

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
(201) 645-3827

UNITED STATES COURT HOUSE  
NEWARK, NJ 07101

sent  
2/19/92  
CHAMBERS OF  
RONALD J. HEDGES  
UNITED STATES MAGISTRATE

MEMORANDUM

Date: February 19, 1993  
From: Ronald J. Hedges, U.S.M.J.  
Re: Annual Assessment  
To: All Members of the Advisory Committee

The Oversight Subcommittee of the Advisory Committee met February 17th. The purpose of this meeting was to address two matters raised in the Annual Assessment: Consideration of means to lessen the impact of criminal docket on the civil docket and of means to decrease prisoner civil cases. Attached are the minutes of the subcommittee meeting.

The Oversight Subcommittee thought it appropriate to discuss the ideas reflected in the attached minutes with the entire Advisory Committee as soon as possible. Accordingly, the subcommittee has scheduled a meeting of the entire Advisory Committee for 1:00 p.m. on March 16, 1993. The meeting will be held in my Chambers in Newark.

If anyone has any comments or suggestions please send these to me as soon as possible and I will have the comments and suggestions circulated before the March 16th meeting.

COULD YOU PLEASE ADVISE ME NOT LATER THAN MARCH 15TH  
WHETHER YOU INTEND TO BE PRESENT AT THE MEETING?

cc: (w/encl.)  
Honorable John F. Gerry, Chief Judge  
William T. Walsh

# MINUTES OF THE FEBRUARY 17, 1993 MEETING OF THE OVERSIGHT SUBCOMMITTEE

The February 17th meeting of the Oversight Subcommittee was convened in Newark at 1:00 p.m. Subcommittee members Don Robinson and Cynthia Jacob were present, as was Magistrate Judge Hedges. Messrs Sabatino and Walder and Ms. Mansier were present at the invitation of the Subcommittee.

The Court, in the Annual Assessment adopted in December of 1992, gave two tasks to the Advisory Committee: Considerations of means to lessen the impact of the criminal docket on the civil docket and of means to decrease the prisoner civil cases. These matters were considered at the Subcommittee meeting.

A number of ideas were discussed as possible means to lessen the impact of the criminal docket. These were:

1. Expansion of criminal discovery (as discovery now exists in the State's criminal justice system). It was observed that the lack of discovery in federal criminal cases by defendants may prolong a case and that opening discovery would tend to further the interests of justice by leading to early plea negotiations or the like. It was also suggested that such an expansion of discovery might require the amendment of Rule 16 of the Federal Rules of Criminal Procedure and that, were the rule amended to expand discovery, the Government could seek protective orders in appropriate cases to protect legitimate concerns.

A question was raised whether, rather than attempt to amend Rule 16, the United States Attorney could "experiment" with an expansion of discovery within the existing rule.

2. Can discovery be had at the pre-indictment stage of a felony case? It was observed that the early exchange of information between the Government and a defendant might lead to an earlier plea.

3. Does the United States Attorney have a means (or can he establish one) to review felony cases at the pre-indictment (or any other stage) to determine whether these could be downgraded to a misdemeanor?

4. What, if any, guidelines exist or could be established to defer the prosecution of certain types of criminal cases to the State criminal justice system? It was observed that any such deferral might have an adverse impact on the State. Mr. Sabatino agreed to look into this.

5. Is there room for more case management of criminal

cases by judges? For example, could judges become involved directly in plea negotiations? Could the uniform discovery order used in the District be modified to provide for a bill of particulars?

6. It was observed that the Sentencing Guidelines have had an impact on pleas. What, if anything, could be done to study the overall effect of the Sentencing Guidelines on the District' criminal docket?

Turning to civil cases, Mr. Sabatino observed that the State is a party (either directly or indirectly) in approximately 600 civil cases filed by pro se prisoners and in over 100 civil cases arising out of terminations of employment and the like. He observed that this number of cases has remained fairly constant over the past several years but that handling of these cases has become more complex, given restricted resources in the Division of Law and the number of cases which go forward on the merits. He also observed that prisoner pro se cases are, as a general matter, not settled for reasons of precedent and that, instead, deputy attorney generals have been instructed to file dispositive motions in lieu of answers when feasible.

The following ideas were discussed on prisoner civil cases:

1. Can the number of complaints dismissed as frivolous under 28 U.S.C. §1915(d) be increased? Concern was expressed that the importance of this statutory provision be impressed on the Court.

After a discussion of the role of the pro se clerk in the District, a question was raised whether she routinely receives "feedback" from judges in response to memos on in forma pauperis applications. Magistrate Hedges agreed to discuss this with Bill Walsh.

2. Can a manual be created and distributed to law clerks throughout the District on Section 1915 and Civil Rule 12? Mr. Sabatino agreed to draft such a manual.

3. It was observed that the cost of litigation is increased if discovery is conducted while a dispositive motion is pending. It was suggested that a stay of discovery would be appropriate whenever such motions were filed. Magistrate Hedges distinguished between applications for a stay when a pre-answer dispositive motion was filed and when a summary judgment motion was filed before discovery. He suggested that judges or magistrates might be more sympathetic to a stay when the former situation exists and agreed to raise with the magistrates in the District a procedure by which the Division of Law could make stay applications by letter.

4. Mr. Sabatino raised the issue of a partial filing fee. He brought to the attention of the subcommittee the attached partial payment plan adopted by the United States District Courts in Iowa. He suggested that, rather than set a fee on the basis of a prisoner's account, a fee be based on income over a certain period of time.

Concern was raised whether the Clerk could administer such a plan and whether the Department of Corrections had means available to it to establish a prisoner's income. Mr. Sabatino agreed to discuss this with the Department of Corrections and, if appropriate, draft a partial payment plan. He also agreed to include in any such proposed plan a mechanism by which to enforce it.

5. Mr. Sabatino expressed an interest in working with any judge or magistrate to set aside a period of time to deal exclusively with prisoner pro se cases (for example, a two-week period for trials). Magistrate Hedges agreed to circulate this information to the other magistrates in the District and, through them, to the judges.

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The Subcommittee agreed that the ideas set forth above required further discussion and that both the United States Attorney and the Federal Public Defender should be present if possible. (Magistrate Hedges offered to invite Mr. McMahon). It was also agreed that these ideas should be discussed with the entire Advisory Committee and that, in the interest of time, any proposals should be submitted to the Chief Judge as soon as possible. A MEETING OF THE ENTIRE ADVISORY COMMITTEE WAS SCHEDULED FOR 1:00 P.M. ON MARCH 16, 1993 IN JUDGE HEDGES' CHAMBERS IN NEWARK.