

# THE OKLAHOMA JUDICIARY

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The features of Oklahoma's judicial system are a direct result of scandals that plagued it in the late 1960s. Before the reforms, the Oklahoma judicial system had been criticized for its circus-like character. After news of extensive scandal erupted in the media, the judicial system was completely restructured. Those recommendations that had been called for previously by law professors and the American and Oklahoma Bar Associations were finally put into practice. While the reforms of the late 1960s caused the Oklahoma system to become similar to the national norm, Oklahoma's system retains unique characteristics. This study will first explore the structure of the judicial system in Oklahoma and then trace its evolution towards the merit selection system.

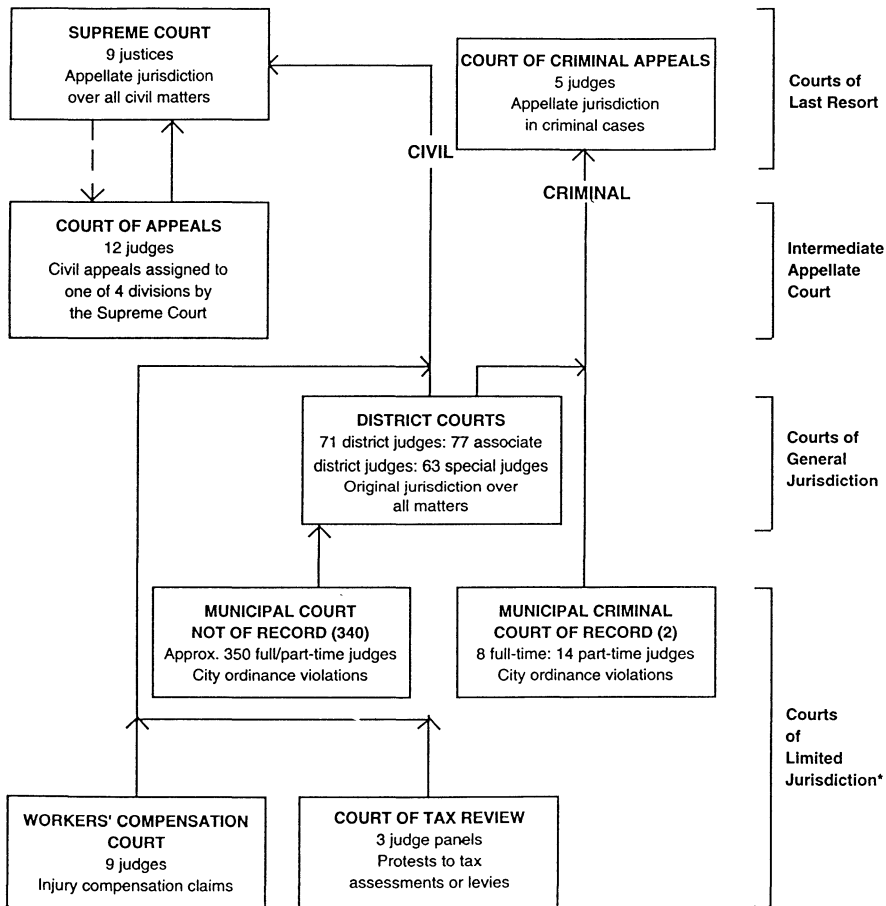
## **Structure of the Oklahoma Judicial System**

The glory of America's courts is their diversity. It is also the bane for anyone who wishes to generalize. There are trends and tendencies, but no uniformity.

State court systems in the United States do not resemble each other. Each state is free to adopt its own judicial structure. As a result, each state differs in court organization. Because of this lack of uniformity, each state's court system must be examined individually to understand its unique facets. It has been suggested that the framework with which to compare an individual state's court structure is a generic three-tiered structure: a court system with a court of last resort, an intermediate appellate court, and two or more trial courts. No court, state or federal, fits neatly into this framework. However, it provides a useful point of departure in examining court systems. In general, the state courts can be divided into four categories: trial courts of limited jurisdiction, trial courts of general jurisdiction, intermediate appellate courts, and courts of last resort. This section will examine the structural characteristics of the Oklahoma judicial system in an attempt to demonstrate its similarities and differences with respect to the generic three-tiered system of court structure.

FIGURE 1

**Organizational Chart  
Oklahoma Judicial System**



← Indicates route of appeal  
 ← - - - Indicates assignment of cases

\* The Court on the Judiciary is not shown

Article VII, Section I of the Oklahoma Constitution establishes the judicial system in Oklahoma. It states:

The judicial power of this State shall be vested in the Senate, sitting as a Court of Impeachment, a Supreme Court, the Court of Criminal Appeals, the Court on the Judiciary, the State Industrial Court, . . .the Court of Tax Review, and such intermediate appellate courts as may be provided by statute, District Courts, and such Boards, Agencies, and Commissions created by Constitution or established by statute as exercised adjudicative authority.

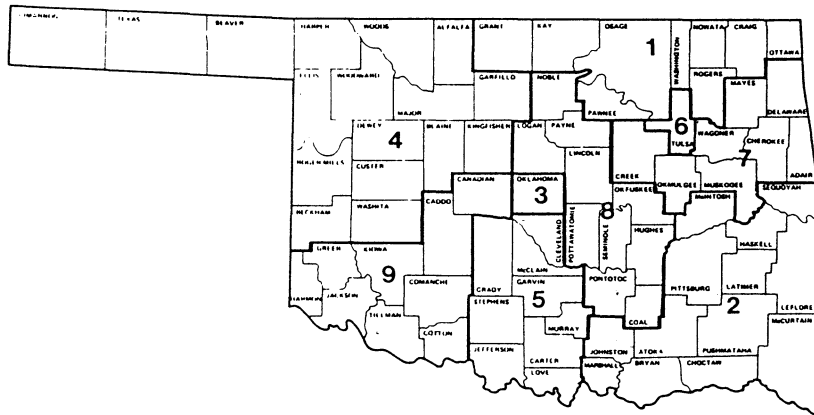
While Oklahoma's court system does not fit neatly into the standard three-tiered model, it retains the characteristics of this model in terms of its hierarchical structure. As with the generic model, it is possible to divide the court system into the following categories: trial courts of limited jurisdiction, trial courts of general jurisdiction, intermediate appellate courts, courts of last resort. The uniqueness of Oklahoma's court system becomes apparent when the courts of last resort are examined. Oklahoma is one of two states that divides final appellate review between separate civil and criminal courts of last resort. The Supreme Court has appellate jurisdiction in all civil cases and the Court of Criminal Appeals has appellate jurisdiction in all criminal cases. Texas' court system shares this unique division of courts of last resort with Oklahoma. Oklahoma has one intermediate appellate court, the Court of Civic Appeals. The District Court is the trial court of general jurisdiction in Oklahoma. Finally, there are four trial courts of limited jurisdiction: The Court on the Judiciary, The Worker's Compensation Court, The Court of Tax Review, and Municipal Courts.

The Supreme Court is the court of last resort for all civil cases in Oklahoma. It has appellate jurisdiction in civil cases as well as holds "general superintending control and administrative authority over all inferior courts, agencies, commissions, and boards except for the Court on the Judiciary and the Senate sitting as a Court of Impeachment." Article VII, Section 6 of the Oklahoma Constitution gives the Supreme Court this general administrative authority over all of the courts in the state. The Chief Justice of the Court is given the authority to exercise these powers. Additionally, the Supreme Court has the exclusive authority over admissions to the bar of the state and disciplinary proceedings against attorneys.

While the number of justices to serve on the Supreme Court was initially set at five, the number was increased to nine in 1918. The state is divided into nine Supreme Court Judicial Districts, where one justice is selected from each district. Justices serve six-year terms. At the end of a term, a majority of voters must be in favor of retention in order for the justice to serve another term. When a vacancy occurs, it is filled by gubernatorial appointment from a list of nominees submitted by the Judicial Nominating Commission. Justices must be at least thirty years old, be a qualified elector in the Supreme Court District for at least one year, and a practicing attorney or judge of a court of record, or both, in Oklahoma for at least five years.

**FIGURE 2**

**Supreme Court  
Judicial Districts**

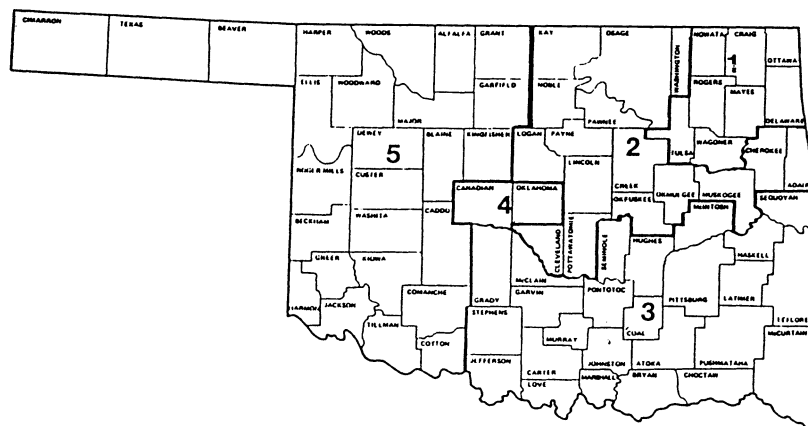


The Court of Criminal Appeals has exclusive appellate jurisdiction of criminal cases. Until its name was changed in 1959, it was known as the Criminal Court of Appeals. This change occurred after it was realized that the adjective was misplaced in the original name. Appeals come to the Court from the District Courts and the Municipal Court of Records. There were three members of the Court of Criminal Appeals until 1989. At that time the number was increased to five. There are five Court of Criminal Appeals judicial districts, where one judge is selected from each district. Length of service, method of selection, and qualifications for office are the same as for the Supreme Court.

The Court of (Civil) Appeals is the intermediate appellate court in Oklahoma. Civil appeals are assigned to the Court by the Supreme Court. Decisions of this court may not be directly appealed to the Supreme Court. Instead, the Supreme Court must grant certiorari in order for a decision to be reviewed. This Court was established by the Oklahoma legislature in 1968. The number of judges was initially set at six; however, membership increased to 12 in 1982. There are six Court of Civic Appeals judicial districts which mirror the congressional districts of the state. Two judges are selected

FIGURE 3

### Court of Criminal Appeals Judicial Districts

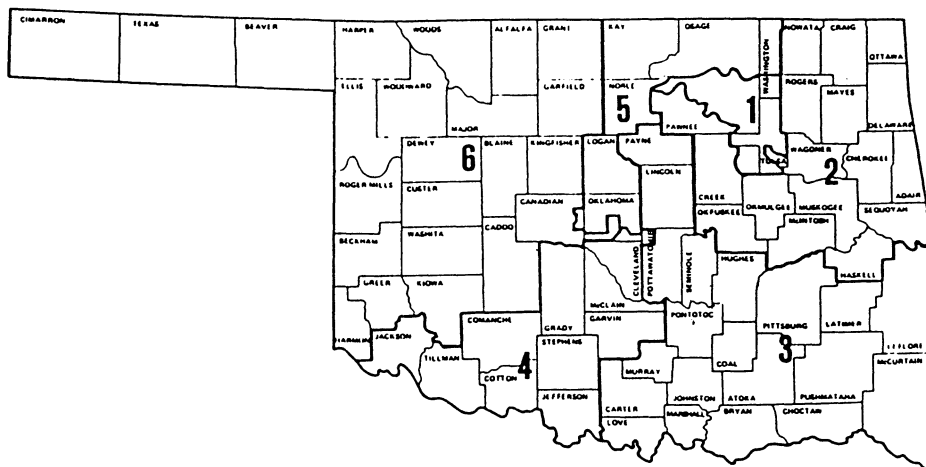


from each district. Judges sit in three-judge panels and are assigned to one of two permanent divisions in Tulsa or Oklahoma City. Length of service and method of selection is the same as for the Supreme Court and the Court of Criminal Appeals. While there is no age requirement for judges, it is required that judges on the Court of Appeals have four years experience as a lawyer and live in the district when the oath of office is administered.

The District Courts are the trial courts of general jurisdiction in Oklahoma. The courts have unlimited original jurisdiction in both civil and criminal cases. In addition, certain administrative decisions may be reviewed as a result of statutory provision. Finally, appeals from Municipal Courts not of record are reviewed as trials de novo, a new trial in which the entire case is retried if no prior trial had taken place. There are 26 District Court districts from which 71 district judges, 77 associate district judges, and 63 special judges are selected. The 26 districts are broken into nine judicial administrative districts. District and associate district judges are selected through nonpartisan, district elections and serve a term of four years. District judges of the relevant judicial administrative district appoint the special judges. Qualifications for district judges are

**FIGURE 4**

**Court of Appeals  
Judicial Districts**



the same as for the Court of Appeals. Associate district judges must have two years of experience as a lawyer, rather than four as required on the Court of Criminal Appeals.

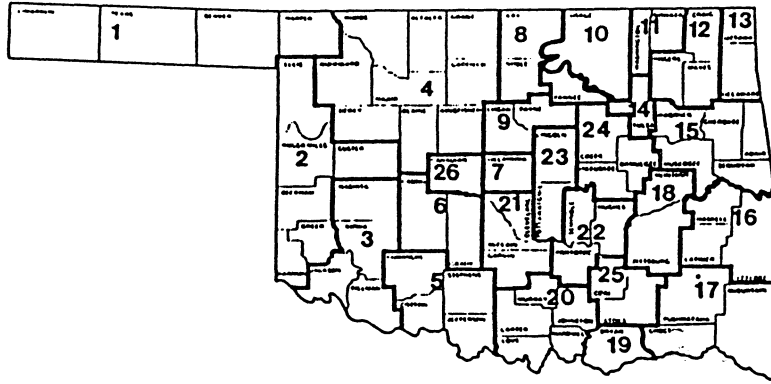
**The Selection Process**

Many scholars have tried to discover the effect, if any, of various selection systems on judicial background characteristics. Most have concluded that the type of selection system used in a state has no effect on the types of judges serving on the courts. While it may be true that the backgrounds of the judges may not significantly differ across systems, Oklahoma provides an example of a state where method of selection is important. The initial impetus to change the method of selecting judges in Oklahoma was not so much to produce more qualified jurists. Rather, Oklahoma provides an example of a state where reforms in method of selecting judges were necessary because of corruption that is inherent in the politics of partisan judicial elections.

The method of selecting state court judges was an area of debate long before the restructuring of Oklahoma’s court system. The debate centers on two key concepts: public accountability and judicial independence. Independence is necessary to insulate

FIGURE 5

**District Courts  
Judicial Districts**



Figures in parenthesis indicate 1990 official total population of Judicial Districts.

1. The counties of Cimarron, Texas, Beaver, and Harper. (29,806)
2. The counties of Ellis, Roger Mills, Custer, Beckham, Greer and Harmon. (64,705)
3. The counties of Washita, Kiowa, Jackson, and Tillman. (61,936)
4. The counties of Dewey, Blaine, Kingfisher, Farfield, Major, Woodward, Woods, Alfalfa and Grant. (135,207)
5. The counties of Comanche, Stephens, Cotton and Jefferson. (167,446)
6. The counties of Grady and Caddo. (71,297)
7. The county of Oklahoma. (599,611)
8. The counties of Noble and Kay. (59,101)
9. The counties of Logan and Payne. (90,518)
10. The county of Osage. (41,645)
11. The counties of Washington and Nowata. (58,058)
12. The counties of Rogers, Mayes and Craig. (102,640)
13. The counties of Ottawa and Delaware. (58,631)
14. The counties of Tulsa and Pawnee. (518,916)
15. The counties of Wagoner, Cherokee, Adair, Muskogee and Sequoyah. (202,259)
16. The counties of Haskell, LeFlore and Latimer. (64,543)
17. The counties of Pushmatah, McCurtain and Choctaw. (59,732)
18. The counties of McIntosh and Pittsburg. (57,360)
19. The county of Bryan. (32,089)
20. The counties of Love, Carter, Murray, Johnston and Marshall. (83,979)
21. The counties of Garvin, McClain and Cleveland. (223,653)
22. The counties of Seminole, Hughes and Pontotoc. (72,554)
23. The counties of Lincoln and Pottowatomie. (87,976)
24. The counties of Okfuskee, Okmulgee and Creek. (108,956)
25. The counties of Coal and Atoka. (18,558)
26. The county of Canadian. (74,409)

decisions from charges of undue influence from external sources, such as public opinion or political pressure. Accountability is necessary to ensure legitimacy of the decisions of the judiciary. The controversy arises because the judge is to be independent of prevailing public sentiment and answerable to the public at the same time. More accountability means less independence and vice versa. Sheldon and Lovrich describe this tension between independence and accountability. They state: “[a]lthough majoritarian democracy demands that when judges make policy they ought to be answerable to the public, the rule of law also requires that judges be largely free from the pressures of politics” (Sheldon and Lovrich, 1991, 166). Judicial reform has been centered around finding the appropriate balance between judicial independence and political accountability.

In Oklahoma, this balance between judicial independence and public accountability was tipped towards judicial independence in the 1960s when scandal erupted in the judiciary. The ensuing reforms attempted to reestablish an independent judiciary that is accountable to the public. As a legacy of populism in the early 1900s, Oklahoma’s judiciary was selected by direct popular election on a partisan ballot. While most states had moved away from partisan elections for judgeships by the 1960s, major reform of the judicial system had not been realized in Oklahoma until that time. Until the late 1960s, Oklahoma’s court system was characterized by a public able to hold judges accountable through direct elections as well as an inability for judges to be independent of political influence.

Signs of scandal on the high court began to emerge when Justice S. Corn, a retired justice of the Supreme Court, and sitting Justice Earl Welch were convicted of federal income tax evasion in 1964. Justice Corn received an eighteen-month sentence after pleading *nolo contendere* (no contest) to the charges. Justice Welch was convicted by a jury and sentenced to three years in prison. Welch was allowed to retain his position on the Court while he appealed the verdict in his case.

Corn went to prison and while there confessed to bribery while on the bench. In addition to confessing to his own improprieties, Corn implicated Justices Welch and Johnson. The Oklahoma House of Representatives brought articles of impeachment against Welch and Johnson. Welch resigned before the articles were filed against him. Corn testified at Johnson’s Senate trial that Johnson and Welch had been paid money in exchange for their favorable votes on two occasions. Corn’s testimony at the trial served to highlight the flaws in the method of selection for the judiciary. Corn argued that bribes were used to help with campaign expenses (Simpson, 1991). This suggested that without the pressures of a campaign, members of the judiciary would be more likely to refrain from taking money from interested parties. The defense attorneys called Corn “an evil old man who had lived a life of corruption” (Simpson, 1991). Despite attempts to discredit Corn’s testimony, Johnson was convicted by a two-thirds majority in the Senate and subsequently removed from office.

Corn’s testimony did more than just remove Johnson from office. It served as the necessary impetus to initiate reform of Oklahoma’s method of selection of the judiciary. In response to the bribery scandal, two constitutional amendments were passed in



1967. The amendments served to abolish partisan elections for state judges and adopt a merit selection system. This system is hailed as a way to accomplish the goal of obtaining qualified judges who are not corrupted by political influence. Under this system, the governor appoints a judge or justice from among several candidates recommended by the judicial nominating commission. The commission is composed of lawyers and non-lawyers. After serving a set length of time (see length of terms above), the judge stands at a special election where voters decide whether to retain the judge. The voters are asked, "Shall Judge X be retained in office?" Under this system, judges would be selected by the governor from a list of nominees put forth by the Judicial Nominating Commission. Upon completion of the term, incumbents would run in a retention election. If the majority of voters were in favor of the judge, another term in office would be served. Lower court judges would still be elected, in a nonpartisan election in order to preserve judicial independence.

The Judicial Nominating Commission is composed of thirteen members. Six members are non-lawyers. These members are appointed by the governor and are selected from each congressional district. Six members of the Judicial Nominating Commission are lawyers. They are members of, and are elected by, the Oklahoma Bar Association. These members are also selected from each congressional district. Finally, the commission selects one at-large member. When a vacancy occurs on a state court, the members of the nominating commission review applications for the vacant position. They are required to submit at least three names to the governor and Chief Justice of the Supreme Court. The Governor then has sixty days to appoint one of the people from the list.

By initiating these reforms, accountability to the electorate was combined with a method of selecting qualified, independent members of the judiciary. The judicial scandals of the 1960s directly resulted in reforms in both Oklahoma judicial structure and the judicial selection process. The resulting current system emerged to better resemble the norms of state judicial systems nationally, as well as retaining some unique characteristics. The history of the judicial system illustrates Oklahoma's ability to respond to turbulence within its institutions as well as to public outcry for reform.

### References

- Conyers, Howard. 1995. *The Judiciary: Annual Report*. Oklahoma City: Administrative Offices of the Courts.
- Gates, John B. and Charles Johnson, eds. 1990. *The American Courts: A Critical Assessment*. Washington, D.C.: Congressional Quarterly Press.
- Sheldon, Charles H. and Nicholas Lovrich Jr. 1990. "State Judicial Recruitment." in John B. Gates and Charles Johnson, eds. *The American Courts: A Critical Assessment*. Washington, D. C.: Congressional Quarterly Press.

Simpson, Phillip. 1991. "The 1964 State Supreme Court Scandals and the Modernization of Reform of the Oklahoma Judiciary." presented at the meeting of the Southwest Political Science Association, San Antonio. Texas.