



November 19, 2024

JAMS Headquarters  
Attn: Kimberly Taylor, CEO and President  
18881 Von Karman Ave, Suite 350  
Irvine, CA 92612  
Telephone: 949-224-1810

In re: JAMS use of AI-generated Transcripts

Dear Ms. Taylor,

By way of introduction, we are writing this open letter to you today as a newly formed association called Jeopardizing Justice to address the recently published article on the Business Wire titled *JAMS Leads ADR Into AI Age with Launch of JAMS Next, AI-Powered Services*. Our founders consist of long-time state and national court reporting association past presidents and leaders.

Certified Court Reporters (CCRs) play an important role in our justice system. CCRs act as impartial officers of the court, present at legal proceedings to ensure an accurate record will not only be captured, but will be securely maintained, safeguarded, and distributed to all parties on equal terms. We work in conjunction with professional associations, the bench, and the bar towards ensuring accountability for producing certified accurate transcripts of our states' court and deposition proceedings. While our associations provide valuable services in education, certification, and professional guidelines, they carry no regulatory or disciplinary authority, and membership is strictly voluntary. Licensure and oversight by an independent governmental agency ensure the highest level of necessary transparency and accountability to the courts, litigants, and the public.

We believe JAMS's decision to utilize an AI Transcription platform may be premature and did not take into consideration many state statutes across the United States wherein the practice of court reporting is strictly regulated by long-standing laws and court rules. In many states, the practice referenced within the article whereby you state certified transcripts will be delivered in just five days which are reviewed by "credentialed court reporters" would be in violation of many states' court reporting statutes and administrative procedures. For that reason, we are writing to ask that you reconsider your decision.

Additionally, we also believe that practice of "credentialed court reporters" certifying AI-generated transcripts would not be in compliance with FRCP 80, which states: "If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it."<sup>1</sup> As we all know, AI is not a person and it is

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<sup>1</sup> [https://www.law.cornell.edu/rules/frcp/rule\\_80](https://www.law.cornell.edu/rules/frcp/rule_80)

difficult to provide verity of the transcript by way of certification without someone who has witnessed the proceeding to ensure what has been transcribed is what actually took place during the proceeding.

AI on all platforms is known to hallucinate and simply make up words and even full sentences that did not actually occur. “AI hallucination is a phenomenon wherein a large language model (LLM)—often a generative AI chatbot or computer vision tool—perceives patterns or objects that are nonexistent or imperceptible to human observers, creating outputs that are nonsensical or altogether inaccurate.”<sup>2</sup>

Stanford University found in a new study where they put the claims of two providers, LexisNexis (creator of Lexis+ AI), and Thomson Reuters (creator of Westlaw AI-Assisted Research and Ask Practical Law AI), to the test. “We show that their tools do reduce errors compared to general purpose AI models like GPT- 4. That is a substantial improvement, and we document instances where these tools provide sound and detailed legal research. But even these bespoke legal AI tools still hallucinate an alarming amount of the time: the Lexis+ AI and Ask Practical Law AI systems produced incorrect information more than 17% of the time, while Westlaw’s AI-Assisted Research hallucinated more than 34% of the time.”<sup>3</sup> OpenAI has published warnings that AI should not be utilized in “high risk domains.”<sup>4</sup>

“AI hallucination is a phenomenon wherein a large language model (LLM)—often a generative AI chatbot or computer vision tool—perceives patterns or objects that are nonexistent or imperceptible to human observers, creating outputs that are nonsensical or altogether inaccurate (See IBM).”

Considering litigants are trusting JAMS arbitrators with the outcome of their cases, in most instances where high stakes and high dollars are involved, is trusting transcripts generated by a new and unproven AI/ASR technology wise? ABA Resolution 604 calls on organizations that are using AI to follow the guidelines below:

- Developers of AI should ensure their products, services, systems, and capabilities are subject to human authority, oversight and control.
- Organizations should be accountable for consequences related to their use of AI, including any legally cognizable injury or harm caused by their actions, unless they have taken reasonable steps to prevent harm or injury.
- Developers should ensure the transparency and traceability of their AI and protect related intellectual property by documenting key decisions made regarding the design and risk of data sets, procedures and outcomes underlying their AI.

“Hallucinations are the errors generated by neural ASR models. They are considered to be dangerous because of their seemingly fluid and coherent manner, but lack of connection with the source.”<sup>5</sup>

ARIAS • U.S. Virtual Arbitration Hearing Guidelines state “e. Recording. Prior to the arbitration hearing, the parties should review the virtual platform’s terms of service and confer regarding whether to make an audio or video recording of the arbitration (in addition to any stenographic means that are being used). The parties should inform the panel of their decision, in writing, no later than fourteen (14) days prior to the arbitration’s first session. If the parties decide to record the arbitration, they should:

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<sup>2</sup> [What Are AI Hallucinations? | IBM](#)

<sup>3</sup> [https://dho.stanford.edu/wp-content/uploads/Legal\\_RAG\\_Hallucinations.pdf](https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf)

<sup>4</sup> [Changing OpenAI's nonprofit structure could have big consequences | AP News](#)

<sup>5</sup> Hallucinations in Neural Automatic Speech Recognition: Identifying Errors and Hallucinatory Models, <https://www.semanticscholar.org/reader/caa435eeef985e9251d5707e2e1276e6f0832758>

- i. advise all participants of that decision, in writing, no later than seven (7) days prior to the arbitration's first session and, if required under applicable law, obtain the written consent of all participants;
- ii. advise, at the start of each arbitration session, that the session is being recorded;
- iii. make the recording of each session available for download, by a secure file transfer system, within seven (7) days to all parties and the panel;
- iv. research applicable law to ensure that any video or audio recording will be made, stored, and distributed in full compliance with applicable state and federal law.”<sup>6</sup> (highlighted for emphasis)

JAMS existing guidelines provided on its website under JAMS Rules Governing Disputes Involving Artificial Intelligence Systems currently do not set forth any rules related to AI-generated transcripts. Under the existing Rule 1. Scope of Rules, specifically Rule 22(k), outlines the process of utilizing a stenographic record but makes no reference to what procedures will be followed for AI-generated transcripts.

Rule 22 (k) states: “Any Party may arrange for a stenographic record to be made of the Hearing and shall inform the other Parties in advance of the Hearing. No other means of recording the proceedings shall be permitted absent agreement of the Parties or by direction of the Arbitrator.

(i) The requesting Party shall bear the cost of such stenographic record. If all other Parties agree to share the cost of the stenographic record, it shall be made available to the Arbitrator and may be used in the proceeding.

(ii) If there is no agreement to share the cost of the stenographic record, it may not be provided to the Arbitrator and may not be used in the proceeding, unless the Party arranging for the stenographic record agrees to provide access to the stenographic record either at no charge or on terms that are acceptable to the Parties and the reporting service.

(iii) If the Parties agree to the Optional Arbitration Appeal Procedure (Rule 34), they shall, if possible, ensure that a stenographic or other record is made of the Hearing and shall share the cost of that record.

(iv) The Parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator in the Award.”

Should parties assume the same rules apply to AI-generated transcripts? There does not appear to be any equivalent disclosure language.

### **Emerging Ethical and Legal Issues Related to the Use of Artificial Intelligence**

Certified Court Reporters have access to and are required to protect confidential information such as financial records, medical information, and trade secrets. This also includes biometric data, which has recently been proven to be easily manipulated by and through artificial intelligence (AI) and/or automatic speech recognition (ASR) if not kept within a strictly controlled environment. The National Court Reporters Association has recently published and adopted a white paper addressing “Emerging Ethical and Legal Issues Related to the Use of Artificial Intelligence (AI), Automatic Speech Recognition

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<sup>6</sup> <https://www.arias-us.org/wp-content/uploads/2020/05/ARIAS-U.S.-Virtual-Arbitration-Guidelines.pdf>

(ASR), Voice Cloning, and Digital Audio Recording of Legal Proceedings.”<sup>7</sup> In addition, the American Bar Association in 2023 adopted Resolution 604,<sup>8</sup> which addresses how attorneys, regulators and other stakeholders should assess issues of accountability, transparency and traceability in artificial intelligence as a result of a multi-year study.

### **Certified Court Reporters shall preserve shorthand notes**

Certified Court Reporters are charged with providing an accurate record, guaranteeing the chain of custody of that record, and providing an unbiased certification to their first-hand knowledge as witnesses to the proceedings.

AI-generated transcripts have no regulatory authority charged with oversight of the transcripts produced, and there are no requirements for the chain of custody of the transcript and the confidential information contained therein. It is unknown who will be reviewing the AI-generated transcripts and whether they will be certified by the person who is responsible for the review. That is unstated. Will there be multiple people involved in reviewing multi-day proceedings, whereby transcribed files are put together in multiple sections without verified chain of custody oversight? This practice has erroneously influenced outcomes in some jurisdictions, including one case where 55 pages of a deposition were left entirely out of the transcript, resulting in an adverse outcome for one of the litigants. See <https://www.thejcr.com/2022/04/19/make-sure-your-court-reporter-is-really-a-court-reporter/>.<sup>9</sup>

### **Potential harms with technological innovation must be carefully considered**

Perceived advances in technology are not necessarily improvements and make oversight even more important. With the advancement of AI, there are currently no court rules or laws within the judicial system that regulate its use. They have not yet been written. WAC 308-14-130(6) states, “CCRs (certified court reporters) shall: Prepare accurate transcripts.” Without anyone within JAMS to verify who is a “credentialed court reporter” could have catastrophic results.

While this statement may seem extreme, current technologies make it easy to manipulate audio and video files, deep fakes are easy to create, and voice recognition algorithms have created a new area of discrimination against people of color, women, individuals with disabilities, or individuals who have unique speech patterns, accents, or dialects. This results in disparity in the quality and accuracy of transcription that jeopardizes litigants’ access to justice. There is increased scrutiny of the use of AI in high-risk environments; and our court system, with the right to a fair trial (and assumingly a fair arbitration) at its heart, is most certainly identified as high risk.

### **CCR WACs highlighting consumer safety provisions**

Using Washington State as an example of some of the regulations certified court reporters must follow, below are some of the court reporting RCWs and WAC 308-14-130 and 135, which contain definitions and consumer protection provisions that would be lost or non-applicable with the use of an AI model, with several of the more important aspects included:

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<sup>7</sup> National Court Reporters Association, <https://www.ncra.org/docs/white-paper-ai-asr>

<sup>8</sup> American Bar Association, [https://www.americanbar.org/advocacy/governmental\\_legislative\\_work/publications/washingtonletter/may-23-wl/ai-0523wl/](https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/may-23-wl/ai-0523wl/)

<sup>9</sup> <https://www.thejcr.com/2022/04/19/make-sure-your-court-reporter-is-really-a-court-reporter/>

RCW 18.145.010 Certificate required. (1) No person may represent himself or herself as a court reporter without first obtaining a certificate as required by this chapter. (2) A person represents himself or herself to be a court reporter when the person adopts or uses any title or description of services that incorporates one or more of the following terms: "Shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter." [2000 c 171 s 31; 1989 c 382 s 2.]

RCW 18.145.020 Practice of court reporting defined. The "practice of court reporting" means the making by means of written symbols or abbreviations in shorthand or machine writing or oral recording by a stenomask reporter of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee, court commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding. [1995 c 27 s 3; 1989 c 382 s 3.]

WAC 308-14-130(1) requires Certified Court Reporters to "offer arrangements on a case concerning court reporting services or fees to all parties on equal terms." Many court reporting firms have contracts or "preferred provider agreements" with their largest clients (usually insurance companies) to give them benefits such as lower rates, free services, and prioritized delivery of transcripts. This usually results in upcharging the other parties, which increases the burden of litigation to the parties least able to afford it. Some states, such as Arizona, Georgia, Montana, Nevada, and Texas have prohibited these types of contractual arrangements. The lack of similar provisions would be detrimental to consumers who would likely pay more to subsidize discounts to larger entities.

WAC 308-14-130(2) requires that CCRs: "Include on all transcripts, business cards, and advertisements their CCR reference number." All CCRs are currently listed on the DOL website. Licensure provides a mechanism to immediately locate court reporters across Washington and ask for the DOL to conduct an investigation, if necessary, in order to resolve complaints or issues. With no such regulations in place for AI-generated transcripts, consumers would not be readily able to identify whether a court reporter is actually certified or otherwise simply "credentialed" by an unknown and/or unregulated entity.

WAC 308-14-130(5) requires that CCRs: "Provide transcripts on agreed delivery date and give notification of any delays." Without this requirement, some court reporting firms that are contracting with litigants intentionally withhold transcripts for some parties while releasing them to others in order to give the party they are contracted with an unfair "head start" advantage.

WAC 308-14-130(7) requires that CCRs: "Disclose conflicts, potential conflicts, or appearance of conflicts to all involved parties." In the courts, it is understood by all that the court reporter responsible for keeping the record is an employee of the county and is performing their duties independently of all parties. That's a given. Unfortunately, in recent years, large court reporting companies (many now owned by private equity companies) are engaging in contracting with third-party litigants by offering sizeable discounts in order to gain exclusive books of business that are highly profitable. In order to offset discounts given, some companies cost shift to other parties so they pay more in order to allow the contracted parties to pay less.

WAC 308-14-130(8) requires that CCRs: "Be truthful and accurate in advertising qualifications and/or services provided." In Washington, all attorneys know they will have a certified court reporter that has been qualified by testing to report their proceedings. This practice standard prevents firms from sending untrained people to report and transcribe legal proceedings.

WAC 308-14-130(9) requires that CCRs: "Preserve the confidentiality of all information obtained during a proceeding and take all steps necessary to ensure its security." Courts are required by law to establish protocols and maintain strict methods of security and oversight of court proceedings.

WAC 308-14-130(10) requires that CCRs: “Notify all involved parties when transcripts are ordered.” There are occasions when counsel or a litigant order a transcript and request other parties not be notified. Lack of a similar provision would allow disparate treatment of litigants.

WAC 308-14-130(11) states: “All parties shall be notified when a transcript is ordered by a person not involved in the case. If any party objects, the transcript cannot be provided without a court order.” While transcripts are public record once filed with the court, many transcripts of depositions or arbitrations are never filed and never made public. Arbitration transcripts often contain sensitive personal details, medical information, financial records, and business trade secrets. Removing this protection from litigants could result in grave harm.

WAC 308-14-130(12) requires that CCRs: “Supply certified copies of transcripts to any involved party, upon appropriate request.”

WAC 308-14-135 governs transcript layouts; for example, the number of lines per page, number of characters per line, et cetera. While the courts have their own formatting requirements, arbitrations have no requirements in place because they have not previously been in the business of providing certified transcripts. Without any regulations in place, transcripts can end up with very few lines or words on a page and this would likely result in increasing costs for consumers, who are generally charged by the page.

Our justice system is founded upon the premise of providing fair and equal access and equitable treatment to all. Certified Court Reporters must be held to the highest standards, especially at a time when trust in the courts is waning. Most citizens who become entangled in court proceedings find it a daunting and sometimes intimidating experience. It is imperative that they know they will be treated fairly to maintain the confidence of consumers.

Thank you for your time and careful consideration of this critically important matter. We hope we’ve provided useful information for you to consider. We are happy to provide further documents or answer any questions you may have.

Sincerely,

JEOPARDIZING JUSTICE

Phyllis Craver Lykken, FAPR, RPR, CCR, CSR

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**The associations below have formally endorsed this letter of concern as of today's date:**

Protect Your Record Project  
Alaska Court Reporters Association  
California Court Reporters Association  
California Deposition Reporters Association  
Colorado Court Reporters Association  
Connecticut Court Reporters Association  
Illinois Court Reporters Association  
Kentucky Court Reporters Association  
Massachusetts Court Reporters Association  
Minnesota Association of Verbatim Reporters and Captioners  
Nebraska Court Reporters Association  
Nevada Court Reporters Association  
New Hampshire Court Reporters Association  
New Mexico Court Reporters Association  
North Carolina Court Reporters Association  
Oklahoma Court Reporters Association  
Oregon Court Reporters Association  
Texas Deposition Reporters Association  
Utah Court Reporters Association  
Virginia Court Reporters Association  
Washington Court Reporters Association  
Wyoming Professional Court Reporters Association