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PRE-TRIAL TECHNIQUES OF FEDERAL JUDGES*

WILL SHAFROTH

Five and a half years have passed since the adoption of the new Federal Rules of Civil Procedure, including Rule 16 giving the district judges express power to make use of pre-trial procedure. At the time of the adoption of these rules, the pre-trial conference as a formal proceeding was little known outside the cities of Detroit, Boston and Cleveland, where good use had been made of it in the state courts. A number of federal judges already, however, had been calling together the counsel in particular cases, usually at the beginning of the trial, to find out whether any agreements could be reached as to facts which need not be proved or documents the authenticity of which would be admitted. As early as 1934, Judge George McDermott of the Tenth Circuit Court of Appeals had published an article in the *Journal* of the American Judicature Society entitled "Just What Is Your Defense?" advocating an informal discussion of the case within a few days after its filing.

When the committee appointed by the Supreme Court to draft the Federal Rules of Civil Procedure set out upon its work, it was with a view to incorporating into the federal system all improvements in practice which seemed of a practical nature. I do not think there is anything in the federal rules which had not previously been tried in some state. It was natural that the state court experience in pre-trial, particularly in Detroit and Boston where it had succeeded in clearing up very bad congestion of the trial calendars, should have attracted the attention of the committee.

The wise men who drew up the federal rules did not, however, require the establishment of a compulsory pre-trial calendar. Instead, they recommended adoption of a rule which was entirely permissive in its nature and allowed each federal court to use pre-trial procedure

Editor's Note: [Journal of the American Judicature Society.] Mr. Shafroth is head of the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts, and secretary of the Committee on Pre-Trial Procedure of the Judicial Conference of Senior Circuit Judges. This article is a slightly condensed version of a paper read by Mr. Shafroth before the Fourth Circuit Judicial Conference at Asheville, N. C., June 21, 1944. Both it and the article by Professor Edson R. Sunderland in this issue are products of the work of the Judicial Conference Committee on Pre-Trial Procedure, as explained by Mr. Shafroth in the text.

* Reprinted from 28 Jour. Am. Jud. Soc. 39 (Aug. 1944). Because of the recent adoption by the Supreme Court of Rule 1, Wyoming Rules of Civil Procedure, establishing pre-trial procedure in Wyoming courts, it is believed that this article will be of value to the Wyoming judge and attorney. [Ed.]

to the extent and in the manner it saw fit.¹ At one of the institutes held on the subject of the new procedure, Professor Sunderland, a member of the rules committee, was asked why Rule 16 was not made mandatory. His reply, characteristic of his usual good common sense, was that if the district judges didn't like the rule it wouldn't work anyway, and there was no use in making it mandatory because nothing could be accomplished without the sympathetic interest of the judge and there was no way to force him to be sympathetic.

The result has been that there is hardly a single federal judge who has not experimented to some extent with this rule. While those federal courts which have established a pre-trial calendar for all civil cases before they go on the trial list are still very much in the minority, the majority of our district courts use pre-trial procedure, either on the initiative of the judge himself or at the request of one of the parties.

JUDICIAL CONFERENCE COMMITTEE APPOINTED

At the suggestion of Senior Circuit Judge John J. Parker of the Fourth Circuit, a committee to study and report on pre-trial procedure was authorized by the Judicial Conference of Senior Circuit Judges at its meeting last September, and was appointed by the Chief Justice shortly afterwards. Judge Parker is the chairman, and the other members are Circuit Judge Alfred P. Murrah of the Tenth Circuit, Associate Justice Bolitha J. Laws of the District of Columbia, and District Judge Paul J. McCormick of the Southern District of California. Professor Edson R. Sunderland of the University of Michigan has been asked to act with the committee in a consultative capacity, and, as a representative of the Administrative Office, I have been designated as secretary.

The preliminary report of the committee, together with a statement by Professor Sunderland, was circulated to all federal judges and their opinion was asked concerning the questions raised in the report. The thirty-odd letters received from district judges contained many valuable comments and suggestions, and are the source material upon which the remainder of this article is based.

1. This statement is not entirely true of the Wyoming rule, which provides: "In any action, the court may in its discretion, *and upon request of any party shall*, direct the attorneys of the parties to appear before it for a conference . . ." The italicized clause is an addition to the Federal Rule. The Rules Advisory Committee recommended this change because they felt that although a judge might not be sympathetic to the idea of such a conference, if the conference were actually held much might in fact be accomplished. The addition may also tend to make the practice more uniform in the several judicial districts, and avoid the possibility of attorneys in one district enjoying advantages not available to those in another district. [Ed.]

OPINIONS OF THE DISTRICT JUDGES

The first question in our preliminary report asked for the results which have been achieved by pre-trial procedure. As was to be expected, most of the judges who responded to Judge Parker's invitation to comment on the report (you will note it was not a questionnaire) were strongly in favor of pre-trial procedure, and their general opinion was that it was producing excellent results. This is not necessarily a reflection of the attitude of the entire federal bench, but I feel very confident in saying that there are few if any United States district judges who would desire to repeal the rule as long as it remains in its present form, leaving the judge the option of using the procedure if and when he chooses and permitting him to employ it in such manner as he sees fit.

The next question related to the objections raised to the use of the procedure by judges or lawyers. As far as judges go, the only objections voiced were that in some instances it was thought that no results were accomplished. In most districts where pre-trial is used, the judges report that the bar cooperates and is favorable to the rule. Individual objections on the part of attorneys sometimes arise from a reluctance on the part of counsel to show their hand before trial, a fear that they will be unduly limited in the presentation of their case on trial, or fear that the case will be prejudged or that they will be forced into a settlement.

It is apparent that these are not valid objections to pre-trial, and the way to dissipate them is to instill confidence in these attorneys by the manner in which pre-trial is conducted.

BEST TIME IS SHORTLY BEFORE TRIAL

The testimony of the district judges is overwhelming that the best time for pre-trial is shortly before trial and this means not less than one week and not more than three as an objective to be attained where possible. The reason for this is that by that time the deadline is close enough so that the parties come in to pre-trial knowing what they are going to prove, what the issues are, what documents are to be introduced and knowing also that actual trial is imminent. At the same time they may not yet have called in many of the witnesses and there remains the possibility of saving much time and expense if stipulations concerning certain facts can be agreed on. Furthermore, it cannot be questioned that the possibilities of settlement are greatly enhanced as the trial day approaches.

Some judges call a conference of attorneys at the beginning of the trial itself and at that time endeavor to segregate and eliminate issues and obtain admissions regarding facts and documents. As Professor Sunderland has said, it is doubtful whether this should be

considered as a true pre-trial hearing, since it fails to accomplish a major purpose contemplated by Rule 16 in reducing the burden of preparation for trial and eliminating the necessity for the attendance of witnesses to prove uncontroverted facts. I do not mean to intimate that in my opinion such attempts to shorten the trial are not valuable where a pre-trial conference well in advance of trial is not feasible, but I am convinced that where good results are accomplished by this method greater advantage would have been secured if the same proceeding had been held earlier.

One other factor is of great importance. We all know that the great majority of cases reaching issue never get to trial. When cases at issue are put on the calendar there is no knowing how many of them are going to be continued, postponed, dismissed, or otherwise go off the calendar. If pre-trial occurs within the one to three-weeks period before trials are scheduled to begin, it is possible to find out with some fair degree of certainty what cases are actually going to be tried, how much substance there is in them, and how long the trial will take. This means that a trial calendar can be set which will enable each lawyer to have a good idea of when his case will be reached and in many instances cases can be set for a day certain. The saving of time to lawyers and witnesses by such a method is highly desirable.

PRE-TRIAL IN RURAL DISTRICTS

Now if the judges who have reported to our committee as to this timing are sound in their opinions concerning it, the question arises—is it possible or profitable to do this in a district having four to six or more places of holding court, with terms at least twice a year? In this connection the testimony of Judge Fred L. Wham of the Eastern District of Illinois is worth quoting. There are in his district four places of holding court, divided between him and Judge Lindley. Here is what he has to say:

“As you know, the Eastern District of Illinois is a rural district, and litigants and attorneys come from long distances within the district to present their cases. The attorneys live considerable distances apart and ordinarily would not see each other until the case came on for trial. To meet this situation, I usually make it a practice to set apart a day or two days about three weeks before the beginning of each term of my court on which all cases which are at issue and have not been pre-tried are set for pre-trial. In the beginning of the day I call the calendar of the cases which are ready to be set for trial and those which are set for pre-trial. As a result of the call I set all of the cases which are ready and in this way am able to get a trial calendar which the attorneys understand will be carried through as made. Immediately following the call of the calendar I begin hearing the pre-trials in chambers. Awaiting their turn, the lawyers from over the district sit out in the courtroom after having been invited by the court to become acquainted and to discuss their cases and the matters which can and should be disposed of in the pre-trial hearing; also to discuss

settlement if either party is interested. All of this has been preceded by a letter to each attorney advising just what will be done on that day and what he should be prepared to do. The result is that the attorneys usually come into my chambers with some idea of what we can accomplish and what they want to accomplish in the pre-trial hearing. Consequently, the pre-trial hearing does not take long and is usually effective in so far as it is in a case that can be advantageously dealt with in a pre-trial hearing. As soon as the pre-trial hearing is concluded, if the case is ready for trial or will be during the succeeding term, it is put on the trial calendar with the attorneys present and they understand that it will be tried on that day unless unavoidably prevented or settled in the meantime."

Judge John W. Delehant of Nebraska, another pre-trial enthusiast, holds his pre-trials in Lincoln, a central point. He states:

"We hold relatively constant session in Lincoln and Omaha and comparatively rare sessions in six smaller divisions. As to the latter group, I have used the pre-trial conference effectively, generally by calling the conference at a time convenient to counsel and in my own chambers in Lincoln, but on at least two occasions by holding the conference in the outlying division where the trial is to be had."

Judge Frank L. Kloeb of Toledo, who sets a pre-trial calendar for all cases in which a trial notice required by the practice of that district has been filed, also finds virtue in pre-trial as an aid to establishment of a stable trial calendar. He writes:

"I find also that I am able to discover whether there is any meat in certain cases, and obtain the opinion of counsel on both sides as to how long it will take to try each of the cases. This results in a great saving of time for the court, as cases can then be so spaced at the pre-trial conference as to conserve time and award time according to the merits involved in each case. This system, also, is very beneficial to counsel, because they are able to secure a day certain for trial of their case, rather than to be assigned with six or eight cases for a particular week without a day certain and thus be required to be ready for court during that entire week."

I think we are entitled to list this feature of winnowing the wheat from the chaff and developing a firm calendar of cases for trial as a major advantage of pre-trial in any district. The extent to which judges use it for that purpose will, of course, depend upon their own enthusiasm for the rule and upon their own individual calendar practices, which are as many and as varied as the colors in Joseph's coat.

TYPES OF CASES SUITABLE FOR PRE-TRIAL

While it is true that pre-trial procedure can be used in any type of civil case, its effectiveness may differ in different kinds of actions and it may vary greatly even as between actions of the same kind depending on the complexity of the case, the nature of the issues, and the kind of testimony which will be needed to sustain them. Where there are rules requiring every case at issue to be put on the pre-trial

calendar, usually no exceptions are made. In the District of Columbia, where the federal court also has local jurisdiction, divorce cases, a certain type of patent case under Section 4915 of the Revised Statutes, which amounts to an appeal from the Patent Office, and veterans' insurance cases, which are investigated by a special court commissioner, are excluded. Most of the judges who are pre-trial advocates, however, feel that the procedure can be used advantageously in any kind of civil case. The committee in its preliminary report mentioned forfeiture and habeas corpus cases as types in which a conference might not be particularly useful, but at least one judge thought both of those should be included.

Cases involving negligence, breach of contract, condemnation where a large number of tracts are involved, wage and hour cases, and insurance were frequently listed. Judge W. Calvin Chesnut of Maryland makes particular mention of long cases and situations where there are a series of cases involving a common critical issue of law or all growing out of one related series of facts and where there are different counsel in the several cases. He further states it as his opinion that it is the nature of the evidence to be produced in the particular case rather than the classification of the type of action that should be controlling.

Judge Bower Broaddus of Oklahoma, who has pre-tried all his civil cases for four years, says:

"Pre-trial hearings may be held advantageously in cases arising from torts, contracts, real properties, war risk insurance, condemnation, anti-trust laws, Fair Labor Standards Act, and rate schedules.

"In the land condemnation cases special values often have been involved—such as the value of the land for oil and gas, lead and zinc, rock and other purposes. When special values have been involved, that fact has been determined and the number of expert witnesses limited. Where a portion only of a tract has been taken, the question of severance damage has been considered, and fully outlined at the hearing. At the conclusion of the pre-trial conference, counsel for the litigants knew the special values to be considered and the legal questions in dispute. This prevented surprise upon the trial. Guarding against surprise was of importance in those cases tried before a jury."

PRE-TRIAL IN CRIMINAL CASES

As to the use of pre-trial in criminal cases, there is a very considerable difference of opinion. It is not widely used at the present time, and some judges feel that the pressure which can be put on a defendant even in a "voluntary" proceeding is highly undesirable and "somewhat dangerous in its constitutional impact." This again gets back to the manner in which it is used, and I assume that none of us would favor its employment to urge the defendant either to plead guilty or to make admissions against his interest.

However, I call attention to a letter from Judge Paul C. Leahy of Delaware, in reference to the Mantle Club mail fraud conspiracy case which he tried last year.

"In January, 1943, I was about to commence the trial of a criminal case involving seventeen defendants, where in it was estimated that the case would take seven months to try. While there was no judicial or statutory authority for calling a pre-trial conference in a criminal matter, I nevertheless called the attorneys for the government and the defense into chambers and asked if they wished to cooperate. In the particular case in question we had approximately 6,700 exhibits. With the exception of about a dozen particular writings the parties had agreed on authenticity and materiality before the trial commenced. I shall not detail other matters that were stipulated prior to trial. The point is that we cut the trial down to four months. I am informed that there is a considerable opinion among federal judges which is opposed to pre-trial in criminal matters, but I cannot share this view."

This is the exceptional type of criminal case where much can be accomplished in pre-trial. Since there are particular instances where criminal pre-trials may be of great value, is the Criminal Rules Committee not justified in advocating inclusion of a rule on the subject, leaving its use to the sound discretion of the individual judge?

There would seem to be little scope for pre-trial in appellate proceedings and no need for any rule regarding it, but where an appellate court wishes to call counsel together for a particular reason in advance of argument, I see no reason why it should not do so.

Rule 16 set out the main subjects to be discussed at the pre-trial conference, including the simplification of the issues, amendment of the pleadings, admissions of fact and stipulations as to the admission of documents subject to objection at the trial as to relevancy, and in some cases the limitation of expert witnesses. Where special verdicts are used, the questions to be asked of the jury may be framed if counsel can agree on them, although some judges think this will usually have to be done after the evidence is in.

DISCUSSION OF SETTLEMENT IN PRE-TRIAL

Then there is the question of settlement, which is not specifically mentioned in Rule 16. It cannot be doubted that it is a great saving of time to court, counsel and litigants to settle lawsuits instead of trying them. Any procedure which does this without infringing on the fundamental rights of the parties is performing valuable service. Pre-trial made its initial reputation in Detroit and Boston through its ability to secure settlements. It is the opinion of the judges in the District of Columbia that it has been very effective there in that direction.

In those courts, however, the pre-trial judge does not try the case. His expressed opinion as to the strength or weakness of one side or the other cannot be thought to be a bias of the trial judge which has

doomed that party's chances in the lawsuit. In view of the fact that federal districts where the pre-trial judge does not try the case are very few, the committee has asked, "To what extent should settlement be discussed by the pre-trial judge?"

It may be stated with a good deal of certainty that the committee has no intention of seeking to have a mandatory rule prescribed on this subject. This will be left up to the district judges, but here again the opinions of the judges expressed to the committee are valuable. In general the opinion is that it is proper for the judge to ask the parties whether settlement has been discussed. This opens the subject up and there are many judges who will not go further without the request of the parties. I quote five district judges on this subject.

Judge Shackelford Miller, Jr., of the Western District of Kentucky:

"I find that very often attorneys strongly object to efforts on the part of the court to bring about a settlement, and while appropriate suggestions might be made at times, yet I do not like to emphasize that feature. I believe that an attorney is very apt to get the impression that you have prejudged his case and are unsympathetic to his position, with resulting dissatisfaction in the way in which the case is terminated. A large percentage of cases set for trial in this district are actually settled before trial without pre-trial conferences or suggestions to that effect by the trial judge, and I have found very little reluctance on the part of attorneys to discuss such a question among themselves. On the other hand, a pre-trial hearing often discloses to counsel a real weakness in his case and naturally leads to negotiations for a settlement and possible settlement without it being necessary for the judge to suggest it or urge it. This is no doubt a valuable by-product of pre-trial procedure."

Judge W. Calvin Chesnut, of the District of Maryland:

"In my view, this should generally be left to counsel to take the initiative. I think the case should be exceptional in which the trial judge should initiate the discussion of a possible settlement. When there is a very congested court docket and it is obvious that the case, such as many negligence cases, involves amount rather than liability, it is certainly not inappropriate for the trial judge himself to suggest that counsel consider settlement."

Judge J. Waties Waring, of the Eastern District of South Carolina:

"I think that no judge should force a settlement and use or misuse his power to force a settlement by stating what he will do in regard to direction of verdict. On the other hand, I think it clearly within the province of the trial judge to suggest to the attorneys that there may be some common ground for discussion and state to them that they might try to have a meeting of their minds. He has an opportunity to suggest this if he has resolved certain doubts, misunderstandings or issues and brought the case down to a narrow compass. I think a judge might sometimes go further and where he sees that one of the parties is probably interposing sham or frivolous matter that he might state

to the attorney that if the matter is substantial of course it should go to trial, but if it is found that claims or defenses are without any foundation that Rules 36 and 37 may be invoked."

Judge Fred M. Raymond, of the Western District of Michigan:

"Because of drastic criticism of pre-trial conferences in which the judge is alleged to have endeavored to force settlements, I have been very careful to do no more than open the subject to discussion among counsel, without projecting my own views. A judge can easily disqualify himself (at least in the minds of parties or their attorneys) by participating too strongly in efforts to bring about a settlement."

Judge John W. Delehant, of the District of Nebraska:

"To what extent should settlement be discussed by the pre-trial judge? Certainly not to such an extent as to amount to coercion or actual moral pressure. But, that having been said, it seems appropriate to add that the judge ought not to disdain to bring the subject of settlement to the attention of counsel during pre-trial conference in any case which may appropriately be settled.

"In practice, under the final paragraph of the rule, I almost invariably close my own participation in the conference by an inquiry in something after the following fashion: 'Finally, gentlemen, have you explored the possibility of the mutual adjustment of your case?' If the answer is negative, it is followed by a second inquiry as to whether counsel think that subject may profitably be considered. Unless the answer to this further question is also negative, I quite uniformly suggest that the facilities of the court chambers and the attorneys' consultation room are available for conference between counsel upon the subject of adjustment, and that it is the general policy of the court to encourage such efforts.

"Beyond that, I do not go; and I definitely insist on remaining away from any conferences between counsel upon the subject of settlement, or participating in any way in the further discussion of this question. Lately, in cases triable to juries, I have occasionally presumed to remind counsel of the practical difficulty and injustice that is involved in assembling and retaining juries in the present crisis, and intimated that they may not unwisely consider that factor in approaching the problem of settlement."

The committee has stated its opinion to be that settlements are a useful by-product of pre-trial procedure and they will result in many cases after the strength and weakness of each side becomes apparent at the conference without pressure from the judge. The answers received tend to fortify this position. Of course, where there is a separate pre-trial judge, many strictures upon the free expression of his opinion concerning the case are not applicable.

WHERE SHOULD CONFERENCES BE HELD?

About two judges out of three prefer to conduct pre-trial proceedings in chambers because of the greater informality of the atmosphere. Judge Broadus of Oklahoma is an advocate of hearings in open court for these reasons:

"Pre-trial hearings should be conducted in court. When so held,

the attorneys and the judge proceed toward the business at hand and omit personal matters and discussions having no bearing upon the case or cases being considered. The hearing in the court room permits other counsel to be present and to witness the method of procedure, and thereby be better prepared to conduct the hearing of the case in which such counsel may be interested. The court room hearing should be beneficial in promoting the use and effectiveness of pre-trial hearings."

PREPARATION FOR PRE-TRIAL

Some judges examine the pleadings before pre-trial; others do not. Some difference may be warranted, as suggested by Judge Chesnut, between situations where a conference is requested by the attorneys and instances where there is a regular pre-trial calendar. In the latter case, he feels the judge should familiarize himself with the pleadings.

Several judges felt that to require advance preparation by the lawyers of a written statement of the case or written stipulations which they desired should be entered into would give the proceedings a formal cast which they wished to avoid. Of course, the lawyers are expected to be ready to discuss their cases, to know what their evidence at the trial will be, and to have in mind the stipulations they want.

PERSONS PRESENT AT PRE-TRIAL

Usually only the lawyers who are to try the case are present at pre-trial, but if they desire to bring their clients with them, that is permitted by most courts. Witnesses, too, are sometimes present, but this would seem to be unnecessary in the usual circumstances.

Reporters are now used in very few courts and most judges feel that their presence would put an affective damper on full and frank discussion of the case if a transcript of the proceedings was to be made. However, the value of drawing the pre-trial order and stipulations agreed to by counsel in their presence before the conference adjourns is worthy of consideration. A secretary or stenographer may be used for this purpose but it is quite likely that, when as and if official salaried reporters become available under the new act, they may be used for this purpose but not for taking down the conference proceedings.

THE PRE-TRIAL ORDER

Rule 16 provides that the court shall make an order setting forth the action taken at the pre-trial conference, the agreements reached, and other pertinent facts. A main purpose of this order is to assist the trial judge in holding down the trial to the actual issues which the parties have agreed on at the conference.

It appears, however, that often where the conference is of a very informal character, it has been considered unnecessary to enter such

an order and the parties have either been asked to draw up and file written stipulations embodying the agreements arrived at or have gone to trial without such agreements having been written out at all.

The danger of this practice would seem to be not in the reliance it places on the good faith of counsel but rather in the danger of misunderstanding or forgetfulness as to the exact agreement reached.

A very usual practice is for the pre-trial judge to dictate an order at the close of the conference in the presence of counsel with the privilege on their part to object to any part of it which does not accord with their understanding. In the District of Columbia the order is dictated to a typist in the courtroom and is initialed by counsel before they leave the conference. On the other hand, Judge Delehant, of Nebraska, prepares the pre-trial order himself but gives the attorneys no chance to object to it at the conference. Copies are afterwards supplied to them and they have the right to file objections, in default of which the order becomes final. In still other jurisdictions the transcript of agreements reached and of the issues in their streamlined form, as developed at the conference, is itself considered as a pre-trial order which guides the course of the trial.

No doubt is expressed by any judge as to the binding force of the pre-trial order in controlling subsequent proceedings, but there is often a saving statement that plain errors can be corrected. It seems to me this is adequately covered in the rule where it says:

“Such order when entered controls the subsequent course of the action unless modified at the trial to prevent manifest injustice.”

SANCTIONS

In reference to sanctions for enforcing the attendance of the attorneys at the pre-trial conference, this is an incident of pre-trial procedure which seems to have caused no difficulty. Judge Francis J. W. Ford, of Massachusetts, calls attention to the form of notice of the conferences used by his court which provides that non-suits or defaults may be entered at the time of the conference. He states that it is rarely necessary to enter such orders.

USE OF DISCOVERY OR SUMMARY JUDGMENT

As to the use of summary judgment and discovery at the pre-trial conference, there is an evident disposition on the part of the district judges to proceed with caution. Judge Lewis B. Schwellenbach, of the Eastern District of Washington, believes that pre-trial should not be used to avoid the requirements of the discovery and summary judgment rules without full consent of the parties, and adds that this will help to create confidence in the bar in pre-trial procedure.

On the other hand, Judge Broadus, of Oklahoma, and Judge Wham, of Illinois, feel that the court should have the power to enter

any order which would promote or expedite discovery under the rules. This appears reasonable to me.

As to summary judgment, it is equally reasonable that the parties should be given ample opportunity to oppose such a motion even if this means a postponement of hearing and decision to a later date.

CONCLUSION

The benefits of pre-trial are becoming known in all parts of the country. Its usefulness in clearing congested dockets has been widely advertised and justifiably so. But the letters which have been sent to Judge Parker by many district judges emphasize the value of the procedure in the non-metropolitan districts where the dockets are not heavy and there is no delay in getting to trial. Many of these judges emphasize the virtue which lies in the flexibility of the rule and believe very strongly that this flexibility should be maintained and no formal requirements of procedure should be added to it.

It is impossible to read these enthusiastic comments of able trial judges on the value of the rule without becoming convinced that it is being effectively used to reduce the number of trials and to shorten the time of trials and lessen their expense to the parties.

In the same way that the procedure is ineffective unless the judge feels that it can be made to produce worthwhile results, pre-trial will not succeed if the bar opposes it. The lawyers must cooperate, particularly in making a full disclosure of their case at the conference and in attempting to eliminate the necessity for proof of matters which are not in dispute. The testimony of the judges is that there has been little difficulty with the lawyers on these scores when they have become convinced that the pre-trial is being fairly conducted without advantage to one side only and their cases are not being pre-judged.

There is little doubt that the use of the pre-trial conference in both state and federal courts will continue to grow as it becomes more and more evident that it is a useful procedural tool to improve the administration of justice.