

Fact and Fiction on Court Delay

Delay in the Court, by Hans Zeisel, Harry Kalven, Jr., and Bernard Buchholz, Little, Brown and Company, Boston (1959) is the first in a series of seven or eight volumes which will report the results of the investigation of the jury conducted by the Law School. The Jury Project has been a major element in the School's Law and Behavioral Science Research Program.

Listed below are twenty statements frequently made about the general problem of court delay. The reader may wish to mark them "True" or "False", and then turn to page 58 for the answers arrived at during the study of the jury and set forth in *Delay in the Court*.

Causes of Delay

1. Suits from automobile accidents are the major cause of court delay. True..... False.....
2. Most courts are delayed because they dispose of fewer cases each year than they take in. True..... False.....

Effect of Delay on Congestion

3. If delay is reduced, the work-load of our courts would increase: Many cases which now do not reach the final stage only because it takes so long, would then have to be tried. True..... False.....

Court Housekeeping

4. Most courts have good statistical records which permit them to measure at any point of time the extent of delay. True..... False.....

Impartial Medical Experts

5. Court appointed impartial medical experts reduce delay by increasing the number of settlements. True..... False.....

Automatic Preferment of Non-Jury Cases

6. It is good idea to grant, as some courts do, automatic preferment to litigants who waive jury trial, because this encourages jury waiver and saves time. True..... False.....

Abolishing the Jury for Negligence Trials

7. Abolishment of the jury trial would sharply curtail court delay. True..... False.....

Claim-Consciousness

8. The same number of comparable accidents will result in a higher number of claims in some cities than in others. True..... False.....

Lost Judge Days and Judge Hours

9. Court days are lost at random whenever sickness

or other unforeseen obstacles occur. True..... False.....

10. Judges who work fewer days make up for it by working longer hours. True..... False.....

Jury Waiver

11. The following devices will help to increase jury waiver and thereby help to reduce court delay: introduction of comparative negligence, stipulation of comparative negligence, special judge panels for bench trials. True..... False.....

Shorten the Jury Trial

12. There is very little room for time saving through shortening of the present jury trials. True..... False.....

13. If the courts would separate the trial of the liability issue, and try the damage issue only if liability is affirmed, substantial time-savings would result. True..... False.....

Relative Length of Jury Trial

14. To try a case without a jury saves more than half the time it would take to try it with a jury. True..... False.....

Adjournments

15. Every court approved adjournment increases delay. True..... False.....

Automatic Preferment of Commercial Cases

16. Commercial cases should receive, as they do in some courts, automatic preferment. Delay hurts them more than other claims. True..... False.....

Pre-Trial

17. Since pre-trial cases are more likely to be settled before the trial stage, pre-trial will reduce court delay. True..... False.....

Interest from the Day of Accident

18. If insurance companies were forced to pay interest from the day of accident rather than the day of verdict, more cases would be settled by them. True..... False.....

Substitute Judges

19. Since Massachusetts and Pennsylvania effectively reduced their delay through auditors and arbitrators, these systems are recommended cures for delay. True..... False.....

Concentration of the Trial Bar

20. Concentration of trial work in a few law offices creates a bottleneck which is one of the major causes of delay. True..... False.....

ANSWERS TO QUESTIONS ON COURT DELAY

1. False. In 1900, long before the advent of the automobile, the delay in the New York Court was greater than it is today.
2. False. Most courts dispose of their current intake. They are delayed only because of a backlog which they inherited as long ago as ten or twenty years. The situation is comparable to an unrepaired bridge, broken down long ago, which forces all vehicles forever into a time-consuming detour.
3. False. There is no evidence that a court's trial load is affected by the length of its delay, unless the delay is extreme, exceeding five years.
4. False. Many courts have no accounting system, and hardly any court has a good one.
5. True. Cases with impartial medical experts are more likely to be settled prior to trial.
6. False. This is indeed an effective remedy of delay. But its remedial effect is so small as to make it not worth while to thus penalize with delay claimants or defendants who exert their constitutional right to jury trial.
7. False. These savings are not large enough to justify the abolition of the jury in these cases.
8. True. The existence of such differential levels of claim consciousness if for the first time, proved. Detroit, for example, has a low claims rate; New York a high one.
9. False. Of the judge-days lost in the New York Court, over one-third fell on days which either preceded or followed a court recess.
10. False. Judges who work fewer days per year, also work fewer hours per day—and vice versa.
11. False. One of these devices can succeed, because they operate differentially in favor of either the plaintiff or the defendant. Short of erasing altogether the difference between jury and judge verdicts, no device can succeed because one side will refuse to waive the jury. There is one exception: the New York practice of awarding jury waiver with automatic preferment. But since this means a penalty for those who insist on their right to a jury trial, the device is inexcusable.
12. False. New Jersey, for instance, tries comparable cases in about 40 per cent less time than the New York Court, suggesting major potentials for savings, through tighter control by the trial judge.
13. True. This device, now introduced on our recommendation in the Chicago Federal Court, is perhaps the most powerful single delay remedy. It should save about 20 per cent of the normal trial time.
14. False. On the average, it will save 40 per cent of the trial time.
15. False. Adjournment increases delay only if it is granted so late so that no other case can be found to fill the gap. *Such* adjournments should therefore not be granted. Adjournments requested bona fide by both parties, made *in time*, so that another case can fill the gap, actually reduce delay. Such adjournments should therefore be granted liberally.
16. False. In the New York Court this policy increases the delay of the personal injury claim by about nine months. It is hard to see why a personal injury claim is less urgent than a contract suit. Moreover, if business men are made to feel the delay, their desire for prompter disposition might help the cause.
17. False. This formula overlooks an important off-setting cost element: those cases which a pre-trial judge *could* try, if he did not have to devote his time to pre-trial.
18. False. Forcing the insurance companies to pay interest from the day of the accident would not reduce delay. Making interest begin from the day of suit might even increase congestion, by increasing the number of filed suits.
19. False. There is no magic in reducing delay by adding judicial manpower. The true issue, obscured by high sounding titles such as "arbitrators" and "referees." is whether judicial functions ought to be entrusted to non-judges. The evidence is against this Ersatz-judiciary bought in the bargain basement.
20. False. While trial work is concentrated, neither in New York nor in Chicago is the concentration large enough to cause by itself delay. If the court has good policy rules on adjournment, and sticks to them, the concentration of the trial bar cannot cause delay.