BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Federal Court Reporting System: Outdated And Loosely Supervised

Even though the Federal judiciary is satisfied that court proceedings are being recorded properly and transcripts are being prepared accurately, GAO found that many court reporters have often overcharged litigants, used Government facilities to conduct private business, and used substitute court reporters extensively. The judiciary needs to strengthen its supervision and management to eliminate such practices. Corrective action is planned or has been sure that abuses do not con-

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses (1) actions needed to improve the management and supervision of court reporters by the judiciary and (2) the need to test electronic recording in Federal district court proceedings. The report makes recommendations to the Judicial Conference of the United States to improve the current system.

We made this review because the court reporting process is an essential part of judicial proceedings and a costly one. Our objectives were to determine (1) how effectively and efficiently the present system was operating and (2) whether alternative court reporting systems could better meet the needs of both the judiciary and the litigants. Better management and supervision by the judiciary would enhance the court reporting process and adoption of electronic recording as an alternative to the present recording system would result in substantial savings to the judiciary.

Copies of this report are being sent to the Director, Office of Management and Budget; the Chairmen, House and Senate Judiciary Committees; the Director, Administrative Office of the United States Courts; the Chairman, Judicial Conference of the United States; and the chief judge of each Federal district court.

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

FEDERAL COURT REPORTING SYSTEM: OUTDATED AND LOOSELY SUPERVISED

D I G E S T

The judiciary in some Federal courts has not adequately managed and supervised its court reporters, with the result that many of the reporters have often overcharged litigants, used Government facilities to conduct private business, and used substitute reporters extensively. GAO believes that with improved management and more adequate supervision of court reporters the judiciary can overcome the abusive practices and protect the courts, the public, and the litigants. (See p. 8.)

A proven alternative to record Federal district court proceedings--electronic recording--is available to the judiciary which would result in an annual savings of about $10 million. (See p. 27.)

THE JUDICIARY NEEDS TO ADEQUATELY SUPERVISE AND MANAGE COURT REPORTERS

The Court Reporters Act and judicial policies established by the Judicial Conference of the United States (the policysetting unit for the judiciary) and district courts require that court reporter activities be supervised; however, six of the seven district courts GAO visited did not adequately supervise or manage the activities of court reporters. Consequently, abusive and/or inefficient practices have occurred, such as

--overcharging litigants for transcripts (see pp. 9 to 14),

--conducting private businesses in Federal courthouses and using substitute court reporters extensively (see pp. 14 and 15), and

--using reporters poorly, resulting in unnecessary contracting costs and inequitable compensation (see pp. 16 to 19).

A PROVEN ALTERNATIVE TO COURT REPORTERS EXISTS

Electronic recording systems are a proven alternative to the traditional practice of using court reporters to record judicial proceedings. Numerous State and foreign court systems are

using electronic recording systems, achieving substantial savings, and also providing excellent service to the courts and litigants. In addition, electronic recording can provide a better record of court proceedings and enable greater management flexibility and control over recording activities. Systems in use today produce high-quality recordings and contain features to safeguard against human and procedural errors. (See pp. 28 to 44.)

If the Federal judiciary used electronic recording systems to record district court proceedings, GAO estimates that it would save as much as $10 million annually. Initial outlay to purchase and install the systems would be between $7 million and $14.3 million depending on the vendor and type of equipment used. (See pp. 28, 45, and 68.)

Opponents of electronic recording--primarily court reporters and their associations, but also some judges and attorneys--argue that the electronic recording systems are not feasible. These individuals assert that electronic recording machines cannot identify speakers, record overlapping or simultaneous testimony, or indicate nonverbal communications, and are unreliable, lack portability, and disrupt courtroom decorum. GAO's evaluation of these arguments showed they have little merit because electronic recording machines have features designed to eliminate most of these problems and, by using proper procedures, the remaining problems can be readily overcome. (See pp. 40 to 44.)

Although GAO is convinced that the use of electronic recording in Federal district courts is feasible and would result in significant savings, GAO recognizes that a wholesale move in this direction could be disruptive. Further, because of the differing workloads and needs in district courts, some may be better suited to electronic recording than others. Therefore, GAO proposed in its draft report that the best approach would be to begin structured testing of electronic recording systems in Federal district courts. In this regard, the Congress enacted legislation on April 2, 1982 (Public Law 97-164) which requires the judiciary to experiment

with different methods of recording court proceedings. It also will eliminate the requirement that court proceedings be recorded by a court reporter and will authorize the courts to use alternative recording methods. Officials of the Administrative Office of the U.S. Courts told GAO that one of these methods will be electronic recording. GAO believes that an adequately structured test will confirm the feasibility of using electronic recording and will help to alleviate the concerns of the Federal judiciary about such a change. (See pp. 44 and 45.)

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

To eliminate the abusive practices and to ensure greater use of court reporters, GAO recommends that the Judicial Conference, through the Administrative Office of the United States Courts and circuit judicial councils, establish procedures and policies to ensure that court reporter activities in Federal district courts are adequately supervised and managed. Specifically, GAO recommends that the clerk of the court within each district be assigned responsibility for managing the district's official court reporters. (See p. 20.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Administrative Office of the U.S. Courts, the chief judges in five of the seven Federal district courts visited, the Chairman of the Judicial Conference Subcommittee on Supporting Personnel, and the United States Court Reporters Association commented on the report. (See apps. III through X.) The comments received regarding the current practices of court reporters ranged from total agreement to total disagreement with the report's findings. However, even those who disagreed with the report regarding the practices of court reporters indicated they plan to take or have taken action to ensure that the abuses GAO identified do not occur. Even the Court Reporters Association, which strongly disagreed with the findings relating to the problems with the current system, has recommended corrective action to ensure that court reporters do not engage in the abusive activities GAO cited. (See pp. 20 to 26.)

Regarding the use of electronic recording systems to record Federal district court proceedings, the comments received ranged from agreement with GAO's proposal to test electronic recording in Federal judicial proceedings, to disagreement because of its questionable feasibility. The opponents expressed a variety of reasons such as (1) not all judicial proceedings take place in a courtroom, (2) dissatisfaction with existing electronic recording systems, and (3) the inability to produce judicial proceeding transcripts. GAO believes that all of the concerns expressed can be overcome with the current state of the art electronic equipment and the establishment of a well implemented and adequately managed electronic recording system. GAO further believes that testing of electronic recording systems, as proposed by GAO and recently provided for by the Congress, will fully demonstrate the advantages of using electronic recording systems. (See pp. 45 and 46.)

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Because the court reporting process is an integral and essential part of judicial proceedings and a costly one, GAO reviewed the Federal judiciary's management of court reporting activities to determine (1) how effectively and efficiently the present system was operating, and (2) whether alternative court reporting systems could better meet the needs of both the judiciary and the litigants. To accomplish this, GAO performed work at seven Federal district courts, 1/ visited a variety of State, local, and foreign courts using electronic recording systems, and analyzed numerous studies and evaluations prepared by independent sources concerning the use and feasibility of electronic recording systems. (See p. 5.)

1/Chicago, Cincinnati, Houston, Los Angeles, Manhattan, San Francisco, and Seattle.

Contents

CHAPTER 1

INTRODUCTION

The court reporting process is an integral and essential part of the Federal judicial system. An accurate record of what occurs in the courtroom is essential to (1) protect witnesses and the courts from allegations about inaccurate statements and judicial errors, (2) assist attorneys during trials to develop strategies and determine the consistency of witnesses' statements, and (3) enable the Courts of Appeals to determine whether district court decisions should be overturned on the basis of the evidence in the record.

Because the court reporting process is such an integral part of Federal judicial proceedings and a costly one ($18 million annually), we decided to review the Federal judiciary's management of court reporting activities to determine (1) how effectively and efficiently the present system was operating and (2) whether alternative court reporting systems could better meet the needs of both the judiciary and the litigants. We performed our detailed review at seven 1/ of the 95 Federal district courts, visited a variety of State, local, and foreign courts that were using electronic recording systems, and analyzed numerous studies and evaluations prepared by independent sources concerning the use and feasibility of electronic recording systems. Our review work was conducted in accordance with GAO's current "Standards for Audits of Governmental Organizations, Programs, Activities, and Functions." See page 5 for a more detailed discussion of our scope and methodology.

REQUIREMENTS OF THE FEDERAL COURT REPORTERS ACT

The intent of the Federal Court Reporters Act 2/ (28 U.S.C 753) was for the Government to assume the costs of recording proceedings and for litigants to pay for transcripts. Prior to the act, litigants had to hire and pay court reporters to attend trials, record the proceedings, and prepare a transcript. In many cases, litigants were unable to afford this service; thus,

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1/Central (Los Angeles) and Northern (San Francisco) California; Northern Illinois (Chicago); Southern Texas (Houston); Southern New York (Manhattan); Southern Ohio (Cincinnati) and Western Washington (Seattle).

2/Our characterization of the act's requirement here reflects the status of the law existing at the time of our review. Recent legislation (Public Law 97-164, Apr. 2, 1982) amending the act is discussed later in the report.

the charge was frequently made that Federal courts were "rich men's courts." To correct this inequity, the act requires district courts to appoint salaried court reporters to record judicial proceedings verbatim without cost to litigants. The act, in essence, made the judiciary responsible for providing a method of recording proceedings but left the responsibility with the litigants to obtain and pay for transcripts prepared by court reporters. As a result, litigants involved in Federal district court proceedings had their costs reduced because they no longer had to pay for the recording of the judicial proceedings.

The act requires that a court reporter attend each court session, record the testimony, and certify to the validity of the official court proceedings. In 1980, there were 575 Federal court reporters who received annual salaries and benefits totaling about $18 million. Although court reporters receive Federal health and life insurance and retirement credits, they are not considered full-time Federal employees and are not entitled to annual and sick leave benefits. The act provides that official reporters receive a salary 1/ to record official court proceedings and allows them to sell the transcripts they prepare and retain the fees. In addition, the judiciary allows court reporters to engage in other reporting activities unrelated to their official transcript work as long as they are not needed to record official court proceedings.

The act specifically requires that district courts supervise reporters in performing their duties, including their dealings with parties requesting transcripts. According to the act, reporters may charge parties for transcripts only in accordance with rates established by the Judicial Conference. In March 1980, the Judicial Conference established maximum per page transcript rates. (See p. 9.) The act also allows a district court to hire contract court reporters when its complement of salaried court reporters is insufficient to meet the temporary reporting needs of the court, including the needs of senior judges and magistrates. 2/

1/The Judicial Conference of the United States establishes court reporters' salaries which range from $28,741 to $31,615, depending on years-of-service and proficiency.

2/A magistrate is a judicial officer whose jurisdictional authority is limited. In the Federal judicial system a magistrate can preside over civil and criminal misdemeanor trials upon consent of the litigants. A senior judge is one who has reached the age of 70 and has elected to retire. However, a senior judge has the option of continuing in the role of a judicial officer of the court.

COURT REPORTING METHODS

The court reporting process generally consists of recording the proceedings by using either shorthand or electronic means and typing a transcript from translated notes or electronically recorded tapes. Four basic recording methods are now being used to record court proceedings--machine shorthand (stenotype), manual shorthand (stenography), stenomask, and electronic recording.

When using the stenotype shorthand method, the most common method used in Federal district courts, the reporter records spoken sounds by striking a combination of keys on a machine's fixed keyboard. The resulting record consists of symbols which generally can be accurately translated only by the recording court reporter. To prepare a transcript using this method, the reporter usually translates his or her notes and dictates the translation to enable a typist to prepare a transcript. With the manual shorthand method, spoken words are represented by a variety of handwritten graphic symbols which generally can be accurately translated only by the recording court reporter. The transcript production process is essentially the same as for stenotype. When using the stenomask method, the reporter orally repeats words into a facemask microphone as they are spoken in the courtroom. The reporter's words are recorded on a single-track recorder from which a transcript is then prepared.

With the electronic recording method, voices in the courtroom are picked up by several strategically located microphones, and the sounds are channeled into a multitrack tape recorder. Typically, one track is used for each microphone. Persons known as recording monitors operate the tape recorders and prepare log notes 1/ which identify events and speakers. The tapes are played back through earphones to typists who produce transcripts of the proceedings; or, alternatively, they are played back directly to those wishing to review the record, such as litigants, attorneys, judges, or juries.

1/Log notes, prepared by the recording monitor, are a brief handwritten notation of court proceedings that are keyed to a counter on the recorder similar to an odometer on an automobile. In this document, the speakers are identified, the time of direct, cross- and re-examination noted, difficult medical or scientific terms and proper names spelled, and other information is given which will be helpful to the typists. By referring to the log, relevant portions of the tape can be located quickly for playback in the courtroom or for transcription.

ADMINISTRATIVE STRUCTURE OF THE JUDICIARY

The judicial branch of the Government has three levels of administration--the Judicial Conference of the United States, the judicial councils of the 12 circuit courts of appeals, and the district courts. Associated with this structure is the Administrative Office of the United States Courts. All of these levels have management responsibilities over court reporters.

Judicial Conference of the United States

The Judicial Conference, the policymaking body of the judiciary, is made up of judges from various levels of the Federal judiciary--the Supreme Court, the U.S. district courts, the U.S. Courts of Appeals, and the U.S. Bankruptcy Courts. Its areas of interest include court adminstration, assignment of judges, just determination of litigation, general rules of practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay. Coupled with these duties, the Conference determines the need for and qualifications of court reporters and establishes court reporter salaries and maximum transcript fees that can be charged litigants. Except for its direct authority over the Administrative Office, the Conference is not vested with the day-to-day administrative responsibility for the Federal judiciary.

Judicial councils

The United States is divided into 12 judicial circuits, each containing a court of appeals (circuit court) and from 1 to 18 district courts. Each of the 12 judicial circuits has a judicial council consisting of both circuit court and district court judges. The councils are required to meet at least twice a year. Each judicial council considers the quarterly reports on district court activities prepared by the Administrative Office and takes appropriate action. Additionally, the councils promulgate orders to promote the effective and expeditious administration of the business of the courts within their circuits. This may include acting on such matters as court reporters' compliance with both circuit and Judicial Conference policies and approving the use of contract court reporters for district courts within the circuit.

U.S. district courts

There are 95 Federal district courts. The judges of each court formulate local rules and orders and generally determine how court activities such as court reporting will be managed. Each court has a clerk of the court who has a wide range of responsibilities and is under the direction of the chief judge.

The clerk keeps the court's records including transcripts. Clerks may become involved in transcript production when salaried reporters cannot meet the reporting needs of senior judges and magistrates. At such times, clerks arrange for contract court reporting services. Such contracting is subject to conditions established by the Judicial Conference, judicial councils, and the Administrative Office.

Administrative Office of the United States Courts

The Administrative Office is headed by a Director, who is appointed by the Supreme Court of the United States. The Director is the administrative officer of the United States courts. Under the supervision and direction of the Judicial Conference, the Director informs district courts of various Judicial Conference policies and procedures, including those that relate to the management of court reporters. The Judicial Conference requires the Director to compile and summarize financial and other data concerning all court reporters' activities and present such information to the Conference. This information is used by the Conference to establish court reporters' salaries, transcript rates, and the number of full-time court reporter positions needed in each Federal district court.

OBJECTIVES, SCOPE, AND METHODOLOGY

In examining the present court reporting system, our objectives were to determine how reporters were supervised and how they dealt with litigants; whether reporters performed their work consistently with employment requirements; and whether reporters were effectively used. To meet these objectives and evaluate current Federal district court reporting practices, we conducted our review at the Administrative Office of the United States Courts in Washington, D.C., and at seven Federal district courts. The selection of courts for review was based on caseload size and geographical location. Our review was performed between April 1980 and December 1981.

At the seven district courts, we interviewed judges, magistrates, and clerks of the courts to determine how they managed the court reporting function. We also interviewed attorneys representing litigants in these courts to verify court reporters' transcript billings and determined whether attorneys were aware of the requirements of the Federal Court Reporters Act.

To determine whether court reporters complied with the act and Judicial Conference policy, we interviewed 51 of the 111 Federal court reporters in the seven districts selected and reviewed their billings for transcripts. Because the most recent transcript rates were established by the Judicial Conference in

March 1980, we concentrated on transcript billings to litigants during the period April 1980 through December 1980. Our purpose was to determine whether the transcript billings were consistent with the maximum approved rates.

In each of the seven district courts, we selected six to nine court reporters on the basis of whether they (1) had private reporting activities, (2) used substitute reporters, (3) had questionable items on the income statements they provided to the Administrative Office, and/or (4) were available at the time of our visits to the districts.

In addition, we reviewed legal opinions prepared by the Administrative Office's General Counsel and 87 audit reports of district courts' operations prepared during the period February 1976 through March 1981. We also examined various Administrative Office reports, including the 1979 and 1980 summaries of Federal court reporters' attendance and transcript production and earnings statements. We reviewed Federal laws and their legislative histories relating to the activities of Federal court reporters.

As an integral part of evaluating the Federal judiciary's court reporting system, we considered methods other than the exclusive use of court reporters to record judicial proceedings and prepare transcripts. Our objectives were to determine whether other more cost-effective court reporting techniques existed which the judiciary could use to reduce its costs of recording proceedings and litigants' transcript costs without hampering court proceedings. After conducting a literature search, reviewing numerous articles and studies on available court reporting alternatives, discussing reporting options with court officials and transcription firms, and making preliminary cost estimates of various options, we concentrated our audit efforts on evaluating the use of electronic recording systems in lieu of court reporters.

To evaluate the feasibility of using electronic recording in Federal district courts, we visited courts using electronic recording systems in Alaska; Connecticut; Florida; Washington, D.C.; and Montreal, Canada. We selected these locations because they had used electronic recording systems for several years and because they each used different electronic recording system configurations. At these locations we interviewed court administration officials, observed proceedings being electronically recorded, listened to tapes, and/or reviewed transcripts. In Alaska; Florida; and Washington, D.C., we asked judges for their opinions about and experiences with electronic recording systems. In Alaska we discussed electronic recording systems with State and private attorneys. In addition, we interviewed officials of 11 other courts using electronic recording, including the Supreme Court and the Federal Tax Court, and non-Federal courts in Idaho;

Maryland; Michigan; Missouri; Nebraska; New Jersey; Ohio; Washington; and Vancouver, Canada.

We interviewed officials of five private firms which prepare transcripts from electronic recording systems to determine how readily transcripts could be prepared from electronic tapes. Furthermore, we reviewed 26 studies conducted by the National Center for State Courts, various State court systems, and others on electronic recording systems in Alaska, Australia, Connecticut, Florida, Idaho, Iowa, Kentucky, Maryland, Michigan, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, and Puerto Rico.

To assess the Federal judiciary's court reporting needs and the applicability of using electronic recording in Federal district courts, we interviewed Administrative Office officials and analyzed various statistical data, including hours of proceedings recorded and transcript pages prepared. We discussed electronic recording with several Federal district court judges, magistrates, and court reporters to obtain their opinions on the feasibility and acceptability of using electronic recording in court proceedings. We also reviewed Federal legislation relating to court reporting in the Federal judiciary, including the Federal Court Reporters Act and the Magistrate Act of 1979 to determine what legal restrictions, if any, existed that prohibit the exclusive use of electronic recording in Federal district court proceedings.

To determine the potential cost savings the Federal judiciary could realize by using electronic recording rather than court reporters, we developed and estimated the costs for a district court electronic recording system and compared our estimates to the judiciary's actual calendar year 1980 court reporting costs. (For detailed information, see app. I.)

During our review of court reporters' activities, we were requested by the Subcommittee on the Courts, Senate Committee on the Judiciary to testify on the results of our work. We provided testimony on June 26, 1981, that presented our findings and conclusions.

CHAPTER 2

THE FEDERAL JUDICIARY IS NOT ADEQUATELY MANAGING FEDERAL COURT REPORTERS

Provisions of the Federal Court Reporters Act and judicial policies and guidelines set forth requirements to be followed by court reporters and require each district court to supervise the activities of its court reporters. However, in the seven district courts visited these provisions and guidelines were often not being followed. In six of the seven districts, court reporters' activities were not adequately supervised or managed. As a result, court reporters were managing themselves often for their own best interest and to the detriment of the litigants, the courts, and the public.

Although the Federal judiciary is satisfied that court proceedings are being recorded properly and transcripts are being prepared accurately by its court reporters, the activities of many court reporters are being carried out in a questionable manner. Specifically,

--some court reporters have overcharged litigants for transcripts, utilized Government facilities to conduct private business, and used substitute reporters extensively to do their official court work; and

--some district courts have poorly utilized court reporters resulting in transcript backlogs, inequities in compensation, and unnecessary contracts for reporting services when official court reporters were available.

Because many court reporters are taking advantage of the present system and engaging in a variety of abusive practices, the judiciary needs to strengthen its supervision and monitoring of court reporters' activities. Through improved management and oversight of reporters' activities, the judiciary should be able to eliminate the abusive practices and ensure greater utilization of court reporters. Although the problems can be solved by improved management and greater supervision, we believe a proven alternative exists--electronic recording--that would save the judiciary about $10 million annually and provide a better record of courtroom proceedings. Therefore, we proposed in our draft report that the best approach would be to begin structured testing of electronic recording systems in Federal district courts. In this regard, the Congress enacted legislation on April 2, 1982 (Public Law 97-164) which requires the judiciary to experiment with different methods of recording court proceedings. Administrative Office officials told us that one of these methods will be electronic recording. The legislation also will eliminate the requirement that court proceedings be recorded by a court reporter

and will authorize the courts to use alternative reporting methods. We believe that an adequately structured test will confirm the feasibility of using electronic recording and will help to alleviate the concerns of the Federal judiciary about such a change.

DISTRICT COURTS DO NOT ACTIVELY SUPERVISE COURT REPORTERS

Specific provisions of the Court Reporters Act and judicial policies require that court reporters' activities be supervised; however, six of the seven districts we reviewed had not adequately supervised or managed the activities of their court reporters. The lack of supervision and management of court reporters' activities has allowed many abusive practices to occur. These practices include charging litigants excessive and unauthorized fees; using Government facilities to conduct private business activities other than transcript preparation; and using substitute court reporters extensively to record official court proceedings. The judiciary, specifically district courts, must exercise greater control and supervision over court reporters' activities to eliminate the abusive practices that are taking place.

Litigants were charged excessive and unauthorized fees for transcripts

In accordance with the Court Reporters Act, the Judicial Conference has established maximum rates per page which a court reporter can charge litigants for transcripts and has set forth transcript format standards. Court reporters are required to comply with these rates and format standards. Charges which exceed these rates, or charges of any other kind, such as postage, delivery, and binding are unauthorized. However, we found that 42 of the 51 court reporters selected for review, in the seven districts visited, had engaged in some form of overcharging or charged unauthorized fees to parties requesting transcripts. To ensure that litigants are treated fairly, the act requires that district courts supervise court reporters' dealings with parties requesting transcripts. However, none of the seven district courts we reviewed had supervised or monitored the rates their court reporters charged for transcripts.

The maximum rates per page that can be charged litigants and page format standards follow.

Rates

--$2.00 per page for "ordinary" delivery (delivered within 30 calendar days)

--$2.50 per page for "expedited" delivery (delivered within 7 days)

--$3.00 per page for "daily" delivery (delivered prior to the next normal opening hour of the court)

--$3.50 per page for "hourly" delivery (delivered within 2 hours)

--fifty cents for the first copy of each page provided to each party and $.25 for each additional copy to the same party

Format standards

"A page of transcript shall consist of 25 lines written on paper 8-1/2 by 11 inches in size, prepared for binding on the left side, with 1-3/4 inch margin on the left side and 3/8 inch margin on the right side. Typing shall be 10 letters to the inch."

In the seven districts, we selected 51 of 111 court reporters for detailed review. Of these, 42 had engaged in some form of overcharging parties for transcripts or had charged unauthorized fees. Specifically,

--In six districts, 28 reporters charged litigants rates per page that exceeded the maximums approved by the Judicial Conference. (See p. 9.) For example, we found that one reporter, in a case requiring "hourly" delivery over a 4-month period in 1980, had overcharged litigants $316,000. The reporter charged each of two litigants $7 per page (maximum authorized $3.50) and at least 22 other parties $1.50 per copied page (maximum allowed 50 cents). The reporter produced about 14,000 original transcript pages. We estimated that the reporter grossed about $675,000 for the originals and copies. The reporter told us that litigants who want hourly delivery should be prepared to pay whatever premimum she wants.

--In three districts, 16 reporters charged litigants for payments the reporters had made to substitute reporters who had helped them prepare the transcripts, in addition to rates per page. This practice is prohibited by Judicial Conference policy. For example, one reporter charged two litigants $1,080 each for the use of a substitute reporter.

--In four districts, 20 reporters charged litigants for unauthorized services. For example, the unauthorized charges for services included: charging for postage and delivery of transcripts (ranging from $8 to $100); charging $0.05 per page to assemble transcripts and $3.00 for binding the transcripts;

charging fees of $45 and $85 for preparing a transcript from a tape recording of proceedings; charging $200 for correcting a transcript; and charging "minimum" fees, such as $35, regardless of how few pages of transcript the litigant ordered.

--In five districts, 15 reporters charged litigants for transcript pages which had formats that did not comply with Judicial Conference policy. The noncompliance resulted in "short pages." For example, one reporter indented all narrative 2-1/2 inches from the left-hand margin (standard is 1-3/4 inch) and 3/4 inch from the right-hand margin (standard is 3/8 inch). By doing this he provided only 80 percent of the narrative required by the Judicial Conference policy per transcript page. In addition, this reporter provided only 9 letters to the inch instead of the required 10, representing another 10-percent shortage in the narrative. Thus, this reporter's transcript format enabled him to overcharge litigants by 30 percent. Further, in another district we reviewed in detail, all reporters prepared transcripts using 24 lines per page instead of the required 25. This resulted in a 4-percent overcharge amounting to about $72,600 in 1980, or about $2,340 of additional income per reporter. The district court and its reporters believe that useful information is provided on the 25th line, including the initials of the reporter, the page number, the name of the witness and a designation of the type of examination, i.e. "direct," or "cross," etc. The Administrative Office's General Counsel has taken exception to this position. The Administrative Office believes that litigants obtain no meaningful information from the 25th line. We concur with the Administrative Office's position. We noted that this information was not always provided and no other district court or reporters follow the interpretation of this court.

--In two districts, 13 reporters followed the general practice of charging litigants for copies of transcripts provided the clerk of the court, even though the Court Reporters Act requires that copies for the court be provided free of charge.

For some time the judiciary has been aware of the overcharging of litigants but has not acted effectively to correct the situation. In fact, the Administrative Office's auditors also found overcharging in 54 of the 87 districts (which include the seven districts we visited) they reviewed during the period February 1976 through March 1981. Specifically, their reports showed that reporters in 20 districts charged litigants rates

per page that exceeded the maximums approved by the Judicial Conference; reporters in 6 districts charged litigants for copies of transcripts provided to a judge or clerk of the court; reporters in 3 districts charged litigants for unauthorized service and delivery fees; reporters in one district charged litigants for the use of substitute reporters; and reporters in 39 districts used transcript page formats that resulted in "short pages."

We interviewed 30 of the 86 active judges in the seven districts we visited. In six of the seven district courts, we found that none of the judges interviewed (28) actively supervised the court reporter assigned to them or knew how their reporters dealt with and/or charged litigants for transcripts. In addition, the 43 reporters we interviewed in these six districts told us they were not directly supervised by a judge. They said the judges did not know exactly how they dealt with litigants or what transcript fees they charged. Further, they said that the judges should not monitor their transcript fee practices. In the seventh district, the reporters are organized in a pool so that individual judges do not supervise specific reporters. Instead, the reporters are under the general supervision of the chief judge and other judges on the district's committee on court reporters. The only questionable charging practices identified in this district were made to litigants for transcripts not prepared in accordance with Judicial Conference policy. However, these charges were made with the full knowledge and support of the judges because they interpreted the Court Reporters Act and Judicial Conference policy differently from the Administrative Office and GAO. (See p. 11.)

All 30 judges interviewed in the seven districts believed court reporters had been charging litigants properly because litigants rarely, if ever, complained about the rates charged for transcripts. Most of the judges believed litigants should and would complain about transcript overcharges. However, we found this belief to be without merit. We talked to 23 attorneys who we determined were overcharged for transcripts during 1980. Of these

--20 said they did not know they were overcharged because they did not know the maximum rates;

--17 said they would not challenge a reporter on transcript charges because the reporter could retaliate by giving them poor service;

--10 said they would not question a judge about a reporter's transcript charges because future litigation could be jeopardized if a judge tries to protect his reporter; and

--15 said they were not greatly concerned with overcharges because the costs were passed on to, and paid by, their clients.

We believe the district courts cannot rely on attorneys and litigants to complain about transcript overcharges because they often believe they could be hurt in the long run by complaining or because they are not aware of what the charges should be. For example, in one district, litigants were charged $10 per page when the maximum allowed rate was $3.50 per page. An attorney for the plaintiff told us that he believed his client "got taken" by the reporter's excessive charges, narrow margins, and liberal spacing in the transcript. He said that only through the reporter's monopoly position was such an "exorbitant and unreasonable fee" charged. Another reporter also charged litigants $10 per page rather than the allowed rate of $3.50 per page. One of the attorneys in this case told us he would not challenge the reporter because he feared poor reporting service in the future. Another attorney in this case said that because court reporters have total leverage and backing of their judges, litigants must pay whatever they are charged. He expressed his frustration on the matter but believed that raising objections to the judge could damage future proceedings in that judge's court.

The courts we visited took varying degrees of action to correct the overcharging practices identified. In four districts, the courts took no further action and allowed reporters to continue to deal with litigants as they always had. In three districts, however, the courts acted to better ensure that litigants were charged fairly for transcripts.

--In one district that took corrective action, the three judges interviewed at the time of our visit stated that even though reporters' practices were unknown to them, they did not believe anyone needed to control their dealings with litigants. However, on the basis of our audit work which documented overcharging by eight of the nine reporters reviewed, the court now requires the clerk to review all reporters' transcripts and billings to ensure that they comply with Judicial Conference formats and established rates per page.

--In another district, the chief judge reprimanded the reporters involved, made litigants aware of maximum rates by informing attorneys of the local bar, and posted the rates outside each courtroom. At the time of our visit in March 1981, some reporters were complying with the maximum rates because they feared noncompliance could lead to criminal prosecution. However, because the court was still not directly supervising its reporters' dealings with litigants, we identified five reporters that were still overcharging litigants from relatively small but unauthorized charges to about three times the maximum rates approved by the Judicial Conference.

--The chief judge of the third district told us that after we informed him about his reporters' overcharging practices, he called the reporters together, asked them individually why they had been overcharging, and told them that any reporter involved in future violations would be fired. He said he was still undecided whether he would require the reporters to refund the amounts overcharged.

Reporters conduct private businesses in Federal courthouses

The Court Reporters Act does not prohibit reporters from engaging in outside reporting. In this regard, the Administrative Office's policy concerning reporters using Government-provided space was to (1) provide minimal office space to each court reporter and (2) require that space be used only by the official reporter and members of his staff whose services are required primarily for official Government business. We found, however, that reporters in four of the seven districts reviewed were conducting noncourt-related reporting activities primarily preparing depositions in Federal courthouses. In effect, the Federal Government is subsidizing these businesses by providing them with rent-free space. For example, in one district, all nine reporters whose activities we reviewed were conducting private business activities from the courthouse. One reporter had located in the courthouse an office manager and six other full-time office personnel who supported his Federal and private reporting activities. This reporter had 830 square feet of courthouse space (current standard is 250 sq. ft.). Another reporter operated a private reporting firm that employed five employees and occupied 1,150 square feet of Federal courthouse space.

In an effort to curb such activities, the Judicial Conference, in March 1981, revised its policy regarding space provided for official reporters. The new policy establishes 250 square feet of office space for each reporter including the court reporters' storage space. In implementing this policy, the Administrative Office as of July 1981, required those reporters engaged in private reporting activities and occupying more than 250 square feet of office space to pay for the additional space being used. The payment is to be based on the standard level usage charges established by the General Services Administration for the particular space involved.

Reporters use substitutes extensively

Many Federal reporters are using substitutes extensively to do their official recording of district court proceedings. In addition, court reporters who use substitutes extensively are also engaged in private reporting activities not related to their official duties. The use of substitutes in this fashion is

inconsistent with reporters' Federal employment status because they continue to receive full salary and other benefits, including retirement credits, without providing a personal service to the court. Court reporters can also profit to the extent that their salaries and benefits exceed the amount they pay substitutes to record for them.

Recognizing this problem, the Judicial Conference in March 1980 adopted a policy designed to discourage the use of substitute court reporters and limit their use to daily copy work, absences due to illness, vacations, and other similar circumstances beyond the control of court reporters. However, many reporters were still using substitutes for purposes contrary to Judicial Conference policy at the time of our fieldwork.

According to statistics reported by court reporters to the Administrative Office, 43 reporters in 25 districts used substitute reporters more than one-fourth of the time. Ten of the 80 reporters in six districts we visited used substitutes over one-fourth of the time (one of the districts reported that substitute reporters were not used). For example,

--A reporter in one district operated a private reporting firm and spent little time in the courtroom, used substitutes 95 percent of the time, and personally recorded only 31 of 601 hours of court proceedings during 1979. In 1980, the reporter used substitutes 86 percent of the time and personally recorded only 82 of the 600 hours recorded.

--A reporter in another district had not recorded any proceedings for at least 5 years. This reporter managed a private reporting firm and used his employees to record the proceedings for which he was responsible.

--Another reporter used substitutes about 60 percent of the time during 1980. This reporter recorded on only 88 days during the entire year and spent about 4 months in Europe on private reporting business matters. While in Europe, the reporter used a substitute and continued to receive his Federal salary, although he performed no duties in connection with his Federal position.

Court reporters also profit to the extent that their salaries and benefits exceed the amounts they pay to substitutes. For example, the salary range of court reporters was $28,741 to $31,615 at the time of our fieldwork. On a workday basis this ranges from $110 to $121. However, we found that in the districts we visited reporters were paying substitutes about $80 to $100 per day.

FEDERAL COURT REPORTERS ARE POORLY UTILIZED

The judiciary's typical practice of assigning one reporter to each judge has resulted in some reporters being poorly utilized and inequitably compensated. Also, some district courts have contracted unnecessarily for reporters to serve senior judges and magistrates when official court reporters were available to perform the work. Because the workloads of judges vary widely, the corresponding workloads of their assigned reporters also vary. Court reporters, however, are usually not required to assist each other in balancing the uneven workloads or to perform recording work for magistrates, senior, or visiting judges. In fact, our review showed that district courts hired contract reporters to record proceedings when court reporters were available to perform the work.

In March 1980, the Judicial Conference recommended a policy that the district courts correct the imbalances in reporters' workloads and provide reporting services to magistrates, senior and visiting judges, and other district court judges by using such procedures as pooling reporters and rotating reporters' assignments. Rather than implementing such procedures, however, most districts continued to assign one reporter to each judge, and only required the reporters to work for that judge.

Our analysis of reporters' workloads disclosed considerable imbalances between their recording and transcript workloads. We found that recording time for reporters nationwide ranged from 139 hours to 1,735 hours during 1980. The reporter with the least recording time averaged only 2.8 hours per week recording Federal court proceedings, whereas the reporter with the most time averaged 34.7 hours per week recording Federal court proceedings. In the seven districts we visited, the average recording times during 1980 ranged from 3.9 hours per week to 34.7 hours per week as follows.

District (note a)	Hours per year (note b) Low	High	Hours per week (note c) Low	High
Southern Texas	439	1,062	8.8	21.2
Southern New York	d/802	1,428	16.0	28.6
Northern Illinois	306	1,091	6.1	21.8
Southern Ohio	404	603	8.1	12.1
Northern California	417	1,072	8.3	21.4
Central California	197	1,735	3.9	34.7
Western Washington	300	981	6.0	19.6

a/Excludes reporters not employed the entire year and temporary reporters.

b/Includes both reporters and substitutes.

c/On the basis of 50 weeks a year.

d/The court reporter who used the least number of hours (523) was relieved during the year from court work and assigned other tasks because he was 72 years old. Twenty-five of the 31 court reporters had a total hours per year ranging from 1,009 to 1,428.

The variances in recording workloads, however, produces substantial inequities in reporters' compensation because they are paid about the same salaries regardless of the number of hours they record court proceedings. For example, on a nationwide basis, the court reporter with the lowest number of recording hours in 1980 (139 hours) was actually paid at an hourly rate of about $206, whereas, the court reporter with the highest number of recording hours (1,735 hours) was paid at an hourly rate of about $15. 1/

The inequitable distribution of recording work and the resultant overburdening of some reporters is magnified when the transcript workload is added to the recording workload. Nationwide, the Administrative Office statistics showed that the pages of transcript prepared by reporters varied substantially, from 1,749 to 45,231 pages in 1980. In addition, as of December 31, 1980, 104 reporters nationwide showed transcript backlogs from 55 to 14,026 pages that had been on order for more than 30 days. Reporters in five of the seven districts reviewed told us they had transcript backlogs. In one district, 8 of the 18 reporters had

1/This computation includes only salary costs and excludes the cost of living salary differential paid to the reporter with the lowest number of recording hours.

transcript backlogs ranging from a low of 750 pages to a high of 12,000 pages at the time of our visit. Backlogs of transcript orders are of major concern to the courts because the transcripts are needed for appeals of district court decisions. Failure to deliver timely transcripts delays the hearing of court cases on appeal. In some cases, the courts have resorted to formal court orders instructing reporters to complete their backlogged transcripts.

In 1980, court reporters recorded court proceedings an average of 162 days out of a normal workyear of about 240 days; averaging about 13 hours per week for judges. Even so, contract reporters were often hired to serve magistrates and senior judges. In four of the seven districts we visited, we analyzed the districts' need to hire contract or per diem reporters in 1980. We found that at least $66,500 of the $107,540 incurred to hire contract and per diem reporters to serve the needs of senior judges and magistrates in the four districts could have been avoided because official reporters were available but not used. Specifically,

--in one district, contract reporters were hired for 70 days of work although court reporters were available for duty each day;

--in a second district, contract reporters were hired for 332 days of work even though a court reporter was available each day;

--in a third district, court reporters were available for all 53 days that contract reporters were used; and

--in a fourth district, court reporters were available for 256 of 476 days that per diem reporters were used.

Judicial Conference policy provides that permanent reporters are appointed to serve the district court as a whole, including senior judges and magistrates, and that the courts should utilize available full-time reporters before using contract reporters. Assigning a reporter to each active judge is inconsistent with this policy because both the judge and reporter usually expect the reporter to serve only the judge. For example, a magistrate in one district told us he had attempted many times to get idle court reporters to work in his courtroom. In one instance, the magistrate said he asked an idle reporter to record a proceeding for him and the reporter said in no uncertain terms that he worked only for his judge. As a result, the magistrate was forced to hire a contract reporter.

Court officials and reporters told us that official reporters do not want to record proceedings for magistrates or senior judges because

--they receive no extra pay for the additional work;

--such assignments generally do not generate income-producing transcript orders; and

--they prefer to use their available time to pursue income-producing activities, such as preparing transcripts or working at outside businesses.

While the reporters' preferences are understandable, the fact remains that they are hired and paid a salary to fulfill the entire courts' recording needs. Judicial Conference policy clearly states that proceedings held by magistrates and senior judges, as well as visiting judges, are part of district court activities and that court reporters are responsible for providing recording services whenever they are available. In addition, Judicial Conference policy provides that courts should use procedures such as pooling of court reporters to help balance the workload as well as to ensure that the needs of all judicial officials are met by full-time court reporters. However, judges that do not support pooling said

--their own reporters are familiar with their procedures,

--other reporters may not be as competent, and

--backlogs may be more difficult to monitor if different reporters were used.

Because of the judges' reluctance to pool reporters, little progress has been made toward equalizing workloads and avoiding the need to hire and pay for contract reporting while at the same time idle salaried reporters are available.

CONCLUSIONS

Many court reporters are taking advantage of the present system for recording and transcribing Federal district court proceedings. Because the district courts are not adequately supervising or managing the activities of court reporters as required by the Court Reporters Act, court reporters are able to engage in a variety of abusive practices. These practices result in court reporters overcharging litigants, using Government facilities to conduct private businesses, and using substitute reporters extensively. In addition, because the current practice typically provides that a court reporter be assigned to a specific judge, inequities in workload and compensation result as well as

additional costs to hire contract reporters to serve the needs of other judicial officials.

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

We recommend that the Judicial Conference, through the Administrative Office and judicial councils, establish appropriate procedures and policies to ensure that court reporters' activities in district courts are adequately supervised and managed. Specifically, we recommend that the Judicial Conference:

--Assign the clerk of the court within each district responsibility for managing the district's official court reporters to ensure that (1) reporters properly charge for transcripts; (2) reporters serve the entire court, including magistrates, senior judges, and visiting judges; (3) reporters' recording and transcript workloads are balanced and equitable; (4) contract reporters are hired only when court reporters are unavailable or the existing workload is not sufficient to justify a full-time court reporter; and (5) reporters are not inappropriately using substitutes.

--Prohibit official court reporters from engaging in private reporting activities not related to preparing official court transcripts when court is in session or when the reporter is otherwise required to perform court-related duties.

--Terminate employment of any official court reporter who knowingly overcharges for transcripts or engages in prohibited private reporting work.

AGENCY COMMENTS AND OUR EVALUATION

The Administrative Office of the U.S. Courts, the chief judges in five of the seven Federal district courts visited, the chairman of the Judicial Conference Subcommittee on Supporting Personnel, and the U.S. Court Reporters Association commented on this report. (See apps. III through X.) The chief judges from the judicial districts of western Washington and central California did not comment on a draft of this report. The comments received ranged from total agreement with the findings, conclusions, and recommendations to total disagreement with the report. However, even those who disagreed with the report's findings indicated they plan to take or have taken action to ensure that the abuses we identified in the report do not occur in the future. Even the Court Reporters Association, which

adamantly disagreed with the findings of the report relating to court reporters' activities, has suggested strong corrective action to ensure that court reporters do not engage in the abusive activities we cited.

Positive actions taken or to be taken

The Administrative Office said, and we cited in our report, that policies adopted by the Judicial Conference are designed to better use reporters and when fully implemented should eliminate problems of underuse of reporters and imbalanced workload; use of substitutes; and unfair marketplace competition because of the overly generous free space from which private businesses have been conducted; as well as obvious or overt abuses of transcript fees. The Administrative Office said that because of the recently enhanced role of the Judicial Circuit Councils (making district judges a part of the councils), reforms can now be implemented more quickly. The Judicial Conference Subcommittee chairman said that he generally concurs with the Administrative Office's comments. He added, however, that the Judicial Conference and its relevant committees and subcommittees are very much aware of our findings and are in the process of examining and discussing various administrative changes similar in some instances to those we recommended.

The chief judge of the southern district of Ohio said that he has appointed an oversight committee of two judges who will monitor the activities of the court reporters. He added that he was convinced that closer supervision of court reporters by judges will dispose of many situations brought out in our report. The chief judge of the northern district of Illinois said that his district will tighten up supervision of court reporters especially in the area of overcharging. He added that he plans to make it the business of the court to correct the deficiencies within his purview and, despite his disagreement with some of our conclusions, he said that our investigation performed a valuable service for his court. The chief judge of the northern district of California said that court reporters have responded effectively and efficiently to a recent court-mandated change in their operations. He cited, for example, that contract reporter costs per month have been reduced from $2,400 to $460, a cost reduction of over 80 percent.

The chief judge of the southern district of Texas, although taking issue with some areas of the report, said that it is a fact of judicial life that trial judges have become accustomed to a one judge/one court reporter system. He further said that he is rather certain that this is not the most efficient procedure to follow in multijudge courts. As a result, in September 1981, his district adopted a plan which requires that supervision of the official court reporters will be the responsibility of the clerk of

the court and that a panel of three judges will be appointed to act on behalf of the court in matters of hiring, discipline, and enforcement of general policy matters. In addition, this panel will work as a liaison for the court with the clerk of the court in all matters concerning employment and discipline of official court reporters. The clerk has been mandated supervisory responsibility primarily in the area of random pooling, fee format compliance, and efficient service for the entire court. The chief judge will continue to serve as a direct liaison between the clerk and the court reporters in general policy matters pertaining to management and supervision of official court reporters.

The Court Reporters Association adamantly disagreed with many of the issues discussed in the report and said that in spite of our broad-brush attack on all official court reporters in the Federal system, only a few may be operating outside of Judicial Conference regulations. However, it also stated that it unanimously adopted two plans on August 3, 1981, which are specifically designed to correct the inadequacies discussed in our report. The Association believes that if both plans are adopted by the courts and the reporters, reporting personnel will be fully utilized, the courts will be more efficiently served, and there will be no opportunity for rules and regulations to be misinterpreted, misapplied, or misused.

We believe the actions taken and being considered by the Administrative Office, Judicial Conference, the district courts, and the Court Reporters Association will greatly improve the supervision and management of court reporters. We believe that many of the abuses discussed in this report will be eliminated if the above actions are fully implemented. However, to ensure the total elimination of abuses by court reporters, we still believe that it is necessary for each district to assign responsibility for supervising court reporter activities to someone other than the judges--as has been done in several districts--whose time is very limited by the heavy litigative caseload demand placed on them. Therefore, we believe that our recommendation that the clerk of the court be assigned this responsibility is still valid. In fact, we believe the plan instituted recently by the southern district of Texas would be an excellent model for all district courts to follow.

Areas of disagreement

Even though the entities involved in the management and supervision of court reporters have taken or plan to take action to improve the operations and eliminate abuses by court reporters, some have taken issue with several areas of the report. These include (1) the methodology and scope of our review, (2) the recommendation that clerks of the court supervise court reporter activities, (3) the utilization of court reporters, (4) the definition of what constitutes private business activities, (5) the

geographic problem involved in pooling court reporters, and (6) the establishment of national transcript rates.

Methodology and scope of GAO's audit

The Administrative Office, the chief judge of the southern district of New York, and the Court Reporters Association all stated that we had broadly accused all court reporters of abusing the system and drew general unwarranted conclusions about the entire Federal court reporting system. In this regard, nowhere in our report have we said that all court reporters were abusing the system. Nevertheless, to ensure that readers do not misinterpret our report, we have made several wording changes in the body of the report so as to clearly indicate that the problems we found are identified with the seven district courts we visited and that we are not concluding that every district court has or will experience any or all of the problems we identified. However, we are saying that we found systemic (procedural and management) problems with the court reporter system in the seven district courts visited, and we believe that there are other district courts experiencing similar problems.

In this regard, we found that six of the seven courts were not adequately supervising or managing activities of court reporters and that 42 of the 51 reporters selected for review had engaged in some form of overcharging or charged unauthorized fees to parties requesting transcripts. Coupling these findings with the fact that the Administrative Office itself also found overcharging in 54 of the 87 districts it reviewed (which include the seven districts we reviewed) during the period February 1976 through March 1981 (see p. 11 of this report), we believe it is evident that a systemwide problem exists. In addition, as indicated on pages 21 and 22, management actions have been or are being taken to ensure that improper activities in the court reporting system do not take place.

The Administrative Office said that court is held in 189 cities on a full-time basis and it was disturbed that a selection of seven sites is construed as representative of all these courts when not even one of the seven sites surveyed was typical of 76 percent of these courts. That is, 143 places of holding court have four or fewer resident judicial officers, and none were included in GAO's study. The Administrative Office further said that 5 of the 7 sites visited represented 22 of the largest Federal courts or only 12 percent of the Federal system. The Administrative Office added that problems may differ between large and small courts. In fact, it added that it had circulated a copy of GAO's testimony given before the Senate Subcommittee on the Courts (see p. 7) to all Federal district courts and that many judges from the smaller courts said that these problems simply do not occur in their jurisdictions.

We agree that the problems discussed in our report may not exist in each and every court especially those in which only one judicial officer and one (or no) court reporter is permanently stationed. However, to obtain an understanding of court reporter operations, we selected for review seven Federal district courts on the basis of caseload sizes and geographical location. We believe that by concentrating on the courts with highest caseloads we would be reviewing operations of court reporters where the greatest activity was taking place and where the greatest potential for cost savings and improvements could be expected to materialize. To fully evaluate the potential for pooling court reporters, it was necessary to visit several of the larger district courts. With regard to the smaller district courts, we wish to point out that two districts, such as the southern district of Ohio, would fall within the Administrative Office's 143 court locations with four or fewer resident judicial officers. Yet even in this small district court we found that problems existed although not to the magnitude identified in other locations. In addition, the Administrative Office's own auditors, as noted above, identified that overcharging by court reporters was a widespread practice occurring in both large and small district courts.

Supervision of court reporter activities

There are significant differences of opinion about how best to supervise court reporters. Some believe that the clerk of the court should supervise court reporters; others believe judges should. The Court Reporters Association believes that court reporters should appoint a chief reporter to supervise their own activities, and one chief judge believes that each court should develop its own plan for supervising court reporters.

We believe that several of these suggestions have merit as long as the judges have the time to adequately manage and supervise court reporter activities. However, we recommended that the clerk be given this responsibility because we do not believe all judges have sufficient time to adequately supervise and manage court reporter activities. The bottom line of our recommendation is that someone must actively supervise and manage court reporter activities. We believe that supervision should be exercised by a judicial official--not a court reporter. Therefore, we do not agree with the Association's suggestion. It should be noted (see pp. 75 and 119) that several courts have adopted plans wherein the responsibility to supervise court reporter activities has been given to the clerk of the court.

The Court Reporters Association took issue with our recommendation that court reporters be supervised by the clerk of the court. It believes court reporters should basically run their own operation subject to the overall rules and regulations which have been and will be established by higher authority. The judges of a court should be responsible for ensuring that the court

reporters are not guilty of fraud and abuse or in violation of any and all applicable rules and regulations. It added that this can be done without getting into the daily minutiae of the court reporters' business. The Association said that the chief judge or a committee of judges can make periodic inquiries and spot checks and listen to complaints by lawyers. The Association concluded that these and other common sense methods would certainly be sufficient to resolve the types of problems which are of immediate concern.

We disagree with this approach because this is generally the way the system has worked in the past and because the judges, with their heavy litigative workload, do not have time to supervise and manage court reporter activities. In addition, placing exclusive supervisory responsibility with the court reporters would be inconsistent with the Court Reporters Act which requires that district courts supervise the court reporter activities. Therefore, we believe a plan similar to the one established by the southern district of Texas which requires supervision and management of court reporters to be the responsibility of the clerk of the court should be implemented in other Federal district courts. 1/

Utilization of court reporters

The chief judge in the northern district of Illinois took issue with the facts we presented on utilization of court reporters in his district. He disagreed that court reporters were poorly utilized in his district. However, he added that to the extent that official court reporters are available during their judges' absence, greater efforts could be made to see that court reporters do not remain idle and are profitably used in some other area of the courthouse.

We wish to emphasize that what we are questioning is the extreme imbalance among the workloads of court reporters who basically receive the same annual salary, and the need to balance the workload among court reporters to avoid the unnecessary use of contract court reporters when official court reporters are available. As noted on page 18 of our report, our analysis showed that in this district salaried court reporters were available for 256 of the 476 days that contract reporters were used. Therefore, we believe there is substantial room for improving the use of full-time court reporters. We are encouraged by the chief judge's comment that greater efforts could be made to ensure that court reporters do not remain idle and are profitably used.

1/The Court Reporters Association also stated that the eastern district of Pennsylvania has established a plan under which the supervisory responsibility for court reporter activities has been placed with the clerk. (See p. 119.)

Geographical dispersion of court reporters

The chief judge from the southern district of Ohio said he was convinced that closer supervision of court reporters by judges will dispose of many situations brought out in our report. However, he did emphasize that pooling of court reporters to balance the workload will not always work, especially in districts similar to his where the judges are geographically scattered.

We agree with the chief judge that pooling would be inappropriate for an entire district if the various court locations were geographically dispersed. However, even in a geographically dispersed district there is usually one main location where the court's activities are held. In the main locations, the opportunity for pooling court reporters may exist. Each district court and court location should determine whether pooling or sharing of court reporters would be more efficient than having some court reporters work part time while others are overburdened with work. Through careful analysis a district court may find it beneficial to pool or share court reporters and during peak workload periods to contract for additional court reporting services. Through the use of the recently established oversight committee in this district, the optimum use of court reporters can be realized by examining the present use of all court reporters in relation to the needs of the court.

Rates for transcripts

The chief judge of the southern district of Texas said that it is not practical to establish court reporter rates that apply uniformly throughout the United States because the rates local court reporters charge in larger cities are far different from the rates charged in smaller areas. He added that he has expressed this view to the Judicial Conference.

We did not take issue with the judiciary's rate-setting policies or analyze whether rates should be regionalized or whether they should be uniform across the country. We accepted the fact that the Judicial Conference has mandated maximum rates that court reporters can charge. When we found instances of court reporters charging rates higher than those authorized, we concluded that the charges were not authorized. The Judicial Conference has given the district courts the authority to establish rates only up to the maximum approved by the Judicial Conference.

CHAPTER 3

ELECTRONIC RECORDING: A PROVEN ALTERNATIVE THAT SHOULD BE TESTED

Electronic recording systems are available and being used in court settings similar to Federal district court proceedings. If these systems were used in all Federal district courts, the Government's annual costs could be reduced by about $10 million, while, at the same time, potentially reducing litigants' transcription costs. In addition, electronic recording can provide a better record of court proceedings and greater management flexibility and control over recording activities.

Even though these benefits exist there are opponents of electronic recording who often refer to problems in recording and transcribing court proceedings as their basis for saying that electronic recording systems have inherent weaknesses and are not feasible, when in fact, the fault lies in improper equipment, improperly trained personnel, or courtroom procedures themselves. We evaluated the arguments advanced by opponents of electronic recording and concluded that they have little merit. Highly reliable electronic recording equipment is available which can produce high quality recordings and which contains features to safeguard against human and procedural errors. Accordingly, courts that have installed and properly managed electronic recording systems have obtained accurate and timely transcripts and have realized cost savings.

The judiciary currently incurs a cost of about $18 million annually to record judicial proceedings. We believe there exists a proven alternative--electronic recording--that would save the judiciary about $10 million annually and provide a better record of district court proceedings. Although we are convinced that the use of electronic recording in Federal district courts is feasible and would result in significant savings, we recognize that a wholesale move in this direction could be disruptive. Further, we recognize that because of the differing workloads and needs in district courts, some courts may be better suited to electronic recording than others. Therefore, we proposed in our draft report that the best approach would be to begin structured testing of electronic recording systems in Federal district courts. In this regard, the Congress enacted legislation on April 2, 1982 (Public Law 97-164) which requires the judiciary to experiment with different methods of recording court proceedings. Officials of the Administrative Office told us that one of these methods will be electronic recording. The legislation also will eliminate the requirement that court proceedings be recorded by a court reporter and will authorize the courts to use alternative recording methods. We believe that an adequately structured test will confirm the feasibility of using electronic recording in Federal district

courts and will help to alleviate the concerns of the Federal judiciary about such a change.

ELECTRONIC RECORDING SYSTEMS HAVE SUBSTANTIAL ADVANTAGES OVER STENOGRAPHIC METHODS

Electronic recording systems are being used effectively in court settings similar to Federal district courts. Thus the Federal judiciary, by using properly managed electronic recording systems instead of court reporters to record judicial proceedings, could realize a cost savings of about $10 million annually and, litigants could obtain accurate and timely transcripts. The courts and litigants will also obtain other important benefits because, in addition to transcripts, a taped record will be produced which can be readily used and understood by anyone. Litigants can buy a copy of the tape and related log notes (see p. 3) from the court and have it transcribed by any qualified transcriber. This opens transcript preparation to competitive bidding which conceivably could reduce transcription cost. The tape also provides a way to objectively verify transcript accuracy and, by listening to the tape, litigants can sometimes save the time and money needed to have a transcript prepared.

Electronic recording is being used effectively in a wide variety of court settings

Electronic recording systems are being used effectively in court settings similar to Federal district courts. The State Court of Alaska; the State Court of Connecticut; the Orange County Court in Florida; and the Federal and Provincial courts in Montreal, Canada; as well as numerous other courts, are using electronic recording systems to record court proceedings. These proceedings include a full range of participants--judges, attorneys, witnesses, and jurors--and thus are similar to Federal district court proceedings. Electronic recording systems are also used by the United States Supreme Court and the United States Tax Court. In fact, the Tax Court specifies in its contracts for recording services that only electronic recording can be used.

Other court systems have also recognized the benefits and efficiencies of electronic recording systems and, at the time of our review, were in the process of implementing, expanding, or experimenting with electronic recording. For example, Washington State recently studied various court reporting options and subsequently required all limited jurisdiction courts to implement electronic recording systems. Also, the court system in Montgomery County, Maryland, was installing a centralized electronic recording system to record both limited and general jurisdiction court proceedings in 15 courtrooms of a new courthouse.

We visited or contacted a total of 16 courts which used electronic recording to record court proceedings. Officials in these courts told us that electronic recording systems are superior to stenographic reporting systems because they are more cost-effective and provide other benefits as well. They said they have experienced no significant problems recording proceedings or having transcripts prepared from electronic recordings. For example, in Alaska where electronic recording has been used for over 20 years, State court officials and most attorneys prefer electronic recording to stenographic methods. These preferences were documented in a 1980 Alaska State legislative audit. The State auditors surveyed 19 attorneys and 11 State judges all of whom reported satisfaction with the electronic reporting system. In fact, those who had worked with both electronic and stenographic reporting methods said the overall quality of transcripts prepared from the electronic recording system equals or exceeds the quality of transcripts prepared by court reporters. These preferences were confirmed through interviews we held with seven attorneys and four judges who, with the exception of one attorney, preferred electronic recording over stenographic methods.

The Federal judiciary can substantially reduce its costs of recording proceedings

We estimate that the Federal judiciary, by using electronic recording systems, would spend from $7.3 to $8.2 million annually to record official proceedings compared to the $18.3 million spent in 1980 to record proceedings using court reporters. This represents cost savings of about $10 million annually, a reduction from about $43 per hour to $19 per hour to record judicial proceedings. We estimate that the initial costs to purchase and install electronic recording systems would be about $7 million to $14.3 million, depending on the vendor and type of recording equipment purchased.

To develop valid cost estimates of an electronic recording system for a Federal district court, we reviewed studies dealing with electronic recording system costs and configurations prepared by the National Center for State Courts and court administrators in Alaska and Florida; discussed electronic recording costs with officials of courts using electronic recording systems; obtained equipment cost information from vendors; and interviewed Administrative Office officials and reviewed their statistics on court reporting costs. On the basis of this information, we identified the elements needed for an electronic recording system and made several assumptions concerning the amount and type of equipment and personnel needed. Our assumptions were:

--High-quality recording equipment would be semi-permanently installed in every courtroom and in every city where a district court judge or magistrate is

permanently assigned. Our equipment cost estimates were based on information provided by four vendors that provide courtroom recording equipment.

--Recording monitors would operate and monitor the recording equipment and take the necessary log notes. Their duties would include duplicating and filing tapes and log notes; arranging for litigants to listen to tapes; selling tapes and ordering tape supplies; and performing minor equipment maintenance. Appendix I contains a detailed discussion of our assumptions and cost estimates.

In 1980, the judiciary spent about $18.3 million to have district court and magistrate proceedings recorded by official and contract court reporters. During this period, these reporters recorded approximately 429,000 hours of proceedings at an average cost of about $43 per hour. We estimate that by using the most expensive electronic recording equipment instead of court reporters, the judiciary would have incurred a cost of only about $8.2 million, or about $19 per hour, resulting in an annual savings of about $10.1 million as shown on the following page.

Cost item	Annual operating costs: Court reporters	Annual operating costs: Electronic recording	Estimated annual savings
Personnel	$15,973,774	$4,047,780	$11,925,994
Contract reporters	619,285	-	619,285
Equipment (depreciation and maintenance)	-	1,839,821	(1,839,821)
Supplies	-	1,073,600	(1,073,600)
Space (office and storage)	1,423,091	493,559	929,532
Facilities modification amortization 1/	-	760,752	(760,752)
Travel	332,775	-	332,775
Total	$18,348,925	$8,215,512	$10,133,413

1/This represents the annual amortization of the cost of installing carpeting in every district judge's and magistrate's courtroom to enable better voice recording.

Cost savings can be realized without incurring a large initial capital outlay. In fact, depending on the vendor and type of equipment used, initial outlays plus the operating costs for the first year would be about the same or perhaps less than it now costs to pay court reporters for 1 year. Thus the judiciary would begin to realize the full cost savings potential of electronic recording systems in about 1 year or less. The initial capital outlay, annual operating costs and annual savings for four different vendors and types of equipment are summarized below and presented in more detail in appendix II.

Vendor and equipment type	Initial capital outlay	Annual operating costs	Annual savings (note a)
	----------(millions)----------		
A (8-track reel-to-reel)	$14.3	$8.2	$10.1
B (4-track cassette)	9.3	7.7	10.6
C (4-track cassette)	7.0	7.3	11.0
D (4-track cassette)	7.5	7.4	10.9

a/Annual savings is the difference between the current costs of the court reporter system ($18.3 million) and the annual operating costs of electronic systems.

Recording equipment provided by the latter three vendors is less expensive primarily because they are 4-track rather than 8-track machines. Our selection of these four vendors for cost estimation purposes should not be construed as an endorsement of these vendors over any other vendors which might be available to supply the judiciary's needs.

Several courts that are using electronic recording systems have experienced substantial cost savings similar to our estimates for the Federal district courts. The table below shows the cost savings reported by four different court systems as a result of using electronic recording instead of court reporters.

Court system	Year analysis made	Number of court reporters that would have been needed	Annual savings	Savings as a percent of total costs
Alaska (Anchorage)	1979	21	$ 838,798	55
Florida (Orange County)	1980	14	231,468	43
Connecticut	1979	146	2,298,000	52
New Jersey	1978	180	4,112,000	46

Electronic recording systems provide a better record of judicial proceedings

Electronic recording systems provide a better record of judicial proceedings than can be obtained through the court reporter stenographic method because two usable products--the recorded tape and the transcript--are available for those who need to review what transpired in the courtroom. The tape provides an important advantage for record review purposes because it captures not only what participants say, but the way they say it. According to judicial officers this is important because it provides them with what they refer to as demeanor evidence. In contrast, under the stenographic method the transcript is the only available record of the proceedings and it does not capture demeanor evidence. Further, because a tape is available under electronic recording, problems which can and do occur in developing an adequate record (transcript) of the proceedings under the stenographic system are eliminated. An adequate record may not be obtainable, for example, when a reporter quits or dies before a transcript is prepared from his or her notes, because other reporters may not be able to decipher the notes.

Judicial officers consider demeanor evidence particularly important in establishing a witness' credibility and in contempt and impeachment situations. For example, one judge we interviewed in Florida said he had encountered a courtroom situation where a defendant went wild, using abusive language and threatening the judge, the jury, and others. He said the tape recording captured all this, so the entire happening could be easily reconstructed for purposes of holding the defendant in contempt. He said he believed a court reporter in this situation would not have been able to capture all the spoken words and might have gotten flustered and fearful and stopped recording the proceedings.

Other judicial officers have expressed similar views regarding the advantage of capturing demeanor evidence on tape. For example, U.S. Tax Court officials prefer electronic recording over stenographic methods because the court places particular emphasis on the desirability of listening to the recorded voices of the parties. Court officials said that by means of electronic recording not only are the party's exact words captured but also the manner in which the words were spoken, which can thus indicate the truthfulness of a witness' testimony.

Furthermore, taped testimony is routinely replayed for juries in Alaska to refresh their memories during deliberations. A judge and several attorneys told us this makes a significant difference compared to a court reporter reading the testimony from his notes because demeanor comes across effectively from the tape but not

from the reporter's reading of the record. They said this ability for jurors to hear again the witness' demeanor can affect how the jurors interpret the testimony.

Substantial problems can and have occurred in trying to get an adequate record of judicial proceedings when the stenographic reporter who recorded a proceeding is not available to translate and dictate his or her shorthand notes. For example, a defendant was hampered in preparing his appeal because the court reporter who recorded the trial testimony died before transcribing a major portion of his shorthand notes. Although another court reporter was hired to transcribe the notes, considerable controversy arose surrounding the accuracy of this transcription. The U.S. Supreme Court reviewed the adequacy of the reconstructed record seven times. In the opinion of one Supreme Court justice:

> "To order after this long delay a new record seems to me a futility. It must be remembered that Chessman was convicted on May 21, 1948--over 9 years ago. It is difficult to see how after that long lapse of time the memory of any participant (if he is still alive) would be sharp enough to make any hearing meaningful." (77 S. Ct. 113b)

In another case, five court reporters with a combined total of 77 years of court reporting experience were unable to decipher enough of the notes of another reporter to produce an acceptable transcript. In this case, the court reporters concluded that the other reporter's notes were "* * * so extremely self-styled as to render any attempt to decipher these notes so time consuming as to make preparation of a transcript prohibitive and certification of the final product impossible".

Electronic recording systems enable parties to get accurate and timely transcripts at reasonable prices

Parties ordering transcripts of Federal district court proceedings will obtain accurate, timely, and reasonably priced transcripts from properly managed electronic recording systems. Court officials we contacted, including judges and attorneys, who use electronic recording said they are generally satisfied with the accuracy and timeliness of transcripts. Occasional problems do occur, but they also occur under stenographic court reporting methods. In addition, questions concerning transcript accuracy can be resolved under electronic recording because the taped record is available for verification whereas in the stenographic method the only verification is the reporter's notes.

Because the tape can be transcribed by any qualified transcriber, it is not necessary to depend on a given court reporter

to prepare a transcript. This would enable litigants to shop in the open market for transcribers willing to prepare the transcript in a timely manner and at a reasonable price. Litigants can also listen directly to the tape, thereby saving substantial time and costs in certain circumstances.

Accurate transcripts can be prepared

Officials in 15 of the 16 courts using electronic recording systems 1/ told us they were generally satisfied with the accuracy of the transcripts. The U.S. Tax Court, for example, has had experience with various reporting methods--shorthand, stenotype, stenomask, and electronic recording. Court officials stated that transcripts prepared from electronic recordings are consistently the most accurate transcripts.

According to a 1980 audit of the Alaska State court's electronic recording system, the attorneys and judges surveyed reported that the transcript accuracy from electronic tapes was adequate or above. In addition, six of the seven attorneys and the four judges we interviewed in Anchorage told us that transcript accuracy was satisfactory.

An important feature of an electronic recording system is that transcript accuracy can be verified against the actual spoken words of the participants. This feature is important because disputes over transcript accuracy can be readily resolved. For example, the availability of the electronically recorded tape prevented a mistrial and a costly retrial in a recent highly publicized case. The judge had elected to record the proceedings electronically and stenographically due to the trial's importance. At the end of the trial the stenographic reporter prepared the transcript from his shorthand notes. When the transcript was compared to the electronically recorded tape, 200 major errors were found in the reporter's transcription. The judge told us these errors would have provided a basis for a mistrial. A court official told us that a retrial would have cost the Government time and money.

The verification problems associated with stenographic reporting methods are compounded when testimony is given by a witness speaking a foreign language. Under the traditional court reporting method, the shorthand or stenotype notes include only

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1/One court did not have transcripts prepared.

the English words spoken by the court interpreter, not the original foreign words spoken by the witness. In these situations no effective check exists as to the accuracy of the court interpreter's translation. With electronic recording, however, the original words of the witness as well as the interpreter's translation can be verified.

Timely transcripts can be prepared

Timely transcripts can be prepared under electronic recording systems. Officials of the courts contacted that use electronic recording systems and have transcripts prepared were generally satisfied with transcript timeliness. Several officials even noted same-day transcript service can be successfully provided when appropriate procedures and adequate numbers of transcribers are used.

Opponents of electronic recording, however, claim that timely transcripts cannot be prepared. For example, one Federal judge contends that it takes a transcriber five to ten times longer to prepare a transcript from electronic recording than from stenographic notes, thereby making the preparation of daily and hourly transcripts virtually impossible and delaying non-expedited transcripts inordinately. Another opponent claims that a court reporter working with his/her transcriber can produce in an 8-hour day, 120 pages of transcript (15 pages an hour) versus 80 pages of transcript (10 pages an hour) from electronic recording methods.

On the basis of our discussions with eight court administrators and five private transcription firms' officials, we found that timely transcripts can be prepared from electronic tapes at an average rate of 10 pages per hour. Two officials said their transcribers can type 15 to 20 pages per hour, but, a 1980 study by the National Center for State Courts states that,

> "* * * the commonly accepted ratio of transcription by transcribers of electronic recordings is five to ten pages of transcript per hour, depending upon the quality of the recording and the skill of the transcriber."

Court officials in the U.S. Tax Court and courts in Alaska, Maryland, Canada, and Australia have stated that daily transcription service has been successfully provided with no delays or problems.

In addition, we found that the average time involved in preparing transcripts under an electronic recording system is about the same as under a court reporter system--5.5 hours for electronic recording transcribers versus 5.9 hours for court

reporters and their transcribers for each hour of court proceedings recorded. The table below demonstrates this and is based on discussions with transcription firm officials and a study by the National Center for State Courts.

Transcript preparation step (note a)	Court reporters	Electronic recording (note b)
	(hours)	
1. Dictating	c/1.40	-
2. Typing	3.00	d/4.00
3. Proofreading	c/ .69	.69
4. Correcting	.38	.38
5. Collating/ binding	c/ .27	.27
6. Typing indexes	.15	.15
Total hours of transcript preparation per hour of proceeding recorded	5.89	5.49
Less: court reporters' time	2.36	-
Transcribers' time only	3.53	5.49

a/On the average, one hour of proceedings results in about 40 pages of transcripts.

b/Under electronic recording, all steps are performed by transcribers directly from tapes and log notes. Therefore, the time needed for steps 3 to 6 is about the same for both methods.

c/Steps 1,3, and 5 are performed by court reporters.

d/Average typing rate of 10 pages per hour from electronically recorded tapes.

Opponents of electronic recording systems contend that transcribers using electronic recording spend more time preparing transcripts than do court reporters' transcribers. When one considers only the transcriber's time this is true. As shown above, a court reporter transcriber spends 3.5 hours whereas transcribing

electronic recording requires 5.5 hours. However, the opponents ignore the time spent by the court reporter--including preparation of his or her notes for transcription--which amounts to about 2.4 hours. Thus, when the court reporters' time is taken into account the two systems require about the same time to prepare a transcript. Because the total time needed to prepare transcripts using both methods is about the same, transcripts from electronic recording systems can be prepared just as quickly as those from stenographic notes.

Furthermore, in the Federal court system most transcripts were not ordered for daily or hourly delivery. In 1980 63 percent of all transcripts were ordered on an ordinary delivery basis (within 30 days); 7 percent on an expedited basis (within 7 days); and 30 percent on a daily or hourly basis. However, these averages are highly skewed because four districts accounted for 50 percent of the hourly and daily transcripts prepared, whereas in 19 districts no hourly or daily transcripts were prepared.

Our discussions with officials of five private transcription firms confirmed that daily transcripts can be readily prepared. The owner of one firm that utilizes stenographic and stenomask reporters in addition to electronic recording systems told us her firm uses electronic recording systems to record proceedings when daily transcripts are requested because this method is faster than the other two. She said they use two transcribers and one person to operate electronic recording machines and take log notes. The tapes and log notes are taken from the courtroom at 15-minute intervals and, the transcript is completed by 8 p.m. that day. Officials of the other four private electronic recording transcribing firms we contacted also told us they can and have prepared daily transcripts from electronic recording tapes. Canadian court officials told us that before they installed electronic recording in 1971, a high percentage of daily transcripts were being prepared. These officials said that during 1980 only about 4 or 5 daily transcripts were requested because attorneys have learned to use tape recordings rather than having daily transcripts prepared.

On the basis of this information, we believe that opponents' arguments contending that timely, and especially expedited, transcripts cannot be prepared are without merit. As we have demonstrated, electronic recording can be used to provide daily transcripts.

Transcripts can be obtained at reasonable costs

By using the electronic recording systems we envision, litigants would purchase copies of the recorded tapes and related log notes from the court and make their own arrangements to have

transcripts prepared. Because the tapes do not have to be translated by the person taking the record (as is now the case), they can be sent to any location where a qualified transcriber is available. Therefore, litigants would have considerable flexibility in determining where to have transcripts prepared and in shopping for the lowest available rates.

The Alaska State courts already allow private litigants to buy tapes and log notes and arrange to have transcripts prepared by commercial transcription firms or freelance transcribers. The State does not regulate the transcript rates for litigants, therefore, litigants are able to bargain for the lowest available rate. Two private attorneys in Alaska told us they sometimes have their clerical staff prepare transcripts if they believe the private transcriber's prices are too high. They said the courts have not questioned the practice of attorneys using their clerical staff to prepare transcripts, because the court has the original tapes to verify transcripts if necessary.

We believe that such a competitive environment for transcript preparation of Federal court proceedings would keep litigants' transcript costs at the lowest possible level and potentially enable them to pay even less than they now pay for transcripts. For example, the U.S. Tax Court has its proceedings recorded electronically and its transcripts prepared through competitive bidding. For the period ending August 31, 1981, the court paid $0.50 per page for an original copy and other parties paid $0.625 per page for delivery within 15 days; additional copies cost each party $0.50 per page. In addition, the Social Security Administration pays its contractor $0.97 per original page for transcripts prepared from electronically recorded tapes, and the D.C. Superior Court pays $1 per original page to the private firm which prepares transcripts from the court's tapes. These rates are lower than the current charge for transcripts in the Federal courts of $2 per page for original copies deliverable within 30 days.

Litigants will be able to reduce transcript costs by buying and using tapes and log notes from the court. The tape can be listened to for review purposes or even in lieu of buying daily transcripts. Several courts we contacted already provide tapes and log notes to litigants (e.g., Alaska, Florida, Maryland, and Montreal) charging from $5 to $10 for copies of tapes and log notes which contain from 1 to 3 hours of testimony. Thus, for under $10 per proceeding hour, litigants can buy tapes and log notes which under the current court reporter system would cost from $80 to $140 per hour for written transcripts.

Two attorneys we interviewed in Alaska told us they sometimes buy tapes and log notes from the State Court, rather than having daily transcripts prepared. They said that tapes and log notes for one day's proceedings cost about $25 versus about $500 for a daily transcript. In addition, if they need a transcript,

they can review the tape and log notes to identify the specific testimony they want transcribed. This would reduce the transcript pages needed and, thus, transcript costs.

In testing the use of electronic recording, we believe the judiciary should establish the following transcription policies and procedures:

--The litigants should be responsible for arranging and paying for their own transcription services.

--The judiciary should be responsible for (1) electronically recording all court proceedings; (2) making duplicates of tapes and log notes to sell to litigants; (3) maintaining possession and control of the original tape and log notes to be used as the official record to verify transcript accuracy when necessary; (4) establishing transcript format standards and minimum transcriber proficiency standards; and (5) allowing the courts and litigants to make and use their own transcript copies rather than being required to purchase them from transcribers.

ELECTRONIC RECORDING SYSTEMS MUST BE PROPERLY DESIGNED AND MANAGED TO ENSURE SUCCESS

Electronic recording systems must be properly designed and managed for the Federal courts to realize the potential benefits and savings. Improper design and operation can result in faulty recording, loss of testimony, transcripts of poor quality, and slow transcript preparation. These problems have occurred in courts using electronic recording, but the experienced electronic recording users we interviewed said that such problems were infrequent in their courts. They said they have learned to resolve such problems by using proper equipment and procedures and trained personnel.

However, electronic recording opponents claim that such problems are inherent in electronic recording systems because electronic recording machines cannot (1) identify speakers, (2) record overlapping or simultaneous testimony, (3) indicate nonverbal communications, or (4) capture interjections made while previous testimony is being played back. In addition, they contend that electronic recording systems erroneously record privileged communications, are unreliable, lack portability, and disrupt courtroom decorum.

On the basis of interviews with users of electronic recording systems, studies prepared on various electronic recording systems, observations of "state-of-the-art" electronic recording

systems in operation, and a review of tapes and transcripts prepared under electronic recording systems, we believe that the arguments put forth by electronic recording opponents have little merit. The latest electronic recording machines are highly reliable and have many features to safeguard against improper recording. Further, by using trained personnel and proper procedures any problems identified by opponents of electronic recording can be readily overcome. A discussion of opponents' arguments and how they can be overcome follows.

Speaker identification

Electronic recording opponents claim that a court reporter can see who is speaking, even the "roving advocate," and identify the person for the record. Machines, they contend, cannot do this. Electronic recording system users told us that this problem is avoided by having a person monitor the recording of proceedings. This person maintains complete log notes in which speakers are identified and indexed to the tape by index numbers displayed on the machine. The National Center for State Courts stresses this procedure as an important element of a properly managed electronic recording system.

Overlapping or simultaneous testimony

Electronic recording system opponents contend that the systems cannot properly record and separate overlapping or simultaneous testimony, that is, two speakers talking at once, and that court reporters can handle this situation better. They point out that court reporters can stop the proceedings when this happens, whereas a machine cannot. Opponents claim that, if court reporters believe it inappropriate to stop the proceedings, they can use their judgment and record only the testimony they believe is most important. Further, opponents argue that the jury can listen to only one speaker at a time and thus the court reporter's version is a better reflection of what the jury heard.

We asked electronic recording users whether overlapping testimony causes problems. They said that it was not a problem, and several court officials explained why. First, most modern electronic recording machines used in courts are multitrack recorders which are capable of separating overlapping testimony. In a typical system for electronic recording of courtroom proceedings, each microphone used by a principal participant has its own channel on the tape. When simultaneous testimony occurs, each speaker's voice is captured on a different channel. Anyone needing to review or transcribe the proceedings can listen to each channel independently. We listened to tapes of actual courtroom testimony containing overlapping testimony and verified that the voices were separable and distinguishable. Court officials said that simultaneous testimony can also be controlled

through proper courtroom procedures and that the ability to say "stop" is not unique to court reporters. Judges and recording monitors can also do this.

Nonverbal communications

Electronic recording opponents contend that machines cannot record nonverbal communications, such as nods, shrugs, and pointing fingers, and unless the court or counsel identifies such nonverbal testimony, (for example, "let the record show * * *"), the transcript prepared from electronic recording systems will not mention such nonverbal activity. On the other hand, court reporters can watch the proceedings, describe any nonverbal actions in their notes, and include the descriptions in the transcript. Officials of courts using electronic recording told us that nonverbal communications are not a problem; they are handled in two ways. First, by using proper courtroom procedures, judges, attorneys, or recording monitors can instruct speakers to present all testimony verbally. Second, recording monitors can record any nonverbal communications in their log notes and include such communication in transcripts.

Playback of previous testimony

At times during court proceedings it is necessary to play back previous testimony. To do this, court reporters have to search through their notes and electronic recording machine operators have to rewind the tape to find the correct testimony. Advocates of using court reporters claim that reporters can do this faster and, if any testimony is given during this readback process, they are able to move quickly back to taking notes again. We found that electronic recording systems can also handle this situation quickly. Detailed log notes, which index speakers to locations on the tape and which paraphrase testimony, can assist recording monitors to rapidly find previous testimony. One recording system has a feature which enables the operator to enter the index number of previous testimony on a keyboard and then push a button that automatically rewinds the tape to the correct position within seconds. This machine can also fast-forward rapidly to the point on the tape where the last testimony ended; thus, recording can be resumed with little delay. Another system is able to record and play back simultaneously. This machine has two independent cassette systems; one can record while the other plays back previous testimony.

Privileged communications

Electronic recording opponents argue that secret and privileged communications between counsel and client or discussions between the court and counsel "out of hearing of the jury" may be inadvertently recorded and played back or transcribed. Attorneys and judges we interviewed said that recording privileged

communications is avoided by using proper procedures and equipment. With experience, attorneys learn to cover the microphone or move away from it when speaking privately with a client. The judges' microphones can be equipped with a button to deaden the sound during bench conferences.

Reliability

Electronic recording opponents argue that court reporters are more reliable than machines. Machines may be operating defectively without being detected; thus, the record may be "lost." Electronic recording users told us that the latest recording machines are very reliable and contain many safeguard features to ensure that proceedings are recorded properly and to identify equipment malfunctions. One court official said in the past 5 years she cannot recall one instance of equipment malfunction in the court's 75 courtrooms which resulted in testimony not being recorded. Another court official said he does not include equipment maintenance costs in his budget because the system has had so few equipment problems since it was installed in 1973.

Modern courtroom recording equipment has many safeguard features. For example:

--Recording machines scan the tapes and sound an alarm or stop if a tape has a previous recording on it.

--Dual cassette machines automatically switch over to a second cassette at the end of a tape (with an overlap) or if a malfunction occurs with the first tape.

--Recording machines signal if a microphone becomes defective or unplugged.

--Recording, transcribing, and duplicating machines do not have erase heads thereby preventing accidental erasure.

--Recording machines automatically adjust volume levels to ensure that both subdued and loud speech is clearly recorded without distortion.

In addition, recording monitors usually wear headphones and listen directly to the tape rather than the speakers. In this way, testimony not being recorded is detected immediately by the monitor who can stop the proceedings and take corrective action.

Portability

Electronic recording opponents contend that tape recorders are bulky and often immovable; unlike court reporters, electronic tape recorders cannot join the judge and counsel for conferences

in the judges' chambers. Users of electronic recording systems told us that various procedures may be used in these situations. Conferences in judges' chambers can be recorded electronically on courtroom recorders by merely bringing a microphone with a long cable into the chambers if they are adjacent to the courtroom; recorders can be placed in judges' chambers for these conferences; or courtroom cassette recorders can be carried easily into chambers or other noncourtroom locations.

Disruption of courtroom decorum

Electronic recording opponents claim that the sober atmosphere of the courtroom will be upset by turning it into a recording studio with the clerk acting as an audio engineer. Distrustful of new devices, counsel will be distracted when presenting his/her case. They say court participants will have to learn microphone orientation. Electronic recording users told us that attorneys become accustomed to using microphones through experience and do not consider electronic recording disruptive. A judge told us that jurors are sometimes more fascinated with a court reporter's notetaking activities than with the testimony. Court officials agreed that proper procedures are necessary to ensure that the record is properly recorded, but this does not disrupt court proceedings.

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In summary, we recognize that problems can and have occurred when electronic recording systems are used, but the judiciary can avoid these problems by (1) properly managing the electronic recording systems, (2) using the appropriate recording equipment, and (3) properly training its personnel.

CONCLUSIONS

Electronic recording systems can reduce the Government's costs of recording Federal judicial proceedings by about $10 million annually and potentially reduce the cost of transcripts to litigants while providing a better record of judicial proceedings and greater management flexibility and control.

Electronic recording systems can no longer be considered experimental as they have proven to be both efficient and cost effective in various court settings. Properly managed systems combined with the proper equipment, which is now available, produce high-quality recordings and contain many features to safeguard against operator and procedural error. In addition, those courts that use electronic recording systems to record judicial proceedings report that transcripts prepared from recorded tapes are accurate and timely, and considerable savings are being realized by using electronic recording systems.

Although we are convinced that the use of electronic recording in Federal district courts is feasible and would result in significant savings, we recognize that a wholesale move in this direction could be disruptive. Further, we recognize that because of the differing workloads and needs in district courts, some courts may be better suited to electronic recording than others. Therefore, we proposed, in our draft report sent to the various entities for comment, that the best approach would be to begin structured testing of electronic recording systems in Federal district courts. Subsequent to our receiving comments from the entities, Congress enacted legislation (Public Law 97-164, Apr. 2, 1982) requiring the Judicial Conference to experiment with different methods of recording court proceedings. Administrative Office officials told us that one of these methods will be electronic recording. We believe that an adequately structured test will confirm the feasibility of using electronic recording in Federal district courts and will help to abate the concerns of the Federal judiciary about making such a change. We further believe that, during the testing of electronic recording, the judiciary should establish specific transcription policies and procedures to be followed by the district courts. (See p. 40.)

BUDGETARY IMPACT OF FULL UTILIZATION OF ELECTRONIC RECORDING

We believe that full utilization of electronic recording systems in Federal district courts would improve service to the judiciary and litigants and also achieve budgetary savings. After the initial cost of $7 to $14 million, for the purchase and installation of equipment depending upon the vendor and type of equipment purchased, the judiciary can expect to save $10 million annually through electronic recording of judicial proceedings. Savings would be achieved in the areas of salaries and expenses for court reporters and contract reporters and storage space. The following table depicts the estimated budgetary savings.

Agency: Judiciary - Courts of Appeals, District Courts, and other Judicial Services

Appropriation: Salaries of Supporting Personnel (02-25) 10-0925

Budget Function/Subfunction: Federal Litigative and Judicial Activities (0752)

Cost item	Startup costs	Annual savings	Net first year	Annual savings after first year
	----------(millions)----------			
Personnel	-	$11.9	$11.9	$11.9
Contract reporters	-	0.6	0.6	0.6
Equipment				
non-recurring	$7 to $14	-	-$7 to $14	-
depreciation	-	-1.8	-1.8	-1.8
Supplies	-	-1.1	-1.1	-1.1
Space	-	0.9	0.9	0.9
Facilities modification/ amortization	-	-0.8	-0.8	-0.8
Travel	-	0.3	0.3	0.3
Total	$7 to 14	$10.0	(a)	$10.0

a/We estimate that the first year savings will cover the costs of new equipment, and annual savings of about $10 million will be realized beginning with the year after implementation.

AGENCY COMMENTS AND OUR EVALUATION

The Administrative Office of the U.S. Courts; the chief judges in four of the seven Federal district courts visited; the Chairman, Judicial Conference's Subcommittee on Supporting Personnel; and the U.S. Court Reporters Association commented on the use of electronic recording in judicial proceedings. The chief judge from the southern district of Ohio did not comment on the use of electronic recording. The chief judges from the judicial districts of western Washington and central California did not comment on a draft of this report. The comments received, ranged from agreement with our proposal to test electronic

recording in Federal judicial proceedings to total disagreement with the potential for the use and/or testing of electronic recording systems in the Federal judicial system.

General agreement with the proposal to test electronic recording

Four of the seven entities that commented on our proposal to test electronic recording systems in Federal district courts agreed generally with our proposal. However, each had somewhat different reservations about the benefits to be derived and the success of using electronic recording systems.

The Chairman, Judicial Conference's Subcommittee on Supporting Personnel said that he personally believes electronic sound recording should now be statutorily authorized as one possible method for maintaining an official record of court proceedings. He added that he does not believe that there is presently sufficient understanding of how well this system would work in the Federal courts for it to be imposed as the exclusive method within the next year or so. He said that he believes that until there has been a substantial and successful period of experimental use of electronic recording systems in Federal district courts it should be postponed. He concluded that while he fully endorses the concept of experimenting with any and all technologies, including electronic sound systems, he does not believe that the courts are ready to make a decision to scrap the present system of live reporting.

The Administrative Office said that systematic experiments should be undertaken to determine the full range of problems and/or advantages that would accrue by the use of electronic recording of proceedings in Federal district courts. It said that a number of judges have expressed an interest in determining the applicability of such technology. However, even though it accepted the concept of testing, the Administrative Office said that the cost savings would be significantly less than we predicted. The Administrative Office took issue with the fact that we believe that courtroom deputies could monitor the electronic equipment in order to produce an accurate and complete transcript. As a result of this exception, the Administrative Office believes there will be a need to hire 300 personnel specifically trained to operate the electronic machines and thus reduce our calculated annual cost savings from about $13 million to about $10 million. As a result of the Administrative Office's reservation, we recalculated our cost analysis and estimate that annual savings would be about $10 million. We continue to believe and the Administrative Office agrees that $10 million is still a significant cost savings. The Administrative Office concluded that even if electronic recording proved to be as advantageous to the courts as indicated, it does

not believe that new systems could be implemented overnight without wreaking havoc with individual courts. We agree that if it is decided that electronic recording is the way to go it should be phased-in considering the needs of each district.

The chief judge from the northern district of California said he supported the proposal for experimentation with electronic recording of court proceedings but emphasized that extensive and controlled experiments testing the impact of the process not only on the court but also on the bar, is needed. He also questioned the use of courtroom deputies as equipment monitors. As noted above we have revised our cost estimate; however, we believe that one part of the testing should be to find out whether courtroom deputies can handle such additional responsibilities or whether it would be necessary to hire staff to handle this function exclusively.

The chief judge from the southern district of New York said he agreed with the proposal for testing electronic recording systems in Federal district courts. He added that the relative merits and demerits of using electronic recording in district courts can be properly evaluated in connection with such testing. However, he added that the report is entirely lacking in objectivity and reveals the strongest bias and partisan approach. He said weight is given exclusively to testimonials in favor of electronic recording and mere lip service is given to contrary evidence and opinion. He said that electronic recording is not suitable for the needs of a busy Federal district court because of the intelligence and expertise of qualified live reporters. However, he concluded by saying that he endorsed the proposal for testing electronic recording in the Federal courts.

Disagreement with proposal to test and use electronic recording in Federal courts

Two chief judges (northern district of Illinois and southern district of Texas) and the Court Reporters Association strongly opposed using electronic recording systems in the Federal district courts. The chief judge from the northern district of Illinois said that he recognized that there are arguments to be made in favor of electronic recording, but after studying the situation, it was his conclusion that the disadvantages outweigh the advantages. However, he did not elaborate.

The chief judge from the southern district of Texas said that our proposal is absolutely unacceptable insofar as he was concerned. He said that one of the defects in our proposal lies in the fact that all reporting of judicial proceedings does not take place in the courtroom. We recognize that all judicial proceedings do not take place in the courtroom. We discussed how electronic recording can be used in these situations on page 43 of the report. In addition, an Alaska State Court judge who

has been on the bench in that court system since it began using electronic recording systems over 20 years ago told us he has had no problems using electronic recording to record noncourtroom activities such as in-chamber conferences and conference calls. He said he uses a spare recording system or a courtroom system with a long microphone cable to record proceedings. For conference calls he uses speaker phones on his telephone and has had these proceedings satisfactorily recorded by the electronic recording system.

The chief judge from the southern district of Texas also said that our cost estimates are nothing but raw estimates, and the underlying data in the report to support the cost savings are critically flawed. We recognize that our cost savings figures are based on estimates; however, we do not consider our figures as "raw estimates," nor do we believe they are "critically flawed." To ensure that our estimates were accurate and reasonable we

- --used the most recent electronic recording system equipment prices available;
- --verified the reasonableness of our system and cost assumptions with equipment vendors, officials of the Administrative Office and courts which were using electronic recording systems, and private electronic recording transcribing firms;
- --estimated the cost of system components on the basis of analyses performed by several court systems which use electronic recording and on cost comparisons made by the National Center for State Courts; and
- --selected the highest cost when several system configurations existed, thereby making our total cost savings estimate conservative. (See app. I, page 54.)

The Court Reporters Association expressed the strongest opposition to the use of electronic recording systems in Federal district courts. It expressed a variety of views and opposition explaining why electronic recording systems will not work in Federal courts. However, in its final analysis, it concluded that if Congress in its wisdom should decide that electronic recording machines have some place in the Federal district courts, then it would concur with our proposal to test the use of electronic recording in the Federal district courts. The Association added that if such testing does take place, it would like to be consulted in the implementation of any testing and also have an official role in the evaluation of the test results before a report is submitted to the Congress. We believe this latter point is a policy decision to be made by the Federal Judiciary. However, a test of electronic recording systems would likely require

a dual system to be used (court reporters/electronic recordings) so as not to hamper either judicial or test proceedings.

A detailed discussion of the points raised by the Court Reporters Association follows.

Electronic recording test

The Association questioned why a "proven" alternative should be tested. We believe electronic recording has been proven to be successful in many court settings, unfortunately, it has not yet been proven or accepted in Federal district courts. Therefore, we proposed that the judiciary begin a structured test of electronic recording systems in Federal district courts. In addition, as noted on page 45, the Congress recently enacted legislation that requires the judiciary to experiment with different methods of recording court proceedings. Administrative Office officials told us that one of these methods will be electronic recording. We believe that an adequately structured test will demonstrate the advantages that can be derived from the use of electronic recording systems.

Dissatisfaction with electronic recording systems

The Association attempted to refute our position that electronic recording systems will work in Federal district courts by presenting the views of a variety of individuals in the locations we visited who were dissatisfied with electronic recording systems. The Association implied that electronic recording systems in these courts were not adequately satisfying the courts' reporting needs. We do not believe that these views represent the majority view of the users of electronic recording in these courts. In the courts we visited which use electronic recording, we talked to court officials responsible for the operations and management of electronic recording systems, primarily court administrators and judicial officers. These officials told us that their electronic recording systems were providing satisfactory court reporting services. The Association, for example, referred to comments of two parties in Alaska, a judge and a private attorney, who expressed dissatisfaction with the State's electronic recording systems. However, we found that the majority of users preferred electronic recording over stenographic methods. (See p. 29.) Also, the Association referred to letters from attorneys which indicated that Montreal, Canada, was changing its policy on the use of electronic recording systems. We contacted Canadian officials in January 1982, and they told us that the court does not intend to change its court reporting system.

The Association said that not once did our report provide views of dissatisfaction by anyone with electronic recording. We disagree. On page 36 of this report we pointed out that some

electronic recording system users we contacted were not totally satisfied with this alternative. Additionally, starting on page 41, we discussed in detail the major problem areas expressed by opponents of this method of court reporting. We believe these sections provide sufficient recognition of the existence and views of opponents to electronic recording systems in judicial proceedings.

Dissimilarities between State/ local and Federal courts

The Association cited a variety of letters and said that the courts we visited which were using electronic recording systems were hardly similar to a Federal district court setting. We recognize that the courts we visited or contacted are not identical in all respects to Federal district courts. However, they are similar with regard to the number and type of trial participants, and we believe this is an important and relevant basis of comparison. In any event, recognition of dissimilarities prompted our proposal for testing prior to a decision on general deployment of electronic recording systems.

Comparing court reporter transcripts to electronic recordings

The Association said we did not compare any electronic tapes with transcripts produced from such tapes. Early in our review, we did indicate to the Association that we would probably not make such a comparison. However, subsequently we compared several tapes and transcripts of actual proceedings and found no problems. Our comparisons were limited because we did not believe this procedure would have provided a valid indication of the quality of transcripts that could be produced by properly managed electronic recording systems in Federal courts. In this regard, as mentioned previously, the overwhelming majority of electronic recording users we talked to said they are satisfied with the accuracy of transcripts. We believe this is sufficient evidence to support our conclusions. Furthermore, we believe the existence of a method to verify transcript accuracy, i.e. the tapes, is a significant advantage of electronic recording over stenographic methods. On pages 33 and 35, we discussed the problems that can occur when verification capability is not available. When electronic recording systems are used, the quality of transcripts can be controlled through the use of the proper equipment, personnel, and procedures. Finally, it should be noted that checks on transcript accuracy are not even possible when stenographic methods are used.

Producing transcripts

The Association contended that allowing transcripts to be prepared on the open market would result in loss of control over

transcript quality and the possibility of excessive, exorbitant charges. We do not believe this position has merit. Furthermore, the matter of excessive charges--now made by some court reporters--is a major problem that the use of electronic recording could help to alleviate. On page 40 we suggested several policies the judiciary can use to control transcript quality. We believe the court's possession of the original tapes is the largest and most important control factor as the tapes can be used as a verification measure whenever a question arises as to the accuracy of a transcript. Courts using stenographic methods do not have this capability.

With regard to transcript fees, we believe that competitive market forces will tend to keep transcript charges at the lowest reasonable level as we discussed on pages 39 and 40. The Association fails to mention the monopoly that exists under the present system whereas an open competitive market would exist under electronic recording.

The Association also contends that there are not enough skilled transcribers available to transcribe electronic recordings. We believe that the availability of skilled transcribers which could prepare transcripts from electronic recording is larger than the Association implies. The use of electronic recording rather than court reporters will not increase the volume of transcripts needed, and therefore, the transcribers who currently transcribe for court reporters would be available to transcribe from electronic recording. They already know transcription formatting, legal terminologies, and grammatical requirements to produce judicial transcripts. Additionally, as we discussed on pages 39 and 40, litigants can use tapes in lieu of transcripts and this will reduce the volume of transcript demand which will in turn reduce the demand for transcribers.

Defining complex terminology

The Association said that electronic recording systems would not be able to adequately handle the complex terminology and issues which may be involved in Federal district courts resulting in an immense potential for disasters and retrials. We agree that Federal district court proceedings may involve more complex terminology and issues than the courts we reviewed which use electronic recording. However, we believe, as we discussed on pages 40 to 44, the judiciary can minimize the potential for disaster by properly designing and managing its electronic recording systems. The judiciary should train the electronic recording monitor to prepare complete and accurate log notes which should include the spelling of complex terms used. The monitors may have to ask the witnesses for the proper spelling of certain words in some cases just as court reporters do now.

Additionally, the judiciary should establish transcriber certification standards that must be met before transcribers would be certified and allowed to prepare transcripts. We believe many qualified transcribers are currently available such as those now used by Federal court reporters. Therefore, the judiciary would not need to find and train an entirely new force of transcribers.

Furthermore, electronic recording systems provide a built-in safeguard for situations where complex terminology is involved. The judiciary would have the original tapes which could be used to verify the accuracy of the transcripts. Whenever a spelling problem occurs, knowledgeable officials could listen to the tapes to identify the words in question.

APPENDIX I

ANALYSIS OF COSTS TO RECORD FEDERAL JUDICIAL PROCEEDINGS USING ELECTRONIC RECORDING SYSTEMS VERSUS COURT REPORTERS

To determine the potential cost savings of using electronic recording systems rather than court reporters to record the proceedings before district court judges and magistrates we (1) developed a model electronic recording system which we believe would adequately satisfy the judiciary's court reporting needs, (2) calculated the systemwide costs of our proposed system using four different vendors and types of recording equipment, and (3) compared our estimates to the actual costs incurred by the judiciary in calendar year 1980 to record judicial proceedings using full-time, per diem, and contract court reporters.

This analysis pertains only to the Government's costs of recording proceedings and not to the costs of transcripts which litigants will be required to pay. Further, we did not estimate the management costs associated with properly managing each court system. We believe such costs would be about the same regardless of which recording method is used and, therefore, would not substantially affect our cost savings estimates.

Briefly stated, the proposed district court electronic recording system includes

--multitrack courtroom recording equipment (i.e., a recorder, microphones and stands, and all necessary wiring and accessories) semipermanently installed in each district judge's, senior judge's, and magistrate's courtroom;

--spare recording equipment and accessories;

--tape duplicating equipment for making copies of recorded tapes;

--recording monitors to operate and monitor the recording equipment in the courtroom and make log notes to identify events and speakers, to duplicate tapes, coordinate recording equipment requirements, and perform minor equipment maintenance;

--space to store tapes; and

--acoustical modification of courtrooms to ensure proper recording.

The following sections present the results of our cost analysis and explain the assumptions and the bases of our calculations.

Costs of Recording Proceedings in U.S. District Courts (including magistrate proceedings) During Calendar Year 1980

Item	Costs
Court reporters' salaries and benefits	$15,973,774
Contract court reporters	619,285
Reporters' office space	1,423,091
Reporters' travel	332,775
Total	$18,348,925

Reporters' salaries and benefits

In calendar year 1980 the judiciary spent $14,458,557 for direct salaries of official and temporary court reporters. The Administrative Office did not have actual figures for reporters' benefits (life and health insurance) and retirement credits, but the Administrative Office estimates these benefits to be 9.5 percent of the direct salaries, or $1,373,563. Additionally, in calendar year 1980, the judiciary spent $141,654 for compensation to per diem court reporters.

Contract court reporters' costs

Administrative Office statistics show that in calendar year 1980 the judiciary spent the following for contract court reporting services for district court judges, senior judges, and magistrates.

Contract reporting services	Costs
Judges (active and senior)	$386,782
Magistrates	232,503
Total	$619,285

Office space costs

According to available Administrative Office statistics, in calendar year 1980, 399 of the 523 court reporters on duty as of June 30,1980, occupied 147,767 square feet of Government

office space costing $1,264,061, for an average cost of $8.55 per square foot. An Administrative Office official told us the 124 remaining court reporters (523 less 399) for which office space costs were not computed occupied about 140 to 160 square feet of office space each. On the basis of this information, we estimated the total office space costs by assuming the 124 court reporters averaged 150 square feet each and the cost per square foot for these reporters would be similar to that for which actual cost data was available. Accordingly, we calculated total court reporter office space costs as follows.

Office space costs for 399 court reporters	$1,264,061
Office space costs for 124 court reporters (124 x 150 sq. ft. = 18,600) (18,600 sq. ft. x $8.55)	159,030
Total office space costs for 523 court reporters	$1,423,091

Travel costs

An Administrative Office official told us that official court reporters were reimbursed $332,775 for travel expenses in fiscal year 1980 and that this data was not readily available on a calendar year basis. Therefore, we used fiscal year rather than calendar year data for this cost element. An Administrative Office official agreed that this was a reasonable approach.

Estimated Initial Outlay Costs For Purchasing And Installing Electronic Recording Systems

Item	Costs
Courtroom recording equipment	$ 5,453,000
Spare recording systems	1,358,000
Tape duplicators	3,686,000
Facilities acoustical modification	3,803,760
Total	$14,300,760

Courtroom recording equipment

This cost category includes the purchase and installation of recording equipment in courtrooms and is based on the following.

One courtroom recording system consisting of one Brand A, 8-track, reel-to-reel recorder/transcriber unit; eight microphones with stands and cables; and all other necessary accessories and equipment such as headsets. Microphones would be placed in the courtrooms at up to eight locations as follows: (1) judge's bench; (2) witness stand; (3) prosecution table; (4) defense table; (5) podium; (6) jury box; (7) courtroom deputy; and (8) a spare. The cost per courtroom recording system is $7,000 installed and is based on a vendor's price quoted to us on June 1, 1981.

One courtroom recording system would be semipermanently installed in every courtroom in every city where a district court judge or magistrate is permanently assigned (primary court location). According to a 1980 Administrative Office space utilization survey, there are 779 courtrooms nationwide. Therefore, total courtroom recording system costs would be $5,453,000 ($7,000 x 779), including installation costs.

We selected Brand A type of equipment for our cost estimates because it is the most expensive courtroom equipment available, thereby making our cost savings estimates as "conservative" as possible. We are not implying that this is the most sophisticated or highest quality equipment available nor are we recommending that the judiciary purchase this type of equipment. Other types and brands of courtroom electronic recording equipment are available, and we calculated the costs and savings of these in appendix II.

Spare recording equipment

One complete spare recording system would be provided for every 10 primary courtroom recording systems at each primary court location, with a minimum of one spare system for each location. We analyzed Administrative Office courtroom data for each primary court location and determined that 194 spare systems would be required at a total cost of $1,358,000 ($7,000 x 194).

These spare units are for backup purposes and would be used as portable units for recording proceedings at court locations where no judicial officer is permanently assigned. Thus, when a judicial officer travels to one of these locations a spare system would be taken along, and the recording system in the courtroom at this judge's primary court location would then serve as the backup for other judicial officers at the primary court location. These spare units would also be used for: recording noncourtroom proceedings such as in-chambers conferences; for limited transcription purposes such as for arraignments, pleas, and sentencings; and for use by judicial officers or others for listening to tapes. The allocation method is based on (1) vendor's recommendations, (2) discussions with electronic recording system users who told us that our estimate of the need for spare systems

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is reasonable, and (3) our analysis of the number of active judicial officers at each court location.

We used Administrative Office court data to determine the locations of court facilities and the number of active judges at each court location. We believe this number of spare systems (194 units) is sufficient. This determination was based on Administrative Office data which showed that primary recording systems would be in use only 60 percent of the time. Also, some courts we contacted that use electronic recording have no spare systems because of the high reliability of the equipment.

Tape duplicators

One hundred and ninety-four Brand A reel-to-reel, high-speed tape duplicators at $10,000 each and 194 Brand A reel-to-cassette duplicators at $9,000 each (vendor's price quote as of June 1, 1981) would be required. This equipment would be allocated to the primary court locations on the same basis used for spare recording systems. We believe this is reasonable on the basis of discussions with vendors and electronic recording system users. The Montreal courts, for example, use one tape duplicator for 90 recording systems.

Total cost of tape duplicators was calculated as follows:

194 reel-to-reel duplicators at $10,000	$1,940,000
194 reel-to-cassette duplicators at $9,000	1,746,000
Total	$3,686,000

Tape duplicators would be available in each primary court location to make copies of tapes for transcription or other purposes. Original tapes would constitute the master or official court record and, as such, would always remain in the court's possession. Tape duplicators are machines which reproduce recorded tapes at very high speeds and come in several configurations. For example, tape duplicators can (1) make exact copies of reel-to-reel tapes or cassettes (i.e., 8-track reels to 8-track reels, or 4-track cassettes to 4-track cassettes); or, (2) make up to three copies simultaneously from 8-track reels or 4-track cassettes. These duplicators, which do not have erase heads so that tapes cannot accidentally be erased, are necessary for providing copies of tapes to transcribers or litigants. By always using tape duplicates rather than originals for these purposes, the risks of loss or accidental erasure are significantly reduced.

Facilities acoustical modifications

This cost element represents the total cost of installing carpeting in every district judge's and magistrate's courtroom at all court locations (primary and other). From our analysis of Administrative Office data 190,188 square yards of carpeting are needed. This would cost about $20 per square yard for carpet and installation, on the basis of Administrative Office estimates. The total cost of installed carpeting is $3,803,760 (190,188 x $20).

On the basis of discussions with two equipment vendors and court administration officials in five States where the courts use electronic recording systems, installing carpeting is sufficient acoustical treatment of courtrooms to ensure proper recording of proceedings, even in large courtrooms with high ceilings. Other acoustical modifications, such as acoustical ceiling or wall tiles or lowered ceilings, are not essential to ensure proper recording of proceedings when multitrack (4- or 8-track) recording equipment and the proper courtroom procedures are used.

This estimate for acoustical modifications costs may be overstated because (1) some district and magistrate courtrooms are already carpeted according to Administrative Office officials and (2) the electronic recording users referred to above told us they have not carpeted all their courtrooms, especially the smaller ones, and they have experienced no difficulty obtaining quality recordings in these courtrooms.

Estimated Annual Operating Costs
For Electronic Recording Systems

Item	Annual cost
Personnel	$4,047,780
Office space	263,700
Equipment depreciation	1,499,571
Equipment maintenance	340,250
Recording supplies	1,073,600
Tape storage space	229,859
Facilities modification amortization	760,752
Total annual cost	$8,215,512

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Personnel

This represents the total salaries and benefits of 300 (level 4,5, and 6) electronic recorder operators to provide service to active judicial officials. This figure is based on comments made by the Administrative Office on the draft report, as to the number of employees that would be needed to handle electronic recording for the district courts. (See p. 73.)

Level-five employee's annual salary	$ 12,266
Estimated number of employees	x 300
Total annual salaries	$3,679,800
Benefits (10 percent of annual salaries)	367,980
Total	$4,047,780

Salaries are based on Federal pay scales, and benefits include sick and annual leave, life and health insurance, and retirement credits. The level of benefits (10 percent) was based on the Administrative Office's estimate. However, if a 26 percent factor was used, which is the figure used by the Office of Management and Budget as a cost of benefits, then the cost for this item would be increased by $588,768. As a result, the overall system savings would be reduced by the same amount. These employees would be responsible for: operating recording equipment and taking log notes, duplicating and filing tapes and log notes, coordinating recording equipment requirements, maintaining records on equipment inventory, making arrangements for listening to tapes and tape sales, monitoring and ordering tape supplies, performing minor equipment maintenance (cleaning tape deck heads, etc.), and arranging for transcription services required by the courts.

Office space

This cost element represents the total annual cost of office space needed for the 300 electronic recording monitors. On the basis of an Administrative Office estimate,

Square feet of office space per clerk's office employee	100
Number of employees	x 300
Total square feet of office space required	30,000
Annual cost per square foot (on the basis of Administrative Office data)	x $8.79
Total	$263,700

Equipment depreciation

All recording and duplicating equipment was depreciated on a straight-line basis over 7 years, and is based on (1) vendor's estimates and (2) experience of users of this type of equipment.

Courtroom recording systems	$ 5,453,000
Spare recording systems	1,358,000
Tape duplicators	3,686,000
Total equipment costs	$10,497,000
Divided by depreciation period (7 years)	7
Total annual equipment depreciation	$ 1,499,571

Equipment maintenance

Service and maintenance of all equipment is estimated at $250 per machine per year calculated as follows, on the basis of experience of users of electronic recording systems.

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Machine	Number needed
Primary recorders	779
Spare recorders	194
Reel-to-reel duplicators	194
Reel-to-cassette duplicators	194
Total machines needed	1,361
Estimated annual maintenance costs per machine	x 250
Total annual maintenance costs	$340,250

Recording supplies

This cost element includes the cost of recording tape used to record proceedings and other recording supplies such as forms for log notes. Three hours of proceedings can be recorded on each 1,800-foot reel-to-reel tape.

According to Administrative Office statistics in calendar year 1980, official court reporters and substitutes recorded 357,295 hours of official district and magistrate court proceedings. Contract and per diem reporters also recorded proceedings for district judges and magistrates during calendar year 1980. However, the Administrative Office does not keep records on the number of hours recorded by these reporters, only the number of days. Therefore, we assumed these contract and per diem reporters recorded proceedings for 8 hours per day. Our estimate of the total number of hours recorded by these reporters follows.

Contract reporter days	7,343
Per diem reporter days	1,675
Total days	9,018
Estimated hours recorded per day	x 8
Total hours recorded	72,144

The calculation of the total number of proceeding hours recorded in calendar year 1980 follows.

Hours recorded during calendar year 1980 by	
Official and temporary reporters	357,295
Contract and per diem reporters	72,144
Total hours recorded	429,439

The number of hours recorded on each 3-hour tape can vary depending on the management policies established. For example, on the one hand, 3 hours of proceedings can be recorded on each tape regardless of the number of cases recorded on each tape, so that all tapes contain 3 hours of recordings, or, each individual proceeding, regardless of length can be recorded on a separate tape which may result in a 3-hour tape containing only 30 minutes of recording. For cost estimation purposes we assumed the judiciary will establish procedures to economize on the use of tapes, so that on the average, 2 hours of proceedings will be recorded on each 3-hour tape. Accordingly, we calculated the number of tapes needed per year as follows.

Hours of proceedings recorded in calendar year 1980	429,439
Divided by hours recorded on each tape	2
Total	214,720

According to electronic recording users who use reel-to-reel recorders, a 1,800-foot, 3-hour tape costs about $2.50. Therefore, the total annual cost of recording tapes is $536,800 (214,720 x $2.50). Cost information was not readily available for other supplies related to recording proceedings, such as forms used for log notes, pencils, etc.; therefore, we estimate this cost to be equivalent to the annual costs of the recording tapes; that is, $536,800. This would amount to about $1.25 per proceeding hour recorded ($536,800 divided by 429,439). The total annual recording supplies cost is therefore $1,073,600 ($536,800 x 2).

Tape storage space

This cost is for storing tapes containing recordings of official proceedings. We assumed that the space needed for this purpose will not exceed the storage space the Administrative Office has allocated to each official court reporter, 50 square feet per reporter. According to Administrative Office data and our calculations, the annual cost of tape storage space would be:

Number of official reporters	523
Square feet per reporter	x 50
Total square feet	26,150
Annual cost per square foot	x $8.79
Total annual tape storage space cost	$229,859

The $8.79 cost per square foot is based on the figure used by the Administrative Office for budget purposes in 1980.

Facilities modification amortization

This cost represents the total carpeting costs amortized over 5 years ($3,803,760 divided by 5) or $760,752 annually. The cost is based on discussions with a carpet vendor who supplies carpeting to the Federal judiciary and who told us his firm provides a 5-year carpet warranty.

COMPARISON OF INITIAL OUTLAY, ANNUAL OPERATING COSTS, AND ANNUAL COST SAVINGS USING VARIOUS BRANDS OF COURTROOM ELECTRONIC RECORDING EQUIPMENT

Several brands of courtroom recording equipment were available at the time of our review and the following shows the total initial outlay, annual operating costs, and annual cost savings the judiciary would incur by using various brands of recording equipment. Except as noted, all calculations and assumptions are identical to those used in appendix I.

Estimated Initial Outlay Costs For Purchasing And Installing Electronic Recording Systems

Item	Vendor A (note a)	B (note b)	C (note c)	D (note d)
Courtroom recording equipment	$ 5,453,000	$3,505,500	$1,857,136	$2,397,762
Spare recording systems	1,358,000	873,000	462,496	597,132
Tape duplicators	3,686,000	1,119,380	848,750	675,702
Acoustical modification	3,803,760	3,803,760	3,803,760	3,803,760
Total	$14,300,760	$9,301,640	$6,972,142	$7,474,356

a/See appendix I for equipment unit price information.

b/One 4-track, dual cassette recorder with four microphones and stands and necessary wiring, $4,500 installed. One 4-track cassette to 4-track cassette high-speed tape duplicator, $2,780. One 4-track cassette to single-track cassette high-speed duplicator, $2,990.

c/One 4-track, dual cassette recorder with four microphones and stands, and necessary wiring, $2,384 installed. One 4-track cassette to single-track cassette high-speed duplicator, $1,595. This vendor does not make a 4-track cassette to 4-track cassette high-speed tape duplicators; therefore we used the unit price for Vendor B equipment ($2,780) in our cost calculations.

d/This vendor does not manufacture a dual cassette recording machine, so to achieve the same capability, two 4-track, single cassette recorders are used and are connected by an automatic transfer unit. Cost of one complete recording system with four microphones and stands, necessary wiring, foot pedal control, and headset, $3,078 installed. This vendor makes a high-speed tape duplicator which reproduces either 1-, 2-, or 4-track cassette copies from an original 4-track cassette. Cost per duplicator, $3,483. Due to this capability, which the other vendors' equipment does not have, only one duplicator is needed for each primary court location.

Estimated Annual Operating Costs For Electronic Recording Systems

Item	Vendor A	Vendor B	Vendor C	Vendor D
Personnel	$4,047,780	$4,047,780	$4,047,780	$4,047,780
Office space	263,700	263,700	263,700	263,700
Equipment depreciation	1,499,571	785,411	452,626	524,371
Equipment maintenance	340,250	340,250	340,250	340,250
Recording supplies	1,073,600	a/1,252,531	a/1,252,531	a/1,252,531
Tape storage space	229,859	229,859	229,859	229,859
Acoustical modification amortization	760,752	760,752	760,752	760,752
Total	$8,215,512	$7,679,283	$7,347,498	$7,419,243

a/Cost of recording tape and other supplies using good quality, 60-minute cassettes, calculated as follows:

Total proceedings hours recorded in calendar year 1980		429,439
Allowance for partially recorded tapes (one-third of total hours recorded)	+	143,146
Total number of 60-minute cassettes needed		572,585
Cost per 60-minute cassette	x $	1.25
Total annual tape costs		$715,731
Total annual costs of other recording supplies (See app. I for calculations)	+	536,800
Total		$1,252,531

Annual Cost Savings Using Electronic Recording Versus Court Reporters

	Vendor			
	A	B	C	D
1980 cost of using court reporters	$18,348,925	$18,348,925	$18,348,925	$18,348,925
Annual electronic recording operating costs	8,215,512	7,679,283	7,347,498	7,419,243
Total savings	$10,133,413	$10,669,642	$11,001,427	$10,929,682

APPENDIX III

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

LEVIN H. CAMPBELL
CIRCUIT JUDGE

BOSTON, MASS. 02109

November 30, 1981

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I am responding to your request for my comments on your proposed report entitled "Court Reporting Procedures in the Federal Judiciary Can Be Improved."

I have already seen the proposed comments of the Director of the Administrative Office of the United States Courts. So as to avoid needless duplication, may I say that I concur generally in Mr. Foley's comments. I have only two additional remarks to make.

First, I would reiterate that the courts, the Judicial Conference and its relevant committees are very much aware of your findings, and are in the process of examining and discussing various administrative changes similar, in some instances, to those you recommend. I and other judges with responsibilities similar to mine have been strongly urging action to guard against future abuses, and the Administrative Office and the judges of a large number of courts are already in process of improving the present system.

Second, while I personally feel that electronic sound recording should now be statutorily authorized as one possible method for maintaining an official record of court proceedings, I do not feel that there is presently sufficient understanding of how well this system would work in the federal courts for it to be imposed as the exclusive method within the next year or so. I feel very strongly that consideration of adopting electronic sound recording on a wholesale basis should be postponed until there has been a substantial and successful period of experimental use in those federal district courts where the judges voluntarily elect to try out electronic sound recording.

The maintenance of a record of proceedings in a trial court is absolutely essential to the working of our judiciary. There can be no meaningful right of appellate review without an accurate trial record. Our aim, therefore, must not be just to report court

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proceedings in the cheapest possible way but to do so in the way best calculated to advance the administration of justice. Electronic sound recording may eventually prove to be such a method. But if the present system of recording court proceedings were to be replaced by a markedly inferior system, the financial savings would be vastly outweighed by the devaluation of our system of justice.

Thus while I fully endorse the concept of experimenting with any and all technologies, including electronic sound systems, I do not believe that we are ready to make a decision to scrap the present system of live reporting. That decision can only be made, if it ever is made, after considerable experimentation in the federal courts; and it is a decision in which the judiciary itself should be very much involved since we are best situated to assess the qualitative aspects of competing systems.

I appreciate this opportunity to comment.

Sincerely,

Levin H. Campbell

Levin H. Campbell
Chairman, Subcommittee on
Supporting Personnel

APPENDIX IV

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

December 2, 1981

Mr. William J. Anderson, Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

Thank you for the draft of your proposed report entitled "Court Reporting Procedures in the Federal Judiciary Can Be Improved," and the opportunity to comment.

The report highlights a series of important issues with which the Judicial Conference, Administrative Office and many judicial officers have been concerned for some time. As noted in the report, the Judicial Conference adopted policies designed to effectuate better utilization of reporters before GAO's review began. Those policies, when fully implemented, should eliminate problems of under utilization of reporters and inequitable workload distributions; use of substitutes; and unfair marketplace competition because of the overly generous free space from which private businesses have been conducted; as well as obviate abuses of transcript fees. Given the recently enhanced role of the Circuit Councils, I am hopeful that these reforms now can be implemented more quickly. In a sense, your findings will act as an educational catalyst because they describe many situations heretofore unknown to most on the federal bench.

I would like to comment on three major areas addressed in your report: (1) the results of GAO's investigations (2) GAO's proposed short-term administrative procedures and (3) GAO's long-term solution.

1. **Results of GAO's investigation.** The systematic abuses mentioned, though existing in some minor form or other since the Court Reporters Act was passed in 1944, seem to have risen significantly in the last few years as the courts have grown significantly in size and become busier, more complex institutions. Whereas only a few years ago judges may have been able to supervise better their reporters even in the larger courts, today as demonstrated in your report most judges do not have the time to be active supervisors, familiar with a series of complex rules and regulations. It was for those reasons that the Conference began focusing on those problems and began guiding the individual courts into pooling arrangements.

I do have a problem, however, in accepting the report's criticisms as a blanket indictment of all the reporters in the federal service. Court is held on a full-time basis in over 189 cities throughout the country. I am disturbed that a selection of seven sites is construed as representative of all these courts when not even one of the seven sites surveyed was typical of 76% of these courts. One hundred forty-three places of holding court have only four or fewer resident

APPENDIX IV

judicial officers (active judges and/or senior judges, full-time magistrates). None of those was surveyed. Yet five of the seven sites surveyed represent the 22 largest federal courts—or only 12% of the federal system.

To the extent that supervisory procedures and policies leading to the problems outlined may be different in the large and small courts, I believe the report should reflect that distinction. When I circulated a copy of your testimony before Senator Dole's Subcommittee on the Courts, many judges from the smallest courts not surveyed commented that these problems simply do not occur in their jurisdictions. If the report is seen as biased because it is unrepresentative, it serves less well as an educational tool.

Whatever the faults uncovered in the present system, it should not be forgotten that almost two million pages of accurate transcript are produced in a timely fashion by many, many hardworking individuals who receive little public credit for their efforts in the judicial process. We must be careful that our administrative reforms promote efficiency and effectiveness in the public arena, making genuine improvements, rather than retrogressing.

2. **GAO's Proposed Short-term Administrative Procedures**

The Clerk of Court within each district be assigned responsibility for managing the district's official court reporters...

There are significant divergencies of opinion about how best to supervise court reporters. Several major courts have pooled their reporters and have appointed the Clerk of Court as supervisor. Some courts believe that reporters should be treated as judge "elbow staff," however, and supervised directly by their judge. In an administratively decentralized system such as that of the federal courts, a monolithic, intractable management grid does not necessarily produce the most effective and efficient results. We can accommodate differing management systems as long as the end result is an honest, efficient and effective reporter service in the court.

3. **GAO's Long-term Solution - Electronic Recording**

The Judicial Conference twice has recommended that Congress permit electronic reporting as the exclusive means of taking the record if a court so desired. Congress opposed those initiatives. Presently there is another bill pending in the Senate which would allow the courts, on a voluntary basis, to benefit from any advantages there might be from electronic sound recording or other technological breakthroughs that in the judgment of the Judicial Conference would provide an accurate record.

I agree with the GAO that systematic experiments should be undertaken to determine the full range of problems and/or advantages that would accrue by the use of electronic recording of proceedings in federal courts. A number of judges, including one from an audited site, have expressed an interest in determining the

applicability of technology. I have directed my staff to undertake scientifically valid experiments. The Administrative office has been experimenting in one Bankruptcy Court since July, 1981.

However, even if technology should prove to be a viable alternative to the present system, I project the cost savings to be signficantly less than those of the GAO report. It is fairly evident to everybody that the machines need an operator/logger in order to produce an accurate record and a complete transcript. While the report indicates that this function can be performed by the courtroom deputy, this analysis is not valid. In fact, in accord with modern court management practices many courtroom deputies are not in the courtroom full time—some never are in the courtroom. Many are involved with implementing better caseload management as suggested in GAO's report of February 24, 1981.

Because personnel would need to be hired specifically to operate the machines and make logs, the real cost savings would be approximately $10,000,000, not the report's estimated $13,500,000. Our projections are based on the need for about 300 electronic recorder operators to provide service to active judges, senior judges and magistrates, who would be paid at the JSP 4-5-6 range. Those 300 operators could also perform the tasks of the 62 new employees identified as necessary in the GAO report. I must stress that even the actual costs cannot be determined until we have gathered data from our experiments. *

While such potential savings are still significant, even if electronic recording were to prove to be as advantageous to the courts as indicated, I do not believe that new systems could be implemented overnight without wreaking havoc with our individual courts. I must reiterate that electronic sound recording has not been proved to be satisfactory in all instances where a record need be taken of federal court proceedings. The primariness of the record is undisputed in our legal system. I believe that the district and appellate judges themselves should review the results of the experiments to decide under what circumstances electronic recording may serve the courts adequately. If they determine that electronic sound recording is acceptable, any phase in would need to be carefully planned and coordinated fully with local judges and other court personnel to avoid complete confusion in the federal judicial system. In short, I believe that only the Judicial Conference should determine how official records are taken in federal courts.

Again, I appreciate the opportunity to comment on the draft report.

Sincerely,

William E. Foley
Director

*GAO Note: Our total cost estimate has been revised to recognize the need to hire individuals to monitor the electronic recording equipment rather than using courtroom deputies.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
HOUSTON, TEXAS 77002

CHAMBERS OF
JOHN V. SINGLETON
CHIEF JUDGE

November 30, 1981

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, DC 20548

Dear Mr. Anderson:

I have reviewed the draft of the proposed report to the Congress relating to court reporting procedures in the federal judiciary. I respectfully submit the following observations and comments.

(1) Generally speaking, it is my considered opinion that this is not an appropriate undertaking of the General Accounting Office. I express this opinion because the reporting of judicial proceedings is a function of the federal judicial system. Any recommendations relating to improvements or changes should be submitted to the Congress, if necessary, by the Judicial Conference of the United States after the subject has been explored by the appropriate committee of the Judicial Conference. Certainly, the General Accounting Office does not have the necessary background or experience to evaluate the reporting of judicial proceedings.

(2) The proposed recommendation of the General Accounting Office concerning electronic recordings is absolutely unacceptable insofar as I am concerned. I believe that I express the views of most, if not all, of the federal trial judges. One of the defects in this recommendation lies in the fact that all reporting of judicial proceedings does not take place in the courtroom. Many important judicial proceedings are conducted before the trial of the case is held and are conducted in chambers, conference rooms, and places other than the courtroom. Further, many times pretrial matters are handled through conference calls which have to be reported and any sort of electronic recording device would be unworkable in such situations. Also, the federal courts, particularly in metropolitan areas, have multiparty (which necessarily means multi-counsel) trials and no electronic recording device that is presently available would be sufficient for that purpose. Also, any electronic recording device would have to be monitored. Your report indicates such monitoring could be accomplished by the courtroom deputy clerk. I can assure you that such would not be practical in most trials. Consequently, a trained person would have to be present to monitor any electronic

recording system. Such person would have to have sufficient expertise, so that the salary would certainly be somewhere near the salary presently paid court reporters. All in all, the recommendation of the General Accounting Office that electronic recording devices be used in court proceedings is, in my view, unworkable and unwarranted. Your estimates of cost savings are nothing but raw estimates, and the underlying data in the report to support cost savings is critically flawed.*

(3) It is a fact of judicial life that trial judges, at least in Texas, have become accustomed to a one-judge/one-court reporter system. This, I am rather certain, is not the most efficient procedure in a multi-judge court. Accordingly, efforts have been made in most metropolitan federal courts to improve this procedure by some form of pooling. The judges in the Houston Division of the Southern District of Texas have adopted a plan (a copy of which is attached) and our experience to date has been satisfactory. Therefore, I support that part of the recommendation of the General Accounting Office that some sort of pooling system be adopted by each multijudge court.

(4) Finally, I feel compelled to comment upon the audit conducted in Houston by the staff of the General Accounting Office. I have come to the conclusion that the members of that staff began the audit with a preconcieved conclusion and that the audit was conducted in a manner to support that conclusion. One of the concerns that I have, and have expressed as a member of the Judicial Conference of the United States, is that it is not practical to establish court reporter rates that will apply uniformly throughout the United States. The rates that court reporters charge in Houston, Texas, is far different from the rates charged in smaller areas. Attached is a factual report concerning court reporters in the state courts in Houston, Texas.

Sincerely yours,

John V. Singleton

Enclosures

*GAO Note: Our total cost estimate has been revised to recognize the need to hire individuals to monitor the electronic recording equipment rather than using courtroom deputies.

APPENDIX VI

United States District Court
Southern District of Ohio
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
Chief Judge

December 1, 1981

William J. Anderson, Director
United States General Accounting Office
General Government Division
Washington, D.C. 20548

Dear Mr. Anderson:

This will supplement my letter to you of November 4th. I had the opportunity on November 24th to discuss the report with your Mr. Bailey. He identified for me those situations in the report that affected the Southern District of Ohio. I was disturbed to learn that some instances of violation of the Judicial Conference standards had occurred in this District. I have immediately appointed an oversight committee of two judges of this District who will monitor the activities of the court reporters. I am unwilling that directives of the Judicial Conference be ignored.

While I have substantial reservations that a district such as the Southern District of Ohio can utilize reporters as efficiently as a district where all judges are concentrated in one courthouse, I am convinced that closer supervision of court reporters by judges will dispose of many situations brought out in your report.

I would like to commend Mr. Bailey for his assistance. This is a fine young man and I think you have reason to be proud of him. I am aware that nobody loves a policeman. I am also aware that the GAO performs such a function. I do point out that if you don't perform this function, nobody else will. There is simply no way that I would ever know what is going on in my district regarding court reporters if I hadn't read your report. Neither the reporters nor the lawyers will bring these matters to my attention because they are not adversely affected. The persons adversely affected are the litigants, but there is no way for them to know that they have been overcharged on transcripts and without such knowledge, they wouldn't complain.

I appreciate the time and effort your department expended in preparing this report.

Very sincerely yours,

Carl B. Rubin, Chief Judge
United States District Court

APPENDIX VI

United States District Court
Southern District of Ohio
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
Chief Judge

November 4, 1981

Mr. William J. Anderson
Director
United States General Accounting Office
General Government Division
Washington, D.C. 20548

Dear Mr. Anderson:

A draft of a proposed report entitled "Court Reporting Procedures In the Federal Judiciary Can Be Improved" has been received by me with a request for comment. I understand from the report that the Southern District of Ohio was one of seven districts studied. The 53-page draft report is well done, it is comprehensive and outlines in general terms problems occurring with court reporters. It does not lend itself to comment because it carefully avoids any specifics. I have read your report and with the exception of a table on page 17, I have no idea which, if any of the representations, refer to the Southern District of Ohio. I am at a loss to understand why you seek my comments when the report makes it almost impossible for me to do so. The general conclusions may very well be accurate. I have no way of determining this because the report simply avoids any specific finding as to any specific district. If you would supply me with the specifics as to the Southern District of Ohio, I would be more than happy to make comments.

Do let me point out one situation in this district which bears upon your finding that reporters are not efficiently used. I suggest that a district with six judges in one courthouse can use its reporters far more efficiently than a district whose judges are scattered. In the Southern District of Ohio, there are six active judges and two senior judges. We are distributed as follows: three active judges in Columbus, one active judge in Dayton, two active and two senior judges in Cincinnati. Columbus is approximately 100 miles from Cincinnati and 80 miles from Dayton. Cincinnati is approximately 50 miles from Dayton. While it is theoretically correct that a court reporter who spends a half a day for one judge has a half a day available for another judge, but only if that judge is located in the same city. I am sure you would agree it makes little sense to send a reporter from Cincinnati to Columbus in the middle of the day with the expectation that that reporter could render any meaningful services in the other city.

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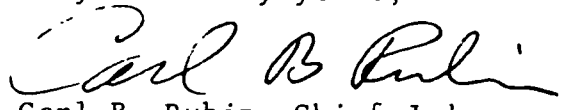
It is possible that the Southern District of Ohio differs from the other districts studied, but if so, I suggest that your general conclusions are not completely applicable.

I am not suggesting that I disagree with your report. To the contrary, I endorse it strongly. I am aware that abuses of the court reporter system have become engrained in our courts. I would, however, appreciate specific knowledge regarding the Southern District of Ohio in order that I might attempt corrective measures.

Very sincerely yours,



Carl B. Rubin, Chief Judge
United States District Court

cc: Mr. William E. Foley

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
219 SOUTH DEARBORN STREET
CHICAGO, ILLINOIS 60604

FRANK J. McGARR
Chief Judge

December 4, 1981

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
441 G Street, N.W., Room 3866
Washington, D.C. 20548

Dear Mr. Anderson:

I am responding to your letter of November 2, 1981 addressed to The Honorable James B. Parsons as Chief Judge of the United States District Court for the Northern District of Illinois. I have recently succeeded Judge Parsons in this office.

Because your draft report came to my attention late and time is short, my comments will necessarily be brief.

The first conclusion, that the judiciary needs to adequately supervise and manage court reporters, is a proposition with which nobody can seriously disagree. Your report reveals that we apparently have not been doing so, and the reaction in the Northern District of Illinois will be to tighten up our supervision of the court reporters in the area of overcharging.

Your second conclusion, that reporters are conducting private businesses in federal courthouses, requires some definition of terms. If it is your concept that the sole official role of the reporter is to attend court sessions and record what takes place, then it may be argued that in the covering of depositions and the furnishing of transcripts of both court and out-of-court activities, the reporter is conducting a private business.*

It is clear that court reporting activities related to cases other than those pending before the judge to whom the court reporter is assigned are private business, and the facilities of the courthouse should not be used in furtherance of such business. There is room for debate as to whether the covering of depositions and the preparation and furnishing of transcripts in cases pending before the judge to whom the reporter is assigned constitute private business. I would argue that they do not.*

I would disagree further that 250 square feet is adequate for an official court reporter, although I recognize that the Judicial Conference is on record with an opinion contrary to mine. In the design of our building, a court reporter office was provided adjacent

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*GAO Note: Private business is any activity conducted by a court reporter other than transcript preparation. With regard to the preparation of depositions, the Administrative Office of the U.S. Courts has stated in its policies that the preparation of depositions is considered private business activity.

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to each courtroom, with space averaging 550 square feet. Bearing in mind not only the space required for the activities of the court reporter but also the storage requirements imposed upon him, this amount of space would seem to be desirable where it is feasible, such as in our building, to make it available. As a practical matter, reducing the court reporter to his allocated 250 square feet of space does not release any space under our present setup for any other useful purpose.

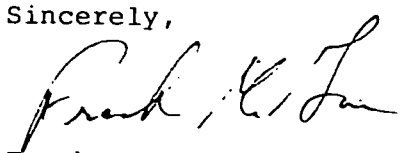
I disagree with the conclusion that federal court reporters are poorly utilized in the Northern District of Illinois, although, to the extent that official court reporters are available during the vacation or other absences of their judges or during non-trial time of their judges, it is certainly true that we should make greater efforts than we do to see that they do not remain idle and are profitably used in some other area of the courthouse.

However, the widespread demand for trial transcript for use on appeal by in forma pauperis litigants has created a backlog of demand in this district, and our court reporters can very profitably use their otherwise-unoccupied days catching up.

Finally, I turn to electronic recording. In an attempt to evaluate electronic recording, I took advantage of an opportunity afforded me by the Administrative Office to spend some time in the District of Columbia court, where an elaborate electronic recording installation is in place and in use. I recognize that there are arguments to be made in favor of electronic recording, but after studying the situation, it was my conclusion in the main that the disadvantages outweigh the advantages for use in our district.

There is no doubt that your report has performed a worthwhile and useful service for the court. There is no doubt that it has exposed deficiencies in our system which need correcting, and I will make it the business of the court to correct what deficiencies I can. Despite my disagreement with your conclusions on electronic reporting, I do not hesitate to say that your investigation performed a valuable service for this court.

Sincerely,



Frank J. McGarr

FJM:bb

United States District Court
Northern District of California
San Francisco, California 94102

Chambers of
Robert F. Peckham
Chief Judge

December 15, 1981

Mr. William J. Anderson, Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

We welcome the opportunity to comment on your report on court reporters in the federal judiciary. The findings in the report speak for themselves but we hope our perceptions developed over many years of experience in working with court reporters may assist in drawing appropriate inferences from those findings.

Our comments are as follows:

1. Although it is obvious from the report that a few individuals have taken advantage of the system by overcharging litigants and misusing their freedom from administrative controls it should be recognized that the vast majority of court reporters are conscientious professionals whose methods of operation have received tacit approval for many years.

Our own court reporters have responded effectively and efficiently to the recent imposition of court mandated changes. This commendable response is demonstrated clearly by the reduction in contract reporter costs. In 1980 our district spent an average of almost $2,400.00 per month for contract reporters; in the last four months that cost has

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averaged only $460.00 per month, a cost reduction of over eighty percent.

2. In measuring the productivity of court reporters, consideration must be given to stand-by time, that is, time when a reporter is on immediate call to report a hearing or read back testimony and is thus unavailable to perform other reporting duties. The most common example of this requirement is during the deliberation of a jury when the reporter must be available to read back testimony requested by the jury.*

3. If the employee aspect of the court reporter's status is to be emphasized over the independent contractor aspect then consideration should be given to allowing reporters the same annual and sick leave benefits enjoyed by other government employees.

4. With respect to the first recommendation to the Judicial Conference of the United States we suggest rather than uniformly delegating to the Clerk supervisory responsibility for court reporters that each court develop and adopt a management plan to be approved by the Circuit Judicial Council. This will provide an element of flexibility for each court to fix authority where it deems it to be most effective and provides a framework within which both the court and the reporters must function.

5. We support the recommendation for experimentation with electronic recording of court proceedings but emphasize that extensive and controlled experimentation, testing the impact of the process not only on the court but also on the bar, is needed. A precipitous mandatory adoption of electronic recording procedures could be disruptive of court processes and would be unfair to career court reporters.

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*GAO Note: We agree that productivity measurements should include stand-by time of court reporters. However, not all court reporters reported such time to the Administrative Office. Where the court reporters did, we recognized the information in computing the productivity shown on p. 17. The Administrative Office recently instructed all court reporters to include their stand-by time.

6. A more detailed cost analysis of electronic recording should be made. The report suggests that the courtroom deputy clerk can monitor the equipment and maintain a witness log, however, in a busy individual calendar court the courtroom deputy is not just a courtroom functionary, he is the judge's calendar manager. A proper performance of his managerial responsibilities requires that he be out of the courtroom a substantial amount of time making it impossible for him to be responsible for the equipment and the detailed log that is required. This suggests that the supporting personnel element of the cost analysis should be reconsidered.*

If you or members of your staff wish to discuss any of these matters further please feel free to contact us.

Sincerely,

ROBERT F. PECKHAM
Chief Judge

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*GAO Note: Our total cost estimate has been revised to recognize the need to hire individuals to monitor the electronic recording equipment rather than using courtroom deputies.

APPENDIX IX

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N.Y. 10007

CHAMBERS OF
LLOYD F. MacMAHON
CHIEF JUDGE

December 14, 1981

Mr. William J. Anderson
General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

On behalf of the judges of the Southern District of New York, we write in response to your letter of November 2, 1981, inviting comments on the Draft Report of the General Accounting Office regarding the court reporting system in the federal district courts. Since your letter did not reach my office until November 12, Mr. Ols of your office agreed to extend our time to comment until December 14.

We are not, of course, fully informed about court reporting practices throughout the federal system. However, the information which we do have causes us to believe that the Draft Report is deficient in its analysis and method, and is substantially inaccurate and misleading in both its findings of fact and its general conclusions. We therefore believe that the General Accounting Office should institute a review of the examination procedures, the field work conducted in preparation for the report, and the raw data assembled. There should then

be a complete re-analysis of the detailed factual findings as well as the conclusions and overall presentation in the report.

We wish to state that if the report is issued in its present form -- or in any other form which we believe to be substantially inaccurate and misleading -- we will deem it the duty of the federal judiciary to take all steps in our power, before the Congress and other responsible bodies, to correct the misinformation.

The bulk of the information in the Draft Report concerning the federal court reporting system is derived from what is said to have been a detailed examination of seven district courts. Specific findings are made regarding certain practices in the seven districts. From the detailed examinations and the specific findings, the Draft Report draws general conclusions about the federal court reporting system. These conclusions are epitomized in the following passages at p. 8 of the Draft Report:

> "The Federal judiciary's management of its court reporters has produced a court reporting system which is inefficient, costly, and inequitable.
>
> * * *
>
> "As a result, court reporters are managing themselves, often for their own best interest, and to the detriment of litigants, the courts, and the public."

APPENDIX IX

We are confident in saying that these unqualifiedly negative conclusions are flatly wrong. They can only be the result of grossly inadequate examination of the facts and lack of responsible analysis.

We hasten to state that any corrupt practices, loose management, and inefficiencies which exist in the federal court reporting system should be brought to light and remedied in the swiftest and most effective manner possible. But, as the GAO should be the first to recognize, the facts must be found with accuracy and fairness, and a complete picture must be presented rather than partial truths. In our view, the Draft Report fails to meet any reasonable standard of accuracy or completeness.

In commenting on the Draft Report, we naturally focus primarily upon what is said pertaining to the Southern District of New York. Aside from the fact that this is the court we know most about, the Southern District has a general importance to the GAO study, since it is one of the seven courts examined by the GAO, and is the largest district court in the nation. Out of the 111 reporters in the seven districts covered by the GAO, 31 are in the Southern District.

With regard to the Draft Report's discussion of the

Southern District, two salient facts emerge. First, the Draft Report has omitted any discussion of the real merits of the performance of the Southern District reporters, in terms of accuracy, promptness, efficiency, etc. We are compelled to conclude that such discussion was omitted because of the negative bias of the authors, since any analysis of these points would necessarily have concluded that the performance of the Southern District reporters is outstanding by any standard which could be conceived. Second, to the extent that the Southern District is dealt with in the Draft Report, the report, without exception, misstates the facts or omits them.

The following is a brief summary of what we believe are incontestable facts about the quality of performance of the Southern District court reporters and their management by the court.

1. The quality of the reporting work meets the most demanding standards both as to accuracy and promptness.

2. The reporters strictly comply with all deadlines for production of transcript. There is not now (and has not been within memory) any backlog in filling orders by litigants, whether for regular or daily copy, or in complying

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with the deadlines of the District Court or the Court of Appeals.

3. The reporters are organized in a pooling system, in which the reporters are assigned flexibly on the basis of need. Without exception, the reporters are employed full time in attendance at court proceedings and in assisting in the preparation of transcripts of those proceedings. In no case do they employ substitutes to relieve them of their court work so that they may do free-lance deposition work.

4. The official reporters employ certain nonofficial reporters at their own expense to do deposition work and to supplement the official reporters in court. These non-officials are employed in court only to the extent that the demands of the court require reporter service over and above the full-time work of the official reporters.

5. The reporters are continually supervised by the judges of the court. This occurs on a daily basis in the courtroom. In addition, the court reporters are supervised by the Chief Judge of this court and the Committee on Court Reporters. The Chief Judge and the Committee monitor the transcript rates charged by the reporters, and all other

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aspects of the reporters' performance, to the extent necessary. As in any question of management, the real test is in the results. It is undisputed that the Southern District court reporters conduct an operation which involves the most remarkable energy, efficiency and attention to quality. They act in strict compliance with their legal mandates. This, of course, is mainly the accomplishment of the reporters themselves; but it is also true that it takes place under the existing management structure of the court.

6. The Southern District court reporters do not overcharge for transcripts. They invariably abide by the Judicial Conference rules.

7. As will be discussed more fully hereafter, the two points of criticism in the Draft Report regarding the Southern District transcript charges (relating to lines per page and copies for the court) are matters on which the reporters have acted under express directions from the judges of this court. If there is a problem, it exists with regard to the interpretation of the statute and the Judicial Conference rules. We believe our interpretations are correct, and have so advised the Administrative Office

in writing.

8. The court reporters devote a substantial portion of their income from depositions and from the sale of transcripts to the employment of transcribers and office personnel, and to the procurement of costly equipment, such as high-speed copiers and computer-aided transcription machinery. These reporters have continually sought to innovate and improve the efficiency of their operation, to the great benefit of the court and the public.

Items in Draft Report
Regarding Southern District

a. Management of Reporters by the Court

The Draft Report states (p. 9) that none of the seven districts examined adequately supervised and managed the activities of court reporters. The Draft Report further states (p. 12) that none of the 30 active judges interviewed in the seven districts "actively supervised the court reporter assigned to them or knew how their reporters dealt with and/or charged litigants for transcripts," and that all 51 reporters interviewed in the seven districts said that they "were not directly supervised by a judge."

What the Draft Report is saying is that the management

and supervision of the court reporters in all seven districts examined (including the Southern District) are so lacking that the court reporters fail to do their job and are able to engage in corrupt practices.

The GAO staff simply omitted to obtain the necessary information in the Southern District. There should have been no comment whatever about the judges' management of the court reporters in this district until and unless the GAO staff had interviewed the Chief Judge and the Chairman of the Committee on Court Reporters. We have confirmed with Mr. Gibbons of the GAO, who was one of the examiners here, that no attempt was made to interview either.

The fact is that the court is organized in a practical and effective manner to make sure that the reporters perform their work efficiently and well and that they comply with the law regarding charges for transcript. There is simply no question about the achievement of these results.

The Draft Report recommends that the clerk of the court within each district be assigned to manage the court reporters. In our view, it is undesirable and totally impractical to attempt to withdraw the court reporters from the

supervision of the judges of the court and to place them under the clerk. The court reporters perform a specialized function, which is quite different from the activities of the clerk of the court. We are convinced that any attempt to place the reporters under the clerk would be cumbersome, inefficient, and destructive to the fine performance which is now attained.

b. Lines Per Page in Transcript

We have confirmed with the GAO staff that the Draft Report is not intended to attribute to the Southern District reporters any overcharges for transcript in the nature of exceeding the prescribed page rates, charging for substitute reporters, or unauthorized charging for services in the production of the transcript. On these points the staff concedes that the Southern District reporters abide strictly by the Judicial Conference rules. This should be made clear by the GAO, something which is not done in the Draft Report.

The only complaints by the GAO with respect to transcript charges in the Southern District relate to two items discussed at p. 11 of the report relating to the number of lines per page and the furnishing of copies to the court.

The Draft Report alleges that in an unnamed district

(which is obviously the Southern District) the reporters prepare transcripts using 24 lines per page instead of the "required 25," resulting in a 4 percent overcharge. The Draft Report goes on to say that the "reporters contended" that they provide useful information on the 25th line, such as the name of the witness and a designation of the type of examination, but the Draft Report states that this information is not always provided.

This discussion is entirely misleading. It implies that the reporters are wilfully violating a clear requirement. It omits the essential facts, known to the GAO, that the page format in the Southern District is a long-established practice, specifically approved by the judges of this court since at least the time of Chief Judge Knox. Our position has been set forth in correspondence with the Administrative Office going back at least eleven years. It was the subject of a letter to the Director of the Administrative Office of November 24, 1981, sent in response to a charge by that office of violation of the Judicial Conference rule.

The applicable Judicial Conference resolution provides:

> "A page shall consist of 25 lines written on paper 8-1/2 by 11 inches in size, prepared for binding on the left side, with 1-3/4 inch margin on the left and 3/8 inch margin on the right side. Typing shall be 10 letters to the inch."

We wish to reiterate our explanation of November 24. The exhibits referred to are attached to the present letter.

> "As shown in Exhibit 'A' attached, our court reporters do comply with the resolution. They type 25 lines on a page and, contrary to the author's charge, comply with the line format. Every letter and number on the first line must be noted and typed, and the information signified is a necessary and integral part of the record. You will note that the first line contains the following symbols: 'PM-4-B;' 'ellm-1;' 'Berrios-cross' and '168.' The meaning and purpose of these symbols are detailed in Exhibit 'B' attached. Suffice it to say, they are indispensable controls for operating an accurate and efficient pool system of court reporters.
>
> "In this court, 15 to 20 trials are in progress simultaneously every day, and more than one-half million pages of transcript are produced each year. Accurate records, fast transcription of daily copy and efficient operation of the pool demand the exacting teamwork of 31 reporters and their supporting administrative and clerical staff of notereaders, transcribers, computer operators, collators, bookkeepers, etc. The work, from initial notes to final transcript, must be divided into segments and performed in steps by relays of reporters and supporting personnel. Without these control symbols, there would be utter chaos; it would be impossible to separate the transcript of one case from another; and there would be no way to take, type and collate the transcript into its proper sequence and pagination. Nor could we readily locate, identify and trace back to the responsible reporter and typist whenever the accuracy of a transcript is questioned. The identity of a witness and the portion of his testimony involved are of vital importance to lawyers who wish to use it on cross-examination or in summations, or when the jury asks for the

reading of selected testimony. Judges, both trial and appellate, also need this information on oral argument, in preparing findings, and in writing opinions.

"Our pool system was instituted long ago by the late Chief Judge Knox, and the same line format has been used in this district as long as anyone can remember. It is also followed in every court of record in the State of New York. It has been specifically reviewed and approved by the judges of this court, as the late Chief Judge Sugarman advised your predecessor, Ernest C. Friesen, Jr., in a letter of May 28, 1969 (copy attached as Exhibit 'C'), and again by me in a letter to Henry R. Hanssen, dated January 16, 1981 (copy attached as Exhibit 'D'), on recommendation of our judges' committee on court reporters."

c. Transcript Copies for Court*

At p. 11 of the Draft Report there is a claim, relating to the Southern District, that the reporters have had a long-standing practice in civil cases of charging private litigants for the copies provided to the judges. This is said to violate the Court Reporters Act. It is said that in July 1980 the Administrative Office's General Counsel "determined that such charges were unauthorized," but that the district court took "no further action on this matter," thus allowing the reporters to continue the alleged illegal practice.

This presentation is misleading. It gives the impression that the judges of the Southern District and the

*GAO Note: The report has been revised to delete any reference to this district court. After considering the above comments, we believe this district court's practices are in conformity with the requirements of the Court Reporters Act.

APPENDIX IX

reporters have acted contrary to an unquestioned statutory requirement and in derogation of the Administrative Office's authoritative pronouncement thereon.

The practice in the Southern District is in accordance with a long-standing interpretation of the statute by this court, which we believe to be correct. We do not regard the view of the Administrative Office as dispositive of the matter. However, contrary to the implication of the Draft Report, we did not simply ignore the opinion of the Administrative Office. On January 16, 1981, we wrote the Administrative Office on this subject as follows:

> "We believe that the present practice of having private parties in civil cases share the cost of a transcript copy for the judge is both legal and appropriate, provided that the parties specifically indicate that they are ordering such copy. We are instituting procedures whereby it will be clear whether such copy is or is not ordered by the parties.
>
> "We believe that this practice is entirely in accord with 28 U.S.C. 753(b). We do not believe that the practice is prohibited by the language of section 753(f), which provides, in pertinent part, that the reporter 'shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court.' For practical reasons based on long experience, it frequently occurs that the judge is assisted by having his own copy of the transcript which is not the same as the 'Clerk's Copy.' The latter is retained by the court reporters for a time and is then filed for

> public use. If private parties to a civil litigation wish to accommodate the judge and order an extra copy for him, there is no reason why they should not pay for this. The increased expense of this to the parties is minimal."

The full letter of January 16, 1981, is attached hereto as Exhibit D.

d. "Private Businesses" in Courthouse Space

In at least five places in the Draft Report (pp. ii, 8, 9, 14, 19) there are references to "private businesses" conducted by the reporters in federal courthouses.

The discussion of this subject, colored by a label intended to be invidious, is misleading.

The detailed discussion in the Draft Report reveals, of course, that the "private businesses" consist of deposition reporting. This reporting performs a most useful function for the litigants in the federal courts, and is clearly legal. The Administrative Office, in its June 26, 1981 statement to the Subcommittee on the Courts of the Senate Judiciary Committee, stated:

> "The legislative history of the Court Reporters Act clearly authorized such freelance reporting activities."

The Draft Report quite properly objects to a practice, apparently engaged in by some official federal court reporters,

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of subcontracting their attendance in court proceedings while the official court reporters devote substantial time to deposition reporting.

The Draft Report (p. 15) clearly implies that in all seven district courts examined, including the Southern District, substitute reporters are used for court appearances while the official reporters are doing freelance deposition work. However, no such practice exists in the Southern District. In this district, virtually all depositions are taken by nonofficial reporters hired at the expense of the official reporters.

One claim in the Draft Report is that the deposition reporting function occupies free space in federal courthouses. At p. 14 of the Draft Report there is a specific complaint, referring to the Southern District, in which it is indicated that, because of the deposition reporting in the Southern District, the reporters are occupying more than their allotted space of 250 square feet for each reporter. It is said that the reporters and their 38 employees occupy 8,592 square feet of space. If we calculate the allotted space of 250 square feet per reporter for 31 official reporters, we arrive at a figure of 7,750 square feet.

The statement about space in the Southern District is

both inaccurate and misleading. The figure of 8,592 square feet is incorrect. The actual amount of space occupied is 8,078. Moreover, the Draft Report omits to state that the Administrative Office, in a letter dated August 5, 1981, advised us that the "excess" space occupied over the standard 7,750 is so small that it would not be "feasible or economic to release nor request reimbursement for the minimal amount of space involved."*

f. Utilization of Court Reporters

The Draft Report asserts that federal court reporters have unequal and inefficiently distributed work assignments. At p. 17, figures are given for the seven districts examined, which purport to illustrate this point. It is said that in the Southern District of New York the hours spent on court appearances in 1980 ranged from a low of 523 hours per year to a high of 1428 hours per year.**

These statistics are entirely misleading. The reporter who spent the 523 hours was 72 years old in 1980. He was relieved somewhat from court work and assigned other tasks because of his age. Twenty-five of the 31 reporters had court hours totaling over 1000 in the year 1980. Of the 6 who had hours under 1000, most were only slightly under, and 3 had spent over 1000 hours in 1979. Sixteen of the reporters spent over 1200 hours in court in 1980.

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*GAO Note: We reverified our square footage figures with the Administrative Office and we agree with the figures presented above. Therefore, this information has been deleted from the final report.

**GAO Note: Page number changed to correspond to final report.

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The fact is that there is a well-organized and equitable distribution of workload of the reporters in the Southern District.

Electronic Recording

A substantial part of the Draft Report is devoted to the proposal that electronic recording should replace live reporters in the federal district courts. The Draft Report recommends that electronic recording be tested in the federal district courts, although the GAO appears thoroughly convinced of the merit of this process even without such testing. The Draft Report urges that Congress enact a statute requiring testing.

A point-by-point discussion of the GAO views on this subject would not be appropriate here. We agree with the proposal for testing in the federal district courts, and believe that the relative merits and demerits of using electronic recording in these courts can be properly evaluated in connection with this testing.

However, certain observations about the discussion in the Draft Report are in order.

The Draft Report is entirely lacking in objectivity, and reveals the strongest bias and partisan approach. The weight

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is given exclusively to testimonials in favor of electronic recording. Mere lip service is given to contrary evidence and opinion.

It is still our considered judgment that electronic recording is not suitable for the needs of a busy federal district court. In our view, the weight of the evidence is to the effect that the intelligence and expertise of qualified live reporters, such as we have in the Southern District, are indispensable to the reporting function in courts such as ours. We are not saying this because of our attachment for the court reporters, but out of concern for the public interest and the protection of the judicial process. The reporting system in the Southern District functions superbly. Nothing has come to our attention, including the information in the Draft Report, which leads us to believe that it should be abandoned in place of something else.

As already stated, we endorse the proposal for testing electronic recording in the federal courts. We believe that the Judicial Conference should institute such testing. However, we are of the view that testing can be carried out under present law, and that no action of Congress is necessary.

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Conclusion

The information and analysis in the Draft Report are inaccurate and unfair in substantial respects. In evaluating the federal court reporting system it is, of course, most important to expose corrupt practices and other defects. But it is equally essential to recognize fully the merits of the system and to avoid careless and indiscriminate accusations of improprieties against those who are faithfully carrying out their duties as public servants. The Draft Report fails entirely in this respect. As stated at the outset of this letter, we urge a re-examination of the facts and a revision of the report.

Very truly yours,

LLOYD F. MacMAHON
Chief Judge

THOMAS P. GRIESA
U.S.D.J.
Chairman, Committee
on Court Reporters

cc Hon. Warren E. Burger
Hon. Wilfred Feinberg
Hon. Levin H. Campbell
Hon. Elmo B. Hunter
Hon. William E. Foley

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PM-4-B

Q What was Agent Scalzo saying to you? You were talking to him, weren't you?

A What was Agent Scalzo saying?

Q Right. You were all in the car together?

A Yes. He said what's this. And I told him this is the ounce, this is an ounce, and I want $4500 for it.

He said all right, don't worry about it. He said I will give it to you Monday because I got no money with me. Ain't nobody in the world, with the right stage of mind, I never seen him in my life, I'm going to let him go with an ounce for $4500, in these day of poverty --

Q But you gave it to him?

A Right, because Jose told me to give it to him, don't worry, we are going to get this money.

Q Why didn't you tell Jose to give it to him?

A Because Jose know what it was because he didn't want Julio to know that he was dealing with Scalzo.

Q Julio, who you met in December?

A Yes, absolutely. Right. And then when he came -- when we met in the Chinese restaurant --

Q Let's hold on and finish January 30.

EXHIBIT "A"

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Meaning and Purpose of Symbols "PM-4-B," "ellm-1," "Berrios-cross" and "168," Appearing on First Line of Transcript, Exhibit "A" Attached.

"PM"	The afternoon session of the court day.
"-4"	The fourth sequential segment of the afternoon's notes ("take"), taken by one of the relay reporters. There may be as many as eight "takes" during an AM or PM session, or sixteen a day for each case.
"-4-B"	There are generally two typists assigned to each case to facilitate transcription. Each "take" of a reporter is divided between them ("-4-A" and "-4-B").
"el"	The initials of the reporter responsible for that portion of the "take."
"lm"	The initials of the typist responsible for that portion of the transcript.
"-1"	The temporary ("blind" or "left-hand) page number for furnishing excerpts of transcripts on request and for proper final pagination.
"Berrios-cross"	The name of the witness and the type of examination.
"168"	The final ("right-hand") page number

EXHIBIT "B"

APPENDIX IX

UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N.Y. 10007

CHAMBERS OF
SIDNEY SUGARMAN
CHIEF JUDGE

May 28, 1969

Honorable Ernest C. Friesen, Jr.
Director
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D. C. 20544

Dear Mr. Friesen:

Shortly prior to the time I received your letter of May 9, 1969 on the subject of Judicial Conference standards for court reporters' transcripts, I was advised by Simon Lubow, the managing court reporter of the reporters' pool in this district, that Mr. Bengtson raised some question about the size of page being used for transcripts by our court reporters' pool.

First, let me advise you that in the three areas mentioned in your letter of May 9th there is no violation by the court reporters of the Southern District of New York, in that

1) Each page of transcription contains 25 numbered lines, and typing appears on each thereof.

2) The margin from the left side of the page to the printed line number is the prescribed 1-3/4 inches. It is important to note that there is no 3/8 inch margin line from the right edge of the paper, the absence of which permits the typing to continue to the extreme right edge of the page. Therefore, although the page size is less than that prescribed by the Conference standards, the net amount of actual transcription space for typing on each page is practically the same.

3) Typewriters that provide ten characters per inch are and always have been used.

EXHIBIT "C"

I understand that a regulation page of transcript means a page 8-1/2 inches wide and 11 inches long, with a 1-3/4 inch margin on the left side and 3/8 inch margin on the right side, with type of ten letters to the inch.

The reason for the use of the 8 x 10-1/2 inch page by the reporters in this district is that that size is and has always been the standard size used in all of the courts in New York, including the Eastern District. Since strict compliance with the regulation size page would accomplish little or nothing in the way of enlarging the prescribed space available for typing, it would appear that no gainful purpose could be accomplished by requiring same.

Aside from the necessity of discarding the large stock of 8 x 10-1/2 inch imprinted paper and stencils, carbons and soft and permanent covers that the reporters' pool has on hand, which would be attendant upon a change of size, there is the much more difficult problem of renegotiating their contract with their typists' union.

As you know, and as your subordinates will attest, the plan of a cooperative court reporters' pool that was conceived by Judge Knox and has existed ever since in this district is the most trouble-free and most efficient and best operated court reporter setup in the entire country. I have been told this repeatedly by persons in the Administrative Office who have to deal with court reporters throughout the entire federal judicial system, and they have always used the setup in this district as a basis for comparison, and I have yet to learn of such comparison indicating a superior operation anywhere.

The cooperative partnership, of course, employs many typists, and every so often hard bargaining has to take place in hammering out an employment contract. In point of fact, although the last contract between

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the Southern District court reporters and the typists' union was negotiated and agreement reached on most major points in October of 1968, there is still no final executed contract because of disagreement between the parties as to exact language of several areas. Since the transcribers are compensated on a per-page basis, to inject at this point the element of change in page size would unsettle and seriously disturb the precarious balance which now exists between the court reporters and the typists' union and would immediately complicate their relationship.

It is for these reasons that I request that the court reporters of the Southern District of New York be permitted to continue using the 8 x 10-1/2 inch page, as they have always been doing.

Your cooperation in this respect would be very much appreciated.

Cordially yours,

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UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N.Y. 10007

CHAMBERS OF
LLOYD F. MacMAHON
CHIEF JUDGE

January 16, 1981

Mr. Henry R. Hanssen
Chief, Division of Management Review
Administrative Office of the
United States Courts
Washington, D.C. 20544

Dear Mr. Hanssen:

We have reviewed the matters raised in your letter of October 29, 1980. We believe that the present practice of having private parties in civil cases share the cost of a transcript copy for the judge is both legal and appropriate, provided that the parties specifically indicate that they are ordering such copy. We are instituting procedures whereby it will be clear whether such copy is or is not ordered by the parties.

We believe that this practice is entirely in accord with 28 U.S.C. § 753(b). We do not believe that the practice is prohibited by the language of § 753(f), which provides, in pertinent part, that the reporter "shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court." For practical reasons based on long experience, it frequently occurs that the judge is assisted by having his own copy of the transcript, which is not the same as the "Clerk's Copy." The latter is retained by the court reporters for a time and is then filed for public use. If private parties to a civil litigation wish to accommodate the judge and order an extra copy for him, there is no reason why they should not pay for this. The increased expense of this to the parties is minimal.

As to the page format, this has been established for many years. Obviously, slight variations can make differences in the compensation of court reporters. We are resolved that the compensation of our reporters should not be tampered with in any way so as to reduce it. This will help to insure the continuation of our outstanding court reporters' service upon which the court and litigants depend so much. I note that the basis for the page format is contained in a letter from former Chief Judge Sugarman to Mr. Ernest C. Friesen, Jr., former Director of the Administrative Office, dated May 29, 1969, a copy of which is attached.

Very truly yours,

Lloyd F. MacMahon

LLOYD F. MacMAHON
Chief Judge

EXHIBIT "D"

APPENDIX X

UNITED STATES COURT REPORTERS ASSOCIATION

GERALD J. POPELKA
President

600 U. S. Courthouse
Seattle, WA 98104
(206) 625-9952

December 2, 1981

Mr. John M. Ols, Jr.
Assistant Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

The enclosed document is the response of the United States Court Reporters Association to the "Draft of Proposed Report, Court Reporting Procedures in the Federal Judiciary Can Be Improved," prepared by the staff of the United States General Accounting Office.

Please include our response in the printed final report that is submitted to the Congress of the United States or other governmental agencies.*

Respectfully submitted,

GERALD J. POPELKA

*GAO Note: The Association enclosed numerous exhibits with its comments, however, we did not include them because they were voluminous and were summarized by the Association in its detailed comments.

GAO Note: Page numbers cited in this appendix were changed to correspond to the final report.

APPENDIX X

RESPONSE

OF

UNITED STATES COURT REPORTERS ASSOCIATION

(USCRA)

TO THE

DRAFT OF PROPOSED REPORT

"COURT REPORTING PROCEDURES IN THE FEDERAL JUDICIARY CAN BE IMPROVED"

PREPARED BY THE

STAFF OF THE U. S. GENERAL ACCOUNTING OFFICE

If the General Accounting Office attempted to introduce the above report in a United States District Court as substantive evidence, the Court would be required to deny its admission on many grounds, including those of hearsay, statements of fact without supporting evidence or documentation, misrepresentations of fact, and gross misrepresentation of facts.

The GAO set the stage for a report which necessarily would be critical of all Federal reporters because of the criteria it established to select reporters for audit. On page 6 the GAO states, "...we selected court reporters based on whether they (1) had private reporting activities, (2) used substitute reporters, (3) had questionable items on the income statements they provided to the Administrative Office, and/or (4) were available at the time of our visits to the districts."

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We ask: (1) How many reporters had private reporting activities, and to what extent? (2) How many reporters used substitute reporters, and how many did not? (3) How many reporters had questionable items on the income statements they provided to the Administrative Office? And what did the GAO consider to be a questionable item? (4) "..were available at the time of our visits to the districts." Was any attempt made to schedule visits at a time when the reporters were not actually reporting in court? There is a sinister implication that because the reporters "were not available," they were hiding from the GAO.

Using the criteria of auditing only those who had already "flunked the test," the GAO then proceeds to charge guilt by association to all 575 Federal reporters because of the alleged improper--not illegal--acts of a few. And how few is demonstrated by a little mathematics, as follows:

The GAO states on page 10 that "In six districts, 28 reporters charged litigants per page rates that exceeded the maximums approved by the Judicial Conference." That is 4.87% of 575 reporters.

"In three districts, 16 reporters charged litigants for payments the reporters had made to substitute reporters..." That is 2.78% of 575 reporters.

"In four districts, 20 reporters charged litigants for unauthorized services." That is 3.48% of 575 reporters.

"In five districts, 15 reporters charged litigants for transcript pages which had formats that did not comply with Judicial Conference policy." That is 2.61% of 575 reporters.

"In five districts, 23 reporters charged litigants for copies of transcripts provided to a judge or clerk of the court..." That is 4.0% of 575 reporters.

And in spite of the fact that on page 6 of the GAO report it is stated, "...we concentrated on transcript billings to litigants during the period April 1980 through December 1980," because the most recent transcript rates were established by the Judicial Conference in March 1980, the GAO on page 10 attempts to inflame the reader by talking about a 1979 case in which the reporter charged a combined rate of $10 per page, which would have been perfectly proper if counsel had agreed to the price and the trial judge had approved the rate for the daily or hourly services rendered.*

USCRA takes the position that if any reporters in the Federal system have committed a criminal act in connection with their official duties, they should be dismissed, and appropriate criminal proceedings should be instituted against such reporters.**

However, in spite of the GAO's broad-brush smear attack on all official reporters in the United States District Courts, when, in fact, only a few may be operating outside the scope of Judicial Conference regulations, the United States Court Reporters Association, consistent with the PURPOSES section of its constitution, unanimously adopted two plans at its annual convention on August 3, 1981, which plans were specifically designed to meet and correct the complaints about official reporters by the GAO and the Administrative Office, as stated by

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*GAO Note: We deleted the cited example from our report because it fell outside the time period we established.

**GAO Note: The Court Reporters Act does not provide criminal penalties for abuses we identified. We did not attempt to determine if such abuses would be subject to prosecution under other Federal statutes.

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representatives of those offices in written and oral testimony before Sen. Robert J. Dole's Subcommittee on the Courts on June 26, 1981.

The two plans are titled (1) District Court and Official Reporter Self-Administration Plan, and (2) Suggested Positive Action Plan for District Courts and Official Reporters. These two plans were mailed to all United States District Judges and all District Court Official Reporters by covering letters dated August 20, 1981, all of which are physically reproduced at this point in USCRA's response.

APPENDIX X

UNITED STATES COURT REPORTERS ASSOCIATION

GERALD J. POPELKA
President

600 U. S. Courthouse
Seattle, WA 98104
(206) 625-9952

August 20, 1981

TO: All United States District Judges.

SUBJECT: District Court and Official Reporter Self-Administration Plan and Suggested Positive Action Plan for District Courts and Official Reporters.

Changes in the court reporting law, 28 USC Sec. 753, as recommended by the General Accounting Office and the Administrative Office, would, if enacted into law, result in a massive, devastating restructuring of the present court reporting system in the United States District Courts.

USCRA's position has been and is that any changes necessary to correct any deficiencies and improve the present system can best be accomplished administratively within the parameters of the present statute.

Therefore, USCRA at its 36th Annual Convention, on August 3, 1981, approved in principle the attached Self-Administration Plan and the attached Suggested Positive Action Plan for District Courts and Official Reporters. The first plan is addressed primarily to the Judges, the second primarily to the reporters. However, the two plans, in fact, complement each other. USCRA asserts that if the plans are adopted by the courts and the reporters, reporting personnel will be fully utilized, the courts will be more efficiently served, and there will be no opportunity for rules and regulations to be misinterpreted, misapplied or misused.

Also reiterated at the convention was USCRA's unalterable opposition to the use of electronic recording machines in the district courts in the absence of a live reporter; a full-time, flat-salaried employee status would stifle any incentive to produce transcripts on an accurate and timely basis; and the use of contract reporters would have a devastating effect on the individual, professional relationship between the Court and the permanent official court reporter.

We respectfully request that you endorse the attached plans and also register your objections to any change in the present statute by letter to the Hon. Levin H. Campbell, Chairman, Subcommittee on Supporting Personnel, 1604 John W. McCormack P. O. & Courthouse Building, Boston, MA 02109.

Judge Campbell will then be able to convey your views to the Judicial Conference of the United States at its meeting on September 24-25, 1981, at which time the Judicial Conference will act on recommendations for changes in the present court reporting statute.

Respectfully submitted,

Gerald J. Popelka,
President

APPENDIX X

United States Court Reporters Association (USCRA)

SAMUEL M. BLUMBERG, JR., *Executive Director*
422 Franklin Street
Reading, Pennsylvania 19602
(215) 373-3252

August 20, 1981

TO: All District Court Official Reporters.

SUBJECT: Self-Administration and Positive Action Plans Approved by USCRA's 36th Annual Convention on August 3, 1981.

After three days of spirited and sometimes heated debate, the members of USCRA in attendance at the San Mateo, California convention, recognizing the full-fledged assault on the present court reporting system, and in a healthy spirit of unanimity, voted to approve two items:

(1) A District Court and Official Reporter Self-Administration Plan; and,

(2) A Suggested Positive Action Plan for District Courts and Official Reporters.

Both plans are being mailed today with a covering letter to all United States District Judges. Copies of the plans and the covering letter are enclosed. You will note that in the next-to-last paragraph of the covering letter USCRA requests the Judges to endorse the Self-Administration Plan and also register their objections to any change in the present statute by letter to Judge Levin H. Campbell, Chairman of the Subcommittee on Supporting Personnel of the Judicial Conference prior to the meeting of the Judicial Conference in Washington, D. C. on September 24-25, 1981.

Please discuss this Self-Administration Plan (No. 1) with your colleagues and with the judge to whom you are assigned, and seek his or her active support immediately.

Plan No. (2) is a Suggested Positive Action Plan for the District Courts and Official Reporters. You should discuss the plan among your colleagues, if any, and then immediately begin implementing the suggestions numbered 1 through 12 as they are applicable to your district.

All of the proposals in both plans were carefully designed to meet and correct the complaints about official reporters made by the General Accounting Office and the Administrative Office, as stated in written and oral testimony before Sen. Robert J. Dole's Subcommittee on the Courts.

In addition, Plans (1) and (2) are being sent to the Chief Judges of the Circuit Courts of Appeals (members of the Judicial Conference), their Circuit Executives, all members of the Committee on Court Administration and its Subcommittee on Supporting Personnel of the Judicial Conference, Director William E. Foley and Edward V. Garabedian of the Administrative Office, William Anderson of the GAO, and Sen. Robert J. Dole, because we believe that if these two plans are put into effect, the necessity for any changes in the present law will be eliminated.

APPENDIX X

UNITED STATES COURT REPORTERS ASSOCIATION

GERALD J. POPELKA
President

600 U. S. Courthouse
Seattle, WA 98104
(206) 625-9962

THE FOLLOWING SELF-ADMINISTRATION PLAN WAS UNANIMOUSLY ADOPTED IN PRINCIPLE BY THE UNITED STATES COURT REPORTERS ASSOCIATION IN CONVENTION ASSEMBLED AT SAN MATEO, CALIFORNIA, ON AUGUST 3, 1981:

DISTRICT COURT AND OFFICIAL REPORTER

SELF-ADMINISTRATION PLAN

1. The Judges of each District Court shall be requested to appoint a Chief Reporter, who shall exercise general supervisory responsibility over the official court reporters, as shall be determined by local court rules.

2. The responsibilities of the Chief Reporter shall include, but not be limited to:

   (a) The assigning of an official reporter, on a temporary basis, for the purpose of distributing fairly and equitably the total workload of all reporters, and to insure the best utilization of reporting personnel.

   (b) Periodically reviewing transcripts to insure full compliance with Judicial Conference-mandated page requirements.

   (c) Periodically reviewing invoices to insure that authorized transcript rates are fully complied with.

   (d) Determining compliance by all reporters within the district with the regulations concerning the recording and filing of pleas and sentences.

   (e) Periodically reviewing the time records of the reporters, to insure proper maintenance and accuracy.

   (f) Periodically checking to insure the timely filing of reports required of the reporters; and

   (g) Performing such other duties as shall be directed by the Chief Judge of the district.

3. Official reporters shall not engage in private reporting during normal court hours, or utilize facilities of the court to perform private work, unless specifically approved by the court.

—

UNITED STATES COURT REPORTERS ASSOCIATION (USCRA)

SUGGESTED POSITIVE ACTION PLAN FOR DISTRICT COURTS AND OFFICIAL REPORTERS

***

1. A conference should be held by the official reporters (or their delegate) with the Chief Judge or the Judges of the district court for the purpose of determining the acceptability of the present court reporting system to the court.

2. Each Circuit Representative of USCRA should arrange regularly scheduled meetings with the Chief Judge of the Circuit and/or the Circuit Executive to discuss, and attempt to resolve, any actual or potential reporting problems within the Circuit.

3. Outlines of various acceptable pool systems and team effort or modified pool systems designed to effectively utilize court reporter personnel will be sent to all of the Chief Judges of the district courts by USCRA.

4. The Judges of each district court shall be requested to appoint a Chief or Supervising Reporter, who shall exercise general supervisory responsibility over the official court reporters, as shall be determined by local court rules.

5. The appointment of new court reporters shall be made from a list of qualified reporters who meet all of the standards and requirements of the Judicial Conference Qualifications and Compensation Plan, and who are recommended by the official court reporters of the employing district court.

6. The Chief/Supervising Reporter shall be responsible for the supervision of the completion of all quarterly, yearly or other reports required by the Administrative Office and/or the district court by the official reporters.

7. The Chief/Supervising Reporter shall supervise the recording and maintenance of accurate time and attendance records of the reporters of the district court.

8. The Chief/Supervising Reporter shall have the authority to review the billing of transcripts to insure that Judicial Conference and/or district court-authorized transcript rates are fully complied with. Invoices should contain detailed information as to the date and method of order (oral or written), short style of case and number; type of

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proceeding, number of copies, pages, and rate per page. Invoices should also contain a space at the bottom for the initials of the Judge approving daily or hourly transcript rates, or other appropriate authorization indication.

9. The Chief/Supervising Reporter shall be authorized to determine compliance by all reporters of the district court with all rules and regulations pertaining to the recording and filing of pleas and sentences.

10. Official reporters are to be "notereadable," so that the stenographic notes of an official reporter can be read by another reporter in the event of an emergency.

11. The marking, filing and storing of reporters' notes shall be standardized in order to insure the prompt location of notes and the withdrawal of same in the event the reporter-author of the notes is unavailable.

12. Discretion will be used by official reporters in the utilization of their time for private reporting functions; and at no time will an official reporter use the facilities of the court or the time of the court to perform private reporting functions unless otherwise approved by the court.

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Since the mailing of those two plans on August 20, 1981, many District Courts have implemented management plans for official court reporters, and in some instances it was at the direct request of the reporters of the district that a management plan was adopted.

In the Eastern District of Pennsylvania, the Hon. Daniel H. Huyett, 3rd, Liaison Judge to the court reporters, submitted a proposed management plan to the reporters for comments on September 23, 1981, Judge Huyett's management plan adopts all of the provisions of USCRA's two plans, but adds that "The Plan shall be under the administrative supervision of the clerk of the court."

The United States District Court for the Southern District of Texas on September 14, 1981, approved what is titled a Manual of Operational Procedure for Federal District Court Reporters, "Pooling System," in which it is stated, "...a genuine random pooling of reporters has been implemented by the Court for the Southern District of Texas."

That management program embodies the following points:

> "(1) that the supervision of the official court reporters be delegated to the Clerk of Court,
>
> "(2) that a panel of three U. S. District Judges be appointed to act on behalf of the court in matters of hiring, discipline, and enforcement of general policy matters set forth in the approved manual. This panel will work as a liaison for the Court with the Clerk of Court in all matters concerning employment and discipline of official court reporters, and
>
> "(3) it was mandated that supervising responsibility of the Clerk lies primarily in the area of random pooling, fee format compliance and efficient service to the entire Court.

> The Chief Judge will continue to serve as a direct liaison between the Clerk and Court in general policy matters pertaining to management and supervision of official court reporters."

However, USCRA's position is that the idea of the Clerk of the Court in every district engaging in day-to-day management and supervision is not a wise idea, and would not be an effective way to eliminate the alleged misconduct of some reporters. The court reporting function is something unique and quite different from what is done in the Clerk's office.

USCRA believes that the court reporters should basically run their own operation, subject to the overall rules and regulations which have been and will be established by higher authority. The judges of a court, certainly, and particularly the Chief Judge of a district, should be responsible for ensuring that the court reporters are not guilty of fraud and abuse in violation of any and all applicable rules and regulations. This can be done without getting into the daily minutiae of the court reporters' business. The Chief Judge, the Liaison Judge, or a Committee of Judges, can make periodic inquiries, spot checks, listen to complaints by lawyers -- even invite complaints by lawyers; these and other common-sense methods would certainly be sufficient to resolve the types of problems which are of immediate concern.

The GAO draft report speaks of "reporters conducting private businesses in Federal courthouses." Although the two USCRA plans specify that official reporters shall not engage in private reporting during normal court hours, or utilize facilities of the

court to perform private work, unless specifically approved by the court, USCRA objects to the characterizaton of "private business" as something inherently illegal or illicit.

The system referred to is exactly what is contemplated by the statute, and which exists for many practical reasons; that is, the system under which the official court reporters provide transcripts to litigants and are paid directly by those litigants. Also, the Federal court reporters arrange to provide a certain amount of deposition work for which they are paid by the litigants, a good deal of which deposition work is done by non-official reporters hired at the expense of the official reporters.*

The present Federal court reporting system has certain distinct advantages over other methods which could be envisioned. When it is properly administered, as we believe it now is in almost all districts, it meets the needs of the court and the litigants in an entirely satisfactory way.

The fact that the official reporters are employed by the court and receive a basic salary from the government means that the primary obligation of the reporters is to serve the needs of the court. The physical location in the courthouse of the reporters and their assistants is a convenience to the Court and an accommodation to the litigants, who can secure needed services at one location in a speedy and expeditious manner; and it is also a safeguard with respect to the records of court proceedings.

The GAO draft report on page 20 makes recommendations to the Judicial Conference of the United States as follows:

"RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

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*GAO Note: Private business is any activity conducted by a court reporter other than transcript preparation. With regard to the preparation of depositions, the Administrative Office has stated that the preparation of depositions is considered private business activity.

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"We recommend that the Judicial Conference, through the Administrative Office and judicial councils, establish appropriate procedures and policies to insure that court reporters' activities in district courts are adequately supervised and managed. Specifically, we recommend that:

--The Clerk of the court within each district be assigned responsibility for managing the district's official court reporters to insure that (1) reporters properly charge for transcripts; (2) reporters serve the entire court, including magistrates, senior judges, and visiting judges; (3) reporters' recording and transcript workloads are balanced and equitable; (4) reporters are assigned other duties when idle; (5) contract reporters are hired only when court reporters are unavailable or the existing workload is not sufficient to justify a full-time court reporter; and (6) reporters are not inappropriately using substitutes.

--Official court reporters be prohibited from engaging in private reporting activities not related to preparing official court transcripts when court is in session or when the reporter is otherwise required to perform court related duties.

--Employment of any official court reporter who knowingly overcharges for transcripts or engages in prohibited private reporting work be terminated."

USCRA, as stated before, does not believe that the idea of having the Clerk of the Court in each district engage in the day-to-day management and supervision of court reporters is a sound

idea. Rather, USCRA suggests the appointment of a Chief Reporter in those instances where the judges of the District Court deem it appropriate, which Chief Reporter would have the duties and responsibilities spelled out in USCRA's Self-Administration Plan set forth earlier in this document.

Also, USCRA specifically objects to item (4) of the first specific recommendation, "reporters are assigned other duties when idle." USCRA does not understand what the GAO means by "when idle," or what "other duties" they should be assigned. The present statute permits (and the legislative history of 28 USC 753 clearly permits) reporters to engage in private reporting work when their services as court reporters are not needed by the courts.*

Otherwise, USCRA has no objections to the recommendations set forth on page 20 of the GAO draft report, and believes that the two plans adopted by USCRA, if put into effect by the District Courts, would achieve the same results as those the GAO seeks in its recommendations.

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*GAO Note: This recommendation was deleted prior to receipt of agency comments.

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ELECTRONIC RECORDING

Chapter 3 of the GAO draft report commences on page 27 with the contradictory and conclusory statement, "Electronic Recording: A proven alternative that should be tested." Why should a "proven" alternative need to be tested? The entire chapter on electronic recording is replete with unsubstantiated statements attributed to unnamed persons, such as on page 38, "Our discussions with officials of five private transcription firms confirmed that daily transcripts can be readily prepared."*

In addition, the draft report, mistakenly or otherwise, makes misleading statements, such as on page 28, "...and the Federal and Provincial courts in Montreal, Canada; as well as numerous other courts, are using electronic recording systems to record court proceedings." The implication is clear: electronic recording is being used effectively and satisfactorily in Montreal, Canada, for example.

One of the partners in a well-known law firm in Montreal, Maitre Jean-Jacques Gagnon, in a letter to Senator Robert Dole dated September 9, 1981 (Exhibit A), says:

> "It is my personal practice and that of many of my colleagues to use court reporters and not to rely on the tape recording system. I have had many bad experiences where it was impossible to secure a transcript from the tape recorders.
>
> "Because of the many problems associated with the tape recording system the Court allows the parties to bring into court a court reporter.
>
> "I believe you will be making a mistake if you rely on the experience of Montreal as the basis upon which you conclude that tape recorders work as efficiently as court reporters."

---

*GAO Note: We do not believe it is appropriate nor would it serve any useful purpose to include the names of the five private firms we contacted.

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And Mr. Jean Riopel, President of the Association Professionnelle des Stenographes Judiciares et Officiels du Quebec, also in a letter to Senator Dole dated September 21, 1981 (Exhibit B), says in part:

> "It has come to our attention that your Committee is studying the use of electrical recording systems, based on the finding of the Government Accounting Office that they are used effectively in the 'Federal and Provincial Courts in Montreal, Canada...'.
>
> "Electrical recording machines were first placed in the courts in Montreal in the early seventies. In the past few years, reporters have started returning to court because of the inability of the recording system to produce transcripts in a timely and satisfactory manner. The usual delivery time for a transcript of a one day court hearing is about two (2) to four (4) months.
>
> "The Court has entered into an arrangement with court reporters whereby all cases scheduled on a three (3) to nine (9) day special roll are reported by court reporters and not tape recorders. As far as the regular roll is concerned, the Court has also arranged for the reporters to go back to court in as many courtsrooms as the reporters wish, as long as they provide adequate service."

And in the Montreal newspaper, "The Gazette," on November 22, 1976, there appeared an article, "Red Tape in the courtsroom" (Exhibit C). The article states in the first two paragraphs:

> "At the Palais du Justice three years ago sophisticated tape-recording equipment was installed to reduce the backlog of cases.
>
> "Today, although court delays are less frequent, transcripts are so slow in coming that judges and lawyers are now complaining about delays in judgments and appeals."

Not once does the GAO report any dissatisfaction by anyone with electronic recording. To the contrary, glowing statements about electronic recording are made. For example, on page 29 referring to electronic recording in the State of Alaska, .the GAO states, "...State court officials and most attorneys prefer

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electronic recording to stenographic methods. These preferences were documented in a 1980 Alaska State legislative audit. The State auditors surveyed 19 attorneys and 11 State judges all of whom reported satisfaction with the electronic reporting system."

Obviously the GAO investigators did not talk to the Hon. Gerald J. Vanhoomissen, Superior Court Judge in Fairbanks, Alaska. However, Judge Vanhoomissen did send a telegram to Senator Dole on June 25, 1981 (Exhibit D), in which he states:

> "I have repeatedly expressed my dissatisfaction with the electronic system. For one thing, a substantial number of 'indiscernibles' and 'inaudibles' appear in the transcript. Although we have very competent in-court clerks and transcribers, the incidence of the foregoing popping up in the record is not inconsequential.....A serious deficiency in the electronic system is the preparation of transcripts. Here in this district, in which there are 5 Superior Court judges and 4 District Court judges, we routinely have a backlog of from 5-14,000 pages in the transcript department."

Another jurisdiction where the GAO states that electronic recording systems are being used effectively <u>in court settings similar to Federal distsrict courts</u> is the Orange County Court in Florida.

Robert Eagan, Esq., State Attorney for the Ninth Judicial Circuit of Florida (Orange County), in a letter to Senator Dole dated July 7, 1981 (Exhibit E), says, "The electronic court reporting system in Orange County is restricted to the County Courts which try misdemeanor and traffic cases." This is hardly a court setting similar to a Federal district court setting.

Howard S. Reiss, Esq., another attorney practicing in Orlando, Florida, states in Exhibit F, "To my knowledge ER is not used in Orange County, Florida, except for State Attorney Investigations and Public Defender Investigations, and County Court, a low-volume transcript Court."

Another Orange County attorney, James M. Russ, in a letter to Senator Dole dated July 7, 1981 (Exhibit G), after stating that electronic recording systems there are limited in criminal matters to misdemeanor and traffic cases, states:

> "My limited experience with electronically reported hearings and trials in misdemeanor cases has been disappointing. In the context of the trial, my experience has been that it is difficult and time-consuming to obtain a playback of the record. On appeals, my limited experience has been that it is difficult to obtain an accurate and complete transcript of the proceedings. In summary, my experience with electronic recording in criminal judicial matters has been disappointing.
>
> "The trial of a federal felony prosecution is vastly more complex, longer in duration, and vigorously contested. On occasion, several lawyers, as well as the judge and a witness, are all speaking simultaneously. It frequently occurs that testimony must be read back for the judge, for the jury, or for a witness.
>
> "In my opinion, the electronic reporting system as it exists today is inadequate and incapable of accurately and completely recording the proceedings in a federal criminal trial."

The State Court of Connecticut also is using electronic recording systems effectively, according to the GAO report on page 28. Theodore I. Koskoff, Esq., of Bridgeport, Connecticut, Past President of the Association of Trial Lawyers of America, disagrees with the GAO's conclusion in a letter to Senator Dole dated September 18, 1981 (Exhibit H), in which he states:

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"I have had some experience with electronic recording of trials and hearings in Connecticut and have found this method to be sorely lacking. It is virtually impossible to obtain daily tanscript services or, for that matter, transcripts delivered within a reasonable time. I have found it to be cumbersome and, in some cases, a nuisance when testimony needed to be found quickly and repeated for the jury. You must then wait for the recording device to get back on track before you can resume, sometimes causing you to lose the effect you are trying to create. I will not even get into the problem of inaudible portions of the tapes, which is inevitable, and the problems that may result therefrom.

"I sincerely urge you to use your good offices to defeat any proposal for change of the present court reporter system in the Federal Courts now being advocated by the Governent Accounting Office."

The President of the Connecticut Shorthand Reporters Association, John J. Carreiro, who is Official Managing Reporter for the Judicial District of Fairfield, Connecticult, wrote in a letter dated July 12, 1981 (Exhibit I):

"Connecticut has employed some sound recording in its courts over the last five or six years, on a limited basis.

"Of about 36 positions, most are used to staff State Referees who at the mandatory retirement age of 70 are no longer on the active trial bench. Some are and have been used in other courts.

"Transcript load is generally much lighter with a State Referee enabling most monitors to keep up with that workload, but when any monitor has been used in any court where transcript was heavy, problems were encountered in its production.

"Daily transcript has never, to my knowledge, been provided by any monitor or group of monitors. Expedited transcript is rare inasmuch as production rarely exceeds five pages per hour among the most experienced monitor. Without time out of court or off the calendar altogether, most monitors would be unable to keep up with even the light work load of a Trial Referee."

Based on the above examples of the use of electronic recordings "in court settings similar to Federal district courts," as alleged by the GAO, it would have to be assumed that the GAO

does not know anything about a Federal court setting, or if it does, chose to ignore that fact for the purpose of attempting to justify a conclusion it had apparently reached before it started its audit of Federal court reporters, and just used any jurisdiction which utilized electronic recording in any fashion as a basis for comparison.

As recently as November 20, 1981, the Association of the Federal Bar of the State of New Jersey by letter from its president, Thomas F. Campion, Esq, forwarded the following resolution to Senator William Bradley (Exhibit J):

> "It is Resolved by the Association of the Federal Bar of the State of New Jersey that the proposal found in Senate Bill No. 1700, Section 401, which provides for electronic sound recording of Judicial proceedings is not in the public interest and is not deserving of becoming part of the law of the land."
>
> The letter from Mr. Campion further states:
>
> "It has been the experience of members of this Association that transcripts produced from tape recording machines in the New Jersey State Courts do not have the degree of accuracy as found in transcripts produced by Certified Shorthand Reporters."

On page 6 of the GAO draft report it is stated that officials of non-Federal courts in Idaho, as well as other states, were interviewed by GAO personnel, the implication being that those officials endorsed the use of electronic sound recording in lieu of court reporters, for a number of reasons.

In fact, a joint Legislative-Judicial Committee of the State of Idaho compared court reporters and electrical recording equipment, as a result of which it issued a report on November 1,

1978, entitled, "An Analysis of Replacing Court Reporters with Electronic Recording Equipment." The following is an excerpt from that report:

> "Idaho attorneys can be said generally to have experienced problems with electronically recorded transcripts in the magistrate division. Most would oppose replacing court reporters with electronic recording equipment in district court cases. Perhaps the most eloquent comment was received from an attorney in Lewiston:
>
> > 'Somewhere along the line the decision has to be made whether we are interested in "cost-cutting" or justice. There is nothing more important to a litigant than a complete, accurate, and readily available record, particularly in criminal matters. The taping system works well for the recordation of perfunctory matters such as traffic court, where the court advises the defendant of his rights, but other than that, its value is very limited.
> >
> > 'I would respectfully suggest that those pressing for "efficiency", which is synonymous with cost-cutting in the judicial system, might keep in mind that the practicing lawyer is an integral part of the judicial process and that proposed changes which increase the amount of time he spends on a particular case or cases directly affect the financial welfare of the client-citizen for whose benefit the costs were created. Clients' legal fees are high enough now, so that any changes in the system ought to take consideration of that.'"

The GAO largely ignores the problems inherent in producing a verbatim transcript in a timely fashion from tape recordings, probably because, as their representatives have admitted to USCRA representatives, they did not compare any electronic tapes with transcripts produced from such tapes.

They state on page 34, "Parties ordering transcripts of Federal district court proceedings will obtain accurate, timely, and reasonably priced transcripts from properly managed electronic recording systems.....Because the tape can be transcribed by any

qualified transcriber, it is not necessary to depend on a given court reporter to prepare a transcript. This would enable litigants to shop in the open market for transcribers willing to prepare the transcript in a timely manner and at a reasonable price. Litigants can also listen directly to the tape, thereby saving substantial time and costs in certain circumstances."

USCRA has in its temporary possession an original transcript prepared from a tape recording made on a tape recorder furnished to a United States Magistrate by the Administrative Office, and USCRA has in its temporary possession the original tape cassettes which were made with the Lanier Advocate II four-track recording system. We also have an affidavit from William J. O'Connor, Clerk of the United States District Court for the Southern District of Alabama, which states:

> "The attached original transcript and recorded cassette tapes of a hearing before the Honorable David G. Bagwell, United States Magistrate for the Southern District of Alabama, In the Matter of: Carl Hall vs. Dr. J. B. Thomas, et al., being Civil Action Number 79-0074-P, are original documents and tapes filed in the office of the Clerk, United States District Court for the Southern District of Alabama, and constitute official records of the said Court."

The hearing was held on July 16, 1979. The transcript consists of 129 pages, including the certificate. On pages 1 through 39 there are 73 instances where the notation "inaudible" appears in parenthesis. And from page 40 to page 46, inclusive, there are, in addition to many "inaudibles," parenthetical notations of a total of 23 minutes of "At this time the tape is inaudible for approximately ___ minutes."

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We have taken the time to listen to the tapes and compare them to the transcript. And while the tape is, in fact, inaudible in most instances where it is so noted, there are many occasions where, by repeated playback we have been able to fill in the "inaudible" notations. Also, in comparing the tapes against the transcript, we found many instances where the transcriber did not accurately type what was clearly on the tape, or left out many words which the typist probably thought were not material, or did not want to take the time to decipher.

Please remember that this transcript was produced from a multi-channel sound recording device furnished by the Government to the United States Magistrate. Such magistrates are now trying cases by designation which the District Court judges would normally try.

Attached as Exhibit K are pages 40 to 46, inclusive, of the aforementioned transcript.

The GAO proposes that the production of transcripts be thrown onto the open market, with litigants seeking the services of the lowest bidder, as set forth on page 39. This is a preposterous proposal which would result in complete loss of control by the court over transcript production, and subject litigants to the possibility of excessive, exorbitant charges for service by a largely unskilled market of transcribers, with perhaps different litigants in the same case hiring different transcribers, each producing a different version of the transcript.

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As an example, a Montreal newspaper, "La Presse," contained an article in Fresnch (Exhibit L, together with English translation), wherein one lawyer, Jean-Yvs Gagne, received not two, but three translations from the GAO-heralded Montreal, Canada, electronic recording system. The article states, in part:

> "But the strange part of the affair is that the two 'translations,' made by two different secretaries, who had, however, listened to the same reel, were not of equal length, included appreciable differences in numerous sentences, and whereas one of the secretaries had, indeed, understood certain passages, the other had simply referred to them as inaudible."

The potential for disaster after disaster and retrial after retrial in the United States District Courts as a result of the use of electronic recordings instead of court reporters is immense. No matter how low the volume of transcript production may be in a given district court, the complexity of the issues, the complexity of the terminology involved, such as that in patent suits, suits involving chemical processes, or the volatile constitutional issues which may be involved in a criminal proceeding involving the liberty or incarceration of individuals, by necessity would logically foreclose that forum as one where electronic recordings have any legitimate place.

One of the witnesses who testified before Senator Dole on June 26, 1981, was the Hon. Edgar Paul Boyko, of Anchorage, Alaska, and San Diego, California, who was also at one time Attorney General of the State of Alaska. In his written statement

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to the Subcommittee on Courts, Mr. Boyko, with eloquence, urged rejection of the proposal to eliminate human court reporters from the Federal courts, in these words:

> "I happen to believe in the value of customs, tradition and historical continuity. I happen to believe in the dignity of the human individual and that technology should serve humanity, not be its master.
>
> "I happen to believe that the object of laws and courts is the production of something called Justice, or at least a reasonable approximation of that ideal, and I do not believe that something so subtle and profound can be achieved by mindless machines. It takes a dedicated and intelligent application of the collective minds of the participants in the adversary process: the judges, lawyers, clerks and, yes, the professional court reporters.
>
> "I do not care what claims are made for the 'state of the art' of high-priced electronic gadgets, no machine has yet been devised by man that can exercise independent judgment; that is possessed of a sense of what is ethical, fair or reasonable, or that can exercise discretion based upon knowledge, experience and moral values. It takes all these ingredients and more to produce a functioning justice team which can give substance to the ideals embodied in our Constitution and laws.
>
> "As long as I have been in the professional life of a trial advocate -- thirty-five busy years -- I can remember witnessing recurrent assaults upon the foundational pillars of our system of administering justice. Attacks upon the adversary system; assaults upon the jury system;; onslaughts upon professional court reporting; attempts to replace intelligent pleadings with forms designed by file clerks; efforts to reduce the administraton of justice to its lowest common denominator.
>
> "Here, as in all other aspects of our cherished form of government and our free way of life, so envied and admired throughout the world, the watchword still holds true, that 'eternal vigilance is the price of liberty'. It is this need for vigilance which brings me here.
>
> "I have no quarrel with the legitimate commercial aspirations of the purveyors of electronic recording equipment. They have their place in the free enterprise system as have the merchants of armaments, or the manufacturers of chemical fertilizers. But when in their zeal to penetrate the market place they threaten to undermine the quality of our life, it behooves those of us who understand and care about what makes

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our form of government so superior, our methods of the administration of justice so desirable, to rise up and defend those values which transcend entries on a bookkeeper's ledger.

"It is an historical fact that the first manifestation of the disintegraton of liberty undesr authoritarian regimes is always the degradation of the judicial system. It is equally important to recognize that such degradation rarely occurs overnight. It starts in small ways, chipping away some of the social mortar here and there, a brick at a time, until the foundation wall finally crumbles.

"I am convinced that the misguided Alaskan experiment -- an historical fluke, brought about by inexperience, haste and the surrender of independent judgment by gullible administrators to the blandishments of tape recorder salesmen with lavish expense accounts -- demonstrates that the professional, skilled, dedicated court reporter is, indeed, a keystone in that foundation wall which underpins the administration of justice in our courts. That foundation wall may not crumble at once as a result of the removal of even so important an element, but it will surely be weakened structurally. Most assuredly, however, there will follow an assault on yet another brick, and still another.

"There is no limit to the ways in which the mind of man can dream up technological substitutes for intangible human values: Electronically synthesized music; chemical food substitutes; test tube babies; and heaven forbid, representative government supplanted by a black box and a red button on every T.V. set in every living room in the country, producing an instantaneous legislative consensus.

"Amidst all of the churnings of modern technology, it is increasingly important to preserve the vitality of delicate human values and qualities, one of the most significant of which would seem to be the continued human and humane administration of justice. To accomplish this objective, it is necessary that we use <u>people</u> to do the job, people with hearts, minds, consciences and ideals, not glorified juke boxes, even if these can spit out a thousand words per minute.

"I respectfully urge you, therefore, to reject the proposal to eliminate human court reporters from the Federal courts. It would be a serious and most likely irreversible mistake."

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The Hon. Thomas P. Griesa, United States District Judge in the Southern District of New York, also testified before Senator Dole on June 26, 1981, and he, as an active trial judge, had this to say, in part:

> "It may well be technically possible to have electronic devices in a courtroom which will accurately record the words spoken in a proceeding. However, what is frequently overlooked is the fact that there is a long distance between the recording of sounds and the production of an accurate written transcript.
>
> "The essential link between the sounds and the accurate transcript is an intelligent human being, who can understand -- not merely hear -- what is spoken. Court proceedings involve difficulties of understanding in a multitude of ways. There are many instances in the English language where different words have essentially the same sound or phonetics. Many witnesses are called upon to testify about technical matters with specialized vocabularies. All witnesses, whether lay or expert, may have mannerisms or inhibitions which obscure the meaning of what they are saying. Foreign accents must be coped with.
>
> "Any thought that an ordinary typist can make a satisfactory transcript from listening to a sound recording of a court proceeding must be dismissed as entirely unrealistic. We know of no such typists who are capable of performing this task.
>
> "Aside from the problem of accuracy, there is a separate and serious problem about the speed of transcription from sound recordings. Even if there were typists with the requisite expertise, the process of transcribing from a sound recording is sufficiently cumbersome that it takes five to ten times as long as transcribing from a stenotype tape. This process would make hourly or daily copy virtually impossible to produce. The non-expedited transcripts would be delayed inordinately."

In conclusion, USCRA categorically objects to the use of electronic recordings in lieu of human court reporters in the United States District Courts for all of the reasons herein set forth, and for all of the reasons set forth on pages 16-49,

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inclusive, of the Prepared Statement of Richard H. Dagdigian, Immediate Past President of USCRA, before the Subcommittee on Courts on June 26, 1981, which pages are attached as Exhibit M.

However, if the Congress in its wisdom should decide that electronic recording machines have some place in the United States District Courts, then USCRA would concur with the GAO that before the current Court Reporters Act is changed there should be a test period of one year, with a human court reporter also present during such testing, and the Administrative Office being required to report the test results to the Congress so that appropriate action could be taken at that time.However, if such testing is conducted, USCRA respectfully requests that it be consulted in the implementation of any testing, and also have an official role in the evaluation of the test results before a report is submitted to the Congress.

December 2, 1981

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