

People You Should Know

BY THOMAS M. DUNLAP¹



Thomas M. Dunlap
Riley & Dunlap, PC

If we are honest, those of us who frequent courtrooms must admit that we are often bored, exasperated, and even aggravated by what goes on there and by the actions of some who spend time there, but never by those who spend the most time there: court reporters. They deserve our gratitude and politeness. You should learn something about them, meet them, and work *with* them. No one spends more time with your judge than your judge's court reporter. Do you think they talk?

The History²

There is a patron saint of court reporters – “St. Cassian of Imola, a shorthand teacher who was martyred ... in Italy” and beatified by Pope Pius XII in 1952.³ Court reporters have a wonderful creed adapted from a poem by reporter W.C. Jones.⁴ Here are some of the creed's highlights:

My profession stems from man's desire and his necessity to preserve the happenings of yesterday and today for tomorrow.

.....

I was with the founding fathers of The United States when they drafted the Declaration of Independence.

.....

The immortal Abraham Lincoln entrusted me to record the Emancipation Proclamation.

.....

My profession protects the truthful witness, and I am a nemesis of the perjurer. I am a party to the administration

of justice under the law and the court I serve.

.....

I am the verbatim Court Reporter!⁵

The Greek historian Xenophon is said to have developed a shorthand system to preserve the writings of Socrates in the third century B.C.⁶ Around 63 B.C., Marcus Tullius Tiro recorded a speech by Cicero substituting abbreviations (e.g., the ampersand (&)) for commonly used words.

Despite this auspicious debut, by the Middle Ages shorthand became associated with witchcraft and virtually disappeared. In 1588, Timothy Bright published “Characterie,” which broke the spell and started the modern era of shorthand.⁷ The Bright system used more than 500 characters or symbols that reporters were required to memorize.

The alphabet-based shorthand system took hold in England. Samuel Pepys – THE DIARY OF SAMUEL PEPYS – used it in his writings, as did Charles Dickens. Dickens served as a parliamentary reporter and this “tribute” to the difficulties of the craft can be found in his book, DAVID COPPERFIELD:

I bought an approved scheme of the noble art and mystery of stenography (which cost me ten and six pence); and plunged into a sea of perplexity that brought me, in a few weeks, to the confines of distraction. The changes that were rung

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upon dots, which in such a position meant such a thing, and in such another position something else, entirely different; the wonderful vagaries that were played by circles; the unaccountable consequences that resulted from marks like flies' legs; the tremendous effects of a curve in a wrong place; not only troubled my waking hours, but re-appeared before me in my sleep.⁸

In 1750, the shorthand system of Thomas Gurney was published. The use of shorthand entered the courtroom when Joseph Gurney, Thomas Gurney's son, reported the trial of William Hastings, who was accused of high crimes and misdemeanors after becoming governor-general of India.⁹

Isaac Pittman created a phonetic-based shorthand system in 1837. The Pittman System remains the predominant system in England, but not in the United States. Fifty years after the Pittman system was created, John Robert Gregg created a system based on the use of cursive rather than geometric symbols and taught his system at specialized schools.

By 1879, Illinois court reporter Miles Bartholomew patented a shorthand machine that pushed the pen to obsolescence in court reporting.¹⁰ The steno machine was refined by Ward Stone Ireland to include a high speed keyboard with 20 keys.¹¹

And now, the system has developed to computer-assisted transcription



and real time reporting – the witness speaks; the court reporter keystrokes the words on the stenograph; and software instantly generates words across a computer screen.

Today, court reporters fall into two camps: the stenotype court reporters and the voice writing court reporters. Both record – verbatim – what lawyers, witnesses, judges, and others say in court proceedings and transcribe that communication into written form. The stenographic court reporters use key strokes. The voice writing court reporters use their voice, muted by a stenomask and supplemented by electronic/digital recording. Charles Russell, who was a court reporter for Judge John M. Cave in the 13th Judicial Circuit, used the mask technique for many years and, in my experience, didn't

miss a word. Judge Cave, always considerate, frequently asked lawyers in his courtroom if their arguments were to be on the record and, upon confirmation that the record wasn't required, would tell his reporter: "Rest your voice, Russ."

Do you realize that the National Court Reporting Association suggests licensing requirements that court reporters meet a writing speed of 225 words per minute?¹² Fortuitously for our court reporters, only a few of the central Missouri lawyers think at that speed and at least some have an Ozark twang that idles at 55.

The Legal Requirements

The Supreme Court of Missouri, by its Rule 14, established a Board of Certified Court Reporter Examiners. The board regulates the examination

content, conducts examinations, establishes standards, and certifies successful applicants. If you are 18, and “of good moral character,” you can apply for the examination to become a court reporter.¹³ However, you must pass proficiency exams ranging from 180 wpm (one-voice dictation) to 225 wpm (two-voice question and answer), with 95 percent accuracy; and score at least 80 percent on the General Knowledge Test.¹⁴

Certified court reporters must complete 10 hours of continuing education every year and they are subject to discipline. The Supreme Court may suspend or revoke a certificate for good cause shown after a hearing before the board. In order to be an official court reporter, you must first be a certified court reporter and then be appointed by a judge.¹⁵ As long as in good standing under Rule 14, the official court reporter serves at the pleasure of the judge. By definition, then, all live reporting in a courtroom is by a certified court reporter who is also an official court reporter.¹⁶

Appeal, Court Reporter, and You

It is the obligation of the appellant to prepare the legal file and transcript in appeals from the trial courts of Missouri.¹⁷ “Within ten days after the notice of appeal is filed, [the] appellant shall order the transcript, in writing, from the [court] reporter.”¹⁸ The “[c]harges due for [the] preparation of the transcript shall be paid as directed in § 512.050, RSMo.”¹⁹ The rate is \$2 per original page and 35 cents per copy.²⁰ In the event that the actual charges due for preparation of a transcript cannot be readily determined, a deposit in the amount of the estimated charge due for preparation of the transcript shall be paid within the 10-day window. After filing a notice of appeal, the failure of the appellant to take the further steps to secure the review

of the judgment or order appealed from does not affect the validity of the appeal, but is grounds for such action as the appellate court deems appropriate, which may include dismissal of the appeal.²¹

The record on appeal is due “ninety days from the date of the filing of notice of appeal in the trial court.”²² If you have not made a timely filing of the record of appeal because of delay in obtaining and presenting the transcript, all of the appellate districts of Missouri require submission of a sworn court reporter statement to support a motion to extend the time for filing the record on appeal.²³ Of course, only your trial court reporter can provide the sworn statement to extend your impending deadline.

A Dozen Practice Tips

1. You don’t have to file an appeal to obtain a transcript. Court reporters can transcribe and prepare a transcript (partial or whole) upon appropriate request and deposit. I have had clients who simply wanted a copy of the transcript. I have had partial transcripts prepared because sometimes I read better than I listen.

2. If permitted by rule or approved by the judge, you can mark your exhibits before you announce, “Ready.” In the 13th Circuit, plaintiffs use numbers, defendants use letters, and other parties use what the court reporter tells their lawyer to use.

3. Even if you can’t pre-mark exhibits, prepare an exhibit list for the reporter (and judge). A typical exhibit list has this format:

Exhibit Number/ Letter	Action Taken	Date	Time	Description

4. Don’t speak until the court reporter is ready. You can tell if the court reporter is ready by making eye contact with the court reporter.

5. Tell your witness (and remind yourself): one person speaks at a time.

6. When you are at the bench, out of the hearing of the jury, the court reporter may have to relocate her stenograph. Don’t speak until the machine is relocated and the court reporter is ready.

7. You want to make sure that every word (or relevant gesture or reaction) occurring in the courtroom is transcribed. Otherwise, the record is not complete. An incomplete record is not the problem of the judge or the court reporter. It is your problem, and the problem will magnify itself if you become the appellant.

8. Don’t stand between the court reporter and the person speaking, e.g., the expert witness who leaves the stand to use an exhibit; the other lawyer – okay, some things are accidental.

9. Tell your witness not to respond non-verbally – “How do you transcribe that?” Corollary: get a verbal, English word response to your question. Corollary to corollary: “uhh” and “unh unh” are not acceptable verbal responses. They will happen, so the follow-up: “Is that a yes?”

10. If you can’t hear or understand the witness, neither can the court reporter.

11. It is not the court reporter's job to keep up with your exhibits, in kind or by number. She does so by sympathy, if engendered.

12. You are not the boss of the court reporter. The judge is the boss of the court reporter.

Conclusion

Court reporters have a unique talent and they know so much. Of course, some things they can't tell you; after all, they are sworn officers of the court²⁴ and keep the confidences reposed in them. But, they can help you do your courtroom work and, on that, you can quote me.

Endnotes

1 Thomas M. Dunlap is a partner in the Fulton firm of Riley & Dunlap, P.C. He is a graduate of Westminster College and the University of Missouri-Columbia School of Law. He has been in the general practice of

law for 38 years in Callaway County.

2 *History of Court Reporting*, Natural Court Reporters Association; available at http://www.courtreportingofamerica.com/law_stenographer.html.

3 See http://www.courtreportersmuseum.info/imola_history.htm.

4 The creed is reported to have been excerpted from Jones' speech given at a 1964 Kansas Shorthand Reporters Association meeting; available at <http://www.ncra.org/About/content.cfm?ItemNumber=10144>.

5 The Court Reporter's Creed, available at <http://www.courtreportersmuseum.info/images/Original%20Court%20Reporters%20Creed%205.jpg>

6 *History of Shorthand*; available at <http://www.t-script.co.uk/history.php>.

7 *Id.*

8 CHARLES DICKENS, DAVID COPPERFIELD 228 (Harper & Brothers 1872).

9 ROBERT WOODGER BOWERS, SKETCHES OF SOUTHWARD OLD AND NEW 32 (William Wesley & Son 1905).

10 GREGORY J. DOWNEY, CLOSED CAPTIONING: SUBTITLING, STENOGRAPHY, AND THE DIGITAL CONVERGENCE OF TEXT WITH TELEVISION (JOHN HOPKINS UNIV. PRESS 2008).

11 *Id.*

12 See <http://www.ncra.org>.

13 Rule 14.05.

14 Study Guide for the Certified Court Reporter Examination, Board of Certified Court Reporter Examiners (revised August 2011); available at <http://www.courts.mo.gov/file.jsp?id=29720>.

15 Section 485.040, RSMo 2000.

16 *Id.* I am aware that court reporters do other jobs (depositions, legislative). My focus here is the official court reporter.

17 Rule 81.12.

18 *Id.*

19 *Id.*

20 Section 488.2250, RSMo Supp. 2012 (revised and effective 90 days after adjournment of the 97th General Assembly to "\$3.50 per legal page for preparation of a paper and an electronic version of the transcript") S. 100, 97th Gen. Assemb., Reg. Sess. (Mo. 2013), signed by Gov. Jay Nixon on July 2, 2013.

21 Section 512.050, RSMo 2000; *Botkin v. Cain*, 587 S.W.2d 100 (Mo. App. S.D. 1979).

22 Rule 81.19(b).

23 Missouri Court of Appeals-Western District Rule XV; Missouri Court of Appeals-Eastern District Rule 340; and Missouri Court of Appeals-Southern District Rule 3.

24 Section 485.040, RSMo 2000.



You can't practice law and not be exposed to human error...

"If you drive a car for 20 years, odds are you will have an accident. If you practice law for 20 years (or in my case 32), you will get sued. You can't practice law and not be exposed to human error, or more likely, unreasonable client expectations regarding lawyers and our legal system. The Bar Plan provided me with first class legal representation and the financial security of knowing I have coverage I can depend on."

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