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A HISTORY OF THE DEVELOPMENT OF THE OFFICE OF UNITED STATES COMMISSIONER AND MAGISTRATE JUDGE SYSTEM*

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Abstract

[a.1] The author reviews the origins of the present federal magistrate judge system, and the historical development of the predecessor commissioner system's evolution into the present system. In addition, the author presents historical information on persons who have served as judicial officers in the system, and presents stories of some unique and memorable cases which these judicial officers have handled.

TABLE OF CONTENTS

[1] Although there is a considerable amount of published history about the federal judiciary, the early years of the United States commissioner system have yet to be addressed in depth. This article addresses the development of the office of United States commissioner, its later evolution into the present magistrate judge system, and the dramatic transformation of the system since 1968. This article also describes some of the backgrounds and work of those who have served in these offices over the years.

I. THE EARLY FEDERAL COURTS

[I.1] To understand the beginning of the United States commissioner system, one must recognize that the original design of the federal trial courts grew out of a compromise between those who preferred a strong central national government, and those who wished to maintain the primacy of state government.[1] As a result, the Judiciary Act of 1789, which created a system of federal trial courts, permitted federal criminal cases to be tried in the newly established circuit and district courts, but left matters of arrest and bail to be governed by state law and handled by state judicial officers.[2]

[I.2] The original circuit courts were not the courts of appeal we know today; rather they were multi-judge federal trial courts with general jurisdiction over all significant federal civil and criminal cases.[3] District court jurisdiction was initially limited to admiralty cases, seizures and forfeitures, and federal crimes carrying a penalty up to six months or thirty lashes[4]. The circuit

courts initially consisted of two justices of the Supreme Court and a district judge.[5] Supreme Court justices did in fact ride circuit within their respective circuits (initially three circuits), trying civil and criminal cases until 1869.[6] Later, more circuits were created and more circuit judges were appointed to reduce the need for Supreme Court justices to sit as trial judges.[7] The original circuit courts were formally abolished, and their jurisdiction was transferred to the district courts in 1911.[8]

[I.3] It became apparent soon after passage of the Judiciary Act of 1789 that, because of resistance in some states to federal policies, federal criminal process could not rely solely upon state judicial officers.[9] For example, the excise tax on spirits led to the Whiskey Rebellion of 1791. In 1793, Congress authorized the federal circuit courts to appoint one or more discreet persons learned in the law to take bail in federal criminal cases.[10]

II. EVOLUTION OF COMMISSIONERS' JURISDICTION

[II.1] In 1812, Congress referred to these appointees, who had by then become known as commissioners of the circuit court, only as discreet persons and authorized them to take acknowledgments of bail and related affidavits according to a fee schedule based on state law.[11] It was not until 1817 that Congress first officially named them commissioners of the circuit court, and extended to them the authority to take depositions in civil cases.[12]

[II.2] As sectionalism and opposition to federal polices, such as the fugitive slave laws, grew in intensity, dependence upon state authority to appoint persons to serve the federal courts was relying on a broken reed. [13] Thus, in 1842 Congress authorized circuit court commissioners to exercise general criminal process in federal cases by issuing arrest warrants and holding persons for trial.[14] Opposition to federal judicial authority, however, continued to grow.

[II.3] In some states, commissioners who enforced the fugitive slave laws were the subject of abolitionist fury, likely aggravated by the Fugitive Slave Act of 1850. That Act granted commissioners a fee of $10 if a slave was returned, but only $5 if the slave remained free.[15] In 1857, a commissioner in Syracuse, New York, was conducting a hearing on a runaway slave, when someone shut off the lights in the commissioner s office, allowing others to use crossbars and clubs to free the slave .[16] During the same decade, in Boston, Massachusetts, Commissioner Edward G. Loring lost his job teaching law at Harvard because he enforced the fugitive slave law.[17]

[II.4] The jurisdiction and role of the commissioners was repeatedly expanded throughout the nineteenth century, reflecting the rapidly changing social and economic needs of the country. Commissioners were given responsibility to adjust seaman s wage disputes,[18] to issue process to enforce the 1866 Civil Rights Act,[19] to conduct extradition hearings,[20] to conduct hearings to determine the exclusion of Chinese aliens,[21] to enforce internal revenue laws,[22] and to enforce migratory bird treaties and federal wildlife and game laws.[23] Commissioners were also

authorized to issue search warrants in connection with specific federal crimes, such as counterfeiting and customs law violations.[24]

[II.5] Growth in the number of commissioners (there was no limit on the number the circuit court could appoint and by 1878 their number had increased to 2,000), coupled with the reliance on fees for the various functions performed, became a fertile source of criticism.[25]

[II.6] One Congressional report, in 1891, concluded that many commissioners were prone to issue complaints and hold preliminary hearings at the slightest, real, imagined or contrived, violation of federal law. [26] Another report to Congress, in 1894, stated

> It also appears that some of the commissioners had their professional witnesses whose duty it was to scour out the country for violations of the revenue laws, report, swear out warrants, and attend as a witness in the case, and draw his per diem for attendance and mileage from the place of arresting defendant, irrespective of the place of service of the subpoena.[27]

[II.7] Another source of complaint was that there was no prohibition on commissioners holding other federal or state offices, including political offices. Because the circuit courts also appointed clerks of court and registers in bankruptcy, the result was that a single person often occupied all three positions, thus maximizing compensation through fees.[28] Commissioners sometimes also served as state justices of the peace, and even as U.S. postmasters and political leaders. For example, Commissioner Robert M. Hunter of Poughkeepsie, New York, who served from 1871 to 1897, was also elected a justice of the peace, was appointed postmaster, and served as county Republican chairman during his tenure as a Commissioner.[29] He was succeeded as Commissioner by James L. Williams, a local Democratic leader, in 1901.[30] Holding multiple offices resulted in an 1896 complaint by one congressman that

> In some instances, under the existing system, one gentleman is not only clerk of the circuit court, but . . . also clerk of the district court, he is jury commissioner, and a commissioner, under the law as it stands, of the United States Circuit Court. He is Pooh-Bah. He does everything except pay himself.[31]

[II.8] One of the Pooh Bahs of the era was Millard P. Fillmore, son of the thirteenth president, who was appointed commissioner of the circuit court and clerk of the circuit and district courts for the former Northern District of New York. Commissioner Fillmore served from 1868 to about 1886.

[II.9] To address these perceived problems, in 1896 Congress renamed the office of commissioner of the circuit court to United States Commissioner. Congress established a four year term, subject to removal by the district court at any time. There were no minimum

qualifications, compensation was determined under a uniform fee schedule, and there was a prohibition against holding other federal, civil or military offices.[32] There developed what many commissioners thereafter called the laundry list, a detailed list of fees for each specific action taken by a commissioner. For example, issuing a commitment: $1.00; issuing an arrest or search warrant: $.75; drawing a bail bond: $.75; administering an oath: $.10. Conducting a preliminary hearing earned a commissioner $5 per day, with one additional per diem if a continuance were needed. Issuing process in civil rights cases earned $10. Chinese exclusion proceedings, which occurred predominantly in the western areas of the country, earned commissioners $5 per case.[33]

[II.10] Despite a 127% increase in the cost of living between 1896 and 1942, the fee schedule was not changed until 1946. Commissioners were required to keep their own records, forms, and stationary; there was no provision for clerical staff, or for transportation reimbursement or telephone service.[34] Because, during prohibition, some commissioners received fees which totaled two to three times a district judge s salary,[35] the fee schedule was changed in 1946 to one based on the volume of matters handled, with a limit of $7,500. The limit was raised to $10,500 in 1957.[36] However, few commissioners ever reached these limits. As of 1942, there were about 1,000 commissioners, and in 1941 the average amount of fees received by a commissioner was $250.[37] Following a 1942 Administrative Office Report on the United States Commissioners, the Judicial Conference directed termination of positions of commissioners handling fewer than twenty cases per year.[38] By 1965, there were 713 commissioners with an annual average cost of $1,400, reflecting increases in the fee schedule as well as some reimbursement for office expenses provided by the 1946 legislation.[39] After the 1946 legislation, commissioners were also given, for the first time, copies of the official United States Code. In 1943, a manual containing detailed explanations on every aspect of a commissioner s criminal case duties was provided, and that manual is fairly consistent with modern practice.

[II.11] The inadequacies of the fee system were graphically described by Commissioner Margaret Keenan Harrais of Valdez, Alaska. She noted in 1941 that in smaller, more isolated Alaska settlements there was difficulty obtaining qualified commissioners for the compensation available.[40] Commissioner Harrais recalled one commissioner who was appointed and sent into the community during prohibition, when no one else would accept the appointment because of the meager fees. The appointee, realizing in Commissioner Harrais words, that the office did not yield an honest living, immediately wired for a boss bootlegger friend to come. They both did well financially to the disgrace of the Department of Justice and the breaking down of every vestige of respect for law in that community. [41]

[II.12] Another recurring criticism of the commissioner system was the absence of a requirement that the commissioner be trained in the law. Of the commissioners on duty in 1942, not more than one-half were attorneys, although most commissioners in large cities were lawyers. Among the other professions and occupations represented were editors, real estate brokers, insurance agents, merchants, miners, photographers, physicians, a chiropractor, housewives, state justices of the peace, and United States district court clerks and deputy clerks.[42] The commissioners

surveyed for the report varied in age from 26 to 87, and about 8% were women. As of June 30, 1963, there were 695 commissioners on duty, of which 225, or 30%, were non-attorneys.[43]

[II.13] Prior to 1900, some commissioners were authorized to handle violations of certain national park laws and regulations, but it was not until 1940 that commissioners were authorized to try petty offense cases on federal enclaves such as military bases and Indian reservations.[44]

[II.14] During most of the history of the commissioner system, if the commissioner was a lawyer, the work would be conducted in his or her law office or, occasionally, in a park ranger station. Commissioners, like magistrate judges today, were expected to be available on a twenty-four hour basis. In less urban venues, proceedings were held from the back of station-wagons or even on boats.[45]

[II.15] Despite the difficulties created by the fee system and the absence of any minimum qualifications for those appointed, the system worked well and commissioners provided significant assistance to the federal courts as their adjunct judicial officers.[46]

III. EVOLUTION OF MAGISTRATE JUDGE JURISDICTION

[III.1] After more than twenty-five years of studies and congressional hearings, on October 17, 1968, the Federal Magistrate s Act of 1968 was enacted.[47] The Act abolished the office of United States Commissioner and created the office of United States Magistrate. The new judicial officer was granted authority to exercise all powers previously exercised by the commissioners, along with additional duties such as assisting district judges in the conduct of pretrial and discovery proceedings, review of habeas corpus petitions and acting as special masters.[48] The 1968 Act also provided that magistrates could be given authority to perform other duties not contrary to law or the constitution.[49] The first United States magistrate took office May 1, 1969. A one year pilot program followed in which the new magistrate system was implemented in the Southern District of California, the District of Columbia, the District of New Jersey, the District of Kansas and the Eastern District of Virginia. After appropriation of funds, appointments began to be made throughout the country in late 1970. By July 1, 1971, the new system of magistrates had replaced the former commissioner system in all district courts.[50]

[III.2] The Federal Magistrate's Act was not without its opponents, particularly part-time commissioners who were then required to be members of the bar, but believed they were to have been grandfathered into the new system. One commissioner of the Middle District of Georgia emotionally wrote to President Nixon in 1971:

> We represent over a combined total of 60 years of service to this court, our nation. One of us was on the Death March of Bataan . . . another, was in the Navy for two years in the Pacific at Iwo Jima, Okinawa, the Philippine Island Liberation and Occupation Fleet of

> Japan. We are not unfamiliar with service for our Nation and we live in full faith that our country will serve us fairly . . .. [51]

Implementation of the Act without exceptions for the non-lawyer commissioners went forward nevertheless.

[III.3] The initial authorization of 542 magistrate positions (82 full-time, 449 part-time and 11 combined positions for part-time referees in bankruptcy and court clerks) replaced more than 700 United States commissioner and national park commissioner positions.[52] Salaries were set at $22,500 for full-time magistrates; $11,000 for part-time magistrates.[53]

[III.4] Following the Supreme Court s decision in [illegible],[54] holding that under the 1968 Act, magistrates could not conduct evidentiary hearings in habeas corpus cases, Congress in 1976 authorized district judges to refer a variety of case-dispositive pretrial matters such as motions to dismiss, to suppress evidence, for summary judgment and for injunctive relief, to a magistrate to conduct evidentiary hearings as necessary, and to report and recommend a ruling to the district judge subject to a de novo review.[55]

[III.5] Authority to conduct the trial of civil cases, with or without a jury, with the consent of the parties was granted to magistrates by the Federal Magistrate Act of 1979,[56] which also expanded the jurisdiction of magistrates to handle all federal misdemeanors, not just petty offenses and, for the first time, granted authority to preside over jury trials in misdemeanor cases.[57] Perhaps of greater significance, the 1979 legislation provided a merit selection system for appointment of federal magistrates and, authorized funding for law clerks to assist magistrates.[58] The Ethics Reform Act of 1989 established compensation for full-time magistrates at 92% of a district judge s salary,[59] and, following a recommendation in 1988 by the Magistrates Committee of the Judicial Conference, the Civil Justice Reform Act of 1990 changed the title of the office to United States Magistrate Judge.[60] At present, the corps of magistrate judges is comprised of 447 full-time judges, and 71 part-time judges.

[III.6] The first magistrates were appointed in the Eastern District of Virginia. Gilbert Swink and Stanley King were simultaneously appointed to full-time positions on May 1, 1969; Alex Akerman, Jr. and Michael Morchower were appointed part-time magistrates the same day. The first woman to be appointed a magistrate was Beatrice Raymond of Wyoming, who was appointed a part-time magistrate January 1, 1971; Hon. Venetta S. Tassopoulos of Los Angeles, appointed on January 18, 1971, was the first female full-time magistrate. The first magistrate of African-American descent was Hon. Arthur L. Burnett, Jr. appointed June 27, 1969 in the District of Columbia; the first full-time Hispanic magistrate was Hon. John M. Garcia appointed November 9, 1972 in the District of Puerto Rico; outside Puerto Rico, the first full-time Hispanic magistrate was Hon. Eduardo E. De Ases of Corpus Christi, Texas, appointed October 6, 1980. At present , 112, or 21%, of the magistrate judges, are women. [61]

[III.7] The strong qualifications of magistrates and magistrate judges has resulted in the elevation of sixty-seven magistrate judges to Article III judgeships. Five have become circuit judges, and several others have become chief judges in their district.

[III.8] The contribution of magistrate judges to the administration of both federal civil and criminal justice cannot be overstated. In 1995, a combined total of 281,681 criminal and civil cases were commenced in the district courts.[62] To help administer the burgeoning federal caseload, magistrate judges routinely conduct scheduling and discovery conferences, enter scheduling orders governing the pretrial phases of the civil and criminal cases, conduct settlement conferences in civil cases, decide discovery disputes in both civil and criminal cases, conduct civil jury and bench trials, and report and recommend on dispositive motions over a broad range of civil and criminal matters, ranging from social security benefit cases to habeas corpus petitions, to requests for injunctive relief.

[III.9] Magistrate judges also issue arrest and search warrants, receive grand jury returns, conduct initial appearances, conduct arraignments and preliminary hearings, assign counsel, conduct detention hearings, set release conditions, take pleas and impose sentences in petty offense and misdemeanor cases; handle removal, prisoner transfer, extradition and competency hearings; and handle supervised release and probation revocation hearings. As of 1994, 17% of all federal civil trials were conducted by magistrate judges pursuant to consent of the parties.[63] In 1995, magistrate judges disposed of over 511,000 criminal and civil matters.[64] The Judicial Conference of the United States, in its 1995 Long Range Plan for the Federal Courts, characterized magistrate judges as "indispensable resources" to the work of the federal judiciary.[65]

[III.10] Through the growing number of their published opinions, magistrate judges make substantive contributions to the development of federal law. In discovery matters, their decisions are effectively the "law of the land." Though springing from modest origins, the work of United States Commissioners and magistrate judges has played an important and vital role in the growth and development of our nation's federal judiciary.

IV. PERSONS WHO WERE COMMISSIONERS - THE SECOND CIRCUIT[66]

[IV.1] The early commissioners in the Second Circuit who were attorneys, were lawyers of high achievement with distinguished records of public service to their local communities, their states, the nation, and the world.

[IV.2] Orsamus Holmes Marshall served as commissioner in Buffalo, New York, from 1868 to 1884. Marshall was a founder of the Buffalo Historical Society, a trustee and chancellor of the University of Buffalo, and a published historian on the subject of Indian history in the Great Lakes region. At his death, he received a published tribute in the Magazine of the American Historical Society, which ranked the quality of Marshall's historical writings with those of Francis Parkman.[67] Commissioner James Sheldon was appointed in Buffalo in 1864, and served

until 1871 when he was elected a judge of the New York superior court, now the state supreme court. Judge Sheldon was a founder of the University of Buffalo Law School and but for his death in 1887, would have been its first dean.[68] Another commissioner from Buffalo, James O. Putnam, was appointed by Abraham Lincoln as counsul at Harve, France.[69]

[IV.3] Amasa Junius Parker, Jr. of Albany, New York, was appointed a commissioner in 1865, the year after graduating from Albany Law School. While still a law student, Parker clerked in the law firm of Cager, Porter and Hand, which was the firm of Learned Hand s father. Parker joined the New York State National Guard while in college, became a major in the Guard during the Civil War, and rose to the rank of general in 1886. Parker was president of the board and trustee of Albany Law School for 25 years.[70]

[IV.4] Jonathan Rider Cady of Hudson, New York, a relative of Elizabeth Cady Stanton, served as commissioner during the 1880's. His biography, in the 1897 History of the Bench and Bar of New York, extends over four pages and describes his great success as a criminal defense lawyer. He also served as postmaster of Hudson, appointed by President Chester Arthur. Early in his career, in 1872, Cady assisted Samuel Tilden in the investigation of the New York City Tammany Hall judges. That investigation led to the resignation of Judge Albert Cardozo, father of Justice Benjamin Cardozo.[71]

[IV.5] Although born in New Hampshire, after starting his legal career studying law with Millard Fillmore in western New York, Isaiah T. Williams relocated to New York City where he became a prominent attorney, successfully defending Horace Greeley in a number of important libel cases. [72]

[IV.6] George Webb Morell served as commissioner for the circuit court of the Southern District of New York from 1854 to 1861. A West Point graduate, he served in the Army Corps of Engineers before becoming an attorney, working on improvements to Lake Erie. After serving as commissioner, Morell was a major-general in the Civil War.[73]

[IV.7] Samuel Appleton Blatchford, son of Supreme Court Justice Samuel Blatchford, was a partner in a predecessor firm to Cravath, Swaine and Moore, of New York City, and served as a commissioner in the Southern District of New York.[74]

[IV.8] Michael F. McGoldrick, appointed a commissioner in Brooklyn, New York, in 1914, was described in one local history as one of the venerable and universally honored members of the New York State Bar. Born in County Donegal, Ireland in 1855, McGoldrick graduated from Manhattan College and Columbia Law School, and served as chief clerk of the Kings County Surrogate s Court for several years.[75]

[IV.9] Although he was then already seventy-seven, General Horatio C. King was appointed a United States Commissioner in Brooklyn in 1914, after running unsuccessfully for state comptroller in 1912 on the Progressive Party ticket. King had studied law in Pennsylvania in the

office of Edwin M. Stanton, Lincoln s Secretary of War, and served with General Grant when Lee surrendered at Appomattox. Commissioner King s colorful career and brief service as a commissioner ended with his death, at age 81, in 1918.[76]

[IV.10 In Connecticut, George M. Woodruff, a nephew of then circuit court judge Lewis B. Woodruff, both of Litchfield, was appointed commissioner in 1868. Commissioner Woodruff, a Yale College and Harvard Law School graduate, served for several years as a member of the Connecticut state legislature. Woodruff, who was commissioner until 1901, also served forty years as town treasurer and probate judge. One of Commissioner Woodruff s family also had the first automobile in Litchfield and thus obtained Connecticut license plate no. 1. When his last direct descendent died, the state demanded return of the plate, but in 1991 Governor Lowell Weicker, Jr., interceded, and Connecticut 1 is still driven by a relative of Commissioner Woodruff.[77]

[IV.11 Frank B. Brandegee became a Commissioner in 1889 in New London, Connecticut, at the age of 25, one year after he was admitted to the bar. Although he was a commissioner for only a few years, he later served for ten years as corporation counsel of New London, and as a congressman and United States Senator from Connecticut from 1905 to 1927.[78]

[IV.12 Several Vermont commissioners present an extraordinary record of public service as members of the state legislature, as state s attorneys, as judges of the state s supreme court, as mayors, at least one as governor, and several as congressmen and United States Senators. Edward J. Phelps of Burlington, Vermont, was appointed commissioner in 1871 and served until a few years prior to his death in 1900. Described at the time as the most accomplished lawyer Vermont has produced, Phelps was, from 1882 until 1900, professor of medical jurisprudence at the University of Vermont and Kent Professor of Law at Yale, and in 1881 was president of the American Bar Association. In 1885 Phelps was appointed Ambassador to Great Britain by President Grover Cleveland and, but for the opposition of some Boston Irish Democratic leaders, Commissioner Phelps would have been appointed Chief Justice of the United States by Cleveland in 1888 to fill the vacancy created by the death of Chief Justice Morrison Waite.[79]

[IV.13]George F. Edmunds, also of Burlington, became a commissioner in 1882, while still a member of the United States Senate, and served until 1895, four years after he resigned from the Senate. Edmunds was a strong contender for the Republican nomination for president in 1880 and 1884 and, while senator, helped pass the Electoral Count Bill which resolved the disputed Hayes-Tilden election of 1876, drafted the basic sections of the Sherman Act, and declined several opportunities for appointment to the Supreme Court. After leaving the Senate and resuming practice, Edmunds successfully argued the Pollack case, which struck down the Income Tax Act of 1894. In 1928, the New York Times declared in intellect no New England senator except Webster ever surpassed him. [80]

[IV.14]Warren R. Austin of St. Albans, Vermont, was appointed United States Commissioner in 1907 and served until 1914. Austin was mayor of St. Albans in 1909 and elected to the United

States Senate in 1931, where he served until 1946 when President Truman appointed him the first United States Ambassador to the United Nations.[81]

V. STORIES FROM JUDICIAL OFFICERS

[V.1] The variety of work assigned to commissioners and magistrate judges is illustrated by recollections of some of those judicial officers. Since Baltimore Washington Parkway is a national park, it is patrolled by park rangers. Magistrate Judge Daniel E. Klein, Jr., appointed commissioner in Maryland in 1968, recalled that commissioners handling traffic cases from the parkway ran a night court operation involving pornography, smuggling, drug trafficking, unauthorized use of stolen vehicles, and miscellaneous traffic violations. The volume of cases was so great that several commissioners would rotate through the duty assignment so they could each reach their $10,500 annual fee limit, and then turn over the duty to another commissioner. Judge Klein recalled the volume was so large that a commissioner would drive home on occasion with a briefcase of as much as $30,000 in cash from forfeitures and fines. Drug cases involving young men under age 25 had their own special form of pretrial diversion. If the young man and his parents agreed he would join the military, the charge was dropped. According to Judge Klein, an Army recruiter was present with the assistant United States attorney, and upon the military oath being administered to the defendant, the government s motion to dismiss the charges would be granted.[82]

[V.2] In December, 1968, the Georgia notorious kidnapping of Barbara Jane Mackle and her shocking burial alive for 83 hours in a pine box in northwest Atlanta held the nation s attention. The kidnapper, Gary Krist, was apprehended in a swamp near Ft. Myers, Florida, and required a Sunday morning hospital room initial appearance on federal kidnapping charges. That initial appearance was handled by commissioner George Swartz, now a magistrate judge in the Middle District of Florida, who set bail in the amount of $500,000, the amount of the paid ransom. Krist was eventually tried in Georgia state court, and sentenced to life imprisonment.[83] The entire story, including Judge Swartz s role, was the subject of a book 83 Hours Till Dawn.[84]

[V.3] Judge Stephen Karr of Grand Rapids was appointed a commissioner in 1950 and served as a magistrate until 1988. Judge Karr recalled a Christmas week in which a United States Marshal presented him with a prisoner wearing handcuffs and a Santa Claus suit. The prisoner had been arrested after robbing a local bank. In Judge Karr s words he was appropriately attired in the clothing of the season. After the initial hearing, we wished each other a Merry Christmas and I committed him to the local jail. The local press in reporting the incident described me as the judge who put Santa Claus in prison. [85]

[V.4] Hunting violations involving migrating birds, including pelicans, were often handled by Judge Kenneth Knutson of Minot, North Dakota. Judge Knutson recalled one hunter who was brought in by his wife, who sat him down and marched up before me and demanded to make a statement on the reason for her husband s appearance. She said that she had spent $150 to get a shotgun for her husband so he could go hunting and leave her at peace at home. He promptly

went out and not knowing the difference between a pigeon and a pelican, he owes $300 for the birds he shot and now wants her to pay. When she said she would not do this, the husband placed $300 on my desk and while walking out, asked the federal attorney if he knew where he could find a good divorce lawyer. [86]

[V.5] Judge James T. Balog of Chicago, Illinois, appointed commissioner in 1967 and recently retired as magistrate judge, recalled an interesting bail question which arose in his first week of duty. The defendant had planted dynamite sticks in a suitcase of his wife, the intended victim. The evidence showed the husband had tried twice earlier, through hired assassins, to kill his wife with dynamite. When the detonating cap in the suitcase exploded, it depressurized the airplane in which she was traveling, and the airplane with its seventy-eight passengers made a forced landing. The government argued that the defendant should be held without bail becaue only a district judge could set bail in a capital case. Judge Balog determined that since no one had died, it was not a capital case, and he set bail at $100,000, a decision later affirmed by the district judge. After the defendant was convicted, his wife offered a $5,000 reward for evidence which could prove her husband s innocence.[87]

[V.6] Judge Robert W. McCoy of New Mexico, appointed in 1963, described how exercising petty offense jurisdiction could interfere with a commissioner s law practice. A Navajo defendant was charged with assaulting his uncle with his pickup truck on a federal highway adjacent to a reservation. Upon the defendant s guilty plea, entered in the judge s law office, the defendant was sentenced to thirty days in the county jail. On each of the next three Thursdays, the visiting days at the jail, about twenty members of the defendant s family crowded into the judge s 12' x 14' waiting room stoically pleading for mercy for the defendant. They sat, they stared, they spoke not, for interminable minutes -- finally, a spokesman in broken English said: He done no wrong, we ask he be out. Judge McCoy concluded the story, In the interest of my private practice -- the few clients standing elbow to elbow in the reception room -- and contrary to justice -- out of desperation on the third trip -- his sentence was suspended, and my practice resumed. [88]

[V.7] Judge Cameron Wolfe, of Oakland, California, who served as a part-time commissioner and magistrate from 1946 to 1974 when he became a bankruptcy judge, recalls the training process as follows: I called Chief Judge St. Sure and asked what is a U.S. Commissioner? The Chief Judge replied, Go look it up! [89] While relieving a commissioner in San Francisco, Judge Wolfe conducted a bail hearing for the leader of the Black Panthers, Bobby Seal. Upon setting a $50,000 cash bail, Seal s attorney shouted and ranted that the bail deprived Seal of his liberty and that his client would rot in jail. Judge Wolfe remained adamant, left the fifteenth floor courtroom, and proceeded to get on the elevator. Thereupon, Judge Wolfe realized he was in the midst of Seal supporters. As the judge recalled, It was a long ride to the ground floor. Judge Wolfe later learned that after denouncing the bail as cruel and arbitrary, Seal s lawyer walked across the hall to the clerk s office and paid the $50,000. Seal left the courthouse in the next elevator.[90]

[V.8] To avoid disrupting his sedate business and private practice, Judge Wolfe arraigned prisoners in his back office, which had a glass door connecting to a corridor. This practice came to an end when a prisoner crashed through the glass door during an initial appearance and ran down the hall with the agents giving chase, their guns drawn. There were no more hearings on the fourteenth floor of the Oakland Central Bank Building.[91]

[V.9] In Vermont, a would-be maple syrup entrepreneur who mistakenly ran his maple tree tap lines into the national forest was prosecuted for misappropriation of government property. After his defense that he did not intrude on government property was rejected in the trial before Magistrate Judge Jerome Neidermeier, the judge exercised leniency and imposed a sentence of $25. While the United States Marshals watched with evident concern, the defendant then placed a brown paper bag on the table and withdrew a jar of a liquid comparable in appearance to motor oil. Telling the court that it represented the total results of his ill-fated maple syrup enterprise, the defendant requested to be allowed to tender the jar and contents in payment of the fine. When asked if it could be used on pancakes, the defendant answered nope. Taking judicial notice that under Vermont s stringent standards for maple syrup, the proffered syrup was no better than grade C, and not the required grade A in quality, Judge Niedermeier insisted on payment in the coin of the realm. [92]

[V.10] In 1985, dancer Joey Heatherton, needing a passport in a hurry, went to the U.S. Passport Office in Rockefeller Center in New York City. When the clerk failed to promptly process her application, Ms. Heatherton angrily yanked out a large swatch of the clerk s hair. She was charged under federal law with disorderly conduct and disruption of governmental administration. Defended by the late William Kunstler, Ms. Heatherton was tried in front of Magistrate Judge Sharon Grubin, in September, 1986. After considering the evidence, Judge Grubin found Ms. Heatherton lacked the required intent and therefore was not guilty as, in the words of Murray Kempton, given the tumults, dawdlings, and perplexities existing in the Passport Office, which would turn Griselda into a termagant, there was no peace to disturb nor orderly administration of government to disrupt.[93]

[V.11] A few magistrate judges have had temporary assignments in foreign countries, overseeing verification hearings when United States citizens serving foreign prison terms seek to complete a foreign prison term in the United States. Magistrate Judge Richard W. Peterson, from the Southern District of Iowa, presided over prisoner transfer hearings in Mexico, Peru, and Bolivia. In Bolivia, a young American woman was one of those transferred. While in custody in Bolivia, she had been allowed to have her two year child with her. Judge Peterson recalls a poignant scene when she returned to this country to complete her prison term, and custody of her child was transferred from her at the airport in Miami, Florida.[94]

[V.12] Chief Justice Harlan Fiske Stone was sworn in as Chief Justice by United States Commissioner Wayne Hackett, in Colorado's Rocky Mountain National Park, on July 4, 1942. Commissioner Hackett administered the oath in a log cabin in the park, with twenty-five park rangers and park officials as witnesses. Chief Justice Stone and his wife were vacationing in the

park, and desired that the ceremony be conducted "without fuss." Commissioner Hackett accomodated that request.[95]

[V.13] Although not possessing the full range of federal judicial power, magistrate judges today contribute significantly to the ability of the federal courts to dispense justice on a timely basis. The quality of today s magistrate judges makes them worthy successors to those who were indeed discreet persons learned in the law.

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1. Charles A. Lindquist, The Origins and Development of the United States Commissioner System, XIV, The American Journal of Legal History 3(1970).

2. 1 Stat. § 33 (1789).

3. 1 Stat. 73 § 4 (1789).

4. 1 Stat. 73 § 9 (1789).

5. 1 Stat. 73 § 4 (1789).

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7. Id. at 45.

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