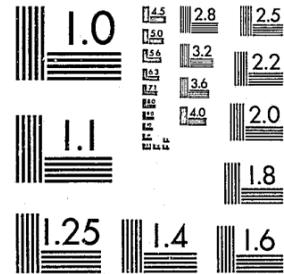


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6-9-83



# THE JUDICIAL COUNCIL OF NEW MEXICO

86816

## Fourteenth Annual Report

### December 31, 1982

**NEW MEXICO  
JUDICIAL  
COUNCIL**  
P.O. BOX 4007  
ALBUQUERQUE, N.M. 87196-4007



**MANNY M. ARAGON**  
Chairman  
**MARSHALL MARTIN**  
Vice-Chairman  
**DAVID R. GARDNER**  
Director  
(505) 842-3102

December 31, 1982

The Honorable Toney Anaya, 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 1982 annual report of the New  
Mexico Judicial Council, pursuant to §34-12-5, NMSA, 1978 which  
directs the Judicial Council to "submit a report of its proceed-  
ings and recommendations to the legislature, the governor and the  
supreme court each year."

Respectfully submitted,

*Manny M. Aragon*  
Manny M. Aragon, Chairman  
New Mexico Judicial Council

U.S. Department of Justice 86816  
National Institute of Justice

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**MEMBERSHIP**

Manny M. Aragon, State Senator, Albuquerque - Edward J. Baca, Director, Administrative Office of the Courts, ex-officio, Santa Fe - Dr. James A. Beall, Ruidoso -  
Jeff Bingaman, Attorney General, Ex-officio, Santa Fe - W. John Brennan, District Judge, Albuquerque - Robert Desiderio, Dean of UNM Law School, ex-officio,  
Albuquerque - Tandy L. Hunt, State Representative, Roswell - Patricia Madrid, District Judge, Albuquerque - Russell D. Mann, Lawyer, Roswell - Marshall Martin, Lawyer,  
Albuquerque - Joseph H. Mercer, State Senator, Albuquerque - Sammy Pacheco, District Attorney, Taos - H. Vern Payne, Supreme Court Justice, Santa Fe, -  
Lidio Rainaldi, Magistrate, Gallup - N. Randolph Reese, District Judge, Hobbs - Olivia Rothschild, Las Cruces - Raymond D. Sanchez, State Representative, Albuquerque -  
Mary C. Walters, Court of Appeals Judge, Santa Fe - Mary Margaret Wilson, Albuquerque.

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JUDICIAL COUNCIL

Membership

The Council consists of nineteen members. Membership at the close of the fiscal year is reflected in Table 1. One new member, Second Judicial District Judge W. John Brennan, replaced Judge James Brown of the Eleventh Judicial District when Judge Brown's term expired at the close of 1981. Dr. James A. Beall of Ruidoso was reappointed by the governor in February. Fifth Judicial District Judge N. Randolph Reese was re-elected to a second term on the Council at the Judicial Conference meeting in October.

At the Judicial Council's September meeting, invited speaker Representative Jack Skinner of Carlsbad, addressed the Council on behalf of House Speaker Gene C. Samberson. He described how the Council could be of assistance to legislators, particularly those with a non-legal background, and suggested that the Judicial Council increase its lay membership. The Council considered the question at its October meeting and passed a motion to propose an increase in membership by four, with three to be lay members appointed by the governor and one to represent the Chief Public Defender. The motion was amended to also eliminate voting privileges of the Council's current ex-officio members. The proposed changes in Council membership will be submitted for consideration by the 1983 Legislature.

Duties

The duties of the Judicial Council are contained in Section 34-12-3 NMSA 1978, as amended. The Council is to:

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

Meetings

The law requires the Council to meet at least four times a year, including at least one session where the public is invited to submit complaints, observations or recommendations concerning the administration of justice in the courts of the state. During 1982, the Council held twelve meetings. Six meetings were held in Albuquerque and three meetings were conducted in Santa Fe. Two meetings were held in which the public submitted comments and suggestions. One was held in March at Las Cruces and the other was held in July at Chama. The June meeting was held in Las Vegas in conjunction with tours of the State Hospital there and the State Penitentiary near Santa Fe.

TABLE 1 JUDICIAL COUNCIL MEMBERSHIP

<u>NAME</u>	<u>POSITION</u>	<u>APPOINTED BY</u>	<u>TERM EXPIRES</u>	<u>RESIDENCE</u>
H. Vern Payne	Supreme Court Justice	Supreme Court	N/A	Santa Fe
Lidio Rainaldi	Magistrate	Supreme Court	N/A	Gallup
Mary C. Walters	Court of Appeals Judge	Court of Appeals	N/A	Santa Fe
W. John Brennan	District Judge	District Judges	12/31/84	Albuquerque
N. Randolph Reese	District Judge	District Judges	12/31/85	Hobbs
Patricia Madrid	District Judge	District Judges	12/31/83	Albuquerque
Manny M. Aragon	Senator	President Pro Tem of the Senate	N/A	Albuquerque
Joseph H. Mercer	Senator	President Pro Tem of the Senate	N/A	Albuquerque
Tandy L. Hunt	Representative	Speaker of the House	N/A	Roswell
Raymond G. Sanchez	Representative	Speaker of the House	N/A	Albuquerque
Russell D. Mann	Lawyer	Board of Bar Commis- sioners	12/31/84	Roswell
Marshall Martin	Lawyer	Board of Bar Commis- sioners	12/31/83	Albuquerque
James A. Beall	Lay Member	Governor	12/31/85	Ruidoso
Olivia Rothschild	Lay Member	Governor	12/31/83	Las Cruces
Mary M. Wilson	Lay Member	Governor	12/31/84	Albuquerque
Sammy L. Pacheco	District Attorney	Governor	12/31/82	Taos
Robert Desiderio	Dean of the Law School	Ex Officio	N/A	Albuquerque
Jeff Bingaman	Attorney General	Ex Officio	N/A	Santa Fe
Edward J. Baca	Director of the Adminis- trative Office of the Courts	Ex Officio	N/A	Santa Fe

### Publications

In 1982, the Council's study committees were reduced in number from six to four to lessen scheduling conflicts and to allow members to devote more time to a single committee. Minutes of all study committee meetings (Court Facilities and Planning, Criminal Justice, District and Appellate Courts, and Lower Courts), as well as those of the Executive Committee, were distributed to all members.

Council meeting minutes have been distributed as follows: to Council members, legislators, budget analysts for the Legislative Finance Committee and the Department of Finance and Administration, judges (probate, municipal, magistrate, district, and appellate), and district attorneys.

The News Review, a monthly synopsis of news articles concerning the state judiciary, has been distributed as follows: to Council members, Judicial Standards Commission members, judges (probate, municipal, magistrate, district, and appellate), and district attorneys.

Distribution of the Annual Report of the Judicial Council is the same as that of the minutes and News Review and also includes state libraries, state universities, and agencies in other states which have specifically requested this document.

Special reports, such as the Council's White Paper on Constitutional Amendment No. 1 (Judicial Selection) and the District Court Facilities Study, are provided to interested persons, agencies, and organizations, as appropriate.

These mailing lists have increased in size despite attempts to reduce them. In 1981, News Review recipients were required to notify the Council office if they wished to remain on that mailing list. The response rate was about 97%. At about the same time, the District Attorneys Association indicated a need to be better informed of Council studies and actions and the district attorneys were added to mailing lists.

Unfortunately, the expense of photocopying and mailing this material has become so great that the Council feels some reduction must be made. Distribution of these items will be curtailed in the coming year.

### Cooperation and Assistance

The Council has received excellent cooperation from judges and district court clerks, county officials and employees, district attorneys, and other state agencies during the year. The Council is especially grateful to State Bar Director Judy A. Zanotti who coordinated activities and arranged facilities for the October Council meeting held during the State Bar Convention in Santa Fe. Ms. Zanotti has consistently granted the Council use of the commission meeting room for meetings held in Albuquerque. The Council also appreciates the use of the Dean's Conference Room at the University of New Mexico School of Law, and the input from the numerous individuals who represented the views and interests of

public and private organizations at regular meetings. The Council recognizes that their presentations and active participation have contributed to the understanding and formulation of actions to improve the judicial system. The Council encourages their interest and participation and that of the general public as well.

#### Budget

The budget for the 70th fiscal year, ending June 30, 1982, was \$190,535, representing a year of expansion for the Judicial Council. The Council's budget for the 71st fiscal year totals \$171,700 which is itemized as follows:

Salaries	\$110,600
Employee Benefits	18,800
Travel	4,100
Maintenance and Repairs	700
Supplies	1,400
Contractual Services	23,300
Board & Commission	10,500
Capital Outlay	1,500
Out-of-State Travel	800
	<u>\$171,700</u>

#### Office and Staff

The Judicial Council maintains its offices on the fourth floor of the Pan American Plaza, 2300 Menaul N.E., Albuquerque, New Mexico. The mailing address is:

New Mexico Judicial Council  
P. O. Box 4007  
Albuquerque, New Mexico 87196-4007

The telephone numbers are:

(505) 841-6382 and (505) 841-6383

The staff members are:

David R. Gardner	Director
Edward R. (Lee) Gonzales	Administrative Assistant
Dale S. Morritz	Staff Attorney
Maggie Gombos	Courts Analyst
Trinnie Lujan	Secretary-Bookkeeper
Yolanda Pino	Secretary

#### PROGRAMS AND STUDIES

#### State of the Judiciary Address

The Judicial Council held its annual public meeting in Chama, New Mexico, on July 9, 1982, during which Justice H. Vern Payne, on behalf of the state Supreme Court, addressed the members and audience on the state of the judiciary in New Mexico. He described the judicial branch of government as a major business organization, stressing efforts to improve both judicial performance and operating efficiency. He summarized recent accomplishments: reorganized magistrate classifications and standardized compensation; formal magistrate training; implementation of the Metropolitan Court in Bernalillo County; and introduction of automated data processing and computer technology. Comparing New Mexico courts favorably to other state court systems, Justice Payne stated that the Supreme Court is pleased with the quality of district judges. He cited the good quality of their decisions, their efforts to improve their abilities, and the infrequency of disciplinary problems.

He reported that current studies under the direction of the Supreme Court include review of sentencing guidelines, changes in court reporting methods, development of magistrate leave guidelines and methods to improve caseload management. In conclusion, he suggested future study of the judicial system should focus on its delivery of services to the public, with emphasis shifting from a court or judicial-oriented perspective to greater consideration of public needs and expectations.

## Citizen Monitoring of Magistrate Courts

### Background

Following the 1974 Citizens' Conference on New Mexico Courts, the attendees organized to spread what they had learned about courts and court improvement to other residents of the state. The organization was first called New Mexicans for the Improvement of the Judicial System, but has since come to be known as Court Update. The Judicial Council, one of the co-sponsors of the Citizens' Conference, continued to support the efforts of the lay-member organization. Court Update members became interested in projects to monitor courts undertaken by similar citizen organizations in other parts of the country. After studying much of the literature, Court Update decided to seek a federal grant for such a project in New Mexico.

The officers of Court Update approached bar associations and state agencies for assistance in raising the needed matching funds, having received some encouragement that a federal grant from the Law Enforcement Assistance Administration might be obtained. Ultimately, the New Mexico Supreme Court supplied \$2,000 to match a federal grant of \$18,000. In order to facilitate the granting of the federal money, and at the request of Court Update, the Judicial Council agreed to take responsibility for the project as the sub-grantee agency. Accordingly, the Judicial Council submitted the request, obtained the grant to carry out the court monitoring project, and contracted with Court Update for that group to carry out the project. The grant for a twelve month project to monitor the seventy-two magistrate courts in New Mexico was approved May 15, 1980.

### Project Goals

Court Update's goals for the project were to:

1. identify problems in magistrate courts, including lack of equipment, inadequate facilities, inefficient procedures, poor management, inadequate service to the public, and lack of support personnel;
2. gain judicial and public support for solutions to any problems identified;
3. open communication between citizens and their judges; and
4. overcome the reluctance of citizens to serve on juries.

To accomplish these goals, Court Update planned to recruit volunteers from within the communities served by each magistrate court, train them with the aid of attorneys, and have the volunteers collect data on standardized forms over an eight week period of observation in each court. The forms were to be analyzed by the project director and resulting reports were to be furnished to the Supreme Court, the Administrative Office of the Courts, and the Judicial Council. The educational value of the project was to be shared through reports to the news media.

### Modifications

Court Update ran into a number of difficulties which resulted in modifications to the project. The greatest problem was in recruiting monitors. In some areas it was difficult to find anyone willing to volunteer to sit in the local magistrate court and observe proceedings. In some cases this was due to apathy, but in other cases it was because of fear of retribution. Even though the Administrative Office of the Courts advised all magistrates of the project and encouraged cooperation, prospective monitors encountered resistance from some magistrates to having their courts observed. In some areas the monitors, after receiving some training, would decline to follow through, and the process of recruitment would have to start again.

There were also problems in completing monitoring of courts once it had begun. This was due to interruptions caused by illness and travel plans, which were not uncommon because of the large percentage of monitors who were of retirement age. The project director himself suffered from physical ailments which caused delays.

Another problem was the delay inherent in government requirements that costs be incurred before money is paid out. This resulted in participants paying for travel, postage, and telephone expenses out of their own funds and then waiting through unreasonable delays for reimbursement. This, with the other frustrations mentioned, was discouraging.

The planned one year project was finally completed after two and a half years. Five of the courts were never monitored. Monitors from outside local areas were needed to do the monitoring in a number of courts. The training of monitors was assumed by the project director. The monitoring period was reduced from eight weeks to one week in some instances.

### Achievements

In spite of all the difficulties, the project results exceeded expectations. Ninety-seven citizen volunteers participated in monitoring sixty-seven magistrate courts. Those who participated have shown continued enthusiasm for the idea and have requested opportunities to continue the project. Many would like to see high school and college students participate, citing the educational value of the experience. Many magistrates responded positively to the project and have encouraged citizens to observe court proceedings.

There is evidence, via comments from law enforcement officers and other local officials, that the functioning of certain courts improved notably during the monitoring period, and they would like to see the project expanded to other courts. In some areas where people told recruiters they would be afraid to monitor the local court, the incumbent magistrates were turned out of office in the 1982 elections.

The final report has now been published, and parts of it have been used by the Administrative Office of the Courts and the Judicial Standards Commission in examining problem areas. The final report will be used to document requests for assistance to magistrates and to educate the public.

An example of the educational value of the publicity surrounding the project is the following clipping from the November 21, 1982 issue of the Albuquerque Journal:

## Magistrate Monitors Offer Tips

By ANTHONY DELLAFLORA  
Journal Staff Writer

Most of the judges at the magistrate-court level in New Mexico are doing a good job, but there is still room for improvement in the system, according to a court-monitoring group.

Members of Court Update met Saturday in Albuquerque to discuss some of the findings made during a two-year program involving 97 volunteers who monitored 67 magistrate courts around the state.

"Many of the magistrate courts are doing a good job," said Pauline La Du, the organization's president. She said there are a number of good judges around the state, but added, "We have some who should never have been in office."

"In some smaller courts in isolated areas, judges have not been responsive to the public. Some are in the northern part of the state and some in the southeast."

She said the monitoring project may have been responsible for some low-

rated judges who lost their jobs in the November elections.

Surveys of the monitors also pointed up the need to increase staffing and to upgrade facilities in some courts.

Milan La Du, director of the monitoring project, called some facilities "deplorable and pathetic."

The Metropolitan Court in Albuquerque was criticized for having courtrooms so noisy that people in the public seating areas could not hear the proceedings.

The Metropolitan Court judges also came under attack.

"The performance of judges leads me to believe judges in Metropolitan Court should be continuously monitored," La Du said. He cited disparities in the sentencing of repeat DWI offenders as one reason.

"One person in for a 10th offense was plea-bargained down to a first offense," claimed La Du.

Haphazard scheduling in the Metropolitan Court also resulted in police officers being required to appear in

two or three different courtrooms at the same time.

All concerned regarded the federally funded project a success.

"They (the monitors) all expressed surprise at what they learned," said Mrs. La Du. "And they are all ready to keep going. They feel if the public is there, the judge is more responsive."

She added that judges were also generally pleased with the program.

Whether the project continues depends on whether more money can be obtained. Funds to start came from a \$20,000 grant provided by the Law Enforcement Assistance Administration. Funds to continue have not yet been found.

Comments from the monitors, statistics and recommendations will all go into a written report expected to be available to the public before the end of the year.

Mrs. La Du said the report would be turned over to the state Supreme Court and the New Mexico Judicial Council, which will consider drafting legislation based on the recommendations.

## District Court Facilities

Almost all departments of state government retain financial responsibility for the facilities from which they operate. These agencies either pay rent or occupy buildings owned by the state. The state's district courts and district attorneys are notable exceptions. Under state law, county governments are responsible for providing space for the courts and for district attorneys. Within the last six years, the courts have experienced increases of 21.1% in case filings and 24.7% in judgeships. County governments have been faced with providing appropriate quarters to accommodate the growing district courts under tighter financial conditions and rising construction and maintenance costs.

The Judicial Council staff undertook a study in 1981 of court facility needs and costs of maintaining existing court facilities. A condensed analysis of each county court facility was included in the Judicial Council's Thirteenth Annual Report last year. The final court facilities report has since evolved into a comprehensive document with photos of each district court facility in the state. The report also includes a rating of courthouses by comparison and on-site observation and a fiscal analysis of county revenues and bonding capacities. A limited number of copies are being printed for distribution to legislators, judicial districts, county governments, and law libraries.

At its July 9th meeting, the Council adopted a position statement that capital outlay and maintenance costs of district court facilities should eventually be supported by state funds. On July 13th, the Council staff and Council member Judge N. Randolph Reese, appearing before the Legislative Finance Committee, reported the staff's findings and the Judicial Council's stand on the need for state funding of court facilities. On September 8th, the Director of the Judicial Council was invited to speak before the Federal Funds Reduction Committee (FFRC) about the physical condition of the district courts and proposals for improving court facilities. On October 20th, the FFRC wrote a discussion draft creating a county maintenance fund to assist counties in the maintenance of the district courts. The FFRC planned to introduce this unprecedented legislation during the 1983 Legislative session.

## Clerk of the District Court Manual

### Introduction

In September, 1981, the District Court Study Committee, chaired by the Honorable N. Randolph Reese, identified the preparation of a clerk's manual as one of its priorities for 1982. The need for a manual for orientation, training, and reference had long been recognized, but several attempts to develop one had been unsuccessful. It was decided that the manual would be most effective if it were the product of the experts in this field -- the district court clerks themselves.

### Preparation

In October, 1981, Judge Reese organized a committee of nine clerks who were given total discretion and responsibility in determining the structure and content of the manual. These clerks are: Eloise Young, Bernalillo County; Bernice Maynez, Dona Ana County; Georgia Camp, Lea County; Frances Wilcox, Eddy County; Jean Willis, Chaves County; Nadine Speir, Luna County; Linda Worley, Curry County; Frances Stull, Quay County; and Emma Jean Hottell, San Juan County. Jean Willis, who had already done some preliminary drafting, was appointed acting chairwoman. The group was then divided into subcommittees assigned to prepare specific chapters. Over the ensuing nine months, the clerks progressed through the laborious stages of research, drafting, review, revision, and proofing.

The Administrative Office of the Courts provided personnel to cite-check the many references to statutes, rules, and other authorities, and allocated funds to pay for word-processing and other production expenses.

Chapters are devoted to these topics: 1) The Court System, 2) General Duties of the Clerk, 3) Required Records, 4) Fees, 5) Case Procedure by Type, 6) Juries, 7) Clerical Duties for Courtroom Proceedings, 8) Judgements and Executions, 9) Appeals and Removals, 10) General Procedural Issues, 11) Extraordinary Proceedings, 12) Docketing, 13) Finance and Accounting, 14) Relations with the Public and the Media, 15) Microfilm and Microfiche, 16) Records Retention and Disposition, 17) Process: Issuance and Service, 18) Bail and Bonds, 19) Oaths, 20) Statistics\*, and 21) Recording\*. A glossary of common court terms and an index are included. The manual is in loose-leaf form so that periodic revision may be made via replacement pages.

### Implementation

The manual was formally adopted by order of the Supreme Court on October 19, 1982, one year after the project was conceived. Copies of the manual were then distributed to all district court clerks at regional meetings which provided an opportunity for discussion of its structure and use.

It is expected that this tool will have a great impact upon the district courts, as it encourages standardization of procedures, clarifies ambiguous or conflicting statutes and rules, and consolidates information about court processes. Important byproducts of

\*Not included in first release; will be added at a later date.

the project have been the consolidation of forms used by the different district courts (reduced from 630 to 110) and the development of a uniform statistical reporting format. Also significant is the fact that during the compiling process, numerous obsolete or conflicting provisions were identified. These will be brought to the attention of the Supreme Court so that those rules and statutes may be repealed or updated as needed to eliminate confusion. These efforts are expected to upgrade and standardize clerical procedures and also to provide better management information at both local and state levels.

### Kudos

Many persons who have seen the manual have commented very favorably on its importance in meeting a long-felt need, and on its thoroughness, clarity, and professionalism. The authors should take great pride in their work. The Judicial Council joins with the New Mexico Supreme Court and Administrative Office of the Courts in commending the Clerk's Committee for a job well done.

As a token of the Council's appreciation, a Certificate of Commendation was presented to each clerk who participated in the writing of the manual. The State Bar of New Mexico, upon the Council's nomination, presented the committee chairwoman, Jean Willis, with a Distinguished Service Award.

### Evaluation of Requests For Additional Judgeships

The Council has traditionally evaluated the Judicial Department's requests for new judgeships and advised the legislature, the authorizing body which funds or rejects the requests. In 1982, district courts from four judicial districts submitted requests for endorsement of new judgeships. The Second Judicial District requested four new judgeships, two for appointment by July 1, 1983, and two to be elected positions in 1984 with the judges to take office on January 1, 1985. The Fifth, Eleventh, and Twelfth Judicial Districts each requested a new judgeship for appointment by July 1, 1983.

The Court Facilities and Planning Committee of the Council was designated to evaluate these requests. The Committee invited the four districts to present their requests at the Council meeting held October 7, 1982. The districts were represented by district judges, court officials, and local Bar Association officers who provided valuable information. On November 12, 1982, the Court Facilities and Planning Committee met and evaluated the requests based on the following method:

Criteria: The Committee compiled district court caseload statistical reports from the Judicial Department's annual reports for 1978 through 1982 (Table 2). In addition, the districts requesting judgeships were asked to complete a caseload profile on each judge in the district. The profile requested statistics in the following areas:

1. Criminal Dispositions; failure to prosecute, other dismissals, mistrial/hung jury, guilty/nolo plea, dropped-jury trials, non-jury trials.
2. Civil Dispositions; default, stipulated judgement or agreement, judgement on hearing or trial, one year dismissal, other disposition, summary proceeding-jury trials, non-jury trials.
3. Domestic Relations Dispositions; default, stipulated judgement/agreement, trial, dismissal-failure to pursue, mistrial/hung jury-jury trials, non-jury trials.
4. Juvenile Dispositions; consent decree, dismissed, certified for criminal proceedings, other disposition-jury trials, non-jury trials.

Travel: Each district was asked to provide statistics concerning the amount of travel each judge had experienced in the last fiscal year.

Backlog: The districts were sent a questionnaire concerning backlog of cases:

1. Is there a backlog of cases in the district-i.e. if a request for a hearing or trial setting were received tomorrow, how soon could it be heard:

TABLE 2

JUDICIAL DISTRICT PROFILES  
(JUDGESHIP, CASELOAD AND POPULATION ACTUALS AND PROJECTIONS)

Judicial District (Counties Listed)	#of Judges		Cases Filed	Filings P. Judge	Backlog (months)				Population	Pop. Per Judge	Attys.	Attys. Per Judge
	Year				Civ.	Dom.	Crim.	Juv.				
Second District Bernalillo	1978	12	19,307	1,609	8.5	3.7	6.2	4.9	399,400	33,283	-	-
	1982	15	20,547	1,370	8.2	3.0	11.4	15.9	**431,619	28,775	1370	91
	*1983	17	20,878	1,228	-	-	-	-	**437,579	25,740	-	-
	*1985	19	21,539	1,134	-	-	-	-	449,500	23,658	-	-
Fifth District Eddy Chaves Lea	1978	5	6,126	1,225	9.0	3.8	4.8	1.5	149,500	29,900	-	-
	1982	6	7,401	1,234	12.1	4.7	4.8	5.5	**157,918	26,319	180	30
	*1983	7	7,786	1,112	-	-	-	-	**158,901	22,700	-	-
	*1985	7	8,556	1,222	-	-	-	-	160,900	22,986	-	-
Eleventh District McKinley San Juan	1978	3	3,428	1,143	12.9	4.7	6.4	4.7	134,500	44,833	-	-
	1982	3	3,606	1,202	16.2	2.5	8.4	7.0	**149,767	49,922	108	36
	*1983	4	3,653	913	-	-	-	-	**155,863	38,966	-	-
	*1985	4	3,747	937	-	-	-	-	167,500	41,875	-	-
Twelfth District Otero Lincoln	1978	2	2,225	1,113	6.9	2.1	6.1	1.0	55,700	27,850	-	-
	1982	2	2,058	1,029	13.6	3.5	2.4	2.6	**56,719	28,360	50	25
	*1983	3	2,019	673	-	-	-	-	**57,248	19,083	-	-
	*1985	3	1,942	647	-	-	-	-	60,900	20,300	-	-

# of Judges column reflects additional judges requested for 1983 and 1985.

\* Cases filed based on 4 year average.

\*\* Population based on 5 year average from UNM Bureau of Business to Economic Research statistics.

TABLE 3

NEW MEXICO  
JUDICIAL DISTRICT  
PROFILES

		<u>JUDGESHIPS FY '80-'81</u>	<u>JUDGESHIPS FY '81-82</u>	<u>PRACTICING ATTORNEYS 1982</u>	<u>ATTORNEYS PER JUDGE 1982</u>	<u>CASES FILED FY '81-'82***</u>	<u>FILINGS PER JUDGE FY '81-'82</u>	<u>CIVIL BACKLOG (MONTHS) AS OF 6/30/82</u>	<u>DOMESTIC RELATIONS BACKLOG (MONTHS) AS OF 6/30/82</u>	<u>CRIMINAL BACKLOG (MONTHS) AS OF 6/30/82</u>	<u>JUVENILE BACKLOG (MONTHS) AS OF 6/30/82</u>
1st	Judicial District	5.3**	6	530	88	4,869	812	12.2	8.6	12.3	3.4
2nd	Judicial District	4.5**	15	1370	91	20,547	1,370	8.2	3.0	11.4	15.9
3rd	Judicial District	2	3	99	33	2,883	961	7.3	3.4	4.7	1.7
4th	Judicial District	2	2	29	14	1,227	614	13.7	5.4	10.4	19.8
5th	Judicial District	5.5*	6	200	33	7,401	1,234	12.1	4.7	4.8	5.5
6th	Judicial District	2	2	43	21	1,669	835	12.4	8.2	5.7	2.5
7th	Judicial District	2	2	21	10	1,672	836	6.8	2.0	4.0	1.8
8th	Judicial District	2	2	65	32	1,398	699	17.5	9.0	8.7	3.5
9th	Judicial District	2	2	44	22	2,336	1,168	9.3	1.4	2.7	1.7
10th	Judicial District	1	1	13	13	615	615	9.1	4.4	2.9	4.4
11th	Judicial District	3	3	105	52	3,606	1,202	16.2	2.5	8.4	7.0
12th	Judicial District	2	2	50	25	2,058	1,029	13.6	3.5	2.4	2.6
13th	Judicial District	3	3	55	18	2,849	950	10.2	6.0	12.2	4.1
Statewide Totals/ Averages		6.3	49	2624	53	53,130	1,084	10.3	4.1	7.8	8.4

\*\*

6th judge in 1st Judicial District effective 3/1/81

15th judge in 2nd Judicial District effective 1/1/81

6th judge in 5th Judicial District effective 1/1/81

\*\*\*Source - Administrative Office of the Courts

TABLE 4

## DISTRICT COURT - CASELOAD COMPOSITION

	<u>ALL CATEGORIES</u>		<u>CIVIL</u>		<u>DOMESTIC RELATIONS</u>		<u>CRIMINAL</u>		<u>JUVENILE</u>	
	<u>TOTAL NO. OF CASES</u>	<u>FILED FY 81-82</u>	<u>NO.</u>	<u>%</u>	<u>NO.</u>	<u>%</u>	<u>NO.</u>	<u>%</u>	<u>NO.</u>	<u>%</u>
1st Judicial District	4,869		2,462	51	1,233	25	555	11	619	13
2nd Judicial District	20,547		10,909	53	5,849	28	1,731	8	2,058	10
3rd Judicial District	2,883		1,151	40	1,308	45	259	9	165	6
4th Judicial District	1,227		573	47	412	34	96	8	146	12
5th Judicial District	7,401		2,597	35	3,209	43	986	13	609	8
6th Judicial District	1,669		569	34	573	34	218	13	309	19
7th Judicial District	1,672		631	38	644	39	222	13	175	10
8th Judicial District	1,398		691	49	487	35	154	11	66	5
9th Judicial District	2,336		862	37	902	39	344	15	228	10
10th Judicial District	615		266	43	176	29	103	17	70	11
11th Judicial District	3,606		1,669	46	1,137	32	532	15	268	7
12th Judicial District	2,058		803	39	869	42	231	11	155	8
13th Judicial District	<u>2,849</u>		<u>1,766</u>	62	<u>803</u>	28	<u>138</u>	5	<u>142</u>	5
TOTALS	53,130		24,949		17,602		5,569		5,010	
AVERAGE				47		33		10		9
HIGH				62		45		17		19
LOW				34		25		5		5
MEDIAN				43		34		11		10

- a. How soon could a case be heard if a 30-minute hearing were requested?

Criminal \_\_\_\_\_

Civil \_\_\_\_\_

Worker's Comp. \_\_\_\_\_

- b. How soon could a case be heard if a trial were requested?

Criminal \_\_\_\_\_

Civil \_\_\_\_\_

Worker's Comp. \_\_\_\_\_

Demographic Analysis: The Committee utilized population statistics compiled and published by the University of New Mexico Bureau of Business and Economic Research in evaluating population counts and trends. The Committee also considered any new information concerning population changes that conflicted with the business bureau's statistics.

Unique Circumstances: Unusual characteristics of a district were considered. They included such variables as population distribution and ethnicity, institutions generating court cases, internal administrative problems, and economic and labor conditions.

On November 12, 1982, the Committee recommended to the full Council that four judgeships be approved for the Second Judicial District and that two more judgeships be approved, one to serve in the Fifth Judicial District and the other for the Eleventh Judicial District. The Committee also recommended that the Council not support the Twelfth Judicial District's request for a new judgeship. The Council voted on the issue and passed a resolution to support the Second Judicial District's request for appointment of two new judges for July, 1983, and two more for elective office in January, 1985, and to support the requests for two new judges by appointment in July, 1983, one to serve in the Fifth District and the other in the Eleventh District. The resolution included the Council's decision not to support the request for an additional judgeship in the Twelfth District.

### Corrections and Mental Health Treatment Facilities

The issue of facilities within the Corrections Department for the treatment of mentally ill inmates was first raised before the Judicial Council at its March meeting. A Council member felt that one of the priorities for study in 1982 should be the ramifications of the state's new law providing for a plea or verdict of "guilty but mentally ill." The concern raised was that there was a shortage of facilities for mental health treatment of convicted offenders before the new law was passed, and the problem might only be exacerbated.

At the Judicial Council's April meeting, Dr. Phillip West informed the Council of a related problem. Dr. West is co-chairman of the state-wide Task Force on Secure Treatment of Severely Disturbed Adolescents. He spoke to the Council regarding the lack of facilities for long-term psychiatric treatment of adolescents in a secure setting. He stated that with the proper facilities and staff, delinquents likely to become the worst offenders are treatable and can become stable, productive citizens.

It was suggested by Council members that representatives from the State Hospital and the Department of Corrections be asked to address the Judicial Council on their plans to treat individuals convicted under the new law. Council members expressed great interest in touring the State Penitentiary in Santa Fe and the State Hospital and Forensic Treatment Unit in Las Vegas before hearing from the spokesmen, and a visit to those facilities was arranged.

The Judicial Council members and staff visited the State Penitentiary on the morning of June 11. The Council toured the main institution, including the cellblocks and dormitories, the dining room, the kitchen facilities, the prison industries complex, the educational facilities, the medical clinic, and the psychiatric unit under construction. There was also a visit to the women's prison. The Council ate lunch in the staff mess hall, and then proceeded to Las Vegas. There they were given a tour of both the State Hospital and the Forensic Treatment Unit. The Council saw the various dormitories and treatment levels, the juvenile treatment area, and the administration building.

At the Judicial Council meeting the following day, presentations were made by John Gabaldon of the Health and Environment Department, Macario Gonzales, administrator of the Forensic Treatment Unit, Dr. Fisher and Dr. Sanchez of the Forensic Unit, and Dr. Lyons of the State Penitentiary. These individuals described the programs and needs of the institutions.

The Forensic Unit is a ninety-bed facility. Thirty beds are allocated to the Department of Corrections, with seven maximum security beds. The hospital is investigating options for establishing a residential facility for female forensic patients, who currently must be treated by mobile forensic teams.

The emphasis at the hospital is on progress and recovery, not on custodial care. There is a need for community-based care programs for the mentally ill. Because it is the job of the Forensic Unit to stabilize inmates from the Corrections Department prior to

their return to the penal institution, there is a need for continued care within the penal system. Otherwise, inmates are merely "warehoused".

The impact of the new "guilty but mentally ill" law may not be great, as mentally ill offenders have been going to prison for some time without being labeled as such. A prison official explained that about 10% of the prison population is mentally ill, and at any one time 10% of those may be in a crisis situation. The Corrections Department needs to treat the mentally ill inmates, not just house them. There is a need for an intermediate care facility at the Penitentiary to provide continuity of care.

Council members raised the problem some judges have faced when they send an individual to the State Hospital for treatment, only to have admission refused. The Forensic Unit receives patients on a priority basis, and some individuals may have to remain in jail or in the community while others with a higher priority are treated.

At a later meeting, it was suggested that a letter be sent to all district judges asking for their input in the area of facilities for treatment of mentally ill offenders. Responses were made to Justice Payne and forwarded to the Judicial Council.

Robert Garcia, Director of the Behavioral Health Services Division of the Department of Health and Environment, addressed a joint meeting of the Judicial Council and the Judicial Conference in October. Mr. Garcia reported that the Forensic Treatment Unit is adding forty beds. He acknowledged the problems with waiting lists and with poor communication between judges, district attorneys and the Forensic Hospital, and explained that a new director for the Forensic Hospital will be hired. Mr. Garcia described several factors that have increased the demand for Forensic Treatment Unit services. One is the return rate of clients for re-treatment and another is the designation of treatment as a condition of parole. He felt that parole board referrals are an inappropriate use of the hospital facilities. He also explained that some projects which were part of a comprehensive plan developed two years ago have not materialized: a twenty-bed short-term facility at the Penitentiary has not been completed and the Corrections Department thus must continue to refer to the Forensic Hospital inmates experiencing short-term psychiatric episodes. Mr. Garcia noted that while many judges are quick to make Forensic Unit referrals for evaluation, few are conscientious about arranging their prompt return from the Unit. These issues have exacerbated problems the Health and Environment Department is experiencing in providing needed space. He expressed appreciation for the opportunity to work with the Judicial Council in resolving these problems.

In November, Dr. Phillip West of the Task Force on Secure Treatment of Severely Disturbed Adolescents met with the Judicial Council again. With him was Dr. Irving Berlin. Dr. Berlin reported that after studying the scope of the problem of violently ill youth, the task force was preparing to ask the Legislature to fund construction of a thirty-six-bed facility. The Council voted to endorse the concept of a secure treatment program

and offered to testify to that effect at legislative hearings on the Task Force's bill.

## White Paper on Constitutional Amendment No. 1

Early in 1982 the question was raised as to what plans the Judicial Council had regarding the proposed Constitutional Amendment No. 1 on judicial selection. The Judicial Council had voted in 1981 to support passage of the amendment at the 1982 general election.

As part of the Judicial Council's role in educating the public about the judicial system of the state, it was decided that a "white paper" would be prepared and distributed prior to the election. The paper would present in an unbiased manner the arguments against and favoring the existing and proposed methods of judicial selection, and would provide information on how the proposed method would operate in New Mexico.

Two Council staff members researched the topic, collecting information and arguments from many sources and jurisdictions. The completed paper runs forty pages in length, with ninety-five footnotes. An introductory section summarizes historical trends in judicial selection, two previous attempts to institute in New Mexico plans similar to that proposed in the amendment, the customary procedure of filling interim vacancies by gubernatorial appointment, and the significance of those appointments. Other sections outline the typical design and operation of nominating commissions and address the role assigned the Judicial Standards Commission in the proposed plan. Three tables identify the number of judicial appointments made during the past twenty years, those incumbents initially appointed to the bench, and those initially elected to the bench.

The White Paper on Judicial Selection was distributed in late Spring to all Judicial Council members, the Judicial Standards Commission, the Coalition for Amendment No. 1, Common Cause New Mexico, Court Update, the League of Women Voters, the New Mexico Bar Association, some local bar associations, the gubernatorial candidates, all district and appellate judges, the Legislative Council Service, and the New Mexico Council on Crime and Delinquency. Copies of the paper and a news release were sent to all daily newspapers published in the state, and to several others. Notices were placed in the State Bar bulletin News and Views, making the paper available to the interested public. The State Bar Association's Continuing Legal Education Division distributed the White Paper as part of its program entitled "The Route to the Judiciary", which featured a debate on the topic of judicial selection.

The Judicial Council produced an informational discussion of Amendment No. 1, which was cablecast on the Community Cable Channel in Albuquerque. Participating in the half-hour panel discussion were Senator Joseph Mercer, Justice William Riordan, Judge Mary Walters, and Judge Joe Galvan.

Many requests were received for copies of the White Paper from people on both sides of the issue, and the paper was used and quoted in newspapers before the general election. At the November election, Constitutional Amendment No. 1 did not pass.

## Cameras in the Courtroom

### Introduction

In determining study priorities for 1982, the Council agreed that news media coverage of court proceedings is an important subject because it is the public's chief source of information about the judicial process. General discussion indicated agreement with the national trend to open courtrooms to the media, but also reflected some concern about the delicate relationship between the media and judges who benefit from media exposure between election campaigns. The trial judge not only decides whether coverage of a specific proceeding is to be granted, limited, or denied, but also monitors the media's compliance with the terms of coverage. Members pointed out the importance of fairness and cooperation on both sides, as well as the dangers of antagonism. For example, certain Bernalillo County and Santa Fe County district judges, after decisions to deny or limit media access to highly-publicized criminal trials, were criticized by journalists for their actions. One editorial referred to the limitations imposed as "arbitrary".

Several judge members feel district judges have not had the discretion to limit or deny coverage which Canon 3(A)7 of the Code of Judicial Conduct seems to allow them. In their view, relevant Supreme Court decisions have not supported judges who attempted to exercise that discretion.

### Committee Work

The current Canon expires on January 1, 1983; action by the New Mexico Supreme Court to extend or make it permanent could include modification. For discussion, the Canon was compared to guidelines or rules in effect in other states. A memorandum summarizing common provisions that are not found in the current New Mexico Canon was given to the Supreme Court in October for informational purposes. No specific recommendations were included.

The District and Appellate Courts Committee is examining both the specific provisions of the Canon and general practice and problems of non-compliance in the Second Judicial District, where most coverage is centered. An early suggestion was to require training for photographers, video camera operators, and possibly news editors to make sure the provisions of the Canon were clearly understood. The biggest drawback to a training requirement would be the need for an ongoing program because of frequent turnover of personnel. The committee also discovered that no other state requires such training, but some have addressed communication and compliance problems by designating media or court liaisons with responsibility for coordinating daily contacts.

The committee has considered various areas that appear to be unclear, including the degree of judicial discretion intended, the discrepancy between the required form of notice to the court and the actual form of notice, Supreme Court policy regarding review of a judge's order or ruling affecting news media privileges, and means of enforcing the Canon or penalizing infractions without disrupting court proceedings.

The Bernalillo County district judges intend to prepare detailed procedures to achieve more uniformity in dealing with the

news media. Many of the problems encountered result from uneven treatment of the media's access to and conduct in individual courtrooms. The committee has asked Mr. Tom Ruiz, Court Administrator for the Second Judicial District, to advise the judges' committee which is to formulate those guidelines of the Council's interest in their endeavors, and to ask that they consider the usefulness of a media coordinator for the court. The District and Appellate Courts Committee tabled the matter pending the recommendations of the Bernalillo County district judges' policy committee.

#### Alternative Location of Court of Appeals Hearings

The District and Appellate Courts Committee considered organizational alternatives for the Court of Appeals, which since its inception in 1966 has convened exclusively in Santa Fe. Statutorily, the headquarters and chief office of the court must be located at the seat of government, but the court may convene at any location in the state (§34-5-7, NMSA, 1978). No facilities have been provided for the court's use outside Santa Fe; all judges and staff are housed in the Supreme Court Building and all business is conducted there.

The committee undertook a limited study of two possibilities: a) splitting the court into regional districts, and b) implementing a circuit-riding system. The study was largely prompted by legislation introduced in 1979 proposing a southern district of the court with facilities in Alamogordo. The Legislature passed an amended version of the bill appropriating money for a feasibility study, but that bill was vetoed by the governor.

The timeliness of the study was indicated by the fact that the Supreme Court Building is overcrowded and some arrangement must be made in the near future to add more space or to relocate some of the occupants of the building. The Court of Appeals now occupies some 5,000 square feet in the building. Given the vast size of the state, decentralizing the court would offer advantages to the residents of areas distant from Santa Fe.

The cost effectiveness of decentralizing the Court of Appeals was estimated using cost differential data reflecting attorney expenses for travel time and mileage to Santa Fe, versus Las Cruces or Roswell.\* This preliminary analysis revealed a savings of some \$20,000 per year to litigants in civil cases; however, that figure would be reduced by several practical factors, the most significant of which is that only about 25% of the cases heard by the court in FY '80-81 required an attorney appearance for oral argument, motion hearings, or show cause hearings. Another factor is that the appellate attorney selected for a given case is often from an area other than the county of case origin. Projected savings to litigants in criminal cases is negligible because so few cases are handled by private attorneys; the Public Defender's Office represents defendants in about 90% of all criminal appeals.

In order to broaden the study beyond financial considerations and examine the proposal from the vantage point of service to the public, the committee sought the views of members of the Supreme Court and Court of Appeals, the appellate divisions of the Attorney General's Office and the Public Defender's Office, and practicing attorneys through various bar associations and through the State Bar of New Mexico's News and Views. The responses received included suggestions regarding the location of facilities and changes in the court's jurisdiction, but overall, did not indicate an urgent need for a second Court of Appeals location.

\*While these cities are not the most central sites in the proposed "southern district", they were selected because of the number of appeals originating there.

The committee brought to the attention of the Court of Appeals judges the possibility of implementing either a formal or an informal circuit-riding system, based upon reasonable accumulation of a docket involving attorneys and litigants from a common geographic area. Four of six judges indicated that, given the court's caseload, such travel requirements could not be accommodated. The availability of facilities is also a consideration. Most district courtrooms in the busier judicial districts are heavily utilized; it would be the state's responsibility to provide additional courtrooms and offices where needed.

Counterbalancing the overt public benefits of decentralization are considerably increased costs to the state, and ultimately to the taxpayer. Direct costs would be incurred in providing facilities; indirect costs would result from the impact on the Attorney General's Office, which acts as prosecutor in all criminal appeals, and the Public Defender's Office, which represents defendants in about 90% of those appeals. These agencies would have to be similarly decentralized, or would require substantial budget increases for travel to a new court located in Las Cruces or Roswell. Finally, the demography of this state is such that there is no "ideal" site that would clearly benefit all southern counties. The committee also examined the structure of intermediate courts of appeal in other western states and found that, with one exception, the smaller courts were undivided.

While sympathetic to costs and inconvenience associated with travel from areas most distant from Santa Fe, the committee concluded that there is not sufficient need or justification to alter the organization or practice of the Court of Appeals at this time. It recommended to the Council that the study be tabled indefinitely, and the Council adopted that recommendation on October 7, 1982.

#### Audio Recording of Trials

In June, 1982, the state Supreme Court ordered that all criminal, juvenile, and workman's compensation proceedings be tape recorded, and specified that the recording serve as the official record on appeal. Audio recording was previously limited to authorized experiments beginning about 1975 in the Second and Eleventh Judicial Districts and to occasional use in other courts due to the absence of a court reporter.

The order triggered considerable reaction and renewed the controversy that surrounded initiation of the earlier experiments. Many court reporters have expressed reluctance to function as tape monitors and resentment over the loss of earnings which will result from the substitution of tapes for typed transcripts. Morale has suffered as reporters speculate about their future. Attorneys have described the problems they encounter in working with tapes rather than transcripts, and both reporters and attorneys have voiced concern about the quality and reliability of the taping method. They cite these difficulties or circumstances: inability to identify speakers; inability to distinguish simultaneous speech; inaudibility of bench conferences; inaudibility due to background noise, static, or radio interference; equipment failure; loss of portions of proceedings; and recording of attorney/client conversation.

The Supreme Court explained its action as a practical measure. Use of tape recordings was adopted to save time, as transcript production is one of the most time-consuming steps in the appellate process, and to save money, as indigent criminal defendants, workman's compensation claimants, and most juveniles are granted free process. A spokesman for the Court also pointed out that chronic personnel problems had played a large part in the Court's willingness to try a new approach to court reporting. He cited the difficulty in filling reporter positions in some rural districts, a lack of standardized procedures, and various disciplinary problems including overcharges for transcripts, performance of compensable work during working hours, use of other court personnel for assistance during working hours, and occasional loss of irreplaceable notes or transcripts when a reporter left court employment. In a memorandum to all district judges and official court reporters on September 16, 1982, then-Chief Justice Easley stated, "Trying to arrive at harmonious solutions to providing a record to the appellate courts for review has been the most onerous and time consuming administrative duty of the members of this Court over several years."

The matter was referred to the District and Appellate Courts Committee after a Council discussion of the advantages and disadvantages of audio recording during the August meeting. The committee hopes to reconcile conflicting opinions of the overall costs and the accuracy and reliability of tapes as the sole record of proceedings. Members also feel it important to recognize that reporters' apprehensions could hinder the courts' ability to attract and retain qualified court reporters.

For background information, the staff reviewed a National Center for State Courts study of New Mexico district court management,

including court reporting practices. That report, completed in September, 1980, assessed the experimental audio recording program in Bernalillo County as a general success but also pointed out specific problems and made recommendations for alleviating those problems. Many of those recommendations are to be implemented with the initiation of audio recording statewide, following installation of equipment, training, certification, and revision of tape log forms.

To determine how effective tape recording of criminal trials in Bernalillo County has been, the committee directed the staff to contact attorneys who had actually used tapes to prepare appellate briefs. Questionnaires were mailed to thirty-six attorneys, asking about their experiences in fifty-four specific cases filed with the Court of Appeals. Twenty-two attorneys returned the questionnaires and nearly all included comments that proved very useful to the committee in understanding the responses.

The nine questions posed and the attorneys' responses are as follows:

#1 Were the tape recordings in this case audible and accurate? (Yes-17; No-8)

#2 In comparison to working with a transcript, did the use of tape recordings for preparation of the brief require more or less time? (Less-2; Same-2; Slightly More-3; Much More-16)

#3 Did you hire a certified shorthand reporter to record some or all of the court proceedings in addition to the use of tape recording? (Yes-1; No-21)

#4 Did you have all or part of the taped record transcribed for use in preparing the brief? (Yes-7; No-18)

#5 Was a designation conference conducted? (Yes-4; No-15; Do Not Know-6)

#6 Did the designation conference result in limiting the record to be considered by the Court of Appeals? (Yes-1; No-15)

#7 Did the tape log effectively enable you to review selected portions of the record? (Yes-10; No-14)

#8 Did the use of tape recordings rather than transcripts result in additional costs to the litigant? (Yes-8; No-14)

#9 Please check any difficulties or circumstances you encountered in reviewing the tape recordings:

- "Inability to identify speakers" (6)
- "Inability to distinguish simultaneous speech" (12)
- "Inaudibility due to background noise" (8)
- "Inaudibility due to static or radio interference" (3)
- "Equipment failure" (1)
- "Loss of portion of proceedings" (4)
- "Recording of attorney/client conversation" (4)

Two problems most frequently identified in the comments were the ineffectiveness of the tape log for reviewing selected portions of the record, and the inaudibility of bench conferences. The first is attributed both to lack of detail in preparation and to technical problems, i.e., inexact duplication of tapes, non-uniformity in recording and playing equipment, and tape elasticity. Training of tape monitors and preparation of a procedural manual will both improve the effectiveness of tape logs and provide a standard for their evaluation which is now lacking. The attorney comments clearly indicate that the technical problems are extremely frustrating in appellate work, and at least one appellate judge has acknowledged the same difficulty in locating cited portions of a tape. Improvement is definitely needed in that area, as it is in bench conference recording practice.

The Board of Bar Commissioners was asked in September to adopt a position on audio recording. The commissioners declined or were unable to do so, but a representative met with the Council in October to discuss the matter. Attorney members of the Council have suggested that the organized bar has not indicated a great interest in the issue because the majority of members are civil practitioners who are not affected by the Supreme Court ruling on audio recording.

The New Mexico Court Reporter's Association and the Bernalillo County Official Shorthand Reporter's Association have also conducted a survey of trial attorneys. The District and Appellate Courts Committee has asked for the tabulated results of that poll when they become available, probably in late December or January. The committee will take up this topic again at that time.

## Probate Courts

### Introduction

In New Mexico, probate courts are established by constitution. Each county has one. In recent years a movement to simplify probate resulted in two types of procedures. Informal probate of estates is relatively simple and can be accomplished in either the probate court or the district court. Formal probate must be processed in district court. If there is any controversy, including a demand for notice in probate proceedings, an informal probate case must be transferred to district court. The informal probate is largely ministerial, consisting of filing documents with the county clerk or a deputy county clerk who acts as probate court clerk. The probate judge signs orders to complete the procedure, usually, if not always, without a hearing. Probate judges need not have any legal training. In fact, the only qualification for office is that a person be elected.

There have been suggestions that probate courts be abolished and informal probates be handled entirely by a deputy county clerk. The Judicial Council has, in the past, endorsed such efforts. However, those efforts have been unsuccessful, and the Judicial Council has more recently taken the position that if probate judges are to continue in existence as a part of the judicial system, they should receive some training so they can competently project an image of judicial demeanor.

### Scope of Research

The Lower Courts Committee of the Judicial Council undertook to study the functioning of probate courts more closely, with the idea that there might be some better use made of the probate courts as a part of the existing judicial system in New Mexico. The committee considered the lack of training of probate judges, the diminished jurisdiction, whether probate courts could be better used, and whether the office of probate judge should be abolished. During the course of its research, the committee found an article of state statutes, consisting of forty-two sections, which is obsolete and should be repealed.

### Methodology

Much of the information on the under-utilization of probate courts was obtained when the Judicial Council staff visited each of the county courthouses to catalogue district court facilities in 1981. The staff talked to county clerks about the number of cases filed in probate court and the availability of the probate judge, and looked at courthouse facilities available to probate judges. Follow-up calls were made to county clerks and district court clerks to get more complete data on the cases filed in 1981.

Under the direction of the committee, the staff sent questionnaires to all probate judges and district judges, and sought input from local bar associations and from members of the Real Property, Probate and Trust Section of the State Bar Association. In addition, the State Land Office and all county clerks were asked if they were aware of any current use of Sections 19-4-1 through 19-4-42, NMSA 1978, dealing with processing patents to townsites through the probate courts. Responses were received from sixty-

four percent of the probate judges, fifty-five percent of the district judges, thirteen attorneys, and forty-five percent of the county clerks.

### Findings

In 1981 there were 800 informal probate cases filed in probate courts around the state, compared with 2,492 combined formal and informal probate cases filed in the district courts. The distribution of case filings by county is shown in Table 5. Some of the cases counted as probate court cases are counted again as district court cases because of transfers of those cases from probate court whenever an interested person asks for notice of proceedings or some dispute arises which must be heard in district court.

Informal probate cases do not involve much time or discretion on the part of the probate judge. Typically the only action the judge takes is to sign the orders prepared by the administrator of the estate. It appeared from visits to the courthouses that under the limitations of the probate code the bulk of the work in informal probates falls on the deputy county clerk who files the cases, and that the work required of a probate judge in a year's time might take as little as an hour in two-thirds of the counties, and less than six hours in all but Bernalillo County.

While some probate judges, because of their limited duties, only go to the courthouse when called, others go by on a regular basis to see if there is anything that needs their attention. A few hold regular office hours at the courthouse, but the time is not related to disposition of probate cases. Probate judges perform other functions, such as performing marriages, not required of them but useful to the community.

Section 34-7-6, NMSA 1978, requires the commissioners of each county to provide a suitable office, stationery, and such other things as necessary for the prompt discharge of the duties of probate judges. That law was written in 1887 and has never been amended. Thirteen probate judges reported that the county does not provide them with an office, and nine said they receive no county funds for supplies or travel. Those counties which do budget for such expenses often appropriate two to four thousand dollars over and above the judge's salary.

District judges could handle all informal probates if the position of probate judge were abolished, although those cases could as easily be handled by a magistrate or the county clerk under suitable legislation. District judges were asked whether they felt probate judges serve a useful purpose in the judicial system. Eleven said yes and fifteen said no. Asked whether, if probate judges were adequately trained, they would consider designating them as special masters to relieve the district court caseload in probate matters, fourteen said yes and ten said no. Fourteen district judges were of the opinion that probate courts should be abolished, while eleven favored retaining them. The split in opinion did not follow any particular geographical pattern. Judges in most districts had different opinions from colleagues within their districts. There were few responses from attorneys, and those responses showed similar differences of opinion. Six attorneys felt

Table 5  
Probate Courts

Judicial District	County	Probate Court		District Court		
		1981 Cases	Judge's Salary	1981 Cases	District Judges	Probate Cases Per Judge
I	Santa Fe	51	\$ 4,214	170		
	Rio Arriba	2	4,214	59	5	49.4
	Los Alamos	2	2,304	18		
II	Bernalillo	282	10,687	554	15	36.9
III	Dona Ana	52	4,214	139	3	46.3
IV	San Miguel	16	4,214	33		
	Mora	1	2,186	11	2	25.5
	Guadalupe	2	3,279	7		
V	Chaves	62	4,214	131		
	Eddy	18	4,214	139	6	73.7
	Lea	43	4,214	172		
VI	Grant	12	4,214	37		
	Hidalgo	9	4,214	5	2	41.0
	Luna	59	4,214	40		
VII	Socorro	3	3,497	35		
	Sierra	3	3,279	49	2	56.5
	Catron	1	3,279	6		
	Torrance	10	3,497	24		
VIII	Taos	24	4,214	29		
	Union	5	3,279	28	2	54.5
	Colfax	13	4,214	52		
IX	Curry	12	4,214	143	2	110.0
	Roosevelt	12	4,214	77		
X	Quay	12	3,497	45		
	Harding	2	1,093	4	1	67.0
	De Baca	11	2,186	18		
XI	McKinley	10	4,214	44	3	49.6
	San Juan	21	4,214	105		
XII	Otero	13	4,214	56	2	46.5
	Lincoln	12	4,214	37		
XIII	Valencia	5	4,214	139		
	Sandoval	14	4,214	75	3	75.3
	Cibola	6	3,497	12		
TOTALS		800	\$129,840	2,492	48	51.9

probate judges are useful and five felt they are not.

By comparing the number of cases filed with the probate judge's salary, it can be seen in Table 5 that some counties, on a cost per case basis, are paying a lot to maintain a probate court. In Rio Arriba, Los Alamos, Mora, Guadalupe, Socorro, Sierra, and Catron counties the cost is over \$1,000 per case. In Santa Fe, Bernalillo, Dona Ana, Chaves, Lea, and Luna counties the cost is under \$100 per case. The other counties range in between. In comparison, the cost to the state per case filed in district courts is around \$200.

There have been amendments to Sections 4-44-4 through 4-44-12, NMSA 1978, which will allow county commissions to set salaries for probate judges and other elected county officials, subject to a maximum amount established by the legislature. The committee at first thought this authority could be used where appropriate to reduce probate judge salaries to coincide with the workload of judges. However, Section 4-44-12.1, NMSA 1978, requires county commissions to give all other elected county officials a raise if they give a raise to any one official, so probate judge salaries cannot be reduced if any other elected official is given a raise.

A final finding of the committee resulted from a reading of Sections 19-4-1 through 19-4-42, NMSA 1978, and an inquiry to the state land office and county clerks. Most of the article was enacted in 1882. There have been no additions or amendments since 1912. The article deals with filing patents to townsites received from the government of the United States, vests title to such townsites in probate judges in trust, and provides for administration of such lands. The law is obsolete.

#### Recommendations

The Judicial Council recommended, upon the advice of the committee, that a mandatory training program for probate judges be undertaken by the Administrative Office of the Courts. The Administrative Office of the Courts has begun development of a training program.

The Council adopted the committee recommendation that the committee's report on probate courts be sent to county commissions. The county commissions could presumably take into account the workload of probate judges when setting their salaries. Because of limitations on reducing elected officials' salaries, little savings to counties is expected. Over the next two years the committee will examine the alternatives to electing probate judges in each county.

The committee recommendation that Sections 19-4-1 through 19-4-42, NMSA 1978, discussed above, be repealed was adopted by the Judicial Council.

## RECOMMENDATIONS AND OTHER AREAS OF INTEREST

### Metropolitan Court

At its meeting in December, 1981, the Judicial Council voted to recommend elimination of the provision in the law restricting the addition of any judgeships in metropolitan court until 1985. No action was taken on this matter in the 1982 Legislature. It was decided that because the Council had voted to support the measure in 1981, no further action was necessary in order to support it before the 1983 Legislature.

### Magistrates

The Judicial Council noted that in Chaves County there are two magistrates serving three-quarter time and one serving one-quarter time. The Council voted to recommend increasing the three-quarter time positions to full time and eliminating the one-quarter time division. The elimination of the quarter-time position in 1983 would coincide with the conclusion of the incumbent's term in office. On review in November, the Council tabled further action on its proposal.

### Modified Juror Selection

Prospective jurors in New Mexico are randomly selected from a list of registered voters within each county. Of forty-five states that use voter registrations to some extent for juror selection, twenty-three, including New Mexico, use voter registration lists exclusively. The other twenty-two states use supplemental sources (State Court Organization 1980, pp.114-116, U.S. Department of Justice, Bureau of Justice Statistics, May, 1982).

In 1979, the Legislature passed House Memorial 33, requesting that the Judicial Council and the Administrative Office of the Courts study the possibility of supplementing the lists of registered voters as a source of names for potential jurors.

The National Center for State Courts compared lists of licensed drivers with lists of registered voters and determined that 38% of the names identified were on both lists, 16% of the names appeared only on the voters' list, and 46% of the names appeared only on the drivers' lists. At that time, it was estimated that there were some 190,000 more licensed drivers than registered voters in New Mexico. (NM Management Study - Final Report, pp.29-36, National Center for State Courts, September, 1980).

With Judicial Council support, an attempt was made in 1981 to amend Sections 38-5-1, 38-5-3 and 38-5-6, NMSA 1978, pertaining to juror qualifications and selection, to permit one judicial district to use an expanded source list for juror selection. This "master list" would be a computer-produced composite of registered voters and licensed drivers within a county. The enabling legislation (HB 422) was killed in the Senate Judiciary Committee after it was broadened to apply to any county.

The Council still advocates a pilot program of this type in order to test its cost effectiveness and value in broadening

citizen participation in the jury system. Legislation similar to HB 422 will be introduced in the 1983 session. Efforts are currently underway to determine the amount of the appropriation needed and to select an appropriate judicial district to undertake the modified jury selection project.

### Marriage Fees

Judicial Council members had raised the issue of fees charged for performing marriages, as civil magistrates are often asked to travel some distance to perform marriages or to perform them outside of office hours. After studying the issue, the Council voted to recommend changes in the statutes regarding marriage fees. The first change would be to amend Section 40-1-2, NMSA 1978, by adding a definition of "civil magistrate" as including all judges of the courts of New Mexico. The Council also voted to recommend an amendment to the same section providing that judges may charge no fee for performing marriages. Judges are not obligated by law to perform marriages. The Council did not go so far as to recommend that judges accept no gifts or donations for performing marriages, although this was seriously considered.

### Council Membership

Chief Public Defender John Bigelow spoke before the Judicial Council at a special joint meeting of the Council and the Judicial Conference held in October, 1982. He requested that the Council consider including the public defender's office in its membership, as his office handles about 95% of all criminal cases in the state. The Judicial Council voted to recommend the addition of the public defender as a voting member of the Judicial Council since the district attorneys are represented. The Council also voted to recommend the addition of three lay-members to the Council.

### Crime Victims Assistance

In August, Mrs. Edith Sorgan of the New Mexico Crime Victims Assistance Organization (CVAO) and the Crime Victims Reparation Commission (CVRC) attended the meetings of the Criminal Justice Study Committee and the Judicial Council. She presented five legislative proposals: (1) a restriction on profits by a criminal defendant from sale of his story to the media; (2) an imposition of mandatory fines, and a penalty assessment upon conviction for a violent felony or misdemeanor; (3) a mandatory victim impact statement to be provided with every pre-sentence report; (4) notification to the district attorney by the Corrections Department or the Parole Board regarding impending release hearings; and (5) amendment to the Crime Victims Reparation Act providing reparations to persons injured by offenders who were driving while intoxicated.

The committee voted to endorse the concept of the legislation and to make recommendations to the Council after studying the drafts. The Judicial Council voted to support the fourth piece of legislation, as is explained in this report under Victim Impact Statements.

At its September meeting, the Criminal Justice Study Committee discussed those drafts which had been submitted and a letter was sent to Mrs. Sorgan outlining the perceived problems with the legislation.

In November, the committee reported to the Council that it could not recommend endorsement of the legislation as written. A staff member met with Mrs. Sorgan and Professor Henry Weihofen later that month and the legislation was redrafted for submission to the committee in December.

At the January, 1983, meeting Council members will review and vote on each legislative proposal.

#### New Mexico District Attorneys' Association

In August, representatives of the New Mexico District Attorneys' Association (NMDAA), contacted the Judicial Council with regard to legislation the Association planned to introduce at the 1983 Legislature. Mr. Robert Schwartz of the NMDAA attended the August meeting of the Criminal Justice Study Committee and provided the Council staff with the NMDAA's tentative legislative packet. The packet was summarized for discussion by the committee, which met in November with Mr. Steve Slusher of the NMDAA. At the Judicial Council meeting that same day, the committee was asked to review the legislation and make its recommendations to the Judicial Council in December.

Committee members attended a meeting of the NMDAA and received a packet containing most of the proposed legislation. This was summarized and distributed to Judicial Council members for discussion. At the December meeting the matter was tabled so the Council members could review all the drafts of legislation before the January meeting.

#### Presiding Judge Rules

The Judicial Council continued its study of Presiding Judge rules begun the previous year. As reported in the 1981 Annual Report of the Judicial Council, a set of rules was drafted and circulated to all district judges in the state for their comments and suggestions. The Judicial Council then voted to adopt the rules as circulated and forwarded them to the Supreme Court with the recommendation that they be enacted. The comments received from the district court judges were forwarded for consideration by the Court as well.

#### Court Reporting

The issue of court reporting was taken up in the District Courts Committee of the Judicial Council because of numerous comments and complaints regarding the qualifications and fees of court reporters and problems with transcripts prepared for appeal. The committee recommended the Judicial Council formally request that the Certified Shorthand Reporters Board be given more authority to handle problems arising with court reporters. It was noted that court reporting issues were serious and ongoing problems for the Supreme Court. In February, 1982, the Judicial Council recommended

that the Supreme Court give the Certified Shorthand Reporters Board "authority commensurate with its duties" of formulating and administering rules for court reporters. The issue of court reporting arose again several months later with the promulgation by the Supreme Court of a rule mandating tape recording of all criminal, juvenile and workman's compensation proceedings in all district courts. The Judicial Council's actions regarding this are detailed on page 21.

#### Victim Impact Statements

The Judicial Council was addressed by representatives of the Crime Victims Assistance Organization and the Crime Victims Reparation Commission. As a result of the presentation made, the Council voted to recommend to the Department of Corrections that a victim impact statement be made a part of all pre-sentence reports. The victim impact statement would detail the effect an offense committed by the person to be sentenced had on the victim of the crime, whether that effect was physical injury or property damage. The statement would be used to aid the judge in sentencing the offender. The Judicial Council further recommended to the Supreme Court that a rule be adopted that before a sentence is imposed, a judge must receive and have in the file a victim impact statement, and that probation and parole personnel interviewing the crime victim provide information to that victim about the Crime Victims Reparation program.

#### Venue of State Cases in Santa Fe County District Court

At the Council's annual public meeting, with Presiding Judge Lorenzo Garcia of the First Judicial District present, the impact of the current statute requiring that civil suits against state officers or state agencies be heard in the Santa Fe County district court (Section 38-3-1(G), NMSA, 1978) was discussed. The District and Appellate Courts Committee was asked to consider whether venue in these cases should be expanded to other counties when circumstances would favor another location.

The staff examined the docket of the Santa Fe county district court to determine the number and types of special venue cases, their relative complexity, and underlying circumstances. Analysis of eighty-five open civil cases filed during the first half of 1982 revealed that at least 49% arose from events occurring in Santa Fe County and would have to be tried there even if the venue statute were changed. At least 38% had no factual connection with Santa Fe County and venue might be proper in another county. In eleven cases there was insufficient information to determine where the case arose.

The committee concluded that the number of cases involved did not merit diversion to other district courts. It felt the statute was designed to accommodate state government and is the most feasible and economical use of state resources. It was noted, however, that the First Judicial District should be entitled to some special consideration in view of the complexity of some of those cases. Additional use of special masters or judges pro tempore was proposed as a means of relief. Upon the committee's recommendation, the Council voted to leave the special venue provision unchanged.

### Workers' Compensation

Representatives of the Governor's Task Force on Workers' Compensation met with the District and Appellate Courts Committee in September, 1982, to discuss a proposal which would remove Workers' Compensation cases from the district courts and establish an administrative system for processing claims and awarding benefits. The Court of Appeals would review any cases not resolved by the proposed administrative procedures.

In evaluating a discussion draft proposed by the Task Force as a possible Workers' Compensation Act, the committee's concerns were the effect of such legislation upon the courts and whether a commission system is preferable to the existing system. According to Mr. H.J. (Doc) Weiler, Task Force Chairman, New Mexico is one of only five states which provide for settlement of disputed Workers' Compensation cases by general jurisdiction trial courts. He indicated that an administrative agency would be needed to follow-up on the rehabilitation services which would be heavily emphasized under the proposed Act.

The meeting revealed strong disagreement within the Task Force. Some Task Force members claimed the new Act would eliminate confusion and controversy, provide more equitable distribution of benefits, and stabilize employer costs. Other members felt the courts' current handling of Workers' Compensation cases is efficient in that the law requires expeditious treatment and judges have developed a collective expertise in this area. They rejected several key concepts of the proposal, i.e., the change to a commission system and the change to a wage loss award basis, and expressed concern that administrative costs paid by employers would reduce benefits overall.

It appeared that the lack of consensus within the Task Force would be very difficult to overcome. As the group had not yet adopted the draft legislation, the District and Appellate Courts Committee voted to table the topic until such time as a final and adopted proposal is made available.

### Family Court Reform

The District and Appellate Courts Committee examined guidelines and forms proposed by an ad hoc Committee on Family Court Reform appointed by the Supreme Court in March, 1982. Questions raised in discussion were whether the establishment of guidelines or rules would facilitate or complicate the handling of family court matters, whether it would provide an avenue for increased appeals, how judicial discretion would be affected, and the cost impact on litigants.

One member of the ad hoc committee was the Hon. W. John Brennan, who also serves on the Judicial Council. Judge Brennan indicated that some suggested procedures may be in use in one or more of the districts, but other districts are not aware of them. He felt that, if implemented, the guidelines would accomplish the Supreme Court's goals of streamlining family court matters and reducing to some extent the anxieties of affected persons.

Following review of the committee's report entitled Proposed Rules/Proposed Forms, the District and Appellate Courts Committee voted unanimous support of its recommendations.

TABLE 6

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
12/31/70	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
10/31/77	184.5	36,348	19,700	34,720	18,818	33,635	18,230
10/31/78	200.9	38,165	18,997	36,456	18,146	35,317	17,579
12/31/79	229.9	38,165	16,601	36,456	15,587	35,317	15,362
12/31/80	258.4	44,000	17,028	43,000	16,641	42,000	16,254
11/30/81	280.7	49,500	17,634	47,000	16,744	45,000	16,031
10/31/82	294.1	55,000	18,701	52,000	17,681	49,300	16,763

**END**