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Delay in the Court by Zeisel, Kalven and Buchholz

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Book Reviews

DELAY IN THE COURT by HANS ZEISEL, HARRY KALVEN, JR., AND BERNARD BUCHHOLZ. Published by Little, Brown & Co., 1959, 313 pages, \$7.00.

There is nothing new or novel about delay in litigation. Hamlet placed law's delay as fifth in his seven burdens of man; references to it are found as far back as the time of Julius Caesar; and a case involving the city of Gelnhausen which began in 1489 was, in 1734, still waiting for the court's decision. In recent times, there have been many commissions appointed and studies made in the hope of finding a solution. Progress has been made in a few jurisdictions, notably New Jersey and Miami, but for the most part, there has been little improvement in a deplorable situation.

This book is the first of a series reporting the results of five years' research on the jury and on judicial administration conducted by the University of Chicago Law School under a Ford Foundation grant.

Although this book is based upon a detailed study of delay in the Supreme Court of New York City, it should be read by every lawyer and every layman interested in the administration of justice. The problems in New York are, for the most part, similar to those in other jurisdictions, and where they are not, the authors generally point out the differences. For example, in New York, 49 per cent of cases filed are personal injury and 51 per cent are general because of the predominantly commercial character of the New York economy. However, the great backlog of delayed cases is in the personal injury category because the New York courts give priority to hardship cases on the delayed personal injury calendar and preferment to all general cases and personal injury non-jury cases. This is not the situation in Cuyahoga County, Ohio, where priority is given only to criminal cases and a few categories such as condemnation proceedings.

Delay in the Court is a scholarly, objective, and interesting presentation of a complex problem. The authors state that it is a study of delay and what might be done about it. They do not claim to have all of the reasons for the delay nor a panacea for this problem. On the other hand, practically every serious suggestion for a solution to this problem is set forth clearly and concisely and then the pros and cons, supported by available statistics and expert analysis, are given with the authors' conclusions, which are seldom positive.

Many theories cherished by members of the legal profession have been minimized by the use of statistics and cold logic. To illustrate, there has been considerable alarm over the concentration of personal injury cases in a few law offices. The available statistics on the basis of individual lawyers indicated that among the plaintiff lawyers, 10

per cent of the busiest tried 34.6 per cent of the cases. The interesting fact is that the average number of appearances per month per counsel in this group was 1.2. In the defense group, the busiest 10 per cent tried 39 per cent of the cases and the average number of appearances per month per counsel was 2.1.

Even though these statistics would indicate that concentration is no problem, the authors have by analysis determined that concentration is a factor in delay and then point out that the courts have it within their power to bring a case to trial in spite of engaged counsel.

The authors do not pretend that this book is the final word and state frankly it is only a beginning; however, it is a good beginning and one that has been too long delayed. It demonstrates the great need for better record keeping by our courts and for more statistical data, so that intelligent and constructive action may be taken by the bench and bar to correct an inexcusable situation.

This book shows how the bench and bar should approach the problem; points out what practical steps could be taken to achieve some present alleviation; and leaves no doubt that further study, more education, and more work of the type being performed by these authors are essential and urgent. The authors' ultimate conclusion is that "Neither despair nor recourse to heroic measures is called for."

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