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STATEMENT OF

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123314

BEFORE THE

SUBCOMMITTEE ON COURTS

SENATE COMMITTEE ON THE JUDICIARY

Mr. Chairman and members of the subcommittee, we appreciate the opportunity to testify before you today on a report issued by the General Accounting Office on July 8, 1983, entitled "Potential Benefits of Federal Magistrates System Can Be Better Realized."

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Our report dealt with the use of magistrates in the federal judicial system. We found that magistrates have become an important and integral part of the federal judicial system and have helped to reduce the workload of federal judges. However, additional actions could be taken to better utilize magistrates and thereby further reduce the burden on district court judges. I would like to now summarize the findings presented in our report, the recommendations made to enhance the use of magistrates, and the actions taken or planned by the judiciary in response to our recommendations.

#### MAGISTRATES SYSTEM

The U.S. Magistrates System was created by the Federal Magistrates Act of 1968 (Public Law 90-578). Magistrates are subordinate district court officials empowered to perform many of the duties previously performed only by district judges. The magistrates system was intended to improve the federal judicial system by easing the workload of federal judges and providing the public with a speedier resolution of litigation. Since its inception in 1969, the magistrates system has grown, and magistrates now annually handle tens of thousands of matters, aiding district judges and helping make the federal district courts more productive. In addition, magistrates have made a substantial contribution to the speedier processing of cases in federal

district courts which is demonstrated by the dramatic increase in district court production of 418 civil cases terminated per judge for the year ended June 30, 1983, compared to only 201 for the year ended June 30, 1970. (The attachment contains details on the number of matters disposed of by magistrates for the 3 year period ending June 30, 1983.)

To deal with the rising number of civil cases pending (166,462 in 1978 to 231,920 in 1983), the judiciary needs to use all its resources as efficiently and effectively as possible. Beyond the gains already made, we believe that the judiciary can make even better use of magistrates than it has to date. Our observations are based on work performed at 11 federal district courts--the central and southern districts of California; the eastern district of Louisiana; the northern and southern districts of Ohio; and the districts of Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, and the District of Columbia.

MAGISTRATES COULD FURTHER EASE  
BURDEN ON DISTRICT COURT JUDGES

During our review we found that the use of magistrates has evolved differently in individual districts resulting in their duties and roles varying among and within districts. We concluded that the magistrates system could have a greater impact

on reducing the workload of district court judges if: (1) more information was disseminated among district courts on how they are using magistrates, (2) districts better planned for the use of magistrates, and (3) district courts understood the criteria for approving additional magistrate positions.

Expanded use of magistrates needed--During our review, we found that magistrates in some districts performed a wide variety of duties, while other districts limited their use. These limitations were based on (1) the personal preferences and perceptions of individual judges, (2) a belief that magistrates cannot handle a wide variety of matters, and (3) a lack of information on the extent magistrates are being used successfully in other districts. We concluded that districts making limited use of magistrates would have a better appreciation of their utility if (1) more information was disseminated among district courts regarding the uses being made of magistrates and (2) experimentation with unique and innovative uses of magistrates was encouraged.

Widest  
Oregon  
High  
Calif. S.  
Louis. - E  
MODERATE  
Conn  
Mass  
RI  
Calif. - C  
Ohio - S  
Ohio - N  
Low  
MD (15 Judges)  
DC (15 Judges)

Better planning for the use of magistrates needed--In enacting the Federal Magistrates Act of 1968, the Congress envisioned that each district court would establish plans for the use of magistrates. However, during our review, we found that not all

Extensive plans  
Oregon  
Calif. S  
Louisiana - E

Some  
Conn  
Md  
Ohio - S  
Calif - C

Little  
Mass  
Rhode Island  
D.C.  
Ohio - N

districts have such plans and that in some districts magistrates have been assigned duties without regard to the overall district needs. We concluded that better comprehensive plans are needed if magistrates are to more fully contribute to the improved processing of civil cases within their districts. We believe these plans should consider the total needs of the district court including the types of cases, overall workload, and the present use of magistrates.

System for establishing magistrate positions needs improvement--

In addition, we found during our review that while the current system for approving new magistrate positions was based on sound criteria, it was not as effective as it might be in identifying opportunities to establish new positions or to obtain approval for them. We found that the system relied on the unsolicited initiation of requests for new positions by individual district courts but the courts were not adequately informed by the Judicial Conference of the criteria used for approving new magistrate positions and, therefore, have been reluctant to request new positions. Mechanisms for making district courts aware of the criteria as well as for encouraging specific districts to request new positions are needed.

## Recommendations and agency actions

To address these areas of concern, we recommended that the Judicial Conference of the United States:

- Encourage district courts and judges who restrict the use of magistrates to explore methods to increase the use of their magistrates. To accomplish this the Conference should improve the system for disseminating information regarding the experiences in other court districts on the use being made of magistrates and making the information more formal and routinely available to all district courts.
  
- Encourage all district courts to analyze their current use of magistrates and develop within their respective districts a comprehensive plan for using magistrates in the most effective and efficient manner.
  
- More formally disseminate to all district courts the criteria used in evaluating and approving applications for new full-time magistrate positions and identify those courts that should be encouraged to request additional magistrate positions.

In response to our recommendations, the Administrative Office of the U.S. Courts in January 1984 told us that actions have been taken or are planned to implement our recommendations. It said the actions taken are designed to encourage district courts to utilize their magistrates to the extent envisioned by the Federal Magistrates Act. In this regard, some of the actions taken are

--The Federal Judicial Center and the Administrative Office through their various publications are increasing the flow of information to district courts concerning the effective utilization of magistrates. In fact a recent publication included an article which summarized the GAO report and its recommendations and explicitly referred to the criteria relied upon by the Judicial Conference in approving requests for additional magistrate positions. The Administrative Office said that future issues of these publications will include articles discussing the different approaches adopted by various courts regarding the use of magistrates.

--The Conference's criteria for approving requests for additional magistrate positions were being incorporated in the Guide to Judiciary Policies and Procedures which is provided to all district judges. In accordance with

the recommendation of the Judicial Conference's Magistrate Committee a section will be added to the Guide which reflects the current policy of the Administrative Office to undertake, upon request, an extensive study of a court's utilization of its magistrate resources.

--The Division of Magistrates will continue to routinely explore with the courts their needs for additional magistrate resources during the course of its periodic surveys of district courts' operations.

--The Federal Judicial Center is conducting an indepth examination of the effectiveness of magistrates in the federal judicial system and the study is to be completed within the next year.

--The Administrative Office is providing the Judicial Conference's Subcommittee on Judicial Statistics with upgraded magistrate workload data and other information so that the impact of magistrates may be more fully considered in the biennial evaluation of judgeship needs.

In addition, the Administrative Office said the Judicial Conference's Committee on the Administration of the Federal Magistrates System considered our recommendations at its meeting

in December 1983. In this regard, the Committee agreed to recommend formally to the Federal Judicial Center that future seminars and orientation programs contain a segment on the magistrates system with information on the general jurisdiction of magistrates, the effective utilization of magistrates, and the procedures and criteria used by the Conference in approving requests for additional magistrate resources.

In addition, the Administrative Office said, and we agree, that the actions being taken or planned will accelerate the trend toward even greater utilization of magistrate resources.

CHANGES NEEDED IF CIVIL TRIAL

PROVISIONS OF THE MAGISTRATES

ACT ARE TO BE FULLY IMPLEMENTED

The Magistrates Act was amended in 1979 to specifically provide that, with the consent of the litigants, magistrates can conduct and enter judgments in civil matters. This amendment was intended to lighten the burden on district court judges while at the same time improving the public's access to the court. We found, however, that differing interpretations and applications of the act's provisions have led to inconsistent implementation of the civil trial provisions.

Magistrates' jurisdiction over civil trials has created a problem--We found that in 2 of the 11 districts reviewed, judges had not designated magistrates to preside over civil trials. We found that judges in these districts believed that the language of the Magistrates Act hinders, or even prohibits, judges from assuming jurisdiction over civil cases in which parties have consented to have magistrates hear their cases. As a consequence, judges in these districts believe they would be prohibited from fully managing and controlling the districts' case workload if they allowed magistrates to preside over civil cases. We concluded that this interpretation of the act had hindered the use of magistrates presiding over civil trials. Thus, we believe that the act needs to be amended to clearly state that the designation of a magistrate does not affect a judge's jurisdictional control over a case handled by a magistrate.

Followup enhances the consent to trial notification process--

In addition, we found that in nine of the 11 district courts visited magistrates had been designated to conduct civil trials and that the court clerks initially notify litigants of their opportunities to have a magistrate hear their cases. However, only 1 district had a process to follow up when litigants did not respond to the notification. As a result, this district was obtaining a greater number of litigants consenting to have

magistrates hear their cases. We believe that consistent use of followup procedures could produce similar results in other districts.

#### Recommendations and agency actions

To address these areas of concern, we recommended that the Congress amend the act to provide that the designation of a magistrate to conduct proceedings does not preclude a district judge from exercising jurisdiction over any case handled by a magistrate.

We also recommended that, in order to increase the use of the civil trial provisions of the act, the Judicial Conference should identify methods for clerks of the court to use in notifying litigants of their opportunities to have a magistrate hear their cases and establish a followup system to encourage litigants to consent to having a magistrate hear their cases.

In response to our recommendation to the Congress, the Administrative Office said that the Magistrates Committee considered our suggested amendment to the act but has decided to continue to support the Conference's proposed statutory language which is basically consistent with our proposed amendment. In this regard, we agree with the Committee's action and believe

its proposed language will address the intent of our recommendation.

With regard to our recommendation to the Conference, the Administrative Office said that neither it nor the Conference plans to act. However, we still believe that an improved system for informing litigants of the opportunities to have a magistrate hear their cases would provide litigants more opportunity to fully consider the possibility of consenting to a trial by a magistrate. We believe the increased opportunity will result in more consents being obtained from the litigants and result in a reduced workload for judges and an opportunity for the litigants to have their cases handled in a more timely manner.

RECENT COURTS OF APPEALS' OPINIONS  
THAT AFFECT THE USE OF MAGISTRATES  
BY DISTRICT COURTS

In concluding my statement, I want to describe two recent, and conflicting, courts of appeals' decisions which have addressed how district courts can use magistrates. On August 5, 1983, the Ninth Circuit Court of Appeals held as unconstitutional that part of the 1979 amendment which authorizes

federal magistrates to enter judgments in civil trials. The Ninth Circuit noted that the authority to enter judgments is generally a function reserved by the U.S. Constitution only to Article III judges, that is, those with lifetime tenure and salary protection and that because magistrates are appointed for a specific term (8 years) they are clearly not Article III judges. Therefore, the Ninth Circuit concluded that magistrates could not enter civil judgments even with the consent of the litigants. Magistrates, however, may still preside over civil trials and recommend disposition of cases, but final decisions must be made by federal district judges. However, the Administrative Office has advised us that this ruling is currently being reconsidered by the Ninth Circuit.

In contrast to this ruling, the Third Circuit held on November 23, 1983, that the authorization that allows a magistrate, on consent of parties, to conduct trials and enter judgments in civil cases does not violate Article III of the Constitution.

In commenting on the differences between the Ninth and Third Circuits' rulings, the Third Circuit stated that the magistrates operate as an integral part of the district court rather than independent of the court. The Third Circuit said that it reached its conclusion that Article III is not being violated because (1) the parties must consent to having a

magistrate handle the case; (2) the district judge has the power to vacate the referral of a case to a magistrate; (3) the magistrate is appointed by the district judges, is a part of the district court, and is specifically designated to try cases; and (4) the parties have a right of appeal to a district judge or to the court of appeals.

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This concludes my prepared statement. We hope this information and the detailed information contained in our report will assist the Subcommittee in its oversight of court activities. We would be pleased to respond to any questions at this time.

## ATTACHMENT

NUMBER OF MATTERS DISPOSED OF  
BY MAGISTRATES FOR THE YEARS ENDED  
JUNE 30, 1981, 1982, AND 1983

<u>Trial jurisdiction cases</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Misdemeanor cases (other than petty offenses)	14,208	13,589	14,504
Petty offense cases	<u>80,944</u>	<u>73,136</u>	<u>79,039</u>
Total	<u>95,152</u>	<u>86,725</u>	<u>93,543</u>
<u>Preliminary proceedings in felony cases</u> (Duties formerly performed by U.S. commissioners)			
Grand jury returns	2,626	3,082	3,179
Search warrants	5,442	6,170	6,555
Arrest warrants	11,634	11,702	12,010
Initial appearances	33,285	31,844	35,023
Bail reviews	6,828	8,301	8,408
Preliminary examinations	3,570	4,650	4,681
Arraignments	18,981	21,296	22,995
Material witnesses	6,865	6,833	5,085
Other matters	<u>3,128</u>	<u>4,580</u>	<u>4,514</u>
Total	<u>92,359</u>	<u>98,458</u>	<u>102,450</u>
<u>Criminal additional duties</u>			
Pretrial conferences	3,199	3,214	3,529
Motions	18,652	20,119	21,330
Calendar calls	884	857	700
Other matters	<u>2,506</u>	<u>2,793</u>	<u>2,777</u>
Total	<u>25,241</u>	<u>26,983</u>	<u>28,336</u>
<u>Prisoner litigation</u>	<u>14,817</u>	<u>16,551</u>	<u>18,543</u>
<u>Civil additional duties</u>			
Pretrial conferences	23,109	28,314	29,695
Motions	51,015	58,150	72,813
Calendar calls	812	1,174	912
Special masterships	564	588	545
Civil consent cases	1,933	2,452	3,127
Social security reviews	4,101	4,532	6,588
Other matters	<u>2,056</u>	<u>1,636</u>	<u>7,158</u>
Total	<u>83,590</u>	<u>96,846</u>	<u>120,838</u>
Total	<u>311,159</u>	<u>325,563</u>	<u>363,710</u>

