



**COMMITTEE ON COURT RECORDING MONITORS
AND
COURT REPORTERS**

FINAL REPORT

NOVEMBER 2010



STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
JOETTE KATZ
JUSTICE

231 CAPITOL AVENUE
DRAWER N, STATION A
HARTFORD, CT 06106

November 4, 2010

Hon. Chase T. Rogers, Chief Justice
Supreme Court
231 Capitol Avenue
Hartford, CT 06106

Dear Chief Justice Rogers,

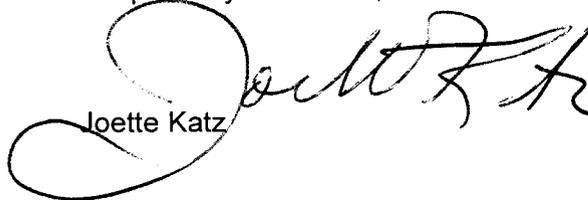
As chair of the Committee on Court Recording Monitors and Court Reporters, I am pleased to present for your consideration the Committee's final report, which includes fourteen recommendations.

The Committee, which was formed under the Delivery of Services goal of the Strategic Plan, was charged with evaluating a myriad of issues surrounding the production of court transcripts, access to those transcripts, the quality of transcripts, and staffing issues related to transcript production. The members spent months evaluating information from within the Judicial Branch and from external sources, including other state judicial branches and representatives of members of the Conference of State Court Administrators.

As the Committee learned, Connecticut is not alone in working diligently to improve access to justice; judicial systems across the country are responding to economic challenges in creative ways, often by merging the best use of existing and emerging technologies with internal structural reorganization. I believe the Committee's report represents a thorough and thoughtful analyses of the issues contained in the charge, and that the recommendations are supported by the Committee's findings.

If you approve of the recommendations, and the report is shared with the Bench, I will be more than happy to meet with the Judges to address any concerns that they may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joette Katz". The signature is written in a cursive style with a large, looping initial "J".
Joette Katz

JK/ms

Introduction

With a few exceptions, Connecticut's courtrooms and records are open to the public, ensuring transparent processes and decision-making by judges that is crucial to maintaining the public's trust in the judicial system. Yet, despite this commitment to openness, for some people access to justice remains a challenge because of processes steeped in tradition and governed by statute. Specifically, the continued reliance on paper transcripts and the attendant costs have proved prohibitive, particularly to self-represented people, who, because of the current economic crisis, have placed greater demands for court services. In an effort to make recommendations to increase access to transcripts, improve the quality of transcripts and service provided by the Branch's Transcript Unit, and remove obstacles that impede access to transcripts, Chief Justice Chase T. Rogers created the Committee on Court Recording Monitors and Court Reporters. The Committee's charge falls under the umbrella of four of the five Strategic Plan goals: access, changing demographics, delivery of services, and accountability. Contained within this report are fourteen recommendations that were unanimously approved by the Committee at its July 2010 meeting, following months of information gathering and discussion.

Chaired by Associate Supreme Court Justice Joette Katz, the committee members are the Honorable Marshall K. Berger Jr., retired media executive and Judicial-Media Committee co-chair Mr. G. Claude Albert, private attorneys Mr. James Brawley, Mr. Peter Dreyer and Mr. Richard O'Connor, private sector business executive Ms. Caren Kittredge, Senior Assistant Appellate Public Defender Attorney Lauren Weisfeld, Senior Assistant State's Attorney Harry Weller of the Chief State's Attorney's Appellate Bureau, Superior Court Operations Director of Administration Attorney James Maher, Attorney Scott Hartley, deputy director of the Branch's Transcript Unit, and until, her resignation in April, court reporter Ms. Shirley Sambrook. The Committee is advised by Attorney Martin Libbin of the Judicial Branch's Legal Services Unit.

The Committee met publicly nine times between November 2009 and July 2010, and the members considered a wide variety of information, including the roles of court reporters and court recording monitors in the current system, existing Judicial Branch policies, state statutes and Practice Book Rules, and how transcripts and other court records are used.¹ Attorney Maher and Attorney Hartley demonstrated to the Committee the processes that the Branch currently uses to memorialize court proceedings, including audio recording and stenographic notes. Judge Berger provided an extensive overview of the Washington, D.C. court system's CourtSmart audio system, and the members sought and received information about practices and policies in other state judicial systems. In January, the Committee participated in a videoconference about emerging courtroom technologies with Professor Fredric Lederer and Mr. Martin Gruen of the Center for Legal and Court Technology Project at the William & Mary Law School. Additionally, the Committee heard presentations from two practicing court reporters and received input from court reporters across the state. The members also considered the report of a national court management group that examined issues surrounding production of the court record.

In fact, that latter report, a January 2010 white paper by the Conference of State Court Administrators (COSCA), "Digital Recording: Changing Times for Making the Record," revealed that Connecticut is not alone in trying to reconcile emerging technologies with historic practices

¹Agendas and minutes: http://www.jud.ct.gov/Committees/pst/court_rep/default.htm (last accessed 29 October, 2010)

for the production of and accessibility to the court record.² Indeed, for at least three decades there has been national debate about the validity of using electronic recording in courtrooms instead of professional stenographers to capture the spoken word, and for nearly as long, there has been debate regarding what constitutes “the record” and who owns it.

As the committee learned, there is no one Connecticut statute or Practice Book rule that singularly defines the court record. According to statutory and Practice Book provisions, the “record” as it relates to court decisions, can include everything from conclusions of law, to portions or the entirety of a transcript, to medical, psychological, and psychiatric studies, or criminal histories, depending upon the particular proceeding. It has also been defined in statutes as information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

The Committee, for its purpose, defined the record as **“The official memorialization of what occurs during official court proceedings.”** This definition took shape following a facilitated exercise in which the members dissected the issues surrounding the making of transcripts of Judicial Branch proceedings. Dozens of questions and concerns were raised and the members grouped those issues into eight broad categories: definition, ownership, security and the making of the record; human resources; present and future costs; accuracy of the record; access for parties and the public; and the use of transcripts. These categories were the Committee’s starting point, and drove the discussion and the learning process and are the basis for the final fourteen recommendations.

The recommendations, which will be more fully discussed later in this report, stem from many of the Committee’s core beliefs: The court record, which is stored and maintained by the Judicial Branch subject to applicable disclosure law, is not simply a typed transcript. Further, the Committee strongly believes that the Judicial Branch should adopt digital audio recording as its minimum standard for memorialization of proceedings, and maximize access to the recordings for the public’s benefit. Finally, as this report will detail, the Committee believes the Judicial Branch should develop uniform policies, standards and practices for its court reporters and court recording monitors to ensure that there is uniformity in memorialization, and accountability to the public.

The recommendations are also made with consideration of creating efficiencies wherever possible. As the Committee learned, transcripts are currently created by public employees, on the public payroll and often in the case of transcripts ordered by private parties, on the public’s time. Yet, the existing structure requires that these employees be *separately* compensated for typing transcripts, even when the transcript is ordered by the judge presiding over the proceeding. As the Committee learned, and as is discussed further in this report, the Judicial Branch and the agencies of its co-equal branches of government are annually paying hundreds of thousands of dollars in additional compensation for typed transcripts of legal proceedings. The Committee’s recommendations will help reduce those costs to the state, while ensuring that the salaries of these Branch employees remains unchanged and the opportunity to earn extra income still exists.

The Committee believes its recommendations, if adopted by the Judicial Branch, will fulfill the Chief Justice’s charge and dovetail with the Strategic Plan and its ongoing implementation. Improved access to processes, documents and facilities will only help to sustain

²Conference of State Court Administrators, *Digital Recording: Changing Times for Making the Record*; <http://cosca.ncsc.dni.us/WhitePapers/DigitalRecording-Jan-2010.pdf>, (last accessed 29 October, 2010) (see appendix, No. 1)

the public's belief in its judiciary, whether members of the bar, jurors, parties to cases, the news media, students or simply curious spectators. Financial barriers to the court process or the court record which can easily be mitigated by utilizing existing and available technologies that will benefit both the Branch and the public by reducing costs and eliminating unnecessary delays to access and information.

Discussion

Not every Connecticut court proceeding is recorded but those that are, are memorialized in one of three ways: digital audio recording, analog cassette tape recording, and stenographic machines. Audio recording is the Branch's predominant method of capturing the spoken word; currently about half of its courtrooms and hearing rooms have been outfitted with For The Record (FTR) computer digital recording equipment, and the others are outfitted with analog cassette tape recorders. Audio recordings are attended by court recording monitors who keep log notes denoting specific events during proceedings. Audio captured by FTR is stored on computers and analog cassettes are kept in boxes.

Stenographic machines are used by court reporters who type specific letter combinations to represent what has been said. This specialized shorthand can be read and understood by the stenographer but appears as a jumble of letters to the non-stenographer. Most stenographic machines produce a narrow tape that shows the keystroke symbols entered by the reporter and, at the end of the day, the reporter files the paper tapes, or in the case of paperless stenographic machines a printout of the keystroke records, as the record for Branch retention. It is important to note that there is no audio recording made of proceedings covered by court reporters. As detailed later, the lack of an audio record can be extremely problematic and costly to the Judicial Branch.

Nevertheless, the Branch's dual methods of audio and stenographic recording of proceedings are fairly typical of judicial systems across the country. This committee sought information about court recording and the official court record from other states via a voluntary listserve questionnaire sent to the members of the Conference of State Court Administrators (COSCA). Representatives from more than two dozen states responded.³ A handful of states rely exclusively on audio recording and one state, Kentucky, relies on video recording of proceedings. The other states are very much like Connecticut, utilizing a mix of memorialization processes that have evolved over the years to meet budget needs and merge with changing technologies.

Technology has played a major role in the evolution of how the spoken word is captured and has driven a national discussion (and occasionally cantankerous debate) about the most reliable and efficient method of memorializing proceedings. As referenced earlier, the Conference of State Court Administrators in January released a white paper dissecting the issues surrounding the making of the court record. The report suggests that state court administrators, virtually all of whom are being challenged with providing increased services with declining budgets, should navigate away from a reliance on stenography as the means by which to memorialize the proceedings and embrace new technology. The report cites issues of timeliness, transparency, and access, and proclaims that "Digital recording of court proceedings is the judicial future" and "This method of making the record must be the rule rather than the exception."⁴

³Committee on Court Recording Monitors and Court Reporters' support staff prepared summaries of the COSCA list-serve responses, 8 February, 2010 (see appendix, No. 2)

⁴*Digital Recording*, Op Cit, page 4

In response to the COSCA white paper, the president of the National Court Reporters Association, a 21,000 member professional association trade group of court reporters, cautioned against courts' "migrating to digital audio recording," lest the "integrity of the record" be in peril⁵.

States that rely on audio recording would no doubt dispute the assertion that they have somehow compromised the administration of justice simply because they do not use stenographers.⁶ In fact, the state of Alaska, which relies on audio recording, issues a disclaimer on their transcripts *encouraging* parties to cases to listen to critical portions of proceedings if there are questions about the accuracy of the typed transcript, and as the federal court reporter who addressed the Committee said federal proceedings where stenographers are in place are simultaneously recorded on audio. That allows the reporter to listen to the recording if he or she has questions about what was said and also creates an audio record for transcription by a different court reporter if the original reporter cannot provide a transcript.

The Connecticut Judicial Branch has over the last several decades moved away from a model that relies on stenographers to one that relies mainly on electronic recording. Thirty years ago, the Branch employed approximately 110 court reporters and twenty-eight court recording monitors to cover 160 courtrooms. Today there are approximately thirty-five court reporters, including fourteen official court reporters, and more than 200 court recording monitors on any given day covering 260 courtrooms and hearing rooms.

Naturally, as staff size has grown to match Branch needs, so has the budget for the court reporting office. Official Court Reporters, who oversee their staff in each judicial district, earn up to \$107,532 and most are in the top bracket, as are full-time court reporters, who earn up to \$74,069. Court recording monitors have salaries ranging from \$41,257 to \$54,257, while permanent part-time monitors earn less, as they work between 30 and 39 hours per week. Temporary court recording monitors, who can work a maximum of 35 hours per week, are the lowest compensated, earning \$14.25 per hour. In total, the budget for the Transcript Services Unit rose from \$2.9 million in 1979, to approximately \$11,413,000 in the fiscal year that ended June 30, 2010.

The wage difference between reporters and monitors reflects the required skill level for each position. Court reporters use stenographic equipment, which requires extensive training as it is a highly specialized and learned skill, and they must be certified by the state Board of Examiners of Shorthand Reporters. Court recording monitors are also trained but their skill set is different; they monitor the court's digital or analog tape recording equipment and are expected to keep ongoing log notes that correspond to the activity occurring during a proceeding for easy retrieval in the event of playback or transcript production.

As the Committee learned, court reporters and court recording monitors are able to supplement their annual base income by preparing transcripts of judicial proceedings. While the Judicial Branch employs its court reporters and monitors to memorialize proceedings, it still must

⁵National Court Reporters Association response to COSCA release of *Digital Recording* white paper http://ncraonline.org/NR/rdonlyres/3A2DA956-EE2E-4C1F-9608-20330D0D7C44/0/COSCA_white_paper_release_final.doc (last accessed 29 Oct, 2010) (see appendix, No. 3)

⁶Fax to Chief Court Administrator Judge Barbara M. Quinn, from Randel Raison, president of the American Association of Electronic Recorders and Transcribers (AAERT), re: NCRA press release (see appendix, No. 4)

separately compensate them on a per-page basis for the production of all paper transcripts, even those ordered by judges and magistrates.

Page rates, set by statute and Branch policy authorized by statute, range between 0.75 cents and \$6.45, depending on the ordering party and the requestor's necessary timeframe.⁷ Transcripts prepared for judges, judge trial referees, magistrates, prosecutors, public defenders and state agencies are by statute charged lower fees, while the highest fee represents a request for an overnight transcript by a private party.⁸

Court reporters and monitors are currently permitted to create transcripts during the work day when there are no proceedings to be reported or monitored. That has applied to the production of transcripts for the Branch, and for all other requestors, including state agencies and private parties. This has raised ethical concerns, which will be discussed later in this report.

It cannot be said with any certainty how many transcripts of court proceedings are prepared for private attorneys and the financial impact fulfilling those requests has on court reporter and court monitor income, but suffice it to say, it can be quite a lucrative endeavor. In one recent example, overnight transcripts for a civil trial lasting several weeks cost the private attorneys on both sides tens of thousands of dollars each: more than \$30,000 for the plaintiff, and about \$20,000 for the defense. That extra \$50,000 in transcript compensation was in addition to the salaries earned by the court reporter and four court recording monitors assigned to that particular courtroom for the duration of the case.

The only transcript production work required of court reporters and court recording monitors is the completion each week of one-hundred pages of appellate transcript requests, although, as the Committee learned, only about 1,800 appeals transcripts are ordered each year.⁹ The requirement is in place to ensure there is no backlog that could affect the timeliness of appeals.

The issue of separate payment for transcripts should not be discounted, particularly in a frugal fiscal environment. In the fiscal year 2009-2010, court reporters and monitors earned nearly \$1 million in *additional* compensation beyond their base salaries for transcripts ordered by the Judicial Branch and state agencies. Specifically, the Judicial Branch paid \$356,862 for transcripts and state agencies paid another \$52,574.¹⁰ Additionally, the State's Attorneys paid \$198,476 for regular transcripts, and another \$58,785 for felony sentencing transcripts, and in the same period, Public Defenders paid \$198,173 for transcripts, and the Commission on Child Protection spent an estimated \$47,473, for a total of \$912,345.¹¹

Additional compensation for transcripts does not simply increase an employee's annual salary, it also increases his or her state retirement pension, not unlike overtime that is earned by police and firefighters boosts their pensions. This is concerning as the State Post-Employment Benefits Commission reported in late October 2010 that the State Employee Retirement System

⁷Connecticut General Statutes, § 51-63 (c) http://search.cga.state.ct.us/dtsearch_pub_statutes.html

⁸State of Connecticut Judicial Branch "Rules for Ordering a Transcript", <http://www.jud.ct.gov/Publications/transcript.pdf>, (last accessed 29 October, 2010)

⁹Transcript Services Unit, *2009 Appeal Transcripts Ordered*, (see appendix, No. 5)

¹⁰Judicial Branch Fiscal Administration, Fiscal Year 2010 Transcript Payments through Payroll (see appendix, No. 6)

¹¹Transcript Services Unit, with information provided by the Office of the Chief State's Attorneys, Office of the Chief Public Defender, and the Commission on Child Protection (see appendix, No. 7)

(SERS) plan is under-funded by more than \$9 billion, and in 2008 had the fifth-lowest funding ratio for its state-sponsored pension plans.¹²

As the Committee also learned, there is another unique benefit extended only to Official Court Reporters and permanent court reporters: they are permitted to leave work early to take outside employment without claiming vacation, personal, or sick leave. This practice is called “U-time” and is only intended to be taken when the court reporter: is unassigned, has been furnishing all transcripts within a reasonable time, does not depart before 2:00 p.m., and does not have duties that have been assigned to someone else in order to facilitate the outside employment.

In the four-year period of 2005-2008, Official Court Reporters and permanent court reporters used a total of 4,490 hours of “U-time,” including many instances that would seem to violate the practice. Looked at in a different light, the 4,490 hours of paid “U-time” equates to 112 weeks of paid time for these employees to take private work while simultaneously earning their salary and benefits. That is more than 2 years and 2 months’ worth of “U-time,” or, paid at the hourly rate of a court reporter in the top bracket, \$159,889.32 worth of extra-compensated time. The ethical concerns raised by this practice are discussed later in this report.

Of course, transcript production is only one facet of court reporting and court monitoring, and despite the National Court Reporters Association’s warning about the COSCA report recommendations, there has been no argument made that the Branch’s migration from reliance on court reporters to reliance on court recording monitors in the last thirty years has somehow endangered the accuracy of memorialization. Without question, the technology available today to capture audio is far superior to what was available three decades ago.

As technology has evolved, improvements in how the record is captured have helped ensure accuracy to a greater degree. Memorialization through digital audio recording means that the spoken word can be stored and accessed instantaneously and permanently. Like analog recording, but unlike stenography, it can be used to hear a replay of the spoken word, and to confirm what actually was said rather than rely on one individual’s interpretation or memory.

Improved audio recording capability is just one advance in technology adopted by the Branch as it moves towards a paperless system. Electronic filing, video proceedings, and video conferencing are also in place and are being expanded as resources allow. As the Committee learned, other states include the electronic recording of proceedings within a case file as part of their case management system, much as they would a paper motion or other paper document. Connecticut may eventually also choose to follow that route; since making mandatory electronic filing by members of the bar for many non-family civil case types in late 2009, nearly 30,000 paperless cases have been created and digitally stored.

With better technologies come opportunities for wider access, and access to the transcript is an important part of the Committee’s charge. Our state’s appellate courts still require a paper transcript, or a release declaring that one is not necessary, as part of the appeal record.¹³ Other members of the bench, as well as the bar, media and public require paper transcripts for their own uses. As the Committee members discussed, many court users want to know what was said in a proceeding without having to purchase an entire transcript. Thus, the issue then becomes less

¹² Connecticut Post-Employment Benefits Commission, final report, issued 28 October 2010, http://www.ct.gov/opm/lib/opm/secretary/oheb/peb_final_report.pdf (last accessed 1 November 2010)

¹³ Rules of Appellate Procedure, § Sec. 63-4 (a) (3), found at page 406 http://www.jud.ct.gov/Publications/PracticeBook/PB_2010.pdf, (last accessed 29 October, 2010)

about the format and more about the accessibility of the medium used for memorialization and all that entails, such as issues of timeliness and cost to the individual or entity seeking access to the recordation.

For example, a self-represented person who wants to review what transpired at a court proceeding may miss elements of what occurred and may not have the financial means to obtain a paper transcript, particularly at an expedited rate. Attorneys who represent clients in civil cases very often must pay their own out-of-pocket expenses, including courtroom proceeding transcript costs and usually at the overnight rate for preparation for the next day's proceedings. These costs can, as illustrated earlier in this report, require an attorney to spend tens of thousands of dollars with absolutely no guarantee that the cost will be recouped.

Members of the media have also expressed to the Judicial Branch a desire to access recordings of proceedings. The Branch's Judicial-Media Committee's Survey Subcommittee, in its 2008 report based on a survey of judges and journalists, recommended that copies of audio recordings be available at cost.¹⁴ Similarly, a media member of the Judicial-Media Committee's Subcommittee on Audio Recordings of Court Proceedings strongly supported the idea of access to electronic recordings, noting in the subcommittee's 2009 final report that, "One of the reasons the proceedings and judgments of our courts command the public's respect is because they are open, accountable and verifiable." (*Connecticut Law Tribune* staff writer Thomas B. Scheffey)¹⁵

Because the media often function as surrogates for the public, the ability to accurately, fairly and timely report on court events benefits not only the media entity, but victims who may not be able to regularly attend court proceedings and the public in general. Reporting court cases does not simply satisfy salacious interest in the details of grim crimes but, when done accurately and well, provides an education on the workings of the courts. By encouraging openness and accuracy through access to proceedings, the Branch is increasing the public's trust in the judicial system.

Challenges: Production, ethics and compensation

Maintaining the public's trust is paramount to the existence of the Judicial Branch. When people feel they cannot trust the branch of government that delivers justice, upholds constitutional rights and safeguards against abuses of power, the very foundation of democracy and liberty is threatened. It is essential then, that the sanctity of the court record be maintained for both posterity and review.

The court record is not the transcript. Rather, the transcript is part of the larger parcel of documentation of a court proceeding. What people want when they purchase a transcript is an honest accounting of the events that have occurred. Problems arise when there are disputes about what was said and by whom. Certainly not every case is a matter of life or death, but in matters before the court, there are no small disputes to the parties involved. Therefore it is essential that the Judicial Branch provides the best possible service to the public it serves, by ensuring true and accurate memorialization that is accessible to all.

¹⁴Judicial-Media Committee Survey Subcommittee Report, Recommendations Developed from October 2007 survey of Judges and Journalists, page 3
http://www.jud.ct.gov/Committees/media/Survey_Recommendations_Report.pdf (last accessed 29 October, 2010)

¹⁵Judicial-Media Subcommittee on Audio Recording of Court Proceedings, 2009 Final Report, page 32
<http://www.jud.ct.gov/Committees/media/audio/FinalReport09.pdf> (last accessed 29 October, 2010)

The Committee discovered, during its information gathering phase, that problems do exist: with technology, with production, with access, with accuracy, even in the way the record is produced by state employees on state time with state dollars.

Tape recording, while satisfactory for capturing the spoken word, is by today's technological standard as relevant as the rotary dial telephone: It still works, but it is not the most efficient way of communication. Finding parts to keep analog tape recorders operating is becoming more difficult, physical storage requirements are not insignificant, and tapes can deteriorate resulting in the loss of the recording. Stenographic machines leave the Branch with a paper tape that must be deciphered by a specialist, and no electronic or audio record. For example, when in doubt about the accuracy of a transcript, one needs only to listen to the recording of the proceeding. That is impossible when the proceeding is memorialized solely by a stenographic machine because no audio recording is made of the proceeding. That leaves the attestation of the accuracy of the recordation to the notes or memory of a single individual.

This is also problematic because, unlike audio recording machines, the Judicial Branch does not own the stenographic equipment; rather, court reporters own their machines and software which, as a rule, cost many thousands of dollars. An advantage has been that the Branch does not purchase updated transcription software, but there are significant disadvantages to the Branch and the public because of the individual nature of the stenographer's equipment. Specifically, every court reporter has on his or her stenographic machine a dictionary that stores their individual shorthand "short-cuts," letter combinations that are particular to the individual who creates them. As such, every court reporter's dictionary is personal to him or her and the short-cuts may not be translatable by another stenographer. This in essence creates an essentially proprietary memorialization of the proceedings reported by one individual. Thus, when a court reporter retires or leaves state service and has, over the course of his or her employment, filed stenographic notes that are difficult to translate and in some cases may be untranslatable by anyone else, there are unnecessary delays in the timely and efficient resolution of matters when a transcript is required.

Further, the *extra* cost associated with hiring an outside transcriptionist to translate the stenographic notes into a typed transcript is then borne by the Judicial Branch, not the individual requesting the transcript. The cost can and *has* run in to the tens of thousands of dollars; one example that the Branch is currently grappling with resulted from a reporter who took a leave and whose stenographic notes from a lengthy civil trial are nearly indecipherable. Estimates to complete this appeal transcript are up to \$100,000, a fee that must be absorbed by the Branch and not the requesting parties. If the parties to this particular case cannot agree on the accuracy of the transcript that is produced, the entire complicated case may have to be re-tried; the cost of that, in both time and money to the parties and the Branch, has not been calculated.

This lack of control over the memorialization and the manner in which it is created is troubling. The court record belongs to the public and is created, maintained and stored by the Judicial Branch. Without complete ownership of the entire memorialization process, the public's interest is threatened and justice is potentially compromised. Without standards in place to ensure the most accurate record, when the quality of the log notes of court recording monitors are inconsistent from person to person, or when the stenographic notes of court reporters are not readable by others, justice is compromised.

The cost of transcripts can be a barrier to justice and their production by state employees raises ethical concerns. As previous examples show, Connecticut taxpayers spend nearly \$1

million annually to buy transcripts from Judicial Branch employees who are in fact paid to memorialize court proceedings.¹⁶ Thus, the public record, which is maintained by public officials, costs the public additional money to access. The ethics questions these practices raise are numerous.

Current Branch practices of allowing court reporters, but not court monitors, to leave work early to take private depositions, and allowing both classes of workers to prepare transcripts for compensation while on state time is an ethical minefield.

In a case decided in New Britain Superior Court earlier this year¹⁷, a judge dismissed an appeal of an advisory opinion¹⁸ issued by the Citizen's Ethics Advisory Board that said it is *not* permissible under the Code of Ethics for Public Officials for workers compensation commission hearing reporters to use state-compensated time to engage in activity that generates income from private sources. As noted previously, the Branch and state agencies are paying Branch-employed court reporters and court recording monitors separately for transcript production. The costs to taxpayers are not insignificant and may not be entirely necessary. While reporters and monitors are allowed by statute to charge set page rates, there appears to be nothing in the statutes that allows these same employees to essentially "double-dip" by accepting salary and benefits while also acting as private contractors on state time.

The Committee was also charged with making recommendations to improve the delivery of services provided by the Court Transcript Services Unit. Unless a party is willing to pay top dollar for an overnight transcript to access the memorialization, he or she must wait. While transcripts are by policy supposed to take less than six months to complete, more than a few surpass the maximum threshold and the Committee's criminal appellate attorneys reported waiting at least six months. Complicating matters, as illustrated above, is that when a record is made whose stenographic notes are indecipherable to any one but the original recorder, the wait time can be much longer, thereby posing a threat to the timeliness of resolution. In essence, the parties are at the mercy of the individual trusted with creating a memorialization and when that is compromised, the integrity of the Branch is called in to question.

Solutions: Improved access, efficiency, transparency

After months of reviewing a variety of sources of information and identifying the issues surrounding the transcript and access to the transcript, the Committee believes that there are solutions to ameliorate these problems. The most basic solution, and perhaps one that becomes the basis for all others, is for the Branch to adopt digital audio recording as its minimum standard of memorialization.

By using digital audio recording in every court proceeding required to be recorded, the Branch is ensuring accuracy that may not be found in stenographic recording; providing an essentially fool-proof method of redress should accuracy be in question; capturing the recordation

¹⁶Transcript Services Unit, Fiscal Administration , Op Cit

¹⁷Docket No. CV-09-4020353S, Council 4, American Federation of State, County & Municipal Employees, AFL-CIO v. Connecticut State Ethics Commission, et al., Memorandum of Decision, the Honorable Henry S. Cohn, Superior Court, Judicial District of New Britain, July 26, 2010, http://www.ct.gov/ethics/lib/ethics/court_decisions/memorandumofdecision7-26-10.pdf

¹⁸Citizen's Ethics Advisory Board, Chairman Roger Worgaftik, 26 February, 2009, Advisory Opinion 2009-3, <http://www.ct.gov/ethics/cwp/view.asp?a=2305&q=434814> (last accessed 29 October, 2010)

for long-term storage without the risk of deterioration that occurs with stenograph tapes and analog tapes; and providing a less bulky and more manageable and reliable storage medium.

In courtrooms where court reporters use stenograph machines, the Branch should also use digital technology to capture the spoken word, and require the reporters to file frequently their individual dictionaries with the Branch to prevent instances in which the only memorialization is a box of paper tapes that are decipherable solely by a single individual. If the Branch wishes to maintain some stenographic machines, it may also want to consider purchasing its own equipment as well as software that captures and archives the reporters' individual dictionaries, and further, to consider as resources allow, investing in real time software that allows for a visual display of the spoken word. Real time software allows a stenographer to produce a near-instant transcription in a live courtroom setting and can be particularly useful for people with certain disabilities, or in complex cases in which the audio record is supplemented by a visual display of the spoken word.

This is not to suggest that the Judicial Branch eliminate the use of paper transcripts. There are, after all, statutes, Practice Book rules and appellate court rules that require the creation and filing of transcripts in the paper form. The two criminal appellate attorney members of this committee specifically voiced their need to examine on paper trial transcripts, as did the private practice attorneys, and of course people with hearing impairments will not be aided by the accessibility of a recorded proceeding. As the attorney members, particularly the civil litigators, however, discovered in the Committee's discussions, the audio recording is a viable and less costly alternative to ordering entire transcripts, particularly when one wants to review only a particular portion of a proceeding.

Additionally, audio captured digitally can be easily replicated onto other media such as compact discs and disseminated via computer by e-mail or posting. Either method will vastly improve access to information for the bench, the bar and the public by removing or reducing costs and allowing for near "real-time" turnaround for the memorialization. The ability to listen to a proceeding, whether on a CD created on a FTR machine or having a download of the proceeding sent electronically to an e-mail address, unquestionably improves access to justice for people of all means and needs.¹⁹ The Judicial Branch has in its courthouses computers for the public to use, so in the event that an individual does not have a home computer, he or she would still be able to access an electronic copy of a recorded memorialization.

By adopting digital audio recording as the minimum standard for electronic recording of proceedings and allowing access to those recordings, a self-represented party or an attorney who wants to review testimony without incurring the cost of an overnight transcript could be given access to the memorialization at the end of the proceeding without the need to purchase a costly overnight transcript. As the Committee learned, both of those technologies are currently available to the Branch, and judiciaries across the country, large and small, allow for the purchase

¹⁹ The Committee was also asked to consider a recommendation from the Judicial-Media Committee to allow media members to use personal recording devices in proceedings solely for note-taking purposes. While this committee's conclusions do not specifically address that, the final recommendations promote the use of digital technology and other emerging technologies to capture memorialization, and of making recordings available to the public. Thus, if the Branch is moving towards adopting newer technologies to create a more accurate record, technology exists that would allow recognized news media members to plug in to a real-time audio feed for excellent quality recordings with no disruption to the court. Such an initiative could then largely serve to satisfy the purpose of the Judicial-Media Committee's recommendation to the Chief Justice.

of recordings of proceedings at a fraction of the cost of a transcript, thereby increasing access to a wider economic demographic.

As an example, the federal court system, through its Public Access to Court Electronic Records (PACER) system, allows for the purchase of audio downloads of some case types, at the judge's discretion, for \$2.40 regardless of the length of the proceeding.²⁰ It is also worth noting that beginning with the 2010 October term, the United States Supreme Court is making available the audio recordings of all oral arguments at the end of each argument week.²¹ The free recordings are available for download or listening on the Court's website, and are permanently maintained at the National Archives and Records Administration.

A pilot program, as suggested by the Committee to Expedite Child Protection Appeals, to allow attorneys in child protection appeals to obtain copies of audio recordings rather than paying for overnight transcripts would be an excellent test of the feasibility of providing access to audio recordings.²² The Commission on Child Protection spent \$47,500 on transcript costs last year; had each transcript been expedited, the cost to taxpayers would have been closer to \$100,000, according to the Committee. The Branch could certainly offset the cost of producing a compact disc with a fee to cover the material; other states generally charge less than \$10 per CD.

The child protection appeals pilot could also provide a baseline to study the effect that providing electronic recordings, as opposed to paper transcripts, may have on transcript production time. As noted earlier, it generally takes at least six months for an appeals transcript. By providing access to audio recording, it would logically seem to follow that there would be less demand for transcripts in some circumstances. Thus, the workload of court reporters and court recording monitors would be eased as they would not be creating transcripts during court time, thus freeing more staff to attend proceedings and, quite possibly, reducing the wait time for requested transcripts.

In that same vein, the Committee considered alternatives to the exclusive preparation of judicial proceedings transcripts by Branch employees on state time as a way of creating efficiencies and making better use of staff. As many other jurisdictions have indicated by their responses to our COSCA surveys, outsourcing transcript work is commonplace and a widely accepted practice. Two states, Utah and New Hampshire,²³ rely solely on digital audio recording proceedings and rely on outside vendors to prepare requested transcripts.²⁴ Other states, including Florida, California, Nebraska, Missouri and New Jersey support a mix of in-house

²⁰Administrative Office of the United States Courts, Public Access to Court Electronic Records, press release, 11 May, 2010, http://www.pacer.gov/announcements/general/audio_pilot.html (last accessed 29 October, 2010)

²¹Supreme Court of the United States, press release, 28 September, 2010, http://www.supremecourt.gov/publicinfo/press/viewpressreleases.aspx?FileName=pr_09-28-10.html (last accessed 29 October, 2010)

²²11 May, 2010 letter to Justice Katz from the Hon. Christine E. Keller on behalf of the Committee to Expedite Child Protection Appeals (see appendix, No. 8)

²³New Hampshire Judicial Branch: <http://www.courts.state.nh.us/forms/nhjb-2557-dfps-instructions.pdf>

²⁴National Center for State Courts: *Future Trends in State Courts 2010*, September 2010; "Reaping Benefits and Paying the Price for Good Business Decisions: Utah's Re-Engineering Experience," Hon. Christine M. Durham and State Court Administrator Daniel J. Becker, pp. 42-45, <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1605> (last accessed 29 October, 2010)

prepared transcripts and outsourced transcripts.²⁵ The outsourced transcripts must meet the individual state's standards.

The Committee was mindful that the Judicial Branch and state government in general are facing severe budget shortages, both short- and long-term, and are looking at ways to create efficiencies. As identified earlier, the state pensions of court reporters and court monitors can be inflated by money earned creating transcripts. Eliminating increased pension obligations for payments based on transcript page production is possible and fiscally prudent.

The Judicial Branch should develop a set of standards and create a list of transcriptionists qualified to produce acceptable transcripts. Those qualified could be Branch employees, but they could also be transcriptionists employed by law firms or private companies. By removing the existing monopoly on transcript production, the Branch would resolve most ethics questions that arise and potentially create savings for external stakeholders as the per-page cost would be driven by the market and not state statute, and those who wish to compete for private dollars may do so, much as they do now for deposition work.

Cognizant that court reporters and monitors are able to complete transcripts for additional compensation, the Committee would suggest that those who wish to accept private transcript work may do so, *after* the end of the workday, and *provided such outside contract work does not conflict with state employee ethics requirements*. This structure would also end the unique practice in place that allows reporters to leave early without taking vacation time, a practice that has cost the Branch nearly \$160,000 in the four year period looked at by the Committee. Further, the Judicial Branch should be mindful of state Ethics Commission rulings that could cause the Branch to unintentionally run afoul of state government ethics that prohibit this practice or any other that allows state employees to use state-compensated time to generate income from private sources.

The Judicial Branch should embrace digital recording and emerging technologies when financially feasible, with an eye towards creating long-term savings from initial investments. And while the Committee believes digital audio should be used in every proceeding, many of the members expressed the belief that digital audio is simply a *minimum* standard for memorialization.

Some members submitted ideas for pilot programs to improve access, measure timeliness, pursue the use of new technologies and to utilize in more expanded ways existing technologies. The recommendations range from expanding the use of and production of CDs in juvenile court settings and in complex litigation cases, to providing real-time transcription in a felony criminal trial, to establishing a forward-looking system by designing and implementing system elements that are multi-functional and reliably and clearly capture on a central server all audio or video that is part of the official proceedings. The Committee's recommendations ultimately have a goal of exploiting technology to provide the most accurate, timely, useful record possible at a reasonable cost to the Branch and the lowest cost to end users.

Memorializing, storing, and transmitting electronically the captured words of court proceedings lends itself to wider accessibility to a greater number of people in a more efficient and cost-effective manner. Therefore, the Committee unanimously makes the following fourteen recommendations:

²⁵COSCA list-serve responses, Op Cit

Memorialization of proceedings: Standards and ownership of the record

- 1) The Judicial Branch should adopt digital audio recording as the standard for recording proceedings.
- 2) The court record is the official memorialization of what occurs during official court proceedings.
- 3) The court record, which belongs to the public, is under the custody of the Judicial Branch and is subject to applicable disclosure law.
- 4) The Judicial Branch creates, maintains and administers the court record.
- 5) The Judicial Branch should own and provide all equipment used to memorialize court proceedings including, but not limited to, stenographic equipment, software and dictionaries.

Responsible human resources: Uniformity and accountability

- 6) The Judicial Branch should eliminate the practice of allowing court reporters and court recording monitors to produce transcripts for private parties on Branch time.
- 7) The Judicial Branch should adopt uniform standards for the type of work court reporters and court recording monitors may perform while on Branch time.
- 8) The Judicial Branch should develop standard training for all court recording monitors, and ensure compliance with those standards, to ensure uniformity of the memorialization of court proceedings.
- 9) The Judicial Branch should eliminate the use of “U-time” (compensated time off not charged to vacation, personal or sick leave) by court reporters.

Access: Creating efficiencies and supporting transparency

- 10) The Judicial Branch should maximize public access to the digital audio recordings of court proceedings, subject to applicable disclosure law.
- 11) The Judicial Branch should adopt several pilot programs including but not limited to making the digital audio record available to attorneys in certain juvenile matters.
- 12) The Judicial Branch should create a list of transcriptionists/companies whose transcripts meet Branch standards and are acceptable for use in all court proceedings.

Technology: Making use of available and emerging technologies

- 13) The Judicial Branch should consider the use of Real Time court reporting in selected cases.
- 14) The Judicial Branch should internally provide Communication Access Realtime Translation (CART) as recommended by the Branch’s Committee on Americans with Disabilities Act.

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List of Attachments

Attachment A: “Digital Recording: Changing Times for Making the Record,” Conference of State Court Administrators white paper, January 2010

Attachment B: Committee on Court Recording Monitors and Court Reporters’ support staff summaries of responses from members of the Conference of State Court Administrators list-serve, February 2010

Attachment C: Response of the National Court Reporters Association to COSCA January 2010 white paper

Attachment D: Letter to Chief Court Administrator Judge Barbara M. Quinn from the American Association of Electronic Recorders and Transcribers, regarding the COSCA white paper

Attachment E: 2009 Appeal Transcripts Ordered, source: Transcript Services Unit

Attachment F: Transcript payments distributed through payroll from the Judicial Branch and twenty-five state agencies, source: Fiscal Administration

Attachment G: Transcript payments from Judicial Branch, state agencies, and the Office of the Chief State’s Attorney, Office of the Chief Public Defender, and the Commission on Child Protection

Attachment H: Letter to Justice Katz, May 11, 2010, from Judge Christine E. Keller on behalf of the Committee to Expedite Child Protection Appeals

Attachment

A

**DIGITAL RECORDING:
CHANGING TIMES FOR
MAKING THE RECORD**

Conference of State Court Administrators

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DIGITAL RECORDING: CHANGING TIMES FOR MAKING THE RECORD

I. Introduction

State court administrators continually review and propose changes that strengthen the processes within court systems. A process that is ripe for review is making the verbatim record. Court administrators would have difficulty justifying courts' continued dependence on stenographic reporting if they were to describe the process by which the majority of state trial courts create, produce, and maintain the official record of the hundreds of thousands of court proceedings annually. If court administrators were to describe the current model for creating the verbatim court record to anyone unfamiliar with court operations, would their confidence in the court system's efficient use of staff and technological resources be lessened? What would they say if they learned that thousands of staff are assigned to individual courtrooms to make this manual record even though few cases are appealed? How might they react if they learned that the manual recording of those proceedings is made in a media that could be interpreted into written English only by the individual making the record? How would we explain that in most states the recording is the property of the employee and not the court? What reason would we provide for the fact many employees receive a fee beyond their government salary from litigants requiring transcription for appeal purposes and that the timely preparation of these records is not under a court's control? How would we explain that public access to the official court record can be obtained only by paying this fee to a public employee? If this process were complicated by the declining supply of reporters and by the current economic crisis, how would we respond to their questions on how we intend to improve and strengthen the business of creating, producing, and maintaining the court record? These questions demonstrate that change is necessary.

II. Challenges of Current Methods

The predominant method of making the verbatim record is stenographic reporting.¹ This method poses challenges to courts in creating, producing, accessing, and preserving the record including (1) the decline in court reporter resources; (2) efficient and timely transcript production; (3) access to justice; and (4) the transparency of court proceedings.

A. Decline in Court Reporter Resources

The clear and undeniable fact is that the number of qualified court reporters has and continues to decline significantly.² In addition, the number of court reporter programs and student enrollment is declining while competition for court reporting services is increasing. Studies commissioned by the National Court Reporters Association (NCRA) confirm this alarming situation. In 2003 the NCRA reported a decline in the number of court reporter programs and student enrollment. The report noted that an average of 8.9% of enrollees

¹ Unless otherwise noted in this paper, stenographic reporting includes voice writing.

² Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2010-11 Edition*, Court Reporters, on the Internet at <http://www.bls.gov/oco/ocos152.htm> (last visited December 17, 2009) ("fewer people are entering this profession [court reporting], particularly as stenographic typists").

graduates from a court reporter program.³ The NCRA also conducted a survey of graduation rates and participation of educational institutions in the association's approval/certification program over an eleven-year period from 1996 through 2006. The data illustrated a downward trend in both number of students graduating and number of educational institutions participating. The number of educational institutions participating declined 41.5% over the eleven-year period.⁴ The number of individuals graduating dropped 61%.⁵

As the number of court reporting schools decreases and the drop out rates rise, the average age of the official court reporter is increasing. For example, the Iowa Supreme Court compiled demographic statistics in early 2009, finding the average age of the 191 court reporters employed by the judicial branch was 46 years and the average number of years of service was almost 18.⁶ In Wisconsin, a similar review conducted in 2009 illustrated that almost 50% of the state's official court reporters were age 50 or older. An additional 26% of the court reporters were between the ages of 45 and 49. In 2003 only 32% of the state's court reporter population was age 50 or older.⁷ Considering these statistics mirror work force demographics in general, Iowa and Wisconsin are likely indicative of the court reporter population in other states.

Certification requirements and training demands contribute to this decline in the court reporter workforce. The reporting profession is a challenging career choice that poses rigorous certification programs at the national level and licensing requirements at the state level and demands that a reporter attain the requisite speed and accuracy skills. A court reporter is, by the nature of technological progress, required to stay informed and skilled in the use and application of new technologies.

Typically a stenographic court reporter must graduate from a court reporting school approved by either the National Court Reporters Association or National Verbatim Reporters Association. Training for a career as a stenographic reporter depends on the type of reporting. The training for a voice writer is nine months.⁸ A voice writer will require at least two years to become proficient at real-time voice writing.⁹ A real-time stenographer will need to study almost three years.¹⁰ A real-time reporter must spend considerably more time in extensive training to achieve the skills and speed required to develop a dictionary and produce a record of the testimony on a computer screen during the court proceeding.

NCRA offers a range of certification programs that recognize competence and skills of stenographic court reporters. The entry-level designation for a stenographic court reporter is a Registered Professional Reporter (RPR). A candidate for an RPR certification must pass a written knowledge exam and a series of three skills tests. The candidate must demonstrate a typing rate of 225 wpm with 95% accuracy. The National Verbatim Reporters Association

³ National Court Reporters Association, *The Status of Reporter Education: Trends and Analysis*, at 6 (June 2002, revised September 2003), available at

<http://ncraonline.org/NR/rdonlyres/8CAC20BC-7438-4D6E-8E80-5BCDD4C9E103/0/SchoolRptStarRev.pdf>.

⁴ National Court Reporters Association, *Graduation Trends in NCRA-Certified Programs, 1996 to 2006*, available at http://ncraonline.org/NCRA/pressroom/reporting_school_graduation_trends.htm.

⁵ *Id.*

⁶ State Court Administrator's Office, Iowa Courts.

⁷ Director of State Courts Office's HRS Database, Wisconsin Courts (2003 data compiled as of Aug. 28, 2003 and 2009 data compiled as of Sept. 22, 2009).

⁸ National Verbatim Reporters Association, Fact Sheet, available at <http://www.nvra.org/displaycommon.cfm?an=1&subarticlenbr=12>

⁹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2010-11 Edition*, Court Reporters, on the Internet at <http://www.bls.gov/oco/ocos152.htm> (last visited December 17, 2009).

¹⁰ *Id.*

offers three national certifications to voice writers: Certified Verbatim Reporter (CVR), Certificate of Merit (CM), and Real-time Verbatim Reporter (RVR). A candidate for the entry-level designation, CVR, must also pass a written exam and a series of three tests. A CVR candidate must achieve a speed of 250 wpm with 95% accuracy. Some states require a reporter to pass a state exam and to earn state licensure.¹¹

If courts continue trying to compete for court reporter services, they will fall victim to competitors and this fading resource. Career opportunities outside of the court system for court reporters are only increasing in number and popularity. The Bureau of Labor Statistics projects an increased demand for real time broadcast captioning and translating services for persons with hearing impairments.¹² “Court reporters continue to benefit from the flexibility to use their skills in a variety of venues. Many experienced court reporters are shifting from courtroom work to broadcast captioning, to providing interpretive services for the deaf, or to freelance deposition services.”¹³ A career as a broadcast captioner provides a reporter the opportunity for flexible work hours and to work from one’s own home. The need for broadcast reporters increased significantly following federal legislation that required new television programming to be captioned for the deaf and hearing impaired by 2006¹⁴ and all Spanish language programming must be captioned by 2010.¹⁵ Courts compete with Communication Access Real-time Translation (CART) reporting opportunities in which a reporter provides personal services for a hearing-impaired person. Skilled reporters who can write in real-time are in high demand in the captioning profession, which provides more opportunities for a reporter to apply this expertise. Reporters are turning away from jurisdictions that do not produce a sufficient number of transcript requests to make the employment economically competitive.

Even if a court is satisfied presently with the court reporter model for creating, preserving, and producing the court record, the rate of decline in the profession poses a serious threat to that way of conducting business in the coming years. Based on demographics alone, the question confronting courts is how the fundamental need to make the record will be fulfilled when the current method cannot be supported.

B. Efficient, Timely Transcript Production and Access to the Record

The courts’ struggle to produce transcripts in a timely manner has surpassed the critical stage. Courts can no longer ignore the increasing demand for greater public access and transparency of court proceedings. These aspects of the record-making process are in dire need of an overhaul because they affect every aspect of the court’s business and influence the progression of the case. Under current methods, a person gains access to the verbatim record captured by a stenographic court reporter or voice writer only after a transcript, in rough or final form, has been requested and produced. A judge’s decision may be delayed awaiting a transcript. A party’s decision on whether to seek review of a court’s decision often requires an attorney to review the trial transcript. Appellate briefing deadlines commence only upon the

¹¹ *Id.* (e.g., Michigan requires state certification, see <http://courts.michigan.gov/scao/services/crr/crr.htm>).

¹² *Id.*

¹³ Pete Wacht, *U.S. Legal/Medical Records Transcribed Offshore Pose Risks to Privacy and Information Security*, *NCRA Warns*, National Court Reporters Association (Jan. 22, 2008), available at www.redorbit.com/news/business/1225490/us_legalmedical_records_transcribed_offshore_pose_risks_to_privacy_and/index.html (citing 'State of Reporting' Remarks by NCRA Executive Director Mark Goldens).

¹⁴ Closed Captioning of Video Programming, 47 C.F.R. § 79.1(b)(1)(iv) (2009).

¹⁵ Closed Captioning of Video Programming, 47 C.F.R. § 79.1(b)(3)(iv) (2009).

filing of the trial court record. Any single paper copy is obviously not accessible to multiple users simultaneously, and copies are made available only upon payment to the reporter of an additional fee. A delayed transcript and inability to access the record readily can hold a case hostage and produce adverse consequences for the attorneys, parties, judges, and the public. The public's perception of fair and equal justice and an efficient court system is jeopardized when access to the verbatim record is not readily available and is available only at a cost.

The decline in the number of court reporter is a significant contributing factor to transcript delays, and with resources continuing to decline, improvements will be impossible without a change in court culture. The presence of a court reporter in a courtroom does not ensure the timely production of a transcript. The court reporter's ability to produce the transcript may be hampered by the number of other transcript requests and the volume of courtroom assignments. The reporter may frequently be required to be present in a number of proceedings for which an appeal or transcript will not be pursued. Backlogs will continue to increase. The level of service will decrease under current staffing models because court administrators often have no flexibility to assign court reporters to resolve these issues or to meet the needs of the courts as a whole.

The reporter's ownership of the notes and stenographic dictionaries may preclude efforts by the courts to reallocate the transcript workload in an effort to ensure a timely transcript. Courts and reporters have contested ownership of the notes and dictionaries for years. Under the current methods, in most states, ownership of the notes and dictionary belongs to the reporter, and the court lacks administrative control to manage this process. Even when the court has custody of the notes, they are difficult to use by other reporters. It is almost impossible for a reporter without access to the personal dictionary of the original reporter to completely and accurately transcribe the notes. This causes access and timeliness problems when court reporters are on vacation, or ill, move out of the jurisdiction, or are otherwise unavailable. Courts must gain custody and ownership of the notes and dictionary.

III. Opportunities of Digital Recording Method

More and more sources are recognizing the value of digital recording. Digital recording of court proceedings is the "judicial future."¹⁶ This method of making the record must be the rule rather than the exception.¹⁷ Courts and the reporting profession recognize that electronic recording in the courtroom "is not only here to stay but likely to continue to grow so long as budget constraints plague our legal system."¹⁸

The evolution of record-making technology has seen the creation of several alternate methods.¹⁹ The court reporting profession and the culture of the courts have supported evolution in technology. As the methods of making the record have evolved over the decades, the judiciary has continued to seek out the best and most economical means of conducting

¹⁶ Paul Gwaltney, *Technology in the Courthouse*, Journal for the Reporting and Captioning Prof. 44 (July-August 2008) (article on integrated courtrooms) (last visited Sept. 29, 2009).

¹⁷ *Id.*

¹⁸ David Ward, *The State of Electronic Recording in the Courts, A Background Paper*, National Court Reporters Association, at 2 (Dec. 2004), available at <http://technology.ncraonline.org/NR/rdonlyres/806906B5-0411-4971-86DF-A72B23A2CC25/0/ERBackgroundPaper.pdf>

¹⁹ National Association for Court Management, *Making the Verbatim Court Record*, at 3-9 (June 2007), available to order on <http://www.nacmnet.org/miniguide.html>.

business.²⁰ Stenographic reporters and voice writers introduced computer-aided transcription and real-time skills and capabilities into the court record-making process to provide almost instantaneous translation of the spoken word. Courts have adapted their business practices and adopted new technology solutions to ensure the verbatim record of judicial proceedings is made by the most accurate, efficient and reliable means reasonably available to courts on a statewide basis. The courts' long history of capitalizing on technology is illustrated by their implementation of automated case management systems with online access to filings, electronic filing, e-commerce applications, video conferencing, evidence presentation systems, audio feeds to oral arguments, and storage of paperless stenographic notes.

The current methods of making the record have served the courts well; however, increased scrutiny, budget constraints of the current economic climate, growing needs and expectations of broader access and improved efficiency, and political pressures require courts to take the next step in the evolution of making the verbatim record. Digital recording is one of the next steps in that evolution of making the verbatim record. This technology improves the efficiency of transcript production, broadens access to the verbatim record, drives more effective management of court reporting resources, and further utilizes new technology solutions.

A. Fundamentals of Making the Record: Effective, Reliable, Accurate, Timely

Considering the significant role that the verbatim record plays in the fair, prompt, and efficient judicial review of cases, it is critical that any alternate method of making the record embody the fundamentals for its creation, production, and preservation: effectiveness, reliability, accuracy and timeliness. Digital recording meets this goal.

The quality and performance of digital recording technology has proven to be an effective and reliable solution to challenges posed by current record-making methods. The number of courts using this technology and transitioning to digital audio and video recording only continues to increase.²¹ The technology provides additional functions that bring efficiencies to many aspects of the record-making process including recording, transcribing, distributing, reviewing, staffing, archiving, and storing. The recording system can be programmed to start at a set time and the proceeding automatically saved and backed up to multiple locations. Multi-channel recording capabilities accommodate for simultaneous recording in multiple courtrooms. The technology provides the ability to continue to record the proceeding while playing back a portion of the record that was previously recorded. Sound enhancing techniques produce a clear, detailed recording that enables a reporter or transcriptionist to isolate a speaker and reduce background sounds. Video technology adds the benefit of clear identification of the speaker. A video feed can also be broadcast into a courtroom for criminal pretrial hearings.

Digital recording further enhances accuracy and completeness of the record by preserving language translations. By capturing and recording the audio of the court proceedings, this technology allows for review of the accuracy of the translations. This method of making the record also accurately portrays the role and involvement of the interpreter. For greater efficiency, digital recording systems should be integrated with teleconferencing systems that

²⁰ *Id.* at 10.

²¹ David B. Rottman and Shauna M. Strickland, *State Court Organization, 2004, Table 37 - Making the Trial Record*, U.S. Department of Justice, Bureau of Justice Statistics, Washington, D.C. USGPO, 2006, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/sco04.pdf> (this table presents a 50-state overview of the different types of court-reporting methods used).

allow an interpreter to appear remotely. This advantage is increasingly important as more and more Limited English Proficiency persons use the courts.

A proceeding annotated and monitored by a trained person is a cost-effective means to obtain the record. A recorder's annotations of the recording provide for easy playback and review and improve access. The record is readily available to electronically transmit, to make copies at a minimal cost, and to access by multiple users on the Internet and network. An attorney, party, or judge may access the recording through a court's automated case management system. Alternatively, court staff can promptly respond to a request for a copy of the record by forwarding an electronic copy via CD, DVD, or email. The convenience flows into chambers, in that a judge may use digital recording technology to record conferences in chambers, including telephonic conferences and arraignments for incarcerated persons by integrating the technology into a remote appearance system. This method is most efficient if the recording is recognized as the official record on appeal; otherwise, a qualified transcriptionist or recorder may prepare a transcript.

Methods of archiving digital recordings of court proceedings include a decentralized method and centralized network method.²² A decentralized system saves an audio recording to a CD (video to a DVD), which is stored in a secure area, and on the hard drive of a personal computer. A centralized network system archives the proceeding on a network drive located on a central storage server. Digital records maintained by either of these methods require significantly less storage space in comparison to paper files and notes.

Digital recording is a reliable record-making method that incorporates safeguards that notify the recorder or judge that the system is functioning properly. Live channel indicators display information that informs the recorder that the proceeding is being recorded. The recorder is able to immediately identify a microphone that is not operating properly. The reliability of the technology also relies on redefined responsibilities in the courtroom. The responsibility for the making of an accurate record shifts to courtroom staff as well as the judge. The recorder or presiding judge may need to play an active role in ensuring attorneys and witnesses remain close to a microphone. The operational reliability of this technology is strengthened by the quality of the equipment and security policies governing use of that equipment.²³

Courts must respond to the declining reporter resources by implementing alternate methods of making the record and changing staffing models. Digital recording technology creates an environment conducive to revisiting staffing models and assigning courtroom responsibilities. Fewer court staff are needed in courtrooms as a single digital recorder can simultaneously monitor multiple hearings or trials from a single remote location.²⁴ Even standalone digital recording in individual courtrooms allows the court monitoring staff to perform additional courtroom clerking duties such as swearing in witnesses, taking minutes, and preparing notices and orders. Both staffing models reduce staff costs and workload pressures and open up the opportunity to develop the skills of existing staff to monitor, record, and transcribe the record. The staffing models must continue to provide courtroom support for the judges, parties, attorneys, and witnesses.

²² *Making the Verbatim Court Record, supra*, at 32-33.

²³ Implementation of digital recording will require security policies governing equipment, access, indexing, and backup issues. Standards for digital audio recordings issued by the Michigan State Court Administrator's Office provide that "Because digital audio recording systems are PC-based, security becomes an issue. Courts should rely on their existing computer security policies and apply them to digital audio recording systems." Standards for Digital Audio Recording Systems, Michigan State Court Administrator's Office (Rev. 3/07).

²⁴ For example, in Hennepin County, Minnesota the court system uses a digital recording system that allows one staff person to monitor proceedings in four courtrooms simultaneously.

The digital recording method of making the record is timely by its very nature. Even when factoring the time necessary to prepare a transcript into the overall timeliness of this method, digital recording surpasses current methods. For example, the Utah court system reduced the number of days from a transcript request to production from 138 to 16 by implementing digital recording and an automated transcription management system.²⁵

B. Access

Immediate access to an accurate and usable record has an indelible impact on the manner in which courts conduct their business and the public perceives the court system.²⁶ Easy and economical access to the record broadens a person's access to justice and maintains the transparency of court proceedings. It is critical that court information be made open, accessible, and convenient through the use of technology.²⁷ Immediate access to the record has the potential to improve decision-making from the bench, bar, and administration. For example, an attorney preparing post-hearing motions or briefs can access a digital recording, confirm testimony, and insert the information into the pleading. Judges can utilize the technology in much the same manner in preparing orders and opinions following a hearing or trial. In addition, improved access could reduce litigation costs by eliminating some or all transcript costs, improve case flow to enable faster disposition, reduce appellate backlogs and delays related to transcript production, and improve the public perception of the judiciary.²⁸

Access to digital recordings of court proceedings through a variety of venues mirrors the transparency of online automated case management systems. Courts are able to make the recordings available on a court's network, distribute on a CD or via email, upload to a web page, and integrate into an automated case management system. Online access allows multiple users to access the record simultaneously. The challenges faced by courts involving access change from one in which a user has no access in the absence of a transcript, with the exception of real-time reporting, to one of almost immediate access with only search capabilities limited by the quality and detail of the log notes created by the recorder.

Storage capabilities of digital recordings further broaden access to the record. Courts have an obligation to preserve the record by maintaining files in a manner that guarantees their accuracy and availability at a future date. Retrieval of a digital recording is made easy and quick with proper labeling of network files or by linking to docket entries in a case management system. Centrally archived digital recordings are easily accessible to court staff, allow simultaneous access by multiple users from different locations, and allow efficient transmission to offsite transcriptionists and attorneys. For example, trial attorneys can, at no cost, review witness' testimony from one day of trial to prepare for the next day. Electronic access to the court record also allows attorneys to make better-informed decisions on the merits of a possible appeal prior to incurring the cost of transcript production.

²⁵ Email from Lisa Collins, Clerk of Court, Utah Court of Appeals (Nov. 24, 2009, 02:56 CST). For information on the transcript management system, see Utah Judicial Council, Minutes of July 20, 2009 Meeting, at 9, "Transcript Management System," available at <http://www.utcourts.gov/admin/judcncl/minutes.htm>

²⁶ See John A. Carver with Barry Mahoney, *How to Conduct an Assessment of Your Court's Record-Making Operations, Executive Summary*, The Justice Management Institute for the National Court Reporters Association, at 4 (June 2002) (guide through the transition to new manner of managing the record).

²⁷ COSCA, *Position paper on The Emergence of E-Everything*, 4 (2005), available at <http://cosca.ncsc.dni.us/WhitePapers/E-EverythingPositionPaperApprovedDec05.pdf>.

²⁸ *Id.*

An essential aspect of automation is that courts use standardized technology to insure future access. Standards for archiving, storage, conversion, and retrieval of digital recordings of court proceedings will preserve the record, insure access, and improve security. In its 1999 report the Federal Judicial Center was critical that “there is no standard format for digital recording. Absent standardization, there is no assurance that the record produced by any of the systems currently available will be readable if the vendor were to leave the business or cease support of its system.”²⁹ In its 2003 report the Massachusetts Study Committee on Trial Transcripts recognized the need to address the longevity of the physical media and technological obsolescence of the digital recording systems in stating “it is important to recognize the potential for format obsolescence. . . . [I]t 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.”³⁰ COSCA recommends that the National Center for State Courts develop national standards on the preservation of digital media. The development of such standards will facilitate conversion to newer technologies and preserve the integrity of the verbatim record.

C. Administrative control

Long overdue is court control of (1) transcript production, (2) assignment of limited court reporter resources, and (3) ownership of the record. Courts have a powerful tool in digital recording to accomplish this cultural change.

Digital recording technology provides an opportunity for courts to strengthen the manner in which transcripts are produced. Courts gain greater control of transcript production by managing the assignment of staff to record the proceedings digitally and to prepare any transcript. The traditional method of courtroom assignment frequently uses court reporters for all cases even though very few are appealed or have a transcript requested. The reporter who attends and takes notes of the proceeding is responsible for preparing the transcript. The utilization of digital recording technology creates a significantly greater number of staffing options for the court's disposal in making the record. Digital recording adds alternatives that allow courts (1) to determine whether to have the proceeding recorded and annotated, or simply monitored, and assign staff accordingly, and (2) to assign responsibility for the preparation of a transcript. Courts have the flexibility to rely on a staff member other than the recorder or monitor to prepare the transcript of a digitally recorded proceeding. Courts with control of these decisions could potentially reduce the transcript production time and ensure any transcript production is given priority because courts can readily consider the workload of staff and make efficient and effective use of available resources.

As courts transition to digital recording and gain greater control of transcript production, they may consider developing guidelines that identify the type of cases that will best utilize digital recording. These guidelines may assist with the transition by addressing concerns about

²⁹ Stienstra, Donna et al., *Digital Audio Recording Technology: A Report on a Pilot Project in Twelve Federal Courts*, Washington, DC: Federal Judicial Center, at 42 (1999), available on [http://www.fjc.gov/public/pdf.nsf/lookup/datrept.pdf/\\$file/datrept.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/datrept.pdf/$file/datrept.pdf).

³⁰ *Report of the Study Committee on Trial Transcripts*, Massachusetts Study Committee on Trial Transcripts submitted to Justices on the Supreme Judicial Court, at 44 fn. 57 (June 30, 2003), at <http://www.mass.gov/courts/trialtransrep.pdf>. See Gregory S. Hunter, *Impact of Information Technology on Local Government Archival Records: A report to the Local Government Archivists Task Force of the Council of State Archivists*, at 7 (June 2007), available at <http://www.statearchivists.org/lga/documents/reports/Hunter-report.doc>.

roles and responsibilities and defining expectations for all courtroom staff. Initially, a court should consider recording, at least, uncontested domestic relations hearings, arraignments, some probate matters or other case types that are unlikely to be appealed. Stenographic court reporters using real-time technology, which provides additional support to the trial judge, could continue to be utilized in complex civil and capital criminal cases.

Court administrators need the latitude to allocate courtroom resources and realign staff, including personal appointee court reporters, to better fit the new technology, improve productivity, meet the needs of the courts as a whole, and provide an appropriate level of service. Some courts are transitioning from the traditional staffing model where a court reporter is employed as a personal appointee of a judge to a digital recording model that trains existing staff to manage the technology. The NCRA conducted an in-house survey in 2006 that indicated 71.5% of responding court reporters were personal appointees.³¹ A court reporter serving as a personal appointee is assigned reporting responsibilities for a specific judge on a permanent basis and is supervised solely by that judge. These reporters have long-established relationships with their judges. A reporter substituting for a personal appointee may have difficulty in meeting the expectations of the judge with regard to courtroom responsibilities. Judges are reluctant to allow their reporter to be reassigned to other courtrooms. The personal appointee staffing model limits the optimal use of staff, fails to utilize digital recording fully and constricts a court administrator's ability to manage resources.³² Court reporters are well equipped to manage digital technology and transition into a digital recording method as recorders, monitors, and transcriptionists.

Existing court staff members provide another pool of resources that require less specialized training than a stenographic reporter or voice writer. Internal staff can be trained in working with the equipment and creating detailed annotations to meet the monitoring or recording needs of the courts. Courts should develop standards for monitors and recorders to ensure full familiarity with the equipment and troubleshooting, proficient annotations, and understanding of courtroom procedures and vocabulary. A centralized monitoring system is very efficient for proceedings where there is little probability that a transcript will be requested. Alternatively, a recorder assigned to a courtroom annotates the proceeding by identifying speakers and noting transitions and is present in the courtroom to ensure the quality of the recording and to clarify inaudible statements. These options help alleviate the complications caused by lack of coverage and allow for the optimum placement of resources and utilization of skills. "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."³³ Courts must incorporate the responsibility for transcription production into their business functions.

In order to ensure the reliability, integrity, and accurate production of a timely transcript, courts must gain control of all aspects of the record including the notes and stenographic dictionary. The implementation of an alternative method of making the record creates an opportunity to establish, whether by statute or court rule, that all records of judicial proceedings

³¹ *Making the Verbatim Court Record*, *supra*, at 5.

³² *Id.* at 12.

³³ *Report of the Study Committee on Trial Transcripts*, *supra*, at 47.

belong to the courts.³⁴ For example, in July 2009 the Florida Supreme Court amended its rules of judicial administration to provide the chief judge of the circuit is the owner of all records and electronic records. New subdivision 2.535(d), "Ownership of Records," states "The chief judge of the circuit in which a proceeding is pending, in his or her official capacity, is the owner of all records and electronic records made by an official court reporter or quasi-judicial officer in proceedings required to be reported at public expense and proceedings reported for the court's own use." The Supreme Court of Colorado adopted a "Management Plan for Court Reporting and Recording Services" that addresses custody under the stenographic method. The plan requires a court reporter leaving the employment of the judicial branch shall provide the court with notes and dictionary for all cases the reporter has done while a state employee. The notes remain the property of the judicial branch but the reporter retains the right of first refusal regarding the preparation of a transcript.³⁵ In gaining management of all aspects of the record, courts assume the responsibility to maintain and update the technology. Again, the cost is worth the effort because by establishing control of the notes and dictionary, the courts can more effectively manage the record-making process.

D. Integration of digital recordings with case management systems

The needs and expectations of attorneys and the public, the increasing volume of the court's business, and limited budgets require that courts produce accessible and transparent multi-media records.³⁶ The implementation of automated case management systems has only increased expectations that case information should be consolidated and accessible at a single location. In a position paper COSCA explored the integration of electronic access technology into the court environment and recommended that court administrators provide "one-stop shopping" for court information.³⁷ Many courts have also integrated electronic filing of documents and payment of filing fees electronically into their business practices. Digital technology allows a court to integrate the recording system with other digital applications, including case management and calendaring systems, and provides for easy access and future exchange of information. The implementation of digital recording will complement these technological advances, improve access, and move courts closer toward "e-everything" -- a full electronic record available to judges, attorneys, parties, and the public.

E. Potential savings

In times of growing economic crisis, courts cannot afford to turn a deaf ear to the advantages supporting digital recording. The technology is an economic alternative to traditional court reporting that provides savings to both litigants and courts. The cost to litigants is reduced because the digital recording is available at less cost than a prepared transcript. Courts have the potential to gain substantial savings with digital technology because court reporters are a significant cost factor in court budgets. For example, in Iowa, court reporting resources will cost

³⁴ *Lipman v. Commonwealth of Massachusetts*, 475 F.2d 565, 568 (1st Cir. 1973) (Court held the court reporter had neither a property right nor common law copyright in the transcript of judicial proceedings.).

³⁵ Colorado Rule of Civil Procedure 80(d) provides that "[a]ll reporter's notes shall be the property of the state."

³⁶ See April C. Artegan, *The Technology-Augmented Court Record*, CTC5 Education Session Article (1997), available at www.ncsconline.org/D_Tech/ctc/showarticle.asp?id=87 (last accessed December 17, 2009).

³⁷ *The Emergence of E-Everything*, *supra*, at 7.

over \$15 million in fiscal year 2010 (July 2009-June 2010).³⁸ In Wisconsin, the annual costs of reporting resources will be \$21 million in fiscal year 2010. These costs consume 31% of the court's operating budget, which includes judges' salaries and equipment costs.³⁹

In comparing the expenses of digital recording equipment and installation with savings associated with assigning staff to monitor multiple courtrooms simultaneously and reducing storage requirements, courts have recognized the technology's capability to provide savings. In a case study conducted for a background paper on electronic recording in the courts, a court administrator explained that the recurring cost savings of an electronic recording system far surpassed the hardware and software costs.⁴⁰ Another court administrator stated that the county saved over a quarter of a million dollars in the first year following the installation of the system.⁴¹ As more courts implement digital recording, they continue to study and compare costs of their record-making methods. A state shorthand reporters association referenced recent efforts to study the costs associated with court-reporter based courtrooms and digital recording courtrooms. In a 2007 newsletter the association noted that the National Court Reporters Association commissioned the Opinion Dynamics Corporation to conduct an electronic recording/court reporter cost comparison study.⁴²

The benefits of digital recording go beyond cost savings because the technology provides an alternate method of making the record of court proceedings, enhances efficiency of the record-making process, and improves access to the record. Greater access and efficiency come at a cost, but it is a cost that outweighs the consequences of maintaining a record-making method dependent on stenographic court reporters or voice writers only. As noted earlier, courts are competing for declining court reporter resources. The investment in digital recording is inevitable because the technology provides solutions to the challenges of the current methods of making the record. The implementation of any new method of making the record requires a significant initial financial and time investment and a long-term commitment to maintain and upgrade the equipment and software.

For some courts the court reporters are funding current technologies.⁴³ The implementation of digital recording and responsibility for maintenance of a new technology shifts this financial burden to the courts. A court will need to dedicate resources to develop staff to monitor and troubleshoot equipment, provide playback, and transcribe electronically recorded proceedings. The opportunity for additional savings for both litigants and the courts could be greater if state courts of appeals accepted audio or video recordings as the official record on appeal.

A return-on-investment strategy and cost analysis is specific to each court and is based on the level of use and timing of the full implementation of this method of making the record. The

³⁸ State Court Administrator's Office, Iowa Courts.

³⁹ Director of State Courts Office, Wisconsin Courts.

⁴⁰ *The State of Electronic Recording in the Courts*, *supra*, at 5 (case study of Florida's 9th Judicial Circuit).

⁴¹ *How to Conduct an Assessment of Your Court's Record-Making Operations*, *supra*, Vol. II, p. 26 (citing Interview with Robert Wallace, Court Administrator for Anne Arundel County Circuit Court (December 14, 2000)).

⁴² *Leadership Conference*, Short Strokes Newsletter (Georgia Shorthand Reporters Association), Winter 2007, at 6, available at <http://www.gsra.org/SS/Winter2007.pdf>. The study is also referenced on the Democracy International, Inc. Web site, see http://www.democracyinternational.com/global_programs.html, as a research project in which Democracy International worked with Opinions Dynamics Corporation (<http://www.opiniondynamics.com>).

⁴³ See California Court Reporters Association, *Cost Implications of State "Ownership" of the Verbatim Record in California*, at 2 (Revised June 1, 2009), available at <http://www.cal-ccra.org/documents/Crawford-TranscriptOwnershipFinal2009.pdf>.

amount of savings will depend on many factors, including whether the court transitions to digital recording through attrition of court reporters, whether the court uses digital recording for most case types, how many case types the courts simply monitor, and whether the court centralizes the monitoring and transcribing of court proceedings.

IV. National Implementation Strategies and Transition to Digital Recording

The next logical and necessary step in the evolution of making the verbatim record is digital recording of court proceedings. Courts implementing digital recording will experience “new opportunities for effective management, reliable record keeping, efficient transcript production,” and integration with other automated systems in the courts.⁴⁴

The transition to digital recording as an alternate method of making the record by some courts has brought the advent of a significant cultural change in the manner in which those courts conduct their business. The decision to change the manner in which a court makes the record involves careful consideration of consequences, cost implications, and work product and process outcomes. A combination of factors is behind the change, including budget constraints, declining reporter resources, inability to recruit or retain court reporters, political pressures, increasing caseloads, growing expectation for access to court records, and improvements in technology. In light of these factors, the arguments that supported the current methods are no longer valid and fail to justify a court’s continued dependence on stenographic reporting to make the record.

The transition to digital recording will require a change from longstanding traditions. For example, the physical presence of a court reporter in a courtroom has been a mainstay of the traditional system.⁴⁵ Courts are assigning other courtroom and administrative responsibilities to traditional stenographic reporters or replacing or supplementing the reporters with digital recorders or monitors to resolve challenges with vacancies in court reporting personnel and increasing costs of stenographic reporters.⁴⁶ The designation of personal appointees must succumb to the courts’ broader need to manage transcript production and resources. Illinois courts have pooled court-reporting services, where possible, as the courts continue to install digital recording systems. Some courts have instituted a policy to reduce the number of stenographic court reporters employed by the court system by attrition, by adding recording responsibilities to the positions, or by layoffs. Reporters in Kentucky Circuit Courts were mainly phased out through attrition as the state constructed new facilities in which each circuit courtroom was equipped with video recording.⁴⁷ Other courts maintain a blended service delivery model consisting of reporters, recorders, and monitors, which includes an assignment

⁴⁴ Richard Ryan Lamb, *Using Video Recording as a Component in Managing Your Court*, CTC4 Education Session Article (1994), available at http://www.ncsconline.org/d_tech/ctc/showarticle.asp?id=109 (last accessed December 17, 2009).

⁴⁵ Justice Research Institute, *Court Reporting Technologies: A Cost-Benefit Analysis and Qualitative Assessment* at 9 (1992), available at http://www.cal-ccra.org/Court_Reporting-TeEA6FE.pdf.

⁴⁶ See Arizona Supreme Court Committee on Keeping the Record, Final Report, at 1 (Dec. 2005). Compare David B. Rottman, et al., *State Court Organization, 1993, Table 31 – Making the Trial Record: Electronic Recording of Trial Proceedings*, U.S. Department of Justice, Bureau of Justice Statistics, Washington, D.C., USGPO, 1995, with David B. Rottman and Shauna M. Strickland, *State Court Organization, 2004, Table 37 – Making the Trial Record*, U.S. Department of Justice, Bureau of Justice Statistics, Washington, D.C., USGPO, 2006.

⁴⁷ See Brian Miller, *Court Reporting: From Stenography to Technology*, Government Technology, at 2 (March 1, 1996), at www.govtech.com/gt/95570 (last accessed December 17, 2009).

process based on case types. The Utah court system discontinued use of all court reporters in 2009, with the exception of the option for contract reporters in capital criminal cases. The decision to move to an all digital recording operation was made by the Utah Judicial Council as one of a number of steps the courts took in response to budget reductions mandated by the legislature.⁴⁸

This change shifts responsibility for the record from the stenographic court reporter or voice writer to the judge and staff. This enhancement to a court's technical infrastructure brings with it a need for different skills and responsibilities among staff, including recording, transcribing, accessing and managing electronic records. Court staff maintain and troubleshoot the equipment, monitor its functioning, and educate attorneys about the technology. They annotate the record, transcribe the recording, retrieve and prepare copies upon request, and archive the records with appropriate indexing and labeling.

The appellate courts could also influence the degree of cultural change by adopting the digital audio or video recording as the official record on appeal. The Kentucky Supreme Court already recognizes official video recordings as the original record on appeal.⁴⁹ Ohio Rule of Appellate Procedure 9, Record on Appeal, provides that a videotape recording of the proceedings constitutes the transcript of proceedings and need not be transcribed into written form with the exception that counsel shall type or print those portions of such transcript necessary for the court to determine the questions presented, certify their accuracy, and append such copy of the portions of the transcripts to their briefs.⁵⁰

In many instances, significant change has been facilitated by strong leadership and study committees such as the Arizona Supreme Court's Committee on Keeping the Record and Florida's Commission on Trial Court Performance and Accountability that lay the foundation for the transition and address the difficult questions by analyzing the court's business. Such committees have issued reports following extensive reviews of the methods for making the record of judicial proceedings and detailed research of legal and operational issues arising from the use of digital recording technology.⁵¹ Such committees identify statutory or rule limitations on a court's record-making responsibility, analyze the degree to which business practices must be reworked, determine the feasibility of relying on one method of making the record or sustaining multiple methods, propose the appropriate staffing model, outline a strategy to roll out the policy and standards, advocate for the digital record to be the official record on appeal, and ultimately make comprehensive recommendations for changes to a court's infrastructure.

In evaluating their record-making function and procedures as part of this transition to digital recording, courts must develop standards governing the technology and define the qualifications, roles, and responsibilities of recorders, monitors, and transcriptionists to ensure its success. In addition, courts should establish ownership, transition personal appointee reporters into a pool of resources for court-wide use, and explain how courtroom assignments will be

⁴⁸ Utah Judicial Council, Minutes of October 27, 2008 Meeting, at 12, "Budget Planning," *available at* <http://www.utcourts.gov/admin/judcncl/minutes.htm>

⁴⁹ Ky. R. Civ. P. 98(3).

⁵⁰ Ohio R. App. P. 9. The rule further states that "[p]roceedings recorded by means other than videotape must be transcribed into written form."

⁵¹ Arizona Supreme Court Committee on Keeping the Record, Final Report (Dec. 2005); In re Amendments to the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure – Implementation of Comm'n on Trial Court Performance and Accountability Recommendations, at 2, SC08-1658 (July 16, 2009). The commission created in 2002 to make recommendations concerning the improvement and accountability of Florida's trial courts. In re Comm'n on Trial Court Performance and Accountability, AOSC02-27, at 2 (Aug. 30, 2002).

made based on case types and court needs. In developing digital recording standards courts may consider whether to provide exceptions for the use of stenographic real time reporting in capital criminal cases, proceedings involving hearing impaired participants, and complex cases. Courts should develop standards for topics including equipment, operation, security, storage, backup, retrieval, transcription and certification, redaction, retention, custody, and public access. In 2006 the Arizona Supreme Court adopted technical and operational standards for digital recording used in courtrooms to create the official record of a court proceeding.⁵² The development of standards has helped courts better manage the cultural change.

Court rules or standards on digital reporting should define the persons who can transcribe from digitally recorded proceedings and require that any transcript filed for official use by a court must be produced by a person meeting the qualifications. The Arizona Supreme Court developed a manual of transcript procedures that governs official transcripts of court proceedings prepared from electronic recordings.⁵³ Courts can determine whether transcripts of electronically recorded proceedings should be produced by the recorder at his or her court location, by a transcriptionist at a centralized location, or by an independent contract transcription service. One court's standards on transcription provide that a certified reporter, court employee, or transcriber under contract with a court shall produce the official transcripts of electronically recorded proceedings.⁵⁴ Another court's rule mandates that only state-certified reporters and recorders may transcribe the proceedings.⁵⁵

The shift to digital recording in courtrooms can cause anxiety among judges, court reporters, staff, and attorneys. As with any significant cultural change, consideration should be given to meeting the needs of stakeholders, maintaining the integrity of the record, and communicating the difference between the current culture and the new culture, which means explaining how the court's record-making business will be different and sustaining the change.

Tools and guides developed by other courts that have implemented digital recording are valuable resources. These courts have already worked through the processes of shifting behaviors, relationships, responsibilities, and attitudes as well as the changing of technologies. In addition, NACM reported lessons learned from a 2002 survey of the methods employed by courts to make the verbatim record. The lessons set forth in Making the Verbatim Court Record serve as well-constructed guideposts for courts implementing digital recording. Lessons learned included (1) one size does not fit all -- one method of making the record will be a solution for all courts -- and (2) courts need to maintain operational flexibility.⁵⁶ The following national resources also provide guidance to courts managing this cultural change.

A. National Association for Court Management

The National Association for Court Management published a mini-guide on making and managing the verbatim record.⁵⁷ This resource, "Making the Verbatim Court Record," documents the methods of making the record and the evolution of different technologies, sets

⁵² Arizona Code of Jud. Admin. § 1-602, adopted by Administrative Order 2006-49 (June 26, 2006).

⁵³ See Arizona Manual of Transcript Procedures (Dec. 2006), at <http://www.supreme.state.az.us/ktr/TranscriptManual.pdf>.

⁵⁴ Ariz. Code of Jud. Admin. § 1-602(5)(a).

⁵⁵ Mich. Ct. R. 8.018.

⁵⁶ *Making the Verbatim Court Record*, *supra*, at 10-13; see Carver, *supra*, at vol. I, p. 18.

⁵⁷ *Making the Verbatim Court Record*, *supra*, at 5.

forth decision criteria to identify the most appropriate and cost-effective method, and makes recommendations on the management of court reporting resources.

B. Justice Management Institute

The Justice Management Institute developed a tool to assist courts in examining and assessing the efficiency and effectiveness of their record-making process and policies and to guide courts through a planning process if they determined changes were appropriate. The two-volume guide entitled “How to Conduct an Assessment of Your Court’s Record-Making Operations: A Systematic Approach”⁵⁸ is based on a study conducted on the process of making the record. The National Court Reporters Foundation funded the study.

C. National Center for State Courts

NCSC published a 1991 report discussing advantages and disadvantages of video court reporting and issues involved in this method of record making. In predicting the outlook for the future of video court reporting, the report stated that trial courts will “use the technology as a remedy for problems experienced with traditional reporting.”⁵⁹

D. Federal Judicial Center

Digital audio recording has been an authorized method of making the record in federal district courts since 1999, and the federal courts continue to build on this technology. The Federal Judicial Center (FJC) conducted a study of the use of digital audio recording in federal district court and bankruptcy court proceedings.⁶⁰ FJC initiated the study to assess the functions of digital audio recording technology and assist in determining whether the technology should be recognized as an approved method for taking the official record of federal court proceedings.

In 1999 the FJC issued a report, “Digital Audio Recording Technology: A Report on a Pilot Project in Twelve Federal Courts,” and found that digital audio recording technology provides an accurate, reliable method of making the record. The pilot courts concluded that digital recording was “the wave of the future” and “the direction the courts must go.”⁶¹ This report is another resource that can aid courts in their implementation of digital recording. The report provides guidance for the future use of digital recording technology and sets forth questions for courts to ask and issues to consider.

Based on the study, the Committee on Court Administration and Case Management recommended and the Judicial Conference approved digital audio recording technology as another method of making an official record of federal court proceedings. In 1999 the Judicial Conference approved digital audio recording technology as a method of making the court record in federal court under 28 U.S.C. § 753(b).⁶²

⁵⁸ Carver, *supra*.

⁵⁹ National Center for State Courts, *Video Court Reporting: A Primer for Trial and Appellate Court Judges*, at 12 (June 28, 1991).

⁶⁰ In 1997 the Judicial Conference authorized a study of the use of digital audio recording in court proceedings.

⁶¹ *Digital Audio Recording Technology supra*, at 36.

⁶² *Report of the Proceedings of the Judicial Conference of the United States*, at 56-57 (Sept. 15, 1999), available at <http://www.uscourts.gov/judconf/99-Sep.pdf>.

Federal courts have also taken advantage of the technology that allows a court to link an electronic recording to the case management system so the audio may be accessed and reviewed from the docket list of case events. In August 2007 the federal courts initiated a pilot project to make digital audio recordings of courtroom proceedings publicly available online. Participating district courts are docketing some digital audio recordings to Case Management/Electronic Case Files (CM/ECF) systems to make the audio files available on the Internet. The pilot project was expanded from five federal courts to nine through the end of 2009.⁶³

V. Recommendations

1. Digital Recording Implementation

State courts should move to digital recording as the method for making the verbatim record, with the possible exceptions for complex civil and capital criminal cases where real-time or stenographic reporting are specifically designated. State courts should establish ownership of the record and review the feasibility of the digital recording being the official record on appeal.

2. Digital Recording Planning

State courts should develop their own comprehensive, strategic plan for digital recording, implement the technology as a method of making the verbatim record, and adopt functional and technical standards to provide guidance, support, and service to judges, attorneys, reporters and recorders, transcriptionists, court staff, and the public.

3. Review of standards and procedures for transcript production

COSCA should request that NCSC conduct a survey of existing standards and procedures and compile a resource reference for use by courts. The relevant procedures would address questions of how the transcript is produced, who prepares the transcript, and criteria for certification.

4. Standards for the technology, archiving, storage, and retrieval of digital audio and video recordings of court proceedings

COSCA should request that NCSC develop comprehensive model standards that govern the technology (e.g., hardware, software, file and communication standards), archiving, storage, and retrieval of electronic recordings of court proceedings and safeguard the integrity of the record.

⁶³ Administrative Office of the U.S. Courts, *Project Expanded: More Courts Offering Digital Audio Recordings Online* (April 15, 2009), available at <http://www.uscourts.gov/newsroom/2009/digitalAudio.cfm>

Attachment B

**Updated COSCA Response Summary
February 8, 2010**

- 1) **Does your jurisdiction have an official definition of “the record?”**
- Arkansas: the pleadings, judgment, decree, order appealed, transcript, exhibit, and certificates
 - Arizona: answers inapplicable (defined transcript)
 - California: no official definition
 - Delaware: the original means of capturing the dialog (audio/video recording, reporter’s notes)
 - Florida: the transcript, which is the written record of court proceedings and depositions
 - Georgia: defines “court record” as all documents, papers, letters, maps, books, microfilm, magnetic tape, etc. made or received pursuant to law or ordinance
 - Idaho: answer inapplicable (defined transcript)
 - Indiana: no official definition, depends upon the context
 - Kansas: the entire record includes: all original papers/exhibits, court reporter’s notes, transcripts, entries on appearance docket
 - Maine: no official definition
 - Minnesota: the transcript is the official record
 - Missouri: no official definition
 - Nebraska: no official definition
 - Nevada: no official definition
 - includes, but not limited to, any document, information, exhibit, decree, judgment, etc.
 - New Hampshire: the certified, digitally-signed transcript prepared by the transcriber designated by the Supreme Court
 - New Jersey: all proceedings shall be recorded verbatim except settlement/case management conferences, calendar calls and ex parte motions
 - North Carolina: the clerk shall maintain the original verbatim record of those court proceedings specified by statute to have such a record made
 - Ohio: describes record for appellate purposes as all original papers/exhibits, the transcript, journal entries and the docket prepared by the clerk
 - Oregon: defines record on appeal as the trial court file, exhibits, and as much of the record or oral proceedings as has been designated in the notices of appeal filed by the parties
 - South Carolina: defines record on appeal as the transcript, which provides the appellate court with reliable information regarding trial court proceedings
 - South Dakota: no official definition
 - Court Reporting Committee is proposing one at next Supreme Court Rules Hearing
 - Tennessee: no official definition
 - Texas: for appellate purposes, there are 2 records
 - clerk’s: in civil, includes all pleadings / in criminal: indictment/information, waivers, stipulations
 - also docket sheet, jury verdict, charge, judgment, notice of appeal, etc
 - reporter’s:
 - if stenographically recorded: reporter’s transcription and any exhibits the parties designate
 - if electronically recorded: certified copies of all tapes, any exhibits the parties designate and certified copies of the logs prepared by the reporter
 - Utah: for appellate purposes, the original papers/exhibits filed with the trial court, the transcript, the index prepared by the clerk and the docket sheet
 - Washington: includes, but is not limited to, (1) any document, information, exhibit, or other thing that is maintained by the court in connection with a judicial proceeding and (2) any index, calendar, docket, order, decree, judgment, minute, and any information in a

case management system created or prepared by the court that is related to a judicial proceeding

Summary: The most prevalent answer that we received (10) was that the jurisdiction does not have an official definition of “the record.” An additional five only gave a definition of “the record” for appellate purposes only. For those states that have defined “the record,” their responses fall into two general categories: (1) five stated the memorialization of what occurs in a courtroom and (2) five stated the pleadings, transcripts, judgments, exhibits, etc.

2) What method(s) does your jurisdiction utilize to memorialize what occurs in the courtroom?

- Arkansas: official court reporter
- Arizona: general jurisdiction courts: steno reporters and digital equipment (FTR, CourtSmart JAVS)
limited jurisdiction courts: digital or analogue recording equipment
-2006: 1st Voice Writing school (do not know how many voice-writers working as official reporters)
- California: official stenographic court reporters
-audio electronic recording limited by statute to misdemeanors, infractions, civil under \$25,000
- Delaware: court reporting, real time court reporting, audio recording, video recording
- Florida: stenography, computer-aided transcription, real-time court reporting, analog recording, digital recording, and voice writing
-pursuing the elimination of analog recording
- Georgia: manual shorthand, machine shorthand, closed microphone voice dictation silencer, or other personal verbatim reporting of any testimony given under oath
- Idaho: Stenographic reporting and digital recording
- Indiana: any suitable media, which could include digital recording, tape recording, shorthand, or video
- Kansas: stenographic court reporting, voice writer and digital recording
- Maine: official court reporter or electronic recording
- Minnesota: Stenographic recording, electronic recording, digital recording
- Missouri: Generally, a court reporter using steno mask or steno writer for circuit judges; and digital sound recording and a few analog sound recording machines for associate circuit judges. If the proceeding is sound recorded, the machine is operated by a court clerk who has no responsibility for transcribing the recording.
- Nebraska: multitrak recorders (analog and digital) and stenographic court reporters
- Nevada: stenographic court reporters, voice writing
- New Hampshire: digital audio recording (FTR software) in larger courts, analog reel to reel recording equipment is smaller courtrooms (installing digital as funds allow)
- New Jersey: court reporters, video recording, digital audio, analog audio
-in process of converting all analog to digital
- North Carolina: court reporters, video digital recording and audio digital recording
- Ohio: varies from court to court (electronic recording devices, digital recording devices, stenographers)
- Oregon: electronic digital recording methods (mostly audio, some video); few stenographic court reporters (2 of the 36 counties)
-cases not subject to potential appeal, such as small claims, may or may not be recorded
- South Carolina: voice writing, stenotype, and computer-aided transcription methods, along with backup audio tapes and digital recorders
- South Dakota: stenographic court reporters and electronic court recording
- Tennessee: analog and digital recording equipment and salaried and contract reporters
- Texas: shorthand reporting
- Utah: digital recording systems maintain the verbatim record of all court proceedings with audio and video files stored on court's computer network
-permitted to contract with a licensed certified court reporter in capital cases
-party can arrange for having a licensed certified court reporter if get prior court approval and pay

Summary: The responses indicate that the states use a variety of different technologies to memorialize what occurs in the courtroom.

3) Is a typed transcript part of the official court record, the entire record, or not part of the record?

- Arkansas: part of the record
- Arizona: part of record only if ordered by party/judge and filed with the clerk by reporter/transcriber
- California: part of record when/if it is transcribed
- Delaware: original recording is the record
- Florida: transcript is the official record
- Georgia: part of the record
- Idaho: certified transcript is the official record if proceeding stenographically reported
- Indiana: part of the record
- Kansas: part of the record
- Maine: part of record
- Minnesota: part of the record
- Missouri: part of the record
- Nebraska: part of record
- Nevada: part of record
- New Hampshire: part of record
- New Jersey: reporter's notes or saved electronic recorded proceeding is official record
- North Carolina: part of the record
- Ohio: part of the record
- Oregon: part of the record
- South Carolina: part of the record
- South Dakota: part of record
- Tennessee: part of the record
- Texas: part of record
- Utah: part of record

Summary: Overwhelmingly, the typed transcript is only a part of the official record (20 states). The typed transcript or the original recording is considered the entire record in the remaining four states that responded.

4) Who owns the record?

- Arkansas: property of the trial court
 - maintained by official court reporter during employment, returned to court once employment ceases
 - can be held in contempt if fail to comply
- Arizona: once filed with clerk's office, copies can be sold by clerk's office
- California: public documents and not "owned" by anyone
 - court reporters have statutory right to prepare/sell transcripts of proceedings where they were reporter
 - when leave position, must be given first opportunity to prepare transcript
- Colorado: all reporters' notes shall be property of the state (by rule)
- Delaware: the court
- Florida: Rule 2.535(d): "The chief judge of the circuit in which a proceeding is pending, in his or her official capacity, is the owner of all records and electronic records made by an official court reporter or quasi-judicial officer in proceedings required to be reported at public expense and proceedings reported for the court's own use."
 - in proceedings not required to be reported at public expense (most civil proceedings), the private reporter hired by the parties is the owner of the notes or recordings
- Georgia: all records created or received in the performance of a public duty or paid by public funds by a governing body are deemed to be public property and shall constitute a record of public acts
- Idaho: the court
- Indiana: the court or administrative agency before whom the proceedings were conducted
- Kansas: broadly, the Judicial Branch
 - court reporter notes belong to the district court
- Maine: the court
- Minnesota: the court
- Missouri: answer inapplicable (answer stated that reporter is to be paid for a copy of the transcript, but does not state who owns the record).
- Nebraska: the court
 - county court: kept in custody of the court
 - district court: kept in custody of official court reporter until employment ceases, then returned to clerk of the court (per court rule)
- Nevada: the court
 - must retain notes for 8 years if concern matter subject to judicial review
- New Hampshire: once transcript is produced, it becomes property of Judicial Branch
 - no answer as to what happens prior
- New Jersey: the court
- North Carolina: the Clerk of the Superior Court is the custodian of audio and video digital recordings, as well as the court reporter's stenographic tapes and notes. The original tapes, notes, disks and other records produced by the court reporters in making the record are the property of the State, and the clerk shall maintain them in their custody.
- Ohio: the court
- Oregon: records/files shall be maintained by the clerk or court administrator
 - stenographic reporters required to file their notes with the clerk, regardless of whether they are state employees or privately retained
- South Carolina: rules do not specifically address ownership; rule requires that reporters retain the records (steno notes, primary and backup tapes) for five years before they can be destroyed. When reporters leave state employment, required to turn the records over to the Branch for the five-year retention period.
- South Dakota: the court
 - transcribed by a "guardian" reporter if needed

- Tennessee: the state
- Texas: the reporter (not spelled out in statute)
- Utah: the court
 - Rule 4-201(3)(A): records filed by the court reporter with the court are the property of the court

Summary: Overwhelmingly, the states responding indicated that the record is owned by the court. However, few states provided any support for this proposition. Certain states, such as Colorado and Florida, have spelled out in their Practice Book Rules that it is the state or the Chief Justice, in his/her official capacity, that is the owner of all records made by court reporters. The only state that indicated that the record is owned by the reporter was Texas, although it is not explicitly stated anywhere.

5) If the individual who is reporting/transcribing/memorializing the record owns the record, what happens to the memorialization when that person leaves state employment?

- Arkansas: NA
- Arizona: NA
- California: NA
- Delaware: NA
- Florida: NA as to proceedings required to be reported by law or reported for the court's own use, as the chief judge is the owner. In regard to private court reporters, they must keep their notes in a secure place in Florida
- Georgia: does not employ court reporters as state employees; however, the Judicial Council of Georgia Board of Court Reporting has implemented a practice whereby court reporters are asked to identify the location of their records in the event of retirement, sudden illness, or upon acquiring inactive status
- Idaho: NA
- Indiana: NA
- Kansas: NA
- Maine: NA
- Minnesota: NA
- Missouri: Their Supreme Court requires court reporters to provide a copy of each hearing, a copy of their dictionary and a log of cases heard to the circuit clerk every 6 months. If the person leaves employment but is still available, they can produce the transcript. If the original court reporter is unavailable, the court will have the case notes on file and will find another court reporter who can read those notes to produce the transcript.
- Nebraska: NA
- Nevada: NA
- New Hampshire: NA
- New Jersey: NA
- North Carolina: NA
- Ohio: NA
- Oregon: NA
- South Carolina: when leave state employment, required to turn over records to the Branch for five-year retention period
- South Dakota: NA
- Tennessee: NA
- Texas: must preserve their notes for 3 years
- Utah: NA

Summary: Since most states indicated that it is the court that owns the record, this question was not applicable. For the only state that indicated that the reporter owns the record (Texas), they only responded that the reporter is required to preserve their notes for 3 years. However, they did not indicate what happens if that did not occur.

6.) Who owns the equipment by which a court proceeding is memorialized?

- Arkansas: Ownership varies among judicial districts; in some jurisdictions, the counties own the equipment, and in others, the court reporters provide their own equipment.
- Arizona: Generally, steno equipment is owned by the court reporter who uses it; digital equipment is purchased and installed by court administration.
- California: Pursuant to statute (GovtCodeSection 70313), courts are precluded from purchasing stenographic and other production equipment for reporters and therefore, the reporters use their own. The court purchases and owns electronic recording equipment used in the courtrooms. (Primarily, courts use official steno court reporters. Audio recording is used in some courts, but is limited by statute to misdemeanors, infractions and civil matters under \$25,000.)
- Delaware: The court reporters own their machines; audio and video equipment is owned by the Court.
- Florida: Florida owns the majority of stenographic and digital court reporting equipment. However, in some cases, courts contract with various court reporting firms that bring in privately owned equipment
- Georgia: county or court may purchase the equipment
- Idaho: The official court reporter owns the necessary equipment to capture the record stenographically. The court owns the digital recording equipment.
- Indiana: generally, the courts
- Kansas: varies by district, but generally it is the counties
- Maine: Court reporters own their own equipment. The court system owns the electronic recording system.
- Minnesota: Stenographic court reporters own their equipment. Court administration owns digital/electronic recording equipment.
- Missouri: If sound recording equipment is used, it is owned by the county in which the court is located. If an official court reporter is used, the equipment can be owned by the county or the reporter, depending on the policy of the local court.
- Nebraska: In County court, the Supreme Court owns the equipment. In District Court, the court reporters own the equipment.
- Nevada: It could either be the court reporter, or if the court has established its own recording procedures, such as JAVS video, the court would own the equipment.
- New Hampshire: The Judicial Branch owns all audio recording equipment used in its courtrooms.
- New Jersey: Court reporters are responsible to provide their own equipment. For electronic recording the equipment is owned by the judiciary.
- North Carolina: North Carolina Administrative Office of the Courts owns the digital recording equipment. Court reporters own their equipment.
- Ohio: varies by jurisdiction. Court generally owns if it uses digital or electronic recording systems or it employs a full-time stenographer. If the court contracts with a stenographic service, the stenographer or their employer would own the equipment
- Oregon: courts purchase/own their electronic recording equipment; transcriptionists are independent contractors and own their own equipment; stenographic court reporters pay for their own equipment
- South Carolina: Court reporters own the equipment to capture the proceedings; the Branch provides audiotapes and reimburses for supplies used to capture the proceedings (paper, note pads, pens, pencils, exhibit stickers)
- South Dakota: Court reporters own their own equipment as they also transcribe for attorneys and other non-court proceedings, for additional income.
- Tennessee: The state owns the analog or digital recording systems. The reporters own the stenographic equipment.
- Texas: Responder believes it is the reporter

- Utah: The court owns the digital recording equipment. If a private, licensed certified court reporter reports a proceeding, he or she uses his or her own equipment.

Summary Generally speaking, the state owns the digital (and, in one case, video) recording equipment that is installed in its courtrooms. Ownership of the stenography equipment is mostly private, that is, the reporters/transcribers own their own equipment. One state, New Hampshire, contracts out its transcription service to a New York-based company. Another, Utah, employs no court reporters or transcribers, but assigns transcription to those on a certified list of transcribers/reporters.

7.) If the equipment is privately owned by a person employed by the state, does that confer any rights about ownership of the memorialization? If yes, advise what rights are conferred.

- Arkansas: Private ownership of court reporting equipment does not confer any rights of ownership of the verbatim record of the court reporter.
- Arizona: No.
- California: Court employees, including court reporters, monitors and clerks, are not state employees but are employees of each individual court. (Some court reporters are not employees at all but are independent contractors working on an as-needed basis). It is our opinion that they have no ownership of the memorialization, but by statute they have the right to prepare and sell transcripts. (As answered in Number 4, "The term ownership is often misused by court reporters. Our view is that all court records, including transcripts, are public court documents ...and are not "owned" by anyone....)
- Delaware: No.
- Florida: No.
- Georgia: Not applicable: Court reporters are not hired as state employees in Georgia, but primarily as contract or county employees.
- Idaho: No.
- Indiana: Not applicable
- Kansas: Not applicable
- Maine: I am not aware of any such rights, except that Official Court Reporters (OCRs) are able to bill private parties for the production of transcripts.
- Minnesota: NA – Record is owned by the court.
- Missouri: No, parties must obtain the transcript from the official court reporter, no matter who owns the equipment.
- Nebraska: See No. 4: don't know if these two are related.
- Nevada: No.
- New Hampshire: This does not apply.
- New Jersey: The only rights the court reporter has is the first right of producing transcripts from their notes. If a reporter is ill or unavailable we send their notes to a note reader to produce the transcript.
- North Carolina: NA
- Ohio: Not applicable.
- Oregon: Not aware of any special rights conveyed to owners of equipment.
- South Carolina: No.
- South Dakota: We want the court reporter who reported the proceedings to also transcribe it, but if that person is unavailable, his or her "guardian" reporter transcribes the proceedings.
- Tennessee: NA
- Texas: I believe yes, but I cannot provide any detail.
- Utah: Court reporters are not court employees in Utah. The court may contract with a private court reporter to report a proceeding in a capital case, or it may approve a party hiring a private court reporter to report a proceeding in a non-capital case, but in either of those situations the court reporter must give a written acceptance that the Utah courts own the transcript and the electronic file.

Summary: Thirteen states say the reporter has no rights to the memorialization and a few others indicated this is not applicable.

8.) How is the individual who creates the transcript compensated for his or her work?

- Arkansas: The court reporter, who provides the transcript, is compensated by the party who requests the transcript. Amounts are set by statute (16-13-506).
- Arizona: Per page rates charged by official reporters in criminal matters are set by statute (12-224), which sets it at \$2.50/page for the original and 0.30 cents per page for a copy. Reporters may charge more in a civil case, but reportedly most charge the statutory rate for all transcripts that they produce. The rate is unchanged since 1987.
- California: Statutory rates are set by statute (CGC 69950). The court must pay for indigent criminal appeals, certain other specified transcripts, and any transcripts ordered for the court's own use. Court-employed court reporters are paid as independent contractors for their transcripts; this payment is separate and distinct from their wages for steno reporting in the courtroom. Civil transcripts are purchased by the individual parties, with payment made directly to court reporters. There is a difference of opinion as to whether the statutory rates apply to civil transcript requests, or only to transcripts charged to the court.
- Delaware: Usually, the court pays the court reporter for the initial transcript (payment is in addition to their salary since the work is done outside of working hours) and uncertified copies can be made from this. Anyone wanting a certified transcript must pay the court reporter/transcriber.
- Florida: For court-ordered transcripts, employees of the court are compensated with salary and benefits. If an approved court reporter is hired by contract, compensation is made according to the fees established locally by each chief judge via an administrative order. Fees vary circuit to circuit.
- Georgia: The Board of Court Reporting has created an official court reporters' fee schedule which was approved by the Judicial Council of Georgia. Statute indicates that court reporters working on matters before state courts of counties are paid by the county governing authority for the county in which the relevant state court sits. Judges may pay contingent expenses and travel allowances to court reporters from the state treasurer from a court operating account.
- Idaho: An annual salary and a per-page rate for requested transcripts.
- Indiana: Varies from county to county based upon a court rule and ranges from \$2.50 per page for an indigent person to \$10 per page for a transcript produced within 24 hours. Interestingly, the Indiana Judicial Branch posts its staffing levels on its website as well as the court reporter income (not by name, but by county) for transcripts, copies and depositions. In 2008, 518 court reporters collected \$2,080,782 for transcripts, depositions and copies. See: www.in.gov/judiciary/admin/courtmgmt/stats/2008/v3/ctreporters.pdf
- Kansas: Official Court Reporters receive a per-page fee for transcripts that is set by the State Board of Examiners of Court Reporters with the approval of the Supreme Court.
- Maine: Official Court Reporters are court employees. They are paid a salary for their time in taking down testimony. In addition, they are paid by the courts and private parties for transcripts requested.
- Minnesota: If the transcript is ordered by the judge, the court reporter completes the transcript during his/her regular work day and is paid his/her normal hourly rate. If the transcript is requested by anyone other than the judge, the court reporter is paid a per page rate, and the transcript is prepared on his/her own time. MN Statute 486.02
- Missouri: By the page for the original and each copy. Rate set by statute.
- Nebraska: Individuals are compensated with a salary. Those in the District Court (court reporters) also receive a page rate.
- Nevada: Compensation is governed by state statute: N.R.S. 3.370
- New Hampshire: We have contracted with a single vendor to provide all transcripts of New Hampshire trial court proceedings as requested by lawyers, litigants, members of the public and judges and court staff. We pay our vendor a per-page rate that depends

on the turnaround time for the transcript and also whether the transcript is needed for appeal purposes.

- New Jersey: The transcript rate is set by statute (JNSA 2B: 7-4). The fee is paid by the ordering party. Current rates are: Standard (30 days): \$3.49 per page and 0.58 cents per copy page; Expedited (7 days): \$5.24 per page and 0.87 cents per copy page; Daily (next day): \$6.98 per page and \$1.16 per copy page.
- North Carolina: This varies by case type. In matters where counsel is appointed or where the district attorney appeals a case, the state pays for transcript preparation. In other matters, retained counsel or pro se litigants pay.
- Ohio: If they are employed full-time by the court then they would be salaried employees. Otherwise the individual would be compensated under the terms of a contractual relationship between the court and the individual or the individual's employer.
- Oregon: State appointed court reporters receive \$2.50 per page for appeals transcripts for the original copy, and 0.25 cents per page for copies. Oregon state courts employ only a few stenographic court reporters; the Branch has transitioned to using electronic recording exclusively in most courtrooms.
- South Carolina: Fees are set by court rule and paid for by the transcribe requestor.
- South Dakota: In a civil matter, whoever has asked for the transcript pays the reporter. In a criminal matter, the county pays for the transcription where the defendant takes an appeal (and this cost becomes a civil judgment against the defendant who owes the county). "Official" court reporters are employees of the state's Unified Judicial System and are also paid a salary with benefits.
- Tennessee: paid a per page rate
- Texas: By statute, official reporters receive a salary plus a fee for the transcript.
- Utah: The party requesting the transcript pays the reporter/transcriber to prepare the transcript. State statutes provide the rate per page that may be charged; currently, the rate is \$3.50 per page.

Summary: Compensation for transcripts is set by statute in most states, with per-page rates varying. In states where the judicial system employs court reporters/transcribers, those employees are also usually compensated separately for providing transcripts, usually by the requesting party. However, Arkansas reports that "past custom and practice dictates that judges do not compensate his/her court reporters" for transcripts.

9.) Do all requesting parties have to pay for transcripts?

- Arkansas: State code (16-13-506) provides that “when required to make a transcript of court proceedings, each court reporter of the circuit court shall be entitled to compensation”—there are no exemptions. However, past custom and practice dictates that a judge does not compensate his/her court reporter for transcribing all or part of the proceedings for use by the court.
- Arizona: Only prosecutors don't have to pay (statutes 12-224 (C)).
- California: Yes, everyone pays and the statutory rates distinguish between original transcripts and copies. In the case of indigents in criminal cases, the court pays.
- Delaware: Only those needing a certified transcript copy pay the court reporter/transcriber, if the court has already requested a transcript.
- Florida: Judges who require a transcript for their use or who require a transcript in proceeds required by law to be reported do not pay the court reporter because the reporter is either a court employee or a contractor paid by the court. Parties or their attorneys in such proceedings pay for a transcript, sometimes under a cost-sharing arrangement with the circuit court. Private parties and or their attorneys pay the court reporter in civil proceedings not required to be reported by law.
- Georgia: Once a court reporter files a transcript with the clerk's office, that reporter may NOT receive payment for photocopy. Indigent defendants are entitled to a free transcript for proceeding on an appeal in a criminal case.
- Idaho: Idaho Code I.C. 1-1105: “It shall be the duty of each reporter to furnish, upon order of the court entered upon written application being made therefore by any attorney of record in a suit, or any party to a suit, in which a stenographic record has been made, a typewritten copy, or copies, of the record, or any part thereof, upon the payment by such attorney, or party, of the cost thereof, as provided in subsection 2.” (www.legislature.idaho.gov/idstat/Title1/T1CH11SECT1-1105.htm). In instances where the defendant is found indigent, subsection 2 of the statute provides for the court to direct payment to the court reporter from the county treasury.
- Indiana: If a party requests a transcript of proceedings, either during or after the trial, that party will pay for the transcription. Other parties to the action will pay a copy fee.
- Kansas: For the most part, everyone pays. However, judges don't pay for a “quick and dirty” transcript produced during working hours for the judge's use in a proceeding. Also, once a transcript is filed in the clerk's office, anyone can requests copies at those rates.
- Maine: Court reporters bill the Administrative Office of the courts for transcripts produced at state expense. State agencies are exempted from fees. Private parties pay court reporters directly. Parties and non-parties must pay for copies in accordance with Administrative Order JB-05-26 (A.8-09) which is available here: www.courts.state.me.us/courts_info/opinions/admin_orders.shtml
- Minnesota: When directed to prepare a transcript by the judge, there is no charge.
 - The current transcript rates are as follows:
 - The Criminal transcript rate is \$3.25 per page for an original and \$.25 for each copy.
 - The Civil transcript rate is \$4.75 per page for an original and \$.25 for each copy.
 - The *in forma pauperis* (IFP) transcript rate for cases involving Sexual Psychopathic Personality/Sexually Dangerous Persons (SPP/SDP) is \$4.75 per page for originals and \$.25 for each copy.
 - The transcript rate for all IFP cases, except SPP/SDP cases, is \$3.55 per page and \$.25 for each copy.
 - The transcript rate for all expedited transcripts ordered shall be negotiable between the Official Court Reporter and the requesting party.
- Missouri: This is somewhat fuzzy – for all transcripts, the court reporter is paid by the defendant or if the defendant is indigent, the court reporter is paid by the state to produce the transcript. In a civil case, many counties have a fund to pay the court reporter if the

party requesting the transcript has filed as a poor person. In juvenile cases, the transcripts are paid by the state. If the media or other outside entity desires a copy, they pay. Since the court reporter is a confidential employee of the judge, if the judge wants a transcript of a limited part of the proceeding and the state cannot be invoiced for it, the court reporter will generally provide the partial transcript at no cost to the judge.

- Nebraska: Yes.
- Nevada: No. (state statute: NRS 3.370 (5)).
- New Hampshire: Yes, all requesting parties pay the transcriber for the transcript.
- New Jersey: All parties pay for transcripts.
- North Carolina: Yes
- Ohio: "When shorthand notes have been taken in a cases...if the court or either party to the suit or his attorney requests transcripts of any portion of such notes in longhand, the shorthand reporter reporting the case shall make full and accurate transcripts of the notes for the use of such court or party. The court may direct the official shorthand reporter to furnish to the court and parties copies of decisions rendered and charges delivered by the court in pending cases. When the compensation for transcripts, copies of decisions or charges is taxed as a part of the costs, such transcripts, copies of decisions and charges shall remain on file with the papers of the case."
- Oregon: The appellant pays for the transcript (up to \$2.50 per page).
- South Carolina: Judges receive free transcripts in rough draft, while others negotiate with the court reporter who reported their proceeding.
- South Dakota: Generally, yes (see answer to No. 8). Judges do not pay for a transcribed proceeding as the court "owns" the record.
- Tennessee: It is a case-by-case determination. If one is a criminal indigent defendant and a transcript is requested and ordered by the court, the state will pay in most cases. A criminal non-indigent defendant will pay for his/her transcript costs.
- Texas: Yes.
- Utah: Yes.

Summary: Arizona reports that prosecutors are exempt from paying a fee. Maine reports that state agencies are exempt from paying for transcripts. Arkansas says that while its reporters are entitled by statute to compensation for transcript production, "past custom and practice" dictates that judges do not compensate their court reporters for transcripts. South Dakota also reports that "judges do not pay for a transcribed proceeding as the court owns the report." Minnesota reports that when directed to prepare a transcript by the judge, there is no charge.

10.)How are transcripts assigned?

- Arkansas: The court reporter who prepared a verbatim recording of the proceedings is responsible for producing the transcript.
- Arizona: If a steno reporter prepared the raw notes, that person is responsible for preparing the transcript. If the raw record was made using recording equipment, the court would have either an official reporter prepare the transcript, or someone under contract with the court (generally a certified court reporter) prepare the transcript.
- California: Government Code provides that the reporter who took the notes shall be given the first opportunity to make the transcription. Electronic recordings are usually assigned to a transcription vendor on contract.
- Delaware: When court reporters are used to make the record, the court reporter who made it transcribes it. When audio or video is used, a court reporter is randomly assigned to transcribe it.
- Florida: usually the reporter who recorded it but no results or standards requiring first right of refusal. The court reserves the right to full and complete access to any unedited notes, paper tapes, electronic files, and audio or video recordings used for the creating the transcript.
- Georgia: The court or jurisdiction sets the assignment policy which differs among each county.
- Idaho: Typically, the individual who stenographically reported a proceeding prepares the transcript. On occasion, preparation of a transcript may have to be assigned to another official court reporter or to a transcriptionist.
- Indiana: Since court reporters earn money for transcribing this is not an issue. But the person who is the court reporter for the proceeding will transcribe it.
- Kansas: Usually it is the court reporter who took the matter but if necessary the appellate court may order another to transcribe it.
- Maine: The official court reporter who took down the testimony has the responsibility to produce the transcript. There is a small pool of transcribers who create transcripts from electronic recordings; they are in one office and make those decisions somewhat informally.
- Minnesota: All transcript requests are directed to the court reporter who reported the hearing, and that reporter is expected to produce a timely transcript. The court does not assign the requests. In the event that the court reporter who reported the hearing is not available (e.g retirement, vacation, etc.) the county and/or district admin is notified and a request is then generated from county and/or district admin by email to all reporters in the district that a transcript request has been made and needs to be transcribed, and someone will step up to produce the transcript.
- Missouri: The court reporter is the only person who produces the transcript for a case in which the court reporter was present, except if there are unusual circumstances. E.g. resignation, illness, death. If the case was sound recorded, the Office of the State Court's Administrator receives the request for transcript via the local court and the cost deposit and we contact with typists. The work is overseen by an official court reporter.
- Each county/district has its own process for determining who has first right of refusal.
- Nebraska: In the District Court, it is the reporter who took the record. In County Court, it can be anyone assigned to these duties. It could also be given to a private entity.
- Nevada: If an official court reporter records the proceeding, they are the one who provides the transcript. If for some reason the original reporter is not available to produce the transcript, a pool of reporters is available who are familiar with each kind of software used and the recording can be provided to them to provide a transcript. If a court uses JAVS or another system to memorialize the proceeding, then it can choose who can provide the transcript.

- New Hampshire: All transcript requests are directed to the vendor who has been designated by the Supreme Court as the sole provider of official transcripts in New Hampshire.
- New Jersey: Court reporters produce their own transcripts. In the case of electronically recorded proceedings they send the work to certified transcribers. Transcribers are independent contractors certified through a testing process administered out of the Appellate Division. Once certified, the transcribers can seek work from any court. Most courts use several transcribing agencies rotating the work among the agencies. An ordering party can request any certified agency from the certified agency list posted on their website.
- North Carolina: A court reporter that memorializes the record has a right of first refusal to produce the transcript. Where digital recording memorializes the record, transcriptionists are either selected by the NCAOC Court Reporting Coordinator or selected from county lists of approved transcriptionists.
- Ohio: Generally the individual assigned but the court can assign any qualified individual.
- Oregon: Transcript coordinator sends a copy of the notice of appeal to either the steno court reporter who reported the meeting, or a qualified transcriptionist (in the case of an audio record. Transcriptionists are NOT employed by the state.
- South Carolina: The production of transcripts is one of the dues of a Judicial Branch court reporter. They may seek transcript production assistance from transcriptionists, scopists or fellow court reporters. The court may require a court reporter to turn over their notes to another court reporter if that person cannot produce a transcript in a timely manner.
- South Dakota: The reporter who reported the proceeding transcribes it unless he/she is unavailable; other reporters may be assigned to assist in transcribing a proceeding, or the reporter's "guardian" may be asked to transcribe where the original reporter is unavailable.
- Tennessee: Generally, the person who memorializes the record produces the transcript. If the person is unable to transcribe it, it is transcribed by another.
- Texas: The reporter who memorialized the record.
- Utah: As of July 1, 2009, all transcripts for official purposes must be requested through a transcript coordinator located in the appellate clerks' office. A web-based transcript ordering service has been developed. If a private court reporter reports the proceeding, that reporter has the right of first refusal. If that reporter does not want to prepare the transcript, the transcript coordinator can assign an official court transcriber to prepare the transcript from the digital audio file stored on the court's computer network. In those proceedings in which the record was solely maintained by the digital audio recording system, the transcript coordinator assigns an available court transcriber to prepare the transcript. The Utah courts maintain a list of official court transcribers. To get on the list, a transcriber must meet certain qualifications described in Rule 5-202 of the Code of Judicial Administration. One of the qualifications is that the person must be licensed in Utah as a certified court reporter or work under the direction of one who is.

Summary: New Hampshire contracts out its services and Utah has a list of certified court reporters who are randomly assigned to produce transcripts. However, most other states report that the "official"—usually state-employed—court reporter who attended the proceeding produces the transcript or has the right of first refusal when a request is made. In courts where electronic recording captures the proceeding, the memorialization or transcript production is often farmed out to transcribers or agencies employing transcribers (Arizona, California, Nebraska, New Jersey).

11.) Does the production of the transcript by a state employed court reporter, monitor or transcriber occur during the course of the business day, or is that work done during non-business hours?

- Arkansas: Depending on the court's schedule, the official court reporter may work on transcripts during the business day. If the court's schedule doesn't permit time during the course of the business day, the court reporter must complete the work during non-business hours.
- Arizona: Official reporters are expected to prepare their transcripts during off hours, which can include hours in the day when they are not required to be in court.
- California: Court reporters may work on their transcripts during business hours and be paid their normal wage *only* if they have a break in the court session, or the court has recessed for the day and they are not needed elsewhere. Most reporters work on transcripts during non-business hours to complete their work, but are not paid wages for this transcript preparation time. This practice is consistent with the FLSA requirement (29 U.S.C. 207 (0) (6)).
- Delaware: This is done during non-business hours.
- Florida: Usually during normal business hours as there is no money for overtime. However, as transcript production backlogs occur, digital recording has allowed courts to contract with transcript providers.
- Georgia: County-employed court reporters are allowed to produce transcripts during the course of the business day.
- Idaho: Both.
- Indiana: Under an administrative order the court reporter usually does the transcription work during normal business hours. If additional time is required then the court reporter receives extra compensation pursuant to the admin order and the county local court rule.
- Kansas: state-employed court reporters may transcribe during business hours and non-business hours. Transcriptionists may transcribe only during business hours.
- Maine: Some work occurs during business hours (usually on-call time) and some occurs after hours.
- Minnesota: If ordered by the judge, it is done on work hours. Otherwise, it is done on the court reporter's own time.
- Missouri: Transcript preparation time is not covered under FMLA as overtime, but the court reporter is salaried. If time exists during the work day to prepare the transcript, the court reporter can work on transcripts. If time does not exist during the work day, the court reporter is obligated to produce them beyond the normal work day. They are paid a per page rate, regardless of when they produce the transcript.
- Nebraska: In County Court, it is always during the course of the business day unless it is outsourced. In District Court, it is both during the workday and outside the workday.
- Nevada: Depending on the system used, the actual transcript can be provided by a state employee in the course of a business day, or by a court reporter who may work outside normal business hours. Due to the different methods employed by each Nevada court, there is no definitive answer.
- New Hampshire: All transcription work is contracted out to a private business who has no other relationship with or compensation from the New Hampshire court system.
- New Jersey: Court reporters complete most of their transcript work on their own time. Reporters are encouraged to work on transcripts during down time to avoid delays in processing appeals.
- North Carolina: Transcript production is done during non-business hours.
- Ohio: During the course of the business day.
- Oregon: Transcribers of electronic records are not employees. For steno court reporters who are employees, transcript preparation is typically done outside the business day

- South Carolina: Normally done during non-business hours, but “we encourage court reporters to prepare transcripts at the courthouse when their services are not required in the courtroom and they have not been released for the day.
- South Dakota: Production of transcripts can be done during the course of a business day. Any transcription of non-court proceedings is considered freelance work by the “official” reporter and must be done after hours or during their annual leave.
- Tennessee: A state employed reporter will produce the transcript during any period of time that he/she is not needed in court.
- Texas: Both.
- Utah: Not applicable, since court reporters and transcribers are not employed by the state.

Summary: Thirteen states allow court reporters—state employees—to work on transcript production when the reporter has a break or court is not in session (Arkansas, Arizona, California, Idaho, Maine, Minnesota, Missouri, Nebraska, New Jersey, Ohio, South Dakota, Tennessee, Texas). Delaware is the only state that says its reporters do transcription outside of the normal business day, while South Dakota says transcription of non-court proceedings must be done after hours or during the reporters’ annual leave. Kansas’ transcriptionists, who prepare transcripts from audio recordings, are permitted only to transcribe during the business day, while the state-employed court reporters can transcribe either during the business day or on off hours. Neither Utah nor New Hampshire employs reporters or transcribers so this question didn’t apply.

12.) Does your state use voice recognition software in memorializing what occurs in the courtroom? If so, what has your experience been?

- Delaware: Voice recognition software is only used when it is unlikely that a transcript will be needed.
- Florida: Use has been extremely limited. Tested a single channel software product and liked it, but have yet to fully execute the product in a real courtroom setting.
- Georgia: Voice writers are used in Georgia courts and make up about 40 percent of all certified court reporters in the state.
- Minnesota: No
- Missouri: No
- North Carolina: Not used
- Ohio: Some courts do.
- Oregon: No.
- South Dakota: No.
- Tennessee: NA
- Texas: No.

Summary: This very limited response indicates that voice recognition is rarely used. The lone exception is Georgia, where 40 percent of all certified court reporters use this technique.

13.)What medium does the Appellate Court and Supreme Court accept as the record: written/audio/video?

- Delaware: Written.
- Florida: Written transcript.
- Georgia: The written format is the general accepted medium in the appellate courts. The Georgia Court of Appeals recently began accepting the electronic filing of documents.
- Minnesota: The official transcript (written) is the record)
- Missouri: Written, but they want both paper and a disk containing the transcript
- North Carolina: written
- Ohio: Appellate Rule 9 allows for videotape transcripts in the intermediate appellate districts. Rule V Section 1 of the Supreme Court Rules of Practice says that the record consists of all original papers and exhibits, the transcript, including an electronic version of the transcript, if available, and certified copies of journal entries and the docket.
- Oregon: The appellate courts accept audio/video recordings only if they are evidence. The appellate courts experimented with using the audio recording of the oral proceedings in lieu of a written transcript but stopped this some years ago. Currently they require a written transcript of the oral proceedings, when that portion of the record is designated as part of the record on appeal. Technically they are still allowed to accept the audio recording in lieu of a written transcript, but they do not do so.
- South Dakota: The Supreme Court accepts the written transcript as the record of court proceedings.
- Tennessee: Written
- Texas: Written is the medium in general, but the Rules of Appellate Procedure do allow for recordings.

Summary: Again, a very limited response, but the majority of these states say the written transcript is the rule or the norm, although Oregon, Texas and Ohio allow for electronic mediums in varying degrees.

14.) If court reporters and/or monitors are paid a per-page rate to produce transcripts, are there ethical considerations involved in their producing transcripts on state time with state resources? If so, how has your state addressed those issues?

- Delaware: Court reporters are paid a per-page rate to produce transcripts but they do so on their own time using their own resources.
- Florida: Court reporters/monitors who are employees of the state should not be conducting freelance work during their work hours with the courts.
- Georgia: Transcripts must be produced timely, and failure to comply can result in a complaint being filed against the court reporter for failure to abide by the rules and regulations of the Board of Court Reporting.
- Minnesota: Unless ordered by the judge and completed during the work day, all other transcripts are produced on the employee's own time using his/her own equipment
- Missouri: No, this has generally not been raised as an ethical issue
- North Carolina: Yes. Court reporters produce transcripts on their own time, with their own equipment.
- Ohio: Not applicable, see No. 8
- Oregon: This was a controversial issue that we dealt with over 20 years ago. We handled it through a statewide policy that, among other things, set specific work priorities for salaried employees as follows: *Stenographic and electronic court reporters are expected to perform the following work assignments in the following priority order:*
 - In-court reporting for their supervising judge at the reporter's assigned work location or at a location to which the judge travels and another reporter is not available;
 - In-court reporting for another judge in the reporter's judicial district;
 - Any other duties the judge or administrative authority assigns;
 - In-court reporting for another Judicial Department court location;
 - State-paid transcription;
 - Non state-paid transcription.

NOTE—Oregon says, "We do not have "electronic court reporters" anymore and transcripts of audio proceedings are prepared by independent contractors, not court staff. The quoted policy, in reality, applies only to the few remaining stenographic court reporters who are employees in our circuit courts."

- South Dakota: Personnel rules prohibit court reporters employed by the state from producing transcripts for additional pay on state time using state resources. Note: The rules says that court reporters may use normal office hours to prepare transcripts of official unified justice system court proceedings, not to exceed eight hours in one workday. Further, "court reporters may not perform freelance work during normal office hours without taking annual leave." Freelance work includes recording and/or transcribing for other UJS proceedings such as hearings of the Board of Bar Examiners, grievance hearings under the UJS personnel rules and other state entities. The court reporter must report this work in advance to the director of human resources and the director of budget and finance so that the work is properly paid according to IRS requirements. The court reporter negotiates his/her own work with the hiring entity.
- Tennessee: There has not been discussion of ethical considerations around this issue.
- Texas: It is more the judge's preference as to whether the official court reporter works on transcripts during the day, between hearings, or is allowed time to work at home with a deputy official covering the courtroom.

Summary: Many states allow for the work to be done on state time. However, Oregon has a personnel policy that dictates the priority in which transcripts can be prepared and non-state paid transcription is at the bottom of the list. South Dakota's personnel rules explicitly prohibit its

state-employed reporters from producing transcripts for extra pay on state time. In Minnesota and Tennessee, work the production is to be on the reporter's own time, using their own resources.

Attachment C

CONTACT
Jim Cudahy
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FOR IMMEDIATE RELEASE

National Court Reporters Association takes association of court administrators to task for white paper that recommends a reckless approach to making the court record, which will endanger the integrity of the legal system.

January 25, 2010; Vienna, VA – In a letter to Steven C. Hollon, president of the Conference of State Court Administrators (COSCA), NCRA President SueLynn Morgan, RPR, today criticized COSCA for the process it used in the development of a [white paper](#) that suggests court systems move to audio recording as the principal form of the court record. Morgan said it is troubling that COSCA not only neglected to involve stenographic court reporters in their discussions, but also “other groups representing judges, jurists, attorneys, parties, or the public in their process, groups whose perspectives and knowledge as the primary users of the court record must be part of any serious discussion on the topic.”

“We do not claim to have a monopoly on all wisdom related to making the court record,” said Morgan in the letter, “but it simply is inconceivable that COSCA would consider our experiences, data, research, and perspectives to be entirely irrelevant in an intellectually honest discussion of a subject on which court reporters indisputably are subject matter experts.”

While NCRA takes exception to the closed process that COSCA employed in development of its white paper, it is nothing compared with the poor quality of the paper, which was the result of that closed process. “Such an opaque, insular, and exclusive process predictably led to seriously flawed conclusions,” said Morgan. “Even more serious than the shortcomings of the conclusions of the paper itself is the complete absence of empirical data or any sort of corroborating evidence to support those conclusions. Statements of opinion are given an illusion of factual basis through liberal use of citations to studies commissioned by other organizations—including by NCRA and the National Court Reporters Foundation—where the specific findings of those studies do nothing to support the paper’s stated theses.”

Court systems—like all governmental institutions—are under serious pressures to cut expenses in the current economic environment, but making wholesale changes to the method with which courts create and preserve the legal record on the basis of short-term savings, without serious consideration of the impact such changes would have on the integrity of the judicial system, is reckless. “Our concern is that in an economic environment where even the *appearance* of savings will get the attention of court officials and legislators, people will overlook the fact that COSCA’s paper does *nothing* to quantify the alleged savings that courts would realize in migrating to digital audio recording,” said NCRA executive director and CEO, Mark Golden, CAE. “Substantially worse, however, is that COSCA’s paper recommends such fundamental changes to the judicial system with no corroborating evidence of any variety—either quantitative or qualitative in nature—to support the conclusion that using digital audio in courtrooms will not result in a degradation of quality in making the court record.”

For decades, stenographic reporters have had to contend with the challenges of audio recording in the courtroom and all too often have found that courts can make important decisions that compromise the integrity of the judicial process based on misinformation about the capabilities of audio recording and its unsubstantiated potential for cost savings. Even though the COSCA white paper neglects to use any data or evidence to support its contention that digital audio can save courts money, NCRA fears that it

nonetheless could be used to justify such changes. “The paper and its conclusions grossly oversimplify or entirely ignore the practical limitations of the ‘audio only’ record that it recommends serve as the de facto official record of all proceedings,” said Morgan in the letter to COSCA. “The costs (in real dollars as well as time) incurred by the parties and superior courts, if there is cause for another court or panel to review a lower court’s actions, are ignored. Issues of ensuring the privacy and security of confidential information within audio records are entirely unaddressed.”

NCRA also finds it irresponsible for the COSCA white paper to completely ignore the fact that it was stenographic court reporters who introduced technology to the courtroom. Beginning with computer-aided transcription more than two decades ago, followed by realtime reporting systems that allow full and instantaneous access to court proceedings for those with hearing-related disabilities, court reporters have been pioneers in this regard.

Indeed, despite the fact that COSCA suggests throughout the paper that digital audio is an acceptable method for creating the court record, on a number of occasions it indicates that in cases involving capital crimes or in complex civil cases, a realtime, stenographic reporter should be utilized. In acknowledging the superiority of stenographic reporters in these types of cases, COSCA undermines its own conclusion that audio recording is generally acceptable for all court proceedings by acknowledging that it is not for the most important or complex cases. NCRA believes strongly that it would be a miscarriage of justice and a dangerous precedent for court administrators or anyone within the judicial system to begin arbitrarily assigning degrees of importance to various court cases. Where might such assessments lead?

Within its white paper, COSCA references as a resource a study by the Judicial Management Institute that was funded by the National Court Reporters Foundation entitled “How to Conduct an Assessment of Your Court’s Record-Making Operations.” NCRA finds it perplexing that COSCA would feel the need to construct a paper that so one-sidedly recommends courts move to digital audio recording while acknowledging a resource courts have at their disposal to assess their needs for making the official record, analyze costs of various methods, and then draw their own conclusions.

“NCRA recognizes that audio and video recording have made their way into the judicial process,” said Morgan. “In fact, it was the National Court Reporters Foundation that funded a study by the Judicial Management Institute that you cite in your paper, which provides courts with assessment tools for evaluating its record-making needs in an objective and practical manner. We likewise acknowledge that there are competing demands on all members of the judicial system and numerous conflicting perspectives over the best solutions. We are prepared to present and defend our own perspectives in a constructive and open fashion. It is the entirely one-sided nature of the COSCA white paper to which we object and that does an injustice to those courts honestly struggling with these serious matters.”

About NCRA

The National Court Reporters Association (NCRA) is a 21,000-member professional association that promotes excellence among those who capture and convert the spoken word to text and is committed to supporting every member in achieving the highest level of professional expertise. NCRA is internationally recognized as being the premier educational and informational resource for its members and the public. NCRA members, who include official and freelance court reporters, broadcast captioners, CART (Communication Access Realtime Translation) providers, and Webcasters, are recognized by both the public and private sectors as ethical, well educated, highly respected, and technologically advanced professionals. For more information, visit www.ncraonline.org.

Attachment D



American Association of Electronic Reporters and Transcribers, Inc.
2900 Fairhope Road · Wilmington, Delaware 19810-1624
Toll-Free (800) 233-5306

Randel Raison, President
Direct Dial (713) 637-8864

TO: The Honorable Barbara M. Quinn
Chief Court Administrator
Supreme Court of Connecticut
231 Capitol Avenue
Hartford, Connecticut 06106

FAX: (860) 757-2130

Attached is a copy of a letter directed to Mr. Steven C. Hollon,
Administrative Director of COSCA, for your information.

Respectfully,

Randel Raison
President, AAERT
Randel.Raison@AAERT.org



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Randel Raison, President
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Randel.Raison@AAERT.org

January 26, 2010

Mr. Steven C. Hollon
Conference of State Court Administrators
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

Re: **Digital Recording: Changing Times for
Making the Record**

Dear Mr. Hollon:

On behalf of the Board of Directors of the American Association of Electronic Reporters and Transcribers, Inc. (AAERT), this letter is in response to the various "press release" postings made by the National Court Reporters Association.

The AAERT applauds the release of the Conference of State Court Administrators' white paper entitled: "Digital Recording: Changing Times for Making the Record."

As a professional association of certified and trained digital court reporters and transcribers, AAERT agrees with the findings of the COSCA report. We are the daily users of advanced digital recording technology. AAERT has advocated strict standards of best practices for digital recording in courtrooms and deposition settings since 1994.

AAERT, as the author of digital reporting standards and practices, has always sought to have a place at the table when court reporting methods are evaluated. Biased and misleading information about unfamiliar technology has all too frequently been published. The COSCA white paper was fair in evaluating digital audio recording as a reliable and efficient method for courtroom use.

Mr. Steven C. Hollon
January 26, 2010
Page Two

We invite COSCA or any users of the report to contact us for further information on implementing best practices for successful use of this reliable state-of-the-art technology. As a leader in the use of digital reporting technology, AAERT has certified professionals capable of filling court reporting and transcribing positions currently available.

Indeed, we do live in changing economic times where cost-saving methods must be put into place without sacrificing quality - especially when the technology advocated is tried, tested, and used the world over. Digital recording of court proceedings is accurate, verbatim, verifiable, unfiltered, accessible to all and is being used successfully in courtrooms worldwide. Digital audio recording is not merely the wave of the future, it has been and is a reality now in courtrooms around the globe.

AAERT is the digital/electronic court reporting industry's professional association in the United States. The American Association of Electronic Reporters and Transcribers is a nonprofit mutual benefit corporation organized to provide education and certification for professionals engaged in electronic reporting, transcribing, and supportive employment roles, and to promote public awareness and acceptance of the electronic reporting industry. For more information, visit www.aaert.org.

Respectfully submitted,


Randel Raison
President, AAERT

Attachment E

Appeal Transcripts Requested *
January 1, 2009 to December 31, 2009

1. Juvenile	113
2. Criminal	595
3. From Court Closure Order only	9
4. Involving the Public Interest	12
5. From judgment involving custody of minor children only	53
6. All other judgments	1088
7. Writ of Error	1
Memorandum of Decision	2
TOTAL APPEAL TRANSCRIPTS	1873

* Note: This data indicates only transcripts ordered for cases that have been appealed to the Appellate Court or Supreme Court. It does not include felony sentencing transcripts for cases that are not appealed.

A random sampling of Official Court Reporters estimate that approximately 10 to 20 percent of transcripts produced in their districts are for appeal purposes, so these numbers represent about 20 percent of the TOTAL number of non-sentencing transcripts ordered.

About 4,500 sentencing transcripts are prepared each year.

A transcript may be requested and produced prior to an appeal being filed, and, therefore, may be counted in another category (for example, civil or family) rather than the appeal category.

SOURCE: Court Transcripts Unit January 2010

Attachment

F

FY 10 Transcript Payments			
Location	Paid through Judicial Payroll	Transferred from State Agencies	Ordered by Judicial
Transcript Services	21,508.25	0.00	21,508.25
GA 23, New Haven	355.00	0.00	355.00
New Haven JD, New Haven	49.75	0.00	49.75
Juvenile Matters, Waterford	24.00	0.00	24.00
Court Reporter, Bantam	1,321.50	0.00	1,321.50
Ct Rep Bdgpt 172 Golden Hil St	716.50	0.00	716.50
Ct Rep, Bdgpt, 1061 Main St	26,647.85	638.60	26,009.25
Court Reporter, Danbury	16,052.95	0.00	16,052.95
Court Reporter, Danielson	3,720.00	236.75	3,483.25
Court Reporter, Derby	1,123.80	24.00	1,099.80
Court Reporter, Enfield	1,008.25	0.00	1,008.25
Ct Rep, Htfd, 101 Lafayette St	76,318.42	17,046.45	59,271.97
Court Reporter, Litchfield	11,264.05	1,737.23	9,526.82
Court Reporter, Manchester	281.00	24.00	257.00
Court Reporter, Meriden	3,070.00	28.00	3,042.00
Court Reporter, Middletown	55,395.18	12,277.00	43,118.18
Court Reporter, Milford	7,243.05	36.00	7,207.05
Court Reporter, New Britain	16,655.45	2,959.80	13,695.65
Ct Rep, N Haven, 235 Church St	52,353.70	6,157.18	46,196.52
Court Reporter, New London	20,998.30	991.50	20,006.80
Court Reporter, Norwalk	3,080.00	18.00	3,062.00
Court Reporter, Norwich	2,997.90	2,291.10	706.80
Ct Rep Rkville, 69 Brooklyn St	16,336.15	495.00	15,841.15
Court Reporter, Stamford	25,535.90	631.00	24,904.90
Court Reporter, Waterbury	39,122.65	5,523.20	33,599.45
Court Reporter, Willimantic	6,250.45	1,459.25	4,791.20
Ad IAR Bdgpt 172 Golden Hil St	6.75	0.00	6.75
	409,436.80	52,574.06	356,862.74
State Agencies ordering transcripts and transferring money to Judicial for payment through Payroll			
Attorney General		52.00	
Comm on Arts,Tourism,Culture		229.25	
Connecticut Siting Council		138.75	
D. of Environmental Protection		9,496.25	
DDS - Central Office		44.00	
Dept of Information Technology		2,971.20	
Dept. of Admin Services		302.00	
Dept. of Agriculture		26.00	
Dept. of Banking		1,082.70	
Dept. of Children and Families		24,774.28	
Dept. of Consumer Protection		268.35	
Dept. of Correction		2,755.75	
Dept. of Labor		244.50	
Dept. of Motor Vehicles		15.00	
Dept. of Public Safety		897.00	
Dept. of Social Services		2,572.90	
Dept. of Transportation		2,191.15	
Econ. & Community Development		818.00	
Human Rights & Opportunities		207.25	
Mental Health & Addiction Svcs		28.00	
Military Dept.		12.00	
Office of Consumer Counsel		824.00	
Office of State Comptroller		1,412.73	
Office of State Ethics		51.25	
Office of Victim Advocate		1,159.75	
		52,574.06	

Attachment G

2009 Total Transcript Payments By State Agencies

Non- Payroll:

State's Attorneys:

Regular: \$198,476.02

Felony Sentencing 58,785.78 257,261.80

Public Defender: 198,173.31 198,173.31

Commission on Child Protection 47,473.00 47,473.00 502,908.11

Payroll:

Judicial Branch 356,862.74

25 Other State Agencies 52,574.06 409,436.80

Total: 912,344.91

Attachment

H

Proposal for Juvenile Court Pilot Court Reporting Program

To: Hon. Joette Katz, Chairperson, Committee on Court Recording Monitors
and Court Reporting

From: Hon. Christine E. Keller, Chief Administrative Judge, Juvenile Matters

Date: May 11, 2010

The federal Adoption and Safe Families Act establishes timelines to achieve permanency for children in foster care. Ideally, a child will be permanently placed no later than 24 months after the date the child first enters foster care. Last year, during a federal Child and Family Service Review, which is conducted every four years, Connecticut was criticized for the length of time it takes achieving adoptions or other permanent placements for children. One problem noted by the CFSR Review team was the lengthy amount of time it takes Connecticut courts to resolve appeals from terminations of parental rights and other child protection matters.

I serve on the committee on expediting child protection appeals, created by Chief Justice Rogers, which has been developing recommendations to the Chief Justice to streamline the appeals process in child protection matters.

When a party desires to appeal a decision in a juvenile case, the trial attorney is first required to assess the merits of such an action. If the trial attorney does not feel there is merit to an appeal, he or she can request the appointment of a second attorney, through the office of the Chief Child Protection Attorney, who will review the trial transcript and trial court decision and determine whether or not to take an appeal (see Practice Book Rule 35a-21.) The length of time the review by the trial attorney or the designated review attorney takes is one area the Committee to Expedite Child Protection Appeals is addressing. Recently, we determined that requiring the trial attorney to immediately order an expedited transcript of the trial proceeding, simultaneous with requesting the appointment of a second attorney and/or filing a motion for extension of time in which to file the appeal, would help expedite the case. Of course, expediting all these transcripts is costly. Last year, the Child Protection Commission paid almost \$100,000.00 for expedited transcripts, and not all trial attorneys complied with her directive to order the transcripts expedited. Mandating the ordering of expedited transcripts by all will be more costly.

Recently, our committee learned that your committee on court recording monitors and reporters is looking for possible locations for court-based pilot programs which would allow attorneys access to “For the Record” or allow attorneys the ability to obtain a disc recording, as opposed to a fully typed transcript. The Regional Child Protection Sessions in Willimantic and Middletown, from which most child protection appeals emerge, could serve as pilot locations for your committee’s efforts, and also continue to improve the expeditious filing of juvenile appeals. Both of these court locations already utilize For the Record and the judges have become adept at using it. The trial attorney or the second attorney could access FTR or review a disc to determine: (1) whether there is merit to an appeal; and (2) which portions of the court record need to be transcribed for the record on appeal. This would lead to the ordering of fewer, costly expedited transcripts while still providing counsel with the full ability to assess the merits of an appeal.

The Regional Child Protection Sessions would involve appeals of similar legal issues. Most attorneys who represent clients in these special sessions are under contract with the Chief Child Protection Attorney, which makes the promulgation and uniform enforcement of a pilot standing order and any necessary training more efficient. In addition, the CCPA would serve as the conduit for requests for access to FTR or discs and would serve as the primary source of payment, where necessary.

The Middletown Child Protection Session and juvenile administrators in court operations also have prior experience in implementing a pilot program, having just established a pilot to permit public access to certain proceedings. The establishment of this pilot also included the creation of data collection processes and surveys to evaluate its effectiveness which could be adapted for this proposal.

cc: Hon. Alexandra DiPentima, Carolyn Signorelli, Susan Pearlman, Cynthia Cunningham, Hon. Francis Foley, Paul Hartan, Jill Begemann

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