
The Supreme Court of New York County (Manhattan)¹ is one of many trial courts in which the problem of delay is too substantial to be ignored. Delay in the Court is the report of a study aimed primarily at appraising the effectiveness of possible means of reducing or even eliminating this blight. By deliberate choice, the authors do not seek to explain how and why the backlog has developed; they do not seek to fix blame. Rather, this is a study of the dimensions of the problem of delay in the New York Court and of the potentialities of a variety of proposed remedies. It has a firmer foundation in statistical data than any previous study of the problem. It can be instructive to those concerned with delay in any court system, both because close analogies can be found between this and other courts and because the study is more than a collection of statistical data. Much of its value is in the insights expressed both in the selection of subjects of statistical inquiry and in the interpretation of data obtained —interpretation that ranges widely from conclusions compelled by logic to possibilities suggested by informed and imaginative speculation. Aside from its value in relation to the problem of delay in court, this study deserves praise also as a pioneering venture in interdisciplinary research, inventively planned and thoughtfully developed. The success of this use of quantitative social research tools should encourage new approaches to the analysis and solution of other problems that concern both the legal profession and the public.

The statistical definition of delay used in this study includes "the whole time interval from the moment the case becomes officially recognized² to the time of trial, though it is acknowledged that this measurement includes some time that is not undesirable delay.³"

The magnitude of delay in the New York Court in late 1956 is stated in sev-

¹ Referred to hereafter as the New York Court, the term also used in Delay in the Court.

² Apparently the authors regard the case as officially recognized in the New York Court before late 1956, when "issue is joined and the plaintiff notices the case for trial" (p. 51). The phrase "date of filing" appears to refer to the same point in the history of the case (pp. 44, 271). The requirement that the first papers filed be accompanied by a certificate of readiness, introduced in the New York Court in late 1956, interrupts the homogeneity of data and causes the authors to base most of their study on data extending only to December 31, 1956 (p. 59).

³ The explanation for this choice of meaning is that "clarity of analysis [is] best served *** by not attempting to separate recorded delay time from 'actual' delay time in terms of the parties' expectations" (p. 52).
eral ways: (1) Average delay per case among the personal injury jury cases tried in regular order (59 per cent of all personal injury jury trials), 39 months; (2) average delay per case among the personal injury jury cases tried under preferment (41 per cent of all personal injury jury trials), 16 months; (3) average delay per case among all personal injury jury cases that were tried (both of the above groups combined), 30 months; (4) delay of all other categories of cases tried, none; (5) average delay of all categories of cases on the law trial calendars combined, 10 months (ch. IV). The third and fifth of the foregoing measures of delay are chosen as the most significant. In view of the purpose of the study, perhaps these measures give the best indication of the size of the total problem as distinguished from the impact on particular cases. However, in view of the substantial percentage of preferments and the indications that advancement is "a sign of the parties' serious interest in going to trial" (p. 46), a substantial percentage of the regular order trials may be cases in which neither party desires an earlier trial. If so, this is another respect in which delay in the authors' statistical sense includes some time that is not undesirable delay. This remains true in some degree even if the authors are right in suggesting that the plaintiff bar as well as the defense bar is not actively opposed to delay (p. xxv).

By a painstaking process that is perhaps better left for the reader's examination of the book itself, the time-measure of delay is translated into a statement of the additional judge effort needed to dispose of the backlog of cases. For the New York Court, the requirement is 11.7 judge years (a "judge year" being the average workload of one judge for one year). For the years examined, the average length of delay remained virtually constant, and 16.9 judge years of court time were required to dispose of the law suits filed in one year (ch. III). The data available are interpreted as indicating that the percentage of jury trials would rise slightly if the calendar were current, and that an additional 0.6 judge years annually (a total of 17.5) would then be needed to dispose of the current workload (ch. V). It is recognized, of course, that the future workload would also be affected by such things as community growth, not accounted for in these calculations (ch. XXII).

The authors conclude that "delay properly measured reveals itself to be within the reach of practical solution" (p. 8). "Making available 2 more judges to the Court, for example, would eliminate the delay in under 6 years" (p. 8). But adding more judges is only one way of making more judge time available for trials; saving judge time is another. The main burden of this study is to determine how much can be accomplished without incurring the costs, economic and political, of the addition of judges. A great number of remedies that have been proposed are appraised from the point of view of how much judge time each would save. The authors use a threefold classification in presenting their findings, since the effectiveness of any remedy for delay must be in one or more of the following ways: (1) shortening the judge time spent in the trial of a case;
(2) increasing the settlement ratio so as to reduce the number of trials; (3) increasing the amount of judge time available for trials. At the risk of distortion by omission of qualifications and details, a summary of conclusions concerning remedies within each of these groups is stated below.

Shortening the judge time spent in the trial of a case.—The data gathered on length of jury and non-jury trials are interpreted as indicating that roughly 40 per cent of the judge time required for a jury trial is saved if the case is tried without a jury (ch. VI). Obviously the extreme remedy of abolition of jury trial in personal injury cases would reduce the judge time required per trial. The authors estimate that the saving in the New York Court would be 1.6 judge years annually. Thus one may think of the cost of adding 1.6 judges to the Court as the rather modest price of preserving this basic institution without causing delay (ch. VII; p. 9). Some saving of judge time might be effected by measures aimed at increasing waivers of jury trial. But there is little room for further saving in the New York Court by such measures; because of the preference given to the non-jury calendar, waivers already run high there—45 per cent in tort cases, in comparison with figures of 24 per cent and lower in other areas for which data were available (ch. VIII). Is it possible to speed up jury trial? A comparison with a small sampling of New Jersey trials suggests that a small saving in judge time could be effected if New York judges would hold tighter reins over the trial; also, more extensive use of pre-trial might reduce the length of trials (ch. IX). Another saving could be effected by “trying the liability issues first and only trying the damage issues if liability is found *** since in some 40 per cent of all personal injury suits tried to completion there is a verdict for the defendant” (p. 99).

Increasing the settlement ratio.—“On the average, in the United States only about one fifth of all personal injury claims are ever filed in court, only about 5 per cent ever reach the trial stage, and only 2 or 3 per cent ever reach the stage where they are decided by the verdict of a jury or the judgment of a court” (p. 105). There is a basic policy issue as to whether the settlement ratio should be increased since this 2 or 3 per cent may “constitute the core of cases which ought to be litigated” (p. 108). The authors conclude from data examined that there is some slight suggestion that extreme delay produces a higher percentage of settlements but that the New York court need not fear an increase in its trial load because of fewer settlements if delay is removed (ch. X). Can the settlement ratio be increased through greater use of impartial medical experts? The data are scant and inconclusive. In the New York Court this device has been used in less than 10 per cent of the cases surviving pre-trial; of these, 76 per cent have been settled before commencement of trial in comparison with

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4 There is variation in the definitions of “claim” on which available data are based; the authors indicate that a good definition, used by one insurance company from which they obtained data, is that a personal injury claim is “a reported accident from which personal injuries resulted for which the policy holder could be held legally responsible if there was negligence” (p. 114).
70 per cent of the cases involving only adversary experts (ch. XI). Another measure that has been suggested is an allowance of interest on some part of the claim from the date of the accident. On the basis of limited data and an economic analysis, the authors conclude that a new interest rule would be likely to affect the dollar amount of settlements but not the settlement ratio; though inducing the defendant to offer more, a provision for interest would induce the claimant to demand more (ch. XII). Pre-trial is another measure that may affect the settlement ratio. The data collected make it appear rather clearly that pre-trial accelerates settlement, less clearly that it increases the settlement ratio, and not at all clearly that the saving is not offset by the judge time used in pre-trial (ch. XIII). The requirement of a certificate of readiness before a case is put on the trial calendar is a measure used in the New York Court since 1956. The certificate is a statement that discovery proceedings have been completed or are not intended; that settlement discussions have occurred or have not occurred for stated reasons; and that the case is ready for trial. This measure has had little if any effect on the number of personal injury cases tried; for puzzling and unexplained reasons, fewer commercial cases have been tried since the date of introduction of the certificate of readiness (ch. XIV). 

*Increasing the amount of judge time available for trials.*—The most obvious ways of gaining more judge time without adding more judges are to increase the number of court days per judge and to increase the number of court hours per day. The record of New Jersey courts in recent years may be accepted at least provisionally as an approximation of the optimum efficiency one can expect. It appears that the average New Jersey judge puts in about 19 per cent more trial time than the average judge of the New York Court (chs. XV, XVI). Since proposals for enlargement of the trial bar to avoid undue concentration of cases in the hands of a few lawyers are aimed at conserving judge time, they could not achieve more than this saving and would probably achieve much less (ch. XVII). Summer sessions have proved helpful in reducing the backlog, but it does not appear likely that support can be obtained for their continuation (ch. XV). The use of part-time and lower ranking adjudicators (auditors, referees, arbitrators) has proved to be a substantial step toward reduction of delay, especially in Pennsylvania and Massachusetts. The authors do not attempt to quantify the potential saving of judge time in the New York Court by introduction of this remedy, and they suggest concern about creation of a body of adjudicators of inferior status (ch. XIX).

Surely most readers will join the authors in the conclusion that their data justify optimism about the manageable size of the problem of delay and the prospects of its being solved even without addition of more judges or adoption of a drastic course such as elimination of jury trial. The study would have been a significant contribution if it had done no more than thus effectively to answer the counsel of desperation. These points one may affirm without joining in the estimates (a) that delay in the New York Court could be eliminated by the use
of 2 additional judges for 6 years (or the equivalent judge-time saving by other measures) and (b) that the increase of current workload resulting from elimination of delay would require the addition of only 0.6 of one judge’s time to that now committed to the task. As the authors acknowledge, the data they use require interpretation. There are reasons for believing that their interpretation is a bit optimistic.

As one check on the possibility that reduction of delay would increase the percentage of jury trials, New York lawyers were interviewed concerning motivation for jury waivers. Data obtained from these interviews were used in arriving at the estimate that after elimination of delay 0.6 judge years annually would be added to the workload because of fewer jury waivers (ch. V). It may be doubted that inquiry into motivations for jury waivers in a seriously delayed system is an adequate basis for predicting the probabilities of waiver in a system that is current. If misinterpretation of these data on waivers has produced an error, however, it is proportionately small; the calculation of an expected workload increase of 0.6 of one judge’s time was based on an estimate that 62 percent of waivers in the delayed system are induced by the prospect of earlier trial (p. 65). Even an assumption that there would be no jury waivers under a current calendar would not cause a relatively great increase in the workload.

The authors attempt also to determine whether reduction of delay would increase the workload by reducing the percentage of claims settled. The data used concern percentages of claims settled and lengths of delay in various parts of the United States. The authors conclude that “it is improbable that a reduction or removal of the delay in the New York Court would increase the number of cases that will reach trial” (p. 119). If data about behavior are conclusive, it is no answer that the behavior patterns they reveal seem unreasonable or unexpected. Where data are inconclusive, however, reasoned speculation about how people should be expected to behave is in order. Surely the data here are of that character.

If all dockets were current, a personal injury plaintiff might bring his case to trial within weeks after the accident and thus in some cases during a period of hopeless uncertainty about the future. Given our system of tort law in which the fact-finder must guess once for always about the plaintiff’s future disability from the accident, this would be undesirable. Every guess about future disability is almost certain to be wrong; the earlier the guess, the greater the range of error and thus the greater the disparity between awards and the harm suffered. Defendants are ordinarily the chief proponents of delay in such cases, on the theory that probably the victim’s condition will improve and the once-for-always estimate of damages by a jury will be lower if the case is tried after such improvement. But if early judgments are made, some of the mistakes will be detrimental to plaintiffs. Nevertheless, under an entirely current calendar some of the plaintiffs who ought not to seek early trial would doubtlessly do so. A pressing need for quick cash may induce one to lose sight of his long-range interest against taking the gamble of early trial. This competition between the
long-range interest and the short-range necessity has contributed much to the widespread disregard by plaintiffs' lawyers of canonical prohibitions against supporting their clients during the pendency of their claims. The ultimate solution to this set of problems lies probably in some kind of arrangement assuring temporary compensation of disabled victims and at least postponing the once-for-always guess until a plateau of rehabilitation has been reached, if not substituting periodic for lump-sum compensation even beyond the attainment of such a plateau. Meanwhile, under existing rules of tort law, pressures toward delay will be considerably more forceful on a current calendar than on one thirty months behind. As the period of delay on the regular order calendar is reduced, a higher percentage of serious personal injury cases will be tried. Settlement will be less likely if a case is in order for trial before plaintiff has reached a plateau of rehabilitation, since the disparity between plaintiff's and defendant's estimates of plaintiff's future will tend to be wider because of the greater uncertainty. Perhaps it is not an inconsiderable factor that the plaintiff's lawyer will be exposed to a greater possibility of bartering his client's claim away for less damages than later developments will justify. If the case is tried and years later the jury's finding proves too small in the wisdom of hindsight, the lawyer can still rest in the knowledge that he did his best for the client. Settlements shift the burden of that error of judgment from the jury to the plaintiff's lawyer, whose client will look to him for advice on settlement proposals. Jurors tend to err on the side of generosity to the plaintiff when making an estimate in the face of uncertainty; similarly, plaintiff's lawyers tend to err on the side of demanding more than defendants will pay under these circumstances of uncertainty.

The data concerning the relation between delay and settlement in other court systems are particularly inconclusive with respect to a prediction for the New York Court because it is atypical in that suits filed there include only about 10 per cent of all suits arising from automobile accidents in Manhattan. The jurisdiction of this court over personal injury claims is supplemented by that of two others whose jurisdictional limits are $6000 and $3000 respectively (pp. 25–26), and sanctions are applied to keep the smaller cases in these other courts (pp. 209–211). Thus, the cases that are filed in the New York Court are a selective group of the more serious personal injury cases, in which the pressures for delay referred to above would be most severely felt.

A further cause for skepticism about eliminating delay at no greater price in judge time than the authors estimate is that pressures for vigorous and economical use of judge time are reduced as the calendar becomes more nearly current. This fact is suggested by statistics gathered by the authors concerning the average length of jury trials at various periods in the New York Court's history. They are suggestive of the proposition that as the backlog of cases grows the judge time per trial decreases, tighter controls being exercised and trials being more expeditious when the pressure of a backlog is felt (p. 102).

These indications of an increase in the judge-time workload under a current
calendar are of particular significance because of the fact that the percentage of claims reaching trial is now so small—2 or 3 per cent. If another 1 per cent of claims had to be tried the courts would be overwhelmed with the task. Although the factors discussed above probably would not have that much effect on the workload, the potential impact of such a small percentage of change in the settlement ratio makes prediction of the workload extremely hazardous.

It may be that the price tag for complete elimination of delay would be so much higher than that for reduction of delay to something like six months that the latter would prove to be the optimum choice. Of course this is not to say that nothing more should be done about the plight of the serious personal injury victim; that is a problem involving other issues as well as delay. Also, this is not to say that the present average delay of 30 months for personal injury cases in the New York Court is tolerable. The call to arms for the attack on delay, both in the New York Court and elsewhere, should be heeded even if the goal is somewhat more modest than elimination of all delay and the estimate of cost somewhat higher than the equivalent of 11.7 judge years in the New York Court and comparable cost elsewhere.

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This volume, in the University Text Book Series, by Professor Lattin of Ohio State University attempts to summarize in one volume the great mass of law within the corporation field. The author states that his book was "written with the purpose of clarifying, where possible, the 'law' of corporations and to present in as simple language as accuracy would permit, the major principles which have been in the making since the early days of the American corporation. Where decision or statute law has seemed out of line with reason, it has been criticized, as justly it should be." He also states that it is his purpose to present a text written in the light of modern thinking and modern cases.

The handling of a very large body of case and statute law within the confines of a single volume is an extremely difficult task; consequently Professor Lattin's statement of purpose is necessarily somewhat grandiose. A one volume text may attempt either to be an intensive analysis of basic principles and problems within the field considered or else a comprehensive introductory presentation which, therefore, covers so much material that it must necessarily treat its subject in rather summary fashion. Professor Lattin's book is in the nature of an introduction within the second category mentioned above, and designed for the use of the law student and not for the practicing lawyer. In accordance with his purpose of modernizing the presentation of the law of corporations, Professor Lattin's footnotes cite recent cases in a large proportion of instances and contain extensive