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To: Jim Greiner
From: Chelsea Simpson
RE: David C. Steelman & Jerry Goldman, *The Settlement Conference: Experimenting with Appellate Justice*, National Center for State Courts (1986).
Date: October 15, 2018

Title: The Settlement Conference: Experimenting with Appellate Justice
Authors: David C. Steelman & Jerry Goldman
Location: Connecticut Supreme Court, Pennsylvania Superior Court, and Rhode Island Supreme Court.
Sample: Connecticut: 604 participants, Pennsylvania: 1,998 participants, Rhode Island: 404 participants
Timeline: Pennsylvania: January 1980 – unspecified, Rhode Island: May 1979–May 1981, Connecticut: December 1978–October 1980.
Target group: litigants in civil appellate cases
Intervention type: Counseling
Research papers: N/A
Partners: National Center for State Courts; National Science Foundation; U.S. Department of Justice; state appellate courts of Connecticut, Pennsylvania, and Rhode Island.

Abstract

Amid a burgeoning of litigation in the mid-twentieth century, appellate courts began to use preargument settlement conferences to facilitate more settlements and reduce the number of cases that proceeded to a court hearing. To test the effectiveness of such conferences, researchers randomly assigned civil litigants in the Connecticut Supreme Court, the Rhode Island Supreme Court, and the Pennsylvania Superior Court to either an experimental “settlement conference” condition or a control condition with no conference. In the Pennsylvania program, significantly more cases in the experimental condition settled before a court hearing, and the average time litigants spent in the appeals process was significantly lower. However, the researchers found no significant results in the Rhode Island or Connecticut programs.

I. Policy Issue

Between 1950 and 1986, the year of this study, the volume of litigation and frequency of appeal surged to “crisis” levels in state courts. Meanwhile, courts’ resources and the number of judges often stayed approximately the same, resulting in large case backlogs and long delays. Appellate courts experimented with reforms to try to make their caseloads manageable, including the use of preargument settlement conferences to assist parties in reaching a settlement before their court date. At the time of this study, the settlement conference was one of the most popular tools used by appellate courts to manage caseloads.

While specific features of settlement conferences varied by jurisdiction, the programs shared three main goals: 1) to reduce the overall number of cases undergoing the full process by encouraging parties to settle and identifying cases eligible for “fast track” procedures; 2) to allow for more thorough discussion that narrowed the issues for the court to decide, thus improving the quality of appeals; and 3) to expedite the process by imposing court-ordered deadlines for major case milestones. Proponents of settlement conferences argued that they conserved judicial resources and improved courts’ efficiency, while critics argued that they were merely another unnecessary, costly step in the appellate process.

Few researchers had rigorously examined the effectiveness of settlement conferences, and the authors of this study claimed that all past studies on the subject suffered from serious methodological problems. Did the use of preargument settlement conferences significantly increase the rate of settlement, reduce courts’ caseloads, or reduce process time for litigants?

II. Context of Evaluation

Three teams of researchers had already published studies on the effectiveness of settlement conferences, but the authors of this study argued that all of those past experiments had serious methodological problems and thus their findings were unreliable.

While this study combined data from multiple states, all of these states were in the northeastern region of the United States and thus their populations may not have been representative of national demographics. All three participating courts excluded pro se cases from the study, which may have included more low-income litigants. It is therefore possible that higher-income litigants were overrepresented in the study, as they may have been more able to afford counsel.

III. Details

Researchers randomly assigned all civil appeals in the participating appellate courts in Connecticut, Rhode Island, and Pennsylvania to an experimental or control group, subject to certain limitations imposed by each court. Parties in the control group proceeded normally through the appellate process, while those in the experimental group had to submit to conference procedures designed by each court.

The courts themselves reported parties' settlement activity and researchers checked their accuracy against a 50% sample of docket sheets. Researchers also mailed surveys to a random sample of attorneys in the study (a random subset of 100 in Rhode Island and Connecticut, and 200 in Pennsylvania) requesting information about their experience, attitudes, and the costs incurred. Finally, researchers evaluated the "character" of a random sample of published appeals opinions to examine whether the settlement conference had any unintended effects on the courts' decision-making.

There were some differences between the programs in each state appellate system.

Connecticut

In Connecticut, a retired trial judge held the conferences and excluded juvenile, criminal, pro se, and Appellate Session cases from the settlement program. In addition, settlement conferences were not mandatory for parties in the experimental group; the judge merely sent the parties a letter inviting them and their attorneys to participate. Of the 238 cases in the experimental group, only 92 actually held a settlement conference. Of these, parties withdrew their appeal in 49 cases. The judge often followed up with parties who engaged in the conferences.

Pennsylvania

Unlike in Connecticut and Rhode Island, where the study occurred in the highest state court, Pennsylvania conducted the study in an intermediate appellate court (the Superior Court). It also assigned a retired judge to hold the hearings and decide which cases were eligible for the program. All eligible cases came from trial courts in Philadelphia and eastern Pennsylvania. The judge excluded criminal and pro se cases from the settlement conference program. Settlement conferences were mandatory for every case assigned to the experimental group. Parties were required to attend these conferences in person—not just their attorneys—unlike in Connecticut and Rhode Island. Researchers believed having the parties present may have led to more settlements, since they had the most at stake in the appeal. The judge administering this program rarely held follow-up conferences on the belief that they would not be productive.

Rhode Island

Rhode Island held the experiment in its only appellate court, the state Supreme Court. Three sitting justices, not retired judges, managed the conferences on a rotating basis. Criminal cases, pro se cases, and custody disputes were ineligible for the study. The court noted that due to the logistical difficulties of having sitting justices run the program, and due to having two justices leave that year, they were unable to hold conferences for as many cases as they would have liked. The settlement conferences were mandatory for the parties' attorneys in the experimental group, although the parties themselves did not have to attend and were often absent. The researchers did not specify whether the judge engaged in any follow-up.

IV. Results and Policy Lessons

In the Connecticut Supreme Court, researchers found that the preargument settlement conferences had no statistically significant effect on the volume of cases or on the length of time between filing for an appeal and case termination. Researchers noted that the judge administering the program in Connecticut did not consistently schedule settlement conferences early in the process.

In the Rhode Island Supreme Court, researchers similarly found no statistically significant results in the number of cases that proceeded to a court hearing or in the total process time. The researchers did note that there was a decrease in the experimental group in both metrics, but the effect was too slight and the sample size too small to be significant.

Researchers found a greater impact in the Pennsylvania Superior Court. The number of cases actually heard and decided by the court was approximately 16 percent lower in the experimental group, which was a significant drop ($n=1998, p < 0.001$). The length of time between filing the appeal and case termination was also significantly lower in the experimental group, with a median of 229 days for the experimental group and 367 days for the control group ($n=1998, p < 0.001$).

Overall, the researchers concluded that only one of the three conference programs—the Pennsylvania Superior Court’s—was a clear success. The court leaders in Connecticut and Rhode Island, however, determined that the results were sufficiently successful to merit continuation of the program. While the researchers could not determine with certainty why the program was more successful in Pennsylvania, they theorized that it was due to a number of weaknesses in the Rhode Island and Connecticut programs, including longer wait times between filing an appeal and scheduling of the settlement conference. Researchers also noted that the Pennsylvania court tended to schedule its settlement conferences earlier in the process than the Connecticut court and speculated that this may have contributed to their success.

The researchers did not analyze the attorney survey results for statistical significance, except to determine that there was no significant difference between attorneys’ years in practice and percentage of time devoted to appellate practice in the experimental and control groups.

V. Quality of the Study

This study involved large numbers of participants and tested for statistical significance in three separate states, which strengthens its findings. However, it also had some serious limitations. The researchers could not standardize the settlement conferences across all states, and so there were large differences in the timing and requirements of each program. The researchers indicate that some of these differences, particularly whether the conference and party attendance was mandatory, may have had a dramatic impact on the programs’ success. However, researchers were unable to confidently explain the different results between states. Although they offered some theories for future studies to explore, this study provides mixed evidence at best for policy decisions regarding settlement conferences. Finally, other researchers must be cautious about generalizing these findings; the participating courts were only in northeastern states, likely with

unrepresentative demographics, and the study may overrepresent higher-income clients who can afford counsel. Because the authors did not analyze the demographics of the participants, it is not possible to ascertain whether or not there were significant differences between participants and the general population.