



THE JUDICIAL COUNCIL  
OF  
NEW MEXICO

**MICROFICHE**

*Eighth*  
**Annual Report**

December 31, 1976.

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THE JUDICIAL COUNCIL  
OF  
NEW MEXICO

*Eighth*

**Annual Report**

December 31, 1976.

# JUDICIAL COUNCIL

1117 Stanford N.E.  
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EDMUND H. KASE III  
Chairman

BOYD F. SCOTT  
Vice-Chairman

DAVID R. GARDNER  
Executive Secretary

December 20, 1976

Samuel Z. Montoya  
Ben C. Hernandez  
Harry E. Stowers  
Edmund H. Kase III  
James A. Maloney  
Lidio Rainaldi  
Theodore Montoya  
Paul F. Becht  
Thomas P. Foy  
Boyd F. Scott  
Russell E. Mann  
Dale Walker  
James Beall  
Carlos Salas  
Rena Rosequist

ex officio  
Toney Anaya  
Frederick M. Hart  
Larry Coughenour

The Honorable Jerry Apodaca, Governor  
State of New Mexico

The Honorable Members of the  
New Mexico State Legislature

The Honorable Justices of the  
New Mexico Supreme Court

Dear Governor, Members of the Legislature, and  
Justices of the Supreme Court:

I am submitting herewith the 1976 annual report of the New Mexico Judicial Council pursuant to Section 16-10-5, New Mexico Statutes Annotated, 1953 Compilation, which directs the Judicial Council to "submit a report of its proceedings and recommendations to the legislature, the governor and the Supreme Court each year."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edmund H. Kase III".

Edmund H. Kase III, Chairman  
New Mexico Judicial Council

Enclosure  
EHK:vmm

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COUNCIL MEMBERSHIP  
December 31, 1976

Chairman: Edmund H. Kase, III

Vice-Chairman: Boyd Scott

\* \* \*

Dr. James Beall, Ruidoso

Paul F. Becht, Senator, Albuquerque

Thomas P. Foy, Representative, Silver City

Ben C. Hernandez, Judge, New Mexico Court of Appeals, Santa Fe

Edmund H. Kase, III, District Judge, Socorro

James A. Maloney, District Judge, Albuquerque

Russell D. Mann, Attorney, Roswell

Marshall Martin, Attorney, Albuquerque

Samuel Z. Montoya, Justice, New Mexico Supreme Court, Santa Fe

Theodore Montoya, Senator, Placitas

Lidio Rainaldi, Magistrate, Gallup

Rena Rosquist, Taos

Carlos Salas, Mesilla Park

Boyd F. Scott, Representative, Farmington

Harry E. Stowers, Jr., District Judge, Albuquerque

Toney Anaya, Attorney General, Santa Fe, ex-officio member

Larry Coughenour, Director, Administrative Office of the Courts,  
Santa Fe, ex-officio member

Frederick M. Hart, Dean, University of New Mexico School of Law,  
Albuquerque, ex-officio member

\* \* \*

The following members were replaced by appointments of members listed above during the year: Dale Walker, Esq., former chairman, Albuquerque, and the Honorable LaFel E. Oman, Chief Justice, New Mexico Supreme Court, Santa Fe.

## THE NEW MEXICO JUDICIAL COUNCIL

### MEMBERSHIP

Created by the legislature in 1969, the Judicial Council is a statutory body consisting of fifteen members and three ex-officio members. The membership consists of one Supreme Court justice, one court of appeals judge, one magistrate, three district judges, two state senators, two state representatives, two lawyers and three non-lawyers. The attorney general, the dean of the law school at the University of New Mexico and the director of the Administrative Office of the Courts are ex-officio members.

### DUTIES

The functions of the Judicial Council are:

- a. to continuously study the administration and operation of all courts in the state;
- b. to investigate criticisms and suggestions pertaining to the administration of justice;
- c. to keep advised concerning decisions of the courts and the legislature affecting the organization and operation of the courts; and
- d. To recommend desirable changes to the legislature and the Supreme Court.

The Council adopted the following statement of Justice Cardozo as best summarizing its functions: "to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged - to act as mediator and research assistant as a means of adapting law to justice." (U. S. Supreme Court Justice Benjamin Cardozo, then New York Chief Justice, 1921.)

### MEETINGS

During 1976 the Council held nine meetings including two public meetings, one in Taos and one in Las Cruces. All meetings are open to the public, but at least one meeting during the year is held after special invitations to the public, requesting testimony on any matter involving the courts in New Mexico.

### COOPERATION AND ASSISTANCE

The Judicial Council has received valuable cooperation from several sources during the year which has greatly aided the Council in performing its duties. The Administrative Office of the Courts, and its director, Larry Coughenour, have

provided information needed for projects and assistance in administrative matters that is sincerely appreciated. The justices, judges, clerks, and other personnel of the Supreme Court, Court of Appeals and District Courts, as well as officials of other state agencies and members of the general public, have been very responsive to requests for information and opinions. The Judicial Council is grateful for that help and the willing attitude with which it was given.

## SENTENCING LAWS

Last year the Judicial Council responded to the request of the House of Representatives that it study the provisions of the criminal code relating to sentencing and disposition of criminal offenders. Due to the continuing concern over the rising crime rate, the Judicial Council was asked, via House Memorial 2\* of the second session of the Thirty-second Legislature to continue its study and submit its recommendations together with suggested legislation to the next session of the Legislature. In response to that memorial, the Judicial Council's findings and recommendations are here submitted. No suggested legislation was drafted, the Judicial Council feeling that the Legislative Council should perform that task, and knowing that some drafting of bills related to the recommendations was already underway. The Judicial Council's recommendations were furnished to the Legislative Council and an appearance was made before the interim Legislative Criminal Justice Study Committee to respond to questions about the recommendations.

### JUDICIAL COUNCIL RESPONSE TO HM 2

#### Findings

From studying available statistics on crime, apprehension, prosecution and sentencing, it is apparent that there is a need for more effective apprehension and prosecution as well as sentencing. Table 1 provides the 1975 figures in these areas for the judicial districts.

One theory gaining in popularity and mustering significant statistical support declares that when the risks of committing crimes outweigh the advantages, crime decreases. When the risk of being caught reaches 30%, there begins to be sufficient deterrence. In New Orleans, a crackdown by the district attorney on repeat offenders and an abandonment of plea bargaining when prosecuting those repeat offenders resulted in a substantially lower crime rate.

While amending the sentencing laws in the Criminal Code to provide harsher sentences may have some effect, it is not likely to be significant unless more offenders can be brought to the sentencing stage. It is variously estimated that only 40% to 60% of all crimes committed are reported to the police.

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\*See Appendix A for text of House Memorial 2.



In New Mexico in 1975 there were 66,296 part 1 crimes reported. Part 1 crimes are the serious crimes against life and property, including murder, rape, robbery, assault, burglary, larceny and motor vehicle theft. For those crimes reported, there were 14,518 arrests which cleared 16,398 crimes, or about one-fourth of the crimes reported were cleared by arrest. In over three-fourths of those arrests the charges were dropped without prosecution. So the chance of being arrested for a crime is only about one in four, and the chance of being prosecuted for a crime is only about one in twenty. Assuming that only half of the crimes committed are reported, the chances of being caught are one in eight, and of being prosecuted only one in forty. Only half of those prosecuted are found guilty, and a little over one-third of those found guilty are sent to prison. The deterrent effect would be much greater if more support were available to apprehend and prosecute offenders than it would be by sending more of the few that are convicted to prison.

#### Recommendations

Having achieved some perspective on the problem, there are some recommendations the Judicial Council would make with regard to the sentencing process.

1. If more offenders are incarcerated, facilities must be made available immediately to house them, and the additional facilities should provide an alternative to the Department of Corrections to place the offender in a minimum or maximum security institution. There should be a way to segregate young, first-time or non-violent offenders from violent or professional offenders. Because of the sentencing judge's familiarity with the offense and the criminal, he should have the right to make recommendations as to the institution where the sentence should be served.
2. The probation and parole act should be amended to require the criminal to serve the full minimum sentence imposed under the indeterminate sentence law before being eligible for parole.
3. The habitual criminal act should be enforced by requiring the district attorney, within thirty days of a second or subsequent felony conviction, to either file an information to invoke the act or file a pleading explaining why the act should not be invoked.

4. In sentencing a criminal who has a record of prior felony offenses, the discretion to defer or suspend sentence should not be available to the sentencing judge if the last prior conviction occurred within five years.

5. The plight of crime victims should be given consideration by enlarging upon the procedures for establishing restitution as a condition for probation and parole.

TABLE 1

District	County	Part 1 Offenses Reported	Offenses Cleared by Arrest	Felony Prosecutions	Convictions	Sentenced to be Incarcerated
1	Santa Fe	4497	810 18.0%	178	69 38.8%	41 59.4%
	Rio Arriba	714	244 34.2			
	Los Alamos	481	99 20.6			
2	Bernalillo	29737	7561 25.4	1219	565 46.3	321 56.8
3	Dona Ana	3883	1137 29.3	69	52 75.4	25 48.1
4	San Miguel	1612	347 21.5	69	45 65.2	7 15.6
	Mora	49	14 28.6			
	Guadalupe	175	32 18.3			
5	Chaves	2153	572 26.6	113	84 74.3	33 39.3
	Eddy	1811	296 16.3	202	153 75.7	37 24.2
	Lea	3184	949 29.8	113	61 54.0	16 26.2
6	Grant	815	273 33.5	140	95 67.9	26 27.4
	Hidalgo	152	60 39.5			
	Luna	892	157 17.6			
7	Socorro	301	61 20.3	111	52 46.8	10 19.2
	Sierra	336	104 31.0			
	Catron	11	3 27.3			
	Torrance	100	32 32.0			
8	Taos	640	137 21.4	58	53 91.4	8 15.1
	Colfax	361	137 38.0			
	Union	175	66 37.7			
9	Curry	2037	551 27.0	478	261 54.6	62 23.8
	Roosevelt	754	229 30.4			
10	Quay	639	132 20.7	125	83 66.4	24 28.9
	Harding	26	1 3.8			
	DeBaca	40	13 32.5			
11	McKinley	1881	304 16.2	78	39 50.0	15 38.5
	San Juan	2776	795 28.6	290	118 40.7	33 28.0
12	Otero	1773	397 22.4	229	156 68.1	37 23.7
	Lincoln	557	146 26.2			
13	Valencia	2010	639 31.8	186	61 32.8	42 68.9
	Sandoval	463	100 21.6			
TOTAL		66296	16398 24.7	3658	1947 53.2	737 37.9

## COURT REPORTING

With the assistance of a grant from the Law Enforcement Assistance Administration, the Judicial Council contracted for a study of the standards of work quality and quantity of court reporters. The report was completed in June and a summary is presented below. The summary was mailed to all district judges for review by them and their reporters. Comments on the report were received from District Judges Campos, Neal, Reese and Riordan, and are appreciated. Those comments, and views voiced by members of the Judicial Council are interspersed at appropriate points in the summary. The study was conducted by the National Shorthand Reporters Association.

### Court Reporting Practices and Procedures in New Mexico (a summary)

#### SCOPE

The objectives of the study were:

1. Develop competency standards for court reporters.
2. Examine relative merits of alternative reporting systems, their methods of producing transcripts, and their efficacy for appeal purposes.
3. Determine salary levels necessary to attract and retain competent reporters.
4. Examine and develop transcript production standards.
5. Determine the availability of court reporters and the feasibility of instituting a reporter training program in New Mexico.

#### METHODOLOGY

Information for the study was gathered by the following means:

1. Questionnaires developed by the technical staff were sent to trial judges and court reporters.
2. On-site interviews were conducted with appellate and trial judges, appellate and district court clerks, attorneys and court reporters.
3. The Appellate Rules governing civil and criminal appeals were studied, particularly as they pertain to court reporters.
4. A random sampling of transcripts was reviewed for quality and form.

#### THE JUDICIAL SYSTEM - FINDINGS

The study described the state as large, sparsely populated, and having two major metropolitan areas - Santa Fe and Albuquerque. It noted that there are thirteen judicial districts with thirty-two judges and thirty-two court reporters, and that the distribution varies from twelve judges and twelve reporters in Bernalillo County to one judge and one reporter for the three counties in the Tenth Judicial District.

The study found the average time spent in open court by reporters to be twenty-five hours per week, with a low of twelve hours and a high of forty hours. It noted that in multi-county jurisdictions some judge and reporter time is taken up in travel.

In addition to the work of reporting and transcribing testimony at court proceedings, hearings and conferences, 40% of the reporters surveyed said they performed some secretarial duties for the judge which generally took less than an hour a day, and 40% reported additional administrative responsibilities requiring from very little to one-third of the reporter's time.

Court reporters are responsible primarily to their individual judges, but also to the appellate courts insofar as timely delivery of transcripts is concerned. The study found that if orders for transcripts are received at a time when a reporter is involved with a heavy in-court schedule, inordinate transcript backlog, or travel requirements, the possibilities of transcript delay increase.

#### REPORTERS - FINDINGS

The study found that the qualifications needed by a court reporter in New Mexico are:

1. Have a good working knowledge of legal terminology and a sound background in English, spelling, and punctuation.
2. Be well versed in modern court practices, procedures, and applications, as well as court rules and regulations.
3. Be able to interpret and follow oral and written instruction.
4. Have the ability to accurately record at 200 words per minute for extended periods of time.
5. Show expertise in taking and transcribing shorthand notes or in using some other method of recording dictation.
6. Be able to type quickly and accurately and to produce a satisfactory volume of material over a sustained work period.

In reporting educational and training qualifications, the 23 of 32 reporters who responded to questionnaires gave the following information:

1. Twenty-one of the twenty-three reported a high school education, two did not report.

2. Seven had post-secondary education without degree, one had an associate's degree, two had a bachelor's degree and one had a master's degree.
3. Four trained to be court reporters through self instruction and nineteen trained in a business school or college program.
4. With regard to certificates of court reporting skills, four had certificates of merit from the National Shorthand Reporters Association (NSRA), seven had certificates of proficiency from NSRA, one had a certificate from the State of Texas, two had certificates from the State of California, and nine had no credentials.

The study reported that there are no court reporter training programs in New Mexico but that there are NSRA approved programs in the neighboring states of Arizona, Colorado, Kansas and Texas.

Noting that conditions are not comparable from state to state, the study gave salary ranges for surrounding states and states having the same number of reporters as New Mexico. Of the ten states used for comparison purposes, the average of the ranges was \$10,148 to \$16,053. New Mexico reporters indicated they are paid salaries ranging from \$8,000 to \$15,000 per year, depending on length of service. Court reporters have such fringe benefits as paid vacations, sick leave, hospitalization insurance, office space, supplies and equipment.

Comment: Judges said New Mexico salaries are too low since Texas reporters make \$18,000 a year plus transcript fees. One judge said his reporter furnishes his own machine and transcript paper.

#### REPORTERS - EVALUATION

The study found that the judges and reporters were unanimous in favoring the one-judge-to-one-reporter system and said the system works well especially where judge and reporter must travel and the reporter performs additional functions for the court. The situation requires a strong working relationship that would not exist if the judge drew his reporters from a pool. These inherent drawbacks were noted:

1. Without back-up reporters, the reporter's absence for any reason means work in the courtroom must stop.
2. If the reporter has a heavy work load, it is hard to find assistance and that causes unnecessary delays in transcript production.

3. The director of the Administrative Office of the Courts (AOC) has no control over transcript production, nor does he have adequate information to decide when a reporter should be allowed an extension on transcript delivery or substitute reporter assistance.

Comment: A judge felt that the district judges are in the best position to know what the court reporter's work load is and whether or not an extension of time to docket the transcript is required.

It was estimated that over the next ten years there would be a need for twelve additional court reporters and that they could readily be obtained from existing schools, particularly those in neighboring states. The New Mexico Certified Shorthand Reporter certificate was recommended as an excellent guide by which any employing judge could determine a reporter's competence but found that certificates from other states would be difficult to assess because of the wide difference in testing procedure and skills requirements.

Comment: A judge said that equivalent certified reporters from other states should be able to obtain employment in New Mexico without further examinations and should be accepted on a reciprocity basis from other states.

The study reported that New Mexico may have difficulty in attracting competent reporters because of its low range of starting salaries.

The study also found that there are no regulations establishing ownership of trial records or their retention.

#### REPORTERS - RECOMMENDATIONS

The study developed the following recommendations:

1. Appointment
  - a. The appointment of an official court reporter should remain with the individual district judge.

Comment: One judge agreed with this.

- b. A list of reporters qualified through certified shorthand reporter examination should be developed from which judges can hire reporters.
- c. Appointment of non-certified reporters should be on a temporary basis.

- d. The Board of Certified Shorthand Examiners should accept out-of-state certified reporters as long as the Board has assured itself that the competency requirements are similar to New Mexico's.
- e. Except in exigent circumstances court reporters should be required to be certified in New Mexico and to participate in a program of continuing education in cooperation with the New Mexico Shorthand Reporters Association.
- f. A testing procedure should be developed, consisting of four parts. See the section on Systems of Record Preservation below.

Comment: One judge felt the district judge is the most qualified person to determine the competency of the court reporter.

## 2. Supervision

The judge will retain immediate supervision of the reporter.

The reporter will submit monthly reports to the AOC containing:

- a. number of hours spent in court that month;
- b. hours required to perform other court-related functions;
- c. transcripts ordered, by case title and date, with estimated number of pages to be produced;
- d. total pages on order outstanding since last report;
- e. pages completed since last report, with case title; and
- f. number of pages filed and the date filed.

These reports are to provide the appellate courts and court administrator the necessary data for considering requests for extensions or making assignments of substitute reporters.

Comment: Judges felt the suggestion that time consuming monthly reports be sent to the Administrative Office of the Courts was ridiculous and they opposed it.

## 3. Temporary Assignments

Temporary assignments should be handled any of three ways:

- a. Hire freelance reporters at a per diem of \$85.

Comment: A judge said a substitute reporter should not be paid more than the salaried reporter.

- b. Retain a freelance agency to supply reporters on an as-needed basis.



Comment: One judge agreed that it would be worthwhile to have free lance agency to supply reporters on an as-needed basis at a regular contract price if such an agency would undertake that type of contract, but could not see how the Court Administrator would make assignments of substitute reporters.

4. Job Description

A detailed job description should be developed setting forth court and non-court related duties and clear designation of persons to whom the reporter is responsible. This job description should be re-evaluated on a yearly basis.

5. Limit Duties

Reporters should be freed from all but the most necessary additional duties so they may make maximum use of their in-court time and have sufficient time to produce transcripts.

Comment: A judge voiced his agreement that reporters should be freed of all non-court duties and of all additional duties so that their time would be used exclusively for court duties and transcript production.

6. Salaries

The study recommends reclassification of reporters on the judicial department salary schedule so that non-certified reporters would have a beginning salary of \$921 per month and certified shorthand reporters would start at \$1,015 per month. Step increases would bring reporters to a maximum of \$1,360 per month.

It is also recommended that as a service to the bar, court reporters be allowed to do freelance work at the discretion of their judges.

7. Ownership of Work Product

It is recommended that rules be established requiring each court reporter to file all exhibits, stenographic notes, or tape recordings with the district court clerk for storage and retention as property of the court.

Comment: There was agreement that this recommendation should be put into effect.

RECORD FOR APPELLATE REVIEW

After reviewing the appellate rules and statutory requirements for preparing and filing transcripts, the report discussed the methods used to prepare transcripts. It was found that

New Mexico reporters use self-typing, dictation and notereading as transcribing systems, and though reporters do some self-typing, very few type 100 percent of their own notes. Reporters provide their own equipment for preparing transcripts with the court providing the necessary office supplies. Dictation was found to be the most widely used system, with the reporter dictating his notes and instructions for typing onto a tape for a professional transcriber.

The report recommended notereading as the most efficient method of transcription in terms of speed of delivery, accuracy and cost, but did not indicate the extent to which this method is used in New Mexico. Computer-aided transcription was described but is only in the experimental stage.

Comment: One judge felt that if it were examined further it would be found that notereading is not extensively used because reporters cannot afford to pay enough to hire and train a note reader to be available when needed. In a related matter, the state Certified Shorthand Reporter Board voted against certifying stenomask reporters to work in the state, reportedly on the basis that the national association did not recognize that type of reporter and the Board felt New Mexico would be taking a step backward rather than upgrading reporters if it certified stenomask reporters. Judges felt stenomask operators should be licensed because it was difficult to find other trained reporters when they were needed. The Supreme Court rejected the Board's recommendation to not certify stenomask reporters.

The use of audio tape as a record pursuant to an order of the Supreme Court was discussed. The discussion was critical. The following findings were arrived at through interviews with judges in the Second Judicial District:

1. The judges' opinions were not sought prior to issuance of the order. The almost unanimous concern of the trial judges was the lack of sophistication of the equipment to be used and the maze of necessary wires that would detract from the dignity of the court environment.
2. Transcripts of the tape recordings are not to be prepared. Instead, the tapes themselves will be duplicated for use of counsel and the court.
3. No formalized training program is contemplated for the in-court audio recording monitors.
4. The status of present court reporter employees has not been established.

The study team felt the use of tapes rather than a written transcript imposes an unreasonable burden on counsel and judges--that the statistically improved date of record filing will be achieved at the cost of the greater amount of time consumed in reviewing a tape.

Comment: One judge added his opposition to audio recordings based on his experience in reviewing magistrate court hearings recorded on tape recordings. Even when not garbled, he said it takes three times as long to hear a tape as to read a transcript.

The study found it difficult to establish the average amount of transcripts produced per reporter due to the wide variations in workload. The production varies from 1,600 pages for some reporters to 10,000 transcript pages for another reporter. By self-typing, reporters can produce an average of 10.3 pages per hour, with a high of 20 pages and a low of 6 pages per hour. By dictating, reporters can manage from 18 to 29 pages per hour. The report indicated that 18 to 20 pages per hour is within acceptable performance standards.

The reporter receives transcript orders for purposes of appeal and such other uses as the parties ordering the transcript may desire. The total number of pages comprising such orders on hand is the reporter's total backlog, which is subdivided as transcripts not yet due and transcripts overdue. The appellate courts' main concern is with transcripts overdue, that is, those transcripts for appeal purposes which have not been completed and delivered within the time requirements for criminal and civil cases. Reporters' backlog averaged 1,000 pages. The high was in the 3,000 page range.

Most reporters are meeting the deadline for delivery of transcripts as required by the rules, although only half of the reporters surveyed were aware of the deadlines. Most transcripts are delivered within a week to two months. Reporters who have had difficulty in meeting deadlines indicated that the problems arise when they are required to process more than one lengthy appeal at a time.

For statistical purposes, the date of filing of a transcript of proceedings is recorded as the date on which the Record Proper, containing the transcript is filed. A review of the files in the appellate clerks' offices revealed some wide discrepancies between the date of filing the transcript and the actual filing of the Record Proper. The discrepancy is caused by the clerk not being able to forward the record until the compilation is completed, or any attorney waiting until the final day before authorizing transmittal.

The report arrived at the following conclusions:

1. A random selection of transcripts indicated acceptable quality, but there was a complete lack of uniformity in format.
2. Appellate court judges had no complaints regarding competency of reporters, but were concerned with the cost of reporting services. They noted that review time is considerably less when using transcripts than when only tape recordings are submitted to them.

Comment: A judge wrote that a court reporter has no control over how long a transcript will be, nor does he have control over what the cost thereof would be, but that is usually determined by the attorneys involved.

3. Audio recording is recognized as a method of record preservation, but is the least efficient of methods and should only be used when an alternate system is not available.
4. Trial attorneys interviewed were generally satisfied with the current reporting system and said they experienced few delays in transcript delivery.
5. The practice requiring counsel to review the transcript in the clerk's office appears cumbersome and undoubtedly causes additional delays.
6. The speed of transcript deliveries in New Mexico appears adequate and the delivery requirements of the appellate rules are reasonable, presenting an effective means to insure prompt submission for appellate review.

#### RECORD FOR APPELLATE REVIEW - RECOMMENDATIONS

Format:

1. The format for transcripts should be standardized, and a formbook prepared in consultation with the New Mexico Shorthand Reporters Association. The book should include transcript style for title sheets, indexing, and certificates; standardized parentheticals; lines per page; and indentations.

Comment: There was agreement from judges and voiced on the Judicial Council that there should be standardized transcript styles. This could be accomplished under the rule making power of the Supreme Court and Certified Shorthand Reporter Board. The president of the state reporters association indicated that they would work on standardization.

Record on Appeal:

2. The Record Proper should consist of the clerk's chronological compilation of all papers filed in the case including the transcript. The Transcript of Proceedings should be bound and paginated separately. The clerk, immediately upon appeal, should be responsible for putting the court file in chronological order, paginating, and properly indexing that record. Upon order and designation of transcript, the reporter should begin immediately to prepare the transcript. The reporter would be responsible for paginating and indexing the transcript separately from the Record Proper.
3. The reporter should file the transcript with the district clerk and this date should be considered as the date of receipt when invoking the time requirements of the rules.
4. A copy of the transcript should be furnished to counsel for each party as an appeal cost to the appellant.
5. The reporter's certificate should reflect the date of filing. This would serve as notice to the attorneys if they intend to file objections to the transcript.
6. The director of the AOC should establish a formula to reflect a diminishing page rate for transcripts that are filed after the expiration of the time limitations for transcript delivery.

Comment: One judge was vehemently opposed to giving the director of the AOC power to punish by cutting the transcript rate.

7. The director of the AOC acting on behalf of the appellate courts should review all requests for transcript delivery extensions.

Comment: Judges felt the director of the AOC does not have the ability to review requests for extensions and felt the district judge should be the one authorized to grant extensions.

8. If a reporter is a deliberate or habitual offender, the director of the AOC should refer the matter to the Certified Shorthand Reporters Board for appropriate disciplinary action.
9. The use of electronic recording should be considered only in courts of extremely low transcript requirements, and then only when an alternate system is not available.

10. The Supreme Court should be petitioned to reconsider its order requiring electronic recording in the criminal courts of the Second Judicial District.

Transcript Rates:

11. Under the prevailing circumstances, the statutory transcript fee of \$1.65 for an original and three carbon copies appears adequate.

Comment: Judges and members of the Judicial Council felt the fee should be raised to \$2.60 or \$2.65 per page by statute, or that the fee should not be set by statute but should be left to the Supreme Court under its rule making power.

#### SYSTEMS OF RECORD PRESERVATION

After describing the various methods of record preservation, their history, strong points, drawbacks and prospects for the future, the report suggested the following testing procedures:

Manual and Machine Shorthand:

1. Dictation of literary material or legal opinion, jury charge, and 4-voice testimony at speeds of 160, 180, and 200 words per minute, respectively.
2. Transcription within specified times of all dictated material with an accuracy of at least 95%.
3. Individual readback of a portion of one or more sections of the takes. Speed in turning to the designated section, accuracy in reading, and length of time in reading to be judged.
4. A written knowledge test to include (a) grammar, punctuation, and spelling, (b) legal and Latin terms, (c) medical terminology, and (d) court procedures and practices.

Stenomask and Voicewriting:

1. Four-voice dictation, the contents of which to be determined in consultation with acknowledged experts in the use of the respective systems.
2. Transcription of all dictated material within specified times with an accuracy of at least 95%.
3. Separate tape recorders not permitted to be used by Stenomask participants. Direct recording onto the second channel not to be allowed by Voicewriters.
4. Individual "readback" of a portion or portions of the dictated material. Speed in locating designated section, accuracy in "reading back", and length of time in "reading back" to be judged.

5. Voice levels of each participant to be evaluated to determine whether loudness of voices may be inimical to the conduct of trials.
6. A written knowledge test to include the subjects listed under Item 4 in the previous section.

Audio Recording:

1. Four-voice dictation.
2. The ability of the monitor to log properly.
3. Transcription of all dictated material within specified times with an accuracy of at least 95%.
4. Knowledge of the basic maintenance of the equipment and its operation.
5. Playback of designated portions of the dictation. Speed in locating each portion and clarity of playback without repeated playback to be judged.
6. A written knowledge test to include the subjects listed in the Manual and Machine Shorthand Section under item 4.

Comment: One judge said he had no quarrel with the testing procedures outlined by the committee other than that they be conducted by and graded by professionals who can properly give such tests and grade the same.

RECOMMENDATIONS OF JUDICIAL COUNCIL

The Council has not terminated its review of the report, but has indicated its approval of at least two recommendations. These are:

1. The transcript rates should be increased. See comment on number 11, page 18.
2. The format for transcripts should be standardized. See comment at the bottom of page 16.

## PARAJUDGES

A study begun in 1975 to explore the use of parajudges in meeting increasing caseloads in district courts as an alternative to creating more judgeships was completed this year. After discussing the objectives and methodology of the study and reviewing successful efforts in other parts of the country to reduce court backlogs, the report announced its findings of the situation in New Mexico based on court statistics and interviews with lawyers and judges. The report's findings under the headings Statistical Analysis, Cost Savings, and Conclusions, are reproduced here in full.

### STATISTICAL ANALYSIS

The statistical data contained in the 1975 annual report published by the Administrative Office of the Courts represents the most comprehensive analysis of district court monthly reports available. The differentiation between the various types of cases and manner of disposition under each category was not a reporting requirement and could not be independently determined. However the Administrative Office of the Courts is presently working on an automated system for statistical summary by category and subcategories which will provide this more definitive information for researchers, planners, and court administrators in January of 1978.

The data which is available can be analyzed with some degree of reliability although the limitations of basing assumptions on information abstracted from generalized statistics must be understood. The statistics contained in the 1975 annual report were analyzed by each judicial district and by summary of districts. In some districts in the civil case area it was the exception to find more cases filed than disposed of. The summary of the statistics indicates there was a .6% increase in the number of filings and 3.9% increase in the number of dispositions. There were more civil cases disposed of than filed in 1975 compared with 1974.

Commensurately, in the criminal case area there were more dispositions of cases (10.4%) than filed (6.4%) in 1975 compared with 1974 statistics. In the juvenile area, there were more dispositions (18.2%) than filings (10.0%) in 1975 compared with 1974. However, there were exceptions in certain districts. In consideration of the increase in and placement of the number of judges available this potential imbalance has been remedied. Essentially, the statistics indicate that



the courts are handling a caseload increase with greater efficiency. The case backlog "problem" may have, in some past instances, been real, but in New Mexico at this point it is imagined. The courts have handled caseload increases with greater efficiency and actively increased the disposition of cases under these circumstances.

The use of referees or other types of subordinate judicial personnel to handle certain types of cases in district courts is an existing, but limited discretionary procedure. The statistics available which could accurately define the specific case types which could appropriately be handled by referees are not available. The case category statistics and disposition data are available and the percentage of caseload which could potentially be handled by qualified referees and other subordinate judicial personnel can be projected. The statistics regarding the methods of disposition in civil filings excluding domestic relations for the period between January 1, 1975 and December 31, 1975 constituted 74.8% of all cases filed in the state and further indicate that, statewide, only 1.3% of these cases went to a jury, 36.1% involved a hearing, 9.6% were settled by default, and 53.0% were settled by the parties by other means (stipulated judgment). The workload in the default and hearing and stipulated judgment categories could potentially have been handled by a referee. This constitutes 62.9% of the total civil caseload (excluding domestic relations) for the entire state. This is a rather dramatic possibility which by no means should be observed as a challenge to the existence of the court. It should however, be considered as one element in the management of district court caseload by administrative means rather than increasing the number of available judges. If the civil caseload dramatically increases, the option available to those affected courts, i.e. using referees in certain cases, could solve the problem with the administrative efficiency which may be required under the circumstances. By exercising this existing administrative option the problem or situation could be handled in a time effective, flexible and cost efficient manner. Once the situation is resolved the referee(s) could be withdrawn from providing services to the court. If at any time it appears that the situation is more permanent, a crisis in the courts can be managed and time can be spent on rectifying the situation on a more permanent basis. To recap, civil filings constituted 74.8% of all cases filed in the state, and 62.9% of all of those cases potentially could have involved work completed by a referee or other qualified subordinate judicial personnel.

In the domestic relations area the statistics indicate that 20.4% of the dispositions were accomplished by default procedures, and 41.8% were disposed of by other means, (stipulated judgments). Essentially 62.2% of the domestic relations

caseload was disposed of by no-contest (default) or by stipulation. This indicates one large potential area for referee or subordinate judicial staff work involvement. Again, these statistics should only be used to identify potential areas for involvement and not as a rigid statistic to argue the appropriateness of the use of referees for each case. If a case backlog situation were to arise this discretionary use of referees could be employed in this area to relieve the judges. This is one element of an administrative program available to the court to be used to solve caseload problems.

Juvenile and criminal caseload areas could also utilize referees, however, they do not constitute the majority of the total caseload or present a large enough potential for substantial judicial relief. The use of referees in some of the functions and procedures in the juvenile and criminal area would be appropriate and in consideration of the new Rule 37 and speedy trial laws it could be a useful administrative tool to assist in the smooth functioning of the courts.

The use of referees is a flexible supportive administrative option which if used properly, could be a substantial asset to the courts without challenging their function or authority.

#### COST SAVINGS

In consideration of the absence, at this time, of the definitive data necessary to determine the actual caseload which could be assumed by subordinate judicial personnel it is commensurately difficult to project reliable cost saving figures. Without judicial time studies, and case type breakout, the actual time spent on each case cannot be determined. And, without this type of data we cannot accurately determine the cost per case type and further project a comparison of cost between a full-time judge and a referee. However, some general information regarding relative cost can be developed and very general inferences can be drawn from it.

The Administrative Office of the Courts has determined that the total cost of maintaining a full-time district court judge is approximately \$65,000 per year. This figure includes salary, court reporting, secretary, bailiff, benefits, travel, training, capital outlay, telephone, postage, average witness and jury costs, et cetera. The total cost is somewhat higher than originally estimated, however, it does reflect a more complete assessment.

In reviewing pertinent, available figures regarding caseload and cost, we made the following findings:

- A. The average caseload, statewide, per judge is 1,261.
- B. The cost per year per judge is approximately \$65,000.
- C. The average number of judge days per year is 215.

D. The estimated time a judge spends on case related duties is four hours a day. This is a figure estimated by the Administrative Office of the Courts. By comparison, the time study completed by Arthur Young and Company for the California courts placed this figure at 4.5 hours per day.

E. The total number of judge minutes per year available for case related duties is 51,600 per judge.

F. The average time spent per case (without distinction as to type) is 41 minutes. It should be noted that the type of cases which could be handled by subordinate judicial personnel would in all probability require substantially less time per case than the 41 minute average. This lack of accuracy is a recognized liability of drawing general inferences from less than acceptable data.

G. In a program where arbitrators were used, they averaged nine to ten cases per day at the reimbursed rate of \$35 per case.

These figures and information regarding judge time, average case time and cost should be used only in inferring very general relationships. The use of subordinate judicial personnel in appropriate types of cases would, understandably, require substantially less average time than the projected 41 minute average. However, the research has shown that where cases were handled by arbitrators they did dispose of their obligations at an average of 9-10 per day (8 hours). This case type disposal rate approximates the time spent on similar duties by a judge at a similar reimbursement rate. We can safely conclude that subordinate judicial personnel can handle cases at a similar completion average and reimbursement rate as the district court judges. The advantage is clear--the use of subordinate judicial personnel in relieving caseload may be less costly than paying for additional judges only insofar as those subordinates can be withdrawn from providing services when the caseload is reduced to manageable level. A competent, trained individual whether functioning in the capacity of a judicial subordinate or district court judge will perform in an equally satisfactory manner and accomplish the same amount of work. It would be irresponsible for

anyone to advance the proposition that subordinate judicial personnel would accomplish more work than their counterpart district court judge. The administrative flexibility of using cost effective utilization of qualified subordinate judicial personnel is the primary advantage. The courts expend only as much money as required by the caseload, hire subordinates for specific peak caseload periods, and have continuing discretion on who is hired. The quality of personnel can be constantly maintained. If the quality of performance is not acceptable, the court, at its discretion, can replace that individual. Waiting for election time to correct a situation is not necessary.

The administrative flexibility and cost savings inherent in the use of subordinate judicial personnel can be a substantial asset to the efforts currently underway to refine, update and improve the district court system in New Mexico.

### CONCLUSIONS

As a result of this project effort, it has been shown that it is quite feasible to use subordinate judicial personnel to relieve district judge caseloads. The legal community supports this concept and would prefer it as an alternative to continuously adding judges as the district court caseload increases. Cost savings can be realized from the administrative flexibility which the use of subordinate judicial personnel could provide. The options for district courts to use subordinate judicial personnel presently exist. However, having this administrative option open does not necessarily mean that it will be exercised. In fact, the data indicates that there is a relatively limited use of all types of subordinate judicial personnel. The legal community has indicated qualified, but substantial support for a program which would direct its attention toward the expanded use of subordinate judicial personnel in district courts. The legal community has expressed its concerns and participated in articulating a desire for the increased use of subordinate judicial personnel. This effort could become an integral component of a larger court refinement effort presently being conducted under the direction of the New Mexico Supreme Court. The benefits of carefully determining needs, considering justifiable future activities and working in concert with other entities engaged in similar efforts cannot be understated. If benefits for improving the services delivered by the district court system are to be fully realized, intelligent, timely, and vigorous action will be imperative elements in accomplishing those ends.

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This study was done by Lars Bjork under contract with the Judicial Council.

## CITIZEN PARTICIPATION

During 1976, the Judicial Council continued to sponsor the involvement of citizens in the improvement of the judicial system under a federal grant from the Law Enforcement Assistance Administration. A non-profit citizens' group, New Mexicans for Improvement of the Judicial System, has been the vehicle for this effort. The Judicial Council has controlled the budget and provided administrative assistance, but allowed the citizens' organization to plan and carry out programs to educate the public to the needs of the judicial system and to promote changes in the system. The Judicial Council appointed a committee of its members as an advisory committee in carrying out the purposes of the federal grant, which is to involve the public in promoting a more effective judicial system through implementation of the changes suggested by the citizens in the 1974 Citizens' Conference on New Mexico Courts.

During the year the citizens' group carried out four mini-conferences on the courts. These conferences took place in Las Cruces, Farmington, Albuquerque and Santa Fe. In addition, plans were laid for two more conferences for January, 1977, one in Clovis and one in Roswell. The result of the conferences has been the increased awareness of citizens of the functioning of the courts of limited jurisdiction--the municipal, magistrate, probate and small claims courts. The conferences have focused on the recommendations of a study made of those courts by the National Center for State Courts for the New Mexico Supreme Court and the Administrative Office of the Courts. Those recommendations and the conferees' feelings about them are reproduced here:

<u>Recommendation</u>	<u>In Favor</u>	<u>Against</u>	<u>No Opinion</u>
Provide adequate support for the Administrative Office of the Courts	93%	2%	5%
Abolish Probate Courts	77%	10%	13%
Abolish the Small Claims Court	63%	13%	24%
Abolish trials de novo	66%	17%	17%
Abolish part-time judgeships and establish full-time judgeships	88%	3%	9%
Consolidate Magistrate and Municipal Courts and create a single trial court	82%	11%	7%
Implement merit selection/demerit ouster of judges	92%	6%	2%

The organization has also testified on behalf of broadened authority for the Judicial Standards Commission before the interim Legislative Criminal Justice Study Committee. Other activities of the organization are found in the president's report, which follows.

#### REPORT OF THE PRESIDENT

I am pleased to report the activities of the corporation for the year beginning October 1975 and ending October 1976. Each of the following items reflects significant personal efforts by individual members who volunteered their time and worked at their own expense to improve our judicial system.

During the second year of the corporation's existence it has gained recognition as the embodiment of an important portion of citizen interest in the New Mexico judicial system. I hope the following items will adequately reflect the activity of the corporation during the year.

During the year there were seven meetings of the Board of Directors. Thirty-three members attended one or more of these meetings, with about half traveling great distances to attend.

The treasury increased from \$139.22 to over \$850.00.

A membership drive was conducted among lawyers, and the membership was increased to 150.

Attempts to achieve tax exempt status under 501(3)(c) of the IRS code met with no success because of the admitted aim of the corporation to influence legislation.

Three applications for additional federal funds from the Law Enforcement Assistance Administration were denied pending the completion of the existing LEAA grant. Two extensions of the existing grant were allowed to enable the corporation to complete mini-conferences and prepare educational material.

Mini-conferences were planned and carried out in Las Cruces, Farmington and Albuquerque.

Educational materials for use in classrooms by business education teachers were prepared for distribution. The materials consisted of an essay on the New Mexico court system by Bob Deiss and a course outline by Ella Riddle. Teaching packets were distributed to 150 teachers initially, with more to be made available on request.

The National Center for State Courts made a study of the courts of limited jurisdiction in New Mexico for the Administrative Office of the Courts and the New Mexico Supreme Court. During the course of the study the advisory staff of the study reviewed it with the corporation. The final report recommended that implementation of the proposed changes be carried out through the corporation and the Judicial Council. The Administrative Office of the Courts requested that the corporation send a representative to the annual magistrate seminar to discuss the proposals with the state's magistrates. This the corporation did. Many of the recommendations of the study paralleled the position of the corporation as found in the consensus statement of the 1974 Citizens' Conference on New Mexico Courts.

The Governor's Council on Criminal Justice Planning requested that the corporation submit names of members who would serve on the Standards and Goals Committee which was working on standards for the criminal justice system in New Mexico. Names were submitted and several NMIJS members were chosen by the Governor to serve on that committee. Again, the standards chosen by that committee were similar to the points of the consensus statement.

The Articles of Incorporation were amended to emphasize the non-profit nature of the corporation and to preclude participation in political campaigns on behalf of any candidate. The by-laws were amended to permit an at-large member from each urban area of a district.

In July the officers of the corporation appeared before the Legislative Criminal Justice Study Committee to speak on behalf of proposals for improving the judicial system.

The officers obtained approval from the Board of Bar Commissioners for the conduct of a poll on the judicial ability of district court judges. The response of the lawyers was very good and because of that success the poll will be expanded to include appellate judges and will be conducted annually.

Information on the court costs and workload of the lower courts was compiled and distributed to members and to magistrates to provide a source of information for the proposal that municipal and magistrate courts be consolidated and the proposal that probate courts be abolished.

In September the Board of Directors adopted a resolution that the authority of the Judicial Standards Commission to

discipline judges be expanded to permit the private admonishment and public reprimand of judges guilty of behavior prejudicial to the administration of justice. On the basis of that resolution, discussion drafts for constitutional and statutory amendments have been drawn up by the Legislative Council.

I am grateful for the efforts of all who have contributed to the growth of awareness of the citizen's importance in the functioning of the judicial branch of government during this bicentennial year. My best wishes go with the new officers of the corporation, and I pledge my continued support.

Carter Kirk



## COURTS OF LIMITED JURISDICTION

A long awaited study of the courts of limited jurisdiction - the municipal, magistrate, probate and small claims courts - was completed during the year and the report was made available to the Judicial Council. The study was done by the National Center for State Courts under contract with the New Mexico Supreme Court and Administrative Office of the Courts. Although the Judicial Council was informed from time to time of the progress and direction of the study, its members were disappointed with the lack of information in the final report to substantiate the report's findings and recommendations. The Council felt that the bulk of the report was mere filler and that the substantive part of the report did not merit the expenditure of \$50,000.

In spite of the lack of information, the Judicial Council felt the recommendations for improving the lower court system had some merit and spent the better part of five meetings discussing the study and obtaining information from informed people on the probable effect of the recommended changes. The Judicial Council's position on each of the report's seven recommendations follows.

### RECOMMENDATION ONE: Adequate Support of the Administrative Office of the Courts

At the May meeting of the Judicial Council the Director of the Administrative Office of the Courts explained the organization and operations of his office and some of the current projects. He noted that the judiciary is operating on about two percent of the total state appropriations plus some federal funds obtained for certain projects under grants from the Law Enforcement Assistance Administration. At the October meeting it was proposed that the Judicial Council adopt the recommendation that adequate financial support be provided the Administrative Office of the Courts. The vote in favor of the motion was unanimous.

### RECOMMENDATION TWO: Abolishment of Probate Courts

The study recommended that all probate courts within the state should be abolished and their functions and jurisdiction should be transferred to the district courts. In April the Judicial Council was in favor of this recommendation by a margin of five to four. It was noted that as courts of record the probate courts could serve some purpose aside from handling probate matters in single judge districts in the absence

of the district judge. There was also some question on the increase in caseload in district courts that would occur if probate courts were abolished. A leading probate lawyer, Paul Robinson, was invited to the August meeting where the effect of the new probate code on the functioning of the probate courts was discussed, as were other effects of the recommendation. It was decided to defer action on the recommendation to see how the new probate code would affect the operations of the probate courts, but in October, following further discussion it was moved that the Judicial Council recommend to the legislature that probate courts be abolished. The motion was carried by a vote of five to four.

RECOMMENDATION THREE: Abolishment of the Small Claims Court

There is only one small claims court, and that is in Bernalillo County. After discussion of the recommendation at several meetings, attorney users of the court, the judge of the court and a representative of the county government were invited to present some facts on the functioning of and need for the court. As it appeared that the users of the court favored its retention and the county wanted to continue to fund its operations, the Judicial Council voted not to adopt the recommendation, with one member dissenting.

RECOMMENDATION FOUR: Abolish Trials de Novo

The Judicial Council collected statistics on the number of appeals filed where a trial de novo would be necessary to see if the number of appeals actually constitutes a problem as maintained by the study. The information on those statistics is found in another section of this report. Some district judges said they rarely had a trial de novo and that when they had an appeal from a municipal or magistrate court decision they would prefer to try it over again than try to review a tape recorded transcription of the lower court trial. Other district court judges feel that one trial de novo is one too many and that it is a waste of time. The Judicial Council noted the decisions of cases in the United States and New Mexico Supreme Courts upheld the constitutionality of non-lawyer judges imposing sentences of incarceration where the defendant had a right to a new trial before a lawyer judge on a trial de novo. The Judicial Council felt that trials de novo must be allowed until all judges in New Mexico are required to be lawyers. A vote not to accept the recommendation was unanimous.

RECOMMENDATION FIVE: Abolish Part-time Judgeships and Establish Full-time Judgeships

There was some concern that many small town and rural areas would be left without a judicial officer if this recommendation were implemented. The Judicial Council voted not to adopt the recommendation. There was one dissenting vote.

RECOMMENDATION SIX: Consolidate Magistrate and Municipal Courts and Create a Single Trial Court

Difficulties foreseen with this recommendation were the question of how to apportion fees collected between the municipalities and the state, and the effect consolidation would have in further reducing the number of judicial officers available to serve the sparsely populated areas of the state. It was noted that in the majority of the areas served by municipal courts and magistrate courts, both courts are located in the same towns. It was proposed that input be obtained from the judges and officials in Albuquerque and Bernalillo County as to how they would view consolidation of their municipal and magistrate courts. After hearing from those officials and discussing the matter at length, the Judicial Council voted seven to five to adopt in principle the recommendation of consolidation of municipal and magistrate courts within the district court system with the proviso that it be limited initially to Bernalillo County.

RECOMMENDATION SEVEN: Merit Selection/Demerit Ouster

The Judicial Council has examined proposals for merit selection of judges at various times prior to the report of the study of courts of limited jurisdiction. There has always been some opposition to those proposals. With regard to the recommendation of the study, the Judicial Council did not feel the time was right to include trial judgeships in such a method of selection, but did vote unanimously to approve the recommendation that Supreme Court Justices and Court of Appeals Judges be appointed through a merit selection plan.

SUMMARY

The Judicial Council favors:

1. Adequate financial support of the Administrative Office of the Courts.
2. Abolishment of Probate Courts.
3. In principle, the consolidation of municipal and magistrate courts, providing that it initially be limited to Bernalillo County.
4. Merit selection of Supreme Court justices and Court of Appeals Judges.

## TRIALS DE NOVO

### PROBLEM

Appeals from magistrate and municipal courts must be tried completely over again in district court with all the witnesses and parties called back to recite their testimony before the judge. The judge had been restricted in criminal matters to imposing the same or a lesser penalty than that imposed in the first trial by the magistrate or municipal judge. Since the convicted offender therefore had nothing to lose the decision to appeal was very tempting, the more so because of the chance that due to the delay between the first trial and the de novo trial before the district judge some of the witnesses might become unavailable or forget some of the details that had led to the first conviction.

In order to reduce the attractiveness of frivolous appeals the Judicial Council recommended legislation which would remove the restriction on the district judge of not imposing a more severe sentence than that imposed by the lower court. Legislation to that effect was passed in 1975, and the question then became, would the number of trials de novo be reduced.

### EFFECT OF LEGISLATION

In theory the new legislation should have the effect of discouraging frivolous appeals, and therefore the statistics should show a decrease in the number of appeals filed. There are other factors which influence the statistics and which make it impossible to prove that that is what happened. First, the statistics must be gathered from thirty-two counties and there is a probability that the individuals submitting the figures varied in their interpretation of instructions one from another. Second, it is assumed that the caseload in 1976 did not fall below that of 1975 in the municipal and magistrate courts since most courts have increasing caseloads. But there are no statistics compiled on the municipal courts to substantiate that assumption. Third, the number of frivolous appeals compared to those that are valid cannot be known, and a single lower court judge whose decisions are viewed as biased can contribute to a large number of appeals. On the other hand, as lower court judges continue in office and gain more experience there may be a natural decrease in the number of appeals taken. With all this caveat, there is a trend in the statistics which shows that the number of appeals from municipal and magistrate criminal cases has decreased but that there has been an increase in the number of appeals from magistrate courts in civil cases. The numbers are reflected in the accompanying charts.

Chart One - Magistrate Criminal Appeals

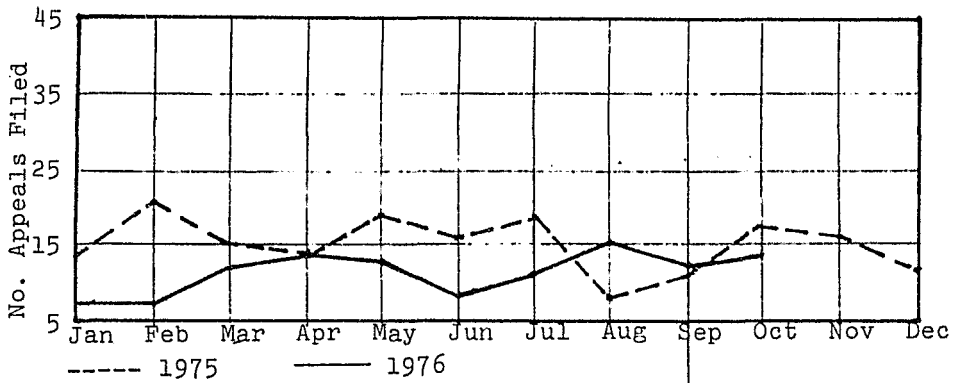


Chart Two - Magistrate Civil Appeals

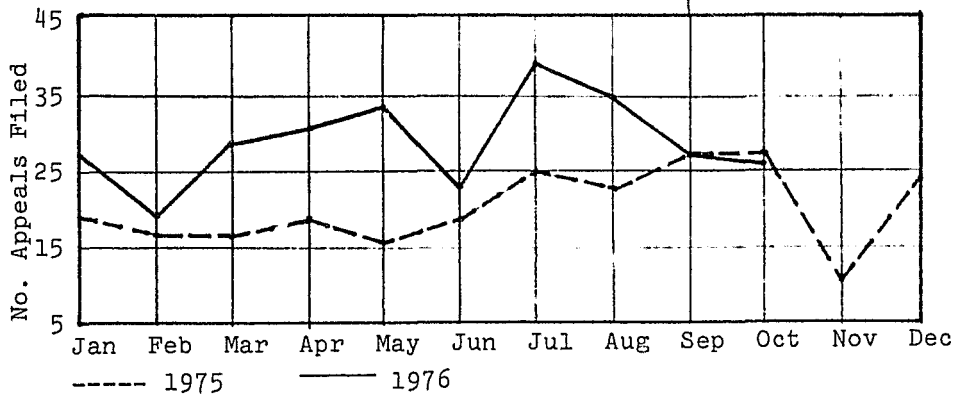
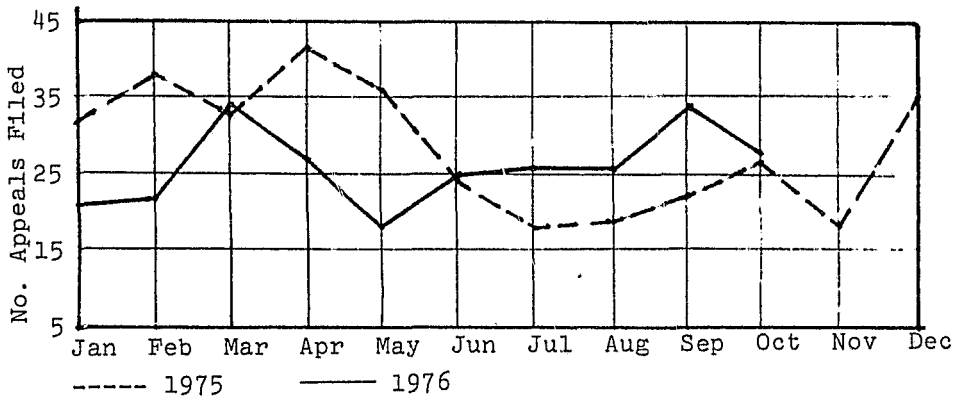


Chart Three - Municipal Appeals



## COUNCIL POSITION

The Judicial Council has adopted the position, noted elsewhere in this report, that it does not favor the abolishment of trials de novo. The reason for this is basically that the United States Supreme Court has decided that it is not a violation of the constitutional guarantee of due process for a person to be tried before a judge not trained in the law as long as a later trial de novo is available before a judge trained in the law. New Mexico has judges in municipal and magistrate courts who are not trained in the law, and as long as they remain there will have to be a provision for trial de novo in the district court.

Some district judges have indicated that trials de novo are so infrequent that they do not pose a significant problem. The statistics for some counties would seem to bear that out since there are six counties where no appeals from the lower courts were filed during the first seven months of 1976 and eight additional counties where four or less such appeals were filed. In addition, not all appeals filed result in a trial de novo, so some district judges may hear such cases only infrequently. Some judges feel that if the alternative to trial de novo were a review of a tape recorded transcript of the lower court trial they would rather retry the case than try to decipher a poor quality tape.

Other district judges feel that to try even one case de novo is a waste of valuable time and that they would rather review the transcript. This is particularly true in Albuquerque where the city judges and county magistrates are required by law to be lawyers and where over one-third of the appeals occur.

## JUDICIAL COMPENSATION

The National Center for State Courts' October 1976 report on judicial salaries shows that New Mexico ranks 39th among the states in the amount paid to supreme court justices, and 32nd in the amount paid to general trial (district) court judges.

The same report ranks New Mexico 49th in per capita income and 37th in population.

Pay for New Mexico's Supreme Court justices is \$5,967 below the national average, and pay for the district court judges is \$2,823 below the national average. The Court of Appeals is \$8,399 below the average salary of the twenty-six states that have a comparable court.

The legislature voted the judges of the District Courts, Court of Appeals and Supreme Court raises of \$1,500 in 1976, but inflation has continued to nullify the raises. Table 2 on the next page shows the effect of inflation on judicial salaries in New Mexico since 1967.

TABLE 2

NEW MEXICO JUDICIAL SALARIES AS RELATED TO CONSUMER PRICE INDEX

1967 = \$1.00 Purchasing Power of the Dollar

as of:	1967 Price Index	Supreme Court		Court of Appeals		District Judges	
		Annual Salary	Purchasing Power	Annual Salary	Purchasing Power	Annual Salary	Purchasing Power
12/31/67	100	\$20,000	\$20,000	\$18,500	\$18,500	\$17,500	\$17,500
12/31/68	104.2	21,000	20,154	19,500	18,714	18,500	17,754
12/31/69	109.8	21,000	19,126	19,500	17,760	18,500	16,849
12/31/70	116.3	22,500	19,347	21,000	18,057	20,000	17,197
12/31/71	121.3	22,500	18,549	21,000	17,312	20,000	16,488
12/31/72	125.3	29,500	23,543	28,000	22,346	27,000	21,548
12/31/73	133.1	29,500	22,164	28,000	21,037	27,000	20,285
10/31/74	153.2	29,500	19,256	28,000	18,277	27,000	17,624
10/31/75	164.6	32,000	19,441	30,500	18,530	29,500	17,922
10/31/76	173.3	33,500	19,331	32,000	18,465	31,000	17,888



## AUDIO TAPE TRANSCRIPTS

The use of cassette tapes to record criminal proceedings in the Second Judicial District has been in effect for only a short time and an assessment of the success of the experiment cannot yet be made. However, a few things can be reported on the experience to date. The Court of Appeals has found no problems at that end. There have been a number of appeals in which the cassette tapes served as the transcript and a review of the portions of the tapes considered relevant to the appeal has proven very workable. A great deal of time is saved in submitting the transcript since a typewritten transcript need not be prepared.

At the district court end there have been some problems. There have been some mechanical breakdowns in the tape recording equipment which have been disruptive of trials. The disruptions are not extremely lengthy, but require that another machine be brought in from another courtroom. Servicing of the machinery has reportedly been neither good nor bad. Since there are twelve courtrooms and only six sets of equipment, it is necessary to use other means to make a record. Attorneys have had problems of unfamiliarity, sometimes causing the microphone wires to be jerked from the equipment as they move about. Attorneys were pleased with the small cost of obtaining a transcript, that is, the price of two to four cassette tapes. The judges are concerned about the disruptions caused by mechanical failure and the fact that five of the regular court reporters have resigned. Interestingly, other court reporters, both from in and out of state, have been hired to fill the vacancies without difficulty. The district court administrator would like, if the experiment is to continue, to have more machines and more sophisticated equipment such as wireless microphones.

## COURT DECISIONS

One of the duties of the Judicial Council is to keep advised concerning decisions of courts relating to procedure and practice. Some notable decisions include:

- A Court of Appeals decision held that the Children's Code limits the district court's jurisdiction to transfer custody of a child, in that the district court cannot commit a child to a private hospital and then require the Health and Social Services Department to pay the cost.
- The Court of Appeals held that it is reversible error for the trial judge to inquire into the numerical division of jurors where the jury has not agreed upon a verdict.
- The Supreme Court upheld the constitutionality of non-attorney municipal judges trying cases, saying that the determination of qualifications of municipal judges is a legislative function.
- The Supreme Court held that the rule requiring trial of an offender to begin within six months of the time charges are filed applies to charges under the habitual offender statute.
- The Supreme Court held that the statute calling for notification of the public defender upon detention of a suspect does not enlarge a suspect's constitutional rights, and failure to notify the public defender does not necessarily require suppression of statements made by the suspect.
- The Supreme Court held that the death penalty is not cruel and unusual punishment, but that a mandatory death penalty not permitting the exercise of controlled discretion is unconstitutional.
- The Court of Appeals held that in renewing "all prior motions" at the close of evidence, counsel must specify each motion in order to inform the court of the questions being raised.
- The Supreme Court held that the privilege created by the legislature to shield journalists and newscasters from disclosing news sources or other information in judicial proceedings was invalid because rules of privilege are rules of evidence, and the power to make rules of evidence is vested in the court rather than the legislature.

## JUROR COMPENSATION

After two years of urging that jurors, jury commissioners and persons summoned for jury duty be reimbursed for travel at the rates paid state employees, and for per diem at a rate comparable to the minimum wage, the 1976 legislature enacted House Bill 12 in the special session. Jurors now receive 12 cents per mile for travel rather than 10 cents, and \$2.30 per hour rather than \$1.60.



Governor Apodaca signs House Bill 12 into law as Judicial Council Chairman Ted Kase and David Garnder, Executive Secretary of the Judicial Council, watch.

## A MEMORIAL

1  
2 REQUESTING THE JUDICIAL COUNCIL TO CONTINUE ITS STUDY OF THE PROVI-  
3 SIONS OF THE CRIMINAL CODE WHICH RELATE TO SENTENCING AND DISPOSITION  
4 OF CRIMINAL OFFENDERS.

5  
6 WHEREAS, the rate of crime continues to increase substantially  
7 each year; and

8 WHEREAS, the judges of the state have been given great discretion  
9 in sentencing persons convicted of crimes, thus causing disparities  
10 among the sentencing of these persons throughout the state; and

11 WHEREAS, the penalties for violation of the law may be too light  
12 to deter potential criminal activity; and

13 WHEREAS, the first session of the thirty-second legislature di-  
14 rected the judicial council to undertake a study of these matters;

15 WHEREAS, the judicial council did undertake a study of these  
16 matters and did submit its recommendations together with suggested  
17 legislation to the second session of the thirty-second legislature;  
18 and

19 WHEREAS, it would appear appropriate because of the continued  
20 seriousness of the problem to request the judicial council to continue  
21 its study of these matters;

22 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES  
23 OF THE STATE OF NEW MEXICO that the judicial council be requested to  
24 continue its study of the provisions of the Criminal Code which relate  
25 to the sentencing and disposition of criminal offenders; and

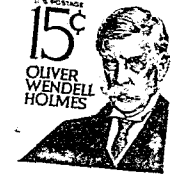
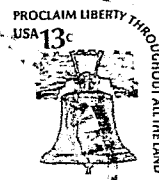
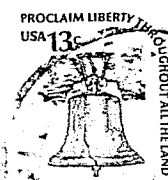
1 BE IT FURTHER RESOLVED that the judicial council submit its rec-  
2 ommendations together with suggested legislation to the first session  
3 of the thirty-third legislature; and

4 BE IT FURTHER RESOLVED that a copy of this memorial be transmitted  
5 to the judicial council.

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Page 2

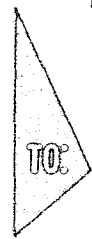
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