



Magistrate Judges and the Transformation of the Federal Judiciary

Friday September 25

12:00 Box lunch / Arrival / Registration

1:00 **Welcome**

Daniel Hamilton, Dean and Richard J. Morgan Professor of Law, William S. Boyd School of Law, University of Nevada—Las Vegas

1:15 **Opening Remarks: Judges and Scholars—Bridging the Divide**

United States Magistrate Judges: Present But Unaccounted For

This paper by Judge Philip Pro is the genesis of this conference. He presented this research as his thesis for his Master of Judicial Studies degree at the Duke School of Law. In his paper Judge Pro describes a system of magistrate judges that, over the course of five decades, has become a central part of the administration of justice. Notwithstanding that profound emergence, however, the institution and judicial behavior of magistrate judges have received little academic scrutiny. The paper raises many important questions about the judicial process of district judges in comparison and contrast to the judicial process of magistrate judges. The results of his survey of thirty-four magistrate judges and district judges offers insight and will shape further inquiry.

Presenter:

Philip Pro, District Judge (ret.), District of Nevada (Las Vegas, NV)

Commentator:

Mitu Gulati, Professor of Law, Duke Law School

2:15 **Panel #1: Demographics**

Article I Judges in an Article III World: The Background and Attributes of U.S. Magistrate Judges

Federal magistrate judges are a relatively new creation, dating back only to 1968. Unlike federal district and appellate judges, whose constitutional authority is rooted in Article III, federal magistrate judges are a creation of Congress through Article I. Since their inception as special masters, magistrate judges' responsibilities have steadily grown, now presiding (with the parties' consent) over civil as well as misdemeanor criminal trials. The institutional differences between magistrate and district judges are stark: selection, compensation, and tenure, to name a few. At the same time, the roles of these judges significantly overlap, and district courts vary in the power and deference granted to magistrate judges. Notwithstanding their importance in federal adjudication, our understanding of magistrate judges remains limited. This article attempts to increase our understanding by building a unique dataset that comprises the universe of sitting U.S. magistrate judges, capturing both biographical and professional characteristics. We find that while magistrate judges come from more diverse educational and professional backgrounds than do district judges, the trend in diversifying the Article III bench has not extended to the Article I courts. The implications of this finding are significant because magistrate judges exercise greater decision-making discretion in federal courts and also serve as a pipeline to the Article III judiciary.

Presenters:

Tracey George, Charles B. Cox III and Lucy D. Cox Family Chair in Law and Liberty, Vanderbilt Law School

Albert Yoon, Professor of Law, University of Toronto Faculty of Law

Commentators:

Johnnie Rawlinson, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit (Las Vegas, NV)

Robert Collings, Magistrate Judge (ret.), District of Massachusetts (Boston, MA)

Moderator:

Ann C. McGinley, William S. Boyd Professor of Law, William S. Boyd School of Law, University of Nevada—Las Vegas

3:45 Break

4:00 **Panel #2: Authority and Utilization**

“Nothing Less Than Indispensable:” The Expansion of Federal Magistrate Judge Authority and Utilization in the Past Quarter Century

The paper will analyze the expansion of magistrate judge authority and utilization in the federal district courts over the past 25 years from the authors' perspective as senior attorneys at the Administrative Office of the United States Courts, where they assist courts and the Magistrate Judges Committee of the Judicial Conference of the United States on legal and policy issues related to the magistrate judges system.

Presenters:

Douglas Lee, Special Advisor for Magistrate Judges, Judicial Services Office, Administrative Office of U.S. Courts

Thomas Davis, Senior Attorney, Judicial Services Office, Administrative Office of U.S. Courts

Commentator:

Candy W. Dale, Chief Magistrate Judge, District of Idaho (Boise, ID)

Michael J. Newman, Magistrate Judge, Southern District of Ohio (Dayton, OH)

James P. O'Hara, Chief Magistrate Judge, District of Kansas (Kansas City, KS)

Neil V. Wake, District Judge, District of Arizona (Phoenix, AZ)

Moderator:

Jeffrey W. Stempel, Doris S. and Theodore B. Lee Professor of Law, William S. Boyd School of Law, University of Nevada—Las Vegas

5:45 Reception

Saturday September 26

8:00 Continental Breakfast

8:30 **Panel #3: The Front-Line of Reforms (e.g., ADR)**

Magistrate Judges, Settlement—and Procedural Justice, Due Process and Self-Determination

Magistrate judges play various roles in connection with the settlement of civil cases. They may refer cases or particular issues to staff or roster mediators, with the understanding that if a trial is needed, it will be conducted by the magistrate judge; they may facilitate settlement sessions (or “mediate”) themselves but with the understanding that if a trial is needed, it will be conducted by a district judge; or they may both facilitate settlement sessions and (with the parties’ consent) conduct a trial if needed. The magistrate judges’ settlement sessions may include ex parte meetings and a promise of confidentiality. This Article will consider these procedural variations’ consistency with procedural justice, due process and party self-determination. It also will consider mechanisms to permit magistrate judges to assess the procedural justice they offer.

Presenter:

Nancy Welsh, Professor of Law and William Trickett Faculty Scholar,
Dickinson School of Law, Penn State University

Commentators:

Valerie Cooke, Magistrate Judge, District of Nevada (Reno, NV)

Nancy King, Lee S. and Charles A. Speir Professor of Law, Vanderbilt
Law School

Moderator:

Jean Sternlight, Michael and Sonja Saltman Professor of Law, William
S. Boyd School of Law, University of Nevada—Las Vegas.

10:00 Break

10:15 **Panel #4: The Judicial Process(es) of District and Magistrate Judges**

The Comparative Decision Making Behavior of Magistrate Judges

Professor Boyd's papers asks: Do federal magistrate judges make different decisions and produce distinct judicial outputs from their Article III district judge colleagues? Similarly, does prior experience as a magistrate judge affect district judge behavior and/or do magistrate judges who receive future Article III appointments behave differently from their magistrate colleagues who do not? To systematically examine these closely linked questions, this study utilizes original and newly available federal district court data covering issue areas including employment discrimination, broader civil rights, intellectual property rights, and personal injury torts. The case activities analyzed from the data include decisions on dispositive and discovery motions, case outcomes, management and scheduling conferences, settlement conferences, reports and recommendations, and opinion content, among others.

Presenter:

Christina Boyd, Assistant Professor, Department of Political Science, University of Georgia.

In the Absence of Scrutiny: Narratives of Probable Cause

This paper, by Mitu Gulati, Jack Knight, and David Levi reports on a set of roughly thirty interviews with federal magistrate judges. The focus of the interviews was the impact of the Supreme Court case, *United States v. Leon*, on the behavior of magistrate judges. *Leon*, famously, put in place the "good faith" exception for faulty warrants that were obtained by the officers in good faith. The insertion of this exception diminished significantly the incentive for defendants to challenge problematic warrant grants. That effect, in turn, could have diminished the incentive for magistrate judge scrutiny of the warrants at the front end of the process. We do not find any indication of diminished scrutiny. What we do find, however, is a highly ritualized and formalistic process for the evaluation of warrants where calculations of probabilities are viewed through a legalistic rather than a pragmatic lens.

10:15 **Panel #4: The Judicial Process(es) of District and Magistrate Judges, cont.**

Presenters:

Mitu Gulati, Professor of Law, Duke Law School

Jack Knight, Frederic Cleaveland Professor of Law and Political Science, Duke Law School

Commentators:

Cam Ferenbach, Magistrate Judge, District of Nevada (Las Vegas, NV)

Tobias Barrington Wolff, Professor of Law, University of Pennsylvania Law School

Moderator:

Daniel Hamilton, Dean and Richard J. Morgan Professor of Law, William S. Boyd School of Law, University of Nevada—Las Vegas

12:00 Conclusion

Biographies of Panelists

Christina L. Boyd is an assistant professor in the Department of Political Science at the University of Georgia. She teaches classes in the areas of judicial politics, public law, and criminal justice, and her current research focuses on empirical legal studies and the quantitative examination of federal courts, judges, and other actors. Professor Boyd received her Ph.D. in political science from Washington University in St. Louis. Prior thereto she received a B.A. with honors in political science from the University of Florida and a J.D. from Wake Forest University School of Law in 2004. She is a member of the North Carolina Bar (inactive), and grew up in beautiful western Montana.

Robert B. Collings has served as a Magistrate Judge for the United States District Court for the District of Massachusetts since March 1982. He was the Chief Magistrate Judge from 1999-2001. Judge Collings has been a lecturer for the Federal Judicial Center, various bar associations continuing legal education seminars, and several law schools. He has also served on many committees of the ABA and the federal judiciary, including service as the Magistrate Judge representative to the Judicial Conference of the United States. Prior to his judicial service he worked in the U.S. Attorney's Office. Judge Collings is a Phi Beta Kappa graduate of Hamilton College, a cum laude graduate of the Harvard Law School, and a former officer in the U.S. Navy's Judge Advocate General's Corps.

Valerie P. Cooke has served as a United States Magistrate Judge for the United States District Court for the District of Nevada since 1999. She currently chairs the Ninth Circuit's Alternative Dispute Resolution Committee, and has served as a member since 2001. Prior to her judicial appointment she was a partner in the law firm of McDonald Carano Wilson LLP where she devoted her practice to creditors' rights in bankruptcy and commercial litigation. Judge Cooke graduated cum laude from the University of Nevada, Reno with a Bachelor of Arts degree in English. A third generation Nevada lawyer, she received her J.D. degree from Northwestern School of Law of Lewis and Clark College in Portland, Oregon where she served on the law review and was a member of the Cornelius Honor Society.

Candy W. Dale has served as the Chief United States Magistrate Judge for the United States District Court for the District of Idaho since 2008. She has chaired and served as a member of many Ninth Circuit and statewide committees regarding pro bono service, ADR, prisoner litigation, drug courts, jury trials, and local rules. A native of Boise, Idaho, Judge Dale obtained a Bachelor of Science degree, with honors and as a Gipson Scholar, from the College of Idaho in 1979, and a Juris Doctorate from the University of Idaho College of Law in 1982, where she served as Editor-in-Chief of the Idaho Law Review. Before her appointment to the federal bench, she was a trial lawyer for over 25 years.

Thomas E. Davis has worked as a senior attorney at the Administrative Office of U.S. Courts since October 1997. He received his B.S.F.S. from Georgetown University in 1976, an M.A. from New York University in 1984, and his J.D. from the University of Memphis Cecil C. Humphreys School of Law in 1988. Prior to working at the Administrative Office he served as a law clerk to Senior Judge Robert M. McRae, Western District of Tennessee, from 1989-1994, and to Magistrate Judge Diane K. Vescovo, Western District of Tennessee, from 1995-1997.

Cam Ferenbach has served as a United States Magistrate Judge for the United States District Court for the District of Nevada since 2011. He graduated from Princeton University in 1969 and served in the United States Navy as a line officer from 1969 until 1973. After the Navy, Judge Ferenbach settled in Arizona where he managed a community owned water utility before beginning law school in 1977. He graduated from Arizona State University College of Law in 1979, and began working at Lionel Sawyer & Collins in Las Vegas, Nevada, where he was later a partner. During a six-month leave of absence from the firm, Judge Ferenbach also served as a deputy public defender with the Maricopa County Public Defender's Office in Phoenix, Arizona. Judge Ferenbach is a past President of the Legal Aid of Southern Nevada, the Clark County Bar Association and the Nevada State Bar.

Tracey George is the Charles B. Cox III and Lucy D. Cox Family Chair in Law and Liberty at Vanderbilt Law School. She is also a Professor of Political Science and the Director of the Cecil D. Branstetter Litigation & Dispute Resolution Program. Professor George brings a social science perspective to a range of topics including judges and courts, judicial selection and elections, legal education and the legal profession, and contract law and theory. Professor George earned her undergraduate degree from SMU, a graduate degree in political science from Washington University in St. Louis, and a law degree from Stanford University.

Mitu Gulati is a professor of law at Duke University. Prior to entering the academy he worked at Cleary Gottlieb in New York. Before joining the Duke faculty, Gulati was a professor at UCLA and then Georgetown.

Daniel W. Hamilton is the fourth dean of the UNLV William S. Boyd School of Law. He assumed the deanship in July 2013 and joined the Boyd School of Law faculty as the Richard J. Morgan Professor of Law. He joined UNLV from the University of Illinois College of Law where he was the Associate Dean for Faculty Development and Professor of Law and History. Dean Hamilton received his Ph.D. in American Legal History in 2003 from Harvard University. He was a Samuel I. Golieb Fellow in Legal History at New York University School of Law during the 2003-04 academic year. His book, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy During the Civil War*, was published by the University of Chicago Press. Dean Hamilton received his J.D. from George Washington University and his B.A. from Oberlin College.

Nancy King is the Lee S. and Charles A. Speir Professor of Law at Vanderbilt Law School. Her work focuses on the post-investigative features of the criminal process, including plea bargaining, trials, juries, sentencing, appeals, double jeopardy and post-conviction review. Over the course of her academic career, she has authored or co-authored two leading multi-volume treatises on criminal procedure, the leading criminal procedure casebook, dozens of articles and book chapters, and several books, including *Habeas for the Twenty-First Century: Uses, Abuses, and the Future of the Great Writ* (University of Chicago Press, 2011). She and two researchers from the National Center for State Courts led a national study of habeas litigation in U.S. District Courts funded by an award from the National Institute of Justice. Professor King is a graduate of Oberlin College and the University of Michigan School of Law.

Jack Knight is the Frederic Cleaveland Professor of Law and Political Science at Duke University, holding a joint appointment with the Law School and with the Trinity College of Arts and Sciences. A renowned political scientist and legal theorist, Professor Knight's scholarly work focuses on modern social and political theory, law and legal theory, and political economy. Among his many books and book awards is *The Choices Justices Make* (with Lee Epstein), which won the American Political Science Association's C. Herman Pritchett Award for the best book published on law and courts. Professor Knight holds a bachelor's degree and JD from the University of North Carolina at Chapel Hill and an MA and a PhD in political science from the University of Chicago.

Douglas A. Lee has worked as a senior attorney at the Administrative Office of U.S. Courts since October 1989. He is currently the Special Advisor for Magistrate Judges in the Judicial Services Office, Department of Program Services. He received his B.A. *magna cum laude* from Brown University in 1979 and his J.D. from the University of Pennsylvania Law School in 1983, where he was a member of the law review. Prior to working at the Administrative Office, he was in private practice in the Philadelphia area.

Ann C. McGinley is the William S. Boyd Professor of Law at the Boyd School of Law. She joined UNLV after prior service on the faculties of Brooklyn Law School and Florida State University. Professor McGinley has published dozens of law review articles and book chapters, and several books. Her scholarly works span topics of torts, disability law, employment discrimination, and masculinities theory. A true renaissance woman, she has also taught at foreign universities, including in Chile—lecturing in Spanish. Professor McGinley earned her bachelor's degree from Rosemont College and a master's degree from the University of Delaware. She is a *cum laude* graduate of the University of Pennsylvania Law School. She spent two years clerking in the U.S. Court for the Eastern District of Pennsylvania for the Honorable Joseph S. Lord, and four years practicing law in Minnesota and New Jersey.

Michael J. Newman has served as a United States Magistrate Judge for the United States District Court for the Southern District of Ohio since 2011. Prior to his appointment, he was a partner in the Cincinnati office of Dinsmore & Shohl LLP, representing both plaintiffs and defendants, practicing in the areas of labor and employment, business litigation and appellate litigation. The author of many publications, Judge Newman has also taught as an adjunct faculty member at a number of law schools. Long a public servant, leading lawyer, and outstanding judge, in 2010, Judge Newman received the Federal Bar Association's Elaine R. 'Boots' Fisher national public service award, given annually to one lawyer in the United States for "exemplary community, public and charitable service." Judge Newman holds a B.F.A. from New York University and is a cum laude graduate of American University's Washington College of Law. Judge Newman will be the National President of the Federal Bar Association from 2016-2016.

James P. O'Hara has served as a United States Magistrate Judge for the United States District Court for the District of Kansas since 2000. Prior to his judicial appointment he was in private practice with the Kansas City-based law firm of Shughart, Thomson & Kilroy, P.C. He primarily represented clients in commercial litigation cases in federal and state courts in Kansas and Missouri. Since joining the bench, Judge O'Hara has remained active in several bar and continuing legal education endeavors, including the Earl E. O'Connor American Inn of Court, the Board of Editors of the *Journal of the Kansas Bar Association*, and teaching Trial Advocacy as a member of the adjunct faculty at the University of Kansas School of Law. Judge O'Hara was born in Detroit, Michigan, but was raised mainly in Utah and Nebraska. He earned a Bachelor of Arts degree from the University of Nebraska and is a cum laude graduate of the Creighton University School of Law.

Philip M. Pro recently retired after 28 years of service as a United States District Judge for the District of Nevada. That service followed years of distinguished practice as a Deputy Public Defender, then Assistant U.S. Attorney, then a partner in a law firm, then Deputy Attorney General for the State of Nevada, and eight years as United States Magistrate Judge. Judge Pro was appointed by Chief Justice Rehnquist and, thereafter, by Chief Justice Roberts to chair and serve upon a number of committees, including chairing the Committee on the Administration of the Magistrate Judges System of the Judicial Conference of the United States. Judge Pro has traveled to over 20 countries to promote the rule of law through educational programs teaching independent judicial administration and case management. Judge Pro is also one of the founding—and still guiding—fathers of the William S. Boyd School of Law. Judge Pro received his J.D. from Golden Gate University School of Law. In 2014, he received his LL.M. in Judicial Studies from Duke University School of Law. Judge Pro now works as a neutral for JAMS.

Johnnie B. Rawlinson has served as a United States Circuit Judge for the U.S. Court of Appeals for the Ninth Circuit since 2000. Prior to this appointment, Judge Rawlinson was in the Office of District Attorney for Clark County Nevada and was a United States District Judge for the District of Nevada. Judge Rawlinson was the first woman and the first African-American to serve on the federal bench in Nevada. She was also the first African-American woman to sit on the Ninth Circuit. Judge Rawlinson has received a number of honors and distinctions recognizing her extraordinary service contributions to the profession and to the community. A native of North Carolina, Judge Rawlinson received her bachelor's degree summa cum laude from North Carolina Agricultural and Technical State University. She earned her law degree, with distinction, from the University of the Pacific McGeorge School of Law.

Jeffrey W. Stempel is the Doris S. and Theodore B. Lee Professor of Law at the UNLV William S. Boyd School of Law. He is a prolific scholar and a leading authority in three distinct fields: civil procedure, insurance law, and professional responsibility. Professor Stempel is a 1981 graduate of Yale Law School, where he was an editor of the Yale Law Journal and co-founder of the Yale Law and Policy Review. He spent two years as a law clerk to a federal district court judge in Philadelphia and three years in private practice with a firm in Minneapolis before entering the teaching profession. Before joining the UNLV faculty, Professor Stempel served on the faculty at Brooklyn Law School and the Florida State University College of Law. He is a member of the American Law Institute, the State Bar of Nevada, and the Minnesota Bar.

Jean Sternlight is the Michael and Sonja Saltman Professor of Law at the UNLV William S. Boyd School of Law, where she also directs the Saltman Center for Conflict Resolution. A renowned dispute resolution scholar, she received the 2015 American Bar Association Section of Dispute Resolution Award for Outstanding Scholarly Work and the 2015 Lifetime Achievement Award from the American College of Civil and Trial Mediators. Professor Sternlight received her B.A. with high honors from Swarthmore College, and her J.D., cum laude, from Harvard Law School. She clerked for District Judge Marilyn Hall Patel, practiced plaintiff-side employment law in Philadelphia, and was a tenured member of the faculty at Florida State University College of Law and the University of Missouri-Columbia School of Law.

Neil V. Wake has served as United States District Judge for the District of Arizona since 2004. Prior to his judicial appointment, Judge Wake was in private practice for 30 years.. Admitted to practice in Arizona, Colorado, and the Navajo Nation, Judge Wake practiced primarily in the fields of business, administrative, constitutional, election, Indian law, and appellate litigation. Judge Wake has served on the State Bar of Arizona's Civil Practice and Procedure Committee, as Chair of the Committee on Local Rules of Practice for the U.S. District Court, and as Chair of the Case Management Committee of the Conference of Chief District Judges of the Ninth Circuit. Judge Wake earned his B.A. from Arizona State University and his J.D. from Harvard Law School.

Nancy A. Welsh is a Professor of Law and the William Trickett Faculty Scholar at Penn State Dickinson Law. Before entering the academy, she was a successful corporate litigator with a Minneapolis firm, and thereafter, served as the executor director to a nonprofit ADR organization, Now a nationally-recognized scholar and leader in the fields of dispute resolution and procedural law, her research and writing focus on negotiation, court-connected and agency-connected mediation, judicial facilitation of settlement, and arbitration. She is former Chair of the ADR Section of the Association of American Law Schools and currently Chair-Elect of the ABA Section of Dispute Resolution. Professor Welsh earned her bachelor's degree, magna cum laude, from Allegheny College, and received her J.D. from Harvard Law School.

Tobias Barrington Wolff is a Professor of Law at the University of Pennsylvania Law School. He writes and teaches in the fields of civil procedure and complex litigation, the conflict of laws, federal jurisdiction, and constitutional law. He is a prolific author whose impactful scholarship is as intellectually rich as it is concretely relevant. Professor Wolff is also a civil rights lawyer who has participated in a number of leading LGBT rights cases. He served as the Chair of LGBT policy for the 2007-2008 presidential campaign of President Barack Obama. Professor Wolff received both his A.B. and his J.D. from Yale University.

Albert Yoon is a Professor of Law at the University of Toronto Faculty of Law. Prof. Yoon's primary research areas are the legal profession, torts, judicial politics, American political development, and corporate law. Professor Yoon was previously on the faculty at Northwestern University School of Law, a Robert Wood Johnson Scholar in Health Policy Research at U.C. Berkeley, a Law and Public Affairs Fellow at Princeton University, and a Russell Sage Visiting Scholar in New York City. In 2007 he was awarded the Ronald H. Coase Prize from the University of Chicago for the best published (co-authored) paper in Law & Economics. Professor Yoon received his undergraduate degree from Yale University, and his J.D. and Ph.D. from Stanford University.

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