**[Ex 2-3] 2006-10-11 791067a October 11 2006 Texas Senate Hearing on Jurisprudence**

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...will come to order, clerk will call the roll. Senator Wentworth? Here. Senator Gallegos? Senator Corona? Senator Duncan? Present.

Senator Harris? Senator Hinojosa? Senator West? Here. Quorum's present. Members, you have in your books copies of the minutes from the May 3rd meeting.

Any corrections or additions or a motion to approve them as printed? I move. Senator Duncan moves we approve the minutes. Any objection? Minutes are approved.

Today we'll be hearing a testimony on committee charge number three, which is study and make recommendations relating to the use and cost benefits of electronic recording as an alternative method of preserving records of official court proceedings. And what we're going to do is start with the members of the committee and our staff sitting out on that front row. We're going to have a little presentation of various technology used in in court reporting.

Take a few minutes. Any questions at this time? All right, if not, let's move out and have some. If I have a subcommittee, I'm going to be able to sign things and show them to you? Yes, Mr. Chairman.

Okay. We always say your name with the microphone. You, Tommy, Kyle, Andre, Stay for as long as you have.

For the next six weeks at the hospital? Yes, sir. Okay. Okay.

Okay. I keep forgetting. Good morning.

I hope this microphone will pick me up from up here. This is a bit of an awkward position because You have it punched in? Okay. You think that'll pick me up better? That'll help you.

Thank you. That's right. I want to say first of all that it's an honor to be invited to speak before this honorable committee and I thank you for that invitation.

I am Judy Miller. I'm an official court reporter in Fort Worth, Texas. I have been in the courts for 30 years there and utilize the same technology that you're seeing our court reporter do on her stenographic machine this morning called real-time court reporting.

I want to introduce our court reporter who is Dana Hayden from Lufkin, Texas. The beautiful lady here working on the stenographic machine and Donna Collins to her left is also a court reporter from Dallas, Texas. She's a firm owner and past president of the Texas Court Reporters Association.

There are many people in the audience that I'm sure will be recognized and hopefully will have a chance to speak but I wanted to specifically introduce Carl Reynolds with the Office of Court Administration to the back of the room and Margaret Bennett and Katie Bond and Michelle Henricks. Margaret and Katie are with the Office of Court Administration and are legal liaisons and Michelle Henricks is the director of the Court Reporters Certification Board. I am a member of the Court Reporters Certification Board and I am here representing that board today.

I've served on that board for six years. It's by appointment of the Supreme Court. That board is comprised of four members of the public.

It is chaired by a district judge. There are two attorneys on the board and the rest is court reporters or court reporter firm owners. Senator Wentworth went over your charge and I want to just start off by talking about technology in society today.

It's clear that in today's digital age we must be technologically literate to live, learn and work successfully. Technological literacy is knowledge about what technology is, how it works, what purpose it can serve and how it can be used efficiently and effectively to achieve specific goals, which I know from the work of this honorable committee is your goal. The public, it goes almost without saying, the public has a growing dependency on technology.

We are an instantaneous society. We do not expect real time. We demand it.

The courts are no different. There are many stakeholders in our judicial system. Our citizens are justifiably demanding better access to the courts, to our judiciary, the litigants and the parties to the courts as well as those whose life and liberty is at stake.

The citizenry includes thousands of disabled individuals, hearing impaired persons, which the federal government has mandated access to our courts through the Americans with Disabilities Act. I stand before you as a resource, if needed, and with the duty of explaining court reporting technology as we know it in Texas, which is currently utilized in our courts and provided by certified, skilled court reporters. I too will address what I know about electronic recording and explain the differences in my lay opinion in tape recording and digital recording.

My goal is to give you an overview of record making technology and its implications for the future. I'll offer information on the many factors involved when considering these various methodologies. I've also been asked to address the current statutes and rules, but I'm delighted that Jody Hughes is here from the Supreme Court.

Jody is in the back row over there. Although he and I have talked many times on the phone, today was our first personal meeting, so I'm grateful for that and I'm grateful for his presence. I am familiar with the current state of the statute and the rules, and Jody and I will likely, as looking at your agenda, it will be likely that we will close the meeting with that information.

The dictionary defines the term real time as a general concept which refers to a system that responds to events or signals as fast as possible as they happen. We've watched our nation at war in real time. We've watched the abolishment of the Twin Towers in real time.

Our fire and police dispatch in real time. Our firefighters and police watch the city's emergency equipment move about in the city in real time so that they can respond to emergencies faster than ever before. We enjoy stock news and daily stock picks in real time.

We watch our bank accounts in real time. We view cloud images as seen from space by geostationary satellites in real time. The list goes on and on.

Why should the integral role of the courts, of the judges, be any different? Why should the citizenry expect anything different? A real time court reporter's stenographic notes are translated instantly as you see on the screen. That's what we're displaying on the screen before you. It's called a real time translation or computer aided transcription being performed by a very skilled professional court reporter.

Real time court reporters create a verbatim text record of the proceedings for instant review and use by the attorneys and judges. In fact, real time is the only voice to text technology that meets the rigorous demands for accuracy that exists in the legal government. Since the testimony is displayed on a computer screen, the attorney can concentrate more on substantive issues and less on capturing what was just said.

Real time also allows those unable to attend the examination to participate. Since real time transcription can be sent securely over the internet, many attorneys have their experts and clients monitor the testimony while it happens. Court reporting technology is used to provide television's live closed captioning and communication access real time translation.

Captioning of classes, meetings, etc. to provide access to those hearing impaired individuals I mentioned earlier. I can read fairly fast, as Dana probably can attest, certainly faster than I listen.

When reading, I can dwell on a word or a phrase and go back to understand a phrase or a sentence and stop and think when I want. When listening to audio, you are not only limited to approximately the speed of the person speaking, but it is considerably harder to go back to review. I can also skim or skip much of the text when reading through it.

I'm going to ask Donna, who I introduced to you earlier, to do some things on her computer screen that you're watching to sort of demonstrate how the judges and the litigators, the discovery process works when utilizing this technology. Again, the court reporter is using CAT, which is an acronym for Computer Aided Transcription Software, provided by many different companies across the nation. Donna's loaded software on her computer called LiveNote, a big user out in the by the lawyers, this software, and there are others.

There's real legal case view and summation. Many of these software companies provide viewing only software for free for the judges and for the lawyers. Now, if you want to go to the subscription service of this software where you can database and do more sophisticated things, then you would pay a subscription fee, but again, this is available for free for the litigators.

Just as the judge, lawyers, paralegals, and court staff might need to search back in the day's testimony for the last question, a repeated phrase, or a ruling on an objection or motion, I'm going to ask Donna to search each instance on this screen in today's testimony so far where the term technology appears. She's going to start at the top, and there's the first instance, or there's the last instance of the word technology. She can also, as things are going along, the judge, the lawyer who's using the software can make what's called quick marks by just using one stroke on the keyboard.

Donna has been doing that this morning, so now I'm going to ask her to show the quick marks that she has made, and then I want to explain the practical application of this simple, user-friendly software. You're going forward with the marks? Okay. She's skipping from one mark to the other now.

Just so that most of you can relate to what happens in a courtroom, as we speak in the court where I am the court reporter, we're picking a capital murder jury. Most of you know that process where the jurors are brought in individually and the attorneys will question them about areas of the law. Some of them are very specific about areas of the law that they could not follow or that they would do automatically, and some of them equivocate back and forth.

My judge has a screen just like this, and as things are happening, as the juror or the person speaks, anything that could disqualify that juror for either side, she marks, and then at the end of the testimony, that individual testimony, when the attorneys are ready to make their challenges or use their strikes, she generates a report from those marks so that she in her expertise knows what they're going to, which side's going to make their challenge, and number one, it keeps the lawyers honest because they know that she has instant access to the testimony. It also allows her to make a much quicker, educated decision on whether or not to grant the challenge for cause or make them burn a strike. I go into that long diatribe just to sort of allow you to see the practical application of this technology.

Another point that I wish to make about this technology, the court reporting technology and the digital text that we generate is that the appellate courts require a written record. The appellate courts have gone one step further in that they require a digital version of the written record so that, and Donna has generated a report here for us to sort of show you how quick and simple it is. And then, and forgive me for digressing, but with that report, then you can actually save that file for later.

So the judge actually has a whole file full of her rulings and the reasons why. And then the lawyers can generate their reports when they go to write their briefs on a challenge that perhaps was overruled. So, I'm sorry to digress there.

But back to the appellate courts. They do require either a digital format in addition to the text. I would venture to say that the appellate courts will never feel any differently about having the text.

We can furnish this text in many different forms on a CD. We can furnish it in a condensed format so that we're not killing all the trees. And with that digital text that they receive, they can do the word searches and they can generate their own reports.

They can cut and paste from the text. And there's no question when it's certified and sent to the appellate courts that this is the official record. This is the sworn officer of the court has sworn to the certification of this record.

So, that's one of the real major issues that I want to make here and that's about our certification process and the accountability issue. Before I move off of the technology, I will tell you there's not time today to demonstrate it, but as Dana is writing on this machine and creating the written text, she's also recording digital audio on her hard drive so that when she goes back for the edit process, you may have seen mistakes up here, phonetic interpretations or perhaps I stuttered and caused a mistake on them. She will go back and edit this transcript and as you can see, 99.9% of it is done, but she can go back and hit a word and the audio comes up.

She can also link video to the text so that when the appellate courts get it, they can have the video deposition in a separate window. The windows can be split up on their screen and they can see the witness testifying. They have the text and they can search through as quickly as they want.

So, court reporters are utilizing all of the current technology and they are being utilized by what we deem is the most important issue. A person who's skilled, a person who's certified by the board that you created and a person who is accountable. The accountability issue is huge and I think that to elaborate on it might be somewhat redundant because we all know the importance of a record and what happens in the courts and what is at stake in most instances.

I want to speak about the Texas history a little bit on this issue. I see many friends out in the audience and some of which are on the opposite side of traditional court reporting. Traditional court reporting is no longer acceptable.

Court reporters have adopted this technology, are using this technology and the federal government has actually appropriated 80 Dana, is it 80 billion or 80 million? I don't want to overemphasize. $80 million for training real-time court reporters. $20 million of that has already been appropriated and it's been appropriated for real-time court reporting to use with the federal mandate, with the Americans with Disabilities Act and with open meetings and that sort of thing.

The federal government has recognized the need for funding and the technology that has got to be utilized in our courts. Audio recording has been tried in our courts. It has failed in our courts.

It has failed at the cost of the taxpayers. It's failed in many regards. I just was handed by Michelle when she came in a news release from Illinois and I'm happy to talk about other states if you wish but I know you'd much rather focus on Texas but Illinois recently installed what I think you're going to see this morning, some court smart equipment and there is a press release here from February the 26th of this year.

I can't pronounce this. Waukegan, Illinois News Sun reported that the court in Illinois are seeking reporters after many digital audio installation in various suburban Chicago counties were found to be faulty. The technology has proven to be a failure in some courts and mediocre in others with bright spots only here and there depending on which manufacturer system is used.

On the McHenry County side of Circuit Court, half of the courtroom systems were deemed failure. The Lake County side avoided installation, installing the electronic systems. The Illinois legislature recently moved court reporters from the Supreme Court to the Circuit Court.

Now the chief judge has authority to bring staffing levels of court reporters back up to the least adequate level and use electronic recording where live court reporters are not available and only in that instance. The Illinois Bar Association has declared its displeasure in December. It passed a resolution declaring unacceptable the exclusive use of electronic tape recording to create official court records.

Several counties and I won't go through those uh just use the sound process and the Bar also deemed that the courts uh should replace all the audio systems with court reporters. That list, I could go into that and waste a lot of your time because hopefully you've seen much of that but back to the Texas history um the Supreme Court has allowed isolated instances of electronic recording in some of our courts. Years ago they were called quote unquote pilot projects and I think you're going to hear from a judge today who I saw his name on the agenda and I know his face who is in a district court now that prior to that had audio recording and so I think he'll be your best resource on that situation.

We have other situations, Judge Charlie Gonzales who I think is the United States, in the United States Senate now. Pardon me? Okay, US House of Representatives. Thank you.

Tried audio recording in his courts and his successor immediately changed to the real time court reporter. This was back from the 80's and still utilizes a real time reporter. There's a federal judge in Texas, Judge Prado who's no longer on the federal bench I don't believe.

He sure is. He's absolutely sitting today. Is he still in San Antonio? Yes ma'am.

Okay. Well actually he's a fifth circuit judge. Thank you.

He is a fifth circuit judge. He's not on a trial bench, right? Right. Is that right? Um he had, the federal government sort of strong armed him into trying this system.

He is one of the most outspoken of all the jurists that have had experiences with this about the miserable failures. His court to this day has a real time court reporter utilizing this same technology. I have used my time and I'm happy to answer questions.

I'm happy to be here and I will be here for the entire things. Court reporters have been ahead of the rest of the legal system in applying digital technology in the workplace. We would the certification board certifies skilled court reporters that is our business and you established this board back in 1977.

You continue to budget for this board and the important work that it does although we have like other agencies received budget cuts that's caused us to have three tests a year and three board meetings a year as opposed to the four meetings that we enjoyed for many years and we've had to cut back on staff and mail outs and all the normal things that you do first before you do the drastic things but as it stands right now the Sunset Commission two years ago saw to continue this board for twelve more years. They saw, you saw the good work of this board to help protect the record in our courts and I hope that you will continue in that vein and I again will be here as a resource and if you have questions now I will answer them or I'll defer to the next speaker. Thank you for your time.

I noticed that the newspaper article that you quoted from indicated that bar associations had taken a position on the use of this technology. Have bar associations in the state of Texas taken a position? Absolutely. What position have they taken? They have taken positions against the use of electronic recording.

It's their contingent, it's their thoughts and I'm paraphrasing here but I have things to furnish you if you need that it's a matter of cost shifting. The costs are touted as being much less expensive to go with electronic recording. I have much information to refute that.

Sounds like arbitration. No arbitration. Also Judge, also Senator West before I get off of the Bar Association I want to speak about the Texas Judiciary.

Judge Delaney is in the audience. Judge Delaney enjoyed a district court where he utilized recording for a period of time. Judge Delaney went to the Texas Center for the Judiciary every year for over 10 years with a resolution to allow for the use of electronic recordings in the court in lieu of the court reporter.

He was overwhelmingly overruled and most of the time never got a second on his resolution. So the Texas Judiciary has spoken. The Texas Judiciary will continue to speak and hopefully we'll hear from some of those today.

Did I answer your question Senator? You have. So you're saying that the Texas, what about the Texas Bar Association? Has it taken a position? Yes, they have taken a position in the Texas Trial Lawyers Association. Glenda, can you give me any other groups? I know the American Judges Association.

The American Trial Lawyers Association. The TTLA, the Defense Bar. Criminal Defense Lawyers Association.

There's so many acronyms out there, but yes, they have. And all of them are opposed? Yes, sir. So what you're saying, Mr. Chairman? Sure.

What you're saying is

 **This file is longer than 30 minutes.**

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