CHIEF JUDGES' MAKING THE RECORD COMMITTEE

FINAL REPORT

May 2004

Wisconsin Circuit Courts

Making the Record Committee
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Making the Record Committee

The Chief Judges created the Making the Record Committee at their June 13, 2003 meeting to look at alternatives and develop a policy and direction for taking the record in the circuit courts. The Chief Judges agreed there is concern regarding the inability to find certified court reporters to fill vacant positions, and that a coordinated effort, with direction from the Supreme Court or the Director's office, is needed to mold the future of court reporting. The Committee originally consisted of Chief Judge Evenson as its chair, a deputy chief judge, a circuit court judge, a managing court reporter, an official court reporter, a district court administrator, the Deputy Director for Court Operations, and the human resources officer. A Court of Appeals judge was subsequently added to the committee. The committee met seven times from September 2003 through March 2004.

Previous Court Reporting Committees and Reports

Previous committees have examined court reporting issues. The committee reviewed the work and reports of these prior court reporting committees to serve as a starting point for its work. These prior reports are listed below and are summarized in **Appendix I**.

- Legislative Audit Bureau Evaluation of Transcription Technology in Wisconsin Circuit Courts, August 1994
- PPAC Subcommittee on Court Reporting, February 1999 through August 2000
- Director of State Courts Ad Hoc Committee on Court Reporter Qualification Criteria
- Chief Judges' Committee on Court Reporter Issues, December 1999 through October 2000
- Report on the Dodge County Digital Court Recording System
- Preliminary Report on Paperless Court Reporting, July 2003

Committee Mission Statement

After reviewing its charge by the Chief Judges and the work of previous committees and studies, the Making the Record Committee adopted the following as its mission at its October 2003 meeting:

> *In response to the perceived looming shortage of certified court reporters for Wisconsin circuit courts, gather and analyze information on projected future court reporter availability and alternative technologies for making the court record, and recommend a vision for making and preserving an accurate and timely court record in the short and long term.*

As part of this mission, the committee affirmed that it was not created to find an alternative to the present system but to explore alternatives if the present system cannot be maintained. In light of the Governor's 1995-1997 biennial budget recommendations concerning court reporting, including a proposal to eliminate the ability of circuit court judges to appoint a court reporter (**Appendix I** describes these budget deliberations in more detail), the committee also affirmed that ***the court system must be the institution to develop alternative means of making the record.*** Making, preserving and reporting the record is a basic function of court operations. Since the courts, as an institution, know best what is necessary to make and preserve the record, the courts must be the institution to plan for and implement changes in court operations relative to making the record.

Current System of Making the Record

Currently, Wisconsin's circuit courts rely primarily on stenographic court reporters, certified under rigorous national standards, to make the court record, preserve the record and, when requested, produce a timely and accurate transcription of the record. Under state law, each circuit judge may appoint and supervise one full-time certified official court reporter to work at his or her pleasure (s.751.02, Wis. Stats.). There are 241 official court reporter positions (the number of persons who are official court reporters is higher because of job sharing).

There are also 29.0 district court reporter positions (including a managing court reporter in District 1) in eight of the ten judicial administrative districts. In Districts 2, 3, 5, 6, 8, 9 and 10, these district reporters are appointed by the chief judge and supervised and given assignments by the district court administrator. These seven districts have a total of 12.0 district reporter positions, ranging from 0.5 position in District 3 to 5.5 positions in District 5. The district reporters serve the court when official reporters are not available for such reasons as vacancies, sick leave, vacation, and workload assistance as

requested under Trial Court Administrative Rule 9 and administrative assignments such as attendance at court meetings.

District 1 uses 16 district court reporters, under the direct supervision of the managing court reporter, who are scheduled on a rotating basis to provide reporting services to the 47 branches of Circuit Court in Milwaukee County. These reporters, appointed by the Chief Judge, are assigned to provide vacation and sick leave coverage for all courts, together with workload assistance to court reporters in the 22 branches of criminal court. In addition, they provide reporting services for lengthy or daily copy civil trials, juvenile termination of parental rights trials, preliminary hearings, mental commitment hearings, default divorces and search warrants. Five of the district reporters are certified real-time reporters who also provide real-time services to hearing impaired court participants pursuant to the Americans With Disabilities Act (ADA). When district reporters are not on the record, they are required to be on call to the managing court reporter for emergency court coverage.

Official and district circuit court reporters are state employees, receiving state-established salaries and fringe benefits. District court administrators are responsible for attempting to locate a district or substitute official court reporter to maintain coverage for court proceedings when the official court reporter is not available. When neither an official nor district reporter is available, district court administrators are responsible for approving and assigning freelance court reporters, under contract with the Director of State Courts Office, to provide reporting services. Because of recent years' budget cuts, the use of freelance reporters has been significantly reduced: expenditures for freelance reporters dropped over 29% from state fiscal year 2000-2001 to state fiscal year 2002-2003.

The primary function of the court reporter is to make and preserve the record and to later transcribe it when necessary. When a transcript is requested, the court reporter who made the record, whether official, district or freelance, is responsible for preparing an accurate and timely transcript. Because the reporter is expected to work on transcripts on his or her personal time, the transcribing reporter charges statutorily-set transcript fees for these services and retains the transcript revenue. When prepared by a state-employed court reporter, these revenues are to be reported to the Director of State Courts and are treated as wages for tax and retirement contribution purposes.

Currently, the vacancy rate for official and district court reporters is relatively low. Of the 270 official and district court reporter positions, as of February 16, 2004, there were 3.7 vacancies, a 1.4% vacancy rate. In comparison, for budgeting purposes an annual 3% vacancy rate is assumed for all state executive branch agencies. There were an additional 2.3 court reporter positions in leave of absence or leave without pay status.

Despite the low vacancy rate and procedures for finding substitute reporters, there are times when a court reporter is not available, and Supreme Court Rule (SCR) 71.05 addresses this. Under SCR 71.05, electronic means of court reporting may be used if a court reporter is not available, or if the chief judge approves its use. Some counties use tape or digital recordings for certain high volume, low transcript proceedings before court commissioners. Currently, the use of electronic means of reporting in a judge's courtroom is limited. Most districts have a tape recorder available for occasional use as an emergency backup.

District 1 also has four electronic taping systems that are currently in use on a daily basis in the following types of hearings: initial appearances for out-of-custody defendants in misdemeanor and felony cases; traffic intake; probate court for guardianships, protective placements, estate cases, summary hearings and orders to show cause; and domestic violence court for initial appearances, pretrial, scheduling and status conferences and guilty plea hearings.

In a survey conducted by the committee in November 2003 on the use of alternative court reporting technologies, of the 69 counties responding to the survey, 52% (36) have used some kind of alternative reporting, while 48% (33) have not. Of those that have used an alternative method, it is most often used for court commissioner hearings. Use by circuit court judges is infrequent, generally when a court reporter is unavailable or for limited proceedings. **Appendix II** summarizes some of the information provided through the survey by the number of branches in a circuit.

The consensus is that the current system works well and meets the needs of the circuit and appellate courts. Among the benefits of the current system are:

- Official court reporters are the only personal appointees of circuit court judges, and because of this status, they are exempt from overtime requirements, thus reducing state costs.

- Requests and payments for transcripts go directly to the court reporter. The Director's office does not have the infrastructure or the staff to manage transcript production, billings and collections.

- With real-time reporting, stenographic court reporters provide reasonable accommodations as required by the ADA.

- The appellate courts have few complaints about the quality and timeliness of transcripts.

There are, however, difficulties in effectively maintaining the current system:

- Recent budget cuts and the shrinking pool of available freelance reporters have resulted in reduced usage of freelance reporters and difficulties in finding freelance reporters.

- Current official court reporter vacancies are largely filled through internal movement, increased hours, and hiring of freelance reporters.

- Some branches have difficulty in retaining court reporters because of working conditions (geography, workload, etc).

- Personal appointee status limits optimal use of reporters.

- Additional court reporters are required when new judgeships are created. [The newest judgeship was created in Waupaca County on August 1, 2000. While no new judgeships have since been authorized by the Legislature, the need for additional judgeships continues to increase.]

- There is an administrative burden in managing court reporters. The district court administrators and their assistants spend a significant amount of time locating and moving court reporters to cover vacancies, both short- and long-term, and absences.

- The physical demands of the job lead to work-related injuries, especially with an aging workforce.

- The lack of a reliable backup system means that courts can be shut down when a court reporter is not available.

Despite these obstacles, the committee has conducted a review of the options currently available for making the record, and has concluded that the current system used in Wisconsin circuit courts continues to be the best approach. Like previous committees, it is the committee's view that the use of certified stenographic court reporters, most of whom now use computer-aided transcription (CAT) to make, store and transcribe the court record, is the option that continues to provide the most accurate and timely record. Further, the committee views that the ability of a circuit court judge to personally appoint

his or her official court reporter is not only an invaluable resource to judges, but also provides optimum record-making capabilities resulting from the reporter's familiarity with his or her judge, courtroom, courtroom procedures and staff, and case types.

While the personal appointee status may have limited the optimal use of reporters, several factors have increased flexibility and expanded the effective use of reporters' time and skills. These factors include enactment of Supreme Court Rule 70.245 and Trial Court Administration Rule 6 giving chief judges the authority to reassign official court reporters, development of district policies for this purpose, and increased cooperation of official court reporters and circuit court judges.

Given the conclusion that the current system remains the best option and the low vacancy rate for court reporters, one might conclude that the committee's work is done. Unfortunately, an analysis of data indicates that the current system is in jeopardy due to a projected shortage of certified court reporters in the near future.

Future Trends

The Chief Judges established the Making the Record Committee in response to the perceived looming shortage of certified court reporters for Wisconsin circuit courts. Rather than relying on anecdotal data, the committee gathered a variety of statistics to assess current and future court reporter trends. The results are not encouraging.

Existing Court Reporter Workforce. As of August 28, 2003, 297 court reporters work full- or part-time as official or district reporters, with ages ranging from 22 years to 65 years old. The average age of these reporters by years of service is found in **Table 1**.

Under the Wisconsin Retirement System, a court reporter is eligible to retire and receive a retirement benefit if the person is age 55 or older and has creditable service in at least five calendar years. Also, recent law changes allow a person with 20 years of service to resign and bank sick leave credits to use for health insurance payments upon retirement. Previously, one had to be a retiree for such use of sick leave credits. The law change was intended to encourage career employees to leave state service sooner to decrease state payroll costs. As shown in **Table 1**, 31% of court reporters are currently eligible to resign and bank sick leave credits, with another 16% eligible in five years or less. This represents nearly half of the work force, or 139 persons.

Table 1
Court Reporter Average Age by Years of Service

Years of Service	Number of Court Reporters	Percent of Total Court Reporters	Average Age of Court Reporters By Years of Service
Less than 5	56	18.9%	41
5 – 9	55	18.5%	42
10 – 14	47	15.8%	43
15 – 19	48	16.2%	46
20 – 24	41	13.8%	47
25 – 29	29	9.7%	53
30 or More	21	7.1%	56

What is perhaps most surprising is the average ages of court reporters with less than 15 years of service. The average age for these reporters, who equal 53% of the workforce, is 42. Even those with less than five years of state experience average 41 years of age. This likely is a result of many court reporters beginning their careers as freelance reporters or entering the profession later.

Overall, the average age of current court reporters is 45. Less than one-fourth (23%) are under the age of 40; nearly one-third (32%) are 50 or older. Therefore, nearly one-third of today's reporters will be eligible for state retirement within the next five years and over three-fourths will be eligible for retirement in the next 15 years. Coupled with the recent law changes making it financially more viable for experienced reporters to resign before retirement age, increasing numbers of reporters are expected to leave state service in the coming years.

The aging of the court reporter population may be a contributing factor in the increasing number of days of sick leave and leave without pay. In 2002, there were 11 court reporter leave requests, with 312.5 workdays missed. In 2003, there were 32 court reporter leave requests with 1,155 workdays missed. There are also more worker compensation claims dealing with repetitive motion injuries. There is no reason to believe that this trend will not continue.

Recent Hires. Who are the people currently filling vacancies? An examination of court reporter hires for January 2002 through August 2003 shows that of 77 hires, only 16 (21%) were new hires. This was despite the expectation of applicants from Illinois. Over

the last few years the Illinois court system has converted to a blended system of reporting utilizing both traditional stenographic reporting coupled with digital reporting. This resulted in a reduction of the court reporter workforce in that state which, it was anticipated, might increase applicants in Wisconsin. Over half resulted from existing reporter transfers or work schedule increases, while 29% were rehires of previous employees. In other words, four out of five of the most recent court reporter hires have come from within the system. Reporters move from place to place and courtroom to courtroom to fill vacancies, part-time reporters are encouraged to increase their hours, and former employees return to state employment. These "musical chairs" transactions have in large part kept the court reporter vacancy rate low, but they cannot be considered a long-term solution, especially considering the anticipated increased numbers of retirements and resignations.

Future Court Reporter Pool –National Statistics. Where will the future replacements come from? The committee examined both national stenographic court reporter education statistics and statistics from the two Wisconsin stenographic court reporting schools. At the national level, the NCRA published a white paper in June 2002 on "The Status of Reporter Education: Trends and Analysis." The paper showed that in 2002 there were 82 NCRA-approved court reporting schools, down from a high of 114 in 1995. Enrollment has declined from a peak of 14,202 in 1992 to 5,885 in 2001. The 2001 enrollment was, however, 2.8% higher than in 2000; the first increase in enrollment since 1992. Dropout rates from stenographic court reporting programs have remained consistent, ranging from 39% in 2000 to 35% in 1999 and 2001. Reasons given most frequently for dropping out include the difficulty of the program, the extreme complex manual dexterity required, the mental skills required, the need for excellent language skills, personal factors and cost. In 2000, the total average tuition was $8,000 for public programs and $20,000 for private programs. Nationwide in 2001, 439 persons graduated from an NCRA-approved court reporting program, a graduation rate of 7.4%. The average time to complete the program was the same in 1994 and 2000: 33.3 months.

Given these statistics on declining enrollments and reporting schools, the NCRA has embarked on an ambitious strategy to respond to the demand for reporters. Efforts include a public relations campaign to improve the profession's image; wide and varied recruitment activities; strategies to make realtime stenographic reporter education more affordable, accessible and effective; and efforts to create funding sources for schools. NCRA efforts led to the passage of federal legislation in 2001 that provided funding of $5.75 million for 14 reporting programs throughout the country. Since 2001 NCRA efforts have led to the passage of federal legislation that provided funding of almost $10 million for 18 reporting programs. Efforts continue to secure more funding.

While NCRA's efforts are expected to increase enrollments and graduations at reporting schools around the country, increased employment opportunities in the field of closed captioning will compete with court recruitment efforts. A federal law mandates that by 2006, with certain exceptions, closed captioning will be required for all new television programming and 75% of programming first shown before January 1998. Most of the federal funding has been used to enhance or create captioning programs that are on a separate track from the court reporter programs. The NCRA is developing a separate closed captioning certification and has even discussed whether its name should be changed to reflect its broader focus.

Future Court Reporter Pool – Wisconsin Statistics. The two Wisconsin court reporting schools are Lakeshore Technical College (LTC) and Madison Area Technical College (MATC). Information on their programs is found in **Table 2**.

As shown in **Table 2**, the recent graduation numbers for both schools are low. LTC had a total of four graduates over the last six years, while MATC had 19. Of the four LTC graduates, two are freelance reporters, one works for a court commissioner and one works at Children's Court Center in Milwaukee. Three of the four MATC graduates plan to stay in Wisconsin, with one hoping for courthouse employment.

Table 2
Wisconsin Court Reporting Schools

	Lakeshore Technical College	Madison Area Technical College
Students Enrolled:		
-Judicial Reporting	64	65
-Captioning	8	55
First Year Students	47	47 judicial, 47 captioning
Second Year Students	20	18 judicial, 8 captioning
Third + Year Students	5	
Average time to Graduation	4 years	33 months
Average Dropout Rate	67%	80-85%
Graduate History:		
-1998	2	3
-1999	0	3
-2000	0	1
-2001	1	4
-2002	0	4
-2003	1	4

Note: Information as of October 2003.

Due in large part to increased recruitment efforts and federal program funding, enrollments are up in both programs. LTC has 72 students, with 64 in the judicial reporting curricula and 8 in the captioning curricula. LTC offers educational sites at five locations throughout eastern Wisconsin, with five to 10 students at each site. MATC has 120 students, with 65 in the judicial reporting curricula and 55 in the captioning curricula. With 47 first-year judicial reporting students and a graduation rate of 15-20%, one could anticipate seven to nine graduates from the current entering class.

Recommendations

It is evident from the above data that, even with the recent increased recruitment efforts, the supply of certified court reporters will not keep pace with future demand under the current system. Thus, the perception of the looming shortage is confirmed. Therefore, the committee has concluded that alternative means of making the court record must be explored, and a plan combining court reporter services and alternative methods must be developed to position the Wisconsin Court System for the future.

A complicating factor in developing a system that blends court reporters with alternative methods is the joint state and county funding of the circuit court system in Wisconsin. Court reporting for judges is funded with state general purpose revenues. Since court commissioner positions are created and funded by counties, counties also fund court reporting services for those commissioners. The State, through CCAP, funds the development and maintenance of the circuit courts' case information and records management systems, including the purchase and maintenance of computers and related equipment. Counties are responsible for the infrastructure of the courtroom, including wiring and sound systems. In a time of increasing debate on state versus county court funding, it must be clearly stated that court reporting for judges is a state function and, therefore, any alternatives also must be state funded. However, if some of the solutions involve courtroom installations, counties must be involved in any necessary infrastructure changes.

The committee has developed the following recommendations to address both short- and long-term needs. The committee acknowledges that circumstances within certain districts may require earlier-than-anticipated implementation of these recommendations on a selected basis. The first recommendation addresses the need to soon replace the analog tape recorders currently used in most districts on an emergency basis when a court reporter is not available, and used daily in certain high volume, low transcript courts in District 1. Recommendations 2 through 6 provide strategies to expand the pool of court reporters eligible to be hired as state employees by modifying the Wisconsin Court

system's definition of "court reporter" to include certified reporters who use non-stenographic technology. Finally, recommendations 7 and 8 begin the process to address long-term making the record technology issues by calling for the study, planning and piloting of CCAP-supported making the record technology.

Tape Recorder Equipment Replacement

1. ***Recommend the Director of State Courts, using the Wisconsin Court System's formal procurement process, purchase stand-alone portable digital recorders beginning no later than July 1, 2004. Provide District 1 with four such recorders for on-going use in high-volume, low-transcript courts, and provide Districts 2 – 10 with two to three stand-alone portable digital recorders per district for emergency use when a reporter is not available. The procurement process should include an in-court demonstration of each vendor's product to ensure the equipment is easy to use and transport, can reproduce an audio copy of the proceedings, and is compatible with Wisconsin's courtroom settings.***

   Discussion: Currently, District 1 has four analog audio recorders that are used daily. Most of the other districts have one analog audio recorder each that is used on an emergency basis. Generally the courtroom clerk operates the recorder. When a transcript is requested in District 1, the managing court reporter produces the transcript. In other districts, generally the official reporter for the branch that used the recorder produces the transcripts. If the official court reporter is unavailable, the Chief Judge assigns the transcript production to another court reporter. Concerns with the current systems include tape degradation, poor sound quality, lack of a backup to the record, and the difficulty in allowing parties to listen to the tapes as an alternative to transcript production.

   There are at least three stand-alone digital recorders on the market. The digital recorders should produce better sound quality, reduce concerns about degradation, allow a backup of the record to be generated, and allow for CDs to be produced and sold as an alternative to transcript production when an official transcript is not required. There are, however, also unanswered questions: will any of these systems meet the circuit courts needs, will they be portable and easy to use, what skills are needed to operate the recorders, who would provide the training, will clerks of circuit court be willing to have their staffs operate the equipment, and who will support and maintain the equipment? It is recommended the court system's formal procurement process be followed, which includes requesting proposals from vendors so the equipment meets minimum criteria, before the purchase of these digital recorders for

all districts. This should include vendor demonstrations and product testing in selected courtrooms.

Once the analog audio recording systems are replaced in counties, it is expected that the current informal system will continue whereby clerk of circuit court staff operate the recording system. It also is expected that Director of State Courts Office staff in conjunction with the district court administrators will provide training to counties on operating the digital recorders.

Qualifications of Certified Court Reporters

2. ***If the Director of State Courts determines stenomask/voice writing reporting is a viable means of making the record and can meet existing Supreme Court standards, recommend the Director of State Courts, beginning no later than July 1, 2004:***

   - ***Revise the Wisconsin Court System's personnel policies to allow stenomask reporters and voice writers certified by the National Verbatim Reporters Association (NVRA) to be hired as official court reporters.***

   - ***Revise the contracts entered into with freelance court reporters to allow uncertified or certified stenomask or voice writer reporters to provide freelance court reporting services to the Wisconsin circuit courts.***

   - ***Conduct national recruitment efforts to announce the Wisconsin Court System's interest in hiring certified stenomask reporters/voice writers.***

3. ***Recommend the Paperless Court Reporting Committee reconvene as soon as practicable to consider this committee's recommendations.***

   Discussion: While the terms are often used interchangeably, the National Court Reporters Association (NCRA) in its Blue Ribbon Commission Final Report on Voice Technology defined stenomask reporting as the traditional method in which no realtime is provided and no voice recognition is utilized, while voice writing includes the use of voice recognition software. The NVRA certification standards, for both stenomask reporters and voice writers, are comparable to the NCRA standards (see **Appendix III**). The NVRA website as of February 16, 2004 lists 903 certified voice writers in 35 states, Washington, D.C., Puerto Rico and Canada. Most are in southern states, although Michigan has 11 voice writers listed. None are listed in Wisconsin. The Director's Office conducted a stenomask trial in Spring 2004, which is described

in **Appendix I**. [Note: As recommended by the Reciprocity Committee, on April 28, 2004, the Director of State Courts accepted the credentials of a certified stenomask reporter in full substitution for the employment qualifications for a court reporter in the Wisconsin Court System. Subsequently, the certified stenomask reporter was offered and accepted employment as a district reporter in the Tenth Judicial District.]

4. ***Recommend the Director of State Courts expand the definition of certified official and district court reporter consistent with s. 751.02, Wis. Stats. for employment in the Wisconsin Court System, to include certified electronic reporters. Expanding the definition of certified court reporter should include attempts to nationally advertise Wisconsin's interest in this new type of court reporter.***

5. ***Recommend the Director of State Courts formally compare the American Association of Electronic Reporters and Transcribers' (AAERT) national certification standards and testing criteria with the national certification standards and testing criteria followed by the NCRA and NVRA. If AAERT's national certifications are not comparable, recommend the Director of State Courts develop and implement the appropriate policies and procedures to ensure electronic reporters are certified to meet minimum standards for taking and transcribing the record in Wisconsin's courtrooms in addition to ensuring electronic reporters are appropriately placed within the Court System's classification and compensation structure.***

6. ***Recommend the Office of Judicial Education explore the feasibility of including training on the new court reporting technologies for members of the judiciary at a future Judicial Conference or other appropriate judicial education sessions.***

Discussion: Not only do these recommendations maintain a judge's authority to appoint a certified official court reporter, these recommendations assume that state-employed court reporters will continue to provide their own means of production, whether stenographic, voice writing or electronic. Further, all court reporters, whether stenographic, voice writing or electronic, will continue to prepare and certify transcripts and be allowed to retain their transcript income.

The AAERT offers three certifications: certified electronic court reporter (CER), certified electronic court transcriber (CET), and certified electronic court reporter and transcriber (CERT). A person would need to have CERT certification, whose standards appear comparable to stenographic court reporter certification standards, to meet the proposed Wisconsin requirements. The standards for NCRA, NVRA and AAERT certifications can be found in **Appendix III**.

Expanding the definition of certified court reporter to include voice writers and electronic reporters provides a way to expand the pool of certified court reporters. It is hoped that this would allow for the continuation, at least in the intermediate term, of the current court reporting system with judges maintaining their ability to appoint their court reporters.

However, at the present time, there are very few of these other types of certified reporters who would be available for hire into the Wisconsin Court System. Currently, one person in Wisconsin, who owns a reporting company and is the president of AAERT, has a CERT certification. As previously mentioned, most of the certified voice writers are located in southern states or the military.

According to the NVRA website, the cost of voice writing equipment is about one-third the cost of stenographic computer equipment, the duration of training is nine months, and the dropout rate is 10% or less. The number of voice writing training programs is listed as "few but growing." It is envisioned that when the Wisconsin Court System modifies its standards to allow NVRA and AAERT certifications, the marketplace will respond accordingly. (As an example, the AAERT website has a link to employment openings in the Minnesota court system.)

As long as expanded certifications allow for the retention of the current court reporting system, the problems of funding equipment purchases, system maintenance and reporter overtime, and administrative costs in billing and collecting transcript fee revenues would be avoided.

7. *Recommend the Director of State Courts and the Committee of Chief Judges continue to actively support and monitor management of court reporting services.*

Efforts to add voice and electronic reporters as official, district and freelance court reporters in Wisconsin will not decrease the need for effective management of court reporting services in each judicial district. Under SCR 70.235, Chief Judges have the authority and responsibility to assign any official court reporter, as needed, to any court within the district to effectively manage the district's court reporting resources. This authority may at times conflict with the personal appointee status of official court reporters. While this inherent conflict currently exists, the need for Chief Judges to use that authority will become greater as court reporter resources shrink and alternate technologies multiply. It must be reiterated that by Supreme Court Rule, the authority of the Chief Judge in assigning court reporters supersedes that of the circuit

court judges. Not only do Chief Judges have this authority, they have an affirmative responsibility to reassign official reporters as necessary to match resources and needs.

Long-Term Making the Record Technology

8. ***Recommend the Director of State Courts set up as soon as practicable an exploratory committee to study and plan the integration of the CCAP case management system with the record making function, with a report to the Director within twelve months of the first meeting. The exploratory committee should include at minimum a CCAP representative, human resources officer, court reporter, judge, district court administrator and budget officer.***

9. ***Recommend CCAP begin, by the end of the 2004 calendar year, to pilot electronic record making equipment in two or three counties. Evaluate the results of the pilots for use by the exploratory committee and the Director of State Courts.***

Discussion: The committee has agreed that the future of making the record will require a blend of human skills and digital technology. As stated previously, the committee believes that the use of certified stenographic court reporters using computer-aided transcription equipment to make, store, and transcribe the court record is the option that provides the most accurate and timely record. This committee's earlier recommendations take the first steps to introduce digital technology into Wisconsin's courtrooms by replacing the current analog recording systems with stand-alone digital systems, and by giving circuit court judges the choice of appointing properly certified stenographic, voice-writing, or electronic court reporters. The committee believes, however, that these measures will not be enough to meet the long-term need for certified court reporters under the current system. Therefore, there is a need to explore technology-based options to serve as a supplement to (not supplantation of) the use of certified court reporters. The committee believes that electronic reporting must be considered and tested and that consideration must be given to integration of electronic record making and the current CCAP case management system. The pilot programs will allow for evaluation of electronic reporting and the feasibility of integrating it with the current case management system and other available courtroom technology. Consideration of all factors is essential to ensure consistent and standardized system-wide record use, storage and retrieval capabilities, and to maximize any technological benefits.

An exploratory committee, coupled with a CCAP pilot, is needed now to further study the variety of issues – technological, staffing and funding – surrounding a

blended system. Among the questions this exploratory committee would need to address are:

- What are the criteria for determining which courtrooms receive the installations?
- What digital system or systems would best meet the needs of the Wisconsin Court System?
- Who will operate the equipment and how will these persons be trained?
- How will the record be stored and retrieved as needed?
- Can CDs be produced for purchase?
- Who will prepare transcripts?
- How will the quality and timeliness of transcripts be ensured?
- Are Supreme Court Rule or statutory changes necessary?
- What does CCAP need to provide the necessary support?
- What will be the role of the Director of State Courts Office?
- What will be the role of the district court administrators?
- How will this affect the personal appointee status of official court reporters?
- How will this affect the county/state relationship?
- How will the cost of the system be determined and how will it be funded?

The capability to produce accurate and timely transcripts of court proceedings is a basic necessity of our justice system. This committee, building on the work of previous committees, has documented the looming shortage of stenographic reporters, examined alternative technologies, and has recommended immediate actions that can be taken to temporarily address court reporter vacancies. It has also developed a long-term vision consisting of a blend of human skills and alternative technologies. There are unanswered questions concerning this vision that need to be addressed, and continued efforts by the Director's Office are needed to ensure that the Wisconsin Court System continues in the future to have the capability it needs in making, preserving and reporting the court record.

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APPENDIX I

PREVIOUS COURT REPORTING COMMITTEES AND REPORTS

Legislative Audit Bureau Evaluation of Transcription Technology in Wisconsin Circuit Courts, August 1994. The Legislative Audit Bureau conducted an evaluation of the new technology available to assist in transcription of circuit court proceedings, as requested by 1993 Wisconsin Act 16. Among its recommendations were the following:

- Fourteen audio recording systems should be placed in Kenosha, Milwaukee and Racine counties' specialized courtrooms, and a minimum level of audio recording capability should be provided in each of the other 69 counties if a commitment from judges in each county to use the audio system is obtained before an audio system is purchased.

- The State should provide the equipment and training needed for all court reporters to become proficient in computer-aided transcription. Along with this, court reporters should be compensated for actual overtime hours worked, and transcript fees should be retained by the state court system for other court purposes.

- The Director of State Courts should engage a consultant to analyze actual job responsibilities in this new structure and develop an appropriate wage package for court reporters.

The report acknowledged that implementation of these recommendations would require additional state funding, so suggested that a four-year phase-out of the old system would be more financially feasible and would make use of equipment already available.

Subsequently, the Governor included in his 1995-1997 biennial budget bill: (a) funding for the State to begin to purchase and maintain computer-aided transcription equipment for reporters who did not have the equipment, with the provision that the State retain the transcript fees for those reporters who received the state-purchased equipment; (b) funding to purchase and maintain audio systems for each county; (c) elimination of the ability of circuit court judges to appoint a court reporter, to be replaced by district reporters appointed, assigned and supervised by the chief judge in coordination with the district court administrator; (d) elimination of 8.0 district court reporter positions in Milwaukee County and (e) reduction in funding for freelance court reporters.

In 1995 Act 27 (the 1995-1997 biennial budget act), the Legislature instead: (a) required court reporters to purchase their own computer-aided transcription equipment by July 1, 1999, and required the State to purchase equipment for any reporter, except those within two years of retirement, who had not purchased their equipment by this date; (b) gave court reporters hired after July 1, 1999 the option to purchase their own equipment; (c) provided that the State keep the transcript revenue of those reporters for whom the State had purchased equipment; (d) deleted funding for county audio systems except for eight in Milwaukee County; and (e) deleted the Governor's recommendation that the personal appointee status of official court reporters be eliminated. The Governor's recommendations to delete 8.0 District 1 court reporter positions and reduce funding for freelance reporters were included in the Act. Subsequently, in 1997 Act 237 (the 1997-1999 budget adjustment act), the requirement for the State to begin purchasing equipment and retaining transcript revenue on July 1, 1999 was repealed.

PPAC Subcommittee on Court Reporting, February 1999 through August 2000. The purpose of the Supreme Court's Planning and Policy Advisory Committee's (PPAC) subcommittee was to address the long-term issue of how to best ensure the preservation and timely production of an accurate court record. The primary long-term issue the subcommittee identified was the declining pool of official reporters, attributable to declining graduates from court reporter schools, employment opportunities elsewhere for graduates and the aging of the current court reporter pool. During the course of proceedings, the subcommittee defined its general objective as record preservation without displacing current court reporters. An additional goal was to provide a technology solution in each county for use in the absence of a court reporter and as a means of record preservation for appropriate types of court proceedings.

The subcommittee made the following recommendations:

- Support efforts to increase enrollment in court reporting schools.

- Work with the Wisconsin Court Reporters Association (WCRA) to encourage real-time reporting training, certification, and use.

- Install a multi-track, digital audio recording system in each county to be used as a back-up when a stenographic court reporter is unavailable.

- Identify or create an oversight entity to develop the technical specifications of the digital audio recording system, identify vendors, and oversee purchase and

installation of the chosen system to ensure standardization, compatibility, and integration with existing courtroom technologies.

- Redefine the duties of the court reporter position to reflect added duties of technology supervision and managing the record of proceedings, or operation of digital audio recording equipment and transcript preparation, as needed.

- Review Supreme Court Rule 71.05 to ensure compliance with the recommendations in this report. Also revise the standards promulgated pursuant to SCR 71.05(4) to reflect digital audio recording technology as the preferred method of electronic reporting.

- Evaluate stenomask technology as another court reporting option, with real-time certification a minimum standard.

- Educate judges, reporters and other affected court system staff in the use of digital audio recording technology.

As a result of the subcommittee's work, while budget constraints prevented the purchase of equipment for each county and the implementation of the other technology-related recommendations, a back-up analog audio recording system was purchased for most of the districts (District 1 was already using these systems). The WCRA took on recruitment of new reporters as a major project, with some success in increasing enrollments in state court reporting schools. At the request of the WCRA, in February 2004 the Director of State Courts authorized the WCRA president to attend the Wisconsin Conference of School Guidance Counselors to promote the court reporting profession. The next section describes an evaluation of stenomask technology.

Director of State Courts Ad Hoc Committee on Court Reporter Qualification Criteria. The Director of State Courts appointed this committee in November 1999 to develop recommendations on court reporter qualification criteria, which were all subsequently implemented by the director's office. Its recommendations included the following:

> Have the Director of State Courts or his designee name a three-person Certification Reciprocity Committee, consisting of a court system human resource professional, a district court administrator and a court reporter, which would be responsible for establishing and recommending guidelines for evaluating whether to grant a reciprocal certification to a requesting

court reporter, and for considering the inclusion of stenomask (voice writing) technology.

In January 2004, the Reciprocity Committee considered an employment application from a certified stenomask reporter. The committee approved and the reporter agreed to a two-week period in late March-early April 2004 to assess the feasibility of expanding the director's office definition of certified court reporter to include certified stenomask/voice writing reporters.

Chief Judges' Committee on Court Reporter Issues, December 1999 through October 2000. This committee was intended to supplement the work of the PPAC subcommittee by focusing on the day-to-day court reporting issues. Among its recommendations was the recommendation that each district develop a policy approved by the chief judge outlining when official court reporters must advise the district office when the official court reporter's assigned court is not in session. As a result, Trial Court Administrative Rule 6 was amended in 2002 to require each administrative district to develop a written policy on availability and assignment of official court reporters. As of February 2004, nine of the ten districts have developed such a policy; District 7 is in the process of developing its policy. The new policies have allowed the districts to better utilize official court reporters at a time when both the funding for and availability of freelance court reporters have declined. Anecdotal reports suggest that some districts are farther along than others in managing official reporter time due to the reluctance of some judges and court reporters to cooperate.

Report on the Dodge County Digital Court Recording System. In March 2001, Dodge County purchased an FTR Gold digital court recording system. Judge Storck submitted a report on the system to PPAC in January 2003, which indicated that Dodge County conducts approximately 10-20 hours of proceedings each week using the system, including: 1) criminal and traffic hearings with the court commissioner; 2) family court commissioner hearings; and 3) daily criminal initial appearances. It also permits the scheduling of last minute and urgent matters when a court reporter is unavailable. While the proceedings are generally low-transcript hearings, when a transcript is needed, the court reporter for the judge assigned to the case prepares it by listening to the archived recording on CD-ROM.

Problems encountered by the system included technical difficulties (location of sound jacks, adequate sound output, compatibility of system components, and coordination issues with CCAP), operator error (participants turning off microphones, not speaking

into the microphone, not identifying themselves when they begin speaking, failure to turn the system on or off), staff resistance and difficulties with technical support. Costs of the system included computer, hardware, software, maintenance contracts and judicial and law clerk time. Benefits included savings of about 500 to 1,000 court reporter hours per year, and increased flexibility/efficiency (court commissioners' ability to handle an additional hearing load without court reporters, judges' ability to schedule after-hours, short-notice and urgent proceedings when a court reporter is not available, and reduced need to call in substitute court reporters).

The report recommended the following when using a digital court reporting system: 1) use a microphone that cannot be turned off and internal CD-RW drives; 2) recognize the limitations of the system; 3) be sure all staff who use the system are adequately trained; 4) designate one in-house support professional who should monitor the system daily to catch technical difficulties and operator errors; 5) establish systems for the taking of minutes and storage of discs; and 6) perhaps most importantly, CCAP needs to become more fully invested in ensuring that the system will run smoothly on the State system and in providing fast and reliable support to counties using the system. A reliable statewide system will eventually be necessary.

Preliminary Report on Paperless Court Reporting, July 2003. In response to the marketing in Wisconsin of a new paperless stenographic writing machine that stores the stenographic notes electronically rather than printing the notes to paper, the Records Management Committee appointed the Ad Hoc Paperless Court Reporting Subcommittee to review applicable statutes and rules, research the technology and make recommendations on whether this new technology should be approved for use in the Wisconsin Court System.

The subcommittee identified a primary mission of preserving the integrity of the court record, meaning ensuring the reliable capture, storage, retrieval and transcription of verbatim notes from court proceedings for up to ten years. The subcommittee recommended that paperless court reporting technology not be approved for use in official court proceedings at this time, but further recommended that the subcommittee reconvene in one year, expanded to include a CCAP representative to assist with issues of long-term storage and maintenance of electronic court reporter notes, to reevaluate paperless court reporting and how it is working in other jurisdictions. The subcommittee also recommended that a petition be drafted to the Supreme Court to define court reporters' notes as "Stenographic symbols/characters imprinted on paper or stored electronically which can be recovered and read by a certified court reporter for the purpose of preparing a verbatim record of a court proceeding."

The subcommittee has not as yet been reconvened, nor has a petition to the Supreme Court been drafted. Paperless court reporting technology as of March 2004 is not approved for use in official court proceedings. The Making the Record Committee urges the Paperless Court Reporting Subcommittee to delay drafting a petition to the Supreme Court Rules until the Making the Record Committee's recommendations can be considered.

APPENDIX II

USE OF ALTERNATIVE COURT REPORTING TECHNOLOGIES BY SIZE OF CIRCUIT

	County	# Judges	District	Who Completed Survey	Altern? Y/N	Type
1-Judge Counties	Buffalo	0.5	7	DCA/Clerk of Court	Y	Technics single-track tape recorder connected to sound system
	Florence	0.5	9	Clerk of Court	Y	Lanier
	Forest	0.5	9	Judicial Asst.	N	
	Pepin	0.5	7	DCA/Clerk of Court	Y	Hand-held tape recorder
	Adams	1	6	Clerk of Court	N	
	Ashland	1				
	Bayfield	1	10	Clerk of Court	N	
	Burnett	1	10	DCA	N	
	Calumet	1	4	Clerk of Court	Y	Lanier
	Clark	1	6	Clerk of Court	N	
	Crawford	1	7	DCA/Clerk of Court	Y	Hand-held tape recorder
	Green	1	5	DCA	Y	Lanier Advocate V
	Green Lake	1	6	Clerk of Court	Y	Audio tape
	Iowa	1	7	DCA/RIP/JA	Y	Hand-held tape recorder
	Iron	1				
	Jackson	1	7	DCA/Clerk of Court	N	
	Juneau	1	6	Clerk of Court	Y	Just purchased court reporting system with CDs
	Kewaunee	1	8	DCA	N	
	Lafayette	1	5	DCA	N	
	Langlade	1	9	Clerk of Court	N	
	Marquette	1	6	Judge	N	
	Menominee	1	9	Judge	N	
	Pierce	1	7	DCA/Clerk of Court	N	
	Price	1	9	Clerk of Court	Y	Tape recorder
	Richland	1	7	DCA/Clerk of Court	Y	Portable single-track tape recorder set on bench
	Rusk	1	10	Clerk of Court	N	
	Sawyer	1	10	Clerk of Court	Y	Tape recorder
	Shawano	1	9	Judge	N	
	Taylor	1	9	Judge	Y	Cheap Radio Shack cassette tape player
	Trempealeau	1	7	DCA/Clerk of Court	Y	Hand-held dictation tape recorder
	Vernon	1	7	DCA/Clerk of Court	Y	Marantz PMD 101U Tape recorder single track connected to sound system
	Vilas	1	9	Clerk of Court	N	
	Washburn	1	10	Judge	Y	Microcassette recorder

USE OF ALTERNATIVE COURT REPORTING TECHNOLOGIES BY SIZE OF CIRCUIT

	County	# Judges	District	Who Completed Survey	Altern? Y/N	Type
1-Judge Counties	Waushara	1	6	Judge & Clerk	Y	Sony Confer-corder BM-246
2-Judge Counties	Barron	2	10	Clerk of Court	Y	Tape recorder
	Chippewa	2	10	Clerk of Court	N	
	Door	2	8	DCA	Y	Reel-to-reel analog system
	Douglas	2	10	Clerk of Court	N	
	Dunn	2	10	Clerk of Court	N	
	Grant	2	7	DCA/Clerk of Court	Y	Marantz PMD 501 stereo tape recorder single track connected to sound system
	Lincoln	2	9	Judge	N	
	Marinette	2	8	DCA	Y	
	Monroe	2	7	DCA/JA	Y	Portable single-track tape recorder – set on bench
	Oconto	2	8	DCA	Y	Marantz PMD680 card recorder
	Oneida	2	9	Clerk of Court	N	
	Polk	2				
3-Judge Counties	Columbia	3	6	Judges/Clerk of Court (2 surveys)	N	
	Dodge	3	6	Judge	Y	Two 4-channel digital recording systems - FTR Gold 1.3 on a county stand-alone computer & an FTR Gold on a CCAP computer. Also have a transcription computer with a foot pedal system (rarely used)
	Manitowoc	3	4	Court Commissioner	Y	Lanier 4 channel tape system
	Ozaukee	3	3	Clerk of Court	N	
	Portage	3	6	Judge & Clerk	Y	Electronic digital recording
	St. Croix	3	10	Clerk of Court	N	
	Sauk	3	6	Judge	N	
	Waupaca	3	8	DCA	Y	Lanier system
	Wood	3	6	Judge	N	
4- and 5-Judge Counties	Jefferson	4	3	Chief Dep Clerk	N	
	Walworth	4	2	Clerk of Court	N	
	Washington	4	3	Clerk of Court	N	
4- and 5-Judge Counties	Eau Claire	5	10	Clerk of Court	N	
	Fond du Lac	5	4	Clerk of Court	N	
	La Crosse	5	7	DCA/Clerk of Court	Y	Lanier LCR5 4-track tape recorder connected to sound system & transcriber

USE OF ALTERNATIVE COURT REPORTING TECHNOLOGIES BY SIZE OF CIRCUIT

	County	# Judges	District	Who Completed Survey	Altern? Y/N	Type
	Marathon	5	9	Judge	Y	Electronic tape recording
	Sheboygan	5	4	Clerk's Office	Y	Lanier tape recorder
6- to 8-Judge Counties	Winnebago	6	4	Clerk of Court	Y	Recording
	Kenosha	7	2	Clerk of Court	Y	Lanier tape recording equipment
	Outagamie	7	8	DCA	N	
	Rock	7	5	DCA	N	
	Brown	8	8	DCA	N	
10- to 12-Judge Counties	Racine	10	2	Clerk of Court	Y	Lanier tape recorder
	Waukesha	12	3	Business Mnger	Y	Digital tape recorder and networked (PC based) ECR
17-Judge County	Dane	17	5	DCA	Y	
47-Judge County	Milwaukee	47	1	Mnging Court Reporter	Y	Lanier Advocate V (analog) & FTR Gold (digital)

Summary	**Yes**		**No**	
	#	%	#	%
1-Judge Counties	17	53%	15	47%
2-Judge Counties	6	55%	5	45%
3-Judge Counties	4	44%	5	56%
4- and 5-Judge Co	3	38%	5	63%
6-to 8-Judge Co	2	40%	3	60%
10- to 12-Judge Co	2	100%	0	0%
17-Judge County	1	100%	0	0%
47-Judge County	1	100%	0	0%
Total	36	52%	33	48%

If yes, satisfied? 20 Yes; 8 No

If no, would you use? 23 Yes; 7 No (some yeses were qualified)

Stenographic Court Reporting National Court Reporters Association (NCRA)	**Stenomask Court Reporting** National Verbatim Reporters Association (NVRA)	**Electronic Monitor Court Reporting** American Association of Electronic Reporters and Transcribers (AAERT)
Registered Professional Reporter (RPR): Must have knowledge, skills, ability to produce a high quality verbatim record Written Knowledge Test (WKT): 100 multiple-choice questions focusing on four areas: • Reporting (48%) • Transcript production (44%) • Operating practices (4%) • Professional issues and continuing education (4%) } 90 minutes to complete passing score 70% or better Pass three sections of a skills test that evaluates three areas: • Literary (180 wpm) • Jury charge (200 wpm) • Testimony/Q & A (225 wpm) } After dictation, 75 minutes to transcribe 95% accuracy	**Certified Verbatim Reporter** (CVR): Written test covering punctuation, spelling, grammar, legal terminology, definitions and more } Passing score of 75% or better Pass three sections five minute tests that evaluates three areas: • Literary (200 wpm) • Jury charge (225 wpm) • Two-voice Q & A (250 wpm) } 95% accuracy required	AAERT's ongoing certification program for electronic court reporters and transcribers is a test of professional skills by direct written and practical examination, with either an **analog** or **digital** focus There are three certifications: CER – Certified Electronic Court Reporter CET – Certified Electronic Court Transcriber CERT – Certified Electronic Court Reporter and Transcriber There is a written test and 2 practical tests (reporter and transcriber). If an individual passes all three, will receive CERT. **Timed written test**: consists of 100 questions covering 3 areas (score of 70% or better required): • Technical aspects of electronic reporting (including for reporters microphone protocols) • Courtroom procedure • Vocabulary **Reporter Practical Test**: Reporters view 1/2 hour courtroom scene on video. The individual is scored on practical note-taking skills. Digital reporters provide their own laptops and note-taking software. **Transcriber Practical Test**: Transcriber listens to an AAERT-prepared audio recording and produces a minimum of 10 text pages of verbatim transcript during a time-limited testing session. **Transcript accuracy must exceed 98%**.
Registered Merit Reporter (RMR): Must have RPR for specified period of time before receiving this certification Written Knowledge Test (WKT): 100 multiple-choice questions focusing on four areas: • Reporting (47%) • Transcript production (41%) • Administration (6%) • Professional issues and continuing education (6%) } Passing score 70% or better is required Pass three sections of a skills test that evaluates three areas: • Literary (200 wpm) • Jury charge (240 wpm) • Testimony/Q & A (260 wpm) } After dictation, 75 minutes to transcribe, 95% accuracy	**Certificate of Merit** (CM): Must have CVR before receiving this certification Pass three sections five minute tests that evaluates three areas: • Literary (225 wpm) • Jury charge (250 wpm) • Two-voice Q & A (300 wpm) } 97% accuracy required	
Certified Real-time Reporter (CRR): Must have RPR in good standing CRR requires 3 steps: • Setting up and operating equipment • Accurately writing real-time for 5 minutes from professional recorded literary material (180 wpm) • Converting file to ASCII text file } Graded on final submitted test file	**Real-time Verbatim Reporter** (RVR): Must have CVR One-5 minute two-voice Q&A testing at speeds varying between 180 – 200 wpm. Candidate must dictate as text while maintaining silence requirements. Candidate may not interact with or edit text either during or following dictation. Candidate must download voice generated text to floppy disk and submit to monitor. } 96% accuracy rate required } Graded on final submitted test file	