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IS JUSTICE DELAYED? A REPORT FROM THE COURT ADMINISTRATOR

C. R. Huie* and G. Lawrence Jegley**

INTRODUCTION

The judicial system, in its broadest sense, is comprised of three primary components: the court system, which includes support personnel as well as judges, the bar, and the litigants. One of the greatest challenges confronting this system, and a challenge which will require concerted effort on the part of all involved in the system, is that of expeditiously dealing with burgeoning litigation without sacrificing quality. An ingredient essential to any "quality" judicial system is prompt adjudication of controversies.¹

The past ten years have witnessed a sixty-two percent increase in the workload of Arkansas courts² with little concomitant increase in judicial manpower.³ As court workloads have increased, so has the number of cases pending on court dockets at the close of each calendar year.⁴ During the five year period, 1972 through 1976, cases pending for more than two years have composed roughly thirteen percent of all cases pending in circuit courts and nearly thirty percent of cases pending in chancery courts. The workload of the Arkansas Supreme Court has nearly doubled over the last ten years, increasing an astounding thirty percent from 1975 to 1976 alone.⁵

Arkansas' experience with rapidly increasing court activity is by no means atypical. Courts across the nation are struggling to keep pace with increasing litigation.⁶ What sets the Arkansas judicial system apart from many others is the fact that it has not yet been overwhelmed by its workload; dispositions in trial courts are only a few percentage points behind filings, while the supreme court

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1. "Justice delayed, is Justice denied." William Ewart Gladstone. T. Edwards, *The New Dictionary of Thoughts—A Cyclopedia of Quotations* 326 (rev. ed. 1972).

2. Filings in general jurisdiction courts totaled 44,950 in 1967 and 72,729 in 1976. Judicial Department of Arkansas, *Twelfth Annual Report, Judicial Statistics 27* (1976) [hereinafter cited as *Judicial Statistics*]. All statistical data referred to in this article are derived from Judicial Department reports.

3. Arkansas had 45 general jurisdiction judges in 1967 and 55 in 1976.

4. Cases pending on Arkansas circuit and chancery court dockets at the end of 1967 totaled 28,766; at the end of 1976 the number pending had reached 48,535.

5. 1976 Judicial Statistics, *supra* note 2, at 1.

6. See Rosenberg, *Court Congestion: Status, Causes, and Proposed Remedies in the Courts, the Public, and the Law Explosion* 29-59 (H. Jones ed. 1965).

has managed to remain current the past ten years with all matters under submission concluded prior to each summer recess. In addition, the percentage of cases pending more than two years on court dockets statewide has remained stable. However, while percentage increases in workload and backlog may remain relatively stable from year to year, the raw figures relative to those percentages continue to grow. With court activity increasing at an annual average rate of nearly ten percent, the judicial system cannot be expected to keep pace in years to come without effecting some changes in its mode of operation.

With the above observations in mind, it is the purpose of this article to present a naked quantitative look at the progress of selected cases through the entire court system during calendar years 1975 and 1976, to present a few facts worthy of consideration by all connected with the judicial system, and to suggest in broad terms what the future will demand of the Arkansas judicial system.

The raw workload datum does little more than confirm the notion that court activity has been increasing by leaps and bounds and that the courts are just beginning to feel the pressures exerted thereby. While no method exists or is likely to be developed which will accurately measure the quality of justice being administered through the court system, information in addition to raw workload datum lends itself to empirical analysis of the quality of our judicial system. One such type of information is the amount of time a case spends in the entire court system.

It is the authors' position that the amount of time necessary to resolve a dispute, from filing in the trial court to opinion day in the supreme court, sheds light on the quality of justice being delivered by the judicial system. Based on this premise, the Arkansas Judicial Department in 1975 began a survey of selected cases reaching the supreme court. Cases surveyed were broadly classified as to the nature of the action and the type of court from which they were brought. Four primary time frames were specifically analyzed: a) filing to trial in the lower court; b) trial in the lower court to filing of the record in the supreme court; c) record filing in the supreme court to submission to the court; and d) submission to the supreme court to decision by the court. The amount of time from filing in the lower court to decision by the supreme court was utilized as a yardstick for determining the total length of time a case was involved in the court system. The length of time which elapsed from filing of the record with the supreme court to decision by the court was also analyzed as a means to determine the length of the appeals process. In addition, the survey recorded the amount of time each case was

continued by the supreme court or its clerk on motion of one of the parties to the action, in order to examine a specific cause of delay in the appeals process.

The number of cases included in the survey represents a substantial percentage of all matters submitted to the supreme court in calendar years 1975 and 1976.⁷ Some cases were not included because of various factors or exceptional circumstances which, in the judgment of the Judicial Department staff, would tend to distort the overall picture the survey was intended to develop.⁸ It should be recognized that, while the average time required to process the surveyed cases in the lower courts (*i. e.*, filing to trial) is reflected below, the figures do not represent the average time from filing to trial for *all* cases filed in general jurisdiction courts. These figures are probably much greater than the average for all cases statewide, because cases reaching the supreme court are generally more complex than the average case and demand of the court system more time for resolution. The following is a summary of the results of the Judicial Department survey.

SURVEY RESULTS

I. Criminal Cases

Criminal Cases—1975

One hundred thirty criminal cases decided by the supreme court during 1975 were surveyed by the Judicial Department. The average length of time each case was active on the circuit court docket was 7.1 months; that is, just over seven months elapsed from filing the information or indictment to commencement of trial. An average of 5.6 months elapsed from trial to filing the record with the supreme court. Following the record filing, the average case was not submitted to the court for decision for 4.1 months. During that 4.1 month period, each case was continued an average of 22.3 days on motion of appellant and 16.1 days on motion of appellee—an overall average delay of 1.3 months. Following submission, an average of nineteen days elapsed before decision by the court. Total time from

7. The supreme court decided 165 criminal appeals during 1975, 130 of which were included in the survey; it decided 314 civil appeals that year, 267 of which were included in the survey. In 1976 the court decided 201 criminal appeals, 160 of which were included in the survey; it decided 350 civil appeals, 317 of which were included in the survey.

8. For example, appeals involving post-conviction relief were discarded, such matters being atypical of substantive criminal appeals; certain data were not available from the records in some instances; some cases were pending in the trial court for such inordinately long periods of time that their inclusion would skew the survey's statistical objective.

filing to decision for each of the 1975 cases was, on the average, 17.4 months. Stated differently, the average criminal case decided by the Arkansas Supreme Court during 1975 was active in the court system for nearly a year and a half.

The survey reflects that appellants exhibited a greater propensity to request time extensions of the court than did appellees. In addition, the length of the extensions granted appellants was generally greater than those granted appellees.

Criminal Cases—1976

One hundred sixty criminal cases decided by the supreme court during 1976 were included in the Judicial Department's survey. The average length of time each of those cases awaited trial in circuit court was 5.8 months, nearly one and one-half months less than the average for 1975 cases. Average time elapsing from trial to filing the record with the supreme court was 5.5 months, virtually the same as the average for 1975. Once the record was filed with the court, the average case was submitted for decision 4.2 months later, about the same as during 1975. During that 4.2 month period, each case was continued an average of 20.1 days on motion of appellant and 6.8 days on motion of appellee, a net average delay of 0.9 months. After submission, an average of nineteen days elapsed before decision by the supreme court.

Total time from filing to decision for the 1976 cases averaged 16.1 months, as compared with 17.4 months for the 1975 cases. Nearly all of the reduction in court system time is attributable to swifter processing through circuit court.

As in 1975, appellants during 1976 exhibited a greater propensity to request time extensions than did appellees, and appellants' time extensions, when granted, were generally much longer than those granted appellees. As compared with 1975, the average number of days each 1976 case was continued on motion of appellant remained virtually unchanged, while the length of time each case was continued on motion of appellee declined significantly. The following tables illustrate the information presented above pertaining to criminal cases decided by the supreme court during calendar years 1975 and 1976:

A. ENTIRE COURT SYSTEM — CRIMINAL APPEALS

Time Sequence	Average No. Months Per Case	
	1975 (130 cases)	1976 (160 cases)
Filing to Trial	7.1	5.8
Trial to Record Filing	5.6	5.5
Record Filing to Submission	4.1	4.2
Submission to Decision	0.6	0.6
Total, Filing to Decision	17.4	16.1

B. SUPREME COURT — CRIMINAL APPEALS

Time Sequence	Average No. Months Per Case	
	1975 (130 cases)	1976 (160 cases)
Record Filing to Submission	4.1	4.2
Submission to Decision	0.6	0.6
Total time before supreme court	4.7	4.8
minus: time extensions granted parties	1.3	0.9
Net time before supreme court	3.4	3.9

II. Civil Cases

Civil cases included in the survey were categorized as to the nature of the action and the type of court. Civil cases from circuit courts were categorized into the following groups: negligence, contract or debt, administrative agency appeals, condemnation, and "other." Civil cases from chancery courts were categorized as follows: contract or debt, domestic relations, probate, administrative agency appeals, condemnation, and "other."

Generally speaking, the survey reflects that civil cases spend much more time in the court system than do criminal cases, with the bulk of the extra time attributable to the period from filing to trial in the lower court. The amount of time elapsing from trial to decision by the supreme court, and during the various intervening periods as well, is roughly the same for civil cases as for criminal cases. One exception is the period of time from submission to the court to decision by the court which increased for all civil cases from an average of nineteen days in 1975 to twenty-nine days in 1976,

while the average for criminal cases in both years was nineteen days. The following is a summary of the Judicial Department's survey of civil cases decided by the Arkansas Supreme Court during calendar years 1975 and 1976.

Civil Cases—1975

A total of 267 civil cases from both circuit and chancery (131 cases) courts, which were decided by the Arkansas Supreme Court during calendar year 1975, were surveyed by the Judicial Department. An average of 14.5 months elapsed from filing the complaint until trial in the lower court for the surveyed cases. The average amount of time from trial in the lower court to filing of the record with the supreme court was 4.3 months. Following the record filing, the average case was not submitted to the court for 4.7 months. During that period of time, each case was continued an average of 10.7 days on motion of appellant and 6.2 days on motion of appellee, an average net delay of 0.6 months. Following submission, an average of nineteen days elapsed until decision was rendered by the supreme court. Total time from filing to decision for each of the 267 cases was, on the average, 24.1 months, which indicates that the average civil case was in the court system more than two years.

Only slight differences were apparent between the various categories of cases from either circuit or chancery courts for the time sequences elapsing between trial and final decision by the supreme court, and therefore the datum on these time periods by individual categories is not included here. The averages for all 267 cases in the various time sequences discussed above are representative of the averages for those time sequences in the individual categories of cases and the type of court. However, the averages for the time sequence "filing to trial" differ sufficiently to warrant further discussion.

The average time which elapsed from filing to trial in circuit court for all 136 civil cases decided in 1975 was 16.5 months per case. The number of cases surveyed and the averages for each of the case categories are: negligence—29 cases, 15.8 months; contract/debt—42 cases, 12.8 months; administrative agency appeals—20 cases, 12.5 months; condemnation—11 cases, 51.9 months; "other"—34 cases, 12.6 months. When the condemnation cases are excluded, however, the average for all cases drops to 13.4 months.

The average time elapsing from filing to trial in chancery court for all 131 civil cases decided during 1975 was 13.5 months per case. The number of cases surveyed and the average time elapsed for each

of the categories are: domestic relations—21 cases, 15.3 months; contract/debt—42 cases, 12.3 months; probate—6 cases, 17.8 months; condemnation—3 cases, 22.5 months; administrative agency appeals—no cases surveyed; “other”—59 cases, 12.7 months.

As in criminal cases, appellants during 1975 exhibited a greater propensity to request extensions of time than did appellees, and the length of extensions granted appellants was generally greater than the length of those granted appellees. The average length of time extensions granted litigants in civil cases was substantially less than the length of those granted litigants in criminal cases.

Civil Cases—1976

A total of 317 civil cases decided by the supreme court during calendar year 1976 were surveyed by the Judicial Department. An average of 13.5 months elapsed from filing the complaint to trial in the lower court for the cases surveyed, one month less than the average for 1975 cases. Other time sequence averages were nearly the same in 1976 as in 1975: the average amount of time from trial in the lower court to filing the record in the supreme court was 4.2 months; after record filing, an average of 5.0 months elapsed before a case was submitted to the court for decision. During the period of time from record filing to submission, cases were continued an average of 11.5 days each on motion of appellant and 7.8 days each on motion of appellee, for an average net delay of 0.6 months. The amount of time elapsing from submission to decision increased dramatically during 1976 as compared with 1975, however. While the average case was under submission for nineteen days during 1975, that average leapt to twenty-nine days during 1976, a fact due in all likelihood to the dramatic increase in the supreme court's workload during 1976. Total time from filing in the lower court to decision by the supreme court for each of the 317 cases was, on the average, 23.6 months during 1976, slightly less than the two-year average during 1975.

Cases appealed to the supreme court from circuit courts comprised 173 of the 317 cases surveyed, while chancery court cases comprised 144 of that total. As in 1975, differences between corresponding categories of cases and the time sequences following trial in circuit and chancery courts were negligible. Therefore, the averages for all 317 cases in the various time sequences discussed above are representative of the averages for those time sequences in individual categories of cases from both circuit and chancery courts. Again, the averages for the time sequence “filing to trial” differ sufficiently to warrant attention.

The average time which elapsed from filing to trial in each of the 173 circuit court cases decided during 1976 was 13.5 months. The number of cases surveyed and the average time elapsed for each category are: negligence—41 cases, 13.9 months; contract/debt—60 cases, 15.5 months; administrative agency appeals—35 cases, 5.4 months; condemnation—11 cases, 27.8 months; "other"—26 cases, 13.4 months. When the condemnation cases are excluded, the average for all cases drops to 12.6 months.

The average time elapsing from filing to trial in chancery court for the 144 cases decided during 1976 was 13.4 months. The number of cases surveyed and the average time elapsed for the case categories are: domestic relations—9 cases, 4.1 months; contract/debt—48 cases, 16.7 months; probate—18 cases, 11.8 months; condemnation—3 cases, 24.9 months; administrative agency appeals—5 cases, 18.4 months; "other"—61 cases, 12.0 months.

Time extensions requested and the length of those granted in the 1976 cases were virtually the same as in the 1975 cases. The following tables reflect the information presented above relating to civil cases decided by the supreme court during calendar years 1975 and 1976.

A. ENTIRE COURT SYSTEM — CIVIL APPEALS

Time Sequence	Average No. Months Per Case	
	1975 (267 cases)	1976 (317 cases)
Filing to Trial	14.5	13.5
Trial to Record Filing	4.3	4.2
Record Filing to Submission	4.7	5.0
Submission to Decision	0.6	0.9
Total, Filing to Decision	24.1	23.6

B. SUPREME COURT — CIVIL APPEALS

Time Sequence	Average No. Months Per Case	
	1975 (267 cases)	1976 (317 cases)
Record Filing to Submission	4.7	5.0
Submission to Decision	0.6	0.9
Total time before supreme court	5.3	5.9
minus time extensions granted parties	0.6	0.6
Net time before supreme court	4.7	5.3

C. CIVIL APPEALS BY COURT AND TYPE, TIME FROM FILING TO TRIAL

Type of Case	Average No. Months From Filing To Trial			
	Circuit Courts		Chancery Courts	
	1975	1976	1975	1976
Contract/Debt	12.8	15.5	12.3	16.7
Negligence	15.8	13.9	N/A*	N/A*
Domestic Relations	N/A*	N/A*	15.3	4.1
Administrative Agency	12.5	5.4	—	18.4
Condemnation	51.9	27.8	22.5	24.9
Probate	N/A*	N/A*	17.8	11.8
"Other"	12.6	13.4	12.7	12.0
Average All Cases	16.5	13.5	13.5	13.4
Average Excluding Condemnation	13.4	12.6	13.3	13.2

*Not Applicable

CONCLUSION

The average criminal case which is eventually appealed to the supreme court is brought to trial in less than half the time of the average civil case. Time from trial to record filing in the average criminal case is about 1.3 months longer than in the average civil case, and each civil case is before the supreme court an average of 1.3 months longer than the average criminal case.

Generally speaking, the nature of the case in any appeal, civil or criminal, makes very little difference insofar as the amount of time required to process such cases from trial through supreme court decision.

Following submission of a criminal case, about nineteen days elapse before decision is rendered. After a civil case is submitted, about four weeks elapse before decision is rendered. Tables *D* and *E* compare civil and criminal cases in terms of processing time in the court system.

D. COMPARATIVE TABLE, CIVIL AND CRIMINAL APPEALS

Time Sequence	Average No. Months Per Case			
	1975		1976	
	Civil	Criminal	Civil	Criminal
Filing to Trial	14.5	7.1	13.5	5.8
Trial to Record Filing	4.3	5.6	4.2	5.5
Record Filing to Submission	4.7	4.1	5.0	4.2
Submission to Decision	0.6	0.6	0.9	0.6
Total, Filing to Decision	24.1	17.4	23.6	16.1

E. COMPARATIVE TABLE, TIME BEFORE SUPREME COURT

Time Sequence	Average No. Months Per Case			
	1975		1976	
	Civil	Criminal	Civil	Criminal
Record Filing to Submission	4.7	4.1	5.0	4.2
Submission to Decision	0.6	0.6	0.9	0.6
Total time before supreme court	5.3	4.7	5.9	4.8
minus time extensions granted parties	0.6	1.3	0.6	0.9
Net time before supreme court	4.7	3.4	5.3	3.9

In summary, the survey results indicate that the Arkansas court system is delivering services at a fairly consistent rate. Whether that rate is acceptable depends upon the viewpoint. The

rate in Arkansas certainly exceeds the rate in some jurisdictions.⁹ It is the authors' position that with appropriate effort this rate may be substantially increased and that increasing the rate of caseload is a goal toward which the judicial system should strive.

Attainment of this goal would require the efforts of the judiciary in the direction of more efficient administration of its operations, better caseload management at the trial level, swifter transcript preparation, and active promotion of prompt adjudication of cases through strict docket supervision. The bar in turn must be conscientious in preparing cases for trial, thereby minimizing causes for continuances, and must cooperate with the judges in expediting caseload. Finally, the litigants, indeed the public in general, have the obligation to demand improved management of the court system and less procrastination by attorneys, and should actively participate in the system as witnesses, jury members, clients, and voters.

The workload of the Arkansas Supreme Court presents a special problem which demands immediate attention.¹⁰ The only lasting solution to this problem appears in the prospect of the establishment of a court of appeals.¹¹ Chief Justice Carleton Harris summed up the court's situation as follows: "[I]t will be difficult for the Court to keep pace with its skyrocketing workload in the years to

9. See, e.g., Institute of Judicial Administration, *Calendar Status Study—1973, State Trial Courts of General Jurisdiction Personal Injury Cases*, at vi (August 1, 1973): "According to the figures furnished . . . it took, in 1973, an average of just over 21.6 months for a personal injury case to reach jury trial after the service of the answer." In Arkansas, it took 13.9 months for the average negligence case surveyed in 1976 to come to trial, and it should be noted that this time period was measured from *filing the complaint* rather than from *service of the answer* as in the IJA study. Actually, in 33 of the 88 jurisdictions reporting in the IJA study, the length of time between service of the answer and trial averaged about four months longer than the average time from filing the complaint to supreme court decision for the 1976 negligence cases in Arkansas.

10. The court has taken steps to cope with its workload in the past two years with the adoption of Sup. Ct. R. 21, Ark. Stat. Ann. vol. 3A (Cum. Supp. 1975), which sets standards governing publication of opinions and is intended to alleviate some opinion-writing duties, and by per curiam order of July 19, 1976, *In re Supreme Court Procedure for Sitting in Arkansas*, 260 Ark. 380 (1976), which provided that the court sit in divisions on most cases.

11. S. J. Res. 5, 71st General Assembly, Ark. Legis. Dig., adopted by the Seventy-First General Assembly last year, will be presented to the voters at the 1978 general election. If adopted, it would amend the Arkansas Constitution to allow the General Assembly to create a court of appeals which would constitute an additional court level between general jurisdiction courts and the supreme court. Associate Justice John A. Fogleman expressed the desirability of an appeals court as follows: "[T]he fact that the court has been sitting in divisions has been helpful and with divisions the court can handle the current caseload, but no more, and, in view of the projected increase in caseload, the establishment of an appellate court is a desirable approach." From remarks to the Arkansas Judicial Council at its annual meeting, October 14, 1977, Helena, Ark.

come unless help in the form of an . . . appellate court for Arkansas is forthcoming."¹²

Intense involvement in the judicial system by all connected with it will help meet the challenges of the future, and only through concerted effort by judges, lawyers, and the public can delay in the courts be reduced and the system deal with burgeoning litigation. Arkansas must begin now its effort to achieve this goal.¹³

12. Excerpted from transmittal letter of 1976 Judicial Statistics, *supra* note 2, to Governor David Pryor and members of the Seventy-First General Assembly.

13. "[T]oo much of the current dissatisfaction [with the administration of justice] has just origin in our judicial organization and procedure. The causes that lie here must be heeded. Our administration of justice is not decadent. It is simply behind the times." Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. Rep. 395 (1906).