The Record

Reproduced from the original booklet

The Institute of Shorthand Writers
practising in the Supreme Court
of Judicature.
The National Society of Stenotypists.
1979.

(Now the British Institute of Verbatim Reporters – incorporating The National Society of Stenotypists)

Cover: Rex v. Thorne, a murder trial at Sussex Assizes, Lewes.
13 March 1925.
Shorthand Writer: Mr. S.C. Sanders.

This booklet is based on "Making the Record", a publication produced originally in 1937 by the National Shorthand Reporters Association of America, the 11th Edn. appearing in 1971.

Much of the text of that valuable work is reproduced herein, suitably amended and improvised, bearing in mind court reporting peculiar to the High Court and Crown Courts of England and Wales.

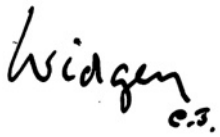
Produced jointly by the Institute of Shorthand Writers practising in the Supreme Court of Judicature and the National Society of Stenotypists, these bodies express their deep appreciation and thanks to the N.S.R.A. for their kind permission to reproduce much of the text of "Making the Record".

We are indebted to Mr. L.W. Hiscoke, Chartered Shorthand Reporter of Ontario and one-time Member of the Institute of Shorthand Writers, for permission to reproduce an extract from the preface to his "Handbook of Verbatim Reporting", published in December 1975.

We are also indebted to His Honour Judge Hines for his permission to reproduce the quotation at [the original] page 6.

FOREWORD BY
THE LORD CHIEF JUSTICE OF ENGLAND,
THE Rt. Hon. LORD WIDGERY,
P.C., O.B.E., T.D.

I am glad to have this opportunity to express my gratitude to and admiration of the corps of shorthand writers and stenotypists, who perform the vital function of keepers of the Court Record. Everyone who works in the Courts of Justice and many tribunals in this country is a craftsman of some kind, and each is essential to the smooth working of the machine. Few are privileged to see the actual work of these verbatim reporters and few, therefore, have seen the degree of clarity and accuracy which they attain, whether the matter for record is pronounced in measured terms or at a cracking speed. We must not take this service for granted.



January 1979.

PREFACE

This publication has been written to direct attention to, and create an understanding of, the functions and problems of the Court Reporter.

Let us commence by asking: What is court reporting? It is one aspect of verbatim reporting, which is the recording accurately of the words spoken in a proceeding of which a permanent record is to be kept. The means of doing this are usually by a system of manual shorthand (such as Isaac Pitman or John Gregg) or by machine shorthand (such as the Palantype, Stenograph or Stenotype). The persons who exercise their skill in this manner are properly called "Reporters" and not, as in some places, "Stenographers", since besides a knowledge of shorthand or stenotyping a degree of knowledge of the matter being reported is necessary in order that the transcript be accurate and legible.

While the art of verbatim reporting is said to go back to the days of ancient Greece and Rome, it was not until the XlXth century that the use of phonetic symbols enabled a verbatim record to be made of proceedings in the law courts and in Parliament. The systems invented by Pitman and Gregg, augmented by machines such as the Palantype, Stenograph and Stenotype, are still in use today in many parts of the world for reporting lectures, meetings, court proceedings and parliamentary debates. While various systems of recording electronically on wire and tape have been introduced over the years, and more recently a repetition of the spoken word into a mask connected with a Dictaphone recorder, such systems have many inherent weaknesses which will be obvious (mechanical faults, electrical failures, extraneous sound, or indistinct speakers, et cetera). The human reporter, on the other hand, has the ability to resolve any uncertainties on the spot, clarify any doubts as to what was said, and often to correct inadvertent mis-speakings or obvious errors, the inclusion of which in the transcript might obscure the true meaning.

This responsibility rests on a relatively small corps of dedicated men and women, doing a challenging and demanding job. It is also a rewarding one, in which personal skill of a high order is called for, with the consequent sense of achievement and pride on the part of the verbatim reporter. Let no one suppose it is an easy job; it is, in fact, one of the few remaining skilled crafts and, as such, calls for dedication, hard work, irregular hours and a strong sense of responsibility.

THE RECORD

"Report me and my cause aright. " Hamlet, V.2.

Counsel are ever mindful of the effect of their courtroom methods upon juries. Many fail to appreciate, however, that indistinct speech, poor selection of words, false starts, slovenly enunciation, and harsh, rasping, monotonous, or uncultivated delivery create an unfavourable impression. Yet the bench and bar rely with confidence upon the ability of the Court Reporter — the one who is called upon to report verbatim the utterances of court, counsel and witness. Upon this 'silent reporter' rests a grave responsibility: the accuracy of the record. Were it not for his trained ability, courts would not function with the celerity demanded by the present-day volume of litigation.

AWARENESS OF THE RECORD

The legal participants in the trial of an action should never lose sight of the fact that their utterances are being recorded. Consciousness of the record and its importance will impel clarity of thought and speech and thereby promote accuracy and readability in the transcript.

Observance of the old adage of thinking before speaking will result in words being used correctly and false starts being avoided, so that no one will remain in doubt as to the meaning or intent of the language used.

INABILITY TO HEAR/COMPREHEND

Court Reporters in all parts of the country from time to time experience considerable difficulty in reporting foreign witnesses.

Rhetorical speakers often rise to heights of forensic eloquence, suddenly to descend to a whispered, inaudible completion of the thought cycle. Nothing is more upsetting to the reporter than inability to hear distinctly each word uttered.

Some barristers in their fervour will talk softly to a witness to convey more intimacy and confidentiality, forgetting this too must form part of the record.

ECHOING

One of the most annoying practices of some counsel is repeating the answers of witnesses while mentally attempting to frame the succeeding question. Reporters call this "echoing". Since the reporter is called upon to render a verbatim transcript, the needlessly repeated words so echoed, and the response of the witness which they may evoke, must be recorded, thus creating an unnecessary duplication, distracting to the reporter, time-wasting to the judge or reviewing body, and expensive to litigants.

It should be noted, however, that repetition at times can serve a useful function in clarifying the responses of the unintelligible witness whose inarticulate or heavily accented mumblings cannot be understood by court, jury or reporter, but can be understood by the lawyer because of his familiarity with the case.

OVERLAPPING

Much confusion, inaccuracy, time-wasting and expense may be avoided if counsel is aware that the reporter is not a worker of miracles. Often in heated cross-examination both counsel and witness will be speaking at the same time, with opposing counsel objecting; and when it is considered that all three may well be speaking at the rate of three, four or more words each second, it ought to be quite apparent that a verbatim record under such circumstances would be a miracle.

ACOUSTICS AND SEATING

A further problem met by Court Reporters in the United Kingdom is that of acoustics. Many courtrooms have a raised dais for the judge; the reporter sitting just below hears but a fragment of the words passing over his head. In other temporary locations, such as those used for public inquiries etc., the reporter is given a seat so as "not to be in the way" — more often than not outside the triangle of counsel/witness/chairman. The reporter's duty being to report word for word, the importance should be stressed of a suitable seat being provided for him from an acoustic point of view.

Even the comfort of the reporter should be considered. The height of tables and chairs is all but disregarded, and yet this can make all the difference to the willingness of the reporter to sit "just a little longer" on a busy day.

Though generally speaking the average reporter is skilled and able to cope with many difficult situations, he or she, contrary to the views held by some judges and members of the bar, is not a magician with limitless powers of stamina and comprehension. The duty to report presupposes the right of the reporter to hear; what he cannot understand he cannot record.

READING BACK

Sometimes a reporter is asked by the judge to read back in court. This involves a mental somersault by the reporter as the transition from a writing activity to a transcribing activity is never an easy one. Some reporters suffer more "stage-fright" than others. His Honour Judge Hines, when senior judge at the Inner London Crown Court, put the matter most succinctly, in 1971 when he sent out

the following notice to his fellow judges: —

"We should remember, and if necessary remind Counsel firmly, that the true purpose of the shorthand note is for the assistance of the Court of Appeal when necessary — only exceptionally therefore should a writer be asked to read back the note.

It is entirely at the discretion of the judge — who will, of course, use it very sparingly — whether the note shall be used at all to resolve any dispute about what a witness has said.

On the rare occasions when the shorthand writer is asked to read back, it is very important that he or she should be encouraged to feel unhurried and not harassed in any way.

Co-operation of the Court Clerk can be very helpful in seeing that the judge's attention is called at once to the fact that the shorthand writer is in difficulty or would like a break."

NAMES

Many proper names sound alike: Harvey, Harvie; Beecham, Beauchamp; Smith, Smyth, Smythe; Morris, Norris; Terry, Perry. Such pairs sound so similar that they are apt to be confused by the reporter, especially if they occur in the same case.
Names such as Joswoskoski, Cheung Wah Kee, Christodoulous, and Harbhajan Singh certainly require spelling if anything is to be made of the usual attempted pronunciation of tongue-twisters.

Proper names should be either spelled out or enunciated so slowly and clearly that there can be no doubt.

FIGURES AND LETTERS

When counsel says "Three-eight-forty-five," the reporter must hesitate momentarily, and sometimes stop the proceedings, to ascertain whether counsel means £3,845 or £38.45. It is more often than not a completely overlooked fact that the reporter, unlike the judge, counsel and the jury, does not have the documentary exhibit in front of him. Similarly "twenty-two" may refer to an amount, a street number, cubic centimetres, 2.20 or twenty minutes past two. "October nineteen sixty-two" may be either "October 1962" or October 19th, '62."

Such expressions as "over to about here," "about that long," "he had a bruise right here as big as that, and another over there, but not quite so large," become entirely meaningless when read in the typed record. The reporter is not permitted to draw a conclusion from a witness's gestures. The record must be clarified by court or counsel. If the witness nods his head or lifts an eyebrow in answer to a question, the notation "Witness nods" or "No audible answer" may appear in the record in the absence of insistence upon a spoken answer, and here again it should be remembered that judge and counsel control the record.

QUOTATIONS

It is an axiom among reporters that no one reads accurately from a printed or

typewritten manuscript. Many are the hours spent by reporters at the end of a day's proceedings in verifying excerpts from cases cited in the course of a trial or legal submissions.

It cannot be over-emphasised that nothing is more calculated to enrage the reporter than the failure of counsel to state clearly and accurately the particular authority he is about to cite. In general, quotations should be read clearly, with indications of punctuation. This is particularly necessary and important when the reporter may have no subsequent access to the original source.

"OFF THE RECORD"

In some quasi legal inquiries and the taking of depositions counsel or the tribunal will occasionally say "Off the record" as a signal for the reporter to stop writing. Discussion continues apace until, after several minutes, court or counsel become aware something of importance is not being recorded. This could easily be avoided by saying to the reporter "Let us go back on the record."

GLOSSARIES

In cases involving abstruse terminology, trade names, or foreign names (technical, medical, patent, international litigation), the trial of a lengthy action will be facilitated if a glossary of unusual terms is handed to the reporter at the outset.

FOREIGN WITNESSES

The reporter's difficulties with foreign witnesses arise principally from the fact that, while court and counsel gather the gist of such witnesses' answers — the thought conveyed — the reporter is required mentally to break down into individual words the thought intended. This process takes time. When such witnesses talk at breakneck speed, the burden on the reporter is aggravated when counsel pile question on question before the answer is fairly out of the mouth of the witness. Instead, a brief pause between answer and question will result in greater facility in recording and in a more intelligible record.

The ear of the reporter becomes attuned through experience to the speech peculiarities of many nationalities, but he cannot decipher some of the outpourings of foreign witnesses without the sympathetic co-operation of court and counsel. While the reporter would prefer in many cases to have a foreign witness testify through an interpreter, the requirement that he do so must come from the court. The judge may prefer to hear the witness present his story in his own way. Consideration for the reporter in such instances will enable him to unravel the language used.

When interrogating a witness through an interpreter it should be remembered that it is still the witness who is being examined, not the interpreter, and the questions should be addressed directly to the witness; Counsel's question, "Ask him to state", and the interpreter's response, "He says that," focus attention upon the interpreter instead of the witness, and the record becomes a colloquy between counsel and interpreter.

The record can become quite confusing, as for example where counsel says, "Ask him to tell us what happened then," and the answer from the interpreter is, "He says he hit him and then he hit him back and finally he hit him and knocked him down." The record is much clearer when it reads: "Q: Tell us what happened then. A: He hit me and then I hit him back and finally he hit me and knocked me

down." The court should insist on the use of the first person.

LANGUAGE FAULTS

Anyone who listens attentively to the individual words of counsel during the course of a trial or argument will be amazed at the number of verbal lapses; the use of "plaintiff where "defendant" is meant, the incorrect reference to dates and exhibit numbers, the failure to connect a verb to the sentence after an intervening qualifying clause, the use of a poorly chosen or an incorrect word in the heat of argument and so on.

While the reporter does not claim infallibility, some errors which counsel in reading the transcript attribute to the reporter are actually errors of counsel which arise in rapid speech.

Generally speaking, the reporter is permitted to do a certain amount of judicious editing, without in any way changing the sense. Such editing is confined to correcting unintentional language faults that may be made by judge and counsel. However, in criminal cases a judge's summing-up is transcribed with virtually no editing.

APPEARANCES

It should be the practice of counsel to state his name upon commencing a hearing, or at least to give this information to the usher or clerk, and the party for whom he appears. If counsel who has a subordinate or collateral interest in a case arrives after the case has commenced he should follow the same practice. No confusion can then arise at the end of the day when it may be too late for the reporter to check such facts since the person in question has long since disappeared.

IDENTIFICATION

In some cases many barristers may appear. It is manifestly impossible for the reporter, while recording names and other information, to memorise them and identify each speaker as he rises. There is great difficulty in attaching names after the record has been made. When counsel, one of many, rises to address the court, the mention of his name to the reporter is an act of thoughtfulness which will avoid guesswork and possible error.

SPEED

Court Reporters would like the legal profession to understand how the factors of sustained speed, even under ideal conditions, react upon the mental functioning of the reporter.

It cannot be gainsaid that the average speed of speech in the courts has increased substantially within the last thirty years. Words flashing through the air at a speed above 200 words per minute may be misheard the more readily because at such speeds speech often becomes slurred and indistinct. A speed of 200 words per minute involves the writing of more than three words per second. Each word must be written unhesitatingly as it falls upon the ear.

Reporting verbatim speech is far from a mechanical process, as many believe. The trained reporter tries to follow the sense of all that he records; he follows the thread of argument, and even enjoys the thrust and parry of skilled and learned practitioners in argument; his mental faculties are constantly alert to the

necessities and requirements of an accurate record.

The degree of concentration and co-ordination required of the reporter in listening to words, recording them accurately, and following intelligently the progress of the trial, is probably not exceeded in any other type of work known to mankind. It must be borne in mind in this connection that the reporter has no control over the pace which he is required to follow; he is eternally chasing the last elusive word.

A Court Reporter is always reluctant to interrupt proceedings, even when very tired. In certain circumstances a working day of 2½ hours in the morning and a similar period in the afternoon is a sufficient daily tax upon the mental and physical resources of any reporter. In such a normal day he may write anywhere from 30,000 to 40,000 words. If these morning and afternoon sessions are to be exceeded a considerate court will always ask the shorthand writer if he or she can continue and, where-ever possible, grant a short adjournment — a concession also often much appreciated by other participants in the proceedings!

A British science research body has recently found that two hours is the maximum period during which one can properly concentrate.

A time-honoured story of the tired reporter may be apropos at this point. After extended argument of a case lasting until about 5 p.m., the reporter turned appealingly to the judge, stating that he was exhausted. The Court, in a spirit of helpfulness, turned to counsel with this request: "Won't you please speed up? The reporter says he is tired."

Up-dated in February 1991:

FOREWORD BY
THE LORD CHIEF JUSTICE OF ENGLAND
THE Rt. Hon. LORD LANE AFC

I have never understood how any human being could have the mental agility and physical endurance to do what our court shorthand writers do so cheerfully every day. Add the ability to transform what all too often must be verbless sentences and unresolved relative clauses into tolerable English prose and you have the invaluable contribution they make to our work.

Lane C.J.

February 1991.

with the addition of the following section:

COMPUTER-AIDED TRANSCRIPTION (CAT)

The computer age has heralded the arrival of computer-aided transcription (commonly known as CAT). CAT aids the judicial system - principally the Court of Appeal - and the reporter by speeding the transcription process. Rather than typing the transcript from stenographic/shorthand notes, the reporter with CAT feeds a disk containing the stenographic notes into a computer which then translates the outlines into English. The text is checked for untranslates (which appear as steno notes on the computer screen) is corrected, proofread and printed. The whole process, of course, continues to be part of the reporter's responsibility in maintaining the court record.

Other applications of CAT are the provision of an almost instantaneous translation on to a computer screen (known as live mode or real time) as an aid to deaf or hearing-impaired participants at conferences or litigants/witnesses in a trial, TV captioning and litigation support.

Then, in October 2007

The late Paul Sanders told us about that photo!

I have been asked to compile a few notes relating to the photograph with which many Members will be familiar which appears on the front cover of "The Record," a publication produced by the Institute in 1991.

This illegal photograph was taken by an unknown, to me at any rate, pressman on 14th March 1925 during the proceedings of the murder trial R. v. J.N. Thorne at Sussex Assizes, No. 1 court, Lewes, before Mr. Justice Finlay.

It appeared, together with a similar photograph, on the front page of the Daily Mirror on Saturday 14th March. It was drawn to the attention of the trial judge who immediately ordered the arrest of the photographer for contempt of court. It is said, however, that the wanted man escaped on a boat from Newhaven to the continent and was never apprehended.
The photograph (believed to be with a camera hidden in an arm sling) depicts the defendant Thorne giving evidence in the witness box. The Shorthand Writer is

my late uncle, Sidney Charles Sanders, who was born in 1896, who would have been twenty-nine years of age at the time.

He was a grandson of Thomas Sanders, who together with his uncle William Hibbit, founded the firm of Hibbit & Sanders in 1861, and was the eldest of three brothers who were at that time involved in the firm and who went into partnership together on the death of their father Charles Alfred Sanders, head of the firm, in 1935, the partnership later being joined by their younger brother Philip Sanders.

The layout of the court, built in 1812, remains unaltered, except today the Shorthand Writer's table has disappeared to accommodate a steno machine and its tripod.

Features of interest include the large floral display on the bench between the nudge's clerk and his marshal, the hat worn by the lady with the disbelieving expression who sits further along the bench, the high neck tunic of the prison officer standing alongside the defendant and the packed press bench, the case attracting nationwide publicity.

Also of interest, drawn to my attention some years ago by the late Judge MacManus, are the bands worn by the Clerk of Assize, Arthur Denman, which are not of the usual variety, having black bands apparently denoting the observance of court mourning for the death of a member of the Royal Family.

Before making use of this interesting photograph for the front cover of "The Record" I sought counsel's opinion as to the propriety of further publication and was advised there would be no contempt of court as all parties involved had long since died.

John Norman Holmes Thorne was duly convicted of the murder of his fiancée Elsie Cameron on 16th March 1925 and was sentenced to death. He was duly hanged at Wandsworth Prison on 22 April 1925.

Paul K. Sanders 1.10.07