



Video Court Reporting— The Time Has Come

By Donald E. Shelton

Several years ago when I was practicing law, we had a firm-wide dictation system that functioned through our telephones. All of the dictation was transmitted to a word processing department for transcription. One of our associates, however, insisted on writing all of his documents in long-hand. The word processors complained that this was inefficient and slowed down the transcription process for the rest of the firm. I finally told the associate that the staff would no longer transcribe his “hen-scratching” and that he would have to use the telephone system. He complied, and the word processors reported that they were receiving clear dictation from him. One day, I peremptorily knocked on his office door and went in—only to find him reading his handwritten document into the telephone dictation system!

Eventually the associate left the firm and joined an insurance company where his Luddite values were presumably rewarded. I am reminded of him when I visit other courts and see my judicial colleagues operating in modern courtrooms but flanked by steno court reporters typing into machines invented more than fifty years ago. Video court reporting has been available for many years. It is time the courts embraced the



technology as a giant step toward accuracy, efficiency, and thrift. More than thirty years ago, courts in Kentucky demonstrated the value of using video systems. Fifteen years ago, the National Center for State Courts analyzed two Michigan pilot video projects and found them to be extremely accurate, accessible, and reliable.¹ In spite of intervening decades that have seen huge leaps in information technology, however, steno reporting apparently remains the norm.

The steno record can never be as accurate as that captured by a video system. Regardless of a steno reporter's experience and competency, human errors occur. A commissioned study compared two recordings of the same proceeding, one made by a video camera and the other by a traditional court reporter.² The college professors who

conducted the study found significant errors in the steno transcript:

A total of 783 form errors were detected in the sample transcripts, amounting to an average of nearly 8 errors per single-spaced page of transcript. . . . There were in excess of 23 content errors of varying degrees of seriousness. These errors included missing words, missing phrases, switching of words, recording errors, and major alteration of sense.

The “content” errors included a \$7 million discrepancy in the amount of a bond!

Certainly, some reporting errors result from inadequate training or personal stress. But there is another cause, as the study concluded:

Court reporters are human beings, and human beings have a powerful compulsion to interpret and understand what they hear. As in the case



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of form errors, where the court reporter “cleans up” the speech of the witness, there is a need to go beyond what is heard, to what the reporter feels the witness meant to say.

Any judge who has watched a demonstration of real time steno recording in a spontaneous testimony situation must honestly admit that steno reporting, even in its most modern form, is simply not accurate.

Nor can the human method compare in efficiency to the video transcript system. On a fundamental level, a video recorder is always available. I have used video recording for almost ten years, and it has never called in sick, insisted on a coffee break, or asked to go to the bathroom. In the midst of a jury trial, it is one of the only “participants” whose schedule and personal preferences need not be accommodated. For playback purposes during trial or jury deliberations, video is far superior to steno notes. Jurors who are evaluating the credibility of a witness can see and hear that person’s testimony. If necessary, the tape can be played again and again. As a result, jurors can better perform their function.

During an era in which courts are pressured to be more fiscally responsible, it is difficult to justify the enormous costs of traditional stenotype reporting. Court reporters are highly trained and therefore well compensated. In many places, they are paid by the state and later receive an additional per-page fee from the parties (including the state, when applicable) for preparing the transcript that they originally produced on government time. After moving to video reporting, my court recovered the equipment and installation costs in one year. Thereafter, the savings included the reporters’ salaries and benefits packages.

Some judges and attorneys complain that the video record is not easily accessible for review. At the trial level, this has never been true. Analog video records include a manually prepared log that allows the operator to find any particular point by footage. I have

always found it easier to locate particular testimonies or events on video recordings than to wait for a steno reporter to find them in the notes.

Now, however, video reporting has moved to digital rather than analog recording (akin to moving from videotape to DVD at home). Digital recording stores information in a computer file format. This carries significant advantages. It allows instant access from any computer media player. The recording itself contains a scroll bar to immediately advance to any point. The viewer can instantly replay or mark sections for further examination. In addition, the record can be stored on any computer hard drive or storage device—less cumbersome than VHS tapes and certainly more permanent than reams of paper notes.

Some charge that video reporting does not produce a paper transcript for appeal. This argument lacks merit for three reasons. First, it assumes that appellate courts can function only with a typed paper transcript of the entire proceeding. I suggest that appellate courts, perhaps even more than trial courts, need to move to electronic review. Current technology eliminates the need to transcribe an entire record of all pretrial and trial proceedings just to review the issues raised on appeal. There is no justification for the expense and delay of paper records when totally searchable video records are readily available. Further, the ability to review the demeanor of witnesses and attorneys, as well as the physical context of the ruling on appeal, may well make appellate review more meaningful.³

Assuming that appellate courts will embrace technology even more slowly than our trial courts, the transcript argument fails for a second reason. Even steno reporting does not instantly produce a paper transcript. As long as appellate courts insist on paper transcripts, a reporter will have to transcribe some medium to produce a paper document. This is done as easily from a video record as steno notes—and video transcription is far more

accurate. Moreover, the video record can be transcribed by anyone and is not dependent upon the idiosyncrasies of a particular reporter. Michigan appellate courts still insist on a paper transcript, so our jurisdiction contracts with a transcription service when necessary.

The transcript argument fails for a third reason as well. In reality, most of what transpires at the trial court level is never reviewed. We should not build a recording system around the assumption that we will need a paper transcript. The video reporting system allows reporters to produce transcripts at any time *if they are required*, so there is no reason to use a less accurate recording system because of a possible need for paper transcripts.

So why would judges be reluctant to adopt a video recording system that is cheaper, more efficient, and more accurate than steno recording? I suspect that concerns about accessibility and transcription are excuses and that the real reasons are more personal—the allegiance to existing steno court reporters and the traditional judicial preference for the status quo. Some states, such as Michigan and New Jersey, have addressed these issues by phasing in video reporting as existing steno reporters leave the court’s employ. Some funding units have found the potential savings so great that they have offered early retirement to existing reporters.

Personal feelings are powerful factors. So are efficiency, accuracy, and fiscal responsibility. Conversion to video court reporting should be accelerated. I suggest judges be the leaders, not the obstacles, in this process.

Notes

1. NAT’L CENTER FOR STATE COURTS, *Evaluating the Use of Videotape for Making the Record of Proceedings in the Michigan Circuit Courts for the Sixth and Ninth Judicial Circuits* (Aug. 1988).

2. William Gillespie & Gary Shank, *Technological Innovation and the Quality of Court Records: Comparing Accuracy of Automatic Videotape Recording Systems with Court Reporters*, available at www.javs.com/courts/feedback/gillespie_shank.html.

3. For a further discussion of this issue, see W. H. Erickson, *The Trial Transcript—An Unnecessary Roadblock to Expedient Appellate Review*, U. MICH. J.L. REFORM 344 (1978).