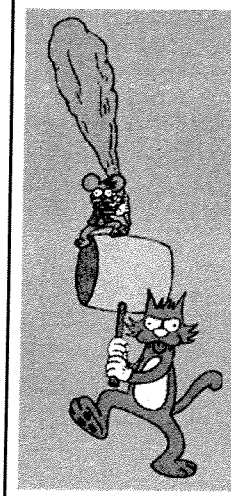

The Itchy & Scratchy Show

By John A. Taylor, Jr., Esq.

This is the last in a series of six articles based on comments from appellate practitioners regarding reporters' transcripts on appeal. I presented the comments to the Reporting on the Record Task Force in December 2002.

First, I have a confession to make: I let my kids watch *The Simpsons*. (So do a lot of other parents, apparently – it was voted the most popular television show at my kids' elementary school.) Another confession: I like the *Itchy & Scratchy Show* episodes that play on the Simpson family's television, with its addictive theme song: "They fight! And bite! They fight and bite and fight! Fight fight fight! Bite bite bite! The Itchy and Scratchy Show!"

Occasionally, court reporters and appellate practitioners act like Itchy and Scratchy. Fortunately, such disputes don't happen too often. Unfortunately, when they do occur, there's no mechanism for resolving them except the nuclear weapon of Court of Appeal intervention.

For example, I recently handled an appeal in which the reporter's transcript was filled with page after page of gobbledygook like this:

THE COURT: I have a minute order that says that the punitive damages motion to bifurcate granted motion to exclude business grant.

MR. [redacted]: Well, we believe that Mr. [redacted] and [redacted] owed and obligation with respect the producer says agreement by its terms. [¶] We didn't, however, assuming that there was a contract an oral program administration agreement, that there was any that was anything other than itself and arms length commercial transaction giving rise to any – there did not give rise to the fiduciary responsibility or special proposed trustor conference.

I knew the court and lawyers didn't actually talk like this because about a hundred pages of the transcript were accidentally printed twice – one version was readable, the other incomprehensible, showing the court reporter could have corrected the transcript if she had not been rushing to meet the "no further extensions" filing deadline imposed by the Court of Appeal.

What could I do to get a corrected transcript? There was nobody to complain to other than the reporter, who offered to do exactly nothing. Ultimately, I had to file a motion to vacate the briefing schedule and send the transcript back to the court reporter for correction. The court granted the motion, but then the reporter continued to request (and obtain) additional extensions of time to resubmit the transcript. Ultimately, the appeal settled, and the reporter got to keep the thousands of dollars she had been paid for preparing the transcript without actually ever having to file a readable version.

In another instance, counsel for a co-defendant designated certain proceedings that were crucial to the appeal. The court reporter submitted a certificate stating that no proceedings took place on the specified date, despite a minute order that identified the court reporter by name and stated "specific details of Counsel's arguments and the Court's ruling are fully set forth in the notes of the court reporter." The court reporter failed to respond to numerous phone messages urging her to file a transcript of the designated proceedings, ultimately requiring letters to the superior court's chief court reporter, copied to the Court of Appeal, before the reporter finally acted.

Many disputes arise when an attorney seeks to use Rule 4(b)(3) to supply the superior court with a "daily" transcript purchased during trial as a substitute for the reporter's preparation of a "reporter's transcript on appeal." The trouble usually occurs in trying to get a multi-volume daily transcript indexed and repaginated sequentially so it complies with Rule 9. Where there are multiple reporters, who is responsible for this task? And what is the applicable charge? In one instance, an attorney had to pay $2,300 for the transcription of one-half day of proceedings and the addition of new title pages to eight previously purchased daily transcripts so they could be submitted under Rule 4(b)(3).

In connection with all these disputes, the primary problem is that the superior court central reporter's office does not provide any coherent method of communicating with reporters or require them to return calls to attorneys. Nor does that office have any authority to require court reporters to comply with the Rules of Court. Appellate practitioners, therefore, have to threaten and cajole certain reporters to comply with the rules, and must do so without any recourse except to the Court of Appeal, which should not have to be the arbiter of such disputes.

Can't we all just get along? That seems unlikely in all instances. And pursuant to the adage that "good fences make good neighbors," the enactment of procedures for resolving disputes arising during the appellate transcription process would be a blessing to both sides.

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[COCRA thanks John Taylor for his series of articles. While we didn't always agree with his comments—as evidenced by a few articles in reply—we sincerely appreciate his insights and the time and effort he put forth in providing an important perspective in relation to the work of official reporters.]