Resources for Public Speaking

U.S. Magistrate Judges



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This resource provides suggested talking points, in outline form, for those wishing to speak about the history of the U.S. magistrate judge position. Magistrate judges serve as judicial officers of the U.S. district courts and exercise the jurisdiction delegated to them by law and assigned by the district judges. Magistrate judges may be authorized to preside in almost every type of federal trial proceeding except for felony cases. The overall number of U.S. magistrate positions has not increased greatly since the system went into full effect in 1971. Over the years, however, part-time positions have steadily been converted to full-time positions, so while part-time positions once constituted a large majority, the opposite is now true. In September 2022 there were 589 authorized U.S. magistrate judge positions, 562 of which were full-time.

In addition to the outline, the resource contains Topic at a Glance, a brief summary in PDF format; a gallery of downloadable images for use in a PowerPoint presentation; links to related resources on the FJC's History of the Federal Judiciary website; a further reading list; and excerpts of historical documents that could be handed out to audience members or incorporated into a presentation. The entire resource is available in PDF format as well.

Topic at a Glance

Introduction. This summary covers the history of the U.S. magistrate judge position. Magistrate judges serve as judicial officers of the U.S. district courts and exercise the jurisdiction delegated to them by law and assigned by the district judges. Magistrate judges may be authorized to preside in almost every type of federal trial proceeding except felony cases. The overall number of U.S. magistrate positions has not increased greatly since the system went into full effect in 1971. Over the years, however, part-time positions have steadily been converted to full-time positions, so while part-time positions once constituted a large majority, the opposite is now true. In September 2022, there were 589 authorized U.S. magistrate judge positions, 562 of which were full-time.

U.S. Commissioners. In 1793, Congress authorized the U.S. circuit courts to appoint officials—called "commissioners" as of 1817—to take bail in criminal cases. Congress expanded the commissioners' authority over the years, permitting them to take affidavits in civil cases, take depositions of witnesses, and, by 1842, to arrest and imprison the accused. Commissioners later gained authority to enforce specific federal laws, such as the Fugitive Slave Act of 1850, the Civil Rights Act of 1866, and the Chinese exclusion acts of the 1880s. Congress formally established the office of U.S. commissioner in 1896, and the position's authority continued to grow in the twentieth century. In 1940, for example, commissioners were authorized to try and sentence individuals accused of petty crimes on federal reservations, although defendants could request a district court trial.

Federal Magistrates Act of 1968. In the 1960s, rising caseloads resulted in efforts to ease docket congestion and increase efficiency. The Federal Magistrates Act was designed to accomplish these goals by giving the commissioners—now called U.S. magistrates—broader responsibilities, increasing their ability to aid U.S. district judges. Magistrates were empowered to conduct most misdemeanor trials, if the defendant waived the right to appear before a U.S. district judge; to serve as special masters in civil cases; and to assist district judges in pretrial proceedings (including arrest warrants, bail, and preliminary hearings), discovery, and appeals for posttrial relief. The district courts were to appoint magistrates to renewable eight-year terms (or four years if part-time) and could assign them other duties not inconsistent with the Constitution. After a pilot program, the magistrate system was in full operation by 1971.

Post-1971 Developments. In 1976, five years after the magistrate system began operating throughout the judiciary, Congress authorized magistrates to conduct habeas corpus proceedings. The Federal Magistrates Act of 1979 was the most significant expansion of magistrates' authority, empowering magistrates to preside over all misdemeanor criminal trials, with the defendant's consent (eliminating prior statutory exceptions to such jurisdiction); establishing magistrates' authority to conduct all civil trials with the parties' consent; and creating merit selection panels to assist district judges in appointing magistrates. The Judicial Improvements Act of 1990 changed the position's title to U.S. magistrate judge.

Outline

I. U.S. Commissioners
   A. In 1793, Congress authorized the U.S. circuit courts (and U.S. district courts in Maine and Kentucky, which had no circuit courts) to appoint “discreet persons learned in the law” to take bail in criminal cases.
   B. In 1812, Congress removed “learned in the law” as a statutory requirement and expanded the power to include taking affidavits in civil cases in the U.S. circuit courts.
   C. In 1817, Congress referred to those appointed as “commissioners” and authorized them to take bail and affidavits, as well as depositions of witnesses who could not appear in court, in both the circuit and district courts.
   D. In an 1842 act, Congress granted commissioners the same authority over federal criminal processes as it formerly had granted to state court magistrates and justices of the peace, including the power to arrest and imprison the accused.
   E. Over the remainder of the nineteenth century, Congress expanded the power of the commissioners to enforce particular federal laws, such as the Fugitive Slave Act of 1850, the Civil Rights Act of 1866, and the Chinese exclusion acts of the 1880s.
   F. In 1896, Congress formally established the office of U.S. commissioner and transferred the appointment power from the circuit to the district courts. Commissioners were appointed to four-year terms but could be removed sooner at the discretion of the district court.
   G. Responding to the increased volume of federal judicial business, Congress in 1940 enacted a measure that permitted judges of the district courts to delegate to their commissioners the authority to try and to sentence individuals charged with petty offenses on federal reservations. Defendants had the right to request a trial in the district court and could appeal a commissioner's decision.
   H. By the 1960s, many felt rising caseloads had reached a crisis point (in large part because of the rising number of statutes and regulations generated by an increasingly active federal government). One response was a series of Judicial Conference of the United States studies and congressional hearings that eventually led to approval of the Federal Magistrates Act of 1968, which abolished the office of United States commissioner and substituted for it the office of United States magistrate (changed to magistrate judge in 1990).

II. Federal Magistrates Act of 1968
   A. In passing the Magistrates Act, Congress was motivated by a desire to mitigate docket congestion, increase efficiency, and assist U.S. district judges by giving the commissioners broader responsibilities. The act also sought to bring order to the former commissioner system by establishing uniform selection criteria, a uniform appointment process, and regular salaries to replace fee-based compensation.

B. The act provided for the Judicial Conference of the United States to set, subject to congressional funding, the number of full-time and part-time magistrate positions for each district as well as the location and salary for each position. In making these determinations, the Conference was to be advised by the director of the Administrative Office of the U.S. Courts, the U.S. district courts, and the circuit judicial councils.
C. The act gave the magistrates authority to:
    1. conduct misdemeanor trials (with exceptions for prosecutions brought under certain statutes) if the defendants waived their right to appear before a district judge;
    2. serve as special masters in civil actions; and
    3. assist district judges in pre-trial proceedings (including arrest and search warrants, bail, and preliminary hearings) and discovery as well as appeals for post-trial relief.
D. The act also authorized a majority of district judges on any court to assign to magistrates "additional duties as are not inconsistent with the Constitution and laws of the United States."
E. Under the act, the district judges of each court would appoint magistrates to renewable terms of eight years (for full-time positions) or four years (for part-time positions).
F. After a pilot program in five districts (the District of Columbia, the Southern District of California, the District of Kansas, the District of New Jersey, and the Eastern District of Virginia), the magistrate system was operating throughout the judiciary by 1971.

III. Post-1971 Developments

A. In 1976, Congress gave magistrates the authority to conduct habeas corpus proceedings, following a 1974 Supreme Court ruling (*Wingo v. Wedding*) that they lacked such authority under existing law.
B. The Federal Magistrates Act of 1979 established magistrates' ability to conduct all civil trials as long as all parties consented.
C. The 1979 act also provided magistrates with authority to preside over all misdemeanor criminal trials (with the defendant's consent) by eliminating the statutory exceptions listed in the 1968 act.
D. The 1979 act also provided for merit selection panels to assist district judges in appointing magistrates.
E. Although magistrate salaries are set by the Judicial Conference, Congress has always imposed statutory maximum salaries for the position. Since 1988, the cap has been set at 92% of the salary of a U.S. district judge.
F. The Judicial Improvements Act of 1990 changed the position's title to U.S. magistrate judge.

Related FJC Resources

Court Officers and Staff: U.S. Commissioners

Kobrick, Jake and Daniel S. Holt. *Debates on the Federal Judiciary, Vol. III (1939–2005)*. Washington, D.C.: Federal Judicial Center, 2018: 9–30.

Landmark Legislation: The Federal Magistrates Act

U.S. Magistrate Judgeships

Further Reading

Boyd, Christina L., Tracey E. George, and Albert H. Yoon. "The Emerging Authority of Magistrate Judges Within U.S. District Courts." *Journal of Law and Courts* 10, no. 1 (Spring 2022): 37–60.

Crowe, Justin. *Building the Judiciary: Law, Courts, and the Politics of Institutional Development*. Princeton: Princeton University Press, 2012.

Lindquist, Charles A. “The Origins and Development of the United States Commissioner System.” *American Journal of Legal History* 14, no. 1 (January 1970): 1–16.

McCabe, Peter G. “The Federal Magistrate Act of 1979.” *Harvard Journal on Legislation* 16, no. 2 (Spring 1979): 343–401.

Pro, Philip M. "United States Magistrate Judges: Present but Unaccounted for." *Nevada Law Journal* 16, no. 3 (Summer 2016): 783–822.

Smith, Christopher E. *United States Magistrates in the Federal Courts: Subordinate Judges*. New York: Praeger, 1990.

Spaniol, Joseph F., Jr. “The Federal Magistrates Act: History and Development.” *Arizona State Law Journal* 1974, no. 4 (1974): 565–578.

Historical Documents

Judge Theodore Levin, Reducing Reliance on Commissioners, Testimony Before Senate Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, December 15, 1965

In 1965, the Subcommittee on Improvements in Judicial Machinery of the U.S. Senate Committee on the Judiciary, led by its chairman Senator Joseph Tydings, launched a wide-ranging examination of federal judicial operations, which included hearings to investigate the shortcomings of the U.S. commissioner system. Judge Theodore Levin was noteworthy as one of the few witnesses to come before the subcommittee to advocate reducing the responsibilities of commissioners rather than elevating their status and duties. Levin argued that non-Article III judicial officers would not be capable of providing the same quality of adjudication as would those judges appointed by the president and confirmed by the Senate.

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Judge Levin. May I be so presumptuous, Mr. Chairman, as to suggest that I don't believe that there ought to be created a tier of judges in the Federal system on the trial level. I am not unmindful of the problems in districts containing major Federal enclaves— but in general, I don't know why a man who faces a 6-month penalty ought to get a different kind of justice than a man who faces a 2-year penalty. I don't know why a man who is sentenced to 6 months by a judge, with the consequence of dislocation of his family and his business, ought to have that judgment by a judge who obviously doesn't have the experience and the responsibility of a U.S. district judge....

Senator Tydings. Judge Levin, ... if the post of U.S. commissioner were sufficiently upgraded, given the standard of a full-time lawyer, the same background, let's say, as a referee in bankruptcy, the same requirements as U.S. district judge, just on the point of competency, do you think he would be competent to handle the jurisdiction which is presently ... given to U.S. commissioners, plus a broadened petty offense jurisdiction and a broadened misdemeanor jurisdiction?

Judge Levin. Well, I think being a judge requires a lot of judgment and experience, not only in criminal matters but in all matters....

I am opposed to the idea of having a commissioner, whether he is called a commissioner or judge, handle criminal matters alone....

You acquire a judgment, you acquire a concept of the whole idea of justice, and I don't think that a man who is to hear misdemeanor cases no matter how well qualified he may be or a graduate of the best law school, is as qualified as a man who is appointed by the President, confirmed by the Senate of the United States, such a man has the awesome responsibility that goes with the job and who comes to a realization if he has any humility in his soul, that the one who is up for the possible maximum punishment of 6 months deserves the same full consideration as does a man who has committed a more grievous crime and is facing a 10-year penalty, because a mistake in judgment may ruin a man's life, while a sound judgment may help him to a better life.

Senator Tydings. Do you feel that two men, two lawyers with the same qualifications, the same background, the same experience, one is appointed by the U.S. district court as a full-time permanent U.S. commissioner, with a salary at $22,500 a year, and the other appointed by the President and confirmed by the Senate to be a U.S. district court judge at $30,000 a year, the second is automatically more capable or more able to try a case involving—

Judge Levin. Well, the way you put the question, Mr. Chairman, the difference is only $7,500 a year. You said the same experience, same background, same judgment....

And just as wise a man and as mature a man, the answer is obviously yes, he is just as competent. But I say to you that system cannot possibly be invoked and get the same result because you are not going to get the same qualifications in a man engaged in a narrow area of the law as you will in a person with a wide experience and maturity. Then again, if I may suggest to the chairman and to Senator Hart, and other members of the committee, if you set up a man with all that authority, you have to provide him with staff and a courtroom. What are you saving? Why don't you appoint another judge? We have eight judges [in the Eastern District of Michigan], give us one more judge if you think we are overburdened. Isn't that the solution?

[Document Source: U.S. Senate, Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, Hearings on the United States Commissioner System, 89th Cong., 1st sess., Part 2, 166, 172.]

Judge Talbot Smith, Support for Enhanced Commissioner Powers, Testimony Before Senate Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, July 13, 1966

Judge Levin's belief that neither commissioners nor magistrates were necessary for the proper administration of a district court did not go unchallenged, even by judges within his own district. Judge Talbot Smith, also of the Eastern District of Michigan, countered Levin's assessment by suggesting that the failure to utilize commissioners harmed the district court in Detroit. He lamented that district judges were forced to take on trivial "police court" duties that could be taken care of by a subordinate court officer.

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The office of Commissioner should either be eliminated entirely or it should be made significant and meaningful in our Federal system. My preference is for the latter choice. Actually, I think, there is no other course of action open to us. We have seen in Detroit the result of the abolition of Commissioners and, speaking for myself and those other Detroit judges who favor their re-employment, we do not approve of the results. In so saying we recognize that others of our court take a contrary view.

We value their judgment and we have worked harmoniously with them on the problem but it is obvious that in this area our professional judgments differ....

During the time I was privileged to serve as a Justice of the Supreme Court of Michigan the only serious criticism of our Federal Court that I heard arose out of precisely the point we are here considering,

namely, the non-use of Commissioners. The criticism came from a senior partner of one of Detroit's largest and most respected law firms, a lawyer of extensive trial experience. It was his complaint that ours was the only Federal Court in the country, to his knowledge, where the judge hearing a trial would interrupt it twice a day, regardless of its importance or complexity, to hear trivial and police court matters, if the trial judge happened that week to be assigned to the "Miscellaneous Docket"... His criticism was so vigorous that it has lingered in my mind.

Moreover, in my judgment, it is indefensible, as a matter of sound judicial administration, to require a District Judge to take his time, whether he is interrupting a trial or not, to do such things as to swear an Internal Revenue agent to the agent's statement that yesterday he discovered ten jugs of moonshine when he executed a search warrant. Notaries public take more significant oaths every day of the week.

The basic problem facing the entire Federal judiciary today is the problem of making the best use of the Judge's time. It cannot reasonably be denied by anyone that while a Federal Judge is doing the work of a justice of the peace, or a notary public, that he cannot be doing anything else. And, furthermore, that there are more important uses for his time, whether it be spent in the litigation of significant Federal questions, in the writing of thoughtful and reflective opinions, or in research upon the law as to matters not clearly settled by precedent.

To those who say that the overall time spent by District Judges on Commissioners' work is not, or would not be, substantial (if Commissioners were eliminated) our reply is that it depends upon what is viewed as substantial. In our opinion any time spent by a District Judge on a trivial function is an unjustifiable allocation of the limited time available to him and is a substantial interference with the performance of his significant judicial functions....

Our District Court time-problem is further compounded by the provisions of recent enactments. Since the employment of attorneys to represent criminal defendants who have not adequate funds for their own defense now involves the expenditure of public funds, and not the donation of time of public-spirited counsel, certain forms not heretofore required must now be completed. The obtaining of the necessary information and its accurate recording on the required forms, must be the responsibility of someone. I do not think it wise that we add these ministerial duties, important though they may be, to the already existing burdens of the District Judge himself....

Much of what I have said in favor of the use of Commissioners applies with equal force to the use of the enlarged Commissioner, termed "Magistrate" in the bill submitted. The cardinal considerations involved, from the standpoint of the District Judge, are the more expeditious disposition of litigation consistent with due process, and the conservation of the time of the District Judge. In my judgment the proposed bill is helpful in both of these considerations.

[Document Source: U.S. Senate, Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, Hearings on S. 3475, Proposals to Reform the United States Commissioner System, 89th Cong, 2nd sess., 1966, 198–200.]