

TechnoLawyer.com: Realtime: The Legal Pad of the New Millennium

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In this article, Chris Santella explains how techno-savvy lawyers have given themselves a competitive advantage when taking depositions thanks to their use of realtime, a technology that enables them to see a deposition transcript as it is being transcribed. In addition to discussing realtime's benefits and setting forth a checklist for those lawyers who wish to use realtime, Chris also provides a wealth of observations from lawyers who regularly use realtime. This article appeared as a TechnoFeature in The TechnoLawyer Community.

Introduction

The desire for immediate deposition gratification has given momentum to interactive realtime, a technology that allows lawyers to view the text of a deposition on their laptop computers seconds after a court reporter has keyed it in, and electronically mark and annotate that testimony without losing focus on the proceedings. In addition, lawyers can take away a draft of the transcript at the conclusion of the proceedings.

Why Realtime?

"In a recent case, we had an accelerated two-week discovery schedule, and then a trial brief due just days before the full hearing," said John Allen, a litigator with Varnum Riddering Schmidt & Howlett, LLP of Grand Rapids, Michigan. "Using interactive realtime software, we were able to leave each of the seventeen pre-trial depositions with a rough transcript on disk. We drafted the brief as we went along, and were ready for a timely filing the day after the last deposition finished."

Beyond the benefit of having immediate access to the day's deposition testimony, there exist other advantages to interactive realtime that become obvious in the heat of a deposition. For example:

- Attorneys can ease up on note taking since the realtime transcript captures what was said. Not needing to take notes helps many attorneys pick up the pace of questioning, giving the witnesses less opportunity to hedge, reflect, and rethink.
- Marking and annotation features make it easier to lock in the witness. Revisiting marked testimony reduces reliance on memory or incomplete notes to help attorneys analyze whether to stand pat, or ask one important final line of questions.
- Reporting and digesting features let attorneys instantly review all marked and annotated testimony in context. Some programs can sort the report according to salient issues assigned to each testimony excerpt.
- Scrolling and search functions allow attorneys to revisit earlier testimony without tipping off the witness (or their attorney) by asking the court reporter to read back testimony.

- During breaks, attorneys can re-read testimony to make sure they have not misspoken (e.g., used the wrong date), that the court reporter has not misheard a crucial question or answer, or, in general, that the record of testimony appears as it should. Review may also help deposing attorneys articulate post-break questions.
- If attorneys have loaded earlier depositions or evidentiary documents into their litigation support software, they can reference them during the proceedings to see how evidence corroborates with the deponent's testimony.

William Kayatta, Jr. of Pierce Atwood in Portland, Maine regularly used interactive realtime in taking depositions in the successful defense of a high-profile suit last year between Florida Power and Central Maine Power. "Interactive realtime was invaluable in framing consistent follow-up questions using the witnesses' own terms, and in replacing less accurate notes for midday decision making," Kayatta said. "It also helped facilitate end of the day sharing of highlights with others working on parallel depositions."

Increasing Demand for Realtime

"It's estimated that almost thirty percent of court reporters provide realtime reporting to their clients on a regular basis," said Judy Wolf, Product Manager at Stenograph, L.L.C., a leading manufacturer of shorthand machines and software for court reporters. "Every day more court reporters are embracing the technology and improving their skills to offer the value-added service of realtime transcripts during the deposition or hearing."

Indeed, court reporting firms have worked hard to fill the demand for interactive realtime certified reporters. "We have continuing education requirements for court reporters associated with our firm on writing better for realtime and how to help attorneys with their interactive realtime software," said Mason Farmani, Chief Operating Officer for Barkley Court Reporters, the largest independent court reporting agency in California. "We also train twenty-five to fifty attorneys and paralegals a month on interactive realtime software usage. The acceptance of realtime, in fact, has influenced the California state legislature to include a 1999 revision of the Rules of Civil Procedure requiring deposition notices to reflect any intention of the noticing party to record a deposition through instant visual display."

Realtime Enhancements

Most leading litigation support software includes an interactive realtime deposition manager, the use of which requires users to simply connect a few cables. For example, the latest version of Summation Blaze <<http://www.summation.com/products/blaze.htm>> features a tool for viewing, searching, and

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annotating realtime depositions. Many of these programs feature expanded functionality, such as the ability to automatically mark transcript lines containing key words the user has previously designated as significant.

Despite the ease of use, lawyers should keep the following in mind when preparing for an interactive realtime deposition:

- Notify your court reporter ahead of time that you wish to take an interactive realtime deposition, and make sure they bring enough cables for you and any other attendee who may want access to a realtime feed.
- To eliminate any objections from your opposition, indicate in your Notice of Deposition that you plan to use this technology.
- Check that the computer you intend to use has a serial port available for the realtime feed.
- Arrive at least fifteen minutes earlier than you normally would to give the court reporter a chance to connect to

your computer. Then have the court reporter send you a test feed while your realtime transcript manager walks you through set up.

As more and more litigators deploy realtime technology to help them extract all possible relevant information from a deponent, the Internet will likely to play a heightened role. "The newest venue is realtime reporting across the Internet, enabling remote parties to monitor or even participate in a remote proceeding without the limitations of time and travel," said Wolf. One of the companies at the forefront of this development is I-DEP <<http://www.i-dep.com>>, which provides live video, audio, transcript, and chat features for deposition participants regardless of their location.

Conclusion

Though interactive realtime depositions may take some time to prepare for and set up, the benefits clearly outweigh the costs of preparation. Realtime will eventually become as rife as hostile deponents and obstreperous opposing counsel, but for now they provide a competitive advantage for techno-savvy lawyers.

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