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JURY TRIAL IN CIVIL CASES—A STUDY IN JUDICIAL ADMINISTRATION

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THE jury method of trial has long been a popular subject of legal and lay controversy.[1] Ever increasing congestion of court calendars, observed instances of allegedly unjust jury verdicts, "ambulance chasing" and other unsavory products of negligence litigation have led to increasing protest against this historic method of trial. It has been attacked as unduly expensive, inefficient, unjust, archaic, and unsuited to the needs of our present civilization. On the other hand, the jury system has been defended as intrinsically sound and highly desirable; the ills have been attributed to abuses and causes not inevitably associated with it and curable by appropriate remedies. Many changes have been suggested and some adopted: abolition or restriction of the jury trial in civil litigation or in certain types of civil litigation, decrease in the number of jurors required to constitute a jury, acceptance of a less than unanimous verdict, provisions that the right to jury trial be deemed waived unless specifically claimed, imposition of various fees and charges on the exercise of the right, and other reforms hopefully advocated as cures of the alleged evils. Individual opinion, founded upon more or less

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1. Some recent discussions are Lummus, *Civil Juries and the Law's Delay* (1932) 17 MASS. L. Q. (No. 4) 34 (1932), 12 B. U. L. REV. 487; Wilkin, *The Jury: Reformation, Not Abolition* (1930) 13 J. AM. JUD. SOC. 154; Duane, *Civil Jury Should be Abolished* (1928) 12 *id.* 137; Wigmore, *A Program for the Trial of Jury Trial* (1928) 12 *id.* 166; Corbin, *The Jury On Trial* (1928) 14 A. B. A. J. 507; Sweet, *The Jury On Trial: A Reply* (1929) 15 *id.* 241; Proskauer, *A New Professional Psychology Essential for Law Reform* (1928) 14 *id.* 121, 13 MASS. L. Q. (No. 5) 2; Green, *Why Trial By Jury?* (1928) 15 AM. MERCURY 316; Elder, *Trial By Jury: Is It Passing?* (1928) 156 HARPER'S 570; Duane and Windolph, *Should the Civil Jury Be Abolished? (A Debate)* (1928) 80 FORUM 489, 498. *Cf.* Peterson v. Fargo-Moorhead St. Ry. Co., 37 N. D. 440, 160 N. W. 42 (1917); Ethridge, J., dissenting in Talbot & Higgins Lumber Co. v. McLeod Lumber Co., 147 Miss. 186, 192, 113 So. 433, 434 (1927).

observation and experience, has been the major weapon of attack or defense. Occasionally in recent years, attempts have been made to overcome the inherent weakness of this method of controversy by supporting opinion with statistical facts not subject to dispute or vulnerable as guess or prejudice. The study of law administration in the trial courts conducted by the Yale School of Law since 1927 has produced much data of interest.[2] Selected material from that study bearing on the actual use of the jury in civil cases is presented in this article.

It is, of course, obvious that certain phases of the historic institution cannot be appraised by the statistical method. And no matter how formidable, statistics may not prevail against opinion founded upon deep emotional conviction. The jury has been regarded alternately as the Saint and the Devil of the law—the safety valve which affords relaxation from unjust rigors of the law and the imperfect material upon which may be laid the blame for the faulty workings of the machinery. Vivid pages of history may be read to establish the jury as our guaranty, worth whatever it may cost, against judicial tyranny and oppression. Statesmen may be called to attest the value of the jury system in the assurance which it gives of popular participation in government and law enforcement. Jurisprudence may be invoked to emphasize the peculiar fitness of the jury to vitalize legal standards of conduct so as to express the norms or desires of the community from which it is drawn. And there is no dearth of lawyers to testify that a jury of twelve men, good and true, is in most cases the best possible tribunal for the trial of issues of fact.

2. This study, supported for the greater part of the time during which it was carried on by a grant from a foundation, has included material on both civil and criminal cases from various courts in several states; but it has centered chiefly on trends over a period of years in a single court of general jurisdiction—the Superior Court for New Haven County, Connecticut.

Previous papers based upon this study are Clark, *Fact Research in Law Administration* (1928) 2 CONN. BAR J. 211, 1 MISS. L. J. 324; Clark, *Should Pleadings Be Filed Promptly* (1929) 3 CONN. BAR J. 69; Clark and O'Connell, *The Hartford Small Claims Court* (1929) 3 *id.* 123; Clark and King, *Statistical Method in Legal Research* (1930) 5 YALE SCI. MAG. (No. 1) 15; Harris, *Joinder of Parties and Causes* (1930) 36 W. VA. L. Q. 192; Harris, *Is the Jury Vanishing?* (1930) 4 CONN. BAR J. 73, 7 N. Y. U. L. Q. REV. 657; Shulman and Thompson, *Mortgage Foreclosures in Superior Court for New Haven County, at New Haven,* 1929-1932 (Oct. 1933) BULL. N. H. COUNTY BAR ASS'N. 4. A general report is in preparation. For the companion study of the business of the federal courts, originally conducted for the National Commission on Law Observance and Enforcement and later under the auspices of the American Law Institute, see NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT REPORT NO. 7, PROGRESS REPORT ON THE STUDY OF THE FEDERAL COURTS (1931); Arnold, *Progress Report on Study of the Federal Courts* (1931) 17 A. B. A. J. 799; Clark, *Diversity of Citizenship Jurisdiction of the Federal Courts* (1933) 19 *id.* 499. Reports will be presented to the Twelfth Annual Meeting of the American Law Institute in May, 1934.

The system's alleged fault is advanced as really its great merit; because a jury is picked anew in each case, its mistakes are spent in the individual case and do not survive as precedents to trouble it or the judge or another jury in other cases. Convictions of this kind are not based on quantitative analyses of the facts of jury trial. Conversely, they are not easily destroyed by such analyses. Even the more conservative middle ground, that the right of jury trial might well be restricted but nevertheless retained both as a guaranty of protection of the individual against arbitrary official conduct and as a safeguard for judges where disputes are sharp and decision is productive of bitterness, is not subject to statistical demonstration. But the actual facts as to the use of the jury cannot fail to be of significance. They remove many matters from the field of controversy and sharpen the issues calling for exercise of judgment and wisdom. While they do not insure wisdom in judgment, they illumine the bases upon which judgment is to be formed.

II

The subject of the present study is the Superior Court of New Haven County, sitting at New Haven, Connecticut—a trial court of general jurisdiction. All the civil cases in this court finished in the period under survey were investigated and tabulated. In the fourteen year period from January 1, 1919 through December 31, 1932, there were finally terminated 23,349 civil cases.[3] In only 934 cases of this number, or 4%, was a jury trial had or at least begun.[4] But some 45% of the total cases

3. Since Connecticut has long been a code state, this total includes, of course, cases which, in other states, are separately tabulated as equity or chancery cases. It includes also divorce actions. In the first part of the period, divorce actions comprised the largest single class of cases in this total, with negligence actions next and foreclosures a close third. In the last five years, negligence actions jumped to first place with foreclosures a close second and divorce a poorer third. The classification of the total cases for the period is as follows:

Divorce—5458 or 23.4%
Negligence—5434 or 23.3%
Foreclosures—5192 or 22.2%

Of the negligence cases, 4098, or 17.5% of the total of all cases, involved automobile accidents. In the last four years of the period alone, the total number of cases terminated was 9443, distributed among the three types as follows:

Negligence—2907 or 30.8%
Foreclosures—2678 or 28.4%
Divorce—1542 or 16.3%

Of the negligence actions, 2211, or 23.4% of the total cases, involved automobile accidents. While divorces dropped off in the years 1929-1932, there were more negligence and foreclosure actions in those four years than in the ten preceding years.

4. In Connecticut, a jury may be had only if properly requested by either of the parties. Failure to make the request constitutes a waiver of the right of jury trial. Prior to 1927 a jury trial fee of $6 was required to accompany the request. Since 1927,

were terminated by withdrawal or discontinuance without trial. Considering, then, only the cases which were terminated by some judicial action the number of jury trials constitutes 7% of the total. In these totals are included, of course, cases in which a jury cannot be had as of right. But the figures given show the very small extent of the use of the jury as compared to the entire judicial business done by this court.[5] Unless the cases in which the jury is used are of peculiar significance despite their small number or unless the use of the jury in these cases has an influence which pervades all the others, this method of trial appears at once as of comparatively limited effect on the total bulk of litigation.

The use of the jury is restricted largely to one type of action, the negligence case. In the fourteen year period, almost three-quarters of all the jury trials occurred in the negligence group. Automobile accident cases account for about half of the total jury trials. And this trend seems to be accelerating. Thus in the last four years of the period, 1929 through 1932, automobile accident cases accounted for 55.1% of all the jury trials; all negligence cases (including automobile) accounted for 80.7%. Only 7.7% of all the jury trials occurred in the breach of contract and debt types of cases.[6] The remaining 11.6% of the jury trials were scattered among the various types of cases as follows: Real Property Actions, 2 cases; Probate Appeals, 4 cases; Fraud Actions, 6 cases; Assault and Battery, 9 cases; Slander and Libel, 5 cases; Conversion, 2 cases; Breach of Promise and Alienation of Affections, 6 cases; Miscellaneous, 8 cases.

The frequency of the negligence actions in the total of jury trials is out of all proportion to their frequency in the total case load or in the total number of cases triable by jury at the pleasure of the litigants. Thus, in the fourteen year period the total number of negligence actions terminated in any manner and the total number of negligence actions tried were each 1.8 as great as the corresponding totals of breach of

the jury trial fee has been $10. CONN. GEN. STAT. (1930) §§ 2254, 5624. The 934 jury cases include those in which settlements were reached during trial and withdrawals or stipulations entered accordingly.

5. The seeming impossibility of disposing of more than a slight fraction of all litigation in Massachusetts by means of jury trial has led at least one eminent member of its bar to prophesy that "the jury trial will pass of its own accord." See letter of Dunbar F. Carpenter in (1929) 15 A. B. A. J. 581. For comparative figures from other states, see note 9, *infra*.

6. There were 363 jury trials in this period of four years, distributed as follows:

Breach of contract and debt—28
Automobile negligence—200
All negligence, including automobile—293
All other cases—42

contract and debt cases. Yet the number of jury-tried negligence actions was 6.3 as great as the corresponding number of breach of contract and debt cases. So also, one and a third as many automobile accident cases were terminated in any manner as were breach of contract and debt cases. And the number of tried cases in the former type was one and a quarter as large as in the latter; yet the number of jury trials was 4.2 as great. This disproportion seems to be wider in the later years than in the earlier.[7] And because traffic accident cases have been continuously increasing, and at a more rapid pace than the other types of cases (except mortgage foreclosures in the depression years), the annual number of jury trials has tended to increase, as is shown in the following table.

Year	Number of Jury Trials
1919	38
1920	54
1921	35
1922	35
1923	62
1924	50
1925	66
1926	56
1927	75
1928	100
1929	80
1930	68
1931	85
1932	130

The data given above show the frequency of the several types of cases in the total number of jury trials. With this may be considered the converse, the frequency of jury trials in the several types of cases. Counting only those cases which were terminated by a judgment after court or jury trial, in the ten years 1919-1928, the ratios for the ten year period are as follows:[8]

7. Thus, in the four years 1929-1932, the number of negligence actions terminated in any manner (2907) was 3.1 times as large as the corresponding number of contract actions (945); and the number of tried negligence cases (464) was 2.7 as large as the corresponding number of contract cases (172). Yet the number of jury trials in the former type was 10.5 as large as in the latter. The total number of automobile accident cases (2211) and the number tried (332) were, respectively, 2.3 and 1.9 as large as the corresponding numbers of contract cases (945 and 172). Yet jury trials were 7.1 as numerous in the former type as in the latter.

8. Because of inexperience in the collection of this data, the number of cases which were withdrawn, settled or discontinued during or after trial or appeal were not separately counted for the ten year period, 1919-1928, and were treated in the same manner as cases settled, withdrawn or discontinued without trial. For the four year period, 1929-

Type of Case	Total	Tried with a Jury Number	Tried with a Jury Per Cent of Total	Tried without a Jury Number	Tried without a Jury Per Cent of Total
Breach of Contract and Debt	354	66	18.6	288	81.4
Automobile Negligence	330	193	58.5	137	41.5
All Negligence, including Automobile	480	296	61.7	184	38.3
Other Types having both jury and non-jury trials	383	73	19.1	310	80.9

In the other types of cases, as has been indicated, jury trials were too few in number to merit consideration in this connection. Unlike the situation in some other states, jury trial of negligence actions was waived in a very substantial percentage of the cases, but was elected in a substantial majority. And, again, unlike the situation in some states, jury trial was elected in only a small percentage of the contract cases.[9]

1932, the cases withdrawn or discontinued during or after trial were separately treated. For this period the following were the ratios of jury to non-jury trials for all cases in which trials were at least begun, regardless of whether they terminated in judgments, withdrawals or discontinuances:

Type of Case	Total	Tried With a Jury No.	Tried With a Jury Per Cent of Total	Tried Without a Jury No.	Tried Without a Jury Per Cent of Total
Debt and Breach of Contract	172	28	16.3	144	83.7
Automobile Negligence	332	200	60.2	132	39.8
All Negligence, including Automobile	464	293	63.1	171	36.9
Other Types having both jury and non-jury trials	151	42	27.8	109	72.2

But while these figures are more accurate than those given in the text, it will be noted that the ratios are not substantially changed.

9. Comparison with other states is limited by the lack of data. Judicial civil statistics are still in the embryonic stage. See Marshall, *Judicial Statistics in the United States* (1933) 167 ANN. AM. ACAD. 135. Even with the available data comparison is hazardous because of lack of uniformity. But subject to the proper caution, the following comparative figures may be given:

The Massachusetts Judicial Council reports that for the years 1918-1932 there were 47,170 "law trials" in the Superior Court for the entire state. Of this number, 37,518 or 79% were "jury" and 9652 or 21% were "jury-waived" cases. For the county of Suffolk in which Boston is located, 81% of the 21,938 "law trials" in the period were "jury" cases and 19% "jury-waived." In 1933 there was a marked increase in the percentage of "jury waived" "law trials": for the state, the percentage rose to 38.8; for Suffolk County, to 46.9. NINTH REPORT (1933) table facing p. 96.

The Judicial Council of Rhode Island reports the following data on the law trials, in the Superior Court for Providence and Bristol Counties:

Year	Total No. Tried	Tried With Jury	Tried Without Jury	Per Cent Without Jury
1927	432	420	12	.27
1928	521	508	13	.24
1929	—	514	—	—
1930	507	450	57	1.12
1931	563	411	152	27.
1932	590	442	148	25.
1933	483	345	138	28.57

SEVENTH REPORT (1933) 20.

Since a jury trial in civil cases cannot be had in Connecticut unless it is specifically claimed and a jury fee of $10 paid by the claimant,[10] it is instructive to investigate by whom the claim of a jury is made. For this purpose no discrimination need be made between those cases which were ultimately tried and those which were withdrawn or discontinued without trial. In the fourteen year period, juries were claimed in 4073 cases. In only 7.2% of these cases was the claim made by the party defendant; in the other 92.8%, the plaintiff made the claim. Fuller information is conveyed by the following table:

	Per Cent of Total Cases in Which Jury Not Claimed	Per Cent of Total Jury Claims Made by Plaintiff
All Cases	....[11]	92.8
Breach of Contract and Debt	87.1	66.5
All Negligence	41.3	97.6

In the Supreme Court of New York in the First Judicial Department there seems also to have been a marked increase in the number of non-jury trials. The following are the figures reported for the Trial Term in New York County (excluding inquests):

Year	With Jury	Without Jury	Per Cent Without Jury
1928	2,042	1,626	44.3
1929	1,391	1,736	55.5
1930	1,309	1,161	47.
1931	1,073	1,072	50.
1932	968	1,276	56.9

Judicial Statistics of the Work of the Supreme Court of the State of New York in the First Judicial Department (1928) 29; *id.* (1929) 30; *id.* (1930) 30; *id.* (1931) 30; *id.* (1932) 30.

A "summary of the civil actions (other than divorce) tried on the merits" in the district courts of Kansas follows:

Year	With Jury	Without Jury	Per Cent Without Jury
1928	650	6,609	91.
1929	708	5,695	88.9
1930	693	7,159	91.2
1931	876	7,736	89.8
1933	610	11,069	94.8

Kansas Judicial Council, Annual Report (1928) 70; *id.* (1929) 76; *id.* (1930) 76; *id.* (1931) 154; *id.* (1933) 144. The Kansas figures are obviously not here comparable since they apparently include the types of cases in which a jury may not be had as of right. They have a greater bearing on the previous discussion of the ratio of jury trials to total litigation. See note 5, *supra*. For more detailed classifications, but over a short period, see Michigan Judicial Council, Second Report (1932) 70-73.

On the effect in New York of the enactment of the provision that jury trial is waived unless affirmative demand is made therefor, N. Y. Civ. Prac. Act (1920) § 426, as amended 1927, see Clark, *Fact Research in Law Administration* (1928) 2 Conn. Bar J. 211, at 226, 227. For the different types of provisions with respect to waiver of jury trial, see Clark, Code Pleading (1928) 54, 67; 1 Clark, Cases on Pleading and Procedure (1930) 529.

10. The fee was increased from $6 to $10 in 1927. See note 4, *supra*.

11. A figure is not here given because the class "All Cases" includes those in which a claim of jury trial is not permitted.

That the plaintiff made the claim for a jury is not, of course, conclusive proof that the defendant did not desire a jury and would have waived it had he had the full choice. Yet it is significant that where plaintiffs did not elect jury trial and defendants did have full choice to do so they availed themselves of the opportunity in so few cases. And it is also significant that the defendants did elect jury trials in such a strikingly greater percentage of the cases of the contract type than of the negligence type. The figures do not suggest an explanation. But they do suggest an inquiry, the answer to which can doubtless be found only in the psychological attitude of lawyers toward juries. Perhaps the answer is the assumed propensity of juries to sympathize with the "underdog," the defendant debtor playing that role in the breach of contract and debt cases, the injured plaintiff in the negligence cases. Perhaps in the contract and debt actions there is the additional desire to delay the payment of a debt to which there is no, or only a doubtful, defense; for, as will be seen, jury cases are terminated much less expeditiously than are non-jury cases. Similar tactics in the negligence cases may not be resorted to as frequently by defendants for fear of the first consideration mentioned.

III

It is also of considerable interest to note the localities from which the jurors are chosen. A traditional defense of the jury trial is that it enables the vague standards of the law to be endowed with operative meanings which will keep pace with the mores and desires of the community—a result which it is said cannot be achieved by judges presumed to be cloistered and removed from the hurly-burly of life. Attention to the localities from which jurors are chosen may cast light upon the effectiveness with which this jury function is performed.

The jurors for the Superior Court are selected from the entire County of New Haven. The City of New Haven is the county seat and the second largest (during a part of this period, the largest) city in Connecticut. Surrounding the city are a number of smaller cities and rural communities. In the following table are set forth all the cities and towns of the county, their populations,[12] the number of jurors contributed by each to the juries in the cases tried to a jury in the ten year period, 1919-1928, and their rank in terms of population and number of jurors. In preparing the table each jury panel and each petit jury in each case

12. The population figure used is the average of the figures given by the 1920 and 1930 censuses. For the purpose of the comparisons made in the table, it actually makes little difference whether the average, the 1920 or the 1930 figure be used. See CONN. STATE REGISTER AND MANUAL (1933) 300.

was considered separately.[13] Consequently, if, for example, one individual from Ansonia was included in the panels for six cases and sat on the petit juries in three cases, Ansonia was credited with six jurors in the "Panels" column and three jurors in the "Petit Juries" column.

GEOGRAPHICAL DISTRIBUTION OF JURORS

Town	No. of Residents on Jury Panels	No. of Residents on Petit Juries	Population	Per Cent of Population on the Panels	Per Cent of Population on the Petit Juries	Rank in respect of Population	Rank in respect of percentage on the Panels	Rank in respect of percentage on the Petit Juries
Ansonia	872	348	18,770	4.6	1.9	4	21	21
Beacon Falls	533	224	1,643	32.4	13.6	17	5	6
Bethany	424	171	445	95.3	38.4	24	1	1
Branford	470	186	6,824	6.9	2.7	11	18	18
Cheshire	767	336	3,059	25.1	11	13	9	8
Derby	665	201	11,013	6	1.8	9	19	22
East Haven	502	199	5,667	8.9	3.5	12	15	15
Guilford	567	287	2,960	19.2	9.7	14	11	10
Hamden	649	270	13,815	4.7	2	6	20	19
Madison	497	258	1,887	26.3	13.7	16	8	5
Meriden	1,042	418	36,622	2.8	1.1	3	23	23
Middlebury	189	104	1,262	15	8.2	19	12	12
Milford	906	382	11,426	7.9	3.3	8	16	16
Naugatuck	658	278	14,683	4.5	1.9	5	22	20
New Haven	1,852	590	162,596	1.1	.36	1	24	24
North Branford	466	245	1,219	38.2	20.1	20	3	3
North Haven	582	271	2,849	20.4	9.5	15	10	11
Oxford	305	117	1,069	28.5	10.9	22	7	9
Prospect	235	123	398	59	30.9	25	2	2
Seymour	670	271	6,835	9.8	4	10	14	14
Southbury	351	158	1,113	31.5	14.2	21	6	4
Wallingford	942	429	13,144	7.2	3.3	7	17	17
Waterbury	668	190	95,808	.7	.2	2	25	25
Wolcott	119	46	845	14.1	5.4	23	13	13
Woodbridge	460	181	1,400	32.9	12.9	18	4	7

The least populous town of the county, Prospect, not only had the second largest ratio of jurors to population, both on the panels and the petit juries, but had a representation on the panels numerically larger than that

13. For each case in which a jury is used, the Clerk keeps a jury sheet on which are recorded, among other things, the jurors constituting the panel, the petit jurors chosen from the panel, the towns in which they reside and their days of service in connection with that case. These sheets are the basis for this table and others to follow.

of two other towns from two to three times as populous, and a representation on the petit juries numerically larger than that of three towns from two to three times as populous. Bethany, the second smallest of the twenty-five, had the largest ratio of jurors to population both on the panels and on the petit juries. In both instances, its absolute numerical representation was larger than that of four other towns approximately two to three times its size. The largest cities in the county had the smallest ratio of jurors to population.

The disproportionate contribution of jurors by the rural areas is apparent even on superficial glance. If the value of juries is based on their representation of the communities in which cases are tried, then the above table eloquently bespeaks the denial of such representation to large portions of the population in New Haven County and the consequent lack of the condition which makes jury trial socially valuable. The Judicial Council of Connecticut has noted "the unfairness of this distribution and its tendency to impair the quality of the jurors finally selected" and has urged amendment of the statutory method for the selection of jurors which caused the above distribution.[14]

IV

The protest against the expense of jury trials finds ample support in the facts. The 571 civil cases in connection with which juries were called in the ten years 1919-1928, involved the payment of 27,321 juror fees or an average over the period of 48 juror fees per case, one day's fee to a juror being counted as a juror fee. The average number of juror fees per case did not fluctuate widely from year to year and ranged from a low of 39 in 1920 to a high of 61 in 1922, with 50 as the most frequent average. In terms of the number of jurors called from their work and paid the jury fee, a jury trial does not involve simply the traditional twelve men. In each of the ten years, the average number of jurors in paid attendance for each case on the first day of trial remained fairly constant, ranging from 17 in 1924 to 21.5 in 1926—the average for the entire period being 20. On the second day of trial, for those cases which had a second day, the average number of jurors in paid attendance ranged from 16 in 1924 to 21.4 in 1921, the average for the period being 17.7. For every subsequent day of trial, the average number of jurors in paid attendance per day continued to be well above 12. In the ten year period, the average number of jurors who were in paid attendance on every day on which a jury was called was 18, the average in each year ranging from 15 in 1924 to 20.5 in 1921. The detail is given in the following table:

14. CONNECTICUT JUDICIAL COUNCIL, FIRST REPORT (1928) 14, 17.

JURORS IN PAID ATTENDANCE

	Average for ten years	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
Average number of jurors in paid attendance per case on 1st day of trial	20	19	19.3	20	19.8	20	17	19	21.5	21	20
Same: 2d day	17.7	18.5	18.4	21.4	16.5	16.4	16	18	19	17	18
" : 3d "	18	18	19.5	20.8	17.4	17	15.6	18	18	17	17.6
" : 4th "	16	18.6	19.3	17	15.6	16	16	17	16.6	14	16.6
" : 5th "	16	13.8	15.5	22	14.4	13	16	19	16.5	17	17.8
" : 6th "	16.6	15.5		22	12	17.7	16	18.6	21	16	18
" : 7th "	14	12		22	13.3	12	17.6	15.5	10	12	16.5
" : 8th "	12	12			12	12	12	12	8.5		17
" : 9th "	15	12			14.5	12	12		20.5		17
" : 10th "	16	17			12		16		17		17
" : 11th "	13	12			12		12		18		
" : 12th "	12	12			12		12		12		
" : 13th "	12.6				12		20		18		
" : 14th "	14.5						12		17		
" : 15th "	17						17				
" : 16th "	12						12				
" : 17th "	17						17				
" : 18th "	16						16				
Average number of jurors in paid attendance per day of jury trial	18	17.5	19	20.5	16.8	17.6	15	18.3	19	18.6	19

The juries in the Superior Court at New Haven are not centrally empanelled. Each judge holding a jury session has his own separate jury panel. On the first day of the session the whole panel is called. After a petit jury is chosen for the the first case, the remaining jurors, except those who are excused for the entire term, are dismissed for the day and instructed to return the next day or at some later time when it is anticipated the first case will be finished and another ready for trial. But, though not used, these jurors have earned their fees and travel allowances for the day. When they return at the appointed time, the case on trial may not yet have terminated. They may wait a few hours until it appears that there is no prospect of termination that day. Again they are excused and again they have earned their fees and allowances.

The juror fee in Connecticut is $4.[15] On the basis of the above averages, the average jury fees per case in the 517 cases of the ten year period

15. It was raised from $3 in 1919. Conn. Laws 1919, c. 304.

were $192, the figure in each year ranging from a low of $156 in 1920 to the high of $244 in 1922. And this does not include the jurors' travel allowances. An attempt was made to ascertain from the Clerk's vouchers the actual amounts expended in fees and travel allowances, but because of the manner in which these records are kept, complete accuracy was not attainable. Yet, since the possible errors are due to the omission of lost, misplaced or overlooked vouchers, they are all errors of understatement. The figures given in the following table are therefore the minimum amounts which it is certain were expended.

Year		Jury Fees		Jury Travel Allowances		Total
1919		$6,845.00		$1,596.68		$ 8,441.68
1920		8,848.00		2,569.50		11,417.50
1921		7,044.00		2,073.30		9,117.30
1922		9,108.00		3,477.70		12,585.70
1923		6,184.00		1,719.60		7,903.60
1924		.....		.....		5,341.40
1925		.....		.....		18,635.90
1926		.....		.....		15,471.20
1927		.....		.....		15,282.90
1928		.....		.....		18,203.40
Total	5 yrs.	$38,029.00	5 yrs.	$11,436.78	10 yrs.	$122,400.58

Taking the number of cases in connection with which a jury was called as previously stated and the minimum fees and travel allowance as just set forth, the average expenditure per jury case is as follows:

Year	Average Fees and Travel Allowances per Case
1919	$222.15
1920	207.59
1921	260.49
1922	359.59
1923	127.48
1924	106.83
1925	282.36
1926	281.29
1927	203.77
1928	182.03
Average for 10 years	$214.36

The unusually small amounts for 1923 and 1924 are probably not correct and the errors are doubtless due to the probable omissions that have been mentioned. It is safe to state that the average expense per jury case for jury fees and travel allowances alone, in the ten years, is well over $214. The average expense to the State per jury case is thus greater by at least $214 than that per non-jury case. Actually the disparity is, of course, much greater. For, in order to gauge accurately the sum by

which the State's expense in a jury trial exceeds that in a non-jury trial, there must be added to the jury fees and travel allowances the expenses of selecting and summoning the jurors, the expense of the additional deputy sheriffs engaged to attend upon the juries, the other expenditures incident to jury trial alone, and the expense caused by the longer period of trial discussed below.

V

Against this cost of the jury system are to be weighed the results which it achieves. The disposal of the 571 cases in the years 1919-1928 is recorded in the jury sheets as follows:

DISPOSITION OF CASES

Verdict for a party	383 or 67.1%
Directed verdict	19 or 3.3%
Settlement during trial	74 or 13 %
Withdrawal from jury	21 or 3.7%
Disagreement	16 or 2.8%
Mistrial	4 or .7%
Nonsuit	18 or 3.1%
Unknown and Miscellaneous	36 or 6.3%

Money verdicts were entered in 244 of the cases. The size of these verdicts is set forth in the following table:

Amount of Verdict	Number of Cases	Per Cent of Total Number of Money Verdicts
$1-250	24	9.8
$251-500	29	11.9
$501-1,000	37	15.2
$1,001-2,000	47	19.3
$2,001-3,000	32	13.1
$3,001-5,000	47	19.3
Over $5,000	28	11.5
Total	244	100

This table suggests many inquiries. In some 10% of the money verdicts the amount of the verdict is barely as large as the State's expenditures for the services of the jurors alone. Twenty-one per cent of the cases, if the amounts demanded corresponded with the amounts recovered, would have been solely within the jurisdiction of the inferior courts and without that of the Superior Court, which is limited to amounts over $500. Likewise, if the amounts demanded had corresponded with the amounts recovered, 56.2% of the cases would have been within the concurrent jurisdiction of the Court of Common Pleas, which extends to cases involving from $100 to $2000. The table suggests the probability that limitations on jurisdictional amount are not an adequate means of distributing judicial business among the several courts. Some

other means, such as a unified court with a directing administrative head, may be necessary to avoid expensive overlapping of courts.[16] Data for the four years, 1929-1932, bear out this belief. The 215 money verdicts were distributed among the several amount groups as follows:[17]

Amount of Verdict	Number of Cases	Per Cent of Total Money Verdicts
$1-250	19	8.8
$251-500	19	8.8
$501-1,000	46	21.4
$1,001-2,000	44	20.5
$2,001-3,000	26	12.1
$3,001-5,000	28	13
Over $5,000	33	15.4
Total	215	100

VI

The preceding pages present the general picture of what the jury accomplished in the years under survey and of the expenditures and burdens involved in that accomplishment. Appraisal of this method of trial needs, however, comparison with the other method used, trial by court without jury. But such comparison does not lend itself easily to mathematical statement or investigation. A mortgage foreclosure is certainly different from a negligence action. And each negligence action has infinite points of possible difference from all other negligence actions, not the least ponderable being the personal characteristics and methods of the lawyers retained to try it. Qualitative comparison of the two methods of trial must rest ultimately on observation, personal intuition, and individual opinion and judgment not subject to objective demonstration. In the research here reported no attempt was made to deal with the subject-matters of the controversies beyond classifying them into general types, or to investigate the situations presented in the cases. And there was no attempt to form an opinion as to the merit of the disposals made of the individual cases.[18]

16. See the discussions in *The Administration of Justice* (1933) 167 ANN. AM. ACAD. 1-60.

17. For similar studies of the amounts recovered, see MASSACHUSETTS JUDICIAL COUNCIL, FOURTH REPORT (1928) 87, FIFTH REPORT (1929) 81; MICHIGAN JUDICIAL COUNCIL, SECOND REPORT (1932) 41.

18. The experiment along these lines of Mr. Justice McCook of the Supreme Court of New York County is highly interesting and rather unique. While sitting at trial term with juries he kept careful record of the verdicts, his own opinions as to the merits of the cases, the points of difference between himself and the juries, the causes which he believed led to the differences, the performances of counsel, and so forth. The results of his investigation are reported in McCook, N. Y. L. J., March 2, 1928 at 2643, and Wherry, *A Study of the Organization of Litigation and of the Jury Trial in the Supreme Court of New York County* (1931) 8 N. Y. U. L. Q. REV. 396, 640.

Yet quantitative comparisons of the results of the two methods of trial involved in this study may have considerable qualitative value. The study is confined to a single court in a single city. The period covered is quite long, fourteen years. The number of cases considered is not too small. And the considerations which lead parties in each case to choose one method over the other are vague, diverse and subjective—not determinate, uniform or objective. Perhaps, therefore, it may be assumed that under the circumstances, the differences in the situations between individual litigations will, by and large, be equally present in each method of trial and will cancel each other.

From the Clerk's diaries were computed the number of days devoted to the trial of cases by the two methods. The information thus acquired is given in the following table. The unit employed is that of one judge holding court one day. Thus, if on a single day one judge was trying cases without a jury and two judges were trying cases with juries, three days were recorded, one "court day" and two "jury days." The Short Calendar "days" are the "Court Days," as above defined, held on Fridays, when only motions, demurrers, foreclosures, ex parte divorces and general uncontested cases are heard.

NUMBER OF DAYS DEVOTED TO TRIAL

Year	Total "Days"	Total "Days" Excluding Short Calendar	"Court Days"	"Court Days" Excluding Short Calendar	"Jury Days"	Ratio of "Jury Days" to Total "Days"	Ratio of "Jury Days" to Total "Days" Excluding Short Calendar
1919	261	223	146	108	115	44%	52%
1920	296	240	185	129	110	35%	46%
1921	290	239	197	146	93	32%	39%
1922	319	266	213	160	106	33%	40%
1923	346	287	214	155	132	38%	46%
1924	323	270	185	132	138	43%	51%
1925	359	301	225	167	134	37%	45%
1926	314	264	185	135	129	41%	49%
1927	368	315	191	139	176	48%	56%
1928	...	...	...	...	...	....	....
1929	406	351	214	159	192	47%	55%
1930	417	369	197	149	220	53%	60%
1931	...	...	...	...	...	....	....
1932	477	428	177	128	300	63%	70%
Total	4176	3554	2330	1707	1846	44%	52%

As has been previously noted, jury participation was limited to only 7% of the total number of cases terminated by some judicial action. Yet, as shown in the above table, 44% of the total "days" were devoted to jury trials. But this comparison overlooks even the obvious differences between the general types of cases. It is clearly improper to compare for this purpose uncontested divorce or foreclosure actions, which are speedily disposed of on short calendar, with contested contract or tort cases. The available data does not permit comparison in the several types of cases separately. Yet the generality of the above comparison may be considerably narrowed. Counting only those types of cases in which there were both jury and non-jury trials, and excluding short calendar judgments and therefore also short calendar days, 934 cases were disposed of with jury participation as against 1206 without jury participation. Thus in the same general class of cases the court disposed of one and a quarter as many cases as did the jury in nine-tenths of the "days" required by the jury, *in addition* to its disposal of between one and two times as many other cases of types in which there were no jury trials.

A comparison of the time intervals that elapsed between the commencement and termination of cases disposed of by court and jury trial is also favorable to the former. Thus, of the automobile negligence cases tried to a judge without a jury, in the ten year period, 96% were terminated within three years after commencement, 92% within two years, 58% within one year, 22% within six months and 5% within three months. The corresponding percentages for the jury-tried cases of this same type are 90%, 81%, 53%, 22% and 2.5%. For negligence cases other than automobile, the respective percentages are 96%, 82%, 53%, 18% and 10%, as against 82%, 71%, 44%, 14% and 1%.

The record of appeals further weighs heavily against the jury method of trial. The frequency of appeals and the frequency of reversals on appeal are considerably much greater in the jury cases than in those of the same types tried without a jury. In the years 1929-1932, for example, appeals were taken in 35 negligence cases out of 293 tried to juries; while of the 171 negligence cases tried to the court, only 5 were appealed. Of the 35 jury cases 13 were reversed; while of the 5 court cases, one was reversed. Similarly, of the 28 contract and debt cases tried to juries, 6 were appealed and 5 of them reversed; while of the 144 cases tried to the court, 12 were appealed and 4 reversed. Taking all the cases in these four years without differentiation as to types, appeals were prosecuted in 115 cases, of which 52 had been tried to juries and 63 to the court. Reversals in the court cases numbered 18, or 28.6% of the court cases appealed. In the jury cases, the reversals numbered 21, or 40.4% of the jury cases appealed. In the ten year period the contract and debt cases

appealed numbered 42, 28 court and 14 jury cases. Of the court cases 6, or 21.4%, were reversed. Of the jury cases 7, or 50%, were reversed. In the negligence group, 13 court cases were appealed with 4, or 30.8%, resulting in reversal; and 68 jury cases were appealed with reversals resulting in 23, or 33.8%. There were 135 appeals in cases of the various types other than those mentioned. Of these, 116 were court cases and 19 were jury. Of the court cases, 34, or 29.3%, were reversed. Of the jury cases, 9, or 47.4%, were reversed. Considering the total number of appeals in all the types together, there were reversals in 28% of the appealed court cases and in 38.6% of the appealed jury cases.[19]

Comparison of the court and jury cases with respect to the winning party and the amount of the verdict in the money judgment cases is, of course, more hazardous than the comparisons made above. The figures reflect none of the data which differentiate case from case, except the broad type. The general comparison may be presented, however, for whatever value it may have.

	No. of Judgments for Plaintiff		No. of Judgments for Defendant		Total Judgments		Percentage of Judgments for Plaintiff	
	Court	Jury	Court	Jury	Court	Jury	Court	Jury
Breach of Contract and Debt	287	54	92	26	379	80	75.7	67.5
Automobile Negligence	160	247	95	120	255	367	62.7	67.3
All Negligence, including Automobile	197	324	141	202	338	526	58.3	61.6

The above figures cover the entire fourteen years. In the last four years the spread between the percentages of plaintiffs' judgments was greater. Thus, in the three types of actions mentioned, and calculated on the same basis as in the above table, the plaintiffs obtained judgments in 66.3%,

19. See NEW YORK LAW SOCIETY, SOME ASPECTS OF APPEALS (1934) where 186 money judgments appealed from the Supreme Court of New York County, First Department, in 1930 are analyzed and a calculation made that the percentage of appeals to total judgments in the jury cases of that year was 14.3% while the corresponding percentage for the non-jury cases was 70.7%. The latter percentage is so high as to seem incredible. Perhaps the short cut used to find the base of total judgments unfortunately resulted in error. But no such doubt surrounds the statement that in the appeals mentioned, the judgment below was affirmed in 74.2% of the jury cases and in 70.7% of the non-jury cases. Compare, however, MASSACHUSETTS JUDICIAL COUNCIL, EIGHTH REPORT (1932) 64: "An examination of the *results* of the review by the Supreme Judicial Court of rulings by the Superior Court for the five-year period 1927-1931 inclusive, applying the severe test that any modification of the action of the Superior Court shall be considered a reversal, shows that the Superior Court was sustained in its rulings to the extent following:

In workmen's compensation cases—69.44%
In civil jury cases—72.20%
In civil cases without a jury, including interlocutory rulings—77.81%."

60.7% and 58.6% respectively of the court cases, while the corresponding figures for the jury cases were 72.7%, 71.5% and 65.5%.[20] It is interesting to compare these figures with those previously set forth anent the party who claims the right of jury trial. The plaintiffs' greater willingness to waive the right in contract cases than in negligence actions finds some basis in their record of victories in the two types of cases.

VII

This report is presented not to prove a thesis about the jury, but to indicate the possibilities and suggest inquiries. Perhaps, however, a brief comment may be permitted. Whatever the political, psychological or jurisprudential values of the jury as an institution may be, its use in the civil litigation covered by this study is certainly not impressive. The picture seems to be that of an expensive, cumbersome and comparatively inefficient trial device employed in cases where exploitation of the situation is made possible by underlying rules. Persuasive reasons are found in the facts set forth for the definite limitation of the right of jury trial to the role of safety valve; and for the greater use of the summary judgment in the debt cases,[21] the requirement of substantial jury trial fees,[22] and the reduction in the number of jurors required for a petit jury to nine or even six.[23]

But it is possible that a different and additional change may come as

20. For interesting comparative data in other states, see MASSACHUSETTS JUDICIAL COUNCIL, EIGHTH REPORT (1932) 12-14; MICHIGAN JUDICIAL COUNCIL, SECOND REPORT (1932) 63.

21. Finch, *Summary Judgment Procedure* (1933) 19 A. B. A. J. 504; Clark and Samenow, *The Summary Judgment* (1929) 38 YALE L. J. 423; Cohen and Shinentag, *Summary Judgments in the Supreme Court of New York* (1932) 32 COL. L. REV. 825; Saxe, *Summary Judgments in New York—a Statistical Study* (1934) 19 CONN. L. Q. 237. *Cf.* the English New Procedure of 1932. Davies, *The English New Procedure* (1933) 42 YALE L. J. 377; Millar, *The "New Procedure" of the English Rules* (1932) 27 ILL. L. REV. 363.

22. In its last two reports, the Massachusetts Judicial Council has recommended a jury trial fee for the relief of the very serious congestion in the Superior Courts of that State, particularly in Suffolk County. NINTH REPORT (1933) 18; EIGHTH REPORT (1932) 18. For a table of jury trial fees required in the several states, see RHODE ISLAND JUDICIAL COUNCIL, FIFTH REPORT (1931) 28. The Rhode Island Council, also, has recommended a jury trial fee. *Id.* at 19; SEVENTH REPORT (1933) 8. On the effect in New York of the requirement of a jury fee, see Tuttle, *Reforms in Federal Procedure* (1928) 14 A. B. A. J. 37, 41; Clark, *supra* note 9.

23. The Judicial Council of Rhode Island has recommended an optional form of decrease with a jury trial fee as an inducement; that is, a requirement of a fee for a jury of twelve and no fee for a jury of six—the choice resting with the parties. FIFTH REPORT (1931) 20. The Connecticut Judicial Council has recommended a constitutional amendment authorizing the legislature to fix the number of jurors below twelve. Pending adoption of such an amendment, it advised the judges to adopt a rule of court which would provide

an incident of a separate and more revolutionary reform. In the court studied, as elsewhere in the country, the jury has become identified in very major part with automobile accident litigation. Much dissatisfaction has been expressed with this method of administering compensation for such accidents. After extended study, a distinguished committee has suggested that compensation for automobile accidents be removed from the sphere of litigation and be administered by an administrative tribunal on the basis of liability regardless of fault, in the manner in which compensation for industrial accidents is administered.[24] Such legislation would make the number of jury trials entirely insignificant.

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that a claim of a jury trial would be interpreted as referring to a jury of six unless otherwise expressly specified by the party in his claim. THIRD REPORT (1932) 7; SECOND REPORT (1931) 15.

A unique device peculiarly applicable in Massachusetts, in view of its compulsory motor vehicle insurance law, has been recommended by its Judicial Council—a statute making the waiver of jury trial by a plaintiff in suits for personal injuries resulting from automobile accidents a condition precedent to his right to realize upon the compulsory liability insurance policy carried by the defendant. As a check upon defendants and their insurance carriers, a substantial jury trial fee is suggested for claims by the defendants of jury trials in cases in which the plaintiffs have waived them. EIGHTH REPORT (1932) 19; NINTH REPORT (1933) 19.

24. REPORT BY THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS (1932); FRENCH, THE AUTOMOBILE COMPENSATION PLAN (1933). See MASSACHUSETTS JUDICIAL COUNCIL, EIGHTH REPORT (1932) 22.