

Working Group Outline

Digital Audio Recordings, Real-time Court Reporting, and Court Interpreting

Different types of audio recordings (e.g., confessions and wiretaps) are often presented as evidence. Although it has always been possible to modify audio recordings, it is much easier to do so when they are in digital form. Digital audio files can be modified with off-the-shelf software—segments can be removed, new material can be added, the order of material can be changed, and the pitch and speed of voices and other sounds can be modified. It may be difficult to determine whether the end product is an accurate representation of the original event, particularly if the original recording is not preserved.

Real-time court reporting is the transcription of testimony by the court reporter with a computer-assisted stenography machine so that written text appears on a monitor almost simultaneous to the actual testimony. Text can be displayed on the judge's, attorneys' and witness's monitors; it may also be displayed on monitor(s) or a screen for the jurors. In addition, the text could be transmitted to remote locations via the Internet (e.g., to law office, expert's office). Real-time reporting also allows the attorneys and the judge to mark or highlight portions of the real-time database for later attention or printing, as well as allowing all participants with access to the real-time display to quickly review statements or questions that they did not hear. Because the court reporter can "clean up" the transcript as the case proceeds rather than later, a finished transcript is available shortly after the proceeding.

In federal court, the services of a court interpreter are used if a party (including a defendant in a criminal case) or a witness speaks only or primarily a language other than English so as to inhibit a party's comprehension of the proceedings or communication with counsel and the court or so as to inhibit a witness's comprehension of questions and the presentation of the testimony. The interpretation is generally in the simultaneous mode for parties and in the consecutive mode for witnesses. Some courts have equipment to facilitate and improve the quality of court interpreting. With an infrared system, which can be portable or fixed, the interpreter listens to the courtroom's PA system. The interpretation is carried by way of an infrared beam from a control box to a small headset worn by the defendant or witness. The interpreter does not need to be in close proximity to the party or witness in the courtroom even in the simultaneous mode.

Also, in federal courts, a telephone interpreting system provides interpreting services from English to foreign languages and vice versa for short proceedings such as pretrial hearings, initial appearances, arraignments, motion hearings, and probation and pretrial services interviews. Defendants and witnesses hear the foreign language translation through telephone handsets or headsets; others in the courtroom hear the English translation through a speaker telephone or the court's audio system.

Drawing on the morning's demonstrations, this group will consider how empirical research can inform the use of these technologies in the courts. The group will attempt to translate into empirical questions the issues inherent in the debate, and identify the social and behavioral science theories on which the research might be based. Finally, the group will suggest priorities for research in the coming years.

We hope the group's report on Friday will address the following:

1. What issues related to the use of these technologies by the courts are the most important? Does this differ for different types of court proceedings (e.g., civil versus criminal, trial versus pretrial, trial versus appellate courts)? Does it depend on your point of view (i.e., society as a whole? courts? litigants? attorneys?)
2. Are the important questions susceptible to empirical study? If so, what are the corresponding empirical questions and on what social or behavioral science theory can the research be based? (The group may want to select just a few of the more important topics to consider in more detail here.)
3. What factors (economic, political, etc.) are likely to constrain the empirical research that can be conducted?

To Get the Group Started:

We've identified a number of questions related to the above technologies that you may want to use as a start. Please do not let our thinking constrain yours.

- Given the ease with which such recordings can be altered and manipulated, do judges and jurors unduly rely on the accuracy of digital sound recordings to depict the content, completeness, tone, pitch, etc. of sounds and conversations as they actually occurred? Are judges and jurors able to critically evaluate any measures taken to ensure the accuracy of digital recordings?
- Does real-time court reporting enhance the effectiveness of direct, cross, and redirect examinations? Does the use of real-time court reporting enhance the quality of judicial opinions and the efficiency with which they are issued? Does the use of real-time court reporting make for a more accurate record? How and why?
- Does the use of real-time court reporting facilitate the participation by hearing-impaired persons in court proceedings?
- If the gallery (including the press) is given access to real-time court reporting, how does this affect the press coverage that is given to court proceedings? Make it more accurate? Magnify the effects of negative pretrial publicity? How do different levels of access mediate this effect (e.g., access to real-time transcript only on screen in court during trial; access to transcript on-line during the trial, access to transcript shortly after close of trial day)?
- How do dial-up translation services and infrared interpreting systems affect the attention jurors and judges give to the intonations and substances of testimony by a non-English speaking witness? Do they discourage inappropriate attention to the demeanor of the interpreter by physically distancing the interpreter from the witness?
- Is the accuracy of the translation compromised with a dial-up system because the interpreter

does not observe the non-verbal behavior of the non-English speaking witness and the attorneys? On the other hand, do such services help interpreters remain impartial during their service?

- Does real-time court reporting of interpreted testimony facilitate jurors' consideration of that testimony? Or does it cause them to pay too little attention to the witness's demeanor?
- Can real time reporting be used in conjunction with court interpreting to help minimize some of the more common errors made by interpreters (e.g., the interpreter correcting a speaker's mistakes, not properly correcting their own mistakes, switching first person to third person, switching active and passive voice, adding or omitting testimony, adding hyperformality, adding or deleting politeness markers, or softening slang or vulgarity)?
- Do infrared systems help parties, including criminal defendants, better attend to what is going on in the courtroom?
- Do dial up services help interpreters avoid inappropriate conversation with the defendant? Does it help them appear to be and actually be more impartial?