



Leadership & Technology



Digital Court Recording Makes the Record Effectively

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Many state and local courts successfully use digital recording as an accurate, cost-effective means to produce and obtain the verbatim court record. Standards, practices, and procedures must be in place to ensure the success of the transition from stenographic to digital recording.

The Conference of State Court Administrators Policy Paper

In December 2009, the Conference of State Court Administrators (COSCA) adopted “Digital Recording: Changing Times for Making the Record.” In this policy paper, COSCA identified stenographic reporting as the predominant method of making the verbatim record in the nation’s courts. While stating that the “current methods of making the record have served the courts well,” the policy paper identified the challenges posed by stenographic reporting in creating, producing, accessing, and preserving the record, while describing the opportunities offered by digital recording.

COSCA determined that digital recording:

- enhances accuracy and completeness of the record by preserving language translations
- is a cost-effective means to obtain the record
- creates an opportunity to establish, whether by statute or court rule, that all records of judicial proceedings belong to the courts and
- allows a court to integrate the recording system with other digital applications, including case management and calendaring systems

COSCA acknowledged that digital recording will require a change from longstanding traditions: “The physical presence of a court reporter in a courtroom has been a mainstay of the traditional system.”

This change shifts responsibility for the record from the stenographic court reporter to the judge and staff. It means redefined responsibilities for courtroom staff not only to make the record, but also to perform courtroom duties and judicial assistance previously performed by the stenographic reporter, including swearing in witnesses and marking and preserving exhibits. It means redefining judges’ courtroom responsibilities to make sure that all participants speak clearly into courtroom microphones. It means new models of staffing, training, and supervising persons who operate and monitor courtroom proceedings.

The National Center for State Courts Policy Paper

The authors of this *Trends* article prepared “Making the Record Utilizing Digital Court Recording” in September 2013, which establishes policies, procedures, and technical standards for producing an accurate record and transcript. It

details the governance and management structures needed to provide oversight of the program and makes recommendations on courtroom practice, transcript production, and minimum technical standards for digital-recording systems, software, and equipment.

Full implementation of these policies, procedures, and standards will enable judges to focus on presiding over court proceedings, knowing that the record is being preserved, no courtroom testimony will be lost, and no confidential or off-the-record conversations will be inappropriately disclosed or published in the public transcript. Trial and appellate judges and attorneys will feel confident that an accurate and timely transcript of court proceedings can be produced.

Current Use of Digital Recording in General-Jurisdiction Courts

A number of states and territories have made the transition to digital recording in their courts. Alaska, Colorado, Connecticut, Delaware, Kentucky, Maine, Indiana, Maryland, Massachusetts, New Hampshire, New Jersey, Oregon, Tennessee, Vermont, Guam, Northern Mariana Islands, and Puerto Rico use audio digital recording to make the record in all or most of their general-jurisdiction court sessions.

Other states use digital recording in many of their general-jurisdiction courts. Florida uses digital recording in its general-jurisdiction trial courts in 66 of its 67 counties. Minnesota has digital recording in all of its counties but does not use it in all of its general-jurisdiction courtrooms. Many other state and local jurisdictions use digital recording in their limited-jurisdiction courts and in some of their general-jurisdiction courts.

Governance, Organization, and Structure

Any program to implement or expand digital recording of court proceedings must make clear who has authority for determining whether digital recording will be used, in which proceedings, and how it is to be implemented. Such authority must include responsibility for determining and enforcing the procedures to adopt and the required technology standards. Successful implementation is more likely if the administrative authority secures and retains buy-in from all stakeholders before and during implementation.

Components of a Successful Program

Ownership of the Official Record. It is important that court leaders make clear that the court owns the digital record of court proceedings and is responsible for storing and archiving the record. The court rule should state who is responsible for establishing procedures for the retention, storage, archiving, and retrieval of recordings and accompanying work papers.

Access to the Digital Recording. It is important that court leaders specify who has access to digital recordings of court proceedings. The court must establish which recordings are accessible to the general public, which are available only to the parties or attorneys of record of a case, and which are available only by court order.

Oversight of the Digital-Recording Courtroom Monitor.

Court leaders must make clear how digital recordings will be monitored and who is responsible for establishing courtroom monitor procedures and for ensuring that the monitor follows those procedures. Oversight of the courtroom monitor should include the same basic human-resources principles that apply to oversight of all court employees.

- **Job Description:** The courtroom monitor, whether an employee or a contractor, must have a job description with minimum qualifications and performance expectations.
- **Conduct and Professional Ethics:** The courtroom monitor must comply with all statutes and court rules and must be subject to the court system's code of conduct for court employees.
- **Responsibilities:** The court should establish the procedures that the courtroom monitor must use to monitor the digital recording and any other courtroom procedures expected of the courtroom monitor, including the marking of exhibits and swearing in of witnesses in the courtroom; the maintenance of evidence; and the storage, archiving, retrieval, and transcription of the digital record.
- **Training:** Courtroom monitors must receive initial hands-on, start-up, and follow-up training from the digital-recording vendors and court staff on the system's start-up and advanced features.
- **Performance:** The court should establish performance expectations, including formal activity reports for courtroom monitors. Courtroom monitors should receive periodic performance reviews and training in areas that need improvement.

Procedures and Best Practices for Digital-Recording Technology

Courts must establish clear, effective procedures to ensure that courtroom proceedings will be recorded and preserved. The procedures identified in the September 2013 NCSC paper, if fully implemented, will enable judges to focus on presiding



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over court proceedings, knowing that an accurate and complete record and transcript can be preserved and produced.

These procedures include:

- signage that provides important reminders to litigants, staff, and the public that the proceedings are being recorded and that anything spoken may be recorded
- an opening colloquy enabling the judge to inform courtroom participants that the proceedings are being electronically recorded and that they need to state their names clearly and speak clearly and directly into the microphone
- the production of log notes and, where necessary, case management system entries
- how and when to interrupt the judge when necessary to make the record
- what must be included on an appearance sheet
- how to play back testimony during the courtroom proceeding
- how the recording is to be stored

Transcription and Delivery of the Record

Access to Recordings. The court should establish by rule or administrative order whether parties, attorneys, other case participants, or the general public can have access to recordings of some or all court proceedings, and if so, how persons can request recordings and how the court can distribute them.

Preparation and Distribution of the Transcript. Digital recording enables the state or local court system to establish a transcript management system that efficiently and effectively manages the life cycle of transcripts from initiation of the transcript request through the electronic or paper distribution and filing of the transcript. Courts should establish clear responsibility and procedures to manage the transcript production process.

Transcript Management in the Utah Courts

The Utah Judiciary has established an effective transcript management program. This Web-based system provides transcribers with online access to recorded hearings, allowing attorneys and self-represented parties to request transcripts and allowing the judge, attorneys, and parties to view the electronically filed transcript in the court's case management system.

The Utah Judiciary contracts for written-document-transcription services. Many of Utah's transcribers are former stenographic court reporters. The transcript fee is paid directly to the transcriber.

Transcripts for cases on appeal are now being completed within 22 days of the request; before Utah's transition to digital recording in 2009, transcripts were being completed within 138 days. Transcripts of cases not on appeal are now being completed within 12 days.

Remote Monitoring of Courtroom Proceedings

The September 2013 NCSC paper did not discuss the trend toward remote monitoring of courtroom proceedings. A number of states have moved in this direction.

Florida increased their use of centralized digital recording in criminal, juvenile, and other state-paid recorded proceedings from 24.7 percent in 2004 to 55.8 percent in 2013. The number of hours recorded using shorthand, stenographic machine, computer-aided transcription, or any other manual form of stenographic court reporting has decreased from 29.7 percent to 22.1 percent. The parties pay for and contract mostly with court stenographers to take the record in most civil and divorce proceedings.

Florida's digital-court-recording system enables operators, commonly referred to as digital court reporters, to make log-note annotations and monitor the quality of the recording by distinctly listening to the recorded audio channel in real time while viewing sound-level indicators of each channel. Operators can and do centrally monitor up to four courtrooms simultaneously from a remote location over the court's local or wide area network. Cost savings vary depending on the logistical configurations of each courthouse, but may reach \$20,000 per courtroom per year.

Florida has established minimum technical and functional standards for integrated digital-court-recording systems. The Florida State Courts System is developing OpenCourt—open-source software for court-reporting services that may in the near future be shared with other states.

Beginning in 2006, the Fourth District in Minnesota (Hennepin) successfully implemented a centralized monitor room. In 2006 an average of 10 courtrooms were being recorded. Today all courtrooms of record have the ability to remotely record, and an average of 45 courtrooms are being recorded. Court reporters, who are employees of the administrative office, monitor up to four courtrooms each and are assisted by nearby supervisors, who can respond to most adverse situations that arise. If a court reporter monitoring multiple hearings observes that one is becoming complex and needs more attention, supervisors can immediately transfer other hearing rooms to a different station. When necessary, an in-person reporter is assigned to work directly in a courtroom.

Conclusion

The trend in the state courts is clearly a shift from the traditional model of a judge and stenographic reporter working as partners to make the courtroom record to a model in which courtroom monitors make the record through digital recordings. State and local courts that have made the transition are pleased with the results: an accurate record is being made; accurate transcripts are being timely produced; judges continue to conduct orderly courtroom proceedings; and digital recording is proving to be a cost-effective means of making the record. The payoff for transitioning to digital court recording is so positive that state and local court systems are justified to invest time and resources to establish strong governance and oversight programs, effective courtroom practices, an effective transcript management system, and minimum standards for digital-recording systems, software, and equipment. ◀



A Call for Article Submissions

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