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NATIONAL CENTER FOR STATE COURTS

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Nigeria Rule of Law Assistance Program

**REPORT ON
ALTERNATIVES TO THE WRITTEN NOTE
IN THE HIGH COURTS OF THE
REPUBLIC OF NIGERIA**

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TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY.....	1
A.	Overview: Consensus on Replacing the “Written Note”	1
B.	Courts Involved	2
C.	Recommended Pilot Project	2
D.	Rationale for E-R Recommendation	2
E.	Equipment	2
F.	Personnel.....	3
G.	Nigerian Concerns about an E-R System	3
H.	Consultant’s Responses to the Concerns.....	3
II.	BACKGROUND: THE WRITTEN NOTE SYSTEM IN NIGERIA.....	5
III.	THE COURT CONTEXT.....	7
A.	High Court Organization and Staffing.....	7
B.	Qualifications of Other Court Personnel.....	8
C.	Appeals and the Preparation of the Record on Appeal.....	9
D.	Transcribers and the Production of Transcripts.....	9
E.	Physical Conditions of Current Facilities.....	10
F.	Facility Construction and Relocation Plans.....	11
G.	Relevant Law.....	11
IV.	COURT REPORTING OPTIONS AND THEIR FEASIBILITY IN NIGERIA...12	
A.	Stenotype Machines.....	13
B.	Stenomask (“voice-writing”) and Video Recording.....	13

C.	Electronic Sound Recording (E-R).....	14
V.	E-R MODELS AND RECOMMENDED CONFIGURATIONS.....	16
A.	Expensive Model (EX).....	16
B.	Inexpensive Model (INEX).....	17
C.	Precedent in Nigeria for the INEX.....	18
D.	Advantages and Disadvantages of the EX Model.....	18
E.	Advantages and Disadvantages of the INEX Model.....	19
F.	Recommended Optimal EX Configuration for Microphones in the Courtroom.....	19
G.	Alternative to the Recommended Optimal Microphone Configuration....	19

Appendices

I. EXECUTIVE SUMMARY

Under Task Order 802 of Indefinite Quantity Contract (IQC) # AEP-I-00-00-0001-00 awarded by the U. S. Agency for International Development (USAID), the National Center for State Courts (NCSC) is administering the Nigeria Rule of Law Assistance Project. This project provides technical assistance to the State High Courts of Lagos, Kaduna, and the Federal Capital Territory (FCT) of Abuja, and – to a more limited extent – the Federal courts for a Nigerian-led process to improve the judicial sector. Task 4 concerns: “Study and Recommendations for Court Transcripts.”

In February 2001, NCSC consultant William Hewitt spent nearly two weeks in Nigeria consulting with High Court representatives and stakeholders regarding replacing the “written note” system of recording court proceedings. This report contains his findings, conclusions, and recommendations.

A. Overview: Consensus on Replacing the “Written Note”

The record of trial court (High Court) proceedings in Nigeria is currently made through a procedure called the “written note.” During all these proceedings – including court hearings where evidence is presented by witnesses, where documentary evidence is presented and supported by statements and arguments, and during motion hearings where arguments are made by counsel – the judge documents as completely as possible everything that is presented as evidence or argued and submitted by counsel. This is a source of both physical and mental discomfort for judges, and is doubtless a constraint on how much time judges can devote to hearing cases. Moreover, to accommodate the judge’s efforts to record verbatim all the relevant oral testimony and argument, lawyers speak slowly, interject pauses, and often, at the judge’s request, remain silent and wait until a cue from the judge to proceed. The result is a very slow and ponderous process. Observations of proceedings suggest that time spent in court presenting cases can be shortened by a factor of 2 or 3 if there is no need to wait for the judge to record the proceedings. However, the high degree of orderliness in Nigerian court proceedings with lawyers speaking when invited to do so, speaking in turn, and not interrupting opposing counsel is highly advantageous for implementing a new system for making the record.

Interviews with scores of Nigerian court and other justice system officials confirm that few people support continuation of the current system. Some lawyers in Lagos State reported to the International Human Rights Law Group that there are quite a number of corrupt judges who had earlier resisted attempts at finding alternatives to the written note because such changes would reduce their capacity for manipulating the record. Therefore, it is conceivable that some corrupt judges might continue to resist attempts to replace the archaic written note system. However, the consultant’s research indicates that that does not appear to be the prevailing attitude.

There is widespread support for change. Justice system officials want to know when an alternative program can begin. Where opinion varies is on the level of confidence that there is one viable alternative. The prevailing view reflected in this report is that the most viable alternative is electronic sound recording (E-R). This report reviews E-R and other alternatives,

explores the factors that would influence the feasibility of E-R, and recommends E-R models for experimentation.

B. Courts Involved

This report concerns only the High Courts, because these are the courts where the problem of the written note exists. High Courts have subject matter jurisdiction over general civil matters and serious criminal matters. They are functionally and jurisdictionally parallel with courts of general jurisdiction in the U.S.

C. Recommended Pilot Project

The consultant recommends a pilot project introducing analog (tape) E-R. The consultant further recommends that the experiment with E-R be limited initially to a small number of selected courts in Lagos, following the opening of new court facilities there, with preparation (training and investigation of equipment options) beginning immediately following a decision to go forward.¹

D. Rationale for E-R Recommendation

Theoretically, there are several possible alternative court reporting methods:

- Stenotype reporting by court reporters, with and without computer-aided transcription
- Stenomask reporting
- Sound recording, analog and digital
- Video recording, analog and digital

As a practical matter, conditions in Nigeria relating both to personnel and to the state of technology point clearly to analog tape recording as the optimal alternative to replace the written note. Any other choices would require years of special training for personnel and/or large investments in specialized equipment.

E. Equipment

In the U.S., specialized sound recording equipment produced by a small number of vendors is currently used to make the record. The equipment is relatively expensive. Though many factors affect cost, a rough estimate is \$10,000 for an initial courtroom in one location, and an average of \$3,000 to \$5,000 per courtroom thereafter in the same location.

This report also describes a significantly less expensive alternative using conventional, "off-the-shelf" recording equipment. While this less expensive alternative would be worth experimentation, it is probably not the most practical alternative for a courtroom setting. Based on its own analysis, Lagos State has already purchased the more expensive specialized recording equipment for one courtroom in Lagos.

¹ Courts in Kaduna also appear suitable for experimentation, but Lagos would be best for the pilot project. The courts in Abuja are least prepared for a pilot project.

A sensible approach to transcription would require computerized word processing by transcribers. Computerized word processing is now uncommon in Nigeria's courts. Simple, stand-alone desktop computers with standard word processing software should be considered integral to an implementation plan. The consultant does not recommend initiating E-R unless word processing equipment is provided to the individuals selected to be transcribers.

F. Personnel

The major personnel challenge associated with implementing E-R in Nigeria's High Courts is recruiting and training competent transcribers. While transcribers must be able to type, typing skill is not the main consideration. With the aid of a word processor, nearly anyone can become competent enough for the mechanical aspects of transcription. What is most important is that the transcribers be highly literate in spoken and written English and able to recognize and understand the technical language of the court. A large English vocabulary is important. A program to recruit and train transcribers will be necessary. It will also be necessary to train courtroom personnel to operate the sound recording equipment, but for this task, there are enough current courtroom staff with the necessary foundation skills, and the training period would be relatively short. The courtroom registrar should be in charge of equipment operation, with at least one back-up assistant registrar or courtroom clerk.

G. Nigerian Concerns about an E-R System

Meetings and interviews with Nigerian judges and lawyers revealed four concerns about an E-R system, shown below in order of frequency voiced:

- Concern about power supply problems. There are frequent short-term power supply interruptions (seconds or minutes); longer-term interruptions (hours) are said to be somewhat frequent, though none were observed during the consultant's 14-day stay in Nigeria;
- Concern about whether, in the short term, there are personnel with the required combination of formal written language and word processing skills to prepare written transcript from oral inputs accurately and speedily;
- Concern about providing written transcripts for trial judges to use when preparing their detailed rulings and judgments; and
- Concern about whether audiotapes are more susceptible to tampering and corruption of the record than are transcripts typed up from the judge's handwritten notes.

H. Consultant's Responses to the Concerns

The consultant's responses to the concerns appeared to satisfy the participating judges and lawyers. These responses are as follows:

Power supply

Power supply problems can be resolved with supplemental equipment. All E-R equipment should have battery back-up systems provided or approved by the E-R equipment supplier. Courts should be equipped with power generators so that they can continue to function in the event of extended outages that exceed the capacity of the battery back-up systems (a few hours). Installing generators in institutional settings is not uncommon in Nigeria and should be standard for the courts. In the event the experiment goes forward in courtrooms without generators, participants would have to cope as they do now, by either recording the proceedings in handwriting or adjourning until power is restored.

Word processing and language skills

Informants' opinions vary about the availability of suitably skilled personnel (or personnel who can be trained in short order). In Lagos, there are appropriately skilled transcribers employed by the Law School and by institutions where meetings or public hearings are recorded and transcribed. Local court personnel tend to express concern about "typing" skills as a limiting factor but, as indicated above, language skills are most critical. Given all of the inefficiencies associated with the written note system, production of transcript by a "slow" typist (e.g., 40 wpm) is still a significant improvement.

Trial judges' access to the record

In Nigeria, the trial record is relatively more important to High Court judges than to corresponding judges in the U.S. Unlike in the U.S., where rulings generally go right to the result and where formal written opinions and judge-prepared findings of fact and conclusions of law are rarely made, trial court notes in Nigeria are important and, according to those interviewed, are always prepared. In the U.S., decisions of the court in almost all cases are preserved in "minute orders" prepared by clerks or in "pattern" or other check-box forms. In the minority of cases, usually civil, where written findings and conclusions are prepared for the record, these are prepared by prevailing counsel, subject to review and comment by opposing counsel prior to submission to the judge. In contrast, the trial judge in Nigeria relies on the notes to produce the decisions of the court in the form of rulings and judgments.

Thus, unless and until trial judges in Nigeria develop alternative habits to replace the "verbatim" notes they now keep, they will need to have the record of proceedings typed up for them in all cases that come to ruling. This will mean a substantial increase in transcript workload, since a typed transcript is now produced only for cases under appeal (as in the U.S.). Using recent Kaduna State and Federal Capital Territory (FCT) statistics, the transcription workload might increase 10- to 20-fold.² Moreover, because judges' notes are selective rather than truly verbatim in that the judges don't write down irrelevancies or "ramblings",³ the volume

² Recent Kaduna State figures show that 53 appeals were filed during a period when 870 cases were disposed; in the FCT, 88 appeals were filed when 898 matters were disposed.

³ Judges were observed to require lawyers to rephrase or summarize statements which the judges believed were rambling or otherwise poorly presented. For example, the judge might say, "OK, now, tell me what was relevant in all that – what is your submission?" Interviewees also acknowledged the necessity for restatements. Moreover, one

of transcripts to prepare per hearing will be greater than it is now. Possible alternatives to word processing all of the tape recordings of court proceedings for the benefit of trial judges when they prepare a decision include relying on summary notes taken by the judges, as in the U.S., and/or selective use of the tapes themselves.

Deliberate tampering/corruption of the record

Deliberate tampering with an official tape record is theoretically possible. Obviously, the likelihood of this happening will depend on the integrity of court staff who care for the record and on measures implemented for storage security. These measures could include routine duplication of the official record and redundant custodial arrangements (which are probably a good idea in any case). Tampering that erases part of the record is obviously simple, given access to the record and malicious intent. However, such tampering would be readily detectable and subject to restoration in the transcript from a back-up copy, or in the typescript. Tampering that otherwise alters the record would be very difficult, if not unfeasible. Arguably, suspicions of errors or corruptions of a typed transcript can be resolved through comparison with the holograph record (handwritten notes).

In comparison, the current written note system can also lead to inaccuracies. The notes themselves are necessarily an account of what was heard and interpreted by the judge. Informants readily acknowledge that such a record is not an objective account of what happened, but an account of those things that the judge heard, or thought she heard, that were relevant and important.

senior official grimaced at the thought that the transcript of court proceedings would include everything said, even the irrelevancies.

II. BACKGROUND: THE WRITTEN NOTE SYSTEM IN NIGERIA

The record of trial court proceedings in Nigeria is currently made through a procedure called the “written note.” During all court proceedings – including court hearings where evidence is presented by witnesses, where documentary evidence is presented and supported by statements and arguments, and during motion hearings where arguments are made by counsel – the High Court judge documents as completely as possible everything that is presented as evidence or argued and submitted by counsel. In short, Nigerian trial judges personally record, in longhand, as close as possible to verbatim – with the exception of statements they deem irrelevant or rambling – everything said in court. This process also affects appellate judges, because the court record is based in large part on the testimonial notes of trial judges.

The written note practice is a source of both physical and mental discomfort for the trial judges, and is a constraint on how much time they can devote to hearing cases. It was repeatedly brought to the consultant’s attention that this practice is seriously, physically burdensome and can become quite painful as time progresses.

To accommodate the judge’s efforts to record verbatim all the relevant oral testimony and argument, lawyers speak slowly, interject pauses, and often, at the judge’s request, remain silent and wait until a cue from the judge to proceed. This results in a very slow and ponderous process. Observations of proceedings suggest that time spent in court presenting cases could be shortened by a factor of 2 or 3 if there were no need to “wait” for the judge to record the proceedings. However, the current system necessarily demands behavioral patterns that are highly favorable to an E-R system of making a record. Because of the judge’s need to take “verbatim” notes, there is a high degree of orderliness in Nigerian court proceedings; lawyers speak when invited to do so, speak in turn, and do not interrupt opposing counsel. This is highly advantageous for implementing a new system for making the record.

All Nigerian High Court judges interviewed said that not requiring them to take notes verbatim would significantly enhance their performance. Not only is it impractical, if not impossible, to take verbatim notes of testimony, but it is also distracting. Judges often miss significant portions of a witness’ testimony because the judge is trying to remember and memorialize the testimony while simultaneously attempting to understand and retain it. Although the judge usually may capture the essence of witness testimony, important information is still sometimes missed. Justice is too important for legal decisions to depend on notes that may be incomplete or inaccurate. Note-taking also significantly slows the pace of the trial and can affect witness testimony (both questions and answers) and argument by counsel. In addition to speaking slowly, witnesses and counsel tend to speak in fragments or short sentences rather than in complete sentences and a natural rhythm, then pause to allow the judge to record what has just been said before continuing on to the next fragment or short sentence. This necessarily results in both extending the length of the trial and restricting the flow of thought processes of parties, witnesses and counsel.

Interviews with scores of Nigerian court and other justice system officials confirm that virtually no one supports continuation of the present system. There is, however, a variation of opinion on whether an E-R system will work, and under what circumstances it would work.

Nevertheless, justice system officials are in agreement that an alternative program should begin and want to know when it can be implemented.

III. THE COURT CONTEXT

A. High Court Organization and Staffing

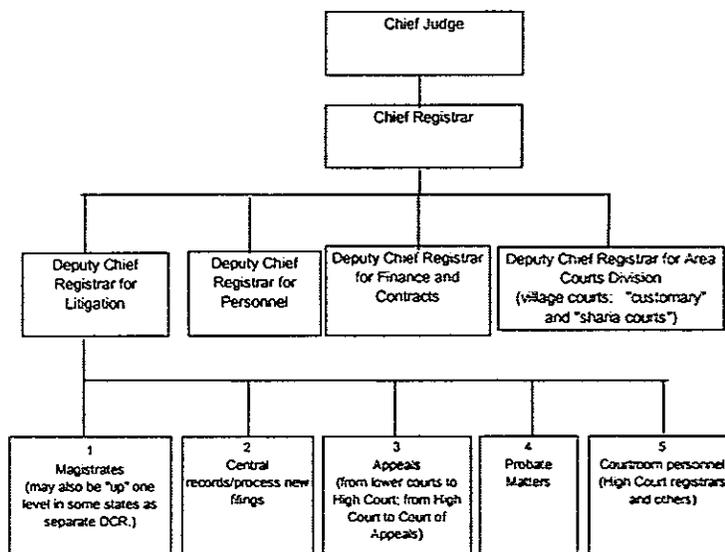
1. High Court Judges

High Court Judges under the current system take the bench after progress through assignments as law-graduated magistrates in the Magistrate Division. Some people move from magistrate into administrative positions as Deputy Chief Registrar and Chief Registrar before achieving assignment as a High Court Judge.

2. Central Administration

The Chief Registrar (CR) is responsible for central administration of the court. The CR is a law-trained individual who is on track to become a High Court judge and may be on a career track to a position as Chief Judge (CJ) of the High Court. Under the supervision of the CR, there are Deputy CRs responsible for court operations and management. Deputy CRs are also Department Heads. The following is a functional blend of the two organizational structures described by Deputy CRs. These structures varied only in functionally minor details. Of greatest importance to a pilot test of alternatives to the written note system is the Department of Litigation.

Figure 1
Organization of a Typical State High Court



3. Courtroom staffing

Assigned to each judge are the following personnel.

Figure 2
Courtroom Personnel

JUDGE - PERSONAL STAFF	Abuja Federal Capital Territory	Kaduna State
Secretary	1	1
Typist	1	0
Orderly - armed police personnel attached to the judge	1	1

COURTROOM PERSONNEL		
Registrar of the Court	1	1
Assistant Registrar	3	1
Court Clerk	1	1
Clerical Assistant	4	0
Messenger	2	1
Interpreter	1	1
Police Duty (sic) - police staff for transportation	2	1
Cleaners	2	0
Total	19	8

The official chain of command for courtroom personnel is from the CR via the Deputy CR for Litigation, although the courtroom judge exercises influence and on-the-spot supervision. The following staff allocation was personally reported and confirmed by the CRs in FCT Abuja and Kaduna. The consultant was unable to collect data on the Lagos courts. From the data available, the judge to staff ratio is as low as 1:19 (FCT Abuja), while more typically in Nigeria it may be closer to 1:8.

B. Qualifications of Other Court Personnel

Courtroom personnel

Deputy CRs, who supervise courtroom registrars and unit chiefs (e.g. in the appeals division), are educated, law-trained individuals who have served as magistrates. Reports vary among jurisdictions regarding the formal education and skills of other courtroom personnel (registrars, assistant registrars, and clerks.) Courtroom registrars are, at a minimum, equivalent to high school graduates and generally have also achieved a special "diploma" in law. These diplomas are awarded in various specialty areas and require varying terms of study, depending on the institution. Some courtroom registrars have completed the equivalent of four years of college study. As is true in trial courts in the U.S., High Court personnel who are permanently

assigned to work in the courtroom appear to be thoroughly familiar with the types of cases heard in those courts, proper procedure, and the significance of events that occur. There are enough courtroom staff with sufficient foundation skills who, with some training, could operate the E-R sound recording equipment and maintain an adequate summary log of the proceedings.

Secretarial staff

The skills of secretarial staff assigned to judges may vary widely. Some staff are simply rote sight-typists without the language skills required to render the oral language of the court into accurate written transcript. Others are more advanced judges' secretaries who may have these skills. There are some trained transcribers available (for example, in the University of Lagos Law School and elsewhere in government generally in Lagos), but not in the courts. There are some electric typewriters, but most are manual. Staff make copies with carbon paper or stencil.

C. Appeals and the Preparation of the Record on Appeal

Aside from the fact that the portion of the records on appeal that stands for the "verbatim" record of the trial court proceedings is a typed transcript made from handwritten notes of judges, there are no relevant differences between the U.S. and Nigerian systems. When an appeal is filed, an order is placed with the central clerks office and forwarded to the courtroom registrar to arrange for transcribing the judge's handwritten notes into typed transcript. The record that goes up on appeal is the combined set of copied pleadings, motions and other documents (e.g., selected exhibits), and the typed transcript of proceedings. The original case file also is forwarded to the Court of Appeals. Altogether, 25 copies are made, 20 of which are forwarded to the Court of Appeals. The lawyer for the appellant bears the cost of preparing these records, and generally does so by providing all of the necessary supplies required to copy the files, e.g., paper, ink, cover folders, etc. In Kaduna, copies of transcripts are produced with stencil technology, not photocopying. Lawyers and court personnel agree that the cost of record preparation itself is a substantial deterrent to the exercise of the right of appeal by low-income people.

Oversight of the process of preparing the record on appeal is strictly parallel to the U.S. oversight process. A special unit in the central process office coordinates the effort, takes the necessary fees, produces the necessary volumes, and forwards them to the lawyers and the Court of Appeals.

D. Transcribers and the Production of Transcripts

The major personnel challenge associated with implementing E-R in Nigeria's courts is recruiting and training competent transcribers. While transcribers must be able to type, typing skill should not be the main consideration in recruitment. With the aid of a word processor, nearly anyone can become competent enough for the mechanical aspects of transcription. Currently in the courts, computerized word processing is uncommon. The consultant recommends implementing an alternative to the written note that provides transcribers with stand-alone computers that have standard word processing capacity. It is important that the transcribers be highly literate in spoken and written English and able to recognize and understand

the technical language of the court. A large English vocabulary is important. A program to recruit and train transcribers will be necessary.

Two important issues related to transcription came to light during meetings with the Attorneys General, Solicitors General, and experienced state counsel in Kaduna State and Lagos State. Both require attention in introducing E-R. First, people who now do transcription judges' secretaries or typists are not necessarily able to transcribe from a tape recording. Many lack the education and understanding of context, concepts, and language to render from sound to writing. The work they do now is acceptable because they are rote typing.

Second, using E-R to make the record will likely require more transcription than occurs now. The judges themselves make extensive use of their written notes to prepare their rulings and judgments. It is traditional in Nigeria for judges to carefully recount salient case facts and to articulate with great care the legal issues in the case. This is how they earn respectful review by the Court of Appeals and maintain their reputation as accomplished jurists. In order to prepare their rulings, therefore, High Court judges will themselves require a copy of the transcript for every case that reaches disposition, instead of only those cases subject to appeal.

To mitigate this potential significant increase in word processing workload, judges can combine two techniques to assist them in preparing opinions. First, they can apply their currently well developed note-taking ability in far more summary form for their personal use, as do judges in the U.S. Second, if necessary for resolving a questionable matter in their notes, or for including especially salient testimony or argument "verbatim" in trial opinion, they can review the tapes themselves on their own playback machine, or have only a relevant portion of the record transcribed for them.

E. Physical Conditions of Current Facilities

The consultant visited courtrooms in Abuja, Kaduna, and Lagos. In general configuration, each courtroom was the same, as shown in Appendix 2 at the end of the report. An important feature of the courtrooms is one or more wall-mounted air conditioners that produce substantial background noise. Acoustics are generally poor, at least for an observer seated to the side of the courtroom or in the gallery. In two states, there was no evidence of care and concern for facility or material maintenance throughout the buildings. In one courtroom in one state, the coating of dirt/dust on the furniture surfaces was so thick that one wondered if any proceedings had been held in the courtroom for many days, although the courtroom was assigned to an active High Court judge. It was impossible to sit on or to lean or brush against the courtroom surfaces without visibly soiling one's clothes. Conditions throughout the buildings in two other courthouses were similar, although not as extreme. File folders were piled on surfaces inside and outside cabinets, not shelved. Systems for placement and retrieval of file folders are based on "date of next scheduled activity;" a judge in one state confirmed that file folders are subject to being misplaced and unavailable when needed. Documents may become ragged through handling. Heaps of jumbled files and miscellaneous paperwork and forms can be seen in hallways or in courtroom or office corners. These are said to be closed cases, obsolete forms, or surplus over-inventory material. In Kaduna State, there appears to be more attention to facility and material maintenance, though the staff complement per courtroom is one-half that of the

FCT, as an example. Courtrooms appeared cleaner and better maintained, as are file folders and documents.

Some courtrooms had public address system equipment (microphones, loudspeakers), but none was functional. Judges and lawyers appeared able to communicate adequately without amplification. In one courtroom, there were several free-standing microphones visible behind the wall separating the bench from the clerks' table and lawyers' area. The Deputy CR/Director of Litigation explained that these microphones were tied to a multi-channel amplifier. However, they are not used because personnel do not know how to operate the amplifier settings to balance the system and avoid feedback when the microphones are in use. If microphones were used, it would be necessary to activate different sets, move the same sets, or, likely, some combination of both, when one case concludes and another begins. This has implications in regard to workable arrangements for microphone placement and distribution in an E-R system.

Evidence suggests that personnel in the current facilities in Kaduna have not given up on maintaining a workspace that is as functional, dignified, and comfortable as possible given available resources. In Abuja, the current courtrooms the consultant visited are not suitable for use as pilot sites, particular for the more expensive model described in Section 4. In those locations, it would be better to wait and coordinate E-R with occupancy of the new facilities described immediately below.

F. Facility Construction and Relocation Plans

In two states, new facilities are in the works. In Lagos, new facilities in both High Court locations (Ikeja and Lagos Island) are under construction and will be completed sometime in late 2001. In the FCT High Court in Abuja, the Deputy CR/Director of Litigation reports that legislation appropriating funds for new courthouse construction has been approved and a building will be completed and available for occupancy within two years. In Kaduna, state court officials hope to acquire access to an old facility now used by the federal trial court when a new federal court building now under construction is completed.

G. Relevant law

The consultant understands that laws relevant to making changes in procedure appear in three contexts. First, there are statutes related to the respective Chief Justices of the High Court and the Court of Appeals, permitting them to establish rules for procedure in civil cases. This suggests that statutory changes are not required in relation to court recording, only adjustments to the court's own rules. Second, the criminal procedure code refers to the judge's responsibility to make written notes of proceedings. This likely calls for statutory review and amendment to authorize the courts to use appropriate technology to make a verbatim record in a manner that is efficient and accurate. Finally, statutory revisions appear to be needed in the laws of evidence. If plans proceed to test and implement E-R, a study group/action committee should be formed to review and revise all relevant statutes and rules.

IV. COURT REPORTING OPTIONS AND THEIR FEASIBILITY IN NIGERIA

In a recent article describing how court records are made in the U.S.⁴, Fredric I. Lederer, Chancellor Professor of Law and Director of Courtroom 21 at William & Mary School of Law, Williamsburg, VA stated “that [American] courts now use two basic approaches to make the record: the court reporter and electronic recordings.” He further described the range of methods used to make the record:

Most stenographic court reporters use a steno machine to make a record of the proceedings. Today’s electronic machines are really small computers that use a highly personalized software dictionary or database that is created over time by the reporter. As the reporter types on the machine, the steno keypresses are compared with the dictionary. When a symbol/English match results, the steno machine translates the symbol into English. Later editing refines and corrects this rough draft text, greatly shortening the amount of time necessary to produce the final transcript. . . .

Voice-writing, better known as Stenomask reporting, permits the reporter to repeat every word said in the trial into a special hush mask. Traditionally, the repeated words are recorded on audio tape that is transcribed afterward. New technology permits voice recognition of the reporter’s voice. This equipment must be trained to the individual speaker; although no technology permits “open microphone” recording and automatic transcription without human involvement.

Electronic recording includes audio and video recording. Traditional audio recording contains everything that is said in the courtroom, with subsequent human transcription, if necessary. Newer technology permits digital recording onto computer hard disk or other media of everything said in the courtroom. This technology also allows a contemporaneous CD-ROM recording that can be given or sold to counsel.

Video records are made in many courts as well, using multiple cameras within the courtroom. Often four camera images, a ‘quad-split,’ appear on the videotape record; each image appears in picture-in-picture, showing one participant or part of the courtroom. Many such systems are voice-actuated, so that when someone speaks, either the speaker’s picture-in-picture image is enlarged on the screen or the speaker appears full-screen. The most sophisticated systems permit more than four images.”

The following reviews options for alternatives to the current written note system in Nigeria and the issues associated with their feasibility. The consultant believes that audio electronic recording offers the most efficient and cost-effective solution to the problems now faced by High Court judges who are required to take notes during court proceedings.⁵

⁴ Lederer, *Courtroom Technology—A Judicial Primer*, the Judges Journal, Winter 2000, Vol. 39, No.1, American Bar Association, at page 14.

⁵ If resources permit, a study tour would allow Nigerian court personnel to visit and observe U.S. courtrooms that use analog E-R records. Such a tour could include a systematic orientation to all aspects of the E-R operation and the responsibility of E-R monitors. It could also include opportunities for some Deputy CRs to sit alongside courtroom E-R monitors during some court sessions.

A. Stenotype Machines

As Lederer points out, stenotype writing is by far the most common method of reporting in the U.S., perpetuated in large part by tradition and by the highly effective influence of national and local stenotypists professional organizations. It had been previously suggested believed that the written note problem in Nigeria could best be solved by creating a cadre of certified court reporters, who would use stenotype machines to record court testimony and other in-court statements.⁶ However, such an initiative presents a number of problems. First, it ordinarily takes 24 months of instruction for a court reporter trainee to develop minimal stenotyping competence. Second, after completion of instructional training, it takes another year of actual courtroom experience before a new court reporter is considered fully competent. Third, starting and maintaining a training program would require identifying, recruiting, and training instructors. Fourth, trainees would have to be recruited, screened, and accepted into the program. Finally, there is the potential for “raids” on newly trained court reporters by private firms offering significantly higher salaries for court reporting services to private lawyers and corporations.

It is the consultant’s view that even the most ambitious effort could not commence before January 2002. That would mean that successful recruits would not complete their stenotyping training until at least January 2004. Hence, it would be January 2005 before fully competent court reporters would be in Nigerian courts, if the courts were able to retain such skilled personnel at all.

Another issue is who would bear the substantial cost for this court reporter training. The consultant’s assumption is it would have to be the government. In addition, courts would have to acquire up-to-date stenotype machines, and the government would have to bear that expense as well. There would be additional costs associated with equipment maintenance, but there are no stenotype machine repairers in Nigeria at present. Thus, there would be effort and costs associated with recruiting and training people to provide this service.

Additionally, like all court personnel, court reporters would be entitled to sick leave and vacation. Therefore, there would have to be a sufficient supply of trained reporters to cover absences. Similar coverage for E-R operators would be less problematic, because of the relative ease of training competent staff.

B. Stenomask (“voice-writing”) and Video Recording

These alternatives present significant technical and financial challenges that would be difficult and extremely costly to overcome in Nigeria. The use of “voice-writing” is limited mostly to military tribunals in the U.S. and has not gained much, if any, acceptance in the

⁶ Reportedly, the Lagos State High Court acquired at least 40 stenotype machines sometime in the past, but these machines have yet to be used in any court. Apparently, there was an effort to train court reporters in a 15-month training program. The consultant was told that although 50 persons started the training, only 15 completed it. Of those 15, according to the Chief Judge, only one was deemed minimally competent to operate a machine. No further resources should be wasted on this effort.

civilian courts. Training time would be just as lengthy as for stenotyping, with no additional advantages.

Video recordings present cost, installation, and maintenance problems that far exceed any potential benefit for Nigerian courts. Further, the Nigerian court system has little need for an official record that an E-R system could not create less expensively, more reliably, and just as efficiently as a video system.

C. Electronic Sound Recording (E-R)

Electronic Sound Recording is the second most commonly used method for making a verbatim record in the U.S. It is used in both the federal and state court systems and administrative hearings. There are two types of electronic recording systems presently used in the U.S. for these purposes: one is the conventional analog tape recorder, and the other is a digital system that requires the use of computers. Digital systems are a relatively new and dynamic technology, and the current state of computerization in Nigeria is not compatible with introduction of the technology. Digital sound recording is computer-based system and requires a more complex infrastructure and subject to more glitches than tape recorders. Therefore, the consultant recommends an analog system for Nigeria's High Courts.

Technology is such that testimony and oral argument in court can be effectively recorded using analog sound recording similar to the familiar tape recorder. Furthermore, unlike stenotype machines or digital electronic recorders, they are not very expensive and do not require sophisticated training to operate. Further, the maintenance and repair of analog electronic recording machines should be within the present capability of Nigerian technicians.

Tape recording equipment is significantly less expensive and easier to maintain and repair than stenotype machines or digital E-R equipment. The basic technology is relatively simple. Small, non-obtrusive microphones are placed at counsel table for each of the parties, on the judge's bench, at the witness stand, and anywhere else (e.g., the clerk's position) where it is important to capture oral testimony or statements. The recording equipment records information on several different tracks that, for purposes of clarity, can be isolated and played separately.

Copies of the tape can be reproduced inexpensively for use by the judge, counsel, or the parties, when needed. Also, where a written transcript is needed, it can easily be produced by a transcriber, provided that a successful introduction of tape recording is supported by computerized word processing. This, ultimately, will also enable a smooth and virtually seamless transition to digital technology when automation in Nigeria expands and becomes routine. Meanwhile, a tape recording system is less complicated and, in the context of the Nigerian judicial system, would be more reliable.

Because of the frequent power outages in Nigeria, any E-R system will require audio recorders that can operate for at least two or three hours using only battery power. Also, and most critical, the courtrooms will need generators to supply electricity during any extended power outage. In addition, provision will have to be made for the long-term storage and maintenance of the electronic tape recordings. Essentially, any facility that is relatively dust-free and reasonably cool would be adequate. For truly long-term storage, the information could be stored using CD-Rom technology. Indeed, it would be wise to use CD-Rom technology for both short- and long-term storage.

The courtroom registrar should be in charge of equipment operation, with at least one back-up assistant registrar or courtroom clerk. Introduction of an E-R system has implications in terms of two personnel categories:

E-R monitors

The consultant believes it is critical to train and use court staff as recording operators or monitors, although a recording system can operate without them. A recording monitor requires substantially less education and training than a certified court reporter. The recording monitor's first responsibility is to make certain that the electronic recorder is operating properly and that each track is recording. The monitor is also responsible for keeping a log of all participants in the proceedings, key words spoken during testimony or argument, and position numbers on the recording. This information allows the monitor, upon request by a party or the judge, to locate and playback particular testimony or argument easily and quickly.

The need for the monitor to have good language skills and understand the significance of courtroom events as they unfold cannot be overstated. Still, individuals who currently hold career positions as courtroom registrars, or well-educated college or business school graduates, should be able to qualify for the monitor position. Training for this position can easily be completed in one month.

Monitor training should include at least one week in a courtroom where a cause list is heard every day. The cause list should average 6-10 matters per day with a mix of motions and hearings, both civil and criminal. Sample E-R tapes and log forms from the U.S. could benefit the training program. Trainees should include the Deputy CR/Litigation (or Assistant Deputy), the courtroom registrar, and an assistant courtroom registrar who will serve as the primary E-R monitor.⁷

⁷ Resources permitting, monitor training would benefit from participation by an experienced court E-R monitor from the U.S. Alternatively, at least two Nigerian court personnel could spend one-two weeks in the U.S. working with U.S. court personnel, preferably at the state rather than federal level, in courtrooms that use E-R equipment and monitoring procedures identical or comparable to those that Nigeria's High Courts may select.

Transcribers

The use of an E-R system requires skilled transcribers to produce written transcript from the sound recordings.⁸ Transcribers could be conventional typists or individuals skilled in using word processing software on a computer. Transcribers need excellent language and solid typing skills and also must be proficient in using a transcribing machine. The latter is very simple. Training someone to be efficient in computerized word processing is easier than training someone to be equally as efficient on a conventional typewriter, because of the ease of correcting errors and the freedom from a paper medium while working.

A good way to train transcribers is to use sample E-R recordings of simulated arguments and submissions. These could be role-played re-creations of hearings using actual transcripts submitted on appeal. Criteria for identifying qualified transcribers could include the following:

- The candidate can listen to a tape recording of typical courtroom speech and accurately render what is recorded into an English language transcript with acceptable spelling and punctuation.
- The candidate can efficiently operate a foot pedal-controlled transcribers' playback machine.
- The candidate can listen to five to 10 minutes of simulated court proceedings and produce error-free transcript at an average speed of 45-50 words per minute.

V. E-R MODELS AND RECOMMENDED CONFIGURATIONS

This section describes two possible models for introducing E-R into Nigerian High Courts. The models are distinguished primarily by cost. A clear plan for equipment acquisition and maintenance is essential prior to purchasing any equipment. If possible, installation should be supervised by a vendor's technical representative who works closely with the personnel who supervise the pilot and operate the E-R system in the courtroom.

A. Expensive Model (EX)

The EX model is based on the design and performance specifications for analog (tape) recording equipment used in U.S. federal courts and many state courts. The EX system includes the following equipment and features:

- A double-deck recording system with warning tone and automatic changeover. When one tape is fully recorded, the second deck continues recording without interruption.

⁸ There is an option of sending tapes to the U.K. or U.S. by commercial courier service for quick turn-around transcription. However, Nigerian justice system officials who read an earlier draft of this report did not favor this option.

- The recording device is “four track” or “four channel,” meaning that four separate input lines can be directed to four channels or tape tracks, each of which can be isolated and played independently on the playback device. System tapes cannot be played back on a standard home/office tape player without prior reformatting using a reformattor/duplicator (described below).
- The recording device is equipped with a tape location/sequence counter that displays a number corresponding to the location of the tape at any given time, provided that the tape counter is set to “0” when the tape is played. When the tape counter is set to 0 at the beginning of a recording session, and all key subsequent events noted in correspondence with the counter, it is relatively easy to fast forward and/or rewind through the tape to find the desired location.
- Playback devices functionally match traditional secretaries’ dictation playback machines. They are equipped with headphones and loudspeaker, and the controls are provided in foot-pedal as well as console button operation. Both loudspeaker and headset output modes can be used to listen to playback. Functions include play, stop, fast forward, and rewind. On a machine designed for transcription, when the operator resumes play mode after a stop to catch up or pause for any reason, the tape automatically performs a brief back-up so the operator can be sure to resume where he or she left off, without missing anything that is recorded. Variable tape playback speed settings are desirable. Like the recording devices themselves, playback devices come in a matched four-track model that allows the operator to isolate on a single channel.
- Playback monitoring via headphones allows the E-R monitor to listen to what has been recorded while court is in session. This allows on-the-spot detection of problems with the record and fixing them without loss of the record.
- The reformattor/duplicator is a special piece of equipment used to make high-speed duplicates of recorded tapes (substantially faster than “real-time” playback.) The duplicator can be set to make a standard tape recording that is compatible with playback on any standard home or office tape player.
- Microphones (see configuration details in Section F below)

B. Inexpensive Model (INEX)

The INEX model is commonly found in the U.S., and no doubt elsewhere, where meetings or administrative hearings or inquiries take place. In this model, proceedings are recorded with off-the-shelf (two-channel or “stereo”) tape recording devices similar to those used in ordinary home and office settings. Such equipment comes in a wide range of quality, price, and function options. Recording equipment priced at less than \$100 could be used for such purposes in closely controlled settings, but better quality and more appropriate functional options are likely to place the equipment above that price but well below \$500. Virtually all of the

functionalities of the EX model can be found on off-the-shelf INEX models, except multi-track, isolatable input recording.

Such configurations typically use only one microphone, or possibly two with a Y connector. Simplicity of technology and controlled behavior of participants are the hallmarks of successful use of this approach. Due to the low cost of the equipment, redundancy (simultaneous use of equipment, or one-to-one back up) can be built in to standard operating procedure.

C. Precedent in Nigeria for the INEX

Chief Adedokun A. Adeyemi, Dean and Professor of the University of Lagos Faculty of Law, cites two relevant INEX examples in Nigeria. The first is the procedure used for formal discipline inquiries at the law school. Individuals who testify or present at such proceedings come forward and address the forum at a location where a microphone can pick up the speaker's voice. When all relevant parties are in proximity to the microphone, this makes a complete and accurate recording. These tapes are then transcribed for the record by a competent transcriber. The second example is in military tribunals. While such tribunals in lieu of court proceedings are no longer conducted, presumably there are still occasions when formal hearings are conducted within military jurisdiction.

D. Advantages and Disadvantages of the EX Model

The major advantages of the EX model are:

- Multi-track inputs and corresponding output isolation;
- High-quality equipment designed and marketed specifically for court proceedings and similar contexts;
- Proven track record in U.S. courts for making a verbatim record; and
- Specialty features for courtroom use (warning tone, automatic changeover).

The major disadvantages are high costs and the downside aspects of specialized engineering and manufacture. Costs would probably be in the neighborhood of \$10,000 for the first pilot courtroom, including a backup recording device, reformattor/duplicator, and transcription station. Additional courtrooms would probably average half of that amount, or less, per courtroom because some of the equipment (e.g., reformattor/duplicator) would be shared. (See recommended equipment allocation for a pilot courtroom at Appendix 4). The downside of specialization includes lack of compatibility with familiar market products, limited number of vendors, and specialization of repair expertise and parts. Standardizing this approach in Nigeria would require initial assistance and support from outside vendors. In this regard, particular attention should be paid to the high unit cost of a small experimental pilot. It is unrealistic to include plans to develop local vendors and local operational support during the experimental stage; these would only be forthcoming in the marketplace following successful trials and a major commitment to institutionalizing the reform throughout Nigeria's courts.

E. Advantages and Disadvantages of the INEX Model.

The major advantages of the INEX model are its low cost, familiar and readily available equipment, and ease of securing repair or replacement. This applies to both the recording and the transcription functionalities. Dual deck and headset monitoring are also possible with this equipment. Overall, less specialized equipment is required, and what is required is less expensive than the EX model equipment.

The major disadvantage is that the INEX model does not provide for separate channel recording and playback to distinguish one speaker and/or location in the courtroom from another during transcription. Another probably less significant disadvantage is that fewer microphones can be accommodated, thus requiring speakers to be in closer proximity to specific locations, or more “shuffling” of microphones – passing them back and forth between speakers. This is awkward and distracting in intense settings such as courtroom hearings.

F. Recommended Optimal EX Configuration for Microphones in the Courtroom

Appendix 3 describes the standard Nigerian courtroom configuration. Microphones should be placed in six locations in the courtroom. These locations, along with corresponding channel inputs, are as follows⁹:

1. At the judge’s bench (Channel 1)
2. At the registrar/clerk’s table (Channel 1)
3. At the witness box (Channel 2)
4. At the prisoner dock (Channel 2)
5. At plaintiff’s counsel table (Channel 3)
6. At defense/respondent’s table (Channel 4)

This model presupposes modifying current courtroom traditions governing lawyer behavior such that the lawyers who are presenting to the court or involved in examinations of witnesses come forward and be seated at their respective stations, with assisting counsel and their supporting books and papers. While this is a departure from current practice, in which lawyers stand and speak from wherever they are seated in the courtroom when their case is called, the time required to make the transition will be incomparably less than the time it now takes during presentations for everyone to wait while judges write out what is being said. Moreover, if the court follows an understood sequence for calling the cause list, lawyers have the option of seating themselves in a fashion that minimizes disruption and delay between cases. If the court takes this approach, microphones should be fixed omni-directional, of the type recognizable as “low profile” in a pyramid shape, and wiring should be fixed in place.

G. Alternative to the Recommended Optimal Microphone Configuration

An alternative to the recommended configuration is to install long cords on the lawyers’ microphones so that the microphones can be passed around the lawyer seating area. This would

⁹ Where two locations share a channel, splitter couplings are used to separate the wires before the device input plug.

permit continuation of the established behavior of courtroom lawyers and obviate the requirement for separate tables in the front of the courtroom.

Appendix 1

Representative list of persons interviewed

Some interviews were conducted in groups, and not all individuals who participated in group discussions are included here.

Aisha Jummai Bage	Chief Magistrate deputy Chief Registrar (Litigation)	Abuja
Deji Adekunle	Special Assistant to Attorney General	Abuja
Fola Arthur-Worrey	Solicitor-General and Permanent Secretary	Abuja
Garba Moh'd Gummi	ACR (L), High Court of Justice	Abuja
Gbola Akinola	Special Assistant to Attorney General	Abuja
Hajiya B.A. Abdulmalik	Federal Judicial Service Commission National Judicial Council	Abuja
Isa Aliyu	Deputy Chief Registrar	Abuja
M.A. Ope Agbe	Honorable Justice, Supreme Court	Abuja
M.B.D. Mensem	Honorable Justice/Judge	Abuja
M.D. Saleh	Honorable Justice/Chief Judge, High Court/Federal Capitol Territory	Abuja
M.L. Uwais	Chief Justice	Abuja

Mal. Muhammed Nasir Ambusa	Administrative Secretary	Abuja
Muhammed Bello Tambuwal	Ass't Director/ Finance & Supply	Abuja
Muktar Muhammad Dodo	Chief Registrar	Abuja
Mwada Balami	Chief Registrar, High Court of Justice	Abuja
Mwanda Balami	Honorable Justice/Chief Registrar	Abuja
Oluwatoyin M. Yahaya	Deputy Chief Registrar	Abuja
T.A.A. Osinuga LLB	Honorable/Planning Research & Statistics	Abuja
U. A. Kalgo	Honorable Justice, Supreme Court	Abuja
U. Abdullahi	President Honorable Justice	Abuja
A. M. Ishaku	Esquire, Solicitor-General/ Permanent Secretary	Kaduna
Alhaji Abdulkadir Aliju Othman	Chief Registrar	Kaduna
Ann Wayo-Ishaku	Solicitor General	Kaduna
Darius Khobo	Deputy Chief Registrar High Court of Justice	Kaduna
Muhammad Lani Aminu	Honorable Attorney General Commissioner for Justice	Kaduna

R. H. Cudjoe	Chief Judge, High Court of Justice	Kaduna
Adeto Kumbo Kayode	Esquire, Nigerian Bar Association - Nat'l Vice President	Lagos
C.O. Segun	Chief Judge, High Court of Justice	Lagos
D.A. Guobadia	Professor, University of Lagos	Lagos
J.O. Pedro	Chief Registrar/ High Court	Lagos
Prof. I. A. Ayua	Director General	Lagos
Prof./Dean Adedokun A. Adeyem	Faculty of Law	Lagos
Yemi Osinbajo	Professor, Honorable Attorney General Commissioner for Justice	Lagos
Yemi Osinbajo	Attorney General & Commissioner of Justice	Lagos