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Pretrial and Date of Settlement

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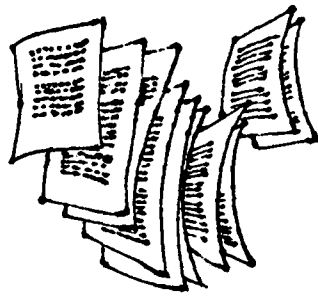
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Readers' Viewpoint



Pretrial and Date of Settlement

Judge Ruggero J. Aldisert takes Professor Rosenberg, me, and "the entire academic" community to task, albeit very politely, for overlooking the argument that "it is not too important whether the cases in fact will eventually settle; the main point is *when* they will settle."

I doubt whether Judge Aldisert believes the first half of his statement; any case that is not settled must be tried, hence increases the workload and thereby the delay of the court. But the point I want to draw attention to is the reproach that we do not pay attention to the question *when* a case is settled. The implication is that pretrial advances the date of settlement, and the reproach is that we do not care.

In response, let me cite here Table 11 from Rosenberg's classic study:¹

Table 11. Not-Pretried Cases are Settled More Commonly than Pretried Cases

Age at Closing (in months)	Not Pretried	Obligatory Pretrial in All Cases	Pretrial at Request of Litigants
12 or fewer	26%	24%	22%
13-18	39	34	32
19-24	32	35	38
25 and over	3	7	8
Total	100%	100%	100%

Number of cases
settled prior
to trial (511) (1,022) (480)

This most careful analysis, the evidence on the point Judge Aldisert raises, does not support him: if anything, the pretried cases are settled later than the ones that had not been pretried.

1. *The Pretrial Conference and Effective Justice* (New York: Columbia University, 1964), p. 55. The table here is slightly simplified.

And since this is the *only* evidence that has ever been produced on this issue, and since it has been produced with care by a distinguished academician, how about stating that it is *only* the academicians who have sufficiently cared about when cases are settled?

As to the substance of Judge Aldisert's concern, I suspect he will say that it is the pretrial as practiced in New Jersey that causes this failure to advance the date of settlement; Pennsylvania has a better pretrial. Maybe so; but in that case, only another controlled experiment should be acceptable proof. I am sure that if the Pennsylvania courts would sponsor such an experiment, Professor Rosenberg would be glad to provide them with the precise blueprints for it.

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Lawyers' and Judges' Salaries

In the February 1968 issue of *JUDICATURE* I find one basic error. The salary received by the judge is a net figure without requirement to pay any overhead or costs in connection with earning same. Every lawyer practicing in his own office must pay rent, salaries, telephone, etc. Judges do not have these expenses.

It seems to me, therefore, that the true salary which a judge receives is the gross amount plus what it would cost him to operate an office in prior practice. On that basis, few tears have to be shed for what is paid judges.

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