Department of Justice

Testimony on S. 1613
Proposed Magistrate Act of 1977

by

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before

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Subcommittee on
Improvements in Judicial Machinery

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It is a pleasure to appear before this subcommittee to comment on the proposed Magistrate Act of 1977, S. 1613. The Department of Justice welcomes the opportunity to cooperate with Senators DeConcini and Byrd on this bill. It is an important step toward providing meaningful access which recognizes that, in many cases, the keyhole in the jurisdictional door is out of reach for federal litigants who do not have great resources or claims that warrant their application. Many are denied such access today. They may have theoretical jurisdictional rights. However, if they file suit and can't get a hearing without excessive complication or expense, then they don't have effective access.

We have district courts that are set up to handle big cases, so every case, big or small, tends to become a big case when lodged there. The genius of the magistrate system is that it can handle cases in an expeditious manner which might be exposed to procedural overkill and a long wait in the district court.

The magistrate system is also supple. Magistrates can be added quickly to respond to litigation surges in particular districts at particular times. In Georgia, for a few years we had disproportionate numbers of Truth-in-Lending cases, which could have been cleaned up much faster if this bill were law at that time.

When the bill was introduced I provided the subcommittee with a statement, since reproduced in the Congressional Record. I will not go over all the ground I covered there. If I may, I would like to discuss the civil appellate procedures in the bill. They have created some concern.

S. 1613 would provide for appeal by right from a magistrate decision to the district court. An aggrieved party could appeal any question of law from the district court to the circuit and be heard at the circuit's discretion. If the circuit took the case, its decision on the merits could be appealed to the Supreme Court.

It is very important to point out that the circuit's discretion in this regard is narrowly drawn. The court must take a case if there appears to be any prejudicial error of law committed below.

The Department feels there is considerable merit to structuring the appellate procedure in this way. Some would prefer to have the initial appeal be by right to the court of appeals. This, I believe, would substantially lessen the effectiveness of the legislation, for it is designed to provide expeditious adjudication in those cases where the parties agreed that magistrate court is a suitable forum. These cases may involve, by-in-large, fact predominate questions, with no difficult issues of law, or involve small amounts in

controversy. To require litigants to embark on an expensive journey to a circuit forum for an initial appeal and to wait for a three-judge sitting is not consistent with the bill's design. Once again the small case made a big, drawn-out case, requiring three judges and a wait of up to two years or more depending on the circuit. Flexibility would be lost because the courts of appeal are, of course, more centralized and less in touch with local conditions.

The bill's lack of reliance on direct, initial appeal to the circuits helps to ensure that only the cases which in fact present real controversies on issues of law are adjudicated before the circuits. The cases reaching the circuits will be screened by the appellate determinations of the district courts and by the circuits' decisions on the petitions for leave to appeal. A case which has successfully gone through this two-step process is more likely to receive the full attention of the circuit, which redounds to the benefit of the appellant. They would also merit the added wait and expense this adjudication entails.

The argument has been made that initial appellate review by the district courts might create "hometown" parochial decisions. It is pointed out that court judges who work closely with magistrates on pretrial and other matters might be biased. I am confident that the appropriate judicial, arms-length climate will and can be created to assure that a magistrate

known to the judge is not favored. The risk of bias is so slight, that I believe it should not be found to outweigh the advantages of initial district court appellate review.

Further, it is argued that requiring the district judges to sit as appellate judges will not save them any time in cases of one or two-day trial duration. The trial time saved would be offset by time consumed in appellate argument and review of briefs and documents. I concede in these cases there might be no time saving. However, there is likely to be a saving where the trial is longer. In addition, the conservation of district court time is not the only goal of the bill. Of equal, perhaps greater importance, are the provision of expeditious initial appeals and the conservation of <u>total</u> judge time expended. With regard to the latter, under the bill one judge is able to do the work of three, a substantial time saving at the initial appellate level.

For all these reasons I would favor the appellate procedures as they are now specified in the bill. However, there are no doubt other matters which concern the subcommittee I am open to your questions.