Sex, Lies, & Magistrate Judges:

Common Misconceptions About the Federal Judiciary

By Hon. Anthony J. Battaglia

Now that I have your attention, I must confess that the article isn't really about sex and lies, but it does deal with the great number of misconceptions and rumors that exist concerning magistrate judges in the federal court. The title illustrates the central theme herein: that names and titles are important in shaping our choices, opinions, and views. I am sure many more of you initially chose to read this article because of the scintillating title. This is the same phenomenon that sells magazines and newspapers.

In answer to the question "What's in a name?" Shakespeare posited, "A rose by any other name would smell as sweet." This may be true for flora and fauna, but it is not necessarily true for higher life forms. Just look at the fate Romeo and Juliet met at the end of the play! Titles are very meaningful. They connote learning, accomplishment, deference, allegiance, and even fear. Just consider such titles as *Chief Justice*, *judge*, *lawyer*, *speaker of the House*, and *IRS agent*. Titles and descriptive terms are also used in everyday parlance, particularly in politics, to help condition the audience to a certain perspective—for example, *liberal*, *terrorist*, *lobbyist*, *right wing*, *weapons of mass destruction*.

As a result of urban legend, vestiges of the past, or lack of familiarity, there are misconceptions about magistrate judges that are perpetuated by the public, the press, and even the judiciary itself. These mislead the public perception of this judicial officer, as will be seen below. It is hoped that this article will help put to rest most—if not all—of these misconceptions.

The word *magistrate* is probably the most often misused or abused term in federal parlance. Although invested with lofty meaning in its early origin, the term has suffered a decline in meaning over time. The initial definition of magistrate was "the highest ranking official in a government."[1] In more recent times, the term is now defined as "a judicial officer with strictly limited jurisdiction, often on the local level and often restricted to criminal cases."[2]

In fact, "because the connotations of magistrate have so fallen, United States Magistrates … lobbied in the late 1980s for a name change. In 1990, they got it … and are now called United States Magistrate Judges."[3] Using more contemporary references, like Google, one will find *magistrate* defined in this way: "A civil officer with power to administer and enforce law, as: a) A local member of the judiciary having limited jurisdiction, especially in criminal cases; b) A minor official, such as a justice of the peace, having administrative and limited authority."

A review of the statutory enabling act, 28 U.S.C. § 631, *et seq.*, as well as the Federal Rules of Civil and Criminal Procedure (such as Fed. R. Civ. P. 74 and Fed. R. Crim. P. 59) demonstrates that the position of magistrate judge is anything but a local office that is of limited jurisdiction and handles principally criminal cases. Despite all these explanations, the moniker *magistrate* continues to survive. The unfortunate reality is that the title is a misnomer and creates the wrong impression for the public trying to understand the federal judiciary.

Probably the best example of the three major misconceptions about magistrate judges is illustrated in a recent article in the *Los Angeles Daily Journal*. The January 2004 issue had a front-page story extolling a new program in the Central District of California that expanded the role of one of the magistrate judges in that district. The following caption ran under a photo of the judge: "U.S. Magistrate Stephen G. Larson, who applied for a judgeship but wasn't nominated, will receive one-sixth of the civil cases in Riverside each month." This statement was followed by a title and subtitle as follows: "U.S. Magistrate in Riverside Joins Rotation of Civil Trials: One-Year Pilot Program Will Evaluate Attorneys' Response to Only Nonjudge."

An otherwise exemplary article follows these unfortunate inaccuracies. The article, however, struggles with what to call Judge Larson and the office of magistrate judge in general. He and the position are referred to as "U.S. Magistrate," "magistrate," and "magistrate judge." When alerted to these errors, the *Daily Journal* corrected its reference to "non-judge" in a subsequent edition. The correction was silent, however, on the issue of the correct title to use.

In an article published by the *Los Angeles Times* on March 11, 2004, and headlined "Judicial Battle Erupts Over Suspect's Release: A U.S. judge in LA is unable to block a magistrate's release of an accused swindler." The article goes on to discuss the "frenzied jurisdictional tug of war"

between a "federal magistrate" and a "Los Angeles judge."

With the appointment of attorney Jeremiah Lynch to the position of U.S. magistrate judge, the Missoulin.com, news online site, reported in May 2006 that "Great Falls Attorney chosen as magistrate." An otherwise flattering article reported that the choice of the new magistrate "fell to Montana's three federal judges."

The most recent misuse or misapplication of the term *magistrate* to a U.S. magistrate judge occurred in January 2007 in a case before the U.S. Supreme Court. In *Jones v. Bock*, 05-7058, which was decided on Jan. 22, 2007, Chief Justice Roberts, writing for the Court, refers to a "magistrate" recommending dismissal for failure to state a claim in a 42 U.S.C. § 1983 case alleging deliberate indifference to medical needs, retaliation, and harassment. On page 7 of the decision, the Chief Justice states that "the magistrate recommended dismissal for failure to state a claim … and the District Court agreed." The decision goes on to state that, as to other defendants, "the District Court disagreed."

These are just a few of the dozens of articles appearing in the last three years with the same misnomers, mistakes, and misconceptions. The misconceptions demonstrated in these examples are that magistrate judges are not judges or federal judges; that a separate magistrate court exists and is distinct from the district court; and, finally, that magistrate judges are to be addressed as "magistrate." As to the title, a variety of misused names is in common use. I have been officially addressed over the years as "judge magistrate," "magistrate court judge," and "Mr."; some enlightened individuals call me "judge" or "magistrate judge."

You might ask what the problem is. Is the issue simply

one of the vanity or pride of the more than 500 U.S. magistrate judges that prompts me to write this piece? To some extent, of course it is. To a greater extent, however, demystifying the court system and how it operates has long been a goal of lawyers and judges alike. The effort is also consistent with the precepts of Canon 1 of the Code of Judicial Conduct regarding upholding the integrity and independence of the judiciary. "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges."[4] The role of the various judicial officers is a centerpiece of the court's operation. A properly informed public can make more prudent choices about the resolution of their cases. Wouldn't average citizens be more responsive to the choice of consenting to a trial before a magistrate judge with the understanding that they are accepting a "federal judicial officer" as opposed to a "nonjudge"? Of course they would!

As you have gathered by now, referring to a U.S. magistrate judge as a "nonjudge" is simply incorrect. Magistrate judges are federal judges. Although a magistrate judge does not have the lifetime status or jurisdiction of judges under Article III of the Constitution,[5] a magistrate judge is no less a judge. The office was created to take on certain duties of the judiciary that have grown steadily over time. The judicial hierarchy in the federal court system includes a variety of different types of judges; the magistrate judge is just one type. The federal judiciary also includes Supreme Court justices, circuit judges, district judges, bankruptcy judges, court of claims judges, and judges of the Court of International Trade. The district, magistrate, and bankruptcy judges are all judges of a district court.

Perhaps it's the evolution of the office of magistrate judge that has spawned this particular misnomer.[6] Magistrate judges can trace the roots of their position back to the early days of the United States. In 1793, Congress authorized the federal circuit courts to appoint "discreet *persons* learned in the law to take bail in federal criminal cases." Act of March 2, 1793, ch. 22 § 4, 1 Stat. 334. By 1817, through legislation, these people became known as "commissioners" with increasing judicial duties. Over time, their duties and responsibilities continued to grow. Magistrate judges were given trial jurisdiction for petty offenses in national parks in 1894; this expanded to include some misdemeanors in the 1940s. Magistrate judges entered the civil arena along the way, leading up to legislation that was passed in 1979 conferring the current civil trial jurisdiction statute.[7] As their duties changed, so did the title of office: they became *United States commissioners* in 1896, five years after Congress created the current *United States district judge*.[8] The name changes continued, with the name becoming *United States magistrates* in 1966, and finally *United States magistrate judges* in 1990.[9]

The change in title from *United States commissioner* to *United States magistrate* in 1966 was "chosen to emphasize the judicial nature of the new officer,"[10] because "the name 'commissioner' does not in any way make clear the judicial nature of the office."[11] Congress changed the title to *magistrate judge* in 1990 to be consistent with other non-Article III judicial officers, including bankruptcy judges, tax court judges, and claims court judges because the title more accurately reflected "the responsibilities and duties of office."[12]

In 1979, as the current civil consent authority statute was being discussed, the House Judiciary Committee correctly noted that

> [t]he Magistrate Judges Act of 1979 is a second patch in the large tapestry of improving judicial machinery. … By redefining and by increasing the case-dispositive jurisdiction of an existing judicial officer—the U.S. Magistrate—the legislation provides the district court with a tool to meet the varying demands on its docket.[13]

So what is the correct view of this judicial officer? According to the administrative arm of the federal judiciary, the Administrative Office of the Courts, "United States Magistrate Judge is a judicial officer of the United States District Court. Magistrate judges serve as adjuncts to the Article III district courts and not as Article I judges. Congress has clearly provided that a magistrate judge's role is to assist Article III judges rather than serve as a substitute judge or lower tier court."[14] In addition, we need only look to Rule 1(b)(3)(B) of the Federal Rules of Criminal Procedure, which includes the term *magistrate judge* in its definition of *federal judge* and defines *court* as a federal judge performing functions authorized by law.

What about the concept of the magistrate court? There used to be a sign outside my courthouse directing people to the magistrate court, but, of course, such a jurisdictional entity does not exist. Fortunately, the sign has been changed recently after several years of requests. Unlike the municipal or justice courts existing in many state court systems, there is one court of original jurisdiction in the federal court, and that is the district court. Magistrate judges do not have any original jurisdiction; their jurisdiction is vested by their appointment by the district judges of a given district. The Judicial Conference of the United States has held this view, and in 1982 it resolved that

> the Federal Magistrates System should continue to be an integral part of the district courts, that the jurisdiction of magistrates should remain "open" and should neither be expanded to include "original" jurisdiction in special categories of cases, nor restricted in special types of cases.[15]

As the Administrative Office reports, "the authority that a magistrate judge exercises is the jurisdiction of the district court itself, delegated to the magistrate judge by the district judges of the court under governing statutory authority and local rules of court."[16] Thus magistrate judges are judges of the district court (but not district judges under Article III) and do not operate independently under separate jurisdiction distinct from the district court.

Finally, how do we address these federal judges? Returning to my basic premise: names and titles are impor-

tant in shaping our choices, opinions, and views. The nomenclature is also a matter of showing respect for the official office or title. Because the official title of the office under discussion is that of United States magistrate judge, these court officials should be addressed as "Judge_____" to be consistent with the judicial role and official title of the position as prescribed by law. An equally appropriate title would be "Magistrate Judge _____."

Use of the word *magistrate* as a noun is obsolete. If we retained the current misuse of that term as a convention for forms of address (Magistrate Battaglia, for example), logic calls for commonly addressing bankruptcy judges as "Bankruptcy _____" (as in Bankruptcy Battaglia), district judges as "District _____" (District Battaglia), circuit judges as "Circuit _____" (Circuit Battaglia), and Supreme Court justices as "Supreme _____" (Supreme Battaglia). Clearly, the appropriate forms of address would be either "Judge _____," "Judge _____," "Judge _____," and "Justice _____," respectively, or "Bankruptcy Judge _____," "District Judge _____," "Circuit Judge _____," and "Supreme Court Justice _____," respectively. Perhaps a military analogy will clarify the point: the proper way to address a lieutenant colonel is "Colonel _____," not "Lieutenant _____."

Despite the media's penchant for misuse, the leading press guides on style have actually addressed this issue properly. The 2003 edition of the Associated Press' style manual defines the term *magistrate* and describes its use as follows: "Capitalize when used as a formal title before a name. Use *magistrate judge* when referring to the fixed-term judge who presides in U.S. district court and handles cases referred by U.S. district judges." The 1999 edition of the *Manual of Style and Usage* used by the *New York Times* gives the following guideline on page 198: "Magistrate Judge Lynn H. Agnello; Judge Agnello; the judge. If there is a risk of confusion with a district judge, in later references, make it *Magistrate Judge Agnello* or *the magistrate judge*."

So, what does judge have to do with definition and use of the term? In the end, the discussion all comes back to the public's understanding of the role and authority of the principals of the federal court system. When all involved identify and describe the position properly, the public will get the best picture of the office and its role in adjudicating the fate of their cases. **TFL**

Hon. Anthony J. Battaglia was appointed as a U.S. magistrate judge for the U.S. District Court for the Southern District of California in 1993. Judge Battaglia has published a variety of legal articles and bench books on federal practice and frequently lectures for the Federal Judicial Center and various bar associations.

Endnotes

[1]Black's Law Dictionary, 970 (8th ed., 2004).

[2]*Id.*

[3]Brian A. Gamer, A Dictionary of Modern Legal Usage 540 (2nd ed., 1995).

[4]"A Judge Should Uphold the Integrity and Independence of the Judiciary," Administrative Office of the U.S. Courts, *Codes for Conduct for United States Judges and Judicial Employees*, Guide to Judiciary Policies and Procedures, vol. 2 at 1-1.

[5]Pursuant to the provisions of 28 U.S.C. § 631, *et seq.*, district judges appoint magistrate judges for a term of eight years. Appointments follow a merit selection process, an FBI field investigation, and clearance by the Department of Justice.

[6]An excellent history of the federal magistrate judge system is contained in Administrative Office of the U.S. Courts, A Guide to the Legislative History of the Federal Magistrate Judge, February 1995.

[7]28 U.S.C. § 636(c). The Federal Magistrate Act of 1979, Pub. L. No. 96-82, 93 Stat. 643. Before this law was enacted, several district courts had magistrate judges try civil cases upon the consent of the parties, according to the "additional duties" provision in 28 U.S.C.§ 636(b). *See* Administrative Office of the U.S. Courts, A Guide to the Legislative History of the Federal Magistrate Judge at 26.

[8]The district courts became the primary trial court in the federal system in 1891 with the passage of the Circuit Court of Appeals Act of 1891.

[9]*Id.*

[10]*See* Administrative Office of the Courts, A Guide to the Legislative History of the Federal Magistrate Judge at 4.

[11]*Id.*, at p. 5, citing 1966–67 Senate Hearings, 1967 Senate Report at 239 (remarks of Sen. Tydings).

[12]H.R. Rep. No. 734, 101st Cong. 2d. Sess. 31 (1990), reprinted in 1990 U.S.C.C.A.N. 6877.

[13]S. Rep. No. 74, 96nd Cong., 1st Sess. 7-9 (1979), reprinted in 1979 U.S.C.C.A.N. 1469, 1476–1477 (emphasis added).

[14]Administrative Office of the Courts, Inventory of United States Magistrate Judge Duties at 1 (3rd ed., 1999).

[15]Judicial Conference of the United States, Rep. 92-3, The Administrative Office Guide at 75–76 (1982).

[16]Administrative Office of the U.S. Courts, A Guide to the Legislative History of the Federal Magistrate Judge at 1 (February 1995).