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Delay In The Court. By Hans Zeisel, Harry Kalven, Jr., and Bernard Buckholz

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student a way to other cases which further explain the divergent views on particular subjects.

Ending this review on the same rapport as it was started, the student and the teacher can find more than enough material to discuss. If the student has done the job which he is required to do, and the teacher supplements the case-book with material from the court's decisions in the state where the law school is located, or which his particular idiosyncracies "drive" him to require of his students, no one should be amiss.

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DELAY IN THE COURT. By Hans Zeisel, Harry Kalven, Jr., and Bernard Buckholz. Boston: Little, Brown & Co., 1959. Pp. 313.

Court congestion has long been a problem of the bench and bar. More recently it frequently has been brought to the attention of the reading public.¹ In this age of studies it was inevitable that this delay in the clearing of court calendars would be the subject of investigation. This book is the report of such a study made at the University of Chicago Law School under a grant of the Ford Foundation.

The problem is this: how much harm do litigants suffer because it is impossible to have a prompt civil jury trial. This survey attempts to measure the extent of the delay and to evaluate the results of several suggested remedies to the problem. This study is based on a thorough investigation of one court, i.e., the Supreme Court of New York County in Manhattan.

The problem of delay in court calendars is not a new one. The New York Court has inherited a backlog of cases which has existed for over a half century. At the present time this court concentrates all of its delay on the personal injury cases. The average time for such a case to come to trial is 39 months. All of its other calendars, personal injury non-jury, general jury, general non-jury, are up-to-date. The net effect is obvious. Many litigants in negligence actions seek settlement out of court or a bench trial.

This delay is more apparent than real. It goes without saying no personal injury case is ready for immediate trial. In answer to a questionnaire submitted to members of the Cleveland Bar it was ascertained that 10 months for tort cases would be the average length of time after filing that a case should come to trial.² The court should not be held responsible for the delay which is necessary to prepare a case. Furthermore, any statistics of delay do not take into consideration requests for continuances and voluntary adjournments.

1. See bibliography pp. 297-303.

2. P. 52.

BOOK REVIEWS

Assuming the current delay could be wiped out (the authors estimate that 11.7 judge years are required to accomplish this) the question arises whether a larger percentage of the cases would be placed on the personal injury jury calendar. To what extent are litigants influenced to settle out of court or to have a bench trial by the congested jury calendar. The authors feel this question is not conclusively answered in this study, but indicate, at least in the New York Court, the removal of the delay would not decrease the number of cases settled or increase the number of cases that go to jury trials.

An obvious remedy for the delay in the court is to increase the number of judges. This would require additional funds. This study devotes a great deal of analysis to the effect of more efficient use of recently established court procedures, impartial medical experts, interest from the day of accident, pre-trial, and the certificate of readiness. Only the pre-trial seemed to reduce the number of cases going to trial, and query the amount of judge time actually saved, because the judge must preside over pre-trial.

The jury trial has been under fire as a time-consuming relic. To compare the length of time between a bench trial and a jury trial is at best complicated. No two trials are the same. The authors conclude that approximately 40% of trial time could be saved with bench trials. They hope their findings, which are favorable to the jury system, will curtail proposals to eliminate the civil jury.

The more probable cure for the problem seems to be the speeding up of the jury trial. The judge who conducts an efficient trial by discouraging dilatory tactics on the part of counsel and participating in the questioning of witnesses himself will do much toward removing calendar congestion. It is recognized that this action must receive approval of the appellate courts, but it is suggested that this solution should be pursued.

This is an admittedly parochial study. The selection of a court which has concurrent jurisdiction with other courts in the nation's largest city may lead one to feel that this court is not typical. To what extent the conclusions made in this report apply to other court systems may be speculative. Furthermore, the New York Court has its peculiarities, e.g., its calendar system. However, although the delay problem has long been discussed, there has been a need for statistics on which to base a reliable estimate of recommended remedies. This systematic survey and analysis suggests a format for further studies of other courts. For it is only a concentrated effort of the bench and the bar to reduce the congestion of the court civil jury calendars that will prevent a serious threat to the administration of justice.

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