



Computer-Readable Transcripts

By John A. Taylor, Jr., Esq.

This is the fourth in a series of articles based on comments from appellate practitioners regarding reporters' transcripts on appeal. The comments were presented to the "Reporting on the Record Task Force" in December 2002, and this article addresses the topic of computer-readable transcripts.

Appellate attorneys have an ambivalent relationship with reporters' transcripts in electronic format. Mostly, we love them.

Loaded into a good database search program (we use "Isys" at my shop), they can be an incredible time-saver. For instance, they can be searched to quickly find all the trial testimony on a particular topic, or to jump from one record cite to another by plugging in the page number. No more pulling multiple transcript volumes off the shelf or trying to locate a particular transcript in a scrambled pile. Another great advantage is the portability of an electronic transcript – 10 or even 100 heavy transcript volumes can be loaded into a laptop computer and accessed anywhere.

But all is not sunshine in the relationship between appellate lawyers and e-transcripts.

For instance, there seems to be confusion among reporters regarding the correct charge for an electronic transcript that is requested with a printed transcript. I have had reporters try to charge the full statutory cost applicable to a second *printed* copy of the transcript (i.e., 15 cents per 100 words), when the statutory rate for a second copy of the transcript in electronic format is *one-third* that cost, provided the transcript is ordered within 120 days of delivery of the printed copy. (See Govt. Code, §§ 69950, subd. (b), 69954, subd. (b) .)

Even this reduced cost seems exorbitant to some appellate practitioners, who suspect that electronic transcripts can be created by reporters with a few minutes' work at the push of a button. Thus, some appellate attorneys believe an electronic transcript should be provided with the printed transcript as a matter of course at nominal or no expense.

After the transcript has been ordered and paid for, other problems arise when several different reporters have been used during the course of a trial. This often makes it difficult to get a complete set of disks, especially when the transcript is large. One of the biggest advantages of having an electronic transcript is nullified if portions are missing. Suppose, for instance, an attorney wants to represent to the Court of Appeal that "there was no evidence presented regarding 'X.'" The attorney can't make that

representation based on a computer search of an incomplete transcript, but instead must laboriously read through the printed version of the transcript for each missing disk.

Moreover, even though 1.4 Mb "floppy" disks are going the way of the 8-track tape player (many new computers don't even have floppy drives anymore), the electronic transcript is still generally delivered on a stack of floppy disks, each of which may come from a different reporter and use a different file-naming convention. It is not uncommon for at least one of the disks to be unreadable, which becomes the equivalent of a missing disk. Sometimes it is possible to track the reporter down and get a replacement, sometimes not. Even when a replacement disk can be obtained, it is sometimes as unreadable as the original – raising the question of whether some incompatibility has been created by the particular hardware or software used by that one reporter.

To alleviate these problems, the Task Force has been asked to consider whether the entire transcript can be provided on a single CD-ROM that has been carefully reviewed by someone before it is shipped out to ensure that all the files are readable. In addition, it has been suggested that each of the files on the CD-ROM should have a consistent filename (e.g., identifying the trial days in that file), so that attorneys can more easily find a particular part of the transcript.

Many attorneys also believe that the time has come for electronic transcripts to be provided in a new uniform format such as the ".pdf" document format. Such transcripts could be viewed and printed exactly as they appear on the printed transcript page using a free "Acrobat" reader from Adobe and would be searchable using commercially available database search programs. The Task Force will presumably be making a decision about the formatting of electronic transcripts in the future.

Perhaps the most serious complaint made by appellate attorneys is that when a problem arises regarding an electronic transcript (e.g., an unreadable disk) and the court reporter in question is not responsive to the problem, there is little recourse for the attorney to obtain a solution. A future column will deal with the need for a dispute resolution mechanism that can be used "when good reporters do bad things."

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