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of Colorado look to the judges to be wise and prompt administrators. Percy Morris voiced the prophesy back in 1941 that if the pre-trial conference were put into effect by the judges and wisely administered by them, it would prove to be one of the most beneficial changes under our law.[12] Prompt justice is a constant challenge to, and a primary responsibility of, our judges. The pre-trial is now a well-proved, modern instrument. It is a flexible instrument that is adaptable to the constant variation of the human element in litigation. While the pre-trial conference rule has been adopted in the Colorado Rules of Civil Procedure, our trial courts, for the most part, have not implemented the pre-trial conference rule with trial court rules making pre-trial mandatory and establishing pre-trial calendars. Even where trial courts have adopted an implementing pre-trial rule, the judges' warm and enthusiastic use of the pre-trial conference has been lacking. This lack is, in part, due to the judges' not having had an opportunity to see the benefits to the people and the judiciary when the pre-trial is warmly and wisely used.

For the future, it can be hoped that more of our trial courts will adopt a mandatory implementing pre-trial rule and a pre-trial calendar. Let us hope that in 1960 it can be reported that, during the past decade, attorneys fully and ingeniously used discovery procedures, and that the judges insured a speedy remedy for every injury by use of the pre-trial conference.

A COMMENT ON PRE-TRIAL PROCEDURE

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Pre-trial has now been a part of the reform procedure in the Federal courts long enough to demonstrate that it is a great success when properly used. True, this section of the new rules is indefinite as to methods. Practice simply leaves that up to the judge. Success or failure, therefore, is strictly up to the court and the members of the bar who use it. I have been an advocate of it from the first time it was suggested before the Rules were adopted. It will not succeed unless the court is sympathetic with the new procedure, insists upon its use and insists further, that the bar take it seriously.

In a good many courts, especially in the state courts, it is a voluntary matter whether the case is "pre-trialed" or not. Where used by a sympathetic court and bar, there is no question of its advantages in saving time and effectuating justice. Every case in the Federal District Court in Colorado is "pre-trialed" as a matter of course, and the bar is now educated to take it seriously and prepare for it the same as they do for the trial of the case itself.

Recently, Judge Phillips, in speaking to the bar on the success

[12] *Supra*, note 1.

of the District Court of Colorado in keeping up to date and turning out more business than most any other district court in the United States, gave chief credit for this to the use of pre-trial procedure. Its obvious advantage is the saving of time for litigants, counsel, and the court by a frank discussion of the law and facts in chambers after a case is at issue and before trial. Each side is compelled to disclose witnesses, what they will testify to, the legal theory upon which they will proceed, and the legal points that will be raised in the trial of the case which can be settled before trial. These matters are discussed, and if the court wishes, it can decide questions of law before the case goes to trial, if a trial is necessary. In this way all elements of surprise are taken out of the case, and the issues are simplified so that they are thoroughly understood by the court and jury. It prevents a law suit from being a contest between counsel rather than between parties. Many lawyers object to this as they are fond of keeping their facts a secret, springing a question of law, etc., at the trial and taking the other side by surprise.

Furthermore, when lawyers and litigants learn of the other side's case by the use of pre-trial procedure, they are not quite so sure of the strength of their own position and are willing to talk compromise and settlement. My experience has been that many clients do not make a full disclosure of the case to their counsel and only tell him the facts favorable to their contentions. They, as well as their counsel, are often surprised to learn at pre-trial of the strength of their opponent's case. This makes them more reasonable and willing to talk compromise when they learn there is a question as to the correctness of their position.

Some very humorous experiences have occurred in this respect. One example will be sufficient to illustrate this point. An automobile accident occurred in New Mexico, and the case was tried before me in Colorado. The principal question was the determination of who was employing the driver of the offending car. A pre-trial conference disclosed that the driver was ostensibly working for one firm, but was also taking orders from another firm who directed his movements. This the client had not disclosed to his counsel, and when the information came out in chambers, the attorney was flabbergasted. It did not take him long to go out and settle the case as should have been done before. When people learn the weaknesses of their case by the disclosures at pre-trial, and discover what the other side has in the way of evidence, they are not so cocksure of victory and are willing to "talk settlement".

Nearly 50 per cent of the cases in the United States District Court for Colorado are settled before trial and after pre-trial conference. This, of course, saves the time of the court and clerk and permits the disposition of business much faster than otherwise. I am a great believer in pre-trial procedure. It should be insisted upon by every trial judge.