

Symposium: Shifting Powers in the Federal Courts

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THE EXPANDING ROLE OF MAGISTRATE JUDGES IN THE FEDERAL COURTS

Tim A. Baker*

"The evidence is all around us. It is the Article I, not the Article III, trial judiciary that is today expanding, vital, and taking on ever more judicial responsibilities."

U.S. District Judge William G. Young¹

I. INTRODUCTION

As Judge Young correctly observed, the evidence is all around us. The Article I judiciary is increasingly taking on additional, significant judicial responsibilities. Article I United States magistrate judges are unquestionably a vital and expanding part of the federal judiciary. The United States Supreme Court itself acknowledged that "federal magistrates account for a staggering volume of judicial work" and are "indispensable."² Lower courts have reached the same conclusion, as has Congress.³ Lawyers and parties who have watched their cases progress through the federal courts no doubt can attest to the fact that more commonly it is the magistrate judges, rather than the district judges, who assume active, pretrial roles in case management and settlement – the mainstay of modern federal court civil practice.

This article explores the origins and developments of both the Article I and the Article III judiciary. Starting with Alexander Hamilton's concern about the need for an independent Article III judiciary, and examining developments up through the present day practice of active pretrial management and trial by Article I judges, this article explores the expanding role of magistrate judges in the federal courts. Included in this examination is a review of the increasing demands and pressures on the judiciary, and how these factors, combined with other developments, have resulted in greater duties and responsibilities for magistrate judges. As will be shown, these changes have altered the nature of federal court

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¹ William G. Young, *An Open Letter to U.S. District Judges*, FED LAW. 30, 34 (July 2003).

² *Peretz v. United States*, 501 U.S. 923, 928-29 n.5 (1991) (citing *Gov't of the Virgin Islands v. Williams*, 892 F.2d 305, 308 n.5 (3d Cir. 1989)); see also Mark Kende, *The Constitutionality of New Contempt Powers for Federal Magistrate Judges*, 53 HASTINGS L.J. 567 (2002) (discussing authority of magistrate judges, including recently expanded contempt powers).

³ See *infra*, notes 30-31.

practice and, along the way, the role of Article I and even Article III judges.

II. OVERVIEW AND COMPARISON OF THE ARTICLE I AND ARTICLE III
JUDICIARY

Article III, Section 1 of the U.S. Constitution provides:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.⁴

The purpose of this provision—which essentially provides Article III judges with lifetime tenure and no decrease in salary—was to establish an independent judiciary. As Alexander Hamilton explained, “The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government.”⁵ Hamilton viewed these protections as the best method any government could devise “to secure a steady, upright, and impartial administration of the laws.”⁶

Hamilton viewed with suspicion the notion that anything short of lifetime tenure would permit federal judges to carry out their sworn duty of upholding the Constitution and protecting individuals’ rights:

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence.⁷

⁴ U.S. CONST., art. III, § 1.

⁵ THE FEDERALIST No. 78 (Alexander Hamilton).

⁶ *Id.*

⁷ *Id.* Likewise, Hamilton observed in Federalist No. 81: “State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied

Hamilton's concerns and suspicions, voiced during the birth of America's democracy, remain vibrant despite the passage of many years. For example, United States Supreme Court Justice William Brennan remarked in *Northern Pipeline Co. v. Marathon Pipeline Co.*,⁸ "[O]ur Constitution unambiguously enunciates a fundamental principle—that the 'judicial Power of the United States' must be reposed in an independent Judiciary. It commands that the independence of the Judiciary be jealously guarded, and it provides clear institutional protections for that independence."⁹ Likewise, Seventh Circuit Court of Appeals Judge Richard Posner echoed such concerns in his vigorous and passionate dissent in *Geras v. Lafayette Display Fixtures, Inc.*¹⁰ in which he argued that the statute authorizing magistrate judges to preside and enter judgment in civil cases was unconstitutional.

Despite these concerns, magistrate judges—which comprise close to half of the judges sitting on the district courts¹¹—are subject to periodic appointments and otherwise lack many of the indicia of independence that characterize the Article III judiciary. As one commentator has observed:

Magistrate judges differ from Article III judges also because they lack life tenure, lack constitutional protection from salary reductions, and are not selected at the national level by a presidential appointment with Senate confirmation. They are selected by the Article III judges in their districts and serve eight-year terms. Article III judges can remove magistrates for reasons other than impeachable behavior, such as poor work performance. Thus, magistrates lack the independence of Article III judges. Some commentators and courts have said this raises concerns about impartiality and the possibility of magistrates being influenced by the Article III judges who run their courts.¹²

upon for an inflexible execution of the national laws." THE FEDERALIST No. 81 (Alexander Hamilton).

⁸ 458 U.S. 50 (1892).

⁹ *Id.* at 60.

¹⁰ 742 F.2d 1037,1045-54 (7th Cir. 1984).

¹¹ See *infra* Appendix B, reflecting that as of 2003 there were 651 district judges and 543 magistrate judges.

¹² Kende, *supra* note 2, at 576-77 (internal citations omitted). As Professor Kende noted, however, there is a federal statute that protects magistrates from salary diminution (28

The magistrate judge system has its roots in the system of commissioners that developed under the Judiciary Act of 1789. The Judiciary Act, which created a system of federal trial courts, let matters of arrest and bail be governed by state law and handled by state judicial officers.¹³ In 1793, Congress authorized the federal circuit court to appoint “one or more discreet persons learned in the law” to take bail in federal criminal cases.¹⁴ In 1817, Congress first officially named these discreet, learned persons commissioners of the circuit court and extended to them the authority to take depositions in civil cases.¹⁵ In 1842, Congress authorized circuit court commissioners to exercise general criminal process in federal cases by issuing arrest warrants and holding persons for trial.¹⁶ The jurisdiction and role of the commissioners was repeatedly expanded throughout the nineteenth century. The associated growing pains resulted in Congress, in 1896, renaming the office of commissioner of the circuit court to U.S. Commissioner, with a court year term subject to removal by the district court at any time.¹⁷ The number of U.S. Commissioners grew, and by 1965 there were 713.¹⁸

The next significant development of the magistrate judge system was the enactment of the Federal Magistrate’s Act of 1968.¹⁹ The 1968 Act abolished the office of U.S. Commissioner and created the office of United States Magistrate. The new judicial officer:

was granted authority to exercise all powers previously exercised by the commissioners, along with additional duties such as assisting district judges in the conduct of pretrial and discovery proceedings, review of habeas

U.S.C. § 634(b) (1994)), though that statute could be amended or repealed at any time unlike a constitutional protection. *Id.* at 687, n.55.

¹³ Leslie G. Foschio, *A History of the Development of the Office of United States Commissioner and Magistrate Judge Systems*, 1999 FED. CTS. L. REV. 4, I.1 (1999). The author of the foregoing article is a magistrate judge for the Western District of New York. For those seeking additional detail on the history of the magistrate judge system, Judge Foschio’s article provides an oasis of information. In addition, Judge Foschio’s article contains informative and interesting anecdotes about magistrate judges. For example, the article points out that Harlan Fiske Stone was sworn in as Chief Justice of the U.S. Supreme Court by United States Commissioner Wayne Hackett in a low-key ceremony in a log cabin in Colorado’s Rocky Mountain National Park on July 4, 1942. *Id.* at V.12.

¹⁴ *Id.* at I.3.

¹⁵ *Id.* at II.1.

¹⁶ *Id.* at II.2.

¹⁷ *Id.* at II.9.

¹⁸ *Id.* at II.10.

¹⁹ *Id.* at III.1.

corpus petitions and acting as special masters. The 1968 Act also provided that magistrates could be given authority to perform other duties not contrary to law or the Constitution By July 1, 1971, the new system of magistrates had replaced the former commissioner system in all district courts.²⁰

Congress amended the 1968 Act in 1976 to clarify the powers of magistrates to hear habeas corpus and prisoner civil rights actions, to review administrative determinations of Social Security benefits, and to issue reports and recommendations concerning motions to dismiss and for summary judgment.²¹

Next came the Federal Magistrate Act of 1979.²² The 1979 Act increased the role, responsibilities, and status of the magistrate in a number of important ways including the following: gave magistrates authority to conduct trials in civil cases, with or without a jury, upon the consent of the parties; expanded the jurisdiction of magistrate judges to handle all federal misdemeanors rather than just petty offenses; granted authority to preside over jury trial in misdemeanor cases; provided a merit selection system for appointment of federal magistrates; and authorized funding for law clerks to assist magistrates.²³

A significant change of form and substance was shepherded in by the Judicial Improvements Act of 1990.²⁴ As to form, the 1990 Act officially changed the title of the magistrate position to United States Magistrate Judge.²⁵ While this change in nomenclature was important, Title I of the 1990 Act contained a more substantive change—the Civil Justice Reform Act of 1990 (“CJRA”).²⁶ The CJRA required each of the ninety-four district courts to adopt a “civil justice expense and delay reduction plan” to “facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.”²⁷ The CJRA “emphasized the importance of early involvement by a judicial officer in

²⁰ *Id.*

²¹ See R. Lawrence Dessem, *The Role of the Federal Magistrate Judge in Civil Justice Reform*, 67 ST. JOHN’S L. REV. 799, 801 (1993) (discussing change and noting codification at 28 U.S.C. § 636(b) (1988)).

²² Foschio, *supra* note 13, at III.5.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Civil Justice Reform Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990).

²⁷ Dessem, *supra* note 21, at 799 (citing 28 U.S.C. § 471).

planning a case's progress and controlling discovery."²⁸ By and large, that "judicial officer" has been the magistrate judge.

Various commentators have correctly observed that the CJRA has resulted in a "changed role for the magistrate judges within many federal district courts."²⁹ For example, Professor Dessem observed:

Regardless of the roles played by magistrate judges under particular expense and delay reduction plans, the office of magistrate judge will, on balance, grow under the CJRA. At a time when magistrate judges in some districts are struggling to enhance their status within the federal judiciary, many of their new roles under the expense and delay reduction plans should increase their stature with both the district judges and the attorneys with whom they work.³⁰

Likewise, another commentator has stated:

Congress and federal judges have steadily expanded the role of magistrates in the federal judicial system since the passage of the Federal Magistrates Act in 1968. Under the original terms of the Act, magistrates had few enumerated powers, and final decisionmaking authority remained at all times with a federal judge. In the two decades since Congress passed the Act, congressional amendment of the law and expansive judicial interpretation have resulted in a new breed of judicial officer. In effect, magistrates now exercise many of the same powers as federal district judges; they decide motions, hear evidence, instruct juries, and render final decisions in civil and criminal cases.³¹

The symbiotic relationship between the Article III and the Article I judiciary might be loosely compared with the modern day relationship between certain states and legalized gambling. By and large, there is strong resistance to legalized gambling in many states. On the other

²⁸ Arthur R. Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Clichés Eroding Our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. L. REV. 982, 998 (2003).

²⁹ Dessem, *supra* note 21, at 801.

³⁰ *Id.* at 838 (footnote omitted).

³¹ Brendan Shannon, Note, *The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer*, 33 WM. & MARY L. REV. 253, 253 (1991) (footnotes omitted).

hand, financially strapped states are always searching for new revenue streams, and gambling provides a potent and available source of such revenues. Likewise, there is strong resistance to allowing magistrate judges too much control and responsibility over the federal docket. This resistance quite rightly finds its support in Article III, Section 1 of the U.S. Constitution, which of course must be respected. However, the heavy demands of the federal court docket have forced Congress and the district courts to search for new ways to manage the workload, and magistrate judges provide a potent and available source for this task.

Seventh Circuit Court of Appeals Judge Richard Cudahy captured this sentiment in *Geras v. Lafayette Display Fixtures, Inc.*³² when he lamented:

In the best of all possible constitutional worlds, there would perhaps be no non-Article III judicial officers. Judicial independence and the purity of the constitutional grant of judicial power might be best assured by barring the door entirely to those unclothed with the constitutional protections. But the pressure to decide cases calls for reasonable measures in response. This does not necessarily mean a flood of new Article III judges, a drastic narrowing of the federal jurisdiction or a higher price of access to the federal courts. It may reasonably mean such programs as the Magistrate Act which are carefully designed to protect the essential values of Article III according to well accepted principles.³³

As the foregoing reveals, the Article III and Article I judiciary have different origins. District judges need look no further than Article III, Section 1 of the U.S. Constitution to find their roots. The Article I judiciary, in contrast, has its roots in the former system of commissioners that developed under the Judiciary Act of 1789. Over time, Congress has granted additional authority and responsibilities to Article I magistrate judges, and Article III district judges—trying to keep pace with a bustling caseload—have utilized this additional resource.

³² 742 F.2d 1037 (7th Cir. 1984).

³³ *Id.* at 1045.

III. THE INCREASING DEMANDS AND PRESSURES ON THE JUDICIARY:
POSSIBLE FALLOUT

Congress, the United States Supreme Court, and lower courts have all acknowledged the increasing demands on the federal judiciary. As noted at the outset of this article, the Supreme Court itself observed that “federal magistrates account for a staggering volume of judicial work” and are “indispensable.”³⁴ The Senate Judiciary Committee that considered the CJRA cited to the “increasingly heavy demands of the civil and criminal dockets” in concluding that magistrate judges “can and should play an important role, particularly in the pretrial and case management process.”³⁵ Former Chief Judge John Gibbons of the Third Circuit Court of Appeals wrote in *Government of the Virgin Islands v. Williams*,³⁶ “given the bloated dockets that district courts have now come to expect as ordinary, the role of the magistrate in today’s federal judicial system is nothing less than indispensable.”³⁷ The numbers bear this out.

Nationwide, civil filings increased by eleven percent in Fiscal Year 2004.³⁸ At the end of Fiscal Year 2003, 261,065 civil cases remained pending in the district courts.³⁹ This was up from 218,041 in 1993, 186,113 in 1980, and 93,207 in 1970.⁴⁰ The criminal docket has also demonstrated explosive growth during this period. At the end of Fiscal Year 2003, 60,532 criminal cases remained pending.⁴¹ The number of pending criminal cases in the district courts has increased every year since 1994: 26,328 (1994); 28,738 (1995); 32,156 (1996); 37,237 (1997); 40,277 (1998); 42,966 (1999); 47,677 (2000); 49,696 (2001); 55,518 (2002); and 60,532 (2003).⁴² By comparison, in 1980, only 14,759 criminal cases were pending, and, in 1970, 20,910 were pending.⁴³ The demands of the criminal docket are increased by the fact that many criminal prosecutions involve multiple defendants (such as in new “docket buster” methamphetamine cases), thereby making such cases potentially

³⁴ *Peretz v. United States*, 501 U.S. 923, 928-29 n.5 (1991) (citing *Gov’t of the Virgin Islands v. Williams*, 892 F.2d 305, 308 n.5 (3d Cir. 1989)); see also Kende, *supra* note 2, at 567 (discussing expanded contempt powers and other authority of magistrate judges).

³⁵ S. REP. NO. 416, at 21.

³⁶ 892 F.2d 305, 308 (3d Cir. 1989).

³⁷ *Id.* at 308.

³⁸ Chief Justice William H. Rehnquist, *2004 Year-End Report on the Federal Judiciary*, at 9 (Jan. 1, 2005) available at <http://www.supremecourtus.gov/publicinfo/year-end/2004year-endreport.pdf> (last visited Apr. 24, 2005).

³⁹ See *infra* Appendix B.

⁴⁰ See *infra* Appendix B.

⁴¹ See *infra* Appendix B.

⁴² See *infra* Appendix B.

⁴³ See *infra* Appendix B.

more time consuming and complex. As the district judges have primary responsibility for the federal criminal docket (and exclusive responsibility for trials and sentencings in felony cases), the increased demands of the criminal docket have made magistrate judges an appealing resource.

Judges face pressures separate and apart from their bulging dockets. In his 2004 Year-End Report on the Federal Judiciary, Chief Justice William Rehnquist stated that the federal budget crisis made Fiscal Year 2004 “a particularly difficult year for judges and court staff throughout the country.”⁴⁴ Thus, judges are being asked to do much more without the resources to accomplish this task. Of course, judges are not alone in being asked to do more with less, as corporate America and others would no doubt attest. But judges are not selling coffee or iPods; they are deciding issues of liberty and justice of life-altering and constitutional proportions. Justice Rehnquist also noted in his 2004 Year-End Report that federal judges have received criticism for judicial decisions and actions taken in the discharge of their judicial duties.⁴⁵ Thus, judges face increasing dockets, decreasing resources, and criticism if they stumble (literally or ideologically) along the way. On top of this, Congress has begun investigating charges of judicial misconduct that previously might have been left to the circuit judicial councils for resolution.⁴⁶ Thus, judges—frankly, most often the district judges—are facing added pressures on many fronts.

The appointment and confirmation process for a district judge nominee can be a pressure cooker as well. Although the vast majority of persons nominated to the federal bench survive the process, the senate floor is littered with would-be district (and circuit) judges who, over the years, have withered on the appointment vine. Although the appointment process for a prospective member of the United States Supreme Court is understandably more demanding than that of a district judge, the editorial cartoon set forth at Appendix A, illustrating the perils of the Supreme Court confirmation process, might evoke a knowing chuckle from district judge appointees. This cartoon depicts three nooses hanging over three chairs at a table before what is meant to be the Senate Judiciary Committee. A woman vacuuming the floor remarks to a stone-faced man in a suit, “I see the Senate is preparing for Supreme Court nominations.”⁴⁷ Cartoons such as these reinforce the

⁴⁴ Rehnquist, *supra* note 38, at 18.

⁴⁵ *Id.* at 5.

⁴⁶ Todd Peterson, *Congressional Investigations of Federal Judges*, 90 IOWA L. REV. 1, 4 (2004).

⁴⁷ *See infra* Appendix A; Gary Varvel, THE INDIANAPOLIS STAR, Oct. 30, 2004, at A.14.

notion that “[r]elations between Congress and the federal judiciary are as bad as they have been in almost 200 years.”⁴⁸ Such poor relations—whether real or imagined—puts added pressures on the judiciary.

In contrast, magistrate judges need no presidential appointment or senate confirmation. Instead, the district judges of each court—having already survived the appointment and confirmation process—are charged with the responsibility of appointing magistrate judges within their courts.⁴⁹ Such appointments occur based upon the recommendations of merit selection panels, which review applications and conduct interviews of magistrate judge applicants.⁵⁰ The design of this process is “to assist the courts in identifying and recommending persons who are best qualified to fill such positions.”⁵¹ Although the process for selecting magistrate judges is highly competitive and can be grueling in its own right, the lack of a requisite presidential and congressional blessing makes the ordeal less onerous than for the district judges.

⁴⁸ Peterson, *supra* note 46, at 4.

⁴⁹ 28 U.S.C. § 631(a) (2000).

⁵⁰ *Id.* § 631(b)(5). This statute sets forth the qualifications of the magistrate judge positions and provides, in relevant part:

(b) No individual may be appointed or reappointed to serve as a magistrate judge under this chapter unless:

(1) He has been for at least five years a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, except that an individual who does not meet the bar membership requirements of this paragraph may be appointed and serve as a part-time magistrate judge if the appointing court or courts and the conference find that no qualified individual who is a member of the bar is available to serve at a specific location;

(2) He is determined by the appointing district court or courts to be competent to perform the duties of the office;

(3) In the case of an individual appointed to serve in a national park, he resides within the exterior boundaries of that park, or at some place reasonably adjacent thereto;

(4) He is not related by blood or marriage to a judge of the appointing court or courts at the time of his initial appointment; and

(5) He is selected pursuant to standards and procedures promulgated by the Judicial Conference of the United States.

Id. § 631(b).

⁵¹ *Id.* § 631(b)(5).

Full time magistrate judges serve eight-year terms and are eligible for (and commonly receive) successive reappointments.⁵² Magistrate judges may be removed during their terms “only for incompetency, misconduct, neglect of duty, or physical or mental disability. . . .”⁵³ The district judges have the authority to remove a magistrate judge in accordance with these conditions.⁵⁴ Magistrate judges receive a salary of 92% of that of the district judges.⁵⁵

The comparatively less tumultuous route magistrate judges face in getting to the federal bench as opposed to district judges may have contributed to the rise in the number of sitting magistrate judges. In 1970, in the wake of the Federal Magistrate Judge’s Act of 1968, there were only twenty-eight federal magistrate judges.⁵⁶ By 1980, after the passage of the Federal Magistrate Act of 1979, that number grew to 439.⁵⁷ From 1993 to 2003, the number of magistrate judges grew, albeit modestly, every year, from 483 in 1993 to 543 in 2003.⁵⁸ By comparison, the number of district judges from 1993 to 2003 has gone up and down, though overall the number grew from 542 in 1993 to 651 in 2003.⁵⁹ These statistics, combined with the previously noted demands and pressures that most often fall more squarely on the district judges, lend support for the proposition enunciated by Judge Young at the outset that the Article I judiciary is expanding and vital.

There are several reasons why Judge Young’s observation has merit. For one, there have been various efforts to decrease the district judges’ discretion, if not their outright jurisdiction. As Judge Young emphatically stated:

When was the last time the district court judiciary protested a diminution in our jurisdiction? Can anyone remember? We didn’t do it before the adoption of the Sentencing Guidelines and, other than vigorous objections to the conversion of the guidelines into a

⁵² *Id.* § 631(e). Magistrate judges may also be appointed to part time positions, which appointments are for four-year terms. *Id.*

⁵³ *Id.* § 631(i). This provision also provides that “a magistrate judge’s office shall be terminated if the conference determines that the services performed by his office are no longer needed.” *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* § 634(a).

⁵⁶ *See infra* Appendix B.

⁵⁷ *See infra* Appendix B.

⁵⁸ *See infra* Appendix B.

⁵⁹ *See infra* Appendix B.

system of case-specific mandatory minimums, we've rarely done it since.

* * *

Other than general platitudes, at the district court level we're all too often unclear what we do, we frequently engage in disparaging it and minimizing its importance, and by the way, dear Congress, we'd like to do less. Our official position is that we'd like to give away diversity jurisdiction. We made no protest over the creation of the redundant and fiscally wasteful Bankruptcy Appellate Panel program, and the presently proposed bankruptcy legislation further restricts our review of bankruptcy court decisions. The President's panel on the Social Security Systems proposes replacing the district judge review of Social Security decisions with an expanded Article I hearing officer (ALJ) program within the executive branch. AEDPA and IIRIRA strip away rights that were traditionally vindicated in the district courts and crowd them onto the already overburdened dockets of the courts of appeal, confident that, as a practical matter, the exercise of these rights will be markedly diminished.⁶⁰

Second, the number of civil trials has markedly decreased over the years. Although the large majority of civil (and criminal) cases have never gone to trial, the numbers provide some support for Judge Young's conclusion that the "American jury system is withering away."⁶¹ In 1970, there were 9,499 federal civil trials, equal to just more than 10% of the cases filed. By 1980, only 7.09% of the civil cases were going to trial, although overall there were more civil trials in 1980 (13,191) than there were in 1970. However, from 1990 to 1993, the number of civil trials as well as the percentage of civil trials has nearly steadily, and significantly fallen. The numbers reflect: 12,510 trials (5.15%) in 1990; 12,136 trials (5.36%) in 1991; 12,124 (5.38%) in 1992; 12,066 (5.53%) in 1993; 12,216 (5.40%) in 1994; 11,991 (5.12%) in 1995; 12,262 (4.89%) in 1996; 11,918 (4.37%) in 1997; 10,897 (4.15%) in 1998; 10,030 (4.02%) in 1999; 9,233 (3.69%) in 2000; 7,592 (3.03%) in 2001; 6,974 (2.67%) in 2002;

⁶⁰ Young, *supra* note 1, at 33.

⁶¹ *Id.* at 30. Judge Young further contends, "This is the most profound change in our jurisprudence in the history of the Republic." *Id.*

and 6,597 (2.53%) in 2003.⁶² The percentage of criminal trials has also decreased fairly (though not entirely) consistently during this time, from a high of 44.95% of the cases in 1980 to just 11.76% of the cases in 1993.⁶³

A third, yet related, reason for the decreased number of trials is the rise of mediation and other alternative dispute resolution methods. Given the expense associated with any type of litigation—particularly high stakes federal court litigation—few parties can truly afford the process. Lawsuits typically take between one and two years to make it through trial, which of course does not include the time (and expense) of a possible appeal. The typical federal court case will include written discovery, one or more depositions, perhaps a discovery dispute with corresponding motions, and at least one summary judgment or other dispositive motion. It is not uncommon for fee petitions to exceed \$100,000 for such cases. Faced with such enormous expense, as well as the risk of an adverse outcome, parties have embraced the settlement process. In the Southern District of Indiana, for example, it is rare for a substantive civil case to make it all the way to trial without a formal settlement conference. Typically, settlement efforts will be initiated early and often.

The magistrate judge is most often the point person for court-sponsored settlement efforts. Magistrate judges have been singled out as being “particularly well suited” to handle settlement conferences.⁶⁴ As one commentator has observed:

Since most judges do not discuss settlement with counsel in cases over which they may preside at trial, a judge other than the trial judge is needed to preside over judicially-hosted settlement conferences. Magistrate judges, who are perceived as having fewer nondelegable tasks than district judges, are the logical choice to handle these conferences.⁶⁵

Fourth, the availability of magistrate judges to exercise full, case-dispositive jurisdiction over the entire case pursuant to 28 U.S.C. § 636(c) supports the conclusion that the Article I judiciary is expanding and vital. Although consent jurisdiction appears to be no serious threat to

⁶² See *infra* Appendix B.

⁶³ See *infra* Appendix B.

⁶⁴ Dessem, *supra* note 21, at 819.

⁶⁵ *Id.*

district judges' dominance of trial practice,⁶⁶ the numbers nevertheless reflect that in 2003 magistrate judges presided over 11.63% of the civil trials in federal court.⁶⁷ From 1994 through 2003 magistrate judges on average conducted slightly more than 14% of the civil trials nationwide.⁶⁸

It must be strongly emphasized, however, that magistrate judges are not taking over the federal judiciary. By design, and by constitutional mandate, the district judge has primary responsibility for trying cases, resolving dispositive motions, and otherwise handling the weighty issues in need of decision by the federal courts. This assuredly will remain the norm, despite the expanding role of magistrate judges in the federal courts. Nevertheless, the increasing use of magistrate judges in active pretrial management, including settlement, the availability and use of magistrate judge consent jurisdiction, and the continual decrease in the number of trials, has had a palpable impact on federal court practice. The magistrate judge has become a prominent and pivotal player in the district courts.

IV. THE EXPANDING ROLE OF MAGISTRATE JUDGES

There are more magistrate judges on the federal bench today than at any time in history, and they are exercising more judicial control over the litigation process than ever before. The source of this power emanates from 28 U.S.C. § 636, which provides in relevant part that upon the consent of the parties, a magistrate judge "may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case. . . ."⁶⁹ Although such consent typically has been provided to the court in writing by way of a form provided by the clerk's office,⁷⁰ the United States Supreme Court recently held that consent to the authority of magistrate judges may be implied from a party's

⁶⁶ *Geras v. Lafayette Display Fixtures, Inc.*, 742 F.2d 1037, 1054 (7th Cir. 1984) (Posner, J., dissenting) (suggesting the day might come where magistrate judges try "50 percent of the nation's federal trials"). While Judge Posner may not have suggested this figure in all seriousness, the 50% range does not in any event seem realistic, and, indeed, the statistics do not bear this out as a viable endpoint.

⁶⁷ See *infra* Appendix B.

⁶⁸ See *infra* Appendix B.

⁶⁹ 28 U.S.C. § 636(c) (2000).

⁷⁰ *Id.* § 636(c)(2) provides, in relevant part:

If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court.

Id.

conduct during litigation.⁷¹ When consent is given, an appeal from any judgment goes directly to the court of appeals as would an appeal from a district judge.⁷²

Even without the parties' consent, magistrate judges exercise vast authority over the direction and resolution of cases in federal court. In this regard, 28 U.S.C. § 636(a) provides:

[E]ach United States magistrate judge shall have within the territorial jurisdiction prescribed by his appointment:

- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
- (2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;
- (3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;
- (4) the power to enter a sentence for a petty offense; and
- (5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.⁷³

In addition, a district judge may:

designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress

⁷¹ See *Roell v. Withrow*, 538 U.S. 580, 581 (2003); see also *Warren v. Thompson*, 224 F.R.D. 236, 238-39 (D.D.C. 2004) (holding that plaintiff's acquiescence to actions of her attorney during pretrial matters and subsequent jury trial constituted voluntary consent to disposition of her Title VII case by the magistrate judge under the Supreme Court's reasoning in *Roell v. Withrow*).

⁷² 28 U.S.C. § 636(c)(3).

⁷³ *Id.* § 636(a)(1-5).

evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.⁷⁴

A district judge may also:

designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.⁷⁵

Within ten days after being served with a copy of the magistrate judge's findings or recommendations, any party may serve and file written objections.⁷⁶

Any consideration of the magistrate judge's authority must take into account the standard of review set forth above. First, the district judge's review of any findings or recommendations is required to be "de novo."⁷⁷ However, litigants may wonder whether a district judge nevertheless gives at least some deference to a trusted magistrate judge colleague who is intimately familiar with the case (sometimes more so than the district judge) and who has produced what appears to be an arguably appropriate resolution of the issue. Second, the standard of review for most other non-dispositive pretrial matters is "clearly erroneous or contrary to law."⁷⁸ This deferential standard increases the impact a magistrate judge's ruling may have on the case given that a party's success in today's federal court litigation arena often rises or falls at the discovery stage, where magistrate judges traditionally enjoy substantial control and influence.

⁷⁴ *Id.* § 636(b)(1)(A).

⁷⁵ *Id.* § 636(b)(1)(B).

⁷⁶ *Id.* § 636(b)(1)(C).

⁷⁷ *Id.* § 636(b)(1)(C).

⁷⁸ *Id.* § 636(b)(1)(A).

Finally, the foregoing excerpts, while extensive, do not set forth all of the authority of magistrate judges. Perhaps most notably, the Federal Courts Improvement Act of 2000⁷⁹ (“FCIA”) gave magistrate judges limited contempt powers for the first time.⁸⁰ As one commentator has correctly concluded, “The importance and powers of magistrates have grown since the Federal Magistrates Act took effect in 1968, replacing the U.S. Commissioner system. The FCIA contempt statute is just another example of that growth.”⁸¹

The case law interpreting the authority of magistrate judges confirms that their powers are broad – yet far from limitless. While the case law in this area has not always been consistent and clear, courts have recognized that a magistrate judge may: hold a non-party liable for contempt sanctions for violations of an injunction issued in a class action case;⁸² overrule an earlier ruling by a district judge after the parties had consented under 28 U.S.C. § 636(c) to have the case disposed of by the magistrate judge;⁸³ disqualify counsel;⁸⁴ take a guilty plea and conduct a proceeding under the Federal Rule of Criminal Procedure 11 (“Federal Criminal Rules”) with the defendant’s consent;⁸⁵ try and sentence a defendant charged with a petty offense without the defendant’s consent pursuant to 18 U.S.C. § 636(a)(4) and 18 U.S.C. § 3401(a);⁸⁶ dispose of a juvenile defendant’s petty offense case under 18 U.S.C. § 3401(g) without receiving certification from the Attorney General of the United States under 18 U.S.C. § 5032;⁸⁷ prohibit a litigant from supplementing the record for the district judge on a case-dispositive motion after the magistrate judge had completed a report and recommendation where the party had sufficient opportunity to raise all relevant arguments and evidence before the magistrate judge;⁸⁸ issue an order allowing a beeper or electronic tracking device to be attached to a suspect’s plane pursuant to Federal Criminal Rule 41;⁸⁹ issue bench warrants;⁹⁰ seal search warrant materials and deny a defendant’s motion to unseal the materials;⁹¹ order

⁷⁹ *Id.* § 636(e).

⁸⁰ Kende, *supra* note 2, at 568.

⁸¹ *Id.* at 572.

⁸² *Irwin v. Mascott*, 370 F.3d 924 (9th Cir. 2004).

⁸³ *Fieldwork Boston, Inc. v. United States*, 344 F. Supp. 2d 257, 274 (D. Mass. 2004).

⁸⁴ *Affeldt v. Carr*, 628 F. Supp. 1097, 1101 (N.D. Ohio 1985).

⁸⁵ *United States v. Woodard*, 387 F.3d 1329, 1333 (11th Cir. 2004).

⁸⁶ *United States v. Zenon-Encarnacion*, 387 F.3d 60, 64 (1st Cir. 2004).

⁸⁷ *United States v. Juvenile Male*, 388 F.3d 122, 125 (4th Cir. 2004).

⁸⁸ *Koken v. Auburn Manufacturing, Inc.*, 341 F. Supp.2d 20, 27 (D. Me. 2004).

⁸⁹ *United States v. Pretzinger*, 542 F.2d 517, 521 (9th Cir. 1976).

⁹⁰ *King v. Thornburg*, 762 F. Supp. 336, 342 (S.D. Ga. 1991).

⁹¹ *In re Eyecare Physicians of America*, 100 F.3d 514, 519 (7th Cir. 1996).

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a psychiatric examination of a defendant under 18 U.S.C. § 4241(a) and 28 U.S.C. § 636 at the time of an initial appearance;⁹² rule on motions for mental competency examinations under 18 U.S.C. § 4241;⁹³ seal financial affidavits for appointment of counsel under the Criminal Justice Act in order to prevent possible violation of a defendant's Fifth Amendment right against self-incrimination, and order a hearing to determine whether court appointment of counsel should be terminated;⁹⁴ conduct an extradition proceeding under 18 U.S.C. § 3184 by local rule;⁹⁵ certify petitioners for extradition;⁹⁶ seal indictments;⁹⁷ amend the conditions of release set previously in another district by another magistrate judge;⁹⁸ issue a detention order under both 18 U.S.C. § 3041 and 28 U.S.C. § 636(a)(2);⁹⁹ try a misdemeanor case;¹⁰⁰ restrict a defendant's driving activities for six months as a condition of probation after defendant pleaded guilty to a misdemeanor motor vehicle offense;¹⁰¹ sentence a misdemeanor defendant to a one-year term of imprisonment and to a one-year term of supervised release, even where the total sentence is greater than the statutory maximum term of imprisonment for a misdemeanor;¹⁰² rule on motions to remand that are non-case dispositive matters under § 636(b)(1)(A);¹⁰³ issue a protective order under Federal Rule of Civil Procedure 26 ("Federal Civil Rules") to prevent a party from releasing discovery information to the public;¹⁰⁴ issue an order under Federal Civil Rule 16 requiring parties with authority to settle the case to attend a pretrial conference;¹⁰⁵ impose Federal Civil Rule 11 sanctions under § 636(b)(1)(A) and Federal Civil Rule 72(a);¹⁰⁶ preside over an evidentiary hearing to determine the voluntariness of a defendant's guilty plea;¹⁰⁷ preside over the selection and impanelment of

⁹² United States v. Simmons, 46 F.3d 1137 (8th Cir. 1995) (unpublished table decision).

⁹³ United States v. Hemmings, Crim. No. 91-313M DAR, 1991 WL 79586, at *5 (D.D.C. 1991).

⁹⁴ United States v. Hickey, 997 F. Supp. 1206, 1209 (N.D. Cal. 1998).

⁹⁵ Austin v. Healey, 5 F.3d 598, 602 (2d Cir. 1993).

⁹⁶ DeSilva v. DiLeonardi, 125 F.3d 1110 (7th Cir. 1997).

⁹⁷ United States v. Laliberte, 131 F.R.D. 20, 21 (D. Mass. 1990).

⁹⁸ United States v. Spilotro, 786 F.2d 808, 813 (8th Cir. 1986).

⁹⁹ United States v. Harris, 732 F. Supp. 1027, 1028 (N.D. Cal. 1990), *overruled on other grounds*, United States v. Koenig, 912 F.2d 1190, 1191 (9th Cir. 1990).

¹⁰⁰ United States v. Ferguson, 778 F.2d 1017, 1019 (4th Cir. 1985).

¹⁰¹ United States v. Martinez, 988 F. Supp. 975, 979 (E.D. Va. 1998).

¹⁰² United States v. Burke, No. CR. M-95-018-N, 1996 WL 170123 *2 (M.D. Ala. 1996).

¹⁰³ Campbell v. International Business Machines, 912 F. Supp. 116, 118 (D.N.J. 1996).

¹⁰⁴ New York v. United States Metals Refining Co., 771 F.2d 796, 804 (3rd Cir. 1985).

¹⁰⁵ G. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 652 (7th Cir. 1989).

¹⁰⁶ San Shiah Enterprise Co., Ltd. v. Pride Shipping Corp., 783 F. Supp. 1334, 1335 (S.D. Ala. 1992).

¹⁰⁷ United States v. Rojas, 898 F.2d 40, 42 (5th Cir. 1990).

a grand jury;¹⁰⁸ exercise the court's inherent authority and rely on Federal Criminal Rule 17 to require an indicted defendant to provide handwriting samples, palmprints, and fingerprints;¹⁰⁹ dismiss a complaint with leave to amend under § 636(b)(1)(A);¹¹⁰ conduct hearings to determine whether in forma pauperis petitions under 28 U.S.C. § 1915(d) should be dismissed as frivolous;¹¹¹ preside over a felony voir dire proceeding as an additional duty under § 636(b)(3) pursuant to a referral order and the parties' consent;¹¹² grant a witness immunity in a grand jury proceeding;¹¹³ administer the allocution under Federal Criminal Rule 11 to accept a defendant's guilty plea in a felony case;¹¹⁴ take a guilty plea with the parties' consent;¹¹⁵ accept a verdict where the district judge was occupied with other court business;¹¹⁶ preside over felony jury deliberations when the district judge leaves town if the district judge maintains overall control over the trial by telephone;¹¹⁷ read a standard *Allen* charge to a jury and accept a verdict in a felony trial;¹¹⁸ and preside over depositions in aid of execution of judgment.¹¹⁹

On the other hand, cases also hold that a magistrate judge may not: issue a final order for sanctions under Federal Civil Rule 11;¹²⁰ make an independent decision regarding sanctions under § 636(b)(1)(A);¹²¹ enter a case-dispositive order granting defendant's motion for summary judgment absent the consent of the parties;¹²² decide a motion to vacate sentence under 28 U.S.C. § 2255 without the parties' consent, even where

¹⁰⁸ *United States v. Diaz*, 922 F.2d 998, 1002 (2d Cir. 1990).

¹⁰⁹ *United States v. Kloepper*, 725 F. Supp. 638, 641 (D. Mass. 1989).

¹¹⁰ *McKeever v. Block*, 932 F.2d 795, 799 (9th Cir. 1991).

¹¹¹ *Wesson v. Oglesby*, 910 F.2d 278, 281 (5th Cir. 1990).

¹¹² *Peretz v. United States*, 501 U.S. 923, 932 (1991).

¹¹³ *In re the Grand Jury Appearance of Cummings*, 615 F. Supp. 68, 69 (W.D. Wis. 1985).

¹¹⁴ *United States v. Williams*, 23 F.3d 629, 632 (2d Cir. 1994); *see also United States v. Ciapponi*, 77 F.3d 1247, 1251 (10th Cir. 1996) (holding that a magistrate judge may conduct proceedings to accept guilty pleas in felony cases under Federal Criminal Rule 11 with the defendant's consent).

¹¹⁵ *United States v. Dees*, 125 F.3d 261, 264 (5th Cir. 1997).

¹¹⁶ *United States v. Day*, 789 F.2d 1217, 1224 (6th Cir. 1986); *see also United States v. Johnson*, 962 F.2d 1308, 1312 (8th Cir. 1992); *Thomas v. United States*, 506 U.S. 928 (1992) (holding that a magistrate judge could accept the jury's verdict in the felony case when the trial judge was unavailable).

¹¹⁷ *United States v. Demarrias*, 876 F.2d 674, 677 (8th Cir. 1989).

¹¹⁸ *United States v. Sawyers*, 902 F.2d 1217, 1220 (6th Cir. 1990).

¹¹⁹ *Chicago Pneumatic Tool Co. v. Stonestreet*, 107 F.R.D. 674, 676 (S.D. W. Va. 1985).

¹²⁰ *Bennett v. General Caster Services of N. Gordon Co., Inc.*, 976 F.2d 995, 998 (6th Cir. 1992).

¹²¹ *Alpern v. Lieb*, 38 F.3d 933, 935 (7th Cir. 1994) (holding that a magistrate judge has no independent authority to award sanctions under Federal Civil Rule 11).

¹²² *Lopez v. Fleck*, 43 F.3d 1479 (9th Cir. 1994) (unpublished table decision).

the magistrate judge had accepted the defendant's guilty plea and imposed the sentence with consent in the underlying misdemeanor case;¹²³ issue a final order for a certificate of probable cause to appeal a habeas corpus matter;¹²⁴ enter a final decision in a bankruptcy appeal, however, a magistrate judge may conduct an advisory hearing, provided the district judge signs the final order;¹²⁵ conduct voir dire in a felony case if the litigants object to the magistrate judge's involvement;¹²⁶ conduct civil voir dire over the objections of the parties;¹²⁷ read an *Allen* charge to the jury and declare a mistrial;¹²⁸ issue a final order for the involuntary medication of a defendant to render him competent to stand trial;¹²⁹ and issue a final order denying a prisoner plaintiff's motion to proceed in forma pauperis on an appeal of the dismissal of the prisoner's civil rights action under 42 U.S.C. § 1983.¹³⁰

Making sense of the foregoing statutes and interpretive case law can be mind numbing. It is fair to say, however, that the foregoing further confirms that the once obscure commissioner has blossomed into a magistrate judge with a broad range of powers and authority at the ready. As one magistrate judge has appropriately summarized the rather broad and varying duties of the position:

To help administer the burgeoning federal caseload, magistrate judges routinely conduct scheduling and discovery conferences, enter scheduling orders governing the pretrial phases of the civil and criminal cases, conduct settlement conferences in civil cases, decide discovery disputes in both civil and criminal cases, conduct civil jury and bench trials, and report and recommend on dispositive motions over a broad range of civil and criminal matters, ranging from social security benefit cases to habeas corpus petitions, to requests for injunctive relief.

Magistrate judges also issue arrest and search warrants, receive grand jury returns, conduct initial appearances,

¹²³ *United States v. Bryson*, 981 F.2d 720, 722 (4th Cir. 1992).

¹²⁴ *Jones v. Johnson*, 134 F.3d 309, 312 (5th Cir. 1998).

¹²⁵ *Virginia Beach Federal Sav. and Loan Ass'n v. Wood*, 901 F.2d 849, 851 (10th Cir. 1990).

¹²⁶ *Gomez v. United States*, 490 U.S. 858, 871 (1989).

¹²⁷ *Olympia Hotel Corp. v. Johnson Wax Dev. Corp.*, 908 F.2d 1363, 1368 (7th Cir. 1990).

¹²⁸ *Gov. of Virgin Islands v. Paniagua*, 922 F.2d 178, 183 (3rd Cir. 1990).

¹²⁹ *United States v. Rivera-Guerrero*, 377 F.3d 1064, 1070 (9th Cir. 2004).

¹³⁰ *Donaldson v. Ducote*, 373 F.3d 622, 624 (5th Cir. 2004).

conduct arraignments and preliminary hearings, assign counsel, conduct detention hearings, set release conditions, take pleas and impose sentences in petty offense and misdemeanor cases; handle removal, prisoner transfer, extradition and competency hearings; and handle supervised release and probation revocation hearings.¹³¹

Even more expansive duties for magistrate judges could be on the horizon. In an Op-Ed article that appeared recently in the *New York Times*, The Honorable Donald P. Lay, a Senior Judge of the Eighth Circuit Court of Appeals, argued that the federal court system should follow the lead of the states and establish federal drug courts. Judge Lay went on to state, "Congress would need to authorize the mechanics of federal drug courts. One suggestion would be that magistrate judges could preside over the drug court. . . ."¹³² Whether this suggestion takes root remains to be seen. The ineluctable point, however, is that the role of the magistrate judge is expanding, and that the burdens on the Article III judiciary will prompt serious consideration of even further expansion of this role, despite the constitutional implications.¹³³

V. CONCLUSION

The role of magistrate judges in the federal court is expanding. As one magistrate judge observed: "Though springing from modest origins, the work of U.S. Commissioners and magistrate judges has played an important and vital role in the growth and development of our nation's

¹³¹ Foschio, *supra* note 13, at 4, III.9.

¹³² Donald P. Lay, *Rehab Justice*, N.Y. TIMES, Nov. 28, 2004, at A.31.

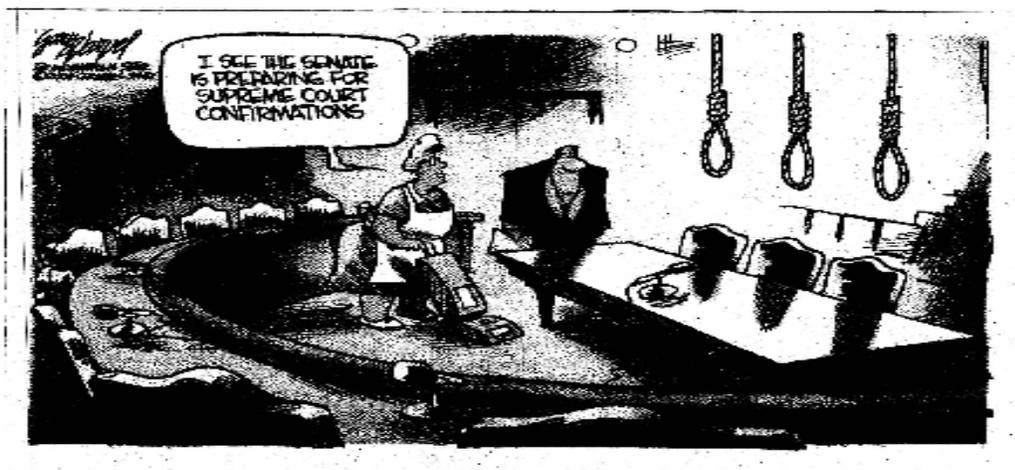
¹³³ Magistrate judges also are enjoying more prominent and expanded governance roles. Magistrate judges (and Article I bankruptcy judges) serve on most committees of the Judicial Conference, the policy making body for the United States courts. In 2001, Chief Justice Rehnquist appointed Magistrate Judge Elizabeth Jenkins, Middle District of Florida, as the first magistrate judge to serve on the Judicial Conference of the United States' Committee on International Judicial Relations. *Committees Highlight International Opportunities*, FEDERAL MAGISTRATE JUDGES ASSOCIATION BULLETIN (FMJA Bridgeport, CT), Oct. 2004, at 3. A magistrate judge also served as a representative at the first International Conference on Court Administration held in Ljubljana, Slovenia in September 2004. *Id.* at 5. Magistrate judges also fill various governance roles at the local level. For example, Magistrate Judge Roger Cosbey is the Chair of the Local Rules Committee for the Northern District of Indiana, and this author is a member of the Local Rules Committee for the Southern District of Indiana.

federal judiciary.”¹³⁴ Undoubtedly this is true, and the evidence suggests that the vitality of the Article I judiciary is poised to increase further.

The causes of this development are many. Foremost among them are the Civil Justice Reform Act’s emphasis on active pretrial management, the rise of alternative dispute resolution, and the magistrate judge’s prominent role in these processes. The availability of consent jurisdiction, bloated caseloads, and other pressures on the Article III judiciary have further enhanced the importance of and need for meaningful contributions from the Article I judiciary. Alexander Hamilton most assuredly would be surprised by the expanded role of the magistrate judge in federal court today. Provided that the powers of the magistrate judge remain properly checked by constitutional limitations, this shift in power can ultimately improve federal courts’ ability to address the demands of modern federal court practice.

¹³⁴ Foschio, *supra* note 13, at 4, III.10.

Appendix A



Appendix B

| | 1970 ¹ | 1980 | 1990 | 1991 | 1992 |
|--|------------------------|--------------------------|-------------------------|-------------------------|-------------------------|
| # of District Judges | 328 ² | 481 ³ | 535 ⁴ | 531 ⁵ | 554 ⁶ |
| # of Magistrate Judges | 28 ⁷ | 439 ⁸ | 476 ⁹ | 476 ¹⁰ | 475 ¹¹ |
| # of Magistrate Judges Authorized by Judicial Conference (Fulltime/Parttime/Combination) | 61/449/8 ¹² | 204/263/21 ¹³ | 323/153/8 ¹⁴ | 345/124/6 ¹⁵ | 374/100/5 ¹⁶ |
| # of Pending Civil Cases | 93,207 ¹⁷ | 186,113 ¹⁸ | 242,808 ¹⁹ | 226,234 ²⁰ | 225,439 ²¹ |
| # of Terminated Civil Cases | 80,435 ²² | 160,481 ²³ | 213,922 ²⁴ | 220,262 ²⁵ | 231,304 ²⁶ |
| # of Civil Consent Cases Disposed of by Magistrate Judges | Not applicable | Not available | 4,958 ²⁷ | 4,986 ²⁸ | 5,479 ²⁹ |
| % of Terminated Civil Cases with Consent | Not applicable | Not available | 2.30 | 2.26 | 2.50 |
| # of Civil Trials | 9,449 ³⁰ | 13,191 ³¹ | 12,510 | 12,136 | 12,124 |
| % of Civil Cases Proceeding to Trial | 10.14 | 7.09 | 5.15 | 5.36 | 5.38 |
| # of Civil Trials by District Judges | 9,449 | 12,594 | 11,502 ³² | 11,024 ³³ | 10,756 ³⁴ |
| # of Civil Trials by Magistrate Judges | 0 | 597 ³⁵ | 1008 ³⁶ | 1112 ³⁷ | 1368 ³⁸ |
| % of Civil Trials by Magistrate Judges | 0 | 4.74 | 8.06 | 9.16 | 11.28 |
| # of Pending Criminal Cases | 20,910 ³⁹ | 14,759 ⁴⁰ | 35,308 ⁴¹ | 39,562 ⁴² | 34,078 ⁴³ |
| # of Criminal Cases Tried by District Judges | 6,583 ⁴⁴ | 6,634 ⁴⁵ | 8,931 ⁴⁶ | 8,925 ⁴⁷ | 9,704 ⁴⁸ |
| % of Criminal Cases Tried by District Judges | 31.48 | 44.95 | 25.29 | 22.56 | 28.48 |

| | 1993 | 1994 | 1995 | 1996 | 1997 |
|---|-------------------------|------------------------|------------------------|------------------------|------------------------|
| # of District Judges | 542 ⁴⁹ | 589 ⁵⁰ | 603 ⁵¹ | 603 ⁵² | 578 ⁵³ |
| # of Magistrate Judges | 479 ⁵⁴ | 494 ⁵⁵ | 497 ⁵⁶ | 502 ⁵⁷ | 510 ⁵⁸ |
| # of Magistrate Judges Authorized by Judicial Conference (Fulltime/Part time/Combination) | 369/104/6 ⁵⁹ | 406/85/3 ⁶⁰ | 416/78/3 ⁶¹ | 422/77/3 ⁶² | 432/75/3 ⁶³ |
| # of Pending Civil Cases | 218,041 ⁶⁴ | 226,071 ⁶⁵ | 234,008 ⁶⁶ | 250,934 ⁶⁷ | 272,602 ⁶⁸ |
| # of Terminated Civil Cases | 226,165 ⁶⁹ | 228,361 ⁷⁰ | 229,820 ⁷¹ | 250,387 ⁷² | 249,641 ⁷³ |
| # of Civil Consent Cases Disposed of by Magistrate Judges | 6,740 ⁷⁴ | 7,835 ⁷⁵ | 8,967 ⁷⁶ | 9,948 ⁷⁷ | 10,081 ⁷⁸ |
| % of Terminated Civil Cases with Consent | 2.98 | 3.43 | 3.90 | 3.97 | 4.04 |
| # of Civil Trials | 12066 | 12,216 | 11,991 | 12,262 | 11,918 |
| % of Civil Cases Proceeding to Trial | 5.53 | 5.40 | 5.12 | 4.89 | 4.37 |
| # of Civil Trials by District Judges | 10,566 ⁷⁹ | 10,473 ⁸⁰ | 10,395 ⁸¹ | 10,343 ⁸² | 10,155 ⁸³ |
| # of Civil Trials by Magistrate Judges | 1500 ⁸⁴ | 1743 ⁸⁵ | 1596 ⁸⁶ | 1919 ⁸⁷ | 1763 ⁸⁸ |
| % of Civil Trials by Magistrate Judges | 12.43 | 14.27 | 13.31 | 15.65 | 14.79 |
| # of Pending Criminal Cases | 28,701 ⁸⁹ | 26,328 ⁹⁰ | 28,738 ⁹¹ | 32,156 ⁹² | 37,237 ⁹³ |
| # of Criminal Cases Tried by District Judges | 9,026 ⁹⁴ | 7,298 ⁹⁵ | 7,421 ⁹⁶ | 7,202 ⁹⁷ | 6,814 ⁹⁸ |
| % of Criminal Cases Tried by District Judges | 31.45 | 27.72 | 25.82 | 22.40 | 18.30 |

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 |
|--|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| # of District Judges | 591 ⁹⁹ | 608 ¹⁰⁰ | 612 ¹⁰¹ | 590 ¹⁰² | 615 ¹⁰³ | 651 ¹⁰⁴ |
| # of Magistrate Judges | 512 ¹⁰⁵ | 519 ¹⁰⁶ | 529 ¹⁰⁷ | 533 ¹⁰⁸ | 540 ¹⁰⁹ | 543 ¹¹⁰ |
| # of Magistrate Judges Authorized by Judicial Conference (Fulltime/ Parttime/ Combination) | 440/69/3 ¹¹¹ | 454/62/3 ¹¹² | 466/60/3 ¹¹³ | 471/59/3 ¹¹⁴ | 486/51/3 ¹¹⁵ | 491/49/3 ¹¹⁶ |
| # of Pending Civil Cases | 262,573 ¹¹⁷ | 249,381 ¹¹⁸ | 250,202 ¹¹⁹ | 250,622 ¹²⁰ | 261,118 ¹²¹ | 261,065 ¹²² |
| # of Terminated Civil Cases | 262,301 ¹²³ | 272,526 ¹²⁴ | 259,637 ¹²⁵ | 248,174 ¹²⁶ | 259,537 ¹²⁷ | 253,015 ¹²⁸ |
| # of Civil Consent Cases Disposed of by Magistrate Judges | 10,339 ¹²⁹ | 11,320 ¹³⁰ | 11,481 ¹³¹ | 12,024 ¹³² | 12,710 ¹³³ | 13,811 ¹³⁴ |
| % of Terminated Civil Cases with Consent | 3.94 | 4.15 | 4.42 | 4.84 | 4.90 | 5.46 |
| # of Civil Trials | 10,897 | 10,030 | 9,233 | 7,592 | 6,974 | 6,597 |
| % of Civil Cases Proceeding to Trial | 4.15 | 4.02 | 3.69 | 3.03 | 2.67 | 2.53 |
| # of Civil Trials by District Judges | 9,349 ¹³⁵ | 8,532 ¹³⁶ | 7,933 ¹³⁷ | 6,513 ¹³⁸ | 6,015 ¹³⁹ | 5,830 ¹⁴⁰ |
| # of Civil Trials by Magistrate Judges | 1548 ¹⁴¹ | 1498 ¹⁴² | 1300 ¹⁴³ | 1,079 ¹⁴⁴ | 959 ¹⁴⁵ | 767 ¹⁴⁶ |
| % of Civil Trials by Magistrate Judges | 14.21 | 14.94 | 14.08 | 14.21 | 13.75 | 11.63 |
| # of Pending Criminal Cases | 40,277 ¹⁴⁷ | 42,966 ¹⁴⁸ | 47,677 ¹⁴⁹ | 49,696 ¹⁵⁰ | 55,518 ¹⁵¹ | 60,532 ¹⁵² |
| # of Criminal Cases Tried by District Judges | 6,847 ¹⁵³ | 6,461 ¹⁵⁴ | 6,746 ¹⁵⁵ | 7,045 ¹⁵⁶ | 6,802 ¹⁵⁷ | 7,118 ¹⁵⁸ |
| % of Criminal Cases Tried by District Judges | 17.00 | 15.04 | 14.15 | 14.18 | 12.25 | 11.76 |

¹ Statistics for the years 1970, 1980, 1990, and 1991 are based on fiscal years ending on June 30. Thereafter, statistics are recorded as of September 30 of the relevant year.

² 1970 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 89 [hereinafter 1970 ANN. REP.].

³ 1980 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 152, tbl. 19 [hereinafter 1980 ANN. REP.].

⁴ 1990 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 41, tbl. 28 [hereinafter 1990 ANN. REP.].

⁵ 1991 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 127, tbl. 28 [hereinafter 1991 ANN. REP.].

⁶ 1992 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 98, tbl. 29 [hereinafter 1992 ANN. REP.]. This figure includes territorial judges. *Id.*

⁷ 1970 ANN. REP., *supra* endnote 2, at 90.

⁸ 1980 ANN. REP., *supra* endnote 3, at 152, tbl. 19.

⁹ 1990 ANN. REP., *supra* endnote 4, at 41, tbl. 28.

¹⁰ 1991 ANN. REP., *supra* endnote 5, at 127, tbl. 28.

¹¹ 1992 ANN. REP., *supra* endnote 6, at 98, tbl. 29.

¹² 1980 ANN. REP., *supra* endnote 3, at 141, tbl. 13.

¹³ *Id.*

¹⁴ 1990 ANN. REP., *supra* endnote 4, at 43, tbl. 30.

¹⁵ 1991 ANN. REP., *supra* endnote 5, at 129, tbl. 30.

¹⁶ 1992 ANN. REP., *supra* endnote 6, at 101, tbl. 33.

¹⁷ 1970 ANN. REP., *supra* endnote 2, at 107, tbl. 12.

¹⁸ 1980 ANN. REP., *supra* endnote 3, at 217, tbl. 13, 258.

¹⁹ 1993 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 7 (revising the 1990 figure) [hereinafter 1993 ANN. REP.].

²⁰ 1995 ANN. REP. OF THE DIR. OF THE ADMIN. OFFICE OF THE UNITED STATES COURTS 22, tbl. 3 [hereinafter 1995 ANN. REP.].

²¹ 1995 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 22 [hereinafter 1995 JUDICIAL BUS.].

²² 1970 ANN. REP., *supra* endnote 2, at 226, app. tbl. C1.

²³ 1980 ANN. REP., *supra* endnote 3, at 370, app. tbl. C1.

²⁴ 1990 ANN. REP., *supra* endnote 4, at 135, app. tbl. C1.

²⁵ 1995 ANN. REP., *supra* endnote 20, at 22, tbl. 3.

²⁶ 1992 ANN. REP., *supra* endnote 6, at 172, app. tbl. C.

²⁷ 1990 ANN. REP., *supra* endnote 4, at 25, tbl. 15.

²⁸ 1991 ANN. REP., *supra* endnote 5, at 108, tbl. 15.

²⁹ 1992 ANN. REP., *supra* endnote 6, at 83, tbl. 16.

³⁰ 1970 ANN. REP., *supra* endnote 2, at 127, tbl. 22, app. tbl. C7. Trials include evidentiary trials (jury and nonjury), hearings on temporary restraining orders and preliminary injunctions, hearings on Bankruptcy review petitions, and motions in reorganization proceedings. *Id.* at 254.

³¹ 1980 ANN. REP., *supra* endnote 3, at 297, tbl. 51, 404, app. tbl. C7. Trials include hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions and other contested proceedings in which evidence is introduced. *Id.* at 406.

³² 1990 ANN. REP., *supra* endnote 4, at 161, tbl. C7. This figure includes trials conducted by district and appellate judges only. All trials conducted by magistrates are excluded. *Id.* at 162. In addition, trials include land condemnation trials, hearings on temporary

restraining orders and preliminary injunctions, hearings on contested motions and other contested proceedings in which evidence is introduced. *Id.*

³³ 1991 ANN. REP., *supra* endnote 5, at 214, app. tbl. C7. This figure includes trials conducted by district and appellate judges only. All trials conducted by magistrates are excluded. *Id.* at 216. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions and other contested proceedings in which evidence is introduced. *Id.*

³⁴ 1992 ANN. REP., *supra* endnote 6, at 214, app. tbl. C7. This figure includes trials conducted by district and appellate judges only. All trials conducted by magistrates are excluded. *Id.* at 216. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases *Id.*

³⁵ 1980 ANN. REP., *supra* endnote 3, at 318, 324, tbl. 63.

³⁶ 1990 ANN. REP., *supra* endnote 4, at 25, tbl. 15.

³⁷ 1991 ANN. REP., *supra* endnote 5, at 108, tbl. 15.

³⁸ 1992 ANN. REP., *supra* endnote 6, at 83, tbl. 16.

³⁹ 1970 ANN. REP., *supra* endnote 3, at 264, app. tbl. D1.

⁴⁰ 1980 ANN. REP., *supra* endnote 4, at 288, tbl. 47, 416, app. tbl. D1.

⁴¹ 1993 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 11, tbl. 8 [hereinafter 1993 JUDICIAL BUS.]

⁴² *Id.*

⁴³ *Id.* at AI 111, tbl. D1 (revising the 1992 figure).

⁴⁴ 1970 ANN. REP., *supra* endnote 2, at 252, app. tbl. C7.

⁴⁵ 1980 ANN. REP., *supra* endnote 3, at 404, app. tbl. C7.

⁴⁶ 1990 ANN. REP., *supra* endnote 4, at 161, app. tbl. C7. This figure includes trials conducted by district and appellate judges only. All trials conducted by magistrates are excluded. *Id.* at 162.

⁴⁷ 1991 ANN. REP., *supra* endnote 5, at 214, app. tbl. C7. This figure includes trials conducted by district and appellate judges only. All trials conducted by magistrates are excluded. *Id.* at 216.

⁴⁸ 1992 ANN. REP., *supra* endnote 6, at 214, app. tbl. C7. This figure includes trials conducted by district and appellate judges only. All trials conducted by magistrates are excluded. *Id.* at 216.

⁴⁹ 1993 JUDICIAL BUS., *supra* endnote 41, at 34.

⁵⁰ 1994 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 25 [hereinafter 1994 JUDICIAL BUS.]

⁵¹ 1995 JUDICIAL BUS., *supra* endnote 21, at 42, tbl. 12.

⁵² 1996 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 40, tbl. 12 [hereinafter 1996 JUDICIAL BUS.]

⁵³ 1997 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 33, tbl. 12 [hereinafter 1997 JUDICIAL BUS.]

⁵⁴ 1993 JUDICIAL BUS., *supra* endnote 41, at 36, tbl. 28. This figure is an estimate based on the number of authorized positions.

⁵⁵ 1994 JUDICIAL BUS., *supra* endnote 50, at 27, tbl. 14. This figure is an estimate based on the number of authorized positions.

⁵⁶ 1995 JUDICIAL BUS., *supra* endnote 21, at 44, tbl. 14. This figure is an estimate based on the number of authorized positions.

⁵⁷ 1996 JUDICIAL BUS., *supra* endnote 52, at 42, tbl. 14. This figure is an estimate based on the number of authorized positions.

⁵⁸ 1997 JUDICIAL BUS., *supra* endnote 53, at 35, tbl. 14. This figure is an estimate based on the number of authorized positions.

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- ⁵⁹ 1993 JUDICIAL BUS., *supra* endnote 41, at 36, tbl. 28.
- ⁶⁰ 1994 JUDICIAL BUS., *supra* endnote 50, at 27, tbl. 14.
- ⁶¹ 1995 JUDICIAL BUS., *supra* endnote 21, at 44, tbl. 14.
- ⁶² 1996 JUDICIAL BUS., *supra* endnote 52, at 42, tbl. 14.
- ⁶³ 1997 JUDICIAL BUS., *supra* endnote 53, at 35, tbl. 14.
- ⁶⁴ 2002 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 14 [hereinafter 2002 JUDICIAL BUS.].
- ⁶⁵ 1994 JUDICIAL BUS., *supra* endnote 50, at AI 51, tbl. C1.
- ⁶⁶ 1999 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 25, tbl. 4 [hereinafter 1999 JUDICIAL BUS.].
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ 1993 JUDICIAL BUS., *supra* endnote 41, at AI 48, tbl. C.
- ⁷⁰ 1994 JUDICIAL BUS., *supra* endnote 50, at AI 51, tbl. C1.
- ⁷¹ 1995 JUDICIAL BUS., *supra* endnote 21, at 134, tbl. C1.
- ⁷² 1996 JUDICIAL BUS., *supra* endnote 52, at 132, tbl. C1.
- ⁷³ 1997 JUDICIAL BUS., *supra* endnote 53, at 125, tbl. C1.
- ⁷⁴ 1993 JUDICIAL BUS., *supra* endnote 41, at 26, tbl. 17.
- ⁷⁵ 1994 JUDICIAL BUS., *supra* endnote 50, at 55, tbl. S19.
- ⁷⁶ 1995 JUDICIAL BUS., *supra* endnote 21, at 75, tbl. S19.
- ⁷⁷ 1996 JUDICIAL BUS., *supra* endnote 52, at 72, tbl. S19.
- ⁷⁸ 1997 JUDICIAL BUS., *supra* endnote 53, at 65, tbl. S19.
- ⁷⁹ 1993 JUDICIAL BUS., *supra* endnote 41, at AI 90, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at AI-92. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ⁸⁰ 1994 JUDICIAL BUS., *supra* endnote 50, at AI 90, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at AI-92. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ⁸¹ 1995 JUDICIAL BUS., *supra* endnote 21, at 174, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 176. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ⁸² 1996 JUDICIAL BUS., *supra* endnote 52, at 171, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 173. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ⁸³ 1997 JUDICIAL BUS., *supra* endnote 53, at 164, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 166. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*

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- 84 1993 JUDICIAL BUS., *supra* endnote 41, at 26, tbl. 17.
- 85 1994 JUDICIAL BUS., *supra* endnote 50, at 55, tbl. S19.
- 86 1995 JUDICIAL BUS., *supra* endnote 21, at 74, tbl. S19.
- 87 1996 JUDICIAL BUS., *supra* endnote 52, at 72, tbl. S19.
- 88 1997 JUDICIAL BUS., *supra* endnote 53, at 65, tbl. S19.
- 89 1994 JUDICIAL BUS., *supra* endnote 50, at AI 110, tbl. D1 (revising 1993 figure).
- 90 1995 JUDICIAL BUS., *supra* endnote 21, at 18.
- 91 1996 JUDICIAL BUS., *supra* endnote 52, t 23, tbl. 5.
- 92 1998 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 21, tbl. 3 [hereinafter 1998 JUDICIAL BUS.].
- 93 *Id.*
- 94 1993 JUDICIAL BUS., *supra* endnote 41, at AI 90, tbl. C7.
- 95 1994 JUDICIAL BUS., *supra* endnote 50, at AI 90, tbl. C7.
- 96 1995 JUDICIAL BUS., *supra* endnote 21, at 174, tbl. C7.
- 97 1996 JUDICIAL BUS., *supra* endnote 52, at 171, tbl. C7.
- 98 1997 JUDICIAL BUS., *supra* endnote 53, at 164, tbl. C7.
- 99 1998 JUDICIAL BUS., *supra* endnote 92, at 46, tbl. 12.
- 100 1999 JUDICIAL BUS., *supra* endnote 66, at 42, tbl. 12.
- 101 2000 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 37, tbl. 12 [hereinafter 2000 JUDICIAL BUS.].
- 102 2001 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 35, tbl. 12 [hereinafter 2001 JUDICIAL BUS.].
- 103 2002 JUDICIAL BUS., *supra* endnote 64, at 34, tbl. 12.
- 104 2003 JUDICIAL BUS. OF THE UNITED STATES COURTS, REP. OF THE DIR. 30, tbl. 12 [hereinafter 2003 JUDICIAL BUS.].
- 105 1998 JUDICIAL BUS., *supra* endnote 92, at 48, tbl. 14. This figure is an estimate based on the number of positions authorized.
- 106 1999 JUDICIAL BUS., *supra* endnote 66, at 44, tbl. 14. This figure is an estimate based on the number of positions authorized.
- 107 2000 JUDICIAL BUS., *supra* endnote 101, at 39, tbl. 14. This figure is an estimate based on the number of positions authorized.
- 108 2001 JUDICIAL BUS., *supra* endnote 102, at 36, tbl. 14. This figure is an estimate based on the number of positions authorized.
- 109 2002 JUDICIAL BUS., *supra* endnote 64, at 35, tbl. 14. This figure is an estimate based on the number of positions authorized.
- 110 *Id.* at 32, tbl. 14. This figure is an estimate based on the number of positions authorized.
- 111 1998 JUDICIAL BUS., *supra* endnote 92, at 48, tbl. 14.
- 112 1999 JUDICIAL BUS., *supra* endnote 66, at 44, tbl. 14.
- 113 2000 JUDICIAL BUS., *supra* endnote 101, at 39, tbl. 14.
- 114 2001 JUDICIAL BUS., *supra* endnote 102, at 36, tbl. 14.
- 115 2002 JUDICIAL BUS., *supra* endnote 64, at 35, tbl. 14.
- 116 2003 JUDICIAL BUS., *supra* endnote 104, at 32, tbl. 14.
- 117 2002 JUDICIAL BUS., *supra* endnote 64, at 18, tbl. 3.
- 118 2003 JUDICIAL BUS., *supra* endnote 104, at 18, tbl. 4.
- 119 *Id.*
- 120 *Id.*
- 121 *Id.*
- 122 *Id.* at 122, tbl. C1.
- 123 1998 JUDICIAL BUS., *supra* endnote 92, at 139, tbl. C1.
- 124 1999 JUDICIAL BUS., *supra* endnote 66, at 133, tbl. C1.
- 125 2000 JUDICIAL BUS., *supra* endnote 101, at 132, tbl. C1.

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- ¹²⁶ 2001 JUDICIAL BUS., *supra* endnote 102, at 127, tbl. C1.
- ¹²⁷ 2002 JUDICIAL BUS., *supra* endnote 64, at 126, tbl. C1.
- ¹²⁸ 2003 JUDICIAL BUS., *supra* endnote 104, at 122, tbl. C1.
- ¹²⁹ 1998 JUDICIAL BUS., *supra* endnote 92, at 79, tbl. S19.
- ¹³⁰ 1999 JUDICIAL BUS., *supra* endnote 66, at 73, tbl. S18.
- ¹³¹ 2000 JUDICIAL BUS., *supra* endnote 101, at 67, tbl. S17.
- ¹³² 2001 JUDICIAL BUS., *supra* endnote 102, at 62, tbl. S17.
- ¹³³ 2002 JUDICIAL BUS., *supra* endnote 64, at 61, tbl. S17.
- ¹³⁴ 2003 JUDICIAL BUS., *supra* endnote 104, at 58, tbl. S17.
- ¹³⁵ 1998 JUDICIAL BUS., *supra* endnote 92, at 178, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 180. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ¹³⁶ 1999 JUDICIAL BUS., *supra* endnote 66, at 172, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 174. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ¹³⁷ 2000 JUDICIAL BUS., *supra* endnote 101, at 171, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 173. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ¹³⁸ 2001 JUDICIAL BUS., *supra* endnote 102, at 163, at tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 165. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ¹³⁹ 2002 JUDICIAL BUS., *supra* endnote 64, at 162, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 164. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ¹⁴⁰ 2003 JUDICIAL BUS., *supra* endnote 104, at 162, tbl. C7. This figure includes trials conducted by district and appellate judges only; all trials conducted by magistrates are excluded. *Id.* at 164. In addition, trials include land condemnation trials, hearings on temporary restraining orders and preliminary injunctions, hearings on contested motions, miscellaneous civil cases and other contested proceedings in which evidence is introduced. Civil includes trials of miscellaneous cases. *Id.*
- ¹⁴¹ 1998 JUDICIAL BUS., *supra* endnote 92, at 79, tbl. S19.
- ¹⁴² 1999 JUDICIAL BUS., *supra* endnote 66, at 73, tbl. S18.
- ¹⁴³ 2000 JUDICIAL BUS., *supra* endnote 101, at 67, tbl. S17.
- ¹⁴⁴ 2001 JUDICIAL BUS., *supra* endnote 102, at 62, tbl. S17.
- ¹⁴⁵ 2002 JUDICIAL BUS., *supra* endnote 64, at 61, tbl. S17.
- ¹⁴⁶ 2003 JUDICIAL BUS., *supra* endnote 104, at 58, tbl. S17.
- ¹⁴⁷ 1999 JUDICIAL BUS., *supra* endnote 66, at 23, tbl. 3.

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- 148 2003 JUDICIAL BUS., *supra* endnote 104, at 16, tbl. 3.
149 *Id.*
150 *Id.*
151 *Id.*
152 *Id.* at 182, tbl. D1.
153 1998 JUDICIAL BUS., *supra* endnote 92, at 178, tbl. C7.
154 1999 JUDICIAL BUS., *supra* endnote 66, at 172, tbl. C7.
155 2000 JUDICIAL BUS., *supra* endnote 101, at 171, tbl. C7.
156 2001 JUDICIAL BUS., *supra* endnote 102, at 163, tbl. C7.
157 2002 JUDICIAL BUS., *supra* endnote 64, at 162, tbl. C7.
158 2003 JUDICIAL BUS., *supra* endnote 104, at 162, tbl. C7.