

JAVS PERSPECTIVES SERIES:

EFFECTIVE USE OF DIGITAL RECORDING
TECHNOLOGY IN THE JUSTICE SYSTEM



TECHNOLOGY ADVANCES:

The Rise of the Digital Court Record

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This white paper provided courtesy of JAVS, a company dedicated to capturing and protecting the court record for over 35 years.

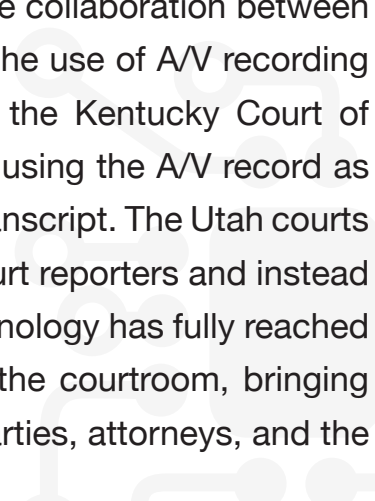
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Many court systems are working with business processes based on assumptions developed years ago about technology, people, geography, and structure.

--National Center for State Courts, A Case Study: Reengineering Utah's Courts Through the Lens of the Principles for Judicial Administration, Final Report by Lee Suskin and Daniel J. Hall, (2012).

EXECUTIVE SUMMARY

This white paper describes the state of digital recording technology now available to capture and preserve official court records through audio and video records. A/V recording works well for the complex proceedings that exist in courts at all levels—from remote arraignments to jury selection to full-blown trials and oral arguments at the appellate level. Kentucky was the home of an innovative collaboration between private industry and the judiciary, pioneering the use of A/V recording in the courtroom in the 1980s. Since 1999, the Kentucky Court of Justice has not used court reporters, instead using the A/V record as the official court record rather than a written transcript. The Utah courts are another example, no longer employing court reporters and instead using A/V recording since 2009. In 2016, technology has fully reached the promise of using electronic recording in the courtroom, bringing accurate court records and cost savings to parties, attorneys, and the public.



MYTHS OF A/V RECORDING

Based on the old recording technology, there are some claims that persist about A/V recording as illustrated in the chart below.

| The Claim | The Reality of A/V Recording |
|--|---|
| Hard to hear audio record | Sensitive condenser microphones can easily pick up speakers 15-20 feet away; can also isolate specific microphones for playback after the recording is made |
| Hard to see video record | Professional-grade color video cameras placed throughout the courtroom show body language and facial expression |
| Hard to find specific event in A/V record | Automatic time and date stamps are supplemented with comments by court clerk or judge for easy retrieval of specific events in A/V record |
| Using A/V recording requires lots of technical know-how | Court clerk hits "record" button, and microphones and cameras will automatically track who is speaking |
| A/V recording is more expensive than employing court reporters | The experience of courts such as those in Kentucky and Utah show that while there is an initial cost to implement the A/V equipment, there are substantial savings in using A/V recording in courts over time |
| A/V recording and written transcripts are always mutually exclusive | A/V recording can capture every court proceeding efficiently, and a private transcriber can work from the A/V recording to provide a written transcript if one is desired |

ADVANCES IN TECHNOLOGY

It is true that audio/video technology for recording official court records has not always been of the high quality that it is today. For example, Minnesota trial courts tried to use VCR recording in the 1980s to create court records, but appellate courts found it too cumbersome to find a specific place in the record. Microphones did not have the advanced technology we do today to pick up voices easily and accurately. Also, video quality sometimes left something to be desired back then.



A court clerk's screen showing the A/V recording in real-time.

Now, however, A/V recording is so good that many state appellate courts such as the Washington State Supreme Court² and the Ohio Supreme Court³ provide videos online of their court proceedings, while the Maine Supreme Judicial Court chooses to use audio files.⁴ Even the Supreme Court of the United States has been audio recording its oral arguments since 1955 and now makes the audio files available online at the end of each week of arguments.⁵ While written

transcripts are also provided online, nothing conveys the tone of questions from the justices or responses from counsel like hearing the oral recording.

Given the video access that already exists in so many parts of government, there is pressure on the U.S. Supreme Court to allow not just audio but also video of its proceedings. For example, a television ad sponsored by the Coalition for Court Transparency that ran in 2014 called for video of the Supreme Court oral arguments, saying “It’s time

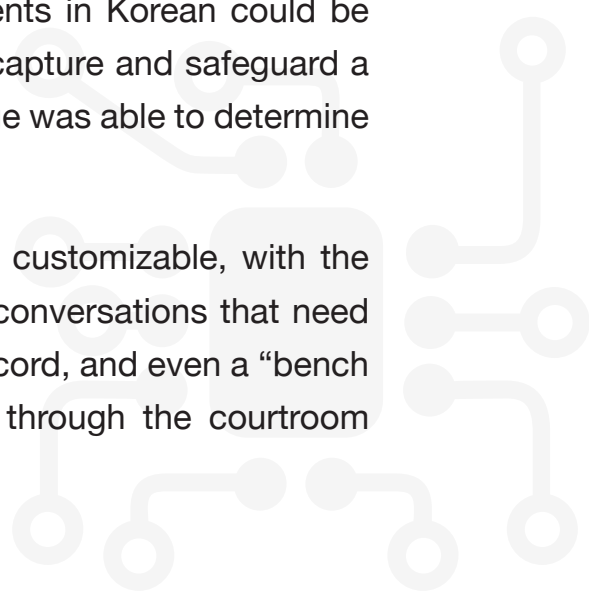
for a more open judiciary.”⁶

Today, the digital recording technology is so good that microphone and camera pick-up patterns are set by computer, patterns can be saved for re-use by specific court proceeding, and the audio and video is easy to hear and see.

Court cameras and microphones today switch automatically to focus on whoever is speaking. It is true that as with court reporters, when more than one person is speaking, it is incumbent on the judge to manage the court proceeding so that the record is kept clean and clear. Unlike court reporters, however, the multiple-channel recording equipment and multiple microphones placed throughout the courtroom can be played back, isolating the relevant microphone for each speaker to allow for easy transcription if necessary.

Recently, one Washington State Superior Court judge had a trial in a courtroom outfitted with A/V recording technology where the witness said something in Korean to the defendant during testimony. Not surprisingly, the written transcript ordered of that exchange did not illuminate what had transpired. Fearing the necessity of calling a mistrial, the judge was able to find a Korean-English interpreter. The judge had the clerk isolate the witness' microphone in the A/V record and play back the relevant section so that the comments in Korean could be heard clearly. Because the A/V record could capture and safeguard a verbatim record of court proceedings, the judge was able to determine that a mistrial was not required in that case.

Audio recording in courtrooms is now totally customizable, with the normal “record” mode, a “private” mode for conversations that need to be limited to the speakers but still on the record, and even a “bench conference” mode where white noise plays through the courtroom



speakers so as to mask the conversation of attorneys and judge at the bench. The microphones allow the voices of the judges, attorneys, and witnesses to be heard at a level sufficient to be broadcast on the court PA system, including to assistive listening devices for those who are hard of hearing.

The verbatim record gathered by A/V can include the exhibits played by laptop, with both picture and sound conveniently captured in one place with the entire court record. For example, a state trooper might bring a video of the defendant's sobriety tests on a laptop to display. The same A/V system that preserves the video in the official court record also plays the audio from it on the PA system and shows the video from it on the courtroom monitors—allowing judge, jury, and the public to see all that needs to be seen to get the full picture during the trial, and an appellate court can see it all after the trial. Photos and pdf files can also be integrated right into the court record, allowing everyone accessing the record to actually see everything, not just the written transcript.



Today's microphones capture the court record accurately.

Storage of digital records is easily accomplished, with years worth of court records held in a space the size of a DVD player. And the turn-around time to get access to the trial court record can be as easy and fast as sticking a memory-stick in the court clerk's computer and downloading the relevant A/V files, or making the files accessible through a Web-based system.

Given the state of advanced technology behind A/V recording, it is not surprising that Jim McMillan and Lee Suskin of the National Center for State Courts ultimately concluded in "Digital Recording Makes the

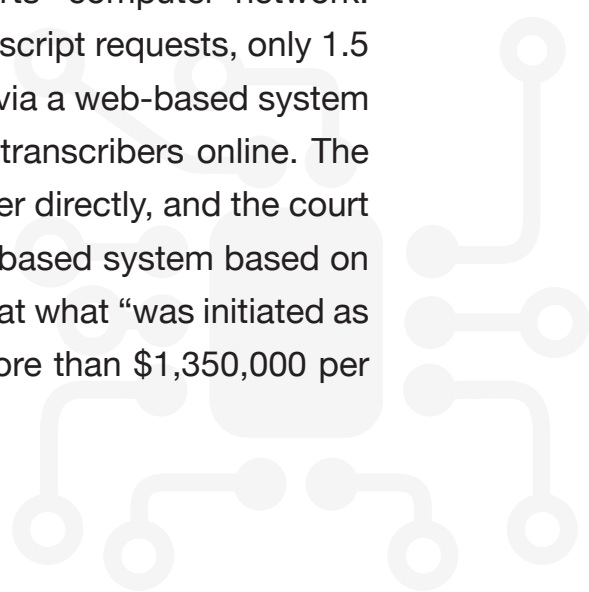
Record Effectively,” Trends in State Courts--Leadership & Technology (2015), “Many state and local courts successfully use digital recording as an accurate, cost-effective means to produce and obtain the verbatim court record.”

EXPERIENCE OF TODAY'S COURTS WITH A/V RECORDING

The Kentucky Court of Justice has used audio or video recording for over thirty years, starting in one courtroom in 1985 and expanding throughout the state with digital recording in Kentucky courtrooms today.

Utah is another good example of the widespread use of A/V recording in the courtroom. As reported by the National Center for State Courts in its 2012 case study of Utah Courts, prior to July 2009, the number one cause of delay for the Utah Court of Appeals was the completion of transcripts for cases on appeal. The 18 court reporters employed by the Utah courts typically took 138 days to complete transcripts of lower court proceedings.⁷

In 2012, no court reporters were employed by the Utah courts, and judicial proceedings were captured by audio/video recording equipment with the files stored on the courts' computer network. Where 50 trial court clerks used to handle transcript requests, only 1.5 court employees now manage the transcripts via a web-based system where the audio is made available to private transcribers online. The money goes from the attorney to the transcriber directly, and the court staff does not have to get involved. This web-based system based on initial A/V recording in the courtroom means that what “was initiated as a cost-saving measure has not only saved more than \$1,350,000 per



year, but has resulted in a more efficient way to deliver transcripts.”

Given this track record of experience in various courts, Jim MacMillan and Lee Suskin of the National Center for State Courts concluded in 2015 about the use of A/V court records that:

The payoff for transitioning to digital court recording is so positive that state and local court systems are justified to invest time and resources to establish strong governance and oversight programs, effective courtroom practices, an effective transcript management system, and minimum standards for digital-recording systems, software, and equipment.⁸

HOW TO SELECT A DIGITAL RECORDING SYSTEM

Use of A/V recording to make the court record means selecting a system that is right for your court and establishing policies, procedures, and technical standards for producing an accurate record.

A good place to start is the National Center for State Courts report “Making the Record Utilizing Digital Court Recording” (2012), which “makes recommendations on courtroom practice, transcript production, and minimum technical standards for digital-recording systems, software, and equipment.”⁹ Another good reference is the white paper by the Conference of State Court Administrators, “Digital Recording: Changing Times for Making the Record” (2009), which ultimately recommended that state courts move to digital recording as the method for making the verbatim record.¹⁰

Finally, the following checklist will help you compare digital recording vendors and equipment in order to make an informed selection:

DIGITAL RECORDING SYSTEM SELECTION CHECKLIST

- Has the A/V system been designed specifically to make a complete court record (including audio, video and exhibits such as photos and pdfs)?
- Does the system switch automatically to focus the microphones and/or video cameras on whoever is speaking in the courtroom?
- Technical specifications: open architecture (can export to industry standard formats), multiple digital compression formats, and noise filtration?
- Microphone quality? Can the pick-up area be set by computer?
- Video camera quality? Can cameras be set by computer to monitor specific areas of the courtroom?
- Training provided to court staff? Can court staff easily handle the recording function while maintaining other duties?
- Ease of time-coding and adding notes to the court record?
- Ease of playback: isolate audio channel, search features?
- Can the system integrate with the equipment of other vendors, including teleconferencing, document cameras, and assistive listening devices?
- Back-up of court records to ensure security and preservation?
- Ease of accessing record for parties, attorneys, higher courts, and public?
- Cost savings over the life of the system?
- Type of warranty and/or service contracts provided?

ABOUT JUSTICE AV SOLUTIONS (JAVS)

For more than 35 years, JAVS has specialized in using audio/video technology to accurately create, store, and publish the official verbatim record of the court. Integrated into over 10,000 courtrooms throughout the U.S. and across 3 continents, JAVS promotes accuracy and efficiency through A/V recording solutions, guaranteeing the preservation of the record for tomorrow's justice system. Call us at 1-800-354-JAVS or visit www.javs.com to learn how your court system can use A/V recording technology to your best advantage.

1. Author Julie A. Helling is a graduate of the University of Michigan Law School. She served as a prosecutor before becoming a college professor.
2. Washington State Supreme Court oral argument video can be found online at: <http://www.twv.org/?s=oral+arguments&search-archives=1>.
3. Ohio Supreme Court oral arguments video can be found online at: <http://www.supremecourt.ohio.gov/videostream/default.asp>.
4. Maine Supreme Judicial Court provides audio files online at: http://www.courts.maine.gov/maine_courts/supreme/stream.shtml.
5. The audio recordings of the oral arguments before the U.S. Supreme Court can be found online at the official site for the Court: http://www.supremecourt.gov/oral_arguments/argument_audio.aspx.
6. Bill Mears, CNN, "Supreme Court secretly recorded on Camera," from Feb. 27, 2014, accessed online at: <http://www.cnn.com/2014/02/27/politics/supreme-court-video/index.html>.
7. National Center for State Courts, "A Case Study: Reengineering Utah's Courts Through the Lens of the Principles for Judicial Administration," Final Report by Lee Suskin and Daniel J. Hall (2012) at p. 14.
8. Trends in State Courts, Leadership & Technology, Jim McMillan and Lee Suskin, "Digital Court Recording Makes the Record Effectively," (2015) at p. 4.
9. National Center for State Courts, "Making the Record Utilizing Digital Court Recording" (2013), available online at: <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Court%20reengineering/09012013-making-the-digital-record.ashx>.
10. Conference of State Court Administrators, "Digital Recording: Changing Times for Making the Record" (2009), available online at: <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/DigitalRecording-Jan-2010.ashx>