

## New digital recording vendor promises vast improvements

### Meanwhile, court reporters' fate being watched closely

By: Kris Olson February 11, 2016



From left, Warren Greenlaw, Richard LeRoux and Christine Doran Blankenship, of Suffolk Superior Court, are among 40 court reporters statewide whose jobs will be impacted by the arrival of digital recording.

While it cannot speak to the fate of the state's 40 court reporters, the vendor currently installing a new digital recording system in 455 Massachusetts courtrooms believes attorneys will find the new system vastly superior to its predecessor.

Nonetheless, lawyers and others continue to plead with the administration of the Trial Court to put the brakes on any transition away from the court reporters' services.

It is hard to overstate the consequences of any glitches that may arise, they say, including that a defendant's otherwise valid appeal of a lengthy prison sentence will be jeopardized by an inaccurate or incomplete trial record.

Questions are lingering, even as installation of the new For the Record digital recording system moves forward. By Feb. 9, Middlesex Superior Court in Woburn had come online, joining courthouses in Plymouth, Salem and Worcester.

For the Record President Tony Douglass said his company has already gotten positive feedback from those who have experienced the new system. Some of that feedback has even come from transcriptionists who earlier had expressed reservations, only now to marvel at the quality of the recordings. Gone is the background hum to which the transcriptionists had grown accustomed, Douglass said.

Still, it seems that FTR has a ways to go before it dispels the impact of the repeated bad experiences attorneys have had with its predecessor, Jefferson Audio Visual Systems — or JAVS.

In a Jan. 28th letter to Supreme Judicial Court Chief Justice Ralph D. Gants, the Massachusetts Association of Criminal Defense Lawyers writes, "It is fair to say that our members' experience with digital recording since 2006 ... has been less than satisfactory and makes us wary of promises that the new generation of recording systems ... will live up to expectations and prove to be a flawless system."

According to MACDL, JAVS' issues have included "equipment malfunctions, clerical error and the absence of adequately trained monitors, which allowed malfunctions to go unnoticed for extended periods of time." The letter highlights a month-long stretch during which a number of suppression hearings in Suffolk Superior Court went unrecorded.

The MACDL letter adds that there had been "countless instances" in which testimony was inaudible or speakers could not be identified, "which required the need to attempt the difficult, time-consuming, expensive and sometimes controversial process of reconstructing the record."

#### **Potential human cost**

Douglass is confident attorneys will be far happier with For the Record, especially now that he and his company have gotten some first-hand experience with JAVS' shortcomings. For the Record's contract, which took effect May 1 last year, required it to take over the support of JAVS.

Some of the JAVS equipment is nine or 10 years old and thus at the end of its useful life, Douglass said. Not only is the equipment old, but there is not enough of it, he added. There are too few microphones to capture sound from all the places from which attorneys and others tend to speak, and the equipment itself, which lays flat on counsel tables, offers little hint to speakers how they might do their part to improve the quality of the recording.

Before installing its equipment, For the Record created working groups of stakeholders, including judges and clerks, and has been compiling 30-plus-page reports on each courtroom, seeking to eliminate the audio dead spots. A series of practice recordings were made in a test courtroom in Woburn.

Once the system is fully installed, users will find a dozen or more microphones in the state's larger courtrooms, Douglass said. He noted that some court reporters have taken to duct-taping three or four microphones around a courtroom to make their own backup recording, which they should no longer have to do.

The FTR system will not only create higher-quality recordings but also amplify sound locally, enabling those in the courtroom to follow what is transpiring more easily, he said.

Time will tell how close to "flawless" the new system turns out to be, but in the meantime, many remain concerned about the potential human cost of the changes. There, the picture is far murkier.

According to Trial Court spokesperson Erika Gully-Santiago, the court's Human Resources Department has been working with members of Local Union 6 regarding how the new digital system will impact them. She said "no final decision" about their employment status had been made.

Massachusetts Court Reporters Association President Kathleen Mullen Silva said Local Union 6 members were informed at a Dec. 10 meeting with Trial Court administrators that the position of official court reporter would not be guaranteed past June 30.

According to Silva, the Trial Court plans to have 20 monitors overseeing the system in 80 courtrooms, with additional monitoring provided by clerks in the courtroom. The clerks, she said, have expressed concerns that their other duties will prevent them from performing that task effectively.

Gully-Santiago said the process for monitoring the system is still under development, and no decisions have been made.

"The court anticipates that the process will modify current business practices based on needs that vary by courthouse and session," she said.

Silva said she fears whether FTR's contract also puts it in charge of assigning the transcription of court recordings, which could cost local transcriptionists work and reduce the quality of the transcripts attorneys receive. However, those fears appeared to be unfounded.

Douglass said that such a role is "not even something that's being looked at," a fact that Gully-Santiago confirmed.

"We don't do that kind of thing," he said, adding that transcribers would continue to be ones who appear on the approved list managed by the Trial Court's Office of Transcription Services.

If anything, Douglass said, local transcribers should see an increase in work under the networked recording system.

How the system is ultimately rolled out is an operational decision for the Trial Court, Douglass added. But he stressed that speech-recognition software is nowhere near where it needs to be to create a high-quality transcript. As a result, transcriptionists will still have an "extremely vital role" in producing a court record.

Indeed, Douglass sees For the Record's system as enabling transcriptionists to work more efficiently, which should help reduce the current 100-day-plus turnaround time for a transcript.

Unlike the JAVS system, in which CDs could be created only at day's end, transcriptionists can be anywhere in the court's network, taking advantage of downtime in the courthouses in which they are located to work on other records.

"I haven't met an attorney yet who isn't interested in speeding up how quickly they get access to a transcript,"

Douglass said.

### **\$5 million investment**

Under the contract with FTR, \$5 million will be spent to have the digital recording equipment installed in 455 courtrooms over the course of what Douglass said is likely to be two to three years.

As of now, about 60 courtrooms are up and running, and Douglass acknowledged that the installation has not been without its challenges. Such is to be expected in a state that boasts not only modern courthouses but also some of the country's oldest, including in Newburyport, which has been in continuous use since 1805, he noted.

Whether, and how quickly, the courts recoup that \$5 million investment is hard to pin down and is ultimately at least somewhat tied to what becomes of the 40 court reporters on the state payroll.

Douglass noted that the maintenance costs of the JAVS system have been "quite significant" and should almost certainly go down with newer technology.

Asked whether the move to the new digital recording system was motivated by a desire to cut costs, Gully-Santiago instead stressed the need to upgrade the JAVS system to one that "provides improved quality and enhanced functionality."

"The Trial Court is implementing a long-term solution to take advantage of these improved capabilities and make optimal use of resources," she said.

But some argue that there are non-monetary lost opportunity costs that would accompany a move away from stenographic reporters. Those include the loss of the capability of real-time reporting, or the immediate conversion of the spoken word into the written word. Real-time transcripts can assist judges in making rulings during the course of a trial and help attorneys prepare questions to cross-examine witnesses, proponents of court reporters say.

Douglass called real-time transcription the "Rolls Royce" of such services and an "awesome tool," but said the cost of providing that service is not justifiable in many, if not most, cases.

### **More concerns**

That digital recording might lead to different levels of service for indigent and wealthier defendants who can afford private court reporting is just one of the criminal bar's concerns.

Indeed, practical worries seem to trump philosophical ones. One common scenario raised involves the difficulty in identifying correctly the speaker on a recording when multiple people may have been talking over one another in the courtroom, thwarting the creation of an accurate transcript.

"I am concerned that when it comes to the type of cases that are heard in the Superior Courts, where defendants are facing significant incarceration, the arguments and legal decisions made during jury trial bench conferences will be riddled with indiscernible timestamps," said Judy Bond of Fairhaven, a state-approved transcriber since 1998.

Using the JAVS system, she estimated that recordings of bench conferences have been inaudible 90 percent of the time due to "malfunctioning microphones, poor audio settings, or people whispering away from the mike."

Bond noted that a live court reporter is able to pause the proceedings if the creation of an accurate record is being compromised by simultaneous speakers or a soft-spoken witness.

"The court reporter can ask to have something repeated if they can't hear it," Bond said. "You can't do that with audio."

One doesn't have to look hard, either, to find horror stories from across the country of proceedings delayed or scuttled by recording failures, creating the need to reconstruct the record or redo those proceedings altogether at a significant cost of both time and money.

Douglass said the For the Record system has features that will greatly ameliorate the situation. Not only will

recordings be backed up on an ongoing, real-time basis, but audio will be recorded on eight separate channels, allowing transcribers to “create their own mix” to discern better who is speaking. Audio also can be slowed down while retaining the same pitch, aiding in the transcription process.

Still, Bond is skeptical.

“It is the quality of the microphones, their compatibility with the recording system, the wiring and, most importantly, the microphones’ placement in the courtroom, parties not stepping away from microphones or shuffling papers near them or whispering near them that will determine the quality of the recordings,” Bond said. “I have my fingers crossed that the installations will be thorough with no corners cut, that more professional attention will be regularly paid to the recorder settings and that attorneys will learn to only speak near microphones.”

Massachusetts Bar Association President Robert W. Harnais, whose practice includes criminal defense work, said one of his concerns is not that the system will pick up too little but that it will pick up too much, including privileged communications between lawyers and their clients.

Given all the concerns, MACDL has asked the courts “to seriously consider postponing the use of digital recording for serious felony cases in the Superior Court until, and only if, the assembly and production of complete and accurate transcripts through FTR has been sufficiently demonstrated.”

“We recognize and appreciate that digital recording is the way of the future, but rushing into that future holds out considerable risk to our clients,” the MACDL letter states. “It is no exaggeration to say that their lives can sometimes rest on the integrity of court transcripts.”

Harnais said he came away from a Feb. 9 meeting with court leadership feeling that the bar had been heard, and that the Trial Court will indeed move forward cautiously while allowing feedback on the new recording system.

Attempts to interview Trial Court Administrator Lewis H. “Harry” Spence were not successful.

## **SIDEBAR:**

### **Cost-saving of digital recording ‘incredibly overstated,’ says study**

In a May 2014 white paper that perhaps warrants a “consider the source” disclaimer, the National Court Reporters Association estimated that the cost savings of a digital recording system with courtroom monitors is negligible compared to a stenographic reporter: \$11,516 over five years, or about \$2,300 a year, for each courtroom, including the judge’s chambers.

The study notes that states benefit from a cost perspective by stenographers paying for their own equipment, while the courts would bear the cost of the hardware and software in a digital recording system.

However, the study’s authors acknowledged that it did not consider the type of “centralized system” Massachusetts is apparently contemplating, in which one person monitors multiple sites.

In addition, some might quibble with some of the white paper’s other premises, including the need to replace computers in the third year of a digital recording system, and the overhaul of recording equipment and/or software in year five.

Still, the cost-savings argument is “incredibly overstated once the year-after-year maintenance costs are factored in,” insists NCRA President Stephen A. Zinone, who works as an official court reporter in Pittsfield, New York.

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