

An Overview of Official Court Reporters in California

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| CONTENTS | | Page |
|-----------------|--|-------------|
| 1. | What the Reporter Does | 1 |
| 2. | Court Reporting Technology | 2 |
| 3. | Court Reporters versus Electronic Recording. | 3 |
| 4. | Privatized Transcript Production | 5 |
| 5. | Opportunities for Improvement | 6 |

This report examines the court reporting profession in California courts, including:

- How privately-funded court reporting technology has affected productivity;
- The differences between stenographic *reporting* and electronic *recording*;
- The dynamics of outsourced transcript production costs; and,
- Suggestions to achieve further improvements and savings.

1. WHAT THE REPORTER DOES

Most people are familiar with the public face of an official court reporter. They're the ones clicking away at a stenotype machine at the foot of a judge's bench in court. What most people would be surprised to learn is that nearly every state and federal trial court in America "contracts" privately with official court reporters to produce a transcript from court proceedings because it would be too costly if the court managed these tasks. This reveals the private face of an official court reporter, an independent business entity producing transcripts and managing this production as a private contractor.

The "public" court reporter studies for three years or more to learn the stenographic skills to accurately capture the verbatim record in the courtroom. He or she uses a stenotype machine that is connected to computer hardware and software that changes these keystrokes into digital files to serve a wide variety of purposes. This technology is called Computer-Aided Transcription, or CAT.

The "private" court reporter works after normal court hours to produce transcripts. The stenotype machine, computer and hardware are all personally purchased and owned by each court reporter; typically, these costs run more than \$10,000. Support personnel assisting in transcript production are recruited, trained and privately funded by the court reporters and not by the court.

Official Court Reporter Overview

Court reporters must perform a significant number of tasks related to transcript production, including:

- Research (for accuracy)
- Printing the draft
- Building the CAT dictionary
- Certification
- Translation of CAT files
- Proofreading
- Producing indices
- Delivery / filing
- Editing of CAT files
- Correction
- Printing / collating / binding
- Hiring/training support staff
- Coordinating with other reporters assigned to the same case
- Managing all of these processes

If the court orders a transcript, it is filed within the court-directed or statutory time requirements. If an attorney or private party orders a transcript, neither the court nor its management would be aware of the transaction. This public / private employment relationship is unique to the official court reporting profession and rarely found elsewhere. It is recognized by U.S. statute in the Fair Labor Standards Act, which was amended in 1995 to allow this unique "privatization" and relieves the courts from having to pay overtime for work demands that easily exceed 40 hours per week.

2. COURT REPORTING TECHNOLOGY

The court reporting profession, like all others, has been dramatically affected by technology. However, what sets court reporters apart are two distinctions ... first, these technologies are privately funded by the court reporters themselves at no expense to the courts they serve; and, second, court reporters have been "early adopters" of technology for a period exceeding 20 years -- much earlier than a vast majority of the courts they serve. Currently, over 90% of court reporters in the U.S. use CAT.

The reason for this phenomenon is simple. In their role as private contractors producing transcripts, official court reporters are highly motivated to improve productivity. Investing in and developing technology are business necessities driven by a free market incentive. The side benefits to the courts, lawyers and litigants are impressive. CAT technology not only helps the court reporter to quickly produce a transcript, but proficient court reporters are able to simultaneously create and display a rough draft of the verbatim record at the time the proceedings occur. This feat is called Realtime reporting that judges, attorneys, litigants, and others are quickly learning to use to improve their *own* productivity. This instant text file of the spoken word allows judges, lawyers, clerks, interpreters, and others to add notes and annotations for current or later needs.

By changing the nature of their "product" from a paper transcript to a digital file, court reporters have provided several opportunities for cost savings and improved productivity:

| | |
|--|---|
| Computer Storage of Stenographic Notes and Transcripts | To save on storage costs and retrieval. Stenographic notes, for instance, must be saved for as long as 10 years; notes relating to death penalty cases must be saved forever. |
| Uncertified draft | To allow users to purchase a lower-priced rough draft CAT transcript, which is useful for many purposes short of appeal or admission in court. |

Official Court Reporter Overview

| | |
|---|---|
| Concordance and Word Search | An electronic record allows the reporter to add a concordance (index of key words) to facilitate ease of use of the printed transcript. In its electronic form, the transcript itself may be digitally searched for key words, names and phrases. |
| Reporter Electronic Data Interchange (REDI) | A data link from the court reporter to the court's computer system to improve the accuracy, timeliness and labor intensity of clerical data entry and allow access by other governmental agencies (Also see page 6, below). |
| Transcript Access by Modem | Digital transcripts may be filed or made available by modem to promote timeliness and accessibility via interactive telecommunications, kiosk, Website, or any number of electronic media. |
| ADA Compliance | Realtime display of text aids hearing-impaired parties, while Braille-text transcripts aid sight-impaired parties. |

3. COURT REPORTERS VERSUS ELECTRONIC RECORDING

Courts are exploring more widespread use of electronic recording to produce the verbatim record. Some of the advantages and disadvantages of electronic recording are described below.

ADVANTAGES OF ELECTRONIC RECORDING

Because the clerical personnel in courtrooms are busy with other pressing duties, most courts using electronic recording equipment must hire and assign recording monitors to operate the equipment and to maintain a log of case names, witnesses sworn, and other relevant data. The effort to replace stenographic reporters with recording equipment is largely to achieve cost savings that are attributable to the salary differential between recorder monitoring personnel and court reporters. Recording monitors are paid substantially less than court reporters because less skill is required in comparison to court reporters.

There is also a significant difference in the choice of electronic recording equipment. Whether audio or video, digital recorders offer distinct advantages over analog (or tape) recorders. The raw (untranscribed) digital record is more easily stored, retrieved and transmitted, as compared to analog tape. The raw digital record is also searchable for key words or events, but only if an electronic recording monitor has made appropriate annotations to the record to allow this feature. The raw analog tape is not searchable for key words or events.

DISADVANTAGES OF ELECTRONIC RECORDING

Whether the end product of capturing the court record is the production of a transcript or other use, there are several disadvantages of electronic recording, including those shown on the following table:

Official Court Reporter Overview

| <i>Activity</i> | <i>Stenographic Reporter</i> | <i>Electronic Recording (ER)</i> |
|---------------------------------|---|--|
| Production of transcript | It is easier, faster and cheaper to produce a transcript via Computer-Aided Transcription (CAT) technology, because a court reporter or their personally funded staff is only editing the CAT record, proofing and printing it. | "Taped" proceedings are more labor-intensive to transcribe into a transcript, because a transcriber must type everything from scratch. It takes 3-4 times longer to transcribe an ER record, which usually results in a higher cost per page. |
| Ease of use | CAT-produced transcripts can be filed by modem, include indices, be stored electronically and have other tangible benefits. | If the "taped" proceedings are used alone, it takes 4-5 times longer to review it as opposed to a hard copy or electronic transcript. If the equipment is not digital, raw files can't be transmitted by modem, and archival is space-intensive. |
| Equipment costs | Courts do not currently pay for a court reporter's steno machine, computer hardware / software, paper, supplies, transcript production equipment and support personnel. | At a minimum, courts would have to pay for electronic recording equipment, repair and replacement. Usually courts would also have to invest in transcript production staff, equipment and supplies. |
| Realtime | Only a stenographic reporter using CAT technology is able to produce an instant text file of the spoken word that is capable of annotation and use by other courtroom stakeholders. | Neither digital nor analog electronic recording equipment can produce a Realtime record. E.R. is difficult to search without a dedicated monitor. |
| Management | Management consists largely of assigning court reporters to courtrooms; the court has no responsibility to manage transcript production. | ER would require significant management responsibility, including staffing and deployment of monitors, equipment maintenance and transcript production. |

In short, there are several factors relating to productivity and indirect costs that affect a court's ability to achieve cost savings merely by replacing stenographic court reporters with electronic recording equipment. The state of the art of recording technology is incapable of "recognizing" speech in dynamic courtroom proceedings where a wide variety of voices and accents are present, technical terms are prevalent, and proper names are used.

Official Court Reporter Overview

4. PRIVATIZED TRANSCRIPT PRODUCTION

Official court reporters working in courts occupy a unique role in human resource management. By day, they are salaried employees reporting in courtrooms, while after hours they are independent contractors producing transcripts for the court, attorneys and litigants. This unique structure has existed for more than a century and has been recognized in state and federal statutes for one simple reason ... it works. If the court had to assume responsibility for transcript production, it would be more costly on several fronts: lack of efficiency, the need for more court reporters, management overhead, and the need to pay for the technology, equipment, and support staff that court reporters currently finance privately.

While court reporters' salaries have been increased over time in recognition of their abilities, the fees to prepare transcripts have remained relatively flat. A comparison of California statutory transcript rates over the past 100 years shows:

| <u>YEAR</u> | <u>Cost per page-Original</u> | <u>Cost per page-Copy</u> |
|-------------|-------------------------------|---------------------------|
| 1903 | \$0.52 | \$0.26 |
| 2003 | \$2.19 | \$0.39 |
| | <i>325% Increase</i> | <i>50% Increase</i> |

The Consumer Price Index during this 100 year period was approximately 2,000%

A comparison between transcript costs in the Los Angeles Superior Court and the U.S. Federal Courts in the Central District of California (Los Angeles) shows a significant cost differential, including several "expedited" services that are not compensated in California state trial courts:

| <u>FEDERAL COURT</u> | <u>Cost per Original (25-line page)</u> | <u>Cost per Copy (25-line page)</u> |
|----------------------|---|-------------------------------------|
| Regular delivery | \$3.00 | \$0.75 |
| Expedite delivery | \$4.00 | \$0.75 |
| Daily Delivery | \$5.00 | \$1.00 |
| Hourly (same day) | \$6.00 | \$1.00 |

(Note: A 10 percent increase has been approved but not funded.)

| <u>LA Superior Court</u> | <u>Cost per Original (28-line page)</u> | <u>Cost per Copy (28-line page)</u> |
|--------------------------|---|-------------------------------------|
| Regular delivery | \$2.19 | \$0.39 |
| Expedite delivery | \$2.19 | \$0.39 |
| Daily Delivery | \$2.19 | \$0.39 |
| Hourly (same day) | \$2.19 | \$0.39 |

To put this in another context, the court pays a court reporter 39 cents per page for a transcript copy (not the original). Yet the rate the court charges anyone asking for a copy of court files in the clerk's office ranges from 57 – 80 cents per page, which reflects the "actual" cost recovery as provided by Government Code Section 6257.

The reason that organizations "outsource" or privatize functions is to achieve cost savings from others who can perform faster, better and cheaper. In the case of court reporters, transcript production and copy costs are faster, better and cheaper because of the free

Official Court Reporter Overview

market, competitive environment that is created when court reporters act as independent contractors for these tasks. In this outsourced model, by statute the court does not pay for related transcript production overhead costs such as paper, binding, supplies, computer hardware / software, delivery service and support personnel. If the court assumed responsibility for producing transcripts, these costs would have to be borne by the court, and it is doubtful that free market incentive efficiencies would result.

5. OPPORTUNITIES FOR IMPROVEMENT

The official court reporters in California courts recognize their responsibility to assist the courts to achieve cost savings and productivity in the face of budget reductions. Accordingly, there are several opportunities for improvement that are highly achievable because of the court reporters' private investment in technology, and the resulting conversion of paper transcripts into electronic files. Some of these improvements are:

- Reporter Electronic Data Interchange (REDI) – because the court reporter's digital file contains key information on rulings, witnesses, party names and motions, the reporter's computer could easily be linked with the court's computer system to allow data interchange with court clerks, probation department, state prison, and other governmental agencies for the purpose of creating and accessing minute orders, docket entries, transcripts, and case management information. This prospect holds enormous potential for cost savings and efficiency due to the significant data entry requirements that clerical personnel must currently perform. This technology is NOT used in any California court today.
- Computer Storage of Stenographic Notes and Transcripts – to save on storage costs and increase the efficiency of retrieval of archived stenographic notes and completed transcripts. Note storage technology is used in less than one third of all California courts; transcript storage technology is almost nonexistent.
- Realtime – to improve judicial and attorney productivity by providing an instant text file of verbal proceedings as they occur. These files may be used at the time they are produced, and annotated and referenced for later use. This technology is highly underutilized, and is estimated to occur in substantially less than half of California courtrooms today.

In summary, official court reporters working in California courts perform a variety of value-added tasks in both their roles as salaried employees reporting court proceedings and as independent contractors producing transcripts. Courts cannot easily replace these cost savings and efficiencies, especially considering that the costs for related technology are currently borne by each of the court reporters at no public expense. Moreover, the technological advances that court reporters have achieved by privately financing computer hardware and software hold strong potential for cost savings if the courts would co-opt these technologies into court operations.

This report was prepared by Christopher Crawford, president of JUSTICE SERVED™, a court management and technology consulting firm. Mr. Crawford has more than 30 years of court management experience, including 21 years managing California trial courts. For more information, please visit www.justiceserved.com.