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Can Courts, Juries And Cars Coexist?

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THERE are those who answer this question in the negative. Some say that juries, at least, must go. Others assert that the courts, with or without juries, are unable to cope with the socio-legal problems created by the automobile.[1]

To these writers and speakers the problems chiefly derive from the sheer massiveness of personal injury litigation.[2]

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[1]Marx, Compensation for the Automobile's Victims, 42 A.B.A.J. 421 (1956); Graubart, Problems of Automobile Accident Litigation, 42 A.B.A.J. 821 (1956); Hofstadter, Alternative Proposal to the Compensation Plan, (May, 1956) Ins. L. J. 331; Hofstadter, Let's Put Sense in the Accident Laws, Saturday Evening Post, (Oct. 22, 1955).

[2]"It is sometimes suggested that the problem of court congestion can be laid entirely at the door of the automobile. * * * * * * * * * * it is important to point out that (1) the volume is great indeed, but (2) far less than one-half of the seriously delayed cases concerned motor vehicle negligence. Of the 3738 cases on the weekly jury trial list under study, 91.6% were trespass cases. Of the trespass group 78.5%, or about 2635 cases involved motor vehicle negligence. This represents 70.5% of the total volume of cases which reach the trial lists. Note, however, that only 39.4% of the seriously delayed group were of the motor-vehicle-negligence variety. This figure increases as the speed of the group increased, so that in the medium delayed

They have set up a syllogism somewhat as follows:

(a) The courts are unduly congested because of the large number of automobile accident cases being litigated.
(b) Automobile accidents are inevitable, therefore this type of litigation will continue to increase.
(c) The only solution to the problem of congestion is to take automobile cases out of the courts.

There are also writers and speakers, fewer in number, who, on the strength of ideological theses of one kind or another, oppose the American jury system and, indeed, the juristic handling of personal injury cases, whether by juries or courts, in what has been, hitherto, the American way.[2] They too make a major premise of the contention that our courts generally are pathologically congested.

The facts as to court congestion in this country support no such premise. Cars have not defeated and will not defeat the courts.

Where, What, Why Court Congestion?

The most comprehensive and valuable court calendar status studies yet made and published are those of the Institute of Judicial Administration. Since 1952 this non-profit corporation, financed by foundation grant, has been publishing studies on court congestion.[4] These studies have been based on data collected relative to the organization and functioning of our courts. An analysis of the collected statistics indicates the scope and extent of congestion and delay. In the 1953 Calendar Status Study it was stated:

"The nation-wide averages for the 97 courts represented in the study show an average time interval of 11.5 months from 'at issue' to trial of jury cases, and of 5.7 months for non-jury cases. With respect to jury cases, there is a general overall correlation between the size of the population of the county area comprising the court's jurisdiction and the delay in reaching trial, although the range within each major population group is a wide one."[5]

The *1956* report states as follows:

"The nation-wide 1956 average for jury cases is 12.1 months from 'first filing' to trial in the 71 jurisdictions reporting thereon and 10.5 months from 'at issue' to trial in the 88 jurisdictions reporting thereon. The reports for 1955 showed an average of 11.4 months from 'at issue' to trial."[6]

This report goes on to point out that non-jury trials have been reduced to 4.4 months from "at issue" in 1956, whereas in 1953 the average was 5.7 months.

The 1956 report shows that the time lapse from 1955 to 1956 was reduced by nearly one year in jury cases. It contains the following conclusion:

"Once again, eight of the thirteen jurisdictions with the longest delay comprise heavily populated metropolitan areas, with the remaining five in jurisdictions where the total county population is less than 550,000 by the 1950 census. *Other than in these 5 areas, jurisdictions with under 500,000 total county population do not seem to have a serious problem with calendar delays, while those jurisdictions over 500,000, especially those with over 750,000, are, on the whole, faced with a mounting problem of delay.*" p. vi (Emphasis added)

Many of the cases involving automobile accidents arise in the federal district courts, therefore it is necessary to analyze the status of the calendars of these courts. The material is readily available in the Annual Report of the Director of the Administrative Office of the United States Courts.[7] The report reveals the following facts with reference to the civil business of the dis-

[2]Marx, Hofstadter, *supra*, note 1. For an answer to these proposals see: Ryan and Greene, The Strange Philosophy of "Pedestrianism", 42 A.B.A.J. 117 (1956); Snow, Compensation and the Automobile, 23 Ins. Counsel J. 161 (1956); Hart, Shall the Jury System be Sacrificed on the Altar of Economy? 28 N.Y. State Bar Bulletin 146 (1956); Nims, Backlog, Justice Denied, 42 A.B.A.J. 613 (1956).

[4]Institute of Judicial Adm'r., Calendar Status Study, 1953-1954-1955-1956, 40 Washington Square, New York 12, New York.

group, there were 56.25% motor vehicle negligence cases and 74.3% in the medium fast group of this type. No doubt, however, that the volume alone makes motor vehicle negligence a factor to be considered." Tentative Draft, Significant Findings and Recommendations—Philadelphia County, p. C-iv, April 5, 1957, prepared by the Institute of Legal Research, University of Pennsylvania Law School, Judicial Administration Project.

[5]Elliott, Delay and Congestion in State Metropolitan Trial Courts, Institute of Judicial Adm'r., p. 2, (May, 1956).

[6]Calendar Status Study—1956, *supra* note 4, at i.

[7]Annual Report of the Director of the Administrative Office of the United States Courts, 2 (1956).

trict courts.

In 1956, there were 62,394 civil cases filed, an increase of 3,019 over 1955, of which nearly two-thirds were private cases. However, in 1956, for the first time in 13 years, the backlog was reduced from 68,832 to 63,526. The report further points out that the median time for the disposition of normal civil cases has gone up to 15.4 months in 1956. Of these, jury trials have a median of 14 months and non-jury cases 17.2 months. However, the Fifth, Eighth and Tenth Circuits had a median time from filing to disposition of less than one year. The United States District Court for the Southern District of New York, one of the busiest districts, had the following situation:

> "As of June 30, 1956 cases on the jury personal injury day calendar from which cases are taken for trial, were being reached for trial about four months after assignment to it and cases on the other day calendars in an even shorter time. Naturally the time from filing to disposition of civil cases is still much longer, but the disposition of cases that are really ready for trial has been greatly expedited." p. 3

The time lag in this court was reduced by 6.6 months in one year. This same result has been accomplished in other districts and the director indicated that with the continued reduction in the backlog of pending cases the reduction in the time requisite to reach trial should be substantially reduced. During this same period the number of automobile accident cases increased, yet the backlog and time lag were being reduced.

Pathological Court Congestion Is Localized, Not National, In Scope

The studies we have cited are sufficient as to areas covered, as to time included and as to method of compilation to warrant certain conclusions:

(a) In non-metropolitan areas there is, by and large, no court congestion problem.

(b) There are many more courts free of congestion than there are with a congestion problem.

(c) The greater part of the country, area-wise, is served by congestion-free courts.

(d) The most seriously congestion-affected areas are about thirty in number but include large populations.

When one analyzes the statistics, in the 1956 report of the Institute of Judicial Administration, some striking patterns become apparent. It is to be noted that the 97 jurisdictions considered in the foregoing reports involve the major trial courts of general jurisdiction in each of the 48 states, and, in addition, courts of general jurisdiction in all cities of more than 100,000 population and the District of Columbia.

The first striking pattern to be noted, involves the time lag in the courts. Over one-half of these major courts have only a time lag of from 1 to 6 months between "at issue" and trial, which time lag is optimum. A little less than one-fourth take from 6 to 12 months and only a few more than one-fourth take over 12 months. Actually then, serious congestion is encountered in *less than thirty* large metropolitan areas in the United States.

The second striking pattern to be noted, involves the concentration of the congestion. The courts with over 20 months delay in 1956 are located as follows: (a) New York City, *four;* (b) Chicago, *two;* (c) Massachusetts, *three* (Boston, Worcester and Springfield); (d) Connecticut, *three* (Bridgeport, Hartford and New Haven); (e) Manchester, N. H., *one;* (f) Cleveland, Ohio, *one.*

The third significant fact about the statistics we have cited is that they demonstrate that court congestion is not what mathematicians would call a function of population concentration. Nor is it governed by traffic accident incidence alone.

The Milwaukee story is in point. The statistics show that the Milwaukee County Circuit Court had an average time lag in 1953 in jury cases from "at issue" to trial of 30 months. In three years this was cut in half, to 15 months. In 1957, most jury cases can be tried in less than 12 months from "at issue". Automobile accident cases were on the increase during this same period.

Two counties in the New York City area show divergent results. Kings County Supreme Court, New York, with a population of 2,738,175 had a time lag, in jury cases, of 26 months in 1956. This is a reduction from 53 months in 1953. On the other hand, Queens County Supreme Court, New York, with a population of 1,550,849 had

a time lag of 46 months, an increase from 39 months in 1953. This cannot be due to the fact that Queens County, with over 1 million less people than Kings County, has more automobile accident cases. We must look for the answer elsewhere. Kings County is still congested but if this surprising progress continues the congestion will soon be eliminated.

Let us look at Detroit, Michigan, in Wayne County. With a county population of 2,435,235 and a city population of 1,849,568, the statistics show a lag of 9 months between "at issue" to trial in jury cases. On the other hand, Boston, Massachusetts, Suffolk County, with a county population of 896, 615 and a city population of 801,444 (one million less people than Detroit, Michigan) has a time lag of 30 months. Is this because there are less automobile accident cases in Detroit than Boston, or is it due to other factors?

The like question can be asked about the state of Pennsylvania. The court of common pleas in Philadelphia, with a county population of over 2 million, has a time lag of 10.5 months, whereas Alleghany County, (which includes Pittsburgh) has over 500,000 less people but has a time lag of 24 months.

Why Court Congestion?

That such congestion in court calendars as actually exists is solely chargeable to the American automobile has been *assumed* by the writers to whom we have referred but has not been proved. Here the quantitative information afforded by the statistics should be supplemented by a qualitative analysis of the facts.

As a competent practicing lawyer puts it:

> "We can all agree that there is no one method of solving this pressing problem of disposing of litigation, whatever its nature, within a reasonable time . . . . . it's about time we quit overstating and magnifying the scope of the problem."[8]

Mr. Justice W. B. Hart, of the Supreme Court, State of New York, has clearly dispelled the illusion that delay is due solely to the automobile. He states:

> "The history of this State demonstrates the falsity of the contention that calendar congestion in the Supreme Court is due to the advent of the automobile. As far back as 1828 Governor DeWitt Clinton, and in 1834 Governor William L. Marcy, commenting on the judicial system, said it needed to be enlarged 'to meet the demands of accumulated business and to prevent delays which amounted to a denial of justice.' This message was repeated by Governor Marcy in 1835, 1836 and in 1837, at which time he 'recommended an enlargement of the Supreme Court'. The legislature apparently found it inconvenient or impracticable to give the subject the attention it deserved but appointed a commission to investigate the circumstances."[9]

He went on to analyze one of the reasons for delay in New York.

> "It is apparent from the foregoing that congestion has existed in our Supreme Court for upwards of 125 years, due solely to the fact that the Legislature has failed to recognize that with the growth of population, industrial expansion and devices created by inventive genius, additional judicial manpower was not only necessary but, as heretofore pointed out, was recommended by practically every governor since DeWitt Clinton in 1828 and by almost a score of committees and commissions on the judiciary appointed during that period. "In 1894, after the consolidation of the various courts with the Supreme Court, there were 76 Justices of the Supreme Court in this state which then had a population of less than 6 million people (one judge for each 80,000 population). At that time there were no personal injury actions resulting from automobile accidents. In fact, there were no automobiles. In 1956 we have 132 justices in New York State with a population of approximately 17,000,000 or one for each 128,785 population and in the Second Judicial District we have approximately one Justice of the Supreme Court for each 160,000 population."[10]

From the foregoing, one can understand why calendar congestion is prevalent in certain areas of New York. In analyzing the contentions of those who would abolish

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[8]Labrum, Congested Court Calendars, 43 A.B.A.J. 311 (1957).

[9]Hart, *supra* note 3, at 149.

[10]Id. at 150.

jury trials of personal injury cases, we note that they do not advocate an abolition of the presently existing courts. They simply advocate additional manpower in the form of commissions or panels. If this extra manpower is forthcoming in the form of additional judges, in the jurisdictions where congestion and delay is unreasonable, the calendars would be greatly improved without the necessity of substituting experiments for a proven and tried judicial system.

It is a matter of common knowledge that the communities where the courts are crowded are also congested as to streets, schools, recreational facilities and hospitals. Be it said to their credit, however, in those fields they have courageously attacked their problems by providing new streets and throughways, additional schools and more and better hospitals.

The delay in the federal courts is due to a great extent to the lack of judicial manpower. The director's report indicates that the number of civil cases increased 62.2 percent from 1941 to 1956. During that same period of time there was an increase in the number of district judges, in all districts, of only 26.9 percent. The number of private cases terminated by each judge increased by 44.5 percent but this was not sufficient to compensate for the steadily rising number of cases.[11] The courts could do the job if sufficient manpower were available. This position is supported by the deputy attorney general of the United States who said:

> "There is at present not enough Federal judges to provide prompt and effective justice in all cases. It is for this reason that we so strongly endorse the legislation which you have under consideration."[12]

Although the federal courts are disposing of a greater number of cases, lack of manpower prevents the elimination of the large backlog that has accumulated in some of the districts. This must await the provision of more judicial manpower.

Lack of sufficient manpower is not the only cause of delay and congestion in our courts, where it exists. There are at least two other major factors — administrative inefficiency in the courts and the preferences and practices of trial lawyers.

Delay results because of the reluctance of some judges to try personal injury cases. If the average judge spends only a few days each month in trying personal injury cases because he prefers other work, of necessity these cases will cause a large backlog. Another contributing factor is the policy of prolonged judicial vacations. At present most circuits do not hold jury trials during the summer. The judge is either on vacation or working a part time schedule. Judicial vacations are needed, some recess in court proceedings inevitable, but the needs of justice require the gearing of judicial work to the litigation present in the courts and the times we live in.

Inadequate assignment methods in our courts result in the duplication of work and the waste of valuable judicial time on administrative functions. Further, these methods often result in the overloading of one court while other courts remain idle. Judges from circuits or judicial districts with small work loads should be, but too generally are not, utilized in busy circuits to relieve the latter judges. Proper assignment procedures would do much to prevent an uneven distribution of judicial work and its inevitable clogging of court calendars. This can only be done by a proper centralized administration of the court system.

A highly significant survey is nearing completion in Philadelphia and adjoining counties. It goes into the causes as well as the statistics of court calendar congestion to a degree nowhere else pursued.[13] This is truly a qualitative study. It covers with particularity court-room utilization, hours per day and days per year of jury hearings. The report says:

> "Although the responsibility of the judiciary for delays in civil litigation has not been ascertained by the Project in any complete sense since it depends largely on the quality and capacities of individual judges which are not easily susceptible of measurement, the bar approved in a five to one ratio the performance of the bench in the cases interviewed. However, that there is considerable room for improvement has been ascertained. In two two-week periods, one jury and one non-jury, during which actual Common Pleas trials were ob-

[11] Report, *supra* note 7, at 4.

[12] Rogers, Proposed Legislation to Create Additional Federal Judgeships, Dept. of Justice Press Release, 4, Feb. 20, 1957.

[13] Judicial Administration Project, Institute of Legal Research, University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia 4, Pennsylvania.

served at City Hall, the median time sat on a jury trial day was slightly less than four hours while the median time sat on a non-jury trial day was less than two and a half hours. These facts and the fact that the four yearly non-jury trial months have no backlogs while the six jury trial months have a nine month backlog show that the courts (at least until most recently) have neither been applying their time to the existing backlog efficiently nor expending very much time when their time is applied to the backlog. Furthermore, long and difficult cases are sometimes postponed for reasons of length and difficulty alone. Of the 109 long cases, six were refused by judges because they would last too long, would require a jury to keep the case over a weekend, or were otherwise unacceptable to the court. Of the remaining 64 cases studied, four were so refused. Delayed decisions by the courts occurred in eight long cases of the 173 jury cases studied."[14]

Trial lawyer practices and preferences are also a factor in the delay of the trial of some cases. It should be remembered that plaintiffs' attorneys are, to a degree, *dominii litis*. They properly have much to say as to when their clients' cases shall be tried. There is an *optimum* time for every personal injury case to be tried. In many a case plaintiff and his attorney wish to await the outcome of the injuries before going to trial. In others one or more continuances to procure the attendance of witnesses may be necessary. These are unobjectionable and a not inconsiderable factor in the statistics.

Again, it is to be noted that a large amount of the personal injury work in many jurisdictions is concentrated in a few firms or individual lawyers. Because of the press of other work, conflicting trial schedules and tactical considerations, this overconcentration will result in unnecessary adjournments. Adjournment for good cause, by either party, is essential, but it should never be tolerated when inimical to the parties or to the administration of justice. Another individual cause is the refusal of the courts and attorneys to use time saving tactics, such as pre-trial conferences, stipulation and arbitration. The reluctance to take firm and imaginative steps to require the expeditious trials of cases contributes to congestion. Too many attorneys and judges still regard such procedures as an infringement of the duty and obligation a lawyer owes to his client.

It is, therefore, apparent that the existence in certain metropolitan centers of a large volume of personal injury litigation is by no means the sole cause of the court calendar congestion which exists there.

The causes of delay in trials have been well analyzed by capable writers in the past few years.[15] No member of the legal profession can condone undue delay and congestion, but it must be realized that the causes of delay are numerous and varied. Simply stated they are:

(a) Undermanned courts and circuits.
(b) Lack of centralized court administration.
(c) Inadequate case assignment methods.
(d) Uneven distribution of judicial work.
(e) Failure to use time saving procedures like pre-trial.
(f) Necessary and legitimate continuances.
(g) Dilatory tactics of counsel and their tolerance by the courts.
(h) Complicated court systems.
(i) Short jury trial days.
(j) Short jury terms.
(k) Prolonged vacation periods.
(l) Lack of standardized instructions and proper rules of court. These deficiencies do not exist in every jurisdiction that is evidencing some delay but many are common to all.

The Attack On Congestion

The problem of congestion and delay once existed in many jurisdictions which have now done something about it. The state of New Jersey could well serve as a model or guide for the successful improvement of judicial administration, with its resulting reduction of delay and congestion. For an illuminating and successful program one should read "Clearing Congested Calendars" by the late Arthur T. Vanderbilt.[16] Another interesting result is

[14]Tentative Draft, Significant Findings and Recommendations – Philadelphia County, p. C-iii, April 5, 1957.

[15]Averbach, Tampering with the Jury System, (Feb. 1956) Ins. L. J. 99; Elliott, Judicial Administration—1955, 31 N.Y.U.L. Rev. 162 (1956); Elliott, Judicial Administration—1956, 32 N.Y.U.L. Rev. 116 (1957); Snow, *supra* note 3.

[16]14 N.A.C.C.A. Law J. 326 (1954).

noted in Arizona. A study was made by the Institute of Judicial Administration, under the joint sponsorship of the superior court judges, the Maricopa County Bar Association and the board of supervisors. The director of the Institute had this to say about it:

> "The Institute's report, based on a two-month on-the-spot analysis and survey of the problem was completed in April, 1955. It included eight specific recommendations for changes in internal administration and operation of the Court, and while it recognized that additional judges might ultimately be needed, the report indicated that there was no 'present critical necessity' for adding them.
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> "Following the publication of the report, most of the Institute's recommendations were adopted and put into effect, with the result that in a twelve month period, the backlog of 1,475 pending civil cases was reduced to 839, with 1,954 cases concluded in the interim. The time lag between trial setting and actual trial was also substantially reduced."[17]

In Milwaukee, delay in the circuit court has been reduced from 30 months in 1953 to less than one year, currently. This was done without any dislocation of traditional and tested judicial methods. The reason for this improvement was stated in a report published by the Public Administration Service.

> "1. The creation of an additional branch in May, 1954.
> 2. The appearance on the bench, through the normal processes of retirement and election of younger more vigorous judges.
> 3. The improved assignment procedures."[18]

A broad scale attack on the problem of court congestion and delay is being made elsewhere. The Attorney General of the United States has called a conference to study and resolve the problem in both the state and federal court systems. A report of the initial meeting of the executive committee of the Attorney General's Conference on Court Congestion was published January 7, 1957 by the Department of Justice.[19] The recommendations proposed by this committee for the solution of the problem are quite forceful and thought provoking. They embody the ideas necessary to solve the problems of congestion and delay as enumerated above, with specific recommendations in certain areas. They recognize no easy solution to increased court loads, the same as there is no easy solution to the problems of taxation, traffic conditions, housing and schools. The committee in paragraph four of its conclusion put the problem and its solution well:

> "4. Because of the widespread attitude of resignation of the law's delay, the solution to the problem will require an extraordinary, nation-wide drive. We are convinced, however, that given adequate judicial manpower and proper judicial administration, this concerted drive can eliminate the existing congestion of cases on the calendars of our courts without subverting fundamental principles of justice. Once this backlog of pending cases is eliminated, and lawyers, judges and litigants are shown that delay is not inevitable in our judicial systems, the business of the courts can then be kept current even though litigation will undoubtedly increase as our economy and population continue to grow."

The goal of this conference is to bring all federal court dockets to a condition where the normal case could be tried within six months of filing. This period of six months between filing and trial is generally regarded as a desirable norm since all cases require a reasonable time for preparation after they are filed.

The American Bar Foundation is taking the lead in the attack on congestion and delay, through its "Project on Congestion in the Courts". This is being done in cooperation with the Attorney General's Conference. In May of 1956, the foundation published a preliminary survey of recent approaches to the problem of congestion and current studies.[20] In analyzing this survey it is interesting to note, how each state has taken steps to improve the administration of justice in the particular localities

[17]Elliott, *supra* note 5, at 5.

[18]The Administration of Court and Legal Services—Milwaukee County, Public Administration Service, 8 (Chicago, Ill. 1955).

[19]Report of the Attorney General's Conference, 43 A.B.A.J. 242, 243 (1957).

[20]Leary, Summary of Recent Approaches to and Current Studies on the Problem of Congestion in the Courts, American Bar Foundation (1956).

that have need for assistance. Of particular interest is the fact that the states (Connecticut, Illinois and New York) that have the greatest need for assistance and improvement appear to be the most active. If responsible elements in these areas work diligently and with good will, the solution is within their grasp.

Conclusion

Although court calendar congestion is present in serious forms in certain populous centers there is no reason for court calendar jitters in this country. The situation calls for medication in the affected areas, not wholesale irresponsible surgery.

Compensation boards, dealing out awards by formula, would compare to the court and jury findings of today as does first aid to full hospitalization.

Again the jury system has an immeasurable value all its own. It keeps the courts close to the people and the people close to the courts.

Our great country is noted for its love of fair play, and abhorrence of injustice. Much of this national character results from our experience with jury trials. The right of being tried by one's fellow citizens, taken indiscriminately from the mass, who feel neither malice nor favor, but simply decide according to what in their conscience they believe to be the truth, gives every man a conviction that he will be dealt with impartially, and inspires him with the wish to mete out to others the same measure of equity that is dealt to himself.[21] We must not suppose that it is trial by jury in criminal cases only that exercises a beneficial influence, or that it can safely stand alone.

"In his able and philosophical work, 'De la Democratie en Amerique', M. de Tocqueville avows his conviction that the jury system, if limited solely to criminal trials, is always in peril . . . He says that in that case the people see it in operation only at intervals, and in particular cases; they are accustomed to dispense with it in the ordinary affairs of life, and look upon it merely as one means, and not the sole means of obtaining justice. But when it embraces civil actions, it is constantly before their eyes, and affects all their interests; it penetrates into the usages of life, and so habituates the minds of men to its forms, that they, so to speak, confound it with the very idea of justice. The jury . . . serves to imbue the minds of the citizens of a country with a part of the qualities and character of a judge; and this is the best mode of preparing them for freedom. It spreads amongst all classes a respect for the decisions of the law; it teaches them the practice of equitable dealing."[22]

Court calendar congestion cannot be saddled on one type of case, on the courts alone, on the bar alone, but is a composite result of many factors. Improvement in our methods of administering justice is needed but it can, and must, be done without sacrificing tested legal principles and procedures. The automobile and its socio-legal problems can be solved and controlled by the cooperative efforts of the bench, the bar and an informed public. The legal profession should be the first to sponsor reform and improvement. It should not allow delay and congestion to take root in any area but it should stand firm for jury trials. Courts, juries and cars can coexist.

[21] Forsyth, Trial by Jury, 354 (1875).

[22] Id. at 354, 355.