

# REPORT OF THE STUDY COMMITTEE ON TRIAL TRANSCRIPTS

Submitted to the Justices of the Supreme Judicial Court  
*June 30, 2003*

Hon. Mark V. Green, *Chair*  
Ashley Brown Ahearn, Esq.  
Thomas J. Carey, Jr., Esq.  
Carol A. Donovan, Esq.  
Hon. Elizabeth B. Donovan  
Francis P. Driscoll, Esq.  
Alexander G. Gray, Esq.  
John H. Henn, Esq.  
Hon. Stephen S. Ostrach  
Robert P. Panneton  
Jacqueline P. Schelfhauadt, Esq.  
Darryl G. Smith  
Hon. Stephen C. Steinberg

## I. INTRODUCTION

In constituting the Study Committee on Trial Transcripts, the Justices of the Supreme Judicial Court observed that the "accurate and timely recording and transcription of trial proceedings is crucial to the fair, prompt, and efficient judicial review of cases." The Study Committee was established and directed to study means by which the timeliness and accuracy of trial transcripts may be improved, including by the use of new technology. The Study Committee was directed to file its report, for public review and comment, within six months.

Since its creation on January 9, 2003, the Study Committee has conducted a review of current methods and practices used in Massachusetts to prepare trial transcripts, has surveyed methods and practices used in other states, has met with (and received input from) court reporters, transcribers, judges, and court administrators, in Massachusetts and in other jurisdictions, and has gathered information about new and emerging technologies to facilitate court record making and transcript preparation. We are pleased to submit this report of our findings and recommendations.

Our report begins with an executive summary. Our more detailed findings follow, beginning with a description of the traditional use of court reporters to record and transcribe proceedings in Massachusetts, primarily in the Superior Court Department of the Trial Court. We then review the use of electronic recording devices and contract transcribers, the predominant method for creating transcripts in the other departments of the Trial Court. We next provide a review of new and emerging technologies, and of methods and practices used in other states. Our specific recommendations appear at the end of the report. Two members of the Committee disagree with the report in certain respects; their separate

statement (described as a “Minority Report”) appears immediately following the recommendations.

As will be seen in our report, the process of trial court record making and transcript preparation in Massachusetts is complex, and it is hampered by inadequate resources, systemic inefficiencies, and a lack of effective management. Our report offers solutions for some of the most significant systemic and structural issues, and provides a suggested framework to address the remaining problems. We recognize that specific or detailed solutions to some of the problems we identify will depend on additional management and funding decisions and, in some instances, may require legislative action. We hope nonetheless that all involved in transcript production and use will find our report useful toward achieving the goal of improving the timeliness and accuracy of transcripts of proceedings in all the courtrooms of the Commonwealth.

## II. EXECUTIVE SUMMARY

Trial transcripts occupy a critical position in the progress of cases to final disposition. With few exceptions, a transcript is a necessary component of the record in any appeal. Cases on appeal involve some of the most important rights and issues affecting Massachusetts citizens. The nearly 2,000 appeals filed each year include child welfare cases involving termination of parental rights, and criminal convictions based on insufficient evidence or an incorrect jury instruction. Civil litigants often have literally millions of dollars in suspense, pending the determination of an appeal. Transcripts are “the lifeblood of the judicial appeal process.”<sup>1</sup> Where the transcript is incomplete, inaccurate, or unavailable, the interests of justice, and the people's faith in a fair and efficient court system, are harmed.

Unfortunately, despite its critical position, the process of trial transcript preparation in Massachusetts does not serve the needs of the court system or its customers. Transcripts are often delayed unconscionably, and are frequently of poor quality. In this respect Massachusetts ranks among the worst states we found in our review of practices across the nation. With the recent expansion of the Appeals Court, and the resulting progress in addressing backlogs in pending appeals, the problem of delay in trial transcripts stands as the single greatest impediment to the progress of cases appealed from the Massachusetts trial courts. The costs to our system of justice and to the residents and businesses of the Commonwealth are enormous.

The process of preparing a trial transcript in Massachusetts reflects in microcosm many

---

<sup>1</sup> Roger P. Kerans and Patrick Keys, Use of electronic appeal transcripts in the Alberta Court of Appeal, 2 Journal of Appellate Practice and Process 329, 329 (2000).

of the problems described by the report of the Visiting Committee on Management in the Courts earlier this year. While the current methods of record making and transcript preparation do not fully utilize new and emerging technology, the essential problems stem at least as much from a lack of effective management and sufficient resources as from outmoded technology. Despite several rounds of court reform, which have included the means to provide unified oversight and management of court reporting and transcription services, court record making methods remain largely unchanged (and in certain respects have regressed) since the early 1970s. As a result (by way of example), no court reporting services are made available to child welfare or murder cases tried in the Juvenile Court (or any other cases, for that matter, in trial court departments other than the Superior Court). Meanwhile, court reporters are assigned to cover Superior Court sessions involving no witness testimony.

The presence of live court reporters in a session does not ensure timely transcripts, however. The median transcript preparation time for criminal cases appealed from the Superior Court is approximately 300 days, and substantially longer times occur in exceptional cases.<sup>2</sup> In addition, for a variety of reasons the court system is largely unable to realize the singular advantage that court reporters provide in comparison to electronic recording -- real-time transcription that allows the transcript to be produced simultaneously (or nearly so) with

---

<sup>2</sup> In one notable recent case, a single justice of the Appeals Court directed that a convicted defendant would be released pending appeal unless the court reporter filed the trial transcript within sixty days. At the time of that order, the defendant's transcript request had been pending for more than seventeen months. See Commonwealth v. Murphy, Appeals Court Docket No. 03-J-111 (March 10, 2003).

its recording -- since so few of the court reporters employed by the court have real-time capabilities. In sessions that are electronically recorded without a court reporter, substandard equipment and inadequate attention to the recording, combined with cumbersome transcript ordering methods and a lack of oversight of transcript quality, produce an inferior product in an inefficient manner. In a nutshell, it is a complex and poorly structured system, virtually devoid of effective management. In a word, it is unacceptable.

Court reporters occupy a unique dual status, as trial court employees for purposes of their in-court work in making the record of court proceedings, and as independent contractors for purposes of transcript preparation and "sale." In preparing transcripts, court reporters operate largely outside the supervision of court management, and there are essentially no financial incentives for prompt transcript delivery (particularly for publicly funded transcripts). Unresolved contractual disputes impair the ability of court management to address transcript preparation backlogs by assigning backlogged reporters to lighter sessions, or by re-assigning records made by backlogged reporters for transcription by another typist. In addition, there are fewer court reporters employed by the trial court than there are active Superior Court sessions, so there is little cushion or flexibility to take reporters "off line" in order to resolve backlog, or to attend training, without sacrificing coverage. That shortage is due to a shortage of new entrants into the field of court reporters, and increasing demand in related and more lucrative fields for workers with similar skills (such as television closed captioning and medical transcription). Concerted efforts and significant resources will be needed to attract qualified court reporters to the Massachusetts courts in sufficient numbers to cover every session where a court reporter would be desirable.

Transcripts prepared from tape recorded proceedings in the six trial court departments other than the Superior Court suffer fewer problems of delay, but the process of obtaining a transcript of the audiotaped record is unnecessarily cumbersome and time consuming, and the quality of the transcript is often poor. Tapes must be copied before they are sent out for transcription, and no coherent or rational system directs where tapes from particular courts are sent for duplication. Nor is there any system governing the selection of the outside transcriber (other than a requirement that the transcriber appear on an approved list), or any system to evaluate the quality or timeliness of the work of any transcriber on the list. No one monitors the recording as it is being made, to ensure that the machine is operating correctly, for example, or that the microphones are picking up what is expected. Background noise often impairs the audibility of the recorded tape. In addition, unskilled or careless transcribers may designate a portion of the tape as "inaudible" simply because they do not recognize specialized legal terminology, or because they neglect to listen to each track in isolation (to reduce the interference of background noise).

Anomalies abound. Even though the cost of a transcript is regulated by statute specifying the rate per page, no required standard format is applicable to all transcripts. Although transcript delay is of concern principally as it affects the progress of cases on appeal, the appellate courts do not learn of an appeal until after the transcript is prepared. Although resources for court record making and transcript preparation are inadequate, no systemic mechanism determines priorities for allocating those scarce resources.

New technologies -- particularly computer-assisted "real-time" transcription systems and digital audio recording devices -- have been implemented with success in other state

courts. Real-time transcription offers obvious benefits in reducing transcript preparation times, and the availability of a simultaneous finished (or even rough) transcript offers significant benefits to trial management independent of any improvement in appellate process. The court should focus on training opportunities and financial incentives to bring court reporters up to real-time standards, since real-time is the principal enhancement in transcription service that cannot be achieved without the presence of a court reporter in court. In other words, to the extent that Massachusetts is willing to allocate resources to pay for the presence of a court reporter in court (as compared to lower-cost electronic recording), we believe the reporter should be able to provide the enhanced benefit of real-time transcription as justification for the added cost.

Digital audio recording technology offers significant promise as a means to make a high quality audio record of court proceedings for later transcription. Though not the equivalent of real-time transcription by a court reporter, digital audio technology is a lower-cost record-making alternative to court reporters, adequate for use in circumstances where real-time is not needed. Since we currently suffer a shortage of court reporters to cover the Superior Court alone, since that shortage is a significant contributing factor in transcript preparation delays, and since the shortage appears certain to persist, digital audio recording provides a much-needed safety valve to meet the current needs of the court system where court reporters are unavailable. The availability of an alternative would also provide management flexibility needed to address court reporter transcript preparation backlogs and training needs.

In addition, compared to tape recording rather than to court reporters, digital audio

has several advantages: (i) more tracks may be recorded (thereby producing more audible audio records); (ii) the audio record may be more easily located and duplicated for transmission to a transcriber or others; (iii) the audio records are more easily and durably stored; and (iv) digital audio recordings are more easily transmitted to and shared by others, including offsite transcribers, attorneys, and others involved in a case. As described in this report (and as employed in most states using it), digital audio systems rely on a person to monitor the recording as it is being made. That person (typically described as a "monitor") requires less specialized training, with a commensurately lower salary, than a court reporter.

Our recommendations (which we detail at the end of our report) fall broadly into four categories: a change in management structure; areas for management attention; areas for contractual attention; and adoption of new technologies. The centerpiece of our recommendations is the establishment of an Office of Court Reporting and Transcription Services (OCRTS), modeled after the recently revamped Office of Court Interpreter Services. The OCRTS would manage and oversee all court record making and transcript preparation services throughout the trial court. We also identify a series of specific areas for management attention, including the establishment of formatting standards and time standards for transcript preparation. And we identify several topics warranting specific treatment in the current round of negotiations toward a collective bargaining agreement with the court reporters, including management's rights to assign court reporters to particular sessions on bases other than seniority and to assign transcripts for preparation by persons other than the reporter who made the record of the session, but also including financial incentives for court reporters who achieve real-time capabilities and sanctions for reporters who fail to prepare

timely transcripts. Finally, as described in the previous paragraph, we recommend the use of digital audio technology to record court proceedings where no court reporter is available to make the record.

Many, many states do a far better job than Massachusetts of managing the process of trial transcript preparation, and of utilizing available technology to assist that process. Our report and recommendations are directed toward bringing Massachusetts up to the level of service in this critical function that our citizens deserve. We have the talent in our system to achieve significant improvement, and the tools and technology are within our reach. It would be inexcusable not to do everything in our power to address the problems in the current system.

### III. FINDINGS

#### A. Introduction

Like many of the states we reviewed, Massachusetts employs more than one method to record court proceedings. Unlike other states, however, Massachusetts divides its approach to court reporting methods along trial court departmental lines. The Superior Court department utilizes court reporters. Other trial court departments rely on analog audio tape recorders. The difference is more a matter of custom and practice than of the underlying statutory framework,<sup>3</sup> or of any essential difference in the need for a record of the proceedings. Although these two systems perform an identical function and have some similar features, they operate largely independently of each other.

As a general matter, the Superior Court does generate more appeals than the other trial courts.<sup>4</sup> For example, although Superior Court judges comprise only 20% of all trial

---

<sup>3</sup> Various statutes authorize judges of the several trial court departments to appoint a stenographer, at the Commonwealth's expense, to transcribe probate proceedings in the same manner as per diem reporters appointed to transcribe proceedings in the Superior Court, although that authority is rarely exercised. See, e.g., G. L. c. 119, §§ 55A, 56 (delinquency and care and protection cases, respectively, in Juvenile Court); G. L. c. 185, § 13A (Land Court); G. L. c. 185C, § 18 (Housing Court); G. L. c. 215, § 18 (Probate and Family Court); G. L. c. 218, §§ 26A, 27A (District Court and BMC criminal cases). In addition, parties may retain reporters at their own expense to serve as temporary court reporters, subject to court approval. See generally G. L. c. 221, § 83. Parties to proceedings in the Land Court, in particular, routinely engage private stenographers at joint expense. See note 27, *infra*.

<sup>4</sup> Since a principal reason for the Committee's creation was the delay in the progress of appeals resulting from delays in transcript preparation, we have paid particular attention to issues of transcript preparation in cases that are appealed to the Appeals Court and to the Supreme Judicial Court. Although cases are also appealed to the Appellate Division of the District Court, the Appellate Division does not routinely receive transcripts of the cases under review. The Committee recognizes that, properly managed, the official record can play an important role in case management in the trial court. However, we believe that improvement of transcript preparation directed to the appeals process will carry benefits to transcript use in the trial courts as well.

court judges, the Superior Court accounts for 64% of all cases entered on the docket of the Appeals Court. Similarly, Superior Court cases are significantly more likely, on average, to generate an appeal than cases heard in the other trial court departments. The charts below illustrate the relative shares of appeals generated by the several trial court departments.<sup>5</sup>

Superior Court Judges as Proportion of All Judges

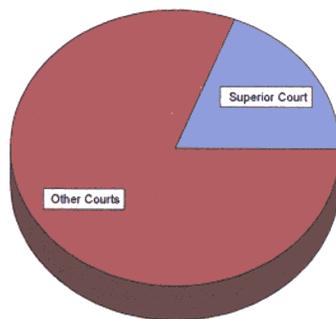


Figure 1

Origin of Appeals (FY 02)

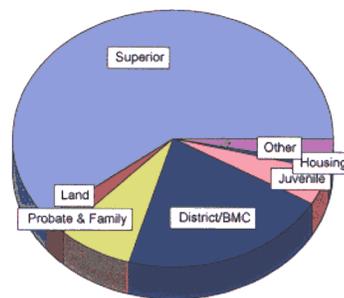


Figure 2 "Other" includes administrative and single justice

Appeals per Judge per Year

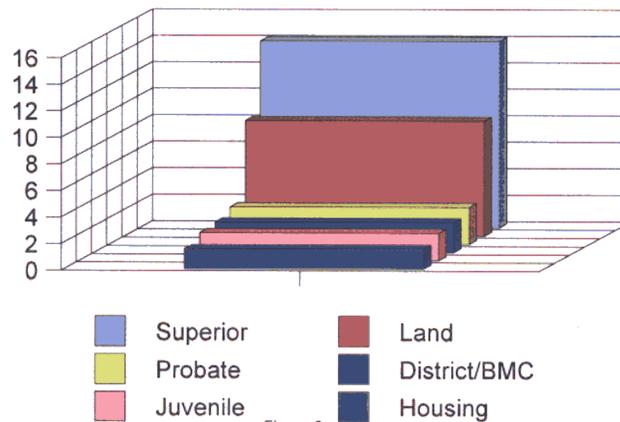


Figure 3

<sup>5</sup> Figure 3 reflects appeals generated in FY02, divided by the number of judges authorized for each department without regard to vacancies in each department for part or all of the year. In the smaller departments that method of counting has the effect of distorting the comparison somewhat; for example, six judges were authorized for the Land Court during FY02 but only four were seated (and one of those four seats was vacant for five months). Adjusted for vacancy, the Land Court generated more appeals per judge than the Superior Court in FY02, but enjoyed no publicly paid court reporter services. A chart showing the data underlying all three charts is attached to this report as appendix A.

Courts in trial court departments other than the Superior Court generate slightly more than one-third (36%) of all appeals, with a corresponding share of required transcripts. However, cases from other trial court departments are proportionately less likely to generate an appeal than those from the Superior Court; those appeals that do occur represent a considerably smaller share of all cases heard in the other courts. Certain cases in other courts, however, appear proportionately and predictably more likely to generate an appeal than others. Such cases include, for example, petitions for termination of parental rights in the Juvenile and Probate and Family Courts, and criminal “operating under the influence” (OUI) cases in the District Court. In addition, Land Court cases are approximately as or more likely to generate an appeal as cases from the Superior Court. See note 5, supra.

## B. Court Reporters

### 1. Introduction

As noted in the previous section, while court reporters are used to make the record only in the Superior Court, courts in other trial court departments conduct proceedings (including murder trials and cases involving termination of parental rights) that are equally in need of a full and accurate record. In the following sections, we describe what court reporters are, how they record and transcribe court proceedings, and how they are managed. The comparatively high rate of appeals originating from the Superior Court warrants particular attention to the methods used in the Superior Court to record the proceedings. Given the higher rate of appeals, in other words, it is particularly important to be able to produce timely and accurate transcripts of Superior Court cases for use in the appeal. The accuracy of Superior Court transcripts prepared by court reporters is not an issue.

Timeliness, however, is of great concern. Median transcript preparation delays (measured from date of transcript request to date of delivery) are approximately 300 days for criminal cases and 141 days for civil cases.<sup>6</sup> Preparation times range from 13 to 1701 days in criminal cases, and 7 to 529 days in civil cases.

2. Massachusetts official court reporters hold a dual status as court employees and independent entrepreneurs

a. Official court reporters are trial court employees. Court reporters make the official record of Superior Court proceedings. See G. L. c. 221, § 82. A "court reporter" is defined by statute as "a shorthand reporter or voice reporter engaged in the practice of court reporting." G. L. c. 221, § 91D. Section 91D also defines the "practice of court reporting" as "the making of a verbatim record of any Massachusetts trial, legislative public hearing, state agency public hearing, deposition, examination before trial, hearing or proceeding before any grand jury, referee, board, commission, master or arbitrator, or other testimony given under oath."<sup>7</sup> Court reporters are responsible for making a "verbatim record" of Superior Court criminal proceedings, from arraignment through post-trial motions, civil trials, pro se hearings, "Mary Moe" proceedings permitting minors to obtain abortions, and evidentiary motions . On occasion, court reporters also record arguments on dispositive motions.

---

<sup>6</sup> Preparation times are based on review of appeals docketed in the Appeals Court from December 2002 to February 2003. The figures correspond roughly to a similar survey conducted in June 2001. The detailed data appear in appendix B.

<sup>7</sup> Note, however, that the statutes use the term "stenographer" generically to refer to any court reporter, regardless of their chosen method of court reporting. See discussion of court reporting methods, infra.

Historically, court reporters penned shorthand notes of court proceedings on paper, which they later transcribed with a typewriter. Today, the profession of court reporting, like other professions, relies on stenotype machines or, more commonly now, on computers and associated technologies to assist in transcript preparation. The Superior Court currently employs 60 full-time "official" court reporters.<sup>8</sup> That number compares unfavorably with the number of Superior Court judges (82) and courtrooms (75).<sup>9</sup> Accordingly, the Superior Court also contracts with approximately 25 additional "per diem" court reporters to provide spot coverage for sessions in which no official court reporter is available. "Per diem" court reporters generally are less experienced than official court reporters; many are available only on a part-time basis.<sup>10</sup> Per diem reporters are sworn in as temporary court officers to perform court reporting duties. See G. L. c. 221, § 83.<sup>11</sup>

There are two types of court reporters: stenotypists and voice writers. A voice writer dictates the proceedings as they occur onto a tape, wearing a specially-designed mask, and

---

<sup>8</sup> Thirteen court reporters opted to retire early as part of the retirement incentive program offered in January 2002. The sixty current court reporters include ten who were hired to fill vacancies created by those retirements. Due to funding constraints, the Superior Court has no current plans to fill the remaining three vacancies.

<sup>9</sup> Eighty-two judges are authorized for the Superior Court. See G. L. c. 212, § 1. Two Superior Court judges serve as Chief Justices (of the Superior Court and for Administration and Management of the Trial Court), and two are assigned full-time to the trial court information technology project. There are currently three vacancies. The resulting number of judges available to sit (75) corresponds exactly to the number of courtrooms assigned for Superior Court business.

<sup>10</sup> Ten of the per diem reporters are available only part-time.

<sup>11</sup> Both official and per diem court reporters are entitled to reimbursement for such "reasonable and actual expenses for travel, food and lodging" as the Chief Justice of the Superior Court may allow pursuant to G. L. c. 221, § 91. Official court reporters are also reimbursed for "reasonable and actual" expenses when they are required to render services outside of their appointing county. See G. L. c. 221, § 90A.

later prepares a transcript from the taped recording. A stenotypist records court proceedings using a stenotype machine (which produces a series of strokes indicating shorthand phonetic symbols) and then later prepares a transcript from the raw stenotype machine notes. Approximately two-thirds of the official court reporters (41) are voice writers; the remaining one-third (19) are stenotypists.<sup>12</sup>

The most advanced technology permits both verbatim reporters and stenotypists to produce transcripts in real-time, that is, simultaneously with the words being recorded. We describe this process more fully in part E.2. below. Of the official court reporters, sixteen stenotypists and two voice writers are currently "real time" capable to some degree.<sup>13</sup> "Real-time" recording does not eliminate the need for cleanup or editing of a transcript, but it reduces significantly the work required to convert the raw record made during the proceeding to a transcript suitable for filing with an appeal.

As court employees, court reporters are members of the clerical employees collective bargaining unit of the Office and Professional Employees International Union, Local 6, AFL-CIO, and subject to a collective bargaining agreement between the union and the Chief Justice for Administration and Management (CJAM) of the Administrative Office of the Trial Court (AOTC).<sup>14</sup> That bargaining unit also includes about 2500 other court employees,

---

<sup>12</sup> Substantially all of the per diem reporters are voice writers.

<sup>13</sup> Twelve of the stenotypists with real-time capability report that they use real-time methods in court on a regular basis. The remaining reporters (voice and steno) with real-time capability do not use it on a regular basis, for reasons ranging from problems with equipment to relatively early stages of their real-time development (which, as discussed later in this report, requires extensive training).

<sup>14</sup> Per diem reporters are independent contractors and accordingly are not included within the collective bargaining agreement.

including clerical staff serving the clerk's and probation offices and court facilities. The most recent collective bargaining agreement expired on February 28, 2003; a new contract is currently under negotiation.

The collective bargaining agreement governs such issues as salary, optional insurance benefits, working hours and conditions, seniority, leave and vacation time, transfers, and other typical collective bargaining issues. Section 16.01 of the most recent agreement authorizes AOTC to establish standards of performance and service. In addition, G. L. c. 221, § 87, provides that "The justices of the superior court may make regulations not inconsistent with law relative to the assignments, duties and service of stenographers appointed for that court, and any other matters relative to such stenographers." Section 17.12 of the collective bargaining agreement pertains specifically to court reporters and provides: "The conditions specific to Court Reporters not otherwise addressed in this agreement shall be added to this agreement by side letter to be incorporated in this section by May 1, 2000, unless otherwise agreed to by the parties." No other provision of the most recent collective bargaining agreement specifically concerns court reporters. Although AOTC and representatives of the Superior Court and the court reporters attempted to negotiate terms of a side letter as anticipated by § 17.12 (and, in that connection, discussed draft policies and procedures governing court reporters), the negotiations did not succeed, nor have any policies governing court reporters been finalized or issued.<sup>15</sup>

---

<sup>15</sup> The last set of policies or procedures governing court reporter management or performance was issued by former Superior Court Chief Justice Walter McLaughlin in 1973, before the court reporters' employment became subject to the collective bargaining agreement and before the establishment of AOTC. Many of the policies contained in that issuance have fallen into disuse; they

In the performance of their official court reporting duties, court reporters (and per diem court reporters) have several supervisors who oversee various aspects of their work. Their first-line supervisors are the judges whose sessions the court reporters cover and who control and oversee the court reporter's work in that session. In addition, a Manager of Court Reporters, centrally located within the Administrative Office of the Superior Court, is responsible for scheduling court reporters. An Associate Administrator in the Superior Court, in addition to his numerous other responsibilities, is in charge of hiring, firing, and general oversight of the work of official and per diem court reporters. However, as we describe below, the authority of any of these supervisors to exercise effective management control over court reporters is seriously hampered by the lack of available management tools.

Although official court reporters were once required to be certified by a nationally-recognized certifying body as a condition of hiring, that requirement was eliminated in 1999. Currently there are no testing or retesting requirements for court reporters as a condition of hiring or retention. The Judges' Committee on Court Reporters was also disbanded in 1999; it previously had served as a forum for discussion among judges and court reporters of topics related to court reporter performance and working conditions.

b. Court reporters are also independent contractors. In contrast to their employment under the collective bargaining agreement to attend and make the record of court proceedings, court reporters operate largely as independent entrepreneurs in preparing transcripts of the record. In preparing transcripts, court reporters purchase, own, and

---

are summarized for historical interest in appendix C to this report.

maintain their own equipment (both for in-court recording and at-home transcribing). They work out-of-court, and set their own hours. They may (and typically do) engage scopists<sup>16</sup> or typists as subcontractors to assist in transcript preparation. Transcript preparation work is not entirely free of management oversight or restriction, however. Court reporters submit monthly reports to the Associate Administrator of the Superior Court listing the name of each case for which a transcript has been ordered, the date on which the order was placed, and the estimated number of pages in the transcript.<sup>17</sup> In addition, the rate reporters may charge for a transcript is established by statute, although the ordering party makes payment directly to the court reporter.<sup>18</sup>

---

<sup>16</sup> "Scopists" perform computerized editing services on "raw" transcripts provided by the transcriber.

<sup>17</sup> The monthly report relies on self-reporting by the court reporters. There is at present no mechanism to verify that the information reported is accurate or complete. There have been isolated discoveries of transcripts delivered but not reported on the monthly reports, and other indications of activity that is not reflected on the reports. For example, one court reporter wrote to the Committee to explain that attorneys in civil cases may defer posting the deposit required to activate a transcript order, in order to delay the appeal pending settlement discussions. The reporter was concerned that such a delay could reflect poorly on the reporter, and advised that she had accordingly determined to omit from her monthly report transcript orders in civil cases where the requesting party had not paid the deposit. The Committee recognizes that parties may on occasion wish to defer the cost of a transcript pending settlement discussions, but believes such activity should occur within limits defined by court rules and ought not to occur "off balance sheet."

<sup>18</sup> The current statutory rate is \$3.00 per page for originals and \$1.00 per page for copies. Reporters may charge a higher rate for daily transcripts: \$4.50 per page for originals, and \$1.50 per page for copies. See G. L. c. 221, § 88. These rates have been in effect since 1988 and apply regardless of whether the payor is the Commonwealth or a private party. Since there are currently no formatting standards applicable to transcripts, however, the cost of a transcript of the same proceeding may vary depending on the individual court reporter's determination of how much text to include on a page.

As with the monthly reports (see note 17), there is currently no mechanism to monitor compliance with the statutory rates. Accordingly, while there have been few known instances of a court reporter charging in excess of the authorized rate, there is no systemic mechanism to uncover an agreement for expedited transcript production in exchange for a premium.

3. The salaries of Massachusetts official court reporters compare favorably with the salaries of court reporters in other New England states

As shown in the chart below, the salaries of Massachusetts official court reporters compare favorably with the salaries of court reporters in the other New England states, though they are lower than salaries in New Jersey and New York, and the salaries of court reporters employed by the federal court in the District of Massachusetts.<sup>19</sup>

COURT REPORTER SALARIES IN SELECTED STATES

| STATE                     | ENTRY-LEVEL   | HIGHEST  |
|---------------------------|---|--|
| Connecticut               | \$45,058.00   | \$57,582.00  |
| Maine                     | \$34,710.00   | \$52,689.00  |
| Massachusetts             | \$46,559.73   | \$59,257.87  |
| MA Federal District Court | \$63,171.00   | \$75,805.00  |
| New Hampshire             | \$43,692.00   | \$55,763.00  |
| New Jersey                | \$32,571.00 (Level I - non-real time certified)<br>\$38,918.00 (Level II - real-time certified) | \$66,500.00 (Level I)<br>\$74,281.00 (Level II)                |
| New York                  | \$60,268 - \$63,598   | \$85,189-89,437  |
| Rhode Island              | \$38,575  | \$43,628   |
| Vermont                   | full-time hourly employee@<br>\$16.64 per hour/40 hr.<br>week                                   | full-time hourly employee@<br>\$25.98 per hour /40 hr.<br>week |

Unlike official court reporters, per diem reporters are independent contractors who are paid at a per diem rate, without benefits. The current per diem rate is \$148.48 per day.

---

<sup>19</sup> Salary figures were drawn from telephone interviews and other communications between Study Committee members and administrators of the courts surveyed.

That figure has not changed since 1990, and is less than the pro rata daily rate implied by the annual starting salary paid to official court reporters.<sup>20</sup> Although per diem reporters are engaged and supervised by the Superior Court Administrative Office, they are paid out of AOTC from a general administrative account that also pays for guardians ad litem and court interpreters.

As illustrated by the chart on the following page, the per-page rates that Massachusetts court reporters may charge are (like salaries) in line with per-page rates established by other New England and Northeastern states for regular-delivery and daily-delivery original transcripts and copies. However, unlike their counterparts in most states, Massachusetts court reporters are unable to charge an "expedited delivery" premium for transcripts requested on an expedited but not daily basis.<sup>21</sup> But see notes 17 and 18, supra.

---

<sup>20</sup> Dividing the annual starting salary (\$46,559.73) by the number of business days in a year (excluding holidays) yields an implied daily rate of \$187.74 for official court reporters.

<sup>21</sup> On the other hand, court reporters in Massachusetts are not required (as in some other states) to charge the Commonwealth less than they charge private parties for a transcript.

PER PAGE RATES FOR ORIGINALS AND COPIES OF TRANSCRIPTS<sup>22</sup>

| STATE                        | ORDINARY DELIVERY   | EXPEDITED <sup>23</sup>   | DAILY DELIVERY   |
|------------------------------|---|---|--|
| Connecticut                  | \$1.50 (\$.50 ) State<br>\$1.75 (\$.50 ) Private                      | \$3.00 (\$1.00 ) State<br>\$3.50 (\$1.00) Private                   | \$3.95 (\$1.30) State<br>\$4.60 Private                              |
| Maine                        | \$3.00* (\$.50)   | As per agreement with<br>ordering party                             | As per agreement with<br>ordering party                              |
| Massachusetts                | \$3.00 (\$1.00)   | N/A   | \$4.50 (\$1.50)  |
| MA Federal<br>District Court | \$3.30 (\$.83, .55)   | \$4.40 (\$.83, .55)   | \$5.50 (\$1.10, .83)   |
| New Hampshire                | \$2.25 (\$.75)  | \$4.50 *  | N/A  |
| New Jersey                   | \$3.00 (\$.50)  | \$4.50 (\$.75)  | \$6.00 daily (\$1.00 )   |
| New York <sup>24</sup>       | \$2.50-\$3.15*<br>(\$1.00) State<br>\$3.30-\$4.30 (\$1.00)<br>Private | \$3.15-\$4.25(\$1.10)<br>State<br>\$4.40-\$5.40 (\$1.10)<br>Private | \$3.75-\$5.25 (\$1.25)<br>State<br>\$5.50-\$6.50 (\$1.25)<br>Private |
| Rhode Island                 | \$3.00 (\$1.50)   | As per agreement with<br>ordering party                             | As per agreement with<br>ordering party                              |
| Vermont                      | \$2.25 (\$.50)  | N/A   | \$5.50 (\$1.00)  |

\* = includes one copy

Transcript production can be a significant source of income. Based on the court reporters' monthly reports, Massachusetts court reporters produce approximately 500

---

<sup>22</sup> Per page figures for copies appear in parentheses.

<sup>23</sup> The definition of what constitutes "expedited" delivery varies from state to state. The Federal District Court assigns yet another category, with a commensurately higher page rate, for "hourly" transcripts.

<sup>24</sup> New York has a three-tiered clientele structure depending on whether transcripts are to be paid for (1) by the Unified Court system, (2) from public funds, or (3) by private parties. See New York Judiciary Law § 108.2(b) (McKinney 2000). The chart above combines categories (1) and (2) into the category of State payments.

transcript pages per reporter per month. At \$3.00 per page, that level of production would accordingly generate \$1,500 per month, or \$18,000 per year, based only on the price of an original transcript.<sup>25</sup> That figure does not take into account money made from selling additional copies of a transcript, or transcripts that are ordered by attorneys for purposes other than appeal.<sup>26</sup> See note 17, supra.

In addition to official court reporters and per diem reporters, there is a third category: reporters privately engaged by the parties in civil cases. In December, 2001, when a funding shortfall depleted AOTC's administrative account and thereby prevented the use of per diem reporters, Chief Justice DeVecchio issued a memorandum to all Superior Court judges directing them to give parties in civil proceedings the option to hire court reporters at their own expense, who are sworn in as temporary court reporters pursuant to G. L. c. 221, § 83.<sup>27</sup> Transcripts prepared, verified, and certified in this manner then become part of the official record as though prepared by an official court reporter.

4. Transcript production rates and backlogs vary widely among individual court reporters

---

<sup>25</sup> It should be emphasized that these figures are only averages. As we discuss in more detail in part 4 below, transcript production rates vary widely among individual court reporters. As a result, some court reporters earn more from transcript production, and others earn less, because they produce significantly more or less than the 500 page monthly average.

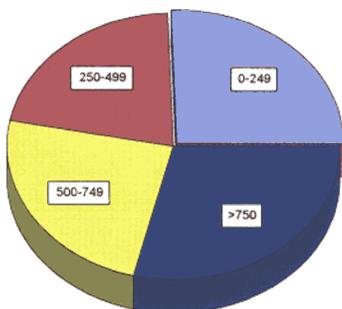
<sup>26</sup> Of course, court reporters also incur costs in creating transcript income, such as the costs of paying scopists.

<sup>27</sup> The same procedure is available to appoint privately engaged stenographers in departments other than the Superior Court. See note 3, supra. Parties in the Land Court, in particular, routinely engage a private stenographer to transcribe the proceedings; in such instances the parties typically share the expense.

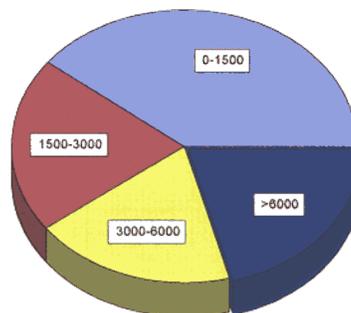
Overall, based on the court reporters' monthly reports, court reporters average approximately 500 pages of transcript production per month, and there is an average backlog of approximately 3,000 pages per court reporter.

Closer examination reveals widely disparate levels of backlogs, productivity and delay times. For example, for the period ended March 15, 2003, while approximately half of the court reporters reported monthly productivity of 500 pages or more, seventeen reporters reported producing fewer than 250 pages (with a low of 0 and several below 100) and nineteen reported producing more than 750 (with a high of 1870).<sup>28</sup> Thirteen court reporters reported backlogs in excess of 6000 pages. A further exacerbating factor contributing to delay arises when a reporter with a large backlog happens to cover a single day of a multiple day trial; even though all other days have been transcribed, the final transcript may be delayed until that single day is completed. The charts below illustrate the distribution of productivity and backlogs.

Monthly Transcript Productivity  
Transcript pages per reporter per month



Distribution of Transcript Backlogs  
Estimated number of pages




---

<sup>28</sup> Data integrity is uncertain, as some reporters refuse to report and there is no mechanism to verify the accuracy of information furnished by those who do. See note 17, supra.

5. Assignment of court reporters to cover a particular session occurs independently of backlog or productivity considerations

As described in part B.2.a above, a manager centrally located in the Administrative Office of the Superior Court is responsible for scheduling court reporters. That scheduling typically occurs in the first instance by circulating a sign-up sheet to the official court reporters assigned to each county. The court reporters select the sessions they wish to cover, with the most senior making their selections before more junior members. Since the number of active sessions exceeds the number of official court reporters, the selection process does not furnish coverage for all sessions. Accordingly, following the reporters' selection, the manager arranges per diem coverage for the remaining sessions.

Because court reporter assignment is driven largely by individual court reporter selection, it occurs independently of backlog considerations (or, for that matter, of any other considerations based on the court's needs). For example, a senior court reporter with a large backlog may elect to cover a long civil trial, due to the likelihood that it will generate an appeal with a lucrative transcript order or that the parties will request expedited transcripts during the course of the trial to assist in their ongoing trial preparations. At the same time, a more junior reporter with real-time capability and no backlog may be left to cover a session that is unlikely to generate a transcript request at all.

The method of assignment is currently a source of tension between the court and court reporters. The court (in the person of the Associate Administrator of the Superior Court) has on several recent occasions assigned court reporters based on factors other than seniority, with a resulting union grievance. Grievances have been filed either by a more senior court

reporter claiming to have been deprived of seniority selection rights, or as a class action by the union itself. In either case, the grievance rests on a claim of past practice. For its part, the court contends that it should have the prerogative to base reporter assignments on factors reflective of court needs, and not simply based on seniority. In the absence of specific contractual guidance on the subject, see part B.2.a, supra, such disputes are submitted to arbitration.<sup>29</sup>

6. Other factors impair the court's ability to employ effective management techniques

In addition to the dispute over the court's right to assign court reporters on bases other than seniority, a variety of other factors impair the court's ability to employ effective management techniques. First and foremost among these is the relative shortage of court reporters. As discussed in part B.2.a, supra, the number of official court reporters is far exceeded by the number of active sessions in the Superior Court. Due to vacation and illness absences, it is frequently difficult to furnish coverage for all sessions. With barely enough capacity to cover active sessions, the court has no "cushion" to relieve transcript preparation backlog (by removing a court reporter from court until the backlog is cleared), or to allow court reporters to attend training to increase productivity, or to impose sanctions for poor performance. There is little practical value in a rule requiring transcripts to be prepared within a specified time if the offending reporter is needed to cover active court sessions every

---

<sup>29</sup> No such disputes have been fully resolved to date. Several grievances were withdrawn, and several await determination through arbitration. One matter, involving a dispute concerning reassignment of a court reporter resident in Stoughton from Brockton to Dedham, is the subject of a pending appeal (SUCV 2001-04713).

day.

Other problems stem from the failure of the collective bargaining agreement to address several important topics, combined with lax practices developed over the years. For example, although the raw record (either stenotype notes or the audiotape made by a voice writer) is the official record of the court proceeding, it is often held in the possession of the court reporter rather than by the court clerk.<sup>30</sup> Moreover, since the underlying record belongs to the court, the court should in theory be able to contract with additional typists to prepare transcripts from the raw record made by the court reporter.<sup>31</sup> However, many court reporters appear to believe that they hold an exclusive (albeit unwritten) right to earn the per page transcription fees generated by transcript requests from proceedings they have covered. That belief is of questionable merit. See Lipman v. Commonwealth of Massachusetts, 478 F.2d 565 (1973).

In the latter regard, court reporters benefit from a peculiar feature of their status as court employees. Official court reporters are currently permitted to take what is commonly known as "Rule 13 time," a reference to the cognate provision of Chief Justice McLaughlin's 1973 Regulations Governing Court Reporters. See note 15, supra, and Appendix C. That provision permits a court reporter to request time away from courtroom recording duties to complete transcripts. A court reporter taking "Rule 13 time" must pay for a per diem substitute to cover his or her courtroom sessions. Although "Rule 13" was designed as a

---

<sup>30</sup> This practice apparently began due to storage space limitations in various clerks' offices.

<sup>31</sup> The audiotape recording made by a voice writer is particularly susceptible of transcription by a third party.

management tool, the economics and practice of taking Rule 13 time are advantageous to the official court reporter. Because the daily pre-diem rate of \$148.48 is significantly less than the implied daily rate of an entry-level court reporter, the obligation to pay a per diem substitute results in a net gain for the official court reporter of \$40.00 to \$80.00 per day.<sup>32</sup>

7. Labor trends suggest that the present shortage of court reporters is likely to persist

A variety of labor-market trends combine to suggest that the present shortage of court reporters is likely to persist. The latest federal employment estimates project that 890 new court reporters, stenographers, and medical transcribers will be needed in Massachusetts between 1998 and 2008. In recent years many court reporting degree programs in area colleges and community colleges have been eliminated. Court reporting programs at Massasoit Community College and Springfield College, both in Massachusetts, and Johnson and Wales University in Providence, Rhode Island, are now closed. A similar dearth of court reporting programs was noted by Florida court personnel interviewed by a member of the Study Committee. Court reporters' associations report a similar decline in the availability of court reporter training at two- and four-year colleges nationwide.<sup>33</sup>

In addition, because federal legislation mandates that by 2006 all new television

---

<sup>32</sup> Other benefits, including vacation time and sick leave, continue to accrue while a court reporter is on "Rule 13 time."

<sup>33</sup> See National Court Reporters Association, *The Status of Reporter Education: Trends and Analysis* (June 2002)(available at <http://www.NCRAonline.org>). According to the NCRA report, "In 1995, there were 114 approved [court reporter] programs (and 267 non-approved). Today there are 82 approved programs (and approximately 70 non-approved)." *Id.* at 2. "Approved" programs follow NCRA guidelines for court reporter education. Of the 82 approved programs, "50% are private schools; 41% are community colleges; 8% are four-year programs (2 public, 5 private)." *Ibid.*

programming be closed-captioned, and the Americans with Disabilities Act gives deaf and hard-of-hearing college and university students the right to request access to real-time transcription of classroom activities, the federal Bureau of Labor Statistics expects increased demand for real-time reporters and computer assisted real-time transcription ("CART") services in many areas outside the courtroom. Many of these competing industries (particularly those in the news and entertainment media) offer more lucrative compensation and/or more flexible working conditions than Massachusetts offers to its court reporters.<sup>34</sup>

### C. Electronic Recording

#### 1. Introduction

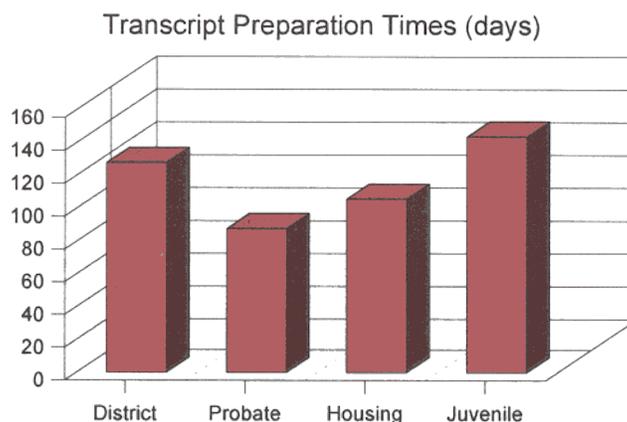
Instead of the traditional court reporters used in the Superior Court department, other departments of the trial courts have for many years utilized electronic sound recording devices to record court proceedings. These devices have almost always consisted of analog audio tape recording equipment that records voices on analog audio cassette tapes. The analog tape recording then becomes the basis for preparing a written transcript, but only after the original audio tape is duplicated and the duplicate copy is sent to an individual or company for transcription.

Trial court departments using tape recorders have experienced fewer problems with delays and backlogs in transcript preparation than the Superior Court. As the chart on the

---

<sup>34</sup> Although court reporters are not fully interchangeable with stenographers working outside the legal system, medical transcribers, or CART workers providing closed captioning services, the professions are related and rely on similar skills and training. As such, labor demands in the related fields affect the labor market's capacity to meet legal system demands. Concerted efforts and significant resources will be needed to attract qualified court reporters to the Massachusetts courts in sufficient numbers to cover every session where a court reporter would be desirable.

next page illustrates, transcript preparation times, though not ideal, are generally not as long as in the Superior Court.<sup>35</sup>



If transcript preparation delays are not as significant a concern, however, transcript accuracy is of far greater concern. Transcripts often are missing portions of the proceedings, and testimony is often untranscribed because it is “inaudible.” The methods used to capture the record during the proceedings, and to request a transcript in the event of an appeal, contribute to the problem. The consequences of such inaccuracy for the administration of justice can hardly be overstated. As Justice Kaplan noted almost thirty years ago, an inaccurate record of trial proceedings is “hazardous. It opens the door to conflicting versions

---

<sup>35</sup> As with the data presented in part III.A, preparation times were taken from cases entered in the Appeals Court. Data were gathered from two different sources: data on Juvenile Court cases were compiled from the Delay Committee, which compiles statistics on child welfare appeals from the Juvenile, District, and Probate Courts. Other data were gathered by the Appeals Court and reproduced in Appendix B. The methods of compiling data vary slightly between the two sources. In addition, since the trial court dockets outside the Superior Court frequently do not reflect the date on which a transcript is ordered, delays were measured from the date the notice of appeal was filed. That method has the effect of overstating to some extent the delay for these cases (and underscoring the need for a uniform method of capturing the most basic information about the operation of our courts). The chart does not include the Land Court since, by custom and practice in that court, the parties arrange for preparation of a trial transcript prior to submitting final briefs and before decision.

of what occurred at trial, and the failure to settle these questions satisfactorily might often result in a miscarriage of justice." Blazo v. Superior Court, 366 Mass. 141, 149 n.17 (1974). In the sections that follow, we summarize the means by which proceedings are recorded on audiotape, and the manner in which transcripts are prepared from the tapes following an appeal.

## 2. The mechanics of tape recording

Although some variation appears in court rules on electronic recording,<sup>36</sup> in general the "mechanics" of the process rely on the session clerk.<sup>37</sup> The session clerk operates the tape recording device, and stores the tapes in the clerk's office. In addition, the session clerk typically makes an announcement at the start of an electronically recorded session as to the name and docket number of the case. The session clerk also is typically obliged to note in the case file and to keep in a separate log a number or other identifier for the cassette or tape, and also to note the start and end points of the proceeding (by reference to whatever tape counter is available for the recording device that is being used). In many sessions, proceedings from more than one case are recorded onto a single tape or cassette. The sessions clerk performs these duties related to making the record in addition to many other duties of the clerk that occur during the session, such as entering orders on the court computers in the case being heard or on cases heard earlier in the day, arranging for other cases, scheduling, taking telephone calls, general "housekeeping" activities, and the like.

---

<sup>36</sup> A brief summary of the rules applicable in each trial court department is set out in appendix D.

<sup>37</sup> The term "session clerk" is used here as a functional description; in the Probate and Family Court, for example, the applicable rule refers to the assistant register.

The tape recorders typically record on four separate audio tracks, to allow isolation of audio feeds from up to four separate microphones, and thereby to enhance a transcriber's ability to separate (for example) the feed from the witness microphone from interference noise picked up by a microphone in another location.

Although the session clerk is responsible for ensuring that the proceedings are recorded, and for keeping a log of the events recorded on a particular tape, the clerk typically is not able to "monitor" what is being recorded, in the sense of constantly attending to the audiotaping and keeping detailed notes of the proceedings. Loss of evidence can occur when the tape fails to record what is being said without anyone noticing the problem. Such failures may be the result of tape defect, machine malfunction, operator error, the speaker's distance from the microphone, poor acoustics, or ambient noises such as a passing siren or a clerk stamping or stapling papers.<sup>38</sup>

Once recorded, the original of the cassette or tape recording is the property of the court, and is the official record of the proceedings.<sup>39</sup> The applicable statutes or rules provide that a typewritten transcript of the recording can become the official record upon certification of accuracy by the court or the transcript preparer, or upon stipulation of the parties. See,

---

<sup>38</sup> Some anecdotal evidence suggests that the "inaudible" portion of the transcript occasionally results from the failure of the transcriber (or person subcontracted by the transcriber) to listen carefully to the tape, or from their unfamiliarity with legal terminology. For example, a high school or college typist may not recognize or understand the phrase "*res ipsa loquitur*" and instead simply record "inaudible." Other anecdotes indicate that portions of the proceeding transcribers described as "inaudible" were in fact audible if only the transcriber had listened to each of the four tracks on the tape separately.

<sup>39</sup> See, e.g., BMC Special Rule 308; District Court Special Rule 211; and Land Court Standing Order 1-88.

e.g., G. L. c. 218, § 27A and G. L. c. 119, § 55A.

3. Procedures for tape transcription<sup>40</sup>

The current practice and procedure for preparing transcripts from audiotapes is cumbersome. Whenever a transcript is ordered, the original tape must first be located and duplicated. Accordingly, on filing a notice of appeal, the appellant requests from the clerk a copy of the original tape recording on a standard Cassette Copy Order Form (AOTC Form OCAJ-9 (7/90)). However, because the tape is made on a “four track” tape recording machine, the tape can be copied only by using a machine with four track duplication capability. A limited number of such machines are located throughout the Trial Court, and their location is more the result of history and workload issues than of logical assignment.<sup>41</sup> There is no prescribed, consistent, or centralized system to monitor or manage the status of requests for duplicate tapes. Problems occur when the tape counter designations furnished by the clerk do not correspond to the portions of the tape where the desired proceeding is actually recorded. This is an equipment problem that is due to factors such as poor tape quality, the stretching-out of reused tapes, and variable tape speed. In addition, since tapes

---

<sup>40</sup> Procedures for tape transcription in child welfare cases differ slightly from those described herein and are set out in more detail in Appendix E.

<sup>41</sup> For example, the clerks of the District Courts request duplicate cassettes from the Administrative Office of the District Court, unless the clerk is from the Dorchester, Roxbury, South Boston, or Chelsea District Courts, in which case the copying request is directed to AOTC. The Administrative Office of the Boston Municipal Court makes duplicate cassettes of proceedings from that court. The Administrative Office of the Juvenile Court does not have the capability to make any duplicate cassettes; tapes from that court (depending on location) are sent either to AOTC, the Administrative Office of the District Court, or the Hampshire County Probate and Family Court. Tapes of proceedings conducted in the Probate and Family Court are duplicated by the Springfield division of the Probate and Family Court department. Oddly, the process of tape duplication at AOTC is overseen by the AOTC General Counsel.

frequently may include proceedings in multiple cases, a request for tape copies in one case may be delayed because the original tape was previously sent out for duplication incident to a request involving a different case. Counsel may have requested two-track copy rather than four-track copy (which the current form allows him or her to do), which further reduces the quality of the recording from which the transcriber must prepare the transcript. The very process of duplicating a tape (no matter how good the duplicating equipment) results in a degradation of sound quality.

Following duplication, both the original and the copy are returned to the requesting clerk. The copy is then furnished to the appellant. Except in child welfare cases,<sup>42</sup> the appellant must then designate the portions of the cassette to be transcribed and select the individual or firm to transcribe the cassette with the agreement of all appellees.<sup>43</sup> If there is no such agreement, the clerk or register must select the transcriber. In child welfare cases, the clerk must order a complete transcript of the proceedings on behalf of the appellant. Mass. R. App. P. 8(b)(5)(ii)(b). If the clerk or register is to select the transcriber, or if the transcript is to be provided at the expense of the Commonwealth (i.e., either a District

---

<sup>42</sup> The term refers to cases involving for care and protection, children-in-need-of-services, and termination of parental rights, guardianship of a minor, adoptions, and name changes. See Mass.R.App.P. 1(c).

<sup>43</sup> Although the rule in most cases (excepting child welfare cases) directs the appellant to review a copy of a cassette -- that is, to listen to it -- and to "designate" what portions are to be transcribed, it is by far the more common practice for an appellant simply to request a transcript of the entire proceeding. The practice is understandable, given the considerable time required to travel to a facility that can play a four-track cassette audiotape and then to listen to the entire cassette in order to designate portions for appeal. Appellate counsel likely feels some obligation to review the entire record for potential issues for appeal and, in any event, the cost of designating portions of the record for transcription likely exceeds any additional cost of transcribing portions that turn out to be unnecessary for the appeal.

Attorney, the Attorney General, or AOTC but not including a Commonwealth agency), the selection is to be made in accordance with procedures promulgated by the CJAM, which means selecting from the list of qualified transcribers. (See further discussion below). There is no set method by which transcribers are selected, and there is no agreement among clerks and registers on whether Rule 1:07 of the Supreme Judicial Court (governing fee generating appointments) governs the selection of transcribers. There is no system in place to indicate to the clerks or registers how many requests are pending before any transcriber at any particular time, and no method to gather information regarding the timeliness or accuracy of transcripts prepared by individual transcribers on the approved list.

Once a transcriber is selected, and depending on the type of case appealed, the appellant or clerk (as applicable) sends to the transcriber the tape copy, along with a written order indicating whether all or portions of the tape are to be transcribed. The order also directs the transcriber to file the original transcript with the clerk. This written order is filed with the clerk and served on all parties. There is no uniform or established system in place to log, track, or tickle the estimated time for the production of transcripts; as noted earlier, in many cases the transcript request is not even entered on the trial court docket.<sup>44</sup>

On completion of the transcript, the transcriber files the original transcript with the clerk, together with a certificate of accuracy. Although Juvenile Court clerks are required to log and monitor the progress of the transcript request, the trial court as a whole has no uniform or established system in place to log, track, or tickle the receipt of transcripts.

---

<sup>44</sup> There is also no standard form to ensure that the transcriber receives certain basic case information, such as the names of witnesses and the correct spelling of unusual terms.

In criminal cases, the invoice for the original transcript is endorsed by the clerk and forwarded for payment either to the AOTC or to the appropriate District Attorney or the Attorney General. However, in criminal cases in both the Superior and District Courts in which the criminal defendant/appellant is indigent, the invoices are sent to the Committee for Public Counsel Services (CPCS), which processes them and sends them on to the state comptroller for further processing, after which they are sent to the Treasurer for payment. The confusion as to who is responsible for the payment of the invoice stems from the fact that Mass. R. App. P. 8(b) states that the "Commonwealth" shall pay for the preparation of the transcript in certain situations, but does not clarify which division of the "Commonwealth" is intended.<sup>45</sup> The invoice for a copy of the transcript is sent to the appellant, unless the appellant is indigent, in which case the invoice for the copy is forwarded to AOTC for payment. There is no established system to monitor the quality of the transcript or to withhold payment because of unsatisfactory performance by the transcriber.<sup>46</sup>

In civil cases in which counsel has been appointed by the court (other than child welfare cases), the invoice for the transcript is endorsed by the clerk and forwarded to AOTC for payment. In child welfare cases, the transcriber files the original transcript with the clerk's office. The clerk's office then provides copies to all counsel who have requested them. Upon

---

<sup>45</sup> The same lack of clarity arises under the various statutes authorizing assignment of per diem court reporters to the various trial court departments. See note 3, supra.

<sup>46</sup> On the subject of financial controls, it appears that CPCS currently has no means to identify multiple orders for "original" transcripts (at the higher per page rate applicable to originals) in instances where CPCS furnishes separate counsel for multiple parties (such as, for example, mother, father and children, in a child welfare case, or separate co-defendants in a criminal case), or multiple orders for copies of transcripts in the same case.

presentation of the bill as endorsed by the clerk's office, CPCS pays the transcriber for an original copy and for as many copies as there are appointed attorneys.<sup>47</sup> Thus, if counsel is appointed for the mother, the father, and the child, CPCS pays for the original and three copies. Where the appellant is not indigent, the transcriber bills the appellant directly

Mass. R. App. P. 8(b)(3) and 8(b)(5) anticipate that the CJAM will promulgate procedures for the selection of transcribers by the clerks and registers. At present, no detailed procedures exist.<sup>48</sup> The criteria used to determine eligibility of transcribers for selection generally are not shared with or available to the clerks, probate registers or private parties who order transcripts. Further, the current system does not provide a mechanism whereby unsatisfactory performance by a transcriber can be reported to the AOTC, the contracting entity. There is no set method for notifying transcribers that there are issues regarding the quality of their work. There is no established requirement that the transcriber listen to all four tracks of the cassette to determine that a portion of the recording is truly inaudible before submitting transcripts with gaps marked as "inaudible." Further, the current system does not link payment to performance, other than to have the invoice presented to the clerk or register when the original transcript is filed (or to CPCS).

---

<sup>47</sup> CPCS advises attorneys to make a copy of the transcript from the appellant's copy rather than ordering a copy from the transcriber. However, neither the Rules of Appellate Procedure nor CPCS policies require or regulate compliance with that advice.

<sup>48</sup> AOTC has issued a Request for Responses (RFR) for transcription services, and AOTC has awarded five year contracts to respondents who met the RFR requirements. The list of those "qualified transcribers" (i.e., those who have been awarded contracts) has been distributed to the clerks and registers for their use in selecting transcribers. However, as noted earlier, confusion surrounds the question whether selection of transcribers must follow SJC Rule 1:07 on fee generating appointments, and there is no mechanism to monitor the quality or timeliness of transcribers -- or to match transcriber selection on the basis of past performance.

D. Issues Common to All Trial Court Departments

In addition to problems peculiar to each of the two recording systems used in the Massachusetts trial courts, the following problems plague both systems.

1. No record of the appeal exists outside of the originating court, and no procedure exists for monitoring the way appeals are handled in the trial court clerks' offices

Currently, the Supreme Judicial Court and Appeals Court have no information about a criminal appeal until the case is entered on the Appeals Court docket. In civil cases, appellate courts have the information only slightly earlier (about ten days), when the trial court clerk sends notice of the assembled record under Mass.R. App.P. 9(d). Entry on the Appeals Court docket does not occur until after the transcript is prepared, the record is assembled, and the docketing fee (if applicable) has been paid. Accordingly, the appellate courts have no way to know until after the fact that a case awaiting their review has been delayed by transcript production.<sup>49</sup> At present, attorneys bring transcript-production issues to the court only in the most egregious cases of delay. See note 2, supra.

AOTC, moreover, has no way (and is not charged with responsibility) to monitor the offices of the individual trial court clerks to ensure that those offices are processing appeals in an efficient and timely manner. Again, the burden falls on appellate counsel to keep the case moving toward appeal.

---

<sup>49</sup> As an aside, our review of transcript delays revealed delays in other instances attributable to the failure of the trial court clerk to assemble the record. Although that problem does not bear on the issue of transcript preparation, it illustrates the problem of having no oversight of pending appeals outside the local trial court clerk's office. Experienced counsel sometimes seek the assistance of the Clerk of the Appeals Court in resolving unusual cases, but no formal procedure exists for doing so.

2. No uniform formatting standards exist

Because no formatting standards exist for the production of transcripts, court reporters and transcribers are free to use their own systems, and as a result, the consumer may end up paying more for an identical record typed by one transcriber than by another. For example, some transcribers may employ 24 lines per page, while others employ 23. Some transcribers may use 12-point type, while others use 14-point type. Some transcribers may use two tabs to indent while others use only one, or use unusually wide margins.<sup>50</sup> In the absence of uniform formatting standards such as those found in other states, litigants in Massachusetts will continue to pay disparate charges for an identical product.

3. Absence of criteria to prioritize cases, or means to enforce priorities

In some of the states we studied, such as Connecticut, transcribers were required to transcribe cases according to a clear order of priority. The prioritization scheme allowed appeals in the most urgent cases – such as child welfare appeals – to be reached before cases of less general urgency. In Massachusetts no single supervisory structure establishes priorities; in fact, no court reporter resources are even allocated to child welfare cases. The habitual preference favoring the presence of a court reporter in every Superior Court session, even when court reporters are backlogged on transcript preparation, implicitly assigns a

---

<sup>50</sup> On June 20, 2000, the CJAM issued a Memorandum to all trial court clerks setting out uniform formatting standards for transcribers on the AOTC transcriber list, requiring clerks to fill out a transcript review form concerning the whether a transcript is or is not acceptable (including whether the transcript adheres to the required formatting standards), and requiring court personnel to review a transcript for accuracy and completeness prior to signing off on a payment voucher for the transcript. This directive appears to have been widely ignored by clerks and transcribers alike. Anecdotal evidence suggests that, even when transcribers complete and return their portion of the transcript review form, little use is made of the information they provide.

higher priority to court reporter presence than to transcript preparation. Even where stated priorities exist, there are no practical means to enforce them. For example, although there is a Superior Court policy directing that criminal cases should receive priority over civil cases, the data reveal that civil transcripts are prepared significantly more quickly.

4. Diffuse payment structures and uncertain funding sources

In our research for this report, the Study Committee attempted to determine how much public money was spent during the most recent fiscal year on transcript preparation. However, due to diffuse payment structures we were unable to obtain even the most rudimentary overall estimates. The reasons illustrate an essential management problem.

Publicly funded transcripts are paid for by any of a number of separate divisions of the Commonwealth.<sup>51</sup> CPCS, which serves as appointed counsel for indigent defendants in criminal cases or for indigent parents (or children) in child welfare cases, pays for transcripts out of its Indigent Court Costs Fund. In the 2002 fiscal year, CPCS processed 2,000 bills and paid more than \$1,550,000 for transcripts. However, as noted above, see note 46, supra, CPCS has no internal mechanism to ensure that separate public counsel assigned to different parties on the same case share a purchased transcript.<sup>52</sup> Similarly, neither the Attorney General nor the District Attorneys separately identifies expenditures made for trial

---

<sup>51</sup> In the preceding section we noted the confusion that currently exists under various statutes and court rules over which division of the "Commonwealth" is required to pay for the transcript.

<sup>52</sup> CPCS appointed attorneys are, by structure, independent contractors, and prosecuting attorneys of course represent the opposing side in criminal cases. In addition, use of transcript copies must include adequate safeguards to ensure the integrity of the copies. However, there is no inherent reason why public funds must be expended for multiple copies of the transcript where the case is funded on both sides by the Commonwealth.

transcripts.

Because CPCS pays for transcripts out of its Indigent Court Costs Fund, it is unable to pay for transcripts when it suffers a funding shortfall in that account at the end of its fiscal year. The resulting uncertainty over payment causes understandable resentment on the part of court reporters, who are made to wait for payment for work already performed (often with the assistance of typing subcontractors, whom the court reporters must nonetheless pay from their own funds).

Conversely, court reporters typically require private litigants to pay the full estimated cost for a transcript “up front,” at the time an order is placed. That payment system leaves the litigant-purchaser limited means to compel timely delivery by the reporter.

## E. Overview of Available Technology

### 1. Introduction

In its order establishing the Study Committee, the Supreme Judicial Court directed the Committee to “evaluate current and emerging technologies and their training components” to determine alternatives to current record making methods employed by the various trial courts. As in all areas of technology, development of court record making technology proceeds at a rapid pace, and the summary that follows could well be out of date in a short time. However, whatever obsolescence might occur in the near term between current and emerging technologies pales in comparison to the obsolescence inherent in our current system. In this section, we review technological development in three areas. First is the advent of “real-time” reporting, referenced in general terms in part B.2.a above. We next consider the use of digital audio recording as an alternative to analog tape recording

devices. We also review the efficacy of audio-visual recording technology as it relates to transcript production.

## 2. "Real-time" Court Reporting

"Real-time" refers to the process by which, using computer assistance, court reporters can create transcripts of proceedings as they occur, and attorneys, judges, and others can simultaneously view transcript text on personal computers or laptops in the courtroom. Real-time texts can also be disseminated on the internet on a daily basis. Although real-time relies on technological assistance, it also relies on a highly skilled and trained professional court reporter to produce the record. As described by one of the official court reporters with whom we met, real-time is not merely a technology -- it is a philosophy that must be employed by the court reporter toward the production of a simultaneous record.<sup>53</sup>

Real-time hardware and software is available to both stenotypists and voice writers. In both cases, the hardware essentially consists of a laptop computer, specially equipped to accept a data feed from the reporter's voice or steno recording equipment. For stenotypists, the software then converts the steno shorthand keystrokes into text; over time the system's recognition capabilities and accuracy increase, as the reporter builds a customized "dictionary" of frequently used words matched to particular keystrokes. For voice writers, the system uses voice recognition software to convert the reporter's spoken words to text. At

---

<sup>53</sup> Both court reporter voice writers and stenographers told us that, in the words of one court reporter, "[r]eal time reporting requires not only exceptionally higher writing skills and training on the part of the court reporter, but exceptional cooperation on the part of all parties, litigants and, in a court setting, judges and staff" to allow time for the real-time reporter to review and log the relevant case-specific information.

present, real-time equipment for voice writers is more expensive than for stenographers, even though voice recognition technology is not currently as reliable as stenographic real-time systems.<sup>54</sup>

Training for real-time is demanding both for stenotypists and for voice reporters. Both the National Verbatim Reporters Association (voice writers) and the National Court Reporters Association (stenotypists) offer real-time certification that requires the candidate to possess a basic court reporter certification as a prerequisite to seeking real-time certification and then to complete continuing education courses as a requisite for maintaining real-time certification.<sup>55</sup> Training for real-time reporting is not readily available in the immediate area (although some informal training is being offered by individual entrepreneurs), and estimates of the costs of formal real-time training vary from \$300 to \$650 per seminar exclusive of transportation and lodging.

Use of real-time technology and methods allows a trained real-time court reporter to produce a simultaneous transcript at an accuracy rate of approximately 92%. To produce "clean" real-time transcripts, the court reporter must work with a "scopist" (an editor or proofreader), who makes corrections to the transcript as it is being produced.

### 3. Digital audio recording

---

<sup>54</sup> Approximately 90% of stenotypists employed by Massachusetts as official court reporters currently have equipment that is real-time capable. The cost of real-time equipment for voice writers is between \$3,000 and \$8,000, over and above the cost of their existing equipment.

<sup>55</sup> For a summary of the requirements for the National Court Reporters Association Certified Realtime Reporter (CRR) Program, see <http://www.ncraonline.org/education/certification>. For requirements for the National Verbatim Reporters Association Real-time Verbatim Reporter (RVR) Program, see <http://www.nrva.org/about/certif.html>.

In much the same way as digital audio CDs have replaced analog audio cassette tapes (and vinyl records) of popular music, analog tape recording systems are being fast supplanted in federal and state courtrooms by digital recording systems. Digital recording devices include both video and audio recording systems. Several vendors currently provide digital recording systems for courtroom use, and each vendor's system differs in some way from its competitors'. However, all share many of the same features, which we describe here.

Digital audio recording systems capture, store, manage, copy, and disseminate digital audio files. The typical digital system uses microphones positioned at key points around a courtroom to capture sound and record it on a computer's hard disk. Digital recording systems are typically designed to record on eight simultaneous tracks (compared to the four tracks recorded on the analog tape systems currently in use). With additional tracks comes a greater ability to isolate separate audio feeds, thereby increasing the transcriber's ability to discern what was said at trial without interference from background noises.<sup>56</sup> The computer may be connected to a network, so that the audio files may simultaneously be stored or copied onto a network server. Copies of the digital file (or portions thereof) may also be copied, or "burned," onto a compact disk (CD). A typical CD can hold about 20 hours of testimony, compared to approximately 45 to 90 minutes on a typical four-track audiotape cassette (depending on whether the court uses one side or two) and approximately four hours for a reel-to-reel tape. Advancing technology promises even more convenient storage; a single digital video disk (DVD), if used as the storage media instead of a CD, can hold far

---

<sup>56</sup> Systems may be configured to record on even more tracks. With more tracks a greater number of separate feeds may be captured, but file storage size becomes larger.

more material. The physical CDs are easier to store than analog tapes, and less susceptible to deterioration.<sup>57</sup> In addition, since copies of the files are easily made, it is much easier to create multiple copies of the audio record, for use by multiple users or for backup storage in a separate location (to protect against data loss due to fire or other casualty). Also, digital copies are perfect copies and do not suffer the degradation inherent in tape-to-tape duplication.

The greatest advantage of digital over analog recording, though, is that the digital recordings are much easier to navigate, manipulate, and send electronically for the purposes most typically required for court use. The digital record is itself simply an audio file recorded on computer disk in digital format. However, each digital audio system also uses a companion software program that allows the creation of annotations to the audio file as it is being made. Such annotations may be as simple as the identification of the case to which the audio relates, as that portion of the audio begins.<sup>58</sup> Or annotations may identify each witness as their testimony begins, or may note certain words or phrases during the testimony to facilitate later review of the testimony. The digital file carries its own time stamp to

---

<sup>57</sup> In planning for a digital system, however, it is important to recognize the potential for format obsolescence. Just as an audio tape requires a compatible playback machine, a digital file requires a compatible operating system and software. A digital audio file will remain intact for many years, and will always be playable using the software designed for it. However, it is necessary as system upgrades occur to ensure that files created on the earlier system are either compatible with the new system or capable of conversion to a format that is compatible.

<sup>58</sup> If the case identification information is itself maintained in computerized form, as will be the case in Massachusetts when MassCourts (the new computerized case management system developed for the trial courts) is fully implemented, the digital recording system may be linked to the docketing system to allow annotation of basic case information by use of a coded "hot key." Similarly, the computerized case management system may be configured to link the digital audio file for a specified event to the docket entry for that event.

facilitate the location of portions of the file, and discrete portions of the audio file (the portion, for example, comprising the hearing on a particular case heard among several matters during a morning motion session) may be bracketed and copied to a CD for transmission to a typist for transcription.

Although there is only one official audio record, it is possible to configure a digital audio system to allow multiple users to connect to it and make their own parallel recording. Such other users (such as the judge, or counsel to the parties) each may then make their own personal annotations as the record is made, secure from access by any other user.<sup>59</sup>

The use of "hot keys" for frequently-occurring events (objections, for example) facilitates the process of making a simultaneous log of proceedings, and "hot keys" may be customized to a particular trial (name of counsel or a particular medical term, for example). Because a log of proceedings can be so accurately keyed to the actual testimony, testimony may easily be located and retrieved. A judge with whom we spoke in Connecticut told us that her digital system made it much easier for her to capture events on her own personal computer at the bench, and then instantly play back portions of disputed testimony before making a ruling.

The digital file may also be accessed from different locations. The same Connecticut judge reported that she found it useful to listen in chambers to the testimony of a witness who

---

<sup>59</sup> One additional benefit of electronic recording, whether in digital or analog form, is that it is less susceptible to human error. In other words, although a court reporter may make an occasional error in transcription, with an electronic recording system the actual audio serves as the record of what was said (so long as the recording system is configured adequately to capture the sound of the proceeding).

had testified earlier during a long trial, and that the search capabilities of the digital file made it easy for her to pinpoint and play back a particular portion of the testimony. The digital format likewise makes it possible to allow off-site typists to access the file for transcription, thereby eliminating the need to mail copies of the audio record for transcription.

Just like analog audio recording systems, however, digital recording systems are dependent on microphones to pick up the sound of testimony as it occurs. High quality microphones, together with increased microphone placement facilitated by the increased number of audio tracks recorded, improves the system's ability to capture the proceedings without significant loss. However, to ensure that the system in fact is recording as expected, most courts using digital audio recording systems employ human operators to monitor the recording as it proceeds.<sup>60</sup> Some systems use a dedicated "monitor" in each courtroom to monitor the equipment, while some systems are configured to permit several courtrooms to be monitored at once by one monitor working at a remote location. We discuss the use of monitors by other states in more detail in part F.3 below. Here it is pertinent to note that at the same time as the digital recording system is capturing 100% of the sound of the proceeding, a trained digital audio court monitor can capture as much as 75% of the court proceedings in "real-time" text using hot keys, personalized "dictionaries," and other available means for transcribing the words said in court into text on a computer. Because so much of the oral record can be captured verbatim as written text on the digital system, much less work is required by a transcriber to produce a final, clean transcript from the raw audio record.

---

<sup>60</sup> Such monitors would of course be advisable for the same reasons in courtrooms using tape recorders.

Moreover, the job of a monitor requires less training, and commands a commensurately lower salary, than that of a court reporter.<sup>61</sup> The benefits of digital recording monitors are not principally based in cost savings, however, but lie in increased flexibility from the availability of alternative means to make the record of court proceedings, with consequent improvement in the timeliness of transcripts. As noted earlier, court reporters with real-time capability are in short supply and high demand, while digital recording monitors, who require less training, are more readily available to meet the court's record making needs. Moreover, it is important to note that digital recording devices produce a better quality and more usable recording than traditional tape recorders, even without additional staffing beyond the personnel who currently run the tape recorders.

A digital recording system still typically requires transcription, which remains more efficient for attorneys and others to review than listening to a CD would be. In most states using digital audio systems, the audio file is transcribed (either by court personnel or by an outside contractor) for use in connection with any appeal.<sup>62</sup>

The cost of digital recording systems varies widely depending on vendor and optional features selected. Prices range from \$7,000 - \$15,000 per courtroom, or \$40,000 for systems that serve multiple courtrooms.

---

<sup>61</sup> In Connecticut, where digital recording monitors work essentially side-by-side with official court reporters, monitors are paid starting-level salaries of \$32,219 annually in comparison with starting annual salaries of \$45,058 for court reporters.

<sup>62</sup> Although it is possible in theory to use a high quality audio record, without transcription, in an appeal, and although such a record is easier to use than its analog counterpart, such an approach imposes significant additional costs on the courts and litigants, when court and counsel must listen to the recordings rather than work with written transcripts.

#### 4. Audio visual recording

Systems are available to provide automatic audio and video recording of court proceedings. Video cameras and microphones positioned throughout the courtroom record every aspect of the proceedings. Audio input can be provided from live courtroom testimony or video playback devices, computers, or other types of multimedia equipment. In some products, a switching system senses which audio source is being used and automatically switches to the appropriate video source to capture the image associated with that audio. Broadcast capabilities allow for court proceedings to occur across distances. For example, an audio and video feed of a defendant can be broadcast into the courtroom for arraignment, saving transportation and court security costs. The United States District Court in Massachusetts is trying cases broadcast from Texas. If video images of the trial were available, certain recurring issues of fairness in trial proceedings that currently evade effective appellate review could be addressed. But the practical difficulties have resulted in very few courts using a video record for appeal. The equipment is also quite expensive . We were informed by a Michigan court administrator that their basic audiovisual set-up costs between \$40,000 and \$50,000 per courtroom.

#### F. Comparison with other jurisdictions

##### 1. Introduction

The Study Committee researched the court record making and transcription practices of a number of states, speaking to court administrators, members of the bar and, in some cases, members of the bench, and reviewed the applicable statutes, rules and regulations in

each.<sup>63</sup> A detailed compilation of that research is being filed with the Supreme Judicial Court along with this report; for convenience that lengthy compilation is not made a part of the report itself. In the following section, we summarize those practices from other states that offer promise for Massachusetts.

2. Dedicated administrative manager overseeing transcript preparation

Several states we studied use dedicated administrative personnel to oversee the court record making and transcript preparation process. Connecticut, for example, has a Supervisor of Transcript Services whose job it is to establish guidelines for transcript preparation and to ensure that the process works smoothly. In addition, each trial court district has a transcript supervisor who provides on-site supervision of court reporters and monitors. In Connecticut, the Supervisor of Transcript Services is also responsible for assignment of court reporters and monitors to individual court sessions, and has designed a training program and manual of standards governing court reporter and monitor performance.

Illinois and Michigan require reporters (and New Jersey requires the reporting supervisor) to file monthly reports regarding the status of each reporter's transcripts. These reports require the reporter to detail outstanding orders for transcripts and state how long each transcript has been on order. The dedicated manager then responds to any problems of backlog or timeliness revealed by the reports.

---

<sup>63</sup> The Committee looked closely at Arizona, Arkansas, Connecticut, Illinois, Maryland, Michigan, New Jersey, New York, and Oregon, but also conducted some investigation of Florida, Alaska, and Nebraska.

### 3. Monitored electronic recording as supplement to traditional court reporters

Of the states studied, only Arkansas was not using any form of audio or video recording for court proceedings. Oregon is the only state surveyed that was predominantly using recording devices, with only thirteen traditional court reporters for its 200 trial courtrooms. The remaining states employ a mix of traditional court reporting and electronic recording. While some states have limited video recording programs, audio recording is far more prevalent. Among states that use audio recording, the trend is clearly toward using digital audio.<sup>64</sup>

The states using digital audio recording technology employ various methods of monitoring the equipment in the courtroom. Arizona, New York, and Oregon use existing court personnel to monitor the audio recording equipment. This means that the clerk or court officer must log exhibits and significant events in addition to their regular duties during the proceedings. The transcripts themselves are then prepared from the audio recording, when necessary, by independent contractors who may or may not be certified court reporters. Michigan has certified “court recorders” hired by the circuit courts who are specifically trained to monitor the equipment, create a log of exhibits, witnesses, objections, etc. during the court proceedings, and prepare and sell transcripts.

Michigan separately employs “court monitors” (as distinguished from court recorders), as do Connecticut and Illinois. Court monitors are trained to operate and monitor the

---

<sup>64</sup> The exceptions are Maryland, which still relies primarily on analog recording technology (although a few of its courtrooms have been outfitted with digital equipment) and civil cases in New Jersey, which has one courtroom equipped with digital technology, 58 courtrooms using video technology, and the remainder of its 400 courtrooms using analog technology.

recording equipment, but also are not subject to certification. Michigan does not allow court monitors to prepare and sell transcripts (only certified court recorders or reporters may do so), in contrast to Illinois and Connecticut, which allow it.

Monitor salaries vary from jurisdiction to jurisdiction but are generally quite low, in comparison to court reporter salaries. The starting salary for entry-level court monitors in Connecticut, for example, is \$32,219 annually, and is \$23,702 a year in Illinois.

#### 4. Appellate court oversight of transcript preparation

Some states have placed their appellate courts in charge of transcript preparation, since the appellate courts have the strongest interest in transcript timeliness and accuracy.<sup>65</sup>

At least the following jurisdictions either have disciplinary boards or use show cause hearings before the court to discipline court reporters: Arizona, Arkansas, Illinois, Michigan, New Jersey, New Mexico, New York, Oklahoma, and Oregon. These boards hold formal hearings before ruling on disciplinary complaints and each board includes at least one court reporter among its members. Typically, the members of these boards are appointed by whichever court (usually an appellate court) sets the standards for certification of court reporters in that state.

#### 5. Formatting standards

The majority of states surveyed have adopted formatting standards for transcripts, which address issues such as font size, margins, and number of lines per page. Michigan's standards appear to be the most comprehensive, with specific instructions on the title page,

---

<sup>65</sup> Trial courts typically are measured principally on how well they process cases to judgment.

table of contents, testimony pages, certification page, and deposition transcripts. Two states, Maryland and Oregon, are currently working to implement formatting standards. Many states require transcripts to be filed in both paper and electronic form; accordingly, several states reported that they are now implementing or considering formatting standards for transcripts provided in electronic form.

6. Court reporter training and continuing education

The majority of states surveyed required court reporters to be specially trained and certified, although few had continuing education requirements. In most states the oversight board was also responsible for setting standards for court reporters and administering the testing and certification requirements, which usually include a skills test and some type of evaluation of the reporter's knowledge of English. States using digital recording often had separate training and testing requirements for those employed as monitors of recording technology. Two states, Arizona and Michigan, required yearly recertification.

7. Financial incentives tied to transcript timeliness

In many cases, fees for transcript production are set by statute or regulation and provide for fees on an increasing scale for expedited or real-time transcripts. In many states, reporters who are trained in real-time technology are paid a higher base compensation than court reporters without this training.

8. Outsourcing transcript preparation; private transcription

In states where electronic recording of court proceedings is prevalent, the audio record typically becomes the official court record. A paper transcript is produced only if requested by a litigant. The states are split between those who have court staff reporters or

transcribers create the written transcript from audio recordings and those who send the audio recordings to a third-party transcription service. Several states report that outsourcing transcript production is a way to free up court reporters' time for the courtroom, or to address backlog concerns. On the other hand, in states outsourcing transcript preparation services, some attorneys reported a decrease in quality in the outsourced transcripts.

In several states using digital recording, parties may, with the court's permission, bring in a private court reporter at their own expense to provide traditional court reporting services or to create a real-time transcript. At the court's discretion, the privately prepared transcript may then become the official court record.

#### IV. RECOMMENDATIONS

Our recommendations fall broadly into four categories: change in management structure; areas for management attention; areas for contractual attention; and adoption of new technologies.

1. Change in Management Structure: Establish Office of Court Recording and Transcription Services.

As described throughout this report, there is at present no single management structure to oversee court record making or transcript preparation. We recommend the establishment of an Office of Court Recording and Transcription Services (OCRTS), with authority and responsibility to manage the process of trial court record making and transcript preparation for all of the trial court departments. As a model, we refer to the Office of Court Interpreter Services, which was recently revamped to address similar management concerns relating to court interpreter services in the trial court, and which achieved savings of more than \$1,000,000 in FY 2003 alone while improving service.<sup>66</sup> A manager with proven managerial skills and experience should be hired to direct the OCRTS, which would be responsible for hiring, training and supervising all court reporters, electronic recording

---

<sup>66</sup> In 2001, AOTC created and filled a new higher level position for a professional manager of OCIS and consolidated management of court interpreter services within AOTC (court interpreters previously had been managed separately within the Superior Court and AOTC). Before the reorganization, court interpreter services had experienced chronic problems of inefficient management similar to those found in transcript production, with the result that court proceedings were frequently delayed or postponed due to the unavailability of a court interpreter. In FY 2003, the OCIS furnished court interpreter services for 37,661 discrete proceedings throughout the various trial court departments, including the Superior Court. In some ways, the system of providing court interpreter services is more complex than the system of recording and transcribing court proceedings, since categorical priorities may allocate record making resources in accordance with established protocols, and record making needs are less dependent on unique attributes of a particular court event.

monitors, and outside transcribers. Among other tasks, the manager would: establish standards and procedures for court reporters; standardize electronic recording systems; develop training programs for court reporters and electronic recording monitors; monitor backlogs; and assign and distribute work equitably among court reporters and transcribers.

As part of the establishment of OCRTS, consideration should be given to consolidating payment for all publicly funded transcripts out of a single account within OCRTS. Such consolidation would improve the OCRTS manager's ability to manage the process, and would connect payment to oversight. It would also avoid the present confusion as to which division of the "Commonwealth" is to pay for a transcript when a statute or court rule so specifies.

In addition, consideration should be given to requiring that all orders for transcripts be placed with the OCRTS (rather than directly with individual court reporters or transcribers), and that payments for privately-funded transcripts be made through the OCRTS. By placing the purchasing and payment function within OCRTS, that office will have the means necessary to monitor and manage all transcript preparation and purchasing activity, thereby ensuring that OCRTS has complete and accurate information on transcript preparation activity and avoiding instances where civil litigants are unable to compel delivery of a transcript for which they have already paid in full.

In the next section, we recommend a number of specific areas for immediate management attention.

2. Areas for Management Attention. We recommend the following areas for immediate management attention (among such others as may be identified by the manager of OCRTS):

- a. Establish certification standards for court reporters;
- b. Establish priorities for allocation of court record making resources, with highest priority given to those proceedings most likely to generate an appeal;
- c. Establish time standards for transcript preparation, requiring that transcripts be prepared within ninety days following request and according to an established order of priority;
- d. Require preparation and filing with the court of a transcript in electronic form (in formats established to facilitate electronic filing in the appellate courts) whenever a transcript is prepared;<sup>67</sup>
- e. Establish minimum qualification standards for those transcribing from audio records of electronically recorded proceedings;
- f. Streamline procedures for ordering transcript preparation from electronic recordings, including development of a case data sheet to furnish the transcriber with key data (party, witness and attorney names, event type and date, spellings of place names or other unusual terms, etc.), and basing transcriber selection on timeliness and quality of performance;
- g. Establish uniform formatting standards for transcripts;
- h. Establish systems to review transcripts for quality, particularly those

---

<sup>67</sup> If and to the extent payment for the electronic copy is warranted, the basis for payment should be addressed in G. L. c. 221, § 88.

prepared from an audio record;

- i. Monitor all appeals filed, and transcripts ordered, on trial court dockets, to identify instances of transcript delay, and furnish regular reports on timeliness of transcript preparation and delays to appellate courts;
- j. Increase the rate paid to per diem court reporters to reduce the disparity between the per diem rate and the imputed daily rate for official court reporters;
- k. Establish a program of initial training and continuing education for court reporters, monitors, and transcribers, and provide training time during the course of the year;
- l. Amend the Rules of Appellate Procedure to require attorneys to review and confirm within a time certain following receipt that the transcript is complete and accurate;
- l. Establish a program to provide educational assistance (in the form of scholarships or student loans) to court reporting students who commit to a period of service in the state courts following completion of their studies; and
- m. Establish a uniform technology platform for use by all court reporters, and facilitate bulk purchasing opportunities (and, possibly, subsidies) to assist reporters' purchases of equipment to upgrade their systems to uniform, real-time capable standards.

3. Areas for Contractual Attention. We recommend that the following specific

topics be addressed as part of the collective bargaining process currently underway with Office and Professional Employees International Union, Local 6, AFL-CIO:

- a. Confirm the court's right to assign court reporters based on court needs (including backlog considerations) rather than seniority;
- b. Establish differential pay scale incentives for court reporters with real-time capabilities (subject to standards for real-time as determined by manager of OCRTS);
- c. Establish financial and other sanctions for untimely transcript preparation; and
- d. Confirm trial court's right to arrange transcript preparation by a typist other than the court reporter who made the record.

4. Adoption of New Technology. Based on the experience of other states, including Connecticut in particular, we believe that digital recording technology, annotated and monitored by a trained person, offers a cost-effective means to make a court record for later transcription, in circumstances where a real-time court reporter is not available or needed. Based on the current shortage of court reporters and forecast labor trends (quite apart from cost considerations), we believe it unrealistic to expect that real-time court reporters will be available in the future to cover every Massachusetts trial court session. Accordingly, we believe that the trial court should move to upgrade its electronic recording equipment to digital audio equipment. It will not be necessary in all settings to assign dedicated personnel to operate the recording machinery, just as it is currently unnecessary to assign a dedicated employee to operate analog tape recorders. However, in those settings

where digital audio recording is employed in substitution for a live court reporter, the trial court should develop a new class of employees to serve as monitors to operate and annotate the digital record as it is made. As part of the transition to digital audio, we also recommend that the trial court conduct a pilot program in one or more courtrooms in various trial court departments to test the capabilities of various digital recording systems against the needs of our courts.

## MINORITY REPORT ON TRIAL TRANSCRIPT

[submitted by the Honorable Elizabeth B. Donovan and Robert Panneton]

By mandate, the Justices of the Supreme Judicial Court directed the Trial Transcript Committee to investigate and report on two issues: (1) timely filing of transcripts and (2) accuracy of transcripts. We file this Minority Report for two reasons. First, we object strenuously to the creation of another bureaucracy (Office of Court Reporting and Transcription Service) when the management tools are available to address the issues as will be suggested below. Second, there are some factual inaccuracies in the Majority Report.

### A. TIMELINESS OF TRANSCRIPTS

The issue of timeliness in the preparation and filing of transcripts applies primarily to the Superior Court which generates approximately sixty-four (64%) percent of the appeals. The Committee has found no evidence of inaccuracy in the transcripts filed by court reporters.

Long filing delays impedes the appellate process. These delays have several root causes. First, there is an insufficient number of court reporters (60) for the number of courtroom sessions (75) throughout the Commonwealth. With the increase in the number of Superior Court judgeships to eighty-two (82) there was been no corresponding funding for court reporter positions.

The problem was exacerbated with the early retirement program which reduced the number of official court reporters to fifty-three (53). The Superior Court administrative office hired either per diem reporters or shifted official reporters between sessions in order to provide coverage. The hiring freeze due to the budget crisis

precluded the replacement of seven (7) positions until recently<sup>68</sup>. In May/June 2002 when funding for per diem reporters was exhausted many civil trials proceeded only if counsel paid the cost of hiring a per diem court reporter. It was an unacceptable situation because justice is for all; rich or poor. The first step in solving the issue of timeliness is to hire a sufficient number of official court reporters to staff the existing Superior Court sessions.

A second root cause which flows from the lack of a one to one ratio between judge and court reporter is the necessity to shore up the sessions by moving reporters during trials, thus disrupting the continuity. This management by necessity results in several court reporters taking testimony during one trial. When a transcript is ordered it may involve tracking down several reporters to prepare his/her portion of the testimony. This inefficiency adds to the delay.

Another root cause is the failure of the Superior Court to exercise its statutory authority for the management of court reporters. G.L. c. 221 §82 (St. 1870, c. 312. §§1,3) states in part that the justices of the Superior Court shall appoint such official stenographers as the business of the court requires. G.L. c. 221 §87 which grants to the justices of the Superior Court the authority to make regulations not inconsistent with law pertaining to the assignments, duties and service of the court reporters provides one of the management tools available to address the issues of timeliness. In the recent past, the justices exercised the statutory authority and promulgated regulations for the court reporters including time standards for the filing of transcripts.

---

<sup>68</sup>The current crisis may also affect some of the new positions.

Unfortunately, the Court Reporters Committee was abandoned. The reestablishment of the Committee would be a positive step toward addressing the timeliness issue.

The resolution of the timeliness issue might include the following management tools currently available.

a.) The office of the Clerk is charged with the assembly of the appellate record. The monitoring of the timeliness of production of transcripts should be a function of the clerk's office. The task is achievable with the computerization of the remaining 11 counties<sup>69</sup> of the Commonwealth two years ago. The clerk should docket the notice of appeal together with a notice to the court reporter to prepare the transcript. Time standards for performing the task of transcription must be developed and disseminated to the court reporters. The clerk should docket the date the transcript is filed.

In order to monitor compliance with the time standards the clerk should send a monthly report to the Chief Justice of the Appeals Court and the Chief Justice of the Superior Court, listing the court reporters not in compliance. This model of management places the responsibility where it belongs, on the local court; Chief Justice and Clerk of Courts. This model could be implemented in the "Other Courts".

b.) Individual court reporters who are incapable of timely transcription should be identified and assisted in solving his/her problem. Court reporters who do not have realtime capacity should be encouraged to develop their skills. Encouragement can be either by assisting in the purchasing of suitable equipment or by creating different scales of remuneration for different levels of capability. Higher standards for future

---

<sup>69</sup>Initially three counties had Forecourt, Suffolk, Middlesex and Worcester.

official court reporters should be implemented. This should include certification and realtime capability.

#### B. ACCURACY OF TRANSCRIPTS

The problem of accuracy is confined to “Other Courts”<sup>70</sup> which use analog tape recording of trial testimony. The tapes are frequently inaudible and confusing with unidentified speakers thus rendering much testimony useless. The fault of the system is twofold: (1) old and outdated equipment and (2) no person monitoring the tape recording to insure audibility and speaker identification. While digital recording is a vast improvement of sound quality over analog recording, monitors are necessary to identify proceeding and speakers to insure audibility and to take notes for later transcription. The lack of a monitor will result in no higher degree of accuracy. The engagement of a sufficient number of monitors will be expensive because apart from the Superior Court there are 296 trial judges<sup>71</sup>. The review of other jurisdiction indicates a monitor receives a salary of \$30,000.00 to \$35,000.00 per year<sup>72</sup>. Additionally, the cost of equipment ranges between \$7,000.00 and \$15,000.00 per court room plus the cost of installation and wiring<sup>73</sup>.

#### THE MAJORITY REPORT

The Majority Report concludes there is no singular advantage accruing to the Superior Court by the use of live reporters in comparison with an electronic system.

---

<sup>70</sup>The Majority Report denotes all the other trial Courts except the Superior Court.

<sup>71</sup>See the Annual Report of the State of Massachusetts Court System, Fiscal 2002.

<sup>72</sup>New Court house construction may be configured such that a single monitor follows several session.

<sup>73</sup>Wiring in our older court houses may be problematic.

The Majority never considered the views of the justices of the Superior Court who will identify numerous and important reasons to employ a live court reporter during a trial or evidentiary hearing. With sixty-four (64%) percent of appeals generated from the Superior Court, an excellent record is imperative. Currently, the quality of transcription from the live reporters is excellent, lending support for the continuation of court reporters in the Superior Court. Once the problem of timeliness is resolved, the Appellate Courts shall have an excellent record.

The Majority recommends the creation of a new bureaucracy in the Office of Administration and Management. The proposed Office of Court Reporting and Transcription (OCRT) is based on the Office of Court Interpreter Services. There is no comparison between the need and use of court reporters and interpreters. For example, court reporters are required daily in a session whereas the interpreters are used sporadically in some sessions. Who would decide which judge needs a court reporter? The manager or the judge?? Not only might this decision impair the statutory authority of the justices of the Superior Court but may also affect the right of a justice in the Supreme Judicial Court from assigning a temporary stenographer in case no stenographer has been appointed. See G.L. c. 221 §83.

The interpreter service is used only when the judge identifies a defendant or witness will require such assistance. Rarely, is there a need to use an interpreter during a civil trial. Sixty percent of the sessions in the Superior Court are civil sessions; all requiring a court reporter. Additionally, there are only eleven (11) full time interpreters compared with sixty (60) court reporters.

The only function which should rest in the Office of Administration and

Management should be the processing of payment for transcripts paid by the Commonwealth. This could be accomplished by having the transcript together with the invoice filed with the Clerk of Court who would send the invoice to the appropriate office for processing.

A more practical and less expensive measure preserving the benefits and strengths of the present system and correcting its weaknesses can and should be proposed. These measures should reflect the spirit and be consistent with the principles of the Monan Committee Report which recognizes the daily operation of the individual courts should rest in the hands of the Justice of that court. A presiding justice should be charged with the management of his/her court including clerks and probation officers. The removal of court reporters to a central management office will have a profound debilitating effect on the orderly operation of the Superior Court. The timeliness of transcripts can be resolved without the disruption of the daily operation of the Superior Court.

The Majority states that court reporters are assigned to cover Superior Court sessions involving no witness testimony. This is incorrect as applied to civil session. Dispositive motions are heard without a reporter except if counsel requests or the judge determines there are issues requiring a record. We do record the arguments of pro se litigants. All criminal sessions are recorded including the first session which covers proceeding from arraignments through non-evidentiary motions.

The Majority is concerned that court reporters will not be available for hire in the

future because of competing interests<sup>74</sup>. However, there is no concrete evidence that advertising the court reporter position together with the benefit package will not produce a positive result. The current problem is the instability in the court budget. If the newly hired court reporters are laid off there will be an adverse impact in the future.

### RECOMMENDATIONS

The following recommendations are set forth by the Minority as a solution to the mandate by the Supreme Judicial Court to investigate the issues of accuracy and timeliness in the transcripts.

#### A. Superior Court

1. Hire 15 realtime court reporters<sup>75</sup>.
2. Encourage the official court reporters to achieve realtime reporting by establishing a pay scale commensurate with the level of accomplishment or assistance in purchasing the necessary equipment.
3. Increase the qualifications for court reporters including a requirement of certification.
4. Increase the rate of pay for per diem reporters which includes an enhancement for realtime.
5. Develop time standards for the production of the transcript.
6. Establish sanctions for the late production of a transcript.

#### B. Other Courts

1. Establish a series of Pilot Projects using audio digital equipment in various venues which generate appeals.

---

<sup>74</sup>There is a cottage industry arising to fill the void left by degree granting schools which have closed court reporter programs.

<sup>75</sup>Obviously, in the present state of the Massachusetts economy this may not be option.

2. Establish a list of transcribers based on certain criteria including an understanding of court procedures.

C. Common to Both

1. Develop an Appellate Rule for formatting standards and e-filing of transcripts.
2. Require the docketing of notice of appeal with the request to the reporter for the transcript. The clerk will be required to forward on a monthly basis, to the Chief Justice of the Appeals Court and the Chief Justice of the specific court from which the appeal is taken, a report of off track transcripts.
3. Establish a route for transmitting the invoice upon filing of the transcript.

APPENDIX A

**MASSACHUSETTS APPEALS COURT - FISCAL YEAR 2002**  
**STATISTICAL REPORT**  
**Origin of Appeals**

| County:         | <u>SUPERIOR</u> |              | <u>PROBATE &amp;</u> | <u>BMC/DISTRICT</u> |              | <u>JUVENILE*</u> |              | <u>TOTAL</u> |
|-----------------|-----------------|--------------|----------------------|---------------------|--------------|------------------|--------------|--------------|
|                 | <u>Civil</u>    | <u>Crim.</u> | <u>FAMILY</u>        | <u>Civil</u>        | <u>Crim.</u> | <u>Civil</u>     | <u>Crim.</u> |              |
| Barnstable      | 42              | 16           | 16                   | 4                   | 12           | 8                | 4            | 102          |
| Berkshire       | 7               | 11           | 1                    | 0                   | 14           | 2                | 1            | 36           |
| Bristol         | 62              | 44           | 2                    | 2                   | 20           | 6                | 0            | 136          |
| Dukes           | 4               | 0            | 0                    | 0                   | 1            | 0                | 0            | 5            |
| Essex           | 47              | 31           | 12                   | 2                   | 23           | 6                | 2            | 123          |
| Franklin        | 3               | 6            | 3                    | 1                   | 6            | 2                | 1            | 22           |
| Hampden         | 16              | 66           | 5                    | 0                   | 18           | 7                | 13           | 125          |
| Hampshire       | 7               | 5            | 1                    | 0                   | 10           | 0                | 0            | 24           |
| Middlesex       | 147             | 106          | 46                   | 25                  | 61           | 7                | 1            | 393          |
| Nantucket       | 2               | 0            | 0                    | 0                   | 2            | 0                | 0            | 4            |
| Norfolk         | 72              | 15           | 15                   | 12                  | 32           | 0                | 1            | 147          |
| Plymouth        | 37              | 49           | 18                   | 0                   | 53           | 0                | 0            | 157          |
| Suffolk         | 181             | 90           | 8                    | 9                   | 60           | 13               | 6            | 367          |
| Worcester       | <u>50</u>       | <u>37</u>    | <u>14</u>            | <u>2</u>            | <u>30</u>    | <u>6</u>         | <u>0</u>     | <u>139</u>   |
| <b>SUBTOTAL</b> | 677             | 476          | 141                  | 58                  | 342          | 57               | 29           | 1,780        |

**OTHER SOURCES OF APPEALS:**

|                              | <u>Civil</u> | <u>Criminal</u> | <u>TOTAL</u> |
|------------------------------|--------------|-----------------|--------------|
| Appeals Court Single Justice | 25           | 8               | 33           |
| Land Court                   | 52           | 0               | 52           |
| Housing Court                | 15           | 0               | 15           |
| Appellate Tax Board          | 24           | 0               | 24           |
| Labor Relations Commission   | <u>7</u>     | <u>0</u>        | <u>7</u>     |
| <b>SUBTOTAL</b>              | 123          | 8               | 131          |
| <b>TOTAL APPEALS</b>         | 1,056        | 855             | 1,911        |

\*NOTE: Juvenile Court data for the Barnstable/Plymouth Division are reported under Barnstable County, and for the Franklin/Hampshire Division are reported under Franklin County

APPENDIX B

MARCH 5, 2003

TO: GREEN, J.  
FROM: ALEX McNEIL  
RE: TRANSCRIPT PREPARATION TIMES

You asked for recent information on transcript preparation times. Here are the data:

Criminal Cases – 50 cases examined (all direct appeals, entered here in 2003)

District Court – 22 cases examined.

|            |         |
|------------|---------|
| 1-60 days: | 6 cases |
| 61-90:     | 3       |
| 91-120:    | 2       |
| 121-150:   | 2       |
| 151-180:   | 2       |
| 181-240:   | 3       |
| 241-365:   | 0       |
| 366+:      | 4       |

Median = 128 days.

Range = 27 to 565 days.

Superior Court – 28 cases examined.

|            |         |
|------------|---------|
| 1-60 days: | 4 cases |
| 61-90:     | 1       |
| 91-120:    | 1       |
| 121-150:   | 0       |
| 151-180:   | 2       |
| 181-240:   | 4       |
| 241-365:   | 5       |
| 366+:      | 11      |

Median = 300 days.

Range = 13 to 1701 days

Notes: Compared with the data compiled in June 2001, it appears that median preparation times have declined somewhat, especially in Superior Court (from 377 days to 300). With respect to District Court appeals, however, that statement needs to be qualified, because District Court dockets rarely show the dates of ordering or receipt of the transcripts. [Of the 22 District Court cases examined, the dockets showed both events in only two cases. Two cases showed ordering only, and two showed receipt only. Sixteen cases showed neither. Some dockets did not show the notice of appeal.] In 2001, where the dockets did not show

the information, I calculated the time by using the date of appeal and the date of assembly of the record. This time, however, I used the date of appearance of appellate counsel as the ordering date, and the date of certification of the transcript as appearing on the transcript itself.

It turns out that there is often some delay between the filing of the transcript (as measured by the date of the transcriber's certification) and the notice of assembly of the record, especially in the District Court. In only four cases was the record assembled within 20 days of the transcript certification, and the median was 38 days. The range was 3 to 225 days.

If we add the two medians – 128 days for filing the transcript and 38 more days to assemble the record – we get 166 days, which is slightly higher than the median of 155 days recorded in 2001.

Civil Cases – 50 cases examined (entered here between mid-December 2002 and February 2003, not including DSS cases)

All Civil Cases with transcripts (50)

|            |          |
|------------|----------|
| 1-60 days: | 14 cases |
| 61-90:     | 5        |
| 91-120:    | 6        |
| 121-150:   | 7        |
| 151-180:   | 1        |
| 181-240:   | 2        |
| 240-365:   | 7        |
| 366+:      | 8        |

Median = 120 days.

Range = 7 to 529 days.

Superior Court (27 cases)

|            |   |
|------------|---|
| 1-60 days: | 5 |
| 61-90:     | 2 |
| 91-120:    | 2 |
| 121-150:   | 5 |
| 151-180:   | 1 |
| 181-240:   | 1 |
| 241-365:   | 3 |
| 366+:      | 8 |

Median = 141 days.

Range = 7 to 529 days.

Probate & Family Court (21 cases)

|            |   |
|------------|---|
| 1-60 days: | 8 |
| 61-90:     | 3 |
| 91-120:    | 3 |
| 121-150:   | 2 |
| 151-180:   | 0 |
| 181-240:   | 1 |

241-325: 4

Median = 88 days.

Range = 7 to 325 days.

District Court (one case, 39 days)

Housing Court (one case, 106 days)

Notes: The median times have decreased since 2001, from 200 days to 141 days in Superior Court, and from 125 days to 88 days in the Probate & Family Court. As in 2001, it should be noted that the data suggest a "reverse bell curve," meaning that one is likely either to get a civil transcript within 60 or 90 days, or one may be likely to get it more than a year later.

It should be noted also that Superior Court dockets usually show both the ordering and the filing of the transcript (21 cases showed both, 1 showed only ordering, 5 showed only filing, and one showed neither), while Probate & Family Court dockets tend to show only the filing date (all cases showed filing, but only 8 of 21 showed ordering).

Further examination of the dockets discloses that in the Probate and Family Court there is usually a delay between the receipt of the transcript and the assembly of the record. The median was 53 days between filing the transcript and assembly, with only two cases assembled within 20 days of the transcript filing. [In Superior Court, by comparison, the median was 8 days between filing and assembly, though in ten cases the record was assembled more than 20 days after the transcript filing.] The principal reason for this may be that, in a number of Probate & Family Court cases, the judge's findings are not filed until after the transcript is filed, which suggests that the judge needs to see the transcript before filing the findings.

\*\*\*\*\*

Attached are copies of a few Trial Court dockets, which illustrate some the situations encountered.

1. 03-P-18 (District Court criminal) – notice of appeal April 11, 2002, together w/ motion for appellate counsel. Appellate counsel files appearance May 15. Cassette tape copies ordered May 15. Copies received from AODC July 8. Tapes mailed to transcriber October 24. Transcript filed November 12. Record assembled January 3, 2003.

Interval from notice of appeal to assembly of record = 267 days. Yet only 73 days are attributable to transcript preparation (54 days to get the 4-track cassettes copied to 2-track, and only 19 days for the actual transcribing). Nevertheless, I recorded this as 181 days, measured from the request for tape copies (May 15) to the filing of the transcript (November 12).

[Note also that this is one of only two District Court dockets showing both the ordering and the filing of the transcript.]

2. 03-P-20 (Superior Court criminal) – notice of appeal filed November 8, 2001, but transcript not ordered until 62 days later.

3. 03-P-22 (Superior Court criminal) – notice of appeal filed March 16, 2001. Appellate counsel files appearance November 9. Transcript ordered April 23, 2002, filed September

23. Record assembled January 6, 2003.

Interval from notice of appeal to assembly of record = 661 days. Yet only 153 days are attributable to transcript preparation.

4. 03-P-157 (District Court criminal) – docket shows notice of appeal filed on September 17, 2002. Docket shows no significant activity thereafter, although transcript was filed and (obviously) record was assembled. [Also attached are the transcriber's notes on the poor quality of the recording.]

5. 03-P-177 (Probate & Family Court civil) – notice of appeal filed March 12, 2002. Ordering of transcript not shown. Transcript filed July 30. Judge's findings filed December 18. Record assembled January 23, 2003.

Interval from notice of appeal to assembly of record = 317 days. Yet (assuming transcript was ordered when appeal was claimed) only 140 days are attributable to transcript preparation.

APPENDIX C  
Policies governing Court Reporters  
Issued by Chief Justice Walter McLaughlin in 1973  
(sometimes referred to as the "White book")

Among other provisions, the policies issued by former Chief Justice McLaughlin:

- \* required that court reporters file a monthly report with the Superior Court listing all cases awaiting transcripts, dates ordered, explanation of any delay, and projected completion date;
- \* establish stiff penalties for poor performance (for example, one provision of the regulations states that, "[w]henver a transcript has not been completed within thirty (30) days from the date it was ordered, the Chief Justice may relieve a court reporter of his assignment and provide a substitute, at the reporter's expense, until such time as the transcript is completed");
- \* require that stenographic tapes, recordings and original shorthand notes be treated as the property of the court;
- \* direct the Judge's Study Committee on Court Reporters<sup>76</sup> to create an examining committee of official court reporters to examine applicants; and
- \* require criminal cases to receive priority over all other cases in the transcription process.

---

<sup>76</sup> The Judges Committee on Court Reporters was a formal Superior Court Committee comprised of judges, court reporters, and other court personnel that met regularly to discuss issues related to court reporting and court reporters.

APPENDIX D  
Summary of Rules on Electronic Recording

1. District Court, Boston Municipal Court and Juvenile Court.

Use of sound recording devices in the District Court is governed by Rule 211 of the District Court Special Rules and Rule 308 of the Boston Municipal Court Special Rules.<sup>77</sup> The two Special Rules are substantively identical, and contain detailed provisions for the use of audio sound recording cassettes to create a record of the court proceedings. District Court Supplemental Criminal Rule 9 and Boston Municipal Court Criminal Rule 15 are to the same effect, incorporating by reference Special Rules 211 and 308, respectively. See also G. L. c. 218, §§ 26A, 27A(h), permitting the use of electronic recording of criminal jury trials in District Courts and the Boston Municipal Court when the court is unable to provide a stenographer; G. L. c. 218, § 55, authorizing the Boston Municipal Court Chief Justice to employ stenographic services or recording systems. In the Juvenile Court, G. L. c. 119, § 55A, contains similar provisions for electronic recording.

2. Probate and Family Court.

Probate Court Supplemental Rule 201 requires electronic recording "whether or not a court stenographer is [also] present," and sets forth detailed provisions for the creation and copying of audio cassettes.

3. Land Court.

Land Court Standing Order 1-88 provides, in somewhat greater detail than comparable rules in other courts, for the use of electronic recording devices and the creation and copying of audio cassettes, including for the purpose of transcript preparation.<sup>78</sup>

4. Housing Court.

G. L. c. 185C, § 18, requires the provision of a "proper recording system" to record Housing Court trial proceedings.<sup>79</sup> According to the court administrator for the Housing Court, each of its 5 divisions (Boston, Northeast, Southeast, Worcester and Western) follows Mass. R. App. P. 8(b)(3), and audiotapes hearings and provides for copying of tapes and the selection of transcribers in the same fashion as described above for other courts. Within all of the Housing Court divisions except Boston, the Housing Court holds hearings in different locations, sometimes using its own dedicated courtroom, and sometimes using a courtroom "borrowed" from the District Court. In the latter case, the Housing Court makes use of the District Court's audiotape machine. In all situations, the Housing Court clerk is responsible

---

<sup>77</sup> The applicability of those rules arrives by a circuitous route. Mass. R. Civ. P. 80(d) states that use of sound recording devices in the District Court shall be governed by Rule 114 of the District/Municipal Courts Supplemental Rules. Rule 114, in turn, refers to Rules 211 and 308.

<sup>78</sup> By custom and practice, however, parties to proceedings in the Land Court typically arrange for private transcription of trials. See note 27, supra.

<sup>79</sup> As noted earlier, see note 3, supra, the same statute authorizes the use of per diem court reporters to record proceedings in the Housing Court.

for operating the machine.<sup>80</sup>

#### 5. Superior Court

G. L. c. 221, § 87, provides in full: "The justices of the superior court may make regulations not inconsistent with law relative to the assignments, duties and service of stenographers appointed for that court, and any other matters relative to such stenographers."

---

<sup>80</sup> There is a very old Housing Court Western Division Rule 4 ("Recording Devices") that still may be found in the Massachusetts Rules of Court (West 2003), which, among other things, places on counsel the responsibility to determine whether and how proceedings are to be recorded, and makes counsel responsible for operating and monitoring the quality of the recording device. That rule has effectively been defunct for many years and is not followed in the Western Division, which was unaware of the rule until the Study Committee inquired about it, and instead follows the same Mass.R.App.P. 8(b) procedures as the other Housing Court divisions.

## APPENDIX E

### Processing the Appeal of a Child Welfare Case In the Juvenile Court June 2003 (excerpts)

#### A. INTRODUCTION

The procedure for processing child welfare appeals is not very different from processing other types of appeals. However, the few differences, particularly in care and protection cases, place additional responsibilities on the clerk prior to sending the assembled record for entry in the Appeals Court.

A *child welfare case* is defined as “any case that is before the court of competent jurisdiction pursuant to G.L. c. 119, §§ 21-39J [Care and Protection and Children in Need of Services]; G.L. c. 201, §§ 1, 2, 6, 14 [Guardianship of a Minor]; or G.L. c. 210, §§ 1-11 [Termination of Parental Rights, Adoption, and Name Change].” Mass.R.A.P. 1(c).

All civil appeals including child welfare appeals are governed by the Rules of Appellate Procedure. Depending on the type of case, child welfare appeals are also governed by statute. Care and Protection cases are governed by the Interim Rules of Appellate Procedure for Care and Protection, as well as the Rules of Appellate Procedure. Specifically, the following cases are governed by:

Care and Protection

G.L. c. 119, §27

Rules of Appellate Procedure

Interim Rules of Appellate Procedure for Care and Protection Cases

Guardianship of a Minor

Rules of Appellate Procedure

Child in Need of Services

G.L. c. 39I

Rules of Appellate Procedure

Permanency Hearing

G.L. c. 119, §29B

Rules of Appellate Procedure

#### B. ENTRY OF THE ADJUDICATION OR COMMITMENT ON THE JUVENILE COURT DOCKET AND NOTICE TO THE PARTIES

The time for filing the notice of appeal starts with the docket entry of the adjudication, commitment, or final judgment in the case.

As in all case types, an adjudication or order of commitment issued by the judge in a care and protection case must be entered on the docket. Parties to the care and protection case must also receive notice of the entry. Notice of the adjudication or order of commitment must include a copy of the order, the date of entry, and notice of the right to appeal within thirty days of entry.

Upon the trial judge's making an adjudication or issuing an order of commitment, the Clerk shall forthwith enter that adjudication or order on the court's docket.

*Interim Supplemental Rules of Appellate Procedure in Care and Protection Cases. Rule 3(a).*

Immediately following the Clerk's entry of the adjudication or commitment on the docket the Clerk shall notify all parties by mail of the entry of said adjudication or order of commitment. The Clerk shall note on the docket the names of the persons to whom he/she mails such notice, with the date of the mailing. This notice shall include:

- (1) a copy of said adjudication or order;
- (2) the date of the Clerk's entry; and
- (3) notice that each party has thirty (30) days from said date of entry within which to file a claim of appeal.

*Interim Supplemental Rules of Appellate Procedure in Care and Protection Cases. Rule 3(b).*

The "claim of appeal" and the "notice of appeal" are synonymous for purposes of the Massachusetts Rules of Appellate Procedure.

*Interim Supplemental Rules of Appellate Procedure in Care and Protection Cases. Rule 3(c).*

## C. THE NOTICE OF APPEAL

1. Thirty-Day Filing Requirement: The notice of appeal of a child welfare case must be filed within thirty days from the date of entry of the judgment, decree, order or adjudication. See *G.L. c. 119, §27, Mass.R.A.P. 4(a), Interim Rule of Appellate Procedure for Child Welfare Cases, 3(c)*.

[The period of time within which a party can file a notice of appeal runs from the date of entry of judgment on the docket. *Standard Register Co, Inc. v. Bolton-Emerson, Inc.*, 35 Mass.App.

Ct. 570, 571-572 (1993)]

The court may extend the time to file a notice of appeal for a period not to exceed 30 days upon a showing of "excusable neglect." *Mass.R.A.P. 4(c)*.

2. The notice of appeal in child welfare cases must contain the following:

- a) name of the party taking the appeal;
- b) the judgment, decree, adjudication, order or part thereof appealed;  
and
- c) the appellant's signature unless the appellant is a minor. The attorney for the minor should sign the notice of appeal.

A notice of appeal that does not contain the appellant's signature should be returned to appellate counsel. The clerk cannot accept a notice of appeal for filing without appellant's signature. *Mass.R.A.P. 3(c)*.

3. Service of the Notice of Appeal: In a care and protection case, the appellant must serve a copy of the claim or notice of appeal on all parties. *Interim Supplemental Rules of Appellate Procedure in Care and Protection Cases. Rule 3(c)*.

However, the clerk must serve a copy of the notice of the appeal in civil and child welfare cases other than care and protections. Compare Rule 3(c) of the Interim Supplemental Rules of Appellate Procedure in Care and Protection Cases (cited above) to Rule 3(d) of the Rules of Appellate Procedure. Rule 3(d) states:

The clerk of the lower court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for each party other than the appellant, or if a party is not represented by counsel, to the party at his last known address. The clerk shall note on each copy served the date on which the notice of appeal filed. The clerk shall note in the docket the names of the persons to whom he mails copies, with the date of the mailing.

Rule 3(d) of the Rule of Appellate Procedure should be followed in non-care and protection child welfare appeals. *Failure of the clerk to provide notice of the appeal will not affect the validity of the appeal.*  
*Mass.R.A.P. 3(d)*.

D. MOTIONS

1. Indigent Party<sup>81</sup>: Court-appointed trial counsel for an indigent party must file the following motions on the same day as the notice of appeal:

- a. motion for reasonable fees and costs associated with the appeal  
An Affidavit of Indigency is not required if the court has previously determined that the party is indigent unless the court requests a redetermination of the party's indigence. *Mass.R.A.P. 8(b)(4)*. The court may redetermine indigency at any time during the case. If an Affidavit of Indigency is completed, a separate motion for the fees and costs is not needed.
2. motion for the appointment of appellant counsel if court-appointed counsel is not certified by the Committee for Public Counsel Services to accept appellate cases (with supporting affidavit).  
*Mass.R.A.P. 3(f)*.

2. Non-indigent party (or the party if pro se)<sup>82</sup>: Trial counsel (or the party if pro se) seeking Indigent Court Cost funds for the payment of cost associated with the appeal should also submit the Affidavit of Indigency and Supplemental Affidavit (if applicable) on the same date as the notice of appeal. A separate motion is not required. The Affidavit of Indigency Form includes a section for requesting waiver and funds. *Mass.R.A.P. 3(f)*.

The information contained in the Affidavit of Indigency and the Supplemental Affidavit of Indigency is confidential and may not be released to anyone including the parties in the case.

"By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant."

*Affidavit of Indigency and Supplemental Affidavit of Indigency.*

The clerk-magistrates office should develop a system for keeping such information separate from other documents contained in the case file.

3. Scheduling Motions for Appointment of Appellate Counsel and for Payment of Fees and Costs for a Hearing. Rule 3(f) requires counsel to request a hearing on both

---

<sup>81</sup> a party previously determined by the court to be indigent

<sup>82</sup> a party who has not has not been determined to indigent

motions. However, the motions should be handled administratively (without a hearing) by the judge unless:

- a. the judge intends to deny the motions,
- b. the judge has questions regarding either motions, or
- c. the appellant's indigency status was not addressed or the appellant was determined to be non-indigent in the case on appeal and/or the appellant was either *pro se* or represented by private counsel.
- d. one of the opposing parties files a motion challenging the parties indigency.

4. Motion to Stay: If a Motion to Stay the Proceedings Pending Resolution of the Appeal is filed with the motions for fees and costs and appointment of appellate counsel, the could should follow the above procedure for the motions that pertain to fees and appointment of counsel. The motion regarding the stay should be scheduled for hearing.

5. Clerk-magistrates do not have authority under G.L. c. 261, §27A to allow a motion for reasonable costs and fees associated with the appeal. Requests for indigent court funds for the payment of fees and costs associated with production of the transcript do not fall within the "normal fees and costs" category and therefore can only be approved by a judge. See Affidavit of Indigency and Supplemental Affidavit of Indigency.

#### E. APPEALS LOG

It is important for the clerk's office to monitor the appellate process prior to sending the case to the Appeals Court for entry. Most divisions of the Juvenile Court are using an appeals log to monitor cases on appeal from filing date to issuance of a decision by the Appeals Court. A log should include the following information:

Case Name  
Appeals Court Docket No.  
Docket Number  
Filing Date  
Transcriber Name  
Date Mailed to Transcriber  
Date Transcript Received  
Date Assembled Record Sent to Appeals Court

Decisions issued by the Appeals court include the Appeals Court docket number and pseudonym which is assigned to all child welfare and delinquency cases. The Appeals Court docket number is included in the letter notifying the Juvenile Court that the appeal has been docketed in the Appeals Court. The name is not assigned upon entry in the Appeals Court. The court often receives Appeals Court decisions without a reference to the Juvenile Court

docket name or the child's name making it difficult for the clerk to identify the case. (See copy of Appeals Court order). It is recommended that the clerk record the Appeals Court docket number on the log or create some other system for matching the Juvenile Court docket number with the Appeals Court docket number. See also sections N. and O. below. See Appendix A.

#### F. ORDERING A COPY OF THE TAPE AND THE TRANSCRIPT

1. Electronically Recorded Proceedings (recorded by tape under the control of the court and which were not recorded by a court report) See *Mass.R.A.P. 8(b)(5)(ii)*.

a. Ordering a Copy of the Tape

Upon the filing of a notice of appeal (signed by the appellant unless a minor) the clerk shall obtain a cassette copy of the recording. *Mass.R.A.P. 8(b)(5)(ii)(b)*.

The cassette tapes should be sent for copying upon receipt of the notice of appeal even if the motions for fees and costs and the appointment of appellate counsel have not been heard or allowed.

Tapes should not be sent for copying if a complete copy of the transcript was produced prior to the filing of the notice of appeal. *Mass.R.A.P. 8(b)(5)(ii)(a)*.

1. The clerk may order a copy of the tape from the Administrative Office of the Trial Court (hereinafter "AOTC") Tape Duplication Center by completing AOTC Form OCAJ-9 (7/90). However, many Juvenile Court Sessions have developed procedures for obtaining copies of tapes from other Trial Court Departments. Courts should continue to use those procedures if tapes are produced in an efficient and timely manner and the other courts continue to accommodate the requests. The attorney for the appellant is not required to complete a tape cassette request form prior to the tapes being sent for copying.

b. Ordering the Transcript

---

Within 10 days of production of the tape(s), the clerk shall order transcription on behalf of the appellant from a transcriber selected by the clerk from a list prepared by the AOTC. The clerk may select a transcriber from the AOTC approved list of eligible vendors. The clerk

must send the entire cassette(s) of the appealed hearing/trial for transcription unless the parties file a stipulation designating the parts of the record which need not be transcribed. *Mass.R.A.P. 8(b)(5)(ii)(b)*.

i. The clerk should order:

\_\_\_\_\_ one original for the court regardless of the number of  
\_\_\_\_\_ appellants; and  
\_\_\_\_\_ one copy for the appellant for the party who filed the first notice  
of appeal.

All other parties including other appellants may contact the transcriber for a copy of the transcript.

- \_\_\_\_\_
- ii. The clerk must notify all parties of the name and address of the transcriber and the date the cassettes were sent out for transcription by sending a copy of the order form to all parties. (See Appendix B: Transcript Order Form)
- iii. Do not send the transcriber the AOTC Transcript Assessment Form. The form is currently under review by AOTC.
- iv. Appellee parties should contact the transcriber for a copy. A non-indigent party seeking Indigent Court Costs funds for the payment of a copy of the transcript should complete the Affidavit of Indigency and Supplemental Affidavit (if applicable) prior to requesting a copy of the transcript. The clerk's office should not make copies of the transcript for any the parties including appellate counsel.

2. Electronically Recorded Proceedings (where a complete transcript was prepared prior to the appeal). *Mass.R.A.P. 8(b)(5)(ii)(a)*.

If a complete transcript was produced for use by the lower court prior to filing of the notice of appeal, and the transcript or copy is available to the parties, that transcript or copy shall be used.

The clerk's office should advise appellate counsel to obtain a copy of the transcript obtained during trial from trial counsel.

3. Proceedings Recorded by an Official Court Reporter. See *Mass.R.A.P. 8(b)(5)(i)*.

- a. Upon the filing of a notice of appeal (signed by the appellant unless a minor), the clerk shall order on behalf of the appellant a transcript of the entire proceedings or such parts of the proceedings not already on file unless the parties designate by stipulation which part of the proceedings need not be transcribed.
  - i. The clerk should order one original transcript for the court regardless of the number of parties filing a notice of appeal and one copy for the party that filed the first notice of appeal. All other parties may obtain a copy of the transcript from the transcriber.
  - ii. Appellee parties may contact the transcriber for a copy. If the party is indigent, a motion for the costs of the copy should be filed prior to ordering a copy from the transcriber. The party should attach the allowed motion to his/her request for a copy.
- b. The clerk must notify all parties of the date the transcript was ordered by sending a copy of the order form to all parties.

#### 4. Ordering a Transcript or Copy for the Department of Social Services

- a. If the Department of Social Services is the appellant, the clerk's office should order the original transcript and one copy as required by Rule of Appellate Procedure 8(b)(5)(ii)(b). However, the order form should specify that the transcriber should send the invoice directly to the Department of Social Services.
- b. If the Department of Social Services is not the appellant and requests a copy of the transcript, the clerk's office should advise the Department to contact the transcriber for a copy of the transcript.

#### 5. Ordering a Transcript for a Non-Indigent Party (excluding the Department of Social Services):

Transcripts for appeals are ordered on behalf of the appellant. *Mass.R.A.P. 8(b)(5)(ii)(b)*. A non-indigent party, particularly a *pro se* party, may not be aware that he/she is responsible for the cost of the original transcript and one copy. In order to avoid later confusion regarding payment, the clerk's office should bring this information to the non-indigent party's attention at the time the appellant files a notice of appeal, or a reasonable time thereafter.

- a. Motion for Fees and Costs: The non-indigent or *pro se* party may request funds for costs associated with the appeal including transcript costs by filing an Affidavit of Indigency and Supplemental Affidavit (if applicable) pursuant to G.L. c. 261, §27A-G. A separate motion is not required. Unlike a Motion for Fees and Costs filed by a party who has already been determined to be indigent, the Affidavit of Indigency should be scheduled for a hearing upon filing of the affidavit.
- b. Informing the Transcriber that the Appellant is not Indigent: The clerk should inform the transcriber that the appellant is not indigent when ordering the transcript. The tapes should be sent to another transcriber if the transcriber declines to accept the order for transcription.
3. Designating portions of the tape: The appellant may limit the parts of the tape that require transcription by filing a stipulation signed by all of the parties designating the parts of the record which need not be transcribed. *Mass.R.A.P. 8(a)(b)(5)(ii)(b)*.

#### G. RECEIPT OF THE TRANSCRIPT

1. Original Transcript (court):

The transcriber is responsible for sending the original transcript to the court with the following certification:

I, \_\_\_\_\_, do certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, of the designated portions to the best of my ability, of the designated portions of the cassette provided to me by the clerk of the lower court of a trial or hearing of the \_\_\_\_\_ Division of the Juvenile Court Department in the proceedings of \_\_\_\_\_, case(s) no(s). \_\_\_\_\_ before Justice \_\_\_\_\_ on \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Transcriber's Signature

*Mass.R.A.P. 8(a)(b)(5)(ii)(b)*.

2. Copies of the Transcript:

- i. Appellant's Copy: The transcriber should send the appellant's copy of the transcript directly to the appellate counsel or to the appellant if *pro se*. If the copy is sent to the court in error, the clerk should advise appellate counsel that the transcript is available for pick-up. If the copy of the transcript is sent to trial counsel in error or prior to the

appointment of appellate counsel, trial counsel is responsible for providing appellate counsel with the copy of the transcript. If there is disagreement between trial counsel and appellant counsel regarding release of the copy, both attorneys should be advised to contact the Committee for Public Counsel Services to resolve the dispute. The clerk's office should not make copies of the transcript.

- ii. Non-appellant Copy: Any party may request a copy of the transcript directly from the transcriber. However, any non-indigent party seeking Indigent Court Cost funds for the payment of the copy should file an Affidavit of Indigency requesting funds if the request was not made at the start of the appellate process. An indigent party who has not requested funds for fees and costs associated with the appeal, should also file a motion prior to requesting a copy. The transcriber may require proof that the request has been allowed prior to making a copy of the transcript.

## 8. PAYMENT OF THE TRANSCRIPT

The appellant(s) is(are) responsible for payment of the original transcript and appellant copy(ies). *Mass.R.A.P. 8(b)(5)(iv)*.

Clerks are not responsible for processing invoices for transcripts by sending the invoice to the appropriate party for payment. However, the court is responsible for a transcript ordered for specifically for the judge for use by the judge. It is important to have a record of such orders. A docket entry is not required.

In those instances where invoices are inadvertently sent to the clerk's office, as a courtesy, the clerk should forward the invoices to the appropriate party for payment.

1. Indigent Parties: Invoices for transcription services (one original and copies for each appellant) should be sent to the Committee for Public Counsel Services. The Committee for Public Counsel Services' address is:

Committee for Public Counsel Services  
Billing Department  
44 Bromfield Street  
Boston, MA 02108

2. Non-Indigent Parties: Invoices for transcription services (copy) for non-indigent parties should be sent directly to the party. Invoices for the Department of Social Services should be sent to:

Virginia Peel, Esq.  
General Counsel  
Department of Social Services  
24 New Farnsworth Street  
Boston, MA 02210

#### I. UNINTELLIGIBLE PORTIONS OF THE CASSETTE

If portions of the cassette cannot be transcribed because they are unintelligible, the parties shall promptly use reasonable efforts to stipulate their content. If agreement cannot be reached, the parties shall promptly present their differences as to such portions to the trial judge who heard the testimony. The trial judge shall, if possible, settle the content of the unintelligible portions, which shall then be included in the transcript. *Mass.R.A.P. 8(b)(5)(iii)*.

Note: The Appeals Court will return an assembled record to the Juvenile Court when issues regarding "inaudible" notations in the transcript are not resolved fairly quickly. Prior to assembling the record, the clerk may want to review the transcript for "inaudible" notations. If the record contains "inaudibles" the clerk may also want to contact appellate counsel to determine whether a stipulated statement of the missing testimony is needed prior to sending the record to the Appeals Court.

#### J. PROCESSING AN APPEAL WHEN A RECORDING OF THE PROCEEDING IS NOT AVAILABLE

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within thirty days after notice of appeal is filed, file a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may file objections or proposed amendments thereto within ten days after service. Thereupon the statement and objections or proposed amendments thereto shall be submitted to the lower court for settlement and approval and as settled and approved shall be included by the clerk of the lower court in the record on appeal. *Mass.R.A.P. 8(c)*.

#### K. COMPOSITION OF THE RECORD ON APPEAL

The original papers and exhibits on file, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk if the lower court, shall constitute the record on appeal in all cases. *Mass.R.A.P. 8(a)*.

In lieu of the record on appeal, the parties may, within thirty days after the notice of appeal is filed, prepare and sign a statement of the case showing how the issues arose and were decided in the lower court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the

statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the lower court, and as approved shall be retained in the lower court as the record on appeal.

Copies of the agreed statement shall be filed as the appendix required by Rule 18. *Mass.R.A.P. 8(d)*.

#### L. CORRECTION OR MODIFICATION OF THE RECORD

If any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court, either before or after the record is transmitted to the appellate court, or the appellate court, or a single justice, on proper suggestion or on its own motion, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified, and if necessary that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to a single justice. *Mass.R.A.P. 8(e)*.

\* \* \*

M.

#### N. DUTIES OF TRIAL COUNSEL AND APPELLATE COUNSEL

1. Court-appointed trial counsel shall continue to represent the party at all trial court proceedings. *Mass.R.A.P. 3(f) (2nd paragraph)*.

Any party to a child welfare case in which counsel was appointed pursuant to Supreme Judicial Court Rule 3:10 and who was represented by that counsel on appeal until either the trial court has appointed counsel for appellate purposes and an appeal has been filed by appellate counsel or the trial court has denied a motion to appoint counsel for appellate purposes. *Mass.R.A.P. 3(f) (1st paragraph)*

2. Appellate Counsel must file an appearance upon appointment by the Committee for Public Counsel Services (if appellant is indigent) or upon being privately retained.

#### O. PERMANENCY HEARING APPEALS

A child, parent, guardian or the department may appeal to the appeals court from the determination or order of the trial court. The claim of appeal shall be filed in the office of the

clerk or register of the trial court within 30 days following the court's determination or order. Thereafter, the appeal shall be governed by the Massachusetts Rules of Appellate Procedure. The scope of appellate review shall be limited to abuse of judicial discretion. *G.L. c. 119, §29B. See also Uniform Rules for Permanency Hearings, Rule 8(A).*

The clerk's office must notify the judge within five days from the filing of the notice of appeal that the determination/order has been appealed. The judges findings are due sixty days from notice of the appeal. *Uniform Rules for Permanency Hearings, Rule 8(B)(C).*

## Selected Bibliography

1. Askew, Rebecca A. Technology in the Courtroom, *Journal of Court Reporting* 70 (February 2003).
2. Carver, John A. and Barry Mahoney. How to Conduct an Assessment of Your Court's Record-Making Operations: A Systematic Approach, 2 volumes (Justice Management Institute, June 2002).
3. Kerans, Roger P. and Patrick Keys. Use of Electronic Appeal Rranscripts in the Alberta Court of Appeal, 2 *Journal of Appellate Practice and Process* 329, 329 (2000).
4. National Center for State Courts, *Court Reporting: Resource Guide* (n.d.). Comprehensive bibliography of material on court reporting, many of which may be borrowed from the NCSC library. Periodically updated. Bibliography available online at <http://www.ncsconline.org/>.
5. National Court Reporters Association, *The Status of Reporter Education: Trends and Analysis* (June 2002). Available online at [www.NCRAonline.org](http://www.NCRAonline.org).
6. Supreme Judicial Court Visiting Committee on Management in the Courts (March 2003). Available from the Public Information Office, Massachusetts Supreme Judicial Court).