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William H. Erickson
Supreme Court of Colorado

THE TRIAL TRANSCRIPT—AN UNNECESSARY ROADBLOCK TO EXPEDITIOUS APPELLATE REVIEW

William H. Erickson*

Securing a just and speedy appellate determination of criminal cases has been prevented, in many instances, by the inability of the litigants to obtain a transcript of the record in the trial court. The goal is to organize a court system so that an appellate court can effect a just, prompt, and economical determination of all appealed cases. The trial transcript, however, continues to be a roadblock to a speedy and final appellate disposition of both civil and criminal cases.

When the American Bar Association *Standards Relating to Criminal Appeals* were prepared, the draftsmen recognized that improvement of the procedures for obtaining a trial transcript was the key to an early resolution of criminal cases on appeal.[1] The American Bar Association *Standards Relating to Appellate Courts* provide guidelines for timely disposition and call for the record to be completed within thirty days.[2] Unfortunately, the trial transcript often provides a bottleneck which prevents the appellate court from promptly reviewing a case that has been appealed.

A number of innovations have been made in the appellate process which expedite appeals and tend to eliminate the need for a trial transcript. The American Bar Association *Standards Relating to Judicial Administration* and *Standards Relating to Criminal Justice* have provided the procedural means for improving our entire system of criminal justice.[3]

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* Associate Justice of the Supreme Court of Colorado; Judicial Member-at-Large on the Board of Governors of the American Bar Association; Chairman of the ABA Special Committee on Standards for Criminal Justice (1974-76). B.A., 1947, Colorado School of Mines; J.D., 1950, University of Virginia.

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[1] ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO CRIMINAL APPEALS § 3.3 (1970) [hereinafter cited as ABA CRIMINAL STANDARDS].

[2] ABA COMM'N ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO APPELLATE COURTS § 3.52 (1977) [hereinafter cited as ABA APPELLATE STANDARDS].

[3] In addition, the ABA has produced other standards which may help improve the justice system. *See generally* ABA COMM'N ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO APPELLATE COURTS (1977); ABA COMM'N ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO TRIAL COURTS (1976); ABA COMM'N ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO COURT ORGANIZATION (1974); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE URBAN POLICE FUNCTION (1973); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE STANDARDS RELATING TO THE FUNCTION OF THE TRIAL JUDGE (1972); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO ELECTRONIC

This article explores some innovations in the appellate process which eliminate the need for a complete record on appeal and discusses the various means to obtain a record of the proceeding in the trial court.

I. INNOVATIONS IN APPELLATE PROCEDURE WHICH MINIMIZE DELAY IN SECURING A RECORD

Procedural innovations have been put into effect which eliminate the need for a full record.[4] In Arizona, the Appellate Process of Expedited Appeals procedure has established that both time and expense can be saved by utilizing a summary procedure which shortcuts the traditional process of reviewing the entire record in the trial court. The empirical studies in Arizona, utilizing their expedited appeal process, indicate that seventy-five percent of all cases can be decided by a summary procedure just after the trial is completed. Without a full trial transcript and with minimal briefing or written support, the Arizona project has relied upon extensive oral arguments as a basis for resolving issues raised on appeal.[5]

A similar experiment, known as the Civil Appeals Management Plan (CAMP), conducted by the United States Court of Appeals for the Second Circuit, utilized appellate pre-argument conferences as a basis for reaching an early appellate disposition. The experimental program in the Second Circuit is the first to implement Rule 33 of the Federal Rules of Appellate Procedure.[6] The pre-argument conference procedure requires

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SURVEILLANCE (1971); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION (1971); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL (1970); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PROBATION (1970); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO CRIMINAL APPEALS (1970); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO FAIR TRIAL AND FREE PRESS (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PRETRIAL RELEASE (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SPEEDY TRIAL (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO JOINDER AND SEVERANCE (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PLEAS OF GUILTY (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO TRIAL BY JURY (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO POST-CONVICTION REMEDIES (1968); W. Erickson, *The ABA Standards for Criminal Justice* in 4 CRIMINAL DEFENSE TECHNIQUES (J. Cook ed. 1975).

[4] *See* ABA TASK FORCE ON APPELLATE PROCEDURE, EFFICIENCY AND JUSTICE IN APPEALS: METHODS AND SELECTED MATERIALS (1977).

[5] Jacobson & Schroeder, *Arizona's Experiment With Appellate Reform*, 63 A.B.A.J. 1226 (1977). The Colorado Bar Association has proposed an expedited appeal process based in large part upon the Arizona Appellate Project. *C.B.A. Judiciary Section's Proposed Expedited Appeal Process*, 6 COLO. LAW. 1132 (1977). *See also* Schroeder, *Judicial Administration and Invisible Justice*, 11 U. MICH. J.L. REF., (1978).

[6] FED. R. APP. P. 33 provides:

> The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the dispostion of the proceeding by the court. The court or judge shall make an order which recites the action taken at the

appellants, within ten days after filing notice of appeal, to file a pre-argument statement setting forth the issues on appeal. The appellant is also required to give notice that the necessary portions of the transcript have been ordered.[7] The goals of CAMP are to encourage settlement early in the appellate process and to simplify the issues in the cases which must undergo appellate review.[8]

Appellate courts can also utilize a central staff of attorneys or other screening devices to assist them to expeditiously dispose of appellate cases. Michigan implemented the first successful central staff in 1968 in its newly created court of appeals. Under the Michigan system, the staff attorneys prepare a memorandum for each appellate case. The three-judge panel that is assigned the case reviews the memorandum, the record, and the briefs. The memorandum is used by the judges to prepare for oral argument and to draft opinions. Staff attorneys also draft per curiam opinions in cases suitable for routine disposition. The central staff concept and other screening devices have been the subject of recent study.[9] The American Bar Association Commission on Standards of Judicial Administration has recognized the value of the central staff concept.[10]

Efforts to shorten the time period between the completion of the trial and the conclusion of the appeal hinge upon reducing the time required to prepare a record on appeal. In 1964, a committee created by the American Bar Association Section of Criminal Law undertook a study of the reasons for appellate delay. The committee found that the length of time between the preparation and filing of a complete trial record varied from twenty days in Georgia to two years in Minnesota. The reason for the more lengthy delays rested, in large part, upon a shortage of qualified court reporters.[11] Transcript delay has not abated and remains the initial roadblock to expeditious appellate review.

Unfortunately, the delay which occurs because of the need to obtain a transcript of the proceedings in the trial court has been exacerbated by a

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conference and the agreements made by the parties as to any of the matters considered and which limits the issues of those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

[7] Kaufman, *The Pre-Argument Conference: An Appellate Procedural Reform*, 74 COLUM. L. REV. 1094, 1096 (1974).

[8] *Id.* at 1099. Pre-argument conferences have been held an average of 19.5 days after the filing of notice of appeal. During the first 4.5 months of CAMP's operation, 66 successful dispositions resulted from a total of 181 cases submitted to the new procedures. *Id* at 1098.

[9] B.E. WITKIN, MANUAL ON APPELLATE COURT OPINIONS § 11 (1977). *See* D. MEADOR, APPELLATE COURTS—STAFF AND PROCESS IN THE CRISIS OF CHANGE 31, 198 (1974); P. ROBINSON, PROPOSAL AND ANALYSIS OF A UNITARY SYSTEM FOR REVIEW OF CRIMINAL JUDGMENTS (1974); Lesinski & Stockmeyer, *Prehearing Research and Screening in the Michigan Court of Appeals: One Court's Method for Increasing Judicial Productivity*, 26 VAND. L. REV. 1211 (1973).

[10] ABA APPELLATE STANDARDS, *supra* note 2, § 3.62(b).

[11] *Report of the Committee on Appellate Delay in Criminal Cases*, 2 AM. CRIM. L.Q. 150, 153 (1964).

shortage of court reporters[12] and by a spiraling increase in the number of criminal cases that are appealed. Sixty-five percent of all federal criminal cases were appealed in 1973, according to one estimate.[13] The increased frequency of appeal in criminal cases is directly attributable to the decisions of the United States Supreme Court which have granted the indigent defendant the right to a free transcript[14] and to counsel[15] on appeal. Since most criminal appeals involve indigent defendants,[16] it is not surprising that the courts are flooded with requests for free transcripts and the right to pursue an appeal with appointed counsel.

The American Bar Association *Standards Relating to Criminal Appeals* specifically recommended improving the techniques for securing a record on appeal.[17] The National Advisory Commission on Criminal Justice

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[12] A study by the National Center for State Courts pointed out the shortage of qualified reporters:

> Some courts are experiencing problems due to a national shortage of qualified court reporters. Stenotype court reporters normally require more than two years of training to learn the basic stenotype skills and meet the minimal proficiency standards. While there are several hundred reporting schools in the country, the National Shorthand Reporters Association has certified only fifty-one programs as meeting the minimum training and educational standards. The attrition rate during the training process sometimes reaches 85 to 95 percent of the students. In addition, several states which require applicants to take a stenotype proficiency examination find few qualified applicants—usually between 5 and 10 percent of applicants fully qualify. This has caused many courts to lower their selection standards.

The shortage has caused available court reporters to assume a greater workload than they can expeditiously handle and inevitably produces delay. J. GREENWOOD & J. TOLLAR, USER'S GUIDEBOOK TO COMPUTER-AIDED TRANSCRIPTION 3-4 (1977).

13 FEINBERG, *Expediting Review of Felony Convictions*, 59 A.B.A.J. 1025, 1026 (1973).

[14] In Griffin v. Illinois, 351 U.S. 12 (1956), the United States Supreme Court held that a state statute affording defendants the right to appeal criminal convictions but conditioning appellate review on the filing of a trial transcript, violated the Equal Protection Clause of the fourteenth amendment to the United States Constitution if indigent defendants were not provided a transcript at state expense. This transcript right does not always require that a full transcript be provided. A complete transcript is necessary, however, when counsel on appeal is different from that at the trial level. Hardy v. United States, 375 U.S. 277 (1964). The transcript right has been expanded to include a "record of sufficient completeness" to permit proper consideration of defendant's claims even if convicted of an ordinance violation punishable only by fine. Mayer v. Chicago, 404 U.S. 189 (1971). In *Mayer*, the Supreme Court rejected arguments that the indigent defendant's interest in a transcript must be balanced against society's interests. Griffin v. Illinois was said to have established the principle that prohibits pricing indigent defendants out of as effective an appeal as would be available to defendants able to pay the costs.

[15] *See* Argersinger v. Hamlin, 407 U.S. 25 (1972); Anders v. California, 386 U.S. 738 (1967); Douglas v. California, 372 U.S. 353 (1963); Gideon v. Wainwright, 372 U.S. 335 (1963).

[16] A figure of 90-95% is cited in J. GREENWOOD & D. DODGE, MANAGEMENT OF COURT REPORTING SERVICES 33 (1976).

[17] ABA CRIMINAL STANDARDS, *supra* note 1, § 3.3.

> (a) Continuing efforts should be exerted to improve techniques for the preparation of records for appeals. Methods should be adopted that will minimize the cost of preparation in terms of money and time. The traditional requirement of a printed record should be abandoned completely. Developing technology should be watched; and, as promising new processes are perfected, they should be accepted as soon as they provide more rapid and efficient preparation of records.
>
> (b) For defendants appealing in forma pauperis, transcripts of the testimony and other elements of the record should be supplied at public expense. . . .

Standards and Goals has advocated a similar approach.[18] Unfortunately, the workload of many court reporter's capacity has largely determined the time required for the production of the record on appeal. Consequently, court control and supervision of the transcription process has often been insufficient and ineffective.[19]

Ideally, state courts should be structured into a unified court system with rulemaking power granted to state supreme courts by constitutional mandate or by statute.[20] Uniform rules may be promulgated for practice and procedure and for supervision of trial courts in the preparation of a record.[21] To expedite the preparation of a record, the appellate court necessarily must exercise control over all stages of the transcript preparation process. A strict schedule should be established and enforced; extensions of time should not be granted automatically.[22]

The American Bar Association Commission on Standards of Judicial Administration *Standards Relating to Appellate Courts* suggests that appellate courts impose procedures and time constraints specifying that a record be completed within thirty days after it is ordered.[23] A procedure for the preparation and transmission of the record is also set forth in the present Federal Rules of Appellate Procedure, as well as in the Proposed Amendments thereto.[24]

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[18] Rapid production of transcripts might be achieved through technological innovation. Methods holding promise include computer-aided transcription, sound (audio) recording, and videotaping. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS (Recommendation 6.1) 140-41 (1973).

[19] The ABA Project For Standards Relating to Criminal Justice directs that courts actively supervise the preparation of cases on appeal.

> (a) Continuing, authoritative supervision of criminal cases on appeal, from docketing through hearing and submission, should be exercised. It may be desirable to assign each case to a single judge who, with an appropriate aide, is authorized to resolve the procedural questions that arise. Under such an arrangement, the judge could delegate to the administrative aide authority to handle most questions, with recourse always available to the judge in charge.
>
> (b) Illustrative of matters that can be administered by such a process would be questions arising in the preparation and filing of the record of the proceedings below; the appointment of counsel and, where necessary, changes in assignment of counsel; granting of stays of execution and admission to bail, at least until the full court can act in due course; and employing practices designed to expedite the appeals by detecting and eliminating unnecessary causes of delay.

ABA CRIMINAL STANDARDS, *supra* note 1, at § 3.1.

[20] *Cf.* ABA COMM'N ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO COURT ORGANIZATIONS §§ 1.30, 1.31 (1974), which suggests that rulemaking power should be vested in the court system with opportunity for the legal profession and the public to participate. The state supreme court or a rulemaking committee may be given the authority to promulgate rules of procedure.

[21] *Id.* §§ 1.10, 1.11; *see also* R. LEFLAR, INTERNAL OPERATING PROCEDURES OF APPELLATE COURTS, (1976); D. MEADOR, *supra* note 9.

[22] Christian, *Delay in Criminal Appeals: A Functional Analysis of One Court's Work*, 23 STAN. L. REV. 676 (1971).

[23] ABA APPELLATE STANDARDS, *supra* note 2, at § 3.52(b)(1).

[24] Fed. R. App. P. 10, 11; *Preliminary Draft of Proposed Amendments to the Federal Rules of Appellate Procedure*, Fed. R. App. P. 10, 11 (1977). Other procedures for expediting the appellate process and shortening the time required for the production of the record have been outlined. *See* R. LEFLAR, *supra* note 21.

Courts should also study the possibility of combining transcript reform with reforms in nontranscript areas. The pre-argument conference, for instance, may very well be related to the transcript, as the American Bar Association *Standards Relating to Appellate Courts* suggest.[25] By implementing the ABA Standard, the parties should be able to shorten the appellate process by clarifying the issues on appeal and by requesting only those portions of the transcript relevant to a determination of the appeal. A complete transcript is seldom required and can only be justified when the sufficiency of the evidence is the primary issue in a criminal appeal.

The need for a complete transcript can further be reduced or eliminated by an agreed case procedure under which the parties submit a stipulated statement of the facts and issues and agree to dispense with all or a substantial portion of the transcript. The process streamlines the appellate process by requiring the parties and court to address only the factual and legal questions which present legitimate issues. The agreed case procedure can also be incorporated into the pre-argument conference structure.

Finally, the necessity for full transcripts in criminal cases can be reduced by insuring continuity of representation for the defendant or by requiring that trial counsel prosecute the appeal. The American Bar Association *Standards Relating to Appellate Courts* recommend denying trial counsel permission to withdraw until appellate counsel has been appointed.[26] Trial counsel should be required to perfect the appeal unless different counsel is appointed. The American Bar Association *Standards for Criminal Justice Relating to the Prosecution Function and the Defense Function* contain a similar provision.[27] If different counsel is appointed, the two attorneys should consult with one another to insure that appellate counsel fully understands the issues to be considered on appeal.

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[25] ABA APPELLATE STANDARDS, *supra* note 2, at § 3.53:

> The court should be empowered, on its own motion or on motion of a party, to direct counsel for the parties to appear at a conference before a judge or judicial officer of the court:
>
> (a) Prior to the preparation of the record when its preparation may be extraordinarily complicated, to establish an agreed statement of all or part of the facts and to reduce the portions of the transcript or other parts of the record to be prepared;
>
> (b) After preparation of the record when there are complex issues or multiple parties to be heard, to regulate the order of presentation and to consolidate the presentation of parties having similar positions.

[26] *Id.*, at § 3.20(c).

[27] ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE PROSECUTION FUNCTION AND THE DEFENSE FUNCTION § 8.3 (1971):

> (a) Trial counsel, whether retained or appointed by the court, should conduct the appeal if the defendant elects to avail himself of that right unless new counsel is substituted by the defendant or the appropriate court.
>
> (b) Appellate counsel should not seek to withdraw from a case solely on the basis of his own determination that the appeal lacks merit.

See also ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO POST-CONVICTION REMEDIES § 4.4 (1968); ABA CRIMINAL STANDARDS, *supra* note 1, at § 3.2.

Several courts have suggested that if the practice of having the same counsel serve at the trial and appellate stages were adopted, appellate counsel could pursue the appeal without a full transcript.[28] If this practice were adopted, substantial time and money savings would be realized. A change in counsel requires new counsel to procure a complete transcript for review. Trial counsel, familiar with the issues to be raised on appeal, can determine which portions of the transcript are necessary adequately to present the issues to the appellate court. Continuity of counsel not only eliminates the need for the transcription of the entire record, but also reduces the amount of time court-appointed counsel consumes in handling a case on appeal. The wasteful duplication involved in having two attorneys become fully acquainted with each case would thus be eliminated.

The methods for obtaining a record of the proceedings in the trial court will be addressed at length, but the greatest hope for improvement lies in the elimination of the need for a transcript in every case.

II. OBTAINING A RECORD OF THE PROCEEDINGS IN THE TRIAL COURT

Various methods have been used to obtain a record of the proceedings in the trial court. The available methods have been the subject of extended debate, detailed criticism, and, in some cases, lavish praise. An attempt will be made to review the advantages and disadvantages of the various methods with particular attention directed to a consideration of the newest methods. Audio (sound) reporting, videotape recording, and computer-aided transcription have been the subject of a number of studies and may provide a solution to the problem of obtaining a transcript.

A. Shorthand Reporting

The use of Gregg, Pittman, or other shorthand methods for speedwriting were the earliest means used for court reporting. The court reporter manually records the courtroom proceeding by the use of symbols which represent phonetic speech and later transcribes his shorthand notes to produce the official transcript. A variation of this method involves a typist who prepares the final transcript from a handwritten or audio translation made by the court reporter. Although this method is still in use in this country, no new shorthand reporters are being trained.

Substantial disadvantages exist with this method of court reporting and transcription. The court reporter who records the proceeding is, as a practical matter, the only person who can translate the shorthand notes,

[28] *See* Hardy v. United States, 375 U.S. 277 (1964); Tate v. United States, 359 F.2d 245, 253-55 (D.C. Cir. 1966).

because almost all court reporters develop individual short forms varying the standard symbols. The accuracy of the final transcript depends entirely upon the skills of the individual reporter. No independent record exists to verify his final product, although some reporters record the proceeding with some type of electronic equipment to guarantee that the proceedings were accurately transcribed. Finally, since all but a minimal amount of the work in this process is done by the court reporter, the cost of this method is quite high.[29]

B. Stenotype (Machine Shorthand)

Stenotype is the most prevalent court reporting method in use today. It is a variation of the manual shorthand method which replaces the court reporter's handwritten notes with symbols imprinted on paper tape by the court reporter through the use of a stenotype recording machine.[30] Because stenotype notes are fairly standardized, it is possible for trained persons other than the original court reporter to translate the notes. It is always necessary, however, for the court reporter to review the final transcript for translation accuracy. Although it is possible to divide the labor and accelerate the transcription process, nearly all stenotype reporters either directly translate and type their own notes or make an audio translation for other typists. This involvement of the court reporter causes the costs of this method to be high and results in substantial delays. As is the case with shorthand reporting, the accuracy of the final transcript depends entirely upon the skill of the individual court reporter.[31] Moreover, the national shortage of qualified court reporters has caused delay by forcing every reporter to carry more than a normal workload.

C. Stenomask

Stenomask is rarely used in civilian courts and is utilized primarily in the military service. The court reporter repeats statements made in the proceeding into a microphone encased in a soundproof mask attached to a single track, audio tape recorder. The court reporter or a typist later prepares the transcript directly from the tape recording. This method eliminates the intermediate translation required in manual and stenotype shorthand, since the tape can be readily understood by typists or by a reviewing court. The most serious disadvantage of stenomask is that the accuracy of the record depends entirely upon the skill of the individual court reporter. Salaries are also relatively high. Finally, although this is

[29] J. GREENWOOD & D. DODGE, *supra* note 16, at 28.

[30] The stenotype notes are transcribed in several ways: direct typing by the court reporter from the notes, translation and dictation by the court reporter onto a tape which is then used by a typist, note translation and typing by other than the original court reporter, or computer-aided transcription. Computer-aided transcription is treated as a separate method. *See* notes 53-59 and accompanying text *infra*.

[31] J. GREENWOOD & D. DODGE, *supra* note 16, at 28-29.

not unique to stenomask, it is often difficult accurately to record simultaneous speech.[32]

D. Gimilli Voice Writing

Gimilli voice writing is a variation of the stenomask method. The court reporter repeats the in-court statements into a microphone for recording on the channel of a multi-track tape, while the actual voices of the participants are simultaneously recorded on the other channels. The official transcript is typed either by the court reporter or by other typists. The major advantage of this method lies in the ability to verify the reporter's record by comparison with the actual testimony. Additionally, little court reporter involvement is required in the transcription process. The two main disadvantages of Gimilli voice writing are high reporter salaries and possible equipment failure.[33]

E. Audio Recording

Audio recording is technically simple and easily implemented. The voices of the participants are recorded by one or more microphones attached to a tape recorder.[34] A monitor must be in attendance at all times to discover and remedy recording problems. Additionally, the monitor can be relied upon to make log notations of the identity of the speakers, the beginning and ending times of each examination, the spelling of difficult names or terms, and any information that may assist the typist in the preparation of the transcript.[35] The tapes are then played back directly to the reviewing court without the need for a written transcription.[36] If a written transcript is made, a final comparison with the tape for accuracy can be left to the attorneys, who can be relied upon to object to significant errors.[37]

The primary advantage of audio recording is the elimination of the intermediate product of shorthand or stenotype notes. This eliminates an element of human error, reduces overall costs, [38] increases the speed of transcription, and frees the process from total reliance upon the original court reporter. Accuracy is also enhanced by audio recording. The typist

[32] *Id.* at 29.

[33] *Id.* at 31.

[34] At least four microphones are used—one at the witness stand, one on the bench, and one at each of the tables for counsel. The recording machines can have either a single-channel or a multi-channel recording capacity. Multi-channel systems have a separate channel for each microphone, permitting the typist or reviewing court to distinguish the speakers.

[35] D. KARLEN, COURT REPORTING: LESSONS FROM ALASKA AND AUSTRALIA 11 (1974).

[36] *Id.* at 6.

[37] *Id.* at 18.

[38] The estimated cost of a one-hour stenographically reported deposition in San Francisco in 1972 was $50-$60. Kornblum, *Videotape in Civil Cases*, 24 HAST. L.J. 9, 10 n. 7 (1972).

or reviewing court has the luxury of replaying the tape to obtain an exact record or to verify a particular portion.[39]

The state courts in Alaska have used audio recording as the exclusive means of court reporting since statehood was granted in 1959. This procedure was adopted because of the serious shortage of qualified court reporters in Alaska and because of the state's unsatisfactory experience with court reporters during the territorial period. The basic system, unchanged since 1959,[40] illustrates the value and practical problems of audio reporting.

In the Alaska superior courts[41] the recorded tape is sent to a central transcription department. Facilities are available for counsel and judges to listen to the tapes before requesting that a full or partial written transcript be made. Most tapes are stored without ever being transcribed; in only five percent of the cases are transcripts prepared. Partial transcripts are often ordered, depending upon the stage of the trial proceeding or the issues to be raised on appeal. Counsel's ability to review the tapes before ordering a transcript permits selective preparation of portions of the record and has reduced the volume of material sent to the supreme court on appeal.[42] The process has been costly and slow in the experience of the Alaska superior courts. A three-month backlog exists which prevents immediate initiation of transcription.[43]

The experience of the Alaska district courts, courts of limited civil and criminal jurisdiction, has been substantially different from that of the superior courts. Tapes of district court proceedings are, as a practical matter, never transcribed. When an appeal is taken to a superior court, the reviewing judges listen to the relevant portions of the tape and render their decision. While there need be no delay in appeals taken from the district courts in Alaska, in fact only seven of fifty-nine appeals to the superior courts in 1971 were disposed of in less than one month and some took more than a year to complete.[44]

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[39] This ability to verify the final transcript is important. The record for stenotype recording is 282 words per minute, and only two percent of all stenographers can reach speeds of 200 words per minute. If two or more participants engage in rapid debate, the traditional court reporter will be unable accurately to record the complete exchange. The physical and mental limitations on stenotype reporting are overcome by the use of multi-channel audio recording. Each speaker is recorded independently and completely. The typist or reviewing court can be certain of what actually was said during the entire course of the proceeding. Note, *The Role of Videotape in the Criminal Court*, 10 SUFF. L. REV. 1107, 1117 n. 36 (1976).

[40] D. KARLEN, *supra* note 35, at 26.

[41] Alaska has three levels of state courts: a supreme court, an appellate court of last resort; superior courts, courts of general civil and criminal jurisdiction; and district courts, courts of limited civil and criminal jurisdiction.

[42] D. KARLEN, *supra* note 35, at 33.

[43] One hour of audio recording tape typically produces forty-five pages of transcript. A transcription typist can turn out an average of only thirty-five pages per day. When these are combined, it becomes evident that one five-hour court day would require two weeks in the transcription department. Not surprisingly, the transcription typists are far behind in their work. *Id.* at 35.

[44] An indirect benefit has been realized from the possibility of prompt disposition on appeal. The number of appeals filed has been drastically reduced. In the Third Judicial District, the state's busiest, 24,000 cases were disposed of in the district court in 1971, yet only twenty-six criminal and eleven civil appeals were taken to the superior court. Id. at 41.

The major difficulties experienced by the Alaska state courts in their use of audio court reporting include limited transcription staffs, inadequate monitoring, preoccupation with the cosmetic appearance of the transcript, and the delays in the production of the transcripts.[45] Nonetheless, a National Center for State Courts study concluded that the above-listed defects can legitimately be considered growing pains in the implementation of an audio court reporting system.[46]

Notwithstanding the problems experienced with audio reporting, there is general agreement among the attorneys and judges in Alaska that the present system is more efficient, more accurate, and less expensive than shorthand methods previously employed.[47]

F. Videotape Recording

With videotape recording of trial proceedings, cameras and microphones electronically record the voices and images of the trial's participant. The videotape itself can be used as the official transcript, or it can be transcribed by a court reporter or a typist.[48]

The United States Department of Justice, through the Law Enforcement Assistance Administration, funded a project to study applications of videotape in the criminal court process, including the use of videotape as the court record.[49] In 1973, the Law Enforcement Assistance Administration funded a demonstration project to examine the value of a videotape record, conducted in three of the four courtrooms of the Court of Common Pleas of Franklin County, Ohio, from March 1973 through June 1974.[50] All criminal trials in the selected courtrooms were officially recorded solely on videotape. By December 9, 1974, merit decisions in forty-eight videotape appeals from the Franklin County court had been

[45] *Id.* at 44.

[46] *Id.* at 45. The NCSC report suggested that the production speed of transcripts could be doubled by two simple steps: the employment of additional audio-typists and the elimination of supervisor accuracy checks known as "sound-proofing," which consumed thirty percent of the time and labor. If these two suggestions were followed, it was estimated that the transcription department could eliminate the present backlog and begin transcribing a record the day it was requested. *Id.* at 45.

[47] A former administrative director of the Alaska courts estimated the savings in 1970 at $257,174, a sizeable portion of the Alaska state judicial budget of less than four million dollars. *Id.* at 48.

[48] J. GREENWOOD & D. DODGE, *supra* note 16, at 31-32.

[49] The project report included a recommendation that "[v]ideo recording, when used, should replace, not supplement other record media such as a transcript. Generally, it is unnecessary to duplicate the video recording process and create extra expense by also providing another reporting technique—such as stenotype—to operate in parallel." F. TRAILLEFER, E. SHORT, J. GREENWOOD & R. BRADY, VIDEO SUPPORT IN THE CRIMINAL COURTS—EXECUTORY SUMMARY 3-4 (1974).

[50] In conjunction with the grant, the Ohio Supreme Court, through the exercise of its rule-making power, provides that:

> Proceedings in any court which are recorded on videotape need not be transcribed into written form for the purposes of appeal. The videotape recording constitutes the transcript of the proceedings as defined in App.R.9 (A) and Sup.R.15(H)3. A transcript of proceedings transcribed on videotape shall be transmitted in its entirety as a part of the record.

OHIO R. OF SUPERINTENDENCE 10 (Page 1977).

rendered by the Tenth District Court of Appeals, based entirely upon the videotape record without a written transcript.[51]

A committee of the 1973 Judicial Conference of the Court of Appeals of Ohio reviewed the videotape project. According to the committee report, all of the appellate judges agreed that the use of videotape records on appeal was burdensome and not beneficial. The committee requested that the Ohio Supreme Court amend the court rule regarding videotape transcripts to require that a written transcript accompany the videotape record.

Appellate Judge Robert E. Holmes prepared an evaluation of the videotape project which summarized the concerns expressed by the conference committee and his own personal observation on the use of videotape as a sole record.[52] The videotape project was evaluated in terms of eight considerations: (1) instant availability—videotape is instantly available for counsel or the court to review, but this benefit is not of particular importance to an appellate court with an existing case docket; (2) accuracy—videotape provides an exact reproduction of the trial court proceeding, but this visual demeanor evidence bears primarily upon the credibility of witnesses and the weight of the evidence, matters properly left to the jury; (3) economy—although videotape can be produced more economically than stenographic records, economy may not be achieved when the cost of the equipment and judicial and counsel time is considered; (4) judicial time consumed in review—where a relevant portion of the record must be located or where the entire videotape must be viewed to evaluate the weight of the evidence, the appellate court must often view the entire videotape; (5) comparison of portions of the record—comparisons cannot be readily done with videotape; (6) flexibility—the videotape record must beviewed in an office with the required equipment; (7) dead time—the videotape records the entire proceeding; therefore, many insignificant aspects of the trial, which can be skipped in a written transcript, must be viewed; (8) comprehension—lawyers trained in the analysis of the written word comprehend and retain more by reading a record than by viewing it on videotape.[53]

G. Computer-Aided Transcription

Computer-aided transcription (CAT) is a technological approach designed to improve and expedite the stenotype method of court reporting.

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[51] Kosky, *Videotape in Ohio*, 59 JUD. 230, 232 (1975).

[52] Holmes, *Exhibit C: Evaluation of Videotape for Appellate Purposes* in NATIONAL SHORTHAND REPORTERS ASSOCIATION, POSITION PAPER RE: VIDEOTAPE APPELLATE PROJECT (1975).

[53] Judge Holmes concluded:

> As to the use of videotape in the appellate process, I conclude, with the proviso that a written record will always be available for review, and that certain taping techniques be improved, that such can prove to be a supportive or clarifying tool, particularly in those instances where the portrayal of the expert in demonstrative techniques is difficult by way of the printed word.
>
> However, in view of the inherent problems that have been referred to, I have

A modified stenotype recording machine produces traditional court reporter stenotype tapes and simultaneously records symbols on a magnetic tape. The magnetic tape is later fed into a computer which translates the typed signals into words which are either displayed on a cathode ray tube or printed by the computer. The court reporter then edits the transcript with the aid of his stenographic notes, and the final edited transcript is rapidly printed by the computer.[54]

An obstacle to the implementation of CAT on a wide scale has been opposition by court reporters concerned that CAT will eliminate their jobs, reduce their status, limit their incomes, change the nature of their jobs, and reduce or eliminate their control over the transcription process.[55] These fears evidence a basic misunderstanding of the CAT system. CAT is based upon the input of skilled, qualified court reporters who will continue to perform their traditional in-court duties. Existing procedures are not wholly compatible with CAT, however, and reporters will be required to learn the system's abilities and limitations. A fully implemented CAT system will permit the court reporter to increase transcript production, maintain or reduce transcript costs, reduce the time required to produce transcripts, and spend noncourt time proofreading rather than translating notes and typing transcripts.

In 1973, the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration awarded the National Center for State Courts a grant to initiate a demonstration project to determine the commercial feasibility of CAT. A fourteen-month project in the Philadelphia Court of Common Pleas resulted in the conclusion that CAT offers a realistic alternative to existing transcription methods. The statistical results demonstrated that CAT can dramatically improve transcript production and reduce transcript delay.[56] The project also demonstrated that CAT is presently economically feasible; its costs are approximately equivalent to costs of traditional procedures.[57] A cost-

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grave doubts about the net advantages looking to speedy appellate procedures that would flow from the exclusive use of video for review purposes.

Id. at 13-14. *See also* Kosky, *supra* note 51.

[54] J. GREENWOOD & D. DODGE, *supra* note 16, at 30. Two hundred pages of transcript can be printed in eight minutes. Kosky, *supra* note 51, at 235.

[55] J. GREENWOOD & J. TOLLAR, *supra* note 12, at 4.

[56] *Id.* at 6. The Philadelphia Court of Common Pleas, a court of general jurisdiction, consists of 91 judges served by 90 official court reporters. In 1975, the court made disposition of 10,000 criminal cases and 4,500 civil cases. Over 1,000 criminal appeals are filed annually, 90% of which involve indigent defendants. Over 650,000 pages of transcript are produced for these criminal appeals. Although each court reporter usually produced over 5,000 pages of transcript annually, extensive transcript demands have created backlogs with delays often exceeding two months. *Id.* at 27.

The CAT system became operational on October 15, 1975. Fifteen court reporters were selected to participate in the project. First-run accuracy varied according to the reporter, with the most proficient consistently achieving 97%-98% accuracy. *Id.*

[57] Four specific findings supported the favorable conclusion. First, the average transcript production time for CAT transcripts was 50% less than that for transcripts prepared by traditional methods (18 days rather than 37.6 days). Second, the preparation time for transcripts of less than two hundred pages (approximately one-half) with CAT averaged 67% less than with traditional methods. Third, the following relationship was found to exist between production times and the completion of transcripts:

related benefit of the CAT system was realized in the Philadelphia court in terms of the court reporter's primary duty of in-court recording. CAT reporters, unlike their traditional counterparts, very seldom had to be relieved from courtroom duty to work on an urgent transcript.[58]

CAT projects similar to the one conducted in Philadelphia have been initiated in other jurisdictions, but some have experienced practical difficulties in implementation. These problems probably reflect the present state of the art and the fact that each system must, in part, be designed especially for a particular court system.[59] As CAT systems become more prevalent, the variety and the degree of sophistication of CAT equipment and services will undoubtedly increase.

III. CONCLUSION

The appellate process has experienced substantial delays as a result of the time required to obtain a transcript of the record in the trial court. Technological advances, matched by procedural improvement, may remove this old roadblock.

The ideal system of court reporting and transcript preparation should be inexpensive to operate, permit rapid transcription when required, insure absolute accuracy with a high degree of verifiability, be easily learned by reporters or operators, and be readily standardized.[60] Unfor-

Time Required	Percentage of Transcripts Completed	
	CAT	Manual
15 days or less	52%	22%
30 days or less	86%	51%
60 days or less	99%	84%

And, fourth, no significant difference existed between the pre-CAT production times for selected as opposed to nonselected court reporters. If the court reporters had followed the recommended first-run translation review norms, an estimated 75% of all CAT transcripts could be produced within fifteen days, 95% within thirty days, and 100% within forty days. The demonstration project revealed that short transcripts (10 pages to 25 pages) were not an efficient use of the CAT system. Nonetheless, the data suggest that their production time could be reduced by 75%-80% (from 26 to 7 days). *Id.* at 37.

[58] The cost per page of CAT transcripts was $1.77 ($1.14 if the court's noncash outlays are deducted). If the full operating cost under new pricing conditions is projected, the cost per page should be $.67 if 100,000 pages are produced annually. Although the Philadelphia CAT system can produce 150,000 pages per year, only 40,000 were produced during the demonstration period.

After the expiration of the initial subsidized CAT vendor contract, the Philadelphia court and the court reporters negotiated a new contract with their CAT vendor. The cost of the transcripts were increased from the subsidized $.50 per page to $.65. *Id.* at 38.

[59] From 15%-25% of traditional court reporters' court time is lost to permit them to work on transcript preparation. The Philadelphia Court of Common Pleas normally employs a pool of 10 reporters to replace reporters who are unavailable for courtroom duty. A reduction of even four or five of these replacement reporters would reduce reporting expenditures by $150,000 annually. *Id.* at 44.

[60] *Id.* at 45.

[61] *Id.* at 32.

tunately, all of these desirable characteristics do not appear in any of the systems which have been described. Each court must, therefore, examine the available methods of transcription in terms of its own needs and implement that method which maximizes the characteristics it deems most important.

The expedited appeal process, pre-argument conferences, continuity of representation, and other procedural innovations may eliminate the number of appellate cases which require a complete transcript and, thus, alleviate some of the delay in the appellate courts. In any event, all courts should examine the techniques which are available, so that the best method can be utilized to insure a speedy, just, and final determination of the case in the appellate court.