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Electronic reporting:

Benefits include lower costs, more flexibility



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By JAMES ARDAIZ

Confronted with a reduced budget and recognition of emergent technology, the judiciary has proposed implementation of discretionary use of digital electronic recording in courtrooms in California. These courtrooms would preferably be in low transcript volume courts such as family, probate, law and motion and limited jurisdiction proceedings.

Frequently referred to by opponents as tape systems, these are instead highly sophisticated digital recording devices. California is one of the very few jurisdictions that preclude discretionary electronic recording by statute. Even federal courts permit it.

What is proposed is the availability of digital recordings that can be converted to certified transcripts as needed by the user. Most evaluations of a court proceeding require a transcript in order to accurately evaluate what occurred. A digital recording allows users to evaluate what transpired and make a decision whether a transcript is necessary or desirable.

Opponents claim it will increase costs of transcripts and lower accuracy. There is no question that cost and accuracy are issues that must be considered. What is at issue for the judiciary is the ability to control cost and implement modern technology. What is not in issue is the judiciary's insistence that costs are contained and accuracy is preserved.

First, current digital systems can be installed at a one-time cost not exceeding \$15,000 per courtroom. These systems will allow recordings that can be sold to the parties for minimal cost and high user flexibility. Highly accurate transcripts can be easily prepared in fairly short time periods. Immediate availability to users, electronic transmission, minimization of copy costs all become a reality.

Why digital recording? The answer is costs and shortage of personnel. Courts are facing a shortage of court reporters that court reporter organizations acknowledge is a national problem. Lack of reporters inhibits flexible court operations and requires expensive per diem reporters.

Second, a highly trained certified court reporter costs a statewide average of \$89,000 a year for salary and benefits. Reporters must be in courts even when the actual demand for transcripts is low. Putting reporters in courts with low transcript demand makes little economic sense. Most family law judges would agree, for example, that very few family law cases require transcription.

The justification for electronic recording is simple: significantly reduced recordation costs; enhanced court flexibility in dealing with reporter shortages; enhanced ability to control costs; increased accessibility of the record; and less expense for litigants.

Opponents argue that these systems will not save money because monitors must be hired to ensure the machine is working. It is correct that the systems need someone to monitor that they are working, but dedicated monitors in addition to traditional court personnel have not proven

necessary in most cases.

Opponents argue transcript accuracy will suffer. Unbiased studies show that the accuracy level is as high or higher than certified reporters. A recording can be checked for errors and resolves differences of opinion.

Any lawyer who has spent time settling the record in a case can appreciate this issue. Logic dictates that a recording only enhances accuracy. That is why so many reporters currently record testimony simultaneously with stenographic recordation in order to confirm their accuracy.

Finally, technology has simply changed the way business has been done in the past. Modern technology allows accurate recordation, ease of use and efficient operation and cost. That is not to say that court reporters should not be used in certain types of courts. Court reporters provide speed of transcription and real time reporting that is not available with current technology. However, not every courtroom requires real time technology and immediate conversion of stenography to transcript.

The proposal by the judiciary seeks to address current practices and costs that are no longer technologically justifiable. The judiciary's proposal seeks to preserve the jobs of our current court reporter employees and maximize their flexibility.

At issue is whether current technology justifies costs based on the significantly more labor-intensive practices of the days before personal computers and high-speed printers. An example is the charge of \$.41 for a copy of an original page in addition to the average charge of \$2.34 for the original page. Should the courts pay \$.41 to copy a page given current technology? Much of what is statutorily protected is an historical evolution based on practices of many years ago and not the current available process.

Courts cannot avoid seeking changes which will minimize costs to attorneys and the public simply because they are politically difficult or a different way of delivering good service.

- *James Ardaiz is the presiding justice of Fifth District Court of Appeal in Fresno. He chairs the Judicial Council's Reporting of the Record Task Force.*

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