

### STATE AND DISTRICT COURTS CHOOSE LICENSED CSRs

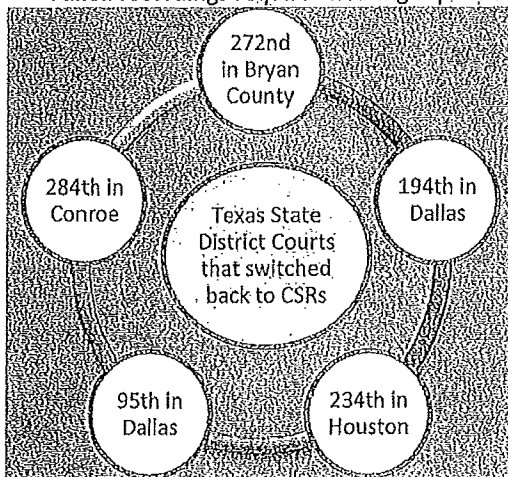
#### OREGON 2011 - OREGON PUSHES SENATE BILL 409 TO BRING BACK CSRs

Delays and problems with audio equipment are causing problems all over the state.<sup>13</sup>

Defense attorney Steve Krasik represented Christian Longo, sentenced to death after being convicted of killing his wife and three children. Krasik feels all aggravated murder cases must be reported by a CSR. "The audio in the Longo case was a disaster...For really important things, there ought to be statewide standards."

#### TEXAS 2011 - DISTRICT COURTS SWITCH BACK TO USING CSRs<sup>14</sup>

- Audio problems bring courts to a "screeching halt."
- 54 cases in South Gauteng High Court are delayed because of lost, inaudible, or inaccessible audio recordings.
- Court records determined useless because they are inaudible.
- Failed recordings require "hearing repeats."



<sup>13</sup> [www.Oregonlive.com](http://www.Oregonlive.com), "Bring Back the Court Reporters," by Steve Duin, *The Oregonian*, April 2011

<sup>14</sup> [www.sunbeltreporting.com](http://www.sunbeltreporting.com), "Why Texas State District Courts Switched Back to Using Live Reporters," by Ken Adams on April 2011

#### NEW YORK 2008 - S7995 PROHIBITS THE USE OF RECORDING DEVICES IN RESPONSE TO COMPLAINTS ABOUT THE QUALITY OF TRANSCRIPTS

Senator John A. DeFrancisco introduces S7995, "which would prohibit the use of recording devices – rather than a stenographic record taken by a court reporter – in Supreme Court, County Court, District Court, Family Court when delinquency cases are being heard and during jury trials in New York City Civil Court."<sup>15</sup>

#### IOWA 2010 - DIGITAL RECORDINGS STUDY COMMITTEE RECOMMENDS KEEPING COURT REPORTERS<sup>16</sup>

"Ten of the 18 members of the Digital Audio/Visual Recording Technology Committee signed a letter saying they don't think [digital audio recording technology] should replace live court reporters."

The cost savings of digital recording technology to replace court reporters in Iowa's courtrooms leaves out a very important factor: Maintenance.

J. Jacobs, a CSR in Scott County, Iowa, states, "The report did not compare the cost of purchasing, installing, and maintaining DART with the cost of maintaining the status quo, court reporters."

"Representative Jeff Kaufmann, R-Wilton, sees no guarantee the state will save money by replacing court reporters with recordings because of the costs of facility upgrades and paying technicians."

<sup>15</sup> New York Law Journal, "Senate Bill Would Limit OCA's Use of Court Recording Devices," by Joel Stashenko, May 2008

<sup>16</sup> Wellner, *Brian Quad-City Times*, "Digital Recordings Study Committee Recommends Keeping Court Reporters," January 2010

DOCUMENTATION FROM NATIONAL COURT REPORTERS ASSOCIATION

**COURTS BRING BACK COURT REPORTERS  
AFTER ELECTRONIC RECORDING USE**

When it comes to ensuring an accurate, fast and cost-effective record of court proceedings, judicial systems around the country are choosing court reporters instead of recording systems. Realtime translation and daily copy transcripts are available only with a court reporter, providing huge time savings, cost savings, and much greater efficiency. Court reporters have been the forerunners in applying computer technology in the legal system – computer-aided transcription, realtime translation, and video/text integration. All of these reporter-based technologies have enhanced the functioning of the judicial system for several years in both headline trials and everyday cases. By providing case information to judges and attorneys in digital format, court reporters produce transcripts that can be researched, corrected, telecommunicated, stored on CD-ROM or other computer media, integrated with a videotape, or simply printed out in a conventional or condensed format. Court reporters provide and maintain this rapidly changing technology at their own individual expense.

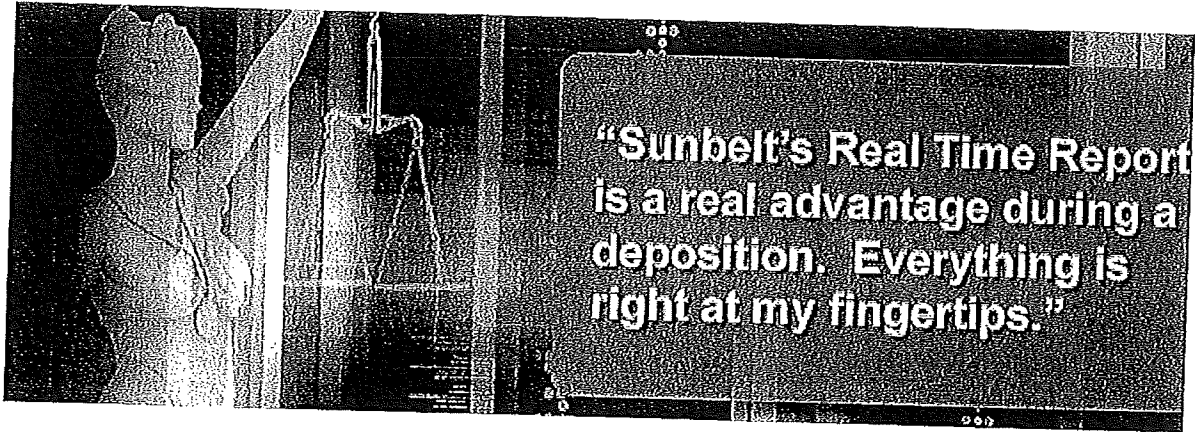
Some jurisdictions have chosen to experiment with recording systems. However, they have found that using recording systems in criminal or civil cases frequently causes court delays, increased costs, and equipment failures that result in expensive retrials. Recording systems require constant maintenance and upgrades as technology improves, resulting in unanticipated expenses to the court and increased personnel. The courts pay higher transcription costs for inferior transcripts; or if no transcripts are provided, the results are great increases of time and additional personnel costs at all levels of the judicial system, as the text form of the record provides far greater judicial economy.

TEXAS	2001- Brought back stenographic reporters after trying both audio and video taping methods, citing realtime court reporting and the ability to have an immediate transcript; saving money during expert witness testimony by having the experts review the transcript from the day before instead of sitting through previous days of court; time and equipment involved in reviewing video testimony – taking at least five hours to review five hours of testimony, compared to 30 minutes to review the same transcript; inherent problems and inaccuracies in transcription of recorded proceedings; unanticipated costs and additional personnel to perform all the functions that a stenographic reporter provides.
NEW MEXICO	Started using recording systems in 1982. By 1986 brought back stenographic reporters, citing unexpected costs, frustrations, backlog of cases at the appellate level, and great increases of time and additional personnel costs with the tape systems. The state abandoned the systems and returned to faster and more cost-effective court reporters.
FLORIDA	Florida's supreme court is currently reviewing an appellate court decision to determine what the official record is - the recording or the transcript from the recording. Digital recording systems record everything, including whispered conversations between clients and attorneys or onlookers. Keeping the recording from the public preserves the attorney-client privilege. The appellate court ruled the recordings are not an official record but are used to create the official record. If this decision is upheld, the court will be required to provide written transcripts, resulting in no cost savings to the court.
FEDERAL COURTS	Appellate and trial court judges taking part in a two-year study said videotapes of trials were too cumbersome and took too long to find specific portions. As a result, the Judicial Conference of the United States voted to end the experiment in 1986.
NEW YORK	2008 - Legislation carried by the chairman of the Senate Judiciary Committee would prohibit the use of recording devices -- rather than a stenographic record taken by a court reporter -- in Supreme Court, county court, district court and family court when delinquency cases are being heard and during jury trials in New York City Civil Court. The rationale behind the bill is based on complaints about the quality of the transcripts generated by electronic recordings, mostly in family and surrogate's courts, but also in some criminal courts.
KENTUCKY	1988 – Use of videotape recorders has resulted in malfunctions, retrials at cost to the state, and too much time spent by attorneys reviewing the tapes.
ILLINOIS	1990 – Installed videotape systems tried as an experiment sit idle. Chief Justice Richard C. Ripple said use of video is very limited. Other judges refuse to use it, stating they don't want to watch television.

OREGON	2004 – Officials are calling for the return of court reporters instead of digital recording due to a series of missing or inaudible recordings. 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 DR 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 record.
HAWAII	The disastrous loss of nearly 100 grand jury indictments caused by a tape recorder system malfunction has resulted in the state's trial courts relying exclusively on court reporters, leaving tapes for minor proceedings such as motions.
NEVADA	Nevada Federal Courts and Commissions brought back stenographic reporters in 1995 after using tape systems for three years, citing higher costs and inferior service compared to realtime stenographic reporters.

Sources of information: National Court Reporters Association [www.ncraonline.org](http://www.ncraonline.org); various state records

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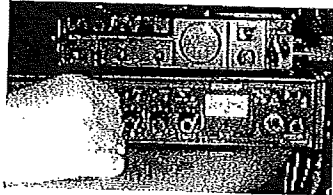


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### Why Texas State District Courts Switched Back to Using Live Reporters

Posted by Ken Adams on Wed, Apr 20, 2011



In hindsight, switching away from using live court reporters in favor of audio only systems in the court system may have been a huge mistake. After all, technical difficulties have halted courts, caused massive delays, required complete hearing repeats, disappearing court records, and virtually useless recordings due to recording problems. Texas state district courts and many others are feeling the pain and abandoning technology in favor of the tried-and-true: live court reporters.

The following Texas state district courts, among others, have switched back from using audio only to using live reporters:

- 272nd in Bryan County
- 194th in Dallas
- 234th in Houston
- 95th in Dallas
- 284th in Conroe

Below are just a few examples of why Texas state district courts are going back to using live court reporters:

#### **Audio Difficulties have brought Courts to a Screeching Halt**

Imagine appeals against criminal convictions averaging two years. At the South Gauteng High Court, this is reality according to an audit of 54 cases. Among the reasons for the

### DIGITAL RECORDING MALFUNCTIONS ACROSS THE NATION

#### KENTUCKY 2010 - PROBLEMS WITH JEFFERSON CIRCUIT COURT'S DIGITAL AUDIO EQUIPMENT<sup>6</sup>

In Judge McDonald Burkman's courtroom, the audio went unrecorded for more than two weeks in May without anyone knowing.

In Judge Charles Cunningham's courtroom, about a month of proceedings were recorded without audio last fall, and is being cited as grounds for an appeal of a jury conviction in an assault and unlawful imprisonment trial.

Judge Susan Schultz Gibson declared a mistrial in a 2008 robbery case when she learned the audio of the testimony had not been recorded.

Judge James Shaker said he faced a possible retrial after an entire criminal trial was lost in the last year.

Judge Andrzej Keleny said she has a capital murder case that stalled and could have ended in a mistrial because of the difficulties in replaying testimony for jurors. It's a huge problem. It should be easier to use, but it's not.

#### HOW IS KENTUCKY HANDLING THE PROBLEM?



"An AOC [Administrative Office of the Court] spokeswoman said in an e-mail that JAVS [Jefferson Audio Visual Systems] has provided a proposal to UPGRADE THE SYSTEM in Jefferson County to its current version at a cost of about \$1.1 MILLION, which would include a backup recorder in each courtroom."

<sup>6</sup> Riley, Jason, *Courier-Journal*, "Court Video Failures Cause Trials, Hearings to be Lost," September 2010

#### FLORIDA 2008 - GRAND JURY PROCEEDINGS MISTAKENLY BROADCAST OUTSIDE COURTROOM TO NEWS STATION

In the highly-publicized case of Casey Anthony and the disappearance of her daughter, Caylee, bad publicity about the justice system hit the newsstands.<sup>7</sup>

"Before the indictment, Local 6 crews realized that audio from the grand jury's secret meeting on the 23<sup>rd</sup> floor of the Orange County courthouse was being piped out of the building.

"After a flurry of activity that could be witnessed outside the grand jury room, the audio feed was cut off and proceedings were suspended."

#### COLORADO 2010 - COURT RECORDINGS MISSING FROM HUNDREDS OF TRIALS

Cherry Creek Springs' Homeowners Association, when filing an appeal, learned a transcript of their trial could not be produced. For the Record [FTR], the digital recording system, did not record any of the proceedings.

The District Court Administrator, Vicki Villalobos, reports as follows:

"There is no record of audio from any proceeding heard in front of Judge Kane from September 19, 2008 through October 10, 2008...

"If any transcript is requested from that time period, one cannot be provided..."

"If any cases are appealed, the courts will have to find some way to reconstruct the trial piece by piece."<sup>8</sup>

<sup>7</sup> <http://www.clickorlando.com/news/17715337/detail.html>, October 2008

<sup>8</sup> Welte, Rachel, [www.coloradoconnection.com/news](http://www.coloradoconnection.com/news), "Court Recordings Missing from Hundreds of Trials," February 2010

**U.S. DISTRICT COURT 2010 -  
"APPROXIMATELY TEN-THOUSAND  
(10,000) INDISCERNIBLE AND/OR  
INACCURATE PORTIONS OF TRIAL  
AND SIDEBAR TRANSCRIPTS"<sup>9</sup>**

Counsel of record for Appellant, Atlantic States Cast Iron Pipe Company, cites the reasons for lengthy delays caused by digital recording.

**NO. 6**

*"During a conference call with the District Court on March 18, 2010, Appellants and Appellee were advised that the District Court has completed its review and correction of the trial transcripts for all but six (6) days of trial which will require additional examination of the audio discs for those trial days...The District Court also requires additional time to complete its review and correction of the sidebar transcripts."*

**No. 7**

*"...four original audio discs containing the trial testimony of key government witnesses...have not been able to be reviewed by the court on its equipment and would need to be examined by an expert computer service."*

**No. 8**

*"Upon the District Court's completion of its review and correction of the trial and sidebar transcripts, the parties must review and approve the District Court's corrections before the transcripts can be sent to the transcription service."*

<sup>9</sup> *US v. Atlantic States Cast Iron Pipe Co.*, Case: 09-2356, Appeal No.: 09-2356, Document: 003110066386, filed March 19, 2010

**VIRGINIA 2011 - RECORDINGS  
FROM VIRGINIA TECH SHOOTER'S  
CIVIL COMMITMENT FOUND, BUT  
ARE INAUDIBLE**

Attorneys request digital recordings and find officials scrambling to locate the tapes; it was believed the tapes had been destroyed in 2009, after the three-year state mandate to keep them had expired.

When located, "Hall said [the defendant's] voice is inaudible on the tape and that he is searching for a company that could enhance the sound quality to retrieve [the defendant's] responses to a special magistrate's questions."<sup>10</sup>

**ALASKA 2011 - BOTH THE  
RECODING DEVICE IN COURT AND  
THE BACKUP RECORDER WERE  
NOT TURNED ON**

A man in Juneau, Alaska, accused of felonious conduct (vehicle theft, burglary, and criminal mischief) may not go to prison after all. There is no record of the search warrant hearing that took place.<sup>11</sup>

**CALIFORNIA 2012 - JURY FINDS  
AUDIO RECORDING OF EXPERT'S  
TESTIMONY USELESS**

A jury in Stockton hangs on a charge of 23152(b), driving a motor vehicle with a blood alcohol level of .08 percent or higher, because of poor audio quality during expert witness testimony.<sup>12</sup>

<sup>10</sup> [www.washingtonpost.com](http://www.washingtonpost.com), "Audio of Va. Tech Shooter Commitment Hearing Found" by *The Associated Press*, June 2011

<sup>11</sup> [www.juneauempire.com](http://www.juneauempire.com), "Lost Record Could be Key to Beer Heist Case" by Emily Russo Miller, December 2011

<sup>12</sup> *People v. Ramona McFee Taylor*, Case No. ST057723A, March 2012

## Digital Audio Recording

Over the years, NCRA's government relations department has compiled a list of electronic recording failures for states to use as a resource when dealing with the potential replacement of official court reporters with digital recording. This information has been collected through news articles and white papers. Below you will find a link to NCRA's government relations website, which has a list of DAR/ER failures.

You can find all articles and studies advocating for a stenographic court reporter at the following link:

- [Electronic/Digital Recording: Key Links and Videos](#)

Here are a few articles that highlight the failures of DAR/ER and promote the need for live official court reporters:

July 2013: A malfunction in courtroom recording equipment prompted the Hon. Ernesto Scorsone to declare a mistrial in the case of murder defendant Patrick Deon Ragland in Lexington, Ky.

July 2012: Faltering digital recording system caused a motion for a new hearing in Adams County, Colo. From the court record: "Plaintiff has not shown that she was unable to have a fair trial due to the later discovered failure of the recording system. At best, only appellate review is impacted."

July 2011: The audio tapes recovered from the high-profile case of the convicted Virginia Tech shooter Seung-Hui Cho's 2005 civil commitment hearing were found to be partially inaudible.

February 2012: Biggs alleged that he needed the new trial because there were huge gaps in the transcript of the administrative appeal hearing due to a bad audio recording of the proceedings. The poor record precluded Superior Court from properly reviewing the record.

September 2010: This article, published in the Jefferson County (Ky.) *Courier Journal*, documents the failures of the ER system put in place in Jefferson County. One judge even switched back to a court reporter due to her lack of faith in the ER system in place. It was suggested that upgrading the ER system could cost the county an additional \$1.1 million.

For more information, consult [NCRA's Stenographic Opportunities in the Courts white paper](#). This document was commissioned by NCRA's Board of Directors to show the value that court reporters provide the judicial system versus alternative methods of making the official court record.

Several additional studies that have been used to help protect and expand opportunities for official court reporters can be found below:

- The California Court Reporters Association had a study completed by an outside vendor that showed that transcripts created by live court reporters are cheaper than those that are transcribed from a digital audio recording.
- The Iowa Court Reporters Association created a document that focused on some of the problems related to DAR versus live court reporters which eventually helped them rehire a dozen official court reporters a few months ago.

If you have any questions, please contact NCRA's government relations department at [govrelations@ncrahq.org](mailto:govrelations@ncrahq.org).