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PERSPECTIVE

Beware the deluge of AV operators replacing CSRs in depositions

By Early Langley

Claiming a shortage of Certified Shorthand Reporters, big box court reporting firms are sending audio/visual operators to depositions in California under the guise of being CSRs. The AV operators, who are also notaries, swear in the witness. They mark exhibits.

Nobody realizes what's going on until an attorney or a witness asks to have something read back. The AV operator's voice-to-text translation — if they even have it — or simple audio recording, is either not there or garbled due to faulty audio or because too many people are talking at once and it is unintelligible. Or the AV operator cannot find the correct question and/or answer to read back.

Or exhibits are lost. Or the exhibit chain of custody is broken.

Too late. The damage is done. And that's only the beginning. The noticing attorney doesn't know what's going on.

The AV operator sends the media to the "mother ship," who then sends the media off to... who? Could be offshore, could be inside the U.S. shores. And what about security issues? What are the chances that the "Sealed — Attorneys Eyes Only" transcript containing highly confidential financial information of a corporation in a punitive damage claim case gets hacked or leaked out over the internet? Too late. The damage is done. It's leaked. The noticing attorney doesn't know what's going on.

After the mother ship sends out the tapes, an untrained transcriptionist gets a hold of the tape recordings and begins the laborious task of putting audio to paper — a process which can take four to five times as long as the deposition itself. An unexpected expedite deadline would likely not be met in time

to rebut an expert witness at trial or adequately argue page/line designations.

Take the usual deposition. The transcriptionist sitting in a remote location plays the audiotape. And plays it over and over. Noise problems. Buzzing from cellphones. Mics with interference. Sirens outside. People talking at once. Emotions intense. The noticing attorney interrupts the witness with a re-sounding, "Nonresponsive," and a myriad of long objections get made at the same time that the witness is answering the question. Critical words are lost. The transcriptionist

Next time you book a deposition, double-check with the reporting firm that you are getting a California Certified Shorthand Reporter and if it is noticed for videotaping, ask for a CLVS.

is left with "unintelligible" which in California is prohibited under the code that applies to CSRs.

Is the AV operator trained to interrupt when two or three people speak at once to prevent the obvious problems of the "unintelligible"? Are they paying that close attention? This reporter has seen some nod off.

Does the AV operator know the notary public statute, Government Code Section 8205(a)? If the AV operator is going to perform the duties of a Certified Shorthand Reporter, does the AV operator know the codes applicable to CSRs? One attorney wants to go off the record, the other vehemently objects. Stay on? Go off? This reporter has had to interrupt the AV operator and ask the attorneys for agreement of counsel to prevent a violation of the code. How about if a nonparty asks for the deposition and/or exhibits of an expert witness? How about if the copy of the deposition is offered to one party and not another?

Make no mistake, they can be

very good, but they do not hang off of every word.

Certified Shorthand Reporters hang off of every word. They are certified by the state of California. They are bound by statutes found in Code of Civil Procedure Section 2025.320. They are the guardians of the record. They are officers of the court. Their duties include swearing the witness, marking and taking custody of exhibits, citing the witness and following all ethical rules regarding when to go off the record, certifying the transcript, preserving notes if not requested transcribed, handling the signing of

by the National Court Reporters Association. They are bound by ethical standards and practices that promote the quality of the record. They maintain continuing education units as CSRs do with NCRA, California Court Reporters Association, and other state associations.

More and more videotaped depositions are shown in trials either because they are expert witnesses or the witness is unavailable, too ill, or too far away. If the quality of your videotaped deposition is poor or the exhibits are lost, the consequences may be costly to you and to your client. The jury may form a negative view of your key witness.

Next time you book a deposition, double-check with the reporting firm that you are getting a California Certified Shorthand Reporter and if it is noticed for videotaping, ask for a CLVS. If you find yourself in the unenviable position of discovering that an AV operator is the only thing you've got — no CSR — insist that whoever is going to transcribe the audiotapes is a Certified Shorthand Reporter who, though not there and present, will certify the transcript with that limitation.

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the depo by the deponent, keeping custody of the original pursuant to code.

AV operators are not licensed in the state of California. If they have a notary public and have passed a six-hour course, they are authorized to swear a witness in. There is nothing in the 2019 Notary Public Handbook published by the California secretary of state that advises a notary public on how to take the kind of deposition CSRs take. In fact, they advise against it. "A Notary cannot record a deposition in shorthand unless the Notary is also a certified court reporter. A Notary Public may take an oral deposition by writing it out in longhand or typing it out on an electronic device. If a Notary Public is asked to take a deposition and he or she is not a certified court reporter, the Notary Public should inform the person of the required method to take the deposition."

The most "certified" type of AV operator is a CLVS, a Certified Legal Video Specialist, certified



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