The Roles of Magistrates: Nine Case Studies

Federal Judicial Center

1520 H Street, N.W.
Washington, D.C. 20005
Telephone 202/633-6011

THE ROLES OF MAGISTRATES: NINE CASE STUDIES

By Carroll Seron

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FOREWORD

The United States magistrate system has developed in response to the circumstances and needs of each district court, as Congress intended when it passed the Magistrates Act in 1968. These developments were studied by the Federal Judicial Center's Research Division and reported in *The Roles of Magistrates in Federal District Courts* (1983), which described the varying structures for involvement of full-time magistrates in the preparation of civil and criminal cases. The present report, a follow-up study, details the activities of magistrates in nine districts selected to represent the spectrum of patterns found in federal district courts.

The magistrate program has been in place for just over fifteen years, and during the course of the program's development, magistrates' statutory authority has expanded considerably. In some of the districts selected for this study, steps were taken to use magistrates to the full extent permitted under the governing statute. Success with such expansive approaches appears to have been closely tied to educating the bar about the program as it was introduced. Findings in this study disclose that practicing attorneys consistently hold the view that continuing education for the bar about changes in court procedures is a critical factor in ensuring a smooth transition. As courts begin to innovate in other areas—be it arbitration, mediation, or local rules—the lesson learned here may be instructive: Involving the bar in the introduction of new procedures helps ensure successful innovation.

This report may allay some of the concerns about the effects of magistrates' participation in litigation. First, there was concern that areas handled mostly by magistrates might be seen as receiving second-class attention from the courts. Actually, the study found that when magistrates come to be seen by the bar as subject-matter specialists—particularly in Social Security and prisoner matters—lawyers often view the result as more careful and expert attention. Second, there was a fear that referring dispositive motions might be wasteful because the magistrates' recommendations would be routinely challenged. While no experience was universal, the study found that in most courts magistrates' reports and recommendations are infrequently challenged; the fear of wasteful duplication of effort has not been borne out.

Three models for the use of magistrates emerge. The magistrate in the role of specialist has already been referred to; in addition, there is the role of the magistrate as additional judge and, finally, as team player.

In some districts magistrates, though their statutory authority is limited, are nevertheless substantial participants in the courts' programs to achieve effective control and management of caseload processing. Within their authority, they are additional judges—in many ways, peer performers.

Finally, the report discloses that in some districts magistrates perform still another role, termed by the author that of team player. The magistrate becomes the pretrial officer of civil or criminal cases, with discretion to make decisions about this phase of case processing (subject, of course, to the limitations imposed by the Magistrates Act.) This is the magistrate's function on the team, and when the case is prepared for trial, it moves on to the judge.

In an interview in the January 1985 issue of *The Third Branch,* Chief Judge Charles A. Moye, Jr., captures the essence of this theme when he comments that "[i]t is entirely possible that, sometime in the future, the federal practice will be such that magistrates will be handling most of the pretrial work in civil as well as in criminal cases, delivering to the Article III judge a pretrial order that the magistrate has formulated after supervision of discovery, in conference with counsel in a manner and form that has been approved by the judge." Carroll Seron's work suggests that this transition is already beginning in some districts. Of equal interest is her finding that practicing attorneys are accepting of and even enthusiastic about this development.

The last decade has seen a growing concern over the specter of a bureaucratized judiciary. Some have even feared that the introduction and subsequent expansion of the magistrate program might contribute to this possibility. Developments chronicled in this study suggest, however, that such a result is not inevitable. Alternative approaches offer promising and intriguing possibilities. Thoughtful analysis of the different patterns now in use, of their respective advantages and disadvantages, may well contribute to the future development of the magistrate system.

A. Leo Levin

SUMMARY

This report presents the findings of in-depth case studies on the use of magistrates by nine districts; districts were selected that vary in size, geography, and use of magistrates. The underlying premise of this investigation is that magistrates' actions, as permitted under 28 U.S.C. § 636(b) and (c), must be analyzed in the context of a district's approach to court administration and case management. By statute, judges may assign a wide variety of pretrial work to magistrates. In practice, what is actually assigned to a magistrate depends upon a district's procedures for handling pretrial matters—from local rules on scheduling, pretrial conferences, and discovery disputes to the way an individual judge prepares a case for trial.

The last decade has seen considerable debate within the judicial community concerning the many systemic developments that are taking place in the federal courts. For example, in the area of court administration, concern has focused on what may appropriately be delegated to district court executives; in the area of case management, concern has focused on the pros and cons of modifying rule 16 so that pretrial management of a case is more tightly scheduled and monitored. Analysis of the magistrate system provides a particularly appropriate window on both of these developments: Administratively, magistrates compose a new tier of judicial officers who must be informed of changes in internal operating procedures. Substantively, magistrates may handle a wide variety of pretrial matters—from scheduling to dispositive motions—subject to various procedures for review within the district court. Thus, the presence of the magistrate system is germane to debates concerning court administration and case management.

Findings from this study disclose two fairly distinct overall approaches to court administration and case management. Some districts selected for this study take a districtwide approach to court processes; in these districts magistrates are generally included in the administrative decisions of the court (e.g., district meetings). Some districts selected for this project begin with the premise that judges may develop their own approach to pretrial monitoring; here, judges may call upon magistrates in very different ways.

In addition to considering questions of court administration and case management it is useful to think about how magistrates are approached as judicial officers of the court. Whether it be a group or an individual decision, how are these officers used? Three fairly distinct models of magistrate use were identified: (1) In some instances, magistrates are used as "additional judges" playing a peer role in the administration of the court and the management of the docket; (2) in other contexts, magistrates are approached as specialists who become experts in a demanding and ongoing area of the docket; and finally, (3) magistrates are sometimes approached as team players who develop discretionary responsibilities for the pretrial phases of case processing. In two of the districts studied, magistrates are approached as additional judges of the court and encouraged to carry a full civil docket; in two other districts, they are approached as team players or pretrial officers of the court; and in the remaining districts, judges' practices vary between using magistrates as specialists and using them as team players.

How is work assigned to magistrates, and what is assigned to them? In the districts selected for this project, two report an expansive use of magistrates; here magistrates are, for all practical purposes, approached as additional judges of the court and encouraged to carry a full docket of cases under 28 U.S.C. § 636(c). Magistrates in these districts report a relatively large number of cases on consent; of equal note, the internal operating procedures reflect a commitment to include magistrates to the full extent feasible under the statute.

Other districtwide practices are equally interesting: In two districts magistrates are used as pretrial officers of the civil or criminal docket. Pretrial matters are centrally assigned from the clerk's office to the magistrate; the judge assigned to the case does not make a determination as to what will or will not be assigned to the magistrate. In both of these districts, magistrates are team players; that is, they have a degree of discretionary responsibility over the way a civil or criminal case evolves during the pretrial stage.

By contrast, in the remainder of the districts there is a working assumption that each judge will develop a unique framework for managing the docket and will call upon magistrates for quite different tasks. In these districts assignment procedures are usually decentralized, or controlled from the judge's office. The judge calls upon a magistrate for pretrial assistance on an individual basis. Thus, some judges within these courts approach magistrates as additional judges and support the consent option where appropriate; others report that they are working toward a teamwork model, whereby a magistrate has discretion to make decisions affecting

pretrial case management; finally, there are those who approach magistrates as specialists and encourage the development of areas of expertise—from Social Security or prisoner cases to resolution of discovery disputes.

In the context of these approaches, the outcome of magistrates' work is considered: What happens when magistrates prepare reports and recommendations on dispositive motions or rule on nondispositive motions? The findings disclose that parties do not regularly challenge magistrates' reports and recommendations on dispositive motions or orders on nondispositive motions. This provides concrete evidence questioning the common belief that lawyers will, inevitably, take "two bites at the apple" or routinely challenge a magistrate's work. The findings indicate that when nondispositive motions or discovery disputes are assigned to magistrates, the magistrates' rulings are usually the final disposition. It is rare for the matters to return to the judge for review and disposition. Though the outcome of assignment of dispositive motions is more complicated, it does appear that magistrates' participation contributes to the conservation of judges' time.

Analysis of the material developed in this study makes for a very encouraging assessment of benefits that have been achieved. An extremely important factor affecting the experience with these new officers has been the effort made by the courts to clarify the magistrates' roles to the bar and other staff, to make clear the courts' expectations about their performance, and to present the magistrates as well-qualified individuals who have earned the confidence of the court and are entitled to the confidence of the bar.

I. INTRODUCTION

This study began as a detailed examination of the roles performed by magistrates, under 28 U.S.C. § 636(b) and (c), in nine districts. The big questions may be phrased as follows: Do magistrates make a difference? Do magistrates improve the administration of justice by helping to move cases fairly and expeditiously? Does the magistrates' assistance relieve judges and reduce the backlog of cases in federal courts?

It is apparent that answers to these questions are intimately linked to current debates over effective case management and court administration: The questions cannot be answered by simply examining the duties delegated to magistrates separate and apart from a district's approach to administration—separate and apart from a district's commitment to collective decision making, tight monitoring of cases, firm cutoff dates for discovery, or preparation of a joint final pretrial order. When the questions of magistrates' roles and effective case management are linked, a series of interesting issues form. Recent changes in the Federal Rules of Civil Procedure raise germane questions; for example, in the debate over changes in rules 16 (pretrial scheduling) and 26 (discovery), some claim that tight control must be monitored personally by the officer who is to try the case, and some believe that these procedures may be delegated effectively to magistrates. Where do magistrates fit into these procedures? Why do courts take steps to include or not include magistrates in the various aspects of case management and court administration? To what extent have magistrates become an integral part of the judicial family? How do courts approach magistrates as judicial officers? It is these questions that give meaning to an assessment of the impact of magistrates.

The report that follows provides a detailed description of what full-time magistrates in nine districts are doing in the context of each court's procedures for managing its caseload. The underlying premise of this study is that one must examine full-time magistrates' roles as new judicial officers in the systemic context of a district's approach to case management and court administration. Open-ended interviews were conducted with judges, full-time mag-

istrates, and practicing attorneys from a variety of firms[1] in nine districts; in addition, data were collected to assess the rates of appeals of magistrates' actions for statistical year 1982.

Chapter 2 describes the rationale for the selection of the various districts as well as an overview of each court's caseload and management statistics. This study builds upon the findings of a study in which all full-time magistrates were asked to describe their section 636(b) and (c) workload, procedures for assignment, and the frequency and consistency with which they are asked to perform duties;[2] the findings of that study informed the selection of districts. Comparing the selected districts' caseload and management statistics helps to develop a common point for assessing the demands placed upon these courts.

In an analysis of magistrates in a systemic context, chapter 3 describes each district's approach to court administration, magistrates' participation, the role of a chief magistrate (if appropriate), procedures for local rule making, and the extent to which magistrates (and the bar) are included. Chapter 4 describes each district's approach to pretrial case management, giving special consideration to local rules promulgated in response to changes in Federal Rule of Civil Procedure 16, the degree to which the districts have developed uniform practices for scheduling, and the involvement of magistrates. Together, these discussions provide an overview of the context within which magistrates' roles are evolving in selected districts.

Against this background, one may begin to sort out various responses to magistrates as judicial officers and professionals. Over the course of this research project, three models for the use of magistrates, described in chapter 5, were identified. Briefly, some districts (or sometimes judges) have opted to approach magistrates as

1. From eighteen to fifty-five attorneys were interviewed in each district. See appendix B for a listing of the reported size of the firm, nature of the practice, and percentage of federal practice of the interviewees for each district. Names of appropriate candidates to interview were obtained using a snowball sampling procedure. In each district, the chief judge, chief magistrate, or clerk of court provided an initial list of attorneys from a cross section of firms that are in federal court on a regular basis; at the conclusion of each interview, the respondent was asked to suggest other attorneys who litigate in federal court. In addition, the U.S. attorney and, where appropriate, the public defender were interviewed. In selecting interviewees from these sources, steps were taken to ensure that attorneys represented a microcosm of the practicing federal bar in each district.

Donna Stienstra of the Federal Judicial Center's Research Division assisted with these interviews in four districts: Eastern Pennsylvania, Northern California, Northern Georgia, and Southern Texas. I am most grateful for her excellent work, suggestions, and support over the course of this project.

2. *See* C. Seron, The Roles of Magistrates in Federal District Courts (Federal Judicial Center 1983).

(1) additional judges playing an equal role in the administration of the court and the management of the docket; in other contexts magistrates are approached as (2) specialists who become experts in an area of the docket that is demanding and ongoing; finally, magistrates may be approached as (3) team players who develop discretionary responsibilities for the pretrial phases of case processing.

As the findings of subsequent chapters demonstrate, the approach taken by a court (or a judge) foreordains the way in which work is actually assigned as well as the scope and variety of duties delegated. Chapter 6 describes in detail each district's procedure for assigning work to magistrates and the rationale for it. Chapter 7 discusses magistrates' handling of civil cases upon consent of the parties for the districts selected. Chapter 8 details the delegation of aspects of pretrial questions to magistrates, with special reference to magistrates' handling of discovery disputes. A primary duty for many magistrates is the preparation of reports and recommendations on prisoner cases and Social Security matters; chapter 9 details how the selected districts have used magistrates for processing these cases. In each of these discussions, consideration is also given to lawyers' evaluations and perceptions of magistrates' roles and duties.

Underscoring the importance of assessing lawyers' willingness to accept the new roles and duties that magistrates may perform, chapter 10 presents a detailed analysis of the rates of appeals of a random sample of the actions assigned to magistrates for a statistical year in the districts studied. Chapter 11 summarizes some of the more salient findings from this study, with special consideration of the questions a court might consider in evaluating the potential roles of magistrates in its district.

II. A VIEW FROM NINE DISTRICTS

This study grows out of an earlier survey of all full-time magistrates as of 1980. Magistrates were asked to report if they had been designated to perform and had performed the full range of duties permitted under the 1976 and 1979 amendments to the Federal Magistrates Act, as well as the method, timing, and frequency with which these matters were assigned to them. The findings of that survey suggested that the magistrate system should be described as a series of subsystems following some common patterns across districts in terms of the use of magistrates in the processing of civil and criminal cases.[3]

More specifically, these findings suggested a working typology of six fairly distinct configurations: (1) random assignment of matters through the clerk's office; (2) rotational assignment among magistrates, whereby an "on-duty" magistrate receives all relevant matters; (3) assignment by a chief magistrate who oversees the random allocation of work as requested by judges; (4) judge-magistrate pairs by local rule, whereby a magistrate is assigned to a group of judges and works for those judges on request; (5) judge-magistrate pairs de facto, whereby a magistrate receives assignments from a group of judges because of geographical considerations; (5) direct assignment at a judge's discretion; and (6) solo magistrate in a district. Indeed, it is feasible to characterize a district by one or some combination of these types of assignment arrangements.[4] Beyond this initial consideration, judges may consistently assign a type of activity (e.g., discovery disputes) to magistrates based upon a collective decision, or judges may make individual decisions about magistrates' duties. For example, these earlier findings disclosed that some judges assign all Social Security cases for a report and recommendation, while others, albeit fewer, assign discovery disputes to a magistrate for resolution. Thus, within each configuration for allocating work, the actual assistance requested may vary considerably.

3. For a more detailed discussion of these findings, see Seron, *supra* note 2.
4. See Seron, *supra* note 2, at appendix A, for a full listing and description of districts with at least one full-time magistrate by assignment procedure.

The first criterion in this study was to select at least one district of each type described above and, within each type, to select districts in which magistrates reported that they were frequently assigned the duties authorized under 28 U.S.C. § 636(b) and (c).[5] This means that while the districts selected may not be typical, they serve the project's goal of ascertaining judges' rationales for assigning various duties to magistrates. Where magistrates report that they are used more extensively, judges' assessments will be informed by broader experience.

Table 1 presents, by assignment arrangement, the districts selected for case study. To elaborate:

TABLE 1
Districts by Assignment Arrangement

Assignment Arrangement	District
Random or rotational	N.D. Georgia S.D. Texas D. Oregon E.D. North Carolina
Paired by local rule	E.D. Pennsylvania
Paired de facto	E.D. Kentucky
Chief magistrate	N.D. California
Judge assigns	E.D. Missouri
One full-time magistrate	E.D. Washington

1. **Random or rotational.** In districts with more than one full-time magistrate at one location, rotational allocation of criminal pretrial responsibilities coupled with random allocation of civil duties is the most common arrangement for assigning work; the previous study disclosed that magistrates located in thirty-one districts reported that this arrangement describes the procedures used in their district. We selected four of these districts for case study, choosing a small district (Eastern North Carolina), medium district (Oregon), and large district in which judges and magistrates are at one (Northern Georgia) and multiple (Southern Texas) locations. In each instance, the magistrates reported that they are used expansively, albeit in very different ways.

2. **Paired by local rule.** Findings from the initial study of magistrates disclosed that six districts' local rules specify that a magistrate will be paired with a group of judges. Of these, the Eastern

5. Note that these were self-reports of the frequency of assignment or, more accurately, of the perceptions of the frequency of assignment; there is, of course, a clear limitation to this approach, since one's own view of the amount of work that one is assigned may be somewhat skewed. For further discussion, see Seron, *supra* note 2, at 39–41.

District of Pennsylvania was selected for case study; the district was one of the first to experiment with this arrangement, and judges' practices within the district vary considerably.

3. **Paired de facto.** Magistrates located in thirteen districts reported that they are paired with a group of judges as a result of geographical constraints; most commonly, each magistrate is located at a particular location and receives assignments from the judges at that location. The Eastern District of Kentucky was selected as illustrative of this type because magistrates reported that they perform the full range of duties authorized under section 636(b).

4. **Chief magistrate.** Magistrates in only two districts reported that a chief magistrate assigns duties as requested by judges. Of these, the Northern District of California was selected for further study.

5. **Judge assigns.** Magistrates in five districts reported that, by local rule, each judge has the discretion to assign work directly to a magistrate. Of these, the Eastern District of Missouri, where magistrates reportedly are assigned a full range of civil and criminal pretrial matters, was selected.

6. **One full-time magistrate.** At the time of the initial study there were twenty-five districts with one full-time magistrate. The Eastern District of Washington was selected because the magistrate plays a very active role in case processing and is described as a "third judge."[6]

Court selection also considered variations in size and geography, as revealed by table 2. Thus, in the discussion that follows I examine the use of magistrates in four large (ten or more judges), three medium (six to nine judges), and two small (one to five judges) districts. The ratio of judges to magistrates varies from 1.33:1 in Eastern North Carolina to approximately 4:1 in Eastern Pennsylvania.

Within the group of large courts, most judges reside at one location. Thus, in Northern California, Northern Georgia, and Eastern Pennsylvania, most judges and magistrates reside at the district's main location and one to two judges or magistrates may reside at a

6. Some districts may have modified their assignment practices since publication of *The Roles of Magistrates in Federal District Courts, supra* note 2. Since the fall of 1982, when that report was completed, 24 positions have been added, bringing the total number of authorized full-time positions to 253 as of March 1984. For example, a number of districts that had one full-time magistrate have been allocated a second slot and may have modified their assignment arrangements.

In some instances the districts selected for case study were in the process of modifying their procedures for using magistrates while this project was in progress; for a more detailed discussion of each district's assignment practices, see chapter 6. However, it should be noted that each district, at least as of March 1984, has not dramatically changed its assignment practices.

TABLE 2
Profile of Districts Selected for Study, 1983

District	Judges[1]	Full-time Mags.[2]	Part-time Mags.	Divisions[3]	Places of Holding Court[4]
Large courts					
N.D. California	12	5	4	2	2
N.D. Georgia	11	5	3	1	3
E.D. Pennsylvania	19	5	1	1	3
S.D. Texas	13	8	1	4	6
Houston	9	4	0	—	2
Corpus Christi	1	1	0	—	1
Laredo	1	1	0	—	2
Brownsville	2	2	1	—	2
Medium courts					
E.D. Kentucky	5.5	2	1	5	6
E.D. Missouri	6	3	1	1	3
D. Oregon	5	3	2	2	2
Small courts					
E.D. North Carolina	4	3	1	4	5
E.D. Washington	3	1	1	1	3

[1]Includes judgeships created pursuant to the Bankruptcy Amendments and Federal Judgeship Act of 1984 (one each in E.D. Missouri, E.D. North Carolina, and E.D. Washington).
[2]Number of magistrates.
[3]Number of locations where judges or magistrates reside.
[4]Number of locations where judges or magistrates hear cases.

smaller, outlying division. The exception to this pattern is the Southern District of Texas, where judges reside at four locations and hold court at six; nine judges and four magistrates are located at Houston, two judges and two magistrates at Brownsville, and one judge and one magistrate at both Corpus Christi and Laredo. The divisions within Southern Texas receive very different caseloads, have developed relatively unique administrative practices, and use magistrates in very different ways. Southern Texas's practice makes it more like one medium and three small courts for the present purposes.

Among the medium courts, both rural and urban districts were selected. In Eastern Kentucky, judges reside at five locations and are assigned cases filed by division; as a general practice, judges only hear cases at their division, and each judge is able to develop a distinctive procedure, both in terms of pretrial case management and delegation of duties to magistrates. In Eastern Missouri, on the other hand, judges and magistrates reside at one location and have some responsibilities for holding court in outlying divisions; in Oregon all officers reside at one location, save a magistrate who sits at an outlying division.

Finally, of the small courts selected, judges and magistrates in Eastern North Carolina reside at different locations, though, unlike in Eastern Kentucky, all judicial officers ride the district and may be randomly assigned a case from any of the district's four locations. The judges and magistrates reside at one location in Eastern Washington and have some district-riding responsibilities.

General Overview

A district's management and caseload statistics did not inform the selection of courts. This decision was a conscious one. At the time districts were selected, our understanding of magistrates' roles was far too limited to evaluate precisely when, where, or if magistrates are helping to reduce court backlogs and contributing to the smooth processing of cases. Indeed, this project was in part undertaken with a view toward sorting out some of the factors that appear to improve magistrates' contribution to case processing, and, as the discussion in the chapters that follow suggests, magistrates' contributions may vary considerably.

With this important caveat in mind, it is useful to examine the caseload profiles of the districts selected. Tables 3 and 4 provide a rough baseline for comparing districts in terms of filing demands; table 5 provides a rough baseline for comparing termination rates.

Table 3 presents a number of indicators to describe each district's active caseload. Total civil and criminal filings provide an initial barometer; of the districts selected, Southern Texas and Eastern Washington have the largest proportion of criminal filings. In the case of Southern Texas, most criminal filings originate in the Brownsville and Laredo divisions, whereas the composition of cases filed in the Houston division has a larger proportion of civil cases, more in keeping with the other districts.

A comparison of civil filings and weighted civil filings per judgeship provides a rough benchmark of the overall scope of demand per judge. A comparison of these statistics underscores a common observation: The raw number of cases on a judge's docket is not necessarily, or directly, indicative of a burdensome civil caseload. Keeping in mind that the weighted caseload figure is an imperfect measure, it nevertheless provides some sense of the districts where judges' caseloads are characterized by a more demanding civil docket. Thus, of the districts selected, Eastern Missouri (629) and Southern Texas (553) have the largest weighted filings per judgeship, though Eastern North Carolina has the largest number of raw civil filings per judgeship (722). At the other end of the spec-

TABLE 3
Caseload Profile of Districts, 1983

District	Total Filings	% Civil	Civil Filings per Judge	Weighted per Judge[1]	Civil 3 Years+[2]	Social Security	Prisoner Petition
Large courts							
N.D. California	7,701	93	598	471	246	292	423
N.D. Georgia	4,225	91	350	427	124	359	516
E.D. Pennsylvania	6,840	94	338	428	200	485	729
S.D. Texas	10,031	77	771	553	379	103	867
Houston	7,261	94	761	—	307	78	781
Corpus Christi	492	53	492	—	18	6	39
Laredo/Victoria	608	25	153	—	20	8	16
Brownsville	1,670	24	198	—	34	11	31
Medium courts							
E.D. Kentucky	1,981	92	332	277	727	452	294
E.D. Missouri	3,546	91	648	629	43	166	272
D. Oregon	2,529	93	472	459	44	212	224
Small courts							
E.D. North Carolina	2,347	92	722	437	23	87	576
E.D. Washington	1,212	83	505	393	71	77	294

SOURCE: Administrative Office of the U.S. Courts (AO), Federal Court Management Statistics 1983. All figures in this table are from Management Statistics except civil cases pending as of June 30, 1983; see also AO, 1983 Annual Report of the Director.

[1]For the period ending June 30, 1983, the average weighted caseload for all judges was 473.

[2]For the period ending June 30, 1983, the average number of civil cases per district was 155.

trum, Eastern Kentucky reports a low raw (332) and weighted (277) number of filings per judgeship. For the year ended June 30, 1983, the average weighted caseload for all judges was 473 cases; the remainder of the districts cluster around the national average.[7]

The number of civil cases over three years old provides a rough basis for examining the age of the district's docket. Here, too, the figures must of course be interpreted with caution, for a large number of cases in this category may be the result of any number of factors—from an unusual spurt in filings, to a vacant judgeship for an extended period of time, to a judge's illness. Keeping in mind all of these problems, it is interesting to note that there is a wide range in these numbers, which do not necessarily coincide with a district's weighted or raw civil filings per judgeship. Of the districts shown in table 3, Eastern North Carolina, which has a high filing rate, reports the smallest number of cases over three years old (23), whereas Eastern Kentucky, whose filing rate is low, reports the largest (727).

Finally, table 3 shows the number of Social Security and prisoner petitions filed for each district. In the earlier phase of this project, most magistrates reported that they are "almost always" assigned Social Security cases and prisoner petitions at filing for a report and recommendation.[8] Therefore, these data have been included in the comparative baseline. (Note, of course, that not all districts necessarily follow this practice.) Over the last few years, many districts have experienced an upsurge in the number of Social Security filings, to the point that, in several districts, these cases pose a unique and time-consuming burden. Of the districts included in this project, Eastern Pennsylvania and Eastern Kentucky report the largest number of Social Security cases, and a primary responsibility of magistrates in these districts has been the preparation of reports and recommendations for these cases.

Some districts have also experienced an increase in the filing of prisoner petitions. In fact, Southern Texas has one of the highest numbers of prisoner filings (869) in the country, though Eastern Pennsylvania is a rather close second (729), and in both districts magistrates have been responsible for the preparation of these cases.

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7. *See* S. Flanders, The 1979 Federal District Court Time Study (Federal Judicial Center 1980), which weights cases according to judges' reports of the time it takes to perform certain tasks.

8. For a more detailed discussion of these findings, see Seron, *supra* note 2, at 47–48, 57–58.

TABLE 4
Misdemeanor and Petty Offense Cases Disposed of by Magistrates During the Twelve-Month Period Ended June 30, 1983

District	Petty Offense	Misdemeanor
Large courts		
N.D. California	4,722	263
N.D. Georgia	543	281
E.D. Pennsylvania	46	296
S.D. Texas	258	3,075
Medium courts		
E.D. Kentucky	9	262
E.D. Missouri	34	380
D. Oregon	15	351
Small courts		
E.D. North Carolina	158	2,330
E.D. Washington	16	63

SOURCE: Administrative Office of the U.S. Courts, 1983 Annual Report of the Director at table M-2.

Table 4 shows the number of petty offense and misdemeanor cases reported by magistrates for the period ended June 30, 1983.[9] These criminal cases represent a part of the initial responsibility of these judicial officers.[10] Though parties must agree to have a magistrate dispose of a misdemeanor case, such consent is often a matter of course; it is rare for a district court judge to try a misdemeanor case.[11] The number of petty offense and misdemeanor cases is often a function of the number of military bases, national parks, and other federal facilities in a district—hence, the large number of filings in Northern California, Southern Texas, and Eastern North Carolina. The misdemeanor caseload in Southern Texas is, in addition, a function of the district's location on the border; the majority of the district's misdemeanor cases originate in Brownsville and are the exclusive responsibility of the two magistrates assigned to this division. In these districts, full-time magis-

9. Note that the figures in table 4 are reported by each magistrate and were prepared by the Magistrates Division of the Administrative Office of the United States Courts (AO), whereas data from table 3 are reported by each clerk's office and were prepared by the AO's Statistical Analysis and Reports Division (SARD).

10. Magistrates of course continue to be responsible for all commissioner duties; *see* 28 U.S.C. § 636(a)(1). Here, too, it should be noted that the amount of time required of magistrates to perform commissioner duties may vary considerably from district to district. Indeed, in districts with a large felony caseload, magistrates' duties may be limited to the handling of pretrial matters through arraignment.

11. *See* 28 U.S.C. § 636(a)(2),(3). Reflecting this pattern, as of 1981 misdemeanor cases were not included in the calculation of judges' management statistics.

trates, with some help from part-time magistrates, must first dispose of a rather large number of misdemeanor cases before they are available to assist judges with other matters. By contrast, in the other districts selected for this project, the petty offense and misdemeanor docket is noticeably smaller. The figures in table 4 underscore an important point: A district's opportunity to have magistrates assist judges depends on the burden resulting from petty offense and misdemeanor cases and Social Security and prisoner petitions.

TABLE 5
Terminations Profile for Districts, 1983

District	Civil Terminations	Terminations per Judge[1]	Median time: Civil[2]	Crim. Terminations	Terminations per Judge[3]	Median Time: Crim.[4]
Large courts						
N.D. Cal.	6,865	572	3	558	47	4.8
N.D. Ga.	3,355	305	8	515	47	5.0
E.D. Pa.	6,123	322	7	624	33	5.4
S.D. Tex.	5,497	423	10	2,186	168	4.2
Houston	4,762	529	—	410	46	—
Corpus Christi	239	239	—	240	240	—
Laredo/Victoria	136	136	—	443	443	—
Brownsville	360	180	—	1,093	547	—
Medium courts						
E.D. Ky.	2,133	388	21	252	46	5.0
E.D. Mo.	2,719	544	5	381	76	4.4
D. Or.	2,221	444	7	195	39	5.7
Small courts						
E.D.N.C.	2,153	718	4	257	86	3.8
E.D. Wash.	806	403	8	198	99	3.9

SOURCE: Figures in this table are from Administrative Office of the U.S. Courts (AO), Federal Court Management Statistics 1983; AO, 1983 Annual Report of the Director.

NOTE: Median time, from filing to disposition, is reported in months. Criminal terminations are original proceedings of felony cases, reported by number of defendants, terminated as of June 30, 1983.

[1]The average number of civil terminations for all judges for the period ended June 30, 1983, was 418 cases.

[2]The median time to disposition for all civil cases for the period ended June 30, 1983, was 7 months.

[3]The average number of criminal terminations for all judges for the period ended June 30, 1983, was 41 cases.

[4]The median time to disposition for all criminal cases for the period ended June 30, 1983, was 4.9 months.

Table 5 reports terminations, terminations per judgeship, and median time from filing to disposition for civil and criminal cases. For the year ended June 30, 1983, the national average for civil terminations per judgeship was 418 cases, and the median time was 7 months. Of the districts selected for this project, Eastern North Carolina, Eastern Missouri, and Northern California dispose of

more cases per judge than the average and are at the "fast" end of the national spectrum; indeed, Northern California and Eastern Missouri report faster median times for civil than for criminal cases. At the "slow" end, Eastern Kentucky disposed of 388 civil cases per judge with a median time of 21 months. For the year ended June 30, 1983, the national average for criminal terminations per judgeship was 41 cases, and the median time was 4.9 months.[12] On the criminal side, the variation among districts is not as great—no doubt a function of the Speedy Trial Act. Reflecting somewhat larger criminal caseloads (see table 3), Southern Texas (124) and Eastern Washington (99) report noticeably more terminations per judgeship than the other districts.

Conclusion

The districts vary in a number of important dimensions—from the demands generated by a district's caseload, over which a court has very little control, to decisions within a court about how to assign work to magistrates. Previous research has shown that in some districts magistrates' duties touch the full range of the courts' caseloads, while in others their activities are much more circumscribed and limited. The Magistrates Act and its amendments provide a great deal of leeway for using this judicial resource, and the day-to-day practices of judges underscore the range of possibilities.

12. The number of civil terminations per judgeship is derived from the number of all civil cases terminated (*see* Administrative Office of the United States Courts, 1983 Annual Report of the Director, at table C-1); the number of criminal terminations per judgeship is derived from the number of felony cases terminated (*see* Annual Report at table D-1).

III. COURT ADMINISTRATION AND THE ROLE OF MAGISTRATES

In the not-too-distant past, the court included a judge, law clerk, bailiff, secretary, clerk of court, and courtroom deputy; administrative and management styles evolved in response to very specific and idiosyncratic needs. Indeed, the federal judiciary might have been described as a loosely connected network of judicial and administrative activities.

Today, a description of the district court includes, among others, magistrates and their law clerks, district court executives, and computer specialists. As these resources have been made available, judges have struggled to strike an appropriate balance between the need to better manage these additional resources and the judiciary's commitment to collegial administration; fueling this endeavor is a very real concern among judges to avoid the pitfalls of bureaucratization as they confront the inevitable demands of a larger and more complex organization. This tension is seen in the many ways districts have used their clerk of court and the range of responsibilities delegated to this office, as well as in some districts' recent experiments with referring administrative questions to a district court executive—a nonjudicial officer.[13]

This concern is not limited to the administrative demands of the court operation, as, for example, recent debates about rule 16 reveal. Increasingly, judges are being called upon to remove their "umpire's" hat[14] and take more active and direct control over their cases—to monitor and to manage their cases, to determine a schedule, to set deadlines for discovery, and to have a final pretrial order completed prior to trial. Some judges are worried that these changes will turn them into managers of a caseload process in which they supervise steps prepared or executed by others.

13. *See* P. Dubois, Administrative Structures in Large District Courts (Federal Judicial Center 1981); W. Eldridge, The District Court Executive Pilot Program (Federal Judicial Center 1984).

14. M. Frankel, *The Search for Truth: An Umpireal View,* 123 U. Pa. L. Rev. 1031 (1975). *But see* R. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition,* 69 Cal. L. Rev. 770 (1981); W. Schwarzer, *Managing Civil Litigation: The Trial Judge's Role,* 61 Judicature 401 (1978).

The presence of magistrates and the expansion of their jurisdiction go to the core of this concern. On the judicial side, magistrates have the statutory authority to render decisions, subject to various forms of review or supervision by a district judge, thereby introducing a potential for modifying the process of case disposition at the trial court level. Magistrates also are judicial officers who must be specially provided for in internal operating procedures, thereby establishing two groups of judicial officers involved in the administrative activities of the district court.

A court's approach to administration and case management sets the stage for the roles magistrates will play. There is no one way in which magistrates have become a part of the judicial family, and there is little evidence to suggest that their presence means an inevitable step toward bureaucratization; rather, the system that evolves depends on the way in which a district acts, or does not act, to facilitate innovation.

Let us begin by looking at the administrative role of magistrates: How are magistrates being integrated into the internal and external administration of the district, that is, the operation of the court and bench–bar relations? Do magistrates participate in decision-making procedures, for example, through membership on committees of the court? How are policy decisions conveyed to magistrates? To whom does a chief magistrate, if there is one, report? Are administrative procedures formal or informal? Are magistrates represented in the local rule-making process?

To answer these questions, we asked the chief judge and chief (or senior) magistrate in each district a series of questions about the district's (1) general administration, (2) procedures for informing magistrates of decisions, and (3) local rule making; in addition, attorneys were asked about the bar's participation in local rule making.[15]

Meetings and Liaison with Magistrates

Meetings among judicial personnel are held in all districts selected for this study except the Eastern District of Kentucky (see table 6 for an overall summary); echoing Flanders's earlier findings,[16] we found that the format, frequency, and structure of these

15. For the questions addressed to judges and magistrates, see part C of each questionnaire in appendix A; for the questions addressed to lawyers, see question 8 of their questionnaire.

16. S. Flanders, Case Management and Court Management in United States District Courts (Federal Judicial Center 1977).

meetings vary considerably—even among the large courts. For example, there are monthly meetings in Northern California and Northern Georgia, weekly lunch meetings in Eastern Pennsylvania, and bimonthly meetings in the Houston division of Southern Texas.[17] In all of these districts the clerk serves as secretary. Judges in the Eastern District of Missouri started meeting only recently; the meetings are called at the discretion of the chief judge.

Magistrates in Oregon, Eastern North Carolina, and Eastern Washington participate in meetings of the court that also include the clerk. In Oregon, all attendees participate, and decisions are usually reached through consensus, unless the issue (e.g., a personnel change) requires a vote of the court.

In the Eastern District of North Carolina there are monthly meetings, which judges, magistrates, and the clerk attend. All administrative questions are decided collectively by the parties in attendance; typically, an issue or suggestion will be raised and discussed over the course of a number of meetings until a consensus on how to proceed is reached.[18] The clerk and magistrates are equal participants in the discussion, except for the occasional situation in which the decision is the sole responsibility of Article III judges (e.g., selection of a new probation officer, procedures for appointment of a new magistrate). The court has delegated a great deal of authority to the clerk, who often uses these meetings as an opportunity to get feedback on new ideas for managing the docket. Because of the case management procedures in effect, a policy decision affecting the court inevitably affects the magistrates, and these meetings ensure that all individuals participate in any changes.

Although policy decisions are made informally as the need arises in the Eastern District of Washington, the magistrate does participate. As the chief judge commented, if he must make an administrative decision, he will often walk across the hall and talk about it with his colleague, walk over to the magistrate's office and discuss it with him, talk with the clerk if appropriate, and then make a decision informed by their suggestions. Thus, the magistrate is included in whatever administrative questions arise.

In the remainder of the courts visited, there are a variety of routes for informing magistrates of relevant decisions by judges.

17. Judges from all divisions in the Southern District of Texas meet about twice a year; however, day-to-day administrative decisions are made in each division.

18. As an example, the chief judge reported that he proposed an interesting procedure for scheduling criminal trials, which he learned about from a colleague in another district; he presented the idea at a meeting, and then, over the course of three or four meetings, the court decided to experiment with the idea.

Table 6 indicates the courts that have designated a chief or administrative magistrate; in keeping with court traditions, the chief magistrate is the senior magistrate in these districts. Although all chief magistrates reported that they never attend a meeting of the court, they often serve as a conduit between judges and magistrates. For example, the chief magistrate in Eastern Missouri reported that the chief judge will call him about something and ask that he pass on the information to the other magistrates. This is a very typical task for the chief magistrate. Two of the selected districts (Northern Georgia and Eastern Pennsylvania) have designated a magistrate committee composed of judges only; in both of these districts, however, the committee is not actively involved in administrative issues affecting magistrates. Instead, both chief judges play an active role in monitoring magistrates' workload. Typically in these districts, a decision made at a judges' meeting will be passed on to the magistrates via the clerk. Northern California and Southern Texas have designated a liaison judge who has primary responsibility for oversight of the magistrates; in both courts, the liaison judge tries to resolve as much as possible without involving the chief judge (e.g., space allocation, assignments).

In those courts that have a chief magistrate, relevant decisions made by the court are transmitted from either the chief judge or the liaison judge to a magistrate, who then passes them along to the other magistrates. The magistrates themselves do not have direct input into the decision-making process. Although the procedure often is quite informal, these courts have opted for a management practice that rests upon a chain of command rather than a collective decision-making process involving magistrates.

Not all court decisions are made at meetings; the informal channels of a court are often as important as more formal ones. The judges in Northern Georgia have invited magistrates to join them in the judges' lunchroom, where, it is reported, many innovative ideas are discussed by judges and magistrates that are then enacted by the judges at their regularly scheduled meetings; for example, an important modification in the workload of magistrates was proposed initially by the magistrates over lunch and then acted upon by the judges through an order of the court. Once the decision was made, the clerk informed the magistrates of the court's decision. All magistrates reported that they feel quite comfortable at these lunches and use it as a forum for raising issues of concern to them. While working relations between judges and magistrates are relatively formal in Northern Georgia, the opportunity

TABLE 6
Administration of Magistrates

District	Practices for Meetings: No Local Meetings	Practices for Meetings: Magistrates Attend	Practices for Meetings: Magistrates Do Not Attend	Chief Magistrate: Yes	Chief Magistrate: No	Link to Magistrates: Chief Judge	Link to Magistrates: Liaison Judge	Link to Magistrates: Magistrate Committee
Large courts								
N.D. California			X					
N.D. Georgia			X	X		X	X	
E.D. Pennsylvania[1]			X	X		X		X
S.D. Texas			X	X	X	X	X	X
Medium courts								
E.D. Kentucky	X							
E.D. Missouri			X		X			
D. Oregon		X		X	X	X		
Small courts								
E.D. North Carolina		X			X			
E.D. Washington		X			X			

[1]By local rule, the presiding magistrate in the Eastern District of Pennsylvania is designated an administrative magistrate.

to meet informally over lunch ensures that judges and magistrates are aware of each other's concerns.[19]

In a similar vein, the chief judge in Northern California appointed a committee to study settlement practices; the committee included a judge and magistrate who have a particular expertise in the area. As part of their responsibilities, they were asked to prepare a talk for the court on effective strategies in settlement conferences. While such a committee involves a limited number of judicial officers and does not ensure an ongoing exchange, the practice can facilitate an environment for discussion of some common concerns of judges and magistrates.

These findings demonstrate that a district's process for reaching administrative decisions can vary considerably and is not necessarily tied to the size of the court or even the range of duties. In three of the districts—Oregon, Eastern North Carolina, and Eastern Washington—the court has incorporated magistrates into the decision-making process directly and has rendered the possibility of bifurcating the procedure for deciding administrative matters a moot point. The practices of Northern Georgia illustrate that the channels for communication between judges and magistrates can take various forms and that informality need not, as the folklore sometimes suggests, be limited to small or even medium courts. The administrative styles in these districts and the degree to which magistrates join in the decision-making process foreshadow themes that go beyond the dissemination of administrative or procedural information.

Promulgation of Local Rules

The modification of a district's local rules may provide an occasion for discussion among judges, magistrates, and practicing attorneys. In some instances the project may become the joint effort of judges and magistrates with comment from practicing attorneys. Underscoring the usefulness of this approach, one attorney, echoing the sentiments of many, commented that the formality of a judge's courtroom and chambers is an important variable in moving cases, but a more informal exchange is valuable so that the

19. On June 24, 1982, the court determined that the magistrates' caseload was not moving in an expeditious manner and the court ordered that magistrates' section 636(b) responsibilities be narrowed until such time as the situation improved. The order was removed in August 1983. Obviously a decision of this sort can create a tense situation; while the decision by the court took its temporary toll on relations between judges and magistrates, it was reported that the opportunity to continue meeting in an informal setting helped the court through this difficult period.

bar understands and appreciates the rationale behind the district's procedures.

Table 7 reports magistrates' involvement with the promulgation of local rules for the districts selected. Thus, in all districts but Eastern Pennsylvania and Eastern Kentucky, magistrates have some input into local rule making.[20] The scope of their responsibilities varies considerably, as the findings in table 7 reflect. Until quite recently, the Eastern District of Missouri did not include the bar in its procedure for modifying local rules. A bar committee, however, has now been invited to participate in rule changes as the court deems necessary. In addition, magistrates have been asked to draft rules that directly affect their responsibilities; for example, magistrates in Eastern Missouri drafted a rule on pro se representation.[21] In the Northern District of California, the original rules outlining magistrates' responsibilities and assignment practices were drafted by the chief magistrate; presently, a judge, with input from a bar committee, is responsible for modifications in local rules.

TABLE 7
Magistrates' Input in Local Rule Making

Input in Changes	No Input in Changes
N.D. California	E.D. Kentucky
N.D. Georgia	E.D. Pennsylvania
E.D. Missouri	
E.D. North Carolina	
D. Oregon	
S.D. Texas	
E.D. Washington	

Participation in Drafting Local Rules	Comment on All Local Rules	Participation in Magistrates' Rules Only
E.D. North Carolina	N.D. Georgia	N.D. California
D. Oregon	S.D. Texas	E.D. Missouri
E.D. Washington		

When changes are made in local rules in the Southern District of Texas, the rules committee (composed of judges only) requests com-

20. The Eastern District of Kentucky does not have local rules; in the last few years, however, three judges have adopted similar standing orders that describe their pretrial procedures and time frames for preparation for trial. These judges did not involve magistrates in the promulgation of these orders. In all instances, these judges adopted procedures suggested by the Federal Judicial Center for the monitoring of cases. Lawyers at the divisions where the orders are in place gave these changes high marks.

21. Most pro se representation occurs in prisoner cases, which are a primary responsibility of magistrates in Eastern Missouri.

ment from magistrates. It is reported that the court has not been inclined to include magistrates in the revision of local rules.

During the period of this study, the Northern District of Georgia undertook a major revision of its local rules; a former law clerk was retained by the court for this project. Working with a committee of judges, she reviewed, synthesized, and developed a new set of local rules; in the course of this major revision, magistrates' suggestions were actively solicited, as were those of some members of the bar. Though magistrates' input was limited, their suggestions were actively sought and considered—particularly in those areas of direct relevance to the responsibilities of these judicial officers.

In keeping with the general approach to administration of the district, magistrates in Eastern North Carolina, Oregon, and Eastern Washington are active in the local rule-making process. For example, in 1978 Eastern North Carolina undertook a major revision of its local rules; the committee was chaired by the clerk, and comment was solicited from the bar. Subsequent rule changes have been drafted by the chief judge and the clerk and approved at court meetings, which include magistrates. All three districts actively solicit suggestions from lawyers.

The approach in these districts has had a dual effect; internally, it has fostered the courts' belief that greater involvement of the magistrates will enrich the administration of the court, at least in those areas in which magistrates have substantial responsibility; externally, these courts appear to have decided that rule making provides an opportunity to enhance and solidify the magistrates' position with the bar through a visible consultation of their views and experience.

Eastern North Carolina, Oregon, and Eastern Washington share another quality that is worth noting. In each of these districts, the bench took active and conscious steps to educate the bar about the tasks that magistrates may perform. For example, in Oregon, which was a pilot court for the magistrate program, the judges held seminars, early in the adoption of the system, with groups of attorneys to explain how the court intended to use magistrates. In Eastern Washington, the magistrate is included in all bench–bar meetings, and the chief judge has used these occasions to explain the magistrates' role to the bar. In Eastern North Carolina, when a new magistrate position was added, the court met with the merit selection committee and underscored its interest in selecting a highly qualified candidate; attorneys' comments on the selection process corroborated the court's description.

Conclusion

It would be naive to suggest that steps taken by some of the courts described in this chapter are minor; indeed, these steps represent a fundamental shift in the nature and scope of court administration. Clearly, a whole series of new questions has been raised: Who is to make administrative decisions about how the court operates? Where does an administrative decision end and a judicial one begin? It is, however, equally naive to assume that such steps will undermine a court's camaraderie or destroy the nature of the judicial process. These findings suggest that as districts take more steps to extend the scope of the judicial family—from only judges to judges, magistrates, the clerk, and in some instances the bar—there is a strong collegial base for administering the court, which in turn helps to ensure a more congenial work setting for all participants. Those very steps that some claim will undermine the unique qualities of the judiciary—rules, standard operating procedures, committees, and demarcated lines of duty and responsibility—may not be the cause of a less satisfactory work setting.[22]

22. For a discussion of this theme from the standpoint of judges, see P. Higginbothem, *Bureaucracy: The Carcinoma of the Federal Judiciary,* 31 Ala. L. Rev. 261 (1980). For a discussion of similar points from the standpoint of legal scholars, see O. Fiss, *The Bureaucratization of the Judiciary,* 90 Yale L.J. 1442 (1983); J. Resnick, *Managerial Judges,* 96 Harv. L. Rev. 376 (1982).

IV. PRETRIAL CASE MANAGEMENT

A judge's role in managing a case raises complex and debated issues that often turn on proposed and implemented changes in rule 16 of the Federal Rules of Civil Procedure. Indeed, the recent changes in rule 16 sought to tighten up the pretrial conference by encouraging the court to monitor case processing from an early stage. The change in rule 16 that requires a scheduling component in case management evolved from empirical work suggesting that early and aggressive management of the civil docket is closely associated with shorter median time to disposition.[23] Underscoring these developments, Chief Judge Robert Peckham has written, "Until quite recently the trial judge played virtually no role in a case until counsel for at least one side certified that it was ready for trial."[24] Of late, however, the court typically enters the scene at a much earlier stage; there is now the expectation that the contested issues will be worked out, that there will be a plan for discovery, that settlement may be discussed, and that there will be a deadline for the filing of a proposed joint final pretrial statement.

Beyond these points, however, there is some disagreement concerning the most appropriate officer for the actual tasks: Should these tasks be performed by the judge assigned to the case, or could they be delegated to a magistrate? Supporting the position that oversight should be monitored personally by the officer assigned to the case, Judge William Schwarzer has written that carefully tuned management of a case "contemplates that the judge, having familiarized himself with the file and the controlling law and discussed the case informally with counsel, will then supply the appropriate degree of guidance based on his judgment and experience."[25] Paralleling Judge Schwarzer's claim, the commentary on the change in rule 16 suggests that it is "preferable" for the "judge" assigned to the case to oversee scheduling.[26]

23. *See* Flanders, *supra* note 16.
24. Peckham, *supra* note 14, at 770.
25. Schwarzer, *supra* note 14, at 406.
26. *See* "Notes of Advisory Committee on Rules," in Federal Rules of Civil Procedure at 47–50 (West 1983). The changes in the rule, as well as the notes, reflect a recognition that there are some types of cases that do not require an early pretrial conference; districts are encouraged to specify through local rules the exempt categories.

In the process of this study there were others who suggested, however, that pretrial work can be delegated effectively to a magistrate and does not require the direct oversight of a district court judge. They claim that a judge's time should be limited to those activities that only a judge can perform, for example, trying cases; therefore, the district's support team, particularly magistrates, should handle the necessary and important tasks of preparing and monitoring cases prior to trial. Reflecting this position, recent amendments to the Magistrates Act clarified the kinds of motions that magistrates are authorized to hear and decide and the appropriate standard of review to be applied. The advocates of this position claim that the court needs to set clear procedures ensuring early case management but that once in place, they need not be monitored by a judge.

In part, this debate is the result of judges' experiences in different settings; for example, it may be unrealistic to hold an early status conference in court when lawyers are located hundreds of miles apart and quite feasible if attorneys are a few blocks from each other. The variation in size, geography, and tradition of district courts suggests that it would be impractical to propose that one arrangement for handling pretrial case management is equally adaptable to all settings.

Granting that aggressive monitoring is a necessary precondition, how can magistrates be used in a manner that comports with sound case management? An organizing premise of this chapter is that there are various strategies for early case management and for the use of magistrates. It is thus appropriate to consider each district's approach to pretrial case management and the extent to which judges within the district have adopted various procedures.[27]

The discussion is divided into two sections: (1) local rules for scheduling cases and the variations in judges' practices and (2) the use of magistrates in early case monitoring.

"Fixed-Time" Versus "Case-Specific" Rules

A recent study of districts' steps to promulgate local rules complying with rule 16 discloses that courts' interpretations of the federal rule requirement vary widely—from the view that the requirement is optional, to the belief that existing local rules were in compliance, to the actual introduction of some new practices.[28] Districts selected for this project reflect these variations; for example, Eastern North Carolina felt quite comfortable with its procedures, whereas Northern Georgia, in the midst of a massive project to revise local rules, has spent a great deal of time reworking the scheduling procedure for civil cases.

Elaborating on the various ways that districts have interpreted rule 16, Weeks suggests that local rules on scheduling can be grouped initially into two clusters: "fixed-time" rules whereby the "maximum time allowable [for working out scheduling orders] does not differ from case to case" and "case-specific" rules that "provide individualized deadlines," which may in turn be broken down by two characteristics—those by which "the judge may have a form that uniformly structures pretrial behavior, but allows for the entering of an appropriate deadline for each phase of the pretrial process," and those by which counsel are required to work out a schedule that is submitted to the court for approval.[29] Case-specific rules can be thought of, then, in terms of whether they rest upon court-drafted or counsel-drafted procedures.

Table 8 shows the types of scheduling rules employed by districts selected for this study;[30] a quick overview reveals that most of the districts have adopted rules that leave actual implementation to the discretion of the judge assigned to the case. Interestingly, however, the findings reported in table 8 also disclose that judges in small, medium, and large courts have adopted uniform procedures.

Fixed-Time Rules

The local rules of Northern Georgia and Oregon spell out clearly the time frame for early case management. In the Northern District of Georgia, local rules specify that, initially, parties must certify that they have made a good-faith effort to settle the case within forty days of filing; if this effort is unsatisfactory, then all motions must be filed no later than one hundred days from the date the complaint was filed. The rules specify the time frame for the filing of a joint pretrial order and the circumstances under which additional pretrial conferences will be held. These rules set

27. *See* L. Silberman, *Masters and Magistrates, Part II: The American Analogue,* 50 N.Y.U. L. Rev. 1297 (1975), which presents an early discussion of the feasibility of dividing pretrial tasks between judges and magistrates.

28. N. Weeks, District Court Implementation of Amended Federal Civil Rule 16: A Report on New Local Rules, at 15 (Federal Judicial Center 1984). This study concludes that there are important reasons for district courts to adopt local rules implementing the amended rule 16.

29. *Id.* at 3.

30. The discussion that follows is based upon a review of each district's most recent local rules on scheduling, pretrial conferences, and final pretrial orders; in addition, the clerk of court for each district was interviewed about any additional scheduling practices that are not spelled out clearly in the local rules.

TABLE 8
Case Management Practices and Scheduling Procedures

Nature of Practices	Scheduling Procedure		
		Case-Specific	
	Fixed-Time	Court-Drafted	Counsel-Drafted
Uniform among judges	N.D. Georgia D. Oregon	E.D. Washington	E.D. North Carolina
Varied among judges		E.D. Kentucky (Covington, Ashland & Pikeville)[1] E.D. Missouri E.D. Pennsylvania S.D. Texas	

[1]The Eastern District of Kentucky does not have local rules; judges at three divisions have instituted their own standing orders that require a preliminary pretrial conference, a status conference, and a final pretrial conference.

fixed time periods within which parties must prepare a case; the judge is not required to meet with counsel. In practice, the local rules assume that a judge will play a passive role at this early stage, with counsel bearing the burden of completing scheduling within a specified period of time and preparing a standard final pretrial statement. In adopting these rules all judges have agreed to conform to the same set of practices.[31]

The civil-case management plan for Oregon sets out the time frame within which a case must be prepared. From the date of filing, counsel have 120 days to complete discovery and 150 days to file a joint pretrial order. Here, too, there is a clear statement that the case must be prepared by counsel within a specified period of time; therefore, the initial burden is with counsel, and a judicial officer (a judge or magistrate) intervenes only if there is a failure to comply with the procedure. Thus, the court plays a passive role unless circumstances dictate otherwise.

31. These rules were adopted by the court in June 1984, to go into effect January 1, 1985; however, most judges have been using a similar set of procedures for some time, in part because the court experimented with various approaches before these rules were adopted. Therefore, these rules represent a fairly recent set of changes, and one may be justifiably skeptical about the claim that all judges will comply. There is strong evidence to suggest, however, that this district will indeed operate in a uniform manner; first, the district already has uniform practices for the handling of criminal cases; second, the new standard pretrial order will be distributed centrally over the signature of the clerk of court rather than from each judge's chamber over the signature of the courtroom deputy.

Case-Specific Rules: Court-Drafted

In this group of districts, local rules specify that the court will order an initial pretrial conference to map out the case, clarify issues in dispute, set discovery cutoff dates, raise settlement possibilities, and, in most instances, set a date for trial. In the Eastern District of Pennsylvania, local rules also specify that an initial conference will be called within forty-five days of filing. More typically, the clerk sends out a standard order setting a date for a status conference in sixty to ninety days from the date of filing, depending upon the assigned judge's preference. In other words, although the local rules specify time frames for case management steps, each judge enforces them according to an individual style. Reflecting this variation, some judges reported that they require counsel to meet in court, while others reported that they use teleconferencing wherever possible; a judge in Eastern Pennsylvania and another in Northern California reported that they use teleconferencing for the initial status conference in the majority of their cases. Whether a conference is conducted by telephone or in person, however, these local rules express an implicit preference for early contact between the parties and the judge assigned to the case.

In Eastern Washington, both judges report that they follow essentially the same practice and hold an early status conference. They begin by setting a date for trial and work backwards to the date for filing a joint pretrial statement and for cutting off discovery. The actual calendaring of conferences is done by the courtroom deputy but is overseen and adjusted as needed by the clerk of court.

There are no local rules in the Eastern District of Kentucky. Three judges believe that it is counsel's responsibility to certify to the court when a civil case is ready for trial. On the other hand, three judges have introduced standing orders outlining the pretrial procedures they will follow, from a scheduling conference to a final pretrial conference; thus, a common approach is beginning to develop in the district.

Case-Specific Rules: Counsel-Drafted

When issue is joined in the Eastern District of North Carolina, the court assigns counsel initial responsibility for drawing a proposed scheduling order. The clerk sends out a standard order that gives counsel twenty days to submit a joint statement specifying the schedule of the case, including dates for discovery cutoff and the time period within which all motions must be filed. If the par-

ties do not comply, they are sent a reminder to file appropriate forms within seven days; if parties are still not able to agree, the clerk, who is also a part-time magistrate, schedules a conference to resolve the problem.

The Magistrate's Role in Scheduling

Table 9 summarizes judges' practices for delegating scheduling assignments to magistrates for the selected districts. Overall, judges reported that they prefer to handle their own scheduling and preparation of a final pretrial order because it provides an opportunity to get a sense of the scope of the case, to meet counsel, and, for some, to raise settlement questions.[32] Indeed, judges who in some instances are quite supportive of delegating other duties to magistrates report that scheduling needs to be supervised by the individual trying the case; elaborating, many commented that an initial pretrial conference also provides the judge with an opportunity to ensure counsel that the case will move according to an agreed-upon plan. Within Eastern Pennsylvania, however, there is a minority of judges who delegate this responsibility to magistrates; judges in Eastern Washington reported that they will request a magistrate's assistance if they have a calendaring conflict. On the whole, then, judges oversee scheduling in these two districts, but the picture is not absolutely uniform. Interestingly, in these districts that use various approaches to delegating scheduling, lawyers consistently viewed scheduling as a phase of case processing that needs to be overseen by the individual who is to try the case.

TABLE 9
Magistrates' Input in Scheduling

Monitored by Judge	Delegated to Magistrate	Mixed
N.D. California	E.D. North Carolina	D. Oregon
N.D. Georgia	S.D. Texas, Laredo	
E.D. Kentucky	S.D. Texas, Brownsville	
E.D. Missouri		
E.D. Pennsylvania		
S.D. Texas, Houston		
S.D. Texas, Corpus Christi		
E.D. Washington		

32. This position provides support for the commentary on the new rules discussed earlier; see note 26 *supra*.

According to table 9, there are settings in which magistrates are consistently involved in the scheduling process. In the Eastern District of North Carolina, magistrates are, for all practical purposes, the pretrial officer for the case; although the case is assigned randomly to a judge and magistrate at filing, the judge does not, except under unusual circumstances, see the case until it is ready for trial. Since it is the view of this court that judges' time should be reserved for what only they can do, judges have delegated all pretrial preparation to magistrates, including scheduling. In part, this strong commitment to a de facto division of labor between judges and magistrates evolves from a very practical set of problems; until May 1980, the district had one active judge and magistrate who worked exclusively on the criminal docket (during this period, the district also made special use of visiting judges). Echoing a repeated concern, one attorney commented that "five years ago one could not get a civil case heard in the Eastern District of North Carolina." Today, the situation is quite different (see table 5); the attorneys interviewed felt that the current arrangement works because the civil caseload is no longer pushed to the back burner and that this change is, in large measure, due to the active involvement of magistrates. Indeed, there were a few comments that cases were overmonitored.

In like manner, there is a strong commitment to the full use of magistrates in Oregon. Civil cases are unassigned until a final pretrial order is lodged; during this initial phase, a disputed point will be heard by the on-duty judicial officer, who may be a judge or a magistrate. In both Eastern North Carolina and Oregon there are fixed time frames within which counsel must act, so the court only intervenes if there is a problem. In Oregon, attorneys also reported that they found oversight by a magistrate feasible and that the consistency of the court's procedure ensured a predictable environment for their practice.

The Brownsville and Laredo divisions of the Southern District of Texas have large criminal dockets, which leave judges with little time for their civil cases. In response to this situation, judges at the Brownsville division send out a docketing control card, specifying dates for pretrials, which is then monitored by the magistrates; all continuances, however, must be approved by the assigned judge. At the Laredo division, the magistrate sets dates and issues scheduling orders; indeed, the magistrate's most important task is to ensure that lawyers' attention to a case is not diverted. The views among attorneys at these divisions were, however, generally unfavorable: In both divisions many commented that it is pointless to monitor a

case closely when a judge cannot get to trial because of the demands of the criminal calendar.[33]

Conclusion

In Eastern Pennsylvania, Northern California, Southern Texas at Houston, and Eastern Missouri, judges generally share a strong commitment to early management of a case. Practices of most of these judges reflect the overall thrust of rule 16; judges in these districts report that they personally monitor the initial pretrial scheduling and the final pretrial conference, though not all meetings are face to face at the initial stage. Beyond this, there is wide variation in management styles among judges. Reflecting this variation, judges in these districts vary widely in their approaches to magistrates—from those who prefer to treat them as additional judges to those who prefer to delegate tasks in a specialized area.

There are, however, some interesting exceptions: The procedures that are in place in Northern Georgia reflect a strong commitment on the part of the court to ensure that all judges manage their dockets in a similar fashion, including the use of a standard final pretrial order. Though the practices in Eastern Washington are not as elaborate as those of Northern Georgia, here, too, judges have developed uniform pretrial procedures. In both districts, moreover, there is a commitment to personally monitor the scheduling of a case.

Like those of Northern Georgia and Eastern Washington, the procedures in Eastern North Carolina and Oregon are uniform; however, the judges take the position that magistrates are appropriate officers of the court to oversee and participate in the scheduling of a case, including the preparation of the final pretrial order. Judges in these courts have also taken a uniform approach to the use of magistrates in other aspects of case processing—from the resolution of discovery disputes to the appropriateness of hearing civil cases upon the consent of the parties.

At the other end of the spectrum, there is a group of judges within the Eastern District of Kentucky that considers it inappropriate for a judge to monitor a case prior to counsel's certification that they are prepared to go to trial; a group of judges in this district is, however, beginning to introduce scheduling procedures that comport with the rationale behind the recent changes in rule 16.

33. The Brownsville division was recently allocated a second magistrate slot, and, as a result, it is in the process of reworking its assignment practices. As part of this overhaul of procedures, attorneys will be notified by the clerk of the consent option; attorneys are beginning to take this route and have reported very favorable experiences.

V. MODELS FOR THE USE OF MAGISTRATES: ADDITIONAL JUDGE, SPECIALIST, OR TEAM PLAYER?

In conformity with the 1976 and 1979 amendments to the Federal Magistrates Act, most districts have taken steps to designate full-time magistrates to perform section 636(b) and (c) duties. Beyond this, districts have begun to develop strategies for using the services of these judicial officers to address other needs perceived by the courts. Most commonly, magistrates are handling Social Security and prisoner cases. In addition, however, magistrates are disposing of a wide variety of civil and criminal matters, including civil trials upon consent.[34]

The variety of duties performed by magistrates results from differences in the districts' approaches to the use of these officers and the ways in which judges determine that magistrates can be most effectively incorporated. Although the approach to magistrates may vary from judge to judge within a district, over the course of this project three models of magistrate use were identified—the magistrate as additional judge, the magistrate as specialist, and the magistrate as team player. The scope of the workload performed by magistrates is a reflection of the models adopted in each court.

The magistrate as additional judge. Some magistrates hear and decide their own civil caseloads, creating an environment whereby magistrates become, in practice, additional judges.

The magistrate as specialist. Some courts may have magistrates hear and recommend action on special areas of the civil docket, most commonly Social Security and prisoner cases. This allows magistrates to develop a specialty in an area where there is an ongoing and large demand. Other judges find it more effective to have magistrates develop an expertise in an aspect of pretrial case management, for example, discovery disputes in complex cases, settlement conferences, or posttrial negotiations determining attorneys' fees. In this model, judges may assign cases for a particular action as a matter of course.

34. See Seron, *supra* note 2, for an elaboration of the overall picture.

The magistrate as team player. Finally, some judges may elect to have a magistrate hear all pretrial matters (on either a regular or a selective basis) and determine when the assigned judge's assistance is necessary. In this model, the initial burden (either before or after the scheduling is worked out) for getting a case ready for trial is on the magistrate, and the judge only need intervene if some additional authority is required. The magistrate is, in practice, a pretrial judicial officer with responsibility for the gamut of issues that may arise at this stage.

A judge's approach to magistrates is, in part, an outgrowth of a court's commitment to uniform court administration as well as of each judge's predisposition toward early case management (see chapters 3 and 4). Therefore, in a district in which judges share a commitment to uniform pretrial practices, magistrates will, as a general rule, develop a role in the court that all judges agree upon. Worked out on a day-to-day basis, this may mean that magistrates are used as additional judges at times and as team players at others; in either instance, however, the practice will be the same for all judges. On the other hand, in a district in which judges have various approaches to pretrial practices, magistrates are more likely to be called upon to develop different roles that fit each judge's personal style and needs, and hence the role a magistrate plays will depend on the judge who makes the request.

Table 10 provides a summary of the discussion to this point. The

TABLE 10
Judges' Practices with Regard to Models for Magistrate Use

District	Additional Judge	Specialist	Team Player
Uniform practices among judges			
N.D. Georgia		X	
E.D. North Carolina	X		X
D. Oregon	X		X
E.D. Washington	X		X
Varied practices among judges			
N.D. California	X		
E.D. Kentucky		X	
E.D. Missouri		X	X
E.D. Pennsylvania		X	X
S.D. Texas		X	X
Houston			
Corpus Christi		X	
Brownsville		X	
Laredo			X
			X

findings show, for example, that all judges in Northern Georgia have adopted two models for the use of magistrates—specialist and team player—depending on the nature of the issue; on the other hand, the findings disclose that some judges in Northern California approach magistrates as additional judges while others use them as specialists.

In some instances, moreover, a unified decision on the part of the bench may be a prerequisite. For example, in Eastern Washington and Oregon a magistrate-as-judge model has emerged. It is reported that, in practice, magistrates receive a composition of cases (albeit smaller in number; see table 14) fairly similar to that of district court judges; in both situations, the evolution of this approach depended on judges' selecting especially well-qualified magistrates, introducing them to the practicing bar, and informing the bar about the roles and duties planned for these officers. At the same time, however, judges in each of these districts have taken quite different internal steps to ensure the implementation of this model.

Use of Magistrates: A Uniform Approach Among Judges

The discussion that follows traces judges' overall approach to magistrates' roles for those districts where judges share a common approach. The bar's response[35] is also discussed, with emphasis on attorneys' perceptions of magistrates as officers of the court.

Northern District of Georgia

Northern Georgia has extended to its magistrates responsibility for the preparation of all criminal cases. Magistrates are pretrial officers for all felony cases, rule on all nondispositive motions, and prepare reports and recommendations on all dispositive motions. It is the consensus of judges in this district that this procedure works smoothly, in large part because magistrates have become so familiar with the law in this area and write well-reasoned reports on preliminary matters.[36] Here, then, the district treats magistrates as team players in the preparation of felony cases.

35. Each attorney was asked whether he or she draws a distinction between judges and magistrates as court officers and, if so, how it is best characterized. See question 9 of the survey to attorneys in appendix A.

36. Underscoring the importance of collective decision making in this district, one judge reported a preference for preparing criminal matters in chambers, but would not modify the procedure to suit judges' individual preferences.

In addition, magistrates receive all Social Security and prisoner cases (see table 3) and write a report and recommendation for a judge. The judges feel that it is not effective to have a judge review the matter before it is assigned to a magistrate.

A number of years ago the court had a caseload crisis of truth-in-lending cases.[37] The court took collective action to have magistrates develop an expertise in this area: All truth-in-lending cases were assigned to a magistrate at filing for a report and recommendation. These filings have now tapered off and represent a small portion of magistrates' responsibilities as their specialized use has shifted with the demands of the docket.

This court has incorporated two models for the use of magistrates: (1) On the criminal side, magistrates are team players in the preparation of all felony cases, and (2) on the civil side, magistrates are specialists in areas of the docket that have posed an ongoing and significant demand for an extended period.

In light of the district's use of magistrates, lawyer interviews were drawn from the criminal bar as well as from attorneys with a civil practice, including Social Security and truth-in-lending cases.[38]

A majority of interviewees commented that they draw a clear distinction between a federal judge and a magistrate—in this district a magistrate is never mistaken for a judge; however, a distinct majority commented that the same respect is shown when one is before a judge or a magistrate, and that, in the areas where the court has delegated responsibilities, magistrates are the experts. The overall sentiment shared by attorneys is quite similar to that of the court's: Magistrates are not federal judges, but they are seen to make a pivotal contribution as judicial officers of the court.

District of Oregon

Oregon was a pilot district for the magistrate program and, at the time, had serious backlog problems due to protracted vacancies and growing filings. Confronted with this situation, the court determined to use magistrates as additional judges.[39] As the program

37. Beginning in 1976 a number of cases were filed in federal court challenging Georgia's procedures on financial loan practices, which resulted in a demanding truth-in-lending docket in the district; in late 1982 the Georgia legislature established new procedures that modified state practices, and, consequently, the number of cases filed in federal court diminished.

38. See appendix B for a description of the composition of the bar interviewed in each district.

39. From 1968 to 1974 there was some dispute concerning magistrates' jurisdiction. In 1974, following the Supreme Court's decision in Wingo v. Wedding, 418 U.S. 461, the district limited its assignments to magistrates. Following the 1976 and 1979

has evolved, all civil pretrial matters are decided initially by a judge or a magistrate and then randomly assigned to a judge or magistrate (assuming consent) when ready for trial. Underscoring the district's commitment to an organizational model in which magistrates are used as additional judges, the court has instituted a pretrial case management procedure controlled by a committee and chaired by a magistrate; in addition, the procedure ensures that magistrates are involved in case preparation, regardless of the inclinations of any individual judge.

Perhaps the most telling finding from interviews with attorneys in Oregon was the overwhelming consensus that consent to a trial before a magistrate under section 636(c) is considered a matter of course; indeed, most reported that it is "almost automatic." Attorneys reported that the instances in which they do not consent have more to do with legal strategy than with the ability of a magistrate to hear and decide the case.[40] Thus, defense attorneys typically commented that a case to be tried before a magistrate usually moves faster, and a defendant generally tries to avoid speed. For all practical purposes, however, the bar perceives magistrates as additional judges and, of equal importance, expressed a general comfort with this model so long as the magistrates are of a high caliber.[41]

Eastern District of North Carolina

The Eastern District of North Carolina also confronted serious civil backlog problems because of long-vacant judgeships. As of 1982, all judicial appointments were approved, and an additional magistrate slot was created and filled in 1983. Thus, for the first time the court had a full judicial staff to address the court's civil backlog.[42] To this end, the district worked out a program whereby

amendments, the district again modified its procedures to ensure that magistrates were fully used judicial officers.

40. It is interesting to note that these interviews were conducted prior to the Ninth Circuit's decision concerning the scope of magistrates' authority to hear and decide civil cases in the *Pacemaker* case, which originated in Oregon. Pacemaker Diagnostic Clinic of America v. Instromedix, Inc., 725 F.2d 537 (9th Cir. 1984).

A number of attorneys commented that they would be less inclined to consent if they were fairly certain that the case would be appealed to the Ninth Circuit. See chapter 7 for further discussion of magistrates' jurisdiction under section 636(c).

41. The number of cases in which parties have consented to have cases decided by magistrates more or less supports this general discussion; for a report of these numbers, see chapter 7.

42. Currently, the district has four judge and three magistrate slots; see table 2.

magistrates prepare all pretrial issues and judges dispose of all cases; the court developed an organizational model in which magistrates are team players, closely allied to judges and responsible for as many tasks as the statute permits. At the present time, magistrates are the pretrial judicial officers for all civil and criminal cases, including conferences to review the final joint pretrial statement in civil cases. As one judicial officer in the district put it, Eastern North Carolina operates on a "surgery theory of justice"—one preserves for an Article III judge what no one else has the formal authority to do. Like the judges in Oregon, judges in Eastern North Carolina collectively decided to use judges and magistrates in a consistent and predictable manner; unlike Oregon, however, Eastern North Carolina decided to divide case management tasks between magistrates and judges. As the plan has evolved and the bar has become more comfortable with the program, magistrates have been used as additional judges; this was not, however, the original intent of the plan.

The overwhelming consensus of the attorneys interviewed in this district is that the division of pretrial and trial tasks between magistrates and judges works smoothly and provides additional avenues for getting cases to trial and disputes resolved. Reflecting the sentiments of most interviewees, one attorney commented that the court would come to an abrupt standstill were it not for the magistrates' contribution to the smooth flow of cases. Another interviewee suggested that the procedure in place in Eastern North Carolina helps to ensure counsel that, should a case not settle, a final joint pretrial statement may be worked out—an interesting challenge to some traditional assumptions about the lawyer's view concerning the propriety of judicial passivity.

Overall, attorneys in Eastern North Carolina do distinguish between judges and magistrates as judicial officers of the court. When asked to elaborate on the nature of the differences between judges and magistrates, attorneys listed varying characteristics such as age, legal experience, access to legal support (i.e., law clerks), and formality in chambers; the ability of both groups of officers, however, was viewed as comparable.

Eastern District of Washington

There is only one full-time magistrate in Eastern Washington. When confronted with a potentially serious caseload problem, the court selected a recognized figure from the local legal community—a former professor and dean of the local law school. The court consciously sought a person whom the bar would be willing to have

decide civil cases upon consent of the parties, that is, to treat as an additional judge of the court.

In practical terms, the bar tends to view Eastern Washington—a district with two judges and one magistrate—as a three-judge court. Interviewees reported that they consent to a trial before the magistrate as a matter of course, adding that their willingness to do so rests on their respect for this magistrate but that this practice would be reevaluated should a different individual hold the position.[43]

At this stage it may be helpful to review some of the more salient findings that have emerged thus far. Perhaps the most crucial point concerns the variety of models that can be used to meet the specific needs of a court. Although each district uses magistrates in a different way, the choice has been carefully made to meet specific goals. Whether magistrates act principally as specialists, as team players, or as additional judges, their roles in these courts have been collectively decided on. Therefore, a magistrate's tasks do not vary from judge to judge in these districts; rather, magistrates play a courtwide role and rarely, if ever, are called on to respond to an individual judge's request. Interviews with practicing attorneys support the effectiveness of a consistent role, particularly when introducing significant modifications in the management of a court's cases.

Use of Magistrates: Variations Within a District

Judges in the districts discussed in this section use magistrates' support in different ways; the range of variation can be considerable.

Northern District of California

All practices in Northern California flow from the assumption that judges have unique case management styles that will result in substantially different needs for magistrates' services. Interviews with judges disclosed two models for using magistrates: the magistrate as specialist and the magistrate as additional judge.

There is a sense among judges that personal case management is a crucial ingredient; hence, there is a general reluctance to delegate pretrial matters to magistrates. Many judges, however, are open to the idea of having magistrates carry their own civil docket;

43. Most lawyers interviewed, as well as the judges in the district, are former law students of the magistrate.

they commonly raise the possibility of consenting to have a magistrate hear a case, some more forcefully than others. As one judge suggested, he does not "twist arms too hard." The bench has not presented this option to the bar through programs like those of Oregon and Eastern Washington.

Currently, one group of judges requests a magistrate's assistance in discovery disputes in all instances, another group does so selectively, and a third group never requests assistance. Not surprisingly, each group has strong views about using magistrates for this task. For example, some judges reported that teleconferencing with the parties is equally, if not more, effective than delegating these matters to magistrates; others claimed that with protracted and complex cases, one is likely to have "superlitigators" who require the authority of an Article III judge in order to control disputes.

Developing the magistrate as a settlement specialist attracts a substantial number of adherents. Over several years, one magistrate has developed a special expertise as a settlement officer, setting the tone for expansion of this specialized skill among magistrates.

In addition to having magistrates develop specialized discovery and settlement skills, the court calls upon magistrates to be additional judges. However, there is no districtwide agreement about the duties that are most appropriately the responsibility of magistrates.

The impression gleaned from interviews with attorneys in San Francisco is that they do not have a clear sense of exactly what magistrates do. An attorney's view of magistrates depends on which judges a lawyer has been assigned. Interviewees who had experience before a magistrate with section 636(c) cases commented that in these instances, the lines are clear and a magistrate will, as one attorney put it, "act like a judge."[44] One attorney had the sense that, in other circumstances, magistrates do not know quite who they are; that is, magistrates' perception of their role is not clear, and it is, therefore, problematic for attorneys.

Eastern District of Pennsylvania

Most judges in Northern California and Eastern Pennsylvania share a general commitment to personal oversight of early preparation of civil cases. In addition, like those in Northern California, magistrates in Eastern Pennsylvania are also used as specialists,

44. A distinct faction of attorneys reported pressure from some judges to consent to have a case tried by a magistrate. For further discussion of this issue, see chapter 8.

though for a different set of tasks. In this district almost all judges assign all Social Security matters to magistrates for an initial report and recommendation; most judges view this as magistrates' special area of expertise.[45] Also paralleling Northern California, some judges in Eastern Pennsylvania delegate discovery disputes and settlement conferences to magistrates on a fairly regular basis, and some do not.

One judge in the district assigns all pretrial matters in very complex cases to a magistrate; once a magistrate's assistance is requested, all questions that arise are decided by the magistrate, unless he determines that the situation would be helped by the judge's action. Thus, the magistrate is called upon to be a team player in selected, and especially demanding, situations.

Not surprisingly, the general perception of the attorneys is that magistrates play a very narrow role in this court. Like the attorneys interviewed in San Francisco, they do not have a clear sense of exactly what magistrates do. One interviewee elaborated that a magistrate is "somewhere between a law clerk and a judge."

Southern District of Texas

Magistrates in Southern Texas are used in a uniform manner within each division, but differently across divisions, reflecting a tradition that each division is relatively autonomous in its case management practices. The rationale for magistrates' use is quite different in each district. Judges in Houston use magistrates as specialists to deal with the district's very demanding section 1983 prisoner caseload.[46] In like manner, the judge in Corpus Christi, who prefers to manage his civil caseload personally, assigns to a magistrate all Social Security cases and discovery disputes (see chapter 4). By contrast, judges at the Brownsville and Laredo divisions use magistrates as limited team players to monitor the scheduling of civil cases; at these divisions, any opportunity to diversify magistrates' activities is in part circumscribed by a large petty offense and misdemeanor docket. Magistrates' role or presence in

45. Until the court was assigned pro se law clerks, magistrates also had responsibility for preparing prisoner cases for most judges. Currently, prisoner cases go directly from the pro se law clerk to the assigned judge.

46. In 1982 the court issued an order limiting Houston magistrates' civil duties to the preparation of prisoner cases; on July 23, 1984, the order was modified so that each judge may assign one additional section 636(b) matter to each magistrate.

It should be noted that prior to the 1982 order, magistrates in Houston performed a fairly wide variety of duties for most of the judges; therefore, we contacted attorneys who had experience with the court's earlier, and more expansive, use of these officers. Overall, the lawyers' response indicated receptivity to a larger range of activities for magistrates than that in place at the time of the survey.

Southern Texas has varied over the years, particularly in Houston, but is at present relatively limited as compared with other districts selected for this study.

Within each division of Southern Texas, attorneys' perceptions of magistrates varied in terms of their specific duties and their general relationship to the district.[47] For example, in Brownsville, interviews with attorneys disclosed that the bar is not aware of the full range of statutory duties that magistrates may perform, though attorneys expressed a general openness to delegating a wider range of responsibilities to these officers. In Houston, with the current work arrangement, very few attorneys have repeat experiences before magistrates; these officers are seen, at best, as an appendage to the court. Those who had wider experiences with magistrates commented that the division does not use magistrates effectively, though here too perceptions varied. Finally, in Corpus Christi and Laredo there is little consensus among attorneys interviewed concerning the magistrates' role: Some voiced a clear preference for judicial control over the case, while others claimed with equal vigor that magistrates could be used more imaginatively and expansively. The range of attorneys' perceptions about magistrates mirrors the debate among judges in this district about the best way to use these officers.

Eastern District of Missouri

A tradition of judicial independence dominates the organization of work in Eastern Missouri; until quite recently each judge worked out a plan for pretrial issues.[48] Subsequently, judges developed individualized approaches to magistrates, though over time an unstated consensus has evolved. On the civil side, magistrates are used as specialists and team players; they prepare Social Security and prisoner cases and, in addition, monitor pretrial questions (exclusive of scheduling) for most judges. On the criminal side, magistrates are team players for most of the active judges and get the case ready for trial by preparing a pretrial "package."

Overall, attorneys in St. Louis described judges and magistrates as distinctly different officers of the court; interviewees suggested that a line divides judges and magistrates. For example, it was

47. The Southern District of Texas has not designated a pro bono panel to represent prisoners in section 1983 cases; consequently, it was very difficult to locate a segment of the bar in Houston that is before magistrates on a regular basis under the current arrangement.

48. The Eastern District of Missouri has five active judges and four senior judges who carry a large caseload and are, in addition, active in general court activities; it is, for all practical purposes, a nine-judge court. Senior judges, as a general rule, make much more sporadic requests of magistrates.

common for an attorney to describe magistrates as a "step down" the ladder or as officers of "an inferior court with less power." Unlike attorneys in San Francisco, Houston, and Philadelphia, however, lawyers in St. Louis do understand what these officers may do and, regardless of the nature of their practice, are familiar with magistrates' duties.

Eastern District of Kentucky

Of the courts selected for this project, Eastern Kentucky has the strongest tradition of judicial independence; the district does not have local rules, and a new group of judges is just beginning to develop a set of standing orders outlining standard pretrial practices. Not surprisingly, there is little if any agreement among judges about the district's approach to magistrates. For some judges, magistrates are used as the need arises, with a general emphasis upon the development of specialized skills (e.g., Social Security and prisoner cases, discovery disputes). For others there is an emerging attempt to develop more systematic control of case management, which for one judge includes a teamwork approach.

Reflecting the court's approach to these officers, attorneys in Lexington expressed a sense that there is a lack of finality when one is before a magistrate, "even with a discovery dispute"; one attorney described magistrates as analogous to "paralegal[s] in a law firm."

On the other hand, attorneys in Ashland were very positive about the emerging model incorporating the magistrate into the pretrial process. Indeed, one attorney commented that there is a "team" approach to case management in Ashland and an "individual" approach in Lexington.

Here, too, there is a theme that is shared across districts: Judges in this group of districts (Northern California, Eastern Pennsylvania, Southern Texas, Eastern Missouri, and Eastern Kentucky) place a premium on individualized practices, though, within this group, some judges are more concerned with independence than others. The magistrates in these districts fit into the courts' schema by responding to each judge's request; in some instances this may vary from case to case, while in others it may vary from action to action.

Conclusion

The findings presented in this chapter suggest that there are districts in which magistrates, in fact, play a courtwide role; for this

to occur, however, the court must take collective steps to work out an understanding of the appropriate roles for magistrates. This precondition of collective decision making is not, as these findings also suggest, limited to questions about the ways that magistrates will be used (i.e., as specialists, team players, or additional judges), but flows from the larger consideration of the court's approach to pretrial case management. That is, the degree to which judges within a district agree among themselves has wide-ranging consequences for the roles that magistrates will perform. Of equal interest, these findings suggest that where the court shares a common understanding of case management and the roles that magistrates will play in that process, the bar, in turn, has a clearer understanding of the contribution of magistrates.

VI. CENTRALIZED VERSUS DECENTRALIZED ASSIGNMENT PRACTICES: THE PROS AND CONS

Building on the preceding descriptions of magistrates' roles in the different courts, I turn now to how the assignments reach the magistrates, the reasons behind those processes, and perceptions about the strengths and weaknesses of the variations.[49] In the earlier study, *The Roles of Magistrates in Federal District Courts,* procedures for assigning work to magistrates were arrayed along a continuum from those courts that openly take account of judges' individual practices (e.g., judge–magistrate pairs, judge's individual designation) to those that encourage more uniform practices (e.g., random or rotational allocation). Considered in the context of these case studies, it becomes apparent that assignment arrangements are a reflection of the degree to which the court also is committed to a shared approach to pretrial case management.

The pattern that emerges is that some court practices ensure uniformity so that all officers perform tasks in a similar manner, while other practices ensure that officers may use their discretion to complete tasks. This same pattern carries over into the actual day-to-day mechanisms for distributing the workload to magistrates: In some districts the assignment procedure itself leaves a judge little room to make discretionary assignments, and in others the assignment procedure rests on the assumption that judges must have room to develop discretionary practices. Thus, some districts have opted for a centralized assignment procedure that is monitored from the clerk's office; here, the filing of certain matters triggers an automatic assignment to a magistrate. In other districts the assignment procedure is decentralized, controlled from each judge's chambers, so that actions may or may not be assigned to a magistrate.

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49. For questions asked of judges and magistrates about assignment practices see part A, questions 1 and 2, of each survey instrument in appendix A. Note that Eastern Washington is not included in the discussion of this topic, since it has only one full-time magistrate.

Table 11 groups districts by centralized and decentralized assignment procedures, generally paralleling the findings reported to this point. Thus, in Northern Georgia, Oregon, Eastern North Carolina, and Southern Texas, assignments to magistrates are made from the clerk's office; in all but Southern Texas, there is a general commitment to a shared approach to case management. In Northern California, Eastern Pennsylvania, Eastern Kentucky, and Eastern Missouri, assignments to a magistrate originate from each judge's office (see also table 1). Beyond these commonalities, however, there are many variations.

TABLE 11
Centralized and Decentralized Practices of Assignment to Magistrates

Centralized	Decentralized
N.D. Georgia	N.D. California
E.D. North Carolina	E.D. Kentucky
D. Oregon	E.D. Missouri
S.D. Texas	E.D. Pennsylvania

NOTE: Eastern Washington is not included because it has only one full-time magistrate.

Centralized Assignment Practices

Random Assignment—Northern District of Georgia

All Social Security cases, habeas corpus matters, Internal Revenue Service enforcements, and truth-in-lending cases are randomly assigned by the clerk's office to magistrates for a report and recommendation. Randomly selected judges then review and dispose of the matters. Recently, each judge has been permitted to assign one additional section 636(b) civil motion to each magistrate; thus, a judge may assign a discovery dispute, a motion to dismiss, or a motion to certify a class. This ensures that each judge has the opportunity to become familiar with the effectiveness of assigning various types of responsibilities to magistrates.

On the criminal side, magistrates in Northern Georgia are responsible for the preparation of all felony cases. When the arraignment is completed, the case is assigned by the on-duty magistrate to a judge and a magistrate on a rotating basis. The on-duty magistrate classifies each case according to an estimate of trial length and then makes assignments so that each judge and magistrate has a balanced mix of cases. A standardized joint pretrial statement is used by all magistrates, and a final pretrial conference is held

about ten or eleven days after arraignment. In reviewing the case, the magistrate tries to rule on all nondispositive motions from the bench. If an evidentiary hearing is required, it is usually scheduled at the same time as the pretrial conference. The magistrate then prepares a report and recommendation for the assigned judge.[50]

A judge does not see a criminal case until it is ready for trial or a civil case assigned to a magistrate until the report and recommendation are completed. The procedure presents no opportunity for the judge to individualize the activity of a magistrate.

When the system was put into place, the court had two overriding concerns: to ensure that the procedure for allocating work to magistrates was blind to lawyers and to ensure that the workload would be divided evenly among magistrates. While the court reportedly toyed with instituting a paired arrangement between judges and magistrates, it rejected the concept because it met neither of these criteria. Finally, as one judge commented, the court was in the process of changing to an individual calendar system when the magistrates were added, and it just seemed "natural" to extend the same logic to the assignment of matters to these new officers.

Random Assignment—Southern District of Texas

Southern Texas at Houston has had two distinctly different procedures for assignment.[51] Prior to 1978, the division had a paired arrangement whereby each of the three magistrates worked with two to three judges. Following the Omnibus Judgeship Act of 1978,[52] the court more than doubled in size, and shortly thereafter a magistrate slot was added at Houston. During this period the court also experienced a dramatic increase in filings of civil rights and other prisoner petitions. The court began to allocate more and more prisoner matters to magistrates at filing for a report and recommendation. Subsequently, the court moved from a paired to a random assignment procedure. From 1982 to mid-1984, the clerk randomly assigned all prisoner cases to a magistrate for a report and recommendation; this was the magistrates' exclusive responsibility. Thus, the role of magistrates changed both substantively (from all duties under section 636(b) to prisoner petitions) and

50. The judge located in Rome, just outside Atlanta, prepares his own criminal cases unless there are some special circumstances.

51. The Brownsville division was recently allocated an additional full-time magistrate position; with this addition, assignments to these officers are made randomly to ensure an even distribution of work. The Corpus Christi and Laredo divisions each have one full-time magistrate. This discussion focuses, therefore, on judges' practices at the Houston division.

52. 28 U.S.C. §§ 41 *et seq.*

administratively (from a paired arrangement to a random allocation from the clerk's office).

Interviews with judges and magistrates suggest varying interpretations of the comparable effectiveness of paired and random arrangements. Many judges commented that when magistrates were paired with judges, "there were still problems" that a close working relationship should minimize—from the magistrate's lack of knowledge about the case to lag times between hearings and rulings. On the other hand, there were those who commented that a paired arrangement breaks down some of the anonymity in a large court, so that judges are more likely to experiment in their assignment practices and to feel that they have closer control over the matters that are with magistrates. When the court was confronted with a serious caseload crisis, however, there was some sense that the magistrates' support should be called upon and centrally controlled; as one judge put it, when there is a big problem, it is necessary to "send men to defend the fort." Thus, the decision to assign prisoner petitions to magistrates was introduced as a response to an emergency situation with the proviso that it would be evaluated after two years.

In this context the court recently modified its assignment practices so that magistrates will continue to be responsible for reports and recommendations on all prisoner petitions. Also, each judge may assign one other section 636(b) motion. In taking this step, the Houston division will use a centralized assignment procedure for prisoner cases and a decentralized assignment procedure for the remainder of motions assigned to magistrates.

Combined Calendar—District of Oregon

Unlike most other federal districts, Oregon continues to use a modified master calendar system. When a case is filed, it is designated as an "unassigned" case and remains on this docket until a final joint pretrial statement is lodged.[53] The unassigned calendar is overseen by a magistrate.

A motion in a case still on the unassigned docket will be heard by the duty officer, who may be either a judge or a magistrate. Thus, if a magistrate receives a dispositive motion (and the parties have not consented), he or she writes a report and recommendation, and the case is assigned to a judge.

53. A case is assigned to a judicial officer at filing if the calendar management committee determines that the case looks like it will be a "judge-involved case," that is, a complex case. If the case is a class action, has a large number of parties or issues, raises very complex legal questions, or raises an issue that will get special public attention, then the committee will probably assign it to a judge.

Once the pretrial order is lodged, the case is designated as an "assigned" case and moved to an "individual" calendar, at which time a judicial officer is selected randomly and remains responsible through disposition. At this stage, if the parties have not consented to appear before a magistrate, the clerk's office may contact the parties to remind them of the option. If the parties have consented, magistrates' names are included in the random assignment wheel; if not, only judges are included. Since the assignment process is designed to equalize the workload, there is a high probability that consent cases will be tried by a magistrate.[54]

The assignment procedure is overseen by a calendar management committee composed of two judges, one magistrate, and the clerk. Responsibilities include determining whether a case requires early assignment, review of each judicial officer's caseload, and notification of counsel if a joint pretrial statement has not been lodged 150 days after filing. Judges must prepare status reports of their cases for review by the committee.

Under Oregon practice, judges have little opportunity for developing alternative assignment procedures to suit personal preferences. The district is committed to ensuring that magistrates are used as broadly as permitted by statute. As one judge commented, if the court had a traditional individual calendar, there would be the potential for "keeping the magistrates out." In fact, a commitment to include magistrates is shared by all judges interviewed, though some suggested that the assignment procedure has "worked" to the extent that the bar is comfortable with magistrates. These judges feel it is now time to modify the procedure and use a more conventional individual calendar so that each officer will have responsibility for cases from filing to disposition.

Random Assignment—Eastern District of North Carolina

In Eastern North Carolina the entire assignment process is overseen by the clerk, who plays a monitoring role similar to the calendar management committee in Oregon. Criminal cases are allocated through a rotational system, and civil cases are randomly assigned at filing to a judge and magistrate.

The rotational assignment of criminal cases is a recent modification in practice. Each judge is paired with a magistrate; each team receives all felony cases filed for a four-month period. The magistrate prepares the case and the judge tries it—a division of labor paralleling that of Northern Georgia. The rationale behind this procedure is that the magistrate and judge will have an eight-

54. See, for example, the numbers for statistical year 1982 in chapter 7.

month stretch of time to prepare and calendar civil cases without any interruptions. The change is too new for judges and magistrates to evaluate it.

Civil cases are randomly assigned at filing to a judge and magistrate. The magistrate handles any discovery or nondispositive motions in an assigned case. The clerk files any dispositive motions with the assigned judge, who decides whether to handle it or have the magistrate prepare a report and recommendation. It is reported that judges' practices with regard to dispositive motions vary with their caseloads and other demands; consequently, over the course of a year all judges assign about the same number of dispositive motions to magistrates.[55]

The current plan was developed by the clerk, and modifications are worked out in meetings of the court. All judges reported that they would have no reason to change the district's current plan. It was the consensus of judges and magistrates that the clerk oversees the procedure.

Summary

A centralized assignment procedure requires, at a minimum, that the court work out the mechanics of allocating work. In the districts selected for this project, judges have also delineated the types of motions that are actually assigned, though the range varies from the assignment of one type of matter (prisoner petitions) in Southern Texas, to all criminal pretrial work in Northern Georgia, to all civil and criminal pretrial work in Eastern North Carolina and Oregon.[56]

The procedure that has been introduced in Northern Georgia and adopted in Southern Texas at Houston is neither a random (centralized) nor a paired (decentralized) arrangement, but may in time incorporate the best of both.[57] With this procedure, discretion remains with the judge, but, at the same time, the procedure ensures, as one judge reported, that no one may deluge a magistrate with more work than is feasible. Judges comment that they do not make assignments to a magistrate because they cannot control who will get the work; it is for this reason that some courts have opted for a paired arrangement. The practice described in Northern

55. For a numerical elaboration, see chapter 10 and appendix C.

56. Alternatively, a court might prefer to let each judge work out the assignment of motions on a case-by-case basis, but have the clerk's office make random allocations, either at filing or when requested.

57. The Northern District of Georgia adopted this procedure at a June 1983 judges' meeting; the Southern District of Texas adopted this procedure at a meeting in July 1984.

Georgia also addresses this concern while ensuring that all judges have equal access to magistrates and that work will be distributed evenly among them.

Decentralized Assignment Practices

Chief Magistrate—Northern District of California

In Northern California, motions are assigned randomly to magistrates by the chief magistrate unless, as the local rule provides, a judge issues an "order of designation or reference." In practice, however, there are two assignment procedures: Three judges always assign matters directly to the same magistrate at the conclusion of a status or scheduling conference. The other judges make requests through the chief magistrate for random allocation, though a number of judges reported that they may request assignment to a specific magistrate in some instances (e.g., for a settlement conference). Once a case is assigned to a magistrate, subsequent requests will be allocated to the same officer. In addition to assigning cases, the chief magistrate must also ensure that work is evenly distributed among all magistrates; therefore, each magistrate reports to the chief magistrate all direct assignments from judges.

In theory, all assignments are made centrally by the chief magistrate; in practice, many assignments are made directly from a judge to a magistrate or, alternatively, from the chief magistrate to a judge's preferred magistrate. The procedure in Northern California is thus in actuality a decentralized one. Attorneys interviewed in San Francisco invariably reported that they assumed the district had a paired arrangement whereby a magistrate is assigned to a group of judges. One interviewee commented that some judges have a pet magistrate.

The consensus among judges is that the alternative would be direct assignment by a judge to a magistrate and that this practice would be "terrible" for morale. In addition, judges generally agreed that magistrates should administer their own affairs, believing that self-administration enhances the magistrates' stature in the district. Finally, the bench in Northern California takes the position that magistrates should be supervised by judges, not by the clerk.[58]

58. Interestingly, in 1983, at the suggestion of the magistrates, the court considered the adoption of a random assignment procedure to be monitored by the clerk's office, but the court voted against it. No explanation was offered.

Judge-Magistrate Pairs—Eastern District of Pennsylvania

Eastern Pennsylvania has adopted a system of judge-magistrate pairs whereby a magistrate receives assignments from only certain judges. A paired arrangement anticipates that judges will use a magistrate's support in very different ways.[59] For example, judges indicated that they wanted "stable" relations whereby a judge and a magistrate might develop a "common point of view on case management." Indeed, one magistrate commented that he has worked with some of the same judges for ten years, so he knows what they want. Changes in pairs do, of course, occur as judges take senior status or magistrates resign or retire; by local rule, when a new judge is appointed, the most senior judges have the option of changing magistrates. Again underscoring the desirability of a paired procedure, a judge commented that "it is okay to have a pool of court reporters, but with magistrates and judges it is important to have interests converge" so that clear lines of communication and understanding may evolve. Finally, one judge pointed out that a paired arrangement was favored because it avoids the "red tape" of a complicated assignment process.[60]

There is, however, one very important caveat concerning the court's general support of a paired arrangement. A judge reported that the procedure only works if one can develop a positive working relationship with the paired magistrate; if, however, one gets "stuck" with a magistrate and relations deteriorate, no support is available until the district's appointments change, assuming of course that the judge is senior enough to have the option of switching. In specifying pairs, Eastern Pennsylvania does not consider what each judge is likely to assign regularly to a magistrate. While a paired procedure may be advantageous because it builds upon a foundation of collegiality, as some have suggested, it is equally important to select pairs according to an assessment of how judges intend to use magistrates, in order to ensure a balanced workload.[61]

From the standpoint of magistrates, a paired procedure ensures a close working relationship with a group of judges, so that some rapport among judicial officers may evolve. As one magistrate commented, a paired arrangement makes it easier to stay on top of a judge's practices, that is, what the judge expects when a certain type of assignment is made, because one responds to requests from four or five, rather than nineteen, judges (as is the case in Eastern Pennsylvania). Commenting on the negative side of this practice from the standpoint of magistrates, however, one magistrate commented that parties usually consent when they feel that they are not likely to get a "fair break" with the judge; consequently, it is quite likely that there will be an uneven distribution of section 636(c) cases among magistrates.[62]

59. It is perhaps ironic, then, that these judges do not in practice use magistrates in widely varying ways. For further discussion, see chapter 8.

60. It must also be noted that there is no mechanism to ensure that actions carried out by the magistrate will pass through the clerk's office and be recorded on the docket sheet. There is, then, very little incentive or reason to develop uniform record-keeping procedures.

61. *See* J. W. Cooley, *Designing an Efficient Magistrate Referral System: The Key to Coping with Expanding Federal Caseloads in the 1980s,* 1 Civ. Just. Q. 124 (1982).

Judge-Magistrate Pairs De Facto—Eastern District of Kentucky

As in Eastern Pennsylvania, magistrates in Eastern Kentucky are paired with a group of judges; the pairs in this district are, however, the result of geographical constraints. Six judges are located at five locations; the two magistrates are each paired with the three judges who are geographically closest to the magistrates' primary locations. Since cases are assigned to judges by location, a magistrate is more likely to ride a part of the district than is a judge. Indeed, a judge will only hear a case at a different location if there is a conflict of interest.[63] In essence, then, magistrates are paired de facto with a group of judges in the Eastern District of Kentucky.

Three judges assign all Social Security and prisoner cases to a magistrate at filing; all other motions are assigned to a magistrate at a judge's discretion. A number of judges prefer to handle their own Social Security and prisoner cases. On the other hand, one judge issues a blanket order for the magistrate to prepare fully all assigned civil cases.

The paired arrangement in Eastern Kentucky allows magistrates some flexibility in controlling their dockets. Unlike those in Eastern Pennsylvania, magistrates in Eastern Kentucky have the authority to shift assignments between them as necessary.

Because some judges reportedly make more requests of magistrates than do others, it is, in fact, not always feasible for a judge to request a magistrate's assistance if the task is to be completed in a timely manner. Judges have not decided among themselves how they intend to use magistrates so that all judges have an opportunity to delegate work. This again underscores the importance of as-

62. Of equal importance, this procedure creates the possibility of a certain degree of judicial-officer shopping; in a paired situation, once the judge is assigned, parties also know which magistrate will decide the case should there be a consent.

63. See chapter 5 for further discussion.

sessing judges' plans for delegating work to magistrates if a paired arrangement is to work smoothly.

Judge Assigns—Eastern District of Missouri

Until 1983, all section 636(b) assignments to magistrates were made directly by a judge. This changed when the district was allocated a third full-time magistrate slot and some steps were necessary to ensure that the basic workload of magistrates would be distributed evenly. All Social Security and habeas corpus cases, as well as section 636(c) consent cases, are now assigned randomly from the clerk's office; all other requests are still made directly from a judge to a magistrate. For some judges this was a minor change because they already assigned such matters on a random basis; for others it was a major change because they always assigned their work to the same magistrate. Indeed, a group of judges reported that they will continue to assign all matters at their own discretion; as one judge noted, this should not be a problem, since the actual request for assignment is still initiated by the judge.

One judicial officer commented that Eastern Missouri is "an intensely conservative" district when it comes to administrative or management matters, and it is not likely that all judges will go along with the change; as another commented, it is "impossible" to imagine that the bench would accept a random assignment procedure for all section 636(b) matters. At best, the bench would be willing to adopt random assignment on a limited basis.

The magistrates reported that they are not aware of the source of assignments, that is, whether it is the judge or the clerk. One magistrate commented that work is unevenly distributed but magistrates do not have authority to reassign it.

A judge who was on the bench when the second magistrate slot was added reported that consideration was not given to a random assignment system because judges wanted to be able to make assignments quickly, and there was a general assumption that things would be slowed down if assignments were centralized. Overall, there is a strong emphasis upon moving cases quickly coupled with a commitment to judicial independence in Eastern Missouri that affects the day-to-day management practices.

Summary

A common characteristic of decentralized arrangements is that assignments are not monitored by the clerk; rather, each judge continues to exercise a great deal of control over how the workload will be allocated to a magistrate. A decentralized arrangement

flows from the working assumption that since judges inevitably develop their own pretrial procedures, there is little reason to believe that a common set of practices is feasible or desirable.

Conclusion

Debate about how to assign work to magistrates is only one facet of a larger issue within the judicial system concerning the feasibility of developing uniform strategies for managing a court. Several questions may arise: Beyond a commitment to early and active case management, is the judicial system served best by a shared approach to pretrial questions, including the role of magistrates? At what point in case processing, prior to a judge's ruling on a case, should a judge be left to work out his or her own practices? The findings reported to this point suggest that there is little consensus on these questions; indeed, there are groups that have strongly held, and diametrically opposed, views.

VII. CIVIL TRIALS UPON CONSENT: CAN MAGISTRATES BE ADDITIONAL JUDGES?

Two of the districts selected for this project, Oregon and Eastern Washington, opted to use magistrates as additional judges. In each instance, the court was faced with potentially serious caseload problems due to long-vacant judgeships. In response, districtwide procedures were introduced that ensured that magistrates would carry an integral share of the load, albeit different in each setting. At this point, it is appropriate to examine closely the extent to which magistrates in these and other districts are disposing of civil cases upon consent of the parties.

Table 12 reports the number of cases in which parties consented to have the case decided by a magistrate,[64] the average per magistrate, and the range for all magistrates. Table 13 reports civil cases assigned to magistrates by basis of jurisdiction; table 14 reports them by nature of suit; table 15 reports them by mode of disposition; and table 16 reports the number of days consumed for those cases that went to trial. An examination of these findings discloses a notable variation in the number of assignments across districts. For example, Northern Georgia reported 3 section 636(c) cases divided among four magistrates, whereas Oregon reported 182 section 636(c) cases divided among three magistrates; thus, magistrates in Northern Georgia tried, on the average, less than 1 case per officer, while magistrates in Oregon disposed of an average of 61 cases.

The range of cases heard by magistrates is rather wide; for example, in Eastern Kentucky one magistrate tried six cases, whereas another heard forty. The District of Oregon displays an exceptionally high average but a very narrow range of cases per magistrate.

At the time of data collection, judges in Southern Texas and Northern Georgia had determined to focus magistrates' work so that they were not assigned civil cases upon consent of the parties. Interviews with attorneys in both districts disclosed, in turn, that

64. *See* 28 U.S.C. § 636(c), which gives magistrates authority to hear and decide a civil case with consent of both parties.

TABLE 12
Civil Cases Terminated by Magistrates upon Consent to Trial in Statistical Year 1984

District	Total Cases Assigned	Average per Magistrate	Range for Magistrates
N.D. California	32	6.00	4–13
N.D. Georgia[1]	3	0.75	0–2
E.D. Pennsylvania	31	6.00	4–10
S.D. Texas[2]	10	1.40	0–4
E.D. Kentucky	46	23.00	6–40
E.D. Missouri	110	37.00	16–52
D. Oregon	182	61.00	55–64
E.D. North Carolina[3]	62	21.00	8–33
E.D. Washington	67	67.00	67
Total	543	15.50	0–67

[1]A fifth magistrate position was recently approved (see table 2) but is not included in the calculation of the average.
[2]An eighth magistrate position was recently approved (see table 2) but is not included in the calculation of the average.
[3]One magistrate was appointed during statistical year 1984 and reported eight section 636(c) cases; since he did not work a full year, however, his workload should be interpreted with caution.

consent was rarely considered, and the findings in table 12 reflect the decision made in each district. Hence, these districts are not included in the discussion that follows (though numbers are reported in subsequent tables where appropriate).[65] The remaining courts can be informally grouped into three clusters: (1) Northern California and Eastern Pennsylvania, where magistrates were assigned a small number of consent cases (an average of six per magistrate); (2) Eastern Kentucky, Eastern Missouri, and Eastern North Carolina, where magistrates were assigned, on the average, between twenty and forty cases; and (3) Oregon and Eastern Washington, where magistrates were assigned, on the average, sixty cases.

A further question warrants consideration: From the court's standpoint, is there reason to assume, a priori, that increasing the number of section 636(c) assignments is necessarily the best use of magistrates' time? If, as stated in earlier chapters, there are useful

65. In light of serious backlog problems, judges in Southern Texas determined that magistrates would only receive prisoner petitions. In Northern Georgia, judges also decided to limit magistrates' workload because of serious backlog problems, caused in large measure by a dramatic increase in truth-in-lending cases (see chapter 5). In addition, judges in this district expressed a genuine ambivalence about the whole issue of consent; this concern was also expressed by judges in other districts, most notably Eastern Pennsylvania. It is interesting to note that the data collection for this project was well under way at the time the *Pacemaker* decision was announced and the Ninth Circuit subsequently agreed to rehear it en banc (see note 40 *supra*).

and creative ways to incorporate magistrates into pretrial preparation, is there some point at which a docket of section 636(c) cases becomes counterproductive? If magistrates are indeed pretrial officers of the court, is there an appropriate and realistic balance that must be struck between assignment of pretrial motions and civil cases upon consent?

Northern District of California and Eastern District of Pennsylvania

Previous chapters showed that Northern California and Eastern Pennsylvania share a number of commonalities beyond the fact that they are both large metropolitan courts. In the area of consent cases, however, the approach within each court begins to diverge. In the Northern District of California, there is a consensus that it is quite effective to have magistrates carry their own civil dockets of smaller disputes involving only factual issues; some judges reported that, in these types of cases, the question of consent may be raised at an early status conference by either the parties or a judge with a potential scheduling conflict. For example, if a judge is simply not able to set a date for trial in a small case for at least a year, counsel may consent to have the magistrate dispose of the case.

Judges were asked if counsel specify preferences for one magistrate over another. Here, there is some difference of opinion among judges concerning the appropriate response. One group felt that if parties consent, they must be willing to accept the "throw of the dice." Another group of judges said that if counsel for both sides agree to the same individual, it is not inappropriate to inform the chief magistrate. This difference in perspectives may be connected to a judge's view of a magistrate's role in the court: If magistrates are seen to play a specialized role in the court (i.e., a specific role for a specific task), then selection by parties would seem appropriate. If magistrates are seen to be team players (i.e., a more generalist role for a variety of pretrial tasks), then permitting selection of a magistrate would be less appropriate.

Lawyers in the San Francisco area corroborated the picture described by judges, with one very important caveat: There was a clear consensus among those interviewed that when a judge raises the question of consent to a magistrate—for whatever reason—lawyers feel that they have little choice but to go along with the suggestion. Attorneys consistently reported feeling some pressure to consent, particularly in a "smaller" case; when interviewees were

asked to describe the reasons for consent, the overriding one given was that the judge had suggested it.

Interviews with judges in Eastern Pennsylvania suggest that the court generally does not get involved with counsel's decision to consent. No attorneys reported experiences in which a judge had suggested the possibility of consent at any point in case processing. Beyond this, lawyers reported that, by and large, they are increasingly open to the possibility of consent when appropriate, that is, when the case is relatively small and does not raise complex questions of law.

TABLE 13
Basis of Jurisdiction for Cases Assigned upon Consent to Trial for Statistical Year 1984 (N = 536)

District	U.S. Plaintiff	U.S. Defendant	Federal Question	Diversity
N.D. California	3	12	12	5
N.D. Georgia	0	0	3	0
E.D. Pennsylvania[1]	3	1	10	13
S.D. Texas[2]	1	0	5	3
E.D. Kentucky	6	26	9	5
E.D. Missouri	2	13	64	31
D. Oregon	8	23	68	83
E.D. North Carolina[3]	9	6	37	8
E.D. Washington	11	27	19	10
Total	43	108	227	158

[1]Data missing for four cases. [2]Data missing for one case. [3]Data missing for two cases.

The findings in table 13 show that consent cases in Northern California were mostly U.S. defendant and federal question cases, whereas they were mostly federal question and diversity cases in Eastern Pennsylvania. Table 14 shows, however, that the majority of these cases were contract and tort cases—a finding in keeping with the earlier discussion. What is somewhat surprising, however, is that a fairly sizable proportion of these cases were disposed of at trial: 44 percent were disposed of during or through trial in Northern California, while 36 percent were disposed of at this stage in Eastern Pennsylvania. In notable contrast to general practices in federal courts, cases assigned to magistrates were almost as likely to reach trial as to be disposed of prior to trial. For the same period, judges in Northern California reported that 1.7 percent of their terminated cases reached trial, and judges in Eastern Pennsylvania reported 6.9 percent.[66]

66. *See* Administrative Office of the United States Courts, 1983 Annual Report of the Director, at table C-4A. For the other districts, the figures are as follows: Northern Georgia, 5.8 percent; Southern Texas, 6.1 percent; Eastern Kentucky, 2.9 percent; Eastern Missouri, 7.6 percent; Oregon, 5.9 percent; Eastern North Carolina, 3.1 percent; and Eastern Washington, 3.8 percent. Overall, 5.4 percent of the cases disposed of for statistical year 1983 reached trial.

TABLE 14
Civil Cases Assigned to Magistrates upon Consent to Trial by Nature of Suit for Statistical Year 1984 (N = 543)

District	Contract	Tort	Civil Rights	Prisoner Petition	Labor	Social Security	Other
N.D. California	4	12	4	2	3	0	7
N.D. Georgia	0	0	1	1	1	0	0
E.D. Pennsylvania	8	17	1	1	0	0	4
S.D. Texas	1	2	0	5	0	0	2
E.D. Kentucky	7	2	5	4	3	22	3
E.D. Missouri	14	23	34	20	6	0	13
D. Oregon	44	62	18	4	18	12	24
N.D. North Carolina	16	7	7	15	2	1	14
E.D. Washington	13	17	3	4	1	17	12
Total	107	142	73	56	34	52	79

Eastern Kentucky, Eastern Missouri, and Eastern North Carolina

Magistrates in Eastern Kentucky, Eastern Missouri, and Eastern North Carolina are assigned a wide variety of section 636(b) tasks, even though the three districts have very different approaches to case management. The average number of consent cases assigned to magistrates in this group ranges from twenty-one to thirty-seven.

In Eastern Kentucky most judges reported that even though a wide range of pretrial work may be delegated to magistrates (see chapters 8 and 9), the disposition of civil cases should be limited to Article III judges.[67] Underscoring the general reluctance of the bench to encourage consent cases, attorneys at most divisions consistently confused an actual consent to trial (with which many of them have very limited experience) with a report and recommendation on a dispositive motion (with which many of them should have relatively frequent experience). Attorneys at one of the divisions, however, reported that they are willing to consent "almost automatically"; this practice evolved during a period when the division did not have a judge in residence and the magistrate—a highly regarded officer of the court, according to the attorneys—was available.[68]

67. This court does not allow magistrates to wear robes.

68. Table 14 shows a notable disparity in the number of section 636(c) cases assigned to each magistrate.

The findings in tables 13 (basis of jurisdiction) and 14 (nature of suit) show that magistrates in Eastern Kentucky mostly disposed of Social Security cases. Here, then, the U.S. attorney consented to permit the magistrate to rule dispositively—a somewhat unusual practice as compared with most other districts (but see Oregon and Eastern Washington). According to tables 15 and 16, the vast majority of cases were disposed of by magistrates prior to trial (82 percent); of those that actually went to trial, most lasted one day. Together, the findings show that one magistrate carried a reasonable number of section 636(c) cases but that most of these were relatively straightforward matters.

TABLE 15
Mode of Disposition of Civil Cases Assigned upon Consent to Trial for Statistical Year 1984 (*N* = 533)

District	Without Trial	Nonjury Trial	Jury Trial
N.D. California	18 (56)	11 (34)	3 (10)
N.D. Georgia	1 (33)	2 (67)	0 (0)
E.D. Pennsylvania	20 (65)	7 (23)	4 (13)
S.D. Texas	2 (20)	4 (40)	4 (40)
E.D. Kentucky	38 (83)	5 (11)	3 (6)
E.D. Missouri[1]	54 (52)	24 (23)	26 (25)
D. Oregon[2]	137 (76)	23 (13)	20 (11)
E.D. North Carolina[3]	34 (56)	14 (23)	13 (21)
E.D. Washington[3]	53 (80)	10 (15)	3 (5)
Total	357	100	76

NOTE: Figures in parentheses are row percentages.
[1]Mode of disposition not reported for six cases.
[2]Mode of disposition not reported for two cases.
[3]Mode of disposition not reported for one case.

By contrast, magistrates in Eastern Missouri were assigned a wide variety of cases upon consent of the parties (see tables 13 and 14), reflecting a consensus among the judges in this district that it is quite appropriate for magistrates to try civil cases. Moreover, most judges reportedly felt comfortable with parties' specification

of a magistrate, assuming, of course, that there was agreement between counsel.[69]

TABLE 16
Number of Days Consumed by Magistrates in Civil Jury and Nonjury Trials for Statistical Year 1984 (*N* = 176)

District	Less than 1 Day	1 Day	2–7 Days	8–14 Days
N.D. California	0	4	9	1
N.D. Georgia	0	0	2	0
E.D. Pennsylvania	0	1	9	1
S.D. Texas	0	3	5	0
E.D. Kentucky	0	7	1	0
E.D. Missouri	1	49	0	0
D. Oregon	0	16	25	2
E.D. North Carolina	0	1	25	1
E.D. Washington	0	3	10	0
Total	1	84	86	5

NOTE: The mean number of days consumed for the districts was 2.55; the median was 2.01.

The Eastern District of Missouri has long prided itself on being a court that moves cases, one that has developed strategies to schedule trials so that time is not wasted should a case settle; hence, judges reported that ten to twelve cases are often scheduled at any given time. Interviews with attorneys in St. Louis underscored this tension; many attorneys reported that they are often willing to consent as a way to control the flow of their cases.[70] In addition, interviewees reported that the judges' practice of notifying counsel by mail of the consent option also encourages consent. Echoing a theme emerging from comments made by attorneys in San Francisco, Missouri lawyers reported that when a judge suggests that parties consent, they feel they have no alternative.[71]

The findings reported in table 15 show that, as compared with the district's overall terminations (see note 66), an unusually large proportion of magistrates' civil consent caseload was disposed of during or after trial (48 percent). In light of the district's overall concern about settling cases prior to trial, this figure is notewor-

69. Interestingly, the clerk in this district does not notify parties of their option to consent; rather, the forms usually go out from the judge's chamber. The origin of this practice was not clear.

70. One attorney, quite frustrated by a practice of overscheduling trials, described it as a "butcher shop" approach to case management, that is, "take a number and wait."

71. It is important to note here a consensus among those interviewed that magistrates in this district were more than qualified to try civil cases upon consent. Note that attorneys in San Francisco expressed a similar view.

thy, particularly since it is reported that magistrates often play an active role in settlement negotiations (see chapter 8).

This same pattern holds for magistrates in Eastern North Carolina, where 45 percent of magistrates' civil cases upon consent are terminated during or after trial. Notification of the consent option is the responsibility of the clerk.[72] However, in keeping with the more active, managerial role of the clerk in this district, it is not unusual, according to many attorneys, to be reminded of the option during the pretrial phase of a case.

The consensus among attorneys is that consent is appropriate when circumstances require it; indeed, many reported that they would be quite comfortable in a trial before any of the magistrates. It was also the consensus, however, that judges in this district like to try cases, so there is little reason to consent. Overall, these interviewees suggested that the division of tasks between judges and magistrates works smoothly, and they saw little reason to modify current practice. Interviewees did report that the one exception to this division of tasks occurs when there is a scheduling conflict and the assigned judge is unable to get to the case as quickly as counsel might prefer; under such circumstances, attorneys reported that they are quite likely to consent. In this district, then, civil trials upon consent are not viewed as magistrates' primary task; rather, they are viewed as an available backup for certain circumstances.

District of Oregon and Eastern District of Washington

In the districts of Oregon and Eastern Washington, the magistrates are viewed as additional judges and generally are expected to carry a reasonable proportion of the districts' civil docket. The findings in tables 13 (basis of jurisdiction) and 14 (nature of suit) disclose that magistrates in both districts were assigned a variety of civil cases in statistical year 1984.

The figures reported for the District of Oregon are, however, somewhat misleading; when parties consent, magistrates' names are entered into the random assignment wheel and the case may or

72. By local rule, when parties consent, they are encouraged to appeal to the circuit court directly; other districts selected for this study do not take this step. As local rule 62.05 for Eastern North Carolina states, "Upon the entry of judgment in any civil case disposed of by a magistrate on consent of the parties, . . . an aggrieved party shall appeal directly to the United States Court of Appeals of this circuit in the same manner as an appeal from any other judgment of this court."

may not actually be assigned to them (see chapter 6). For example, for statistical year 1982, 846 civil cases were filed in the district, of which approximately 15 to 20 percent were "early assignments" (i.e., because of some extenuating circumstance it was decided that one judge should handle the case from filing); if 15 percent are removed, there were approximately 719 cases in which parties had the option to consent.[73] Of these, parties consented in 177 cases (25 percent), and magistrates were assigned 122 cases through random allocation. In practice, then, a case is not assigned to a magistrate in all instances when the option is available.

For statistical year 1984, judges disposed of, on the average, just over 400 cases in both Oregon (404) and Eastern Washington (403). While a comparison of these numbers should be interpreted with the caveat that the *Pacemaker* case originated in Oregon and was pending during a part of this period, there remains, nevertheless, a rather notable difference between the civil terminations of judges and magistrates in these districts. The number of consent cases in Oregon and Eastern Washington is, however, greater than and of a wider variety than that in the districts as a whole.[74] In addition, the mode of disposition of cases handled by magistrates in these districts is more in line with general practice; magistrates in Oregon disposed of 76 percent of their caseload without trial, and the magistrate in Eastern Washington disposed of 80 percent in like manner.

Conclusion

Has the use of magistrates in consent cases interfered with the officers' pretrial responsibilities? In the districts selected, all reported that the number of magistrates' section 636(c) cases has not yet reached that point where it interferes with other responsibilities. One judge in Northern California noted that things can get complicated when a magistrate is involved in a major trial (as happened in this district in statistical year 1983).

The question of increasing the number of consent cases was more of an issue in some districts than in others. For example, in Eastern North Carolina and Northern Georgia, there was concern about having magistrates try more cases, but it was not pressing

73. Note that tables 13 to 16 report cases terminated for statistical year 1984.

74. There are some districts in which the number of consent cases reported is greater than that for Oregon or Eastern Washington. In many of these situations, however, magistrates' civil caseloads are limited to prisoner cases; see, for example, the figures for the Southern District of Illinois.

because these officers are being used in an expansive and effective manner (at least as evaluated within these courts), whether lawyers take the route to consent or not. Indeed, even in Eastern Washington (where the magistrate fills in for both judges in pretrial matters) and Oregon (where the magistrates can be assigned a large share of the pretrial work), it was reported that the magistrates carry a relatively large number of section 636(b) pretrial motions. The findings, therefore, suggest that at this point magistrates are not, by and large, carrying a full docket of civil cases upon consent—that magistrates are not, in practice, "additional judges."

VIII. OTHER FORMAL AND INFORMAL DUTIES: A NEW TEAM PLAYER OR A SPECIALIST?

Across the various districts selected, there were many judges who reported that they find it very effective to request magistrates' assistance on section 636(b) matters, particularly disputes involving discovery questions. In this chapter, then, I examine closely the delegation of other types of section 636(b) motions to magistrates. In addition, I touch upon magistrates' handling of settlement conferences.

In many respects, the recent revisions of rule 26 of the Federal Rules of Civil Procedure on discovery parallel those of rule 16 on scheduling: In both instances, the rule changes express the belief that judicial control is pivotal for sound pretrial case management. Indeed, the changes in rule 26 shift the monitoring of discovery from counsel to the court and reflect an assumption that tighter judicial controls over the discovery process, with particular emphasis on firm cutoff dates and the use of sanctions where necessary, complement the spirit of the adversarial process.

Although the Advisory Committee's report on the rule does not directly address the issue of delegating discovery disputes to magistrates, there is growing support within the judicial community for the delegation of nondispositive motions, particularly disputes involving discovery, to magistrates. Many who hold this view also believe that, by and large, it is not as useful to delegate most dispositive motions (except prisoner petitions and Social Security) to magistrates because of the likelihood that the case will turn on the motion in question. Overall, the delegation of discovery disputes to magistrates is seen as a part of a larger trend toward better managed and more tightly controlled pretrial handling of civil cases. The authors of an earlier Center study proposed that judges should manage discovery by setting cutoff dates at an early point in case processing; they emphasized that magistrates may be effective officers to monitor this phase of the case.[75]

75. P. Connolly, E. Holleman & M. Kuhlman, Judicial Controls and the Civil Litigative Process: Discovery (Federal Judicial Center 1978).

Some disagree, however, pointing out the importance of what one learns about the case in the process of resolving the pretrial dispute. Also, they assert, a case may move more expeditiously when overseen by the person who will try it. The question is simple: Is the education about a case that a judge gains in disposing of a discovery dispute outweighed by the time saved if the dispute is delegated to a magistrate, assuming for the moment that counsel do not challenge the order of the magistrate? The discussion that follows elaborates on the observations of judges, magistrates, and practitioners on this question.

The delegation of duties to magistrates may, for many judges, raise more than simply a question of saving time. In deciding to delegate a task to a magistrate, the judge's traditional role has been modified. Rather than knowing that he or she will simply rule on a nondispositive or dispositive motion, the judge now has the option of first deciding if it might be useful—more efficient or effective—to request the assistance of a magistrate. Judges are concerned that they may become the conduit for pretrial work performed by others, in this instance by magistrates. In a larger context, does the experience of judges, magistrates, and practitioners in these districts suggest that the delegation of section 636(b) tasks to magistrates implies an inevitable turn toward a managed (e.g., hierarchical) pretrial process?

I examine the approach taken in the various districts as well as the reports of practitioners, returning in chapter 10 to an empirical examination of the rates of appeals of these actions.[76] Eastern Washington and Oregon are excluded from discussion in this chapter because these courts have decided to use magistrates as "additional judges."[77]

Table 17, which provides a guide to the discussion, shows that magistrates in the Houston and Brownsville divisions of the Southern District of Texas do not perform the types of duties discussed in this chapter: In Houston, magistrates' responsibilities are limited currently to prisoner petitions (see chapter 9); in Brownsville,

76. Measuring "time saved" is a very complicated task. In this chapter, I report the experiences and observations of the relevant actors; in chapter 10, I report the rates of appeals of magistrates' orders for a sample of actions for the selected districts. Neither data source, then, derives from a quasi-experimental or controlled setting where similar types of cases have been subjected to disparate types of treatment (e.g., controlled cutoff dates versus no cutoff dates, with and without magistrate delegation). However, the findings improve our understanding, so that a more tightly controlled experiment might be feasible in the future. Of equal importance, a number of common observations across districts do emerge.

77. Note that this courtwide decision is to be distinguished from individual practices in Northern California, where a few judges find this the most appropriate role for magistrates; the court, however, has never made this decision collectively.

magistrates' responsibilities are limited to scheduling.[78] The findings in table 17 also show that magistrates' duties in half of the districts are limited to nondispositive motions; this means that magistrates are being called upon to resolve discovery disputes.

TABLE 17
Formal and Informal Duties of Magistrates

District	Nondispositive Motions	Dispositive Motions	Settlement Conferences
N.D. Georgia	X	X	
S.D. Texas			
Houston			
Corpus Christi	X		
Brownsville			
Laredo	X		X
N.D. California	X		X
E.D. Pennsylvania	X		X
E.D. North Carolina	X	X	
E.D. Kentucky	X	X	
E.D. Missouri	X	X	X

NOTE: Dispositive motions exclude assignment of a report and recommendation on Social Security and prisoner cases.

Judges were asked whether they provide guidance to a magistrate when a matter is delegated. For example, do judges find it useful to specify what they expect in a report and recommendation?[79]

Northern District of Georgia

The Northern District of Georgia has taken a somewhat exceptional path: Since the inception of the magistrate program in 1968, magistrates have prepared all criminal felony cases for trial. This responsibility includes ruling on all discovery questions (e.g., nondispositive motions), preparing a report and recommendation

78. See chapter 4. Magistrates in Houston at one time played a more expansive role. When magistrates were introduced, the court developed a paired arrangement, and many judges experimented with delegating a wide range of duties to these officers.

79. The attorneys who were interviewed had very different impressions about the process actually described by judges and magistrates. Attorneys often commented that they "assumed" that the judge and magistrate met to discuss various motions. The report that one gets from judges and magistrates is quite the opposite: It was exceptional for a judge to report, and a magistrate to confirm, that guidance was provided in preparing a case. This is not to suggest, of course, that a magistrate may not pick up the tone or approach that is expected in resolving various matters.

on all dispositive motions (e.g., motions to suppress evidence), and completing a standard pretrial order.[80]

Given the assignment procedure in Northern Georgia, it is structurally impossible for a judge to guide a magistrate's work on a case-by-case basis. Indeed, a consensus was expressed among judges in this district that providing guidance to magistrates is inappropriate; one judge commented that if he were a magistrate, he would not want someone telling him what to do.

Judges were questioned on challenges by attorneys to magistrates' work. There is a consensus that while parties will challenge, the procedure still saves time and that, in any case, they "usually" agree with the magistrate's report and recommendation; as one judge commented, an attorney will challenge if there is an issue of "real substance."

Interviews with criminal attorneys about the effectiveness and preference for this practice corroborated comments by judges and magistrates, with one interesting caveat: Attorneys report that they will "always" challenge a motion (dispositive or nondispositive) if the ruling is not in their favor in order to preserve the record should the case be appealed.[81] Attorneys also reported that they let the court know if the challenge is "for real" or "boilerplate," hence explaining in part judges' observations that challenges to motions are not overly burdensome.

While a few voiced dissent, attorneys expressed an overall preference for the district's practice of assigning criminal pretrial preparation to magistrates. Some suggested that pretrial preparation is viewed as a magistrate's most important task, and, therefore, magistrates pay close attention to their work. Issues are framed carefully, and a better pretrial record is developed. Attorneys pointed out that this is especially helpful if the case is appealed; also, one knows at a relatively early stage when one does not have a case and when to "plead out."[82]

80. Civil responsibilities, including settlement conferences, were not assigned to magistrates at the time of data collection. As noted in chapter 6, the court recently modified its practices so that magistrates will be working on civil matters as well. It is, however, much too early to determine how this is working.

81. If a magistrate's motion is not challenged in the district court, then the issue cannot be raised on appeal at the circuit level. *See* 28 U.S.C. § 636(c)(3)–(5).

82. A study of the joint criminal and civil calendars in the Western District of Missouri discloses a similar division of labor between judges and magistrate for criminal pretrial preparation; a magistrate prepares the felony case and judges do not see it until it is ready for trial. The findings disclose very similar reasons for support of this procedure to those reported in Northern Georgia. For further discussion, see D. Stienstra, The Joint Trial Calendars in the Western District of Missouri (Federal Judicial Center 1985).

Almost all criminal attorneys interviewed expressed some concern about the prosecution orientation of the magistrates' bench; that is, most, if not all, of the current

Southern District of Texas

Here, the discussion is limited to the magistrate's role in the Laredo (and Victoria) and Corpus Christi divisions. At each division, the judge assigns discovery disputes to a magistrate as a matter of course.[83] At Corpus Christi, the magistrate's civil responsibilities have varied over the years; this is, in practice, a one-judge court, and so the magistrate, while working at Corpus Christi, receives assignments from one individual. Recently when a new judge was selected, the composition of civil pretrial work assigned to the magistrate was modified. Having adopted a model of tight and personal monitoring of civil cases, the judge at Corpus Christi reports that he prefers to oversee scheduling and general preparation of civil cases, but finds it useful to have the magistrate resolve discovery disputes; at the present time, this is the magistrate's primary responsibility in civil cases.

At Laredo, the magistrate prepares a "pretrial package" in all civil cases, which evolved from a shared commitment to "judicial economy" so that the judge has the time necessary to dispose of civil cases. Further supporting this theme, the judge reported that a magistrate's most important task is to keep lawyers attentive to their civil cases, to "prod" them along so that they are prepared for trial. Preparation of civil cases that arise at Victoria is assigned to a magistrate from Corpus Christi when discovery disputes occur or as demand permits.

Judges from both divisions commented that the assignment of discovery disputes to a magistrate is especially useful; it saves time, and the orders are rarely challenged. As one of the judges put it, many discovery questions are "petty quarrels" and just getting the lawyers together moves things along. Judges reported that

appointments had prior work experience in the U.S. attorney's office. This concern was by no means limited to lawyers interviewed in Atlanta. A general theme to emerge from interviews across the districts was attorneys' desire that magistrates be selected from a broader cross section of legal backgrounds than has been the practice in most districts.

83. A large percentage of the cases filed at the Corpus Christi (53 percent) and Laredo–Victoria divisions (75 percent) are criminal. Recently, the judge from the Laredo division was assigned to hear cases from the Victoria division. Since the judge at Laredo carries a large criminal docket and must travel to the Victoria division to try cases, he has begun to call upon the magistrate from the Corpus Christi division to prepare civil cases for him. Therefore, the magistrate at the Corpus Christi division has been working for two judges from two different divisions; the magistrate at Laredo works for one judge and also carries a very large misdemeanor caseload. Using the earlier typology of assignment practices, the relationship between judges and magistrates at these divisions might best be described as one of de facto pairs; that is, assignments to magistrates are the result of geographical constraints.

CONTINUED

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they find it useful to provide guidance to magistrates in making assignments to resolve disputes. For example, one judge reported that he may spell out in an order a few "pointers" about what he wants. While the judge at Laredo uses magistrates more expansively than his counterpart at Corpus Christi, both reported that resolution of discovery questions is the most useful task performed by magistrates and that elaboration of what is expected is a necessary precondition.

While judges reported that challenges to magistrates' orders are rare, attorneys themselves were quite likely to report the opposite: that it is not unusual for them to challenge the ruling and that the judge does not always go along with a magistrate's order.[84] Indeed, descriptions of the allocation of work to magistrates, particularly the resolution of discovery disputes, were mixed. Many reported that discovery disputes are not common because lawyers know each other and have worked together for a long time. Others reported that magistrates should be doing more because it would help to move cases, particularly where there is a large criminal burden. Despite these variations in evaluations of the use and effectiveness of magistrates for pretrial preparation, a common theme did emerge. Interviewees commonly reported that a magistrate should act firmly and definitively on a motion—attorneys need to know that the action is decisive. Here, attorneys underscored the importance of magistrates' independence by suggesting that in a discovery dispute, the most important factor in resolution is the presence of an assertive court party who makes it clear to everyone, including clients, that a particular step must be taken. Attorneys also commented that when magistrates are viewed as being too anxious to please judges, as not being assertive, then the system breaks down.

Northern District of California

Judges in the Northern District of California are equally likely to assign settlement conferences and disputes involving discovery to magistrates. Hence, the discussion that follows considers the assignment of both to magistrates.[85]

84. Interviews with attorneys in the outlying divisions of Southern Texas suggest that most practice law in several divisions; it is not unusual for an attorney from Corpus Christi to have cases that have been filed at Victoria. Therefore, many interviewees in these locations could comment on experiences in Laredo, Corpus Christi, and Victoria.

85. All attorneys interviewed were asked about settlement practices in their district (see questions 4 and 5 of the survey instrument for attorneys in appendix A).

Holding a conference for the specific purpose of settlement, as distinguished from other types of pretrial conferences (e.g., scheduling, status, final pretrial, etc.), is a point of some controversy. Some consider it inappropriate for judicial officers to present positions about cases that they will later try; others claim that firm dates, rarely continued, are more important than holding a settlement conference; still others claim that it is a judge's responsibility, as an officer of a public forum, to ensure that disputes are resolved in an expeditious manner and that a settlement conference may play a significant role in that end.

Northern California is a district with a strong and widely shared commitment to the position that settlement conferences bring parties together and resolve civil cases. Translated into actual practice, most judges request the assistance of one magistrate, who is regarded as the "guru" on settlement. Alternatively, judges trade cases among themselves, though here, too, it is reported that one judge's assistance is requested more frequently than that of others. Judges also reported that they are unlikely to raise settlement with counsel in a bench trial, but will, if the chemistry looks right, ask a colleague to try to settle a case.[86] As one lawyer commented, sitting through a settlement can be a tedious process, which many judges are not willing to do.

There was little consensus among attorneys about the effectiveness of magistrates at settlement conferences. One interviewee commented that a magistrate settled a case in twenty minutes that had been languishing for seven years, while another commented

These data are reported, however, only for districts in which magistrates are asked to play an active role in settling cases. Of the districts selected for this project, the Northern District of California has taken a leading role in this area.

It is interesting to note that for many years the California state court system has had a mandatory settlement conference program, which may, in part, have helped set the tone for the federal district court's commitment to developing a settlement procedure. This is not to suggest, however, that settlement works in Northern California in reducing the burden of civil cases for judges or the court. What is interesting is the perception of the success of settlement programs in contexts in which the legal community at large already views such endeavors as the norm: Lawyers in California were quite familiar with settlement conferences long before the project in the federal court was undertaken.

86. For each district, magistrates' calendars or logs of actions for statistical year 1981 were collected. For Northern California this included reports on requests for settlement conferences; these data support the point that assignments are essentially made to one magistrate. For the period for which data were collected, magistrates reported that they held 316 settlement conferences; the numbers per magistrate were 6, 12, 69, and 229.

See also W. Brazil, Settling Civil Suits: Litigators' Views About Appropriate Roles and Effective Techniques for Federal Judges (American Bar Association 1984); W. Brazil, *Where Attorneys Disagree About Judicial Roles*, 23 Judges' J. 20 (1984). Brazil reports lawyers' overall preference for handling of settlement conferences by someone other than the individual assigned to try the case.

that magistrates "believe" in settlement too much to do the job. Lawyers often reported that some types of cases are simply better settlement candidates than others.[87]

Judges in this district also increasingly request the assistance of magistrates in resolving discovery disputes. Assignments are somewhat more evenly divided among all four officers, though the range extends from 72 to 247 actions (see table 37 in appendix C). Despite the differences in the number of actions assigned to magistrates, there was a consensus among judges, magistrates, and lawyers that most discovery disputes are delegated to magistrates. A number of judges, however, have found that discovery disputes can be resolved more easily and quickly by the judge's holding a teleconference; consequently, they are using this approach with greater frequency. In general, judges reported that they do not find it necessary to guide magistrates in preparing their work, though one judge did report that a magistrate has on occasion called him to "ask what he wants" in a particular case. Finally, these judges reported that they have not found too many challenges to magistrates' orders in discovery disputes and that the order is generally upheld when they do occur. Lawyers' descriptions of the same issue are quite different: A group of interviewees reported that they or opposing counsel regularly challenge a magistrate's order, though most also commented that they operate on the assumption that the judge will support the magistrate's order.

Eastern District of Pennsylvania

There is little agreement among judges in Eastern Pennsylvania concerning the desirability of assigning discovery disputes. No judge reported assigning these disputes regularly; a more likely practice is occasional assignment when the dispute is of a rudimentary nature.[88] The judges' explanations are illustrative. A number of judges commented that it may be more trouble to explain what is needed than just to handle it oneself. Many reported that an Article III judge is simply more effective with lawyers because they will listen to a judge in a way that they will not do with a magistrate.

Judges reported that they are, however, quite likely to have magistrates hold pretrial conferences to monitor the case or settlement

87. This point is also made by Brazil, *id.*, in his much larger and more comprehensive survey of lawyers on settlement practices.

88. One judge makes occasional assignments in complex cases; see chapter 5.

conferences to see if a disposition can be worked out.[89] Here, many judges said that magistrates can be especially useful if there is a suspicion that the case has no merit, is "empty," or is "kicking up dust." In the same vein, a judge reported that it may be useful to request a magistrate's reading of the situation if counsel are troublesome.

At the heart of the judges' reluctance to allocate these pretrial issues to magistrates is a prevailing view that lawyers will challenge a magistrate's order anyway. Though not tested by very many judges on this bench, there is an explicit assumption that lawyers will not accept the delegation of work to magistrates.[90]

Attorneys' reports corroborated judges' descriptions: Discovery disputes are not frequently assigned to magistrates. Interestingly, however, a group of attorneys with multidistrict experience reported that, based on their understanding of practices outside Eastern Pennsylvania, the court would do well to assign more to magistrates. These attorneys often suggested that it is a "waste of a judge's time" to get involved in a discovery dispute when a magistrate who can resolve it effectively is available. When questioned about possible challenge, most reported that it would only be done if, as one interviewee put it, the decision was "terrible."[91]

89. For the period for which data were collected on magistrates' actions, the number of settlement conferences reported for Eastern Pennsylvania was not as high as for Northern California: Two magistrates did not report any, one reported twenty-one, and one reported sixteen. (Note that data for one magistrate are not included.) These figures should of course be interpreted with caution because of variations in identifying various types of conferences; for example, in many districts a pretrial conference (i.e., a conference called for the purpose of evaluating the status of the case) may be what another district refers to as a settlement conference.

90. One judge did delegate a large portion of his pretrial work when he was tied up with a trial that took almost a year. He found that the delegation had been most ineffective and that there had been a lot of "wheel spinning." He felt this experience suggested that lawyers do not take magistrates seriously when they will not be trying the case.

The data collected certainly underscore a general reluctance to request magistrates' assistance in this area. Judges assigned, on the average, between ten to twenty-five disputes (nondispositive motions) per magistrate (see table 25) in a district in which each judge receives more than three hundred new civil filings per year (see table 3).

91. These comments were often made by attorneys from the largest Philadelphia law firms, that is, those who were most likely to have experience in many district courts. This same theme can be generalized to attorneys from comparable firms in nearly all the cities studied; it was rare for lawyers from this stratum of the legal profession to voice opposition to delegating pretrial work to a magistrate (though many voiced strong skepticism about the feasibility of having magistrates write reports and recommendations on dispositive motions or actually try a case). Again, when asked about challenges to a magistrate's order, more often than not these same attorneys reported that they "wouldn't bother" with a challenge. These attorneys work in a setting where they delegate parts of a case to associates and paralegals; hence, the concept of developing a similar procedure within the court is not difficult to accept.

Eastern District of North Carolina

As mentioned earlier, judges in Eastern North Carolina operate on the explicit assumption that magistrates are the pretrial officers and judges are the trial officers of the court; that is, a magistrate should do everything that is statutorily feasible to prepare a case for trial. It follows, of course, that magistrates' day-to-day workloads include the assignment of pretrial motions. All discovery disputes are assigned to a magistrate as a matter of course. When a dispositive motion arises, the clerk sends it to the assigned judge with a standardized cover sheet[92] asking the judge to report whether he or she will dispose of the matter or return it to the assigned magistrate. A judge's decision to assign a dispositive motion is based on that judge's current work situation. On the average, each judge will make about the same number of requests for assignment to magistrates over the course of a year. The three magistrates for whom data were collected reported that they disposed of between sixty-four and seventy-one dispositive motions during statistical year 1982.[93]

As pretrial officers of the court, magistrates may use a hearing on a discovery question to raise the possibility of settlement; that is, they have the discretion, and the backing of the court, to act upon their own understanding of what a case requires at any pretrial stage. Supporting the comments of others, one judge reported that he simply does not have the time to tell magistrates what to do, except in the form of a remand with instructions on a report and recommendation. In this regard, however, judges reported that should there be a challenge, it is useful to have the magistrate's review and evaluation of the motion.

Interviews with attorneys uniformly confirmed the judges' impressions: Magistrates monitor the pretrial part of a case in this district, and it is assumed that they are in charge at this stage. Attorneys reported that they may challenge, but they do not make a habit of it, and that, in any case, judges generally uphold magistrates.

92. See appendix D for a copy of the form used.

93. One should interpret these figures with some caution. These data include the workload of the clerk-magistrate because he handles so many pretrial matters. One of the magistrates was appointed to the court during the period for which these data were collected, so he did not report a full year's work; the third full-time magistrate was not on the bench during the time for which data were collected (see tables 36–38 in appendix C).

Eastern District of Kentucky

Of the districts selected for this project, Eastern Kentucky has the most decentralized organizational structure; indeed, each judge operates an independent court with little knowledge of what colleagues are doing at other divisions. This practice carries over into the use of magistrates. Since the court has not made a policy determination on the appropriate use of magistrates throughout the district, it is not surprising that the magistrates' workloads are markedly uneven. One magistrate reported the assignment of 246 dispositive motions for statistical year 1982, while the other reported 7.[94]

Interestingly, the magistrate with the smaller caseload is paired with judges who routinely issue an order that all pretrial matters in a civil case will be heard by the magistrate. There are some judges within this district, however, who take a passive role in pretrial preparation and argue that it is counsel's responsibility to certify to the court that the case is ready for trial. Thus, while two judges assign work to magistrates, the court does not carry the responsibility for getting the case ready to be tried in a timely manner.

Interviews with attorneys suggest that, with few exceptions, their experiences with judges are limited to the divisions in which they practice; they have only indirect information about practices in other divisions. According to these attorneys, a group of judges has begun to take a more active approach to pretrial practice—to scheduling, settling, and holding counsel to firm dates. In practice this has meant that at one division, the judge monitors civil cases himself, but delegates all criminal pretrial preparation to a part-time magistrate; at a second division, the magistrate is available on a limited basis; and at a third division, the judge and magistrate are evolving a clearer division of tasks so that, with time, this judge suspects that he will request that the magistrate be responsible for getting the case ready for trial in a timely manner. As a group, then, these judges are committed to tight pretrial controls

94. Disparities between magistrates are reported for other section 636(b) matters as well. The magistrate who reported the larger assignment of dispositive motions (246) also reported more nondispositive motions (644 versus 97) and pretrial conferences (108 versus 25). During the period for which these data were collected, one division did not have a judge; the magistrate carried a large share of the pretrial docket during this time. Even allowing for this factor, however, the variation is still unusual. Compared with the reported workload of magistrates in the other districts selected for this project, one magistrate's workload is markedly larger while the other's is notably smaller (see tables 36–38 in appendix C).

and, if geographically feasible, to the delegation of work to a magistrate.

There are, thus, in this district two distinct approaches to delegating pretrial work to magistrates, based on two fundamentally different styles of case management: One is controlled by counsel but overseen by a magistrate, and one is controlled by the court but delegated to a magistrate if feasible. Lawyers' comments on these dramatically different styles were not neatly divided in terms of defense versus plaintiff practices. While there was a group of defense attorneys who have been schooled in the counsel-controlled approach to litigation and who do not look favorably upon change, there was also a group of defense attorneys who noted that the court should be moving cases and not simply waiting for counsel. When asked about a magistrate's handling of discovery disputes, one attorney with a large defense practice commented that it is "one of the few good things about civil case management at this division" because the decision is rendered from the bench.

By the same token, plaintiff and defense attorneys at divisions where active case management is becoming the norm claimed that it is appropriate for the court to take control of the docket—whether delegated to magistrates or not—as long as the bar is told what to expect. Indeed, it was the consensus of attorneys at these divisions that it is easier to practice in a court when there is a clear and consistent set of expectations about how a case will be managed.

In those instances in which a discovery dispute is delegated to a magistrate, there may be challenges from time to time, but no attorneys reported that they would take this step just to stall. These interviewees explained that they must appear in this court before the judge and magistrate on a regular basis, so that the possibility of a short-term gain is outweighed by the need to maintain good long-term relations with the court.

Eastern District of Missouri

Each year, judges in Eastern Missouri report that they move civil cases at a rate that is faster than the norm for the country (see, e.g., table 3). Interviews with judges disclosed that there is a shared commitment, which goes back many years, to keep civil cases moving and attorneys on their toes. It is in this context that each judge decides if an action will be turned over to a magistrate.

Even though judges assign matters on a case-by-case basis to a magistrate of preference, there are some patterns. The active

judges reported that they are assigning more and more of their discovery problems to two of the three magistrates. Among the senior judges (all of whom carry a full docket of cases), requests for a magistrate's assistance are much more sporadic.[95] One judge commented that the assignment of a discovery dispute to a magistrate is especially useful when attorneys get angry, because a long series of motions may follow such an episode; if the magistrate is clear about the judge's expectations, a great deal of time is saved for the judge. Active judges reported that they use the same logic in requesting a magistrate's assistance on a motion that may be dispositive of the case or on efforts to get parties to settle. Interviews with two magistrates also disclosed that magistrates often initiate talks on settlement themselves—a point that was confirmed in interviews with attorneys.

In this district, then, judges are quite confident that the magistrates know what is needed when a request is made and, therefore, rarely need to provide guidance. One judge commented that when a motion is assigned, the magistrate is given "carte blanche," noting, however, that two of the magistrates "understand" him.

In criminal cases, judges as a general rule request a magistrate's assistance in all pretrial preparation, that is, discovery questions, dispositive motions, and preparation of a final pretrial statement. Indeed, interviews with criminal attorneys disclosed that they do not draw a distinction between a dispositive and nondispositive motion and report but, rather, that a magistrate prepares a "criminal package" for the judge assigned to the case. Here, the reports of criminal attorneys closely echo those of attorneys in Atlanta: The assignment to a magistrate may mean that the judge who tries the case will be less familiar with the record, but this must be weighed against the fact that when one goes before a magistrate first, one gets "two bites at the apple." Though attorneys reported that they are quite likely to file challenges, they let the court know when they "mean business"; thus, an attorney commented, an objection n.ay range in length from "one sentence to a full brief."

There was a clear consensus among attorneys with experience in civil cases that corroborates the descriptions by judges: Magistrates play a very active role in pretrial case management and, in general, are as well regarded as the judges.[96] Hence, attorneys from a

95. The Eastern District of Missouri is a five-judge court with four active senior judges, all of whom were chief judge at one time. One of the magistrates was a law clerk for two of the judges.

96. Interviews with attorneys underscored the court's general reluctance to assign all types of matters to all three magistrates; the majority of interviewees only had experience with two of the magistrates.

wide variety of backgrounds had very few objections to the assignment of pretrial questions to magistrates. Indeed, attorneys with civil practices reported that they do not challenge unless there is a good reason to do so. While some judges voiced surprise that there are not more challenges, many attorneys commented that the gain of winning a small discovery dispute does not outweigh the fact that one must continue to appear in the court.

Conclusion

Earlier in this report, I suggested that before a court or a judge develops a practice for allocating section 636(b) motions to a magistrate, a decision—explicit or implicit—must be made about the role of magistrates: Are they to be additional judges, team players, or specialists? In a sense, the discussion in this chapter summarizes a debate about whether magistrates are indeed new team players or specialists.

Although the difference may seem subtle, its implications are wide-ranging. In approaching a magistrate as a team player, the bench (or the judge) works on the assumption that the officer can take affirmative steps to shape the process of litigation; that is, the magistrate has been given the responsibility to make decisions about the issue in question as well as others that may go beyond the actual request. By contrast, in approaching a magistrate as a specialist, the bench (or the judge) works on the assumption that a magistrate's action should be limited to precisely what is requested: If the magistrate is requested to resolve a discovery dispute, then that is all that should be done.

Where magistrates are used as team players, candid discussion with members of the bar suggests, attorneys are more likely to come to an understanding of and respect for the reorganization of the litigation process. Together, the findings suggest that where the court tends to use magistrates as specialists, a judge is likely to be called upon to review challenges; where the court tends to use magistrates as team players, there is less probability of a judge's needing to review someone else's work.

IX. THE PRISONER PETITION-SOCIAL SECURITY DEBATE: A SPECIALIZED ROLE FOR MAGISTRATES

Magistrates' section 636(b) duties are often seen as synonymous with prisoner petitions and Social Security cases; over the course of the last decade, these cases have come to represent a large proportion of civil filings in many districts and a special type of case management problem. In 1983, prisoner petitions represented 13 percent of all civil filings. Of the districts selected for this project, prisoner cases accounted for 11 percent of the civil filings in Eastern Pennsylvania and Southern Texas[97] and 27 percent of the civil filings in Eastern North Carolina for statistical year 1982. (It was in the context of such proportions that the pro se law clerk program was introduced.) For statistical year 1983, Social Security cases represented 8 percent of civil filings. In Eastern Kentucky, 25 percent of the civil filings were Social Security cases; in Northern Georgia, the figure was 9 percent. Thus, it is not surprising that some districts have encouraged the development of special skills among magistrates in response to this caseload dilemma.

While the preparation of these cases may indeed be a primary duty for a large number of magistrates, this is by no means the only way in which these officers are being used, as the findings already demonstrate. Nevertheless, it may be helpful to focus on the development of a specialized role for magistrates. In the discussion that follows, special attention is given to those districts that have particularly demanding prisoner petition or Social Security caseloads. In discussing the management of prisoner petitions, it is also important to consider the tasks performed by pro se law clerks.[98]

97. The 11 percent figure for Southern Texas is somewhat misleading, since nearly all prisoner cases are filed in the Houston division; for the same period these cases represent 14 percent of the Houston division's civil filings. There were 6,378 civil filings in the Houston division from July 1, 1981, to June 30, 1982; of these filings, 869 were prisoner cases.

98. Information describing the tasks performed by pro se law clerks comes from a survey to all clerks administered on September 26, 1983, by Wendy Jennis of the Clerks Division of the Administrative Office of the United States Courts.

Finally, the impressions of attorneys with regard to this specialized role are presented.

TABLE 18
Assignment of Social Security Cases

District	Blanket Order	Allocated to All Officers	Selectively Assigned	Not Assigned
N.D. Georgia	X			
S.D. Texas				
Houston				X
Corpus Christi	X			
Laredo				X
Brownsville	X			
D. Oregon		X		
E.D. North Carolina		X		
N.D. California				X
E.D. Pennsylvania			X	
E.D. Kentucky			X	
E.D. Missouri	X			
E.D. Washington		X		

Most of the districts studied have made similar case management decisions about the preparation and disposition of Social Security cases and prisoner petitions. For example, in Northern Georgia there is a blanket order that all Social Security cases and prisoner petitions (except habeas corpus cases involving a prisoner on death row) are assigned at filing to a magistrate for a report and recommendation. Neither type of case, however, is assigned to a magistrate in Northern California. Four fairly distinct case management strategies for magistrates have been identified: (1) a blanket order whereby all Social Security cases and prisoner petitions are assigned to a magistrate; (2) an allocation of these cases between judges and magistrates; (3) a discretionary assignment procedure whereby some judges assign these cases to magistrates and others do not ("selectively assigned"); and (4) no assignment of such cases to magistrates. The findings in this chapter are presented according to these four strategies. Table 18 reports districtwide strategies for Social Security cases; table 19 presents similar findings for prisoner petitions.

TABLE 19
Assignment of Prisoner Petitions

District	Blanket Order	Allocated to All Officers	Selectively Assigned	Not Assigned
N.D. Georgia	X			
S.D. Texas				
Houston	X			
Corpus Christi				X
Laredo				X
Brownsville	X			
D. Oregon		X		
E.D. North Carolina		X		
N.D. California				X
E.D. Pennsylvania			X	
E.D. Kentucky			X	
E.D. Missouri	X			
E.D. Washington		X		

Blanket Order to Magistrates

In Northern Georgia, Southern Texas, and Eastern Missouri, magistrates are the primary officers responsible for the initial handling of prisoner petitions and Social Security cases.[99]

Northern District of Georgia

Northern Georgia uses magistrates as team players in the preparation of criminal cases and as specialists in the preparation of Social Security and prisoner petitions. Magistrates play a pivotal role in the management of the court—they are highly respected professionals, but their position is not to be confused with that of Article III judges. Supporting this general approach, magistrates have also been given responsibility for the legal supervision of pro se law clerks; specifically, the pro se law clerk works under the supervision of the chief magistrate. This law clerk does much of the initial screening, including in forma pauperis (IFP) petitions, and does some legal research on motions before a magistrate prepares a report and recommendation for a judge.[100]

99. In Eastern Missouri there is one judge who does not assign Social Security cases to magistrates; he reports that he uses "externs" (i.e., law students) to review and prepare these cases. His practice is very similar to that employed by some judges in Northern California and is, therefore, considered in greater detail later in this chapter. Attorneys interviewed in St. Louis view these cases as the primary responsibility of magistrates.

100. Specifically, the pro se law clerk reports that he is responsible for IFP screening for all civil rights cases (state and federal) and habeas corpus petitions, section 1915(d) (i.e., frivolous or malicious; *see* 28 U.S.C. § 1915(d)) screening for civil

Social Security cases are initially filed with a magistrate for a report and recommendation. It is the practice of the magistrates to hold a hearing in Social Security cases.[101] A former law clerk commented that there is an element of "wheel spinning" because the case is reviewed by the magistrate's elbow clerk, the magistrate, the judge's elbow clerk, and finally the judge; this interviewee suggested that a case should be prepared in either the judge's or the magistrate's office, but not both.

While judges generally agreed that the direct assignment of prisoner petitions and Social Security cases to a magistrate for a report and recommendation saves time, they expressed some reservations. One judge commented that assignment of a dispositive motion to a magistrate is, by its very nature, duplicative, since it must be reviewed; it was this judge's position that a magistrate's time should be reserved for those duties that can be handled dispositively—for example, ruling on nondispositive motions absent a challenge—and that dispositive-type motions are best prepared and completed within a judge's chambers.

Interviewees who represent Social Security claimants reported that magistrates' handling of these cases is generally fair, prompt, and consistent with circuit law. One interviewee commented, however, that the hearing held in these cases is usually unnecessary and duplicative. On the other hand, an interviewee who has represented Social Security claimants in many districts noted that when the magistrate program was introduced, he was opposed to turning Social Security cases over to magistrates. He assumed that a "two-tiered" system meant that these cases would be "shuffled off to Buffalo," but also acknowledged that Northern Georgia would have "collapsed" without magistrates' contribution in this area and that the program is "money well-spent." Finally, this attorney reported that magistrates in Northern Georgia are "sufficiently independent" of judges. Supporting this set of findings, attorneys reported that they rarely challenge magistrates' reports and recommendations.[102]

rights cases, and legal research on dispositive and nondispositive motions in civil rights cases.

101. This practice is controversial; since most Social Security cases are summary judgments, they need only be reviewed on the record. Magistrates in Northern Georgia report, however, that they develop a better understanding of these cases if they hold a hearing.

102. The Young Lawyers' Section of the Atlanta Bar Association has set up a special program to train attorneys to represent Social Security clients; funds to pay for this program are gathered from a one-dollar add-on filing fee in county court.

The Northern District of Georgia has established a pro bono panel of attorneys to represent litigants, usually in prisoner cases. Consequently, responsibility for these cases is spread among attorneys, and few have experience with more than one or

Southern District of Texas

Magistrates' responsibilities vary from division to division within Southern Texas.[103] In Houston, their primary and, until recently, exclusive responsibility has been the preparation of prisoner cases, whereas in Corpus Christi the magistrate prepares all Social Security cases. At Laredo and Brownsville, magistrates prepare both types of cases, though the caseload is not overly demanding. The following discussion focuses on practices with regard to prisoner petitions in Houston and with regard to Social Security cases in Corpus Christi.

As in Northern Georgia, in Houston the pro se law clerks play an active role in screening and preparing prisoner petitions; here, however, the law clerks are under the supervision of the clerk of court.[104] Once screened, prisoner petitions are assigned randomly to a magistrate for a report and recommendation. In response to a particularly demanding prisoner caseload, the court has developed various strategies for using the skills of magistrates.[105]

The appropriate strategy for handling the prisoner petition caseload has been widely debated in Southern Texas. While the various practices for delegating prisoner cases to magistrates is supported by the plaintiff bar, it is strongly opposed by the state attorney general who is the primary defendant. On the plaintiff side, few attorneys have more than a limited experience with these types of cases; with this caveat, the consensus among attorneys interviewed was that magistrates handle these cases with competence. Indeed, many voiced a preference for magistrates over judges because the cases get care, time, and attention. On the other hand, an attorney from the attorney general's office commented that "when Exxon is willing to consent to a magistrate, maybe we will." This comment does not necessarily apply to the quality of the magistrate's work; it may mean, however, that once a court conveys the message that it hands small matters to magistrates, there will be resistance from

two cases; hence, it was difficult to find attorneys who could comment on this aspect of the court's procedure. The state attorney general's office was contacted, but they did not agree to be interviewed.

103. Overall, the judges at each division use a blanket order to magistrates for the more demanding of the two caseloads. Note that the district reported a relatively small Social Security caseload (104 cases) for the period ended July 1, 1983.

104. Pro se law clerks report that they do all IFP and section 1915(d) screening of civil rights cases as well as legal research on dispositive and nondispositive motions.

105. Ruiz v. Estelle, 552 F. Supp. 567 (5th Cir.), 666 F.2d 854 (5th Cir. 1982), a landmark prisoner case, originated in the Southern District of Texas; subsequent to this case, Southern Texas has had a particularly demanding prisoner petition caseload. *See also* Ruiz v. McCaskle, 724 F.2d 1149 (5th Cir. 1984); Ford v. Estelle, 740 F.2d 374 (5th Cir. 1984).

attorneys. This same concern was expressed by attorneys in various districts.

The magistrate in the Corpus Christi division prepares all Social Security cases for a report and recommendation. Here attorneys' experiences were mixed; in general, these attorneys give the impression that there is little communication or dialogue among judicial officers. As one interviewee put it, echoing the sentiments of others, a magistrate's tasks are limited to "mundane" things—like Social Security cases.

Eastern District of Missouri

Recently, Eastern Missouri modified its assignment procedure for Social Security and prisoner cases: Since June 1983 judges have been asked to assign these cases by a random allocation through the clerk's office. Some judges prefer to continue assigning these cases themselves.

The preparation of these cases by magistrates was never formally and collectively worked out by the bench; it is, however, the consensus that this is an appropriate use of magistrates. A recently appointed judge commented when asked about his handling of these cases, "I follow the lead of the others" and assign all Social Security, habeas, and Veterans Administration collection cases to magistrates. Magistrates reported a similar understanding: They have developed an expertise in the area, and it is more "efficient" and "effective" for them to handle these matters. It was also noted by one magistrate, however, that these are not "enjoyable" cases to handle.

The picture that emerges from interviews with attorneys corroborates that provided by judges and magistrates: The delegation of Social Security cases and prisoner petitions to magistrates works smoothly, though they are difficult cases to deal with on a repetitive basis. Although there are some dissents and some skepticism from the bar, attorneys, too, seem to feel comfortable with the delegation of these cases to magistrates.

Allocation to All Judicial Officers

In response to the repetitive and demanding nature of Social Security and prisoner cases, Oregon, Eastern North Carolina, and Eastern Washington divide these cases among all judicial officers, though the actual techniques are different in each district. The bar in these districts found the procedures to be completely satisfactory.

District of Oregon

Social Security cases and prisoner petitions are assigned according to the number of law clerks per judicial officer in Oregon. Thus, each judge (who has two law clerks) is assigned two cases, while each magistrate (who has one law clerk) is assigned one case. Together, Social Security and prisoner cases represented about 18 percent of the district's civil filings for the year ended June 30, 1983.

Eastern District of Washington

Eastern Washington has a relatively large prisoner caseload that is divided evenly among all three judicial officers. There are instances in which the parties consent so that the magistrate may rule dispositively on the case; where this does not occur, the magistrate writes a report and recommendation. In either instance, however, a pro se law clerk does a full screening of the case for all petitions.[106] The same procedure is used for the preparation of Social Security cases, though that caseload has not been as demanding (see table 3).

Eastern District of North Carolina

In Eastern North Carolina, Social Security and prisoner cases are assigned randomly to all judicial officers. Each magistrate is paired with a judge and prepares a report and recommendation; using this procedure, the docket is divided equally among six judicial officers. There is a pro se law clerk who is responsible for all screening of cases, legal research on motions, appointment of counsel, and monitoring at trial if necessary; compared with the clerks in Southern Texas and Northern Georgia, the pro se law clerk in this district has a wider range of responsibilities in preparing and monitoring prisoner petitions.

The district's Social Security filings were relatively small for statistical year 1982 (87 cases). The filings of prisoner petitions were not (576), constituting about 26 percent of the district's filings in 1982.

A number of attorneys in Eastern North Carolina presented an interesting view, which was shared by attorneys with various experiences across the other districts: When cases raise large questions that challenge the status quo or require, as one interviewee put it, "sweeping injunctive relief," magistrates may be a bit "reluctant"

106. The pro se clerk is responsible for all IFP petitions, legal research on motions, appointment of counsel, and preparation for trial and appeal.

to take the big step. They go, as one attorney said, "a bit more slowly" into new territory. One interviewee elaborated that magistrates are a bit lower on the "pecking order" and reflect that in the decisions they write. Attorneys commented that magistrates are not as independent as Article III judges are and sometimes take their cues from the judges in their district.

Selective Assignment to Magistrates

Eastern District of Pennsylvania

In both Eastern Pennsylvania and Eastern Kentucky magistrates prepare a report and recommendation on prisoner petitions and Social Security cases for most judges. A minority of judges in each district prepare these cases themselves. For example, one judge in Eastern Pennsylvania does not give work of any kind to a magistrate; he reports that he simply prefers to do everything himself. In addition, as discussed in greater detail in chapter 6, one judge in the district reports that he finds it more effective to have a magistrate work closely with him on the "big" case.

Nevertheless, the general impression among attorneys in Eastern Pennsylvania is that these cases are magistrates' primary responsibility. Generally, attorneys interviewed in Philadelphia reported the same experience as attorneys interviewed in Atlanta: At first they were not pleased with the delegation of cases to magistrates because of a concern that the cases would not be treated seriously; over time, however, attorneys found that magistrates treat the cases fairly, are current with respect to circuit law, and make prompt determinations—three crucial factors from the standpoint of attorneys representing Social Security claimants.

Eastern District of Kentucky

In Eastern Kentucky geographical constraints impinge upon the practices of some judges. Also, the district has a relatively large Social Security caseload. Since judges are assigned cases by division, a magistrate's time is consumed with the preparation of these cases for the judges who are within closest geographical proximity.

Judges without access to a magistrate have had to work out alternative strategies. Thus, the judge at Covington has developed a questionnaire that his law clerk fills out for all Social Security and "black lung" cases.[107] He has the law clerk brief the case with

107. A copy of this questionnaire is in appendix E.

notations for the appropriate pages of transcript to be reviewed. Then, this judge reported, he can dispose of a case expeditiously.

Interviews with attorneys in the Eastern District of Kentucky disclose varying experiences; at the Ashland division, as in Northern Georgia, the magistrate and the judge have worked out a viable arrangement whereby the magistrate prepares most cases and the judge reviews and disposes of them. Attorneys applaud the use of magistrates here because the law "is followed religiously," one interviewee commented. Elaborating on the positive relations between judge and magistrate, another attorney said that, for the first time, he feels a "rapport" with the federal court. Attorneys at the Covington division similarly commend the handling of Social Security cases. At both divisions, attorneys reported that the procedures mean that these cases do not sit in the court. While there is a similar arrangement at the Lexington division, attorneys noted that the backlog is a serious problem and that cases are not decided in an expeditious manner.

Not Assigned to Magistrates

Northern District of California

While the assignment process in Northern California does, in theory, permit judges to assign Social Security cases to magistrates, none do so. As two judges put it, they do not want to convey a message to the bar that Social Security cases are not treated seriously in this district. Some judges, however, draw upon a program whereby law students from neighboring schools work for judges and are given responsibility for the preparation of Social Security cases. It was reported that cases are prepared in an effective and efficient manner while providing a "wonderful teaching tool" for students.

Conclusion

There are a variety of strategies for managing Social Security and prisoner cases: (1) delegation to magistrates for a report and recommendation, (2) equal allocation of cases among judges and magistrates, (3) development of a questionnaire that law clerks use to prepare cases for the judge's review, and (4) use of law students to help review and prepare the cases. The most common strategy is to delegate the cases to magistrates for a report and a recommendation, which are then reviewed by a judge. By and large, the reports of attorneys who have extensive experience in this area are

favorable; there is a consensus that where the court gives these cases a high priority, magistrates do likewise. In both Northern Georgia and Eastern Pennsylvania, for example, judges share a commitment to move Social Security cases quickly and fairly, and this message of commitment is in turn embraced by magistrates. In other districts—for example, Eastern Kentucky—some judges have not given a high priority to these cases, and there are delays with both magistrates' reports and recommendations and judges' final decisions. The tone that a court sets in resolving disputes may be more important than whether the cases are actually prepared by a magistrate or a judge.

X. APPEALS OF MAGISTRATES' ACTIONS

A wide variety of approaches to the use of magistrates have been examined, and it is clear that attorneys' experiences with magistrates are strongly affected by a district's approach to court administration, case management, and the roles of these officers. Yet, a series of important questions remains: When pretrial questions are delegated to magistrates, how frequently do lawyers challenge magistrates' actions? If challenged, how likely are magistrates' actions to be sustained by judges? Answers to these questions, coupled with the findings of earlier chapters, will provide data on the extent to which magistrates actually reduce the burdens of case management.

It is necessary to trace practices from the filing of a motion to the final decision of the court. To this end a simple random sample of dispositive motions, nondispositive motions, and pretrial conferences has been analyzed for the districts selected for this project.[108]

Outcome of Dispositive Motions

Building on the findings presented in chapters 8 and 9, the districts can be divided informally into three groups: (1) districts in which magistrates are quite likely to receive a wide variety of dispositive motions on civil cases; (2) districts in which magistrates' reports and recommendations tend to be limited to actions on prisoner petitions and Social Security cases; and (3) districts in which

108. Appendix C provides a detailed description of the research design for this phase of study. It should be noted that a separate simple random sample was selected for each population of motions for statistical year 1982. The size of each sample has an error of estimation of ±.075; this means that there is the probability that the findings derived from the sample would be the same in ninety-three instances out of every hundred. Where the number of motions for the year was relatively small, the entire population was analyzed. See table 33 for the size of population groups, table 34 for the size of simple random samples, and table 35 for the actual number of cases analyzed for each district (all are in appendix C).

magistrates' workload does not include the regular assignment of dispositive motions.

The districts of Oregon, Eastern Washington, Eastern Kentucky, and Eastern North Carolina are illustrative of the first group. In Oregon, the composition of magistrates' pretrial assignments parallels that of judges. In Eastern Washington, the magistrate fills in for judges as the need arises. At the time of data collection, one magistrate in Eastern Kentucky performed a wide variety of duties under section 636(b). And in Eastern North Carolina, magistrates are the pretrial officers for the civil and criminal dockets. Northern Georgia, Southern Texas (Houston), Eastern Missouri, and Eastern Pennsylvania fall into the second cluster: Magistrates' assignments of civil matters are limited to reports and recommendations on Social Security and prisoner cases.[109] Finally, Northern California is an example of the third type: Judges there do not assign civil dispositive motions to magistrates on a regular basis.

The data in tables 20 and 21 support these groupings. Table 20 shows the assignment of dispositive motions to magistrates by nature of suit, and table 21 shows the assignment of dispositive motions to magistrates by type of motion.[110] Magistrates in Oregon, Eastern North Carolina, Eastern Kentucky, and Eastern Washington were indeed assigned a full array of motions (table 21) in a variety of civil cases (table 20). By contrast, in the remaining districts, except Northern California, magistrates' dispositive caseload was limited to summary judgments and motions in Social Security cases and motions to dismiss in prisoner cases.

In Northern California magistrates were assigned a variety of dispositive motions in civil cases; the number of assignments, however, was relatively small. Magistrates were assigned an average of eleven dispositive motions for the year under study, which is notably less than the reported assignments for other districts.[111]

Once a motion is delegated, the magistrate is responsible for reviewing the record, holding a hearing if appropriate, and preparing a report and recommendation for a judge's final decision. Parties have ten days in which to challenge, in whole or in part, the magis-

109. Data were not available to analyze the outcome of magistrates' criminal pretrial workload in the Northern District of Georgia.

110. In many districts it was not possible to code the exact type of dispositive motion from the information provided on the docket sheet. In such instances, the docket sheet did indicate, however, that the magistrate prepared a report and recommendation; therefore, it was reasonable to infer that a dispositive motion had been assigned.

111. Note that the motions analyzed in Northern California represent the reported population for the year; see tables 33 and 34 in appendix C for a comparison with other districts.

TABLE 20
Nature of Suit for Random Sample of Dispositive Motions Assigned to Magistrates (Error of Estimation = ±.075; *N* = 878)

District	1	2	3	4	5	6	7	8	9	10
D. Oregon	18	3	11	13	32	32	1	19	1	1
(*n* = 131)	(14)	(2)	(8)	(10)	(24)	(24)	(1)	(15)	(1)	(1)
E.D. Washington	0	11	1	2	1	4	0	1	11	0
(*n* = 31)		(35)	(3)	(6)	(3)	(13)		(3)	(35)	
E.D. North Carolina	12	2	5	15	8	32	2	1	5	6
(*n* = 88)	(14)	(2)	(6)	(17)	(9)	(36)	(2)	(1)	(6)	(7)
E.D. Kentucky	6	7	2	2	7	27	0	3	44	0
(*n* = 98)	(6)	(7)	(2)	(2)	(7)	(28)		(3)	(45)	
E.D. Pennsylvania	0	0	1	1	1	67	0	2	40	1
(*n* = 113)			(1)	(1)	(1)	(59)		(2)	(35)	(1)
N.D. Georgia	0	0	21	1	3	1	1	2	74	0
(*n* = 103)			(20)	(1)	(3)	(1)	(1)	(2)	(72)	
E.D. Missouri	1	0	1	0	0	39	0	0	45	0
(*n* = 86)	(1)		(1)			(45)			(52)	
N.D. California	9	0	5	10	14	2	4	6	1	3
(*n* = 54)	(17)		(9)	(19)	(26)	(4)	(7)	(11)	(2)	(6)
S.D. Texas										
Houston	0	0	0	0	2	92	0	0	0	0
(*n* = 94)					(2)	(98)				
Corpus Christi	9	1	8	3	6	16	1	0	4	0
(*n* = 48)	(19)	(2)	(17)	(6)	(13)	(33)	(2)		(8)	
Laredo	0	1	0	1	1	0	0	1	2	0
(*n* = 6)		(17)		(17)	(17)			(17)	(33)	
Brownsville	0	0	0	2	1	5	2	2	9	5
(*n* = 26)				(8)	(4)	(19)	(8)	(8)	(35)	(19)
Total	55	25	55	50	76	317	11	37	236	16
	(6)	(3)	(6)	(6)	(9)	(36)	(1)	(4)	(27)	(2)

NOTE: Figures in parentheses are row percentages. 1 = contract, 2 = property, 3 = tort, 4 = other civil, 5 = civil rights, 6 = prisoner petition, 7 = forfeiture, 8 = labor, 9 = Social Security, 10 = criminal.

trate's report and recommendation; the challenging party is, moreover, obligated to challenge the magistrate's report and recommendation if the record is to be preserved on appeal to the circuit.[112] If

112. Most of the circuits are in agreement that failure to file objections to a magistrate's report and recommendation in the district court bars further appeal on the matter. *See* United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); United States v. Slay, 714 F.2d 1093 (11th Cir. 1983); Scott v. Schweiker, 702 F.2d 14 (1st Cir. 1983); Nettles v. Wainright, 677 F.2d 404 (5th Cir. 1982); United States v. Walters, 638 F.2d 947 (6th Cir. 1981); Park Motor Mart v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980). *But see* Messimer v. Lockhart, 702 F.2d (8th Cir. 1983); Lorin Corp. v. Goto & Co., 700 F.2d 1292 (8th Cir. 1983). The Eighth Circuit has taken the position that waiver is a drastic measure to be merely assumed from the language of the statute.

TABLE 21
Types of Dispositive Motions for Random Sample Assigned to Magistrates (Error of Estimation = ±.075; N = 878)

District	1	2	3	4	5	6	7
D. Oregon (n = 131)	44 (34)	1 (0.7)	68 (52)	2 (2)	3 (3)	1 (0.7)	12 (9)
E.D. Washington (n = 31)	20 (65)	1 (3)	7 (23)	0	0	0	3 (10)
E.D. North Carolina (n = 88)	18 (20)	3 (3)	28 (32)	6 (7)	1 (1)	6 (7)	26 (30)
E.D. Kentucky (n = 98)	40 (41)	2 (2)	10 (10)	0	0	0	46 (47)
E.D. Pennsylvania (n = 113)	37 (33)	1 (1)	17 (15)	1 (1)	0	57 (50)	0
N.D. Georgia[1] (n = 103)	7 (7)	0	10 (10)	0	0	15 (15)	71 (69)
E.D. Missouri (n = 86)	48 (56)	0	17 (20)	0	1 (1)	20 (23)	0
N.D. California (n = 54)	24 (44)	1 (2)	14 (26)	2 (4)	0	1 (2)	12 (22)
S.D. Texas							
Houston (n = 94)	5 (5)	1 (1)	12 (13)	0	0	49 (52)	27 (29)
Corpus Christi (n = 48)	8 (17)	0	12 (25)	0	0	0	28 (58)
Laredo (n = 6)	4 (67)	0	0	0	0	0	2 (33)
Brownsville (n = 26)	7 (27)	2 (8)	5 (19)	0	0	0	12 (46)
Total	262 (30)	12 (1)	200 (23)	11 (1)	5 (0.6)	149 (17)	239 (27)

NOTE: Figures in parentheses are row percentages. 1 = summary judgment; 2 = dismissal, criminal; 3 = dismissal, civil; 4 = judgment on pleadings; 5 = certification of class; 6 = involuntary dismissal; 7 = other, i.e., type of dispositive motion not reported on docket sheet.

[1]Dispositive motions for civil responsibilities only. In Northern Georgia magistrates may write orders to remand in Social Security cases without actually ruling on summary judgment motion, and magistrates are assigned Internal Revenue Service cases to enforce compliance. Both types of motions are reported as "other."

challenge is made, the judge makes a de novo determination of the challenged portions.[113]

113. *But see* United States v. Barney, 568 F.2d 134 (9th Cir. 1978). On appeal the appellant argued in part that he did not receive ten days to file objections to a magistrate's report and recommendation. The court denied the defendant's appeal, arguing that "ten days is a maximum, not a minimum. The court may require a response within a shorter period if exigencies of the calendar require, as they did in this instance." The limitation of this ruling was noted in Thompson v. Rose, 505 F. Supp. 183 (11th Cir. 1981); in denying a plaintiff the motion of an untimely objection by the defendant, the court noted that the *Barney* decision does allow a judge to reduce the ten days under limited circumstances. In general, however, a party has ten days in which to file an objection to a magistrate's report and recommendation.

Table 22 presents magistrates' reports and recommendations for each district; overall, the findings show that in 31 percent of the cases magistrates recommended that the motions in question be granted and in 19 percent they recommended denial. Note that a number of districts have special procedures for various types of routine dispositive motions that are reported in the table as "Other"; for example, in Eastern Pennsylvania (52 percent) and Eastern Missouri (17 percent), where magistrates are assigned primarily Social Security cases, there is a special procedure whereby the magistrate may initiate a report and recommendation to remand the case to the agency though the motion before the court is a summary judgment.

When the magistrate's work has been completed, one of several outcomes will follow: (1) If no objections are raised by the parties, the judge may accept the report's recommendations and conclude the matter; (2) even if no objections are raised, the judge may decline to accept the report and may reject, modify, or recommit the matter with instructions; or (3) if objections are raised, the judge will make a de novo determination, sometimes after a de novo hearing.

Table 23 reports challenges to magistrates' reports and recommendations for the selected districts. There were 220 challenges to the dispositive motions (N = 878) across the various districts for statistical year 1982; thus, in 24 percent of these motions, a party initiated steps to require a de novo determination, in whole or in part, on the issue in dispute. The percentage of challenges to these motions ranges from 13 percent in Eastern Missouri[114] to 44 percent in Eastern North Carolina. Challenges in Oregon, where magistrates are used most extensively, occurred in 15 percent of the sampled cases.

The findings in table 23 also demonstrate that there were only eighteen instances in which a judge decided that a de novo hearing was required. Finally, the findings in table 23 mean that in 76 percent of the cases, the losing party to the motion in question failed to raise formal objections to the magistrate's report and recommendation, thereby waiving the opportunity to raise objections at the appellate level. The findings suggest that in the majority of cases, parties are likely to accept the reports of magistrates.

114. It was not possible to ascertain magistrates' criminal pretrial workload (dispositive and nondispositive motions) in Eastern Missouri. Therefore, the cases reported are limited to civil motions, particularly summary judgments and motions to dismiss.

TABLE 22
Magistrates' Reports and Recommendations for Random Sample of Dispositive Motions (Error of Estimation = ±.075; *N* = 878)

District	Granted	Denied	Granted/ Denied	Moot	Contin-ued[a]	Without Action	Other	Not Reported[b]
D. Oregon	58	27	9	6	3	18	0	10
(*n* = 131)	(44)	(21)	(7)	(5)	(2)	(14)		(8)
E.D. Washington	5	12	2	1	2	0	0	9
(*n* = 31)	(16)	(39)	(6)	(3)	(6)			(29)
E.D. North Carolina	40	10	6	0	0	0	20[c]	12
(*n* = 88)	(45)	(11)	(7)				(23)	(14)
E.D. Kentucky	46	25	2	0	3	1	13[c]	8
(*n* = 98)	(47)	(26)	(2)		(3)	(1)	(13)	(8)
E.D. Pennsylvania	23	23	0	0	0	0	59[d]	8
(*n* = 113)	(20)	(20)					(52)	(7)
N.D. Georgia	8	5	0	4	0	30	42[e]	14
(*n* = 103)	(8)	(5)		(4)		(29)	(41)	(14)
E.D. Missouri	18	23	1	1	0	0	15[f]	28
(*n* = 86)	(21)	(27)	(1)	(1)			(17)	(33)
N.D. California	26	16	1	1	0	5	0	5
(*n* = 54)	(48)	(30)	(2)	(2)		(9)		(9)
S.D. Texas								
Houston	16	5	0	0	0	0	57[g]	16
(*n* = 94)	(17)	(5)					(61)	(17)
Corpus Christi	20	9	1	0	0	3	6[c]	9
(*n* = 48)	(42)	(19)	(2)			(6)	(13)	(19)
Laredo	3	2	0	0	0	0	0	1
(*n* = 6)	(50)	(33)						(17)
Brownsville	7	7	0	0	0	0	0	12
(*n* = 26)	(27)	(27)						(46)
Total	270	164	22	13	8	57	212	132
	(31)	(19)	(3)	(1)	(0.9)	(6)	(24)	(15)

NOTE: Figures in parentheses are row percentages.

[a]Motion fiied, continued, and not resolved as of last entry on docket sheet.

[b]Includes cases in which description of magistrate's report and recommendation was not recorded or information was missing.

[c]Includes cases in which parties consented to trial before a magistrate under section 636(c).

[d]In the Eastern District of Pennsylvania, magistrates have authority to write a report and recommendation indicating that a prisoner petition should be dismissed as frivolous, prior to such motion being served.

[e]In Social Security, truth-in-lending, and Internal Revenue Service cases, where a magistrate's action is limited to an automatic order (see note 1, table 21).

[f]Includes Social Security cases in which a magistrate recommends remand but does not rule on summary judgment.

[g]Includes cases in which the magistrate's action was limited to the issuing of a show-cause order to dismiss for want of prosecution, and the case was then dismissed, or in which the magistrate only issued an order to transfer the case sua sponte.

TABLE 23
Challenges to Magistrates' Reports and Recommendations and De Novo Hearings for Random Sample of Dispositive Motions (Error of Estimation = ±.075; *N* = 878)

District	Challenges	De Novo Hearings
D. Oregon (*n* = 131)	19 (15)	4 (3)
E.D. Washington (*n* = 31)	8 (26)	3 (10)
E.D. North Carolina (*n* = 88)	39 (44)	1 (1)
E.D. Kentucky (*n* = 98)	19 (19)	0 (0)
E.D. Pennsylvania (*n* = 113)	40 (35)	1 (1)
N.D. Georgia (*n* = 103)	25 (24)	0 (0)
E.D. Missouri (*n* = 86)	31 (36)	0 (0)
N.D. California (*n* = 54)	7 (13)	7 (13)
S.D. Texas (*n* = 174)	32 (18)	2 (1)
Total	220 (25)	18 (2)

NOTE: Figures in parentheses are percentages of cases challenged or heard again within each district's sample of dispositive motions.

Though it is reasonable to expect that a judge will often accept a magistrate's report and recommendation absent a challenge, that is certainly not always the case. Table 24 reports judges' actions on magistrates' reports and recommendations: Judges accepted magistrates' reports and recommendations in 62 percent of the cases. Indeed, these findings suggest that, in general, judges are unlikely to reject (2 percent), modify (1 percent), or recommit (1 percent) a magistrate's report and recommendation.[115] These findings must be interpreted, however, with the important caveat that data were not available (i.e., not reported) for 28 percent of the cases; nevertheless, nearly two-thirds of the reports are known to have been accepted. Supporting this general theme, it is of interest to note the

115. Note that in table 24 "Other" refers to special procedures within a district; "Not Reported" refers to instances in which the judge's final action was not included as of the last entry on the docket sheet.

high acceptance rate of magistrates' reports and recommendations in Eastern North Carolina (74 percent) and Eastern Pennsylvania (86 percent), where there are also the lowest proportions of "Not Reported" actions (13 percent and 7 percent, respectively). This pattern holds for districts in which magistrates' assignments are limited to Social Security and prisoner cases (e.g., Eastern Pennsylvania and Northern Georgia), as well as for districts in which magistrates' duties cover the full range of possible assignments (e.g., Oregon, Eastern Washington, and Eastern North Carolina).

Finally, a separate analysis of judges' actions on magistrates' reports and recommendations for those motions in which a party did challenge ($n = 220$)[116] shows that the judge sustained the magistrate's report and recommendation in 79 percent of the challenged cases; moreover, the rate of acceptance is essentially the same whether the magistrate recommended that the motion be granted or be denied.[117] It is feasible to conclude that judges, at least in the districts selected for this study, are likely to accept the reports of magistrates, even in those instances in which a party files an objection.

These findings raise questions concerning the common belief that the losing party will inevitably challenge a magistrate's report and recommendation. Challenge of a report and recommendation was not a routine step in the motions studied. Of equal importance, the findings suggest that the districts that have taken somewhat more expansive steps to include magistrates in pretrial preparation (e.g., Oregon, Eastern North Carolina) do not, in turn, experience a deluge of challenges from attorneys. Here, too, the findings underscore the general picture gleaned from interviews with practitioners in these districts: Where the court has taken steps to expand carefully the roles performed by magistrates, the practicing bar appears to accept the modification in case management. Assuming the review of a magistrate's report and recommendation is less burdensome than the actual preparation for and disposition of a dispositive motion, the findings also mean that magistrates are making a notable contribution to the overall management of a court's docket.

116. A party has ten days in which to challenge the magistrate's decision, so it is quite reasonable to assume that all such actions would be reported on the docket sheets before the last entry.

117. Chi-square = 91.5719; d.f. = 25; $p = 0$.

TABLE 24
Judges' Actions on Magistrates' Reports and Recommendations for Random Sample of Dispositive Motions (Error of Estimation = ±.075; $N = 878$)

District	Accept	Reject	Modify	Recommit with Instructions	Other	Not Reported[a]
D. Oregon ($n = 131$)	72 (55)	2 (2)	1 (1)	0	18[b] (14)	38 (29)
E.D. Washington ($n = 31$)	18 (58)	0	0	0	1 (3)	12 (39)
E.D. North Carolina ($n = 88$)	65 (74)	3 (3)	3 (3)	0	4[b] (5)	13 (15)
E.D. Pennsylvania ($n = 113$)	97 (86)	3 (3)	3 (3)	2 (2)	0	8 (7)
N.D. Georgia ($n = 103$)	51 (50)	4 (4)	0	2 (2)	3[c] (3)	43 (42)
E.D. Missouri ($n = 86$)	55 (64)	0	0	2 (2)	0	29 (34)
N.D. California ($n = 54$)	11 (20)	4 (7)	1 (2)	0	18[d] (33)	20 (37)
E.D. Kentucky ($n = 98$)	70 (71)	2 (2)	1 (1)	0	1[c] (1)	24 (24)
S.D. Texas Houston ($n = 94$)	58 (62)	0	1 (1)	0	0	35 (37)
Corpus Christi ($n = 48$)	25 (52)	2 (4)	0	2 (4)	4[c] (8)	15 (31)
Laredo ($n = 6$)	3 (50)	1 (17)	0	0	0	2 (33)
Brownsville ($n = 26$)	16 (62)	0	0	0	0	10 (38)
Total	541 (62)	21 (2)	10 (1)	8 (1)	49 (6)	249 (28)

NOTE: Figures in parentheses are row percentages.

[a]Exact action by judge on magistrate's report and recommendation was not reported.

[b]Includes cases in which parties subsequently consented under section 636(c).

[c]Includes cases in which a motion was withdrawn or parties consented under section 636(c).

[d]Includes cases in which the magistrate wrote a report and recommendation but either the parties subsequently consented under section 636(c) or the case settled before the judge acted on the report and recommendation.

Outcome of Nondispositive Motions

A magistrate who is assigned a nondispositive motion has the statutory authority to rule on the matter with finality, subject to a challenge from the losing party. If the party does not challenge the magistrate's ruling, the motion is settled and counsel must respond

accordingly. This means that once the matter is delegated to the magistrate no further judicial burden arises from the issue. If, on the other hand, the party does challenge the magistrate's ruling, it must show that the order is "clearly erroneous or contrary to law" and the judge then makes a de novo determination; in this instance, the same motion is, in essence, being considered twice—once by the magistrate and once by the judge. This means that an extremely high challenge rate could nullify magistrates' contribution to the conservation of the limited resource of judges' time. Even a moderately substantial challenge rate would raise serious doubts about the effectiveness of magistrate participation. Duplicate work for the judge, even if eased by the magistrate's earlier work, would suggest that greater effectiveness might be achieved by shifting magistrates' responsibilities to matters on which acceptance is greater.

With this issue in mind, let us turn to the findings reported in tables 25 to 28. Table 25 shows the nature of suit for the sample of nondispositive motions across the selected districts. The largest number of motions is in the prisoner area, particularly in Eastern Pennsylvania, Eastern North Carolina, Eastern Kentucky, and Southern Texas, where, it may be recalled, there has been a particularly demanding docket. The findings also show, however, that magistrates' assignments of nondispositive motions are by no means limited to prisoner cases: In Oregon, Eastern Missouri, Northern California, Eastern North Carolina, Eastern Kentucky, Eastern Washington, and Southern Texas at Corpus Christi, magistrates were assigned nondispositive motions in a wide variety of cases for the period under study.

Table 26 reports magistrates' rulings on the sampled motions, disclosing that magistrates across the districts granted the motion in 47 percent of the sampled cases and denied it in 17 percent of these cases for statistical year 1982.[118]

Regardless of the nature of the unchallenged ruling, however, the magistrate's order completes the matter. As noted above, a challenge requires the judge to review the matter. Thus, the findings reported in table 27 are particularly noteworthy, showing that challenges to a magistrate's order on a nondispositive motion occurred in only 4 percent of the sampled cases; the largest number of challenges occurred in Oregon (10 percent) and Northern California (9 percent);[119] there were none in Eastern Pennsylvania, Eastern Missouri, and Southern Texas at Houston. In Oregon and Northern California, magistrates rule on discovery matters in a wide variety of civil cases, as is apparent from table 25. Table 27 also shows that following a challenge, judges held a hearing in less than 1 percent of the sampled cases.

Finally, table 28 reports judges' decisions on challenged motions; here, again, the findings demonstrate that in most instances the magistrate's order was sustained. Forty-five percent of the challenges occurred in instances (n = 18) in which the magistrate

118. Note that some motions may have been "Continued" but not finalized before the last entry reported on the docket sheet. Motions are reported as "Other" where the docket indicated that the magistrate held a conference, but a formal order was not entered, and as "Not Reported" where the outcome of the magistrate's action was not indicated on the docket sheet.

TABLE 25
Nature of Suit for Random Sample of Nondispositive Motions Assigned to Magistrates (Error of Estimation = ±.075; N = 956)

District	1	2	3	4	5	6	7	8	9	10
D. Oregon (n = 136)	28 (21)	2 (1)	29 (21)	15 (11)	29 (21)	21 (15)	1 (1)	9 (7)	0	2 (1)
E.D. Washington (n = 98)	9 (9)	14 (14)	14 (14)	45 (46)	5 (5)	10 (10)	0	0	0	1 (1)
E.D. North Carolina (n = 120)	16 (13)	2 (2)	15 (13)	15 (13)	8 (7)	35 (29)	7 (6)	5 (4)	3 (3)	14 (12)
E.D. Kentucky (n = 138)	19 (14)	24 (17)	6 (4)	13 (9)	7 (5)	36 (26)	10 (7)	4 (3)	16 (12)	3 (2)
E.D. Pennsylvania (n = 96)	10 (10)	0	19 (20)	4 (4)	5 (5)	55 (57)	0	1 (1)	1 (1)	1 (1)
E.D. Missouri (n = 77)	11 (14)	0	4 (5)	5 (6)	3 (4)	6 (8)	0	0	1 (1)	47 (61)
N.D. California (n = 117)	32 (27)	1 (1)	18 (15)	36 (31)	23 (20)	0	2 (2)	5 (4)	0	0
S.D. Texas Houston (n = 70)	1 (1)	0	0	0	1 (1)	68 (97)	0	0	0	0
Corpus Christi (n = 93)	5 (5)	1 (1)	54 (58)	5 (5)	3 (3)	20 (22)	0	3 (3)	1 (1)	1 (1)
Laredo (n = 10)	0	0	4 (40)	0	4 (40)	1 (10)	0	1 (10)	0	0
Brownsville (n = 1)	0	0	0	0	1 (100)	0	0	0	0	0
Total	131 (14)	44 (5)	163 (17)	138 (14)	89 (9)	252 (26)	20 (2)	28 (3)	22 (2)	69 (7)

NOTE: Figures in parentheses are row percentages. 1 = contract, 2 = property, 3 = tort, 4 = other civil, 5 = civil rights, 6 = prisoner petition, 7 = forfeiture, 8 = labor, 9 = Social Security, 10 = criminal.

119. The population of motions for Brownsville and Laredo is too small to be considered reliable.

TABLE 26
Magistrates' Rulings on Random Sample of Nondispositive Motions (Error of Estimation = ±.075; *N* = 956)

District	Granted	Denied	Granted/ Denied	Moot	Contin-ued[1]	Without Action	Other[2]	Not Reported[3]
D. Oregon	65	31	14	9	1	9	7	0
(*n* = 136)	(48)	(23)	(10)	(7)	(1)	(7)	(5)	
E.D. Washington	12	13	4	0	8	6	14	41
(*n* = 98)	(12)	(13)	(4)		(8)	(6)	(14)	(42)
E.D. North Carolina	69	17	2	0	0	0	9	23
(*n* = 120)	(58)	(14)	(2)				(8)	(19)
E.D. Kentucky	67	7	1	0	0	0	38	25
(*n* = 138)	(49)	(5)	(1)				(28)	(18)
E.D. Pennsylvania	51	5	1	1	1	0	0	37
(*n* = 96)	(53)	(5)	(1)	(1)	(1)			(39)
E.D. Missouri	15	21	2	13	0	3	3	20
(*n* = 77)	(19)	(27)	(3)	(17)		(4)	(4)	(26)
N.D. California	52	28	20	1	2	5	0	9
(*n* = 117)	(44)	(24)	(17)	(1)	(2)	(4)		(8)
S.D. Texas								
Houston	40	27	0	0	0	0	0	3
(*n* = 70)	(57)	(39)						(4)
Corpus Christi	73	8	3	1	0	0	5	3
(*n* = 93)	(79)	(9)	(3)	(1)			(5)	(3)
Laredo	6	1	1	0	0	0	0	2
(*n* = 10)	(60)	(10)	(10)					(20)
Brownsville	0	0	0	0	0	0	0	1
(*n* = 1)								(100)
Total	450	158	48	25	12	23	76	164
	(47)	(17)	(5)	(3)	(1)	(2)	(8)	(17)

NOTE: Figures in parentheses are row percentages.

[1]Motion filed, continued, and not resolved as of last entry on docket sheet.

[2]Includes cases in which the magistrate held a conference but did not prepare a formal order.

[3]Includes cases in which description of magistrate's ruling was not recorded or information was missing.

denied the motion and 35 percent occurred in instances ($n = 14$) in which the magistrate granted the motion; in either case, however, judges upheld magistrates in 60 percent of the cases.[120]

Together these data provide persuasive evidence that magistrates' handling of nondispositive motions, which in most instances means discovery disputes, does tend to resolve the matter in question. Once assigned to a magistrate, a nondispositive motion rarely comes back to a judge for further action. The delegation of

120. Chi-square = 53.85865; d.f. = 24; $p = 0$.

TABLE 27
Challenges to Magistrates' Rulings and De Novo Hearings for Random Sample of Nondispositive Motions (Error of Estimation = ±.075; *N* = 956)

District	Challenge	Hearing
D. Oregon	14	4
(*n* = 136)	(10)	(3)
E.D. Washington	8	0
(*n* = 98)	(8)	
E.D. North Carolina	1	0
(*n* = 120)	(1)	
E.D. Kentucky	1	0
(*n* = 138)	(1)	
E.D. Pennsylvania	0	0
(*n* = 96)		
E.D. Missouri	0	0
(*n* = 77)		
N.D. California	10	2
(*n* = 117)	(9)	(2)
S.D. Texas		
Houston	0	0
(*n* = 70)		
Corpus Christi	6	0
(*n* = 93)	(7)	
Laredo	0	0
(*n* = 10)		
Brownsville	0	0
(*n* = 2)		
Total	40	6
	(4)	(0.6)

NOTE: Figures in parentheses are percentages of cases challenged or heard again within each district's sample of nondispositive motions.

nondispositive motions to magistrates, therefore, can provide an effective means for reducing the burdens of judges.

Over the course of this study, attorneys often reported that when a discovery problem requires the intervention of the court, a firm, independent, and neutral party is needed to clarify the steps that must be taken so that the case can proceed. Attorneys from various districts also commented that it is not unusual for a client to refuse to turn over documents though the attorney has urged otherwise; it is in these situations, many defense attorneys claimed, that clarification from the court is essential. The findings reported herein certainly lend strong support to the position that magistrates may be effective officers for this task.

TABLE 28
Judges' Actions on Challenges to Magistrates' Orders for Random Sample of Nondispositive Motions (Error of Estimation = ±.075; $N = 40$)

District	Upheld	Reversed	Modified	Vacated
D. Oregon ($n = 14$)	12	1	1	0
E.D. Washington[1] ($n = 8$)	5	0	0	0
N.D. California ($n = 10$)	6	0	3	1
E.D. North Carolina ($n = 1$)	0	1	0	0
E.D. Kentucky ($n = 1$)	0	0	1	0
S.D. Texas, Corpus Christi[2] ($n = 6$)	1	0	1	0
Total	24 (60)	2 (5)	6 (15)	1 (3)

NOTE: Figures in parentheses are row percentages.
[1]Not reported for three cases as of last entry on docket.
[2]Not reported for four cases as of last entry on docket.

Outcome of Pretrial Conferences

A magistrate has the statutory authority to hold a conference and, if appropriate, enter an order; the standard of review is the same as that for nondispositive motions described above. Despite this similarity, pretrial conferences and nondispositive motions have been analyzed separately. There were two reasons for this decision: (1) When a magistrate is assigned a pretrial conference it is less likely that it will result in a formal order, since many of these assignments may be requests to determine the status of the case; and (2) overall, judges and attorneys agreed that problems tend to arise when pretrial conferences are assigned to magistrates.[121]

Interviews with attorneys across the various districts underscored the controversial nature of delegating pretrial conferences

121. The pretrial conferences discussed herein are not to be confused with settlement conferences. In districts where magistrates are frequently asked to try to settle cases (e.g., Northern California, Eastern Pennsylvania), they reported these assignments separately; when the simple random samples of pretrial conferences were selected, settlement conferences, as reported by magistrates, were not included. Of course, it may be quite common for a magistrate in a district that emphasizes settlement to raise it at a pretrial conference. These data do not, however, permit one to examine that possibility.

to magistrates: Many claimed that a judge's request that a magistrate call in parties to get a "reading" on the progress of a case is, at best, a waste of time and, at worst, a conference that will need to be rescheduled by the judge who is to try the case. Indeed, many attorneys commented that the monitoring of the progress of a case (i.e., assigning a pretrial conference) is simply not effectively delegated. In making this point, many interviewees suggested that the assignment of a nondispositive or dispositive motion is different from the assignment of a pretrial conference: Requesting that a magistrate resolve a nondispositive motion or prepare a report and recommendation on a dispositive motion entails a specific task—one with a beginning, a middle, and an end. By contrast, requesting that a magistrate hold a pretrial conference involves a much more nebulous task.

Judges often raised similar points. Some judges reported that they had experimented with the assignment of pretrial conferences and found that it usually did not work; they subsequently abandoned the practice or now limit such assignments to unusual extenuating circumstances.

Table 29 reports magistrates' pretrial conferences by nature of suit for the selected districts. The findings support the more qualitative assessment that they are delegated less frequently. Overall, the number of sampled assignments is notably smaller ($N = 478$) than that reported for dispositive ($N = 878$) and nondispositive ($N = 956$) motions. For several districts (i.e., Eastern Pennsylvania, Eastern Washington, Northern California, and Eastern Missouri), the numbers shown in table 29 include all assignments to magistrates for statistical year 1982; put differently, the population was so small that it was not feasible to select a sample for these motions.

Examination of the dockets for these motions disclosed that in more than half of the actions (52 percent), nothing at all was reported, and in close to half (40 percent), only that the magistrate held a conference was reported. On the other hand, no challenges to magistrates' actions arose from pretrial conferences across the districts; in this sense, the delegation of conferences did not result in any additional direct burdens for these judges, that is, requests that the judge make a de novo determination.

One is left to speculate, however, about the usefulness of assigning pretrial conferences to magistrates in terms of reducing the less quantifiable burdens of pretrial case management. These findings demonstrate that it is very unlikely that a status or scheduling conference held by a magistrate will result in a formal challenge of any kind; however, it does not follow that the assignment

TABLE 29
Nature of Suit for Random Sample of Pretrial Conferences Assigned to Magistrates (Error of Estimation = ±.075; N = 478)

District	1	2	3	4	5	6	7	8	9	10
D. Oregon	18	1	16	6	9	21	1	6	0	0
(n = 78)	(23)	(1)	(21)	(8)	(12)	(27)	(1)	(8)		
E.D. Washington	2	8	4	0	2	2	1	0	9	0
(n = 28)	(7)	(29)	(14)		(7)	(7)	(4)		(32)	
E.D. Kentucky	13	25	6	7	6	6	1	3	0	1
(n = 68)	(19)	(37)	(9)	(10)	(9)	(9)	(2)	(4)		(2)
E.D. Pennsylvania	14	0	36	5	6	4	0	0	0	0
(n = 65)	(22)		(55)	(8)	(9)	(6)				
E.D. Missouri	12	0	5	4	8	1	5	1	0	1
(n = 37)	(32)		(14)	(11)	(22)	(3)	(14)	(3)		(3)
N.D. California	11	0	18	6	15	2	1	1	0	3
(n = 57)	(19)		(32)	(11)	(26)	(4)	(2)	(2)		(5)
S.D. Texas										
Corpus Christi	22	1	26	7	12	2	3	12	0	0
(n = 85)	(26)	(1)	(31)	(8)	(14)	(2)	(4)	(14)		
Laredo	6	5	20	9	16	0	1	3	0	0
(n = 60)	(10)	(8)	(33)	(15)	(27)		(2)	(5)		
Total	98	40	131	44	74	38	13	26	9	5
	(21)	(8)	(27)	(9)	(15)	(8)	(3)	(5)	(2)	(1)

NOTE: Figures in parentheses are row percentages. 1 = contract, 2 = property, 3 = tort, 4 = other civil, 5 = civil rights, 6 = prisoner petition, 7 = forfeiture, 8 = labor, 9 = Social Security, 10 = criminal.

of these conferences completes this step of pretrial preparation. In this sense, the assignment of a dispositive or nondispositive motion to a magistrate is notably different from the assignment of a pretrial conference: In the former case, the tasks required are relatively self-contained steps; in the latter case, the tasks required are usually closely associated with the needs of individual styles of case management.

Conclusion

Perhaps the most interesting, and significant, finding to emerge from this chapter is that attorneys do not challenge magistrates' work on dispositive or nondispositive motions as a matter of course. This appears to be the case whether one considers their work in less controversial areas—from reports and recommendations on prisoner petitions and Social Security cases to discovery disputes involving nondispositive motions—or their work in other areas of

pretrial case management. The findings in this chapter also lend some further, if indirect, support to those who claim that monitoring of a case is more effectively handled by the individual who is actually to try it. On the other hand, magistrates are preparing reports and recommendations on the full array of dispositive motions in the districts that have taken careful steps to introduce these new officers to the local legal community (e.g., Oregon and Eastern North Carolina). At this point, there is a firm basis on which to speculate that where these steps are taken, magistrates will contribute to a reduction of the burdens of case management for the court.

XI. SOME CLOSING THOUGHTS

To return to the opening questions: Do magistrates make a difference? Do magistrates improve the administration of justice by helping to move cases fairly and expeditiously? Does the magistrates' assistance relieve judges? Each of these questions suggests complex issues confronting the delivery of justice in the federal courts. The introduction of magistrates and the expansion of their jurisdiction raise fundamental questions about the way courts will be administered and cases processed. There are, of course, no easy answers.

As the larger questions of judicial philosophy continue to be debated it is useful to look at what courts are actually doing and the experiences reported. On one level the models for magistrate use reported in this study underscore a commonly made point about the federal court system: There are as many ways to manage a task as there are federal district courts. The present findings disclose that there are also some commonalities. For example, districts that vary in size and geography appear to be moving increasingly toward innovative administrative and management practices on a districtwide basis. Indeed, these findings demonstrate that some districts have begun to manage their affairs on the assumption that a systemic approach for a whole district is feasible and preferable. And as districts have modified traditional practices magistrates have begun to play an integral role in the internal decision-making process. For example, magistrates may be consulted through ongoing, albeit informal, channels, or may participate in and contribute to the regularly scheduled meetings of the court.

Findings from this study disclose that an important ingredient for successful innovation is a willingness to develop ongoing channels of communication with the practicing bar: Contrary to some commonly held expectations, pretrial case management by magistrates may be an effective strategy if the practicing bar develops an understanding of the rationale for these steps. For example, in some districts, magistrates have become, for all practical purposes, the pretrial officer of the criminal or civil docket and have discretionary responsibility over the initial phase of case processing. Interviews with a broad cross section of attorneys demonstrate a willingness to accept the decisions of these officers; of equal impor-

tance, empirical analysis of the outcome of magistrates' actions on dispositive and nondispositive motions discloses that challenges are not frequent and that judges tend to sustain the actions. Education of the bar and consistent practices are necessary preconditions to ensure successful innovation.

What lessons might be drawn from this study by a court contemplating a revamping of its practices and willing to experiment with a participatory approach to case management? The findings from this study suggest a series of considerations. Initially, a district must assess systematically the time required for the completion of magistrates' exclusive responsibilities, for example, their commissioner duties as well as their petty offense and misdemeanor demands. A district must also evaluate the burden posed by ongoing and demanding parts of the civil docket, for example, Social Security or prisoner cases. A districtwide decision concerning management of these cases is necessary: Will these cases be treated as part of magistrates' initial responsibility for a report and recommendation, or will they be shared by judges and magistrates? The findings reported herein suggest pros and cons for both strategies. In districts that assign these cases to magistrates on a regular basis, attorneys have come to view magistrates as specialists, have supported the practice after some initial reluctance, and have not, as a rule, challenged their decisions. Other districts recognize the risk of burnout or stultification inherent in a severely limited docket and provide for magistrates and judges to share the prisoner petition–Social Security docket.

With these baseline issues worked out to their satisfaction, courts might consider various options for allocating other tasks to magistrates. As this study makes clear, the possibilities for innovative experimentation are many.

Findings from some districts suggest that magistrates can make an important contribution to the pretrial preparation of the criminal felony docket. Indeed, criminal practitioners in these districts were consistent in preferring magistrates' preparation of a pretrial package because of the care and attention received.

On the civil side, effective strategies raise somewhat more complicated questions: What parts of the civil pretrial package are usefully delegated? There is general agreement among judges and attorneys that discovery disputes are effectively resolved by magistrates, since a magistrate may rule with finality and challenges are rare. Therefore, it is reasonable to assume that the resolution of these pretrial issues by magistrates reduces judicial burden. Decisions on delegating other matters to magistrates are more difficult. Can a magistrate work out reasonable schedules for a judge to

pursue? Can dispositive motions be prepared by an officer who does not have authority to rule with finality, in a way that generates acceptance and avoids duplication? On both points, the findings demonstrate that magistrates can effectively handle such pretrial matters in some circumstances. The management environment for innovation, however, is critical to its success: Best results have followed conscious steps to select as magistrates highly respected members of the legal community, to include them in the management and administration of the court, to educate the practicing bar about the work that magistrates may perform, and to include the practicing bar and magistrates in the promulgation of local rules.

A premise of this study is that magistrates' roles and duties must be examined in a systemic context; in so doing, it becomes apparent that the emergence of magistrates sharpens many concerns about bureaucratization of the judiciary. Interviews with judges, magistrates, and practicing attorneys certainly underscored this theme. It was not unusual for a judge to express some concern about the courts' taking on all of the worst bureaucratic qualities of any executive branch agency. By the same token, it was not unusual for magistrates in some districts to express a concern that they were at a distance from the decision-making process, that they were somewhat cut off from the hub of activity, or that they generally "operated in the dark." Interestingly, judges and magistrates were most forceful about these themes in the districts that have taken fewer steps to achieve participatory decision making and to incorporate magistrates into that process. By contrast, judges and magistrates in courts that have developed formal or informal channels for the exchange of ideas on both internal operating procedures and external relations with the bar seemed to feel less threatened by an encroaching bureaucracy. In these settings interviewees expressed an overriding commitment to a collegial work setting that rests on procedures for collective decision making; hence, there was a willingness to take the steps to secure such procedures—even when it meant judges and other court officials modifying their ways of doing things.

APPENDIX A
Questionnaires to Lawyers, District Judges, and Magistrates

Lawyer's Survey

NAME _____

LAW FIRM _____

DISTRICT _____

INTERVIEWER _____ DATE _____ TIME _____

INTRODUCTION

As part of an ongoing study of federal magistrates, the District of _____ has been selected for in-depth study. We will be interviewing judges, magistrates, the clerk of court, and members of the bar who litigate frequently in this court. In this interview we hope to learn about your practices in hearing motions or cases before the magistrates in your district.

The answers that you provide will be held in confidence.

1. *Background Data:*
   Number of Lawyers in Firm:
   Nature of Practice (civil or criminal, etc.):
   Number of Lawyers Who Litigate:
   State:
   Federal:

2. *Practice of Firm:* Is there a firmwide practice on stipulating to have a case tried by a magistrate? If so, what is it?

   If not, do you have a practice for stipulating to a magistrate? What factors do you consider in deciding if you will consent?

   a. From your point of view, is it automatic?

   b. When you consent do you specify appeal to the district court or to the appellate court? What is your reason for this practice?

   c. Is the client consulted?

   d. Do you have different policies for in-district and out-of-district clients? If so, what are they?

   e. Does the decision to hear a case before a jury affect your decision to consent to hear a case before a magistrate? If so, why?

   f. Do your associates share your view?

3. *Court Pressure:* Do you feel under any pressure from the court to consent to have your case heard by a magistrate? If so, does it affect your decision to consent?

4. *Filings to Trial:* Approximately how many cases do you file in federal court each year? Of the cases filed, approximately what percentage of the cases actually go to trial?

5. *Settlement Work:* Do you find it useful to have a judicial officer to facilitate settlement of a case? If yes, are the court's current resources meeting your needs?

Background: Section 636 specifies that a party to a case may challenge the action of a magistrate. Thus, if a magistrate hands down an order in a nondispositive motion (e.g., a discovery motion) a party has ten days to file an appeal; if a magistrate writes a report and recommendation to a judge in a dispositive motion (e.g., a summary judgment, a motion to grant a class action, etc.), a party also has ten days to file an appeal, pending the judge's action on the motion.

6. *Appeals of Nondispositive Motions:* In your experience, how often do magistrates handle hearings and orders on nondispositive motions? Have you appealed a nondispositive motion decided by a magistrate?
   a. How often does this occur?
   b. In your experience, has the judge usually upheld, or reversed, the decision of the magistrate?
   c. Do other lawyers report similar experiences?

7. *Actions on Reports and Recommendations in Dispositive Motions:* In your experience, how often do magistrates handle hearings, reports, and recommendations on dispositive motions?
   a. Do the judges of your district usually uphold the report and recommendation of the magistrate? If not, do they tend to reverse these reports in whole or in part?
   b. Do other lawyers report similar experiences?

8. *Local Rules:* Do you feel that the district court has adequate procedures for consulting the bar when developing new local rules for the magistrates?

9. *General Effectiveness of Magistrates' Contributions:* Have you found the "additional duties" (e.g., special master, civil trial on consent, as well as settlements) delegated to magistrates to be a positive step in the administration of the court?
   a. Do you draw a distinction between magistrates and judges? If so, how would you describe it?
   b. Does this distinction affect your decision to consent? If so, how?
   c. If you perceive a distinction between judges and magistrates, does it alter your dealings with the court? If so, how?
   d. Do you think that the differences between judges and magistrates have a positive, negative, or mixed effect upon the organization of the court?

10. If offered, would you consider being a U.S. magistrate? How would you compare the position to that of an Article III judge?

11. *Other Lawyers:* Can you suggest other lawyers whom we might talk with?

12. *General Comments:* Do you have any additional comments not covered in the above questions?

Appendix A

Judge's Survey

NAME _____

DISTRICT _____ LOCATION _____

INTERVIEWER _____ DATE _____ TIME _____

INTRODUCTION

As part of an ongoing study of federal magistrates, the District of _____ has been selected to be a case study. We will be interviewing judges, magistrates, the clerk of court, and members of the bar who litigate frequently in this court. In this interview we hope to learn more about what magistrates do in your district, why and when you assign motions, the degree to which you find the magistrates' contribution useful in reducing various burdens on the court, and how judges and magistrates communicate with each other.

PART A: ASSIGNMENT PRACTICES UNDER SECTION 636(b) AND (c)

In this section, we ask some questions concerning practices for assigning reports and recommendations on dispositive motions, decisions on nondispositive motions, and "additional" duties to the magistrates in your district.

1. Regardless of the assignment system specified by local rule, do you from time to time select a magistrate of your preference? If yes, are there certain circumstances under which this is more likely to occur? Do you find that the court's assignment practices meet your needs? Please elaborate, if possible.

2. Were you involved in the court's decisions concerning the allocation of matters to magistrates?

   If yes, what factors did you consider in developing procedures for assigning matters to magistrates? For example, were you concerned that all magistrates receive the same types of matters? Were you concerned to make sure that judges' needs were met? Has it been possible to balance these factors?

3. *Prisoner and Social Security Cases:* Is it your practice to have a magistrate handle prisoner petitions?

Is it your practice to have a magistrate handle Social Security matters? Please elaborate.

Do you have these cases assigned to a magistrate at filing, or do you review the case before it is assigned to a magistrate? Does it represent a significant savings of time for you? Can you be specific?

If you do not assign these matters to magistrates, why? Have you done so at some point and no longer find it to be an effective procedure?

4. *Reports and Recommendations:* Can you describe the frequency with which you request a magistrate's assistance on civil and/or criminal reports and recommendations (other than prisoner and Social Security cases)?

   Do you "always" assign some matters and not others? Under what circumstances would you "never" request a magistrate's assistance?

   When in the processing of a case do you assign matters to a magistrate, i.e., at filing in some types of cases, after the case has been reviewed?

   How valuable is it to you to have magistrates perform these duties? Does it represent a significant savings of your time and an effective use of this resource?

5. *Nondispositive Motions:* Can you describe the frequency with which you request a magistrate's assistance on various civil and/or criminal nondispositive motions?

   For example, do you "always" assign these matters to a magistrate?

   If yes, does this represent a significant savings of your time? Is it an effective use of magistrates?

6. Once you request a magistrate's assistance on a matter, do you provide any type of guidance? Do you consult with magistrates?

7. If your court were assigned more full-time magistrates, would you be inclined to request their assistance more frequently than is currently your practice?

8. Do you have any further comments on your district's practices for assigning matters to magistrates that have not been covered in the above questions?

PART B: CIVIL TRIALS UPON CONSENT

In this section we ask some questions about magistrates' roles in civil trials on consent of parties.

1. Is it your practice to inform parties that they have the right to consent to have a magistrate hear and decide a civil case under section 636(c)?

2. If parties consent, is it still useful if they specify appeal to the district court?

3. Do you know of instances in which parties have made it clear that they would consent, but not to a specific magistrate?

4. When parties consent, is it your practice to review the case before it is turned over to a magistrate? If so, why?

5. Are you satisfied with the number of cases in which parties are consenting to a case before a magistrate? Should parties be encouraged to consent to hear a case before a magistrate? Is it reasonable for judges to inform lawyers of their right to consent to trial before a magistrate? Do you feel that this is an appropriate role for you to perform? Please elaborate.

6. From the standpoint of the court's current resources, is it effective to have magistrates try cases on consent? Is this the most effective use of a magistrate's time? Please elaborate.

PART C: MANAGEMENT OF MAGISTRATES

For chief judge or chair of magistrate's committee: In this section, we ask some questions about your district's procedures for overseeing and administering the work of magistrates.

1. *General Administration of District*
   a. How are policy decisions of the judges in your district conveyed to magistrates?
   b. Can you summarize the issues that were considered by the magistrate's committee during the last year? Is this a typical year's agenda?
   c. Is there a liaison judge responsible for coordinating matters among magistrates, judges, and other court personnel?
   d. Aside from the procedures considered above, do magistrates and judges meet on a periodic basis? How often?

   e. Other comments:

2. *Chief Magistrate*
   a. To whom does the chief magistrate report?
   b. What are the duties of the chief magistrate?
   c. Does the chief magistrate attend meetings of the magistrate's committee? If so, does he or she have a vote on this committee?

3. *Local Rule Making*
   a. How are local rules of practice regarding magistrates promulgated?
   b. What is the role of magistrates with regard to the promulgation of local rules?
   c. What is the role of the local bar with regard to the promulgation of local rules?

PART D: GENERAL EFFECTIVENESS OF MAGISTRATES

In this section we ask some questions concerning your impressions of the general effectiveness of magistrates.

1. In your estimation, what are the most useful roles performed by magistrates? What are the least useful roles? Please elaborate on your conclusions.

2. Is it your impression that parties commonly appeal the decisions of magistrates? Is it more frequent with dispositive or nondispositive motions?

3. Is it your impression that the local bar is satisfied with the responsibilities delegated to magistrates?

4. Do you feel comfortable with magistrates' responsibilities as promulgated in the 1979 Magistrates Act? Do you think that further amendments are necessary or desirable?

5. Overall, are you satisfied with the quality of the work of magistrates?

Appendix A

Magistrate's Follow-up Survey

NAME _____

DISTRICT _____

INTERVIEWER _____ DATE _____ TIME _____

INTRODUCTION

As part of an ongoing study of federal magistrates, the District of _____ has been selected to be a case study. We will be interviewing judges, magistrates, the clerk of court, and members of the bar who litigate frequently in this court. In this interview we would like to follow up on a number of questions that have emerged from our mail survey to all full-time magistrates.

We would welcome any suggestions of names of lawyers whom we might interview about their experiences before magistrates. Please list the names below.

PART A: ASSIGNMENT PRACTICES UNDER SECTION 636(b) AND (c)

In this section, we would like to follow up on some questions concerning practices for assigning reports and recommendations on dispositive motions, decisions on nondispositive motions, and "additional" duties to you.

It is our understanding that magistrates in your district have participated in _____. These duties are assigned to you through a system of _____. As a general practice, judges assign these matters [insert time and frequency of assignment] _____.

1. Does this correctly describe the practices of judges in your district? Are there any modifications or clarifications that you would like to add?

2. Were you involved in the court's decisions concerning the allocation of matters to magistrates?

   If yes, what factors did your district consider in developing procedures for assigning matters to magistrates?

3. In general, would you say that the current procedures for assigning matters to magistrates work smoothly and effectively?

   Do you think any changes should be made in these procedures? Please elaborate.

4. Are the judges in your district using your skills as effectively as possible? From what you hear how does your experience compare with that of magistrates in other districts?

5. Do you have any further comments on your district's practices for assigning matters that have not been covered in the previous survey or the above questions?

PART B: CIVIL TRIALS UPON CONSENT

In this section we ask some further questions about your experience with civil trials on consent of parties.

The *1982 Annual Report* shows that magistrates in your district disposed of _____ section 636(c) duties. Of these, _____ were disposed of without trial.

1. Are the judges in your district interested in having magistrates hear cases on consent? Can you elaborate?

2. What role does the clerk's office play in notifying parties of their right to consent?

3. From the standpoint of the court's overall needs, is it effective to have you try cases on consent? Please elaborate.

PART C: MANAGEMENT OF MAGISTRATES

Chief Magistrate Only: In this section, we would like to ask some questions about your district's practices for overseeing and administering the work of magistrates.

1. *General Administration of District*
   a. How are policy decisions of the judges in your district conveyed to magistrates?
   b. Can you summarize the issues that were considered by the magistrate's committee during the last year? Is this a typical year's agenda?
   c. Is there a liaison judge responsible for coordinating matters among magistrates, judges, and other court personnel?
   d. In addition to the procedures considered above, do magistrates and judges meet on a periodic basis? How often?

e. Other comments:

2. *Chief Magistrate*
   a. To whom do you report?
   b. What are your duties?
   c. Do you sit in on meetings of the magistrate's committee?
   d. If yes, do you have a vote on this committee?
3. *Local Rule Making*
   a. How are local rules of practice regarding magistrates promulgated?
   b. What is the role of magistrates in this area?
   c. What is the role of the local bar?

PART D: GENERAL EFFECTIVENESS OF MAGISTRATES

In this section we ask some questions concerning your impressions of the general effectiveness of magistrates.

1. In your estimation, what is your most important role in this court? Please elaborate.
2. [If magistrate has participated in nondispositive motions:] Is it your impression that parties are appealing magistrates' decisions on nondispositive motions? How frequently does this occur? Does the presiding judge usually uphold magistrates' decisions on these motions? When parties appeal, does it add significantly to the overall burden of a case?
3. [If magistrate has written reports and recommendations on dispositive motions:] Is it your impression that judges accept magistrates' reports and recommendations? How frequently do judges tend to modify your reports?
4. Do the reports that you submit to the Magistrates Division accurately reflect the composition of cases and matters that you decide? Can you elaborate?
5. Is it your impression that the local bar is satisfied with the responsibilities delegated to magistrates?
6. Do you feel comfortable with your responsibilities as promulgated in the 1979 Magistrates Act? Do you think that further amendments are necessary or desirable?

7. Overall, are you satisfied with the roles performed by magistrates? For example, do you find that your workload includes a variety of different types of matters?

APPENDIX B
Tables 30 and 31: Background Data for Lawyers Interviewed in Selected Districts

TABLE 30
Background Data for Lawyers Interviewed in All Districts but the Southern District of Texas

Item	N.D. Cal. ($n = 37$)	N.D. Ga. ($n = 31$)	E.D. Pa. ($n = 38$)	E.D. Ky. ($n = 32$)	E.D. Mo. ($n = 30$)	D. Or.[1] ($n = 26$)	E.D.N.C. ($n = 22$)	E.D. Wash. ($n = 18$)
Size of firm								
100+	10	3	4	0	0	1	0	0
50–99	4	0	6	3	7	2	0	0
2–49	21	16	19	28	18	23	20	16
1	1	6	4	1	1	0	0	1
Other[2]	1	6	5	0	4	0	2	1
Nature of practice								
Civil								
Plaintiff	8	10	15	11	10		6	3
Defendant	10	7	12	7	5		3	8
Pl. & Def.	11	1	4	7	8		5	3
Criminal (def.)	1	8	4	1	5		2	0
Crim. & civ.	4	3	3	5	1		3	3
Govt. agencies	1	2	0	1	1		2	1
Not available	2	0	0	0	0		1	0
Estimated federal practice								
100%	4	3	7	6	4		3	1
75–99%	5	9	8	0	10		0	0
50–74%	19	7	9	2	7		8	3
25–49%	4	7	8	13	4		8	7
0–24%	4	5	5	10	5		3	7
Not available	1	0	1	1	0		0	0

[1]The District of Oregon was the pilot district for this phase of the project. Consequently, a number of questions were added to the survey instrument after lawyers were interviewed in that district.

[2]Includes government agencies.

TABLE 31
Background Data for Lawyers Interviewed in the Southern District of Texas

Item	Corpus Christi (*n* = 11)	Houston (*n* = 23)	Laredo (*n* = 9)	Brownsville (*n* = 12)
Size of firm				
100+	0	5	0	0
50–99	1	0	0	0
2–49	7	16	6	11
1	2	1	3	1
Not available	1	1	0	0
Nature of practice				
Civil				
Plaintiff	4	2	2	6
Defendant	1	5	0	1
Pl. & Def.	4	6	3	2
Criminal (def.)	1	3	2	1
Crim. & civ.	0	4	1	0
Govt. agencies	1	3	1	2
Estimated federal practice				
100%	1	4	1	4
75–99%	2	6	1	0
50–74%	0	3	2	1
25–49%	4	5	4	2
0–24%	4	3	1	5
Not available	0	2	0	0

APPENDIX C
Framework for Analysis of Appeals of Magistrates' Section 636(b) Actions for Statistical Year 1982

Framework for Analysis of Appeals of Magistrates' Actions

Section 636(b) permits judges to designate magistrates to hear and decide nondispositive motions (section 636(b)(1)(A)) and to hear and recommend action on dispositive motions (section 636(b)(1)(B)). In addition, the statute delineates avenues of review. When a magistrate decides a matter designated under section 636(b)(1)(A), parties have the right to challenge the decision if "it can be shown that the magistrate's order is clearly erroneous or contrary to law." When a magistrate recommends action on a motion under section 636(b)(1)(B), the officer files a recommendation with the court and the parties to the case. Upon receipt of the magistrate's recommendation, the parties have ten days in which to file a written objection. The court must make a de novo determination of those portions to which there are objections; in addition, section 636 specifies that the judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions."

While section 636(b) expands the authority of magistrates, it also introduces the possibility of review of actions that would not occur if decided by an Article III judge. Of course, it is reasonable to speculate that if magistrates are deciding motions that are not challenged or subject to review, then they are contributing to a reduction in judicial burden. If, on the other hand, magistrates' actions are challenged, then their contribution to reducing judicial burden may be less clear. The question is posed: Does a district's commitment to use magistrates in a more expansive manner (i.e., to have them take over a number of pretrial matters) facilitate the processing of cases?

Given the lack of uniformity both within and across districts in terms of the scope of the duties assigned to magistrates, it is appropriate to begin with the assumption that the first step must be one of description only. The questions for description can be specified as follows:

1. Over the course of a statistical year, what proportion of magistrates' actions on pretrial matters as outlined in section 636(b)(1)(A) is challenged and reviewed? Are parties challenging magistrates' actions on nondispositive motions?

2. Over the course of a statistical year, what proportion of magistrates' actions on nondispositive motions as outlined in section 636(b)(1)(A) is challenged and reviewed? Are parties challenging magistrates' actions in pretrial conferences?

3. Over the course of a statistical year, what proportion of magistrates' actions on pretrial matters as outlined in section 636(b)(1)(B) is challenged and reviewed? Are magistrates' recommendations on dispositive motions accepted or rejected, in whole or in part?

To answer these questions, the following framework was developed.

Step 1: Ascertaining the Population of Activities by District

In all of the districts selected, most magistrates have developed some type of a log or calendaring system, which contains a record of all the matters (e.g., nondispositive motions, dispositive motions, etc.) that they are assigned, by docket number. Together these data record the population of matters handled by magistrates.

These data were collected for each magistrate in the nine districts selected for this project for statistical year 1982 (July 1, 1981, to June 30, 1982). This time frame covers a full year and reduces bias that might result from seasonal differences. There were some problems, however, in gathering exactly comparable data for all magistrates both within and across districts; that is, in some instances, the data were available from a magistrate's calendar and indicated the date the matter was heard; in other instances, they were available from a magistrate's log and reported the date the matter was assigned by or completed for a judge; in still other instances, they were available from an assignment sheet from the clerk's office at the time the case was filed. There are, therefore, some variations: Where a calendar was available, the matter may have been assigned by the judge prior to July 1 but heard after July 1; where a log showed the date the matter was assigned, the matter may have been completed after June 30. Data collection was thus limited by what was available; in all districts, however, the population covered a year of assignments. Table 32 lists the data sources for each district selected for this study; where there are variations among magistrates within a district, they are indicated.

The following indicators for all matters handled by magistrates for this period were coded: (1) magistrate, (2) judge (where avail-

TABLE 32
Data Sources for Full-time Magistrates' Actions for Statistical Year 1982 (July 1, 1981, to June 30, 1982)

District	Source	Description
E.D. Pennsylvania	Log	For two magistrates, by date of execution; for two, by date of request; no data available for another magistrate
E.D. Washington	Calendar	One magistrate; by date motion heard
N.D. California	Calendar	Two magistrates; by date motion heard
	Log	Two magistrates; by date motion completed; another magistrate not appointed for period of study
D. Oregon	Calendar	Three magistrates; by date motion heard (same as that posted for judges)
N.D. Georgia		
Civil	Assignment wheel	Four magistrates; date assigned from clerk's office; another magistrate not appointed for period of study
Criminal	Courtran	Not available for statistical analysis
E.D. Missouri	Log	Two magistrates; by date motion completed; another magistrate not appointed for period of study
E.D. North Carolina	Cover sheet	One magistrate; data collected from cover sheet of each motion; month/year available only
	Log	For one magistrate, filed with monthly report to AO, available for 11 of 12 months of the study; for one magistrate, by date of action completed
S.D. Texas		
Houston	Clerk's record	Four magistrates; computerized record of all prisoner petitions, by date of assignment, for period of study; collected by case (not by motion)
Corpus Christi	Log	One magistrate; kept with monthly report to AO; by date motion completed
Laredo	Cover sheet	One magistrate (not appointed for full period of study); by date motion completed; exact date not always available
Brownsville	Cover sheet	One magistrate; by date motion completed, month/year available only; another magistrate not appointed for full period of study
E.D. Kentucky	Calendar	One magistrate; by date motion heard
	Log	One magistrate; by date motion completed

able), (3) nature of action (e.g., nondispositive motion, dispositive motion, pretrial conference), (4) docket number of case, and (5) date of action.[122] Together, these data provided a population from which to draw a random sample of magistrates' actions for statistical year 1982.

Step 2: Analysis of Magistrates' Actions

Simple random samples of pretrial conferences, nondispositive motions, and dispositive motions were selected for each district from the population described in step 1. The docket sheets that reported the action that occurred were collected and used to trace the outcome of the sampled groups.

Type of Sample

It was determined initially that there is a clear difference between a magistrate's role in a dispositive motion, a nondispositive motion, and a pretrial conference; that is, the evidence from the first part of this study, coupled with the statute as outlined in section 636(b), suggested that the various duties to be analyzed describe conceptually unique types of activities. Therefore, it was decided that it would be best to select a separate simple random sample for each type of duty; for each district, then, there are three simple random samples of magistrates' activities—nondispositive motions, dispositive motions, and pretrial conferences.

Size of Sample

It was determined that random samples would be selected with an error of estimation of $\pm.075$. Table 33 reports the population of each group of motions for the selected districts; table 34 reports the size of each random sample. Finally, table 35 reports the actual number of correct docket sheets returned by the districts for the sampled cases.

A comparison of the numbers in table 34 and table 35 discloses a clear discrepancy: In most instances, fewer correct docket sheets were returned than requested. In all districts, one follow-up request was made to obtain outstanding docket sheets. A number of problems remained, however. In some instances, the docket sheets were not returned after the second request, or the wrong docket sheet

122. Note that what the date indicated (e.g., assigned, completed) depended on the data source.

TABLE 33
Population of Nondispositive and Dispositive Motions and Pretrial Conferences for Statistical Year 1982 (July 1, 1981, to June 30, 1982)

District	Dispositive Motions	Nondispositive Motions	Pretrial Conferences
E.D. Pennsylvania	316	233	69
E.D. Washington	34	94	3
N.D. California	52	523	57
D. Oregon	539	674	144
N.D. Georgia[1]	331	NA	NA
E.D. Missouri	163	82	37
E.D. North Carolina	200	744	NA
S.D. Texas			
Houston[2]	141	267	195
Corpus Christi	5	13	68
Laredo	28	1	0
Brownsville	741	253	133
E.D. Kentucky			

NOTE: NA = Not available or not assigned to magistrates.
[1]Includes only civil dispositive motions; magistrates' primary responsibility is preparation of criminal cases, but the relevant data were not available for statistical analysis.
[2]Data for the Houston division were collected by case assignment and then coded for type of motion. There were 658 prisoner cases.

was sent; in other instances, the docket sheet had reportedly been lost; in still other instances, the requested docket number was reportedly incorrect.

There are, moreover, a few instances in which the opposite occurred, that is, in which more cases were coded and analyzed (table 35) than were requested (table 34). The initial record did not always indicate the exact date of a magistrate's action on a case or, indeed, if more than one action was performed. Where this occurred, all motions that took place within the specified time frame were included.

Descriptive Statistics

Tables 36 to 38 report descriptive statistics for each population of motions by district for statistical year 1982. (For further discussion of these tables, see chapters 8 and 9.)

Coding of Docket Sheets

Using docket sheets, the following data were coded for each motion sampled:

1. Docket number
2. Date case commenced
3. Jurisdiction and nature of suit
4. Date moving party filed sampled motion
5. Party (plaintiff, defendant, magistrate's order, etc.)
6. Type of motion
7. Magistrate's order on motion
8. Date magistrate completed action
9. Challenge
10. Date of challenge
11. De novo hearing
12. Date of de novo hearing
13. If applicable, judge's action on magistrate's order
14. Date of judge's action
15. Date case terminated.

TABLE 34
Size of Simple Random Samples, by Population Group, for Dispositive Motions, Nondispositive Motions, and Pretrial Conferences (Error of Estimation = ±.075)

District	Dispositive Motions	Nondispositive Motions	Pretrial Conferences
E.D. Pennsylvania	114	101	69*
E.D. Washington	34*	94*	3*
N.D. California	52*	133	57*
D. Oregon	134	141	80
N.D. Georgia[1]	116	NA	NA
E.D. Missouri	85	82*	37
E.D. North Carolina	95	144	NA
S.D. Texas			
Houston[2]			
Corpus Christi	79	107	93
Laredo	5*	13*	68*
Brownsville	28*	1*	0
E.D. Kentucky	105	144	76

NOTE: NA = Not available or not assigned to magistrates.
*The population is analyzed because the difference between the random sample and the population is small.
[1]Includes only civil dispositive motions; magistrates' primary responsibility is preparation of criminal cases, but the relevant data were not available for statistical analysis.
[2]Data for the Houston division were collected by case assignment and then coded for type of motion. There were 141 prisoner cases.

TABLE 35
Number of Cases Analyzed for Samples of Dispositive Motions, Nondispositive Motions, and Pretrial Conferences

District	Dispositive Motions	Nondispositive Motions	Pretrial Conferences
E.D. Pennsylvania	113	96	65
E.D. Washington	31	98	28
N.D. California	54	117	57
D. Oregon	131	136	78
N.D. Georgia[1]	103	NA	NA
E.D. Missouri	86	77	37
E.D. North Carolina	88	120	NA
E.D. Kentucky	98	138	68
S.D. Texas			
Houston	94	70	0
Corpus Christi	48	93	85
Laredo	6	10	60
Brownsville	26	1	0
Total	878	956	478

NOTE: NA = Not available or not assigned to magistrates.
[1]Includes only civil dispositive motions; magistrates' primary responsibility is preparation of criminal cases, but the relevant data were not available for statistical analysis.

TABLE 36
Descriptive Statistics for Magistrates' Dispositive Motions for Statistical Year 1982 (July 1, 1981, to June 30, 1982)

District	Total	Average	Median	Range
N.D. California	52	10	13	9–14
N.D. Georgia[1]	331	55	43	88–94
E.D. Pennsylvania	316	79	73	67–100
S.D. Texas[2]				
Corpus Christi/Victoria	141			
Laredo	5			
Brownsville	28			
E.D. Kentucky	253	127	127	7–246
E.D. Missouri	163	82	82	67–96
D. Oregon	539	179	157	157–255
E.D. North Carolina	200	67	65	64–71
E.D. Washington[3]	34			

[1]Includes civil dispositive motions only.
[2]Data are not available for magistrates from the Houston division. At the time of data collection, there was one full-time magistrate at Corpus Christi, Laredo, and Brownsville.
[3]One full-time magistrate.

TABLE 37
Descriptive Statistics for Magistrates' Nondispositive Motions for Statistical Year 1982 (July 1, 1981, to June 30, 1982)

District	Total	Average	Median	Range
N.D. California	523	105	74	72–247
E.D. Pennsylvania	233	58	52	38–70
S.D. Texas[1]				
Corpus Christi/Victoria	267			
Laredo	13			
Brownsville	1			
E.D. Kentucky	741	371	371	97–644
E.D. Missouri	82	41	41	10–72
D. Oregon	674	225	212	179–283
E.D. North Carolina	744	248	280	15–280
E.D. Washington[2]	94			

[1]Data are not available for magistrates from the Houston division. At the time of data collection, there was one full-time magistrate at Corpus Christi, Laredo, and Brownsville.

[2]One full-time magistrate.

TABLE 38
Descriptive Statistics for Magistrates' Pretrial Conferences for Statistical Year 1982 (July 1, 1981, to June 30, 1982)

District	Total	Average	Median	Range
N.D. California	57	11	10	2–22
E.D. Pennsylvania	69	17	8	0–53
S.D. Texas[1]				
Corpus Christi/Victoria	0			
Laredo	68			
Brownsville	0			
E.D. Kentucky	133	67	67	25–108
E.D. Missouri	166	83	83	81–85
D. Oregon	144	48	46	10–88
E.D. North Carolina	0			
E.D. Washington[2]	3			

[1]Data are not available for magistrates from the Houston division. At the time of data collection, there was one full-time magistrate at Corpus Christi, Laredo, and Brownsville.

[2]One full-time magistrate.

APPENDIX D
Request for Instructions on Handling of Dispositive Civil Motions, Eastern District of North Carolina

REQUEST FOR INSTRUCTIONS ON
HANDLING OF DISPOSITIVE CIVIL MOTIONS

DATE: _____

TO: JUDGE _____

FROM: _____, Deputy Clerk

RE: Case Number: _____

(Defendants–Plaintiffs) motion _____ filed in this action assigned to your office is ready for decision. The response time has run. Please return this form to the Clerk's Office indicating which of the procedures you desire to follow:

_____ Calendar this before the Judge for oral argument at a convenient time. (Extra copy to Joyce in Raleigh if this box is checked)

_____ Refer this motion to a Magistrate for his recommendation.

_____ The motion will be decided by the Judge on the record without oral argument.

_____
JUDGE OR LAW CLERK

Discovery expires: _____

Pre-trial Conference: _____

Trial: _____

APPENDIX E
Law Clerk's Report Form for Social Security Cases, Eastern District of Kentucky, Covington Division

LAW CLERK'S REPORT FORM
for Social Security Cases

Description of Plaintiff:

NAME: _____

D.O.B.. _____

SEX: _____

HEIGHT: _____ WEIGHT: _____

EDUCATION: _____

Date of Claimed onset of Disability: _____

Work History:

Nature of Claimed Disability (specify alleged cause of onset): (Describe briefly)

Summary of Doctor's Testimony:
(Indicate who retained doctor, date of examination, *brief* summary of findings, degree of disability found, pages of transcript on which report may be found, whether doctor's diagnosis and prognosis is based on objective findings or subjective symptoms.) Specify exact diagnosis and degree of disability found. Indicate with * those you recommend for judge to read.

Discussion of Applicable Law:

Conclusion and Recommendation:

Doctors relied on by Plaintiff:

Doctors relied on by Secretary:

Other:

Summary of Testimony of Vocational Expert (with references to transcript or application of the grid)

☆ GPO : 1985 O - 479-824

END