THE DEPOSITION REPORTER

Deposition Reporters Association OF CALIFORNIA, INC.

2009 SUMMER Vol.1

IN THIS ISSUE

President's Message

My apologies up front to those of you who enjoy the obligatory how-humble-and-proud-I-am, how-great-you-all-are presidential newsletter articles. If that's your preference, you might as well skip this article and all the rest I write this year.

So NCRA has proposed the following:

> MOTION 08-11-13: MOVED, seconded and carried that the Board directs staff to develop a business plan for testing non-members, with the plan to include an assessment of the feasibility and desirability of testing stenographic and non-stenographic court reporters, transcriptionists, and other technologies.

As you might suspect, this action has created quite a stir within and without NCRA's membership. There are at least two polls that have been taken regarding this issue, one on NCRA's own forum. The polls show approximately 80% oppose NCRA's motion. Judging from the e-mail I personally have received, I suspect if DRA ran its own poll, the percentage opposed would actually be much higher.

There is a manner set forth in NCRA'S bylaws and constitution whereby NCRA members are allowed to challenge motions proffered by the NCRA Board of Directors via a Motion to Rescind.

As many of you are aware, DRA has sent out an e-note setting forth its position on the proposed motion by NCRA and the Motion to Rescind. The e-note reads, in part, as follows: "DRA supports its members who believe it is in contradiction to NCRA's Constitution & Bylaws, and outside its scope and purpose, to spend resources and dues money on certifying nonstenographic methods when stenographic reporters are losing jobs all over the country to these competing methods of reporting; further, that it would be very hard, if not impossible, for NCRA to remain an advocate for the stenographic method if it were to test and certify other methods' competency; further, that such endeavor would be harmful to its core members and to the profession as a whole."

The vote on the Motion to Rescind will take place at the annual business meeting on August 6, 2009 at the NCRA convention in Washington, D.C. You must be present to vote.

As you can imagine, there has been much debate over this issue on the NCRA forum (over 22,000 posts on one thread), to the point of some NCRA board members accusing the framers of the Motion to Rescind of being "thought police" and some NCRA members accusing NCRA board members of being influenced by the 1-800 companies.

Besides the very fact that NCRA's Board of Directors thinks that this is the proper path to head down, what surprised me the most is that the vote on this motion was unanimous. We often at DRA board meetings have unanimous votes, but rarely on such a controversial issue. I do understand the fact that, because of their position, board members and officers often have more information at their disposal than their constituents. However, if approximately 80% of your constituents disagree with a proposed action, I suggest it may be time for a little self-introspection.

Of course NCRA's Board of Directors could go back to the drawing board and draft a more narrowly framed motion, thus resulting in the withdrawal of the Motion to Rescind. In my opinion, I doubt that will happen. I doubt that will happen because feelings have gotten in the way of reasoning. At least I hope that is why NCRA's Board of Directors is refusing to reframe this motion. I hope they are not refusing to reframe the motion because, even though we appreciate 80% of you disagree, we know what's best for you, so we're going to do this anyway. Or maybe they truly think this motion will pass. Even though approximately 80% of NCRA's members disagree with this proposed motion, I expect that the firms who will benefit in some manner from the motion passing will see to it they have a lot of supporters present for the vote.

A while back DRA's Board of Directors voted to apply for NCRA affiliation. There was a very spirited "battle" on that issue before and after the vote was taken. Opponents feel that NCRA has lost its way and do not want to belong to such an organization and support it financially. Proponents feel that NCRA may have lost its way, but the only way to help put NCRA back on the proper course is by participating from within. I believe this motion by NCRA supplies ammunition to both sides of that battle.

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Editor's Note:

Since this article was written, DRA has been accepted by NCRA as a full-fledged affiliate of NCRA.

Will DRA be able to help change NCRA's proposed course from within as an affiliate state organization? Stay tuned for updates in future issues.

Members' E-mail

THIS LETTER WAS WRITTEN TO DRA'S PRESIDENT, BY A CONCERNED MEMBER.

ALL READERS ARE ENCOURAGED TO EXPRESS THEIR VIEWS ON ANY MATTER PERTAINING TO THE COURT REPORTING PROFESSION.

John,

Okay, I'm going out on a big limb here, but it's time for DRA to take a position on this unbelievable direction NCRA is headed in.

I would like to see an emergency session of DRA's officers and see if there isn't enough heartfelt desire to separate yourselves from the national organization's direction – and withdraw immediately your affiliation request due to the conflict in ideals. It's all about the money – follow the money, that's what they're after – money, members – and we might as well ask Sony and Martel Electronics to join as well – hell, why not, bring 'em all in.

Those folks have lost their way, that's 100 percent clear – don't walk, run from them.

Sincerely, etc.

Editor's Note: DRA's board voted to support the Motion to Rescind regarding the NCRA Board's motion to develop a plan for testing non-steno methods of making a record.
See articles starting on page 7.

REPORTER SHORT TAKES

(In the "What did we ever do to him?" category)

Governor Schwarzenegger stated the following in a June 8, 2009 NPR radio interview:

"Like for instance, we don't need Court Reporters. I mean, we can do this digitally. Why are we still holding on to Court Reporters? Just because the unions want to hold on and keep their jobs."

State of Nevada
CERTIFIED COURT REPORTERS BOARD
500 North Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Phone: 702-448-8140 Fax: 702-448-8141
Website: www.crptr.state.nv.us Email: NVCCR@aol.com

CONTRACTING IS PROHIBITED IN NEVADA!

According to NAC 656.330 a court reporter or court reporting firm is prohibited from providing services in the state of Nevada if the following conditions apply (otherwise known as contracting).

If the court reporter or court reporting firm:

- Is financially interested in the outcome of the litigation.
- Enters into a financial relationship that compromises the court reporter's impartiality.
- Enters into a financial relationship that creates the appearance that the court reporter's impartiality has been compromised.
- A person other than the court reporter has established the rates being charged.
- The services being provided are ongoing services for all future litigation.
- The provisions of the services agreement appear to give any party an unfair advantage.

IN SHORT, THE COURT REPORTER'S IMPARTIALITY IS OF PARAMOUNT IMPORTANCE AND MAY NEVER BE COMPROMISED.

Example: An insurance company, attorney or client hires a court reporting firm or court reporter based on a written or verbal pricing arrangement for ongoing services of all future litigation involving that client.

MAKE SURE YOUR COURT REPORTER AND/OR COURT REPORTING FIRM IS LICENSED IN NEVADA!

NRS 656.185 and NRS 656.340 - Requirements of a Licensed Court Reporting Firm and a Registered Certified Nevada Court Reporter

It is unlawful for any court reporting firm or court reporter to provide services in the state of Nevada without first obtaining a license and/or certificate of registration from the Nevada Certified Court Reporters Board.

Example: A Nevada licensed attorney contacts the 800 number of a non-Nevada licensed court reporting firm to arrange for the services of a court reporter for a deposition in a case filed in the state of Nevada.

If you need a court reporter for a Nevada case and the deposition is being taken in Nevada, only hire a Nevada certified court reporter or a Nevada licensed court reporting firm.

NCRAs Global Testing Plan Sparks "Motion to Rescind"

In November 2008 the NCRA Board of Directors passed a motion directing NCRA staff to "develop a business plan for testing non-members, with the plan to include an assessment of the feasibility and desirability of testing stenographic and non-stenographic court reporters, transcriptionists, and other technologies."

This motion was reconfirmed at NCRAs February 2009 board meeting, as reported on page 26 of the May issue of the Journal of Court Reporting.

CURRENT NCRA PRESIDENT KAREN YATES EXPLAINS NCRA'S RATIONALE

TO ALL DRA MEMBERS:

Thank you so much for the opportunity to write to you on the subject of the NCRA board's plans to test non-members. With all the controversy focused on one small part of the board's discussions on this topic, it is easy to lose sight of the benefits that may exist for our association and membership, and why it generated such excitement in the board. I want to take time to explain some of the background and the board's thinking on this topic, and summarize the matter at the end.

NCRA members know that there are harsh conditions for the court reporting profession out there – student recruitment down, student graduation rates down, state and national association memberships down, the profession as a whole shrinking, with a large percentage of our profession fast approaching retirement age. The state budget crises and the worldwide economic disaster clobbered court reporters with the same force as every other sector of the judicial system.

All these challenges cannot be viewed in isolation. Every one is tied to the others in some way. The board is convinced that even in the midst of these challenges, opportunities exist to improve the lives of our members.

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DRA PAST PRESIDENT LYNDA GODDARD ARGUES AGAINST THE PLAN

TO ALL DRA MEMBERS:

Along with other reporters nationwide, I am opposing this action. Using a provision in the NCRA Constitution and Bylaws, we will be submitting a Motion to Rescind to be voted on by the membership on August 6 at the NCRA annual business meeting. This motion is not eligible for online voting, so one must be present to vote.

I thank Karen Yates for clearly setting forth the rationale of the NCRA Board of Directors. My purpose in supporting the Motion to Rescind is to allow members to be heard on this controversial plan to explore testing of other technologies, which includes electronic recording/digital audio recording (ER/DAR).

WHY BRING THIS TO THE MEMBERSHIP NOW? NCRA IS ONLY EXPLORING THE IDEA.

It starts with a premise that this action would mean a very basic, fundamental alteration to the nature and purpose of NCRA, changing it from a professional advocacy association for stenographic reporters to a testing entity. Directly from the NCRA website: "Using a single, uniform test would protect stenographic reporters by holding all technologies to the same standard and assure a level

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YATES (cont'd)

We are determined to find them and capitalize on them. Our Total Immersion pilot (to teach stenotype at 225 wpm in close to 12 months) is one step in this long-term plan. There's our legal education initiative, making presentations at every law school in America on making the record and the pivotal role of court reporters in that process. We have expanded support and services for our schools and for our students. There are two new training certificates, Realtime Systems Administrator and Trial Presentation Administrator, which will make our NCRA members even more valuable to the judicial system. There are so many projects and initiatives active within NCRA right now, it was hard to discuss them all within our two-day board meeting in February.

As it does a couple times each year, though, the board lifted its eyes from the immediate horizon to scan far ahead to see what might be developing in the world in general and in our marketplace specifically that could impact the court reporting profession and the NCRA membership. Here's where we returned to our discussion about testing non-members. Let me hasten to say that much of what follows is drawn from discussions among board members and is not formalized and does not constitute a plan; only the launching point for NCRA staff to begin to look into factors that might affect testing.

NCRA now tests non-member steno reporters and voice writers in situations where a state governmental agency mandates the RPR as the certification test and the lack of having the RPR is a bar to employment. NCRA has reason to believe that those sorts of situations will increase. Many states, due to budget cuts, have already looked at removing certification boards, and may instead either not test professionals like court reporters or will default to a national organization's testing procedure. The board has asked staff to immediately make plans to implement testing in such circumstances if they arise. There is the chance also that freelance firms and CART/captioning companies will want reporters and captioners they hire or contract with to be tested, and NCRA is the most likely and most experienced choice for that testing. The firms cannot mandate that independent contractors join the association, and again NCRA cannot refuse to administer our tests if to do so is a bar to employment. We've had two rounds with the Department of Justice where our refusal to test non-steno reporters was challenged as anti-competitive. We

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GODDARD (cont'd)

playing field. In addition to allowing technologies with no or inferior testing regimes to claim equivalence to verbatim stenography, refusing to test other methods amounts to relinquishing NCRA's claim of preeminence as a testing authority." This sentence is clear as a bell; the direction is for NCRA to be a testing authority of all technologies, not just stenographic reporters and support personnel.

If this proposal goes forward, I see three possible outcomes:

1. The board explores it and decides it is not feasible or desirable, in which case time, effort, and resources have been wasted.
2. The board explores it and decides it is feasible/desirable, at which point the membership opposes it; again, time, effort, and resources have been wasted.
3. The board explores it, decides it is feasible/desirable, and implements it without member input, as adding testing categories is not something that requires a membership vote. (Evidenced by the new Trial Presentation Administrator.) By then, it will be a little late to reverse the process.

And once other methods are "certified" by NCRA, it becomes hard, if not impossible, to justify denial of Association membership to practitioners of these alternative technologies. I anticipate it would be only a matter of time before the necessary bylaws amendments would be proposed to create the "umbrella" organization envisioned by some.

Karen mentioned Department of Justice challenges to NCRA's refusal to test nonstenographic reporters as being anticompetitive, in which NCRA prevailed. Frankly, since NCRA is a voluntary professional trade association for stenographers, it is no surprise that NCRA prevailed. Is the possibility of another DOJ challenge a valid reason to explore testing? And if testing nonstenographic record-makers, would it be deemed discriminatory to deny NCRA membership to them?

NCRA CONSTITUTION AND BYLAWS (C&B)

Proponents argue that talking about something or exploring it does not violate the C&B. This is true. My position is that consideration of the C&B should be

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YATES (cont'd)

prevailed both times, but those proceedings were horribly expensive ($75,000 in legal fees in 2003, not including the hundreds of hours invested by our staff.)

In some states, courthouses use both stenographic reporters and digital audio to make their record. I truly wish it wasn't so, but the world has changed and we need to adapt to the world as it is, not as it used to be. (In some states like Nevada – though there are other examples – it was the lack of reporters to cover the courts or the refusal of reporters to take those jobs that incrementally led to digital audio becoming ubiquitous in our courthouses.)

For many court administrators and judges across the U.S., NCRA is the gold standard for testing. If courts request testing for all their reporters and others charged with making the record and NCRA refuses, some other entity will certainly step in to conduct that testing. I do not see a benefit to NCRA or its membership if NCRA loses its position as the expert on testing among court authorities.

This is the situation that now exists in Florida. Because steno reporters are required to sometimes make the record in court and sometimes to transcribe the audio of the proceedings, and because NCRA does not offer a test on audio transcription, steno reporters are required by the courts to pass the AAERT (American Association of Electronic Reporters and Transcribers) test. So we have NCRA members becoming AAERT members, paying testing fees to AAERT, and building AAERT into a stronger organization. I think you would agree that that is a less than ideal situation.

In some states where stenographic court reporters and digital audio monitors/transcribers work side-by-side in court, the stenographic reporter is required to have passed certification tests, be licensed by the state, pay annual fees to maintain their reporting status, receive annual and costly continuing education, and abide by ethical guidelines to keep their jobs, and there is recourse against their license and their ability to earn a living if they mess up. Those who act as electronic reporters in the other courtrooms have none of those requirements. That is not fair.

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GODDARD (cont'd)

addressed before spending valuable time and resources.

The first item under "Purposes" in the C&B is:

> "1. To assume responsibility for leadership and enlightenment of verbatim stenographic reporters and of the public regarding the special competency, importance, and value of verbatim stenographic reporters, and to promote verbatim stenographic reporting technologies by the use of symbols, manually or by stenographic machine, over alternative reporting methods."

To me, it would be counterintuitive to promote stenography over alternative methods while simultaneously testing and certifying them as being acceptable. Truly, I am at a total loss as to how offering an NCRA "seal of approval" to other methods aligns with the purpose to "promote" stenographic reporters. I believe it would be particularly damaging in states that do not have a state test/licensing board, as we have in California.

Another stated purpose in the C&B is:

> "4. To encourage, establish, and maintain high standards of professional education, competence, and performance of verbatim stenographic reporters."

There is no provision or authority in the bylaws for NCRA to establish standards and determine competence of alternative record-makers. I happen to think that should be addressed before exploration.

Also, logic dictates that if testing alternative methods, NCRA would also want to promote education and high standards for practitioners of these other methods. If so, either my dues go toward subsidizing that effort, or NCRA opens its doors to membership.

Think about my outline of three outcomes: Waste, waste, or implementation with ramifications and likely bylaw change proposals. I believe it is prudent to consider the issue now.

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YATES (cont'd)

In those courts, if those who make the record with digital audio had to meet some of the criteria that steno reporters do – at least the testing! – it may raise the level of the people who apply for those jobs, and may cause those folks to demand higher wages. If they have to pay higher wages anyway, hiring entities wouldn't be able to make those budget arguments when debating whether to hire a stenographic reporter.

I have long thought that it is a shame that so many court reporting students hit a plateau and quit school when they are writing between 160 and 200 words per minute. They walk away with a closet full of equipment they won't use, debt they can't pay, and we lose a valuable segment of our profession. If we had an interim certification test for transcribers, these steno writers would make excellent transcribers for judicial and other specialty audio recordings. The students would have a skill they could use, a certification that would demonstrate their qualification to employers, and our schools would welcome ways to bring success to the 80 percent of reporting students who never make it to RPR speeds. NCRA could have a new wave of members entering the association, as we did when we brought in CRIs, CMRSs, and CLVSs. Of course, if employers established that test as the standard for hiring and if other than steno writers sought those jobs, NCRA might be back to looking at testing non-member non-steno writers.

That's a whole lot of "ifs" in just a few paragraphs, which is why I stress that this is not a plan. This is a snippet of discussions that the board has had on the topic of testing. There are innumerable unanswered questions at this point. We have asked NCRA staff to explore the factors, the pros and cons that the board would weigh in deciding if there is merit in any of these ideas. The subject is not ripe for a full evaluation by the board, let alone any presentation to the membership, but we must start to gather information. It would be a dereliction of the board's and staff's duties to simply refuse to look at what is happening around us.

Despite all the complexity and uncertainty of the testing discussions, a segment of the NCRA membership seized upon one item and translated it to: NCRA plans to certify ER! As the message passed from one member to another it became distorted and exaggerated in ways that are staggering to behold: NCRA has abandoned our officials! NCRA has abandoned stenographic court

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GODDARD (cont'd)

NCRA WANTS TO "LEVEL THE PLAYING FIELD." THIS IS A MATTER OF FAIRNESS.

Proponents claim this will help stenographic reporters by holding record-makers of all forms to the same standard, thereby creating a "level playing field." I return to my belief that this would be a fundamental change in direction. NCRA currently is designed to promote stenographic reporting, not to level the playing field, not as a testing authority for all technologies, and not to be a consumer protection entity.

Does *Ford* test *Hondas* and *Toyotas* in order to level the playing field? Of course not. Philosophical differences aside, the danger I see in this proposal is harm to stenographic reporters nationwide once NCRA deems other methods proficient, effectively encouraging their use. It is not hard to imagine those methods then creeping inside our borders, as well as making it harder for our state associations to oppose them.

Karen correctly offers that if ER/DAR record-makers had to meet the criteria that steno reporters do, it "may cause those folks to demand higher wages." An alternate scenario is that it may require stenographers to lower their fees/wages to compete with these newly NCRA-certified record-makers. Both views are pure speculation. Personally, I find it doubtful that ER/DAR operators or transcriptionists will ever raise rates to match a stenographer with years of training. I would be curious to know whether AAERT-certified folks charge more than those without a certificate. If NCRA does the testing, will they suddenly raise their rates?

Karen cited Florida as an example where steno reporters are required to obtain an RPR and AAERT certification to work in court since Florida has no state licensing requirements for reporters. I do not dispute the accuracy of that statement. I can only go by an Internet "Court Reporter I" job posting for Sarasota, Florida, which required an RPR, but no mention of AAERT certification.

In any event, as Karen pointed out, when certification is mandatory for employment, association membership cannot be required to obtain or maintain that certification. I imagine testing fees also must be "reasonable,"covering the cost of development and administration, so as not to accrue profit from nonmembers to benefit members. Thus, testing of other record-making methods will not

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YATES (cont'd)

reporting! NCRA is breaching the Constitution & Bylaws! And on and on in ever more unsavory ways.

Not all of DRA's members may be familiar with the people who are serving this year on NCRA's board of directors. We are 14 volunteer leaders, and every one of us is at least an RPR, with most of us holding higher certifications in stenographic proficiency. Four are officials, seven work in the freelance arena, and two are in CART or captioning. We serve on NCRA's Board of Directors without pay and still rely on the stenographic profession to earn our living. Most of us were leaders in our state associations and continue to be active within those associations. Why on earth would we abandon officials or stenographic reporting?

Let me address a couple points quickly, only because they were raised on the periphery of the discussion surrounding testing non-members. First, finances are NOT what is driving this testing dialogue.

It was the members of the board of directors themselves who initiated the discussion of testing non-members, NOT any staff member. To suggest otherwise is just plain wrong. Board members chart the course for the association and the staff implements our plans, as is true of any organization with volunteer leadership and a paid staff.

NCRA had planned to arrange a meeting with representatives of AAERT, NVRA (the association for voice writers), and the medical transcriptionists' association. The purpose was to be an open dialogue on matters of mutual concern, such as security and confidentiality of outsourced transcription, security and redaction issues with eFiling in the courts, and the need for a full-time maker of the record (not unmonitored equipment) in court proceedings. Although we thought initially it would make sense to plan such a meeting close in time and geography to our annual convention, we decided against that plan. We wanted to foster a mutually respectful dialogue and not hold the meeting on any one group's "turf." In addition, NCRA's board was mindful that some members within our association consider members of these other groups to be the "enemy," and we did not want to create tensions among attendees. In the end, we decided that discussion of these topics in a group setting might not be the best way to proceed after all, and we set this project aside for now.

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GODDARD (cont'd)

generate an influx of money into the Association; that is, unless membership is ultimately offered to the alternate record-makers.

CONSIDERING STUDENTS

We all know most students do not complete stenographic training. However, I do not see offering them alternate careers as transcriptionists or ER/DAR operators, sanctioned by NCRA, as an incentive to persevere. In fact, if these alternate professions will raise their charges to be comparable to a stenographer, why persevere?

Students have plenty of opportunities to use skills while in school or use them should they not complete the program. I won't bore you with the many examples of which I am aware, both in and outside of California. My point is that NCRA finding ways to certify them in some other capacity may have unintended consequences.

WHY THE MOTION TO RESCIND IS CRAFTED AS IT IS:

It is the NCRA BoD that combined everything into one motion (action). I do not know of any way for the membership to oppose part of an action; hence, the necessity to oppose the entire action. If there is a way, NCRA leadership or staff have not offered it, and I am not schooled in parliamentary procedures.

Beyond that, my understanding is that the BoD can revisit this motion and limit it to nonmember steno, proofreaders, scopists. We have allowed plenty of time for it to do so before the convention. In an e-mail exchange with Karen Yates, NCRA President – who has given me permission to share – I stated, "If you have heard the message from members, you have the choice to act upon it." The response:

> "I still see nothing wrong with the board's motion. The board won't be meeting again until August, but I have gotten the sense from our directors that there is no appetite for recrafting the motion. Our intent is the same – to investigate and discuss a plethora of possibilities following a report back to us from the staff. Each of the possible testing scenarios could have a bearing on the others. It makes no sense to separate them into individual boxes and examine them in isolation."

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YATES (cont'd)

This must have been as exhausting to read as it was for me to write. That is, though, the background that led the NCRA board to the strategic dialogue about testing at our November and February meetings. Reaction to those discussions by two members present during the meeting led to the "Motion to Rescind" that is now circulating. If that motion passes at the August business meeting in Washington, DC, I believe it will have consequences that the members do not intend. It does not rescind just the portion of the motion dealing with non-steno non-members, but all the testing plans – those I've enumerated and others that perhaps would have been discovered along the way – contemplated by the NCRA board's motion.

It is widely known and admired that California has been successful time after time in keeping digital audio out of its court system. Of course, we all sincerely hope that it will stay that way. Like Texas, California has an abundance of reporters and reporter training programs. Unfortunately, most of the states, including some of your neighbors, have not been as blessed. NCRA is an individual member association and has to view problems and craft most solutions without regard to state borders. When this subject comes back to the board for a full discussion and if a plan to move forward with non-member testing seems prudent (even though that undoubtedly won't happen while I am still on the board), I have no doubt that the needs of California reporters will weigh heavily in the decision.

The email disseminated to NCRA members by the supporters of the "Motion to Rescind" exhorts reporters to "Let Your Voice Be Heard!" In the midst of all the noise and tumult surrounding this subject, the NCRA board most certainly does hear the voices of our members. We understand their concerns and we take them very seriously. There are many ways of ensuring that NCRA will continue to be an association that meets the needs of its core membership, stenographic court reporters. Regardless of how this issue resolves itself, we must find ways to work cooperatively to meet the very real challenges that face us now and in the future. The board may not get it right every time, but we continue to try to find solutions to our problems. It doesn't help any of us to have some members saying "No!" to every suggestion without at the same time being willing to offer alternative solutions. We either build a secure future together or we're history.

I thank you again for the opportunity to clarify this matter for DRA members. Please don't hesitate to contact me with any questions or comments.

Very sincerely,
Karen Yates, CRR, CCP, CBC
NCRA President

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GODDARD (cont'd)

So we really are at loggerheads. I, for one, do not subscribe to the argument that since there is some good in the Board's action, we must take the bad also. I am genuinely saddened at the characterization that some members are "saying 'No!' to every suggestion without offering alternative solutions." The solution offered is for the Board to amend its own motion to limit the exploration to nonmembers and support trades (proofreaders/scopists), eliminating alternative record-makers.

In closing, I respect the proponents. The issue is simply whether NCRA members want a testing authority and believe NCRA's testing of nonstenographic methods will "level the playing field" to our benefit. I don't. I want NCRA to promote stenography and continue to advocate for steno reporters over alternative methods. I don't believe it can do both.

If you agree, please visit http://motiontorescind.wordpress.com/2009/04/17/we-need-your-support/ and become a signatory. If at all possible, attend the Annual Business Meeting in Washington, D.C., on August 6 to cast your vote.

Sincerely,
Lynda Goddard,
DRA Past President

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CRB Escapes Cuts

On June 22, 2009, the California Senate Committee of Business, Professions, and Economic Development voted to keep the Court Reporters Board in its present form. Senator Ellen Corbett, in fact, offered a substitute motion to retain the Court Reporters Board and the Transcript Reimbursement Fund, which passed by a 7-2 vote. The initial motion was to eliminate the Court Reporters Board due to California's dire budget situation.

Take time TODAY and write Senator Corbett a thank you note:

Senator Ellen Corbett
State Capitol, Room 5108
Sacramento, CA 94248-0001

Editor's Note:

This is why you should call two reporters right now and get them to join DRA – this did not happen without a lot of hard work by DRA's lobbyist and legislative representatives, Stephanie Grossman and Toni Pulone.

Legislator Friends

PROFILE

IRA RUSKIN (D)
ASSEMBLYMEMBER, DISTRICT 21

Assemblymember Ruskin is the author of AB1461, proposed legislation to close a loophole in present law so that all entities providing reporting services must obey the same rules and regulations and be under the jurisdiction of the Court Reporters Board, which is tasked with protecting the consumers of our services. (See related article, page 12.)

Ira Ruskin has been in the California Assembly since 2004 and represents the 21st district, which includes much of the Silicon Valley. He resides in Redwood City and was previously a member of the Redwood City Council.

If you are in Assemblymember Ruskin's district, please call him and thank him for authoring AB1461 and for supporting ethics and fairness in the court reporting industry. His office's number is (650) 691-2120.

To find out who your Assemblyperson and Senator in California are, go to http://www.leginfo.ca.gov/yourleg.html and type in your zip code. Please take any opportunity to let them know who you are and that you are a court reporter. Find out: Are they a friend of reporters? Assemblymember Ruskin clearly is, and we thank him for supporting our profession.

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AB1461: The Opposition Steps Forward

AB1461 is proposed legislation to close a loophole in existing law so that all entities providing court reporting services in California are under the jurisdiction of the Court Reporters Board of California and must follow the same rules and regulations as CSR-owned reporting companies and solo reporters. At present, the CRBC does **not** investigate and/or cite and fine any entity **other than** an individual court reporter or a court reporter who is an owner of a court reporting agency.

On April 15, 2009, The California Deposition Agency Owners & Reporters Association formally objected to AB1461. The listed agent for the California Deposition Agency Owners & Reporters Association, who previously has opposed anti-contracting legislation in California, is Dan Weilen, and the address of record listed is the office address of *Barkley Court Reporters.*

On April 17, 2009 the following companies formally expressed their opposition to AB1461:

Peterson Court Reporting, Veritext
Barkley Court Reporters
Esquire/Paulson Court Reporters
Sarnoff Court Reporters, U.S. Legal
Merrill Corporation.

Their opposition letter, in part, states that "AB 1461 seeks to significantly expand current law . . . notwithstanding the fact that corporate entities are already regulated by other state departments and boards and that shorthand reporters and shorthand reporter corporations are already regulated by the Court Reporters Board."

On April 20, 2009, *Thomson Reuters* registered their opposition to AB1461 stating,

> "We are concerned that the Board does not have any experience or history of regulating such entities, and may not understand the business models employed by such service providers. The Board and the regulations they promulgated are designed primarily to regulate individual licensees and small, reporter-run agencies. While those regulations may or may not be appropriate for individuals, they do not work for larger companies whose primary business is not in the shorthand reporting field, but who nevertheless arrange or broker shorthand reporting services for their clients in conjunction with other productions and services."

AB1461 was amended to address the concern that the professional conduct provisions would apply to lawyers and law firms arranging for court reporting services, but only *Peterson Court Reporting* has thus far withdrawn its opposition.

DRA supports this legislation that would simply make everyone play by the same rules and protect every consumer of our services, not just the large entities, from being taken advantage of due to unfair arrangements for court reporting services. AB1461 is "held under submission" at this point in the Assembly - watch for DRA e-notes for status updates.

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DID YOU KNOW?
(aka "You Should Know if you're a court reporter")

Alexander Gallo Holdings LLC has renamed its family of companies "Esquire," which includes Esquire Deposition Solutions, Esquire Litigation Solutions, Esquire Corporate Solutions, DepoNet, SetDepo, Esquire Staffing Solutions. Also wholly owned by Gallo is Sanction Solutions, provider of trial presentation software.
Thomson Reuters is a conglomerate that owns Livenote, West Court Reporting (court reporting agency), and Reallegal (etranscript) as well as Westlaw, FindLaw, and many other entities.

When in Russia . . .

When in Russia, do as the Russians?

by Christine Randall, CSR, RPR
and Rosalie Kramm, CSR, RPR

We were flattered to be included in a delegation of 37 reporting professionals for the People to People trip to Russia last October. This trip was sponsored by the National Court Reporters Association. The trip focus would be on the Russian judiciary system, but the trip included visits to Red Square, St. Basil's Cathedral, the Kremlin, the Hermitage Art Museum, Peterhof, and the Amber Room at Catherine's Palace.

When in Russia, do as the Russians. Right? We could spend hours discussing our adventure, but this article will be dedicated to their system of justice and our reporting counterparts. But let us say that the people of Russia are beautiful, the cities are colorful, and girls from California have no business buying fur hats. It also should be noted that vodka can really give you a headache.

With that being said, we learned that judicial reform began in 1991 after the demise of the Soviet Union. Russia has patterned its judicial system after the American federal court system. The new Russian Federation has worked toward establishing a court system that gives its citizens rights to a fair trial and to be protected against accusation and judicial mistakes.

The judiciary consists of three different types of courts: a Supreme Court, a High Court of Arbitration, and a Constitutional Court. The Supreme Court hears general cases. The High Court of Arbitration hears economic dispute cases, including bankruptcy. The Constitutional Court determines the validity of laws passed by the Russian legislature.

Generally, more cases go to trial in Russia than in the U.S. There are no pretrial depositions. A defendant in a felony matter can have his case heard by a judge, a 12-person jury, or a three-judge panel. The government can appoint defense counsel for a criminal defendant. There are no sentencing guidelines.

The judge's secretary must have a legal degree and three years of legal experience. The secretary would be the closest thing they have to a court reporter. She prepares minutes of the proceedings. Most lawyers and judges were once court secretaries.

The highlight of our professional tour was definitely at the Constitutional Court in St. Petersburg. There are 19 judges appointed to this court which rules on the constitutionality of the 135 articles to the Russian Constitution. Reporters in this court prepare a daily verbatim record from a video feed. While a proceeding is in progress, reporters type one-minute segments. One reporter then ties all the segments together.

We feel that the Russians are truly interested in a fair and impartial judicial system. It still is evolving. And although their reporters use a different method to capture the record, there was still camaraderie and a shared interest, the desire to accurately capture and protect the record.

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BIT 'O HUMOR

The following "humor" comes from actual church bulletins:

"This evening at 7 PM there will be a hymn singing in the park across from the church. Bring a blanket and come prepared to sin."
"The ladies of the Church have cast off clothing of every kind. They may be seen in the basement on Friday afternoon."
"Low Self Esteem Support Group will meet Thursday at 7PM. Please use the back door."

Toni Pulone's

Depo Diplomat

Dear Depo Diplomat:

I was taking the deposition of a Respondent (husband), with the Petitioner (wife) present. After approximately 45 minutes of questioning, the wife started to jump in, adding things in response to the husband's statement. The questioning attorney turned to me and said, "Swear her in, too." What is the proper thing to do in this situation? Can you have multiple witnesses at the same time, just talking to each other? Any help you can provide for the proper handling of this situation would be greatly appreciated.

Dear Reporter:

There is nothing in the Code of Civil Procedure that prohibits the taking of two deponents' testimony combined in one transcript, though all the instructions given in the CCP regarding the handling of depo transcripts would infer that a single witness at a time is what's anticipated. But it certainly is problematic to combine two deponents in one transcript. First, there's the issue of review and correction of the transcript by a witness. Each witness may correct/change his or her testimony, but if you combine two witnesses in one transcript, then they could attempt to make corrections to each other's testimony, since they would both have access to the same original transcript, and if they were to correct one another's testimony, I would expect that the attorneys involved would find that objectionable and also possibly confusing. Also, you now have two deponents but only one original, so if they both want access to the transcript at the same time for review, how is that to be handled? These two witnesses both happen to be parties to the action, but in a different situation, if one were a party and one were not, technically the party would be entitled to purchase a copy of any depo taken whereas the non-party would only be entitled to purchase a copy of his/her own depo, so then how do you deal with the fact that the non-party is not entitled to a copy of any other witness' depo when they're blended together? And another perhaps smaller issue is that you really have to prepare the transcript so that the witness is identified by name each time he/she speaks, so you have to put it all into colloquy or include the appropriate witness name with each answer, and it could also be an issue that it may not be entirely clear to the readers later who is being asked each question. If the wife was in the habit of interrupting during her husband's answers, the transcript could be very misleading as to who is being questioned, since she could be responding to a question which was actually put to her husband, and vice versa.

So while there is no law or regulation specifically prohibiting this practice, there are many reasons why combining two deponents into one depo transcript is not advisable. Now, whether you could dissuade the questioning attorney from doing this during the depo is another question. I think the proper thing or the wise thing would be to try to discourage him from taking this approach, perhaps by reminding him of the complications involved, telling him that each deponent really must be prepared in a separate transcript for review purposes and for filing with the court, but if you were asked to provide some code section which prohibited the depo from being done this way, there is nothing you could point to that specifically says that. You might remind him that the transcript later could be easily confused or considered unusable since there could always be the question raised as to which witness is being addressed, unless he remembers with each and every question to address the witness by name. You might be able to talk the attorney out of this, or maybe with any luck the opposing counsel will get the idea and object to proceeding in this fashion. But pointing out the problems involved in this dual-witness depo transcript might be the best you can do, and if he's determined to do it this way, then that's that. The only other means of approaching this, if you're brave enough to do so, would be to say that you're sorry, but you cannot blend two deponents together into one depo transcript and they must be done separately, period. If he just accepts your word for that, then that might do the trick. But you'd just have to stick to your guns on that without the benefit of referral to any particular code section for support.

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In the "things that should make you go 'hmmmmmmmm'" category:

Esquire Depo Solutions, an Alexander Gallo Company, is a corporate partial sponsor of the Opening Reception at NCRA's annual convention in August 2009 in Washington D.C.

Vendor Highlights

THIS ISSUE

THE SECOND IN THIS OCCASIONAL SERIES OF ARTICLES FROM COURT REPORTING VENDORS

WHY SOFTWARE AND CAT DON'T ALWAYS "PLAY NICE."

by
White-Boucke Publishing, Inc.
(the people behind the Brief Encounters resources)

Court Reporting professionals, along with other branches of the service industry, are aware of the frightening news announced recently: *Microsoft* has confirmed that the company will be releasing "Windows 7" this year. Windows 7 is, of course, the latest iteration of the personal computer operating system that we have all come to tolerate (all versions up to XP) and hate (Vista).

Why is this news so frightening? Mainly because of three fairly predictable factors:

1. Windows 7 (after much ballyhoo about thorough, comprehensive testing, retesting and re-retesting) will likely NOT cure all the problems associated with Vista. Rather, it will be released complete with a new set of "bugs."
2. Amid marketing claims of ultimate backwards compatibility with existing applications, Windows 7 will frustrate those who rely on fast and stable programs, causing software publishers from *Adobe* to *Z-Soft* to rush to release new device drivers and application updates, fixes and patches, some of which will also come complete with a new set of "bugs."
3. Despite 1 and 2 above, we will buy into Windows 7 with open arms, telling ourselves that the printing/writer interfacing/CAT crashing/permission denying has "gotta be better than last time."

So, why? Why all the bugs? This stuff is expensive, why doesn't it work properly?

The simple answer is – **It doesn't work properly because it is expensive!**

In order to understand this seemingly silly answer, one must appreciate some recent history.

In the beginning, The personal computer was the brainchild of "Big Blue," who placed as many overpriced gray metal boxes and noisy matrix printers in as many offices as possible, then declared that the concept had no future at the personal level. They never worked that well – and they were expensive. With *IBM* out of the way the industry thrived, hardware and peripherals improved in speed and power under the stewardship of garage-based clone manufacturers who grew to become *Acer, Compaq, Dell* and *Gateway*.

None of this could have happened without a range of software applications that could make life simpler (ironically, by making life more complicated). Word processors replaced the typewriter/dictionary/carbon paper/white-out team; spreadsheets replaced pen-and-ink journals; and the database was born, allowing us to devote half of our lives to recording, cataloging, searching for information on everything we own and everything we ever did. Finally we were blessed with the internet, which replaced everything else.

As the western world drifted towards dependency on the personal computer, technology entrepreneurs sought lesser markets to develop specialized software . . . and the early DOS versions of CAT programs were born.

The incredible growth that occurred over a small period of time forced software publishers to change focus. In the space of a few years, technical innovation took second chair as the "bean counters" took over. The first casualty was product support – cheaper, smaller, poorly-written manuals and pay-as-you-go technical support. Next, prices climbed steadily as companies went public, resulting in increased overheads and shareholder demands for profit! profit! profit!

cont'd on page 16

Vendor Highlights cont'd.

The unfortunate consequence of this was (and remains) the corruption of development budgets and strategies. In the pioneering era, software publishers could-and-would design newer versions of their product(s) to add features (many of them being customer requested) and improve performance. A new releases of a software application would be released when it was ready, when it had been exhaustively tested, when it had been suitably debugged. The replacement development model enforced cost-reductions by:

- Defining a release date for new versions of software early in its development cycle, thereby placing a finite budget to the creation.
- Increasing the frequency of new version releases in order to flatten a product's sales decay over time.
- Reducing the new features of a new release, thereby justifying future new releases. In some extreme cases, new versions merely correct old faults and/or swap menu items around and rename button functions!
- Cutting back on final product testing (commonly called "beta testing") prior to release. This is ofttimes justified by the philosophy that "**90% accuracy is fine. 100% is just too expensive – We'll let the customers do the final 10% for free."** (Can you imagine this attitude working for depo transcripts?). Even worse, more cutbacks can occur in order to protect the hallowed release date cited above.

It is that last factor that is the root cause of customer frustration. When it is applied to your computer's operating system (typically *Microsoft* Windows), a small bug can snowball through to your writer interface, printer driver, internet connection, etc. When it is applied to your CAT software, it can cause a program crash and loss of transcript in mid-deposition.

That fateful 10% possibility of error in a $50 utility is little more than an annoyance. In a $5,000 CAT program with all the bells and whistles, it is another matter. **And that is why it doesn't work properly . . . because it is expensive!**

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Job Security: AUDIO TRANSCRIPT JOB

In these tough economic times and with the shortage of depo settings, we sometimes have to resort to other ways of making money. So when I received a call from a man who was incarcerated asking me to transcribe a CD for him of a hearing in US District Court, I thought, this would be an easy way to fill in the income gaps.

After downloading the special software to listen to the CD, I found out it wasn't as easy as I thought it would be. There were four tracks with controls for each track, but there was background noise that made it sound like they were in a wind tunnel. I played with each control, trying to get rid of the background noise, to no avail. I think the microphones were probably on a desk or table and were picking up air conditioning instead of people's voices. I could hear the judge fairly well, but could only pick up about every fifth word of the defendant and could barely hear his female attorney's soft voice.

So I called the gentleman back and said it would be an impossible task to transcribe and there would be too many inaudibles. This man was in jail and was representing himself and was insistent that the hearing be transcribed. So I called the clerk's office and asked if they had any better copies of the recording. The clerk said she could send me another CD but it would sound the same. So I said, "Well, thank you for my job security. Because if this is the best you can do, it's a pretty good argument for keeping a live court reporter in the courtrooms."

I'm bothered by the injustice to individuals who are relying on this means of making a record and having it be absolutely useless to them. And I'm hoping that he will complain to the powers that be that he was denied a transcript of a hearing that was obviously important to him. Cost savings can be very costly in terms of not having a clear and accurate record of court proceedings. This gentleman now wants a reporter to report his next hearing, at his expense, because he doesn't trust the system that's in place now.

Linda Pugliese, CSR

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Delaware Loses . . .

Delaware loses Prohibition of Contracting and CSR Licensure

In March 2009, *Esquire Deposition Services* filed a lawsuit in Federal Court asking that the anticontracting provisions of Delaware's Administrative Directive AD132 be declared unconstitutional. Esquire was previously charged by Delaware's Board that regulates court reporters with violations of AD132, and a review board was tasked with investigating the charges. Before either the charges against *Esquire* or the federal lawsuit were resolved, Delaware's Supreme Court rescinded AD132 completely, which also included the requirement for CSR licensure in addition to prohibiting special financial arrangements between court reporters and litigants.

The court order can be read at www.ded.uscourts.gov/LPS/opinions/Apr2009/09-206.pdf

To see *Esquire's* reaction to the rescission of AD132, go to www.esquire solutions.com/news/news051909.html.

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. . . Georgia Fights

Georgia and Esquire Battle Over Gift-Giving

In September 2008, the Board of Court Reporting of the Judicial Council of Georgia initiated a grievance proceeding against *Brown & Gallo, LLC* (now *Esquire Deposition Services*) alleging a possible violation of the Ethics Code "based on the giving of promotional gift cards in connection with the scheduling of depositions."

From May 2008 through September 2008, *Brown & Gallo* conducted a promotion whereby they offered a $25 gas card for each deposition scheduled. The Ethics Code limits "any gift, incentive, reward or anything of value" to a maximum of "$50.00 in the aggregate per recipient each year."

In October 2008, *Brown & Gallo* responded by filing a lawsuit in the Superior Court against the Board and the Judicial Council of Georgia alleging, among other things, that the "Rule is invalid in that it is vague and ambiguous, unreasonable, arbitrary and capricious, overbroad and exceeds the scope of the Board's rulemaking authority."

In their complaint *Brown & Gallo* gives examples of their competitors offering gas cards, restaurant gift cards and *Visa* gift cards. They also assert that they and their competitors have competed for business by paying for, among other things, clients' meals and entertainment.

Brown & Gallo is asking the Court to stay the Board's grievance proceeding against them and to declare that the Board's Ethics Code "violates the laws of the State of Georgia and the Constitution of the State of Georgia."

To read the full text of the *Brown & Gallo* complaint, go to www.courthousenews.com/2008/11/10/BrownGallo.pdf. Details of the gas card competition can be found at www.galloreporting.com/gasrules/.

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Video Audiosync Tech Tip

If you want to get better audio quality in your BAM (backup audio media) file on video jobs, here's how.

You need three things:

1. Headphone splitter with separate volume controls (*Amazon* for $10 or less)
2. In-line volume control (*RadioShack* for $9)
3. Cable with 1/8 inch male plugs on both ends (*RadioShack* for $6 to $12 depending how long you want it; 3 feet to 6 feet is plenty).

Attach the headphone splitter to the output from the videographer that he gives you for the headphones. In one of those now two plugs insert your headphones. In the other plug goes the extension cable with the in-line volume control attached to it and then plug the other end into the mic input on your computer. Most CAT softwares have an audio volume bar of some sort so you can see the proper recording level. Set the splitter volume control to zero and then adjust the other volume control accordingly. The audiosync quality is better than that of the audiocassettes still given by most videographers, and it is synced to your CAT file (an advantage over the MP3 files provided by some videographers).

Tamar Wolfe, CSR

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April's Briefs – Medical

ANESTHESIA	STHAOEZ or THAOERB
ANESTHESIOLOGIST	STHOLGS or THOELT
ANESTHETIC	THET
ANESTHETIZE	STHIS
BIOLOGY	BAOILG or BOLG
BIOLOGIC	BL-J
BIOLOGICAL	BLOLG or BLAL
BIOPSY	BOIP
COLONOSCOPY	KLOIPS
ENDOSCOPY	END/SKOIP or SKROP
ENDOSCOPE	SKROEP
ENDOSCOPIC	SKROIPG
CARDIAC	KAURK
CARDIAC ARREST	KAURKT
CARDIOLOGY	KAURLG
CARDIOLOGIST	KAURLT
NEUROLOGIC	NURK
NEUROLOGICAL	NURKL or NURL
NEURAL	NAOURL
NEUROLOGIST	NURLT
RADIOLOGIST	RAOLT
RADIOLOGY	RAOLG

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NOTE:

April Heveroh's extensive collection of steno briefs includes outlines sourced from Laurie Boucke's "Brief Encounters" family of products. Such entries are included here by kind permission of White-Boucke Publishing, Inc.

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DEPOSITION REPORTERS ASSOCIATION

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DRA represents Certified Shorthand Reporters who report depositions and out-of-court proceedings in the State of California, who wish to promote a broader understanding of freelance reporting.

DRA strives to preserve and enhance the reporting profession, ensure its integrity, and maintain its high standards and impartiality wherever a verbatim record is required.

DRA is committed to ensuring that the shorthand reporting profession remains a viable and integral part of the legal system.

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E-mail: cal_dra @yahoo.com Website: www.caldra.org

Items marked with an asterisk (*) are required to process your application.

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Firm Name _____ DOB _____

*Mailing Address _____ *City/State/ZIP _____

Home Phone _____ *Office Phone _____ Fax _____

E-mail Address _____

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