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Examination of How the Stenographic Reporter Enhances the Delivery of Business For the Iowa Judicial System

Why replacing stenographic court reporters with digital audio recording technology is not sound public policy in Iowa, and a look at similar efforts in California and Florida courts

Prepared November 4, 2009 by:



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**JUSTICE SERVED® - Examination of How the Stenographic Reporter Enhances
Delivery of Business for the Iowa Judicial System**

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INTRODUCTION

The Iowa Judicial Branch is not alone among state court systems making difficult decisions to address serious budget shortfalls attributable to a severe global economic downturn. In response to Iowa budget shortfalls, a study was undertaken in May, 2009, by a committee appointed to determine the accuracy, reliability, and cost efficiency of digital audio recording equipment. In addition, a substantial portion of budget cuts took the form of 13 court reporter layoffs out of a workforce of 183.

As a consequence, this study is commissioned by the Iowa Court Reporters Association in an effort to determine the potential long-term impact of the loss of court reporters on court operations in Iowa. The research was conducted and the report prepared by Chris Crawford, a leading expert on judicial administration and the management of court reporter operations, and president of Justice Served®, a court management and technology consulting firm. For more information about Justice Served, visit, www.justiceserved.com.

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EXECUTIVE SUMMARY

Courts in 36 of the 50 United States reported budget shortfalls in fiscal years 2008-09 and/or 2009-10. These courts responded with a variety of actions including cutbacks in non-personnel expenses, freezing of vacant positions, furloughs of court staff, closure of courthouses and layoff of employees. The Iowa Judicial Branch recently laid off 13 court reporters, ostensibly as a budget savings. The Iowa Judicial Council appointed a committee that is currently investigating the reliability, accuracy and cost of installation of digital audio recording (DAR) in lieu of stenographic court reporters. We conclude that cost savings will not accrue from this policy change because:

- Court reporters produce a written transcript, which increases the productivity of the appellate courts, trial judges, attorneys and parties – audio records take three-to-five times longer to review compared to a written transcript, and transcripts produced from audio recordings are more expensive and less accurate.
- The appropriate and recommended use of DAR requires dedicated staff monitors annotating the record, safeguarding against equipment malfunction, interceding when the record is inaudible or unclear, and managing audio record sales and transcript production. Replacing court reporters with DAR monitors does not produce significant cost savings, especially when transcript production costs are considered.
- Iowa court reporters also serve as judicial support, so eliminating the position would have a severe impact on judicial productivity.
- It is difficult to justify cost savings comparing DAR to court reporters when the initial equipment acquisition and installation costs are significant. Costly upgrades and added servers will be needed for the Judiciary's computer network to support DAR file transmission and storage.
- The technology impact of eliminating court reporters is significant because court reporters personally invest in hardware, software and networking costs that will become Judicial Branch expenses, and the potential benefits of these electronic efficiencies will be lost.
- Court reporters in Iowa must master a rigorous education process that includes not only the essentials of stenographic techniques, but also a course of study that includes language, law, and logistics. DAR monitors will not have these skill sets and could therefore jeopardize the integrity of the record and not perform the same level of judicial support tasks now assumed by court reporters (see Chapter 2).

This report examines the cost effectiveness and policy implications of replacing court reporters with DAR in the Iowa Judicial Branch, as well as the nature of the court reporting profession in Iowa, and compares and contrasts similar experiences in the California and Florida courts. Among the findings are:

- Judicial productivity would suffer from the loss of administrative support provided by court reporters at no additional cost to the court; this productivity is especially needed today when caseloads are soaring due to previous budgetary actions that restricted travel, closed court locations and reduced staff.
- The cost of transcripts produced from DAR would be approximately three times higher due to the difficulty of transcription.
- Technology acquisition and IT support currently provided personally by court reporters would now be borne by the court at an estimated \$23,000 per court reporter per year for acquisition and maintenance, and \$200 per courtroom per day for support.

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1. WHY DIGITAL AUDIO RECORDING IS NOT BEST PRACTICE FOR IOWA

The Iowa Judicial Branch endured two major rounds of budget cuts in 2009. The first round of cuts affected the 2008-09 fiscal year and was met with unpaid leaves, judicial travel restrictions and court closures. The latest round affecting the 2009-10 funding period chopped operating expenses by \$5.4 million. The court addressed these cuts with a combination of non-personnel curtailments, the freezing of approximately 50 vacant positions (including some judicial positions) and the layoff of approximately 15 court staff – 13 of these were court reporters.

The central questions are whether cutting court reporter staff is cost effective and the consequences of reducing or eliminating court reporter positions. Let's address these questions in that order ...

Cost Effectiveness

Court reporter positions cannot be simply eliminated without some replacement means of creating a verbatim record of court proceedings, which is needed for processing, case preparation and appellate purposes. The various means of producing this record in the Iowa courts include:¹

- Stenographic Reporting – traditional court reporting that uses computer-aided-transcription software to efficiently and quickly produce a written transcript.
- Digital Audio Recording (DAR) – for the purposes of this report, we define digital audio recording as both analog and digital, and both audio and video.

Each of these methods has advantages and disadvantages, and cost implications. Generally speaking, limited jurisdiction court proceedings with less need for a written transcript (such as magistrate court) are better suited for DAR because a recording may suffice as “the record” for most purposes. General jurisdiction court proceedings with more need for a written transcript (such as criminal cases, civil, family matters, and juvenile) are better suited for stenographic reporting because of the lower cost and efficiency of producing a transcript.

The need for a written transcript versus a recording is dictated by (a) the use of the record, and (b) the length of the record. For instance, with few exceptions across the US, appellate courts require a written record of lower court proceedings. Whether for appellate or non-appellate needs, it takes three-to-five times longer to review an audio record compared to a written record; therefore, a lengthy proceeding would take an extraordinarily long time to review a recording compared to reviewing a written transcript either on paper or an electronic file that is capable of word and name searches.

Even so, some DAR records are easier to review than others. Those courtrooms using DAR equipment monitored by dedicated staff produce an “annotated” electronic record

¹ Another reporting method is called Voice Writing, in which a trained operator using a microphone contained in a mask dictates proceedings as they occur and using voice recognition software to assist in producing a transcript. However, this methodology is not used in the Iowa courts.

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in which major events during a proceeding are marked for identification purposes. These annotations include when proceedings start and end, when specific witnesses testify, when evidence is introduced and when motions and rulings are made. Dedicated DAR staff also reduce instances of DAR equipment malfunction, inaudible portions of the record and other technical difficulties that are not addressed when non-dedicated staff such as courtroom clerks or bailiffs are “in charge” of the equipment.

There is also the matter of selling audio tapes and producing a transcript from a DAR record when needed. Court staff or dedicated DAR monitors are required to complete these tasks. When court reporters are used, transcription duties are not handled by court staff, and these tasks are performed most often by court reporters or voice writers acting as independent contractors. Court reporters, in particular, produce paper and electronic transcripts using labor, supplies and technology that are personally financed by court reporters acting as independent contractors under the Federal Fair Labor Standards Act. On average, court reporters spend \$10,000 on hardware and software and \$1,500 on annual support contracts. Most of the certified shorthand reporter transcript preparation work is performed by the workforce after hours and on weekends.

In the early 1990s, the Iowa Supreme Court established the Equality in Courts Task Force and charged it with examining whether bias on the basis of race and gender existed within Iowa’s court system and the effect of any bias upon the judicial process. The task force found that women and minorities were significantly underrepresented in positions of influence affecting the court system. Following the task force recommendations, the judicial branch has strived to have more diversity in the judicial branch workforce. Replacing court reporters is a step backward from this worthy goal, because it would have the effect of displacing a large female workforce base. Unquestionably, this would have a negative impact on the Judicial Branch workforce, representing, at the very least, an intangible and unquantifiable cost.

Comparing DAR to court reporting strictly from a cost effective standpoint would have to take into consideration several other related issues:

Accountability – Iowa laws provide tight controls enabling the court to regulate court reporters and the dynamics of the court record they produce. Since court reporters are highly skilled, licensed and regulated professionals, they are held to high standards of conduct. No such controls exist over the DAR record or those who may monitor it. Worse, if there is no dedicated DAR monitor, these matters are left to chance as to whether the equipment is functioning properly and whether the record is complete and usable. Transcribers may be used without regard to qualifications, so “certification” of written transcripts is called into question. High cost, errors and delays in producing transcripts from a DAR record have become a way of life in those states that have adopted its widespread use.

Replacing Transcripts with a DAR Audio File is Not a Cost Savings – One of the biggest myths about DAR is that judges, attorneys, parties and court staff can review the audio DAR files in lieu of a transcript and thereby realize substantial cost savings.

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Every study conducted on this subject shows that it takes three-to-five times longer to review an audio file compared to a written transcript. Widespread use of audio files is highly unproductive and will result in delay while transcripts are more cost effective, especially electronic versions of transcripts that are capable of word and name searches, including Boolean search functionality. If a dedicated monitor is not used, a DAR record is even more difficult to review because it lacks annotation as to what occurred and when, forcing the users to have to review large instead of targeted sections of the audio file.

Personnel Cost Savings will Not Occur with DAR – Most courts justify using DAR with the claim that the largest cost savings are derived from salary savings by eliminating court reporters. These cost savings are usually over-projected for two reasons. First, it assumes that most DAR monitoring can be done with a single staff person handling multiple courtrooms, or no monitoring staff at all. This refutes most recommended best business practices, most notably the American Association of Electronic Reporters and Transcribers (www.aaert.org) that recommends: *At all times, electronic recording equipment should be overseen by an experienced reporter, who also takes simultaneous notes regarding the proceedings. In digital systems, these notes can be very extensive.* Second, transcript production cost savings are achieved by a court reporter using computer-aided transcription software and privately-paid staff, both of which (technology and staffing) would become state costs when using DAR.

Court Reporter Technologies Yield Substantial Cost Savings – Court reporters have personally invested in computer hardware, software, telecommunications, and staffing to make technological advances available to judges, attorneys, parties and court staff, thereby increasing productivity. These technology enhancements, which would be lost with DAR, include:

- “Realtime” instant display of the record for view and annotation, which has proven to substantially boost productivity and a benefit for efficiently resolving cases. A “realtime” record allows courts to make proceedings available to the hearing impaired utilizing court reporters’ computer-aided-transcription. This allows hearing-impaired users to participate in public court proceedings, enabling courts to comply with *Americans with Disabilities Act* requirements.
- Computerized court reporting, in general, which produces electronic transcripts, ease of storage of notes/transcripts, printed concordance indices, time stamped transcripts, condensed printed transcripts, and computer-integrated courtrooms,
- “Reporter Electronic Data Interchange”, a means to mark and block portions of the verbatim record to reduce keystroke data entry chores of courtroom clerks in updating the court’s automated case management system.

Historically, court reporters’ paper shorthand notes have gone to the clerk of court for filing and storage. The Iowa Court Information System, commonly referred to as ICIS, has made it possible for court reporters to store their shorthand notes electronically through ICIS. To the delight of clerks of court, this eliminates the need for clerk staff to log and store shorthand notes, and saves storage costs. Redundant storage of court

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records is crucial and these anticipated computer network costs would be on top of: courtroom equipment, installation, maintenance, replacement and additional staffing needs. Continued use of court reported records would not further burden the Iowa Judicial Branch computer network, resulting in cost avoidance without loss of quality of the record.

Accordingly, we conclude that there is no cost savings associated with the reduction or elimination of court reporter positions in the Iowa Judicial Branch. In fact, the costs associated with DAR could be significantly higher.

Consequences of Reducing or Eliminating Court Reporter Positions

Iowa courts have one particular practice that distinguishes the state from all others with whom this author is familiar – in addition to regular court reporting duties, court reporters also often act as court attendants, and they serve in a judicial support capacity, particularly for traveling judges, thereby playing a critical role in judicial productivity and effectiveness. In most other states, the courtroom clerk or court attendant assumes this role, but in Iowa many of these positions have been eliminated due to previous budget cuts. The only constant with judges who travel between multiple counties are the judge and his or her court reporter.

An in-depth description of added duties performed by court reporters in Iowa courts is provided in the next chapter of this report.

Therefore, in addition to a strict cost comparison between DAR and court reporting services, the added dimension of judicial productivity associated with service by a court reporter acting in a judicial support role must be taken into consideration. This added dimension further justifies the retention of court reporters over DAR.

An August 17, 2009 news article in the Des Moines Register² revealed that *many district judges are coping with a backlog of cases created by budget-induced closures of the courts and travel restrictions earlier this year that forced lawyers and their clients to travel to other counties to see judges ... at the same time, layoffs and unfilled jobs have left all eight judicial districts short of the law clerks and court reporters that help the courts function smoothly, according to court officers.*

Since court reporters added value to their position by performing extra duties *before* the budget crisis, their role in judicial productivity *after* budget cutbacks is even more critical. After considering the entire spectrum of cost impacts to the Iowa courts, it is clear that replacing a person (court reporter) with a machine (digital audio recording equipment) does not yield cost savings. And even if court reporters were to be replaced with DAR monitoring staff, an examination of the list of extra duties performed by court reporters enumerated in the next chapter shows that a substantial number of these duties require skills that only a court reporter possesses.

The following are several cost considerations clearly indicating that replacing court reporters with DAR is not a cost savings:

² Available at <http://www.desmoinesregister.com/article/20090817/NEWS/908170321>.

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Cost consideration	Projected impact
Transcript preparation	Transcripts prepared from DAR are three-times the cost of preparing transcripts compared to stenographic equipment and computer-aided-transcription software according to current fair market pricing.
Technology	Court reporters <u>personally</u> purchase software, hardware and networking technology as part of their stenographic and transcription duties. Court reporters also serve as IT support in the courtroom for their judges. These costs would be borne by the Judicial Branch if reporters are replaced. A study in California estimated technology acquisition annual and start-up costs for each reporter are as high as \$23,000 or more, and the cost for replacement IT support in Iowa courts would be upwards of \$200 per day for each courtroom.
Network	DAR would place a substantial added burden on the Judiciary's current IT infrastructure attributable to the creation, transmission and storage of digital audio files. Costs associated with network upgrades to support DAR files would be approximately \$140,000 to \$270,000 annually, plus one time installation costs of \$20,000 to \$30,000 for additional network installations. Costs associated with additional servers to support the storage area network would be approximately \$50,000 every five years. These estimates do not include additional IT personnel, if needed.
Administrative support	Judges cannot be expected to be productive without highly skilled staff supporting their work. Without a court reporter assisting judges with a wide variety of administrative, clerical, legal and stenographic services, the replacement costs would be a minimum of \$42,000 annually, which is the cost for an equivalent administrative assistant; additional court attendant duties at \$26,000 annually; additional law clerk positions at \$51,000 annually. Moreover, court reporters have indicated in surveys that they would be willing to assume more of these added duties if training and opportunities were provided.
Realtime reporting	There is no question that judges, lawyers, interpreters and court staff are more productive and the quality of justice is improved when court reporters report proceedings in realtime. Not only is accuracy improved and parties able to refresh their memories as to what occurred when, but the technology allows parties to annotate the record <i>as it is reported</i> so that salient points can be documented for later referral. A 25% increase in courtroom productivity can easily be attributed to realtime.
ADA Requirements	In order to comply with the Americans With Disabilities Act (ADA), the Judicial Branch must make accommodations to allow deaf and hard-of-hearing courtroom participants – judges, attorneys, litigants, witnesses and jurors – access to the courts. Certified sign language interpreters charge \$75 or more per hour, with a minimum eight-hour charge if they are not notified within 24 hours that their services are not required. Official court reporters using realtime reporting provide instant text-to-English translation to deaf and hard-of-hearing courtroom participants at no cost to the Judicial Branch.

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2. THE COURT REPORTING PROFESSION IN IOWA

The court reporting profession consists of private sector reporters conducting depositions, closed captioning, communication access realtime translation (CART), and reporters working in courts as either salaried or as-needed court reporters.

In order to ascertain the current state of the court reporting profession among those reporters working in court, the Iowa Court Reporters Association commissioned a survey in early 2009 by Richard M. van Deusen, Ph.D., a lecturer at the University of Iowa Mathematics Department. The survey asked 48 questions including such topics as demographics, compensation, retirement plans, duties, supervision, types of cases reported and the use of technology by reporters and judges. Among 183 reporters working in Iowa courts, 153 responses were received.

The survey showed a vibrant, cohesive profession of well trained and highly skilled court reporters, that aside from their core duties of reporting and transcribing the verbatim record of court proceedings, perform a wide range of added administrative support tasks for judges in the Iowa courts, including:

- Drafting and creating forms, orders, rulings and jury instructions for the judge.
- Information technology support, including troubleshooting, network management, computer diagnostics, and audio-visual equipment set-up and maintenance.
- Legal research at the direction of a judge.
- Court attendant/judicial assistant duties³ of opening court, answering phones, directing the public, data entry, retrieving files, checking future calendar status, preparation of orders, and checking attorney status.
- General secretarial duties.
- Scheduling cases in the court's case management system (ICIS2).
- Providing judges with unedited transcripts for preparation and improved rulings.
- Updating and working in chamber libraries.
- Providing some judges with email.
- Inventorying, ordering, and shelving courtroom supplies.
- Reading Supreme Court and Court of Appeals decisions and advising judge of relevant decisions.
- Keeping custody of exhibits and indexing exhibits.
- Transporting court files and supplies between counties without travel reimbursement.
- Creating jury trial calendars and distributing copies.
- Working in clerks' offices (filing, faxing, and general clerical work).
- Emailing copies of orders to counsel, Department of Correctional Services, and sheriffs to save clerks' time and postage.
- Electronically filing shorthand notes to save storage expense, save clerks' time handling shorthand notes, and saving cost of shorthand paper.
- Scheduling defendants' *mittimus* dates.

³ Court attendants are not provided in many courtrooms, and some of those are only provided an attendant when a jury trial is conducted.

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- Preparing calendar entries.
- Participating in fine collection docket

This is a significant departure from other states where court reporters rarely perform duties outside of their core scope of stenographic work. While court reporters working in rural courts perform more added duties out of necessity, all but one respondent out of the entire population of court reporters indicated that they perform at least some additional duties in support of judicial productivity. The recent layoff of 13 court reporters targeted urban courts, where judicial productivity is no doubt affected; any future layoffs in rural settings would have an even higher negative effect on judicial productivity.

Even more significant is that nearly 97% of respondents to the survey indicated they would be willing to perform more added tasks if training and opportunities to do so were available.

Court reporters working in Iowa courts responded to technology-related survey questions as follows:

Technology-related survey question	% Well or extremely well
On a 5-point scale with 1 meaning “not well” and 5 meaning “extremely well”, how well have you embraced technology?	85%
On a 5-point scale with 1 meaning “not well” and 5 meaning “extremely well”, how well has your judge embraced technology?	51%
On a 5-point scale with 1 meaning “not well” and 5 meaning “extremely well”, how well have your colleagues embraced technology?	69%

As courts have become more dependent upon technology for efficiency, a trained and qualified workforce is a critical necessity. What distinguishes court reporters from other court staff is that they personally invest in software, hardware and networking as part of their stenographic and transcription duties. This technology *know-how* is provided to judges and court users in the form of:

- Faster, cheaper and more accurate transcripts;
- The provision of Realtime court reporting for substantial productivity by judges, lawyers, interpreters and court staff; and,
- Free technical support when judges and court staff run into trouble and no court IT staff is available to help.

The final revelation from the survey results addresses the current state of digital audio recording and the likelihood that it will supplant the need for court reporters. When asked about the shortcomings of DAR, one particular response was insightful and captured the aggregate sentiments of the remaining responses ...

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Digital recording cannot do secretarial work for judges, cannot provide immediate transcripts, cannot do Realtime (reporting), cannot work during a power outage, cannot work if they are broken and won't be fixed until someone needs something that didn't record or recorded poorly. Digital recording cannot read something back. It cannot go off the record or not record discussions between counsel and client. It cannot say "Please repeat that" when someone has spoken too softly, unintelligibly or facing away so that the person was not picked up on the mike. It cannot tell people to speak one at a time. It cannot remind the judge to turn it on. It cannot find someone to cover for it if it has a mechanical problem, and it cannot request that it be fixed before a problem is discovered. It will not pay for reparations and regular equipment updates out of its own pocket, and it will not seek to improve itself for the sake of a good record. Digital recording devices in one courtroom cannot cover for digital recording devices in another courtroom as needed. Digital recording devices cannot keep track of exhibits during trials or tell a judge what its recollection of something during a hearing was.

The majority of states that heavily rely on the use of DAR in their courts have resorted to doing so because they were not able to fill court reporting vacancies. Iowa is in a unique position, however, because they have not had, nor do they have, a shortage of reporters. The reason for Iowa's reporter availability is AIB College of Business in Des Moines, Iowa. It is one of a few colleges nationally that teach court reporting and captioning. AIB graduates are in demand and nearly all have employment upon completing their degrees. Over the years, the court reporting curriculum at AIB has been updated and expanded, and graduates now earn a Bachelor of Science degree. They must also pass proficiency tests and become licensed by the State of Iowa.

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3. WHY D.A.R. WAS NOT EXPANDED IN CALIFORNIA COURTS

In the past three decades, the California Courts and the California Legislature have struggled more than a dozen times with the prospect of replacing court reporters with DAR in the state trial courts based upon the belief that such a change would result in substantial costs savings. These efforts are most often triggered by state budget shortfalls and the belief that advancements in DAR technology render the use of court reporters to be less cost effective.

While some minor court proceedings are electronically recorded in the state, most proceedings utilize a stenographic court reporter using computer-aided-transcription technology. The latest attempts at widespread implementation of DAR centered on recommendations by the CA Legislative Analyst that speculated upwards of \$111 million in annual costs savings would result. *In the past two years, this proposal has been rejected three times* because legislators considered four major drawbacks to such a policy shift:

1. Replacing court reporters with DAR would result in substantial costs associated with retirement and severance payments to departing court reporters;
2. Purchasing DAR equipment and hard wiring courtrooms to replace court reporters would result in substantial cost;
3. Replacing court reporters with DAR equipment also required the hiring of DAR monitors, thereby resulting in substantially less cost savings; and,
4. The productivity loss to judges and attorneys having to review an audio versus a written record, coupled with substantial transcript preparation cost increases associated with a DAR record, outweighed projected cost savings.

Moreover, the California Judicial Council created a Reporting of the Record Task Force in April 2002 and charged it with evaluating how court reporting services are provided. Over its two-year term, the task force developed recommendations for the future of court reporting in the state, covering such policy issues as transcript format, training needs, electronic transcripts, and the challenges in recruiting and retaining qualified shorthand reporters. Widespread use of DAR was considered and rejected by the task force in their final report.⁴

Despite crushing budget deficits and tempting recommendations from legislative staff that substantial costs savings would ensue, California policy and lawmakers rejected the wholesale replacement of court reporters with DAR. The CA Administrative Office of the Courts was among the many stakeholder groups testifying against such a proposal at budget hearings.

⁴ *Final Report of the Reporting of the Record Task Force*, February 18, 2005, <http://www.courtinfo.ca.gov/jc/documents/reports/0205item7.pdf>.

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4. WHY FLORIDA IS STRUGGLING WITH D.A.R.

Like many states, Florida has grappled with economic hardship for several years in a row, partly attributable to tax structure and politics, and partly attributable to natural disasters such as hurricanes. Even though limited use of DAR was authorized by statute in 1995, in a continuing effort to find cost savings, the state pushed the widespread replacement of court reporters with DAR in July, 2004, the first step of which was to shift the cost of managing the court record from local to state government.⁵

Despite this major push in 2004 to replace stenographic court reporting with DAR, today every circuit (general jurisdiction) court uses a mix of stenographic and DAR service delivery methods. Approximately twice as many proceeding hours are digitally recorded compared to stenographic reporting.

While all outward appearances indicate cost savings and a seamless transition to at least partial replacement of court reporting services, the Florida Commission on Trial Court Performance & Accountability (CTCPA) has issued three reports⁶ on the subject that address several administrative problems associated with DAR, including:

- A determination was needed that the official record of court proceedings is the *transcript*, not an electronic recording;
- A rule was promulgated finding that the electronic recording was not a public record, and the court “owned” it and thereby controlled access to it;⁷
- The court needed to be immunized from legal liability associated with unintended interception of privileged oral communications by DAR equipment, including attorney/client communications;
- Before a court sells a DAR record, it should ensure that inappropriate content is redacted (a labor intensive process);
- It is incumbent upon the court to provide an accurate record maintained by qualified staff – asking courtroom clerks or bailiffs to assume these chores is not the preferred solution;

⁵ Revision 7 to Article V of the Florida Constitution, which shifted several due process costs from local to state government.

⁶ The first report was December 2002

(http://www.flcourts.org/gen_public/pubs/bin/crtreporting_pubs1.pdf) that anticipated implementation of DAR, the second was in February 2005

(http://www.flcourts.org/gen_public/pubs/bin/crtreporting_pubs2.pdf) and the third was October 2007

(http://www.flcourts.org/gen_public/court-services/bin/TCPACtReportingFinalReport.pdf).

⁷ Subsequent to the latest CTCPA report, the FL Supreme Court ruled that the DAR record is indeed a public record and the trials courts had no right to restrict access to it (July 16, 2009, SC08-1658 *In re: Amendments to the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure – implementation of Commission on Trial Court Performance and Accountability recommendations*, <http://www.floridasupremecourt.org/decisions/2009/sc08-1658.pdf>).

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- Instances of recording inappropriate content increased when DAR equipment was unmonitored;
- Instances of equipment problems, inaudible portions and unrecorded proceedings increased when DAR equipment was unmonitored;
- Giving DAR records to parties provided opportunities for modification of the record and/or errors associated with use of untrained transcribers; and,
- Both audio and video recording has advanced technologically so that digital recording is the preferred method over analog, yet many courts still use analog equipment.

What is abundantly clear from the Florida experience is that there are a myriad of administrative issues that must be addressed before DAR is implemented in a trial court. When mandated and recommended best practices accompany implementation, additional costs are incurred in the form of appropriate equipment and adequate staffing by dedicated DAR monitors. Since DAR staffing was not considered when these policy matters were first directed by the state, courts were left to their own device to install and operate DAR equipment; too often this meant a clerk, bailiff or even the judge was left to run the equipment, which is contrary to recommended business practice. Many of the problems identified in the various Florida reports are directly related to the need for DAR monitoring staff.

None of this discussion concerning the Florida experience addresses the loss of productivity associated with judges and lawyers having to review audio recordings as opposed to transcripts, the additional costs for transcription of a DAR record, and the loss of potential productivity associated with court reporters using Realtime technology to make the written record instantly available to the users.

Unlike the California experience, Florida did not refrain from widespread implementation of DAR and was forced to address these administrative issues as the problems were identified.

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5. OTHER STATES RETURNING TO STENOGRAPHIC REPORTING

States such as New Mexico, New Jersey and Texas that replaced court reporters with DAR in the past have now reverted back to court reporters, especially when those court reporters offer “Realtime” technology. These reversals are attributable to problems with inaudibles, missing recordings, and system failures with DAR (whether audio or video).

While technical and human error problems can occur with both court reporting and DAR, there are many more documented instances of these problems in the use of DAR. Having to retry a case or conduct a new hearing to recapture a lost record is a staggering price to pay for a “cost savings” that doesn’t hold up under analytical scrutiny. Here are some examples of digital recordings gone wrong:

Essex County, NJ – (Nov 2007) A mistrial caused by a recording failure may have cost a medical malpractice plaintiff in Essex County up to \$560,000 of a high-low settlement, and it is stirring calls for more court reporters in New Jersey courts.

Suburban Chicago, IL – (Nov 2007) Officials in Huntley Unit District 158 have taken steps to avoid a repeat of a school board meeting where all of the devices failed to record a substantial portion of open- and closed-session discussions.

Portland, OR – (February 2004) A series of missing or inaudible recordings leads to editorials calling for a revisit of replacement of court reporters with DAR. These instances include one hour of missing key witness testimony in a 2003 murder case; a retrial of a 2002 complex civil environmental case because the DAR failed to record proceedings onto a CD; attorneys handling criminal appeals saying their clients’ rights are compromised by inaudible portions of recordings; and attorneys hiring their own court reporters for fear of an inaccurate court record.

Bryan, TX – (December 2000) When Judge-Elect Rick Davis considered whether to use a court reporter or electronic recording in the 272nd District Court, he compared three trial transcripts – one produced by a court reporter and two produced by a transcriptionist. The comparative error rates were staggering:

Case	Transcript volumes	Total # of pages	# of inaudibles / errors	% Error per page
State v Robinson (Court reporter)	9	1,288	8	<1%
State v Smith (DAR)	6	717	171	24%
State v Nutall (DAR)	3	304	45	15%

There are many more instances of mechanical and human error failures that render DAR as a less desirable choice over court reporting for making the court record. Contact the National Court Reporters Association (www.ncraonline.org) for more examples.

Much like the Florida experience, some states rushed into DAR with the promise of instant cost savings and instead encountered a myriad of unanticipated policy issues, resistance from judges and attorneys, missing verbatim records, and hidden costs associated with DAR monitoring, storage, retrieval, and transcript production. Many of these states are now rethinking DAR and returning to court reporters, especially when those court reporters add value to the courts’ productivity using realtime technology.

**JUSTICE SERVED® - Examination of How the Stenographic Reporter Enhances
Delivery of Business for the Iowa Judicial System**

CONCLUSION

It is understandable that the Iowa Judiciary examine its operations to find efficiencies and cost savings in order to meet the current budget problems facing the state. However, cutting programs and staffing such as court reporters has serious unintended consequences that leads to cost increases and loss of productivity that over time will erode the effectiveness of the justice system as a whole. The budgetary impact is not that a court reporter is being replaced by technology, but if it is to be done correctly, by equipment and replacement staffing - even if salary savings ensue from the salary differential between a court reporter and DAR monitoring staff, the overall costs implications are not beneficial when additional considerations are factored in, including:

- Employee benefits
- Management and supervision
- Transcript preparation, delivery, billing and accounts receivable
- IT and Judiciary network acquisition, maintenance, upgrade and repair
- Added productivity from the court reporters electronic work product, such as note storage, transcript storage/delivery, realtime (especially the ADA compliance aspects), Reporter Electronic Data Interchange, and more

What makes an overwhelming case for retention of court reporters in Iowa is the substantial number of added tasks performed by court reporters, especially those working in rural district courts. Judicial productivity has suffered because of recent budget cuts, and removing this added staff assistance would place an unjustified burden on an already overworked judiciary. And given the depth and breadth of added tasks identified in Chapter 2 of this report, it is clear that DAR monitoring staff is incapable of performing a substantial number of them because of lack of legal and stenographic training and experience that court reporters receive as part of their professional development.

Finally, these budgetary and management discussions fail to address the most important underlying issue of all ... the accuracy and integrity of the verbatim court record. A court reporter intervenes when the record is unclear, knows what to include and not include in a final transcript (such as inappropriate attorney client discussions), and researches proper names, technical terms and jargon that may be used in a proceeding.

Experience in other states has shown that the accuracy of the record is the first casualty of migrating from court reporters to DAR. Inaudible portions of transcripts attributable to low voices or a misdirected microphone are one thing – lost testimony attributable to equipment failure or malfunction result in inestimable costs.

The unique operating circumstances in Iowa would justify moderate augmentation of court reporting services with DAR in selected, minor, lower jurisdiction court cases, but retention of stenographic court reporting in most, if not all, district associate court and district court cases, especially in rural jurisdictions where court reporters provide added judicial assistance. Any use of DAR should be accompanied by dedicated DAR monitoring staff. The Iowa Judiciary would be well served by engaging the Iowa Court Reporters Association to assist in defining which cases should be captured by which methodology, as well as the myriad of other administrative consequences of administering the court record.