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Office of the
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Washington, D.C. 20530

December 21, 1993

MEMORANDUM TO STEF CASSELLA
ASSET FORFEITURE SECTION

From: Walter Dellinger *WD*
Assistant Attorney General

Re: Constitutional Analysis of A Proposed Statute Authorizing United States District Judges to Refer Certain Civil Forfeiture Cases to United States Magistrate Judges

In a December 6, 1993 memorandum, we advised you that any statute vesting jurisdiction over asset forfeiture cases in United States Magistrate Judges would be unconstitutional.¹ You subsequently solicited our opinion on the constitutionality of a proposed statute granting United States District Judges the discretionary authority to reassign certain civil forfeiture cases to United States Magistrate Judges, whose "final determination" of each civil forfeiture case would be subject to de novo review by a United States District Judge at the request of a party to the action. The proposed statute raises two constitutional issues:

1. Does the Seventh Amendment permit District Judges to undertake de novo review of verdicts rendered in jury trials before Magistrate Judges?
2. Does Article III permit judgments in civil forfeiture proceedings conducted by Magistrate Judges to become final without the review of an Article III judge?

We conclude that the answer to the second question is yes. The answer to the first question, however, is no: the proposed statute can withstand constitutional scrutiny only if reference of civil forfeiture cases to Magistrate Judges is limited to instances where the parties have waived their Seventh Amendment right to trial by jury. Accordingly, we must advise you that the specific statute you propose, which expressly authorizes Magistrate Judges to conduct jury trials, suffers from a constitutional defect.

¹ Propriety of Vesting Jurisdiction Over Forfeiture Matters in Magistrate Judges, Memorandum to Stef Cassella, Asset Forfeiture Section, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel (Dec. 6, 1993).

I. The Role of Magistrate Judges

United States District Judges are empowered under existing law to "designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court," of a wide variety of dispositive motions. 28 U.S.C. § 636(b)(1)(B). In addition, a United States Magistrate Judge, "[u]pon the consent of the parties . . . may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves." 28 U.S.C. § 636(c)(1). Thus, Magistrate Judges currently have the authority to consider dispositive motions, with or without the consent of the parties, based upon a reference from a District Judge. Furthermore, Magistrate Judges acting with the parties' consent may conduct jury trials as well as bench trials in civil cases. See Gomez v. United States, 490 U.S. 858, 871 (1989) (Magistrates Act "authorizes magistrates to preside at jury trials of all civil disputes and criminal misdemeanors, subject to special assignment, consent of the parties, and judicial review.").

The statute you propose builds upon the recognized capabilities of Magistrate Judges by allowing District Judges, without the parties' consent, to refer small-value civil forfeiture cases to Magistrate Judges, who then may conduct "any or all proceedings in a jury or nonjury civil matter" and render a "final determination" that is subject to review by a District Judge at the request of any party:

(8) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection or any other provision of law, the district court may designate a magistrate to conduct any or all proceedings in a jury or nonjury civil matter involving the forfeiture of property in rem without the consent of the parties, if the value of the property does not exceed \$10,000. Any final determination made by a magistrate pursuant to such designation shall be subject to de novo review by the district court upon the request of any party.

Proposed Amendment to 28 U.S.C. § 636(c). The language of the proposed statute clearly permits Magistrate Judges to preside over jury and non-jury trials of civil forfeiture claims without the consent of the parties. Although the proposed statute provides for de novo review of any final determination rendered by a Magistrate Judge in such a proceeding, plenary review is impracticable in cases tried to juries. More importantly, the statutory authorization of nonconsensual jury trials before Magistrate Judges followed by de novo review of jury verdicts unconstitutionally impinges upon claimants' Seventh Amendment right to trial by jury.²

² The Seventh Amendment states as follows: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." A claimant in a civil forfeiture action undoubtedly can assert a Seventh Amendment right to trial by jury. United States v. Oné 1976 Mercedes Benz 280S, 618 F.2d 453, 456-69 (7th Cir. 1980); United States v. Real Property Located at 2101, 2280, 2401 and 2501 Maple Street, 750 F. Supp. 817, 819 (E.D. Mich. 1990).

II. The Authority of Magistrate Judges to Conduct Trials

The first sentence of the proposed statute allows District Judges, in their discretion, to assign civil forfeiture cases involving \$10,000 or less to Magistrate Judges, who in turn may "conduct any or all proceedings." Such an assignment does not require the consent of the parties, and the involvement of an Article III judge occurs only if a party to the proceeding affirmatively requests de novo review of a Magistrate Judge's "final determination." This type of limited involvement by District Judges satisfies constitutional concerns when the disposition of the claims at issue does not require trial by jury. For example, the Supreme Court placed its imprimatur upon broad, nonconsensual references of dispositive motions to Magistrate Judges in United States v. Raddatz, 447 U.S. 667 (1980) (approving 28 U.S.C. § 636(b)(1)(B) reference of suppression motion to Magistrate Judge). Analogizing the role of Magistrate Judges in such circumstances to that of masters and commissioners, the Court held that the delegation of dispositive motions to Magistrate Judges, who conduct evidentiary hearings and render proposed findings and conclusions, "does not violate Art. III so long as the ultimate decision is made by the district court." Id. at 682-83. Similarly, in McCarthy v. Bronson, 111 S. Ct. 1737 (1991), the Supreme Court approved the nonconsensual bench trial of a prisoner's excessive force claim before a Magistrate Judge where the district court subsequently reviewed de novo the Magistrate Judge's proposed resolution of the case. Id. at 1740-43. But the McCarthy Court drew a sharp distinction between jury and non-jury proceedings before Magistrate Judges: "No constitutional question arises in cases like this one, in which the plaintiff has waived the right to a jury trial. And, in cases in which the jury right exists and is not waived, the lower courts, guided by the principle of constitutional avoidance, have consistently held that [28 U.S.C. § 636(b)(1)(B)] does not authorize reference to a magistrate." Id. at 1743 (collecting cases).

The three circuit court decisions cited with approval in McCarthy all proceed from the assumption that the constitution forbids District Judges to assign jury trials to Magistrate Judges. Hall v. Sharpe, 812 F.2d 644, 648-49 (11th Cir. 1987); Archie v. Christian, 808 F.2d 1132, 1135 (5th Cir. 1987) (en banc); Wimmer v. Cook, 774 F.2d 68, 74-75 (4th Cir. 1985). Nonconsensual trial by jury before a Magistrate Judge creates an irreconcilable tension between two bedrock constitutional principles. See McCarthy, 111 S. Ct. at 1742-43. If the District Judge defers to the jury's verdict, the absence of de novo review of the determination reached before the Magistrate Judge constitutes an Article III violation; but if the district judge undertakes de novo review of the jury verdict returned in the trial before the Magistrate Judge, "there would be interference with the jury verdict forbidden by the Seventh Amendment, because the judge's de novo review of the jury's factual findings would reduce the jury to a merely advisory role." Hall, 812 F.2d at 648-49; accord Ford v. Estelle, 740 F.2d 374, 380 (5th Cir. 1984). For this reason, although the Supreme Court's decision in McCarthy expressly permits Magistrate Judges to conduct nonconsensual bench trials because the results of such proceedings may be reviewed de novo, the McCarthy ruling implicitly prohibits jury trials before Magistrate Judges because the verdicts rendered in such proceedings cannot be assessed de novo without abrogating the Seventh Amendment rights of civil litigants to trial by jury. See McCarthy, 111 S. Ct. at 1743. The proposed statute, which empowers Magistrate Judges to conduct jury trials, founders upon this ineluctable tension between Article III and the Seventh Amendment.

III. The Requirement of a Request for Article III Review

The second sentence of the proposed statute conditions de novo review of a Magistrate Judge's "final determination" by a United States District Judge "upon the request of any party." The import of this language is manifest: a district court will not review the final determination of a Magistrate Judge unless a party formally requests such consideration. But this type of waiver provision, which often obviates review by a United States District Judge, withstood an Article III challenge in Thomas v. Arn, 474 U.S. 140, 153-54 (1985). Specifically, the Thomas Court reasoned that such a "rule merely establishes a procedural default that has no effect on the magistrate's or the court's jurisdiction." Id. at 154. The district court, in fact, "retains full authority to decide whether to refer a case to the magistrate, to review the magistrate's report, and to enter judgment. Any party that desires plenary consideration by the Article III judge of any issue need only ask." Id. These observations apply with equal force to the proposed statute here; no District Judge is compelled to refer any civil forfeiture case to a Magistrate Judge, all final determinations by Magistrate Judges are subject to review by a District Judge, and any party dissatisfied with the "final determination" of a Magistrate Judge can obtain de novo review with a simple request. Article III demands nothing more. See id. at 153-54.

IV. Conclusion

The proposed statute contains one flaw -- the authorization of nonconsensual jury trials conducted by Magistrate Judges. If the proposed statute authorized referral of small-value civil forfeiture cases to Magistrate Judges only when the parties had waived their Seventh Amendment right to trial by jury, we believe that no constitutional infirmities would exist. In its present form, however, the proposed statute cannot withstand constitutional attack.