

NEBRASKA
COURT REPORTING PROJECT
FINAL REPORT



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NATIONAL CENTER
FOR STATE COURTS
July, 1975

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July 1975

NEBRASKA COURT REPORTING

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INTRODUCTION

The Supreme Court of Nebraska must insure that cases on appeal in Nebraska move efficiently and expeditiously through the appellate process. As part of this responsibility, the court must approve any request for additional time in which to compile the record for the court's consideration. This information includes the transcript, or collection of pleadings, orders, and other documents of the case, supplied by the district court clerk; the bill of exceptions, or record of testimony, supplied by the official court reporter; and the briefs supplied by the attorneys for the parties. The Supreme Court has received many requests for extensions of time. The members of the court became concerned that considerable problems and delay might exist in assembling the materials of a case for argument before any consideration by the Supreme Court.

Pursuant to Sec. 24-342.02, N.R.S., the Supreme Court in 1974 drafted rules to provide for the recording of proceedings and the preservation of evidence in the district and separate juvenile courts and the preparation of bills of exceptions from these courts. In order to draft a comprehensive approach to these issues, the Supreme Court contracted with the National Center for State Courts. Chief Justice Paul W. White and State Court Administrator James E. Dunlevey contacted Mark G. Geddes, Staff Attorney and Acting Regional Director of the North Central Regional Office, to perform the court reporting study. They agreed to a four-

month study, during which time the National Center would survey the current court reporting process and recommend procedures to improve the operations. The Nebraska Commission on Law Enforcement and Criminal Justice approved the project on February 28, 1975, and the study began on March 1. The National Center's project team includes Mr. Geddes, Dr. Theodore J. Fetter, Staff Associate, and Lynn A. Jensen, Staff Associate, all of the North Central Regional Office. Dr. J. Michael Greenwood, Senior Staff Associate, who has conducted several major court reporting studies throughout the United States, assisted the project team in planning the project and in preparing the final report. Louis R. Tilton assisted the project team in analyzing statistical data. Throughout the project, Donald C. Patton, Reporting Services Coordinator in the State Court Administrator's Office, worked closely with the National Center's personnel.

The National Center's staff has studied the court reporting procedures in Nebraska from several approaches. The project team examined the legal environment and court structure in which the reporters work, the responsibilities, qualifications, compensation, and work routines of the reporters, the procedures for preparing a bill of exceptions, and the statistical records which show the court reporter's work. In addition, at the request of the Chief Justice and the State Court Administrator, the project team examined the time required for counsel to prepare the briefs and the extensions of time limits requested for the briefs. They also studied the time required for district judges to consider and rule on motions for new trial and other motions after judgment. The project team assembled a full description of the court reporting procedures and enough additional data to allow them to

view the entire process of preparing cases for Supreme Court consideration.

In order to guide the National Center's project team in this project, the Supreme Court appointed an Advisory Committee of five district judges. The Advisory Committee included Judge William F. Colwell (Chairman), Judge James A. Buckley, Judge Lloyd W. Kelly, Jr., Judge Herbert A. Ronin, and Judge C. Thomas White. The Committee met and discussed the project with the National Center staff three times: at the start of the work, after the staff had completed the data collection, and after having read a draft of this report. The project team also met with a group of reporters to get their views on the project and on the findings and recommendations of the staff. The reporters included South Bickley, Gary Latimer, John Matheson, Richard Mowers, and Lewellyn Nelson. The reporters also reviewed a draft of this report and offered suggestions.

The project team used three methods to gather the information for this report. First, they wrote questionnaires and distributed them to each district judge and to each court reporter in the state. About eighty-five percent of each group responded. Second, the project team and the Nebraska court administrator selected six judicial districts for detailed study - District 3 (Lancaster County), 4 (Douglas County), 9 (Madison County, et al), 11 (Hall County, et al), 17 (Scotts Bluff County, et al), and 21 (Platte County, et al). Approximately two-thirds of the Supreme Court's case load comes from these six districts. The project team interviewed all available district judges and court reporters in

these districts. Finally, the project team investigated the court records on every case appealed to the Supreme Court from these six districts from September 1, 1972, to February 28, 1975. They calculated the time span between the following major events in the preparation of the appeal: the date of trial court judgment, the entry of motion after judgment, the date of the ruling on that motion, the entry of the notice of appeal, the date of filing of the praecipe for a bill of exceptions, the filing of the bill of exceptions, and the filing of the last brief. The project team noted any extensions granted to reporters or lawyers, and they calculated the length of the bill of exceptions.

The multi-faceted methodology of the project allowed the project team to gain a well-rounded understanding of court reporting in Nebraska. The court records yielded a solid factual basis concerning time frames and work loads. The questionnaires and interviews allowed the judges and reporters to advise the staff of their observations and experiences within the system and gave them an opportunity to make their own recommendations for changes. With this knowledge and the assistance of the Advisory Committee, the State Court Administrator, and the Reporting Services Coordinator, the project team has prepared the following report.

COURT REPORTING: THE STATE OF THE ART

At least seven methods to record and transcribe courtroom proceedings are now in existence. Some have been in use for many years; others depend on new technologies; and still others streamline the traditional methods. The Supreme Court should be aware of these various methods so that it can manage the system and establish standards in which they could operate. The district judge should also be familiar with them so that he will be able to employ the reporting method which best fills the needs of his court.

Reporting Methods

The traditional methods are manual and machine shorthand. With manual shorthand, the reporter records proceedings by pen. With machine shorthand, he uses a stenotype or similar machine to print shorthand symbols on a paper tape. With both systems, the reporter develops over time an individual style and system of abbreviations which make the notes his own. Then he must go through his notes and either type them himself or dictate them into a tape recorder for a typist to transcribe.

Voice-writing uses multi-track audio equipment. In addition to recording the actual proceedings, the reporter simultaneously dictates on a separate channel, using stylized dictation to identify the speaker and give the transcriber instructions. The steno-mask method is similar to voice-writing, except that the

reporter wears a mask and speaks into it to keep from disturbing the proceedings. Like shorthand, these voice methods require a professionally trained person to take the record in court. Instead of requiring the manual dexterity of shorthand, they require voice dexterity.

Audio recording can be used to prepare courtroom records in several different ways. In a multi-track system, microphones are placed in each key location - judge's bench, witness stand, counsel tables, etc. They record the proceedings separately. Audio adjustments for each microphone can be made manually or automatically. The audio recorder operator keeps a written log as a guide to the tape, indicating when significant events were recorded on the tape. Either the audio operator or a typist can transcribe directly from the tape.

Video recording has been used to take evidence or testimony before trial or to record proceedings in court. As in audio recording, a log accompanies the tape as a guide. The video tape can serve as the record of appeal, or an operator or typist can transcribe the testimony.

Computer-aided transcription is a variation of machine shorthand which permits quick transcription of the reporter's stenotype notes. The reporter uses a stenotype machine that records electronic impulses onto a magnetic tape, which is then fed into a computer. The computer's memory bank includes the individual reporter's "dictionary" so the computer can translate the symbols, allow electronic editing, and permit a verbatim record very quickly. With computer-aided transcription, or CAT, bills of exceptions could be ready within a day or two of the request.

Criteria for Evaluating Method

The National Center for State Courts believes that any of these methods can produce an excellent record. Getting the record is the goal, not the advocacy for or against any particular method. The prime requirement for every method is a reporter-operator who is familiar with court proceedings, provided with proper equipment, and trained to use the equipment.

Each method, of course, has its own strengths and weaknesses. The selected reporting method should provide an accurate record, be easy to use in court, have a reasonable cost, be readily available in Nebraska, be relatively easy to maintain in workable order, and provide a record that can be easily transcribed.

Accuracy is one of the principal tests of a reporting method. With a good operator, a properly-functioning audio recorder gets an extremely accurate record. The current reporters recognize the accuracy of the audio records; 60% of the reporters responding to our survey use a tape recorder as a back-up to their shorthand reporting. Half of those record the bulk of the proceedings, while the others record only technical portions, expert testimony, or argumentative witnesses. Several of the above methods, including audio recording, voice-writing, and video recording, achieve this high level of accuracy. A multi-track audio machines raises the accuracy level still further, since the transcriber can key into one track at any time. The shorthand methods are as accurate as the person using them is skillful. The operator himself must pick up the proceedings, however, and this factor allows human error, fatigue, and faulty understanding to enter the record immediately.

When the reporter misses or misunderstands an item, he can rectify his lapse by asking that it be repeated only so often before he loses the patience of the participants.

Ease of use is a second major factor in deciding which reporting method to use. A method that requires cumbersome procedures and elaborate mechanisms in or out of the courtroom is less desirable than one which is unobtrusive and operated without distracting the attention or taking up the time of the participants. In this sense, the traditional shorthand methods are quite easy to use. The manual shorthand reporter, or penwriter, needs only a table, chair, and pad of paper. He can record proceedings almost anywhere without elaborate preparation. The stenotype reporter is almost as flexible. His machine is fairly compact and easy to get up. The newer technologies are more complicated to use. Tape recorders, video cameras, and computer terminals must be set up in advance. While they can be moved, it takes significantly more time. Also, the presence of elaborate equipment in the courtroom may have a potential for detrimental effect on some participants. In recording court proceedings, the ease-of-use factor is important, and the equipment should be as simple as possible.

Cost is a significant factor in court reporting methods as well as in most other decisions in our society. The manual shorthand and stenotype methods obviously entail a smaller initial capital investment and a lesser amount for supplies than the audio and video tape methods, but higher costs for training reporters. In the tape recording methods, the initial cost of the machine and the purchase of more blank tapes make a more expensive system,

but lower training costs. Implementing video also requires major equipment purchases. The cost of computer-aided transcription has not been precisely determined, but it does require large initial investment in equipment, including modified steno-type machines and computer time.

The high initial cost of the alternate methods may make them appear to be impractical options. They should not be. In order to establish a system with several reporting methods from which to choose, the project team recommends that the state pay for each reporter's primary recording equipment. If the state bought several audio recorders, the economies of bulk purchase would apply. To establish some standardization in supply of equipment, the state should also furnish a stenotype machine to the machine shorthand reporters. Of course, when a reporter leaves a position as an official court reporter in Nebraska, the state would assert its ownership of the equipment.

Whatever reporting method is employed in the Nebraska district courts, it should be relatively easy to obtain in the state. There is no need to use the newest technologies at this time. The traditional shorthand methods and audio recording are readily available now. Video recording and computer-aided transcription are still in an experimental stage. Under this condition, it is impractical to implement them widely, although video recording may be used for depositions and expert testimony, if the witness is not otherwise available. These methods might be used more in the future; certainly the judiciary should monitor their developments and be ready to reassess their availability. The Supreme Court could

establish a pilot program to test these methods.

Maintenance of court reporting equipment is important. Any equipment has to be in proper running order to get a good record. Manual and machine shorthand is of course very reliable. A multi-track audio recorder can also be dependable. With proper care and cleaning, which a trained operator can perform, the recorder runs smoothly. When service is necessary, a tough service contract will enable the court to proceed without significant interruption. The present service contract on the audio recorders in Nebraska's county courts is good; it provides for completed service within a day and gives the courts a back-up machine when necessary. The more complicated methods may require a more stringent service contract, but, again with proper care, maintenance should not be a major problem.

Finally, any reporting method should provide a record that is easily transcribed. The audio and video methods do so. Any trained typist can listen to the tape and prepare a written record for the bill of exceptions. It is possible that the tape itself could serve as the record; the attorneys and appellate judges could listen to it rather than read a written bill of exceptions. Computer-aided transcription also allows for direct transcription, as long as the reporter's "dictionary" is in the computer's memory bank. The traditional methods may be more difficult to transcribe. The reliance on the reporter himself either to transcribe his notes or to dictate them for a typist makes the traditional systems less flexible. The other methods depend less on the reporter once the record is made; his unavailability, disability, or even death need not postpone the appeals process.

The Nebraska County Courts now use an audio recording system for their official record. The consensus throughout the state is that, after a rocky start, the system is working fairly smoothly. Bills of exceptions are prepared fairly quickly (see Figure 13), and few judges interviewed indicated that major problems in understanding the record still existed. With training or experience, the operators of these machines are performing their jobs well. Still, the work load and other duties of the county court operators generally are not comparable to that of the district court reporter, due not to the reporting methods but to the jurisdiction of the courts and their personnel utilization.

Almost all district court judges preferred the traditional shorthand and stenotype methods, whether or not the reporters used a back-up tape recorder. Eighty-four percent of the judges would not use audio equipment to keep the official record in their courtroom, and two-thirds opposed its availability as an option for the district courts. Only 21% found an official audio record acceptable, and 27% had no opinion.

The Supreme Court and the State Court Administrator should be mindful of the district judges' opinions. The judge and reporter must accommodate themselves to each other both in the courtroom and outside, and certainly the judge must be comfortable with his reporter's method of recording proceedings. The Supreme Court should make several alternative methods available for use. They should decide which methods produce adequate results and which can be readily implemented in Nebraska. The district judge should then select from the acceptable methods the one he wishes to use in his courtroom.

The National Center recommends that Nebraska experiment with audio and video recording devices in the district courts. Standards should be developed after such experimentation to insure complete and accurate preparation of the court record and integration into the appellate process. Since audio-recording is used in the county court system, the court administrator should use this experience to develop the pilot programs in the district courts.

For those courts that establish an audio method, the State Court Administrator should prepare a standard logging form and logging procedures. The form should follow the procedures in the county court to identify the speakers and any technical or difficult material on the tape. The district judge, attorneys, and transcribers will use the log, and the court administrator can best determine what information these persons will want.

OFFICIAL COURT REPORTER

The court reporter is one of the most important individuals in the judicial process. His primary function of recording the official court record is absolutely necessary in the appellate process. Without an accurate and reliable record of the past court action, the Nebraska Supreme Court would have to rely on a narrative summary to decide the merit of the appeal.

Besides the accurate and reliable preparation of the official court record, the reporter usually functions as an administrative aid and general secretary to the district judge. In this capacity, he is constantly in contact with the judge. The service that he provides for the judge is vital to the judge's performance of his duty. Due to the multi-faceted relationship that exists between the judge and the reporter, it is essential that the reporter be well qualified. The official court reporter must be a full time, professional state employee whose aim is to serve justice.

Duties of the Official Court Reporter

The Supreme Court should issue a job description for the official court reporter. This job description should be clear and concise to eliminate duties the court does not want to permit. It should, however, remain flexible enough to allow the district judge the freedom of assignment of specific duties and functions.

The National Center recommends the following specific duties that should be part of the job description:

- 1) official recorder of all court activities;
- 2) preparation of the official bill of exceptions;
- 3) custodian of the exhibits and evidentiary materials during the trial and the preparation of the bill of exceptions;
- 4) administrative aid to the district judge; and
- 5) general secretary to the district judge at the judge's discretion.

In Lincoln and Omaha, each district judge has a full-time bailiff. Some of these judges have hired secretary-bailiffs, relieving the reporter of most secretarial duties. We recommend this practice to all judges in these two districts.

The court reporter's function is to serve the district judge in the preparation and keeping of the official record. He can best do this by serving the judge in every capacity possible. The taking of depositions and other free-lance work during the normal work day take up valuable time and effort that should be expended on his official duties. The Supreme Court should set forth a standard policy on free-lance work. The reporter's work in court and the preparation of the bill of exceptions must have first priority. Free-lance work should be permissible only if no praecipe for a bill of exceptions is on file. The Supreme Court should not permit a court reporter to hold a job which could create a conflict with his position as reporter. One official court reporter now serves as a lay associate county judge. Since any appeal from the county court would be heard in the district court where he serves as reporter, a potential conflict of interest exists.

Certification

Nebraska should adopt a state-wide court reporting certification program. Within the state, there is a recognized need for

assured competence in the court reporting field. Certification programs are being established in many states to fulfill this vital need. During the National Center's data collection activities we found that 94% of the district judges favored a certification program. It is important to note that the National Shorthand Reporters Association and the Nebraska reporters also favor certification of court reporters.

The certification program should be established by the Supreme Court and administered through the office the State Court Administrator. All individuals wishing to be court reporters within the state (full or part-time) should be certified before employment as much as possible. Exceptions to this procedure should be controlled and made only on a case-by-case basis by the Supreme Court.

Several important issues present themselves when a certification program is established. The following discussion attempts to cover the most important of these issues. Should present reporters be exempted under a "grandfather" clause? If not, what period of time after adoption of such a certification program should present reporters be given in which to be certified? How many opportunities should present reporters be given to qualify before being declared ineligible? Would there be an option for present reporters to be certified or non-certified, with an attendant differential in salary?

The primary purpose for establishing a certification program is to guarantee to the participants in a court action the accuracy and reliability of the court record. A court reporter certification program, although unable to give an absolute guarantee, does

establish a minimum level of professional competency for the individual recording and preparing the court record. Grandfather clauses can operate to entrench unqualified individuals. There is a danger of self-defeatism in a rule which allows carte blanche grandfathering; however, due to the apparent high quality of the present court reporters in Nebraska the project team recommends that current court reporters be exempt from the certification requirement.

To encourage incumbent reporters to become certified, the state should establish a differential in salary between certified and non-certified reporters. Nebraska should also set forth salary grades based on experience and skill levels, such as the holding of the NSRA certificate of proficiency, certificate of merit, or the Registered Professional Reporter designation, or other standards of competency as may be promulgated by the Supreme Court.

When a district judge hires a new court reporter, that individual should be required to take the certification test at the beginning of his employment. If he fails to pass the certification process, he may be given employment on a three-month provisional basis. He should be required to pass the certification test during his first three months of employment. If he is unable to do so, his employment should be terminated.

Should certification cover only shorthand and stenotype techniques as utilized by court reporters? Any reliable court reporting technique should be allowed within Nebraska, and any person wishing to utilize one or more of the recognized court reporting techniques should have the opportunity to be

certified in those methods. Salary differentials could encourage multiple skills. The Nebraska Supreme Court should establish a certification process for each technique: manual shorthand, machine shorthand, stenomask, voice-writing, audio-recording, and video-recording. The court administrator should also establish periodic seminars and training sessions and periodic testing sessions covering certification.

Every effort should be made to maintain a high basic level of competency in the certification process. It is also important to recognize the need for and value of uniform national standards on court reporting certification. With this in mind, the project team recommends adoption of the same standards used by the NSRA for the Registered Professional Reporter in shorthand and steno-type reporting. Currently, these standards are for 95% accuracy on three dictated takes-literary at 180 WPM, charge at 200 WPM, and testimony at 225 WPM, each for five minutes. There is also a written test on English, grammar, punctuation, spelling, word definitions, and legal and medical terminology. Typing should be at least 60 WPM.

Standards for audio-recording, stenomasks, voice writing, and video recording have not yet been nationally established. The Nebraska Supreme Court should adopt its own after reviewing any existing standards established by other associations, such as the National Stenomask Association. Certification of these techniques should include machine monitoring and logging capabilities. The certification process should test the ability of the individual

to detect malfunctioning of the equipment and to operate it correctly. The ability of the individual to keep a complete and accurate log of the events of the court action should be tested.

It is important that the Supreme Court prepare and conduct the tests for certification. Such a test should satisfy Nebraska's own needs and it should be open to everyone who desires to qualify Nebraska, and not an outside organization, should control the eligibility requirements for the position of official court reporter. Reciprocity may be desirable where other states in the nation require similar or higher standards than those set by Nebraska.

Employment Policies

All court reporters should be hired by the district judges for whom they will work. This is the current practice and it should be continued. The project team learned that an excellent working arrangement now exists between most district judges and their reporters. Questionnaire data heavily supports this finding. Removal of the ability of a judge to hire or replace his reporter at his own discretion would undermine this established relationship. The district judge should be able to replace a reporter whose work performance may be unacceptable.

While we recommend that the district judge hire his own reporter, this individual should be a qualified and competent reporter. The reporter hired by the district judge should be certified to be a Nebraska official court reporter. He should

be selected from a list of applicants who have successfully completed the state-wide certification program, or he should be required to pass the certification program during the first three months of his employment.

One of the functions of the Supreme Court is to evaluate the work performance of state judicial employees. A certification program can monitor the skills of each reporter as he enters the system. Work performance measures can be designed to monitor the skills of each reporter in the performance of his court duties. New procedures will have to be adopted to evaluate the work performance of each court reporter after the implementation of the certification program. This should be done to insure the continual maintenance of a basic level of court reporting competence within the state. The project team recommends that the Supreme Court establish procedures to monitor the work performance of each court reporter. A reporter may be found unacceptable due to poor work performance, frequent delays in the preparation of bills of exceptions, delinquent filing of bills of exceptions, and inadequate maintenance of professional reporting skills. The Supreme Court should take appropriate action where work performance is found unacceptable.

Court reporters are state employees, and as such they are covered by the State Employees Retirement Act. State employees are required to retire at age 65 unless their department approves an annual extension of their employment up to age 72 (Sec. 34-1317, N.R.S.). This statute envisions departmental review and approval; within the judicial branch of government the department should be the Supreme Court. The Court can establish consistent

standards to consider these extensions statewide.

As state employees, court reporters should receive regular benefits such as sick leave and vacation time. The Supreme Court should set these policies for reporters throughout the state.

Salary and Compensation

In any study of this nature, it is important to look at the problem of salary and its relationship to the employees' attitudes toward their work. In our survey 82% of all district judges were satisfied with their reporters' work performance. It has been shown that work performance is a valid criterion for job satisfaction. To bear this out, 92% of the court reporters were satisfied or very satisfied with their profession and their job. However, the single most significant statistic in this area is that only 63% of the reporters were satisfied with their salary. During the interviews conducted throughout the state, judges and reporters alike felt that the base salary was too low. In Omaha and Lincoln, the reporters were especially dissatisfied. They felt they were handling a much higher volume of work than the reporters in the rest of the state. They thought that due to this heavier work load they should be getting a higher salary.

The same base salary now applies to all reporters. No salary benefits are given for years of experience or for professional certification. Our data revealed that the Omaha and Lincoln reporters did in fact handle larger volumes of work throughout the year. This work load was reflected in total appeals and cases handled. We found that much of the dissatisfaction towards the current salary was not its base level, but rather the lack of

increments for years of service and professional development. Only 18% of the current reporters are certified for proficiency or merit. One reason for this low percentage may be that no salary considerations are given for professional improvement.

Currently reporters are compensated separately for the preparation of bills of exceptions. The standard billing rate for this preparation is 45¢ per 100 words, which averages \$1.125 per page. Our data disclosed that each reporter on an average prepares 14 bills of exceptions of 46 pages each year. This means that each reporter averages an additional \$724.50 each year from bills of exceptions preparation. This figure, of course, varies from district to district and from year to year. The point is that the average yearly state-generated compensation for a single court reporter is currently under \$15,000¹ regardless of experience or competency. Many reporters have developed extensive free-lance capabilities. Depending on the reporter, this type of activity yields income up to several thousand dollars per year.

The National Center recommends that the Supreme Court should face the salary and compensation issue head on. It should adopt a more equitable salary structure. This structure should face the issues of in-grade increments, professional development increments, and the question of raising the base salary to include bill of exceptions preparation.

Below we have outlined what we perceive to be the basic alternatives available to the court.

¹ Appropriation for the 1975-76 fiscal year will permit an increase in base salaries from \$14,000 to \$15,168 effective July 1, 1975.

- 1) Maintain the status quo. Base salary of \$15,168, separate compensation for bill of exceptions preparation, no policy statement on free-lance.
- 2) Raise the base salary.
- 3) Raise the base salary to include compensation for bill of exceptions preparation.
- 4) Develop a base salary and have incremental increases based on years of service and/or professional development.
- 5) Issue a policy statement favoring free-lance work.
- 6) Issue a policy statement disallowing free-lance work.

Place of Residence and Daily Work Routine

A point consistently raised during the interview phase with the district judges was the place of residence of the court reporter. Most judges interviewed wanted to require the court reporter to live near the judge. In fact 78% of the judges responding to our questionnaire favored such a requirement. The most common reasons given were convenience and travel costs. The National Center finds a lack of rationale for such a Supreme Court rule or administrative action.

While the project team believes that the judge and the reporter should live near each other for convenience, it is a matter for the judge and reporter to agree upon as a condition of employment. If the reporter's residence causes undue hardship or inconvenience to the judge, the judge can always replace the reporter. In light of the extensive cooperation

exhibited between the reporters and the judges, it is evident that this problem should be solved locally.

Travel expenses cause a collateral problem. Currently there is no uniform policy regulating reimbursement. Considering current state and nationwide practices, the National Center recommends that the court reporter be compensated only for travel costs incurred between his home or office (whichever is closer to the destination) and the courthouse where he will be working. He should not be compensated for travel expenses incurred between his home and the courthouse where the judge has his principal office. The principal office of each district judge should be permanently designated by either the judge or, if he fails to designate, the Supreme Court. The principal office location should be filed with the Supreme Court, and it should be permanent, so that travel reimbursement can be more accurately anticipated. It can also dictate indirectly the location of the residence of both the judge and the court reporter.

The judge should have the flexibility to determine the court reporter's work routine. A minority of judges and reporters interviewed felt that the reporter's work routine should be better defined state-wide. Administratively, this uniformity has merit. Due to the working relationship that exists between most of the district judges and reporters in Nebraska, however, each judge should be allowed to determine his reporter's work hours and clerical functions.

The flexibility in the court reporter's function does not eliminate the need for guidance from the Supreme Court. The

Supreme Court should set guidelines for the reporter's clerical and professional duties. Free lance activity should be regulated and definite priorities should be set on court related activities. Prohibition of certain external employment must be defined and enforced.

Pooling of Reporters

Several questions were broached during the data gathering phase concerning pooling of typists and reporters. A few of these are given below. Should a typist or typists be located in high volume district courts to prepare bills of exceptions? Should a "pool" of reporters be formed in Lincoln and Omaha? Should there be a floating reporter arrangement within the State to handle emergency needs and vacation arrangements?

The study team considered these questions seriously. The Nebraska Shorthand Reporters Association gave us a policy statement. Most district judges were queried for their point of view. The National Center recommends that the present one-judge one-reporter arrangement continue in Nebraska and that the typist pool and floating reporter ideas be rejected.

Our data does not support the need for a floating reporter ~~even in the high volume courts of Lincoln and Omaha.~~ The typist pool has the disadvantage of removing the responsibility of the preparation of the bill of exceptions from the reporter. In those instances where a reporter is sick or must take a short time from work, judges in the high volume courts have with little difficulty been able to borrow a reporter. In the rural areas,

if a need arises for an emergency replacement, the court administrator should assist the district judge in finding another certified reporter on a temporary basis. If necessary, the judge should be authorized to hire a reporter from an external source. To handle those cases in which a temporary replacement is necessary, the Supreme Court should set aside sufficient state funds to pay for the employment of a qualified court reporter. This contingency should not be the responsibility of the reporter. The National Center believes that the permanent employment of an extra floating reporter to substitute in several courts would cost more than the use of temporary replacements.

Control of Exhibits, Testimony, and Other Evidence

Control of all evidentiary materials should remain with the court. This view was supported unanimously by judges and reporters throughout the data collection activities. Currently in Nebraska, the court reporter acts as the custodian of this material. Both judges and reporters noted the lack of security over exhibits. Some exhibits, such as drugs and handguns, represented obvious dangers. Lawyers and judges frequently borrowed exhibits without the knowledge of the reporter. Under the present arrangement, the reporters felt they had inadequate control over this evidentiary material. The reporters (and judges) are often required to keep the materials in their file drawers and desk drawers. None of the reporters was provided security areas to store the evidence and testimony. In discussing the storage situation with the judges and reporters, it became apparent that many times the judge is unaware of the location of the evidentiary materials.

We found that both judges and reporters favored a central storage facility or a private security area for the storage and safe-keeping of all case related materials.

The Supreme Court should adopt rules for the custody and security of exhibits. Secure areas and proper checkout procedures should be developed especially for dangerous articles such as weapons and drugs. Rules for the disposal of evidence no longer needed should be adopted. Without such policies, unauthorized persons could get dangerous articles, an attorney could raise a question of authenticity of an exhibit, and a court reporter's office could become a crowded storeroom for out-of-date materials.

Another problem was identified concerning the control of exhibits, testimony, and other evidence. From time to time, reporters have taken their notes or tapes and exhibits with them when they terminated their employment. The court lost control of the case-related materials and evidence as a result. In these situations, the return of the needed materials to the state depends to a great extent on the reporter's good will. The former reporter is still responsible for preparing the bill of exceptions should a praecipe be filed, however; so he needs the notes he has recorded recently.

To protect the interests of the state of Nebraska and the litigants in these cases, the Supreme Court should require each reporter to put up a \$5000 performance bond with the State Court Administrator's office. The terms of the bond should specify that the

Supreme Court maintains control over exhibits, notes, and tapes. If a reporter fails to file timely a bill of exceptions, whether ~~he is living inside or outside Nebraska,~~ the Supreme Court should take action under the terms of the bond.

At the present time, district courts send all exhibits in appealed cases to the Supreme Court with the bill of exceptions. Sometimes these exhibits are univieldy, and the substitution of photographs may be satisfactory for appellate review. The Supreme Court should consider rules to handle these cumbersome exhibits.

PROCEDURE TO COMPILE RECORD FOR APPEAL

The main purpose of the court reporter's job is to make a record of the trial proceedings in case it is needed. While the trial judge and the attorneys will consult the record of proceedings from time to time, these participants have their own notes and recollections. The appeal of the court's decision or order, however, depends very largely on the court reporter's product. When a case is appealed, the bill of exceptions usually is of crucial importance; without it, the appellate court would have to conduct a trial de novo or rely on a narrative summary to learn about the case. For this reason, the bill of exceptions is the reporter's principal work product. The reporter spends on the average only about 20% of his time on bills of exceptions, but the production of the record is one of the main reasons for his job.

While the reporter is central to the preparation of the case for Supreme Court consideration, other activities are necessary. The trial judge must consider and decide motions after judgment, the losing attorney must decide whether to appeal and on what basis, and counsel must prepare briefs. The Supreme Court and the State Court Administrator asked the National Center to review the time involved for each of these activities in the appellate process.

Motions after Judgment

In 51% of the cases surveyed by the project team, motions for new trial, motions for judgment notwithstanding the verdict,

motions for reductions for sentence, and like motions were placed on file by counsel (See Appendix A). The purpose of these motions after judgment is to allow the trial court judge to re-evaluate the case, his decision, and to correct any errors in judgment. The filing of a motion delays the one month time period for filing a notice of appeal (Sec. 25-1912, N.R.S.) until the district judge rules on the motion.

The average time for ruling on a motion after judgment was 37 days in the cases sampled for this project. The range ran up to 517 days. Almost 60% of the judges queried favored a time limitation for setting a hearing on a motion after judgment. In many states, formal civil and criminal rules of procedure have been adopted by the Supreme Court to require ruling within a set time on motions after judgment. If a ruling is not made, the motion is usually considered to have been overruled for appeal purposes. This type of rule requires both the district court judge and counsel to move the cases along expeditiously.

We recommend that the Nebraska Supreme Court adopt such a rule. The district judge should be able to rule on a motion after judgment within 60 days of its filing, unless extraordinary cause is shown for an extension. Within a year or two, it may be possible to reduce this time limit to 30 or 45 days.

Notice of Appeal

According to the Nebraska statutes, a notice of appeal must be filed by the appellant within one month of a judgment, final order, sentencing, or ruling on a motion after judgment. Likewise praecipes for a transcript and a bill of exceptions must be filed

within that month but not necessarily simultaneously. The notice of appeal filed with the district court is forwarded to the clerk of the supreme court. The praecipe for a bill of exceptions is, according to court rule, forwarded "forthwith" to the court reporter.

In a number of cases the praecipe for the bill of exceptions was filed some days after the notice of appeal. This extra time seems unnecessary. Even without a court requirement, the data collected revealed that in 85% of the cases the two documents were filed simultaneously. It would appear that a rule or statutory change should be made requiring that the praecipe for the transcript and the praecipe for the bill of exceptions be filed simultaneously with the notice of appeal. The court reporter could then begin his work immediately.

In most counties, the clerk now gives the reporter a copy of the praecipe within a few days. About 35% of the reporters indicated in the survey that the delivery of the praecipe had been or is now a problem. The reporter has a definite period of time, now two months, from the time the counsel files the praecipe in which to prepare the bill of exceptions. If there is a delay in receiving the praecipe, the reporter has less time to do his work. In one county, the clerk of district court requires the court reporter to sign a receipt acknowledging that the praecipe for a bill of exceptions was tendered to him. A regular procedure should be established to insure that the reporter is notified promptly. The project team recommends that the Supreme Court

adopt a rule requiring the counsel who files the praecipe to mail by regular or certified mail a copy of the praecipe to the court reporter. For this purpose, the court reporter should designate an address convenient to him to receive the praecipis. A complete listing of the court reporters and their mailing addresses should be made available through the State Court Administrator's office, the Nebraska State Bar Association's publications, and any directory listing the names of judges and attorneys residing in Nebraska. This practice should not change the requirement that the clerk of the district court should also notify the court reporter of the praecipe. With both procedures, the reporter should always receive the information promptly.

Preparation of Bills of Exceptions

The standards for the preparation of a bill of exceptions and the information required to be contained therein are set out in Chapter I of the Revised Rules of the Nebraska Supreme Court. In addition to these guidelines, we have been informed that the Nebraska Shorthand Reporters Association is in the process of developing standard forms to be used by court reporters. It is the National Center's recommendation that once developed, these standard forms be referred to the Nebraska Supreme Court for review. The Supreme Court should adopt a form for use by court reporters in the State of Nebraska. The court should set the type setting, spacing, size of paper, margins, and number of lines per page that it desires so that the fee can be calculated by the page.

Court reporters prepare a bill of exceptions in about 81% of all cases appealed to the Supreme Court (See Appendix B). In the remainder of the cases, the project team did not find a notation on the docket that the bill of exceptions was filed. The lack of this entry may be due to one of several causes. In most cases, the appeal probably did not relate to the courtroom testimony, or there was no testimony presented to record. Many lawyers probably file a praecipe automatically with a notice of appeal. When a reporter receives a praecipe and is unable to fill the request, he should notify the court of his action. He should file an affidavit with the Supreme Court clerk stating his reasons for not preparing the bill of exceptions.

The individual reporter prepares the bill of exceptions according to the procedures he has developed. Fifty-three percent type the copy themselves from their shorthand or stenotype notes. The rest dictate from notes and hire a typist to prepare a bill of exceptions. The reporter pays that person from the income received for the bill of exceptions, usually at a page rate. If the volume of work on the court reporters generally becomes too great, the state could establish typing pools to prepare bills of exceptions from a reporter's dictated notes. At present, however, the project team does not see a need for such pools. The reporter's use of outside help to prepare a bill of exceptions is up to him; the Supreme Court is concerned only with the timely preparation of the bills.

The Legislature or the Supreme Court should standardize county supply of court reporters' materials. Currently some counties supply paper and other materials for the reporters, but most do not.

Currently the court reporter has two months in which to file a bill of exceptions after the praecipe has been filed in the district court clerk's office. Depending upon the amount of testimony taken in a trial, a bill of exceptions may run from a few pages to many hundreds of pages. Some judges and court reporters thought that a sliding scale could be developed in which the time period required for the filing of the bill of exceptions would vary, depending upon the court reporter's estimate of the number of pages of the bill of exceptions. This approach presents problems because it depends on the reporter's estimate and becomes hard to enforce. From the statistics gathered during this project, it would appear to the project team that generally the two month period for the filing of the bill of exceptions can be reduced. Most of the court reporters admitted in the interviews that a shorter time was adequate for almost all bills. In the cases surveyed, the average bill of exceptions was 46 pages. The reporters said that they could prepare up to 200 pages in a day. On occasions, however, where the trial was lengthy, even a two month period was not enough time to complete the task. In addition, numerous praecipis for bills of exceptions may be filed within a short period of time.

We recommend that the standard time for the preparation of bills of exceptions be reduced to 6 weeks. Most bills can be filed within that time. Longer bills and requests for several bills at once may require a request for an extension. The Supreme Court should have the opportunity to consider the merits of the request, granting only those in which the reporter would be unduly burdened by the new limit. Where appropriate, the Court should investigate requests for extensions.

For this purpose, the reporter must make his request at least one week before the end of the allotted time. The Supreme Court should set standards by which it will consider an extension, such as a very long bill, a large number of praecipes (i.e., three or more) on file, or reporter's illness or family emergencies. Such reasons as vacations or free lance work should not suffice. Normally, one two-week extension should be adequate.

Our data disclosed that currently many reporters who exceed the two-month limit do not ask for an extension. In 51% of those cases studied in which the reporter took longer than two months to file the bill, he did not receive an extension. In order for the Supreme Court to retain control over the flow of cases under appeal, it must regulate this failure. The court should take appropriate action against a reporter who fails to request an extension, including a judgment of unacceptable work performance.

Filing a Bill of Exceptions

Once a bill of exceptions has been prepared and filed with the clerk of the district court, this one and only document is removed from the file by the appellant's counsel in order to prepare his brief. The bill of exceptions is then again filed in the clerk's office and the appellee's counsel picks it up for his use in the preparation of his brief. The fact that the original copy of the bill of exceptions is handled by so many people has caused bills of exceptions to be lost, destroyed, or damaged by accident in some cases. Also, the bill may be susceptible to fraudulent editing.

The Supreme Court should adopt a rule for making available photostatic copies of the bill of exceptions to both counsel. The cost should be nominal and charged to the appellant unless the trial court or the Supreme Court attributes it to the appellee or to any other party. Other interested parties who desire the bill of exceptions should pay for a copy they request. It would appear that the immediate photostating of the bill of exceptions would eliminate possibility of lost, damaged, or destroyed bills; and that immediate distribution would allow both the appellant and appellee counsel to begin the writing of their briefs. The time saved would allow the Supreme Court to receive the briefs sooner. Photocopies can be made inexpensively today. The project team recommends that the cost be set as close as possible to the actual cost of the copy.

Preparation of Briefs

In the analysis of the data collected from the cases appealed to the Nebraska Supreme Court, it was found that in 73% of all cases studied an extension for the filing of briefs was made. Most cases had several extensions for attorneys. This percentage is much higher than that for the bill of exceptions. Without reviewing case by case the causes, excuses, or reasons for extensions, it would appear that the Supreme Court should forewarn the Nebraska bar that after a set date, no extensions for the filing of briefs will be given unless extraordinary cause is shown. The Supreme Court or the State Court Administrator's

office should, where appropriate, investigate requests for extensions for the filing of the briefs as well as for the filing of the bill of exceptions. All requests should be carefully scrutinized.

Currently lawyers usually request extensions at the last hour. The project team recommends that the court adopt a rule requiring requests for extensions a set time before the deadline. We recommend that the time period be set at one week prior to the deadline. This would allow the court to review the matter immediately and to determine whether or not the counsel has expeditiously handled his obligations under the rules. It is recommended that the Nebraska Supreme Court publish standards which set forth justifiable causes for extensions for the filing of briefs.

STATISTICAL SUMMARY

Delays in the appellate process can be harmful to the parties in the case and detrimental to the cause of justice. In conducting the current study, the National Center identified three areas in the appellate process that could create delays. The first was the period of time used by the district court to rule on motions after judgment. The next was the time needed by the court reporter to prepare and file the bill of exception. The third area was the time interval needed by the attorneys to prepare their briefs. The statistics gathered relate to the time taken in these three steps, the frequency with which they exceeded existing or recommended rules, and the frequency with which extensions were necessary.

The project staff computed the time intervals for all cases appealed to the Supreme Court from the six districts studied from September 1, 1972 to February 28, 1975. The staff researched and analyzed a total of 785 cases. In order to determine whether the period for preparing the case was changing over time, we divided the 2 1/2 years into 5 six-month intervals. We computed the time intervals for cases appealed in each six-month interval and found no significant change overtime. We have not reported the six-month figures; the statistics in this section cover the entire time studied. The following sections discuss the major statistical findings of the study as they relate to the National Center's recommendations in the preceding test of this report.

TABLE I
 PERCENTAGE OF CASES EXCEEDING TIME GUIDELINES
 IN RULES*

RULING ON MOTIONS AFTER JUDGMENT ¹	NOTICE OF APPEAL ENTERED ²	BILL OF EXCEPTIONS FILED ³	LAST BRIEF FILED ⁴
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CRIMINAL

DOUGLAS	13% (60)	10% (265)	16% (226)	94% (108)
LANCASTER	0% (12)	10% (84)	10% (79)	94% (50)
FOUR DISTRICTS	8% (36)	10% (47)	5% (40)	72% (32)
COMBINED	10% (108)	10% (396)	13% (345)	89% (190)

CIVIL

DOUGLAS	21% (130)	3% (147)	9% (128)	86% (95)
LANCASTER	17% (77)	8% (98)	18% (76)	90% (62)
FOUR DISTRICTS	17% (84)	7% (107)	8% (88)	95% (77)
COMBINED	19% (291)	6% (352)	11% (292)	90% (234)

* This table does not take into account that in most of these cases extensions were asked and granted. The number in parentheses indicates the sample size.

- 1 Time limit 60 days - NCSC recommendation for new rule
- 2 Time limit 31 days - current Supreme Court rule
- 3 Time limit 62 days - current Supreme Court rule
- 4 Time limit 72 days (or 102 if no bill of exceptions) - current Supreme Court rule

Time for Ruling on Motions after Judgment

Figures 1 and 2 show that, for the judicial districts studied, the average time for ruling on criminal cases was 31 days or less; while the average time for ruling on civil cases was 45 days or less. Even more significant is that the median in criminal cases was 27 or less, and for civil cases the median was 22 or less. Although the range of the data was 0 to 517 days, only 10% of the rulings of all criminal cases and 19% of the rulings of all civil cases studied (Table I) exceeded the project team's recommendation of 60 days for ruling on post-judgment motions. This data suggests that the adoption of the 60-day rule is reasonable. Actually, the Supreme Court might monitor the results of the new rule, with the idea of lowering the 60-day limit to 45 days if justified.

FIGURE # 1

TIME FOR RULING ON MOTIONS AFTER JUDGMENT
CRIMINAL CASES ON APPEAL

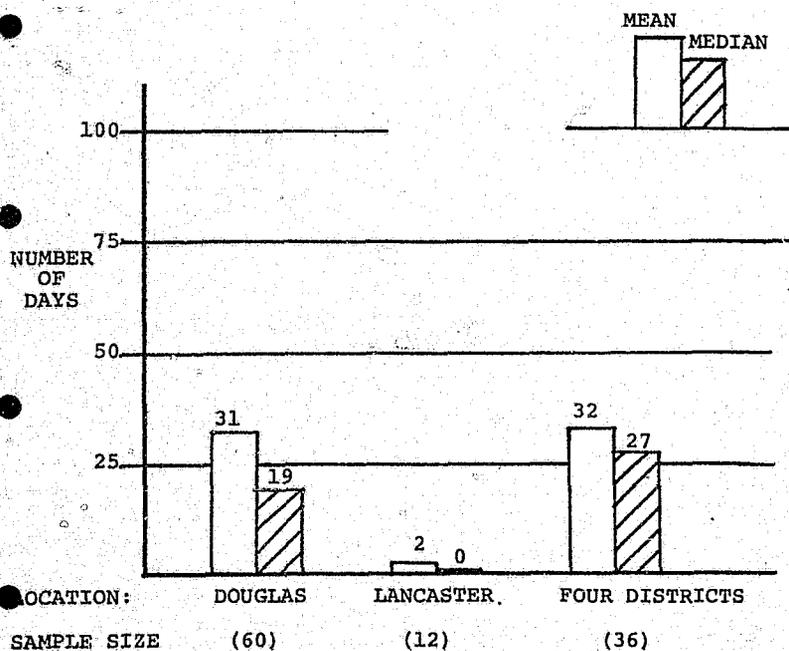
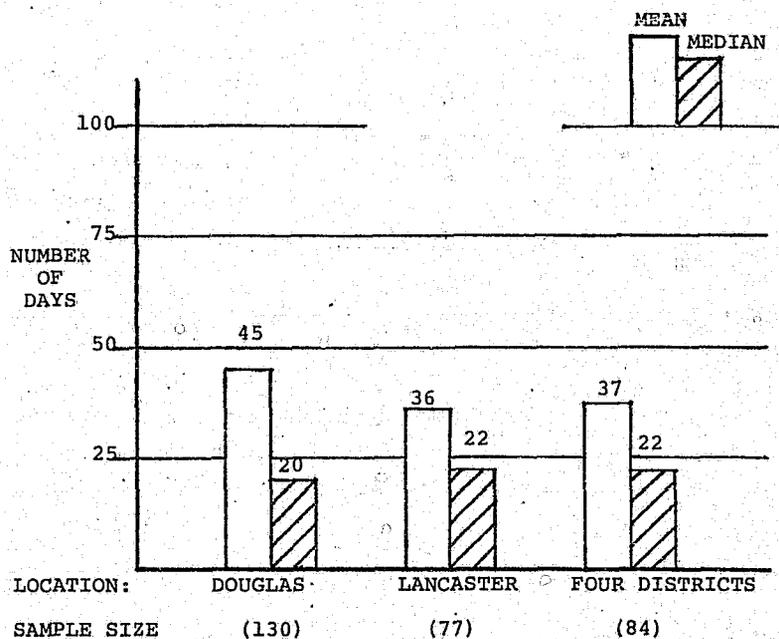


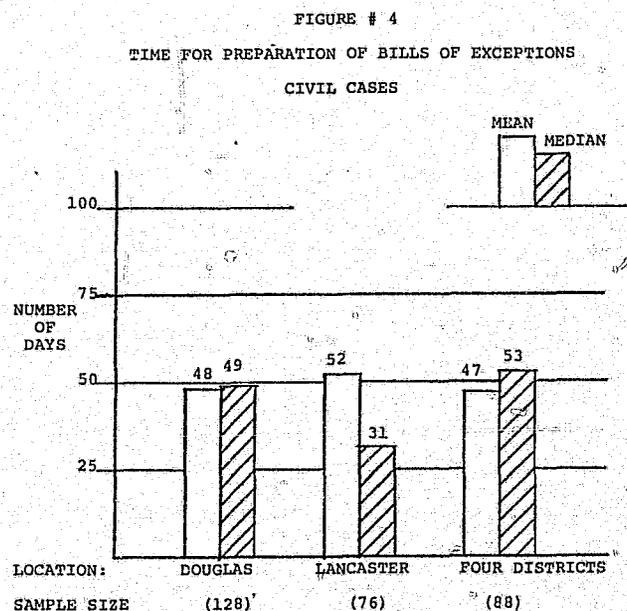
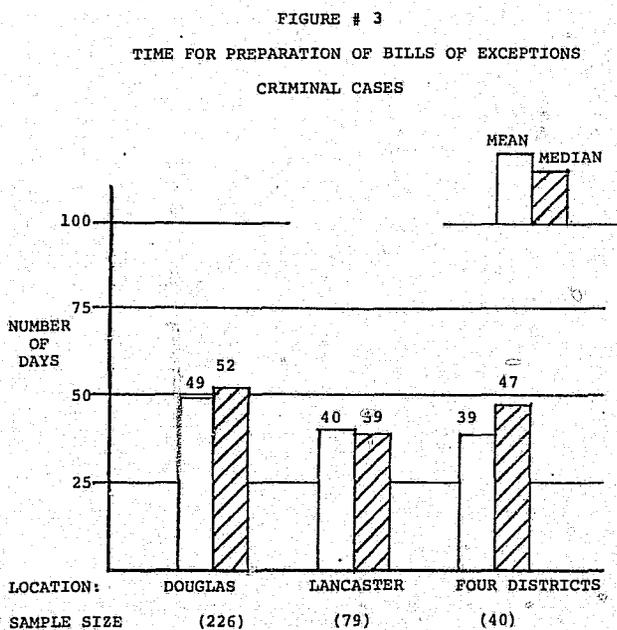
FIGURE # 2

TIME FOR RULING ON MOTIONS AFTER JUDGMENT
CIVIL CASES ON APPEAL



Time for Preparation of Bills of Exceptions

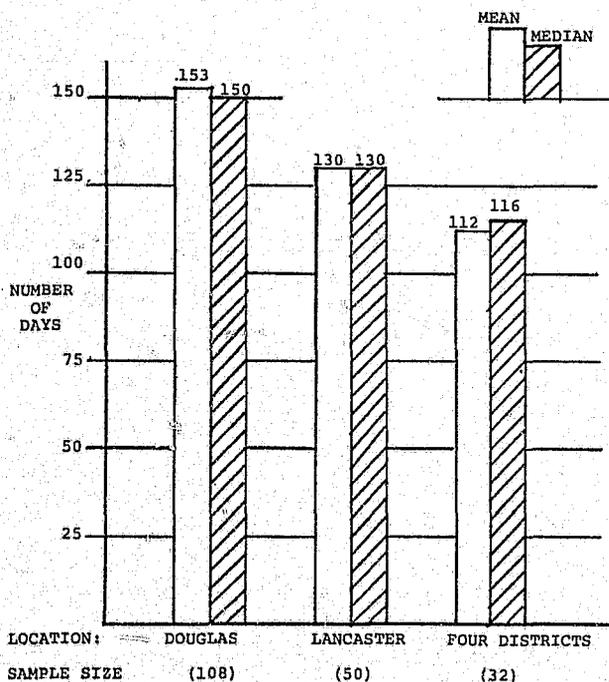
Figures 3 and 4 show that, for the judicial districts studied, the average time for the preparation of bills of exceptions on criminal cases was 49 days or less, while the average time for the preparation of bills of exceptions on civil cases was 52 days or less. The median time on criminal cases was 52 days or less, while that for civil cases was 53 days or less. This data reflects that the court reporters are able to prepare most bills of exceptions in much less than the two months currently allowed by Supreme Court rules. Table I shows that, for the judicial districts studied, the court reporters exceeded the Supreme Court guidelines in only 13% of the criminal cases in the sample and only 11% of the civil cases in the sample. These combined statistics were the basis upon which the project staff recommended lowering the time limit for the preparation of bills of exceptions to six weeks.



Time for the Preparation of Briefs

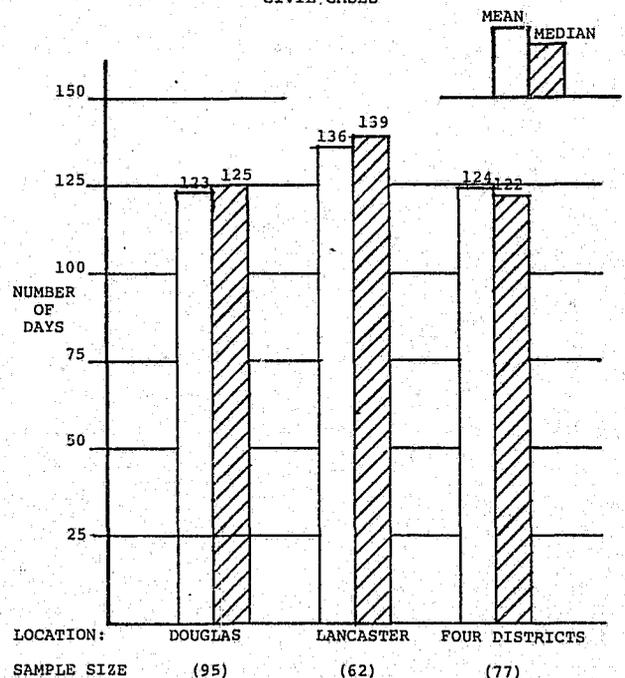
The data gathered indicates that the time taken by the attorneys in the preparation of the briefs is one of the major reasons for delays in the appellate process. Current Supreme Court rules allow two months and 10 days for briefs in most cases. Figure 5 shows that in all judicial districts studied, the mean and median exceeded 112 days for the preparation of the briefs in criminal cases. Figure 6 shows that in all jurisdictions studied, the mean and median exceeded 122 days for the preparation of the briefs in civil cases. Table I further indicates that in all jurisdictions studied, the last brief was filed after the time limit currently allowed by Supreme Court rule 89% of the time for criminal cases and 90% of the time for civil cases. These combined statistics give great weight for the National Center's recommendation that the Supreme Court should grant fewer extensions to lawyers for the preparation of briefs.

FIGURE # 5
TIME FOR PREPARATION OF BRIEFS*
CRIMINAL CASES



* The current Supreme Court rule for time allowed for the preparation of briefs is 72 days or 102 days if no bill of exceptions is filed.

FIGURE # 6
TIME FOR PREPARATION OF BRIEFS*
CIVIL CASES

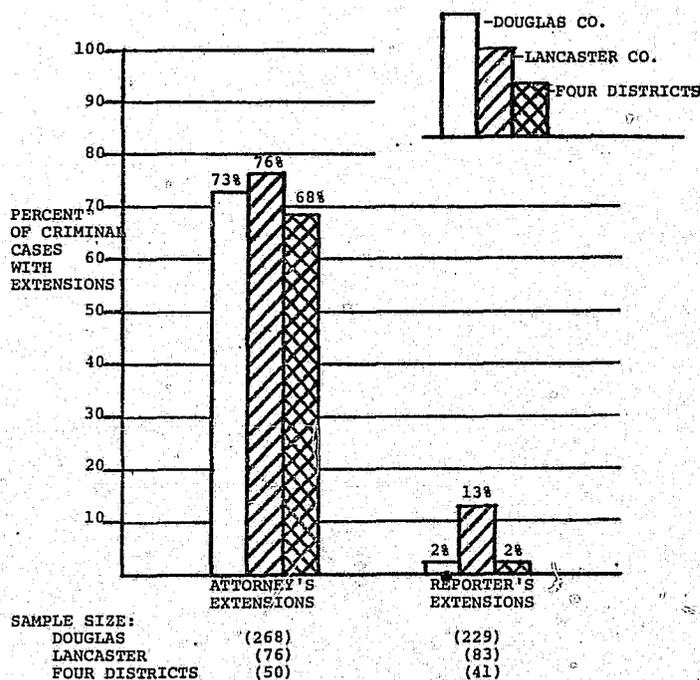


* The current Supreme Court rule for time allowed for the preparation of briefs is 72 days or 102 days if no bill of exceptions is filed.

Extensions of Time

The data illustrated by Figures 7 and 8 give additional support to the National Center's recommendation on tightening the granting of extensions to attorneys for the preparation of briefs. Figure 7 shows that, for the judicial districts studied, attorneys were granted extensions in 68% or more of the criminal cases in our sample. Figure 8 indicates that, for the judicial districts studied, attorneys were granted extensions in 67% or more of the civil cases in our sample. However, Figure 9 does show that the attorneys only exceeded the time allotted in the rules without applying for an extension 7% or less of the time. The combined data indicates that the attorneys are willing to follow the Supreme Court rules; however, they do take advantage of liberal extension policies. The Supreme Court should establish definite guidelines to prevent any unwarranted use of requests for extensions by attorneys.

FIGURE # 7
 CASES IN WHICH EXTENSIONS GRANTED
 TO ATTORNEYS AND REPORTERS
 CRIMINAL CASES



The data shown in Figures 7 and 8 indicates that court reporters are granted extensions for the preparation of bills of exceptions in a very small percentage of the cases in which they are involved. Figure 7 shows that reporters were granted extensions in 2% of the criminal cases in Douglas County and the four judicial districts studied. In Lancaster County reporters were granted extensions in 13% of the criminal cases studied. Figure 8 shows that reporters were granted extensions in 5% or less of the civil cases in Douglas County and the four judicial districts. In Lancaster County reporters were granted extensions in 16% of the civil cases studied. This data by itself indicates that the court reporters are good about meeting the Supreme Court time limit rule.

FIGURE # 8
 CASES IN WHICH EXTENSIONS GRANTED
 TO ATTORNEYS AND REPORTERS
 CIVIL CASES

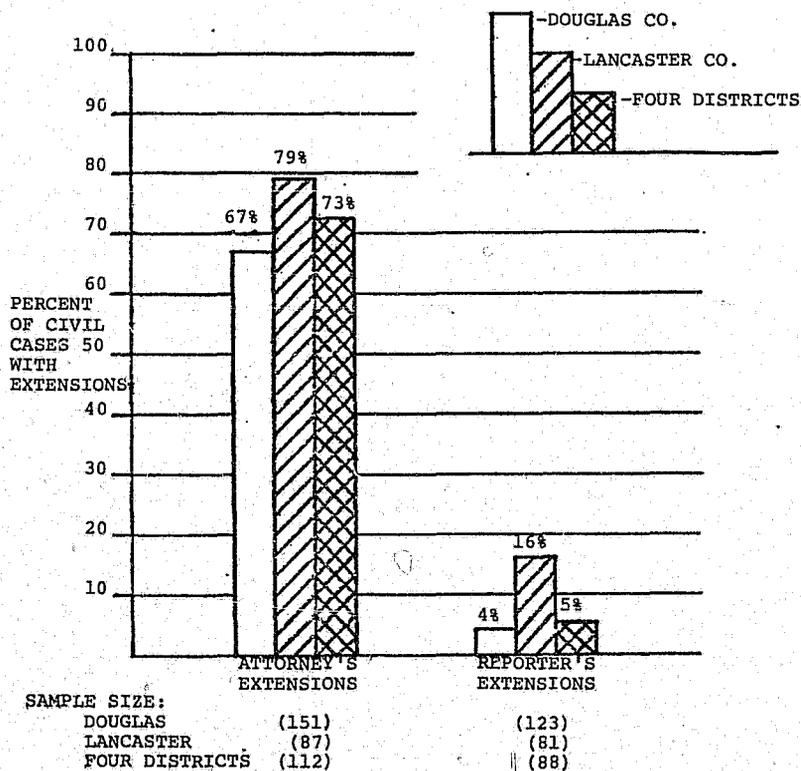
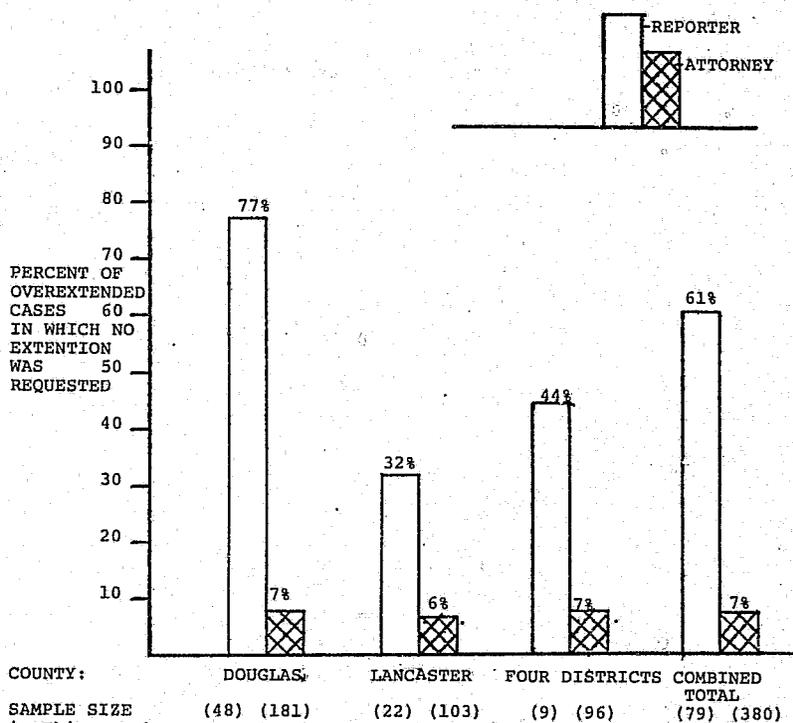


FIGURE # 9

CASES IN WHICH ALLOTTED TIME IN RULES EXCEEDED AND
NO EXTENSION REQUESTED*



SAMPLE SIZE (48) (181) (22) (103) (9) (96) (79) (380)
 * This graph represents the cases that extended beyond the reporter's time limit (62 days for bill of exception) or attorney's time limit (72 days for brief or 102 days if no bill of exception) and gives the percentage of those cases in which there was no extension granted or requested.

Figure 9, however, indicates that in all the judicial districts combined, the court reporters failed to request an extension in 61% of the cases in which they filed a bill of exceptions late. This failure occurred in 47 cases, or 7% of the cases studied. The court reporters in Douglas County were the biggest offenders on this point. They failed to request an extension in 77% of their late bills, approximately 10% of all the bills they prepared. In the four districts, 44% of the overextended cases had no extension requested; and in Lancaster County, the reporters received no extension in 32% of their overextended cases. These findings give great weight and support for the National Center's recommendation that the Supreme Court should act to eliminate the unauthorized extensions being taken by the court reporters.

Time to Prepare Bills of Exceptions Related to Length

The National Center studied the variations in time necessary to prepare bills of exception in relationship to the length of the bills. Figure 10 indicates that, for criminal cases for all judicial districts included in the study, the average preparation time for bills of 0-25 pages in length was 38 days. For bills of exceptions for all judicial districts included in the study of 501+ pages, the average preparation time was 72 days. Figure 10 shows that the court reporters in the four districts were on the average able to produce the criminal case bills of exceptions in less time than the other districts studied. It can also be seen that Douglas County court reporters were on the average taking longer periods of time to prepare criminal case bills of exceptions than the reporters in the other districts studied.

FIGURE # 10
TIME TO PREPARE BILL OF EXCEPTIONS
RELATED TO LENGTH
CRIMINAL CASES

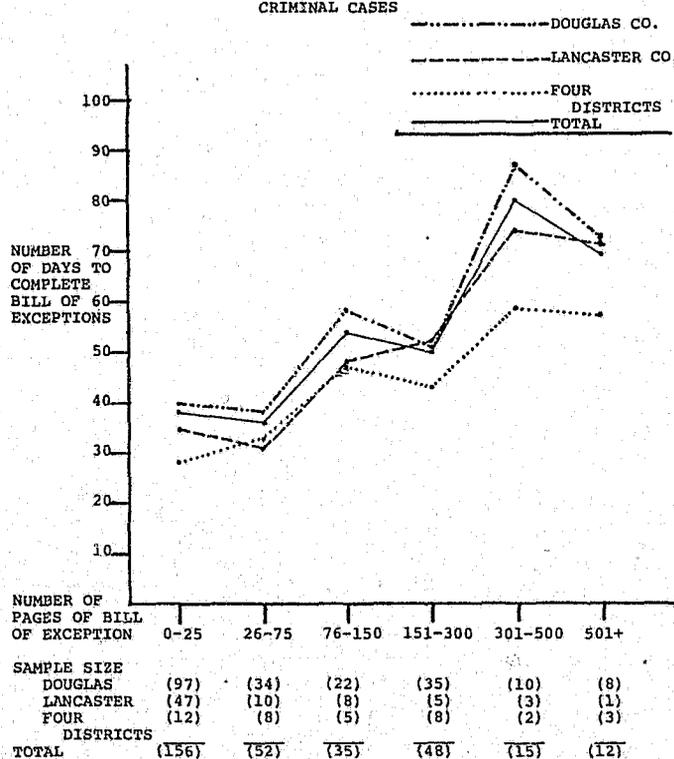


Figure 11 shows that, for civil cases for all judicial districts included in the study, the average preparation time for bills of 0-25 pages in length was 35 days. For bills of exceptions of 501+ pages for all judicial districts included in the study, the average preparation time for civil cases was 73 days. In looking at Figure 11 it is apparent that the court reporters in the four districts and Douglas County developed on the average the most consistent time trend for the preparation of civil case bills of exceptions. Lancaster County was able to average significantly lower time frames for the cases studied when bills of exceptions were 75 pages or less. However, once bills of exceptions exceeded 75 pages, Lancaster County reporters took considerably more time to prepare the civil case bills than the reporters in the other districts studied.

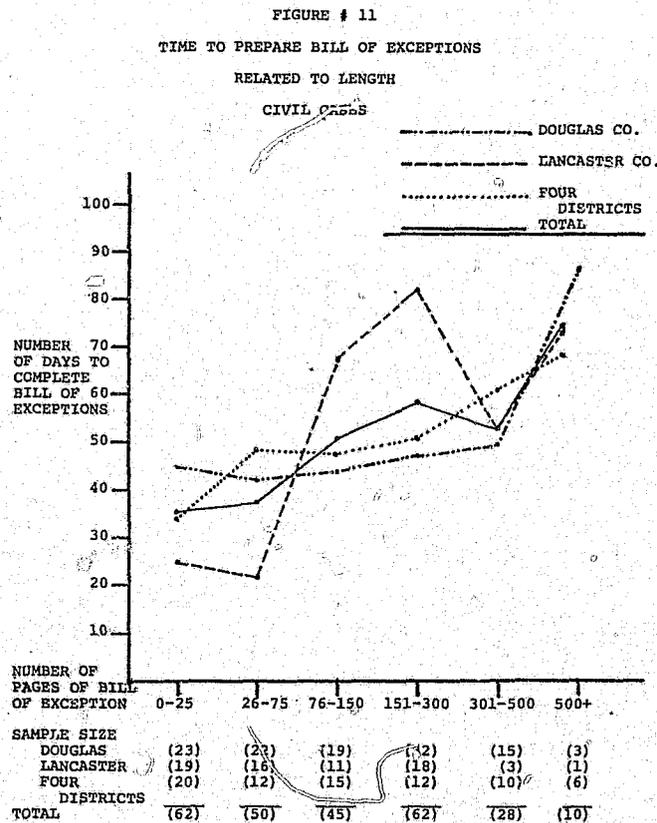
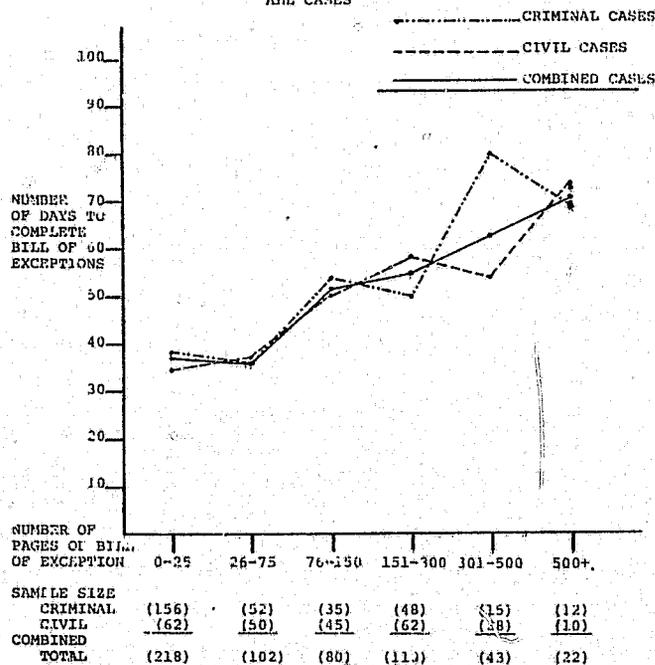


Figure 12 illustrates the time trend lines developed for the preparation of briefs related to length for all criminal cases, all civil cases, and all combined cases. The significant point of this graph is that once the reporters begin the preparation of the bills of exceptions a fairly consistent time progression develops. There appears to be a 30-day lag between the time of the filing of the praecipe and the beginning of the preparation of the bills of exceptions. In looking over Figures 10, 11, and 12, it can be seen that to prepare even a bill of exceptions of 0-25 pages it took an average minimum of 25 days and an average maximum of 45 days. Based upon the data reflected in Figures 10, 11, and 12 and the earlier data presented in Table I and Figures 3 and 4, the National Center recommended that the Supreme Court rule of two months for the preparation of bills of exceptions be lowered to six weeks.

FIGURE # 12
 TIME TO PREPARE BILL OF EXCEPTIONS
 RELATED TO LENGTH
 ALL CASES

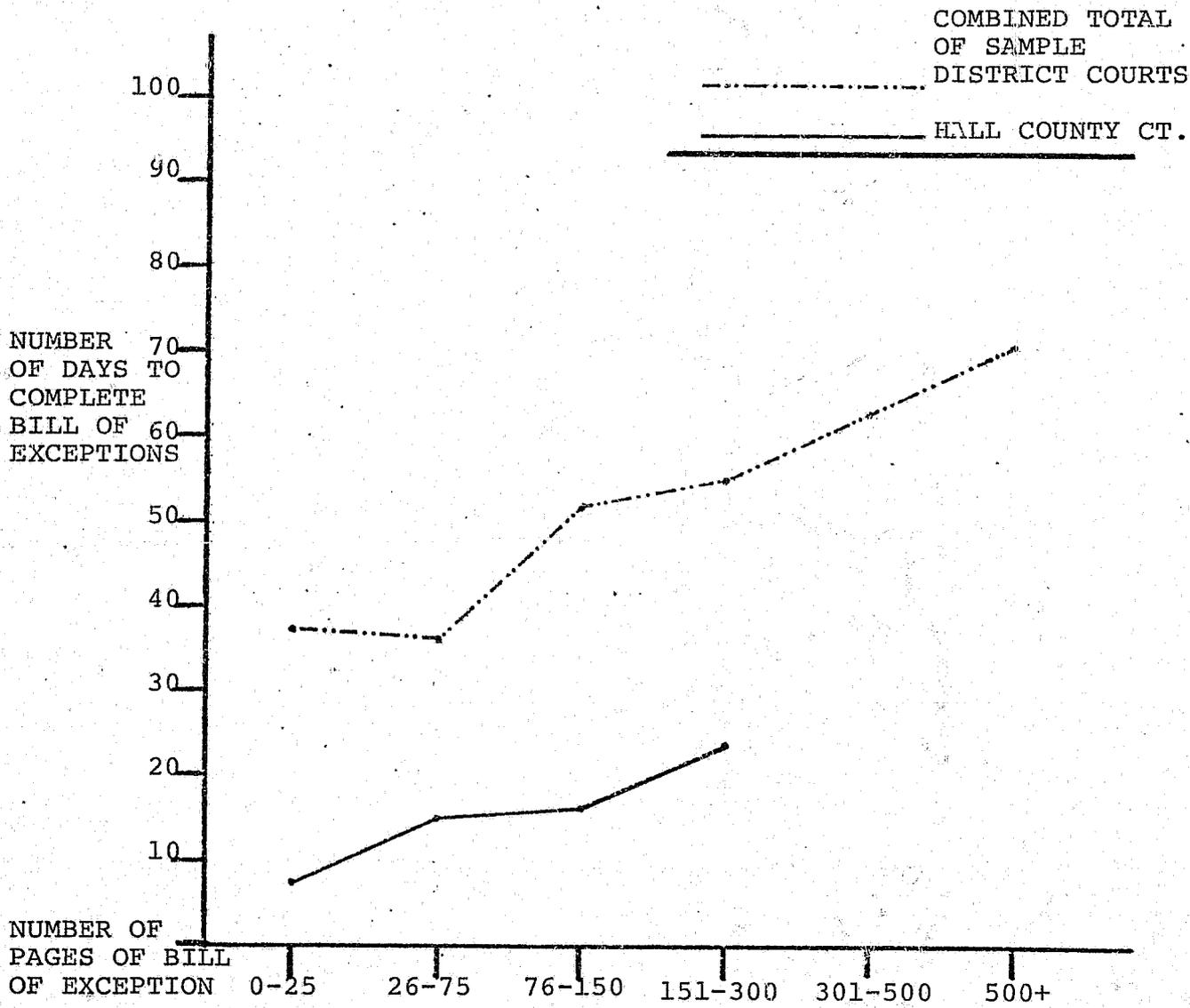


Time to Prepare Bills of Exceptions - District Court Sample vs. Hall
County Court

The Advisory Committee of the Nebraska Court Reporting Project and the Court Administrator's staff requested that the National Center compare the results of the district court study with sample results from the Hall County Court. The Advisory Committee and the Court Administrator wanted to see if there was a significant difference between the time necessary to prepare bills of exceptions under a system using exclusively audio court reporting and under a system using traditional court reporters. The National Center agreed to conduct this comparison, with the reservation that the results were of limited value. It must be pointed out that although the data gathered for the district court trend line have validity, the data gathered on audio recording in the Hall County Court is extremely limited and of questionable value. It reflects only one county, and the sample size is very small. However, with this reservation, it is interesting to note that the average time necessary to prepare the bills of exceptions in the Hall County Court was much less than the average time in all district courts included in the study. In the Hall County Court bills of 0-25 pages took only 8 days and bills of 151-300 pages took 25 days; but in the district court sample, the shorter bills took 37 days and the longer took 55 days. This cursory comparison might justify a further study of the county court reporting performance.

FIGURE # 13

TIME TO PREPARE BILL OF EXCEPTIONS
DISTRICT COURT SAMPLE VS. HALL COUNTY COURT



SAMPLE SIZE							
COMBINED TOTAL OF SAMPLE DISTRICT COURTS	(218)	(102)	(80)	(110)	(43)	(22)	
HALL COUNTY COURT	(6)	(5)	(1)	(2)	(0)	(0)	

SUMMARY OF RECOMMENDATIONS

Court Reporting Method

1. The Court administrator and the district judges should be aware of the alternative court reporting methods, and they should be familiar with the advantages and disadvantages of each (p. 5).

2. Any of the standard methods can produce an excellent record, as long as the reporter/operator is well-trained (p. 7).

3. In order to make the cost differences among reporting methods equitable for the reporter and the counties, the state should provide each reporter's primary recording equipment (p. 9).

4. Video-recording, audio-recording, and computer-aided transcription are viable alternatives whose development should be followed. Nebraska should experiment with the use of these methods to establish standards and procedures in the use of the methods in the district courts (p. 9).

5. The Supreme Court should make several alternatives available for use in Nebraska as the official record, and the district judge should be granted the opportunity to establish what he wants in his court (p. 11).

6. The State Court Administrator should prepare a standard logging form for use with audio recording (p. 12).

The Official Court Reporter

7. The Supreme Court should issue a job description for the official court reporter (p. 13).

8. The Supreme Court should establish a standard policy on free-lance work (p. 14).

9. Nebraska should adopt a state-wide certification program for full time and part time reporters (p. 14).

10. The Supreme Court should certify candidates who want to be official court reporters (p. 15).

11. Current court reporters should continue in their position, but be encouraged to become certified (p. 16).

12. The district judge should select his own reporter. This reporter should be required to pass the certification test within the first three months of his employment or be dismissed (p. 16).

13. The state should conduct periodic training sessions and seminars to allow reporters to maintain their high levels of skill (p. 17).

14. The Supreme Court should monitor the work performance of court reporters and consider action against a reporter whose work performance does not meet high standards (p. 19).

15. The Supreme Court should issue a clear policy statement concerning reporters' compensation and outside work. At a minimum, this statement should establish a salary schedule with increments and adjustments for experience and professional accomplishments (p. 21).

16. The daily work routine and place of residence should be a matter between the judge and his reporter (p. 22).

17. The state should compensate court reporters' travel only to outlying counties, not to their principal location (p. 23).

18. The state should hire and pay temporary replacements for reporters when necessary due to illness or vacation (p. 25).

19. The Supreme Court should adopt rules for the control of exhibits and evidentiary materials, with adequate procedures to guarantee the security of dangerous articles (p. 26).

20. The Supreme Court should require court reporters to post a \$5000 performance bond so that it could take action to insure proper production of bills of exceptions and control of evidence and exhibits when a reporter leaves the state (p. 26).

21. The Court should adopt rules to handle cumbersome exhibits, substituting photographs where possible (p. 27).

Procedure to Compile Record for Appeal

22. The Supreme Court should promulgate a rule establishing a set time limit such as 60 days for a judge to rule on motions after judgement (p. 29).

23. The appellant's counsel should be required by statute or rule to file the praecipis he desires at the same time as the notice of appeal (p. 30).

24. The appellant's counsel should be required by rule to send a copy of the praecipe for bill of exceptions to the reporter (p. 30).

25. The Supreme Court should adopt a standard form for bills of exceptions (p. 31).

26. The court reporter should file an affidavit when he cannot comply with a praecipe for a bill of exceptions, stating the reasons for not preparing the bill (p. 32).

27. The state should adopt a standard policy concerning the supplies furnished by the county to the court reporters (p. 32).

28. The time limit for the preparation of bills of exceptions should be 6 weeks (p. 33).

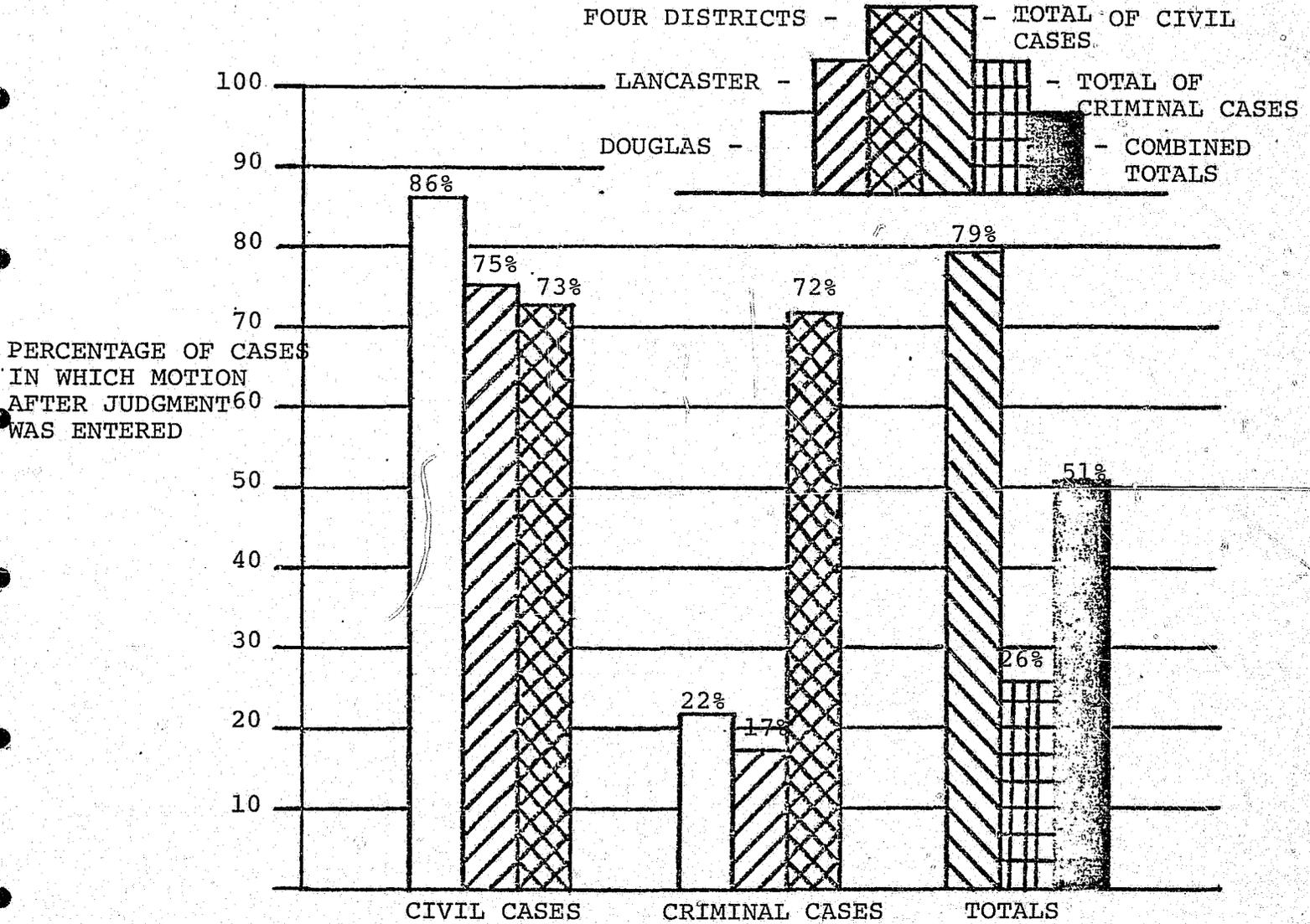
29. The Supreme Court should consider reporters' requests for extensions a set time before the allotted time expires, using explicit standards for granting extra time (p. 34).

30. The Supreme Court should establish a procedure to make a photocopy of the bill of exceptions for each counsel (p. 35).

31. The Supreme Court should tighten its procedures for granting extensions to lawyers for the preparation of briefs. The court should grant extensions only for cause, and the attorneys should be required to make the request in advance of the expiration of the time limit (p. 35).

APPENDIX A

CASES IN WHICH MOTIONS AFTER JUDGMENT ENTERED

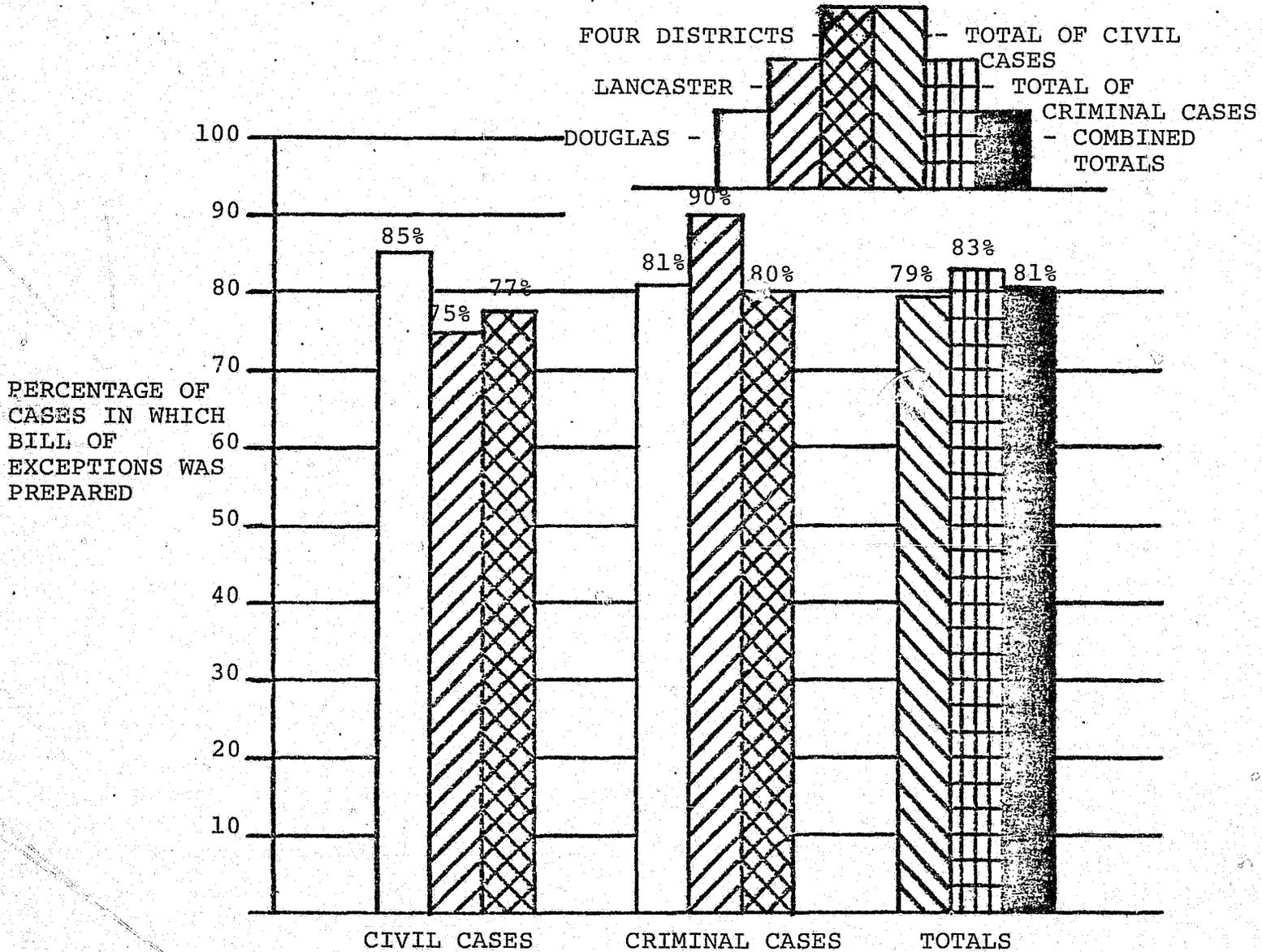


SAMPLE SIZE:

DOUGLAS	(151)	(278)	CIVIL CASES	(368)
LANCASTER	(102)	(88)	CRIMINAL CASES	(416)
FOUR DISTRICTS	(115)	(50)	TOTAL	(784)

APPENDIX B

CASES IN WHICH BILL OF EXCEPTIONS PREPARED



PERCENTAGE OF
CASES IN WHICH
BILL OF
EXCEPTIONS WAS
PREPARED

SAMPLE SIZE:

DOUGLAS	(151)	(278)	CIVIL CASES	(368)
LANCASTER	(102)	(88)	CRIMINAL CASES	(416)
FOUR DISTRICTS	(115)	(50)	TOTAL	(784)

APPENDIX C

DISTRICT JUDGES QUESTIONNAIRE

1. In what judicial district do you usually hold court?

10 Douglas County
3 Lancaster County
25 Other

2. If other, are you in a single or multiple judge district?

9 Single
29 Multiple

3. How many years have you been a district judge?

mean = 7.39 years
range = 1/2 to 20 years

4. How would you rate the acoustics in your courtroom?

15 Excellent
24 Good
22 Satisfactory
19 Poor
1 No Courtroom

5. How would you rate the space in your courtroom?

39 Excellent
18 Good
12 Satisfactory
17 Poor
1 No Courtroom

6. As an average, how many hours per week do you use a court reporter to take an official record of the proceedings in your court?

18.54 hours
range = 6 to 32.5 hours

7. What reporting method does your court reporter normally use?

2 Shorthand only
19 Stenotype only
4 Shorthand and audio recording
13 Stenotype and audio recording

8. Is your reporter available at the times and places where you have need for his services?

<u>34</u>	Always
<u>4</u>	Most often
<u>0</u>	Seldom
<u>0</u>	Never

9. How would you rate the in-court reporting ability of your court reporter?

<u>29.5</u>	Excellent
<u>6.5</u>	Good
<u>1</u>	Satisfactory
<u>0</u>	Poor
<u>1</u>	No Answer

10. How would you rate your court reporter in terms of speed in which he produces bills of exceptions?

<u>28.5</u>	Excellent
<u>7.5</u>	Good
<u>1</u>	Satisfactory
<u>0</u>	Poor
<u>1</u>	No Answer

11. How would you rate the overall district court reporting system in Nebraska?

<u>9.5</u>	Excellent
<u>10.5</u>	Good
<u>1.0</u>	Satisfactory
<u>0</u>	Poor
<u>17</u>	No opinion

12. Throughout the state, is there a delay in the preparation of bills of exceptions?

<u>1</u>	Never
<u>8</u>	Seldom
<u>2</u>	Often
<u>0</u>	Always
<u>27</u>	No opinion

13. In your opinion, would the preparation of an original and two copies of the bill of exceptions expedite the appellate process?

<u>23</u>	Yes
<u>10</u>	No
<u>5</u>	No answer

If no, please comment.

14. Are the statutes and rules in Nebraska adequate to manage the court reporting system?

27 Yes
9 No
2 No answer

If no, please comment _____

15. Would you favor the use of the following reporting methods in your courtroom to keep the official record of proceedings?

Audio	<u>5</u> Yes	<u>27</u> No	<u>6</u> No opinion
Video	<u>6</u> Yes	<u>25</u> No	<u>7</u> No opinion
Computer aided transcription	<u>6</u> Yes	<u>17</u> No	<u>15</u> No opinion

16. Would you rate each of the following reporting methods?

	<u>very good</u>	<u>acceptable</u>	<u>unacceptable</u>	<u>no opinion</u>
Manual shorthand	<u>12</u>	<u>14</u>	<u>4</u>	<u>38</u>
Stenotype	<u>29</u>	<u>8</u>	<u>0</u>	<u>1</u>
Audio-tape recording	<u>0</u>	<u>7</u>	<u>17</u>	<u>14</u>
Video-tape recording	<u>0</u>	<u>5</u>	<u>15</u>	<u>18</u>
Shorthand with audio-tape records	<u>13</u>	<u>11</u>	<u>4</u>	<u>10</u>
Stenotype with audio-tape records	<u>22</u>	<u>9</u>	<u>2</u>	<u>5</u>
Computer aided transcription	<u>4</u>	<u>3</u>	<u>6</u>	<u>25</u>

17. Would you favor the option to use the following reporting methods throughout Nebraska?

Audio recording	<u>12</u> Yes	<u>22</u> No	<u>4</u> No opinion
Video recording	<u>8</u> Yes	<u>21</u> No	<u>9</u> No opinion
Computer aided transcription	<u>12</u> Yes	<u>11</u> No	<u>15</u> No opinion

18. Do you think a reporter should be required to live in the city (or area) of residence of his judge?

29 Yes
9 No

19. What should the time limit be for filing a notice of appeal and praecipe for a bill of exceptions?

28 One month (present rule)

10 Days mean 11.55 days

20. Should judges be required to set motions for a new trial for hearing within a specified time after their filing?

21 Yes. If yes, please suggest time limit. _____ days

17 No mean 23.63

21. Would you favor a statewide certification program for all official court reporters?

28 Yes

8 No

1 depends on program

1 no answer

22. Would you require that all present reporters be certified by the state?

22 Yes

14 No

1 depends on program

1 no answer

23. Would you permit present reporters to choose whether or not to be certified, with an attendant differential in salary between certified and non-certified reporters?

9 Yes

26 No

3 no answer

APPENDIX D

COURT REPORTERS QUESTIONNAIRE

1. In what judicial district do you usually work?

8 Douglas County
4 Lancaster County
26 Other

2. Are you in a single or multiple judge district?

12 Single
26 Multiple

3. How many years have you been an official reporter in Nebraska? mean = 9.52 Years
range = 2 months to 33 years

4. What method of reporting do you use?

8 Shorthand
30 Stenotype

5. Do you use a audio recording in conjunction with your reporting?

23 Yes
14 No
1 once in several years

6. If yes, in what percentage of cases?

 percent mean 57.95%
range 1 - 100%

7. In those cases in which you use audio recording, are the entire proceedings recorded?

6 Yes
18 No

8. If no, what portions do you record? _____

(see p. 7)

9. List the approximate hours per week you spend in the following:

Total Time	Office Time	
<u>19.9</u>	_____	Reporting in court
<u>6.3</u>	_____	Preparing bills of exceptions
<u>3.9</u>	_____	Free-lance work
<u>6.16</u>	_____	Secretarial duties
<u>2.9</u>	_____	Travel
<u>0.83</u>	_____	Other
<u>39.99</u> TOTAL		

10. If significant to you, list the number of hours per week you spend traveling on court work in your district.

mean = 5.4 hours to commute mean = 9.6 other travel hours
 range 2.5 to 10 hours range = 5 to 15 hours

11. Approximately how many pages of material did you prepare in 1974?
 (means)

1610 Bills of exceptions
30 Daily copy
252 Transcript
1255 Free-lance

12. What method of transcribing do you use?

27 Type yourself
26 Dictate from notes
3 Notereader
2 Other (Please specify _____)

13. How many of your bills of exceptions in 1974 took more than 60 days from the date you were notified to transcribe?

0 (30) 2 (1)
 1 (1) 4 (1) mean = 0.2

14. How many extensions of time for preparing bills of exceptions did you request from the Supreme Court in 1974?

0 (29) 2 (1)
 1 (2) 4 (1) mean = 0.2

15. Estimate as nearly as you can the average time consumed in preparing a bill of exceptions in 1974. mean = 30 Days

16. Do attorneys request you to delay the preparation of a bill of exceptions once a praecipe has been filed?

0 Always
1 Often
21 Sometimes
13 Never
3 no answer

17. Has this ever caused you to request additional time to prepare the bill of exceptions?

7 Yes
15 No

18. Do clerks of court furnish you a copy of the praecipe as soon as they receive it?

28 Yes
8 No
2 no answer

19. If no, do you consider this a serious problem?

2 Yes
6 No

20. How often is the delay more than seven days?

0 Always
1 Often
5 Sometimes
2 Never

21. How would you rate the acoustics and work area of the courtroom(s) in which you work? (Indicate the number of courtrooms in each category.)

11 Excellent
34 Good
24 Satisfactory
52 Poor

22. Does the district court supply you with the following:

Office space	<u>35</u> Yes	<u>5</u> No
Typewriter	<u>34</u> Yes	<u>4</u> NO
Paper	<u>16</u> Yes	<u>19</u> No
Dictation machine	<u>3</u> Yes	<u>29</u> No
Other supplies (please specify)	_____	

23. Counting from today, how long do you desire to be an official court reporter?

2 Less than 1 year
2 1-4 years
12 Over 4 years
22 Until compulsory retirement

24. What is your present skill level in taking courtroom testimony?

a) Question and Answer testimony (Interrogatives)
mean = 218.76 words per minute
range = 175 to 275 words per minute
b) Single voice mean=202.38 words per minute
range 175 to 275 words per minute
1 as fast as they go

25. How would you rate the overall court reporting services provided by court reporters in Nebraska?

10 Excellent
15 Good
4 Satisfactory
1 Poor
8 no answer

26. How satisfied are you with court reporters' salary?

0 Very satisfied
23 Satisfied
12 Dissatisfied
2 Very dissatisfied
1 no opinion

27. How satisfied are you as an official court reporter?

16 Very satisfied
20 Satisfied
1 Dissatisfied
1 Very dissatisfied

28. Would you favor a statewide certification program for official court reporters?

33 Yes
2 No
3 maybe

29. Would you require that all present reporters be certified by the state?

24 Yes
13 No
1 no answer

30. Would you permit present reporters to choose whether or not to be certified, with an attendant differential in salary between certified and non-certified reporters?

17 Yes
17 No
4 no answer

31. Are you now certified by National Shorthand Reporters Association as any of the following:

Proficiency
Merit

6 Yes
1 Yes

29 No 3 no answer
31 No 6 no answer

32. Please make any comments you have regarding procedures to expedite the preparation and filing of bills of exceptions.

APPENDIX E

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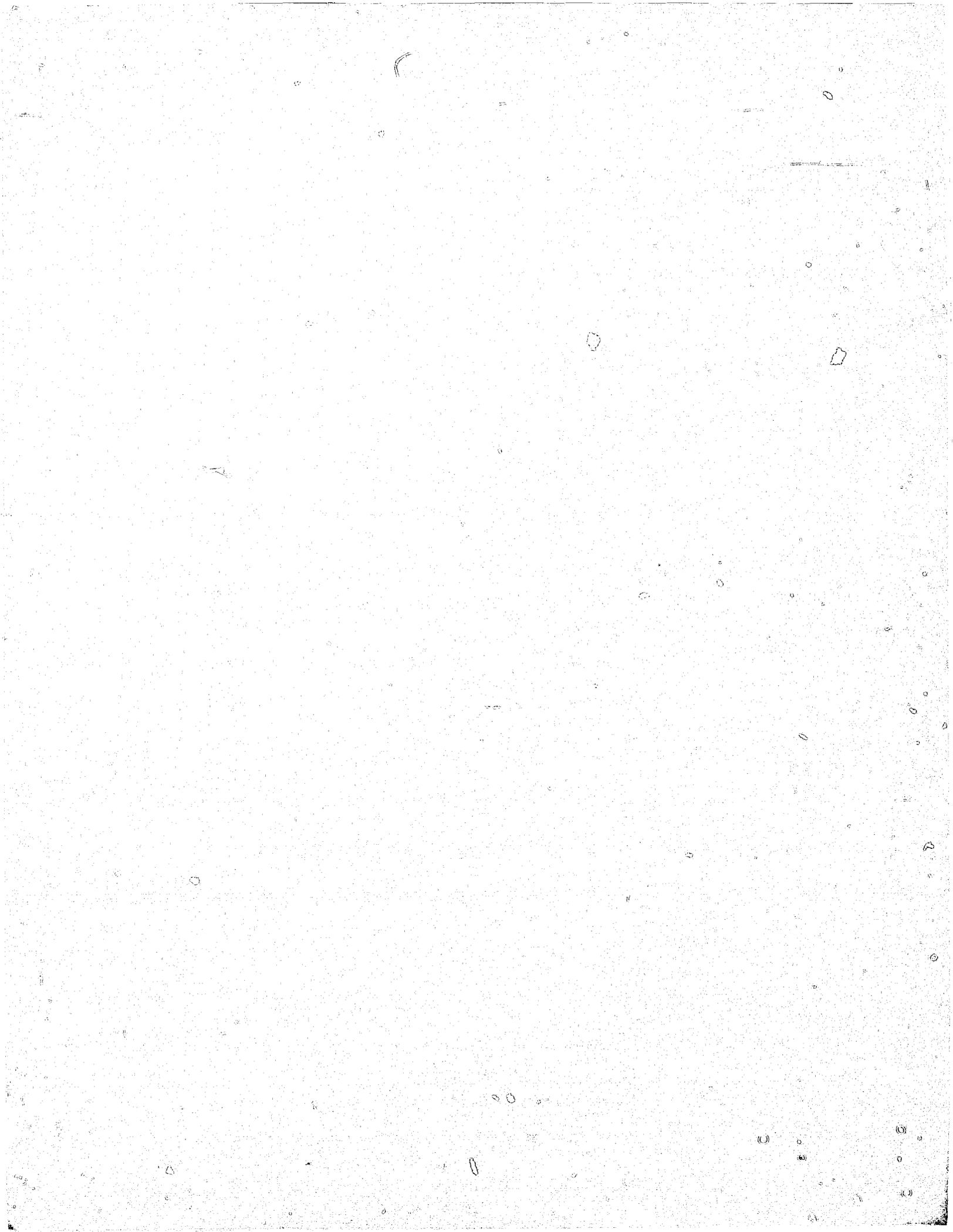
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