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STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON THE COURTS
SENATE COMMITTEE ON THE JUDICIARY
ON THE
FEDERAL JUDICIARY'S COURT REPORTING SYSTEM

Mr. Chairman and Members of the Subcommittee we appreciate the opportunity to testify before you today on our review of the Federal Judiciary's court reporting system. Although we have not finalized our report, we have completed the fieldwork which gives us the opportunity to discuss the problems we found and the actions needed to correct them.

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 court reporters are being carried out in a questionable fashion in many cases. We noted that Federal court reporters are

- (1) engaging in a general pattern of overcharging litigants for transcripts;



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- (2) operating private businesses out of space provided by Federal courts;
- (3) using substitutes rather than personally providing the services for which they were hired; and
- (4) receiving about the same salary for significantly varying workloads and are not required to serve all the recording needs of the district courts.

While these problems could be solved by improved management of court reporter activities, we believe consideration should be given to a proven alternative--electronic recording. Such a change would not only result in substantial savings, but would also provide a better record of courtroom proceedings.

The Court Reporters Act requires that a court reporter attend each court session, record the testimony, and certify the official court records. In 1980 there were 575 Federal court reporters who received annual salaries and benefits totaling about \$16 million. These reporters have unique employment status. Although they 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 Court Reporters Act provides official reporters a salary 1/ to record official court proceedings and allows them to sell and retain the fees collected from selling the transcripts they prepare. The preparation and sale of official court

1/Court reporters receive salaries ranging from \$28,741 to \$31,615 depending on longevity and proficiency, for their attendance in court or in chambers for the purpose of taking notes of proceedings.

transcripts are viewed as private business activities. Also, court reporters are usually allowed to engage in other reporting activities unrelated to their official transcript work as long as they are not needed to record official court proceedings.

To develop our findings and conclusions, we discussed court reporting procedures with judges, attorneys, court reporters and others; reviewed the activities of 51 of the 111 reporters in seven Federal district courts; reviewed Administrative Office of the U.S. Courts audit reports and statistical information which covered activities of court reporters; and evaluated the feasibility and use of electronic recording systems in Federal and non-Federal court settings.

Our findings fall into two categories:

- management of reporters' official activities and oversight of private reporting activities; and
- methods used to record court proceedings.

COURT REPORTERS ARE NOT
ADEQUATELY MANAGED

The Court Reporters Act requires each district court to supervise the activities of its reporters and Judicial Conference policy states that the reporters are to serve the reporting needs of the entire court. However, these provisions and various Judicial policies and guidelines governing court reporters' activities are not being followed.

The typical practice of district courts is to assign a reporter to each active judge and rely on the judge to supervise the reporter's activities. This practice enables each judge to

have his/her court proceedings recorded but does not assure that the reporter's other activities are properly supervised and monitored. Most judges simply do not have the time to keep track of their reporters' activities and, in fact, probably should not take the time to do so. As a result, court reporters manage themselves, often for their own best interest, to the detriment of litigants, the courts and the public. Specifically, we found that some court reporters have

- devised ways to overcharge litigants for transcripts, including violations of maximum transcript rates set by the Judicial Conference;
- engaged in activities which conflicted with Federal employment, including operating businesses out of Federal courthouses and profiting by using substitutes to do their official court work; and
- been poorly utilized, resulting in transcript backlogs, inequitable compensation and contracting for reporting services when official reporters were available.

Litigants Were Charged Excessive and Unauthorized Fees for Transcripts

In accordance with the Court Reporters Act, the Judicial Conference has established maximum per page rates which a reporter can charge litigants for transcripts. Reporters are required to comply with these rates, and charges of any other kind or which exceed these rates are unauthorized. In addition, the Judicial Conference has set forth transcript format standards which reporters must comply with in preparing transcripts. This format is important to assure that litigants get full pages for the rates paid.

Contrary to specific provisions of the Court Reporters Act, none of the seven district courts we reviewed supervised or monitored the rates their reporters charged for transcripts. This lack of supervision and monitoring has enabled reporters to charge litigants excessive and unauthorized fees for transcripts.

Of the 51 court reporters we selected in the seven district courts, 42 had engaged in some form of overcharging. Specifically,

- twenty-eight reporters in six districts charged litigants per page rates that exceeded the maximum approved by the Judicial Conference;

- sixteen reporters in three districts, in addition to per page fees, charged litigants for payments the reporters had made to substitute reporters who had helped them;

- twenty reporters in four districts charged litigants for unauthorized postage, binding, and delivery fees up to \$100 per transcript; and

- fifteen reporters in five districts charged litigants for transcript pages which had formats that did not comply with Judicial Conference policy, resulting in "short pages."

The Court Reporters Act also requires reporters to provide (1) a transcript to any Federal judge who requests one, and (2) a copy of all transcripts to the clerk of the court whenever a transcript is prepared. The Administrative Office's General Counsel has taken the position that reporters' salaries compensate them for these transcript copies and that reporters should not charge litigants for them. Contrary to this position, we found that in five of the seven districts visited 23 reporters had charged litigants for copies of transcripts provided to a judge or clerk of the court.

For some time the Judiciary has been aware of the overcharging of litigants, but has not acted to fully correct the situation. For example, the Administrative Office reported that, in 51 district courts it evaluated from 1976 through early 1981, overcharging for transcripts occurred.

We interviewed 30 of 86 active judges in the seven districts visited and found that none had actively supervised or arranged for the supervision of reporters or knew how the reporters dealt with and charged litigants for transcripts. All 30 judges believed their reporters had been treating litigants fairly because litigants rarely, if ever, complained about the rates charged for transcripts.

Court Reporters Engaged in
Activities Which Conflicted
With Federal Employment

The lack of supervision and monitoring of reporters has enabled them to

- subsidize their private reporting activities by operating businesses in Federal courthouses; and
- profit at the Government's expense by hiring substitutes to do their work while they did other things, including engaging in private business activities.

Businesses in Federal courthouses

Reporters in five of the seven districts reviewed were conducting private reporting business activities in Federal courthouses. The Federal Government is subsidizing these businesses by providing reporters rent-free space. For example:

- In one district, all nine of the 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 private reporting activities. This reporter had 700 square feet of courthouse space (current standard is 250). Another reporter operated a private reporting firm that had five employees and occupied 1,150 square feet of Federal courthouse space.

--In another district 31 court reporters are incorporated and operate an extensive private reporting business from Federal courthouse space. In addition to these reporters, this firm has 38 employees, all of whom occupied courthouse space. This business had gross income of about \$901,000 in 1979 and \$722,000 in 1980 from its private business. This firm had no other location from which it conducted business.

--In the three other district courts, reporters were also conducting private business activities in Federal courthouses.

Use of Substitutes

Many reporters are profiting by hiring substitutes to do their official work. Reporters profit because (1) they pay substitutes less than their Federal salaries and/or (2) they are free to engage in private reporting activities not related to their official duties. The use of substitutes in this fashion is inconsistent with (1) 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, and (2) certain requirements of the Court Reporters Act.

Recognizing this problem, the Judicial Conference in March 1980 adopted a policy discouraging the use of substitute court reporters and limiting their use to assisting in meeting recording and transcription deadlines, absences due to illness, vacations,

and other similar circumstances beyond the control of court reporters. However, many reporters were still using substitutes at the time of our fieldwork and only one of the seven district courts reviewed had established a policy limiting the use of substitutes. This district, however, was not following its policy. Two examples of the extensive use of substitutes are:

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

--In another district, a reporter 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. He received a Federal salary plus benefits.

Federal Court Reporters Poorly Utilized

Reporters are usually expected to serve the recording needs of the judge they are assigned to. This has created a wide variance in workloads among reporters because judges have varying workloads. As a result, many court reporters were not fully utilized. However, these under-utilized court reporters were not being used to fulfill other court reporting needs and district courts were contracting for reporters to serve the needs of senior and visiting judges and magistrates even though Federal court reporters were available.

Workload imbalance causes problems

The recording and transcript workloads of reporters varied widely. Some reporters had very light workloads while others

were overburdened and sizeable backlogs had developed in preparing requested transcripts. Also, compensation on an hourly basis among reporters was inequitable because regardless of the number of hours reporters actually spent recording proceedings, they all received about the same annual salary.

Nationwide, the time court reporters spent recording official court proceedings during 1980, exclusive of the Alaska Federal district court, ranged from 173 hours to 1,735 hours. On a weekly basis the range was from 3.5 hours to 34.7 hours. Furthermore, the pages of transcript prepared by reporters also varied substantially nationwide, ranging from 1,749 to 45,231 pages.

These varying workloads created backlogs in the preparation of requested transcripts for some reporters. For example, in one district, 8 of the 18 reporters had transcript backlogs averaging over 5,000 pages. Although these 8 were behind weeks, and even months, in preparing requested transcripts, 10 other reporters in the district had no backlogs.

These variances in workloads also produced substantial inequities in reporters' compensation because they were paid about the same salaries regardless of the number of hours they recorded court proceedings. Accordingly, reporters' pay per recording hour varied substantially. For example, the court reporter with the lowest number of hours of recording time (173 hours) was paid

at an hourly rate of about \$160 whereas the court reporter with the highest recording time (1,735 hours) was paid at an hourly rate of about \$15. This includes only salary costs.

Contract reporters were hired even though official reporters were available

In 1980 reporters recorded court proceedings an average of 162 days out of a normal work year of about 240 days. On the average they recorded about 15 hours per week for judges. In four of the seven districts we reviewed, we noted that in 1980 most of the costs (\$107,540) incurred to hire contract reporters to serve the needs of senior judges and magistrates could have been avoided because official reporters were available but not used.

For example,

--in one district contract reporters were hired for 63 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 53 of 54 days that contract reporters were used; and

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

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Although the numerous problems that have been discussed can be solved by improved management of court reporters, we believe serious consideration should be given to another proven alternative--electronic recording of court proceedings.

ELECTRONIC RECORDING SYSTEMS SHOULD
BE USED AS THE JUDICIARY'S PRIMARY
COURT REPORTING METHOD

Electronic recording systems are now available and in use which could significantly--we estimate \$13.6 million annually--reduce the Government's costs of recording Federal judicial proceedings and, at the same time, potentially reduce the costs of transcripts borne by litigants. Furthermore, electronic recording can provide a better record of court proceedings and much greater management flexibility and control. Highly reliable electronic recording equipment which produces high quality recordings and contains features to safeguard against operator and procedural errors is available. Accordingly, courts that have properly implemented electronic recording systems obtain accurate and timely transcripts and realize several advantages over using manual stenographic methods.

In evaluating the cost-effectiveness and benefits of electronic recording and its feasibility for use in Federal district courts, we visited four courts that used electronic systems to record trial proceedings similar to Federal district court proceedings. Further, we interviewed officials of five private reporting firms that use electronic recording to record court proceedings and officials of four manufacturers of electronic recording equipment.

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 trial court proceedings. These proceedings include a full range of participants, including the judge, attorneys, witnesses and jurors and thus are similar to Federal district court proceedings.

In total, we visited or contacted 16 courts which used electronic recording to record trial court proceedings. Officials in these courts told us that they have experienced no significant problems recording proceedings or having transcripts prepared from tapes.

Electronic recording systems are also used by the United States Supreme Court and the United States Tax Court. Officials of these courts told us that they were satisfied with the recordings and transcripts from the use of electronic recording systems. In fact, the Tax Court, which is a trial court, specifies in its contracts for recording services that only electronic recording can be used.

Advantages of Electronic Recording Systems

We estimate that by using electronic recording systems, the Federal Judiciary could reduce its costs of recording proceedings from about \$18.4 million to \$4.8 million a year--a savings of about \$13.6 million annually. (See attachment I.) This estimated savings is based on exclusive usage of electronic

recording systems and considers the annual operating costs of the new system such as personnel, office and tape storage space, equipment depreciation and maintenance, facility modification amortization, and recording supplies. We estimate that the initial outlay costs would total about \$14.3 million. (See attachment II.)

Another advantage is that litigants would have opportunities to reduce their transcript costs by purchasing tapes from the court and having transcripts prepared on the open market where competition could be expected to keep costs at the lowest possible level.

Litigants can also keep costs down by using the tapes and related log notes taken by persons monitoring the proceedings, instead of transcripts, to review what transpired in the courtroom. Tapes and log notes can be provided to litigants at a very low cost--under \$10 for an hour's proceeding versus \$80 to \$140 for written transcripts.

Court officials who have had experience with both electronic and stenographic methods contend that records produced electronically are more accurate than records produced stenographically because a tape recorder records the actual words spoken without interpretation or editing, capturing not only what was said but how it was said. In addition to accurately recording proceedings, accurate transcripts of proceedings can readily be prepared from

the tape. Court officials in all 16 courts we visited or contacted, which use electronic recording systems, told us that they are satisfied with the accuracy of the transcripts.

Timely transcripts can be prepared under electronic recording systems. Even same day transcript service can be successfully provided when appropriate procedures and numbers of transcribers are used. For example, although not routinely done daily, transcript service has been successfully provided in Alaska, Australia, and Maryland.

Electronic recording systems provide other advantages over stenographic court reporting methods. For example, the taped record eliminates problems which can result from two inherent weaknesses in stenographic methods: (1) the necessity to translate a court reporter's notes into an understandable form, and (2) the inability to verify transcript accuracy. The taped records can be reviewed and understood instantly without translation or transcription and any transcripts prepared can be verified against the taped record. A court reporter's notes, however, cannot be readily understood and cannot provide an objective basis to verify transcript accuracy.

Electronic Recording Systems
Must Be Properly Designed And
Implemented To Assure Success

Electronic recording systems must be properly designed, implemented, and managed before a court's reporting needs can be properly met and the benefits and savings inherent in electronic recording systems can be realized. Officials in courts using

electronic recording systems told us that proper equipment, properly trained personnel, and appropriate courtroom procedures must be used to avoid problems with the accuracy and timeliness of transcripts.

Opponents of electronic recording--which include some judges and attorneys, but primarily court reporters and their associations--often refer to problems in transcribing court proceedings as their basis for saying that electronic recording systems are not feasible, when in fact, the fault lies in improper equipment, improperly trained personnel, or in courtroom procedures themselves.

These individuals argue that the electronic recording machines cannot (1) identify speakers, (2) record overlapping or simultaneous testimony, (3) indicate non-verbal communications, or (4) capture interjections made while previous testimony is being played back. They assert that these shortcomings result in inadequate or inaccurate transcripts. In addition, they contend that electronic recording systems erroneously record privileged communications, are unreliable, lack portability, and disrupt courtroom decorum.

We evaluated these arguments by observing "state-of-the-art" electronic recording systems in operation, asking users of electronic recording systems if they experienced these problems, and reviewing studies prepared on various systems. We concluded that these arguments have little merit. The latest electronic recording machines have features designed to eliminate most of

these problems and by using proper procedures the remaining problems can be readily overcome. A discussion of each of the arguments and how they can be overcome follows.

1. Speaker identification. Opponents of electronic recording claim that a court reporter can see who is speaking, even the "roving advocate", and identify the person for the record. Machines cannot do this.

Users of electronic recording systems told us that this problem is avoided by using individuals to monitor the recording of proceedings. These persons maintain complete log notes in which speakers are identified and indexed to the tape via index numbers displayed on the machine. The National Center for State Courts stresses this procedure as an important element of an electronic recording system.

2. Overlapping or simultaneous testimony. Opponents of electronic recording systems contend that the systems cannot properly record and separate overlapping or simultaneous testimony, i.e., 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. Also, opponents claim that in such situations court reporters, if they believe it inappropriate to stop the proceedings, use their judgment and record only the testimony they believe is most important. They further argue that in these situations the jury can listen to only one speaker

at a time and therefore the court reporter's version is a better reflection of what the jury heard.

We asked users of electronic recording systems whether overlapping testimony causes problems. They responded that it was not a problem and several court officials explained why. First, most modern electronic recording machines used in courts are multi-track recorders which have the capability of separating overlapping testimony. In a typical system for electronic recording of courtroom proceedings there is a channel on the tape for each microphone used by a principal participant. 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 in which overlapping testimony was recorded and verified that the voices were separable and distinguishable. Court officials also told us 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 electronic equipment operators can also do this.

3. Non-verbal communications. Opponents of electronic recording contend that machines cannot record non-verbal communications such as nods, shrugs, pointing fingers, and that unless the court or counsel identifies (e.g., "let the record show. . .") such non-verbal testimony, the transcript prepared from electronic recording systems will not mention such non-verbal activity.

Court reporters, on the other hand, can watch the proceedings, describe these in their notes, and include them in the transcript.

Officials of courts using electronic recording told us that non-verbal communications are not a problem and are handled in two ways. First, by using proper courtroom procedures judges, attorneys, or recording monitors can instruct speakers to present all testimony verbally, and second, recording monitors can record any non-verbal communications in their log notes and include such communication in transcripts.

4. 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 read-back process, they are able to move quickly back to taking notes again.

We found that means are available to deal with this situation when electronic recording systems are used. Recording monitors' detailed log notes, which index speakers to locations on the tape and which paraphrase testimony can assist monitors to find the previous testimony rapidly. In addition, one machine has a feature which enables the operator to enter the index number of previous testimony on a keyboard, then push a button which automatically rewinds the tape to the correct position within seconds. This machine can also fast-forward very rapidly to the point of

the tape where the last testimony ended so recording can be resumed with little delay. Another machine has the capability of recording and playing back simultaneously. This machine has two independent cassette systems; one can record while the other plays back previous testimony.

5. Privileged communications. Opponents of electronic recording 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 talked to said that recording privileged communications is avoided by proper procedures and equipment. With experience, attorneys learn to cover the microphone or move away from it when speaking privately with a client. The microphones for judges usually have a button to deaden the microphone when required for bench conferences.

6. Reliability. Opponents of electronic equipment argue that court reporters are more reliable than machines. A court reporter may be tardy, ill, or dead but at least his/her sufferings are obvious. Machines may be operating defectively without detection and the record may be "lost".

Users of electronic recording told us that the latest recording machines are very reliable and contain safeguard features which provide warnings if a malfunction should occur. 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.

7. Portability. Opponents of electronic recording contend that tape recorders are bulky, if not immovable, and court reporters can join the court and counsel for conferences in the judges' chambers.

Users of electronic recording told us that various procedures may be used in these situations. Conferences in judges' chambers can be recorded electronically by courtroom recorders by merely bringing a microphone with a long cable into the chambers if they are adjacent to the courtroom. Also, recorders could be located in judges' chambers for these purposes. And, courtroom cassette recorders can be carried easily into chambers or other non-courtroom locations.

8. Disruption of courtroom decorum. Advocates of using court reporters 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-fangled devices", counsel will be distracted in the presentation of his/her case. They said court participants will have to learn microphone orientation.

Users of electronic recording told us that counsel get 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 note-taking activities than with the testimony. Court officials

agreed that proper procedures are necessary to insure the record is properly recorded, but that this does not disrupt court proceedings.

SUMMARY

In summary, many court reporters are taking advantage of the present system for recording and transcribing Federal district court proceedings. The system is costly to both the courts and litigants and is permeated with inefficiency and inequities. Accordingly, we believe another method--electronic recording--should be established in lieu of court reporters as the predominate method of recording district court proceedings. The benefits of installing electronic systems are threefold:

- the system has certain inherent benefits itself in terms of accuracy and timeliness of recording and transcribing court proceedings;
- lower costs of about \$13.6 million annually once electronic systems are fully installed; and
- elimination of the questionable activities that are presently occurring among Federal court reporters.

Before the Federal Judiciary can use electronic recording systems exclusively, the Congress must amend the Court Reporters Act to permit Federal district court proceedings to be recorded by using electronic recording equipment without the presence of a court reporter.

However, until the act is amended and court reporters are phased out, the Judiciary needs to better manage its court reporters and eliminate the problems we have discussed. We believe

an important step to accomplish this would be to establish a central management authority in each district court--probably in the office of the clerk of the court--to supervise and monitor the district's reporters. This management authority--which should be independent of court reporters--should assure that reporters (1) charge litigants appropriate fees for transcripts, (2) are effectively and efficiently used to meet all the district's recording needs, and (3) are not engaging in private reporting activities which conflict with their status as Federal employees.

This concludes my prepared statement. We hope this information and the information in our final report will assist the Subcommittee in its efforts to improve court operations. We would be pleased to respond to any questions.

COMPARATIVE COST ANALYSIS
COURT REPORTERS VERSUS
ELECTRONIC RECORDING SYSTEMS

<u>CURRENT ANNUAL OPERATING COSTS</u>	<u>COST</u>
Court reporters' salaries and benefits	\$15,973,774
Contract court reporters	619,285
Office space provided court reporters	1,419,371
Travel	<u>332,775</u>
Total cost of recording proceedings	<u>18,345,205</u>

ESTIMATED ANNUAL OPERATING COSTS
FOR ELECTRONIC RECORDING SYSTEMS

Personnel	\$ 836,541 <u>a/</u>
Office space	54,498
Equipment depreciation	1,499,571
Equipment maintenance	340,250
Recording supplies	1,073,598
Tape storage space	229,859
Facilities modification amortization	<u>760,752</u>
Total estimated annual operating costs	<u>4,795,069</u>
Annual savings by converting to electronic recording	<u>\$13,550,136</u>

a/The personnel costs are based on the need for 62 people at an annual salary rate of \$12,266 (JS-5) plus a 10 percent allowance for benefits. These administrative clerks will be responsible for insuring the availability of recording equipment and supplies, maintaining custody of tapes that contain official court proceedings, and arranging for court requested transcription. The responsibility for monitoring the use of electronic recording equipment in the courtroom will be performed by the existing courtroom deputies.

ESTIMATED INITIAL OUTLAY
COSTS FOR ELECTRONIC RECORDING
SYSTEMS FOR FEDERAL
DISTRICT COURTS

<u>ITEM</u>	<u>COST</u>
Courtroom recording equipment	\$ 5,453,000
Spare recording systems	1,358,000
Tape duplicators	3,686,000
Facilities acoustical modification	<u>3,803,760</u>
Total outlay	<u>\$14,300,760</u>