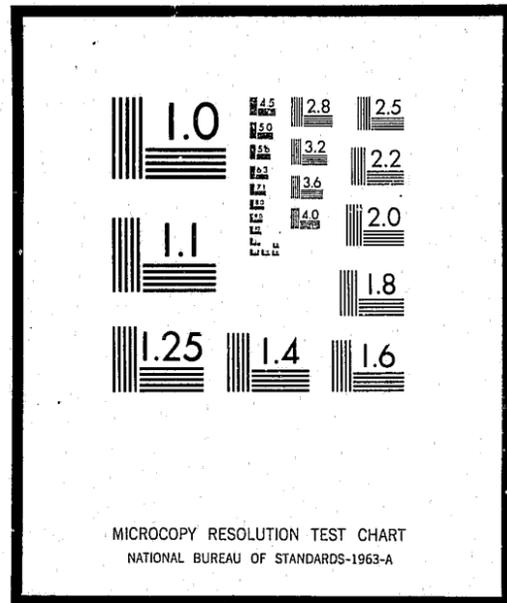


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IMPROVING COURT REPORTING SERVICES

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Federal Judicial Center
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Preface

The purpose of this paper is to summarize the present status of Federal Judicial Center information and conclusions on the subject of court reporting. Center activities have consisted of studies, reviews of the literature, meetings of advisory groups, meetings with officers of professional associations, interviews with officials in court systems which use direct voice recording, and interviews with experts in the field. A formal report has been issued on the study of court reporting systems conducted by the National Bureau of Standards which was jointly funded by LEAA and the Center. The suggestions and recommendations herein are based on a combination of the sources noted above. Those based on the formal study are specifically attributed thereto.

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Introduction

The employment and duties of court reporters in federal courts is covered in 28 USC 753. The statute requires reporters to attend each session of the court and every other proceeding designated by rule or order of the court or by one of the judges. It further requires a reporter to record verbatim, by shorthand or by mechanical means which may be augmented by electronic sound recording subject to regulations promulgated by the Judicial Conference: (1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule or order of court or as may be requested by any party to the proceeding. Proceedings on arraignment, plea and sentence in a criminal case can be taken via electronic sound recording.

Reporters are appointed by each district court in numbers determined by standards formulated by the Conference. Reporters are paid a salary of \$16,880 per annum and receive - in addition - fees for transcripts ordered by parties to an action. Fees are not received for transcripts requested only by a judge or for transcripts of arraignments, pleas and proceedings in connection with the imposition of sentence.

Transcripts are not required for arraignments, pleas and sentencing if electronic sound recording is used. Unless restricted from doing so by the court, reporters are free to engage in outside reporting work whenever their schedules permit.

Reporters are not required for proceedings before a magistrate. Electronic recording is normally used for such proceedings unless a magistrate is conducting a hearing which is covered by 28 USC 753.

Although not directed by the statute, it has been the practice in most district courts for a reporter to be assigned exclusively to one judge. Because the number of trial hours per judge varies, a resulting inequity in the distribution of workload among reporters has occurred.

There are several basic requirements of the court reporting process apart from the notetaking and transcription functions. In order to produce a record, it is necessary to have someone controlling the trial or hearing in a manner sufficient for "capturing" the content in a medium which can be transcribed at a later time. There must be someone - at some point in the reporting process - who can "construct" the record, someone who understands what is being, or has been, said and can convert oral statements into a meaningful and accurate written sentence structure. These basics are essentialities for an acceptable transcript.

The matter of acceptability is of key significance in considering alternative court reporting systems. In federal courts, any transcript certified by an official reporter is deemed prima facie a correct statement of the testimony taken and proceedings had. Thus, in federal courts, a certified transcript is in almost all cases an acceptable transcript. But there is at present no meaningful objective standard for measuring transcript adequacy (i.e., accuracy and acceptability) and this shortcoming affects the conclusions of most experiments and the contentions of parties claiming superiority for a given type of system.

Dissatisfaction with present court reporting services has focused primarily on the contribution to delays in the appellate process caused by the time required for preparation of transcripts. Center activities have been aimed at determining methods for reducing the time for transcript preparation. At this point in time there is no factual basis for recommending a radical change in the types of court reporting systems used in the federal courts. Although research and development must continue, there are a number of "non-technological" changes which should be made to effect more immediate improvements having the objective of reducing delay.

A. Types of Court Reporting Systems

At the present time, three reporting systems are used by reporters for those proceedings requiring a verbatim record. A majority use the stenotype system; some use manual shorthand and several use the stenomask system. Most reporters who use stenotype or shorthand use a tape-recording as a back-up. A reporter using any system should have a good background in English and should be able to "write" at the highest speed a trial participant can be expected to talk. In general, the average stenotypist can write at a faster speed than the average shorthand writer. Stenomask "writing" speed depends upon the background and training of the individual, but has the capability for a higher rate of speed than the other two systems.

The National Shorthand Reporters Association certification tests require the ability to write at 160 words per minute on literary matter, 180 on jury charges and 200 for question and answer. The NSRA merit tests require speeds of 200 words per minute for literary matter, 240 on jury charges and 260 for question and answer. These speeds are achieved under ideal conditions for a short period of time, using somewhat routine material. Such rates of speed are not usually sustainable for long periods.

These rates are meaningful only when compared to the speaking rate of participants in court proceedings. Average conversational speed is around 175 words per minute. Rapid conversational speed is around 225 words per minute. Rapid exchanges or argument can frequently exceed 250 words per minute. It is not possible for many reporters to write at the latter speed, let alone to write accurately. Therefore, a tape recording back-up is

often necessary. The actual writing speed of a reporter in any given situation depends upon a combination of his skill, the person speaking, the content of the material, the acoustical characteristics of the courtroom and the reporter's understanding of the language being used. It is obvious that a reporter's ability to write accurate and complete notes will have an effect on the time required for later steps in the court reporting process and on the accuracy of a transcript.

Another scheme for categorizing types of court reporting systems is to divide them into duplex and triplex systems. A triplex system involves three steps: (1) writing notes, (2) dictating from these notes and (3) typing from the dictated tape. A duplex system involves only two steps: (1) writing notes and (2) typing - by someone else. The importance of this distinction when covering problems of delay is that less total time is required for preparing transcripts under a duplex system. The differences can be illustrated by reviewing the three major methods now used for transcribing notes. These are:

- (1) the reporter types directly from his own notes.

Although this involves only two steps, it means the reporter can work on transcripts only when he is not recording court proceedings. Also, some reporters are not fast typists;

- (2) the reporter dictates from his notes into a tape recorder for typing by someone else.

Normally, it takes less time to dictate than it does to type a given hour of proceedings. Therefore, it is to the court reporter's advantage to dictate since it

reduces the time he spends in the transcription process. Nevertheless, the dictation step requires court reporter time and represents an activity which, if it could be eliminated, would have a significant effect on reducing transcript delays. Because the majority of reporters use this triplex system, its inefficiencies have a widespread impact;

- (3) the reporter turns his notes over to a note reader who types directly from these notes.

In order to get an accurate transcript, the reporter must write accurate notes and must "construct" the notes as he writes them in court. Construction involves inserting commas, periods, etc. and is the reporter's job - not the typist's.

Many reporters are not able to construct the record as they are writing and this limits the number who can make effective use of note readers. Even so, such reporters could use note readers if the note reader has the skills necessary for construction. It should further be noted here that the use of note readers is usually impossible for any reporter who uses the manual shorthand system.

Since a duplex system has the potential for reducing delay, it would seem advisable to press for wider use of note readers. However, this involves several problems in addition to those noted. There are many variations in style and technique among stenotype writers. One company has

identified twelve different schools of stenotypy (a "school" here referring to a cluster of techniques). Even within these schools, there are many variations, and individuals trained in any of the methods develop their own styles and idiosyncrasies over a period of time so that the range of differences increases and the end result is complete lack of standardization. Thus, it is usually not possible for note readers to read more than one reporter's notes and this inhibits the possibilities for general wide-spread use of note readers.

Where note readers are used, they are often trained to read a specific reporter's notes. There are some exceptions to this where outstanding reporters have developed relatively standardized systems, but it would not be feasible to train a corps of note readers unless special training programs were established to first standardize court reporter's techniques. Because of the complexity of the process - and the cost and time required - it would not be feasible to attempt such a training program. In addition to these problems, some existing note readers are training to become certified reporters and they move on once they reach the required skill level.

In spite of these obstacles, a number of reporters have trained their own note readers. Such individual action should be encouraged throughout the courts. It sometimes requires approximately one year to train a note reader, where the notes are unorthodox and execution is inaccurate, but it is possible to train a person to note read in several weeks where the stenotypist has a disciplined system and is an exceptional writer.

Although the time required for the steps in a triplex system are subject to great variability, there are some general guidelines which give an indication of the time required for transcript preparation. Generally, it takes

between one to two hours for dictation per hour of trial. When a reporter dictates, he normally punctuates, structures sentences, etc. (unless he is an exceptional reporter who "constructs" while writing in court). Thus, dictation normally involves more than simply translating from notes.

One hour of trial can be expected to result in anywhere from 30 to 50 pages of transcript. The typing rate for note readers and for typists using a dictated tape can be expected to vary between 10 and 18 pages per hour. Thus, one hour of trial can be expected to result in one to two hours of dictation time and from two to seven or eight hours of typing time. If the reporter is busy in court for long hours, the intermediate dictation step represents a major road block to the timely production of transcripts.

The figures given re typing speed are also subject to variability. For example, a particularly difficult hearing - one where the speed or vocabulary were beyond the reporter's ability - might result in a typing speed of only two pages per hour. A relatively easy hearing could be typed at as high as 25 pages per hour if the reporter has excellent notes and if an outstanding typist is used.

Computer transcription, another example of a duplex system, holds promise but requires additional development before it can be applied on an operational basis in the courts. Experiments conducted by the Center have shown it is feasible for use when an unusually outstanding court reporter is taking the proceedings. However, it is not known whether this level of skill exists in any significant percentage of the current group of federal reporters. Estimate range from 1% to 25%, but no one has the

data to make any conclusive statement. In fact, widespread use may be dependent on new types of training courses for stenotype reporters. The National Bureau of Standards study concluded that computer transcription was a feasible method but that the extensive time now required for proofing and editing makes it less cost effective than other court reporting systems. The report also itemizes the specific improvements which need to be made in order to make it a more economically viable alternative.

Even if the Center were in a position to recommend the widespread use of computer transcription immediately, there would be other conditions precedent to its use. The courts would have to provide computer transcription services or the services would have to be available from a commercial service in each city. At the present time, the federal courts do not have a computer large enough for the translation programs required for computer transcription. Even if the Administrative Office computer were large enough, this would not provide a necessarily adequate service to reporters in other cities unless costly on-line capabilities were added. Furthermore, if widespread high volume service to federal court reporters from an Administrative Office computer were feasible, there would be problems of processing priority allocations between this function and the financial and statistical workload of the Administrative Office. Thus, it is not considered feasible at this time for the U. S. Courts to provide this service either out of the Administrative Office or on a regional basis.

A more realistic alternative will exist when private companies begin to offer computer transcription services in the major metropolitan areas. Even then, court reporters may not be eager to use the service unless it

costs approximately the same or less than a human transcriber. This, however, would not be a serious obstacle since the courts could order the reporter to have a transcript ready on a date certain and suggest that the use of computer transcription would allow him to meet the schedule. It might also be necessary to establish a different rate structure for transcripts. Many court reporting services now have a price schedule for three types of delivery: daily, expedited and regular. Expedited transcripts are delivered within one week. A regular transcript is one delivered after one week or more. The court would also have to be ready to levy sanctions in terms of fines or a reduced price per page for transcripts delivered after the date certain.

Another duplex system which has a promising potential for improvement of the court reporting function is voice writing. Voice writing refers to a technique which involves making "notes" of proceedings via the human voice. Voice writing can be considered a refinement of the steno-mask system. The differences lie in the type of person, the type of training and type of equipment. Mr. Joseph Gimelli, an expert stenotype reporter, court reporting instructor, and proponent of modern voice writing has developed a system which involves (1) selection of individuals with a college background and specified abilities in language, (2) a three to six month specially designed training course, (3) a new microphone which eliminates problems which are inherent in the closed microphone, and (4) a new multi-track recorder which records courtroom proceedings on one track and the on-the-spot "constructed record" dictation of the reporter on the other track. The equipment also includes a monitoring device which provides assurance that the recorder is "picking-up" the proceedings and assists the reporter in hearing everything that is said.

The advantages of the system lie in the elimination - in most cases - of the intermediate dictation step (i.e., a typist types directly from the dictation track) and the ability to take proceedings at a faster and more sustainable speed rate. With this system, it is no longer necessary for an expert transcriber to be versed in the numerous idiosyncracies and "schools" of stenotypy. It is possible for a skilled typist to "note read" any reporter since the natural English language - as opposed to the artificial stenotypy language - is already sufficiently standardized. Furthermore, the typing rate is at least double the rate of typing from direct voice recording and is essentially the equivalent of typing from the intermediate phase dictation of a triplex system.

In one respect voice writing can be said to be the equivalent of a good stenotypist who uses a good note reader, but the voicewriting equipment has the advantage of providing proof of what was actually said via the second track which records the proceedings directly.

Another difference is that a good stenotypist emerges over a period of years as perhaps one out of many who started in the profession and who, in addition to unusual note taking skill, has competence in language construction and understanding. In contrast, voice writing starts with a person who has the necessary education and intellectual competence and then adds to this - via training - the voice writing skill. Of course, it still remains to be seen whether individuals with the necessary background can be found or whether experienced court reporters will be the main source for voice writers.

Because of the apparent advantages of voice writing, this is a fruitful area for experimentation. An experiment could consist of training a small group of both current and new reporters in the system and lending them the necessary equipment. These reporters would use the system in several courts over a period of months during which the Center would evaluate the results. Even if successful this system would not replace stenotypy, but would provide another method which could be used within the context of the standards and management programs discussed below.

Funds limitations may preclude the possibility of such an experiment unless a level of funding far beyond that which the Center could provide is made available. If another agency provided funding for training state court voice writers, it might be possible for the Center to participate by adding the funds required to train and supply a designated number of federal reporters. In the meantime, several official reporters are taking - or plan to take - informal training in the system and the success of these people is being informally monitored.

The final court reporting system to be considered is direct voice recording (sometimes erroneously called "electronic" recording). Before discussing system characteristics it is important to highlight the major distinction between this system and those covered above.

First, a professional court reporter is not part of the system. Second, the management and control tasks involved in the preparation of the record - which are consolidated in one person in other systems - are dispersed among several persons. This fragmentation of the court reporting function introduces a requirement for coordination and

integration of the dispersed tasks and imposes upon courts a reallocation of resources and the addition of personnel to control the process. An additional management burden - that of tightly controlling the trial participants and the equipment monitor - is placed on the Judge. If one assumes the federal trial courts require professional expertise to construct the record, there is no apparent advantage in direct voice recording. (This is especially true when one considers that the two separate skill complexes held by a courtroom monitor and a typist are both of a nonprofessional level and their combination does not yield the same result as that of a competent reporter. Skills of this type are neither additive nor synergistic.) But the need for professional expertise is questioned by numerous - though a minority of - administrators and judges, so direct voice recording should not be eliminated from our consideration.

Direct voice recording involves the placement of several microphones at strategic positions in the courtroom and the use of a tape recorder to record the microphone input. Tape recorders can be either single or multiple track. The latter have the advantage of a greater capability for distinguishing voices when overlapped speaking occurs. Although not mandatory, it is advisable to have a courtroom deputy maintain a log which notes the name of each speaker along with a counter number each time a different person starts talking.

Comparative speed tests have shown that transcription from direct voice recordings is at a rate of 1/2 - or less - the rate for typing from court reporter notes or dictation. (One of the causes of this difference may be that direct voice recording is the only duplex system where "construction" is done by a typist at the time of typing.) Comparative

tests of accuracy have shown direct voice recording to be inferior in terms of more errors, more statements left out and more erroneously identified speakers.

The inferior transcription speed has been objectively confirmed by the NBS report. Comparative accuracy is still open to question since tests of this variable suffer from use of a meaningless standard for comparison. Typically, the tape recording is used as the standard to determine accuracy. This is done by having a panel of judges and attorneys laboriously listen and re-listen to the tape to find out what was actually said and to determine who said it. Where the tape is indistinct, what was said is sometimes agreed upon via consensus. Since the tape recording is treated as the standard for comparisons, such experiments are testing primarily skill level and transcription rate. But a typist transcribing from a tape is normally a less-skilled person than a reporter, so one would expect greater accuracy from the professional. If one further assumes that the tape recording has been made under "adequately controlled conditions" with the best available equipment, it can be concluded that transcription speed is the primary variable being measured. The "true" transcription rate is the panel rate and the actual speed ratio between typing from dictated tapes or notes and typing from a direct voice recording could be anywhere from 2:1 to 10 or 50:1 with accuracy held constant. Even this conclusion assumes it is possible to achieve the same level of accuracy from a recording as from the actual proceedings where visual cues are available to the reporter.

The NBS study shows direct voice recording is a cheaper system for the courts, but if accuracy and construction requirements were required

to be the same as those required (apparently) for reporters the NBS calculations on costs might lead to a different conclusion. NBS has of course recognized this in their report by emphasizing the lack of any meaningful standard for accuracy.

The reference above with regard to the burden placed on a Judge for increased control when direct voice recording is used is illustrated by a statement of a court reporter that "The most valuable asset the reporter has is the ability to say 'Hold it! I didn't understand you. Please repeat.' Someone has to have control of the record as it is being made." However, some Judges do exercise this type of control so it is not an insurmountable problem. In effect, when direct voice recording is used, the Judge replaces the court reporter as the person responsible for making a good and complete record. In New Jersey, where direct voice recording is used in the courts of limited jurisdiction, the Judges are instructed that an adequate record is a personnel problem, not a technical problem. New Jersey goes further by requiring a Judge to attend a special Saturday training session if he does not adequately control the making of the record.

Since direct voice recording is now used in federal magistrates' courts and since currently available technical and procedural solutions could result in amelioration of the current defects, the Center should consider expending resources for improving direct voice recording systems. Two projects appear reasonable. One would consist of funding technical development of a recorder specifically designed for courtroom recording. The second would involve development of a guidebook and procedural manual for use by magistrates. The Center does

not have sufficient funds to achieve any significant results from the first project. The second project appears to be within the resource capabilities of the Center - subject to the development of realistic estimates of the costs required.

Conclusions:

Although there are some differences attributable to the type of system used by a reporter, the primary differences which affect efficiency are the level of competency of the reporter, the time he has available to work on transcripts and the method he uses for transcription. As to the latter, a duplex system is best. This eliminates the time consuming intermediate step and means the reporter's work is essentially finished when he has completed his day in court.

Direct voice recording is used extensively in courts of limited jurisdiction and in some courts of general jurisdiction. Comparative tests have shown it to be a less accurate but more economical system. However, these tests are subject to question because the hidden costs may well invalidate the claimed economic advantages. There is at present no factual basis for recommending the replacement of reporters by direct voice recording in the federal district courts.

Steps should be taken to assure a high level of competency in official federal reporters and the use of stenotype note readers and voice writing should be encouraged and stimulated by the Center.

Although technical research and development should continue, the most promising avenues for near-term improvement lie in the development and implementation of qualification and production standards and better

management. Management of the court reporting function is essentially non-existent, except in the Southern District of New York.

Judges, court administrators, and reporters should recognize there is no single solution to court reporting problems. The National Bureau of Standards study emphasizes the need for a "mixed systems approach". This approach recognizes that different types of systems may best meet the needs of different types of courts and different levels of transcription volume. Thus, in a court of limited jurisdiction, where a small percentage of transcripts are ordered, direct voice recording may be adequate if the proper controls are established. In a court which has an unusually high volume of appeals or daily copy orders, computer transcription may be feasible. In effect, NBS recommends we should fit the system to the needs.

The federal courts actually use the mixed system approach at present in that direct voice recording is allowed for magistrates' courts and for arraignment and sentencing at the district court level. Any project aimed at improving and/or evaluating direct voice recording should focus on the use of this system by magistrates.

B. The Need for Standards

There is general agreement that some existing court reporting problems would be solved if more specific and more professional qualification standards were established for federal court reporters. (In fact, officials of the NSRA and USCRA contend that a majority of the current problems of transcript delay are caused by reporters who do not have the necessary qualifications.) Improved qualification standards have been approved by the Judicial Conference but these have not yet been implemented because of lack of the necessary appropriation. Even these standards do not seem to be sufficient to assure an adequate level of proficiency for federal court reporters. The development and evaluation of a new qualifications and certification program should be initiated. This is necessary because neither the existing nor recently approved standards provide a sufficiently objective certification procedure, nor do they assure a level of proficiency adequate for today's needs.

This development project would initially involve an evaluation of the level and types of skills required. An official certification program, operated out of the Administrative Office, should then be established after coordination with the professional associations. The new standards should emphasize performance capabilities, regardless of the system used.

It is not often recognized that court reporting requires much more than the ability to write shorthand or stenotypy notes. Reporters should have an extensive background in English. They should have taken legal

procedures courses and special courses in vocabulary development. In addition, they should have the ability to convert the spoken word into phrases and sentences which accurately reflect oral utterances and the exact meaning of statements. It is very easy to mistranslate both individual words and sentence structure if the reporter does not understand what is being said. Thus, the new qualification standards should require extensive testing in these areas as a requirement for certification as a federal reporter.

In addition to a certification program, based on improved qualification standards, there should be recording and production standards. A recording standard would establish the amount of time which a reporter should reasonably be expected to spend in court per day on the average. Production standards would establish the number of pages which a court reporter should be expected to dictate and transcribe per unit of time. As an example, the NSRA has unofficially proposed the following standards for dictation rate:

That:

1. Official reporters be required to dictate the equivalent of 30 pages every day after court hours.
2. Official reporters be required to dictate the equivalent of 150 pages per day when not in court.
3. Official reporters be required to dictate the equivalent of 30 pages per day on weekends.

As another example, the New Jersey Courts have established a standard production rate of 600 pages per month per reporter in addition to their regular recording work.

The informal NSRA proposed standards assume the use of a triplex system and also implicitly suggest transcript typing is performed by someone other than the reporter, but the standards do not include the actual page production rate. NSRA has unofficially proposed elsewhere that the transcript production rate should be 200 pages per week which, as can be noted, is actually higher than the existing New Jersey standard.*

The initially established production standards for federal reporters should be subject to increases after improved qualification standards are implemented and after more reporters are trained or stimulated to adopt duplex systems.

It should not be assumed that production standards can be rigid or that they can be applied in a mechanical fashion. Also, it is not feasible to implement such standards unless a system for monitoring and administering them on a local basis is also established. It should be obvious, therefore, that better management and assignment of management responsibilities to designated individuals are prerequisites for the establishment and implementation of recording and production standards.

The implementation of standards presupposes, in fact, demands better information systems if there is to be any possibility of more effective management. At the present time, there is insufficient information to be able to objectively measure the important variables which affect

*These standards are too low for federal courts. Data on three sample metropolitan districts shows the average number of pages per month produced in 1971 was 738, 778 and 946. In each of the three districts there were reporters who produced over 1,000 pages per month and several who produced around 2,000 per month. There were also reporters in these courts who produced less than 300 pages per month.

transcript delays. Some of the data which is necessary on a local basis is:

- (1) The number of hours per day spent recording proceedings by each reporter and the type of proceeding.
- (2) The number of transcripts currently on order from each reporter and the estimated number of pages for each transcript.
- (3) The date each transcript is ordered from a reporter - and the docket number and other necessary identification for each case for which a transcript has been ordered.
- (4) The number of pages produced each week by each reporter.
- (5) The backlog - in estimated number of pages - for each reporter at the end of each week.
- (6) The estimated date for completion of each transcript.
- (7) The date the complete transcript is required by the rules or by order of the Court of Appeals.
- (8) The number of transcripts which are due the following week; and
- (9) The number of transcripts which have been delayed beyond the time allowed by the rules or the time set by order of the Court of Appeals.

With an information system which consisted of established procedures and forms for collecting, and using this data, it would be possible to begin to adequately measure and control transcript production. This would also make it possible to develop a rational basis for determining when and where additional court reporters were required.

Not all of the data suggested above would necessarily be required for improved management. For example, the New Jersey court system, which has centralized management control of court reporters, requires a relatively simple report to be submitted to the Court Administrator's office weekly. This report cites only those transcripts throughout the state which are late. At any given time, the Administrator knows exactly how many transcripts have not been delivered on time and this gives him the information for corrective action by his office.

C. Management

Each district court is allowed to appoint one or more court reporters, the total number to be determined by the Judicial Conference (28 USC 753). The statute does not require that a reporter be assigned exclusively to one judge. Nevertheless, in most courts, each judge has his own reporter who works exclusively for him. This results in an inequitable distribution of work among reporters. The annual reports filed by the federal reporters (AO form JS-40) indicate that the variation in recording hours among reporters in a court is often as high as three to one and on the average is around a two to one ratio. By this we mean that in many courts, some reporters spend two or three times as many hours recording proceedings as other reporters. One could intuitively assume that a reporter who spent more hours recording would have more transcripts ordered. A statistical analysis conducted by the Center, which compared the total number of pages of official transcripts per year with the number of hours spent recording proceedings, shows this is true. Thus, the inequity of workload distribution for recording hours compounds the problem by creating a resulting inequity in the amount of transcription required. (The effect of this inequity has been expressed by one of the foremost state court administrators who stated that "The explanation for a delay is never the system used, it's because a reporter is busy.")

Although the above cannot be considered "hard" data since the number of recording hours reported is not necessarily precise and since the great variation in types of proceedings can mean that a given hour of recording in one court does not result in the same number of transcript pages as an hour in another court, nevertheless, it does illustrate the need for a

management system which would provide equitable workload assignments. As a minimum, the recording hours ratio could at least be reduced to a 1.5:1 ratio. Absolute equitability is not a realistic goal. The New York/Southern District Reporters use a different basis for achieving equitability. They maintain an "earnings standings" report so that during each year each reporter makes the same amount of money from transcripts. In some cases, this can result in large variations in the number of hours spent recording. In other cases, the average number of hours spent recording tends to average out over the year. If we assume every reporter is equally motivated toward maximizing income, this method of assignment might be viewed as more equitable by reporters.

Some of the variations that now exist in courts could be caused by "eager beavers" who substitute for their associates when daily copy is ordered or when an associate has extremely long trial days. In making this type of decision, the associate has decided to forego some amount of income in exchange for a reduced burden of work. There is no data to show whether or not this occurs, but it is another factor which must be considered in the equitability determination by local court administrators.

One proposed recommendation is to establish a pool of reporters in each multi-judge court, create the position of supervisory reporter and give this individual the authority and responsibility for assigning reporters to courtrooms. An immediate question here is whether the supervisor should be a reporter or a non-reporter. In a medium-sized court, one of the reporters could be assigned supervisory responsibility, but in

a large court, it might be necessary to employ an administrator who would spend 100% of his time managing the total court reporting function. The managing partner for the Southern District Reporters handles assignments for 25 reporters in a two hour period each day prior to the opening of court. If this experience is applicable elsewhere it would indicate that a full-time supervisor is not required.

The administrator would be responsible for collecting and evaluating the types of information suggested in part B above and would use this, plus daily observation, as his management information system for purposes of monitoring, controlling, and assigning reporters. His overall job objective would of course be to eliminate all transcript preparation delays in his court.

Another issue which is raised by this recommendation is that of employment of transcribers. At the present time, reporters are responsible for employing, and assigning work to transcribers. Many reporters, however, cannot afford to guarantee a transcriber full-time work and there are sometimes problems in obtaining transcription services when required. One possible solution is for the courts to employ transcribers who would provide services to the court reporters. There are a number of other issues which bear on this possibility, but one conclusion is clear, namely, that transcribers should not be employed by the courts unless a court reporter administrative or supervisory position exists. One argument against official transcribers is the loss of incentive which exists under the present system. Since non-official transcribers are paid a rate per page, there is an incentive for greater speed and efficiency.

Whether or not the position of a supervisory reporter is established, all district courts should establish a five-day rule. This rule states that no reporter should sit more than five days on one case. The reason for this should be apparent. A case lasting six weeks is capable of producing a record of 6,000 pages. If the case is appealed, the transcript will almost certainly be late. By spreading this case over six reporters, the transcription time will be substantially reduced.

If one assumes production and recording standards have been implemented and management positions established, it is then possible to establish enforcement procedures. Court reporting officials have stated again and again that the incompetent reporter should be fired, but (they claim) judges usually refuse to do so. The existence of reasonable standards would provide a rational basis for disciplinary action and since the reporter would not be assigned exclusively to one judge the supervisory reporter would be responsible for termination or other appropriate action.

It is unrealistic to plan and implement the type of management standards and management procedures suggested without central guidance. The development of standards and procedures and their implementation has to be conducted out of the Administrative Office. Therefore, the first step to improved management should be the appointment of a court reporter administrator in the Administrative Office. In addition to administering a certification program and establishing the management system, he should serve as a trouble shooter who would go to a district having court reporting problems, investigate the situation and advise as to corrective action. This means the person in this position should either be a court reporter or someone who is completely conversant with all the factors involved in the court reporting function.

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-D. Acceptability of Transcripts

There is at present no objective measure of transcript accuracy. In effect, an acceptable transcript is one that is certified by a reporter (if the particular court uses reporters) and is acceptable to the attorneys for both parties. In the vast majority of cases, a certified transcript is an acceptable transcript. The courts presently operate under the myth that they are using verbatim transcripts. The objective of the court-reporting function is to produce accurate transcripts, but not necessarily verbatim transcripts. To illustrate, the NBS study showed a variation of 25% in the number of words in five different transcripts produced from the same trial (from 4079 to 5070 words). The Los Angeles County Superior Court is currently conducting experiments with a variety of systems. They report a similar wide variation in the number of words in different transcripts produced from the same trial. These experimental results confirm the experience of court administrators and reporters, but the appellate courts and the statutes continue to refer to a verbatim transcript.

Acceptability is defined differently in different jurisdictions. In Alaska, where direct voice recording is used, the tape itself is the official record and both it and a transcript typed from it are almost always considered acceptable, even though many attorneys contend the transcripts are of very poor quality. There can be great variations in transcripts produced by two different reporters whose speed and ability in the English language are different. A transcript, however, can be accurate even though there are differences in sentence structuring and in number of words. An important point to emphasize here is that not

all courts need the same level of adequacy in the reporting function. A transcript produced from a tape recorder for a magistrate's hearing may be legally acceptable even though it is not as professional as the transcript produced by a top reporter. Although there are no methods for measuring this difference, we should recognize that it does exist and that different types of courts have differing requirements in terms of the type of transcript, even though each and all of the resulting transcripts would be legally adequate.

-E. Some Other Aids: Partial Transcripts, Proctoring, Early Ordering, Elimination of Unnecessary Transcripts

Discussion of the court reporting function is not complete without considering other factors external to the system used or the type of management. Every problem discussed to this point might become moot if every appeal in the federal courts involved a partial transcript which was approximately half the size of the current transcripts and covered only that part of the proceedings which was necessary for appeal.

For criminal cases, the policy on appointment of attorneys for in forma pauperis appeals has an important impact on the size of the transcript. If the trial attorney is not appointed to handle the appeal, it is reasonable to expect that a complete transcript will be ordered. If the trial attorney is appointed to represent the defendant before the appellate court, he normally should not require a full transcript. The inference as to the recommended policy for CJA appointments at the appellate level is obvious.

The extent of the impact on transcription workload which partial transcripts would have is not measurable at this time since insufficient data has been maintained in those courts which promote the use of partials. This is another area ripe for analysis since there is presently no basis for determining how much the problem would be eased by the broader use of partial transcripts.

Several appellate courts have already instituted procedures for managing the appellate process. These procedures reduce transcript delay by assuring early ordering. A constant complaint of court

reporters is that they are often blamed for transcript delays which are caused by attorneys who have failed to order the transcript within a reasonable time. A study of 79 criminal appeals terminated in the U. S. Court of Appeals for the District of Columbia, in the period January through May 1971 showed that only 56% of the transcripts were ordered before the original record was filed. Thirteen percent of the appeals did not involve a transcript at any time during the appellate process. In 31% of the cases, the original transcript was not ordered until a median period of 62 days after the original record was filed. Other data showed that less than half of the median time period between the Notice of Appeal and the date the record was filed was attributable to transcript preparation. Thus, there is a basis for the court reporter's complaints - at least in one Court of Appeals.

The Second Circuit is an excellent example of improved management by the appellate court. Under their proctoring plan, a schedule is established for each step of the appellate process and a transcript is ordered immediately without waiting for an attorney to ask for it. The U. S. Attorneys in the Southern and Eastern Districts of New York also contribute to the elimination of transcript delays by making a determination at the time of conviction as to the likelihood that an appeal will be taken in a given case. If, in their judgment, it is likely an appeal will be taken, they immediately order a transcript from the reporter and agree to pay for the original copy at the established rates. In the event an appeal is taken, the appellant (or the Administrative Office, if it is an in forma pauperis case) has to pay for the original copy and the

U. S. Attorney pays at the additional copy rate. Although this may sometimes result in ordering transcripts that are not needed, it does reduce delay by giving the court reporter notification ahead of time.

Local practices vary on whether pleas and sentences are automatically transcribed. In any district court which has an excessively heavy transcription load per reporter, the chief judge should review the local practices on the preparation of transcripts for pleas and sentences and on special requests by judges. There may be situations where some orders of this type may not be essential or where such orders could be given a lower priority.

F. Future Systems

Although the future holds the strong possibility of technological developments which would lead toward automatic transcription, this will be many years off and should not be relied on as a solution. Even if dramatic achievements of this type occur, we may still find it requires a skilled professional to operate the equipment.

G. Career Plans and Transcript Fees

The Center has not probed into areas which do not seem to have a direct relationship to delays. At some point, it may be fruitful to determine the effect which the present employment status of reporters has on obtaining the best available people. Some court systems have a career plan with a graduated salary schedule, based on both competence and experience. The Center is not in a position to make any suggestions on this subject, but over the long range, the court reporter's position in the courts may require adjustment. At the present time, reporters are considered part-time employees with no regular tour of duty. An individual reporter is subject to the call of the court when his services are needed. In view of such intermittent services, the Comptroller General of the United States has ruled that court reporters are excluded from Leave Act coverage. This is mentioned here because the changes suggested in this report may at some point be affected by or may result in changes in this status.

Present fee structures for transcripts include a schedule for both the original and copies. This fee structure is an anachronism in this age of xerography. It might make more sense to have a single charge per page which would be higher than the present charge for an original - and have the court provide Xerox copies as required. Such a change would require new allocation procedures so that no litigant would be subject to an inequitable charge for pursuing the appellate process.

H. Conclusions and Recommendations

1. There is no factual basis for recommending either direct voice recording or computer transcription for district courts.
2. The Center should consider funding a project for training voice writers. This project should include a determination of the feasibility of training note readers for selected reporters. The primary purpose of the project would be to test on a significant scale the impact which these duplex systems would have on reducing transcript delays.
3. The Center should provide funds for assisting the Administrative Office in developing:
 - a. improved qualification standards,
 - b. a reporter certification program,
 - c. transcript production standards and
 - d. standards for the average number of hours a reporter should reasonably be expected to spend recording court proceedings.

These standards should emphasize the process regardless of the system used. The emphasis is on results. By moving in this direction, we are leaving the door open to the use of any type of equipment in the future as long as its use met the required production standards.

4. The Center should conduct surveys as necessary to support the Administrative Office in the development and implementation of

improved management procedures and the standards and certification programs.

5. The Center should consider a survey and evaluation of the use of direct voice recording by magistrates with a view to determining the cause of any problems which may exist and developing a manual of procedures to assure the preparation of an adequate record.

6. The Center should consider conducting studies of transcript acceptability for the purpose of developing a meaningful standard for transcript adequacy.

7. It is suggested the Federal Judicial Center Board make the following recommendations to the Judicial Conference:

a. That the Judicial Conference adopt a policy to the effect that efficient management of the court reporting function takes precedence over the exclusive assignment of one reporter for each judge; and that procedures for supervising and assigning reporters in multi-judge courts be established and implemented with a view to equitable distribution of the court reporting workload.

b. That the Judicial Conference establish improved qualification standards for court reporters which should be based on performance regardless of the system used;

that the conference establish production standards for all court reporters which take into account the amount of time spent recording court proceedings; and, that the Conference establish standards for the average number of hours per day a reporter should reasonably be expected to spend in court recording court proceedings.

c. That the Conference authorize the Administrative Office to establish a position for court reporting administration to assist the Director in fulfillment of the objectives of improved management, and development, implementation and enforcement of standards.

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