

DOCUMENT RESUME

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Computer-Aided Transcription Program in the Federal Courts.  
B-185484. May 25, 1977. 11 pp.

Decision re: Federal Judicial Center; by Robert F. Keller,  
Deputy Comptroller General.

Issue Area: Automatic Data Processing (100); Law Enforcement and  
Crime Prevention (500).

Contact: Office of the General Counsel: General Government  
Matters.

Budget Function: Miscellaneous: Automatic Data Processing  
(1001); Law Enforcement and Justice (750).

Authority: Court Reporters Act (28 U.S.C. 753, 753(a)). P.L.  
90-219. 28 U.S.C. 620, 620a-b, 620(3). 28 U.S.C. 623,  
623(a)(5). 28 U.S.C. 604(a)(1), 604(a)(9), 604(a)(10). 31  
U.S.C. 483a, 484. B-185484 (1976). 55 Comp. Gen. 1172. 55  
Comp. Gen. 1176. S. Rept. 90-781. H Rept. 90-351. 11 D. C.  
Code 1727(b) (1973).

The Director of the Federal Judicial Center requested  
an opinion on whether its "Computer-Aided Transcription Research  
Project" may continue to use appropriated funds and still allow  
court reporters to collect fees for transcripts under the  
project. Court reporters may retain transcript fees. Necessary  
equipment and supplies may be furnished on cost reimbursable  
basis, as may be use of computer system, although some  
transcripts must be furnished court at no cost. (DJM)

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**DECISION**



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

**FILE:** B-185484

**DATE:** May 25, 1977

**MATTER OF:** Computer-aided transcription program in  
the Federal Courts

- DIGEST:**
1. Court reporters selected to participate in Federal Judicial Center's computer-aided transcription pilot project may receive fees for transcripts processed during project, in which equipment and supplies are furnished to reporters without cost to them, notwithstanding provision in 28 U.S.C. § 753(e) that reporters furnish supplies at their own expense. Center's pilot project is a research and development effort, clearly within its statutory authority, to test feasibility of computer-aided transcription system. Court reporters' participation is essential to project, and allowing retention of transcript fees may be considered necessary incentive for their participation. B-185484, May 21, 1976, distinguished.
  2. If computer-aided transcription system is implemented by Federal courts, necessary equipment and supplies may be furnished to court reporters on full cost reimbursement basis, so as to satisfy provision in 28 U.S.C. § 753(e) that reporters furnish supplies at their own expense. Compare B-185484, May 21, 1976.
  3. Court reporters may also be permitted reimbursable use of computer system furnished by Federal courts for their private work.
  4. Court reporters must provide reimbursement for use of court-furnished computer system to prepare transcripts even though some transcripts are required to be furnished to court free of charge. Cf., 55 Comp. Gen. 1172.

The Director of the Federal Judicial Center (Center) requests our opinion on whether the Center can continue to use appropriated funds to complete its "Computer-Aided Transcription Research Project."

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Specifically, the Center asks whether funds can be spent on the project and still preserve the franchise of each participating official Federal court reporter to collect fees for transcripts prepared as part of the research project in light of our unpublished decision B-185484, May 21, 1976, which held that court reporters in the Superior Court of the District of Columbia could not collect transcription fees under a proposed computer-aided transcription project.

In a later submission, the Administrative Office of the United States Courts (Administrative Office), which would have operational responsibility of the computer-aided transcription program if it is found to be feasible to establish it on a court-wide basis, recognizes the potential problems concerning B-185484, supra, and has formally requested that our decision to the Federal Judicial Center address the legality of implementing the program on a court-wide basis.

A computer-aided transcription program requires court reporters to record court proceedings on special stenographic machines equipped with magnetic tape cartridges. The cartridges are then inserted into a computer terminal to be located in the court, which transmits the reporter's notes by telephone lines to a central computer operated by a commercial contractor. The central computer translates the notes into printed form via a copyrighted computer program and transmits the "first run" transcript back to the terminal to be edited by the reporter on a display screen. After corrections are made, the terminal prints out the final transcript ready for delivery.

Our decision, B-185484, May 21, 1976, to the Executive Officer of the District of Columbia Superior Court involved a similar computer-aided transcription program and concerned the right of court reporters of the Superior Court, under the District of Columbia Code, to profit from the sale of transcripts of proceedings held before that Court. That decision held that the furnishing of all necessary equipment by a court reporter at his own expense is a prerequisite to a court reporter's right to profit from the sale of transcripts. Although the decision involved exclusively the interpretation of a statute applicable only to the Superior Court, 11 D.C. Code § 1727(b)(1973), the discussion makes reference to parallel language in the United States Code which governs court reporting practices in the Federal court system: the so-called Court Reporters Act, 28 U.S.C. § 753 (1970).

The Federal court reporting system established by 28 U.S.C. § 753, supra, is unique with regard to the compensation of Federal employees. Section 753 provides that for each Federal judicial district one or more official salaried court reporters shall be appointed. These reporters are officers and employees of the court and their work is under the supervisory control of the judiciary. They are compensated by a yearly salary for attending and recording official proceedings, preparing transcripts for judges, and filing copies of transcripts with the clerk of court. However, unlike other Federal employees, the official court reporter is allowed by statute to be an independent entrepreneur, deriving a substantial part of his income from the sale of transcripts to litigants. It is because of this latter status that the Act also requires that the reporter must furnish all of his own supplies. The following are the pertinent provisions of 28 U.S.C. § 753, supra:

"(b) One of the reporters appointed for each such court shall attend at each session of the court and at every other proceeding designated by rule or order of the court or by one of the judges, and shall record verbatim by shorthand or by mechanical means which may be augmented by electronic sound recording subject to regulations promulgated by the Judicial Conference:  
\* \* \*

\* \* \* \* \*

"\* \* \* Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request.

"The reporter shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made.

\* \* \* \* \*

"(c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts.

\* \* \* \* \*

"(e) Each reporter shall receive an annual salary to be fixed from time to time by the Judicial Conference of the United States. All supplies shall be furnished by the reporter at his own expense.

"(f) Each reporter may charge and collect fees for transcripts requested by the parties, including the United States at rates prescribed by the court subject to the approval of the Judicial Conference. \* \* \* (Emphasis added.)

A. The Federal Judicial Center's Pilot Project

The Center's research project has been divided into two phases. Under the completed first phase, reporters selected at random from six judicial districts were provided with an electronic stenotype transcriber and three days of training at the commercial contractor's training facility in Virginia. The reporters were also supplied with magnetic tape cassettes. The first 200 pages of transcription on the program were paid by the Center and a subsidy was paid for the next 800 pages of transcript to cover the costs to the reporter for the commercial contractor's processing fees. The transcriber was then assigned to another selected reporter after three months time.

Under the proposed second phase, the Center will make a computer terminal available to each selected judicial district to give the selected reporters direct access to the main computer, thereby eliminating the sending of the cartridges by mail to Virginia and the mailing of the transcripts back to the reporter. Under this phase, the Center will lease from the contractor, and give the reporters temporary access to, all necessary equipment, including the scope terminals and tape stenotype machines. The Center will also furnish the reporters with processing services and telecommunication lines.

A problem arises because of the language of 28 U.S.C. § 753(e), supra, which states that all supplies needed by the reporter to produce court transcripts must "be furnished by the reporter at his own expense." As mentioned above, under the second phase of the Center's Project, all necessary equipment and supplies will be supplied to the reporters by the Center free of charge. However, the Director of the Center takes the position that 28 U.S.C. § 753(e) does not apply to the instant pilot project. His letter to us states in part:

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"Public Law 90-219 established the Federal Judicial Center on December 20, 1967. Section 620 of Title 28 describes the functions of the Center and Section 623, Title 28 states the duties of the Board. Without quoting verbatim the foregoing statutory provisions, it is clear that research, education and training, innovations and systems development and, generally, anything promoting the improvement of court operation, all fall within the purposes and duties of the Center. \* \* \*

"The position of the Federal Judicial Center is quite different from that of the Executive Officer of the District of Columbia Courts. The Center's only goals are research and development, and continuing education and training, and it does not propose to enter the operational field. It certainly would not, within the meaning of 28 U.S.C. § 753(e), be furnishing 'supplies' to official reporters who would participate in the Center's research program, by allowing them temporary access to Center-acquired data computer equipment. The Center will retain title and possession of any hardware as well as related software, and is not in any event empowered to furnish 'supplies' since this is a function of the Administrative Office of the United States Courts (28 U.S.C. § 604(a)(10)). The Center will retain ownership and possession of the equipment used until, at such time in the future, the project might become operational. At that point, our research and development mission would be phased out. Admittedly at that time, the problem presented in B-185484 would be confronted by the Administrative Office which would assume operational responsibility. (I understand that the Administrative Office does intend to write to you on this matter in the near future.)

"It is not, however, intended in the Center's present limited research program that those reporters participating in the program will be able to use the Center's hardware for private purposes, except to the extent that the production of official transcripts will enable these reporters, utilizing their own 'supplies,' to duplicate the original transcript for distribution to parties, etc. (as is customarily done by reporters everywhere).

"The issue is whether the Center is furnishing 'supplies' by giving reporter-participants a mere temporary access to computers in carrying out an essential, statutorily mandated research project under strict controls."

We cannot accept the assertion that the Center's pilot project does not, at least in a functional sense, involve furnishing supplies to court reporters. In fact, the basic holding of our prior decision in the District of Columbia Superior Court matter was that the very similar arrangement proposed there would result in furnishing supplies to court reporters, so as to preclude the reporters from receiving their normal transcript fees under the analogous D.C. Code provision. Nevertheless, we do agree that 28 U.S.C. § 753(e) need not constitute a bar to continuation of the instant research project in view of the Center's overriding statutory research and development authorities.

As the Director indicates, the Center has a broad mandate "to further the development and adoption of improved judicial administration in the courts of the United States." 28 U.S.C. § 620(a). Its specific functions, as set forth in 28 U.S.C. § 620(b), include the following:

"(1) to conduct research and study of the operation of the courts of the United States \* \* \*;

"(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States; [and]

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government \* \* \*."

Of even more specific relevance to the instant matter, the Board which supervises and directs the activities of the Federal Judicial Center is mandated by 28 U.S.C. § 623(a)(5) to--

"study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States \* \* \*."

The Senate Judiciary Committee report on the legislation enacted as Pub. L. No. 90-219 observed with respect to the above-quoted provision:

"Paragraph (5) of proposed section 623(a) contains the most specific of the Board's duties: evaluation of proposals for the application of data processing and systems techniques to the administration of the Federal

courts. The computer revolution, sweeping the financial and industrial enterprises of our Nation, has thus far made little headway in the courts. Claims of unprecedented efficiency for the courts in the age of the computer, on the one hand, and fears of 'mechanized justice' and 'trial by computer,' on the other, have been voiced in various circles, but it is apparent to your committee that an objective evaluation of the potential of data processing systems in the work of the courts is a necessity. By its very nature as a center for the study of court administration, the Federal Judicial Center is an appropriate medium for such an evaluation." S. Rep. No. 781, 90th Cong., 1st Sess. 19 (1967); see also, Additional Statements of Reps. McCallock and McClory. H. Rep. No. 351, 90th Cong., 1st Sess. 23-27 (1967).

The Senate report also emphasized the distinction between the research and development functions of the Center and the operational role of the Administrative Office:

"Although the Federal Judicial Center is properly located within that branch of Government with primary responsibility for the administration of justice in the courts of the United States, your committee specifically rejects establishment of the Center within, or as a constituent bureau of, the Administrative Office of the U.S. Courts. The purpose and functions of the Center are not akin to those of the Administrative Office. The latter is charged by chapter 41 of title 28, United States Code, with recordkeeping, budgeting, statistics gathering, salary and fringe benefit administration, and other so-called housekeeping functions for the Federal courts. It is the 'operations' arm of the judicial branch. The Federal Judicial Center, on the other hand, is to be the 'research and development' arm of the judiciary, responsible for furthering the development of improved techniques of administration in the courts of the United States. The roles of these two units in the administration of the courts, although undeniably related, are not essentially congruent." Id. at 14.

The Center's computer-aided transcription research project is clearly a proper exercise of its duties and functions as envisioned by Congress. Moreover, we are aware that the success of the project



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depends on the cooperation of the court reporters; and that the reporters require some incentives to participate in a project which, if successful, may ultimately serve to reduce their income. Cf., the testimony of the Director of the Center in Hearings before a Subcommittee of the House Appropriations Committee on Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1976 (Part 1), 94th Cong., 1st Sess., at 406.

In view of the foregoing, we are satisfied that permitting court reporters to retain fees for transcripts produced under the experimental projects is a necessary incident to the successful conduct of the research project, and that the Center's research and development authorities provide adequate support for this practice.

B. Implementation of an Operational Computer-aided Transcription System

If the Center's pilot project demonstrates that a computer-aided transcription program is feasible and the Judicial Conference approves its use on a court-wide basis, the Administrative Office will be faced with the task of implementation. The research and development mission would be phased out, and as distinguished from the pilot project under which each court reporter operates independently, each court reporter would have to look to the Administrative Office or some commercial service bureau for processing the output of a magnetic tape stenotype machine into hard copy. Court reporters would require new stenotype machines of the magnetic tape variety and expendable supplies of magnetic tape. The magnetic tape would be required to be filed with the clerk of court.

We believe that the providing of such materials by the Administrative Office in an operational context for use by the official court reporters without cost to them would be contrary to 28 U.S.C. § 753(e). B-185484, supra; cf. Texas City Tort Claims v. United States, 188 F.2d 900 (5th Cir. 1951).

Following the issuance of our previous decision in the District of Columbia case, the Committee on the Budget in its September 1976 report to the Judicial Conference recommended that the Administrative Office explore with this Office possible alternative methods of implementing the computer-aided transcription program. Accordingly, the Director of the Administrative Office has proposed a plan to implement the program. The Director's letter to us describes this plan in relation to our prior decision as follows:

"Under the proposed plan in the Superior Court for the District of Columbia, court reporters would have been charged only for the use of the system, i.e., a processing charge. The rates to have been established would not have recovered the cost of the initial investment in the equipment. Your decision concluded that the effect would be to furnish the equipment to participating court reporters free of cost, and at least for that reason the plan was objectionable.

"In contemplating a plan for Federal district courts, however, another option appears to be available. The Administrative Office could provide the processing service to court reporters on a reimbursable basis, at rates established to recover all costs of the system, including depreciation, amortization, repair, operation, and telecommunications. Cf. 31 U.S.C. § 483a. Under this proposal, the system would be financed from appropriated funds and all revenues received would be required to be deposited to the General Fund of the Treasury. See 31 U.S.C. §§ 483a, 484. The establishment of rates at levels sufficient to recover all costs and the collection of such fees from court reporters would mean that court reporters still would be bearing the full financial responsibility for all aspects of transcript preparation and sale. Each court reporter would remain responsible for the provision of a magnetic tape stenotype machine and the necessary magnetic tapes. Training would continue to be provided by the Federal Judicial Center. 28 U.S.C. § 620(b)(3). It is anticipated that the Administrative Office might award requirements-type contracts for the magnetic tape stenotype machines and magnetic tapes to minimize costs to court reporters.

"Alternatively, the Administrative Office could provide the magnetic tape stenotype machine to the court reporter, and recover the cost thereof over the life of the machine through periodic payments from the court reporter. Such payments also would be deposited to the General Fund of the Treasury."

The Director specifically requests our opinion on the following questions with respect to this proposal:

"1. Are the appropriations to the Judiciary available to the Director of the Administrative Office for obligation and disbursement in the establishment of this computer assisted transcription program under present law?

"2. Would the establishment of a computer assisted transcription program as outlined above, including as a key element the fixing of charges at levels to recover all costs, satisfy the objections interposed to the plan of the Superior Court of the District of Columbia?

"3. Would the use of the service by court reporters in preparing transcripts as part of their private reporting work be objectionable?

"4. May the service be provided to court reporters without charge for their work in preparing transcript for the court for which they receive no transcript fees?"

With reference to the first question, the Administrative Office certainly has authority to establish a computer-assisted transcription program. See, e.g., 28 U.S.C. §§ 604(a)(1), (8), and (10)(1970 & Supp. V, 1975). Apart from the comments hereafter as to the effect of 28 U.S.C. § 753, our response to the first question is, of course, concerned only with the basic authority for the program as such. We do not expressly or implicitly address the mechanics of its implementation.

With reference to the second question, our prior decision reasoned that under the D.C. Code provision, which is analogous to 28 U.S.C. § 753, the obligation of court reporters to furnish supplies at their own expense represents a quid pro quo for their retention of transcript fees. Thus our basic objection to the Superior Court proposal was that reporters would continue to receive transcript fees without assuming the full cost of the computer-aided system.


The Administrative Office's plan would require that the reporters who use the program reimburse the Government for the full cost of providing the service. This would be done by setting the rates for use of the Government service (i.e., the terminal, rental of computer time, necessary software and telecommunications), at a level which would cover the entire cost of the equipment, including depreciation,

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amortization, repair and operation, plus rentals for computer time and related software. The reporters would still be required to purchase their own stenotype machine, magnetic tapes and other supplies. In the alternative, the Administrative Office would purchase the magnetic tape stenotype machines and, in effect, sell them to the reporters. This satisfies the requirement that the reporters must furnish all necessary supplies, at their own expense. Under these circumstances, we would have no objection to their retention of transcript fees. Accordingly, question 2 is answered in the affirmative.

The Administrative Office's third question is whether the official court reporters could use the computer-aided transcription system in providing transcripts as part of their private reporting work. As we understand the program, the Administrative Office would charge the same rates for processing transcripts made in a private context as the rate applicable to processing official court transcripts. The system would be provided to the reporters in their capacity as independent contractors and not as employees of the court. We have no objection to use of the system for private reporting work on a reimbursable basis, as proposed, provided that such use does not interfere with the processing of official court transcripts.

The final question is whether the computer system can be provided to court reporters without charge for their work in preparing the transcripts which they are required to provide for the court free of charge. The answer is in the negative. In a somewhat similar matter, we have followed the reasoning of the Texas City Tort Claims v. United States, supra, which held that the Court Reporters Act contemplates that such duties as preparing transcripts for judges and filing copies of transcripts with the clerk represent the reporters' statutory duties for which they are duly compensated by their yearly salary. Therefore, supplying the transcription service to a reporter without charge for producing this copy would be contrary to the intent of the Court Reporters Act. Cf. 55 Comp. Gen. 1172, 1176 (1976).

  
Deputy Comptroller General  
of the United States