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Cost Implications of State “Ownership” of the Verbatim Record in California

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Executive Summary

This report examines the cost implications of state “ownership” of the verbatim record in California courts. The reason this examination is necessary is that the state is facing a substantial budget deficit, and one of the cost-saving recommendations from the state Legislative Analyst’s Office (LAO) is to convert verbatim record methodology from stenographic court reporting to digital recording.

At the initial budget hearings, the state Administrative Office of the Courts disagreed with the LAO’s projected cost savings because civil court reporting services and transcript production costs are borne by the litigants, and because of productivity benefits derived from the computer aided court reporting “Realtime” record (especially in criminal proceedings). The attention has now shifted to prospective cost savings attributable to state “ownership” of the verbatim record, ostensibly to reduce transcript production costs.

FINDINGS

We conclude that the California courts will not achieve cost savings by state “ownership” of the verbatim record for three primary reasons:

1. Court reporters currently produce transcripts as independent contractors, and this privatized arrangement results in cost savings that cannot be achieved if the courts assumed this responsibility.
2. The court is currently paying 20-year-old transcript production fees to court reporters as provided by statute. Court reporters are able to continue producing transcripts at these rates because of privately-funded efficiencies that will cease to exist if the state “owns” the record. When the court pays salary and overtime, and/or seeks outside contractors to perform this work, transcript production costs will be higher.
3. As independent contractors, court reporters currently bear all direct and overhead costs associated with producing and delivering transcripts, including investments in technology. These costs would be shifted to the state, resulting in added higher cost and delay.

These findings are covered in more detail in the remainder of this report.

How Transcripts are Produced

When preparing transcripts, official court reporters in California courts act as independent contractors, bear all production costs, and work mostly after hours and on weekends. These court-reporter-paid costs include personal labor for production, purchasing and use of computerized

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technology, purchasing of supplies, hiring of support personnel, and delivery. When the court orders a transcript, it is filed within the court-directed or statutory time requirements.

The California courts cannot possibly achieve the free-market efficiencies in terms of timeliness and cost for production that court reporters produce as private contractors working on a profit incentive. If the state “owned” the record, court reporters would have to be paid straight salary to produce transcripts during an eight-hour workday, the vast majority of which is currently filled capturing the record in the courtroom. The result would be either (a) payment of overtime to existing court reporting staff; (b) hiring of additional court reporting staff; (c) hiring of transcription staff; or (d) a combination, all of which will increase the cost and time needed to produce transcripts.

It is important to note that the court does not currently pay overtime to court reporters because after-hours time spent producing transcripts is performed by the reporter as a private contractor. This public/private employment relationship is unique to the official court reporting profession and rarely found elsewhere. It is recognized by U.S. statute in the Fair Labor Standards Act, which was amended in 1995 to allow this unique "privatization" and relieves the courts from having to pay overtime for work demands that easily exceed 40 hours per week.

Like other professions, court reporting has been dramatically affected by technology. However, what sets court reporters apart are two distinctions: First, these technologies are privately funded by individual court reporters at no expense to the courts they serve; and, second, court reporters have been "early adopters" of technology for the past 25 years -- much earlier than a vast majority of the courts they serve. Currently, over 98% of court reporters in California use Computer Aided Transcription (CAT) for reporting and preparing transcripts of proceedings. Transcripts prepared by court reporters are backed-up for redundancy, significantly reducing instances of lost records, and they are capable of storage in web repositories for wider accessibility.

The reason for this phenomenon is simple. In their role as private contractors producing transcripts, official court reporters are highly motivated to improve productivity. Investing in and developing technology are business necessities driven by a free market incentive. The side benefits to the courts, lawyers and litigants are impressive. CAT technology not only helps the court reporter to quickly produce a transcript, but proficient court reporters are able to simultaneously create and display a rough draft of the verbatim record at the time the proceedings occur. This feat is called Realtime reporting that judges, attorneys, litigants, and others are quickly learning to use to improve their own productivity. This instant display and text file of the spoken word allows judges, lawyers, clerks, interpreters, and others to add notes and annotations for current or later needs.

By changing the nature of their "product" from a paper transcript to a digital file, court reporters have provided several additional opportunities for cost savings and improved productivity by the court and its users.

Privately Financed Court Reporter Transcription Costs

Unlike most California public employees, court reporters must personally pay for a wide variety of technology, and even staffing, in order to perform their dual role of court employee, to capture the verbatim record, and private contractor, to produce transcripts. The California Government Code sections 70311 (a) and (b) and 70313 prohibit the courts from supplying stenotype equipment, transcription equipment, and related supplies to court reporters.

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These annual and start-up costs are as high as \$23,000 or more for technology, equipment and supplies, and could run as high as \$15,000, \$20,000 to \$30,000 or more for staffing. The choice to hire transcript production staff differs from reporter to reporter, and the decision is largely driven by the amount of transcript workload. A reporter could decide to hire only a scopist (editor of stenographic notes), only a proofreader, both or neither. There is no choice when it comes to technology, equipment and supplies – these are necessary and ongoing costs.

Accordingly, court reporters have made a significant investment in technology and productivity, which benefits the court in the form of low cost and rapid transcript production. For instance, ***in the last 100 years***, court-paid transcript reimbursement costs have increased only 325% for original and 50% for copies, while the consumer price index during this period has increased 2,000%. Court reporters have not received any increase in transcript fees in 20 years.

A detailed breakdown of court reporter-paid costs is provided below:

STAFF COSTS

<i>Annual Volume of Transcript Production</i>	<i>Scopist (85¢ per page)</i>	<i>Proofreader (40¢ per page)</i>
1,000 pages	\$850 per year	\$400 per year
5,000 pages	\$4,250 per year	\$2,000 per year
10,000 pages	\$8,500 per year	\$4,000 per year
25,000 pages	\$21,250 per year	\$10,000 per year
NOTE: <i>The decision as to whether to hire a scopist (editor of stenographic notes) and/or a proof reader is optional and differs from reporter to reporter, and the decision is largely workload driven.</i>		

EQUIPMENT AND SUPPLY COSTS

<i>Hardware, Software, Supplies, Etc. (replacement cycle indicated in parentheses)</i>	<i>Initial Cost</i>	<i>Annual Cost</i>
Software: Transcript prep & billing (3-4 years)	\$4,100	
Hardware: Stenotype machine (5 yrs), laptop & desktop computers (3-4 yrs), two printers (4-5 yrs), photocopier (leased), fax machine (5 years)	10,180	\$3,000
Supplies: Copy paper (13 boxes X \$30), stenotype ribbons (\$15 x 3), carrying case (7 yrs), printer toner \$80 x 3, cables, serial converter, connectors (5 yrs), fax toner (\$35 X 4), binding equipment & supplies (6 boxes/yr @ \$40 per 100+shipping), office supplies, "original" & "copy" stamps, packaging material, diskettes, address labels, research material, business cards, CDs.	420	1,665
Other: Stenotype machine (annual maintenance, support for software, including updates), Internet provider, wheeler (5 yrs), home office furniture (5 yrs), training/seminars, training/vendor, postage, professional dues, CSR license, equipment insurance, cell phone, liability insurance.	570	3,397
<i>Investment in equipment and supplies</i>	<i>\$15,270</i>	
<i>Annual ongoing costs</i>	<i>\$8,062</i>	
<i>Combined costs (start-up and annual)</i>	<i>\$23,332</i>	

California Reporting of the Record Task Force (RRTF)

In April 2002, the California Judicial Council created a Reporting of the Record Task Force (RRTF) to examine how court reporting services are provided. Their final report and recommendations were published in February, 2005. Among their charges was to consider state “ownership” of transcripts and related products.

After considering all the productivity and cost implications, the RRTF did not recommend that the courts take over responsibility for producing transcripts, and specifically recommended that court reporters continue to be paid as independent contractors for this purpose. Ironically, most of the cost-saving recommendations that resulted from the RRTF report are directly attributable to the technological advances that court reporters have privately funded to convert the verbatim record into a digital format, which is three to five times faster to review and can be easily stored, retrieved, transmitted, shared, and more productively used by judges, attorneys, litigants and court staff.

The Unquantifiable

While it is important to present accurate cost figures as we have done in this analysis of the financial impact of shifting ownership of the record from the court reporters to the court, there are also a substantial number of unquantifiable negative consequences for doing so.

The Electronic Recording Project Advisory Committee asked in their 1992 final report: *“Who is in charge of making the record? Is there a chain of players and equipment, or one individual who is responsible and accountable for accuracy and the integrity of the record.”* A court reporter is currently the central figure in charge of the record. When the responsibility for the record is shared among several parties, such as a court monitor, court clerks and court management, chances for errors and delay increase precipitously.

Since the Electronic Recording Project and its final report form the primary basis for the LAO’s recommendations, several other observations from that report are worth repeating:

“An orderly system of justice requires an accurate and timely record for appellate review.”

“Audio reporting is an acceptable method in all courts which do not have testimony if there is a trained monitor who has no other duties while recording.”

“We found inconsistency in quality of audio transcripts.”

“A computer integrated (court reporter) and video reporting system (are) the state of the art. It promises a trial with a near instant record.”

“Courts should be open to technological advances.”

In short, shifting ownership of the court record from the court reporter to the court does not provide hard cost savings, and results in substantial negative consequences that impact its accuracy, timeliness and integrity.

This report was prepared by Chris Crawford, president of JUSTICE SERVED®, a court management and technology consulting firm. Mr. Crawford has more than 34 years of court management experience, including 21 years managing California trial courts. For more information, please visit www.justiceserved.com.