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The Arnolds of Southwest Arkansas: 102 Years of Law

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The Arnolds of Southwest Arkansas

102 YEARS OF LAW

In 1879, William Hendrick Arnold, a seventeen-year-old school teacher in Clark County, began in earnest to read Blackstone and other relevant legal matter as a first step to becoming a lawyer. His formal education had included attendance at Ansley's Academy at Artesian, a kind of preparatory school that his father David Saxon Arnold, a farmer, had helped establish; but the considerable learning that he acquired thereafter was entirely by dint of individual effort. David Saxon Arnold had received a classical education at Erskine College in South Carolina in the 1840s before moving to Arkansas, but much formal education for his family was made impossible by the civil war and its aftermath.

In 1862, David enlisted in the confederate cause in El Dorado, and he returned home in 1864 after being discharged as a captain in the Louisiana Cavalry. His wife Temperance Lucinda Arnold, speaking of his military commissions, wrote: "I remember the old papers with the seals, worn and broken where they were folded. They were such sad old relics, funereal in every respect. We never talked of them, and looking back now it seems to me we laid it all down and tried to forget all its horrors. I do not know what became of his sword."[1] During the war, the family became refugees and settled for a time in Miller County near Garland City until the war ended. After the war, of course, there was very little in the way of education available. William Hendrick Arnold wrote that "we never had any schooling in those days other than for a few months in the year at uncertain intervals. Teachers could not be had as the people were all very poor on account of the ravages of the civil war."[2]

It would be some time after the war ended before even normal civil regulation, much less anything resembling schools, could be very firmly established. David Arnold's cotton was sometimes stolen by the Union soldiers occupying South Arkansas. On one occasion, William reports, "a cavalcade of these officers came to our house . . . and simply took possession. They had their own cook with them, and the family, consisting of my mother and us children, stayed out of the house, and I never heard

By Morris S. "Buzz" Arnold

such frying and cooking as went on in our kitchen. I came very near starving as these men had spent the previous night with us, and after they had gotten through eating their dinner which I remember was cooked with so much noise and sputtering, there was one biscuit as large as a saucer left and I made a grab for it, but my mother seized me and told me not to touch it. She thought it was a Yankee biscuit, and threw it out."[3]

Why William turned to the law is not altogether clear. Perhaps it was because his paternal grandfather Ira Arnold had been a trial judge in South Carolina as had others of his eighteenth-century ancestors. Just as likely, it was because farming was not much to his liking. Recalling the days when his work at Ansley Academy had been interrupted by farm duties, he wrote that he "plowed up new ground in which there were roots of elm trees running all around on top of the ground. I made some marvelous escapes and sometimes the plow would strike a stump or root and the handles would be thrust against me, other times the roots would fly back and strike my knees and shins. I pursued this work with so much energy that one of my knees swelled up for six weeks, and while I was in bed I continued my studies."[4] It was then, he said, that he read "history, biographies of great men, exploits of great generals, especially Napoleon, and had it in my mind that I possessed great military genius, and resolved to be a general in war, and a lawyer in time of peace...These golden dreams have recurred with less frequency as the years have gone by, and I have reached the conclusion that a good, reliable citizen is worth more to a country than some of those who agitate and bring on strife."[5]

William's ambition to become a lawyer, however, was in fact realized. In 1881 he took up the study of law in the offices of Warren & Mitchell in Prescott. Like most nineteenth-century legal apprentices, he did not think very highly of the tutelage that he received. "With references to reading law in the office of Messrs, Warren and Mitchell," he wrote, "it may be said that, so far as my knowledge goes, students are, in the main, always self-instructed, the old lawyers seldom ask any questions of the students with reference to books, and the conversation seems to relate to practical matters or incidents of the present time and in detailing their own experiences and successes, their failures never mentioned."[6] Indeed, he said that his mentors "were seldom in the office."[7] In 1882 he was admitted to the bar and, after practicing a few months in Prescott, in 1883 he moved to Texarkana and established an office.

He arrived in Texarkana, a town barely ten years old, with fifteen second-hand law books, a bed and mattress, "a little old tin or zinc trunk," and forty dollars in cash.[8] He rented a small room from W. J. Smithers, a justice of the peace, for $2.50 a month. His circumstances were something less than palatial: "There were holes in the floor," he recalled, "through which the rats, large and small, ran back and forth all the live long night. He also claimed that "the dirt on the floor and tobacco juice had accumulated and must have been half an inch thick in places," but he "slept securely in that old building, although one would not have thought it very secure as there were fires in Texarkana at that time nearly every night, and nearly everything in the town was burnt up first and last except that old building."[9]

As might be expected, it took William some time to establish a practice. He bagan his work in the J. P. courts of Texarkana, and one of his first cases was a suit against one L. Samuel, a pawnbroker, for a wash-pot. The claim was that the pot was stolen from his client, but the defendant's expert (a hardware man) testified that "there were a great many black pots in the world of this size, and it was doubtful whether you could identify one from the other." On the basis of their testimony the case went against William and fifty years later he could still feel the sting: "The loss of the wash-pot case," he wrote, "hurt my conscience very much, and I thought that there was no justice in law."[10]

William claimed that "he was naturally shrinking and timid" and therefore his "business was not very extensive for a long time," especially since he did not "cultivate acquaintances" or "mix

L to R: Sheppard Arnold, Thomas Saxon Arnold, Richard Lewis Arnold, William Hendrick Arnold, Jr. (1893-1977), William Hendrick Arnold III, and Richard Sheppard Arnold. The picture in the back is of William Hendrick Arnold (1861-1946).

around with the business interest."[11] In time, however, he prospered, acquired a very large general practice, and argued several cases before the Supreme Court of the United States. He also was evidently able to overcome his purported shyness sufficiently to be elected four times city recorder of Texarkana (1885-88), mayor of Texarkana (1892-94), and president of the Texarkana School Board in which capacity he served ten years. In 1907 he was elected president of the Arkansas Bar Association. He also served as chairman of the Miller County Democratic Convention of 1917. In 1923 he attended the organizational meeting of the American Law Institute. In 1925 he was appointed special associate justice of the Supreme Court of Arkansas and in 1929 was elected special judge of the Eighth Circuit of Arkansas by the bar of that circuit to fill a vacancy.

William Hendrick Arnold's eventual success in the law, the practice of which he vigorously pursued until his death in 1946, would make it possible for his children to enjoy educational advantages that he had been denied. His first child, Jodie Claypool Arnold, attended Randolph Macon Woman's College and the Drexel Institute; Lucy Arnold, his next child, received a B.A. from Randolph Macon in 1911; and Ruth Arnold, the third daughter, attended Vassar and the University of Chicago.

The sons, all of whom were to become lawyers, were also outfitted with the finest possible educations. William H. Arnold, Jr., the eldest son, was born in 1893, was graduated from Phillips Exeter Academy in 1911, Harvard College in 1915, and Oxford University in 1918. He attended Oxford as a Rhodes Scholar and was a student at the Inner Temple in London. He was admitted to the Arkansas Bar in 1916. He served in the Army in France during World War I, and was also a member of the Texas and Louisiana bars. William, Jr. was chairman of the Miller County Democratic Central Committee and was engaged in the general practices of law in Texarkana until his death on November 6, 1977.

David Christopher Arnold, William's second son, was born in 1896. He was graduated from Phillips Exeter Academy in 1913 and attended the University of the South. In 1918 he was admitted to the bar of Arkansas. In 1920, at the age of 24, he was elected to the Arkansas House of Representatives. In 1922 he was elected to the Arkansas Senate by a majority of two to one and served one four-year term. He died in 1936 after being stricken while trying a case in Miller County.

Richard Lewis Arnold, William's youngest son, was born in 1906. He was graduated from Phillips Exeter Academy in 1925, Yale College in 1929, and Harvard Law School in 1932. He was admitted to the Arkansas bar in 1931 and was for many years a member of the Board of Directors and General Counsel of Southwestern Electric Power Co. He twice served as special associate justice of the Supreme Court of Arkansas. He is presently living in Texarkana.

William H. Arnold, Jr. had two sons, both of whom became lawyers. William Hendrick Arnold, III was born in 1923. He attended Rice University and received a B.A. from the University of Texas in 1948. In 1950 he was graduated from the University of Texas Law School and the same year was admitted to the bar of Texas. In 1953 he was admitted to the bar of Arkansas and in 1966 was elected circuit judge of the Eighth Judicial District of Arkansas. He is presently engaged in the practice of law in Texarkana in the firm of Arnold and Arnold with his brother Thomas Saxon Arnold. Thomas was born in 1928 and was graduated from Rice University in 1949 and the University of Texas Law School in 1952. He was admitted to the bar of Texas in 1952, the bar of Arkansas in 1953, and the bar of Colorado in 1977. For many years he has had interests in various title companies in the southwestern United States.

Richard Lewis Arnold's first son, Richard Sheppard Arnold, was born in 1936. He was graduated from Phillips Exeter Academy in 1953, Yale College in 1957, where he was first in his class, and Harvard Law School in 1960, where he was again first in his class and served as an editor of the Harvard Law Review. In 1960 he was admit-

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ted to the Arkansas bar after having made the highest score on the bar examination given in July of that year. In 1961 he was admitted to the bar of the District of Columbia. After a year's clerkship with Mr. Justice Brennan of the Supreme Court of the United States, he practiced for a time with the Washington firm of Covington and Burling before returning to Texarkana to join the family firm in 1964. He was elected a delegate to the Arkansas Constitutional Convention of 1969-70 and for a number of years worked for Governor and later Senator Dale Bumpers. In 1978 he was appointed a United States district judge for the Eastern and Western Districts of Arkansas and in 1980 he was elevated to the United States Court of Appeals for the Eighth Circuit where he presently sits. Judge Arnold's wife, Kay Kelley Arnold, a graduate of the University of Arkansas and the UALR Law School, was admitted to the Arkansas bar in 1981. Morris Sheppard Arnold, his brother, was born in 1941. He was graduated from Phillips Exeter Academy in 1959, attended Yale College, and was graduated from the University of Arkansas in 1965 and the University of Arkansas Law School in 1968 where he was Editor-in-Chief of the Arkansas Law Review and first in his graduating class. He was admitted to the Arkansas bar in 1968. In 1969 he received an LL.M. and in 1971 an S.J.D., both from Harvard Law School where he was a Teaching Fellow in Law in 1969. He has taught law at a number of American universities and in 1978 was a member of the Law Faculty of Cambridge University. He is presently a professor of Law and History at the University of Pennsylvania where he served as vice president of the University from 1979 to 1981. In 1982 he was elected state chairman of the Arkansas Republican Party and the same year was appointed special chief justice of the Supreme Court of Arkansas.

Though this list is long, it has not exhausted the list of Arkansas Arnold lawyers. John H. Arnold, William Hendrick Arnold's first cousin, was born in 1864, read law in the Prescott firm of Smoote & McRae, and was admitted to the bar of Arkansas in 1884. He later moved to Washington, Arkansas, where he became mayor and a member of the firm of Williams and Williams. He died in 1925. Finally, W.H. (Dub) Arnold prosecuting attorney in Arkadelphia, is a distant cousin.

The Arnolds have been practicing law in southwest Arkansas for one hundred and two years. With eleven of them having been admitted to the Arkansas bar, the Arnolds have one of the longest and fullest family legal traditions in the state. ☐

NOTES

1. W. H. Arnold, **The Arnold Family** 22 (1935).
2. Id. at 171.
3. Id. at 184.
4. Id. at 173.
5. Id. at 173-74.
6. Id. at 185.
7. Id.
8. Id. at 186.
9. Id.
10. Id. at 188.
11. Id.

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The Arkansas Court of Appeals

WAS IT WORTH THE TROUBLE?[1]

By James D. Gingerich

On November 7, 1978, the voters of the State of Arkansas approved Amendment 58 to the Arkansas Constitution, which provided for the creation of the Arkansas Court of Appeals.[2] The impetus for the new court had come from members of the Arkansas Supreme Court and others in the legal profession who argued that the state's judicial system, and specifically the Supreme Court, would suffer without it. Proponents argued that the new court would reduce the Supreme Court's workload, allow judges more time to consider cases and write opinions, and make the appellate process quicker and more efficient.[3]

Because the creation of the Court of Appeals brought about such a dramatic change in the Arkansas judicial structure, requiring the expenditure of a substantial portion of state funds,[4] the general public, as well as the members of the bar, have a right to know whether the change has been a beneficial one.

This study was undertaken as an attempt to determine whether the projected benefits have accrued, and what effects, if any, the creation of the court has had on the Supreme Court. Several factors were chosen to measure changes in the Supreme Court during the years immediately preceding and following the creation of the Court of Appeals. The results of those measurements were then analyzed to determine the nature and extent of the effect, and whether the new court has achieved those things which were expected of it.

Editor's Note: James D. Gingerich is University Counsel and assistant professor of Political Science at the University of Central Arkansas. He is a 1980 graduate of the University of Arkansas School of Law in Fayetteville. He received his L.L.M. in 1982 from the University of Bristol, England.

This article is a condensed version of a paper which won top honors at the February meeting of the Arkansas Political Science Association in Jonesboro.

I. The Creation of the Court of Appeals

At one time, the workload of the Arkansas Supreme Court was very stable. In 1964, a total of 464 cases were disposed of by the court.[5] In 1970, that number had risen to 716[6] and by 1976, they totaled a staggering 1037 cases—an increase of 123% in only 12 years.[7] The earliest appeals for help came from within the membership of the Supreme Court. In his 1976 annual report to the Governor and General Assembly, then Chief Justice Carleton Harris wrote:

> *Justices of the Supreme Court wrote an average of over 73 opinions each in 1976 as compared with an average of 65 during 1975, substantially above the national averages for states without an intermediate appeallate court. Total workload of the Court increased by almost 30 per cent during 1976 as compared with 1975. Despite the heavy workload, the Court remains current, but it will be difficult for the Court to keep pace with its skyrocketing workload in the years to come unless help in the form of an intermediate appellate court for Arkansas is forthcoming.(8)*

The same theme was echoed in civic meetings and legislative committee hearings in subsequent months by other members of the Court, educators, and legal practitioners. These efforts realized success in March of 1977, when the Arkansas General Assembly approved Senate Resolution 5,[7] which allowed the proposal to be placed on the ballot in the 1978 general election. By more than a two-to-one margin,[8] the proposal was approved by voters as Amendment 58 to the Arkansas Constitution.

The amendment itself was not very specific. It simply provided that the General Assembly was empowered to create a court of appeals with such "jurisdiction as the Supreme Court shall by rule determine." All provisions concerning the number of judges, method of election, length of term, method of selecting the chief judge, and issues relating to salaries and staff support were left to the Legislature.

This lack of specificity led to an intense debate, especially in legal circles, concerning the legislation to implement the amendment. In a vote in January of 1979, the House of Delegates of the Arkansas Bar

Association was closely divided over the bill which was then being debated before the General Assembly. The most controversial provisions concerned the six-person composition of the court, which could lead to evenly split decisions, and the selection of the chief judge by the chief justice of the Supreme Court.[11] The legislators, after lengthy discussions and several amendments, eventually enacted Act 208 of 1979, including both of those provisions. On July 7, 1979, Governor Bill Clinton appointed the court's first members[12] and its first opinions were handed down one month later.

II. Measurements and Expectations

When the creation of the Court of Appeals was being debated, proponents argued that the following benefits would result: (1) the workload of the Supreme Court would be decreased; (2) the Supreme Court would be able to hear only the more "serious', cases, have more time to decide them, and consequently, write "better" opinions; (3) the appellate process would become quicker and more efficient; and (4) duplications in the appellate process would be avoided. In order to measure whether these benefits have accrued, nine criteria were selected as measurement tools. Supreme Court decisions over a seven year period, from 1976-1982, were studied.[13] The criteria selected, and the reason for their selection, are as follows:

Workload

Two criteria were selected to measure changes in the workload of the Supreme Court. The first was the number of cases which were disposed of during each term. Included in the figures were all appeals, petitions, and motions (other than motions for an extension of time) considered by the court which were finally disposed of during the term. The second criteria selected was the total number of majority opinions written each year, denominated into a per-justice average.

If the Court of Appeals has produced the desired result, the number of dispositions and majority opinions should decrease after the 1979 term.

More Time to Consider Cases, Write "Better" Opinions

The objective of allowing justices more time to consider and write opinions is that it will allow time for additional research, thought, drafting, and, in the end, produce a "better" opinion. The problem, of course, is in developing a set of criteria to measure the quality of an opinion which excludes, as much as possible, the introduction of large amounts of subjectivity.

In an attempt to avoid this problem, a method similar to that used by Roger Groot in his study of the North Carolina courts[14] was adopted. With Groot's method, there is no direct attempt to determine whether the quality of the opinion has improved, but simply to note those changes which would indicate that additional time has been put into the opinion writing task.

Thus, four criteria were selected for measurement. The first two involve the average number of concurring and dissenting opinions written by each justice. In a system in which a justice is overworked and pressed for time, it is reasonable to assume that if he agreed with the result reached by the majority, he would join the opinion even though he disagreed with the reasoning used. Likewise, a justice who disagreed with the result of the majority would issue an opinion in only those cases in which he possessed very strong feelings. In both instances, with more time available to develop and formulate his own reasoning, a justice would be more likely to express it. Thus, it should be expected that the number of concurring and dissenting opinions would increase after the creation of the Court of Appeals.

A third criterion studied concerns the length of opinions. With more time available to do research and develop and expand lines of reasoning, the length of the justices' opinions should increase. Thus, if proponents were correct in their projections, one would expect the number of pages per opinion to increase after 1979.

Finally, the number of per curium opinions was studied. If the appellate courts are properly structured so that the Supreme Court hears only the more important cases, the number of those cases disposed of with per curium opinions should decrease. In addition, with more time to consider cases, those which would have previously resulted in a per curium order could be handled with a full opinion. Thus, if the Court of Appeals has had the desired effect, the number of per curium opinions should decrease after 1979.

Make the Appellate Process Quicker and More Efficient

The obvious method of determining whether the appellate process requires less time is to count the average number of days cases are before the court. The Arkansas Judicial Department has been tracking selected cases through the courts for several years, and their findings are used here for this purpose. The time measured begins on the day in which the record is filed with the Supreme Court and ends on the day when the decision is rendered. It should be expected that the amount of time will decrease following the creation of the Court of Appeals.

As to the court's efficiency, this criterion is usually determined by measuring its currency, that is, the number of cases which are disposed of within the term as compared to the number of cases which are filed. With a smaller

workload, it should be expected that the disposition ratio of the court will increase after 1979.

Avoid Duplication of Appeals

The final benefit noted by the Court of Appeals' proponents was that the structure of the court would insure that duplication in the appellate process would be avoided. The only way a case once heard by the Court of Appeals may reach the Supreme Court is by a grant of certiorari. In order to assess the success of this structure, the number of petitions for review granted by the Supreme Court were compared to the total number of cases disposed of by the Court of Appeals. If the proponents were correct, only a very small percentage of the cases disposed of should have been accepted for review by the Supreme Court.

III. Findings and Analysis[15]

1. **Dispositions.** At first glance, there seems to be a little change in the number of Supreme Court dispositions before and after the creation of the Court of Appeals (See Table 1). In 1976, there were 1037 cases disposed of, rising to 1234 in 1979. By 1982, the number of dispositions had dropped to 1062,[16] a decline of only 14%

WORKLOAD AS MEASURED BY NUMBER OF DISPOSITIONS ARKANSAS SUPREME COURT, 1976-1982

Year	Appeals	Petitions	Non-Time Motions	Total
1976	551	186	300	1037
1977	576	190	268	1034
1978	585	203	282	1070
1979	657	244	333	1234
1980	512	312	398	1222
1981	468	208	384	1060
1982	437	224	401	1062

Table 1

The figures are more enlightening, however, when compared to the number of dispositions which would have resulted had the Court of Appeals not been created. Since the jurisdiction of the Supreme Court prior to the creation of the Court of Appeals is basically the same as that presently shared by the two courts,[17] an indication of what the Supreme Court's workload would have been can be made by adding the workload of the two courts. The number of dispositions for the Court of Appeals is found in Table 2. In 1982 had these cases been added to the workload of the Supreme Court, they would have totaled 1754 cases. As compared to the actual workload of 1062 cases, this is a real decline of 1692 cases, or 61% (See Table 3). **Thus, it can be seen that the creation of the Court of Appeals has had a significant effect on the decline in the number of dispositions by the Supreme Court.**

WORKLOAD AS MEASURED BY NUMBER OF DISPOSITIONS ARKANSAS COURT OF APPEALS, 1979-1982

Year	Appeals	Petitions	Non-Time Motions	Total
1979	226	96	93	415
1980	905	158	284	1347
1981	886	178	361	1425
1982	1062	164	466	1692

Table 2

2. **Number of Majority Opinions.** A look at the average number of published opinions per justice provides further evidence of the Supreme Court's decreasing workload. From a high of 77 majority opinions per justice in 1978, the average had dropped 41% to 45 opinions in 1982 (See Table 4). This decline is even more dramatic when it is considered that the number of actual cases disposed of

NUMBER OF DISPOSITIONS IN SUPREME COURT AND COURT OF APPEALS, 1976-1982

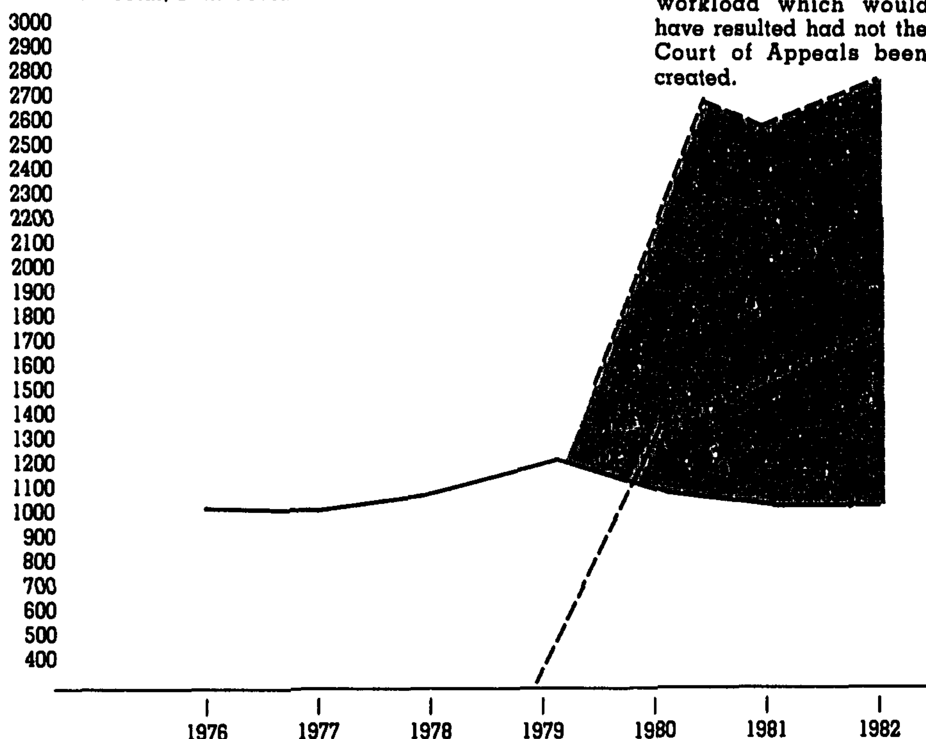

Table 3

in the Supreme Court alone had remained fairly constant. This can be explained by the fact that the percentage of cases disposed of with a written opinion has steadily declined (See Table 5). This decline is largely a result of the decreasing number of appeals taken to the Supreme Court, which are more likely to be disposed of with a written opinion than are petitions and motions (See Table 1). The largest decline is from 1979 to 1980, a direct result of the effects of the Court of Appeals. **Thus it appears that the creation of the court has produced the desired result of decreasing the workload of the Supreme Court.**

WORKLOAD AS MEASURED BY NUMBER OF WRITTEN OPINIONS
ARKANSAS SUPREME COURT, 1976-1982

Year	# Maj. Opinions	Ave. Per Justice	# Other Opinions	Ave. Per Justice	All Opinions	Ave. Per Justice
1976	509	73	72	10	581	83
1977	488	70	54	8	542	77
1978	539	77	95	14	634	91
1979	453	65	91	13	544	78
1980	352	50	141	20	493	70
1981	327	47	112	16	439	63
1982	318	45	100	14	418	60

Table 4

NUMBER OF WRITTEN OPINIONS
AS PERCENTAGE OF
TOTAL DISPOSITIONS
ARKANSAS SUPREME COURT 1976-1982

Year	Dispositions	Written Opinions	Percentage
1976	1037	581	56%
1977	1034	542	52%
1978	1070	634	59%
1979	1234	544	44%
1980	1222	493	40%
1981	1060	439	41%
1982	1062	418	39%

Table 5

3. Frequency of Concurring Opinions. In the three years preceding the creation of the Court of Appeals, the Supreme Court wrote an average of 16.33 concurring opinions per year. In the years following the court's creation, that average increased to 39 opinions per year (See Table 6). This number increased even though the total number of all opinions declined during the period. The percentage of all opinions made up of concurring opinions increased from 4% in 1979 to 13% in 1982. Thus, the expected rise in concurring opinions after 1979 has, in fact, resulted.

4. Frequency of Dissenting Opinions. Similarly, the number of dissenting opinions has increased over the period (See Table 6). From 1976-1978 the Supreme Court wrote an average of 52.33 dissenting opinions per year, representing an average of 8.66% of the total opinions handed down during the period. From 1980-1982 the number had increased to 70 dissenting opinions per year, an average of 15.33% of the total opinions.

NUMBER OF MAJORITY, DISSENTING, AND CONCURRING OPINIONS
ARKANSAS SUPREME COURT, 1976-1982

Year	Majority Op. #	Majority Op. %	Dissenting Op. #	Dissenting Op. %	Concurring Op. #	Concurring Op. %	Dissenting in Part and Concurring in Part #	Dissenting in Part and Concurring in Part %	Total
1976	509	88%	55	9%	11	2%	6	1%	581
1977	488	90%	37	7%	14	3%	3	0%	542
1978	539	85%	65	10%	24	4%	6	1%	634
1979	453	83%	62	11%	23	4%	6	1%	544
1980	352	71%	95	19%	35	7%	11	2%	493
1981	327	74%	79	18%	26	6%	7	2%	439
1982	318	76%	36	9%	56	13%	8	2%	418

Table 6

5. Number of Pages Per Opinion. If the Supreme Court had declining workloads and additional time to consider cases, it is reasonable to expect that the length of opinions issued by the court would increase. The evidence, however, indicates that the number of pages per case has declined.[18] In 1976, the court published 256 opinions with an average of 4.5 pages per case (See table 7). By 1982, the number of published opinions had increased to 382, but the average had declined to 3.4 pages per case. The average has declined each year since 1979.

One possible explanation external to the Court of Appeals which may account for the decline is related to the publication of the court's opinions. It was at one time a policy of the Supreme Court to publish only certain types of opinions; those which involved routine issues or were not useful for reference purposes were not designated for publication.[19] In 1979, this rule was changed to provide that "all signed opinions of the Supreme Court shall be designated for publication. Prior to 1979, therefore, many opinions which resolved routine issues, and thus were more likely to be shorter opinions, were not published; whereas, following 1979, all cases were included.

6. Number of Per Curium Opinions. Other than to note that the number of per curium opinions rose dramatically in 1982, it is difficult to draw any conclusions from the figures. The percentage of per curium opinions decreased in the years preceding the Court of Appeals, then began to rise slowly until 1982 (See Table 8). The

expectation was that they would decrease after 1979. It may be that the increasing percentage of the Supreme Court's workload made up by petitions and motions, as opposed to appeals (See Table 1) has increased the use of per curiums. The number of appeals decreased 21% from 1976 to 1982, whereas the number of petitions and motions increased about 29% during the same period. Even if this could be shown, however, it would not account for the dramatic increase of per curiums in 1982.

NUMBER OF PAGES PER CASE*
ARKANSAS SUPREME COURT, 1976-1982

Year	Cases	Pages	P/C
1976	256	1159	4.5
1977	275	1102	4.0
1978	333	1367	4.1
1979	371	1626	4.4
1980	367	1515	4.1
1981	375	1300	3.5
1982	382	1288	3.4

Table 7

* *Includes all opinions written and published by the Supreme Court, including per curium opinions.*

PER CURIUM OPINIONS
ARKANSAS SUPREME COURT 1976-1982

Year	Number Per Curiums	Number Total Opinions	%
1976	43	624	7%
1977	28	570	5%
1978	16	650	2%
1979	16	560	3%
1980	22	515	4%
1981	46	485	9%
1982	106	524	20%

Table 8

7. Number of Days in Appellate Court. The results of the survey concerning the average length of time a case is before the Supreme Court are somewhat mixed. The average time for all cases actually rose substantially from 1979 to 1980—from 173.5 days to 196.5 days (See Table 9). The average has steadily declined since reaching its lowest point during the seven years in 1982 with an average of 149.5 days.

While the average time for all cases has increased, that increase is solely attributable to the increased time to hear criminal cases. The average time for civil cases has declined each year since 1979. This added time to hear criminal cases is no doubt a result of the change in the Supreme Court's criminal jurisdiction. While the court was hearing all criminal cases before the creation of the Court of Appeals, it now hears only the most serious criminal cases involving a sentence of death, life imprisonment, or at least 30 years imprisonment. The more substantial issues, especially in capital cases, have increased the amount of time these cases are before the court. As a result, the Court of Appeals has not had the immediate result of decreasing the amount of time a case is before the Supreme Court.

AVERAGE TIME CASE IS
BEFORE APPELLATE COURT*
ARKANSAS SUPREME COURT 1976-1982

Year	Ave. Civil Cases	Ave. Criminal Cases	Ave. All Cases
1976	181	146	163.5
1977	178	137	157.5
1978	173	150	161.5
1979	201	146	173.5
1980	184	209	196.5
1981	177	188	182.5
1982	146	153	149.5

Table 9

* *Figures are based upon a yearly survey of cases by the Judicial Department of Arkansas. All cases in which there was a written majority opinion are included in the survey. Per curiums, cases transferred pursuant to Rule 29, cases dismissed without opinions, and exceptional cases which tend to skew the statistical objective of the survey were not included.*

8. Currency. With the currency level of over 100% in the calendar year preceding the creation of the Court of Appeals, it is difficult to expect that level to be improved. In fact, the disposition ratio increased to 110.57% in 1979, dropped to 95.39% in 1980, and then returned to above the 100% level in 1981 and 1982 (See Table 10). Because the Supreme Court did such an admirable job of remaining current despite a pressing workload before its creation, it is difficult to tell if the Court of Appeals has had any effect.

DISPOSITION RATIO (CURRENCY)
ARKANSAS SUPREME COURT 1977-1982*

Year	Number Filings	Number Dispositions	Disposition Rate
1977	1086	1034	95.21
1978	1012	1070	105.73
1979	1116	1234	110.57
1980	1281	1222	95.39
1981	1021	1060	103.81
1982	979	1062	108.47

Table 10

* *Figures for 1976 were not available.*

9. Number of Petitions for Review Granted. The last general goal stated by the proponents of the Court of Appeals was to insure that the court did not slow down or complicate the appellate process by allowing a system of "dual" appeals. Dr. Robert Leflar, one of the leading figures in the court's establishment, suggested that "3 or 4 percent is too large, of the cases decided by the intermediate court, [to] go on to the Supreme Court."[21] The figures indicate that the system has easily met that goal. In the first six months of the Court of Appeals' existence, 8 cases, or 2% of the court's 415 total dispositions, were heard again in the Supreme Court (See Table 11). The percentage has decreased each year so that by 1982, only .3% (5 of 1692) of the Court of Appeal cases were accepted for review.

PETITIONS FOR REVIEW GRANTED
ARKANSAS SUPREME COURT 1979-1982

Year	Number—Petitions Granted	Total Dispositions in Court of Appeals	%
1979	8	415	2%
1980	15	1347	1%
1981	9	1425	.6%
1982	5	1692	.3%

Table 11

IV. Conclusion

From this analysis, it can be concluded that the insertion of the Court of Appeals into the Arkansas appellate structure has been largely successful. Most of the benefits which were projected by

the court's proponents have, in fact, resulted. The decrease in the workload of the Supreme Court, during a time in which the number of appeals from lower courts has increased dramatically, has relieved the court of a tremendous burden. The substantial decrease in the number of majority opinions written per justice and the increasing frequency of concurring and dissenting opinions suggest that justices now have more time available to consider cases. In addition, the court continues to be one of the most efficient in the United States.

The success of the new system is due largely to the unique structure of the two courts. By providing each court with its own separate jurisdiction, the largest possible number of appeals can be processed and the problem of having "dual" appeals is avoided.

One of the goals which has not been so successfully met involves the nature of the cases heard by the Supreme Court. While the rule providing for the division of the two appellate courts' jurisdiction was intended to allow the Supreme Court to hear only the more important cases and issues of some serious legal significance, recent additions to that jurisdiction have been made solely to effectuate a balance between the number of cases filed in the two courts. Thus in many instances, the cases heard by the Supreme Court are no more important than those heard by the Court of appeals—they are merely different. One might argue that what results is an appellate system having two supreme courts. However, so long as the Supreme Court retains the right to review cases heard by the Court of Appeals, it remains the "supreme" court, and any dilution of its jurisdiction is more than outweighed by the advantage of smaller workloads and the resulting quality and efficiency in the appellate process.

From a situation in which bulging dockets and increasing workloads were threatening the integrity of the Arkansas appellate system, the Arkansas Court of Appeals has emerged to save the day. A review of the evidence suggests that its creation has had a positive effect on the Supreme Court and accomplished those things which were expected of it. With the Supreme Court's ability to constantly monitor the workload between the two courts, to make necessary adjustments, and to exercise control over those cases which are accepted for review from the Court of Appeals, the work product, efficiency, and effectiveness of the Supreme Court and the Arkansas judicial system should continue to improve in the years to come. □

FOOTNOTES

[1] This is a condensed version of a paper which was presented to the Arkansas Political Science Association in Jonesboro, Arkansas in February, 1984.

[2] Amendment 58 provides:
The General Assembly is hereby empowered to create and establish a Court of Appeals and divisions thereof. The Court of Appeals shall have such appellate jurisdiction as the Supreme Court shall by rule determine, and shall be subject to the general superintending control of the Supreme Court. Judges of the Court of Appeals shall have the same qualifications as justices of the Supreme Court and shall be selected in the manner provided by law.

[3] **Arkansas Gazette**, March 4, 1977, §B at 1, col. 7 and September 2, 1978, §A at 9, col. 1.

[4] In 1982, a total of $1,018,514 was budgeted for the 1983-84 Fiscal Year for the salaries and operating expenses of the Arkansas Court of Appeals.

[5] **First Annual Report of Judicial Department of Arkansas**, [herein cited as **Annual Report**].

[6] 1979 **Annual Report.**

[7] 1976 **Annual Report.**

[8] Letter from Carleton Harris to David Pryor, contained in 1976 **Annual Report.**

[9] Senate Joint Resolution 5, Acts of Arkansas 1977, p. 2431.

[10] The official vote totaled 291,941 for the amendment, 141,792 against the amendment.

[11] **Arkansas Gazette**, January 21, §A at 9, col. 1.

[12] The first members of the court included M. Steele Hays, David Newbern, Mrs. Marian Penix, George Howard, Jr., Ernie Wright, and James Pilkinton. These members served until January 1, 1981, when the first elected members of the court assumed office. **Arkansas Gazette**, July 8, 1979, §A at 1, col. 3.

[13] One problem with the figures which must be noted is the fact that the personnel of the court changed during this period. Three of the justices who were on the court in 1976 remained in 1982. The extent to which this change in personnel affected the court is not considered in this study.

[14] R. D. Groot, "The Effects of an Intermediate Appellate Court on the Supreme Court Work Product; The North Carolina Experience," 7 **Wake Forest Law Review** 548, 1971.

[15] Unless otherwise noted, all figures were compiled from the **Annual Reports of the Arkansas Judicial Department** for years 1976-1982.

[16] The 1982 **Annual Report**, p. 21, incorrectly calculates the total dispositions at 928. This appears to be due to an error in addition for petitions and motions which is listed at 491, but actually totaled 625.

[17] The only significant change in the jurisdiction of the court concerned the addition of appeals from the Employment Security Division. Originally, these cases were appealed to the circuit court in the county where the appellant resided. In 1979, all such appeals were transferred to the Court of Appeals. **Ark. Stat. Ann.** §1107(d)(7) (Repl. 1976). These cases constituted 154 dispositions in 1980, 360 in 1981, and 391 in 1982.

[18] These figures were compiled from a review of all cases published by the Supreme Court for January 1, 1976-December 31, 1982, contained in volumes 531-644 of the **South Western Reporter, 2nd. Series.** The figures used for each case include any page on which any part of the case appeared.

[19] **See**, Smith, "The Selective Publication of Opinions: One Court's Experience," 32 **Ark. L. Rev.** 26 (1978) and Newbern and Wilson, "Rule 21: Unprecedent and the Disappearing Court," 32 **Ark. L. Rev.** 37 (1978).

[20] Arkansas Supreme Court Rules, rule 21.1.

[21] **Arkansas Gazette**, September 2, 1978 §A at 9, col. 1.

BULLETIN

ABA Model Rules on Professional Conduct: An Update

By Herschel H. Friday

On August 2, 1983, after more than six (6) years of study and hearings, the American Bar Association House of Delegates approved a new set of rules governing the professional conduct of lawyers. If history repeats itself, these rules will ultimately be adopted substantially intact in most of the states. Certain states have already taken action.

State bars or bar associations in Pennsylvania, New Jersey and Michigan have recommendations for the adoption of the Model Rules in their new format pending before their supreme courts. In Pennsylvania a court-ordered comment period was expired and the Model Rules themselves and the State Bar Association's recommendations have been referred to the Disciplinary Board for final comment. The State Bar of Maryland's Board of Governors is expected to approve a final version of its committee's report in time to make a recommendation to its Court of Appeals in May.

Arizona's high court is scheduled to receive a recommendation from their state bar shortly, and Montana and Kansas will report to their high courts in April and June, respectively. The state of Virginia had adopted a new Code of Professional responsibility in October, 1983, having used the Model Rules as a starting point and adopting certain substantive portions of the Rules, but adhering to the Model Code format.

In most of the other states there are committees in existence charged with the responsibility of guiding the rules through the necessary educational and adoption processes.

The committee in Arkansas (created by the Arkansas Bar Association) consists of Philip Anderson, John F. Stroud, Jr., H. William Allen, Howard W. Brill, Jack Deacon, John Fogleman, John Gill, Jerry W. Cavaneau, Richard N. Moore, Jr. and Herschel H. Friday, chair. We are holding meetings and making presentations to various bar associations and interested groups and will present a program at the Annual Meeting of the Arkansas Bar Association in Hot Springs on Thursday, June 7, 1984. We have not seen fit to set a rigid timetable but will proceed as diligently as possible.

The new rules contain a total of eight categories and 52 individual rules as follows:

Category	Number of Rules
Client-Lawyer Relationship	16
Counselor	3
Advocate	9
Transactions with Persons Other than Clients	4
Law Firms and Associations	6
Public Service	4
Information About Legal Services	5
Maintaining the Integrity of the Profession	5

I think it is fair to say that most of the criticisms of earlier drafts have been answered. There remains in the minds of some lawyers and laymen (as has always been the case) doubts about the rules that deal with certain historically controversial subjects (particularly confidentialy and other aspects of client-lawyer relationships, some subjects dealt with rules in the advocate category and the varying but deliberate use of both mandatory and permissive language). Nevertheless, most seem to agree that the rules represent a comprehensive and responsible effort to keep the governing standards for professional conduct of lawyers abreast of the times and most like the new restatement format. I urge each of you to take the time to read and study the proposed Model Rules and contact our Committee with any suggestions or comments which you may have. □

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