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REFLECTIONS ON DEFLECTION: APPELLATE ASSIGNMENT TO OKLAHOMA'S COURT OF APPEALS

William W. Means*

I. INTRODUCTION

Intermediate appellate courts exist in a number of forms in both state and federal judicial systems throughout the United States. They exist as both legislative and judicial creation. Although the intermediate appellate courts perform a wide variety of judicial functions which vary from state to state, these courts generally obtain jurisdiction over appellate cases in one of two ways: either appeals are lodged directly with the intermediate court from a trial tribunal, or appeals are assigned to the intermediate court by a supreme court or court of last resort.

Oklahoma's intermediate appellate court, the Oklahoma Court of Appeals, falls into the latter, or deflection, category. By constitutional requirement, all appeals are filed initially with the Oklahoma Supreme Court. That Court, acting through its Chief Justice, assigns or deflects appeals to the Oklahoma Court of Appeals.

To fully understand this deflection system in Oklahoma, an appreciation must first be reached regarding certain fundamentals: first, the development of the need for or origin of the intermediate court of appeals

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in Oklahoma; second, the organization and development of that Court of Appeals; third, the historical operation of the Court of Appeals and its relationship with the Supreme Court; fourth, the present status of the deflection system as it is being implemented by the Supreme Court. This article reviews those fundamentals.

Throughout statehood, the Supreme Court has explored various adjunct alternatives for a solution to the problems of an expanding case load. Since 1971, these alternatives have involved the Court of Appeals. At first, the Court of Appeals operated only as an adjunct to the Supreme Court. The Supreme Court assigned only a limited number of cases, carefully screened. Gradually, the conclusion emerged that the original deflection system was ineffective as a response to a rapidly expanding appellate case load. As the Supreme Court used temporary divisions of the Court of Appeals, implemented new rules of appellate practice, and refined its work load relationship with the Court of Appeals, the role of the Court of Appeals gained new importance. Greater volumes of cases were assigned to the Court of Appeals. The Supreme Court shifted some administrative responsibilities to the Court of Appeals for its own operation and case processing. Today, the Court of Appeals is closer in function to a true intermediate court of appeals, relieving the Supreme Court of an excessive case load.

II. ORIGIN

The origin of an intermediate appellate court system in the form of the Oklahoma Court of Appeals is found in the matured thinking of Oklahoma's legal profession as it searched for greater appellate capacity. The rationale for this intermediate system evolved as various adjunct systems¹ were tried to reduce the backlog or inventory of cases pending before the Supreme Court, that is, cases considered at issue or ready for consideration. The realization that these adjunct systems were only temporarily successful in reducing the backlog led to the creation of an intermediate court of appeals.²

1. The adjunct systems referred to are the Supreme Court Commissioner scheme, the use of referees, and the use of law clerks.

2. The experience of several states demonstrates that the intermediate appellate court may be an effective mechanism for dealing with congestion and delay in the state high courts and for increasing accessibility to the appellate process. M. OSTHUS, *STATE INTERMEDIATE APPELLATE COURTS* 4 (1980).

See also R. LEFLAR, *INTERNAL OPERATING PROCEDURES OF APPELLATE COURTS* 65, 68 (1976). As Professor Leflar observes:

The need for an intermediate appellate court in any particular state arises directly from the

Almost since statehood, November, 1907, Oklahoma has searched for methods to generate an increase in its appellate capacity.³ Originally there were five justices on the Supreme Court,⁴ the only appellate court for civil cases in the new state. A glance at the statistics showing the number of cases filed each year demonstrates a dramatic increase in cases during the first five years.⁵ The appellate case growth from 546 cases in 1908 to 1,319 cases in 1912 represents a 141 percent increase. Within this short time it became increasingly clear that five justices could not adequately handle the appellate case load.

Initially the Supreme Court implemented an adjunct system known as the Supreme Court Commission.⁶ In 1911, due to the increasing case load, the legislature authorized six Supreme Court Commissioners. A commissioner's duty was to assist the Court in the disposition of the causes then pending or later brought to the Court by appeal or otherwise.⁷

The commissioner system was used as a Band-Aid when the need

inability of the top court to deal fairly and efficiently with an increasing bulk of cases coming up on appeal from the courts of original jurisdiction.

Id. at 65. Professor Leflar continues:

The question whether a particular state needs an intermediate court may be answered by determining whether the top court can keep its docket current by achieving maximum efficiency in its operational procedures and by allowing its divisions to decide the cases that would otherwise be concluded in an intermediate court. If it can, the reasons against establishing an intermediate court are the most weighty. If, after every effort has been made for maximum efficiency, the top court still cannot keep its docket current, an intermediate court is needed.

Id. at 68.

3. See Meador, *Appellate Case Management and Decisional Processes*, 61 VA. L. REV. 255, 255 (1975). Professor Meador reflects that as a result of the stress resulting from rapid growth in the volume of appeals, three related and significant innovations have emerged: affirmative case management, central staff attorneys, and differentiated processes. *Id.*

4. OKLA. CONST. art. VII, *repealed* at election on July 11, 1967, by State Question 448, Legislative Referendum 164, as proposed by Okla. H.J. Res. 508, 31st Leg., 1967 Okla. Sess. Laws, ch. 698. For text of original art. VII, see OKLA. STAT. §§ 13553 - 13577 (1931).

5. See Appendix Table 1.

6. Okla. H.B. 75, 3d Leg., 1911 Okla. Sess. Laws, ch. 167. This legislation authorized the Supreme Court to appoint six persons possessing the qualifications required for a justice of the Supreme Court, one from each of the five Supreme Court judicial districts and one from the state at large, to be Supreme Court Commissioners. The commissioners were appointed for two-year terms, indicating that this was a temporary measure, and worked in two divisions known as Oklahoma Supreme Court Commissioner divisions numbers 1 and 2.

The duties were described to be, "under such orders, rules, and regulations as the Supreme Court may adopt, to assist the Court in disposing of the cases then pending or brought by appeal or otherwise." *Id.* at § 2.

The commission was to make its findings and opinions in writing to the Supreme Court, which could remand, adopt, or reject, in whole or in part, and render such opinion or opinions and enter such judgment as it deemed proper. *Id.*

7. The use of the word "otherwise" in the statute appears to refer to cases filed with the Supreme Court invoking its original jurisdiction. *Id.*

arose and never became a permanent fixture in the judicial system.⁸ On occasion, the Band-Aid had a Band-Aid. As a result of this approach to

8. The legislature in 1913 authorized the extension of the duration of the Supreme Court commission until February 1, 1915. Okla. H.B. 257, 4th Leg., 1913 Okla. Sess. Laws, ch. 95, § 1.

The legislature changed certain aspects of the commissioner system in 1915. Okla. S.B. 204, 5th Leg., 1915 Okla. Sess. Laws, ch. 87. The power of appointment was moved to the governor, but subject to the consent and approval of the Supreme Court. The number of commissioners was increased to nine, but the term of appointment remained at two years, again demonstrating that this commissioner system was considered temporary. *Id.* at § 1.

Because there were only five Supreme Court districts available to select nine commissioners, four of the commissioners were selected from the state at large. They were again required to possess the qualifications of judges of the Supreme Court. The Commissioners were divided into groups of three each as divisions one, two, and three. Their duties continued to be described: "to assist the Supreme Court in disposing of the causes now pending or hereafter filed." *Id.* at § 3.

It is interesting to note that the Supreme Court was directed to assign, from time to time to each division of commissioners, a sufficient number of causes to keep them employed. Their duties were specifically expanded to permit them to hear arguments, to examine briefs and records, to pass upon motions in the causes assigned, to prepare and submit to the Supreme Court opinions in writing stating their findings and conclusions, and to make recommendations to the Court. *Id.*

In addition to increasing the number of Supreme Court Commissioners to nine, the 1915 legislation also authorized the governor, when in his judgment the public interest warranted and the Supreme Court concurred, to designate not more than nine district judges to act as Supreme Court Commissioners for a period of not less than four months at a time. *Id.* at § 2.

This same bill also provided for an increase in the filing fee for appeals, another technique for controlling the flow of litigation. *Id.* See R. LEFLAR, *supra* note 2, at 9: "A number of ways have been suggested to cut backlog and lessen delay. Appeals could be made more costly . . ." *Id.* See also P. CARRINGTON, D. MEADOR, & M. ROSENBERG, JUSTICE ON APPEAL 133 (1976). "The third method of reducing the rate of appeal is to increase the costs, financial or non-economic, of the appeal." *Id.*

Chief Justice Davison employed this technique in 1973 when he requested that the legislature impose an additional filing fee for the filing of a petition for certiorari:

There is still a substantial backlog of cases in the appellate courts. It is being reduced thanks to a very high productivity of the Court of Appeals, but we are plagued with an ever increasing number of petitions to review by certiorari the decisions of the intermediate court. This added burden is taking so much of our time that it creates a virtual bottleneck in the processing of appeals. We ask that you study this matter and give due consideration to imposing an additional filing fee for those who seek access to the Supreme Court after losing their case in the Court of Appeals. Such access to our Court is now free to all litigants because only one cost deposit is required for filing an appeal.

Our hope is that the number of petitions for further review in the Supreme Court may be decreased so that more cases decided by the intermediate court can become final.

Chief Justice D. N. Davison, Report to the Oklahoma Legislature (Jan. 23, 1973), *reprinted in* 44 OKLA. B.J. 425, 427 (1973).

In 1917, the Supreme Court commission was again extended until November 30, 1918. Okla. H.B. 19, 6th Leg., 1917 Okla. Sess. Laws, ch. 128, § 1. The only major change was to subject the commissioners to removal only by impeachment, as provided for the impeachment of justices of the Supreme Court. *Id.* at § 4.

Reactivated in 1923 by Okla. S.B. 35, 9th Leg., 1923 Okla. Sess. Laws, ch. 21, the commissioner system was to exist this time until December 31, 1926. Fifteen persons, with the qualifications of a justice of the Supreme Court, were appointed by the governor, subject to consent and approval of the Supreme Court. The commissioners held office at the pleasure of the Supreme Court. *Id.* at § 1.

The last time the commissioner system was used in Oklahoma was between 1955 and 1959, when three persons possessing the qualifications of a justice of the Supreme Court were authorized. Okla. H.B. 547, 25th Leg., 1955 Okla. Sess. Laws, ch. 1.

the problem of increased appellate case load, in 1915 the governor designated nine district judges, in addition to the regular commissioners, to serve as Supreme Court Commissioners for a limited time.⁹

In 1917 two major events occurred in the search for a greater and more efficient appellate capacity. The number of justices was increased to nine,¹⁰ and the law clerk system was instituted in Oklahoma.¹¹

The law clerks were required to be competent stenographers and typists, to assist in the justice's clerical work, and to perform such other work pertaining to the duties of a justice as the justice should direct.¹² Although the duties of the clerks have remained constant, the qualifications have varied.¹³ The assistance of the law clerks became popular with the members of the Court, resulting in the creation of a first law clerk position in 1919 to assist the Chief Justice and act as the marshal for the Court.¹⁴

Although the assistance of law clerks proved to be beneficial, the case load continued to increase and in 1919 the legislature authorized another technique to increase appellate production. By this method, the

9. Okla. S.B. 204, 5th Leg., 1915 Okla. Sess. Laws, ch. 87.

10. Okla. S.B. 252, 6th Leg., 1917 Okla. Sess. Laws, ch. 145, § 1.

11. *Id.* at § 5. "In the nineteenth century, the United States Supreme Court began to use recent law school graduates as legal aides to appellate judges. The practice, which was slow to spread to other courts, is common among appellate judges today." R. LEFLAR, *supra* note 2, at 80 (footnote omitted).

12. Okla. S.B. 252, 6th Leg., 1917 Okla. Sess. Laws, ch. 145 § 5.

13. By 1931 law clerks were required to have had ten years actual experience in the practice of law in Oklahoma. Okla. S.B. 69, 13th Leg., 1931 Okla. Sess. Laws, ch. 21, art. 1, § 1. This experience factor was changed in 1937 to require clerks to have the same qualifications as a district judge. Okla. S.B. 249, 16th Leg., 1936-1937 Okla. Sess. Laws, ch. 21, art. 2, § 1. Today, there is no statutory requirement.

14. Okla. H.B. 23, 7th Leg., 1919 Okla. Sess. Laws, ch. 127, § 2. Unfortunately, the utilization of staff attorneys in the court system had not been fully explored in Oklahoma. For only a short period in the late 1930's did the justices have second law clerks (who are also known as legal assistants).

Okla. S.B. 249, 16th Leg., 1937 Okla. Sess. Laws, ch. 21, art. 2, § 2, authorized for a period of two years, the position of an additional legal assistant to each justice. Both the first assistant and the additional assistant were appointed by each justice subject to confirmation by the Court. The first assistant was required to have the same qualifications as a district judge, but the additional assistant was required only to be a member of the Oklahoma Bar.

The position of additional legal assistant was extended in 1939 for a period ending June 30, 1940. Okla. S.B. 280, 17th Leg., 1939 Okla. Sess. Laws, ch. 21, art. 1.

The Administrative Director of the Courts made efforts in 1987 to provide additional law clerks to Supreme Court justices and Court of Appeals judges. Passage of authorizing legislation failed because funding was lacking as a result of a depressed economy. Telephone interview with Charles Ferrell, Director, Administrative Office of the Courts, Supreme Court of Oklahoma (June 22, 1987). The current director has renewed the efforts to provide additional law clerk staffing. Again, the chances of success depend upon the availability of funds from the legislature. Interview with Howard Conyers, Director, Administrative Office of the Courts, Supreme Court of Oklahoma (Jan. 27, 1988).

Supreme Court gained authority to provide by its rules for two divisions of the Court, each division to be constituted of any of the four justices sitting with the Chief Justice or a fifth designated justice. With five justices participating in a decision, unanimous decisions constituted a majority of the Court and fulfilled the constitutional requirement.¹⁵ Less than a unanimous decision required the case to be referred to the entire Court.¹⁶

The use of referees to assist the Supreme Court was first authorized in 1919¹⁷ and their utilization has continued to the present. The number only recently increased to four. Just as the commissioners had possessed the qualifications required of a supreme court justice, the referees also possessed the same qualifications and assisted the Supreme Court in its duties.

Traditionally in Oklahoma, the commissioners, and subsequently the law clerks, have drafted proposed opinions to dispose of appeals, and referees have assisted the Supreme Court in fulfilling its original jurisdiction obligations. The use of the referees to hear evidence and make recommendations in cases involving the Court's original jurisdiction, however, does not relieve the Court's appellate obligations. Furthermore, the use of referees to screen and recommend actions regarding motions and procedural problems has become a substitute for a central staff attorney's function. Despite the use of these adjunct systems, the number of cases filed with the Supreme Court continued each year to outnumber the terminations.

With the crescendo of indictments, convictions, and impeachment proceedings in the early 1960's concerning certain of Oklahoma's Supreme Court justices, an embarrassed public and legal profession turned their attention to the problems of the courts in resolving litigation. As a result, legislative investigations into current court structures

15. OKLA. CONST. art. VII.

16. Okla. H.B. 23, 7th Leg., 1919 Okla. Sess. Laws, ch. 127, § 1. A footnote to H.B. 23 states:

The plan of dividing the Supreme Court into divisions has been in operation in California for many years, although that state has intermediate appellate courts. The Supreme Courts of Alabama, Colorado, Florida, Iowa and Oregon are also divided into divisions. In requiring each division to consist of five justices, and limiting the divisions to unanimous opinions the act conforms to Constitution, Art. 7, Sec. 3, which provides that a majority of the court shall constitute a quorum, and requires a majority of the court in the determination of any question.

Id. at footnote.

17. *Id.* at § 2. Two Supreme Court referees were authorized in 1919 to perform such duties as were prescribed by the Supreme Court. They were appointed by the Supreme Court and required to possess the qualifications of a justice of the Supreme Court. *Id.*

were conducted. The findings, along with the desire to increase the appellate capacity and to reduce or eliminate the backlog, led the legislative investigators to the realization that the adjunct systems used in years past were inadequate and that additional appellate courts and judges were necessary. From this came a new judicial article for Oklahoma's Constitution¹⁸ and the authority for the creation of "such intermediate appellate courts as may be provided by statute."¹⁹

III. ORGANIZATION

The basic structure of the Oklahoma Court of Appeals is found in the constitutional provisions adopted in 1967.²⁰ As indicated in those provisions, the judicial power of the state is vested in several courts. This includes such intermediate appellate courts as may be provided by statute.²¹

18. OKLA. CONST. art. VII, Judicial Department, added by State Question No. 448, Legislative Referendum No. 164, adopted at election held July 11, 1967.

19. OKLA. CONST. art. VII, § 1. This action by the people of Oklahoma vested the judicial power of the state in the senate, sitting as a court of impeachment; a supreme court; a court of criminal appeals; a court on the judiciary; other courts; and for the first time, "such intermediate appellate courts as may be provided by statute." Article VII, § 3, specifically provided that appellate judges were to be elected at non-partisan elections. *Id.* at § 3.

The appellate jurisdiction of the Supreme Court is specifically coextensive with the state and extends to all cases at law and in equity. *Id.* at § 4. Section 4 separates the appellate jurisdiction of the Court of Criminal Appeals by declaring that the Court of Criminal Appeals has exclusive appellate jurisdiction in criminal cases until otherwise provided by statute. *Id.*

20. *Id.*

21. *Id.* at § 1. The role of a true intermediate appellate court is beyond the scope of this paper. For an examination of that role, see Hopkins, *The Role of an Intermediate Appellate Court*, 41 BROOKLYN L. REV. 459, 478 (1975):

The three-tier system of appellate review has developed beyond the original purpose for which it was conceived. It now has the function not only to relieve the highest court of the burden of excessive caseload, but also to assist the highest court and legislature in making needed changes in common law doctrine and statutory provisions. As the court of last resort in the great majority of appeals, it has the duty of assuring uniformity of treatment, particularly in the area of discretionary rulings by the trial courts. Finally, as to that minority of cases which reach the highest court, it has the responsibility of sharpening the legal issues and determining the factual issues completely, so that the task of the highest court is made easier.

In the context of a large volume of appeals, the nature of this obligation on the intermediate court suggests that a periodic re-examination of its role should be instituted, particularly with respect to the kind of cases which it should review, the need for additional judges, or the innovation of other means of reducing the case load for the courts.

Id.

During the months following the adoption of the new judicial article, the legislature passed many bills to implement changes in the operations of the courts.²² Among these was an act creating the Oklahoma Court of Appeals.²³ An examination of the constitutional and statutory provisions for the intermediate appellate court dictates the conclusion that the authors intended this new court to be yet another adjunct system of the Supreme Court. For example, the Oklahoma Constitution provides that the jurisdiction, powers, duties, and procedures of the Court of Appeals are all dependent upon the rules of the Supreme Court.²⁴ The Supreme Court responded to this provision with Rule 3.1, declaring that each division of "the Court of Appeals shall have power to determine or otherwise dispose of any case assigned to it by the Supreme Court."²⁵ This rule represents the only grant of authority by which the Court of Appeals decides or disposes of cases.

The Oklahoma Constitution describes the Supreme Court appellate jurisdiction as coextensive with the state and extending to all cases at law or equity with the exception of criminal cases.²⁶ Once a case is assigned, or deflected, to the Court of Appeals, that Court, by implication, acquires the same appellate jurisdiction as the Supreme Court for that case. One must not confuse this appellate jurisdiction with the Supreme Court's original jurisdiction which extends to a general superintending

22. "Successful judicial reformation comes in two packages: constitutional revision and implementing legislation." Hufstедler, *Constitutional Revision and Appellate Court Decongestants*, 44 WASH. L. REV. 577, 578 (1969).

23. Okla. S.B. 697, 31st Leg., 1968 Okla. Sess. Laws, ch. 157.

The governor signed this enactment on April 11, 1968, to become effective July 1, 1970. However, before the effective date, the statutes were amended. The new legislation changed the creation date of the Court of Appeals from July 1, 1970, to the second Monday in January, 1971. Okla. S.B. 563, 1970 Okla. Sess. Laws, ch. 247.

Left in effect were the provisions of Okla. H.B. 1055, 1969 Okla. Sess. Laws, ch. 6. The 1969 act created a temporary Court of Appeals, designed to provide some appellate relief to the Supreme Court until such time as permanent divisions were established. *Id.* at § 1. The 1969 enactment provided for a final termination date of December 31, 1970. *Id.* at § 8. This date was modified by the 1970 act to permit the temporary court to continue to exist until abolished or deactivated by rule or directive of the Supreme Court. 1970 Okla. Sess. Laws, ch. 247, § 18.

These temporary divisions of the Court of Appeals were to be manned by existing judicial officers. The act authorized the Supreme Court to make temporary assignments of judicial officers to sit on a division of the Court of Appeals. The judicial officers selected were district judges, the trial judges of Oklahoma's courts of general jurisdiction. OKLA. H.B. 1055, 1969 Okla. Sess. Laws, ch. 6, § 1.

The technique of utilizing temporary divisions was again implemented in 1981. On this occasion, the Supreme Court was authorized to appoint not only active judicial officers, but also lawyers and retired judges.

24. OKLA. CONST. art. VII, § 5.

25. Rules On Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.1, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981).

26. OKLA. CONST. art. VII, § 4.

control over all inferior courts and all agencies, commissions, and boards created by law.²⁷ The Oklahoma Constitution also provides that the Supreme Court may by rule determine the method of assignment to, and recall from, the intermediate appellate courts.²⁸ This means that the Supreme Court also determines the jurisdiction of the Court of Appeals by its rules regarding the assignment or deflection of cases to it for disposition.

This brief review clearly demonstrates that the authors of Oklahoma's Court of Appeals did not consider it to be an independent court with its own original jurisdiction. They were creating merely an adjunct court of the Supreme Court to decide or dispose of only the cases assigned to it.

The Supreme Court's rule-making power in this area does have a limitation. The Oklahoma Constitution provides that certain rules of the Supreme Court relating to intermediate appellate courts may be changed by statute.²⁹ The authority involves any Supreme Court rules governing the jurisdiction, powers, duties, and procedures of the Court of Appeals. The legislature has, however, not yet changed any of the Supreme Court rules in this regard.

Even if the legislature should exercise some changes in these rules governing the relationship between Oklahoma's Supreme Court and its Court of Appeals, the Court of Appeals will continue to be dependent upon the Supreme Court, because there is one organizational aspect fixed by constitutional mandate. Sometimes called the deflection system, Oklahoma constitutionally requires that all civil appeals shall be made to the Supreme Court.³⁰ The Supreme Court is permitted by rule to determine only the method of assignment, or deflection to, and recall from, the intermediate courts.³¹ The deflection system is not without its critics, both nationally³² and locally.³³

27. OKLA. CONST. art. VII, §§ 4, 6.

28. OKLA. CONST. art. VII, § 5.

29. OKLA. CONST. art. VII, § 1, grants the authority to create intermediate courts of appeal only to the legislature. The phrase "until otherwise provided by statute," permits the legislature to preempt the Supreme Court in its rule-making authority establishing the jurisdiction, powers, duties, and procedures for intermediate appellate courts. *Id.* at § 5. The phrase is also used to allow preemption of the Supreme Court's rules regarding its own procedures in assigning and recalling cases to the intermediate appellate courts. *Id.*

30. OKLA. CONST. art. VII, § 5.

31. *Id.*

32. This method of appellate procedure has been strongly questioned. In writing about jurisdictional conflicts between a supreme court and an intermediate court of appeals, Judge Hufstedler stated:

There are two ways to avoid all jurisdictional conflicts between the supreme court and

After fulfilling the constitutional grant of authority to create intermediate appellate courts, the legislature began to fill in the operational

the intermediate court of appeal and to prevent uncertainty about where appeals should be filed and with whom. The first is to file all appeals directly in the supreme court, and the second is to file all appeals in the intermediate appellate court. Under the former method the supreme court screens all of the appeals in the first instance and transfers those it does not wish initially to hear to the lower appellate court. There are such severe drawbacks to this method that it cannot be recommended. The supreme court would spend far more time upon the screening process than it could possibly be worth, and, in the event litigation rises to the proportions it has in California, for example, the burden would paralyze the court. Even if the volume of litigation did not reach such proportions, it is a waste of judicial time to have the cases reviewed potentially three times: once by the supreme court in the first instance, again by the intermediate court if the case is transferred, and a third time if the supreme court is dissatisfied with the decision of the intermediate appellate court. The value of having an intermediate appellate court is seriously impaired by permitting direct appeal to the supreme court as a matter of right. No state has gone this far, although some of the earlier two-tiered systems did provide extensive bypassing for a bewildering variety of cases, revenue cases, cases involving title to real property, election cases, and cases raising constitutional questions. The result was highly detrimental to the functioning of the appellate process and created a Mother Lode of jurisdictional disputes to be mined by lawyers at attractive rates.

Hufstедler, *supra* note 22, at 598-99 (footnotes omitted).

A footnote to this article is of interest:

In 1967 in California it would have meant that the Supreme Court would have had to screen 3,249 new appeals filed in the intermediate appellate courts. These figures exclude original proceedings in both courts and backlogs in both. The projections for appellate litigation in the State of Washington show 1399 new appeals will be filed in 1985, again excluding backlog. Assuming that each member of the Supreme Court devoted only fifteen minutes to the consideration of each case, the screening process would consume, in round numbers, 3,141 judicial hours, or more than three quarters of the total judicial time available for all the work of the Supreme Court, assuming that all the judges worked not less than forty hours per week, with two weeks' vacation per year.

Id. at n.49.

Other writers are critical of this method of organization, as witnessed by the following statement on the assignment of cases by a supreme court to an intermediate court of appeals:

[I]t would appear that such a procedure results in a waste of judicial time. Certain cases may be reviewed three times: once by the high court; once by the intermediate appellate court if the high court decides to transfer; and yet again by the high court if it is dissatisfied with the result reached by the intermediate appellate court. Such a jurisdictional procedure would never work in a state like New York, where 7,279 records on appeal were filed in 1977 in the appellate division alone.

... The most effective way to avoid jurisdictional conflicts, and to prevent confusion among the bar, is to have all or almost all appeals filed first in the intermediate appellate court.

M. OSTHUS, *supra* note 2, at 7 (footnotes omitted).

33. A severe critic of the deflection method is Judge Paul W. Brightmire, a judge on the Oklahoma Court of Appeals since its inception in 1971. He has consistently urged that Oklahoma needs a true two-tiered appellate system consisting of regional courts of appeal, each with a court clerk. He notes that the history of the judicial system demonstrates two significant problems:

One, of course, is that obviously the supreme court by itself has not in the past been able to keep reasonably current with the disposition of appeals when the annual volume of case filings exceeded 400. And today with annual filings greatly exceeding 1000 the supreme court must soon find itself with its traditional backlog of undisposed-of appeals if it continues with its failure to recognize the court of appeals as a true intermediate appellate court with general appellate jurisdiction.

Secondly, it is apparent that to gain the maximum effectiveness from the two-tier appellate system such as we now have the supreme court is not only going to have to assign

details. These details also reflected the prevailing philosophy that the intermediate court was to be dependent upon the Supreme Court. With the passage of S.B. 563 in 1970, the legislature established an intermediate appellate court to be known as the Court of Appeals of the State of Oklahoma.³⁴ The bill granted to the Court the power to determine or otherwise dispose of any cases that were assigned to it by the Oklahoma Supreme Court.³⁵ This authority declared the Court's final decisions to be neither appealable to the Supreme Court nor subject to reexamination by another division of the Court or by the Court sitting en banc.³⁶ However, the bill provided that a majority of the Supreme Court may grant certiorari to review a decision of the Court of Appeals. The intermediate appellate court was also specifically granted the jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition, or

cases down at random, but repress its past inclination to grant certiorari in cases concerning matters of less than great public importance. Recent experience demonstrates this practice to be a luxury the increased volume of appeals will no longer allow us to afford except at the expense of unduly delayed review finality.

Adding to the problem is the reluctance of the supreme court to allow court of appeals' decisions to have precedential value. During the past five years hundreds of questions have been resolved in cases which by high court rule may not be cited as precedent resulting in a great waste, it seems to me, of time, expense, energy, and a loss to the legal community.

Letter from Judge Paul W. Brightmire to Chief Justice Ben T. Williams, Oklahoma Supreme Court (June 21, 1976) (footnotes omitted).

In 1982 Judge Brightmire voiced these same concerns to the state legislature, urging legislative changes in the appellate structure. After demonstrating the failure of the "response of high court leadership" to the glut of appeals, he discussed reasons for our "appellate court mess." The first is the failure to obtain adequate funds from the legislature. Second is the power distribution apprehension on behalf of the Supreme Court. He attributes the response of the Supreme Court to be: "(1) urge more output per judge; (2) hire more referees to write opinions; or, (3) farm cases out to trial judges and members of the bar." P. Brightmire, *The Rest of the Story—About the Need for Restructuring Oklahoma's Appellate Court System* 2 (article circulated to Oklahoma legislature, Mar. 15, 1982).

Judge Brightmire's solution is to establish regional appellate courts, each with a court clerk, with whom all appeals can be filed.

In each such court we should vest responsibility for entertaining original jurisdiction with reference to petitions for extraordinary relief within the region. Its decisional precedents should be published and recognized just the same as those of any other court. Publication of opinions should rest in the discretion of the rendering court.

Such an appellate court structure will not only be able to render a valuable and needed service to the regional public but it will relieve the supreme court of a top heavy burden that threatens to interfere with its important policy-shaping responsibilities.

Id. at 11-12.

The Special Commission to Study the Judicial System also had harsh words for the deflection system. In its 1986 report to the Chief Justice, Governor, 40th Legislature, and the Oklahoma Bar Association, this body recommended that appeals should be made directly to the Court of Appeals. Special Commission to Study the Judicial System, Final Report (1986). See *infra* notes 105-06 and accompanying text.

34. See *supra* note 23 and accompanying text.

35. See 1970 Okla. Sess. Laws, ch. 247.

36. *Id.*

any other process, but only when necessary in any case assigned to it.³⁷

Section 2 of the Act³⁸ established that the Court would consist of two permanent divisions, one sitting in Tulsa County and one in Oklahoma County.³⁹ Each division consisted of three judges, at least two of whom must concur in any decision.⁴⁰ Each division selected its presiding judge who acted in that capacity without additional compensation.⁴¹ This section specifically mandated that the assignment of judges to the various divisions was to be effected by the Supreme Court and that "[j]udges may be transferred from one division to another."⁴² This again is a specific limitation upon the intermediate court's self-determination.

The Court of Appeals may promulgate its own rules, but even this authority is subject to law and the rules of the Supreme Court.⁴³ There are also several procedural areas for which the Supreme Court by statute has exclusive responsibility, rather than the Court of Appeals. For instance, a judge of the Court of Appeals may not participate in the consideration or decision of any case over which he has presided at the trial, or acted in as an attorney for one of the litigants.⁴⁴ The Supreme Court is required to prescribe the procedure to be followed when a member of the Court of Appeals is thus disqualified.⁴⁵ Other examples of such Supreme Court directives are rules regarding the practice and procedure in the Court of Appeals,⁴⁶ the procedure for bringing certiorari to the Court of Appeals, and the scope of review to be afforded on certiorari to that Court.⁴⁷

The Supreme Court rules, and not the Court of Appeals rules, also control the forms of the opinions and the publication policy for Court of Appeals' opinions. Section 5 of the 1970 Act provides for the disposition of cases assigned to the Court of Appeals by a written opinion in such

37. *Id.*

38. *Id.* (currently codified at OKLA. STAT. tit. 20, § 30.2 (1981)).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Rules On Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.21, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981).

44. OKLA. STAT. tit. 20, § 30.3 (1981).

45. *Id.*

46. OKLA. STAT. tit. 20, § 30.4 (1981). *See also* Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981 & Supp. 1987).

47. OKLA. STAT. tit. 20, § 30.4 (1981). *See also* Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rules 3.13 through 3.18, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981 & Supp. 1987).

form as the Supreme Court prescribes.⁴⁸ This section also establishes the publication policy that Court of Appeals' opinions shall not be binding or cited as precedent unless approved by the majority of the justices of the Supreme Court for publication in the official reporter.⁴⁹ The Supreme Court is also required to direct which opinions or decisions of the Court of Appeals, if any, shall be published in the official reporter.⁵⁰ This section specifically directs that opinions of the Court of Appeals which apply settled precedent and do not settle new questions of law shall not be released for publication in the official reporter.⁵¹

The provisions for electing the judges of the Court of Appeals are different from those for the Supreme Court or Oklahoma's third appellate court, the Court of Criminal Appeals. When the Oklahoma Court of Appeals was formed in 1970, the judges were elected for six-year terms on a nonpartisan ballot,⁵² as opposed to a retention ballot used for the Supreme Court justices. The qualifications to be a Court of Appeals judge were the same as those for a district judge, rather than those required for Supreme Court justices.⁵³ Court of Appeals judges were elected from the six congressional districts, one judge from each district,⁵⁴ but for staggered terms.⁵⁵

In 1987, at the urging of the judges of the Court, the legislature changed the method of electing judges to the Court of Appeals and filling vacancies.⁵⁶ The judges are now on a retention ballot⁵⁷ just as those of the Supreme Court and the Court of Criminal Appeals. Vacancies are filled by the governor. The governor must choose one of the three nominees submitted by the judicial nominating commission. A unique feature requires the Chief Justice to appoint one of the nominees if the governor fails to appoint within sixty days.⁵⁸

As indicated above, each division of the Court elects a presiding judge.⁵⁹ Unfortunately, the authority and responsibility of this office is ill

48. See 1970 Okla. Sess. Laws, ch. 247, § 5 (codified at OKLA. STAT. tit. 20, § 30.5 (1981)).

49. *Id.*

50. *Id.*

51. *Id.*

52. See *id.* at § 9. This section, previously codified at OKLA. STAT. tit. 20, § 30.9 (1981), was repealed Apr. 20, 1987.

53. *Id.*

54. *Id.*

55. *Id.*

56. Okla. S.B. 22, 41st Leg., 1987 Okla. Sess. Laws, ch. 33 (codified at OKLA. STAT. tit. 20, §§ 30.15-19 (Supp. 1987)).

57. *Id.* at § 7 (codified at OKLA. STAT. tit. 20, § 30.16 (Supp. 1987)).

58. *Id.* at § 3 (codified at OKLA. STAT. tit. 20, § 30.17 (Supp. 1987)).

59. OKLA. STAT. tit. 20, § 30.14(A) (Supp. 1987).

defined by statute or rule. Other than in the authorizing statute, the references to the presiding judge appear only in a limited number of Supreme Court rules.⁶⁰ Rule 3.5 provides that the presiding judge may decide motions for relief other than on the merits of the case.⁶¹ Rule 3.7 provides that the presiding judge shall set the time if oral argument or an informal predecisional conference is ordered by a division of the Court.⁶² These rules, however, do not delineate any real authority or responsibility for functions normally associated with presiding judge positions.

The accompanying chart, Appendix, Table 2, graphically demonstrates for the ten-year period 1966-1975, the number of cases filed and terminated.⁶³ Not until 1971, the first year of operation for the Court of Appeals, did the terminations exceed the number of cases filed. This phenomenon, however, lasted only three years.

In 1982 a large backlog of cases caused significant changes in the court's organization. The legislature increased the number of judges and divisions for the Court.⁶⁴ The number of permanent divisions increased from two to four. Two divisions sit in Tulsa County and two in Oklahoma County.⁶⁵ The number of judges increased from six to twelve.⁶⁶

In fulfilling its overall administrative responsibility for operation of

60. Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.5, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981); Rules of Appellate Procedure in Civil Cases, Rule 1.204(III), OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

61. Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.5, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981).

62. *Id.* at Rule 3.7.

63. Appendix, Table 2.

64. Okla. H.B. 1611, 38th Leg., 1982 Okla. Sess. Laws, ch. 336 (codified at OKLA. STAT. tit. 20, § 30.2 (Supp. 1987)). It is important that the court be flexible enough to add positions as the case load continues to increase. See M. OSTHUS, *supra* note 2, at 12.

The increase in judges resulted from a concerted action by the courts and the bar. Prior to passage of the legislation, Chief Justice Pat Irwin reported:

Approximately 2,500 cases are now pending in the Supreme Court. About 1,600 are still in their briefing stage and are not ready for assignment to a judge. The remaining 900 have been assigned or [sic] ready for assignment. This 900 case figure includes those cases pending on rehearing or certiorari, etc.

....

A brief review of our increase in litigation shows that in 1971, the first year our Court of Appeals was in operation, we had 742 appeals filed in the Supreme Court. In 1981, there were 1,683 appeals filed in our court. In other words, for every one case filed in the Supreme Court in 1971, 2.3 cases [sic] were filed in 1981. I anticipate that we will have approximately 1,800 appeals filed in the Supreme Court this year.

Chief Justice P. Irwin, State of the Judiciary Report to the 38th Sess. of the Okla. Leg. (Jan. 12, 1982) reprinted in 53 OKLA. B.J. 50, 53 (1982).

65. Okla. H.B. 1611, 38th Leg., 1982 Okla. Sess. Laws, ch. 336 (codified at OKLA. STAT. tit. 20, § 30.2 (Supp. 1987)).

66. See *id.*

the courts, the Supreme Court, in December, 1982, addressed the administrative relationship between itself and an enlarged Court of Appeals.⁶⁷ The doubling in size of the Court had resulted in significant changes in the Court's internal structure. These changes provided for the creation of two administrative chief judge positions, one for the Tulsa Divisions and one for the Oklahoma City Divisions.⁶⁸ The stated purpose was to insure that the Court could "function administratively in as smooth a manner as possible."⁶⁹ The administrative chief judges acquired the authority, along with the Chief Justice of the Supreme Court, to make temporary assignments within the two divisions in case of disqualification. The administrative chief judges also began to control the informal assignment of cases and provide direction for the secretarial help. Each of the Court of Appeals judges became responsible for the appointment and supervision of their own legal assistant.⁷⁰ In spite of these changes in internal procedures, however, cases continued to be screened by the Supreme Court staff under the direction of the Chief Justice and then assigned to the administrative chief judge for reassignment to the particular judges.⁷¹

On January 29, 1985, over the signature of Chief Justice Robert D. Simms, the Supreme Court appointed two new administrative chief judges and detailed further responsibilities. These included the requirement of prior approval by the administrative chief judge for purchases and travel claims by Court of Appeals judges before being approved by the Chief Justice.⁷²

IV. HISTORICAL OPERATION

A majority of states which utilize an intermediate appellate court use a system of direct filing of appeals with the intermediate court of appeals, a system similar to the federal system.⁷³ Unlike this majority,

67. Letter from Chief Justice-Elect Barnes to all Judges of Court of Appeals (Dec. 9, 1982).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. Letter from Chief Justice Robert D. Simms to Administrative Chief Judge W. W. Means (Feb. 22, 1985).

73. The vast differences in the method of allocation of cases are discussed in the following:

In a few states all appeals go directly to the top court, and that court transfers to the intermediate docket those cases it thinks should be handled there. By this procedure based on a preliminary screening in the top court, cases can be assigned more accurately to the proper court than by some automatic selection process. This arrangement is based on the assumption that the top court allocates cases in a thoughtfully informed manner, that it is honest in not attempting to turn difficult or disagreeable cases over to the other court. Its big defect is that all the appealed cases must be studied by the judges of the top court

Oklahoma, through the 1967 constitutional changes in the judicial branch of government, requires that all civil appeals be made directly to the Supreme Court.⁷⁴ The Supreme Court is then authorized to permit by rules the method of assignment or deflection to, and recall from, the Court of Appeals.⁷⁵

Traditionally, for its own cases, the Supreme Court has delegated to the Chief Justice the authority and responsibility of case assignment to the individual justices. The Chief Justice, with the assistance of whatever staff available, has in the past reviewed all of the cases or matters filed with the Supreme Court and determined which appeals would be assigned to which justice. Once assigned, the particular justice prepared an opinion or order for consideration by the Supreme Court in conference. This practice has never been reduced to a written rule. Each Chief Justice is free to develop and implement criteria for assigning the Supreme Court work load. Because the Oklahoma Supreme Court elects a new Chief Justice every two years, variations in the methods of assignments often occurred.

With the advent of the Oklahoma Court of Appeals in 1971, the Supreme Court also delegated to the Chief Justice the responsibility for determining which cases would be assigned to the Court of Appeals. The number of cases assigned often depended upon the receipt of a request from the Court of Appeals for cases. The frequency of assignment depended upon the responsiveness of the Chief Justice's staff.

As demonstrated by the chart in Table 3 in the Appendix, the number of pending cases declined after the 1971 institution of the Court

before they can be docketed. Even the most efficient staff screening, with an accurate identification of the issues posed in every case, cannot replace this time-consuming duty.

In the majority of the states a converse procedure is followed: all or nearly all appeals go to the intermediate court, where they are somehow sorted out. This involves the possibility of double argument and double decision in cases appropriate for top-court review if there is no arrangement for advance screening and immediate transfer to the top-court docket. In the federal system, a careful deliberation by the intermediate court serves the useful function of giving a reasoned preview of the few cases that will finally be heard by the United States Supreme Court. There is no way, apart from the narrow area of original jurisdiction, in which the Supreme Court cases could be selected before they were heard in the circuit courts. To a lesser extent, the same may be true in a few of the most populous states, such as New York and California.

R. LEFLAR, *supra* note 2, at 74-75.

74. See *supra* notes 18-19 and 26 and accompanying text. Article VII provides: "In the event of the creation of intermediate appellate courts, all appeals shall be made to the Supreme Court, which may, by rule, determine the method of assignment to, and recall from, the intermediate appellate courts until otherwise provided by statute." OKLA. CONST. art. VII, § 5.

75. See *supra* note 27 and accompanying text.

of Appeals.⁷⁶ However, by 1976 the number had returned to the 1970 level of 1,473 cases.

To meet the challenge of this large case load, the Supreme Court in 1981, with the assistance of the Oklahoma Bar Association, persuaded the legislature to authorize the Supreme Court to again convene temporarily as many additional divisions of the Court of Appeals as it deemed advisable.⁷⁷ Chief Justice Irwin instituted the new program, which was to be completed on December 31, 1982.⁷⁸ The Supreme Court convened temporary divisions of the Court of Appeals, consisting of three temporary judges selected by the Supreme Court from the trial bench and bar. Each division received three cases. A total of 300 divisions were convened, involving 900 judges and/or lawyers and approximately 900 cases.

The impact of this program can be seen in the drop of pending cases shown on Table 3. The number of cases pending dropped 253 cases for the period from July 1, 1981, to July 1, 1982. The number of pending cases ending July 1, 1983, though showing an increase for the year, was still under the July 1, 1981, mark. The drop of total pending cases for the period beginning July 1, 1981, was the first decline in cases pending since 1972, a period of over ten years.

The Supreme Court also sought other operational devices to expedite the appellate process. Fulfilling the constitutional⁷⁹ and statutory⁸⁰ mandates, the Supreme Court had previously promulgated "Rules on Practice and Procedure in the Court of Appeals and On Certiorari to that Court," effective July 13, 1971.⁸¹ Those rules specifically provided that the rules in regard to practice in the Supreme Court applied to all petitions, motions, briefs, and other instruments in cases assigned to the

76. The decline of pending cases from 1970 to 1971 can be attributed to the use of the temporary divisions of the Court of Appeals. See *supra* note 63 and accompanying text.

Chief Justice Berry reported in 1972:

With the aid of the Court of Appeals the Supreme Court is making an appreciable inroad into its existing backlog. The decisional process has been significantly accelerated even though the latest per-annum case load figures reflect an increase of 46 percent over the pre-reform filings. We wish to commend the Court of Appeals for the fine job it has done.

Chief Justice W.A. Berry, State of the Judiciary Report to the 2d Reg. Sess. of the 33rd Sess. of the Okla. Leg. (Jan. 11, 1972) reprinted in 43 OKLA. B.J. 347, 348-49 (1972).

77. Okla. H.B. 1281, 38th Leg., 1981 Okla. Sess. Laws, ch. 126.

78. See Irwin, C.J., *Notice to Judges and Lawyers*, 52 OKLA. B.J. 1127 (1981); 52 OKLA. B.J. 1465 (1981).

79. See *supra* note 27 and accompanying text.

80. See OKLA. STAT. tit. 20, § 30.4 (1981).

81. OKLA. STAT. tit. 12, ch. 15, app. 3 (1981).

Court of Appeals.⁸² Beginning in March, 1983, the Supreme Court reviewed and amended the various rules of appellate practice applying to both the Supreme Court and the Court of Appeals. These various amendments streamlined and updated the appellate process to expedite the disposition of cases.⁸³ Also, many of the justices were then expressing open concern about the Court's need to find even more effective

82. Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.1, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981). Other court rules are codified as the Rules of the Supreme Court of Oklahoma, OKLA. STAT. tit. 12, ch. 15, app. 1 (1981 & Supp. 1987), and Rules of Appellate Procedure in Civil Cases, OKLA. STAT. tit. 12, ch. 15, app. 2 (1981 & Supp. 1987).

83. Order of March 4, 1983, adopted Rules on Manner and Form of Opinions in the Appellate Court by adding Rules of Appellate Procedure in Civil Cases, Rules 1.200-1.203 (OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987)), and amending Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.8, (OKLA. STAT. tit. 12, ch. 15, app. 3 (Supp. 1987)).

Order of March 17, 1983, amended Rules of Appellate Procedure in Civil Cases, Rules 1.14 and 1.16, by adopting rules for commencement of an appeal, and changing the content and form of the petition in error and response. OKLA. STAT. tit. 12, ch. 15, app. 2. (Supp. 1987).

Order of April 18, 1983, added Rules of Appellate Procedure in Civil Cases, Rule 1.31, stating purposes for which trial court retains jurisdiction while appeal is pending. OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of June 13, 1983, amended Rules of Appellate Procedure in Civil Cases, Rule 1.60, defining interlocutory orders appealable by right, to include orders which "[d]ischarge, vacate or modify or refuse to discharge, vacate or modify an attachment (12 O.S. Supp. 1984 § 993(A)(1))." OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of June 27, 1983, adopted Rules of Appellate Procedure in Civil Cases, Rules 1.52, 1.53, and 1.63. Rule 1.52 involves content and form of petition for certiorari to review certified interlocutory order. Rule 1.53 involves content and form of response to petition for certiorari to review certified interlocutory order. Rule 1.63 involves content and form of petition in error and response in appeal of interlocutory order. OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of September 15, 1983, amended Rules of Appellate Procedure in Civil Cases, Rule 1.16, by adding subdivision (c) regarding the procedure and grounds for retention of a case by the Supreme Court. (OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987)); and Rules of Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.2, providing that a case assigned to the Court of Appeals would bear the original caption and numbers and adding a rule for recall of an assigned case from the Court of Appeals. (OKLA. STAT. tit. 12, ch. 15, app. 3 (Supp. 1987)).

Order of October 3, 1983, amended the following Rules of Appellate Procedure in Civil Cases: Rules on Perfecting a Civil Appeal providing for content and form of petition in error and response in Corporation Commission appeals (Rule 1.88), Workers' Compensation Court appeals (Rules 1.100 and 1.103), Oklahoma Tax Commission appeals (Rules 1.117, 1.125, 1.128), Court of Tax Review appeals (Rules 1.140, 1.142), appeals from Banking Board or Banking Commissioner (Rules 1.155, 1.157), and appeals in regard to Initiative and Referendum Petitions. OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of May 1, 1984, amended Rules of Appellate Procedure in Civil Cases, Rules 1.18, 1.40, 1.60, and 1.61, regarding multiple appeals arising out of the same case, interlocutory orders, orders appealable by right, and time for commencement of appeal of interlocutory orders. OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of January 15, 1985, amended Rules of Appellate Procedure in Civil Cases, Rules 1.15, 1.26, and 1.28, concerning appeals related to county budgets. OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of January 15, 1985, amended Rules for District Courts for Oklahoma, Rule 8.2, regarding custody of Indian children. OKLA. STAT. tit. 12, ch. 2, app. (Supp. 1987).

Order of April 8, 1985, amended Rules of Appellate Procedure in Civil Cases, Rule 1.200,

measures to reduce both the backlog and the time needed to process appeals.⁸⁴ The conviction that the Supreme Court should become a "writ court" was becoming more acceptable. This meant that, with certain exceptions, all of the appeals would be assigned to the Court of Appeals, and the Supreme Court would review those decisions only when it granted a writ of certiorari.⁸⁵

Also in 1983, as the case load of at-issue cases continued to increase,

regarding publication of memorandum opinions and effect of publications of formal opinions. OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

Order of September 16, 1985, amended Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.10, to require filing nine copies of petition for rehearing. OKLA. STAT. tit. 12, ch. 15, app. 3 (Supp. 1987).

84. "Case overload dictates that cases be decided with the use of some acceptable minimum of judicial resource at the sacrifice of a fine-tuned decision in a significant portion of cases, lest the court drown in its own intake of appeals." Thompson & Oakley, *From Information to Opinion in Appellate Courts: How Funny Things Happen on the Way Through the Forum*, 1986 ARIZ. ST. L.J. 1, 31-32.

See Meador, *An Appellate Court Dilemma and a Solution Through Subject Matter Organization*, 16 J. of L. REFORM 471 (1983). As Meador observed:

The recent litigation explosion presents a two-pronged dilemma for American appellate courts. If, on the one hand, the number of appellate judges is not expanded to keep abreast of growing case loads, there is a risk that courts will rely too heavily on professional staff, thereby watering down the decisionmaking process. If, on the other hand, the number of judges is proportionately increased with the growth in appellate litigation, the number of three-judge decisional units will also increase, thereby threatening predictability and uniformity in the law of the jurisdiction.

Id. at 471. Meador's solution is subject matter organization, which means, simply stated, that a particular type of case goes on appeal to a specified panel or division and no other. *Id.* at 481-82.

85. In 1979 Chief Justice Lavender discussed problems with this method of review and progress in correcting appellate delay:

The Court of Appeals has been doing its share of the appellate work and, by way of strengthening the system, the Supreme Court, by amendments effective October 30, 1976, modified its rules regarding the review of an opinion of the Court of Appeals on certiorari. Although the procedure has been somewhat simplified, the grounds for the Supreme Court granting a writ of certiorari have been limited, and the grounds must be stated with more careful particularity.

The time involved between the filing of a petition for certiorari and the taking of action by the Supreme Court on said petition has been of growing concern to the court. After the first of the year, the court authorized me as Chief Justice to assign all petitions for certiorari to the office of the two Referees for the court. These individuals, not being concerned with the writing of opinions or with the administrative detail work of the court, have been able to process the certiorari matters in much less time than was formerly required. The Referees' Office, on the average, has been able to take a petition for certiorari and answer thereto, prepare a memo for the court, and have the matter be taken before the court en banc and disposed of in an average of only 27 days from the date of the filing of the petition for certiorari. The Referees' Office has reported to me that it has remained current regarding all certioraris presently on file and not yet acted on by the court.

When a petition for certiorari and answer (if filed) have been studied, the memo prepared by the Referees' Office, together with copies of the petition and answer, are distributed to all members of the court several days in advance of that case appearing on the conference docket. At that conference, the decision of whether to grant or deny certiorari is considered. If certiorari is granted, the matter is assigned to a justice who, by an in-house court rule, gives priority to further study of the matter and the preparation of a proposed opinion for consideration by the court.

Lavender, *Minireport on the State of the Judiciary*, 50 OKLA. B.J. 1334, 1336 (1979).

the Supreme Court expressed its concern by adding new rules on the manner and form of opinions in the appellate courts.⁸⁶ These new rules became Part III (I) of the Rules of Appellate Procedure in Civil Cases, effective April 1, 1983.

An examination of these rules provides an insight into the Supreme Court's efforts to expedite the appellate process and reduce the backlog while continuing to treat the Court of Appeals as a dependent adjunct court. The rationale behind the adoption of the new rules resulted from the conclusion by the Supreme Court that many of the appellate cases could be effectively decided without expending a court's resources in writing a manicured, exhaustive opinion in every case.

Thus, Rule 1.200 provided guidelines for the form of memorandum opinions and formal opinions. An opinion by the Supreme Court or the Court of Appeals appears in memorandum form unless it:

- (1) Establishes a new rule of law or alters or modifies an existing rule;
- (2) Involves a legal issue of continuing public interest;
- (3) Criticizes or explains existing law;
- (4) Applies an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state;
- (5) Resolves an apparent conflict of authority; or
- (6) Constitutes a significant and non-duplicative contribution to legal literature:
 - (a) by an historical review of law; or
 - (b) by describing legislative history.⁸⁷

Rule 1.201 addresses summary disposition of an appeal. It provides for the summary affirmance or reversal when a prior controlling appellate decision is dispositive of the appeal.⁸⁸

Rule 1.202 provides for affirmance by summary opinion for particular reasons. In this category, a Court may affirm a trial court's opinion by merely referring to the particular part of the rule. This reference

86. Rules of Appellate Procedure in Civil Cases, Rules 1.200 through 1.203, OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1983).

87. *Id.* at Rule 1.200(A).

88. *Id.* at Rule 1.201.

In any case in which it appears that a prior controlling appellate decision is dispositive of the appeal, the court may summarily affirm or reverse, citing in its order of summary disposition this rule and the controlling decision.

At any time during the pendency of the appeal, any party may move for summary disposition, citing the prior controlling decision. The motion shall be served on opposing counsel who may respond within ten (10) days. Thereafter, the court may enter an order summarily affirming or reversing, or denying the motion.

Id.

states which part of the rule is applicable. Reasons for summary affirmance include frivolous appeals, findings of fact supported by sufficient competent evidence, adequate explanation by the trial court, or finding that the trial court did not abuse its discretion.⁸⁹ The rule specifically dictates that the opinion will be the following form: "Affirmed under Rule 1.202 [(a)(b)(c)(d) or (e)]."⁹⁰

This publication policy for Court of Appeals opinions has been an area of discord absorbing the attention and time of the Supreme Court, which has repeatedly exercised its administrative control in this regard. The first expression of the Supreme Court's policy occurred in September, 1973.⁹¹ By order of March 4, 1983, the Court issued a new publication policy.⁹² On April 8, 1985, the Court refined its publication

89. *Id.* at Rule 1.202.

In any case in which the court determines after argument or submission in the briefs that no reversible error of law appears and either

- (a) the appeal is frivolous and completely without merit;
- (b) the findings of fact of the trial court are supported by sufficient competent evidence;
- (c) the verdict of the jury is supported by sufficient competent evidence;
- (d) the opinion or findings of fact and conclusions of law of the trial court adequately explains the decision; or
- (e) the trial court did not abuse its discretion. . . .

Id.

90. *Id.* at Rule 1.202(e).

91. Previously codified as Rules of the Supreme Court of Oklahoma, Rule 27, OKLA. STAT. tit. 12, ch. 15, app. 1 (1981):

- 1. Opinions of the Supreme Court and the Court of Criminal Appeals, deemed by the authoring court to settle some novel question of law or to contribute significantly to the body of our case law, will be published in the official (Pacific) and unofficial (OBJ) reporter.
- 2. Opinions of the Court of Appeals which resolve novel or unusual issues, when un-superseded and unmodified by the Supreme Court, may be released for publication in the official (Pacific) reporter concurrently with issuance of mandate upon request made to the clerk of the Supreme Court by the presiding judge of the division that handed down the opinion sought to be published. No opinion so published shall have precedential effect but may be considered persuasive. It shall bear the notation "Released for publication by order of the Court of Appeals". An opinion of the Court of Appeals that is specifically authorized by the Supreme Court for publication in the official reporter and bears the notation "Approved for publication by the Supreme Court" shall be accorded precedential value.
- 3. Only those appellate opinions which at the time of their original release are approved for publication in the official (Pacific) reporter by the authoring court or its division will be published in the unofficial (OBJ) reporter immediately after their adoption. Other appellate opinions will not be published in the unofficial reporter. Disposition of all cases in which there is no published opinion will be reported in the Oklahoma Bar Journal by brief reference to the case and the decision reached therein on appeal.
- 4. The new policy adopted herein shall be effective as to all appellate opinions promulgated on and after September 24, 1973.

Id. For a discussion of the publication rule, see Lilly, *Some Thoughts for Judicial Reform in Oklahoma*, 10 TULSA L.J. 91, 99 (1974). See also Fraser, *Judicial Reform—Work of the Legislature in 1970*, 23 OKLA. L. REV. 390, 397 (1970); Fraser, *Oklahoma's Judicial Reforms Revisited*, 23 OKLA. L. REV. 1, 4 (1970).

92. Rules of Appellate Procedure in Civil Cases, Rule 1.200, OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1983), provided:

rules as expressed in Rule 1.200 by adopting a new policy⁹³ added as Part

Opinions of the Supreme Court and the Court of Appeals shall be memorandum opinions or formal opinions.

Opinions shall be published in the official reports only when they satisfy the standards set out in this rule. Disposition by memorandum, without a formal published opinion, does not mean that the case is considered unimportant. It does mean that no new points of law making the decision of value as precedent are believed to be involved.

An opinion shall be prepared in memorandum form unless it:

- (a) Establishes a new rule of law or alters or modifies an existing rule;
- (b) Involves a legal issue of continuing public interest;
- (c) Criticizes or explains existing law;
- (d) Applies an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state;
- (e) Resolves an apparent conflict of authority; or
- (f) Constitutes a significant and non-duplicative contribution to legal literature:
 - (1) by an historical review of law; or
 - (2) by describing legislative history.

A memorandum opinion shall not be published unless it is ordered to be published by the Supreme Court.

A party or other interested person who believes that an opinion of either the Supreme Court or Court of Appeals which has not been designated by the Court for publication established by this rule or otherwise has substantial precedential value may file a motion in the Supreme Court asking that it be published. The motion shall state the grounds for such belief, shall be accompanied by a copy of the opinion, and shall comply with Supreme Court Rule 8.

Regardless of the foregoing, no opinion superseded by an opinion on rehearing shall be published. An opinion that is modified on rehearing shall be published as modified if it otherwise meets the standards of this rule.

An opinion shall be published only if the majority of the justices or judges participating in the decision find that one of the standards set out in this rule is satisfied. Concurring and dissenting opinions shall be published only if the majority opinion is published.

All memorandum opinions, unless otherwise required to be published, shall be marked: "Not for Official Publication." Since unpublished opinions are deemed to be without value as precedent and are not uniformly available to all parties, opinions so marked shall not be considered as precedent by any court or in any brief or other material presented to any court, except to support a claim of *res judicata*, collateral estoppel, or law of the case.

Id.

93. Rules of Appellate Procedure in Civil Cases, Rule 1.200(C), OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1985), stated:

A. Opinions of the Supreme Court and the Court of Appeals, deemed by the authoring court to settle some novel question of law or to contribute significantly to the body of our case law, will be published, when adopted, in the unofficial (Oklahoma Bar Journal), and published in the official (Pacific) Reporter after the issuance of the mandate. Opinions of either appellate court may not be cited as authority in a subsequent appellate opinion nor may they be used as authority by a trial court until the mandate in the matter has been issued.

B. Opinions of the Court of Appeals which resolve novel or unusual issues, when un-superseded and unmodified by the Supreme Court, may be released for publication in the official (Pacific) reporter concurrently with issuance of mandate, upon direction by the presiding judge of the division that handed down the opinion sought to be published. No opinion so published shall have precedential effect but may be considered persuasive. It shall bear the notation "Released for publication by order of the Court of Appeals." An opinion of the Court of Appeals that is specifically authorized by the Supreme Court for publication in the official reporter and bears the notation "Approved for publication by the Supreme Court" shall be accorded precedential value. Denial of certiorari does not confer precedential value on an opinion of the Court of Appeals.

C. Only those appellate opinions which at the time of their original release are approved

C of the rule.

The rules governing the publication of Court of Appeals opinions are also a constant subject of debate among the bench and bar. Lawyers are concerned that there are now too many decisions to research, that law library expenses are far too great, and that there are very few Court of Appeals opinions of substantial precedential value to warrant publication. Because of this, lawyers have felt that Oklahoma Court of Appeals judges should spend less time refining opinions and instead write more memorandum opinions, thus increasing the number of cases decided. It appears that the Supreme Court has favored this view by making the publication rules more restrictive in conjunction with emphasizing shorter memorandum opinions.

Another example of the Supreme Court acting administratively for the Court of Appeals is its rule for the form and content of Court of Appeals opinions. Originally enacted in 1971,⁹⁴ the Supreme Court changed the rule by its order of March 4, 1983, requiring Court of Appeals opinions and decisions to be governed by its Rules 1.200, 1.201, 1.202, and 1.203. In this amendment, the Supreme Court also required that Court of Appeals opinions be published only under Rule 1.200.⁹⁵ These restrictions on the form, content, and publication of Court of Appeals opinions bolster the conclusion that the Supreme Court still viewed the Court of Appeals as simply another adjunct system.

Rule 1.203 formally introduced the accelerated docket or "fast track" to Oklahoma. The rule provides: "Any Appellate Court may advance, sua sponte or by agreement of the parties, an appeal by placing it on Accelerated Docket for early disposition. The case may be set for oral

for publication in the official (Pacific) reporter by the authorizing court or its division will be published in the unofficial (Oklahoma Bar Journal) immediately after their adoption. Other appellate opinions will not be published in the unofficial reporter. Disposition of all cases in which there is no published opinion will be reported in the Oklahoma Bar Journal by brief reference to the case and the decision reached therein on appeal.

Id.

94. Previously codified as Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.8, OKLA. STAT. tit. 12, ch. 15, app. 3 (1981), the rule required:

Opinions of the Court of Appeals shall be filed with the clerk of the Supreme Court. The opinions need not contain a detailed recitation of facts but may set forth only such parts of the history of the case and of the facts in evidence as may seem necessary to an intelligible discussion of the errors urged. The Court of Appeals may promulgate its opinions in general form or in memorandum form.

Id.

95. Rules on Practice and Procedure in the Court of Appeals and on Certiorari to that Court, Rule 3.8, OKLA. STAT. tit. 12, ch. 15, app. 3 (Supp. 1983).

presentation with or without any record or briefs.”⁹⁶ The rule allows an appeal to be submitted to a panel of five justices, providing that three concurring justices may render a decision in the case. If the concurrence is not unanimous, a party may petition for rehearing to the entire court. However, if all five justices concur in the decision, it is considered final and no petition for rehearing will be considered.⁹⁷ The Court of Appeals may submit a matter under this method to a panel of three judges, with or without the consent of the parties, with concurrence of two judges necessary for a decision. Certiorari from such decisions is provided.⁹⁸

Although the rule does not require written opinions in cases assigned to the accelerated docket, it does require “that an order be entered in each case briefly explaining (with citation of applicable authority) the reason for the Court’s action. Where the case is to be retried, the explanation of the Court’s decision should be sufficiently clear for the guidance of the trial court (and counsel).”⁹⁹ The rule requires a particular procedure to be followed in oral arguments of accelerated docket cases, limiting oral arguments to fifteen minutes for each side. The rule further prohibits questions from the bench during the oral arguments, but instead allows such questions after argument has been heard from all parties.¹⁰⁰

As Chief Justice Barnes stated to the judges of the Court of Appeals in his letter of December, 1982, the experiment with the accelerated docket or fast track resulted in the conclusion that “even on a voluntary basis it was a useful tool.”¹⁰¹ He advised that the Supreme Court intended to begin assigning fast track cases to the Court of Appeals. The Chief Justice also stated that other appeals would be thoroughly screened by the Supreme Court staff under the direction of the Chief Justice for assignment to the administrative chief judge for a non-selective reassignment to individual judges.¹⁰² A new docketing statement had been introduced which gave attorneys an opportunity to state why their case should not be handled on fast track. The decision for fast track assignment could therefore be made by the Chief Justice from the docketing

96. Rules of Appellate Procedure in Civil Cases, Rule 1.203(A), Okla. Stat. tit. 12, ch. 15, app. 2 (Supp. 1983).

97. *Id.* at Rule 1.203(A)(1).

98. *Id.* at Rule 1.203(A)(2).

99. *Id.* at Rule 1.203(A)(3).

100. *Id.* at Rule 1.203(A)(4).

101. *See Barnes, supra* note 67.

102. *Id.*

statement. As is apparent, the Supreme Court was using its valuable resources of time, energy, and staff to screen cases for retention or for assignment to the Court of Appeals.

This procedure was modified in February, 1985, by Chief Justice Simms.¹⁰³ While encouraging fast track disposition, he directed the administrative chief judges to screen the assigned cases for fast track disposition. As he pointed out, "[b]ecause the ultimate disposition of cases on appeal rests in your court, we will no longer designate which case should be disposed of by Fast Track methods."¹⁰⁴ This shifting of the screening process and disposition designation from the Supreme Court to the Court of Appeals was the prelude to a significant change in the Supreme Court's policy toward the Court of Appeals, a change that would subject all appeals to assignment to the Court of Appeals.

In 1984 another development occurred which observers had expected to produce major changes in Oklahoma's judicial system. Pursuant to a resolution of the House of Delegates of the Oklahoma Bar Association, a Special Commission to Study the Judicial System began to investigate, study, and review the complete judicial system and recommend constitutional, statutory, and rule changes needed to improve its efficiency.

The commission held hearings throughout 1985 and submitted its report to the legislature in March, 1986. The commission observed that it "was soon made aware of substantive problems caused by an increased caseload [sic] in the courts. Particular attention was given to the increasing backlog of cases in the Supreme Court"¹⁰⁵ In response to this concern, the commission recommended that the appellate process be changed to provide for direct appeals of civil cases to the Court of Appeals.¹⁰⁶

103. See Simms, *supra* note 72.

104. *Id.*

105. Special Commission to Study the Judicial System, Final Report iii (1986) (recommendations to 40th Leg., Chief Justice, Governor and Oklahoma Bar Association).

106. *Id.* at 26-28.

The backlog of civil cases in the Supreme Court has forced the court to adopt procedures which leave the lawyers of the state in the position of advising their client what happened to them in the Supreme Court, but not why it happened. In an effort to reduce the backlog in the Supreme Court, the court has adopted a procedure called an "Accelerated Docket" in which a decision is made without any of the reasons for the decision given. How could this burden be eased?

Most states have what are called Intermediate Courts of Appeal to which all appeals from the trial courts are made directly, with certiorari only to the Supreme Court. This, of course, follows the Federal System in which virtually all appeals are made to the various circuit courts as intermediate courts between the trial court and the Supreme Court.

Under the system presently mandated by the law, all civil appeals must first be filed in

One cannot discern what influence this report had upon the Supreme Court. However, the backlog of unresolved cases remained unmanageable, despite the merit and success of the new methods of resolving appeals. In November, 1985, the Supreme Court promulgated its first rules for the management of the work load in the appellate courts.¹⁰⁷ By so doing, the Court effected landmark changes in Oklahoma's appellate system. An examination of these rules reveals the Supreme Court's position regarding its relationship with the Court of Appeals in responding to both courts' appellate responsibilities. The rule first provides that the work load of the Supreme Court falls into various categories:

1. supervision over the budgetary, financial, statistical, managerial and operational activities of the district courts and of the Court of Appeals;
2. supervision over the Oklahoma Bar Association, its revenue, budget and operations;
3. supervision over the Board of Bar Examiners, its revenue, budget and operations in licensing lawyers;
4. rule making for, and adjudication of, bar disciplinary proceedings;
5. original jurisdiction for the exercise of superintending control under Art. 7, Sec. 4, Okl. Const.;
6. original jurisdiction for the exercise of managerial powers and operational control under Art. 7, Sec. 6, Okl. Const.;
7. rule making functions in the exercise of explicit or implicit constitutional and statutory authority, or of one claimed under inherent power;

the Supreme Court. Reviewed [sic] by that court as to its appropriateness for assignment to the Court of Appeals and then assigned to the Court of Appeals. That is a step that unnecessarily burdens the Supreme Court and delays the appellant process. The Commission feels that the time has come to lift this burden and speed the appellant process by providing for direct appeals of civil cases to the Court of Appeals. There are, of course, certain cases in which exclusive jurisdiction by law vested in the Supreme Court this type of case should remain in the Supreme Court. The Supreme Court would determine which appeals it would accept on certiorari from the court of Appeals.

The Commission feels that there should be provisions in any law providing for direct appeals to the Court of Appeals for "pass through" certification from the Court of Appeals to the Supreme Court on questions of (1) "great public importance or which have a great effect on the proper administration of justice throughout the state", (2) a decision certified to be "in direct conflict with a decision of another division of the Court of Appeals" and (3) "cases of constitutional concern".

This change would not require an amendment to the centralized appellate filing system, but safeguards should be provided to insure random assignment to Court of Appeals Panels to prevent panel shopping.

Because this change would increase the caseload of the Court of Appeals, it is recommended that an additional division of the Court of Appeals be established or, in the alternative, the support personnel (law clerks) of the existing divisions be increased.

Id.

107. This order became Rules of Appellate Procedure in Civil Cases, Rule 1.204, OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

8. original jurisdiction in protests against statewide initiative and referendum petitions and ballot title appeals;
9. answering questions certified by a federal court;
10. certiorari to the Court of Appeals;
11. any other responsibility vested by law in the Supreme Court alone;
12. certiorari to the district courts for review of certified interlocutory orders;
13. general appellate jurisdiction.

The law vests in the Supreme Court alone the functions described in the first eleven categories. The last two categories of responsibility — comprising appellate cognizance — may be shared with the Court of Appeals.¹⁰⁸

The Supreme Court publicly expressed for the first time the scope of its far-reaching activities and responsibilities. The Court demonstrated that it had given systematic effort toward gaining control over its own affairs.¹⁰⁹

The Supreme Court also recognized that it must divide its time and efforts to successfully conclude the work load. To effectively accomplish this division, the Court of Appeals' role in the appellate process was greatly enhanced. The remaining parts of the rule accomplished this objective.¹¹⁰ The significant statements were in the expressions: "After January 1, 1986, *every* appeal shall be subject to assignment to the Court of

108. *Id.*

109. See R. LEFLAR, *supra* note 2 at 77:

[T]he high court retains ultimate control over its own docket and indirectly over that of the intermediate court, but it is not saddled with the preliminary task of sorting through all appealed cases to decide which ones should stay in the intermediate court. This alternative, which represents a combination of procedures currently followed in different states, appears to afford maximum realization of the useful purposes for which intermediate courts are typically established.

Id.

110. Rules of Appellate Procedure in Civil Cases, Rule 1.204(II), (III), & (IV), OKLA. STAT. tit. 12, ch. 15, app. 2 (Supp. 1987).

(II) After January 1, 1986, *every* appeal shall be subject to assignment to the Court of Appeals, unless within 30 days of that date or within 30 days of the commencement of the appeal, a party shall request by motion, accompanied by 10 copies and containing not more than one letter-sized page, that the case be retained for disposition by the Supreme Court. The motion will receive favorable consideration if the court is satisfied that: (a) the case does present significant public interest issues; or (b) the dispositive legal questions have major public significance.

(III) After January 1, 1986, an undetermined appeal pending before the Court of Appeals may be retransferred for disposition by the Supreme Court upon a certificate of the chief judge of the division to which the case is assigned showing that:

(a) the case presents significant public interest issues; or

(b) the dispositive legal questions pressed for resolution have major public significance.

The Chief Judge's certificate *must be filed* in the case not later than 30 days after its original assignment to the Court of Appeals.

Appeals"; and "Every appeal that is not retained by, or retransferred to, the Supreme Court, shall, after January 1, 1986, be assigned to the Court of Appeals." Without so explicitly stating, the Court had taken the first steps towards becoming a "*cert. court.*"¹¹¹

The final part of the November 7, 1985, order addressed the backlog problem. The order marshalled the energies and resources of both appellate courts for the first ninety days of 1986 to decide all appeals found suitable for disposition by the accelerated docket method. These are cases that may be decided promptly by a short memorandum order under Rule 1.203.¹¹² The order also provided that appeals unsuitable for fast track consideration would not be reached for consideration during this period, unless otherwise directed by the Chief Justice.¹¹³ The Supreme Court also divided its members to sit in two five-justice panels for fast track assignments, with the Chief Justice or his designee to participate in the work of both panels.¹¹⁴

This concerted drive resolved a large number of cases, as Table 3 indicates. Although the Supreme Court discontinued fast track hearings after the ninety-day period, the Court of Appeals continued with the program through 1986.

The lack of adequate judicial staff has been another important factor in the relationship between the Supreme Court and the Court of Appeals

(IV) Every appeal that is not retained by, or retransferred to, the Supreme Court, shall, after January 1, 1986, be assigned to the Court of Appeals.

Id. (emphasis in original).

111. Florida has apparently achieved the goal that Oklahoma is seeking:

Since the 1980 jurisdictional reforms, the bulk of appeals from trial courts and administrative agencies are now being expeditiously resolved in the district courts without further appellate proceedings. As a result, the Florida Supreme Court's caseload has been reduced to manageable proportions.

The supreme court no longer dissipates its judicial energy in attempting to determine if conflicts lurk beneath the surface of per curiam affirmances of district courts. Instead, the high court is performing its law-making function more effectively by deciding constitutional issues, addressing conflicts in the decisional law, and, with the screening assistance of district court judges, examining cases "passed through" or "certified" for review.

Scheb, *Florida's Courts of Appeal: Intermediate Courts Become Final*, 13 STETSON L. REV. 479, 520 (1984).

112. These new rules for the management of workload in the Supreme Court and the Court of Appeals were discussed by Chief Justice Robert D. Simms in a joint meeting on November 14, 1985, between the Supreme Court and the Court of Appeals. He advised that as of November 1, 1985, there were 663 cases on assignment to a justice or judge, there were 653 cases fully briefed and ready for assignment, and an additional 1,001 cases in the briefing cycle. He further advised that the function of the Supreme Court was to mold and expand the law; the function of the Court of Appeals was that of an error correcting court.

113. *Id.*

114. This approach appears to be a revival of the techniques first authorized in 1919. See *supra* notes 15 and 16 and accompanying text.

related to the deflection system. The need for adequate judicial staff cannot be overemphasized. The authors of *Justice on Appeal* acknowledged, in the preface, this critical factor: "Many of our suggestions for efficiency are dependent on the availability of a central staff."¹¹⁵

In spite of the importance of adequate numbers of staff, the Chief Justice's single law clerk, who in Oklahoma is called a "legal assistant," had the primary responsibility to screen and recommend assignment of cases to the Court of Appeals, the various justices, and referees.¹¹⁶ Because of the lack of other staff, this assignment necessarily deprived the Chief Justice of the normal assistance of his legal assistant in the research and writing of opinions.¹¹⁷

Each week a computer printout of the cases at issue was prepared. The legal assistant then chose 150-200 cases, usually by age, to prepare for final assignment. The record from the trial court was called up and screened for a final order. If a final order had not been issued, the work-basket referee received the case. If the case was ready, the legal assistant reviewed and recommended whether it should be retained by the Supreme Court or assigned to the Court of Appeals. Generally, the recommendations for retention included only cases of first impression, statewide importance, or significant public interest. Cases not retained were assigned by the Chief Justice to either the Oklahoma City or Tulsa divisions of the Court of Appeals on a geographic basis, attempting to keep the work load balanced.

V. NEW DEVELOPMENTS

Arizona's Chief Justice Frank Gordon has identified three institutional tensions in relationships between the highest appellate court and

115. P. CARRINGTON, D. MEADOR & M. ROSENBERG, *supra* note 8, at VII.

116. Interview with Diane Bartlett, legal assistant to former Chief Justice Robert D. Simms, Supreme Court of Oklahoma (Feb. 1988).

117. Chief Justice John Doolin reported the need for additional staff:

The Supreme Court caseload has continued to grow at an ever increasing rate. The number of cases and special matters filed in the Supreme Court average over nine to 10 per day. My colleagues on the Court, and I have attempted to maintain a regimented effort to combat this workload with basically the same number of law clerks the Supreme Court Justices had 50 years ago, when they were faced with one-tenth the workload. Ladies and gentlemen of the Legislature, additional judicial staff is no longer a desire, but a need. IT IS CRITICAL.

Chief Justice J.B. Doolin, State of the Judiciary Address to the 41st Sess of the Leg. (Mar. 4, 1987) reprinted in 58 OKLA. B.J. 625 (1987) (emphasis in original).

This plea for additional judicial staff was repeated in the Chief Justice's State of the Judiciary Address to the Oklahoma Bar Association House of Delegates in November 1987. 58 OKLA. B.J. 3212, 3214 (1987).

the intermediate court of the same jurisdiction. These tensions "usually arise in connection with allocation of work between the two courts, exercise of the high court's review function, and irregular communication between the courts."¹¹⁸ Oklahoma has not escaped these tensions.

To address these problems and the larger, ever-increasing backlog of appeals,¹¹⁹ the Oklahoma Supreme Court, on November 12, 1987, announced its new policy directive regarding the appellate work load.¹²⁰ Chief Justice Doolin, in a joint meeting of the Supreme Court justices and the judges of the Court of Appeals, announced the new policies and procedures being instituted.¹²¹ On January 20, 1988, the Supreme Court formally adopted these changes in writing.¹²²

To create better communication and organizational structure between the courts, the directive created a Chief Judge and a Vice Chief Judge for the Court of Appeals, replacing the Administrative Chief Judge positions. Their terms of office are co-terminous with the two-year

118. Gordon, *Tensions Between Highest and Intermediate Appellate Courts*, 3 REMAND, Spring 1987, at 3 (report of speech by Arizona Chief Justice Frank X. Gordon, Jr.).

119. In his study of the Wisconsin appellate structure, Judge Richard Brown concluded that, although intermediate courts were designed to relieve problems of congestion and access, the increase in litigation and misallocation of cases has frustrated these objectives:

A significant factor in the workload problem of both intermediate and high courts is misallocation of cases. The highest court often takes cases for the single reason of correcting an "erroneous decision" of the intermediate court. In seeking to preserve the principle that the supreme court is open to everyone, the high courts have unnecessarily increased their own workload problem by indirectly encouraging a flood of petitions to review. At the same time, the intermediate court finds itself reading many cases which will eventually be reviewed by the high court. In short, current practices contribute to poor allocation and duplicative effort.

Brown, *Allocation of Cases in a Two-Tiered Appellate Structure: The Wisconsin Experience and Beyond*, 68 MARQ. L. REV. 189, 235 (1985).

120. See *infra* note 122 and accompanying text.

121. The organized bar was also advised the next day of these new policies and procedures in the State of the Judiciary Address to the Oklahoma Bar Association's House of Delegates. The Chief Justice closed his speech with a request that members of the bar direct their efforts and support toward individual members of the legislature in the following areas:

- 1) Adequate funding and planning for today and the future;
- 2) Development of accelerated methods, issue tracking, settlement and increased arbitration;
- 3) Increase of staff for courts of all levels. We are barely making do with a 1930's staff in the waning years of the 20th century.
- 4) Salaries will have to be considered in the immediate future. Kansas, Texas and Arkansas have recently increased judicial salaries at all levels. New Mexico, Colorado, and Missouri are not far behind. Current salaries of the federal trial judiciary exceed \$90,000 per annum. Likewise, many minor administrators and referees within the federal system earn more than Oklahoma's trial and appellate judges.

Chief Justice J. B. Doolin, State of the Judiciary Address to the Oklahoma Bar Association's House of Delegates (Nov. 13, 1987), reprinted in 58 OKLA. B.J. 3212, 3215 (1987).

122. Oklahoma Supreme Court Directive Regarding the Appellate Workload (adopted Jan. 20, 1988)(unpublished).

term of the Chief Justice.¹²³

These policies and procedures have not been fully implemented but portend significant changes in the operation of the Oklahoma judicial system. For instance, to relieve the tension of poor communication between the courts regarding the Court of Appeals' budget, and to answer complaints by the Court of Appeals that its judges were not participating in the budget process, the Administrative Director of the Courts is now required to consult with the Chief Judge and the Vice Chief Judge for input during preparation of the budget.¹²⁴ The directive also expresses a policy of restraint from promulgating rules affecting the Court of Appeals without consulting that Court.¹²⁵ The Supreme Court also affirmed the goal of continuing the effort to secure additional legal staff.¹²⁶ To promote continuing communications and inter-court relationships, the Supreme Court will provide at least one annual seminar for the justices and judges, plus other joint in-state training and educational sessions.¹²⁷

As for the allocation of work between the courts, the directive reaffirms the 1985 policy of routinely assigning all cases on appeal to the Court of Appeals, unless a party files a motion to retain. The Supreme Court will retain only those types of appeals mentioned in Appellate Procedure Rule 1.204 (III)(a) and (b), with questions of first impression alone not requiring retention.¹²⁸

Most significantly, the Supreme Court has embraced the long-range goal of limiting itself annually to a predetermined quota for grants of certiorari and retention of appeals.¹²⁹ The Court has recognized the need to conserve its time and energies and that the initial burden of handling appeals properly belongs to the Court of Appeals.

To accomplish these goals, the Supreme Court stated that it must continue to dispose of some of the routine appellate work load until both appellate courts substantially reduce the backlog. The Supreme Court acknowledges that a shift of the entire backlog of appeals to the Court of Appeals would burden both that Court and the justice system intolerably. Towards that end, the directive makes several specific provisions.

The first provision states that the opinions of the Court of Appeals

123. *Id.* at 1.

124. *Id.*

125. *Id.* at 2.

126. *Id.* at 3.

127. *Id.* The first training session was held in Oklahoma City on February 17, 1988.

128. *Id.* at 4.

129. *Id.*

for 1988 shall consist of reasoned orders that are not intended for publication.¹³⁰ This rule is intended to "reduce the backlog that burdens the appellate system."¹³¹ Second, the summary disposition system¹³² initiated in January, 1986, is to be continued, with the Court of Appeals receiving the benefit of memoranda written by a Supreme Court referee.¹³³ Third, the Supreme Court incorporated into the Court's computer system an issue tracking system.¹³⁴ When completed, the system will track a case from initial filing through final disposition, enabling the courts to have access to cases and opinions dealing with similar issues. The objective is to promote uniformity in court decisions and to conserve judicial resources by identifying similar issues in cases and the proper cases to support a dispositive opinion.

This expression of policy in allocating the work load between the courts has affected not only the Chief Justice's staff, but has also altered the operations of the court clerk, the marshal, and the referees. The court clerk now has two fundamental roles in the processing of a case on appeal.¹³⁵ Initially, the clerk files all documents for the appellate courts. The clerk enters the filing onto the docket, files the document, and forwards a copy to the marshal for review, as described below. If the document is for a case already assigned to the Court of Appeals, the clerk forwards the document to the proper division.

The clerk's other role in the appeal process is performed once the case is at issue and ready for final assignment and distribution. In the past, these tasks were performed by the Chief Justice's legal assistants as ministerial or discretionary duties. As of February 3, 1988, however, the the Court's policy of assigning all appeals to the Court of Appeals has

130. *Id.*

131. *Id.*

132. See generally Meador, *supra* note 3, at 272-73.

[A]n appellate court should make informed, reasoned and collegial decisions with expedition. Its procedures should all be shaped to that end. . . . The degree of judicial attention should correspond to the substantiality and complexity of the issues. To give operational effect to this premise, the processes of perfecting appeals and the processes through which judges consider the cases should consist of multiple tracks, with process differentiated to fit the varied circumstances of the cases.

Id.

Judge Hopkins cautions: "The question which must be answered is whether a new procedure will expedite the appeal, reduce its expense, and result in a fair disposition." Hopkins, *The Winds of Change: New Styles in The Appellate Process*, 3 HOFSTRA L. REV. 649, 660 (1975).

133. Oklahoma Supreme Court Directive Regarding the Appellate Workload, at 5 (adopted Jan. 20, 1988) (unpublished).

134. *Id.*

135. Interview with James Patterson, Clerk of the Supreme Court of Oklahoma (Feb. 1988).

been in operation. The Supreme Court directs the clerk to assign all appeals, regardless of subject matter, to the Court of Appeals as a matter of course, with three exceptions: cases in which a motion to retain has been granted; cases that have been voluntarily dismissed prior to assignment; and, at least for the time being, workers' compensation cases. The court clerk screens incoming cases only for motions to retain. Responsibility for identifying the other two types of cases belongs to the Chief Justice's staff.

All cases are identified by using a computer printout. The clerk, on all motions to retain and others on notice from the marshal or Chief Justice's staff, will pull the file and physically deliver it to the proper person, who will then be responsible for maintaining the file. If the file is pulled pursuant to a motion to retain, the clerk will order the record from the district court automatically; otherwise, the person who has responsibility for the file will instruct the clerk to do so. If a file has been pulled pursuant to a motion to retain and the motion is later denied, the file will be returned to the court clerk for general assignment to the Court of Appeals.

In addition, the court clerk no longer has the responsibility for obtaining the record and assigning a case if the trial court disposed of the case prior to a hearing on the merits. The referee in charge of summary dispositions pulls those cases and obtains the record and the file.

For cases remaining among the general appeals, the clerk is responsible for assembling the at-issue cases. The docket is computerized and lists, among other things, the status of all cases filed. The clerk generally checks the oldest cases first. Once the clerk finds that the appellant's reply brief or waiver of filing reply has been filed, either by its physical presence or by computer printout, the clerk orders the record from the district court. As soon as the record arrives, the case is assembled for assignment and distribution to the Court of Appeals.

Whether a case is assigned to Oklahoma City or Tulsa is determined on a random basis. This is also a change, for the prior policy was to divide them according to location of the litigants. The clerk prepares an order assigning the cases for the Chief Justice's signature. Once that is signed, the case is shipped. The Chief Justice's staff receives a copy of the order. The date of the order, not the date of receipt by the Court of Appeals, is considered to be the date of "original assignment" for purposes of recertification.

The current Oklahoma Supreme Court marshal describes her job as

the "nerve center" of the court.¹³⁶ She receives a copy of every document filed with the clerk; she then directs and monitors its route through the appellate system. One of the marshal's primary duties is to review each appeal for threshold questions of appellate jurisdiction. The marshal is the one who, for example, checks to see whether the petition in error was timely filed, or whether some sort of document evidencing an appealable order has been attached to the petition. The marshal does not check for an actual journal entry.¹³⁷ If the marshal senses a problem with the appeal, the documents are forwarded to the "workbasket" referee, as described below. In addition, whenever a pre-assignment motion is filed, the marshal disposes of routine motions for extensions of time and routes the others to the workbasket referee.

The marshal is also responsible for dividing and routing each case according to its basis for jurisdiction. Bar matters, original writs, certiorari petitions, and the like are separated from the general flow of appeals and routed to the proper referee.

Like the court clerk, the marshal monitors cases according to a computer printout and has a desk top central computer terminal for direct access to the dockets. If filings are past due or if a case is not moving, the marshal will prepare an order for the Chief Justice's signature giving the parties a deadline for filing or otherwise requiring the parties to inform the Court of the status of the case, such as, whether a bankruptcy stay has been lifted, whether an appeal has been settled or abandoned, etc. Finally, the marshal is responsible for general administrative duties, such as scheduling the courtroom and answering telephone inquiries from attorneys.

The Supreme Court currently has four referees. Each referee is primarily responsible for a certain area of cases.¹³⁸ The senior referee is responsible for original jurisdiction cases, such as writs of mandamus or prohibition and bar matters. A second reviews matters pertaining to petitions for certiorari. A third is currently the "workbasket" referee. The workbasket referee is responsible for appellate motions and other procedural matters prior to the case assignment to a justice or to the Court of Appeals.

The fourth referee is now responsible for all summary disposition cases: those cases on appeal that were decided prior to a decision on the

136. Interview with Nancy Parrott, Marshal of the Supreme Court of Oklahoma (Feb. 1988).

137. See generally OKLA. STAT. tit. 12, § 32.2 (Supp. 1985).

138. Interview with Wayne Snow, Senior Referee of the Supreme Court of Oklahoma (Feb. 1988).

merits, such as summary judgments, demurrers, or motions to dismiss. This marshal reviews, by computer, all pending cases, determines whether a case is appropriate for his review, obtains the file from the court clerk, and causes the record to be ordered from the district court. After review, this marshal determines whether the case can be disposed of summarily or whether it will require a lengthier analysis and opinion. If the latter is required, the marshal will draft a brief, one-paragraph memorandum of his reasoning. If, however, the former is required, the marshal will draft a longer memorandum setting out the facts, law, and recommended disposition, including a proposed order. The memorandum is then attached to the file. If the case has been retained, it will be forwarded to the justice to whom it has been assigned or, if none assigned, to the justices' conference for assignment. If the case has not been retained, the marshal will procure its assignment to either the Oklahoma City or Tulsa divisions of the Court of Appeals on a random basis.

The net effect of the recent rule and policy changes is to reduce the role of the Chief Justice's staff, particularly the legal assistants, in the screening and assignment of appeals, with a concomitant rise in the Court of Appeals' responsibility for its own docket. Essentially, the assignment of cases is now an administrative function of the court clerk exercised when the cases are at issue.

The 1987 Supreme Court directive also addressed the tensions involving the exercise of its review function by modifying its policy regarding publication of Court of Appeals opinions. The new rule,¹³⁹ while

139. See Supreme Court Policy Directive Regarding the Appellate Workload, at 2, 4 (adopted Jan. 20, 1988) (unpublished). Regarding publication of opinions, the directive states:

Opinions of the Court of Appeals shall remain unpublished until after mandate issues. An opinion of the Court of Appeals shall be ordered for publication after mandate only upon affirmative vote of at least two members of the panel responsible for the opinion. Each panel shall keep a record of its votes on publication.

The Supreme Court retains the power to order Court of Appeals opinions withdrawn from publication. Published opinions of the Court of Appeals, where certiorari is dismissed or not sought, shall be accorded persuasive value, unless accorded precedential value by order of the Supreme Court. Published opinions of the Court of Appeals, where certiorari is denied and the opinion not withdrawn from publication by the Supreme Court, shall be accorded precedential value by the Supreme Court in accordance with 20 O.S. Supp. 1982 § 30.5.

Id. at 2.

With the exception of opinions to which a substantial amount of judicial energy has been devoted as of the date hereof, opinions of the Court of Appeals for 1988 shall be limited to reasoned orders that are not intended for publication. The purpose of this policy is to address and reduce the backlog that burdens the appellate system.

Id. at 4.

delaying any publication until after the mandate issues, does permit publication ordered solely by the Court of Appeals when certiorari is denied and the opinion is not withdrawn from publication by the Supreme Court. Precedential value is then accorded to the published opinions. Before this last rule change, the Supreme Court accorded precedential value to Court of Appeals' opinions only by an affirmative action specifically authorizing and noting that the case was for publication.

VI. CONCLUSION

As Judge Hopkins stated in 1975: "There is no likelihood that appellate litigation will decrease. The balance must be fairly struck between the need for efficiency and the need to render justice in the process."¹⁴⁰ Oklahoma, keeping in mind the twin concerns of efficiency and justice, has continued to cope with the resulting problems of a greater appellate case load and a growing backlog of unresolved appeals.

Professor Leflar has observed: "It is possible to separate the two major causes of backlogs — increased volume and inefficient operation procedures — and to discuss one without tying in the other."¹⁴¹ He notes: "One remedy often proposed is the creation of more courts — an intermediate appellate court if none already exists, or more panels or districts if the State has already established an intermediate court. An alternative sometimes equally available, however, is the improvement of rules and procedures. . . ."¹⁴²

Oklahoma has pursued the first suggested remedy, creating an intermediate court of appeals in 1969,¹⁴³ adding additional divisions in 1982,¹⁴⁴ and utilizing temporary courts from time to time. It is in the pursuit of the alternative remedy — improved rules and procedures — that Oklahoma has altered its unique deflection system. Because the

140. Hopkins, *supra* note 132, at 661.

141. Leflar, *Delay in Appellate Courts, Comments on Appellate Court Delay*, in J. MARTIN & E. PRESCOTT, *APPELLATE COURT DELAY*, 151, 152 (1981).

Persistently increasing numbers of cases filed in American state courts, with corresponding increases in the number of cases brought up to appellate courts, can give rise to unprocessed backlogs of appealed cases unless improved procedures, or at least changed ones, move the appealed cases along to decision more rapidly and efficiently. When backlogs develop, the backlogged cases are delayed.

Id. at 151.

142. *Id.* at 151-52.

143. See *supra* notes 23-28 and accompanying text. Authorized in 1969, the Court began operation in January 1971.

144. See *supra* notes 64-66 and accompanying text. The new divisions began operations in January, 1983.

Supreme Court governs the rules and procedures in Oklahoma's appellate courts, the Court of Appeals influences the disposition of a case only after the point of assignment. Thus, any delays or failings in processing appeals before assignment have been solely within the control of the Supreme Court.

As demonstrated above, the Supreme Court has continually searched for and utilized various adjunct systems and rules to improve its appellate processing capabilities. Only recently has it begun to better use the Court of Appeals to accomplish this purpose.

The new policy that every appeal shall be subject to assignment to the Court of Appeals adopts a benefit that other states have realized by having cases filed initially with an intermediate court. Such a procedure promotes the winnowing process of disposing of the routine appeals and the refining of issues in those cases reserved for Supreme Court review. By permitting the Court of Appeals to screen pending appeals for the proper method of disposition (fast track, summary disposition, or memorandum decision), the Supreme Court and its staff are relieved of this additional burden which is more properly decided by an intermediate court.

But the Supreme Court has still retained other areas of responsibility that an intermediate court could also carry out. One area is the motion and procedural matters prior to a case's assignment or deflection which is now carried out by a Supreme Court referee. A Court of Appeals staff attorney could just as effectively handle this work. To accomplish this, the Supreme Court would have to move the point of deflection or assignment. At the present time, the deflection occurs after the case is fully briefed or at issue. By changing the time of deflection to the moment when a particular case is filed, the Court of Appeals would obtain jurisdiction earlier.

This step would produce several benefits. First, all the motion and procedural problems, especially in those cases finalized by the Court of Appeals,¹⁴⁵ would not absorb the time and energy of the Supreme Court and its staff. Second, those cases more properly decided by the Court of Appeals would be screened before absorbing the attention of the Supreme

145. See OKLA. CONST. art VII, §§ 4, 6.

When the intermediate appellate courts acquire jurisdiction in any cause and make final disposition of the same, such disposition shall be final and there shall be no further right of appeal except for issuance of a writ of certiorari ordered by a majority of the Supreme Court which may affirm, modify or make such other changes in said decision as it deems proper.

Id. at § 5.

Court. Third, earlier deflection would eliminate a waste of judicial resources in those cases initially received in the Supreme Court, assigned to the Court of Appeals, and reviewed yet again in the certiorari process. As a result, the Supreme Court could conserve its resources to better decide those cases selected within its pre-determined quota for certiorari and for retained or certified appeals. Fourth, the Court of Appeals could, at an earlier stage of the appellate process, resolve the appropriate fast track and summary disposition cases. By reducing delay in these cases and accelerating their disposition, the backlog of appeals would be alleviated.

These benefits, to be fully realized, depend upon adequate financing for staffing and equipment. Staff attorneys, computers, and word processing equipment are valuable investments in resolving the backlog delay.

The deflection system in Oklahoma has changed considerably from its initial implementation. From its original use in 1971 with the assignment to the Court of Appeals of selected cases of limited impact, the Supreme Court now assigns appeals without any selectivity. With the improvement of the rules and procedures, the Court of Appeals is in a better position to address and resolve the problems of its case load, consider more appeals, and reduce the appellate backlog.

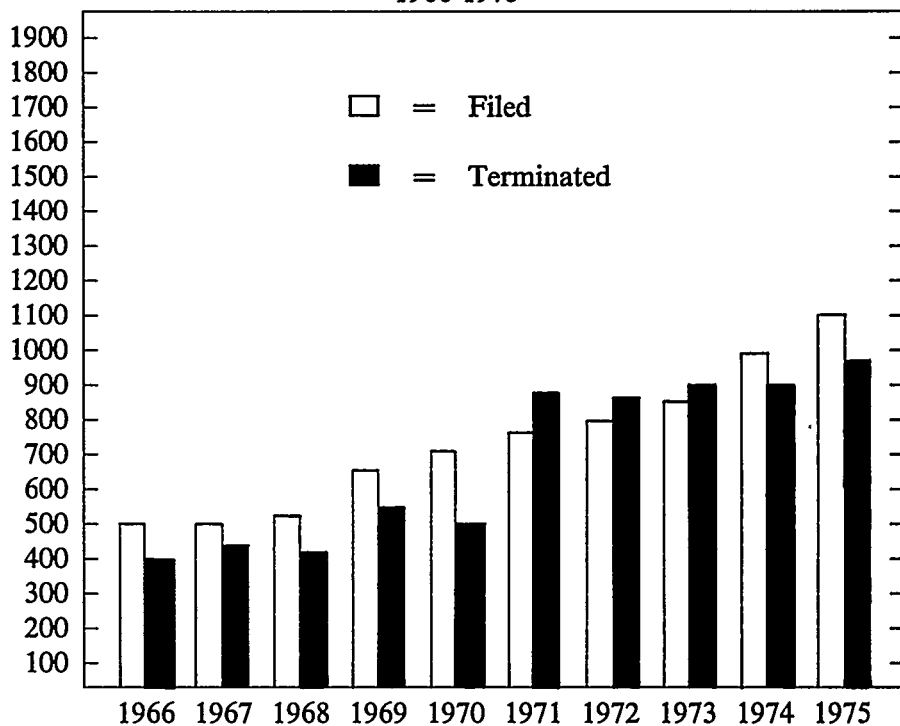
TABLE 1*
NUMBER OF CASES FILED EACH YEAR

1975	##### 1144
1974	##### 965
1973	##### 879
1972	##### 801
1971	##### 742
1970	##### 726
1969	##### 644
1968	##### 505
1967	##### 492
1966	##### 512
1965	##### 477
1964	##### 500
1963	##### 425
1962	##### 472
1961	##### 438
1960	##### 520
1959	##### 437
1958	##### 431
1957	##### 446
1956	##### 455
1955	##### 445
1954	##### 454
1953	##### 452
1952	##### 485
1951	##### 409
1950	##### 471
1949	##### 530
1948	##### 522
1947	##### 475
1946	##### 483
1945	##### 416
1944	##### 359
1943	##### 423
1942	##### 523
1941	##### 563
1940	##### 548
1939	##### 682
1938	##### 666
1937	##### 809
1936	##### 809
1935	##### 782
1934	##### 820
1933	##### 923
1932	##### 1118
1931	##### 1212
1930	##### 1018
1929	##### 958
1928	##### 995
1927	##### 993
1926	##### 960
1925	##### 1040
1924	##### 1028
1923	##### 1091
1922	##### 1103
1921	##### 952
1920	##### 854
1919	##### 723
1918	##### 731
1917	##### 841
1916	##### 882
1915	##### 895
1914	##### 1110
1913	##### 1261
1912	##### 1319
1911	##### 1244
1910	##### 921
1909	##### 733
1908	##### 546
1907	##### 30

100 200 300 400 500 600 700 800 900 1000 1100 1200 1300 1400 1500

* Table adapted from M. Opala, *Report on the Judiciary*, 40 (1975).

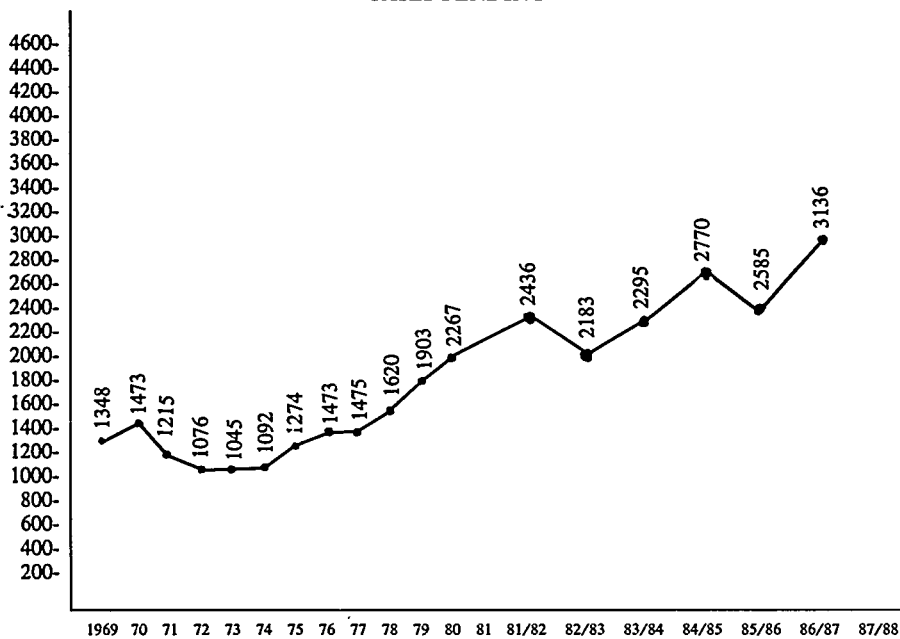
TABLE 2*
SUPREME COURT
NUMBER OF CASES FILED AND TERMINATED
1966-1975



* Table adapted from M. Opala, *Report on the Judiciary*, 39 (1975).

TABLE 3*

CASES PENDING



* Table derived from records of the Administrative Director of the Courts for the Supreme Court of Oklahoma.

