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# Visiting Judges in Federal District Courts



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**VISITING JUDGES  
IN FEDERAL DISTRICT COURTS**

By Donna Stienstra

U.S. Department of Justice  
National Institute of Justice

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## FOREWORD

The ability to shift judicial resources from one federal court to another has contributed significantly to the efficiency of the federal judicial system. Federal judges have been exceedingly generous in responding to the temporary needs of other courts, which are occasioned by a variety of circumstances. Sometimes they result from a drug task force operating in a particular area, sometimes from vacancies that have too long gone unfilled, sometimes from a particularly lengthy and complex case.

Despite the common ground provided by case law and the federal rules of practice and procedure, a visiting judge is entering an environment that is inevitably different, and hence unfamiliar to some extent. By the same token, adjustments in the staff and facilities of the host court may be necessary. The satisfaction and productivity of a visit depend substantially on the extent to which the visitor and the court can make appropriate accommodations. This report describes the methods some district courts use to ensure that a visit will be satisfying and productive for both the visitor and the court.

The discussion is based on information obtained through contacts with visiting judges and with the clerks or division managers in eighteen district courts that have received substantial support from visiting judges. This experience has been diverse, with some courts, for example, receiving assistance from only a few judges who made lengthy visits, while other courts used many judges for short visits.

The report discusses several issues that arise when a judge visits another court: (1) the steps taken in planning and organizing the caseload of a visiting judge; (2) the role courts play in arranging accommodations and travel and in providing an orientation to the court; and (3) the impact a visit has on court staff and facilities.

We are aware that judgments concerning the desirability of particular procedures will vary from district to district, and that each court must assess any proposed change in light of local conditions. It is our hope, however, that this report will prove helpful in focusing attention both on the problems that may arise and on the solutions that some have found helpful.

A. Leo Levin

## I. INTRODUCTION

As caseloads have grown dramatically, and the number of judgeships has risen only slightly, the federal courts have adopted a variety of measures for increasing the number of cases disposed of per judge. Although able to handle continuing caseload problems over an extended period, at times a court may find an already precarious condition exacerbated by a sudden surge in filings, a prolonged vacancy, or an extended illness. A court may then request the temporary services of a judge from another district or appellate court. If this request is granted, a judge is designated to sit in the troubled court, with the authority to carry out the full range of judicial activities.<sup>1</sup>

Despite the common ground provided by case law and the federal rules of procedure, when a judge serves in another court he or she is in an unfamiliar milieu. On the other hand, the court, where a set of routine procedures is taken for granted, is faced with adjusting its staff and facilities to the needs of an outsider. Whether a visit is productive may rest substantially on the extent to which the court and the visiting judge can mesh their needs, expectations, and resources.

Given the fairly extensive use the federal courts have made of visiting judges,<sup>2</sup> and the difficulties that may arise from this arrangement, it may be instructive to examine the procedures the courts have adopted to ensure a successful visit or, at least, to minimize the inherent problems. This report, based on information obtained through a questionnaire sent to clerks of court, covers a range of court and case management concerns, from preparation of a calendar before a judge's arrival to disposition of posttrial events that may develop after the judge's departure. It addresses such matters as the selection of cases for the calendar, the provision of

1. The authority to shift judicial resources from one federal court to another is found in 28 U.S.C. ch. 13. Assignments to another court may be made by the Chief Justice or by a circuit chief judge, depending on several factors. Among these are whether the assignment involves an appellate or district judge and whether the assignment is made to a court within or outside the circuit.

2. See, for example, data presented here in chapter 2 and in table V-1 (p. 472) in the 1983 Annual Report of the Director of the Administrative Office of the United States Courts.

### Chapter I

staff for the visitor, and the restrictions imposed by limited facilities. Highlighted in chapter 8 are the ingredients the clerks of court said are essential for a productive visit.

Chapter 2 describes the method used for selecting the courts included in this study and presents a profile of the courts' use of visiting judges, noting, among other features, the number of visitors used by each court, the number of trials they heard, and the average length of their visits. Chapters 3, 4, and 5 discuss the methods used to facilitate the visits of judges from other courts, and chapters 6 and 7 describe the visitors' impact on the court staff and facilities.

## II. SELECTION AND PROFILE OF THE COURTS

This study began with an effort to identify courts that had used visitors successfully. In early 1984, twelve judges who had given the greatest number of hours to courts other than their own in statistical year 1983 were asked to identify those district courts they felt had developed particularly effective procedures to aid visiting judges. A description of the procedures used by these courts and by other district courts that had used visitors extensively was then developed. The selection of the additional district courts was based on two criteria: (1) The chosen courts had substantial experience with visiting judges, and (2) they varied in the ways in which they had used visiting judges.

To meet the first criterion—substantial experience—I selected courts that had received either more than one hundred hours of trial time from visitors in statistical year 1983 or more than one hundred hours of procedural and trial time combined.<sup>3</sup>

The second criterion—diverse experience—was established in order to examine the different kinds of problems that might arise and the kinds of solutions that might be adopted under dissimilar conditions. Thus I chose courts that varied along several dimensions: (1) the number of visitors used in statistical year 1983; (2) the average number of cases assigned each visitor; (3) the kinds of trials heard by the visitors (criminal or civil, long or short); (4) the average length of the visitor's stay; and (5) the number of visitors who came from outside the circuit. Any particular court may exhibit a combination of these features; for example, one court may use a large number of visitors for many short trials while another court may use only a few visitors for a small number of long

3. In general, visiting judges are not used for pretrial proceedings. Only nine district courts received more than 40 hours of procedural time from visitors; seven of these courts received between 43 and 84 procedural hours, while two received substantially more (266 and 532 hours). All nine of these courts were contacted for this study.

David Gentry, of the Statistical Analysis and Reports Division of the Administrative Office, provided the data used to determine the number of hours received from visitors and the ways the courts used visiting judges. The analysis reported here is based on data from statistical year 1983.

## Chapter II

trials. The selection of courts that differed in their use of visitors allowed examination of the effect these differences had on the courts' planning for and management of their visitors.

The initial study group comprised twenty-two district courts. Further examination revealed that in two of these courts the judges who were reported as visitors had recently been elevated from within the district. Because the judges in these circumstances have an ongoing relationship with the court (sometimes including provision of staff and office space), these courts were eliminated from the study.<sup>4</sup> Their removal, and that of two districts that did not respond to the questionnaire, left eighteen district courts. These courts, then, used the greatest number of visiting judge hours in statistical year 1983 and represent a wide variety of ways to use this judicial resource. A profile of the selected courts is presented in the following table.

The table shows that the number of visiting judges used in statistical year 1983 varied greatly across the districts, ranging from one to thirty judges. However, fourteen of the eighteen courts fall into a narrow range, using between three and eight visitors. Two districts stand out because of the large number of outside judges who spent time in these courts. For both, somewhat unusual circumstances led to this outcome. In the Southern District of Florida, where thirty visitors were used, the work of the Vice President's South Florida Joint Task Force on Drugs resulted in a surge in criminal cases, many of which were handled by visiting judges. (The court also had several vacancies during this time.) The eighteen judges who spent time in the Eastern District of Tennessee, on the other hand, were requested because vacancies left only one resident judge to handle the caseload. At the other end of the spectrum are the districts of Minnesota and Colorado, each of which used only one visiting judge. In both instances, the court used a visitor only for cases in which all the resident judges had recused themselves.

It is not uncommon for a court to be assigned a judge from another circuit—it occurred in slightly more than half the courts studied. This situation seems to arise when several courts within the same circuit require the assistance of a visitor. For example, in statistical year 1983 the First Circuit districts of Maine, Puerto Rico, and Rhode Island all were assigned out-of-circuit judges.<sup>5</sup>

4. For example, in one district a visiting judge contributed 208 hours of trial time in statistical year 1983. The statistics are misleading, however, because this judge, who had been elevated from that district, was not assigned to the court as a visitor but had simply chosen to carry his district court caseload to disposition.

5. A substantial proportion of the visitors are senior judges. Of the 111 visitors used by these eighteen courts, 40 (36 percent) were senior judges. Twelve of the visi-

**Profile of Visiting Judge Usage for Eighteen District Courts  
(Statistical Year 1983)**

Court	No. of Visitors <sup>1</sup>	No. of Trials			Trial Hours		% by Visitors	Avg. Trial Length <sup>3</sup>	Proced. Hours	Avg. Stay <sup>4</sup>
		Civ.	Crim.	Judg. <sup>2</sup>	Total	Visitors				
D. Ariz.	3 (2)	2	3	2	2,637	74	2.80	14.8	35	.9
D. Colo.	1	0	3	3	3,705	141	3.80	47.0	22	4.1
D. Conn.	5	32	1	7	2,959	179	6.05	5.4	12	1.0
M.D. Fla.	7 (4)	20	3	3	6,175	764	12.37	33.2	12	2.8
S.D. Fla.	30 (24)	40	153	6	10,062	2,096	20.83	10.9	525	2.2
S.D. Ga.	4	12	5	4	1,919	305	15.89	17.9	68	2.3
D. Hawaii	4	4	4	2	1,069	238	22.26	29.8	16	1.6
S.D. Iowa	3	8	0	3	1,078	108	10.02	13.5	6	1.0
D. Me.	4 (3)	15	7	6	586	129	22.01	5.9	43	1.1
D. Minn.	1	1	0	1	4,221	398	9.43	398.0	7	10.1
E.D.N.C.	4	5	3	2	949	121	12.75	15.1	7	.8
D. Nev.	4 (1)	1	5	2	986	94	9.53	15.7	7	.6
D.P.R.	3 (3)	11	0	4	1,435	115	8.01	10.5	46	1.3
D.R.I.	3 (1)	4	1	2	1,656	104	6.28	20.8	31	1.1
D.S.C.	6 (3)	14	1	3	3,554	114	3.21	7.6	22	.6
E.D. Tenn.	18 (9)	65	5	4	1,311	753	57.44	10.8	264	1.4
E.D. Wash.	3	1	6	2	766	81	10.57	11.6	32	.9
W.D. Wash.	8 (2)	35	0	4	2,683	512	19.08	14.6	66	1.8

<sup>1</sup>In parentheses is the number of visitors who came from outside the circuit. For several districts the total number of visitors has been decreased slightly by removing the few judges who were reported as visitors but who gave no hours to the court.

<sup>2</sup>Rounded to the nearest whole number.

<sup>3</sup>Reported in hours and calculated by dividing the visitors' trial hours by the number of trials heard by visitors.

<sup>4</sup>Reported in weeks (based on a forty-hour week) and calculated by dividing the total number of hours first by the total number of visitors and then by forty. Both trial and procedural hours are included.

Selection and Profile of the Courts

The districts vary widely in the number and type of trials assigned to visiting judges. Again, the Southern District of Florida and the Eastern District of Tennessee stand out, having assigned to visitors many more trials (193 and 70, respectively) than did most courts. The Southern District of Florida is especially notable for the large number of criminal trials heard by visitors. The number of cases tried per judge also varies, from 6.6 trials per visitor in the District of Connecticut to 1.0 trial in the District of Minnesota, where only one visitor was used and only for a case in which all the resident judges had recused themselves. (If this latter, somewhat anomalous district is not included, visitors in the District of Nevada tried the fewest cases—with 1.5 trials per judge.) In general, the courts assign civil, rather than criminal, cases to visiting judges.

The total number of trial hours received from visitors ranged from 74 hours in the District of Arizona to 2,096 hours in the Southern District of Florida. A better sense of the contribution made by visitors may be gained by examining the proportion of the courts' total trial hours heard by visitors. The range is quite remarkable, with visitors presiding over more than half of the trial hours spent in the Eastern District of Tennessee, but hearing less than 3 percent of the trial hours in the District of Arizona. In slightly more than half the courts studied, visitors accounted for at least 10 percent of the time spent in trial, and in five courts—Southern Florida, Hawaii, Maine, Eastern Tennessee, and Western Washington—nearly 20 percent or more of the total trial time was presided over by visitors.

The data in the table suggest that in thirteen out of eighteen districts the visiting judges presided over fairly short trials, with an average duration between five and twenty hours. Included in this category are the two courts with the highest number of visitors—the Southern District of Florida and the Eastern District of Tennessee. However, several courts deviated from the pattern. The District of Minnesota, for example, used only one visiting judge in statistical year 1983, for a trial that lasted 398 hours (or ten weeks). Although not of the same magnitude, the average trial length was also above the mean in cases heard in the District of Colorado, the Middle District of Florida, and the District of Hawaii.

Visiting judges spent many fewer hours on procedural matters than they did in trial, although here, too, the courts varied. As is discussed in chapter 4, most courts feel very strongly that all the

tors went to more than one court; of these twelve, eight were senior judges. (Data showing the pattern for senior judges are available from the author.)

pretrial work in a case should be completed before a visitor arrives. Other courts, and several visiting judges themselves, have not adopted this position. And some courts—the Eastern District of Tennessee, for example, where only one judge was in residence—may have had little choice but to use visitors for a wide range of activities.

The data in the table indicate that few visits by a judge lasted longer than two weeks. In the districts of Colorado and Minnesota, visitors stayed an unusually long time, but in both districts the visitors were assigned difficult cases from which the resident judges had recused themselves. Besides these two courts, only three others had visitors who stayed two weeks or longer. By comparison, in nine districts, which account for half the courts in this study, visitors spent a week or less at the court. A brief visit appears to be the norm.

Any of the factors discussed above—length of visit, number of trials per visitor, type of case assigned—may affect the procedures used by a court. To discover the role of these factors in courts' use of visiting judges, I sent a questionnaire to the clerk in each of the selected courts in the summer of 1984. (A copy of the questionnaire can be found in appendix B.) In most instances, the clerk responded, though in a few districts a deputy clerk or division manager answered the questions. Nearly all the clerks and deputies chose to respond by telephone rather than in writing. The policies and procedures they have adopted are described in the following chapters.

### III. THE FIRST STEPS IN PLANNING A VISIT

Before arranging for a visitor and setting a calendar of cases, a court must identify its needs and decide how a visitor should be used. In most of the courts in this study, the request for assistance arose from caseload pressures. Some courts were pressed by a backlog of old civil cases, while others faced Speedy Trial Act deadlines. Depending on its needs, a court may find that the best way to use a visitor is to have the judge try primarily criminal cases (as in the Southern District of Florida), many short civil cases (as in the District of Connecticut), or longer cases, enabling the resident judges to keep their dockets current (as in the Middle District of Florida). To some extent the choice of one strategy over another will determine the subsequent plans for a visit—for example, the number of visitors, the length of stay, and the selection of cases for a calendar.

Ideally, the planning process begins several months before the visit, though the courts do not always have the luxury of substantial advance notice. Occasionally a court may have as much as six months' lead time, but this is not typical; a month or two appears to be the norm. If a court has no choice, it can accommodate a visitor on very short notice, but most prefer to have four to six weeks to make the preparations. During this time a calendar is set, arrangements are made for staff and housing, attorneys are notified, and jurors are summoned. More lead time is especially necessary when a calendar is being prepared from scratch, as opposed to having a visitor take over a resident's calendar. Three months may be needed if substantial effort will be required to bring the cases to a trial-ready state. One respondent, however, noted that because of the scheduling orders required by Federal Rule of Civil Procedure 16(b), cases now move more quickly through the pretrial phases, and a calendar can be prepared on shorter notice.

Few of the courts included in this study have adopted any formal procedures, special guidelines, or standard forms to be used in preparing for a judge's visit. Only two use any kind of document designed especially for this situation. Both are divisions of the Middle District of Florida, and in each a checklist is used to ensure that

### Chapter III

all preparations for a visit have been completed. (Appendix A contains copies of these checklists.) In the remaining courts, preparation for a visit is guided by an unwritten, but in many instances clearly articulated, set of principles and procedures.

## IV. MANAGING THE CASELOAD

### Selection of the Cases

Although the courts' needs are a major determinant of the kinds of cases assigned to visiting judges, the visitors' preferences are also taken into consideration. All but the most burdened courts attempt to tailor the selection of cases to the visitors' desires, which appear to be fairly well-defined.

Because of the necessity of writing an opinion, visiting judges generally ask not to be assigned nonjury cases. Posttrial demands are also a factor; thus, many judges prefer civil over criminal cases because, as one respondent stated, criminal cases "never end." One clerk reported that some judges find a variety of cases—some criminal and some civil—more interesting, while another reported that visitors do not like diversity cases because they fear they do not know the state law well enough. The most frequently mentioned preference was for jury trials.

Visitors apparently do not dislike complex or long cases, but a number of clerks reported that, from the perspective of the court, it is less helpful to assign these cases to visitors. Assigning a calendar comprised of several short, routine cases, in the clerks' view, is a more effective way to use visiting judges because it clears a larger number of cases from the docket. One clerk noted that visitors are able to dispose of a calendar of routine cases in a shorter amount of time than are resident judges; the clerk suggested that this may happen because the attorneys do not have other cases pending before the visitor and therefore the visitor is not diverted from the trial calendar into discussions about these other cases.

In general, the courts assign visitors the oldest cases—including criminal cases facing Speedy Trial Act deadlines—and the less complicated ones. In addition, almost all the courts only assign cases that are ready for trial—that is, all motions have been resolved and the final pretrial conference has been held. Many respondents were emphatic about the importance of assigning only trial-ready cases. This practice is in keeping with two widely accepted principles: (1) The most productive use of visitors is to have

them hear trials; and (2) the gravest error a court can make is to waste a visitor's time.

The actual process of selecting particular cases for the calendar varies among the districts. In most of the courts studied, the clerk asks each judge to submit a list of appropriate cases. Each judge usually decides the number of cases he or she will submit; one court, however, has specified a limit of twenty cases per judge. One clerk noted that it may be desirable to set a limit on the number each judge may submit because an open-ended request sometimes results in an imbalance in the number of cases submitted per judge. In several courts, the clerk or chief deputy clerk selects the cases within guidelines established by the judges. A much less common procedure—selection by the chief judge—was used in only one court.

Although selection from all the judges' dockets is the usual procedure, in one court any exceptionally long case is selected first, and subsequent cases are chosen to relieve a judge with an overcrowded docket. Another court rotates the selection of cases among the resident judges. When a visitor is assigned, the judge whose turn it is to select cases submits a list to the clerk, and a calendar is set; if these cases fall out, the next judge in line selects a calendar of cases, and so on.

In two courts, cases are not actually selected. The standard procedure in one of these courts is to schedule trials for trial terms; when a visitor is assigned to the court, he or she is given the cases set for a particular term. The second of these courts is currently using a master calendar, and the visitor simply tries cases from this calendar.

Whatever selection procedure is used, it is important to screen cases carefully so that the calendar fits the visitor's schedule and desires. One respondent said, for example, that it is especially disconcerting when one of the cases set on what was supposed to be a calendar of routine cases turns out, on closer inspection by the visitor at a final pretrial conference, to be a routine case in terms of liability but a long case in terms of damages. The case may be removed from or left on the calendar, but scheduling difficulties arise either way.

### Preparation of the Cases

In almost all the courts surveyed, most pretrial aspects of the cases are handled by resident judges or magistrates, leaving only the trial for the visitor. Most of the respondents expressed views

similar to that of the clerk who said, "The only way to dispose of a case is to try it, so the cases should be ready for trial when a judge arrives." The ineffectiveness of using visitors to decide pretrial motions was emphasized by another clerk, who said that attorneys frequently will simply renew these motions before another judge at a later point. Only when a trial calendar completely falls out, which most courts try to avoid, will pretrial matters be placed on a visiting judge's calendar.

The courts differ in the procedures used to ensure that cases are ready for trial, but most have assigned this responsibility to a particular person—usually the clerk, a magistrate, or a courtroom deputy. The designated individual searches the case files for unresolved motions and routes these matters to a resident judge or magistrate. The most formalized procedure is used in the Tampa Division of the Middle District of Florida, where the clerk's checklist is a reminder to the courtroom deputies to find any unresolved motions. (See section IV of the Tampa checklist in appendix A.)

In the Eastern District of Tennessee and the Southern District of Florida, the most overburdened courts in this study, the resident judges could not prepare all the cases for trial, so the visitors handled pretrial matters as well as the trials themselves.

Although in most courts motions are resolved before a visitor arrives, the final pretrial conference may be held by the visitor rather than a resident judge. Several clerks reported that visitors often prefer to hold their own final pretrial conferences, sometimes because they use it as a way to become familiar with the attorneys or the case, and sometimes because they want to discuss settlement with the parties.

Some visitors request copies of the case files before their arrival. When asked, the clerks will comply, but most do not routinely send visitors the complete files, preferring to send copies of only the docket sheets, pleadings, and orders. Several clerks mentioned the risk of losing case files or, alternatively, the burden of copying all the documents in a large file. One respondent noted that because the cases assigned to visitors generally are not complex, it is not necessary to send the complete files. If the same judge routinely visits a court, the clerks have found they receive fewer requests for case files, suggesting that after judges become familiar with a court they feel less need for preparation before their arrival. On the other hand, in the Eastern District of Tennessee, where the visitors handled both the pretrial and trial calendars, much more extensive pretrial preparation by the visitors was necessary. In this court the clerk's office routinely sent copies of pending motions and briefs on these motions to visiting judges before their arrival. In sum, nearly

all the courts send visitors a calendar of the cases they will hear, the docket sheets for these cases, and the final pretrial order if it has been completed. One court also routinely sends the visitors a copy of the local rules. Beyond these common practices, the courts tailor the mailed materials to the preferences of the visitors.

### Preparation of the Calendar

One of the most important and difficult tasks in preparing for a visitor is the setting of cases on a calendar. The importance and the difficulty arise from the same aim: making sure there are enough cases on the calendar for the duration of the visitor's stay. A visitor's time should never, under any circumstances, be wasted. (The clerks' concern about wasting a visitor's time was two-sided; they want the visit to be profitable to their courts, but even more they recognize the ill will that may be provoked if a visitor is brought to the court and then left with little to do.)

The number of cases set on a calendar depends on the type of cases selected and the length of the visitor's stay. The general principle is that more than enough cases should be set because many will settle. According to a number of respondents, settlement rates are higher than average when cases are set before a visitor; the clerks presume the rate is higher because attorneys decide not to risk going before an unknown judge. As a rule, if routine civil or criminal cases are on the calendar, at least three or four cases should be set for every one that can be tried.

Most courts use a trailing calendar for visitors. One clerk emphasized the importance of clearly articulating the expectations the judge and the court have for this calendar. For example, will the visitor be expected to dispose of the entire calendar? Or will the visitor be asked only to do what is possible within the limits of the visit? In nearly all the courts studied here, visiting judges are assigned for a period of time, not for a particular calendar. Thus, the visitor's responsibility is to try as many cases as possible during his or her stay, not to dispose of all the scheduled cases. Those cases not reached are returned to the resident judges' calendars.

In general, the calendar is set by the clerk, working with the assistance of the resident courtroom deputies. Most clerks list the oldest cases first; if criminal cases are included in the calendar, these are usually placed at the top of the list. After the calendar has been set, the deputies, in most courts, become responsible for contacting attorneys and monitoring the status of the cases assigned to the visiting judge.

Three courts have adopted practices that warrant separate discussion. In the Eastern District of Tennessee, where many visitors were brought in to assist the single resident during a period of vacancies, cases were set for a specific date, and the visitors stayed until they had tried all the cases they were assigned. Most cases were tried as scheduled, with few delays, and attorneys soon began to complain about scheduling conflicts, particularly with the state court. The federal and state courts were able to reach an agreement that the federal cases would, under the pressing circumstances, have priority.

In the Jacksonville Division of the Middle District of Florida, another court that received a large amount of assistance, the division manager found that having visitors at the court could alter the way in which the resident judges set their trial calendars. Every effort was made to calendar enough cases to make full use of the visitor, while at the same time only as many cases as the visitor could reach were set. However, when there was an expectation that many of the visitor's cases might settle, the resident judges' trial calendars were overloaded. Then, if the visitor's cases settled, the extra cases on the residents' calendars were tried by the visitor. In this situation, the visitors became, in effect, backup judges for the resident judges' trial calendars.

Finally, the District of Connecticut organized a "blitz" in which a large number of visitors were brought in over a six-month period to dispose of a backlog of routine civil cases.<sup>6</sup> After the Second Circuit approved the chief judge's request for a large number of visitors, a call for cases went out to the resident judges in March 1983. A master calendar of 369 civil jury and nonjury cases was set. At calendar calls in April and May these cases were assigned to thirteen visitors, who visited the court for approximately one month each between May and December. Of the 369 cases initially set, 231 were disposed of either by settlement or by trial.

### Selection of Juries

The selection of juries has little impact on the activities preceding a visitor's arrival. In few courts does a resident judge or magistrate select a jury for the visitor before his or her arrival. Although some visitors request this service, most prefer to select their own juries. The presence of a visiting judge appears to have only one

6. This is not reflected in the data reported in the table because the "blitz" spanned statistical years 1983 and 1984.

## Chapter IV

perceptible effect on jury selection: If there are going to be many jury trials, the size of the jury pool must be increased.

### Posttrial Considerations

According to one respondent, even the simplest case has posttrial activity that may require the attention of a judge. This is especially true for criminal cases, where sentencing is the major posttrial event. When a visiting judge has tried several criminal cases and sentencing for all of them can be scheduled for a single visit, he or she is likely to return to the court to impose the sentences. In general, however, the courts do not have a uniform approach to this problem. In some, the visitors return to give the sentence, while in others the resident judges carry out this task. Most of the clerks who have had experience with assigning criminal cases to visitors felt that sentencing and posttrial motions make these cases problematic for visiting judges.

Posttrial events in civil cases, on the other hand, are usually easier for both the visitors and the court to handle. The most common practice is to send motions to the visitor, who rules on them and sends an order back to the court. In a few courts a magistrate may decide such issues as petitions for rehearing or attorneys' fees, usually in consultation with the visitor. Visitors usually prepare the opinions in nonjury civil cases after they have returned to their home court.

In general the courts expect a visitor to handle the civil cases to disposition, but they use a more flexible approach—which may require the involvement of more than one judge—in the disposition of criminal cases. For these reasons, a calendar of civil cases appears to be easier to manage than a calendar of criminal cases.

### Impact of Case and Calendar Characteristics

In each interview the respondent was asked whether any of the following case characteristics affect the preparation for a visit by a judge: length of trial, type of case (civil or criminal, jury or nonjury), and complexity of case. They were also asked whether the demands of a long visit differ from those of a short one.

Although the visitors seem to prefer short cases, a number of clerks find that it is easier to manage a long one. A long case occupies a judge throughout his or her visit and requires fewer adjustments of the calendar, selection of only one jury, and notification

of only one set of attorneys. A calendar of short cases is, by comparison, much less stable; it is difficult to predict what will happen and thus to use a visitor's time productively.

Some clerks, however, reported that their courts prefer to assign only short trials to visitors. In at least one instance, the court lacks courtroom space for the lengthy visit required by a long trial; other clerks felt it is unfair to burden a visitor with a long trial. In addition, if a long case is assigned, the court still must construct a backup calendar lest the long case settle before trial.

Assignment of criminal cases to a visitor seems to create greater difficulties than does assignment of civil cases. Greater security and more jurors usually are required. In addition, posttrial events, such as sentencing or a section 2255 motion challenging the sentence, may require return visits. A different view was expressed by a clerk located in a court that has used visitors primarily for criminal trials. He felt that the criminal caseload is more "structured" and thus makes more efficient use of a visitor's time. He suggested that a court with a heavy criminal caseload should not hesitate to assign these cases to visitors.

As noted above, the assignment of jury cases may require an increase in the size of the jury pool, but beyond this requirement, jury cases have little impact on managing a visit. However, the preference most visitors have for jury cases can cause a problem because the court may not have enough of these cases to set a full calendar. Nonjury cases have both an advantage and a disadvantage. They can be scheduled closer together, allowing a visitor to try more of them in a given length of time, but the posttrial exchange through the mails of files, opinions, and other materials creates a risk of lost documents.

It is helpful to the resident judges to have visitors try complex cases, but these cases are rarely placed on a visitor's calendar. Aside from a general opinion that a visitor should not be burdened with these cases, one clerk reported that it is very difficult to schedule multiple attorneys. Therefore, there are greater risks that these cases will have to be postponed and the visitors' time will be wasted.

The length of a visit also has an impact on the clerk's office. Because the clerk (or the judges or courtroom deputies), usually spends a fair amount of time with a visitor at the beginning of a visit, a long visit by one judge rather than short visits by several judges may make fewer demands on the court. Long visits are also advantageous because a judge does not have to leave just as he or she has become comfortable with the procedures of the court. A long visit, however, generally requires a calendar of many cases,

which introduces the difficulties described above into the planning. Also, for many courts a lengthy visit is not feasible because there are no extra courtrooms; a visitor would have to be shifted back and forth between courtrooms as they are vacated by the resident judges.

As one clerk summarized in his response to the questionnaire, the differential needs of the visitors have a greater impact on planning and managing a visit than do the characteristics of the cases and the calendar. Clerks should always be alert, he said, to differences in judicial style and habits, such as whether status conferences are held, whether the visitor is an advocate of active judicial participation in settlement, and the kind and degree of work a visitor requires from courtroom deputies.

## V. PLANNING AND MANAGING THE VISIT

### Orientation to the Court and Interaction with Resident Judges

The courts in this study do not provide visitors with a formal orientation, but most of the clerks spend a great deal of time before the visit discussing court procedures with the visitor or the visitor's staff. Among the topics covered are (1) how juries are selected; (2) record keeping; (3) availability of support staff; (4) local rules; and (5) idiosyncracies of outlying divisions, if applicable. Much less time is required of the clerk when the outside judge has been a regular visitor to the court, but generally the clerks make themselves accessible to all the visitors and devote a substantial amount of time to preparations for the visitors.

During the judge's visit, the clerk usually continues in this role, often meeting the judge at the airport and then making sure he or she enjoys the hours off the bench as well those spent in trial. In some courts this includes making reservations for shows or for dinner, and in several it involves entertaining the visitor at home.

Once the visitor has arrived, some of the burden on the clerk shifts to the courtroom deputies and the resident judges. The deputies field many of the visitors' questions about routine procedures and forms. The resident judges, on the other hand, usually invite the visitors to their informal meetings and frequently entertain them in the evenings. The clerks report that both the visiting and the resident judges often find the interaction beneficial because they learn about procedures used in other courts.

The efforts of two courts deserve additional attention. In the Southern District of Florida, where many judges spent a considerable amount of time, the clerk's office was simply unable to attend to all the needs of the visitors. The court turned to the local federal bar association for assistance and the bar responded enthusiastically, holding dinners and receptions for the visitors.

The Jacksonville Division of the Middle District of Florida has developed a standard set of orientation procedures. Upon arrival, the visitor receives an informal introduction to the court from a

resident judge or the division manager. The visitor is then given a Point of Contact (POC) roster, which lists the names of the individuals who can assist the judge with various problems. To ease the unfamiliarity between the visitor's staff and the court staff, name cards are placed on the bench, on the desks of courtroom deputies and docketing clerks, on counsel's tables, and on the marshal's desk.

### Accommodations and Travel Arrangements

The clerk's office generally makes or assists with the arrangements for the visitor's housing, but leaves the travel arrangements to the visitor's secretary. When a judge will be visiting the court for several weeks, or when visitors are coming in a constant stream, the clerk tries to find an apartment or suite that can be rented on a long-term basis. Several courts maintain a list of restaurants, and others make arrangements for a rental car. One court mentioned that it always provides a reserved parking space for visitors as well.

Arrangements for housing and travel, like the process of orientation, are less demanding when the judge is a regular visitor to the court. One clerk also said that a visitor is less likely to depend on the court for these arrangements and for entertainment when accompanied by a spouse. On the other hand, another clerk pointed out, a visitor from a different circuit is likely to be much more dependent on the court. In fact, this clerk makes arrangements only for visitors who are from a circuit other than his own. In the Southern District of Florida, the court relied on the federal bar association for the coordination of all travel and housing plans for the visiting judges.

## VI. IMPACT OF A VISIT ON COURT STAFF

There is little question that a visit by an outside judge has a substantial impact on the court staff, both before and during the visit. The preponderance of the planning and coordination falls on the clerk or division manager, but at various stages courtroom deputies, docket clerks, secretaries, court reporters, and law clerks may become involved.

As stated earlier, the preparations before a visit fall primarily on the clerk, who usually sets up the calendar after consulting with the visitor about his or her preferences and makes arrangements for the visitor's accommodations and orientation to the court. The courtroom deputies, too, may be involved in these preparations, usually in the selection of cases for the calendar.

Although the planning stage can be hectic and demanding, the real pressure on the court begins when the visitor arrives. Visitors—especially those from outside the circuit—seldom bring their own staff with them, so the court may have the extra burden of providing a courtroom deputy, a court reporter, secretarial services, and, at times, even a law clerk.<sup>7</sup>

The major staffing difficulty arises when a visitor needs a courtroom deputy but those serving the resident judges are unavailable. When necessary, clerks, division managers, docket clerks, magistrates' clerks, and docket supervisors have served as courtroom deputies for visiting judges. Provision of a courtroom deputy is a less serious problem for the courts that cross-train their staff, but the visitor's needs then remove staff members from their regular tasks, which may create strain in the administration of other offices in the court.

7. If the visitor brings any staff at all it is likely to be a law clerk and possibly, but less likely, a secretary or court reporter. Recent guidelines developed by the Committee on Intercircuit Assignments of the Judicial Conference and approved by Chief Justice Warren E. Burger specify that a judge assigned to another circuit may bring either a law clerk or a secretary; the court must provide a courtroom deputy, court reporter, and any additional assistance the judge requests. (See page 19 of the March 1985 Proceedings of the Judicial Conference.) However, at times a court that is very pressed simply cannot provide staff, and visitors will be permitted to bring a courtroom deputy with them.

Although the primary staffing requirement is for a courtroom deputy, a visitor's needs extend beyond the courtroom. According to the clerks, staff members are very attentive to the visitors' needs, answering questions and offering assistance on problems ranging from how to operate a machine to where to eat dinner. As one clerk pointed out, if a court cares about the comfort and satisfaction of its visitors, a great deal of staff attention and long hours will be required.

The experience of the Southern District of Florida is once again instructive. At times this court has had as many as four visitors at once. To alleviate the strain on the clerk's office, court personnel from every office were shifted into service for the visitors. Nevertheless, the clerk soon found that he could barely support the resident judges under these conditions, and he has recommended that visits be staggered (one a month) and that visitors bring their own staff. He also said it is critical that the clerk and chief judge carefully calculate how much help the court can profitably use. If a court cannot make good use of the additional resources, these resources should not be requested.

From the above discussion it is clear that a flexible staff is a major asset, if not a requirement, for a court that uses visiting judges. Not only are the staff members likely to be asked to work longer hours while a visitor is present, but they also have to be able to adjust to the different styles and requirements of a number of judges. (One clerk pointed out that flexible visiting judges are also an asset.) Other than cross-training of staff, the clerks do not report any special training in preparation for a visit. As one clerk said, a visit requires a great deal of coordination rather than specific instruction.

## VII. IMPACT OF COURT FACILITIES ON A VISIT

Because many courts do not have extra courtrooms or chambers, the clerks have to plan a judge's visit within the limits set by courtroom availability. There are several options: A court can request visitors for periods when the resident judges are not in trial or are on vacation; the visitor can be shifted between courtrooms on a day-to-day basis as they are left vacant by the resident judges; or the court can assign visitors to magistrate, appellate, or state courtrooms. The limitations imposed by facilities suggest that the use of visiting judges will be greatest in the summer months, and a number of clerks reported that they try to assign visitors at that time. This arrangement is complicated by another problem, however: a lack of staff during the summer months.

Because of the shortage of courtrooms, courts are rarely in a position to have more than one visitor at a time. However, if the court has several divisions, it may be possible to assign the visitors to different divisions. The division must be staffed, however, or there will be additional burdens for the clerk's office. Burdens on the visitors should also be considered; one clerk said that he did not use the courtroom in the outlying division because he did not want to add additional travel to a visitor's schedule. Several of the courts included in this study, however, have fully staffed and easily accessible divisions, and the clerks do not hesitate to use those with extra courtrooms.

The shortage of courtrooms also to some extent determines the length of a visitor's stay. If a visitor is using the courtroom of a resident judge who is temporarily off the bench or who is on vacation, the visitor will probably stay only a week or two, unless additional space becomes available.

Several clerks noted that, if facilities were not a problem, they would like to plan a joint trial calendar, using a large number of visiting judges for a concentrated period.<sup>8</sup> However, because many

8. For a description of the operation of a joint calendar, see D. Stienstra, *The Joint Trial Calendars in the Western District of Missouri* (Federal Judicial Center 1985).

courtrooms would be needed to carry out this plan, it is not feasible in most of the courts studied.

## VIII. ESSENTIAL INGREDIENTS FOR A SUCCESSFUL VISIT

The clerks were asked to name the element they felt was most vital for a productive and satisfying visit. Although their answers covered a number of points, two basic principles emerged: (1) Keep the visitor busy, and (2) keep the visitor happy. Within these broad guidelines, the clerks emphasized a number of practices and policies they feel enhance a visit by a judge:

1. Have a firm understanding ahead of time of several critical issues: (1) the kinds of cases the judge is willing to try; (2) the procedural stage at which the judge expects these cases to be; (3) the kind of staff support the judge expects; (4) whether the judge is coming to complete a calendar or to spend a period of time.
2. Don't waste a visitor's time. Have enough backup cases ready, a sufficient number of jurors impaneled, and a staff in place. Tell law firms to have a substitute lined up for an attorney who is scheduled before a visiting judge.
3. Set an effective calendar that correctly estimates the length of each trial and the potential for settlements.
4. Have the cases ready for trial; there should be no pending motions.
5. Tailor the calendar to the visitor's preferences.
6. Give the visitor good support from the clerk's office, including immediate typing, enough work space, a flexible staff, and on-going attention from the clerk before, during, and after the visit.
7. Give the visitor enough case material ahead of time so that he or she arrives with some knowledge of the cases to be tried. The more complete the visitor's knowledge, the more effective will be the visit.
8. Give the visitor and his or her staff a complete orientation to the court when they arrive.

9. Bring in only as many visitors as the resident staff can serve while simultaneously meeting the needs of the resident judges.
10. Ensure cooperation from the resident judges. They should assist the visitor in general, but more important, they should make sure they do not create scheduling conflicts by requiring an attorney to be in their courtroom at the same time he or she is scheduled before a visitor. The resident judges should defer to the visitor.

The clerks were nearly unanimous in saying that the worst mistake a court can make is to waste a visitor's time. Once the visitors have arrived at the court, they no longer have their own work to fall back on, so it is the court's responsibility to supply them with a sufficient number of cases. The second worst mistake is to give a visitor a case that is not ready for trial; visitors do not react kindly to problems and errors when they are under the impression that they have come to try cases.

## IX. CONCLUSION

The discussion in this report suggests that the management of a visit by a judge makes great demands on a court's staff. Given the effort involved, why do courts use visiting judges? The simple answer, in the words of one clerk, is that the visitors "play an indispensable role" in moving the caseload in these courts. For some courts this has meant that a protracted case was disposed of, leaving the resident judges free to handle the rest of the caseload. For others, assistance from visitors has allowed the court to meet Speedy Trial Act deadlines or to reduce the number of old cases. In general, the effort and cost are outweighed by the contribution made by the visitors. This was especially true, of course, in the most burdened courts, but also in the smaller courts where judicial resources are more limited.

Finally, most of the clerks reported that the cooperation and dedication shown by the visiting judges considerably eased the demands a visit might otherwise have made on their courts. Without the commitment the judges made, the task before these courts would have been substantially more difficult.

**APPENDIX A**  
**Checklists Used by the Jacksonville**  
**and Tampa Divisions**  
**of the Middle District of Florida**

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## Visiting Judge Checklist—Jacksonville Division

JUDGE \_\_\_\_\_ DISTRICT \_\_\_\_\_

### I. INITIAL ACTIONS

- A. Purpose of Visit? (Trial Term or Case Specific.)
- B. Length of Stay: \_\_\_\_\_ (Add info to facility requirement calendar.)
- C. Name and Number of POC: \_\_\_\_\_/\_\_\_\_\_
- D. Provide POC with mailing address: Middle District of Florida, P.O. Box 53558, Jacksonville, FL 32201; Chambers Phone Number, FTS 946-2931; and Room Number, 526/Courtroom 3.
- E. Names/Positions of Accompanying Staff: \_\_\_\_\_  
\_\_\_\_\_

### II. ACCOMMODATIONS

- A. Hotel Arrangements (Number of rooms/reservations/location) \_\_\_\_\_
- B. Flight Information (arrival date and time) \_\_\_\_\_
- C. Transportation Requirements (rental car?) \_\_\_\_\_
- D. Advise on Use of Parking Slot No. 3 (Corner W. Duval & Pearl St.) \_\_\_\_\_

### III. AVAILABILITY OF FACILITIES

- A. Courtroom \_\_\_\_\_
- B. Chambers \_\_\_\_\_
- C. Witness Rooms \_\_\_\_\_
- D. Jury Room \_\_\_\_\_ (Jury Numbers) \_\_\_\_\_
- E. Check serviceability of equipment: air conditioner \_\_\_; phones \_\_\_; sound system \_\_\_; clocks \_\_\_; typewriters \_\_\_; security TV \_\_\_; coffee machine and ingredients (chambers & jury room) \_\_\_; calendars \_\_\_

### IV. STAFFING SUPPORT REQUIREMENTS

- A. Courtroom Deputy \_\_\_\_\_

B. Court Reporter (Coordination w/contract services.)

\_\_\_\_\_ Send follow-up letter  
(Date) (POC)

\_\_\_\_\_ (Date)

V. PRIOR TO ARRIVAL (See VII & VIII for additional requirements)

A. Prepare and distribute final calendar. \_\_\_\_\_

(standard distribution)

B. Forward certified copies of docket \_\_\_\_\_; calendar \_\_\_\_\_; pretrial stipulations \_\_\_\_\_; local rules \_\_\_\_\_; case files (if requested) \_\_\_\_\_.

C. Ensure all cases pretried \_\_\_\_\_ and no pending motions \_\_\_\_\_.

D. Ensure docket updated \_\_\_\_\_, notices forwarded \_\_\_\_\_ and telephonically contact parties to confirm receipt of notice (docket this action) \_\_\_\_\_.

E. Make last check day before arrival for new motions \_\_\_\_\_.

F. Ensure facilities are set up \_\_\_\_\_.

G. Ensure GSA has completed cleanup (chambers, courtroom, jury room) \_\_\_\_\_.

H. Set up courtroom deputy desk in courtroom with necessary form, etc. \_\_\_\_\_.

I. Prepare 3-by-5 cards naming support personnel for bench, courtroom deputy, and bench \_\_\_\_\_.

J. Have sufficient number of entry keys available \_\_\_\_\_.

K. Fix floor directories/door signs \_\_\_\_\_.

L. Ensure federal/local rules available on bench \_\_\_\_\_.

VI. UPON ARRIVAL

A. Orientation of court and facilities

B. Brief on current status of cases (have files in chambers)

C. Discuss handling of follow-up actions after departure

D. Ensure coffee prepared and air conditioner on

E. Discuss preparation of JS 10/10A

F. Provide staff with keys

G. Point out location of court directory roster available in chambers

VII. CASE SPECIFIC

A. Identify case number and style.  
\_\_\_\_\_

B. Criminal: Ask visiting judge if case summary required. Inquire as to judge's preferred format for summary.

C. Civil: Does judge want pretrial conference in advance?  
\_\_\_\_\_

Does judge use standard pretrial form? \_\_\_\_\_

VIII. TRIAL TERM

A. Determine visiting judge's limitations on preconditions on cases that will be calendared.  
\_\_\_\_\_

B. Check local rules to ensure consistent with above.

C. Cross-check with item 8 above where applicable.

IX. MISC./SUPPLIES

A. Telephone directories (court, FTS, Jax.)

B. Visiting judge packet (maps, restaurants, etc.)

C. Stock office supplies

D. Coffee cups/ashtrays/soap/toilet paper

E. Room location charts and desk setup

*Appendix A*

**Visiting Judge Checklist—Tampa Division**

1. Assistance Required?
  - a. Secretarial
  - b. Courtroom Deputy
  - c. Court Reporter
  - d. Law Clerk
  - e. Bench Books/Special Research Materials
  - f. Other (note).
2. Courtroom/Hearing Room
3. Jury \_\_\_\_\_ Yes/No? Number of jurors \_\_\_\_\_  
Dates \_\_\_\_\_
4. Pretrial Conferences
  - a. Visiting Judge
  - b. Resident
  - c. Magistrate.
5. Review of Records by Visiting Judge?
6. Personal
  - a. Lodging
  - b. Automobile
  - c. Mail Forwarding
  - d. Other (note).
7. Fort Myers
  - a. Typewriter
  - b. Telephone
  - c. Office Supplies
  - d. Court Reporter Service.

**APPENDIX B  
Questionnaire**

## QUESTIONNAIRE

### Questions for District Clerks of Court About Case Management Procedures for Visiting Judges

#### General Policy

1. Do you use visiting judges in a standard way? For example, do you use them only for civil trials?
2. Or do you use them on a more ad hoc basis, as a particular need arises?

In answering the above questions, please describe the way in which your court uses visiting judges (e.g., for trials only, for short or long visits, for protracted or simple cases, for civil or criminal cases, for jury or nonjury trials, etc.).

#### After You Have Decided to Ask for a Visiting Judge

1. How are the cases chosen for the visiting judge?
  - a. Are particular kinds of cases chosen? Avoided? (e.g., nonjury; old cases; criminal cases)
  - b. Who chooses the cases? By what procedure?
  - c. Are cases chosen from all the judges or from only one judge? If only one, do the judges rotate the opportunity to give cases to a visiting judge?
2. Are the cases pretried?
  - a. By whom? To what point?
  - b. How much lead time is needed before the visitor's arrival to work out pretrial matters?
  - c. Is a standard pretrial order used?
3. Is the judge given an orientation to the court?
  - a. To the cases?
  - b. What materials is the judge given before or after arrival? (e.g., the case files?)
  - c. Who prepares the material sent to the judge? Who is liaison to the judge?
4. Is staff provided?

## Appendix B

- a. Who works with the judge before arrival? After arrival? (secretary, courtroom deputy, court reporter, magistrate)
- b. How are the resident judges affected by the visitor's use of the court's courtroom deputies?
5. Are housing, transportation, and meal arrangements made? By whom?
6. If the visit is long, does the visiting judge attend judge meetings?
  - a. To whom does the visiting judge go if there are problems?
  - b. How does the visiting judge know to whom to turn?
7. Does the court sit in divisions? How does this affect the use of visiting judges? What facilities do you have?

### The Clerk's Office

1. Which persons in the clerk's office are involved in any aspect of a judge's visit? Describe their involvement if you haven't already in the preceding questions.
2. In terms of staff time, is the coordination of the judge's visit costly to the clerk's office? For example, who fills in for a courtroom deputy who is assigned to a visiting judge?
3. Who sets the visiting judge's trial calendar? Pretrial calendar?
4. What kind of calendar is used?
  - a. How do you predict how many cases the visiting judge can handle? Approximately how many trials are scheduled? For how long a period?
  - b. How are cases ordered on the calendar? (e.g., oldest first; criminal first)
5. Do you do anything special with regard to selecting juries? Is a jury selected before the judge's arrival?
6. Who monitors the progress of the visiting judge's calendar? (e.g., who is responsible for notifying you that another jury should be impaneled?)
7. How much lead time does the clerk's office need to get ready for a visiting judge?

8. Do you give special training to your staff for handling the visits of outside judges?

### After the Visiting Judge Leaves

1. If there are any subsequent steps in the case, who handles them?
2. If the visiting judge does not handle the case to disposition, is the case transferred back to a resident judge?
3. Are certain types of cases more problematic than others in the attention they require afterwards? Which ones?

### General Questions

1. Under what circumstances does the court use visiting judges? Backlog? Only certain kinds of backlog?
2. What is the most useful thing a visiting judge does for your court? (e.g., is a judge more useful for some kinds of cases than others?)
3. Do any of the following characteristics make a difference in your planning for a judge's visit? Which are advantageous, which are problematic?
  - civil or criminal trial
  - jury or nonjury case
  - long or short trial
  - simple or complex case
  - trial or pretrial caseload
  - long or short visit
  - judge from inside or outside circuit
  - many or few cases on calendar for judge
  - many or few judges coming to the court
4. If you have adopted a particular case management procedure (as compared to your regular case management procedures) for visits of outside judges:
  - a. Why this procedure?
  - b. How does it work?

*Appendix B*

- c. Does it work for only certain kinds of cases or circumstances?
  - d. Is it effective? How do you measure that?
  - e. Is there anything unique about this court that suggests the procedure wouldn't work in another court?
  - f. What are the critical features, without which the procedure would not work?
5. What is the most important element in making a visiting judge's tenure in the court beneficial to the court?

Please send any forms, orders, instructions, local rules, and so on that the court has adopted vis-à-vis visiting judges. If you have any questions, please call me. And thank you very much for your responses.

Donna Stienstra

**END**