

# THOSE R.T.'S

By John A. Taylor, Jr., Esq. (First in a series by John Taylor, Esq., on court reporters' appellate transcripts.)

In December 2003, I spoke to the "Reporting on the Record Task Force," a group consisting of court reporters, judges, court administrators, and others charged with the two-year task of evaluating and making recommendations to the Judicial Council concerning possible reforms relating to the reporting of the record in California. I was invited to speak as an appellate specialist regarding reporters' transcripts on appeal.

In preparing my remarks, I gathered comments from the 30 attorneys at my firm, all of whom specialize in civil appeals; from members of the Los Angeles County Bar Appellate Courts Committee; and from members of the California Academy of Appellate Lawyers. I discovered there was a near-consensus on many issues of concern regarding reporters' transcripts on appeal. In this and future articles, I will summarize those concerns.

What seems to matter most to practitioners when it comes to appellate transcripts is *accuracy*. The fundamental rule of appellate practice is that if it doesn't appear in the transcript, it didn't happen – no matter what the trial attorney says to the contrary. An entire appeal may conceivably turn on the inclusion or omission of the word "not" in a particular line of testimony or ruling from the bench, or it may turn on the accurate transcription of an objection to a key piece of evidence or a jury instruction that is necessary to preserve an issue for review on appeal.

One aspect of transcript accuracy is consistency throughout an appellate transcript – with respect to names, technical terms, and abbreviations. This is especially important when more than one reporter is assigned to cover a trial, since different reporters may use different spellings in the proceedings each reports. Pity the poor appellate attorney who has purchased the appellate transcript on computer disk and attempts to search for key terms or names that are spelled different ways

depending on the reporter who transcribed the particular day in question.

Another frustration arises when testimony or argument is littered with gaps marked by bracketed terms such as "[inaudible]," "[coughing in courtroom]," or the repeated use of ellipses. An experienced reporter would ask the witness to speak up or repeat the testimony in question, and most appellate attorneys view such annotations as an indication the reporter was inexperienced or poorly skilled and simply could not keep up with what was happening in the courtroom.

Similarly, some transcripts read as if *all* the witnesses, lawyers, and the judge were speaking English as a second language, another clear sign the court reporter in question was having trouble. Our firm's weekly newsletter often includes items under the heading "Those RT's," [reporters' transcripts] containing the most amusing mis-transcriptions of trial testimony found in transcripts under review that week. (For example, from the "I'm just an unfrozen caveman jurist" archives: "THE COURT: Mr. McMillan, me recess at this point.")

A final concern regarding transcript accuracy arises with respect to the marking and identification of trial exhibits. It is crucial that the correct exhibit number is included in the transcript when an exhibit is first introduced at trial and described by an attorney or witness. Because the exhibit thereafter is normally referenced only by its exhibit number, great confusion arises if the wrong number is used, which may be especially likely to happen when the exhibit numbers range into the hundreds or include letter subparts. Also, these inaccuracies in the body of the transcript lead to problems in the transcript indices. It then becomes difficult for attorneys to identify the correct place in the trial when the exhibit was first introduced and to determine whether a timely objection was asserted and ruled on.

A future column will discuss particular problems that result when transcript indices don't accurately reflect the introduction and admission of trial exhibits.

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*[Editor's note: Computer-aided transcription has certainly become an essential tool for the legal and CART-user communities. However, it has also brought with it those mistranslations that never occurred in "prehistoric" reporting time, when reporters typed their own transcripts or dictated them for transcription. I, for one, was very happy when CAT was born and couldn't throw out my old Stenorette quickly enough. (Stenorette: (obs.) An archaic form of dictation equipment.) But with it came some of those R.T.s that John Taylor wrote about in his article.*

*Upon reading his article, I was reminded of a transcript error that produced quite a few laughs in a deposition-reporting agency I once worked with.*

*During a CAT-reported deposition, the word "happiness" translated as "happy penis." The reporter did catch it upon proofing, made a note to have it corrected, and then turned it into the office computer staff for making the corrections. The computer staff got so caught up in laughing at the mistranslation that they just forgot to make the correction and the transcript went out with the words "happy penis" intact.*

*Fortunately, the attorney receiving the transcript got a good laugh about it, called the agency to clarify that he was sure he did not use those words, the correction was made, the corrected transcript was delivered, and the aggrieved party was fully satisfied.]*

*(Do you have any other instances of incorrect translations you would like to share? Send them to the editor at plmoser@yahoo.com.)*

## COCRA's Legislative Debut

By Maura Baldocchi

One proud step for COCRA, one giant step for real-time court reporting.

On May 19, 2003, COCRA made its legislative debut in a very positive way with the introduction of AJR35. By AJR35, the California Legislature will urge the U.S. Congress to pass legislation to authorize funding for the training of real-time writers across the country. There is an urgent need for this funding in California.

Special thanks go to Assemblyman Mark Leno, 13<sup>th</sup> Assembly District, who authored the resolution. Special recognition is due Barry Broad, COCRA's Legislative Advocate, who was instrumental in drafting AJR35's language, finding an author, and walking it through.

COCRA looks forward to working with its friends at NCRA and in California to pass this legislation.