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Briefing Report to the Chairman, Subcommittee on Administrative Oversight and the Courts, Committee on the Judiciary, U.S. Senate

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THE FEDERAL JUDICIARY

Observations on Selected Issues

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The Honorable Charles E. Grassley
Chairman, Subcommittee on Administrative
Oversight and the Courts
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

This briefing report responds to your May 4, 1995, request that we review various aspects of the federal judiciary's operations. Specifically, you asked us to provide information on (1) the appropriations, expenditures, and functions of the Administrative Office of the U.S. Courts (AOUSC) and Federal Judicial Center (FJC), including any substantial duplication in AOUSC and FJC functions and services; (2) the costs of FJC education and training programs, including the potential savings that could result from eliminating all such programs except for the training and education of new district judges; (3) the annual number and cost of meetings of the Judicial Conference and its committees, circuit judicial conferences, and circuit judicial councils; and (4) the cost, by circuit, of any circuit task forces on gender, racial, and/or ethnic bias, and the process used to select any executive directors for the task forces. You also asked us to assess the methodological soundness of any circuit task force reports that were at least in final draft. As agreed with your office, we will provide in a separate product our analysis of the Ninth Circuit report, published in 1993, and the final drafts of the two District of Columbia Circuit reports.

Background

The federal judiciary consists of the Supreme Court, 12 regional circuit courts of appeals, the Court of Appeals for the Federal Circuit, 94 district courts, 91 bankruptcy courts, the Court of International Trade, and the Court of Federal Claims. The Judicial Conference of the United States, a body of 27 judges over which the Chief Justice of the United States presides, is the judiciary's principal policymaking body and does most of its work through about 25 committees. The AOUSC, operating under the direction and supervision of the Conference, provides a wide range of administrative, legal, and program support to the courts, including budgeting, space and facilities, automation, statistical analysis and reports, financial audit, and management evaluation. FJC, the judiciary's research and education agency, operates under the direction of its own eight-member board, which has two permanent members, the Director of the AOUSC and the Chief Justice, who chairs the board. By statute, AOUSC

and FJC have some similar responsibilities in supporting and evaluating court operations and supporting implementation and evaluation of the Civil Justice Reform Act of 1990.[1]

Regionally, each of the 12 circuits has a circuit judicial conference, chaired by the chief judge of the circuit, whose purpose is to provide a forum for judges and members of the bar to exchange ideas and discuss the administration of the courts in the circuit. Each circuit also has a judicial council of the circuit, also chaired by the chief judge of the circuit, which is charged with making all necessary and appropriate orders for the effective and expeditious administration of justice within the circuit.

Results in Brief

The operations of AOUSC and FJC are funded by a combination of appropriations and offsetting collections. Total AOUSC budget authority rose from $68.4 million in fiscal year 1992 to about $81.2 million in fiscal year 1995.[2] Of this total, appropriations accounted for $44.7 million (65 percent) in fiscal year 1992 and $47.5 million (58 percent) in fiscal year 1995. Funds available from offsetting collections, principally the Judiciary Automation Fund,[3] accounted for the remainder of funds available. In each fiscal year 1992 through 1994, total AOUSC obligations equaled the total funds available.

Total FJC budget authority declined from about $19.2 million in fiscal year 1992 to about $19 million in fiscal year 1995. Appropriations accounted for $17.8 million (93 percent) in fiscal year 1992 and about $18.8 million (99 percent) in fiscal year 1995.[4] The FJC's offsetting collections are derived from other judicial appropriation accounts and the FJC Foundation, which may accept donations to finance FJC programs. FJC obligations equaled funds available in each fiscal year from 1992 through 1994.

To determine whether duplication of effort exists between AOUSC and FJC, we focused on the delivery of services. First, we identified functions that

[1]The Act (P.L.101-650) required each district court to develop and implement a civil justice expense and delay reduction plan.

[2]All figures are expressed in current dollars.

[3]For a description of the Judiciary Automation Fund and its uses, see Judiciary Automation Fund: Reauthorization Should Be Linked to Better Planning and Reporting (GAO/T-GGD/AIMD-94-176, June 30, 1994).

[4]The decline in offsetting collections is primarily the result of a change in appropriations. Beginning in fiscal year 1994 Congress appropriated directly to FJC about $1 million for training of new court personnel that had previously been appropriated to the judiciary's salaries and expenses account for this purpose and subsequently transferred to FJC.

overlapped the responsibilities of each agency and selected for further analysis three functions that encompassed virtually all of FJC's services—(1) education and training, (2) research, and (3) automation. Next, recognizing that the existence of overlapping functions does not necessarily equate to a duplication of effort in the delivery of services, we analyzed the customer services provided by each agency within these three functions to identify duplication of effort, if any, that existed. For example, we reviewed AOUSC and FJC training materials and curricula for new judges to determine if AOUSC and FJC covered the same topics and material (they did not).

We found little actual duplication of activities or services within the overlapping functions we examined. For example, while each agency provides training to court clerks, probation officers, and new judges, the objectives and topics of each agency's training appeared to be distinct. Given our time constraints, our analysis focused on duplication of effort in the delivery of services and did not include a detailed assessment of whether efficiencies could be achieved from consolidating the administration of overlapping functions in AOUSC or FJC.

FJC estimated it spent about $3 million on district judge orientation, education and training in fiscal year 1994. Of this total about $500,000 was spent on training and orientation of newly appointed district court judges and another $2.5 million on district judge seminars and workshops. All 70 district judges appointed in fiscal year 1994 attended a FJC orientation program for new district judges and 42 attended at least one nonorientation program during their first year on the bench.[5] If all FJC functions in 1994 had been abolished except for new district judge orientation, up to about $18 million of FJC's $18.5 million fiscal year 1994 appropriation could have been saved. However, to the extent that AOUSC increased its training and education programs for district court or other judges, it would probably incur additional costs unless it reduced or eliminated some of its current activities. In addition, these savings assume that none of FJC's other functions would be transferred to any other federal judiciary organization. FJC, for example, currently conducts research on a variety of topics, plus orientation, training, and continuing education for chief district court judges; court of appeals, bankruptcy, and magistrate judges; probation and pretrial service officers; federal public defenders; and other court personnel.

[5]Attendance at either the orientation or nonorientation program may not necessarily have occurred in fiscal year 1994.

In fiscal year 1995, FJC estimated it will spend about $6.2 million on workshops and conferences for court of appeals, district, magistrate, and bankruptcy judges and court staff. These estimated costs include travel and per diem, space rental (when used), and faculty honoraria but exclude the costs of producing and mailing FJC-furnished materials used for training and education, such as manuals, videos, curricula packages, and interactive materials such as compact discs with read-only memories (CD-ROMs). (See briefing section II.)

In calendar year 1993, the total estimated cost of 2 Judicial Conference sessions and 54 meetings of the Conference's approximately 25 committees was about $893,000. The estimated calendar year 1994 cost of 2 Conference sessions and 59 committee meetings was about $1,069,000. Normally, Conference committees meet twice a year. However, in calendar years 1993 and 1994, the Long-Range Planning Committee met 11 times while preparing the draft long-range plan for the federal courts, which was presented to the Conference for review in March 1995. (See briefing section I.)

In fiscal year 1993, 8 of the 12 regional circuits[6] held circuit conferences at a total estimated cost of $1,083,000. In fiscal year 1994, 8 of the 12 circuits held conferences at a total estimated cost of $972,000. (See briefing section IV.)

In fiscal year 1993, the 12 regional circuits held 25 circuit council meetings at a total estimated cost of $55,000. In fiscal year 1994, the regional circuits held 32 circuit council meetings at a total estimated cost of $67,000. According to the circuits, many of the regional circuit council meetings were held at little or no additional cost while the council members were assembled for the circuit judicial conference or other regular court business. (See briefing section IV.)

As of June 1, 1995, 10 of the 12 circuits had established task forces on gender, racial, and/or ethnic bias[7] and had spent a total of about $667,000. Of this total, about $562,000 (84 percent) was spent by the D.C. Circuit, which had completed final drafts of its studies, and the Ninth Circuit, which had published its study in final form. (See briefing section V.)

[6]The federal courts of appeals are organized into 12 regional circuit courts of appeals plus the Court of Appeals for the Federal Circuit. Our work focused on the 12 regional circuits.

[7]The Eleventh Circuit has established an ad hoc committee rather than formal task force and hired a part-time consultant rather than an executive director.

Five of the 10 circuits that established bias task forces had hired or appointed executive directors as of June 1, 1995. Four of the five were chosen by competitive selection from applicants who responded to a position advertisement. The remaining director was appointed and will serve pro bono (without pay). The Tenth Circuit had advertised for but not hired an executive director. The current Executive Director for the D.C. Circuit was unanimously selected by the task force members.[8] (See briefing section V.)

Scope and Methodology

We used the Budget Appendix and the judiciary's congressional budget submissions for fiscal years 1994 through 1996 to identify appropriations and obligations for AOUSC and FJC for fiscal years 1992 through 1996 (estimates for fiscal years 1995 and 1996). We agreed with the Subcommittee to review appropriations and obligations for these fiscal years because 1992 through 1994 were the fiscal years for which the most recent actual budget data were available. The Budget Appendix figures for fiscal year 1995 are estimated, and for 1996, they are the amounts included in the congressional budget request.

To determine whether there was duplication in AOUSC and FJC services, we reviewed documents provided by each organization, including annual reports; organizational manuals; memoranda of understanding regarding automation and education and training; listings of research projects, publications, and training courses; training course curricula; and orientation materials for new judges. We also interviewed officials within each organization, including the directors of AOUSC and FJC; the two most recent former directors of FJC; heads of AOUSC and FJC operating units that appeared to have overlapping responsibilities; and judges recommended by AOUSC and FJC officials as knowledgeable and of diverse viewpoints on the subject of AOUSC and FJC overlap and duplication.

We sent a questionnaire to the circuit executive in each of the 12 geographic circuit courts of appeals to obtain data on (1) the number of circuit conference and council meetings and their cost; (2) the number of circuits with gender, ethnic, and/or racial bias task forces, and the costs of such task forces as of June 1, 1995; (3) the tasks undertaken by each task force as of June 1, 1995; and (4) those circuits that had hired or appointed an executive director for their task force as of June 1, 1995. For those districts with executive directors, we sent memorandums requesting

[8]The D.C. Circuit has had two directors. Both were unanimously selected by the members of the Circuit's Task Force from applicants who responded to position announcements.

information on the process used to select the executive director and on the persons who made the final hiring decision. In our questionnaire, circuits were asked—if they did not provide actual costs—to provide the assumptions and methods used for any cost estimates. This information is provided, as appropriate, in the more detailed cost data shown in the appendixes.

See appendix I for more details of our objectives, scope, and methodology.

We did our work primarily in Washington, D.C., between May and July 1995 in accordance with generally accepted government auditing standards.

Agency Comments and Our Evaluation

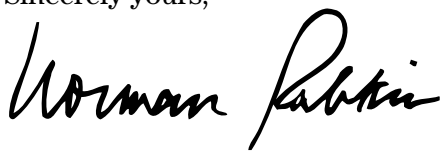
We requested comments from AOUSC and FJC on a draft of the report. AOUSC provided no comments on the report's conclusions, but did provide technical clarifications, including those AOUSC received from the Circuit Executives, which we incorporated into the report where appropriate.

FJC provided written comments dated August 18, 1995. FJC emphasized that "the presence of overlap—agencies performing 'similar' activities—in no way means that duplication is also present" and that any waste, and, therefore, any potential savings would arise from duplication of activities, not simply overlap. FJC agreed with the report's conclusion that there was little overall duplication in the services provided by the FJC and AOUSC. FJC also proposed technical changes and clarifications which we included in the report where appropriate. FJC's written comments are printed in full in appendix VI.

We are sending copies of this report to the Chair and Ranking Minority Member of the House Committee on the Judiciary; the Chair and Ranking Minority Members of the House and Senate Subcommittees on Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations; the AOUSC Director; the FJC Director; members of FJC's Board; members of the Judicial Conference of the U.S.; and the Circuit Executives of each of the 12 regional circuit courts of appeals. Copies will also be made available to others upon request.

The major contributors to this briefing report are listed in appendix VII. If you have any questions about this report, please call me on (202) 512-8777.

Sincerely yours,



Norman J. Rabkin
Director, Administration of
Justice Issues

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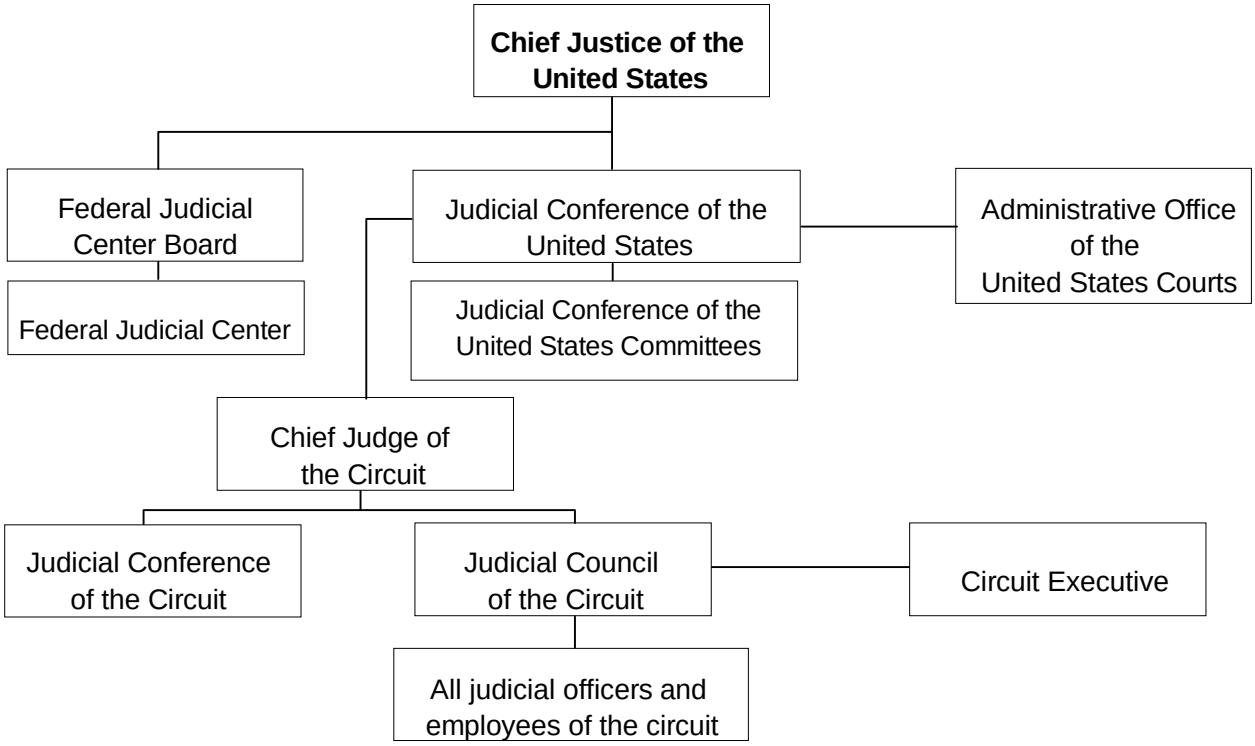
Abbreviations

ABA	American Bar Association
AOUSC	Administrative Office of the U.S. Courts
CJRA	Civil Justice Reform Act of 1990
FJC	Federal Judicial Center

The Federal Judiciary

GAO Federal Judicial Administration



Source: AOUSC.

Federal Judicial Administration

The judicial branch of the federal government consists of the Supreme Court, 12 circuit courts of appeals, 94 district courts, 91 bankruptcy courts, the Court of Appeals for the Federal Circuit, the Court of International Trade, and the Court of Federal Claims. (The geographic boundaries of the 12 regional circuits are shown in appendix II.)

The federal judiciary includes several agencies and judicial bodies that provide for its administration, self-governance, research, education, and training. At the national level, these include the Judicial Conference of the United States and its committees, the Administrative Office of the U.S. Courts (AOUSC), and the Federal Judicial Center (FJC). (See briefing section II for more information on the AOUSC and FJC.) Regionally, they include the circuit judicial conferences, each of which includes all the active appellate, district, and bankruptcy judges of the circuit,[9] and the circuit judicial councils, whose membership each circuit may designate within statutory requirements. See briefing section IV for more information on the judicial councils and conferences of the circuits.

[9]Membership by statute includes all active judges. Senior judges, those who have retired from active status and may take a reduced caseload, are not statutory members of the Conference nor required to attend its meetings.

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Judicial Conference of the United States

- Primary policymaking body for the federal judiciary
- Works in large part through its committees and subcommittees
- Chief Justice of the United States is the presiding officer

Judicial Conference of the United States

At the judiciary's request, the Congress created the Judicial Conference in 1922.[10] The Conference is the primary policymaking body for the federal judiciary. The Chief Justice of the United States, who presides at sessions of the Conference, also designates the time and place of Conference meetings. The other Conference members include the chief judge of each of the 12 regional circuit courts of appeals, the Chief Judge of the Court of Appeals for the Federal Circuit, a district judge from each regional circuit, and the Chief Judge of the Court of International Trade. The district judges of the Conference are chosen for 3-year terms by the circuit and district judges of their circuit at the meetings of their individual circuit conferences. The Judicial Conference is statutorily required to meet annually but may meet as many times as the Chief Justice deems necessary. It currently meets twice a year.

The Conference's responsibilities include: (1) considering policy issues that affect the federal courts; (2) making suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of court business; (3) making legislative recommendations to Congress, including the need for additional judgeships; (4) proposing amendments to the federal rules of practice and procedures; (5) making intercircuit assignment of judges; (6) considering administrative problems of the courts; (7) and providing supervision and direction for the AOUSC Director.[11]

The Conference works in large part through its committees and subcommittees, which study and make recommendations to the Conference on a wide range of issues. For example, Conference committees have prepared for the Conference's consideration an automation plan, a design guide for court construction, and the Proposed Long-Range Plan for the Federal Courts.

[10]The Conference's membership and general responsibilities are found at 28 U.S.C.331.

[11]This responsibility of the Conference is found at 28 U.S.C. 604.

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1993 and 1994 Judicial Conference Sessions and Committee Meetings

	Calendar year 1993		Calendar year 1994	
	Number of meetings	**Estimated cost**	**Number of meetings**	**Estimated cost**
Judicial Conference	2	$68,883	2	$70,584
Judicial Conference committees	54	$824,734	59	$998,415
Total	**56**	**$893,617**	**61**	**$1,068,999**

Source: AOUSC estimates.

1993 and 1994 Judicial Conference Sessions and Committee Meetings

In calendar year 1993, the Judicial Conference of the United States held two sessions at an estimated cost of $68,883. The Conference also held two sessions in calendar year 1994 at a slightly higher estimated cost of $70,584.[12]

The approximately 25 Judicial Conference committees met 54 times in 1993 at an estimated cost of $824,734 and 59 times in 1994 at an estimated cost of $998,415.[13] Total estimated costs for committee meetings in 1993 and 1994 were $1.8 million. Normally, committees meet twice a year, but in these years the Committee on Long-Range Planning met 11 times to prepare the Proposed Long-Range Plan for the Federal Courts submitted to the Judicial Conference in March 1995.

[12]AOUSC estimated these costs using actual expenses for one Conference session.

[13]AOUSC estimated total costs for Conference committee meetings based on the actual expenses of one meeting for each of four committees, including the costs of all judges and staff who attended the committee meeting. These costs were used to calculate an average cost per meeting for each committee participant during calendar years 1993 and 1994, excluding any nominal and incidental expenses of local participants. The total estimated cost for meetings held each year is based on this average cost per participant times the total number of participants in each calendar year. The four committees were (1) Court Administration and Case Management, (2) Judicial Resources, (3) Administration of the Magistrate Judges System, and (4) Administration of the Bankruptcy System. All four committees include representatives from each of the 12 circuits with the exception of the Committee on the Administration of the Magistrate Judges System, which has no representative from the D.C. Circuit.

AOUSC and FJC Functions, Obligations, and Operations

GAO

Administrative Office of the U.S. Courts

- Supports and carries out Judicial Conference policies
- Provides administrative support to the courts
- AOUSC director is supervised by and serves as secretary to the Judicial Conference

Administrative Office of the U.S. Courts

At the request of the judiciary, Congress created AOUSC in 1939.[14] Prior to that time, administrative support of the courts was the responsibility of the Department of Justice. The functions and responsibilities of AOUSC are primarily vested in the director, who may delegate them to the deputy director or others. The Director of AOUSC operates under the direction of the Judicial Conference, serves as the Secretary to the Judicial Conference, appoints AOUSC staff, and directs the operations of AOUSC. The Chief Justice of the United States appoints the AOUSC director after consulting with the Judicial Conference and may also remove the Director after consulting with the Conference.

AOUSC is principally responsible for (1) supporting and carrying out the policies of the Judicial Conference and its committees; and (2) providing staff support to the Conference; (3) providing administrative and program support to the courts of appeals, district courts (including their probation/pretrial offices), bankruptcy courts, and federal defender offices throughout the United States, Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands. AOUSC services and responsibilities include supporting the development of the judiciary's budget and allocating funds to local court units; developing automation systems; providing space and facilities for local court units; performing financial audits of local court units; providing legal analyses, statistical analyses and reporting; and performing program and management reviews and analyses. AOUSC also trains local court units in a variety of administrative functions, including personnel, budgeting, financial control, and space and facilities management.

[14]The statutory responsibilities and structure of AOUSC are found at 28 U.S.C.601-612.

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AOUSC Collections, Appropriations, and Obligations, FYs 1992-1996

Dollars in thousands

Fiscal year	Offsetting collections	Appropriations	Obligations
1992	$23,702	$44,681	$68,383
1993	26,326	45,100	71,426
1994	27,481	44,900	72,381
1995 estimate	33,703	47,500	81,203
1996 request	32,226	53,445	85,671
Percent change FYs 92-95	42%	6%	19%

Note: Offsetting collections are derived from (1) other judiciary appropriation accounts, including salaries and expenses, defender services, court security, and the Judiciary Automation Fund; (2) funds appropriated to the Department of Justice for independent counsels; and (3) business-type fee collections made by the courts (as authorized by P.L. 101-162).

Source: Budget Appendixes, fiscal years 1994 to 1996.

AOUSC Collections, Appropriations, and Obligations

Funded by offsetting collections and appropriations, AOUSC saw its offsetting collections increase 42 percent, from nearly $24 million in fiscal year 1992 to about $33 million in fiscal year 1995. AOUSC's appropriations increased 6 percent in this period, from about $45 million to about $48 million. AOUSC's obligations, as shown in the Budget Appendix, increased 19 percent during this period, from about $68 million in fiscal year 1992 to an estimated $81 million in fiscal year 1995. See appendix III for more detail on AOUSC's budget and obligations.

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Federal Judicial Center

Is the Judiciary's continuing education and research agency

Is quasi-independent with its own board

Director and deputy director serve at the pleasure of the board

Federal Judicial Center

At the request of the Judicial Conference,[15] Congress in 1967 created the Federal Judicial Center (FJC) as the judiciary's agency for continuing education and research.[16] Unlike AOUSC, whose director is directly answerable to the Chief Justice and the Judicial Conference, FJC is quasi-independent. FJC has its own eight-member board, of which the Chief Justice, who serves as chair, and the AOUSC director are permanent members. The other six board members—two appellate, three district, and one bankruptcy judge—are elected by the Judicial Conference for nonrenewable 4-year terms. By statute, the nonpermanent members of the board may not be members of the Judicial Conference and, by Conference policy, are not usually members of Conference committees. The board appoints the FJC director and deputy director, and provides general oversight. The director and deputy director serve at the pleasure of the board. Six of the seven FJC directors have been judges. The current director is a district judge.

[15]The Conference proposed a center to be "established" in AOUSC with its own board which would appoint and could remove the center director and would fix the director's duties. The center director would report to the board and not the AOUSC director.

[16]The basic structure and statutory responsibilities of FJC are found at 28 U.S.C.620-629.

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The FJC's Duties

- Conducts research on the federal courts
- Recommends improvements to the administration and management of the federal courts
- Develops and conducts education and training for judicial branch personnel

The FJC's Duties

The FJC's statutory duties fall into three broad categories: (1) conducting research on the federal courts, (2) making recommendations to improve the administration and management of the federal courts, and (3) developing education and training for judicial branch personnel and others whose participation would improve court operations, such as mediators and arbitrators. FJC undertakes research projects on behalf of the Judicial Conference, its committees, individual courts or circuits, Congress in a few cases, and, on its own initiative occasionally on such topics as case management, long-range planning, the Civil Justice Reform Act, and the impact of changes in rules of procedure or organizational structure. The FJC provides training for judges and court staff in such areas as case management, legislation and rules of procedure, and managerial team building (e.g., for new chief judges and their clerks, for new chief probation officers). This training is provided through formal classroom instruction, videos, curriculum packages used by individual courts in their own training, and interactive materials, such as compact discs with read-only memories (CD-ROMs). FJC develops and distributes manuals on such topics as case management and litigation as well as videos and interactive training programs for court personnel.

By statute, AOUSC provides accounting, disbursing, auditing and other fiscal services for FJC.[17]

[17] 28 U.S.C. 628.

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FJC Collections, Appropriations, and Obligations, FYs 1992-1996

Dollars in thousands

Fiscal year	Offsetting collections	Appropriations	Obligations
1992	$1,378	$17,795	$19,173
1993	1,210	17,500	18,710
1994	161	18,450	18,443
1995 estimate	163	18,828	19,096
1996 request	30	20,771	20,801
Percent change FYs 92-95	-88%	6%	0%

Note: Offsetting collections are derived from (1) other federal judiciary appropriations accounts; and (2)the Judicial Center Foundation, which may accept private contributions to support FJC programs.

Source: Budget Appendixes, fiscal years 1994 to 1996.

FJC Appropriations, Collections, and Obligations

FJC is funded by offsetting collections and appropriations. FJC's offsetting collections declined 88 percent, from nearly $1.4 million in fiscal year 1992 to only about $163,000 in fiscal year 1995. The decline in offsetting collections is primarily the result of a change in appropriations. In fiscal years 1992 and 1993, Congress appropriated about $1 million annually to the judiciary's salaries and expenses account for FJC training of new court personnel. During the fiscal year, these funds were transferred to FJC and recorded as offsetting collections by FJC. Beginning in fiscal year 1994, Congress appropriated these funds directly to FJC.

FJC's appropriations increased 6 percent in this period, from about $18 million to about $19 million. FJC's obligations ranged from about $18.4 million to about $19.1 million during this period. See appendix III for more detail on FJC's budget and obligations.

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FJC Education Costs and Budget for District Judges, Fiscal Year 1994

Orientation of new district judges	Continuing education for district judges	Total costs for district judges
$493,000	$2,514,000	$3,007,000

Source: FJC.

FJC District Judge Education Costs, Fiscal Year 1994

In fiscal year 1994, FJC spent about $493,000 on orientation for newly appointed district judges and an additional $2,514,000 on district judge seminars and workshops, which newly appointed district judges—defined as those in their first year on the bench—may attend. All 70 district judges appointed in fiscal year 1994 attended a FJC orientation program for new district judges and 42 attended at least one nonorientation seminar or workshop in their first year on the bench.[18] The costs reported by FJC included the costs of mailing materials to judges; shipping materials to training sites outside of Washington, D.C.; travel costs; FJC staff costs for designing and conducting the training, producing videos, manuals, and other materials used in the education and orientation; and general administrative direct and indirect costs. See appendix III for more information on FJC's 1994 orientation and education budget.

[18]Attendance at either the orientation or nonorientation program may not necessarily have occurred in fiscal year 1994.

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Some Overlap in Functions But Not Necessarily Duplication of Services

- Some functions appeared to be substantially similar and to overlap
- More detailed analysis was necessary to identify if duplication of services existed within these overlapping functions
- We found little duplication of services in overlapping functions

Some Overlap in Functions but Not Necessarily Duplication of Services

Upon initial examination, some broad AOUSC and FJC functions, such as research and training and education, and to a lesser extent automation, appeared to be substantially similar (overlapping). However, the existence of overlapping functions does not necessarily equate to a duplication of services within those functions. We examined the services AOUSC and FJC provided in each overlapping function to identify duplicative services, if any. We found very little actual duplication of services.

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AOUSC and FJC Agreements on Roles and Responsibilities

- Goal is to avoid duplication in the areas covered by the agreements
- Agreements cover such areas as automation, education, and training
- Both agencies said a formal agreement about research is unnecessary

AOUSC and FJC Agreements on Roles and Responsibilities

In some broad overlapping functions, AOUSC and FJC have entered into agreements primarily intended to define specific agency roles and responsibilities with the goal of avoiding duplication of activities and services in the areas covered by the agreements. For example, a 1992 agreement sets out specific responsibilities regarding automation and assigns to AOUSC the primary judiciary-wide roles, including design, testing, procurement, implementation, and evaluation. A similar April 1993 agreement covers education and training. Under this agreement, for example, FJC is responsible for educating judges and court staff on legal issues and court and case management, while AOUSC is responsible for ensuring proper performance of the many administrative and operational duties delegated to the courts by AOUSC. The agreement also calls for full interagency communication, coordination, and exchange of information.

In December of 1994, the agencies established the Joint Court Education and Training Advisory Committee, which is intended to assist the agencies in identifying long-term training needs, coordinating training, and avoiding duplication. There is no formal, written agreement concerning research. Officials of both agencies told us no such agreement was needed.

GAO

Little Apparent Duplication in Training and Education Programs

- Both have extensive programs
- Training provided by AOUSC and FJC appeared to be distinct

Little Duplication in Training and Education Programs

We focused much of our review on training, education, and research because both agencies conduct extensive training, education, and studies of various issues. Our review of training curricula and course materials revealed very little duplication in the services or activities each agency provided in these areas.

AOUSC and FJC have extensive training and education programs. Much of this training is distinct. AOUSC, for example, provides training in areas of AOUSC responsibility such as personnel, budget, and space and facilities. FJC does not provide training in these areas. In some cases, such as the orientation for new judges, the training seemed initially to be similar but on closer examination proved not to be. AOUSC, for example, provides a 1-day orientation covering a variety of issues focusing on AOUSC's administrative, judicial, and Judicial Conference support functions and services; judicial security, pay, and benefits; and the hiring of personal staff. FJC provides two orientations for new judges—a 5-day course based largely on FJC video presentations and discussions with an experienced judge followed later, in the judge's first year, by a 5— day class that features a variety of speakers and panel discussions. FJC's orientation focuses primarily on issues of judicial decisionmaking; federal jurisdiction, law, and procedure; the federal sentencing guidelines; and case management.

GAO

Little Apparent Duplication in Educational Materials and Research

- Subjects of educational materials were not duplicative
- Research done in similar areas was not duplicative

Little Duplication in Educational Materials and Research

We found that FJC and AOUSC provided a variety of educational and reference materials for judges and court staff, but we found virtually no duplication in the subject matter of the materials we reviewed. FJC educational materials generally focus on such topics as rules of procedure and case management. For example, FJC has recently published the third edition of its Manual on Complex Litigation (1995). AOUSC education materials, such as the book on Senior Status and Retirement for Article III Judges (1994), focus primarily on judicial benefits, administrative support, and other AOUSC responsibilities. In some areas, developing these materials is a joint effort or there is substantial cooperation, such as the recently completed Case Management Manual for United States Bankruptcy Judges (1995).

We defined research broadly to include any empirical studies of court policies, operating procedures, and/or technologies, or of the impact of changing one or more of these policies, procedures, and/or technologies. We found AOUSC and FJC studies in the areas of automation and technology, bankruptcy, implementation and evaluation of the Civil Justice Reform Act of 1990, court administration, and work measurement. However, we found virtually no duplication in the specific topics of the studies done in these areas. FJC work measurement studies, for example, have focused on judges, while AOUSC studies have focused on court staff. AOUSC and FJC methodologies used in such studies are also different and distinct. The CJRA statute creates similar FJC and AOUSC responsibilities, which the agencies have divided and generally coordinated closely.

GAO

AOUSC and FJC Officials Disagreed as to Whether Functions Overlap

- AOUSC officials said 100 percent of FJC functions overlap with theirs but only 15 percent of their functions overlap with FJC's
- FJC officials said the agencies share a common mission but perform distinctly different functions

AOUSC and FJC Officials Disagreed About Whether Functions Overlapped or Some Services Were Duplicative

Senior AOUSC and FJC management fundamentally disagreed on the extent, nature, and effect of functional and program overlap between the two agencies. Senior AOUSC management told us that although 100 percent of FJC's functions are also performed by AOUSC, only about 15 percent of AOUSC's functions overlap with those of FJC. These officials also believe there is significant duplication and waste in such functions as automation, planning, training, and staffing Judicial Conference committees. Senior AOUSC managers said that significant savings—perhaps as much as half of the FJC's fiscal year 1996 budget request—could be achieved by eliminating FJC and transferring its necessary functions to AOUSC.

FJC senior management, however, said that while the two agencies share a common mission—supporting the administration of justice in the federal courts—each agency performs distinctly different functions. They maintained that although there may be overlap in some functions, actual duplication is virtually nonexistent. FJC senior officials offer several reasons in support of this view. First, they note that there is little duplication in the statutory responsibilities of the two agencies. Second, at the highest levels of the judiciary there are means of coordinating activities of the two agencies and avoiding substantial duplication. The Chief Justice and the AOUSC director, for example, are permanent members of the FJC board. At the operational level, interagency agreements, committees, and normal cooperation help to avoid duplication. In addition, FJC officials argue that because FJC has little administrative overhead, few savings would result from merging FJC into AOUSC unless specific FJC or AOUSC functions were substantially reduced or eliminated entirely.

GAO

Judges Had a Variety of Opinions About the Agencies' Roles

- Some argued that it is essential that FJC remain separate
- Others believed having both agencies is confusing and wasteful

Judges Had a Variety of Opinions About the Agencies' Roles

The AOUSC and FJC gave us the names of judges to contact who had diverse views on the subject of AOUSC and FJC roles and duplication.[19] The nine current judges and one former judge with whom we spoke had varying opinions regarding the roles of AOUSC and FJC, agency coordination, and the continued need for two separate judicial support agencies. Some judges argued that it is essential to retain FJC as a separate and independent organization within the judiciary. A former FJC Director said that if FJC's functions were transferred to AOUSC, research and nonjudicial training and education would not receive the same priority, visibility, and support they now do. Instead, resources for these activities would probably be reallocated to daily operational needs, particularly in an era of scarce resources. Some judges, including former FJC directors and board members, argued that FJC's independence was critical for providing diverse views on major policy issues before the courts.

Conversely, other judges we interviewed, including past and current members of the Judicial Conference Committee on the Administrative Office, believed that having two agencies with responsibilities for some of the same general functions was confusing and wasteful. They mentioned that some type of consolidation could achieve substantial cost savings and efficiencies and would avoid "friction" between the two agencies and ensure that the judiciary speaks with one voice on major policy issues. They also believed that judicial conference committees could be better served by a consolidation. Some judges who support consolidation have also been critical of some recent FJC research projects, which they do not believe have served the judiciary well.

[19]We requested the names of judges with diverse views, not a representative sample of judges.

Prior Studies of FJC and AOUSC Responsibilities

GAO

Two 1990 Studies Examined AOUSC and FJC Responsibilities

- The Report of the Federal Courts Study Committee recommended enhanced roles
- The Chief Judge of the Fifth Circuit wrote the Chief Justice expressing concerns about the AOUSC, FJC relationship
- An AOUSC staff report for the Chief Judge of the Fifth Circuit reported conflicts and coordination problems

Two 1990 Studies Examined AOUSC and FJC Responsibilities

Several studies have examined FJC and AOUSC roles and relationships. In April 1990, the Report of the Federal Courts Study Committee recommended enhanced roles and increased funding for both agencies.

In April 1990, the Chief Judge of the Fifth Circuit, who was also the Chairmen of the Judicial Conference's Executive Committee, wrote a letter to the Chief Justice expressing concerns about the working relationships between AOUSC and FJC in automation, training, and research. Also in April 1990, a staff report prepared by AOUSC for the same chief judge noted that the separation of the two agencies had led to "unfocused, uncoordinated, and, at times counter-productive efforts." The report stated there were conflicts and coordination problems in such areas as automation, training, research, workforce planning, and publications.

GAO

A 1991 Study Examined the Agencies' Relationship

- This study recommended improved coordination, especially in the areas of automation, research, and training
- The study also recommended that AOUSC continue administrative staff assistance to Conference Committees and that FJC focus on research, education and training, and--when requested--consulting and program evaluation

A 1991 Study Examined the Relationship Between FJC and AOUSC

In February 1991, the Chief Justice created an ad hoc committee to study the relationship between FJC and AOUSC and to make recommendations consistent with the two agencies' enabling statutes. The Committee included the Chief Justice plus four judges and examined six areas: (1) automation and technology, (2) staffing and research support for judicial conference committees, (3) budget, (4) education and training, (5) legislative affairs, and (6) communications and liaisons. The Committee's September 1991 report, approved by the Judicial Conference and FJC Board, made a number of recommendations for improved coordination between AOUSC and FJC, particularly in the areas of automation, research, and training. In 1992 and 1993, AOUSC and FJC entered into agreements regarding automation and education and training, as previously discussed, for the purpose of avoiding duplication and encouraging coordination.

The Committee found that AOUSC and FJC each had unique capacities for staffing and research support to Judicial Conference committees. The Committee recommended that administrative staff assistance to Conference committees remain with AOUSC and that FJC direct its resources to (1) innovative as well as applied research, (2) education and training for the Judiciary, and (3) on request from Conference committees, providing consulting and program review and evaluation.

Although the Committee found a perceived tension between the concepts of FJC as an independent judicial branch entity and the Judiciary as a united group speaking with one voice to Congress, it stated that FJC's role as an independent research and development agency is not incompatible with the Conference's role as the Judiciary's policymaking body. The Committee recommended that as the Conference develops policy, FJC should have complete independence to explore ideas and proposals and to make evaluations, whether or not FJC's findings comport generally with the findings of AOUSC or the Judicial Conference. At the same time, the report stated that the conclusions and proposals of the Judicial Conference represent the view of the Judiciary branch on all matters and should be respected as such by all members of the Judiciary, AOUSC, and FJC when dealing with members of Congress.

GAO

A 1995 Study Proposed a Long Range Plan for the Judiciary

- It supported the continued separation of the two agencies and their missions
- At the request of two members of the Judicial Conference the recommendation was reviewed and subsequently reaffirmed by the Conference's Executive Committee

A 1995 Study Recommended Continued Separation of AOUSC and FJC

Recommendation 48 of the Proposed Long-Range Plan for the Federal Courts (March 1995) supported the continued separation of the two agencies and their missions. Two members of the Judicial Conference requested further review of this recommendation.[20] The Executive Committee of the Conference conducted a review and at its August 1995 meeting tentatively approved for Conference consideration the following language for Recommendation 48:

The Administrative Office of the United States Courts and the Federal Judicial Center should retain their separate institutional status and respective missions. The officially-adopted policies of the Judicial Conference represent the view of the judicial branch on all matters and should be respected as such by the Administrative Office and the Federal Judicial Center when dealing with members of Congress or the executive branch.

[20]The proposed long-range plan contained 101 recommendations. One or more Conference members requested further substantive study of 38 of these recommendations.

Judicial Conferences and Councils of the Circuits

GAO

Purpose of Circuit Judicial Conferences and Councils

Judicial conferences of the circuits are to improve the administration of justice in the circuits

Judicial councils of the circuits are to effectively and expeditiously administer the circuits' business

Purpose of Circuit Judicial Councils and Conferences

Each circuit has a circuit conference. The primary function of the conference is to provide a forum for judges and members of the bar to discuss the administration of the courts in their circuits through an exchange of ideas and suggestions. Unlike the circuit council, the conference is not designed to exercise administrative authority over the courts in the circuit. By statute, each circuit court of appeals must, by its rules, provide for the representation and active participation at such conferences by members of the bar of the circuit.

The councils are charged with making "all necessary and appropriate orders for the effective and expeditious administration of justice within [the] circuit." By statute, "all judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council." However, regular business of the courts need not be referred to the council unless "an impediment to justice is involved." The circuit councils may also appoint a circuit executive for the circuit, and each of the 12 regional circuit councils has done so. The circuit executive's duties are defined by the council.

GAO

Circuit Judicial Conference Membership

- Circuit chief judge is the presiding officer
- Members are active circuit, district, and bankruptcy judges of the circuit
- Members' terms are the duration of their service as active judges

Circuit Judicial Conference Membership

Chaired by the chief judge of the circuit (who is the chief judge of the court of appeals for the circuit), members include all active circuit, district, and bankruptcy judges in the circuit.[21]

[21]The membership and functions of the Circuit Conferences are found at 28 U.S.C. 333.

GAO

Circuit Judicial Conference Meetings

- Mandatory meetings are held every 2 years
- Voluntary meetings may be held once a year
- Circuit chief judge selects the meeting location
- Members must attend unless excused and members of the bar in the circuit may attend

Circuit Judicial Conference Meetings

Circuit judicial conferences are statutorily required to meet every 2 years but may meet annually. The chief judge of the circuit selects the meeting location. Conference members must attend unless excused by the chief judge, and members of the bar in the circuit may attend. Senior judges and magistrate judges, while not statutory members of the Conference, may attend Conference meetings, and many do. Topics included are generally determined by a conference agenda committee. In fiscal years 1993 and 1994, conference meetings ranged from 2 to 4 days.

GAO

Circuit Judicial Conference Meetings in Fiscal Years 1993 and 1994

Fiscal year	Number of meetings	Number of circuits that met	Average cost per meeting	Total cost for meetings
1993	9	8	$120,280	$1,082,527
1994	8	8	$121,532	$972,258
Total	**17**	**12**	**$120,869**	**$2,054,785**

Source: GAO survey of Circuit Executives.

Circuit Judicial Conference Meetings in Fiscal Years 1993 and 1994

Our survey of Circuit Executives indicated that Circuit conferences met 17 times in fiscal years 1993 and 1994 for a total cost of $2.05 million. In 1993, there were nine conference meetings. Only the First Circuit met more than once, although its two meetings were almost one year apart—in November 1992 and September 1993. Four circuits—the Second, Tenth, Eleventh, and D.C.—did not meet at all in 1993. Meeting costs ranged from $43,454 to $287,237. Five of these conferences cost less than $100,000, and only one cost more than $200,000.

In 1994, eight circuits held one meeting each. Four circuits—the First, Third, Sixth, and Eighth—did not meet at all. Meetings costs ranged from $29,418 to $257,589. Four meetings cost less than $100,000 each, and two exceeded $200,000.

See appendix IV for more detail on Circuit Judicial Conference meetings in fiscal years 1993 and 1994.

GAO

Circuit Judicial Council Membership

- Membership is equal number of active circuit and district judges and the chief judge of the circuit
- Members' terms are established by a majority vote of active judges in the circuit
- Circuit chief judge is the presiding officer

Circuit Judicial Council Membership

Authorized by the same statute that created AOUSC, the Administrative Office Act of 1939, each of the 12 geographic judicial circuits has a judicial council consisting of equal numbers of active court of appeals and district judges, plus the Chief Judge of the Circuit, who is the presiding officer.[22] Each circuit may determine the number of members on its council, and membership in each circuit varies from 9 to 21. The circuit's active judges vote to establish members' terms. The chief judge may appoint members to serve the remainder of the term of a council member who dies, resigns, retires, or becomes disabled.

[22]The membership and functions of the circuit councils are found at 28 U.S.C. 332. When the councils were created in 1939, membership was limited to circuit court of appeals judges.

GAO

Circuit Judicial Council Meetings

- Mandatory meetings are held twice a year
- Voluntary meetings may be held
- Circuit chief judge selects the meeting location
- Members must attend

Circuit Judicial Council Meetings

Circuit judicial councils are statutorily required to meet twice a year. Unlimited voluntary meetings may be held. The circuit chief judge selects the meeting location. Unless excused by the circuit chief judge, council members must attend.

GAO

Circuit Judicial Council Meetings in Fiscal Years 1993 and 1994

Fiscal year	Number of meetings	Number of circuits that met	Average cost per meeting	Total cost for meetings
1993	25	12	$2,201	$55,046
1994	32	12	$2,108	$67,458
Total	**57**	**12**	**$2,149**	**$122,504**

Source: GAO survey of Circuit Executives.

Circuit Judicial Council Meetings in Fiscal Years 1993 and 1994

According to the Circuit Executives surveyed, circuit councils met 57 times in fiscal years 1993 and 1994 for a total cost of $122,504. In 1993, there were 25 council meetings. Four circuits met more than twice. Meeting costs ranged from $0 to $7,990. Twelve meetings cost less than $1,000, and five meetings cost more than $6,000.

In 1994, circuit councils met 32 times. Five councils met more than twice. Meeting costs ranged from $0 to $8,645. Fifteen meetings cost less than $1,000, and two exceeded $6,000.

See appendix IV for more detail on Circuit Judicial Council meetings in fiscal years 1993 and 1994.

Racial, Ethnic, and Gender Bias Task Forces

GAO

Origination of the Bias Task Forces

In 1990 the

- Federal Courts Study Committee recommended education over more studies of bias
- Ninth and D.C. Circuits established bias task forces

In 1991, the ABA supported studying the existence of bias.

Origination of the Task Forces

A 1990 Report of the Federal Courts Study Committee concluded that much was already known about bias in courts from state studies. The report concluded that rather than additional studies, the best means of preventing and dealing with gender, ethnic, and racial bias in the federal courts was through education. The report encouraged FJC and the circuit conferences to continue and expand their educational efforts in this area. However, in August 1990, in response to a request from its Lawyer Representatives Coordinating Committee, the Ninth Circuit created a Gender Bias Task Force charged with "conducting a study of gender in the Ninth Circuit, reporting to the conference about its findings, and making recommendations to respond to any problems." Also in 1990, the Judicial Council for the D.C. Circuit created a Task Force on Gender, Race, and Ethnic Bias to determine whether and to what extent gender, race, and ethnicity affect the operations and proceedings of the federal courts of the D.C. Circuit. This task force was created, in part, as a result of the recommendations of the Study Committee on Gender Bias in the District of Columbia Courts of the District of Columbia Bar.

In 1991, the American Bar Association (ABA) adopted a resolution supporting studies of the "existence, if any, of racial, ethnic, and gender bias in the federal judicial systems and the extent to which bias may affect litigants, witnesses, attorneys, and all those who work in the judicial branch."

GAO

Origination of the Bias Task Forces (cont'd)

In 1993, the Judicial Conference endorsed the proposed crime bill provision encouraging studies of existence of bias

In 1994, the Crime Act encouraged circuit councils to conduct studies of gender bias

Origination of the Task Forces

In March 1993, the Judicial Conference of the United States adopted a resolution endorsing a proposed provision in the 1994 crime bill encouraging studies of gender bias in the federal courts. In March 1995, the Conference approved a resolution encouraging circuit studies also of bias based on race or other invidious discrimination, and the need for any additional education programs.

In August 1993, the Report of the National Commission on Judicial Discipline and Removal recommended that each circuit that had not already done so conduct a study (or studies) of judicial misconduct involving bias based on race, sex, sexual orientation, religion, and ethnic or national origin.

In 1994, the Violent Crime Control and Law Enforcement Act (P.L. 103-322, sec. 40421(a)) encouraged circuit councils to conduct studies of the instances, if any, of gender bias in their respective circuits and to implement recommended reforms. The statute designated AOUSC to act as a clearinghouse to disseminate any reports and materials issued by the gender bias task forces. In carrying out its responsibilities under the statute, FJC may include in its education programs, including training for new judges, information on issues related to gender bias and may prepare materials necessary to implement its responsibilities under the statute. The statute authorized fiscal year 1996 appropriations of $500,000 for the judiciary's salaries and expenses account to carry out the studies, and $100,000 each for the AOUSC and FJC accounts to carry out their responsibilities.

The FJC has conducted some training and in March 1995 issued a research guide which is intended to assist those circuits that chose to study the role of gender in the federal courts to avoid common research pitfalls. The guide does not advocate task force creation or any particular approach, but describes the benefits and limitations of a range of research methods that might be used. AOUSC has helped circuits with funding for task force activities, and its Equal Employment Opportunity and Special Projects Office has responsibility for coordination of judiciary gender bias activities.

GAO

Bias Task Forces Established as of June 1, 1995

Nine of the 12 circuits had established task forces

Circuit Councils established most of the task forces

The task forces were established between June 1990 and November 1994

Task Forces Established as of June 1, 1995

Replies to our survey of Circuit Executives indicated that as of June 1, 1995, 9 of the 12 circuits had established task forces on gender, racial, and/or ethnic bias. The Fourth and Fifth circuits had not established task forces, and the Eleventh Circuit said that it had established an ad hoc committee instead of a task force to study bias. Two circuits, the Sixth and Ninth, had established two task forces each, one on gender bias and one on racial/ethnic bias.

In all of the circuits except the Ninth, the task forces were established by the circuit council. In the Ninth Circuit, the Circuit Conference established its two task forces.

The task forces were established between June 1990 and November 1994. The D.C. Circuit established the first one, and the most recent one was established by the Sixth Circuit. Four circuits established task forces in 1993. See appendix V for the dates each circuit task force was established.

GAO

Task Force Cost and Activities

Task force costs ranged from $890 to $300,941 and totaled $666,812

Most of the task forces had selected members

Over half of the task forces had started drafting research design and gathering data

One task force had completed a final draft and one had completed its final report

Task Force Cost and Activities as of June 1, 1995

We asked the judiciary to provide us with the total costs for task force activities as of June 1, 1995. According to the responses, the total costs for the task forces ranged from $890 in the Seventh circuit to about $260,900 in the D.C. circuit and $300,900 in the Ninth Circuit.[23] Total cost of all the task forces was $666,812.

Most of the task forces reported that they had selected members, and over half had started drafting their study's research design and gathering data. Beyond that, the First, Second, Eighth, and Eleventh[24] circuits had started analyzing data; the D.C. circuit was revising its draft report; and the Ninth circuit had completed its final report. See appendix V for information on task force costs and activities by circuit.

[23]In its study report, the Ninth Circuit acknowledges the assistance it received from a wide variety of volunteers and volunteer working groups.

[24]The Eleventh circuit has begun analyzing the results of a survey of judges and attorneys (public and private) in the circuit, but is planning to conduct additional surveys of federal court staff, and possibly jurors.

GAO

Task Force Executive Directors

Five circuits had hired executive directors and five had not

Four circuits filled their executive director positions competitively and one circuit filled its position by appointment

Task Force Executive Directors as of June 1, 1995

Our survey of Circuit Executives showed that as of June 1, 1995, five circuits had hired executive directors for their task forces and five had not. These executive directors were hired between December 1992 and February 1995. The D.C. circuit task force, which hired first, has had two executive directors; the first reported for work in December 1992, and the current executive director reported for work in January 1995. The Eighth circuit hired its executive director most recently, in February 1995.

Four circuits filled their executive director positions competitively. The Second Circuit has appointed an executive director who will serve pro bono (without pay). The two executive directors for the D.C. circuit were selected unanimously by the task force members from those who responded to position advertisements. The Tenth circuit had advertised for but not hired an executive director. The Eleventh circuit hired a part-time consultant rather than an executive director. See appendix V for information by circuit on task force executive directors.

Objectives, Scope, and Methodology

The Chairman of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts asked us to provide information on (1) the appropriations and expenditures of the Administrative Office of the United States Courts (AOUSC) and Federal Judicial Center (FJC); (2) AOUSC and FJC programs, if any, that are duplicative or offer substantially the same services; (3) the savings that could result from abolishing all FJC programs except for the training of new district court judges; (4) the annual cost of workshops and conferences sponsored by FJC; (5) the annual number and cost of the meetings of the Judicial Conference and its committees; (6) the cost by circuit of each judicial circuit's conferences and council meetings; (7) the cost by circuit of any circuit task forces on gender, racial, and/or ethnic bias; and (8) the process used to select any executive directors of the task forces. The Chairman also asked us to assess the methodological soundness of the task force reports that have been circulated in final draft. As agreed with the Chairman's office, we will provide our assessment in a separate product.

We used the Budget Appendix and the judiciary's congressional budget submissions for fiscal years 1994 through 1996 to identify appropriations and obligations for AOUSC and FJC for fiscal years 1992 through 1996. We agreed with the Subcommittee to review appropriations and obligations for these fiscal years because 1992 through 1994 were the fiscal years for which the most recent actual budget data were available. The Budget Appendix figures for fiscal year 1995 are estimated, and for 1996 they are the requested amounts.

To determine whether there was duplication in the programs and activities of AOUSC and FJC, we reviewed the statutory responsibilities of each agency and documents provided by each organization, including memoranda on prior studies of FJC and AOUSC overlap and coordination; memoranda prepared for us during the course of this review; annual reports; organizational manuals; memoranda of understanding regarding automation and education and training; listings of research projects, publications and training courses; copies of publications by each agency when the topics of those publication appeared to be similar; and training course curricula and orientation materials for judges. We also interviewed officials within each organization, including the directors of the AOUSC and FJC; the two most recent former directors of the FJC; heads of AOUSC and FJC operating units that appeared to have overlapping responsibilities; and nine current judges and one former judge recommended by both AOUSC and FJC officials as knowledgeable and of diverse viewpoints on the subject AOUSC and FJC overlap and duplication.

To review the issue of overlap and duplication between AOUSC and FJC, we first identified functions, such as education and training, in which AOUSC and FJC both provided services to the judicial branch. To determine if there was actual duplication of services within these functions, and, thus, any potential budgetary savings, we reviewed the services of each agency within these overlapping functions. For example, we reviewed training materials and curricula to determine if there was duplication in AOUSC and FJC orientation and training for new district court judges. We focused solely on the existence of such overlap and duplication. We did not examine the desirability of having FJC or AOUSC provide all services in areas where we found overlap, but not duplication, or in which we found actual duplication. Nor did we examine the efficiency of each agency's operations. Although we reviewed the joint memoranda of understanding between FJC and AOUSC, we could not, in the time available, determine if those agreements were followed for every single activity covered by them.[25] We reviewed the cost data AOUSC and FJC provided, including the assumptions used for any cost estimates but did not independently validate those data.

We determined the total cost of FJC workshops and seminars as well as the cost of orientation and training for new district judges. We reviewed FJC cost estimates and memorandums prepared for us and discussed the basis for the estimates with those who prepared them but did not validate the financial data provided.

We sent a questionnaire to the circuit executive in each of the 12 regional circuit courts of appeals to obtain data on (1) the number of circuit conference and council meetings and their cost; (2) the number of circuits with gender, ethnic, and/or racial bias task forces, and the costs of such task forces as of June 1, 1995; (3) the tasks undertaken by each task force as of June 1, 1995; and (4) those circuits that had hired or appointed an executive director for their task force as of June 1, 1995. For those districts with executive directors, we sent a memorandum requesting information on the process used to select the executive director, and the persons who made the final hiring decision. In our questionnaire, circuits were asked, if they did not provide actual costs, to provide the assumptions and methods used for any cost estimates. This information is provided, as necessary, in the more detailed cost data shown in the

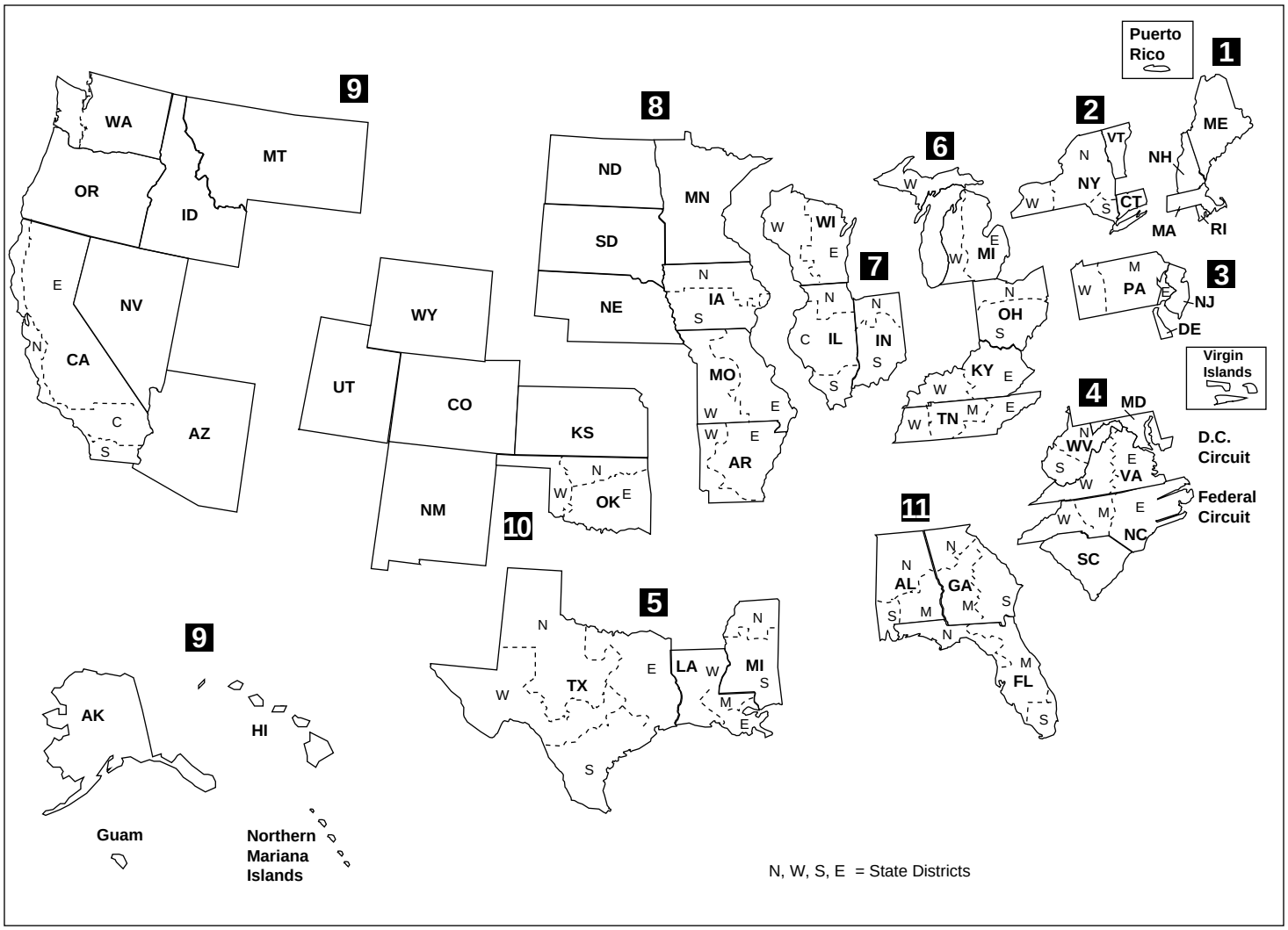
[25]For example, the memorandum on education and training provides that AOUSC will normally turn to FJC first for "advice on the most cost-effective education techniques, prototype curriculum design, and preparation of education materials." Conversely, the memorandum calls for FJC to turn to AOUSC for advice on "required administrative and management practices." We did not determine if such consultations occurred in every case in which it may have been appropriate under the memorandum.

appendixes. We also called the circuit executives to clarify any questions we had on the responses to the questionnaires.

We requested comments from AOUSC and FJC. AOUSC provided no comments on the report's conclusions, but did provide technical clarifications, including those AOUSC received from the Circuit Executives, which we incorporated into the report where appropriate. FJC provided official written comments which are discussed in the letter and printed in full in appendix VI.

We did our work primarily in Washington, D.C., between May and July 1995 in accordance with generally accepted government auditing standards.

The 13 Federal Circuits



Source: AOUSC.

AOUSC and FJC Budgets, Fiscal Years 1992 Through 1996

Table III.1: AOUSC's Budget, Fiscal Years 1992-1996

Dollars in thousands

Financing and obligations by activity and object class	Actual FY 1992	Actual FY 1993	Actual FY 1994	Estimated FY 1995	Percent change[a] FY 1992-1995	Request FY 1996	Percent change FY 1995-1996
Financing							
Appropriations	$44,681	$45,100	$44,900	$47,500	6%	$53,445	13%
Offsetting collections	23,702	26,326	27,481	33,703	42	32,226	–4
Total	**$68,383**	**$71,426**	**$72,381**	**$81,203**	**19%**	**$85,671**	**6%**
Obligations by direct program and object class							
Direct program							
Executive direction[b]	3,432	4,689	4,473	4,773	39	5,566	17
Administration and human resources	21,047	19,279	[c]	[c]		[c]	
Finance, budget, program analysis	8,208	8,947	[c]	[c]		[c]	
Automation and technology	2,456	2,442	2,183	2,510	2	2,850	14
Court program	6,022	5,857	5,416	6,037	0	6,706	11
Judges programs	3,516	3,886	3,735	4,098	17	4,522	10
Human resources and statistics	[c]	[c]	13,872	8,675		10,481	21
Facilities, security and administrative services	[c]	[c]	9,547	14,654		15,806	8
Finance and budget	[c]	[c]	5,674	6,753		7,514	11
Subtotal direct program	**$44,681**	**$45,100**	**$44,900**	**$ 47,500**	**6%**	**$53,445**	**13%**
Reimbursable program							
Court automation support	23,702	26,326	27,481	33,703	42	32,226	–4
Total direct and reimbursable program	**$68,383**	**$71,426**	**$72,381**	**$81,203**	**19**	**85,671**	**6**
Object class							
Personnel compensation							
Full-time permanent	29,938	30,168	30,840	34,540	15	38,626	12
Other than full-time permanent	719	713	824	876	22	980	12

(continued)

Dollars in thousands

Financing and obligations by activity and object class	Actual FY 1992	Actual FY 1993	Actual FY 1994	Estimated FY 1995	Percent change[a] FY 1992-1995	Request FY 1996	Percent change FY 1995-1996
Other personnel compensation	561	392	577	66	–88	73	11
Total personnel compensation	**$31,218**	**$31,273**	**$32,241**	**$35,482**	**14%**	**$39,679**	**12%**
Civilian personnel benefits	5,294	5,580	5,809	6,600	25	7,595	15
Benefits for former personnel	[c]	[c]	74	35		35	0
Travel and transportation of persons	1,061	789	728	901	–15	932	3
Transportation of things	77	70	55	60	–22	62	3
Rental payments to General Services Administration	4,386	355	316	313	–93	322	3
Rental payments to others	[c]	1,738	[c]	[c]		[c]	
Communications, utilities, and miscellaneous charges	525	666	2,396	949	81	987	4
Printing and reproduction	94	93	72	86	–9	89	3
Other services	575	3,257	2,139	2,094	264	2,300	10
Supplies and materials	639	303	379	465	–27	481	3
Equipment	803	976	691	515	–36	963	87
Insurance claims and indemnities	9	[c]	[c]	[c]		[c]	
Subtotal obligations by object class	**$44,681**	**$45,100**	**$44,900**	**$47,500**	**6%**	**$53,445**	**13%**
Reimbursable obligations	23,702	26,326	27,481	33,703	42	32,226	–4
Total by object class	**$68,383**	**$71,426**	**$72,381**	**$81,203**	**19%**	**$85,671**	**6%**
Personnel summary							
Full-time equivalent employment (FTE)	615	654	635	693	13	708	2

(continued)

Dollars in thousands

Financing and obligations by activity and object class	Actual FY 1992	Actual FY 1993	Actual FY 1994	Estimated FY 1995	Percent change[a] FY 1992-1995	Request FY 1996	Percent change FY 1995-1996
FTE of overtime and holiday hours	3	[c]	[c]	[c]		[c]	
Reimbursable: total compensable workyears (FTE)	219	265	279	296	35	301	2

[a]Percent change is based on current dollars, unadjusted for inflation.

[b]According to AOUSC, in fiscal year 1993 the Office of Audit was transferred from the office of Finance, Budget and Program Analysis to Executive Direction. For fiscal year 1996, AOUSC has requested 5 additional positions for the Office of Audit.

[c]Categories changed during the period covered in the table. This category was not included in this fiscal year.

Source: Budget Appendixes, fiscal years 1922 through 1996.

Table III.2: FJC's Budget, Fiscal Years 1992-1996

Dollars in thousands

Financing and obligations by activity and object class	Actual FY 1992	Actual FY 1993	Actual FY 1994	Estimated FY 1995	Percent change[a] FY 1992-1995	Request FY 1996	Percent change FY 1995-1996
Financing							
Appropriations	$17,795	$17,500	$18,450	$18,828	6%	20,771	10%
Offsetting collections[b]	1,378	1,210	161	163	–88	30	–82
Total	**$19,173**	**$18,710**	**$18,611**	**$18,991**	**–1%**	**20,801**	**10%**
Obligations by program activity and object class							
Direct and reimbursable program							
Administration and support services	4,776	4,226	3,557	3,401	–29	3,581	5
Education and training	9,265	9,466	10,903	11,405	23	12,657	11
Research and technology	3,754	3,808	3,822	4,127	10	4,533	10
Subtotal direct program	**17,795**	**17,500**	**18,282**	**18,933**	**6**	**20,771**	**10**
Reimbursable program	1,378	1,210	161	163	–88	30	–82
Total direct and reimbursable program[c]	**$19,173**	**$18,710**	**$18,443**	**$19,096**	**0%[b]**	**$20,801**	**9%**
Object class							
Personnel compensation							
Full-time permanent	5,541	6,399	7,041	7,687	39	8,148	6
Other than full-time permanent	860	850	907	990	15	1,049	6
Total personnel compensation	**$6,401**	**$7,249**	**$7,948**	**$8,677**	**36%**	**$9,197**	**6**
Civilian personnel benefits	1,441	1,688	1,896	2,067	43	2,344	13
Travel and transportation of persons	4,376	4,346	5,015	5,201	19	6,143	18
Transportation of things	125	72	67	86	–31	89	3
Rental payments to General Services Administration	895	29	28	29	–97	30	3

(continued)

Dollars in thousands

Financing and obligations by activity and object class	Actual FY 1992	Actual FY 1993	Actual FY 1994	Estimated FY 1995	Percent change[a] FY 1992-1995	Request FY 1996	Percent change FY 1995-1996
Rental payments to others	[c]	490	507	[c]	0	[c]	0
Communications, utilities, and miscellaneous charges	1,100	415	381	520	–53	542	4
Printing and reproduction	108	107	103	85	–21	88	4
Other services	1,437	1,034	888	857	–40%	883	3
Supplies and materials	830	1,007	687	866	4%	892	3
Equipment (including library)	1,082	1,063	762	545	–50%	563	3
Subtotal object class	**$17,795**	**$17,500**	**$18,282**	**$18,933**	**6%**	**420,771**	**10%**
Reimbursable obligations	1,378	1,210	161	163	–88%	30	–82
Total object class	**$19,173**	**$18,710**	**$18,443**	**$19,096**	**0%[b]**	**$20,801**	**9%**
Personnel summary							
Full-time equivalent employment (FTE)	141	158	178	178	26%	178	0%
Reimbursable: total compensable workyears (FTE)	1	[d]	[d]	[d]	0%	[d]	0%

[a]Percent change is based on current dollars, unadjusted for inflation.

[b]The sharp decline in offsetting collections in fiscal year 1994 is the result of a change in Congress appropriations for the training of new court personnel. In fiscal years 1993 and 1994, Congress appropriated about $1 million annually to the judiciary's salaries and expenses for such training, and the monies were transferred to FJC. Beginning in fiscal year 1994 , Congress appropriated the funds for training new court personnel directly to FJC.

[c]Declined less than 0.5 percent.

[d]Some categories were changed during the period covered by the table. This category was not included in this fiscal year.

Source: Budget Appendixes, fiscal years 1992 through 1996.

Table III.3: Functions Supported by FJC Expenditures Classified in the Budget Appendix as Administrative, Fiscal Year 1995

Function	Budget	Position	Percentage of FJC Budget	Percentage of Admin. Budget
Direct support of education and research programs				
FJC education center[a]	$27,000		[b]	.8%
Property management[c]	41,000		[b]	1.2
Educational materials[d]	742,000		3.9	21.8
Center-wide program support Costs[e]	1,349,000		7.2	39.7
Subtotal	**$2,159,000**	**6**	**11.1%**	**63.5%**
History Office: Interjudicial Affairs Office	415,000	6	2.2	12.2
Office of Director and Deputy Director[f]	314,000	3	1.7	9.2
Personnel and financial management[g]	512,000	7	2.7	15.1
Total	**$3,400,000**	**22**	**17.7%**	**100.0%**

[a]Includes facilities scheduling and set-up, audio-visual services for FJC, AOUSC, U.S. Sentencing Commission and others.

[b]Less than 0.5 percent.

[c]Includes functions under a delegation of authority from the AOUSC director.

[d]Includes audio and video tapes; written materials for training programs; media items, such as blank cassettes; media and automation equipment.

[e]Includes utilities; supplies; furniture/equipment; telecommunications, postage, phone; copier maintenance; temporary services; health unit costs for the Thurgood Marshall Federal Judicial Building where FJC and AOUSC are housed; automation supplies, software, hardware, network items. (Personnel costs for computer maintenance budgeted in Planning and Technology Division.)

[f]Positions and cost exclude the current FJC Director, a district judge whose salary is paid by the judiciary's salaries and expenses appropriation, not FJC's appropriation.

[g]By statute, AOUSC provides accounting, disbursing, auditing, and other financial services to FJC.

Source: FJC data.

Table III.4: FJC Budget by Division, Fiscal Year 1995

Division	Budget	Positions	Vacancies[g]
Judicial education[a]	$3,270,000	16	2
Court education[b]	5,957,000	41	7
Publications and media[c]	2,073,000	31	1
Research[d]	2,251,000	29	1
Planning and technology[e]	1,876,000	19	3
Administration[f]	3,401,000	22	1
Totals	**$18,828,000**	**158**	**15**

[a]Provides orientation and continuing education programs for circuit, district, magistrate, and bankruptcy judges; court attorneys; and federal defenders.

[b]Provides orientation for newly appointed probation and pretrial services officers and continuing education—primarily in management, supervision, and selected skills—to court employees.

[c]Produces video and audio tapes, publications, and periodical services that serve the FJC's education and research functions and edits reports and periodicals of other divisions.

[d]Provides analysis, evaluation, and information to inform court and case-management policy decisions of Judicial Conference and its committees, the courts, and Congress.

[e]Develops and enhances FJC-wide automated support services; analyzes and develops emerging technologies that do not fall within the broader scope of AOUSC's automation development efforts; provides planning advice and support to Conference committees and the courts.

[f]FJC director and deputy director, financial, personnel, and administrative services, and FJC Interjudicial Affairs Office, Federal Judicial History Office, and pension of a former director.

[g]As of May 25, 1995.

Source: FJC data.

Table III.5: FJC Training and Education Programs, Direct Costs, Fiscal Year 1995

	Number of programs	Number of participants	Estimated costs[a]
Judicial Education Division Programs[b]			
Circuit and district judges	25	1,347	$1,782,000
Bankruptcy judges	7	398	452,000
Magistrate judges	5	360	426,000
Combined groups	32	700	180,000
Legal staff	2	79	64,000
Subtotal	**71**	**2,884**	**$2,904,000**
Court Education Division Programs			
National	38	1,773	$1,709,000
Regional	8	412	261,000
Pilots and training for trainers	33	782	461,000
Programs in district	874	17,650	836,000
Subtotal[c]	**953**	**20,617**	**$3,267,000**
Total Funded by FJC	1,024	23,501	6,171,000
Funded by Defender Services[d]	5	843	700,000
Total	**1,029**	**24,344**	**$6,871,000**

[a]Direct costs only. Costs include travel, subsistence, faculty honoraria, meeting room and audio visual equipment rental (if needed), but exclude salary costs of FJC staff, costs for training supplies and reproduction, and transportation costs for materials used in programs held outside Washington, D.C.

[b]Total for Judicial Education Division includes funds from the Federal Judicial Center Foundation that were donated for support of training on scientific evidence ($250,000), financial statement workshops ($131,000), and sending 37 court personnel to a National Center for State Courts/State Justice Institute conference on racial and ethnic bias in the courts ($37,000). The Foundation monies for training on scientific evidence were from a $1 million Carnegie Foundation grant that was paid in installments.

[c]Total for Court Education Division includes reimbursements from AOUSC of $50,000 for a program on managing the technical professional, and $19,000 for a workshop to help court unit managers administer the downsizing process.

[d]Under an agreement with AOUSC, the FJC arranges and provides, but does not fund, training for Federal Defenders and their staffs. The amount shown is an FJC estimate of the costs paid from the Defender Services appropriation (including travel costs), but not transferred to FJC, to support this training. In addition, AOUSC has transferred $70,000 from the Defender Services appropriation to FJC to reimburse FJC for its costs for program design and administration.

Source: FJC data.

Table III.6: Fiscal Year 1994 Federal Judicial Center Costs of Education for District Judges and Orientation for Newly Appointed District Judges

Category of expense	New judge orientation	Continuing education[a]	Total all district judge education
Distribution of preliminary materials[b]	$14,000	$0	**$14,000**
Travel costs[c]	175,000	998,000	**1,173,000**
Staff costs[d]	143,000	437,000	**580,000**
Video production-staff costs[e]	69,000	11,000	**80,000**
Publications-staff costs[f]	[g]	533,000	**533,000**
Subtotals	**$401,000**	**$1,979,000**	**$2,380,000**
General administrative direct/indirect costs[h]	92,000	535,000	**627,000**
Total	**$493,000**	**$2,514,000**	**$3,007,000**

[a]Continuing education programs are open to all district judges, including new judges (those in their first year on the bench).

[b]Mostly personnel costs for packaging materials for mailing to newly appointed judges.

[c]Includes transportation, per diem, room rental.

[d]Estimated staff costs (salaries and benefits) for planning and presenting seminars and workshops.

[e]FJC-produced videos are used in new judge orientation and some education seminars. FJC estimates a 4-year average life for such videos. Costs reflect one-fourth of production costs of videos currently used for district judge education, excluding supplies and materials.

[f]Estimated FJC staff costs of writing, editing, producing educational materials used primarily for district court judges. According to FJC, this figure may not fully reflect Research Division staff time. It reflects costs of materials that are continuously updated and revised.

[g]According to FJC, only one publication, a photocopied pamphlet, is specifically produced for new judges. However, FJC officials said that new judges receive annotated outlines to accompany the FJC videos used for new judge orientation, and that new judges, as well as their more experienced colleagues, receive FJC manuals and reference works, such as the Benchbook for United States District Judges.

[h]Includes costs of supplies (including video tapes), equipment, copying, shipping, and general administrative support.

Source: FJC data.

Circuit Judicial Conference and Council Meetings

Table IV.1: Number and Cost of Circuit Judicial Conference Meetings, Fiscal Years 1993 and 1994

	Fiscal year 1993		Fiscal year 1994	
Circuit	**Number of meetings**	**Cost[a]**	**Number of meetings**	**Cost[a]**
First[b]	2	$55,540 43,454	None	0
Second	None	0	1	$83,193
Third	1	86,311	None	
Fourth	1	90,827	1	108,957
Fifth	1	114,979	1	144,801
Sixth	1	186,036	None	0
Seventh	1	56,366	1	53,572
Eighth	1	161,777	None	
Ninth	1	287,237	1	257,589
Tenth	None	0	1	86,268
Eleventh	None	0	1	208,460
D.C.	None	0	1	29,418
Total	**9**	**$1,082,527**	**8**	**$972,258**

[a]Costs were rounded to the nearest dollar.

[b]The meetings in fiscal year 1993 were almost one year apart—November 1992 and September 1993.

Source: GAO Survey of Circuit Executives.

Table IV.2: Number and Cost of Circuit Judicial Council Meetings, Fiscal Years 1993 and 1994

	Fiscal year 1993		Fiscal year 1994	
Circuit	**Number of meetings**	**Cost**	**Number of meetings**	**Cost**
First	4	$1,159 1,002 446 225	1	$1,517
Second	2	1,175 2,248	2	1,175 0[a]
Third	2	648[b] 935[b]	2	0[b] 79.00[b]
Fourth	2	0[a] 2,070	3	1,498 0[a] 1,752
Fifth	1	7,561[c]	2	5,938 8,645[c]
Sixth	1	0[a]	2	5,682 5,193

(continued)

	Fiscal year 1993		Fiscal year 1994	
Circuit	Number of meetings	Cost	Number of meetings	Cost
Seventh	2	1,046 0[a]	5	1,052 1,376 874 0[d] 0[d]
Eighth	1	0 [a]	1	5,251 [e]
Ninth 3		5,303 6,274 2,498[f]	4	4,395 0[g] 5,082 2,610[f]
Tenth	1	1,832	3	2,550 0[h] 0[a]
Eleventh	3	7,990[i] 6,200[i] 7,610[i]	2	7,640[i] 5,150
D.C.;	4	0[j] 0[j] 0[j] 0[j]	5	0[j] 0[j] 0[j] 0[j] 0[j]
Total	**25**	**$55,047**	**32**	**$67,458**

(Table notes on next page)

[a]The Council indicated that its meeting was held in conjunction with the Circuit Conference and no additional costs were incurred.

[b]The Circuit indicated costs were limited because the Circuit Council meeting was held in conjunction with an en banc session of the Court of Appeals.

[c]The Council meeting was held in conjunction with an en banc session of the Court of Appeals.

[d]One Circuit Council meeting was held in conjunction with the Circuit Conference and another was held in conjunction with a judges workshop.

[e]According to the Eighth Circuit Executive, the cost included travel expenses only for the district, magistrate, and bankruptcy judges; the circuit judges were there for a regular session of the court.

[f]The Council meeting was held in conjunction with the Circuit Conference. Costs reflect one day's per diem for council members.

[g]The Circuit indicated that this meeting was held in conjunction with a judges workshop.

[h]The Circuit indicated that this meeting was held in conjunction with an en banc session of the Court of Appeals, and the district and magistrate judges participated by phone.

[i]The Circuit Council meeting was held in conjunction with other court activity. Costs included the Circuit Executive's time in support of the meeting and the costs of preparing materials.

[j]All courts in the D.C. Circuit are located within the same federal courthouse in Washington, D.C., and the Circuit Council meetings were held in the courthouse.

Source: GAO Survey of Circuit Executives.

Bias Task Forces

Table V.1: Establishment of Circuit Task Forces as of June 1, 1995

Circuits	Had established a task force?		Who established the task force?		Date the task force was established
	Yes	No	Circuit Conference	Circuit Council	
D.C.	X			X	06/14/90
1	X			X	01/12/94
2	X			X	10/12/93
3	X			X	06/29/94
4[a]		X			
5[a]		X			
6[b]	X			X	11/30/94
7	X			X	10/14/93
8	X			X	12/06/93
9[c]	X		X		02/91
					02/94
10	X			X	04/15/94
11[d]		X		X	02/16/93

[a]The fourth and fifth circuits had not established a task force on gender, racial, and/or ethnic bias.

[b]The Sixth Circuit Judicial Council has voted to establish two task forces—a task force on gender bias in the courts and a task force on racial/ethnic bias in the courts—to operate under supervision of a joint steering committee.

[c]The Ninth Circuit formed two separate task forces. The Gender Bias Task Force was established in February 1991, and the Racial, Religious and Ethnic Fairness Task Force was established in February 1994.

[d]The Eleventh Circuit Judicial Council has created an ad hoc committee rather than a formal task force.

Source: GAO Survey of Circuit Executives.

Table V.2: Circuit Task Forces on Gender, Racial, And/or Ethnic Bias, Their Total Cost, and Activities Undertaken as of June 1, 1995

Activities	D.C.	1	2	3
Cost	$260,874	$27,439	$3,000	$36,955
Selection of members	X	X	X	X
Started drafting research design	X	X	X	X
Completed research design	X		X	
Started data gathering	X	X	X	
Completed data gathering	X			
Started analyzing data	X		X	
Completed data analysis	X			
Started drafting report	X			
Reviewing draft report	X			
Revising draft report	X			
Completed report				
Other				

Circuits								
4	5	6	7	8	9[a]	9[a]	10	11[b]
N/A	N/A	0	$890[c]	$26,054	$185,428[d]	$115,513	$1,119	$9,540
		N/A	X	X	X	X	X	
			X	X		X		
					X	X		
				X		X		
					X			
						X		
					X			
					X[e]			
								X[f]

Legend

NA = not applicable.

[a]According to the Ninth Circuit Executive, the Ninth Circuit Conference established two separate task forces, the Gender Bias Task Force and the Racial, Religious, and Ethnic Fairness Task Force.

[b]According to the Eleventh Circuit Executive, the Eleventh Circuit Judicial Council established an ad hoc committee rather than a formal task force.

[c]Total excludes the cost of travel and per diem for two FJC staff who attended a 1-day meeting in Chicago.

[d]The Ninth Circuit Task Force report notes that the task force received assistance from a number of volunteer work groups and individuals.

[e]According to the Ninth Circuit Executive, the final report on gender bias was issued in July 1993. The task force conducted its work between February 1991 and August 1993 and was then disbanded.

[f]According to the Eleventh Circuit Executive, a consultant is reviewing the results of a survey of judges and attorneys within the Circuit. The Circuit plans to send questionnaires to federal court personnel and is considering having jurors fill out questionnaires as they complete their juror service.

Source: GAO Survey of Circuit Executives.

Table V.3: Executive Directors for Circuit Bias Task Forces Hired or Appointed by June 1, 1995, Including Selection Process Used

	Hired an executive director?		Date the executive director hired	Advertised for executive director, selected from pool of applicants?	
Circuits	Yes	No		Yes	No
D.C.	X[a]		12/07/92 and 01/03/95	X	
1	X		02/13/95	X	
2	X		02/07/94		X[b]
3	X		12/12/94	X	
4[c]					
5[c]					
6		X[d]			
7		X			
8	X		02/27/95	X	
9		X			N/A
10		X		X[e]	
11[f]		X			X

N/A = Not applicable.

[a]The Task Force in the D.C. Circuit has had two Executive Directors. The hiring dates shown are the dates each reported for work.

[b]The Second Circuit Task Force appointed its Executive Director, who will perform her duties pro bono.

[c]The fourth and fifth circuits had not established a task force on gender, racial, and/or ethnic bias.

[d]The sixth circuit's joint steering committee will conduct the task forces and is now selecting its members. An executive director will then be selected and the task forces will be formed.

[e]The Tenth Circuit Executive indicated that the circuit had advertised for but not hired an executive director.

[f]According to the Eleventh Circuit Executive, the Circuit Judicial Council has created an ad hoc committee rather than a formal task force and has hired a part-time consultant rather than a formal executive director.

Source: GAO Survey of Circuit Executives.

Comments From the Federal Judicial Center

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August 18, 1995

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United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Rabkin:

Thank you for the opportunity to comment on your draft briefing report, *Federal Judiciary: Observations on Selected Issues* (B-261800). It is important to ask periodically whether any government agency's continued existence is justified and conversely whether costs savings might be achieved by transferring or consolidating its services. Your report shows that the Federal Judicial Center's services are not duplicated by the Administrative Office of the U.S. Courts and thus that a consolidation to eliminate duplication would provide little if any cost savings.

I comment first on aspects of the report's finding of little if any duplication between the activities of the Federal Judicial Center (FJC) and the Administrative Office (AO). I then describe the value of the Center's functions as it performs them and describe why the AO could not perform them as well. The Center's record demonstrates the soundness of the Judicial Conference's 1967 recommendation, which Congress enacted into law. The Conference concluded that its goals for the Center "would not be achieved merely by adding positions and funds to the Administrative Office." They would be realized instead by a separate organization, "to be directed by its own autonomous board of judges" and with its personnel "responsible to the Board and not to the Director of the Administrative Office."[1] I have appended to this letter an analysis of the original Conference recommendation and legislative treatment of it.

LITTLE DUPLICATION

Senator Grassley asked, "What programs operated by the Administrative Office and the Federal Judicial Center are duplicative or offer substantially the same services?" Any such duplication could be eliminated to achieve budgetary savings with no loss in service to the judiciary. You found, however, "little duplication in the services or activities each agency provided" in the functions of education, training, and research (p. 35), essentially the totality of FJC functions. You report "virtually no overlap in the subject matter" of educational materials you examined (p. 37) and "virtually no overlap in the specific top-

1. Report of the Special Committee on Continuing Education, Research, Training and Administration, in *Hearings Before the Senate Judicial Subcommittee on Improvements in Judicial Machinery on S. 915 and H.R. 6111*, 90th Cong., 1st Sess. (1967) at 38 [hereinafter *Hearings*].

ics of the [research] studies" you examined (p. 37). You note that activities that may first appear duplicative because of their common label turn out upon examination to be quite different. You compare as an example the FJC's several weeks of substantive judicial orientation about judicial tasks and the AO's one-day orientation for judges about the agency's functions and services.

Clearer definitions of "overlap" and "duplication" will discourage misuse of the report

The draft report draws a helpful distinction between "overlap," a neutral concept for present purposes, and "duplication," a negative concept. In fact, however, in everyday conversation people use both these terms negatively and interchangeably. Thus, readers of the first paragraph on p. 3 might understand the phrase "We found substantial overlap" to mean a finding of substantial duplication (and thus potential costs savings)—even though the paragraph later states clearly that you found "little actual duplication of activities or services." In that regard, we believe that the first two sentences on p. 31 provide a clearer statement of these concepts than do the first three sentences on p. 3.

To make it difficult to attribute conclusions to this report that are not in it, I recommend that you lay out clearly that: (1) The presence of overlap—agencies' performing "similar" activities—in no way means that duplication is also present. Agencies performing "similar" activities can be a necessary part of proper government operations. (2) For this reason, budgetary waste does not necessarily occur when there is overlap. (3) Instead, budgetary waste, and thus potential savings, occurs when agencies perform "duplicative" activities.

Caveats may obscure findings

Your findings may not stand out clearly because of the caveats you use to explain the limits of your assignment. I suggest that you consider using "conclusive" and "conclusively" rather than "definitive" and "definitively" to convey an especially high level of confidence in research results. (See, for example, pp. 3, 30, 31, and 35.)

Also, the report uses two formulations to qualify its finding on duplication. One formulation appears at pp. 3 and 35: "Although we could not definitively conclude that no duplication exists, in the overlapping functions we examined we found little actual duplication of activities or services" (p. 3). A different formulation, however, appears in the third bullet at p. 30—"We could not definitively determine the extent of any duplication within these overlapping functions"—and in the text at p. 31. This different formulation leaves the inference, contrary to your findings, that there is duplication, perhaps extensive. Page 30's bullet is particularly unfortunate, because these boldface summaries set a tone for the reader. I suggest that p. 31's text be changed to conform to pp. 3 and 35 and that the bullet text be changed to "We could not conclusively determine that no duplication exists."

AO claims of duplication are difficult to understand

Confusion about overlap and duplication arises again at p. 39. The heading says "AOUSC and FJC Officials Disagreed as to Whether Functions Overlap," but the text makes clear that the disagreement is over "duplication."

FJC officials stated that, whatever the degree of "overlap" (similar activities), there is virtually no duplication (and thus there would be no budget savings from a merger). Your investigation supports that statement.

AO officials, by contrast, stated that there is "significant duplication and waste" and on that basis evidently called for eliminating the Center and enlarging the AO. I note that AO officials said nothing on this subject during the judiciary's recent review of its governance structure. In light of the jointly developed agreements that guide our relationships in automation and education, and AO officials' statements to you that there are no major coordination problems as to research (p. 33), I find this present call for FJC elimination somewhat puzzling.

AO sources of information are not known

Despite requests to the AO, we have not seen any objective information to support assertions that half the Center's budget is duplicative or wasteful, thus justifying a merger. We do find, however, occasional misunderstanding about our budget. For example, our "administration" budget category, which includes over $3 million, might appear to be a source of potential budget savings until one realizes, as data in your Appendix Table IV3 show, that 64% of the administration budget consists of funds for centrally provided logistical support of education and research programs, 10% of the administration budget funds our history and interjudicial programs, and another 15% of it funds generic personnel and financial functions. The small amount in the category of director/deputy director's office—9% of the administration budget—includes not only salaries but the cost of Center Board meetings (average per meeting is about $5,500) and a retired director's pension. I should add that we provided information to the AO in late May that would clarify this and other aspects of the FJC budget.

Source of 1990 study should be identified

The text at p. 43 and the boldface at p. 42 refer to a study, "prepared for" the Chief Judge of the Fifth Circuit, that noted interagency coordination problems. The report should also state *by whom* the study was prepared. The other studies you cite were prepared by committees of judges or of legislators, judges, and lawyers assisted by interagency staffs. Was the second study prepared by a similar group, with similar assistance? The other studies have been published or are readily available within the judiciary. Is that true of the study referenced above?

FJC FUNCTIONS/AO-FJC MERGER

You report there is "little duplication" between the AO and FJC. Thus, whether to merge them, or eliminate FJC functions, requires examination of the need for those functions and how the FJC, under the current statute, performs them. You were not asked to report on these subjects, but I wish to describe the value to efficient judicial administration of the Center's research and training.

Value of Center research

Research and evaluation account for less than 20% of Center spending. The need for that function, however, was well described by Chief Judge John S. Hastings of the U.S. Court of Appeals for the Seventh Circuit. He was the Judicial Conference's lead-off witness at the 1967 Senate hearings in support of the Conference's proposal for a separate Judicial

Center. The Conference stressed that the Center should be responsible to its Board "and not to the Director of the Administrative Office" and that the type of organization the Conference wished to create "would not be achieved merely by adding positions and funds to the Administrative Office."[2] Why not, Chief Judge Hastings asked rhetorically, "expand the staff of the Administrative Office and let them do" the research? The answer, he said, is that "evaluations and appraisals that necessarily follow its studies may be critical," and the AO, with "its many and personal relationships with almost every judge in the Federal Judiciary . . . should never be placed in the unfortunate position of having to criticize what a court or a judge has been doing." In other words, the AO "cannot hope in some circumstances to give a thoroughly objective appraisal of what needs to be done, because such an objective appraisal may meet with considerable criticism from members of the judiciary."[3]

Throughout its history, pursuant to its general research mandate and the specific statutory direction "to provide staff, research, and planning assistance to the Judicial Conference . . . and its committees,"[4] the FJC has provided the federal courts with objective, empirically derived appraisals of how judges and court staff can better manage litigation, sentence and supervise criminals, and administer the courts. It has illuminated for judicial branch policy makers and others the strengths and weaknesses of policy options such as different forms of alternative dispute resolution, increased federalization of crimes and civil actions, changes in court structure and governance, and judgeship creation. It responds faithfully to Conference committee requests for assistance. In a broader sense, the Center's research staff represents a small but important legislative investment in experience, knowledge, and advice about the often arcane business of the federal courts. That resource is readily available to judicial branch policy makers, Congress, the executive branch, and the public. In this regard, it bears some similarity to Congress's own Congressional Research Service, providing a resource that costly outside contractors by definition cannot provide.

Value of Center education and training

The Center's education and training, which represents almost four-fifths of its spending, teaches judges to deal effectively with complex legislation and litigation, teaches probation and pretrial services officers how to conduct accurate presentence investigations and to supervise offenders safely and effectively, and teaches clerks of court and staff specific steps they can take to improve their offices' performance and productivity. Our teaching is done by judges, court personnel, staff from the FJC, AO, and Sentencing Commission, and experts from colleges, universities, and court management organizations. We use traditional classroom instruction and various types of distance education, including videos, interactive CD-ROMs, and electronic bulletin boards. We have also begun to make FJC publications available through a site on the Internet, which provides extremely fast and low-cost access to the public as well as the federal judiciary.

Training needs change constantly as appropriations and substantive legislation alter the tasks courts must perform. The FJC pinpoints its training through consultation with its

2. Report of the Special Committee, in *Hearings, supra* note 1, at 38; see also at 31.

3. Testimony of Judge John Hastings, in *Hearings, supra* note 1, at 20. The second passage is part of a subcommittee question, to which Judge Hastings replied: "That is right. I think it is self-evident, almost." The colloquy is contained in the attachment to this letter.

4. 28 U.S.C. § 620(b)(4).

national judicial education advisory committees appointed by the Chief Justice, circuit planning committees appointed by the chief circuit judges, Judicial Conference committees, AO and FJC advisory groups, professional organizations of federal court personnel, and from our own surveys and monitoring. FJC sentencing institutes are a collaborative effort of Center research and education staffs, working in cooperation with the Judicial Conference Criminal Law Committee, the Sentencing Commission, the Justice Department, and AO staff.

We meet national training needs while providing local court managers tools to help them implement training solutions to specific local problems. That is one reason why 80% of Center training for court staff occurs in the courts, often presented by court personnel using Center curriculum packages (and requiring little travel). As shown in Table IV.5, p. 98, we expect this fiscal year to train about 2,100 court supporting personnel at national and regional programs for about $2 million, and to train over 17,000 employees in local programs for only $836,000.

Effects of merging FJC functions into the AO

Views of FJC Board and Justice Kennedy

As you note, the AO is supervised by the Judicial Conference, and the FJC is supervised by its Board, both of which are chaired by the Chief Justice.[5] On the question of an AO-FJC merger, the Center's Board has adopted the attached policy. The statement makes clear the Board's view that the FJC is performing its functions efficiently and without duplication and that nothing would be gained, and much would be lost, by assigning them to the AO.

Justice Anthony M. Kennedy, a former Center Board member who served as a federal circuit judge from 1975 to 1988, now sees the system from a national perspective, as does the Chief Justice. During House hearings on the Supreme Court's fiscal 1996 appropriation request, the subcommittee asked Justice Kennedy about efforts to streamline the courts. He described some recent litigation management success stories, and then referred to the Federal Judicial Center as a "marvelous resource" in such matters, "a remarkable symbol of excellence in judicial administration." Later, in response to a specific question about an AO-FJC merger, he said "the Chief Justice and the judiciary generally has been very, very careful to ensure that we have a balanced view presented [in judicial education programs] . . . and we would not like to see it part of the administrative office because it would be more difficult for us to control. . . . we think it functions superbly now." He characterized the Center as "really one of the crown jewels of the Federal system."[6]

Effects of a merger

It is instructive to consider how judicial branch education, training, and research would function were the Center's duties merged with what the Center Board described as "the necessarily larger and structurally more complex Administrative Office, with its different

5. Current members of the Center Board, in addition to the Chief Justice, who is permanent chairman, and the AO director, who serves ex officio, are: Courts of appeals judges J. Harvie Wilkinson III (4th Circuit) and Bruce Selya (1st Circuit); district judges Marvin Aspen (N.D. Ill.), Richard Matsch (D. Colo.), and Michael Telesca (W.D.N.Y.); and Bankruptcy Judge Elizabeth Perris (D. Ore.)

6. *Hearings Before the House Committee on Appropriations, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies,* 104th Cong., 1st Sess., Part 7 at 17, 21 (1995).

role within the federal courts."[7] I presume this increase in AO staff would be accompanied by the creation of one or more additional Judicial Conference committees (requiring meeting costs that would otherwise be spent on FJC Board meetings).

1. Judicial oversight and direction, including that of the Chief Justice, over judicial education and research would be weakened. Currently, the Chief Justice attends all Board meetings as the presiding officer. A judge directs the Center's daily work in designing educational programs and research projects. Merging the Center into the AO would end the direct involvement of the Chief Justice, who would not likely chair a regular Conference committee. No judge, furthermore, would serve in any new AO units created to do the Center's work. And Conference committees, the Conference emphasizes, are "policy advisory" only and "not involved in making day-to-day management decisions . . . for the Administrative Office."[8]
2. The AO, as the judiciary's administrative support agency, would be put in the awkward position of having to conduct objective research on court operations and procedures—leading to conclusions that at times may be seen as critical of some of the very operations and procedures that it supports.
3. As the Center Board points out in the attached statement, were the AO responsible for education and research, personnel and resources for those functions would be absorbed by administrative demands. Corporate experience shows that the temptation to save money by eliminating education and research is often too strong for the good of the organization.
4. The AO, with its numerous points of internal agency approval and clearance, characteristic of large multipurpose administrative support agencies, could not maintain the FJC's capacity to respond quickly and creatively to new evaluation and training needs. Dispersing the education and research staffs throughout the 1,000-person AO would also make it much less likely that research findings would inform education, as they do now at the FJC. Our training in Conference-approved ADR techniques, for example, is a collaborative effort of FJC research and training staffs.
5. The AO uses more generous travel allowance and staff compensation policies than the Center. Education and research units within the AO would find it difficult to adopt the policies the Center now uses.
6. Without the Center's reputation, federal judicial branch education and training would lose the participation of the Center's network of academic experts, and the benefits of interest and funding from outside organizations that now support the FJC through its statutory FJC Foundation. It is doubtful, for example, that the Carnegie Corporation would want to work with a large administrative support agency to produce a *Reference Manual on Scientific Evidence* and other educational programs to help judges exercise the gatekeeper role that the Supreme Court has assigned them in respect to scientific testimony by expert witnesses.

* * *

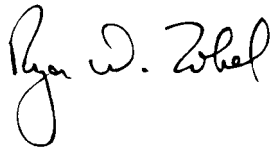
As documented in the attachment to this letter, Congress created the Center in 1967 at the request of the Judicial Conference to serve as the judicial branch's separate agency for

7. See statement, attached.
8. AO, *The Judicial Conference of the United States and Its Committees* at 3 (no date) [1994]

research and education. Concentrating these functions in the Center has enabled the Center to establish a record of expertise, excellence, and efficiency in providing education and training to judges and court staff and policy-relevant research to aid the improvement of the judicial process.

I appreciate the opportunity to submit these comments.

Sincerely,



Rya W. Zobel

cc: The Chief Justice and Members of the FJC Board

Attachments: June 1995 FJC Board statement
Federal Judicial Center Organizational Placement—Original Intent

Statement of the Board of the Federal Judicial Center, June 1995
Re: Recommendation 48 of the *Proposed Long Range Plan for the Federal Courts*:

"The Administrative Office of the United States Courts and the Federal Judicial Center should retain their separate institutional status and respective missions."

At its June 2, 1995 meeting, the Board voted* to support fully Recommendation 48 and expressed its hope that the Judicial Conference will adopt it.

The Conference in 1967 proposed, and Congress created, the Center as a separate agency for research and education, under the direction of a separate Board consisting mainly of judges. The Center's mission is "to further the development and adoption of improved judicial administration" in the federal courts. Its educational programs for judges and staff, and its research and evaluation for the courts and the Conference, demonstrate a solid history in service of that mission to the benefit of the federal courts and the citizens they serve.

The Center's instruction in modern case management is one reason that federal courts today are disposing of many more cases per judgeship than they were 25 years ago. The Center's contributions, however, should not be measured solely by raw numbers of cases resolved. Its educational programs, monographs, and manuals provide judges what they need to implement Congressional policy in such diverse areas as sentencing, civil rights, and employee retirement. They help judges deal with the increasing complexity of the litigation process in such areas as pretrial case management, expert testimony, and attorneys fees. Center education has helped probation and pretrial services officers exercise their duties as to pretrial release, pre-sentence investigations, and offender supervision. It has helped form and sustain a corps of skilled federal court managers. Center research helps the courts and Conference committees assess current operations and proposed changes in areas ranging from class action rules to appellate settlement programs to risk prediction in offender supervision. Moreover, the Center provides judges and court staff a means of communication and sharing in a judicial branch whose growing size threatens it with increased balkanization and disunity.

The Center's contributions are due largely to its status as a separate organization with a distinct research and education mission. The delicate task of educating federal judges is under the control of judges through the Center Board chaired by the Chief Justice, and with a judge as Center director. Were the judiciary's education and research programs to be merged into the necessarily larger and structurally more complex Administrative Office, with its different role within the federal courts, it is quite likely, as the Judicial Conference concluded in 1967, that "personnel and resources intended for continuing education, training and research will ... be absorbed by the always present and always increasing demands of daily administration." Consolidation would deprive the federal courts of an independent source of quality research and education. It would also deprive the legal community, state judiciaries, and the academic world of the Center's leadership role. And little would be gained, because the Center has a very small administrative overhead and minimal duplication with Administrative Office functions.

The Center will supply information when requested by Congress for legislative purposes. The Center does not have a legislative agenda, however, and it has no interest in policy disputes with the Judicial Conference. As the Ad Hoc Committee to Study the Relationship of the Federal Judicial Center and the Administrative Office reported in 1991, the Center's role "as a responsible independent research and development arm of the federal Judiciary is not incompatible with the role of the Judicial Conference as the policy-making body of the Judiciary."

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* As he is also a member of the Executive Committee, to which this statement is directed, Mr. Mecham abstained from the Board's vote.

Federal Judicial Center Organizational Placement—Original Intent

Attachment to Judge Rya W. Zobel's Letter of August 18, 1995

During this GAO study, we have been questioned about assertions that the original intention of the Judicial Conference and the House of Representatives was to make the FJC part of the AO, but that the Senate favored a different approach, which prevailed.

Fortunately, there is information in the public record that allows a full exploration of those assertions.

Confusion over this matter stems mainly from a single but prominent phrase in the draft bill prepared by a special Judicial Conference committee, chaired by retired Justice Stanley Reed, that recommended the Center's creation. The bill, endorsed by the Conference, stated that the Center would be "established in the Administrative Office," as did H.R. 6111, the bill passed by the House. The Senate, however, changed the relevant section to say the Center would be "established in the judicial branch," the wording in the statute as enacted (28 U.S.C. § 620(a)).

To determine what the creators wanted to create, it is necessary to analyze (1) the specific organizational structure and provisions they proposed for the Center, (2) the purpose they expected the Center to serve, and (3) what the drafters meant by "established in the Administrative Office."

Such analysis reveals that the Judicial Conference proposed a Center separate and autonomous from the AO in terms both of its supervisory structure and its mission. The phrase "established in the Administrative Office" stems from the Reed Committee's provision that the AO would provide the Center with fiscal services such as disbursing and auditing funds.

Most of the documentation herein is from testimony and reports printed in the 1967 Senate Judiciary Subcommittee hearings on the bill creating the Center, cited here as Hearings,[1] including the Report of the Reed Committee (Report of the Special Committee on Continuing Education, Research, Training, and Administration of the Judicial Conference of the United States, March, 1967) (cited as Reed Comm. Report, with appropriate Hearings page number) and the Committee's "BILL to provide for the establishment of a Federal Judicial Center" (cited as draft bill, with appropriate Hearings page number).[2]

The creators' proposed organizational structure and provisions

Title 28, in pertinent part unchanged since 1967, provides that the Administrative Office "shall be supervised by a Director and a Deputy Director" (28 U.S.C. § 601) and that "The Director shall appoint and fix the compensation of necessary employees of the Administrative Office" (28 U.S.C. § 602(a)).

The Reed Committee's draft bill gave the AO director no supervisory authority over the Center except as a Board member. The bill said that "The Activities of the Center shall be supervised by a Board" (draft bill, § 621 at 40). "The Board shall appoint and fix the duties of a Chief of the Federal Judicial Center who shall serve at the pleasure of the Board." "The Chief" (not the AO director) was to "appoint necessary employees of the

1. *Hearings Before the Senate Judicial Subcommittee on Improvements in Judicial Machinery on S. 915 and H.R. 6111,* 90th Cong., 1st Sess. (1967)

2. The bill itself, but not the committee report, is reprinted in *Report of the Proceedings of the Judicial Conference of the United States,* March 1967 at 4-8.

Center" and "supervise the activities of persons employed in the Center" (draft bill, § 623 at 41).

These provisions were central to the Reed Committee's proposal. Its three basic conclusions, presented at the outset of its report, were that (1) the administration of justice should be efficient, (2) research and training programs can help it be efficient, and (3) the Center should be under an autonomous board, supervised by an executive officer "responsible to the board and not to the Director of the Administrative Office" (Reed Comm. Report at 31). Later the committee elaborated on this theme.

> The Special Committee believes, and this is a view shared by the Director of the Administrative Office, that the realization of an organization controlled and operated by judges would not be achieved merely by adding positions and funds to the Administrative Office . . . regardless of whether the additional positions were added to that office or set up separately as staff positions attached to standing committees of the Judicial Conference. The Special Committee has concluded, however, that the objective can be obtained by organizing the Judicial Conference programs and projects relating to continuing education, training and research in a Federal Judicial Center to be created in the Administrative Office and in the judicial branch, but to be directed by its own autonomous board of judges to be elected by the Judicial Conference and with its own Chief responsible to the Board and not to the Director of the Administrative Office. (Reed Comm. Report at 38.)

"Judicial Conference programs and projects" refers to "no less than 24 existing or suggested programs or projects" that the Conference had undertaken or thought were important but "which have not been undertaken because of the lack of staff, funds, and Congressional authority."[3] The projects are listed in Reed Comm. Report at 33-36.

There is additional evidence of the creators' intention to make the Center separate from the Administrative Office.

The draft bill anticipated that the Center's "Chief" would not be analogous to AO staff members. Instead, the chief might be a "justice or judge," and a non-judge chief would receive the same salary as a district judge (draft bill, § 624 at 41).

The draft bill authorized the Center Board to report and recommend directly to the Conference, the Congress, and other entities (draft bill, § 621 at 40).

The Senate Judiciary Subcommittee asked whether the Center's independence might create conflict with the Conference or its committees. The Director of the Administrative Office, Warren Olney, who worked closely with the Reed Committee, replied: "The Board is controlled entirely by the Judicial Conference. All the members, excepting the Chief Justice and the Director of the Administrative Office, are elected by the Conference and even the Director of the Administrative Office by statute performs his duties under the direction of the Conference. So, they have the control of it." (Hearings at 366.) (On the other hand, Warren Olney wrote House Judiciary Committee Chairman Emanuel Celler that "it would only cause friction and difficulty if the Center was organized as a third body, separate and distinct from the Judicial Conference and the Administrative Office."[4] The "third body" to which Olney refers is an entirely different organization that

3. *Report of the Proceedings of the Judicial Conference of the United States,* March 1967 at 3.

4. Warren Olney to Cong. Emanuel Celler, May 10, 1967, in Federal Judicial Center, Report No. 351, Committee on the Judiciary, House of Representatives, 90th Cong., 1st Sess., 11 at 13 (1967).

some had proposed in Senate hearings, a Center with a board of judges, law deans, business persons, and others, to be located in Chicago near the American Bar Association and other organizations.[5])

As to FJC-AO relations, Olney told the subcommittee that the "Reed Committee and the Judicial Conference, while desiring to give the Board and its Chief a high degree of autonomy in conducting the activities of the Center, also desired to avoid so great a separation from the Administrative Office as to place the two organizations in a position of potential rivalry or competition. It is to avoid this possibility and to ensure proper coordination and cooperation between the activities of the Center and the activities of the Administrative Office that the Director of the Administrative Office is to be made ex officio a member of the Board of the Federal Judicial Center." (Hearings at 378.) Such a description shows a clear intent for the FJC to be autonomous, not a constituent unit of the AO.

The creators' proposed activities and functions

The Reed Committee provided several reasons why a separate organization was necessary. One was to "insure that the personnel and resources intended for continuing education, training and research will not be absorbed by the always present and always increasing demands of daily administration" (Reed Comm. Report at 24). AO Director Olney said: "The need for having autonomy in the Center is quite apparent for a lot of reasons. One of them is to make sure that the resources including personnel that are supposed to go into research and into training programs are not absorbed into the regular administrative tasks of the Administrative Office as there would be a tendency to do." (Hearings at 364.)

The Reed Committee, however, had a more profound reason for keeping the Center separate from the Administrative Office, as illustrated by this exchange between a member of the Senate subcommittee staff and Chief Judge John Hastings. Judge Hastings had moved the Reed Committee's creation at the Conference's September 1966 session[6] and was the Conference's lead-off witness before the Judiciary Subcommittee in support of the Reed Committee bill. (Hearings at 20.)

> JUDGE HASTINGS: In answer to a question that was asked this morning by the Senator from Maryland—why don't we just go ahead and expand the staff of the Administrative Office and let them do this; they are there. The answer is that the Administrative Office, with all of its many and varied housekeeping problems, and all of its many and personal relationships with almost every judge in the Federal Judiciary, at sometime or another, should not be saddled with that responsibility. Certain evaluations and appraisals that necessarily follow its studies may be critical. The Administrative Office should never be placed in the unfortunate position of having to criticize what a court or a judge has been doing. I think that is another reason for not simply enlarging the Administrative Office . . . .
>
> MR. FINLEY: What you are saying—tell me whether I understand you correctly—is that the Administrative Office must always operate with the confidence of the judges that it serves, and that realizing this, it cannot hope in some circumstances to give a thoroughly objective appraisal of

5. Warren Olney to Judge John Oliver, May 17, 1967 (copy on file, Federal Judicial Center).
6. *Report of the Proceedings of the Judicial Conference of the United States,* September, 1966 at 37.

> what needs to be done, because such an objective appraisal may meet with considerable criticism from members of the judiciary.
>
> JUDGE HASTINGS: That is right. I think it is self-evident, almost.
>
> MR. FINLEY: Therefore, to get the objectivity that is needed, you really have to insulate the people doing the in-depth research into problems of judicial administration from those performing the housekeeping functions of the Administrative Office.
>
> JUDGE HASTINGS: I think that is absolutely essential. Otherwise you will destroy the effectiveness of the Administrative Office, as it is today.

This exchange tracks very closely the Senate Judiciary Committee's reasons for revising the bill so as to "establish" the Center in the judicial branch. The revision makes clear that "[i]n their research into the administrative practices and procedures of the courts, personnel management techniques, et cetera, members of the Center staff ought to be insulated from intraorganization loyalties or pressures, or both."[7]

The creators' purpose in using language that "established" the Center in the Administrative Office

In light of the Reed Committee's design of a Center separate from the AO, why did its draft bill establish the Center "in the Administrative Office"? The answer is that "in the Administrative Office" is consistent with the Reed Committee's draft bill provision that the AO would "provide accounting, disbursing, auditing and other fiscal services for the Federal Judicial Center" (draft bill § 627 at 42)—a provision in the enacted statute (28 U.S.C. § 628). This explanation is echoed in a more comprehensive analysis offered by Warren Olney. In 1977, during a series of interviews with the Center's judicial branch creators, Olney was asked why the Reed Committee bill put the Center "in the Administrative Office." He replied:[8]

> I can't recall clearly at all why that happens to be worded in that way. I don't believe, however, that it was anything more than the thought that the Administrative Office was supposed to include all the administrative aspects of the federal judicial branch. We were trying to keep the two things separate so that the Center would be independent.

He was then asked whether there was "ever any real view that the Center would be part of the AO in the same sense as any other division?" He responded:

> Oh no, oh absolutely not. Not at all, no. We had to say it was located somewhere. As a matter of fact putting it within the judicial branch is a better way to word it. We didn't word it that way, I don't know, maybe we weren't just good enough draftsmen. I can't recall if there was ever any controversy over this thing at all.

7. Senate Report No. 781, 90th Cong., 1st Sess., *reprinted in* 1967 U.S. Code Cong. & Admin. News 2402, 2410.

8. Transcript of Interview with Warren Olney III, October 4, 1977, Berkeley, California, at 17-18 (transcript and audiocassette on file at Federal Judicial Center). Other parts of this interview have been published in Wheeler, *Empirical Research and the Politics of Federal Judicial Administration: Creating the Federal Judicial Center,* 1988 Law & Contempt. Prob. 31. This segment has not, although it has had limited release within the judiciary.

In fact, a small controversy did occur during the House debate on the Senate-revised bill. Two Judiciary Committee members objected to the procedure by which the Senate had revised the bill, to aspects of the Center director's personnel responsibilities, and to the Senate bill's wording regarding the placement of the Center. [9] The Chairman of the Judiciary Committee, however, said that the House-Senate conference committee "accepted the Senate view to emphasize that the Federal Judicial Center was not to be a subordinate or constituent part of the Administrative Office. . . . These two offices are to be equal in stature, each has different functions."[10] And the two objecting Committee members voted for the bill on final passage.[11]

Finally, some have said, citing other portions of the Olney interview referenced above, that the only reason that the Judicial Conference even proposed a Federal Judicial Center was because the Chairman of the House Appropriations subcommittee with jurisdiction over the judiciary refused to appropriate funds to the AO for a research and education program, perhaps because of a dislike of Warren Olney. It is true that Olney said that the Committee Chairman was averse to providing funds for statistical analyses.[12] However, unpublished segments of the Olney interview show that Chief Justice Warren and Director Olney conceived the Center to meet a need quite apart from an appropriations strategy. In Olney's words:[13]

> I talked with the Chief Justice about it and we tried to look at it from a greater distance than those minor things and realized that there was a basic need there besides these irritating things and frustrating things that—we needed something like a separate organization that would quickly engage in research and development.

Had the antagonism between the Appropriations Subcommittee and Director Olney been the major impediment to establishing a research and education program, that problem could have been solved with much less effort than was required to create a new agency. Chief Justice Warren and the Judicial Conference would simply have waited until Warren Olney's scheduled retirement in December 1967 and then resumed the appropriations effort with a new AO director. They did not do that because they realized, as the Reed Committee said, that merely "adding positions and funds to the Administrative Office" would not achieve their goals (Reed Comm. Report at 38).

In short, the record fully supports the view that the Judicial Conference, the House of Representatives, and the Senate intended to create the Federal Judicial Center as an agency separate from the Administrative Office.

9. Congressional Record, December 6, 1967, at 35139-40.
10. Congressional Record, December 6, 1967, at 35137-38.
11. Congressional Record, December 6, 1967 at 35143.
12. Wheeler, *supra* note 8, at 38.
13. Olney interview, *supra* note 8, at 8.

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