

DART Committee Site Visit Report
Salt Lake City, UT
Matheson Courthouse 8/21/09

1. Court Background Information

Utah has 71 full-time district court judges and 28 full-time juvenile court judges located in 29 county courthouses around the state. As of July 1, 2009, the Utah judicial branch laid off its remaining 18 court reporters.

The electronic recording systems are monitored by clerk's office employees, who are not certified court reporters. The state court system has funded the DART program in Utah. The initial cost of the equipment was partially offset by the court system's appropriation of the revenue from transcripts which was previously retained by the official court reporters.

2. Judicial support staff for each judge

The district court judges have two clerks, and share one bailiff between two judges and one law clerk among four judges (for a total of 2 3/4s staff members).

3. History of electronic recording

Utah has used FTR systems in its courtrooms for the past seven years. Before that, many of the courtrooms had VHS recording. (Four courtrooms in Logan, Utah still have JAVS.)

The Utah courts chose the FTR software based on a competitive bidding process. The hardware used by their unified court system also has become standardized. Court administration is able to bundle the courtroom specifications and bid them out at a savings for the state. The IT staff does small upgrades and trouble shooting on its own and bids out the bigger jobs.

4. Description of DART system

All of the courtrooms in Utah use electronic recording. Currently, FTR provides video recording in about 40 locations in Utah, with the majority of courtrooms using audio recording only – due to a glitch with FTRs software. Court administration is contemplating restoring video recording, but faces budget limitations to updating the cameras and storage capacity. (We spoke with two district court judges who missed having the video recording available.).

Each courtroom is equipped with at least six microphones and one computer monitor with headphones for the clerk to check if the system is working. Microphones also are available in chambers if the judge desires to record a conference outside the

presence of the jury. Handheld wireless microphones are used for jury selection. A PA system is also available for playbacks in the courtroom, though playbacks are rarely requested. (One clerk told us that it would take about 30 seconds to find the segment of the trial requested to be replayed.)

IT specialist Jymn Edwards estimated a cost of \$18,000 to equip each courtroom with the hardware – and he estimated that the life of the equipment was six to seven years. The IT director also indicated that it would cost approximately \$4,000 per courtroom (\$900 per camera plus a monitor) to provide video with four screens showing on a monitor from a camera in four fixed locations.

5. Daily management of the recording system

The daily management of the DART system falls to a court clerk who is assigned to each judge or courtroom. The clerk will check the sound levels at the start of each court session, but will not wear the headphones through the entire proceeding. (They can hear whether the microphones are working even when they are not wearing the headphones.) The clerk can multi-task while monitoring the DART. He or she will keep minutes of each hearing as part of their internal court management system; those minutes will note times which can be traced back to the digital recording, but are not integrated into the recording. The Utah courts do not use the annotation/indexing software available from FTR. The Utah courts also do not display the recording time in the courtroom, though FTR has such a device available. The court administrator ruled out the possibility of a centralized monitoring system. One full-time IT person supports the technology in all the courtrooms across the state – with a goal of next-day, on-site response to break-downs in the system.

The clerks can burn digital recordings onto a CD for the attorneys after a hearing is over in the courtroom before they leave for the day. (Sometimes attorneys review the day's testimony overnight before the next day of a trial). The court charged \$10 for a CD copy. Lawyers also may obtain access to the recorded files through the court's website. FTR has viewer software that can be downloaded to play the files. The recordings are archived to two separate hard drives and are backed up for two years on off-site servers. The computers used in the courtrooms have space for about one year's worth of recordings.

In case of equipment malfunctions or loss of power to a courtroom, each courthouse has a battery-operated, back-up portable recording system available so that hearings may continue. The IT department also prides itself on a well-trained help desk.

Future developments. The Utah courts are exploring the use of remote-site interpreters through their DART system. In addition, court administration has a major upgrade pending to integrate their DART system with their EDMS.

6. Courtroom procedures for attorneys and litigants to ensure complete and clear recordings.

The Utah court administrators have developed short checklists for the attorney tables and the clerk's workspace which summarize the steps necessary for optimum use of the DART system. They will make copies of these available to our committee.

The monitoring clerks try to point out to their judges when a witness or lawyer needs to speak up or move within closer range of a microphone. The judges noted that out-of-range speakers is sometimes a problem with the recordings. Certain courtrooms also had "dead spots" where the sound could not be picked up. Utah's court management requires counsel to use a podium in the courtroom so the microphone picks up their questions and argument.

7. Challenges presented by use of DART

The attorneys working within the Utah courts found inaudibles to be the biggest problem with the recordings and the transcripts created from them. However, they agreed that the missing words generally could be determined from the context. An appellate attorney noted that fairly frequently when the transcriptionist notes an "inaudible" – it is actually possible to listen to the recording and decipher what is being said. In such cases, they may footnote the discrepancy if it is material to the issue on appeal.

Neither the lawyers nor the judges we spoke to found that recording voir dire was particularly problematic. The courthouses keep handheld wireless microphones available for this purpose. Jurors are identified by both name and number on the audio recordings; jurors are not placed on camera where video is used.

The clerk staff and judges believed that playback was possible, but rarely requested. The attorneys seems less sure about its availability in the DART system.

8. & 9. Types of cases most and least amenable to DART

The Utah judges expressed their belief that criminal and civil trials and juvenile hearings were all amenable to digital recording. Official court reporters *may* still used in termination of parental rights and death penalty cases, though Utah court administration believes that as litigants become more comfortable with the DART system, the court reporters will be used less even in those high-stakes cases.

One of the judges related a situation where he held a settlement conference with a large number of different plaintiffs and their lawyers and he took special pains to be sure that they were all within range of a microphone when accepting the agreement. This kind of multi-litigant hearing presents special challenges for the DART system.

In certain complex civil litigation, the parties will hire their own court reporters to keep notes during the trial. This was true of the personal injury case being tried during our visit to the Matheson courthouse. In such cases, new Utah court rules provide that the court reporter's transcript *and* the digital audio recordings are *both* considered the official record of the proceedings. Although one party opts to retain a court reporter, both parties have equal access to that record, eliminating a have/have-not situation. This arrangement of having two official records has not yet resulted in any serious issues for the Utah courts.

10. Reliability of the DART system

The Utah courts had experienced minimal hardware difficulties. They were plagued by a software problem in several courtrooms when using both the FTR video and audio – which was somewhat mysteriously cured by moving to audio only.

Human error in operating the system – for example, forgetting to turn the recorder back on following a recess – was the most noted drawback to the reliability of the system. The Attorney General's appellate division had experienced a panicked call from a trial prosecutor who faced a defense mistrial motion after a portion of a trial went inadvertently unrecorded. The issue did not reach the Utah appellate courts because the defendant was acquitted.

Both the court staff and attorneys acknowledged that the human breakdowns in the DART system could be ameliorated with more training for the participants.

11. Accuracy of the digital recordings

The written surveys from the judges and attorneys noted persistent problems with inaudible portions of the recordings, but both groups expressed less concern about the accuracy of the digital recordings when we met with them in person. The judges stressed the importance of keeping speakers close to the microphones – otherwise the recordings could miss much of what is said.

The court managers and technical staff related that the accuracy of the recordings have not been systematically evaluated. They also noted that it was “very dependent” on the judicial officer's control of the courtroom, e.g., making sure that participants speak up and do not talk over each other.

12. Accuracy of the written transcripts

The written transcripts are produced by “official court transcribers.” The appellate clerk's office keeps a roster of qualified transcribers and centrally assigns all of the transcription preparation to those on the list. Parties ordering transcripts can request a specific transcriber or can report bad experiences with certain transcribers. The Utah clerk and court administration developed an on-line transcript ordering and

tracking system that has dramatically streamlined their process. All of the digital recording files and completed PDFs of transcripts are delivered electronically – creating a significant cost savings for the court and the parties. Their statistics show that the average time for transcript preparation has gone from 138 days in 2007 to just 15 days in 2009.

The judges said they found that the transcripts were “close to perfect” and the overall record being made with the DART system was good. They were impressed with the quick turnaround time for transcripts under the new system. Some of the attorneys opined that the transcripts were not as accurate as under the court reporter system. The transcripts were not as accurate for one of two reasons: the presence of inaudibles or the lack of certified court reporters (as some of the transcribers were not as well trained in the legal and medical jargon used in trials).

13. Advantages of courtroom DART systems

The Utah court administrators credited their switch to the DART system for a significant savings (over \$1 million) in court reporter costs. However, they also described a fairly gradual transition, starting several years ago when they decreed that court reporter notes and transcripts become the property of the court system rather than the individual court reporter. In exchange for this concession, the court administration provided court reporters an equitable salary increase to offset the transcript revenues; assumed the cost of the court reporters’ equipment and its maintenance; and also offered training opportunities at state cost. The court system then used the money from litigants ordering transcripts to fund the hardware for the recording systems.

In addition to the cost savings, the DART system opens up new possibilities for attorneys and judges. For instance, attorneys can request a portion of a trial recording to be burned on a CD and they can use it to prepare for the next day’s proceedings. Several of the attorneys said they were skeptical of the system at first, but have been surprised at its efficiency. One of the family law attorneys found that he receives rulings faster now because the judicial officers can use the recordings to draft their findings of fact and conclusions of law.

An appellate attorney said her office occasionally uses the recordings to look back at the tone and demeanor of either the witnesses or the presiding judge in a matter on appeal – an ability which can shape how they might argue an issue.

The judges pointed out that the DART system has advantages for public access to the judicial process.

14. Disadvantages & problems with courtroom DART systems

Both the judges and attorneys told us they missed the human element of having court reporters take notes at their trials. The human element also encompassed the court reporters' ability to manage inaudible speakers, as well as speakers who sometimes talk as if they had rocks in their mouths, those who are very emotional and those who are generally not loud and clear. Another disadvantages of not having court reporters – who have more qualifications than some of the transcribers and who were present at the proceedings – was the risk of a less clean and accurate written record.

The biggest downside to using the DART system was the risk of not capturing large portions of a trial or hearing and having to recreate them or cope with not having the record available for appeal. A couple of the lawyers had anecdotes about minor difficulties, but shared no specific horror stories under the current FTR system.

The accuracy of the transcript made from the digital audio recording compared to the accuracy of the transcripts produced by court reporters seemed to remain a subject of debate among the Utah attorneys who spoke to us.

15. Satisfaction with their DART system

The court administrators seemed very happy with their system. They recognized that their decision to eliminate virtually all of their official court reporters was controversial and met with anger among some members of the bench and bar, as well as the court reporters themselves. However, the administrators thought the DART system was finding acceptance as the participants start to see its advantages.

The attorneys' reaction to the system seemed to be cautiously optimistic. Some who were initially skeptical were pleasantly surprised at how well it is working. Other seemed resigned to the switch and were still trying to work through the kinks.

One of the judges summarized his overall view of their DART system by saying: "the parties are entitled to a record, but not a perfect record."

16. Recommendations/cautions for Iowa courts regarding DART

One big difference emerged between the Utah experience and what Iowa is facing: the current dependence of Iowa judges on their court reporters for more than just taking notes of court proceedings. While the Utah courts' decision to eliminate virtually all of their court reporters was driven by budget issues, the judges there already had the benefit of more support staff in the courtroom and courthouse. Because of the greater staffing, the switch to DART did not leave the trial judges without assistance.

Another significant difference is that Utah has done much more experimenting with recording of court proceedings over the past two decades than Iowa has. The Utah courts have had some form of recording since the early 1990s. As such, for many purposes their transition to all DART as of July 1, 2009 was seamless to many participants in the system.