THE SECRET LAWS OF ARKANSAS

The History and Economics of Split Judicial Districts

A thesis submitted in partial fulfillment of the requirements for the degree of

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ABSTRACT

In the years between 1875 and 1913 the Arkansas State Legislature passed a series of Acts which divided thirteen counties into judicial districts now referred to as split districts. These Acts were never codified and, although they are still valid law, their contents are virtually unknown to the public officials who are responsible for implementing their provisions and nearly inaccessible to the public. Many of these Acts went far beyond the stated purpose of creating judicial jurisdictions and divided the finances of the counties and created other administrative responsibilities.

The impact of the failure to codify the law is, first and foremost, making compliance with the provisions of the law impossible. But the failure has also given rise to a wide misconception that these counties have two county seats of government and this belief has become so ingrained in State culture that it operates as a barrier to the elimination of the districts. It is virtually a “third rail” that politicians and judges fear to touch.

The historic basis for the creation of these split judicial districts has never been examined in any systematic way nor has the necessity for their continued existence been reviewed. The author contends that the rationale for the creation of the districts was based in political struggles for the location of the county seats
and devised by politicians to circumvent the provisions of the State Constitution’s limitations on the creation of new counties or county seats. These political struggles were grounded in local economic conditions and today the continued existence of these districts imposes an unnecessary economic burden on the taxpayers of these counties. It is further contended that there is a discernible pattern in events that lead to the creation of the split districts and the author further concludes that the local option to eliminate these districts should be restored through legislation.
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On July 4, 1876 Col. Ben T. Duval delivered a speech at Fort Smith recounting the bitter political battle that had once divided Sebastian County and explaining how it was resolved. He spoke of the events that began in 1854 when the Sebastian County Seat was moved to Fort Smith and summarized the events by saying:

“The contest over, the location of the county seat increased in bitterness, and the town and country were arrayed in open hostility to the great detriment to the public interests. It engendered mutual hatred and distrust between the sections, and had its influence upon all elections. In 1861 John T. London, who lived at Greenwood, and myself, then as now a resident of Fort Smith, were members of the House of Representatives, and Green J. Clark, who was also a citizen of Greenwood, was the Senator. We agreed upon an Act dividing the county into two judicial districts. This Act removed the sting from the vexed question, and was accepted as a fair compromise. The county organization, as to revenue and general business, was left intact, and the county court for the whole county was still to hold at Greenwood.

In 1868 the county seat question was again revived, and under an Act of the Legislature of that year an election was held. After an angry and bitter contest over the result, the records were removed to this place (Fort Smith) and all the courts of the county were held here for a short time. At the session of the General Assembly of 1871 an Act was passed dividing the county into two districts, with separate revenue and, in fact, making two distinct counties in one. This act was declared by the Supreme Court to be unconstitutional, and they also held that the Act of 1861 was still in force, notwithstanding the election of 1868. The courts were again divided.
The Constitutional Convention of 1874, by a provision inserted in the Constitution, provided that this county should be divided into two judicial districts, with separate county courts, separate revenue, and each paying its own expenses. So now we have two separate districts, with county, circuit and probate courts for each district as of two counties, yet under one general organization.”

The events that Duval recounted in this speech mark the beginning of a unique series of legislative laws enacted between 1875 and 1913. These Acts linger today on dusty shelves in law libraries in Little Rock and Fayetteville. These laws are truly unique for two reasons: they have never been published in the statutes (un-codified) and after more than one hundred years they are still valid law.

In legal literature unpublished laws are often referred to as “secret laws” and are considered to be extremely dangerous. In his treatise on administrative law Kenneth Davis calls them “abominable” which is a term others have used as well. (Kenneth Davis, 1978, 1979). The term has been cited in U.S. Federal cases (Eddie David Cox v. United States Department of Justice, 1978) dealing with the refusal of agencies to comply with Freedom of Information requests and decisions of the National Security Courts (Lichtblau, 2013). The most egregious and frequently used example of such secret laws were those of Nazi Germany during the 1940’s during the 1940’s but before that the fictional account of the
unsuspecting official who violated such a law was chillingly portrayed in Kafka’s novel The Trial. (Kafka, 1925)

While we have not seen the extremes of Nazi Germany or the horrors of Kafka’s surreal world in Arkansas, we can identify a series of Acts which were never codified and are truly “secret laws”. The Arkansas Supreme Court has ruled that these Acts are still in full force and effect (Tim Parker, attorney at law and Ramona Wilson, Circuit Clerk v. Gerald K. Crow, Circuit Judge, 2010) and thus public officials in nine Arkansas counties are responsible for complying with laws that they have no knowledge of or access to.

The Acts to be discussed were written between 1875 and 1913 and they created what are called “split judicial districts”. To be clear, a split judicial district is a division of one county into two separate and distinct geographic areas for the operation of the courts. But the laws I will discuss went far beyond just creating geographical areas of judicial administration; they created a unique set of requirements for the administration of government within the counties including the division of tax revenue and financial records which, if still valid, could inflict substantial financial burdens on the counties.

Few, if any, elected officials know what these laws require of them; members of the general public know nothing of them and informal research
conducted for this paper indicates that no one wants them fully and completely enforced today because of the economic consequences they would impose. In the words of one county administrator; “If we had to follow this law the Western District would own the Eastern District” because we haven’t divided the tax money. Other administrators who have requested that their names and counties not be used in this paper have stated that they do not want these split districts but that trying to eliminate them would have political consequences because the people in each district have formed a community identity that distinguishes them from the residents of the other district. These community identities seem to have deep roots in old conflicts over the location of the county seat and the rivalries still exist as though passed from generation to generation.

Co. Duval’s speech seems to demonstrate that some ideas may have good intentions and then take a turn down a road that leads to consequences never anticipated. History and economics prove this result when we examine these split districts for we will see that the solution to an old problem has become the new problem a hundred years later. It is the goal of this paper to review these laws and to obtain an understanding of why they were written and explore some of the unintended consequences they have now produced.

A FEW QUESTIONS
As with any thesis a student begins with a vague question such as “Why?” and then attempts to formulate a theory that might give an answer. After some struggle that theory then gives rise to other questions and then to a few propositions that will lead the inquiry. Here are mine.

First, what historic conditions led to the creation of split judicial districts? Second, are the original reasons for their creation still valid today? Third, do replicated service locations (courthouses) required by the split districts ignore the changes in technology and transportation and do these changes make dual courthouses obsolete? Fourth, how can we determine the actual cost to the counties of operating two judicial districts?

These are the principal questions this paper will attempt to address and if there are no answers, perhaps a dialog will begin, the issues made public, and solutions sought to correct the problems if any exist. With some luck, perhaps some other questions will also be answered or at least identified for future discussions.

LITERATURE REVIEW

I have been unable to find any published articles which review the topic of split judicial districts. Much of the historical information presented here is
derived from works published during the 1800’s by Goodspeed’s Publishing and Southern’s Publishing and reprinted by Hearthstone Legacy Publishing. The two publication companies were apparently commercial undertakings funded by subscriptions in a manner very similar to genealogy works issued by local county historical societies today. While not “scholarly histories” they do contain a great deal of information on the geography and local economics of the counties and it appears that much of the information was provided by the then living residents of the respective counties. Each volume contains a detailed list of prominent citizens and their personal histories and some contain a great deal of commercial or civic promotion that we can view with great skepticism.

I have found a few articles published by local historical societies but these contain little if any scholarly research and appear to be written by amateur historians. These articles contain no citations to other work, do not reference any primary or secondary sources and, while the information in them is interesting, it is presented as fact without providing a basis of the research. I have been able to compare the information in these articles with Goodspeed and Southern and it appears that the amateur articles contain information consistent with those accounts and these articles are of some use.
Reported cases of the Arkansas Supreme Court are an important source of historic information because the Court’s usually provide the factual background of the dispute that is being decided. These descriptions give some historical context to the disputes involving the divisions within the individual counties and the creation of the split districts as well as a view of the law as interpreted by the court. In some instances the information about an underlying dispute can be cross referenced to accounts in Goodspeed’s history which seems to lend more credibility to the commercial histories. The case law is also valuable for the court’s interpretation of the Acts that are the focus of the first portion of this paper which includes the determination of the location of the county seats.

The Arkansas Constitution, the Acts creating the judicial districts, early statutes and current laws fill out the framework for the historic analysis and are the touchstones for an attempt to describe the legal framework.

The portion of this paper which attempts to address the economic issues utilizes the published statistics for Circuit Courts issued by the Arkansas Administrative Office of the Courts (AOC). These statistics provide the data on the number of cases processed by the courts in Arkansas. Studies prepared by other states have been reviewed because they attempt to address the cost factors and efficiencies of their courts which is something not done in Arkansas. The
National Center for State Courts also provides a framework for case cost
evaluation through the CourTools program of performance measures used for
the training of court administrators. This program has been useful in formulating
a structure for approaching the issue of “cost per case”. Articles written on the
cost-benefit analysis method known as Transactional and Institutional Cost
Analysis (TICA) are reviewed to provide a suggested approach to evaluating the
costs of court operations and finally I have attempted to construct a crude
analysis of the cost per case for one county to demonstrate the problems that are
associated with incomplete data.

METHODOLOGY

Since I have been unable to find previous work in this area and thus
nothing on which to build or review I have had an “open field” to run, but that
makes the field rather large. I freely acknowledge that I may have missed some
issues or questions that others will deem critical to an analysis of this subject but
if anything has been learned by this author it is that the problem is truly an
iceberg and I have seen only the tip.

For the historic analysis I begin with a review of the constitutional
provisions that control the creation of counties and county seats, briefly review
past and current statutes that pertain to the creation of counties and then move to a review of the general statutory construction of the Acts.

A look at specific statutory provisions for individual counties is offered and some historical background for the enactment in the specific counties is presented when it can be found. Geographic and economic or transportation factors are discussed as they may have impacted the decisions to seek a division within specific counties. Finally, the historic review attempts to identify an apparent pattern of conflict and resolution resulting in the creation of these split districts. An understanding of “how we got here” has been missing and is necessary to an intelligent dialog about the continued existence of split districts.

The economic portion of this paper is first an attempt to provide an overview of the problems which confront every administrator who wants to evaluate or audit their court system. The complexity of this task is difficult to understand until one has reviewed attempts made to evaluate just one component of the court system. The system is not only vast in terms of the agencies involved, it is extremely complex from the standpoint of the operational relationships between the agencies and offices involved in the court system. To oversimplify the complexity we can easily view the court system as the pool of
water into which a pebble is dropped by one agency; the resulting ripple effect will reach far and touch everyone before it reaches the shore.

In a crude attempt to evaluate the costs of one court system I have undertaken a review of the county budget for the operation of the courthouses in one of the districts. This evaluation is limited to one county as an example of the financial cost of a split district. A review of the problems associated with establishing a sound cost evaluation for this one county quickly demonstrates the difficult task that awaits the county administrator who undertakes an audit without adequate resources or expertise. I envisioned this portion of the paper as an attempt at a cost benefit study but it quickly evolved into a study of the problems associated with such studies in public administration and the need for a state level study.

Finally, conclusions will be made and recommendations for legislative action offered.

DEFINITIONS

It will be of benefit to the reader if some terms are defined before we begin.

Judicial District. This is a geographic area for the operation of courts and it is created by a legislative act and then placed in the statutes or code book. In
Arkansas there are currently 23 judicial districts which cover seventy five counties.

**Split District.** This is one county which has been divided into two (2) judicial districts. It will have an eastern and western district or a northern and southern district. A county with a split district may be a part of a larger judicial district composed of several counties or it may be a single county district.

**Quorum Court.** This is the administrative body for a county government. It is known in other states as a Board of Commissioners. It is not a court with jurisdiction over cases and controversies. There is only one quorum court in each county.

**County Court.** This is a court of limited jurisdiction and the County Judge presides over the cases. This judge is not required to have any legal training nor are there any educational requirements to be a county judge. This term is sometimes used to denote the quorum court and this creates some confusion.

**Circuit Court.** This is a court that has jurisdiction over a judicial district and hears cases and controversies. A circuit court has five divisions or types of cases that it may hear. The circuit court must hold court in the district to which it is assigned. If the district is composed of several counties or has a split district the judge must travel to that district to hold court.
THE CONSTITUTION OF 1874 AND THE STATUTES

The constitution is the base line document in Arkansas which controls the creation of counties and county government. It is this document which is the basis for statutory codes that are written to implement the standards of the constitution and legislative acts are often reviewed or measured against the constitutional mandate. Therefore, it is necessary to understand the role the constitution plays in the establishment of counties and the limitations it places on what may be done and who may do it if you wish to understand the battles for county seats.

After the Civil War, Arkansas was required to write a new constitution to be readmitted to the Union. The constitution of 1864 was the first effort to accomplish this goal and the third constitution for the state but two more were yet to be written. (1836 was the original and it was rewritten in 1861 at the beginning of the Civil War.) In 1868 another constitution was written and then the last, and current, constitution was completed in 1874 at the conclusion of the Reconstruction period. This final constitution was devised by former Confederates who were known as “redeemers” and whose goal was the dominance of the Democratic party.
For the purposes of this paper, Article 13 of the Arkansas Constitution of 1874 is the starting place for an understanding of the framework that governs counties. There are only five provisions of this Article and since they are short they are worthy of verbatim review.

1. **Size of Counties – Exceptions**
   No county now established shall be reduced to an area of less than six hundred square miles, nor to less than five thousand inhabitants; nor shall any new county be established with less than six hundred square miles and five thousand inhabitants; Provided, that this section shall not apply to the counties of Lafayette, Pope and Johnson, nor be so construed as to prevent the General Assembly from changing the line between the counties of Pope and Johnson.

2. **Consent of voters to change county lines.**
   No part of a county shall be taken off to form a new county, or a part thereof, without the consent of a majority of the voters in such part proposed to be taken off.

3. **Change of county seats – Conditions – New counties**
   No county seat shall be established or changed without the consent of a majority of the qualified voters of the county to be affected by such change, nor until the place at which it is proposed to establish or change such county seat shall be fully designated; Provided, that in formation of new counties, the county seat may be located temporarily by provision of law.

4. **Lines of new counties – Distance from county seat of adjoining county – Exception.**
   In the formation of new counties no line thereof shall run within ten miles of the county seat of the county proposed to be divided, except the county seat of Lafayette County.
5. **Sebastian County – Districts.**

Sebastian County may have two districts and two county seats, at which county, probate and circuit courts shall be held as may be provided by law, each district paying its own expenses.

The significant provisions contained in Article 13 are therefore:

1. A county must be no less than 600 sq. miles;
2. A county must have at least five thousand people;
3. No part of an existing county can be taken to form a new county;
4. A county seat can’t be established or changed without a majority vote of the electorate;
5. A county seat can’t be within ten miles of a county line;
6. Sebastian County may have two county seats and two districts, but is not required to.

These provisions are the supreme law of the State of Arkansas for the creation of counties and of county seats. There can be no action to create a county or county seat that violates these provisions. Article 13 does not preclude the creation of new counties, but it does limit the legislature in significant ways.

When we note that a new county cannot be formed from an existing county you must then ask, “How could a new county be created”? The answer would seem to be that a new county could only be created if the State of Arkansas annexed territory from another state; an unlikely event. This point is not simply
a rhetorical question but is of actual significance in the history of the split judicial
districts as will be seen.

It is axiomatic that the provisions of a constitution are codified by the
legislature in a way that expounds on the articles and provide a means to
implement or comply with the dictates of the constitution. The provisions for
counties, size, population, county seats and voting requirements are no different.
These legislative provisions were originally found in the Digest of Statutes and
are currently published in the Arkansas Code Annotated (A.C.A.) Title 14.

FROM CONSTITUTION TO STATUTE

A brief review of the statutes as they existed at the time the counties were
divided into two districts is useful to demonstrate the manner in which they
complied with the constitutional provisions just cited and a comparison to the
current laws will show an ongoing compliance with the Constitution and is
useful for an evaluation of the un-codified acts that are reviewed here.

The Arkansas Digest of 1894 (the earliest statutory code owned by the
author) contained all the state statutes in one volume titled Sandels and Hill,
Digest and Statutes. Chapter XXXII, (32) beginning at page 371, through
Chapter XL (40) at page 393, is where we find the provisions that apply to
counties. (Hill, 1894)
Chapter XXXVII (37) beginning with Code Section 943 contains the provisions for county seats. This statute reflects the requirements of the Constitution of 1874 and delineates the procedures for the establishment of a county seat and the removal, or moving, of the location of a county seat. These provisions require an election to be held in the county, that a majority of the qualified electors of the county approve the location of the county seat and the steps that must be taken in such an election. This provision has been uniformly interpreted by the Arkansas Supreme Court as mandatory and the legislature is without authority to make any decision for the location of a county seat. The case law and Goodspeed’s histories (Goodspeed, 1880 republished 2004) tell us that when a county was initially formed the legislative act would direct the appointment of a committee to select proposed locations for the county seat and that an election would be held to make the final choice.

The statutory provisions for the establishment of a county seat have changed little since 1874. Some statutory requirements, such as the posting of $5,000.00 for the construction of the new court house, have been eliminated by the legislature but the constitutional provisions outlined above were not changed and remain in effect to this day. The current statutory provisions are found in Title 14 of the Arkansas Code Annotated (A.C.A.) These provisions,
while not those in force at the time these judicial districts were created, are worthy of note because they embody the Constitutional scheme that has not been altered since 1874 and a short review will demonstrate the continuity of the legislative scheme.

The current statute, A.C.A. §14-14-201, provides the legislature with the power to create counties subject to the constitutional limitations of 600 square miles and a population of no less than 5,000 people but does not grant it the power to select the location of the county seat. This statute also provides that in forming a new county no county line may be within ten miles of the county seat. We also see that this statute addresses Sebastian County and provides that it may have two districts and two county seats with each district paying its own expenses but the county is not required to maintain such districts. Sebastian County received this unique status in Article 13 of the Constitution and that will be discussed more later.

A.C.A. §14-14-301(a), defines a county seat by stating it “shall be defined as the principal site for the conducting of county affairs and maintaining the records of the various courts.” Subsection (b) of this section gives the county government some latitude in the provision of service locations. This section provides that:
(b) Nothing in this section, however, shall be construed as a limitation on a county to maintain several sites throughout the county for the conducting of county affairs.

A.C.A. §14-14-302 (a) provides for the establishment or change of a county seat. The prohibitive language is very strong in this section. It states that “…it shall be unlawful to establish or change any county seat in this state without the consent of a majority of the qualified voters of the county to be affected by the change.” (emphasis added) This is the precise language used in the Statutes of 1894 and, in the absence of an election and approval by the majority of voters in a county, a county seat cannot be established or moved. This provision was in effect at the time these split districts were created and is still in effect today. We will see that this constitutional limitation was often litigated as a result of legislation that provided for the location of a county seat and that election results were often contested because of an allegation that a majority did not vote to move the county seat.

This statutory provision restricting the relocation of the county seat is, in and of itself, the provision that operates to remove the misconception that some counties have a second county seat: None of the subject counties have ever conducted an election which attempted to create a second county seat and there is no constitutional provision or statute that allows a county to hold such an
election for two county seats with the exception of Sebastian County. There
never was any authority granted to the legislature to create county seats; that
was a power reserved to the voters of the county under the constitution and any
attempt to take such an action would violate the constitution. Each of the split
districts we discuss were created by an Act of the Arkansas State Legislature and
not by a majority vote of the citizens of the county, ergo, no new county seats
were created by the passage of these Acts.

A.C.A. §14-14-303 contains the current provision for elections to move a
county seat. This statute allows 15% of the qualified voters, based on the number
who voted in the last election for the Governor, to submit a petition to the county
court of the county to change or move the county seat. There have been some
modifications of this provision thru the years including, most notably, the
removal of the requirement for the paying of a poll tax to be deemed a qualified
voter but, again, the power to remove or relocate a county seat is reserved to the
voters of the individual counties and it is one power that the legislature cannot
assume without an amendment to the State Constitution.

With this baseline understanding, let us begin with an examination of the
common aspects of these Acts, or the statutory scheme, and then move to a
review of the individual counties.
THE DIVIDED COUNTIES OF ARKANSAS

There are three groups or “clusters” of counties which can be identified from the passage of the legislation that we are concerned with. I call them clusters simply because these counties are contiguous to one another or in a specific geographic area of the state.

The first cluster is located in the western portion of the state and includes Sebastian, Yell, Logan and Franklin counties. The second cluster is located in the northeast section of the state and includes Craighead, Clay, Mississippi and Lawrence counties. The third, or southern cluster, is comprised of Arkansas, Prairie and Lonoke counties. One remaining county is in the northwest corner of the state and that is Carroll County. This single county seems to be an anomaly because no other neighboring county enacted similar legislation although they share common geographic, social and political features.

These clusters contain a total of thirteen divided counties. We will see that three of the counties, Lonoke, Lawrence and Lincoln, have subsequently elected to eliminate their split districts either by legislation or by simply ignoring the unpublished statute and Sebastian is an exception under the constitution.

Therefore, we are concerned with nine counties: Yell, Logan, Franklin, Clay, Mississippi, Craighead, Prairie, Arkansas and Carroll.
THE BEGINNING OF DIVISION

It was with Sebastian County that things began in 1871 followed by Yell County in 1875 and ending in 1913 with Arkansas County. These Acts were virtually identical in the language, form and purpose. Each of the Acts identified the county seat that was currently used and provided for a second “judicial seat”, “seat of justice” or “court seat”. These court seats are erroneously believed to be a second “county seat”, but as we will see later in this paper, that seems to be a misconception created by the failure to codify or publish these laws. Misconceptions or misunderstanding easily arise when secret laws are born: If the law is unpublished then it is possible to say that it allows for things that it doesn’t and the general public has no basis for understanding or the public misconstrues the law or cannot make important and necessary distinctions such as the difference between a “court seat” and a “county seat”.

An analysis of these laws demonstrates that the legislature used the “cookie cutter” approach to the drafting so as a starting point let us look at the statutory construction of the Acts.

THE STATUTORY SCHEME

As we discuss these Acts keep in mind that the legislature holds the power to create judicial districts but is not allowed to establish county seats. In
the nineteenth and early twentieth a county seat was the jewel in the crown of every county and its location was much sought after in local politics.

Each of the Acts contains twenty to twenty four sections and each begins with sections that specify the division of the county into two judicial districts and sets the procedure for holding court in each district. Yell County, since it was the first to be divided after the 1874 constitution will be used for reference. (An Act to establish Separate Courts in the County of Yell, 1875)

The Yell County Act’s stated purpose is to create separate judicial districts. This appears to be a modest purpose. Unfortunately, Yell County’s Act, like all the others written, fails to provide any rationale or statement of the necessity for the creation of such districts. It could be implied that public convenience is the motivation for the law since nothing else is said but I will demonstrate that the true purpose was political compromise. If the creation of judicial districts had been the only thing accomplished through the passage of these Acts we might end our discussion here, but the remaining sections of these laws do much more than create judicial districts and it is in these sections that the genesis of our questions can be found.

As with all the Acts, Yell Counties law identifies the specific townships or area of the county that will be in the control of each judicial district and makes
provision for the town or city which will be the location of the new district. In two of the Acts an exception to the naming of this location was made and counties were directed to hold an election within 20 or 30 days of the passage of the Act to name the location or to vote on a location.

Every Act then identifies the divisions of the court (circuit, chancery and probate) and the location of the county seat and provides that the court proceedings shall continue to be held in that location. The Yell County Act states that the court “shall continue to be held at the county seat of Danville” (emphasis added) and that there will be the same number of court sessions held “at the city of Dardanelle...at such a place in said city selected...as by law said courts are now helden at the county seat of said county...” (emphasis added) Again, note that this Act does not create a new county seat in Dardanelle.

Here we can pause and point to a case which makes a distinction between a county seat and a court seat. In 1913 the Arkansas Supreme Court heard the case of Law v. Falls, (Law et al v. Falls et al., 1913) which involved the issue of the construction of a new courthouse in Dardanelle and ruled that “it is apparent that a seat of justice is not always a county seat, although a county seat is perhaps always a seat of justice.” (emphasis added) Each of the subsequently discussed Acts is
specific that there is a county seat and a new judicial district, or court seat, where
court will be conducted.

No Act creating the judicial districts ever proposes nor contains any
language that could be construed as authorizing a second county seat because it
would run afoul of the constitutional provisions cited above.

The next series of sections in the Yell County Act employs language that is
as unusual as it is specific for it speaks of the two judicial districts as if they are
two counties. Every Act contains some variation of this language and placement
in the sections. For Yell County the language is as follows:

Sec. 6. That the circuit courts hereby established in the respective
districts of Yell county, shall be as distinct from each other, and
shall have the same relation to each other, as if they were circuit
courts of different counties...”

Remembering for a moment that this legislation is doing something which
had only been done once before, in Sebastian County, we must ask if the
language was only copied from the Sebastian County legislation, or if this
specification was felt necessary to distinguish the jurisdiction of the courts over
their respective districts? Sebastian County was first split in 1871, before the new
State Constitution of 1874 was written and the Sebastian County Act specified
that the courts

“shall be as independent of, and distinct from each other, and
shall hold the same relation to each other as if they were
courts of different constitutional counties of this State, and shall be deemed, for all purposes of this act, separate and distinct counties, with original and exclusive jurisdiction within their respective territorial limits.” (An Act to amend an act entitled "An act to establish separate courts in the county of Sebastian", 1871)

The words, “of different counties” in the Acts becomes of greater interest as the more unpublished Acts are passed because the language sets the stage for the misconceptions concerning county seats.

To state the obvious, the effect is not just the creation of a place where court sessions may be held for the convenience of the court and the litigants, it is to specifically change the jurisdictional limits of the court within a county boundary and establish the venue for actions. This is highly unusual because never before or after the passage of these Acts has a county been divided for judicial or administrative purposes.

This aspect of the legislation hints at motives other than just public convenience: with the exception of the meeting of the quorum court, (the county administrative body) which by law must meet at the county seat, the county has the authority to conduct business and maintain offices in other locations, so one must ask why is it necessary to divide the county as if it were two separate legal districts?
One answer is that court sessions were once required to be held at the location of the county seat and that absent specific legislative authority the court cannot be conducted in another location, so this language is necessary to establish the court’s authority to hold sessions in another location. Chapter 37, Section 952 of Sandels and Hill’s Digest states that “...the circuit court and all other courts for said county of superior or general jurisdiction shall be held at the new county seat, and all process issuing therefrom shall be made returnable thereto.” (Hill, 1894)

We now have a new question: If the courts must be held at the location of the county seat, and the legislature cannot create new county seats, how can the creation of new judicial districts permit the conduct of court proceedings at a location other than the county seat? I believe the answer is obvious: It is impermissible unless you modify the law and this is what these Acts were attempting to do. However, the legislature did not follow thru and correct the conflicting statutes, a not uncommon failure.

This conundrum has since been resolved by the elimination of the requirement to conduct court proceedings at the county seat. The statutory requirement soon disappeared from the statutes and now circuit courts may hold proceedings at any location subject to the jurisdiction, venue and notice
requirements. This allows the Supreme Court of Arkansas or the Court of Appeals, as an example, to hold court on occasion at a law school or other public venue. But at the time of the passage of these Acts the location of court proceedings was a real and important requirement and one which I believe contributed to political struggles for the location of the county seats.

In this one example involving the location for court proceedings we see another impact of secret laws: If the law isn’t published it isn’t available for scrutiny or review for inconsistencies with other existing laws.

But the scope of the legislation didn’t stop there. Yell County’s Act moves beyond the division of judicial responsibility by providing for further division of the county’s other important functions. As an example, the Act requires the sheriff and clerk to appoint deputies, with the approval of the presiding judge, to administer the newly created judicial district. But, more specifically it states that the sheriff and clerk

“shall reside in one of said districts, and their deputy in the other; and the clerk and sheriff or their deputies shall reside in the City of Dardanelle in the Dardanelle district.”

We see that the Act not only provides for officials to serve in the new judicial districts but it creates a residency requirement. This requirement parallels the State’s Constitutional provisions requiring office holders to reside in
the county and district where they are elected. (Arkansas Constitution, Article 19, Section 4)) The Yell County Act then requires, in Section 15, that records pertaining to all legal matters such as court proceedings and deeds will be maintained in the new district. This provision is common with all of the Acts and simply solidifies the distinction between the two districts and is a further separation or division of the county.

Each of the Acts also contains a provision which is a form of “savings clause” that is written to avoid the conflict with the Constitutional provisions concerning the creation of new counties. Yell County’s provision states “That as to all matters not within the provisions of this act, the county of Yell shall be one entire and undivided county.”

If we consider the creation of a new district within Yell County, a new place to conduct the county business, a new courthouse to hold court, a place to keep the records and a requirement that the officials must live in this new district, we might ask “What’s left that would need to be done to create a new county?”

The answer is, three fold: size, taxing authority and control of finances. To create a new county you must meet the size requirement of 600 square miles; you must have a taxing authority and you must be able to control the expenditure of funds. Yell County’s Act did not meet these requirements and in fact it was a
fairly straight forward creation. But we will see that the counties that followed took steps to expand the divisions and moved toward the creation of new counties in everything but name. Those provisions will be reviewed below on a county by county basis.

**SUMMARY OF YELL COUNTY ACT**

For our immediate purpose of outlining the framework of these Acts the major points of the Act of 1875 for Yell county were these:

1. It created two judicial districts.
2. It designated the location of the new courthouse.
3. It required court to be held an equal number of times in each district.
4. It recognized the existing county seat and did not create a second county seat.
5. It created a residency requirement for officials; a Sheriff’s Deputy and Deputy Clerk must reside in the new district and in the city where the new court seat would be located.
6. It required a set of records to be maintained in each district with a Seal for the new district certifying records.
7. It restricted the right to bring an action or be charged with a crime to the district in which the act or crime occurred.

8. It required jurors to be summoned only in the district in which they reside.

9. It specifies that the county for all other purposes is not divided.

A key point that should be kept in mind is that the Act, like all the others, was not submitted to a vote of the electorate. There was never a vote by the citizens of the county to create two districts and undertake the financial obligations associated with the legislation. The absence of a vote to divide the county seems to indicate that political influence was exerted from the local level to achieve the division. We will obtain more insight into this assertion when Sebastian County is reviewed.

Six years after Yell County was split Clay County created two judicial districts with an Act containing 23 Sections. (An Act to establish separate courts in the County of Clay, 1881) It is the passage of this Act that took a significant step toward creating two independent political subdivisions within one county.

Clay County’s division recognized the existing county seat at Boydsville and identified Corning as the site of the new court. The county seat was later moved by election of the voters to Piggott. (Biographical and Historical Memoirs of Clay
County, 1889) recounts the contentious election that moved the county seat
which will be discussed more in the section on Clay County.

Again, the Clay County Act uses specific language to create the new district
and specifies in Section 3 that:

“...the authority and territorial jurisdiction of said Circuit
courts shall extend over the Western district, the same and in
like manner as if said district was a constitutional county of
the State.”

This language reinforces the concept that this new district will be treated
as a separate county. While this verbiage might be viewed as simply making a
legal distinction for the sake of clarity or precision it actually conveys a powerful
concept of separation.

The Act reinforces this concept of a separate county by continuing to
specify, in Section 5, that the authority of the courts “for all the purposes of this
act, shall be considered as separate and distinct counties”. Clay County then
takes another opportunity to reinforce this division, in Section 6, by stating that
the courts established in their respective districts by the Act shall “have the same
relation to each other as if they were Circuit Courts of different counties...”

We find ourselves asking why it was necessary to make the distinction
between the two districts in this manner and to this degree. Was this simply a
“belt and suspender” legal mentality that over uses terms to insure that the
intended purpose, i.e. the creation of a new judicial district with specific powers, was not missed or misunderstood? Or, was it an attempt to further define a new political subdivision that was in fact contrary to the limitations imposed by the provisions of Article 13 of the State Constitution? It is my thesis that the latter proposition was, in fact, the motivation and later in this paper I will explore that proposition and the manner in which the question was answered by the Arkansas Supreme Court.

The Clay County Act, like Yell County’s, made specific provision that the deputy sheriff and deputy clerk must reside in the new district and, in the city of Corning. Then Section 16 of the act provides a “savings clause” by providing that “in all matters not within the provisions of this act, the county of Clay shall be one entire and undivided county.”

But Clay County took an unprecedented step in this Act; the division of all county finances under Section 18, 19 and 20 of the Act and the requirement that separate financial records be kept by the treasurer and that the revenue raised in each district must be spent in that district. Again we find the language of separation in Section 18:

“The financial affairs of each district shall be kept as separate and distinct as though the two districts were separate and distinct counties.”
The specific language of Section 18 is only the preamble for Sections 19 and 20 which may reveal the ultimate motivation for the Act.

Sec. 19. That all revenue accruing to the county of Clay, from the sale of forfeited State and county lands, liquor and ferry license, and from all other sources whatsoever (emphasis added) shall be used for the exclusive benefit of the district in which such revenue may arise.

Sec. 20. That in making deposits of county funds with the county treasurer, the sheriff and collector shall take his receipts specifying to which district said funds belong.

This step is highly significant because now there was no real pretense of maintaining one unified county despite any savings clause or verbiage that says this is one county; For all purposes, except one, Clay County has been divided and two counties created in contravention to the State’s Constitution.

The language that I have emphasized above provides the new judicial district with the benefit of all taxes that can be imposed and while it did not create a separate taxing authority, it provided the district with the actual benefit and imposed on the Quorum Court the requirement to administer the two districts as if they were separate constitutional counties. Never in the history of judicial districts in Arkansas, before or after the passage of these Acts, has it been necessary to create a separate county financial structure to fund the operation of the judicial districts. It would appear that there was never a necessity to direct that all the funds raised in one district had to be spent in that
district and the provisions of these Acts did not restrict the expenditure for judicial purposes, rather, the taxes could be spent for any purpose deemed appropriate in that district. This allocation obviously grants one district of the county, with greater economic power, the right to enjoy great advantage over the other, less prosperous district. Here we find yet another possible motivation for the creation of these judicial districts: economic power.

Here again we find a potential impact of a secret law. County officials who have failed to make the proper division of county tax revenues and expend them in the appropriate district may be subject to charges of malfeasance and legal actions by the citizens of one district might result in severe economic consequences for the county as a whole.

With this type of taxing provision in place it would be tempting to set different tax rates for each district and Clay County fell victim to the temptation. That decision was challenged and in the case of Hutchinson et. al. v. Ozark Land Co., (Hutchinson et al v. Ozark Land Co., 1893) the Arkansas Supreme Court stated that “the expense of maintaining two judicial districts in a county is necessarily a county expense, and the revenue to pay it can be raised only by a (uniform) county tax.” The ultimate issue in the Hutchinson decision was whether counties had to levy taxes uniformly throughout the county and the
court found that you could not levy additional taxes in a district to support the new court house. This decision protected property owners or businesses in the new judicial district from higher tax rates but the clear message is that where you had one judicial district that was economically advantaged it was tempting to impose a higher tax rate on that district.

It would appear that with the passage of the Clay County Act all the elements or key components of an independent governmental entity or political subdivision were in place: a geographic division line, a separate police agency, a separate court system and a separate financial system with tax revenue and the requirement that key officials reside in the district and in a city of the new political subdivision. What is striking is that it did all of this without a vote of the people of the county.

But can this actually be deemed to be a political subdivision which is the equivalent of a county? After all, we have seen that the Arkansas Constitution sets geographic size and population requirements for the creation of a county so did these Acts side step the constitution and create new counties? Let us take a short side trip and attempt to answer that question because it is important to an understanding of the real impact of this legislation and to the question of whether these Acts were an end run on the State Constitution.
POLITICAL SUBDIVISIONS

This short discussion is intended to provide an answer to the question of whether or not the Acts have attempted to create counties or political subdivisions that violate the State Constitution. As we have already seen the Acts have taken all the steps necessary to create a county with the exception of establishing a new taxing authority and having a geographic area large enough to meet the constitutional requirements. Let us look at how these shortcomings compare with the definition of a political subdivision.

The Gale Encyclopedia of US History defines political subdivisions as “local governments created by states to help fulfill their obligations” while Arkansas courts and statutes have defined what is, or what is not, a political subdivision in a variety of contexts. Under the current Arkansas Code, §14-14-101, “County Government Code”, we find county defined.

A county is a political subdivision of the state for the more convenient administration of justice and the exercise of local legislative authority related to county affairs and is defined as a body politic and corporate operating with specified geographic limitations established by law.

Using that definition we see that the Clay County act provides for convenient administration of justice” using two judicial districts; provides for the exercise of local legislative authority related to county affairs through the
allocation of revenue and expenditure funds within each district and that it operates within a specified geographic area established by law, i.e. the judicial district. This statutory definition fails to specify that the “geographic limitations established by law” is 600 sq. miles as provided for under Article 13 of the State Constitution so the Clay County Act does not meet that essential requirement and does not therefore create a new county. But is that the end of the inquiry?

The Arkansas Supreme Court adopted the following general definition of the term “political subdivision” in the case of Dermott Special School District v. Johnson, 343 Ark. 90 (2000):

“Political subdivisions have been defined as that they embrace a certain territory and its inhabitants, organized for the public advantage, and not in the interest of particular individuals or classes; that their chief design is the exercise of governmental functions; and that to the electors residing within each is, to some extent, committed the power of local government, to wielded either mediately or immediately within their territory for the peculiar benefit of the people there residing.” (Emphasis added)

Using the terms in this definition we find that the judicial districts seem to meet the Supreme Court’s requirements for a political subdivision: a certain territory, organized for public advantage, to exercise a governmental function, to some extent wielded for the peculiar benefit of the people there residing. But a
political subdivision is not necessarily a county. After all, you can create a water district or a subordinate service district or a flood control district and while they may be “political subdivisions” they are not counties.

So, utilizing either of the definitions cited above these judicial districts seem to meet the requirements for political subdivisions but not the requirements for a county. The Acts did not create a new legislative body, called a Quorum Court in Arkansas, for the new districts, and that is factor, coupled with the geographic size requirement seems to control the question of whether these are counties in Arkansas. However, from a common sense standpoint, or by any standard of reality, isn’t this side stepping the issue? After all, the Quorum Court must administer the two districts as if they are “separate and distinct”.

The Acts gave the new districts control of records, officials to administer the district, control of finances and separate legal proceedings. It seems that such local control creates a political subdivision on equal footing with any county in the State and that the issue of a separate administrative body is actually a “straw man” because under the requirements of the Acts the elected officials are administering the two districts “as if they were separated and distinct counties” and a certain number of Quorum Court members are elected
from the new district. As is commonly said, if it looks like a duck, walks like a duck and quacks like a duck maybe we should call it a duck. But that isn’t the way that the law works and if the legislature is smart enough to build a duck that doesn’t quack, that’s good enough; these Acts did not create new counties.

But one matter seems to defy logic if logic is an issue: How can the elected officials administer such a system if they are unaware of the requirements of the Act? Why would such a law be enacted but not codified for easy reference by those who are charged with the administration of these districts? Why put these laws away on a shelf where no member of the public would know about the requirements of the law? Wouldn’t a chain of knowledge be difficult to maintain if those charged with administration were not provided with specific guidelines? This is one of the unanswered, or unanswerable, questions we have. But this didn’t stop the Legislature from continuing to create more divided districts after the division of Yell and Clay Counties.

SUBSEQUENT ACTS – 1883 to 1913

The legislature efforts continued and in 1883 acts were passed for Craighead and Carroll Counties which, with only minor changes, contained the same language as the Clay County Act of 1881. Craighead County established a new judicial district with a court seat at Lake City and Carroll County created a
new district with the court seat in Eureka Springs. Once again, these Acts did not establish new county seats and both specifically recognized the existing locations of Jonesboro and Berryville as the county seats in the respective counties. The Acts contained the same language concerning the operation of the districts, including the division of finances, as did the Clay County Act.¹

In 1885 Acts were passed for Franklin, Lincoln and Prairie Counties. Again, these Acts contained the same provisions as their predecessors and again each Act recognized the existing county seat and only created new judicial or “court” seats and divided the finances of the counties.

The legislative session of 1887 saw Lawrence and Lonoke Counties added to the list. Lawrence County repealed the Act in 1963 and Lonoke County repealed the Act without implementation. In the 1887 Lonoke County legislation we see the first Act since 1875, in Yell County, which does not divide the finances of the county and which does not specify a town for the new court seat but rather requires an election to decide if it will be in Booneville or in Magazine. This Act gave Lonoke County only twenty days after the passage of the law to hold the

¹ In 2011 the Legislature passed Act 2011 No. 1171, codified as A.C.A. §14-14-114, Allocation of Revenue, which eliminated the requirement to divide revenue of those counties with split districts created in 1883 and which have an eastern and western district. This applies only to Carroll and Craighead counties and it appears that the legislation was in response to the Parker v. Crow case in Carroll County and that Craighead was an unintended beneficiary.
election for the new court seat. As stated, Lonoke later repealed this Act and now operates as an undivided county.

In 1901 the Legislature passed Acts for Mississippi County and Logan County and in 1913 Arkansas County’s Act was passed. Mississippi County’s Act required the court to continue being held at the county seat, Osceola and the new judicial district would be held at either Manila or Blythesville. It utilized the provisions we have previously discussed that divided the county finances in Sections 19, 20 and 21 of the Act.

In 1913 Arkansas County became the last split district to be created, making DeWitt the Southern District and Stuttgart the Northern District. The Act acknowledges DeWitt as the county seat and Stuttgart the location for the new courthouse in the Northern District. The Arkansas County Act, in Section 25, was the only Act that specifically stated that

“...the financial affairs of the County of Arkansas shall not be separated, but shall remain as before the passage of this Act; the entire County paying all claims, whether of the Northern District or the Southern District.”

Arkansas County also removed the requirement that the deputies (sheriff and clerk) reside within the cities designated, but did require the Sheriff and the Clerk to live in one district and their deputies to reside in the other. In this sense
we see a step to pull back from any language that might be construed as an effort to create a de facto county but the results were the same.

**FIRST CONCLUSIONS.**

What conclusions can we draw from this review of the Acts and the State’s Constitution?

1. The Constitution of 1874 has not been amended in any way that would alter the law as it pertains to the formation of counties and the location of a county seat.

2. We are able to conclude that the statutory provisions which implement the constitutional mandates have changed little between the passage of the Acts and 2013.

3. Between 1875 and 1913 the Arkansas Legislature created new, and unprecedented, judicial districts and failed, in the legislation, to state any basis, necessity or reason for the enactment of these laws.

4. These Acts did not, contrary to popular belief, create any new county seats in the counties which were divided. Such legislation would have been, and would still be, unconstitutional. Sebastian County which has a unique status is the only county authorized by the State Constitution to have two districts and two county seats.
5. The Legislature failed to codify these new Acts which left the requirements of the law unknown to those who are charged with the administration of the districts and unenforceable by the public at large who would not have easy access to the law.

6. By failing to codify the Acts the legislature also failed to provide any additional guidance which could have supplemented the laws for implementation of key provisions or led to modification that would conform with new or conflicting legislation.

7. Most of the Acts, although purporting to create two judicial districts, arguably created new political subdivisions in the counties by requiring a division of the county finances with the money raised in each district designated to be expended only in the district in which it was raised. This facet of the legislation seems to have been completely ignored by the county governments in light of the fact that there is no history that any county implemented this provision even though it is mandated by the Acts. What the Acts did not do is create a separate taxing authority within the new judicial districts.

8. These Acts, when their sections are analyzed strongly suggests that these laws were an attempt to create new political subdivisions. The creation of
new counties would violate the constitution and one way to avoid that result would be to use the guise of a new judicial district to establish de-facto counties. The Arkansas Supreme court would disagree with this analysis on the basis of a lack of a taxing authority or a separate legislative body within the new district.

With these initial conclusions we can attempt to answer a difficult question: what would motivate such legislation? After that we will proceed to review the individual counties and identify specific historic events where we can.

**SOCIAL, GEOGRAPHIC, POLITICAL AND ECONOMIC FACTORS**

The four most easily identified factors which might motivate the enactment of legislation to divide these counties are social, geographic, political or economic pressures. It would not be unusual if some combination of these factors were not working in tandem.

These Acts began to appear at the end of what is referred to as the Reconstruction period after the Civil War. The degree to which social factors affected political and economic decisions is difficult to measure but it is certain that those pressures were a part of daily life in Arkansas in the years following the war. The counties had different degrees of Union and Southern support and the impact of “carpet bagging” was felt more strongly in some counties than
others. Each county had some people who had suffered under the institution of slavery and were now free, and all of the counties were subjected to changes in social organization and control that they could not have imagined prior to the war. All of the counties suffered from extreme economic hardship as a result of the war and the shortages of every kind that those conditions created. But were these changes in the social structure sufficient to motivate the specified counties to seek political and financial divisions within their own boundaries? A search for some proof of the effects of this social pressure or reconstruction might begin with an evaluation of the population distribution.

A starting point could be the U.S. Census. The Census of 1870 was the first post war count of the population and acknowledged to have been inaccurate in the count of freed slaves so the Census of 1880 is of more value. That Census was more accurate and reflected a total population in Arkansas of 501,531 whites and 210,000 “colored”. The possibility of segregation as the basis for the division of our subject counties should be taken into account as a possible factor in the divisions of these counties and an examination of Table V of the 1880 Census, titled Population By Race, Sex and Nativity, provides the number of freed slaves in these split counties. By county the freed slave populations are as follows:

<table>
<thead>
<tr>
<th>County</th>
<th>White</th>
<th>Colored</th>
<th>Date of Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas:</td>
<td>4,971</td>
<td>3,067</td>
<td>1913</td>
</tr>
</tbody>
</table>
Arkansas, Lincoln, Mississippi and Lonoke had significant ratios of colored to white. As can be seen from the above table, other counties had small populations and most notably, Carroll County in the Northwest corner of the State had none. (* Lonoke county passed an act but repealed it without division. A further examination of the populations by township may give us a better understanding of the role population may have played in the counties with the largest populations of colored but unfortunately this early census did not break the race category down at the township level. The total populations for townships were given but the number, by itself, is of little use. Lacking any documented racial data I am not able to provide an answer to the question of this as a motivation for creating a divided county. However, the history of the delta region of the state, the area of the highest concentrations of freed blacks, may demonstrate some interesting social dynamics that would create a motivation for division.
In her recent book, Delta Empire, (Jeannie Whayne, Delta Empire, Lee Wilson and the Transformation of Agriculture in the New South, Baton Rouge, Louisiana State University Press, 2011) Professor Jeannie Whayne discusses the rise of a new plantation system in Mississippi County and other delta counties after the Civil War. This new plantation system utilized black sharecroppers and Whayne documents the proportion of blacks in the eastern and southern portion of Mississippi County as being up to 84% by 1920. (Jeannie Whayne, 2011, p. 120) She also recounts the conflicts that arose between the white farmers and plantation owners who used the sharecroppers as a source of cheap labor that “drove the cost of labor down, something efficacious to planters but lamentable to white labor”. (Jeannie Whayne, 2011, p. 121) The white population of the western side of the county sought to establish a “white man’s “ country and this racism may have contributed to the division of this county and possibly others in the lower delta region and along the Arkansas River.

This leaves us with three factors that can be evaluated in a more concise manner; geography, economics and politics. Of the three, political motivation is the most difficult to assess but the advantages of having all of the functions of government located in your city would certainly constitute a political consideration.
I will examine these factors by discussing the “clusters” that I have previously identified because each cluster may share certain geographic and economic similarities.

**THE WESTERN CLUSTER**

The first cluster to be reviewed is in the central Western section of the State and is comprised of Yell, Logan, Franklin and Sebastian counties. I have selected this area as the first to be evaluated because Sebastian is the only county permitted by the State Constitution to have two districts and two county seats and because Yell County was the first to enact the legislation after the enactment of the 1874 constitution. Each county will be reviewed and discussed for its individual characteristics.

The geographic make up of this area is described in Goodspeed’s History. (Goodspeed’s History of Benton, Washington, Carroll, Madison, Crawford, Franklin and Sebastian Counties, Arkansas, 1889, republished by Hearthstone Legacy Publications, Higginsville, Missouri, 2004) Another history was published by Southern Publishing Company( Southern Publishing Company, Biographical and Historical Memoirs of Western Arkansas, 1891 republished by Hearthstone Legacy Publishing, Higginsville, MO. 2004) Hearthstone Legacy Publications and describes these works in the 1800’s as an “ambitious
project...to document the history of numerous American counties. One section of this Southern’s work was a History of Yell County (Southern Publishing Company, 1891). It is fortunate that these histories include all of the Arkansas counties and have been preserved in the original exactly as they appeared at the time they were published, including the original grammar and spellings or misspellings.

It is from Goodspeeds and Southern’s that much of the information I present here has been taken but with the caveat that much of what is written appears to have been based on information given to the publisher by residents of the county written about. More specifically, it is apparent from the glowing descriptions of the counties that much of what was written may have been an attempt to simply promote the region for economic purposes and the accuracy of what is reported may be suspect in light of the fact that Goodspeed’s Publishing was in all probability done for their own economic gain and not out of an interest in accurate history. That concern aside, these works contain information written in the 1880’s and 1890’s that appears reliable.

I will review the individual counties and the history of these Acts as far as it can be determined.

Sebastian County
As we have seen, Sebastian County is the only county in Arkansas authorized by the Constitution to have two county seats and two districts. (Arkansas State Constitution, 1874, p. Art. 13) Why was this county granted this unique status? The answer is that it was the result of a bitter and divisive struggle over the location of the county seat. To understand that struggle we need to identify the factors that led to a conflict that was eventually resolved at a constitutional convention.

Sebastian County is located on the western edge of Arkansas, bounded on the east by Oklahoma. The Arkansas River flows out of Oklahoma to the east and Fort Smith is located on the southern banks of that river at the extreme northwest tip of Sebastian County. There are no major rivers or geographic feature dividing the county and, most notably, there are no significant geographic features between Fort Smith and the city of Greenwood which was located in the center of the county and was in contention for the county seat.

The geography of the county is typical of this area of the state with “mountain ridges, table lands, rolling prairies, undulating timbered lands and valleys.” (Goodspeed Publishing Co., 1889, p. 676) The elevations range from 417 feet at Fort Smith to 1,500 feet above sea level at the highest point in the county.
The County was created in 1851 from portions of Crawford, Scott and Polk counties and the first seat of justice was established in the home of Eaton Tatum who laid out a town that was named Jenny Lind in honor of a popular singer of the day. The county selected commissioners to locate a site for a new county seat and after selecting forty acres they named it Greenwood. Fort Smith had been a rival site for the county seat designation and a political battle soon began.

Those who advocated for Fort Smith were successful and the county seat was moved there but the fight wasn’t over and in 1854 a majority vote of the county moved the seat back to Greenwood. We must believe that Fort Smith, being located on a major transportation waterway and hence a center of commerce, had significant political and economic power and could see advantages in being the site of county government. Greenwood on the other hand was the historic site of the county seat and centrally located for the rest of the county while Fort Smith’s location on the far northwestern edge of the county was inconvenient to many of the residents of the county. This was a scenario for conflict between one city with economic and political power located on a principal transportation route, the Arkansas River, and another that was convenient to most residents but lacked transportation routes and major
economic advantages. But seeing this situation thru the lens of hindsight tells us little of how the citizens of Sebastian County dealt with it. Fortunately, on July 4, 1876 Col. Ben T. Duval delivered a speech at Fort Smith recounting the bitter political battle and explaining how it was resolved.

“The contest over, the location of the county seat increased in bitterness, and the town and country were arrayed in open hostility to the great detriment to the public interests. It engendered mutual hatred and distrust between the sections, and had its influence upon all elections. In 1861 John T. London, who lived at Greenwood, and myself, then as now a resident of Fort Smith, were members of the House of Representatives, and Green J. Clark, who was also a citizen of Greenwood, was the Senator. We agreed upon an Act dividing the county into two judicial districts. This Act removed the sting from the vexed question, and was accepted as a fair compromise. The county organization, as to revenue and general business, was left intact, and the county court for the whole county was still to hold at Greenwood.

In 1868 the county seat question was again revived, and under an Act of the Legislature of that year an election was held. After an angry and bitter contest over the result, the records were removed to this place (Fort Smith) and all the courts of the county were held here for a short time. At the session of the General Assembly of 1871 an Act was passed dividing the county into two districts, with separate revenue and, in fact, making two distinct counties in one. This act was declared by the Supreme Court to be unconstitutional, and they also held that the Act of 1861 was still in force, notwithstanding the election of 1868. The courts were again divided.

The Constitutional Convention of 1874, by a provision inserted in the Constitution, provided that this county should be divided into two judicial districts, with separate county courts, separate revenue, and each paying its own expenses. So now we
have two separate districts, with county, circuit and probate courts for each district as of two counties, yet under one general organization.”

Here we seem to have a historically valid account of the division of the county and, perhaps, a plausible explanation for the subsequent divisions of the other counties: a political dispute resolved by compromise. This scenario also gives us a valuable insight for the analysis of the later Acts because we can now see that the first county that created the judicial districts was attempting to resolve a political dispute and not simply overcome a geographic feature that divided the county.

Col Duval told us of the dispute, elections and lawsuits. Let us look a little closer at these events and see if there is any further insight or indication of how future disputes would be dealt with.

The Sebastian County Act was passed on March 28, 1871 and as we have seen above in our discussion of the statutory provisions, it was the model for all the subsequent legislation creating the split districts. But unlike those that followed, Sebastian’s Act provided for the creation of two county courts. These are the administrative bodies for Arkansas counties now called Quorum Courts. In Sections 7 and 8 of the 1871 Act a county court was provided for in Fort Smith
and in Greenwood. These county courts were given taxing authority over their respective districts in Sections 10 and 11 with the following language:

...the Fort Smith district of said county shall have the same and like duties and powers, in every particular, in relation to the assessment, levying, adjustment and correction of the tax list, and in all matters and things in relation to levying, assessing and collecting the revenues of said district, as is conferred by law upon other constitutional counties.

The identical language was used to confer the same powers on the Greenwood district and this is where the Act ran into trouble with the Supreme Court.

The lawsuit Duval spoke of went to the Supreme Court in the case of Patterson v. Temple, decided in the December term of 1871 and reported at 27 Ark. 202. (Patterson v. Temple, 1871) Remember, this case was decided prior to the new Constitution of 1874.

In the decision the court recounted some of the history of the dispute in the county saying that for more than four years prior to 1860 and for years after that date, Greenwood was the county seat of Sebastian County and that the statutes provided that a county seat that was established for more than four years cannot be removed unless the inhabitants were paid for their property lots.

The lawsuit resulted from the attempt to move the county seat as recounted by Col Duval. The Prosecuting Attorney for the third judicial district,
Mr. Newton Temple, sought a writ of mandamus to compel the Clerk, William Patterson, to “omit removing any of the county records to Greenwood” (Patterson v. Temple, 1871) as he was required to do under the statute passed by the legislature. Temple alleged that Fort Smith was the only county seat and the only legal place to hold court. The issue for the Supreme Court was whether the Act of the General Assembly establishing separate county courts in Sebastian County was unconstitutional and void.

The court reviewed the provisions of the Act which included two judicial districts, the location of records to be kept, and most importantly, the separate levying and collection of taxes and the division of indebtedness in proportion to the taxable property of each district. It also provided for a change of venue from one district to the other and other matters that enabled the districts to operate independently of each other.

The Supreme court found the provision for a separate taxing authorities of the Act offensive to the constitution because it provided for the creation of two county courts; (Quorum Courts) the legislative body that controls a county and which has taxing authority. The court said:

The enactment under consideration, attempts to divide Sebastian county into two judicial districts, creates two Circuit, two Chancery, two Probate and two County Courts, (emphasis added) and provides that each “shall be as
independent of, and distinct from each other, and shall hold the same relation to each other as if they were courts of different constitutional counties of this State, and shall be deemed, for all purposes of this act, separate and distinct counties, with original and exclusive jurisdiction within their respective territorial limits.

The court proceeded to say that the legislature can create judicial districts and define the powers and jurisdiction of the courts but it cannot make two counties under the guise of the judicial districts. The court also ruled that Greenwood was the county seat and the legislature could not move the county seat. The court, in a final aside, noted that Mr. Temple, as the Prosecuting Attorney, had no standing to bring a suit or action on behalf of the people of the county and the suit should have been dismissed for that fact alone.

As we have seen, Sebastian County did not let this deter them in an effort to quell the political discontent; they took advantage of the constitutional convention that was convened and managed to have their county designated as the only one in Arkansas permitted to have two county seats and two districts. This history of Sebastian County’s political struggle over the location of the county seat gives us a template for the evaluation of the subsequent Acts and the decision in the Patterson case provided a road map for avoiding the fate of any county that attempted to overreach the constitution. The counties that
followed now knew that to create a divided county the legislature only had to leave the county court, or taxing authority, out of the mix and let one local legislative body control the entire county. But, we are still left with some interesting questions and the restatement of a legal cliché by the court in Patterson: “All persons are presumed to know the law under which they are required to act.” The inability to follow a secret law makes this assertion a bit uncertain.

**Yell County**

In 1875, the year after the new state constitution allowed Sebastian County to create two districts, the legislature went to work again and passed the Yell County Act. (An Act to establish Separate Courts in the County of Yell, 1875) We previously reviewed the provisions of that Act and know it closely followed Sebastian’s and have seen that while containing the same language and structure of the Sebastian county Act, Yell County did not attempt to divide the finances or create two county courts; it only dealt with the court system. This more restricted approach was undoubtedly in response to the Patterson case.

As with the Acts that subsequently followed, this Act confirmed the existing county seat location and created a new seat of justice. The county seat was Danville and the new court seat would be in Dardanelle. Section 2 of the
Act states that the courts in the Danville District “shall continue to be held at the county seat at Danville.” In Section 3 of the Act the courts are authorized to hold “the same number of sessions at the city of Dardanelle at such place in said city as may be selected...” but it did not attempt to create two county seats or two taxing authorities as did Sebastian County’s Act.

Still, Yell County’s Act, like Sebastian’s, eventually came under judicial scrutiny but the Arkansas Supreme court found the Act to be constitutional in the case of Walker v. The State, 30 Ark. 186. (Walker v. the State, 1880) In this case Mr. Walker challenged the Act of 1875 as unconstitutional because it permitted jurors to be called only from the district in which he was tried for the misdemeanor crime of carrying a pistol as a weapon in the Dardanelle District.

In its decision the court noted that the county seat of Yell County is Danville and that the county is divided into two judicial districts with Dardanelle being the second judicial district in the county. After a review of English common law and that of other jurisdictions on the issue of judicial districts, the court said that “If the legislature may divide a county into judicial districts for public convenience, it would, to some extent, defeat the purpose and policy of the act to require jurors to be taken from the whole county to serve in the court held in each district.” The court went on to say that “[T]he power of
the legislature to excuse citizens from jury service who reside without the limits of a judicial district established for public convenience, may not be entirely free from doubt, but by a long settled rule the courts must resolve mere doubts in favor of the validity of legislative acts.” (Walker v. the State, 1880)

So, we now have a court decision which says that the legislature can divide counties into judicial districts and that it is permissible to restrict a defendant’s right to a jury drawn from the district in which the crime was committed; that he does not have a right to a jury drawn from the entire county.

But, we are still left with the “why” question; why did Yell county want two judicial districts? The Court’s decision hinted that the creation of the districts was “for public convenience” but said nothing else. Let us look more closely at Yell County and see if we can determine what the basis for the division might have been or if the legislature just woke up one morning and decided that it would be convenient for the citizens of Yell County to build a new courthouse.

Some aspects of Yell County cannot be changed and geography is one of them. We know that the county is bounded by Logan County on the north, Perry County on the east and Garland and Montgomery counties on the south. To the west lie Scott and Logan Counties. Yell County is comprised of approximately 930 square miles and its northern boundary is the Arkansas River and that it is
downstream from Fort Smith. Another river, the Petit Jean, enters the county on
the west side and flows northeasterly to the Arkansas River roughly through the
center of the county. A third river, the Fourche La Fave, flows diagonally across
the southern part of the county from the southwest to the northeast. There are
many other small tributaries which are non-navigable. The course of the Petit
Jean and La Fave Rivers roughly divide the county into thirds with one third of
the county area lying north of the Petit Jean, one third between the Petit Jean and
the La Fave and one third south of the La Fave.

During the time with which we are concerned, the county was described
in Southern’s History as “undulating and broken. About twenty percent is
mountains, “the tops and slopes of which are tillable. Fifty percent is in uplands,
thirty percent is level, most of it alluvial, a small portion prairie.” (Southern
Publishing Company, 1891, p. 114) Agriculture and timber were the principal
products of this region. Some lead, coal and iron were thought to be potential
sources of mineral mining and, in what can now only be described as wishful
thinking, Southern’s reported that “it is believed that gold and silver abound in
paying quantities, and the day is not far distant when Yell County will be classed
as one of the most profitable mining counties in the State.” (Southern Publishing
Company, 1891, p. 115). The county is further described as having three
principal valleys named for the rivers that flow thru it; the Arkansas, Petit Jean and Fouche La Fave Valleys. The highest peak in the county is Mount Nebo on Magazine Mountain. The valleys run east to west between the hills rather than north to south.

Southern’s states that “The present county seat, Danville, is situated on the South bank of the Petit Jean, near the north base of the Fouche Mountains...” (Southern Publishing Company, 1891, p. 119) and the population of the county seat was approximately 200 and “lies in the heart of the county.

It appears that Yell County shared the same politically divisive atmosphere as Sebastian county: “The location of the seat of justice was the end of a memorable struggle for honors between different localities within the county limits, the details of which incomplete records does not disclose.” (Southern Publishing Company, 1891, p. 126) Eventually Dardanelle was selected to be the location of a new court seat and “is situated on the south branch of the Arkansas River equidistant from Fort Smith and Little Rock, and about eighty miles from Hot Springs, has a population of about 2,000 people, and does a larger commercial business than any other town in the Arkansas Valley between Little Rock and Fort Smith.” (Southern Publishing Company, 1891, p. 125)
In this history we see a pattern similar to that witnessed in Sebastian County in which the county seat, Danville, is centrally located in the county and convenient to the general population and the competing city of Dardanelle is located on the Arkansas River in the extreme northern section of the county. We can also see from Southern’s history and the Arkansas Supreme Court decision that the county seat of Yell County is Danville, which, while located on a river and at the geographic center of the county, did not achieve the economic success of Dardanelle which was on the more trafficked Arkansas River. Dardanelle was enjoying greater commercial success than the county seat “with a population of about 2,000 people and does a larger commercial business than any other town in the Arkansas Valley between Little Rock and Fort Smith.” (Southern Publishing Company, 1891, p. 125) Dardanelle also enjoyed “communication by rail over the Dardanelle & Russellville Railroad, and the ferry and transfer line between the two towns (Dardanelle and Russellville) and telegraphic and telephonic communication.” But the Dardanelle & Russellville Railroad was only a spur line with connected with the Little Rock and Fort Smith line. However, there were many railroad projects in the planning stages. The St. Louis & San Francisco Railroad had surveyed a route through the Fourche La Fave Valley which would run across the entire span of the county. The St. Louis, Iron Mountain &
Southern planned a route through the Petit Jean Valley from Fort Smith to Little Rock and a right of way was planned from Little Rock to Fort Smith through Dardanelle. Other lines were also in the planning stages including lines from Memphis to Dardanelle and on to Fort Smith, Albuquerque and California. The Fort Scott, Natchez and New Orleans Railroad anticipated a line through Dardanelle from Texas to St. Louis and the Springfield & Gulf line was planned to run from Springfield, Missouri to Hot Springs. (Southern Publishing Company, 1891, p. 127)

As can be seen, these lines were all planned to run through Dardanelle which would make that river town an important railroad hub in addition to a fresh water port. But the citizens of Yell County were not waiting on railroads to improve their transportation network and had constructed ‘two magnificent iron bridges across the Petit Jean River with a 100 foot span each – one at Danville and the other on the main road leading from Dardanelle to Hot Springs.” (Southern Publishing Company, 1891, p. 128)

A review of maps such as the Rand, McNally of 1895 confirms that some of the railroads mentioned above were in fact constructed. A line ran across the Arkansas River from Russellville to Dardanelle and the line through the Petit Jean Valley was constructed by 1898 as shown on the map by George F. Cram.
By 1915 the Rand, McNally map depicts a line connecting Dardanelle to the Petit Jean Valley and Danville. 

The railroads would also become an important source of income for the county. The lines were vital transportation links with major cities to the east and west and provided easy movement of goods. But there was a more important aspect to the stream of income for the county and that was through the ability to tax the railroads for all the real property held as right of way and for all the equipment and rolling stock that was assessed as personal property. The coming of the railroads was an economic boom to local governments and I believe that this was a significant economic motivation in subsequent Acts for the division of finances in the judicial districts.

The Arkansas statutes of 1894 provide some insight for understanding the importance of railroads in any county. Chapter 134, Section 6466 of Sandles and Hill’s Digest of Statues is titled the “Manner of Listing and Valuing Property of Railroads.” (Hill, 1894) This section requires the railroads to list all property “with reference to its amounts, kind and value…” and also required them to state the “length of the main and all side tracks, switches and turnarounds in each county in which the railroad may be located, and in each city and town in said county through or into which the railroad may run.”
The statutes then require the railroad to “state the fair and actual aggregate value of the whole railroad, taking into consideration in estimating and fixing such value, the entire right of way, ...also taking into consideration and estimating everything ... upon such right of way...which adds value of such railroad as an entire thing.” The statute continues for many sections and at Section 6474 provides a formula for determining the assessed value of the railroad within a county.

“...for the purpose of finding the value of the rolling stock...take the total value of the...rolling stock of each of the respective railroads of the state, and divide the same by the number of miles in the entire length of such railroad, and the result shall be the value per mile of such railroad for the purpose of taxation, and the value per mile of any such railroad shall be multiplied by the number of miles or fraction of miles, thereof lying and being in any county, and the product thereof is the sum to be taxed in such county...”

The statute then directs the County Assessor to list and assess the same as personal property. Keeping in mind the provisions of the Acts that would designate all revenue “from whatever source derived” be allocated to the district in which it is raised we now see a significant economic motivator for the division of a county: the location of rail lines and the revenue such a line would generate for the residents of that district. In some counties this income would prove to be worth tens of thousands of dollars each year.
An evaluation of the remaining split counties may strengthen the hypothesis that railroads and economics were a significant motivation for the creation of split judicial districts.

**Franklin County**

Act 51 of 1885 (An Act to Establish Two Separate Judicial Districts in the County of Franklin, in the State of Arkansas, 1885) created the two districts in Franklin County, part of the Western cluster, and it also followed the language of the Sebastian County law.

Franklin County is separated from Yell County by Logan County and it shares many of the geographical aspects of Yell but here, the Arkansas River traverses the county from west to east dividing the county near the middle. Franklin is only one of four counties in the State split by the Arkansas River. The county is more mountainous than Yell County with the Boston Mountains on the north boundary. As stated in Goodspeed’s History of Franklin County (Goodspeed Publishing Co, 1889) the “Big Mulberry Valley cuts a wide depression diagonally across the entire part from the northeastern to the southwestern corner, where it joins a similar valley depression of the Little Mulberry, lying along the western boundary.” (Goodspeed Publishing Co, 1889, p. 603) It is reported by Goodspeed “that part of Franklin County south of the
Arkansas River is cut off from easy access to (the city of) Ozark not only by the river, but by the rough and ridgy region between the prairies and the river” and that it was this topography that led to the division of the county into two judicial districts. (Goodspeed Publishing Co, 1889, p. 619)

The Act specifies that “the Circuit, Chancery and Probate Courts of Franklin County, in and for the Ozark District, shall continue to be held at the county seat of Ozark, as now provided by law…”(Emphasis added) and that “the Circuit, Chancery and Probate Courts of Franklin shall be holden the same number of sessions the town of Charleston, at a place provided hereafter by the citizens of said District…”

Once again we see that the Act dividing the county did not create two county seats and did not indicate in any way that a second county seat was being created; it is clear that the county seat of Franklin County is the city of Ozark and that the second judicial seat is located at Charleston.

The locations of these two cities mimic the situation we have seen in Sebastian and Yell counties. Ozark is located on the north bank of the Arkansas and the city of Charleston is located in the far southwest corner of the county. Charleston’s location is interesting because of this extreme southerly location in the county: it is almost at the junction of the Sebastian and Logan County lines
and far removed from a central spot in the county. However, it was located on
the Ft. Smith – Little Rock Railway line as depicted on the J.H. Colton & Co. Map
of 1855 and at the junction of roads leading to Ft. Smith to the west, Little Rock to
the east and to the Arkansas River at Ozark to the north. This location made
Charleston a transportation hub for the southern end of Franklin County and
with that carried certain economic benefits.

On the other hand we see the county seat at Ozark was more centrally
located but it was far from a central point for the northern district that had been
created. In fact, Ozark was at the most southern tip of the northern judicial
district which was also divided by the Mulberry River further to the north.
However, Ozark’s location also made it a center of transportation and commerce
for the county, enjoying both river traffic and a major rail line.

By 1898 Fort Smith had become a railroad center with lines running to all
points of the compass. One major line, the St. Louis & Iron Mountain, ran east
along the north bank of the Arkansas River to Little Rock through Ozark and a
second ran east through Charleston but apparently terminated at the town of
Paris in Logan county. It is reasonable to assume that transportation hubs, or
centers of commerce in the county, would seek the additional advantage of being
the location for the seats of justice because these communities enjoyed growing
populations and wealth. This would give rise to competition and political divisiveness.

Goodspeed’s Franklin County History is not as complete as some of the other works it performed on Arkansas counties and we are only told that the county did not own any bridges and never voted any railroad bonds and that in 1889 the Little Rock & Fort Smith Railway was the only one operating at that time and “the chief result of that enterprise in Franklin County was to transfer its river traffic to the railway, and increase immigration into the county.” (Goodspeed Publishing Co, 1889, p. 620) So we are not afforded any indication of the nature and extent of any conflict that would have resulted in a division of the county but we can easily see that the two centers of transportation and thus economic power would each desire to have courthouse for the convenience of conducting commercial transactions and that Charleston could not have been geographically further from Ozark and still be in Franklin County

Logan County

Logan County created its split judicial district in 1901 under Act 5. (An Act to establish two separate judicial districts in the County of Logan, in the State of Arkansas, 1901) This county borders Yell county to the southwest, Franklin county to the northwest and Sebastian to the west, all of which as we have seen
implemented the split district concept. The two judicial districts created in Logan County were the Northern District with Paris, as the county seat and the second, at Booneville as the seat of justice for the Southern District.

It is reported that Paris was chosen as the county seat in 1874 after a fire destroyed the courthouse at Ellsworth and all the county records were destroyed. (Biographical and Historical Memoirs of Logan County, Arkansas, 1881, p. 330) In 1877 the courthouse at Paris also burned as a result of a fire started by Tom Biggs who was convicted of the crime and sent to prison.

In an article provided to the author of unknown origin and by an unknown writer it is reported that the location of a county seat for the southern district was hotly contested and that an election was held and “Booneville was chosen as the county seat of the Southern District.” This article raises some interesting questions about the nature of the “hotly contested” election but that seems lost to history. However, Southern’s History seems to confirm the contentious nature of the location of the county seat. (Biographical and Historical Memoirs of Logan County, 1891, pp. 329, 330) That history states that in 1873 the county seat was located at the town of Ellsworth but

“The people were not satisfied and much contention arose about another location for the county seat, and strenuous efforts were made by the party in power to locate it at a point three miles west of where Paris now stands… To settle the contention about the
permanent location of the county, the Legislature of 1874 passed an act authorizing an election to be held whereby the electors of the county might, by a majority vote select a site for the seat of justice. An election was held and Paris was selected by a majority of the electors.”

This indication of controversy over the locations of the county seat and the location for the second seat of justice seems to conform to the nature of the political disputes we have observed in the neighboring counties. It is interesting that we see elections for the location of the second seat of justice were called for and that may be another indicator of the basis for misconceptions about the county having two county seats, specifically, the voters may have believed that this was a vote for a “county seat” and not a “court seat”. But perhaps of more significance for this study is that we have further evidence of yet another resolution of a conflict over the location of the county seat through political compromise.

SECOND CONCLUSIONS.

We can draw some conclusions from the analysis of this first cluster of counties in Western Arkansas.

1. Sebastian County’s attempt to create two county courts with taxing power in their respective districts was unconstitutional. Sebastian County
became the only county under the Constitution of 1874 that is allowed two county seats and two districts.

2. The Arkansas legislature is permitted to create more than one judicial district in a county.

3. The Arkansas Supreme court found no violation of due process in restricting a defendant’s right to a jury drawn from one district in a county.

4. The Acts passed after Sebastian County’s, contrary to popular misconceptions, did not create two county seats.

5. The motivation to create judicial districts may have been the result of a combination of geographic and economic factors; River ports on the Arkansas River became rail hubs such as found at Fort Smith, Ozark and Dardanelle and these communities were the economic engines of the respective counties.

6. The cities of Greenwood, Charleston, Paris, Danville were located on main roads with rail service but lacked river ports and did not achieve the economic success of their rival communities.

7. Other counties in this region which were divided by the Arkansas River, or bounded by it, or which had other rivers and streams bisecting them,
did not create split judicial districts. Crawford, Johnson, Pope and Perry counties all share similar geographic topography and rivers with our subject counties in western Arkansas, but did not seek to create split districts and each had at least one railroad line traversing the county. This indicates that geography was not the primary factor in the decision to create a split judicial district.

8. Transportation factors or the geographic location of the county seat does not explain the decision to create two judicial districts therefore other factors, such as economics coupled with transportation, must be viewed as significant in light of the ability to tax railroads and generate revenue for the districts.

9. A combination of factors, especially economic and the location of transportation hubs precipitate a contest for the location of the seat of government and create political divisions within the counties.

These conclusions still leave a significant issue out of this analysis which has not been addressed; the importance of having a courthouse located at the center of the transportation and economic hub of the county. Understanding the significance associated with a courthouse in the nineteenth century and early twentieth century should not be over looked. Courthouses were viewed as the
seat of power within a county; the location for trials; filing of important documents such as deeds and tax records; the location for tabulation election results; the posting of public notices, the location of law enforcement agencies and the source of news for the local newspapers. The community that had a courthouse was often viewed as the center of all that was important within a county and the connection with the “outside” world. These factors then created economic opportunities through the businesses associated with these governmental functions including newspapers, hotels, eateries and legal services. When we understand what was at stake, economically, in the late nineteenth and early twentieth century the real significance of the county seat can be understood.

THE NORTHEAST CLUSTER

Turning now to the Northeast corner of Arkansas we find our second cluster of counties that enacted split judicial district legislation. These counties are Clay (1881), Craighead (1883), Lawrence (1887), and Mississippi (1901).

Clay County

Act 14 of 1881 follows the same outline I have previously discussed. (An Act to establish separate courts in the County of Clay, 1881) It contains 23
sections and divides the county into eastern and western districts with the division line designated as the main channel of the Black River.

Section 2 of the Act leaves the county seat at Boydsville “as now provided by law” and Section 3 of the Act places a new court seat at Corning, “on block number ninety three as shown by the plat of said town...” The Act grants to the courts in these locations “the authority and territorial jurisdiction of said districts...as if said district was a constitutional county of this State.” Again we see the requirement in Section 14 that a sheriff’s deputy and a deputy clerk and a deputy treasurer “reside in the town of Corning, in the Western district.” And in Section 18 of the Act is the requirement that “the clerk of the county court of Clay County shall keep two financial records, in one of which he shall keep a true and perfect record of the financial affairs of the Eastern District; and in the other he shall keep a similar record for the Western District.” This Section then states that the “…financial affairs of each district shall be kept as separate and distinct as though the two districts were separate and distinct counties.”

Section 19 provides that “…all revenue accruing the County of Clay...shall be used for the exclusive benefit of the district in which such revenue may arise.”
Clay County lies in the extreme northeast corner of Arkansas with the State of Missouri on the north boundary and on the east. The Black River flows on a diagonal line from north to south dividing the western third of the county from the remaining two thirds to the east. The St. Francis River follows a similar course in the eastern third of the county. The city of Corning lies just west of the Black River and the city of Boydsville lies east of the St. Francis. Goodspeed’s history (Biographical and Historical Memoirs of Clay County, 1889) says that a “strip of broken or hilly lands, averaging between seven and eight miles in width, known as Crowley’s Ridge, extends through the county in a southwesterly direction from the northeast corner.” (Biographical and Historical Memoirs of Clay County, 1889, p. 189) The height of this ridge reaches approximately 200 feet. The Black River, the St. Francis and the Cache all cross the county and create flooding but, according to Goodspeed, “the water, however, recedes so early as seldom to interfere with the raising of summer crops...” (Biographical and Historical Memoirs of Clay County, 1889, p. 190) These crops included cotton, which was still “King” in the late 1800’s as well as produce and timber. (Biographical and Historical Memoirs of Clay County, 1889, p. 190)
Railroads also played an important role in Clay County at this time. The St. Louis, Iron Mountain and Southern Railroad ran across the western half of the county for a distance of approximately nineteen miles. This rail line ran from Little Rock to St. Louis and the city of Corning was on the line where it crossed the Black River. The St. Louis & Texas ran on the eastern side of Crowley’s ridge and ran from Memphis north through the eastern third of Clay county some distance from Boydsville, but directly through the city of Piggott.

The history of the county seat location is similar to those we have reviewed in the western portion of the state which indicates there was a struggle in Clay county (at the time called Clayton County) to remove the county seat from Boydsville to Corning. The county seat had been located at Corning but on June 30, 1874 an election was held on the issue of removal to Boydsville and the measure passed with a 316 vote majority. But because “such strong resistance to this decision was manifested “ the county records were not removed from Corning and on May 22, 1877 another election was held and again, by a margin of 561 votes, Boydsville was declared the county seat. (Biographical and Historical Memoirs of Clay County, 1889, p. 192). But matters did not stop there.

By 1888 the county seat had been moved to Boydsville and then two more elections were held to decide if the county seat should be moved to Greenway,
Rector or Piggott. In the first of the two elections Greenway and Piggott received the most votes and the second election selected Piggott. The election results were contested in an effort to retain Boydsville as the county seat but in the case of Blackshear et. al. v. Turner et. al. (Blackshear et.al. v. Turner et. al., 1890) the Arkansas Supreme Court ruled that Piggott had been selected as the county seat of Clay County. The efforts to move the county seat were in fact initiated by the business men of Greenway which as located on the St. Louis, Arkansas and Texas railroad line. (Wright, History of Our County Seats, unk, p. 8) They had found that it would be to their advantage to have the county seat located there since Boydsville was not on a rail line. In the final election Piggott received 954 votes and Greenway received 923 votes.

In an undated article published by the Clay County Courier and written by V.C. Wright of Piggott, titled The History of Our County Seats, (Wright, History of Our County Seats, unk) the importance of the location of the county seat is discussed. Mr. Wright tells us that:

“Both the Black and Cache Rivers were often out of their banks and the lowlands were covered with water. There were no roads across these swamps but only blazed trails that followed the highest ground and avoided the deepest sloughs. Perhaps 75 percent of the inhabitants lived on Crowley’s Ridge. When those living east of the swap realized what it meant to make the trip to Corning a wail of dissatisfaction arose. They demanded the county seat be removed to the Ridge.”
After discussing the elections that resulted in the removal of the county seat to Boydsville Wright states that the Legislature passed the act creating the two judicial districts and proceeds to say that “The seat of justice for the Western District should be at Corning”. Goodspeed’s History also tells us that after losing the fight for the county seat the issue of division of the county was sent to the legislature and on February 28, 1881 the Act was passed creating the two districts.

Here again, we see that the creation of judicial districts was apparently a compromise or mechanism to resolve a political and economic dispute over the location of the courthouse. In this instance we have some historic reference to the problems of geography that, when coupled with the transportation factor of the railroads and the interests of businessmen, give us an explanation for the dispute. What is clear is that the degree of conflict was high enough that election results were not accepted and the dispute could not be resolved until the creation of the split districts.

Craighead County

On March 6, 1883 Act 65 was passed which established two judicial districts in Craighead County. (An Act to establish two separate Judicial Districts in the county of Craighead in the State of Arkansas, 1883) This eastern
Arkansas county lies south of Clay County and is west of Mississippi County. Crowley’s Ridge, a prominent geographical feature, runs across the west central portion of this county in a southerly direction and is described as being twelve miles wide in the north and three in the south. The St. Francis River runs from the north to the south across the eastern section of the county. The earthquake on the New Madrid Fault in 1811 impacted much of the area around the St. Francis River which was covered in water and is referred to as the “Sunk Lands”. (Biographical and Historical Memoirs of Craighead County, 1889, p. 310)

As with other counties we have examined, Goodspeed’s History tells us that the railroads constitute a large portion of the taxable wealth of the county. In 1888 the Helena branch of the St. Louis, Iron Mountain & Southern was assessed at $181,000.00 dollars; the St. Louis, Arkansas and Texas line was assessed at $238,637.52 dollars and the Kansas City, Fort Scott and Memphis at $283,212.95 dollars for a combined assessed value of $702,850.47 dollars. (Biographical and Historical Memoirs of Craighead County, 1889, p. 311)

In addition to the value of the railroad property we must also understand the routes that these lines followed to fully understand the impact this had on the local communities. The Kansas City, Fort Scott and Memphis line entered
the county near the northeast county line and ran southeasterly thru the county by way of Jonesboro. The other rail lines also run thru Jonesboro which made that community a rail center. Goodspeed’s History states that “These railroads give an advantageous outlet to all points of the compass. But few counties, even in old settled communities, are so favored with railroad and shipping facilities”. (Biographical and Historical Memoirs of Craighead County, 1889, p. 311) The routes of these rail lines may also give us some insight into division of the county under the Act.

The Act created the Jonesboro District and the Lake City District and it simply states that all of the ”county lying East of and including range five, shall compose and be called the Lake City District, and the residue of said county shall compose and be called the Jonesboro District.” ² This east/west division places Jonesboro and its rail lines in the western district. Section 3 of the Act also identifies Jonesboro as the county seat and Section 4 creates the judicial

² This description is similar to many of those contained in the other Acts and gives rise to a problem often overlooked: Where is that line on the ground? How can a prosecutor or a law enforcement officer or a defendant know which side of that imaginary line a crime was committed? A mistake on this point can result in the defendant being tried in the wrong venue and has resulted in the guilty being freed after a trial. In Carroll County the line was believed to be the Kings River for more than a hundred years and it wasn’t until 2011 that the line was discovered to be more than a mile west of the river and legislation was passed to make the line the Kings River. How many cases were tried in the wrong district and how many property records were filed in the wrong district as a result of this mistaken belief is unknown.
district at Lake City. The remaining Sections follow the same outline as previously discussed for the other counties including the residency requirements for the deputies, the division of finances and the requirement that all funds, from whatever source, be spent in the district in which the funds were raised.

With the above information concerning the valuation of the railroad’s assessed value and the knowledge that all of the rail lines converged on Jonesboro, it would seem reasonable that the citizens of the Western district might have advocated for split districts to secure the economic benefits of the taxes. Jonesboro was already the county seat and enjoyed all of the benefits associated with being the center of justice as well as the economic/transportation center of that area. In light of these considerations it wouldn’t have been unusual for the residents of the eastern side of the county to also advocate for the split districts for many of the same reasons reviewed for Clay county: geographic distances, tax benefits and increased economic growth. However, I have not been able to locate any documentation of any political struggle to obtain the division of the county. Goodspeed’s History does make one intriguing comment on the judicial districts: “The probability is that the districts will, ere long, be abolished and the county placed as it formerly was, under the
management of one seat of justice.” (Goodspeed’s History, pg 312) The History offer’s nothing more than this comment and no explanation has been found.

Lawrence County

This county presents us with possibly the best example of what can go wrong under the series of Acts under discussion. The current law, Arkansas Code, Section §16-13-1102, titled “Terms of court”, states that the term of the court in Lawrence county shall commence “In the Western District of Lawrence County: on the fourth Monday in August and the third Monday in January” and “In the Eastern District of Lawrence County: on the sixth Monday after the third Monday in January.”

But there seems to be a problem with this statute setting the terms of the court for the Eastern and Western Districts; In August, 1963 Lawrence County voted to repeal the Act and consolidate the judicial districts. It closed one of the two courthouses and has only been conducting court in the city of Walnut Ridge for the last fifty years. Turning back to Goodspeed’s History we learn that the community of Powhatan was selected as the county seat in 1868 by a vote of 207 to 6. (Goodspeed’s Publishing, 1889, p. 768) The first courthouse constructed there burned and the still existing structure was built in 1888. “When the county was divided into judicial districts, a two story frame court-house, with the clerk’s
office and two jury rooms on the first floor and the court room on the second, was erected at Walnut Ridge.” (Goodspeed’s Publishing, 1889, p. 768)

After this it seems little happened until 1956 when an election was held to move the county seat to Walnut Ridge. In the case of Bruce v. Nicholas, (Bruce v. Nicholas, 226 Ark. 890, 1956) the Supreme Court heard the petition to stay an election for the removal of the county seat. The court introduced the matter by saying:

By the above mentioned Act No. 85 of 1887, the General Assembly of Arkansas divided Lawrence County into two judicial districts to be called the Western District and the Eastern District. Trial courts in the Western District were to …continue to be held at the county seat at Powhatan, as now provided by law; and trial courts in the Eastern District were to be held…in the town of Walnut Ridge. On October 1, 1956 there was filed in the County Court of Lawrence County …a petition purporting to be signed by more than one-third of the qualified voters of all Lawrence County, and praying for an election …on the question of moving the county seat from Powhatan to Walnut Ridge. (emphasis added)

The petition asking to stay the election alleged that the county had two county seats under the Act of 1887 and that the only question that could be raised was the dissolution of the two judicial districts. The petition also alleged that if the action was allowed on the issue of county seats the number of petitioners was not sufficient to hold an election because the required poll tax had not been paid by the persons signing the petition. The Supreme Court said
that this presented questions of law and fact and remanded the case to the circuit court of Lawrence County for further proceedings. It seems that the trial ends here until 1963 when the election was held to dissolve the districts and all court records were moved to Walnut Ridge and court was no longer held in Powhatan. However, it appears that the election was only on the issue of dissolution of the two districts and that the issue of the county seat was not presented.

We know that court is no longer held in the Western District and that this seems to contravene the requirements of §16-13-1102 and we know that the elected officials believe that the county seat is Walnut Ridge which is where the Quorum Court holds its meetings. The Arkansas Gazette (Arkansas Gazette, County Seat Consolidation Vote Sought, July 18, 1963 pp A-16) reported that the city of Powhatan only had 163 residents and that the county offices had been moved to Walnut Ridge where a new courthouse was already under development. The newspaper further reported that on August 27th the vote was “For Consolidation...4,196” and “Against...374”. (Arkansas Gazette, Merger Plan Approved, August 28, 1963) This report indicates that the vote was only to address the consolidation of the districts and did not address the issue of the location of the county seat, which can only be removed by a majority vote of the
electorate as we have previously discussed. Where does this leave Lawrence County? It would appear that if the law is followed, the county seat is still Powhatan and the county quorum court has been meeting in the wrong location for the previous fifty years.

Here we see an absurd result of a failure of a secret law and the misunderstanding that arises from a failure to codify the Act (An Act to Establish Two Separate Judicial Districts in the County of Lawrence in the State of Arkansas, 1887) passed by the legislature.³

Mississippi County

This eastern Arkansas County was divided into two districts on April 1, 1901 when the Legislature created the Chickasawba District and the Oseola District. (An Act to establish two judicial districts in the County of Mississippi, in the State of Arkansas, 1901) Under Section 4 of the Act the Chickasawba District was to be at a site in either Manila or Blythesville and court would be held there “as by law said courts are now required to be held at the county seat…”.

Section 24 of the Act gave the citizens thirty days to hold an election for the purpose of determining whether Manila or Blythesville would be the

³ A.C.A. §16-10-129, Abolition of Judicial Districts – Procedure, now repealed, was in effect at the time of this election and specifies the form of the ballot for a vote on the elimination of a judicial district.
location for the new courthouse. The Act also required the two towns to post bonds for the construction of the courthouse and specified, in Section 24, that if they failed to post the required bonds then court would “continue to be held at Osceola as now provided by law, and this Act shall fail.”

Section 3 and 4 of the Act states as follows:

Section 3. That the circuit, chancery and probate courts of Mississippi County, in and for the Osceola District shall continue to be held at the county seat, as now provided by, except as hereinafter provided; and there shall be no change in the style of process and legal proceeding which shall be pending in said courts.” (emphasis added)

Section 4. That the circuit, chancery and probate courts of Mississippi County, in and for Chickasawba District shall be holden the same number of sessions in either the towns of Manila or Blythesville, at a place to be hereafter provided by the citizens of the Chickasawba District, as by law said courts are now required to be held at the county seat…”

Section 24 of the Act then states that the county judge is to appoint commissioners to select a site “for the courthouse in the town of the court seat of the Chickasawba District “ and that a bond must be posted by the town “if said town shall be designated as the court seat for the Chickasawba District by a majority of the electors voting at the election to locate a court seat for said district provided for in this Act.” And it then continues to say

“The election for a court seat shall be had under the direction of and by reporting to the election commissioners of Mississippi County as other elections are now held and reported.”
Then, in the next sentence, we see a change in terms:

The election commissioners shall provide an official ballot for said election, the expense of which shall be paid for by the town or towns authorized by this Act to be voted for. The town authorized by this Act to be voted for \textit{county seat} receiving the highest number of votes in said election shall be declared by the said commissioners the \textit{court seat} for the Chickasawba District of Mississippi County.

(emphasis added by author)

This section is the only one in the Acts reviewed that makes any reference to the new court seat also being a “county seat” and begs the question of whether this was (1) a deliberate decision to move the county seat from Osceola, (2) an attempt to create two county seats in contravention of the State Constitution or (3) a simple scriveners error.

We know that Blythesville was selected for the seat in the Chickasawba District and that Oseola continued to be the seat for the Oseola District. We also know from the review of the law above that a county seat can only be removed by a majority vote of the electorate of a county and that the ballot would require the purpose of the vote to be stated. As an example, the ballot might be “For Removal” or “Against Removal”. We know that the removal of a county seat can only be initiated by a petition signed by the required number of registered voters. In other words, the legislature is without power to direct the removal of a county seat or to create a county seat in violation of the
Constitution. We can also state with a high degree of certainty based on the history of the other counties reviewed, that the removal of a county seat would be a highly contested matter and it would be unlikely that the citizens of Oseola would acquiesce in the removal. We also know that there is no provision in the State Constitution allowing any county, other than Sebastian County, to have two county seats. All of these factors mitigate against interpreting this Act as authorizing the creation of a new county seat in Blythesville but rather point to a simple scrivner’s error in the legislation; using the term “county seat” and “court seat” in the same sentence.

The Mississippi County Act of 1901 was addressed many times in cases brought to the Arkansas Supreme Court. In 1911 the court heard the case of Lee Wilson & Co. v. Driver, (Lee Wilson& Co. v. Driver, 1911) which involved the sale of delinquent land and a conflict between the Act of 1901 and an Act of 1905 which clarified the issue of the sale of tax delinquent lands. The court stated that;

“In undivided counties the sale of delinquent lands is made at the courthouse and the courthouse is at the county seat. So, if it can be said that the special act of April 1, 1901 provides for the sale of delinquent lands at Osceola, the county seat of Mississippi county, regardless of the district in which such lands were situated, still the Act of 1905, supra, under the doctrine of irreconcilable conflict between the two, repeals the act of April 1, 1901. The Act of May 6, 1905 is applicable to the sale under consideration.” (emphasis added)
The repeal of a portion of the Act of 1901 was limited to the provision for the location of tax sales. Here we see that the Court recognized Osceola as the county seat for Mississippi County. It is also interesting to note that the court addressed the failure of the county to keep two separate tax books, one for each district, as required by the Act of 1901 and that “this is a mandatory provision that was not complied with. For a failure to observe the above requirements of the law, the tax sale under which appellee claims was void, and the lower court erred in not so holding.”

In these words, “a mandatory provision” the Supreme Court put all counties with split judicial districts on notice that the provisions of the un-codified Acts must be complied with or there could be legal consequences as in this case where the tax sale was set aside.

THE SOUTHERN CLUSTER

Prairie County, Arkansas County, Lincoln County and Lonoke County comprise the southern cluster of divided counties and they are located in Southeastern Arkansas. Lonoke County established two judicial but subsequently dissolved the districts and the county seat remains in the city of Lonoke. I will not discuss this county since in light of the dissolution.

Prairie County
Act 83 of 1885 created the two districts in Prairie County; the Northern and Southern. (An Act to establish separate courts in Prairie County, 1885) Again we see the same template of twenty six sections providing for the jurisdiction of the courts, division of finances and duties of the officials. In Section 2 of the Act the city of Des Arc is identified as the county seat and Section 2 names the location of the new court house as DeVall’s Bluff. Section 16 establishes residency requirements for the county officials and Section 22, 23 and 24 direct the division of the county finances and expenditure of the revenues in the districts where the money is raised.

Turning again to Goodspeed’s, (Goodspeeds Publishing Co., 1890) we are given a description of the geographic features of the county. “The whole county is level, undulating and rolling enough to admit of free and easy drainage, and not to wash, no hills and hollows, no gullies and ravines, no rock-cursed farms and not even a stone to become the instrument between the bad boy and the family cat.” (Goodspeed Publishing Company, 1890, p. 676) The county is crossed by a major tributary, the White River and also by the Wattensas, the Cache and the LaGrue Rivers.

We find the railroads are again a significant economic factor. Goodspeed’s informs us that:
The Little Rock & Memphis Railroad crosses Prairie County from east to west, and divides it into nearly two equal parts. Its length within the county is about twenty three miles. The Cotton Belt Railroad crosses the southeast part of the county, running in a southwesterly direction. The railroads constitute a considerable portion of the taxable wealth of the county, and give excellent shipping facilities. (Goodspeed Publishing Company, 1890, p. 678)

Goodspeed also states that “Des Arc-the county seat- is situated on the west bank of the White River.” (Goodspeed Publishing Company, 1890, p. 679)

The Butterfield Stage line met boats at the White River and once ran a daily coach to Little Rock and Fort Smith and on to San Francisco and charged a fare of $200.00 dollars for the trip to California.

DeVall’s Bluff is also located on the west side of the White River and on the Little Rock and Memphis Railroad line. DeVall’s Bluff was at one time the county seat until it was moved to Des Arc in 1875. Goodspeed’s History offers us no information on the decision to relocate the county seat and we are left to a simple analysis of the geography as a tool to evaluate the decision to create two districts.

A look at the maps of 1895 show us that Prairie County is rectangular in shape with the long axis running in a north to south direction. The White River is the major tributary with traverses the county from the north to the south along the eastern one-third of the county. The Wattensas River runs from the
east to the west and separates Des Arc and DeVall’s Bluff and is roughly the
demarcation line between the northern and the southern districts of the county
as described in Section 1 of the Act.

The two railroads as mentioned above divide the county nearly in half.
DeVall’s Bluff is located on the east-west rail line of the Little Rock & Memphis
Railroad which runs directly to Little Rock in the west and northeasterly to
Memphis. This rail line is used to this day and is now followed by U.S.
Interstate 40 and Arkansas State Highway 70.

Des Arc was located on the rail line that runs in a north-south direction
for approximately one third of the county making a connection with the line at
DeVall’s Bluff in the south and with the line running from Little Rock to St.
Louis near the city of Searcy in White County to the north. This line would
divide the northern district into east-west sections but the line does not continue
into what became the southern district. A review of current maps shows us
that the county seat of Des Arc is now far from any main transportation lines or
highways while DeVall’s Bluff is located on Highway 70 and only a short
distance from Interstate 40.

It is here that any attempt to add find a reason for the division of the
county seems to end. The county seems to have been divided because of the
geography of the area including the Wattansas River and the Wattansas Bayou which would have made travel between the northern and southern districts difficult. The economics of the rail lines may also have contributed to the decision but we may have a key to the politically divisive nature of the location of the county seat in the case of Edwards v. Hall reported at 30 Ark. 31 and decided by the Arkansas Supreme Court in 1875. (Edwards et. al v. Hall et. al., 1875)

As mentioned above, DeVall’s Bluff was the county seat of Prairie County until 1874. In May of 1874 the State Legislature passed an act with the provision that three Commissioner’s would be selected to locate the county seat and at the same time a vote would be taken for or against the removal of the county seat, then located at DeVall’s Bluff. The election was held and the vote was for the removal and it is here that the political battle for the location of the county seat became a public record.

The lawsuit was filed to block the removal of the county seat to DesArc and it was alleged in the case that at least one, if not more, of the Commissioners that were appointed were less than honest and that they were not diligent in their efforts to find a site for the new county seat or that at least one Commissioner was attempting to fulfill a political promise. The lawsuit
was based on the argument that the actions taken by the Commissioners was void because the legislative act was invalidated by the new State Constitution of 1874 and that the power of the Commissioners was lost for a failure to act in a timely manner. The court rejected both arguments and in the closing paragraph of the ruling said:

It may be that the location (of the county seat) is an injudicious one, such as a majority of the tax-payers and voters of the county do not approve. If such unfortunately should be the case, whilst it is to be regretted that injury (if any) is the result of the election of incompetent or dishonest Commissioners, their acts being in accordance with law, and the power conferred, must be submitted to.

It is in this case that we see the seeds of another political compromise made to resolve a dispute over the location of the county seat during the turbulent times of reconstruction. The dynamics of such political struggles might be more easily understood if the scope of this paper would allow but that is simply not the goal before me.

It is interesting however to give just a glimpse of what might be found if time and space allowed a study of the Commissioners who were involved. By way of example, while not much can be known in this paper of the men who were selected as Commissioners for Prairie County there are some clues. Goodspeed’s History identifies Dr. David N. White of Hickory Plains as one of
the Commissioners named as a defendant in the law suit. (Goodspeed Publishing Company, 1890, p. 735) His town of Hickory Plains is located Northwest of DesArc. But the beginnings of a dispute might be found in the neighboring state of Tennessee where Dr. White resided during the Civil War. He moved to Arkansas in 1866 and one of his eight sons became the Clerk in Des Arc.

On the other side of the legal action we find one of the plaintiff’s was J.B. Sanders, the County Examiner for Prairie County who was a resident of Hazen. Hazen is located just west of DeVall Bluff. (Goodspeed Publishing Company, 1890, p. 726) Mr. Sander’s had been a member of General Bedford Forest’s Calvary fighting in Tennessee during the Civil War. Sanders was also the chairman of the Democratic party for Prairie County. He arrived in Prairie County in 1870. Both men were members of the White River Masonic Lodge. If we knew whether these two men had differing views on the actions of Forest’s famous cavalry during the war, had conflicting political views, or disagreed in the Mason’s Lodge we might know more about the political battle in Prairie County.

Lincoln County.
As mentioned above, Lincoln County has repealed the Act of 1885 (An Act Amendatory of an Act to Establish a Separate Court in Lincoln County April 1885, 1887) which created two judicial districts; Star City and Varner. While this effectively eliminates this county from our discussion it is worthy to note that Lincoln County underwent a process very similar to that of Prairie County for the selection of the county seat including the appointment of Commissioners to locate the site in 1871, an election to move the county seat to that location (Star City), a legal contest, another vote in 1880 to remove the seat to Varner (which failed) and the subsequent construction of a courthouse at both Star City and at Varner.

Arkansas County

Act 63 of 1913 (An Act to Establish two Judicial Districts in Arkansas County, 1913) created the two districts in Arkansas County that are called the Northern District and the Southern District. Section 3 of the Act states:

That the Circuit, Chancery and Probate Courts and the Court of Common Pleas, in for the Southern District of the County of Arkansas, shall continue to be held at the County seat at DeWitt, as now provided for by law, and there shall be no change in the style of process and legal proceedings which are now pending in said Courts. (emphasis added)

Section 4 of the Act states that the courts will hold an equal number of sessions in the City of Stuttgart.
Sections 19, 20 and 21 make provision for the appointment of deputies and for their residence in each district and city. Section 22 of the Act requires the County Clerk to prepare and maintain a set of tax books for each district to be kept in the respective district “and the law governing the preparation, use and care of said tax books shall be the same as the law now is regulating tax books.” But, notably, Section 23 specifies that the financial affairs of the county “shall not be separated, but shall remain as before the passage of this Act; the entire County paying all claims, whether of the Northern District or of the Southern District.”

This Act removes the economic entitlement of each district to the funds raised in the district. Without reviewing newspaper articles from this era it is very difficult to ascertain the cause or motivation for creating the two districts. Goodspeed’s Biographical and Historical Memoirs of Arkansas County was published in 1890 before the creation of the two districts and gives no indication of a reason for splitting the county.

Geography and transportation are always suspect as factors for a division but as we have seen, with a great deal of regularity, political motivations usually play a role. I am without any evidence that such a struggle took place but in 1928, fifteen years after the passage of the Act, the new judicial district
was still without a courthouse. The county was renting facilities for the court in the Northern district and it was argued that if the county continued to rent such facilities it would eventually pay more in rental fees than it would cost to build a courthouse.

In the case of Kleiner v. Parker, County Judge, et al., 177 Ark. 671, decided in 1928, we find that the county court approved the expenditure of $50,000.00 dollars to construct a new courthouse in Stuttgart. In this case a suit was filed to block the construction by alleging that the county court falsely claimed an emergency existed and that the cost of construction was inflated. The Arkansas Supreme Court upheld the use of the emergency clause in the county ordinance and found the contract for construction was given to the lowest bidder and that no evidence of fraud was present in the contract. In this case the court did identify the county seat of Arkansas County.

The appellant says that while he does not waive the question of the proper meeting place, he believes it was held at the proper place. We think that this is a correct conclusion. Act 63 of the General Assembly of 1913 establishes two judicial districts in Arkansas county, and it provides for the holding of circuit, chancery, and probate courts and the court of common pleas in each district. But it does not provide for holding any county court at Stuttgart in the Northern district. Therefore the only place where county court can be held is at Dewitt, the county seat. (emphasis added) (Kleiner v. Parker, County Judge, et. al, 1928)
Once again we find judicial recognition of the only county seat and no indication that a second county seat was established at Stuttgart.

**CARROLL COUNTY – AN ANOMALY**

This Northwestern Arkansas County lies outside any of the clusters that I have identified. It is bounded on the north by Missouri, to the west by Benton and Washington Counties, to the south by Madison and Newton, and to the east by Boone County.

The county’s geography is dominated by portions of the Boston and Ozark Mountains which make the terrain in the western portion very steep and rugged while the eastern half has some prairie and tillable farm land. The county is drained by the White River which flows through the extreme northwestern portion of the county in a northeasterly direction. This river was dammed in the 1960’s and now forms Beaver Lake in the western portion of the county and Table Rock Lake to the north. The Kings River is the second largest in the county and enters on the southern boundary with Madison county and flows almost due north. This river has become a division line between the western and eastern sections of the county. Other smaller rivers and streams such as the Osage, Piney, Long Creek, Yokum, Keels Creek, Dry Creek, Owl Creek and the Big Indian feed into the Kings and White Rivers.
The first county seat and courthouse were located in Carrollton. This community was located on what was known as the Dubuque road from Dubuque Landing on the White River near Lead Hill and passed through the southern portion of Carroll County to Carrollton and then on thru Alpena to Boone County. This is now the route principally followed by U.S. Highway 412.

In 1869 Boone County was formed from a portion of Carroll County and this placed the majority of Carroll County north of Carrollton. As a result of the shift of the geographic center an election was held on November 1, 1869 to remove the county seat to Berryville. The election results were contested and a second election was held on November 13, 1871. Goodspeed’s Carroll County History, (Goodspeed Publishing Company, 1889, pp. 355-356) tells us that citizens again petitioned the county court to declare the election a failure but the court refused to grant the request and an appeal was filed with the circuit court. The appeal was successful and on February 22, 1875 another election was held. The vote was 557 for removal to Berryville and 529 against. In June, 1875 a lot was purchased in Berryville for the construction of a new courthouse which was built in 1880 at a cost of $8,997.50 dollars.

But the controversy over the location of the county seat did not end. In 1887 the county jail burned during a planned prisoner escape and the City of
Green Forest offered the county “a liberal bonus for the removal of the county seat.” (Goodspeed Publishing Company, 1889, p. 358) The citizens of Green Forest claimed that due to the creation of the new judicial district in 1883 Berryville was no longer centrally located for the citizens of the Eastern Judicial District and another election was scheduled for the fall of 1888. That effort failed and Berryville remained the county seat.

This county was divided by Act 74 (An Act to establish separate courts in Carroll County, 1883) which created two judicial districts and called for the construction of a new courthouse in Eureka Springs. As with the other acts discussed, this legislation was written in 23 sections, created two districts, divided the county finances and identified the county seat as Berryville. What is a little more unusual with this county is the “why” question. Why did the legislature wish to divide this county into two districts?

Unlike other counties discussed Carroll County was not on a major transportation route. In fact the county was rather isolated due to the geography. The White River bordering the extreme western side of the county did not see the development of any major river port. There were no railroads or industry located in the county in 1883 that would motivate a political struggle for the seat of government, but there was a booming medical tourism industry
in Eureka Springs founded on the “healing waters” and one very determined man; Mr. Powell Clayton.

Powell Clayton, a Brigadier General in the Union Army during the Civil War, had become the first Governor of Arkansas after war. He participated in the formation of the Republican Party in Arkansas and served a three year term as governor from 1868 to 1871. His term was highly controversial and included a declaration of martial law, the raising of a state militia to fight the Ku Klux Klan and a campaign platform based on the doctrines of “loyalty, freedom, Negro rights, economic development, and free public education for both races alike.”

During Clayton’s term as governor the State financed many of the railroads that we have discussed above. As governor, Clayton survived an attempt on his life, an impeachment action and other challenges to his leadership. In 1871 the State Legislature elected him to the U.S. Senate until 1877 when the Democratic party was able to elect one of its members to that seat.

In 1873 Clayton had become the president of the Little Rock, Mississippi River and Texas Railroad Company. In 1881 he moved to Eureka Springs where he became the president of the Eureka Springs Improvement Company (ESIC).
and began working for the construction of a railroad line to serve the development of Eureka Springs. The sole purpose of the rail line was to transport the tourists from the terminal in Missouri to the hotels and spas that Clayton’s company was constructing.

Clayton’s Improvement Company constructed the Crescent Hotel, still in operation today, the city transit company, the water and sewer system and he served on city boards. Clayton was aggressively speculating in Eureka Springs real estate development, created the first plats of the city for development and worked to make Eureka Springs a premier resort for tourists who were coming to experience the healing benefits of the spring waters.

With these developments, starting in 1881, Eureka Springs became the economic powerhouse in Carroll County. The community became the third largest city in the state with more than 5,000 residents and many more visitors who often swelled the population at times to more than 20,000 people. Powell Clayton had become a force for change and the City of Eureka a model of development.

If we consider Clayton’s experience with creating split counties we have a more complete understanding of the role he played in Carroll County. He was the governor during the years when the controversy arose over the division of
Sebastian County and the State Senator when the new state constitution of 1874 was written. He remained the leader of the Republican Party of the State until his death in 1914 and he was undoubtedly aware of the legislation that had been enacted for the division of other counties in the state. Clayton would have been aware of the advantages of having a courthouse in Eureka Springs and would also have been aware of the difficulty in traveling twelve miles and crossing the Kings River by ferry to reach the courthouse in Berryville, the county seat. We can also surmise that a person with his political influence and power would have had little difficulty in procuring the enactment of legislation that would divide the county and obtain financial control over all the tax money raised in the new district “from whatever source derived” and which would be required to be spent in that district, which only had one city: Eureka Springs.

But Eureka Springs became a “boom and bust” community. In November, 1883 a fire destroyed 75 homes and businesses and burned over five acres in the city. In October of 1888 another fire destroyed more buildings in the center of the city and 480 homes were reported destroyed leaving only four standing. In November of 1890 yet another fire destroyed forty five homes, the 60 room Perry House hotel, the original wood frame Flatiron building built in 1880, and the Grand Central Hotel. After these conflagrations the city passed an
ordinance requiring the commercial buildings to be built from stone to limit the fire hazards. These fires undoubtedly impacted the economics of Eureka Springs and it appears that the county never complied with the provisions of Act 74 of 1883 for the division of the finances or for spending tax revenues in the district in which the money was raised.⁴

Powell Clayton left Eureka Springs when he was appointed the first U.S. Minister to Mexico in 1897 and when the position was raised to embassy level he became the first Ambassador to Mexico. He resigned from his post in 1905, moved to Washington D.C. and died on August 25, 1914. The existence of any of Clayton’s personal papers is unknown to the author, but if they exist they could provide many insights to the history of Eureka Springs and the division of the county.

There have been other chapters in the division of Carroll County and some have involved the expenditure of the tax funds but only two cases were decided on the question of the county seat.

In 1992 decisions were entered by the Circuit Court in cases No. Civ. 91-44-2 and 91-118-2. The first case was IN RE: A Petition For Election To

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⁴ In 2011 as a response to the Parker v. Crow case the legislature passed an Act that eliminated the requirement to divide the finances in counties with an eastern and western district created in 1883. This act only affected Carroll County and, apparently unintentionally, Craighead County.
“Establish a Single County Seat For Carroll County With That County Seat To Be Located In The Present County Courthouse For Eastern District In Berryville, Arkansas” and the second was McClung et. al. v. Jackson, et. al. Judge John Lineberger presided and entered his Findings of Fact and Conclusions of Law on March 11, 1992. The plaintiff’s in the McClung case contended that Act 74 of 1883 created a de facto county seat in Eureka Springs. Lineberger stated:

The testimony and evidence adduced at trial reflects that an election was held in Carroll County in 1871 in which Carroll County voters approved a change of their County Seat from Carrollton to Berryville. There have been no subsequent elections in the county establishing a county seat at any other place...Act 74 of 1883 refers to Berryville as the county seat. It does not provide for a second levying court or county court to meet or transact any business in Eureka Springs...the court finds that Act 74 of 1883 does not, on its face or in application, make the city of Eureka Springs a “seat” of Carroll County...The substantial evidence is sufficient to establish that City of Berryville is the sole county seat of Carroll County, Arkansas. (emphasis added)

This order further found that the Act was not unconstitutional and that the petitions for an election were “legally insufficient to require an election.” These findings of fact and conclusions of law reflect the same analysis that has been presented at the beginning of this paper and I argue that this is applicable to each and every one of the counties discussed.

FINAL HISTORICAL CONCLUSIONS.
The creation of split judicial districts seems to have followed a similar pattern in each of the counties: (1) a political struggle for the location of the county seat and courthouse; (2) a failure by one faction to gain the relocation of the county seat; (3) a legislative compromise resulting in the creation of a new judicial district without a vote of the electorate and (4) construction of a second courthouse. The motivations for the political struggle seem to have been primarily economic, resulting from the rise of a community within the county which had some industry or physical location that would benefit from a courthouse and the services provided by the offices there. Railroads appear to be a common denominator because they facilitated the industry and growth of a community and they also provided a source of revenue thru taxation. The provisions of the Acts which divided finances provided greater motivation for the creation of the split districts although it appears that these provisions were not implemented.

Finally, the geographic rationale for the division of the counties does not seem supportable when considered with all seventy five counties. Every county in Arkansas is traversed in some way by rivers or streams which flood and which made travel difficult during some portion of the year. Many counties are bisected by the Arkansas and White Rivers and those counties did not elect to
create split districts. Every county has some terrain feature, whether rugged hills, ridges, swamps or bayou which made transportation difficult in the latter part of the nineteenth century. It appears that the geographic rationale, what I call “the river argument”, is a red herring; easily identified, simplistic, and yet believable if not examined closely.

I have given the issue of “dual county seats” a substantial amount of space because this concept has become so ingrained in Arkansas culture that even elected officials believe it to be true. This factor stands as a social and psychological barrier to the dissolution of split districts and I believe it must be overcome to gain popular support for the elimination of these districts.

I will now move to the economics of maintaining these dual courthouse operations in the counties.

THE ECONOMICS OF SPLIT DISTRICTS

The goal of this section is an attempt to “overlay” some economic considerations on the concept of split judicial districts. We have seen that the districts were created for economic and political reasons, that geography and social considerations were factors, and that some counties have rescinded the legislation or re-consolidated their districts. We know that these districts were created more than one hundred years ago and the motivating factors are no
longer the force that they once were. The economics of all of counties have changed over time; our communities are not isolated agricultural districts, transportation modes have shifted from stage coaches and river boats to railroads to highway and air travel; communications are radically different and the public’s utilization of government offices has changed in ways that could not be imagined in 1875 or 1913. It would not be an exaggeration to say that the concepts of court operations has evolved into something that was only seen in science fiction fifty years ago. Now judges handle proceedings via teleconferencing, attorneys file documents electronically, witnesses testify from electronic notepads, court records are accessible on-line and the distances between court facilities is traveled in minutes, not days.

COST AND EFFICIENCY – THE TOOLS

How do we begin to understand the cost associated with court operations? First you must know that here are many components to such costs and one of those is the cost associated with processing a case in the court system. The cost of moving one case through the system is the foundational component of determining the overall costs of operations. To be simplistic, it is analogous to the cost of one product that a store sells to its customers. And if you don’t
understand what it costs to put that item in the customer’s basket you may not be able to stay in business. So, let us first look at how we determine costs.

The National Center for State Courts developed a program for the training of court administrators called CourTools. One element of this program addresses the cost associated with the processing of cases and a method for the evaluation of those costs. In this module of the training program the purpose for making such an assessment was provided and I believe is applicable to any evaluation of court costs. The purpose was explained by saying:

“Monitoring cost per case, from year to year, provides a practical means to evaluate existing case processing practices and to improve court operations. Cost per case forges a direct connection between how much money is spent and what is accomplished. This measure can be used to assess return on investment in new technologies, reengineering of business practices, staff training, or the adoption of “best practices.” It also helps determine where court operations may be slack, including inefficient procedures or underutilized staff.”

The CourTools training provides a methodology for completing this cost per case assessment but it is clear that such an assessment involves a level of expertise and an expenditure of time that is beyond the ability of county personnel. Such an assessment can only be made by a dedicated research staff in conjunction with a full audit of clerk workloads, judicial workloads, procedures and costs. So, here is the first thing we must understand: This is not something
that you do without allocating enough resources. If you fail to allocate sufficient resources the conclusions you reach may not be accurate.

THE FLORIDA STUDY

One example of a court cost study and the difficulties of obtaining reliable data can be seen in the Study of Cost Factors and Efficiencies performed in 2007 by the Florida Clerks of Court Operations Corporation and authored by Thomas Howell Ferguson, P.A. (Thomas Howell Ferguson, 2007) This study did not follow the specific guidelines of the CourTools methodology but it did repeatedly acknowledge the need for quantifiable data. This study is worth reviewing for the findings and as an example of areas that directly affect court costs.

In this comprehensive study of 67 Florida courts the authors identified approximately twenty factors which influence the average unit cost (AUC) of processing a court case. Most factors were considered to be external to the clerk’s offices or in the workflow process which included the type of case that was being processed. The study ultimately identified eight cost factors that seemed to be common to all the courts in the study and which contributed to the increase in AUC when they were present. It was clearly stated by the authors in their Executive Summary that the “AUCs should be used as measures or
indicators of performance efficiency with caution and should not be used to compare one county to another.” (Thomas Howell Ferguson, 2007, p. 2) This cautionary note was based upon observations that counties have different AUCs attributable to size, populations, resources and external factors.

The cost factors identified in the study require careful examination to fully evaluate their application, but for the purposes of this paper it is useful to list the eight found most common to the courts.

1. Multiple Courthouse Facilities and Remote Locations Requiring Court Staff.
2. Staffing Standards and Workload.
4. County and Clerk Workforce Socio-Economics and Demographics.
5. Type of Case Processed.
7. Multiple Government Entities within the County.
The Executive Summary of the Study also identified different cost factors impacting small, medium, large and very large counties. The report again cautions the reader to avoid county to county cost comparisons by stating:

The scope of the study/survey precluded obtaining detailed AUC information from each county. For example, if the overall unit case cost is $87.50 in County A, and $115.90 in County B, the difference of $28.40 per case can be attributed in total to the cost factors that are enumerated in our county survey (type of case processed, judicial orders, etc.) but not segmented and detailed by cost factor. The difference of $28.40 per case cannot be itemized ($10.40 due to type of cases processed, $5.42 due to judicial orders, etc.) because of the extensive financial analysis it would entail from both the Clerk staff and the consultant. Where the information was readily available from the counties, it is discussed in the Quantitative Examples section of each cost factor, to give the reader of the report an idea of the type of fiscal impact each of these cost factors can have in the various Clerk offices. (Thomas Howell Ferguson, 2007, p. 2)

This admonition with regard to the segmentation or itemization of cost is due to the amount of data that individual counties provided (some complete and some less complete) and individual quantitative examples are necessary to offer insight to the actual costs. As an example, in the review of Judicial Orders, Requirements, and Operating Policies and Procedures, (Thomas Howell Ferguson, 2007, p. 14) the Study concluded that a judge’s administrative orders impact the Clerk’s cost of providing mandated services.

“The frequency and breadth of these administrative orders can impact costs of a particular case type (cases which include courtroom hearings or trials) or can impact costs across the board
(requirement to process paper case files in a particular manner).” Most significantly for the judiciary the Study found that “...the way in which cases are processed and adjudicated can affect the overall cost per case. Rescheduling of cases will increase the unit cost of that case type.” (Thomas Howell Ferguson, 2007, p. 15)

Another example of the impact that judicial requirements is given for Brevard County where the clerk’s staff is required to tab files in a particular way due to the judge’s administrative order. They estimate this tabbing procedure takes the clerks an average 1 – 1.5 hrs per day. At $9/hr wage plus $1,000.00 per month benefits ($14.77/hr) this costs the clerk an estimated $163,208.00 per year.

These quantitative examples point to the need for a detailed study in any jurisdiction that is interested in efficient operations. Such studies could determine the impact of judicial actions on the costs of processing cases and especially for the need to implement a uniform case management system which would set time standards for the disposition of cases thus avoiding the costs of delay.

Yet another example of judicial impact is found in the cost imposed on clerical staff when a case is continued without good cause. The work involved in filing orders for a continuance, providing new scheduling information, mailing notices, making docket entries (even electronically) and the cost of simply “showing up” in the courtroom are costs which can be avoided or
reduced through efficient judicial management and which is often overlooked because judges do not consider or simply unaware that their daily decisions impact the cost of operations and attorneys have no reason to be concerned with the costs of a continuance. Another factor that cautions against comparing judicial districts is simply population growth. Arkansas, like Florida, has experienced greatly different growth patterns across the State and the counties that have split judicial districts are no different in terms of the variables that have influenced these patterns including geography and economics.

Some of the split districts in Arkansas have seen increases in population which may be placing greater demands on limited resources and other counties have seen population declines and reductions in their tax base which places another type of strain on their ability to operate and maintain two. If the State Legislature alters the tax basis within the State or reduces the turn-back amounts to counties, or if revenues decline in a county due to loss of property values, population or industry, the county is still obligated to operate the facility and the courts are obligated to operate there regardless of the financial impact until such time as the legislature repeals the Act which created the two districts.

Arkansas’ split judicial districts are therefore left in a situation similar to that discussed in the Florida Study where multiple facilities create an
unsustainable financial burden and Florida made some important findings that are undoubtedly uniform across the national judicial landscape. In the Florida Study one factor that was evaluated was the cost of multiple courthouse facilities and the associated costs for their operation and the cost savings that could be realized if locations were consolidated. The estimated savings ranged from $81,000 per year in Nassau County to $435,000.00 in Brevard County. (Thomas Howell Ferguson, 2007, p. 11) The Study stated that “Full service locations replicate the fixed costs of the main courthouse, which increases the overall cost per case.” In reviewing the statements of Clerks in Florida on the issue of multiple facilities the Study found that in Brevard County:

“Clerk staff estimates that if there was one main courthouse strategically located in the central part of the county, they could reduce staff by at least 25% because of replication of functions at the various locations. Assuming a cost of an entry level clerk at $32,240.0 ($8.50/hr wage plus $7/hr benefits), the Clerk could save at least $435,000.00 if there was one courthouse.” (Thomas Howell Ferguson, 2007, p. 15)

The savings that are attributable to just the two factors discussed above, judicial awareness of cost factors and centralization of the facility, could save Brevard County $600,000.00 dollars per year. The magnitude of the savings that could be realized across the State of Florida would be significant if these factors are applicable in the majority of jurisdictions.
The need for accurate quantitative data to make determinations of actual
costs is apparent from these estimates made in Florida courts. This would be as
true in Arkansas counties with split judicial districts.

The complexity of making accurate evaluations of the costs of court
operations addressed in the 2007 Florida Study, and the methodology provided
in the CourTools training program to find a cost per case dollar figure, still leave
us with without a foundational tool for accurate cost assessments.

Neither the Florida Study nor the CourTools method identify the
underlying economic methodology they utilized and as a consequence we do not
know if the measurements achieved are accurate or if other unidentified factors
would provide different results. In the Florida Study the authors repeatedly
admonished us to view the results with caution because of the lack of data
available due to the limits of the study. In the CourTools methodology it is
apparent that it fails to address the many complexities of the external factors
which may impact the real costs for the processing of cases and provides only a
simple or rough approximation of costs based on a simple formula. These
shortcomings compel us to search for a more satisfactory economic methodology
or an economic theory that provides a framework to analyze or evaluate the cost
of doing business. There are three general forms of public cost analysis utilized
in performing evaluations of public programs or operations. These are cost
determination studies, cost effectiveness analysis and cost-benefit analysis. Cost-
benefit analysis is the preferred method of evaluation and has been used by the
Federal government since the 1930’s. However, we know that local government
operates in a much different way than federal projects. In response to those
differences the concept of Transactional and Institutional Cost Analysis (TICA)
as an approach to cost-benefit analysis has developed.

TRANSACTIONAL AND INSTITUTIONAL COST ANALYSIS (TICA)

A variety of studies utilizing TICA have been performed on specific types
of cases and a review of this methodology may give us a better understanding of
the problems and what we are trying to accomplish. One area that has been
extensively evaluated has been the costs of processing problem solving court
cases such as drug court cases and one particular study may be especially helpful
to us here and provide a framework for future evaluations of case costs.

In 2004 the issue of evaluating the cost of drug courts was addressed in
the paper titled Enhancing Cost Analysis of Drug Courts: The Transactional and
Institutional Cost Analysis Approach. (NPC Research, Dave Crumpton, M.P.A.,
Shannon Carey, Ph.D., Michael Finigan, Ph.D., 2004). In conducting an analysis
of drug court operations this work addressed the challenges of defining costs
and the factors of organizational complexity. The authors also provide us with an overview of economic theories that have been utilized in cost-benefit analysis for the evaluation of state and local governmental programs and offer an approach to the cost-benefit method which is known as Transactional and Institutional Cost Analysis (TICA). The authors state that

Transaction and institutional Cost Analysis (TICA) is an approach to CBA (cost-benefit analysis) that meets a primary challenge for the application of cost analysis on the local level – the identification of costs. The groundwork for the TICA approach is organizational analysis informed by transaction cost economics, institutional theory and practical public administration. TICA can be applied to specify the resource commitments of multiple organizations to complex public programs and the consequences of such in meaningful detail. (Dave Crumpton, 2004, p. 8)

Transaction cost economics is further defined as largely focusing on the “transaction” or a consideration of how organizations seek to economize on costs. For our purposes we can think of a “transaction” as processing a court case. TICA attempts to provide the researcher with a better understanding of the “real life” context within which agencies operate. Some of the influences which impact this context are program budgeting, performance budgeting, zero-based budgeting and the guidance of professional organizations.

This approach seems to address many of the concerns expressed by the authors of the Florida Study and, like the Florida Study, it acknowledges the
need for the cost analyst to “accumulate extensive understanding regarding the ways that agency resources are combined to make …programs operate.” The authors state that “[A]ssessing the costs associated with public sector programs is a complex matter that resists the application of simple conceptualizations or formulas” (the CourTools approach) and that “capturing the total costs of a program to the taxpayers including time and resources…is one of the critical components of accurate cost analysis.”

The TICA approach believes that the organizational complexity in public programs, such as court proceedings, requires, as a first step, an organizational analysis. (Dave Crumpton, 2004, p. 4) The underlying rationale is that you cannot understand or evaluate the cost to the taxpayer if you do not first understand the operation of the organizations that are involved in the process. In short, you cannot obtain an accurate cost analysis if you do not factor in all the agencies which are involved in processing a case. In a criminal case this may include the cost of law enforcement, the prosecuting attorney, the public defender, the clerk’s staff and the judiciary and the probation offices. Other types of cases, such as civil or domestic relations cases, require separate organizational evaluations to determine the cost per case.
As a key concept of TICA the authors state that “The organizational assessment performed as part of TICA supports the development of understanding of the resource and outcome effects that result from organizational commitments to extra-organizational activities”. (Dave Crumpton, 2004, p. 11)

This assessment requires a “clear mapping of the organizations that contribute resources to the service delivery system under consideration.” (Dave Crumpton, 2004, p. 19) and that a “Through review of administrative documents, interviews of knowledgeable informants and observation of program activities, the researcher will identify all organizations that contribute to the operational environment of the …court. “ (Ibid p. 19)

This reflects some of the underlying concerns of the Florida Study and points us to the steps needed to make a full evaluation of the costs of processing a case through the legal system. The TICA approach proceeds to a phase of transactions analysis; development of clearly understood activities and activity related costs. The end product of this analysis stage is a view of the ways in which various resources are applied and it gives us a view of the “real world” activities of the courts that will not appear on an organizational chart.
A further description of this form of evaluation is beyond the scope of this paper but it should be noted that the approach of the Florida Study was incomplete due to limitations imposed on the researchers and the National Center for State Courts, CourTools, program does not give us a true evaluation of the costs of processing cases.

The point of this entire discussion is simply this: When we are attempting to evaluate the costs imposed for the operation of dual courthouse facilities in a split judicial district, the analysis goes beyond a review of the percent of the county’s budget spent to keep the lights on or staff the building. The true costs for the operation of a court facility involve multiple agencies who are engaged in processing cases through the legal system. The determination of actual costs are far more complex than estimating the number of employees needed in a clerk’s office to file documents, make entries on docket sheets or answer questions for people who walk into the building; the costs can only be understood when the complete organizational structure is fully understood and the “below the radar” activities are identified because they contribute to the real costs of operations and those costs are much higher than a simple analysis would indicate.

COURT COSTS AND FEES
The second component of the economic equation is the relationship between the fees charged or assessed for the use of the courts and the cost of operations. To state what seems to be obvious, (and the point of the above discussion) if you don’t know what it costs to run the business you can’t know what you should charge for your services. From the study conducted in Florida, and the TICA approach, we know that the factors involved in determining the cost of running the court system are very complex and are determined by factors both internal and external.

A number of court cost studies have been conducted across the country for the purpose of determining the level of fees which should be assessed in courts. (Sunset Advisory Commission, Court Costs and Fees Study, Report to the 80th Legislature State of Texas. May 2007; Bernalillo County Metropolitan Court DWI-Drug Court Cost Study, The University of New Mexico, May 2009; Report and Recommendations of The Joint Committee to Study Court Costs and Filing Fees, State of Ohio, July 2008; Court Costs and Fees Handbook for Justice Courts, State of Court Administration, Texas, October, 2005). These studies were designed to assist in determining whether or not the fees paid meet the funding needs of the courts and reduce the cost per case to the taxpayer.

A SIMPLISTIC COST ANALYSIS
As can be seen from the discussion on the complexity of cost analysis it is beyond the scope of this paper to present an accurate review of any county’s operational costs or to accurately assess the internal or external factors for nine counties to arrive at an average cost per case processed. So what can be done to open a dialog about the costs of maintain split judicial districts? What can a local official do without paying for an extensive cost-benefit analysis or attempting to utilize the formula provided by the CourTools program.

For the purposes of this paper I propose that the documented costs for the operation of the physical facilities for one of the identified counties may be a starting point to construct a crude analysis and see if there are savings that can be achieved. I will use the CourTools formula in an attempt to demonstrate what can be achieved but I must note that CourTools requires the compiling of case dispositions by major case type, a review of all court expenditures and the a complete “inventory” of all judicial officers and court staff. My attempt at this evaluation is missing the last component because it is beyond the scope of this paper.

I will attempt to utilize the case statistics as reported to the Arkansas Administrative Office of the Courts (AOC) to determine the number of cases handled by one jurisdiction to arrive at a simple cost per case figure and I will
utilize the reported administrative personnel costs for clerks and janitorial staffing where available, to arrive at a total operational cost. Again, this analysis is crude but it may be a starting point for discussion at the local level of the issues involving sustainability of split judicial districts.

The statistics used for case load will contain inaccuracies due to the methodology utilized by the Administrative Office of the Courts (AOC). Specifically, in criminal case reporting AOC reports each charge or “criminal count” as a separate case and uses this method because there are no guidelines established in the state for the filing of criminal charges. Prosecuting attorneys in the state may file multiple cases or charges against one criminal defendant when in fact all the charges are processed and disposed of simultaneously.

Without a uniform system of filing the only method plausible is to count each charge. This lack of a uniform guideline for filing cases permits local prosecutors to inflate their statistics and appear to handle many more cases than are actually transacted. The end result is that reported court statistics for each judicial circuit may be substantially inflated creating the appearance that some judges and prosecutors are doing a great deal of work while others seemingly have a smaller case load, this reporting method may result in the appearance that a jurisdiction’s cost per case is very high or low. However, even with this
apparent disparity, I feel that it provides a starting point for evaluation and perhaps demonstrates the need for a comprehensive workload study for Arkansas courts.

The counties for which data has been received and reviewed are Carroll, Craighead, Prairie, Yell, Lincoln, Arkansas and Franklin. The population in these counties varies greatly as does their individual economic resources. I have selected Craighead County as a subject because of the disparity between the reported criminal workload for the two districts in that county: Jonesboro and Lake City. Additionally, this county is representative of an area that has seen growth and a diverse economic base.

I will not attempt to estimate the expenditure cost for the time spent by judges and their staff since Arkansas has not performed a workload study or assessment since 2004. (Arkansas Circuit Court Apportionment Commission Report to the Eighty-Fifth Arkansas General Assembly and the Arkansas Supreme Court) Data for other states is available but the application of such data, even when prepared by the National Center for State Courts, would be speculative and therefore I will decline the opportunity to make comparisons which could be misleading. Further, the focus of this study is the cost of facility
operation and the expenditure of judicial resources should be constant although judicial policy and administration does affect the cost of processing cases.

As discussed above, the complexities of a complete cost per case study are beyond the scope of this paper. We will see that the cost of clerk staff is a factor which must be considered since duplication of facilities requires duplication of staff. But, again, a workload study for clerk staff cannot be completed for this paper.

**COUNTY BUDGETS.**

The cost of operation for physical facilities is reported in each county’s Budget Detail Report prepared by the county treasurers each year. These reports provide the data for the amounts budgeted at the beginning of each calendar year and the end of year actual expenditures. The detail of these reports varies but certain elements or expenditures are common. They are, in no particular order of importance:

1. Personnel Services  
2. Supplies  
3. Communications  
4. Insurance  
5. Utilities
6. Building Improvements

7. Advertisement & Publications

8. Equipment leases

One recurring problem with an evaluation of the reported budgets is a failure to report separate costs per facility. County treasurers utilize a system which can be customized to classify budget items in a variety of ways. As a note of caution, this is an accounting procedure that has the potential to hide or disguise total expenditures by spreading the cost of one category over several departments and makes an unskilled audit very difficult.

CRAIGHEAD COUNTY – ONE EXAMPLE OF BUDGET ANALYSIS

Using Craighead County as an example we see that the data for Lake City facility does not contain the building maintenance costs or all of the expenditures the county may make for facilities. Many of the operational expenses seem to be divided between departments and the departments do not differentiate between the two facilities in their individual budgets. As an example, the county clerk and the circuit clerk’s offices may each have a budget for utilities or insurance even though their offices are in the same physical location. Again, this makes an accurate accounting impossible without a full audit of each department that would identify each receipt and warrant for
payment as it pertains to a particular office or building. This type of audit is beyond the ability of the author to conduct for the nine counties examined or for even one such as Craighead.

The following expenditures are taken from the reports of the Craighead County Treasurer for the year 2012.

CRAIGHEAD COUNTY BUDGET 2012 End of Year Expenditures

**County Clerk’s Office**

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<tr>
<th>Item</th>
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<tr>
<td>Salary Expenses</td>
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<td>Office Supplies</td>
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<td>Small Equipment</td>
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<td>Utilities &amp; Elect</td>
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**Circuit Clerk’s Office**

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<td>Utilities &amp; Elect.</td>
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### Craighead County Total Costs

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### County General Building Fund

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<td>Janitorial Supplies</td>
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<td>Clothing &amp; Uniforms</td>
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<td>Auto Maint.</td>
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### Lake City Clerks Office

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<tr>
<td>Salary</td>
<td>$151,371.58</td>
</tr>
<tr>
<td>Office Supplies</td>
<td>$6,737.84</td>
</tr>
<tr>
<td>Small Equipment</td>
<td>$3,053.90</td>
</tr>
<tr>
<td>Sundry</td>
<td>$183.60</td>
</tr>
<tr>
<td>Telephone</td>
<td>$1,509.28</td>
</tr>
<tr>
<td>Postage</td>
<td>$36.00</td>
</tr>
<tr>
<td>Liability Insur.</td>
<td>$424.70</td>
</tr>
<tr>
<td>Fire Insur.</td>
<td>$425.13</td>
</tr>
<tr>
<td>Utilities &amp; Elect.</td>
<td>$1,682.35</td>
</tr>
<tr>
<td>Gas</td>
<td>$136.00</td>
</tr>
<tr>
<td>Water</td>
<td>$159.61</td>
</tr>
<tr>
<td>Copier Lease</td>
<td>$2,935.31</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$168,614.80</strong></td>
</tr>
</tbody>
</table>

**CRAIGHEAD COUNTY TOTAL COSTS FOR ABOVE DEPARTMENTS** - $2,006,184.00
This total cost attributed above to the clerks and the building fund do not include amounts reported paid by the County General Fund, County Judge’s Office, County Treasurer, County Tax Collector, County Assessor, County Computer Services, Veteran’s Services, or from the Clerk’s Automation Funds.

It should be noted that the above data was taken from the 2012 budget detail reports but that the Craighead County Treasurer provided a hand written itemization for the two courthouse facilities. That report reflects the following summary for the two courthouse facilities which includes all of the departments that I did not itemize in the above budget detail. This summary may give us a better picture of the costs of operations.

<table>
<thead>
<tr>
<th></th>
<th>Total Budgeted</th>
<th>Total Expended</th>
<th>Utilities &amp; Com.</th>
<th>Maintenance</th>
<th>Employee Cost</th>
<th>Total Revenue</th>
<th>Total Funds in Reserve</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Craighead County Courthouse</strong></td>
<td>$6,847,641.00</td>
<td>$6,529,497.00</td>
<td>$174,275.00</td>
<td>$562,823.00</td>
<td>$5,209,284.00</td>
<td>$7,700,717.00</td>
<td>$500,000.00</td>
</tr>
<tr>
<td><strong>Lake City Courthouse</strong></td>
<td>$619,531.00</td>
<td>$513,862.00</td>
<td>$10,694.00</td>
<td>$62,535.00</td>
<td>$226,032.00</td>
<td>$385,000.00</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>

Total expended for all court operations: $7,043,179.00
Note: This would appear to result in a positive cash flow but the State takes more than 50% of revenue. As an example the first $110.00 of each $150.00 filing fee is allocated to the State Administration of Justice Fund.

It appears that all of the county departments share some of the expenses for the operation of the facilities. However, for simplicity purposes I have only utilized those offices or budgets which may be directly involved in the processing of cases for the courts or for the operation of the facility. Additionally, with the exception of the salary paid in the Lake City Clerk’s Office, I have removed all salary costs which includes social security, retirement, health insurance, unemployment and worker’s compensation from my final estimates of operational costs.

Based on the treasurers actual expenditures for the court facilities I will make an allocation of 7% of all expenses associated with the reported budget expenditures above to the operation of the Lake City court facility and the remaining 93% to Jonesboro. With the 7% allocation of cost for operating the Lake City Facility could be designated as follows:

Lake City Clerk $226,032.00
(includes all employee expenses)
Bldg. Maint. Fund $62,535.00
Utilities and communications $10,694.00

Total Expenditures for Lake City $299,261.00
My estimated cost for the operation of the Lake City facility represents 7% of the budgets listed. A 7% figure may be conservative but not unreasonable in light of the treasures report to the author.

It should be noted that these figures do not represent any income earned by the county which offsets the costs of operation. However, the income should remain constant whether there are two facilities or only one. I have also not made any attempt to determine the impact or costs on the Jonesboro facility for record storage or the requirement for additional personnel who would handle the additional workload from Lake City.

This should be viewed as a starting point for a full analysis or audit of the operational costs for the two facilities. Only when that is completed will it be possible for the county officials to actually understand the savings that may be realized for the county.

**COST PER CASE ANALYSIS**

Because I have a lack of information or data, I am unable to apply the National Center for State Courts, CourTools, cost per case formula as outlined above. I will attempt to provide a very basic evaluation using two of the
CourTools measurements as a suggested starting point for any local official who desires to evaluate some cost factors.

To determine the cost per case for the operation of the two facilities it is first necessary to determine the actual case load or how many cases are being processed for the county. The cases are reported to the Arkansas Supreme Court and statistical reports are filed for each year and reported on the Arkansas Supreme Court’s web page.

The individual clerk’s offices for the districts could prepare a report on the number of cases filed for each division, criminal, civil, domestic relations, probate and juvenile, but that is not typically done and the retrieval of such data is based on the numbers assigned to each file opened. As an example, beginning in 2012 the civil cases might be numbered CV2012-1, CV2012-2, etc. By checking the files or the court’s record books the clerks can report the highest number recorded for each division in each district. However, this is not a satisfactory method of determining the number of cases that are actually heard by the courts because many closed cases are “reopened” and utilize the original file numbers. The effect is that a case from the year 2000 or 1999 may be opened, fees paid, and clerk and court time consumed to process the old case. Additionally, a simple “case count” does not reflect the number of hearings
conducted for each case. Every hearing requires an action by the court staff and the clerk’s office which contributes to the workload within the office and, if an accurate study were to be performed, would be a significant factor. That workload study, or inventory, is in fact the third element of the CourTools program and necessary to achieve a more accurate, although incomplete, assessment.

For Craighead County we find that the statistics for criminal cases are now reported by district but that the other divisions, civil, domestic relations, juvenile and probate, are still reported to the Supreme Court as totals for the county. This consolidation of statistics leaves us without a method to make even a rudimentary estimate of the cost per case for the individual districts without making some unsupported assumptions which I will do.

As an initial assumption, we can see from the reported criminal statistics that the activity in the Lake City District is significantly less than that of the Jonesboro district. Of the total cases reported for Craighead County at the end of 2012 the Lake City District handles 5% of the criminal case load. If this percentage is applied to the other divisions as well, we could conclude that Lake City courthouse handles a small fraction of the cases filed in Craighead County. A second assumption, based purely on judicial experience, is that the criminal
case load numbers are representative of the other divisions workload as well. A third assumption is that the number of probate cases filed each year is a small percentage of all cases filed because the bulk of those cases involve decedent’s estates and guardianships although, because probate cases take an exceptionally long time to complete, the number of open cases is very high.

Looking at the case load figures for Craighead County reported below we see that there are 1,381 civil cases, 1,828 domestic relations cases, 1,040 juvenile cases and 343 probate cases filed in 2012. My assumption is that the criminal cases only represent one third of the total number of charges filed which would make Craighead counties criminal case filings total 1,432. This would bring the criminal case filings in line with the other divisions case loads.

The total of all criminal charges and new case filings for both districts of Craighead County in 2012 was 9,019. Again, this number may be skewed because there were 4,297 criminal charges filed and this could easily represent only one third of actual cases if they were reported in a different manner.

I would submit, based on my experience as a circuit judge in Arkansas, that the actual number of criminal cases would actually be approximately 36% of the total number of charges filed. As an example, the criminal case statistics
for another of the split districts, Carroll County, for the past four years show the difference between the charges and the cases opened.

<table>
<thead>
<tr>
<th>Year</th>
<th>Charges filed</th>
<th>Cases opened</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>946</td>
<td>271</td>
<td>28%</td>
</tr>
<tr>
<td>2010</td>
<td>721</td>
<td>195</td>
<td>27%</td>
</tr>
<tr>
<td>2011</td>
<td>363</td>
<td>164</td>
<td>45%</td>
</tr>
<tr>
<td>2012</td>
<td>281</td>
<td>191</td>
<td>67%</td>
</tr>
<tr>
<td>Total</td>
<td>2,311</td>
<td>821</td>
<td>35.5%</td>
</tr>
</tbody>
</table>

If the total cases for Carroll County for the past four years are evaluated by district we would find that the percentages of cases filed in all divisions show a similar pattern:

<table>
<thead>
<tr>
<th>Carroll County</th>
<th>Eastern District</th>
<th>Western District</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil</td>
<td>1,428</td>
<td>581</td>
<td>41%</td>
</tr>
<tr>
<td>Domestic Rel.</td>
<td>1,474</td>
<td>323</td>
<td>22%</td>
</tr>
<tr>
<td>Juvenile</td>
<td>264</td>
<td>42</td>
<td>16%</td>
</tr>
<tr>
<td>Probate</td>
<td>576</td>
<td>222</td>
<td>39%</td>
</tr>
<tr>
<td>Criminal</td>
<td>1,069</td>
<td>247</td>
<td>23%</td>
</tr>
<tr>
<td>Total</td>
<td>4,811</td>
<td>1,415</td>
<td>28%</td>
</tr>
</tbody>
</table>

The importance of knowing the actual number of cases filed permits the county to at least estimate the total of filing fees that could, potentially, be collected. In the matter of Carroll County we can see that there was a four year total of 6,226 cases filed and that if a $150.00 dollar filing fee was collected the county would have realized $249,040.00 over a four year period to offset the costs of operation after the State was paid the first $110.00 of each filing fee. It is here that you will want to sigh, scratch your head, and then embrace the need
for an accurate audit of every county’s records for the collection of fines and costs before you can grasp the significance of the numbers.

But, in an effort to gain the big picture and construct some kind of framework for evaluation, we can continue to examine Craighead County.

If the actual number of criminal cases filed in Craighead County totaled 1,432 it would reduce the total number of all reported cases to 6,155 in 2012 for both districts. As we have seen, an accurate case count is necessary as an initial step in determining a simple cost per case figure and it is easily seen that the collection of fines and costs can be a significant factor for the county.

While the criminal charges, or criminal cases, that are handled by the courts represents a significant number, for the purposes of an economic or cost evaluation it must also be remembered that these cases do not require the state to pay filing fees. These fees are charged to the defendant and may or may not be paid depending on a variety of circumstances including the collection efforts made by elected official designated for the collection of the fees and costs. The same is true for the filing of juvenile cases even though the court must process the cases in the same manner as any other i.e. open a file, prepare docket sheets and make data entry. However, in virtually all civil, domestic relations and probate cases a filing fee must be paid by one of the parties to initiate the action.
The payment of these fees, by a criminal defendant or a civil litigant, have a direct impact on the cost per case to the county.

The Craighead county case load for 2012 is represented by the following statistics:

**CRAIGHEAD COUNTY CASE STATISTICS   2012**

<table>
<thead>
<tr>
<th>CRIMINAL CHARGE SUMMARY</th>
<th>Jonesboro</th>
<th>Lake City</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital</td>
<td>1</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Felony</td>
<td>1589</td>
<td>78</td>
<td>1667</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>835</td>
<td>89</td>
<td>924</td>
</tr>
<tr>
<td>Post Conviction</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Probation Revocation</td>
<td>853</td>
<td>10</td>
<td>863</td>
</tr>
<tr>
<td>Violation</td>
<td>145</td>
<td>12</td>
<td>157</td>
</tr>
<tr>
<td>Writ</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Charges Disposed</td>
<td>2,783</td>
<td>180</td>
<td>2,963*</td>
</tr>
<tr>
<td>Total Pending Cases</td>
<td>3,430</td>
<td>189</td>
<td>3,986*</td>
</tr>
<tr>
<td>Cases &gt; 1 year old</td>
<td>1,844</td>
<td>76</td>
<td>1,920</td>
</tr>
<tr>
<td>Total Charges Filed 2012</td>
<td>4,064</td>
<td>233</td>
<td>4,297</td>
</tr>
</tbody>
</table>

**CIVIL CASES**

<table>
<thead>
<tr>
<th>Torts</th>
<th>Contract</th>
<th>Equity</th>
<th>Miscel.</th>
<th>Cases Terminated</th>
<th>Cases Pending</th>
<th>Cases &gt; 1 year old</th>
<th>Total Cased Filed 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>250</td>
<td>474</td>
<td>107</td>
<td>268</td>
<td>802*</td>
<td>1,099*</td>
<td>1,381</td>
</tr>
</tbody>
</table>

**DOMESTIC RELATIONS_CASES**

<table>
<thead>
<tr>
<th>Divorce</th>
<th>Divorce w/support</th>
<th>Annulment</th>
</tr>
</thead>
<tbody>
<tr>
<td>254</td>
<td>106</td>
<td>1</td>
</tr>
<tr>
<td>Category</td>
<td>Stats</td>
<td></td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Sep. Maint.</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Custody/Visit</td>
<td>97</td>
<td></td>
</tr>
<tr>
<td>Child Support</td>
<td>328</td>
<td></td>
</tr>
<tr>
<td>Paternity</td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>Paternity w/support</td>
<td>135</td>
<td></td>
</tr>
<tr>
<td>Domestic Abuse</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Other Dom. Rel.</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Body Attach.</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Foreign Judge.</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Cases Terminated</td>
<td>1,675*</td>
<td></td>
</tr>
<tr>
<td>Cases Pending</td>
<td>1,141*</td>
<td></td>
</tr>
<tr>
<td>Cases &gt; 1year old</td>
<td>450</td>
<td></td>
</tr>
<tr>
<td>Total Cases Filed 2012</td>
<td>1,828</td>
<td></td>
</tr>
</tbody>
</table>

**JUVENILE CASES**

<table>
<thead>
<tr>
<th>Category</th>
<th>Stats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delinquency</td>
<td>141</td>
</tr>
<tr>
<td>Dependent/Neglect</td>
<td>47</td>
</tr>
<tr>
<td>Extended Juv. Jur.</td>
<td>0</td>
</tr>
<tr>
<td>FINS</td>
<td>75</td>
</tr>
<tr>
<td>Juv. Adopt.</td>
<td>7</td>
</tr>
<tr>
<td>Juv. Commit</td>
<td>0</td>
</tr>
<tr>
<td>Juv. Contempt</td>
<td>0</td>
</tr>
<tr>
<td>Juv. Custody/Sup.</td>
<td>12</td>
</tr>
<tr>
<td>Juv. Foreign Judg.</td>
<td>0</td>
</tr>
<tr>
<td>Juv. Guardianship</td>
<td>3</td>
</tr>
<tr>
<td>Juv. Other</td>
<td>3</td>
</tr>
<tr>
<td>Juv. Paternity</td>
<td>1</td>
</tr>
<tr>
<td>Probat. Revocation</td>
<td>60</td>
</tr>
<tr>
<td>Review Hearing</td>
<td>0</td>
</tr>
<tr>
<td>Termin. Parental Rights</td>
<td>30</td>
</tr>
<tr>
<td>Cases Terminated</td>
<td>1,043*</td>
</tr>
<tr>
<td>Cases Pending</td>
<td>379*</td>
</tr>
<tr>
<td>Total Cases Filed 2012</td>
<td>1,040</td>
</tr>
</tbody>
</table>

**PROBATE CASES**

<table>
<thead>
<tr>
<th>Category</th>
<th>Stats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption</td>
<td>111</td>
</tr>
<tr>
<td>Adult Protec. Cust.</td>
<td>17</td>
</tr>
<tr>
<td>Alcoholic Commit.</td>
<td>9</td>
</tr>
</tbody>
</table>
Ancillary Admin 8
Civil Commit. 133
Conservatorship 4
Decedent Estate 738
Guardianship Probate 1910
Narcotic Commit. 6
Other –Probate 25
Small Estate 23
Trust Admin. 21
Cases Terminated 214
Cased Pending 3,005*
Total Cases Filed 2012 473

*Includes cases more than one year old.

As previously stated the total of all cases filed for 2012 is 9,019 and the cost for operating both courthouse facilities was: $7,043,179.00 based on the treasures report of total expenditures for the two facilities. Using a very simplistic method this would make the cost per case $780.00 dollars for both districts. If we reduce the number of criminal charges by two thirds to reach a total number of criminal cases, as discussed above, and a total case load of 6,155 for both districts, the cost to process a case from start to finish would rise to $1,144.00 dollars in Craighead County. But, as stated above, this may not represent the number of old cases reopened so there is missing data.

The current filing fee charged for the opening of a case is set by the State and is currently $150.00. If Craighead County collected all filing fees, including those assessed to criminal defendants in 2012, the total for 6,155 cases would be
$923,250.00 dollars before the State takes its share in the amount of $677,050 leaving the county with $246,200.00.

Again, let me stress that this calculation assigns all costs of the reported departments to the processing of cases and does not assign any costs to the other functions that the offices engage in, such as the filing or recording of deeds and other documents, providing other public services such as election activities or maintaining voter registration roles. We can quickly see that these types of activities should be factored into the calculations and could reduce our cost per case number by a significant amount. This is the point of Transactional and Institutional Cost Analysis (TICA) which tells us we can’t find the real cost without doing an inventory of activities performed by the agencies.

So what is the result of this cost per case as processed in the Lake City District using this very crude method? If we utilize the total case number of 6,155 and assign one third of these cases to Lake City, a total of 2,051 cases. If we use the total amount of finds expended by the Lake City facility of $513,862.00 the cost per case would be $250.54 dollars. Recall that the actual expenditures for the Lake City Courthouse totaled $513,863 dollars as reported by the county treasurer. Given just the few variables that have been identified here, we could conclude that a reliable cost per case number cannot be
established without a detailed analysis of each court’s operations and that a similar analysis of the remaining dual judicial districts would support that conclusion. This inability to reach an accurate cost for operations is both frustrating and, from a management standpoint, unacceptable.

ECONOMIC CONCLUSIONS

The evaluation or analysis of the economics of court operations is complex and dependent upon a variety of factors. It is impossible to determine the actual cost per case or Average Unit Cost (AUC) for the processing of cases without considering all the functions performed by the court/clerk staff and costs associated with the operation and maintenance of a particular facility. However, certain factors can be identified and attributed to the operation of dual facilities: increased staffing or personnel requirements which are the single greatest expense associated with court operations, the cost of maintaining a physical structure which includes janitorial staffing and supplies, insurance costs, utilities and communications just to name a few.

The need for accurate financial data for each facility is crucial to developing a complete understanding of the real cost associated with the facility and, as reported by County Judges, has not been performed for any of the subject counties.
The Florida Study has identified at least eight common factors which appear to impact the costs of operations in all counties and this study could be utilized as a starting point for any assessment of the dual districts in Arkansas. This type of study may be beyond the financial ability of individual counties and is in all likelihood beyond the capabilities of the counties to perform “in house” due to a lack of personnel skills.

The reporting of criminal charges filed, as opposed to the actual number of cases processed, represents a factor which could artificially impact the cost per case data due to workload evaluations. The statistical data base created by the state could establish a range of acceptable cost per case figures which all counties could utilize to monitor their expenditures. While it is apparent that no two counties will have the same cost per case, or Average Unit Cost (AUC), it is evident that a baseline criteria for the evaluation of costs can be established and until that is accomplished no one will know what it costs to process a case in Arkansas and what the actual cost per case is in split districts.

RECOMMENDATIONS

To accurately assess the costs of operating dual facilities each county with a split district must undertake a full audit of each facility to determine the actual cost to the taxpayers. This audit must include an assessment of case loads and
workloads to determine the personnel needs of all the offices. The use of technology and the acceptance of that technology by the judicial staff should be considered as factors in evaluating the workloads.

The State, through judicial leadership and the Administrative Office of the Courts, should evaluate the need for the split districts and the resulting costs imposed on the individual counties as well as the loss of judicial work hours spent in travel between courthouses and other factors that impede judicial efficiency.

The State has repealed the statutory provision that allowed local voters to decide if they want to maintain two judicial districts and this assumption of power over the local expenditure of tax money imposes a duty on the State judiciary and the State Legislature to assess the need for such districts and eliminate them where no need exists.

The State should provide funding for the completion of a cost study for each county to determine the cost per case for each major category of cases processed. Only by assessing the costs of operations can the local governments make informed decisions for the staffing of clerk’s offices and the operation of facilities including dual courthouses within one county.
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