Def Exhibit: # 2

Date: 10/17/03

Judge: JMR

Case #'s:

CR03-3089
CR03-3090
CR03-3091

the 16 day of October 03
TESTE: LILLIE M. HART, CLERK 1:40pm
By _____ D.C.

Courtroom 21 Project

A Joint Project of the William & Mary School of Law and the National Center for State Courts
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October 15, 2003

The Honorable Jane Marum Roush
Fairfax Circuit Court
4110 Chain Bridge Road
Fairfax, VA 22030

Dear Judge Rousch:

On Friday, October 10th, Chief Deputy Clerk Jane Deliee directed us to proceed with the first steps necessary to implement the possible use of remote testimony in *Commonwealth v. Malvo*, thus permitting us to better determine its feasability. This letter constitutes our initial report.

Based on the information now available to us, the defense proposal is feasible. Our estimated cost for remote testimony based on the information provided at the October 10th meeting is approximately $ 11,016, constituting a cost savings of $ 12,539.26 ($23,555.26- $11,016) over the cost of transporting to Virginia those witnesses able to travel. These calculations are based on the maximum number of Washington State witnesses, assumes use of an Antigua facility, and does not include any defense-estimated travel costs for remote witnesses from Louisiana, although our costs assume two remote Baton Rouge witnesses. With Louisiana witness travel added, our cost savings are even greater

Because of the overflow viewing capability now being installed in the Chesapeake Courthouse, installation of video-conferencing will require only a video-conferencing codec (the equipment that makes video-conferencing possible), a monitor on which to view the remote witness behind the witness stand, installation of the necessary telecommunication lines, and necessary wiring adjustments. The Supreme Court of Virginia will loan the codec to the Court at no charge, and the Courtroom 21 Project will loan the Court its 40inch Pioneer flat screen plasma monitor at no cost. The cost of installation of the necessary lines and the monthly charge for their use is minimal and reflected in the attached financial summary. We assume that there should be no additional major rewiring expenses other than the codec connection and infrastructure supervision to be supplied by Martin Gruen, a $ 2,000 cost.

The clerks of court of the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Middle District of Louisiana believe that they can make their Seattle and Baton Rouge video-conferencing available (at no charge), but must first obtain judicial approval, which they are now inquiring into. We anticipate that their equipment, complete with a United States Marshall, will be made available. We will have to pay only the cost of calling their systems from Chesapeake.

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Remote testimony from Antigua and Jamaica appears fully feasible. Upon Ms. Deliee's instruction to proceed, I requested that the State Department begin the process necessary to obtain approval from the originating nations. We are now awaiting originating nation approval, but are proceeding for the moment on the assumption that it will be granted so as to be ready if it actually is. United States consular officers should be available to swear witnesses should the Court desire not to rely on oaths administered from Virginia.

The Antigua commercial videoconferencing site has only a limited bandwidth capability, one third of what we customarily prefer. Earlier today, we completed a first test call, in which that facility was able to use only one channel (1/6 of our desired) capability. Notwithstanding that, our courtroom technologist deemed that adequate so long as the witness remained still and did not move about in the witness stand. We will test again on Thursday, using, we hope, two channels. During our October 10th meeting, Defense counsel expressly accepted a lower quality transmission from Antigua.

The Kingston, Jamaica, site, appears to have full video-conferencing capability and is prepared to work with us. Our primary difficulty in pricing its services is the considerable uncertainty as to when the witnesses will testify. We have assumed a given amount of testimony, added a safety margin, and estimated the cost of facility rental based on those numbers. In my preliminary discussions with the vendor's business manager it appears that we may be able to contract for a fixed number of days of transmission but actually use those days in severable hours, thus allowing us a substantial bulk discount. The vendors supply technical support throughout the lease period. Telecommunication sosts are extra and a considerable expense. Originating the calls from the remote sites in Jamaica and Antigua appears cheaper than calling from Chesapeake.

Ms. Deliee asked that we arrange a test call with the Jamaica facility and then physically visit it. We plan to conduct that test call the first part of next week. Subject to the Court's direction if satisfactory I will then travel to Jamaica and inspect the facility. It may also be that I should inspect the Antigua facility, although that would increase our cost.

As you would expect, our report is subject to a number of caveats. We are relying on information from a number of different sources and assuming that we will encounter no major surprises in the Chesapeake courthouse. The actual number of witnesses and their timing could prove a significant factor in Antigua and Kingston, especially if we cannot obtain a "bulk rate" from the facility there. Audio should be fine, but we cannot determine the acoustic effects of the courtroom until we have actually installed the system there.

We have no concerns about the testimony in Chesapeake. Based on our extensive experience in Williamsburg, we think that with the possible exception of Antigua, it should be of high quality. We are concerned, however, about leaving the remote sites unsupervised by a court representative. We believe that for reasons of both decorum and practicality (unforseen matters could well take place) it would be wise to have a representative on hand during those times when a large number of witnesses are to testify. Doing so would raise our costs, of course.

I have not addressed any questions of law. We are available to assist the Court in that area should you do desire.

We await your direction.

Respectfully,

Fredric I. Lederer
Chancellor Professor of Law &
Director, Courtroom 21

October 15, 2003

Commonwealth v. Malvo Estimated Remote Testimony Costs

I. Chesapeake courtroom costs

Videoconferencing codec (supplied by Virginia Supreme Court)	0
Cameras and audio equipment (being installed for overflow use already)	0
40 inch Pioneer plasma screen display to show remote witnesses (Courtroom 21)	0
Installation and wiring supervision by Martin Gruen	2,000
ISDN telecommunication line installation	450
ISDN monthly subscription costs	270
Technical personnel to oversee Chesapeake operation (Virginia Supreme Court)	0

II. Remote locations

A. Location rental

Baton Rouge (United States District Court for the Middle District of La)	0
Seattle (United States Court of Appeals for the Ninth Circuit)	0
Antigua ($100/hour)	400
Jamaica (assumed two days at $ 1,500/day at six hours of testimony/day)	3,000

B. Telecommunication charges

Baton Rouge	
(two witnesses at one hour each @ .48 /minute)	58
Seattle	
(Eleven witnesses at 30 minutes each @ .48/minute)	158
Antigua	
(Seven witnesses at 30 minutes each plus safety margin of 30 minutes at estimated $ 1.00/min	240
Jamaica (assumed 12 hours maximum testimony @ $4.50/min)	
Four hours (8 witnesses at 30 minutes each)	
Four hours (2 witnesses at 120 minutes each)	
Four hours extra safety margin	3,240

III. Jamaica site survey 1,200

Estimated Total ***$11,016***

This does not include the travel costs of witnesses to the remote testimony sites or the possible attendance of a court representative in Jamaica and/or Antigua.