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Assuming that no quotation from the Constitution of Florida may become hackneyed however often it may be repeated, it is well at the outset of this commentary to draw attention to the admonition in Section 4 of the Declaration of Rights that ". . . justice shall be administered without . . . denial or delay."[1] This pronouncement is really more than an admonition, for each votary of the law in this state, whether he be judge or practitioner, is, under the oath he takes at the threshold of his career, duty bound to support this constitution. So he becomes obligated to see, whatever his capacity, that those who litigate or find themselves in the toils of the law shall know their fate without undue delay, for, in truth, justice delayed may well be justice denied. This does not mean, though, that an extreme opposite course should be followed, for the motto on the seal of the Supreme Court, *Sat cito si recte,* recently judicially translated to mean "Soon enough if correct," tempers any haste that may be exercised to meet the injunction against tardiness. So a decision of a given case should be forthcoming at the earliest time it can be reached without sacrificing soundness to speed.

It is the purpose of these observations to emphasize, from the standpoint of the appellate court, some of the things which have been and may yet be done to simplify the presentation of appeals in order that decisions may be expedited, or at least not unduly delayed, and also that the conclusions may be as nearly accurate as possible.

The increase in appellate litigation of late, and the probability that in a growing state such as ours it will progressively continue, make the problem of dispatch of business, with as little disturbance of settled law as possible, a constant challenge to the profession. There is no immediate prospect of an increase in membership of the Supreme Court of Florida or of the establishment of intermediate courts of appeal; so it seems fitting that an examination be made into what may be accomplished with the present machinery and personnel to keep abreast of

[1] FLA. CONST., Decl. of Rights §4.

the docket as it is today and to meet the increase in the number of appeals sure to come in a state which is developing so rapidly and consequently experiencing recurring growing pains. Time being inexorably limited and the Court having no direct control over the number of appeals to be considered, the vital basic problem ever present is how best to apply that time to constantly increasing demands upon it.

The Court is always faced with two horns of a dilemma—whether to undertake the preparation of opinions in a greater number of cases, with a resulting falling behind with the docket, or to keep the docket current, with fewer opinions. It is conceivable that, if the first "horn" is chosen, justice may be delayed or, to state it otherwise, justice will not be administered without delay; while, if the second is chosen, there must be disappointment to many attorneys who have labored long and traveled far, only to be rewarded with the one word "affirmed" or, in the case of appeals from interlocutory orders in chancery, "petition denied."

The Court is fully conscious of the unfavorable criticism of either process, but, if a choice must be made, it seems that a decision without delay should have the preference and that the Court should strive to that end. In the final analysis, the party to the cause is the one to receive first consideration, and it is he who is concerned more with the outcome of the controversy than with the reasons for his having lost or won, important as those reasons may become as a beacon to light the paths of others who need guidance in the future on the matters of law involved.

Before pointing out what may still be done to expedite the rendition of judgments that are sound, whether they be based on opinions establishing the law or merely per curiam affirmances, it is appropriate to review briefly some of the steps already taken toward that end.

The Supreme Court of Florida long ago became aware of the necessity for adopting rules which would better systematize the work and afford a means of simplifying, as well as speeding, the entertainment of appeals and the disposition of them. It was in this effort that it was determined to hear all motions on Monday of each week,[2] with the provision that none should be heard at any other time except in cases of emergency.[3] This simple rule had a dual purpose. In the first place, it concentrated that particular phase of the work so that members of the Court, while

[2]RULES OF PRACTICE, SUP. CT. OF FLA., as amended July 27, 1945, Rule 3(a). The Rules of Practice will hereinafter be referred to as "S. C. R. P."

[3]S. C. R. P., Rule 3(b).

engaged in the preparation of opinions and other judicial tasks, would not be interrupted haphazardly. Such interruptions result in an expenditure of time required to resume a train of thought that is wending its way to a solution of a legal question, as any practitioner who has been interrupted while in the midst of fathoming an intricate abstract of title or writing a complicated brief well understands; also, it takes time to assemble and disband a court of seven men, or even a division of three and the Chief Justice. In the second place, this rule assured any attorney who traveled to the Capital on Monday that in the absence of an emergency he would not have to make the journey again before another week had passed.

Another rule which had the effect of saving to the members of the Court time sorely needed, prescribed that original writs in mandamus should not be heard unless a state officer, board, or functionary, or some other agency representing the people was named as respondent.[4] At the time this rule was promulgated there had developed the practice of filing in this Court original actions in mandamus, and the number of them had grown prodigiously. Of course there is no difficulty whatever in understanding why any lawyer would prefer to start in the Supreme Court rather than present his case in the circuit court and eventually arrive there on appeal; however, it was the attitude of the Supreme Court that, after all, these were matters which could be entertained by the circuit courts and that, there being such a demand on the Supreme Court, much time would be saved if original jurisdiction were restricted to those cases in which the public generally was interested. As a practical matter, the adoption of this rule resulted in a sort of "screening" process, so that by the law of averages not every case thus required to be brought in the circuit courts reached the Supreme Court by appeal, and the burden of hearing these cases was greatly lessened, thereby releasing to the individual members much time that could be used for the determination of matters that could not be heard elsewhere.

More important even than these two rules was the so-called streamlined procedure established for the adjudication of appeals from interlocutory orders entered in chancery causes.[5] The benefit derived from this system is likewise twofold, for it enables a litigant to get an immediate review of the order by which he feels aggrieved, and it discourages anyone, assuming that there are such, from prosecuting an appeal for the purpose of retarding the ultimate decision of the main case on the

[4]S. C. R. P., Rule 30(d).

[5]S. C. R. P., Rule 34.

merits. In other words, it was calculated to offer little encouragement to anyone to appeal from interlocutory orders unless some real point of law was involved which it was important to have decided, in order that unnecessary work on the part of the Court and attorneys and needless expense to litigants in the taking of testimony that might eventually prove useless could be avoided. This particular rule has had more to do than any other with bringing the docket up to date and keeping it so.

It is well to advert here to what has been said about the determination of petitions for certiorari by simply denying them without comment. It is pointedly stated in the rule that, in the event the writ is denied, the ruling will be announced without opinion, and that opinions on such appeals—that is, by certiorari—shall be prepared only when required to settle the law of the case or serve as a guide in future steps in that litigation.[6] The object sought to be accomplished by this provision grew from the same situation that gave rise to the rules already mentioned and those to be discussed later—that is, a crowded docket.

The Court is currently entertaining about 750 cases yearly, and when the amount of work allotted to each member is taken into consideration, aside from the actual preparation of opinions, such as the examination of opinions prepared by his colleagues, the handling of motions, and the many other duties exacted from him, it is doubtful whether more than 350 carefully written decisions can be expected. Only in rare instances can a judgment of the lower court be appropriately reversed without an expression on the part of the appellate court. Consequently, from the number of opinions which the Court has the capacity of preparing and adopting, there must be subtracted the number of those containing reversals, and it is the remainder which may be assigned to the case in which affirmances are entered or petitions for rehearing are denied. It is easily seen, if we use this arbitrary figure of 350 as the number of opinions the Court has the capacity to prepare, that, were an attempt made to write an opinion in each case whether affirmed or reversed, one of two situations would develop: either the court would fall behind a few hundred cases the first year, and this number would be multiplied thereafter even though the number of appeals remained fixed; or the quality of the opinions both in composition and accuracy would suffer.

Reference has already been made to the obligation on the part of the Court not to permit justice to wane because of tardy decisions, and to our motto reminding us that a decision is never late if it is right. If the

[6]S. C. R. P., Rule 34(b).

Court undertakes to respect both, the conclusion seems inescapable that an attempt to augment the number of opinions would be an utterly inconsistent course.

It is trite to suggest that only a small part of the lawyers' work is devoted to actual litigation, while a vast amount of it consists of advising and counseling clients on the basis of decisions of the courts interpreting the law. Many eminent and successful attorneys seldom appear in the court room, but exercise their talents in saving to their clients the cost and delay of litigation. We should be chary of adopting any plan that might disturb established precedents; and were the Supreme Court to attempt to render opinions in a volume out of proportion to the time available to prepare them accurately, then these precedents would become endangered.

Certainly no contest that justifies the expense and labor of bringing it to the Supreme Court should receive such hurried consideration that the rights of the parties would be jeopardized and pertinent legal precedents unsettled. The more disrupted these precedents became, the more litigation would ensue. Confusion would beget confusion.

It is one thing for a judge to be certain in his mind and heart what the judgment in a case should be, but it is quite another for him to set down the reasons for his conclusions in such form that they will be thoroughly understandable to the reader in years to come, and to make them so clear in composition that they may not be given quite another meaning when applied to a set of facts similar but not identical.

Brevity, clarity, and completeness should be the cardinal characteristics of an opinion, so that anyone resorting to it may at once grasp the facts, the governing law, and the reasoning which led to the conclusion. This is especially valuable to the trial jurist, who must so often pause in the trial of a case and examine an authority while the work of counsel, court officers, and jurors is at a standstill. The shorter the decision he is required to examine, the shorter will be the interruption of the trial. To compress the facts, the law, and the comment, and condense further by rewriting the opinion until the whole has been reduced to a minimum takes patience, perseverance, and time.

Another reason for the restriction with reference to opinions in appeals by certiorari from interlocutory orders is that in a vast majority of such cases the order under attack, if held by the Court to be free from harmful error, itself serves as the guide in the formation and trial of the issues by the chancellor. If, for instance, a bill of complaint is assailed by motion to dismiss and the chancellor decides that the pleading with-

stands the assault, and a petition to review this order is denied, the consequence is that the bill itself then becomes the corner stone on which the issues are to be built. These issues then in turn become the skeleton about which the symmetrical body of the case is formed by proof.

This question is now reached: What may be done by a court limited to seven members, there being no restriction on the number of appeals that may be prosecuted, to perform more properly the task it now bears and meet the anticipated burden? In treating of the subject it is purposed to give only the viewpoint of the appellate court, from which each case, important as it is and should be to the attorney presenting it and the litigant involved, is magnified in the sight of the appellate court 750 times.

Each of the rules to which reference will be made seems of comparatively little consequence in itself, but, if all are taken collectively and observed assiduously in cases appealed, the result will unquestionably be of the greatest help in meeting a problem which is so vital to the lawyer, the litigant, and the appellate judge.

In giving illustrations there is no thought of criticism of any particular member of the bar, but these illustrations are alluded to only in an effort to clarify the position of the appellate court.

Much concern has been caused the Court by the lodging there of voluminous transcripts showing everything that occurred in the trial court from beginning to end, when so much of the record is utterly irrelevant to the vital point or points to be decided, and the irrelevant matter serves only as an impediment to rapid and comprehensive examination. For instance, if the validity of any particular count of a declaration is the focal point in a case, there is small need to include every paper filed from the time of the institution of the suit, but it would suffice if the pleading with the demurrer directed to it and the order on that pleading, together with such subsequent instruments as would show the prosecution of the appeal, were incorporated.

It often happens that, in chancery cases growing out of bills for divorce, bulky files, not only of the pleadings but of testimony taken on many issues, are compiled and sent to the Court when there is a dispute only about that part of the final decree which adjudicates the property rights of the parties or some other particular phase of the controversy. In such instances it is often necessary to sift the testimony in order to take from it the relatively small portion which develops the factual situation on which the challenged order is based. Manifestly this places an undue burden on the Court and results in consumption

of time needed for other purposes. The fault may be found also in appeals in criminal cases, in which, for illustration, numerous stereotyped affidavits are filed that vary only in the descriptions of the affiants, such as name, residence, and so on. Obviously the same economy of time and money could be accomplished by giving one affidavit and the list of affiants with the information peculiar to each, instead of incorporating the full affidavit of every affiant.

The members of the Court are fully aware that a careful lawyer, in the abundance of caution, may conclude that it is better to have too much in the record than too little, and there is a logical reason for this position; however, if a transcript is kept to a minimum, thus obviating the expenditure of valuable time in searching for such of it as may be pertinent to the controversy, and it is discovered that testimony may have been eliminated which should properly be examined, the Court will not hesitate of its own motion to have the record supplemented.[7] As an illustration of this attitude, it has not infrequently happened that in the examination of a case it has been discovered that the final judgment, say in a criminal case, has been overlooked. On these occasions the Court has simply had its clerk request the clerk of the trial court to forward the missing document so that the case might be entertained, without even the formality of corresponding directly with counsel for the appellant.

In passing, it may be well to note that not only will the simplification of transcripts obviate unnecessary expenditure of time by a busy tribunal, but it will also decrease the cost to litigants presenting cases. Here again attention should be drawn to the rule providing that pleadings and evidence not essential to a decision should be omitted, and that formal parts of exhibits and duplicate copies of any documents should be excluded.[8] The importance of eliminating in each case even a few pages of unnecessary pleadings, captions, duplications, and the like, when multiplied by the number of cases that the Court is required to consider in the course of a year, will produce a figure of considerable proportions. When it is considered that there are literally hundred of pages of such pleadings and especially of testimony which serve no useful purpose, it is readily seen that much can be done by those having the transcripts prepared to save the valuable time of the Supreme Court of Florida, as well as reduce the expenses of the parties litigant who ultimately pay the costs.

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[7]S. C. R. P., Rule 11(8)(b).

[8]S. C. R. P., Rule 11(2)(a).

Of course it is realized that the condensation of records does demand time on the part of the person who is charged with compiling them and that it is much easier for appellant's counsel simply to incorporate in the instructions to the clerk the items appearing on the progress docket. It is the idea of the Court, however, that this problem which we face is not one for the Court alone but is one for all who are charged with the administration of justice, no matter what their capacity. The control of what initially goes to make up the records is exercised long before they come to the Court's attention, so anything the appellate court might thereafter do would necessarily be a penalty and not a preventive. It seems only reasonable that the condition should be corrected at the source.

It has been suggested that the Court adopt a rule bringing under direct supervision of the trial judges all transcripts which are to be filed in the Supreme Court, and eventually such a procedure may be required, but, even without such a rule, in cases not coming under the direction of the trial judges the situation can be remedied through the efforts of counsel.

Strict adherence to present rules by attorneys directing the compilation of transcripts will do much to correct the practice of saddling unnecessary records on the Court and the cost of them on litigants. Not only are attorneys enjoined in general to omit nonessential pleadings, evidence, and so forth, but also to exclude formal parts of exhibits, more than one copy of any document, as well as irrelevant and formal parts of such document.[9] By way of emphasis there is imbedded in the rule the terse warning, "Immaterial substance shall be omitted"[10] from the transcript of trial proceedings. To accomplish the purpose of abridging the record, it is expressly provided that the entire record may consist of a stipulation of the fundamental facts.[11]

While treating the subject of transcripts it is probably wise to mention the requirements of the court rules with reference to the weight of paper[12] and the filing of originals.[13] These rules seem almost insignificant, yet in view of the volume of work to be done their importance is magnified. The obvious purpose of insisting on paper of a certain thickness is to prevent the type on the page underneath from showing through. If

[9] *Ibid.*
[10] S. C. R. P., Rule 11(4)(a).
[11] S. C. R. P., Rule 11(5).
[12] S. C. R. P., Rule 12(d).
[13] S. C. R. P., Rule 12(c).

only a few pages were to be read, the use of transparent paper would be of small consequence, but when hours upon hours are needed to peruse a transcript the reader cannot read speedily if the type is clouded by that on the page beneath. It is impossible, too, to read rapidly and continuously carbon copies, which by their nature are somewhat blurred.

It was in this effort to further the speed of the Court, and not to contribute to the comfort of members, that the number of pages in a folio was limited[14] and the size and kind of type specified.[15] For the same reason the Court forbade the use of photostatic copies unless certified as essential by the trial judge.[16] The wisdom of such a rule will be immediately apparent to anyone who undertakes to read a photostatic copy of an entire record of several hundred pages.

Before leaving the subject of transcripts it should be mentioned that, in the process of incorporating the stenographer's transcription into the master's report and both into the transcript, it too frequently happens that most of the pages are assigned more than one number. The stenographer's transcription receives a set of numbers which does not correspond with those adopted by the master in his completed report, and the transcript when finally compiled gets a different set; so that the pages of the first may have three numbers, the pages of the second, exclusive of the first, two numbers, and the pages supplementing the master's report one number. The inconvenience flowing from such a system is obvious. The pages of the transcript filed in the Supreme Court should be numbered consecutively from the first to the last and all other designations should be omitted, for the inconvenience caused by doing otherwise costs time.

Although the burden falls upon the appellate court to dispose of 750 appeals in a year, it has been reported by a recognized statistician that the average time lapsing between submission of an appeal and the rendering of the decision is twenty-one days. If this pace is to be maintained, it is patent that each member of the Court must, in a minimum of time, absorb the facts in a given case and prepare an opinion, or examine one prepared by a colleague, and pass quickly to the next. To do this, it is not only vital that the record itself contain as little surplusage as possible, but it is necessary that the questions of law in the briefs be clear-cut and concise so that the pivotal points may stand out in

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[14]S. C. R. P., Rule 12(f).
[15]S. C. R. P., Rule 12(c).
[16]S. C. R. P., Rule 12(h).

bold relief against the background of facts or pleadings as reflected in the transcript.

In a vast majority of cases there is but one real point determinative of the controversy; occasionally there are two or three, infrequently three or four, and on rare occasions a greater number. In some instances the author of the brief presents a great number of questions of law to be studied by the Court which, upon careful examination, are revealed to be a point or two stated in various ways, apparently so that the real point cannot escape the Court. Such a method has precisely the opposite effect, tending only to obscure the essential matter in controversy. Nothing is to be gained by stating each of three points four different ways so that the brief contains twelve divisions instead of three. It is far better to give three concise questions, for the Court is not especially concerned with the technical composition of the questions so long as the propositions of law are plainly stated. Occasionally the appellee will be dissatisfied with the question framed by his adversary and, stating one of his own, set off on an independent excursion and exploration of the law. There is no objection to his following such a course, if he does not ignore the question of appellant, for it may happen that the justice to whom the case is assigned believes the first statement to be correct and the appellant's position in regard to it unsound, whereupon he turns to the appellee's brief to find contrary authorities, only to be disappointed and forced to make his own research.

As the name implies, a brief should be as short as is compatible with a proper presentation of the facts and the applicable law, and should be prepared with the idea of informing the members of the Court quickly and directly of the pivotal questions and the governing law; so, if there are manifold decisions upon the subject, it is helpful to cite one that is typical and place the citations of the others in an appendix. In this way, the justices who are participating may immediately have a clear picture of the contest and, by resorting to the appendix, make such further investigation of prevailing law as they may find necessary completely to satisfy themselves of the correct position. If any governing statute, rule, or the like is the focal point of the controversy, it is also a real service to the Court to place a copy of it in the appendix so that those who participate in the decision may easily refer to it without the need of keeping at hand the book in which it is printed. When, in his quest for the law to support his position, a briefer finds in a digest a collection of authorities on the point, he does the Court a genuine service if he then and there indicates in his brief the source of his material. Thus the reader

is saved the time of locating it in the appellee's reply or, in the event it has not been discovered by the appellee, of finding it for himself.

It is always an obstacle to a ready understanding of a case if an entire decision is copied in the brief, for it places upon the members of the Court the task of winnowing from the reported case those parts which are relevant to the issue; and by copying a whole opinion the author does not necessarily impose on the reader the obligation to study every letter, word, clause, and paragraph of it in a search for the relevant portions. If this plan were carried to the extreme, it is easy to surmise what sort of brief would be the result. Even twenty cases cited, and all twenty copied in full, would render the brief one in name only, and the creator might become the victim of the confusion he himself had wrought. It is an especial accommodation to the Court to give citations in both the Florida Reports and the Southern Reporter.[17]

To repeat, the matter set down here, if taken separately, seem to range in effect from "trivial" to "vital," yet when considered collectively in the light of the burden now present and to be met, all become important. The sole purpose of recording them is to give the view of the appellate court on a problem which is common to bench and bar.

Many other suggestions could be offered that are slightly afield but nonetheless helpful to the efficient operation of the Court and the administration of its affairs. For instance, it is always wise for counsel to append his address to his name wherever it appears on papers filed in the Supreme Court. Thus correspondence will not be delayed.

If one studies the current rules of the Court, the impression is immediately gained that faithful adherence to them will do much to alleviate the burden. The rules relative to briefs and transcripts are in general adequate to conserve time and space and money.

The justices of the Supreme Court are profoundly sensible of the cooperation received from the trial courts and the attorneys, as an attitude at once comforting and encouraging, and one which the Court is ever eager to reciprocate. From this spirit of cooperation among members of the profession is bound to spring the solution of the problem now encountered. Truly the responsibility of a profession having so much to do in the dispensation of justice is tremendous. Each of us, in meeting that great burden, should be ever alert to see that justice is administered without denial—or even delay.

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[17]S. C. R. P., Rule 20.