

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

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Executive Summary

During the period January through April of 2007, a case-budgeting attorney (CBA) was hired in each of the Second, Sixth, and Ninth Circuits as part of the Case-Budgeting Attorney Pilot Project authorized by the Judicial Conference of the United States. The primary responsibilities of the CBAs were providing objective case-budgeting advice to attorneys and judges and enhancing case management in the pilot circuits.

The Judicial Conference's Committee on Defender Services asked the Federal Judicial Center (FJC) to conduct an evaluation of the pilot program. Important aspects of the FJC's findings are summarized below.

What was the scope of the pilot?

- CBAs were to assist with budgeting in capital, capital habeas, and mega representations from 2007 to 2009. In the Ninth Circuit, the CBA was to assist with budgeting only in capital and mega representations.

What were the criteria for evaluating the pilot?

The criteria were as follows:

- Does the pilot help to effectively manage resources available through the Defender Services account while achieving a high quality of defense representation?
- Does the pilot provide objective case-budgeting advice to judges and Criminal Justice Act (CJA) panel attorneys?

How was the pilot evaluated?

- The evaluation used a multimethod approach, which consisted of interviews, surveys, multivariate analyses of costs, matched pairs, an examination of excess compensation voucher review before the pilot, and rich descriptions of the everyday work of the CBAs.

What does a CBA do?

- The CBAs all serve as case managers, circuit problem solvers, and points of contact for CJA work.

What issues did the CBAs face?

- All CBAs faced issues related to paperwork, attorney skepticism concerning the pilot program, timing (late submission of budgets or vouchers, notification of death certification, etc.), and other conflicting demands.

What issues did the evaluation face?

- While all of the CBAs have some similar responsibilities, there are notable differences from circuit to circuit in the jobs of the CBAs; the full range of responsibilities was assessed.
- Determining the impact of the pilot involved addressing issues of data availability and reliability.

What was the review process like before the CBAs started?

- Less than 10% of the vouchers in a sample of excess compensation vouchers in the Second Circuit had any changes made to them by judges or court staff.
- The average change to vouchers in the sample prior to the start of the CBAs ranged from less than 1% to 52%, but most changes were not for significant dollar amounts.
- Review of vouchers was slow because attorneys were slow to submit vouchers.

Did the pilot generate savings in the circuits?

- The pilot program saved a total of approximately \$3.7 million in capital and mega cases from 2007 to 2009—the most modest estimate of savings (the results for capital habeas cases were not significant).
- Total costs for the pilot were \$1.7 million in salary, benefits, travel, and overhead; therefore, the pilot program did save money.
- In follow-up interviews, 72% of attorneys and judges said that the same amount of money could not be saved without the CBAs.

What effect did the cost containment efforts have on the quality of representation?

In their responses to our survey,

- 70% of judges and attorneys who had experience budgeting cases agreed that the CBA helped to promote a high-quality defense.
- 70% of judges and attorneys who had experience budgeting cases thought that the CBA's work enhanced the effective management of cases.
- 92% of judges and attorneys who had experience budgeting cases agreed they were getting objective case-budgeting advice from the CBA.
- 76% of judges and attorneys thought the CBA was having a positive effect on the awareness of resources available for the defense of CJA clients.

What effect did the pilot have on case management?

- Cases that were budgeted involved more types of service providers and more attorneys than non-budgeted cases did, but at no higher cost.
- Attorneys and judges agreed that cases are thought through by counsel at an earlier stage, leading to improved representation of the client.

Introduction

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

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

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

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

3. *Id.* at 2.

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

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

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

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

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

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

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

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

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

5. *Id.* at 3–4.

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

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

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

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

The Ninth Circuit was not the only circuit with some degree of case budgeting prior to the appointment of the CBA, although the process in the Ninth Circuit was far more formal than that in other circuits. When asked to detail the extent of budgeting the CBAs

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

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

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

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

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

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

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

Descriptive Evaluation

To gain a better understanding of the impact of the pilot project, it was first necessary to consider the day-to-day duties of the CBAs. This descriptive evaluation was drawn from site visits made by members of the research team and from several sources of information provided by the CBAs: the narrative description of functions, status reports of activities, and daily diaries (reports of actions taken or recommended in individual cases by the CBAs that had a cost impact). From these sources, a list of common responsibilities and different tasks of the CBAs was created. These common responsibilities and different tasks, as well as a number of challenges the CBAs have faced, are discussed below, and greater detail is provided in the Appendix.¹³

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

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

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

13. The Circuit CJA Case-Budgeting Attorney Pilot Project Evaluation (2007–2009) Appendix is available at <http://cwn.fjc.dcn/fjconline/home.nsf/pages/1315> [hereinafter *Appendix*]. The findings show that the position has evolved differently in the three circuits, requiring an expansion of this evaluation to

Common Roles

There were three common roles found for the CBAs. The first, and where the CBAs spent the greatest amount of their time, was in their capacity as CJA case manager. Included in their role as CJA case manager was the time they spent budgeting cases. Budgeting involved a substantial amount of time working with attorneys to develop budgets that will be approved by the district, as well as working with the judges reviewing the budgets for approval. Training attorneys in the use of the budgeting program was an integral part of this work, and most attorneys needed to be trained individually.

The second common role for the CBAs was their responsibility as the circuit problem solver. Included in this role was being the go-to person for questions about cost containment even in non-budgeted cases. Related to questions about cost containment was the work the CBAs did, at the request of either an attorney or a judge, to track down voucher payments. While there was really no way to plan for this type of work throughout the day, and it was not envisioned at the start of the pilot project, it consumed a considerable amount of the CBAs' time.

The third common role of the CBAs was their responsibility as CJA point person. Any questions about the CJA, either litigating under it or getting appointed as CJA counsel, were filtered to the CBA. While the time necessary to address these needs was typically small, the importance of having a resource attorney to contact for these questions cannot be overstated. The interviews (discussed later in the Matched Pairs section) corroborated the importance of the CBAs' role as a resource for attorneys.

Different Tasks

While much of the work of the CBAs was common across all circuits, there were some noteworthy differences as well. One such difference among the CBAs was the extent to which they assisted the judges' review of excess compensation vouchers.¹⁴ The CBAs in the Second and Sixth Circuits spent a considerable amount of time working on all excess compensation vouchers, providing information to the reviewing judges. The information provided includes the reason for the excess request and the CBA's assessment of the reasonableness of the request given the case details. In addition to the daily work on these excess vouchers, both CBAs were faced with a backlog of excess compensation vouchers when they began their work. The Ninth Circuit CBA also did some work on excess com-

consider all responsibilities of the CBAs. Moreover, the difficulty of assessing the extent of case budgeting before the pilot required additional data collection efforts to verify the information used in the analysis.

14. Paragraph (d)(3) of the Criminal Justice Act, 18 U.S.C. § 3006A, provides that payment in excess of any maximum amount provided in paragraph (d)(2) may be made for extended or complex representation whenever the court in which the representation was rendered, or a magistrate judge if the representation was furnished exclusively before him or her, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit. Paragraph (d)(3) further provides that the chief judge of the circuit may delegate such approval authority to an active or senior circuit judge. Section 630.10.20 of the Guidelines for Administering the CJA and Related Statutes, Vol. 7A, *Guide to Judiciary Policy*, provides that the statutory case compensation amounts for appointed counsel do not apply in capital cases.

pensation vouchers, creating an Excel program for reviewing them. As the interviews with judges noted, the CBAs' work on excess compensation vouchers saves a substantial amount of judge time and provides more consistency in the review process.

Another difference across the circuits was the amount of time the CBAs spent working with committees in the circuits. The CBA in the Ninth Circuit, unlike the other two CBAs, was charged with serving on a number of working groups and task forces related to the needs of the circuit. While the CBA in the Second Circuit worked with a committee in the creation of the Second Circuit Case Budgeting Manual, the work was less of a weekly task.

A final difference among the CBAs was how they divided up work that was ultimately shared across pilot circuits. While the Second Circuit CBA, along with the Pro Bono Committee, created a manual for budgeting cases, the Sixth Circuit CBA created a budgeting checklist for attorneys and judges, and the Ninth Circuit CBA created an Excel program for case budgeting. The work of each CBA was reviewed within the circuit, either by the CBA's supervisor or by a committee of people, and then shared across all the circuits participating in the pilot project.

Common Challenges

The descriptive evaluation also revealed a number of challenges with which the CBAs dealt and which affected the evaluation and were considered throughout the rest of the assessment. The CBAs especially struggled to maintain costs in cases in which the budgeting process commenced after the litigation process had begun. The challenge for the CBAs was to negotiate with service providers to take a lower hourly rate after they had agreed to a higher amount. Not only were such negotiations time intensive, but they were difficult.

A second challenge was that attorneys were typically skeptical about the budgeting process before they began. Concerns about arbitrary cuts to vouchers or learning the Excel budgeting program were common in discussions between the attorneys and CBAs, and the surveys and interviews found these concerns as well.

In part because of this skepticism, attorneys and other service providers were often slow to submit budgets and vouchers. This challenge made it difficult for the CBAs and the presiding judges to monitor and assess the costs in budgeted cases and to effectively manage resources.

A fourth challenge was the amount of paperwork the CBAs dealt with on a daily basis. Each new budget request and any supporting memoranda were printed and included in a case file. Likewise, all correspondence and notes from correspondence were kept in the file and updated so that the CBA could know the current status of any case at a moment's notice. While the CBAs were given administrative help to deal with this issue, the burden did not go away.

A fifth challenge for the CBAs was that they were often notified about the decision to seek the death penalty well after the decision was made. Not being updated on the status of certification meant that the CBAs found themselves behind in the budgeting process through no fault of their own.

A final challenge for the CBAs involved conflicting demands on their time. The CBAs worked with judges, attorneys, court staff, and the Office of Defender Services (ODS) each day. At times these groups came in conflict with one another, creating role conflict for the CBA. The need to mediate disputes among these groups sometimes placed the CBA in a challenging position of trying to satisfy conflicting interests, and meant that less time was available for budgeting.

Conclusions

From the descriptive evaluation three conclusions relevant to the rest of the evaluation deserve highlighting. The first is that although there was one pilot project, there were really three CBA positions with three different sets of responsibilities. The variation in jobs was due to the differences in the needs of each circuit, both at the time the CBA started and on a daily basis, and was likely to affect the assessment of the pilot project.

Another conclusion is that assessing the extent of case budgeting before the pilot is challenging. There was relatively little objective information about efforts at cost containment before the pilot was created, making it difficult to assess how much money was saved as a result of case budgeting before the pilot's creation. Even during the pilot, assessing the use of resources was challenging. The CBAs and attorneys had conversations about cost containment that were not independently verified. This calls into question the reliability of information in the daily diaries and status reports. Other sources of information, such as the matched pairs analysis and interviews, were used to fill in these information gaps. However, not all information was verified or could be verified (discussed below in the Matched Pairs section).

A final conclusion about the assessment was the increasing importance of the CBAs' role of circuit problem solver. While this role was not envisioned at the beginning of the program, the evaluation did assess this responsibility.

Pre-pilot Circuit Culture (Second Circuit)

A second part of the evaluation plan was an analysis of excess compensation vouchers in the Second Circuit.¹⁵ The purpose of this evaluation was to get a sense of how often changes were made to vouchers prior to the appointment of the CBA. The vouchers can show both the frequency of change and the magnitude of change, as well as the dollar amount of the changes. The full results of this analysis are detailed in the Appendix.

The results show that review of excess compensation vouchers was rare before the pilot, and the changes that were made altered the vouchers by few dollars. This is true for both attorney vouchers and service provider vouchers in cases authorized and not authorized for the death penalty.

Using a list of all cases initiated in 2003 for which excess compensation vouchers were paid, we generated a stratified random sample of 100 cases.¹⁶ From these 100 cases, 1,143 payments were identified, and for these 1,143 payments, 1,062 (93%) paper vouchers were found.

The 1,062 vouchers consisted of 305 CJA 20 vouchers, 15 CJA 30 vouchers, 674 CJA 21 vouchers, and 68 CJA 31 vouchers.¹⁷ We recorded the initial dollar amount requested, the changes made by court staff and district and circuit judges, and the final approved amount.

Summary of Changes to CJA 20 and 30 Vouchers

In considering the changes made to vouchers, the best picture was provided by comparing changes made by court staff to the total amount with changes made by district and circuit judges to the total. While judges often endorsed the changes made by court staff, they sometimes made unique changes to vouchers as well. Because the unique changes made by judges are related to the substance of cost containment (as opposed to mathematical or technical changes), the unique changes made by judges are reported in Table 1 and are broken down by whether the change was a reduction or an addition.

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

16. The list of cases was provided by ODS. The sample was stratified to allow for proportionate representation of the districts in the Second Circuit.

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

Table 1. Pre-pilot Changes to CJA 20 and 30 Vouchers

Review Type	Voucher Type	Frequency of Change	Range of Change
Mathematical review by court staff	CJA 20	56/305 (18%)	Reductions -25% to -1% Additions 1% to 11%
	CJA 30	1/15 (7%)	Reduction -1% No Additions
Additional review by court staff	CJA 20	14/305 (5%)	Reductions -20% to -1% Additions 1% to 16%
	CJA 30	1/15 (7%)	Reduction 2% No Additions
Unique district judge changes	CJA 20	23/305 (8%)	Reductions -31% to -1% Additions 1% to 15%
	CJA 30	0/15	
Unique circuit judge changes	CJA 20	27/305 (9%)	Reductions -31% to -1% Additions 1% to 10%
	CJA 30	0/15	

In terms of the frequency of the review of CJA 20 and 30 vouchers, changes were fairly infrequent and were made most often by court staff to correct mathematical errors. District and circuit judges made changes apart from approving the changes by court staff for mathematical and additional review, but the changes were relatively infrequent (less than 10% of the time).

In terms of the scope of the changes, both the additions to and reductions from a voucher could be a significant percentage of the total dollar amount for the voucher. The dollar amount of change ranged from a few cents to several thousand dollars (see the Appendix for more detailed information). In most instances reductions were as common as additions.

The total time it took to review CJA 20 vouchers was rather lengthy. Table 2 shows the length of time for each stage of the review process for CJA 20 vouchers. Such information was unavailable for CJA 30 vouchers.

Table 2. Pre-pilot Time to Review for CJA 20 Vouchers

Stage in Review	Median Days to Review
Days between end of service period and submission of voucher	64
Days between attorney signature and submission	6
Days between submission and district judge signature	12
Days between district judge and circuit judge signatures	30

The time between the end of the service period and submission of the voucher was over two months. Added on to that was a 12-day period for the district judge to review the voucher, and a 30-day period between the district judge’s and circuit judge’s approval. While review itself took about one and a half months, additional time was needed to pay the voucher, an element outside the bounds of this study. However, if one were to consider the beginning of the review process to the end of the service period, a substantial amount of time elapsed between the end of service and payment. While some of the delay was the attorney’s responsibility for allowing so much time to elapse between the end of the service period and submission of the voucher, the lengthy period was a source of frustration for CJA attorneys before the start of the pilot project (see Survey and Matched Pairs sections). The service period for these vouchers was between 30 (CJA 30s) and 187 (CJA 20s) days, making for a considerable length of time between the initiation of the case work and payment.

Changes to CJA 21 and 31 Vouchers

In addition to considering the changes to vouchers for attorneys, we also examined service provider vouchers. Table 3 presents the pre-pilot changes to CJA 21 and 31 vouchers.

As with the CJA 20 and 30 vouchers, changes to the CJA 21 and 31 vouchers were quite rare, though the range of changes could adjust the voucher by a substantial amount. Reductions were somewhat more common than additions, though with so few changes it is not clear if reductions are more frequent overall.

The CJA 21 vouchers were similar to the CJA 20 vouchers in terms of the lengthy time period between the end of the service period and submission of the voucher, here 50 days (see Table 4). Some of the delay was in getting the service providers’ signatures as well as the attorney’s, but the remainder of the review process was also quite long. The median number of days from submission of the voucher to review by the district judge was 13. The median number of days from district judge review to circuit judge review, however, ranged from 28 days for CJA 21 vouchers to 45 days for CJA 31 vouchers (not shown). This was after a median service period ranging from 1 day (for CJA 21 vouchers) to 30 days (for CJA 31 vouchers; not shown).

Table 3. Pre-pilot Changes to CJA 21 and 31 Vouchers

Review Type	Voucher Type	Frequency of Change	Range of Change
Mathematical review by court staff	CJA 21	2/674 (< 1%)	Reduction -52% Addition 1%
	CJA 31	3/68 (4%)	No Reductions Additions 1%
Additional review by court staff	CJA 21	23/674 (3%)	Reductions -52% to -1% Addition 1%
	CJA 31	1/68 (1%)	Reduction 3% No Additions
Unique district judge changes	CJA 21	12/674 (2%)	Reductions -52% to -1% Additions 1% to 7%
	CJA 31	3/68 (4%)	Reductions 1% No Additions
Unique circuit judge changes	CJA 21	26/674 (4%)	Reductions -52% to -1% Additions 1 %
	CJA 31	0/68	

Table 4. Pre-pilot Time to Review for CJA 21 Vouchers

Stage in Review	Median Days to Review
Days between end of service period and submission of voucher	50
Days between attorney signature and submission	20
Days between expert signature and submission	27
Days between submission and district judge signature	13
Days between district judge and circuit judge signatures	28

Conclusions

This part of the evaluation was undertaken to shed light on how frequently excess compensation vouchers were changed prior to the start of the pilot and to answer questions about the scope of the change. The first conclusion is that changes were both rare and modest in scope. Neither staff nor judges adjusted excess compensation vouchers often, or for large amounts. While it may appear that judges made a number of changes on the whole, if we exclude judge approval of changes made by court staff, few unique modifi-

cations remain. Circuit judges also made fewer changes than district judges, and relatively few unique changes to excess compensation vouchers as a whole.

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

The results of this analysis also point to a potentially significant impact for the CBA. All three CBAs are working with their circuits to assist in review of excess compensation vouchers. If excess compensation vouchers are changed more than 10% of the time as a result of these efforts, one could argue that the CBAs have increased voucher review.

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

Overall the review of excess compensation vouchers prior to the appointment of the CBA revealed modest review of vouchers, both by judges and by court staff. The review was rare in frequency and, while some changes were substantial, most reviewers made changes to vouchers that were a small percentage of the overall amount of the voucher. It is possible that changes were not made because there was nothing unusual about the voucher. However, the prevalence of review by the CBAs today makes change more frequent than in the past.

Aggregate Analysis

The next aspect of the evaluation was to consider the aggregate costs of defense in cases, both budgeted and not budgeted. While there were more non-budgeted cases than budgeted cases in the study period, some general estimates of aggregate costs were made. To that end, we collected data on the amount of money paid out on vouchers annually for each circuit from 2003 to 2009.¹⁸ The data were broken down by the year in which the

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

case was initiated, the dollars spent per year, and how many representations were included in each yearly amount spent. Additionally, the data were divided by the type of case: capital, capital habeas, or mega. It should be noted at the outset that the CBA in the Ninth Circuit was not responsible for budgeting capital habeas cases.

The analyses show that the approximately \$3.7 million dollars in savings in aggregate circuit costs for capital and mega representations outweigh the \$1.7 million dollars in costs for the pilot.

The data collected allowed us to determine both national and circuit trends for each type of case. Discussed in this section are the trends we found in aggregate dollars spent annually. It should be noted before beginning the comparison that the dollars have been adjusted for inflation, using the Consumer Price Index. This means any dollar amount discussed is estimated in 2009 dollars. The data, however, have *not* been adjusted for changes in the hourly rate for counsel. This adjustment was not made because the aggregate amounts discussed here cover the costs for all types of service providers, not just the costs for counsel. It would artificially inflate the estimates of aggregate dollars if the totals were adjusted for changes in hourly rates across all voucher types (for a more detailed discussion, see the Appendix).¹⁹

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

To consider the impact that case budgeting was having on the dollars spent in pilot circuits, it is important to first consider what the variation in dollars spent per circuit looks like. Figure 1 shows the variation in dollars spent for cases initiated in 2003 (which have the most data available).

The general trend was for higher amounts of money to be spent in the second and third years of cases, and for the dollars spent in later years to decline. Of course, the most important factor in the dollars spent per year is the number of representations in each circuit. Figure 2 shows the variation in the number of representations from 2003 initiated cases in each circuit.

19. In addition to the problems of overestimating costs noted above, there are problems with adjusting for changes in hourly rates that occur even if money spent for attorney hours was examined separately. While rates go into effect on a single day, they can take three to seven months to be implemented in a case. There was no change at a single point in time for the rates, and thus adjusting rates becomes a representation-specific issue, and not an appropriate correction for the aggregate data here.

Figure 1. Aggregate Amount Paid for 2003 Initiated Cases

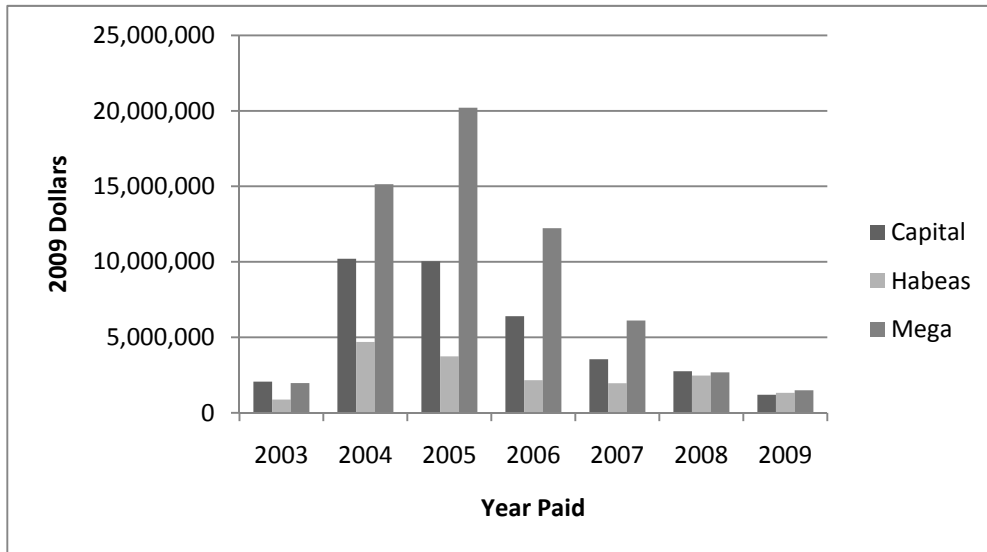
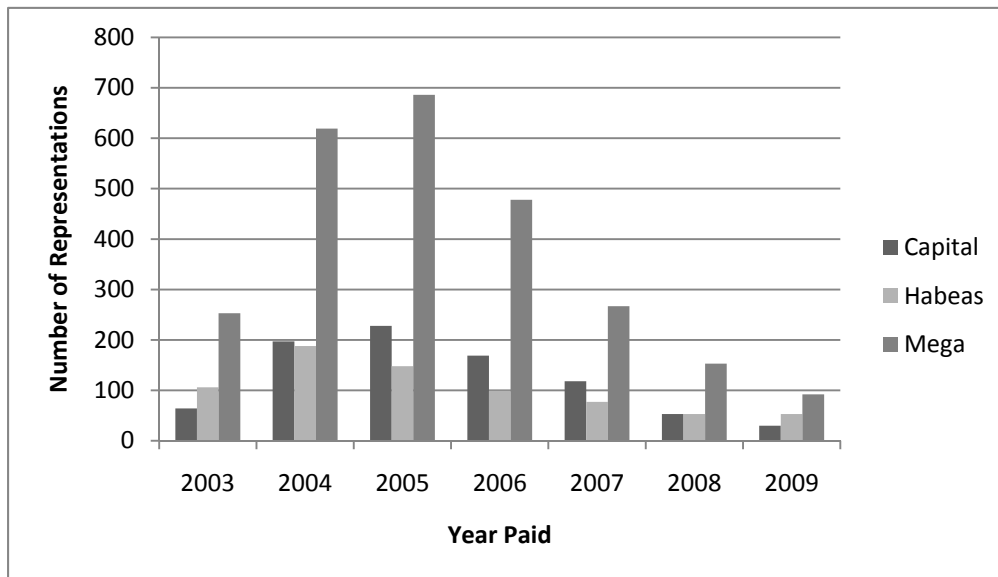


Figure 2. Number of Representations from 2003 Initiated Cases



As with the dollars spent per year in each circuit, the number of representations on which vouchers were paid followed a pattern of increasing in the second and third years and declining in later years. The correlation between the dollars spent and the number of representations litigated was quite strong, with a correlation coefficient of 0.8559. This means we are 99% confident that 73% of variation in dollars spent can be explained by the number of representations in the circuit.

*Explaining the Variation in Aggregate Dollars*²⁰

Before delving too deeply into comparisons of circuits, it was useful for us to consider the simplest comparison of aggregate dollars spent by those circuits that do budget cases as part of the pilot project and aggregate dollars spent by those that do not. We began by comparing the average dollars spent per representation for each case type in pilot and non-pilot circuits during our period of study.²¹ Using average dollars allows us to control for any difference between pilot circuits and non-pilot circuits that was the result of differing numbers of representations. Although one of the goals of the pilot project is to better manage the resources for CJA cases, it may be too early to determine the full effect of the pilot. The period of study (2003 to 2009) is weighted toward non-pilot years, meaning that the full impact of the pilot may be too soon to determine at this time. Because of the conflict between the goals of the program and the time period for evaluation, it is necessary to use the most rigorous tests and standards available to determine if there is an effect for the pilot.²²

In looking at the differences in case costs, we find that the average dollars spent per representation in capital cases for pilot circuits and those spent for non-pilot circuits look modestly different, but the results are just beyond typical bounds for statistical significance. Non-pilot circuits averaged \$54,587.55 per representation during the study period, while the pilot circuits spent \$43,675.02 on average. From this we are unable to conclude that the average dollars spent during the period for capital cases by pilot circuits and the average spent by non-pilot circuits differed.²³

In looking at the average dollars spent per representation in capital habeas cases, we found the average for non-pilot circuits to be \$29,245.36, while the average for the pilot circuits was \$22,337.36. The difference was substantively significant, almost \$7,000, but just outside the bounds of statistical significance, suggesting that the average dollars spent per representation by pilot circuits and the average spent by the non-pilot circuits for capital habeas cases did not differ.²⁴

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

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

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

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

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

The average dollars pilot circuits spent per representation for mega cases did not appear different from the average non-pilot circuits spent at first blush, and there was not a statistically significant difference between them. Non-pilot circuits spent on average \$25,234.92 per representation, while pilot circuits spent \$25,077.12. Since the two averages were neither statistically nor substantively different, we are confident in concluding that there was no difference between the two groups in average dollars spent for mega cases.²⁵

While the differences between pilot circuits and non-pilot circuits in average dollars spent was not significant in any case, this may be a function of a more complicated process. Therefore, before we can definitively conclude if the pilot is having a significant effect, we must account for other factors known to affect circuit costs. In the rest of this section, we discuss different ways to compare the dollars spent across circuits, controlling for circuit characteristics, differences between pilot circuits and non-pilot circuits, the number of representations, and the effect of time.

We began by running separate analyses for each type of case and then estimated an analysis with all case types. We included variables for the effect of the year in which the money was paid, expecting that more money would be spent in later years because later years included cases initiated from all years under study (e.g., 2009 dollars spent included cases from 2003 to 2009, while 2003 dollars spent included only cases from 2003). We also included variables to determine whether pilot circuits worked differently from non-pilot circuits during the span of our study. Finally, in the analysis with all case types, we included variables to control for the differing costs of each type of litigation.

Table 5 shows the results of our analysis. The baseline for all the case-type analyses was the average dollars spent in 2009 in non-pilot circuits of an average size. In the final column of Table 5, the baseline for the analysis was for dollars spent in 2009 in non-pilot circuits of an average size for mega cases. The first conclusion we made was that these analyses do not explain a significant amount of the variation in average dollars spent per representation. The analyses range from explaining three percent of the variation to explaining one percent of the variation, none of which was a significant improvement over the mean for average dollars spent. The effects for the pilot are well outside the bounds for statistical significance in some of the analyses, though the effects for participation in the pilot in capital cases and in the full analysis were significant. The third column of the table shows that pilot circuits spent \$15,000 less on average per capital representation than non-pilot circuits did. The 779 capital representations paid in 2009 would then result in a potential savings of \$11,685,000 with case budgeting, all else being equal.²⁶ Capital cases overall cost about \$26,000 more per representation than mega cases, which is not surprising given the higher attorney rate of pay in capital cases than in non-capital cases (shown in the final column). The final column of Table 5 shows a savings of \$7,000 per

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

26. The estimate of \$11,685,000 savings with case budgeting was calculated *before* the costs of the CBA positions were considered.

representation in pilot circuits relative to non-pilot circuits. With 1,851 mega representations paid in 2009 alone, the potential savings with case budgeting is almost \$13 million. While larger circuits, which typically have higher travel costs, do spend more money than smaller circuits do, the effect for each additional square mile is fairly small (less than a dollar for each additional 10,000 square miles).

Table 5. Averages (in Thousands) Spent per Representation, Pilot Circuits vs. Non-pilot Circuits

Variables	Capital Habeas Cases (Standard Error)	Capital Cases (Standard Error)	Mega Cases (Standard Error)	All Cases (Standard Error)
2003 paid	-15.436* (5.345)	-26.783* (9.082)	-25.206* (2.593)	-22.917* (3.393)
2004 paid	-5.466 (4.881)	-20.866* (7.644)	-16.238* (3.122)	-14.618* (3.179)
2005 paid	-2.258 (4.740)	-9.556 (9.547)	-12.594* (3.112)	-8.598* (3.761)
2006 paid	-2.090 (4.174)	-8.373 (8.981)	-10.767* (3.120)	-7.487* (3.457)
2007 paid	3.718 (4.928)	1.691 (10.934)	-5.704 (3.857)	-0.606 (4.125)
2008 paid	-3.591 (4.223)	-7.045 (7.718)	-4.069 (3.862)	-4.787 (3.202)
Pilot circuit	-3.547 (2.764)	-15.025* (4.770)	-0.648 (3.207)	-7.238* (2.298)
Size of circuit	0.000* (0.000)	0.000* (0.000)	0.000 (0.000)	0.000* (0.000)
Capital habeas cases	—	—	—	1.493 (1.719)
Capital cases	—	—	—	26.419* (3.012)
Constant	25.424* (4.032)	57.540* (6.566)	31.955* (2.406)	29.636* (2.563)
R-squared	0.097	0.044	0.087	0.159
No. of observations	228	281	329	838

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

Another way to consider the variation in dollars spent per year was to examine the aggregate dollar amounts. Because the amount of money spent increased as the number of representations increased, we included a variable for the number of representations paid in each circuit for each year. The results are shown in Table 6.

Table 6. Aggregate Dollars (in Thousands), Pilot Circuits vs. Non-pilot Circuits

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

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

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

Conclusions

While the conclusions we can reach at this point are tentative, we learned much about the costs of cases with respect to the pilot project. With a better understanding of this baseline, we can best assess the effect of the pilot on dollars spent in pilot circuits. There are, however, several important factors to keep in mind.

First, there were differences between the pilot circuits and non-pilot circuits before budgeting began, both as a group and as individual circuits. Thus, any comparison of dollars spent would have to include variables for being in the pilot project or for the circuits specifically. Second, the number of representations, while a significant explanation for dollars spent, was not the only factor driving circuit costs. It was useful to include measures for the geographic size of a circuit, which can lead to higher costs overall. Third, the highest cost cases are capital cases, not mega cases. This finding may illustrate the problems with identifying mega cases, or it may simply be the higher rate for attorneys and absence of a cap on the costs of death cases. Finally, in our analysis of whether the money saved by the pilot outweighs the costs of the positions and staff, the findings point to a tentative yes. While the money saved varies by circuit and case type, the purpose here is to consider the pilot as a whole. In so doing, we find that the estimated \$3,685,590 saved over the life of the pilot (from Table 6—the most modest estimate of pilot savings) outweigh the \$1,725,000 in salary, benefits, travel, and overhead for the CBAs and their support staff.²⁷

Survey

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

The results show that those respondents with experience budgeting cases see the work of the CBA as having a positive effect on the management of cases litigated under the CJA. Moreover, the efforts at cost containment by the CBAs help to promote a high-quality defense. Both attorneys and judges report that they are receiving objective case-budgeting advice from the CBAs.

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

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

Identifying Survey Respondents

Potential respondents for the survey came from two groups: panel attorneys and judges working in the Second, Sixth, or Ninth Circuit. Lists of CJA panel attorneys for each district in these three circuits were provided to the CBAs by the district panel office.²⁸ We created a comprehensive list of judges from all three circuits, including district, magistrate, and circuit judges, using the J-Net. The number of potential respondents in each group is detailed in Table 7.

Table 7. Identifying Survey Respondents

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

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

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

On February 23, 2010, we took two additional steps to ensure a high response rate for the surveys. First, we created a list of attorneys who had participated in budgeting, compiled from the budgets themselves. To those attorneys who had budgeted a case *and* received the initial e-mails, but had not yet responded, we made a phone call asking for their participation in the study. Second, we created a list of attorneys who had budgeted a case but had not received the survey. To those attorneys who had budgeted a case but had not re-

28. Two districts, California-Southern and Idaho, did not send in lists, and therefore panel attorneys in those districts were not included in the survey. The district of California-Eastern sent in a list of attorneys after the initial contact was made with respondents. The panel attorneys in this district were contacted separately from the other districts. However, because the California-Eastern list was comprehensive, the responses are included with those of all other respondents for purposes of analysis. The number of Ninth Circuit attorneys shown in Table 7 includes the list from California-Eastern.

ceived the initial e-mails, we sent an e-mail from the FJC Director with a link to the survey.²⁹

Response Rates

Data collection ended on March 5, 2010. The response rates, by group, are noted in Table 8.

Table 8. Response Rates to the Survey

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

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

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

Table 9 shows the number of respondents in each category who have had contact with the CBA.

29. While inclusion of the first group (those who had not yet responded, but were on the panel list) is not problematic for purposes of analysis, inclusion of the second group (those who budgeted but were not on the panel list) is problematic. Because these attorneys were not on the panel list, there is no way to know how representative these attorneys are of all other attorneys. That they are not on the panel list is an important difference, and one that could merit a separate analysis. Only 25 attorneys are in this separate group, and of the 25, only 7 responded to the survey. Therefore, in the results that follow, this supplemental group of respondents is excluded unless otherwise specified.

Table 9. Number and Percentage of Respondents Who Had Contact with the CBA

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

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

After the initial filter question to determine if the respondents had been in contact with the CBA, a series of questions asked the respondents the type of contact they had with the CBA. Included in the types were contacts to discuss case budgeting, service providers, district vouchers, circuit excess compensation vouchers, cost containment, cost drivers, and case management. Respondents could choose as many of the options as fit their work with the CBA. Each type of contact took the respondent to a series of questions on that type of work with the CBA. Anyone who had any contact with the CBA was also asked a series of questions about the overall pilot evaluation. Table 10 shows the variation in the types of contact with the CBA.

Of the types of contact with the CBA listed in Table 10, contact to discuss budgeting (178 respondents), district vouchers (156 respondents), and cost containment (130 respondents) were the most common. Of the 178 respondents in contact with the CBA to discuss case budgeting, the majority (104) were working on at least one mega case.

Table 10. Number and Percentage of Respondents Who Had Various Types of Contact with the CBA

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

Note: Percentages are based on the number of respondents in that category who had contact with the CBA, from Table 9. Judges were not asked about the use of service providers because the questions were not relevant to the experience of a judge with a case.

Budgeting

Respondents were asked about the types of cases they had budgeted, and all subsequent questions referred only to the case types with which they had experience. An initial set of questions asked the respondent about challenges to budgeting cases, allowing the respondent to choose more than one challenge. The most commonly mentioned challenges were largely the same across case types, and the three most common challenges across all case types are shown in Table 11. The cells show the percentage of respondents who either strongly or somewhat agreed that the issue was a challenge to budgeting.

Table 11. Challenges of Budgeting

Challenge	Capital Cases	Capital Habeas Cases	Mega Cases
Estimating overall case costs	89% agreed	68% agreed	83% agreed
Estimating rates/fees for service providers	67% agreed	32% agreed	58% agreed
Estimating the attorney hours necessary for a defense	82% agreed	74% agreed	73% agreed

To best understand Table 11, one must keep in mind two caveats. First, the number of people budgeting habeas cases is quite small, relative to the number budgeting the other two case types. The smaller number of habeas cases budgeted decreases the confidence we can have in the results because it is difficult to generalize from small samples to the population. The second caveat to keep in mind is the distribution of responses across the spectrum from agreement to disagreement. For example, while 89% of respondents agreed that estimating overall case costs in capital cases was a challenge, the remaining 11% were more likely to say that they neither agreed nor disagreed that estimating case costs was a challenge than that they disagreed it was a challenge. In fact, for all the challenges listed in the budgeting section of the survey, respondents were more likely to report being neutral than to disagree.

Given the challenges of case budgeting, it is important to consider the satisfaction of attorneys and judges with the work the CBA has done to address these challenges. The rates of satisfaction of attorneys and judges with the CBA's work to address budgeting challenges are presented in Table 12.

Once again, the percentage listed is a combination of the percentage of respondents reporting that they were very satisfied and the percentage reporting they were somewhat satisfied with the work of the CBA to address the challenges of case budgeting, and those who were not satisfied were more likely to be neutral than dissatisfied with the work of the CBA. The vast majority of respondents were satisfied with the work of the CBAs to address estimating overall case costs, estimating rates and fees for service providers, and estimating the attorney hours necessary for a defense.

Table 12. Respondents' Satisfaction with the CBA's Work to Address Budgeting Challenges

Work of CBA on Challenge	Capital Cases	Capital Habeas Cases	Mega Cases
Estimating overall case costs	86% satisfied	94% satisfied	80% satisfied
Estimating rates/fees for service providers	88% satisfied	92% satisfied	79% satisfied
Estimating the attorney hours necessary for a defense	87% satisfied	94% satisfied	77% satisfied

In addition to the challenges associated with case budgeting, the respondents were asked some overall questions about case budgeting and its impact on representation of clients under the CJA. The responses are shown in Table 13.

Table 13. Budgeting Impact (Percentage of Respondents Agreeing)

Budgeting Impact	Capital Cases	Capital Habeas Cases	Mega Cases
[The CBA] provided objective case-budgeting advice in [case type]	89% agreed	100% agreed	88% agreed
[The CBA] enhanced the effective management of [case type]	69% agreed	76% agreed	70% agreed
[The CBA] helped to promote a high-quality defense for [case type]	69% agreed	76% agreed	64% agreed

Overall, the respondents working with the CBAs on case budgeting see the work of the CBA as enhancing case management and promoting a high-quality defense. They see the CBA as providing objective case-budgeting advice across all case types. One could conclude from these survey items that those who have experience budgeting cases and who responded to the survey are very positive about the case-budgeting process and do not see a negative effect on representation of CJA clients.

Review of District Vouchers

The second most common type of contact that attorneys and judges had with the CBA was to discuss vouchers sent to district court judges for review. The nature of the contact was somewhat different for judges than it was for attorneys, however. Judges would contact the CBA to discuss items on the voucher on which they had questions, while attorneys would inquire about the status of a voucher they had submitted for review. The different nature of the contacts for the two groups requires us to divide the survey responses into two discussions.

Attorneys were asked whether the work of the CBA had an impact on the review process and the speed with which they were paid. Of the 73 attorneys responding to this section of the survey, 85% said they agreed, either strongly or somewhat, that the assistance of the CBA reduced the time they waited for review of district court vouchers. Additionally, 81% somewhat or strongly agreed that the assistance of the CBA reduced the amount of time they waited for payment. Finally, 88% of the attorney respondents agreed that the CBA was a resource for them in the district court's voucher review process.

Judges were asked slightly different questions about the assistance of the CBA in the district court's voucher review process, and only 53 judges had this type of contact. When asked whether the CBA expedited the judge's review of vouchers, 82% of the judges agreed either somewhat or strongly. Moreover, 92% of the judges agreed either somewhat or strongly that the assistance of the CBA facilitated their decision making in reviewing district court vouchers. Finally, 90% of the judges agreed, either somewhat or strongly, that the CBA was a valuable resource to them in reviewing district court vouchers.

Overall, the work of the CBA on district court voucher review is viewed positively by both attorneys and judges. Attorneys see the work of the CBA as making the process more efficient, leading to faster payment, and giving them a resource in the review process. Judges see the work of the CBA as making their review faster and easier, and giving them a resource in the review process.

Cost Containment

The third most common type of contact with the CBA was to discuss cost containment. Those in contact with the CBA to discuss cost containment were not necessarily the same as those budgeting cases with the CBA, so the results can be interpreted somewhat more broadly than the budgeting results discussed above.

Both attorneys and judges were asked their opinion on whether the assistance of the CBA helps to keep attorneys and service providers accountable for the costs of litigation in CJA cases. Of the 76 attorneys and 54 judges responding to this section of the survey, 83% agreed, either somewhat or strongly, that the assistance of the CBA keeps attorneys accountable for the costs of litigation. In addition, 78% of the attorney and judge respondents agreed somewhat or strongly that the assistance of the CBA keeps service providers accountable for the costs of litigation.

Judges were also asked whether the assistance of the CBA increased their confidence in the appropriateness of expenditures under the CJA. Once again, a substantial majority of judges, 84%, agreed somewhat or strongly that the assistance of the CBA increased their confidence in the appropriateness of expenditures under the CJA.

Both attorneys and judges were asked whether the assistance of the CBA enhanced cost containment in each of the case types. Table 14 presents the percentages of judges and

attorneys agreeing, either somewhat or strongly, that the work of the CBA enhanced cost containment.

**Table 14. Does the Work of the CBA Enhance Cost Containment?
(Percentage of Respondents Agreeing)**

Capital Cases	Capital Habeas Cases	Mega Cases	Other Non-capital Representations
81% agreed	86% agreed	76% agreed	67% agreed

Overall Pilot Evaluation

Attorneys and judges in contact with the CBA were asked a series of questions that evaluated the pilot project overall. The results in this section of the survey have the largest numbers of respondents, providing even more confidence in the results. Table 15 shows the opinions of attorneys and judges on the items listed.

**Table 15. Effect of the Assistance of the CBA
(Percentage of Respondents Reporting a Positive Effect)**

Effect of Assistance of the CBA	Percent Positive (Very or Somewhat)
On the quality of the representation of CJA clients	69%
On the awareness of resources available for defense of CJA clients	76%
On the ability of counsel to obtain the necessary resources to provide a quality defense for CJA clients	73%

Consistent with the results discussed above, those not seeing the impact of the CBA as positive were more likely to be neutral than negative. In fact, only 10 attorneys (out of 189) and no judges thought the assistance of the CBA had a negative impact on any aspect of representation of CJA clients.

Conclusions

Overall, the survey results demonstrate a positive evaluation of the CJA Case-Budgeting Attorney Pilot Project. While the response rates from judges were higher than those from attorneys, the response rates are strong enough that we can conclude the two groups view the pilot in the same positive light.³⁰

Of those who were in contact with the CBA, 285 out of 1,047 respondents to the survey, their contact was most likely to involve a discussion of case budgeting, review of district

30. In fact, the survey responses were so similarly positive, there was no need to weight the different groups of attorneys and judges by their response rates.

vouchers, or cost containment. For those with experience budgeting a case, mega cases were those most commonly budgeted.

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

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

Both attorneys and judges saw the CBAs as helping to keep attorneys and service providers accountable for the costs of cases. The work of the CBAs enhanced cost containment efforts across all case types, according to the attorneys and judges responding to the survey.

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

Matched Pairs

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

The results show that the budgeted cases involve more resources (attorneys and service providers) than the non-budgeted cases, but at no higher cost. This may be due to the changes CBAs are making to budgets, given that approved budgets were from \$1.2 million to \$2.6 million lower than submitted budgets. While the CBAs are reducing the costs of budgets, the judges and attorneys interviewed said that working with the CBAs on budgets leads to better-planned cases and more effective case management. The CBAs are viewed by judges and attorneys as a resource, without whose efforts the same amount of money could not be saved.

Matching pairs is an increasingly common technique in empirical research for evaluating the effects of a particular factor.³¹ Two entities are paired based on characteristics that exist prior to study, and, ideally, they differ only on the factor of interest. For our purposes here, cases were paired based on case characteristics: case type, district, charges, number of representations, etc., but they differ on whether or not the case was budgeted with a CBA.

To find the pairs for study, one of two approaches can be used, and the choice of technique depends on the sizes of the sample and the universe from which the pairs are drawn. For small samples or a small universe, a researcher can match observations by hand. For larger studies, a computer program can be used to match cases based on a propensity score, and the score is calculated based on several characteristics of the observations.³² For purposes of this study, cases were matched by hand. Matching by hand was the preferred technique for two reasons. First, the number of cases being budgeted was relatively small and from a large universe of cases, meaning that the work invested to create a propensity score would have been inefficient. Second, because the law itself has changed, cases needed to be paired within a specific time frame and within a specific circuit. With the case parameters, time parameters, and circuit law parameters all affecting the quality of the pair, it was more precise to find the pairs by hand.

From a list of all cases being budgeted in the fall of 2008, we drew 13 budgeted cases in a stratified random sample.³³ The strata were to ensure that all three case types (capital, capital habeas, and mega) were included in the sample (where the cases were available), and all three circuits were represented.³⁴ We then paired the cases by searching PACER for a similar case in the same district during the period 2002–2006. The time frame for finding pairs was limited to cases commenced prior to the creation of the pilot to avoid the possibility that case-budgeting or case-management practices were having an impact in the circuit even in non-budgeted cases. Pairs were limited within the circuit to avoid the potentially confounding issue of variation in circuit law. In fact, in most instances, cases were paired within the same district, though when a pair was not found within the district during the time frame of study, a sibling district was used to find the pair.³⁵

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

32. See Daniel E. Ho et al., *Matching as Nonparametric Preprocessing for Reducing Model Dependence in Parametric Causal Inference*, 15 *Political Analysis* 199, 199–236 (2007); Paul R. Rosenbaum & Donald B. Rubin, *Reducing Bias in Observational Studies Using Subclassification on the Propensity Score*, 79 *J. Am. Stat. Ass'n*, 516, 516–24 (1984); and Paul R. Rosenbaum & Donald B. Rubin, *The Central Role of the Propensity Score in Observational Studies for Causal Effects*, 70 *Biometrika* 41, 41–55 (1983).

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

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

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

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

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

We compared cases not only for their total cost, but also for the types of experts used in the litigation process. The purpose here was to determine if cases are managed differently because of the CBA and if this case management results in a cost savings to the circuit.

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

In comparing the use of resources in these 10 pairs, we found some statistically significant differences (see the Appendix for the full results). Table 16 shows the number of budgeted and non-budgeted representations using each type of resource.

Table 16. Representations with Attorneys and Service Providers

Service Provider	Representations from Non-budgeted Cases	Representations from Budgeted Cases
Counsel	90 (97%)	68 (97%)
Investigator	35 (38%)	39 (56%)*
Transcript service	18 (19%)	32 (46%)*
Paralegal	5 (5%)	20 (29%)*
Interpreter/translator	10 (11%)	19 (27%)*
Mitigation specialist	6 (6%)	20 (29%)*
Duplication service	15 (16%)	16 (23%)
Other service providers	5 (5%)	24 (34%)*

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

With the exceptions of counsel and duplication services, the use of service providers differs significantly for budgeted cases and non-budgeted cases. Representations from budgeted cases were more likely to involve every type of service provider except counsel and duplication services. While the increasing use of service providers may be due to a change in the nature of litigation, the impact of such changes is outside the bounds of this study. The use of some service providers, such as paralegals, can be attributed more easily to the work of the pilot project. All three CBAs noted that they encouraged attorneys to use paralegals for discovery purposes, and the increased numbers appear to suggest that attorneys are following the suggestion.

Not only are more types of service providers used in budgeted cases than in non-budgeted cases, but the numbers of service providers differ significantly as well (see Table 17). Budgeted cases involve higher numbers of attorneys, investigators, transcript services, paralegals, mitigation specialists, and other service providers, and the differences between budgeted cases and non-budgeted cases is statistically significant for all service providers except interpreters and duplication services. The difference in number of service providers is not surprising, however, when one considers the differences discussed in Table 16. Moving from using zero paralegals to one paralegal, for example, will affect both usage by type and average numbers of service providers.

Table 17. Average Number of Attorneys and Service Providers per Representation

Service Provider	Average Number from Non-budgeted Cases	Average Number from Budgeted Cases
Counsel	1.204	1.771*
Investigator	0.462	0.786*
Transcript service	0.441	1.329*
Paralegal	0.075	0.400*
Interpreter/translator	0.419	0.586
Mitigation specialist	0.065	0.371*
Duplication service	0.258	0.243
Other service providers	0.161	1.214*

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

With the increased use of most types of service providers in budgeted cases, a comparison of case costs may show higher amounts of money spent in budgeted cases than in non-budgeted cases. The results of comparing case costs are mixed. While the average dollars spent per representation for budgeted cases and the average spent for non-budgeted cases differ significantly when participation in the pilot is the only factor considered, a more sophisticated multivariate analysis shows that the case costs of budgeted cases and non-budgeted cases do not differ when case differences beyond budgeting are included. A lack of case difference here, however, is a significant finding given the results shown in Tables 16 and 17. While budgeted cases are using more service providers than non-budgeted cases, the costs of budgeted representations are not higher than the

costs of non-budgeted representations. Moreover, the aggregate analysis showed that circuits participating in the pilot spend significantly less than non-pilot circuits.

While differences between budgeted cases and non-budgeted cases in case costs are not significant, this is not to say that the pilot project does not affect total dollars in a case. It is possible that the results for dollars out the door are not significant because changes are made to budgeted requests before any voucher is submitted. It is, therefore, important to consider one final difference in the paired cases, differences between the requested amount and the approved amount.

Looking at differences in budget requested and approved amounts makes an assumption worth mentioning. To say that the changes to budgeted requests save money is to assume the budget would have been submitted as a voucher and approved without any modification by district or circuit judges. Because there is no way to know if changes would have been made to budgets or vouchers without the work of the CBA, the modifications to budgets are referred to as changes, not dollars saved.³⁶

In considering the differences between approved amounts and budgeted amounts, it is also important to note that these changes both add to and subtract from dollar totals. With all these caveats in mind, as well as others listed in the Appendix, we find that the approved amounts in case budgets were from \$1.2 million to \$2.6 million lower than the requested amounts, an estimate based on adjustments before vouchers were submitted for reimbursement and possibly revised a second time.

Interviews

Given the number and amount of changes to budgets, it is important to consider whether the attorneys in these cases and the judges presiding over the cases see the changes to budgets as affecting the quality of the representation in the cases. To answer this question and gain a better sense of budgeting at the case level, we conducted a series of interviews.

In July and August 2010, 25 attorneys and judges were contacted and asked to participate in interviews with members of the FJC research team. The interviews lasted 15 to 90 minutes and covered the process and impact of case budgeting in specific cases (both those included in the matched pairs analysis and those outside the analysis). The FJC chose the subjects for the interviews, and recommendations were provided by ODS and the CBAs themselves.

The interviews sought to gather the perspectives of attorneys and judges who were budgeting specific cases from the matched pairs as well as those of attorneys and judges with broader pilot experience. Regardless of the perspective of the interview subject, they all had a positive impression of the pilot. Those working with the CBAs thought that budgeting led to better case management because the case was thought-out by the attorney at an

36. While the Pre-pilot Circuit Culture section suggests few modifications were made to excess compensation vouchers, we are hesitant to make such generalizations to budgets for all the circuits.

earlier stage. This support for the pilot was true of both attorneys and judges, including those who were initially skeptical of the pilot.

The skepticism of attorneys and judges had several sources. First, learning the Excel program for budgeting took time on the part of attorneys. However, once they were familiar with the program they found it to be a useful tool, and even used it as a case-management tool for non-budgeted cases. Both attorneys and judges expressed initial concern that the pilot would cut costs without consideration for the effect on a high-quality representation. Resource scarcity was a concern among both groups, especially given the experiences with state court budgeting programs.

Both the attorneys and judges interviewed were overwhelmingly satisfied that the budgeting and case management under the pilot project did not negatively impact representation, and many thought representation was actually improved by budgeting because of the earlier planning mentioned above.

In addition to the CBAs' case-budgeting work, judges and attorneys agreed that the CBA was a resource to them in the circuit that did not exist prior to the pilot. They viewed the CBA as a one-stop source for answering questions about litigation under the CJA. The CBAs were so helpful that attorneys and judges turned to them for assistance even in non-budgeted cases. CBAs not only answered questions about litigation but facilitated the entire litigation process, through voucher review and payment. According to both attorneys and judges, review and payment were faster and more consistent with the help of the CBA.

All interview subjects were asked if the money saved by the pilot project would have occurred without the efforts of the CBA. Eighteen of the 25 interview subjects said there was no way to save the same amount of money without these efforts, and the other 7 were not able to say if the money would have been saved. Overall, the interviews support the claim that the CBAs are developing case-management practices that save money and may even improve the quality of representation for CJA clients.

Conclusions

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

The work of the CBAs is likely to be affecting these lower case costs. As the analysis of the budgets suggests, the CBAs are engaging in a number of efforts to reduce case costs, including increasing the number of service providers to find lower estimates. As the mul-

tivariate analysis above showed, the higher number of service providers for duplication and translation is lowering case costs.

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

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

Pilot Evaluation Conclusions

The purpose of this evaluation was to assess whether the CJA Case-Budgeting Attorney Pilot Project was meeting its goals of helping to effectively manage the resources available through the Defender Services account while achieving a high quality of defense representation and providing objective case-budgeting advice to judges and CJA panel attorneys. To determine whether these goals have been met, we drafted and executed a five-stage evaluation plan.

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

Not only does the pilot achieve cost containment, the first part of the first goal, but it also achieves the second part of this first goal—high-quality representation. In both the sur-

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

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

The willingness of attorneys and judges to seek the help of the CBA points to other benefits of the pilot project, beyond its two stated goals. The pilot project, and the work of the CBAs specifically, results in faster and more consistent review of vouchers, at both the district and circuit court levels. Both attorneys and judges see the process as more efficient: judges spend less time reviewing vouchers and attorneys see faster payment. Not only are vouchers moving through the system more efficiently now than before the pilot, but changes to vouchers, when they occur, are understood more easily by counsel. Judges feel more confident in the changes they make, and attorneys have a source they can go to when they have questions about the changes made.

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

Overall, the pilot project has added a resource for attorneys and judges involved in CJA litigation. The CBAs solve problems in the circuit, answer questions about litigation, and

have brought greater consistency and accuracy to the CJA litigation process. All of this additional work has been done while still achieving the twin goals of effectively managing resources and providing objective case-budgeting advice.