
The Roles of Magistrates in Federal District Courts



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THE ROLES OF MAGISTRATES IN FEDERAL DISTRICT COURTS

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FOREWORD

The United States magistrates system has developed into a structure that responds to each district court's particular circumstances and needs, as was the intention of Congress in the original Magistrates Act passed in October 1968. Judges in each district court, constrained only by the guidelines set forth in the 1968 act and the Federal Magistrate Acts of 1976 and 1979, establish the responsibilities and duties of their magistrates. To gain a better understanding of the various tasks current magistrates have been designated to perform and to gain a better appreciation of those they are actually assigned, it is necessary to examine the work of individual magistrates in their respective courts.

This report, The Roles of Magistrates in Federal District Courts, sets forth the results of a survey of 191 full-time magistrates, located in eighty-two federal district courts, who responded to questions concerning their authority and experiences therewith, as the scope of that authority was clarified and expanded by the Federal Magistrate Act of 1976, 28 U.S.C. § 636(b), and section 2 of the Federal Magistrate Act of 1979, 28 U.S.C. § 636(c).

The 1976 act specifies that a magistrate may be designated by a court to hear and to determine nondispositive pretrial mat-

ters pending before the court. The magistrate's orders with respect to these motions are to stand unless they are clearly erroneous or contrary to law. That act also invests magistrates with the specific capacity to conduct hearings, including evidentiary hearings, and to submit proposed findings and recommendations on dispositive motions, which the court can accept, reject, or modify--in whole or in part. Also made explicit in the 1976 act is the court's ability to designate a magistrate as a special master.

The Federal Magistrate Act of 1979, an act "to improve access to the Federal Courts by enlarging the civil and criminal jurisdiction of United States Magistrates," permits a magistrate with the consent of all parties to conduct all proceedings in a jury or nonjury civil matter and to enter judgment in the case.* This legislation also sanctions a magistrate's trial of persons

*There exists today a conflict between two circuits as to whether magistrates may constitutionally enter final judgments in consensual cases. On August 5, 1983, the United States Court of Appeals for the Ninth Circuit handed down an opinion declaring unconstitutional section 2 of the Federal Magistrate Act of 1979, 28 U.S.C. § 636(c), insofar as the act permitted magistrates to enter final judgments in civil cases conducted before them with the consent of all parties. *Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.*, 712 F.2d 1305 (9th Cir. 1983), reargued en banc, Nos. 82-3152, 82-3182 (Nov. 15, 1983) (decision pending). Contra *Wharton-Thomas v. United States*, No. 82-5555 (3d Cir. Nov. 23, 1983), in which the Third Circuit held that 28 U.S.C. § 636(c) does not violate Article III of the Constitution by permitting magistrates with the consent of the parties to conduct trials and enter judgments in civil cases.

The issue addressed in the Pacemaker and Wharton-Thomas cases is presently pending in several other circuits.

accused of (and also the sentencing of persons convicted of) misdemeanors committed within the judicial district to which the magistrate has been assigned, provided that the defendants have consented thereto. Magistrates may also, with consent, try cases involving juveniles and youth offenders.

Given the delineation of magistrates' broad scope of power under 28 U.S.C. § 636(b) and (c), the purpose of the following report is to describe the scope of responsibilities for which 191 magistrates have been designated, the extent to which these magistrates perform the various designated duties, and the frequency with which they perform them. The report reveals that while more than half of the responding magistrates (68 percent) have been designated to perform all duties specified in 28 U.S.C. § 636, only 15 percent indicated that they perform all these duties on a regular basis. With reference to particular duties, however, the percentage of magistrates both designated for such duties and performing them climbs quite dramatically: 94 percent (the highest degree of participation) of the responding magistrates designated for these duties had heard and ruled on nondispositive civil motions, while 49 percent (the lowest degree of participation) had presided over criminal pretrial conferences. Furthermore, as to those duties most frequently assigned to magistrates--prisoner petitions (including both habeas corpus cases and civil rights cases) and social security cases--the percentages of responding, designated magistrates handling such matters were 88 percent and 86 percent, respectively.

This report has set the stage for a second study (already in progress), which involves interviewing and surveying judges, magistrates, and members of the bar of eight prototype courts to ascertain, among other things, the rationale underlying the evolution of the magistrates' duties as described herein.

A. Leo Levin

SUMMARY

This report presents findings from a survey of 191 full-time magistrates, located in eighty-two federal district courts. Questionnaires were sent to 210 magistrates, of whom 91 percent responded. The survey questioned magistrates on their experience with duties expanded by the Federal Magistrate Acts of 1976 and 1979, namely, conducting civil and criminal pretrial conferences; developing reports and recommendations on dispositive motions; deciding nondispositive motions; and other duties such as serving as special master and conducting civil trials "upon consent of the parties." Questions covered a wide array of topics, ranging from whether respondents have actually participated in these duties, to the way matters are assigned, to the frequency with which they are assigned.

Consistent with local rules for magistrates, the findings show that most full-time magistrates have been designated to perform duties under 28 U.S.C. § 636(b) and (c):¹ 98 percent of the

1. Note that this report asked magistrates to describe only a part of their duties. That is, 28 U.S.C. § 636 also specifies that magistrates' jurisdiction includes "all powers and duties conferred or imposed upon United States commissioners," "the power to administer oaths and affirmations, impose conditions of release under section 3146 of title 18," and "the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section." (See 28 U.S.C. § 636(a)(1)(2)(3).) In practice, then, magistrates continue to dispose of a large number of criminal matters not encompassed by this study.

respondents, the largest proportion, indicated that they have been designated by their district courts to decide civil nondispositive motions, while 85 percent, the smallest proportion, indicated that they have been designated to perform special master duties. The proportions are smaller for actual exercise of jurisdiction over these matters: 94 percent of the designated respondents reported that they have decided civil nondispositive motions under section 636(b)(1)(A), whereas 81 percent of the designated respondents reported that they have conducted civil trials upon consent of the parties. This report focuses on the responses of those magistrates who indicated that they have performed these duties.

Because the magistrates' duties have expanded--in accordance with statute--in response to local needs, it is useful to begin by conceiving of the magistrates system as a series of subsystems, where duties performed as well as assignment procedures vary according to local practices. Thus, to develop a picture of these subsystems, we asked the magistrates to describe the procedures of assignment in their districts as well as the timing (i.e., at filing, after filing, or both) and frequency of assignment.

A working typology of five fairly distinct assignment processes was identified:² (1) Random assignment through the clerk's

2. This typology was based on a survey of clerks of court regarding assignment procedures as well as the broader survey of full-time magistrates. Interestingly, there were discrepancies between clerks' and magistrates' descriptions of assignment pro-

office is the most common procedure for civil matters (especially prisoner petitions and social security matters), which, by and large, are assigned at filing. (2) Rotational assignment among magistrates, whereby an "on-duty" magistrate receives all relevant matters, is the most common procedure for criminal matters; these matters are, on the whole, assigned at filing. (3) Assignment by a chief magistrate who oversees the random allocation of matters is not a common procedure; where it is in use, assignments are usually made on request from a judge. (4) Assignment through judge-magistrate pairs, whereby a magistrate is assigned to a group of judges and works for those judges on request, is relatively common; in some districts, this procedure is established by local rule, while in others the same result occurs because there is only one magistrate to receive assignments. (5) Direct assignment by a judge at his discretion is especially common for the allocation of civil matters. It should be noted, moreover, that a sizable number of judges select magistrates of their choice even in those districts that have developed more formal practices, such as random or rotational assignment.

We also asked respondents to describe the frequency with which particular matters are assigned. Regardless of assignment procedure, magistrates reported that judges are most likely to assign prisoner petitions (both habeas corpus and civil rights)

cedures. A partial explanation for these discrepancies may be that in some districts, assignments are apparently made directly by judges, with little input from the clerk's office.

and social security cases. Moreover, most respondents indicated that they receive these matters directly at filing for a report and recommendation.

By contrast, respondents reported that civil pretrial and settlement conferences are among the least frequently assigned matters. Here, it is useful to consider the different functions that may be served by pretrial conferences. For example, in many districts judges hold "initial" or "status" conferences for the purpose of scheduling the preliminary motions of a case and setting a date for trial. These are to be distinguished from a "final" pretrial conference, during which issues in dispute may be simplified and clarified, and from a settlement conference, during which a judicial officer works with the parties to resolve the dispute prior to trial.

As a whole, the findings suggest that magistrates' roles must be considered from two perspectives, namely, that of the district court and that of judges' practices. Examined at the level of the district court, the findings show that, by and large, magistrates agreed in their descriptions of how assignments are made; for example, magistrates within districts agreed that magistrates are rotated or that they are paired with judges. Examined from the vantage point of judges' practices, however, magistrates' descriptions of the timing and frequency of assignments often varied; for example, within the same district one magistrate might have reported that social security cases are "almost always" assigned, whereas another might have reported

that they are "occasionally" assigned. To the extent that within any one district judges' practices vary considerably, it may be premature to characterize magistrates' roles in systemic terms.

Finally, we asked magistrates to describe assignment procedures for civil trials upon consent of the parties. Overall, the findings suggest that random assignment is the most common arrangement. For statistical year 1982, magistrates received 2,448 cases upon consent of the parties; of these, the largest proportion were prisoner petitions, torts, and contracts that were disposed of without trial.

I. INTRODUCTION

The magistrates system has been in place for just over a decade. During this period, Congress has twice acted to expand the Federal Magistrates Act of 1968; in effect, these amendments have given the districts the option of significantly broadening the scope of magistrates' responsibilities. After the passage of the Federal Magistrates Act of 1968, magistrates' authority included "three basic categories of judicial duties: (1) all the powers and duties formerly exercised by the United States commissioners (largely initial proceedings in federal criminal cases); (2) the trial and disposition of minor criminal offenses; and (3) 'additional duties' to assist the judges of the district courts."³ While some districts had established local rules that authorized magistrates to perform "additional" duties, controversy over exactly what the statute permitted judges to delegate to magistrates resulted in a number of appellate cases and conflicting circuit court decisions. A 1974 Supreme Court decision held, however, that magistrates were not, under the 1968 statute, authorized to conduct evidentiary hearings in a habeas corpus case.⁴ The Chief Justice wrote a strong dissent, urging Congress

3. McCabe, The Federal Magistrate Act of 1979, 16 Harv. J. on Legis. 343, 349 (1979). See also 28 U.S.C. § 636.

4. Wingo v. Wedding, 418 U.S. 461, 487 (1974).

to clarify its intent and expand the authority of magistrates. Acting upon the Chief Justice's dissent, the Congress passed the 1976 and 1979 Federal Magistrate Acts, giving judges the authority to expand the scope of magistrates' participation. By statute, magistrates may now hear civil and criminal nondispositive motions in a case, write reports and recommendations to a judge on dispositive motions, serve as special master in a case, and decide a civil case if the parties consent.⁵

Recognizing the tremendous differences in district courts' caseloads and case mix, and the consequent variation in the needs of judges, Congress left the implementation of the magistrates system, for all practical purposes, to the district courts. Therefore, it may be most useful to think of magistrates' roles

5. Section 636 specifies two types of motions. In practice, these types of motions are described as dispositive and nondispositive. Some clarification is required.

A dispositive motion refers to "a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action" (28 U.S.C. § 636(b)(1)(A)). A judge may designate a magistrate to conduct hearings and write a report and recommendation on a dispositive motion. Note that a dispositive motion will usually, though not always, dispose of a case (e.g., a motion to dismiss).

A nondispositive motion includes all other motions (e.g., discovery); a judge may designate a magistrate to hear and determine a nondispositive motion, subject to reconsideration by a judge if it can be shown that the "magistrate's order is clearly erroneous or contrary to law" (28 U.S.C. § 636(b)(1)(A)).

For purposes of this report, a dispositive motion refers to all matters in which a designated magistrate may write a report and a recommendation, and a nondispositive motion refers to all matters in which a magistrate may hear and decide a motion.

as forming a series of subsystems that represent responses to relatively distinct circumstances and needs. Thus, some judges may, as a matter of common practice, request a magistrate's assistance in hearing all discovery motions, request a magistrate's assistance in scheduling and thus turn over "initial" pretrial conferences, or request a magistrate's assistance in settlement conferences. In contrast, other judges may request a magistrate's assistance on a selective (i.e., case-by-case) basis for each of these types of matters. It is the purpose of this report to provide an initial, yet systematic, description of these practices.

The Expansion of the Magistrates System: 1970 to 1982

Just as the duties of magistrates have expanded since the program's inception, so too has the number of full-time magistrates assigned to the districts. In 1970, following a pilot program in five districts, there were 61 full-time and 449 part-time magistrates; as of September 1982, there were 228 full-time and 238 part-time magistrates. In part, this change in the composition of full- and part-time magistrates reflects the original concept of the legislation that supported the development of a system of full-time judicial officers.

New magistrate positions are authorized by the Judicial Conference, subject to funding by the Congress. In authorizing these positions, the Conference considers recommendations from (1) the Administrative Office of the United States Courts, (2) the district courts, (3) the circuit councils, and (4) the Magistrates

Committee of the Judicial Conference. As part of its responsibilities, the Magistrates Division of the Administrative Office considers the needs of districts and reviews requests by the districts for new positions. Its reports are then reviewed by the Magistrates Committee for referral to the Conference. The usual practice for adding new positions is for the Judicial Conference to act upon the recommendations of the Magistrates Committee, on the basis of the work of the Magistrates Division; recommendations to the Judicial Conference can, however, be made independently by the district court or circuit council. In determining when and if new slots should be created or existing part-time positions converted to full-time ones, the Magistrates Division considers the following factors:

(1) the caseload of the district court as a whole and the comparative need of the judges for additional assistance from magistrates; (2) the effectiveness of the existing magistrates system in the district and the commitment of the court to the effective utilization of magistrates; and (3) the sufficiency of judicial business of the sort which the judges intend to assign to magistrates to warrant the addition of a full-time position.⁶

It is the position of the division that

[s]tatistics provide the basic foundation of the analysis and recommendations presented to the Conference. Because of the number and complexity of the factors to be considered, the variations in the sizes and caseloads of the districts, and the differences in the way magistrates are used by the courts, the Conference cannot, and should not, apply a rigid statisti-

6. Report of the Judicial Conference of the United States to the Congress on the Federal Magistrates System 36 (Dec. 1981). More specifically, the division reviews such factors as number of judges, number of places of holding court, number of civil and criminal filings, composition of terminated cases, cases per

cal formula for the authorization of magistrate positions. Rather, the Conference reviews each position on a case-by-case basis, taking into account all relevant factors.

Table 1 shows the number of full-time positions recommended by (1) the Administrative Office, on the basis of reports prepared by the Magistrates Division, (2) the district courts, (3) the circuit councils, (4) the Magistrates Committee, and (5) the Judicial Conference, for each meeting of the Judicial Conference since 1970. The Judicial Conference has generally acted upon the recommendation of the Magistrates Committee. Over the course of the decade, there are seven instances in which the Conference did not adopt, in total, the suggestions of the committee: On six occasions it approved more positions and on one occasion it approved fewer positions than the committee suggested. Consequently, the committee has recommended the addition of 170 positions since 1970, whereas the Conference has approved 177 positions. Moreover, the Magistrates Committee has not consistently adopted the recommendations of the Administrative Office: Since 1970 the Administrative Office has recommended the creation of 188 positions, whereas the committee has recommended the creation of 170. Finally, the district courts and the cir-

judgeship, trends in the composition of the district's caseload, number and length of trials, and any special factors (e.g., the presence of a prison). In addition, the division examines the workload of magistrates, including such factors as number and composition of magistrates already in the district, composition of petty offense and misdemeanor caseload, number of preliminary criminal duties handled by magistrates, composition of "additional duties," and any special factors. See id. at n.72.

7. Id. at 37.

TABLE 1

STEPS IN APPROVAL OF NEW FULL-TIME MAGISTRATES: 1970 TO 1982

Date	Number of Recommended Positions					Number of Authorized Positions
	Adminis- trative Office	District Court	Circuit Council	Magis- trates Committee	Judicial Conference	
Spring 1970	0	26	25	8	10	61
Fall 1970	16	28	25	19	21	82
Spring 1971	1	3	1	1	1	83
Fall 1971	5	6	5	5	5	88
Spring 1972	2	7	3	2	2	90
Fall 1972	12	13	10	12	13	103
Spring 1973	1	5	1	0	0	103
Fall 1973	8	9	8	8	9	112
Spring 1974	0	0	0	0	0	112
Fall 1974	19	21	18	18	18	130
Spring 1975	3	4	3	3	3	133
Fall 1975	12	12	12	10	10	143
Spring 1976	7	9	7	7	7	150
Fall 1976	9	9	9	8	9	159
Spring 1977	5	6	7	5	5	164
Fall 1977	4	4	4	2	2	166
Spring 1978	10	13	12	10	10	176
Fall 1978	13	12	14	11	11	187
Spring 1979	11	12	12	9	9	196
Fall 1979	5	6	6	5	5	201
Spring 1980	5	6	6	3	3	204
Fall 1980	10	19	12	7	6	210
Spring 1981	8	9	9	7	7	217
Fall 1981	5	5	5	2	2	219
Spring 1982	9	13	11	3	4	223
Fall 1982	<u>8</u>	<u>11</u>	<u>10</u>	<u>5</u>	<u>5</u>	228
Total	188	268	235	170	177	

cuit councils have consistently recommended more slots than have been approved by the Conference: Since 1970 the district courts have recommended 268 positions and the circuit councils have recommended 235.

At the time of the survey, seven was the largest complement of full-time magistrates in a district; three districts were authorized seven positions. Ten districts had no full-time positions and twenty-five districts had one full-time position. The ratio of judges to full-time magistrates ranged from 1:1 in four districts to 5:1 in two districts. The variation in the ratio of judges to magistrates across the country suggests that expansion has indeed conformed to the intent of the original legislation, that is, in response to the individual needs and practices of the district courts.

The decentralized structure of the district courts creates a need for systematic investigation of the various ways that magistrates are actually being used. This study sheds some light on the roles magistrates are now performing. In particular, it examines whether magistrates are performing duties authorized under section 636(b) and (c), for example, whether they are participating in civil and criminal pretrial conferences, making reports and recommendations to judges, and deciding motions. The study also addresses how these matters are assigned to magistrates, at what point in the processing of a case judges are likely to request magistrates' assistance, and how frequently judges request magistrates' assistance.

This study is based on the results of a survey sent to all full-time magistrates (N = 210), located in eighty-three federal district courts. A pilot survey, using telephone interviews, was initially administered to all full-time magistrates in the Ninth

Circuit (n = 26). The instrument was slightly modified as a result of the pilot, and the remainder of the population of full-time magistrates was then contacted through mail surveys (see appendix B for a copy of this survey). Of the 210 magistrates contacted, 191 magistrates located in eighty-two districts returned surveys, representing a response rate of 91 percent.

In the discussion that follows, summary tables describing the responses of magistrates are presented. More detailed tables are presented in appendix A. Note that the findings presented represent impressions of the magistrate's role and responsibilities as described by magistrates. Thus, we are, in the current context, developing a picture of the system from the vantage point of a single, albeit important, group.

II. DESIGNATED AND EXERCISED JURISDICTION

As a result of the Federal Magistrate Acts of 1976 and 1979, magistrates may now perform a wide variety of duties, including the conduct of a civil trial upon consent of the parties. The amendments give magistrates the authority to hold hearings and to write reports and recommendations on dispositive motions, for example, motions for injunctive relief, for summary judgment, and to dismiss a case (see 28 U.S.C. § 636(b)(1)(B)). Since such motions may dispose of a case, a magistrate's responsibility is limited to the report and recommendation, which is reviewed by the presiding judge, who may reject or accept, in whole or in part, the report of the magistrate. A party may file an objection within ten days of the magistrate's action, in which case a district judge makes a de novo determination of the issues in controversy. In addition, the amendments authorize magistrates to hear and rule on nondispositive motions, such as discovery and procedural motions. In practice, when a magistrate hears a nondispositive motion, it is assumed that his determination completes the matter unless a party objects; by contrast, when a magistrate hears a dispositive motion and writes a report and recommendation, the matter is reviewed by the judge to whom the case has been assigned.

Examination of local rules reveals that most districts have

designated magistrates to perform the full range of duties under section 636. Some districts have developed elaborate rules for magistrates; in other districts, the rules guiding magistrates' practices are short, if to the point. There may, however, be considerable variation among what the current statute permits, what the local rules specify, and what matters magistrates are actually assigned. The decision to delegate responsibilities to magistrates is made by judges within a district. That is, magistrates' participation in the processing of cases may be narrower than that permitted by statute. In addition, requests for magistrates' participation may vary from judge to judge within a district.

To corroborate these perceptions, the first part of our survey asked magistrates whether they have been designated to dispose of civil and criminal matters under section 636(b) and (c). Equally important, magistrates were questioned on whether they have, to date, regularly exercised that authority.⁸

Table 2 summarizes magistrates' responses to these questions

8. It should be noted that prior to 1979 many districts had introduced procedures, usually through local rule, whereby magistrates could perform the duties authorized by the 1976 and 1979 Magistrate Acts. After the inception of the magistrates program in 1968, there were a number of cases challenging the jurisdiction of magistrates; the 1976 and 1979 acts are, in essence, responses to this controversy (see McCabe, supra note 3). The 1976 and 1979 acts specify that each district must take formal steps to designate a magistrate to exercise jurisdiction under section 636(b) and (c); therefore, a full-time magistrate could work in a district but not be designated to dispose of certain types of matters. Some districts have allowed magistrates to exercise authority over these matters for a number of years, whereas other districts are just now beginning to expand the authority of magistrates.

TABLE 2

MAGISTRATES' DESCRIPTION OF DESIGNATED
AND EXERCISED JURISDICTION

Jurisdiction	Designated Magistrates		Participating Magistrates	
	Number	Percentage	Number	Percentage ¹
Criminal matters				
Pretrial conferences	166	87%	82	49%
Nondispositive motions	174	91%	122	70%
Dispositive motions	170	89%	93	55%
Civil matters				
Pretrial conferences	180	94%	146	81%
Nondispositive motions	187	98%	175	94%
Dispositive motions	180	94%	149	83%
Social security	180	94%	155	86%
Special master	162	85%	116	72%
Prisoner petitions				
Habeas corpus	185	97%	162	88%
Civil rights	185	97%	162	88%
Civil trial upon consent	166	87%	135	81%
All matters	130	68%	20	15%

¹Percentage of those designated who reported that they participate in the matter.

by reporting the number and percentage of magistrates who (1) have been designated and (2) once designated have regularly performed these duties.⁹

9. By requiring districts to designate magistrates' authority, the 1976 and 1979 acts imply that a judge's request to a magistrate to perform a duty is not sufficient. In fact, only one magistrate reported that he has decided a criminal motion without designation by the district court.

The findings confirm our impression that the majority of respondents have been designated to dispose of section 636(b) and (c) criminal and civil matters. Specifically, 130 respondents, or 68 percent, indicated that they have been designated to dispose of all matters under section 636. Yet only 20 respondents, or 15 percent of the designated magistrates, indicated that they have disposed of all types of matters on a regular basis. Thus, the findings suggest that there is a fairly large gap between magistrates' full designation and full participation in all currently authorized duties.

However, table 2 also shows that this gap is not nearly as great on a duty-by-duty basis. For example, 122 respondents, or 70 percent of the designated magistrates, indicated that they decide criminal nondispositive motions (91 percent of the magistrates reported that they have been designated to work on such matters). This is to be contrasted with the findings for other criminal duties: 49 percent of the designated magistrates dispose of pretrial conferences, and 55 percent of the designated magistrates regularly participate in dispositive motions.

The findings for magistrates' experience under section 636(b) indicate a greater likelihood of participation in civil duties. First, the absolute numbers of participating magistrates are greater for civil than for criminal matters: 175 magistrates reported participation in nondispositive civil motions, 155 reported participation in social security cases, and 162 reported regular participation in prisoner matters, whereas 82 reported

participation in criminal pretrials, 122 in nondispositive criminal motions, and 93 in dispositive criminal motions. Second, the reported differences between designated and exercised jurisdiction are smaller. The smallest difference occurs in nondispositive motions, where 98 percent of the respondents have been designated and 94 percent of those designated regularly perform this duty, that is, have ruled on a motion in a civil case. The largest differences occur in special master duties and civil pretrial conferences, where the percentages are 85 percent versus 72 percent and 94 percent versus 81 percent, respectively. Consistent with the findings for civil duties in general, 88 percent of the designated population participate in prisoner matters, and 86 percent participate in social security matters on a regular basis.

In addition, 135 magistrates reported that they have received civil cases upon consent of the parties. At present, parties must specify appeal to the district or the circuit court. In either instance the magistrate has authority to rule on all motions, subject, of course, to the paths for appeal that operate if an Article III judge hears the case. We return to a more detailed discussion of magistrates' participation in civil trials upon consent in chapter 6.

It thus appears that magistrates have more experience with civil matters, specifically decisions on nondispositive motions and reports and recommendations on social security cases and prisoner petitions.

Districts may further limit magistrates' participation by the practice of designating "specialists" in particular areas, whereby one magistrate, for example, would be assigned only prisoner matters and another would be assigned only general civil matters. Respondents reported, however, that this is not a common practice; 77 percent indicated that all full-time magistrates in their districts are assigned the same mix of duties.

Nevertheless, the findings do suggest variation across districts in magistrates' participation. The reasons for this variation are no doubt many, but at least two are worth considering here. The composition of a court's caseload affects the burdens placed upon judicial personnel, and the weighted caseload across district courts varies considerably; according to an Administrative Office report, the average weighted number of filings per judgeship in 1982 was 417 cases, with a range from 226 to 669 cases.¹⁰ In addition, districts experience changes in filing rates from year to year. The 1982 average for the country was a 13.5 percent increase in filings; however, some districts experienced as much as a 38 percent decrease, whereas others experienced as much as a 77 percent increase in total filings. While magistrates' limited participation in a given area might be related to a district's reluctance to modify its practices in order to use these judicial personnel effectively, it might also be indicative of their effective use by a well-managed court in re-

10. Administrative Office of the United States Courts, Management Statistics for the United States Courts 131 (1982).

sponse to its particular caseload demands. Moreover, until we have information on the extent of challenges to magistrates' decisions on nondispositive motions and of objections to their reports on dispositive motions, we cannot say how magistrates' participation affects a district's caseload.

Finally, the findings in table 2 do not speak to the processes or frequency of assignment of civil and criminal matters, points we turn to in the following chapters.

III. PROCESSES OF CASE ASSIGNMENT

A comparison of local rules outlining the process of case assignment to magistrates suggests that there is variation across districts: Some districts have developed relatively formal procedures for random assignment to magistrates; other districts leave assignment of matters solely to the discretion of individual judges. Moreover, individual judges within a district may develop different practices for the timing of a magistrate's entry into a case; for example, some judges may have magistrates hear all discovery motions, while others may have magistrates enter a case upon specific request. The survey of magistrates sought to shed light on these practices.

Prior to passage of the Federal Magistrates Act of 1968, criminal matters were delegated to commissioners and did not pass through the clerk's office for assignment; rather, they were handled directly by the commissioner, usually at the initiation of the arresting agent. As magistrates' responsibilities have expanded, it is important to determine if there have been modifications in the way assignments are distributed.

To what degree have districts developed assignment practices that are essentially the same for all judicial officers, that is, judges and magistrates? Although our survey did not question magistrates on how cases are allocated to judges, other sources

provide some general background.¹¹ The size of a district often affects assignment practices. In the twenty-three largest districts (ten or more judges), all judges usually reside at one location, and matters are assigned randomly to judges. In the sixteen smallest, often more rural, districts (five or fewer judges), where a judge may often sit alone, assignment may be by the division in which the case arises. And in the fifty-five medium districts (six to nine judges), about two-thirds of the courts have a random procedure, though there are instances in which a judge sits alone and receives cases filed in that locale. In general, most districts have some type of individual calendar by which cases are randomly allocated by the clerk's office.

We asked magistrates to describe the assignment practices for magistrates in their districts. Here we distinguished between rotational systems that alternate assignments on a regular basis and other more discretionary procedures. Specifically, we asked magistrates to indicate whether (1) duties are randomly assigned, either at filing or at a judge's request, (2) duties are rotated among magistrates, (3) magistrates are paired with a group of judges, (4) a chief or presiding magistrate makes assignments at a judge's request, or (5) judges themselves specify a magistrate of their choice as needed. We return to their responses shortly.

11. Information describing assignment procedures in federal district courts has been assembled by the Management Review Division of the Administrative Office. Since this information was gathered in 1979, it must be read with some caution.

Assignment by Divisional Location

We also asked the magistrates if, as a first step in assigning matters, cases are allocated by divisional location within a district. Ninety-two of the 191 respondents, or 48 percent, reported that they are, as a general practice, only assigned cases arising at a specific location. Moreover, the findings in table 3 show that more than 20 percent of these 92 respondents reported that they sit alone (as a solo magistrate) and do not receive matters through one of the assignment procedures listed. (See table 31 for the districts with two full-time magistrates who sit at two different geographical locations.) In practice, then, small districts and some medium districts may develop a system of

TABLE 3

PROCEDURES OF ASSIGNMENT FOR MAGISTRATES WHO ARE
ALLOCATED CASES BY DIVISIONAL LOCATION

Procedure	Criminal Matters (n = 91)	Civil Matters (n = 92)	Prisoner Petitions (n = 91)	Social Security (n = 91)
Random	12 (13%)	24 (26%)	17 (19%)	20 (22%)
Rotational	14 (15%)	7 (8%)	15 (16%)	10 (11%)
Pairs	24 (26%)	26 (28%)	21 (23%)	17 (19%)
Chief magistrate	0	1 (1%)	1 (1%)	0
Judge	12 (13%)	14 (15%)	10 (11%)	9 (10%)
Solo magistrate ¹	29 (32%)	20 (22%)	27 (30%)	35 (38%)

¹ Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

judge-magistrate pairs, whereby a solo magistrate works for one or two judges at a particular location, a practice we consider in greater detail later in this chapter.¹²

For the sixty-three magistrates at divisional locations who are not solo magistrates, cases allocated to the divisions are assigned as shown in table 3. For example, twelve of these respondents indicated that in their division, criminal matters are assigned randomly.

Table 4 shows magistrates' descriptions of assignment practices for civil and criminal duties, reported by number of districts using each procedure. Before we turn to a discussion of these findings, however, a point is in order. Our findings show that in most instances magistrates within a district agreed on how matters are assigned in that district (e.g., by division and then by pairs, by random allocation, etc.). Thus, at this level, it is feasible to consider the district itself as a unit of analysis or comparison.¹³

12. One of the findings from the pilot study of the Ninth Circuit was the importance of administrative divisions within districts and the role that solo magistrates play in the operation and administration of a district. Magistrates in Arizona, Eastern California, and Oregon independently emphasized that while there was more than one full-time magistrate in their district, they each worked in separate divisions and only for the judge(s) at that location. A number of these respondents indicated that their situation is, in practice, analogous to a single-judge district.

13. More detailed tables showing magistrates' descriptions of assignment procedures by specific types of 636(b) duties are contained in appendix A.

TABLE 4

ASSIGNMENT OF CIVIL AND CRIMINAL DUTIES
BY NUMBER OF DISTRICTS

Procedure	Criminal	Civil
Rotational	23	7
Random	8	24
Pairs		
By local rule	6	6
By location	13	13
Chief magistrate	2	2
Judge	5	5
Solo magistrate	<u>25</u>	<u>25</u>
Total	82	82

Random and Rotational Assignment

In districts with a rotational procedure, the "on-duty" magistrate (or magistrates) automatically receives the action and, in most instances, remains responsible for that case through disposition. In those districts with more than one full-time magistrate, rotation is the most common practice for assigning criminal matters (see table 4). In districts with a random assignment procedure, the clerk of court selects magistrates by lot, either at filing or at a judge's request. In those districts with more than one full-time magistrate, random assignment is the most common procedure for allocating civil matters (see table 4).

Rotational and random assignment systems share a common fea-

ture: In neither instance does the judge personally select the magistrate who will receive the assignment. Moreover, in districts with random or rotational systems, steps have been taken to organize the allocation of the magistrates' workload in a manner that complements the allocation of work to judges.¹⁴

There are also differences between rotational and random assignment systems. In a rotational system, both lawyers and judges can anticipate the cycle of on-duty magistrates and may possibly make decisions accordingly. For example, lawyers may wait to file a motion until a magistrate of their preference is sitting. A number of magistrates pointed out, in written comments to their surveys, that rotational assignment allows some forum shopping, particularly among U.S. attorneys, who may move their cases in accordance with their magistrate preferences. By contrast, such shopping should not be possible, in theory at least, in a district that assigns matters randomly.

Judge-Magistrate Pairs

Other districts have developed a procedure of judge-magistrate pairs whereby a magistrate is assigned to a group of judges and conducts proceedings upon request. Note that there are two types of pairs. In some districts, local rules specify

14. This procedure may have an effect on the operation of the clerk's office. In addition, the 1979 Magistrate Act authorizes the establishment, on a discretionary basis upon approval by the Judicial Conference, of legal assistant positions for magistrates; in exchange, the magistrate's clerical assistant moves to the clerk's office and may then work under the supervision of the clerk.

that a magistrate be assigned to a specific group of judges and work exclusively for that group. In districts in which a magistrate sits alone at a divisional location, judge-magistrate pairs have evolved de facto. Magistrates located in thirteen districts reported assignment through de facto judge-magistrate pairs.

Assignment by a Chief Magistrate

Some districts designate a chief or presiding magistrate. Our survey sought to determine whether this officer's responsibilities include the assignment of matters to magistrates. Table 4 indicates that this procedure occurs in only two districts.

Assignment at the Discretion of a Judge

While less common than random assignment or judge-magistrate pairs, there is a procedure, in some locations, in which judges themselves select a magistrate to decide a motion or write a report and recommendation.¹⁵ Respondents in five districts indicated that this is the primary procedure for assigning civil and criminal duties.

We also asked magistrates if, despite procedures for uniform assignment, judges continue to choose magistrates to decide motions or write reports and recommendations. The responses suggest that this practice is fairly common and that it varies with different types of requests. For example, in districts with a

15. This procedure is to be distinguished from instances in which judges continue to select a magistrate of their choice even though the district has another procedure for assignment (e.g., random, pairs, etc.).

random or rotational assignment process, 1 percent of the respondents who consider prisoner petitions and social security cases indicated that judges continue to exercise some discretion over the assignment of these matters; 24 percent of those participating in civil duties indicated that judges continue to assign these matters; and 28 percent of those participating in criminal duties indicated that judges continue to assign these matters. (See table 28 for more detailed findings.)

Overall, then, according to the magistrates participating in section 636(b) duties, in districts with more than one full-time magistrate, criminal matters are most commonly assigned by rotation and civil matters are most commonly assigned randomly. Moreover, magistrates within a district were in substantial agreement about how matters are assigned in that district. Thus, at this level of comparison, there is consensus in the description of this decentralized system. In the following chapters, we describe magistrates' responses about more specific aspects of judges' practices, that is, the timing and frequency of judges' requests for magistrates' assistance. For example, once we know that a district pairs its magistrates with groups of judges, we must still consider when and how frequently in the processing of a case a judge is likely to call upon a magistrate. At this level of comparison, magistrates within a district often described differing practices among judges. For example, it was not unusual for some magistrates within a district to report that they are "always" given pretrial conferences and for another mag-

istrate in the same district to report that he is "occasionally" given such matters. Thus, when we begin to look at judges' practices within the various types of judge-magistrate subsystems, there appears to be a great deal of variation.

IV. TIME OF ASSIGNMENT

The timing of a magistrate's entry into a case is a function of at least two factors: (1) the nature of issues raised during the processing of a case and (2) the practices of individual judges. Accordingly, the assignment of motions to magistrates varies with individual judges' practices: Some may request that magistrates hear discovery motions as a matter of course and have such matters assigned when the case commences; others may request magistrates' participation at some point after filing; and still others may vary their requests on a case-by-case basis. We asked magistrates to describe the practices of the judges at their locations, and tables 5 through 8 summarize their responses.

Overall, the findings show that judges' practices for the timing of assignment are probably the clearest point of difference both across and within districts. This variation is particularly true for civil pretrial conferences and dispositive and nondispositive motions: Here, magistrates reported that judges within any given district may develop quite different practices for requesting their assistance. On the other hand, in districts in which magistrates are assigned social security and prisoner petitions, there appears to be a general tendency among judges to request a report and recommendation on the issues in dispute at filing.

In turning to a more detailed consideration of the findings reported in tables 5 through 8, it is important to keep in mind that the reported experience of magistrates is the appropriate unit of comparison. In chapter 3 we described variations in assignment procedures across districts because magistrates within each district tended to agree. In this chapter and in chapter 5 we describe variations in magistrates' responses because the agreement among magistrates within any one district was not as strong. For example, even in a district that decides to assign civil matters randomly, judges may develop quite different practices for when they assign discovery matters (i.e., nondispositive motions).

Table 5 shows magistrates' descriptions of the various practices of judges within their districts in requesting assistance. We asked magistrates to report whether (1) all judges request their assistance "at filing" such that the assigned magistrate handles matters as they arise, (2) all judges request their assistance on a selective basis, or (3) some judges request their assistance at filing and some request their assistance on a selective basis. Of the seventy-seven magistrates participating in criminal pretrial conferences, thirty-nine (or 51 percent) indicated that they enter the case at filing, thirty-three (or 43 percent) indicated that they enter at a judge's request at some point after filing, and five (or 6 percent) reported that judges' timing for requests may vary.

Half (51 percent) of the 121 magistrates participating in

TABLE 5

POINT OF ENTRY INTO CRIMINAL AND CIVIL MATTERS FOR
MAGISTRATES WHO PARTICIPATE IN SECTION 636(b) DUTIES

Matter	At Filing	At Judge's Request	Both
Criminal			
Pretrial conferences (n = 77)	39 (51%)	33 (43%)	5 (6%)
Nondispositive motions (n = 118)	60 (51%)	49 (42%)	9 (8%)
Dispositive motions (n = 84)	27 (32%)	47 (56%)	10 (12%)
Civil			
Social security (n = 146)	84 (58%)	50 (34%)	12 (8%)
General ¹ (n = 121)	33 (27%)	62 (51%)	26 (21%)
Prisoner petitions			
Habeas corpus (n = 159)	101 (64%)	42 (26%)	16 (10%)
Civil rights (n = 160)	95 (59%)	50 (31%)	15 (9%)

¹Refers to civil pretrial conferences and nondispositive and dispositive motions.

general civil matters (i.e., pretrial conferences and nondispositive and dispositive motions) indicated that, usually, they enter a case at a judge's request; 27 percent indicated that judges assign them civil responsibilities at filing, and 21 percent indicated that the judges in their districts are inclined to do both, that is, assign pretrial matters at filing or at some point thereafter.

In contrast to general civil matters, magistrates reported relatively uniform experiences regarding the timing of judges' requests for reports and recommendations in social security cases and prisoner petitions. Accordingly, 58 percent of participating magistrates reported that they are assigned social security matters at filing. In addition, more than half of participating magistrates reported that they receive habeas corpus matters (64 percent) and civil rights petitions (59 percent) at filing. Thus, for these types of civil dispositive motions, participating magistrates are more likely to be assigned cases at filing.

What relationships emerge between magistrates' point of entry into a case and the assignment system used in the district? The discussion that follows considers these relationships for each type of matter (i.e., criminal, civil, and prisoner).

Criminal Matters

Table 6 shows the timing of judges' requests for magistrates' assistance in criminal matters by assignment procedure. As mentioned earlier, where more than one full-time magistrate sits, criminal matters are usually rotated (see table 4); however, magistrates' point of entry into a criminal case differs across various types of duties. For example, of those respondents who have conducted pretrial conferences, 18 percent work in districts with a rotational assignment system and receive such matters at filing, while 13 percent receive them on rotation but at some later point. Magistrates under other types of assignment procedures are fairly evenly divided between those who report as-

TABLE 6

PARTICIPATING MAGISTRATES' POINT OF ENTRY
INTO CRIMINAL MATTERS BY ASSIGNMENT PROCEDURE

Procedure	Pretrial Conferences (n = 77)			Nondispositive Motions (n = 118)			Dispositive Motions (n = 84)		
	At Filing	After Filing	Both	At Filing	After Filing	Both	At Filing	After Filing	Both
Random	7	4	1	2	5	2	2	5	2
Rotational	14	9	1	37	37	6	16	34	6
Pairs	7	7	1	0	1	0	0	1	0
Chief magis- trate	0	0	0	0	0	0	0	0	0
Judge	3	6	1	0	0	0	0	0	0
Solo magis- trate ¹	8	7	1	21	6	1	9	7	2
Total	39	33	5	60	49	9	27	47	10
Percentage	51%	43%	6%	51%	42%	8%	32%	56%	12%

NOTE: For pretrial conferences, five magistrates gave no response to the point-of-entry question; for nondispositive motions, four gave no response; for dispositive motions, nine gave no response.

¹ Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

signment of pretrial conferences at filing and those who report assignment at some point after filing.

Magistrates who receive criminal nondispositive motions by rotation are also evenly divided in their reports of the timing of assignment of such matters (i.e., they receive them either at filing or upon a judge's request). Full-time magistrates serving

alone in a district or a divisional location more often reported that they are assigned nondispositive motions at filing. In contrast, perhaps in part because of the nature of the issue, most magistrates assigned dispositive motions by rotation reported that such matters are assigned at the request of a judge. In districts with judge-magistrate pairs, only one respondent reported that he has been requested to hear and decide motions, though fifteen respondents reported that they have been assigned pretrial conferences in criminal cases. Similarly, in districts in which matters are assigned at the discretion of a judge, none of the magistrates have been requested to handle motions; however, ten magistrates in these districts have been assigned pretrial conferences, most at some point after filing. Overall, the findings suggest that regardless of the way matters are assigned, judges differ in their practices for the timing of requests for magistrates' assistance on various types of criminal motions.

General Civil Matters

In those districts with more than one full-time magistrate, most magistrates reported that civil motions are randomly assigned by the clerk of court, though it is not uncommon for magistrates to be paired with judges or to receive assignments at the discretion of an individual judge. Table 7 reports magistrates' descriptions of judges' timing of requests by assignment procedure. These findings show that regardless of the type of assignment procedure used, more judges within a district assign civil motions and pretrial conferences after filing (51 percent)

TABLE 7

PARTICIPATING MAGISTRATES' POINT OF ENTRY
INTO GENERAL CIVIL MATTERS BY ASSIGNMENT PROCEDURE

Procedure	General Civil (n = 121) ¹		
	At Filing	After Filing	Both
Random	12	19	10
Rotational	1	7	4
Pairs	8	10	5
Chief magistrate	0	4	2
Judge	3	8	3
Solo magistrate ²	<u>9</u>	<u>14</u>	<u>2</u>
Total	33	62	26
Percentage	27%	51%	21%

¹Includes pretrial conferences and nondispositive and dispositive motions.

²Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

or vary their practices (21 percent) than assign at filing (27 percent). In sum, the timing of judges' requests for magistrates' assistance in civil matters is likely to vary from judge to judge within a district.

Social Security Cases and Prisoner Petitions

Social security matters are most often assigned at filing. The one exception to this pattern is the districts in which social

security matters are assigned at the discretion of a judge; here, most matters are assigned at some point after case filing (13, or 9 percent; see table 8).

As with civil matters in general, at locations with more than one full-time magistrate, prisoner petitions are most often assigned at filing regardless of the assignment procedure used. There is the continuing exception for assignment at the discretion of a judge, however, which occurs most often after filing;

TABLE 8

PARTICIPATING MAGISTRATES' POINT OF ENTRY INTO PRISONER PETITIONS
AND SOCIAL SECURITY CASES BY ASSIGNMENT PROCEDURE

Procedure	<u>Prisoner Petitions</u>								
	<u>Habeas Corpus</u> (n = 159)			<u>Civil Rights</u> (n = 160)			<u>Social Security</u> (n = 146)		
	<u>At Filing</u>	<u>After Filing</u>	<u>Both</u>	<u>At Filing</u>	<u>After Filing</u>	<u>Both</u>	<u>At Filing</u>	<u>After Filing</u>	<u>Both</u>
Random	29	13	4	29	14	3	27	16	3
Rotational	22	0	6	19	4	3	15	4	2
Pairs	21	7	3	21	6	5	15	5	5
Chief magis- trate	1	4	0	0	4	0	0	2	0
Judge	4	10	1	3	13	1	4	13	2
Solo magis- trate ¹	<u>24</u>	<u>8</u>	<u>2</u>	<u>23</u>	<u>9</u>	<u>3</u>	<u>23</u>	<u>10</u>	<u>0</u>
Total	101	42	16	95	50	15	84	50	12
Percentage	64%	26%	10%	59%	31%	9%	57%	34%	8%

¹ Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

and there is a substantial minority of magistrates under procedures other than rotation who receive these matters after filing.

We observe, in general, that judges' practices for the timing of assignment of social security and prisoner matters are different from their practices for other civil and criminal matters.¹⁶

16. Most 1983 prisoner petitions incorporate an in forma pauperis request that legally requires immediate attention. Hence, those districts that assign prisoner petitions to magistrates are establishing a practice whereby such matters must go to these officers at filing. A number of magistrates indicated that they are only responsible for the determination of in forma pauperis and do not dispose of the case itself.

V. FREQUENCY OF ASSIGNMENT

Thus far, we have focused on magistrates' reports of how and when civil and criminal matters are assigned. Briefly, we have found that within a district, participating magistrates agree substantially on the way in which they are assigned matters (see chapter 3), but often report that judges develop varying practices in the actual timing of their requests for assistance. The findings have thus suggested that it is appropriate to compare across districts when examining procedures for assignment but that this level of analysis breaks down when examining judges' practices for requesting magistrates' assistance on various types of duties.

We may also consider the frequency with which judges request magistrates' assistance on various matters under section 636(b) and, again, whether the frequency of judges' requests is related to the various procedures for assignment. In examining this question it is important to clarify exactly what is being described. We asked the magistrates to indicate how many of the active judges in their district "always," "frequently," "occasionally," or "never" assign each of the duties under section 636(b). It is clear from the responses, however, that for the most part the magistrates were not describing practices of the entire bench of their districts. For example, the number of

practices described by a magistrate at a divisional location was invariably the same as the number of judges in that division rather than the total number in the district. In fact, many respondents added comments indicating that they were not in a position to describe the practices of all judges. A comparison of the total number of judges in a district with the numbers described by magistrates disclosed that it was rare for a magistrate's description to cover all judges. It appears, with few exceptions, that the responses we have are based on the practices of the judges with whom the respondents had direct experience.

Of course, there were a few magistrates who described the practices of all judges in a district, but the behavior is not consistent enough for us to make the observations we intended to make about district practices. Even where one magistrate in a district has described the entire bench, if two others in the district have described subsets, we cannot determine how many judges' practices have been described once, twice, or three times.

Most magistrates described, then, the practices of the judges with whom they had firsthand experience. In addition, magistrates within the same district often described quite different experiences: Some may have indicated that judges always assign a particular matter, while others reported that the same duty is occasionally assigned. At this stage, we cannot ascertain whether magistrates were describing the practices of the same group of judges who happened to treat each magistrate dif-

ferently or the practices of different judges who tended to work with different magistrates. Thus, the responses permit us only to examine how frequently judges with whom a magistrate is familiar give work to that individual magistrate. In considering this question, we are holding constant, as it were, the amount of work that judges' assignments may generate for magistrates, a point we plan to consider in the next phase of this study.¹⁷

In the introduction to this report, we presented the factors that are considered in requests for new full-time magistrate positions. In addition to a district's caseload, the Magistrates Division of the Administrative Office examines judges' "commitment to the effective utilization of magistrates," recognizing that numbers alone cannot provide an accurate assessment of when and if an additional position is required. As we have suggested above, the analysis of "effective utilization" by judges of magistrates is a very complex, if central, question; as a preliminary step, it may be useful to develop a baseline for examining

17. We cannot extrapolate a description of the relative size of magistrates' workloads from these responses. For example, one magistrate may work for twelve judges who are described, on the average, as "occasional" givers of work. A magistrate at another location may work for two judges who are described, on the average, as "frequent" givers of work. Clearly, the twelve judges at the first location may generate more work for magistrates than the two judges at the second location, even though the larger group are "occasional" givers and the smaller group "frequent" givers. In this context, therefore, we are only comparing one magistrate's description of judges as "frequent" givers with another magistrate's description of judges as "occasional" givers of work; we are not comparing the amount of work this generates for each magistrate. Each magistrate's rating of judges is the unit of comparison in this phase of the study.

how frequently judges give work to magistrates. It is hoped that the findings presented in this chapter (as well as the more detailed findings by district presented in appendix A) will provide a framework for more systematic exploration of magistrates' utilization by judges.

Tables 9 to 11 present magistrates' descriptions of the frequency with which judges give work to magistrates for the various types of duties under section 636(b). The descriptions of judges' practices have been summarized into a composite score derived by assigning "always" a value of four, "frequently" a value of three, "occasionally" a value of two, and "never" a value of one. Each response was converted to a numeric value, multiplied by the appropriate number of judges, and then standardized by dividing by the number of judges whose practices the respondent described.

The findings in tables 9 through 11 are presented from the vantage points of two groups: (1) all respondents and (2) those who have participated in a particular duty. Respondents include any magistrate who answered the question on the frequency with which judges assign work to magistrates. Participants include only those magistrates who (a) have been designated, (b) have exercised a duty regularly (see chapter 2), and (c) have reported that at least one judge has given him a particular type of duty. In the previous chapter we considered the descriptions only of participants, since they are the only subgroup who can accurately describe when judges request assistance on various types of duties under section 636(b). A respondent, however, may have

insight into the question of how frequently judges give work to magistrates even though he is not a regular participant.

In the end of this chapter we return to a consideration of judges' timing of their requests and speculate about the relationship between when and how often judges give work to magistrates; there it will be useful to consider the descriptions of participants only.

Table 9 presents the descriptions of all respondents and shows the number and percentage of respondents whose descriptions translate to "almost always" (3.50 to 4.00), "frequently" (2.50 to 3.49), "occasionally" (1.50 to 2.49), "rarely" (1.01 to 1.49), or "never" (1.00) assigned a particular type of matter. (Nonrespondents to this question are omitted from the frequencies presented in table 9; hence the number of observations for each type of duty varies.) Table 10 presents the descriptions of participants and does not include the frequency "never" assigned. (According to the definitions in this study, it is inconsistent for a participant to report that he is never given a particular type of duty; a respondent, however, may never, or even rarely or occasionally, be given a particular type of matter.)

The findings in table 9 show that respondents describe quite different practices for civil and criminal matters. For criminal matters, almost half of the respondents reported that they are never given pretrial conferences (84, or 48 percent) or dispositive motions (84, or 46 percent). If we eliminate those who reported that they are never given these criminal duties,

TABLE 9

NUMBER AND PERCENTAGE OF RESPONDENTS BY FREQUENCY OF JUDGES'
REQUESTS FOR ASSISTANCE ON SECTION 636(b) DUTIES

Matter	Almost Always	Frequently	Occasionally	Rarely	Never
Criminal					
Pretrial conferences (n = 175)	37 (21%)	14 (8%)	26 (15%)	14 (8%)	84 (48%)
Nondispositive motions (n = 182)	57 (31%)	21 (12%)	42 (23%)	21 (12%)	41 (23%)
Dispositive motions (n = 181)	29 (16%)	20 (11%)	37 (20%)	11 (6%)	84 (46%)
Civil					
Pretrial conferences (n = 181)	40 (22%)	46 (25%)	53 (29%)	21 (12%)	21 (12%)
Nondispositive motions (n = 182)	59 (32%)	62 (34%)	50 (27%)	5 (3%)	6 (3%)
Dispositive motions (n = 179)	22 (12%)	53 (30%)	72 (40%)	15 (8%)	17 (9%)
Prisoner petitions					
Habeas corpus (n = 180)	100 (56%)	30 (17%)	26 (15%)	7 (4%)	17 (9%)
Civil rights (n = 179)	91 (51%)	37 (21%)	30 (17%)	10 (6%)	11 (6%)
Social security (n = 180)	90 (50%)	43 (24%)	16 (9%)	6 (3%)	25 (14%)

NOTE: Almost always = 3.50 to 4.00, frequently = 2.50 to 3.49, occasionally = 1.50 to 2.49, rarely = 1.01 to 1.49, never = 1.00.

¹Includes all magistrates who answered the question on the frequency with which judges give them work; i.e., includes respondents who answered "never" (1.00) assigned. Since each respondent described judges' practices for each type of duty, the number of observations varies.

however, the findings suggest that for the remaining subgroup of respondents, judges are likely either almost always or occasionally to give them these matters. This pattern is most notable for pretrial conferences and dispositive motions; for example, of the 91 respondents who reported that they, at the least, have rarely been given a criminal pretrial matter, 41 percent (or 37 respondents) reported that they are almost always given such matters and 32 percent (or 26 respondents) reported that they are occasionally given such matters. A similar, if somewhat less pronounced, pattern holds for nondispositive and dispositive motions. Overall, the findings suggest that a proportion of the respondents have no experience with these criminal duties, particularly pretrial conferences and dispositive motions, and that for those who have some experience, it tends to be either frequent ("almost always") or occasional.

Turning to respondents' descriptions for civil matters, the findings disclose that the number who reported that they are never given such matters is much smaller than the corresponding number on the criminal side. For example, 25 respondents (or 14 percent), the largest proportion on the civil side, reported that they have never been given social security cases. In general, then, magistrates reported that they tend to be given civil matters more often than criminal matters, especially prisoner petitions and social security cases.

Table 10 presents the descriptions of regular participants in section 636(b) duties. These findings show the descriptions

TABLE 10

NUMBER AND PERCENTAGE OF PARTICIPANTS BY FREQUENCY OF JUDGES' REQUESTS FOR ASSISTANCE ON SECTION 636(b) DUTIES¹

Matter	Almost Always	Frequently	Occasionally	Rarely
Criminal				
Pretrial conferences (n = 72)	36 (50%)	12 (17%)	18 (25%)	6 (8%)
Nondispositive motions (n = 116)	57 (49%)	18 (16%)	31 (27%)	10 (9%)
Dispositive motions (n = 85)	29 (34%)	18 (21%)	26 (31%)	12 (14%)
Civil				
Pretrial conferences (n = 139)	40 (29%)	44 (32%)	43 (31%)	12 (9%)
Nondispositive motions (n = 168)	59 (35%)	62 (37%)	44 (27%)	3 (2%)
Dispositive motions (n = 141)	21 (15%)	52 (37%)	58 (41%)	10 (7%)
Prisoner petitions				
Habeas corpus (n = 152)	95 (63%)	29 (19%)	22 (14%)	6 (4%)
Civil rights (n = 154)	87 (56%)	36 (23%)	24 (16%)	7 (5%)
Social security (n = 150)	88 (59%)	42 (28%)	15 (10%)	5 (3%)

NOTE: Almost always = 3.50 to 4.00, frequently = 2.50 to 3.49, occasionally = 1.50 to 2.49, rarely = 1.01 to 1.49.

¹Includes only those magistrates who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., a respondent's score is equal to or greater than 1.01). Since each participant described judges' practices for each type of duty, the number of observations varies.

of the same subgroup we considered when examining judges' practices for the timing of requests for magistrates' assistance (see chapter 4). As we have seen in previous chapters, a smaller number describe themselves as regular participants in criminal matters than in civil matters.

A comparison of the findings in tables 9 and 10 shows that although there are respondents who report that judges occasionally request their assistance in a civil or criminal pretrial or motion (see table 9), they do not consider themselves to be regular participants in these duties (see table 10); this pattern is particularly clear for criminal pretrials and dispositive and nondispositive motions. This comparison also shows that a few respondents who reported that judges frequently assign civil or criminal pretrials or motions did not report themselves as regular participants in these duties. It thus appears that while most magistrates interpreted the frequency question to apply to what their judges assigned to them, a few interpreted it to apply to all judges of the court, seeing a particular activity as commonly assigned, but not to them personally.

The findings are somewhat different for prisoner petitions and social security cases. A comparison of the findings presented in tables 9 and 10 reveals that whether we examine the descriptions of respondents only (table 9) or we control for those who also described themselves as regular participants (table 10), a small proportion reported that judges only rarely or occasionally give these duties to magistrates. Put differ-

ently, both groups of magistrates described themselves as regular participants in these matters and, in turn, reported that they are given these duties on a frequent basis.

Table 11 summarizes the findings from tables 9 and 10, reporting means (averages) and medians (midpoints) for the various duties under section 636(b) and (c) for (1) all respondents to the frequency question and (2) magistrates who reported that they participate regularly in each of these duties.¹⁸ Overall the findings disclose that respondents and participants are essentially in agreement about the frequency with which judges give them prisoner matters, social security cases, and special master duties. That is, whether we consider all respondents or we control for those who indicated regular participation, the picture of judges' practices is quite similar: On the average, judges "frequently" give magistrates prisoner petitions and social security matters, but only "occasionally" ask them to perform special master duties.

Where the mean and median are fairly close in table 11, it is reasonable to assume that there are fewer outlying cases that either inflate or deflate the average. For example, the mean (2.00) and median (2.00) for participants' descriptions of how

18. Note that the means and medians reported for the group of all respondents include scores for those who reported that judges "always" to "never" give them a particular type of matter (i.e., the scores can range from 4.00 to 1.00), and that the means and medians for the group of participants include scores for those who reported that judges "always" to "rarely" give them a particular type of matter (i.e., the scores can range from 4.00 to 1.01).

TABLE 11

MEAN AND MEDIAN FREQUENCY OF JUDGES' REQUESTS FOR
ASSISTANCE ON SECTION 636(b) and (c) DUTIES:
SUMMARY OF MAGISTRATES' RESPONSES

Duty	<u>All Respondents¹</u>		<u>Participants²</u>	
	Mean	Median	Mean	Median
Criminal				
Pretrial conferences	1.93	1.13	3.05	3.40
Nondispositive motions	2.40	2.00	3.04	3.38
Dispositive motions	1.91	1.30	2.76	3.00
Civil				
Pretrial conferences	2.45	2.33	2.78	2.78
Nondispositive motions	2.90	3.00	3.01	3.00
Dispositive motions	2.35	2.00	2.58	2.50
Prisoner petitions				
Habeas corpus	3.13	4.00	3.39	4.00
Civil rights	3.10	3.50	3.31	4.00
Social security	3.06	3.40	3.41	4.00
Special master	2.00	2.00	2.39	2.00
Civil trials	2.87	3.00	3.37	4.00
Settlements	2.12	2.00	NA ³	NA ³

NOTE: Scores can range from 4 to 1, where 4 = "always," 3 = "frequently," 2 = "occasionally," and 1 = "never." The mean and median are the average and midpoint of the scores.

¹Includes all respondents who answered the question on the frequency of assignment (i.e., score is equal to or greater than 1.00).

²Includes only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., score is equal to or greater than 1.01).

³Not applicable.

often judges give them special master duties are the same. On the other hand, there is some discrepancy between the mean and median for participants' descriptions of the assignment of prisoner petitions and social security cases, suggesting that there are magistrates at some locales who are given these matters with greater frequency than the average. Note that while assignment as a settlement judge is not formally authorized, magistrates reported that districts have taken steps to use them as settlement officers on occasion.

Magistrates described a somewhat different picture for other civil and criminal duties. Paralleling the findings shown in tables 9 and 10, respondents' and participants' descriptions of judges' practices for other civil and criminal duties vary. For criminal matters, if we consider the descriptions of all respondents, judges, on the average, occasionally give each of these duties to magistrates. If we control for regular participants, judges, on the average, frequently give each of these duties to them. For both groups, however, there are discrepancies between the mean and the median for each type of duty, suggesting that from either vantage point, magistrates' experiences are not uniform.

For civil matters, the disparity between the descriptions of respondents and the descriptions of participants is somewhat less pronounced, and the mean and median scores for each duty are closer than those shown for criminal duties. Both groups re-

ported that, on the average, judges frequently to occasionally give them civil duties to perform.

To understand the variation in judges' practices, it may be helpful to inquire into the relationships among magistrates' reported participation in particular matters, the various assignment procedures described, and magistrates' descriptions of the frequency with which judges request their assistance on various types of duties.

Criminal Matters

Table 12 shows the number and percentage of participants in criminal duties by type of assignment procedure and magistrates' ratings of the frequency of judges' requests. Fifty percent of those who have been designated to handle criminal pretrial conferences reported that they are "almost always" given such matters, and not surprisingly, almost half of those (i.e., 15), in turn, reported that they work in districts in which assignments are rotated. The experiences of the remainder of the population are more diverse, both in the way pretrial conferences are assigned to them and in the reported frequency with which judges request their assistance on these matters.

The findings for participants' experience with nondispositive motions in criminal cases are quite similar to those for pretrial conferences: Those participants who work in districts in which matters are rotated are more likely "almost always" to be given discovery and procedural motions in criminal cases, with others reporting much more diverse experiences. By contrast,

TABLE 12

PARTICIPATING MAGISTRATES BY ASSIGNMENT PROCEDURE AND FREQUENCY
OF JUDGES' REQUESTS FOR ASSISTANCE ON CRIMINAL MATTERS

Procedure	Pretrial Conferences (n = 72)				Nondispositive Motions (n = 116)				Dispositive Motions (n = 85)			
	A	F	O	R	A	F	O	R	A	F	O	R
Random	6 8%	2 3%	1 1%	0	7 6%	2 2%	1 1%	1 1%	3 4%	4 5%	1 1%	3 4%
Rotational	15 21%	4 6%	2 3%	3 4%	19 16%	2 2%	10 9%	3 3%	8 9%	3 4%	9 11%	3 4%
Pairs	7 10%	3 4%	5 7%	0	11 9%	8 7%	5 4%	0	5 6%	7 8%	4 5%	0
Chief magis- trate	0	0	0	0	0	0	0	0	0	0	0	0
Judge	2 3%	1 1%	2 3%	3 4%	5 4%	1 1%	6 5%	6 5%	4 5%	3 4%	4 5%	5 6%
Solo magistrate	6 8%	2 4%	8 11%	0	15 13%	5 4%	9 8%	0	9 11%	1 1%	8 9%	1 1%
Total	36	12	18	6	57	18	31	10	29	18	26	12
Percentage	50%	17%	25%	8%	49%	16%	27%	9%	34%	21%	31%	14%

NOTE: A = almost always, F = frequently, O = occasionally, and R = rarely.

judges' assignment practices with regard to dispositive motions are much less consistent, even within those districts in which matters are rotated. Thus, although the majority of participating magistrates are assigned criminal matters by rotation, judges' practices vary in the frequency with which they make such assignments, especially for reports and recommendations on dispositive motions. This variation in judges' practices comple-

ments earlier findings for the timing of assignment of criminal matters; on both questions participating magistrates reported that judges' practices are quite different even within the same district.

Civil Matters

The findings reported in table 13 for participants' descriptions of the frequency of assignment of civil matters reveal somewhat different patterns: Here, we see that certain procedures, notably pairs and solo magistrates (i.e., those who responded "not applicable" to the procedure question), are associated with more frequent requests as reported by participating magistrates. In examining the findings in table 13, one should keep in mind that the absolute number of respondents who have disposed of civil matters is larger than the number who have disposed of criminal matters (see table 2). Earlier, we determined that in those districts in which there is more than one full-time magistrate, random assignment is the most common procedure for allocating civil matters. The present findings suggest, however, that random assignment is not necessarily a determinant of frequent requests by judges for assistance on civil matters. In fact, participating magistrates who reported that assignments are made through a procedure of judge-magistrate pairs also reported somewhat more frequent assignment of civil matters; in like manner, those magistrates who sit alone (i.e., those who responded "not applicable") reported somewhat more frequent assignment. Earlier, we also observed that there are two types of

TABLE 13

PARTICIPATING MAGISTRATES BY ASSIGNMENT PROCEDURE AND FREQUENCY
OF JUDGES' REQUESTS FOR ASSISTANCE ON CIVIL MATTERS

Procedure	Pretrial Conferences (n = 139)				Nondispositive Motions (n = 168)				Dispositive Motions (n = 141)			
	A	F	O	R	A	F	O	R	A	F	O	R
Random	14 10%	9 6%	14 10%	7 5%	17 10%	20 12%	14 8%	1 1%	7 5%	18 13%	16 11%	5 4%
Rotational	0	2 1%	7 5%	1 1%	5 3%	2 1%	6 4%	0	3 2%	1 1%	7 5%	0
Pairs	13 9%	10 7%	7 5%	1 1%	17 10%	12 7%	4 2%	1 1%	4 3%	13 9%	8 6%	1 1%
Chief magis- trate	0	2 1%	2 1%	1 1%	0	2 1%	4 2%	0	0	0	5 4%	1 1%
Judge	2 1%	7 5%	9 6%	1 1%	3 2%	14 8%	11 7%	1 1%	2 1%	10 7%	11 8%	1 1%
Solo magistrate	11 8%	14 10%	4 3%	1 1%	17 10%	12 7%	5 3%	0	5 4%	10 7%	11 8%	2 1%
Total	40	44	43	12	59	62	44	3	21	52	58	10
Percentage	29%	32%	31%	9%	35%	37%	27%	2%	15%	37%	41%	7%

NOTE: A = almost always, F = frequently, O = occasionally, and R = rarely.

pair arrangements, one that emerges as a result of local rules and one that emerges de facto, that is, as a result of only one magistrate's residing in a district or at a divisional location. In either situation, however, the magistrate is functionally "paired" with a group of judges. While the following point should be interpreted with caution, these findings suggest that there may be qualities in a procedure of pairs that are conducive

to more frequent assignment of civil matters to magistrates. As distinct from the random procedure, when magistrates are paired with judges, they work for the same group of judges on an ongoing basis and the two may thereby develop, it is reasonable to speculate, a better knowledge of each other's "styles." This knowledge, in turn, may lead to judges' more frequent requests for assistance on civil matters.

Prisoner Petitions

Table 14 shows the number and percentage of magistrates who have participated in prisoner petitions by type of assignment procedure and frequency of judges' requests. As indicated in table 11, prisoner petitions and social security cases are the matters most frequently given to magistrates.

Table 14 reveals that over half the participating magistrates are "almost always" assigned habeas corpus (63 percent) and civil rights (56 percent) matters. Although the largest number (28 for habeas corpus cases and 27 for civil rights cases) of participants work in districts in which matters are assigned randomly, it is clear from table 14 that prisoner petitions are most likely always to be assigned regardless of the type of assignment procedure used by the district. In those districts in which assignment is primarily at the discretion of a judge, however, magistrates are somewhat less likely to receive prisoner petitions.

Social Security Matters

By and large, the findings shown in table 15 for social

TABLE 14

PARTICIPATING MAGISTRATES BY ASSIGNMENT PROCEDURE
AND FREQUENCY OF JUDGES' REQUESTS FOR ASSISTANCE
ON PRISONER PETITIONS

Procedure	Habeas Corpus (n = 152)				Civil Rights (n = 154)			
	A	F	O	R	A	F	O	R
Random	28 18%	12 8%	6 4%	1 1%	27 18%	11 7%	6 4%	2 1%
Rotational	21 14%	0	0	2 1%	19 12%	1 1%	1 1%	2 1%
Pairs	23 15%	4 3%	5 3%	1 1%	22 14%	5 3%	5 3%	1 1%
Chief magistrate	0	1 1%	5 3%	0	0	1 1%	5 3%	0
Judge	3 2%	5 3%	2 1%	1 1%	2 1%	6 4%	4 3%	1 1%
Solo magistrate	20 13%	7 5%	4 3%	1 1%	17 11%	12 8%	3 2%	1 1%
Total	95	29	22	6	87	36	24	7
Percentage	63%	19%	14%	4%	56%	23%	16%	5%

NOTE: A = almost always, F = frequently, O = occasionally, and R = rarely.

security matters parallel those shown in table 14 for prisoner petitions: More than half (88, or 59 percent) of the participants reported that they "almost always" receive social security cases. Those magistrates who work in districts in which matters are assigned randomly also indicated a greater likelihood of almost always receiving these matters. And where social security

TABLE 15

PARTICIPATING MAGISTRATES BY ASSIGNMENT
PROCEDURE AND FREQUENCY OF JUDGES' REQUESTS
FOR ASSISTANCE ON SOCIAL SECURITY MATTERS

Procedure	Social Security (n = 150)			
	A	F	O	R
Random	23 15%	12 8%	2 1%	4 3%
Rotational	18 12%	3 2%	4 3%	0
Pairs	20 13%	8 5%	2 1%	0
Chief magistrate	0	1 1%	2 1%	0
Judge	4 3%	6 4%	3 2%	1 1%
Solo magistrate	23 15%	12 8%	2 1%	0
Total	88	42	15	5
Percentage	59%	28%	10%	3%

NOTE: A = almost always, F = frequently,
O = occasionally, and R = rarely.

matters are rotated among magistrates or a system of pairs is used, it is again likely, though slightly less so, that such matters will almost always be assigned. Moreover, a sizable number of the respondents (23) indicated that they sit alone (i.e., responded "not applicable") and that they almost always receive these cases.

In sum, the frequency of assignment of prisoner matters and

social security cases is substantially independent of assignment procedures. There does, however, appear to be an exception: In districts in which assignment is at a judge's discretion, prisoner matters and social security cases are less likely to be "almost always" or "frequently" assigned.

Time and Frequency of Assignment

It may be useful to step back and reconsider the patterns that have emerged from these data. That is, what relationships are there between participating magistrates' descriptions of the way assignments are made and the timing and frequency of judges' requests?

At locations within districts in which there is more than one full-time magistrate, respondents reported that rotational assignment of criminal matters and random assignment of civil matters are the most common procedures, although others have evolved. For example, some magistrates reported that they are paired with a group of judges (in some cases, this pairing is the result of local rule and in others it is the result of location), while others reported that the chief magistrate's responsibilities include the assignment of matters. At this level, it is feasible to make comparisons across districts; for example, magistrates who work in districts with random assignment procedures or judge-magistrate pairs agree substantially about how matters are allocated. In addition, magistrates agree substantially about judges' practices regarding social security and prisoner matters, with one very important distinction: Regardless of the

type of assignment procedure used within a district, most magistrates who participate in these matters reported that they are "almost always" or "frequently" assigned these cases at filing for a report and recommendation to the judge assigned to the case.

When we examine magistrates' descriptions of when and how often judges request their assistance on other types of section 636(b) civil and criminal matters, however, we find reports of more divergent experiences both within and across districts. The range of judges' practices is particularly noteworthy on the criminal side. While participating magistrates at locations within districts with more than one full-time magistrate reported that criminal matters are usually rotated, there appears to be little uniformity among judges in terms of when in the processing of a case or how frequently they request magistrates' assistance. To the extent that magistrates within any one district report divergent experiences on these questions, it appears that the practices of judges may be the most important vantage point for a better understanding of magistrates' participation in criminal case processing.

When we turn to magistrates' descriptions of judges' practices for requesting their participation in civil matters, yet another picture emerges. Here we see that regardless of how matters are assigned, judges are most likely to request magistrates' assistance after filing, that is, after the case has been reviewed by the judge. Moreover, respondents tended to report

frequent requests in districts in which judges and magistrates are paired; this finding holds for magistrates who work in districts in which pairs are the result of local rule as well as for those who work in districts in which pairs develop de facto (i.e., because there is only one full-time magistrate in a district or at a divisional location). These findings thus suggest that the way in which civil matters are assigned to magistrates is associated with the frequency (if not with the timing) with which requests for handling these matters are made.

VI. CIVIL TRIALS UPON CONSENT

Apart from the various duties considered in previous chapters, magistrates also have the authority, under section 636(c), to try civil cases upon consent of the parties.¹⁹ Table 2 showed that 135 magistrates, or 81 percent of the respondents, indicated that they have participated in civil trials upon consent.

Here we focus specifically on how civil trials are assigned once consent has been granted and on the kinds of cases magistrates report they are deciding.²⁰ The discussion that follows parallels earlier chapters; thus, we begin with magistrates' descriptions of assignment procedures, followed by their descriptions of the frequency of assignment.

Assignment Procedures

Table 16 shows the number and percentage of magistrates participating in civil cases upon consent by assignment procedure, that is, random assignment, when filed or at consent; assignment

19. Note that while parties may stipulate to a magistrate, the case may be disposed of prior to a jury or nonjury trial. In addition, a magistrate may write a report and recommendation on a dispositive motion that is accepted without modification by the judge and, in turn, disposes of the case, without the parties having formally consented to a trial before a magistrate.

20. In most districts, it is now common procedure to notify parties at filing that they may consent to a trial before a magistrate. Forms are usually included in the papers obtained at filing. Preliminary research in the Ninth Circuit suggests that most parties do not consent upon filing a case.

TABLE 16

PARTICIPATING MAGISTRATES' DESCRIPTION OF
ASSIGNMENT OF SECTION 636(c) DUTIES

<u>Participating Magistrates (n = 135)</u>		
Procedure	Number	Percentage
Random		
When filed	16	12%
At consent	51	38%
Judge-magistrate pairs	28	21%
Parties' selection	8	6%
Not applicable	32	24%

by judge-magistrate pairs; or selection of a magistrate by the parties to a case.

Preliminary work in the Ninth Circuit indicated that when parties consent they usually do so at some point after filing. In fact, random allocation at consent of the parties, as distinct from random assignment to a judge and a magistrate when filed, is the most common procedure for assigning civil trials (51, or 38 percent).²¹ Moreover, 67 of the 135 respondents, or 50 percent, reported that civil trials are randomly assigned, either when filed or at consent; indeed, participating magistrates reported

21. It may be that in some districts, the clerk's office informs parties of the possibility of trial by a magistrate once case processing begins. The statute clearly stipulates that parties may not in any way be coerced into consent; hence, there may, on the other hand, be some districts in which this type of practice is not considered acceptable.

that random assignment is more common for trials upon consent than it is for civil matters in general. This suggests that some districts treat trials upon consent differently from other types of civil matters. For example, in some districts, when a report and recommendation is required, judges may select a magistrate, but in the instance of a trial upon consent, the case may be randomly assigned. In addition, as a number of respondents pointed out in written comments on the survey, the point at which trials upon consent are assigned makes a difference. Thus, when cases are assigned to a magistrate and a judge at filing and the parties subsequently consent to a trial before a magistrate, they know in advance who will hear the case. To avoid this problem, magistrates indicated, some districts have adopted the practice of reassigning cases randomly should parties consent.

Earlier, we described districts in which assignments are made through a system of judge-magistrate pairs. Twenty-eight of the 135 respondents, or 21 percent, indicated that this is the procedure used for trials upon consent in their districts. As compared with other types of civil matters, therefore, a relatively smaller proportion of magistrates reported that trials upon consent are assigned in this manner. The procedure of pairs and random assignment when filed have a common feature: Parties know, in advance, which magistrate will be assigned to the case. However, in contrast to the comments of some magistrates from districts with random procedures, magistrates in districts with pairs did not indicate that cases are reassigned when parties consent.

Eight magistrates, or 6 percent of the 135 respondents, reported that, upon consent, parties select a magistrate. This is clearly the exception rather than the rule, but it is a practice worth noting.²² Moreover, at least 4 respondents commented that it is not unusual for parties to indicate informally which magistrate they would prefer or, alternatively, who they would not accept.

Finally, almost a quarter of the respondents (32, or 24 percent) did not answer the question on how section 636(c) duties are assigned. In this regard, a number of magistrates indicated in written comments that parties' consent is not, at present, a common occurrence.²³ Many also indicated that their districts have not developed procedures for assigning trials upon consent to magistrates. In those districts that do assign trials to magistrates upon consent, several respondents indicated that when parties consent, the magistrate who has handled the pretrial work is assigned to the trial. In addition, at least seven commented that judges in their districts select a magistrate of their choice

22. To our knowledge, the Central District of California is the only district that has authorized this procedure by local rule, but magistrates in other districts reported this practice.

23. This point was also made by many magistrates in the pilot study of the Ninth Circuit. Whether this reluctance originates with the bar, the bench, or both is a matter that will be investigated in the next phase of this study. In the District of Oregon, a district in which it is fairly common for parties to consent, judges engaged in seminars with members of the bar when the magistrates system was introduced to explain the roles that magistrates could perform; many of those interviewed in this district suggested that this played a significant part in facilitating the acceptance of the magistrates program.

when parties consent. Other respondents pointed out that judges reserve the prerogative to "veto" the parties' consent.

Frequency of Assignment

Table 17 shows the frequency with which magistrates hear civil cases upon consent. In the previous chapter, we reported magistrates' descriptions of the frequency with which judges request their assistance; in the case of civil trials upon consent, however, magistrates described the frequency with which parties request their assistance in hearing and deciding a civil case. In other words, if parties consent, the magistrate hears the case unless a judge intervenes to bar the parties' consent. Examination of respondents' written comments suggests that some interpreted this question from the standpoint of judges' willingness to permit them to hold trials should parties consent; therefore,

TABLE 17

FREQUENCY OF PARTIES' CONSENT TO MAGISTRATES IN CIVIL CASES

<u>Participating Magistrates (n = 123)</u>		
<u>Frequency</u>	<u>Number</u>	<u>Percentage</u>
Almost always	74	60%
Frequently	22	18%
Occasionally	23	19%
Rarely	4	3%

NOTE: Almost always = 3.50 to 4.00, frequently = 2.50 to 3.49, occasionally = 1.50 to 2.49, and rarely = 1.01 to 1.49.

the figures reported in table 17 must be interpreted with some caution. With this caveat in mind, it seems reasonable to conclude that a sizable proportion of the magistrates participating in civil trials are "almost always" (60 percent) or "frequently" (18 percent) assigned to try cases when parties consent.

In considering the frequency with which magistrates hear civil cases in light of magistrates' descriptions of assignment procedures, one finds, not surprisingly, that districts with a random assignment procedure are disproportionately more likely "almost always" or "frequently" to assign civil trials upon consent (see table 18).

TABLE 18

PARTICIPATING MAGISTRATES' DESCRIPTION OF FREQUENCY
OF ASSIGNMENT OF CIVIL CASES UPON CONSENT
BY ASSIGNMENT PROCEDURE (n = 123)

<u>Procedure</u>	<u>Almost Always</u>	<u>Frequently</u>	<u>Occasionally</u>	<u>Rarely</u>
Random				
When filed	11	2	3	0
At consent	28	10	4	3
Judge-magistrate pairs	17	5	6	0
Parties' selection	4	0	1	0
Not applicable	<u>14</u>	<u>5</u>	<u>9</u>	<u>1</u>
Total	74	22	23	4
Percentage	60%	18%	19%	3%

What Kinds of Cases Are Magistrates Receiving for Trial?

Table 19 shows the composition of civil cases assigned to 141 magistrates for trial upon consent in statistical year 1982. (Note that these data were collected by the Administrative Office of the United States Courts.²⁴) Collectively, these magistrates disposed of 2,448 cases, and not surprisingly, the largest proportion of these cases were prisoner petitions (677, or 28 percent), followed by torts (526, or 21 percent) and contracts (365, or 15 percent). Table 20 shows the basis of jurisdiction of these cases: 50 percent of the cases in which parties consented to trial before a magistrate raised a federal question. Table 21 shows that 33 percent, or 805 cases, were disposed of during or after trial.

Finally, the findings in table 22 provide a preliminary basis for ascertaining the amount of time magistrates spend on trials. On the average, magistrates held 5.84 trials during statistical year 1982, and the average case required 2.27 days of bench time. However, the median number of days spent on these cases was fewer, 1.45 days, suggesting that a few cases reported by magistrates elevated the average. For example, one magistrate

24. The data reported in this section (and in tables 19-22) were collected by the Magistrates Division of the Administrative Office of the United States Courts for inclusion in its Annual Report of the Director. Note that only 135 respondents in our sample indicated that they have been designated to participate in trials upon consent, while the data collected by the Magistrates Division are based on the reports of 141 designated magistrates. This discrepancy may be a function of changes in district practices or underreporting by magistrates in our survey.

TABLE 19

CIVIL CASES ASSIGNED UPON CONSENT TO TRIAL
TO 141 MAGISTRATES IN STATISTICAL YEAR 1982

<u>Nature of Suit</u>	<u>Number</u>	<u>Percentage</u>
Prisoner petition	677	28%
Tort	526	21%
Contract	365	15%
Nonprisoner civil rights	254	10%
Other	253	10%
Social security	170	7%
Labor	101	4%
Real property	73	3%
Forfeiture	15	.6%
Property rights	<u>14</u>	.6%
Total	2,448	

TABLE 20

BASIS OF JURISDICTION OF CASES ASSIGNED UPON
CONSENT TO TRIAL TO 141 MAGISTRATES IN
STATISTICAL YEAR 1982

<u>Basis of Jurisdiction¹</u>	<u>Number</u>	<u>Percentage</u>
U.S. plaintiff	169	7%
U.S. defendant	401	17%
Federal question	1,162	50%
Diversity	<u>591</u>	25%
Total	2,323	

¹This information was not reported for 125 cases.

TABLE 21

MODE OF DISPOSITION OF CIVIL CASES ASSIGNED
UPON CONSENT TO TRIAL TO 141 MAGISTRATES
IN STATISTICAL YEAR 1982

<u>Disposition¹</u>	<u>Number</u>	<u>Percentage</u>
Without trial	1,624	67%
Nonjury trial	559	23%
Jury trial	<u>246</u>	10%
Total	2,429	

¹Nineteen cases were consolidated.

TABLE 22

DESCRIPTIVE STATISTICS FOR 824 CIVIL CASES
TRIED BY 141 MAGISTRATES IN
STATISTICAL YEAR 1982

<u>Days Consumed¹</u>	<u>Number of Cases</u>	<u>Percentage of Cases</u>
1	435	53%
2 to 7	365	44%
8 to 14	16	2%
15 to 38	8	1%

¹The mean, median, and range of the number of days consumed are, respectively, 2.27, 1.45, and 1 to 38.

reported that a case took 38 days of trial, although 53 percent, or 435, of the cases assigned to magistrates required one day or less.

In sum, data for statistical year 1982 show that most cases heard by magistrates upon consent are prisoner petitions and tort cases and that more than 50 percent of the cases that come to trial before a magistrate take one day or less.

VII. CONCLUSION

The intent of the magistrates study is to develop a comprehensive description of the magistrates system. This survey provides a preliminary basis by systematically describing the roles currently performed by magistrates, leading to a better understanding of the allocation of work to magistrates. In conformity with the 1976 and 1979 Federal Magistrate Acts, 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 varying strategies for using the services of these judicial officers to address needs as the courts perceive them. Magistrates are handling a wide variety of cases--most commonly, prisoner petitions and social security cases. Less generally, but still in substantial numbers, they are disposing of other civil and criminal matters, including civil cases upon consent.

Of the various types of assignment procedures that have developed across the districts--from random or rotational to judge-magistrate pairs or assignment by a judge--we found random assignment the most common procedure for civil matters and rotational assignment the most common procedure for criminal matters, where there is more than one full-time magistrate.

The development of these preliminary findings has focused attention on many questions; some will be addressed in the next

phase of this study, and others may require more extended study and consideration. The framing of specific questions is beyond the objective of this section, but we believe it useful, nevertheless, to sketch briefly three general areas that require further study.

First, how do magistrates fit into the overall operation of the district court? In this report, for example, we speculated that the development of a random or rotational system may reflect a decision on the part of the district to treat judicial officers similarly. The question remains, How has the clerk's office responded to the presence of magistrates in reorganizing the processes of court management? Beyond the clerk's office, are other court officials affected by the presence of magistrates and, if so, how? What factors have been important in local decisions concerning procedures for assigning matters to magistrates?

Second, what effect has the practicing bar had on the role of magistrates? Work in this area is crucial for a full understanding of magistrates. District judges, through local rules and other management plans, may take relatively elaborate steps to ensure the full utilization of magistrates, as described in the 1976 and 1979 Magistrate Acts. Yet, implementation of these steps ultimately depends upon the willingness of the bar to accept the decisions of magistrates. It is interesting to note, for example, that in cases involving the government it is the prerogative of the U.S. attorney in the districts to develop a

policy concerning consents to trial by magistrates;²⁵ thus, in some districts U.S. attorneys may authorize consents as a matter of course, whereas in others the practice may be to make a determination on a case-by-case basis. Clearly, it is reasonable to assume that variations in these practices have an effect on the kinds of matters assigned to magistrates.

Third, what contribution have magistrates made to reductions in the courts' backlogs? The findings of this study suggest that these judicial officers are, at present, playing a fairly central role in the processing of some civil matters, particularly prisoner petitions and social security cases, to the extent that many magistrates report that they are "almost always" given these matters at filing for a report and recommendation. (The largest proportion of consents for trial before a magistrate are prisoner petitions.) In other areas of the civil and criminal docket, the frequency with which magistrates are requested to decide motions and write reports and recommendations is less clear. Questions remain, however, in all areas of jurisdiction outlined by the 1976 and 1979 acts: Are magistrates' decisions on nondispositive motions being challenged and, if so, upheld by judges, or are their actions adding another layer of review to the litigation process? Are magistrates' reports and recommendations on dispositive motions accepted, without significant modification, by judges, or do they, too, add another step that, in the long run,

25. 42 Fed. Reg. 55,470 (1977).

further delays the disposition of a case? These are very complex questions that cannot easily be resolved, but the findings of this report are a first step toward that end.

APPENDIX A

Tables Showing Magistrate Participation by District

TABLE 23

PROCEDURES OF ASSIGNMENT FOR MAGISTRATES
WHO PARTICIPATE IN CRIMINAL DUTIES

Procedure	Pretrial Conferences	Nondispositive Motions	Dispositive Motions
Random	10 (12%)	13 (11%)	13 (14%)
Rotational	26 (32%)	34 (28%)	24 (26%)
Pairs	16 (20%)	26 (21%)	18 (19%)
Chief magistrate	0	0	0
Judge	12 (15%)	20 (16%)	18 (19%)
Solo magistrate ¹	<u>18</u> (22%)	<u>29</u> (24%)	<u>20</u> (22%)
Total	82	122	93

¹ Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

TABLE 24

PROCEDURES OF ASSIGNMENT FOR MAGISTRATES
WHO PARTICIPATE IN CIVIL DUTIES

Procedure	Pretrial Conferences	Nondispositive Motions	Dispositive Motions
Random	46 (32%)	54 (31%)	49 (33%)
Rotational	10 (7%)	13 (7%)	12 (8%)
Pairs	32 (22%)	35 (20%)	27 (18%)
Chief magistrate	6 (4%)	6 (3%)	6 (4%)
Judge	22 (15%)	31 (18%)	26 (17%)
Solo magistrate ¹	<u>30</u> (21%)	<u>36</u> (21%)	<u>29</u> (20%)
Total	146	175	149

¹Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

TABLE 25

PROCEDURES OF ASSIGNMENT FOR MAGISTRATES WHO PARTICIPATE
IN PRISONER PETITION AND SOCIAL SECURITY DUTIES

<u>Procedure</u>	<u>Prisoner Petition¹</u>	<u>Social Security</u>
Random	51 (31%)	43 (28%)
Rotational	24 (15%)	25 (16%)
Pairs	33 (20%)	30 (19%)
Chief magistrate	6 (4%)	3 (2%)
Judge	14 (9%)	17 (11%)
Solo magistrate ²	<u>34</u> (21%)	<u>37</u> (24%)
Total	162	155

¹ Respondents reported that habeas corpus and civil rights petitions are assigned in the same manner.

² Respondent indicated that he does not receive matters through one of the five listed assignment procedures, e.g., because he is the only full-time magistrate residing at the location.

TABLE 26

STANDARD DEVIATIONS FOR MAGISTRATES' DESCRIPTIONS OF THE
FREQUENCY OF ASSIGNMENT OF SECTION 636(b) AND (c) DUTIES

Duty	All Respondents ¹	Participants ²
Criminal		
Pretrial conferences	1.20	1.04
Nondispositive motions	1.23	1.05
Dispositive motions	1.10	1.04
Civil		
Pretrial conferences	1.03	.92
Nondispositive motions	.87	.80
Dispositive motions	.87	.78
Prisoner petitions		
Habeas corpus	1.08	.86
Civil rights	1.04	.87
Social security	1.11	.78
Special master	.91	.83
Civil trial upon consent	.90	.86
Settlement conferences	.93	NA ³

¹Includes all respondents who answered the question on the frequency of assignment (i.e., a respondent's score is equal to or greater than 1.00).

²Includes only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., a respondent's score is equal to or greater than 1.01).

³Not applicable.

TABLE 27

DISTRICTS IN WHICH MATTERS ARE ASSIGNED TO MAGISTRATES
ON A RANDOM OR ROTATIONAL BASIS (n = 31)

District	No. of ¹ Judges	No. of ² Magistrates	Ratio of Judges to Magistrates
Puerto Rico	7	3	2.33:1
Middle Pennsylvania	5	2	2.50:1
Western Pennsylvania	10	2	5.00:1
Northern Alabama	7	3	2.33:1
Southern Alabama	2	2	1.00:1
Northern Georgia ³	11	4	2.75:1
Eastern Louisiana	13	5	2.60:1
Middle North Carolina	3	2	1.50:1
Western Michigan	4	2	2.00:1
Northern Illinois	16	3	5.33:1
Southern Indiana	5	3	1.67:1
Western Tennessee	3	2	1.50:1
Eastern Arkansas	4	2	2.00:1
Central California	17	7	2.43:1
Southern California	7	3	2.33:1
Western Oklahoma	3.7	2	1.85:1
District of Columbia	15	3	5.00:1
Assigned by division ⁴			
Massachusetts	10	4	2.50:1
Connecticut	5	3	1.67:1
Eastern New York	10	4	2.50:1
Maryland	9	5	1.80:1
Eastern North Carolina	3	3	1.00:1
Middle Florida	9	5	1.80:1
Southern Texas	13	7	1.86:1
Northern Texas	9	4	2.25:1
Western Texas	6	4	1.50:1
Southern Ohio	6	4	1.50:1
Northern Ohio	10	4	2.50:1
Western Washington	5	3	1.67:1
Oregon	5	3	1.67:1
Arizona	8	3	2.67:1

¹As reported in Administrative Office of the United States Courts, Management Statistics for the United States Courts (1982).

²Number of full-time magistrate slots as of August 30, 1982.

³In this district, magistrates are assigned specific types of cases (e.g., criminal or civil).

⁴Includes only districts with at least three full-time magistrates in which at least two are situated at one location, with the exception of the Eastern District of North Carolina, where all judicial officers ride the district to three locations.

TABLE 28

RESPONDENTS' AND PARTICIPANTS' DESCRIPTIONS OF THE FREQUENCY OF JUDGES' REQUESTS FOR ASSISTANCE ON 636(b) AND (c) DUTIES FOR DISTRICTS WITH RANDOM OR ROTATIONAL ASSIGNMENT (n = 31)

District	Criminal Matters					
	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Puerto Rico	3.60	3.60	4.00	4.00	3.20	3.20
Middle Pennsylvania	1.00	--	1.08	--	1.08	--
Western Pennsylvania	1.25	1.50	1.75	1.75	1.75	1.75
Northern Alabama	4.00	4.00	4.00	4.00	3.93	3.93
Southern Alabama ²	4.00	4.00	4.00	4.00	1.00	--
Northern Georgia ²	3.97	3.97	3.97	3.97	3.97	3.97
Eastern Louisiana ²	1.00	--	1.33	--	1.15	1.46
Middle North Carolina	2.50	4.00	2.50	2.50	1.00	--
Western Michigan ³	4.00	4.00	2.00	--	1.25	--
Northern Illinois ³	2.03	3.07	2.13	1.19	2.13	--
Southern Indiana ³	2.00	--	2.00	4.00	1.00	--
Western Tennessee	1.50	--	1.67	--	1.17	--
Eastern Arkansas	1.00	--	2.00	2.00	1.20	--
Central California ²	1.00	--	1.50	--	1.00	--
Southern California	4.00	4.00	4.00	4.00	2.14	2.21
Western Oklahoma ²	1.00	--	1.00	--	1.00	--
District of Columbia ²	1.00	--	1.00	--	1.00	--
Assigned by division ¹						
Massachusetts ²	2.00	4.00	4.00	4.00	1.17	1.25
Connecticut ^{2,3}	1.00	--	1.57	1.57	1.57	1.57
Eastern New York	1.00	--	1.07	--	1.00	--
Maryland ³	1.00	--	1.10	1.16	1.10	1.16
Eastern North Carolina ^{2,3}	2.50	4.00	4.00	4.00	3.33	3.33
Middle Florida ²	1.62	2.12	4.00	4.00	--	--
Southern Texas ²	1.55	2.50	1.73	2.20	2.87	1.90
Northern Texas	2.00	2.00	1.60	--	1.50	--
Western Texas ²	1.22	--	2.67	2.67	2.33	3.00
Southern Ohio ²	1.04	1.13	1.04	1.13	1.04	1.13
Northern Ohio ²	2.26	3.31	2.26	3.31	2.23	3.31
Western Washington ³	1.33	2.00	2.00	2.00	2.00	2.00
Oregon ²	4.00	4.00	4.00	4.00	4.00	4.00
Arizona ²	1.00	--	1.06	--	1.00	--

(table continued)

TABLE 28 (Continued)

<u>Civil Matters</u>						
<u>District</u>	<u>Pretrial Conferences</u>		<u>Nondispositive Motions</u>		<u>Dispositive Motions</u>	
	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>
Puerto Rico	3.60	3.60	4.00	4.00	3.00	3.00
Middle Pennsylvania	2.00	2.00	4.00	4.00	4.00	4.00
Western Pennsylvania	1.85	1.85	1.85	1.85	1.85	1.85
Northern Alabama	1.54	--	1.86	--	1.00	--
Southern Alabama ²	1.37	1.37	3.75	3.75	3.12	3.12
Northern Georgia ²	1.67	2.00	2.67	2.67	2.67	2.67
Eastern Louisiana ²	1.87	1.87	2.67	2.67	2.00	2.00
Middle North Carolina	4.00	4.00	3.33	3.33	2.33	2.33
Western Michigan ³	2.00	--	3.00	3.00	1.00	--
Northern Illinois ³	2.63	2.63	2.63	2.63	2.16	2.16
Southern Indiana ³	4.00	4.00	3.00	3.00	2.00	2.00
Western Tennessee	2.50	2.33	3.33	3.67	2.33	3.00
Eastern Arkansas ²	1.40	--	2.40	2.40	1.20	--
Central California ²	1.12	1.12	3.18	3.18	2.32	2.32
Southern California ²	3.38	3.38	4.00	4.00	2.67	3.00
Western Oklahoma ²	1.19	1.37	2.20	2.20	2.10	2.10
District of Columbia ²	2.57	2.57	2.64	2.64	1.36	1.36
Assigned by division ¹						
Massachusetts ²	1.23	1.40	3.15	3.15	2.24	2.24
Connecticut ^{2,3}	2.29	2.29	3.00	3.00	3.00	3.00
Eastern New York	2.40	2.40	2.40	2.40	2.13	2.13
Maryland ³	1.07	1.20	2.05	2.05	2.05	2.05
Eastern North Carolina ^{2,3}	4.00	4.00	3.67	3.67	3.33	3.33
Middle Florida ²	2.42	2.42	3.50	3.50	2.25	3.00
Southern Texas ²	2.79	2.79	2.66	2.66	2.37	2.60
Northern Texas	1.50	2.00	2.30	2.30	1.25	--
Western Texas ²	1.83	2.00	2.67	3.00	2.67	3.00
Southern Ohio ²	2.57	2.57	2.17	2.17	2.17	2.17
Northern Ohio ²	2.22	2.22	1.64	1.74	1.98	2.24
Western Washington ³	1.67	2.00	2.33	2.33	2.33	2.33
Oregon ²	4.00	4.00	4.00	4.00	4.00	4.00
Arizona ²	2.44	3.00	2.83	2.83	2.67	3.00

(table continued)

TABLE 28 (Continued)

Additional Civil Matters						
District	Habeas Corpus Cases		Civil Rights Cases		Social Security Cases	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Puerto Rico	4.00	4.00	4.00	4.00	1.40	1.40
Middle Pennsylvania	4.00	4.00	4.00	4.00	4.00	4.00
Western Pennsylvania	3.75	3.75	3.70	3.70	3.95	3.95
Northern Alabama	4.00	4.00	4.00	4.00	--	--
Southern Alabama ²	4.00	4.00	4.00	4.00	4.00	4.00
Northern Georgia ²	4.00	4.00	3.00	4.00	4.00	4.00
Eastern Louisiana ²	3.67	3.67	3.67	3.67	4.00	4.00
Middle North Carolina	4.00	4.00	4.00	4.00	4.00	4.00
Western Michigan ³	4.00	4.00	4.00	4.00	4.00	4.00
Northern Illinois ³	2.10	2.10	2.28	2.28	2.28	2.28
Southern Indiana ³	4.00	4.00	4.00	4.00	3.03	3.03
Western Tennessee	3.25	3.00	3.25	3.00	3.00	3.00
Eastern Arkansas ²	4.00	4.00	4.00	4.00	4.00	4.00
Central California ²	4.00	4.00	4.00	4.00	4.00	4.00
Southern California	1.19	1.57	1.67	2.00	1.00	--
Western Oklahoma ²	4.00	4.00	4.00	4.00	3.50	3.50
District of Columbia ²	1.00	--	1.14	1.14	--	--
Assigned by division ¹						
Massachusetts ²	2.32	2.32	2.35	2.35	1.58	1.58
Connecticut ^{2,3}	2.71	2.71	3.00	3.00	3.00	3.00
Eastern New York	1.47	1.47	1.47	1.47	2.33	2.33
Maryland ³	2.53	2.53	2.56	2.56	2.71	2.71
Eastern North Carolina ^{2,3}	3.00	3.00	3.00	3.00	3.00	3.00
Middle Florida ²	3.75	3.75	3.67	3.00	3.58	3.58
Southern Texas	4.00	4.00	4.00	4.00	3.56	3.56
Northern Texas	4.00	4.00	3.00	3.00	1.50	2.00
Western Texas ²	3.83	3.83	3.83	3.83	3.67	3.67
Southern Ohio ²	3.54	3.54	3.75	3.75	3.42	3.42
Northern Ohio ²	2.88	2.88	2.83	1.97	3.44	3.44
Western Washington ³	3.67	3.67	3.67	3.67	2.00	4.00
Oregon ²	4.00	4.00	4.00	4.00	4.00	4.00
Arizona ²	4.00	4.00	4.00	4.00	2.00	4.00

(table continued)

TABLE 28 (Continued)

District	Additional Civil Matters (Continued)					
	Special Master		Civil Trials		Settlements	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Puerto Rico	2.00	2.00	1.00	--	3.60	NA ⁴
Middle Pennsylvania	1.00	--	1.00	--	1.67	NA
Western Pennsylvania	1.50	1.50	4.00	4.00	1.85	NA
Northern Alabama	2.50	--	1.00	--	1.36	NA
Southern Alabama ²	2.50	2.50	4.00	4.00	1.50	NA
Northern Georgia ²	1.76	1.76	3.33	4.00	1.67	NA
Eastern Louisiana ²	3.00	3.00	1.67	2.00	2.13	NA
Middle North Carolina	2.17	2.17	4.00	4.00	2.00	NA
Western Michigan ³	1.25	--	1.00	--	1.25	NA
Northern Illinois ³	2.28	2.28	1.19	1.19	2.63	NA
Southern Indiana ³	2.00	3.00	4.00	4.00	3.00	NA
Western Tennessee	2.67	2.33	4.00	4.00	2.00	NA
Eastern Arkansas ²	1.20	--	4.00	4.00	1.00	NA
Central California ²	1.07	--	3.00	4.00	Not collected ⁵	
Southern California	2.33	2.33	4.00	4.00	Not collected	
Western Oklahoma ²	2.00	2.00	4.00	4.00	1.00	NA
District of Columbia ²	2.93	2.93	2.86	2.86	2.21	NA
Assigned by division ¹						
Massachusetts ²	2.17	2.17	2.13	2.70	1.30	NA
Connecticut ^{2,3}	1.50	2.00	1.64	1.64	2.29	NA
Eastern New York	2.13	2.13	4.00	4.00	2.33	NA
Maryland ³	1.29	1.43	3.27	3.27	1.30	NA
Eastern North Carolina ^{2,3}	2.78	3.50	4.00	4.00	3.67	NA
Middle Florida ²	1.87	2.50	3.37	4.00	1.06	NA
Southern Texas ²	2.40	3.19	3.29	3.67	2.36	NA
Northern Texas	1.20	--	1.60	1.60	1.00	NA
Western Texas ²	2.67	3.00	4.00	4.00	1.67	NA
Southern Ohio ²	1.96	1.94	2.93	2.93	1.86	NA
Northern Ohio ²	1.13	1.29	3.75	3.75	1.69	NA
Western Washington ³	2.67	2.67	3.33	3.33	Not collected	
Oregon ²	2.50	--	4.00	4.00	Not collected	
Arizona ²	2.39	3.00	1.33	2.00	Not collected	

NOTE: Respondents (Resp.) include all magistrates who answered the question on the frequency of assignment (i.e., includes respondents who reported "never" (1.00) assigned). Participants (Part.) include only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., the respondent's score is equal to or greater than 1.01).

¹Includes only districts with at least three full-time magistrates in which at least two are situated at one location, with the exception of the Eastern District of North Carolina, where all judicial officers ride the district to three different locations.

²In these districts, some judges directly assign motions and conferences in civil and criminal matters.

³In these districts, magistrates reported that criminal matters are assigned randomly.

⁴Not applicable. Holding of settlement conferences is not a formal duty designated under section 636(b) or (c).

⁵The question on settlement conferences was added to the survey instrument after pilot interviews with magistrates in the Ninth Circuit. Therefore, these data are not available for all magistrates in this circuit.

TABLE 29

DISTRICTS IN WHICH JUDGES AND MAGISTRATES ARE PAIRED,
BY LOCAL RULE OR PRACTICE (n = 6)

District	No. of Judges	No. of Magistrates	Ratio of Judges to Magistrates
New Jersey ¹	11	5	2.20:1
Eastern Pennsylvania ¹	19	5	3.80:1
Southern Florida ¹	12	5	2.40:1
Minnesota ¹	6	3	2.00:1
Eastern Michigan	13	6	2.17:1
Kansas ¹	5	3	1.67:1

¹In these districts, magistrates are first assigned to a division and then paired with judge(s).

TABLE 30

RESPONDENTS' AND PARTICIPANTS' DESCRIPTIONS OF THE FREQUENCY OF JUDGES' REQUESTS FOR ASSISTANCE ON 636(b) AND (c) DUTIES FOR DISTRICTS IN WHICH JUDGES AND MAGISTRATES ARE PAIRED, BY LOCAL RULE OR PRACTICE (n = 6)

<u>Criminal Matters</u>							
<u>District</u>	<u>Pretrial Conferences</u>		<u>Nondispositive Motions</u>		<u>Dispositive Motions</u>		
	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	
New Jersey ¹	1.75	4.00	2.00	3.00	1.25	2.00	
Eastern Pennsylvania	2.07	2.33	2.35	2.35	2.15	2.43	
Southern Florida ¹	3.00	3.00	4.00	4.00	3.67	3.67	
Minnesota ¹	1.75	4.00	3.83	3.83	3.83	3.83	
Eastern Michigan	3.07	3.48	1.44	1.88	1.69	4.00	
Kansas ¹	4.00	4.00	4.00	4.00	1.00	--	

<u>Civil Matters</u>							
<u>District</u>	<u>Pretrial Conferences</u>		<u>Nondispositive Motions</u>		<u>Dispositive Motions</u>		
	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	
New Jersey ¹	4.00	4.00	3.50	3.50	2.50	2.50	
Eastern Pennsylvania	3.13	3.13	3.09	3.09	3.04	3.04	
Southern Florida ¹	1.86	2.00	3.00	4.00	3.00	4.00	
Minnesota ¹	4.00	4.00	4.00	4.00	3.21	2.94	
Eastern Michigan	1.87	2.40	2.55	2.55	1.99	2.19	
Kansas ¹	3.78	3.78	4.00	4.00	1.00	--	

<u>Additional Civil Matters</u>							
<u>District</u>	<u>Habeas Corpus Cases</u>		<u>Civil Rights Cases</u>		<u>Social Security Cases</u>		
	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	
New Jersey ¹	1.75	2.50	2.50	3.00	1.25	2.00	
Eastern Pennsylvania	3.59	3.59	3.59	3.59	3.29	3.29	
Southern Florida ¹	4.00	4.00	4.00	4.00	4.00	4.00	
Minnesota ¹	4.00	4.00	4.00	4.00	3.75	3.75	
Eastern Michigan	2.03	2.03	2.60	2.72	3.83	3.83	
Kansas ¹	1.17	--	1.17	--	1.00	--	

<u>Additional Civil Matters (Continued)</u>							
<u>District</u>	<u>Special Master</u>		<u>Civil Trials</u>		<u>Settlements</u>		
	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	<u>Resp.</u>	<u>Part.</u>	
New Jersey ¹	1.75	2.50	3.00	3.33	4.00	NA ²	
Eastern Pennsylvania	1.88	2.69	3.08	3.08	3.13	NA	
Southern Florida ¹	2.50	3.00	2.00	2.00	1.86	NA	
Minnesota ¹	2.28	2.61	4.00	4.00	3.18	NA	
Eastern Michigan	2.19	2.39	1.20	2.00	1.55	NA	
Kansas ¹	1.00	--	3.00	4.00	2.78	NA	

NOTE: Respondents (Resp.) include all magistrates who answered the question on the frequency of assignment (i.e., includes respondents who reported "never" (1.00) assigned). Participants (Part.) include only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., the respondent's score is equal to or greater than 1.01).

¹In these districts, magistrates are first assigned to a division and then paired with judge(s).

²Not applicable. Holding of settlement conferences is not a formal duty designated under section 636(b) or (c).

TABLE 31

DISTRICTS IN WHICH JUDGES AND MAGISTRATES
ARE PAIRED DE FACTO (n = 13)

District	No. of Judges	No. of Magistrates	Ratio of Judges to Magistrates
Northern New York	3	2	1.50:1
South Carolina	8	3	2.67:1
Western Virginia	4	2	2.00:1
Southern West Virginia	4.5	2	2.25:1
Western Louisiana	5	2	2.50:1
Northern Mississippi	2	2	1.00:1
Southern Mississippi	3	2	1.50:1
Eastern Kentucky	5.5	2	2.75:1
Western Kentucky	3.5	2	1.75:1
Southern Illinois	2	2	1.00:1
Northern Indiana	4	2	2.00:1
Eastern California	6	3	2.00:1
Nebraska	3	2	1.50:1

NOTE: In some districts, there is only one full-time magistrate at a location; the judge and magistrate are thus paired de facto rather than by local rule or practice.

TABLE 32

RESPONDENTS' AND PARTICIPANTS' DESCRIPTIONS OF THE FREQUENCY OF JUDGES' REQUESTS FOR ASSISTANCE ON 636(b) AND (c) DUTIES FOR DISTRICTS IN WHICH JUDGES AND MAGISTRATES ARE PAIRED DE FACTO (n = 13)¹

Criminal Matters						
District	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Northern New York	1.00	--	1.00	--	1.00	--
South Carolina	1.57	--	1.41	2.11	1.41	2.11
Western Virginia	1.10	--	1.40	1.80	1.00	--
Southern West Virginia	1.10	--	1.30	1.60	1.30	1.60
Western Louisiana	2.50	4.00	3.00	3.00	2.83	2.83
Northern Mississippi	1.00	--	4.00	4.00	1.50	2.00
Southern Mississippi	1.67	1.67	4.00	4.00	3.33	3.33
Eastern Kentucky	1.92	2.83	2.42	2.42	2.42	2.42
Western Kentucky	1.00	--	1.90	1.80	2.30	2.60
Southern Illinois	2.25	2.25	2.25	2.25	2.00	2.00
Northern Indiana	1.75	2.00	2.75	4.00	1.25	--
Eastern California	2.50	4.00	4.00	4.00	3.00	4.00
Nebraska	1.00	--	4.00	4.00	3.50	3.50

Civil Matters						
District	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Northern New York	1.17	--	1.00	--	1.00	--
South Carolina	1.50	2.00	1.48	2.00	1.48	2.00
Western Virginia	1.30	1.60	2.30	2.30	1.70	2.00
Southern West Virginia	1.50	2.00	2.75	2.75	1.50	2.00
Western Louisiana	1.67	1.33	3.00	3.00	2.67	2.67
Northern Mississippi	4.00	4.00	4.00	4.00	2.00	2.00
Southern Mississippi	2.67	2.67	4.00	4.00	3.00	3.00
Eastern Kentucky	2.92	2.92	2.92	2.92	2.92	2.92
Western Kentucky	1.55	1.60	2.60	2.60	2.60	2.60
Southern Illinois	2.75	3.00	2.50	2.50	2.50	2.50
Northern Indiana	3.00	3.00	3.25	3.25	3.25	3.25
Eastern California	2.50	4.00	4.00	4.00	3.00	3.00
Nebraska	3.00	4.00	3.25	3.25	2.25	2.25

Additional Civil Matters						
District	Habeas Corpus Cases		Civil Rights Cases		Social Security Cases	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Northern New York	4.00	4.00	4.00	4.00	2.75	2.75
South Carolina	4.00	4.00	4.00	4.00	4.00	4.00
Western Virginia	2.70	2.70	2.80	2.80	3.70	3.70
Southern West Virginia	3.00	3.00	2.00	1.75	2.45	2.45
Western Louisiana	3.50	3.50	3.00	2.00	3.50	3.50
Northern Mississippi	4.00	4.00	4.00	4.00	4.00	4.00
Southern Mississippi	4.00	4.00	3.50	3.50	4.00	4.00
Eastern Kentucky	4.00	4.00	4.00	4.00	4.00	4.00
Western Kentucky	3.20	3.20	3.20	3.20	2.90	2.90
Southern Illinois	4.00	4.00	4.00	4.00	4.00	4.00
Northern Indiana	3.50	2.25	2.75	2.75	3.75	3.75
Eastern California	1.00	--	2.50	4.00	4.00	4.00
Nebraska	4.00	3.00	3.00	3.00	2.00	3.00

(table continued)

TABLE 32 (Continued)

Additional Civil Matters (Continued)

District	<u>Special Master</u>		<u>Civil Trials</u>		<u>Settlements</u>	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Northern New York	1.25	1.50	1.00	--	1.00	NA ²
South Carolina	2.23	2.57	1.19	--	1.00	NA
Western Virginia	2.40	2.40	1.30	--	1.30	NA
Southern West Virginia	1.50	2.00	1.00	--	1.00	NA
Western Louisiana	1.50	2.00	1.50	2.00	1.17	NA
Northern Mississippi	2.00	2.00	4.00	4.00	2.50	NA
Southern Mississippi	3.00	3.00	3.50	3.50	3.00	NA
Eastern Kentucky	2.50	4.00	4.00	4.00	2.42	NA
Western Kentucky	1.60	--	3.20	3.20	1.00	NA
Southern Illinois	2.00	2.00	3.50	3.50	2.75	NA
Northern Indiana	1.50	2.00	3.75	3.75	2.50	NA
Eastern California	1.00	--	3.00	3.00	Not collected ³	
Nebraska	1.00	--	1.50	2.00	3.25	NA

NOTE: Respondents (Resp.) include all magistrates who answered the question on the frequency of assignment (i.e., includes respondents who reported "never" (1.00) assigned). Participants (Part.) include only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., the respondent's score is equal to or greater than 1.01).

¹In some districts, there is only one full-time magistrate at a location; the judge and magistrate are thus paired de facto rather than by local rule or practice.

²Not applicable. Holding of settlement conferences is not a formal duty designated under section 636(b) or (c).

³The question on settlement conferences was added to the survey instrument after pilot interviews with magistrates in the Ninth Circuit. Therefore, these data are not available for magistrates in this circuit.

TABLE 33

DISTRICTS IN WHICH THE CHIEF MAGISTRATE ASSIGNS
MATTERS TO MAGISTRATES (n = 2)

<u>District</u>	<u>No. of Judges</u>	<u>No. of Magistrates</u>	<u>Ratio of Judges to Magistrates</u>
Southern New York	27	7	3.86:1
Northern California	12	4	3.00:1

TABLE 34

RESPONDENTS' AND PARTICIPANTS' DESCRIPTIONS OF THE FREQUENCY OF JUDGES' REQUESTS FOR ASSISTANCE ON 636(b) AND (c) DUTIES FOR DISTRICTS IN WHICH THE CHIEF MAGISTRATE ASSIGNS MATTERS TO MAGISTRATES (n = 2)

District	Criminal Matters					
	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Southern New York	1.03	1.08	1.05	1.13	1.01	1.04
Northern California	1.11	1.43	2.75	4.00	1.07	1.29

District	Civil Matters					
	Pretrial Conferences		Nondispositive motions		Dispositive motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Southern New York	2.58	2.58	2.58	2.58	2.28	2.28
Northern California	2.06	2.42	2.85	2.85	1.99	1.99

District	Additional Civil Matters					
	Habeas Corpus Cases		Civil Rights Cases		Social Security Cases	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Southern New York	2.26	2.26	1.81	1.81	2.35	2.42
Northern California	1.25	2.00	1.60	2.12	1.04	1.14

District	Additional Civil Matters (Continued)					
	Special Master		Civil Trials		Settlements	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Southern New York	1.65	1.77	3.00	3.00	1.95	NA ¹
Northern California	2.05	2.05	2.70	2.70	Not collected ²	

NOTE: Respondents (Resp.) include all magistrates who answered the question on the frequency of assignment (i.e., includes respondents who reported "never" (1.00) assigned). Participants (Part.) include only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., the respondent's score is equal to or greater than 1.01).

¹Not applicable. Holding of settlement conferences is not a formal duty designated under section 636(b) or (c).

²The question on settlement conferences was added to the survey instrument after pilot interviews with magistrates in the Ninth Circuit. Therefore, these data are not available for magistrates in this circuit.

TABLE 35

DISTRICTS IN WHICH JUDGES ASSIGN MATTERS
TO MAGISTRATES (n = 5)

<u>District</u>	<u>No. of Judges</u>	<u>No. of Magistrates</u>	<u>Ratio of Judges to Magistrates</u>
Eastern Virginia	8	6	1.33:1
Rhode Island	2	2	1.00:1
Western Missouri	6	3	2.00:1
Eastern Missouri	5	2	2.50:1
Colorado	6	3	2.00:1

TABLE 36

RESPONDENTS' AND PARTICIPANTS' DESCRIPTIONS OF THE FREQUENCY OF JUDGES'
REQUESTS FOR ASSISTANCE ON 636(b) AND (c) DUTIES FOR DISTRICTS
IN WHICH JUDGES ASSIGN MATTERS TO MAGISTRATES (n = 5)

Criminal Matters						
District	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Eastern Virginia	1.04	1.20	1.44	1.20	1.00	--
Rhode Island	3.00	3.00	3.00	3.00	3.00	3.00
Western Missouri ¹	3.26	3.89	2.93	3.39	2.93	3.39
Eastern Missouri	3.00	3.00	3.00	3.00	3.00	3.00
Colorado ¹	3.00	3.00	2.19	3.37	1.00	--

Civil Matters						
District	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Eastern Virginia	1.50	2.25	2.77	2.77	1.65	2.08
Rhode Island	3.50	3.50	3.50	3.50	3.50	3.50
Western Missouri ¹	2.19	2.78	2.19	2.39	2.19	2.78
Eastern Missouri	3.00	3.00	3.00	3.00	3.00	3.00
Colorado ¹	2.74	2.74	2.87	2.87	1.81	2.21

Additional Civil Matters						
District	Habeas Corpus Cases		Civil Rights Cases		Social Security Cases	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Eastern Virginia	3.00	3.67	2.99	2.98	2.67	3.08
Rhode Island	3.25	3.25	3.50	3.50	3.50	3.50
Western Missouri ¹	2.48	3.22	3.15	3.50	2.33	2.89
Eastern Missouri	3.00	3.00	3.00	3.00	3.00	3.00
Colorado ¹	2.90	3.50	2.90	3.50	1.00	--

Additional Civil Matters (Continued)						
District	Special Master		Civil Trials		Settlements	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
Eastern Virginia	1.60	2.00	2.47	2.83	1.18	NA ²
Rhode Island	3.00	3.00	1.00	--	3.50	NA
Western Missouri ¹	2.37	2.37	4.00	4.00	1.85	NA
Eastern Missouri	3.00	3.00	3.00	3.00	3.00	NA
Colorado ¹	1.56	1.84	1.00	--	2.90	NA

NOTE: Respondents (Resp.) include all magistrates who answered the question on the frequency of assignment (i.e., includes respondents who reported "never" (1.00) assigned). Participants (Part.) include only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., the respondent's score is equal to or greater than 1.01).

¹In these districts, judges designate magistrates to handle specific types of cases (e.g., criminal, civil, or prisoner).

²Not applicable. Holding of settlement conferences is not a formal duty designated under section 636(b) or (c).

TABLE 37

RESPONDENTS' AND PARTICIPANTS' DESCRIPTIONS OF THE FREQUENCY OF JUDGES'
REQUESTS FOR ASSISTANCE ON 636(b) AND (c) DUTIES FOR DISTRICTS
IN WHICH THERE IS ONE FULL-TIME MAGISTRATE (n = 25)

Criminal Matters						
District	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
New Hampshire	4.00	4.00	4.00	4.00	1.00	--
Western New York	1.00	--	1.67	1.67	1.33	1.33
Vermont	2.00	2.00	2.00	2.00	2.00	2.00
Delaware	1.00	--	1.25	--	1.25	--
Western North Carolina	2.00	2.00	3.00	3.00	3.00	3.00
Northern West Virginia	1.00	--	3.00	3.00	1.00	--
Middle Alabama	1.00	--	1.00	--	1.00	--
Middle Louisiana	2.00	2.00	3.50	3.50	3.50	3.50
Eastern Tennessee	1.00	--	2.00	2.00	2.00	2.00
Middle Tennessee	1.00	--	1.00	--	1.00	--
Central Illinois	--	--	2.00	2.00	2.00	2.00
Eastern Wisconsin	1.00	--	4.00	4.00	4.00	4.00
Western Wisconsin	4.00	4.00	4.00	4.00	4.00	4.00
Western Arkansas	1.75	1.75	1.00	--	1.00	--
Northern Iowa	3.00	--	3.00	3.00	2.00	2.00
Southern Iowa	4.00	--	4.00	4.00	2.00	--
Alaska	1.00	--	4.00	4.00	4.00	4.00
Nevada	2.00	2.00	4.00	4.00	4.00	4.00
Eastern Washington	1.00	--	1.00	--	1.00	--
New Mexico	1.00	--	1.00	--	1.00	--
Northern Oklahoma	2.00	2.00	2.00	2.00	2.00	2.00
Utah	1.67	1.67	2.67	2.67	2.67	--
Wyoming	1.00	--	4.00	4.00	2.00	2.00
Northern Florida	1.00	--	1.00	--	1.00	--
Southern Georgia	1.00	--	2.00	2.00	2.00	2.00

Civil Matters						
District	Pretrial Conferences		Nondispositive Motions		Dispositive Motions	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
New Hampshire	4.00	4.00	4.00	4.00	1.00	--
Western New York	2.67	2.67	2.33	2.33	1.67	1.67
Vermont	3.00	3.00	4.00	4.00	3.00	3.00
Delaware	1.00	--	1.75	1.75	1.75	1.75
Western North Carolina	2.00	2.00	2.00	2.00	2.00	2.00
Northern West Virginia	2.00	2.00	3.00	3.00	2.00	2.00
Middle Alabama	3.00	3.00	3.00	3.00	3.00	3.00
Middle Louisiana	2.00	2.00	3.50	3.50	3.50	3.50
Eastern Tennessee	4.00	4.00	4.00	4.00	4.00	4.00
Middle Tennessee	1.00	--	1.00	--	1.00	--
Central Illinois	3.00	3.00	3.00	3.00	3.00	3.00
Eastern Wisconsin	1.00	--	2.00	--	2.00	--
Western Wisconsin	3.00	3.00	2.33	2.33	2.33	2.33
Western Arkansas	3.00	3.00	3.00	3.00	3.00	3.00
Northern Iowa	4.00	4.00	4.00	4.00	2.50	--
Southern Iowa	4.00	4.00	4.00	4.00	2.00	--
Alaska	3.00	3.00	4.00	4.00	2.00	2.00
Nevada	3.00	3.00	4.00	4.00	2.00	2.00
Eastern Washington	3.00	3.00	3.00	3.00	3.00	3.00
New Mexico	4.00	4.00	4.00	4.00	2.00	2.00
Northern Oklahoma	3.00	3.00	3.00	3.00	3.00	3.00
Utah	2.33	2.33	2.67	2.67	2.67	2.67
Wyoming	4.00	4.00	4.00	4.00	2.00	2.00

(table continued)

TABLE 37 (Continued)

Additional Civil Matters						
District	Habeas Corpus Cases		Civil Rights Cases		Social Security Cases	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
New Hampshire	1.00	--	1.00	--	3.00	3.00
Western New York	1.33	1.33	1.33	1.33	1.00	--
Vermont	4.00	4.00	4.00	4.00	4.00	--
Delaware	3.67	3.67	4.00	4.00	4.00	4.00
Western North Carolina	4.00	4.00	2.00	2.00	1.00	--
Northern West Virginia	4.00	4.00	3.00	3.00	3.00	3.00
Middle Alabama	4.00	4.00	3.00	3.00	3.00	3.00
Middle Louisiana	4.00	4.00	4.00	4.00	4.00	4.00
Eastern Tennessee	1.00	--	2.00	3.00	4.00	4.00
Middle Tennessee	1.00	--	1.00	--	4.00	4.00
Central Illinois	2.00	--	2.00	--	4.00	4.00
Eastern Wisconsin	2.00	2.00	4.00	4.00	4.00	4.00
Western Wisconsin	1.33	1.33	1.33	1.33	2.00	2.00
Western Arkansas	3.75	3.75	3.75	3.75	3.00	3.00
Northern Iowa	3.00	3.00	3.00	3.00	4.00	4.00
Southern Iowa	2.00	2.00	3.00	3.00	1.00	--
Alaska	4.00	4.00	4.00	4.00	4.00	4.00
Nevada	4.00	4.00	2.00	--	4.00	4.00
Eastern Washington	--	--	--	--	3.00	3.00
New Mexico	--	--	--	--	4.00	4.00
Northern Oklahoma	2.50	2.50	2.50	2.50	3.00	3.00
Utah	4.00	4.00	4.00	4.00	2.33	2.33
Wyoming	4.00	4.00	4.00	4.00	4.00	4.00
Northern Florida	4.00	4.00	4.00	4.00	4.00	4.00
Southern Georgia	1.67	1.67	2.00	2.00	4.00	4.00

Additional Civil Matters (Continued)						
District	Special Master		Civil Trials		Settlements	
	Resp.	Part.	Resp.	Part.	Resp.	Part.
New Hampshire	1.00	--	1.00	--	4.00	NA ¹
Western New York	2.00	2.00	4.00	4.00	2.67	NA
Vermont	--	--	--	--	3.50	NA
Delaware	1.00	--	--	--	1.25	NA
Western North Carolina	2.00	2.00	1.00	--	2.00	NA
Northern West Virginia	2.00	2.00	2.00	--	1.00	NA
Middle Alabama	--	--	3.00	3.00	1.00	NA
Middle Louisiana	--	--	4.00	--	2.50	NA
Eastern Tennessee	2.00	2.00	3.00	3.00	--	--
Middle Tennessee	4.00	4.00	4.00	4.00	1.00	NA
Central Illinois	1.00	--	4.00	4.00	2.00	NA
Eastern Wisconsin	1.75	1.75	4.00	4.00	1.50	NA
Western Wisconsin	1.00	--	4.00	4.00	2.33	NA
Western Arkansas	1.00	--	4.00	4.00	3.00	NA
Northern Iowa	1.00	--	4.00	4.00	1.00	NA
Southern Iowa	1.00	--	4.00	4.00	3.00	NA ²
Alaska	4.00	4.00	4.00	4.00	Not collected	
Nevada	2.00	--	1.00	--	Not collected	
Eastern Washington	1.00	--	--	--	Not collected	
New Mexico	2.00	2.00	1.00	--	3.00	NA
Northern Oklahoma	3.00	3.00	2.00	2.00	1.00	NA
Utah	1.00	--	--	--	1.00	NA
Wyoming	2.00	2.00	2.18	2.18	1.00	NA
Northern Florida	2.00	2.00	2.00	2.00	1.00	NA
Southern Georgia	1.00	--	2.33	2.33	1.00	NA

NOTE: Respondents (Resp.) include all magistrates who answered the question on the frequency of assignment (i.e., includes respondents who reported "never" (1.00) assigned). Participants (Part.) include only those respondents who reported that (1) they are designated, (2) they participate regularly, and (3) at least one judge sometimes assigns them a duty (i.e., the respondent's score is equal to or greater than 1.01).

¹Not applicable. Holding of settlement conferences is not a formal duty designated under section 636(b) or (c).

²The question on settlement conferences was added to the survey instrument after pilot interviews with magistrates in the Ninth Circuit. Therefore, these data are not available for all magistrates in this circuit.

APPENDIX B

Survey Sent to All Full-time Magistrates

FULL-TIME MAGISTRATE'S SURVEY

Magistrate's Name _____

Location _____

District _____

1. Jurisdiction: (A) Please describe the jurisdiction formally (i.e., as described in local orders and/or rules) authorized to you as a full-time magistrate under 28 U.S.C. § 636(b) and (c) by checking the appropriate space below. (B) Please indicate which of these activities you perform regularly.

JURISDICTION

	<u>AUTHORIZED</u>		<u>EXERCISED</u>	
	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
A. Criminal				
Pretrial Conference	—	—	—	—
Nondispositive Motion*	—	—	—	—
Dispositive Motion**	—	—	—	—
B. Civil				
Pretrial Conference	—	—	—	—
Nondispositive Motion	—	—	—	—
Dispositive Motion	—	—	—	—
Social Security	—	—	—	—
Special Master	—	—	—	—
C. Prisoner Petitions				
Habeas Corpus	—	—	—	—
Civil Rights	—	—	—	—
D. Civil Trial, on Consent	—	—	—	—

*A nondispositive motion is a motion decided with finality by a magistrate under 28 U.S.C. § 636(b)(1)(A), generally involving procedural or discovery matters.

**A dispositive motion is a motion in which the magistrate files a report and recommendation with a judge under 28 U.S.C. § 636(b)(1)(B).

2. Division of Assigned Duties: Please check the space that describes how matters arising under 28 § U.S.C. 636(b) and (c) are divided among full-time magistrates in your district.

	<u>YES</u>	<u>NO</u>
A. All magistrates receive all types of matters.	—	—
B. Assignments are divided among magistrates by subject area (e.g., one magistrate handles criminal while another handles civil matters).	—	—

3. Assignment by Division/Location: Please indicate, by checking the appropriate space, whether the procedures for assignment to magistrates are uniform across the district.

	<u>YES</u>	<u>NO</u>
A. Magistrates are assigned only matters arising at specific locations or divisions within the district.	—	—
B. If yes, are procedures for assignment at different locations the same?	—	—

4. Number of Active Judges: Please indicate the number of active judges. (In calculating this figure, include senior judges who continue to carry a full load of cases and make assignments to magistrates on a regular basis.)

A. Within your district: _____

B. At your assigned location: _____

5. Duties Assigned to Magistrates: We are interested here in ascertaining the uniformity of arrangements among judges in their assignment practices for those matters authorized by local rule. Please describe this aspect of your district's practices by indicating the number of active judges who fall into the various categories defined below for each of the duties authorized under 28 U.S.C. § 636(b) and (c).

	<u>Frequency of Assignment</u>			
	<u>Always Assign</u>	<u>Frequently Assign</u>	<u>Occasionally Assign</u>	<u>Never Assign</u>
<u>Duties under 28 U.S.C. § 636(b) and (c):</u>				
A. Criminal				
Pretrial Conference	—	—	—	—
Nondispositive Motion	—	—	—	—
Dispositive Motion	—	—	—	—
B. Civil				
Pretrial Conference	—	—	—	—
Settlement Conference	—	—	—	—
Nondispositive Motion	—	—	—	—
Dispositive Motion	—	—	—	—
Social Security	—	—	—	—
Special Master	—	—	—	—
C. Prisoner				
Habeas Corpus	—	—	—	—
Civil Rights	—	—	—	—
D. Civil Trial, on Consent				
	—	—	—	—

6. Timing of Assignment: Please check the space that best describes the point in the progress of a case at which you are assigned duties.

A. Criminal Matters under 28 U.S.C. § 636(b)

	<u>Pretrial Confer- ence</u>	<u>Nondis- positive Motion</u>	<u>Dispositive Motion</u>
1. I enter the procedure at filing.	—	—	—
2. I enter a case upon a judge's request.	—	—	—
3. Some judges prefer to have a magistrate enter the case at filing while others prefer to have a magistrate enter a case upon his/her request.	—	—	—

B. Civil Matters under 28 U.S.C. § 636(b)

	<u>General Civil Matters</u>	<u>Social Security</u>
1. I enter the procedure at filing.	—	—
2. I enter a case upon a judge's request.	—	—
3. Some judges prefer to have a magistrate enter the case at filing while others prefer to have a magistrate enter a case upon his/her request.	—	—

C. Prisoner Petitions

	<u>Habeas Corpus</u>	<u>Civil Rights</u>
1. I enter the procedure at filing.	—	—
2. I enter a case upon a judge's request.	—	—
3. Some judges prefer to have a magistrate enter the case at filing while others prefer to have a magistrate enter a case upon his/her request.	—	—

7. Method of Assignment: Recognizing that various types of duties may be assigned to magistrates differently, we are interested in ascertaining the general practices followed in your court. Please check the method of assignment that best describes these general practices for criminal, civil, and prisoner cases.

	<u>Types of Duties</u>			<u>Prisoner</u>	
	<u>Criminal</u> <u>636(b)</u>	<u>Civil</u> <u>636(b)</u>	<u>Social</u> <u>Security</u>	<u>Hab-</u> <u>eas</u>	<u>Civil</u> <u>Rights</u>
<u>A. Rotation:</u> Cases assigned on alternating basis among magistrates (e.g., by week, month, etc.).	—	—	—	—	—
<u>B. Random:</u> Magistrate selected by lot.	—	—	—	—	—
<u>C. Judge/Magistrate Pairs:</u> Magistrates are assigned to specific judge(s) and conduct proceedings only for their assigned judge(s).	—	—	—	—	—
<u>D. Chief Magistrate:</u> A chief or presiding magistrate oversees the assignment or reassignment of matters.	—	—	—	—	—
<u>E. Designation by Judge:</u>					
(1) A judge may assign matters to a specific magistrate of his/her choice.	—	—	—	—	—
(2) In combination with system checked above ("A" through "D"), judge(s) frequently designate a magistrate on their own.	—	—	—	—	—
<u>F. Comment:</u> If, after reviewing the above options, the procedure(s) developed in your court are not described, please specify how cases and/or matters are assigned to you. _____					

8. Civil Trials, on Consent: When parties consent to a trial before a magistrate, please indicate how the respective magistrate is assigned by checking the appropriate box.

	<u>YES</u>	<u>NO</u>
A. Random Assignment		
1. At filing	—	—
2. At consent	—	—
B. Judge/Magistrate Pairs	—	—
C. Selection by Parties	—	—

D. Other: If the above categories do not describe how magistrates are selected for trials on consent in your district, please describe the procedure that is used. _____

9. Additional Comments: If you would like to make any additional comments on your court's procedures in this area, we welcome them.

Thank you very much for your time and effort.

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