I. INTRODUCTION

The federal magistrate judge position was formally established nearly fifty years ago, with roots in serving the judiciary reaching into the eighteenth century. The position has since become integral to federal courts and cases. This year marks twenty-five years since an important event for the magistrate judge: in 1990, Congress changed the title from United States Magistrate to United States Magistrate Judge. Despite the passage of a quarter century, the judicial position continues to be incompletely referred to as “magistrate.” Federal statutes and procedural rules have reflected the...
full title for years, but the partial omission of the title persists in judicial opinions, scholarship, and practice materials. This article explores the prevalence of the titling error in legal writing in an effort to curb the mistaken practice and to promote the accurate reference to magistrate judges.

II. HISTORY AND ROLE OF THE MAGISTRATE JUDGE

Although described in judicial writing and by commentators as vital to the operation of the federal judiciary, magistrate judges’ service to the federal courts appears less well understood than that of Article III judges. As such, an explanation of their history and role in the judiciary is useful.

The magistrate judge system has been carefully and thoughtfully discussed by others, warranting an abbreviated presentation here. Forms of the magistrate judge have existed since the late eighteenth century, but it was the Federal Magistrates Act of 1968 that created “a new class of federal judicial officers to help relieve the burgeoning caseloads of the United States District Courts and the corresponding burdens on federal trial judges.” This Act shepherded the rise of the magistrate judge that we know today.

After the 1968 Act, Congress continued to modify magistrate judge authority through additional legislation. It is not solely legislation, but also

1. E.g., Wellness Int’l Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1938–39 (2015) (Sotomayor, J.) (“And it is no exaggeration to say that without the distinguished service of these judicial colleagues, the work of the federal court system would grind nearly to a halt.”); Paterson-Leitch Co. v. Massachusetts Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988) (discussing magistrate judges pre title-change and noting that “[t]he role played by magistrates within the federal judicial framework is an important one”).


4. Id. at 8.


6. See Brown v. United States, 748 F.3d 1045, 1052–53 (11th Cir. 2014) (detailing the Federal Magistrates Act and other significant events in the expansion and clarification of the magistrate judge position).

7. See McCabe White Paper, supra note 3, at 10–17; see generally Philip M. Pro &
practice that prompted the evolution and expansion of the magistrate judge’s role. District judges promoted this expansion by diversifying magistrate judge duties and increasingly assigning matters of importance. Peter G. McCabe, first-appointed Chief of the Administrative Office’s Magistrate Judges Division, has remarked, “A particular genius of the Federal Magistrates Act is that it does not mandate the assignment of particular duties to Magistrate Judges[, but i]nstead, it lets each District Court determine what duties are most needed in light of local conditions and changing caseloads.”

This flexibility continues today. There is no single responsibility that all federal magistrate judges hold, making it at times difficult to define in a national context what role the judges play. The Federal Magistrate Judges Association describes a magistrate judge as being appointed by district judges who “supervise the activities of the Magistrate Judges by assigning civil cases for jury or non-jury trial upon consent of the parties and for pre-trial matters. . . . [C]riminal cases are assigned to Magistrate Judges on the consent of the parties, except for the trial of felony cases.” This versatility allows magistrate judges to be called on for a variety of duties, ranging from criminal initial appearances, detention hearings, and arraignments, to civil settlement conferences, discovery motions, and consent jury trials. Dispositive matters may also be “referred” for the preparation of a “report and recommendation,” frequently including social security, habeas corpus, and prisoner civil rights cases.

Because the role of the magistrate judge is the result of congressional action under Article I of the Constitution of the United States, rather than authority provided in Article III, magistrate judges are sometimes casually titled “Article Ones.” This nickname is misleading, however, because
Magistrate judges are not a separate Article I court. Bankruptcy and tax courts, for example, are more appropriately described in the Article I context, whereas federal district judges, circuit judges, and Supreme Court justices are each empowered through Article III. Those whose role's genesis is in Article III enjoy lifetime tenure and salary. Magistrate judges do not have this luxury; rather, they are appointed by each district's district judges in eight-year terms and require reappointment. Reappointment is required yearly after a magistrate judge reaches seventy years. Unlike district judges, magistrate judges do not have a "senior status" option, although a magistrate judge may be recalled in some instances.

The consensus is that the creation of the magistrate judge has been an unqualified success. The Court has addressed this: "It can hardly be denied that the system created by the Federal Magistrates Act has exceeded the highest expectations of the legislators who conceived it. In modern federal practice, federal magistrates account for a staggering volume of judicial work." More recently, the Court remarked that "it is no exaggeration to

14. McCabe White Paper, supra note 3, at 62 (“Magistrate Judges are not an administrative agency or a separate Article I court. They have no jurisdiction of their own. They perform their duties entirely within the Article III District Court and are an integral part of the court.”).


16. See U.S. CONST. art. III, § 1 (“The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”).

17. Id.


19. 28 U.S.C. § 631(e). The statute also provides for part-time magistrate judges, appointed to four-year terms.

20. Id.

21. Id. § 631(d).

22. Id. § 371.

23. Id. § 375.

24. The Court was quoting a circuit court opinion that was issued in 1989, before the Judicial Improvements Act of 1990, and thus used “magistrate.”

say that without the distinguished service of these judicial colleagues, the work of the federal court system would grind nearly to a halt."26 Although there were 82 full-time and 449 part-time magistrate judges authorized by the Judicial Conference in 1970, the number of full-time positions has increased greatly over the years.27 There are now 534 full-time and 36 part-time magistrate judge positions.28

III. THE MAGISTRATE JUDGE TITLE

Although this article’s purpose is to highlight the misuse of “magistrate” (alone) to identify a federal magistrate judge, the 1968 legislation was titled the Federal Magistrates Act and referred to “magistrates.”29 Accordingly, for years magistrate judges were properly referred to as “magistrates.” In 1988, the Magistrates Committee of the Judicial Conference30 endorsed the practice of addressing a then-magistrate as “Judge” or “Your Honor.”31 In 1990, after years of discussion, the title of the office changed.32 Following “considerable debate regarding an appropriate new title,” options such as “assistant United State District Judge,” and “associate judge” were proposed.33 Those options were ultimately not adopted, and instead “United States Magistrate Judge” prevailed as the new title.34 The title was changed through the Judicial Improvements Act of 1990, which provides:

CHANGE OF NAME OF UNITED STATES MAGISTRATES.

After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate

v. Williams, 892 F.2d 305, 308 (3d Cir. 1989)).
27. ADMIN. OFFICE OF THE U. S. COURTS, A GUIDE TO THE LEGISLATIVE HISTORY OF THE FEDERAL MAGISTRATE JUDGES SYSTEM 21 (2009). The Judicial Conference also authorized the district courts to fill 11 “combination” positions “in which part-time referees in bankruptcy or clerks or deputy clerks of court serve[d] concurrently as part-time magistrates.” Id.
30. This committee is now known as the Committee on the Administration of the Magistrate Judges System.
33. Id.
34. Id.
judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.\textsuperscript{35}

The titling of the magistrate judge position was a process, both in terms of respecting the position and of educating the public.\textsuperscript{36} The Federal Courts Study Committee’s subcommittee discussing the proposal wrote that “magistrate judge” “implies no independent role but recognizes that when a judicial officer acts with full authority, as in consent cases, he or she acts as a judge and merits respect of that office.”\textsuperscript{37} Garner’s Dictionary of Legal Usage discusses the name change, including that it came about because “by the late 20th century the connotations of magistrate had fallen so.”\textsuperscript{38} Garner’s mentions the successful lobbying efforts that led to the Judicial Improvements Act, and that the judicial officers “are now called (pleonastically but to them pleasingly) United States Magistrate Judges.”\textsuperscript{39} In 2015, twenty-five years since the enactment of the 1990 legislation, the term “magistrate judge” has been the title longer than “magistrate” was.

\begin{itemize}
  \item \textsuperscript{36} Although use of the term “magistrate” instead of “magistrate judge” frequently seems most plausibly to be a mistake, other times use of the former title is deliberate. See Brendan Linehan Shannon, Note, The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer, 33 WM. & MARY L. REV. 253, 253 n.5 (1991) (“For the purposes of this Note, the term ‘judge’ refers to a district judge, appeals court judge, or Supreme Court Justice appointed by the President of the United States . . . . The term ‘magistrate’ refers to a United States magistrate judge, the new title of officeholders under the Federal Magistrates Act.”).
  \item \textsuperscript{37} See ADMIN. OFFICE OF THE U. S. COURTS, supra note 31, at 52 & n.259.
  \item \textsuperscript{38} BRYAN A. GARNER, GARNER’S DICTIONARY OF LEGAL USAGE 556 (3d. ed. 2011) (defining “magistrate”).
  \item \textsuperscript{39} Id.
\end{itemize}
IV. THE MAGISTRATE JUDGE TITLE IN LEGAL WRITING

Some have commented on the inaccuracy of dropping “judge” from the magistrate judge title, and many in the district court know it to happen frequently. As has been noted, “Judges often look unkindly on mistakes in their titles” and some judges have remedied this by inserting “[sic]” after titling errors. Chief Justice Rehnquist, for example, was observed as correcting attorneys who addressed him as “Judge.” This annoyance is understandable in any context, but especially so for magistrate judges based on the connotations carried by “magistrate” versus “magistrate judge.” Some have been particularly careful of their use of the title in light of the 1990 change, but there is discussion (at least in the halls of the federal courts) about the use of the former title.

Despite the literature on the origins of the magistrate judge position and the importance of referring to the judges by the appropriate title, there appears to be no article on the magistrate judge title that has evaluated how widespread the use of the shortened title is in legal writing. That is, is the truncated title arguably harmless conversational shorthand, or is this a genuine mistake on behalf of those learned in the law?

A. Statutes and Rules

First, a review of some statutes and rules regarding magistrate judges. The oft-cited and relied-upon magistrate judge jurisdictional statute is 28 U.S.C. § 636, which provides the position’s full title—magistrate judge. The remainder of Chapter 43 governing magistrate judges follows suit, referencing the name change in each section. Other sections of the United States Code, varying from that describing disqualification of a “justice, judge, or magistrate judge,” to that governing juvenile proceedings,


41. GARNER, supra note 38, at 494 (defining “judge; justice” and including an example of a judge correcting a litigant’s mistake as to the judge’s title).

42. Id. (citing David Margolick, At the Bar, N.Y. TIMES, 26 Apr. 1991, at B9).


44. 28 U.S.C. §§ 631–639 historical and statutory notes. The text of Chapter 43 is entirely consistent in referring to the full title except for section 633(a)(1) & (b), which refer to “magistrates.” Section 633’s notes provide that the name was changed in the rest of that section, but for reasons unclear, the text was not changed in those two provisions.

45. Id. § 455.
that discussing retirement provisions for judges, are all uniform in one respect—each refer to magistrate judges as magistrate judges. One section, which discusses adequate representation of defendants, includes numerous references to magistrate judges, but also mentions “United States magistrate” twice. Both instances of the former title are marked by a footnote contending that the statute should state “magistrate judge.”

The federal procedural rules comport with the statutes. On the criminal side, Federal Rule of Criminal Procedure 1 defines “Federal judge” to include “a magistrate judge.” Rule 3, regarding the complaint, and Rule 5, on initial appearances, similarly provide the full title. The same is true for Rules 4, 5.1, 6, 9, 17, 40, and 41. The text of Rule 58, discussing petty offenses, misdemeanors, and pretrial procedures, references magistrate judges fifteen times—each time including the full title. And Rule 59, which contemplates a magistrate judge’s determination of referred matters, likewise keeps the full title. The advisory committee’s notes to Rules 1, 3, 4, 5, 5.1, 6, 9, 17, 40, 41, and 58 each include a notation from 1993 identifying that, “The Rule is amended to conform to the Judicial Improvements Act of 1990 . . . which provides that each United States magistrate . . . shall be known as a United States magistrate judge.”

On the civil side, Federal Rules of Civil Procedure 72 and 73—regarding the pretrial order, trial by consent, and appeal—discuss the magistrate judge. Unsurprisingly, Rules 16 and 53’s references are no different, referring to magistrate judges. Each of these rules includes an advisory committee note referencing the Judicial Improvements Act of 1990.


48. 18 U.S.C. § 3006A.
49. Id. § 3006A n.2 (“So in original. Probably should be ‘United States magistrate judge’.”).
50. See, e.g., FED. R. CRIM. P. 1 advisory committee’s note (1993 amendment). Federal Rule of Criminal Procedure 59 does not contain the note because it was added in 2005. Other rules include this note as well, but this article discusses only those rules that currently include reference to a magistrate judge in the text of the rule.
51. See, e.g., FED. R. CIV. P. 16 advisory committee’s note (1993 amendment) (“This subdivision . . . is revised to reflect the new title of United States Magistrate Judges pursuant to the Judicial Improvements Act of 1990.”).
52. FED. R. APP. P. 3(3)(3).
B. Judicial Opinions

With the unanimity of the statutes and rules, one might assume courts would be equally consistent. This assumption would be wrong, however, and instead a review of opinions of the Supreme Court of the United States reveals that the Court has misstated the title of the position several times. An opinion from 2006 described the underlying federal district court proceedings by providing that the court “assigned the case to a Magistrate who conducted discovery.”53 The opinion continued by discussing what “the Magistrate recommended” and that the district judge “accepted the Magistrate’s recommendation.”54 These instances are not anomalies. Opinions discussing federal magistrate judges, including those opinions issued well after the passage of the 1990 Act, reference “the Magistrate,”55 the “Magistrate’s memorandum,”56 “the Magistrate’s findings,”57 the “Magistrate’s decision,”58 the “Magistrate’s recommendation,”59 “the Magistrate’s job of overseeing discovery,”60 “the Federal Magistrate’s bail order,”61 Rule 73’s allowance for referral to the “magistrate for resolution,”62 and that “[o]n recommendation of the Magistrate, the District

54. Id. at 528.
60. Cunningham v. Hamilton Cnty., 527 U.S. 198, 201 (1999) (Thomas, J.) (“The District Court affirmed the Magistrate Judge’s sanctions order . . . and described the Magistrate’s job of overseeing discovery . . . .”).
Court [took certain action].\textsuperscript{63} At times the use of the truncated title is not a mistake or oversight, but instead is by design. At least two recent Court opinions provide, “A Federal Magistrate Judge (Magistrate),” thereby defining the title as “Magistrate” and referring to the magistrate judge accordingly for the balance of the text.\textsuperscript{64}

There are times that reference to a “magistrate” when referring to a United States Magistrate Judge is understandable. Examples are opinions released shortly after the title change or those that discussed “the Magistrate Judge” throughout the opinion and then omitted the “judge” portion in one citation.\textsuperscript{65} These are likely typographical errors or oversights based on the then-newness of the title. There are also times when reference to a magistrate could be considered more accurate than reference to a magistrate judge. For example, some opinions were released after the 1990 title extension but discussed actions taken before the change. Thus, the action described was by a “magistrate” when the underlying event occurred, even if the actor’s title had changed by the time the case was at the Court.\textsuperscript{66} Other instances are in opinions that discuss legal authority that did not yet reflect the full magistrate judge title.\textsuperscript{67} Additionally, some mentions of “magistrate” do not identify a United States Magistrate Judge but instead refer case to magistrate for resolution”.

\textsuperscript{63.} United States v. Cabrales, 524 U.S. 1, 4 (1998) (Ginsburg, J.) (“On recommendation of the Magistrate, the District Court denied the motion . . . . Also on the Magistrate’s recommendation . . . .”).


\textsuperscript{65.} Erickson v. Pardus, 551 U.S. 89, 92 (2007) (per curiam) (referring to the “Magistrate Judge” but including “Plaintiff’s Objections to the Magistrate’s Recommendations” in citation).


\textsuperscript{67.} Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 69 (1991) (Scalia, J., dissenting) (discussing “presentment before a federal magistrate” but in the context of Federal Rule of Criminal Procedure 5, which did not yet include the new title).
refer to a neutral or detached magistrate, or state proceeding, or foreign or historical tribunal. This article does not quibble with those uses. Even taking into account this variety of circumstances, however, there are still numerous instances in which the position’s title is mistaken.

This article is not meant to denigrate the Court. Instead, the cited opinions illustrate that, beyond a mere annoyance for some in the district court, the mistitling is an inaccuracy that has persisted throughout the last two decades. Circuit court opinions also warrant inclusion. Both the Ninth Circuit and the Eleventh Circuit have cited the Judicial Improvements Act of 1990 and noted the changed magistrate judge title. The Eleventh Circuit opinion, issued in 2014, provided the history of the magistrate judge position as well as efforts regarding clarification and expansion of the role. Despite these instances, recent federal court of appeals decisions from the First, Second, Third, Fourth, Fifth, Sixth, Seventh,


71. See cases cited supra notes 53–64.


73. See Brown, 748 F.3d at 1050–58.

74. Butterworth v. United States, 775 F.3d 459, 469 (1st Cir. 2015) (“Neither the magistrate’s recommendation nor the district court’s order addressed Butterworth’s equitable tolling theory.”).


77. United States v. LeCraft, 544 F. App’x 185, 187 (4th Cir. 2013) (“Like LeCraft, Cagle failed to file objections to the magistrate’s recommendation that his suppression motion be denied . . . .”).


79. Clark v. United States, 764 F.3d 653, 655 (6th Cir. 2014) (“It then denied Clark leave to amend because he filed her motion to amend after the magistrate recommended a disposition of her § 2255 motion.”).
Eighth, Ninth, Tenth, Eleventh, D.C., and Federal Courts demonstrate that the mistitling occurs in those courts as well. There may be many more cases in each court that provide the magistrate judge her full title, and many of the cited cases include both the current and former titles. But these cited examples show that there is a lack of knowledge regarding magistrate judges even within the federal judiciary and that comments and complaints about a shortening of the title are not exaggerated.

In some of the cited decisions, confusion results from mistaking the magistrate judge’s title, but also from referring to the magistrate judge and the district court as separate entities. Returning to the Supreme Court, an opinion released in 2015 carefully uses the magistrate judge’s full title throughout, but then comments that “the Magistrate Judge, the District Court, and the Court of Appeals all thought that they were bound to defer to the Department’s assertion.” Such statements could prompt questions regarding the magistrate judge’s work in district court, with inquiries about whether a case is before a magistrate judge or is in district court. In effect, language that separates the magistrate judge from district court effectively creates two courts in the reader’s mind—a district court (in which the district judge sits) and a magistrate court (in which a magistrate judge sits). This artificial separation by describing two courts instead of two benches has resulted in confusion. As described by a magistrate judge in the Southern District of New York:

Although the phrase “Magistrate’s Court” is frequently heard in federal courthouses, there is no such thing in our current federal system. Magistrate Judges are judges of the District Court. The phrase “Magistrate’s Court” frequently

80. United States v. Seidling, 737 F.3d 1155, 1158 (7th Cir. 2013) (“[T]he district court adopted the magistrate’s recommendation . . . .”).
81. Reeves v. King, 774 F.3d 430, 431 (8th Cir. 2014) (“The magistrate determined Lieutenant King was not entitled to qualified immunity . . . [and] the district court adopted the magistrate’s recommendations . . . .”).
82. Lowe v. Johnson, 584 F. App’x 702, 704 n.2 (9th Cir. 2014) (“Here, the magistrate’s R&R included . . . .”).
83. In re Brooke Capital Corp., 588 F. App’x 834, 840 (10th Cir. 2014) (“The district court agreed and therefore adopted and incorporated the magistrate’s recommendations.”).
86. Colida v. Nokia, Inc., 347 F. App’x 568, 569 (Fed. Cir. 2009) (“Over Colida’s objections, the district court adopted essentially all of the magistrate’s recommendations . . . .”).
refers to courtrooms where all or most of the matters heard are criminal in nature, sometimes with rotating Magistrate Judges handling the criminal duties, but it is a misnomer. Magistrate Judges are appointed by the District Court Judges in that District to serve in the District Court, not in a so-called “Magistrates Court.”

Another judge wrote, “There used to be a sign outside my courthouse directing people to the magistrate court, but, of course, such a jurisdictional entity does not exist. Fortunately, the sign has been changed recently after several years of requests.” The Federal Magistrate Judges Association has been sensitive to titling issues and the magistrate judge’s place in district court. A document produced by the Association mentions the position’s title and the practice of addressing a magistrate judge as “magistrate.” The literature’s frequently-asked-questions section addresses the misconception of a “magistrate judge’s court” and maintains that there is no such court and instead both district judges and magistrate judges “preside in United States District Courts created under Article III of the Constitution.”

C. Secondary Sources

The widespread use of “magistrate” alone is not limited to judicial opinions, and is prevalent in secondary sources as well. Some of these instances are accurate in context, such as when discussing a case decided before the enactment of the Judicial Improvements Act of 1990, but they do not account for the numerosity of errors. One law review note specifically excludes magistrate judges from the definition of judge, providing: “For the purposes of this Note, the term ‘judge’ refers to a district judge, appeals court judge, or Supreme Court Justice appointed by

89. Battaglia, supra note 40, at 50.
90. United States Magistrate Judges, FED. MAGISTRATE JUDGES ASSOC., http://www.fmja.org/pdfs/brochures/FMJA%20Brochure%2026639.pdf (last visited July 19, 2015) (asserting that the word “magistrate” is “merely descriptive of the type of judge” and that to address a magistrate judge as “magistrate” is akin to addressing a lieutenant colonel as “Lieutenant” or a bankruptcy judge as “Bankruptcy”); see also Battaglia, supra note 40, at 51.
91. Id.
the President of the United States . . . The term ‘magistrate’ refers to a United States magistrate judge . . . “73 Even when limiting the review of legal scholarship to the past two years, instances in which a magistrate judge is inaccurately titled are abundant.74 Notably, magistrate judges’ decisions receive considerably less attention than those of, for example, federal appellate judges, and therefore are discussed less frequently in legal scholarship. As with the courts, many law review boards make this error and no single law journal is responsible for all of the mistitling.

Top-ranked law reviews are not immune to mistitling. Recent publications by the flagship journals of some of the nation’s top law schools have printed statements such as, “Like U.S. Magistrates, they are appointed

93. See Linehan Shannon, supra note 36, at 235 n.5.
by the judiciary itself, but lack the full protections of tenure and financial security required for the Article III judiciary.”

Other recent examples from these schools are plentiful. One published note on objections to magistrate judge rulings identified that the Judicial Improvements Act of 1990 had changed the magistrate judge title, but the publication continued to include references to “magistrates.”

Law review articles aside, other secondary sources also include the outdated title when addressing a magistrate judge. Use of the former title is found in trade and practice materials, including publications issued by respected institutions such as the Federal Bar Association and the

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96. See, e.g., Alexander J. Kasner, Note, National Security Leaks and Constitutional Duty, 67 STAN. L. REV. 241, 267 n.148 (2015) (“Congress vests, through statute, the power to appoint federal magistrate judges with district court judges, which is only possible if magistrates are inferior officers.”); Dodge, supra note 15, at 929 n.113 (“As a formal matter, the decisions of special masters and magistrates are reviewed de novo, under Federal Rules of Civil Procedure 53 and 72.”); Alan M. Trammell, Transactionalism Costs, 100 VA. L. REV. 1211, 1263 n.197 (2014) (discussing magistrate judges and noting that “[i]f the goal is to minimize trial judges’ workloads, magistrates should take on that responsibility”); Recent Case, United States v. Chappell, 691 F.3d 388 (4th Cir. 2012), 126 HARV. L. REV. 842, 843 (2013) (“The magistrate rejected Chappell’s overbreadth claim . . . . Adopting the magistrate’s conclusions, the district court found . . . .”); Recent Case, United States v. Skinner, 690 F.3d 772 (6th Cir. 2012), reh’g and reh’g en banc denied, No. 09-6497 (6th Cir. Sept. 26, 2012), 126 HARV. L. REV. 802, 803–04 & nn.15–16 (2013) (discussing “the magistrate’s recommendation,” and what the “magistrate found,” and “the magistrate noted”); Michael D. Sant’Ambrogio & Adam S. Zimmerman, The Agency Class Action, 112 COLUM. L. REV. 1992, 2054 (2012) (in the context of federal multi-district litigation actions, asserting that “[j]udges may then appoint magistrates or special masters to handle settlement discussions to avoid becoming overly invested in the parties’ proposed resolution”) (citing MANUAL FOR COMPLEX LITIGATION (FOURTH) § 22.91 (2004) (discussing judicial role and settlement and that “a magistrate judge, a special master, or a settlement judge” may handle));


98. Bruce Moyer, Federal Judges Score A Pay Adjustment, Quietly, FED. L.AW., Jan.–Feb. 2015, at 8, 8 (“The decisions also have raised the pay of many non-Article III judges, including magistrates, and those in the tax, bankruptcy, and claims courts.”).
American Law Institute. Also notable are references in the habeas corpus section of the *Georgetown Law Journal Annual Review of Criminal Procedure*, which functions as a helpful tool for many magistrate judges. Perhaps unsurprisingly considering the other cited sources, Westlaw includes a “key number” entry entitled “United States Magistrates.”

V. A CALL FOR ACCURACY

It is clear there is a lack of knowledge regarding the magistrate judge title, and by extension, the service of magistrate judges. Admittedly, in light of the weighty issues presented to the courts each day, a title of any judicial officer is not paramount. But the legal profession is built on the premise that *words matter*. This is demonstrated through statutes, caselaw, briefing, and oral advocacy. The value of words carries with it the value of titles. Using “magistrate” to refer to a magistrate judge removes these judicial officers from their post in the judiciary—judges are in one category, magistrates in another. To reiterate, this article is not an indictment of any court, publication, or person. Instead, it is intended as a wake-up call. When magistrate judges, empowered through an act of Congress and serving a court created by Article III, are repeatedly addressed incorrectly by their colleagues, this inaccuracy reflects poorly on the judiciary. When practitioners and scholars make the same omission, it reflects poorly on the profession. Recognizing the importance of referring to a judge by his or her proper title, some courts have taken it upon themselves to educate parties.

One order correcting a party provided:

The brief for defendant, submitted by the office of the United States Attorney for this District, recites in its opening paragraph that defendant “respectfully objects to the Recommended Ruling of United States Magistrate Judge Joan G. Margolis (‘Magistrate’), as follows: . . .” In point of fact, the defendant’s objection is less than respectful. Unaccountably, the rest of defendant’s brief incompletely and incorrectly refers to “Magistrate Margolis” or “the Magistrate.” One is constrained to wonder whether the United States Attorney’s office is

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100. See, e.g., *Habeas Relief for State Prisoners*, 44 GEO. L.J. ANN. REV. CRIM. PROC. 1018, 1051 (2015) (“When a federal court grants an evidentiary hearing, the court may appoint a federal magistrate to conduct the hearing.”).
either unaware of, or chose in this case to disregard out of pique, Section 321 of Pub. L. 101-650, which provides: “After the enactment of this Act [Dec. 1, 1990], each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge,” a change of name the Act explicitly imposed upon “any regulation of any department or agency of the United States in the executive branch” issued before the date of enactment in 1990. Twenty-two years should be sufficient time for the denizens of a United States Attorney’s office to learn the legally correct way to refer to a Magistrate Judge, a judicial officer sensible attorneys routinely address as “Judge.” Throughout this Ruling I will respectfully refer to “Judge Margolis.”[101]

When an attorney appearing before a magistrate judge does not understand that she is in district court or that the person presiding is a judge, the attorney is at risk of not conveying the appropriate respect. One magistrate judge who left the state bench to join the federal bench recalls a conversation she had with an attorney in which the attorney asked her why she “gave up being a judge” (presumably referencing her state court service) in order to be a “magistrate.” Another magistrate judge reports that a litigant asked him if he was training to be a real judge. There have even been instances when litigants have referred to a magistrate judge by last name only—dispensing with any sort of honorific. In one instance, attorneys from “three prestigious firms,” attempting to skirt local word count rules, responded to an objection to a report and recommendation prepared by a magistrate judge but referred to the magistrate judge by her last name alone. The district judge evaluating the objection noted that he commended the practice of referring to parties and witnesses by last name only, but added, “[T]his Court cannot recall reading a motion, brief, or other paper—even from the most hapless of pro se litigants—that referred to a federal magistrate judge by her last name only. No one does this because it is disrespectful to the magistrate judge.”[102] Although not as extreme as removing the title altogether, referring to a magistrate judge by the wrong title is no less inaccurate or disrespectful to the position.

VI. CONCLUSION

The change of the magistrate judge title was made to “help educate attorneys and litigants about the magistrate judges’ status as authoritative judicial officers within the federal courts.”\textsuperscript{103} Decades have passed since the title change, and some have been meticulous about noting the once-new title.\textsuperscript{104} Even so, legal writing produced by the judiciary, academia, and practitioners continues to inaccurately refer to these judges. Considering the technical inaccuracy of referring to a magistrate judge as any other office, as well as the high regard in which magistrate judges are held, it is time for a more uniform change in the language of those trained in the law.
