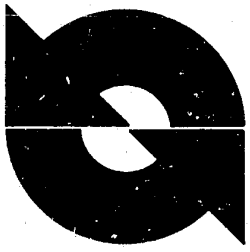
U.S. Department of Justice
Washington, D.C. 20350



The Utilization and Impact of United States Magistrates: A Pilot Study

by Alice M. Padawer-Singer
Roger Goldman
Steven Puro

Federal Justice Research Program
Office for Improvements in the
Administration of Justice

August 1979

FJRP-79/006

The Utilization and Impact of United States Magistrates: A Pilot Study

by

Professors Alice M. Padawer-Singer
Roger Goldman
Steven Puro

Support for this project was provided by the Federal Justice Research Program under contract number J-42665. Points of view or opinions expressed in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Acknowledgments

We wish to thank all the judges, magistrates, and court personnel in the United States District Courts for the Southern and Eastern Districts of New York who assisted us in our study. We appreciate the outstanding cooperation and reception we received in both district courts. We also wish to thank the lawyers who took the time to share their thoughts with us on the magistrate system. We wish to offer a special note of thanks and appreciation to former United States Magistrate Sol Schreiber, Circuit Executive Robert Lipscher, and Senior United States District Judge Charles Metzner for their encouragement and assistance in this project.

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

EXECUTIVE SUMMARY

The purpose of the Magistrates Act of 1968 was to assist judges in the performance of a wide variety of duties. Its extension by the 1976 Amendments and the current legislative efforts to increase still further the duties of the federal magistrates indicate that the magistrates' role in the federal judicial system is ever increasing. A pilot study in the Southern and Eastern Districts of New York in mid-1978 showed that magistrates have served the district courts by taking on tasks which would otherwise have to be undertaken by the judges and by developing areas of expertise to improve the quality of justice rendered in the federal courts.

The pilot study relied on a variety of data sources, including sources not examined previously by other researchers. The standard sources were the Administrative Office of the U.S. Courts Annual Reports and the Magistrates monthly reports filed with the Administrative Office. The new data sources which were examined were the magistrates' files, the Inventory of Pending Matters before the Magistrates (1977 and 1978, Southern District only), and the criminal and civil docket sheets in both districts. In addition, interviews were conducted with judges, magistrates, court personnel, and lawyers, both governmental and private, appearing frequently before the magistrates.

In order to compare the difference, if any, between cases retained by judges and those referred by judges to magistrates, we selected a type of case of common occurrence, which was referred approximately as often as it was retained. We chose cases involving an appeal of an administrative decision denying social security benefits. The results of the small sample of cases indicate that the average length of time to dispose of a referred case compared to a retained case was roughly the same.

Based on our observations, data analysis, and interviews, we found clear, though evolving, patterns of magistrate utilization. We observed a flexible system of magistrate use, tailored to the individual needs of 44 judges, changing as each judge adopted that use best complementing his strengths. Thus, a judge who would conduct pretrial conferences quite formally referred pretrial matters to a magistrate who could handle pretrial in much less time; another judge who was uncomfortable in taking a role in settlement because he would be a key figure in the settlement negotiations and then the trier of fact would send cases for settlement to the magistrates; and a judge who was tied up in a lengthy criminal trial kept his civil docket from stagnating by referring all pretrial matters to a magistrate.

If any trend of nationwide significance emerged from our research, it was that the use of magistrates in civil pretrial proceedings will increase dramatically. That pattern has been established in the Southern District since 1974 and in the Eastern District since early 1977. The Eastern District Magistrates have experienced a major increase in civil duties during fiscal 1978. They have received complicated discovery issues and conducted civil trials. While the number of civil matters referred to magistrates has not increased in the Southern District there has been a marked rise in the complexity of these matters.

Since the 1976 Amendments the types of matters which magistrates have considered have started to undergo a change. Our study showed that there was an increase in both the number and variety of civil matters and other additional matters with a stable number of criminal matters, especially petty and minor offenses. The Southern District magistrates considered increasingly complex civil matters -- such as evidentiary hearings, dispositive motions, and trials -- even though the number of civil matters has

remained almost stable since fiscal 1974. For example, between January and June 1978 these magistrates had significant increases in the number of their dispositive matters. The complex civil matters occupy a large amount of magistrates' time because of the magistrates' extensive research on orders and lengthy reports and recommendations required on these matters.

In the Eastern District there were important increases in magistrates' duties. The magistrates disposed of one-third more matters between fiscal 74 and fiscal 77. The increase was especially evident in the magistrates' civil duties. This rapid increase has been continuing through fiscal 78 when these magistrates began receiving on a regular basis complex discovery issues and civil trials.

Many of the problems that currently face Southern District magistrates in civil pretrial and dispositive matters may well face the Eastern District magistrates in the near future. The number of petty and minor offenses considered by magistrates in these two districts showed a high degree of stability during the last two fiscal years. In criminal matters these magistrates considered a slightly greater number of matters under Section 636(b) such as post-indictment arraignments. The magistrates in the Southern District believed they could consider a greater number and breadth of criminal matters along with their civil pretrial matters.

In both districts appeals from the magistrates' non-dispositve rulings are rare. In the Southern District, appeals from magistrates' dispositive rulings are higher (about 40%) than non-dispositive rulings. Eastern District magistrates have not ruled on many dispositive motions. In both dispositive and non-dispositive rulings both districts' magistrates are rarely reversed by the district judge. However, we found that district judges occasionally modify portions of the magistrates' recommendations on dispositive motions while affirming the main thrust of the report.

The accessibility of the magistrate contrasts sharply with the busy trial schedules of judges and hence the magistrates have greater potentiality to keep pretrial stages of litigation moving forward by regularly scheduling conferences. There are some risks, however; some judges and magistrates believed that the very accessibility of the magistrates encourages dilatory motions. From our observations, we found that some motions would probably not have been made to judges, but the magistrates' ability to resolve the motions expeditiously can prevent unnecessary delays.

The success of the magistrates in pretrial matters is beginning to lead to a reliance on them to alleviate the backlog of dispositive motions and civil trials. The most frequently voiced concern by judges and magistrates was that magistrates would be referred an ever increasing number of such substantive matters, thereby threatening their ability to stay current with pretrial matters.

Based on an investigation of the use of the magistrates in the pilot districts, the study makes several recommendations:

1. Controlled studies comparing productivity of magisterial vs. judicial resolution of issues should be undertaken to permit assessment of the kinds of matter best suited for reference.
2. Additional data sources of magistrate activity should be developed.
3. Additional personnel should be made available to selected magistrates for a trial period.
4. Additional rules for magistrate use should be adopted in the two districts.
5. Referral practices should be modified.
6. In selection of magistrates, minimum qualifications should be given weight, but no statutorily mandated standards should be imposed.

7. Additional training of magistrates focussed on needs of particular districts should be given on a regional or local basis.

I. Introduction

The major purpose in establishing the Office of United States Magistrate was to relieve overburdened federal judges by permitting them to assign a variety of judicial tasks which were performed largely by the judges themselves. Overcrowded dockets and delays in litigation are perhaps the most serious impediments to the operation of courts throughout the country and to the proper administration of justice. The Office of United States Magistrate, established in all United States District Courts in 1971 by the Magistrates Act of 1968, 28 U.S.C. secs. 631, 636, was a means to alleviate these problems. The magistrates replaced the United States Commissioners. The magistrates were given much broader authority than the Commissioners in criminal matters and allowed to decide civil matters, an area not within the Commissioners' authority.

In recognition of the assistance magistrates have given to the district courts, Congress increased the powers of the magistrates in October, 1976 (P.L. 97-577, 90 Stat. 2729, 28 U.S.C. sec. 636, Oct. 21, 1976). In the last (95th) Congress, another bill to expand magistrates' criminal and civil jurisdiction was considered (S. 1613, Magistrates Act of 1977). It passed the Senate and House but died in conference committee at the end of the session.[1]

Judges, lawyers and court administrators differ as to 1) whether United States Magistrates substantially expedite processing of cases and 2) what their impact is on the quality of decision making in the federal courts. To date there have been only limited studies of the activities and effects of the United States Magistrates.

This investigation is a pilot study to determine the feasibility of a nationwide study on the impact of United States Magistrates. The pilot

study was conducted in two contiguous United States District Courts, the Southern and Eastern Districts of New York, during 1978. These District Courts were selected because of difference in their use of magistrates, their innovation in the use of magistrates (most of the magistrates' activities in the proposed 1978 Magistrates Act (S. 1613) are already being undertaken), and an unusual opportunity for access to and cooperation with district judges and magistrates in both courts.* These district courts provide a base for comparing the effectiveness of United States magistrates on the administration of justice.

A. Objectives of the Study

The major purpose of this pilot study is to identify the present and potential uses of magistrates thereby permitting the formulation of an approach to study the magistrates' impact on district court procedures. The specific objectives of this study are, first, to analyze the way magistrates are actually used in the district courts by different judges and the relationships between the utilization of magistrates and their training. The study compares selected district courts' assignment of magistrates' duties, the degree of the district courts' innovation and experimentation in their assignment of magistrates' duties, and the effect of the judges' preferences on the duties assigned to magistrates (e.g., hearing civil or criminal matters, conducting pretrial conferences, holding evidentiary hearings). Second, the study will assess the influence the magistrates have on the productivity of federal district court judges and on the dis-

*Professor Goldman was scholar-in-residence with five district judges in the Southern and Eastern Districts for the 1977-78 academic year, and Professor Padawar-Singer conducted a jury utilization and management project in the New York County courts during 1978.

position of matters in federal court. Methods will be developed for assessing the impact of the magistrates' use on the court's efficiency and productivity in processing cases and in enabling judges to consider additional cases and perform other duties. The third objective is to determine what data are available on the magistrates' activities and suggest other types of data which could help to determine the effect that magistrates' decision making has had on the district judges' activities. Finally, the study will develop a methodology for evaluating whether the present system of magistrate use can result in a greater impact on the district court or whether the present system should be substantially altered with repect to certain duties. Tentative recommendations will be offered on ways to study the magistrates' activities, on changes in the magistrate system, and on additional training and qualifications needed by magistrates to solve effectively the problems they encounter.

An overview of the two district courts under investigation will provide the framework to present the methods used to collect the data for the study.

B. Overview of the United States District Courts for the Eastern and Southern Districts of New York

A brief overview of the two United States District Courts under investigation will provide a necessary background for judges and magistrates' activities and the relationships between them. Both district courts are within the jurisdiction of the United States Court of Appeals for the Second Circuit. The United States District Court for the Southern District of New York includes the boroughs of Manhattan and the Bronx, and the upper New York State Counties of Westchester, Orange, Rockland, Dutchess, Sullivan, Putnam, Green, Ulster and Columbia. The last three counties will be shifted

to the Northern District of New York in early 1979. The United States District Court for the Eastern District includes the New York City boroughs of Brooklyn, Queens, and Staten Island, and the two Long Island Counties.

Southern District

The United States District Court for the Southern District of New York is one of the largest district courts in the nation. At the time of our study (May, 1978) it had 25 active and 7 Senior judges, 6 full-time magistrates, and 1 part-time magistrate.

In fiscal 1977 these judges terminated 8,049 cases. The Southern District considers the largest number of civil cases among all district courts. It has the highest number of civil cases pending among all district courts, and in addition, the number of civil cases pending in this single district nearly equals or exceeds the total number of pending civil cases for all district courts in some circuits (e.g., the district courts in the United States Court of Appeals for the Seventh Circuit). The major civil matters considered by the Sothern District Judges are contracts, marine personal injury, civil rights, and copyright, patent, and trademark.*

At the time of our interviews (May, 1978) there were 6 full-time and one part-time magistrate in this district. Among the full-time magistrates, three magistrates were among the first group of magistrates appointed in this district. They had served seven years. The three other magistrates have each served less than three years. All of these magistrates placed heavy emphasis on civil matters. In fiscal 1977 they considered more than 6,200 civil matters under 28 U.S.C. sec. 636(b) and slightly less than 2,000 criminal matters (Charts 2 and 6). This is a ratio of approximately

---

*Source: Administrative Office of the U.S. Courts Annual Reports.

3 to 1 (civil:criminal). In September, 1978 a seventh full-time magistrate was authorized for this district to relieve some of the workload on the judges and magistrates.

Eastern District

The United States District Court for the Eastern District of New York considers approximately one-half of the cases considered by the Southern District. The former court had 9 active and 3 Senior judges, three full-time and 1 part-time magistrate at the time of our interviews. In fiscal 1977, 3,684 cases were filed in this district (1,172 criminal cases and 2,512 civil cases) and 3,584 cases were terminated (Chart 18).

The major types of civil cases were contracts and personal injury. Since fiscal 1974 the Eastern District judges have had more than twice as many civil as criminal cases commenced; however, their magistrates have considered more criminal than civil matters since 1974.[2] For example, in fiscal 1977 the Eastern District magistrates considered more than 2,800 criminal matters and slightly more than 600 civil matters (Charts 11, 13, 14). This is a ratio of approximately 1:4.7 (civil to criminal). However, during the last two fiscal years Eastern District judges have given more civil matters to magistrates, 374 and 604 civil matters respectively in fiscal 1976 and 1977 (See chart 14).

The Eastern District magistrates' emphasis on petty and minor offenses (see Table 1, and for a trend since fiscal 1972, see chart 12) is due to the location of a major federal facility -- Gateway National Park -- in this district. We hypothesize that the number of minor and petty offenses considered by magistrates varies directly with a) whether there is a major federal facility in the district; and b) the type of facility -- e.g., wilderness area, military base. The proportion of criminal to civil matters

heard by Eastern District magistrates belies the amount of time they devote to criminal and civil matters. In the last two fiscal years (FY 77 and 78) civil matters which are dominated by pre-trial conferences have accounted for approximately 70% of their time. We observed and also found in the magistrates' files that many civil matters are complex and require many hours or days of magistrate work -- such as discovery motions in a class action suit -- while many of the criminal matters are comparatively simple such as a traffic fine or bail proceeding.

In this district all the full-time magistrates had served less than two years; moreover, one magistrate had served only one month. The new magistrate was an additional magistrate for the Eastern District. One of his main assignments was the civil discovery motions and other pretrial matters in the Franklin National Bank case.

In the U.S. Court of Appeals for the Second Circuit, the Southern and Eastern Districts of New York have 9 of the 12 authorized full-time magistrate positions as of June 30, 1977. In addition, during fiscal 1977 the magistrates in these two districts considered the overwhelming number of matters (75% or more) in each category for magistrates throughout this Circuit. (Table 1). A comparison of the trends of magistrate use in the two districts under investigation and national trends in magistrate use will be presented in Part II.

TABLE 1

Magistrates' Disposition 1977****

	Defendants Disposed Of		Other Matters Disposed Of	
	Minor*	Petty	636(a)**	636(b)***
Connecticut	3	2	272	965
NDNY	18	72	286	286
EDNY	135	934	1,350	1,014
SDNY	0	241	1,934	6,515
WDNY	15	95	452	698
Vermont	2	30	91	3

* Other than petty.

** Bail, preliminary examinations, etc. (See, e.g., Chart 13 for a fuller description of magistrate duties under this section).

*** Pretrial conferences, Social Security review, etc. Sec. 636(b) contains both civil and criminal matters. (See Chart 14 for a fuller description of magistrate duties under this section).

**** Source: 1977 Annual Report of the U.S. Court of Appeals for the Second Circuit 54.

C. Data and Methods Used in the Study

One of the objectives of the pilot study is to determine what data on magistrate utilization is available in the Southern and Eastern Districts of New York and examine this data to assess the use of magistrates. The following data were examined and analyzed: 1) standard data sources on magistrates' activities -- the Administrative Office of the United States Courts Annual Reports and individual magistrates' monthly reports; 2) several data sources on the utilization of magistrates which have not been previously examined by other researchers such as the magistrates' files, Inventory of Pending Matters Before Magistrates (January, 1977 and 1978 in the Southern District only), and criminal and civil docket sheets from these district courts; 3) interviews with judges and full-time magistrates; 4) interviews with court personnel; and 5) interviews with members of the U.S. Attorney and Federal Defender's Office and private counsel.

The standard sources on magistrate utilization -- the Administrative Office of the United States Courts Annual Reports and the magistrates' monthly reports in the Southern and Eastern Districts of New York -- were used to analyze the trends in magistrates' activities. The Administrative Office data on nationwide patterns of magistrate use was collected between fiscal years 1972-1977. The data included the total number of matters disposed of by U.S. magistrates, total of matters pursuant to 28 U.S.C. sec. 636(a) and sec. 636(b), and magistrates' consideration of minor and petty offenses.[3] Similar data was collected for both districts under investigation from FY 1972 through 1978 (12/31/77). This data shows the trends and changes in magistrate use in these districts. Moreover, the trends in the two districts have been compared with the national patterns of magistrate use (Part II infra). The magistrates' monthly reports were used to determine if the magistrates' annual reports masked any trends in magistrate use or indicated innovative activities undertaken by the magistrates. Administrative Office data was also used to show the caseload patterns in the two district courts (Charts 8-10 for the Southern District, charts 15, 16 and 18 for the Eastern District) as a factor in assessing the impact of magistrates upon the district court.

In-depth interviews were conducted with all nine full-time magistrates in the Southern (6) and Eastern (3) District; and with 14 district judges [(Southern (10) and Eastern (4)].[4] The interviews with the judges and magistrates revealed their perceptions about their activities and interactions and the rationale for existing practices. In both districts the judges were selected according to their different degrees of magistrate use (e.g., heavy users, users of magistrates for specific purposes -- e.g., discovery motions, social security administrative reviews -- and hardly any use of magistrates).[5] The district judge interviews gave an important

perspective on the ways magistrates are actually used in the district courts, the magistrates' impact on the district court, and why different district judges use magistrates in different ways. The judges' questionnaire (see Appendix C) included questions on the individual judges' use of magistrates, the frequency and type of matter sent by the judge to the magistrates, the judges' supervision of magistrates' activities, the advantages and disadvantages of the current referral system, and recommendations for future use of magistrates.

The magistrates' interviews assisted our analysis of the ways magistrates are used in the district courts, the ways they process cases, and an evaluation of the present magistrate system. A detailed questionnaire was used to determine the magistrates' attitudes (See Appendix A). Among the types of questions were: the magistrate's background and training prior to assuming office, kinds of matters considered by magistrates, how they handle different types of matters (e.g., discovery motions, pretrial orders), their interactions with the district court and individual district court judges, and future problems and prospects of magistrates' use in the district court. The magistrates' interviews ranged between one hour and fifteen minutes to four hours. The average interview lasted two hours. Selected magistrates were reinterviewed in August (See Appendix B).

In addition to the magistrates' interviews the investigators in the pilot study observed many types of magistrate activities. These observations of different types of magistrates' civil and criminal duties[6] -- e.g., hearing motions, holding settlement conferences, setting bail -- helped to assess the ways magistrates are actually used in the district courts, suggest if additional training or qualifications are needed by magistrates, and evaluate the magistrates' impact on cases. Some magistrates' duties were not observed because they occur infrequently (such as a

motion for disqualification of attorneys or Nebbia hearing) or involve confidential proceedings such as an ex parte search warrant application.

Many court personnel were interviewed during our investigation. These interviews were used to obtain various perspectives on the magistrates and determine some of the procedures and interactions between magistrates and other court personnel. These interviews were conducted informally and helped us formulate several questions that were included in our questionnaires and assisted our understanding of each district court's operating environment, e.g., interviews with magistrate clerks and secretaries helped understanding the filing systems used by each magistrate. We relied upon discussions with the court personnel because this format permitted more frequent conversations and a formal questionnaire would be difficult to analyze because of the court personnel's diverse responsibilities. The interviewer asked each individual specific questions that concerned their specific areas of responsibility. The court personnel were very helpful in offering information and assistance in overcoming procedural problems. An overview of the approximately 22 court personnel that were interviewed includes: In the Southern District, United States Attorney's office (chief and deputy chief of criminal division) to discuss their views of magistrates' activities, clerk in charge of magistrates' criminal cases, members of Clerk of the Court's office including chief assistant, all six magistrates' secretaries and Magistrate Schreiber's law clerk, and 4 members of the Circuit Executive's Office for the United States Courts of Appeals for the Second Circuit, including the Circuit Executive. In the Eastern District all personnel in the magistrates' offices [secretaries and clerks (5 people)] and the Clerk of the Court were interviewed.

Formal interviews of lawyers with both criminal and civil practices were conducted. Lawyers interviewed for their views of the magistrates'

handling of criminal matters included Chief, Federal Defender's Office, Southern District, and Chief and Deputy Chief, Criminal Division, U.S. Attorney's Office, Southern District. Interviews were also conducted with three lawyers involved in complex civil litigation, all specializing in antitrust. One headed a firm, the other was a partner in a firm, and the third was an associate. The lawyers came from firms that had been involved in over 25 cases requiring appearances before the magistrate in the pilot districts. The two senior lawyers had each personally appeared 25 times before magistrates, the associate, 15 times.

In addition to the formal interviews, informal conversations with lawyers in both districts helped to formulate their perception of magistrates' activities. These conversations usually occurred immediately before or after our observations of magistrates.

This pilot study examines several sources of information on magistrate utilization which have not been examined by other researchers. These sources include: the magistrates' files, district court docket sheets, and the Inventory of Pending Matters. This study conducted the first systematic attempt to examine individual magistrates' files.[7] Files were selected on a random basis from each full-time magistrate (except the magistrate in the E.D.N.Y. who had served for approximately one month). Individual magistrates' files vary according to completeness of data and the material included in the files. Both open and closed files were used. The former were used to determine whether magistrates made any recent changes in their practice or rulings.

The magistrates' files provide different data, data in greater depth, and a better indication of specific actions taken by the magistrates than other sources such as the Inventory of Magistrates' Pending Matters, the Administrative Office Reports, or the court dockets. In general, the

magistrates' files showed the specific assignments given to the magistrates. The categories in the Inventory such as general pretrial include a wide variety of tasks -- e.g., the supervising of settlement discussions, or preparing a case for a general pretrial order. While the Inventory indicates that a motion was heard by the Magistrate, the files indicate whether the motions sent were objections to interrogatories or to depositions. The closed district court dockets frequently omit magistrates' activities or describe them only in general terms (see infra for a further discussion of this problem). The files show patterns of magistrate use by indicating when a judge received the case, the stage of the proceeding when the case was sent to the magistrate and how many days it took the magistrate to dispose of the matter(s). In addition, the number and dates of pretrial conferences and a determination of whether the matter before the magistrate was simple or complex can be found. The files show the magistrates' disposition of the matter, e.g., through memorandum and order, report and recommendation, or settlement. In some instances the files show whether there was an "appeal" or "objection" to the magistrates' ruling.

In one instance we conducted an expanded file search and considered additional matters from the magistrates' files. This further examination permitted a comparison between the magistrates and judges' consideration of selected types of cases. The cases used for this comparison were social security administrative reviews in both the Southern and Eastern Districts.[8]

In both districts a small sample of criminal and civil docket sheets was used to examine court activities before and after the emergence of the magistrates. Cases starting in three time periods, 1968, 1972, and 1976 were selected. The first period precedes the magistrates; the second period is immediately after the inception of the magistrates and it will allow us to examine the magistrates' initial use; and the third period

considers recent utilization of magistrates.[9] In each district we selected 60 cases prior to and 60 cases after the inception of the Office of U.S. Magistrate; the latter were divided equally between 1972 and 1976. We anticipated that the court dockets would permit a limited assessment of the amount of time it took to process cases before and after the magistrates. However, the court dockets did not contain the information needed to assess changes occurring as the result of the use of magistrates.

The data from the district court docket sheets raised several problems of analyzing and comparing cases. Two problems in particular -- the change in assignment of cases to judges and limited descriptions of magistrates' activities -- did not permit us to use the district court dockets as a reliable source of information. In the early 1970's both district courts in this study shifted from a Master Calendar System (MCS) to an Individual Assignment System (IAS). The Southern District adopted the IAS for criminal matters in October, 1970 and civil matters in July, 1972. In civil cases many of the duties that the trial judge now undertakes under IAS, such as pretrial motions and discovery, were not his responsibility under the MCS. Under the MCS the trial judge was not assigned a case until it was readied for trial by the Assignment Division judge. Since judges did not have an individual calendar responsibility cases were slow in moving to trial [(for a description of the advantages of the IAS in the Southern District see Report Evaluating the Individual Assignment System in the Southern District of New York after Three Years' Experience, 69 F.R.D. 493 (1976)].

The change of assignment systems makes comparison between before and after the inception of magistrates in 1971 very difficult. The utilization of magistrates and the operation of the IAS are areas which require much further investigation. How does the magistrates' handling of pretrial conferences and discovery motions affect the operations of the IAS in a

district court? To the extent judges send all of their civil cases to a magistrate for pretrial, some of the weaknesses of the MCS may be presented.

Both the civil and criminal dockets contain only limited description of the magistrates' activities -- e.g., a magistrate may have heard a motion but the type of motion or the magistrates' disposition of the motion is not included in the docket sheets. We found several instances where magistrates' files reveal that a magistrate took action in a case but no indication of that activity is in the court docket sheet. This omission occurred more frequently in the Southern District than in the Eastern District. Administrative practices may account for this difference. In the Eastern District the magistrates receive the entire district court file when they hear a case while in most instances this practice is not followed in the Southern District.

As a substitute for the district court dockets, we examined from our sample of magistrates' files the types of cases magistrates heard in selected periods before and after the 1976 Amendment to the Magistrates Act. The two periods we studied were January, 1975 to October 21, 1976 (the day the Amendment became effective) and October 22, 1976 to January 1, 1978.

In January 1977 and 1978 the Southern District magistrates submitted an Inventory of all pending civil matters as of January 31st of that year. The Inventory deals only with open civil cases and includes information on each magistrate's civil caseload and the number of referrals per kind of issue from each judge. This information allowed us to examine changes in magistrates' civil caseload between 1977 and 1978. Moreover, this information indicates referral patterns by types of matters from different judges and reveals if judges send cases in batches or singly to magistrates. The Inventory indicates the year that the case was filed in the court and, in some cases, when the matter was referred to the magistrate. In such

instances, the length of time matters are pending before the magistrates can be determined.* In May 1978, the Eastern District magistrates submitted an inventory which listed only the number of open civil cases by each judge.

In October 1976 the Committee on Federal Courts of the Association of the Bar of the City of New York and the Committee on Second Circuit Courts of the Federal Bar Council conducted a study of the Magistrate System in the Southern District of New York (the "Bar Study") which was published on November 17, 1977 and appears in an edited version at 33 Record of the Association of the Bar of the City of New York 212 (April, 1978).

The pilot study differs from the Bar Study in several respects. First, the pilot study offers a comparative perspective of magistrate use in two United States District Courts. It examines the general patterns of magistrate use in both the civil and criminal areas. The Bar Study examined a single district court (Southern District of New York) and heavily stressed magistrates' duties in civil matters. Second, the pilot study uses data not considered by the earlier study (e.g., magistrates' files and Magistrates' Inventory of Pending Matters). This new data uncovered important patterns of magistrate use. Third, our study found systematic patterns of magistrate use; the Bar Study, to the contrary, found that the utilization of magistrates in the Southern District was a "nonsystem". Fourth, the investigators in the pilot study observed a wide variety of magistrates' activities. These observations assisted our assessment of the magistrates' impact on different aspects of the judicial process. The Bar Study did not conduct systematic observations of the magistrates' activities. Fifth, the pilot

---

*To improve the Inventory data, the magistrates should stamp the date of referral on every matter received.

study looked at problems which were raised only as questions in the previous study -- e.g., appeals from magistrates' rulings, modes of referral of matters to magistrates, the different ways judges use magistrates, and the length of time cases stay with magistrates. Moreover, our data will give a broader assessment of matters heard by magistrates after the 1976 Amendment to the Magistrates Act since a large part of the Bar Study occurred prior to that Amendment.

II. Magistrate Utilization in the District Courts

A. Statistical Trends in Magistrate Utilization

The developments in the magistrates' activities since July 1, 1972 (fiscal 1972) in the two districts under investigation and in districts nationwide establish certain trends in magistrate use among the district courts. Initially our analysis will be based on the information from the Annual Reports of the Administrative Office of the U.S. Courts ("A. O. Reports") and this analysis will then use other data sources mentioned above. The initial analysis will consider the magistrates' activities by examining the main sections of the Magistrates Act, 28 U.S.C. sec. 636(a) and sec. 636(b). Section 636(a) defines the magistrates' criminal duties, similar to those of U.S. Commissioners, and includes trials of petty and minor offenses. Magistrates' activities in this section also include search warrants, arrest warrants, and removal hearings. Section 636(b) defines the magistrates' other duties in criminal and civil matters. Magistrates' civil activities under this section include discovery motions, pretrial conferences, special master reports, and review of social security administrative proceedings, and their criminal duties include pretrial conferences, post-indictment arraignments and probation revocation.

The 1976 Amendment to the Magistrates Act which became effective October 21, 1976, near the start of fiscal 1977, clarified the magistrates' authority and the scope of matters that might be assigned to them. This Act revised sec. 636(b) and authorized magistrates to hear and determine nondispositive motions and matters, to conduct evidentiary hearings, to hear and make recommendations to a judge on certain dispositive motions such as a summary judgment and certification of a class and to recommend disposition of prisoner petitions. The 1976 Act provided an impetus for many district courts to use magistrates for a wide variety of new tasks.

Since the greatest change in magistrates' activities has occurred under sec. 636(b), our analysis will start with it.

1. Magistrates' Duties under Sec. 636(b)

On a national scale U.S. magistrates' duties under sec. 636(b) increased almost 25% between FY 76 and FY 77. This increase is related to the 1976 congressional clarification and broadening of the magistrates' authority. New areas of magistrates' authority were created -- such as civil trials and indictments -- and utilization of magistrates increased markedly in several existing criminal and civil areas (see especially Chart 3). In FY 77 magistrates in many district courts decided cases where they had not previously ruled prior to 1976 amendments (see 1977 Annual Report of Administrative Office of United States Courts especially Table M-4). On the national level, in criminal matters, the magistrates' consideration of indictments and post-indictment arraignments increased by more than 6,500 matters between FY 76 and FY 77. These two categories accounted for 85% (6,623 of 7,707 matters) of magistrates' increase in criminal matters. In civil matters the magistrates heard almost 17,000 more matters (a 14% increase) between FY 76 and FY 77. The major additions between these fiscal years were in civil motions (an increase of greater than 8,000 matters) and pretrial conferences (an increase of greater than 5,000 matters) (see chart 3). The district courts may expand on the magistrates' authority under the 1976 Act because that act also provides for magistrates' additional duties in sec. 636(b)(3).

In the two districts under investigation there were different effects from the 1976 Amendments. The magistrates in the Southern District of New York are the dominant magistrates among U.S. District Courts in handling civil pretrial conferences. They have maintained this dominance since the

inception of the Magistrates (See 1972-1977 Annual Reports of Administrative Office of United States Courts, Table M-4). In FY 77 magistrates in only one district court, the Eastern District of Louisiana -- 2,954 matters -- held half as many civil pretrial conferences as those in the Southern District of New York. Before the 1976 Act, the Southern District magistrates engaged in many of the civil practices authorized by that Act. They took these actions under the sec. 636(b) provision which permitted magistrates to be assigned "such additional duties as are not inconsistent with the Constitution and laws of the United States." These magistrates did not show marked changes in the number of civil matters assigned after the 1976 Act because the newly authorized activities (such as civil trials and summary judgments) did not significantly increase the total number of matters considered by these magistrates (see Chart 2). In civil matters since FY 1974 the number of pretrial conferences in the Southern District has remained relatively stable (Chart 2) and from FY 74 to FY 77 the number of civil motions has declined and reached a relatively constant level for the last three fiscal years (Chart 2). In FY 77 the Southern District magistrates considered the ninth largest number of civil motions among all magistrates.

In the Eastern District there have been important increases in the magistrates' duties under sec. 636(b) during the last two years. In FY 77 the magistrates in this district considered twice as many civil and criminal matters under sec. 636(b) as they considered in FY 76. The major changes were in civil pretrial conferences (368 matters in FY 76 and 603 in FY 77) and other additional duties in criminal cases -- mainly grand jury returns --(2 matters in FY 76 and 286 in FY 77) (Chart 14). In addition, in the first half of FY 78 these magistrates started to hear motions in criminal

cases -- 40 -- while hearing none in FY 77. However, these magistrates did not hear any civil motions during the last four fiscal years.

Civil trials and special master reports were important magistrates' activities in recent years. In FY 77 magistrates were authorized to conduct civil trials by the 1976 Amendments. In that fiscal year the Southern District magistrates conducted twelve civil trials, slightly above the median number of 9.02 civil trials in the 36 districts which permitted magistrates to engage in this activity. In the first half of fiscal 78 they conducted seven civil trials. In contrast, no civil trials were conducted by the Eastern District magistrates in fiscal 77. In fiscal 78 these magistrates began to conduct civil trials. One magistrate heard a civil trial and another magistrate was assigned a civil trial early in the Fall and one in both December and January.

Special master reports increase markedly in the Southern District in FY 76. However, in FY 77 there was a return to the FY 75 level (Chart 2). Perhaps the magistrates' authorization to conduct civil trials diminished the need for special master reports. In the Eastern District there was a major increase in special master reports in the first half of FY 78. In this period there were 13 special master reports as contrasted with none in FY 77 and five in FY 76 (Chart 14). Perhaps the authorization of civil trials in this district will result in the same pattern as in the Southern District and lead to a reduction of special master reports in future years.

The increase in the Eastern District magistrates' consideration of sec. 636(b) matters was about one-third greater than the nationwide increase in handling these matters since FY 75. In comparison since FY 75 the Southern District had a small decline (approximately 7.5%) in the number of section 636(b) matters. This decline occurred in civil pretrial conferences and civil motions (a decrease of approximately 700 matters) while there was

an almost 700% increase in criminal post-indictment arraignments and other sec. 636(b) duties in criminal cases (an increase of approximately 200 matters) (Chart 2).

2. Magistrates' Duties under sec. 636(a)

The national pattern of magistrate consideration of petty and minor offenses shows that most categories within these offenses have remained stable during the last two fiscal years. The increases in magistrate consideration of minor offenses and petty offenses occurred mainly in the area of traffic violations (minor offense) and food and drug violations (petty offense) (Chart 5).

In both pilot districts the magistrates' most frequent duties under sec. 636(a) are (1) bail proceedings and (2) arrest warrants. The magistrates hold some removal hearings and a small number of preliminary examinations (Charts 4 and 11). The number of petty offenses considered by the magistrates varies according to the number of traffic violations. Southern District magistrates handled a large number of minor offense matters during the first year (FY 72) of the magistrates in the district (138 matters). Since that time they have considered only a small number of minor offenses (Chart 4). The small number of minor offenses can be explained by the "felony-orientation" of this district's United States Attorney. For example, the theft of a social security check from the mail is usually tried as a felony before a judge in the Southern District and as a minor offense before a magistrate in the Eastern District. In the first half of FY 78 there were some signs of increased magistrates' criminal duties in the Southern District. There were increases in preliminary examinations during the first half of FY 78 (28 in the first half of FY 78 compared with 5 for

FY 76 and 77), increases in probation appearances (19 in the first half of FY 78 compared with 2 in FY 77), and some increases in search warrants (Charts 6 and 2). The Southern District magistrates believe they could consider a greater number of criminal matters and that they should have wider authority in this area.

In the Eastern District there are a larger number of federal facilities, especially Gateway National Park, than in the Southern District. Accordingly, the Eastern District magistrates consider a much larger number of traffic violations and thefts. These categories account for the overwhelming majority of minor and petty offenses (Chart 11). In the first half of FY 78 there was a decline in the number of minor and petty offenses considered by magistrates. This decline may be a seasonal variation since the Gateway National Park is used more frequently during the summer.

3. General Patterns

The changes in magistrate utilization have been different in the Southern and Eastern Districts since FY 74. The Southern District has been one of the most active users of magistrates from the inception of the system. During the four fiscal years FY 74-77, the total number of matters considered by its magistrates remained almost stable, an average of 9,260.5 matters. Moreover, the number of section 636(b) matters has also remained stable (an average of 6799.25 matters). Although the number of matters has remained stable, since the 1976 Amendments the Southern District magistrates have a greater breadth of duties, e.g., civil trials, evidentiary hearings, and summary judgments, and handled a greater number of complex civil matters in such areas as products liability, copyright, and sex discrimination.

The Eastern District magistrates disposed of one-third more matters in FY 77 than in FY 74 (Chart 17). During this period these magistrates

considered an average of 2991.75 matters. As part of this increase we found a six-fold increase in the number of section 636(b) matters considered by magistrates since FY 74 with twice as many minor offense matters in FY 77 than in FY 74. The Eastern District judges relied on their magistrates to consider criminal matters until very recently. Starting in late FY 77 and continuing through FY 78 these magistrates have considered a greater number of civil issues, such as an OSHA hearing and wrongful death matters.

One possible way to assess the magistrates' impact upon the district court is to relate the number of matters considered by the magistrates to the number of cases pending and terminated in a district. (When a magistrate completes a case, the completion is added to the record of the judge who assigned the case to the magistrate, with the exception of traffic fines). In the Southern District during FY 72-FY 77 there was almost a 50% increase in the number of matters considered by magistrates. These increases occurred at the same time as cases pending before judges declined in both civil (20%) and criminal (40%) areas. Moreover, an increase of almost 25% in the number of cases terminated by judges in this five-year period was found. This data suggests important contributions by the magistrates to the effective functioning of the court (See charts 1, 8, 9, 10). Since 1973 the number of civil cases pending before judges declined while the number before magistrates has increased. Between FY 73 and 74 the number of pending civil cases before judges declined by approximately 2,000, while the number of civil matters heard by magistrates increased by approximately 1,500 (See charts 1 and 8). Since FY 73 there was another interesting pattern in civil cases. Between FY 73 - FY 77 there was an increase in the number of civil cases commenced but a decline in civil cases pending (except

FY 76) (See Chart 8). However, between FY 68 - FY 72, judges terminated fewer cases than were commenced.

The drop in judicial caseload in the Southern District can be accounted for by two sets of factors: 1) the increased use of magistrates to a) decide issues and b) permit judges to more effectively manage their individual calendars; and 2) structural changes in the district court which encourage greater efficiency and responsibility by judges due to a) the shift to Individual Assignment System which made a judge responsible for all aspects of the case; b) initiation of quarterly printouts to inform judges about the number of their open cases; and c) an increase to two law clerks for each judge. In recent years, another magistrate was appointed in FY 77 to assist with increased judicial caseloads. In FY 78 another magistrate was authorized by the Judicial Conference to further assist judges with their increased caseloads. This information suggests some of the effects of the broad use of magistrates, especially in civil cases, in the Southern District.

The interpretation of the relationship between magistrate utilization and the district's caseload is more difficult in the Eastern District. In this district there has been an overall decline in the number of matters considered by magistrates between fiscal 1972-1977, an increase in the number of cases pending before judges and an increase in the number of cases terminated by judges. This pattern requires further explanation of the activities within this district court. Since fiscal 1977 the Eastern District has expanded the magistrates' activities in both criminal and civil matters under sec. 636(b) (Charts 14 and 17). Prior to fiscal 1977 these magistrates focused overwhelmingly on sec. 636(a) matters and minor offenses. Between fiscal 1972-1977 there were small increases in the number of minor offenses (714 matters) and sec. 636(b) issues (876 matters)

heard by magistrates. These increases were offset by a 60% decline in the number of sec. 636(a) matters. The general picture reflects an 8% decline in the total number of matters magistrates considered in this five-year period.

During the period of FY 72 - FY 77 the district court had an increase in the number of cases pending before judges, approximately 50% in civil cases and 70% in criminal cases. Along with the number of pending cases there was a sharp increase in the number of civil (26.2%) and criminal (31.8%) cases commenced in fiscal 1976 and 1977 respectively (Charts 15 and 16). However, judges terminated almost one-third more cases during this period (See Charts 15 through 18). One factor affecting the Eastern District's high number of terminated cases was the concomitant increase in the magistrates' duties under section 636(b), especially in civil cases. This pattern merits further observation.

In the Southern District our interviews with judges and magistrates and the 1977 and 1978 Inventories show that some judges send a large number of matters to some magistrates and not others. Our evidence suggests that the judges have confidence in a particular magistrate's work in both dispositive and nondispositive matters. Judges rely on magistrates' expertise in certain matters. As matters before judges change or when they need certain tasks performed the judges shift their allocation of matters among magistrates. In nondispositive matters in both 1977 and 1978 one magistrate received approximately 30% of his cases from one judge while other magistrates received between 23% and 42% of their cases from different combinations of two judges. Four judges send all or almost all of their pretrial matters to magistrates via the Administrative Magistrate. These matters are distributed among the magistrates. These judges account for a large percentage of the matters received by magistrates.

A comparison of the 1977 and 1978 Inventories indicates that judges relied upon different magistrates for different types of duties in the year between the two inventories. In the 1978 Inventory four of the six magistrates received a major portion of their cases from a different combination of judges than in the 1977 Inventory. The shift in magistrate referrals from different combinations of judges was caused by two factors. First, a senior judge, who sent a large percentage of his pretrial work to magistrates, was not sitting on the bench in S.D.N.Y. during most of fiscal 1978. This accounted for two of the shifts in magistrate referrals. Second, a judge began to send all his pretrial matters to magistrates through the Administrative Magistrate. This accounted for the other two shifts in magistrate referrals.

The Inventories and the monthly reports show a marked increase in the number of dispositive matters sent to the Southern District magistrates between January 1977 and June 1978. Each magistrate believed that more dispositive matters were being sent, especially since the beginning of 1978. However, they did not know whether other magistrates were receiving greater or fewer dispositive matters. No direct measure of magistrates' completion of dispositive matters was available.

An indication of the magistrates' activities in dispositive matters can be found in the Inventory's recording of open cases and the monthly reports. The percentage of open cases that were dispositive motions in the 1977 Inventory ranged from 5.4% to 7.7% with only one magistrate above 7%. However, in the 1978 Inventory the range of dispositive motions as a percentage of open cases changed significantly. In that inventory the range was between 1.5% to 11.3% with two magistrates below 5%, two magistrates between 5% and 7%, and two magistrates with 11% or above. In the period between the Inventories the two magistrates with less than 5% open dis-

positive matters disposed of 80% and 50% of their open dispositive matters. These magistrates showed sharp declines in the percentage of their cases that were open dispositive matters. These magistrates effectively closed many of the dispositive matters on their calendars. Two other magistrates had approximately the same number of open dispositive motions in both inventories. Two other magistrates showed sharp increases in the number of dispositive matters they received between the two Inventories. In both instances their number of open dispositive matters nearly tripled, from 9 to 28 and from 11 to 27 (see below for further discussion of these magistrates). These magistrates' percentage of open dispositive matters as part of their civil caseload increased to 11%. Between January and June, 1978, there were additional increases in the number of dispositive motions considered by the Southern District magistrates. The magistrates' monthly reports show that the six magistrates considered an average of slightly less than 11 dispositive matters in this six-month period.

Between January and June, 1978 over 70% of the dispositive matters in the Southern District were considered by the two magistrates who were most skilled in complicated civil issues. These two magistrates, who were among the three magistrates appointed in the last three years, received a higher number of dispositive matters each month than the other magistrates, except for one magistrate during one month. Both these magistrates had extensive federal civil litigation backgrounds especially in the appellate area. Two factors deserve further attention. Most of the magistrates in the Southern District have a much larger number of dispositive matters than magistrates in other districts, and dispositive matters account for more than 10% of the open civil cases of two magistrates in this District.

4. 1976 Amendment to Magistrates Act

The 1976 Amendment to the Magistrates Act provided an impetus for new magistrate activities. This Amendment became effective on October 21, 1976. We selected cases from magistrate files from a period before and after the Amendment, January 1, 1975 to October 21, 1976 and October 22, 1976 to January 1, 1978. One hundred eighty-one of our 230 magistrates' files fall into these two periods, 90 cases in the former period and 91 in the latter period. The Eastern District accounted for 47 cases, 11 in the former period and 36 in the later period. The combined totals of both districts showed many similarities between the two periods (Table 2). The major changes were declines in maritime and securities cases in both districts, and false arrests and tax matters in the Eastern District. Increases occurred in wrongful death matters and employment discrimination cases in the Eastern and Southern District respectively. There were some important additions of new matters to the magistrates' activities such as Commodities Exchange Act cases, immigration cases and OSHA hearings. The table shows that after the 1976 Amendment the magistrates considered a small number of cases in several new areas. These areas will introduce greater diversification in magistrates' activities under sec. 636(b) in the near future.

TABLE 2

Types of Cases Considered by United States Magistrates Before and After 1976 Amendment in Southern and Eastern Districts of New York Combined

Type of Case	Jan. 1, 1975-Oct. 21, 1976	Oct. 22, 1976-Jan. 1, 1978
All Maritime Cases	26	15
Breach of Contract	9	12
Copyright, Trademark, Patent	9	7
Bankruptcy	0	2

Wrongful Death	0	4
Personal Injury	12	11
SEC	9	4
Veterans Affairs	0	1
Labor Relations	0	2
Social Security Review	5	10
Antitrust	3	3
Tax	2	0
Foreclosure	3	1
F.O. Information Act	1	0
Sec. 1983	7	8
Commodities Exchange Act	0	2
False Arrest	2	0
Immigration	0	1
Employment Discrimination	0	3
FELA	2	2
FLSA	0	1
OSHA	0	1
Totals n = 181	90	91

5. Comparison between Retention and Referral: Social Security Cases

A comparison of the time it took magistrates and judges to handle similar matters is one of the possible methods to assess the effects and productivity of U.S. magistrates. To test this method, we selected social security administrative review cases handled by judges and magistrates. In both districts we found similar issues, mostly reviews of administrative rules and wrongful denial of benefits, and cases which had both pro se claimants and claimants represented by attorneys. There was almost no

difference between pro se cases and others. In both districts we selected the social security cases from magistrates' files and court dockets.

In the Eastern District we reviewed 19 social security cases, 9 referred to magistrates and 10 retained by judges, between January and June 1976. In more than one-half of the cases considered by magistrates (5 of 9) the judge sent the case to the magistrate within one week of receiving it. In one case the judge had the matter for 256 days before sending it to the magistrate. The magistrates took an average of 192 days to resolve this type of matter, the shortest period 45 days, the longest 388 days. As required by the Act, the magistrate must file a report after reviewing the administrative record. Once the report was filed with the Court, the judges took an average of 101 days to review it. This equals an average total of 300 days when considered by both judge and magistrate.

In the 10 cases retained by judges, an average of 303 days was taken to resolve the case. The shortest time period was 83 days and the longest was 878 days. If we eliminate the case which took the longest time as an extraordinary matter the judges' average falls to 262 days. Thus, in this district the average time spent on social security cases is approximately the same for retained cases as for referred cases.

In the Southern District we reviewed 17 social security cases, 7 considered between early 1974 and 1978 by magistrates and 10 considered between October and December 1976 by district judges. Judges held the matters for a much longer period than in the Eastern District before sending them to the magistrates, 233 days on the average. In three instances the judge had the matter for more than 300 days and the longest period was 465 days. In the four closed cases the magistrates took an average of 104 days to resolve the matter. Three of the magistrates' social security cases were open at the time of our investigation. If we assume that they would

be closed at the date of our investigation then the average time for a magistrates' consideration jumps to 232 days. Two of these three open matters were filed in 1975 and the magistrates had held them for 730 days and 545 days. Once the magistrates reported it took the judges an average of 64 days to complete action on the magistrates' report. Thus, it took an average of 401 days for closed cases from the date of complaint until the judges' final action. If we eliminate the magistrates' longest social security case and the number of days the judge held the case prior to sending it to the magistrate, (545 and 465 days respectively) and then examine data on the date the case was filed until the date the case was returned by the magistrate to the judge, we find that for all cases the average time from judge to magistrate and back to the judge is 391 days. We would hypothesize that Eastern District judges had a more automatic system of referring social security cases to magistrates while Southern District judges examined the cases for particular problems before sending them to magistrates. This area needs further investigation.

When the Southern District Judges retained social security cases, it took an average of 390 days to consider them. The shortest time was 188 days and the longest was 545 days.

In both districts, if we exclude one outlying case, the amount of time it takes to consider social security cases is almost equal for judges and magistrates.

B. Description of the Magistrate Systems in the Southern and Eastern Districts

This section will consider the patterns of magistrate utilization in the Southern and Eastern Districts of New York. In addition, the two districts' methods of selecting and recruiting magistrates will be compared; moreover, the ways magistrates receive cases in these districts, i.e., the

referral systems, will be explored. The relationships between the referral system, the magistrates' qualifications and training, and the ways magistrates are used will be analyzed.

1. Background of Magistrates

The judges in the Southern and Eastern Districts use different procedures and different emphases in selecting magistrates for their courts. The Southern District judges emphasize magistrate utilization in civil matters. All six magistrates had extensive experience in federal civil cases prior to their appointment either at the trial or appellate level or both. Several of these magistrates had handled complex litigation prior to their appointment. For example, one of the magistrates had tried many Title VII (Employment Discrimination) cases. Another magistrate had been a pretrial examiner in the Southern District.[10]

Besides a broad background in civil matters, each of the Southern District magistrates had different specialities which supplemented those of their colleagues. For example, one magistrate had extensive work in securities and contract litigation, another work in consumer affairs and mental health. We are uncertain whether specific areas of expertise were sought in selecting magistrates. However, our respondents, both judges and magistrates, indicated that the "best person available" was sought. Some of the Southern District magistrates had limited civil trial experience prior to their appointment. These magistrates had a brief "period of adjustment" when they began considering pretrial matters.

Four of the Southern District magistrates had no or very limited background in criminal law before assuming their current positions. The magistrates in this district serve on criminal duty for one out of every six weeks. The dominant factor in their criminal duties is conducting bail

hearings. (Chart 6). There are few petty and minor offenses due to the U.S. Attorney's "felony-orientation". We found that these magistrates' criminal duties are limited by the judges' belief that magistrates should emphasize civil matters, especially pretrial, and the U.S. Attorney's policies.

In contrast to their counterparts in the Southern District, the magistrates in the Eastern District had extensive experience in criminal matters prior to their appointment. One magistrate was in charge of the Eastern District's Federal Defender's Office for 8 years, another magistrate handled cases in the Eastern District's U.S. Attorney's Office, Criminal Division for five years, and another magistrate was a Long Island County District Attorney for criminal matters for ten years. In addition, two of these magistrates had some legal experience in federal civil matters. At the time of our interviews (May, 1978) all of the Eastern District magistrates had served less than two years.

2. Selection of Magistrates

The selection of magistrates in the Southern District, at the time of our study, was conducted through the District Court's Magistrate Committee, chaired by Judge Metzner. The judges on this committee contacted law school deans and other judges for recommendations to fill a magistrate's position.[11] The committee narrowed the number of candidates and asked them to apply if they were interested in the position. These candidates were interviewed by the members of the committee and some candidates had interviews with judges on the committee prior to the full committee interview. The committee made its recommendation to all the active district court judges who have always approved the committee's recommendations. In recent times, the committee found more qualified individuals than positions avail-

able and has filled a new position with a candidate from the previous selection process.

At the time of our study the selection procedure in the Eastern District was more complex than the Southern District. In the Eastern District an announcement is placed in the New York Law Journal and Bar Association Journals that a magistrate's position is open. Lawyers form subcommittees of the County Bar Association Judiciary Committee in each of the five counties in the District to recommend candidates for the magistrate's position. A nine-member selection committee of district court judges and lawyers reviews the applications and recommends six names to the active judges on the district court. The applicants have two interviews with the district judges, and all the active district court judges select the magistrate. Prior to 1976 a three-judge committee, chaired by the Chief Judge, recommended the nominee to all the district's active judges.

3. Referral System

The way magistrates receive cases is called the referral system. All criminal matters, with the exception of some sec. 636(b) matters such as post-indictment arraignments, come originally to a magistrate -- e.g. search warrants, and petty offenses. On the other hand all civil matters must be referred by a judge to a magistrate. The referral system determines the type and number of matters considered by the magistrates. The magistrate interviews show different referral systems in the Southern and Eastern Districts of New York.[12]

In the Eastern District the two magistrates regularly at Cadman Plaza serve alternate weeks on criminal duty. In criminal matters the magistrate hears whatever matters appear during that week. The major element of their criminal duty is initial appearances such as bail proceedings. Magistrate

Jordan had not become part of the criminal duty rotation at Cadman Plaza because there are no courtroom facilties currently available for him.[13]

Until October 1978 the two magistrates regularly at Cadman Plaza were on civil duty every other week. Now each magistrate hears new civil matters once every third week. Whichever magistrate is assigned to civil duty receives all the civil referrals during that week. In the civil area some judges immediately refer selected civil cases for pretrial conferences to the magistrates while others send few or no matters. New rules for magistrates in the Eastern District and the 1976 Amendments have encouraged these district judges to give a greater number of civil and other additional duty references to magistrates. Magistrate Jordan's consideration of civil cases at Cadman Plaza is due to this district's magistrates' increased civil responsibilities beginning in FY 77 and continuing through FY 78. Moreover, the larger amount of magistrates' time taken by civil matters, e.g., in research and writing recommendations and orders, probably placed a heavy burden on the two magistrates. A memorandum on the referral of civil cases showed that Magistrates Chrein and Caden had 696 open civil cases as of May 31, 1978. Magistrate Jordan was specifically assigned the complex Franklin National Bank bankruptcy case for pretrial purposes.

Both the statistical and interview data indicate that magistrates have received a larger amount of matters since FY 77. Moreover, they expect more of these matters in the near future. All the magistrates agreed that the major components of their docket are civil pretrial conferences leading to pretrial orders and initial appearances in criminal matters. In the civil area they consider many nondispositive matters; the number of dispositive matters is limited. We found a greater emphasis on dispositive matters among the Southern District magistrates.

In contrast to the Eastern District a variety of methods is used by the judges in referring matters to magistrates in the Southern District. In general, magistrates receive matters either through Administrative Magistrate Jacobs or directly from judges. Magistrate Jacobs assigns cases to the next available magistrate as he receives cases from judges. Sometimes judges will call the Administrative Magistrate to determine who is the next magistrate available for a case and the judge will send the case directly to that magistrate rather than through the Administrative Magistrate to that magistrate. On some occasions judges will send matters directly to magistrates without notifying the Administrative Magistrate. There is a wide variation in the judges' use of this practice. Some send a single matter while others send a number of matters at one time; some send simple matters that can be quickly handled by the magistrates, while others send complicated or potentially lengthy matters, e.g., trials. Before April, 1978, the matters so assigned were not recorded by the Administrative Magistrate. Because of this practice the Administrative Magistrate had no accurate count of the matters considered by magistrates and thus could not assess which magistrates had heavier caseloads than others when he assigned new cases. Since April, 1978, magistrates who received cases directly from judges were requested to report these cases to the Administrative Magistrate.

The most common reference is civil pretrial matters. Some judges send their entire quarterly printout for all pretrial purposes to the magistrates and Administrative Magistrate Jacobs divides these cases among the magistrates. This practice has been followed regularly by three judges. One judge sends practically all his cases for pretrial purposes to a particular magistrate. Another judge began sending practically all of his cases for pretrial purposes to a particular magistrate shortly before the implementation of the 1976 Amendments to the Magistrates' Act. About the

same time the Southern District Judges discussed the possibility of assigning a specific magistrate to several district judges; however, they rejected this proposal. This type of magistrate assignment system has received widespread attention in district courts throughout the nation. However, the judge mentioned above seems to have adopted this practice in regard to a specific magistrate.

Some judges send specific types of matters to selected magistrates because of the magistrates' training or expertise. For example, in the Southern District, one magistrate was noted for excellence in written reports and orders, while another was noted for superb skills at settling matters.[14] These magistrates received the most difficult matters in their special areas. Some judges send a few "heavy substantive matters which take a lot of time", while others send trials, and still others send matters such as habeas corpus petitions and dispositive matters.

As discussed below, a judge's philosophy on the proper use of the magistrate usually determines the matters he refers. In addition, where unusual circumstances are present -- e.g., lengthy trial, illness, large backlog of cases -- a judge may alter his normal referral pattern. Further, some judges changed their referrals based on experience. For example, instead of sending routine pretrial matters, they now send only complex pretrials. We also found that some judges who might like to increase the frequency and complexity of their referrals did not do so for fear of overburdening the magistrates. A few favored guidelines that would control the frequency of referrals.

In the Southern District each judge determines how much the magistrates may most effectively assist the movement of his cases. Each judge has his own areas of competence and expertise and can utilize magistrates to assist him, e.g., for all pretrial matters or a limited part of the case. We

found that a few judges have recently changed their use of magistrates. For example, prior to 1977 one judge sent referrals for a very limited purpose but since mid-1977 he sends his quarterly report to magistrates for all pretrial purposes. This judge said he changed his practice after the passage of the 1976 Amendments to the Magistrates' Act. The high degree of flexibility in magistrate use depending on the magistrate's expertise is an important element underlying the magistrate system in the Southern District. In general, the judges in the Southern District use magistrates extensively or moderately and only a few of the active judges use them in a limited fashion or not at all. The diverse way that these judges utilize magistrates makes the description of a modal use of magistrates very difficult.

4. Types of Referrals

As pointed out earlier, the civil work of magistrates is entirely dependent upon a reference from a district judge, while the criminal work, with rare exceptions, commences with the magistrate. Accordingly, magistrate activity is uniform within a district in criminal matters while varying greatly in civil cases depending on the referral practices of individual judges.[15] Since the purpose of this study is to analyze the differential use of the magistrates, this section will be concerned with civil matters.

A. Pretrial

By far the most common use of magistrates in both districts is for pretrial purposes -- holding pretrial conferences, resolving discovery disputes, preparing pretrial orders, and supervising settlement discussions. Among judges who sent pretrial matters to magistrates, there was great variation in what was sent: a few referred their entire print-out of

cases, others sent only cases in which discovery motions had been filed, still others referred only those cases in which lawyers needed supervision by a judicial officer to keep the case moving.

Lawyers needing the most supervision were variously described by judges as "obstreperous", "dilatory", "unable to complete discovery on their own", "squabbling", "floundering", "at each other's throats", "not talking to each other", and "too nice to each other and thus not coming to grips with the case". Cases most in need of supervision were typically those with multiple parties in which there was extensive discovery or other factors likely to cause dispute.

There was virtual unanimity among judges and magistrates in both districts that the most important function of the magistrate is handling the pretrial stages of litigation. Judges expressed this view of the value of the magistrate in a variety of ways: "moves pretrial forward and thus speeds up the entire process", "relieves me of having pretrial burdens such as resolving disputes over interrogatories", "takes care of pretrial so that the decks are cleared for prompt trial", "permits judges to handle important dispositive matters", "takes care of a good deal of trivia", "attends to pretrial matters which would otherwise languish". There was general agreement that the magistrates' accessibility to resolve pretrial disputes kept cases moving more expeditiously than a judge's busy trial calendar would permit.

Informality of proceedings also keeps cases moving. Two of the three lawyers interviewed with complex litigation backgrounds found that magistrates were more accessible than judges, and all three agreed that judges conducted proceedings more formally than magistrates. For example, magistrates often handle discovery disputes by way of conference telephone calls when a deposition becomes stalled. Judges at trial could not be interrupted

to resolve such disputes. Hence, in the absence of a magistrate, lawyers would have to notice a motion for hearing before the judge with submission of briefs. The judges interviewed by the supplemental questionnaire were almost unanimous in believing that the informality of the magistrates' proceedings expedited complex litigation. Additional examples of magistrate informality were hearing motions and ruling orally, less formal surroundings than judges' chambers and courtrooms, quick scheduling of conferences, e.g., hearing a matter within minutes of referral from the Assignment Division judge.

To the extent magistrates can sharpen issues and set limits to discovery, the lawyers interviewed believed the trial process can be expedited. Similarly, the Bar Study found that the "majority of lawyers polled believed that in both simple and complex cases the magistrates expedited the disposition process" [(4 Record of the Assoc. of the Bar of the City of N.Y. at 221 (1978)]. The lawyers interviewed faulted some magistrates who were unable to set limits to discovery, although almost 70% of the lawyers responding to the Bar Study questionnaires believed the "magistrates disposed of discovery and pretrial matters faster than the individual judges to whom the case was assigned".

In addition to speed of resolution of pretrial matters, the magistrate's expertise at this stage offers an even more important, though less tangible, benefit to the trial process. A busy trial judge might be able to force a settlement or trial by virtue of his office more quickly than a magistrate, but a magistrate can move a case forward more systematically. By scheduling frequent conferences on a regular basis, the magistrate permits counsel to develop their case in an orderly fashion and thus better ensures that a case is properly prepared for trial or settlement.

The danger of accessibility was pointed out by some magistrates who felt that it might encourage the filing of dilatory motions. From our observation of several discovery motions, we concluded that some motions would not as likely have been brought to a judge; however, the ability of some magistrates to resolve discovery disputes promptly and informally might offset any delay occasioned by the filing of unnecessary motions. The lawyers believed that some magistrates were not skillful in stopping discovery and that some made arbitrary decisions. We observed approximately 20 proceedings in which objections to discovery requests were discussed. In addition, we raised the problem with selected judges and magistrates. The length of the proceedings, the kind of objections made, and the perceptions of judges and magistrates led us to conclude that judges would not have been as tolerant of some of the motions.

One judge who did not use the magistrate for pretrial purposes believed that the judging function was not divisible. He reasoned that separating the judging function into trial and pretrial results in a return to the Master Calendar System where one or more judges pretried the case before it was sent to the trial judge. Even though the magistrate's decision is reviewable, the case is shaped so critically at pretrial that the trial judge's role is greatly altered by giving up the pretrial function. Moreover, sending the case to the magistrate deprives the litigants of an Article III judge to which they should be entitled as a matter of policy at all stages of the litigation. Another judge observed that some lawyers may feel that the magistrate adds an additional level of decision making which can delay and add costs to the case.

The more typical response from judges about the value of magistrates at pretrial is the following comment by a judge from the Southern District: "The magistrates are able to resolve disputes quickly, forcing the lawyers

forward, which results in settlements. The key to the disposition of litigation is that matters be resolved quickly, and if the parties know this, they will either settle or be ready for trial".

The Report of the National Commission for the Review of Antitrust Law and Procedure has recommended that masters or magistrates should not be used "to supervise the pretrial stages of complex antitrust cases. Direct supervision should be exercised by the district court judge," and "(a)dditional support personnel and relief from other judicial assignments should be available, when necessary, to judges handling complex cases." (80 F.R.D. 510, 515, 1979). These recommendations would be realistic if the judges were relieved of other matters. However, under the current system the judge is rarely relieved of other matters while considering a complex case. An intermediate solution to this issue was found in the pilot districts. We found that a judge and a magistrate sat together and coordinated their activities in multidistrict litigation cases, one of which involved antitrust violations in the pricing of copper wire. The judge made rulings on dispositive motions and the magistrate handled discovery matters. This process helped move the cases towards trial or settlement.

B. Complex Cases

Of the fourteen judges in the two districts interviewed, a majority cited the complexity of a case as a reason for referring it at the pretrial stage. This group included the lightest user of magistrates of the Southern District judges interviewed. It is important to note that complexity in this context usually means "unwieldly" rather than substantively difficult, although a particular discovery motion in a complex case might itself be substantively difficult since it would be necessary, e.g., in a discovery dispute in an antitrust case, to understand the underlying legal issues to

determine whether the requested information could lead to admisible evidence. Much less frequent was the referral of dispositive motions, such as summary judgments, involving "complex" issues. The complex litigation attorneys interviewed preferred the referral of long, drawn out discovery disputes endemic to complex litigation; however, they felt the complex substantive issues should be retained by the judge. Thus, their preferences were consistent with current practice.

Nine judges specifically mentioned the complexity of the case as a reason for referral. The major reason for the referral was the belief that the magistrate would have the time to resolve the inevitable pretrial disputes which would arise in such cases. The complex reference was no different from other pretrial references -- magistrates were instructed to prepare pretrial orders, resolve discovery disputes, supervise settlements, etc. The lightest user of the magistrates utilized magistrates in complex pretrial matters because they typically required a great deal of supervision which the judge, because of time constraints, could not provide.

Those judges who did not send complex pretrial matters to the magistrates were largely concerned about the possibility of having to review the magistrate's decision on appeal. See page 44, infra. The majority of judges, however, found that some magistrates were experts at achieving settlement of complex cases as well as having the time to oversee properly complex pretrials.

Multi-district litigation is the paradigm case for use of the magistrate for one Southern District judge who does not use magistrates in other pretrial situations. We observed this judge utilizing a magistrate in an MDL case for discovery disputes and settlement discussions while the judge handled the many dispositive motions and pretrial conferences which were attended by several lawyers representing hundreds of plaintiffs in a mass

air disaster. The magistrate sat at the judge's side during the conferences, not only to receive instructions from the judge and offer him suggestions but also to show counsel that magistrate and judge were working as a team.

Almost all of the judges who utilized magistrates in complex cases found there had been no resistance to the use of magistrates in such cases. Again the referrals are typically pretrial. Two judges in their supplemental questionnaire argued: "Magistrates are more accessible to the attorneys and the informality of magistrate proceedings expedite the progress of litigation particularly when there are numerous parties or issues;" and "[c]omplex cases require more judicial attention than other cases and they are more likely to get the time from a magistrate than from a busy district judge." One judge noted that he used to send routine cases for pretrial but that he now sends only complex matters.

Judge "A", however, noted that the use of magistrates in complex litigation "is sometimes counterproductive. The stakes are so high and the discovery requests so voluminous that it becomes worthwhile for the parties to appeal from the Magistrates' rulings, perhaps just in the hope that they may wear the judge out. The judge can't avoid reading briefs that may be 50 to 100 pages long explaining why the Magistrates' rulings are incorrect. If this is the way it is going to be, he might as well rule on the matters himself in the first place. Accordingly, what I have done is ruled on such matters at conference on the record." Another judge noted that appeals from discovery orders are rare, but that in complex cases, he tended to receive several appeals on different rulings in the same case. In addition, the interviews of magistrates and judges suggested that appeals from discovery orders in complex cases were more numerous than in other cases.

One area where magistrates receive complicated and lengthy discovery matters is antitrust cases. In antitrust cases magistrates engage in normal pretrial work -- e.g., discovery, settlement, and preparation of a pretrial order. One exception to this practice was found. In a single instance a magistrate decided a summary judgment motion. The summary judgment motion occupied most of the magistrate's time during the summer of 1978. Antitrust matters account for a small percentage of the magistrates' matters. In the 1977 Inventories two magistrates listed the type of case that was open, and antitrust cases were 5% and 0% respectively of the magistrates' activities. Our sample of the magistrates' files showed antitrust cases were 3% of the magistrates activities in each of two time periods (Table 2). Since January 1, 1978, some magistrates in the Southern District believed that they received a slightly greater number of unusually complicated antitrust matters. It is too early to assess if this change reflects a conscious new pattern of magistrate use, or is an artifact of these new cases.

Table 2 indicates five of the six antitrust cases occurred in the Southern District. The magistrates engaged in normal pretrial work as noted above and they also made at least one ruling on non-dispositive motions in each of the six antitrust cases (pursuant to Rules 26c, 37 and 41b, Fed. R.Civ.P.). In one case in both time periods an appeal was taken from the magistrates' ruling. In one case the judge affirmed the magistrate's ruling while in the other case the judge reversed in part and affirmed in part.

After the inception of the 1976 Amendment to the Magistrates' Act antitrust matters began to be sent to the Eastern District magistrates. The Southern District magistrates had considered these matters prior to the Amendment. In the Eastern District, our sample of magistrates' files and

interviews shows that the magistrates have received only a small number of these matters. However, one of these instances is a multi-district litigation case involving the price of copper-wiring.

C. Settlement

The most dramatic impact magistrates have on expediting cases is their role in settlement. Typically, magistrates are not referred cases solely for settlement purposes, but for general pretrial purposes including settlement. Even when a reference is made for a single purpose, such as hearing a discovery motion, the magistrates often assume that the referring judge would welcome the magistrate's help in settling the case if the occasion arose. Occasionally the magistrate will call the judge to get permission to undertake settlement discussions.

Several times in our interviews, magistrates and judges expressed the view that the magistrates' settlement role at pretrial and the judges' role at trial were more likely to result in settlement than the judge acting alone. In the Southern District most of the judges expect the magistrate to try to settle the case during the pretrial proceedings. Some judges thought so much of the magistrates' ability that they would refer cases for settlement on the eve of trial or after trial on liability but before damages were assessed. Judges used a different form of request for magistrates' settlement in 19 cases of our sample of 230 magistrates' files. In these cases the magistrates were specifically directed to bring parties to a settlement. In 18 of the 19 cases the magistrates settled the case. In the one remaining case the parties refused to reach an agreed upon settlement. These 19 cases do not appear to be distinctive from other cases that magistrates settle while pursuing the mandate of a judge's reference. One lawyer indicated that a magistrate had tried to coerce settlement.

The achievement of settlement between the parties before the case reaches the district judge is an important norm governing the magistrates' activities in the Southern District. This norm is not as prevalent in the Eastern District. However, the number of settled cases in this district has increased rapidly since January, 1978. This increase is probably due to the larger number of civil cases heard by the magistrates.

In the Southern District an innovative coordinated effort between two magistrates was used to settle cases in which the parties had consented to a trial before a magistrate. On a few occasions before the trial began, the trial magistrate sent the parties to another magistrate for settlement discussions. Thus, the first magistrate could remain an objective arbiter while settlement was undertaken. In some instances the parties settled the case. In other instances where settlement could not be reached the trial magistrate would immediately call the case to trial. This practice expedited the completion of the case whichever outcome occurred, settlement or trial.

One judge cautioned against the wholesale reference of cases for settlement prior to the time counsel realized the relative strength of their case. The magistrates seemed aware of the danger of premature settlement discussions and pointed out that through frequent pretrial conferences, they had an accurate picture when a case was ripe for bringing up settlement. Indeed, one magistrate observed that a case might have to be nurtured over the course of a year with several very brief conferences before settlement negotiations were likely to be fruitful.

D. References Other than Pretrial

If there was virtual unanimity on the value of magistrates for pretrial purposes, there was great disagreement among the judges on other uses

of the magistrate. While some judges sent magistrates habeas corpus cases and appeals of social security administrative proceedings, others felt these pro se matters should be left up to the judge. The reasons some judges do not send pro se matters are, first, they would have to read the entire record upon review of the magistrate's recommendation and thus duplicate work, and second, they believe the judges, not an inferior judicial officer, should resolve pro se matters. As one judge who did not use magistrates for any purpose noted, "reviewing the work of another is an entirely different matter than doing the creative work from the beginning." A minority of judges interviewed sent dispositive motions to magistrates. An even smaller number sent important dispositive motions such as summary judgments. However, we found the total number of dispositive motions heard by magistrates has increased since the 1976 Amendments.

Evidentiary hearings were infrequent in the Southern District and virtually nonexistent in the Eastern District. Those evidentiary hearings which were held were typically inquest on damages after a default judgment, assessment of damages after liability had been established before the judge in a class action, awarding of attorneys' fees, and hearings on a corporate defendant's amenability to process under a state long arm statute. Trials are also infrequent.[16]

On rare occasions the magistrates assist the U.S. Court of Appeals for the Second Circuit. The Court of Appeals requests that magistrates serve as special masters for contempt hearings stemming from administrative orders, such as those of the NLRB.

5. Reasons for Referrals

A. Judge's Philosophy

Referral practices were often a function of the judge's own temperament, interests, and background prior to taking the bench. Those who found pretrial utilization of the magistrates most helpful were likely to conduct their own pretrial proceedings quite formally, thus taking a great deal of time. Other judges were uncomfortable in the role of settler and would send cases for that purpose to a particular magistrate who was an expert in settling complex litigation. Those judges were extremely grateful for the work of the magistrate as several long trials were avoided by the magistrate's skills at settling cases.

Judges who enjoyed the rough and tumble of pretrial usually did not refer pretrial matters since they felt they could more quickly resolve the matter themselves, particularly since they had the power to set an immediate trial date. Yet even some of these judges relied on the magistrate in routine pretrial matters, reasoning that the regularized process of pretrial before the magistrate was a proper allocation of responsibility in the federal judicial system. We found that even greater use of the magistrates in pretrial would be made by judges but several were reluctant to increase their referrals for fear of unduly burdening the magistrates.

Judges expressed their philosophies as follows:

"It is unfair to litigants to turn over cases when they are first assigned to the judge and tell the magistrate to get them ready for trial. Approximately 80% of the cases could be put on the right track by the judge without adding an additional layer of decision-making." (Light user of magistrates).

"I'm not good at settling cases in face to face encounters; I can only achieve settlement in setting a trial date and sticking to it rather rigorously." (Sends cases, particularly complex cases, for settlement).

"I refuse to discuss settlement in nonjury cases and rarely do so in jury cases, but the magistrates will discuss settlement since they do not have to try the case." (Heavy user of magistrates, sends all pretrial matters other than dispositive motions).

"I determine my priority in sending matters by figuring out the amount of time a matter will take me in proportion to its importance in resolving the case. Thus, a discovery motion which takes a long time but which doesn't resolve the case is a good matter to refer." (Sends only troublesome pretrial matters).

Another reason for referring matters was the obstreperousness of counsel. (See comments, page 39, on judges' descriptions of lawyers.) A magistrate could call in the parties more frequently than a judge, resolve petty disputes and keep the case moving forward. Several judges praised the magistrates for relieving them of such unpleasant situations.

B. Prejudging Cases

Two situations were noted by judges where their involvement in pretrial proceedings might affect their ability to later try the case and therefore reference was appropriate. The first was settlement negotiation, particularly in non-jury cases where the judge would be the trier of fact. Secondly, where pretrial was likely to be factually complex, one judge noted he did not want to become involved prior to trial. He reasoned that lawyers are likely to be more forthright with magistrates in assessing the strength of their side since they need not fear that such discussion would prejudice future court proceedings. Most of the judges and magistrates who commented on it believed that magistrates had a distinct advantage in settlement discussions by being able to get involved since they had no future fact finding responsibilities. Indeed, in one case a magistrate who

had trial responsibilities referred it to another magistrate for settlement purposes.

6. Appeals

Appeals from orders[17] and objections to reports, recommendations[18] or proposed findings of the magistrates (hereinafter "appeals") are important indicators of the role the magistrates play in the district courts. The magistrates believe that the type of matter under consideration is the major factor determining whether an appeal is taken to a district judge. In general, there is a high percentage of appeals, almost 40%, if the matter is dispositive and a very small percentage of appeals if the matter is nondispositive.[19] In the Southern District appeals of the magistrates' discovery rulings were said to be "unusual" or "rare" by judges, magistrates and lawyers. One magistrate noted that lawyers who have had experience with magistrates do not appeal nondispositive orders as frequently as inexperienced lawyers. He believed this was due to the former lawyers' knowledge that judges are likely to uphold such rulings. Our interviews with lawyers gave support to this view. Our impression was that judges normally affirmed the magistrates' rulings on non-dispositive matters. However, the judges occasionally reversed or modified parts of magistrates' rulings on these matters. Two judges believed that appeals on nondispositive matters were more frequent in complex cases.

However, from rulings on dispositive motions, and on evidentiary findings the magistrates believed there were frequent appeals. We found that magistrates in both districts are not regularly informed whether their rulings are appealed or what the judges' disposition of the appealed matter is. There was no resistance expressed by judges to notify magistrates of their rulings. Some judges did so. Rather, there was no official communi-

cation of the magistrates' desire to be kept informed. The Southern District Magistrates believed they are usually affirmed by the district judge when an appeal is brought. Moreover, the magistrates stated that the district judges sometimes alter portions of their report and recommendations while affirming the main direction of the argument.

In the Eastern District there were few appeals from the magistrates' rulings. In the civil area the magistrates consider mainly nondispositive motions. As in the Southern District these rulings are usually not appealed. In the criminal area there is an infrequent "Anders brief" appeal filed when the defense attorney believes there is no basis for an appeal but the defendant insists upon appealing.

7. Judges' Changes in Referral Practices

The trend among the judges interviewed who have changed the kinds of matters referred was to be more selective in their references. Several judges noted that instead of sending all cases for pretrial, they now sent only the complex or slow moving cases. In the routine case, they saw no need for a reference since they felt they could handle the case more expeditiously. A few noted that the magistrates were overloaded and could not absorb additional referrals. One judge noted that the least current of his cases were those pending before the magistrates. He added, however, that one could not conclude that the magistrates were causing delay since he only sent the magistrates pretrial cases which were difficult.

8. Judges' Impressions of the Magistrates

Although the interviews with the judges indicated they were deeply appreciative of the magistrates for their pretrial contributions, there was no necessary correlation between heavy utilization of the magistrates and

the judges' views on the effect of the magistrates on their caseload. There were judges who sent virtually all of their cases for pretrial and yet had a sizable backlog of cases, while others sending the same volume of matters were current. The difference is attributable to the individual judge's ability to control his docket. Similarly, there was great variation among judges in how much of their time was saved by referring all of their pretrial matters: one judge indicated that only one hour per week was saved, while another estimated that 35% of his time would have to be spent on pretrial without magistrates. These were the two extremes and in general, judges felt there was a substantial saving of their time by referring pretrial matters.

Judges lacked information on how busy the magistrates are, although most thought they had too much work. A problem for the researchers was having available in one place the status of each case pending before the magistrate. Most judges and magistrates interviewed favored computerizing the magistrates' docket. The judges did not initiate the suggestion for better record keeping but most agreed it would keep them better informed and assist in keeping magistrates' dockets moving. Magistrates feared that additional paperwork could not be handled without additional clerical assistance. Among other benefits would be less likelihood of losing track of cases by both judges and magistrates.

9. Innovative Use of Magistrates

It was apparent to the researchers that there was mutual respect between judges and magistrates in both districts. This trust enabled innovative uses of the magistrates. Three examples stand out:

(1) We were quite fortunate to observe an experimental use of the magistrate in a multi-district litigation case involving a mass

air disaster. The judge held several pretrial conferences in his courtroom with the magistrate sitting at the bench beside the judge. Their respective roles were exemplified by their attire -- the judge in his robes, the magistrate in a suit. The judge decided the dispositive motions, the magistrate calendared discovery disputes and was instructed to supervise settlement negotiations. One of the benefits of this arrangement was that the lawyers could observe the respect the judge had for the magistrate who was referred to as "Judge" by the district court judge.

(2) One judge described his use of both a magistrate and another judge who would be ready as stand-ins for future trials in the event the first judge was tied up in trial. By informing counsel they would go to trial on a date certain, the judge was able to ensure readiness of counsel. Although the magistrate was not needed, the desired effect on counsel was achieved.

(3) One judge who rarely used magistrates arranged for a particular magistrate to handle pretrial stages of his civil docket while the judge was sitting on an exceptionally long criminal trial. When the trial ended, the civil cases had been pretried, and the judge reverted to his former practice of handling his own pretrial work.

10. Concerns for the Future

Both judges and magistrates in the Southern District expressed concern for the effect increasing referrals of trials and substantive motions will have on the current system of magistrate use. Although pretrial matters are still far more numerous, numbers do not tell the full story since a single summary judgment motion handled by one magistrate took an entire summer to decide.

In the Eastern District, referral of trials and dispositive motions are less common, but with an ever increasing criminal trial calendar, judges may soon resort to using magistrates for civil trials. Indeed, recent discussions with Eastern District magistrates revealed an upsurge in references of such matters.

There was a clear desire on the part of the magistrates in both districts to have trials and substantive motions referred, since a diet of pretrial matters can become bland. Although there were allusions to blandness by several judges and magistrates, one judge was quite explicit:

> Much of the magistrates' work is dull and repititious. There are real problems keeping a core of good magistrates and keeping them hard working because the office is not a stepping stone to the district court. They are working for the district court and not recognized for their own work. At some point they will get jaded, fed up with it all, somewhere between five and ten years. This is a long range problem of some significance.

More important than job satisfaction, however, is that trial experience helps the magistrate do a better job at pretrial. Further, the availability of magistrates to try cases might be a benefit to judges who may need a back-up when faced with a burgeoning trial calendar. And to the extent magistrates conduct trials, the practicing bar has the opportunity to see how the magistrates conduct themselves on the bench as possible candidates for elevation to the district court.

While recognizing the advantages of trial work, the magistrates and judges were keenly aware that too heavy a trial calendar would alter the magistrates' present role as experts in pretrial proceedings whose major function is moving cases forward to permit judges to try them. To the extent magistrates conduct trials, they can spend correspondingly less time on pretrial work. Since pretrial work requires the magistrate to be on top of a case to prevent it from stagnating, trials could seriously hamper that effort.

Care must be taken to distinguish three types of complex-matter references: nondispositive pretrial matters, dispositive pretrial matters, and trials. The majority of lawyers, judges and magistrates favored referral of complex nondispositive pretrial matters and, indeed, such references were frequent in the Southern District and increasing in the Eastern District. Assuming magistrate competency, lawyers preferred magistrates rather than judges to resolve detailed lengthy discovery requiring point-by-point examination. The lawyers believed complex discovery motions were the most appropriate matters to be referred to magistrates. The lawyers preferred that judges consider complex cases where issues were already precisely drawn because judges could resolve the cases more quickly. One judge who did not believe any routine pretrial matters should be referred felt complex ones should be, such as discovery and settlement in multi-district litigation. Other judges were cutting down on referral of routine pretrial matters believing that such referrals cause unnecessary delay. In summary, referral of complex, nondispositive pretrial matters seems to be the trend in both districts.

Referrals of complex dispositive motions and trials of complex cases to magistrates are quite infrequent. On balance, magistrates and judges felt that so long as trials and substantive motions were few in number, they should be referred. Several magistrates and some judges noted that the current system would break down if such referrals were made more than occasionally. If not handled by a judge, those cases are the perfect candidates for reference to a specially appointed master. As one judge noted: "To refer wholesale dispositive motions and trials would mess up a good thing and would drastically change the current role of the magistrates."

11. Magistrates' Resources

It was apparent to the researchers that lack of resources hampered the efficiency of the magistrates -- courtroom deputies were not available to contact absent counsel, court reporters were unavailable for pro se petitioners appearing before the magistrate, telephones went unanswered when the volunteer student clerks were out of the office, and magistrates could not research a point quickly for lack of a library in chambers. By far the most pressing need in the opinion of virtually all of the magistrates was for law clerks. Complicated discovery motions into privilege, for example, require research, and a single motion for summary judgment before a magistrate took the time of three student clerks working an entire summer. During the academic year, magistrates have the use of law students for only 15 hours per week per semester. One magistrate noted that he uses the students for a single duty -- reviewing the administrative record in a social security appeal --but that it still requires one month of training before their efforts are worthwhile.

Increasing the referrals of trials and substantive motions would, of course, make the need for additional resources even more pressing. Law clerks would be needed to research the substantive law and evidentiary questions as well as assist in drafting findings of fact and conclusions of law; courtroom deputies would be needed to mark exhibits and handle other in-court duties; court reporters would have to transcribe the proceedings; and a library should be in or near the magistrate's office for ready access during trial.

TOTAL MATTERS DISPOSED OF BY UNITED STATES MAGISTRATES[1]

Southern District

	1972	1973	1974	1975	1976	1977	1978*
Pursuant to 28 U.S.C. S636(a)[2]	3,083	2,430	2,376	2,206	2,064	1,934	936
Minor offenses[3]	563	602	262	438	324	241	133
Pursuant to 28 U.S.C. S636(b)	2,338	5,400	6,989	7,032	6,661	6,515	3,025
Total	5,984	7,432	9,627	9,676	9,049	8,690	4,094

National

	1972	1973	1974	1975	1976	1977
Pursuant to 28 U.S.C. S636(b)	120,723	115, 121	100,152	103,326	86,084	83,357
Minor offenses	72,082	84,580	82,705	84,505	90,166	103,061
Pursuant to 28 U.S.C. S636(b)	44,717	51,517	60,072	67,230	75,894	100,318
Total	237,522	251,218	242,929	255,061	252,144	286,736

---

1. These statistics refer to the operation of the magistrates system under the 1968 act.

2. Excludes trials of minor offenses pursuant to U.S.C. S3401.

3. Minor offenses (including petty offenses) usually do not take up very much court time in the Southern District.

CHART 1

* up to 12/31/77

TABLE M-4. U.S. DISTRICT COURT: MATTERS DISPOSED OF BY UNITED STATES MAGISTRATES PURSUANT TO 28 U.S.C. S636(b)

Southern District

	1972	1973	1974	1975	1976	1977	1978*
Total	2,338	5,400	6,989	7,032	6,661	6,515	3,025
Criminal Cases							
Total Criminal	14	8	6	37	211	228	89
Post-indictment arraignments	--	--	--	32	140	107	26
Pre-trial Conferences	--	--	--	--	--	--	--
Motions	10	6	5	--	1	2	1
Probation Revocation	N/A	N/A	N/A	N/A	2	2	19
Other	43	4	2	1	5	68	43
Civil Cases							
Total Civil	2,324	5,392	6,983	6,995	6,450	6,287	2,936
Prisoner petitions	33	34	30	18	14	1	3
Pre-trial Conferences	1,500	4,446	5,934	6,067	5,544	5,463	2,498
Motions	607	518	925	804	724	723	383
Special Master Reports	40	29	19	10	32	10	2
Social Security	--	--	1	2	2	2	3
Civil Trial	--	--	--	--	--	12	7
Other	6	363	74	94	134	76	40

* up to 12/31/77

TABLE M-4. U.S. DISTRICT COURTS: MATTERS DISPOSED OF BY UNITED STATES MAGISTRATES PURSUANT TO 28 U.S.C. §636(b)

National

	1972	1973	1974	1975	1976	1977
Total	44,717	51,517	60,072	67,230	75,894	100,318
Criminal Cases Total Criminal	22,336	24,337	28,028	30,464	35,596	43,303
Post-indictment Arraigments	10,799	12,093	13,996	15,769	18,694	21,799
Pre-trial Conferences	5,279	5,327	6,313	6,629	5,397	4,787
Motions	5,870	6,684	7,118	7,286	7,861	7,301
Probation Revocation	N/A	N/A	N/A	N/A	726	943
Other	388	233	601	780	2,918	4,955
Indictments*						3,518
Civil Cases						
Total Civil	22,381	27,180	32,044	36,766	40,298	57,015
Prisoner Petitions	6,786	7,604	7,455	8,464	8,231	8,515
Pre-trial Conferences	7,168	11,819	15,743	17,776	17,559	22,787
Motions	6,077	4,434	5,985	7,938	9,583	17,687
Special Master Reports	256	306	367	391	684	546
Social Security	334	284	277	537	1,480	3,449
Other	1,055	1,993	1,897	1,660	2,761	3,706
Civil Trial						325

TABLE M-1. U.S. DISTRICT COURTS: MINOR OFFENSE CASES--DEFENDANTS DISPOSED OF BY UNITED STATES MAGISTRATES, BY NATURE OF OFFENSE

Southern District

	1972	1973	1974	1975	1976	1977	1978*
Total Offenses	563	602	262	438	324	241	133
Minor Offenses Other Than Petty							
Traffic	—	—	—	—	--	—	--
Theft	87	13	7	6	--	--	3
Food & Drug	6	--	--	--	--	--	--
Other	45	11	4	4	1	--	1
Total	138	24	11	10	1	--	4
Petty Offenses							
Traffic	419	574	247	422	315	220	84
Immigration	--	--	4	2	--	--	--
Hunting, Fishing and Camping	--	--	--	1	5	2	--
Mail	N/A	N/A	N/A	N/A	--	8	6
Drunk/ Disorderly	N/A	N/A	N/A	N/A	--	5	8
Other	6	4	45	3	3	6	31
Total	425	578	251	428	323	241	129

* up to 12/31/77

TABLE M-2. U.S. DISTRICT COURTS: MINOR OFFENSE CASES--DEFENDANTS DISPOSED OF BY UNITED STATES MAGISTRATES, BY NATURE OF OFFENSE

	National					
	1972	1973	1974	1975	1976	1977
Total Offenses	72,082	84,580	82,705	84,505	90,166	103,061
Minor Offenses Other Than Petty						
Traffic	4,972	6,999	5,651	5,164	6,399	12,478
Theft	1,928	1,849	2,449	2,770	2,661	2,610
Food & Drug	397	825	884	938	602	454
Other	1,870	2,161	2,258	2,531	2,030	1,639
Total	9,167	11,834	11,242	11,403	11,692	17,181
Petty Offenses						
Traffic	41,997	48,889	44,164	49,896	50,988	56,941
Immigration	9,798	13,986	15,824	11,147	13,273	13,231
Hunting, Fishing and Camping	6,223	4,771	5,633	4,637	5,837	6,511
Mail	N/A	N/A	N/A	N/A	1,368	1,928
Drunk/Disorderly	N/A	N/A	N/A	N/A	1,368	1,552
Food & Drug	N/A	N/A	N/A	N/A	N/ A	1,150
Other	4,897	5,100	5,842	7,422	5,254	4,567
Total	62,915	72,746	71,463	73,102	78,474	85,880

TABLE M-3. U.S. DISTRICT COURTS: MATTERS DISPOSED OF BY UNITED STATES MAGISTRATES PURSUANT TO 28 U.S.C. S636(a).[1]

	Southern District						
	1972	1973	1974	1975	1976	1977	1978*
Total	3,083	2,430	2,376	2,206	2,064	1,934	936
Search warrants	452	185	179	131	179	169	122
Arrest warrants	461	338	329	305	374	344	181
Bail hearings	1,994	1,764	1,751	1,531	1,265	1,205	505
Bail review	N/A	N/A	N/A	139	171	138	58
Prelim, exam.	48	18	25	8	4	1	28
Removal hearings	128	125	92	87	71	77	23
Summons	N/A	N/A	N/A	N/A	--	--	--

1. Excludes trials of minor offenses pursuant to 18 U.S.C. S3401. See Chart 4 (Table M-1).

* up to 12/31/77

TABLE M-3. U.S. DISTRICT COURTS: MATTERS DISPOSED OF BY UNITED STATES MAGISTRATES PURSUANT TO 28 U.S.C. S636(a).[1]

	National					
	1972	1973	1974	1975	1976	1977
Total	120,723	115,121	100,152	103,326	86,084	83,357
Search Warrants	7,338	5,961	5,649	5,563	6,068	5,203
Arrest Warrants	36,833	33,149	27,029	27,893	19,904	17,716
Bail hearings	64,518	66,095	58,034	50,194	41,461	42,327
Bail review	N/A	N/A	N/A	7,927	7,155	7,975
Prelim. Exam.	9,554	7,628	7,124	8,144	7,142	5,502
Removal hearings	2,480	2,288	2,316	2,198	1,727	1,883
Summons	N/A	N/A	N/A	N/A	N/A	N/A

1. Excludes trials of minor offenses pursuant to 18 U.S.C. 3401. See Chart 5 (Table M-1).

C-1 Fiscal Year	Civil Cases	Pending July 1 of Prior Year	Commenced	Terminated	Pending June 30
1977		8,441	6,350	6,699	8,092
1976		8,182	6,440	6,181	8,441
1975		8,582	6,282	6,682	8,182
1974		10,596	5,639	7,653	8,582
1973		13,345	5,680	8,429	10,596
1972		13,210	5,766	5,631	13,345
1971		12,402	6,012	5,204	13,210
1970		11,816	5,826	5,240	12,402
1969		11,247	5,444	4,875	11,816
1968		10,929	5,335	5,017	11,247

Southern District of New York

CHART 8

D-1 Fiscal Year	Criminal Cases	Pending July 1 of Prior Year Total	Fugitive	Commenced	Terminated	Pending June 30 Total	Fugitive
1977		903	186	1,185	1,350	738	258
1976		896	71	1,282	1,275	903	186
1975		807	41	1,334	1,245	896	71
1974		778	25	1,147	1,118	807	41
1973		956	154	1,249	1,427	778	25
1972		1,041	93	1,498	1,583	956	154
1971		1,204	224	1,339	1,502	1,041	93
1970		1,344	293	922	1,052	1,204	224
1969		1,294	195	1,003	963	1,334	273
1968		1,240		1,039	985	1,294	195

Southern District of New York

CHART 9

Total Terminated Cases: Southern District of New York

Fiscal periods	
1976-77	8,049
1975-76	7,456
1974-75	7,929
1973-74	8,771
1972-73	9,856
1971-72	7,214
1970-71	6,706
1069-70	6,292
1968-69	5,838
1967-68	6,002

TABLE M-1 U.S. DISTRICT COURTS: MINOR OFFENSES -- DEFENDANTS DISPOSED OF BY UNITED STATES MAGISTRATES, BY NATURE OF OFFENSE

EASTERN DISTRICT

	1972	1973	1974	1975	1976	1977	1978*
Total offenses	355	262	532	644	1351	1069	363
Minor offenses other than petty							
Traffic	--	--	--		--	--	--
Theft	263	144	152	142	205	135	25
Food & Drug	--	1	4		--	--	--
Other	47	39	37	27	--	--	--
Total	310	184	193	169	205	135	36
Petty offenses							
Traffic	7	31	277	346	1026	835	327
Immigration	--	--	--		--	--	--
Hunting, fishing, & camping	37	32	17	12	30	4	--
Mail	--	--	--		--	--	--
Drunk/disorderly	--	--	--		1	--	--
Other	1	15	45	117	89	95	--
Total	45	78	339	475	1146	934	327

CHART 11

* up to 12/31/77

TABLE M-2. U.S. DISTRICT COURTS, MINOR OFFENSE CASES--
DEFENDANTS DISPOSED OF BY U.S. MAGISTRATES

EASTERN DISTRICT

	1972	1973	1974	1975	1976	1977	1978*
Total all defendants:	355	262	532	644	1351	1069	363
Minor offenses other than petty:							
Dismissed or acquitted	69	2	10	0	8	3	3
Convicted	241	182	183	169	197	132	33
Total	310	184	193	169	205	135	36
Petty offenses:							
Dismissed or acquitted	12	38	149	185	397	534	231
Convicted	33	40	190	290	749	400	96
Total	45	78	339	475	1146	934	327

CHART 12

* up to 12/31/77

TABLE M-3. MATTERS DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO 28 U.S.C. 636(a)

EASTERN DISTRICT

	1972	1973	1974	1975	1976	1977	1978*
Total	3220	2545	1730	2081	1478	1350	572
Search Warrants	474	166	88	125	119	121	87
Arrest Warrants	483	410	280	321	340	272	102
Bail Proceedings	2248	1923	1355	1474	850	827	336
Bail Review	--	--	--	112	90	116	22
Prelim Exam	11	2	4	1	10	11	1
Removal Hearings	4	--	3	1	2	3	4
Summons	--	--	--	--	58	--	--
Probation Revocation	--	--	--	47	--	--	20

CHART 13

* up to 12/ 31/ 77

TABLE M-4. MATTERS DISPOSED OF BY U.S. MAGISTRATES
PURSUANT TO 28 U.S.C. 636(b)

EASTERN DISTRICT

	1972	1973	1974	1975	1976	1977	1978*
Total	138	37	164	105	449	1014	536
Criminal Cases:							
Total	124	18	27	3	85	410	280
Post-indictment arraignments	119	3	1	3	80	124	59
Pre-trial conferences	--	--	--	--	3	--	--
Motions	--	--	--	--	--	--	40
Other	5	15	26	--	2	286	181
Civil Cases:							
Total	14	69	137	102	374	604	256
Prisoner Petitions	5	9	--	--	--	--	--
Pre-trial conferences	--	26	57	70	368	603	240
Motions	4	5	--	--	--	--	--
Special Master Reports	5	23	80	27	5	--	13
Social Security	--	--	--	--	1	1	--
Other	--	--	--	5	--	--	3

* up to 12/31/77

TABLE C-1. EASTERN DISTRICT CIVIL CASES

Fiscal Year	Pending July of Prior Year	Commenced	Terminated	Pending June 30
1977	3029	2512	2189	3352
1976	2549	2438	1958	3029
1975	2307	1931	1739	2549
1974	2105	1959	1757	2307
1973	1873	1850	1618	2105
1972	1652	1799	1578	1873

CHART 15

TABLE D-1. EASTERN DISTRICT CRIMINAL CASES

Fiscal Year	Pending July 1 of Prior Year	Commenced	Terminated	Pending June 30
1977	1593	1172	1395	1370
1976	895	886	859	922
1975	962	892	860	959
1974	1201	894	1133	962
1973	1225	1131	1155	1201
1972	983	1422	1180	1225

CHART 16

TOTAL MATTERS DISPOSED OF BY U.S. MAGISTRATES

EASTERN DISTRICT

	1972	1973	1974	1975	1976	1977	1978*
Pursuant to 28 U.S.C. 636(a)	3220	2545	1730	2081	1478	1350	572
Minor Offenses	355	262	532	644	1351	1069	363
Pursuant to 28 U.S.C. 636(b)	138	87	164	105	449	1014	536
TOTAL	3713	2894	2426	2830	3278	3433	1471

CHART 17

TOTAL TERMINATED CASES--EASTERN DISTRICT OF NEW YORK

FISCAL PERIODS	TOTAL
1976-1977	3584
1975-1976	2817
1974-1975	2599
1973-1974	2890
1972-1973	2873
1971-1972	2758

CHART 18

III. Recommendations and Conclusion

A. Recommendations

1. Qualifications of Magistrates

Based on our observations and interviews, consideration should be given to years of practice, trial (including pretrial) experience, and civil/criminal experience in appointing a magistrate, but there should be no automatic exclusion if a candidate fails to meet one or more of the criteria. (It should be noted that at least two magistrates currently serving in each of the two pilot districts would have been excluded had five years of civil trial experience been prerequisites.)

If minimum qualifications are to be set they should be promulgated by the Judicial Conference of the United States rather than set forth in legislation which would be difficult to amend in the event experience suggested different criteria were appropriate.

Since district courts utilize magistrates for different purposes, different skills are required from district to district. Uniform qualification standards ignore the need for flexibility and thus qualifications for magistrates should be based on the characteristics of the various courts.

We agree with the judges who felt a judicial temperament was as important as any particular set of qualifications. In more pragmatic terms, magistrates should avoid the two extremes of which some magistrates are guilty, according to the lawyers interviewed: arbitrary decisions denying legitimate discovery requests or refusal to cut off endless discovery.[20]

One judge noted that the number of years of trial experience was misleading since a twenty year practitioner may have actually tried only a handful of cases while settling the vast majority. A magistrate who favored a certain number of years of practice pointed out that the trial bar would

not respect a magistrate who lacked meaningful trial experience; the lawyers interviewed believed that extensive federal practice would help ensure qualified magistrates. With respect to requiring complex-litigation background as a prerequisite, one judge said:

> To my knowledge, recruiting magistrates with complex litigation backgrounds has never been attempted. It would not be a wise idea since attorneys with complex litigation backgrounds generally tend to be specialists and the work of a magistrate is too diverse to allow for such specialization.

We conclude that a careful selection process which includes a screening panel of lawyers and judges will ensure capable appointments without rigid prerequisites which could disqualify the most talented lawyers. As one judge said, the selection process should ensure that "bright" lawyers are recruited to handle a variety of complex civil matters.

2. Training of Magistrates

Although many of the magistrates found the initial training conducted by the Federal Judicial Center to be of limited value, they did find it useful to meet other new magistrates from across the country and generally praised the sessions on evidence. The Southern District magistrates found the seminar's emphasis on criminal matters not germane to their work in the Southern District. They believed that emphasis on civil matters such as handling pretrial and trial would have been more helpful. The Eastern District magistrates said that the criminal law coverage of the seminars was repetitive of their existing knowledge and concurred with the Southern District magistrates that the civil side should have been emphasized. The magistrates in both districts concluded that the initial seminars gave little more than an overview of a magistrate's duties. The advanced seminar, in the view of the magistrates, was more worthwhile and specific, but several magistrates could not attend because of calendaring conflicts.

We recommend a series of regional, state or local training sessions focussed on common magistrates' duties in certain districts -- e.g., handling discovery matters in complex litigation. These sessions could be held during the evening or on a weekend. Perhaps most useful would be a training session conducted by experienced magistrates, judges, lawyers, and other experts. We found that this kind of training now goes on quite informally and much could be gained by formalizing it. These sessions could be sponsored by the Office of the Circuit Executive or several district courts.

3. Suggestions for Assessing the Impact of Magistrates

a. Developing pilot study's methodology

In our data collection, we selected certain categories of cases in the two districts to compare the differences in cases referred to a magistrate and retained by the judge. We were particularly interested in the speed of disposition and the number of proceedings involved when a case was handled with or without the magistrate.

Although no firm conclusions could be made from our small sample, we are of the opinion that a refinement of this technique to ensure sufficient numbers of like cases would permit better assessment of what kinds of cases ought to be referred in terms of productivity, quality of decision making, etc. We recommend, to this end, a controlled study in which selected judges would retain half and refer half of their cases of a certain type over a one year period. Implementation of such a controlled study would be relatively easy in the Southern District where judges are divided into units, each unit sharing docket clerks. A common and simple matter would be pretrials of longshoremen cases under $20,000. An analysis could then be made of the differences between referring and retaining, and conclusions could be drawn as to the best type of cases for referrals.

In the absence of a controlled study, an expansion of our research could be made which compared cases, for the most part, retained by some judges and referred by others. Of course, the drawback to such a study is that it is possible to conclude that the same kind of matter is better retained by one judge and better referred for another. In our interviews, we found that some judges believed they could consider particular matters faster than the magistrate, while on other types of matters the same judges believed the matter would receive quicker or better consideration if heard by the magistrate.

The comparisons between referred and retained cases could better document the qualitative and quantitative effects of magistrates' activities, such as whether magistrates hold more frequent pretrial conferences than judges and are generally more accessible to counsel; whether settlement occurred well before trial when a case was referred to a magistrate, while taking place only on the eve of trial when the case was retained; whether settlement occurred more frequently when the case was referred. In short, this study could form an empirical base on which judges could conclude whether or not they should alter their referral practices.

b. Need for Additional Data Sources

The major difficulty in accurately assessing the impact of the magistrate on the productivity of the district court is the dual lack of accessible and comparable data sources. To remedy this problem, we recommend the development of three additional sources of information:

(i) Computerizing the Magistrate's Docket

The following information, at a minimum, should be included: case name, civil docket number, date complaint filed; referring judge; date

matter referred; purpose of referral; number and kinds of actions taken by magistrate; most recent action and date taken; expected date of next action and what action is to be.

(ii) Quarterly Reporting of Magistrate's Activities

The quarterly report, to be circulated to all judges and magistrates within the district, would include the number of cases pending before the magistrate; the number and kinds of matters referred, listed by judge; and the number and kinds of matters disposed of during the quarter just completed.

(iii) Amending AO Monthly Report

Presently, the AO Monthly Report asks for the frequency of certain matters but does not solicit information on the time spent on each category of matters. One magistrate observed that he may report five times as many nondispositive motions as dispositive ones, but the latter take five times as much work as the former. Further, the AO Report should request information on the number of complex cases referred both for purposes of trial and pretrial, to ascertain if trends are developing nationwide in this area. Finally, the number and kinds of matters settled by the magistrate should be recorded since this is such an important aspect of magistrate impact on the court's productivity. At the present time, all of the magistrates in Eastern and some of the magistrates in Southern are supplying information on settlements and time spent on various matters even though this information is not required to be given.

In addition to improving the data sources, these three suggested changes would have the therapeutic value of keeping cases moving by reminding the magistrate of the state of his docket, give judges an idea of the number and kinds of matters they are referring compared to other judges,

and indicate to both judges and magistrates the level of the magistrates' workload.

4. Measuring the Potential of the Current System: Recommended Changes

Before any systematic methodology for measuring the potential productivity of the present system can be implemented, there has to be an accessible, accurate way to document what the magistrates are currently doing. As suggested above, computerizing the magistrate's docket, reporting quarterly actions disposed of, improving the AO Reports, and comparing cases retained by the judge with those referred to the magistrate are necessary first steps. After measuring current productivity, we recommend seven steps be taken to evaluate whether the present system can be improved without significant change.

a. Make available for one year full-time law clerks to magistrates who request them.

Comparisons can then be made with the magistrate's docket for the year preceding the arrival of the law clerks, as well as comparisons with the dockets of magistrates who do not have the law clerks. At least the following observations should be made: total matters disposed of by the magistrate, time taken to do so, number and depth of written orders and recommendations.

Student law clerks have been indispensable for some magistrates, especially those having difficult motions such as summary judgments. It is therefore highly probable that law graduates able to devote full-time to the magistrate will be of immense assistance. The ability of law clerks to perform thorough legal research will inevitably cut down on appeals to and reversals by district judges, especially in complex litigation. The savings in time and money to both litigants and the judicial system will more than offset the additional costs.

b. Enable magistrates to call court reporters for any proceeding they wish for a one year period.

Evaluation would be made of the impact of the reporters' presence on the ability of the magistrate to give oral recommendations and orders rather than writing them out after the hearing. The writing of discovery orders occupies a large amount of the magistrates' time and a transcript and oral ruling would speed the process for both dispositive and nondispositive matters. In both courts, there has been an increased emphasis on magistrates' written recommendations. As the number of substantive matters increases, practices which could limit extended written recommendations might expedite the magistrates' decision making.

c. Implement the Bar Study's recommendation for written rules in the Southern District.

The Eastern District has implemented local rules for the magistrate. In the Southern District, judges and magistrates identified several areas which should be addressed by the rules.

(i) A time limit should be established by which appeals from orders in nondispositive matters must be made. The time could be varied by the magistrate if set forth in the order appealed from.[21]

(ii) Additional criminal duties of a ministerial nature now performed by judges should be delegated to the magistrate. For example, magistrates cannot sign removal warrants. Additionally, clerks in the magistrates' office should be assigned some duties now performed by magistrates, e.g., taking signatures on bonds.

(iii) Uncertainties now present in referring matters for trial should be cleared up. Magistrates stated that it was often unclear when they were being referred matters as a special master, for evidentiary hearing, or trial by consent under sec. 636(b)(3).

CONTINUED

1 OF 2

(iv) There should be a requirement to notify the magistrates that an order or recommendation has been appealed, and clerks should send the magistrates a copy of the decision affirming, reversing or modifying the magistrate's decision. Currently magistrates learn of these matters informally, if at all.[22]

(v) Magistrates should be notified of motions made to a judge in cases which are before the magistrate. For example, if a motion to dismiss is made to the court, the magistrate might want to stay further discovery proceedings, or at least coordinate his future actions with the judge.[22]

d. Have a pilot group of judges offer immediate trial dates before a pilot magistrate.

The type of cases could be limited to minor personal injury cases. Several judges mentioned that they would like to refer such cases if they could do so consistently with Article III of the Constitution. If a significant number of litigants chose to consent, the effect of magistrates trials on the judges' calendars as well as on the ability of the magistrate to keep pretrial matters moving could be measured. Stephen Flanders has suggested the "possibility of sending a case to a magistrate can be important in maintaining the credibility of trial settings. Having a magistrate available to try a case when it otherwise might have to be continued permits the judge to schedule an adequate number of trials per week with confidence." (District Court Studies Project, Federal Judicial Center, June 1976). One of the Southern District judges who was interviewed adopted a version of this suggestion. He utilized another judge and a magistrate as back-ups in "ready" civil jury cases which were to be disposed of or moved to trial and in cases that were difficult to settle. In this procedure the magistrate agreed to accept referrals for discovery and settlement matters. The pilot study must be constructed in such a way to ensure that counsel have the

option whether to have the case tried immediately before the magistrate or before the judge on his regular calendar.

e. Set deadline in relation to actual trial date.

An important factor in settlement of cases is that a firm trial date be established. If the magistrates can with confidence rely on a definite trial date in moving a case through pretrial, they have an easier time in reaching settlement or readying it for trial. Although few judges set rigid deadlines by which they require the magistrate to have completed pretrial, magistrates are willing to abide by those time constraints so long as the referring judge is able to try the case promptly after the magistrate had prepared it.

f. In multi-magistrate districts, assign matters to magistrates by weighting various matters.

Just as criminal case assignments in the Southern District are rotated among the judges according to the estimated length of trial, a system of rotating lengthy civil referrals among the magistrates should be implemented in multi-magistrate districts as a way to equalize the workload and more accurately measure magistrate productivity. In smaller magistrate offices where magistrates are in daily contact, such as the Eastern District, less formal allocation devices are adequate. To establish such a system, each magistrate could weight the matters currently before him to see if a consensus of what matters are most weighty emerges. The most obvious matters to rotate are the substantively or procedurally complex cases, such as trial and pretrial of complex litigation, summary judgment motions, and class certifications.

g. Refer matters precisely and for multi-purposes.

Several judges utilize a referral form on which the purposes for the referral are listed and the appropriate boxes are checked off in a given matter. Occasionally, it is unclear what precisely is the scope of the magistrate's duties, although such confusion is usually cleared up by a phone call to the judge. Counsel can file motions with the incorrect judicial officer if the reference is unclear, and thereby unnecessarily delay the case.

Such confusion is more likely when the reference is for a single purpose, such as a discovery motion, rather than for all pretrial purposes except dispositive motions. Another reason we do not recommend single purpose references at the pretrial stage is that a magistrate is technically precluded from initiating settlement discussion. The view held by magistrates and judges is that their tasks are delimited by the terms of the reference. If a matter is referred for all pretrial purposes, settlement is clearly contemplated. However, if a reference is solely, e.g., to resolve a discovery dispute, other pretrial functions such as preparing a pretrial order or supervising discovery are not contemplated. Such a reference also ignores the expertise the magistrates have developed in all phases of pretrial. In practice, magistrates assume or seek out the authority despite the limited terms of the reference, but in fairness to counsel, the broader grant should be made in the first instance.

5. Substantial Alteration of the Current System: Rejected Suggestions

Until the recommended changes listed above are implemented, we do not recommend adoption of more radical proposals for improving magistrate productivity, for the reasons which follow.

a. Reference to the magistrates of complex trials should not be increased.

At least until the effect of referring simple trials to the magistrate is measured, we would not recommend the assignment of a number of complex trials to the magistrates. These complex trials take several days to try and require the magistrate to take the time to reflect on the trial and make findings of fact and conclusions of law. A regular flow of complex trials would detract from the magistrate's ability to keep matters moving at the pretrial stage and shorten the time for writing recommendations and orders on motions. The attorneys interviewed opposed any expansion of magistrate utilization for trials of complex cases.

b. A system in which a group of judges is assigned to a particular magistrate should not be adopted.

Most of the judges interviewed opposed such a system. We have reached the same conclusion for the following reasons: first, judges who did not like their assigned magistrate would hold back on referrals while judges who favored their magistrate would overload him; second, it would prevent the flexibility currently enjoyed by the judges of referring certain kinds of matters to a particular magistrate who they feel is an expert in that matter. In the Southern District, we observed such referrals in complex litigation settlement, Title VII and securities issues, and multi-district litigation cases. This question would only be an issue in large metropolitan courts where there are several full-time magistrates.

c. Magistrates should not be referred one type of matter exclusively.

The suggestion was made that, for example, one magistrate handle only criminal duties. This would enable magistrates to develop specialities such as complex litigation settlement, trial of minor offenses, etc. We

reject this suggestion because the magistrates' tasks are not so specialized that a single magistrate is unable to master all of them. Such compartmentalization might discourage capable persons from seeking the position of magistrate. Moreover, the current referral system in the Southern District permits specialization. One judge observed that a complex litigation background is too specialized for performing the duties of magistrate. Further, to the extent outstanding performance as a magistrate is indicative of potential for the federal bench, the full range of federal jurisdiction under the Magistrates Act should be open to the magistrate.

B. Conclusion

The magistrates play a significant role in the two courts studied in this pilot project. As one might expect, they perform important duties in the preliminary phases of routine criminal and civil cases. But they are also heavily involved in many of the most important cases in the two courthouses -- multi-district litigation, antitrust, securities, civil rights. As qualified persons become magistrates throughout the nation, we predict that their role will become similarly important.

The great value to the federal courts of the magistrate system is its ability to adapt to changing needs of the courts. Currently, the magistrates in the Southern and Eastern Districts of New York are responding effectively to the district court judges' need for management of the pretrial phase of civil cases. The question which may soon face these courts is whether greatly increasing the referral of trials and dispositive motions will seriously impede the magistrates' ability to perform their invaluable pretrial functions.

FOOTNOTES

1. As of July 25, 1979, the 1979 Magistrates Act has passed both the Senate (S. 237) and the House (HR 1046). However, a conference committee must be convened to resolve differences between the two versions of the bill. The major differences between the Senate and House versions concern the appeals process from a magistrate's decision and the selection standards for magistrates.

2. In both districts the magistrates handle initial proceedings in criminal cases. However, in the Eastern District the magistrates have wider latitude in criminal matter under the district's rules, e.g., hearing grand jury indictments, than the magistrates in the Southern District. In both districts the judges usually do not refer criminal cases to magistrates.

3. See pp. 18 - 22.

4. The six full-time magistrates' service in the Southern District fell into two groups. At the time of our interviews three magistrates had been appointed seven years ago as part of the initial group of magistrates in this district. The other three magistrates had served 2 1/2 years, 2 years and 1 1/2 years. In the Eastern District the three full-time magistrates had served less than 2 years. One magistrate had served slightly less than two years, another magistrate slightly less than one year and the other magistrate had served only one month.

5. Judges were selected on the basis of the frequency and type of referrals to magistrates, how current they were on their docket, their change in use of the magistrates, and their years on the bench. Interviews with the 14 judges lasted from 25 minutes to two hours. The average interview was one hour. A follow-up questionnaire dealing with complex cases was sent to 11 judges; all responded. (See Appendix D for questionnaire).

6. The researchers spent approximately 85 hours observing some sixty different events taking place in magistrate and judges' courtrooms as well as in magistrates' chambers. We frequently discussed the proceedings with the magistrate and lawyers after their termination.

7. See p. 28, for further information on the file sample.

8. We selected social security administrative review cases because they typically involved a single issue (adequacy of the record denying benefits) and were more likely to be uniform, and to obtain a simple comparison of the amount of time it took judges and magistrates to dispose of these matters. We found that judges held distinct views on whether they would send these cases to magistrates. Some judges sent all of these cases to the magistrates while others sent none. The judges who sent the cases believed the magistrates could handle the issues in a speedier fashion while those who did not send the cases believed they could handle them more expeditiously. Our sample of social security cases (see pp. 29-31 for a description of the sample) provides data on whether or not magistrates speed the disposition of the cases.

9. We examined a total of 240 docket sheets. The number of docket sheets was equally divided between the two districts and between civil and criminal matters. Of the 120 docket sheets in each district we selected 60 docket sheets (30 each from criminal and civil dockets) prior to the inception of the magistrates (1968) and 60 docket sheets from two periods after the inception of the magistrates (1972 and 1976). In the two periods since the magistrates, 30 docket sheets were selected and equally divided between civil and criminal dockets. We randomly selected a civil or criminal docket book for each year and then selected every fifth case in that book until the required number of cases was reached.

10. The pretrial examiner was an experimental office in several district courts. The pretrial examiner preceded the Office of U.S. Magistrate and considered mainly discovery and pretrial matters in civil cases.

11. After completion of the study, the selection process was modified to include placing announcements of an opening in the New York Law Journal.

12. The location of the magistrates is a factor in the referral system. All the Southern District's full-time magistrates are located in the main District Court building at 1 Foley Square in New York City. The magistrate's offices are located throughout the building including an office on the first floor and one on the thirtieth floor. In the Eastern District the full-time magistrates are situated at two locations. Magistrates Chrein and Caden are located in the same office at Cadman Plaza in Brooklyn (the main U.S. District Courthouse) and Magistrate Jordan divides his time between the district courthouse in Westbury, L.I. (Judge Pratt's location) and Cadman Plaza, where he has a different office from the other magistrates. Magistrate Jordan assists Judge Pratt's consideration of the larger number of criminal cases filed in Long Island.

13. There was not an available courtroom adjacent to Magistrate Jordan's chambers at Cadman Plaza. He would take part in the Saturday rotation for criminal matters. On this day he could use the courtroom available for the other magistrates. The magistrates in this district hear almost all civil matters in their chambers.

14. The magistrate with the superb skills at settling matters had worked as house counsel for an insurance company for 16 years prior to being appointed a magistrate. He had been involved in both federal and state practice.

15. Magistrates have disqualified themselves when a reference presents a conflict of interest. None of the lawyers interviewed has made a disqualification motion, nor was any such motion found in the file searches. Similarly, no motions were found seeking district court resumption of the action.

16. Because of the rarity of trials, information about obtaining the parties' consent under sec. 636(b)(2) or (3) was lacking.

17. Orders are issued on nondispositive motions. Review is under the clearly erroneous standard, 28 U.S.C. sec. 636(b)(1)(A).

18. Reports and recommendations are issued on dispositive motions. Review is de novo, although typically it is a record review. 28 U.S.C. sec. 636(b)(1)(B) & (C).

19. The difference in appeal rates is largely a function of the statutory scope of review. See footnotes 17 and 18, supra.

20. Our interviews, formal and informal, suggest that lawyers have similar complaints about judges.

21. The interpretation given to the time limits set forth in sec. 636(b)(1) is that they apply only to the hearing and recommendation of dispositive motions and not the determinations under subparagraph A.

22. Applicable to Eastern District also.

Appendix A

U.S. MAGISTRATES STUDY

NUMBER _____

DATE _____

PLACE _____

COMPLETED _____

I am studying the activities of U.S. Magistrates. The information and opinions you give me will be tabulated along with materials from other magistrates. No names will be used, and all of your answers will be strictly confidential.

Background

1. HOW LONG HAVE YOU BEEN A MAGISTRATE?

WHAT WERE YOUR PROFESSIONAL ACTIVITIES BEFORE BECOMING A MAGISTRATE (LAW CLERK, PREVIOUS LEGAL PRACTICE)?

WHAT TYPE OF LAW FIRM (SMALL/LARGE PRACTICE FIRM, DEFENSE/PROSECUTION ORIENTED, SOLO PRACTIONER)? WAS PRACTICE CIVIL OR CRIMINAL?

Probes

WHAT PREVIOUS TRAINING PREPARED YOU TO BE A MAGISTRATE?

2. HOW DID YOU BECOME INTERESTED IN BEING A U.S. MAGISTRATE?

2a. WHAT WAS THE SELECTION PROCESS USED BY THIS COURT TO SELECT YOU AS A MAGISTRATE?

DID YOU APPLY OR WERE YOU ASKED TO APPLY?

DO YOU BELIEVE THERE SHOULD BE PREREQUISITES FOR A LAWYER TO BECOME A MAGISTRATE (E.G., THE NUMBER OF YEARS OF FEDERAL PRACTICE?

2b. DID YOU RECEIVE ANY SPECIFIC TRAINING TO ASSIST YOUR PERFORMANCE OF MAGISTRATES' DUTIES?

WHAT WAS MOST HELPFUL?

WHAT IMPROVEMENTS WOULD YOU MAKE IN THE TRAINING?

Kinds of cases/matters and court's use of magistrates

3. WHAT IS THE MAJOR COMPONENT OF YOUR DOCKET (E.G., PRETRIAL PURPOSES, HABEAS CORPUS, MINOR AND PETTY OFFENSES)?

3a. WHAT IS THE MOST FREQUENT MATTER REFERRED TO YOU?

4. ARE THERE DIFFERENT WAYS THAT ISSUES ARE SENT TO YOU (BEFORE IT GOES TO DISTRICT JUDGE OR AFTER IT HAS BEEN PLACED ON JUDGE'S CALENDAR--E.G., CIVIL, SOCIAL SECURITY, CRIMINAL, PRETRIALS, REVIEW OF ADMINISTRATIVE HEARING)?

4a. WHY?

4b. HAVE JUDGES ESTABLISHED ANY AUTOMATIC PROCEDURES FOR MAGISTRATES' HANDLING PARTICULAR TYPES OF CASES OR MATTERS--E.G., CRIMINAL PRETRIALS, CIVIL MOTIONS, INITIAL APPEARANCES (ARE THERE ANY STANDARD PROCEDURES)?

4c. WHICH JUDGE SENDS YOU THE GREATEST NUMBER OF MATTERS?

5. ARE THERE PARTICULAR TYPES OF MATTERS THAT YOU COMPLETE QUICKLY?

5a. WHAT ARE YOUR CRIMINAL DUTIES IN THIS DISTRICT?

5b. WHAT IS YOUR MOST FREQUENT CRIMINAL DUTY, BAIL PROCEEDINGS, DISMISSAL, IMPRISONMENT, FINES?

5c. WHAT ARE YOUR CIVIL DUTIES IN THIS DISTRICT?

5d. WHAT IS YOUR MOST FREQUENT CIVIL DUTY, PRETRIAL CONFERENCES, CIVIL TRIALS, ETC.?

5e. IN ALL TYPES OF CASES, WHAT TYPES OF LAWYERS MOST FREQUENTLY APPEAR BEFORE YOU (IS IT DIFFERENT THAN THOSE APPEARING BEFORE THE DISTRICT JUDGES?--LARGE FIRMS/SMALL FIRMS/AND SOLO PRACTITIONERS)?

5f. WHAT TYPES OF CLIENTS MOST FREQUENTLY APPEAR BEFORE YOU (IS IT DIFFERENT THAN THOSE APPEARING BEFORE THE DISTRICT JUDGES?--INDIGENTS, PRISONERS, CORPORATIONS, INDIVIDUALS WITH RETAINED COUNSEL)?

6. HAS THERE BEEN ANY MARKED CHANGE IN THE TYPE OR VOLUME OF MATTERS THAT YOU HAVE HEARD IN THE LAST TWO YEARS (OR) SINCE BECOMING A MAGISTRATE?

6a. WHY?

6b. HAS THE DISTRICT COURT MADE ANY MAJOR CHANGES IN YOUR AUTHORITY IN THE LAST TWO YEARS (OR) SINCE YOU BECAME A MAGISTRATE (ADDITIONAL DUTIES, 1976 AMENDMENT)?

6c. (EASTERN DISTRICT:) WHAT HAVE BEEN THE EFFECTS OF RECENTLY UPDATED MAGISTRATES' RULES?

6d. (SOUTHERN DISTRICT:) WHAT IS THE CURRENT STATE OF WRITTEN MAGISTRATES' RULES?

6e. WOULD WRITTEN RULES BE PREFERABLE TO THE CURRENT SYSTEM?

6f. WHAT AREAS SHOULD THEY SPECIFICALLY GOVERN?

7. MOST OF THE ACTIVITIES OF MAGISTRATES ARE DESCRIBED IN TERMS OF MATTERS. HOW DO YOU DISTINGUISH BETWEEN A MATTER AND A CASE?

7a. E.G., A CASE ASSIGNED FOR DISCOVERY MAY INVOLVE MANY DISCOVERY MATTERS?

8. HOW WOULD YOU COMPARE THE COMPLEXITY OF ISSUES YOU CONSIDER WITH THOSE HEARD IN THE DISTRICT COURT?

8a. HOW WOULD YOU COMPARE THE SIMPLICITY OF ISSUES YOU CONSIDER WITH THOSE HEARD IN THE DISTRICT COURT?

8b. ARE THERE ISSUES/MATTERS BROUGHT TO YOU WHICH ATTORNEYS WOULD NOT NORMALLY BRING TO A DISTRICT JUDGE?

9. IN WHAT CASES DO YOU HOLD HEARINGS (INJUNCTIONS, HABEAS CORPUS, ETC.)?

9a. HAVE THERE BEEN OCCASIONS WHERE PARTS OF A CASE HAVE BEEN REFERRED TO YOU AND WHERE THE REMAINDER HAS BEEN RETAINED BY THE DISTRICT JUDGE?

DOES THE REFERRING OF PART OF THE CASE SPEED THE DISPOSITION OF CASES/ MATTERS IN THE DISTRICT COURT?

9b. IF ONE MATTER IS REFERRED TO YOU, DO YOU ALSO HANDLE OTHER MATTERS, E.G., IF A MOTION IS SENT TO YOU DO YOU ALSO INITIATE SETTLEMENT?

9c. HOW FREQUENTLY DO JUDGES SUBMIT AN ENTIRE CASE FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND DECIDING THE WHOLE CASE ON THE MERITS?

9d. DOES THE REFERRAL OF AN ENTIRE CASE SPEED THE DISPOSITION OF THE CASES IN THE DISTRICT COURT?

9e. HOW FREQUENTLY DO YOU CONDUCT TRIALS IN CIVIL CASES?

(EASTERN) HOW FREQUENTLY IN CRIMINAL CASES?

9f. DO MOST OF THE TRIALS INVOLVE ONE TYPE OF ISSUE?

9g. WHAT COMPARISONS WOULD YOU DRAW BETWEEN THE TRIALS BEFORE THE MAGISTRATE AND TRIALS BEFORE THE DISTRICT JUDGE?

IN GENERAL, DOES YOUR HOLDING OF HEARINGS OR CONDUCT OF TRIALS SPEED OR SLOW THE ULTIMATE DISPOSITION OF CASES?

9h. DO YOU BELIEVE MAGISTRATES SHOULD CONDUCT A GREATER NUMBER OF TRIALS IN THE FUTURE?

9i. HOW FAR AWAY ARE YOU FROM BEING CURRENT IN YOUR DOCKET?

10. WHAT DO YOU THINK THE EFFECTS OF THE SPEEDY TRIAL ACT WILL BE UPON THE MATTERS HANDLED BY MAGISTRATES? IN CRIMINAL AREA? IN CIVIL AREA?

11. WHAT ACTIVITIES DOES THE "ADMINISTRATIVE MAGISTRATE" CONDUCT IN THIS DISTRICT COURT?

11a. HOW SHOULD THE ROLE OF THE ADMINISTRATIVE MAGISTRATE BE CHANGED IN THIS DISTRICT (E.G., TIGHTER CONTROL OF REFERRALS)?

12. UNDER WHAT CIRCUMSTANCES DO YOU SERVE AS A SPECIAL MASTER?

13. WHAT ARE SOME OF THE MAJOR FACTORS THAT DETERMINE THE LEVEL OF THE MAGISTRATES' WORKLOAD?

Relations with district court

Well, I imagine judges differ in their use of magistrates.

14. HOW WOULD YOU CHARACTERIZE THE WILLINGNESS OF DISTRICT JUDGES TO SEND CASES OR MATTERS TO MAGISTRATES?

14a. DO SOME JUDGES SEND SIGNIFICANTLY MORE CASES OR MATTER TO MAGISTRATES THAN OTHERS (E.G., SENIOR JUDGES, NEW JUDGES)?

14b. WHY? WHAT ACCOUNTS FOR THE DIFFERENT UTILIZATION BY JUDGES (BACKGROUND OF JUDGE PRIOR TO ASSUMING BENCH--TRIAL LAWYER, CIVIL PRACTICE; JUDGE'S TEMPERAMENT; JUDGE'S VIEW OF HIS WORKLOAD)?

14c. HAVE INDIVIDUAL JUDGES CHANGED THEIR USE OF MAGISTRATES OVER THE LAST TWO OR THREE YEARS? HOW AND WHY?

15. HOW DO NEW JUDGES LEARN ABOUT OBTAINING THE MAGISTRATES' ASSISTANCE?

15a. IN GENERAL, WHAT IS THIS DISTRICT COURT JUDGE'S PERCEPTION OF THE MAGISTRATES? ~~HAS IT CHANGED IN THE LAST TWO YEARS?~~

16. HOW WOULD YOU CHARACTERIZE YOUR RELATIONS WITH THE DISTRICT COURT? ARE THEY COOPERATIVE, CONFLICTFUL, OR NEUTRAL?

16a. HOW DOES THE DISTRICT COURT SUPERVISE YOUR ACTIVITIES AS MAGISTRATE? (E.G., DISTRICT COURT MAGISTRATES COMMITTEE) WHAT DOES THE SUPERVISION INVOLVE?

17. HOW ARE THE PRIORITIES SET FOR THE MATTERS YOU CONSIDER? IS IT SET BY THE PARTICULAR JUDGE OR TYPE OF MATTER?

WOULD PRIORITIES BE HELPFUL?

17a. DO LAWYERS ASK FOR A SPEEDY DISPOSITION OF THEIR CASE?

17b. DO ANY JUDGES SET UNREALISTIC DEADLINES? WHO?

17b. DO YOU RECEIVE ALL OR ALMOST ALL OF ONE TYPE OF MATTER FROM A JUDGE (E.G., SETTLEMENTS, CIVIL PRETRIAL ORDERS)?

17c. DOES THIS OCCUR WITH OTHER MAGISTRATES?

17d. ARE THERE UNWRITTEN RULES (OPERATING NORMS) IN THIS DISTRICT ABOUT THE USE OF MAGISTRATES?

18. WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF THE CURRENT REFERRAL SYSTEM OF MATTERS TO MAGISTRATES?

18a. WHAT CHANGES IN THE REFERRAL SYSTEM WOULD YOU MAKE?

18b. (SOUTHERN:) DO MOST LAWYERS PREFER TO GO BEFORE THE MAGISTRATE RATHER THAN A DISTRICT COURT JUDGE?

18c. (EASTERN:) DO MOST CRIMINAL DEFENDANTS PREFER TO GO BEFORE THE MAGISTRATE RATHER THAN A DISTRICT COURT JUDGE?

18d. IS THERE DIFFICULTY OBTAINING THE CONSENT OF BOTH PARTIES TO HAVE THE MAGISTRATE RULE?

18e. WHAT IS YOUR IMPRESSION ABOUT HOW FREQUENTLY MATTERS TAKEN "ON APPEAL" FROM YOUR COURT TO THE DISTRICT COURT IN LAST TWO YEARS?

18f. ON WHAT ISSUES?

18g. IN ANOTHER AREA, SOMETIMES DISTRICT JUDGES RECONSIDER THE MAGISTRATES' RECOMMENDATIONS; UNDER WHAT CIRCUMSTANCES?

18h. DOES THIS DIFFER WHEN PARTIES FILE "OBJECTIONS" TO MAGISTRATES RECOMMENDATIONS?

18i. DO CERTAIN DISTRICT JUDGES IN THIS COURT WANT TO GIVE ADDITIONAL RESPONSIBILITIES TO MAGISTRATES?

---

20. THERE HAS BEEN TALK OF "HOMETOWN BIAS" (IN HEARINGS ON S. 1613), I.E., DISTRICT JUDGES, ESPECIALLY THOSE WHO ASSIGN CASES TOSPECIFICALLY NAMED MAGISTRATES, ARE RELUCTANT TO REVERSE THEM. HAVE YOU FOUND ANY "HOMETOWN BIAS" IN THIS DISTRICT COURT?

21. IN THIS DISTRICT COURT WHAT ARE THE MAJOR BENEFITS THAT MAGISTRATES GIVE TO DISTRICT JUDGES?

22. IN WHICH TYPE OF CASES AND MATTERS, IF ANY, DO MAGISTRATES CREATE DELAYS IN THE DISTRICT COURT?

22a. IN YOUR OPINION, WHAT RECOMMENDATIONS WOULD JUDGES MAKE FOR THE USE OF MAGISTRATES? (DO CERTAIN DISTRICT JUDGES WANT TO GIVE ADDED RESPONSIBILITY TO MAGISTRATES?)

23. WHAT POTENTIAL USES OF MAGISTRATES DO YOU RECOMMEND?

23a. DO YOU FORESEE ANY CHANGES IN THIS DISTRICT'S MAGISTRATES' DUTIES IN THE NEXT TWO YEARS?

(SOUTHERN) SHOULD YOUR CRIMINAL DUTIES BE INCREASED?

23b. DO YOU NEED ADDITIONAL PERSONNEL (REPORTERS, LAW CLERKS) TO ASSIST YOU IN YOUR DUTIES?

23c. DO YOU NEED OTHER IMPROVEMENTS ASIDE FROM PERSONNEL . . . MORE SPACE, ADEQUATE LIBRARY (SPECIFIC VOLUMES)?

24. TO WHAT EXTENT WOULD THE PASSAGE OF S. 1613 ALTER PRACTICES IN THIS DISTRICT?

24a. HOW WOULD THE PASSAGE OF S. 1612 ALTER THE MAGISTRATES' CASELOAD IN THIS DISTRICT?

Prospects and Problems

25. WHAT HAVE BEEN THE MOST IMPORTANT EFFECTS OF THE U.S. MAGISTRATES FOR THE FEDERAL COURT SYSTEM?

26. COULD YOU INDICATE HOW THE MAGISTRATE SYSTEM HAS IMPROVED THE ADMINISTRATION OF JUSTICE IN FEDERAL COURTS (E.G., SPEED OF DISPOSITION OF MATTERS; TOTAL NUMBER OF MATTERS AND CASES HEARD BY DISTRICT JUDGES AND MAGISTRATES)?

27. WE RECOGNIZE THE CURRENT NUMBER OF YEARS IN THE MAGISTRATES' TERM OF APPOINTMENT; WHAT WOULD YOU SAY IS AN APPROPRIATE TERM OF APPOINTMENT FOR MAGISTRATES?

WHY?

28. HOW HAS THE SECOND CIRCUIT COURT OF APPEALS RULINGS REACTED TO THE MAGISTRATES--SYMPATHETICALLY, RESTRICTIVELY, OR NEUTRALLY?

29. HOW WOULD YOU CHANGE THE MAGISTRATES' DUTIES IN THE UNITED STATES COURT SYSTEM?

Appendix B

U.S. Magistrates Study (Reinterview)

Number_____

Date_____

Place_____

Completed_____

I am studying the activities of U.S. Magistrates. The information and opinions you give me will be tabulated along with materials from other magistrates. No names will be used, and all of your answers will be strictly confidential.

I would like to ask you some questions about several topics.

1. How are magistrates used as special masters in this district?

When you are conducting a trial are you frequently serving as a special master?

2. Has there been an increase in the number of complex cases which you have heard in the last year?

a. In complex cases do judges direct parties to appear before Magistrates?

b. Do the most complex cases go to a particular magistrate or particular magistrates?

c. Have you heard any antitrust matters?
(Caden (E) check about MDL 331)
(Schreiber (S) potential role in E. Kodak case)

Party's Consent

3. Have you encountered probelms in parties willingness to have magistrates hear case dispositive matters?

From your perspective do the parties believe the judge prompted or coerced them to appear befoe the Magistrate?

4. Have you had any instances where parties had tried to withdraw their consent after the hearing began (e.g. motion to withdraw consent and return control of case to district judge; asking magistrate to disqualify himself?

Administrative Issues

5. Should a computer printout be distributed listing the Magistrates' pending matters by the judge who assigned them the matters?

6. Judges are required to report to the District Court motions that they have more than 60 days. Do you think magistrates should also report upon all motions they have more than 60 days?

Appendix C

JUDGES' QUESTIONNAIRE

1. What qualifications for magistrates does the court seek?

2. Do you believe there should be minimum qualifications for magistrates? (e.g., number of years of practice).

3. (Judge Metzner only) Do you think the federal judicial center's training programs for magistrates are adequate?

4. What kind of cases and matters do you send to magistrates? (e.g., simple or complex, commercial or civil rights, pretrial matters or evidentiary hearings, etc.).

5. How would you characterize your use of magistrates--heavy, moderate, or light?

6. What is the most frequent matter you send?

7. How did you learn about utilizing the magistrates?

8. What factors affect your decision to use magistrates? (If non-user: Why have you chosen not to utilize the magistrates?).

9. In what ways, if any, have you changed your use of magistrates during the last few years (or) since becoming a judge? What caused the change?

10. Do you have an opinion on the use of magistrates for settlement of cases pre-trial, during trial, after trial on liability but before damages?

11. What is the procedure you follow in referring matters to the magistrates? (i.e., do all of certain types of matters go to the magistrates; do you send the matter to particular magistrates or do you send it first to the administrative magistrate?).

12. What is the normal extent of your supervision or contact with the magistrates when you send them matters?

13. Do you have a preference on how the magistrate reports back--e.g., formal written presentation, copy of transcript with dictated oral decision, telephone conversation, etc?

14. How frequently do you refer a case for trial, make a special master reference, or send the magistrate matters for evidentiary hearings?

15. Do you ever establish time guidelines or deadlines for the magistrates to handle matters?

16. How often do you request of magistrates status reports concerning your referrals?

17. Do you believe written priorities or suggested guidelines should be established to rank the order in which matters should be taken up by the magistrates?

18. Should there be a limitation on the types of matters which a judge may refer to a magistrate?

19. What are the advantages and disadvantages of the current referral system of matters to the magistrates?

20. What changes, if any, would you make in the referral system?

21. What is your view of having a particular magistrate assigned to a group of judges? (If favorable): Would you permit, in unusual cases, a judge to select another magistrate with particular expertise?

22. How frequently are matters taken "on appeal" from the magistrates to your court in the last two years (on what issues)?

23. How often do you reject or modify a magistrate's recommendation? (Does this differ when a party files objections to the recommendation)?

24. What is your view of the magistrates role in this court?

25. How would you compare the difficulty of issues you consider with those of the magistrates?

26. Which of the following most closely characterizes your concept of the magistrate--an assistant to the district judge or an independent judicial officer?

27. How has your utilization of magistrates affected your work? (e.g., in terms of time saved, ability to conduct more trials, etc.).

28. Should there be a system of computerizing magistrate's cases which could be keyed into the judge's print-out?

29. Should there be a system of magistrate's reporting motions over 60 days old or similar matters?

30. (Eastern district only) Does this court emphasize magistrates use in civil or criminal matters?

31. Would you make any changes in the magistrates criminal duties?

32. Would you make any changes in the magistrates civil duties?

33. Have there been any marked changes in the type or volume of matters that magistrates have heard in the last two years (or) since you became a judge?

34. (Eastern district only) What have been the effects of the recently updated magistrates rules?

35. (Southern only) (Only to members of the magistrates committee--Ward, Pollock, Pierce and Metzner). What is the status of written magistrates rules?

36. How does the district court supervise magistrates activities? (e.g., by magistrates committee, chief judge, etc.). (What does the supervision involve)? (Do you believe there should be greater or lesser court control of magistrates)?

37. What are the major benefits magistrates give the court as a whole?

38. What are the major detriments, if any, that magistrates bring to the court?

39. Do you have an opinion regarding the workload of the magistrates?

40. Is there a need for or desirability of additional supportive staff for magistrates such as law clerks?

41. Do you foresee changes in the duties of the magistrates in this district over the next few years?

42. Are additional magistrates needed in this district?

43. What have been the most important effects of magistrates for the federal court system?

44. How have the magistrates improved the administration of justice in the federal courts?

45. Would you change the current term of service magistrates now have?

46. How has the second circuit reacted to the magistrates--favorably, restrictively, or neutrally?

47. How would you change the magistrates duties, if at all, in the U.S. court system.

Appendix D

Supplemental Questions
Judges' Questionnaire
Complex Litigation

Judge # _____ _____

1. Has there been resistance to the use of magistrates in complex cases by the complex-litigation bar?

(1) Yes _____

(2) No _____

(3) No Opinion _____

If (1) or (2), do you have an opinion why this might be so? _____

_____

_____

_____

2. Does the informality of magistrate proceedings expedite complex litigation?

(1) Yes _____

(2) No _____

(3) No Opinion _____

3. Have there been significant difficulties recruiting magistrates with complex-litigation backgrounds?

Yes _____

No _____

No Opinion _____

If yes, why is this so? _____

_____

_____

_____

Appendix E

MAGISTRATES STUDY---LAWYERS' QUESTIONNAIRE

NUMBER_____

DATE_____

PLACE_____

COMPLETED_____

1. HOW FREQUENTLY HAVE YOU OR YOUR FIRM APPEARED BEFORE U.S. MAGISTRATES IN THE SOUTHERN OR EASTERN DISTRICT?

A) 0 to 5 times B) 6 to 15 times C) 16 to 25 times

D) more than 25 times

2. WHAT MATTERS WERE INVOLVED IN YOUR APPEARANCE(S) (DISPOSITIVE MOTIONS, DISCOVERY MATTERS, CRIMINAL MATTERS, PREPARATION OF A PRETRIAL ORDER, TRIAL)_____

_____

(IF TRIAL) DID THE JUDGE TRY TO CONVINCE YOU TO APPEAR BEFORE A MAGISTRATE?_____

3. HAVE YOU APPEARED BEFORE MANY MAGISTRATES OR ONLY ONE?

_____

WHICH ONE OR ONE(S)? (SPECIFIC NAMES)_____

_____

_____

_____

WHY DID YOU USUALLY APPEAR BEFORE THE MAGISTRATE(S)?

(OWN CHOICE) (BY ORDER OF JUDGE) (SUGGESTION OF JUDGE)

4. IN YOUR VIEW WHY DID THE JUDGE REFER THE LAST SEVERAL CASES OF YOURS TO MAGISTRATES?_____

_____

_____

_____

4a. DO YOU GENERALLY FAVOR OR OPPOSE HAVING YOUR CASE REFERRED TO A MAGISTRATE?

4b. DOES IT DEPEND ON THE MAGISTRATE?

4c. DOES IT DEPEND ON THE PURPOSE OF THE REFERRAL?

4d. WHAT WERE THE MAJOR DECISIONS/RULINGS THE MAGISTRATE(S) MADE IN YOUR CASE(S)? (GIVE A LIST IF POSSIBLE)?

4e. HAVE YOU EVER SOUGHT TO HAVE A MAGISTRATE DISQUALIFIED?

4f. IN THE REFERRAL SYSTEM SHOULD JUDGES BE FREE TO SELECT THE MAGISTRATE OR SHOULD CASES BE ASSIGNED ON A RANDOM BASIS?

5. ARE MAGISTRATES OR JUDGES GENERALLY MORE ACCESSIBLE TO YOUR INQUIRIES? ABOUT MATTERS SUCH AS (DISPOSITIVE MOTIONS, DISCOVERY, PREPARATION OF PRE-TRIAL ORDER, TRIAL)?

5a. IN GENERAL DO MAGISTRATES SCHEDULE MORE PRE-TRIAL CONFERENCES THAN JUDGES?

5b. ARE MAGISTRATES MORE OR LESS EFFECTIVE THAN JUDGES IN RESOLVING PRE-TRIAL DISPUTES OR SETTLING CASES?

5c. IN YOUR OPINION WHO KEEPS CASES MOVING IN A MORE EXPEDITIOUS FASHION MAGISTRATES OR JUDGES (DO REFERENCES TO MAGISTRATE TYPICALLY DELAY OR SPEED UP A MATTER IN COMPARISON WITH A JUDGE)?_____

_____

_____

_____

WOULD YOU GIVE THE SAME JUDGMENT ABOUT SIMPLE AND COMPLEX CASES?_____

_____

ARE PROCEEDINGS BEFORE MAGISTRATES MORE OR LESS FORMAL THAN COMPARABLE PROCEEDINGS BEFORE DISTRICT JUDGES?_____

_____

_____

5d. DO YOU BRING MATTERS BEFORE A MAGISTRATE THAT YOU WOULD NOT BRING BEFORE A DISTRICT JUDGE? (SUCH AS OBJECTIONS TO INTERROGATORIES)?_____

_____

_____

5e. DO MAGISTRATES HAVE SUFFICIENT AUTHORITY TO "KEEP LAWYERS IN LINE"?_____

_____

_____

6. HOW FREQUENTLY DO YOU "OBJECT TO" OR "APPEAL FROM" THE MAGISTRATES RULINGS?

(VERY FREQUENTLY) (FREQUENTLY) (SOMETIMES) (FEW)

6a. WHAT IS YOUR VIEW OF DISTRICT COURT JUDGES' PRACTICE TO REVERSE OR MODIFY MAGISTRATES' DECISIONS?

6b. UNDER WHAT CIRCUMSTANCES DO YOU OBJECT TO MAGISTRATES' RULINGS?

WHY DID YOU BRING THOSE OBJECTIONS?

7. IF THE CASE WAS NOT SETTLED, WHAT HAPPENED TO IT AFTER THE MAGISTRATE CONCLUDED HIS ACTIONS ON IT?

8. IN WHAT WAYS ARE MAGISTRATES MOST BENEFICIAL TO YOU AND YOUR CASES?

LEAST BENEFICIAL_____

DOES YOUR ANSWER DEPEND ON WHO IS THE PARTICULAR MAGISTRATE?

9. WHAT ARE OPINIONS ABOUT THE MAGISTRATES IN THIS DISTRICT?

WHAT ARE ITS GREATEST STRENGTHS?_____

WHAT ARE ITS GREATEST WEAKNESSES?_____

WHAT AREAS DO YOU THINK NEED IMPROVEMENT?_____

9a. HOW DO YOU VIEW THE INDEPENDENCE OF THE MAGISTRATES?

9b. SHOULD THERE BE MINIMUM QUALIFICATIONS FOR MAGISTRATES?

10. ARE THERE ANY CHANGES THAT YOU WOULD LIKE TO SEE IN THE USE OF MAGISTRATES (INCREASE IN DUTIES,--SUCH AS TRYING SIMPLE CASES WITHOUT CONSENT--, DECREASE IN DUTIES, HANDLING NEW MATTERS, E.G. CRIMINAL TRIALS).

WOULD YOU BE IN FAVOR OF EXPANDING, CONTRACTING OR ENDING THE MAGISTRATES' ROLE IN CIVIL CASES?

11. WHAT POSITIVE OR NEGATIVE COMPARISONS WOULD YOU MAKE BETWEEN MAGISTRATES AND DISTRICT JUDGES CONSIDERATION OF SIMPLE CASES (COMPETENCE OF RULINGS, KNOWLEDGE OF CASE DELAYS, ETC).

12. WHAT POSITIVE OR NEGATIVE COMPARISONS WOULD YOU MAKE BETWEEN MAGISTRATES' AND DISTRICT JUDGES' CONSIDERATION OF COMPLEX CASES (COMPETENCE OF RULINGS, KNOWLEDGE OF CASE, DELAYS, ETC).

END