

“The marriage of TTS technology and the e-brief portends a significant change in the nature of the brief, or at least in the perception of it.”

VOICE OF THE FUTURE: AUDIO LEGAL BRIEFS

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Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other “brutal choices” that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035 or to Mary Lawrence, University of Oregon School of Law, 1515 Agate Street, Eugene, OR 97403, phone: (541) 346-3848.

The audio legal brief lurks in our future. This impending development will bring with it a number of interesting challenges and concerns for lawyers and judges, as well as for law faculty who teach legal writing.

An audio legal brief results when the electronic file used to create a legal brief passes through a text-to-speech (TTS) conversion program, yielding an audio version of the brief.

As a general matter, computer-aided TTS programs do not represent new or cutting-edge technology. Bell Labs, for example, demonstrated a speech-synthesis device at the 1939 World's Fair.²

¹ The views expressed in this commentary do not necessarily represent those of the Wisconsin attorney general, the Wisconsin Department of Justice, or any of the department's other employees. I greatly appreciate the thoughtful comments and suggestions of my wife and frequent writing collaborator, Jill Robinson Wren, a lawyer in Madison, Wisconsin. In my writing, as in my marriage, I accept most of them, reject a few, and welcome all.

² Bell Laboratories, Background: Bell Labs Text-to-Speech Synthesis: Then and Now, at <www.bell-labs.com/news/1997/march/5/2.html> (last visited Dec. 18, 2003) (Web page archive on file with author). AT&T Labs TTS Web page <www.research.att.com/projects/tts/> offers access to online demonstrations of AT&T's current computer-based TTS technology at <www.research.att.com/projects/tts/demo.html> and <www.naturalvoices.att.com/demos/> (last visited Dec. 18, 2003) (Web page archives on file with author). See also Joseph P. Olive, “The Talking Computer”: *Text to Speech Synthesis*, at <mitpress.mit.edu/e-books/Hal/chap6/six1.html> (summarizing the history of talking machines) (last visited Dec. 18, 2003) (Web page archives on file with author).

In addition, many stand-alone TTS programs exist, easily available at little or no cost over the Internet.³

Similarly, electronic briefs (sometimes called “e-briefs”) do not represent a cutting-edge technology,⁴ even though few lawyers yet file them. Typically, the e-brief consists of the word-processing file used to create the written brief, or an Adobe Acrobat file derived from the word-processing file. The lawyer submits the file to the court, either in addition to or in lieu of the printed brief. Sometimes, the e-brief evolves into a multimedia document, with hyperlinks to cited legal authorities and parts of the court record, and even to nontext items, such as audio and video files.

The marriage of TTS technology and the e-brief portends a significant change in the nature of the brief, or at least in the perception of it.⁵ Currently, the e-brief, even the multimedia e-brief, remains a document created primarily for visual review—for reading. The audio legal brief, however, affords aural review. Thus, the underlying document, originally intended for one of the senses (vision), will now serve a second sense (hearing).

The emerging dual-purpose character of the legal brief creates a predicament for the writer. A composition style suited for the eye does not necessarily work well for the ear, and vice versa.

³ For example, ZDNet Downloads offers numerous demonstration, freeware, and shareware programs identified as TTS software (<downloads-zdnet.com.com/3120-20-0.html?qt=text-to-speech&tg=dl-20> (last visited Dec. 18, 2003). For a no-cost, relatively easy-to-use freeware TTS program, visit the Natural Voice Reader site <www.naturalreaders.com/index.html> (last visited Dec. 18, 2003) (Web page archive on file with author); see also ReadPlease <www.readplease.com/> (last visited Dec. 18, 2003) (Web page archive on file with author). In addition, the Microsoft® Windows® XP operating system includes a built-in TTS engine and, through the XP “help and support” feature, offers a link to commercial third-party providers of TTS programs at <www.microsoft.com/speech/evaluation/thirdparty/engines.asp> (last visited Jan. 25, 2004).

⁴ Bradley J. Hillis, *Electronic Briefs in Trial and Appellate Courts* (Apr. 20, 2000), available at <jurist.law.pitt.edu/courttech3.htm> (last visited Dec. 18, 2003) (Web page archive on file with author).

⁵ I realize that vision-impaired lawyers and jurists can, and sometimes do, deal with written documents (including briefs) in audio form. The documents, however, remain targeted overwhelmingly toward an audience that will review them visually rather than aurally. Here, the issue concerns the effect of TTS conversion when aural review evolves from a limited-use technique implemented out of necessity (an environment in which authors will continue to treat their documents as primarily visual artifacts) into a mainstream technique used for reasons of convenience (leaving the author routinely uncertain as to whether the audience will review the document visually or aurally).

Moreover, some conventions used in writing legal briefs—footnotes and legal citations, to name two of the most obvious—will undoubtedly involve some difficult trade-offs for writers and audiences.

The judicial use of audio legal briefs highlights troubling aspects of this development as well. A little background might help here. Beginning in February 2001, I served as my employer's representative on a state-court committee appointed to create criteria for an electronic filing (e-filing) system the Wisconsin Supreme Court hopes to create for the Wisconsin court system.⁶ Early in the discussions, one of the co-chairs remarked that one supreme court justice especially wanted e-filed briefs in order to put them on a CD, pop the disc into a player with TTS capability (perhaps using a laptop computer), and listen to the briefs while commuting between home and the court.

As an appellate lawyer who writes briefs for his livelihood, I see this use of audio legal briefs as presenting three principal difficulties. First, I doubt the desirability of a judge evaluating a lawyer's views—and, likely, a truncated version of those views—while simultaneously navigating through traffic. That does not strike me as something to encourage.⁷

Second, and a complement to the distraction issue, the introduction of audio legal briefs implicates an analog of the “presentation order effect” or “stimulus effect.” These phrases refer to the subtle bias that arises from the order in which a reader encounters documents, thus affecting the reader's judgment about the relevance of a given document.⁸ Here, the effect would arise from the reader (or, in this case, listener) encountering the

legal brief in a format and under circumstances that could unfavorably influence the listener's perception of the brief when he or she later reads it in the format the author intended and under circumstances the author expected would exist when the reader came to consider it.

Third, the audio legal brief gives a new meaning—and not necessarily a desirable one—to the notion of an author's “voice,” which in an audio legal brief could easily take on an oral tone unanticipated by the writer. In what voice—dulcet? authoritative? aggressive? Elmer Fudd-ish?⁹—will the listener hear the writer's words? And could the introduction of a literal “voice” turn the audio legal brief into a form of oral argument?

Audio legal briefs will pose particular challenges for law faculty who teach legal writing. Legal writing teachers already face a formidable array of difficulties when guiding students to competence in legal communication. Thus far, however, those difficulties have not included teaching the hybrid form of communication inherent in the audio legal brief. Although overlap exists, legal writing instruction typically deals separately with principles and practices associated with written communication (briefs, memoranda, etc.) and those associated with oral communication (mainly oral argument). The audio legal brief will almost certainly put considerable pressure on that dichotomy and require legal writing teachers to develop new theories and techniques for teaching dual-purpose communication.

Regardless of whether the audio legal brief looks like a desirable development for legal practice and academia, the march in this direction appears inevitable. Technology has moved inexorably toward integration of media of all sorts, and the audio legal brief represents simply another instance of that progression. Unlike most other integrations, however, the audio legal brief also has the potential to affect the rights and privileges of litigants. That prospect argues for anticipating and confronting with special care the promise and danger this particular technological innovation carries with it.

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⁹ Fans of Bruce Springsteen cannot forget—or, in some cases, forgive—Robin Williams' rendition of “Fire” as sung by Elmer Fudd. Robin Williams, *Elmer Fudd Sings Bruce Springsteen (Fire)*, Throbbing Python of Love (Casablanca Records 1983).

⁶ On December 18, 2002, the Wisconsin Court System Electronic Filing Committee filed its final report with the director of the Wisconsin court system.

⁷ I'd also like to think that a commute between home and office would provide the typically overworked judge with an opportunity, however short, to take a breather from the judicial burden and listen to some music, tune in talk radio, or just travel in silence and contemplate the world passing by.

⁸ See, e.g., Michael Eisenberg & Carol Barry, *Order Effects: A Study of the Possible Influence of Presentation Order on User Judgments of Document Relevance*, 39 J. Am. Soc'y for Info. Sci. 293, 293 (1988). Researchers in various fields recognize, and attempt to control for, the possibility that the presentation-order effect can skew results. See, e.g., Norm Otto, Scott Amman, Chris Eaton & Scott Lake, *Guidelines for Jury Evaluations of Automotive Sounds*, Sound and Vibration, Apr. 2001, at 1, 5, available at <www.sandv.com/downloads/0104otto.pdf> (last visited Dec. 18, 2003) (PDF archive on file with author).

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