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DRI REPORTS... Court Congestion, Part I

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COURT congestion, found only in a limited number of metropolitan areas, has long been a problem which must be solved by lawyers and the judiciary in the best interests of the people and of the profession. The need for solution has always been pressing. Action is now commanded because congestion has taken on a new and a dangerous face.

Congestion and delay, subject to statistical distortion and overemphasis, have become keynotes of a propaganda campaign to dislodge the adversary-jury method of determining personal reparations. With their sights set upon destroying rather than remedying the ills of our system of trial, these propagandists would discard the fault system which fixes the responsibility for his own actions upon the individual. These advocates of "social justice," who declare that the by-products of accelerated use of the automobile, death and injury from accidents, are problems for society-at-large and not for offending drivers, would reward all injured regardless of fault. They would take a "fling" on an untried, highly suspect system of compensation which, in the end, would be disastrous economically for the people who, once again, would have been lulled into believing that they must be responsible for the wrongs of their neighbors. Replacing opposing attorneys and the citizen juror would be another bureaucratic "dole house," staffed by still more government employees who would mete out payments for injuries, some of them overpayments and other beneath what justice demands. But, *all injured would be paid* up to certain limits, regardless of fault. Behind these propositions are other basic attacks: Court congestion is indicative of a trial system which does not work; justice delayed is justice denied; justice cannot be gained because of incompetence of juries who award too little or too much. There is no mention of remedial measures to improve the adversary-jury system, and nothing is said about the dangers of expediency. It is dangerous to employ the philosophy that the end justifies the means.

While all of the criticisms which are leveled can be answered satisfactorily, it is only necessary here to affirm that many of the basic statements regarding court congestion are erroneous. According to a DRI study now underway, the following salient points are beginning to emerge: 1. Court congestion is not a national problem; it exists only in a limited number of metropolitan centers. Thus, the attempt by the "anti-adversary" faction to impose its program on an entire nation is wrong in its basic premise. For example, only portions of oft-cited states, Illinois and New York, have congestion problems; in Illinois only 3 of 102 counties have backlog, and there is no delay in 43 out of 62 New York counties.

2. Statistics which relate, for example, that the national average court delay is 17.0 months are meaningless. Either a specific court is in trouble, or it is not. Since most areas are not in difficulty, statisticians should avoid averaging likes and unlikes; through this approach, problems which are local in origin are given a false national cast.

3. Proponents of adversary-jury elimination have not considered the fact that most jurisdictions are willing to move hardship cases ahead on the trial docket, thus upsetting the neat calculations which have gone into the statistical picture.

4. Delay statistics also are in error because they are tallied from the wrong base. Arguments are couched in terms of time to trial dating from the initial filing of complaint and answer, rather than from certification of readiness by opposing attorneys. The latter figure would correctly depict delay if it exists; the former does not consider the absolute need of sufficient time for attorneys to prepare their cases.

5. Critics of the adversary-jury method disregard "success stories" of some states and metropolitan areas. They brush aside the lesson to be learned in such states as

Florida where there is no unseemly court delay for the simple reason that one judge is named for each 50,000 of population. "Ivory tower" dreams rush onward without analysis as to why Cook County, Illinois has a delay of 69.5 months from answer to trial, while another area of similar population, Los Angeles, Calif., has a delay from answer to trial of 22.3 months and only 4.9 months from ready to trial. Such citations should indicate that congestion can be eliminated in large and small communities alike.

6. Statistics distort in still another way. It is said that of a total of 193,000 auto accident claims in New York City only 7,000 reached trial and of these only 2,500 reached verdict. Thus, the argument is that justice was denied to those who did not want to fight the so-called "thicket of delay." If the bulk of these claims are settled without trial because of reluctance to face the "thicket," why did some 4,500 claimants who fought long and hard to get through the "thicket" settle after getting the trial for which they fought? The answer is obvious; cases are settled without trial because claimants, defendants and insurance companies are able to work out settlements agreeable to all.

NEEDED ACTIONS CITED

The flag of court congestion and delay is waved vigorously in behalf of a suspect plan of universal "handouts" without thought of improving practices which exist and without suggestions to better a tried system which is operating in antiquated courtrooms, staffed by an inadequate number of judges who, in turn, are deprived of equipment and personnel required to apply modern business methods to the courts. Other action is needed in the following areas:

1. Insurers, through refusal to pay "nuisance" claims and steadfast opposition to claims which are inflated or without merit, could reduce the burden on the courts and could curb the immorality which is part of tomorrow's blackmail lawsuit.

2. Except in proved cases of need, contingent fees for attorneys should be eliminated so that there is no element within the profession which would add impetus to unnecessary trials.

3. Attorneys also must combat unwarranted claims and unrealistic demands of clients so that dubious standards do not become part of claims consciousness in the future.

4. Stronger actions by the judiciary would curb "Hollywood" courtroom tactics which cause loss of time and which, through appeals to jury emotions, cause unreasonable verdicts.

5. Arbitration services, such as those provided by the Defense Research Institute, should be fully utilized. Answers to issues of law are provided here, bringing about savings of time, money and manpower which would otherwise be spent in the courts.

6. Lawyers should establish more uniform standards for settlement so that issues may be more easily resolved and so no attorney need file for trial to gain added leverage.

7. Legislatures must forge more efficient controls over slaughter on the highways, supported by the public for which the programs are designed. This, more than any other cause, is at the root of the increased workload for the courts.

8. Pressure from the public is one of society's strongest forces against the avaricious who perjure themselves and who seek to gouge in their quest for "something for nothing." Needed is an education and information program which constantly and completely explains the role of fraudulent claims in relation to trial delay.

9. For a jury system to succeed, the public must appreciate it sufficiently to serve as jury members when called. Trials should be truly by "one's peers," a group which represents an adequate cross-section of society. Updated rules are needed to eliminate easy excuses from jury duty so that this universality may be gained.

When the DRI court congestion study is completed, its findings will be incorporated more fully into a total program to retain and to improve the adversary-jury system. In the meantime, IAIC and DRI members are urged to combat erroneous ideas with renewed vigor. In their countering of the critics, they should also include the following thought of Mark Martin, DRI Board Chairman: "Any person who is not granted the right of trial by jury and is not afforded a true adversary trial when his rights are at issue is in truth and in fact a second-class citizen."