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To: Jim Greiner
From: Fiona Fitzgerald
RE: Jerry Goldman, *Ineffective Justice: Evaluating the Preappeal Conference* (1980); Jerry Goldman, *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration*, Fed. Judic. Cent. (1980)
Date: September 30, 2018

Title: The Civil Appeals Management Plan: An Experiment in Appellate Procedural Reform; *Ineffective Justice: Evaluating the Preappeal Conference; An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration*

Authors: Jerry Goldman

Location: Second Circuit for the United States Court of Appeals

Sample: N = 302

Timeline: October 1974 to October 1975

Target group: Appeals cases eligible for informal dispute resolution

Intervention type: United States Court of Appeals

Research papers: <https://heinonline.org/HOL/P?h=hein.journals/clr78&i=1232>;
<https://www.fjc.gov/sites/default/files/2012/CivAppMg.pdf>

Partners: Federal Judicial Center

Abstract

The United States Court of Appeals for the Second Circuit in the late 1970s became overwhelmed by the number of cases appealed. The chief judge, Irving Kaufman, decided to experiment with preargument conference to decrease the number of cases argued before the court. His initial experiment with five cases proved successful and Judge Kaufman applied to the Federal Judicial Center for funding to conduct an experiment on the effectiveness of the conferences. After negotiations, the FJC and the Court decided to create an experimental group that would receive both prehearing conferences and scheduling orders to test whether encouraging dispute resolution would reduce the number of cases appearing before the appellate panel of judges; improve time efficiency of civil appeals process; and improve quality of argued appeals. The experimental program reduced the time it took for cases to reach termination but did not significantly reduce judge burden and did not substantially improve the quality of cases that reached briefing and argument.

I. Policy Issue

The number of federal appeals cases reaching trial in the 1970s was outpacing the number of judges available to hear cases. The Second Circuit for the United States Court of Appeals sought to address this problem without increasing the number of sitting judges or taking shortcuts in the appellate process. Judge Kaufman of the Second Circuit, based on his experience in personally conducting prehearing conferences in a small number of cases (cases in which he might later have sat as the presiding judge), proposed in 1974 the increased use of prehearing conferences to encourage dispute resolution and reduce the number of cases presented to the judge panel. The Second Circuit called this program the Civil Appeals Management Plan (CAMP).

II. Context of Evaluation

The Second Circuit of the United States Court of Appeals included districts in Connecticut, New York, and Vermont. The Second Circuit derives the majority of its business from New York City and tended to have cases regarding commerce, trade, and business. The author noted that this made settling cases without court encouragement more likely (and attendance at pretrial conferences less onerous) because of the concentration of attorneys in New York and the likelihood that the attorneys resided close to the Second Circuit, meaning that they could easily travel to meet each other and with the court. Other federal appellate courts across the United States often faced a major obstacle in that the counsel lived far from the physical court and would request multiple extensions to account for travel.

In 1973 there were 141 judges sitting on the 11 appellate federal circuit courts and a panel of three judges decided each appeals case. The judges were assigned by rotation but as the number of cases increased, the number of judges had to also increase in order to handle the caseload. Chief judges in federal appellate courts had relative autonomy to implement their own systems to deal with the shortage in judges and the rising caseload; Judge Kaufman of the Second Circuit decided to experiment with the CAMP program to address the problems he noticed in his own cases.

The CAMP program consisted of two components: the first made each civil case subject to a scheduling order notifying both parties when certain stages of their appeal would take place (e.g. date for oral arguments); the second held prehearing conferences in selected cases to explore settlement, improve quality if the case did go to trial, and to facilitate supervision of the appeal.

III. Details

The researchers set out to test the effectiveness of CAMP by seeing if it would reduce the number of cases appearing before the appellate panel of judges; improve time efficiency of civil appeals process; and improve quality of argued appeals.

The Second Circuit oversaw the experiment over the course of one year. Participants were entered the program over the course of the year and each case was randomly assigned to the treatment or control group. The cases were then divided into three cohorts representing when they entered the program; each subgroup represented a four-month period and contained the seventy-five experimental and twenty-five control cases. The researchers reasoned that

analyzing the cases in three cohorts would allow them to evaluate the effectiveness of CAMP as it matured throughout the year as staff counsel grew more experienced at determining whether a case qualified for CAMP. Staff counsel decided whether to include a case in the experiment based on whether they thought the case merited both a scheduling order and a preargument conference. Following intake, staff members in Washington randomized cases using log books into either the experimental or control group and communicated the randomization back to staff members in New York. Over the course of one year this resulted in a total sample size of three hundred and two cases (N=302), with one group receiving both CAMP procedures (n = 225) and one group receiving no CAMP procedures (n=77).

The authors tracked the progress of each case and in the experiment group, collected data from scheduling orders on the timing of the appeal lifespan. To address the appeal-quality hypothesis, the authors utilized outcome data and surveys of judges and attorneys.

IV. Results and Policy Lessons

CAMP did not significantly reduce the number of appeals presented to the court. This was true both for the three study cohorts as well as for the entire study. CAMP improved efficiency by reducing the amount of time a case spent in the appellate process; this finding was statistically significant ($p < 0.05$). Researchers compared the median elapsed time from first notice of the appeal to its termination. Cases in the experimental condition took 161 days while those in the control condition took 220 days.

The researchers surveyed judges and the attorneys from the control groups and experimental groups. The judge's survey had a response rate of 95 percent; the survey asked about seven different measures of the quality of a case and compared the judges' evaluations of control cases and treatment cases for each question. It found that CAMP decreased the presence of redundant issues in briefs and generally improved the preparation of the counsels and the quality of the appeal based ($p < 0.05$) but they found that the magnitude of the improvement was slight (only a one percent change for all three measures of quality). The authors did not find any other statistically significant improvements in the quality of briefs and oral arguments based on the judges' evaluation of the program. The survey of attorneys asked about issue modification and the extent of adversary contact. It had a response rate of 84 percent. The questions on adversary contact were slightly different between the treatment group and the control group, which made it impossible to look at statistical significance. The questions on issue modification found that CAMP generally did not improve the modification of issues. When the researchers looked at the specific types of modification, however, they found that CAMP did improve the clarification of issues ($p < 0.05$) but there were no statistically significant effects on the addition or abandonment of issues. Neither survey made adjustments for multiple testing.

CAMP did not meet expectations and could be considered a failure. Although CAMP did decrease the median time needed to terminate a case, the magnitude of CAMP's effect on appeal quality, though statistically significant, was slight. This data pointed to a need for a different system to improve judicial efficacy; judges and attorneys in state and federal courts were assuming that CAMP strongly reduced judicial burden, yet the study found that the program had no discernible effect. In 1978, the Second Circuit credited CAMP with the Court's success at

closing more cases than it opened despite the experimental evidence to the contrary. The author notes that this claim could be attributed to the judges' reliance on first-hand experience and their prior claims about the success of CAMP, as well as the Court's suspicion about the quality of the study. But little in this gold-standard RCT supported the judge's sanguinity regarding CAMP's effects.

V. Quality of the Study

One limitation of the CAMP evaluation was that it only lasted one calendar year.

Given the popularity of the CAMP program prior to the study, many attorneys and judges expected that the experiment would find results corroborating the efficacy of the program. This may have affected how the judges, attorneys, and staff counsel filled out their evaluation surveys for both the experimental and control groups.

One shortcoming that the author addresses is exactly *how* CAMP reduces the duration of an appeal's life for settled or withdrawn cases. The author proposed that appeals subject to CAMP procedures either settled or withdrew earlier in the process than control cases, or information about settlement or withdrawal reaches the court sooner than control cases. A more developed follow-up with each case might have better identified which was the case, especially because the former is the more important of the two. If there was a lag between the settlement or withdrawal and the notification, this could be a completely different problem within the Second Circuit that CAMP was addressing.

Otherwise, the study authors clearly defined key parts of the study, including their randomization procedure, usage of surveys, and data analysis.