



# Calendaring Practices of the Eastern District of North Carolina



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# CALENDARING PRACTICES OF THE EASTERN DISTRICT OF NORTH CAROLINA

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## INTRODUCTION

The calendaring practices established by a federal district court may to an outsider seem to be among the most technical and least substantive decisions the court makes. In fact, calendaring choices have important consequences for both court personnel and citizens using the courts. Calendaring affects the efficiency, the accessibility, and even the fairness of court procedures.

The Eastern District of North Carolina has two unusual calendaring practices of potential interest to other districts. The first procedure, involving the civil cases, arises from the divisional arrangement of the district. The judges are randomly assigned civil cases from each of the geographical divisions of the district, and they then "ride the district"; that is, they travel to the divisional locations to try the cases.

The second calendaring procedure involves the criminal cases. Instead of being randomly assigned, all criminal cases are assigned to the same judge and magistrate team for several consecutive months. For the remainder of the year the judge and the magistrate receive no new criminal assignments, but they do retain their initial cases until final disposition. The self-described "old navy men" on the court have dubbed the period during which they receive criminal cases the "watch."<sup>1</sup>

The members of the court believe that these two calendaring procedures are the ones best able to achieve several goals:

- Avoidance of any bias or appearance of bias in decision making, including deterrence of efforts to "shop" for a particular judge or forum
- Accessibility of the federal courts to citizens of the district
- Equitable division of the workload among members of the court
- Organization of work to facilitate sound and expeditious decision making.

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1. The terms *watch*, *shift*, and *rotation* are used interchangeably throughout this report to indicate the period during which a judge and magistrate receive criminal assignments.

## *Introduction*

Eastern North Carolina's practice of having judges travel around the district to try civil cases may be particularly relevant to other districts with a population scattered around a moderately large area. The criminal calendaring procedure may be adaptable to any district. This report describes both practices in some detail and discusses the ramifications of each.

Chapter 1 presents a discussion of several facets of calendaring and the connection between calendaring procedures and the goals listed above. Eastern North Carolina's practices are described in more detail to illustrate these connections. Chapter 2 contains a discussion of (1) the specific procedures Eastern North Carolina follows in scheduling trials for judges in all the divisions, (2) some related practices that facilitate the required travel, and (3) the effects of the travel on different groups and on the court generally. Chapter 3 includes a detailed description of the background, operation, and effects of assigning criminal cases by rotating shifts. Chapter 4 presents a discussion of crucial features of these calendaring practices and a consideration of their feasibility for other districts. In addition, the criminal assignment procedure in Eastern North Carolina is compared with similar procedures in other districts.

This report is based on interviews with three active judges and three full-time magistrates of the Eastern District of North Carolina, one senior judge, the clerk of court and several of his deputies, and thirty-five private practitioners and four government attorneys who practice in the court.<sup>2</sup>

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2. The court is allotted a fourth judgeship, which was vacant at the time of the interviews. The senior judge interviewed carries virtually a full caseload. Another senior judge, who was not interviewed, carries a greatly reduced load. A new part-time magistrate was sworn in after the interviews were completed. Summary data about the attorneys interviewed appear in appendix A.



# I. CALENDARING OPTIONS AND COURT GOALS—EASTERN NORTH CAROLINA AS A CASE STUDY

One of the most critical administrative functions of a court is the calendaring of cases. Calendaring has several components, such as the assignment of cases to judges and the scheduling of cases for trial, any one of which may affect the progress or outcome of a case. A delicate operation under the best of circumstances, calendaring poses special challenges for a court with the geographical constraints of the Eastern District of North Carolina.

Even though the state of North Carolina is divided into three federal court districts—Eastern, Middle, and Western—the Eastern District is still quite large, covering approximately 24,000 square miles. Raleigh, the largest city and the residence of the clerk of court and chief judge, is not centrally located but at the western edge of the district, some 180 miles from the farthest of the other places of holding court.

To an outside observer, the amount of traveling done by the judges and others is the most distinctive feature of Eastern North Carolina's calendaring procedures. This traveling is a product of the combination of calendaring choices the court has made to meet its goals of efficiency, accessibility, and fairness in light of the geography of the district.

To clarify the relationship between options for calendaring and court goals, it may be useful to distinguish five components of calendaring and the common variations that occur within these five. After these calendaring components are outlined, their impact on court goals is discussed, using as examples the procedures chosen by the Eastern District of North Carolina.

1. The first calendaring decision a court must make is whether a district will be divided into geographical divisions for filing cases and, if so, what filing rules will be established. The options are as follows:

- a. The district is not divided into geographical divisions.
- b. The district is divided into geographical divisions; parties have discretion to file in whichever district is convenient.

## Chapter I

- c. The district is divided into geographical divisions; local rules specify the division in which cases must be filed, which is typically determined by the location of events, parties, or property.
2. If a district is divided into divisions, the court must decide not only where cases will be filed but where they will be decided:
  - a. The cases will be decided in the divisions where they are filed.
  - b. The cases will be decided elsewhere, such as the location where the judge resides.
3. Cases may be assigned to judges using one or more of several methods:
  - a. Cases are assigned randomly.
  - b. Cases are assigned in rotation.
  - c. Cases are assigned by geographic location (if the district uses divisions).
  - d. Cases are assigned by subject matter.
4. The judges of a single district may hold court in one or more locations:
  - a. The judges are centrally located, and all parties come to them.
  - b. The judges are assigned to geographically scattered places of holding court, where they preside permanently.
  - c. The judges travel among geographically scattered places of holding court.
5. The judges may be assigned to handle all aspects of a case or only a part of it, depending on whether the court uses an individual or a master calendar:
  - a. With an individual calendar, cases are assigned at filing to a single judge, who is responsible for the case until disposition.
  - b. With a master calendar, cases are assigned to the first available judge at the time judicial attention is first required.

Any procedure chosen has ramifications for realization of the court's goals: avoiding the appearance of bias, maximizing accessibility, equitably dividing the workload, and making sound and expeditious decisions. Each court must choose the combination of calendaring practices that maximizes its goals. Some goals may be

supported equally well by more than one procedure, such as making courts accessible either by assigning judges permanently to divisional offices or by having them travel among the divisions.

In some instances, however, a calendaring procedure may enhance one goal while undermining another. For example, assigning the judges permanently to divisional offices might support expeditious case disposition, but this practice might also foster a localism that could create the appearance or reality of bias. On the other hand, having the judges travel among divisions, which would discourage localism, might be costly in time and money. The ramifications of a court's calendaring choices are explored further in the next several sections.

### **Filing by Divisions**

The decision by a court to have cases filed by geographical divisions may increase the accessibility of the court, but may also increase the potential for forum shopping. Geographical divisions are presumably established to decentralize certain procedures, such as jury selection or, where staffed offices are maintained, court services generally. When a court is decentralized but has no rules specifying where cases must be filed, it maximizes accessibility but increases the opportunities for forum shopping.

Rules specifying that cases must be filed in the division in which they arose prevent parties from filing in a particular division to obtain a preferred judge or to inconvenience an opponent. Although random or rotational assignment of cases would also restrict judge shopping, in the absence of filing rules parties could still attempt to shop for a favorable jury.

In the face of the geographical dispersion of the Eastern District of North Carolina, making the federal courts accessible to the population has been a high priority for the court. Only two of the original eight statutory places of holding court have been pretermitted (i.e., legally closed), and one has been given over for the use of the bankruptcy court. Of the five remaining divisions, staffed clerks' offices are maintained in four. Three divisions are duty stations of active judges, and the other two divisions are duty stations of full-time magistrates.<sup>3</sup>

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3. The senior judge who carries virtually a full load of cases is located in Raleigh, which is also the duty station of the chief judge. The other senior judge resides in one of the divisions where a magistrate is assigned.

The court's local rules state that papers for a case may be filed in any office in the district, but the case is credited (or assigned) to the division where the events occurred or where the parties or property is situated (see Local Rule 3.00, reproduced in appendix B). These filing rules enable the court to maintain accessibility while restricting forum shopping.<sup>4</sup>

## Where Cases Are Decided

The accessibility of courts, of course, is a function not only of where cases are filed but also of where they are decided. Places of holding court are to some extent determined by statute (28 U.S.C. §§ 81-131), but courts still have some discretion about where to hold different proceedings. Holding court in the location most convenient for the most parties presumably maximizes accessibility, but other goals—for example, reducing judicial travel time—may be served by deciding cases somewhere other than where they were filed.

The policy of the Eastern District of North Carolina is to hold civil trials, but not necessarily criminal trials or other civil or criminal proceedings, in the division of filing (i.e., the division in which the case's events occurred, not necessarily the division in which the papers were filed). The court assumes that civil trials are likely to involve more private parties than are involved in criminal trials, where some or all of the attorneys are paid by the government and the defendant is often in custody. Thus, criminal trials are held wherever the assigned judge is located. However, if holding a criminal trial in another part of the district would seriously inconvenience the defendant or his or her family, witnesses, and so on, the court is willing, the clerk of court reported, to consider a motion for a continuance until the assigned judge is next in the most convenient division.

With this exception, the goal of accessibility is subordinated in criminal cases to the goal of expedition in meeting Speedy Trial Act deadlines. This trade-off is necessitated by the remaining calendaring practices the court has chosen to follow.

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4. The rules ensure that a smaller divisional office receives "credit" for cases whose papers are filed in another division though the events of the case occurred in the smaller division. This is necessary if the divisional clerks' offices are to get the minimum number of cases required to stay open and serve attorneys outside Raleigh.

## How Cases Are Assigned to Judges

Generally, courts may assign cases to judges by one of four methods: random assignment, rotational assignment, subject matter assignment, or assignment by division—that is, the assignment of all the cases in a division to one or more judges. The choice among these procedures has implications for several court goals: avoidance of bias and the possibility for judge shopping, equitable distribution of the judges' workload, and expeditious decision making. Again, there are trade-offs in matching the procedures to the goals.

For example, assigning cases to judges by subject matter may expedite case disposition by creating specialist judges, but this assignment procedure has generally been rejected by federal district courts on the assumption that it may result in bias. A second reason this procedure is avoided is that it may create uneven workloads.

Assignment of cases by division may, like subject matter assignment, expedite case processing. For example, when all the cases in a division are routinely assigned to the same judge, the time and cost of moving people and documents around the district are reduced. However, assigning a judge all the cases in one division may produce four results that are unacceptable to a court. First, if the judge who is assigned a division's cases works unusually slowly, delay will be concentrated on the parties who must file in that division rather than being dispersed among all parties in the district. Second, routine assignment of a division's cases to one judge will increase the opportunities for judge shopping unless rules that specify where cases must be filed are adopted. Third, litigants who are required to file in a division where one judge is assigned the division's cases will always be subject to that judge's interpretation of the law. And finally, because a district's cases are unlikely to be evenly spread among its divisions, assignment by division is likely to result in uneven workloads for the judges, unless those in smaller divisions also take some of the cases filed in larger divisions.

Because of the problems inherent in assignment both by subject matter and by division, random and rotational assignment systems are more commonly used. Both are more likely to ensure an equitable distribution of the court's work, as well as to minimize the appearance of bias. In some situations, however, random assignment may be favored over rotational assignment as less susceptible to judge shopping by litigants attempting to guess the order of rotation and to file when they think their preferred judge will be assigned the case.

## Chapter I

In an effort to mesh the court's goals with its geography and population concentrations, the Eastern District of North Carolina uses a combination of rotational and random assignment procedures. In fact, a new version of rotational assignment for criminal cases, as described below, has emerged from the court's efforts to achieve accessibility, an equitable division of labor, and expeditious and sound decisions.

While criminal cases are distributed fairly evenly around the district, the Raleigh division is the site of a majority of the civil litigation. If cases were assigned to judges according to their duty stations, the active judge and senior judge in Raleigh would receive many more civil cases than would the other judges.<sup>5</sup>

The court has responded to its geography and case distribution with different assignment procedures for civil and criminal cases. Civil cases from each divisional office are randomly assigned to all the judges so that each judge receives the same share of cases from each division. This procedure equalizes the workload and also eliminates the risk of one person's becoming the sole judge for any area. Most of the judges in Eastern North Carolina indicated that they take very seriously the danger that a sole judge in a division could acquire too much power and abuse it to develop a "fiefdom" of sorts.<sup>6</sup>

In contrast to civil case assignment, criminal cases are assigned to one judge and magistrate team for several months in a row. This is, in effect, a rotational system, in which the rotation is a period of several months. This procedure, begun in 1984, emerged from problems with the previous criminal assignment procedure and emphasizes somewhat different goals than the civil assignment procedure.

The previous criminal calendaring system consisted of a master calendar with two judges holding regularly scheduled criminal terms at the same time in different cities. This practice created numerous conflicts for the assistant U.S. attorneys, U.S. marshals, and some members of the private criminal bar, who were often called to appear in two cities simultaneously. Because of complaints, the court designed a calendaring system that would generate fewer scheduling conflicts and still meet the court's goals.

The criminal assignment procedure now in place enables the judges to pursue the goal of sound and expeditious decision making

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5. In an earlier period the judges in the district, by personal preference, divided the cases according to subject matter—civil or criminal. The current judges, however, believe that this practice contributed to the serious backlog problem the court suffered until the early 1980s.

6. Concern about this problem is also the reason cited for the judicial assignment system used in the North Carolina state superior courts. Judges preside in a district for only six months before rotating to another one.

by concentrating the criminal case work in some periods in exchange for uninterrupted blocks of time for civil cases in other periods. Creating time free from criminal work for holding long civil trials was, in fact, as important a goal for the court as was reduction of attorney scheduling problems.

The criminal "watch" system addresses the goal of equitable distribution of work by assigning all active judges and full-time magistrates to shifts of the same length.<sup>7</sup> Although slight differences exist in the number of cases received during one's watch, nobody is aware of cyclical filing patterns that would make the practice consistently inequitable.

In addition, the procedure of assigning all criminal cases to the same judge at any given time eliminates the possibility of trying to manipulate which judge one will be assigned, except at the margins of the judges' shifts. Concern has arisen among defense attorneys, however, that the new procedure creates too much opportunity for assistant U.S. attorneys to expedite cases or to delay them for the next rotation if they perceive one judge to be more favorably disposed toward their case than another.<sup>8</sup>

## Where Judges Hold Court

A court with several divisions must decide how judges are going to be assigned to those divisions or, in other words, where the judges will hold court. Two options are available: (1) The judges may be assigned permanently to hear cases in particular divisions, or (2) the judges may travel among the divisions. Either option increases the court's accessibility, but both may undermine other goals. Having judges travel among divisions is likely to be less expeditious than assigning them permanently to divisions. On the other hand, permanent assignment of judges is more likely to raise questions about excessive familiarity between judge and lawyers, as well as questions about development of a judicial "fiefdom."

In the Eastern District of North Carolina, because the civil cases are filed and decided by divisions to increase accessibility but randomly assigned to all the judges to avoid judge shopping or excessive localism, the court has no choice: The judges have to travel to the parties' locations for civil trials. With the judges' week-to-week

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7. One senior judge chose to join the criminal rotation in its third year of operation, but takes a shorter shift than the active judges.

8. Lingering concerns about judge-shopping possibilities under this procedure and the court members' satisfaction with the concentrated criminal work are discussed in chapter 3.

locations determined by their civil dockets—and because of the district's choice for the fifth component of calendaring, the individual calendar—the parties in criminal cases, who operate under strict statutory deadlines, must travel to the judges' locations.<sup>9</sup>

## Master or Individual Calendar?

The choice between a master or an individual calendar system principally affects the goal of sound and expeditious decision making, but the case of Eastern North Carolina suggests that the decision may also have ramifications for accessibility.

While there is no definitive evidence that an individual calendar system results in faster case dispositions than a master calendar system, most federal district courts have chosen to adopt individual calendars. There is some evidence that the greater accountability created by individual calendars makes judges more conscious of the need for expedition.<sup>10</sup> On the other hand, some courts continue to make successful use of master calendars, at least for limited purposes.<sup>11</sup>

Many courts have favored individual calendars for another reason: the continuity they provide to cases. Because one judge becomes familiar with all the details of a case, that judge can supervise its progress throughout, which arguably leads to faster and more informed decisions. Master calendars, however, may in some circumstances provide greater flexibility in scheduling, as the situation in Eastern North Carolina illustrates.

The Eastern District of North Carolina changed from a master to an individual calendar system for criminal cases in conjunction with its adoption of the criminal watch system. The district had already used individual calendars for civil cases for some time. Attorneys in Eastern North Carolina noted two advantages of individual calendars: (1) the continuity provided by having one judge responsible throughout a case and (2) less confusion about which judge should get any papers or make any decisions for a case. The former presumably contributes to sound decision making and the latter to expeditious decision making.

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9. A subsidiary goal served by decentralizing trials is the greater use of courtroom facilities already constructed around the district. The district clearly cannot afford to ignore existing facilities and build enough new courtrooms and offices in Raleigh to handle all cases.

10. S. Flanders, *Case Management and Court Management in United States District Courts 13-14* (Federal Judicial Center 1977).

11. D. Stienstra, *The Joint Trial Calendars in the Western District of Missouri* (Federal Judicial Center 1985).



Because of the traveling judges in Eastern North Carolina do, however, having one judge responsible for all proceedings in a case means that parties in criminal cases must go wherever the assigned judge is holding court; Speedy Trial Act deadlines prohibit their waiting until the judge is scheduled to be in the division where the case is located. By comparison, under a master calendar system, a criminal matter would be heard by the first judge holding court in the division. Thus, the Eastern District of North Carolina sacrifices some degree of accessibility for parties in criminal cases in exchange for the other goals served by the calendarling practices it has chosen.

For any court, finding the right combination of calendarling practices to achieve the greatest number of goals is likely to depend upon several factors, including the number of judges, the nature of the caseload, and the geography of the district. A relatively small district with a centrally located seat may well be able to maximize achievement of all the goals by having no geographical divisions and by using random or rotational assignments to individual calendars. A district that is too large for such centralization can make itself most accessible by establishing divisional courts, but then it must devise a calendarling system that attempts to equalize workload, minimize the risks of judge shopping or the undue influence of one judge, and maximize efficiency. As the example of Eastern North Carolina shows, choices among calendarling practices influence each other and often require trading some goals for others.

The Eastern District of North Carolina provides an interesting case study of a district that has attempted to develop a calendarling system that meets as many of these goals as possible. Whether the travel required by its system serves the goal of expeditious decision making—or sacrifices it for other goals—requires a more detailed look at the operation of this facet of calendarling. “District riding” involves complicated scheduling and coordination, and it exacts its toll in time and effort from many persons, as the next chapter describes.

## II. RIDING THE DISTRICT

The practice of traveling to hold trials, or "riding the district," is not a new idea in the Eastern District of North Carolina. It goes back to the time when there was only one judge serving the sprawling district. Concern over accessibility is also not new; because it seemed unreasonable to expect everyone who wished to use the federal courts to travel to Raleigh, on the western edge of the district, the judges have traveled around the divisions for some time. Now there are more judges, but they have chosen to continue to travel for the reasons discussed in chapter 1.

This chapter describes several aspects of district riding: the details of scheduling five judges to sit in four cities, the relationship of traveling to other practices of the court, the costs and benefits that accrue to various participants who do the traveling and to the court itself, and the potential limits of the practice.

### The Implementation of Districtwide Traveling

The gist of Eastern North Carolina's scheduling process is that the civil calendar determines where the judges will be and the criminal calendar determines what they will do first while they are there. On the assumption that more private (as distinct from government) parties are involved in civil than in criminal cases, civil trials are calendared in the division where they are filed and the judges rather than the parties do the traveling. The parties in criminal cases, in contrast, come to whichever court the judge is at. In response to Speedy Trial Act deadlines, however, criminal cases are calendared first, and short civil trials are placed on a trailing calendar to be taken up when the criminal business is finished.

Twice a year the clerk of court constructs a proposed trial calendar that lists each judge's civil cases that will be ready for trial during the upcoming six months, grouped by approximate trial dates and by divisions to which the cases are assigned. These lists tentatively determine the order in which each judge will travel to each city. The clerk knows which cases to include by reviewing the rule 16 (of the Federal Rules of Civil Procedure) scheduling orders,

in which the attorneys have stipulated to a date for the close of discovery.<sup>12</sup>

The court's stated practice is to allow the attorneys to establish their own timetable for discovery but then to hold them to their deadlines and permit few extensions. Ordinarily without further conferencing, the clerk sets a trial date 60 to 120 days after the close of discovery.

The judges have an opportunity in the preparation stage of the calendar to submit personal plans and conflicts that they would like to have accommodated in their trial schedules. To facilitate optimal scheduling and minimize travel, the clerk may propose some exchange of cases if, for example, one judge has only one or two cases ready in a distant division where another judge resides or one judge has a case that threatens to take substantial time. The judges review the proposed calendar and issue a final scheduling order listing the dates on which each judge will begin a trial session in each city. Most sessions are calendared to last for two weeks if necessary.

The criminal cases are scheduled by a different procedure from that of the civil cases. In addition, not all the judges will have criminal cases on their calendars because, under the criminal watch assignment system, only one or two judges are hearing criminal matters at any given time of year. Details of criminal calendaring are discussed in the next chapter.

A final civil trial calendar is sent to attorneys four to six months in advance of a trial session. This calendar lists, for the attorneys who are to appear, the dates, cases, and order of appearance for the session. One calendaring clerk prepares this final calendar in coordination with each chambers. The same deputy clerk sends out notices of continuance, which can be granted by the clerk of court in civil cases. Of course, many cases settle during the last two weeks before trial, so the attorneys, the calendaring clerk, and the judges' law clerks keep in close touch with each other to move cases up the queue as necessary.<sup>13</sup>

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12. In this court the clerk is also a part-time magistrate. He personally conducts the discovery conferences (in accordance with Federal Rule of Civil Procedure 26(f)) required in all civil cases. This puts him in a particularly good position to stay abreast of the progress of the cases, and he issues all the rule 16 orders as the stipulations come into the court.

13. Since January 1, 1986, the court has had a local rule that requires notice of any settlement one full business day before the trial date. Jury costs may be assessed for failure to notify the court. According to the court clerk, this sanction was imposed at least four times in the rule's first six months.

Sometimes so many cases will settle that most or all of a calendar will collapse. What originally was to be a two-week session may become merely a one- or two-day session, leaving the judge with extra time to catch up on other work. A judge with only civil business might be able to cancel a session altogether. A judge with both civil and criminal matters might take a number of pleas and then return to his duty station.<sup>14</sup>

Since the anticipated civil matters determine the location of the session while the criminal cases might be coming from anywhere in the district, judges have on occasion moved a session to a location more convenient for the criminal parties or for themselves if all the civil cases settle. Such a move is contingent on courtroom availability in the other city, of course.

For sessions that do go forward as scheduled, the judge and usually one law clerk travel to the place of holding court. One judge noted that occasionally a secretary or a second law clerk may join the others near the end of a long trial if there are complex instructions to prepare. Judges who have criminal matters on their calendars are accompanied by a deputy clerk as well. Courtroom assistance for judges hearing only civil cases is provided by a deputy clerk from the division where court is being held. When a trial is held at the one court without a staffed clerk's office, a deputy clerk from Raleigh travels to that location to assist the judge.

Each person makes his or her own travel arrangements. The court does not currently own or lease any accommodations in any of the cities, so all personnel stay in hotels or with friends. For two years the court leased a condominium in one city, but ended that arrangement because the cost rose considerably.

## Compensating Efficiencies Adopted by the Court

The time spent in actual travel is minimized by careful scheduling of as many cases as possible in the same city at any given time, but inevitably more time is spent traveling than would be in a centralized district or in one where resident judges take all the cases within their own divisions. The cities of holding court are separated by distances from 60 to 225 miles on mostly two-lane roads. The court has adopted a number of other timesaving practices that it believes compensate for the time spent in travel and thus help

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14. Pronouns appropriate to the particular individuals holding an office are used throughout this report. At the time of the interviews, all the judges and magistrates in this district were men.

## *Chapter II*

maintain an acceptable disposition rate without sacrificing the benefits of traveling.

### **Equipment**

It is court policy that all chambers use the same word-processing and dictation equipment. This allows a judge's law clerk or secretary to take a computer disk with general jury instructions to another division and edit them on the equipment in that court. A second mechanical aid to efficiency is that each of the four divisional clerks' offices is equipped with a machine capable of sending documents over telephone wires. With this a judge can get a copy of a document more quickly than by mail or courier service.

### **Use of Magistrates<sup>15</sup>**

The members of the court believe that they increase their efficiency a great deal by heavy and diverse use of magistrates. All the judges and magistrates take equal shares of prisoner petitions and Social Security cases. In addition to misdemeanor trials and preindictment work, the magistrates hear all arraignments, conduct civil trials by consent, hold most final pretrial conferences, and do much of the pretrial motion work.

The magistrates rule on all nondispositive motions, which they receive directly from the clerk's office. They also prepare a report and recommendation on those dispositive motions referred to them by the judges. It is not uncommon for a judge to see the materials in a case for the first time in the week before it goes to trial.

Two of the three full-time magistrates are in cities where there is no resident judge, and one full-time magistrate and the clerk/part-time magistrate are located in Raleigh. In criminal cases pretrial work is assigned to the magistrate currently on the watch, as discussed in the next chapter. Initial motions in civil cases are assigned in rotation; the same magistrate then receives all subsequent motions referred in a case. Final pretrial conferences are usually handled by the magistrate most conveniently located to the parties.

The diversity of the magistrates' work means that scheduling them is as complex as scheduling the judges. While the magistrates travel somewhat less than the judges do, the assignment and scheduling procedures ensure that no magistrate, any more than a judge, acquires a monopoly within one division. The clerk of court

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15. A detailed discussion of the use of magistrates in the Eastern District of North Carolina appears in C. Seron, *The Roles of Magistrates: Nine Case Studies* (Federal Judicial Center 1985).

prepares a six-month calendar for the magistrates' travel at the same time as the judges' trial calendar, noting who will be holding arraignments and misdemeanor trials by city and date.

### **Paperwork Requirements**

A third practice that the Eastern North Carolina court believes contributes to its efficiency is a relatively heavy reliance on written submissions from attorneys in both motion practice and pre-trial preparation.<sup>16</sup> The court's presumption is that motions will be decided on the briefs without oral argument. Local Rule 4.08 on motion practice states: "Hearings on motions may be ordered by the court in its discretion. Unless so ordered, motions shall be determined without hearing." Restricting motion hearings allows judges and magistrates to do motion work at their convenience and also reduces the amount of travel that parties or judicial officers have to undertake for hearings.

Local Rules 25.00 and 26.00 require attorneys in civil cases to submit a proposed final pretrial order that includes stipulations and contentions, lists of exhibits and witnesses, designations of pleadings and discovery materials to be offered at trial, and objections to those materials. Any differences on these matters between plaintiff's and defendant's counsel are resolved at the final pretrial conference. On or before the Thursday before a trial session is to begin, counsel for all parties are required to file memoranda of authorities on anticipated evidentiary questions and contested issues of law, motions relating to the admissibility of evidence, lists of voir dire questions in jury cases, and statements of proposed findings of fact and conclusions of law in nonjury cases.

The judges believe that these detailed paperwork requirements enable them to prepare for trial very quickly and to hold faster trials. Together with mechanical aids and the use of magistrates, these requirements may compensate somewhat for the time required to travel to other cities for trial.

### **Personal Costs and Benefits of Traveling**

Notwithstanding the efficiencies that may be gained by the practices just described, the judges' traveling to hold trials in all the

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16. An empirical study of motion practice in six district courts found that written-submission and motions-day procedures can be equally fast but that the latter are somewhat more likely to be rapid because of their self-enforcing administration. See P. Connolly & P. Lombard, *Judicial Controls and the Civil Litigative Process: Motions* (Federal Judicial Center 1980).

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divisions still imposes significant costs on the court and on other participants in the judicial process. In general, because of the institutional goals it serves, the members of the court support the practice of district riding even though it affects their personal lives as well as their professional lives. For some the personal impact is positive, but for others it is negative.

### Judges

The judges in the district differ in the extent to which they find the traveling burdensome. Two judges reported that they enjoy it for the opportunity to get out around the district, work with different lawyers and jurors, and visit friends. One of these two, however, acknowledged a cost in the form of his envy of the greater flexibility in scheduling of judges who sit in one court and have courtrooms that are exclusively theirs.

A third judge was less enthusiastic and commented that there are more efficient uses of his time than traveling. He nevertheless feels that the procedure is worthwhile because he believes there is, as he put it, a risk of "judicial tyranny" if the citizens of an area are beholden to only one judge. Although most of the trips to other divisions are short enough not to be major inconveniences, he wishes there were some institutional protection against getting "hooked" any more than once a year with a long out-of-town trial.

The fourth judge finds the travel more onerous and is also more skeptical of its benefits. While acknowledging that some travel is inevitable in order to serve cities that do not have resident judges, he commented that the practice is expensive and inefficient. It disrupts his family life and makes it difficult to keep up with necessary work at his office. He suggested that a system involving much less shuffling of judges would still keep lawyers from knowing who would be trying their cases. He pointed to the state courts as evidence that rotating judges is no safeguard against cronyism. The potential for the problem of localism is less in the federal court, he believes, because of other factors, such as big law firms that handle cases all over the district.

### Magistrates

The three full-time magistrates travel somewhat less than the judges and reported that they generally do not find it too burdensome. One was just as enthusiastic as two of the judges about the personal benefits of the travel. Another magistrate said he did not mind it because he estimated that he is typically away from home only three or four days per month. A third magistrate emphasized

that because he is on the public payroll, he believes he ought to accommodate the lawyers, who charge their travel costs to their clients, by traveling to them when possible for pretrial conferences or the occasional motion hearing. He feels strongly that the courts exist to serve the people and that it would be wrong to make them bear most of the travel costs.

### **Court Support Staff**

Criminal deputy clerks and judges' law clerks also do a great deal of traveling. Secretaries reportedly travel only occasionally.<sup>17</sup> Judges reported that their two law clerks usually take turns going with them to other cities. According to one judge, the travel is an advantage to the law clerks because it gives them an opportunity to meet many lawyers around the district in which they will later practice.

The criminal deputy clerks interviewed seemed to accept their travel as part of the job. They reported that the deputy clerks who remain in the home office routinely assume the office responsibilities of any clerk who is traveling, so being away does not cause a serious backlog of work for any of them.

The U.S. marshals directly benefit from having the judges travel rather than hold all criminal proceedings in Raleigh. Because jails in the Raleigh area are particularly crowded, most federal prisoners are housed in jails in the other divisions. The marshals thus have to transport the prisoners shorter distances when the judges hold court in other cities.

### **Attorneys**

The court's schedule creates a greater burden for criminal attorneys than for civil attorneys because in civil litigation the judges hold trial in the division where the case was filed, whereas in criminal matters they hold trial wherever they happen to be located for their civil docket. Occasionally, attorneys in civil cases have to travel to another location for a motion hearing, but these hearings are relatively infrequent. Civil attorneys may also have the option of waiting for a hearing until the next time the judge is in their city. One hearing the attorneys must attend is the pretrial conference with a magistrate, but several attorneys reported that the magistrates usually consult with them about a convenient time and place.

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17. No law clerks or secretaries were interviewed.



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A complaint expressed by some civil attorneys was that there are too many exceptions to the court's general policy of holding civil trials in the parties' division. While nobody had tried to document systematically the frequency with which exceptions occur, several attorneys recalled instances when scheduling changes had been made, apparently for the convenience of the judge.

Some attorneys are aware that the personal preferences of the judges are considered when the six-month schedule is constructed. At least two attorneys alleged, somewhat wryly, a tendency in the summer for trials from all divisions to be held more often in the most attractive beach city, imposing additional travel costs on some of the parties. The schedule for the 1986 summer months does not, however, show a disproportionate number of sessions in that particular city.

Attorneys with civil practices had fewer complaints about the travel per se than they had about the requirement of detailed pre-trial submissions, one of the measures the court has adopted that helps to compensate for the travel time. A few attorneys pointed out that this requirement makes federal litigation extremely expensive because federal practice requires so much more work in the earlier stages of a case than does state court practice. They suggested that the result is to keep some litigants out of federal court and to drive some attorneys away from federal practice. Other attorneys acknowledged that the submissions are time-consuming and expensive, but stated that they are definitely worthwhile, making federal litigation more predictable and "professional."

Criminal attorneys generally have to travel more than civil attorneys do, not only because the judges' locations are determined by their civil rather than criminal calendar but also because criminal cases typically require more court appearances. Moreover, the rapid deadlines of the Speedy Trial Act usually require criminal attorneys to follow the judge assigned to their case wherever his civil calendar takes him rather than allowing them to wait until the judge is in the attorney's or defendant's location.

In light of the overall contribution district riding makes to the court's goals, the court believes its practice is acceptable, especially because many criminal attorneys are court appointed and receive public reimbursement for their travel. Also, the court is willing to be "generous with a continuance," in the words of the clerk of court, when a criminal case is going to trial and will involve numerous witnesses or other private parties. Unlike in civil cases, however, continuances in criminal cases are granted or denied by the judge assigned to the case, so there is naturally some variation in the frequency with which they are approved.

Attorneys with criminal cases noted several cost-related problems caused by the travel. A couple of attorneys reported that they use witnesses not just at trials, but at sentencing hearings as well, which are often held in the more remote divisions, and the cost of moving these witnesses around can be substantial. Some attorneys insisted there is a significant class of defendants who do not have appointed counsel and yet are of limited means, for whom the additional cost of their own and their attorney's travel is difficult.

A number of attorneys also complained that they simply could make more money if they could spend more time in their offices and less in the car. Although a greater number of retained than of appointed counsel voiced this concern, the problem is especially great for appointed counsel. Until the rate doubled in 1985, the reimbursement for appointed counsel was very low, especially for noncourt time.

On the specific issue of whether the court is indeed generous with continuances for criminal trials, as the clerk claimed, the attorneys' comments varied substantially. Five agreed with the clerk's statement, and five did not. Four criminal attorneys said they had never asked for such a continuance. The court apparently has the reputation of being so reluctant to grant continuances generally that some attorneys have assumed the policy applies equally to continuances for criminal trials, regardless of inconvenience to the parties. One attorney stated that continuances for trials are not an issue because he has had only one criminal case go to trial in four years.

As the most frequent parties in federal court, attorneys in the U.S. attorney's office and the federal public defender's office are greatly affected by the court's practice of holding court in every division. Attorneys in these offices do indeed travel a great deal. One assistant U.S. attorney calculated that the attorneys in the office spend 25 percent of their time traveling, and one half-time position is devoted solely to making travel arrangements. Another attorney estimated that one to three attorneys are on travel every day.

Even the organization of the U.S. attorney's office has been affected by the court's scheduling practices. The U.S. attorney had considered opening a branch office in the city with the next greatest caseload after Raleigh, but this idea was rejected because the additional overhead would not have significantly reduced the travel costs. For criminal cases in particular, the assistant U.S. attorneys from a branch office would still have had to go to another part of the district if the judge hearing their case was there.

While they do not particularly enjoy their travel, the assistant U.S. attorneys nevertheless strongly endorse the court's practice of

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holding trials all over the district. One suggested that the greater visibility of the federal court supports law enforcement efforts. He pointed out that the long and mostly rural North Carolina coastline is the site of significant drug trafficking. A federal trial is bigger news and thus a better deterrent, he noted, when it is held in one of the three small coastal cities than it is when it is held in larger and distant Raleigh.

The assistant U.S. attorneys also view the judges' travel as beneficial because they agree that one judge should not be the sole law for a division. As one prosecutor noted of the travel, "It's not done for efficiency, but for fairness and good government."

Attorneys in the public defender's office also do a great deal of traveling because of the court's calendaring. The public defender's office recently calculated how much time its attorneys spend traveling. According to this study, in a recent six-month period the three attorneys spent 8.6 weeks literally in the car, although the figure includes driving to detention centers as well as to court. One public defender had worked in divisions away from the office for nine straight working days.

Although they recognize the need to decentralize the federal court to make it accessible, the public defenders generally were less supportive of the court's practice than the assistant U.S. attorneys were. The public defenders feel that the potential for problems from having a single judge for a division is somewhat overestimated and that a system of assigning cases to permanent judges in each division might be feasible. If the court insisted on random assignment of cases to judges, the public defenders' preference would still be for the judges to stay in one place, even though this would mean that a case filed in one division might be assigned to and tried by a judge in a different division. Under this system the public defender's office could at least appoint an attorney from the assigned judge's division to the case, and the costs of following the judge around the district would be saved.

This is a minority viewpoint. Many more attorneys—both civil and criminal, public and private—agreed with the majority of members of the court that the practice of traveling is worthwhile. Most attorneys expressed appreciation for the opportunity to appear before various judges. They agreed that a policy of having several different judges serve a community reduces the chances that a judge and certain parties will have close ties or that a judge will have prior knowledge about a case, either of which could lead to bias or "home cooking," in a colorful local phrase.

The attitudes of attorneys toward district riding seem to be influenced partially, but not entirely, by the nature of their practices:

More negative comments were made by criminal than by civil attorneys. At the same time, most of the thirty-five private attorneys interviewed, both criminal and civil, were much more positive than negative about the court as a whole. Many commented that they "thought highly" or "felt confident" of the court; that the judges and magistrates are "excellent"; that the court is a "class act"; or even that the court is "as close to perfection as human beings are capable of accomplishing."

## General Effects of Traveling

In addition to the personal impacts of traveling, a brief look at the dollar costs to the court as a whole is in order. Without question, the traveling is expensive. In fiscal year 1985, the Eastern District of North Carolina spent considerably more, per case disposed of by trial, on the combined travel of judges, judges' staff, and clerk's office personnel than the national average or than any other Fourth Circuit district court (see the table in appendix C).

Even though the travel expenses of judges and their staffs are not borne by individual districts, any district considering adopting a similar calendaring procedure must weigh this cost against the institutional and personal benefits of traveling. On the other hand, the greater expense to the court presumably results in less expense to some parties. Data on the related costs of private litigants are not readily available, but their costs would have to be part of any comprehensive cost-benefit analysis of the district's calendaring practices.

Another general effect one might expect is that the accessibility and avoidance of appearance of bias gained from the traveling would be at the expense of the goal of expeditious decision making. Perhaps surprisingly, the court has been able to travel as it does without sacrificing that goal. Eastern North Carolina is a relatively fast court, especially in civil litigation, with median disposition times in fiscal year 1985 of 4.4 months from filing to disposition for criminal felonies, 4 months from filing to disposition for civil cases, and 11 months from joinder of issue to trial for civil trials.<sup>18</sup>

These disposition rates are particularly striking if viewed in relation to the district's history. In the past eight years Eastern North Carolina has gone from being one of the slowest to being one of the fastest district courts in the country. Its median time from filing to

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18. Administrative Office of the U.S. Courts, Federal Court Management Statistics 66 (1985). The felony disposition rate was lower the three previous years: 3 months in 1984 and 2.5 months in 1983 and 1982.

disposition for civil cases dropped from 10 months in 1978 to 4 months in 1985, and its percentage of three-year-old cases dropped from 9.5 percent to 2.5 percent in the same period.<sup>19</sup>

This is certainly not to imply that the district riding has caused the increased speed; in fact, court members have traveled around the district throughout both slower and faster periods. Common sense would suggest, however, that having all the judges hold trials in five different cities is highly inefficient. One of the most interesting characteristics of this district, then, is the conjunction of extensive traveling and relatively fast disposition rates.

The answer seems to lie in an unusual combination of uniform practices and accommodation of individuals. On the one hand, the Eastern District of North Carolina exemplifies one of the principal characteristics associated with modern court management: Uniform procedures are used by all the judges, in contrast to the more traditional pattern in which each chambers has unique procedures. One gets a sense that a new judge entering this court adapts to ongoing practices rather than making the practices adapt to his or her desires. This is evidenced in the consistent use of magistrates by all the judges, standardized equipment in all chambers, and uniform pretrial procedures established by local rule.

On the other hand, the court maintains a vital sense of itself as a "family"—a term that court personnel used frequently in interviews. This attitude manifests itself in numerous ways. First, the systematic travel schedule is moderated by a personal approach to scheduling, in that the clerk attempts to accommodate judges' and magistrates' individual preferences in the scheduling of their trips. Second, several judges, magistrates, and clerks have worked out an informal exchange relationship in which one will take over some of the work of another if he or she becomes inundated. Third, staff members report that virtually every day the chief judge walks through the clerk's office and personally greets each staff member, a practice that probably contributes significantly to the sense of the court as a family.

A central figure in this balancing of traditional and modern styles is the clerk of court. He has proposed numerous new court procedures, which he has been delegated the authority to implement and coordinate (see Local Rule 9.00, reproduced in appendix D). The complicated scheduling required by the traveling is a major job of the clerk. He bears the responsibility of calendaring the cases while keeping the traveling within tolerable bounds for

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19. Administrative Office of the U.S. Courts (AO), Federal Court Management Statistics 66 (1985); AO, Federal Court Management Statistics 42 (1982).

people. The task requires someone who has both the confidence of the judges and a knowledge of their personal preferences.

## **Potential Limits of Districtwide Traveling**

There may be natural limits to the practice of having all judges hold trials in all cities. The first and most imminent is budgetary. If the efforts to decrease the federal deficit continue to restrict the budget of the judiciary, courts may be forced to reduce their accessibility or to sacrifice other goals. In Eastern North Carolina that could mean premitting more places of holding court or cutting travel costs by assigning at least some cases on the basis of geographical proximity, which would compromise the commitment to random assignment.

A second potential brake on the district's travel schedule is its caseload. If the senior judge who is now carrying a full caseload continues to do so after a current vacancy is filled (the district is allotted four active judgeships), the district will have five full-time judges serving five divisions. The number of cases from the smallest division, divided by five, might be insufficient for a trial docket for each judge. That the judges have already encountered this problem is evidenced by the occasional trades they make when a judge has only one or two cases scheduled in a division in a six-month period.

At the time the fourth judge joined the court in 1984, the judges considered modifying the equal distribution of cases from all divisions, but decided that its benefits still outweighed its costs. Faced with a fifth judge and fewer resources, however, the court might be forced to reopen the question. It is not clear that the values served by traveling require an exactly equal split of all cases from all divisions. Any modification to the current system, however, would involve new administrative complexities and difficult issues of equalizing the work among the members of the court. The conceptual simplicity of the current procedure undoubtedly reinforces the court's support of it.

### III. THE "WATCH" ASSIGNMENT SYSTEM FOR CRIMINAL CASES

On January 1, 1984, the Eastern District of North Carolina changed its criminal calendaring procedure from a master to an individual calendar system and began the practice of assigning all criminal cases filed during a specified period (usually four months) to a single judge and magistrate. This rotation or "watch" system for criminal cases was integrated with existing calendaring practices, including the district riding.

The judges adopted the watch system for two specific purposes. (1) They sought to reduce the number of conflicts for attorneys and marshals when more than one judge holds court at the same time. (2) In the interest of maximizing sound and expeditious decision making, they wanted to create uninterrupted time during which the judges could better move their civil dockets. Because of Speedy Trial Act deadlines, some judges had found it difficult to block out time for lengthy civil trials.<sup>20</sup>

The idea for this rotating criminal assignment procedure emerged from an informal conversation among judges at a Federal Judicial Center case management seminar. The Western District of Oklahoma was using such a procedure, and the Eastern North Carolina chief judge recognized its possibilities for his district.<sup>21</sup>

Before the judges decided to adopt the criminal watch system, the clerk of court reviewed a couple of years of JS-10 forms, which report the monthly time spent conducting trials, to see how much in-court time the judges had been spending on criminal cases. Finding that they collectively spent three to five weeks of court time per month, he concluded that one judge could handle the criminal work at any given time.<sup>22</sup>

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20. While the Eastern District of North Carolina does not have more trials than average, it does have somewhat longer civil trials (4.12 days compared with the average of 3.26 days). (These figures come from Administrative Office data tapes based on JS-10 forms.)

21. Western Oklahoma is no longer using this criminal assignment system. In chapter 4 Eastern North Carolina's experience is compared with that of Western Oklahoma and other districts that have tried similar procedures.

22. A court with a higher rate of criminal filings would presumably have to schedule more than one judge at a time to take the criminal cases.

The court decided to adopt a procedure under which one judge would receive all criminal cases filed during a four-month period. Since there were then three active judges, each judge had the watch once a year. In 1986 the senior judge who carries a full case-load decided to join the rotation and took a two-month watch. The case assignment procedure, the role of magistrates, the significance of the length of a shift, and the scheduling process under the watch system are described in the next section.

## Operation of the Watch System

The criminal assignment procedure in Eastern North Carolina combines an individual calendar system with rotating periods of exclusive assignment.<sup>23</sup> A judge receives all criminal cases filed during a specified period. The judge retains these cases until final disposition, not passing them on to the judge who next comes up. A judge keeps an assignment even in the event of the indictment of a fugitive and hears the case when the fugitive is captured.<sup>24</sup>

While serving a criminal shift, a judge is assigned civil cases as usual. Although one might expect this to have a negative impact on the civil cases, the court notes that relatively little judicial activity is required in the early months of a civil case. Moreover, judges in Eastern North Carolina generally delegate much pretrial activity to magistrates. Also, since the judges manage to do some work on their civil cases while they have the watch, they believe their civil dockets do not suffer significant delay.

The magistrates assist the judges with the criminal cases as well as with their civil pretrial work. One of the three full-time magistrates is designated to do the motion work arising in criminal cases filed during a watch period. Nondispositive motions in criminal cases are automatically referred to the magistrate currently on the watch; dispositive motions are sent to the judge with a cover memo asking if the judge will decide it himself or refer it to the magistrate (the memo is reproduced in appendix F).

The decision whether to refer a motion to a magistrate gives the judge an opportunity for calendar control. Since federal law requires a ten-day objection period for magistrates' recommendations on dispositive motions (28 U.S.C. § 636(b)(1)), a referral involves at

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23. The court's detailed statement of the procedure is reproduced in appendix E.

24. According to the clerk of court, fugitives are relatively rare in Eastern North Carolina. If a district had a lot of fugitives, the procedure might have to be changed. Having to hear many fugitive cases at unpredictable intervals would reduce the uninterrupted time for civil cases expected after a watch.



least a brief delay in a case. When a late motion comes in, a judge who wants to keep his calendar on schedule can choose to decide it himself, or he can refer it to the magistrate if he does not mind a delay.

During the first two years of the new criminal assignment system, the same judge and magistrate always worked together. The senior judge's decision to take a shift, however, means that there is now one more judge than magistrate taking the watch, so that the judge and magistrate pairs rotate.

Except for the senior judge's shift, the length of the watch period has been four months. The four-month duration was initially determined by dividing the year into equal segments for each of the active judges. The court has decided it will keep the four-month length even when a new judgeship, currently vacant, is filled. The addition of the senior judge and a fourth active judge will eliminate any possible seasonal effects of having the same judge taking the same months every year, which occurred during the first two years of the system.

Depending on the number, length, and complexity of cases, the work from four months of filings typically continues another two to four months after new assignments cease. Indeed, the busiest period tends to be the last two months of the watch and the first two months after it. There are often two judge and magistrate teams handling criminal cases at the same time, as one team is still hearing some motions or holding trials when the next team has begun receiving motions and taking pleas in cases from the subsequent shift.

The four-month length of the shifts has proven to be satisfactory for several reasons, regardless of any seasonal patterns. With a shift of that length, judges and magistrates can count on approximately six months of the year when they will not be hearing criminal matters. A shorter period would reduce the length of time between one's criminal shifts. It would also increase the overlap among consecutive shifts and therefore increase the risk of scheduling conflicts for attorneys and marshals who might be asked to appear before two judges simultaneously.

A longer assignment period, which would reduce the overlap and the possibility of conflicts, has its own potential problems. First, some judges and magistrates find the watch fatiguing, which would be aggravated by a longer one. In addition, the civil docket might be more disrupted if one had to concentrate on criminal cases for a longer period.

The adoption of the criminal watch system has led to more separation within the clerk's office of the criminal and civil calendaring

procedures than existed before. Within the constraints of the six-month travel schedule that determines which cities the judges will be in at any given time, a different deputy clerk handles the criminal calendaring for each judge. All civil case calendaring, in contrast, is handled by a single deputy clerk. The clerk of court chose to have several deputies work on criminal case scheduling because he believed the work would be too intense for a single clerk. The concentration of criminal work on one or two judges under the watch system and the speed with which criminal cases move require that a clerk be very familiar with all the cases and give the calendar daily attention.

The deputy clerk of the judge receiving the criminal assignments maintains a master list of the Speedy Trial Act deadlines of the cases. Two weeks before a trial session, the clerk and the judge's senior law clerk schedule the trials, pleas, and sentencing hearings in accordance with the judge's preference. Copies of this calendar are distributed within the court, and the attorneys receive notices to appear. Last-minute rearrangement of the calendar as cases plead out is handled by a member of the judge's chambers staff, usually the senior law clerk.

### Effects of the Watch System

In its third year of operation, most members of the court are happy with the watch system of criminal assignments. They feel it has largely accomplished its intended purposes and has not had significant negative consequences. The assignment procedure has fewer direct effects on attorneys than on members of the court, but many attorneys expressed concern about one aspect of the system—the possibility of judge shopping by members of the U.S. attorney's office. Each group's reactions to the procedure are discussed below.

#### Judges

The judges believe that the rotating criminal assignment system has had its intended effect on their ability to hear long civil cases. Their favorite example is that in the first year of the watch system, one judge, after completing his criminal rotation, held a two-and-one-half-month antitrust trial at its originally scheduled time and without interruption. More systematic analysis also suggests that the procedure has enabled the court to block out time for longer civil trials. The district's issue-to-trial time for all trials and

especially for trials of four days or more has decreased since the beginning of 1984 (see the table in appendix G for details).

All four judges expressed a preference for the watch system over the prior system of random assignments from a master calendar, although three noted that their preference is not strong. Even the most enthusiastic judge noted that the practice involves the trade-off of greater pressure in some periods in exchange for greater control over his time in other periods.

The judges identified both advantages and disadvantages of concentrating criminal work into four months. For some, the watch system creates a feeling of getting slightly "rusty" about criminal issues and procedures during the time away from the criminal docket, so that some retooling is required when one's watch begins. On the other hand, some judges suggested that once they have returned to the criminal cases, they can be more efficient in both substantive work and scheduling because they are able to concentrate their time and energy. One judge admitted that he would not mind an occasional break from civil cases during the rest of the year, but he still ultimately prefers the watch system.

Judges differed in their views about whether they find the watch particularly fatiguing. One judge noted that civil law is intellectually more difficult than criminal law, but said that he finds sentencing difficult. Another judge acknowledged that the watch period is more intense, but added that he likes the greater amount of courtroom work involved in criminal cases. A third judge noted that he puts in longer days when on the watch, but feels that the advantages clearly outweigh the disadvantages. In contrast to the first three judges, the fourth judge said that handling the criminal cases on the watch is less tiring than handling the civil cases because there are so many guilty pleas and thus fewer trials in criminal cases.

The four-month duration of the shift appears to be a happy medium for the court. One judge said he would not mind a longer shift. Another, however, said he definitely would not want a longer period and, in fact, thinks three months might be better.

For some judges the watch duty requires adjustments in the use of staff because more of the criminal calendaring is now done in chambers. For instance, one judge said it took half the time of one law clerk to coordinate scheduling with the criminal deputy clerk. Most of the judges, however, apparently do not find that the criminal calendaring adds a significant burden to their staff's responsibilities because the law clerks are already involved in some civil scheduling.

### *Chapter III*

#### **Clerk's Office**

The clerk of court reported that the criminal watch system has simplified the work of his office. Now there is only one judge—or at most two—handling criminal cases at any given time, which means there are simply fewer people to work with and fewer personal preferences to accommodate.

Because the criminal deputy clerks are centrally located in an office in Raleigh, they have to travel when their judge is hearing criminal cases in any other city. Because of the rotational assignment system, however, each clerk's travel is confined to the roughly six months consumed by the work from a four-month watch. The criminal deputies who are not on the road take over office work for clerks who are traveling and help the magistrates with their criminal work.

#### **Magistrates**

The impact of the watch system on magistrates is much the same as it is on judges. All three full-time magistrates estimated that their criminal motion work occupies roughly six months for each four-month rotation. They recognized the same two trade-offs that the judges mentioned: (1) the start-up costs after being away from criminal work weighed against the greater efficiency once they focused on it again and (2) the half-year periods of exclusive attention to civil work weighed against an inability to concentrate on civil work while on the watch because of constant interruption by criminal work.

The magistrates were more consistent than the judges in agreeing that their work is more intense while they are assigned to the criminal watch. This is particularly a problem for them because the Eastern District of North Carolina has given magistrates responsibility for most pretrial activities and has encouraged extensive use of magistrates. The magistrates are generally well regarded by the local bar and, as a result, are getting an increasing number of trials by consent. One magistrate noted that he enjoys conducting civil trials so much that he does not turn down an opportunity to conduct one, but added that he can get very overloaded if there are not as many settlements as expected.

The magistrates cope with these demands in several ways. One admitted that when the pressure is greatest, the criminal motions may get short attention because most of them are largely pro forma. The magistrates' use of their law clerks may also change during the criminal rotation. Two magistrates, who do all their own criminal motions, delegate more of the civil motion research

and drafting to a law clerk during their criminal watch. The third magistrate, who has less background in criminal law, prefers to use his law clerk to do research and drafting on the criminal motions.

The magistrates' ultimate preferences between the watch system and the old system seem to turn on their familiarity with and taste for criminal work.<sup>25</sup> The magistrate who feels the least comfortable with criminal law would prefer to have the criminal cases more spread throughout the year, although he is not strongly opposed to the watch system. The other two magistrates prefer the current practice. For one magistrate, the opportunity to concentrate on criminal work seems to be an attraction in itself. The other does not find criminal work too burdensome and likes the opportunity to concentrate on civil cases during the rest of the year.

The magistrates did not state a preference between being paired with the same judge or being paired with a different one each time they have the watch. They did mention slight differences in the frequency with which various judges refer dispositive motions, however, which suggests that a permanent pairing might create an uneven division of work among the magistrates.

### **Attorneys**

When attorneys in the district were asked their opinion of the criminal assignment system, they often responded first and most enthusiastically about the change from master to individual calendars. Many attorneys mentioned that they prefer the continuity provided by the federal court's individual calendar system to the lack of continuity under the master calendar used by the state superior courts. This feature of the federal court's criminal calendaring was more salient to many attorneys than the assignment of cases to the same judge and magistrate for several consecutive months.

The latter feature—the four-month rotating shift—was intended to benefit attorneys, by reducing their scheduling conflicts, as much as to benefit members of the court. Most private defense attorneys, however, do not have such a large federal practice to have been seriously inconvenienced by such conflicts. Thus, they notice little difference under the new procedure. Members of the U.S. attorney's office, on the other hand, who do all their work in federal court, confirmed the judges' impression that the criminal watch

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25. Under the previous criminal assignment system, the magistrates were assigned to motion work according to the case's geographical division, which spread the work relatively evenly throughout the year.

system, while not eliminating conflicts, has reduced them noticeably.

The assistant U.S. attorneys gave a second reason for preferring the criminal watch system: It gives them certainty for several months about which judge and magistrate will hear and rule on their cases. A minor inconvenience noted by one attorney, however, is that when an emergency arises and the judge or magistrate on the watch is out of town, the attorneys must place a courtesy call to the watch judge and then find a substitute to sign an order. In addition, one prosecutor offered his opinion that it is better for a judge to have more than one magistrate's views on pretrial matters, an opportunity that is, with the present procedure, available only over the course of more than one shift.

Another possible impact of the new procedure would fall mainly on civil attorneys, whose cases are put on trailing calendars behind criminal cases. Attorneys with civil practices were asked if they had had any problem with cases' being delayed because a judge was too involved with criminal matters. Eight of fourteen private civil attorneys mentioned some delay, but they could not necessarily attribute the delay to the criminal assignment procedure. On the other hand, some attorneys complained that, to the contrary, the district tries to move its civil docket too quickly.

One civil attorney specifically complained about the use of the trailing calendar for civil cases. He reported that on three separate occasions he had assembled the witnesses for a civil trial, only to have the trial session end without his case's being reached. It appears that this attorney's problem is unusual, however. Shortly before our interview, the clerk checked to see how many civil cases had been continued because of the court's failure to reach them. He identified only 6 such cases among 105 cases set for trial during the six months he examined.

The above concerns are all somewhat minor compared with the major complaint of criminal defense attorneys about the watch system: the possibility of judge shopping by members of the U.S. attorney's office. Because the judges take cases for a set period of time in an established order, defense attorneys fear the prosecution may speed up or delay a case at the margins of two shifts to try to obtain a particular judge.<sup>26</sup>

The members of the court are aware that their procedure creates the possibility for some judge shopping. They reported that they watch for evidence of it and would take any such attempts very se-

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26. This problem would presumably be greatly reduced in a district where two or more judges shared a criminal shift.

riously. If they suspected someone was judge shopping, they said, they would substitute another judge. To keep the bar from becoming too certain of which judge would be taking cases, the court kept secret that the senior judge would be taking a shift and what its length would be once he started.

The prosecutors asserted in their defense that their opportunities to delay indictments are very few and that they do not want to jeopardize their good relations with the court. They pointed out that they do not always know which judge will be hearing the cases, citing the change that occurred when the senior judge joined the rotation. Nevertheless, because that is the only change the court has made in the rotation, it is likely that the prosecutors usually know who the judge will be.

Both the prosecutors and the judges suggested that one reason judge shopping is not really a problem is that the judges of the district tend to sentence sufficiently alike that there is little incentive to forum shop. The defense attorneys, however, universally disagreed that there is no such incentive.

Although some of the attorneys acknowledged that the current judges sentence quite similarly, they worried that the situation might change if a person with a prosecutorial background joined the bench. Others agreed that all the current judges are generally "tough," but pointed out that the judges' sentences differ on certain crimes. Many defense counsel also noted differences in courtroom style that might make an attorney prefer one judge over another on occasion. One argued that the prosecutor should not be allowed to pick the judge, even if the advantage is mainly psychological.

A few defense attorneys indicated that they assume the prosecutor is judge shopping, but view it as so much a part of the "game" of criminal justice that they do not consider it a problem. More defense attorneys, however, do consider the potential for judge shopping with the rotational assignment procedure a problem, watch for signs of it, and in some cases oppose the watch system because of their concern about it.

Despite their suspicions, the defense attorneys have little clear evidence that any judge shopping is actually going on under the present system. Most merely suspected or assumed that it is or worried that it could be. Others even suggested that a good prosecutor would be attempting to exploit such an opportunity if he or she was doing the job well. The one explicit allegation came from a prominent attorney who handles a large number of federal criminal cases. He reported that assistant U.S. attorneys, engaged in

### *Chapter III*

pre-indictment bargaining with him, have suggested that a client should agree to plead because "a worse judge is coming."

In short, limited opportunities to judge shop appear to be present under the criminal watch system. While it has not clearly been a major problem in Eastern North Carolina, it is obviously something for a district to consider before adopting such a system. Other districts' experiences with similar calendaring systems, discussed in the final chapter, may shed further light on the matter.



#### IV. ADAPTABILITY OF THE DISTRICT'S CALENDARING PRACTICES TO OTHER DISTRICTS

Many other federal district courts have constraints of population distribution and geography similar to those of the Eastern District of North Carolina. Further, all courts confront the challenge of making justice accessible, expeditious, and evenhanded and of equitably dividing work among the court members. The apparent success of Eastern North Carolina in achieving these goals suggests that its calendaring practices may be worthy of consideration by others.

The watch system of criminal assignments might transfer more easily to other districts than district riding would because the watch system is a more discrete procedure. District riding, in contrast, has deep historical roots in the district and influences all other calendaring practices. Neither judges nor other participants in the judicial process think having to travel is unusual—perhaps in part because some North Carolina state judges have always traveled, too. In fact, two attorneys commented independently that the Eastern District of North Carolina's great changes since the late 1970s have been successful because they were "tempered with a knowledge of local custom" and they "fit the district." Nevertheless, there is little about these calendaring practices that inherently limits them to this particular court.

There is no doubt, however, that some adjustments would have to be made to adapt either practice to another district. Some consideration, then, of the dispensable and indispensable features of these two practices is in order. Discussed first is the rotating criminal assignment procedure, then the district-riding procedure.

##### Rotating Criminal Assignment Procedure

Three other district courts—New Mexico, Western Oklahoma, and Massachusetts—are known to have used a rotating criminal

## Chapter IV

assignment procedure.<sup>27</sup> A brief look at their experiences with this procedure may help illuminate the features that are indispensable. Following this discussion, the features the clerk of court in Eastern North Carolina considered most important are noted.

The District of New Mexico currently uses a criminal assignment procedure very similar to Eastern North Carolina's and has been using it for a much longer time—longer than the eleven years the present clerk has been in office in New Mexico. The Western District of Oklahoma and the District of Massachusetts also used rotating criminal assignment systems in the past.

The procedures used in Western Oklahoma and Massachusetts differ from the one used in Eastern North Carolina in one major respect: In both courts the judges passed cases on to the next judge at the end of their shifts rather than retaining responsibility for the cases assigned to them until final disposition. Although both Western Oklahoma and Massachusetts have now abandoned their rotating criminal assignment procedures, neither court attributed the termination to this feature. Nevertheless, a judge in one of the districts did note some tendency for judges to defer criminal work near the end of a shift because they knew that it would soon be assumed by others.

The District of Massachusetts used a watch system for approximately one year only. The court reportedly adopted it as an emergency measure to relieve judges from criminal cases for a long enough period to allow concentration on the civil docket. According to the judge interviewed, the procedure did help reduce the civil backlog, so when the pressure eased, the court concluded it no longer needed the special criminal assignment procedure. In addition, the system was not very popular with the local bar because of fears of judge shopping.

The Western District of Oklahoma had used its version of a criminal watch system for many years until 1981. According to the judge who was chief at the time, the court decided to abandon it "because we thought the U.S. attorney was judge shopping."

Even in the District of New Mexico, which has continued to use a watch system, judge shopping has been a concern. The clerk reported that at one point the chief judge called in the U.S. attorney and "chewed him out" when his office was determined to be holding back indictments to get a desired judge.

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27. These three districts are the only other ones known by the author to have used a criminal assignment system similar to Eastern North Carolina's. The Federal Judicial Center would be interested to learn of the experiences of any other such districts.

The potential for judge shopping may be the Achilles' heel of a criminal watch system in a small court where a single judge takes all the criminal cases at a given time. If the criminal caseload is large enough to warrant two or more judges on the watch at a time, however, judge shopping might be avoided by randomly assigning cases. Nevertheless, even in Massachusetts, where three judges were on the watch at the same time, defense attorneys were concerned about the possibility.

Eastern North Carolina and New Mexico have apparently concluded that the risk of judge shopping is manageable with sufficient vigilance on the part of the court. These two courts and others like them, however, might consider an additional safeguard against judge shopping—that is, a more irregular assignment of judges to the watch so that attorneys could not predict which judge would be up next. But such an irregular pattern would probably be more difficult to administer and might make it harder to equalize the workload among the judges. In any case, some protection against judge shopping appears to be the first indispensable feature of the rotating criminal assignment procedure.

A second consideration is the number of fugitives on the docket. A minor adjustment might have to be made to the rotating criminal assignment system in a district with many indictments of fugitives. Such a district might want to assign those cases to the judge who is on the watch when a fugitive is captured rather than to the judge who is on the watch when the indictment is filed; otherwise a judge's time for civil cases could be excessively interrupted by criminal cases. A special procedure for fugitives is not necessary in New Mexico because all assignments there are made at the time of arraignment rather than indictment.

A third feature to be considered is the duration of the watch period. New Mexico, Massachusetts, and Western Oklahoma, in contrast to Eastern North Carolina, use (or used) three-month rather than four-month shifts. In all four districts, however, the length was apparently determined initially by the number of judges who might participate in the course of a year, so the difference between three and four months is probably insignificant. A shift considerably longer or shorter than either of these periods, however, might lead to some of the problems discussed in chapter 3.

When asked for his sense of the crucial features of the criminal watch system, the clerk in Eastern North Carolina mentioned two. First, he suggested that each judge needs to delegate clearly the responsibility for final scheduling to one person who is familiar with the judge's preferences. Because of the Speedy Trial Act, deadlines

come quickly; in addition, the watch system creates a high volume of cases for the designated judge. Together these conditions result in many last-minute changes. The clerk found that attorneys and members of his staff became confused and did not know whom to contact if more than one person attempted to juggle the schedule.

The second crucial feature the clerk suggested was a flexible use of magistrates. As noted in chapters 2 and 3, the judges of Eastern North Carolina use magistrates for a very wide range of tasks, including all arraignments and nondispositive motions in criminal cases, as well as many dispositive motions. Such teamwork enables one judge and magistrate to handle all the criminal cases filed in the district at any given time.<sup>28</sup>

In sum, clearly designated responsibility for scheduling and safeguards against judge shopping appear to be the most important features of a successful criminal watch system. It is also helpful to be flexible in the use of magistrates and to have some procedure for keeping fugitive cases, if they are numerous, from disrupting the judges' concentration on civil cases. There is some suggestion that having judges retain cases through final disposition is preferable to their passing them on to the next judge on the watch. At least within the range discussed, the precise length of the shifts appears to be less crucial than other considerations.

## District Riding

The judges of the District of New Mexico also ride their district—in somewhat the same manner as the judges of Eastern North Carolina. The New Mexico judges are assigned civil cases randomly, regardless of the location of filing, and do some traveling among the four places of holding court though they reside in only two of the cities.

This court's procedure differs from that in Eastern North Carolina in that the court has made no general commitment to coming to the parties' location for civil trials. In New Mexico, trips to the other two cities are made on an ad hoc basis, depending on the needs of parties in particular cases, rather than being scheduled months in advance. Furthermore, the one full-time magistrate does not travel at all.

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28. While such a use of magistrates does not seem to be required by the concept of a watch system for criminal assignments, it is clear that more judicial resources would have to be devoted to the watch if magistrates were not doing much of the criminal pretrial work. It is also worth noting that New Mexico's magistrates are used in the same manner in criminal cases as Eastern North Carolina's.

Determining whether the New Mexico district-riding procedure serves the goals of efficiency, accessibility, and fairness equally well or determining whether it better suits the wishes of all facets of the district's bar would require a detailed study. In any event, it appears that Eastern North Carolina's comprehensive system is but one way to accommodate a multidivision district.

Because district riding is more dependent on a district's unique characteristics than a criminal watch system is, it is difficult to identify features essential for another court that wishes to adopt district riding. At the least, because traveling around the district presumably takes more time than trying cases in one central location or in permanently assigned divisions, some compensating mechanisms to increase court efficiency are probably necessary. As noted previously, Eastern North Carolina relies on standardized office equipment, detailed pretrial submissions, and magistrates to take some of the extra burden off judges. Notably, the clerk in New Mexico commented that a study of his district has attributed the court's relatively fast disposition rate to its use of magistrates.

Although structural features are an important part of the practices discussed in this report, one should not ignore the court personnel. The clerk of court in Eastern North Carolina suggested that a crucial element in the functioning of both the criminal watch system and the districtwide traveling is judges who are quick learners and who help each other out if one becomes inundated. The criminal watch system requires fast retooling after a six-month hiatus from criminal cases. The practice of assigning all the cases to a single judge also means that if more than the usual number of criminal cases go to trial, the judge on the watch may become swamped. Similarly, the scheduling of several possible trials in another city requires efficient trial preparation and, if most do not settle, can lead to the trial session's spilling over into the time for catching up on other work and preparing for the next session.

Cooperation and flexibility appear to be essential qualities of all members of the court. Again and again, not only judges, but magistrates and deputy clerks as well, spoke of taking on some of the work of a colleague who found himself or herself overwhelmed. Achieving this sense of cooperation depends on positive leadership from the judges and the clerk of court.

The Eastern District of North Carolina has changed from being a court viewed as "the best way to bury a civil case," in the words of several attorneys, to being one of the fastest courts in the country and one that is highly regarded by most of the attorneys interviewed. This change and the procedures that have facilitated it

## *Chapter IV*

have now persisted under two chief judges and two new judges, suggesting that the procedures can withstand the tests of time and personalities.<sup>29</sup>

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29. Although there have been changes in judges, there has been continuity in the clerk's office. It may be significant to the success of some of the procedures that the clerk of court under whom they were begun is still clerk today.

**APPENDIX A**  
**Background Data on Attorneys Interviewed**  
**for the Study**

<b>Size of Firm</b>	<b>No. of Attorneys</b>
Solo practice	1
2-9 attorneys	20
10-19 attorneys	2
20 or more	10
Government attorneys	4
Data missing	<u>2</u>
Total	39
<b>Nature of Practice</b>	
Criminal only	4
Criminal and civil	16
Civil only	15
U.S. government civil	1
U.S. government criminal	<u>3</u>
Total	39
<b>Percentage of Federal Practice</b>	
1%-10%	10
11%-25%	12
26%-50%	7
51%-75%	3
76%-100%	6
"Fairly extensive"	<u>1</u>
Total	39

**APPENDIX B**  
**Local Rule 3.00 of the Eastern District**  
**of North Carolina**

**COURT SCHEDULE AND CONDUCT OF BUSINESS**

**3.01: Headquarters of the Clerk.** The headquarters of the clerk of court shall be in Raleigh.

**3.02: Divisions of the District.** There shall be five divisions of the court. Headquarters of each division and the counties comprising each division are as follows:

<u>Name of Division</u>	<u>Headquarters</u>	<u>Counties</u>	
Elizabeth City Division	Elizabeth City	Bertie	Hertford
		Camden	Northampton
		Chowan	Pasquotank
		Currituck	Perquimans
		Dare	Tyrrell
		Gates	Washington
Fayetteville Division	Fayetteville	Halifax	
		Cumberland	Sampson
New Bern Division	New Bern	Robeson	
		Beaufort	Lenoir
		Carteret	Martin
		Craven	Onslow
		Greene	Pamlico
		Hyde	Pitt
		Jones	
Raleigh Division	Raleigh	Edgecombe	Vance
		Franklin	Wake
		Granville	Wayne
		Harnett	Warren
		Johnston	Wilson
		Nash	
Wilmington Division	Wilmington	Bladen	Duplin
		Brunswick	New Hanover
		Columbus	Pender

**3.03: Assignment of Cases to a Division.**

(a) *Civil Actions.* The clerk shall assign all civil actions to a division when the action is filed or removed. If one or more plaintiffs



## Appendix B

are residents of this District, the clerk shall assign the case to the division in which the first named such plaintiff resides. If no plaintiff resides in the District and one or more defendants reside in the District, the clerk shall assign the action to the division in which the first named such defendant resides. In the event no party resides in the District but the claim is alleged to have arisen in the District or to involve real property in the District, the clerk shall assign the action to the division in which such claim is alleged to have arisen or in which the real property is situated. In all other instances, a case shall be assigned to a division in the discretion of the clerk.

(b) *Criminal Actions.* The clerk shall assign all criminal indictments to a division when an indictment is filed or transferred. If the indictment alleges the crime occurred within the District, the clerk shall assign the action to the division in which the crime is alleged to have occurred. In cases where it is not alleged that the crime occurred in the District or in cases in which it is unclear in which division the alleged crime occurred, the clerk shall assign the indictment to the division in which the first named defendant, who resides within this District, resides. In all other instances, an indictment shall be assigned to a division in the discretion of the clerk.

(c) *Residence of Corporation.* For the purposes of this Local Rule, a corporate plaintiff shall be deemed to reside in the state in which it was incorporated and in the district and division in which it has its principal office; and, a corporate defendant shall be deemed to reside in the division in which the corporation is alleged (1) to be incorporated and have its principal office, or (2) to be licensed to do business or (3) to be doing business.

(d) *United States as Plaintiff.* For the purposes of this Local Rule, in cases where the United States, its agencies or officers acting in an official capacity, is the plaintiff it shall be deemed that such plaintiff does not reside in this district.

**3.04: Court in Continuous Session.** This court shall be in continuous session in all divisions of the District on all business days throughout the year. All matters of either a criminal or civil nature not reached at the regular sessions of court are deemed to be in an open status and subject to being called for disposition before the next regular session of court upon reasonable notice to the interested parties.

**3.05: Correspondence.** Correspondence addressed to the court shall indicate that copies have been transmitted to all other parties and failure to transmit the same to all other parties may result in

sanctions by the court. Such correspondence shall not become a part of the record in the case.

**3.06: Forms of Pleadings, Motions and Documents.** All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall:

(a) after July 1, 1982, be on standard letter size (8½ x 11) paper; prior to that date, either legal or letter size paper will be accepted;

(b) state the court and division in which the action is pending;

(c) bear, except for initial filing, the case number assigned by the clerk;

(d) contain the caption of the case;

(e) if applicable, state the title of the pleading, motion, discovery procedure or document and the federal statute or rule number under which the party is proceeding;

(f) contain the individual name, firm name, address and telephone number of all attorneys who appear for the filing party, including an attorney making a special appearance pursuant to Local Rule 2.05;

(g) bear the date when signed by counsel;

(h) be signed by counsel as required by Local Rule 2.04;

(i) on all documents, the signature of parties and counsel shall be followed, on the line immediately below, by the typed or printed name in the exact form as the signature. In preparation of documents for signature by a judge or magistrate, a blank space shall be provided below the signature line in which the name may be typed or printed; and

(j) have each page number sequentially. . . .

**3.07: Filing and Service of Papers.** Unless otherwise specifically provided for, the original of all pleadings and other papers required to be filed or served shall be filed with the clerk in the office of the clerk in Raleigh, Fayetteville, New Bern or Wilmington regardless of the division to which the case is assigned. When the law requires a proceeding to be heard and determined by a district court of three judges, pleadings and other documents shall be filed in triplicate. In all cases, whenever a pleading (subsequent to the complaint) or other paper is required to be filed with the clerk or with the court, a copy thereof shall be served upon opposing parties as provided in Rule 5(b), F.R.Civ.P.

**3.08: Discovery Materials Not to Be Filed Unless Ordered or Needed.** Depositions upon oral examination and interrogatories, requests for documents, requests for admissions, and answers and responses thereto are not to be filed unless by order of the court or for use in the proceeding. All such papers must be served on other counsel or parties entitled to service of papers filed with the clerk.

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The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

**APPENDIX C**  
**Dollars Spent on Judge and Clerk Travel per Trial**  
**in the Fourth Circuit (Fiscal 1985)**

District	Judges and Law Clerks	Clerk's Office	Combined
Total U.S.	283	86	369
E.D.N.C.	1,176	381	1,557
D. Md.	73	30	103
M.D.N.C.	501	75	576
W.D.N.C.	213	88	301
D.S.C.	258	24	282
E.D. Va.	158	39	197
W.D. Va.	588	133	721
N.D. W. Va.	506	464	970
S.D. W. Va.	591	181	772

SOURCE: Expenditure data were obtained from Tom Van Horn, Financial Management Division, Administrative Office of the U.S. Courts (AO). Number-of-trials data are published in AO, Federal Court Management Statistics 66 (1985).

NOTE: Expenditure data include all travel costs; costs specifically for holding court are not separately recorded.

**APPENDIX D**  
**Local Rule 9.00 of the Eastern District**  
**of North Carolina**

**POWERS AND DUTIES OF THE CLERK**

**9.01: Approval of Security.** The clerk or deputy clerk is authorized to approve all recognizances, stipulations, bonds, guaranties, or undertakings, in the penal sum prescribed by statute or order of the court, whether the security be property, or personal or corporate surety.

**9.02: Seizure of Person or Property.** All acts and duties pertaining to the seizure of person or property as provided by the law of the State of North Carolina authorized to be done by a judge or the clerk of the state court may be done in like cases by a judge of this court or the clerk of this court, respectively.

**9.03: Orders and Judgments.** The clerk or deputy clerk is authorized to enter the orders and judgments listed below without further direction of the court. However, such action may be suspended, altered or rescinded by the court for cause shown.

(a) Consent orders for substitution of attorneys.

(b) Orders enlarging time periods in civil actions authorized to be entered by the court by Rule 6(b), F.R.Civ.P.

(c) Orders extending for a reasonable amount of time the period within which an act must be performed under the local rules of this court.

(d) Consent order dismissing an action, except in bankruptcy proceedings and in cases to which Rule 23(c) F.R.Civ.P. and Rule 66, F.R.Civ.P. apply.

(e) Orders cancelling liability on bonds.

(f) Orders changing the time of opening and adjourning court in the absence of the judge.

(g) Judgments by default as provided for in Rule 55(a) and 55(b)(1), F.R.Civ.P.

(h) Orders authorizing service of process by a person other than a United States Marshal pursuant to Rule 4(c), F.R.Civ.P.

(i) Certification of law students and supervising attorneys pursuant to Local Rule 13.00.

(j) Any other motion, rule or order which may be granted of course or without notice.

(k) Pursuant to the provisions of 28 U.S.C. Sec. 956, the clerk or a deputy clerk, when there is need to serve a complaint and attach-

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ment upon a vessel, or any other process incident to admiralty and maritime claims, either *in rem* or *in personam*, are empowered to grant and enter an order authorizing any sheriff or any deputy sheriff, or other suitable person, to serve all such process.

**9.04: Handling of Exhibits.** The clerk shall be the custodian of all exhibits admitted into evidence. Upon ten days notice by mail to counsel for all parties, the clerk may, within 30 days after the entry of final judgment, destroy or otherwise dispose of the exhibits.

**9.05: Deposit of Registry Funds in Interest-Bearing Accounts.** Whenever an order of court directs the clerk to place registry funds into interest-bearing accounts, counsel shall confer with the clerk, within five days after receipt of the order, concerning the manner and place of investment. If counsel, and the clerk do not agree, the clerk shall seek further direction from the court. No officer or employee of this court shall incur any liability for failure to invest or for improper investment unless counsel have complied with their obligations under this local rule.

**9.06: Court Libraries.** The clerk shall maintain for the court and the general use of the members of the bar of this court the court libraries in the district. Books shall not be removed from the library without the consent of the person responsible for the maintenance of the particular library, and shall not be removed from the courthouse under any circumstances. A violation of this rule shall be punishable as for contempt of court.

**9.07: Jurisdictional Agreements With Other Courts.** The clerk shall maintain all jurisdictional agreements entered into by the Chief District Judge of this court and the Chief District Judge of any other United States District Court and a copy of such agreements shall be furnished to counsel upon request.

**APPENDIX E**  
**Plan for Assignment and Calendaring of**  
**Felony Cases Effective January 1, 1984**  
**(Eastern District of North Carolina)**

1. The Chief Judge shall assign a judge to handle the criminal docket for a continuous four-month period each calendar year. Each of the active judges shall be so assigned each calendar year.

2. The Chief Judge shall similarly assign a full-time magistrate to the criminal docket, with each being so assigned during a calendar year.

3. During the assigned period, the judge is responsible for disposing of cases arising from:

- (a) indictments or informations filed during the period. Superseding indictments or amended informations continue to be assigned based on the original filing date;
- (b) appeals from misdemeanor convictions filed during the period;
- (c) disputed grand jury matters;
- (d) criminal removal petitions from state court;
- (e) misdemeanors in which defendants refuse to consent to magistrate jurisdiction during the assignment period;
- (f) probation revocations to the extent that the sentencing judge does not desire to handle the matter;
- (g) re-trials resulting from appellate reversals where the mandate is filed in this court during the assignment period; and,
- (h) miscellaneous criminal matters.

4. All magistrates shall continue to conduct routine proceedings in criminal cases, to wit: initial appearances, setting of bail, removal hearings and arraignments. All magistrates shall continue to conduct the trial of misdemeanors under current practice.

5. All motions in felony cases, unless otherwise directed by the assigned judge, shall be referred to the magistrate assigned to the criminal docket for the period. Objections and appeals lie to the judge assigned for the same period.

6. The Clerk shall also assign to a deputy clerk primary responsibility for criminal calendaring for each period. He or she shall assist the assigned judge and magistrate to insure that all proceed-

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ings in criminal cases are calendared within applicable speedy trial limits.

7. In the event that docket congestion, recusal, illness or any other reason prevents the assigned judge or magistrate from disposing of matters in a timely fashion, the Chief Judge and Clerk shall be notified so that necessary reassignments can be made.

8. Proceedings in criminal cases shall be calendared through the district as required by the cases initiated, taking into consideration the schedule and convenience of the entire court.



**APPENDIX F**  
**Memorandum Concerning Handling of**  
**Dispositive Criminal Motions**  
**(Eastern District of North Carolina)**

DATE: July 8, 1985

TO: Eastern District Secretaries and Law Clerks  
FROM: Rich  
RE: New Procedure for Handling Dispositive Motions in Criminal Cases

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The current practice in this district is to refer all motions in criminal cases to the fulltime magistrates. This has generally worked well, but we have run into a snag with a recent Fourth Circuit opinion forbidding the shortening of the ten day objection time to a magistrate's recommendation. This in turn has created some calendaring difficulties for the district judges.

In order to alleviate this problem and provide the judges with a way to control more tightly their calendars, the court decided at the July 2 bench conference to adopt a procedure where *dispositive* motions in criminal cases will immediately upon filing be forwarded to the judge to whom the case is assigned for a determination of how the motion will be handled. These motions are 1) motions to dismiss the indictment and 2) motions to suppress evidence.

This is similar to the procedure that we follow in civil cases. However, it differs in two aspects:

- 1) In civil cases we hold the motion until the response time has run. Because in criminal cases the time periods are much shorter, we will forward the motion upon filing.
- 2) In civil cases we forward the entire original file when a motion is ready for ruling. In a criminal case we will only forward a copy of the motion.

Finally, preparation of criminal calendars will depend to a large extent on prompt attention to these requests when they arrive in the judge's office. Inadvertent delays may cause speedy trial problems down the line, so they need a quick decision.

cc: Judges and Magistrates  
Criminal Section, Clerk's Office

**REQUEST FOR INSTRUCTIONS ON  
HANDLING OF DISPOSITIVE CRIMINAL MOTIONS**

DATE: \_\_\_\_\_

TO: JUDGE \_\_\_\_\_

FROM: \_\_\_\_\_, Deputy Clerk

RE: Case Number: \_\_\_\_\_

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Defendant's motion \_\_\_\_\_ in this action assigned to you was filed on \_\_\_\_\_. A copy of the motion is attached. Please return this form to the Clerk's Office indicating which of the procedures you desire to follow in its disposition:

\_\_\_\_\_

Calendar this before the Judge for oral argument at a convenient time.

\_\_\_\_\_

Refer this motion to a Magistrate for his recommendation.

\_\_\_\_\_

Motion will be decided by the Judge on the record without oral argument.

\_\_\_\_\_  
JUDGE OR LAW CLERK

Anticipated Trial Date: \_\_\_\_\_

**APPENDIX G**  
**Issue-to-Trial Time in the Eastern District of**  
**North Carolina Before and After Adoption of**  
**Rotating Criminal Assignments**

<u>Issue Date</u>	<u>No. of Trials</u>	<u>Mean (Days)</u>	<u>Median (Days)</u>
<b>All trials</b>			
Before 1/1/84	166	558.49	396.0
Since 1/1/84	43	308.47	306.0
<b>Trials of 4 days or longer</b>			
Before 1/1/84	47	781.72	559.0
Since 1/1/84	13	297.15	306.0

SOURCE: This table was compiled from Administrative Office data tapes based on JS-10 forms.

NOTE: The table includes all civil jury and nonjury trials beginning from July 1981 through May 1986.

## THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** provides educational programs and services for all third branch personnel. These include orientation seminars, regional workshops, on-site training for support personnel, and tuition support.

The **Division of Special Educational Services** is responsible for the production of educational audio and video media, educational publications, and special seminars and workshops, including programs on sentencing.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its committees, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovation and Systems Development Division** designs and tests new technologies, especially computer systems, that are useful for case management and court administration. The division also contributes to the training required for the successful implementation of technology in the courts.

The **Division of Inter-Judicial Affairs and Information Services** prepares a monthly bulletin for personnel of the federal judicial system, coordinates revision and production of the *Bench Book for United States District Court Judges*, and maintains liaison with state and foreign judges and related judicial administration organizations. The Center's library, which specializes in judicial administration materials, is located within this division.



**Federal Judicial Center**

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