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APPROVED
OCT 21 1976

8/10/21/76

THE WHITE HOUSE
WASHINGTON
October 20, 1976

ACTION

Last Day: October 23

Posted
10/21/76

archive
10/21/76

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *Jim Cannon*
SUBJECT: S. 1283 - Jurisdiction of U.S. Magistrates

Attached for your consideration is S. 1283, sponsored by Senator Burdick.

The purpose of the enrolled bill is to clarify and define additional duties which may be assigned to U.S. magistrates at the discretion of U.S. District Court Judges. The legislation was introduced at the request of the Judicial Conference of the United States.

A detailed description of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 1283 at Tab B.



OCT 30 1976



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1283 - Jurisdiction of U.S.
Magistrates
Sponsor - Sen. Burdick (D) North Dakota

Last Day for Action

October 23, 1976 - Saturday

Purpose

To clarify and define additional duties which may be assigned to a U.S. magistrate at the discretion of a U.S. District Court judge.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Administrative Office of the United States Courts	Approval

Discussion

The Magistrates Act of 1968 created a system of full-time and part-time magistrates who perform various judicial duties under the supervision of the district courts in order to ease court congestion. That Act afforded the district court judges broad discretion in assigning duties to magistrates; any district court, with the concurrence of the majority of judges for the district, can establish rules specifying duties for, or assigning additional duties to, magistrates so long as the duties "are not inconsistent with the Constitution and laws of the United States." The additional duties include



preliminary review of applications for posttrial relief by convicted individuals and submission of recommendations to facilitate the district court's decision on such cases.

In several districts, many of the magistrates were authorized to conduct evidentiary hearings in habeas corpus hearings and to submit to district court judges recommended findings of fact and conclusions of law, which, if accepted by the district court, would then dispose of the case. However, a 1974 Supreme Court case held that a magistrate could make merely a "preliminary review" of a petition but that the statute did not authorize a magistrate to hold an evidentiary hearing in a habeas corpus proceeding.

The enrolled bill is, principally, a response to the Supreme Court's ruling and is intended to clarify the original legislative intent of the 1968 Act concerning the assignment of duties to magistrates. It would also define the procedures to be followed by the magistrate in performance of those duties.

Summary of S. 1283

S. 1283 would eliminate current law's requirement that the majority of judges in a district court concur in rules and other assignments of duties to magistrates and, instead, authorize any single judge to designate a magistrate to:

-- Hear and determine any pretrial matter pending before the court, except for certain dispositive motions. The excepted motions a magistrate could not act upon are motions (1) for injunctive relief, (2) for judgment on the pleadings, (3) for summary judgment, (4) to dismiss or quash an indictment or information made by the defendant, (5) to dismiss or to permit maintenance of a class action, (6) to dismiss for failure to state a claim upon which relief may be granted, and (7) to involuntarily dismiss an action. However, a magistrate would be able to hear and make recommendations concerning these motions.

-- Conduct hearings, including evidentiary hearings, on habeas corpus writs and other petitions for posttrial relief. The magistrate would be required to file proposed findings and recommendations with the court, as well as provide copies of the same to all parties in a case.

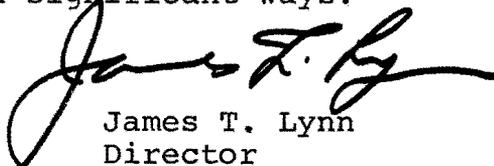
The bill would also reenact authority for magistrates to serve as special masters in civil cases. If a party objects, the magistrate appointed as a special master would be bound by the applicable Federal Rule of Civil Procedure governing the powers of special masters, the conduct of proceedings before them, and the submission of reports. The authority to assign to magistrates additional duties which are not inconsistent with the Constitution and Federal law would also be retained.

In all situations the magistrates' rulings on preliminary matters, their proposed findings of facts, and their recommendations would be subject to review by the judges. Rulings on preliminary matters would be reconsidered when shown to be "clearly erroneous or contrary to law." In habeas corpus proceedings and other applications for posttrial relief, the judges, to the extent parties file written objections, would review proposed findings and recommendations, and make de novo determinations with respect to the particular objections.

Finally, the enrolled bill would make conforming amendments to the procedural rules governing State and Federal habeas corpus cases.

* * * * *

In its attached views letter the Department of Justice states: "Federal magistrates may be expected to perform very well the various duties that could be assigned to them under this legislation, and the provisions for review of their actions by the district judges afford litigants appropriate safeguards. The bill thus represents a conservation of judicial resources at a time when the need for relieving Federal judges of some of their work has become critical. This bill should operate to the benefit of the Federal judicial system in significant ways."



James T. Lynn
Director

Enclosures

Department of Justice
Washington, D.C. 20530

October 8, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

Pursuant to your request I have examined a facsimile of the enrolled bill, S. 1283, "To improve judicial machinery by further defining the jurisdiction of United States magistrates, and for other purposes."

The bill would amend 28 U.S.C. 636(b) so as to clarify and enlarge the authority of federal district judges to assign duties to magistrates, notably with respect to the hearing of pretrial motions in criminal and civil cases and the hearing of habeas corpus petitions under 28 U.S.C. 2254 and 2255. Different procedures are provided depending upon whether the pretrial matter is preliminary in nature or whether the motion might be dispositive of the case. In all situations the magistrates' rulings on preliminary matters, their proposed findings of facts, and their recommendations will be subject to final review by the judges. Rulings on preliminary matters will be reconsidered when shown to be "clearly erroneous or contrary to law." In other situations the judges, to the extent parties file written objections, will review proposed findings and recommendations and make "de novo" determinations with respect thereto. The bill makes conforming amendments to the procedural rules governing 28 U.S.C. 2254 and 2255 proceedings.

The present system of magistrates jurisdiction was established under the Magistrates Act of 1968, the primary purpose being to relieve Federal judges of some of the lesser burdens of an ever-increasing caseload. The ability of judges to utilize magistrates under the Act has been restricted in a number of appellate decisions, most notably Wingo v. Wedding, 418 U.S. 461 (1974), in which the Supreme Court ruled that magistrates may not conduct the hearings necessary in handling habeas corpus petitions. These various restrictive decisions would be overcome by the enactment of the enrolled bill, and the intent of Congress to foster the utilization of magistrates would receive new emphasis.



The Department of Justice has supported this legislation. Federal magistrates may be expected to perform very well the various duties that could be assigned to them under this legislation, and the provisions for review of their actions by the district judges afford litigants appropriate safeguards. The bill thus represents a conservation of judicial resources at a time when the need for relieving Federal judges of some of their work has become critical. This bill should operate to the benefit of the Federal judicial system in significant ways.

Accordingly, the Department of Justice recommends Executive approval of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned above the typed name.

Michael M. Uhlmann
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 7

Date: October 18

Time: 900pm

FOR ACTION:

Dick Parsons *DP*
Bobbie Kilberg *BK*
Max Friedersdorf *MF*

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19

Time: 300pm

SUBJECT:

H.R1283-Jurisdiction of U.S. Magistrates

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

October 6, 1976

WILLIAM E. FOLEY
DEPUTY DIRECTOR

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

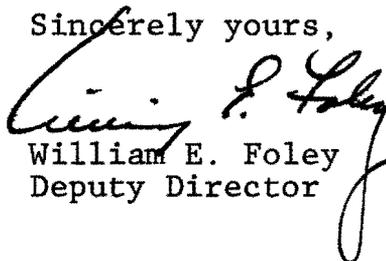
Dear Mr. Frey:

This is in response to your enrolled bill request of October 6, 1976, seeking our views and recommendations on S. 1283, "To amend title 28 of the United States Code to broaden and clarify the jurisdiction of United States magistrates."

United States magistrates have played an indispensable roll over the last five years in assisting the judges of the United States district courts in meeting their heavy and increasing caseload burdens. The legislation would clarify the current status of the law and expand the jurisdiction of magistrates to facilitate their use by district judges. The bill would expedite administration of justice in the federal courts.

The legislation was introduced at the request of the Judicial Conference of the United States, and is viewed by the Conference as a matter of highest priority. Executive approval is recommended.

Sincerely yours,



William E. Foley
Deputy Director

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

7

Date: October 18

Time: 900pm

FOR ACTION: Dick Parsons
Bobbie Kilberg
Max Friedersdorf

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19

Time: 300pm

SUBJECT:

S. 1283-Jurisdiction of U.S. Magistrates

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend approval

Ken Lazarus 10/19

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 7

Date: October 18

Time: 900pm

FOR ACTION:

Dick Parsons ✓
Bobbie Kilberg
Max Friedersdorf

cc (for information):

Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19

Time: 300pm

SUBJECT:

S. 1283-Jurisdiction of U.S. Magistrates

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

-x- For Your Comments

___ Draft Remarks

REMARKS:

Approve RB

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 7

Date: October 18

Time: 900pm

FOR ACTION: Dick Parsons
Bobbie Kilberg
Max Friedersdorf

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 19

Time: 300pm

SUBJECT:

S. 1283-Jurisdiction of U.S. Magistrates

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Recommend
Approval*

[Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503



To -
Johnston
10-18-76
3:30 p.m.

OCT 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1283 - Jurisdiction of U.S.
Magistrates
Sponsor - Sen. Burdick (D) North Dakota

Last Day for Action

October 23, 1976 - Saturday

Purpose

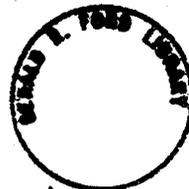
To clarify and define additional duties which may be assigned to a U.S. magistrate at the discretion of a U.S. District Court judge.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Administrative Office of the United States Courts	Approval

Discussion

The Magistrates Act of 1968 created a system of full-time and part-time magistrates who perform various judicial duties under the supervision of the district courts in order to ease court congestion. That Act afforded the district court judges broad discretion in assigning duties to magistrates; any district court, with the concurrence of the majority of judges for the district, can establish rules specifying duties for, or assigning additional duties to, magistrates so long as the duties "are not inconsistent with the Constitution and laws of the United States." The additional duties include



JURISDICTION OF U.S. MAGISTRATES

SEPTEMBER 17, 1976.—Committee to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DANIELSON, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 1283]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary to whom was referred the bill (S. 1283) to improve judicial machinery by further defining the jurisdiction of United States magistrates, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 2, line 5, strike the following language: "for failure to comply with an order of the court".

Page 2, beginning on line 23, strike "A judge of the court shall accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.", and insert in lieu thereof the following:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.

Page 3, immediately after line 16, insert the following:

SEC. 2. (a) (1) Rule 8(b) of the Rules Governing Section 2254 cases in the United States District Courts is amended to read as follows:

(b) Function of the Magistrate.

(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the petition, and submit to a judge of the court proposed findings of fact and recommendations for disposition.

(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.

(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.

(2) Rule 8(b) of the Rules Governing § 2255 Proceedings for the United States District Courts is amended to read as follows:

(b) Function of the Magistrate.

(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the motion, and submit to a judge of the court proposed findings and recommendations for disposition.

(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.

(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.

(b)(1) Rule 8(c) of such Rules Governing Section 2254 Cases is amended by striking out "and shall conduct the hearing" and inserting in lieu thereof the following: "and the hearing shall be conducted".

(2) Rule 8(c) of such Rules Governing § 2255 Proceedings is amended by striking out "and shall conduct the hearing" and inserting in lieu thereof the following: "and the hearing shall be conducted".

(c) The amendments made by this section shall take effect with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.

The purpose of the amendments to the Senate are as follows:

PURPOSE OF THE BILL

The purpose of the bill is to amend section 636(b), title 28 United States Code, in order to clarify and further define the additional duties which may be assigned to a United States Magistrate in the discretion of a judge of the district court. These additional duties generally relate to the hearing of motions in both criminal and civil cases, including both preliminary procedural motions and certain dispositive motions. The bill provides for different procedures depending upon whether the proceeding involves a matter preliminary to trial or a motion which is

dispositive of the action. In either case the order or the recommendation of the magistrate is subject to final review by a judge of the court.

The purpose of the amendments to the Senate act are as follows:

(1) The first amendment clarifies the intent of Congress that all motions to dismiss, and therefore dispositive motions, will be subject to the procedures of subparagraphs (B) and (C). Therefore such motions, which may be heard by the magistrate, will be determined by the judge, and those portions of findings and recommendations to which objection is made will require a de novo determination by the judge. This conforms to the intent of the Senate and the Judicial Conference, as well.

(2) The second amendment emphasizes and clarifies when a de novo determination must be made by the judge. The Committee believed that the S. 1283 was not clear with regard to the type of review afforded a party who takes exceptions to a magistrate's findings and recommendations in dispositive and posttrial matters. The amendment to subparagraph (b)(1)(C) is intended to clarify the intent of Congress with regard to the review of the magistrate's recommendations; it does not affect the substance of the bill. The amendment states expressly what the Senate implied: i.e. that the district judge in making the ultimate determination of the matter, would have to give fresh consideration to those issues to which specific objection has been made by a party.

The use of the words "de novo determination" is not intended to require the judge to actually conduct a new hearing on contested issues. Normally, the judge, on application, will consider the record which has been developed before the magistrate and make his own determination on the basis of that record, without being bound to adopt the findings and conclusions of the magistrate. In some specific instances, however, it may be necessary for the judge to modify or reject the findings of the magistrate, to take additional evidence, recall witnesses, or recommit the matter to the magistrate for further proceedings.

The approach of the Committee, as well as that of the Senate, is adopted from the decision of the United States Court of Appeals for the Ninth Circuit in *Campbell v. United States District Court for the Northern District of California*, 501 F.2d 196 (9th Cir.), cert. denied, 419 U.S. 879 (1974). The clarifying amendment merely draws upon the language of the Campbell decision to a greater extent:

In carrying out its duties the district court will conform to the following procedure: If neither party contests the magistrate's proposed findings of fact, the court may assume their correctness and decide the motion on the applicable law.

The district court, on application, shall listen to the tape recording of the evidence and proceedings before the magistrate and consider the magistrate's proposed findings of fact and conclusions of law. The court shall make a *de novo* determination of the facts and the legal conclusions to be drawn therefrom.

The court may call for and receive additional evidence. If it finds there is a problem as to the credibility of a witness or witnesses or for other good reasons, it may, in the exercise of

its discretion, call and hear the testimony of a witness or witnesses in an adversary proceeding. It is not required to hear any witness and not required to hold a *de novo* hearing of the case.

Finally, the court may accept, reject or modify, the proposed findings or may enter new findings. It shall make the final determination of the facts and the final adjudication. . . . (501 F. 2d at 206)

(3) The third amendment to S. 1283, which is section 2 of the act, as amended, makes changes in the *habeas corpus* rules of procedure.¹ Those rules were originally promulgated by the Supreme Court on April 26, 1976. The House recently approved legislation (H.R. 15319) making some changes in them and providing that they shall take effect on February 1, 1976.²

Rule 8(b), tracking the present Magistrates Act and case law, sets forth the authority of magistrates with respect to evidentiary hearings in postconviction cases and proceedings. Rule 8(b), as it presently will take effect, authorizes a district court, by local rule, to improve a magistrate to recommend whether or not an evidentiary hearing is necessary in order to dispose of a petition under 28 U.S.C. § 2254 or a petition under 28 U.S.C. § 2255.

This legislation expands the authority of magistrates beyond that set forth in Rule 8(b) of the habeas corpus rules of procedure. It is therefore necessary to change Rule 8(b) in order to make it consistent with the provisions of this legislation. Section 2 of the bill, therefore, inserts language into Rule 8(b) that will bring it into conformity with this legislation.

STATEMENT

When the Congress enacted the Magistrates Act in 1968 (P.L. 90-578), it created a system of full-time and part-time judicial officers who would perform various judicial duties under the supervision of the district courts in order to assist the judges of these courts in handling an ever-increasing caseload.

In the 93rd Congress, the Judiciary Subcommittee on Improvements in Judicial Machinery held 17 days of hearings, during which extensive inquiry was made into the caseload of federal district courts. During these hearings, the chief judges of 44 of the federal judicial districts personally appeared and testified before the subcommittee. The vast majority of the chief judges who testified stated that the magistrates were of assistance to the court in handling certain preliminary matters in both civil and criminal cases, and were of greatest assistance in handling petitions for the issuance of a writ of habeas corpus made by both state and federal prisoners in an effort to obtain a collateral review of the original conviction. A few of the district courts which had not made extensive use of the services of the magistrates were encouraged to do so as a means of freeing time of district court judges to preside at trials of other cases.

¹ Rule Governing Section 2254 Cases in the United States District Court and Rules Governing Section 2255 Proceedings for the United States District Courts.

² H.R. 15319 passed the House on September 14, 1976, by a vote of 359-4. See House Report No. 94-1471.

In several of the districts, the majority of the judges of the court authorized magistrates to hold evidentiary hearings in habeas corpus cases and to submit to a judge of the court recommended findings of fact and conclusions of law dispositive of the petition for a writ of habeas corpus. The recommendations of the magistrate would be reviewed by the judge who would then exercise the ultimate authority to issue an appropriate order.

However, on June 26, 1974, in the case of *Wingo v. Wedding*, 418 U.S. 461, the Supreme Court of the United States interpreted Section 636(b) of Title 28 of the U.S. Code, as authorizing the magistrate to make merely a "preliminary review" of a prisoner petition and expressly held that the statutory language did not evidence any intent by Congress that the magistrate be authorized to hold an evidentiary hearing in a habeas corpus proceeding.

In a dissenting opinion, the Chief Justice and Justice White dissented on the basis that Section 636(b) "should be interpreted to permit magistrates to conduct evidentiary hearings in federal habeas corpus cases", since such an interpretation would serve the principle objectives of the Magistrates Act. The dissenting opinion concluded with the following statement:

In any event, now that the Court has construed the Magistrates Act contrary to a clear legislative intent, it is for the Congress to act to restate its intentions if its declared objectives are to be carried out.

The bill under consideration by the committee would accomplish this restatement and clarification of the Congressional intention that the magistrate should be a judicial officer who, not only in his own right but also under general supervision of the court, shall serve as an officer of the court in disposing of minor and petty criminal offenses, in the preliminary or pretrial processing of both criminal and civil cases, and in hearing dispositive motions and evidentiary hearings when assigned to the magistrate by a judge of the court.

In addition to *Wingo v. Wedding* there are several other court decisions the result of which would be overcome by passage of this bill. In *T.P.O. v. McMillan* (7th Cir. 1972) 460 F.2d 348, the court held that a magistrate could not hear a motion to dismiss or a motion for summary judgment, even though an appeal was allowed from a final order of a magistrate to a judge of the district court. In *Ingram v. Richardson* (6th Cir. 1972) 471 F.2d 1268, the court held that a magistrate had no power to review the Secretary's denial of social security benefits and to make proposed findings of fact and conclusions of law which proposed order was then submitted to a district court judge for final decision. In *T.P.O. v. McMillan*, supra, the court stated:

We need not speculate in regard to what civil functions the magistrate can constitutionally perform, however, since Congress carefully intended that in regard to civil cases the magistrate was not empowered to exercise ultimate adjudicatory or decision making.

Also, in *Wilver v. Fischer* (10th Cir. 1967) 387 F.2d 66, which predated the Magistrates Act, the court held that a master could not be appointed to supervise discovery proceedings in civil actions.

Since introduction of S. 1283, the Supreme Court of the United States granted certiorari in *Weber v. Secretary of HEW*, 503 F.2d 1049 (CA 9 1064), and on January 14, 1976, resolved the conflict between *Ingram* and *Matthews* concerning the power of a district court to assign, under section 636(b), to a magistrate an action to review a final determination of the Secretary of Health, Education and Welfare on the question of whether a person was entitled to social security benefits. In *Matthews v. Weber* (January 14, 1976) — U.S. —, 44 LW 4065, the Supreme Court held that under section 636(b) it was competent for the court to assign as "additional duties" of the magistrate an action to review an award of Social Security benefits. The Supreme Court noted that the reference to the magistrate was "to prepare a proposed written order or decision, together with proposed findings of fact and conclusions of law where necessary or appropriate". Under subsection (b)(1)(B) of section 636 as amended by S. 1283, the magistrate could be given similar responsibilities with reference to certain dispositive motions, to applications for post-trial relief and to prisoner petitions brought under section 1983 of title 42 U.S. Code.

In 1968, when the Magistrates Act was passed, the total filings in the United States District Courts were 102,000 cases. In 1974, total filings amounted to 143,000 cases. In 1968, there were 323 district court judges. In 1974, there were 400 district court judges. The Congress in enacting the Magistrates Act manifested its intention to create a judicial officer and to invest in him the power to furnish assistance to a judge of the district court. The magistrate was given jurisdiction over petty criminal offenses and the Act also gave each district court the discretionary power to use the magistrate to assist a district court judge "in the conduct of pretrial or discovery proceedings in civil or criminal actions" and to make a "preliminary review of applications for posttrial relief" and to submit a report and recommendations "to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing".

The language quoted above is from the 1968 Magistrates Act. In *T.P.O. v. McMillan*, the decision restricting the power of magistrates in pretrial proceedings hinged on the judicial interpretation of congressional intent. Similarly, in *Wingo v. Wedding* the authority of the magistrate to hold an evidentiary hearing in a habeas corpus proceeding also hinged on an interpretation of congressional intent.

It seems to the committee that in 1968 the Congress clearly indicated its intent that the magistrate should be a judicial officer whose purpose was to assist the district judge to the end that the district judge could have more time to preside at the trial of cases having been relieved of part of his duties which required the judge to personally hear each and every pretrial motion or proceeding necessary to prepare a case for trial. That the magistrate has fulfilled this function seems clear from the statistics relating to magistrate activity in fiscal year 1976. In this year magistrates handled a volume of matters as shown in the following table:

In fiscal year 1976 magistrates handled a volume of matters as shown in the following table:

Criminal cases:	
Minor offenses.....	11, 692
Petty offenses.....	78, 474
Arrest warrants.....	22, 531
Search warrants.....	6, 068
Ball hearings.....	48, 616
Preliminary examinations.....	7, 142
Removal hearings.....	1, 727
Subtotal	176, 250
Post indictment arraignments.....	18, 694
Pretrial conferences.....	5, 397
Pretrial motions.....	7, 861
Probation revocation.....	726
Other criminal matters.....	2, 918
Subtotal	35, 596
Total criminal matters.....	211, 846
Civil cases:	
Prisoner petitions.....	8, 231
Pretrial conferences.....	17, 559
Motions.....	9, 583
Special master reports.....	684
Social security cases.....	1, 480
Other civil matters.....	2, 761
Total civil cases.....	40, 298

Rather than constituting "an abdication of the judicial function", it seems to the committee that the use of a magistrate under the provisions of S. 1283, as amended, will further the congressional intent that the magistrate assist the district judge in a variety of pretrial and preliminary matters thereby facilitating the ultimate and final exercise of the adjudicatory function at the trial of the case.

The Federal Rules of Civil Procedure provides many opportunities for the parties by motion to invoke a decision of the court. These opportunities range from a motion under Rule 6(b) to extend the time for an act, or a motion under Rule 4(e) specifying the manner of serving a summons, to a motion under Rule 12(b) to dismiss, or a motion under Rule 56 for summary judgment on the grounds that there is no genuine issue of fact to justify a trial. In between these extremes are various motions relating to discovery, to production of evidence, to physical examination of a party, to join necessary or proper parties, to set the time and place of a disposition, to suppress evidence, and to hold a pretrial conference under Rule 16, and others too numerous to mention.

Without the assistance furnished by magistrates in hearing matters of this kind, and others not specifically named, it seems clear to the committee that the judges of the district courts would have to devote a substantial portion of their available time to various procedural steps rather than to the trial itself.

Therefore, the committee has concluded that the enactment of S. 1283, as amended, will further improve the judicial system by clearly

defining the additional duties which a judge of the district court may assign to a magistrate in the exercise of the discretionary power to so assign as contained in Section 636(b) of Title 28 United States Code as herein amended.

Before turning to a detailed explanation of the bill, the committee believes that it should comment upon the contention that Article III of the Constitution imposes a limitation upon the judicial functions which this bill vests in a magistrate. In the federal court system, the primary court of general jurisdiction has always been the district court and, as such, it is an "inferior court" ordained and established by the Congress under Article III. But this is not to say that the Congress may not create other inferior courts. For example, it is believed that it would be competent for the Congress to create below the district courts a court of limited jurisdiction which would be roughly the equivalent of a municipal court in some of the state systems. Multi-tiered court systems developed simply in recognition of the fact that certain cases and judicial functions are of differing importance so as to justify different treatment by the court system. While the U.S. District Court has long been a single tiered court as far as original jurisdiction is concerned, the Congress has nevertheless recognized that it is not feasible for every judicial act, at every stage of the proceeding, to be performed by "a judge of the court".

In several instances, the Congress has vested in officers of the court, other than the judge, the power to exercise discretion in performing an adjudicatory function, subject always to ultimate review by a judge of the court. For example, a judgment or order of a referee in bankruptcy, adjudicating legal rights, is a final order unless an appeal is taken to a judge of the district court. Title 11 U.S.C., section 67(c); Rule 801, Rules of Bankruptcy Procedure.

Also, section 636(a)(3) of Title 28 vests in the magistrates the power to try persons accused of minor criminal offenses, which power was formerly vested in a United States Commissioner. Thus, under section 3401 of Title 18 United States Code, the magistrate has jurisdiction to try minor offenses and under section 3402 of Title 18, an appeal may be taken from the judgment of the magistrate to a judge of the district court.

Finally, section 1920 of Title 28 United States Code authorizes "a judge or clerk of any court" to tax costs in a case. Rule 54(d) of the Rules of Civil Procedure implements section 1920 by providing that costs may be taxed by the clerk on one day's notice and that on notice "the action of the clerk may be reviewed by the court". Therefore, by analogy, the committee believes that the judicial functions vested in the magistrates, as a judicial officer, by this bill are not in violation of Article III of the Constitution.

EXPLANATION OF THE BILL

No changes are made in section 636(a) of title 28 under which magistrates exercise the powers with respect to issuance of arrest warrants, search warrants, setting bail, preliminary hearings, and the trial of minor and petty offenses under section 3401 of title 18, United States Code.

The bill revises in its entirety section 636(b) under which magistrates could be assigned certain additional duties in the discretion of the court. This discretionary power to assign additional duties to a magistrate is continued but the discretion is vested in a judge of the district court rather than in a majority of all the judges of the court. Of course the scope of any permissible additional duties to be assigned can still be agreed upon by a majority of the judges, but the bill will permit exercise of the actual power of assignment to a single judge. Since assignments are frequently made in individual cases, or on an ad hoc basis, it seems preferable to vest the power in a single judge who can execute any required order of assignment or reference.

The initial sentence of the revised section uses the phrase "notwithstanding any provision of law to the contrary—". This language is intended to overcome any problem which may be caused by the fact that scattered throughout the code are statutes which refer to "the judge" or "the court". It is not feasible for the Congress to change each of those terms to read "the judge or a magistrate". It is, therefore, intended that the permissible assignment of additional duties to a magistrate shall be governed by the revised section 636(b), "notwithstanding any provision of law" referring to "judge" or "court".

The additional duties which can be assigned to a magistrate are classified into three categories set forth in subparagraphs (A) and (B) of subsection 636(b)(1) and in subsection 636(b)(2). These categories and the scope of the magistrate's authority are as follows:

1. *Pretrial matters.*—Under subparagraph (A) a judge, in his discretion, may assign any pretrial matter to be heard and determined by a magistrate. In scope, this includes a great variety of preliminary motions and matters which can arise in the preliminary processing of either a criminal or a civil case. As indicated by the statistical table set forth earlier in this report many of the magistrates are already hearing these pretrial matters under the authority contained in subsection 636(b)(2) of the present law. A statement was received at the Senate hearing on July 16, 1975, from Chief Judge Belloni of the District of Oregon setting forth a description of the various motions and pretrial proceedings which have been assigned to Magistrate Juba by the judges of the Oregon Court. A similar scope of additional duties is intended for magistrates under the provisions of S. 1283, as amended. Thus, the revised law will not unduly extend the magistrates' authority to hear pretrial matters but it will clarify the broad authority to refer "any pretrial matter".

Subject to the exception of the dispositive motions expressly named in subparagraph (A), the magistrate shall have the authority to not only hear the pretrial matter but also to enter an order determining the issue raised by the motion or proceedings. The magistrate's determination is intended to be "final" unless a judge of the court exercises his ultimate authority to reconsider the magistrate's determination.

The last sentence of subparagraph (A) makes it clear that a judge of the court has the ultimate judicial prerogative to review and reconsider a motion or matter "where it has been shown that the magistrate's order is clearly erroneous or contrary to law". The standard of "clearly erroneous or contrary to law" is consistent with the accepted and existing practice followed in most district courts when reviewing a pretrial matter assigned to a magistrate under existing law.

Use of the words "may reconsider" in subparagraph (A) is intended to convey the congressional intent that a matter "heard and determined" by the magistrate need not in every instance be heard a second time by the judge. However, if a party requests reconsideration based upon a showing that the magistrate's order is clearly erroneous or contrary to law then the judge must reconsider the matter. Of course, the judge has the inherent power to rehear or reconsider a matter *sua sponte*.

Thus, the revision proposed in this bill makes it clear that Congress intends that the magistrate shall have the power to make a determination of any pretrial matter (except the enumerated dispositive motions) and that his determination set forth in an appropriate order shall be "final" subject only to the ultimate right of review by a judge of the court. Under section 631 of the Magistrate Act (28 USC 631), a magistrate is required to be a member of the bar whose experience in the practice of law has been such as to persuade the appointing judges that he is competent to perform the duties of the office. If a particular magistrate does not have this competence it is assumed that a judge would not assign particular matters to the magistrate for hearing and determination. However, assuming such competence, it seems to the Committee to be inefficient and duplicative to require a "report and recommendation" from the magistrate to the judge as a prelude to a separate order by the judge in order to dispose of preliminary and pretrial matters. Thus the statute uses the term "hear and determine" in vesting the authority of a magistrate, subject, of course, to ultimate review by the court.

While subparagraph (A) does not specify a procedure to be followed by a party in obtaining reconsideration of a magistrate's order by the judge, it would normally be by motion duly served, filed and noticed. However, in some districts the local rules now in existence provide merely that the request for review be in a letter or other written form. Nor is a fixed time specified within which to obtain review of a magistrate's order in "any pretrial matter", since what is a timely request to a judge of the court will depend upon the nature of the pretrial matter. For example, an order by the magistrate under Rule 13(f) granting leave to serve and file an amended pleading asserting an omitted counterclaim, could be reviewed by a judge in due course and at a time set by the court or noticed by the parties. In such an instance there would be ample time within which the matter could be reconsidered. On the other hand, suppose a pretrial order under Rule 16 is issued by the magistrate following a pretrial conference held a week or less before a day certain setting for trial. In that instance, time is of the essence and review of the order by a judge should be sought and the matter reconsidered as soon as possible. Thus, under subparagraph (A), it is intended that the method and procedure for seeking reconsideration of a magistrate's determination of a pretrial matter can be set by local rules of court pursuant to section 636(b)(4), or by uniform rules, if uniformity is deemed necessary.

2. *Dispositive motions, Habeas Corpus, and Prisoner Petitions.*—As stated previously in this report, certain motions which are dispositive of the litigation are specifically excepted from the magistrate's power under subparagraph (A) "to hear and determine". These excepted motions are:

- (1) A motion for injunctive relief;
- (2) A motion for judgment on the pleadings;
- (3) A motion for summary judgment;
- (4) A motion to dismiss or quash an indictment made by the defendant;
- (5) A motion to suppress evidence in a criminal case;
- (6) A motion to dismiss for failure to state a claim upon which relief can be granted; and,
- (7) A motion to involuntarily dismiss an action for failure to comply with an order of the court.

It is not intended that a magistrate shall have the power under subparagraph (A) "to hear and determine" such dispositive motions. However, depending upon the qualifications and competence of a particular magistrate, it is intended that under subparagraph (B) a judge of the court, in his discretion, may assign such dispositive motions to a magistrate for hearing and submission of proposed findings and recommendation to a judge of the court for ultimate disposition.

Not only may these dispositive motions be assigned to the magistrate under subparagraph (B) but also there may be assigned application for posttrial relief made by individuals convicted of criminal offenses and petitions under section 1983 of title 42 United States Code brought by prisoners' challenging the conditions of their confinement. The authority of the magistrate under subparagraph (B) is clearly more than authority to make a "preliminary review". It is the authority to conduct hearings and where necessary to receive evidence relevant to the issues involved in these matters. Therefore, passage of S. 1283, as amended, will supply the congressional intent found wanting by the Supreme Court in *Wingo v. Wedding*, supra. Also this bill will overcome the effect of the decision in *T.P.O. v. McMillan*, supra, relating to motions to dismiss or motions for summary judgment. Further, passage of this bill will also permit a judge to refer to a magistrate the consideration and study of cases brought to review the Secretary's determination of entitlement to benefits under the Social Security Act, since these matters usually involve a motion by the agency for summary judgment.

Under subparagraph (B) the magistrate is required to submit proposed findings and his recommendation to the judge for disposition of the various proceedings included in subparagraph (B). As specified in subparagraph (C) a copy of the proposed findings and recommendation must be mailed to all parties. Written objections must be filed within 10 days. This is substantially the procedure and the time limit specified in Rule 53 where there has been a reference to a master. The bill would permit the court by local rules to specify whether the written objections must be in the form of a motion or other written form, as well as to specify any procedure for bringing the matter on for a formal hearing, if a formal hearing is to be required.

The judge is given the widest discretion to "accept, reject or modify" the findings and recommendation proposed by the magistrate, including the power to remand with instructions. Thus, it will be seen that under subparagraph (B) and (C) the ultimate adjudicatory power over dispositive motions, habeas corpus, prisoner petitions and the like is exercised by a judge of the court after receiving assistance from and the recommendation of the magistrate.

3. *Special Master and Trial by Consent.*—The third category of magistrates' additional duties is set forth in the proposed subsection 636(b)(2). The subsection expressly authorizes the magistrate to be appointed as a special master under Rule 53 of the Federal Rules of Civil Procedure. This merely carries forward the same provision in section 636(b)(1) of the existing law. This also carries with it a requirement that if a party objects to the reference to a master, the requirements and restrictions of Rule 53 must be met.

The second sentence of this subsection provides an exception to this the magistrate, to serve where one of the parties objects to the reference. This exception takes such cases out from the restrictions of Rule 53(b), which limits the conditions under which cases may be referred to a master, since no significant purpose is served by restricting the use of magistrates where the parties agree to this procedure. At the same time, Rule 53 contains many important rules governing the powers of masters, the conduct of proceedings before them, and the submission of reports. Thus, subsection 636(b)(2) retains these provisions in any case in which a magistrate is appointed as a special master.

Enactment of this new subsection 636(b)(2), and experience in the use of magistrates as special masters, may serve to occasion a reappraisal of the power of the court to appoint a special master, i.e., the magistrate, to serve where one of the parties objects to the reference. [See, *La. Bay v. Howes Leather Co.* (1957), 352 U.S. 249.] Indeed, the magistrate is not an attorney in private practice "appointed on an ad hoc basis" and the magistrate is experienced in judicial work.

Other Provisions of the Bill

Proposed subsection 636(b)(3) provides for the assignment to a magistrate of any other duty not inconsistent with the Constitution and laws of the United States. A similar provision is contained in the existing legislation. This subsection enables the district courts to continue innovative experimentations in the use of this judicial officer. At the same time, placing this authorization in an entirely separate subsection emphasizes that it is not restricted in any way by any other specific grant of authority to magistrates.

Under this subsection, the district courts would remain free to experiment in the assignment of other duties to magistrates which may not necessarily be included in the broad category of "pretrial matters". This subsection would permit, for example, a magistrate to review default judgments, order the exoneration or forfeiture of bonds in criminal cases, and accept returns of jury verdicts where the trial judge is unavailable. This subsection would also enable the court to delegate some of the more administrative functions to a magistrate, such as the appointment of attorneys in criminal cases and assistance in the preparation of plans to achieve prompt disposition of cases in the court.

If district judges are willing to experiment with the assignment to magistrates of other functions in aid of the business of the courts, there will be increased time available to judges for the careful and unhurried performance of their vital and traditional adjudicatory duties, and a consequent benefit to both efficiency and the quality of justice in the Federal courts.

Proposed subsection 636(b)(4) permits each district court to adopt local rules of court governing the performance of these duties by magistrates in the district. This requirement is carried over from the existing statute. It ensures that a magistrate will not be so burdened by assignments from one judge that he cannot assist the other judges in the district. Further, by requiring the promulgation of such local rules of the court, the statute provides the local bar at least some advance notice of the potential assignment of a case to a magistrate. As discussed previously in this report, these local rules may also specify procedures for obtaining reconsideration of a magistrate's order under subparagraph (A) and may supplement the procedure for objection to proposed findings and recommendations under subparagraphs (B) and (C).

BACKGROUND

S. 1283 was passed by the Senate on Feb. 5, 1976. Hearings on the issue of magistrate jurisdiction were held in the Senate Judiciary Subcommittee on Improvements in Judicial Machinery on July 16, 1975, and in this Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice on June 20, 1975, and July 18, 1975, when the original H.R. 6150 was being considered. The bill has the support of the Justice Department, the Administrative Office of the U.S. Courts, and the Judicial Conference. It also has the personal support of many judges who have written to express their needs for increased assistance from the magistrates. One judge, the Hon. Damon J. Keith (Chief Judge, U.S. District Court for the Eastern District of Michigan) wrote Mr. Kastenmeier that the Speedy Trial Act's implementation, the 300% increase in criminal case filings in the past six years, among other reasons, necessitated this legislation. On the national level, civil and criminal filings rose by 12% in the federal district courts. The need for this legislation is apparent, and this Committee voted to report it favorably on Sept. 15, with the previously mentioned amendments.

OVERSIGHT

Oversight of the federal courts and magistrate system is the responsibility of the Committee on the Judiciary. S. 1283, as well as S. 2923, is a response to the needs for increased assistance to the federal judges.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No statement has been received on the legislation from the House Committee on Government Operations.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the Committee estimates there is no cost to the legislation. The CBO letter follows.

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 7, 1976.

HON. PETER W. RODINO, JR.,
Chairman, Judiciary Committee, U.S. House of Representatives, Suite
2137, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1283, a bill which defines the jurisdiction of United States magistrates.

Based on this review, it appears that no additional costs to the government would be incurred as a result of enactment of this bill.
Sincerely,

ALICE M. RIVLIN,
Director.

INFLATIONARY IMPACT STATEMENT

The legislation will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COMMITTEE VOTE

S. 1283 was ordered to be reported favorably with amendments by voice vote of the Committee on the Judiciary on September 15, 1975. Twenty-seven members were present.

SECTIONAL ANALYSIS

The legislation has two sections, both of which are explained under the purpose and statement portions of this report.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 636 OF TITLE 28, UNITED STATES CODE

§ 636. Jurisdiction and powers.

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

(1) * * *

[(b) Any district court of the United States, by the concurrence of a majority of all the judges of such district court, may establish rules pursuant to which any full-time United States magistrate, or, where there is no full-time magistrate reasonably available, any part-time magistrate specially designated by the court, may be assigned

within the territorial jurisdiction of such court such additional duties as are not inconsistent with the Constitution and laws of the United States. The additional duties authorized by rule may include, but are not restricted to—

[(1) service as a special master in an appropriate civil action, pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts;

[(2) assistance to a district judge in the conduct of pretrial or discovery proceedings in civil or criminal actions; and

[(3) preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing.]

(b) (1) *Notwithstanding any provision of law to the contrary—*

(A) *a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action for failure to comply with an order of the court. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.*

(B) *a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.*

(C) *the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.*

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

(2) *A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule*

53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.

* * * * *



JURISDICTION OF U.S. MAGISTRATES

FEBRUARY 3, 1976.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 1283]

The Committee on the Judiciary, to which was referred the bill (S. 1283) to improve judicial machinery by further defining the jurisdiction of the United States magistrates, and for other purposes, having considered the same, reports favorably, thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

The purpose of the bill is to amend section 636(b), title 28 United States Code, in order to clarify and further define the additional duties which may be assigned to a United States Magistrate in the discretion of a judge of the district court. These additional duties generally relate to the hearing of motions in both criminal and civil cases, including both preliminary procedural motions and certain dispositive motions. The bill provides for different procedures depending upon whether the proceeding involves a matter preliminary to trial or a motion which is dispositive of the action. In either case the order or the recommendation of the magistrate is subject to final review by a judge of the court.

AMENDMENT

The committee proposes an amendment by striking everything commencing at page 1, line 5, of the bill through line 9, page 2 of the bill and inserting in lieu thereof the following:

(b) (1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action for failure to comply with an order of the court. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

PURPOSE OF AMENDMENT

The purpose of the amendment is to further perfect the language of the proposed new section 636(b)(1). This further amendment grants to the magistrates the power (1) to hear and determine certain pretrial motions, and (2) to hear and recommend a disposition of certain dispositive motions, including certain habeas corpus proceedings and certain prisoner petitions. In each case a review by a district court judge is required.

STATEMENT

When the Congress enacted the Magistrates Act in 1968 (P.L. 90-578), it created a system of full-time and part-time judicial officers who would perform various judicial duties under the supervision of the district courts in order to assist the judges of these courts in handling an ever-increasing caseload.

In the 93rd Congress, the Judiciary Subcommittee on Improvements in Judicial Machinery held 17 days of hearings, during which extensive inquiry was made into the caseload of federal district courts.

During these hearings, the chief judges of 44 of the federal judicial districts personally appeared and testified before the subcommittee. The vast majority of the chief judges who testified stated that the magistrates were of assistance to the court in handling certain preliminary matters in both civil and criminal cases, and were of greatest assistance in handling petitions for the issuance of a writ of habeas corpus made by both state and federal prisoners in an effort to obtain a collateral review of the original conviction. A few of the district courts which had not made extensive use of the services of the magistrates were encouraged to do so as a means of freeing time of district court judges to preside at trials of other cases.

In several of the districts, the majority of the judges of the court authorized magistrates to hold evidentiary hearings in habeas corpus cases and to submit to a judge of the court recommended findings of fact and conclusions of law dispositive of the petition for a writ of habeas corpus. The recommendations of the magistrate would be reviewed by the judge who would then exercise the ultimate authority to issue an appropriate order.

However, on June 26, 1974, in the case of *Wingo v. Wedding*, 418 U.S. 461, the Supreme Court of the United States interpreted Section 636(b) of Title 28 of the U.S. Code, as authorizing the magistrate to make merely a "preliminary review" of a prisoner petition and expressly held that the statutory language did not evidence any intent by Congress that the magistrate be authorized to hold an evidentiary hearing in a habeas corpus proceeding.

In a dissenting opinion, the Chief Justice and Justice White dissented on the basis that Section 636(b) "should be interpreted to permit magistrates to conduct evidentiary hearings in federal habeas corpus cases", since such an interpretation would serve the principle objectives of the Magistrates Act. The dissenting opinion concluded with the following statement:

In any event, now that the Court has construed the Magistrates Act contrary to a clear legislative intent, it is for the Congress to act to restate its intentions if its declared objectives are to be carried out.

The bill under consideration by the committee would accomplish this restatement and clarification of the Congressional intention that the magistrate should be a judicial officer who, not only in his own right but also under general supervision of the court, shall serve as an officer of the court in disposing of minor and petty criminal offenses, in the preliminary or pretrial processing of both criminal and civil cases, and in hearing dispositive motions and evidentiary hearings when assigned to the magistrate by a judge of the court.

In addition to *Wingo v. Wedding* there are several other court decisions the result of which would be overcome by passage of this bill. In *T.P.O. v. McMillan* (7th Cir. 1972) 460 F.2d 348, the court held that a magistrate could not hear a motion to dismiss or a motion for summary judgment, even though an appeal was allowed from a final order of a magistrate to a judge of the district court. In *Ingram v. Richardson* (6th Cir. 1972) 471 F.2d 1268, the court held that a magistrate had no power to review the Secretary's denial of social security benefits

and to make proposed findings of fact and conclusions of law which proposed order was then submitted to a district court judge for final decision. In *T.P.O. v. McMillan*, supra, the court stated:

We need not speculate in regard to what civil functions the magistrate can constitutionally perform, however, since Congress carefully intended that in regard to civil cases the magistrate was not empowered to exercise ultimate adjudicatory or decision making.

Also, in *Wilver v. Fischer* (10th Cir. 1967) 387 F.2d 66, which predated the Magistrates Act, the court held that a master could not be appointed to supervise discovery proceedings in civil actions.

Since introduction of S. 1283, the Supreme Court of the United States granted certiorari in *Weber v. Secretary of HEW*, 503 F.2d 1049 (CA 9 1064), and on January 14, 1976, resolved the conflict between *Ingram* and *Matthews* concerning the power of a district court to assign, under section 636(b), to a magistrate an action to review a final determination of the Secretary of Health, Education and Welfare on the question of whether a person was entitled to social security benefits. In *Matthews v. Weber* (January 14, 1976) — U.S. —, 44 LW 4065, the Supreme Court held that under section 636(b) it was competent for the court to assign as "additional duties" of the magistrate an action to review an award of Social Security benefits. The Supreme Court noted that the reference to the magistrate was "to prepare a proposed written order or decision, together with proposed findings of fact and conclusions of law where necessary or appropriate". Under subsection (b) (1)(B) of section 636 as amended by S. 1283, the magistrate could be given similar responsibilities with reference to certain dispositive motions, to applications for post-trial relief and to prisoner petitions brought under section 1983 of title 42 U.S. Code.

In 1968, when the Magistrates Act was passed, the total filings in the United States District Courts were 102,000 cases. In 1974, total filings amounted to 143,000 cases. In 1968, there were 323 district court judges. In 1974, there were 400 district court judges. The Congress in enacting the Magistrates Act manifested its intention to create a judicial officer and to invest in him the power to furnish assistance to a judge of the district court. The magistrate was given jurisdiction over petty criminal offenses and the Act also gave each district court the discretionary power to use the magistrate to assist a district court judge "in the conduct of pretrial or discovery proceedings in civil or criminal actions" and to make a "preliminary review of applications for posttrial relief" and to submit a report and recommendations "to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing".

The language quoted above is from the 1968 Magistrates Act. In *T.P.O. v. McMillan*, the decision restricting the power of magistrates in pretrial proceedings hinged on the judicial interpretation of congressional intent. Similarly, in *Wingo v. Wedding* the authority of the magistrate to hold an evidentiary hearing in a habeas corpus proceeding also hinged on an interpretation of congressional intent.

It seems to the committee that in 1968 the Congress clearly indicated its intent that the magistrate should be a judicial officer whose purpose was to assist the district judge to the end that the district judge could have more time to preside at the trial of cases, having been relieved of part of his duties which required the judge to personally hear each and every pretrial motion or proceeding necessary to prepare a case for trial. That the magistrate has fulfilled this function seems clear from the statistics relating to magistrate activity in F.Y. 1974. In that year magistrates handled a volume of matters as shown in the following table:

Criminal cases:	
Minor offenses	11, 242
Petty offenses	71, 463
Arrest warrants	27, 029
Search warrants	5, 649
Bail hearings	58, 034
Preliminary examinations	7, 124
Removal hearings	2, 316
Subtotal	182, 857
Post indictment arraignments	
Pretrial conferences	13, 996
Pretrial motions	6, 313
Other criminal matters	7, 118
Subtotal	601
Subtotal	
	28, 028
Total criminal matters	
	210, 885
Civil cases:	
Prisoner petitions	7, 456
Pretrial conferences	15, 743
Motions	5, 985
Special master reports	367
Social security cases	277
Narcotic addict rehabilitation cases	320
Other civil matters	1, 897
Total civil cases	32, 044

Rather than constituting "an abdication of the judicial function", it seems to the committee that the use of a magistrate under the provisions of S. 1283, as amended, will further the congressional intent that the magistrate assist the district judge in a variety of pretrial and preliminary matters thereby facilitating the ultimate and final exercise of the adjudicatory function at the trial of the case.

The Federal Rules of Civil Procedure provide many opportunities for the parties by motion to invoke a decision of the court. These opportunities range from a motion under Rule 6(b) to extend the time for an act, or a motion under Rule 4(e) specifying the manner of serving a summons, to a motion under Rule 12(b) to dismiss, or a motion under Rule 56 for summary judgment on the grounds that there is no genuine issue of fact to justify a trial. In between these extremes are various motions relating to discovery, to production of evidence, to physical examination of a party, to join necessary or proper parties, to set the time and place of a disposition, to suppress evidence, and to hold a pretrial conference under Rule 16, and others too numerous to mention.

Without the assistance furnished by magistrates in hearing matters of this kind, and others not specifically named, it seems clear to the committee that the judges of the district courts would have to devote a substantial portion of their available time to various procedural steps rather than to the trial itself.

Therefore, the committee has concluded that the enactment of S. 1283, as amended, will further improve the judicial system by clearly defining the additional duties which a judge of the district court may assign to a magistrate in the exercise of the discretionary power to so assign as contained in Section 636(b) of Title 28 United States Code as herein amended.

Before turning to a detailed explanation of the bill, the committee believes that it should comment upon the contention that Article III of the Constitution imposes a limitation upon the judicial functions which this bill vests in a magistrate. In the federal court system, the primary court of general jurisdiction has always been the district court and, as such, it is an "inferior court" ordained and established by the Congress under Article III. But this is not to say that the Congress may not create other inferior courts. For example, it is believed that it would be competent for the Congress to create below the district courts a court of limited jurisdiction which would be roughly the equivalent of a municipal court in some of the state systems. Multi-tiered court systems developed simply in recognition of the fact that certain cases and judicial functions are of differing importance so as to justify different treatment by the court system. While the U.S. District Court has long been a single tiered court as far as original jurisdiction is concerned, the Congress has nevertheless recognized that it is not feasible for every judicial act, at every stage of the proceeding, to be performed by "a judge of the court".

In several instances, the Congress has vested in officers of the court, other than the judge, the power to exercise discretion in performing an adjudicatory function, subject always to ultimate review by a judge of the court. For example, a judgment or order of a referee in bankruptcy, adjudicating legal rights, is a final order unless an appeal is taken to a judge of the district court. Title 11 U.S.C., section 67(c); Rule 801, Rules of Bankruptcy Procedure.

Also, section 636(a)(3) of Title 28 vests in the magistrates the power to try persons accused of minor criminal offenses, which power was formerly vested in a United States Commissioner. Thus, under section 3401 of Title 18 United States Code, the magistrate has jurisdiction to try minor offenses and under section 3402 of Title 18, an appeal may be taken from the judgment of the magistrate to a judge of the district court.

Finally, section 1920 of Title 28 United States Code authorizes "a judge or clerk of any court" to tax costs in a case. Rule 54(d) of the Rules of Civil Procedure implements section 1920 by providing that costs may be taxed by the clerk on one day's notice and that on notice "the action of the clerk may be reviewed by the court". Therefore, by analogy, the committee believes that the judicial functions vested in the magistrates, as a judicial officer, by this bill are not in violation of Article III of the Constitution.

EXPLANATION OF THE BILL

No changes are made in section 636(a) of title 28 under which magistrates exercise the powers with respect to issuance of arrest warrants, search warrants, setting bail, preliminary hearings, and the trial of minor and petty offenses under section 3401 of title 18, United States Code.

The bill revises in its entirety section 636(b) under which magistrates could be assigned certain additional duties in the discretion of the court. This discretionary power to assign additional duties to a magistrate is continued but the discretion is vested in a judge of the district court rather than in a majority of all the judges of the court. Of course the scope of any permissible additional duties to be assigned can still be agreed upon by a majority of the judges, but the bill will permit exercise of the actual power of assignment to a single judge. Since assignments are frequently made in individual cases, or on an ad hoc basis, it seems preferable to vest the power in a single judge who can execute any required order of assignment or reference.

The initial sentence of the revised section uses the phrase "notwithstanding any provision of law to the contrary—". This language is intended to overcome any problem which may be caused by the fact that scattered throughout the code are statutes which refer to "the judge" or "the court". It is not feasible for the Congress to change each of those terms to read "the judge or a magistrate". It is, therefore, intended that the permissible assignment of additional duties to a magistrate shall be governed by the revised section 636(b), "notwithstanding any provision of law" referring to "judge" or "court".

The additional duties which can be assigned to a magistrate are classified into three categories set forth in subparagraphs (A) and (B) of subsection 636(b)(1) and in subsection 636(b)(2). These categories and the scope of the magistrates authority are as follows:

1. *Pretrial matters.*—Under subparagraph (A) a judge, in his discretion, may assign any pretrial matter to be heard and determined by a magistrate. In scope, this includes a great variety of preliminary motions and matters which can arise in the preliminary processing of either a criminal or a civil case. As indicated by the statistical table set forth earlier in this report many of the magistrates are already hearing these pretrial matters under the authority contained in subsection 636(b)(2) of the present law. A statement was received at the hearing on July 16, 1975, from Chief Judge Belloni of the District of Oregon setting forth a description of the various motions and pretrial proceedings which have been assigned to Magistrate Juba by the judges of the Oregon Court. A similar scope of additional duties is intended for magistrates under the provisions of S. 1283, as amended. Thus, the revised law will not unduly extend the magistrates' authority to hear pretrial matters but it will clarify the broad authority to refer "any pretrial matter".

Subject to the exception of the dispositive motions expressly named in subparagraph (A), the magistrate shall have the authority to not only hear the pretrial matter but also to enter an order determining the issue raised by the motion or proceedings. The magistrate's deter-

mination is intended to be "final" unless a judge of the court exercises his ultimate authority to reconsider the magistrate's determination.

The last sentence of subparagraph (A) makes it clear that a judge of the court has the ultimate judicial prerogative to review and reconsider a motion or matter "where it has been shown that the magistrate's order is clearly erroneous or contrary to law". The standard of "clearly erroneous or contrary to law" is consistent with the accepted and existing practice followed in most district courts when reviewing a pretrial matter assigned to a magistrate under existing law.

Use of the words "may reconsider" in subparagraph (A) is intended to convey the congressional intent that a matter "heard and determined" by the magistrate need not in every instance be heard a second time by the judge. However, if a party requests reconsideration based upon a showing that the magistrate's order is clearly erroneous or contrary to law then the judge must reconsider the matter. Of course, the judge has the inherent power to rehear or reconsider a matter *sua sponte*.

Thus, the revision proposed in this bill makes it clear that Congress intends that the magistrate shall have the power to make a determination of any pretrial matter (except the enumerated dispositive motions) and that his determination set forth in an appropriate order shall be "final" subject only to the ultimate right of review by a judge of the court. Under section 631 of the Magistrate Act (28 USC 631), a magistrate is required to be a member of the bar whose experience in the practice of law has been such as to persuade the appointing judges that he is competent to perform the duties of the office. If a particular magistrate does not have this competence it is assumed that a judge would not assign particular matters to the magistrate for hearing and determination. However, assuming such competence, it seems to the Committee to be inefficient and duplicative to require a "report and recommendation" from the magistrate to the judge as a prelude to a separate order by the judge in order to dispose of preliminary and pretrial matters. Thus the statute uses the term "hear and determine" in vesting the authority of a magistrate, subject, of course, to ultimate review by the court.

While subparagraph (A) does not specify a procedure to be followed by a party in obtaining reconsideration of a magistrate's order by the judge, it would normally be by motion duly served, filed and noticed. However, in some districts the local rules now in existence provide merely that the request for review be in a letter or other written form. Nor is a fixed time specified within which to obtain review of a magistrate's order in "any pretrial matter", since what is a timely request to a judge of the court will depend upon the nature of the pretrial matter. For example, an order by the magistrate under Rule 13(f) granting leave to serve and file an amended pleading asserting an omitted counterclaim, could be reviewed by a judge in due course and at a time set by the court or noticed by the parties. In such an instance there would be ample time within which the matter could be reconsidered. On the other hand, suppose a pretrial order under Rule 16 is issued by the magistrate following a pretrial conference held a week or less before a day certain setting for trial. In

that instance, time is of the essence and review of the order by a judge should be sought and the matter reconsidered as soon as possible. Thus, under subparagraph (A), it is intended that the method and procedure for seeking reconsideration of a magistrate's determination of a pretrial matter can be set by local rules of court pursuant to section 636(b) (4), or by uniform rules, if uniformity is deemed necessary.

2. *Dispositive motions, Habeas Corpus, and Prisoner Petitions.*—As stated previously in this report, certain motions which are dispositive of the litigation are specifically excepted from the magistrate's power under subparagraph (A) "to hear and determine". These excepted motions are:

- (1) A motion for injunctive relief;
- (2) A motion for judgment on the pleadings;
- (3) A motion for summary judgment;
- (4) A motion to dismiss or quash an indictment made by the defendant;
- (5) A motion to suppress evidence in a criminal case;
- (6) A motion to dismiss for failure to state a claim upon which relief can be granted; and,
- (7) A motion to involuntarily dismiss an action for failure to comply with an order of the court.

It is not intended that a magistrate shall have the power under subparagraph (A) "to hear and determine" such dispositive motions. However, depending upon the qualifications and competence of a particular magistrate, it is intended that under subparagraph (B) a judge of the court, in his discretion, may assign such dispositive motions to a magistrate for hearing and submission of proposed findings and recommendation to a judge of the court for ultimate disposition.

Not only may these dispositive motions be assigned to the magistrate under subparagraph (B) but also there may be assigned application for posttrial relief made by individuals convicted of criminal offenses and petitions under section 1983 of title 42 United States Code brought by prisoners' challenging the conditions of their confinement. The authority of the magistrate under subparagraph (B) is clearly more than authority to make a "preliminary review". It is the authority to conduct hearings and where necessary to receive evidence relevant to the issues involved in these matters. Therefore, passage of S. 1283, as amended, will supply the congressional intent found wanting by the Supreme Court in *Wingo v. Wedding*, supra. Also this bill will overcome the effect of the decision in *T.P.O. v. McMillan*, supra, relating to motions to dismiss or motions for summary judgment. Further, passage of this bill will also permit a judge to refer to a magistrate the consideration and study of cases brought to review the Secretary's determination of entitlement to benefits under the Social Security Act, since these matters usually involve a motion by the agency for summary judgment.

Under subparagraph (B) the magistrate is required to submit proposed findings and his recommendation to the judge for disposition of the various proceedings included in subparagraph (B). As specified in subparagraph (C) a copy of the proposed findings and recommendation must be mailed to all parties. Written objections must be filed

within 10 days. This is substantially the procedure and the time limit specified in Rule 53 where there has been a reference to a master. The bill would permit the court by local rules to specify whether the written objections must be in the form of a motion or other written form, as well as to specify any procedure for bringing the matter on for a formal hearing, if a formal hearing is to be required.

The judge is given the widest discretion to "accept, reject or modify" the findings and recommendation proposed by the magistrate, including the power to remand with instructions. Thus, it will be seen that under subparagraph (B) and (C) the ultimate adjudicatory power over dispositive motions, habeas corpus, prisoner petitions and the like is exercised by a judge of the court after receiving assistance from and the recommendation of the magistrate.

3. *Special Master and Trial by Consent.*—The third category of magistrates' additional duties is set forth in the proposed subsection 636(b)(2). The subsection expressly authorizes the magistrate to be appointed as a special master under Rule 53 of the Federal Rules of Civil Procedure. This merely carries forward the same provision in section 636(b)(1) of the existing law. This also carries with it a requirement that if a party objects to the reference to a master, the requirements and restrictions of Rule 53 must be met.

The second sentence of this subsection provides an exception to this the magistrate, to serve where one of the parties objects to the reference. This exception takes such cases out from the restrictions of Rule 53(b), which limits the conditions under which cases may be referred to a master, since no significant purpose is served by restricting the use of magistrates where the parties agree to this procedure. At the same time, Rule 53 contains many important rules governing the powers of masters, the conduct of proceedings before them, and the submission of reports. Thus, subsection 636(b)(2) retains these provisions in any case in which a magistrate is appointed as a special master.

Enactment of this new subsection 636(b)(2), and experience in the use of magistrates as special masters, may serve to occasion a reappraisal of the power of the court to appoint a special master, i.e., the magistrate, to serve where one of the parties objects to the reference. [See, *La Buy v. Howes Leather Co.* (1957), 352 U.S. 249.] Indeed, the magistrate is not an attorney in private practice "appointed on an ad hoc basis" and the magistrate is experienced in judicial work.

Other Provisions of the Bill

Proposed subsection 636(b)(3) provides for the assignment to a magistrate of any other duty not inconsistent with the Constitution and laws of the United States. A similar provision is contained in the existing legislation. This subsection enables the district courts to continue innovative experimentations in the use of this judicial officer. At the same time, placing this authorization in an entirely separate subsection emphasizes that it is not restricted in any way by any other specific grant of authority to magistrates.

Under this subsection, the district courts would remain free to experiment in the assignment of other duties to magistrates which may not necessarily be included in the broad category of "pretrial matters". This subsection would permit, for example, a magistrate to review

default judgments, order the exoneration or forfeiture of bonds in criminal cases, and accept returns of jury verdicts where the trial judge is unavailable. This subsection would also enable the court to delegate some of the more administrative functions to a magistrate, such as the appointment of attorneys in criminal cases and assistance in the preparation of plans to achieve prompt disposition of cases in the court.

If district judges are willing to experiment with the assignment to magistrates of other functions in aid of the business of the courts, there will be increased time available to judges for the careful and unhurried performance of their vital and traditional adjudicatory duties, and a consequent benefit to both efficiency and the quality of justice in the Federal courts.

Proposed subsection 636(b)(4) permits each district court to adopt local rules of court governing the performance of these duties by magistrates in the district. This requirement is carried over from the existing statute. It ensures that a magistrate will not be so burdened by assignments from one judge that he cannot assist the other judges in the district. Further, by requiring the promulgation of such local rules of the court, the statute provides the local bar at least some advance notice of the potential assignment of a case to a magistrate. As discussed previously in this report, these local rules may also specify procedures for obtaining reconsideration of a magistrate's order under subparagraph (A) and may supplement the procedure for objection to proposed findings and recommendations under subparagraphs (B) and (C).

COMMUNICATIONS

A representative of the Judicial Conference of the United States testified at the hearing and conveyed to the committee the Conference Committee on Magistrates' support of S. 1283, as amended. Most of the perfecting amendments suggested by the witness were adopted by the Senate Committee.

ESTIMATED COST

Enactment of the bill does not involve any direct additional cost to the government.

SECTIONAL ANALYSIS

Each section of the bill is discussed in detail in the body of the report.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law is shown in roman, matter repealed enclosed in black brackets, and new matter is printed in italic) :

TITLE 28, UNITED STATES CODE

CHAPTER 43—UNITED STATES MAGISTRATES

§ 636. Jurisdiction, powers, and temporary assignment.

* * * * *

[(b) Any district court of the United States, by the concurrence of a majority of all the judges of such district court, may establish rules pursuant to which any full-time United States magistrate, or, where there is no full-time magistrate reasonably available, any part-time magistrate specially designated by the court, may be assigned within the territorial jurisdiction of such court such additional duties as are not inconsistent with the Constitution and laws of the United States. The additional duties authorized by rule may include, but are not restricted to—

(1) service as a special master in an appropriate civil action, pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts;

(2) assistance to a district judge in the conduct of pretrial or discovery proceedings in civil or criminal actions; and

(3) preliminary review of applications for posttrial relief made by individuals convicted of criminal offenses, and submission of a report and recommendations to facilitate the decision of the district judge having jurisdiction over the case as to whether there should be a hearing.]

“(b) (1) Notwithstanding any provision of law to the contrary—

“(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action for failure to comply with an order of the court. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate’s order is clearly erroneous or contrary to law.

“(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

“(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

“(2) A judge may designate a magistrate to serve as special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States District

Courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53 (b) of the Federal Rules of Civil Procedure for the United States District Courts.

“(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

“(4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.”.

RECOMMENDATION

The committee believes that S. 1283, as amended, is meritorious and favorably recommends the same.

○

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To improve judicial machinery by further defining the jurisdiction of United States magistrates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 636(b) of title 28, United States Code, is amended to read as follows:

“(b) (1) Notwithstanding any provision of law to the contrary—

“(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

“(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

“(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

“(2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

“(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

“(4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.”

SEC. 2. (a)(1) Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts is amended to read as follows:

“(b) FUNCTION OF THE MAGISTRATE.—

“(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the petition, and submit to a judge of the court proposed findings of fact and recommendations for disposition.

“(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

“(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.

“(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.”

(2) Rule 8(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts is amended to read as follows:

“(b) FUNCTION OF THE MAGISTRATE.—

“(1) When designated to do so in accordance with 28 U.S.C. § 636(b), a magistrate may conduct hearings, including evidentiary hearings, on the motion, and submit to a judge of the court proposed findings and recommendations for disposition.

“(2) The magistrate shall file proposed findings and recommendations with the court and a copy shall forthwith be mailed to all parties.

“(3) Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.

“(4) A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify in whole or in part any findings or recommendations made by the magistrate.”

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(b) (1) Rule 8(c) of such Rules Governing Section 2254 Cases is amended by striking out "and shall conduct the hearing" and inserting in lieu thereof the following: "and the hearing shall be conducted".

(2) Rule 8(c) of such Rules Governing Section 2255 Proceedings is amended by striking out "and shall conduct the hearing" and inserting in lieu thereof the following: "and the hearing shall be conducted".

(c) The amendments made by this section shall take effect with respect to petitions under section 2254 and motions under section 2255 of title 28 of the United States Code filed on or after February 1, 1977.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*