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BOOK REVIEW

Delay in the Court. By Hans Zeisel, Harry Kalven, Jr., and Bernard Buchholz. Boston: Little, Brown and Co. 1959. Pp. xxvii, 313. \$7.00.

This volume, the first of a series which will report the studies on the jury and on judicial administration conducted at the University of Chicago Law School, is a detailed study of congestion in the Supreme Court of New York County.

Concern over congestion and delay in courts is no new thing, and studies of the problem occur regularly. The distinguishing feature of this study is not its scope (it is limited to the trial court of a single county, albeit one of the most densely populated on the earth), nor its method of obtaining information (the data used come primarily from routine statistics collected by the court for its own administrative and managerial purposes). The distinguishing feature, and the factor which makes the report of great significance, is the approach to the problem, both as to measurement of delay and as to appraisal of remedies.

In effect, the authors forego the usual approach, which seeks to determine the causes of delay and then to suggest remedies which will remove the cause and therefore cure the delay. Instead they seek to measure the delay and to evaluate various available remedies in terms of a common denominator. This common denominator is defined in terms of judge-years. Specifically, the authors determine that it would take one judge about twelve years to dispose of the backlog of personal-injury jury cases (the only ones delayed in the New York court by reason of preferential calendaring given to all other types of cases). Thus the delay could be eliminated, and all trial calendars would be made current if twelve judge-years could be made available. An obvious solution would be to add one judge for twelve years, or twelve judges for one year, or some intermediate combination; the authors are concerned, however, with finding these necessary judge-years through remedies in existing practices and procedures and administration, within the framework of the existing judicial personnel. They then examine possible remedies: (1) speeding up the trial process; (2) increasing the settlement ratio and (3) making more effective use of judge time.

A recitation of the specific values determined for each of these possible remedies would serve no useful purpose. Suffice it to say that each of the remedies is found to have some potential value, though none alone can solve the problem.

The basic premise of the study is most interesting: "In brief, we think the profitable concern is not with the allocation of blame but simply with an evaluation of the relative strength of the various proposals designed to remedy delay." At first blush this statement appears to suggest that the proper way to eliminate delay in the courts is to treat symptoms—the fact of actual delay—and not causes. This impression is furthered by the statement that "the one certain remedy for delay in any court system is the creation of a sufficient number of additional judgeships and it needs no special study to tell us that." It is suggested that it is serious error to assume that extra judges, in any reasonable number, will necessarily eliminate delay. Such a suggestion presupposes that the efficiency of the extra judges will equal that of the existing ones (a factor probably more likely to be true in a big court with efficient administrative machinery), and also that the factors which produced the delay in the first place will not become aggravated as the manpower of the court increases. With sharply varying levels of new cases during the last forty years, the level of dispositions in the New York court varied in close correlation. Thus the backlog tended to remain somewhat constant. We are not informed as to how the judicial manpower varied during this interval, but the authors recognize that "the ability of the Court to rise to higher demands, when necessary, is an important element of the system" These facts seem to undermine the conclusion that more judges (in a measureable and reasonable number) are an automatic solution to the problem of delay in court.

When the authors reach the evaluation of remedies, it becomes apparent that they are not really treating symptoms. The evaluation of the various remedies proposed is in effect a determination of the causes of the delay and a measurement of the extent of delay caused by each. Thus, the use of the bench trial, as opposed to trial before a jury, would save approximately forty percent of the former trial time. By applying this figure to the judge time required for jury trials the authors determine that an annual saving of one and six-tenths judge-years would be possible if jury trials were abolished in negligence trials in the New York court.

The authors do not suggest the abolition of jury trial; they merely measure its effect as a delay-producing factor. They find that the right can be preserved, and that other remedies are still available to reduce the time required for the trial of cases. An obvious one is to increase the number of instances in which a jury is waived; another is to speed up the trial of the cases. In the latter instance, the authors compare the hours required for jury trials in New York with those required for the same types of cases in the metropolitan counties of New Jersey, and find that the New Jersey trials move appreciably faster. The authors

do not purport to explain all the causes of this difference, but they attribute part of it to the role of the trial judge in maintaining vigorous control over the trial. Thus, in effect, they are identifying one of the causes of court delay—the waste of judicial time by lawyers.

So the authors move through the various remedies suggested and inevitably identify and measure causes, though their efforts are phrased in terms of remedies. More efficient use of judge time is discussed with respect to the actual daily schedule of hours and to the individual work habits of the various unidentified judges. Problems caused by the concentration of the trial bar are examined, along with a discussion of calendaring procedures. All of these discussions are identifications of causes of delay. The remedy is better court administration, both by way of assistance to the trial judge in making possible full utilization of his courtroom time and by way of supervision to provide some pressure upon the judge to utilize his full time.

Under the section entitled Increasing Settlements the authors discuss a number of possibilities, including the effect of delay itself as a settlement-inducing factor. Of particular interest in this section is the chapter on Pre-trial, wherein it is shown that, from the point of view of eliminating delay, there are limits to the usefulness of pre-trial, even where pre-trial is used primarily as a device for inducing settlement.

The most valuable contribution of this study is not the substance of its findings or of its conclusions. The authors have limited themselves to a single court, and in a number of instances the sample of cases studied has been so small that it may not be valid. The authors recognize that there are not too many courts in the country with the volume and manpower and physical facilities of the New York court, and that the New York court has special features and procedures which differ from most other courts. But these things are relatively unimportant. The significant value of this study is that it demonstrates how judicial statistics may be used in a meaningful manner. This is no small accomplishment. Judicial statistics of one kind or another are being collected and published in nearly every state today, but their usefulness in improving the administration of justice has been questionable. This study shows how to translate statistical fact into meaningful and more or less precise measurement. Equally important, it indicates where gaps in existing statistics occur, and it demonstrates the limitations of statistics operating in a mass of variables.

This application of social science methods to the problems of judicial administration is a valuable contribution. Here and there throughout the study, however, it seems to this reviewer that the authors have strained themselves to honor the notion that "one picture is worth a thousand words." Statistics translated into graphic form may usually

tell a story more clearly, but if one must read two pages of text to understand the graph, the graph may serve no better purpose than to distract the reader. Tables 49 and 50 are examples of graphic representations which add nothing to an understanding of the material presented.

Though one may not necessarily subscribe to the publisher's blurb that "all future discussions of court delay must start with this study," surely every person who is seriously studying the problem should read this book carefully.

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