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

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You can have a core recorder or a stenographer, typist, transcriptionist, whatever, take that verbatim record, which is an audio and video rendering, and produce a paper transcript. Or, you can run it through filters and you can use some voice recognition software that will begin to convert that. After which, it has to be cleaned up and scoped as well.

There is no perfect way to do it. So, at the basic level, they both do the same thing. At the sophisticated level, one does it much differently than the other.

You see, digital... Okay, let me rephrase my question. Is your program, what you're going to show us, does it affect the present court reports that we have now? Is it going to affect? It could. I don't want a could.

Just tell me, you know. Senator, you're asking me to make a political statement, and I'm not here to do that. That's not a political statement.

If somebody's going to take my job from me, that's not political. Just tell me. We're not advocating that.

We're advocating the hybrid use of both technologies, core reporters as well as electronic. Electronic can be used as backups for core reporters. Electronic can be used in place of a core reporter in a court of lesser jurisdiction or wherever you might deem appropriate.

I'm not going to stand in front of you and say core reporters are losing their jobs because I quite honestly do not know of a single instance where a core reporter has ever lost their job as a direct result of either my technology or any other technology. Okay, well, let me ask you this. Where your program is presently being done, was there any core reporters in those states that had lost their jobs or was there a percentage of, you know... Let me give you an example.

Ms. Miller brought up Illinois, and I take exception with some of the comments she made, but that's okay. In the state of Illinois, we have a very, very big installation in Wheaton, Illinois, DuPage, and you'll have a picture of that. You'll have a picture in your handouts of some of the core reporters that are actually running the system.

The core reporters run and manage the electronic recording system in DuPage, Illinois. And as long as you're talking about opportunity, in DuPage, Illinois, they have a staff of 25 core reporters that are running 38 courtrooms. Since the implementation of electronics some seven years ago, Senator, each core reporter, on average, made $10,000 more per year, and that's a documented statement.

So, you want to talk about opportunity? I'm not sure. That's a negative. Perhaps it is.

I don't know. Well, compared to that town you're talking about in Illinois, that's a hell of a lot of difference than Harris County, Texas. Could be.

Could be. I don't know anything about Harris County, Texas. It's the largest county in the state and probably third in the nation.

But I would say, based upon our experiences, Senator, no. More court reporters. More court reporters? I mean, you know why I'm trying to get here.

I mean, we don't have to play ring around the rosy here. I just want to make sure that I don't get yelled at when I go back home. Well, you probably will anyway.

But most jurisdictions choose not to get rid of core reporters, but there is an attrition rate. There is a growth and an increase in courts, and so many of them have solved that problem by not replacing core reporters as they retire or move on, move, et cetera. Thank you.

Mr. Chairman. Senator Biffin. What I've heard you talk about today is a case for not mandating one or the other but to allow counties, I guess, to choose.

That's essentially what I'm saying. We're just saying allow choice. So then those decisions would be made by the county commissioners.

I don't necessarily think they're the only ones that would make that decision. Judges can make those decisions as well. Well, I think the way in Texas it works is that those decisions are made by the county because the county funds that.

So we would be basically giving this decision over to the commissioners as opposed to taking that decision out of our hands or the judicial branch of the government's hands and placing it into the local county government's, the way I see if we do what you want to do on the choice plan. So I would have some major concerns about turning those decisions with regard to operation of the courtroom itself over to the county commissioners. Well, that's a political decision, again.

I'm here to advocate that, you know, in our system, not just the judicial system but in our economic system, the best usually ends up rising, the most cost-effective, whatever the technology or whatever the application is, and we're saying let it be allowed. If one technology is better than the other, they're going to obviously win. Real time's not available in your system, is it? No, no.

And as I understand, so if you have a murder trial, say you have a capital murder case which is going to be appealed, and that county commissioner's court has chosen to implement your system, and your system's not perfect, is it? No, no system's perfect, Senator. So critical parts of the testimony are omitted. What happens to that case? Well, what would happen in the case of court reporters losing their notes, which has happened many times? Well, I know one case where it's happened in Texas.

It was high profile, but I'm saying, you know, where's the accountability? Well, it's the same system. If you implement. . . So if, well, let me go one step further.

I understand where you're going. So if we were to allow this and there was a error in, say, your system, it failed, and say somebody, let's hypothetically use a civil litigation where, say, a jury awards a $25 million verdict to a plaintiff, and the defendant appeals that, but because the record has a flaw in it, because your system failed or something happened, there was a defect or something or it just didn't work, who would be liable for that? In other words, could the plaintiff who lost his $25 million verdict because the appellate court said there's no record, so we've got to retry the case or a motion for new trial is granted because we've got to retry the case, would your company be. . . How does this work in the other states? Would you be civilly liable for that? No.

But you know what, Senator, I think that there are some people here that are going to be speaking before you. Would a court reporter be liable for that? Well, you'd have to speak for court reporters. I don't know.

What's the present law as it relates to court reporters? In terms of liability. Do you all have insurance to cover that? Yes, we do. What I'm suggesting is that we have county commissioners here.

. . How much? And judges. Senator, you know, we have errors and omissions, and we have liability insurance that covers about $5 million. So, hypothetically, you wouldn't have enough coverage? Well, hypothetically, but then again, hypothetically, we're not really responsible for the abuse or misuse of technology.

I'm talking about if it's just defective, it doesn't work. I mean, you install it wrong. Understood.

I mean, the same thing can happen with court reporters. I'm wondering where the responsibility is. Understood.

And if court reporters are basically certified and, you know, we have some level of minimum requirements for that, is there any minimum level of requirements that we have for your system? You can certainly establish them. And I think that moving forward with any technology, that's why I mentioned before standards. I think standards should be established.

Well, what about liability and minimum limits of liability insurance? Well, that may be part of your standards. You may require that anybody who submits any software to the state of Texas have a minimum liability insurance. That would be up to you all to decide how to do that.

But as I was saying, we have some judges and we have some commissioners here that are far better at addressing some of your concerns that you raised than I am. Thank you. I'm here advocating choice as a representative of the electronic industry, not as a member of any Texas political body.

Okay. Mr. Chairman. Senator West has a question.

As it relates to the accuracy of your system compared to that of a stenographer, kind of give us an idea of how accurate it is compared to that system, a stenographer system. Well, you know, Senator, I'm not trying to— Hold on a second. Hold on a second.

Let me lay this predicate. Your system is installed, is used in other states. Is that correct? And I assume that prior to that system being implemented, they had a court-reported system, real-time system.

Has there been any type of comparative analysis as to the accuracy of your system compared to a real-time system? There have been. And what states have they been in? The state of Pennsylvania. And what was the result? Did one.

Well, Pennsylvania, Clark. What was the result? The result is that verbatim recording is more accurate. Verbatim recording.

Verbatim recording is synonymous— It's digital. Electronic—I mean— Well, let me make sure I got the terminology right. When you say verbatim recording, we're talking about using a court reporter.

No, we're talking about using electronics, Senator. You're saying the electronics in— Mm-hmm. What about Florida? Florida did a couple of studies, and this is a county-by-county situation.

Nothing was done statewide. Okay. And, I mean, if you think about it— No, hold on.

Just give me—just answer the question, please. He's trying. I just need to know the result.

That's all I asked you. The result is electronic produces a more accurate recording when implemented correctly. Okay.

I'd like to get—Mr. Chairman, I'd like to get those reports submitted to the committee, if at all possible. Do you have them available? I can ask those jurisdictions if they would be willing to do that.

Okay. That'd be great. The other question that I have is—and I'm kind of a subject, verb, and object person.

That's all I need to know, all right? The specific question is this. In your presentation a few moments ago, you indicated that the electronic record ultimately has to be scrubbed. And I assume that when you mean that it has to be scrubbed, if there's going to be an appeal taken, then someone has to come in and format it for the appellate—for appeal purposes.

Is that correct? Senator, what I said was the transcript— Has to be scrubbed. —that would be produced has to be scoped and cleaned up the same as any transcript would be. Okay.

And that would be done by? By a court reporter in many jurisdictions, by someone else that you want to appoint, whether they're on the staff or not. This has been done in many different ways, depending upon the locations and jurisdictions. Okay.

So then the need for a court reporter under your system would be if, indeed, an appeal was going to be taken from the proceeding. The absolute need, that would be affirmative. However, in many jurisdictions, court reporters are running and managing these technologies, as I mentioned to you before.

For example, Illinois is one state where court reporters in DuPage, Illinois, are actually managing the system. There are no non-certified stand-ups that operate the system. Okay.

So there are no—and throughout the country where your system is utilized, there are no non-certified stand-ups? That's not the case. There's a hybrid implementation. In some jurisdictions, there are certified.

In some, there aren't. It depends upon the jurisdiction. Okay.

And you also mentioned ownership of the record a few moments ago. Elaborate a little bit more on that. Well, what I mean by that is who owns the record? Does the court own the record? Does the court reporter own the record? Does the person who makes the record own the record? In a hybrid situation of choice, the record would be owned by the court, and the court then or the litigants could decide who they want to transcribe, if they want a transcription, or produce a CD, DVD, and that would be the official record.

So it's the ownership of the record that comes in question when you're looking at other than a court reporter making the record. And how does that impact at the cost of litigation, one way or the other? That depends. For example, with an electronic recording system, you can produce, and Commissioner Hoagland is going to go into this in a little bit more detail in his presentation, but you can produce an electronic copy of a daily proceeding for about 19 cents.

That's the cost of a CD versus whatever it would cost to produce the equivalent amount of pages. A judge in Chambers, for example, could immediately after a proceeding go into Chambers and review it on their computer, on their PC, by downloading it over the network. So from a cost perspective, electronic recording offers different choices and other alternatives than simply a paper transcript.

Thank you, Mr. Chairman. Thank you. Are there other questions? I think we interrupted your presentation with some questions.

If you'd like to continue with your question. I don't know where I was, Mr. Chairman. Well, you were about halfway through this handout.

I think you were talking about ER should. Yeah, I think the last point I was going to make, Senator Wentworth, is retention and disaster recovery. With electronic technology, and again I want to emphasize, not all technologies are created equal, any more so than anything else.

With electronic technology, you can have a true disaster recovery plan in the sense that the electronic files, as they're recorded, can be transferred to remote sites instantaneously. And so you would always have repositories, secured repositories, of the record in the event that there should be some sort of a disaster that would occur to that sole repository of a record. So that offers you some flexibility that current technology might not.

The next page is... I think we're subject to a large-scale site-type hurricane. Up along the middle part of Texas, the Panhandle, and all that. Is that what you're trying to tell us? Well, that's one thing.

That's one thing. There could be other things that could occur. It needs the rain.

Senator, I'll tell you, in Massachusetts we had about 21 inches of rain in the month of May, and I'll tell you, we'd be glad to ship some of that down to you. Because that's a lot of water. We had a lot of floods.

We had a lot of water up there. You know, a few years ago, every year I attend a Microsoft executive conference that's held around the world, and we get speakers from various places. Two years ago, in Florida, we had a speaker from the state of Texas, and she represented the comptroller's office and talked about the use of technology in the state of Texas.

And afterwards, I went up to her and I asked her, I said, You know, I'm having a tough time trying to sell technology in the state of Texas. I said, Could you help me a little bit and talk to me about how Texas makes decisions of this magnitude? And she said, Sure, there are four things you've got to think about right now. That's what we think about when we make technology decisions.

And I said, What would they be? She said, First of all, we want to see a real return on investment, not somebody coming in here and saying, Well, you know, if you do this three years or five years down the road, you're going to have this. She said, You need to be able to show us a real return on investment of 12 months or less, real. I said, What's the second point? She said, The second point is that it's got to be relatively easy to implement.

We can't embark upon something that's going to take us three or four or five years to implement. She said, We want a return on investment, and we want a technology that we can implement quite easily. I said, What's the third point? She said, The third point is it's got to have something to do with security, because right now that's a real big issue in Texas.

So if you can demonstrate how your technology can be employed in a way that can help us with a security issue, that's a really important part of it. And I said, What's the fourth thing? She said, The fourth thing is it has to be affordable, period, because we don't have a lot of money to invest in technology. So if you can get creative on how we can implement technology, we'll be willing to listen.

And that's why I put some of these points down under ER, and I agree with them all. We've got to be able to address security issues. And technology, ER technology, the proper ER technology does, and I'll give you an example of that.

In some of the courthouses that we're installed in in other states, they take live video feeds in the courtroom, and they feed them directly down to security offices. So that whole technology is now integrated. And security can bring up replays of any audio, any video, not just in the courtroom, but in the halls around chambers, wherever they have security.

They can integrate that. And as a result of that, because of federal grant money that's available for security applications through Homeland Security, some places have been able to pay for a great deal of this technology through federal Homeland Security grants. As you move further down, we believe that it should be managed to address a question I think that was raised by, I think you, Senator West, about qualified staff.

We're not advocating that you go out on the street and hire somebody that's not qualified to operate this technology at all. If you've got FTEs, full-time equivalents, court reporters that are on your staff, by all means, you want to employ the best people possible to use this technology and use it to their advantage as well. I was not at the center.

But we wouldn't be making that decision because the way I understand this would work is that the pitch for this would be made to the county commissioners, and they would have to pay for that expertise. I'm going to defer that to Commissioner Holman to address. He'll address that question.

I also believe that the technology should be capable of being leveraged and converged into other technologies. For example, case management systems. Many counties in Texas are using Tyler Technologies' case management system.

And we have integrated with a number of case management systems throughout the United States where information that's entered in a court once populates all systems. And we believe that there's a tremendous amount of economy and efficiency in being able to converge technologies. Senator Harris has a question.

Senator? Now, in using this technology, are you saying that this would be for one courtroom at a time? Are you talking about multiple courtrooms at a time or what? That would be up to how you choose to implement it. We're not advocating any particular implementation plan. We're just advocating a case to at least allow it.

That would be up to the commissioners, up to the judges to decide how they want to do it. Well, if it's the machine and a court reporter is the one monitoring it, you're talking about adding cost to the county. Because the court reporter is the one overseeing it and monitoring it, you're talking then whatever this thing costs is going to be in addition to the court reporter.

Is it not if it's one court at a time? Senator, if you could turn to that page in your handout, you're going to see a picture of a control center. I see that control center. I see four courts.

That's why I asked you the question I did earlier. Sir, please don't be argumentative. That's why I asked you the question, sir, earlier as to how many.

Were you contemplating four courtrooms at once or one courtroom or what? Senator, I apologize if I appeared argumentative to you. Well, I listened to you answering Senator West's questions. You're a lawyer.

You know better. I don't necessarily advocate any one particular implementation. For example, if you integrate this technology with the case management system, for example, you don't necessarily need anyone to be operating it on a regular basis.

You do need somebody to be able to monitor the proceedings from however many courts you're doing. But if you need a record, you've got to have a stenographer transcribe the record, don't you? Or some other. Yes, you do, unless you allow electronic.

Based on what you're saying, excuse me, Senator Duncan, based on what your response was to my question, if you have the electronic system and it's recording everything that's going on in a court proceeding and there's an appeal, you still have to have a court reporter turn around and format it and transcript for appeal, right? Produce a transcript, that's correct. So is that cost going to be borne by the county or is it going to be passed on to the parties that have to hire their own court reporter to do that? Again, I'm going to defer to Commissioner Holman to address the costs to the counties and how they intend to deal with that. Sir, let me ask you one other question.

Yes, sir. All right, let's say I'm in a trial. I ask a question.

Senator West objects to it. The judge asks to have my question that's been objected to read back. How's that going to be done under your system? That's done by going back to on a computer in the courtroom.

By going back to the previous question, the operator can either scroll back. If they've made a note that says question was asked, they can click on a button and that will be played back through the PA system or they can go back incrementally in a matter of seconds or minutes to find exactly what they want. But you've got to have an operator there to be doing that.

Yes, you do, or a clerk or a judge, whoever is going to be using the system. The judge is now going to be monitoring the system? Is that what you're saying? I'm not advocating that, sir. What I'm saying is that a judge could do a playback if they chose to.

So when I'm looking at your screen here and you're showing four proceedings at once and one monitor, that monitor is going to have to be reacting to four courtrooms at the same time. That's correct. Actually, I think there are two ladies in that.

Well, it looks like four to me. Senator Wentworth? Four screens but two ladies. Each one of these women, Senator Harris is correct, each one of these ladies is operating four courtrooms at the same time.

See? Explain the four screens to me then. Four screens and two women in my photograph. That's 16 screens.

Well, that's correct, but the other woman at the end that you can't see her face, she has her own set of courtrooms, her own set of four courtrooms. The one in the foreground is looking at four courtrooms. The one in the background is looking at an additional four courtrooms.

I see. There's eight courtrooms. And so what are those blue-screened panels that are not courtrooms apparently? That is the interface that they're using to make notes and to control the actual recording process.

What you're seeing on the left, the four courtrooms, those are video images of the courtrooms so that these court reporters can take visual cues as to what's going on so they can look into it and then take visual cues. What are you anticipating? How is this going to work? You're going to have mics at each of the council tables, mic at the witness stand, mic on the judge. How is that going to work? Well, each participant has a microphone.

In addition, there are generalized microphones to accommodate walking through a well area, for example, where someone might not be behind the microphone. Each of those microphones is recorded to a separate channel. There can be any number of channels.

If you have four microphones, there can be four channels. If you have eight microphones, there can be eight channels, et cetera. Each of those channels can be isolated for playback.

A channel could be dedicated, for example, to an interpreter. So that interpreter, you can copy and you can have a verbatim record of what the interpreter is saying to the defendant as well as the proceedings in the court. That can be a separate channel that you can listen to and deal with in a separate manner.

Have you gone around to the rural courthouses in Texas? Have you gone around to some of the older rural courthouses? I've gone to some of them, yes. Have you noticed how bad the acoustics are in there? Yes, sir. The acoustics are next to impossible in various areas of those courtrooms.

Never mind. Senator Gallegos has a question. Mr. Trinus, let me ask you.

Senator Duncan brought up a good point, okay, and I see the lady working in the four courtrooms. What if, you know, in a case, whatever the case may be, a P.I. case, you know, an explosion, especially in Texas along the channel, an explosion case or a murder case, and some of the court reportings are dropped, and my question to you is who's sued if that shows up missing in a replay or if on an appeal, I'm not a lawyer, and on an appeal, who is sued? I mean, is most of the states involved, but is the county sued, the state sued? Who's sued here if she drops this girl here that you show on your pass out some important data from that record? Well, in the case of this particular gal, she's a certified court reporter. No, no, no, that's not what I said.

I'm talking about if something comes up missing, if Senator Harris or, well, the rest of the lawyers here, of all these lawyers that we have up here, they have cases. Except for Senator Corona. Except for Senator Corona.

He's a non-lawyer. He makes more money than all of us. He knows a bunch of good lawyers.

What I'm saying is these lawyers are trying a case, and this girl's monitoring all four, and one of them is theirs, murder case, explosion case, and then that doesn't show up in the transcript on an appeal.

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

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