



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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July 7, 1998

MEMORANDUM

TO: Deputy Chief Immigration Judges
All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Support Staff

FROM: Office of the Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum No. 98-2:
Guidelines for Recording Immigration Hearings
(Replaces OPPM 84-9 and OPPM 83-3)

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I. INTRODUCTION

This Operating Policies and Procedures Memorandum addresses several issues concerning the quality of the taped records kept by the Immigration Courts. It is the responsibility of the Immigration Court to preserve the taped record of proceedings for the purposes of preparing transcripts, and for making copies of those tapes pursuant to FOIA requests, criminal prosecutions, and testing of Berlitz and in-house interpreters. To meet these responsibilities it is essential that the tapes we preserve are of the quality these demands require.

As the organization has rapidly increased in size, so have the number of records to be transcribed or copied. The number of errors, both significant and insignificant in nature, have increased at an even greater rate. All court personnel must take the time to review the proper use of the tape-recording equipment and check the equipment on a daily basis. In addition, they should review the following procedures for assuring that the taped recordings of court proceedings preserve the record completely and with the highest quality possible.

II. OPERATION OF EQUIPMENT

A. Arrangement and Testing of Equipment

1. For the best results, only one person should speak at a time, and under no circumstances should more than one person speak into the same microphone at one time.
2. The two approved machines for use in Immigration Courtrooms are **SONY BM246** or **SONY BM146**. (It is realized that some Sony BM 145's are still in use). The older machine, the **Sony BM146** has four slots for plugging in the microphones and each records on a separate track. The newer machine, the **SONY BM 246** also has four tracks, but has 8 slots and can accommodate up to 8 microphones. If four microphones are used, they should be plugged into the recorders in slots 1, 3, 5, 7 or 2, 4, 6, 8, so that each is on a separate track for clarity. If more than four microphones are used, each extra microphone will be sharing a track with the adjacent microphone, *i.e.*, microphones plugged into slots 1 and 2 share one track, slots 3 and 4 share another track. If tracks are shared, there is a greater possibility that the recording will be difficult to understand.
3. Connections between microphones and tape recorder should be checked by the courtroom clerk each day. Each microphone should be tested on its own

channel by monitoring the channel indicator lamps while speaking, and by playing back the test tape to verify that each microphone is operating properly.

4. Although there is a "Variable Speed" Control, it is only effective during the Playback Mode. It has no effect when in the Recording Mode.
5. Immigration Court recordings are 4-track, one-side-only recordings. Even though they run at normal voice speed, the listener must have a four-head player to hear them correctly. This should be made clear to attorneys or other parties who request copies of the hearing tapes.
6. Tape recorders are expensive equipment. To provide maximum life they should be turned "OFF" whenever they are not in use, and should be covered at the end of the work day.

B. Tape Recorder Speed

During the progress of a case, hearings may be conducted in different courtrooms with different tape recorders, and a single tape may include two or more hearings. Therefore it is essential that we adhere to a single tape speed throughout all Immigration Courts.

There may be some confusion as to correct speed since there are at least three models of SONY recorders and several different portable tape recorders in use. Because of recalibration of speeds on calibrated-for-EOIR recorders, the permanent speed designations engraved on the machine may not state the actual recalibrated speed.

1. The approved machines for use in Immigration Courtrooms are **SONY BM246** or **SONY BM146**. The proper speed to use is the highest numbered speed on each machine. If the machine has designated speeds of 1.2 and 2.4, use 2.4. If the machine has designated speeds of 2.4 and 4.8, use 4.8. The way the machines are calibrated, no matter which of the two combinations is shown on the machine, the highest numbered speed is the approved, normal voice speed.
2. If portable tape recorders are used in IHP or detail sites, test to make sure they are operating at normal voice speed. They are operating at normal voice speed if a commercial tape can be played on the recorder at a normal speed.

3. If for any reason a substitute machine is used which does not run at normal voice speeds, a separate tape must be used for that hearing or portion of a hearing and the tape(s) and the tape envelope must be clearly marked. (The most common situation where this occurs is when an Immigration Court recorder malfunctions at a detail or IHP site and the Immigration Judge [IJ] has to borrow a recorder from INS or prison personnel.)

C. Identification of Tapes and Tape Envelopes (EOIR-10)

1. Each tape should be clearly marked with the A#, date of hearing, and sequence number if more than one tape is used in the session.
2. If multiple cases are recorded on one tape, *e.g.*, a group advisement at a master calendar, there are two options for assuring that all ROPs have information as to where the taped record is located:
 - a) Leave the original tape in the ROP of the case heard first. Make a notation of the A# of the ROP which contains the original taped record on the worksheet in each ROP for the other cases recorded on that tape; and
 - b) After the master session, copy the original tape and place a copy in each of the ROPs for all the cases included in the master taped record.
3. The Tape Envelope should be annotated with the A# when the ROP is created and the tapes should be placed in the envelope at the completion of each hearing by the Immigration Judge to avoid any mix-ups with other ROPs and tapes. (Sample EOIR-10 attached.)
4. After the last hearing in the case the clerk should fill in all the information on the EOIR-10. Particular attention should be given to the correct spelling of the names of all parties.

III. QUALITY OF RECORDING

A. Missing Information

Almost half of the reported errors fall in the category of missing information. The Immigration Judge (IJ) should be sure that the following information is included on the record and on the worksheets:

1. The IJ should identify all parties in the hearing by name and title or function, e.g.; immigration judge, alien(s), legal technician, interpreter, trial attorney, alien's attorney or representative, and witnesses. Difficult or unusual names should be written on worksheet and spelled out on the record.
2. The IJ should state the date of the current hearing and any continuance or call-up dates on the record.
3. The IJ should state the Alien Number (A#) and any other A#s that may apply, e.g., family members, or other cases included in group hearings.

B. Voice Clarity

1. The most reported problems with tape voice clarity and quality are connected to misuse of the microphones, causing voices to fade in and out, or for voices to be recorded on top of each other. All parties need to be cognizant of their position in relationship to the microphone, and of the necessity to let one person speak at a time.
2. By far the most common problem is with interpreter voices:
 - a) Interpreters moving back and forth from the microphone; and
 - b) Interpreters and aliens using the same microphone or using two microphones which are plugged in to the same channel. (If the interpreter must use a shared channel, that channel should not be shared with the alien or the witness box. If two persons speak on the same channel at the same time, the transcriber cannot separate the voices. If two persons speak at the same time but their microphones are on different channels, the transcriber might be able to separate the voices by listening to the channels separately.)

3. The SONY recorders are sensitive enough to pick up normal speaking voices from a person sitting upright at the conference table. Speakers should not lean in close to the microphone as this will also cause distortion. If a speaker has a particularly soft voice, the microphone can be moved closer, but the speaker should not speak with his/her mouth right next to the microphone.
4. The ANSIR workstation may create a buzz which will be picked up on the recording if a microphone is placed too near the terminal.

C. Noise and Speech Difficulties

In addition to earlier reminders to use normal speed and check microphone connections to insure highest quality of recording, courtroom personnel must assess the environment of the courtroom. Because of heavily accented speech patterns, it is difficult to discern the actual words unless the recording is clear. The following should be done to ensure the highest quality of recording:

1. Courtroom doors to hallways and to support staff space should be closed to cut down on background noise; and
2. Parties should be instructed not to shuffle papers next to the microphones. That noise often completely obliterates the voice recording.

IV. BLANK OR MISSING TAPES

A. Problems and Causes

There are several combinations of problems where there is no record made of a hearing:

- a) Tapes that are completely blank but labeled as recorded;
- b) Portions of tapes blank in mid-hearing;
- c) Additional tapes referred to on the record but not found in the tape envelope; and
- d) Absence of any tapes.

A very small number of blank tape problems are related to defects in the tape itself. Occasionally a tape will twist over to the back side when it is wound on the spool and the machine then records on the back side of the tape. There is little you can do to avoid this, and it is very rare.

B. Precautions to Prevent Blank or Missing Tapes

The following precautions should be taken to prevent the occurrence of blank, partially blank, and missing tapes:

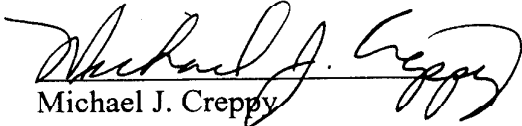
- a) Daily testing of the recording equipment;
- b) Remembering to turn on the tape recorder, not only at the beginning of the hearing, but each time the court goes off the record and then back on the record during the hearing;
- c) Marking all tapes clearly as they are used, with A#, date, and sequence #;
- d) Making annotations or copies when more than one case is heard on one tape; and
- e) Placing tapes in the tape envelope at the end of each hearing.

C. Replacement of Blank or Missing Tapes

Whether the blank or missing tapes are discovered during the progress of the case or during the transcription process when appealed, the Immigration Judge and the parties in the case must determine how or if to reconstruct the missing or blank portions of the record:

- a) In the case of missing tapes, a reasonable search for missing tapes should be made by checking locations where the ROP has been stored and by checking other ROPs heard on the same day; and
- b) If the missing tapes cannot be found or it is determined that some error has been made in the recording process, the Court should notify the parties in the case and a status conference should be set as soon as possible, preferably within 30 days of the discovery of the missing or blank tapes. At that status conference hearing, the judge and the parties should determine how the missing portion will be reconstructed, *e.g.*, stipulating to what transpired during the hearing or portion of hearing in question; or arranging to rehear the missing portion of the case.

There are many pressures on the courtroom personnel, but we need to be sure that we do not overlook the routines that assure the highest quality recordings we can manage. All of our other efforts in the process of managing a case and reaching a decision are wasted if there is only a partial record or no record at all and the case had to be reheard.


Michael J. Creppy
Chief Immigration Judge