

# It really is your record now: a conversation about court reporters

By Ian A. Mc Williams



Since 1996, it has been my honor to have a ringside seat for the greatest human dramas imaginable, acted out on a daily basis

courtesy of our commonwealth's incomparable system of civil justice.

As Judge Christopher Muse said during a history lesson to out-of-state counsel at trial in Plymouth County, "We were here first. We made the rules."

During that time, I have also witnessed an explosion of technology that has radically altered the way the business of law is being managed. When I started, deposition videos were distributed on VHS tape, and a transcript was printed and shipped with an early stage electronic copy stored on a floppy disk. Remember WordPerfect?

Nowadays, transcripts with hyperlinked exhibits are delivered to your office, be it brick or virtual, electronically via the internet, and videos come to you on DVD with a synchronized transcript and editing software included (more on that in sidebar).

A witness's testimony can be shown live, around a conference table or around the world, as it is being transcribed. Videos can be instantly edited and shown during trial.

Written testimony can be projected as captions, scrolling below the picture. And all of these great tasks can be accomplished ONLY because of the talents and labors of some very important, yet often unnoticed professionals.

### The stenographers

They do sort of sound like superheroes, don't they? Can you imagine any one individual who can work in a room with between three and hundreds of people and be expected to listen to everything that was said in a day? And be able to know the difference between what is to be written down and what is to be ignored? And



to be able to know and document who said what? Even when more than one person at a time will talk?

Not only that, but this champion of the record must also prepare a written copy with all words correctly spelled, all sentences punctuated and correctly identified as questions or answers; must make sure that all names are properly spelled and capitalized, all acro-

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nyms are identified and defined, and every "mnn-hmm," "uh-uh," "nah," nod and shrug are described. And oftentimes are asked to do all of that overnight, after a long work day taking testimony, in order for counsel to have an expedited transcript.

All of these tasks, individually and as a whole, require such a high level of concentration and attention to detail that it often

takes a team effort, with scopists (professionals who can read and translate the phonetic language of symbols that are the basis of the steno machine; now mostly done by computer software but often still double-checked against the paper) and proofreaders on call at all hours to make sure the record is accurate, legible and complete.

Fortunately, technology and humanity have merged into an efficient compromise between machine and person, enabling the freelance court reporter to produce a first-rate product for discovery purposes.

As the practice of law has zoomed into the Age of the Geek, in our haste to welcome new technology we sometimes overlook what made the previous technology great for its time. Unfortunately, new technologies have driven away an important human element from our courtrooms, with banks of microphones expected to replace the human ear connected to a computer system expected to replace the brain of a human, trained in law and language, entrusted to create the verbatim record of proceedings.

Face it, it is a fate you must all accept. Never again will you utter the comforting words, often used as a break to collect one's thoughts, "Would the reporter please read back the last question?"

And, on top of all that, *you* must now make sure *your* record is accurate. You have nothing else to rely on but a recording. Are you really going to trust a machine with the most important part of your case — the trial record?

I have spent countless hours sitting in courtrooms, observing long, tedious and often boring proceedings from behind a TV or computer, waiting for my few moments of terror (will the video play or crash?), and have gathered a few bits of advice, inspired by my time working with stenographers. I pass along these tips to you in the hopes they will guide you to more than a shot in the dark that your transcript will be complete, legible and accurate.

### What you need to do for yourself now

**Spelling:** Typically, at the end of a deposition or a day of trial, your human stenographer will ask counsel and the witness to clear up any questions as to spelling of certain words said during testimony. A tape-recording cannot ask how to spell words. A tape-recording cannot even ask if you meant to say "to," "too" or "two." My suggestion is to spell out for the microphone, as they are said, any difficult or easily misidentified words. Perhaps, if you feel this might slow down some difficult examinations, a written list may be added to the exhibits at the end of each day, or the recording can be restarted and spellings verbally added at the close of the day's proceedings. In any case, since whoever will eventually type out a transcript of the recording will not have an opportunity to ask the parties for clarification, it is my belief that counsel must now pay much closer attention to what is said, and how it is said.

**Punctuation:** Let's eat grandma. Let's eat, grandma. One sentence is a friendly invitation to dine with a beloved elder relative. The other is evidence of a conspiracy to commit senicide. Do you need that kind of confusion on your appeal petition?

**Acronyms:** A Confusing Regional Or National Yardstick Measuring Sincerity. If your case or experts require the use of copious amounts of acronyms, the least you can do for later readers is to explain what they mean. A recording cannot tell if your weather report is coming from NOAA or Noah.

**Capitalization:** i dont know about you but i never really got into the poetry of ee cummings i need capital letters to let me know when i come to the beginning of a new

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sentence or if a word is a name it is also a function of punctuation but i think that john smith should be recognized in a record as a person and not a bathroom in a forge.

**Accents:** Fust, I'd like to tank yawl for reeding dis article i rote. Exaggeration? Maybe, but wait until you have a nervous client you sometimes have difficulty understanding on the phone. Now imagine someone, somewhere else, will listen to a recording made in a large room with many people, and have to make out what is said. Make sure your witnesses speak loudly and clearly every time they say something, because there will be no other chance to say what they mean and no one to ask them to explain once they leave the stand.

**Voice-overs:** I don't mean narration over images used for dramatic effect, but too many voices at once. A living reporter can and will admonish speakers for interruptions and indistinguishable language and ask that the questions and answers be spoken again. A recording can do what?

**Documents, images and gestures:** Everyone in the room can see what you are showing on the monitor. Everyone who was looking saw the witness point to the spot on the X-ray. Everyone except the bank of microphones around the room. If you want future readers of your record to understand what is happening on screen and in the

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room, you or your witness will need to describe what is happening. Imagine needing to present your physical evidence to a blind juror. If you want your record to reflect anything, you now need to hold up the mirror and describe what you mean.

**Take nothing for granted**

Again, I am just an outside observer with a lot of time spent sitting in courtrooms listening.

And as someone who relies on a reporter's accurate and complete transcript to make my living showing videos, I have come to appreciate all the little things that a competent, experienced, tested and certified stenographer will do to create and protect the record — all the little things you will now have to do yourself in order to make sure you have the most accurate and complete transcript possible.

If you must rely on a recording and unknown transcriptionist or voice recognition software to produce the most important component of your case, then be proactive and detailed in your presentation. Of course, if your case is so important that you will use a freelance stenographer at all of your depositions rather than record them for later transcription, then maybe your case is important enough to ask those same freelance stenographers to come to court with you.

*Ian A. McWilliams has been serving the needs and comfort of court reporters for 20 years and will even go so far as to berate an attorney who might dare to mistreat his reporter. He has had the opportunity to work for some of the greatest reporters in the nation and knows that the stenographer has the hardest job in the room. You can reach him at New England Trial Services. Look for our ad in the MATA Journal.*

**Tips for using video depo clips**

At the risk of telling you my trade secrets, I would like to offer you a tip on using your video deposition clips in presentations. You can even edit your own video playback for the jury.

Using the editing tools that come with the typical synchronized digital video transcript (DVT) disk you receive from your videographer, you can highlight transcript text, use the clip-making tool to create a video file containing your designated text, and save that clip to your computer.

Then, when you have your range of designated clips, you arrange them into a Windows Media Player Playlist, which you title with the name and date of the deposition, and put all those files into a folder.

When it comes time to play, simply double-click on the playlist title in the folder and your Windows Media Player will play your clips in order.

— Ian A. McWilliams



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Since 1996 Ian has been providing experienced, professional audio visual production and presentation services to Trial Attorneys throughout New England. He was the first to bring the power of the personal computer and the art of persuasive presentation into the courtroom and has authored several articles on the subjects in publications including The MATA Journal and The Jury Expert. Ian's work has been an integral part of some of the region's largest awards and settlements including:

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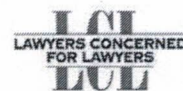
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