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A Judge by Any Other Name? Mistitling of the United States Magistrate Judge

Ruth Dapper[α]

I. INTRODUCTION

The federal magistrate judge position was formally established nearly fifty years ago, with roots in serving the judiciary reaching into the eighteenth century. The position has since become integral to federal courts and cases. This year marks twenty-five years since an important event for the magistrate judge: in 1990, Congress changed the title from United States Magistrate to United States Magistrate Judge. Despite the passage of a quarter century, the judicial position continues to be incompletely referred to as "magistrate." Federal statutes and procedural rules have reflected the

α Judicial Clerk for United States District Judge Anthony J. Battaglia, United States District Court for the Southern District of California. My interest in magistrate judges was developed through my clerkship with Judge Battaglia (formerly a magistrate judge), clerkship with United States Magistrate Judge Jeanne J. Graham, and internship with United States District Judge Susan Richard Nelson (formerly a magistrate judge). My thanks to Judge Battaglia for his earlier work on this topic and his assistance with all aspects of this article. I am also grateful to Judge Graham for her comments on an earlier draft. Finally, my gratitude to Bryce Young for his edits, discussions, and extensive support during the writing process.

full title for years, but the partial omission of the title persists in judicial opinions, scholarship, and practice materials. This article explores the prevalence of the titling error in legal writing in an effort to curb the mistaken practice and to promote the accurate reference to magistrate judges.

II. HISTORY AND ROLE OF THE MAGISTRATE JUDGE

Although described in judicial writing[1] and by commentators[2] as vital to the operation of the federal judiciary, magistrate judges' service to the federal courts appears less well understood than that of Article III judges. As such, an explanation of their history and role in the judiciary is useful.

The magistrate judge system has been carefully and thoughtfully discussed by others,[3] warranting an abbreviated presentation here. Forms of the magistrate judge have existed since the late eighteenth century,[4] but it was the Federal Magistrates Act of 1968 that created "a new class of federal judicial officers to help relieve the burgeoning caseloads of the United States District Courts and the corresponding burdens on federal trial judges."[5] This Act shepherded the rise of the magistrate judge that we know today.[6]

After the 1968 Act, Congress continued to modify magistrate judge authority through additional legislation.[7] It is not solely legislation, but also

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

2. Tim A. Baker, *The Expanding Role of Magistrate Judges in the Federal Courts*, 39 VAL. U. L. REV. 661 (2005) ("United States magistrate judges are unquestionably a vital and expanding part of the federal judiciary."); Leslie G. Foschio, *A History of the Development of the Office of United States Commissioner and Magistrate Judge System*, 1999 FED. CTS. L. REV. 4, III.10 (1999) ("Though springing from modest origins, the work of United States commissioners and magistrate judges has played an important and vital role in the growth and development of our nation's federal judiciary.").

3. *See* Peter G. McCabe, A Guide to the Federal Magistrate Judge System, FED. BAR ASSOC. (2014) [hereinafter McCabe White Paper], *available at* http://perma.cc/6ZXJ-4JHT. McCabe is considered the architect of the magistrate judge system.

4. *Id*. at 8.

5. 12 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3066 (THE FEDERAL MAGISTRATES ACT OF 1968—HISTORY AND PURPOSE) (2d ed. 2014); *see* Federal Magistrates Act, Pub. L. No. 90-578, 82 Stat. 1107 (1968) (abolishing the office of commissioner and establishing "the United States magistrate").

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

7. *See* McCabe White Paper, *supra* note 3, at 10–17; *see generally* Philip M. Pro &

practice that prompted the evolution and expansion of the magistrate judge's role. District judges promoted this expansion by diversifying magistrate judge duties and increasingly assigning matters of importance.[8] Peter G. McCabe, first-appointed Chief of the Administrative Office's Magistrate Judges Division, has remarked, "A particular genius of the Federal Magistrates Act is that it does not mandate the assignment of particular duties to Magistrate Judges[, but i]nstead, it lets each District Court determine what duties are most needed in light of local conditions and changing caseloads."[9]

This flexibility continues today. There is no single responsibility that all federal magistrate judges hold, making it at times difficult to define in a national context what role the judges play. The Federal Magistrate Judges Association describes a magistrate judge as being appointed by district judges who "supervise the activities of the Magistrate Judges by assigning civil cases for jury or non-jury trial upon consent of the parties and for pre-trial matters. . . . [C]riminal cases are assigned to Magistrate Judges on the consent of the parties, except for the trial of felony cases."[10] This versatility allows magistrate judges to be called on for a variety of duties, ranging from criminal initial appearances, detention hearings, and arraignments, to civil settlement conferences, discovery motions, and consent jury trials. Dispositive matters may also be "referred" for the preparation of a "report and recommendation," frequently including social security, habeas corpus, and prisoner civil rights cases.[11]

Because the role of the magistrate judge is the result of congressional action under Article I[12] of the Constitution of the United States, rather than authority provided in Article III,[13] magistrate judges are sometimes casually titled "Article Ones." This nickname is misleading, however, because

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Thomas C. Hnatowski, *Measured Progress: The Evolution and Administration of the Federal Magistrate Judges System*, 44 AM. U. L. REV. 1503, 1511 (1995).

8. David R. Cohen, *Special Masters Versus Magistrate Judges: No Contest*, FED. LAW., Sept. 2014, at 73, 74; Morton Denlow, *Should You Consent to the Magistrate Judge? Absolutely, and Here's Why*, LITIG., Winter 2011, at 3, 4.

9. McCabe White Paper, *supra* note 3, at 23.

10. *About Us*, FED. MAGISTRATE JUDGES ASSOC., http://www.fmja.org/about-us.html (last visited July 13, 2015).

11. Although referral can lead to more efficient handling of a case, for instance when district judges refer all prisoner cases or social security appeals, the Magistrate Judges Committee of the Judicial Conference cautions districts that some referral of case-dispositive motions leads to a duplication of judicial effort. The Committee reasons that some referrals of dispositive motions burden the judiciary because an objecting party receives a de novo determination by the district judge, providing parties with an extra opportunity to litigate an issue. *See* MAGISTRATE JUDGES COMMITTEE OF THE JUDICIAL CONFERENCE, SUGGESTIONS FOR UTILIZATION OF MAGISTRATE JUDGES 4–5 (2013).

12. U.S. CONST. art. I.

13. U.S. CONST. art. III.

magistrate judges are not a separate Article I court.[14] Bankruptcy and tax courts, for example, are more appropriately described in the Article I context,[15] whereas federal district judges, circuit judges, and Supreme Court justices are each empowered through Article III.[16] Those whose role's genesis is in Article III enjoy lifetime tenure and salary.[17] Magistrate judges do not have this luxury; rather, they are appointed by each district's district judges[18] in eight-year terms[19] and require reappointment.[20] Reappointment is required yearly after a magistrate judge reaches seventy years.[21] Unlike district judges, magistrate judges do not have a "senior status" option,[22] although a magistrate judge may be recalled in some instances.[23]

The consensus is that the creation of the magistrate judge has been an unqualified success. The Court has addressed this: "It can hardly be denied that the system created by the Federal Magistrates Act has exceeded the highest expectations of the legislators who conceived it. In modern federal practice, federal magistrates[24] account for a staggering volume of judicial work."[25] More recently, the Court remarked that "it is no exaggeration to

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

15. *See* Wellness, 135 S. Ct. at 1939 (discussing bankruptcy jurisdiction); Freytag v. C.I.R., 501 U.S. 868, 888 (1991) ("Treating the Tax Court as a 'Department' . . . would defy . . . the clear intent of Congress to transform the Tax Court into an Article I legislative court."); *see also* Jaime Dodge, *Reconceptualizing Non-Article III Tribunals*, 99 MINN. L. REV. 905, 920 (2015) (describing bankruptcy courts as hybrid courts, serving as Article I courts as to rights arising under the Bankruptcy Code, but as adjuncts acting upon referral for determinations of state and common law); James E. Pfander, *Article I Tribunals, Article III Courts, and the Judicial Power of the United States*, 118 HARV. L. REV. 643, 770 (2004) (describing bankruptcy as a "mixed system," with bankruptcy courts acting as Article I tribunals in part, while also enjoying reference jurisdiction as adjuncts to the district court).

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

17. *Id*.

18. 28 U.S.C. § 631 (governing appointment and tenure of magistrate judges); *see generally* James W. Satola, *How Magistrate Judges Are Selected, Appointed, and Reappointed*, FED. LAW., May–June 2014, at 39 (discussing magistrate judge qualifications, application process, merit panel, and reappointment).

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

20. *Id*.

21. *Id*. § 631(d).

22. *Id*. § 371.

23. *Id*. § 375.

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

25. Peretz v. United States, 501 U.S. 923, 928 n.5 (1991) (quoting Gov't of Virgin Islands

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

III. THE MAGISTRATE JUDGE TITLE

Although this article's purpose is to highlight the misuse of "magistrate" (alone) to identify a federal magistrate judge, the 1968 legislation was titled the Federal Magistrates Act and referred to "magistrates."[29] Accordingly, for years magistrate judges were properly referred to as "magistrates." In 1988, the Magistrates Committee of the Judicial Conference[30] endorsed the practice of addressing a then-magistrate as "Judge" or "Your Honor."[31] In 1990, after years of discussion, the title of the office changed.[32] Following "considerable debate regarding an appropriate new title," options such as "assistant United State District Judge," and "associate judge" were proposed.[33] Those options were ultimately not adopted, and instead "United States Magistrate Judge" prevailed as the new title.[34] The title was changed through the Judicial Improvements Act of 1990, which provides:

> CHANGE OF NAME OF UNITED STATES MAGISTRATES.
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> After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate

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v. Williams, 892 F.2d 305, 308 (3d Cir. 1989)).

26. Wellness, 135 S. Ct. at 1938–39.

27. ADMIN. OFFICE OF THE U. S. COURTS, A GUIDE TO THE LEGISLATIVE HISTORY OF THE FEDERAL MAGISTRATE JUDGES SYSTEM 21 (2009). The Judicial Conference also authorized the district courts to fill 11 "combination" positions "in which part-time referees in bankruptcy or clerks or deputy clerks of court serve[d] concurrently as part-time magistrates." *Id*.

28. *Appointments of Magistrate Judges*, UNITED STATES COURTS, http://www.uscourts.gov/statistics-reports/appointments-magistrate-judges-judicial-business-2014 (last visited Aug. 6, 2015).

29. *See* Federal Magistrates Act, Pub. L. No. 90-578, 82 Stat. 1107 (1968).

30. This committee is now known as the Committee on the Administration of the Magistrate Judges System.

31. *See* ADMIN. OFFICE OF THE U. S. COURTS, A GUIDE TO THE LEGISLATIVE HISTORY OF THE FEDERAL MAGISTRATE JUDGES SYSTEM 52 (1995).

32. McCabe White Paper, *supra* note 3, at 14.

33. *Id*.

34. *Id*.

> judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.[35]

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

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35. Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990).

36. Although use of the term "magistrate" instead of "magistrate judge" frequently seems most plausibly to be a mistake, other times use of the former title is deliberate. *See* Brendan Linehan Shannon, Note, *The Federal Magistrates Act: A New Article III Analysis for a New Breed of Judicial Officer*, 33 WM. & MARY L. REV. 253, 253 n.5 (1991) ("For the purposes of this Note, the term 'judge' refers to a district judge, appeals court judge, or Supreme Court Justice appointed by the President of the United States . . . . The term 'magistrate' refers to a United States magistrate judge, the new title of officeholders under the Federal Magistrates Act.").

37. *See* ADMIN. OFFICE OF THE U. S. COURTS, *supra* note 31, at 52 & n.259.

38. BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 556 (3d. ed. 2011) (defining "magistrate").

39. *Id*.

IV. THE MAGISTRATE JUDGE TITLE IN LEGAL WRITING

Some have commented on the inaccuracy of dropping "judge" from the magistrate judge title,[40] and many in the district court know it to happen frequently. As has been noted, "Judges often look unkindly on mistakes in their titles" and some judges have remedied this by inserting "[*sic*]" after titling errors.[41] Chief Justice Rehnquist, for example, was observed as correcting attorneys who addressed him as "Judge."[42] This annoyance is understandable in any context, but especially so for magistrate judges based on the connotations carried by "magistrate" versus "magistrate judge." Some have been particularly careful of their use of the title in light of the 1990 change,[43] but there is discussion (at least in the halls of the federal courts) about the use of the former title.

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

A. Statutes and Rules

First, a review of some statutes and rules regarding magistrate judges. The oft-cited and relied-upon magistrate judge jurisdictional statute is 28 U.S.C. § 636, which provides the position's full title—magistrate judge. The remainder of Chapter 43 governing magistrate judges follows suit, referencing the name change in each section.[44] Other sections of the United States Code, varying from that describing disqualification of a "justice, judge, or magistrate judge,"[45] to that governing juvenile proceedings,[46] to

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40. *See, e.g.*, Hon. Anthony J. Battaglia, *Sex, Lies, & Magistrate Judges: Common Misconceptions About the Federal Judiciary*, FED. LAW., June 2007, at 48, 48. Judge Battaglia, former president of the Federal Magistrate Judges Association, also presented on this topic at the Ninth Circuit Judicial Conference in 2006.

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

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

43. Hon. Aaron E. Goodstein, *The Expanding Role of Magistrate Judges: One District's Experience*, FED. LAW., May–June 2014, at 69, 69 ("It was summer 1979 in Milwaukee, Wisc. The Magistrate (not yet referred to as "judge") . . . .").

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

45. *Id*. § 455.

that discussing retirement provisions for judges,[47] are all uniform in one respect—each refer to magistrate judges as magistrate *judges*. One section, which discusses adequate representation of defendants, includes numerous references to magistrate judges, but also mentions "United States magistrate" twice.[48] Both instances of the former title are marked by a footnote contending that the statute should state "magistrate judge."[49]

The federal procedural rules comport with the statutes. On the criminal side, Federal Rule of Criminal Procedure 1 defines "Federal judge" to include "a magistrate judge." Rule 3, regarding the complaint, and Rule 5, on initial appearances, similarly provide the full title. The same is true for Rules 4, 5.1, 6, 9, 17, 40, and 41. The text of Rule 58, discussing petty offenses, misdemeanors, and pretrial procedures, references magistrate judges fifteen times—each time including the full title. And Rule 59, which contemplates a magistrate judge's determination of referred matters, likewise keeps the full title. The advisory committee's notes to Rules 1, 3, 4, 5, 5.1, 6, 9, 17, 40, 41, and 58 each include a notation from 1993 identifying that, "The Rule is amended to conform to the Judicial Improvements Act of 1990 . . . which provides that each United States magistrate . . . shall be known as a United States magistrate judge."[50]

On the civil side, Federal Rules of Civil Procedure 72 and 73—regarding the pretrial order, trial by consent, and appeal—discuss the magistrate judge. Unsurprisingly, Rules 16 and 53's references are no different, referring to magistrate judges. Each of these rules includes an advisory committee note referencing the Judicial Improvements Act of 1990.[51]

The Federal Rules of Appellate Procedure also reference "a magistrate judge"[52] and Federal Rule of Evidence 1101 on the applicability of the rules refers to magistrate judges and includes a note about the magistrate judge title in light of the Judicial Improvements Act of 1990.

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46. 18 U.S.C. § 5034.

47. 28 U.S.C. § 377.

48. 18 U.S.C. § 3006A.

49. *Id*. § 3006A n.2 ("So in original. Probably should be 'United States magistrate judge'.").

50. *See, e.g.*, FED. R. CRIM. P. 1 advisory committee's note (1993 amendment). Federal Rule of Criminal Procedure 59 does not contain the note because it was added in 2005. Other rules include this note as well, but this article discusses only those rules that currently include reference to a magistrate judge in the text of the rule.

51. *See, e.g.*, FED. R. CIV. P. 16 advisory committee's note (1993 amendment) ("This subdivision . . . is revised to reflect the new title of United States Magistrate Judges pursuant to the Judicial Improvements Act of 1990.").

52. FED. R. APP. P. 3(a)(3).

B. Judicial Opinions

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

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53. Beard v. Banks, 548 U.S. 521, 527 (2006) (Breyer, J.).

54. *Id*. at 528.

55. United States v. Jose, 519 U.S. 54, 55 (1996) (per curiam) (repeatedly referring to the magistrate judge as "the Magistrate"); Florida Bar v. Went For It, Inc., 515 U.S. 618, 621 (1995) (O'Connor, J.) (first referring to "the Magistrate Judge" but later "the Magistrate"); Purkett v. Elem, 514 U.S. 765, 766 (1995) (per curiam) (first discussing "the Magistrate Judge's report and recommendation" but referring to the "Magistrate" for the remainder of the opinion); Barker v. Kansas, 503 U.S. 594, 605 n.5 (1992) (White, J.) (noting that Kansas applies its income tax to some federal retirees, including "United States magistrates").

56. Koenig v. Fugro-McClelland (Sw.), Inc., 531 U.S. 1104, 1104 (2001) (granting motion to "lodge Magistrate's memorandum and recommendation").

57. Roe v. Flores-Ortega, 528 U.S. 470, 475 (2000) (O'Connor, J.) ("The District Court adopted the Magistrate's findings and recommendation, and denied relief.").

58. Geissal v. Moore Med. Corp., 524 U.S. 74, 78–79 (1998) (Souter, J.) (regarding a magistrate judge's proceedings in a consent context, describing what "[t]he Magistrate concluded," "[t]he Magistrate held," "the Magistrate's decision," "[t]he Magistrate['s]" handling of various motions).

59. Gonzalez v. Crosby, 545 U.S. 524, 543 n.5 (2005) (Stevens, J., dissenting) (referring to "the Magistrate Judge" but also "the Magistrate's final report" and "the Magistrate's acknowledgment [of a lack of precedent as to a particular issue]"); Fiore v. White, 528 U.S. 23, 28 (1999) (Breyer, J.) ("The Federal District Court, acting on a Magistrate's recommendation, granted the petition."); Ornelas v. United States, 517 U.S. 690, 694 (1996) (Rehnquist, C.J.) (discussing what "[t]he Magistrate found," and that "the District Court adopted the Magistrate's recommendation").

60. Cunningham v. Hamilton Cnty., 527 U.S. 198, 201 (1999) (Thomas, J.) ("The District Court affirmed the Magistrate Judge's sanctions order . . . and described the Magistrate's job of overseeing discovery . . . .").

61. Reno v. Koray, 515 U.S. 50, 56 (1995) (Rehnquist, C.J.).

62. Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 289 (1995) (Thomas, J., dissenting) (discussing how, under Federal Rule of Civil Procedure 73, the district judge "may

Court [took certain action]."[63] At times the use of the truncated title is not a mistake or oversight, but instead is by design. At least two recent Court opinions provide, "A Federal Magistrate Judge (Magistrate)," thereby defining the title as "Magistrate" and referring to the magistrate judge accordingly for the balance of the text.[64]

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

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refer case to magistrate for resolution").

63. United States v. Cabrales, 524 U.S. 1, 4 (1998) (Ginsburg, J.) ("On recommendation of the Magistrate, the District Court denied the motion . . . . Also on the Magistrate's recommendation . . . .").

64. Sell v. United States, 539 U.S. 166, 170 (2003) (Breyer, J.) ("A Federal Magistrate Judge (Magistrate) . . . ."); Groh v. Ramirez, 540 U.S. 551, 553 (2004) (Stevens, J.) ("[G]iven that a Magistrate Judge (Magistrate) . . . .").

65. Erickson v. Pardus, 551 U.S. 89, 92 (2007) (per curiam) (referring to the "Magistrate Judge" but including "Plaintiff's Objections to the Magistrate's Recommendations" in citation).

66. Caspari v. Bohlen, 510 U.S. 383, 387 (1994) (O'Connor, J.) (noting that the district judge "adopt[ed] the report and recommendation of a Magistrate" when the court of appeals opinion establishes that the report and recommendation was entered before the title change); United States v. Alvarez-Sanchez, 511 U.S. 350, 352 (1994) (Thomas, J.) (discussing "the Federal Magistrate's docket" for an event that occurred in 1988); Helling v. McKinney, 509 U.S. 25, 28–29 (1993) (White, J.) (discussing consent to a jury trial before "a Magistrate" and "the Magistrate's grant of a directed verdict" for a trial that occurred before the title change); Hudson v. McMillian, 503 U.S. 1, 4, 12 (1992) (O'Connor, J.) (the matter was heard by "a Magistrate" before title change, and the Court continues to refer to "the Magistrate"); *id*. at 17 (Thomas, J., dissenting) (same); Melkonyan v. Sullivan, 501 U.S. 89, 92 (1991) (O'Connor, J.) (referring to "[t]he Magistrate" but discussing actions that occurred before the title change); Kay v. Ehrler, 499 U.S. 432, 434 n.2 (1991) (Stevens, J.) (discussing "[t]he Magistrate['s]" actions, which occurred before the title change); Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc., 498 U.S. 533, 537–38 (1991) (O'Connor, J.) (same); Lozada v. Deeds, 498 U.S. 430, 431 (1991) (per curiam) (same).

67. Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 69 (1991) (Scalia, J., dissenting) (discussing "presentment before a federal magistrate" but in the context of Federal Rule of Criminal Procedure 5, which did not yet include the new title).

refer to a neutral or detached magistrate,[68] or state proceeding,[69] or foreign or historical tribunal.[70] This article does not quibble with those uses. Even taking into account this variety of circumstances, however, there are still numerous instances in which the position's title is mistaken.[71]

This article is not meant to denigrate the Court. Instead, the cited opinions illustrate that, beyond a mere annoyance for some in the district court, the mistitling is an inaccuracy that has persisted throughout the last two decades. Circuit court opinions also warrant inclusion. Both the Ninth Circuit and the Eleventh Circuit have cited the Judicial Improvements Act of 1990 and noted the changed magistrate judge title.[72] The Eleventh Circuit opinion, issued in 2014, provided the history of the magistrate judge position as well as efforts regarding clarification and expansion of the role.[73] Despite these instances, recent federal court of appeals decisions from the First,[74] Second,[75] Third,[76] Fourth,[77] Fifth,[78] Sixth,[79] Seventh,[80]

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68. Riley v. California, 134 S. Ct. 2473, 2482 (2014) (Roberts, C.J.) (discussing neutral and detached magistrate); Fernandez v. California, 134 S. Ct. 1126, 1132, 1137 (2014) (Alito, J.) (discussing magistrate generally); Messerschmidt v. Millender, 132 S. Ct. 1235 (2012) (Roberts, C.J.) (referencing neutral magistrate throughout); Kentucky v. King, 131 S. Ct. 1849, 1864 (2011) (Ginsburg, J., dissenting) (discussing neutral magistrate).

69. Navarette v. California, 134 S. Ct. 1683, 1687 (2014) (Thomas, J.) (discussing magistrate in a state court context); Evans v. Michigan, 133 S. Ct. 1069, 1087 (2013) (Alito, J., dissenting) (same); Bullcoming v. New Mexico, 131 S. Ct. 2705, 2717 (2011) (Ginsburg, J.) (same); Rothgery v. Gillespie Cnty., 554 U.S. 191, 195 (2008) (Souter, J.) (same).

70. *See, e.g.*, Williams v. Illinois, 132 S. Ct. 2221, 2261, 2263 (2012) (Thomas, J., concurring) (discussing historical Marian statutes).

71. *See* cases cited *supra* notes 53–64.

72. Brown, 748 F.3d at 1052 n.20 ("It was not until 1990—when Congress enacted the Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 321, 104 Stat. 5089, 5117—that the title of magistrate was changed to magistrate judge."); Dixon v. Ylst, 990 F.2d 478, 480 n.1 (9th Cir. 1993) ("The title was changed from 'magistrate' to 'magistrate judge.' Act Dec. 1, 1990, Pub. L. 101-650, Title III, § 321, 104 Stat. 5117.").

73. *See* Brown, 748 F.3d at 1050–58.

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

75. Cement & Concrete Workers Dist. Council Welfare Fund v. Metro Found. Contractors Inc., 699 F.3d 230, 233 (2d Cir. 2012) ("Metro objected to the magistrate's report and recommendation on two grounds . . . .").

76. Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 243 (3d Cir. 2013) ("Third, [the district judge] erroneously adopted the magistrate's recommendations.").

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

78. Smith v. Bank of Am. Corp., No. 14-50256, 2015 WL 1263221, at *2 (5th Cir. Mar. 20, 2015) ("The district court adopted the magistrate's recommendations over the Smiths' objections and granted each motion to dismiss.").

79. Clark v. United States, 764 F.3d 653, 655 (6th Cir. 2014) ("It then denied Clark leave to amend because she filed her motion to amend after the magistrate recommended a disposition of her § 2255 motion.").

Eighth,[81] Ninth,[82] Tenth,[83] Eleventh,[84] D.C.,[85] and Federal[86] Circuits demonstrate that the mistitling occurs in those courts as well. There may be many more cases in each court that provide the magistrate judge her full title, and many of the cited cases include both the current and former titles. But these cited examples show that there is a lack of knowledge regarding magistrate judges even within the federal judiciary and that comments and complaints about a shortening of the title are not exaggerated.

In some of the cited decisions, confusion results from mistaking the magistrate judge's title, but also from referring to the magistrate judge and the district court as separate entities. Returning to the Supreme Court, an opinion released in 2015 carefully uses the magistrate judge's full title throughout, but then comments that "the Magistrate Judge, the District Court, and the Court of Appeals all thought that they were bound to defer to the Department's assertion."[87] Such statements could prompt questions regarding the magistrate judge's work in district court, with inquiries about whether a case is before a magistrate judge or is in district court. In effect, language that separates the magistrate judge from district court effectively creates two courts in the reader's mind—a district court (in which the district judge sits) and a magistrate court (in which a magistrate judge sits). This artificial separation by describing two courts instead of two benches has resulted in confusion. As described by a magistrate judge in the Southern District of New York:

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

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80. United States v. Seidling, 737 F.3d 1155, 1158 (7th Cir. 2013) ("[T]he district court adopted the magistrate's recommendation . . . .").

81. Reeves v. King, 774 F.3d 430, 431 (8th Cir. 2014) ("The magistrate determined Lieutenant King was not entitled to qualified immunity . . . [and] the district court adopted the magistrate's recommendations . . . .").

82. Lowe v. Johnson, 584 F. App'x 702, 704 n.2 (9th Cir. 2014) ("Here, the magistrate's R&R included . . . .").

83. In re Brooke Capital Corp., 588 F. App'x 834, 840 (10th Cir. 2014) ("The district court agreed and therefore adopted and incorporated the magistrate's recommendations.").

84. Jones v. United States, No. 14-11008, 2015 WL 327837, at *2 (11th Cir. Jan. 27, 2015) ("The district court adopted the magistrate's recommendation without elaboration.").

85. United States v. Bowman, 496 F.3d 685, 691 n.1 (D.C. Cir. 2007) ("Rule [59] applies to a magistrate's 'recommendation' regarding certain kinds of dispositive matters 'refer[red] to' the magistrate by a district judge.") (internal alterations in original).

86. Colida v. Nokia, Inc., 347 F. App'x 568, 569 (Fed. Cir. 2009) ("Over Colida's objections, the district court adopted essentially all of the magistrate's recommendations . . . .").

87. *See, e.g.*, Holt v. Hobbs, 135 S. Ct. 853, 863–64 (2015) (Alito, J.).

> refers to courtrooms where all or most of the matters heard are criminal in nature, sometimes with rotating Magistrate Judges handling the criminal duties, but it is a misnomer. Magistrate Judges are appointed by the District Court Judges in that District to serve in the District Court, not in a so-called "Magistrates Court."[88]

Another judge wrote, "There used to be a sign outside my courthouse directing people to the magistrate court, but, of course, such a jurisdictional entity does not exist. Fortunately, the sign has been changed recently after several years of requests."[89] The Federal Magistrate Judges Association has been sensitive to titling issues and the magistrate judge's place in district court. A document produced by the Association mentions the position's title and the practice of addressing a magistrate judge as "magistrate."[90] The literature's frequently-asked-questions section addresses the misconception of a "magistrate judge's court" and maintains that there is no such court and instead both district judges and magistrate judges "preside in United States District Courts created under Article III of the Constitution."[91]

C. Secondary Sources

The widespread use of "magistrate" alone is not limited to judicial opinions, and is prevalent in secondary sources as well. Some of these instances are accurate in context, such as when discussing a case decided before the enactment of the Judicial Improvements Act of 1990,[92] but they do not account for the numerosity of errors. One law review note specifically excludes magistrate judges from the definition of judge, providing: "For the purposes of this Note, the term 'judge' refers to a district judge, appeals court judge, or Supreme Court Justice appointed by

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88. Hon. Lisa Margaret Smith, *Top 10 Things You Probably Never Knew About Magistrate Judges*, FED. LAW., May–June 2014, at 36, 38.

89. Battaglia, *supra* note 40, at 50.

90. *United States Magistrate Judges*, FED. MAGISTRATE JUDGES ASSOC., http://www.fmja.org/pdfs/brochures/FMJA%20Brochure%2026639.pdf (last visited July 19, 2015) (asserting that the word "magistrate" is "merely descriptive of the type of judge" and that to address a magistrate judge as "magistrate" is akin to addressing a lieutenant colonel as "Lieutenant" or a bankruptcy judge as "Bankruptcy"); *see also* Battaglia, *supra* note 40, at 51.

91. *Id*.

92. *See, e.g.*, Doug Lieb, Note, *Vindicating Vindictiveness: Prosecutorial Discretion and Plea Bargaining, Past and Future*, 123 YALE L.J. 1014, 1035 n.103 (2014) (discussing "[t]he magistrate's recommendation and report" in pre-1990 context, thus using the correct title for the time period); Douglas R. Richmond, *Depositions of Other Lawyers*, 81 TENN. L. REV. 47, 51–52 (2013) (same); Bruce A. Green & Ellen S. Podgor, *Unregulated Internal Investigations: Achieving Fairness for Corporate Constituents*, 54 B.C. L. REV. 73, 96 n.128 (2013) (same).

the President of the United States . . . . The term 'magistrate' refers to a United States magistrate judge . . . ."[93] Even when limiting the review of legal scholarship to the past two years, instances in which a magistrate judge is inaccurately titled are abundant.[94] Notably, magistrate judges' decisions receive considerably less attention than those of, for example, federal appellate judges, and therefore are discussed less frequently in legal scholarship. As with the courts, many law review boards make this error and no single law journal is responsible for all of the mistitling.

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

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93. *See* Linehan Shannon, *supra* note 36, at 235 n.5.

94. *See, e.g.*, Ursula Tracy Doyle, *The Evidence of Things Not Seen: Divining Balancing Factors from* Kiobel*'s "Touch and Concern" Test*, 66 HASTINGS L.J. 443, 463 (2015) ("The district court accepted the magistrate's Report and Recommendation and also began to answer the question of what satisfies *Kiobel*'s touch and concern test."); Bethany A. Corbin, *Losing at Dodge Ball: Understanding the Supreme Court's Implied Authorization of Consent in* Executive Benefits Insurance Agency v. Arkison *and Why Revision of 28 U.S.C. § 157(b) Is Critical for Clarity*, 63 DRAKE L. REV. 109, 154 (2015) (discussing "the magistrate system" and "magistrate courts"); Cynthia Alkon, *The U.S. Supreme Court's Failure to Fix Plea Bargaining: The Impact of* Lafler *and* Frye, 41 HASTINGS CONST. L.Q. 561, 599 (2014) (discussing the relevance of the "magistrate's statement" and that "[t]he magistrate recommended" the defendant plead guilty); Jonah J. Horwitz, *Social Insecurity: A Modest Proposal for Remedying Federal District Court Inconsistency in Social Security Cases*, 34 PACE L. REV. 30, 38–39 (2014) (discussing research methodology, and not considering recommendations by magistrate judges "on the assumption that such opinions might reflect as much about the magistrate as the district court judge"); M. Jackson Jones, *A Confusing Interaction Between the Warrants Clause, Child Pornography, and Child Molestation: Determining Whether Evidence of Child Molestation Creates Probable Cause to Search for Child Pornography*, 40 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 75, 92–93 (2014) (discussing a 2006 criminal case and describing the magistrate judge as "magistrate" throughout the discussion); M. Isabel Medina, *Derivative Citizenship: What's Marriage, Citizenship, Sex, Sexual Orientation, Race, and Class Got to Do with It?*, 28 GEO. IMMIGR. L.J. 391, 451 n.292 (2014) (discussing "magistrate recommendation"); Bailey W. Heaps, Note, *The Most Adequate Branch: Courts As Competent Prison Reformers*, 9 STAN. J. C. R. & C. L. 281, 302 (2013) (discussing "the magistrate's recommendations" and "the magistrate's findings"); Caitlin E. Burke, Note, *The Eleventh Circuit's Interpretation of* Mitsubishi*'s Footnote 19 and the Validity of Arbitration Clauses in Union-Negotiated Collective Bargaining Agreements*, 67 U. MIAMI L. REV. 893, 911 (2013) ("The District Court adopted the Magistrate's recommendation and the United States Court of Appeals for the Fourth Circuit affirmed."); Richard J. Pierce, Jr., Essay, *District Court Review of Findings of Fact Proposed by Magistrates: Reality Versus Fiction*, 81 GEO. WASH. L. REV. 1236, 1237 (2013) ("Magistrates have become an indispensable and ubiquitous part of the federal judicial system."); Yosefa A. Englard, Note, *Unfair Practices and Practicing Attorneys: Should the Fair Debt Collection Practices Act Apply to Communications Between Debt Collectors and Debtors' Attorneys?*, 87 ST. JOHN'S L. REV. 1107, 1116 n.63 (2013) (discussing the district court's adoption of "the magistrate's recommendation"); Samantha Healy Vardaman & Christine Raino, *Prosecuting Demand As A Crime of Human Trafficking: The Eighth Circuit Decision in* United States v. Jungers, 43 U. MEM. L. REV. 917, 937 (2013) (discussing "the magistrate's recommendation"); Jennifer K. Gregory, *#bewareofovershare: Social Media Discovery and Importance in Intellectual Property Litigation*, 12 J. MARSHALL REV. INTELL. PROP. L. 449, 458 (2013) (noting the adoption of "the magistrate's recommendation").

by the judiciary itself, but lack the full protections of tenure and financial security required for the Article III judiciary."[95] Other recent examples from these schools are plentiful.[96] One published note on objections to magistrate judge rulings identified that the Judicial Improvements Act of 1990 had changed the magistrate judge title, but the publication continued to include references to "magistrates."[97]

Law review articles aside, other secondary sources also include the outdated title when addressing a magistrate judge. Use of the former title is found in trade and practice materials, including publications issued by respected institutions such as the Federal Bar Association[98] and the

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95. Peter L. Strauss, Essay, *"Deference" Is Too Confusing—Let's Call Them "*Chevron *Space" and "*Skidmore *Weight"*, 112 COLUM. L. REV. 1143, 1152 (2012).

96. *See, e.g.*, Alexander J. Kasner, Note, *National Security Leaks and Constitutional Duty*, 67 STAN. L. REV. 241, 267 n.148 (2015) ("Congress vests, through statute, the power to appoint federal magistrate judges with district court judges, which is only possible if magistrates are inferior officers."); Dodge, *supra* note 15, at 929 n.113 ("As a formal matter, the decisions of special masters and magistrates are reviewed de novo, under Federal Rules of Civil Procedure 53 and 72."); Alan M. Trammell, *Transactionalism Costs*, 100 VA. L. REV. 1211, 1263 n.197 (2014) (discussing magistrate judges and noting that "[i]f the goal is to minimize trial judges' workloads, magistrates should take on that responsibility"); Recent Case, United States v. Chappell*, 691 F.3d 388 (4th Cir. 2012)*, 126 HARV. L. REV. 842, 843 (2013) ("The magistrate rejected Chappell's overbreadth claim . . . . Adopting the magistrate's conclusions, the district court found . . . ."); Recent Case, United States v. Skinner*, 690 F.3d 772 (6th Cir. 2012), reh'g and reh'g en banc denied, No. 09-6497 (6th Cir. Sept. 26, 2012)*, 126 HARV. L. REV. 802, 803–04 & nn.15–16 (2013) (discussing "the magistrate's recommendation," and what the "magistrate found," and "the magistrate noted"); Michael D. Sant'Ambrogio & Adam S. Zimmerman, *The Agency Class Action*, 112 COLUM. L. REV. 1992, 2054 (2012) (in the context of federal multi-district litigation actions, asserting that "[j]udges may then appoint magistrates or special masters to handle settlement discussions to avoid becoming overly invested in the parties' proposed resolution") (citing MANUAL FOR COMPLEX LITIGATION (FOURTH) § 22.91 (2004) (discussing judicial role and settlement and that "a magistrate judge, a special master, or a settlement judge" may handle)); Adam Teitelbaum, Note, *Dubious Delegation: Article III Limits on Mental Health Treatment Decisions*, 110 MICH. L. REV. 1553, 1560 (2012) (discussing the role of "federal magistrate"); Benjamin A. Saidman, *Designing Around A Patent Injunction: Developing A Comprehensive Framework for Determining When Contempt Proceedings Are Appropriate*, 61 EMORY L.J. 863, 880 (2012) (discussing "magistrate's recommendation"); Adam S. Zimmerman & David M. Jaros, *The Criminal Class Action*, 159 U. PA. L. REV. 1385, 1443 & 1455 n.205 (2011) (noting that "[j]udges often appoint magistrates or special settlement masters to oversee settlement negotiations" and later citing to "the magistrate's findings" in a federal action); *Leading Cases*, 125 HARV. L. REV. 321, 323 (2011) ("The district court adopted the magistrate's recommendation to dismiss the complaint for failure to state a claim . . . ."); Recent Case, Kiobel v. Millson*, 592 F.3d 78 (2d Cir. 2010)*, 124 HARV. L. REV. 1327, 1330 (2011) (discussing the authority of "magistrates" to discharge duties under 28 U.S.C. § 636); Pratheepan Gulasekaram, *"The People" of the Second Amendment: Citizenship and the Right to Bear Arms*, 85 N.Y.U. L. REV. 1521, 1531 (2010) (discussing "[t]he magistrate's recommendation").

97. Kevin Koller, Note, *Deciphering De Novo Determinations: Must District Courts Review Objections Not Raised Before A Magistrate Judge?*, 111 COLUM. L. REV. 1557, 1564 n.41 (2011).

98. Bruce Moyer, *Federal Judges Score A Pay Adjustment, Quietly*, FED. LAW., Jan.–Feb. 2015, at 8, 8 ("The decisions also have raised the pay of many non-Article III judges, including magistrates, and those in the tax, bankruptcy, and claims courts.").

American Law Institute.[99] Also notable are references in the habeas corpus section of the *Georgetown Law Journal Annual Review of Criminal Procedure*, which functions as a helpful tool for many magistrate judges.[100] Perhaps unsurprisingly considering the other cited sources, Westlaw includes a "key number" entry entitled "United States Magistrates."

V. A CALL FOR ACCURACY

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

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

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99. RESTATEMENT (SECOND) OF AGENCY § 242 case annotation (citing *Dial v. Beightler*, 689 F. Supp. 2d 906, 906 (N.D. Ohio 2010)) (discussing party's objection to magistrate judge's recommendation and referring to "the magistrate's recommendation").

100. *See, e.g.*, *Habeas Relief for State Prisoners*, 44 GEO. L.J. ANN. REV. CRIM. PROC. 1018, 1051 (2015) ("When a federal court grants an evidentiary hearing, the court may appoint a federal magistrate to conduct the hearing.").

> either unaware of, or chose in this case to disregard out of pique, Section 321 of Pub. L. 101-650, which provides: "After the enactment of this Act [Dec. 1, 1990], each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge," a change of name the Act explicitly imposed upon "any regulation of any department or agency of the United States in the executive branch" issued before the date of enactment in 1990. Twenty-two years should be sufficient time for the denizens of a United States Attorney's office to learn the legally correct way to refer to a Magistrate Judge, a judicial officer sensible attorneys routinely address as "Judge." Throughout this Ruling I will respectfully refer to "Judge Margolis."[101]

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

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101. Koutrakos v. Astrue, 906 F. Supp. 2d 30, 31 n.1 (D. Conn. 2012).

102. Northbrook Digital, LLC v. Vendio Servs., Inc., 625 F. Supp. 2d 728, 734 (D. Minn. 2008).

VI. CONCLUSION

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

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103. Rubin v. Smith, 882 F. Supp. 212, 214 n.2 (D.N.H. 1995) (quotation omitted); Christopher Smith, *From U.S. Magistrates to U.S. Magistrate Judges: Developments Affecting the Federal District Courts' Lower Tier of Judicial Officers*, JUDICATURE, Dec.–Jan. 1992, at 210, 212.

104. *See, e.g.*, Hon. Robert C. Longstreth, *Does the Two-Prong Test for Determining Applicability of the Discretionary Function Exception Provide Guidance to Lower Courts Sufficient to Avoid Judicial Partisanship?*, 8 U. ST. THOMAS L.J. 398, 416 (2011) (discussing district judges' decisions and listing those decided by magistrate judges, all while including the full title).