



One of the most successful reforms ever undertaken in the courts, the federal Magistrate Judges program was enacted by the Federal Magistrates Act of 1968 “to reform the first echelon of the Federal judiciary into an effective component of a modern scheme of justice.” The office of Magistrate Judge has evolved greatly in the succeeding five decades. Many important changes have been made to expand Magistrate Judges’ authority, install a strong merit-selection process, improve pay and benefits, and change the title of the office. U.S. Magistrate Judges today are an integral and indispensable component of the federal district courts. They disposed of more than 1.3 million cases and proceedings last year, and more than 150 Magistrate Judges have now been rewarded for their service by presidential appointment to an Article III judgeship. A key feature of the 1968 statute is the great flexibility that it gives each district court. Rather than mandate the assignment of particular duties to Magistrate Judges, it authorizes each court to determine what duties to delegate, based on its local needs and conditions. The key challenge for the judiciary, therefore, is to promote the wisest and most effective use of Magistrate Judges in every district.

By PETER G. McCABE

A Brief History of the Federal Magistrate Judges Program

The federal Magistrate Judges system is one of the most successful judicial reforms ever undertaken in the federal courts. Once the Federal Magistrates Act was enacted in 1968, the federal judiciary rapidly implemented the legislation and established a nationwide system of new, upgraded judicial officers in every U.S. district court. It then methodically improved and enhanced the system over the course of the next several decades. As a result, today's Magistrate Judge system is an integral and highly effective component of the district courts.

As the 50th anniversary of the act approaches, it is appropriate to consider what has been accomplished by examining the history and development of the Magistrate Judges system, which can be divided conveniently into five phases:

- The Predecessor Commissioner System
- Enacting the Federal Magistrates Act of 1968
- Building a National System
- Fixing Deficiencies and Enhancing the System
- The System Today

The Predecessor Commissioner System

The antecedents of the federal Magistrate Judges system date far back to the early days of the republic and development of the commissioner system. In 1789, Congress created the first federal courts and authorized federal judges, and certain state

judicial officers, to order the arrest, detention, and release of federal criminal offenders.¹ Four years later, drawing on the English and colonial tradition of local magistrates and justices of the peace serving as committing officers, Congress authorized the new federal circuit courts to appoint "discreet persons learned in the law" to accept bail in federal criminal cases.²

These discreet persons were later called circuit court commissioners and given a host of additional duties throughout the 19th century, including the power to issue arrest and search warrants and to hold persons for trial. They were compensated for their services on a fee basis.³

In 1896, Congress reconstituted the commissioner system. It adopted the title U.S. Commissioner, established a four-year term of office, and provided for appointment and removal by the district courts rather than the circuit courts.⁴ No minimum qualifications for commissioners were specified and no limits imposed on the number of commissioners the courts could appoint. In addition, Congress created the first uniform, national fee schedule to compensate commissioners, fixing such fees as 75 cents for drawing a bail bond, 75 cents for issuing an arrest or search warrant, and 10 cents for administering an oath. Those fees stayed in effect for more than half a century.

Congress also established special commissioner positions for several national parks, beginning with a position for Yellowstone in 1894.⁵ The park commissioners could hear and determine petty offenses on designated federal territories, national parks, and roads. In 1940, Congress enacted general legislation authorizing all U.S. commissioners, if specially designated by their district courts, to try petty offenses occurring on property under the exclusive or concurrent jurisdiction of the federal government.⁶

Soon after the Administrative Office of the U.S. Courts was created, the Judicial Conference asked it to undertake a comprehensive study of the commissioner system.⁷ In its 1942 report, the office noted that judges and prosecutors were generally satisfied with the commissioners, but the system itself

had several problems that needed to be addressed.⁸ The greatest concern was that commissioner fees, not raised since 1896, were insufficient to attract able lawyers in many locations. The commissioners, moreover, had to bear the cost of all office supplies—even their forms and official seal. The report pointed out that fewer than half the commissioners nationally were lawyers, although most who were in large cities were members of the bar. In addition, there were far too many commissioners to handle the relevant workload.

The report concluded that commissioners should be compensated on a salary basis, if feasible, or that fees should be increased. Emphasizing that the commissioners' functions were legal in nature, the report emphasized the desirability of having the courts appoint lawyers to the positions.

A special Judicial Conference committee reviewed the report and generally approved its recommendations but concluded that a salary system was not practical in light of enormous workload differences among the commissioners. The conference adopted the report and approved a resolution urging District Judges to select lawyers as commissioners "where possible" and to reduce the overall number of commissioners.⁹

Fees were increased by legislation in 1946 and 1957, and commissioners were provided with some basic office supplies and a copy of the U.S. Code.¹⁰ Several proposals were made in the 1950s and 1960s to raise fees further and broaden commissioners' petty offense jurisdiction. But the recommendations were overtaken by a much larger debate over whether the system itself needed more fundamental structural changes.

In 1964, the Administrative Office was asked to draft legislation to create a new commissioner system, modeled largely on the system in place for referees in bankruptcy under the Referees Salary and Expense Act of 1946.¹¹ Its draft provided for a system of full-time commissioners, all of whom would be lawyers, and part-time deputy commissioners. The Judicial Conference would be authorized to determine the number of commissioners in each district and set the salaries of each position, relying on surveys conducted by the office.¹² Several of these features in modified form eventually made their way into the Federal Magistrates Act of 1968.

Enacting the Federal Magistrates Act of 1968

Sen. Joseph D. Tydings (D-MD) led the legislative efforts to reform or replace the commissioner system. He conducted extensive hearings in the 89th and 90th Congresses before the Senate judiciary subcommittee that he chaired. The first hearings were exploratory in nature, focusing on major criticisms of the commissioner system—the impropriety of a fee-based system for judicial officers, the lack of a requirement that commissioners be lawyers, the excessive number of commissioners, the part-time status of almost all the commissioners, and the lack of support services and legal guidance given the commissioners.¹³

Senate staff then prepared draft legislation to replace the commissioner system with an upgraded system of new federal judicial officers called U.S. Magistrates. Additional hearings were held, and Sen. Tydings introduced a revised bill early in the 90th Congress, incorporating many of the suggestions made. The bill, with further changes, passed and was signed into law as the Federal Magistrates Act on Oct. 17, 1968.

This legislation was designed to satisfy two principal goals:

- To replace the outdated commissioner system with a cadre of new, upgraded judicial officers; and
- To provide judicial relief to District Judges in handling their heavy caseloads.

In the words of the Senate Judiciary Committee report, the central purpose was "both to update and make more effective a system that has not been altered basically for over a century and to cull from the ever-growing workload of the U.S. district courts matters that are more desirably performed by a lower tier of judicial officers."¹⁴ The House Judiciary Committee report stated that the purpose was "to reform the first echelon of the Federal judiciary into an effective component of a modern scheme of justice."¹⁵

As noted above, the structure of the Magistrates system under the act was modeled to a large extent on the existing system for referees in bankruptcy. Through an interesting confluence of later events, the current statutory authority of Bankruptcy Judges is modeled in turn on 1976 and 1979 amendments to the Federal Magistrates Act.¹⁶

The key provisions of the Federal Magistrates Act of 1968 included:

- Authorizing the Judicial Conference, rather than individual courts or Congress, to determine the number, location, and salary of each Magistrate Judge position;
- Specifying a strong preference for a system of full-time Magistrates;
- Providing an eight-year term of office for full-time Magistrates and a four-year term for part-time Magistrates;
- Setting the maximum salaries at \$22,500 for full-time Magistrates and \$11,000 for part-time Magistrates;
- Placing all Magistrates under the government civil service retirement system;
- Authorizing the Judicial Conference to provide "secretarial and clerical assistance" to full-time Magistrates and reimburse part-time Magistrates for necessary staff and office expenses;¹⁷
- Requiring the Federal Judicial Center to educate Magistrates in their duties and the Administrative Office to provide them a legal manual; and
- Authorizing the Administrative Office to obtain appropriate federal space and facilities for Magistrates.

The act substantially expanded the duties of Magistrates over those exercised by the commissioners in several respects.

First, it extended to Magistrates all the powers and duties that had been conferred on the commissioners by law or the Federal Rules of Criminal Procedure.

Second, it expanded the criminal trial authority of Magistrates to include all minor offenses, whether committed on federal property or not. The term "minor offense" was broader than the term "petty offense," embracing all federal offenses for which the maximum penalty on conviction was not more than one year's imprisonment, a fine of \$1,000, or both.

Third, it authorized the district courts to assign Magistrates a range of judicial duties to assist District Judges in disposing of civil and criminal cases. Section 636(b) listed just three specific duties—serving as a special master in an appropriate civil action, assisting a District Judge in conducting pretrial or discovery proceedings in civil or criminal actions, and conducting a preliminary review of

applications for post-trial relief made by individuals convicted of criminal offenses to assist a District Judge in deciding whether there should be a hearing. But it also broadly authorized district courts to assign Magistrates “such additional duties as are not inconsistent with the Constitution and laws of the United States.” The clear legislative purpose was to encourage the district courts to experiment in assigning a wide range of judicial duties to Magistrates in both civil and criminal cases.¹⁸

Building a National System

The act required the Judicial Conference to implement its provisions on an expedited basis. In doing so, the conference relied on the guidance of its new Committee on the Implementation of the

positions, and 2 Clerk of Court-Magistrate positions. The Judicial Conference approved the positions,²⁰ but some Chief Circuit Judges found the results disappointing because district courts in their circuits had decided not to assign additional duties to their Magistrates. Therefore, Administrative Office staff resurveyed many districts, spoke further with the local judges, and described the various types of judicial duties that might be delegated effectively to Magistrates. Following those efforts, the committee recommended another 21 full-time Magistrate positions, and at its September 1970 session, the conference authorized a national complement of 82 full-time Magistrates, 449 part-time Magistrates, and 8 combined positions.²¹

Congress provided appropriations for the national system for the fiscal year beginning Oct. 1, 1970, and the Administrative Office

In the words of the Senate Judiciary Committee report, the central purpose of the Federal Magistrates Act of 1968 was “both to update and make more effective a system that has not been altered basically for over a century and to cull from the ever-growing workload of the U.S. district courts matters that are more desirably performed by a lower tier of judicial officers.”

Federal Magistrates Act, chaired at first by Judge William E. Doyle and then throughout the 1970s by Judge Charles M. Metzner.

The committee’s first order of business was to gather empirical data that it could use in assessing the number of positions needed across the country and to identify Magistrates’ support needs. Using existing appropriated funds, the committee established a pilot Magistrates program in five districts,¹⁹ and the first U.S. Magistrate took office in the Eastern District of Virginia on May 1, 1969. Judges on the committee personally visited each pilot court and filed reports on the operations of the new Magistrate system. They concluded that it was working well in general and that the Magistrates were gradually assuming new duties and beginning to have an impact on the work of the courts, particularly in reviewing prisoner petitions and, to a lesser extent, in conducting pretrial and discovery proceedings.

I was very fortunate to have been hired by the Administrative Office in July 1969, as the new system was just being implemented. The act required the office to complete an initial survey of all district courts within one year to determine the number of Magistrate positions needed in each. We reviewed every district in the country to assess local conditions and gather pertinent workload information. Most reviews included on-site visits, which imposed a truly grueling schedule on the participants. During the visits, we interviewed each Chief Judge, other judges, and the clerks of court, to elicit as much information as possible on how the courts would use their Magistrates and how many would be needed at each location.

All the courts were cordial and cooperative, and several were very enthusiastic about having Magistrates available to assist judges in handling their dockets. On the other hand, a large number of judges and courts had given little or no thought to what duties they would assign Magistrates other than the traditional commissioner duties. Clearly, substantial additional educational efforts would be needed.

Following the initial national survey, the Magistrates Committee recommended establishing 518 Magistrate positions nationally—61 full-time positions, 449 part-time positions, 8 Referee-Magistrate

instructed the district courts to proceed immediately with filling all the newly authorized positions. The first non-pilot-program Magistrates were appointed in December 1970, and by June 30, 1971, all districts in the country had converted to the Magistrate system, replacing all the U.S. commissioners and national park commissioners. Thus, the federal Magistrates system became a nationwide entity on July 1, 1971.

Meanwhile, the office, under the Magistrates Committee’s supervision, continued to build the infrastructure for the new system, including:

- Assigning a dedicated staff to support the committee and to serve the Magistrates (which became the Magistrates Division of the Administrative Office);
- Preparing model local rules to assist courts in assigning duties to Magistrates;
- Building a national statistical system to report on cases and proceedings conducted by Magistrates;
- Establishing a survey process for conducting future surveys of Magistrate positions;
- Providing Magistrates with necessary staff, law books, chambers, courtrooms, recording equipment, and supplies;
- Preparing a legal manual and an administrative manual for Magistrates;
- Assisting the Federal Judicial Center in developing training programs for Magistrates;
- Drafting new docket sheets, forms, and other materials for Magistrates;
- Drafting regulations to reimburse part-time Magistrates for their expenses;
- Drafting conflict of interest rules for part-time Magistrates; and
- Initiating a forfeiture of collateral system for petty offenses.²²

Fixing Deficiencies and Enhancing the System

It soon became evident that the 1968 legislation had serious

deficiencies. Moreover, there were other practical problems that needed to be addressed to make the Magistrate system truly effective nationally. The issues can be grouped broadly into three categories: (a) salary and benefits; (b) Magistrates' authority; and (c) acceptance of the program.

Salary and Benefits

The 1968 act set the maximum salary of a full-time Magistrate at \$22,500, the same salary as a referee in bankruptcy at the time. But an apparent drafting oversight and unfortunate timing prevented Magistrates from receiving the significant salary increase given to all other high-level government officials in late 1968. The Federal Salary Act of 1967 had established an ad hoc salary commission every four years to make recommendations to the President and Congress on the appropriate salaries for designated officials in all three branches of the government. Federal judges and referees were included in the increase, but not Magistrates because they did not exist when the Salary Act was passed and were not included in the salary commission's coverage. Moreover, the 1968 Federal Magistrates Act did not contain a specific reference to the Salary Act or otherwise provide for future salary adjustments.

Therefore, full-time Magistrates were stuck with a salary of \$22,500, while the salary of a referee rose from \$22,500 to \$30,000 and that of a District Judge from \$30,000 to \$40,000. The referees' salaries could have been raised as high as \$36,000 under the Salary Act, but the Judicial Conference chose to limit them to \$30,000. The conference has adhered consistently to the policy of maintaining parity in the salary and benefits of Magistrate Judges and Bankruptcy Judges, as the 1968 statute contemplated.²³ The denial of a higher salary created considerable hard feelings in the bankruptcy community, which were exacerbated further in the 1970s and early 1980s by serious legislative differences over the future status of the bankruptcy courts.

The Federal Magistrate Judges Association (then the National Council of U.S. Magistrates) worked with the Magistrates Committee and Administrative Office staff to secure legislation setting the salaries of Magistrates at the same level as those of referees and providing for periodic future salary adjustments. The bill proceeded well in the House, but an unexpected, last-minute floor amendment imposed a cap on the maximum salary of Magistrates at 75 percent of the salary of a District Judge. The legislation passed with the limitation attached, and the executive committee of the Judicial Conference quickly raised full-time Magistrate salaries to \$30,000.²⁴ It took another 26 years, though, before the salary legislation would be corrected.

This major legislative accomplishment took the combined, cooperative efforts of the committee, then under the chairmanship of Judge Otto R. Skopil, the Bankruptcy Committee, then chaired by Judge Morey L. Sear, the three private federal judge associations, and the Administrative Office. The legislation, finally enacted in 1988, fixed the salaries of Bankruptcy Judges and the maximum salaries for full-time Magistrate Judges at 92 percent of the salary of a District Judge.²⁵ The following year, the Ethics Reform Act of 1989 authorized a 25 percent salary increase for all judges, including Magistrate Judges, effective Jan. 1, 1991, coupled with limitations on their outside income, employment, and honoraria.²⁶

The statutory problem appeared to have been resolved. But a new and greater difficulty arose because Congress in later years

failed to honor the spirit and letter of the law and did not provide the regular annual cost-of-living adjustments that the law required. As a result, the salaries of judges and other high-level government officials deteriorated progressively in real value. Judicial salaries finally were partially restored more than 20 years later as the result of litigation.²⁷

Another, related accomplishment of the Judicial Conference committees, the judges' associations, and the Administrative Office was the enactment of a new retirement system in 1988. Under the old commissioner system, only those commissioners who earned more than \$3,000 in annual fees were entitled to coverage under the government retirement system. Only about 30 of the commissioners had qualified for the benefit.

The Federal Magistrates Act of 1968 made all Magistrates, like referees in bankruptcy, eligible to participate in the government's civil service retirement system. As a practical matter, though, most Magistrates and referees could earn only a small annuity because of the limited tenure of their judicial service compared to federal employees generally. Unlike career civil servants, judges normally join the bench later in life after a successful legal career. As a result, they are unable to accumulate enough years of federal service to earn an adequate annuity under the regular civil service retirement system.

The legislation established the new Judicial Retirement System, entitling Bankruptcy Judges or full-time Magistrate Judges retiring after age 65 with at least 14 years of service to receive an annuity equal to their salary at the time of leaving office. It also authorized the judges to participate in a survivors' annuity program.²⁸

Magistrates' Authority

The statutory authority provided to Magistrates in the 1968 act was both overly restrictive and overly broad. On the one hand, 28 U.S.C. § 636(b) was too detailed in limiting a Magistrate's authority in *habeas corpus* cases to a preliminary review to help a District Judge decide whether to hold a hearing. On the other, the elastic "additional duties" clause, authorizing district courts to assign Magistrates "any other duties not inconsistent with the Constitution and laws of the United States," was very broad and vague. The authority of Magistrates under the act quickly came under attack in litigation, and the Supreme Court had to intervene to resolve the uncertainties that developed.

The 1976 Legislation

In 1974, the Supreme Court, in *Wedding v. Wingo*,²⁹ invalidated a District Judge's delegation of an evidentiary hearing in a *habeas corpus* case because the 1968 statute and the Habeas Corpus Act only allowed a Magistrate to recommend that a District Judge conduct a hearing. In dissenting, Chief Justice Warren E. Burger objected that the decision was inconsistent with the expansive purpose of the Federal Magistrates Act. He recommended that Congress amend the act.³⁰ Two years later, the Court resolved a circuit split and held that it was permissible for a District Judge to "refer all Social Security benefit cases to United States [M]agistrates for preliminary review of the administrative record, oral argument, and preparation of a recommended decision."³¹

In light of the Chief Justice's invitation in *Wedding v. Wingo* and the prevailing uncertainty over a Magistrate's additional-duty authority, the Magistrates Committee concluded that it was essential to clar-

ify and expand the statute, at least regarding pretrial proceedings in civil and criminal cases. The committee decided to pursue legislation to recast 28 U.S.C. § 636(b) to permit Magistrates to conduct hearings in prisoner cases and handle a broad range of pretrial matters.³² Its proposal, approved by the Judicial Conference in March 1975, would allow Magistrates to handle any pretrial matter in the district court—(1) deciding with finality any matter that does not dispose of a civil case or claim (with a right of appeal to a District Judge) and (2) making a recommendation to a District Judge for the judge's disposition of any matter that would in fact dispose of a civil case or claim.³³

Senate counsel supported the proposal, but insisted as a matter of legislative drafting that the statute itemize each motion that a Magistrate could handle and specify in detail the procedural steps for processing motions and the parties' objections. The National Council of U.S. Magistrates invited the chairman of the Magistrates Committee, another committee member, and Senate counsel to its 1975 annual meeting. We all sat around a large table at a Colorado Springs hotel restaurant and discussed the details of the proposed statute. What emerged eventually was an agreement to allow Magistrates generally to decide all pretrial procedural and discovery motions with finality, but to list in the statute eight specific, *de facto* case-dispositive motions that Magistrates could hear but not decide.³⁴ With these eight motions, Magistrates could only file a report and recommendations regarding an appropriate disposition. A revised bill passed the Senate in February 1976.³⁵

A serious policy dispute arose over the appropriate scope of a District Judge's review of a Magistrate's report and recommendations on a dispositive motion. The Senate bill merely provided that a District Judge "may accept, reject, or modify," in whole or in part, a Magistrate's findings and recommendations. House staff, though, insisted as a constitutional matter on specifying a *de novo* review standard, essentially requiring a District Judge to rehear the motion anew. On the other hand, Senate counsel asserted that *de novo* review was unacceptable, simply did not work in the state courts, and would not survive in the bill. As a result, the impasse between two principled but diametrically opposed philosophical views on a key provision placed the success of the legislation in doubt.

Attempts at reconciliation eventually succeeded when, by chance, I discovered a recent decision of the Ninth Circuit in *Campbell v. United States District Court*,³⁶ in which the court of appeals had used the term "*de novo* determination," rather than "*de novo* review." The opinion held that the reviewing judge did not have to rehear all the evidence but could rely on the record developed by the Magistrate and make a *de novo* decision on that record. The judge could hear additional evidence if appropriate but was not required to do so.³⁷ The decision was brought to the attention of House and Senate staff, and they agreed to use the term "*de novo* determination" in § 636, rather than "*de novo* review." Appropriate language was added to the House report referring to *Campbell*.³⁸ The bill, with amendments, passed the House and was signed into law on Oct. 21, 1976.³⁹

The 1979 Legislation

The 1976 legislation solved most of the problems associated with the authority of Magistrates to handle pretrial matters. But jurisdictional uncertainty continued because about 30 district courts were using Magistrate Judges to conduct full civil trials on consent of the parties, relying largely on the general provision in the 1968 act

allowing a district court to refer "such additional duties as are not inconsistent with the Constitution and laws of the United States."

The Magistrates Committee decided to pursue additional legislation authorizing Magistrates explicitly to try and order final judgment in any civil case with the consent of the parties and the court. The legislation would also authorize Magistrates to try most federal criminal misdemeanors, rather than just "minor offenses." Magistrates, moreover, could try both civil and misdemeanor cases with a jury.

Coincidentally in 1977, the new Department of Justice Office for Improvements in the Administration of Justice proposed legislation authorizing Magistrates to try certain designated categories of civil cases, generally smaller federal benefit claims, and all criminal misdemeanors. Its bill would also require the Judicial Conference to issue regulations governing the selection of Magistrates to improve the quality of the bench.

We met with department staff to coordinate efforts because the conference's proposal was similar in many ways to the department's bill. But opposition had developed to the department's bill on the grounds that it would establish a separate, *de facto* federal small claims court and two different systems of federal civil justice. The conference proposal, on the other hand, emphasized that Magistrates were an integral part of the district courts and could—on consent—try any civil case or criminal misdemeanor filed in the court.

The Senate Judiciary subcommittee merged the department's bill with the Judicial Conference's proposal and made additional changes. During the Senate deliberations, serious concern arose over where an appeal should be taken from a judgment in a civil case decided by a Magistrate Judge. Several witnesses recommended that all appeals be taken directly to the court of appeals. But the department strongly favored limiting appeals exclusively to a District Judge.⁴⁰ As eventually enacted in 1979, the legislation allowed both appellate routes, but listed direct appeal to the court of appeals as the first option.⁴¹ The statute was later amended in 1996 to eliminate appeals to the district court.⁴²

The House Judiciary Committee expressed particular concern about "unevenness" in the competence of Magistrates and cited complaints that some courts had not opened up the selection process to all potential candidates and had selected insiders to Magistrate positions. The committee, therefore, added amendments to the bill specifying detailed legislative requirements for the merit selection of Magistrates.⁴³

The Magistrates Committee responded that the statute should leave the details of the selection process to Judicial Conference regulations. Administrative Office staff drafted comprehensive appointment (and reappointment) regulations that were approved as guidelines by the conference.⁴⁴ They reached an agreement to have the statute simply require that Magistrates be appointed and reappointed under regulations approved by the conference mandating (1) public notice of all vacancies and (2) selection of Magistrates by the district court from a list of candidates proposed by a merit selection panel. Provisions were also added to the bill urging the district courts to broaden their selection process by fully considering under-represented groups, such as women and minorities, and requiring that the Administrative Office provide annual reports to Congress on the qualifications of the persons selected.

The bill passed the full House of Representatives in amended

form in October 1978 but did not become law that year because a controversial, extraneous provision was added on the House floor to eliminate diversity jurisdiction in the federal courts. The two chambers could not agree on the diversity provision, and the bill failed in the 95th Congress. It was introduced again in 1979 without the diversity proposal, passed in both the House and the Senate, reconciled in Congressional conference committee, and signed into law on Oct. 10, 1979.

Other Legislation

In 1989, the Magistrates Committee informed the *ad hoc* Federal Courts Study Committee⁴⁵ that the magistrates system was working well and did not need major changes. But it did recommend provisions to fine-tune it, including: (1) giving Magistrate Judges limited authority to issue contempt orders for acts committed in their presence and (2) eliminating the requirement of the defendant's consent in petty offense cases. The committee's report did not address these proposals, but both were eventually enacted into law.

The Judicial Conference's 1995 *Long-Range Plan for the Federal Judiciary* suggested ways in which the Magistrate Judges system might be improved, including: (1) encouraging more extensive use of Magistrate Judges; (2) giving Magistrate Judges limited statutory contempt authority; (3) having all appeals from final Magistrate-Judge decisions in civil consent cases go directly to the courts of appeals; (4) adding a Magistrate Judge to the board of the Federal Judicial Center; and (5) including Magistrate Judges in all levels of judicial governance.

In 1996, the option of an appeal from a final judgment of a Magistrate Judge in a civil consent case to the district court was eliminated, and all appeals were directed to the court of appeals.⁴⁶ A Magistrate Judge was added to the board of the Federal Judicial Center by statute in 1996.⁴⁷ The requirement of the defendant's consent to disposition by a Magistrate Judge in a petty offense case was limited in 1996⁴⁸ and eliminated completely in 2000.⁴⁹ And Magistrate Judges were given specific statutory contempt authority in 2000.⁵⁰

and appreciation of the system in some courts and opposition to assigning Magistrates a broad range of duties or civil-consent authority. Several districts did not use their Magistrates effectively, some did not address Magistrates as "judge," and a few did not let them use the judges' private elevators or lunchrooms or wear judicial robes. Magistrates were not invited to the annual circuit Judicial Conferences and did not sit on judicial conference committees or local court committees. The passage of time resolved most of these difficulties, as Magistrate Judges progressively earned the respect of their courts and the bar.

In 1976, the first two Magistrates were appointed as Article III Judges—Gerard L. Goettel in New York and Morey L. Sear in Louisiana. As of Jan. 1, 2014, 157 full-time Magistrate Judges had been appointed as Article III Judges, and many others had been appointed as Bankruptcy Judges, state court judges, and state Supreme Court justices.

In 1980, Chief Justice Burger appointed the first Magistrate to a Judicial Conference committee—Paul J. Komives to the Magistrates Committee. Today 17 Magistrate Judges serve on conference committees, and a nonvoting Magistrate Judge observer and Bankruptcy Judge observer attend sessions of the conference. Several Magistrate Judges who later became Article III Judges have served as chairs of conference committees and as members of the conference itself and its executive committee.

In 1983, the General Accounting Office (GAO) conducted a review of the Magistrates system and filed a positive report noting that Magistrates "have become an important and integral part of the federal judicial system," were being used effectively in several districts, and "had made a substantial contribution to the movement of cases in Federal district courts, which is demonstrated by the dramatic increase in district court production [from 1970 to 1982]."⁵¹ But GAO concluded that Magistrates should be used more widely by the courts, and it recommended that the Judicial Conference disseminate more information about their effective use and urge the courts to assign them more duties.

In 1990, the title of U.S. Magistrate was changed after years of

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Acceptance of the Program

At the outset, the low salary of a Magistrate position, the lack of a true judicial retirement system, the absence of the title "judge," unclear statutory authority, and general uncertainty about the system among both bench and bar impeded the national development of the Magistrates system.

Despite these problems, several district courts took immediate advantage of the new Magistrate system in the 1970s and began assigning Magistrates a broad range of judicial duties. Many were able to appoint excellent Magistrates, including respected practicing attorneys and state judges, and used them heavily to supervise civil and criminal discovery, settle cases, and try civil cases, even before the 1979 legislation authorized the practice.

On the other hand, there was a considerable lack of knowledge

debate. By that time, the titles of virtually all other non-Article III federal judicial officers had been changed. Referees, trial commissioners, and executive branch hearing examiners had all acquired the statutory title "judge." But there was considerable debate over an appropriate new title for Magistrates. Many suggestions were offered, including Assistant U.S. District Judge, Associate Judge, and Magistrate Judge. The conference did not endorse a change in title, but the Federal Magistrate Judges Association, with strong support in Congress, succeeded in making the statutory change to U.S. Magistrate Judge.⁵² This immediately brought a great deal of prestige to the position and clearly emphasized its judicial role.

In 2008, Magistrate Judges were formally added to the statutory list of judges summoned to attend annual circuit conferences.⁵³ All but two circuits now invite a Magistrate Judge and Bankruptcy

Judge to participate in circuit judicial council proceedings, and Magistrate Judges commonly serve as members or chairs of many local district court committees.

The System Today

The Federal Magistrates Act of 1968 created a strong foundation and framework for the federal Magistrate Judges system. But it has taken more than 40 years of statutory changes and internal judiciary actions to transform the system into what it is today.

First, the office of Magistrate Judge itself has evolved greatly. The exceptionally high quality of appointments today is due in large part to a much better salary, a sound judicial retirement system, and addition of the title “judge.” The strength of the bench can also be attributed to the rigorous merit-selection process mandated by the 1979 legislation, which requires courts to reach out for qualified candidates to fill Magistrate Judge positions. Most importantly, the lure of a Magistrate Judge position derives from the meaningful judicial duties assigned by most district courts and the enhanced status of Magistrate Judges among the bench and bar. Potential candidates, moreover, are surely aware that many Magistrate Judges have been rewarded by eventual promotion to an Article III judgeship.

Second, the system is now very largely a system of full-time judges. The Judicial Conference’s initial national allocation to the district courts in 1970 was for 82 full-time Magistrate Judge positions and 449 part-time positions. The numbers today, though, are reversed. On Jan. 1, 2014, there were 531 full-time positions and only 40 part-time positions. The slow but steady increase in the number of full-time positions over the years was partly the result of increased district court caseloads, but more of the increasing delegation of a broad range of additional judicial duties by the district courts.

Third, under the 1968 act, the Judicial Conference, rather than Congress, authorizes Magistrate Judge positions. It has done so very deliberatively over the past four decades. The conference and the Magistrate Judges Committee have always been cognizant of the strong legislative preference for a system of full-time judges, but they have demanded a strong workload justification and a district court’s commitment to effective use of its Magistrate Judges before authorizing additional positions.

After years of steady growth, however, the number of positions has not grown in the past few years. This is likely due to two factors. First, the Magistrate Judge system may have matured fully as a national program and reached its natural size—unless, of course, major caseload increases occur in the future. Second, the perilous financial state of the federal judiciary—resulting from several years of inadequate appropriations and the damaging effects of a Congressional sequester—has caused major cutbacks in court staff, operating expenses, and federal defender services.

The prevailing budgetary crisis has led the Magistrate Judges Committee to be particularly demanding in considering requests for additional Magistrate Judge positions. The committee, moreover, has rigorously reviewed all vacancies in existing positions before allowing courts to fill them. As a result, several vacancies have been placed on hold. The uncertainty over the judicial authority of Magistrate Judges has largely been resolved.⁵⁴ In short, district courts may delegate Magistrate Judges to:

- Try and dispose of any civil case in the court on consent of the parties;

- Try and dispose of any criminal misdemeanor in the court (with the defendant’s consent required only for misdemeanors above the level of a petty offense);
- Conduct virtually all preliminary proceedings in felony criminal cases; and
- Preside over virtually all pretrial proceedings authorized by a District Judge or court rule in civil and criminal cases.

The enormous contributions of Magistrate Judges to the work of the district courts is evidenced by statistics produced by the Administrative Office. During the statistical year ended Sept. 30, 2013, Magistrate Judges disposed of 1,357,217 cases and proceedings nationally, including:

Entire cases disposed of:

Criminal misdemeanor cases:	124,703
Civil cases decided on consent:	15,804
Prisoner cases and hearings:	26,666
Social security appeals:	4,977
Pretrial motions, conferences, and hearings:	
In criminal cases:	210,052
In civil cases:	369,264
Preliminary proceedings in felony cases:	377,179
Miscellaneous matters:	228,572 ⁵⁵

Fourth, a particular genius of the Federal Magistrates Act is that it does not mandate the assignment of particular duties to Magistrate Judges. Instead, it lets each district court determine what duties will best meet the needs of the court and its judges. Most districts now use their Magistrate Judges broadly and extensively, but there is still considerable disparity in usage among the courts because of the considerable variety in workloads and local conditions. Some courts do not delegate certain types of duties to Magistrate Judges because they do not see a need to do so or because the judges prefer to handle pretrial matters and trials themselves, rather than delegate them to a judicial alter ego.

Traditional case management teaching encourages early judicial involvement and active management of a case. But there are differences of opinion on how best to accomplish that objective. Some District Judges believe that they personally must assert active hands-on control of a case at the outset. Others, however, routinely and effectively assign initial pretrial conferences, case scheduling, motions, discovery disputes, and settlement efforts to Magistrate Judges, especially in complicated cases and cases involving electronically stored information. The Federal Magistrates Act was designed to be flexible and accommodate these variations.

Fifth, the central challenge for the judiciary now is to achieve the wisest and most effective use of court resources of all types, including Magistrate Judges. To that end, the Magistrate Judges Division of the Administrative Office compiled an inventory of Magistrate duties and a case law digest to assist the courts. The Magistrate Judges Committee issues a set of common-sense *Suggestions for Utilization of Magistrate Judges*, drawn from its many years of closely observing the use of Magistrate Judges in all districts. The suggestions emphasize that there is no single best way to use Magistrate Judges, but they offer a set of “lessons learned” on the most effective and efficient ways to delegate duties.

They encourage the district courts to:

- Make decisions regarding Magistrate Judge utilization on a court-wide basis;
- Use Magistrate Judges as generalists rather than specialists;
- Establish a preference for assigning entire cases or entire phases of cases to Magistrate Judges rather than piecemeal duties in a case;
- Encourage litigants in civil cases to consent to a Magistrate Judge's final decisional authority;
- Limit referrals of case-dispositive motions, which require written reports and recommendations and potential duplication of judicial efforts;
- Distribute assignments to Magistrate Judges within a district randomly and evenly;
- Establish a system for automatic, rather than *ad hoc*, assignment of cases to Magistrate Judges;
- Consider whether specific matters may be more appropriately or efficiently handled by a District Judge;
- Avoid giving assignments that are more appropriately performed by law clerks;
- Ensure that Magistrate Judges have broad, meaningful participation in court-governance activities; and
- Educate counsel and litigants on the role and professional qualifications of Magistrate Judges.

Conclusion

The federal Magistrate Judges system has clearly come a long way since enactment of the Federal Magistrates Act in 1968. Many important and beneficial changes have been made in the statute to expand Magistrate Judge authority, install a strong merit-selection process, improve pay and benefits, and change the title of the office. The judiciary has also initiated more than 40 years of internal operational improvements. The Judicial Conference, the Magistrate Judges committee, and the Administrative Office continue to closely monitor all aspects of the Magistrate Judges system, including the authorization of positions, the filling of vacancies, the utilization of Magistrate Judges in each court, and all the costs associated with the program.

Magistrate Judges today are both an integral and indispensable component of the federal district courts. They have no original jurisdiction of their own but exercise the jurisdiction of the district court itself. Their duties are delegated by the court under authority of the 1968 act, as amended—which gives each court great flexibility to address its own particular workload needs. The great majority of district courts today use their Magistrate Judges effectively and extensively, and the remaining courts that delegate less are challenged on a regular basis to evaluate and expand their usage. In summary, the Magistrate Judge system has surely lived up to the twin purposes of “reform[ing] the first echelon of the Federal judiciary into an effective component of a modern scheme of justice” and providing the district courts with an efficient supplemental judicial resource to assist in expediting their workload.⁵⁶ ©



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Endnotes

¹Judiciary Act of 1789, ch. 20, § 33, 1 Stat. 91.

²Act of March 2, 1793, ch. 22, § 4, 1 Stat. 334. The requirement that they be learned in the law appears to have been abandoned in 1812. Act of Feb. 20, 1812, ch. 25, § 25, 2 Stat. 679. It was not restored until the commissioner system was replaced a century and a half later by the Federal Magistrates Act.

³Commissioners received fees authorized by state law. Federal laws also provided fees for designated services. The infamous Fugitive Slave Act of 1850, for example, specified that commissioners would receive a fee of \$10 if a slave were returned and \$5 if not. Act of Sept. 18, 1850, ch. 60, § 8, 9 Stat. 464.

⁴Act of May 28, 1896, ch. 252, §§ 19, 21, 29 Stat. 184.

⁵Act of May 7, 1894, ch. 72, §§ 5, 7, 28 Stat. 74. The national park commissioners were paid a salary in addition to fees.

⁶Act of Oct. 9, 1940, ch. 785, 54 Stat. 1058.

⁷JCUS-SEP 41, p. 12.

⁸*U.S. Commissioners, A Report to the Judicial Conference by the Administrative Office of the U.S. Courts*, September 1942, reprinted in *U.S. Commissioner System: Hearings Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., Part 2, December 14-15, 1965, pp. 53-67.

⁹JCUS-SEP 43, pp. 11-14. The conference also endorsed a procedures manual, prepared by the special committee, instructing commissioners on how to perform their duties. The Administrative Office later revised the manual and supplemented it from time to time with bulletins informing commissioners about new rules and legislative changes.

¹⁰Act of Aug. 1, 1946, ch. 721, 60 Stat. 752; Act of Sept. 2, 1957, Pub. L. No. 85-276; 71 Stat. 600 (1957).

¹¹Act of June 28, 1946, ch. 512, § 34, 60 Stat. 324 (1946).

¹²See *Senate Hearings*, *supra* note 9, at pp. 113-115.

¹³*U.S. Commissioner System: Hearings Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 89th Cong., 1st Sess., Part 1, (Oct. 13, 1965).

¹⁴S. REP. No. 371, 90th Cong., 1st Sess. 9 (1967).

¹⁵H.R. REP. No. 1629, 90th Cong., 2d Sess., 11 (1968).

¹⁶Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 336 (1984). The distinction between bankruptcy core proceedings and non-core proceedings under 28 U.S.C. § 157(c) mirrors that between non-dispositive and dispositive motions under 28 U.S.C. § 636(b). Non-Article III Bankruptcy Judges or Magistrate Judges may decide with finality a core proceeding or non-dispositive motion but may only hear a non-core proceeding or dispositive motion and submit findings and a recommended disposition to a District Judge. With litigant consent, though, they may dispose of non-core proceedings and dispositive motions.

¹⁷Many Magistrates used a staff support position to hire a recent

graduate to perform law clerk duties. Law clerks were officially authorized by statute in 1979.

¹⁸See S. REP. NO. 371, 90th Cong., 1st Sess. 25 (1967). See also H. R. REP. NO. 1629, 90th Cong., 2d Sess. 19 (1968).

¹⁹The District of Columbia, the Eastern District of Virginia, the District of New Jersey, the District of Kansas, and the Southern District of California.

²⁰JCUS-MAR 70, pp. 30, 39-46.

²¹JCUS-SEP 70, pp. 67-70.

²²In addition, the Supreme Court promulgated Rules of Procedure to Govern the Trial of Minor Offenses superseding the rules governing petty offenses before commissioners. The rules, effective in 1969, were incorporated in 1990 into the Federal Rules of Criminal Procedure, mostly in new FED. R. CRIM. P. 58.

²³In 1987, for example, the Judicial Conference reaffirmed its long-standing policy of maintaining parity between Bankruptcy Judges and full-time Magistrates and adopted a standing resolution extending to full-time Magistrate Judges any future increases authorized by statute for Bankruptcy Judges. JCUS-MAR 87, p. 32.

²⁴Pub. L. No. 92-428, 86 Stat. 721 (1972); JCUS-OCT 72, pp. 58-62.

²⁵Judiciary Appropriations Act of 1988, Pub. L. No. 100-202, Title IV, § 408, 101 Stat. 1329-26 and 27 (Dec. 22, 1987).

²⁶Pub. L. No. 101-194, 103 Stat. 1716 (1989).

²⁷See *Beer v. United States*, 696 F.3d 1174 (Fed. Cir. 2012), cert. denied, 133 S. Ct. 1997 (2013) and collateral judicial-salary cases.

²⁸Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Pub. L. No. 100-659, 102 Stat. 3918.

²⁹418 U.S. 461 (1974).

³⁰418 U.S. at 487.

³¹*Mathews v. Weber*, 423 U.S. 261, 263 (1976).

³²In 1974, Judge Charles Metzner, the committee chairman, another District Judge, three Magistrates, and the director of the administrative office visited the Queen's Bench Division of the High Court of Justice in London. They reported that masters handled most matters in civil cases for the judges, and U.S. Magistrates could be used in the district courts to perform similar functions. See *Report of the Committee to Study the Role of Masters in the English Judicial System* (Federal Judicial Center 1974), reprinted in *Magistrate Act of 1977: Hearings Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess., pp. 47-61 (1977).

³³JCUS-MAR 75, pp. 31-32.

³⁴Motions for summary judgment, dismissal for failure to state a claim upon which relief may be granted, judgment on the pleadings, involuntary dismissal for failure to comply with a court order, injunctive relief, certification of a class action, suppression of evidence in a criminal case, and dismissal by the defendant of an indictment or information.

³⁵S. REP. NO. 94-625, 94th Conf., 2d Sess. (1976).

³⁶501 F.2d 196 (9th Cir.), cert. denied, 419 U.S. 879 (1974).

³⁷In *United States v. Raddatz*, 447 U.S. 663, 675-76, the Supreme Court explained that the 1976 revision of 28 U.S.C. § 636(b)(1)(B) had provided for a *de novo* determination, rather than a *de novo* hearing. As a result, a District Judge does not have to hold a new hearing and has discretion either to accept the evidence presented before the Magistrate or hear additional evidence.

³⁸It explained that the District Judge would not have "to actually conduct a new hearing on contested issues." Rather, the judge, on application, would consider the record developed before the Magistrate and make his or her determination on the basis of that record. The judge could modify or reject the Magistrate's findings and take additional evidence. H. R. REP. NO. 94-1609, 94th Cong., 2d Sess. 3 (1976).

³⁹Pub. L. No. 944-577, 90 Stat. 2729 (1976).

⁴⁰See, e.g., the testimony and statement of Attorney General Griffin B. Bell, *Senate Hearings*, supra note 22, pp. 152-159, 162-163. The Judicial Conference approved the legislation at its September 1977 and March 1978 meetings, but it, too, opposed the direct appeal provision. JCUS-SEP 77, pp. 62-63; JCUS-MAR 78, pp. 16-17.

⁴¹See S. REP. NO. 96-322, 96th Cong., 1st Sess. 8 (1979) (Congressional conference committee report).

⁴²See *infra* note 47.

⁴³H. R. REP. NO. 95-1364, 95th Cong., 2d Sess. 17-18 (1978). See also H. R. REP. NO. 96-287, 96th Cong., 1st Sess. 14-16 (1979).

⁴⁴JCUS-MAR 78, p. 17.

⁴⁵The committee, established as an *ad hoc* committee of the Judicial Conference, was created to recommend statutory changes that could improve the federal court system. Federal Courts Study Act, Pub. L. No. 100-702, 102 Stat. 4644 (1988).

⁴⁶Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 207, 110 Stat. 3847 (1996).

⁴⁷*Id.*, § 601.

⁴⁸*Id.*, § 202.

⁴⁹Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, § 203(b), 114 Stat. 2410 (2000).

⁵⁰*Id.*, §§ 202-203.

⁵¹*Potential Benefits of Federal Magistrates System Can Be Better Realized*, pp. i and 6, GAO GGD-84-46 (July 8, 1983).

⁵²Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, § 321 (1990). The conference promptly changed the name of its committee to the Committee on the Administration of the Magistrate Judges System.

⁵³Judicial Administration and Technical Amendments Act of 2008, Pub. L. No. 110-406, § 9, 122 Stat. 4291 (2008).

⁵⁴Every circuit that has addressed the matter has concluded that the statutory authority of Magistrate Judges to order final judgment in civil cases on consent of the litigants is constitutional. Moreover, the Supreme Court in *Roell v. Withrow*, 538 U.S. 580 (2003) held that consent to disposition could be inferred from a litigant's conduct in certain circumstances. On Jan. 14, 2014, the Court heard oral arguments in *Executive Benefits Ins. Agency v. Arkison*, docket 12-1200, testing the authority of a non-Article III Bankruptcy Judge to dispose of an Article III claim on consent of the litigants. The decision in the case may impact the future of the civil-consent authority of Magistrate Judges.

⁵⁵Numbers adapted from Table S-17, *Matters Disposed of by U.S. Magistrate Judges for the 10-year Period Ended Sept. 30, 2013*, Administrative Office of the U.S. Courts.

⁵⁶H. R. REP. NO. 1629, 90th Cong., 2d Sess. 11 (1968) and S. REP. NO. 371, 90th Cong., 1st Sess. 9 (1967).