

MEASURED PROGRESS: THE EVOLUTION AND ADMINISTRATION OF THE FEDERAL MAGISTRATE JUDGES SYSTEM

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INTRODUCTION

The Federal Magistrates Act of 1968 (Federal Magistrates Act)¹ represented the culmination of years of joint effort by Congress and the federal judiciary to improve the quality of justice and to expedite the disposition of the growing caseloads of the federal courts.² The Act built upon and superseded the 175-year-old United States commissioner system³ and created a unique corps of judicial officers, the United States magistrate judges.⁴

The evolution of the magistrate judges system since 1968 shows the federal judiciary's capacity to address the growing and increasingly complex civil and criminal caseloads that have confronted the federal courts. The development of the magistrate judges system would not have been possible without the mutual efforts of Congress and the federal judiciary. Those efforts have established a statutory framework that has allowed for the considered growth of the magistrate judges system to augment the United States district courts. The system's growth also demonstrates the ability of the federal judiciary to nurture and to supervise the development of a valuable new judicial resource within its governing structure. That structure consists of the Judicial Conference of the United States, the judicial councils of the circuits, and the United States district courts, with administrative, legal, and program support services provided by the Administrative Office of the United States Courts. Within this framework, the success of the magistrate judges system must be acknowledged as the product, in large part, of the efforts of the district judges and magistrate judges

1. Pub. L. No. 90-578, 82 Stat. 1107 (1968) (codified as amended at 28 U.S.C. §§ 631-639 and 18 U.S.C. §§ 3401, 3402, 3060 (1988)).

2. See MAGISTRATE JUDGES DIV., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, LEGAL MANUAL FOR UNITED STATES MAGISTRATE JUDGES ch. 2 (*History of the Magistrate Judges System*) (1993) [hereinafter LEGAL MANUAL] (providing comprehensive legislative history); Peter G. McCabe, *The Federal Magistrate Act of 1979*, 16 HARV. J. ON LEGIS. 343 (1979).

3. See McCabe, *supra* note 2, at 345 (describing U.S. commissioner system).

4. Until December 1, 1990, United States magistrate judges were known as United States magistrates. Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 321, 104 Stat. 5089, 5117 (codified at 28 U.S.C. § 631 note). References in this Article to the judicial office of the United States magistrate judge prior to December 1, 1990, will use the title United States magistrate.

who labor to provide an accessible forum in which litigants can receive a fair, inexpensive, and expeditious resolution of their disputes.

Numerous law review articles have chronicled the history of the magistrate judges system⁵ and a significant body of case law⁶ has developed to address issues relating to both the jurisdiction and authority of United States magistrate judges. One perspective on the evolution of the magistrate judges system that has received less attention, however, is that of those responsible for the administration of the system. A variety of reports and studies of the federal judiciary, produced at the direction of the Judicial Conference of the United States and Congress during the past fifteen years, as well as recent amendments to the Federal Rules of Civil and Criminal Procedure, reflect that perspective. The Long Range Plan for the Magistrate Judges System further reveals changes in that perspective.⁷ A review of some of those resources provides an interesting view of the development of the magistrate judges system as well as valuable insight into the future of the system.

The Federal Magistrates Act of 1968 gave the Judicial Conference of the United States responsibility for administering the magistrates system, including determining the number of magistrates, as well as the type, location, and salary of each magistrate position.⁸ When the magistrates system commenced nationwide operation in July 1971, it consisted of 82 full-time magistrates, 449 part-time magistrates, and 11 combination referees in bankruptcy/magistrates and clerk/magistrates.⁹ These magistrates were responsible for a larger share of the workload of the federal courts than the 700 U.S. commissioners¹⁰ they replaced.

The original Federal Magistrates Act vested United States magistrates with authority to perform three basic categories of judicial duties: (1) all the powers and duties formerly exercised by United

5. See, e.g., Joseph D. Gallagher, *An Expanding Civil Role for United States Magistrates*, 26 AM. U. L. REV. 66 (1976); Peter G. McCabe, *The Federal Magistrate Act of 1979*, 16 HARV. J. ON LEGIS. 343 (1979); Linda J. Silberman, *Master and Magistrates, Part II: The American Analogue*, 50 N.Y.U. L. REV. 1297 (1975); Joseph F. Spaniol, Jr., *The Federal Magistrates Act: History and Development*, 1974 ARIZ. ST. L.J. 565 (1974).

6. See LEGAL MANUAL, *supra* note 2, at ch. 3 (*Jurisdiction of United States Magistrate Judges*).

7. COMMITTEE ON THE ADMIN. OF THE MAGISTRATE JUDGES SYS., JUDICIAL CONFERENCE OF THE U.S., LONG RANGE PLAN FOR THE MAGISTRATE JUDGES SYSTEM (June 1993, amended Dec. 1993, & Supp. June 1994) [hereinafter MAGISTRATE JUDGES PLAN].

8. 28 U.S.C. § 633 (1988 & Supp. V 1993).

9. McCabe, *supra* note 2, at 350-51 (referring to referees in bankruptcy as "bankruptcy judges").

10. McCabe, *supra* note 2, at 351.

States commissioners; (2) the trial and disposition of "minor" criminal cases; and (3) "such additional duties as are not inconsistent with the Constitution and laws of the United States," including pretrial duties in civil and criminal cases, review of applications for post-trial relief in criminal cases, and services as a special master.¹¹ In 1976, amendments to the Federal Magistrates Act¹² clarified and expanded the authority of magistrates to assist district judges with all aspects of pretrial case management.¹³ In 1979, further amendments to the Federal Magistrates Act specifically: (1) authorized magistrates to try any civil case upon consent of the parties and to order the entry of final judgment; (2) expanded the trial jurisdiction of magistrates to all federal misdemeanors; and (3) provided that all magistrates be selected and appointed in accordance with regulations promulgated by the Judicial Conference.¹⁴ As required by the statute,¹⁵ the regulations provide for public notice of magistrate vacancies and for the establishment of citizen merit selection panels to screen applicants and to recommend candidates for appointment by the district courts.¹⁶

From its inception, the magistrates system has evolved to meet the needs of the federal judiciary, while reflecting the growing confidence of federal judges, the bar, and the general public in its effectiveness. That confidence is illustrated by the fact that after more than twenty years of experience with the system, the title of United States magistrate was changed by statute to "United States magistrate judge," to reflect more accurately the responsibilities and duties of the office.¹⁷

11. See Federal Magistrates Act of 1968, Pub. L. No. 90-578, 82 Stat. 1107, 1113 (codified as amended at 28 U.S.C. § 636 (1988 & Supp. V 1993)).

12. Act of Oct. 21, 1976, Pub. L. No. 94-577, 90 Stat. 2729 (codified as amended at 28 U.S.C. § 636(b) (1988)).

13. McCabe, *supra* note 2, at 351-55.

14. Federal Magistrate Act of 1979, Pub. L. No. 96-82, 93 Stat. 643 (codified as amended at 18 U.S.C. § 3401 and 28 U.S.C. §§ 631, 636 (1988 & Supp. V 1993)).

15. See 28 U.S.C. § 631(b)(5).

16. Regulations for the selection, appointment, and reappointment of magistrates were promulgated by the Judicial Conference on March 6, 1980, and have been in effect since April 5, 1980. JUDICIAL CONFERENCE OF THE U.S., REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ESTABLISHING STANDARDS AND PROCEDURES FOR THE APPOINTMENT AND REAPPOINTMENT OF UNITED STATES MAGISTRATE JUDGES (1980) (amended 1981, 1982, 1986, 1992), reprinted in ADMINISTRATIVE OFFICE OF THE U.S. COURTS, THE SELECTION AND APPOINTMENT OF UNITED STATES MAGISTRATE JUDGES, at H-1 to H-7 (1995).

17. H.R. REP. NO. 734, 101st Cong., 2d Sess. 31 (1990); see Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 321, 104 Stat. 5089, 5117 (codified at 28 U.S.C. § 631 note (1988 & Supp. V 1993)) (establishing provision to change official name); see also *supra* note 4 and accompanying text (discussing change of magistrate's title).

I. ADMINISTRATION OF THE FEDERAL MAGISTRATE JUDGES SYSTEM

Consideration of the administration of the magistrate judges system requires an understanding of the administrative structure of the federal courts.

A. *Judicial Conference of the United States*

The Judicial Conference of the United States (Judicial Conference or Conference) is the policymaking body of the federal judiciary.¹⁸ The Chief Justice of the United States is the presiding officer of the Judicial Conference, which is also composed of the chief judge of each judicial circuit, the chief judge of the Court of International Trade, and one district judge from each judicial circuit.¹⁹ The Judicial Conference convenes twice annually and an Executive Committee acts on behalf of the Conference in emergency situations between sessions.²⁰

Although the Judicial Conference does not have direct administrative authority over the individual courts, it has general responsibility for establishing policies for the federal judiciary, for recommending legislation, for approving annual budget estimates for the courts, for reviewing rules of practice, and for otherwise supervising the administration of the courts.²¹ The Judicial Conference operates through committees established for the various functional and program areas of the judiciary. The Chief Justice appoints all Judicial Conference committee chairs and members.²²

Subject to the appropriation of funds by Congress, the Judicial Conference determines the number, locations, and salaries of all magistrate judge positions.²³ The Conference also supervises and directs the administration of the magistrate judges system by the Director of the Administrative Office of the United States Courts.²⁴ The Conference exercises its responsibilities with regard to United

18. See 28 U.S.C. § 331 (1988 & Supp. V 1993) (describing duties of Conference *inter alia* as studying court system and making recommendations for its improvement).

19. *Id.*

20. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 57-58 (1987) [hereinafter 1987 JUDICIAL CONFERENCE REPORTS]; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS: A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY 6 (1994) [hereinafter A TRADITION OF SERVICE].

21. 28 U.S.C. §§ 331, 605.

22. See 1987 JUDICIAL CONFERENCE REPORTS, *supra* note 20, at 58; A TRADITION OF SERVICE, *supra* note 20, at 6; see also 28 U.S.C. § 331 (1988 & Supp. V 1993).

23. 28 U.S.C. § 633(b) (1988).

24. *Id.* § 604(d).

States magistrate judges through its Committee on the Administration of the Magistrate Judges System (Magistrate Judges Committee or Committee).²⁵ The Committee is composed of twelve Article III judges—one from each of the regional federal circuits and three United States magistrate judges. The Committee meets twice a year, and its staff and counsel functions are performed by the Magistrate Judges Division of the Administrative Office of the United States Courts.²⁶

B. *Administrative Office of the United States Courts*

The evolution of the magistrate judges system over the past ten years owes much to the leadership of L. Ralph Meham, who has served as Director of the Administrative Office of the United States Courts since his appointment on July 15, 1985 by the Chief Justice of the United States.

The Administrative Office of the United States Courts is the administrative arm of the federal judiciary. One of its primary responsibilities is providing support to the Judicial Conference and its committees.²⁷ The Director of the Administrative Office is the administrative officer of the federal courts,²⁸ secretary to the Judicial Conference,²⁹ ex officio member of the Executive Committee of the Judicial Conference,³⁰ and ex officio member of the Board of the Federal Judicial Center.³¹

Under the "supervision and direction" of the Judicial Conference, the Director supervises all administrative matters relating to the offices of United States magistrate judges.³² Acting through the Magistrate

25. This Committee was originally called the Committee to Implement the Federal Magistrates System. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 29 (1969). In 1972, its name was changed by the Judicial Conference to the Committee on the Administration of the Federal Magistrates System. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 18 (1972). On June 4, 1991, the Executive Committee of the Judicial Conference changed the name to the Committee on the Administration of the Magistrate Judges System in order to reflect the statutory change in title. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 50 (1991) [hereinafter 1991 JUDICIAL CONFERENCE REPORTS]. See *supra* note 4 and accompanying text (discussing statutory change in title).

26. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1 GUIDE TO JUDICIARY POLICIES AND PROCEDURES (A.O.), ch. 11, 93 (mission statement of Magistrate Judges Division) [hereinafter GUIDE TO JUDICIARY].

27. See A TRADITION OF SERVICE, *supra* note 20, at 6.

28. See 28 U.S.C. § 604(a), (d) (1988 & Supp. V 1993).

29. See GUIDE TO JUDICIARY, *supra* note 26, at 13.

30. GUIDE TO JUDICIARY, *supra* note 26, at 13.

31. 28 U.S.C. § 621(a)(3) (1988).

32. 28 U.S.C. § 604(d), (e) (1988 & Supp. V 1993).

Judges Division of the Administrative Office,³³ the Director is responsible for the daily administration and support of the magistrate judges system, serving as a clearinghouse for information on magistrate judges and the magistrate judges system, preparing and issuing legal and administrative manuals for magistrate judges, and providing management and procedural assistance to district courts on magistrate judge issues.³⁴ The Director also compiles and evaluates statistical and other information on the work of magistrate judges for use by the Judicial Conference and presents Congress with an Annual Report that includes detailed information on the workload of magistrate judges.³⁵

Additionally, the Director provides the district courts, circuit councils, Magistrate Judges Committee, and the Judicial Conference with recommendations concerning the number, salaries, and locations of magistrate judge positions.³⁶ To meet the Director's responsibilities in this regard, the Magistrate Judges Division conducts on-site interviews of judges and other court officials, analyzes caseload statistics, studies utilization of magistrate judge resources, and prepares written survey reports and recommendations for district courts seeking additional magistrate judge positions.³⁷ The Division also conducts periodic district-wide reviews of all existing magistrate judge positions in each district to determine whether there should be any changes in their number, salaries, or locations.³⁸ Before March 1991, the Administrative Office, the Magistrate Judges Committee, and the Judicial Conference, reviewed each magistrate judge position prior to the expiration of an incumbent's term of office, in order to determine whether the position should be continued for an additional term of office.³⁹ After twenty years experience with the magistrate judges system, the Judicial Conference changed this survey methodology in 1991 to require the Director of the Administrative Office to

33. The division was established originally as the Magistrates Division. It became the Magistrate Judges Division in June 1991, reflecting the statutory change in title. *See supra* note 4.

34. 28 U.S.C. § 604(a) (1988 & Supp. V 1993).

35. *Id.* § 604(d)(3) (1988).

36. *Id.* § 633 (1988 & Supp. V 1993).

37. *See* GUIDE TO JUDICIARY, *supra* note 26, at 93; *see also* JUDICIAL CONFERENCE OF THE U.S., THE FEDERAL MAGISTRATES SYSTEM: REPORT TO THE CONGRESS BY THE JUDICIAL CONFERENCE OF THE UNITED STATES 21 (1981) (discussing role of Magistrate Judges Division) [hereinafter FEDERAL MAGISTRATES SYSTEM].

38. *See generally* 1991 JUDICIAL CONFERENCE REPORTS, *supra* note 25, at 21.

39. 1991 JUDICIAL CONFERENCE REPORTS, *supra* note 25, at 21.

review all magistrate judge positions in each district periodically to determine whether any changes should be made.⁴⁰

C. *Judicial Councils of the Circuits*

The judicial councils of the circuits are responsible for making "all necessary and appropriate orders for the effective and expeditious administration of justice"⁴¹ within each circuit. The circuit councils also have a role in recommending changes in the number, salaries, or locations of magistrate judge positions within the circuit.⁴²

In accordance with regulations promulgated by the Judicial Conference, the circuit councils may recall retired magistrate judges, with the consent of the chief judge of the district involved, to serve in any district court within the respective circuit.⁴³ Under certain circumstances, the circuit councils are also authorized to take appropriate action on complaints alleging misconduct by federal judges, including magistrate judges, within the circuit.⁴⁴ Although a circuit council may order any action it considers appropriate,⁴⁵ the removal of a magistrate judge must be performed by the district court.⁴⁶

D. *District Courts*

A magistrate judge is a judicial officer of the district court.⁴⁷ The district judges appoint magistrate judges within the district in accordance with regulations promulgated by the Judicial Conference.⁴⁸ A magistrate judge may be removed by the district judges of the court "only for incompetency, misconduct, neglect of duty, or physical or mental disability."⁴⁹

Within the statutory parameters established by Congress, each district court determines the volume and type of duties to be assigned to a magistrate judge.⁵⁰ A magistrate judge must be specially

40. 1991 JUDICIAL CONFERENCE REPORTS, *supra* note 25, at 21. "Each district will be surveyed no less frequently than every four years, if the district is authorized part-time magistrate judge positions, or every five years, if the district is authorized only full-time magistrate judge positions." *Id.*

41. 28 U.S.C. § 332(d)(1) (1988).

42. *Id.* § 633(b), (c) (1988 & Supp. V 1993).

43. *Id.* § 636(h) (1988).

44. *Id.* § 372(c)(5).

45. *Id.* § 372(c)(6)(B)(vii) (1988 & Supp. V 1993).

46. *Id.* § 631(i) (1988).

47. *Id.* § 631(a).

48. *Id.* § 631 (1988 & Supp. V 1993); *see supra* note 16 and accompanying text.

49. 28 U.S.C. § 631(i) (1988).

50. *Id.* § 636(b)(4).

designated by the district court to try misdemeanor cases⁵¹ and to try civil cases with the consent of the parties.⁵² The authority of a magistrate judge to handle pretrial matters in civil cases also requires a designation or assignment from the district court.⁵³ Virtually all full-time magistrate judges have received these designations.⁵⁴

II. DEVELOPMENTS IN THE ADMINISTRATION OF THE FEDERAL MAGISTRATE JUDGES SYSTEM SINCE THE FEDERAL MAGISTRATE ACT OF 1979

Changes in the magistrate judges system have been the product of thoughtful study within the judiciary. The discussion that follows illustrates the manner in which the magistrate judges system has gradually evolved since 1979, playing an increasingly important role in the federal judicial system.

A. 1981 Report to Congress

When Congress approved the Federal Magistrate Act of 1979,⁵⁵ it included a provision requiring the Judicial Conference to conduct a study of the federal magistrates system and to file a report with Congress within two years.⁵⁶ The Conference was also asked to address the basic needs and future direction of the magistrates system.⁵⁷ After completing the study, the Judicial Conference approved its report in September 1981.⁵⁸ The final report was presented to Congress in December 1981. The report concluded that the magistrates system fulfilled the objectives of Congress: (1) in upgrading the status and quality of the first echelon of the federal judiciary; (2) in establishing an effective forum for the disposition of federal misdemeanor cases; (3) in providing needed assistance to district judges in the disposition of their civil and criminal cases; (4) in improving access to the federal courts for litigants; and (5) in

51. 18 U.S.C. § 3401(a) (1988).

52. 28 U.S.C. § 636(c)(1) (1988).

53. *Id.* § 636(b).

54. See MAGISTRATE JUDGES PLAN, *supra* note 7, at 7-2; see also *infra* notes 166-68 and accompanying text.

55. Pub. L. No. 96-82, 93 Stat. 643 (1979) (codified as amended at 28 U.S.C. §§ 631, 636 and 18 U.S.C. § 3401 (1988 & Supp. V 1993)).

56. *Id.* § 9, 93 Stat. at 647 (codified at 28 U.S.C. § 631 note (1988)).

57. *Id.*

58. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 80 (1981) [hereinafter 1981 JUDICIAL CONFERENCE REPORTS].

providing the courts with a supplementary judicial resource to meet the ebb and flow of their caseload demands.⁵⁹

The report found that the 1979 amendments⁶⁰ had been well-received and were proving beneficial to the courts and litigants.⁶¹ Minor improvements were suggested, however, in the language of the amendments.⁶²

In considering the future of the magistrates system, the report concluded that magistrates should remain an integral part of the district courts, and should not be reconstituted as a separate tier or court. The report emphasized that flexibility should be retained in the statute to promote the most effective use of magistrates in light of local caseload exigencies.⁶³ The Conference stated that the civil jurisdiction of magistrates should remain "open ended" to allow the courts maximum flexibility to refer cases to magistrates.⁶⁴ It also emphasized that magistrates should not be given "original" jurisdiction over any specific categories of cases.⁶⁵

The Conference further recommended that no change be made to authorize magistrates to accept guilty pleas in felony cases with the defendants' consent.⁶⁶ This recommendation was based on "the sensitivity and critical nature of the guilty plea procedure and its close interrelationship with the sentencing function."⁶⁷ The report found that, although there are potential benefits to delegating the function to magistrates, "it is preferable for the judge who is later to pronounce judgment and determine the sentence to conduct the proceeding."⁶⁸

As a matter of judicial administration, the Conference suggested that Congress consider the use of magistrates to dispose of a greater number of less serious criminal cases as misdemeanors.⁶⁹ The Conference also suggested amending the Federal Magistrates Act to provide that in a petty offense case the consent of the defendant be

59. JUDICIAL CONFERENCE OF THE U.S., THE FEDERAL MAGISTRATE SYSTEM: REPORT TO THE CONGRESS BY THE JUDICIAL CONFERENCE OF THE UNITED STATES 67 (1981) [hereinafter REPORT TO CONGRESS].

60. See *id.* at 6-8; see also *supra* note 14 and accompanying text.

61. REPORT TO CONGRESS, *supra* note 59, at iii.

62. REPORT TO CONGRESS, *supra* note 59.

63. REPORT TO CONGRESS, *supra* note 59, at 47-49, 67.

64. REPORT TO CONGRESS, *supra* note 59, at 47-49.

65. REPORT TO CONGRESS, *supra* note 59, at 41-49.

66. REPORT TO CONGRESS, *supra* note 59, at 52-53.

67. REPORT TO CONGRESS, *supra* note 59, at 53.

68. REPORT TO CONGRESS, *supra* note 59, at 52.

69. REPORT TO CONGRESS, *supra* note 59, at 51-52.

made on the record, without requiring that the consent be in writing.⁷⁰

The report raised the issue of contempt authority for magistrates.⁷¹ Although the Conference made no recommendation on contempt, it suggested that Congress explore the need for such authority for magistrates in appropriate circumstances.⁷²

In discussing the role of part-time magistrates, the report stated that the Judicial Conference would continue to implement the congressional preference in favor of a system of full-time magistrate positions wherever feasible.⁷³ The report concluded that the title "United States magistrate" was an appropriate designation for the office and that no change in title was warranted.⁷⁴ Finally, the report stated that the salaries and retirement benefits for magistrates should be increased to attract and retain highly qualified individuals.⁷⁵

B. 1983 General Accounting Office Report

In July 1983, the Comptroller General submitted a report to Congress on the federal magistrates system.⁷⁶ The report found that magistrates had become an important and integral part of the federal judicial system, helping to reduce the workload of district judges.⁷⁷ The report also contained a number of recommendations to the Judicial Conference designed to increase the utilization of magistrates.⁷⁸

At its December 1983 meeting, the Committee on the Administration of the Federal Magistrates System acted on the recommendations of the General Accounting Office (GAO).⁷⁹ The Magistrates Committee declined to endorse a GAO recommendation to encourage courts to develop district-wide plans for the use of magistrates.⁸⁰ The Magistrates Committee was concerned that the proposal would

70. REPORT TO CONGRESS, *supra* note 59, at 56-58.

71. REPORT TO CONGRESS, *supra* note 59, at 59-60. The Conference noted that magistrates lacked power to punish for contempt. While it noted that a majority of those responding to a Federal Bar Association poll favored limited contempt authority for magistrates, the Conference did not make a formal recommendation to Congress on this issue. *Id.*

72. REPORT TO CONGRESS, *supra* note 59.

73. REPORT TO CONGRESS, *supra* note 59, at 58-59.

74. REPORT TO CONGRESS, *supra* note 59, at 60-62.

75. REPORT TO CONGRESS, *supra* note 59, at 62-63.

76. GENERAL ACCOUNTING OFFICE, COMPTROLLER GENERAL'S REPORT TO THE CONGRESS, POTENTIAL BENEFITS OF FEDERAL MAGISTRATES SYSTEM CAN BE BETTER REALIZED (1983).

77. *Id.* at 6.

78. *Id.* at 14-44; see JUDICIAL CONFERENCE OF THE U.S., SUMMARY OF THE REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM 6-8 (1984) [hereinafter 1984 COMMITTEE REPORT].

79. See 1984 COMMITTEE REPORT, *supra* note 78, at 9-12.

80. 1984 COMMITTEE REPORT, *supra* note 78, at 10-11.

lead to the development of a rigid system that would conflict with Congress' intent to establish a flexible system under the Federal Magistrates Act.⁸¹ The Magistrates Committee directed the Magistrates Division of the Administrative Office, however, to inform courts of the division's availability to undertake an extensive study of their utilization of magistrate resources and to advise the courts of those utilization plans that have worked well.⁸² At its March 1984 session, the Judicial Conference endorsed the actions taken by the Magistrates Committee and the Administrative Office to encourage greater use of magistrates.⁸³

C. *Amendments to the Federal Rules of Practice and Procedure*

Following the 1979 amendments to the Federal Magistrates Act, the Federal Rules of Civil and Criminal Procedure were amended to include rules of practice and procedure governing proceedings before magistrates.⁸⁴

1. *Federal Rules of Civil Procedure*

In June 1981, drafts of proposed amendments to the Federal Rules of Civil Procedure were circulated for comment. Among the proposed changes were amendments to Rule 53⁸⁵ and new Rules 72-76,⁸⁶ which specified procedures for pretrial matters referred to magistrates and for the new case-dispositive authority of magistrates in civil cases. Proposed amendments to Rule 16 required more extensive pretrial management in civil cases⁸⁷ but also provided that only a "judge" (as distinguished from the "court," which could include a magistrate) could issue a scheduling order in a case.⁸⁸

Although supporting the changes to Rules 53 and 72-76, the Magistrates Committee objected to the proposed changes to Rule 16 to the extent that they would preclude pretrial assignments to magistrates.⁸⁹ The Advisory Committee on Civil Rules acknowledged

81. 1984 COMMITTEE REPORT, *supra* note 78, at 9.

82. 1984 COMMITTEE REPORT, *supra* note 78, at 9.

83. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 20 (1984).

84. *See infra* Part C1-C2.

85. FED. R. CIV. P. 53 (draft), *reprinted in* 90 F.R.D. 451, 485 (1981).

86. *Id.* at 72-76 (draft), *reprinted in* 90 F.R.D. 451, 494-507 (1981).

87. *Id.* at 16 (draft), *reprinted in* 90 F.R.D. 451, 466 (1981).

88. *Id.*

89. Comments of the Honorable Otto R. Skopil, on behalf of the Committee on the Administration of the Federal Magistrates System of the Judicial Conference on the Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure, to the Committee on Rules of Practice and Procedure and the Advisory Committee on Civil Rules of the Judicial

“that in some districts it may be impractical or difficult for the judge personally to handle the scheduling of every case on his calendar.”⁹⁰ In recognition of this concern, the draft proposed amendment was subsequently revised to provide that “the judge, or a magistrate only when specifically authorized by district court rule,” shall enter the scheduling order.⁹¹

The Standing Committee on Rules of Practice and Procedure (Standing Committee) recommended that the Judicial Conference approve the proposed amendments at its September 1982 session.⁹² The Magistrates Committee advised the Conference that it endorsed new Rules 72-76 and the amendments to Rule 53.⁹³ The Magistrates Committee, however, objected to Rules 16(b) and (f) and the accompanying Advisory Committee notes, as they affected magistrates, on the grounds that: (1) they were contrary to the language and intent of the Federal Magistrates Act; (2) they were inconsistent with Judicial Conference policy and would restrict the flexibility of district courts to manage their civil caseloads; and (3) they were inconsistent with terminology used in the Federal Rules of Civil Procedure.⁹⁴

The Judicial Conference reviewed the proposed language of Rule 16(b) providing that a magistrate may perform duties under the rule “only when specifically authorized by district court rule.”⁹⁵ The Conference voted to amend the language to read, “when authorized by district court rule.” A subsequent occurrence of the word “specifically” was also deleted from the rule, and the Standing Committee was authorized to make necessary changes in the Advisory Committee note.⁹⁶ With these amendments, the Conference approved the recommendations of the Standing Committee.⁹⁷ The amendments became effective on August 1, 1983.⁹⁸

Conference 1-2 (Nov. 6, 1981) (on file with author); *see also* Letter from the Honorable Otto R. Skopil, Chair, Judicial Conference Committee on Administration of the Federal Magistrates System, to the Committee on Rules of Practice and Procedure (June 1, 1982) (on file with author).

90. Letter from the Honorable Walter R. Mansfield, Chair, Advisory Committee on Civil Rules to the Honorable Edward T. Gignoux, Chair, and Members of the Standing Committee on Rules of Practice and Procedure 4 (Mar. 9, 1982) (on file with author).

91. *Id.*

92. *See* JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 86 (1982) [hereinafter 1982 JUDICIAL CONFERENCE REPORTS].

93. JUDICIAL CONFERENCE OF THE U.S., SUPPLEMENTAL REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM 2 (1982).

94. *Id.*

95. 1982 JUDICIAL CONFERENCE REPORTS, *supra* note 92, at 86.

96. 1982 JUDICIAL CONFERENCE REPORTS, *supra* note 92, at 86.

97. 1982 JUDICIAL CONFERENCE REPORTS, *supra* note 92, at 86.

98. FED. R. CIV. P. 16, 53, 72-76.

2. *Federal Rules of Criminal Procedure*

The Rules of Procedure for the Trial of Misdemeanors before United States Magistrates were promulgated in 1980⁹⁹ to replace the 1971 Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.¹⁰⁰ The revised rules were necessary to take into account the expanded authority of magistrates under the Federal Magistrate Act of 1979.¹⁰¹ The Misdemeanor Rules were drafted by a subcommittee appointed by the Chair of the Criminal Rules Advisory Committee (Rules Committee). After approval by the Rules Committee and the Judicial Conference, the Misdemeanor Rules were promulgated by the Supreme Court. Unlike the Federal Rules of Procedure, which are enacted pursuant to 28 U.S.C. §§ 2072-2074, the Misdemeanor Rules were promulgated under 18 U.S.C. § 3402, which imposed no requirement that they be reviewed by Congress. Amendments to the Federal Magistrates Act and to the Rules Enabling Act in 1988,¹⁰² however, subsequently required that rules of practice and procedure for proceedings before magistrates be promulgated pursuant to 28 U.S.C. § 2072.¹⁰³

In 1990, the Federal Rules of Criminal Procedure were amended to add a new Rule 58 governing procedures for misdemeanors and other petty offense cases.¹⁰⁴ The new rule is essentially a restatement of the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates, which were abrogated.¹⁰⁵ The phrase "before United States Magistrates" was deleted from the title of the new rule to indicate that the rule may be used by district judges as well as magistrates.¹⁰⁶

99. 85 F.R.D. 417 (1980).

100. 51 F.R.D. 197 (1971).

101. Pub. L. No. 96-82, 93 Stat. 643 (1979); *see supra* note 14 and accompanying text.

102. Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 404(b), 102 Stat. 4643, 4651 (1988). The Act was an omnibus judicial "housekeeping" measure.

103. *Id.* (describing which language should be stricken in order to conform with 28 U.S.C. § 2072).

104. FED. R. CRIM. P. 58 advisory committee's note.

105. *Id.*

106. *Id.*

D. The Federal Courts Study Committee (1990)

The formation of the Federal Courts Study Committee (FCSC)¹⁰⁷ within the Judicial Conference provided another opportunity for the judiciary to assess the magistrates system, as it had last done comprehensively in 1981.¹⁰⁸ To respond effectively to a request for advice from the FCSC, the Magistrates Committee reviewed the state of the magistrates system and submitted a report to the FCSC in June 1989.¹⁰⁹

The Magistrates Committee reaffirmed the importance and value of having the judiciary retain authority over the administration of the federal magistrates system, including the authorization of new positions and the selection and appointment of magistrates.¹¹⁰ The Magistrates Committee also set forth recommendations for legislative changes to enhance the utilization of magistrates and to ensure that the office continues to attract high-caliber professionals. The Magistrates Committee noted that the legislative proposals it was recommending involved issues that had been debated for years, with input from many members and units of the judiciary.¹¹¹ The Magistrates Committee recommended that:

1. Magistrates should be provided with limited contempt power;
2. The requirement of consent in all petty offense cases should be eliminated;
3. If the consent requirement in petty offense cases is not eliminated, the filing of a written consent should be eliminated;
4. Judges and magistrates should be allowed to advise and encourage parties to consent to have a civil case tried by a magistrate at any time prior to trial; and
5. The title of full-time magistrates should be changed to incorporate the word "judge."¹¹²

107. See Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 101-109, 102 Stat. 4642, 4644-45 (1988) (codified at 28 U.S.C. § 331 note (1988 & Supp. V 1993) (creating Federal Courts Study Committee on future of federal judiciary). The statute directed the Federal Courts Study Committee to make a complete study of the courts and to submit a report within 15 months. *Id.*

108. See THE FEDERAL MAGISTRATES SYSTEM, *supra* note 37.

109. COMMITTEE ON THE ADMIN. OF THE FEDERAL MAGISTRATES SYS., JUDICIAL CONFERENCE OF THE U.S., REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM TO THE FEDERAL COURTS STUDY COMMITTEE (1989) [hereinafter COMMITTEE REPORT TO FCSC].

110. *Id.* at 4-5.

111. *Id.* at 14.

112. *Id.* at 2, 12-13.

The Magistrates Committee concluded that “[b]y maintaining the essential attributes and adopting some ‘fine-tuning’ adjustments, the magistrates system will enter the twenty-first century continuing its role as an integral component of the federal judiciary.”¹¹³

The FCSC submitted its report in April 1990.¹¹⁴ In the Overview section of the report, the FCSC stated that it had “conducted the most comprehensive examination of the federal court system in the last half of the century—a period of unprecedented growth in federal law and federal courts.”¹¹⁵ It also noted that the recommendations were “directed to institutional rather than substantive concerns.”¹¹⁶

Of the five recommendations submitted by the Magistrates Committee,¹¹⁷ the FCSC only addressed the one to authorize district judges and magistrates to explicitly remind parties of the possibilities of consent to civil trials before magistrates.¹¹⁸ The FCSC's recommendation to amend 28 U.S.C. § 636(c)(2) was consistent with the views of the Magistrates Committee.¹¹⁹ The FCSC also recommended a study of the constitutional limits of magistrates' authority.¹²⁰

The FCSC made two recommendations pertaining to magistrates that have not been endorsed by the Judicial Conference or the Magistrates Committee. The first recommendation involved establishing a federal small claims procedure for claims below a \$10,000 minimum jurisdictional amount.¹²¹ The FCSC suggested assigning these claims to divisions in the district court administered by magistrates.¹²² The second recommendation stated that courts should consider “using magistrates or special masters as fee taxing masters” as one alternative procedure to simplify the process of assessing attorney fee awards.¹²³

113. *Id.* at 3.

114. FEDERAL COURTS STUDY COMMITTEE, REPORT OF THE FEDERAL COURTS STUDY COMMITTEE (1990) [hereinafter FCSC REPORT].

115. *Id.* at 3.

116. *Id.*

117. See *supra* note 112 and accompanying text.

118. The FCSC recommended that Congress “amend 28 U.S.C. § 636(c)(2) to allow district judges and magistrates to remind parties of the possibilities of consent to civil trials before magistrates.” FCSC REPORT, *supra* note 114, at 79.

119. FCSC REPORT, *supra* note 114, at 79.

120. FCSC REPORT, *supra* note 114, at 80-81.

121. FCSC REPORT, *supra* note 114, at 81.

122. FCSC REPORT, *supra* note 114, at 81. The FCSC suggested two other alternatives:

- (1) Create an administrative tribunal; or
- (2) Authorize the United States Claims Court to assume jurisdiction.

Id.

123. FCSC REPORT, *supra* note 114, at 104-05. The FCSC also recommended “[a]dopting reasonable rate schedules” and “setting advance guidelines . . . in certain cases.” *Id.*

In anticipation of legislation to implement the FCSC recommendations, the various committees of the Judicial Conference were asked to review the recommendations that would affect their respective areas of responsibility. In response, the Magistrates Committee expressed support for the recommended amendment to 28 U.S.C. § 636(c)(2) and interest in conducting the constitutional study of the magistrates system.¹²⁴ The Magistrates Committee indicated, however, that the recommendation to establish divisions administered by magistrates to handle small claims would conflict with long-standing policy of the Judicial Conference.¹²⁵ In addition, the Magistrates Committee was concerned that using a magistrate to assess attorney fees might undermine the generalist role envisioned for magistrates in civil cases.¹²⁶ The Magistrates Committee expressed doubt "whether a judicial officer not involved in a case could fairly and efficiently ascertain attorney fee awards *in all situations*."¹²⁷

In May 1990, the Executive Committee approved the amendment of 28 U.S.C. § 636(c)(2) for inclusion in comprehensive court reform legislation.¹²⁸ In September 1990, the Judicial Conference objected to the FCSC recommendation to vest magistrates with authority to decide certain federal claims cases automatically.¹²⁹

124. Memorandum from the Honorable Joseph W. Hatchett, Chair, Judicial Conference Committee on the Administration of the Federal Magistrates System, to Karen K. Siegel, Office of the Judicial Conference Secretariat (May 1990) (on file with author) [hereinafter Letter from Judge Hatchett to Karen Siegel]; see also Letter from the Honorable Joseph W. Hatchett, Chair, Judicial Conference Committee on the Administration of the Federal Magistrates System, to the Honorable Joseph F. Weis, Jr., Chair, Federal Courts Study Committee (Jan. 29, 1990) (on file with author).

125. See Letter from Judge Hatchett to Karen Siegel, *supra* note 124, at 3. The Magistrates Committee cited the following resolution adopted by the Judicial Conference at its September 1982 session:

Anticipating that additional suggestions to expand or contract the jurisdiction of magistrates will continue to recur in the Congress from time to time, the Committee proposed the following resolution which was approved by the Conference:

Resolved, that it continues to be the position of the Judicial Conference of the United States that the Federal Magistrates System should continue to be an integral part of the district courts, that the jurisdiction of magistrates should remain "open" and should neither be expanded to include "original" jurisdiction in special categories of cases, nor restricted in special types of cases or proceedings.

1982 JUDICIAL CONFERENCE REPORTS, *supra* note 92, at 92.

126. Letter from Judge Hatchett to Karen Siegel, *supra* note 124, at 5.

127. Letter from Judge Hatchett to Karen Siegel, *supra* note 124, at 4-5 (emphasis in original).

128. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 60-61 (1990) [hereinafter 1990 JUDICIAL CONFERENCE REPORTS]. "The Conference was advised that certain FCSC recommendations might be included in an 'omnibus court reform' title of the civil justice reform package being considered by the 101st Congress." *Id.* at 60.

129. *Id.* at 94. "The Conference also reaffirmed disapproval of legislation 'which mandates that a district court automatically refer particular types of cases to magistrates.'" *Id.* (footnotes omitted).

E. Judicial Improvements Act of 1990

1. Title I—Civil Justice Reform Act (CJRA)

The Civil Justice Reform Act of 1990 (CJRA) was introduced on January 25, 1990, as S. 2027 in the Senate and as H.R. 3898 in the House.¹³⁰ The bills, *inter alia*, called for each district court to adopt a "Civil Justice Expense and Delay Reduction Plan."¹³¹ The judiciary expressed concerns about the legislation. With respect to the magistrates system, there was concern that proposed section 471 (b) (3) of S. 2027 would have required "a judge and not a magistrate"¹³² to conduct a pretrial discovery/case-management conference.¹³³

On March 13, 1990, the Judicial Conference voted to oppose S. 2027 and H.R. 3898, as introduced, and to reaffirm the judiciary's long-standing commitment to case management.¹³⁴ On May 17, 1990, a revised bill, S. 2468, was introduced.¹³⁵ The new bill reflected many of the comments made by the judiciary concerning S. 2027. Among other changes, the references to "judges" conducting discovery/case-management conferences were eliminated.¹³⁶ Instead, the revised bill required such conferences, when conducted, to be presided over by a "judicial officer."¹³⁷ The bill defined "judicial officer" as a district judge or a magistrate judge.¹³⁸ These provisions were enacted on December 1, 1990.¹³⁹

2. Implementation of CJRA

As required by the CJRA, each United States district court appointed an advisory group to assess the status of the civil and criminal dockets in its district and to advise the court on its civil justice expense and delay reduction plan.¹⁴⁰ To assist the advisory groups

130. S. 2027, 101st Cong., 2d Sess. (1990); H.R. 3898, 101st Cong. 2d. Sess. (1990).

131. S. 2027, 101st Cong., 2d Sess. 11-24 (1990); H.R. 3898, 101st Cong., 2d Sess. 61-81 (1990).

132. S. 2027, 101st Cong., 2d Sess. 15 (1990).

133. *The Civil Justice Reform Act: Hearing on S. 2027 Before the Senate Judiciary Comm.*, 101st Cong., 2d Sess. 220, 259, 274-76 (1990) (testimony of Judge Richard A. Enslin and Judge Aubrey E. Robinson, Jr.) (discussing why it is useful to have U.S. magistrates conduct case-management conferences).

134. 1990 JUDICIAL CONFERENCE REPORTS, *supra* note 128, at 9.

135. S. 2648, 101st Cong., 2d Sess. (1990).

136. *Id.* at 8.

137. *Id.*

138. *Id.* at 17.

139. Civil Justice Reform Act of 1990, Pub. L. No. 101-650, 104 Stat. 5090 (codified as amended at 28 U.S.C. §§ 471-482 (1988 & Supp. V 1993)).

140. See 28 U.S.C. § 478.

with their review of the role of magistrate judges, the Director of the Administrative Office sent information on the jurisdictional authority and utilization of magistrate judges to all advisory group chairs on September 17, 1991.¹⁴¹ The Administrative Office prepared this information under the direction of the Magistrate Judges Committee, and the Chair of the Judicial Conference Committee on Court Administration and Case Management approved it.¹⁴²

Implementation of the CJRA has had a significant impact on the magistrate judges system. Many courts began utilizing magistrate judges far more extensively in accordance with their expense and delay reduction plans. Moreover, to cope with increased caseloads, several courts requested additional magistrate judge positions.¹⁴³

A review of the expense and delay reduction plans of the district courts gives some indication of the increased role of magistrate judges under the CJRA.¹⁴⁴ Many of the plans, however, do not address utilization of magistrate judges specifically, instead using the term "judicial officer" to include district judges and magistrate judges.¹⁴⁵ Moreover, many courts had already established, by local rule or general order, effective case management practices involving magistrate judges. These practices are not necessarily reflected in the courts' expense and delay reduction plans.¹⁴⁶

Among the court and case management policies adopted in the plans of the various district courts, there are a number of specific provisions relating to magistrate judges. These include: assigning magistrate judges automatically for civil pretrial and trial duties,¹⁴⁷ referring cases requiring early judicial intervention to a magistrate judge,¹⁴⁸ and encouraging parties to consent to disposition of the case by a magistrate judge.¹⁴⁹

141. JUDICIAL CONFERENCE OF THE U.S., CIVIL JUSTICE REFORM ACT REPORT: DEVELOPMENT AND IMPLEMENTATION OF PLANS BY EARLY IMPLEMENTATION DISTRICTS AND PILOT COURTS (1992).

142. *Id.*

143. See generally JUDICIAL CONFERENCE OF THE U.S., CIVIL JUSTICE REFORM ACT REPORT app. II, at 333-54 (1995) [hereinafter 1994 CJRA REPORTS] (indicating districts with CJRA plans that call for additional magistrate judge positions). Appendix II to the 1994 CJRA REPORT is a prepublication version of THE FEDERAL JUDICIAL CENTER SOURCEBOOK ON THE CIVIL JUSTICE REFORM ACT EXPENSE AND DELAY REDUCTION PLANS (forthcoming Summer 1995).

144. See generally R. Lawrence Dessem, *The Role of the Federal Magistrate Judge in Civil Justice Reform*, 67 ST. JOHN'S L. REV. 799 (1993) (considering reports and plans adopted in 34 early implementation courts).

145. *Id.* at 800.

146. See 1994 CJRA REPORT, *supra* note 143, at 4.

147. 1994 CJRA REPORT, *supra* note 143, at 13.

148. 1994 CJRA REPORT, *supra* note 143, at 16.

149. 1994 CJRA REPORT, *supra* note 143, at 18.

Other initiatives advanced in one or more of the CJRA plans reflect additional changes in the role and responsibilities of magistrate judges. These initiatives include: instituting frequent and regular meetings between district judges and magistrate judges to facilitate efficient and effective management of the civil caseload;¹⁵⁰ providing information and education programs to inform attorneys and litigants of the availability and qualifications of magistrate judges;¹⁵¹ and specifying that case-dispositive motions normally should not be referred to magistrate judges for reports and recommendations because the practice results in two layers of decisionmaking and further delay.¹⁵²

Magistrate judges are also assuming a larger role in alternative dispute resolution (ADR). Many courts have incorporated ADR programs into their CJRA plans or local rules.¹⁵³ "[N]oteworthy in this process is the emerging role of magistrate judges, many of whom conduct settlement conferences and preside over summary jury trials and other forms of ADR. Nearly a dozen courts have institutionalized magistrate judge settlement/mediation programs, where specified case types are routinely referred for settlement assistance."¹⁵⁴

F. *Study of Constitutional Limits of Magistrate Judge Authority*

The FCSC stated in its report that "[s]ome district courts have been reluctant to expand the role of magistrates because of confusion over magistrates' constitutional and statutory authority."¹⁵⁵ As a result, the FCSC recommended that the Judicial Conference authorize a study of the constitutional limits of magistrate judge authority that would include a catalog of the duties magistrate judges are authorized to perform and an analysis of the legislative history of the Federal Magistrates Act.¹⁵⁶ The Judicial Conference authorized its Magistrate Judges Committee to oversee the study.¹⁵⁷ A special subcommittee was formed to supervise work on the project by the Magistrate Judges Division of the Administrative Office of the United States Courts.

150. 1994 CJRA REPORT, *supra* note 143, app. II, at 249.

151. 1994 CJRA REPORT, *supra* note 143, app. II, at 254, 348.

152. 1994 CJRA REPORT, *supra* note 143, at 18-27, app. II, at 245-58.

153. 1994 CJRA REPORT, *supra* note 143, at 6.

154. 1994 CJRA REPORT, *supra* note 143, at 6.

155. FCSC REPORT, *supra* note 114, at 80.

156. FCSC REPORT, *supra* note 114, at 80.

157. MAGISTRATE JUDGES DIV., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *A Constitutional Analysis of Magistrate Judge Authority*, 150 F.R.D. 247, 251 (1993) [hereinafter *Constitutional Analysis*].

The study was completed in three parts. The first was a compilation of cases and statutes relating to the authority of magistrate judges. The Magistrate Judges Committee approved this part in June 1991. Published initially as Chapter 3, "Jurisdiction of United States Magistrate Judges," of the *Legal Manual for United States Magistrate Judges*, (*Legal Manual*),¹⁵⁸ it was then made available separately in pamphlet form as *Inventory of United States Magistrate Judge Duties*.¹⁵⁹

The Magistrate Judges Committee approved the second part of the study, *A Constitutional Analysis of Magistrate Judge Authority* (*Constitutional Analysis*), at its December 1991 meeting.¹⁶⁰ The Administrative Office published it as a pamphlet in June 1993,¹⁶¹ and it was reprinted in the *Federal Rules Decisions*.¹⁶² The *Constitutional Analysis* includes a review of the six decisions of the Supreme Court that specifically address the authority of magistrate judges.¹⁶³ In addition, it reviews Supreme Court decisions that discuss constitutional limitations under Article III in other contexts and reviews the decisions of the courts of appeals on the civil and misdemeanor trial authority of magistrate judges.¹⁶⁴ Although the Supreme Court has not directly addressed the consensual trial authority of magistrate

158. LEGAL MANUAL, *supra* note 2, at ch. 3.

159. COMMITTEE ON THE ADMIN. OF THE MAGISTRATE JUDGES SYS., JUDICIAL CONFERENCE OF THE U.S., INVENTORY OF UNITED STATES MAGISTRATE JUDGE DUTIES (1991). An updated and revised version of the INVENTORY was published in June 1995. Both THE LEGAL MANUAL FOR UNITED STATES MAGISTRATE JUDGES and the INVENTORY OF UNITED STATES MAGISTRATE JUDGE DUTIES, are prepared in accordance with 28 U.S.C. § 604(d)(4) (1988). They are designed to serve as a basic research tool and training guide for newly appointed U.S. magistrate judges, and as convenient references for more experienced magistrate judges.

160. See *Constitutional Analysis*, *supra* note 157, at 305.

161. MAGISTRATE JUDGES DIV., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, A CONSTITUTIONAL ANALYSIS OF MAGISTRATE JUDGE AUTHORITY (1993).

162. *Constitutional Analysis*, *supra* note 157, at 247.

163. *Id.* at 253-72; see *Peretz v. United States*, 501 U.S. 923, 926 (1991) (finding no constitutional infirmity in delegation of felony trial jury selection to magistrate judge when litigants consent); *McCarthy v. Bronson*, 501 U.S. 136, 139-44 (1991) (holding that 28 U.S.C. § 636(b)(1)(B) authorizes nonconsensual reference of all prisoner petitions to magistrate judge); *Gomez v. United States*, 490 U.S. 858, 863-76 (1989) (finding no statutory authority for magistrate to conduct felony trial jury selection without defendant's consent); *United States v. Raddatz*, 447 U.S. 667, 680-81 (1980) (upholding reference of motion to suppress under 28 U.S.C. § 636(b)(1) for evidentiary hearing and report and recommendation); *Mathews v. Weber*, 423 U.S. 261, 271-72 (1976) (upholding reference of social security appeal to magistrate for review of record and recommended disposition); *Wingo v. Wedding*, 418 U.S. 461, 472-73 (1974) (finding no statutory authority for magistrate to conduct evidentiary hearing in habeas corpus action).

164. The 12 courts of appeals that have considered § 636(c) have held that it does not violate Article III of the Constitution. See generally *Constitutional Analysis*, *supra* note 157, at 291-302. Four courts of appeals have concluded that the consensual misdemeanor trial authority of magistrate judges under 18 U.S.C. § 3401 (1988) does not violate the Constitution. *Constitutional Analysis*, *supra* note 157, at 302.

judges in civil or misdemeanor cases, the study concludes that the authority would likely be upheld in both types of cases.¹⁶⁵

In approving the *Constitutional Analysis*, the Magistrate Judges Committee also addressed several possible modifications of magistrate judge authority.¹⁶⁶ The Committee considered whether to seek elimination of the requirement in 28 U.S.C. § 636(c) that a magistrate judge be specially designated by the district court to conduct civil trials on consent of the parties.¹⁶⁷ The Magistrate Judges Committee noted that all but two of the United States district courts nationwide had already designated magistrate judges to conduct civil trials on consent of the parties. The Committee decided not to seek a statutory change to eliminate the requirement, but agreed to encourage courts to specially designate their magistrate judges to exercise consensual civil trial jurisdiction.¹⁶⁸ The Magistrate Judges Committee also agreed not to recommend a change to the specific consent requirement¹⁶⁹ in civil cases to authorize an "opt-out" or waiver system in which parties' consent to a magistrate judge is presumed in the absence of an affirmative expression to the contrary.¹⁷⁰ In addition, the Committee agreed not to seek legislation to eliminate appeal to a district judge as an alternate route of appeal in a civil trial by a magistrate judge with the parties' consent.¹⁷¹

In considering the trial authority of magistrate judges in misdemeanor cases, the Committee voted to endorse modification of the consent requirement to authorize an "opt-out" or waiver system of consent.¹⁷² At its September 1991 session, the Judicial Conference had endorsed elimination of the requirement of written consent to a magistrate judge in a Class A misdemeanor case.¹⁷³ Upon the recommendation of the Magistrate Judges Committee, the Judicial Conference subsequently endorsed the "opt-out" or waiver system of obtaining a defendant's consent to trial before a magistrate judge in a misdemeanor case.¹⁷⁴

165. *Constitutional Analysis*, *supra* note 157, at 302-05.

166. *See Constitutional Analysis*, *supra* note 157, at 305-06.

167. *Constitutional Analysis*, *supra* note 157, at 305.

168. *Constitutional Analysis*, *supra* note 157, at 305.

169. *See* 28 U.S.C. § 636(c)(1) (1988); FED. R. CIV. P. 73(b) (specifying requirements for trial by consent).

170. *Constitutional Analysis*, *supra* note 157, at 305.

171. *Constitutional Analysis*, *supra* note 157, at 305; *see* 28 U.S.C. § 636(c)(3)-(5) (1988); FED. R. CIV. P. 73(c)(d) (stating that normal appeal route is to court of appeals, and optional appeal route is to a district judge upon consent of parties).

172. *Constitutional Analysis*, *supra* note 157, at 305.

173. 1991 JUDICIAL CONFERENCE REPORTS, *supra* note 25, at 66-67.

174. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 30 (1992).

At its December 1991 meeting, the Committee also considered proposals to expand the authority of magistrate judges in felony cases.¹⁷⁵ The Committee took the position that judicial duties at certain critical stages of felony cases are fundamental elements of the authority of district judges under Article III of the Constitution and, therefore, should not be delegated to magistrate judges.¹⁷⁶ In its report to the March 1992 session of the Judicial Conference, the Committee recommended that the Conference adopt a resolution to that effect.¹⁷⁷ The Committee Chair subsequently withdrew the recommendation for further consideration after concerns about the resolution were raised prior to the Judicial Conference session.¹⁷⁸

At its June 1992 meeting, the Committee again took the position that magistrate judges' authority should not be expanded to include duties at certain critical stages of felony cases, but agreed not to seek Conference endorsement of this position.¹⁷⁹

As a follow-up to the constitutional analysis and in consideration of possible modifications to magistrate judge authority, the Committee voted in June 1992 to reaffirm in principle the view that it expressed in June 1989 that "a need exists to provide magistrate judges with summary contempt power."¹⁸⁰ The Committee also discussed proposals to increase the use of magistrate judges as special masters, concluding that "expansion of the special master reference capability would not add to the flexibility of magistrate judge utilization possible under the existing statute."¹⁸¹ The Committee was concerned that increased use of magistrate judges as special masters might interfere with the more expansive use of magistrate judges to conduct civil trials with the consent of the parties under 28 U.S.C. § 636(c).¹⁸²

The third part of the study recommended by the FCSC is a legislative analysis of the Federal Magistrates Act.¹⁸³ It was published in September 1993, as Chapter 2, "History of the Magistrate Judges

175. See *Constitutional Analysis*, *supra* note 157, at 305.

176. See *Constitutional Analysis*, *supra* note 157, at 306. The Committee cited three such duties: accepting guilty pleas, conducting sentencing proceedings, and presiding over felony trials. *Id.*

177. See JUDICIAL CONFERENCE OF THE U.S., SUMMARY OF THE REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE FEDERAL MAGISTRATES SYSTEM 9 (Mar. 1992).

178. See JUDICIAL CONFERENCE OF THE U.S., SUMMARY OF THE REPORT OF THE COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATES SYSTEM 16 (Sept. 1992) [hereinafter SEPT. 1992 COMMITTEE REPORT].

179. *Id.* at 16-17.

180. *Constitutional Analysis*, *supra* note 157, at 306 (reaffirming in principle but declining to propose specific legislation).

181. *Constitutional Analysis*, *supra* note 157, at 306.

182. *Constitutional Analysis*, *supra* note 157, at 306.

183. *Constitutional Analysis*, *supra* note 157, at 306.

System," of the *Legal Manual*.¹⁸⁴ In April 1995, it was published in pamphlet form as *A Guide to the Legislative History of the Federal Magistrate Judges System*.¹⁸⁵

III. PUTTING THE EVOLUTION OF THE FEDERAL MAGISTRATE JUDGES SYSTEM IN PERSPECTIVE

While the magistrate judges system has come to play an integral role in the operation of the federal courts, it has consistently adhered to its legislative mandate and to the precepts of the mission statement included in the Long Range Plan for the Magistrate Judges System as amended December 7, 1993:

The mission of the magistrate judges system is to provide the federal district courts with supportive and flexible supplemental judicial resources. The magistrate judges system is available to cope with the ever-changing demands made on the federal judiciary, thereby improving public access to the courts, promoting prompt and efficient case resolution, and preserving scarce Article III resources.¹⁸⁶

The means by which that mission has been implemented have progressed significantly. In contrast to the period only twenty-four years ago when part-time magistrate judges outnumbered full-time magistrate judges by more than five to one,¹⁸⁷ there are now 406 authorized full-time magistrate judge positions, 85 part-time magistrate judge positions, and 3 combination clerk/magistrate judge positions nationwide.¹⁸⁸ Although full-time magistrate judges are appointed for eight-year terms, they are entitled to seek reappointment¹⁸⁹ and this, combined with current salary and retirement benefits,¹⁹⁰ has attracted lawyers and state judges of the highest caliber to the position. Additionally, since 1976, approximately sixty former magistrate judges have been elevated to Article III judgeships in the United States district courts and United States courts of appeals.¹⁹¹

184. LEGAL MANUAL, *supra* note 2, at ch. 2.

185. See also MAGISTRATE JUDGES DIV., ADMINISTRATIVE OFFICE OF THE U.S. COURTS, A GUIDE TO THE LEGISLATIVE HISTORY OF THE FEDERAL MAGISTRATE JUDGES SYSTEM (1995).

186. MAGISTRATE JUDGES PLAN, *supra* note 7, at 3-1.

187. See *supra* notes 9-10 and accompanying text. In July 1971, there were 82 full-time magistrates, 449 part-time magistrates, and 11 combination positions.

188. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES: A REPORT OF THE DIRECTOR L. RALPH MECHAM 27 (1994).

189. 28 U.S.C. § 377(b)(2) (1988).

190. *Id.* §§ 377(c), 634.

191. The Magistrate Judges Division of the Administrative Office of the United States Courts maintains a list of magistrate judges who were elevated to Article III judgeships.

Flexibility has been the hallmark of the magistrate judges system throughout its development. Practitioners in federal courts have come to expect that in many districts, magistrate judges will handle the majority of the non-case-dispositive pretrial matters in civil cases and often will be called upon to address case-dispositive motions as well. For the twelve-month period ending on September 30, 1994, magistrate judges adjudicated 55,304 non-case-dispositive motions (such as discovery and procedural motions) and, by report and recommendation, addressed 10,335 case-dispositive motions in civil cases.¹⁹² During the same period, magistrate judges conducted 54,703 pretrial conferences in civil cases.¹⁹³

The workload of magistrate judges is not, of course, limited to civil cases. For the twelve-month period ending on September 30, 1994, magistrate judges adjudicated 75,381 petty offense cases and 12,138 misdemeanor cases, issued 26,250 search warrants and 18,395 arrest warrants, and presided over 50,645 initial appearances and 21,711 detention hearings.¹⁹⁴ During the same period, magistrate judges also adjudicated 23,463 non-case-dispositive motions and, by report and recommendation, addressed 4777 case-dispositive motions, including motions to suppress evidence and to dismiss indictments in felony cases.¹⁹⁵

Statistics can be misleading, and those reflecting the utilization of magistrate judges in districts throughout the United States are bound to fluctuate with the caseload dynamics of each district. There can be no serious question, however, that the magistrate judges system has become an integral part of the structure of the federal courts upon which great demands and great reliance are placed.¹⁹⁶ Throughout the development of the system, districts have experimented with a variety of ways to enhance magistrate judge utilization to meet their particular needs.

Efforts to promote the civil case consent provisions of 28 U.S.C. § 636(c) provide perhaps one of the best illustrations of innovative utilization of magistrate judges. In 1990, at the request of the Judicial Conference of the United States, Congress amended 28 U.S.C. §

192. Statistics provided by the Magistrate Judges Division for publication in ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS (forthcoming 1995) [hereinafter 1994 ANNUAL REPORT].

193. *Id.*

194. *Id.*

195. *Id.*

196. The Supreme Court stated in *Peretz v. United States* that "the role of the magistrate in today's federal judicial system is nothing less than indispensable." *Peretz v. United States*, 501 U.S. 923, 928 (1991) (quoting *Government of Virgin Islands v. Williams*, 892 F.2d 305, 308 (1989)).

636(c) to allow district judges and magistrate judges to remind parties in civil cases of the option of consenting to proceed before a magistrate judge.¹⁹⁷ This amendment was consistent with a recommendation by the Federal Courts Study Committee.¹⁹⁸ The results were immediate and impressive.

In 1989, magistrate judges disposed of 5571 civil cases with consent of the parties, including 438 civil jury trials and 581 non-jury trials.¹⁹⁹ In 1994, magistrate judges terminated 7835 civil cases with consent of the parties, including 912 civil jury trials and 831 non-jury trials.²⁰⁰

It is not possible to quantify the degree to which the expanded involvement of magistrate judges in civil cases under section 636(c) is the product of general acceptance by the bar of the consent option as compared to efforts by each district to encourage such consents. Several district courts have, however, employed innovative techniques to encourage section 636(c) consents in civil cases, and it appears these efforts have had favorable results.

Some district courts, for example, are currently experimenting with systems whereby civil cases are assigned directly to a magistrate judge rather than by referral from a district judge.²⁰¹ Most of these courts require written consent pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(b).²⁰² A few, however, have adopted opt-out or waiver approaches that presume consent to magistrate judge jurisdiction over all aspects of civil cases in the absence of objection by the parties.²⁰³

Predictably, magistrate judges have also come to play a meaningful role in the governance structure of the federal courts. Magistrate judges currently serve on fourteen of the twenty-five Committees of

197. Judicial Improvements Act of 1990, Pub. L. No. 101-650, Title III, § 308(a), 104 Stat. 5089, 5112 (codified as amended 28 U.S.C. § 636(c) (Supp. V 1993)).

198. FCSC REPORT, *supra* note 114, at 79-80.

199. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 26 (1993).

200. See 1994 ANNUAL REPORT, *supra* note 192, at tbls. M-1A to M-5.

201. See *Many District Courts Encourage Expanded Role for Magistrates in Civil Cases*, in 9 CHAMBERS TO CHAMBERS No. 2 (Federal Judicial Ctr. Mar. 1994).

202. *Id.* at 1.

203. For example, Local Rule 105-2(d) of the U.S. District Court for the District of Montana sets forth an opt-out procedure in civil consent cases. D. MONT. L.R. 105-2(d). Civil cases are assigned randomly to a magistrate judge in Billings at the time of filing. Under the local rule, a civil case assigned to a magistrate judge will be reassigned to an Article III judge only if a party serves a written demand for reassignment upon the other parties "not later than ten (10) days after the service of the last pleading." *Id.* Failure to serve a demand within the specified time period "constitutes a waiver by the party to have . . . trial proceedings conducted and judgment entered, by an Article III judge, and a consent . . . to have the magistrate judge . . . conduct any or all proceedings and order the entry of judgment in the case." *Id.* The procedure in the Middle District of North Carolina is similar. See M.D. N.C. Standing Order No. 30 (1993).

the Judicial Conference.²⁰⁴ Moreover, the Sixth, Eighth, Ninth, and Tenth Circuits invite a magistrate judge, as well as a bankruptcy judge, to participate in circuit council meetings as nonvoting representatives.²⁰⁵ Although no statistics are available, magistrate judges are also heavily involved in court governance at the district level by participating in various committees of the district courts and by assuming numerous other administrative responsibilities.

IV. THE FUTURE OF THE MAGISTRATE JUDGES SYSTEM

Predicting the future of any component of the federal judiciary is difficult. Certain developments regarding the magistrate judges system, however, are clearly on the horizon. Unless the caseload trends of the United States district courts change radically, magistrate judges will undoubtedly continue to discharge the wide range of traditional and "additional duties" for which they have been so fully utilized during the past twenty-five years. The emerging trends regarding utilization of consent trial provisions for civil cases under 28 U.S.C. § 636(c) suggest that as the heavy trial burdens of United States district courts continue to grow, and as the concomitant pressure to provide expeditious disposition of those cases increases, continued recourse to magistrate judges to assist in handling that trial burden can be reasonably anticipated.

Perhaps one of the best windows on the future of the magistrate judges system is the Long Range Plan for the Magistrate Judges System approved by the Committee on the Administration of the Magistrate Judges System.²⁰⁶

In April 1990, the Report of the Federal Courts Study Committee recommended that the federal judiciary broaden its capacity to anticipate societal change and engage in extensive long range planning.²⁰⁷ In response, Chief Justice William Rehnquist established the Judicial Conference Committee on Long Range Planning.²⁰⁸ At a national planning seminar in March 1992, Chief Justice Rehnquist noted that "if we don't look over the horizon, and

204. Memorandum from L. Ralph Mechem, Director of the Administrative Office, to United States judges (Jan. 3, 1995) (on file with author).

205. Memorandum from the Honorable Wayne E. Alley, Chair, Judicial Conference Committee on the Administration of the Magistrate Judges System, to Chief Judges, U.S. Courts of Appeals (July 26, 1993) (on file with author).

206. See MAGISTRATE JUDGES PLAN, *supra* note 7.

207. FCSC REPORT, *supra* note 114, at 146.

208. MAGISTRATE JUDGES PLAN, *supra* note 7, at 1-1.

at least have the discipline and structures in place to meet anticipated changes, we will simply be swept along in the currents of change."²⁰⁹

With a view toward developing and periodically updating a long range plan for the judiciary for consideration by the Judicial Conference, the Long Range Planning Committee was authorized to coordinate and to promote planning activities within the judicial branch²¹⁰ The Long Range Planning Committee requested that the other Conference committees participate in the planning process and identify the long range goals the judiciary should establish in their respective areas of responsibility.²¹¹ In addition, it was contemplated that the committees could develop specialized long range plans that would eventually "nest" under the long range plan for the judiciary.²¹² Several committees, including the Committee on the Administration of the Magistrate Judges System, submitted reports to the Long Range Planning Committee.²¹³

In June 1992, the Magistrate Judges Committee commenced the development of a comprehensive Long Range Plan for the Magistrate Judges System (Magistrate Judges Plan). The Magistrate Judges Plan was approved by the Committee in June 1993 and amended in December 1993. The Magistrate Judges Plan was subsequently supplemented by the Magistrate Judges Committee in June 1994.²¹⁴

The long range planning activities undertaken by the Magistrate Judges Committee provided another opportunity for a comprehensive review of the magistrate judges system. Throughout its history, the magistrate judges system has evolved gradually. Consistent with that approach, the initial Magistrate Judges Plan developed by the Committee revalidated the essential attributes of the magistrate judges system, making recommendations largely consistent with previously established policies of the Judicial Conference and the Committee.

209. MAGISTRATE JUDGES PLAN, *supra* note 7, at 1-1.

210. See COMMITTEE ON LONG RANGE PLANNING, JUDICIAL CONFERENCE OF THE U.S., PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS 151 (2d prtg. 1995) [hereinafter 1995 PROPOSED LONG RANGE PLAN].

211. *Id.* at 154-55.

212. See MAGISTRATE JUDGES PLAN, *supra* note 7, at 1-1.

213. See 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 155.

214. The Committee approved three supplements to the Long Range Plan at its June 1994 meeting: (1) Committee on the Administration of the Magistrate Judges System, Judicial Conference of the United States Supplement to the Long Range Plan for the Magistrate Judges System, *Role of Magistrate Judges in Court Governance* (June 1994) [hereinafter *Governance Supplement*]; (2) Committee on the Administration of the Magistrate Judges System, Judicial Conference of the United States, Supplement to the Long Range Plan for the Magistrate Judges System, *Magistrate Judge Utilization* (June 1994) [hereinafter *Utilization Supplement*]; (3) Committee on the Administration of the Magistrate Judges System, Judicial Conference of the United States, Supplement to the Long Range Plan for the Magistrate Judges System, *Civil and Felony Consent Authority of Magistrate Judges* (June 1994) [hereinafter *Consent Supplement*].

The long range planning process, however, also provided an opportunity to define and explore issues relating to the future of the magistrate judges system.

The Magistrate Judges Plan, as amended in December 1993, chronicles the history of the magistrate judges system and presents a vision of the role of magistrate judges in the federal courts that contemplates extensive and innovative utilization of magistrate judges to meet the long term needs of the federal courts.²¹⁵ The Magistrate Judges Plan emphasizes the importance of maintaining magistrate judges as adjuncts of the district courts allowing for maximum flexibility in the delegation of their duties.²¹⁶ The supplements to the Magistrate Judges Plan approved by the Magistrate Judges Committee in June 1994 contain several recommendations pertaining to magistrate judge utilization,²¹⁷ civil and felony consent authority,²¹⁸ and the role of magistrate judges in court governance.²¹⁹ Many of these recommendations are restatements or refinements of long-standing positions of the Magistrate Judges Committee and the Judicial Conference. Other recommendations, however, represent innovative, and in some respects, controversial changes in views previously expressed by the Committee.

Following historical precedent, the Magistrate Judges Plan stresses the importance of retaining the authority of the Judicial Conference to authorize new magistrate judge positions in accordance with the procedures set forth in 28 U.S.C. § 633:

Unlike the time-consuming procedures and political considerations involved with establishing Article III judgeships, the Conference is able to respond in a timely fashion to the changing and pressing needs of the district courts with respect to magistrate judge resources. The Conference is also in the best position to evaluate the overall needs of the district courts, and to determine whether they can best be satisfied by the establishment of magistrate judge

215. See MAGISTRATE JUDGES PLAN, *supra* note 7, at 2-1 to 3-2.

216. See MAGISTRATE JUDGES PLAN, *supra* note 7, at 4-1 to 4-2.

217. See *Utilization Supplement*, *supra* note 214, at 1. The *Utilization Supplement* recommends, *inter alia*, using magistrate judges to the fullest extent permissible to handle work appropriate to judicial officers of the district courts; developing Conference guidelines on utilization of magistrate judges; having each district develop a comprehensive plan for using its magistrate judges; and eliminating the option to appeal a magistrate judge's final ruling in a civil consent case to the district court under 28 U.S.C. § 636(c). *Utilization Supplement*, *supra* note 214, at 1.

218. See *Consent Supplement*, *supra* note 214, at 1 (recommending, *inter alia*, that district courts be encouraged to adopt procedures to maximize consensual utilization of magistrate judges in civil cases).

219. See *Governance Supplement*, *supra* note 214, at 1 (recommending that magistrate judges have voting representation at all levels of court governance structure).

positions, law clerks, pro se law clerks, or additional district judgeships.²²⁰

Nearly thirty years ago, the rationale for vesting the Judicial Conference with the authority to establish magistrate judge positions was set forth in the 1967 Senate Report on the Federal Magistrates Act:

These procedures are thought to afford this paramount advantage: all decisions upon the matters in question will be made by the Judicial Conference of the United States, composed of judges of the courts of the United States under the chairmanship of the Chief Justice of the Supreme Court. Insulated from political pressures, yet informed by the report of the Director and the recommendations of local district courts and the circuit judicial councils the Judicial Conference can be expected to establish a unified national system of U.S. magistrate [judge]s that will be sensitive to local needs without being the product of merely local interests.²²¹

Over twenty-five years of experience demonstrate the wisdom of placing the authority for the authorization of new magistrate judge positions in the hands of the Judicial Conference, and of the vesting of magistrate judge selection with the district courts in accordance with the merit selection panel process established by regulations of the Judicial Conference.

The Magistrate Judges Plan calls for the maintenance of the existing, broad authority of magistrate judges under 28 U.S.C. § 636, and for the expansion of authority in a variety of areas. These areas include encouraging district courts to adopt procedures maximizing the consensual utilization of magistrate judges in civil cases under 28 U.S.C. § 636(c), such as the direct assignment and opt-out approaches employed in the district courts of Oregon, Montana, and North Carolina.²²² Additionally, recognizing that judicial efficiency is enhanced by referring to magistrate judges matters over which they have clear decisional authority, the Magistrate Judges Plan encourages district courts to adopt procedures to reduce reliance on the report and recommendation process for case-dispositive motions under 28 U.S.C. § 636(b)(1)(B).²²³ The report and recommendation process can be inefficient where it routinely requires *de novo* review by a district judge, resulting in duplication of judicial effort.

220. MAGISTRATE JUDGES PLAN, *supra* note 7, at 4-2.

221. MAGISTRATE JUDGES PLAN, *supra* note 7, at 4-2 (quoting S. REP. NO. 371, 90th Cong., 1st Sess. 19 (1967)).

222. See *Consent Supplement*, *supra* note 214, at 1-3; see also CHAMBERS TO CHAMBERS, *supra* note 201, at 1-2.

223. See *Consent Supplement*, *supra* note 214, at 2-3.

In response to the projected growth of the criminal caseload of the federal courts, the Magistrate Judges Plan proposes establishment of pilot programs in selected district courts where magistrate judges, with the consent of the parties and under the supervision and control of the district judges, would be authorized to accept guilty pleas, conduct trials, and impose sentences in felony cases.²²⁴ In this regard, however, the Plan acknowledges a divergence of views regarding whether consent of the parties is sufficient under Article III to permit expanded utilization of magistrate judges in felony cases.²²⁵ In light of such constitutional concerns, the Magistrate Judges Plan proposes to proceed cautiously, expanding the involvement of magistrate judges in felony matters on an experimental basis.²²⁶

In addition, the Magistrate Judges Plan proposes that magistrate judges be accorded power to punish litigants directly for contempt.²²⁷ It also calls for eliminating the requirement of defendant's consent to trial before a magistrate judge in petty offenses cases and establishing an opt-out or waiver system for obtaining the consent of a defendant to trial before a magistrate judge in misdemeanor cases.²²⁸

Finally, the Magistrate Judges Plan proposes an expanded role for magistrate judges in court governance. The Magistrate Judges Committee recommends that magistrate judges be accorded voting representation at all levels of the court governance structure, including the Judicial Conference of the United States, the Board of the Federal Judicial Center, and the judicial councils of each circuit.²²⁹ As noted in the Magistrate Judges Plan, the concept of meaningful representation of magistrate judges in court governance is gaining increasing acceptance within the federal judiciary.²³⁰ Voting membership on court governance bodies comports with the recognition of magistrate judges as fully contributing members of the federal judiciary and enhances uniformity of understanding and collegiality among all judges on an institutional level.

Of course, the Long Range Plan for the Magistrate Judges System does not, in every respect, represent a policy statement by the Committee regarding the current utilization of magistrate judges, nor

224. See *Consent Supplement*, *supra* note 214, at 4-6.

225. See *Consent Supplement*, *supra* note 214, at 5-6.

226. See *Consent Supplement*, *supra* note 214, at 5-6.

227. MAGISTRATE JUDGES PLAN, *supra* note 7, at 6-4; *Utilization Supplement*, *supra* note 214, at 1.

228. MAGISTRATE JUDGES PLAN, *supra* note 7, at 6-6.

229. *Governance Supplement*, *supra* note 214, at 1.

230. *Governance Supplement*, *supra* note 214, at 2.

does it necessarily provide a firm blueprint for the future. The long range planning process does, however, require those involved to consider a variety of potential scenarios for the future and to consider appropriate responses.

In March 1995, the Judicial Conference received the Proposed Long Range Plan for the Federal Courts (Proposed Long Range Plan) developed by its Committee on Long Range Planning.²³¹ The Proposed Long Range Plan recognizes the important contributions of the magistrate judges system, and essentially comports with the Long Range Plan for the Magistrate Judges System adopted by the Magistrate Judges Committee a year earlier.²³² Many of the recommendations contained in the Proposed Long Range Plan, including those pertaining to the magistrate judges system, have been identified for further study and report at the September 1995 session of the Conference. Regardless of the final disposition of those proposals, they nonetheless provide additional insight regarding the magistrate judges system.

The Proposed Long Range Plan provides that individual districts should retain maximum flexibility to utilize magistrate judges in light of local conditions and changing caseload needs consistent with the national goal of effective utilization of all magistrate judge resources.²³³ The Proposed Plan also contains several specific proposals regarding magistrate judges. In particular, it recommends that where the parties in a civil case have consented to the case-dispositive authority of a magistrate judge pursuant to 28 U.S.C. § 636(c), judgments should be reviewable only in the courts of appeals.²³⁴ This proposal recognizes what has become the standard practice in most civil consent cases before a magistrate judge.²³⁵ The Proposed Plan also recommends expanded use of recalled magistrate judges to help achieve the goal of carefully controlled growth of the federal judiciary.²³⁶ It further recommends limited contempt authority for

231. See 1995 PROPOSED LONG RANGE PLAN, *supra* note 210. As noted on each page of the PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS, the document was prepared under the authority of the Judicial Conference Committee on Long Range Planning for consideration by the Judicial Conference. Its contents reflect only the preliminary views of the committee and do not represent Judicial Conference policy unless approved by the Conference. See 1995 PROPOSED LONG RANGE PLAN, *supra* note 210.

232. Compare MAGISTRATE JUDGES PLAN, *supra* note 7 with 1995 PROPOSED LONG RANGE PLAN, *supra* note 210.

233. 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 93.

234. 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 46-47.

235. 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 47 n.26 (stating that review by court of appeals is standard route in these cases).

236. 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 91-92.

magistrate judges,²³⁷ and provides that non-Article III judges, including magistrate judges, should be afforded the opportunity for meaningful participation in court governance.²³⁸

As can be seen from a review of the long range plans devised by the Magistrate Judges Committee and the Judicial Conference Committee on Long Range Planning, the future of the magistrate judges system is being carefully considered and will continue to develop through the deliberate policymaking authority of the federal judiciary.

CONCLUSION

The measured progress of the federal magistrate judges system is reflected in the incremental, yet substantial, change that has occurred since the enactment of the Federal Magistrates Act of 1968. Significantly, the evolution of the magistrate judges system has been accomplished largely through the governing structure of the federal judiciary provided by the Judicial Conference of the United States, the judicial councils of the circuits, and the district courts, supported by the Administrative Office of the United States Courts.

The hallmark of the magistrate judges system remains its flexibility to assist the district courts in addressing their needs. Ultimately, the development of the magistrate judges system is the product of a federal judiciary committed to the effective utilization of magistrate judges and to a corps of magistrate judges prepared to maximize their effectiveness. The evolving magistrate judges system represents one important example of how the federal judiciary meets its responsibility of providing an accessible forum in which litigants in federal court can receive a fair, inexpensive, and expeditious resolution of their disputes. It can be reasonably anticipated that the magistrate judges system will continue to play an integral role in that process.

237. 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 93-94.

238. 1995 PROPOSED LONG RANGE PLAN, *supra* note 210, at 76-79.

