



OUTLINE

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Making the Best Record for law students and lawyers

Attorneys make the record – court reporters preserve it

- Importance of an accurate record
 - Preservation for courtroom proceedings
 - Record on appeal
- Methods for capturing a record
 - Reporters with realtime technology
 - Instant viewing of the spoken words through a live feed from the reporter
 - Create issues for the case ahead of time
 - Tag key words to automatically be highlighted (i.e. “objection”)
 - Annotate the transcript with your own notes
 - Make “quick marks” for later review
 - The goal is that all on-the-record spoken words are converted to text.
 - Stenographic court reporters:
 - Make a verbatim stenographic recording of the proceedings
 - Interrupt speaker for clarification when response is inaudible or unintelligible
 - Upon request can read back portions of the proceedings
 - Oversee transcription production
 - Can provide realtime services
 - Voice writers:
 - Make a verbatim stenographic recording of the proceedings

- Interrupt speaker for clarification when response is inaudible or unintelligible
- Upon request can read back portions of the proceedings
- Oversee transcription production
- Can provide realtime
- Audio recording
 - Analog
 - Mostly obsolete
 - Difficult to work with
 - Equipment less sophisticated and creates an inferior recording
 - Must be played on tape player
 - Digital
 - Easier playback than analog
 - Can be played on a computer or other CD player
 - Makes good recording if people stay close to microphone
 - Ability to synchronize notes to audio
 - Text not available prior to transcription
 - Speaker identification and content accuracy dependent on quality of audio recording
 - Electronic court reporter
 - Sets up digital audio recording equipment and conducts sound check on system
 - Reviews the court records and prepares case information for annotations made during the recording
 - Records, annotates, and monitors hearings to ensure an audible record
 - Interrupts speaker for clarification when response is inaudible or unintelligible
 - Advises the participant of equipment malfunction
 - When requested, plays back audio of proceedings
 - Researches the proper spelling of terms, values, names, and figures used during a proceeding
 - Oversees transcript production
 - Maintains computer and audio equipment to ensure an audible record
- Video recording
 - Great for preservation for trial uses
 - Snippets
 - Unavailable witness
 - Can be used in conjunction with a court reporter
 - Audio and video can be synchronized with text for trial use
 - Synchronized record can be quickly searched for easier edits.
 - Tips for making the deposition record
- Preparation and scheduling
 - Provide notice of deposition

- This gives the reporter the case title, parties of record, the witness' name.
- Duration of the deposition
 - Whether a lunch break is anticipated
 - If you anticipate going late
 - If you anticipate long hours, the reporting firm may choose to assign two reporters – one for the morning, one for the afternoon. Testimony obtained after 6:00 p.m. in an all-day deposition quickly degrades as both the questioner and the witness tend to wear out. You typically won't get case-winning, unguarded testimony; you'll get confused answers to oftentimes unintelligible questions.
 - Notify the reporter if you know the deposition is not going to be transcribed and is only for preservation of testimony.
- Alert the reporting firm to special reporting needs
 - Realtime
 - Videotape
 - Special equipment
 - X-ray boxes
 - Models
 - Enlarged exhibits
 - Who is responsible for providing them
 - Interpreter (sign language or foreign language)
 - Children or elderly witnesses
 - Assistive listening devices
- Required delivery time
 - Don't wait until the end of the deposition to indicate you need delivery by the next morning. (Reporters need to arrange their schedule and staffing requirements.)
 - For videotaped testimony for trial, indicate when the playback will be and when the transcript is required for review by the judge
 - Schedule the playback as well as the deposition
- Specify format for final transcript
 - Digital – pdf, e-transcript, ASCII
 - Hard copy – condensed, duplexed
- Preferred skill level of the reporter/type of case
 - Some reporters specialize
 - Argumentative testimony (fast speakers)
 - Chemical
 - Medical
 - Technical
 - Foreign-speaking witness
- Advise court reporter or firm ASAP if deposition cancels
- Inform the reporting firm of travel considerations if known delays due to weather, construction, traffic congestion

- Early start times can cause problems for videographers, especially if the location requires a significant travel time, because competent videographers like to set up at least an hour ahead of time to warm up the equipment especially in times of cold weather.
- Include a map if possible
- The reason it is important to gather the above information is so the reporting firm can better assign the right reporter by matching the deposition's requirements with the reporter's capabilities
- In long cases, consider setting up a team of reporters.
- If the reporting firm has a website, check to see if you can schedule online and review your calendar online so you don't panic the night before wondering if you have a reporter scheduled for 9 a.m. the next day.
- If you're traveling out of town, contact your local reporting firm for recommendations. They may have the ability to manage the case for you, taking care of the scheduling, confirming, arranging of rooms, etc.
- To save your client money and keep you at home with your family, consider using video teleconferencing.
- To obtain the best record – before the first question
 - Consider the room layout and size.
 - If the proceedings last more than an hour or two, reporters should be provided with chairs with backs and padded seats.
 - Be prepared to provide a caption for the reporter to make sure they have the correct venue, parties, and appearances.
 - It is appreciated, if a notice isn't provided ahead of time, that the reporter have a copy they can retain after the deposition.
 - Offer your business card to the reporter (and videographer, if present) to make sure your name is spelled correctly.
 - Write who you represent on the back.
 - In videotaped depositions, most videographers come with four microphones and a mixer. If there are more than four attorneys, letting the videographer know who will be the primary speaking attorneys will help in distributing the microphones.
 - Make sure the reporter has the premier location for hearing both the witness and the attorneys.
 - This is typically between the primary questioning attorney and the witness.
 - Watch posture – facing the witness or attorney, head up, hands away from mouth
 - If marking exhibits during the deposition, let the reporter complete the marking process, which includes both marking the exhibit itself and also

writing the description on his or her machine before you take the exhibit and start asking questions.

- If you know exhibits will be used, consider having them pre-marked.
 - Just use numbers, not letters, nor a combination of both, such as 1A-1, A1-1.
 - Is that “UU” (spoken “U-U”) or “W”?
 - Was that Exhibit 1-A or 1-8?
 - Submark exhibit with decimals
 - Easier to say and easier to hear
 - If you use the same reporting firm throughout the litigation, they can maintain the numbering sequence for you.
 - On technical litigation (medical and product liability for example), consider making an extra copy for the reporter.
 - In large-scale litigation, ask the reporter to retain the exhibits and create exhibit books and indices, as well as digitizing the exhibits and linking them to the electronic transcript.
 - Specify what to do with original exhibits – attached to original deposition, exhibit notebook, etc.
 - Be clear on copies to counsel
- Introducing the reporter (and videographer if present) to parties is always appreciated.
- Make sure you spend time with your witness informing them of:
 - The importance of the deposition and how they’re conducted
 - What it means when you object to the form
 - What to do when the reporter interrupts
 - If you’re asked to repeat the answer, just repeat the answer; don’t explain the answer.
 - If you’re asked for a spelling, please spell slowly.
 - If you’re asked to slow down, it’s in the witness’ best interest to make that effort.
- To obtain the best record – after the first question
 - Remember, as a new attorney taking a deposition, it will most likely be someone else using the transcript to examine/cross-examine the witness at the time of trial. If it’s not on paper, it is not worth anything.
 - Indicate your stipulations.
 - Read and sign?
 - What is the oath of the referee?
 - What is meant by “reserving all objections except objections as to the form of the question until the time of trial”?
 - Be careful with this stipulation when taking a witness’ videotaped trial testimony. If the videotaped deposition is to

be used in lieu of the live witness, objections may be ruled on by the court before presenting the video testimony.

- Make the introduction count (this may be the first impression someone forms).
- Speak clearly.
- Speak at a well-modulated pace.
- Remember that reporters write what is said, typically phonetically, not what is done, pointed to, or gestured, etc.
 - Get clear responses: “uh-huh,” “hu-uh” are not sufficient.
 - This is not for the reporter’s sake. It’s for your senior partner’s sake when he’s pinning the witness down on the answer to *Did you kill Robert Jones?*
- Make your objections verbal for all to hear and wait until your opponent has finished objecting before responding.
- Wait until the witness finishes the answer before you ask the next question.
 - Listen to the answer!
 - What you think you heard might not be what they said.
 - Watch for double negatives or confusing follow-up phrases.
 - You didn’t not want to go?
- Encourage the witness to wait until you’ve finished your question before answering the question.
 - Explain that if they don’t wait, you will have to re-ask the question and it may prolong the deposition.
 - They may be anticipating a different question than you are asking.
- If you follow recommendations above, the transcript will be much more readable, understandable, and usable at the time of trial.
 - If the testimony was videotaped, the playback will make more sense to the jury if there are complete, uninterrupted questions and answers.
- Be sensitive to breaks. It’s easy to talk for eight hours straight. It is very difficult physically and mentally for the reporter to write for eight hours straight.
 - Break every one-and-a-half to two hours.
 - Break for lunch.
 - Be conservative in going late.
 - Bringing in food for lunch for all the participants so that you can finish early doesn’t help the reporter who can’t eat and write at the same time.
- There are no pictures in transcripts.
 - When witnesses gesture, have them describe in words.
 - When referring to exhibits, use left, right, upper, lower, etc.
 - When describing accident scenes, establish ground rules of referring to particular landmarks.

- Be careful when pointing to exhibits to describe where you are pointing. “Did you see him right there?” means nothing in a transcript.
- Be sure to preserve any electronic marking witnesses make on exhibits.
 - Screenshots
 - Print document before moving on
- When using numbers, make sure you’re precise in the decimals and thousands.
 - How do you pronounce 12150? Twelve one-fifty?
 - Is it a dollar amount? (\$12,150? \$12,000, 150? \$121.50?)
 - How will your paralegal search for that number in the electronic transcript?
 - Where does the decimal go?
- When names or geographical locations come up, prompt for spellings.
 - Names in citations need to be spelled out.
 - If you don’t spell the name, give the entire citation. It is very difficult to search for the spelling without a citation.
 - Unusual geographical terms need to be spelled – names of towns, counties, street names, business names.
 - Spell them slowly.
 - Many letters sound alike – S and F; T and P; D, V, and B
 - In very technical cases provide:
 - Bills of Particulars
 - In patent cases, the primary patent number
 - Other key documents that contain the heart of the case
 - Be sure to fully explain acronyms
- Things to remember to prevent confusion in the transcript
 - Sometimes silence is golden
 - New attorneys will oftentimes repeat the answer as they formulate the next question. Unless there’s a specific purpose, the transcript will read clearer with those recitations omitted.
 - The exception is with a witness with a very heavy accent. This sometimes clarifies and assures everyone is hearing the same thing.
 - Be careful of uttering “Yes,” “Okay,” “I see” to portions of the answer as the witness is answering, which is oftentimes an unconscious response of people listening to someone speak, usually an indication of processing the “chunks” of information, and not an agreement to what’s being said, which is how it can be interpreted in a transcript.
 - Some people have a poor concept of east and west and do better referring to “traveling on Main Street going downtown” or “traveling on Main Street going to Williamsville.”

- Tailor the language of your question to the witness.
 - *Subsequent* is not universally understood.
 - *Prior to* is second to *subsequent* in being misunderstood.
 - Most witnesses have not gone to law school. Keep the questions simple and straight to the point (use *before* and *after*).
- What may seem English to you may be Greek to the reporter.
 - You've lived with the case since its inception. You know all the players and the terms that define the issues.
 - The reporter walks in cold almost every time.
 - Railroad cases are classic for the use of seemingly common terms in uncommon usage.
 - Admiralty comes in a close second.
- Reporters are impartial officers of the court.
 - Please do not try to involve them in the prosecution or defense of the lawsuit as it relates to what they may or may not have overheard counsel for the other side do or say outside the deposition room and even inside it.
- Learn how to argue correctly on the record.
 - Talking over your opponent can virtually guarantee it won't be available to read later.
 - Reporters will typically write until the conclusion of the first speaker. If they then have to interrupt, your comments may be lost.
 - It is best to simply state the objection and leave the argument for the judge if it ultimately comes to that. Clarence Darrow was not made famous in the deposition room; it was in the courtroom.
- Establish what "off the record" means.
 - Unless both sides agree, "off the record" has no effect on the well-trained reporter. They will keep on writing until counsel agrees to go off the record.
- Be clear on when you're quoting.
 - Speak clearly and slowly when reading from documents.
 - Admonish witnesses to do the same.
 - Always give a copy to the reporter when reading from the record so that punctuation is maintained.
- Clarify the use of pronouns. ("He pointed the gun at her.")
- Watch out for distractions (clicking pens, rattling papers, jingling coins).
- Be careful with what is confidential and not confidential in trademark/patent cases and other litigation dealing with sensitive material.
 - Remember most court documents, including transcripts, are public records and may be available via the Internet.

- There are not blanks in the transcript for the witness to fill in later. That's what errata sheets are for.
- To obtain the best record – after the last answer
 - Clearly indicate your ordering instructions.
 - Know the local practice for who is responsible for the original transcript and copies for counsel, etc.
 - Don't assume your local practice is the same.
 - Non-party witnesses are different than the normal procedure.
 - Trial testimony is different.
 - If a reporter calls for spellings or clarifications, please try to respond as soon as practical.
- To obtain the best record – after you've read the transcript
 - If you feel there is a problem with the testimony or conduct of the reporter, contact the owner of the reporting firm and let them know about your concerns.
 - The only way a firm can address a problem is if they know about it.
- How to get the most out of a reporting firm
 - Research what services they offer (Internet, telephone call).
 - Know what services you need.
 - Record production
 - Realtime writers
 - Video services
 - Videotaped testimony
 - Day-in-the-life
 - Accident reconstruction
 - Video on CD/DVD
 - Synchronized video with text
 - Video teleconferencing services
 - Electronic transcripts
 - ASCII
 - Litigation support transcript analysis programs
 - Visionary
 - Summation
 - LiveNote
 - Realtime software
 - CaseView Net
 - Bridge
 - LiveNote
 - Summation and others
- Know your technology
 - Realtime technology
 - Record verification
 - Searching
 - Issue coding
 - Annotations

- Equipment and software needed
 - Computer
 - Cables and appropriate port configuration
 - Software
 - Realtime receive software
 - How to enhance your realtime record
 - Searching
 - Marking
 - Annotating
 - Issue coding
 - Report generation
 - Realtime to remote locations
 - Allows others off-site to use the transcript instantly
 - Connection to Internet in deposition
 - Dial-up or high-speed
 - Wireless credentials
 - Anticipate firewall issues
 - Rough draft vs. certified records
 - Realtime/rough draft is for attorney work product only
 - Certified transcript may change as to spelling, page numbers, line numbers, total number of pages
 - Realtime technology
 - View, annotate, and digest testimony as it is being transcribed in “real time”
 - Identify case-specific issues ahead of time
 - Select auto tagging of key words ahead of time
 - Issue highlights can show in distinct colors
 - Quick marks for easy access to portions of the record
 - This advanced delivery is only available when you order a court reporter capable of realtime
 - Request a connection from the court reporter to your laptop
- Litigation support
 - Time-saving, value-added services available from your reporter
 - Synchronizing video and/or audio
 - Scanned exhibits
 - With deposition exhibit stickers
 - Linking exhibits to transcript file
 - Know your preferred transcript management software
 - Acceptable file formats delivered
 - Scanned exhibits
 - Video
 - Audio