1969

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TEMPORARY JUDICIAL ASSIGNMENTS: AN INVALUABLE TOOL FOR EFFECTIVE JUDICIAL ADMINISTRATION

Joseph D. Tydings*

ONE of the great strengths of the Federal judicial system is the ability to shift judicial manpower to meet critical caseload demands. This administrative authority is a statutory creation, first incorporated in the United States Code on the suggestion of Chief Justice William Howard Taft.¹ Because temporary judicial assignments are premised upon a statutory foundation,² it is the particular responsibility of Congress to see that those assignments are used to effectuate the Congressional intent and, thereby, alleviate the critical caseload bottlenecks in the Federal judicial system. As Chairman of the Senate Subcommittee on Improvements in Judicial Machinery I conducted hearings in May, 1968 to review the operation of the temporary assignment power. This article will outline the statutory guidelines, examine the operation of the temporary assignment system as reported in the Subcommittee’s hearings, discuss the shortcomings uncovered by these hearings and, finally, describe the judiciary’s actions to improve the temporary assignment system.

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¹ See A. MASON, WILLIAM HOWARD TAFT: CHIEF JUSTICE ch. 4 (1965).

The Federal courts in the ’20s met growing caseload demands, many caused by Prohibition, with an antiquated court structure, and few if any clear lines of administrative authority. Chief Justice Taft began a campaign for judicial reform shortly after becoming the nation’s chief magistrate. See Taft, Three Needed Steps of Progress, 8 A.B.A.J. 34 (1922). One major proposal was a cadre of district judges-at-large—eighteen in all, two added to each circuit. These judges, under Taft’s idea, would have been assignable to any district in the circuit where needed by a circuit council and by the Chief Justice to any district in any other circuit. Taft’s recommendation met hard opposition, because it violated the traditional custom of authorizing a judgeship for a particular district. The concept of “roving judges” was considered “fundamentally wrong” by a number of Senators. See 62 CONG. REC. 4849, 4861-62 (1922) (remarks of Senators Caraway, Shields and Overman). The idea of a “flying squadron of judges” who were not regularly assigned to a particular district did not meet with approval in the 67th Congress. Taft, Possible and Needed Reforms in the Administration of Justice in the Federal Courts, 8 A.B.A.J. 601 (1922). The Act of September 14, 1922 did establish the principle of temporary judicial assignment under Judicial Conference supervision. Some of Taft’s lobbying efforts are described by A. MASON, WILLIAM HOWARD TAFT: CHIEF JUSTICE 121-123 (1965).

I. Statutory Guidelines and Use of Temporary Judicial Assignments

The temporary assignment of Federal judges is governed primarily by chapter 13, title 28, United States Code. These provisions of law allow both the intercircuit and intracircuit assignment of judges. An active district judge may be assigned "in the public interest," by the chief judge of his circuit to hold court in any district in the circuit\(^8\) or to sit with the court of appeals of the circuit.\(^4\) An active district judge may be assigned temporarily for service to another circuit—intercircuit assignment. This can be done either in a district court or court of appeals or to a special court such as the Court of Claims, by the Chief Justice upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit or by the chief judge of a special court wherein the need for help arises.\(^5\) But the assignment must receive the consent of the chief judge or judicial council of the circuit from which the judge is to be assigned.\(^6\)

An active circuit judge may be assigned "in the public interest" to hold a district court in any district within the circuit by the circuit justice.\(^7\) An active circuit judge may also be assigned as a circuit judge in another circuit or to serve on a special court, by the Chief Justice upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit or by the chief judge of the special court where the need arises,\(^8\) if the assignment is consented to by the chief judge or judicial council of the circuit from which the assignment is made.\(^9\)

Senior judges\(^9a\) may be assigned such judicial duties as they are willing and able to undertake within the circuit by the chief judge or judicial council of the circuit.\(^10\) In addition, a senior judge may be assigned such judicial duties as he is willing and able to undertake in a court outside his own circuit by the Chief Justice upon presentation of a certificate of necessity by the chief judge or circuit judge of the circuit.

\(^7\) 28 U.S.C. § 291 (c) (1964).
\(^8\) 28 U.S.C. § 291(a), (b) (1964).
\(^9a\) A senior judge is one who retires pursuant to 28 U.S.C. § 371(b) or § 372(a) (1964).
wherein the need arises.11 An intercircuit assignment of a senior judge does not require the concurrence of the chief judge of his circuit. Judges of special courts, such as the Court of Claims, are subject to assignments to other special courts or to district or circuit courts, on provisions similar to those relating to active and senior district and circuit judges.12

To assist the Chief Justice in the performance of his statutory power of designating judges for service outside their circuits, the Judicial Conference established an Advisory Committee on Intercircuit Assignments. Its purpose is to receive requests for assignments and make recommendations to the Chief Justice. The Judicial Conference has also promulgated principles and procedures for implementing intercircuit assignments.

The Judicial Conference of the United States has a role in the temporary assignment of judges because it is empowered to "prepare plans for assignment of judges to or from circuits or districts where necessary." 13 In fact, the original purpose for calling together the Conference of Senior Circuit Judges, the forerunner of the present Judicial Conference, was to settle matters relating to intercircuit assignments of judges. To assist the Judicial Conference in fulfilling its statutory duty, the Administrative Office of the United States Courts is required to "secure information as to the courts' need of assistance." 14

Assignments pursuant to chapter 13, title 28, United States Code, have been used extensively to meet the needs of the Federal judicial system. During the period of January 25, 1963, to February 9, 1968, 295 intercircuit assignments were recommended by the advisory committee and all but a handful were carried out.15 The primary cause of those few not undertaken was illness or death of the judge designated for assignment. In fiscal year 1967, alone, 101 Federal judges spent 2,777 days in service to courts other than those to which they were assigned.16

During fiscal year 1968 the process of temporary assignments continued apace17 and, in fact, faced additional strain attempting to fulfill

15 Hearings on The Operation of Procedures for the Temporary Assignment of Federal Judges Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, 90th Cong., 2d Sess., 39 (1968) [hereinafter cited as 1968 Hearings].
17 Twenty-eight intercircuit assignments were recommended by the Advisory Com-
the needs of two of the most heavily burdened U. S. district courts—the U. S. District Court for the District of Columbia and the U. S. District Court for the Southern District of New York. Both courts have, for different reasons, heavy demands for visiting judges. The U. S. District Court for the District of Columbia assigned all of its twelve active district judges to a criminal calendar which had reached a 1,400-case backlog on July 1, 1967. This action created the need for the outside help of thirteen visiting judges to avoid substantial disruption to the civil calendar which could have easily resulted from the heavy assignment of judge power to the criminal calendar. The southern district of New York called for the assistance of nine visiting judges to implement a crash program aimed at cutting the civil caseload in that district which had reached an 11,000-case backlog causing the average litigant to wait 45 months for jury trial.

II. Subcommittee Hearings and My Conclusions

At the hearings to review the operation of the temporary assignment power, the Subcommittee on Improvements in Judicial Machinery heard testimony from a distinguished panel. On the basis of testimony elicited and statements presented at the hearings, and after careful consideration of this information, I have reached the following conclusions:


18 During fiscal year 1968, there were 2176 trials completed in these two districts, accounting for more than fifteen percent of the Federal trials in that year. See Annual Report of the Director of the Administrative Office of the United States Courts, Table C1 (paperbound ed. 1968).

19 1968 Hearings 103ff.

20 Id. at 11. See also Annual Report, supra note 16, at Tables C3a, C5.

21 The Hon. Jean S. Breitenstein, judge of the U.S. Court of Appeals, 10th Circuit, and chairman of the Advisory Committee on Intercircuit Assignments of the Judicial Conference of the United States; the Hon. John R. Brown, chief judge of the U.S. Court of Appeals, Fifth Circuit; the Hon. Edward M. Curran, chief judge of the U.S. District Court for the District of Columbia; the Hon. Henry N. Graven, senior U.S. district judge; the Hon. George Boldt, U.S. District Judge, Western District of Washington; the Hon. Wallace Gourley, U.S. District Judge, Western District of Pennsylvania; the Hon. Alfred Murrah, Chief Judge of the U.S. Court of Appeals, Tenth Circuit; the Hon. Aubrey Robinson, Jr., U.S. District Judge for the District of Columbia; the Hon. Sidney Sugarman, Chief Judge of the U.S. District Court, Southern District of New York; Mr. Ernest Freisen, Director of the Administrative Office of the United States Courts; and Professor Paul P. Carrington of the University of Michigan Law School.
First, the temporary judicial assignments system has won a respected place in the sound administration of the Federal courts and offers invaluable assistance to those courts burdened by vacancies, illness of judges, or overwhelming caseloads. The need for and use of the statutory assignment power, however, varies greatly among the circuits.

Second, temporary judicial assignments are an economical way of dealing with the demands of Federal judicial business.

Third, although the Judicial Conference of the United States has established an Advisory Committee to regulate intercircuit assignments and has published guidelines for such assignments, there has been little or no effective long-range planning to assure the coordination of judges available for temporary assignment with the need for such judges. The chief judge of the circuits in many instances work out for themselves the needs of their individual courts and, for the most part, the Advisory Committee only serves to verify the need for assigned judge power before passing the recommendation for an intercircuit assignment to the Chief Justice for approval. The Advisory Committee's value is significantly depreciated because it has no role in planning special crash programs for the assistance of a particular Federal court or in determining future needs for assigned judge power.

Fourth, no effort is now made to report the experience gained during an assignment. No report other than one stating trial time is filed as a matter of policy by the visiting judge although a few veteran visiting judges have begun on their own the practice of filing such reports.

Fifth, senior judges have been used to optimum advantage on temporary assignments.

A. Value of temporary assignments

Although the Federal courts have a common jurisdiction and are governed by uniform rules of procedure, the practices in and work of the district courts are not uniform. Local rules and local ways of doing things allow the Federal judicial system to shape itself to meet local demands.

This diversity within the Federal system has a particular meaning with respect to temporary assignments. Such assignments allow judges to experience and contribute new techniques for judicial administration within the general framework of Federal practice and procedure. Temporary assignments are a vehicle for the interchange of ideas and practices among Federal judges from different parts of our diverse land. U.S.
District Judge George Boldt, who has held court in every Federal District and who is among the most respected Federal trial judges, attested to the educational value of temporary assignments both to the visiting judge and the court to which he is assigned. His belief in the educational value of temporary assignments was corroborated by both Chief Judge John Brown of the Fifth Circuit and Chief Judge Alfred Murrah of the Tenth Circuit.  

Broadening the perspectives of Federal judges, however salutary, is not sufficient in itself to justify the concept of temporary assignments. Such an assignment system actually exists to relieve the caseload pressure upon a particular court. Where assignments have been made, they have served that role well.

The Court of Appeals for the Fifth Circuit, according to the testimony of Chief Judge Brown, has been able to deal with its staggering caseload explosion only through the assistance of visiting judges. Although extra-authorized judicial manpower for the Fifth Circuit did not become a fact until 1966, the Court of Appeals for the Fifth Circuit was able to handle this situation because it found relief in the use of visiting judges. Visiting judges represented between seventeen and twenty-nine percent of the judicial manpower of the Fifth Circuit Court of Appeals during those years and their presence allowed the court to increase its total number of sittings to cope in reasonable terms with its caseload.

The example of the Fifth Circuit is not unique. Visiting judges have recently come to the rescue of the U.S. District Court for the District of Columbia. By assigning its regular judges exclusively to criminal matters and its visiting judges to civil matters, that court has cut into its backlog and kept itself from being overwhelmed by a rising workload.

Prior to the April, 1968 disorders in the Nation's Capital, the U.S. District Court, according to testimony of Chief Judge Curran, by marshalling its regularly assigned judges for criminal trial work, had cut its criminal caseload from 1,086 in January, 1967, to a little under 700 cases. The visiting judges were used exclusively on civil matters and allowed the U.S. District Court for the District of Columbia to

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22 1968 Hearings 2, 4, 70, 71.
23 The caseload of that court jumped from 582 appeals during its 1959-60 term to 1,160 appeals in its 1966-67 term and, while the court was able to dispose of 554 cases in 1959-60, it completed 1,171 in 1966-67. 1968 Hearings 65.
24 1968 Hearings 66-68.
terminate more civil cases than were filed in fiscal year 1968—a feat not achieved by that court in either fiscal year 1967 or fiscal year 1966.27

Although the Fifth Circuit and the District of Columbia district provide telling examples of the benefit of the visiting judges, many districts and circuits have been aided by the practice of temporary assignments. Such assignments have been particularly helpful where illness or judicial vacancy has hampered the operation of a court. The assigned judges can help a court meet the continuing demands of the public’s judicial business until relief in the form of an appointment to fill the vacancy or recovery from illness restores the court’s strength.

B. Costs

Temporary judicial assignments have proven to be an economical way of dealing with problems in judicial administration. While the contrary might have been presumed, figures show that it costs substantially less for a judge to fill a temporary intercircuit assignment than for the Congress simply to create a new judgeship. For the ten year period covering fiscal years 1958 to 1968 inclusive, the average cost per trial conducted by a judge assigned from another circuit was $250 and the average cost per trial day by a judge of intercircuit assignment was $114. The Administrative Office of the United States Courts reports that the annual recurring cost of one district judgeship is $84,900. For a cost 5.25 times that amount over ten fiscal years, intercircuit assignments resulted in 1,784 trials consuming 3,901 trial days. If a trial judge would work 200 days a year trying cases, which generally does not occur, the cost per trial day, on the basis of the annual recurring cost of a district judgeship, would be $424. This compares with $114 cost per trial day on intercircuit assignments.28 These figures demonstrate a substantial saving, especially if the judge on assignment would not have been effectively utilized in his home court during the assignment period. Of course, there is no real saving if a judge of a heavily burdened court is temporarily assigned away from that court.

26 Annual Report, supra note 18 at Table C1.

27 Statistics for fiscal year 1968 also show that the U.S. District Court for the District of Columbia was able to cut two months off its median time interval for the trial of civil cases, reducing that interval from twenty-seven months in fiscal year 1967 to twenty-five months in fiscal year 1968. Id. at Table C10.

28 The cost analysis was done by Judge Brietenstein and is reprinted in 1968 Hearings S2.
C. Lack of Effective Correlation of Need and Availability

Although the assignments have assisted the courts receiving aid and although the cost effectiveness of intercircuit assignments has been substantial, a close look at the workload of the various federal courts illustrates that assignments have not been used to optimum advantage. The workload of the Federal courts has been steadily increasing, but the increase in work has not been spread evenly throughout the various districts and circuits. The district courts which have been affected most by the rise in judicial business are those located in the metropolitan areas. In fact, the nineteen large metropolitan courts have fifty percent of the authorized district judgeships to deal with more than sixty-three percent of the pending civil business.²⁹

²⁹ The workload of the metropolitan districts can be illustrated by the following chart:

CIVIL CASES FILED AND TERMINATED IN NINETEEN LARGE METROPOLITAN COURTS, FISCAL YEAR 1968

<table>
<thead>
<tr>
<th>District</th>
<th>Number of Authorized Judgeships</th>
<th>Civil Cases</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Commenced</td>
<td>Terminated</td>
<td>Pending</td>
<td></td>
<td></td>
</tr>
<tr>
<td>90 Districts (Exclusive of districts in territories)</td>
<td>338</td>
<td>69,571</td>
<td>67,581</td>
<td>81,391</td>
<td></td>
</tr>
<tr>
<td>New York, Southern</td>
<td>24</td>
<td>5,335</td>
<td>5,017</td>
<td>11,247</td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>15</td>
<td>4,529</td>
<td>4,628</td>
<td>3,993</td>
<td></td>
</tr>
<tr>
<td>Pennsylvania, Eastern</td>
<td>14</td>
<td>3,068</td>
<td>2,727</td>
<td>7,177</td>
<td></td>
</tr>
<tr>
<td>Louisiana, Eastern</td>
<td>8</td>
<td>2,611</td>
<td>2,709</td>
<td>4,327</td>
<td></td>
</tr>
<tr>
<td>California, Northern</td>
<td>9</td>
<td>2,486</td>
<td>2,134</td>
<td>2,876</td>
<td></td>
</tr>
<tr>
<td>Illinois, Northern</td>
<td>11</td>
<td>2,306</td>
<td>2,492</td>
<td>1,729</td>
<td></td>
</tr>
<tr>
<td>California, Central</td>
<td>13</td>
<td>2,041</td>
<td>2,021</td>
<td>1,657</td>
<td></td>
</tr>
<tr>
<td>Virginia, Eastern</td>
<td>5</td>
<td>1,654</td>
<td>1,650</td>
<td>1,269</td>
<td></td>
</tr>
<tr>
<td>Pennsylvania, Western</td>
<td>8</td>
<td>1,580</td>
<td>1,287</td>
<td>2,221</td>
<td></td>
</tr>
<tr>
<td>Texas, Southern</td>
<td>7</td>
<td>1,499</td>
<td>1,453</td>
<td>1,724</td>
<td></td>
</tr>
<tr>
<td>Florida, Middle</td>
<td>5</td>
<td>1,449</td>
<td>1,610</td>
<td>1,080</td>
<td></td>
</tr>
<tr>
<td>Florida, Southern</td>
<td>5</td>
<td>1,439</td>
<td>1,571</td>
<td>1,142</td>
<td></td>
</tr>
<tr>
<td>Michigan, Eastern</td>
<td>8</td>
<td>1,398</td>
<td>1,330</td>
<td>1,992</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>8</td>
<td>1,289</td>
<td>1,080</td>
<td>1,652</td>
<td></td>
</tr>
<tr>
<td>Ohio, Northern</td>
<td>7</td>
<td>1,285</td>
<td>1,195</td>
<td>1,714</td>
<td></td>
</tr>
<tr>
<td>New York, Eastern</td>
<td>8</td>
<td>1,254</td>
<td>1,125</td>
<td>1,805</td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td>5</td>
<td>1,205</td>
<td>1,129</td>
<td>1,494</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td>6</td>
<td>1,127</td>
<td>1,175</td>
<td>1,371</td>
<td></td>
</tr>
<tr>
<td>Texas, Northern</td>
<td>5</td>
<td>1,102</td>
<td>975</td>
<td>892</td>
<td></td>
</tr>
<tr>
<td>Total 19 metropolitan courts</td>
<td>171</td>
<td>38,657</td>
<td>37,358</td>
<td>51,282</td>
<td></td>
</tr>
<tr>
<td>Percentage of total</td>
<td>50.6%</td>
<td>55%</td>
<td>55%</td>
<td>63%</td>
<td></td>
</tr>
</tbody>
</table>
Just as the rise in business has not been consistent throughout the Federal system, the use of temporary assignments varies among the Circuits. The Ninth Circuit makes the most use of intracircuit assignments and has been the largest contributor of active judges for intercircuit assignments. Since 1960, the Fifth and Second Circuits have received the most intercircuit help, 113 and 67 judges respectively, while the Eighth received only three and the Fourth, four judges through intercircuit assignments.

Moreover, some courts with serious backlogs have received little or no help. The Eastern District of New York and the Eastern District of Pennsylvania are a prime example. The Eastern District of New York received no assigned judge power during fiscal years 1965 to 1967 although it had one of the largest backlogs of pending civil cases and it took 20.3 months for that court to provide a jury trial for criminal cases disposed of in fiscal year 1967.\(^{30}\) It must be noted, however, that visiting judges were provided to assist in a crash program in fiscal year 1968. But continuous prior help might have avoided the need for last year’s crash effort.

The Eastern District of Pennsylvania has had the largest number of civil cases pending for more than three years of any Federal district court. It reports one of the largest number of filings annually.\(^ {31}\) Its problems are exacerbated by the loss of twenty judge years over the last decade due to the traditions in filling vacancies in the district.\(^ {32}\) Between fiscal year 1965 and fiscal year 1967, the Eastern District of Pennsylvania received 130 days of temporary assistance but that was nullified in part by the absence for 68 days in fiscal year 1965 of one regularly assigned judge on intercircuit assignment because of his expertise in handling the electrical antitrust cases. It must also be noted that both the Southern

\(^{30}\) In the courts of appeals the number of appeals per judgeship varies from 57 in the Eighth Circuit and 71 in the First Circuit, to 119 in the Second Circuit and 146 in the Fourth Circuit. ANNUAL REPORT, supra note 16, at II-5. The rise in the number of appeals during fiscal year 1968 amounts to 15.3 percent for all circuits, but the Third Circuit experienced a 5.1 percent drop in business over fiscal year 1967. The Fourth, Seventh and Ninth Circuits each experienced more than a 24 percent rise in business. Id. at II-3.

\(^{31}\) Id. at Table D6.

On June 30, 1967, the Eastern District of Pennsylvania had 1,344 civil cases which had been pending for three years or more. Id. at Table 6a. The Eastern District of Pennsylvania commenced 2,723 civil cases. Id. at Table C1.

\(^{32}\) Hearings on Bills to Establish a Federal Judicial Center Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess. 459 (1968).
District of Georgia and the Eastern District of Texas, among the five
districts reporting the heaviest weighted caseload, received no tem-
porary help either through intercircuit or intracircuit assignments between
fiscal years 1965 and 1967.

Courts with low weighted caseloads have not been significant con-
tributors of judge power to temporary assignments. Of the twenty-two
districts with weighted caseloads twenty-five percent lower than the
national average, only seven contributed to helping other courts in fiscal
year 1967.33 The failure to achieve a better distribution of temporary
assignments stems from two factors—first, poor coordination and plan-
ing; and second, a failure to recognize the responsibility to accept work
beyond the confines of one's court.

The Judicial Conference's Advisory Committee on Intercircuit As-
signments has not been serving a positive role in the assignment process.
It has properly discouraged intercircuit assignments where the need for
additional judge power is not clear or where the judge wishing to be
assigned could not be reasonably freed from service to his own court.
The Committee has not engaged, however, in any real effort at planning
for assignments. The Committee is often presented for approval an
assignment already tacitly arranged by the chief judges of the lending
and receiving circuits.34 The Committee has been faced with the de-
velopment of a number of "crash programs" of temporary judicial as-
sistance for the aid of a particular court, but has not been involved in
the planning for such programs.35

While in some instances both the informal arrangement of assign-
ments by the chief judges involved and the spontaneous development
of a crash program by districts or circuits in need of help may prove
satisfactory, these practices do not reflect the type of planning for inter-
circuit assignments contemplated of the Judicial Conference by the
directory language of its enabling act.36 The act specifically calls for
the preparation of "plans" for the intercircuit assignment of Federal
judges. Of course, predicting illness or a judicial vacancy is largely
impossible, but, through the use of statistics of previous years, the Con-
ference, acting through its Committee, should be able to pinpoint the
sources of potential visiting judge power. If a roster of potentially avail-
able judges were maintained, as has been suggested in the past,37 a ready

33 1968 Hearings 62.
34 1968 Hearings 40, 42.
35 1968 Hearings 44-45.
37 1968 Hearings 54.
source of judges would exist for assignment when the need arose, subject to the needs of the potential visitor’s own district or circuit.

It is fair to suggest that greater use of temporary assignments would be encouraged if our Federal judges were to view themselves as, in the words of Judge Learned Hand, “members of a national unitary staff, whose service would be best employed wherever they were most needed.” \(^\text{38}\) There has been some reluctance on the part of judges to accept responsibility for service beyond the confines of their own court, but it is encouraging to note that this reluctance has greatly diminished. In this regard we must take cognizance of the words of the former chief judge of the Tenth Circuit, Orie L. Phillips, who wrote:

> Only under a plan by which trial judges can be assigned to other courts and the judicial manpower distributed to meet the needs of the several courts throughout the judicial system and under which each judge feels a responsibility for prompt and competent administration of justice in all the courts in a state or circuit, can we hope to relieve congestion in particular courts and effect that expeditious administration of justice which the courts should afford litigants.\(^\text{39}\)

D. Reports

Several judges who regularly undertake intercircuit assignments have adopted the practice of filing a detailed report with the chief judge of the court visited, with copies to the chief judge of that circuit and to the Administrative Office of the U.S. Courts. These reports typically relate to the judicial matters handled. If these reports were to be filed by each judge as a matter of course after an assignment, and if they were to include constructive comments about the courts’ operations, such reports would be a valuable means of stimulating improved court techniques.

E. Senior judges

Some senior judges have performed invaluable service as visiting judges. Others have not been active as assigned judges for three reasons: (1) the age and infirmities of some senior judges; (2) the per diem rates for visiting judges; and (3) the apparent failure to communicate to some senior judges the opportunity for assignments.

\(^\text{38}\) 1968 Hearings 124.

It was suggested during the hearings that a more energetic cadre of senior judges might be developed if more liberalized retirement benefits were provided. During the course of the hearing it was also suggested, I think wisely, that judges who have served for twenty years be allowed to retire regardless of age. Liberalized retirement would not be a wasteful measure. Federal courts have been blessed by the continued service of senior judges both within their regular assignments and on temporary assignments. Without exception, those senior judges who are not afflicted by the infirmity of age or illness have been willing to accept their share of the federal workload. They have been of major assistance to the federal judicial system.

It does appear, however, that the present per diem allowance for visiting judges might be too parsimonious when considered in light of living expenses in some large metropolitan areas. It is to be noted that these are the very areas most in need of outside assistance. It might be well for Congress to review the provisions for allowances to see if they, in fact, have amounted to a real impediment to the temporary assignment of judges. It was also suggested during the hearings that some senior judges are not aware of the opportunity for temporary assignments. Each senior judge should be fully aware of the possibility for temporary assignment and those who are able and willing to accept assignments should be fully utilized.

III. Actions Subsequent to Subcommittee Hearings

Subsequent to the conclusion of hearings by the Subcommittee on Improvements in Judicial Machinery, the American Bar Foundation published a report entitled Accommodating the Workload of the United States Courts of Appeals which touched upon the temporary assignment system. The report endorsed the greater use of such assignments and states in pertinent part:

Fuller utilization of temporary intercircuit assignment can be made within the present system. Some circuits, notably the First and Eighth,
have much lighter loads than others, such as the Fifth. Provision should be made so that such assignment requires consultation with but not consent of the assigned judge or the Chief Judge of his Circuit. All judges should be regarded as having service responsibilities to the federal judicial system as a whole.

At the most recent meeting of the Judicial Conference of the United States, a revision of the policies relating to intercircuit assignments was adopted. The new policies were recommended by the Advisory Committee on Intercircuit Assignments. The Committee recognized the present difficulties in the intercircuit assignment system and said, in pertinent part:

The difficulty comes in the correlation of need for judge help with availability of judgpower. Courts in need, through an analysis of caseloads and a projection of requirements, should make long-range programs which can form a basis for timely requests on courts which may be able to supply assistance. This may be accomplished through greater cooperation among the circuits. Improvement can be made within the framework of the existing statutes.

* * *

The present system operates largely on an ad hoc, personal arrangement basis. Such a system cannot and will not produce the most advantageous use of judicial personnel. In the circumstances the Committee makes the following recommendations for the approval of the Conference:

1. Adopt the policy that a federal judge has a responsibility, first, to the particular court of which he is a member, second, to the other courts within his own circuit, and, third, to the courts outside his circuit.

2. Except for emergency situations, courts in need of help shall forecast that need by at least six months and advise the committee of the times and places where help is required and of the number of judges desired.

3. When there are conflicting requests for the available judges, the committee shall determine the relative priorities of such requests.

4. The practice of inter-circuit assignments of active judges on a personal arrangement basis is not approved.

46 Id. 124.
47 Id.
5. The committee shall make requests of the Chief Judges of the circuits for judges available to respond to requests for help. The results of such requests shall be reported to the Conference.

6. No judge shall be assigned out of his circuit without his consent and, in the case of active judges only, without the consent of the Chief Judge of his circuit.

As stated earlier, the Conference adopted the Committee’s recommendations. The policy, if effectively administered, should eliminate many of the present deficiencies in the assignment system already described. The responsibilities of the judiciary beyond the confines of their regular assignments is, as Judges Hand and Phillips recognized, a prerequisite to the maximum efficiency of the federal judicial system. The effort to estimate future needs is essential if the available judge power is to be effectively utilized on temporary assignments to courts in need of assistance. Defining such needs must be diligently worked out or the heart of the new policy will be denied its essential force.

The newly stated policy also gives the Judicial Conference Committee an important responsibility for establishing priorities among the requests for assistance. This responsibility is new and its absence has impaired significantly the effectiveness of the Judicial Conference’s efforts in regard to temporary assignments. As Chairman of the Senate Subcommittee on Improvements in Judiciary Machinery, I intend to watch closely the operation of these new policies. I am convinced that the temporary assignment system is an essential tool of judicial administration and that this tool must be more effectively utilized by the Federal judiciary.