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The Judge's Role in the Settlement of Civil Suits

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THE JUDGE'S ROLE IN THE SETTLEMENT OF CIVIL SUITS

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FOREWORD

Over twenty years ago, Mr. Justice Brennan observed that "a case settled is a case best disposed of, because then one of the parties certainly avoids the heartache of losing at the trial." Settlements, properly arrived at, are still critical to the effective delivery of justice to litigants and to the effective operation of the courts.

This paper on the settlement of federal civil cases was presented by Judge Frederick B. Lacey (D-N.J.) at the Center's September, 1977, Seminar for Newly Appointed Federal District Judges. As a result of the interest expressed in his remarks by seminar participants and others, the Center asked Judge Lacey to revise it for publication.

We are pleased to make it available to a wider audience because we believe it is a significant contribution to the literature on the conduct of civil litigation.

A. Leo Levin
Director

INTRODUCTION

There are, broadly speaking, two schools of thought on the role the court should play in the settlement of civil suits. One school contends that the judiciary is demeaned by a judge who actively promotes settlement; the other believes that the judge has a responsibility to pursue every reasonable means to achieve settlement. The first argues that the lawyers know how to settle their cases and that judicial intervention may disturb the delicate balance of the adversary system. The second responds that today's lawyers welcome judicial efforts to achieve settlement.

Those who oppose judicial activity in the settlement area would be shocked and offended to learn that the Federal Judicial Center is devoting a generous portion of this valuable seminar to a discussion such as this. They contend that rule 16 of the Federal Rules of Civil Procedure was carefully drawn to eliminate from the pretrial conference <u>any</u> reference to settlement

discussion.[1] They draw support from eminent authorities such as the late Judge Charles Clark, who sat in the Court of Appeals for the Second Circuit and was a draftsman of rule 16. Like Judge Clark, they argue that compelled settlement negotiations give rise to questions about the impartiality of the court that is to try the case.[2] If settlement results from a pretrial conference,

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1. Rule 16 provides:

> "In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider
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> (1) The simplification of the issues;
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> (2) The necessity or desirability of amendments to the pleadings;
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> (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
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> (4) The limitation of the number of expert witnesses;
>
> (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
>
> (6) Such other matters as may aid in the disposition of the action.
>
> "The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions."

2. Proceedings of the Seminar on Procedures for Effective Judicial Administration, 29 F.R.D. 191, 454-456 (1961). See also Handbook for Effective Pretrial Procedure Adopted by the Judicial Conference of the United States, 37 F.R.D. 263, 271 (1964).

they say, it should come about only as a by-product.[3]

On the other hand, those who urge settlement activity by the court contend that rule 16, authorizing the court to direct the parties to appear "for a conference to consider . . . such other matters as may aid in the disposition of the action," does in fact sanction the active judicial exploration of settlement.[4] Even if this were not so, they argue, the inherent power of the court, implemented by its case management program, furnishes a legitimate base for judicial action in the settlement area.

The nonactivists had their day. The activists are now in the ascendancy, as times change and case loads become increasingly burdensome both in number and complexity of suits.[5] As a busy trial lawyer, I welcomed judicial efforts to explore and promote settlement. Given the civil case settlement rate today, about 90 percent in the federal system, obviously lawyers continue

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3. 3 Moore's Federal Practice, § 16.17, at 1128 (2d ed. 1974).

4. See the tentative draft of the fourth revision of the Manual for Complex Litigation (with revisions to July 21, 1976), 1.21: "In order to produce a climate in which counsel may explore the possibility of early settlement, the judge should ask the views of counsel on the possibility of settlement at the first principal pretrial conference."

5. Lord MacMillan has said, in Law and Other Things (page 35), "Reform of procedure is always a ticklish business for we grow accustomed to paths we have long trodden however tortuous. But the task must be undertaken from time to time if the vehicle of the law is to keep pace with the changing requirements of the age."

to feel, as I did, that a fair settlement is infinitely more desirable than a bitter, fight-to-the-last-ditch trial followed by costly pursuit of the appellate process and the worsening of the calendar problems in the courts of appeals.

My bias is revealed. I believe the judge should actively and firmly (but not coercively) seek to settle every case on his docket, that he should "institutionalize," if you will, the settlement conference. I suggest that no more than 5 percent of each year's civil terminations should result from fully tried cases. The other 95 percent, if not settled by counsel themselves, should be settled with the judge's active participation.

I know judges who actually believe that they have failed the lawyers and litigants when, the court's settlement efforts having failed, a case has to be tried. There is much to be said for this view. The costs of litigation are soaring. The good trial lawyer is on call for trial in several cases on any given day. As calendars become increasingly clogged, litigants are frustrated and disenchanted by delay. We judges must promote settlement.

As a final note to my Introduction, I urge that you see your role not only as a home plate umpire in the

courtroom, calling balls and strikes. Even more important are your functions as mediator and judicial administrator. Remember that the judicial branch of government, in a well-ordered society, is created to provide means for peaceful resolution of disputes.[6]

DON'T TRY IT--SETTLE IT

In both fiscal 1975 and 1976 (the federal fiscal year then ran from July 1 to June 30), of the 100,000-plus terminations of civil cases in the federal courts, 92 percent occurred before trial.[7] To emphasize this: of every 100 cases disposed of, only 8 reached trial; and even some of these were settled during trial.

The more efficient the judge and the more talented he is as an administrator the more cases he will settle; the fewer he will have to try; and the more days he will have available for administrative duties, status conferences, trial calls, and the like, all of which in turn will generate more dispositions by settlement.

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6. This paper assumes that the individual calendar assignment system is in effect in your district. Under such a system of case management, cases are assigned to a particular judge when the complaint is filed.

7. Administrative Office of the United States Courts, Ann. Rep. of the Director at I-26 (1976); id. (1975) at A-26.

SETTLEMENT IS NOT INEVITABLE; IT MUST BE ACHIEVED

There is a danger in the presentation of the 92 percent - 8 percent settlement analysis. You may be misled into relaxing comfortably, thinking the cases will settle themselves without any action on your part to promote or speed up the process.

In fiscal 1976, in the Northern District of California, all but 5 percent of civil terminations were by settlement before trial. This is much better than the national average. Another district, my own, fell below the national average, settling only 91 percent and leaving 9 percent to be disposed of at trial. Other districts, which I shall not name, did much worse. In one district, for example, only 80 percent of the terminations were by pretrial settlement.[8]

There is a lesson here. Obviously, there are means working--or being put to work--in certain districts, and not in others; means that are being utilized to process civil litigation more efficiently and expeditiously.

What accounts for this substantial difference between districts in pretrial settlements? The answer is a simple one: judicial initiative, orderly and firm calendar control, active judicial administration, and

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8. Administrative Office of the United States Courts, Ann. Rep. of the Director at I-26 (1976).

sound case management.[9] These attributes of a well-organized court have been and will be discussed in detail with you by others on the faculty. The judge who develops and then closely follows and firmly administers a sound system of calendar management and control will almost inevitably generate a higher percentage of settlements well before trial. The judge who adopts the laissez faire type of case management, who believes that the lawyer should control the pace of the litigation process, who has no program for routinely setting status conferences and pretrial and trial dates, will not--and I say this without reservation--achieve a high percentage of settlements before trial. What he will achieve, no matter how hard he works, is an ever-increasing backlog of cases awaiting trial. As that backlog builds and goes unattended, the lawyers involved (quick to perceive when a judge's calendar is stagnant, with trial off in the uncertain future) will go on to other matters where activist judges are pressing them for trial, pretrial, and settlement discussions.

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9. A survey of settlements accomplished by nine judges in a New York court shows, not surprisingly, that settlement rates are related to the personality of the judge and his enthusiasm for settlement as a means of disposition of cases. One judge settled only 27 percent of his cases at pretrial. Another achieved settlement in more than 50 percent of his cases at pretrial. See Zeisel, Kalven & Buchholz, Delay in the Court 152 (1959).

HOW ARE SETTLEMENTS ACHIEVED?

1. By the lawyers themselves, at the outset of litigation, and before the intervention of judicial administration.
2. By the pressures of the several steps involved in good judicial administration, the elements of which I have detailed in the two preceding sections.
3. By the trial judge intervening personally, through conference with counsel, after the pressures of active judicial administration have failed to achieve a settlement.

By the Lawyers Themselves

As to this category of cases, little need be said. During the pleading stage the lawyers may confer and settle the case. Their evaluation of the matter, coupled with the knowledge of what lies ahead in a tightly run case management program, has brought about settlement. Even without such a case management program suspended over their heads, the lawyers might have quickly settled the dispute; however, it can be said with certainty that the adoption and use of a well-run case management program will not impede early settlement.

By the Pressures of Good Judicial Administration

The answer has been filed and now counsel sit back, sigh with relief, and attend to more pressing matters. "Boilerplate" interrogatories may be routinely served and just as routinely ignored and depositions noticed and then repeatedly postponed. Needless motions on discovery grounds may be filed, then postponed because counsel are otherwise engaged or not ready. Office time, court appearances, legal research--unnecessary work and expense--are charged to clients; the cost of even simple litigation discourages the average citizen from seeking redress in our courts. Yet, one day you look at this typical case and find that, while at issue for six to nine months, it is no more ready for trial now than it was the day the answer was filed. Is the fault solely counsel's? An emphatic "no" is the answer. They have simply been "doing their thing" as we all do. Lawyers--you and I--are great procrastinators. Busier than ever before, they turn to that matter which is demanding their instant attention. You did not place their law-suit before you in that category. You have no one to blame but yourself. Now let's do just what we should have done: let's get their instant attention. Let's get it right at the joinder of issue and, just as

important, let's keep it throughout that case's career on your docket.

Set up a routine procedure with your clerk's office. Have printed forms go out immediately upon filing of the answer, with your deputy clerk typing in the date of the pretrial and status conferences and the date of trial. You will, while you are here, be exposed to additional forms and procedures, as well. The key is to have a well-organized system, one that works routinely and automatically, and to insist upon compliance with it. Given specific dates for conferences, submissions, and trial, lawyers will be compelled to get their discovery done promptly--if you have acquired the reputation of insisting on compliance with your schedule.

Discovery and other trial-delaying motions can be heard on short notice, especially where, under the individual calendar assignment system, each case is assigned to a particular judge.

There will be no more "dead" time after answer is filed. Counsel will have to concentrate constantly on your case. It will ever be in the forefront of their minds, not in the rear of an "Inactive Files" drawer.

What else must you do? Judge Charles B. Renfrew has told you. Having given a pretrial date--or status

conference date--you must insure that when that date arrives, the conference is not a sterile and empty one. Preferably you, the trial judge, not a magistrate, should preside at the conference. Through the devices used by Judge Renfrew, you once again fill in this formerly "dead" time. I draw to your attention his order that counsel thoroughly explore settlement, report to the court on their efforts, and advise the court whether its assistance is desired or would be helpful. This command removes the concern counsel have about initiating settlement discussions on their own: that they will thereby weaken their own bargaining position.

The routinely mailed notice is important because it sets deadlines, including that greatest of all settlement inducements, the trial date. These deadlines require that counsel explore their cases and prepare them for trial early; and, perhaps most important of all, they bring about meetings and discussions between counsel.

Create a good system of judicial administration and you will be amazed at the number of settlements that result, without your even holding a settlement conference. You must, however, take any action required to let counsel know the deadlines are firm and that you insist on full compliance with your status and pretrial conference requirements.

By the Trial Judge Intervening Personally

Settlement conference: general comments. I now turn to the settlement conference. This can be a pretrial conference pursuant to rule 16, or a separate and distinct conference. Regard a well-run settlement conference as a highly respected institution within the judicial system. Perhaps here you will find a bit of history comforting. As an outstanding lawyer in my district has noted,[10] Chaucer, in his prologue to The Canterbury Tales, describes the function of friars in that period (the late fourteenth century), who acted as mediators, on what were called "love days," to settle disputes before trial. His words, for you Chaucer scholars, were:

> In love dayes there koude be muchel help.
> For ther he was not lyk a cloysterer
> With a thredbare cope, as is a povre scholer,
> But he was lyk a maister or a pope.

For you Latin scholars, Coke referred to the same institution as dies amoris. 1 Coke Institutes, fol. 135F. Even Blackstone in his Commentaries exalted the settlement conference. Vol. 2, at 166-167 (Cooley ed. 3d ed. 1884).

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10. Israel B. Greene, Esq., Newark, New Jersey. I express to Mr. Greene my grateful appreciation for his assistance and generosity in furnishing me certain of the historical notes that follow.

With such venerable roots, the settlement conference can be approached without fear that you are less a judge for conducting it.[11] If you need more documentation, and to put the lawyers in the same reverential mood that you, I assume, will now reflect, you might urge them in the gospel precept: "Agree with thine adversary quickly, whilst thou art in the way with him."[12]

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11. Hon. Ruggero J. Aldisert, now a judge on the United States Court of Appeals for the Third Circuit, once wrote, as a state court judge, A Metropolitan Court Conquers Its Backlog, 51 Judicature 247, 250 (1968):

> "More and more of our cases are settled before going to verdict. When we announced the calendar control plan in 1963, we said that its purpose was not to expedite trials but to eliminate them. I am a staunch believer in the jury system, but if the jury system is to be retained, it must only be used in those personal injury cases where there is a bona fide dispute as to the facts of liability or the facts of damage. Its use in any other circumstance is simply not defensible. If there is no dispute as to the facts of a case, and only a dispute as to its value, there is no intellectual justification for removing the evaluating process from the hands of expert lawyers and judges and dispatching it to a lay jury for determination." (footnote omitted.)

12. Matthew v:25. This, says Blackstone, "has a plain reference to the Roman law of the twelve tables, which expressly directed the plaintiff and the defendant to make up the matter while they were in the way, or going to the praetor - in via rem uti pacunt orato." 2 Blackstone 167 (Cooley ed. 3d ed. 1884).

Mr. Greene also commends to me Sheridan's observation from The Duenna, act I, scene 3:

> A bumper of good liquor,
> Will end a case quicker,
> Than Justice, Judge or Vicar.

Mr. Greene has also pointed out to me that Professor J. W. Spargo, who has made a scholarly research of the "love days" institution, says: "They were days appointed for settlement of disputes out of court, and the clergy took an active part as arbiters at first with the approval of church." J. W. Spargo, Speculum 15, at 36-40.

Put the lawyers on the settlement track early. Encourage them to think of an amicable disposition of the case. Be meticulously impartial and absolutely fair. Let counsel know that they will be at trial shortly and that the trial date is firm. Point out what will be required of them before trial, and when (i.e., briefs, requests to charge, or, in a bench trial, preliminary proposed findings of fact, stipulations, premarked exhibits, etc.).

So much for the philosophy of the settlement conference; let's now turn to the conference itself. The success of any settlement conference is largely a function of the personality and experience of the judge and counsel and how well all (including the judge) know the facts of the case. Theoretically at least, lawyers of equal background and experience, both of whom know each other's and their own cases well, should usually come close in their evaluation of the case. All they need from the court is its indication that a figure somewhere between their two figures is fair. Once received, this judicial approval is added to their recommendations to their clients. Settlement results.

I have found that the difficult cases to settle are those in which there is a disparity in counsel's

skill, experience, and knowledge of the case. It is in these cases particularly that the court must, if it is to function effectively, have a thorough knowledge of the law and the facts of the dispute. You can then discuss separately with each counsel his case's strong and weak points as you see them. Once the bubble of counsel's unfounded optimism is exploded by a judge's knowledgeable and penetrating questions, a settlement results. Obviously, without a careful review of the file before the conference, you cannot ask such questions.

It will occasionally (but hopefully not too often) happen that you have not had the time to educate yourself thoroughly on the case before trial. If your efforts at settlement fail before trial, listen to the openings, review the clerk's file, and then confer further with counsel. Your watchword should be, "Don't give up." The lawyers would prefer to settle, you want to settle, let's settle! Even after the testimony begins, be alert to the psychologically best time to approach settlement once again. Many clients are obdurate against settling until they face--or have been through--cross-examination. Again, "Don't give up."

Should you encounter that rare lawyer who wonders why you are working so hard at settlement, you can tell

him that you must settle all but a few cases. Your case load requires it.

I came on the bench in fiscal 1971. That year, 93,396 civil cases were instituted in the federal courts; 86,563 cases were terminated. Since that time, the filings have increased as much as 13 percent annually. Your task is clearly stated: you have to settle an increasing percentage of your cases just to stay even, because there obviously is a limit, fixed by hours and days of the week, on the number of cases you can actually try.

Settlement conference: when? Since roughly nine out of ten cases are going to be settled, why not get about the business early?[13] Each case on your docket does more than take up file space in your chambers and the clerk's office. It creates problems. It takes time. It must be planned for, requires research, generates telephone calls and letters. In these ways, each case burdens your staff and the clerk's office. It makes like demands upon counsel and their offices. Discovery and motion practice are inevitable by-products. The costs of litigation increase to the disadvantage of the parties and counsel. Why must we go through all this when we know that the case (if it is one of the 90 percent) is eventually going to be settled anyway?

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13. See note 4, supra.

The conclusion to be drawn is evident: settle sooner, not later.[14] Inject yourself into settlement discussions at the earliest realistic opportunity. Timing is important. Many attorneys (and claims agents) will not put a figure on the table until certain discovery has been undertaken or all discovery has been completed. Only by closely monitoring your cases will you know when a conference is in order. In a personal injury case, you will, by your administration, assure that all medical reports are promptly exchanged, experts deposed, physical examinations had, and the like. This of course takes us full circle: by using the Northern District of California plan, you will automatically and routinely be bringing counsel in at certain intervals. If, at the first meeting, you decide it is too soon to discuss settlement, you assume control over the case and set a date for another conference. The parties may need more information, or perhaps an interlocutory ruling by you is needed to break through an impasse. There may be a

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14. The last-minute settlement often results in calendar confusion. Our beloved friend, Judge Walter E. Hoffman (Taxation of Jury Costs in Last Minute Settlements, presented to the Sixth Circuit Judicial Conference, May 17, 1974, Gatlinburg, Tennessee), describes a local rule in the Eastern District of Virginia that provides for taxing of jury costs equally against the parties where settlement occurs too late to call off attendance of a jury panel.

dispute over what jurisdiction's law applies. Evidence questions may have to be resolved. If such issues cannot be resolved quickly at a particular conference, set them down for an early hearing; and then set another settlement conference date. All of this can be and must be done by you as the judicial administrator in charge of the case.

Can anything be clearer than that the sooner you have that 90-plus percent settlement rate working for you, the better it is for your entire case management program, the lawyers, and the litigants?[15]

Settlement conference: how? Having assured yourself that the optimum time for a settlement conference is at hand, you are ready to proceed.[16] Counsel with authority to negotiate and settle must attend. In an

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15. Private litigation with a public interest, e.g., the treble-damage antitrust suit and class actions, actually merit separate discussion of the court's settlement role. For an excellent treatment of the subject, see Renfrew, Negotiation and Judicial Scrutiny of Settlements in Civil and Criminal Antitrust Cases, 57 Chicago Bar Record 130 (1975).

16. What follows relates to the settlement conference, which is separate and distinct from the rule 16 pretrial conference. Others on this seminar's program will address the function of the judge in preparing for and conducting a good pretrial conference. Needless to say, distillation and defining of issues, a "must" for any sound pretrial conference, will generate a substantial number of settlements.

insurance case, if it is a serious one, a representative of the carrier should be present. The parties too should be on hand. There need then be no delay while a lawyer says, "I'll submit the figure to my client" (who, incidentally, will not be available for a week). Concentrated negotiations, with the client available outside chambers for a quick "yes" or "no," are the kind that lead to settlements. The soft and flabby conversation leads only to a waste of everyone's time.

Each judge must develop his own method of conducting a conference. It should be run in chambers, informally and under relaxed circumstances. I do not believe in the "hard boiled" approach. In the long term, coerced settlements will add to neither your stature as a judge nor your success at settling cases. This does not mean, however, that you must take the first "no" for an answer. Keep at it. Many lawyers expect you to brush aside their early negative response. It is normal to hold back your "top dollar" or "rock bottom" position. Encourage counsel to talk about the strength of their cases and the weaknesses of the opposition. At the outset listen, and give each side equal time. Then and only then should you ask questions. Having studied the file, you will know what questions to ask. Require

clear, frank responses. Along the way, be alert to admitted and stipulated matters. The smaller the area in dispute, the better chance you have of bringing the parties together. Whittle down the controversy to its hard core. Then there can be intelligent analysis rather than emotional response. Settlement conferences involve much more than having the judge simply get two figures from the litigants and then split the difference.

After I have encouraged each side to develop its case in the other's presence and to respond to the other's contentions, and I have a good picture of the case, I explore what their settlement positions have previously been. I develop areas of agreement on the facts and law (which, if settlement fails then, can be later incorporated in a stipulation). The difference between the parties very often is not factual but is a difference of opinion regarding value. If counsel consent, I then speak separately with counsel.

I have certain "disaster" cases to which I may refer: in which a stubborn plaintiff refused a generous offer, only to lose the verdict; and in which a defendant who rejected a reasonable demand later heard a jury foreman return a tremendous verdict against him.

It is essential that counsel have confidence in your impartiality and fairness. They know that you were once a lawyer and daily faced their problems. Show them you remember this too. Encourage frank, "off the record" discussion. They know you will never know as much about their cases as they do. Demonstrate you know this too. At the same time, you can point out that your factual inadequacies are compensated for by your objectivity, and that therefore your perspective may be better than theirs in evaluating the worth of their cases. Point out too that, in the final analysis, what a jury is going to hear and understand may be not precisely what counsel believe the case is all about.

Rarely will you settle a case with your first suggestion. Listen carefully, however, to the first negative response to your proposal. It might be qualified by "I don't think my client will be interested" rather than a flat "no." By careful watching and listening, you can ascertain how counsel really feel about their cases.

After separately conferring with each counsel, I then ask counsel if they have an objection to my presenting a figure (or a formula) for settlement. If they do not, I will then present something in terms of an

"area" rather than a fixed figure, and state that, of course, it is intended only as a "bridge" between their differences.

After posing such a figure, I will suggest that counsel discuss my figure with their clients and with each other. Though some may disagree, I think it unwise for the judge to talk directly with the litigants. I may insist upon a response later in the day, or I may, if warranted, give counsel a few days to report back. It is important that they understand that settlement is not a by-product of a pretrial conference but an end in itself, and that you are going to pursue it aggressively.

If settlement is not achieved this time, put counsel back on the track of getting ready for trial. Another day will come when the settlement stars are better positioned in the heavens. If settlement is reached, have it put into the record and have the clients agree on the record. Close it out then and there!

Nonjury trials. Many ardent proponents of judicial activism in advancing settlement confine their enthusiasm to thus resolving jury trials. They are concerned about a showing of partiality by a judge who, if he fails to settle a case, will sit as a fact finder in a bench trial.

There is a difference, but only in degree, in how the judge should conduct himself in trying to settle a nonjury case. He should continue to be involved in settlement conferences in such cases. Here, however, I will never enter into such a conference until I know the case thoroughly. I then will call a conference, at which I ask the parties if there seems to be a well-founded hope for compromise. If agreeable to both sides, I have them tell me of the status of their negotiations, omitting amounts that may have been discussed. If they are still short of agreement following my suggestions, if any, I ask counsel if they object to talking about precise details of the relief sought (money or other relief). As you become known as one who can conduct such discussions without coloring your judgment at trial, lawyers will not hesitate to engage in full, frank discussion with you.

Settlement of nonjury cases is much to be desired. Even a relatively simple nonjury trial will require many hours of post-trial reflection by you in arriving at your decision and in writing your opinion or findings of fact and conclusions of law pursuant to rule 52(a). A complex patent case tried nonjury may require hundreds of hours from you post-trial in composing your decision.

The impact of this on your docket is clear.

Let me raise one cautionary note in settlement, whether it be a jury or nonjury case: where you believe the plaintiff's case is totally without merit, do not encourage the defendant to enter into a "nuisance" settlement nonetheless. Such encouragement will, in the long run, worsen rather than improve your calendar problems.

Finally, when offering a settlement figure, make it clear that acceptance or rejection of your suggestion will not influence your view of the case.

Encourage--but do not coerce--settlement.

THE JUDGE AS ADMINISTRATOR

1. Know your inventory
2. Leaf through your case cards or docket book monthly to see if cases are lagging in their development
3. Concentrate on cleaning out the older cases
4. Review every complaint for jurisdictional allegations and defects
5. Have a constant scheduling of early morning conferences

6. Know how many cases are added to your case load each month and how many have been terminated. You will soon see whether you are staying even, pulling ahead, or falling behind
7. Ask yourself whether your own management of case flow can be improved
8. Finally, grant continuances of conferences and trials sparingly

CONCLUSION

Judicial settlement of lawsuits is an art. It is an art that can be mastered by experience, and a judge can become adept at it without having had a great deal of trial practice in his background. Your confidence in your ability to assess the value of the case will grow as you move case after case--and you will.

What I have sought to do is persuade you that today's judge must involve himself, with firm dedication, in disposing of as many cases as possible through settlement. A dispute resolved through settlement rather than trial, where both sides believe a fair result has been reached, furthers the ends of justice

and good judicial administration. A fair settlement promotes the orderly and expeditious processing of litigation, which, as the late Chief Justice Warren once said, "is a right which each of us should be able to ask of our judicial system, no matter what our station in life or how meager or non-existent our resources may be." Warren, The Administration of the Courts, 51 Judicature 196 (1968).