Abolition of the Civil Jury: Proposed Alternatives

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freedom for the entire world. The fact that the United States is in the minority with respect to maintenance of the civil jury system proffers no real reason to abandon that system.69

Some claim that the jury is costly, but "cost is small when compared to justice wrought. Cost is meager when weighed against corruption which could ensue from jury elimination."70 It is argued that a great deal of income is lost because people are called off their jobs. But it is the price we must pay for the jury system.

CONCLUSION

The civil jury system should be maintained along with the requirement of unanimity. This system provides protection for minority rights, receives more public acceptance and can perform its function of finding the facts better than any alternative system. Unanimity prevents hasty decisions, and the result of jury deliberation avoids the mistake of any one individual entering the verdict.

Illinois, with its new court system, increased number of judges, and the statutory safeguards, appears well on the way to solving these problems. "The jury trial system has stood the test of history. The wisdom of our day unites with that of the ages in validating jury trial in preference to spurious substitutes."71

It was said by Chief Justice Earl Warren, of the United States Supreme Court that, "[t]he men and women who are called upon to serve on juries in both our federal and state courts have maintained a standard of fairness and excellence throughout the history of our country. They have demonstrated a vision and will toward the administration of justice that is a well-spring of inspiration."72

Howard Frank

69 The Defense Research Institute, Inc., op. cit. supra note 20 at 7.
70 Ibid.
71 Lambert, supra note 10 at 23.
72 The Defense Research Institute, Inc., op. cit. supra note 20 at 1.

ABOLITION OF THE CIVIL JURY: PROPOSED ALTERNATIVES

The principal purpose of our civil courts is to hear with reasonable promptitude such controversies as arise between our citizens and to decide them with due dispatch. If any adjunct in the administration of justice unduly retards or frustrates that ultimate end, then the legislature should remedy or eliminate that undesirable impediment by applying the science of law to procedure.
If it is acknowledged that “justice delayed is justice denied,” it is the intent of this paper to establish that the civil jury system is the primary cause of the delay and congestion found in courts throughout the country, and more particularly in Cook County, Illinois. Further, it will be demonstrated that the only practical and efficient means of eliminating this delay and congestion is to abolish the civil jury system and substitute a state judiciary system.

However, the constitution of the State of Illinois guarantees to the citizens of Illinois the right to a trial by jury. It is the purpose of this paper to influence the state legislature to propose to the citizens of Illinois a revision to the constitution, eliminating this guaranty to a jury in a civil action so that the legislature could adopt a system more able to cope with the increasing tide of litigation created by a more urban and complex society. The constitution of the State of Illinois should be revised to correspond to the provision of the constitution of the State of Louisiana, or if the legislature finds such a provision too restricted, then a provision similar to those found in the constitution of the States of Colorado and Utah should be urged.

An amendment in the nature of the Colorado and Utah provisions would permit more flexibility in the manner in which the Illinois State Legislature might approach the problem of eliminating court congestion and would probably be more acceptable to the citizens of Illinois who may resist any change in the constitution affecting their personal rights. Such a provision would allow the legislature to adopt systems extending from simple procedural modification through substantive changes and perhaps even complete abolition of the civil jury system.

In order to justify a modification or the abolition of the civil jury system, it is first necessary to determine its faults, if any, and analyze them with a view toward their relevance in achieving the goal, i.e., prompt and

1 ILL. CONST. art. II, § 5: “The right of trial by jury as heretofore enjoyed, shall remain inviolate. . . .”

2 LA. CONST. art. I, § 9: “In all criminal prosecutions the accused shall have the right to a speedy public trial. . . .”

3 Colo. Const. art. II, § 23: “The right of trial by jury shall remain inviolate in criminal cases. . . .”

4 Utah Const. art. I, § 10: “In capital cases the right of trial by jury shall remain inviolate. . . .” Although the constitutional provisions of Colorado and Utah provide that a jury in civil cases may consist of less than twelve persons, no specific guaranty of a jury in civil cases is provided in either constitution. The Colorado Supreme Court held that there is no constitutional right to a jury in civil cases in Miller v. O’Brien, 75 Colo. 117, 223 Pac. 1088 (1924). There have been no decisions construing the Utah provision, but since the Utah provision was furnished after Colorado’s, it is likely that Utah will decide the issue in a similar manner. See Degnan, Right to Civil Jury Trial in Utah: Constitution and Statute, 8 Utah L. R. 97 (1962).
just adjudication of civil controversies. The two elements of judicial administration with which we are primarily concerned are, therefore, the quality of justice dispensed by the system and the quantity of justice so dispensed.

It is contended by many jurists that the civil jury system is a useless anachronism in our society which usurps the function of the legislature by making new law instead of applying the enacted law. In effect, we, like past generations, have clung to the unrecognizable remnants of the original system. We engage in mimicry by selecting the numbers of our modern jury from political subdivisions hundreds of square miles in area and peopled by thousands of inhabitants. We have attempted through the years to adapt a system created to meet the needs of a sacred, rural society to an urban, industrialized society with its wholly secondary relationships and increasing complexities.

We have evolved a comprehensive legal procedure that not only permits, but encourages the exclusion of jurors possessing the slightest knowledge of the facts he is supposedly summoned to determine. Thus, that which specifically qualified one to act as a juror at the inception of the system now specifically disqualifies him. This evolution has been termed progress. It is contended the system has adapted and improved in order to cope with the growing demands resulting from an increasingly complex society. If this is true, the system has failed. It has failed both to cope with the increasing tide of litigation and to render decisions consistent with the laws of society. It has always been the function of the jury to determine the facts of the case and to apply the laws of society to those facts. Notwithstanding, the jury not infrequently refuses to apply the enacted law. For example, the jury often disregards the doctrine of contributory negligence in favor of comparative negligence in tort cases. Many would justify these results by labeling the action of the jury as a new function of the jury, tempering the laws of society with the conscience of the

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5 See Comment, 15 De Paul L. Rev. 398 (1966). One has only to look to the history and origin of the system to see that it was established in answer to the peculiar needs of a society which no longer exists. The civil jury system developed into its present form under Henry II (1154-1189) and became fixed in that form. It developed out of feudal notions of justice to serve the needs of a rural, agrarian society. The original protagonists of the jury system provided that the members of the jury be selected from a narrowly circumscribed vicinage to insure that they would be judged by those most likely to be supporters. Furthermore, they required as prerequisites of those who would act as jurors that they have an acquaintance not only with the parties litigant but also with the facts germane to the issue. Even when it later evolved that to qualify as a juror, one could not personally be acquainted with the facts of the case, the requirements that the juror be chosen from the same vicinage continued to be rule and continues today.

6 See Frank, Courts On Trial (1949); Galston, Behind The Judicial Curtain (1951); Green, Judge And Jury (1930).
community. This argument admits that the jury not only ignores the law but, that it is the function of the jury to do so. Thus, the duty to make new laws for the society is withdrawn from the legislatures and is devolved upon a body of twelve men who purportedly represent a cross-section of the community. This theory denies the very ground and existence of a representative, democratic type of government. If society thought these laws unjust and desired to change them, society, through its legally elected representatives, would so have done. Proponents of the civil jury justify this new function of the jury by contending that the laws are only general principles which are to be applied specifically to the facts of a case as determined by the jury, in accordance with the jury's interpretation of such vague, flexible standards as that of the "reasonable man." This presupposes that these twelve men not only represent a cross-section of the community but are permitted and are capable of making an objective judgment. This "presupposed" contention does not withstand objective scrutiny. There is strong evidence that, generally, the jury is numerically dominated by housewives and retired people.  

The inability of the jury to make a sound, objective finding of the facts and then objectively to apply the law to these facts has often been attributed to the manner of selecting jurors and the resulting composition of the jury. Entirely inexperienced and untrained, the jurors are opposed in their hampered investigation of the facts, not only by the absence of first-hand knowledge of the particular facts, but by the designed and effective histrionics of experienced counsel and the deliberate deceptions of strongly interested partisans. The evidence that would give light to the juror in his blind quest is carefully concealed by one party and the other is strenuously attempting to disclose it. The result is a distorted presentation of fact that evidences the astuteness of respective counsel. Abysmal ignorance constitutes a condition precedent in the qualification of jurors and that ignorance must be established to the satisfaction of contending counsel.

The selection of jurors is considered an art among the most successful trial attorneys. Whole volumes have been devoted to this art, but most

7 See Holbrook, A Survey of Metropolitan Trial Courts, Los Angeles Area (1956), as quoted verbatim in Joiner, Civil Justice and the Jury, 195-200 (1962). A survey of jurors in metropolitan Los Angeles area indicated that the jury does not represent a cross section of the community. A poll of the area trial attorneys concluded that many of the trial attorneys did not feel that the jurors serving represented a true cross section of the community. They complained most often of too many housewives and retired people and not enough executives or craftsmen. Although a significant minority of the judges interviewed confirmed this view, the majority indicated that in their opinion there was a reasonable cross section of the population serving on juries. Significantly, this survey confirmed, in general, the view of the trial attorneys and the minority judges.
trial attorneys are familiar with some of the popular rules for selecting jurors.\textsuperscript{8}

The object of jury selection is to choose those individuals who will be most influenced by the emotional displays of the attorney in his presentation of the case and by the participants in testifying. In presenting his case to the jury, the attorney resorts to these emotional displays in order to divert the attention of the jurors away from the legal concepts and legally admissible evidence. This practice is most common in cases where an individual is suing a large corporation or insurance company. This is exemplified by the verdicts rendered by thirty juries which were divided into three groups and asked to try the same case. The first group tried the case where there was no mention of insurance. The second group tried the case where the presence of insurance was inadvertently disclosed but no further mention of it was made. The third group tried the case where the presence of insurance was not only disclosed, but the juries were explicitly instructed by the judge to disregard the information. The mean award of the group which was not informed of the insurance was $33,000. The mean award of the group which was inadvertently informed of insurance was $37,000. The mean award of the group which was explicitly instructed to disregard the mention of insurance was $46,000.\textsuperscript{9} It is obvious from the disparity of these awards that the mere fact that insurance was present prejudiced the juries somewhat against the defendant with respect to the amount of damages.

A comparison of verdicts rendered by judges and juries in cases involving individuals as plaintiffs and large corporations or insurance companies as defendants indicates that emotional appeals to the juries might be successful in deciding liability.\textsuperscript{10}

A comparison of the size of the awards rendered by judges and juries in different kinds of cases also indicates that the juries are influenced by emotional displays. In those kinds of cases where an emotional appeal is less

\textsuperscript{8} Latins are hotblooded and free with their money. Jews are coldblooded and tight with their money. Professional men, executives and scientists are objective. Blue collar workers, clerks and women are emotional, etc. See Kennelly, \textit{Jury Selection in a Civil Case}, 9 \textit{TRIAL LAW GUIDE} 15 (1965); Busch, \textit{Observations as to the Manner and Scope of Examination of Prospective Jurors}, supra at 81, Vance, \textit{Voir Dire Examination of Jurors in Federal Civil Cases}, supra at 90; Davis and Wiley, \textit{49 Thoughts on Jury Selection}, supra at 110.


\textsuperscript{10} See Sunderland, \textit{Trial by Jury}, 11 U. \textit{CINC. L. REV.} 120 (1937), as quoted verbatim in Joiner, \textit{op. cit. supra} note 7 at 147-153. The jury rendered verdicts for the individual in 61\% of the cases, while the judges rendered verdicts for the individual in only 51\% of the cases. In cases where both the defendant and the plaintiff were either both individuals or both large corporations, the judges and juries rendered verdicts for each equally.
likely to influence the jury, the judgments rendered by the jury corresponded on the average to the judgments rendered by the judges.\textsuperscript{11} The results of these comparisons indicate that the jury is incapable of disregarding the emotional appeals, and of rendering a judgment based upon the legally admissible evidence.

Thus, one could conceivably conclude that not only is there a tendency of the juries to allow their common prejudices to influence their decisions with respect to the issue of liability, but that there is also a tendency to permit emotional displays to influence their decisions with respect to amount of liability.

These studies do not indicate that the juries do not dispense "justice." Nonetheless, they demonstrate that this system is susceptible to non-legal influences which in turn affect the quality of the justice dispensed.

Having established that the quality of justice dispensed by the jury system is not the highest possible, it is necessary to proceed to analyze the second function of the system, the quantity of justice dispensed.

Perhaps the most prominent defect of the civil jury system is the enormous backlog of jury cases which it has created. A backlog of cases per se does not indicate a defect inherent in the system. However, the defect need not be inherent in the system to justify its modification or abolition. Even if we could only achieve the same minimum quality of justice dispensed by the civil jury system, but eliminate the backlog through modification or abolition of that system at a lesser cost than is necessary to eliminate the backlog through retention and expansion of that system, it would be both impractical and unfair to the public not to adopt modification or abolition.

Delays in bringing a case to jury trial vary among jurisdictions, but the average delay as of 1962 was 14 months. Cook County, Illinois had a delay of approximately 71 months.\textsuperscript{12} The figures revealed an apparent correlation between the population of the jurisdictions and the degree of calendar congestion.\textsuperscript{13} The delay increased with the number of inhabitants of the jurisdiction. In order to appreciate the meaning and significance of these figures, it is necessary to attempt to translate the numbers into human terms and observe the effect of the backlog on those seeking justice. An individual who files suit in April of 1962 for damages resulting from an

\textsuperscript{11} Ibid.

\textsuperscript{12} See INSTITUTE OF JUDICIAL ADMINISTRATION, STATE TRIAL COURTS OF GENERAL JURISDICTION: 1962 CALENDAR STATUS STUDY 1–3 (July 10, 1962). The average delay, from the filing of a suit until jury trial, increased steadily from 9.4 months in 1957 to 14 months in 1962.

\textsuperscript{13} Ibid. In counties having a population under 500,000, the average delay was 7.1 months. In the counties having a population between 500,000 and 700,000, the average delay increased to 15.1 months. In the counties having a population over 750,000, the average delay increased to 23.9 months.
automobile accident could imaginably be forced to wait until March of 1968 for a jury trial. Presuming that the injury will prevent the individual from working for a considerable length of time, that the individual's salary is his family's sole means of support and that he has little if any money reserves to fall back on, the delay may force the plaintiff into an unfavorable, if not unjust, settlement with the defendant.

Although a delay of 70 months is the extreme, even the average delay in 1962, 14 months, or the lowest average since 1957, 9.4 months, is a delay which could conceivably cause many injured individuals to forgo complete justice for immediate relief. It is reasonable to say that any delay in justice is a disadvantage to the plaintiff and an advantage to the defendant, and that the longer the delay, the greater the disadvantage to the plaintiff and the more likelihood of an unjust settlement. A system which fosters unjust settlements cannot be said to dispense a high quality of justice.

No jurist would deny the existence of the backlog and its detrimental effect on the dispensation of justice, nor would any deny the necessity of eliminating the backlog. But many will argue the means which should be employed to accomplish this goal. One factor in considering the different proposals which cannot be disregarded is the cost of the alternative systems, both in terms of time and money. The distinction between the cost of a system in terms of time and money is frequently vague due to the fact that time is money. Jury trials are expensive from both the standpoint of time and the standpoint of money.

The cost to the national and state governments of maintaining the civil jury system is a conservative $200,000,000. This figure does not include the cost to the parties litigant nor to jurors or witnesses who must give up work to appear in court. Add to this loss the loss incurred by the employer of these jurors as a result of the loss of productivity of these people during the trial. This loss of productivity, however small, is passed along to the consumer in the form of higher prices.

A jury trial takes 60 per cent more time than a judge trial, excluding the

14 Ibid.

15 See Summers, Some Merits of Civil Jury, 39 Tul. L. Rev. 3 (1961). There are approximately 100,000 jury trials each year in the United States. See Broeder, University of Chicago Jury Project, 38 Neb. L. Rev. 744 (1959). It has been conservatively estimated that the cost of one jury trial in the state is $2,000.

16 See Institute of Judicial Administration, Jury Costs: 1960 Supp. (August 15, 1960). Depending on the jurisdiction, the per diem compensation allotted to the jurors ranges from as low as $2 per day to as high as $10 per day. See Reader's Digest, Almanac 278 (1966). Considering that the average laborer makes a minimum of $20 per day and that somewhere in the area of 100,000 people are called to report to jury duty daily (see Broeder, supra note 15), the minimum loss to those serving as jurors is a total of $20,000,000.
time required in jury deliberation and impanelling the jury. The factors for jury deliberation and jury impanelling are too variable and negligible to be considered in the time evaluation of a jury as compared to a bench trial. It appears that on a quantitative basis, the civil jury system is far less efficient than the judiciary system. If it can be established that the judiciary system dispenses even the same minimum quality of justice as does the civil jury system, it would be uneconomical and impractical to choose the jury system over the judiciary system.

As a result of the criticism of the civil jury system arising mainly out of the previously discussed defects, several alternative systems have been proposed. The more moderate proposals center around modifying or streamlining the present system. The more prominent proposals include the establishment of administrative boards in the nature of Workmen's Compensation boards to handle automobile tort cases; the enactment of a compulsory arbitration statute, such as the one in use in Pennsylvania, and, finally, the abolition of the civil jury system entirely and the substitution of a judiciary system.

MODIFICATION

The major premise sustaining these proposals is that there is nothing inherently defective with the civil jury system and, therefore, the present system will, when modified, be more able efficiently to deal with the increasing amount of litigation. One can classify these proposals into two general categories, procedural modifications and substantive modifications.

The procedural modifications include the expanded use of the pre-trial conference, more liberal rules governing discovery procedures, use of an impartial board of medical experts to testify in personal injury cases, in-

See Zeisel, Kalven, Buchholz, Delay in the Court (1959). Three independent approaches were employed in determining that a bench trial is, on the average, 40% shorter than a jury trial.

Ibid. The time element for jury impanelling may increase the difference, depending upon whether the jurisdiction requires the presence of the judge. If the judge need not be present, there would be no increase in the time required by a jury trial, since the judge could devote his time to other judicial matters. However, if the judge's presence is required, the time requirement for a jury trial would exceed that approximated in the study. Therefore, a jury trial in such a case would be more than 60% longer than a bench trial. Jury deliberation as a time factor may have opposite and varying effects on the time difference between a jury and a bench trial. Since a judge is required to devote time in composing and writing an opinion, he may spend more time in doing that than a jury would spend deliberating the verdict. However, any savings in time resulting from jury deliberations, taking on the average less time than composing and writing judicial opinions, could not substantially reduce the length of time. In those jurisdictions, such as Illinois (see Ill. Supreme Court Rule 24-1 Ill. Rev. Stat. ch. 110, § 101.24-1, 1963), where the judge's presence is required during voir dire, there would be no substantial savings.
creased control of *voir dire* examination by the judge and more stringent rules governing excusal from jury duty.

Expanded use of the pre-trial conference, together with a more liberal discovery procedure, remove the element of surprise and permit a more accurate appraisal of the merits of the case. Both of these procedures help to create an atmosphere more conducive to a speedy, just settlement. It is unanimously conceded that pre-trial and discovery probably speed settlements and may even result in more equitable settlements.\(^{10}\) Without further studies, it is difficult to see how pre-trial conferences affect those cases which normally go to trial, those which make up the backlog.

The purpose of the expanded use of impartial expert medical testimony is to reduce the time spent by opposing counsel in attempting to overwhelm each other, and the jury, with conflicting and contradicting medical evidence. In most personal injury cases, each side introduces its own experts to establish its contentions. The number of experts produced by each side is limited only by the funds available to pay for their services. In an important case, the jury may be forced to listen for days to the opposing medical experts. By limiting the number of expert medical witnesses available to counsel or by substituting an impartial board of medical experts, one could conceivably reduce substantially the time required for a complex personal injury case.

In the past, attorneys have often used the *voir dire* examination as a means of ingratiating themselves with the jury. It is at this stage that an attorney brings to bear his ability to outwit the opposing counsel in selecting jurors most susceptible to the argument the attorney proposes to present to the jury. In order to avoid the time often spent by the counsels in outwitting one another, and in order to prevent the attorneys from ingratiating themselves with the jurors, many jurists propose withdrawing control of the *voir dire* from the counsel and vesting control in the judge. This procedure would no doubt increase somewhat the quality of justice dispensed by the civil jury system, but it would also increase the length of time necessary for a civil jury trial, thereby increasing the backlog.

Still another proposal is directed at improving the quality of the jurors by permitting less excusals. There tends to be too few executives, professionals, craftsmen, and even white collar workers on the jury and too many women and housewives.\(^{20}\) Although the proposed remedy would, if effec-

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\(^{10}\) *Note*, 21 *U. Pitt. L. REV.* 52 (1959). In the federal district court for the Western District of Pennsylvania, 40% of those cases brought to pre-trial conference were settled at conference, 10-20% after conference and another 40% after the jury had been selected. The report fails to note the high percentage of cases normally settled before a jury verdict is reached. It is, therefore, difficult to determine the effects of pre-trial conference in reducing the backlog from this study.

\(^{20}\) *Supra* note 7.
tive, increase the quality of justice somewhat, it too would fail to decrease the backlog. It would also seem that this proposal would be impractical to implement and would fail to accomplish its purpose. However, there are no figures or studies available from which to draw any conclusion.

It seems that although these procedural devices may increase the quality of justice rendered by the jury, they make no substantial improvement in the quantity of justice dispensed by the system. They fail to affect those cases which require a jury trial and cannot, therefore, conceivably remedy the quantitative defect of the civil jury system.

There are usually three proposals involving substantive modifications: reduce the size of the jury; eliminate the unanimous verdict requirement; and use two juries, one to determine liability and one to determine the damages.

It has been suggested that by reducing the size of the jury, one reduces both the time necessary for impaneling the jury and the cost of maintaining the jury proportionately.\(^1\) The savings could go toward providing more judges and courtrooms and in that manner somewhat decrease the backlog. Also, in those jurisdictions wherein the judge is required to be present during the voir dire examination, the judge could devote this added time to other judicial matters and thereby help to decrease somewhat the backlog. It has even been suggested that by reducing the size of the jury, one reduces the time necessary for deliberation in that there are fewer people to convince and fewer to disagree. Taking into consideration the low compensation paid to jurors\(^2\) and the high cost of judicial administration, the money saved in any one jurisdiction through reduction in the size of the jury would hardly be sufficient to increase substantially the amount of judicial administration. These factors do not materially affect the comparative lengths of the jury or the bench trials.

Those who propose the elimination of the unanimous verdict requirement contend that a majority verdict would not only expedite jury deliberations but would also reduce the number of hung juries. It has been surmised that hung juries result chiefly from the personality of the hanging juror and would be eliminated by relaxing the unanimity rule.\(^3\) There is evidence that if the state required 8/12 (2/3) verdict, 36 per cent of the cases would have been decided on the first ballot and that if the state required only a simple majority vote over 90 per cent of all the cases could

\(^1\) See Institute of Judicial Administration, op. cit. supra note 16. Since the per diem compensation to a juror ranges from between $2 and $10 per day, the average jury trial requires two days (supra note 10) and an estimated 1,000,000 people will be called upon for jury duty (see Broeder, supra note 15), the cost to the federal and state governments for maintaining the juries ranges between $4,000,000 and $20,000,000 per year.

\(^2\) Supra note 6.

\(^3\) Supra note 9 at 202.
be determined on the first ballot.\textsuperscript{24} It may, therefore, be surmised that the unanimity rule, as opposed to a simple majority rule, affected the final results of something less than 10 per cent of the cases. But for the unanimity rule, the verdicts in 10 per cent of the cases would have been the opposite. If any of these decisions were just decisions, the quality of justice would have been sacrificed by the simple majority rule.

It is further argued that since the standard for judging liability in a civil action is merely a preponderance of proof, a party should only be required to persuade a preponderance of the jury of his innocence. If the jurors had been instructed with respect to a simple majority rule, they may have been less prone to vote the way they had under the unanimity rule. Where one is aware of the more significant consequences of his vote, he is more apt to guard that power rather than exercise it hastily. There have been no comparative studies nor are figures available from which to determine whether and to what extent a majority rule reduces the time required for jury deliberation. When one considers that hung juries are relatively rare, it is apparent that the majority rule would not go a long way toward reducing the backlog.

Unlike the proposals to reduce the size of the jury and to eliminate the unanimity rule, which are primarily directed at the quantitative aspects of the civil jury system, the suggestion to employ two juries is directed primarily at the qualitative aspects of the civil jury system. It has been shown that the amount of damages awarded is a variable of the clarity of proof of liability as well as of the clarity of proof of damages.\textsuperscript{25} This, in effect, is the result of the jury applying a comparative negligence standard rather than the doctrine of contributory negligence prescribed by the law. In an attempt to prevent confusion of the two issues, the federal courts have recently adopted the use of dual juries. This device undoubtedly results in a higher quality of justice. As of yet there are not sufficient results to discern the effects of this device on the backlog. It is hard to conceive that this system could have anything but a detrimental effect on the quantitative aspect\textsuperscript{26} of the civil jury system regardless of the beneficial effect on the qualitative aspect.

\textsuperscript{24} Ibid.

\textsuperscript{25} See supra note 9. In presenting the facts of a case to one group of juries, liability was made absolutely clear while in presenting the facts of the same case to another group of juries, liability was made somewhat ambiguous. When liability was made clear, the mean award was $41,000. Where liability was made ambiguous, the mean award was only $34,000. The report concluded that the jury tends to combine the liability and damage issues.

\textsuperscript{26} See Kalven, A General Analysis of and Introduction to the Problem of Court Congestion 7 (1960). An indication of the difference in time required to conduct jury trial, as opposed to a bench trial, is indicated by the results of the different systems in New York and in Cook County, Illinois. In New York 71\% of all the cases filed were settled without a jury in 16.2\% of the court's time. See Cook County
In the battle to eliminate the jury calendar backlog, many jurists have gone so far as to advocate the abolition of the civil jury system in part or in its entirety. The proponents of such action offer basically three substitutes for the jury: establishment of administrative bureaus in the nature of Workmen’s Compensation boards to dispose of automobile tort cases; compulsory arbitration for a certain class of cases; or a judiciary system.

It seems generally agreed that the bulk and core of contested civil jury cases are those arising from personal injuries sustained in auto accidents. It has been suggested that the jury calendar backlog could be eliminated by withdrawing automobile injury cases from the civil jury and submitting them to administrative boards in the nature of Workmen’s Compensation boards. The same reasons are offered for the change as were offered for the adoption of the Workmen’s Compensation Acts. These reasons include the ever-increasing number of automobile cases and the ensuing social problems they create. The objective of the proposed system would be the same as that of Workmen’s Compensation, that is, to provide a prompt, simple and sure remedy for victims of automobile accidents. A study of the operations and results of Workmen’s Compensation boards indicates that although they have reduced delay in having the case heard, they did not abolish the delay, and there was a general dissatisfaction with the quality of justice dispensed by the system. The purported purpose of the Act was to prevent delay and thereby discourage settlement. The fact that settlements persist and are encouraged in over one half of the jurisdictions reporting indicates that the system fails to prevent delay.

Delays by the various Workmen’s Compensation boards can be traced somewhat to the practice in most jurisdictions of not announcing decisions at the hearing, but announcing them sometime later. The hearings them-

Deputy Administrator, Special Bulletin (October 8, 1963). In Cook County, 45% of all the cases disposed of were with a jury in 75% of the court's time while the remaining 55% of the cases required only 25% of the court's time.

See Ziesel, Kalven and Buchholz, supra note 17. The ratio of jury to non-jury filings for personal injury cases is 5:1, while this ratio for all other types of cases is only 3:4. Personal injury complaints comprise one half of all those filed in New York. See Institute of Judicial Administration, Delay and Congestion in State Metropolitan Trial Courts: Suggested Remedies Series Number 12 (May 21, 1956). It is estimated that automobile accidents account for anywhere from 70 to 90% of all personal injury complaints.

See Institute of Judicial Administration, Administrative Boards for Automobile Tort Cases: Workmen's Compensation Compared, Delay and Congestion—Suggested Remedies Series Number 8 (May 15, 1956). Out of 24 jurisdictions reporting, 10 discouraged private settlement, 5 encouraged it and 8 encouraged it subject to a hearing before the Commission, while one jurisdiction encouraged it subject to a hearing before the Commissioner. As with the civil jury system, it was found that the volume of private settlement grows in proportion to the delay encountered.
selves are delayed by allowing time for the litigants to file briefs and waiting for transcripts of testimony, indicating that these hearings are thought of as court appearances. There is yet a further delay if the decision is appealed. Other causes of the delay were attributed to the parties involved, especially the insurance companies.29

General complaints directed at the system are usually directed at the quality of justice dispensed by the system, in the form of low benefit levels, rather than the quantity of justice dispensed. Not only do the benefit levels start off at initially low levels, but they are further reduced by the added costs to the plaintiff of attorney’s fees and compensation to expert witnesses.30

There are certain practical implications in establishing administrative boards for automobile cases which must be considered. These include determining the extent of coverage, the method of financing and award schedules.31 However, the effect of such a system on the standards of fault and negligence in our society are more important considerations. The standards of fault and negligence are the basis of our tort law, in particular, and of our entire legal system in general. The Workmen’s Compensation Acts make no attempt to maintain these standards in the instance of industrial or occupational accidents. Such an attempt would destroy the rationale behind the system. Allegedly, accidents are an inherent consequence of industrialization for which industry, aided in part by the state, must be prepared to compensate the injured. This burden of compensation is passed on to the general public represented by the consumer in the form of higher prices. It is difficult to equate industrial accidents which occur within specified geographical and time restrictions to automobile accidents which can occur literally anywhere at any time. Industry also lacks that personal element which automobile accidents embody. A large corporation operating many complex machines and employing many individuals to run and service these machines can hardly be equated with the single, individual driver of an automobile who injures the person or property of another. It is difficult to place blame upon an impersonal large corporation for an injury suffered by one of its numerous employees during the operation of one of its many complex machines. However, it is even more difficult to burden society with the cost of an injury when the fault of an individual involved in an automobile tort case is relatively easily determinable. If one were to abandon the standards of fault and negligence in automobile cases where the conduct is usually personal and individual, it would not be difficult to abandon these standards in any other category of cases involving

29 Id. at 13. As is the case in the civil jury system, it is not uncommon for the insurance companies to postpone the hearing indefinitely in order to force a settlement.

30 Id. at same study generally.

31 Id. at 21.
personal, individual conduct which includes the whole field of tort law. Unless society chooses to reject the standards of fault and negligence, the civil jury system cannot be abandoned in favor of administrative boards in the nature of Workmen's Compensation boards. It would seem that such administrative boards would go a long way in eliminating the jury calendar backlog, but only at the unacceptable sacrifice in the quality of justice dispensed. Quality, not quantity, should be the primary objective of any judicial system. Only where increased quantity can be achieved without a resulting decrease in quality will a proposed alternative to the civil jury system be considered.

**Compulsory Arbitration**

Compulsory arbitration has been adopted by Pennsylvania as one means of eliminating the jury calendar backlog. The statute permits the courts of common pleas to provide by rules that all cases which are at issue, where the amount in controversy is $2,000 or less, except those involving real estate, be submitted to and be heard by a board of three members of the bar in the judicial district. The county is to establish fees for the arbitrators and pay them and establish rules of procedure. Either party may appeal from the award to the court in which the cause was pending at the time the case was referred to arbitration, provided that the party appealing shall first repay to the county up to 50 per cent of the fees of the members of the board of arbitrators. Such fees shall not be taxed as costs to the adverse party, nor are they recoverable in any proceeding. All appeals are de novo.

The Supreme Court of Pennsylvania, in 1955, held the Pennsylvania Compulsory Arbitration Statute constitutional under both federal and state constitutions, and the United States Supreme Court dismissed the appeal without argument.

Some practical problems have arisen from the operation of the statute. It was feared that an attorney acting as an arbitrator may fear retribution at a later date if he injured a fellow attorney by an unfavorable decision. Proponents of the system contend that any “get even” tendency is negated by requiring three attorneys serve on each board. However, it was suggested by one participating county bar member in Pennsylvania that one impartial layman serve with two attorneys to further protect against this tendency.

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33 Application of Harvey A. Smith, 381 Pa. 223, 112 A.2d 625 (1955), appeal dismissed sub nom, Smith v. Wessler, 350 U.S. 858 (1955). The Supreme Court of Pennsylvania held that the condition precedent to a trial by jury required by the statute was not a hardship.

34 See Institute of Judicial Administration, Compulsory Arbitration and Court Congestion: The Pennsylvania Compulsory Arbitration Statute 8, 9 (July 1, 1956).
Attorneys frequently specialize in defense or trial work and become known as plaintiffs' attorneys or defendants' attorneys. It was feared that, if such attorneys are permitted to act as arbitrators and make rulings, they will attempt to establish rulings favorable to their specialty. It is pointed out that not only is it necessary to get a concurrence of two of the three attorneys serving on each board but any one attorney has very few opportunities to make such a ruling. An attorney rarely serves more than three or four times yearly. Furthermore, since rulings are subject to appeal by trial de novo, it would be foolish to make such a prejudicial ruling which almost certainly would be appealed.35

Perhaps the greatest fear arising out of the application of the statute is that concerned with the arbitrators' compensation. The usual fee for an attorney serving as an arbitrator is $25 per case. It is contended by many that such a low fee will attract the inexperienced and inept attorneys. This has proven to be incorrect in the experience of Pennsylvania. Participation by the county bar associations has been between fifty and one hundred per cent. The overwhelming majority of those attorneys serving as arbitrators have done so out of a sense of public duty. However, this conjures up the fear that as the system expands, and greater demands on the time and services of the attorneys are made by the system, attorneys will refuse to serve. This fear could be allayed in one of two ways: insure adequate compensation for those desirous to serve as arbitrators, or administer the system in such a manner that attorneys will not be called upon to serve more than a specified maximum number of times per year.36

A general objection voiced by those attorneys who have served both as arbitrators and as counsel before the boards is that the attorneys who appear before the boards are not as prepared as if they were pleading a case in court. Most observers attribute this tendency to the fact that there is no judge or jury and that there is always the right to appeal for a trial de novo. The situation may remedy itself, however, because clients will tend to choose those attorneys who are successful in the field of arbitration. This would exclude those who suffer adverse decisions due to consistent unpreparedness. Furthermore, the small number of appeals being taken does not justify speculation that the right to appeal creates a lax attitude on the part of the attorney.37

The system was offered to the counties in Pennsylvania in 1953 and through March, 1956, 43 out of the 67 counties had adopted compulsory arbitration by rule.38 The report of the survey of the results of the system through 1956 concluded that the procedure removes small claims for damages from the regular jury trial list, that the procedure is effective in speed-

35 Id. at 10.
36 Id at 9.
37 Id. at 9, 10.
38 Id. at 12.
ing trials of larger cases, that the procedure is economical and that the procedure has been well received by the majority of attorneys in the counties in which it has been adopted. However, some doubt was expressed as to the adaptability of the system to metropolitan areas. This doubt has been allayed somewhat by the results of the use of arbitration by the Philadelphia Municipal Court. In Philadelphia the number of appeals being taken in the metropolitan area was the same proportionally as that in the outlying counties. It appears that the system in Philadelphia has proven very effective in handling small claims and there appears to be a decrease not only in the cost of judicial administration, but also in the size of the jury backlog.

Citing the results of the system in Philadelphia between 1959 and 1961, the arbitration commissioner of Philadelphia referred to the achievements as "the miracle of compulsory arbitration." Chief Justice Stern, of the Common Pleas Court of Pennsylvania, commenting on the reaction of the litigants to the system, said:

[T]he plaintiffs expressed satisfaction because they get a prompt hearing of their cases with resulting prompt payments. . . . On the other hand, the defendants were equally pleased because they felt protected from the danger of reckless and extravagant verdicts, and were satisfied that the amounts found were fair and reasonable.

Some jurists contend that the cases handled by arbitration do not affect the jury calendar backlog in that these cases would never get to trial anyway. They contend that these cases are discontinued or settled before

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[39] Id. at 15.

[40] Id. at 16.

[41] See Institute of Judicial Administration, Compulsory Arbitration and Court Congestion: The Pennsylvania Compulsory Arbitration Statute—A Supplementary Report 1958 (August 15, 1959). Arbitration was extended to the Philadelphia Municipal Court in 1957 (Pa. Stat. tit. 5, §§ 23, 30, 57, 73, Purdon Supp. 1958), at which time the jurisdiction under the act was extended to include cases involving $5,000 or less (Pa. Stat. tit. 17 § 693, Purdon Supp. 1958). A survey of the results of the system through 1959 found that as a rule there were no appeals from awards under $400. The survey resulted in two recommendations: (1) that the board of arbitrators be composed of one businessman in the particular field covered by the case, one attorney and one impartial layman, and (2) that the boards sit in other counties to remove the personality factor from arbitration.

[42] Id. at 13.

[43] Ibid. The study did not, however, indicate the dollar saving in the cost of judicial administration or the decrease in the backlog.


[46] Institute of Judicial Administration, op. cit. supra note 34 at 38.
coming to trial. This objection finds support in the calendar studies for the years following adoption which indicated a marked increase in jury calendar backlogs of these courts even after adoption of arbitration. Presuming that the system continues to operate efficiently and with the cooperation of the county bar associations, it appears that it does not achieve its primary purpose which is to eliminate the jury calendar backlog. The big increase in the backlogs of Philadelphia and Pittsburg does not indicate whether compulsory arbitration has tended to aggravate the backlog but is evidence that it has failed substantially either to eliminate the backlog or even retard its growth. Compulsory arbitration, like the procedural and substantive modifications, does not deal directly with those cases which eventually go to trial and, therefore, cannot substantially remedy the situation.

JUDICIARY SYSTEM

The only alternative proposal which directly confronts all of the problems presented by the civil jury system is the abolition of that system and the substitution of a judiciary system. Such a judiciary system would be composed of three divisions. The first division would consist of three judges elected for a term of years by the voters of the county wherein the justices officiate. Wherever a jury trial is now authorized a concurrence of two out of the three justices would be necessary to decide a case. In those cases where no jury trial is provided, one justice would officiate. The second division, the appellate tribunal, would consist of five justices also elected for a term of years, but by the vote of the state electorate. These justices would set en banc and review on appeal the issues of both law and fact by a concurrence of three out of the five justices. The third division would be the supreme court. The court would consist of seven members preferably elected for life by a general vote. This court, like the appellate courts, would also review both questions of law and fact. Every member of the court would be subject to removal for cause by a commission established by the judicial article and would run upon his record at each election.

In response to the proposal to replace the civil jury trial with bench trials, proponents of the civil jury point to the alleged disadvantages of a judiciary system: the public is not brought into the case; there is no adequate way to detect unconscious bias or prejudice on the part of a judge since a voir dire examination of the judge would be unavailable; the decision is made by a single man without the benefit of discussion with others and the judge does not represent a cross-section of the community.

47 Supra note 12.
The argument that the judiciary prevents direct participation in the judicial process evolved from the democratic appeal of the institution of trial by jury, that the jury acts as a shield against oppression and arbitrary laws. This argument concludes that laws in a democratic society require public support and that the best way in which to instill respect and confidence in the judiciary and the laws of the state is to permit the common citizen to participate directly in the judicial process. There is a foreboding intimation in this argument that if the common citizen is denied this direct participation, he will neither respect and support the law nor have confidence in the judiciary.

The argument that the jury is a shield against oppression and arbitrary laws was true at the inception of the civil jury system both in England and in the United States. But laws in the United States are no longer governed by King George III, nor does the Star Chamber, whose members were appointed by the sovereign, dispense the law. There no longer exists this threat of oppression and arbitrary law which gave rise to fear and distrust of the judiciary. Laws are enacted by representatives of the people and dispensed by a judiciary elected by the people and dependent upon the continued support of the people for tenure.

In Illinois the independence of the judiciary is further protected by the specific denial of any power to anyone except the voters to appoint a new judge or fill a vacancy. However, the new judicial article provides for retirement of any judge for disability, for the suspension without pay, or for the removal for cause of judges by a commission established by the Supreme Court. The article also provides for the automatic retirement of judges at an age prescribed by the General Assembly.

The intimation that the denial of direct participation of the common man in the administration of justice will undermine the public respect and support of the laws and cause the public to lose confidence in its judiciary finds no basis in history. There has been no great public outcry against the administration of justice by the chancery courts or admiralty courts in the United States nor against the judiciary systems applied in all other major democratic countries, including England.

However, even if one were to accept the presumption that direct participation by the public is necessary to maintain public support and confidence in the laws and the judiciary, the direct participation afforded to the public through the civil jury system is insignificant. A study concerning the extent of direct contact of the general population with the jury system con-

49 ILL. Const. art. VI § 10. 50 ILL. Const. art. VI § 11.
53 Ibid.
cluded that although it is estimated that some 1,000,000 Americans serve on juries,\textsuperscript{54} it would appear that jury service is no longer the dominant avenue for direct citizen contact with the court system.\textsuperscript{55}

It is suggested that this direct participation of the population may be a factor in favorably influencing people's views toward the civil jury system. A survey of jurors prior to and after jury service indicated that more people who originally favored a jury trial shifted views than those who had originally favored a bench trial.\textsuperscript{56} The general question about preference for jury or judge may frequently be understood by the respondent as a question about criminal trials.\textsuperscript{57} It concluded that jury experience tends to keep one enthusiastic about the jury in criminal cases and make him less enthusiastic about it in contract cases.\textsuperscript{58} Because of the opportunities for avoiding jury service, those who do serve in effect choose to do so and are very probably more favorable to the jury at the outset.\textsuperscript{59} Therefore, the figures indicating those in favor of a jury would be favorably exaggerated, while those in favor of a judge would be unfavorably exaggerated. Although the public is generally favorable to trial by jury,\textsuperscript{60} there is evidence that the public is generally unfavorable toward serving on a jury.\textsuperscript{61} The conflicting attitudes of the general public toward two aspects of the same system suggests that many people who respond favorably to trial by jury do so for emotional and psychological reasons. These people equate the institution of trial by jury with democracy and freedom. Nevertheless, they reject participation in the system when demands are made upon their time, indicating that direct public participation in the administration of justice is avoided by the public.

It appears that there is no basis for the argument that direct public participation is necessary to maintain the public support and respect for the law and the continued confidence in the judiciary system. There are indications that support for the jury system declines after direct participation.\textsuperscript{62} The emotional and psychological attachment by the public to the

\textsuperscript{54} Broeder, \textit{supra} note 15. (0.55\% of the population of 1960 census count).
\textsuperscript{55} \textit{Supra} note 9 at 203.
\textsuperscript{56} \textit{Id.} at 204. 19\% of those favoring jury trial shifted to judge while only 17\% of those favoring a judge trial shifted to jury trial.
\textsuperscript{57} \textit{Id.} at 205. Prior to jury service 5\% preferred a judge in criminal cases and 28\% in contract cases. After jury service 10\% preferred a judge in criminal cases while 55\% in contract cases.
\textsuperscript{58} \textit{Ibid.}
\textsuperscript{59} \textit{Supra} note 9 at 203.
\textsuperscript{60} \textit{Supra} note 9 at 204. 70\% favored trial by jury, 21\% were undecided and 9\% favored trial by judge.
\textsuperscript{61} \textit{Supra} note 9 at 203. Among those who had never served only 36\% said they would like to serve, 16\% were undecided and 48\% said they would not like to serve.
\textsuperscript{62} \textit{Supra} note 9 at 204. The percentage favoring jury trial dropped 7\% while the percentage favoring bench trial increased 10\%. 
institution of trial by jury is no formidable impediment to the abolition of the civil jury system. If the public can be made more aware of the distinction between the proposal to abolish trial by jury in criminal cases rather than the proposal to abolish trial by jury in all cases, and can be adequately informed of the relative disadvantages of the civil jury system and advantages of the judiciary system, a great deal of the opposition to the judiciary system might disappear.

The argument that there is no way to detect unconscious bias or prejudice in a judge, even if true, is not significant. It is true that it is impractical for counsel to conduct a *voir dire* examination of the judge. However, in the proposed judiciary system, the findings of both law and fact are reviewed on appeal. It is necessary for the judge in his opinion to justify not only his application of the law to the facts but also his findings of the facts according to the evidence presented. This is not true of the jury. The proceedings in the jury room are shrouded in a cloak of mystery. The jury neither has to justify its finding of the facts nor its application of the law to these facts. The jury merely renders a verdict of "guilty" or "not guilty." The jury occupies a unique status among democratic institutions in that its acts are not subjected to the investigation of a revisory power. The only instance where the judge is permitted to set aside a verdict is when the verdict is against the manifest weight of the evidence. In most cases, if the verdict was against such evidence, the judge could have directed a verdict. Therefore, there was no need for a jury in such circumstances in the first place. The law precludes an appellate court from disturbing the fact-finding of the jury in the trial court. There is an almost conclusive presumption at law that the jury was not prejudiced by extraneous, non-legal, influences. However, it is common knowledge that jury selection is directed by counsel at obtaining on the jury those people most susceptible to extraneous, non-legal, influences and that the present system for supplying jurors accommodates the attorney in achieving his kind of jury. In comparison with the provisions of a judiciary system in protecting a litigant from bias and prejudice in a decision of the merits of his case, the jury system offers little.

In conjunction with the argument of the inability to detect unconscious bias and prejudice in a judge, proponents of the civil jury system contend that the judge as a single man lacks the advantage of discussions with others in deciding the issues. There is an implication in their argument that because the judge does not have this opportunity to discuss his opinions with others, he will himself be unable to render an objective decision. The argument reasonably assumes that the judge like any other individual has certain unconscious biases and prejudices. Every individual is a product of

his environment and as such he is influenced in his decisions by his environment. The judge's opinions and decisions must in some way reflect the values of his environment. It is contended that besides such innate biases and prejudices, the single judge has to contend with the biases and prejudices which result from his training and experience in the field of law. The proponents of the civil jury system argue that there is an inclination on the part of the judge to categorize the fact situations, to place the fact situations which confront him into patterns which have evolved as a result of his training and experience. They contend that with a jury of twelve, there is a tendency of individual prejudices to cancel out or equalize each other. During jury deliberation, bias or distortion can be brought to the surface and neutralized. This theory is commonly referred to as the "safety in numbers" theory. This argument fails to note the inconsistency between what the jury purports to accomplish and the actual results. The jury purports to cancel out or neutralize prejudices, yet it has been indicated that the jury crystallizes common prejudices rather than eliminating personal prejudices.\textsuperscript{64} However, the judge, unlike the jury, is trained for the difficult task of hearing conflicting testimony and of synthesizing and reconciling it, of judging witnesses and the truth of their statements and of deducing the truth or falsity of particular testimony by the coherence or incoherence of the whole. Although a judge may form certain patterns into which certain fact situations may easily fit, the judge in deciding each case must contend with the particular facts of the case and justify not only his fact-finding but his application of the law as well. The arguments concerning the alleged involuntary bias and prejudice of a single judge do not take into consideration the fact that the judiciary system proposed substitutes three judges wherever there was previously a jury trial. There will not only be the element of discussion and deliberation in such cases but such discussion and deliberation will exist on a more qualified and competent level than that of the jury.

Some proponents of the civil jury system would justify the jury's disregard of the judge's instructions and reliance on extraneous, non-legal factors, such as emotions and passions, on the ground that it is a function of the jury to temper justice with the conscience of the community. Allegedly, the jury representing a cross-section of the community is better equipped to apply the general principles of law established by society. The standard of a "reasonable man" is determined in each society by the people who make up that society. The jury, it is contended, is the reasonable man for that community. It matters not that in tempering the law a jury of twelve men changes the law enacted by the whole community. There is evidence that the jury neither represents a cross-section of the

\textsuperscript{64} See 15 \textit{De Paul L. Rev.} 398 (1966).
community nor is capable of rendering a decision consistent with the law. The judiciary represents the community, also, and attempts to temper justice with the conscience of the community. However, the judiciary confines its attempts to temper justice within existing legal structure. It does not attempt to change the laws. A judiciary elected by the people must be somewhat responsive to the people who elect it. The judges do not live in a vacuum but are, like the members of the jury, continually subjected to the influences of the community.

One must only look to the examples of the equity, admiralty and numerous administrative courts. These courts continue to function and dispense justice without any great outcry from either attorneys or the public. England, which is more culturally and socially related to the United States than any other major power, exemplified the practicability and effectiveness of limiting the right to a civil jury trial as early as 1883, and in 1918 that country, restricting it as a wartime measure, abolished it in all but a few cases. After the war the restrictions to a right to a jury trial were repealed for a short period but were reënacted again as a wartime measure in 1933 and have continued in existence ever since. As Sir William Kenneth Diplock, Lord Justice of Appeal of England, commented: “The whole atmosphere of civil litigation today is unsympathetic to technical objections to admissibility.” The judge is more competent to hear and judge “all” evidence objectively without weighing some evidence improperly. He concluded that this is why the law of negligence in England is growing simpler while the law of negligence in America is growing more complex.

The State of Louisiana has never guaranteed the right to a civil jury in its constitution and has drastically reduced that right in practice. It is interesting to note that prior to 1960 the backlog in the Civil District Court of Orleans Parish never exceeded three months, while the overwhelming majority of the jurisdictions in this category never dropped below nine months.

65 Supra note 54 and notes 10, 11 & 25.
68 Id. at 301.
71 See supra note 13, wherein it lists the population in New Orleans as 627,525.
72 Ibid.
CONCLUSION

The experience of England and the other major Western democratic countries which have abandoned the civil jury system, together with the limited experience of Louisiana and of each of the states individually in the areas of equity and admiralty, offer proof that the abolition of the civil jury will not result in a loss of freedom or a lesser quality of justice. A judiciary system dispenses, as a minimum, the same quality of justice as the civil jury system, and there are indications that it dispenses a higher quality of justice.

It is not necessary that the civil jury system be abolished in its entirety in one giant sweep, but it is necessary that the right to a civil jury be curtailed or limited to some extent as has been done in Louisiana. Before any limitation can be placed upon the right to a civil jury trial in Illinois, it is necessary to revise the state constitution which guarantees to all citizens the right to a jury in civil cases. The constitution should be revised to guarantee the right to a jury only in criminal cases as is done in the constitutions of Louisiana, Colorado, and Utah. This mere revision of the constitution to exclude the guarantee of a right to a jury in civil cases will not of itself abolish that right. The right exists in the common law of Illinois and can only be abolished or limited by legislative action. However, once the revision has been accomplished, the legislature would be free to experiment with a judiciary system by limiting the right to a jury trial rather than by abolishing it completely. Some practical measures which could be attempted by the legislature upon revision of the state constitution would be to abolish the right to a jury in all cases involving $5,000 or under and restrict the right to a jury in actions on an unconditional obligation to pay a specific sum to the defenses of only fraud and error. By abolishing the jury in actions involving $5,000 or under, it is hoped to reduce the number of automobile tort cases which make up the bulk of the backlog. These restrictions should not only substantially reduce the backlog but they would allow the legislature and the citizens of the state to judge for themselves the merits of a judiciary system. In Louisiana, which has adopted measures similar to those suggested, only 300 jury trials, both criminal and civil, plagued the district court dockets for all 64 parishes in 1962. By retaining the constitution in its present form, Illinois is limited to experimenting only with modifications to the jury system, none of which go directly to the problems of substantially improving the

73 Jury Abroad, 221 Law Times 118 (March 9, 1956).
75 Supra note 70.
76 Supra note 1.
77 Supra notes 3, 4 & 5.
78 Summers, supra note 15 at 9.
quality of justice or increasing the quantity of justice. Illinois has, in fact, adopted nearly all the modifications suggested, yet Cook County continues to have the biggest backlog in the country. Even adding more judges has failed to either substantially reduce the backlog or prevent its increase. This is due to the increased amount of litigation especially in the area of automobile tort cases. Over a three-year period the number of resident judges in the Circuit Court of Cook County increased more than 300 per cent, yet the jury calendar backlog was reduced by only 15.3 per cent. The addition of more judges did not, and could not, cope with the increased amount of litigation. Only by limiting the right to a civil jury trial will the jury calendar backlog be substantially reduced without impairing the minimum quality of justice dispensed and, in all likelihood, increasing the quality of justice.

There is no federal constitutional bar to the abolition of the jury in civil cases. The only possible applicable provision in the United States Constitution is the seventh amendment which provides:

In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law.

However, the United States Supreme Court has ruled that this amendment is not a limitation on the powers of the state. The court has even gone so far as to say that in civil action in state courts, trial by jury may be modified by the state or abolished altogether.

Since there is no legal bar to abolishing the guarantee to a jury in civil cases in our state constitution, it would be unreasonable and unfair to the citizens of Illinois to deny the legislature and to themselves the power to experiment with a system which could conceivably not only dispense a higher quality of justice but also a substantially greater quantity.

Bruce Rashkow


80 Supra note 12.


82 U.S. Const. amend. VII.


84 Olesen v. Trust Co. of Chicago, 245 F.2d 522 (7th Cir. 1957), cert. denied, 355 U.S. 896 (1957).