United States General Accounting Office

GAO

Testimony

For Release
on Delivery
Expected at
10:00 a.m. EST
Wednesday
March 13, 1991

U.S. Attorneys: Better Models Can Help Reduce Resource Disparities Among Offices

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Before the
Subcommittee on Courts, Intellectual
Property, and the Administration of Justice
Committee on the Judiciary
House of Representatives

DISPARITIES IN THE ALLOCATION OF ASSISTANT U.S. ATTORNEYS

SUMMARY OF STATEMENT BY
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GAO's report U.S. Attorneys: Better Models Can Reduce Resource Disparities Among Offices describes GAO efforts to determine first whether attorney staffing disparities exist among the offices, and if so, to identify attorney staffing allocation methods that would substantially reduce disparities among offices and make the staff allocations more economically efficient.

To accomplish these objectives, GAO developed a pair of models, a "workload model" that seeks to account for differences in the workloads of the U.S. Attorney offices and an "allocation model" to allocate new attorney positions in such a way as to reduce staffing disparities identified by the workload model.

GAO also assessed the Justice Department's allocation process and found that it does not adequately account for differences in complexity of legal workload among U.S. Attorney offices. In developing its models, GAO sought to factor in aspects of case complexity, such as the number of defendants and whether a trial occurred, not currently included in the Justice Department's quantitative model.

The results of our workload model suggest that resource disparities exist among the U.S. Attorney offices. On the basis of fiscal year 1989 data, the model results showed 44 offices that expended significantly less criminal attorney time than predicted and 35 offices that expended significantly less civil attorney time than predicted. Conversely, 22 offices used significantly more criminal time than predicted and 37 offices used significantly more civil time than predicted.

In an application of its allocation model in the drug litigation area, GAO compared the model's allocation of 423 additional attorneys with the Justice Department's actual 1989 allocation of 423 drug crime attorneys. While there was a high level of agreement between the two processes, a different GAO allocation achieved a greater reduction of the disparities identified by GAO's workload model.

These models must be interpreted with care. They serve only as a rational starting point for allocating attorneys, and obviously cannot substitute for managerial and political judgment.

Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to discuss our report, U.S. Attorneys: Better Models Can Reduce Resource Disparities Among Offices (GAO/GGD-91-39). We undertook this assignment for Senator Charles E. Grassley, Ranking Minority Member of the Senate Judiciary Subcommittee on Courts and Administrative Practice.

Our work had two objectives: (1) to determine whether attorney staffing disparities exist among the offices, and if so, (2) to identify attorney staffing allocation methods that the Department of Justice could use to reduce disparities among offices and to allocate staff in ways that more accurately match workloads.

The allocation of Assistant U.S. Attorneys among the 94 U.S. Attorney offices has become an issue of some urgency because over the past several years, the number of cases handled by the U.S. Attorneys increased substantially, especially for white-collar crimes and drug crimes. As we began our review in 1989, we noted that many U.S. Attorneys had advised the Department of Justice that their resources were inadequate to handle their growing caseloads. Many also asserted that serious disparities exist in the distribution of resources among offices.

As you know, Congress appropriated funds for the appointment of new Assistant U.S. Attorneys in each of the past three fiscal

years. Using these funds, the Justice Department has established positions for 428 new Assistant U.S. Attorneys in fiscal year 1989, 687 in fiscal year 1990, and 351 in fiscal year 1991. This represents a 54-percent increase from the 2,720 attorney positions authorized in fiscal year 1988. These positions are targetted for the prosecution of bank fraud, drug, and violent crime cases.

GAO'S MODELS

To help achieve a more equitable allocation of U.S. Attorney resources, we developed a pair of models. The first we call the "workload model." This model seeks to account for differences in the workloads of the various U.S. Attorney offices and makes it possible to assess attorney staffing-level disparities among these offices.

We then developed a second model (the "allocation model") to allocate new attorney positions in such a way as to reduce staffing disparities identified by the workload model.

The Workload Model

Our workload model indicates the expected or "predicted" amount of time that attorneys in each office should have spent on their caseload based on the numbers of cases of different types, number

of defendants, indictments, trials, and other legal proceedings they handled. By comparing the actual time expenditures of each office with the time expenditures predicted by the model, we were able to assess attorney staffing disparities among U.S. Attorney offices.

The results of our workload model suggest that resource disparities exist --some of them substantial-- among the U.S. Attorney offices. On the basis of fiscal year 1989 data, the model results showed 44 offices that expended significantly less criminal attorney time than predicted by the model and 35 offices that expended significantly less civil attorney time than predicted by the model. Conversely, 22 offices used significantly more criminal time than predicted and 37 offices used significantly more civil time than predicted.

It is important to note that our workload model addresses only the question of the relative resource requirements of the U.S. Attorney offices and not the absolute resource needs of these offices. Other things being equal, offices using less attorney time than our model predicted based on workload analysis are relatively understaffed, and those using more than our model predicts are relatively overstaffed. Since all inferences on overstaffing and understaffing are relative, inferring that an office is "overstaffed" using the model does not necessarily mean that office does not need additional attorneys.

The Allocation Model

Our allocation model distributed additional positions to the attorney offices in such a way as to reduce staffing disparities identified by the workload model without reducing the staff of any U.S. Attorney office.

We applied our allocation model to a 1989 Justice Department distribution of 423 new attorney positions designated for drug crime prosecution. Overall, our model's allocations correlated highly with the actual allocations as reported by the Justice Department; however, some significant differences arose. Several examples follow.

-- the model would have allocated 21 of the new positions to the Florida's Southern District, while the actual allocation was 42 attorney positions.

-- the model allocated only one of the new positions to California's Central District, which actually received 21 positions.

-- the Western District in Texas actually received six, while the model allocated 18.

-- the Eastern District, New York, received 16, while the model allocated 23.

DEPARTMENT OF JUSTICE RESOURCE ALLOCATION PROCESS

When additional attorney positions are approved by Congress, officials at the Executive Office of U.S. Attorneys use a two-step process to allocate the new positions among the U.S. Attorney offices. First, preliminary allocations are produced using an allocation model that employs data on seven variables. The seven variables include the numbers of district court judges, civil and criminal cases, grand jury hours, and trials. Second, additional factors bearing on the allocation, including numbers of branch offices in the districts, court-related travel time, and client agency workload projections, are qualitatively assessed. The allocation proposals developed using this two-step process are subject to approval by the Deputy Attorney General.

At 17 of the 28 U.S. Attorney offices we visited, officials questioned this decisionmaking process. They maintained that the process does not adequately account for the complexity of caseloads and thus does not accurately measure the work done by different offices. Officials from the majority of the U.S. Attorney offices we visited supported the need for a system that

takes case complexity into account by quantitatively weighting cases by their complexity or difficulty. For example, an official from one large office we visited pointed out that a case weighting system would show that his district's work includes an unusually high percentage of large, complex, multidefendant cases, a fact that is not reflected in raw caseload statistics.

We assessed Justice's resource allocation model and found two weaknesses. First, as asserted by many officials with whom we spoke, Justice's model does not quantitatively measure case complexity, omitting such aspects as type of litigation and number of defendants. Since the type of litigation is omitted, Justice's model cannot provide guidance in allocating positions that are targeted to specific litigation areas, such as drugs.

Second, Justice's model uses the number of judges as a predictor of the number of attorney positions. Treating the number of judges as a predictor suggests that the number of judges causes the number of attorneys. However, it is more appropriate to think that the association between these two variables arises from their mutual dependence upon a common cause, namely the dependence of both number of judges and number of attorneys upon the need for legal services. The use of judges as a predictor could have the adverse consequence that any inequities or inefficiencies in the distribution of judges would affect the distribution of attorneys.

WHAT GAO'S MODELS ADD

Our models, as described more fully in our report, seek to overcome the weaknesses we identified in the Department's current model by introducing and measuring additional aspects of case complexity. The model we developed assigns weights to cases on the basis of the average time required to handle cases with the same general characteristics or of the same general type. For example, according to the literature on legal case weighting systems and discussions with officials of the Executive Office for U.S. Attorneys and the 28 U.S. Attorney offices we visited, criminal cases involving multiple defendants, grand jury indictments, and trials usually take more time than those that do not, and civil cases involving multiple defendants, motions, and trials usually take more time than those that do not. In all, criminal cases in each of the six litigation areas were assigned to 18 classes depending on the amount of time they took. Civil cases in each of seven litigation areas were assigned to 16 classes on the same basis.

On the criminal side, we grouped cases into the following six litigation areas: public corruption, economic crime, organized crime, drugs, violent crime, and other criminal offenses. On the civil side, we re-worked the model separately for each of seven areas: affirmative-monetary, affirmative-nonmonetary, defensive-

monetary, defensive-other, civil forfeitures, foreclosures, and prisoner petitions.

Mr. Chairman, our report explains these models in greater detail. We have sought to present them so that they can be understood by the general reader. In addition we have provided extensive appendices for those who may be interested in the more technical aspects of our work.

Interpreted with due care, the models we developed can aid the Department of Justice in assessing the relative staff needs of U.S. Attorney offices by enabling the Department to identify offices that appear to deviate significantly from typical resource usage patterns. The models can serve as a rational starting point in the process of allocating new assistant U.S. attorney positions as these positions are authorized.

We want to underscore that while these models may assist in reaching more informed professional, managerial, or political judgments, they obviously cannot substitute for those judgments. Indeed, there may be good reasons for deciding that the staffing levels of individual offices should deviate significantly from the pattern suggested by the model.

We invite further refinements to our model. Improvement might be possible, for example, when data become available on additional

variables --such as data on time spent on appellate proceedings in particular litigation areas.

Mr. Chairman, it is noteworthy that GAO staff and Justice Department staff have enjoyed an excellent working relationship over the course of this assignment. The Justice Department has shown high interest in our models, and plans to test them in upcoming attorney allocations. We have provided them the computer programs and documentation that support the models, and responded to questions they have raised.

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This concludes my prepared remarks. We would be pleased to respond to any questions.

APPROACH AND METHODOLOGY

Before developing our models, we met with officials at the Executive Office for United States Attorneys and 28 U.S. Attorney offices and reviewed the literature on case weighting models. At the Executive Office, officials from the Administrative Services and Legal Information Systems divisions explained the Department of Justice's methods for allocating resources. On the basis of our discussions with these officials and our literature review, we developed a set of hypotheses about the relative attorney time requirements of different types of cases. The hypotheses helped us to identify variables, measured by Department of Justice or Judicial Branch data systems, which could be used to classify cases according to their relative time requirements. However, several potentially relevant variables were not measured in the available data systems, such as grand jury and trial hours, and hence could not be used in modelling the time requirements of workloads (see app. I).

These officials also provided most of the data for our review, including (1) supporting documents on the Department of Justice's current resource allocation method; (2) statistics on resource allocations in prior years; (3) U.S. Attorneys' Resource Utilization Reports; and (4) automated criminal and civil master files for fiscal years 1987, 1988, and 1989. At 28 U.S. Attorney

offices, we obtained information on the resource allocation process, the adequacy of resources, and the impacts of resource shortages on the legal system.[1]

As part of the modelling work, we evaluated the completeness and accuracy of the Executive Office's central criminal database by comparing it with a criminal database maintained independently by the Administrative Office of the United States Courts.

We performed the audit portion of this assignment between January 1989 and April 1990, and developed the models over the remaining months of 1990.

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[1]The 28 offices were a judgmental, or nonrandom, sample of the 91 offices in the continental United States and Puerto Rico. The sample was selected to include at least one district from each of the 12 judicial circuits. The offices visited accounted for 50 percent of the total criminal and civil cases filed in court by U.S. Attorneys in fiscal year 1989.