

An Analysis of Court Reporting and Audio Recording in the California Courts

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Executive Summary

Many states, including California, use a blended system of court reporters and audio recording in the trial courts. For decades the California courts have considered the policy question of whether to expand audio recording or even replace court reporters altogether as a cost-saving measure. In this analysis, we study the question of whether the implementation of audio recording would truly be a cost savings in California courts, especially when considering the loss of quality of the verbatim record. This examination reveals that the budgetary impact is an increase to the trial courts as a result of a shifting of costs from the court reporter to the courts. **Court reporters fund 100% of transcription production.**

Cost comparison of Court Reporting and Audio Recording:

Monthly Cost

Cost Component	Audio Recording	Court Reporting
Transcription costs (1,000 pages)	\$ 7,000	\$ 2,970
Salary	\$ 3,715	\$ 7,912
Management overhead	\$ 885	\$ 74
IT equipment/maintenance, software	\$ 167	Self-funded
Transcript preparation supplies and staff support	\$ 726	Self-funded
Total	\$12,493	\$10,956

Initial Cost to the Trial Court per Courtroom

Cost Component	Cost	
	Audio Recording Courtroom	Court Reporter Courtroom
Equipment acquisition	\$ 4,000	Self-funded
IT Network Upgrades	\$50,000	Not applicable
Added servers	\$10,000	Not applicable
Total initial cost to trial court	\$64,000	\$0

A comparison of Court Reporting and Audio Recording:

Court Reporting

- Personally purchase and maintain all required equipment and software
- Professionals specially-trained and state-licensed
- Responsible for all facets of transcript preparation
- Produces a verbatim official record
- Provide jury readback with appropriate portions omitted
- Provide instant digital transcript (realtime) and instant readback

Audio Recording

- Upfront costs for equipment acquisition
- Ongoing costs to court for purchasing and maintaining equipment and upgrading software
- Office staff trained on the job
- Court must prepare or manage preparation and duplication of transcriptions of audio
- Instances of incomplete, inaudible and unintelligible recordings
- Court, attorney and jury time lost redacting and reviewing audio record for readback
- Time for judicial review can be extensive and expensive

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Introduction

For the past 30 years, many suggestions have been made to reduce costs in the trial courts by producing the court record using audio recording devices rather than official court reporters. California studies conducted in 1992, as well as recent studies, show that the use of court reporters continues to be the most efficient and cost-effective method to make an accurate, complete verbatim record of court proceedings.

There are a number of reasons for this, including:

- Court reporters are specially-trained, at their own expense, and they are tested and licensed by the State of California. Audio recording monitors are office staff trained on the job at the court's expense. The number of supervisory personnel required to oversee audio recording monitors is higher than that for court reporters.
- Court reporters purchase, maintain and upgrade their own computerized stenographic machines. They purchase computers and court reporting software that connects with existing court equipment. Audio recording equipment must be purchased by the court and maintained and upgraded by specialized IT personnel paid for by the court. The initial cost for equipping a courtroom for audio recording is substantial.
- Court reporters provide all computer equipment, supplies and labor to prepare, print, and bind official court transcripts. The preparation of transcripts prepared from audio recordings must be contracted out or additional staff must be hired to prepare them. Due to the labor-intensive nature of typing from audio tapes, transcription costs can be up to three times higher than for a court reporter's transcript. Most often, the court is responsible for personnel to order, invoice, bind, and deliver the transcripts made from audio recordings.
- It is not uncommon to find inaudible and unintelligible portions of audio recordings **that can never be recovered** and lead to incomplete transcripts. Transcriptionists are required by law to label indiscernible portions of the transcript.¹ Audio recording devices often record confidential attorney/client conversations which are not meant for the official record. Objections sustained by the court during a jury trial must be redacted before jury review. Redacting information from an audio recording is cumbersome and labor-intensive.
- Reviewing an audio recording can be far more time-consuming for lawyers and judges than reviewing a court reporter's record. The court reporter's record allows for instant digital searches or, upon request, the court reporter can immediately read back the record.

¹ California Government Code 69957(a)

Background

1. Court Reporters

A Certified Shorthand Reporter (court reporter) captures the record of court proceedings by using a stenotype machine connected to computer hardware and software that converts shorthand keystrokes into digital files that can be read in English. The technology is called Computer-Aided Transcription (CAT). Court reporters have the technology to provide instantaneous searches of court proceedings. They can also provide realtime translation to judges, attorneys and others. Reporters also provide the technology to electronically file court transcripts.

Outside the courtroom, after normal work hours, reporters produce transcripts of the court record. This is the official transcript of what was said in the courtroom and is used by attorneys, parties and appellate courts. The computer, specialized software, printer and transcript supplies are personally purchased by the reporter. The reporter is responsible for maintaining and upgrading the hardware and software as needed. Any support personnel used by the reporter to assist in transcript preparation are recruited, trained and privately funded by the court reporter.

Court Reporters:

- Are trained, licensed professionals
- Provide the funding for the Transcript Reimbursement Fund for indigent litigants
- Purchase, maintain and upgrade their own equipment and software
- Produce rough draft transcripts available minutes after a hearing
- Provide electronically-searchable official transcripts
- Provide instantaneous searchable realtime translation to judicial officers, lawyers and others
- Provide time-saving readback to judicial officers, jurors and court attachés
- Print, bind and deliver official certified court transcripts
- Comply with the statutorily-set rates for transcript production
- Are subject to oversight by the Court Reporters Board of California within the Department of Consumer Affairs

2. Audio Recording

Present California statutes authorize the use of audio recordings in specified types of court proceedings. Equipment used by the audio recording monitor is owned by and must be maintained and upgraded by the court. Due to the ongoing budget cuts to the courts, most courtrooms do not have proper sound systems. In order to expand audio recording, older courthouses will have to be retrofitted with new electrical and IT wiring and all courtrooms will have to be equipped with microphones, amplifiers, and other accoutrements, which are cost-prohibitive for most courts.

As recommended by the California Judicial Council, “when a recording is of sound only, a separate monitor without other substantial duties is recommended.”² Other clerical staff in the courtroom do not have time to pay sufficient attention to recording equipment. Since an audio recording monitor’s duty is, basically, supervising a recording device, the salary is less than that of a court reporter.

In the Los Angeles Superior Court, the minimum requirements for an audio recording monitor are a GED and a year’s experience as a journey-level court services assistant. Training as an audio recording monitor is conducted on the job at the court’s expense. Preparing a transcript from an audio tape is labor-intensive and takes at least three times longer than that produced by the reporter’s CAT system and as a result costs up to three times more.³ Audio recordings are cumbersome and difficult to transcribe because the sound quality fluctuates due to noise, rustling of papers and poor sound equipment. Reviewing an untranscribed audio record is very difficult and time-consuming, taking four to five times longer to accomplish than reviewing the searchable record prepared by the court reporter.

Using audio recording requires:

- Upfront funding for equipment acquisition
- Upfront funding to upgrade older courthouse electrical and IT wiring
- Upfront funding to fully integrate sound systems in each courtroom
- Ongoing funding for recording software and annual license fees
- Ongoing funding for hardware upgrades and maintenance contracts
- New funding for outsourcing transcription production or more in-house personnel for transcript production
- More personnel for managing transcript procurement and invoicing
- Time-consuming review of the audio record
- Retrials due to inaudible and unintelligible areas on the tape and within a transcript
- More personnel to redact confidential attorney/client conversations recorded
- More personnel trained to be dedicated monitors
- IT personnel to maintain the equipment and software
- More supervisory staff

A Comparison of Court Costs for Court Reporting and Audio Recording

In order to compare the operational costs of capturing the record and producing a transcript using court reporting versus audio recording, this section provides a side-by-side contrast of the monthly costs for a courtroom using a court reporter versus one using audio recordings with a monitor in the Los Angeles Superior Court. Each of the elements -- means of calculation and related issues -- are described in detail in the appendix:

² California Rules of Court 2.952(b)

³ Crawford, Chris. *An Overview of Official Court Reporters in California*. 2003.

Cost Component	ER Monitor	Court Reporter
1. Transcript (1,000 pages)	\$ 7,000	\$ 2,970
2. Salary	\$ 3,715	\$ 7,912
3. Management overhead	\$ 885	\$ 74
4. IT equipment/maintenance, software	\$ 167	Self-funded
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Total	\$12,493	\$10,956

In addition to annual costs, there are substantial start-up costs required for courts implementing audio recording. When utilizing court reporters, these costs are either self-funded by the court reporter or unnecessary. These upfront costs do not include equipment for in-house transcript production. Anticipated costs per courtroom are:

Cost Component	Cost	
	Audio Recording courtroom	Court Reporter Courtroom
6. Equipment acquisition	\$ 4,000	Self-funded
7. IT Network Upgrades	\$50,000	Not applicable
8. Added servers	\$10,000	Not applicable
Total initial cost to trial court	\$64,000	\$0

When all cost factors are taken into account, it is less expensive to use court reporters in cases where readback is necessary and transcript requests occur.

Quality of the Record

The quality of the court record is as critical an issue as cost. The record prepared by a court reporter is superior to an audio recording. It is available for instant review by the judicial officer or attorneys. Inaudible or unintelligible testimony can be immediately corrected at the time it occurs, rather than found later on a recording, with no way to recover what was said. Redactions are easily accomplished by court reporters creating a digital record capable of being searched instantly as opposed to trying to decipher what is being said on an audio recording. A reporter who cannot hear a comment will ask the party to repeat their response; thus, the quality of the record made by a court reporter is superior to that made by a machine.

A recent editorial in the Fresno Bee, written by a Fresno Superior Court Judge, stated the quality issue quite clearly:

Witnesses mumble, speak softly and often have difficulty using a microphone. Attorneys move about to retrieve exhibits, approach witnesses or display items for the jury. Often witnesses answer a question while an attorney is still asking it, even as opposing counsel lodges an objection. Court reporters have the unique ability to obtain an accurate

record in spite of these difficulties; **a transcriptionist simply writes “unintelligible.”** (emphasis added)⁴

Having to retry a case or conduct a new hearing to recapture a lost record is a high price to pay for a “cost savings” that does not hold up under analytical scrutiny.

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

State of Missouri v Barber, No. WD74279, Court of Appeals of Missouri, Western District, November 13, 2012. The defendant was found guilty of two counts of tampering with a witness in a child molestation case. The case was appealed, but when the defendant requested a trial transcript it was found that the entirety of his direct testimony and much of his cross-examination was not available. The recording machine was not turned on during most of his testimony. The case was remanded for a new trial.

State of North Carolina v King, No. COA11-568, Court of Appeals of North Carolina, February 7, 2012. A defendant appealed a conviction of charges related to cocaine possession and sale and “attaining habitual felon status.” When he received the trial transcript he found sections were missing and deemed unrecoverable. “Because neither a verbatim transcript nor adequate alternative is available to conduct a meaningful review of defendant’s habitual felon status hearing, we reverse and remand for a new habitual felon status hearing.”

Hamilton County, Ohio, January 20-31, 2011. A recording equipment malfunction during grand jury proceedings resulted in failure to record proceedings for 146 cases, including a capital murder charge that had to be dismissed, re-filed and presented to the grand jury again.

These quality issues are critical. The instances of an inadequate record are significantly higher when no audio recording monitor is provided. Even so, audio recording only becomes a cost-effective choice with low transcript volume and low impact cases.

Conclusion

Making the verbatim record in a court of law is a complex process, and accuracy and faith in the transcript are essential for the administration of justice.

The service and transcripts provided by court reporters are of the highest quality and of the most use to courtroom personnel – judicial officers, attorneys, jurors and other court attachés. Court reporters provide this service using their own funds for training and for necessary equipment. They are professionals licensed by the California Department of Consumer Affairs. Their value to the judicial system is evident not only in the quality of their work, but in the cost to the court, as detailed in the cost comparison with audio recording.

The quality of the work produced combined with the cost savings make the use of court reporters to create the verbatim record a clear choice.

⁴ Hamlin, W. Kent. Fresno Bee. *Court reporters are vital.* February 11, 2013.

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Appendix

1. Transcript: Court Reporters are paid \$2.97 per page for an original plus two copies of a transcript. Courts tend to contract out the process of preparing transcripts from audio recordings, at a cost ranging from \$5 to \$9 per page. This analysis uses an estimated cost of \$7 per page. Transcript preparation companies may also charge an hourly fee for time spent transcribing, which is not accounted for here.
2. Salary: The monthly salary for the positions of Court Reporter and Electronic Recording Monitor.
3. Management overhead: Court reporters are specially-trained and pass a rigorous test to be licensed by the Court Reporters Board of California within the Department of Consumer Affairs. As such, they do not need the same level of supervision as clerical staff. Currently there are three managing court reporters for 510 court reporters, or one manager for each 170 Reporters. There is one Administrator II for all court reporters. Because audio recording monitors require a closer level of supervision, this analysis assumes a unit of 25 monitors needs a court services supervisor and an administrator II. Because of the required hardware and software for audio recording, each unit of audio recording monitors also requires an information technology associate.
4. IT equipment maintenance, software: The cost to purchase a single audio recording unit is approximately \$4,000, with an assumed lifespan of five years, or \$800 annually. A one-year license, maintenance agreement and laptop rental is approximately \$1,200.
5. Transcript preparation supplies and staff support: A transcript preparation company provides a digital transcript, which must then be printed, copied and bound. The court must also manage transcript requests, which includes invoicing, delivery and monitoring quality. Annual costs for paper, binders, and toner is approximately \$3,100. Each unit of 25 audio recording monitors requires a secretary, production control assistant and printer to manage the necessary paper production.
6. Equipment acquisition: The cost to purchase a single audio recording unit is approximately \$4,000.
7. IT network upgrades: Audio recording places a substantial burden on a court's IT computer network infrastructure attributable to the creation, transmission and storage of large digital audio files. Costs associated with network upgrades would be approximately \$50,000 annually.⁵
8. Added servers: Costs associated with additional servers to support the storage area network is approximately \$10,000 annually.

⁵ Crawford, Chris. *A Study of Court Reporting and Digital Recording in the California and Florida Courts*. 2009.