



MINNESOTA ASSOCIATION OF
VERBATIM REPORTERS & CAPTIONERS

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January 27, 2010

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Mr. Leo Brisbois
President, MSBA
250 Second Avenue South, Suite 120
Minneapolis, MN 55401-2190

Dear Mr. Brisbois:

As President of the Minnesota Association of Verbatim Reporters and Captioners (MAVRC), I am writing with the concerns of Minnesota court reporters regarding a recommendation advanced to the State's Judicial Council by one of the Access to Services and Delivery Committee (ASD-2). We are extremely concerned that a great many litigators are unaware of how dramatically it will impact the record as we have always known it.

The ASD-2 Committee believes that removing court reporters from the Judge Unit and replacing court reporters in all courtrooms with digital recording systems will result in cost savings and create efficiencies. As court reporters, we stand willing to embrace system reforms, yet we have obvious concerns and serious doubts with regard to the assertions of the ASD-2 Committee. While Official Court Reporters concede that digitally recording certain hearings (short, low transcript generating proceedings) may be cost-effective, we maintain that the longer the length of the proceeding, and the more complex, the greater the resulting disservice to litigants, attorneys, and the appellate court.

Not only does digital recording technology have the tendency to fail at the most inopportune times, it also records the loudest sound in the courtroom, be it a voice, a cough, a door slam. The resulting compromise to the record can be significant. Compare this to a reporter's ability to safeguard the record by monitoring and intervening whenever problems are detected, be they technological failures or everyday occurrences such as litigants talking over one another. The human element protects the record. The price tag to remand for retrials in instances of compromised records could be staggering.

Of extreme concern to litigators: This recommendation as written calls for providing the record to litigants in a digital audio format versus a written transcript, the goal being to eventually "create a paperless court." Of course, court reporters have long been delivering paperless electronic transcripts. However, this recommendation will, among other things, greatly impact, if not prevent, one's ability to obtain an expedited transcript of proceedings.

With remote digital recording, the recording device would be turned on at the beginning of the day and not turned off until 5:30 or 6:00 PM. Thus, every word uttered in the courtroom, including intended private conversations, would be captured as part of the record, which could be request and used for any purpose by anyone (litigants, parties, court observers, the press, etc). Also lost is the mobility of the steno court reporter in that judges would be unable to hold tele-conference motions in chambers if digital systems are installed in courtrooms.

We request that you alert the members of your association and submit your support of the stenographic court reporter on the ASD Comment Form by February 3, 2010 (<http://www.courts.state.mn.us/?page=3862&item=47970>). Please urge Judicial Council to preserve the integrity of the current system of making the record, which has endured the test of time and remains the most accurate and cost-efficient means of producing an official record. (A copy of the letter submitted by the Office of the State Public Defender and the response of the Second Judicial District are attached as a reference.)

Thank you for your support,

Nancy Utke

Nancy Utke, President

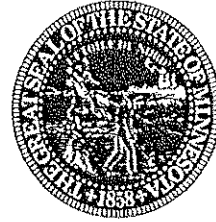
Enclosure



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**STATE OF MINNESOTA
BOARD OF PUBLIC DEFENSE**

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January 19, 2010

Chief Justice Eric Magnuson
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: Access and Service Delivery Committee 2 Report

Dear Chief Justice Magnuson:

Thank you for the opportunity to comment on the work of the Access and Service Delivery 2 Committee.

First we would like to take this opportunity to commend Judge Rodenberg and his fellow committee members. As you are no doubt aware they put in many long and strenuous hours and wrestled with some very difficult issues.

While there are several issues in the report that may have an impact on the public defender system, we would like to comment on two of these issues. The first is the issue of digital recording. As you know the cost of trial transcripts has been an ongoing issue for our Appellate Office for many years. While the recommendation in the report to move toward digital recording has the potential for significant cost savings in transcript fees, this will be more than offset by the costs incurred by the office if a digital format is used.

Several years ago the Appellate Office participated in a pilot project of videotaped trials. Based on the office's experience during the pilot it took an attorney three times as long to go through the video and take notes as it did for them to read through a transcript and take notes. The experience with a digital system would not be much different. The time required for reviewing a digital record would be hour-for-hour *plus* time for taking notes; therefore, a four-week trial would take the attorney at least four weeks simply to listen to the trial record. An appellate attorney now picks up a new file every two weeks; with a digital record, this would be impossible. The office would either need additional attorneys or would fall further behind.

In addition, citing to the record, as the criminal rules require, poses problems with a digital record. Rather than being able to cite to a page, it is necessary to cite to the minute and second of the audio record. Again, this would be more complicated and time-consuming. The Appellate courts would have the same problem; they too would be faced with the options of requiring more personnel or falling behind in their work.

Another problem with a digital record is that it provides no official record of what was said at trial. The court reporter now certifies the transcript as accurate. With no certification, there would undoubtedly be factual disputes between the parties that would have to be resolved. The defense attorney could hear one thing; and the prosecutor could say disagree with the defense interpretation. If there would be a dispute over what was said, it would have to go back to the trial court for a resolution of what actually occurred, adding another layer of litigation and more time to the appellate process.

The same situation could arise in cases using interpreters. With the use of transcripts, issues have arisen regarding the accuracy of the translation. The report cites the possibility of such issues as a reason for adopting digital recording. (Report at 19). However, a digital recording as the record would give the defense a much greater chance to challenge the accuracy of the translation and might require zealous appellate defenders looking into every possible issue on appeal to routinely hire their own translators.

An additional concern would arise for defendants who have the right to submit a pro se supplemental brief even if they are represented by counsel. Inmates can work with transcripts fairly easily; it is likely to be an insuperable problem for them if they must be provided with the machinery and the time necessary to review a digital record without a transcript.

Also, unless there is a sophisticated backup system, it is inevitable that a digital-only record would be lost. Under current case law, a defendant would be entitled to a new trial in such an event unless an accurate record could be pieced together by all the parties. For this and other reasons, an attempt to dispense with a stenographic record in criminal cases might be a false economy.

In many places on the trial level we no longer get transcripts of any type free of charge, and have to pay the court reporter to transcribe them from their notes. A transition to digital reporting won't change much provided that there are still court reporters who will transcribe the recordings for a fee. If the court stops providing transcription and chooses to instead make the recording the "official record" (see p.17), this would not achieve any savings and would in fact represent a cost shift to the Board of Public Defense. In many circumstances, there would still be a need to hire someone to produce a transcript. In addition, as on the appellate level it takes longer to listen to a recording than to read a transcript.

The second issue that we would like to comment on is the potential consolidation of judicial districts and the development of service centers.

We believe that redistricting to create fewer and larger judicial districts will have an impact on the public defender system. A model of fewer districts will create a situation where there are fewer supervisors. This is at a time when it is clear we need more supervision, not less. Our need for managers in a statewide system is clear from any

review of best practice models and our recent discussions with the Office of the Legislative Auditor.

Redistricting would create major disruptions to our system of providing services to our clients. This would exacerbate the struggles we face created by lack of funding and negatively impact the entire criminal justice system. Creating some districts that are made up of huge geographical area increases travel costs (a major budget item) and compounds our current struggles with travel, scheduling, and excessive workloads

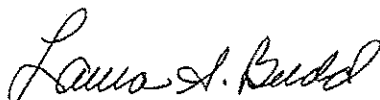
The Trial Service Center Model is of concern simply because our clients need access, ITV notwithstanding, to the courts and their appearance is essential, necessary, and often mandatory. Transportation or better stated a lack of transportation is already a major issue for public defender clients and is a contributing factor to non appearances and warrants being issued for clients. A regional system would exacerbate this problem. This assumes that the regional centers would be full service centers. The establishment of full time public defender offices and the assignment of public defenders are based on case loads and geography. An overlapping system of trial centers would provide significant logistical problems for clients, public defenders and witnesses, and would again represent a shift cost shift to the Board as public defenders would incur significant travel related costs and lost time traveling to and from trial centers.

Thank you again for this opportunity to comment on the report. Whatever the Judicial Council decides on these issues we would hope that the Board and other criminal justice partners will have an opportunity to have input and work with the Court to develop a system that is not only efficient but provides better service to clients.

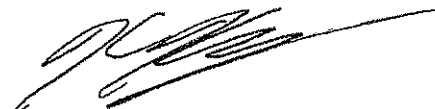
Sincerely,



John Stuart
State Public Defender



Laura Budd
Chair, Board of Public Defense



Kevin Kajer
Chief Administrator

Judge Unit

2nd District. With regard to the judicial unit, the judges in the 2nd District have a court reporter and a law clerk. This district operates under a block system of assigning cases. For the judges working on the civil and family blocks, it is necessary to have a law clerk to help with the review of the cases and legal filings. For the judges working on the criminal block, the law clerk takes over much of the courtroom duties of the administrative clerks, except for the high volume court calendars (pretrial, sentencing, arraignment, housing, etc) and that is because administrative clerks are specifically trained to do in-court updating for the high-volume calendars. There is far less research and writing required by judges on the criminal block. By requiring the law clerks to take on administrative duties in the courtroom for criminal cases, this alleviates the need to have administrative clerks in the courtroom, or at least fewer administrative clerks, depending on what kind of calendar the judge has. Judges used to be allowed to hire law students as law clerks, which was adequate for criminal cases and economically responsible. The judges' court reporters long ago took on additional duties, such as marking and keeping track of exhibits in the courtroom, and if the law clerk is out of the courtroom, court reporters call court, swear in witnesses, etc. Additional clerks from administration are not expected to be in the courtroom except for the high volume calendars (to do in-court updating) as discussed above. For civil motions and trials, often the judge and court reporter are the only court employees in the courtroom.

Courtsmart Integration. All of the court reporters in the 2nd District are steno court reporters. Courtsmart recording has been integrated by recording high volume calendars, such as misdemeanor arraignments, some juvenile, some probate, some housing. By doing this, the district has nearly eliminated the hiring of "per diem" court reporters; the court reporters working for judges handling Courtsmart-recorded calendars become available to cover court reporter sick calls/vacations. This integration of Courtsmart while maintaining court reporters for each judge has resulted in a high level of efficiency for the 2nd District. Court reporters also work as the judge's legal assistant or secretary doing clerical work in chambers. The Judicial Council should be aware that there have been many instances in the past two years where Courtsmart has failed and, in these instances, the 2nd District has been required to hire per diem court reporters to help cover some of the vacations /sick calls due to the unexpected failure of the digital recording equipment. The district was fortunate to have enough steno court reporters that could go to each of the courtrooms that are usually audio-recorded to report the proceedings. It would be extremely restrictive to make a drastic change in policy so as to force all judges and court reporters in this district to change "how they do business," especially in light of the fact that this district has implemented a mixed-use method of steno reporting and audio recording already and required the law clerks and court reporters to take on additional duties within the courtroom.

Courtsmart Malfunctions. Regarding the all-audio record, Courtsmart has malfunctioned and failed at least three times for inexplicable reasons. Approximately a year and a half ago, Courtsmart malfunctioned and was not able to be used for approximately a month in any of the Courtsmart-recorded courts. Steno reporters simply followed their judges to the various calendars that had been deemed "Courtsmart" calendars. Approximately six months ago, Courtsmart malfunctioned and failed for approximately two weeks in the Ramsey County Law Enforcement Center (LEC) where arraignment courts are handled. Steno reporters simply followed their judges to the LEC to report the arraignment calendars usually "Courtsmart" recorded. This past November-December, Courtsmart malfunctioned and failed in our Juvenile and Family Justice Building for 2 to 3 weeks. Again, Steno reporters simply followed their judges to report these calendars. This past October, all of the FTR recording machines in the family court malfunctioned and failed for approximately three weeks. The Child Support Magistrates that do not have court reporters, but only audio record, had to cancel cases. Fortunately, all of the family court referees have steno reporters, so family court continued unaffected by the malfunction.

Access to the Record. Steno court reporters in this district have been able to provide immediate review of testimony, whether in the courtroom or in chambers with their CAT (computer-aided transcription) software, which they purchase and provide out of their own pocket. (Also worth consideration: Stenos provide their own equipment and transcription service.) Example: Situations have arisen where attorneys argue over what the other specifically said the previous day, at which time everyone turns to the court reporter, all step into chambers, and within 5 minutes the reporter pulled up the specific area of argument with her CAT software on her laptop computer. She printed off the specific couple of pages for each attorney and the judge for review. Don't take that incredible service away with your vote. Often, reporters provide transcripts to judges, when requested, as needed. This is done free of charge and costs the district nothing.

Summary. In summary, the mixed-use of audio recording and stenographic court reporting works well in the 2nd District. Do not require judges to use a specific method of court reporting, but the method that the judge prefers to use. The 2nd District Court Reporters have taken on additional responsibilities in the courtroom and in helping to cover other court reporter assignments due to vacations/sick calls, in addition to working as their judge or referee's legal secretary. This mixed-use approach with additional courtroom support responsibility in the dual capacity as court reporter/legal secretary is a fiscally responsible use of this employee. Please do not vote in favor of a change of something that is already fiscally responsible. Possibly other districts should model their districts after districts that have already made fiscally responsible changes. However, changing the structure to the judge unit and how the judge unit does its work because of divisiveness felt by other employees in other districts is hardly a reason to tear apart the judge unit state-wide or force it to do its work one way or another. Programming to encourage employees to concentrate on their own job responsibility, respect the responsibilities of other employees, and to cohesively work together from division to division might help other districts, and the entire state-wide court system, operate more efficiently.