

Making the Verbatim Record: A Window of Opportunity for Systemic Change

By Matthew Kleiman, Kathryn Holt and Sarah Moser Beason

Challenging fiscal times have created a unique window of opportunity for court leaders to critically examine current business practices. One extant court function that has been the focus of reengineering efforts is the creation of the court record. Making the verbatim record is an essential court function that historically has relied on court reporters. Recent reform in several states suggests systemic change to incorporate digital recording technology in creating the record is difficult to achieve, but not insurmountable.

The recent economic recession and state budget shortfalls have had a significant impact on the courts' ability to provide quality services to the public. In response to budgetary reductions, courts around the country were forced to lay off and furlough court employees, reduce court hours, cancel jury trials and eliminate special programs.¹ Despite the negative impact of those cuts on service delivery, the challenging fiscal times have created a unique window of opportunity for court leaders to critically examine current business practices and challenge the status quo. A number of state courts have responded to the fiscal bad times by undertaking wholesale reengineering efforts that strive for systemic change and improvements in the efficiency of operations while maintaining or improving access to justice as well as the fair and timely disposition of cases. One court function that has been the focus of reengineering efforts is the creation and preservation of the court record.

The making and preservation of an accurate and timely verbatim record of legal proceedings is an essential court function that imports verity to the judicial process and helps to ensure government accountability and the fair administration of justice. The certified record is a neutral tool that allows parties to seek to remedy any injustices through appellate review. Court consultants, John Carver and Barry Mahoney assert that the official record "is a pillar of our system of justice. How that record is made—how quickly it is produced, how accurate it is, and how usable the format—all have significant impact on the flow of cases through the system and the fairness of the process."²

Historically, courts have relied on court reporters—humans in the courtroom—to ensure an accurate, reliable court record and the timely production of transcripts. In the face of economic shortfalls, sev-

eral states—such as Arizona, Iowa, Massachusetts, North Carolina and Utah—have explored alternative technology-based means of creating the record. These investigations have been spurred on by a 2009 Conference of State Court Administrators policy paper advocating that "[s]tate courts should move to digital recording as the method for making the verbatim record"³ and arguing this approach "is an economic alternative to traditional court reporting that provides savings to both litigants and courts."⁴ In spite of this call to action, entrenched justice system stakeholders—such as judges, attorneys, court managers and court reporters—remain reluctant to jettison old practices. Recent reform efforts in several states suggest systemic change is difficult to achieve, but not insurmountable.

Methods of Creating the Record

The methods used to create and maintain the record vary greatly from state to state, and often between jurisdictions within a state. Variation exists among the types of cases required to be on the record, the methods for creating the record—such as court reporters versus digital technology, stenography versus voice recording, whether court reporters are state or contract employees and their required level of certification. These differences are not necessarily indicative of the most efficient and effective best practice, but instead reflect the complex funding strategies, statutory requirements and political histories of each state. Table A provides an overview of eight states, selected to illustrate the varied means and methods of creating the record.

Although many states require all case types to be on the record, South Carolina and Virginia do not. Judges are given discretion to determine the recording of certain cases, providing flexibility in the content of the verbatim record. When consider-

Table A: Comparative State Practices for Creating the Record

State and court	Case types required to be on the record				Methods for		State or contract employee?	
	Criminal	Civil	Family/ domestic relations	Juvenile	Digital recording	Court reporter		
Arizona.....	Superior Court Juvenile Court	●	●	●	●	●	State State	
Iowa	District Court Juvenile Court	●	●	●		●	State State	
Massachusetts	Probate & Family Court Juvenile Court District Court Superior Court	●	●	●	●	●	NA State NA State	
Minnesota.....	District Court	●	●	●	●	●	State	
North Carolina.....	Superior Court District Court	●	●	●	●	●	State NA	
South Carolina.....	Circuit Court Family Court	●	●	○	○	○	●	State State
Virginia.....	Circuit Court	●	○	○	○	○	●	Contract
Utah.....	District Court Juvenile Court	●	●	●		●	●	NA NA

● Required for all cases
○ As directed by the judge

● Used in practice
○ Allowed by statute

Sources: Table content was gathered from state statutes and court reporter handbooks by the authors, April 2014.

ing the method used to create the record, many states like Arizona and Minnesota use a mix of both digital and court reporters; however, Iowa strictly relies on court reporters and Utah solely on digital technology. North Carolina and Massachusetts use different methods depending on the court level and case type, with court reporters being employed for more complex and sensitive cases. For example, court reporters are used for juvenile cases in Massachusetts, whereas digital technology is used to capture more routine cases. States relying on court reporters often employ them as state employees; however, Virginia uses private contractors for reporting.

Pros and Cons of Different Methods⁵

The primary benefit of using court reporters is that they are valued for their human touch, an ability to actively monitor the courtroom by intervening when attorneys or witnesses speak over each other or confirming the spelling and accuracy of names and technical terms, which ensures an accurate record. Court reporters also are able to complete all tasks associated with creating and maintaining the record, including preparing and delivering the transcript. Having one person responsible for all

of these tasks ensures consistency; it also allows the court reporter to prepare a more thorough and accurate transcript based on personal knowledge, evidenced by trial logs and notes, to supplement the record.⁶

Despite these benefits, concern exists that the use of court reporters undermines the courts’ administrative control of the record because recorded proceedings are often the property of the reporter and documented in the reporter’s unique shorthand, known only to that individual. This reliance on one reporter for the verbatim record may result in delays and complications with transcript requests that can be detrimental to the effective and timely production of the record. Associated personnel costs, as well as the declining pool of qualified reporters, also are concerns when considering the continued use of court reporters as a viable method for creating the record.⁷

Proponents of digital recording argue it is more cost effective, promotes increased accessibility to the record in a timely manner and allows for more complete and potentially more accurate records than those created by court reporters.⁸ Although digital recording offers many advantages, critics highlight the potential for incomplete and

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Table B: Superior Court Criminal Dispositions FY 2012–2013

<i>Charge level</i>	<i>Cases disposed</i>	<i>Cases appealed</i>	<i>Percentage of cases appealed</i>
A	375	35	9.3%
B1+B2	1,868	80	4.3
C	2,987	65	2.2
D	5,072	67	1.3
E	5,563	31	0.6
F	8,227	49	0.6
G	11,333	45	0.4
H+I	69,531	135	0.2
Total	104,956	507	0.5

Source: North Carolina Administrative Office of the Courts Research and Planning Division, in consultation with the National Center for State Courts. Report on Use and Compensation of Court Reporters in North Carolina. (Feb. 1, 2014).

inaccurate transcripts. They claim the quality of the record may suffer from equipment failures or malfunctions. Serious errors may result if the recording equipment is not functioning properly, such as inaudible, indiscernible or inaccurate records and the inability to identify speakers. Such errors can be extremely costly, resulting in retrials, reversals or the perceived loss of court’s legitimacy and fairness.

Exploring Alternative Ways to Create the Record in North Carolina

North Carolina is evaluating the most efficient and effective way to produce accurate and timely records of court proceedings. The state provides an opportunity to examine the efficacy of producing the record by court reporters or digital recordings as both methods are being employed within the state court system.

North Carolina’s general jurisdiction Superior Court hears complex civil cases as well as felonies; appeals are heard at the Court of Appeals. For all proceedings in Superior Court, a court reporter is responsible for creating a verbatim record, as well as transcribing proceedings and delivering certified transcripts by order of the court or for purposes of appeal.⁹ Since the mid-1990s, North Carolina’s limited jurisdiction District Court has utilized digital recording equipment to create the record. District Court has jurisdiction over some civil matters and misdemeanors, including exclusive jurisdiction over domestic relations and juvenile cases. Although civil and misdemeanor appeals are heard de novo

in Superior Court, family and juvenile cases can appeal directly to the Court of Appeals and are required to be on the record.

In a 2014 report submitted by the North Carolina Administrative Office of the Courts to the North Carolina General Assembly, two key findings and recommendations emerged from a comprehensive assessment of the process of making the court record conducted by the National Center for State Courts. First, the rate of appeal for cases using court reporters in Superior Court is extremely low. For example, of the approximately 105,000 criminal cases¹⁰ heard in the 2012–13 fiscal year, only 507 (0.5 percent) were appealed. Table B illustrates this rate of appeal and demonstrates that the likelihood of appeal increases with the severity of the charge.¹¹

As noted in the Conference of State Court Administrators policy paper, this low rate of appeals makes it difficult for court leaders to defend the expenditures for court reporters when so few cases are actually appealed.¹² These findings led the North Carolina Administrative Office of the Courts to recommend further investigation into the types of complex or serious criminal and civil cases (e.g., medical malpractice) that are more likely to be appealed and should continue to be recorded by court reporters. These types of cases typically have lengthy trials in which a long transcription process could be avoided by having a real-time reporter in the courtroom. The use of digital recordings to produce the record, however, is likely a more efficient method for more routine, administrative cases.

Second, key justice system stakeholders expressed strong concerns about the effectiveness of digital recording systems. Superior Court judges, who previously served as District Court judges; attorneys and court reporters, shared personal anecdotes of equipment failures and indecipherable or incomplete recordings that adversely affected the accuracy of the record in District Court. One court reporter cited a juvenile transcript she produced from a digital recording that was 100 pages long with 147 inaudible sections. Each of these stakeholder groups expressed reservations about expanding the use of digital recording into the Superior Court.

The North Carolina Administrative Office of the Courts report, however, highlighted that most of the perceived problems with digital recordings in District Court were associated with issues of implementation and administration of the equipment—such as the failure to adequately monitor the recording—not the technology itself. The

report concluded these issues can be mitigated by reviewing and improving the existing technological infrastructure to ensure that the current recording equipment in District Court meets best practice standards and by establishing a clear set of implementation and appropriate training standards for courtroom clerks who serve as monitors of the equipment.¹³

The Use of Digital Recording and the Centralization of Transcript Management in Utah

Starting in 2008, Utah's judiciary faced severe reductions in its operating budget. In response, the Utah Judicial Council considered creative ways to reengineer judicial service delivery to save costs. The most drastic of the cost-saving efforts was a shift away from the use of court reporters to the use of digital recording and centralized transcript management for the creation and production of the verbatim record.

The Utah Judicial Council amended its judicial rules in 2008 to state that a transcript of a video or audio recording would represent the official transcript for all case types. Utah eliminated the court reporter position by 2009, saving the court system an estimated \$1.1 million after factoring in the cost of equipment installation.¹⁴ The Utah Administrative Office of the Courts installed and tested state-of-the-art equipment in all courthouses, following established best implementation practices to ensure the quality of the recordings. Utah's judges have accepted and are confident in the capabilities of the digital recording system, as evidenced by judges' rare use of court reporters for capital cases, even though judges are allowed to request their use for these serious cases.

In addition to changing the way the record is created, significant reforms were made to improve the efficiency of transcript production. Under the old system, 50 clerks across the state were tasked with locating recordings, assigning transcript production, monitoring the delivery of the transcript and processing payments. Each clerk performed these tasks in a unique way. The lack of statewide uniformity led to errors and delays well in excess of the Utah Rules of Appellate Procedure time standard of 20 days; the average time from filing to delivery of a transcript to the appellate courts was 138 days.¹⁵

The court's information technology department designed an in-house application that automated the processing of transcripts. The new system coor-

dinates the management of all transcript requests, document retrieval, transcription assignment, delivery and payment. The management of transcript production is handled by 1.5 coordinators at the Court of Appeals Clerk's Office, rather than 50 clerks statewide monitoring the production process. The new centralized transcript management system effectively reduced the time from filing to transcript delivery from 138 days to 19 days and led to additional savings of about \$3 million for the Utah State Courts. In a 2012 article, Daniel Becker, the Utah State Court Administrator, asserted the transcript management system "is a good illustration of what's possible if you are willing to honestly assess the shortcomings of an existing process, think creatively about centralizing a process and apply technology with originality."¹⁶

Conclusion

Even when opportunities for change present themselves, key stakeholders will argue that the current, familiar ways of doing business are efficient and effective and will be reluctant to accept and embrace new ways of doing things. For systemic reform to take place, leaders must be willing to challenge the status quo arguments and convey a clear vision of change. Efforts to reengineer established practices do not call for doing "more with less;" instead, they call for doing things in a different way to achieve better outcomes that are more cost effective. The success of reengineering efforts requires strong leadership, coordination, planning and execution.

The experiences of North Carolina and Utah highlight the importance of implementation. Digital recording is a reliable, efficient and effective alternative to court reporters as long as best practice implementation standards are followed. This entails investing in the proper technological infrastructure; ensuring there is sufficient staff to perform all necessary functions; establishing a clear set of staff tasks, functions and standards; developing and providing training to staff on how to set up, operate and monitor equipment; and ensuring protocols for storing, archiving and retrieving records are followed. Even the best conceptualized change efforts will fail if implementation is overlooked or given short shrift.

If public agencies, institutions and branches of government are to be good stewards of public funds, they need to take advantage of the opportunities for change that are cost effective and improve service delivery. Chief Justice Christine Durham of the Supreme Court of Utah and Becker suggest,

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“challenging the way business is done and being willing to entertain significant reengineering efforts should be part of what it means to be accountable and a well-governed court system.”¹⁷ For states across the country, this means considering the replacement of court reporters with more effective and efficient digital recording technology.

Notes

¹ Schauffler, Richard Y. and Matthew Kleiman. “State Courts and the Budget Crisis: Rethinking Court Services,” in *The Book of States*, Vol. 42. The Council of State Governments, Lexington, KY. (2010).

² Carver, John A. with Barry Mahoney. “How to Conduct an Assessment of Your Court’s Record-Making Operations: A Systemic Approach, Vol. 1 The Self-Assessment Guide.” The Justice Management Institute, Denver, CO. (June, 2002). p. 8.

³ Conference of State Court Administrators. “Digital Recording: Changing Times For Making the Record.” (December 2009). p. 16.

⁴ *Ibid*, p. 10.

⁵ The list of court reporter and digital recording pros and cons presented in this article is exemplary, not exhaustive.

⁶ Iowa Digital Audio/Visual Recording Technology (DART) Committee. Final Report and Findings. (December 2009). p. 13. <http://www.iowacourts.gov/wfdata/frame1783-1382/File24.pdf>.

⁷ Conference of State Court Administrators, p. 1.

⁸ *Ibid*, p. 5.

⁹ As of January 2013, there were approximately 100 court reporters for North Carolina’s Superior Court.

¹⁰ Criminal DUI cases are not included in this count.

¹¹ North Carolina Administrative Office of the Courts Research and Planning Division, in consultation with the National Center for State Courts. Report on Use and Compensation of Court Reporters in North Carolina. (Feb. 1, 2014).

¹² Conference of State Court Administrators, p. 1.

¹³ North Carolina Administrative Office of the Courts. (Feb. 1, 2014).

¹⁴ Durham, Christine M. and Daniel J. Becker. “Reaping Benefits and Paying the Price For Good Business Decisions: Utah’s Reengineering Experience.” *Future Trends in State Courts 2010*. National Center for State Courts, Williamsburg, VA.

¹⁵ Utah Rules of Appellate Procedure 12(a).

¹⁶ Becker, Daniel J., “Reengineering Utah’s Experience in Centralizing Transcript Management” in *Future Trends in State Courts 2012*. National Center for State Courts, Williamsburg, VA.

¹⁷ Durham and Becker, p. 45.

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