PRETRIAL SETTLEMENT CONFERENCE: EVALUATION OF A REFORM IN PLEA BARGAINING

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A field experiment in Dade County, Florida, evaluated the use of a pretrial settlement conference as a means of restructuring plea negotiations. All negotiations took place in front of a judge and victim, defendant, and arresting police officer were invited to attend. The conferences were brief but generally reached at least an outline of a settlement. They usually included at least one lay party although lay attendance rates were quite low. The change in the structure reduced the time involved in processing cases by lowering the information and decisionmaking costs to the judges and attorneys. No significant changes were observed in the settlement rate or in the imposition of criminal sanctions. There was some evidence that police and victims who attended the sessions obtained more information and developed more positive attitudes about the way their cases were handled.

I. INTRODUCTION

In 1974 Norval Morris proposed that judges should play a more active role in plea negotiations and that the victims and defendants should also be invited to participate (1974:55-57). We are reporting a year-long test of that proposal carried out in Dade County, Florida (Kerstetter and Heinz, 1979). Using a field experiment design, we randomly chose 1074 cases: 378 were assigned to use a pretrial settlement conference; the remainder were the control group.

Plea bargaining—the primary mode of criminal charge disposition—has been under sustained attack for some time; the

The authors wish to thank the participants in the Dade County experiment, especially the judges and attorneys and their staffs, for their continued cooperation and interest in this project. Our research staff in Dade County, directed by Charlotte Boc, provided us with consistently high quality data in the face of substantial obstacles; without their perseverance the evaluation would never have been completed. The project was conducted at the Center for Studies in Criminal Justice of the University of Chicago Law School. Heinz was the senior methodologist and research associate; Kerstetter, the project director and Associate Director of the Center. We particularly wish to acknowledge the unfailing support and stimulus of the Center staff, and especially Frank E. Zimring, Ben S. Meeker, and Helen Flint.

The evaluation was prepared under Grant 76-NI-99-0088 from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the United States Department of Justice.

U. S. National Advisory Commission on Criminal Justice Standards and Goals recently urged that such negotiations should be abolished (1973:46-49). But despite criticism from many quarters, there is little indication that the practice is about to disappear.

The major criticism of plea bargaining is that it penalizes the defendant who wishes to assert his constitutional right to trial (U. S. National Advisory Commission, 1973:48). As a consequence, innocent persons may plead guilty to avoid the more severe sanctions that follow conviction at trial. Thus a guilty person may receive a reduced sentence by pleading while an innocent person is severely punished for unsuccessfully asserting his innocence at trial.

The issue of judicial participation in plea bargaining has been part of this larger controversy. The American Bar Association Standards (1967:71-77), Rule 11 of the Federal Rules of Criminal Procedure, and the U. S. National Advisory Commission on Criminal Justice Standards and Goals (1973:59-63) all state that trial judges should not be directly involved in plea negotiations though they may review a tentative settlement reached by the parties and indicate whether it is acceptable. This position is predicated on the belief that the role of the judge is so inherently coercive that his participation undermines the voluntariness of the defendant's acceptance of a plea agreement.

Morris challenges this view (1974:55-57). He points to the desirability of greater judicial knowledge of the facts and considerations behind the proposed plea. Traditional plea negotiations allow the judge little more than a veto power, which is itself constrained by caseload pressure. Alschuler, in his definitive survey of the arguments for and against judicial involvement, concludes:

> Judicial control of the plea bargaining process would offer defendants a clear and tangible basis for reliance in entering their guilty pleas; it would, at least on occasion, permit effective regulation of the extent of the penalty that our criminal justice system imposes for the exercise of the right to trial; it would facilitate the introduction of new procedural safeguards; it would be likely to affect the tone and substance of the bargaining process in a variety of useful ways; and most importantly, it would restore judicial power to the judges. [1976:1154]

Rosett and Cressey (1976:170-72) argue that judicial participation will help to equalize the opportunity of all defendants to negotiate and will encourage the prosecutor and defense counsel to furnish the judge with information about the defendant's background, thereby leading to more individualized punishment.

Participation by the victim and the defendant in plea discussions has not received a great deal of attention. A *Yale Law Journal* Comment (1972:286) suggested including the defendant in a pretrial conference presided over by a judge. Rosett and Cressey (1976:173) also recommended that both defendant and victim participate in order to increase their understanding of the proposed settlement and encourage greater attention to the unique qualities of each case. Fredric DuBow and Theodore M. Becker (1976:147) assert that the victim's capacity to influence the outcome of the criminal case has declined over time, and that traditional plea bargaining has largely excluded victims. As a result, victims are dissatisfied with both the sentence imposed and their inability to participate meaningfully in the process.

> If the victim is interested in retribution, he may be frustrated by the imposition of a low sentence without explanation of the reasons for leniency or the opportunity to participate meaningfully in the process of reaching a disposition. If the victim is not interested in retribution, there is little other satisfaction to be gained. Victims seldom get an apology, seldom are reconciled with the offender, and seldom receive restitution. [1976:150]

The proposal for a pretrial settlement conference envisions participation in all plea discussions by the judge, the victim, the defendant, and the police. It neither requires the judge to take an active role in the actual negotiations nor prohibits such a role. Victim and police officer are given an opportunity to be heard, not a veto power. The defendant retains all existing rights and acquires the option to participate, either as a passive observer or an active party.

In our search for experimental sites we discussed the proposal with attorneys and judges in over twenty jurisdictions. We were frequently met with dire predictions that the conference would absorb inordinate amounts of judicial time; that the presence of victims and defendants would lead to emotional or even violent confrontations; that the candid discussions between attorneys necessary to facilitate a settlement would be inhibited by the presence of lay participants; that victims and defendants would misunderstand the conference discussions and accuse judges of improper conduct; and that the dignity of the judge would be diminished by his involvement in the negotiations. In the context of such widespread misgivings, we launched the conference procedure in Dade County (Miami), Florida.

II. METHODOLOGY

A. Research Design

In order to determine if our proposal made any difference in the processing of criminal cases, we designed a field experiment[1] that compared post-arraignment cases where conferences were available with those where they were not (see Figure 1). Since we wanted to control the assignment of cases to the treatment condition, we required (i) random assignment of cases to judges and (ii) random assignment of cases from each judge's calendar to test or control conditions.[2]

EVALUATION DESIGN

Judge	Prior to Intervention			Period of Intervention		
	T−n	T−2	T−1	T	T+1	T+2 ..... T+n
A (Test)		R	O		R X O R O	
B (Test)		R	O		R X O R O	
C (Test)		R	O		R X O R O	
D (Comparison)		R	O		R	O
E (Comparison)		R	O		R	O
F (Comparison)		R	O		R	O

O = Observation (Data Collection)
X = Treatment (Pretrial Settlement Conference)
T = Period of Intervention
R = Random Assignment

FIGURE 1

We identified three (test) judges who agreed to use the conference in a random selection of those cases that survived arraignment and three others (comparison judges) who did not use the conference but allowed us to analyze their cases. Since the judges were not selected randomly, we do not argue that they represent the universe of judges in Dade County. Instead, we have considered the three test judges as three separate tests of the procedure. The cases of comparison judges serve to indicate possible changes in the court environment during the

[1] For a general discussion of field experiments, see Campbell and Stanley (1963); Weiss (1972). For their use in criminal justice research, see McCall (1975:13-20).

[2] For a more detailed discussion of the design, sample selection, instrumentation, and indices, see Kerstetter and Heinz (1979:136).

test period. Since the Dade County Circuit Court randomly assigns cases to individual judges for disposition, part of our requirements were satisfied prior to our intervention.

For the three test judges the research staff identified (i) 40 cases that closed prior to our intervention in January, 1977, (ii) approximately 130 cases that would be eligible for treatment (for which a conference date was set), and (iii) 75 control cases that were processed at the same time as the test cases but followed the court's usual procedures. For the control judges we divided cases into two categories: (i) approximately 40 cases that closed prior to our intervention and (ii) 75 cases disposed during the treatment period. Thus the design included three treatment conditions: pretreatment, test, and control for the test judges, and pretreatment and control for the comparison judges. We used the case rather than the defendant as our sampling unit because of the need to provide equal treatment to all members of multiple-defendant cases.

For the test and control categories we used prospective samples identifying cases from the arraignment calendars and following them until they closed. For the pretreatment category we used a retrospective sample, identifying closed cases by their proximity to the date of our intervention and tracking them back in time. Neither method imposed constraints on the length of time involved in processing the cases or on the types of offenses included. However, approximately eight percent of the prospective samples had not closed at the conclusion of the data collection period. All noncapital felonies that survived arraignment were eligible for selection.

B. Data Sources

The research staff collected information from the court records concerning the nature of the offense, the timing of the process, and the method and type of disposition for each defendant in the sample.[3] A member of the staff also attended each conference and recorded the discussion. Structured twenty-minute interviews were conducted with victim, defendant, and police in test and control cases, after the cases were closed—in person for incarcerated defendants, otherwise by telephone. Among those respondents we could locate, we interviewed 54 percent of the defendants, 78 percent of the victims, and 63 percent of the police. Finally, senior staff conducted

[3] In multiple-defendant cases, one defendant was randomly selected to represent the case.

open-ended interviews with both test and comparison judges and attorneys.

III. THE SETTING

A. Criminal Procedure

A 1972 amendment to the Florida Constitution streamlined the state court system. (American Judicature Society, 1973:174). It established two tiers of trial courts, circuit and county. The Circuit Court has jurisdiction in all felony cases (crimes punishable by death or imprisonment in the state prison) and all misdemeanors where the defendant has also been charged with a felony. The Circuit Court in the 11th Judicial Circuit (Dade County) has a Criminal Division to which twelve judges are assigned.

The State Attorney is the prosecuting officer in all trial courts but municipalities may appoint officials to prosecute violations of their ordinances. The State Attorney's Office in Dade County employed 99 Assistant State Attorneys at the time of this study. Since 1974 the team of attorneys who present the case at the preliminary hearing also handle the case at trial, which has the advantage of encouraging them to review the cases carefully and screen out those that are inappropriate for felony prosecution.

The Public Defender is responsible for representing indigents. Assistant Public Defenders are assigned to specific courtrooms for extended periods of time. The Dade County Defender's Office had a staff of 57 attorneys at the time of this study.

In the Dade County Circuit Court it takes about 30 days to process a felony case from arrest to arraignment. Approximately 15 days after arrest a nonadversarial preliminary hearing is held in County Court. The prosecutor presents the State's case and the defendant is bound over for trial if the judge finds probable cause. If the defendant indicates at the preliminary hearing that he wishes to plead guilty a public defender is appointed to represent him.

Discussions with attorneys and judges suggest that about 25 percent of felony cases are settled prior to arraignment. Defendants are normally arraigned on a felony information between 7 and 14 days after the preliminary hearing, depending on whether the defendant is in custody. If a public defender is necessary, the appointment is made no later than the time of

arraignment. A local rule, normally invoked by oral motion at arraignment, provides for liberal discovery.

At arraignment the case is usually set for trial in 30 to 60 days. Many judges hold a "sounding" conference one week before the scheduled trial. The judges use the conference, which prosecutor and defense counsel attend, for a variety of purposes: most commonly to determine whether both parties are ready for trial, but also to explore the possibilities of a settlement, and even to urge the parties toward it. By providing a formal structure for judicial participation in plea discussions, this meeting is an antecedent to the pretrial settlement conference.

B. Experimental Intervention

Discussions with Dade County officials led to the development of an agreement specifying the conference procedure in the context of the policies and practices of that jurisdiction. In order to minimize administrative problems we decided to use only those cases that survived arraignment. Project staff randomly selected the test cases from each test judge's arraignment calendar and notified the judge of the cases selected. At arraignment the judge informed prosecution and defense that the case had been selected and scheduled the settlement conference at a time that allowed for completion of pretrial motions and discovery. The defense attorney was required to notify the prosecutor three court days in advance of the scheduled conference if he wished the conference to be held. Victims and police officers were invited by the prosecutor to attend the conference unless their eyewitness identification of the defendant was a crucial element in the case. The victims were neither subpoenaed nor compensated. The defendant could decide to attend with counsel, not to attend but to be represented by counsel, or fail to confirm the conference, thus canceling it.

At the conference the judge would indicate the purpose of the meeting and state that, for purposes of the discussion, the defendant's guilt of the charges would be assumed. The explicit statement of this assumption was necessary to make it clear that the defendant was not admitting guilt by participating in the discussion. The judge also advised the defendant that he was not required to make any statement supporting that assumption and could terminate the conference at any time. The judge advised the defense that no statement made at the conference could be used in a subsequent trial if settlement

efforts failed. The conference discussed whatever issues the parties felt might contribute to a settlement. If a proposed settlement was reached between prosecutor and defense counsel, the judge had to decide whether it was appropriate, given the interests of all the parties and of society. The defense counsel could consult with his client and report back later. If a settlement was reached and approved by the judge, the defendant entered a plea in open court. If no settlement was reached, the case was set for trial. A second conference could be held on the day of the trial, if necessary.

IV. FINDINGS

A. Dispositions

A conference date was scheduled for 378 cases and was held in 287 (76 percent);[4] of these, 26 percent were settled and another 46 percent were tentatively settled.[5] In the remaining 28 percent the parties could not agree even in principle; slightly more than half of these were likely to go to trial, according to one or more participants; the remainder were continued for further discussions (although a second conference was scheduled only in one). In the 212 cases that did not reach a settlement, roughly 60 percent needed only to review the tentative settlement. For example, the defense counsel might say: "Three years probation makes sense to me but I will have to talk to my client. I'll be back and give you an answer." In one-third of these cases, timing problems were cited as the reason for failure to settle: additional motions to be filed, incomplete discovery, or other pending charges. Certainly the setting of a conference date reduces flexibility in scheduling. Nevertheless, judges and attorneys maintained that the conference did not interfere with pretrial preparation. In summary, the sessions were able to accomplish the task of working out a proposed settlement.

B. Attendance

A judge attended every conference. In 83 percent one or

[4] Cancellations were caused by scheduling problems, the timing of the session within the disposition process, and the likelihood of trial. There was some evidence that conferences involving more serious offenses were more likely to be canceled.

[5] Tentative settlement is defined as a disposition to which the parties agreed but which one or more was unwilling to accept as binding at that time.

more lay parties was present. Most often, then, negotiations involved four or more participants rather than just the two attorneys. This reduced the cost of communicating information between judge and counsel and between professionals and nonprofessionals. Frequency of participation varied by role: defendants attended 67 percent of the conferences, police 28 percent, and victims 32 percent of those involving a crime against a victim. Attendance cannot be explained by the type of offense, personal characteristics, prior experiences with the courts, or general attitudes toward the criminal justice system.[6]

By far the most frequent reason given by those who did not attend was that they had not been notified; others said they were notified but told the conference would not take place. Although self-reports are difficult to interpret, the site director, attorneys, and the secretaries who handled the notification all confirmed that there were problems. Some were organizational: the task requires a level of persistence and imagination that may not be applied given the other duties of the secretarial staff. Often the information was inadequate: insufficient records, changes of address, lack of phone service, and absence from home during working hours made notification difficult.[7] Further, attendance was neither compulsory nor compensated. Some judges and attorney suggested that the low rates of attendance by victims and police indicated their lack of interest. Our findings show that notification problems must also be considered.

C. Conference

The following is a paraphrase of a pretrial settlement conference, drawn from observations made by one of the research staff.

Parties Present: Judge, Assistant State Attorney, Assistant Public Defender, Defendant, and Victim

JUDGE: What is this case about?
A.S.A.: This is a larceny. The defendant stole television sets from a loading dock.
JUDGE: What about a prior record?
A.S.A.: Drugs and larceny.
JUDGE: Are you the victim?
VICTIM: Yes.
JUDGE: What did you lose?
VICTIM: Two TV's.
JUDGE: How old are you?

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[6] Nevertheless, police who attended had a slightly more favorable attitude toward plea bargaining.

[7] Even after the research site director became somewhat more active overseeing the level of secretarial effort the attendance rates did not change substantially.

DEFENDANT: Twenty-four.
JUDGE: Are you married?
DEFENDANT: No.
JUDGE: Do you have a job?
DEFENDANT: I'm a busboy.
JUDGE: What should happen in this case?
A.S.A.: I'd like to see two years.
JUDGE: What about you?
A.P.D.: He has a drug problem and has been in a treatment program. If he goes to prison it will hurt his recovery and he will lose his job. I'd recommend jail and probation.
JUDGE: Do you have a drug problem?
DEFENDANT: I used to; not any more.
JUDGE: I'll give one year and some probation with treatment and restitution. He has done this before and I have to protect society.
JUDGE: Do you have anything to say?
VICTIM: It's O.K. with me.
JUDGE: Can you come back this afternoon at the sounding?
A.P.D.: I'll have to consult with my client. Thanks for your time.

Time elapsed: 8 minutes
Case status: tentative agreement on some incarceration and probation.
Final disposition of the case: a guilty plea was entered the day of the conference. The sentence was 364 days in the county jail and 3 years probation with restitution; recommend drug treatment.

Virtually all conferences took place in the judge's chambers, with the judge wearing a business suit rather than judicial robes. The protocol and atmosphere were those of a business conference rather than a judicial proceeding. The conferences were generally short and to the point. One of our concerns was the amount of the time the conference might add to the disposition of cases but sessions averaged approximately ten minutes and only five percent took more than twenty minutes. Since the professional participants probably would otherwise engage in sequential bilateral discussions by phone or in person, the conference procedure did not substantially increase the time they devoted to case disposition.

The conference paraphrased above illustrates the type and quantity of information presented.[8] Virtually all conferences covered the facts of the case (96 percent), prior record (94 percent), and disposition recommendations (93 percent), however briefly. Roughly two-thirds dealt with the personal background of the victim or defendant. Office policy, statutory requirements, or the likely consequences of going to trial were rarely mentioned. Discussion was very superficial. The example presented above describes the crime by means of a mere statutory label and the object stolen. The assumption of guilt necessary to the conference may account for some of the lack of attention to factual detail; the danger of revealing one's case in

[8] It is noteworthy that the participants were not introduced.

the event of a trial was a further constraint. Disposition was also resolved expeditiously. Although the parties represented opposed interests, their recommendations generally were not widely divergent and were presented with little explanation. Contrary to the expectations of some observers the victims did not demand the maximum authorized punishment. Usually the victim was supportive of the disposition proposed by the attorneys and the judge.[9]

The judge appeared to play a pivotal role in the conference, typically controlling the discussion. In the example above, the judge initiated new subjects by asking questions: what were the facts, priors, defendant background, and recommendations? On average, the judge accounted for more than half of all subject changes. Further, it was the judge who most often made the recommendation that formed the basis for settlement. Within these parameters, there were differences among judges. One took an active role in developing consensus decisions. Another, after eliciting information, would announce the sentence without seeking the advice of any of the professional parties although he did consult with the lay participants. The third spent more time in establishing the factual basis for the decision.

The lay participants, by and large, provided information. The police took the most active part, particularly in giving facts of the case; the defendant said the least. Overall, 88 percent of the police but only 25 percent of the victims and 19 percent of the defendants made more than five comments during the course of the entire session. Although police and victim often gave recommendations, only a third of the defendants did so. As illustrated above, most recommendations were made at the request of the judge and amounted to an expression of approval of or acquiescence in the agreement achieved by the professional parties.

The professional participants reached different conclusions about the utility of the information the lay parties provided. At the beginning of the project the three judges and many of the attorneys spoke optimistically about the value of this new resource. Toward the end of the project, two of the three judges concluded that the information was often either unnecessary or could be obtained elsewhere. The assumption that the defendant was guilty and the extensive experience of the professionals produced a very narrow definition of relevance that made

[9] Whether this resulted from prior consultation with the prosecutor we do not know.

the contribution of lay participants marginal.[10] The mere fact that lay parties participated in the conference without adding "relevant" information may have served to create the impression in the professionals that the lay parties rarely had anything to contribute.

In summary, most of the conferences ended with agreement on at least the outlines of a settlement. The process took an average of ten minutes. Most sessions had at least four participants: the judge, two attorneys, and one lay member. As a result, the structure of decisionmaking was generally different from the traditional mode of plea negotiation in criminal cases. The judge played the central role in the process by directing the information flow and determining sentence. Although the presence of lay participants changed the structure, their rate of attendance was lower than some professionals had hoped it might be, perhaps because of notification problems. Their role was limited to providing information requested by the professionals.

D. Effects of the Conference on Processing Costs[11]

We expected that the conference procedure would reduce the time a case remained open. Joint negotiation by all of the parties in place of more traditional sequential series of discussions seemed likely to facilitate the settlement of cases. To test this we compared the number of days from arraignment to disposition for the test and comparison judges for pretreatment, test, and control groups of cases. Tests were run for each courtroom among the three treatment conditions and between pairs of treatment conditions in order to pinpoint the location of differences as precisely as possible. Prior to the implementation of the conference procedure the average time from arraignment to disposition was 126 days, varying from 75 days to 208 days, among the three test judges. The conference procedure reduced the time to disposition in all three courtrooms by roughly three weeks. No similar reduction occurred in the cases handled by the comparison judges so the finding cannot be explained by some change in the court system.

In the total sample, approximately 10 percent of the cases went to trial and almost one-quarter were dismissed without

[10] When interviewed after the conclusion of the project, the judges could think of no information that was essential but *not* brought out at the conference.

[11] For a full presentation of our findings, see Kerstetter and Heinz (1979: chs. 7-9).

adjudication. Although there is some evidence that the likelihood of trial or dismissal may have entered the decision to convene the conference, the overall distribution of trials, dismissals, and settlements was not changed by introduction of the conference.

Based on interviews with defendants, victims, and police we found that their participation in the conference did not affect the average number of contacts between lay and professional actors or the number of issues they discussed. However, those who attended the conference met more professionals and discussed more issues than those who did not.

An analysis of the costs of the conference involves several dimensions. We have already mentioned that the brevity of the session suggests a net savings. If notification of lay participants is to be improved and higher attendance achieved, more money will have to be spent for support staff. The accelerated disposition of cases and the brevity of the conference sessions appear to have several causes. First, the conference may have encouraged attorneys to review their cases carefully. The relative formality of the scheduling (it took place before a judge and then appeared on the court calendar) may make the attorneys less inclined to seek postponements. The presence of the lay participants may have facilitated communication by reducing the need for subsequent consultation to review the proposed disposition. Nevertheless, the processing costs were not fundamentally altered: settlements did not increase nor were trials more attractive (for example, because the conference provided more information about the likely sentence following conviction at trial).

E. Effects of the Conference on Case Dispositions

Defendants were found not guilty in 5 percent of the entire sample of closed cases. That figure was not significantly affected by the use of the conference. Almost half (46 percent) of those found guilty were incarcerated. The average sentence was 2.1 years.[12] We used a modification of the Diamond-Zeisel (1975:121) sentence severity scale (which incorporates fines, probation, and incarceration into a single score) to make comparisons among the treatment conditions and courtrooms. We found significant differences among the courtrooms but little change that could be attributed to the use of the conference. Two judges modified their sentencing patterns (one imposed

[12] After excluding suspended sentences and sentences that ran concurrently with those in earlier cases, the average was 1.7 years.

less severe sentences and the other ordered restitution more frequently) but the changes appear to be due primarily to changes over time since the control cases showed similar changes. The third judge did not change his basic sentencing pattern. The changes in sentencing may be due to spillover effects of the conference on the whole calendar.

Although the procedure did not contain an explicit sentencing philosophy, expanding the number of roles and reducing information costs might be expected to alter outcomes. Project findings did not support that expectation. Individual cases may have been affected by the conference but its introduction did not significantly change the pattern of adjudication or sentencing. Our review of the negotiation process suggested that it had not been significantly altered by the use of the conference. The absence of a significant change in either outcomes or sentences supports that conclusion.

F. Effects of the Conference on Lay Attitudes

We expected a change in the attitudes and perceptions of defendants, victims, and police officers as a result of their participation in the conference: for instance, more knowledge about and more positive attitues toward the specific disposition with which they were concerned. We tested these expectations by means of interview data with defendants, victims, and police, comparing those who did and did not attend for the effect of conference participation upon individuals and pretreatment and post-treatment cases for the systemic effects of the intervention.[13]

We were interested in whether the central actors in the criminal process knew the disposition of their cases. As expected, only two of the 297 defendants interviewed reported they did not know the outcome of their cases but half of the victims and one-third of the police reported ignorance. Since victim and police are not necessary to the closing of a case, some special effort by the courts would have been required to inform them unless they happened to be present at the disposition.

Introduction of the conference into the system did not significantly increase the level of knowledge of either victims or

[13] The research design, with its random assignment of cases to test and control conditions, allows inferences about systemic efforts. Since attendance was not controlled in a similar manner, inferences about individual differences are more tenuous since those who attend may vary systematically from those who do not. However, they did not differ significantly in social and economic background and general attitudes toward the criminal justice system.

police.[14] Nevertheless, both the victims and the police who reported attending the conference were much more likely to feel they knew the disposition than those who did not.

The majority of each category of lay participants were generally positive in their evaluation of the attention given their cases by the judge and/or attorney. Defendants were the least satisfied and police the most, which is surprising given the common attitude among police that they are excluded from the subsequent processing of the arrests they make and that the judge is unsympathetic to their perspective.[15] The comparisons among respondents in the different treatment groups showed no significant treatment effects for defendants and police, but victims in the test category were somewhat more satisfied with the processing of their cases. Defendants and victims who attended a conference did not differ from those who did not, but police who attended were more satisfied.

All three categories of lay participants indicated general satisfaction with the disposition of their cases. Since they could be expected to have quite different perspectives, it is interesting to note the similarity in the overall ratings.[16] Among the defendants and victims there was no difference between test and control groups or between those who attended a conference and those who did not. Nevertheless, police who attended a session were more positive about the disposition and there was some evidence that police in the test group were more positive than those in the control.[17]

A major concern about judicial involvement in plea negotiations is that the role of the judge is inherently coercive. We explored this concern by comparing responses on whether defendants plead guilty because of fear of a more severe sentence if they go to trial. We found that 60 percent of the defendants interviewed felt that the possibility of a more severe sentence

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[14] Defendants were not included because virtually all knew the disposition.

[15] We should note that the police and victims may come from what may be the more satisfied end of a continuum of victims and police, since they represent only cases that survived arraignment. The survival of these cases could be viewed by victims and police as a validation of their perceptions about the significance of the criminal event, with the result that they would be more disposed to view the court processing as a success.

[16] We are not suggesting that the three parties agreed in any given case but only that the overall pattern is similar. Further, these figures do not reflect the relationship between satisfaction and sentence. We are not saying that defendants who were imprisoned were as satisfied as those acquitted. We only measured the satisfaction of those who knew the disposition.

[17] Differences between test and control were statistically significant for one of the three judges.

following a trial was an important or critical factor in their decision to plead.[18] Comparisons between test and control groups and between those who did and did not attend showed no differences in the salience of the issue that could be attributed to the use of the conference. Thus, concern about the inherent coerciveness of judicial participation is not supported by this study.

To argue that the conference procedure made an impact on attitudes and perceptions, consistent and significant differences need to be found. Out of fifteen sets of tests for treatment effects upon defendants, victims, and police, only one (or possibly two) showed significant differences. It therefore seems clear that the conference procedure did not substantially change the overall judicial environment. Out of the fifteen sets of tests for the effect of attendance, nine showed significant differences. These findings pose some difficult problems of interpretation. One must first come to grips with the reason for attendance. Perhaps those who attended were systematically different from those who did not—more satisfied with the courts, endowed with a greater sense of civic duty or from a higher socioeconomic stratum. On that basis one would interpret differences related to attendance as evidence of preexisting differences. But our data show no significant difference in these characteristics between those who did and did not attend. Further, those in the test group who did not attend and those in the control group were similar in their degree of satisfaction and extent of knowledge but both differed from those who attended the conference. Because notification was not perfect and some conferences were canceled, we are inclined to view differences related to attendance as suggestive of effects on individuals, if not on the court system as a whole. The findings are consistent with the anticipated effects of making the negotiation procedures more open: participants generally had more information and were more satisfied with their treatment, but the gains were modest.

V. CONCLUSION

The pretrial settlement conference in Dade County, Florida, created a more open, formal arena for plea negotiations. The procedure increased the number of participants, including

[18] Whether there really is such a sentencing differential is a separate question, see Rhodes (1978).

nonprofessionals, and thereby lowered information costs. Information needs were quite low. The sessions were brief, lasting an average of ten minutes. At the conclusion of the conference three-quarters of the cases had reached either a settlement or the outlines of a settlement.

The conference assumed the characteristics of an administrative proceeding whose goal was to fit the case into a category and then apply existing legal rules. Such a procedure appears appropriate for most criminal cases, where the issues in dispute are minimal. It also helped to identify the "difficult" cases (those that were most serious or where guilt was disputed) so that alternative procedures could be followed, such as further discovery and trial. This is facilitated by the presence of the disputing parties. For example, one defendant brought in a surprise witness which resulted in a continuance for further discovery.

The greatest impact of the conference procedure was to shorten the length of time it took to close cases. Furthermore, our data suggest that the conference certainly did not increase and may actually have decreased the total time invested by the court system. The conference did not cause significant changes in the proportion of litigated or settled cases or in the proportion of defendants found guilty, but there was some evidence that the imposition of restitution and incarceration were modified.

It seems unlikely that the conference procedure could change the environment in which the courts operate because lay attendance was so low. Nevertheless, the impact on individual police and victims who did attend was not insignificant.

The conference reduced the decision costs by achieving savings in time and by lowering the cost of obtaining information. These reductions benefit professionals (judge and attorneys) and lay parties as well, to the extent that processing costs concern all citizens. Further, because speedy dispositions are beneficial to innocent defendants, victims, and police, the conference procedure also enhances justice.

REFERENCES

ALSCHULER, Albert W. (1976) "The Trial Judge's Role in Plea Bargaining, Part I," 76 *Columbia Law Review* 1059.

AMERICAN BAR ASSOCIATION: PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, ADVISORY COMMITTEE ON THE CRIMINAL TRIAL (1967) *Standards Relating to Pleas of Guilty*. Chicago: American Bar Association.

AMERICAN JUDICATURE SOCIETY (1973) *Criminal Justice in Dade County: A Preliminary Survey*, vol. 3. Chicago: American Judicature Society.

CAMPBELL, Donald T. and Julian C. STANLEY (1963) *Experimental and Quasi-Experimental Designs for Research*. Chicago: Rand McNally.

DIAMOND, Shari and Hans ZEISEL (1975) "Sentencing Councils: A Study of Sentence Disparity and Its Reduction," 43 *University of Chicago Law Review* 109.

DuBOW, Fredric L. and Theodore M. BECKER (1976) "Patterns of Victim Advocacy," in W. F. McDonald (ed.) *Criminal Justice and the Victim.* Beverly Hills: Sage Publications.

KERSTETTER, Wayne A. and Anne M. HEINZ (1979) *Pretrial Settlement Conference: An Evaluation.* Washington, D.C.: Government Printing Office.

McCALL, George J. (1975) *Observing the Law: Applications of Field Methods to the Study of the Criminal Justice System.* Washington, D.C.: Government Printing Office.

MORRIS, Norval (1974) *The Future of Imprisonment.* Chicago: University of Chicago Press.

RHODES, William (1978) *Plea Bargaining: Who Gains? Who Loses?* (PROMIS Research Project No. 14, Final Draft). Washington, D.C.: Institute for Law and Social Research.

ROSETT, Arthur I. and Donald R. CRESSEY (1976) *Justice by Consent: Plea Bargains in the American Courthouse.* Philadelphia: Lippincott.

U.S. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS (1973) *Courts.* Washington, D.C.: Government Printing Office.

WEISS, Carol H. (1972) *Evaluation Research: Methods for Assessing Program Effectiveness.* Englewood Cliffs, N.J.: Prentice-Hall.

YALE LAW JOURNAL (1972) "Comment: Restructuring the Plea Bargain," 82 *Yale Law Journal* 286.