



Counting The Cost

By John Taylor, Esq.

This is the third in a series of articles based on comments from appellate practitioners regarding reporters' transcripts on appeal that were presented to the "Reporting on the Record Task Force" in December 2002. In these articles I've been working my way chronologically through the issues discussed in that forum and have now arrived at the topic of "transcript costs," undoubtedly making this article the most controversial to date.

The Government Code specifies a "word count" pricing method for calculating the cost of a Reporter's Transcript on Appeal. Section 69950 of the Government Code provides for payment rates "for each 100 words" and rule 4(f)(2) of the California Rules of Court requires a court reporter to bill parties "at the statutory rate."

It appears, however, that some or many reporters do not base transcript charges on an actual word count but, rather, on a "folio" system that *approximates* the number of words in the transcript. This approach can lead to an over-counting of words and a charge in excess of the statutory rate. In addition, the definition of a "folio" appears to vary from jurisdiction to jurisdiction, so that the cost of similarly sized transcripts varies accordingly – making it difficult to predict transcript costs for the benefit of clients.

Thus, there is a strong feeling among appellate practitioners that reporters should be required to include a certificate disclosing the actual "word count" for an appellate transcript, like the certificate attorneys must now attach to their appellate briefs. (See California Rules of Court, rule 14(c)(1) ["a brief must include a certificate by appellate counsel . . . stating the number of words in the brief. The person certifying may rely on the word count of the computer program used to prepare the brief."]) Given the sophisticated computer technology currently used by reporters – as evidenced by the general availability of the Reporter's Transcript in computer readable format (see Gov. Code, § 69954) – there does not seem to be any conceivable impediment to calculating an actual word count rather than the current system of reliance on a folio system to "estimate" the transcript cost.

The following anecdote from a certified appellate specialist shows the type of abuse that can occur in the absence of an actual word-count requirement:

I had an appeal where the reporter used "factors" to calculate the fee for the Reporter's Transcript (I think the factors were 250 words per page of testimony, and 300 words per page of argument). There were only 28 lines per page, and each line of testimony contained far less than 10 words (on average). Yet the

reporter claimed she could not give me a word count. I ordered the ASCII disks and had my secretary perform the word count using WordPerfect. The reporter's use of factors resulted in my client being overcharged by about \$15,000 (the record was pretty big).

Obviously, a discrepancy of this magnitude breeds cynicism among practitioners and potentially tars the reputation of those reporters who are making an honest effort to calculate

transcript costs according to the statutory requirements.

It remains to be seen whether an actual word count requirement is eventually recommended by the Reporting on the Record Task Force. Opposition from court reporters to such a requirement would only fuel further suspicion by appellate practitioners that reporters are protecting a method of calculating transcript costs that allows gaming of the system, at the expense of appellate litigants.

(John A. Taylor, Jr. is Chair of the State Bar Appellate Courts Committee, a California State Bar Certified Appellate Specialist, and a partner with the law firm of Horvitz & Levy LLP.)

[Any official with an alternative point of view or contrary opinion? Please contact Paige Moser at plmoser@att.net if you would like to respond to this article.]

"It remains to be seen whether an actual word count requirement is eventually recommended by the Reporting on the Record Task Force."