

1965-2005



Division I, First Judges, circa 1967
Francis J. Donofrio, James Duke Cameron, Henry S. Stevens

the
Arizona
Court of Appeals

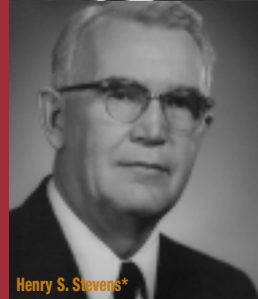
Hon. Patrick Irvine was appointed to the Arizona Court of Appeals, Division 1, in 2002. He was born in Arizona and is a graduate of the Arizona State University College of Law.



James Duke Cameron



Francis J. Donofrio*



Henry S. Stevens*



Levi Ray Haire



Eino M. Jacobson



William E. Eubank*

Court histories can be dull and boring, filled with dry statistics and stories of internal disputes over proper record-keeping methods, budgets and opinion formatting. Writing about an intermediate appellate court such as the Arizona Court of Appeals is particularly challenging. Compared to the drama of a trial or the finality of a court of last resort, an intermediate appellate court often seems like just another step in the litigation process—and a not particularly noteworthy step at that. Angry litigants will shout “I’ll see you at trial!” or threaten “I’ll take this case all the way to the Supreme Court.” No one seriously threatens to take a case “all the way to the Arizona Court of Appeals.” Consequently, this article does not address the intricacies of selecting a chief judge, or the debates over how cases are assigned to calendars.

It simply outlines some of the basic facts about the Arizona Court of Appeals to provide context to the more interesting Judicial Memories published elsewhere in this magazine (see p. 26).

The real importance of the Arizona Court of Appeals is that for 40 years an appeal to the Court of Appeals has been the only appeal that most litigants will get. The Arizona Supreme Court is required to review all death sentences, and it chooses to consider as direct appeals or special actions many issues involving elections, separation of powers, constitutional rights and other important public policies. Add in the Supreme Court’s supervision of the judiciary and the practice of law, and other administrative duties, and it is no wonder that in recent years more than 98 percent of the decisions from the Court of Appeals have been the final word. Although many of these cases attract no publicity and address no novel issue of law, many are quite complex, and to the people involved the case is the most important court case they will ever see. For them, the Court of Appeals is the last stop.

As with many things in Arizona, the Court of Appeals

owes its very existence to the state’s evolution from the western frontier to one of the largest states in the Rocky Mountain region. When Arizona became a state in 1912, each of the 14 counties had one superior court judge, and the three-member Supreme Court heard all appeals. To accommodate the increasing workload, the Supreme Court was expanded to five members in 1949.

With the state’s continued growth in the 1950s, the Arizona Constitution was amended in 1960 to authorize the legislature to create an intermediate appellate court. In 1964, legislation creating the Court of Appeals was enacted. The Court was given jurisdiction over most appeals from the superior court, except criminal cases punishable

by death or life imprisonment (which would go directly to the Supreme Court), and over worker’s compensation awards by the Industrial Commission.

The structure of the Court reflected the political realities of the time. Reapportionment had not yet shifted

power to the cities, and the non-urban areas were well represented in the legislature. Obviously concerned that most judges of the Court of Appeals would come from Phoenix, the Court was divided into two divisions, each consisting of three judges. Division 1 sat in Phoenix and heard appeals from Maricopa, Yuma (and later La Paz), Mohave, Coconino, Yavapai, Navajo and Apache counties. Division 2 sat in Tucson and heard appeals from Pima, Pinal, Cochise, Santa Cruz, Greenlee, Graham and Gila counties. To ensure the selection of non-urban judges, the legislation required that two of the judges of Division 1 be chosen from Maricopa County, and the third selected from another county within the division. Likewise, two of the judges of Division 2 were required to be chosen from Pima County and the other from another county.

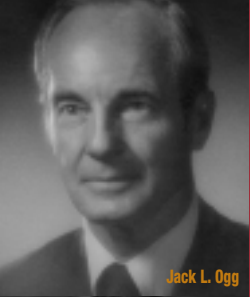
The original six judges were nominated in partisan primaries, but they were elected in the 1964 general election without party designation. On Division 1, Francis J. Donofrio and Henry S. Stevens were from Maricopa County, and James Duke Cameron from Yuma County. On Division 2, Herbert F. Krucker and John F. Molloy

ALSO IN THIS SPECIAL SECTION

Then & Now19
 The State Courts Building20
 Court of Appeals Staff24
 Judicial Memories26



Williby E. Case*



Jack L. Ogg



Gary K. Nelson



Donald F. Froeb*



Laurance T. Wren*



Mary M. Schroeder



Joe W. Contreras

were from Pima County, and James D. Hathaway was from Santa Cruz County. Donofrio, Stevens, Krucker and Molloy were all sitting superior court judges, Cameron had served on the superior court, and Hathaway was the Santa Cruz County Attorney.

The Court opened for business in January 1965. The honeymoon was short. The Supreme Court wasted no time in sharing the appellate workload, transferring hundreds of cases to the new Court. Hundreds more were filed during the first year.

Those early years saw the Court of Appeals establish itself as an independent court. Division 2 obtained office space and a hearing room that became its courtroom in Tucson's State Office Building. It remained in that space until 1991, when it moved next door to a new building and a much larger courtroom.

Division 1 moved into the State Capitol and shared a courtroom with the Supreme Court. Proximity to the Supreme Court led to some tensions. The Supreme Court justices tried in several ways to direct the Court of Appeals in how to operate. Chief Judge Henry Stevens informed them that if the Supreme Court wanted to direct the Court of Appeals in how it would do its business, they should put it in a formal rule, otherwise the Court of Appeals would manage itself! In 1975, the Court of Appeals got its own courtroom on the first floor of the new west wing of the Capitol. As it grew it also used offices elsewhere in the building. When the new State Courts Building opened in 1991, the Court of Appeals moved there and occupied parts of the second and third floors.

Growth became the hallmark of the Court of Appeals, particularly Division 1. A second three-judge panel was added in 1969, a third in 1974, a fourth in 1982, and a fifth in 1989. In each case, the original structure of two judges from Maricopa and one from the other counties was maintained. In 1995, Division 1 was expanded to 16 judges so that the Chief Judge could devote time to the court's increasing administrative workload. The 16th judge can come from any county within the Division, but the two appointed under this provision have resided in Maricopa County. Division 2 also has expanded, with a second panel being added in 1985, with one of the new judges having to be chosen from outside Pima County.

At age 40, the Court of Appeals currently consists of 16 judges in Division 1 and six in Division 2. In addition to the judges from Phoenix and Tucson, current judges

come from Kingman, Yuma, Prescott, Flagstaff, Nogales and Casa Grande.

The caseload also has increased proportionately. Over time, the Court's jurisdiction has been expanded to include cases in which the sentence was not death, but life imprisonment (the Supreme Court immediately transferred several dozen of these cases to the Court of Appeals), as well as unemployment insurance appeals from the Department of Economic Security and direct appeals from the Corporation Commission.

Because of the growth, it has sometimes been necessary to take extraordinary measures to handle the caseload. From 1974 to 1986, special actions—which would typically have been heard by Division 1—were heard directly by the Supreme Court. Numerous cases also were transferred from Division 1 to Division 2. In the 1980s and 1990s, Division 1 also made extensive use of pro tem judges (Department S) to speed the processing of cases. Each division has expanded its professional staff and increased its use of technology. These efforts have largely been successful, with significant reductions in the delays that were common in the 1970s and 1980s.

Over the years, 50 judges have served on Division 1 and 17 on Division 2. The original six were directly elected. With one exception, all others were appointed by the governor to fill vacancies as they occurred, to fill new panels, or under the merit selection system that took effect in 1975. The exception was in 1972 when Jack Ogg ran against and defeated Williby Case, who had been appointed to replace James Duke Cameron when he was elected to the Supreme Court (Case would go on to serve several years as a superior court judge in Maricopa County). Another judge to not win re-election was Gary Nelson, who, under the new selection system, failed to be retained in 1978 (Nelson later served 18 years as the Chief Staff Attorney for the Arizona Supreme Court).

The judges have come from a variety of professional backgrounds. All have been experienced in the public or private practice of law; some with big firms, some in sole practice; some as prosecutors, some as defense lawyers. Many have been superior court judges.

Many also have served in the armed forces, including wartime service in World War II, Korea and Vietnam. Herbert Krucker served on the staff of Justice Robert Jackson at the Nuremberg war crime trials. Jack Ogg was captured by the German army in the final days of the war, but he escaped.



Sandra D. O'Connor



Robert J. Corcoran



Sarah D. Grant



J. Thomas Brooks



Bruce E. Meyerson



Thomas C. Kleinschmidt



D. L. Greer*

Some judges have been elected officials: Gary Nelson as attorney general, Sandra Day O'Connor as a state senator, and several as county attorneys.

Judges also have distinguished themselves in academia or elsewhere. Joseph Livermore was the dean of the University of Arizona law school, Rudolph Gerber taught philosophy at the University of Notre Dame, and Rebecca White Berch was the director of the legal writing program at the Arizona State University law school. Williby Case was president of the State Bar of Arizona for 1966-1967. Bruce Meyerson founded the Arizona Center for Law in the Public Interest. Ruth McGregor served as one of Justice O'Connor's first law clerks on the United States Supreme Court. As this sample shows, each judge has brought a unique mix of experiences to the Court.

In many ways the composition of the Court has tracked the changes in Arizona. Five of the original six judges were raised in Arizona. All six were graduates of the University of Arizona law school, the only law school in the state at the time (Molloy also had a law degree from the University of Kansas City).

University of Arizona graduates still account for just more than half (34) of the 67 judges who have served since 1965, but currently only three of the Division 1 judges and four on Division 2 come from that school. Arizona State University law school, which graduated its first class in 1970, has had 11 of its graduates appointed to the Court of Appeals, with four currently on Division 1 and one on Division 2. The other judges received their legal educations at 18 different law schools from all over the country:

“It is unlikely that any intermediate appellate court in the country has as distinguished a group of alumni as the Arizona Court of Appeals.”

DIVISION ONE

1980



1983



1985



1989



DIVISION ONE
1991



1992



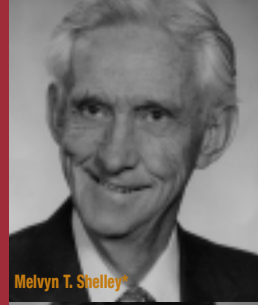
1997



2000



2004



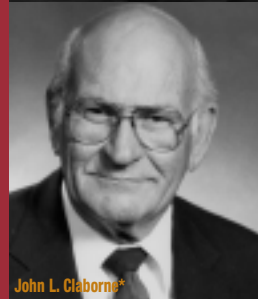
Melvyn T. Shelley*



Mel Fidel



Rudolph J. Gerber



John L. Claborn*



Edward C. Voss III



Susan A. Emrich



Ruth V. McGregor

Stanford (3), Cornell (2), Brigham Young (2), Harvard, Yale, Fordham, Georgetown, Virginia, Duke, Michigan, Notre Dame, Ohio State, Chicago, Iowa, Colorado, Wyoming, U.C.L.A. and California Western. Along with thousands of others, many of the Court of Appeals judges moved to Arizona in search of opportunity and warm weather.

Also reflecting Arizona and the bar in the 21st century are the increasing numbers of women and minority judges. Mary M. Schroeder became the first woman to join the Court of Appeals when she was appointed to Division 1 in 1975. Joe Contreras became the first Hispanic judge on Division 1 in 1979, and was followed on Division 2 by Greenlee County Superior Court Judge Lloyd Fernandez in 1985. Cecil B. Patterson, Jr., became the first African-American appellate judge in 1995.

Most judges of the Court of Appeals have served until their retirement, and many continued after retirement to make significant contributions to the legal system as lawyers, arbitrators or pro tem judges. Others have left the Court for bigger things. Indeed, it is unlikely that any intermediate appellate court in the country has as distinguished a group of alumni as the Arizona Court of Appeals. Best known is United States Supreme Court Justice Sandra Day O'Connor, who first served as an appellate judge on the Court of Appeals from 1979 to 1981. O'Connor replaced Mary Schroeder, who was appointed to the Ninth Circuit Court of Appeals and now serves as its Chief Judge. Also in the federal courts are John Roll, who left Division 2 upon his appointment as a United States district court judge, and Edward Voss, who was appointed



Jefferson L. Lankford



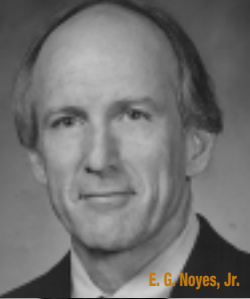
John F. Taylor



Philip E. Tocci



William F. Garbarino



E. G. Noyes, Jr.



Sheldon H. Weisberg



Jon W. Thompson

as a federal magistrate judge after his retirement from Division 1.

Three of the current members of the Arizona Supreme Court served on the Court of Appeals: Ruth McGregor from 1989 to 1998, Michael D. Ryan from 1996 to 2002, and Rebecca White Berch from 1998 to 2002. Two other Court of Appeals judges also went on to the Arizona Supreme Court. James Duke Cameron was one of the original members of Division 1, taking his seat only after defeating opponents in both the primary and general elections of 1964. In 1970 he successfully ran for a seat on the Arizona Supreme Court, where he served for 22 years. Robert J. Corcoran served on the Court of Appeals from 1981 to 1989 before being appointed to the Supreme Court, where he served until 1996.

Some judges have left the Court to return to the practice of law. John Molloy left Division 2 in 1969, and by the time of his retirement from the active practice of law in 1989 headed one of the largest firms in Tucson. Bruce Meyerson resigned from Division 1 to become General Counsel to Arizona State University, and later

returned to private practice, where he is a recognized leader in alternative dispute resolution. Meyerson and Lawrence Howard of Division 2 continue to be mainstays of the appellate mediation programs of their respective divisions.

As you can read in the Judicial Memories, the Court of Appeals has been a good place to work. Many people have devoted their careers to making it work well, including dedicated staff members, who are not responsible (or to blame) for the decisions, but without whom very few cases would ever be decided (see sidebars regarding Court staff on p. 24). Sometimes this has been easy; sometimes not. There have been conflicts within the Court, between its divisions, with the Supreme Court, and with the superior court, but these have not prevented the Court from focusing on the job of deciding real disputes involving real people.

The real history of the Court is in its decisions, which are generally made with little fanfare and reflect a genuine desire to arrive at the best possible result. This has been the Court's mission for 40 years, and it is likely to remain so for the next 40. 