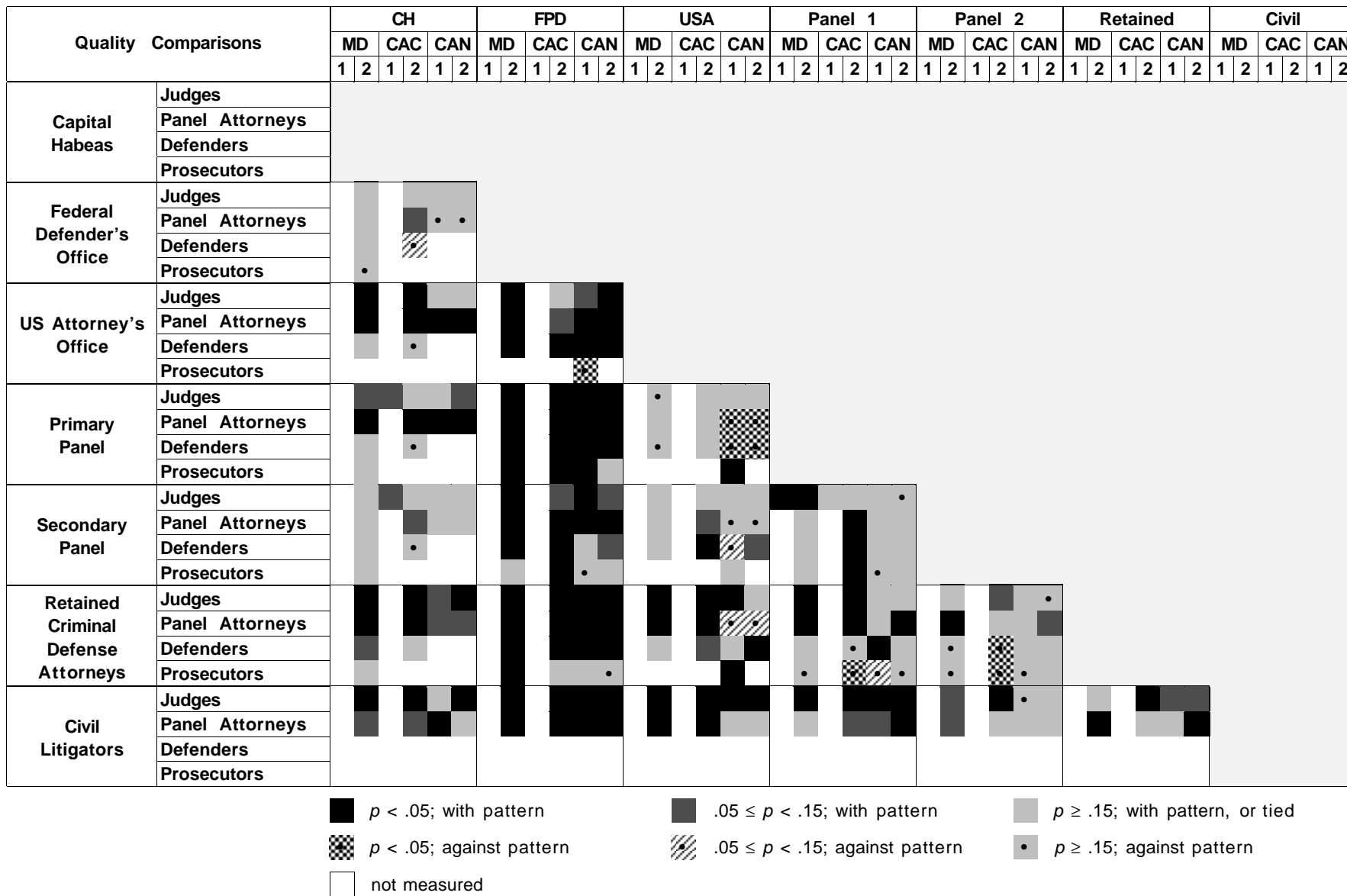
If a comparison was statistically significant, but opposite to the dominant pattern (e.g., California Northern defense attorneys' rating San Francisco/Oakland panel attorneys more highly than federal prosecutors), then it is represented by a checked square in Figure VII-19. If a comparison was marginally significant, but opposite to the dominant pattern, then it is represented by a diagonally striped square in Figure VII-19. All comparisons opposite to dominant pattern are represented in Figure VII-19 also with a dot in the square, including those not even marginally significant, which are light gray whether they supported the dominant pattern or were opposite to it.

Because there are two surveys (the first in 1998 and the second in 2000), three districts (Maryland, California Central, and California Northern), and four categories of respondents (judges, panel attorneys, federal defenders, and federal prosecutors), there are $2 \times 3 \times 4 = 24$ possible significance tests for each pairing of attorney categories. Not all of these combinations actually resulted, however – federal defenders and federal prosecutors were not surveyed in Maryland or California Central in 1998, federal prosecutors were not asked to rate federal prosecutors in 2000, only judges were asked to rate quality in Maryland and California Central in 1998, and they were asked to rate only two or three types of attorney, etc.

The columns in Figure VII-19 are organized first by type of attorney rated, second by district, and third by year of survey. The rows are organized first by type of attorney rated and second by type of respondent. Patterns that support the dominant pattern are those where the column type of attorney is rated more highly than the row type of attorney.

Note that it is possible for a majority of respondents to rate one type of attorney more highly than another even if the other type has a higher mean good or better. This can happen because of the ratings by respondents who did not rate both types. For example, in the 2000 survey of California Northern judges, 21 judges rated federal prosecutors and gave them a mean rating of 80% good or better. Five judges rated San Jose Panel attorneys and gave them a mean rating of 84% good or better. But of these five judges, four rated federal prosecutors more highly than San Jose Panel attorneys and one rated San Jose Panel attorneys more highly.

Figure VII-19: Relative Quality Ratings – Reliability of Rating One Type of Attorney Over Another



Judges' Satisfaction with Panel – How to Read the Charts

We asked Maryland judges – in both 1998 and 2000 – whether cases assigned to panel attorneys fit their experience level and capabilities. Figure VII-20 reports the data from district judges concerning Felony Panel attorneys and Figure VII-21 reports the data from magistrate judges concerning Misdemeanor Panel attorneys. Possible responses are “always,” “usually,” “sometimes,” “not usually,” and “rarely or never.” Vertical bars stretching from 0% to 100% represent the proportion of judges giving each possible response, with the more positive responses represented by darker and lower portions of the bar. The number of responses each bar represents is given at the top of the bar.

At the California Central court's request, we did not ask this question of its judges, because case assignments were not expected to be part of the CJA supervising attorney's responsibilities.

We asked California Northern judges slightly different questions. We asked them how satisfied they were with the selection of attorneys for CJA panels (Figure VII-22) and how satisfied they were with the assignment of CJA panel attorneys to individual cases (Figure VII-23). In the figures, more positive responses are represented by darker and lower portions of vertical bars stretching from 0% to 100%, and the number of responses on which each bar is based is given at the top of each bar.

VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-20
Maryland District Judges:
 Do the cases assigned to CJA panel attorneys fit the experience level and capabilities of the attorneys?

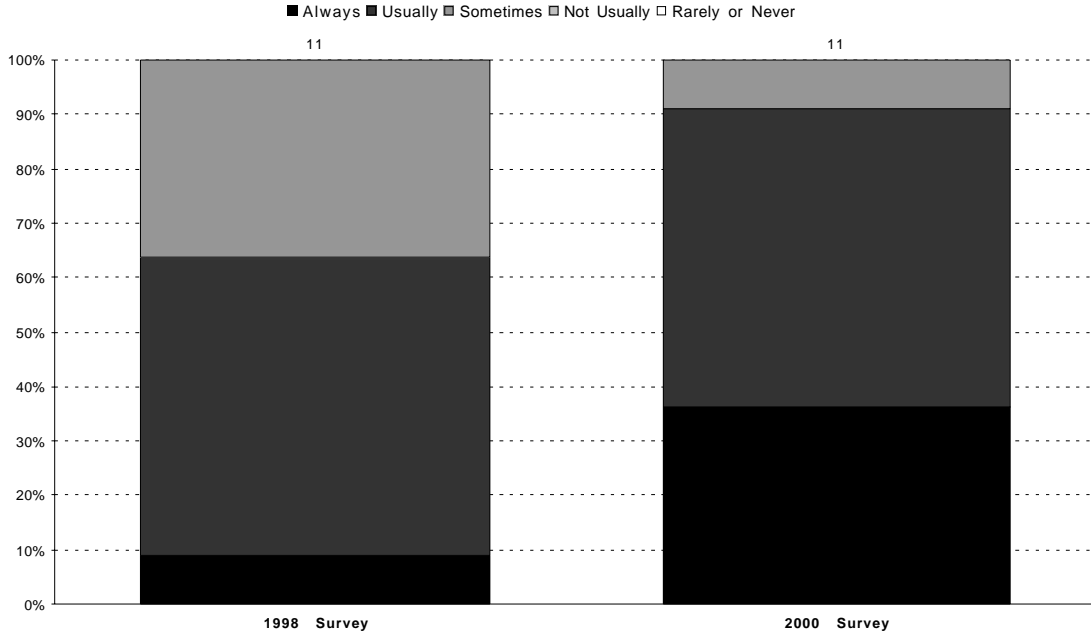
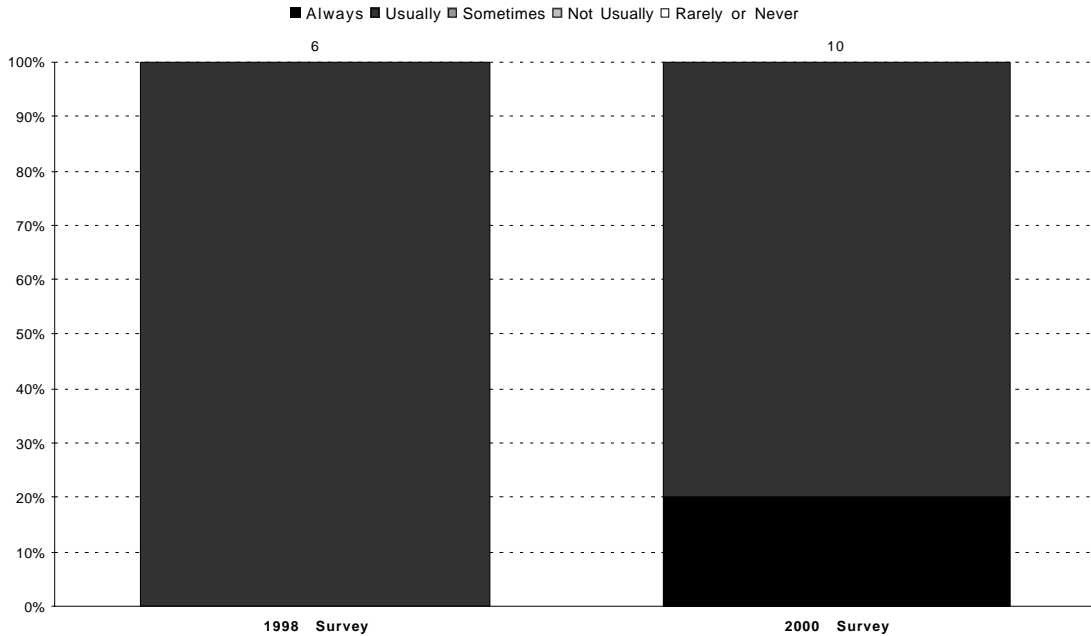
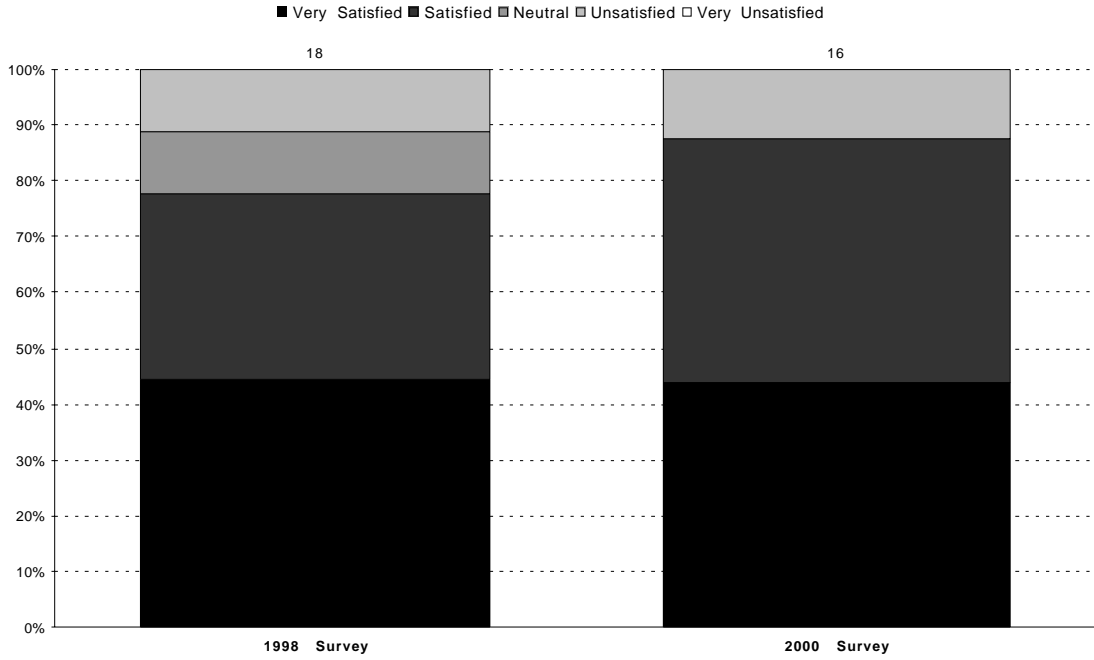


Figure VII-21
Maryland Magistrate Judges:
 Do the cases assigned to CJA panel attorneys fit the experience level and capabilities of the attorneys?

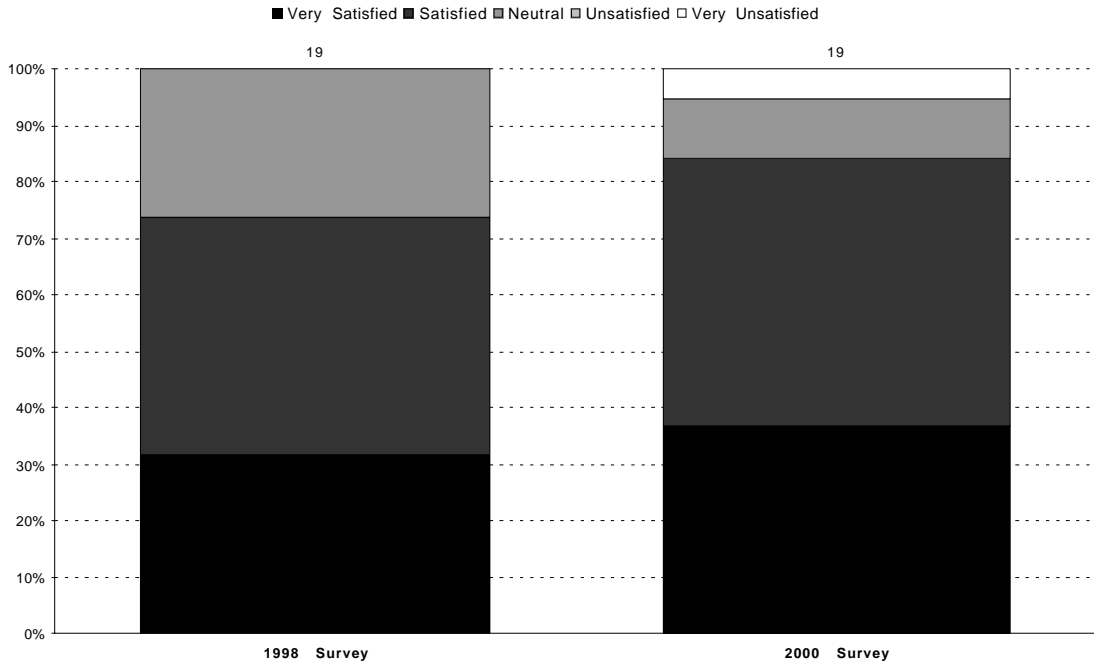


VII. EFFECTIVENESS OF REPRESENTATION

**Figure VII-22: California Northern Judges:
Selection of attorneys for CJA panels.**



**Figure VII-23: California Northern Judges:
Assignment of CJA panel Attorneys to individual cases.**



Number of Appointments – How to Read the Charts

Figures VII-24 through VII-28 are box-and-whisker charts for the number of appointments per year. Each plots the maximum, third quartile, median, first quartile, and minimum of a set of data. These particular charts are plotted on a logarithmic scale, which means that the vertical distance between 1 and 10 is the same as the vertical distance between 10 and 100. The number of responses on which each box-and-whisker chart is based is given in the caption below the chart.

The two ends – on the vertical scale – of each chart’s “box” correspond to the third and first quartile. For example, 39 Maryland panel attorneys told us in the 1998 survey how many appointments they received in the previous year (Figure VII-24). The third quartile was 4 appointments. That means that one quarter of the responses were greater than or equal to 4 and three quarters of the responses were less than or equal to 4. The first quartile was 2 appointments. That means that three quarters of the responses were more than or equal to 2 and one quarter of the responses were less than or equal to 2. Together, this means essentially that half of the responses were in the range of 2 to 4 appointments and half were either more or less than that range. The box shows where the middle half of the responses are.

The median is represented as a line through the box. This is the value above which are half the data and below which are half the data. In our example, the median is 3 appointments.

The whiskers are the lines extending out from the ends of the box. In this version of a box-and-whisker chart the whiskers extend to the highest number reported (24 appointments in our example) and to the lowest number reported (0 appointments in our example).

Note that to accommodate the fact that zero cannot be plotted on a logarithmic scale, all values less than or equal to .1 are plotted at .1 and regarded as equal to 0.

The box-and-whisker charts in Figures VII-24 through VII-28 are labeled with the values for the maximum, third quartile, median, first quartile, and minimum. Note that it is possible for two or more of these values to be the same. For example, both the median and the first quartile for number of appointments per year as reported by California Central Auxiliary Panel attorneys in the 2000 survey is 12.5 appointments. (See Figure VII-26.) So a single line representing both the median and the first quartile is labeled “12.5, 12.5.”

California Central panel attorneys were not asked about number of appointments in the 1998 survey.

VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-24
Maryland Panel: Number of Appointments Last Year
(1998 Survey)

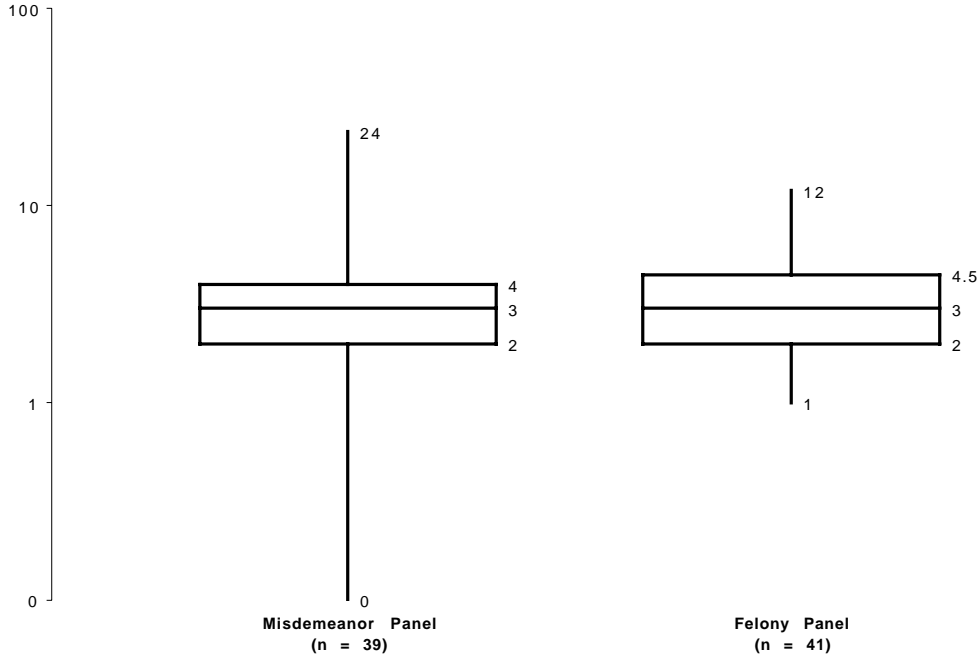
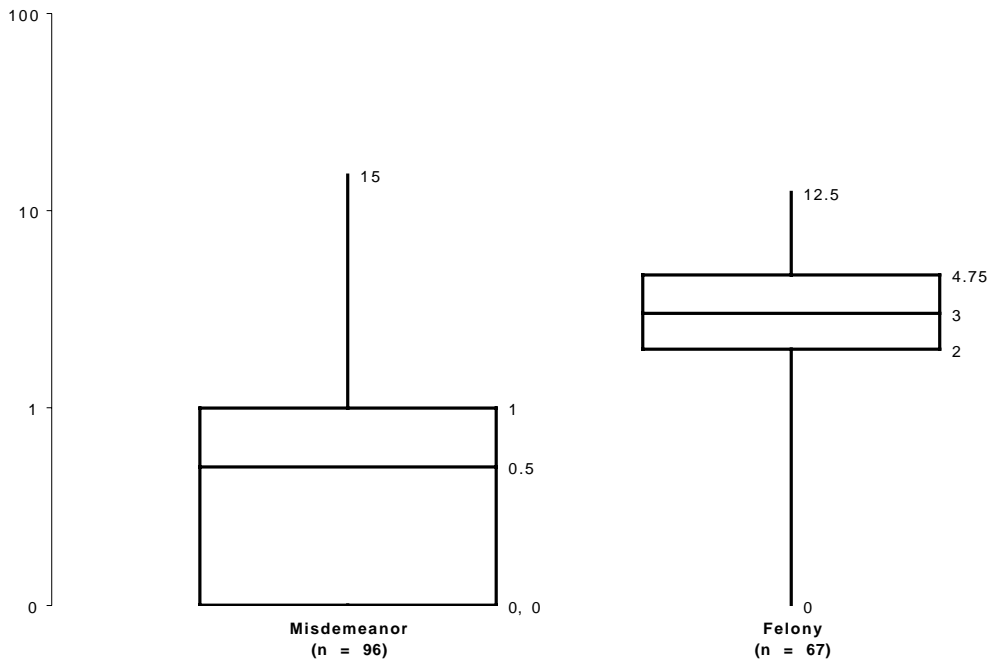
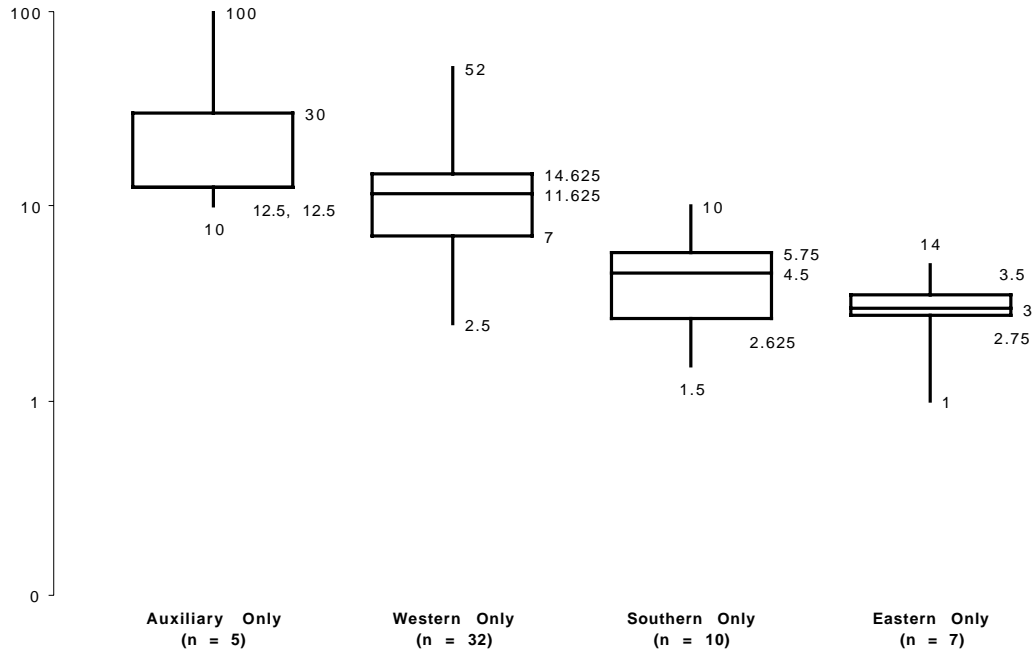


Figure VII-25
Maryland Panel: Number of Appointments Per Year
(2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-26
California Central Panel: Number of Appointments Per Year
(2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-27
California Northern Panel: Number of Appointments Per Year
(1998 Survey)

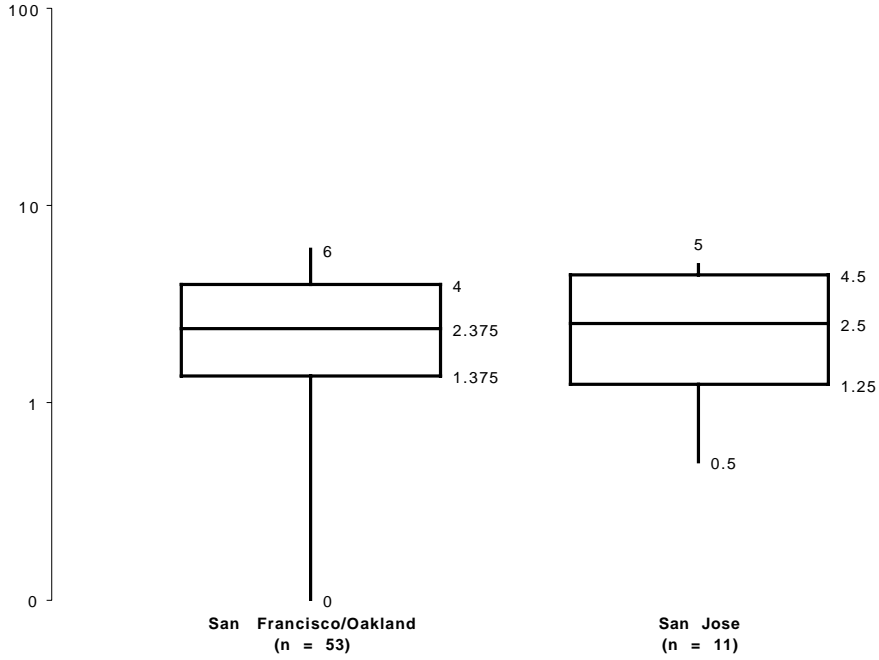
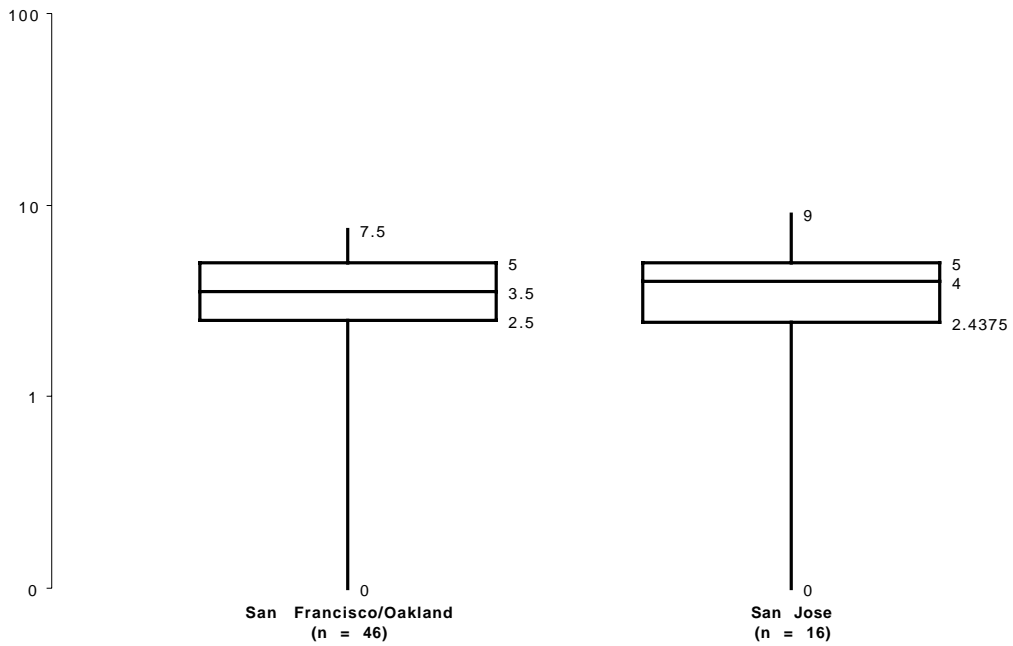


Figure VII-28
California Northern Panel: Number of Appointments Per Year
(2000 Survey)



Assignment Satisfaction – How to Read the Charts

We asked panel attorneys to evaluate the number of assignments they received.

Figures VII-29 through VII-32 show the results of our asking Maryland and California Central panel attorneys whether they received a sufficient number of CJA case assignments to maintain familiarity with federal criminal representation. Results are plotted separately for survey year and panel. The number responding “yes” is represented by the dark and lower portion of a vertical bar stretching from 0% to 100%, with the percentage responding “yes” printed at the top of this portion of the bar. The number of responses on which each bar is based is given at the top of each bar.

We asked a somewhat different question of California Northern panel attorneys – we asked them how satisfied they were with the number of CJA case assignments they received. Figure VII-33 plots the results for the San Francisco/Oakland Panel and Figure VII-34 plots the results for the San Jose Panel. Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of each bar.

We also asked Maryland panel attorneys how satisfied they were with the cases assigned to them. Their responses are given in Figure VII-35 for the 1998 survey and in Figure VII-36 for the 2000 survey.

VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-29
Maryland Panel: Sufficient Assignments?
(1998 Survey)

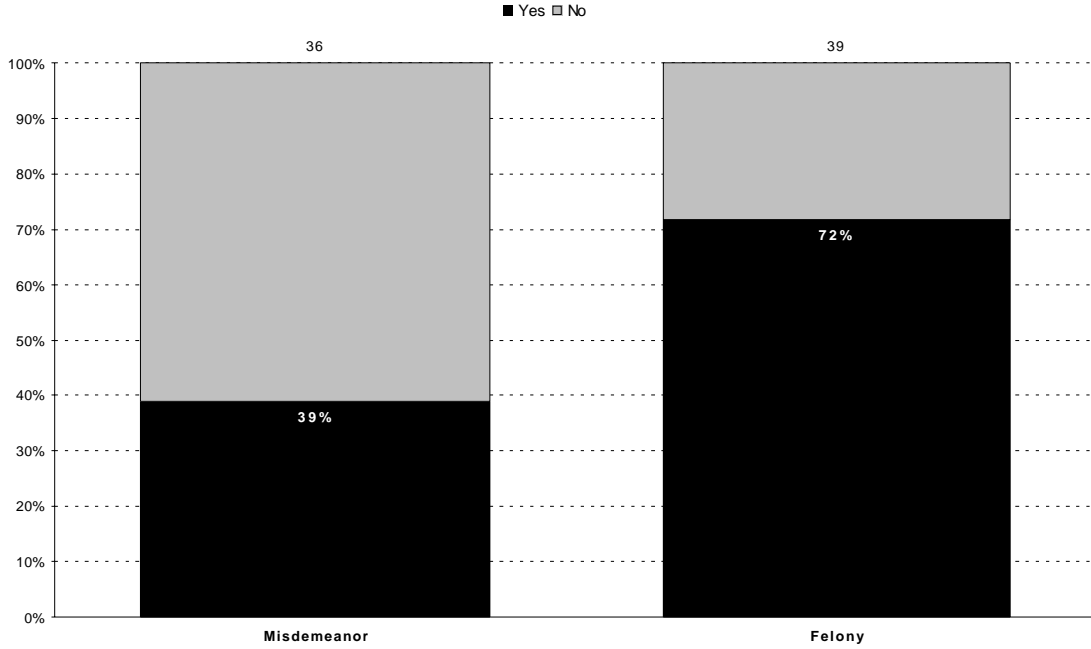
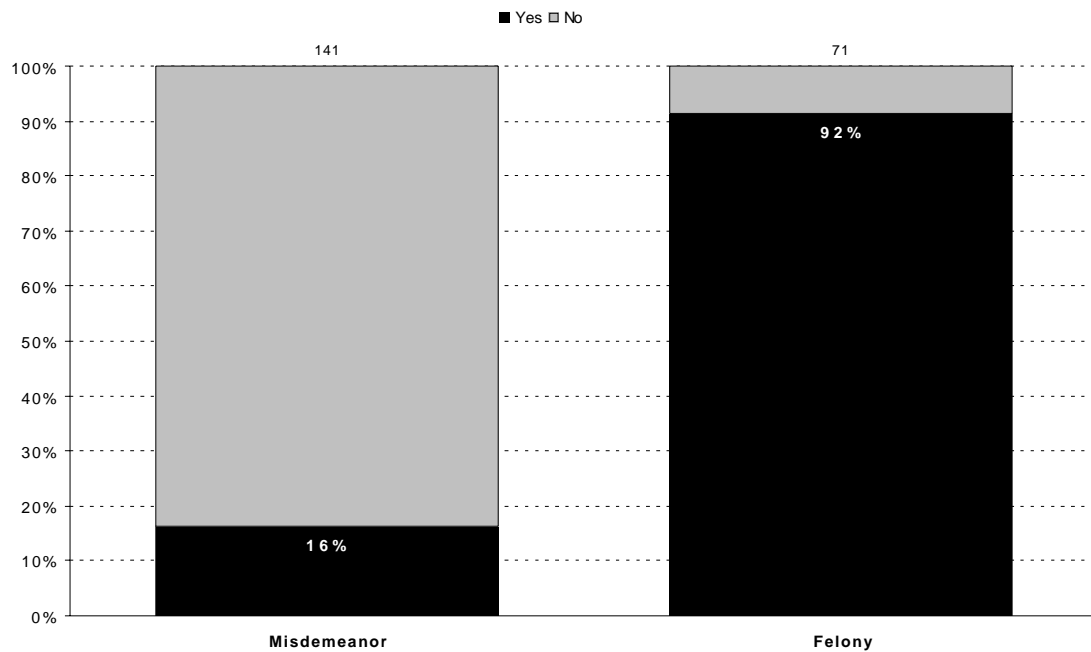


Figure VII-30
Maryland Panel: Sufficient Assignments?
(2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-31
California Central Panel: Sufficient Assignments?
(1998 Survey)

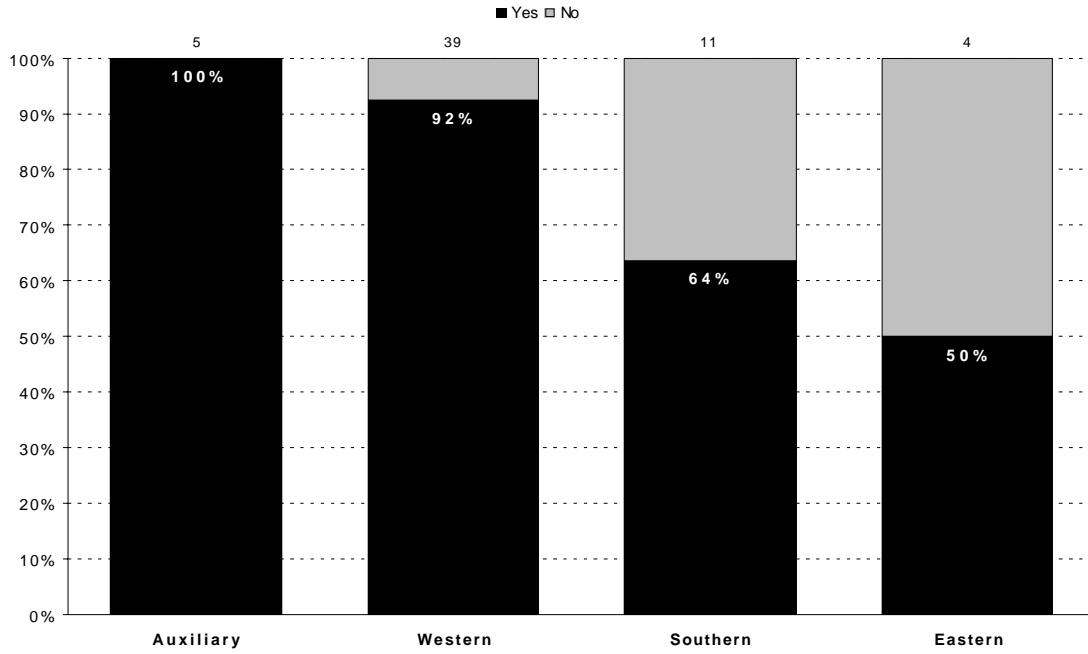
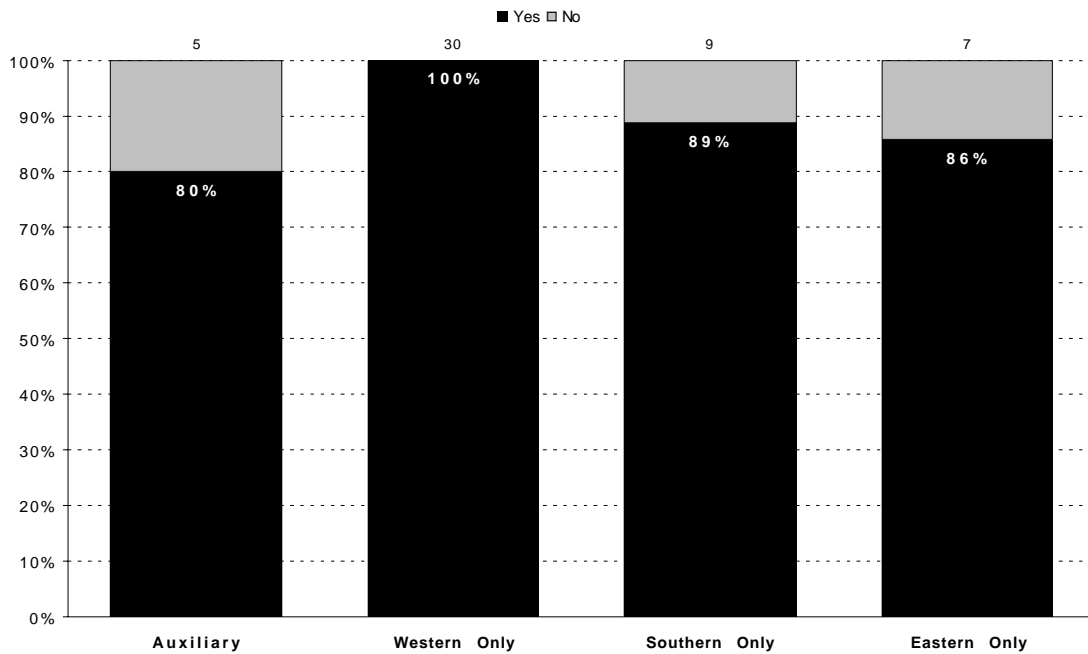


Figure VII-32
California Central Panel: Sufficient Assignments?
(2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-33
California Northern San Francisco/Oakland Panel:
Satisfaction With Case Assignment

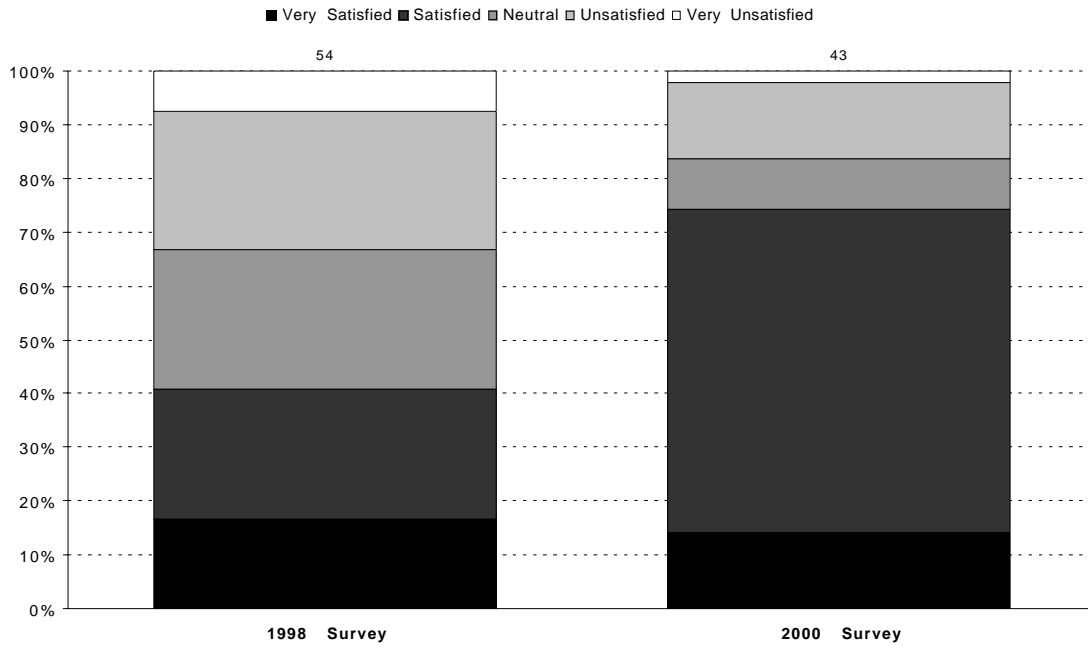
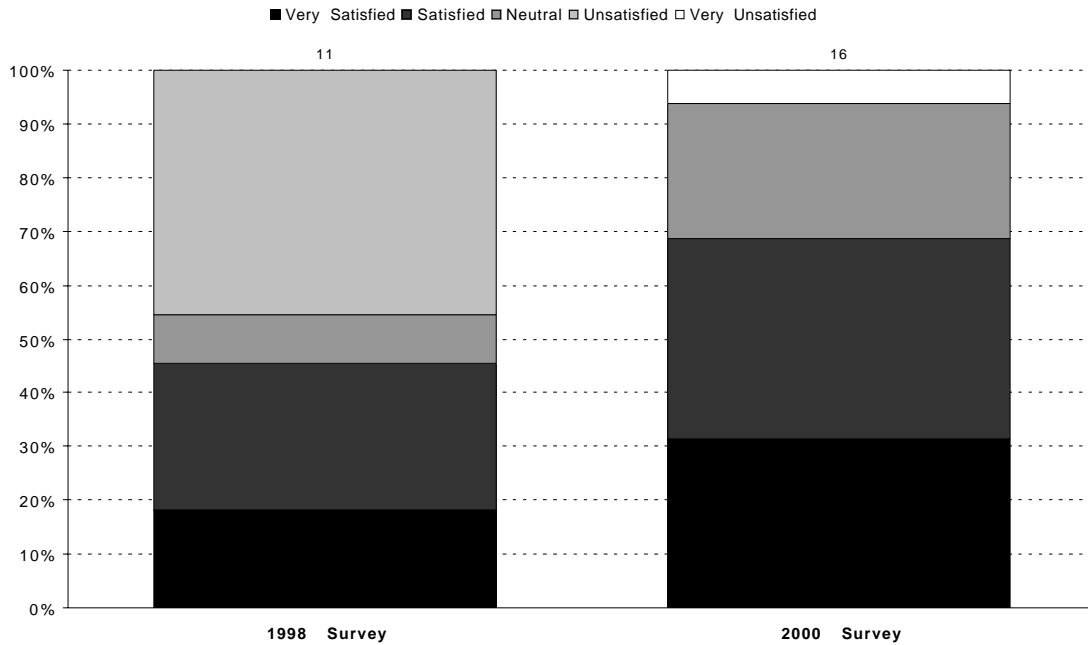


Figure VII-34
California Northern San Jose Panel:
Satisfaction With Case Assignment



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-35
Maryland Panel: Satisfaction With Case Assignment
(1998 Survey)

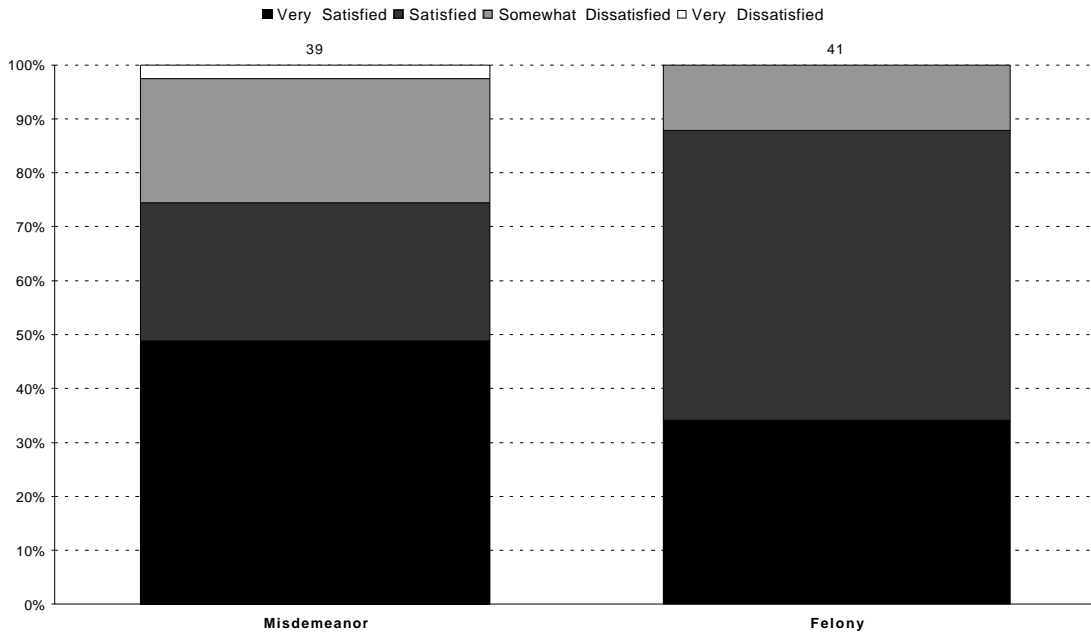
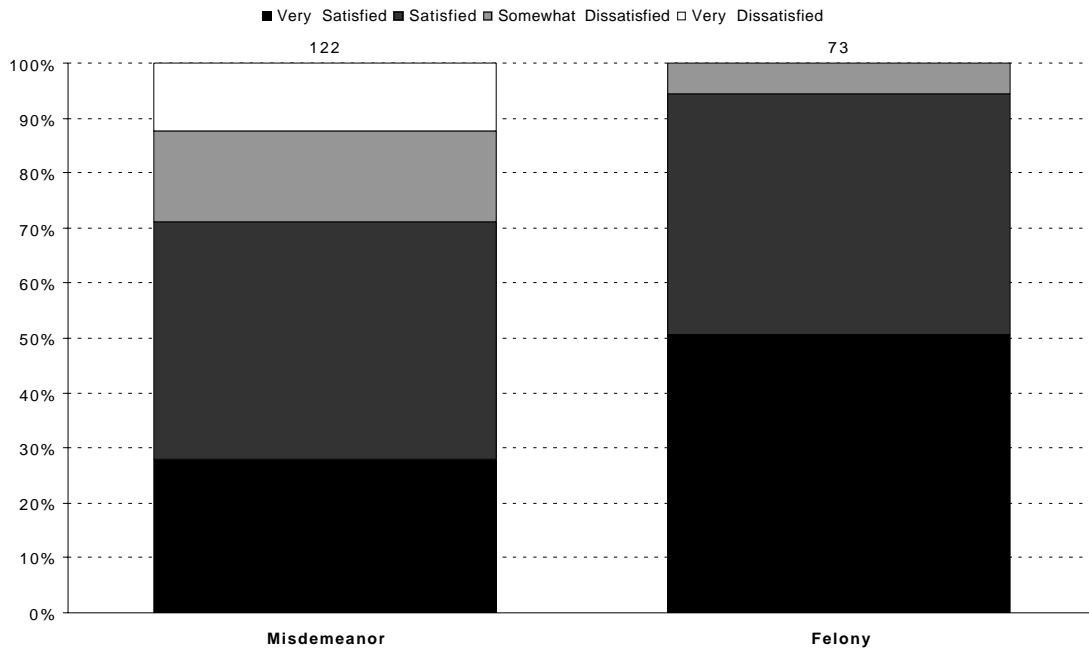


Figure VII-36
Maryland Panel: Satisfaction With Case Assignments
(2000 Survey)



Quality of Other Counsel – How to Read the Charts

We asked Maryland and California Central panel attorneys whether co-defendants' CJA counsel had the appropriate experience and capabilities. In the 1998 survey, they were not asked to rate types of attorney as excellent, good, fair, or poor. Because California Northern panel attorneys were, we did not ask them this co-counsel question. We asked the co-counsel question of Maryland and California Central panel attorneys in 2000 to compare the results with their 1998 responses.

Figures VII-37 through VII-40 summarize the data. Possible responses were "always," "usually," "sometimes," and "rarely or never." More positive responses are represented as darker and lower portions of vertical bars stretching from 0% to 100%. The number of responses on which each bar is based is given at the top of the bar.

VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-37
Maryland Panel:
Other Counsel Appropriately Experienced and Capable
(1998 Survey)

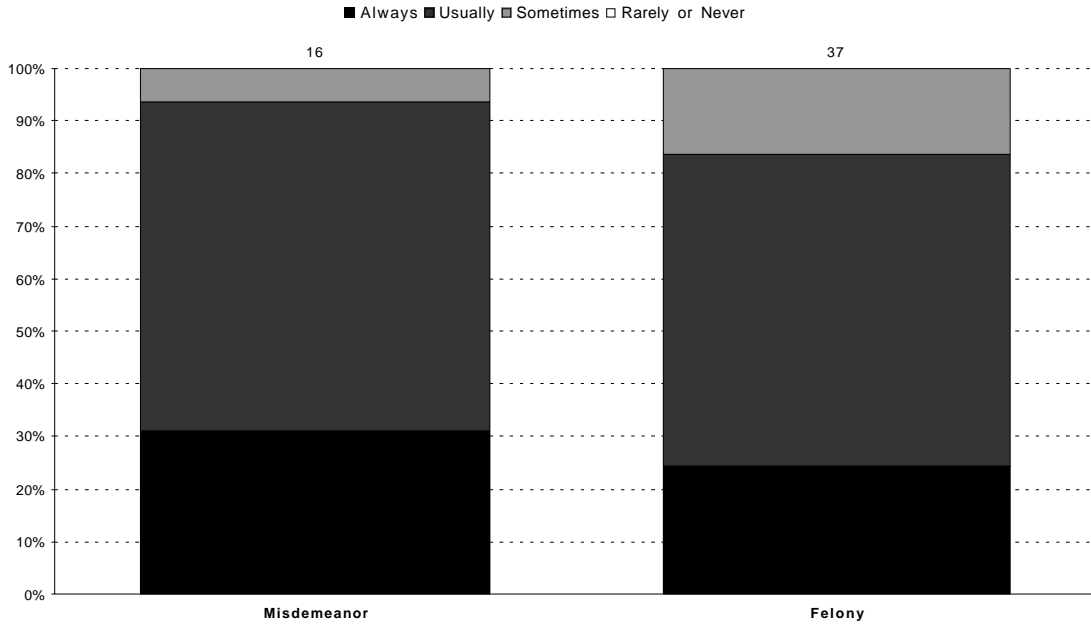
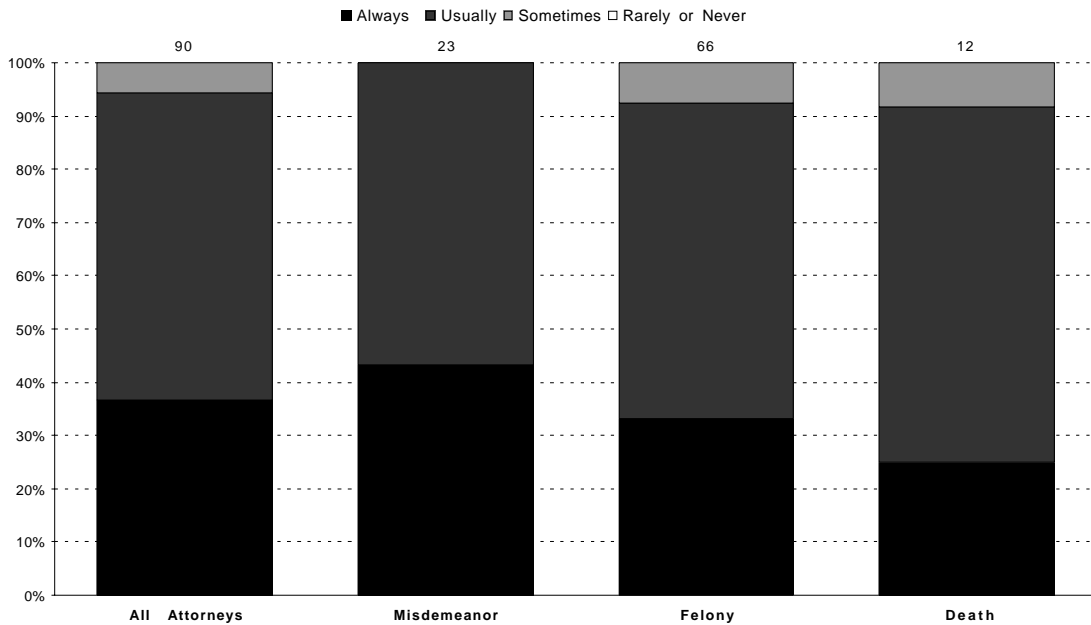


Figure VII-38
Maryland Panel:
Other Counsel Appropriately Experienced and Capable
(2000 Survey)



VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-39
California Central Panel:
Other Counsel Appropriately Experienced and Capable
(1998 Survey)

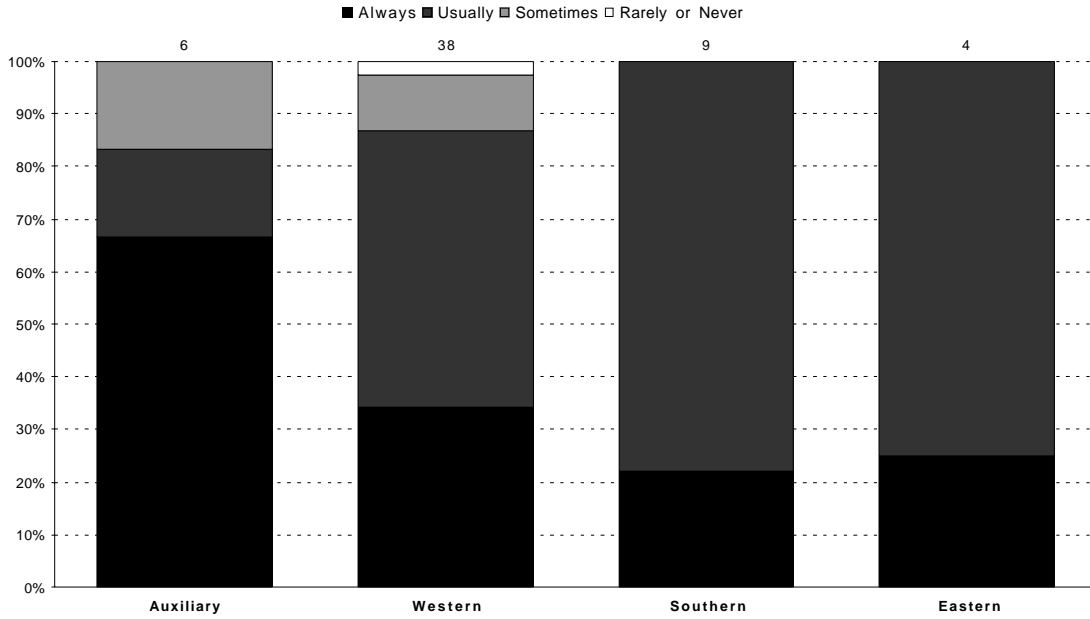
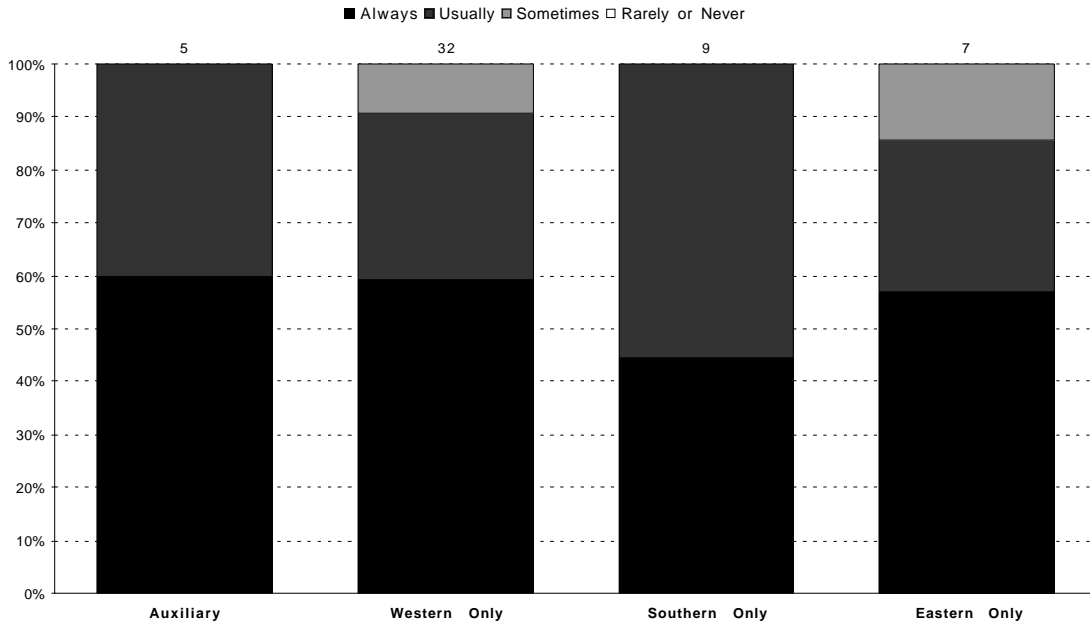


Figure VII-40
California Central Panel:
Other Counsel Appropriately Experienced and Capable
(2000 Survey)



Investigative and Expert Assistance – How to Read the Charts

We asked California Northern panel attorneys how often their ability to hire investigative and expert assistance on CJA-assigned cases was reasonable. Figure VII-41 displays the data for San Francisco/Oakland Panel attorneys and Figure VII-42 displays the data for San Jose Panel attorneys. Darker and lower portions of the vertical bars represent more positive responses, and the number of responses represented by each bar is given at the top of the bar.

VII. EFFECTIVENESS OF REPRESENTATION

Figure VII-41
California Northern San Francisco/Oakland Panel:
 How often is the ability to hire investigative and expert assistance on CJA-assigned cases reasonable?

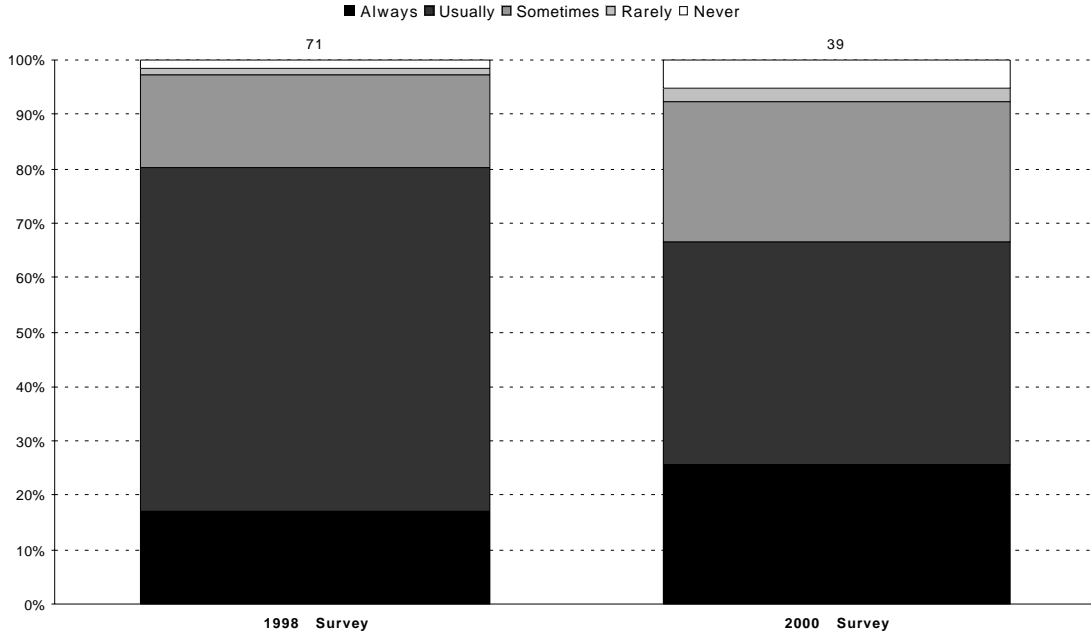
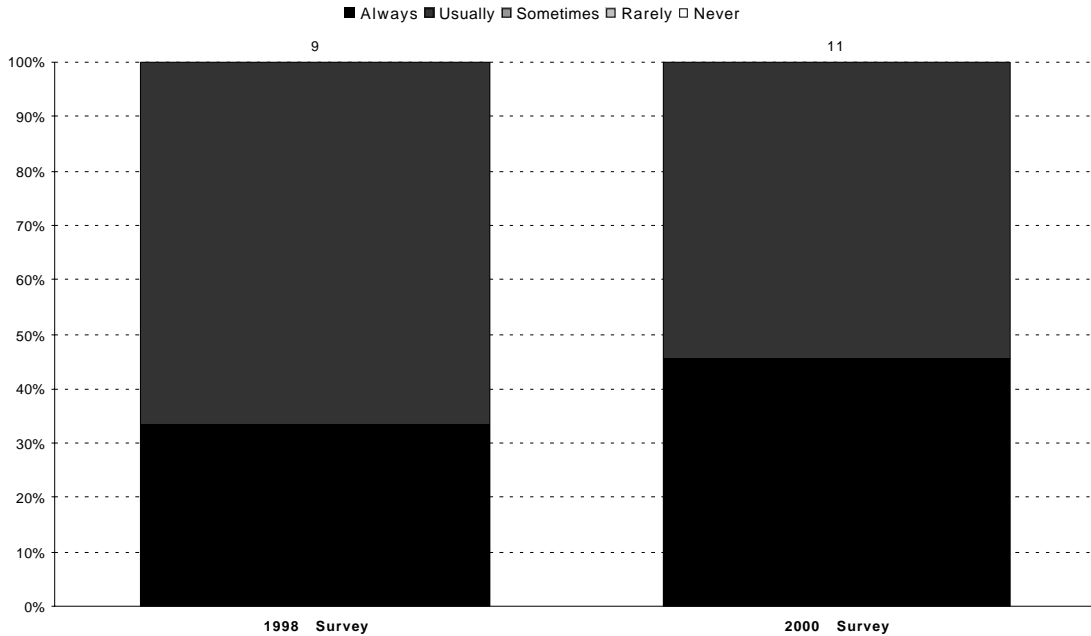


Figure VII-42
California Northern San Jose Panel:
 How often is the ability to hire investigative and expert assistance on CJA-assigned cases reasonable?



VIII. Fairness to Counsel

Attorneys in all three districts were very complimentary of their CJA supervising attorneys (e.g., “fantastic resource,” “tremendous asset,” “excellent job!” in Maryland; “very outstanding job,” “GREAT development,” “turned a nightmare completely around” in California Central; “great resource” in California Northern).²²²

Attorneys want to be paid promptly and reliably for their CJA work. They do not mind having their vouchers reviewed or, in many cases, even adjusted if the review is fair and consistent. Having one person review all vouchers for the district goes a long way in making the reviews consistent. Attorneys even appear to be more concerned with being paid promptly and according to consistent standards than with being paid more dollars per hour.

Attorneys also appreciate knowing there is a single person who can answer their questions about CJA matters, from how review of their voucher is proceeding to whether they can bill for certain tasks.²²³ In Maryland one attorney told us that Ms. Shearer was very helpful in his effort to find a testifying expert. She was able to provide the attorney with a list of experts known to be willing to provide services at rates the court is willing to pay. He was especially happy because experts on this list are persons known and respected by the court.

In our interviews with attorneys, most of them told us that the CJA supervising attorney should have experience as a criminal defense attorney. We believe that although it may not be necessary to make this a requirement it does help inspire panel attorneys’ confidence. Mr. Schnack in California Central did not have criminal defense experience, but he earned panel attorneys’ confidence by reviewing their vouchers promptly and according to consistent standards.

Of course, fairness to counsel is not only a goal in its own right, it also is a means of attracting qualified attorneys to the CJA program. The following pages summarize our focus group and survey data related to fairness.

Voucher Review Consistency

As part of our focus-group proceedings we presented all participants at each focus group with three sample vouchers to review, based on vouchers actually submitted to the district. One voucher was an attorney voucher for a noncapital case, another was an attorney voucher for a capital habeas case, and the third was a voucher for an expert or investigator.

All of the evidence we have seen suggests that most vouchers are and should be paid in full. The vouchers we selected for the focus groups were selected because they posed interesting review challenges. The discussions made two things clear: (1) different reviewers would reach different decisions on how to act on these vouchers, and (2) there were no strong feelings that anyone else’s

²²² Note that the CJA supervising attorneys in Maryland and California Central have contact with a larger proportion of the panels in those districts because they review *all* payment vouchers.

²²³ Attorneys expressed considerable reluctance to trouble judges with these matters.

decision would be wrong. That means that vouchers actually requiring a careful discretionary review – as opposed to the majority of vouchers that are more obviously reasonable in their entirety – are susceptible to inconsistent outcomes if different decision makers are reviewing them. On the other hand, if one person with good and reliable judgment reviews all of the vouchers for the district, results are likely to be more consistent, while still acceptable to both the court and the attorneys.

The attorneys we spoke with who had had vouchers adjusted by the three CJA supervising attorneys in this study told us that although they did not always agree with the adjustments, they accepted them as the result of good and fair judgment.

Panel Management

Panel attorneys in California Northern are largely satisfied with how their panels are managed.

We asked California Northern panel attorneys how satisfied they were with the process by which they were appointed to the CJA panel and the process by which they were assigned to CJA cases. We did not ask this question of attorneys in Maryland or California Central, because we devised the question after the 1998 surveys were sent out in those districts and we wanted the 2000 surveys to be similar to the 1998 surveys within each district.

Although the CJA supervising attorney does not have a major role in panel management in California Northern, we did notice some improvement in attorney satisfaction between surveys – from a majority satisfied to a large majority satisfied. The proportion of attorneys very satisfied or satisfied with the panel appointment process increased from 73% to 86% (see Figure VIII-1). The proportion very satisfied or satisfied with the case-assignment process increased from 59% to 82% (see Figure VIII-2). Of the attorneys who participated in both surveys, however, approximately one sixth gave more negative answers in the second survey.

Assistance from the Court

A clear advantage of having a CJA supervising attorney is the Attorney's being a central, available, reliable, and knowledgeable source of information about CJA procedures and policies.

We asked panel attorneys in Maryland and California Central to what extent they were satisfied with the availability and ability of court personnel to answer questions concerning completion of vouchers (e.g., allowable expenses, hourly rates) and obtaining resources (e.g., how to apply for investigative, expert, and other services).

Maryland panel attorneys showed considerably greater satisfaction after the hiring of the CJA supervising attorney. (See Figures VIII-3 and VIII-4.) Nearly all Misdemeanor Panel attorneys in Maryland reported that they were satisfied or very satisfied in both surveys. In 1998 a substantial majority of Felony Panel at-

torneys reported they were satisfied or very satisfied – 64% – but in 2000 *all* Felony Panel attorneys reported they were satisfied or very satisfied.

California Central panel attorneys showed approximately the same satisfaction improvement – from 76% satisfied or very satisfied in 1998 to 93% satisfied or very satisfied in 2000. (See Figure VIII-5.)

We asked panel attorneys in Maryland and California Central whether the court provided them with adequate information concerning completion of CJA voucher forms and supporting documentation.

A large majority of Maryland’s Misdemeanor Panel said “yes” in both surveys – 86% in 1998 and 89% in 2000. The number of Felony Panel attorneys saying “yes” increased substantially between 1998 and 2000 – from 75% to 99%. (See Figures VIII-6 and VIII-7.)

Most California Central panel attorneys also responded “yes” in both surveys – 73% in 1998 and 93% in 2000 – with a marked increase in proportion responding “yes” observed for all panels except the Eastern Division’s. (See Figures VIII-8 and VIII-9.) The increase was especially large for capital habeas attorneys – from 53% to 97%.

We asked California Northern panel attorneys a somewhat different question – how satisfied were they with the availability of information on CJA compensation and reimbursement procedures? Proportions saying that they were satisfied or very satisfied were not quite as high as proportions expressing satisfaction in Maryland or California Central, but there was some improvement between surveys – from 60% in 1998 to 77% in 2000 – especially for capital habeas attorneys – from 31% in 1998 to 73% in 2000. (See Figures VIII-10 and VIII-11.)

Payment Satisfaction

Attorneys’ satisfaction with their payments for CJA work depends upon the speed and reliability with which they are paid.

Payment Satisfaction in California Northern. California Northern panel attorneys expressed considerably more concern with *how* they were paid than with *how much* they were paid.

We asked California Northern panel attorneys four questions concerning their satisfaction with how they are paid for CJA representations. We did not ask these questions of Maryland or California Central panel attorneys because we devised the questions after the 1998 survey of panel attorneys in those districts and we wanted the 2000 survey to be substantially similar to the 1998 survey.

We asked attorneys how satisfied they were with the process by which they are compensated and reimbursed for their CJA services. Only a minority responded that they were satisfied or very satisfied, but this minority grew between surveys – from 31% in 1998 to 43% in 2000. (See Figures VIII-12 and VIII-13.) Satisfaction, however, declined for the San Jose Panel – from 64% in 1998 to 50% in 2000.

We asked California Northern attorneys how often compensation for their time on CJA-assigned cases was reasonable. Most attorneys responded that compensation was always or usually reasonable, but this proportion dropped a bit

between surveys – from 73% in 1998 to 64% in 2000. (See Figure VIII-14.) We also asked them how often reimbursement for their expenses on CJA-assigned cases was reasonable. A substantial majority in both surveys responded that reimbursement always or usually was reasonable – 83% in 1998 and 80% in 2000. (See Figure VIII-15.)

California Northern panel attorneys expressed considerably lower satisfaction with the speed with which their CJA vouchers were paid, although there was some improvement overall between surveys. (See Figures VIII-16 and VIII-17.) In 1998 several attorneys, most of whom were capital habeas attorneys, complained in their general comments about how long it took them to get paid. In 2000 the only volunteered complaint was from a San Jose Panel attorney.

Mathematical and technical reviews of vouchers in California Northern formerly were done by the federal defender's office, but now they are done by the clerk's office. The federal defender's office in San Francisco used to be slow, but the federal defender's office in San Jose used to be quick. The clerk's office has been not as slow as the former, but not as quick as the latter. In answer to survey questions, only a minority of San Francisco/Oakland and capital habeas attorneys said that payment speed was always or usually reasonable, but this proportion increased somewhat between surveys – from 17% in 1998 to 28% in 2000. A substantial proportion reported that payment speed was never reasonable, although this proportion declined between surveys – from 27% in 1998 to 14% in 2000. We observed an opposite pattern for San Jose Panel attorneys. In 1998 most – 64% – reported that payment speed was always or usually reasonable and very few – 9% – reported that it was never reasonable. In 2000 considerably fewer San Jose attorneys reported that payment speed was always or usually reasonable – 23% – and a larger proportion reported that payment speed was never reasonable – 23%.

Voucher Review. Panel attorneys on most of the panels in these three districts typically submit approximately 3 payment vouchers per year. Attorneys on California Central's Western Division's Regular and Auxiliary Panels (serving the Los Angeles court) typically submit approximately one dozen vouchers per year. Some attorneys in California Central reported submitting as many as 100 vouchers per year, some in California Northern reported submitting as many as 20, but no attorney in Maryland reported submitting as many as 15. (See Figures VIII-18, VIII-23, VIII-28, and VIII-29.)

A greater proportion of California Central panel attorneys reported voucher reductions than attorneys in the other two districts. In 1998, 65% of California Central panel attorneys reported voucher reductions, but in 2000 this proportion increased to 72%. (See Figure VIII-24.)

In California Northern and Maryland a minority of attorneys reported voucher reductions, and this proportion actually declined a bit between surveys – from 50% in California Northern and 44% in Maryland in 1998 to 39% in both districts in 2000. (See Figures VIII-19 and VIII-30.)

We asked panel attorneys in Maryland and California Central whether they were given an explanation of voucher reductions proposed or imposed. There was a very large increase in the proportion of attorneys responding always or usu-

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ally in both districts – from 39% to 85% in Maryland and from 39% to 97% in California Central. (See Figures VIII-20 and VIII-25.)

We also asked panel attorneys in Maryland and California Central whether they were given a reasonable opportunity to contest voucher reductions proposed or imposed. There was a very large increase in proportion of attorneys responding always or usually in both districts to this question also – from 23% to 78% in Maryland and from 36% to 94% in California Central. (See Figures VIII-21 and VIII-26.) We asked California Northern panel attorneys a similar question – how often was their opportunity to challenge reductions to their CJA vouchers reasonable? The proportion responding always or usually was approximately half in both surveys – 47% in 1998 and 52% in 2000. (See Figure VIII-31.)

We asked panel attorneys in all three districts how often voucher reductions were reasonable. There was an increase in proportion responding always or usually in Maryland – from 17% in 1998 to 50% in 2000 - and California Central – from 11% in 1998 to 66% in 2000 – but not in California Northern – 32% for proposed reductions and 39% for imposed reductions in 1998; 31% for proposed reductions and 33% for imposed reductions in 2000. (See Figures VIII-22, VIII-27, VIII-32, and VIII-33.)

Panel Management – How to Read the Charts

We asked California Northern panel attorneys how satisfied they were with the process by which they were appointed to the CJA panel (see Figure VIII-1) and the process by which they were assigned to CJA cases (see Figure VIII-2). Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of each bar. Each figure gives data for both the 1998 survey (First Survey) and the 2000 survey (Second Survey).

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Figure VIII-1
California Northern Panel:
 The process by which you were appointed to the CJA panel.

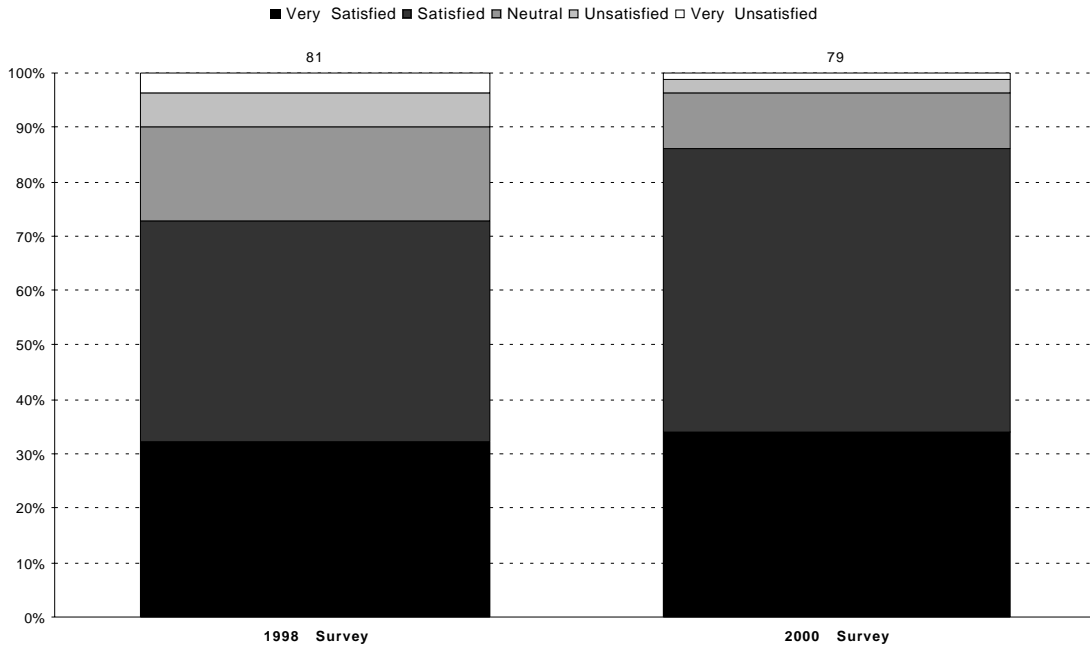
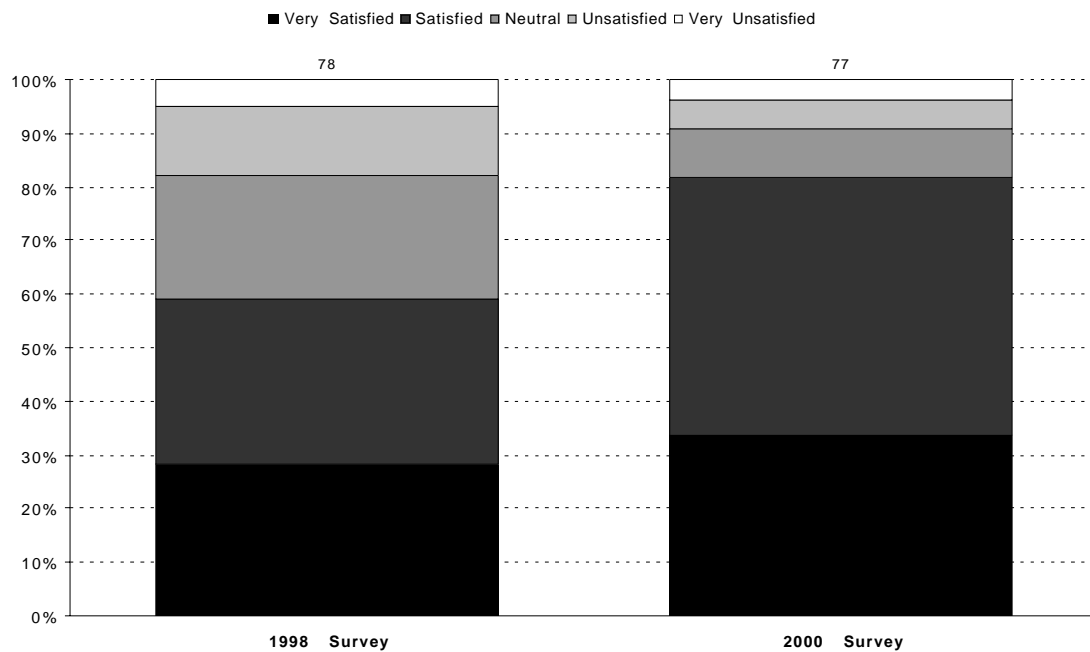


Figure VIII-2
California Northern Panel:
 The process by which you have been assigned to CJA cases.



Availability and Ability of Court Personnel – How to Read the Charts

We asked panel attorneys in Maryland and California Central to what extent they were satisfied with the availability and ability of court personnel to answer questions concerning completion of vouchers (e.g., allowable expenses, hourly rates) and obtaining resources (e.g., how to apply for investigative, expert, and other services). Figures VIII-3 and VIII-4 display responses separately for Misdemeanor Panel and Felony Panel attorneys in Maryland. Figure VIII-5 displays responses for California Central. Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of each bar.

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Figure VIII-3
Maryland Panel:
Availability and Ability of Court Personnel (1998 Survey)

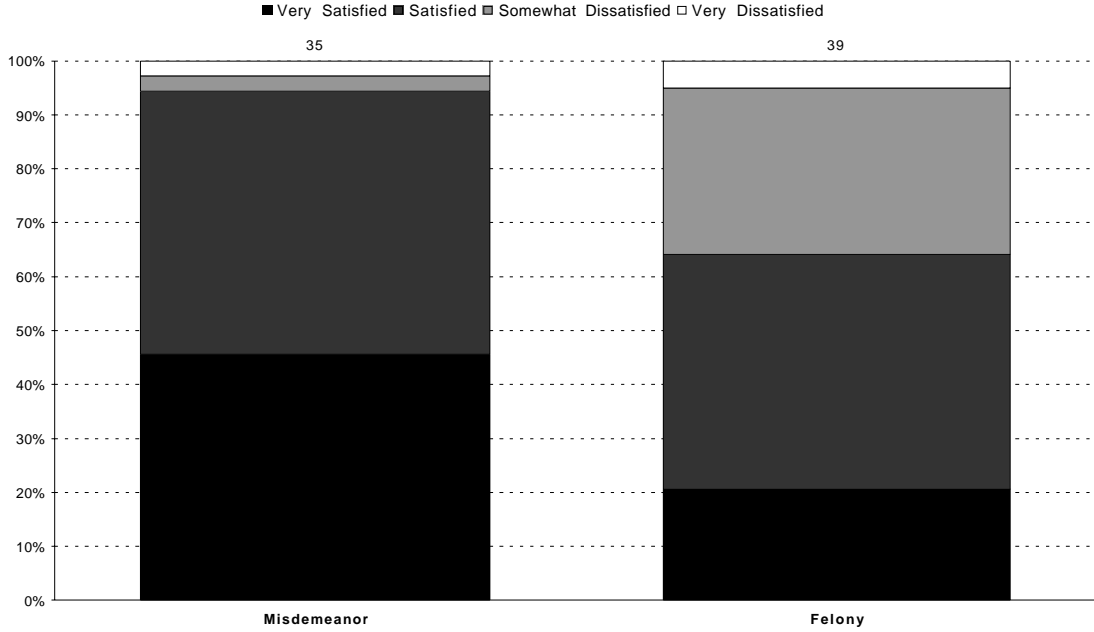


Figure VIII-4
Maryland Panel:
Availability and Ability of Court Personnel (2000 Survey)



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Figure VIII-5
California Central Panel:
Availability and Ability of Court Personnel



Information from Court – How to Read the Charts

We asked panel attorneys in Maryland and California Central whether the court provided them with adequate information concerning completion of CJA voucher forms and supporting documentation. Figures VIII-6 through VIII-9 show the data separately for each panel within each district for each survey year. The number responding “yes” is represented by the dark and lower portion of a vertical bar stretching from 0% to 100%, with the percentage responding “yes” printed at the top of this portion of the bar. The number of responses on which each bar is based is given at the top of each bar.

We asked a somewhat different question of California Northern panel attorneys – we asked them how satisfied they were with the availability of information on CJA compensation and reimbursement procedures. Figure VIII-10 plots the results for the 1998 survey and Figure VIII-11 plots the results for the 2000 survey. Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of each bar.

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Figure VIII-6
Maryland Panel:
Adequate Information From Court (1998 Survey)

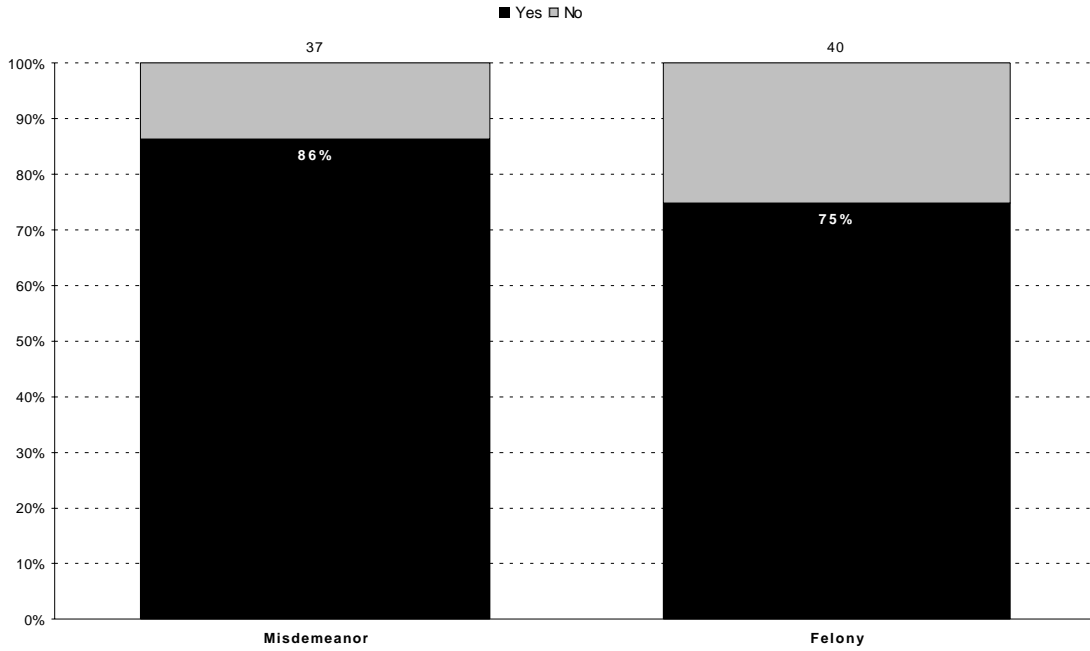
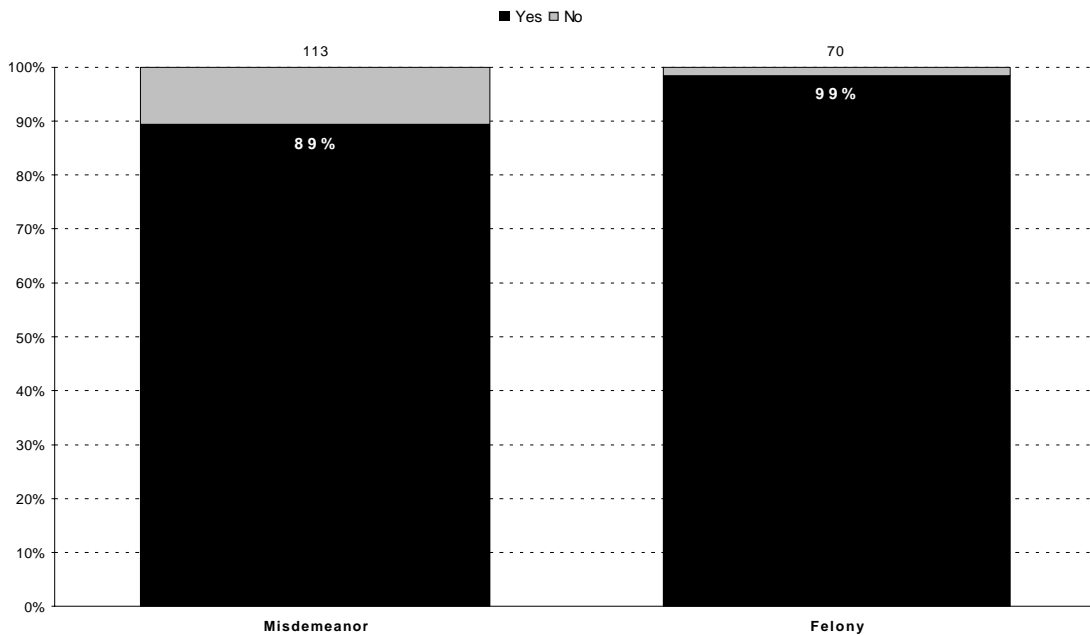


Figure VIII-7
Maryland Panel:
Adequate Voucher Information (2000 Survey)



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Figure VIII-8
California Central Panel:
Adequate Voucher Information (1998 Survey)

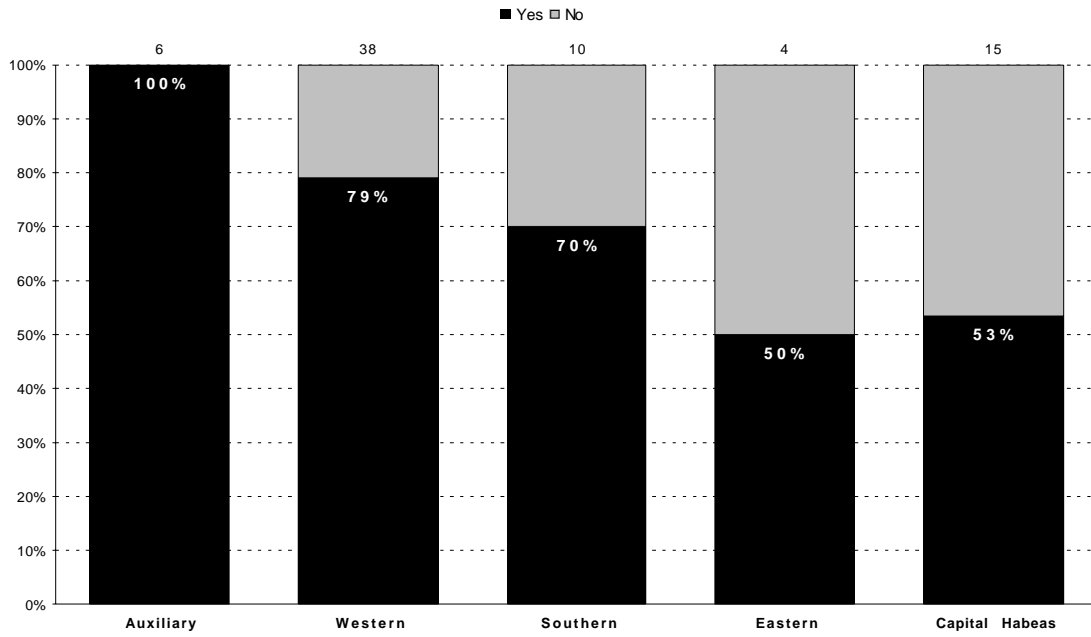
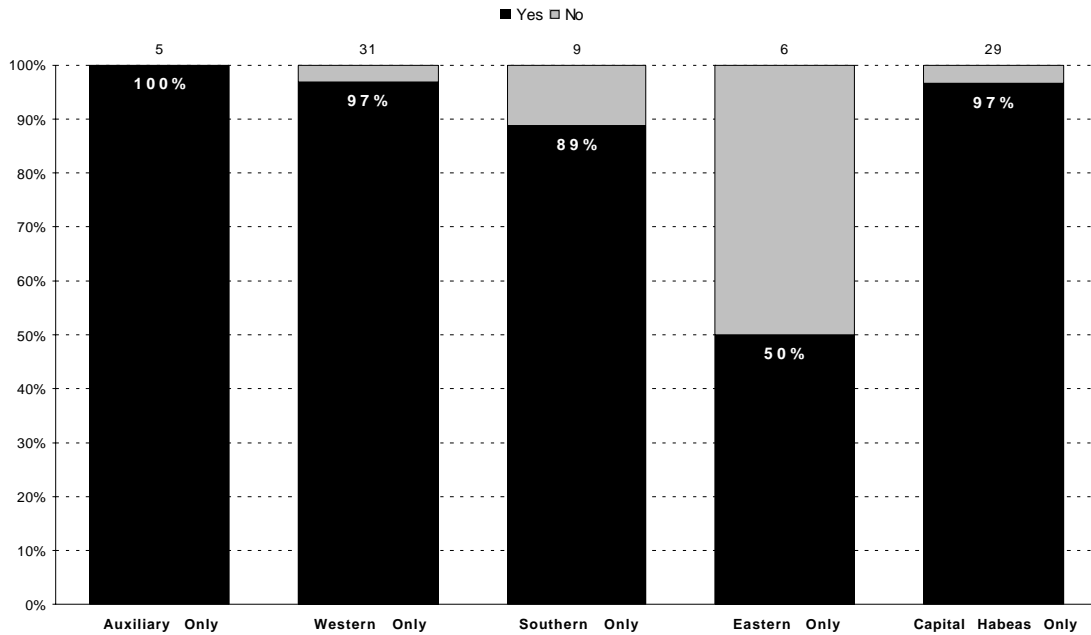


Figure VIII-9
California Central Panel:
Adequate Voucher Information From Court (2000 Survey)



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Figure VIII-10
California Northern Panel:
Availability of Payment Information (1998 Survey)

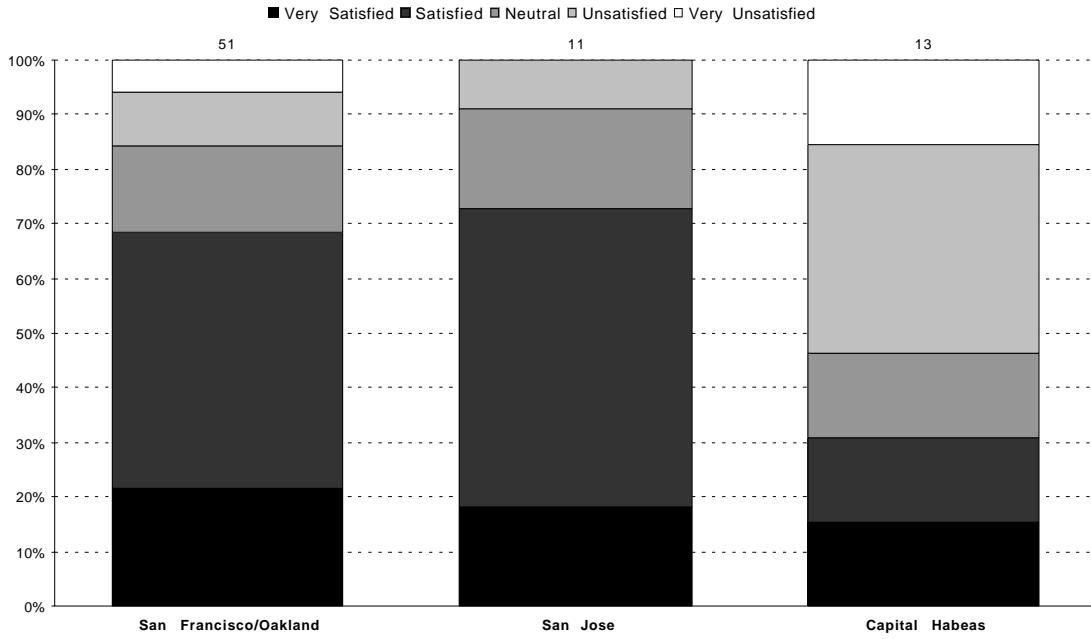
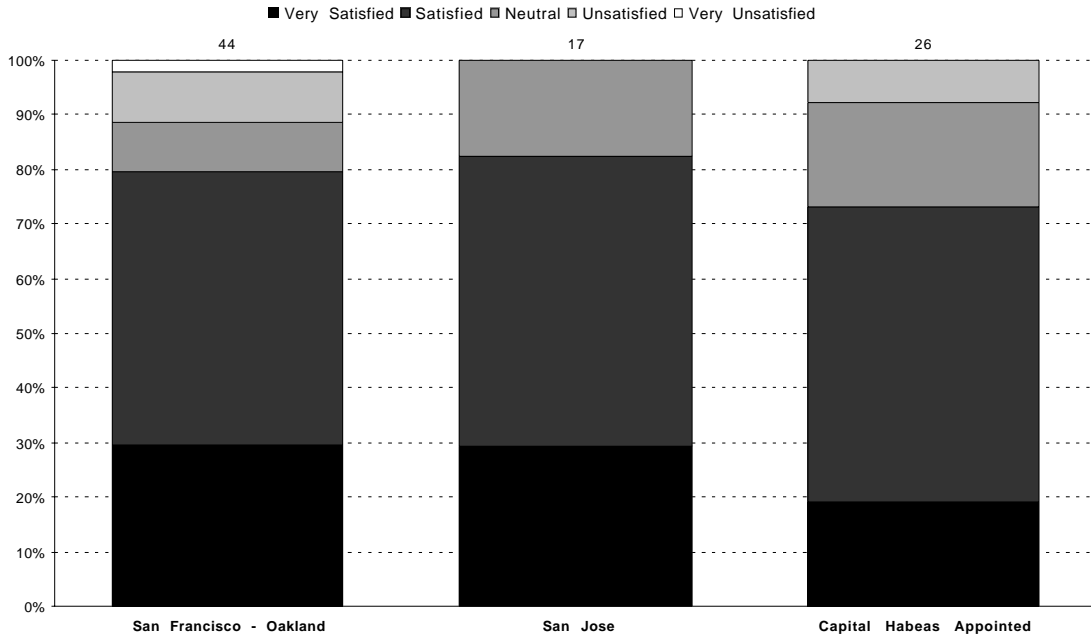


Figure VIII-11
California Northern Panel:
Availability of Payment Information (2000 Survey)



Payment Satisfaction in California Northern – How to Read the Charts

We asked California Northern panel attorneys four questions concerning their satisfaction with how they are paid for CJA representations.

We asked attorneys how satisfied they were with the process by which they are compensated and reimbursed for their CJA services. Figure VIII-12 plots the results for the 1998 survey and Figure VIII-13 plots the results for the 2000 survey.

We also asked California Northern attorneys how often three separate things were reasonable – compensation for their time on CJA-assigned cases (Figure VIII-14), reimbursement for their expenses on CJA-assigned cases (Figure VIII-15), and the speed with which their CJA vouchers were paid (Figures VIII-16 and VIII-17).

Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of each bar.

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Figure VIII-12
California Northern Panel:
 The process by which you are compensated and reimbursed for your CJA services.
 (1998 Survey)

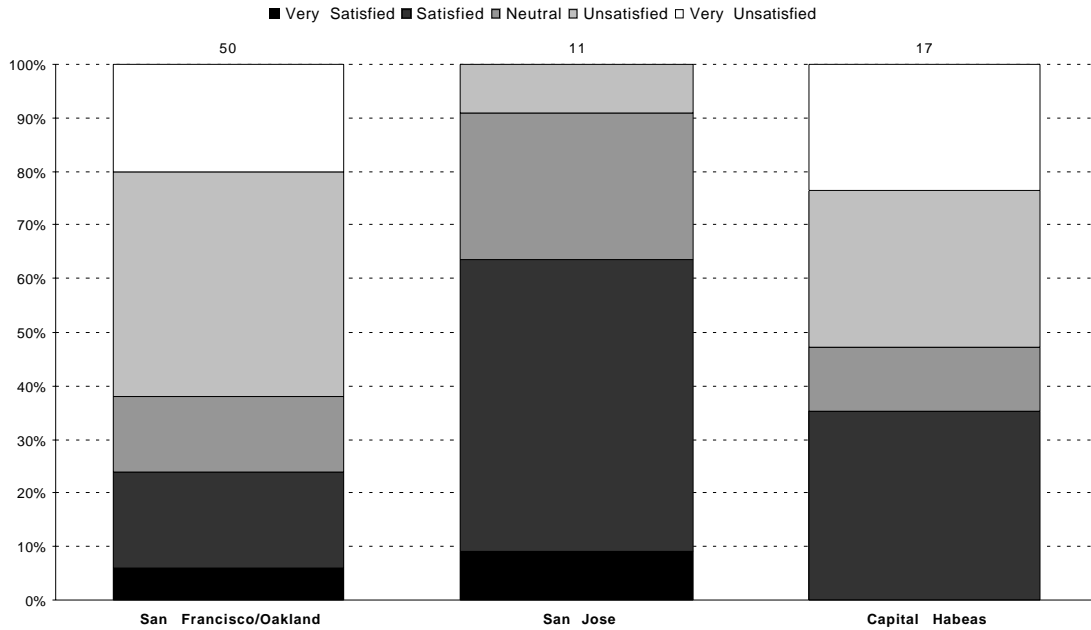
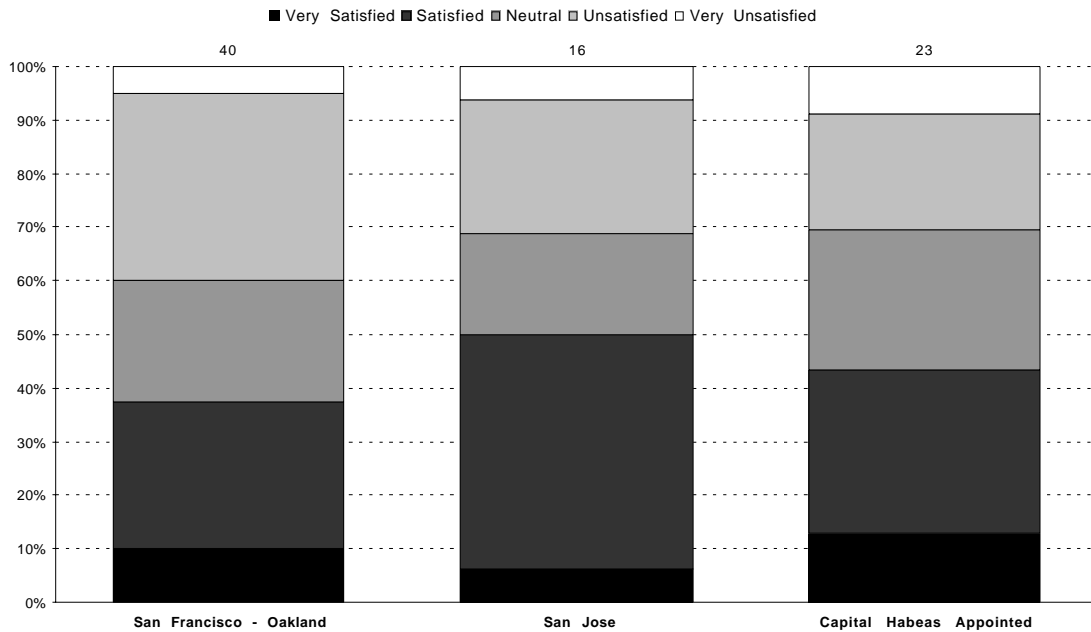


Figure VIII-13
California Northern Panel:
 The process by which you are compensated and reimbursed for your CJA services.
 (2000 Survey)



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Figure VIII-14
California Northern Panel:
How often is the compensation for attorney time on CJA-assigned cases reasonable?

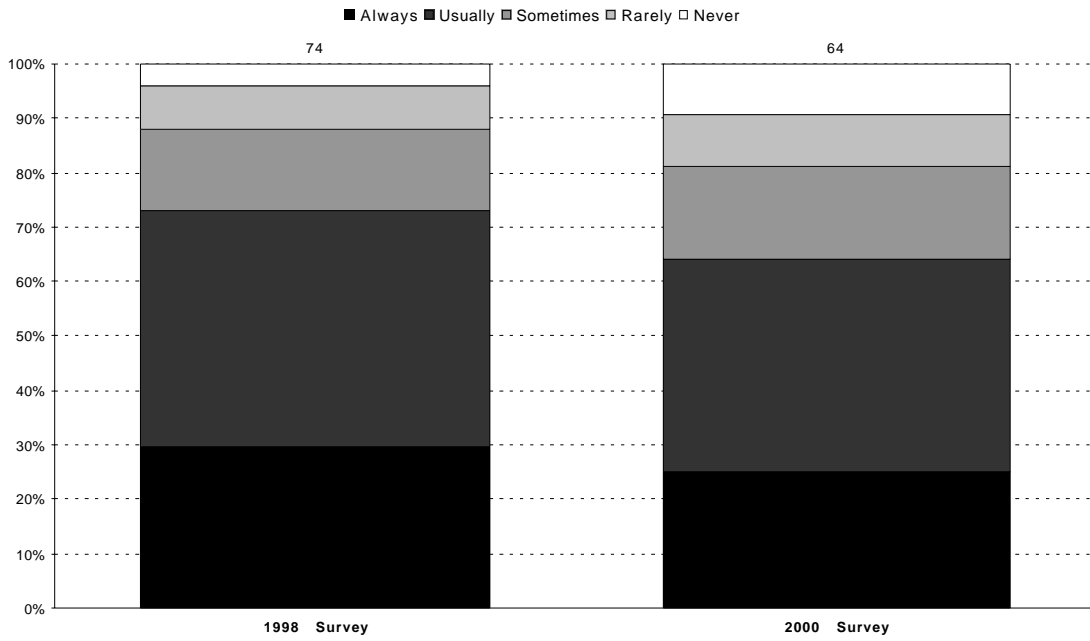
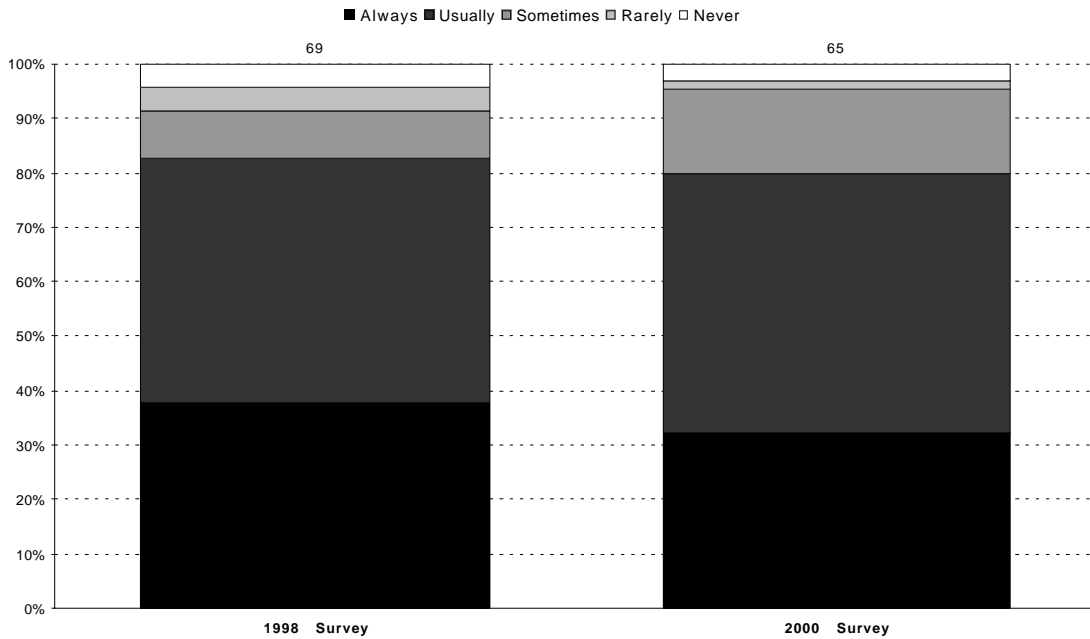


Figure VIII-15
California Northern Panel:
How often is the reimbursement for expenses on CJA-assigned cases reasonable?



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Figure VIII-16
California Northern Panel:
 How often is the speed with which CJA vouchers have been paid reasonable?
 (1998 Survey)

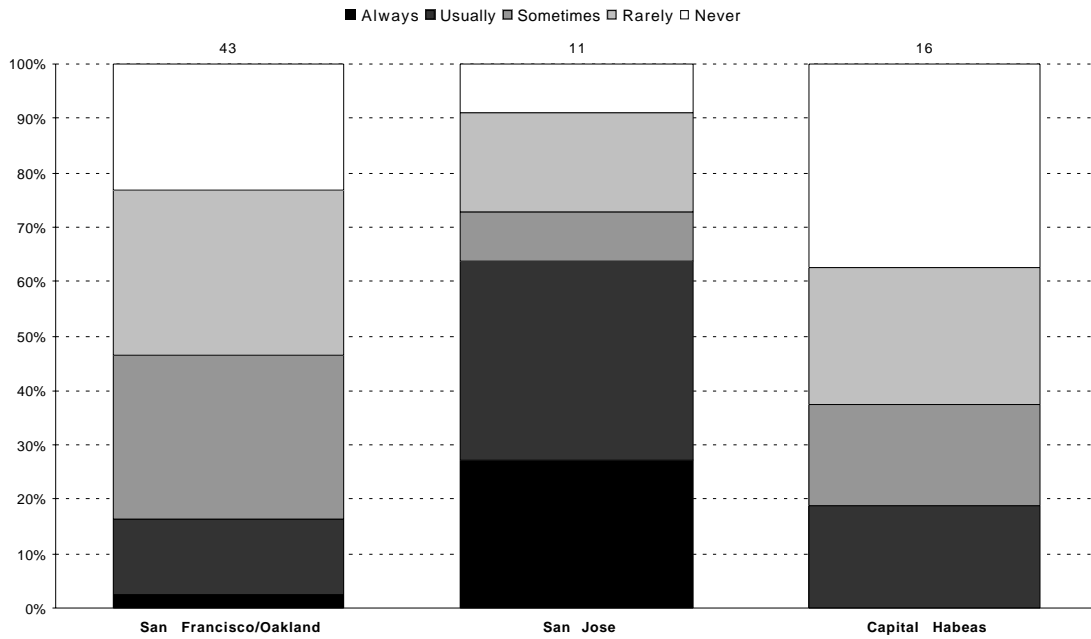
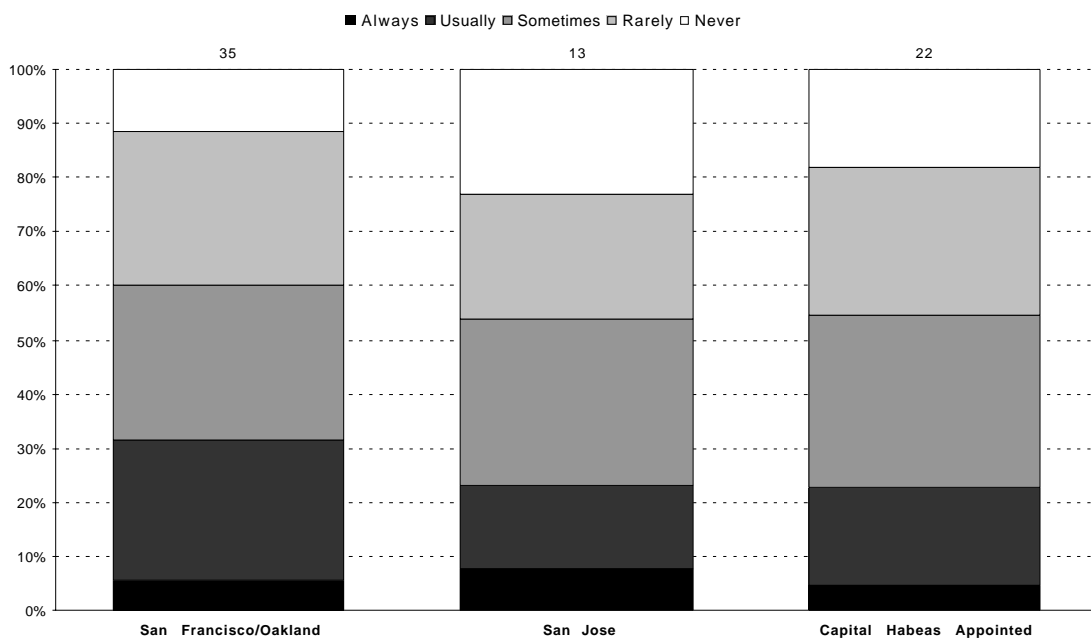


Figure VIII-17
California Northern Panel:
 How often is the speed with which CJA vouchers have been paid reasonable?
 (2000 Survey)



Satisfaction with Voucher Review – How to Read the Charts

Figures VIII-18 through VIII-33 give data on panel attorneys satisfaction with the courts' reviews of their vouchers. Figures VIII-18 through VIII-22 display data from Maryland panel attorneys, Figures VIII-23 through VIII-27 display data from California Central panel attorneys, and Figures VIII-28 through VIII-33 display data from California Northern panel attorneys.

Box-and-Whisker Charts. Figures VIII-18, VIII-23, VIII-28, and VIII-29 are box-and-whisker charts of the number of vouchers submitted by each attorney in one year. We do not have data for Maryland or California Central in 1998, but we do have data for California Northern in 1998 and for all three districts in 2000. We asked attorneys whether they had been on a panel continuously for the past two years and how many vouchers they had submitted in that time. For attorneys who had been on the panel for two years, we computed the number of vouchers submitted per year by dividing the number of vouchers submitted in two years by two. For attorneys who had been on the panel less than two years, we computed the number of vouchers submitted per year by dividing the number of vouchers submitted in the previous two years by the length of time they had been on the panel.

The box-and-whisker charts give the maximum, third quartile, median, first quartile, and minimum of each set of data. These particular charts are plotted on a logarithmic scale, which means that the vertical distance between 1 and 10 is the same as the vertical distance between 10 and 100. The number of responses on which each box-and-whisker chart is based is given in the chart's caption below the chart.

The two ends – on the vertical scale – of each chart's "box" correspond to the third and first quartile. The position of the box shows where the middle half of the data fall. The median is represented as a horizontal line through the box. Half of the responses are greater than or equal to the median and half are less than or equal to the median.

The whiskers are the lines extending out from the ends of the box. In this version of a box-and whisker chart the whiskers extend to the highest number reported and to the lowest number reported.

Note that to accommodate the fact that zero cannot be plotted on a logarithmic scale, all values less than or equal to .1 are plotted at .1 and regarded as equal to 0.

The box-and-whisker charts in Figures VIII-18, VIII-23, VIII-28, and VIII-29 are labeled with the values for the maximum, third quartile, median, first quartile, and minimum. Note that it is possible for two or more of these values to be the same. For example, the third quartile and the median are the same for California Central's Eastern Division in the 2000 survey (Figure VIII-23), so a single line representing both the third quartile and the median is labeled "3, 3."

Data are plotted separately for each panel in each district. For California Central, where some attorneys were on more than one panel, only attorneys on just one panel are included.

Frequency of Reductions at Least Proposed. Attorneys were asked how often reductions to their vouchers were proposed or imposed. In the 1998 survey of Maryland and California Central attorneys we asked, “approximately what percentage of your CJA payment vouchers submitted to the district court were reduced or proposed to be reduced?” In both surveys of California Northern attorneys and the 2000 survey of Maryland and California Central attorneys we asked attorneys to report how many vouchers they had submitted in the previous two years. We asked them to report either for how many vouchers or for what percentage of vouchers reductions were proposed. As a separate question we asked for how many or for what percentage reductions were imposed.

We converted all responses to percentages and then classified responses according to five categories:

- More than 20%.
- Less than or equal to 20%, but more than 10%.
- Less than or equal to 10%, but more than 5%.
- Less than or equal to 5%, but more than none.
- None.

Figure VIII-19 shows the results for Maryland, Figure VIII-24 shows the results for California Central, and Figure VIII-30 shows the results for California Northern. Darker and lower portions of the bar represent larger percentage categories. The percentage of attorneys responding “more than 20%” is printed at the top of the darkest portion of the bar. The percentage of attorneys responding with some percentage other than none is printed at the bottom of the lightest portion of the bar. The number of responses on which each bar is based is given at the top of each bar.

Reasonableness of Reductions and Reduction Procedures. We asked panel attorneys in Maryland and California Central whether they were given an explanation of the reductions or proposed reductions. Possible responses were “always,” “usually,” “sometimes,” “rarely,” or “never.” Figure VIII-20 displays the data for Maryland and Figure VIII-25 displays the data for California Central.

We asked panel attorneys in Maryland and California Central whether they were given a reasonable opportunity to contest the reductions or proposed reductions. Figure VIII-21 displays the data for Maryland and Figure VIII-26 displays the data for California Central. We asked California Northern panel attorneys a similar question – how often was their opportunity to challenge reductions to their CJA vouchers reasonable? Figure VIII-31 displays results for this question.

We asked panel attorneys in Maryland and California Central if they thought that any reductions actually imposed were reasonable. Figure VIII-22 displays the results for Maryland and Figure VIII-27 displays the results for California Central. We asked California Northern panel attorneys two questions about the reasonableness of reductions – how often were proposed reductions to their CJA vouchers reasonable, and how often were final reductions to their CJA vouchers reasonable? Figures VIII-32 and VIII-33 display the responses to these two questions.

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Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of each bar.

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Figure VIII-18
Maryland Panel:
Number of Vouchers Per Year (2000 Survey)

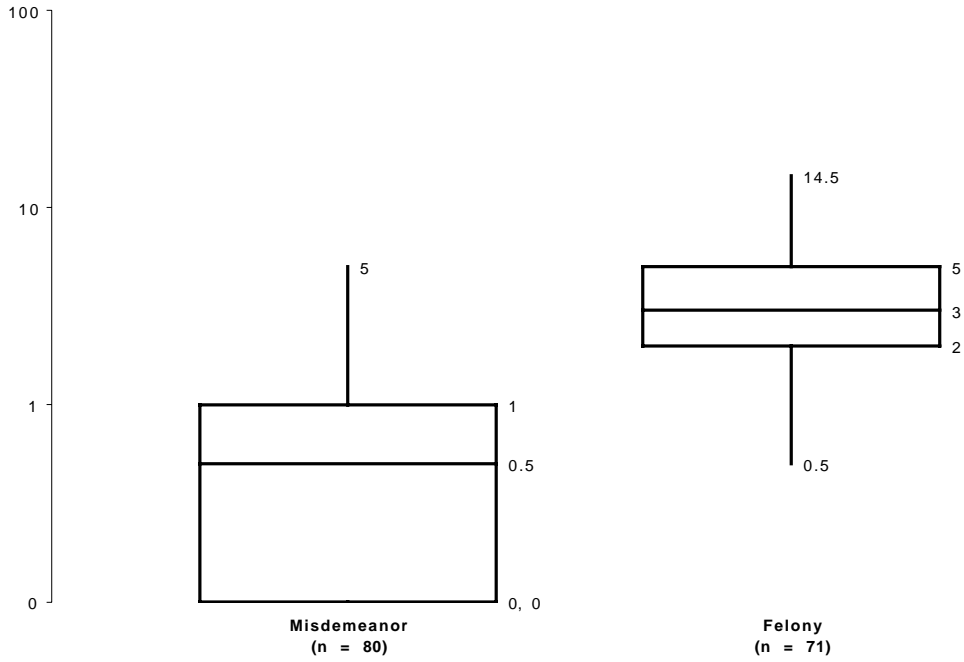
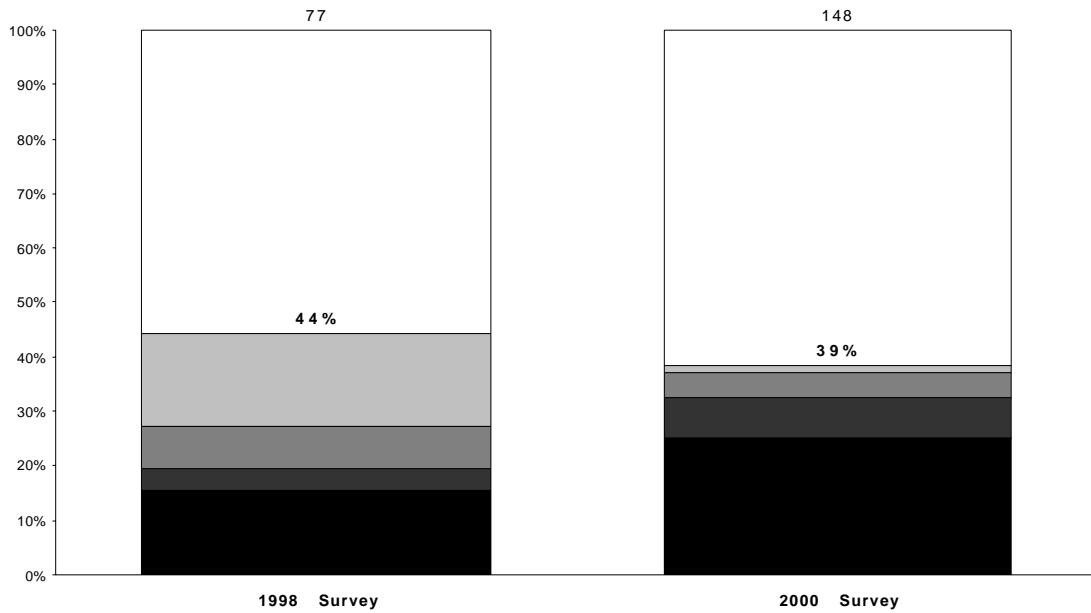


Figure VIII-19
Maryland Panel:
Frequency of Reductions at Least Proposed

■ More Than 20% ■ More Than 10%, Up to 20% ■ More Than 5%, Up to 10% □ More Than None, Up to 5% □ None



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Figure VIII-20
Maryland Panel:
 Were you given an explanation of the reductions or proposed reductions?

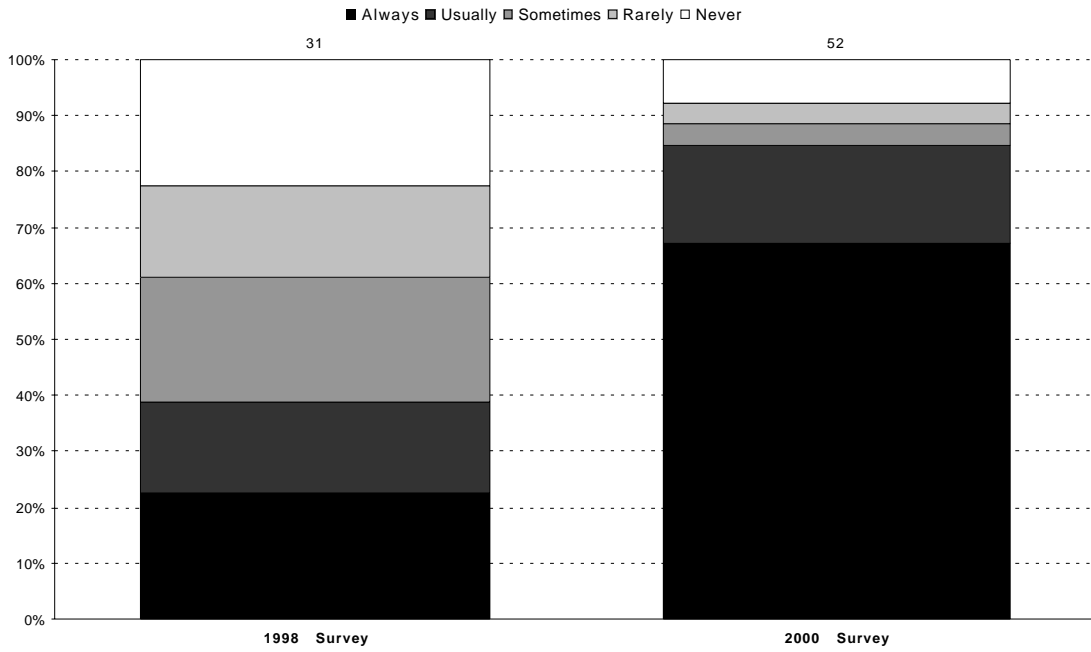
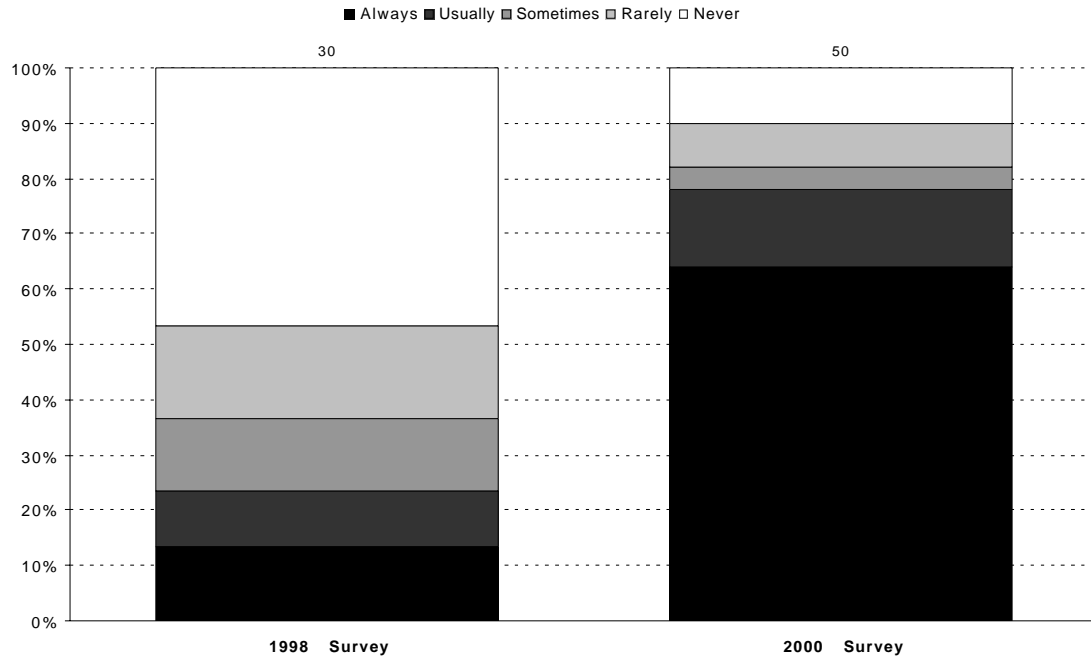


Figure VIII-21
Maryland Panel:
 Were you given a reasonable opportunity to contest the reductions or proposed reductions?



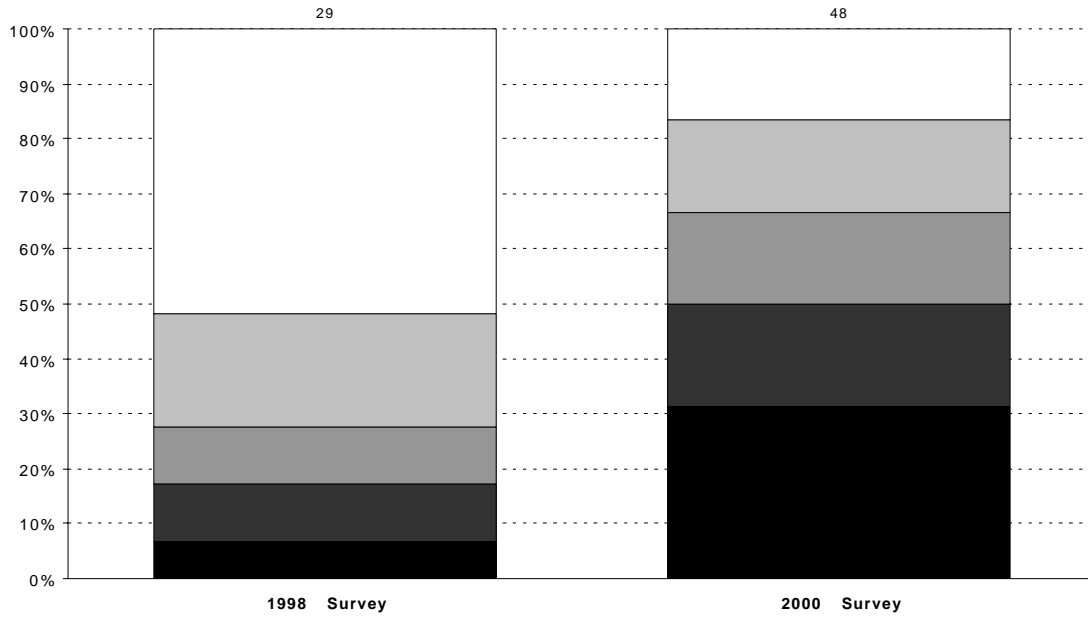
VIII. FAIRNESS TO COUNSEL

Figure VIII-22

Maryland Panel:

Did you think that any reductions actually imposed were reasonable?

■ Always ■ Usually ■ Sometimes ■ Rarely □ Never



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Figure VIII-23
California Central Panel:
Number of Vouchers Per Year (2000 Survey)

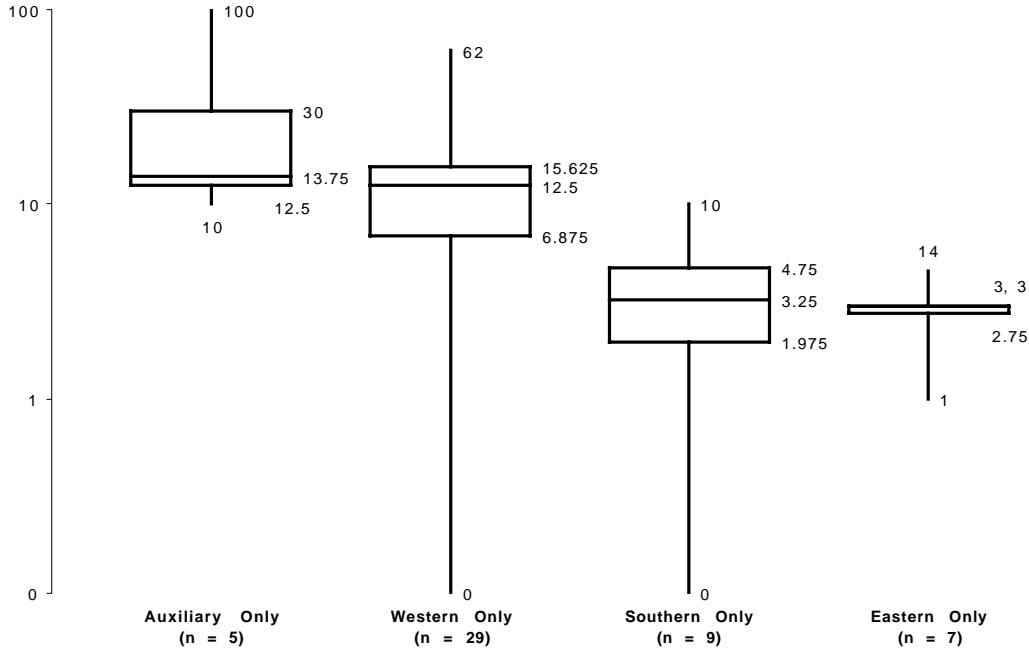
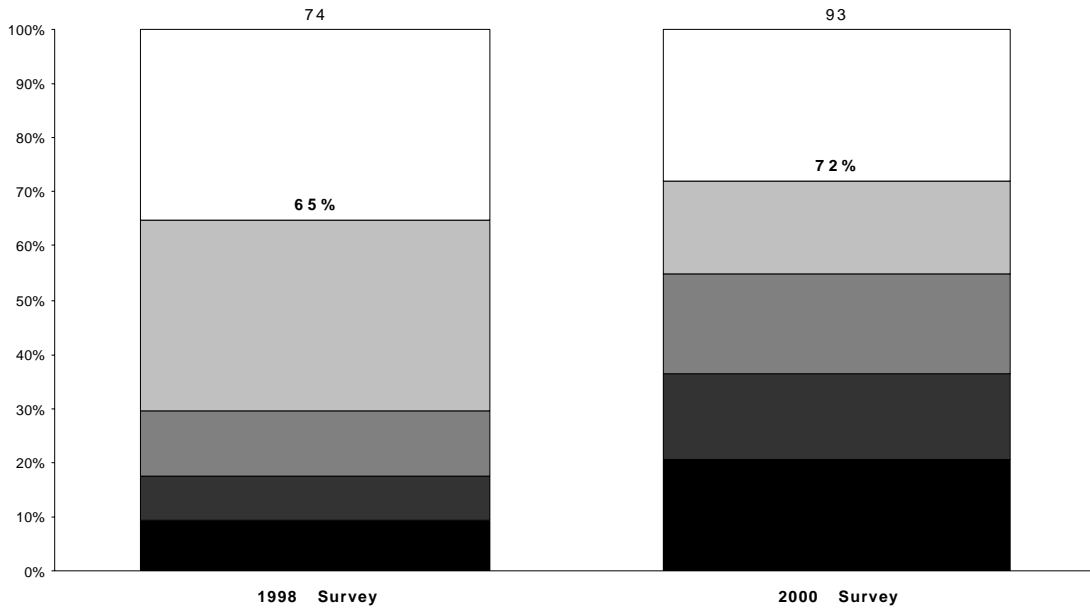


Figure VIII-24
California Central Panel:
Frequency of Reductions at Least Proposed

■ More Than 20% ■ More Than 10%, Up to 20% ■ More Than 5%, Up to 10% □ More Than None, Up to 5% □ None



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Figure VIII-25
California Central Panel:
Were you given an explanation of the reductions or proposed reductions?
 ■ Always ■ Usually ■ Sometimes ■ Rarely □ Never

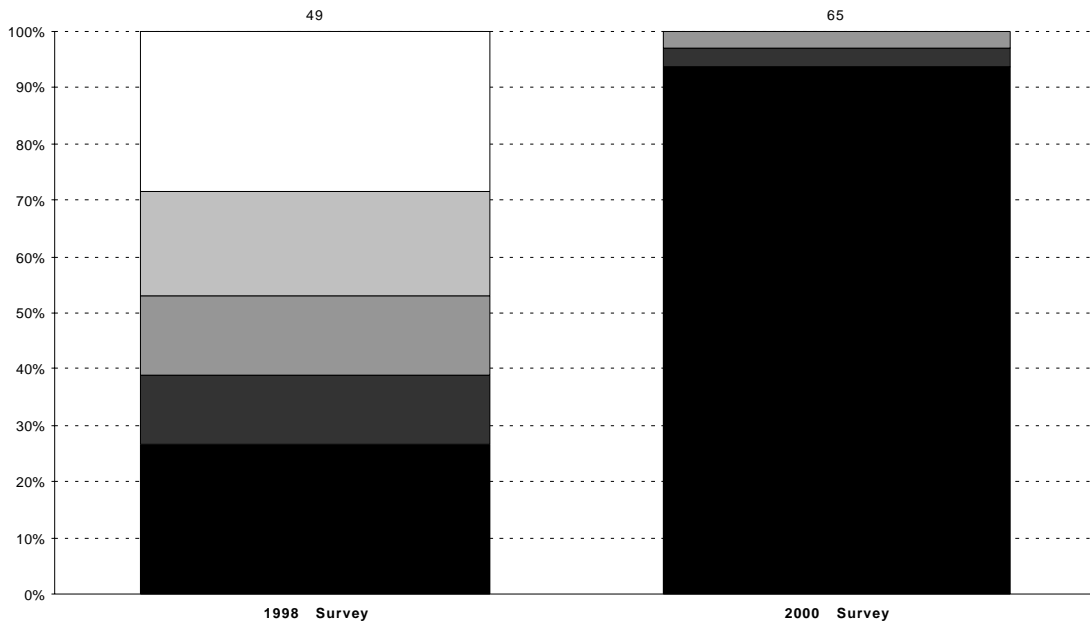
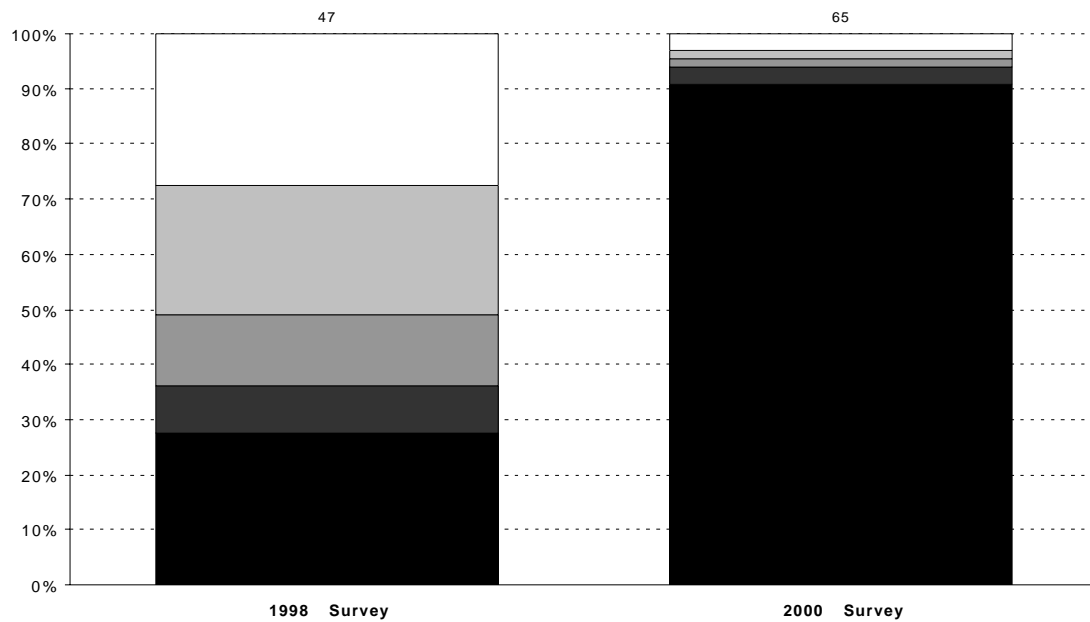
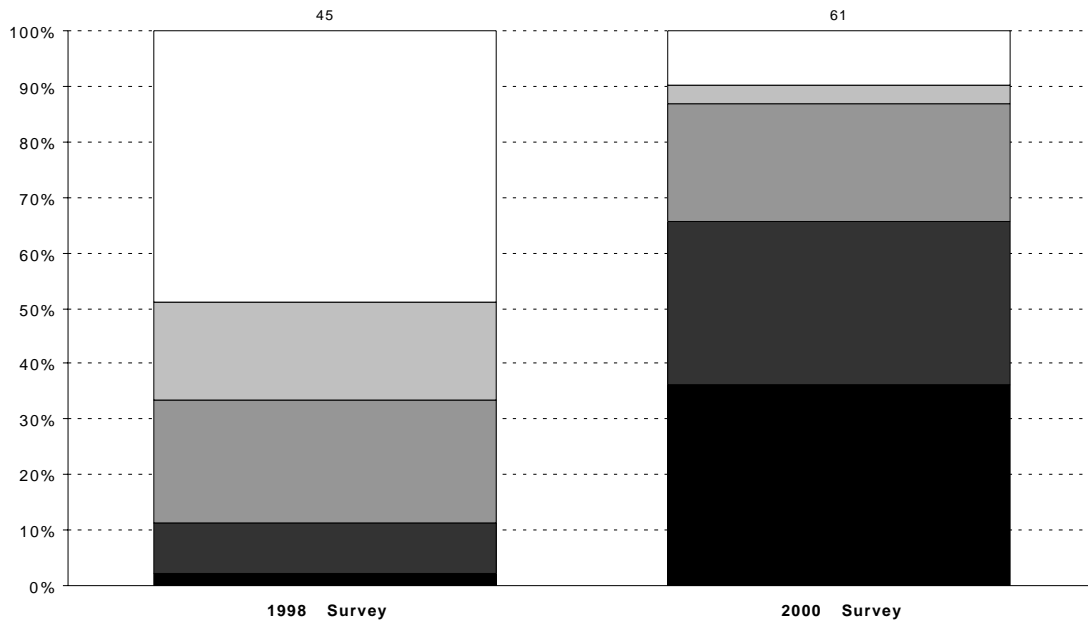


Figure VIII-26
California Central Panel:
Were you given a reasonable opportunity to contest the reductions or proposed reductions?
 ■ Always ■ Usually ■ Sometimes ■ Rarely □ Never



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Figure VIII-27
California Central Panel:
Did you think that any reductions actually imposed were reasonable?
■ Always ■ Usually ■ Sometimes □ Rarely □ Never



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Figure VIII-28
California Northern Panel:
Number of Vouchers Submitted Per Year (1998 Survey)

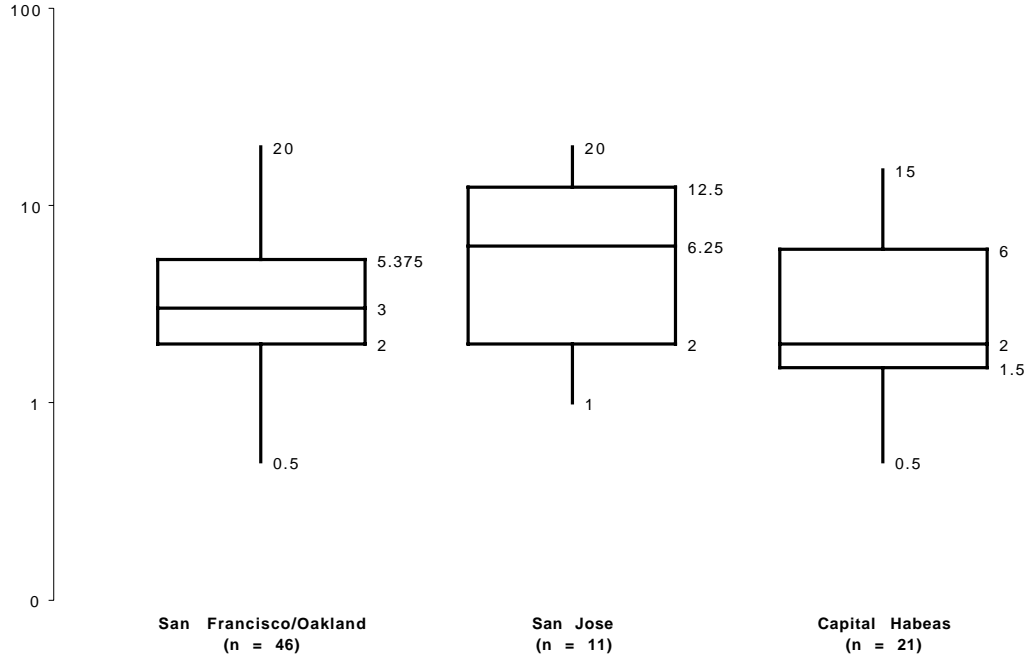
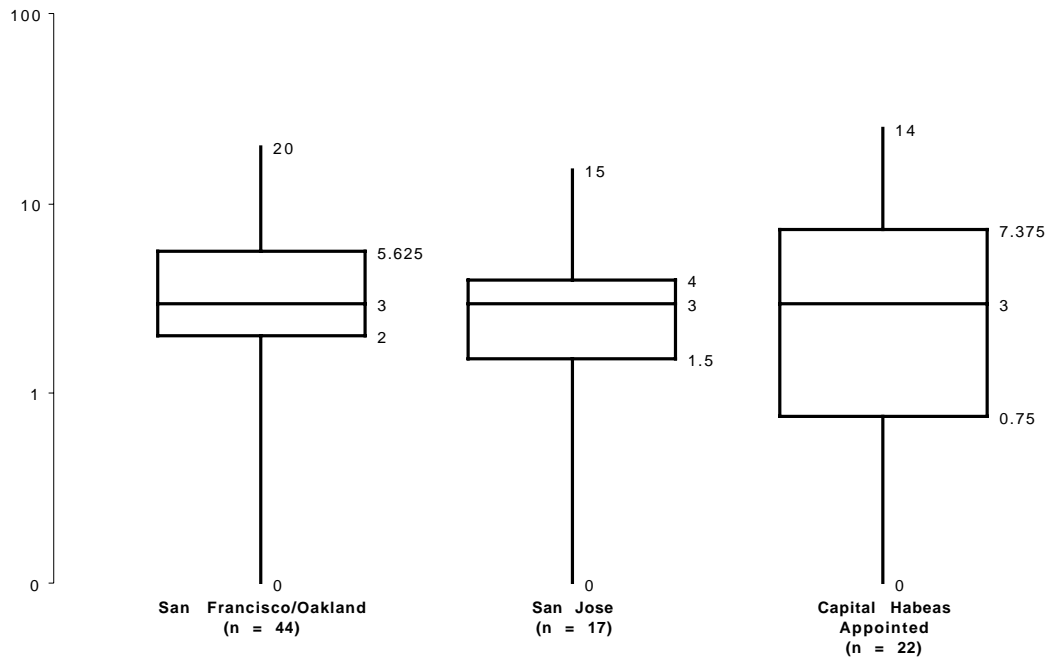


Figure VIII-29
California Northern Panel:
Number of Vouchers Per Year (2000 Survey)



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Figure VIII-30
California Northern Panel:
Frequency of Reductions At Least Proposed

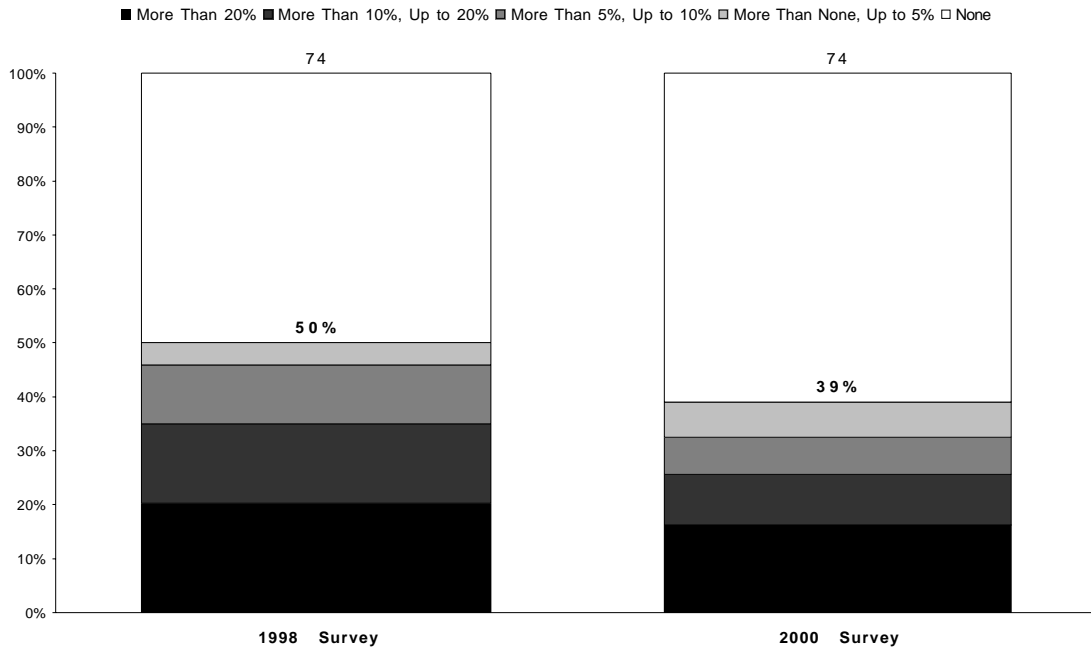
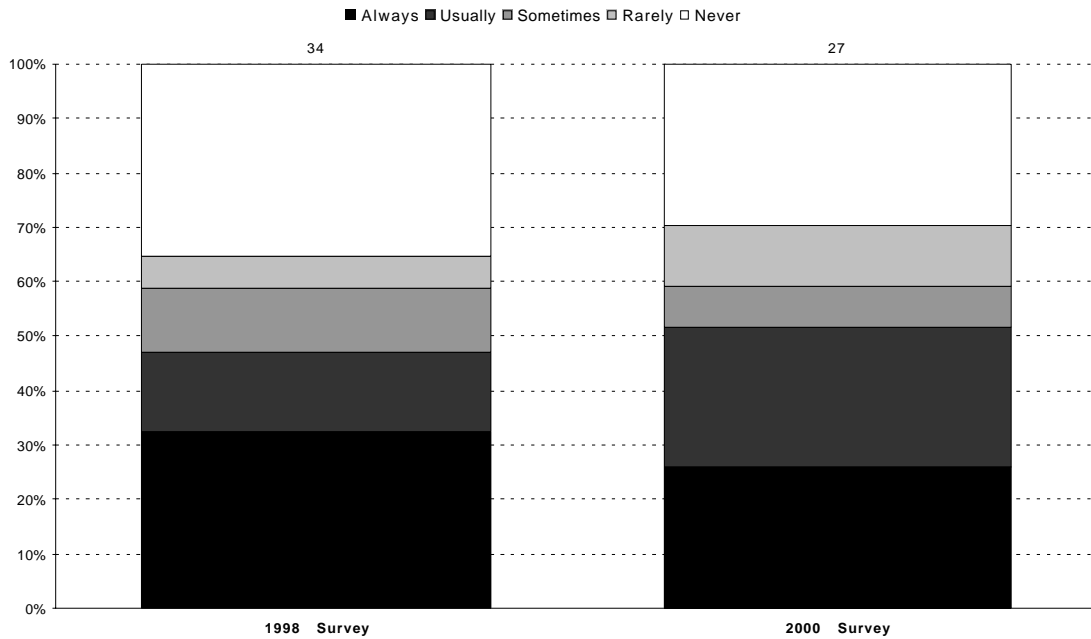


Figure VIII-31
California Northern Panel:
How often was an opportunity to challenge reductions to CJA vouchers reasonable?



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Figure VIII-32
California Northern Panel:
 How often were proposed reductions to CJA vouchers reasonable?

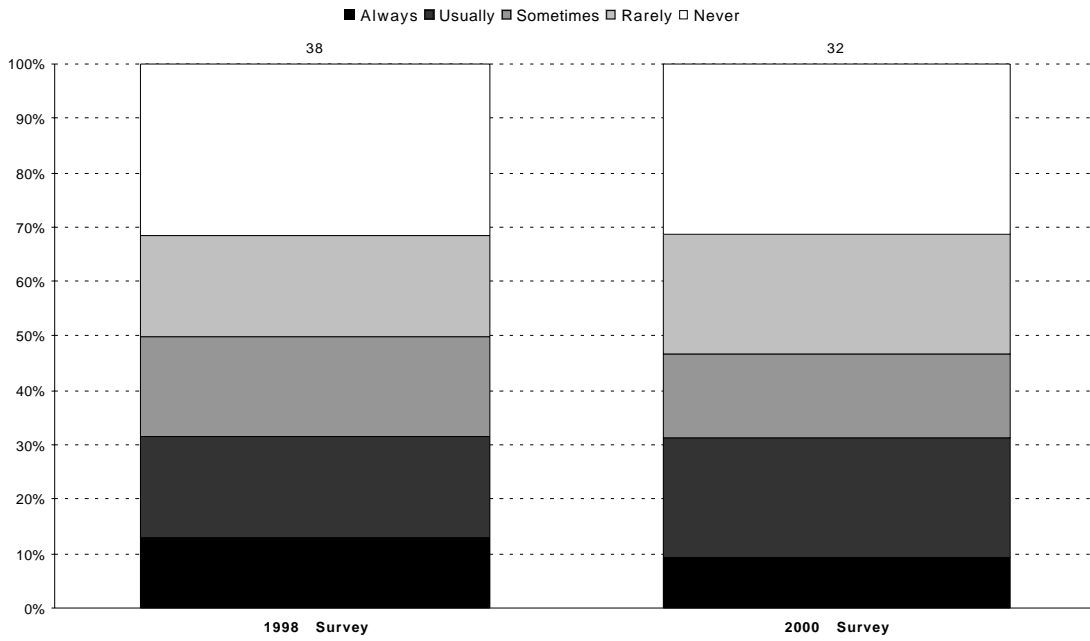
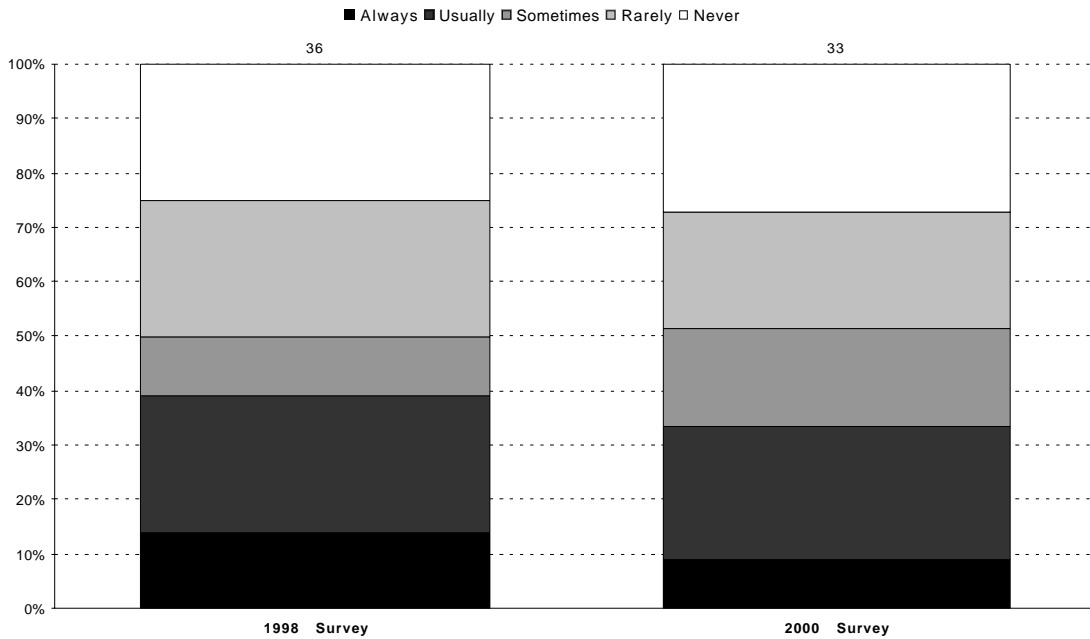


Figure VIII-33
California Northern Panel:
 How often were final reductions to CJA vouchers reasonable?



IX. Accountability

Voucher Review. It is tempting to hope that a CJA supervising attorney's reviewing vouchers will reduce CJA costs overall. Many attorneys we spoke with were quite concerned that saving money would be the CJA supervising attorney's only goal. The CJA supervising attorneys in this study were able to earn panel attorneys' trust because they demonstrated that accountability did not mean cost savings only. The accountability that CJA supervising attorneys provide arises from their central oversight of the court's multi-million-dollar annual CJA expenditures. Their mere presence may give comfort that someone is minding the store.

Neither a substantial drop nor a substantial increase in CJA expenditures followed the hiring of the CJA supervising attorney in any of the study districts. (See Figures IX-2, IX-4, and IX-6.) There are several reasons for our not doing a more finely grained analysis. First, such an analysis would require comparisons between similar cases both before and after the hiring of the CJA supervising attorneys. Unfortunately, cases where the most money is at stake are cases least likely to have similar counterparts. Second, although most criminal cases are completed within a year or two of filing, a substantial number continue for up to ten years or more. This makes it difficult to determine what impact a single change in procedures has on costs, because the analysis requires looking at data over the course of many years, during which time many events might have occurred that could affect costs. Third, neither the individual courts nor the Administrative Office has complete and reliable data on adjustments to vouchers before the CJA supervising attorneys were hired, so we saw insufficient value in the courts' devoting the substantial resources necessary to maintain such data afterwards, because comparisons would not be available. So we did not ask them to.

Nevertheless, the hiring of a CJA supervising attorney with good and reliable judgment is likely to be a good way to help ensure that the occasional out-of-control case or spendthrift attorney will not deplete the judiciary's CJA funds improperly.²²⁴

Courts naturally are concerned that CJA funds be spent appropriately. For example, no one wants to pay an attorney for 20 hours of work to prepare a form memorandum that really took 20 minutes. Such overbilling would be fraud, and although fraud is egregious, it appears to be quite rare. Apparently more common, but also rare, is billing for more time than a task *should have* taken, although it actually took that long. When one person reviews all of the vouchers, he or she can spot such inefficiencies more easily than can someone who reviews fewer vouchers. An inefficient attorney is likely to have more confidence in a reviewer

²²⁴ There is a temptation to worry that panel attorneys might be milking the system. This appears to be unlikely – at least in the study districts. Attorneys in these districts generally do not receive enough CJA work to live on alone. The districts want CJA assignments to be few enough to force attorneys to rely on the private market for work on the theory that this will help ensure that the panel will include only high-quality attorneys. Hourly rates in the private market generally are quite a bit higher than CJA rates. There does not appear to be a financial incentive for panel attorneys in these districts – most of them anyway – to waste time on CJA cases.

who spots his or her inefficiencies if the reviewer has seen a lot of other vouchers and the attorney has not had previous inefficient vouchers approved without question, as might happen if different people reviewed them. With more reliable feedback the inefficient attorney may be more likely to change his or her behavior.

Case Budgeting. For expensive cases, budgeting in advance is seen as a way to ensure accountability.²²⁵ The CJA supervising attorneys in Maryland and California Northern have been very helpful in this process. The CJA supervising attorney in California Central is not expected to have as large a role in case budgeting.²²⁶

Some judges we talked to are concerned about the propriety of a judge supervising one party's litigation activities as extensively as required by budget negotiations. Other judges we talked to do not think this is a problem. We talked to several attorneys with each view as well. There are two potential problems. There is an *ex parte* problem because budgets must be negotiated *ex parte*. Good attorneys will use the budgeting process as an opportunity to frame the case.²²⁷ There also is a role conflict problem because budgeting requires the court to be both neutral arbiter and aggressive manager of one of the parties.²²⁸

For those who are concerned about the propriety of a judge negotiating a litigation budget with one of the parties, the CJA supervising attorney may provide at least a partial solution. In Maryland and California Northern the CJA supervising attorney provides a buffer between the judge and the attorney. The judge gets less *ex parte* information, and the judge less directly supervises one party's litigation decisions.²²⁹

²²⁵ We do not know whether budgeting decreases costs overall. A form of budgeting long has existed under the Criminal Justice Act in that substantial expenses for expert or investigative services require prior approval. Our review of individual vouchers submitted to the study courts suggested that very often expert and investigative vouchers come in at full pre-approved amounts. Whenever budgeting is implemented in a system, there is a risk that budgeted funds will be spent in full even if fewer funds would have sufficed in the absence of budgeting. Often, however, the curb on run-away expenses that budgeting provides more than makes up for this risk.

²²⁶ On the one hand, he has many more vouchers to review so he has less time available. On the other hand, he does not have the same level of criminal litigation experience as his counterparts in the other districts.

²²⁷ The budgeting process also is a good time to present to the court theories based on very limited evidence, because budgeting necessarily comes before evidence is developed.

²²⁸ If this is indeed a problem it really is only an exacerbation of a problem, because even without case budgeting the court has to approve significant expenditures of funds for investigators, experts, and other service providers.

²²⁹ In California Central, and in other Ninth Circuit districts without a CJA supervising attorney, death penalty law clerks are expected to play a substantial role in the budgeting of capital habeas cases. If the *ex parte* and role conflict issues are problems, as some but not all judges and attorneys believe, then having death penalty law clerks participate in budgeting does not really provide a solution, because the death penalty law clerks also participate in rulings and judgments. Moreover, there are considerable limits on permissible contacts between law clerks and counsel.

Many of the attorneys we talked to who had not yet experienced case budgeting expressed considerable apprehension that budgeting would unduly interfere with their ability to effectively litigate a case. Some attorneys also expressed concern that budgeting would lead to competitive bidding and that cost of representation would override quality of representation as the court's goal. Attorneys who had budgeted cases with Ms. Shearer in Maryland or Ms. Anyon in California Northern told us that their fears were not realized. On the one hand, it actually helped them plan and manage their cases. On the other hand, they appreciated the reduction in compensation uncertainty a budget agreement provides.

CJA Expenditures

Not surprisingly, all three districts have seen an overall increase in annual criminal filings during the last decade – about 58 cases per year in California Central and about 18 cases per year in Maryland and California Northern (see Figure IX-1). Sometimes, however, there may be substantially fewer filings in one year than during the year before. Most CJA vouchers are paid either the same year a case is docketed or the following year. Some vouchers, however, are not paid until ten or more years later (see Figures IX-3, IS-5, and IX-7), and these include vouchers in criminal cases as well as capital habeas cases. With criminal filings somewhat erratic, with well-known variations among cases, and with cases sometimes taking several years to complete, it is difficult to show what impact hiring a CJA supervising attorney has on overall expenditures.

In the last decade, Maryland's annual CJA expenditures have fluctuated between about \$1 million and \$2 million, with an unusually large expenditure of \$2.7 million in fiscal year 1998 (see Figure IX-2).²³⁰ Expenditures in the California districts increased quite a bit in the early 1990s, but they have remained substantially stable since then, averaging about \$10 million in California Central and about \$8 million in California Northern each fiscal year since 1993 (see Figures IX-4 and IX-6). For all three districts, the number of dollars spent closely tracks the number of vouchers paid.

Supervision of Expenditures

The following survey results confirm that a CJA supervising attorney can increase at least the impression of accountability.

We asked Maryland judges how often they felt satisfied with the adequacy of information available to them on which to base their review of a CJA payment voucher. (See Figure IX-8.) The California Central court asked us to omit this question from our survey of its judges. We asked California Northern judges two related questions – how satisfied were they with the amount of information available when they review a CJA voucher (see Figure IX-9) and how satisfied were they with supervision of expenditures for CJA representation (see Figure IX-10)?

²³⁰ Of the three districts in this study, Maryland is the only one whose attorneys had rate increases in the 1990s.

IX. ACCOUNTABILITY

It was not surprising to observe that after a judge's role in voucher review in Maryland changed from having to review the voucher after only a numerical audit to reviewing a recommendation by the CJA supervising attorney, the proportion of judges stating that they always or usually had enough information to do their review increased from 31% to 100%.

In California Northern the CJA supervising attorney reviews vouchers only for big-ticket cases, such as capital habeas cases, and on a case-by-case basis at the request of judges. There was some increase in the proportion of judges who were satisfied or very satisfied with the amount of information available when they reviewed vouchers – from 35% in 1998 to 45% in 2000. There was a more marked increase in their satisfaction with overall supervision of CJA expenditures – from 19% satisfied or very satisfied in 1998 to 50% satisfied or very satisfied in 2000.

CJA Expenditures – How to Read the Charts

Figure IX-1 shows how many criminal cases were docketed in each of our study districts in each calendar year of the 1990s. To make this analysis similar to that in Figures IX-3, IX-5, and IX-7, we regarded each case as docketed in the year given by its docket number in the Administrative Office’s database of criminal filings.

Figures IX-2, IX-4, and IX-6 show total number and value of vouchers paid each fiscal year from 1990 to 2000 for the three study districts. These data come from the Administrative Office’s CJA payment database. Number of vouchers paid each year is represented by a line chart corresponding to the left vertical axis. Dollars paid each year are represented by a bar graph corresponding to the right vertical axis.

Figures IX-3, IX-5, and IX-7 show how long it can be between the time a case is docketed and the time a voucher is paid. These analyses also are based on the Administrative Office’s CJA payment database. One of the fields in that database is docket number. Usually the calendar year in which a case is docketed is represented in the docket number. We did what we could to derive the year docketed from docket number. Many vouchers did not have docket numbers that reflected year docketed, such as magistrate court cases. Such vouchers were not included in this analysis.

We computed the calendar year each voucher was paid from the check date in the payment database. To determine lag, we subtracted the docket year from the payment year. Obviously this means that if the case is docketed in December and the voucher paid the following month the lag is one “year.” If the case is docketed in January and the voucher paid the following December, the lag is zero. This lack of precision results from the unreliability of the field in the payment database designed to show when the case was filed, but it is not terribly troubling for this analysis, because the finding that it often takes many years to complete a case is still clear.

Each line in Figures IX-3, IX-5, and IX-7 represents a docket year cohort. The line shows how many vouchers were paid for that cohort the same year the case was docketed, the next year, etc.

We looked at data for voucher payments in fiscal years 1990 through 2000. For cases docketed in 1990 we have data on all vouchers with lags from 0 to 9. We do not have data on all vouchers for 1990 cases with lags of 10 years because our data do not include all of calendar year 2000 – only through September. Lags longer than 10 years cannot be computed for this cohort until more time elapses.

For cases docketed in 1989, we have data on lags from 1 to 10 years; for 1988 cases, 2 to 11 years; and so on back to lags of 9 to 18 years for 1981 cases.²³¹ These cohorts are represented as dotted lines in the figures.

For cases docketed from 1990 through 1999, we have all data on lags from 0 to a diminishing number of years – 9 for 1990 cases down to 0 for 1999 cases.

²³¹ We did not necessarily actually observe vouchers with every possible lag time for every docket year cohort.

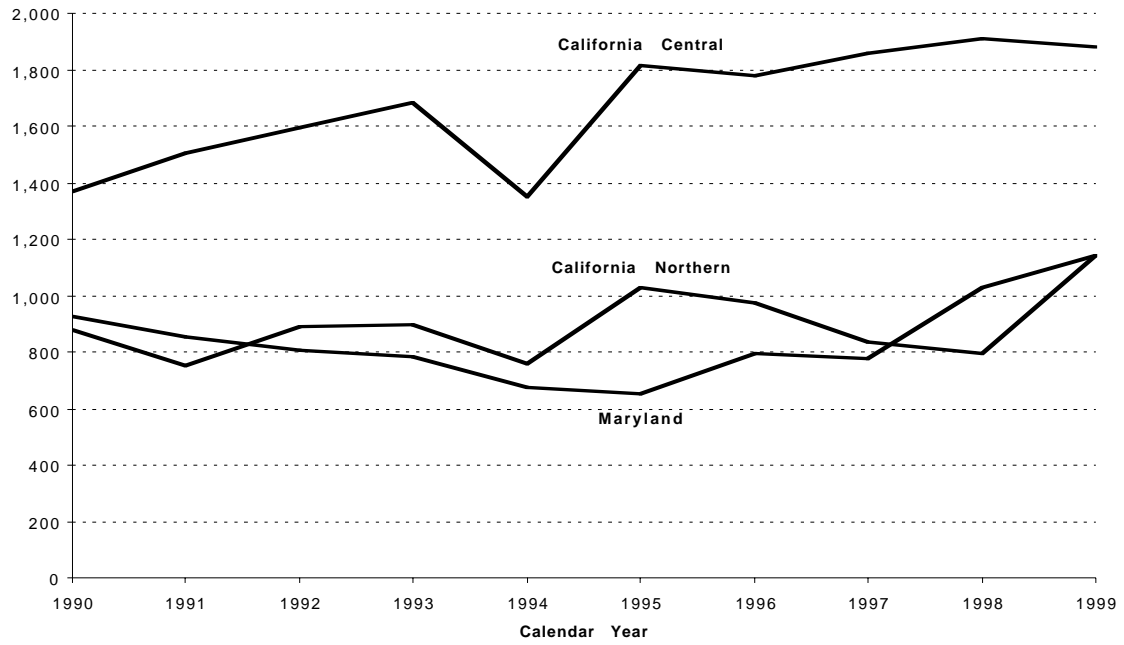
IX. ACCOUNTABILITY

These cohorts are represented as undotted lines in the figures, except for the 1999 cohort, which is represented as a single dot.

Figures IX-3, IX-5, and IX-7 show that most vouchers are paid the same year as a case is docketed or the following year. Many are paid the year after that. Some, however, are paid as many as 10 years after the case was docketed, or even later.

IX. ACCOUNTABILITY

Figure IX-1
Number of Criminal Cases Docketed Each Year



IX. ACCOUNTABILITY

Figure IX-2
Maryland: CJA Vouchers and Payments

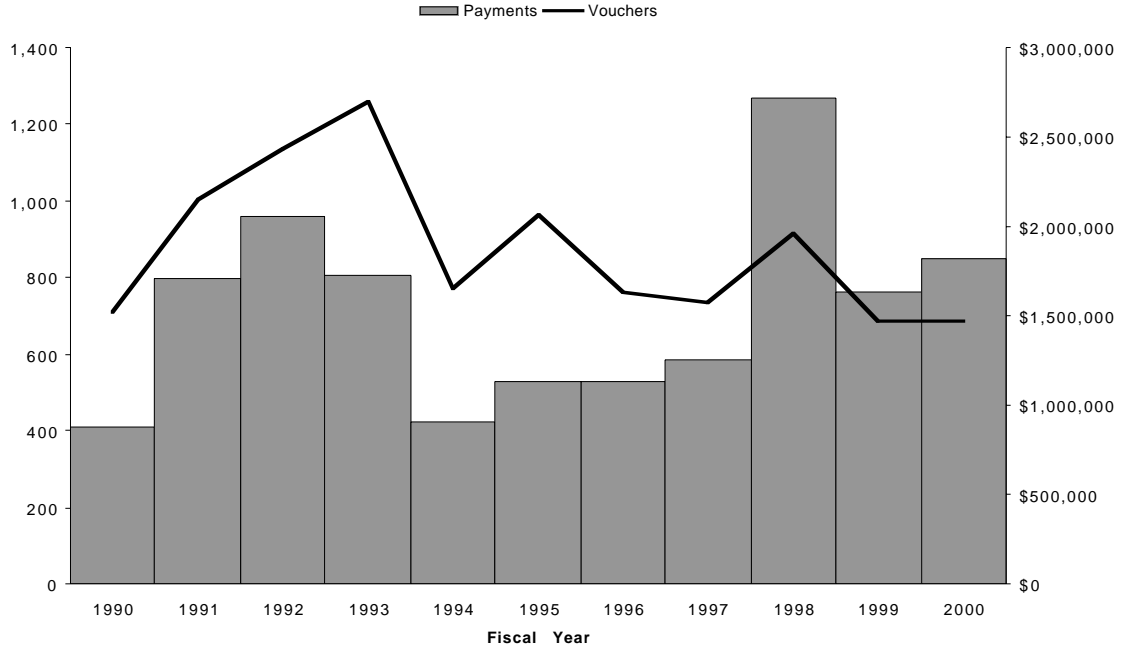
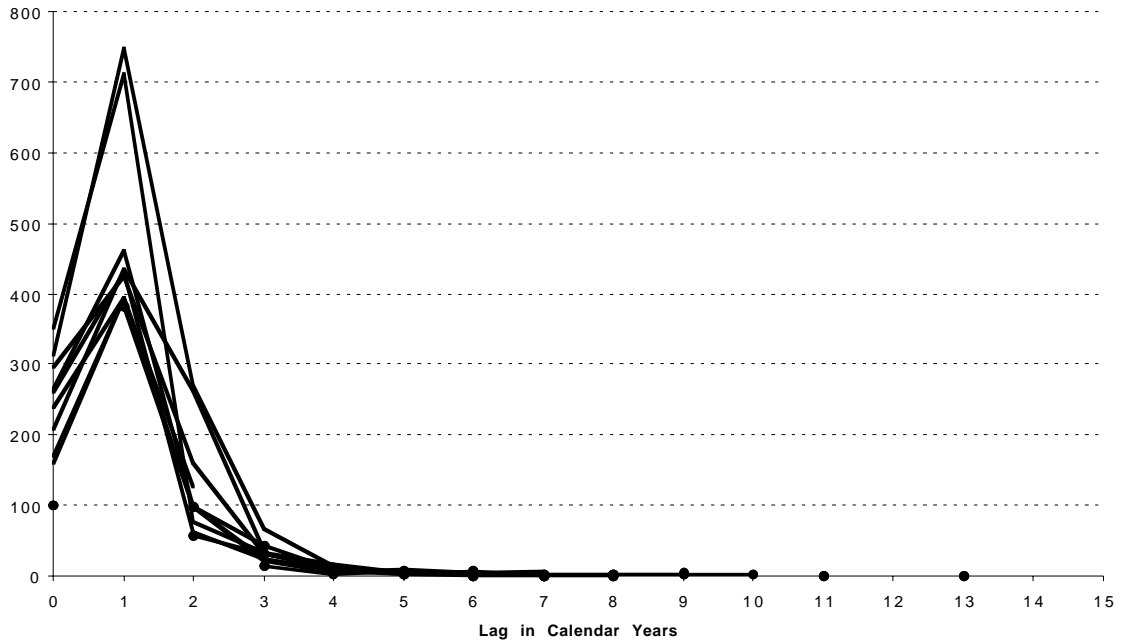


Figure IX-3
Maryland: Lag Between Docket Year and Payment Year



IX. ACCOUNTABILITY

Figure IX-4
California Central: CJA Vouchers and Payments

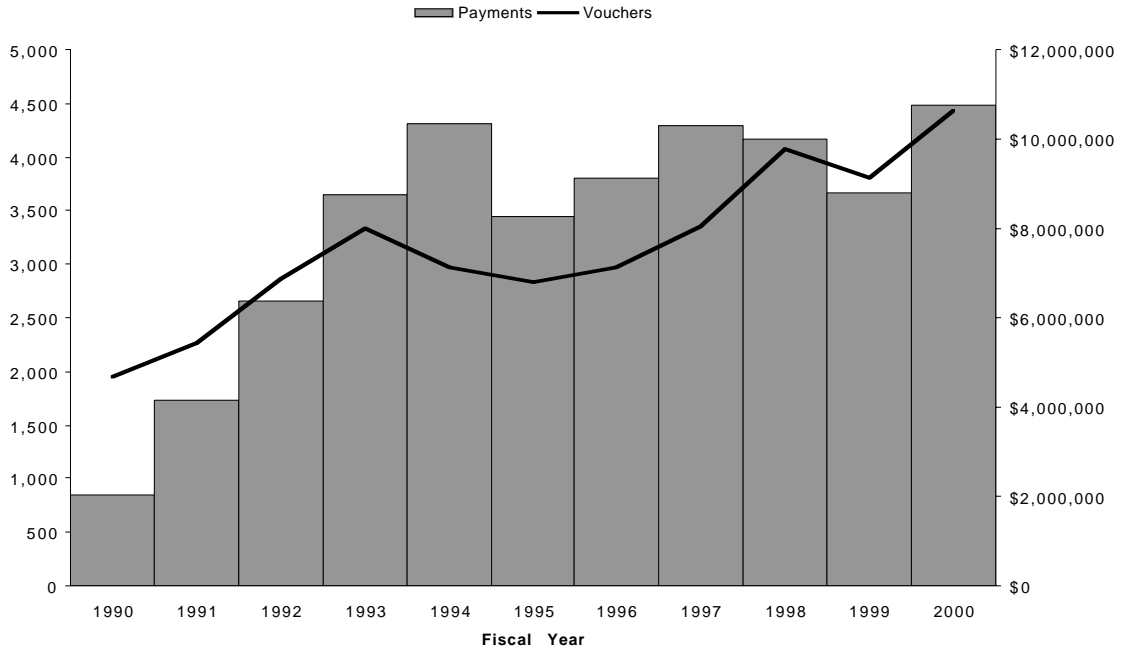
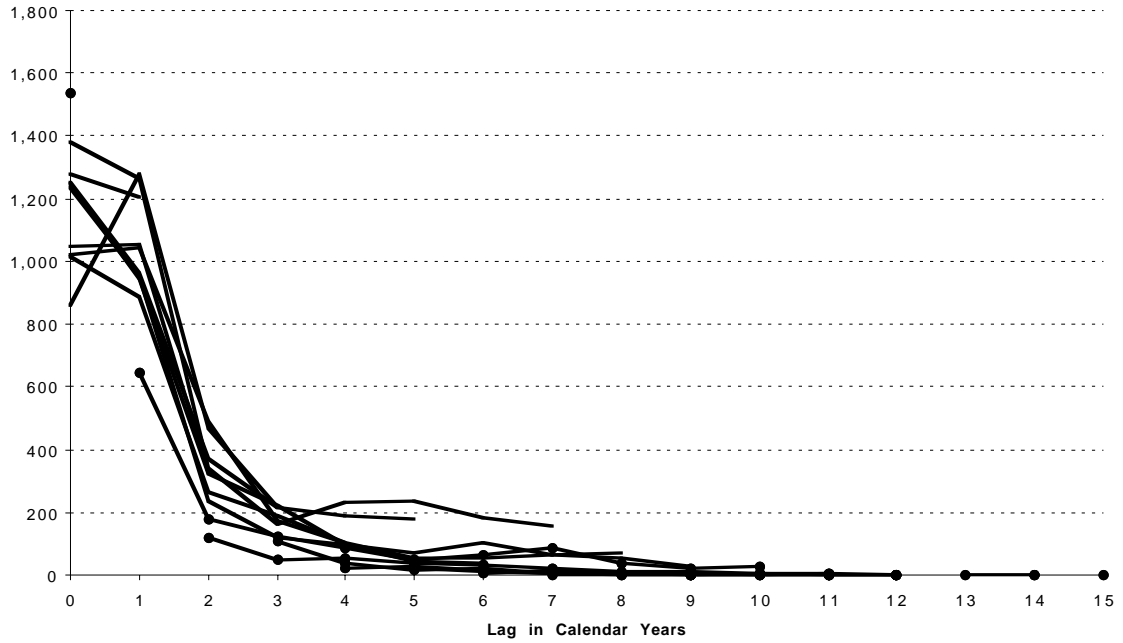


Figure IX-5
California Central: Lag Between Docket Year and Payment Year



IX. ACCOUNTABILITY

Figure IX-6
California Northern: CJA Vouchers and Payments

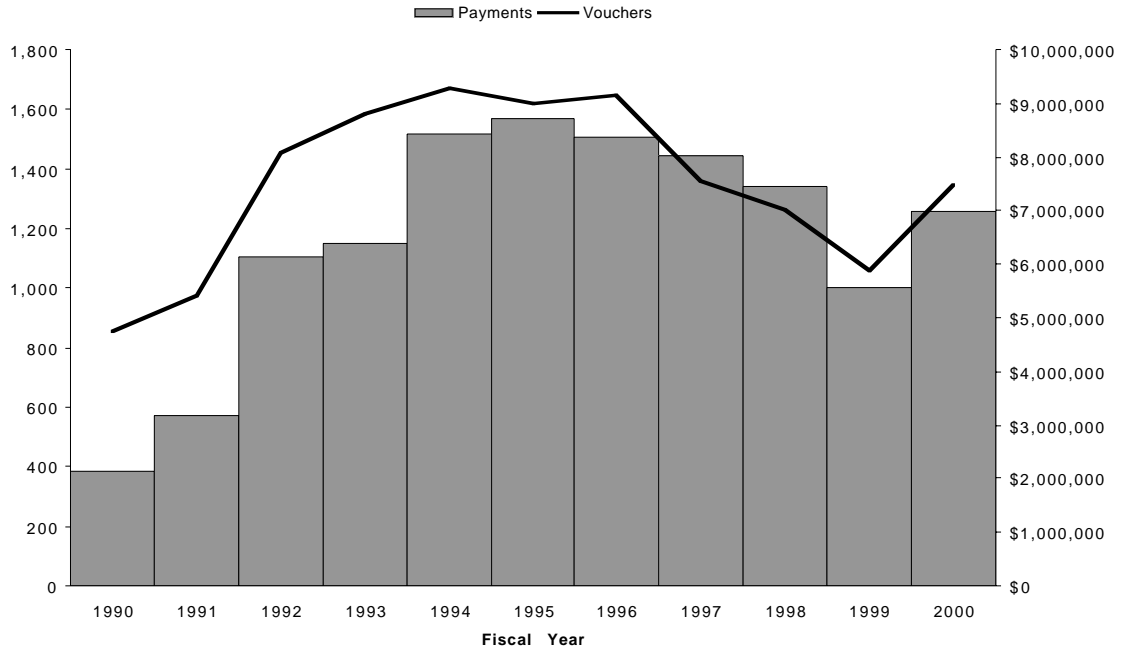
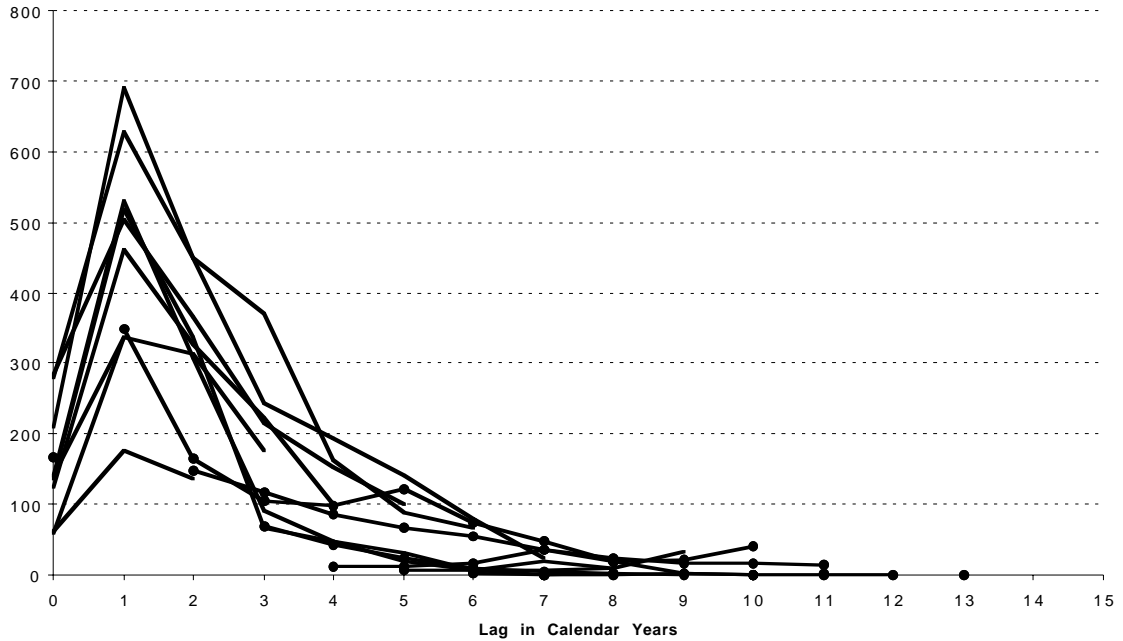


Figure IX-7
California Northern: Lag Between Docket Year and Payment Year



Expenditure Supervision – How to Read the Charts

We asked Maryland judges how often they felt satisfied with the adequacy of information available to them on which to base their review of a CJA payment voucher. The California Central court asked us to omit this question from our survey of its judges. We asked California Northern judges two related questions – how satisfied were they with the amount of information available when they review a CJA voucher and how satisfied were they with supervision of expenditures for CJA representation. Figure IX-8 displays the results for Maryland and Figures IX-9 and IX-10 display the results for California Northern.

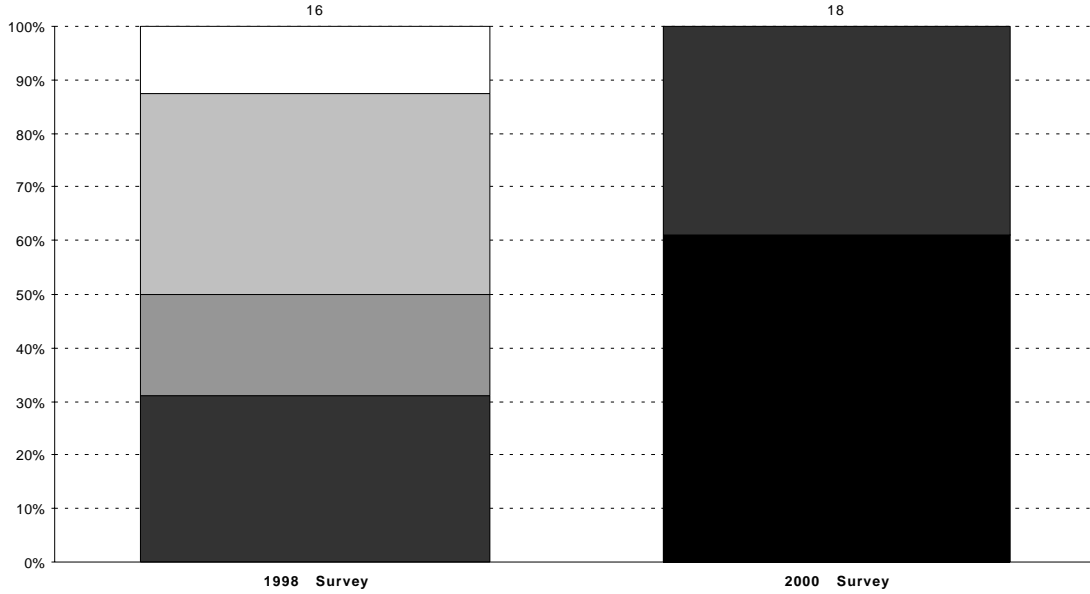
Darker and lower portions of each bar in the figures represent more positive responses and the number of responses on which each bar is based is given at the top of each bar.

IX. ACCOUNTABILITY

**Figure IX-8
Maryland Judges:**

How often do you feel satisfied with the adequacy of information available to you on which to base your review of a CJA payment voucher?

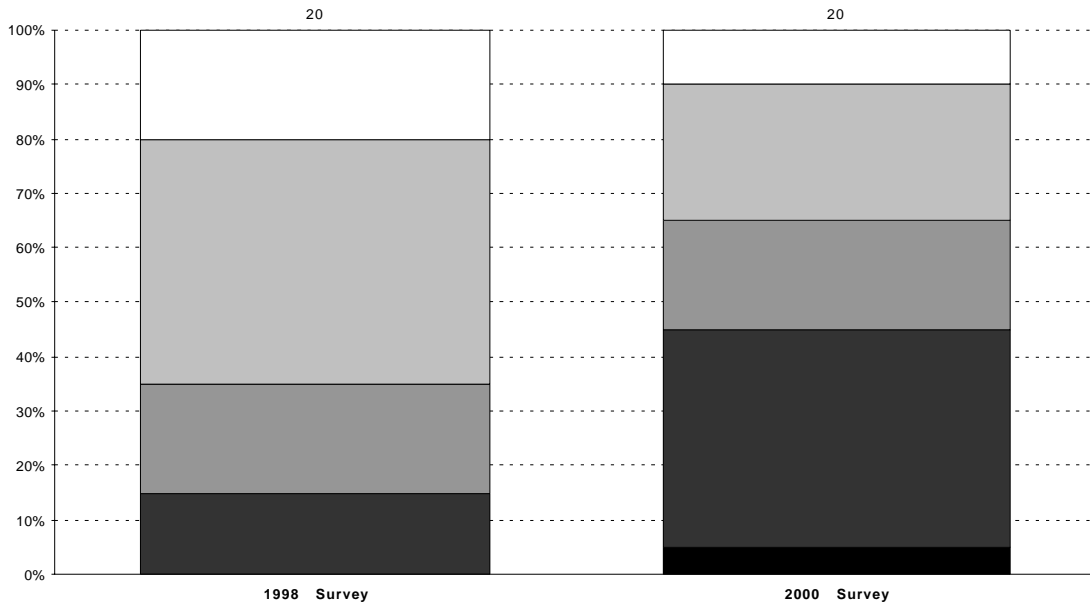
■ Always ■ Usually ■ Sometimes ■ Not Usually □ Rarely or Never



**Figure IX-9
California Northern Judges:**

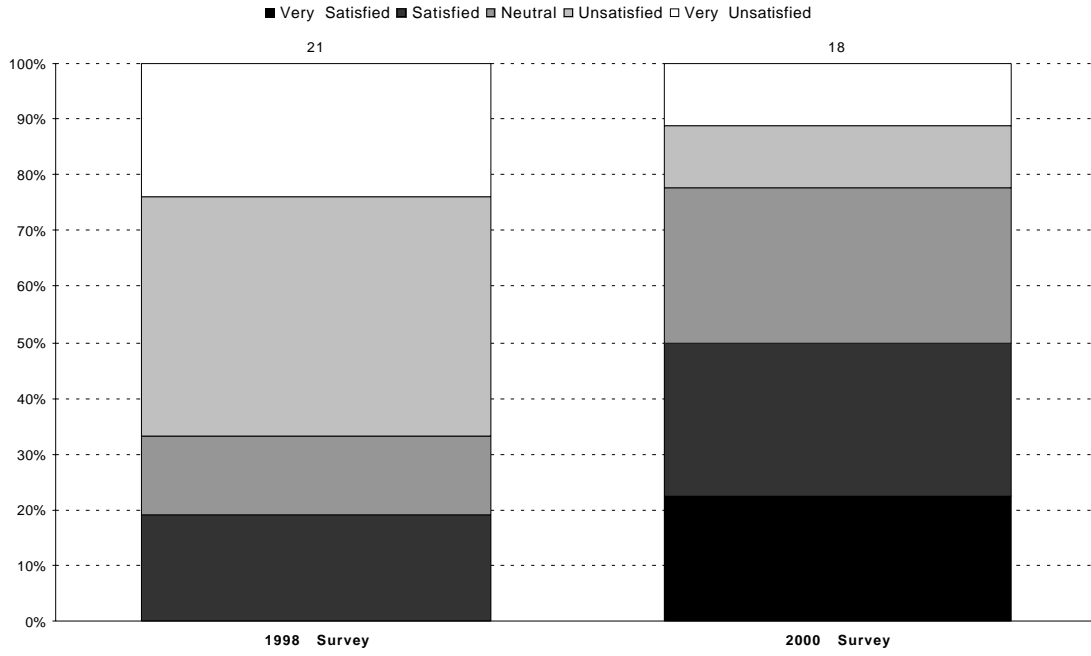
Amount of information available when you review a CJA voucher.

■ Very Satisfied ■ Satisfied ■ Neutral □ Unsatisfied □ Very Unsatisfied



IX. ACCOUNTABILITY

Figure IX-10
California Northern Judges:
Supervision of expenditures for CJA representation.



X. Efficiency

In response to our surveys, one judge expressed a view we heard informally from many others: “I do not believe the average U.S. district judge has sufficient expertise to intelligently review CJA vouchers. It is also a waste of our time to be serving as bookkeeper/accountants when our case loads need our attention on legal matters.”

A CJA supervising attorney who reviews all vouchers for the district is in a much better position than the presiding judge to compare each voucher to other vouchers submitted by that attorney and vouchers submitted by other attorneys in similar cases. The CJA supervising attorney, therefore, probably is in a better position than presiding judges to monitor inefficiencies.

Some have suggested that judges are in a better position to review vouchers than someone who has not heard the case, because they know what happened. But many judges told us that by the time they review most vouchers they do not remember enough details about the case to make their reviews uniquely valuable.²³² Many attorneys suggested that they would rather have someone review their vouchers who knows what out-of-court work it takes to defend a criminal case than someone who sees only what happens in court. Some judges expressed the same preference.

Moreover, our research suggests that judges – in these districts at least – often do not have time to review CJA vouchers adequately. This can lead to payment delays, adjustments too severe (e.g., “this seems awfully high, but I don’t have time to figure out why so I’ll just cut it”), and insufficient adjustments (e.g., “I don’t have time to audit this whole case so I’ll just sign the voucher”).

Because case budgeting procedures are developing in these districts at the same time the CJA supervising attorney positions are being created, and case budgeting procedures have not developed very far in other districts, it is hard to make efficiency comparisons between judges’ and CJA supervising attorneys’ doing the budgeting. Certainly some efficiency results from CJA supervising attorneys’ being paid less than judges. Also, CJA supervising attorneys bring to each budget they tackle experience with more budgets than judges have.

Judge Time

We asked judges in all three districts how many hours they and their chambers staff typically spent each month reviewing CJA payment vouchers. We also asked Maryland judges how many hours they and their chambers staff typically spent on other CJA matters each month. Our confidence in these data, however, is mitigated by some reliability checks we performed. The amount of time each judge spends reviewing CJA vouchers varies quite a bit from month to month and our research suggests that this is very difficult to estimate.

²³² Of course, judges have to review fee petitions in cost-shifting civil litigation, but an advantage they have in those cases is an adversary proceeding.

The CJA supervising attorney in California Central surveyed his judges just before he began to review their vouchers and asked how many hours per month the judges and their staffs together spent reviewing vouchers. Each judge was asked to provide one number in response. When we surveyed judges in California Central five months later, we asked them to report two numbers each – one for their own time and one for their staffs' time. Twenty-two judges responded to both surveys. Ideally, each judge's response to the first survey would approximately equal the sum of the judge's two responses to the second survey. Unfortunately we found only modest agreement between responses to the two surveys. Although responses to the district's own survey may have been more accurate, because they were given closer in time to when judges actually were reviewing vouchers, they do not break down time between judge and staff, so we cannot determine how much time judges themselves were spending reviewing vouchers.

We did a different sort of reliability check in California Northern. In 1998 we attached time sheets to vouchers received by the court during half a month beginning late in June and for the month of September. Seventy-three vouchers were submitted during these time periods. All persons working on each voucher between the time it was submitted and the time it was paid – including judges, their staffs, and clerk's office staff – recorded how much time they spent working on each voucher. From the amount of time spent by judges reviewing these vouchers and the number of vouchers the district receives in a year we estimated that voucher review in California Northern requires a total for the district of approximately 32 hours per month. Survey responses, however, implied a total of approximately 102 hours per month of judge time for the district. These two estimates differ by a factor of more than 3.

Although survey estimates of judge time may be overestimates, it is useful to compare responses in the two survey years. We consider active district judges and magistrate judges separately, because district judges typically review more complex payment vouchers. Senior district judges either reported that they did not hear criminal cases, or they responded similarly to active district judges.

In 1998 active district judges in Maryland reported that they typically²³³ spent 3 hours per month reviewing vouchers and magistrate judges reported that they typically spent 1.5 hours per month. After the CJA supervising attorney was hired to review vouchers and make recommendations to the judges, the active district judges typically reported 1.5 hours per month and the magistrate judges typically reported 0.4 hour per month.

Active district judges in California Central typically reported 4 hours per month reviewing vouchers in 1998 and magistrate judges typically reported 1 hour per month. In 2000, after the court's CJA supervising attorney had essentially relieved judges of all voucher-review responsibilities, both active district judges and magistrate judges typically reported spending no time at all reviewing CJA vouchers.

²³³ We use the word "typically" here to refer to a median – the value greater than which are half the data and less than which are half the data.

In California Northern only the active district judges reported a decrease in voucher review time between surveys. In 1998 they typically reported 4.5 hours per month, but in 2000 they typically reported 2 hours per month. Magistrate judges typically reported 1.5 hours per month in response to both surveys.

Case Assignments

Of the three districts in this study only the CJA supervising attorney in Maryland has much responsibility for assigning attorneys to cases. We asked judges there whether appointments under the CJA were made within what they consider to be a reasonable amount of time. All magistrate judges in both survey years responded “always” or “usually.” Most district judges responded “always” or “usually” in 1998, but all did in 2000.

Timeliness of Case Assignments – How to Read the Charts

We asked Maryland judges if appointments under the CJA were made within what they considered to be a reasonable amount of time. Possible responses were “always,” “usually,” “sometimes,” “not usually,” and “rarely or never.” We did not ask this question of judges in California Central or California Northern, where case assignment was not to be part of the CJA supervising attorney’s responsibilities. Figure X-1 displays the results for Maryland district judges and Figure X-2 displays the results for Maryland magistrate judges. Darker and lower portions of each bar represent more positive responses and the number of responses on which each bar is based is given at the top of the bar.

X. EFFICIENCY

Figure X-1
Maryland District Judges:

Are appointments under the CJA made within what you consider to be a reasonable amount of time?

■ Always ■ Usually ■ Sometimes □ Not Usually □ Rarely or Never

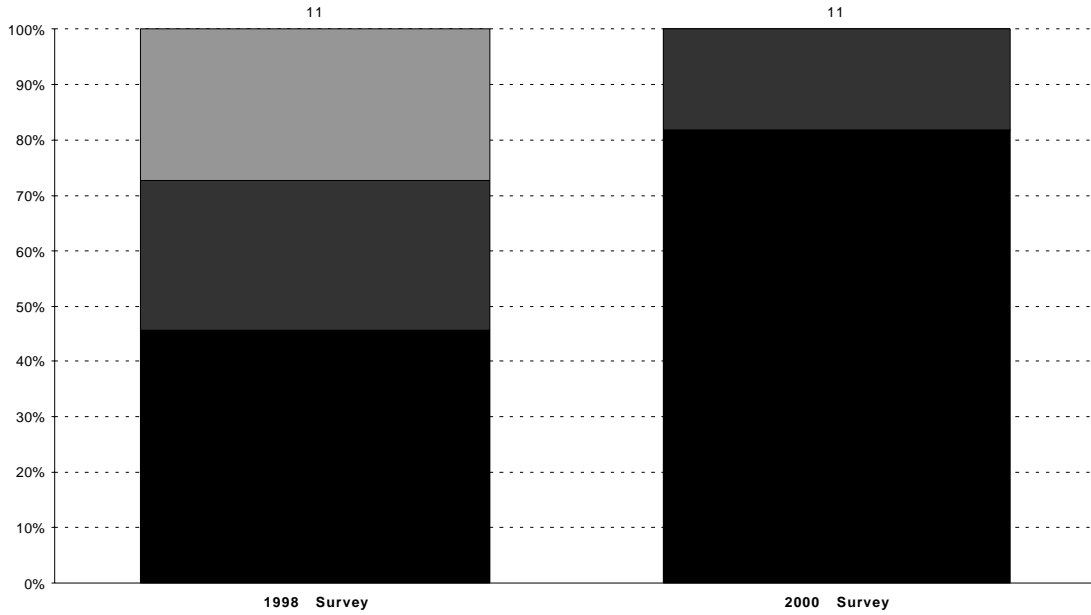
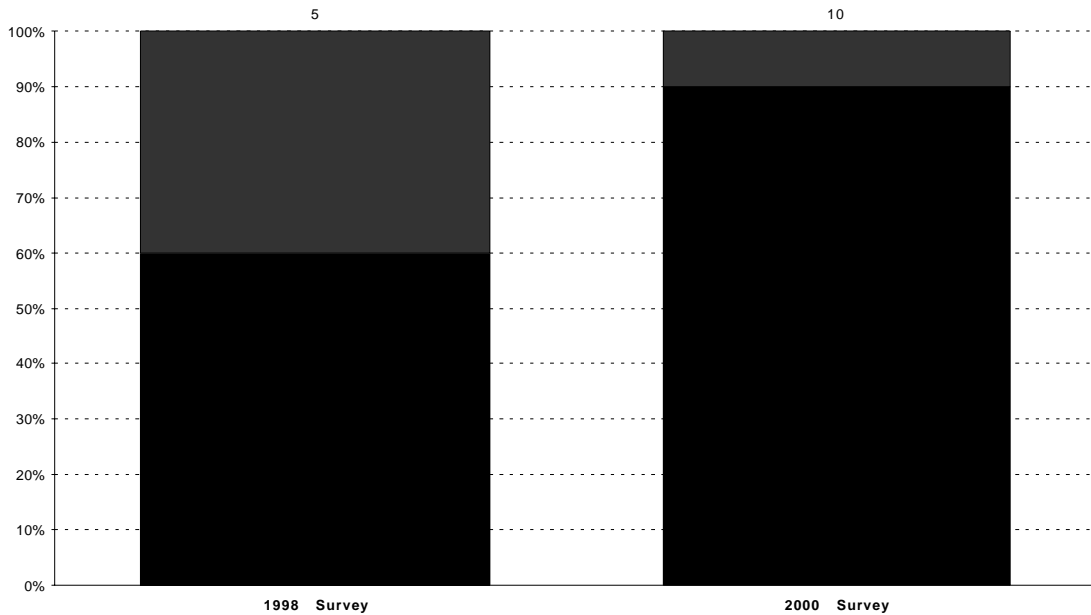


Figure X-2

Maryland Magistrate Judges:

Are appointments under the CJA made within what you consider to be a reasonable amount of time?

■ Always ■ Usually ■ Sometimes □ Not Usually □ Rarely or Never



XI. Conclusion

We think that it is beyond question that the District of Maryland, the Central District of California, and the Northern District of California each has hired a talented and dedicated public servant as its CJA supervising attorney. All three incumbents bring value to their courts.

The CJA supervising attorneys do a job that must be done, so the fundamental question determining whether these positions should be retained where they are and possibly created elsewhere is: if they do not do it, who should?

The advantages of assigning CJA funding tasks to CJA supervising attorneys rather than to district judges include:

1. Litigation funding often concerns matters outside the judge's expertise.
2. Judges often are overburdened with other matters.
3. Close and direct supervision of litigation expenses by the presiding judge requires extensive *ex parte* communication and may create a conflict between the judge's role as neutral arbiter and as supervisor of one of the parties.
4. The CJA supervising attorneys are paid less.
5. Fairness, accountability, and efficiency benefits may arise from the centralization of CJA responsibilities, such as:
 - a. More prompt and consistent processing of vouchers.
 - b. A central source of information for attorneys and other service providers.
 - c. Central oversight of expenditures.

Some courts have delegated much of what CJA supervising attorneys do to magistrate judges. CJA responsibilities could be centralized and assigned to a single magistrate judge, who could be hired specifically to have the necessary skills and experience, but magistrate judges also command higher salaries than do CJA supervising attorneys.

Much of what the CJA supervising attorneys do is done by the Federal Public Defender's office in some other districts. Some persons are troubled by the conflicts of interest this might create. If the federal defender has control over how much a panel attorney is paid, there may be a financial incentive for the panel attorney not to adopt litigation strategies that disadvantage the federal defender's client. If the federal defender has control over case assignments, there is the opportunity for the Defender to assign cases strategically.

At least some of what CJA supervising attorneys do might be done by deputy clerks who are not attorneys and who command lower salaries. It appears unlikely, however, that persons who are not attorneys would command the same level of confidence among the bench and bar as Ms. Shearer, Mr. Schnack, and Ms. Anyon clearly have.