

Leveraging Communication Technology to Reduce Litigation Costs

Joseph A. Grabowski and John T. Sly



attorneys and legal team members follow the text of the deposition on their computers as the stenographer writes the testimony. This “dirty” version of the transcript can permit various participants at multiple locations to follow the testimony as it occurs. Typically, realtime writers can produce text using

stenograph machines at the rate of at least 200 words per minute. Realtime reporting is already established in Communication-Access-Realtime-Translation (CART) which is used to assist the hearing impaired by translating spoken words into text. Also, realtime reporting technologies are used in

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The negative economic downturn has impacted the return on investment seen by insurers and private companies while the amount of litigation and their associated costs continue to rise. According to a recent study by international law firm, Fulbright & Jaworski, more than one third of US companies say that the economic downturn has resulted in an increase in their litigation caseloads and no reduction in litigation costs. Edward M. Petrie, “Litigation Costs on the Rise”, Special Chem, September 22, 2010 (<http://www.specialchem4adhesives.com/home/editorial.aspx?id=4063>). This article will discuss some of the new communication technologies available that can safely realize cost reductions for clients while expanding the ability to involve them.

To keep costs manageable, depositions have long been conducted by telephone. The downside is one cannot observe demeanor and body language. Videoconference is another way to go, requiring lining up videoconferencing services in all locations. This is the most stable and reliable method to bring parties together in remote locations but cost can be a factor. Traveling to facilities might also be inconvenient for the participants if sites are not nearby. While multi-point videoconferencing is possible, it is not always feasible or cost-effective.

With the latest developments in technology, all interested parties can be present for the deposition without travel. Everyone, including the court reporter and videographer, can be connected through internet text and video streaming. Given advances in software and internet speed, every medium — text, audio, video — can be streamed, viewed, shared and captured in realtime.

Internet text and video streaming is a progression of realtime reporting, whereby

Editor's Corner

The Editors are proud to publish this latest edition of *The Defense Line*, which features several interesting articles and case spotlights from our members. The lead article, submitted by Christopher Daily of Miles & Stockbridge P.C., provides insight into authentication issues and concerns associated with social networking evidence. Joseph A. Grabowski and John T. Sly discuss how litigation communication technology can both expand the ability of attorneys to effectively represent their clients while reducing the costs associated with litigation. An article by Wendy B. Karpel, who is the co-chair of The Maryland Defense Counsel's Programs and Membership Committee, discusses a recent Maryland court opinion in which the jurisdiction of the Maryland Workers' Compensation Commission was expanded. In addition to these articles, Gregory Garrett of Tydings & Rosenberg LLP discusses a recent case in which the Court of Appeals restricted the Workers' Compensation Act and limited the “prior bad acts” rule to criminal cases.

The Maryland Defense Counsel has had a number of successful events since the Winter 2010 edition of *The Defense Line*, including the always popular Past Presidents Reception. Mark your calendars now for Maryland Defense Counsel's Annual Meeting and Crab Feast, which will take place on June 7, 2012 at 5:30 p.m. at Bo Brooks in Canton! The Editors encourage our readers to visit the Maryland Defense Counsel website (www.mddefensecounsel.org/events.html) for full information on the organization's upcoming events.

The Editors sincerely hope that the members of the Maryland Defense Counsel enjoy this issue of *The Defense Line*. In that regard, if you have any comments or suggestions or would like to submit an article or case spotlight for a future edition of *The Defense Line*, please feel free to contact the members of the Editorial Staff.

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closed captioning in television broadcasts.

Because remote parties can attend online from multiple locations, it saves travel costs and reduces time away from the office. A revolutionary aspect of the new technology is that clients and experts can also follow the deposition in realtime — something that has traditionally been cost prohibitive. As with any realtime deposition, a rough transcript can also be made available for review until the final is produced and delivered.

Moreover, an internet video stream can be provided that can include the video with realtime synch text. This is often termed “captioning.” A video DVD with the synchronized text can also be later produced. When you play the video, each line of testimony scrolls as the witness speaks, capturing demeanor, body language and tone of voice. Furthermore, you can conduct text-based searches to zero in on crucial statements, and easily create video clips to import into trial presentation software. Presentation at trial or in other venues is made much easier and becomes more compelling in this format.

Maryland Rule 2-416 expressly permits “[a]ny deposition [to] be recorded by videotape or audiotape without a stenographic record, but a party may cause a stenographic record of the deposition to be made at the party’s own expense.” Md. R. 2-416(a). Therefore, there is no legal prohibition to moving forward with internet video and synched transcription. Be aware, however, that Maryland Rule 2-412(b) does require that the notice of deposition “shall specify the method of recording.” To be safe, express description of the use of digital video recording should be included in the notice. *See* Md. R. 2-412(b). Finally, where one intends to “videotape” the deposition for use at trial, the attorney should be aware of the notice requirements and that Maryland Rule 2-419(a)(4) provides that a videotaped deposition of a “treating or consulting physician or of any expert witness may be used for any purpose even though the witness is available.”

The application of this technology can take many forms. Take for instance a situation where you go to Los Angeles to take a deposition of an opponent’s expert. Your expert, a person who can provide critical insight in to the process of questioning, is in New York. To fly your expert to Los Angeles with you would include round-trip airfare plus hotel, transportation and meals. Clients rarely find this cost-effective. For the same reason, the associate who has been working on the case with you from the outset cannot participate in the deposition.

As an alternative, you, the expert and



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your associate — and your client — can participate in the deposition in realtime. Systems allow multiple persons to be able to see and listen to the witness and also view realtime testimony. The latter are often termed “observers” who can monitor testimony. However, depending on the technology used, the observers can still highlight statements, make notes and send private messages to you and/or your associate. For example “page 92, line 7 contradicts earlier testimony — bring this up.”

Commercial online services such as Skype and Google+ provide some of the connectivity mentioned and may be useful for less formal interactions. However, when conducting a discovery deposition or *de bene esse* trial testimony, it is critical that reliable and secure connections are used. Also, given that a court reporter is required for both anyway, it may be more cost effective and efficient to simply have the court reporting agency set up the connection and monitor the technology as the deposition is ongoing.

Unfortunately, serious issues regarding the security of commercially available internet connection programs like Skype and Google+ have been raised. In a PCWorld article dated October 10, 2011, it was reported that the German government had been using eavesdropping tools to intercept Skype calls. Jeremy Kirk, “German Government’s Skype Spying Tool has Holes, Hackers Say”, PCWorld (http://www.pcworld.com/article/241571/german_governments_skype_spying_tool_has_holes_hackers_say.html). The tool called “Quellen-TKU” was developed “ostensibly for wiretapping internet phone calls” and is a “lighter version of a more encompassing surveillance tool conceptualized by the German government.” *Id.* The ease with which commercially available

products can be breached should give pause to attorneys who may be concerned with privileged and commercially sensitive information. One should inquire of any internet video provider as to what type and level of security is used to protect communications. Most court reporting programs use encryption and password protection systems to provide security.

The law rightfully demands that attorneys be careful with critical aspects of their cases. Therefore, attorneys are often slow to adopt new technology. However, technology that can both expand the ability of attorneys to effectively represent their clients while reducing the costs associated needs to be incorporated into practice.

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Joseph A. Grabowski is CEO of Gore Brothers Reporting & Video, a silver sponsor of MDC. Joe began reporting in 1976, started working at Gore Brothers in 1978, and bought the company in 1996. He has covered reporting assignments throughout the Mid-Atlantic region and parts of Europe. In 1996 he went to Poland for the Department of Justice to report on statements from survivors of concentration camps. Joe is past president and currently on the board of the National Network of Reporting Companies, a member of The National Court Reporters Association, past president of the Maryland Court Reporters Association, Chairman of the State Association’s Education Advisory Committee, a member of the Society for The Technological Advancement of Reporting and appointed by Chief Judge Robert M. Bell to Maryland’s first State Committee on Court Reporting.

Expert Information Inquiries

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