

Chapter 7 - Managing Litigation Information Using Technology

Real-time Translation of Testimony



Real-time transcription is the capability of the court reporter to use a computer-assisted stenograph machine to have the testimony of a witness appear on a computer monitor within seconds from the time the words are spoken. Real-time translation of testimony is a computer application that has been under-utilized in the everyday practice of law. Its value in both trials and depositions should be seriously considered. It is invaluable for instantly viewing testimony on a computer monitor for review, impeachment during deposition, trial or in other legal proceedings.

Depending upon the specific software and the court reporter, the following features may be available:

- Review the testimony of a witness as he or she testifies;
- Search for prior testimony during the deposition;
- Add notes, cross-references, or issue codes during the deposition;
- Mark certain passages of testimony for later printing;
- Transmit the testimony and video to remote locations, such as your law office or expert's office, through a modem and telephone line using the Internet,
- Obtain a "dirty" or uncertified copy of the deposition as soon as the deposition is over.

Real-time translation of textual testimony requires a highly skilled court reporter. Sometimes they request a premium rate for their services. Many court reporters are unwilling to do real-time translation because of the skill required. Since many cases are won or lost during depositions, it is surprising that more attorneys are not demanding that their depositions be conducted in real-time.

Real-time translation of a witness's testimony during a deposition or trial presents unique opportunities and pitfalls to the unsophisticated. Generally, a court reporter may have a computer available for you to use during the real-time transcription; however, under the Federal Rules of Civil Procedure, there is no such requirement.

Checklist - Deposition Real-time transcription of evidence

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“As the world watched Kato Kaelin dance around questions from prosecutor Marcia Clark, defense attorney

Only a few feet away sat a court reporter. As Kaelin’s lips moved, her fingers lightly touched the keys be

Thirty feet away, Bailey starts to highlight some of Kaelin’s comments. Using his own keyboard, the fam

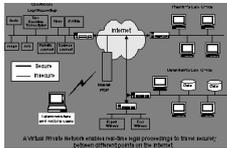
- September, 1995 Legal Assistant Today

Determine if you want to use real-time reporting. Explore the benefits of using real-time technology. Reading back the testimony is eliminated; witness control is enhanced; witness testimony can be immediately printed out; hearing impaired litigants can now participate; testimony can be transmitted worldwide; examinations, motions and closing arguments are supported by actual witness testimony; and translation to other languages is enhanced.

- *Determine if court reporter can translate testimony in real-time.* Transcription of live testimony to real-time cannot be done by all court reporters. Most court reporters do not write in real-time, which results in many untranslates in the transcript and lessens the utility of the technology. It is a relatively recent technology, in which most court reporters are not yet skilled. The court reporting industry has a certifying process for certifying real-time reporters. Is there an extra charge for real-time reporting? Can you download or use the daily-uncertified transcript? Will the same court reporter be doing all the depositions? Is the court reporter or someone else available to ensure their equipment is correctly transmitting the testimony to your computer or to remote locations and to fix any problems?

- *Select and purchase real-time software and train litigation team.* Select real-time software that is non-proprietary, open, easy to use and can be connected to any of the different computer aided transcript (CAT) machines that court reporters use. The real-time industry has been hampered with software from vendors that only works with certain CAT systems, forcing court reporters to upgrade and purchase these CAT systems. In the last few years, new non-proprietary real-time software has become available, which works with any CAT system. Provide training to your staff on the software features and the strategy for capturing and

controlling witness's testimony. If possible, practice under actual conditions with a connection to a court reporter's machine. Software selection criteria should include whether the notes and cross-references taken during the deposition can be saved and used in your full text program.



Select hardware equipment needed for the deposition. To view and actually control the transcript testimony, each person needs a computer and be connected to the court reporter's CAT system. Do you need to bring in a computer or does the court reporter have them available? Do you have a backup system? If more than one person will be using the real-time, do you have the necessary equipment to split the signal or transmit it to remote locations?

- *Install and test system with court reporter two weeks before deposition.* Coordinate with the court reporter a time for all the parties to test their equipment in the deposition room. If you are sending testimony to a remote location, test the system. Can remote users transmit messages back to you in the deposition room via the computer e-mail system or by a pager? Have a laptop or other computer configured and tested as a backup in case of problems.

- *Test two days before deposition.* Have the court reporter complete a final test of their equipment.

- *Using real-time during the deposition.* Have a specific strategy as to who will be using the real-time computer and their objectives. If you are alone in the deposition, have easy to use one keystroke commands available to mark important testimony. Don't forget to watch the non-verbal communication of the witness. Make sure witnesses excluded from the depositions do not view the real-time testimony. If alone, try to review testimony during breaks, while the witness is reviewing a document or any other time when your full attention is not required on the proceedings.

See also, Chapter 8, Courtroom Technology, Real-time Transcription of Evidence.

Real-time Broadcasting of Depositions over the Internet.



A new technology breakthrough allows the sound, text and video of a deposition to be sent over the Internet to anyone in the world on a regular phone line. This opens up immense strategic opportunities for the astute litigator. For the first time, the live testimony of a witness, such as an expert, can be sent via the Internet over a secure and confidential connection to your staff back at your office, co-counsel, or to your own expert located in other parts of the country. Chat sessions can be opened for witnesses or co-counsel to communicate with you during the live proceedings.

Attorneys not present at a deposition can now “sit in”, though not be physically present. This makes the decision easy whether to attend or not to attend a deposition since it saves travel and expense time.

Real time broadcasting is different than videoconferencing in that the deposition is unilaterally broadcast to multiple users at remote locations.

However, there is the capability to send e-mail or paging messages to the participants at the deposition to ask specific questions, etc.

You have a choice to only send video, audio or text, or whether to send all three to whatever location you desire. For example, you may want to analyze the way a particular witness responds to questions, so you may decide to listen to the live audio only of a witness.