



August 6, 2009

To Judge Robert Blink

Iowa District Court

Polk County Courthouse Room 207

Des Moines, Iowa 50309

Re: Digital Recording of Court Proceedings

As you are aware the Drake Legal Clinic has its own courtroom and has recorded a number of proceedings electronically over the years. In this past year the courtroom has been upgraded and has the ability to digitally record proceedings now. This technology change is a significant upgrade and enhances the ability to use the recording as part of our mission as an educational institution. We have recorded trial advocacy classes, CLE presentations, as well as trials as part of the trial practicum. Based on my experience with the recording equipment I will make some recommendations that you may find useful.

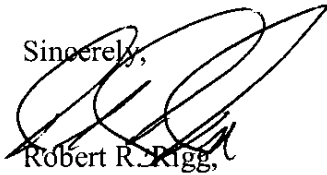
1. If the court decides to use electronic recordings in lieu of court reporters, I would strongly recommend both visual and audio recording. The visual record makes it much easier to track who is speaking and their role in the proceedings.
2. You will need to select a vendor to install the equipment as well as train court personnel to operate the machinery. Do not underestimate the value of a vendor who is available for questions by court personnel who will be in charge of the operation.
3. You will also have a maintenance agreement to service the equipment on a regular basis to insure its upkeep. Again, based on my experience at Drake I would not underestimate the importance of the maintenance of the equipment.
4. You will need to hire a number of technicians who have the training and skill to repair or replace equipment as it wears out or for some reason is defective.
5. You need the person who operates the equipment to have the ability to monitor the recording while court is in session to insure the equipment is functioning correctly and recording.
6. You will want to make sure that all attorneys are outfitted with microphones and they are turned on while the attorney is making record. Obviously the court and witnesses must also be mic'd. I would recommend a multi-track system allowing for recording of each participant separately to avoid talk-over. With regard to jury selection, the court rule prohibited the photographing of potential jurors should be amended to allow for digital

recording for the official record. Based on our experience at Drake, I would not recommend voice activated microphones.

7. You would want to establish training sessions for judges and lawyers so they understand the system and how to use it. Also the court may want to amend rules regarding where lawyers are allowed to stand or sit to maximize the system's ability to develop a more accurate record. For example, during jury selection most attorneys including myself tend to move around in the well of the court as opposed to remaining stationary. This impairs the recording system to generate an accurate recording. Perhaps lavalier microphones would alleviate this problem.
8. The courts may want to experiment with the technology under consideration to evaluate its utility in the Iowa Courts System before a system wide change is undertaken. I would not recommend this technology be used without court reporters so a side by side comparison can be made. This would allow a check on the recording systems reliability and accuracy. I would not recommend this technology be utilized in any indictable criminal case, complex civil litigation, or juvenile proceedings.
9. If the system is utilized at some point what would be the procedure for transcription of the recordings and would the recording be made available to the parties to check transcription accuracy?
10. Who would have authority to make edits of the recordings?
11. If the recording system does not record or the recording is inaudible what procedure would be in place to resolve disputes about the record?

These are some of my concerns regarding the utilization of digital recording. Drake has had 12 years experience with the trial practicum with mixed results. Although we have recorded the proceedings we have always had a court reporter taking down the proceedings.

Sincerely,



Robert R. Rigg,

Associate Professor of Law and Director of the Criminal Defense Program