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A Study of Court Reporting and Digital Recording (DR) in the California and Florida Courts

Prepared December 3, 2009 by:



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ABOUT THE AUTHOR

The California Court Reporters Association commissioned this study of court reporting and digital recording in the California and Florida courts in a continuing effort to provide cost details to lawmakers and policymakers concerning the most cost-effective means to create the verbatim court record in the California courts. The salient work product from this effort is a side-by-side comparison of court reporting and digital recording in a typical court trial; in this instance, the Los Angeles Superior Court.

This report was prepared by Chris Crawford, president of Justice Served®, a court management consulting firm. He has extensive knowledge of justice operations with over 36 years of court management experience, including Court Administrator for the South Bay Municipal Court, Beverly Hills Municipal Court and Catalina Justice Court, and court manager for the Los Angeles Municipal Court. He served as an advisory member to the California Judicial Council in 1991.

Both as a California court administrator and private sector court management consultant, Crawford worked extensively in court reporting operations. He headed the court reporting office for the Los Angeles Municipal Court with over 90 court reporters on staff. He has also written several reports analyzing court reporting technologies and verbatim record dynamics for the California Court Reporters Association, Arizona Court Reporters Association, Association of Federal Court Reporters, Iowa Court Reporters Association and the Los Angeles County Court Reporters Association.

In 2005, Crawford was named chair of FACT, Forum on the Advancement of Court Technology (<http://fact.ncsc.dni.us>), a consortium of public and private sector court and IT professionals addressing technology development, procurement and education in the field of court management. As a court management technology professional, he also has experience in electronic recording products, services and operational issues.

) EXECUTIVE SUMMARY

46 of the 50 US states use some form of digital recording¹ (DR) and all but a handful use a combination of court reporters and DR - California is one of these combination states. The California courts have struggled for decades with the policy question of whether to expand DR or even replace court reporters altogether as a cost-saving measure. In this report, we study this question of cost savings in California courts by examining similar efforts in the Florida courts, and a side-by-side comparison of court reporting and DR in the Los Angeles Superior Court. The results of this comparison are as follows:

<i>Cost Component</i>	<i>Court Reporter</i>	<i>Digital Recording</i>
1. Personnel (5 days)	\$2,743	\$1,288
2. Transcript (1,000 pages)	\$2,970	\$4,500
SUBTOTAL	\$5,713	\$5,788
3. Delivery costs	\$ 0	\$ 13.50
4. Tech acquisition/maintenance	\$ 0	\$ 35
5. IT network upgrades	\$ 0	\$1,110
6. Added servers	\$ 0	\$ 220
7. Management overhead	\$ 16	\$ 80
TOTAL COST COMPARISON	\$5,729	\$7,247.50

What this examination reveals is that the budgetary impact is not a court reporter being replaced by technology, but by equipment and replacement staffing. Even if salary savings ensue from the salary differential between a court reporter and DR monitor, the overall costs still favor a court reporter because California courts report that, in most instances, transcription costs for a digital recording are higher than the statutory rates paid to court reporters. Moreover, the costs for DR substantially exceed those of a court reporter when the following issues are taken into consideration:

- Management and supervision
- Transcript administration, production, delivery, billing, and accounts receivable
- Court technology and network acquisition, maintenance, upgrade and repair
- Added productivity from the court reporters' electronic work product, such as note storage, transcript storage/delivery, instantaneous, searchable realtime (especially the ADA compliance aspects), Reporter Electronic Data Interchange, and more

The matter of transcript preparation and delivery are key components to a comparison of capturing the court record. As independent contractors, court reporters produce and deliver transcripts using privately purchased hardware, software, computer networks, supplies, shipping costs and even labor. A major shift to DR would require that CA courts purchase recording equipment, hardwire courtrooms, fund technology improvements to support the capture, transmission and storage of massive digital audio files, and become the primary administrator of transcript production and delivery operations.

The experience of the Florida courts with expanded use of DR is that this policy shift resulted in the need to address several unintended consequences to widespread DR usage, including:

- Lack of standards in regards to DR staffing to monitor the equipment and annotate the recordings
- The need for the court to exert quality control over choice and qualifications of transcribers
- Liability associated with recording of privileged conversations between attorneys and their clients
- The need to specify what is the "official" court record - the recording or a transcript?

In low-impact cases and low-transcript cases, DR may be a cost-effective choice. However, the higher the stakes and the higher the need for a transcript, court reporters are more cost-effective.

¹ We define digital recording in this report as both analog and digital, and both audio and video.

The Florida Court Experience

In the past five years, the state of Florida has made a major effort to replace court reporters with DR. Today, approximately twice as many proceeding hours are digitally recorded compared to stenographic reporting throughout the state, although these percentages vary widely among the various trial courts. Every circuit court (general jurisdiction) uses a mix of stenographic and DR delivery methods.

Like California, Florida has struggled with economic hardship for several years in a row, partly attributable to tax structure and politics, and partly attributable to natural disasters such as hurricanes. Even though limited use of DR was authorized by statute in 1995, the State strongly advocated the widespread replacement of court reporters with DR in July, 2004, in a continuing effort to find cost savings. The first step of this process was to shift the cost of managing the court record from local to state government.²

While all outward appearances indicate cost savings and a seamless transition to at least partial replacement of court reporting services, the Florida Commission on Trial Court Performance & Accountability (CTCPA) has issued three reports³ on the subject that address several administrative problems associated with DR, including:

- A determination was needed that the official record of court proceedings is the *transcript*, not an electronic recording;
- A rule was promulgated finding that the electronic recording was not a public record, and the court "owned" it, and thereby controlled access to it;⁴
- The court needed to be immunized from legal liability associated with unintended interception of privileged oral communications by DR equipment, including attorney/client communications;
- Before a court sells a DR record, it should ensure that inappropriate content is redacted (a labor intensive process);
- It is incumbent upon the court to provide an accurate record maintained by qualified staff – asking courtroom clerks or bailiffs to assume these chores is not the preferred solution;
- Instances of recording inappropriate content increased when DR equipment was unmonitored;
- Instances of equipment problems, inaudible portions and unrecorded proceedings, increased when ER equipment was unmonitored;

² Revision 7 to Article V of the Florida Constitution, which shifted several due process costs from local to state government.

³ The first report was December 2002

(http://www.flcourts.org/gen_public/pubs/bin/crtreporting_pubs1.pdf) that anticipated implementation of ER, the second was in February 2005

(http://www.flcourts.org/gen_public/court-services/bin/crtreporting_pubs2.pdf) and the third was October 2007

(http://www.flcourts.org/gen_public/court-services/bin/TCPACTReportingFinalReport.pdf).

⁴ Subsequent to the latest CTCPA report, the FL Supreme Court ruled that the DR record is indeed a public record and the trials courts had no right to restrict access to it (July 16, 2009, SC08-1658 In re: Amendments to the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure – implementation of Commission on Trial Court Performance and Accountability recommendations, <http://www.floridasupremecourt.org/decisions/2009/sc08-1658.pdf>).

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- Giving DR records to parties provided opportunities for modification of the record and/or errors associated with use of untrained transcribers; and,
- Both audio and video recording has advanced technologically so that digital recording is the preferred method over analog, yet many courts still use analog equipment.

The Florida experience clearly demonstrates that there are a myriad of administrative issues that must be addressed before DR is implemented in a trial court. When mandated and recommended best practices accompany implementation, additional costs are incurred in the form of appropriate equipment and adequate staffing by dedicated DR monitors.

While the issue of qualifications of DR transcribers was covered, the issue of transcript costs comparing DR with court reporters was not examined in detail in any of the Florida reports. In a fair market, a digital recording is more difficult to produce compared to a record captured by a court reporter using computer-aided-transcription software and, therefore, costs as much as three times higher depending upon the urgency of the request.

Finally, none of this discussion concerning the Florida experience addresses the loss of productivity associated with judges and lawyers having to review electronic recordings as opposed to transcripts, and the loss of potential productivity associated with court reporters using Realtime technology to make the written record instantly available to the users.

Unlike the California experience, Florida did not refrain from widespread implementation of DR and was forced to address these administrative issues as the problems were identified.

A Side-by-Side Comparison of Court Reporters and DR

In order to compare the operational costs of capturing the record and producing a transcript using a stenographer versus DR, this chapter will conduct a side-by-side contrast of the individual cost components for a one-week trial in Los Angeles County Superior Court. Each of the elements -- means of calculation and related issues -- are described in detail in the following table:

<i>Cost Component</i>	<i>Court Reporter</i>	<i>Digital Recording</i>
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- Personnel (5 days) – The top-step monthly salary of a court reporter (\$7,912.18) and ER monitor (\$3,714.91) in Los Angeles County Superior Court is multiplied by 12 for an annual rate, 30% is added for employee benefits, and that figure is divided by 225 days to derive a daily rate. The daily rate for each is then multiplied by five days.
- Transcript (1,000 pages) – 1,000 pages of transcript is the estimated output from a five-day trial. For a court reporter-produced transcript, the statutory rate of \$2.97 per page is used for an original plus two copies. For a DR transcript, California courts report that rates range from \$4 to \$9 for an original plus two copies, depending upon how quickly a transcript is needed. The lower range rate of \$4.50 is used to calculate the figure provided, but this cost could be significantly higher.
- Delivery costs – The US Postal Service rate of \$13.50 covers a large flat-rate Priority Mail box carrying approximately 25 pounds of printed transcript. Court reporters privately fund these costs. Overnight rates for private carriers run as high as \$383.00, but presumably these added costs would be passed along to those demanding earlier delivery. DR would require management and tracking of these pass-along costs, while court reporters would do so in the course of their transcript production duties.
- Tech acquisition and maintenance – The cost to purchase a single DR unit is approximately \$2,800, hardwire installation is approximately \$20,000, and a one-year maintenance agreement is approximately \$200. As with all technology, DR equipment must have a life-cycle replacement, which we estimate to be every five years. If these equipment, maintenance and hardwire costs are amortized over a five-year period of time, the daily rate translates to \$7.

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5. IT network upgrades - DR would place a substantial added burden on a court's IT computer network infrastructure attributable to the creation, transmission and storage of large digital audio files. Costs associated with network upgrades to support DR files would be approximately \$50,000 annually. The daily costs would translate to \$222, which are then multiplied by five. There is no need for a network upgrade to support court reporter operations.
6. Added servers - Costs associated with additional servers to support the storage area network for large DR files is approximately \$50,000 every five years, which translates to a daily rate of \$44. These estimates do not include additional IT personnel, if needed. No server enhancements are required to support court reporter operations.
7. Management overhead - The top-step monthly salary of a court manager in Los Angeles County Superior Court is \$6,823.36. This is multiplied by 12 for an annual rate, 30% is added for employee benefits, and that figure is divided by 225 days to derive a \$473 daily rate. A reasonable supervisory span of control for DR monitors is one manager for every 30 employees, which translates to a daily rate of \$16. The daily rate is then multiplied by 5 days to account for management overhead needed to support DR, while one-fifth of this is needed to manage court reporter operations. Examples of this disparity are the need in a DR environment to set up accounts receivable protocols to bill for transcripts, manage transcript orders, and generally supervise a class of personnel that does not have a high level of professional training as a prerequisite of hiring. By virtue of their professional training and independent contractor status producing transcripts, court reporters require minimal supervision, which is typically limited to coordination of assignments.

Looking solely at the personnel and low-end transcript costs, it would appear that DR is not the most cost-effective means of capturing the verbatim record compared to a court reporter. While personnel costs are lower, transcript preparation costs are higher, so that the combined total for DR compared to a court reporter results in a higher cost. The DR transcript rate used for this model is at the lower end of \$4.50 per page for an original and two copies. Some California courts report paying as much as \$9 per page.

However, the overwhelming additional costs for DR are attributable to technology acquisition, upgrades, and maintenance, and the need for management support. Since court reporters operate largely as independent contractors, minimal supervision is needed, except for coordinating assignments and some administrative support. DR requires direct and close management supervision, especially for transcript production. Court reporters also privately fund technology acquisition, maintenance, upgrades and networking, while DR requires that the court substantially upgrade its computer network to support the creation and transmission of digital audio and video records, which are quite large compared to documents and other electronic files. Additional servers are also needed to accommodate storage and retrieval of these files.

Conclusion

The making of a verbatim record in a court of law is complex. The current system in California relies largely upon court reporters acting as court employees during the day to capture the record, and acting as independent contractors after hours to produce transcripts at statutory rates that in most cases are lower than those paid for transcripts from a digital recording.

It appears upon superficial examination that replacing a court reporter with DR equipment would yield a substantial cost savings, but this notion is quickly dispelled when staffing costs for a DR monitor and transcript production rates are factored in. The previous chapter shows a side-by-side comparison of a court reporter and DR in a five-day trial, and the two measurement criteria of personnel and transcript costs alone show nearly identical cost -- actually, DR is slightly more. However, since court reporters act as independent contractors, this also means they require less supervision and self-fund technology costs that would become court expenses in a DR environment. **By an overwhelming margin, these added overhead costs make the overall comparison of cost-effectiveness a clear-cut case favoring a court reporter over DR.**

Another variable not included in this comparison is the quality of the record. While technical and human error problems can occur with both court reporting and DR, there are many more documented instances of accuracy problems in the use of DR, especially if no DR monitor is present. Having to retry a case or conduct a new hearing to recapture a lost record is a staggering price to pay for a "cost savings" that doesn't hold up under analytical scrutiny.

There are dozens of examples of digital recordings gone wrong, many of which have been cited in previous reports on this topic. Here are a few recent reports:

Harris County, TX – (Sept 2007) A civil malpractice suit is heard by the Fourteenth Court of Appeals in which one of the causes of action is malfunctioning DR equipment that rendered a critical portion of the record on appeal unusable. The appellate court overruled this cause of action only because the missing recording did not pertain to the particular issues on appeal.

Newark, NJ – (May 2008) A civil \$800,000/\$280,000 high-low settlement inadvertently triggered the low-end amount when a mistrial was declared after a jury requested readback of a digital recording of crucial testimony that was found to be blank.

Naples, FL – (May 2008) A 2003 murder prosecution repeatedly bounced between the trial and appellate courts when multiple instances of a faulty digital recording were challenged by the defense. Accordingly, the prosecution changed their policy to accept digital recordings for serious felony hearings and now only accepts a court reporter to make the record.

Obviously, these quality issues are critical when reporting high-impact cases such as felony, complex civil and high-stakes family law. The instances of problem recordings are significantly higher when no DR monitor is provided. Even so, DR only becomes a cost-effective choice with low-transcript volume and low-impact cases.