

Merced Superior Court Official Court Reporters

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The reporter's transcript is an important document before, during, and after a trial. The transcript and its electronic version are used for trial preparation, briefs, impeachment purposes, and, of course, for appellate review. Property, freedom, and life all can depend on a clear and accurate record. Many cases lost in trial courts are subsequently won on appeal because the record was carefully made in the trial court. *Making the Record* provides numerous reminders and tips to help you make a clear record. Many of them are common sense, but they are precisely the kinds of things that often are overlooked or forgotten during a trial or a hearing. We hope this brochure will help you remember to take the greatest care in making the record.

Awareness of the record

You are aware of the effect your courtroom methods have on the jury. But do you also remember that your words are being reported? The transcript may be read by opposing counsel, appellate judges, legal scholars, future generations of law students — maybe even by Supreme Court justices.

When you keep this fact in mind, you take a big step toward creating an effective, usable record. Remembering that your words are being reported for the record will help you choose them more carefully and state them more clearly. You will tend to eliminate duplication of statements and repetition of questions. Your number of false starts will drop dramatically.

You will tend to present your arguments and evidence more logically.

In short, you will look good, not only in the transcript but in court.

Identification

Whether it's a trial or regular court calendar, unverified presumptions can cause problems. The reporter needs to know who you are, whom you represent. This will prevent you from being referred to in the transcript as an unidentified speaker.

Matters of identification are especially important in multiple-counsel cases. Reporters usually are good at associating names with faces, but they can't do it if they don't get the name right in the first place. You can help ensure a clean record if you identify yourself to the reporter when you rise to speak in a multiple-counsel case.

In today's world of technology, telephonic hearings are commonplace. It is imperative to identify yourself each time you speak during a telephonic proceeding.

What's in a name?

Two things are true about names: Everyone has one, and no one likes it when his or her name is misspelled, mispronounced, or confused with someone else's. But many names sound alike: Terry/Perry, Egan/Regan, Morris/Norris, Hoffman/Coffman, Corcoran/Cochran. Such pairs sound similar and can be mistaken by the reporter and others as well, especially when they show up in the same case. Proper names should be spelled out or enunciated slowly and clearly so there can be no doubt. And even if you pronounce it slowly, chances are the reporter will ask you to spell it anyway. Consider, for example, the case of Mr. White — or was it Mr. Wight? No, it was Weit ... or maybe it was Wyatt.

Overlapping

Overlapping is what happens when two or more people talk or shout at once. Imagine, for example, a heated cross-examination. Counsel asks a question. Before it is completed, the witness begins the answer. At the same time, opposing counsel objects and the court starts to rule. What does the court reporter do when all that can be heard is a jumble of voices at a combined rate of probably 10 words per second?

The reporter has a duty to report and a need to hear and understand. What can't be heard and understood can't be reported. Moreover, if the reporter didn't hear it, most likely other participants and the jury didn't hear it either. The proceeding at this point might be stopped and everyone's train of thought derailed.

This sort of problem can affect a jury's ability to follow a line of questioning. An attorney who continually interrupts the witness's answers should try hard to overcome the habit. Also, if you have a witness who anticipates your questions and starts answering before you are through asking, remind the witness to wait until the question is finished before responding.

At times you might have to interrupt a witness who you think is about to give inadmissible testimony; but these occasions will be relatively few, and they are not an excuse to interrupt to the point that broken statements appear in the transcript.

The basics of courtroom speech etiquette are quite simple: one at a time. There are very few occasions when overlapping speech serves the interests of justice or a client.

Know your ABCs

You've been very kind and spelled the acronym for the reporter, but when you read the transcript, BART has become DARP. Even the spelling of names and other words must be done carefully. M and N, B and D and V, F and S, and P and T are likely to cause confusion. To eliminate doubt, use an identifying name to clarify, such as M as in Mary, N as in Nathan, P as in Paul, T as in Thomas, etc.

Know your 1-2-3s

Numbers are no less subject to confusion than names or letters. For example, when you say forty-one-oh-six, you might mean 41.06, 4,106 or 40,106 — all with or without a dollar sign.

Q. *When did the accident happen?*

A. *One twenty. (A.M.? P.M.? January 20?)*

Q. *What were the damages?*

A. *One twenty. (\$1.20? \$120? \$120,000?)*

Let everyone know what you mean by stating figures in full, followed by the subject they represent. For example:

<u>Say</u>	<u>Transcribe</u>
forty-one-dollars-six-cents	\$41.06
two-point two percent	2.2 percent
six-o-five p.m.	6:05 p.m.
May-nineteenth-nineteen-ninety-eight	May 19, 1998

Show and tell

There is no standard national procedure for marking exhibits. What is customary in one locale might be heresy in another. The marking of exhibits generally is left to the clerk unless the judge or counsel asks the clerk to follow a specific procedure. Here are some tips to keep in mind for the efficient handling of these important items of evidence:

- After an exhibit has been marked be sure the exhibit has been identified by the witness or the attorney into the record. Two or more items often bear the same date, and reference to them by date alone may not be sufficient to clarify the record.
- When referring to an exhibit, identify the item specifically by exhibit number. You also should clarify a witness's vague reference to "that exhibit."
- When you withdraw an exhibit or substitute a verified copy, state for the record that you are doing so.
- When introducing a previously marked exhibit, indicate by exhibit number, not by "this exhibit."

Body language

The simple phrase "let the record show" or its equivalent should be used to clarify every important gesture that witnesses make. By doing so, you can convert otherwise meaningless testimony into a coherent account. Such answers with gestures as "over to about there," "about that long," "he had a bruise here about that big and another one here not quite as large," or "that man sitting there" become meaningless when read.

Reporters may be able to describe some gestures, but they cannot draw conclusions from them. It is up to you or the judge to clarify the record. If the witness nods in answer to a question, the notation "(witness nods)" might appear in the record if a spoken answer is not forthcoming. Here again, remember that you make the record. It would be improper for the reporter to interpret the gesture.

Electronic presentation of evidence makes it easy to slip into poor record-making habits. Everyone can see the document or photo, and you can point to or highlight a portion. Unless these areas are preserved electronically or identified for the record, the exchange can become meaningless.

The out-of-towners

The reporter's ear becomes attuned through experience to the speech patterns and accents of many nationalities, but the reporter often needs help from the court and counsel to decipher testimony of foreign witnesses.

It generally is sufficient for you and the court to gather the gist of the answers — the thought the witness is trying to convey — but the reporter must, for the record, identify and capture all the words. This process takes a fraction of a second longer than understanding the thought. Especially with a foreign witness, you should avoid crowding the answer with your next question.

Using an interpreter can cause special problems. For example, a witness sometimes will understand the question and begin answering in English without waiting for the interpreter to translate the question. It is then your responsibility to instruct the witness to answer only through the interpreter.

Did I say that?

A casual listener at a legal proceeding may be impressed with the clarity of what was said. But the reporter is not a casual listener. The reporter hears and must record the false starts, the mistaken references to plaintiff instead of defendant, inaccurate exhibit numbers and dates, and, often, the unfortunate grammatical errors. Before approaching the reporter with the all-too-familiar “did I say that?”, remember that the reporter is only the mirror that reflects what was actually said, not what was intended.

Quote, unquote

During the course of trial, you might find occasion to quote from citations, depositions, or other written materials. Almost everyone has a tough time reading aloud with accuracy. Keep in mind that if it is important enough to quote, it is worth doing so in a fashion that can be heard and understood by everyone. The ability to speed-read is an asset, but not in court.

When quoting, give the proper reference, and indicate where the quote begins and ends by saying “quote” and “unquote.” When you read testimony into the record, include the words “question” and “answer.” Reporters spend a lot of time verifying excerpts from cases cited during the course of a trial or argument. You can greatly expedite the transcription process by providing the reporter and the court a copy of the quoted materials.

Methyl-ethyl-what?

Through training and continuous education, court reporters, like lawyers and judges, acquire a broad general knowledge. However, in this world of advanced technologies, it is difficult to be familiar with every possible subject matter.

You have the advantage of having prepared your case and thus become familiar with its specialized

terminologies. A reporter who just ended an asbestosis case will not be as prepared for the metallurgical terms that have become like old friends to you during your preparation.

You can help ensure an accurate transcript — and even more so with a realtime display — by providing the reporter with a glossary of technical terms and names. This will acquaint the reporter with the terminology of the case and minimize interruptions for clarification during the proceedings.

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