Court Delay: Some Causes and Remedies

By Francis H. Monek, Dean

According to a survey by the National Center for State Courts of Williamsburg, Virginia, the most serious indictment of our civil justice system in the layman's mind is that it *takes* too long and costs too much.[1] I shall here try to analyze one of the causes and remedies of the first complaint which will of necessity to some extent cure the second.

Using the Law Division of the Circuit Court of Cook County, Illinois, as an example because it is the largest urban court system in the United States, we can see the same problems that are plaguing all the other judicial centers.

In Cook County, the backlog of undecided cases becomes a bottleneck for the even flow and orderly disposition of cases because the cases keep piling up, and the time between filing of a lawsuit to ultimate disposition by settlement or jury verdict keeps increasing as an ever widening gap. For example, at the close of 1976, there were 49,647 undisposed cases on the Law jury Docket and this leaped to 55,763 in 1978, 60,681 at the end of '79, and at the end of 1981, there were over 71,395 such undisposed cases[2] -- a jump of almost 43% (42.8) in 5 years. This is despite heroic methods used by the Court in requiring accelerated and concentrated pre-trial conferences throughout the summer months, with a resultant tremendous case disposal.

The result of all this is that the average time in Cook County for a case to be disposed of by settlement, dismissal for want of prosecution, default, or verdict is 35.3 months and the average time from the filing of the lawsuit to verdict is 51.9 months.[3]

The scandal, however, is nationwide. In Los Angeles, there is a backlog of 72,000 cases with a wait of 5 years to get to trial;[4] in Detroit, 3½ years, the Bronx of New York City, about 4 years, to cite only a few. The delay is so catastrophic that were it not for the contingent fee system, many tort cases would die on the vine.

Of all cases filed in the Law Division of Cook County, over 90 % are for personal injury or death, or other tort claims, and according to a study by the Committee to Study Caseflow Management co-headed by our esteemed Fellow Phillip H. Corboy, 85% of these cases are minor in nature, not involving complex issues or large monetary exposure.[5]

The culprit, therefore, is the personal injury and death actions that of necessity increase in our expanding mechanized society, and of these cases, a small number retard the even flow of the whole but, merely to accelerate the trial of the more serious cases as recommended by some courts, would not remedy the sluggishness of case flow and would at the same time cause an injustice to the smaller cases. All cases, large and small, are entitled to expeditious disposition. A fairer and more effective solution must be found, as the victims of the vast majority of tortious acts are the viable and vociferous majority, causing disrespect for our judicial system.

In his most exhaustive study of the sluggishness of case-flow, Professor H. Zeisel of the University of Chicago has observed:

> "Delay in the courts is unqualifiedly bad. It is bad because it deprives citizens of a basic public service, it is bad because the lapse of time frequently causes deterioration of evidence and makes it less likely that justice be done when the case is finally tried; it is bad because delay may cause severe hardship to some parties and may in general affect litigants differentially; and it is bad because it brings to the entire court system a loss of public confidence, respect and pride. It invites in brief the wisecrack made a few years ago in a magazine editorial, 'Okay, blind, but why so slow.'"[6]

Even though civil dockets are far behind criminal cases because constitutionally an accused is entitled to a speedy trial, the criminal docket itself likewise lags and adds to the whole delay by taking precedence in the order of trial. For that reason, the following observation by J. B. Jennings must just as well be applied to the problem of civil delay:

> Congestion and delay in courts throughout the country threaten to strangle our system of justice, for as delays increase, the innocent who cannot afford to make bail suffer longer in jail, the guilty who are released pose greater threats to society, and the deterrant value of speedy justice is lost. The resultant pressures to dispose of cases more and more quickly lead to still other wrongs; less and less attention is given to each case, and greater reliance is placed onthe disposition of case through 'Plea Bargaining' and the likelihood of injustice increases."[7]

The bar, which fought so zealously for a jury system and the retention thereof, as so eloquently described by Fellow DeCoff in his Dean's address last year is in jeopardy of seeing the jury trial system gradually whittled away until as in other countries once having it, it is non-existent.

In search for a panacea to remedy the delay some, including our Chief justice Burger, already advocate abolition entirely of jury trials in negligence cases and replacing it with compulsory arbitration, or, as a prelude encourage jury waivers; others suggest use of impartial medical witnesses, compulsory pre-trial conferences, the expensive solution of election of more judges and assistants and building more courthouses. Already, to pare judicial costs, juries are being cut to less than 12 -and even in some jurisdictions to 6. Empirical evidence, the reformers say, bolsters whatever position they take on these matters and though many of these suggested reforms have been adopted in various jurisdictions, the delay continues and the backlog grows with the resultant disrespect for the law, the courts and the lawyers.

Is it any wonder that only 23 % of those interviewed in a recent national survey expressed any high degree of confidence in the State and local courts? In excess of one third expressed little or no confidence in our judicial system. Of fifteen professions and institutions included in the poll, we lawyers and our courts ranked behind and below the medical profession, American business, public schools, and even the Federal Executive branch of Congress. Our courts were way down to the 11th of 15 institutions that were subject to this inquiry.[8]

Understandably, efficiency of the Courts was cause for greater concern amongst those polled in this national survey than the national problem of pollution, education, racial issues, and even the threat of war.[9]

The predominant single reason for such utter lack of confidence in our courts was the pre-trial delay. Almost half of the public in this survey felt the courts were in need of great or moderate reform.[10] As the authors said "... when two thirds of the respondents in a national sample assert strong support for spending tax dollars in an effort to try to make the Courts handle their cases faster, it is apparent that our courts are expected to handle their work load more expeditiously regardless of cost. [11]

Resultant criticism is then levied, not only against the courts, its judges and aides, but against us as trial lawyers who are most visible in the pubic mind. Unless a solution is found, our much vaunted jury system, which is already under direct attack, will flounder.

While there are many causes for court delay, such as the local legal culture or the laissez faire attitude of lawyers for both sides who are comfortable with the system they grew up with and into, inflated and deflated ideas of the value of cases, a most serious cause of delay to which I shall address myself, requires an understanding of the procedures inherent in the handling of tortious injury or death cases.

Though known to all of us trial lawyers, for the benefit of the wives and guests here present, I must point out that in our society almost all tortoius injuries and deaths are caused by a corporation that may be self-insured, or by an individual that is covered by insurance. Upon notification that the corporation or insurance company may be liable for a certain tortious act, a reserve fund of the estimated cost of disposition of this case is set up by the corporation or insurance company. This fund, as are all funds of corporations and insurance companies, is invested in the highest yielding interest return available, which in the past year has been as high as 23 %. In addition, the money managers of these companies invest and re-invest these funds so that their interest return is not only at prime rate, but compounded at prime rate.

On the other hand, the injured or widowed wife and children of the deceased have only a claim against the tortious wrongdoer. If suit is filed and it takes four to five or more years for the case to be decided by a judge or jury, the injured or the widow and children get nothing throughout the delay though the corporation or insurance company is reaping compound interest for the duration thereof. Obviously, the longer the delay before the verdict or judgment, the greater the interest return for the wrongdoer.

By law, in all states interest is allowable on a judgment after its rendition, but the rate at which it is set is always behind the market rate. Presently in Illinois it is 9%. As a consequence, even after verdict, the lower courts are cluttered with numerous time consuming post trial motions, and the upper courts with appeals, having slim hope of reversal because the insurance carrier can reap as high as 23 % compounded whereas the victim can receive only 9% in Illinois, and even less in other jurisdictions.

It is the profit of delay, both before and after the trial, mostly by the defense, which I feel is one of the prime causes of delay in the courts.

The Federal Courts have stated that they are not unmindful of the fact that at the currently high money market rates there is created a built-in incentive to withhold sums due, and indeed to prolong litigation[12] but cannot remedy the situation because they feel it is up to the state courts or state legislatures to remedy the problem as interest on Federal judgments in diversity actions is calculated at the state rates. [14]

Over 20 years ago, Chief justice Lumbard aptly notes that "as ancient as the injured's plaint of 'the law's delay'; is the use of that delay as a means by which a defendant may obtain a more favorable settlement."[13]

The remedy to a partial extent, is simplistic in concept-not only take away the profit in delay by either side, but make avoidable and exploited delay expensive to its perpetrators. Succinctly stated, I believe that we as an International Academy of Trial Lawyers, in an effort to contribute a much needed suggestion to a speedier disposition of cases, should consider espousing in all tort cases:

1) Prejudgment Interest
2) Prejudgment Interest at Prime Rate
3) Post judgment Interest at Prime Rate

By prejudgment interest, we mean interest on the amount due a victim of a tort from the date of its commission until the date of verdict and judgment. In many states it is allowable on contract cases and cases of damage to or deprivation of real or personal property on the theory that to hold otherwise would unjustly enrich the wrongdoer, but even in these cases, it is held that the amount must be certain and readily ascertainable by simple computation or by reference to generally recognizable standards, such as market prices. In other words, the damages must be ascertainable with mathematical precision. judicially stated, it is held:

> "Interest cannot be awarded prior to judgment when the amount of damages cannot be ascertained except on conflicting evidence. The rationale of such rule is that where a defendant does not know what amount he owes and cannot ascertain it except by accord or judicial process, he cannot be in default for not paying it."[15]

The prejudgment interest, where allowable, is held to be necessary to compensate the plaintiff, not only for the amount by which he suffered damage in the usual sense, but also for the loss of the use of the money or property to which he was entitled. Where, however, the damages are incomplete and cannot be calculated with mathematical accuracy, such as in torts of personal injury, wrongful death, defamation of character, false imprisionment, etc., where the amount of the damages must be ascertained and assessed by the trier of the fact at trial, prejudgment interest, in the majority of states is not allowed.

We must, however, recognize that when a wrong is committed as of that instant the tort feasor or wrongdoer owes the victim redress -not five years later. Consequently, the above mentioned reserve fund belongs to the victim and all its interest does too. This has long been the rule in religious ethics and equity law -that a thing fructifies for its owner.

Instantaneous trial would determine the loss sustained by the victim as of that date, the date of injury. Due to court delay, the trial merely determines at a later date the rightful owner and the monetary extent of his ownership of the above reserve fund.

Some courts and all insurance carriers consider prejudgment interest a form of penalty for delay in disposing a case but the economic realities of delay make it immaterial who or what causes the delay because in either instance the defendant individually on this case and collectively on all cases may reap a bonanza thereby and the plaintiff suffer a gross injustice. Rather than appraise prejudgment interest as a punishment of the defendant it must be considered as a substantive right of the plaintiff. Someone of necessity is going to profit by the delay-who has a greater right than the victim? To hold contrariwise would reward the insurance carrier to the extent that he has a vested interest in, and will promote court delay.

For example, assume a case worth $100,000, at a time when prime rate is 20%, as it presently is for Internal Revenue purposes. If it takes 4 years for the case to reach trial, the defend-ant not only has by compound interest, recovered the $100,000 before he is obliged to pay it, so in effect he pays nothing, but any longer delay before verdict, and then by appeal, is sheer profit - all at the expense of the victim. And this does not take into consideration that the carrier charged such premiums that actuarily,

had he paid the $100,000 immediately, he would have suffered no loss. Now, in effect, even when he pays the $100,000 five or more years later, he has more than doubled his money.

As was aptly stated and illustrated by the Alaskan court:[16]

> "Courts in other jurisdictions and commentators have over the years been moving away from medieval religious notions that all interest was evil toward recognition by awarding prejudgment interest of the economic fact that money awarded for any reason is worth less the later it is received."
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> ... at the moment the cause of action accrued, the injured party was entitled to be left whole and become immediately entitled to be made whole-all damages then, whether liquidated or unliquidated, pecuniary or nonpecuniary, should carry interest from the time the cause of action accrues..."
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> "The following hypothetical case illustrates the injustice of denying prejudgment interest. Suppose A inflicts precisely the same amount of damage of any type on B and C at the same moment, evaluated by juries as $1,000 each. If C wins his judgment a year later than B and does not get prejudgment interest for that year, C recovers less than B for the same injury; C has been deprived of the use value of $1,000 for one year while B has enjoyed the use value-only by awarding prejudgment interest *from the time the cause of action accrues, when a plaintiff is entitled to be made whole,* can the sort of injustice which happened to C in the hypothetical case be avoided. We are also influenced by the policy consideration that failure to award prejudgment interest creates a financial incentive for defendants to litigate even where liability is so clear and the jury award so predictable that they should settle." (Emphasis supplied.)

Judge Learned Hand, over 50 years ago, in a taxation case, voiced what is now apparent in the money markets when he said:

> "Whatever may have been our archaic notions about interest, in modern financial communities, a dollar today is worth more than a dollar next year, and to ignore the interval as immaterial is to contradict well settled beliefs about value. The present use of my money is itself a thing of value, and if I get no compensation for its loss, my remedy does not altogether right its loss."[17]

Isn't it ironic that the courts are so zealous in protecting a defendant's rights that future loss must be reduced to present worth on the theory that money begets money, yet the plaintiffs past loss to date of trial does not consider that this reserve fund covering his case has made money for the defendant. The subtraction of interest in one phase surely requires its addition in the other. Surely the compensation purpose of prejudgment interest requires no less.[18]

Insurance companies prior to lawsuit and defense attorneys prior to trial are understandably reluctant to enter into sincere and meaningful negotiations toward settlement until the last possible moment, while the amount in controversy is accumulating income at compound prime rate in a reserve fund. The result is more and more suits are filed and take longer and longer to reach trial and eventual disposition.

Obviously, in instantaneous tortious death cases or in total and permanent disability cases where there is no question of liability, or contributory negligence, the damages can be readily ascertainable for a fair and reasonable offer of settlement, by either side, with the exception of that portion for pain, suffering and disfigurement, but no distinction between pecuniary and non-pecuniary injuries is justified because defendant had unjustly enjoyed the use of the money, and therefor one should adopt prejudgment interest in all personal injury and death verdicts for the totality thereof as a public policy because it encourages early settlement and discourages defendant from using the delay between injury and verdict to defeat a legitimate demand.[19]

It is my contention that with the experience of medical prognosis and the use of economists and mortality tables and reference to the compiled verdict results in regional jury reports, the value of a personal injury or death case can be *reasonably* ascertainable. Nevertheless, even without this, prejudgment interest should be allowed in the interest of justice, and to accelerate the speedier disposition of cases.

The fairness and justice of prejudgment interest applies equally to injury and death cases as to property and contract cases. In states where allowable, it is a substantive right of that party to recover an economic loss occasioned by his inability to use the award of damages between his injury and judgment and is meant to place an injured party in the same position as if he had

been compensated immediately after his injury for his loss. Justice requires that one ought not to be able to use someone else's money for a considerable period of time without paying anything for its use. This is the very basis of the theory of restitution.

Only ten states out of 50[20] have so far determined not only that prejudgment interest is a right of the plaintiff in a personal injury action, but secondly that allowing it will accelerate the disposition of cases. Where legislatures have been slow to provide such a measure by statute, New Jersey and Pennsylvania have done so by adopting a civil procedure rule. In 1978, the Supreme Court of Pennsylvania, pursuant to its constitutional rule making authority, provided for prejudgment interest in certain instances to plaintiffs who receive jury verdicts in excess of any settlement offer made by defendant prior to trial. In upholding the constitutionality of this rule, the Supreme Court of Pennsylvania in the latest judicial pronouncement on this subject quoted the spirit prompting this rule on October 29, 1981[21] as:

> "The judicial system has long been vexed by the problem of congestion and delay in the disposition of civil actions for bodily injury, death, or property damage pending in the trial courts.
>
> ... Some are settled through pretrial consideration techniques, but in too many cases meaningful negotiations commence only after a trial date is fixed or on the courthouse steps or in the courtroom, thus leading to delay in the disposition of cases and congestion in the courts. The present practice provides no incentive for early settlement.
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> In the usual civil action for bodily injury, death or property damage there is no compensation to the successful plaintiff and no sanction against the defendant for the long delay between commencement of the action and the trial."

and the court then observes:

> "Rule 238 awards damages for delay where defendant made no settlement offer prior to trial or where the defendant made an offer of settlement which was 2 5 % less than the amount of the jury verdict. Such language clearly reflects a primary desire to encourage pre-trial settlement. In those instances where the settlement offer is not accepted and the jury verdict does not exceed the offer by 2 5 % the interest is only computed up to the date of the settlement offer. By tolling the running of interest this provision demonstrates the prominent goal of fostering *early* settlements. Undeniably this rule serves to compensate the plaintiff for the inability to utilize funds rightfully due him, *but the basic* aim of the rule is to alleviate delay in the disposition of cases, thereby lessening congestion in the courts."

In rebutting the argument that this makes a distinction between plaintiffs and defendants, the Supreme Court of Pennsylvania finds (p 156):

> "The difference upon which the classification rests is that the plaintiffs have been wrongly injured and have suffered financial losses because of defendants actions. The losses then become exacerbated by defendants refusal to settle the law suit in a timely fashion. The defendants, on the other hand, have suffered no wrong. They, as tort feasors, are not unjustly deprived of compensation during the course of pre-trial delays. On the contrary, it is in the best interest of the defendants to protract the litigation process as long as possible, so that they may benefit from the funds rightfully owing to the plaintiffs."

It is significant that none of the states that have ever adopted prejudgment interest has ever withdrawn it. Obviously, in allowing prejudgment interest in tort cases, the aims of the above mentioned legislatures and courts is to correct a long overdue wrong, and to make whole the plaintiff as of the moment of injury by allowing him full and adequate compensation for the injury inflicted on him. By its very nature this will expedite prompter settlements. Seen in this vein, prejudgment interest is not a penalty, but the manner in which it is granted or withheld by the various courts can be considered a penalty upon recalcitrance or arbitrariness and in furtherance of the by-produced result of effecting prompt and expeditious trial and settlement of cases. Inasmuch as it is the personal injury and death torts that clog the court calendars, and inasmuch as it is desirable that these cases be settled and disposed of without undue delay as a matter of public policy, prejudgment interest should be allowed, as in Michigan, on the whole verdict, including pain and suffering and disfigurement and not only on the actual pecuniary loss.

Chief Justice Warren Burger said just a month ago in addressing the American Bar Association in Chicago, and complaining of the court congestion, that the delay becomes more acute if the litigant cannot recover interest on the award or is allowed interest at 8 % while paying double or so on a home mortgage or other debts." The justice then overlooked the obvious: the remedy for both the delay and the interest inadequacy is to grant the latter at the rate generally required of all people in the

market place or what is known as prime rate. Only in this manner can we take the profit out of delay and create a proper atmosphere for prompt and meaningful settlement overtures.

Prejudgment interest is not a sanction[22] against the defendant and to grant or withhold it only as a ploy to clear up a judge's backlog or as an administrative tool is unworthy of the courts. To further play with a plaintiff 's rights is a wrong in itself and beneath the dignity of our judicial system. Prejudgment interest is a substantive right of the plaintiff, and its imposition has, as a natural ancillary effect the result of not only righting a wrong, but of speeding up the disposition of the backlog. Prime rate, though not yet adopted by any state on pre or post judgment interest, will further assure this by discouraging delaying tactics and destroying its economic benefit.

To cut off prejudgment interest from the time a fair and reasonable offer has been made by the defendant, as has been adopted in most of the above ten states, should also not be considered a sanction against the plantiff. It is merely a fair and just procedure, for his loss from that date is his own doing.

The fairness of the defendant's or plaintiff's offer is determined by comparing it with the final verdict. The offer of the losing party must be as large or larger that the amount ultimately awarded. If sanctions are needed against either party to clear up the backlog, the court could change the prime rate from simple interest to compound interest; or the English system of penalizing the losing party by charging it with his opponent's costs and attorney fees may need thoughtful consideration.[23] Our English brethren have found that this cost system encourages settlements, discourages procrastination and stimulates speedy, effecient trial. Even in England, however, this cost system is not considered as a penalty or punishment, but as an increase of the damages the wrongdoer inflicted that must be awarded to the victim to make him whole.

As in some instances, it might be unfair to charge prejudgment interest before a defendant knows of the wrong he has committed and has had an opportunity to evaluate the plaintiff's claim, such as in delayed-notice cases, malpractice actions, asbestosis cases, and cases of multiple defendants, etc., the trial judge should have discretion to award such interest, with his reasons, either from the date of the commission of the tort, the time the plaintiff first notifies defendant and presents his demand, or the date of the filing of the law suit. His discretion must be limited to this alone; the interest itself is a substantive right over which he has no discretion. In this manner, a defendant will not be penalized for the delay occasioned solely by the plaintiff.

To prevent the incongruity of allowing prejudgment interest at money market rates while assessing interest on the court judgment at a lesser rate, and in further keeping with fairness and justice, the post judgment interest should also be at prime rate.

The prime rate considered must be on some readily determined, authoritative and binding uniform standard such as is being used by the new 1981 U.S. Income Tax law in charging interest at 100 per cent of prime rate on delinquent and fraudulent tax payments. The Internal Revenue Service will change this rate each year. Interest rate changes take effect early in the year, based on the prime rate during the previous September, and announced by mid-October. This year, starting February 1st, it is 20 per cent. As this method is now a national standard, the Internal Revenue Service rate can be nationally applied throughout the courts without cause for complaint or suspicion by anyone, and once set, it should remain constant until settlement of the case -just as though the plaintiff had used the money on the date of injury to buy a 5 year Certificate of Deposit.

In Canada, where by Statute since November 25, 1977, prejudgment interest has been available on tortious claims at prime rate, this is defined at "the prime rate existing for the month preceding the month on which the action commenced" and an unliquidated claim is calculated "from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment." The prime rate as set out in the periodic publication, *Bank of Canada Review, is* admissible as conclusive proof of the prime rate as set out therein. Since prejudgment interest in Canada is discretionary with the judge, it was allowed originally only on the principle of fault where the defendant caused the delay, but now it is considered as nothing more than causing the defendant to account for the money earned on the money not paid the plaintiff during the period the plaintiff was entitled to compensation, but did not receive it. The law had been found eminently efficacious in the early and sensible settlement of claims which might otherwise proceed a long distance in terms of litigation before settlement according to our esteemed Canadian Fellow Kenneth E. Howie.[24]

In keeping with the modern tendency of courts to award prejudgment interest, at least in death cases, even where not provided for by Statute; our esteemed Fellow John J. Kennelly, persuaded the Federal District Court in Chicago to follow this line in re *Air Crash Disasters*, by arguing that, "it is incomprehensible that under Illinois law the owner of personal property

would by entitled to prejudgment interest in a suit against a common carrier, but that the family of a killed passenger would not," and asking, "Upon what logical foundation can human beings be treated differently from personal property?" The court thereupon held:

> "…we believe that fair and just compensation must include interest on a judgment in a wrongful death case from the date of death. The losses suffered by the decedent's survivors arise at the moment of the decedent's death; the award of judgment in a subsequent wrongful death suit is merely an expost facto determination of a pre-existing obligation. Unless prejudgment interest is available, the survivors suffer the additional loss of the income from the damages they incurred on the date of death."[25]

reasoning that if two were killed in the same accident and one wins judgment a year later than the other, due to the court delay, he would receive less for the same injury, and only that by awarding prejudgment interest from the time the cause of action accrues, the time that a plaintiff is entitled to be made whole, can such a miscarriage of justice be avoided.

The court estimated that the damages in that air crash, involving 275 deaths and injuries was between 115 and 500 million and the interest that the defendants may earn, and the plaintiffs may lose based on current average rate of 10% on short term United States Treasury notes (despite the fact that interest as high as 14 or 15 % was being paid on certificates of deposit) was between 11.5 and 50 million dollars per year, or $31,800 and $137,000 per day. What an incentive for delay! Defendants would gain this interest and plaintiffs would lose it and because the total amount of damages involved in those cases was so large and the interest accumulating on it was so substantial there was no real incentive for the defendants to settle. Although these amounts are only in one unusual case, the many thousands of yearly casualty claims aggregating even a much greater gain for the defendants and loss to the plaintiff, would make it appear that the injured and the widowed, and the orphaned are subsidizing the defendants and underwriting the casualty business.

Prejudgment interest at prime rate will urge all litigants toward earlier settlement or trial. Most judges and attorneys interviewed by the National Center of State Courts felt that only the reality of immediate trial produced fast and sure settlements Under the present system, many defendants are literally dragged kicking and howling to the conference tables. Yet, the efficacy of our judicial system is readily apparent when we realize that settlements do result in most cases. Making the advantageous use of delay expensive to both sides can only result in hurrying the process along.

CONCLUSION

Our adversary system of trial by jury is the result of many centuries of trial and error by other methods. Admittedly it is ponderous and costly, but then, too, so is our democratic system. Admittedly, too, it is the only system so far devised that, except for the court delay, leaves a feeling of fairness and justice in two opposing litigants who knew their case was heard and considered by twelve of their peers, and not by administrators, arbitrators, judges, or others who may be jaundiced by repetitious similar experiences or influenced by political or personal considerations, not so readily persuasive with a jury of twelve.

Before abandoning our present system, why not at the same time right a long neglected injustice and within this very system at no cost to the courts, adopt as a remedy for the delay, prejudgment interest in tort cases on the full extent of the verdict and make both this prejudgment interest and the post judgment interest thereon subject to simple interest at prime rate. Only after this obvious and simple expedient has been fairly tried need we consider other more radical recommendations that may ultimately threaten to destroy our adversary and jury trial system.

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FOOTNOTES

1. Memorandum of T. F. Bridgman and Philip H. Corboy to the Illinois Committee to Study Caseflow- Management in the Law Division, Circuit Court, Cook County, Ill., January 8, 1982 -Introduction.

2. Id.

3. Id., p. 2.

4. *Los Angeles Herald Examiner,* May, 1981.

5. Memorandum, supra, p. 2.

6. H. Zeisel, H. Halven and B. Bucholz, "Delay in the Court," Boston, Little Brown & Co., 1959, p. XXIII.

7. J. B. Jennings, "Evaluation of the Manhattan Criminal Courts Master Calendar Project," Phase 1, Feb. 1. June 30, 197 1, (New York Rand Corp. 1972), p. 111

8. Yankelovich, Skelly & White, Inc., "The Public Image of Courts, Highlights of a National Survey of the General Public, judges, Lawyers and Community Leaders," as cited in National Center for state courts, 1978, Table 111, 6, p. 25.

9. Id. I Table IV. 1. p. 29.

10. Id. I Table 111, p. 22.

11. Yankelovich, et. al., supra, P. 52.

12. *Pelarsor v. Crown Financial Corp.,* 661 F2287, (1981).

13.*Moore-McCormick Lines, Inc. v. Richardson,* 295 F 2d 583 (2 Cir 1961).

14.28 USC #1961. *Schneider v. Lockheed Aircraft,* 658 F2835. (1981).

15. *Mocomber v. State of California,* 250 Cal App2 391.

16.*State v. Phillips,* 470 P. 2., 266, (Alaska 1970) See also *National Airlines Inc.,* V.*Stiles,* 268 F2 00 (1959) and *First National Bank of Chicago v. Material Service* Corp., 597 F2 1110 (7th Cir 1979): *Moore-McCormick Lines Inc., v. Richardson* 295 F2 583 (2nd Cir 1961).

17.*Procter and Gamble Distributing Co., v. Sherman,* 2 F2 165, (1924).

18. *In Re Air Crash Disaster near Chicago,* etc., 480 F. Supp 1280 (1979).

19. State v. Philips, 470 p. 2nd, 266 (1970).

20.

1. *Colorado: Col.* Review. Stat 1973 #13-21-101
2. *Louisiana:* LSA-R.S. 13 4203
3. *Michigan:* MCLA #600 6013
4. *New Hampshire:* N.H. R.S.A. #524-1-6 (Supp)
5. *North Dakota:* ND. 32-03-05
6. *Oklahoma:*12 Okla. St. Ann #727 1
7. *Rhode Island:* R.I. Gen Laws #9-21-10
8. *South Dakota:* S.D.C.L. 1967 Ann. #21-1-11
   All have prejudgment interest statutes regarding death and personal injury cases
9. *NewJersey:* Rule of Civil Procedure 4:42-11 has a judge made rule.
10. *Pennsylvania:* Rule of Civil Procedure 238

21. *Loudenberger v.* Port *Auth of Allegheny City,* 436 A2d 147 (Oct 29, 1981).

22. Biesk v. Levine 63 N.J. 351 307 A 2d 571 (1973).

23. See Kuenzel Calvin: "The Attorney's Fee: Why Not a Cost of Litigation" 49 Iowa L. Rev 75 (1963).

24. Howie, Kenneth R., "Prejudgment Interest Payments into Court and Advance Payments." WP (Official journal of Ontario Insurance Adjusters' Ass'n) Vol. 45, No. 2, Oct. 1980.

25. In *Re Air Crash Disaster Near Chicago,* 480 F. Supp. 1280, (1979) Although on appeal the U.S. Circuit Court in 644 F. 2nd 633 (1981) disallowed the prejudgment interest as contrary to the laws of Illinois, it nevertheless allowed interest given as being "the present value at trial" and therefore the true compensatory damage amount.

BIBLIOGRAPHY

Church, Thomas, Jr. et al, "Justice Delayed -The Pace of Litigation in Urban Trial Courts"-A publication of The National Center for State Courts, Williamsburg, Virginia, 1978. Publication No. R 0041

Church, Thomas, Jr. et al-"Pretrial Delay-A Review and Bibliography" A publication of the National Center for State Courts, Williamsburg, Va. 1978.Publication Number R 0036

46 University of Cincinnati Law Review 151 (1977) "Recovery of Pre-judgment Interest in an Unliquidated State Claim Arising Within the Sixth Circuit"

Derkum, Stephen A., "Prejudgment Interest -Frosting on the Cake?" Orange County Bar Journal, Vol. 4, No. 3, p. 298

Greenberger, Howard, "The Cost of justice: An American Problem, An English Solution," 9 Villanova Law Review, p. 400-414 (1964)

McCormick on Damages, Ch 7, #55, p.217

McDivit, Patrick J. -"Prejudgment Interest as an Element of Damages: Proposed Solutions for a Colorado Problem," 49 University of Colorado Law Review, 335 (1978)

Nye, Russell E. -"Denham v. Bedford: Statutory Prejudgment Interest and its Effect on Third Party Insurers"-Il Detroit College of Law Review, P. 355 (1979)

Perch, H.D.-"Payment into the Court and Prejudgment Interest," The Advocate's Quarterly, Vol. 2 (1979-1981, p. 347)

Rogers, James- "Prejudgement Interest Held Available in DC-10 Suits-66ABAJ. 137, Feb. 80

Sipes, Larry L. et al, "Managing to Reduce Delay," -A publication of The National Center for State Courts, Williamsburg, Va. 1980. Publication Number R 0050

23 Trial Law Guide-536-597 (Winter 1980)- "Prejudgment Interest: Allowed in Wrongful Death Cases"

15 Stanford Law Review, Page 107, Dec. 1962) "Prejudgment Interest as Dam-ages: A New Application of an Old Theory."

Williams, Joel A. -"Prejudgment Interest: An Element of Damages Not to be Overlooked." 8 Cumberland Law Review 521 (1977)

Zeisel, Kalven, & Buchholz, "Delay in the Court" Greenwood Press, Publishers, Westport, Conn. 1959