

# ArizoNotes

Arizona Court Reporters Association

Volume 42, Number 2

Summer 2014

## 2014 Annual Convention

### ***“Spotlight on Education”***

September 12-13, 2014  
Westin La Paloma Resort  
3800 E. Sunrise Dr.  
Tucson, AZ

NCRA approved for 10 hours CEU

**Pre-registration deadline is September 3, 2014. Register at [www.acraonline.org/Upcoming Events](http://www.acraonline.org/Upcoming%20Events) page or use the registration form on page 9.**

#### **Friday, September 12, 2014**

**11:00 a.m. – 4:30 p.m.**

Registration Open

**12:00 p.m. - 1:00 p.m.**

**Board Town Hall - Part 2 (1.0 hr CE/.10 CEU )**

This is a continuation of the Spring ACRA Town Hall. We want to make sure we answer all questions with updated information.

**1:30 p.m. - 3:00 p.m.**

**Court Reporters and HIPAA (1.5 hr CE/.15 CEU )**

*Presenter: Jon Moretti*

Jon will go over the basics of how HIPAA affects the court reporter or reporting firm and how to become compliant.

**3:00 p.m. - 3:30 p.m.**

Refreshment Break

**3:30 p.m. - 5:00 p.m.**

**Cold Cases: Then and Now (1.5 hr CE/.15 CEU )**

*Presenter: Nicol Green, Supervisor of the Cold Case Unit, Pima County Attorney's Office*

An Inside Look at State of Arizona v Pamela Phillips, who was convicted in March 2014 in the 1996 car-bomb death of her former

## **Humor In The Court...**

"Q: As you can see, we have a court reporter here. Mr. Herder is going to be taking down EVERYTHING that's said on the record today. So, for example, if I say that I'm really looking forward to the upcoming college football season, where Michigan State will probably dominate the Buckeyes again, he's going to write that down. He ain't going to like it, but he will HAVE to write it down."

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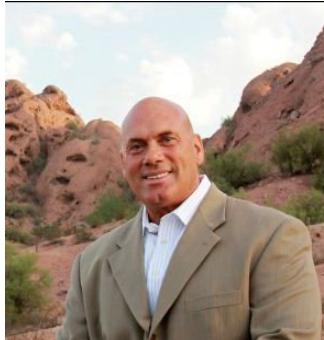
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**"Knowledge is power, and our knowledge base should continue to include vocation-centric updates, developments and refresher courses, AND RELATIONSHIPS..."**

## President's Message



Look around you. Our reporting community truly is populated with so many dynamic and talented men and women. Throughout the decades, we have seen and shared an infinite number of changes in our industry together. Think about it. We have adapted and updated to cutting-edge changes in technology, specialization, certification, and all the issues that we expect and rely on ACRA to address and inform us on.

Also critical to our careers has been keeping relentlessly abreast of the myriad of state and local policy changes, CEU requirements, state bar ethics updates, best practices, court admin politics, and many local marketplace challenges that are both cyclical and exponential. For example, today Arizona reporters are duty-bound to learn and implement the new language of ACJA 7-206, which was created and promulgated not by court reporters, but by the Taskforce on Certified Reporter Regulation. The Taskforce was comprised of the Vice Chief Justice, an Appellate Judge, a Superior Court Judge, a former County Supervisor, and President-Elect of the Arizona Trial Lawyers Association.

Whether you are simply young at heart (like me) or a mid-career reporter, or an up-and-coming powerhouse of tomorrow who is still soaking in the complexities and developments of our vocation . . . it is both our professional and moral duty to implement and furnish a proven formula for continuing education, information and support that is vocation-specific and encourages interaction with our peers.

Knowledge is power, and our knowledge base should continue to include vocation-centric updates, developments and refresher courses, AND RELATIONSHIPS....personal exchange of current events with our peers, with our association, just like every other vocation and walk of life.

Think about it. Every other vocation has come to the same conclusion and encourages membership in professional state associations . . . doctors, lawyers, nurses, engineers, scientists, teachers, insurance professionals, accountants . . . the list goes on, ad infinitum.

Do they all agree on everything all the time? Of course not.

Like anything else in life, whether its education, parenting, athletics . . . you get out of a membership, convention or seminar exactly what you put into it.

## BOARD OF DIRECTORS

**President** - Marty Herder

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*Continued from front page*

husband, high-flying commercial real estate developer Gary Triano. Prosecutors said she wanted his \$2 million life insurance policy to keep up her lavish lifestyle after their divorce. They say Phillips' greed led her to pay a hit man, onetime boyfriend Ronald Young, who was convicted in 2010 to two life sentences, to plant a pipe bomb in her former husband's car. She fled to Europe for 15 years before being extradited to Tucson to stand trial.

**5:30 p.m. - 7:00p.m.**

**Reception**

Join us on the Murphey Patio for chips, salsa, margaritas and more! Catch up with friends, thank outgoing President Marty Herder for his service and welcome Pam Griffin as incoming President.

**Saturday, September 13, 2014**

**7:30 a.m.**

**Registration Opens/Continental Breakfast**

**7:30 a.m. - 5:00 p.m.**

**Exhibits/Marketplace Open**

**8:30 a.m. - 10:00 a.m.**

**You Want me to Use a Comma There? Part 1 (1.5 hr CE/.15 CEU )**

*Presenter: Margie Wakeman Wells*

Are you “comma happy”? Do you put in a comma whenever there is a pause? Do you get nervous when there are three or four lines with no punctuation? Do you just toss in a comma from time to time? All commas are used in one of two ways. We will look at the two overall rules and talk about how to pinpoint the trouble spots. Then we will look at how the semicolon rules relate to some comma usage. “I haven’t used one for a couple of pages; so it must be time” is NOT a rule for the semicolon. The semicolon serves a vital role in punctuating sentences and creating readability when some of those 14-line sentences pop up in the transcript. This two-part session will clarify how sentences go together and the role the semicolon plays. Any questions you might have about correctly using the semicolon -- as well as questions on other pesky problems -- will be put to rest. This is a day for the punctuation-savvy reporter to hone comma skills and for the “Help me; help me” reporter to get a handle on the intricacies of commas. What more fun could we have than to spend a morning delving into punctuation?

**10:00 a.m. - 10:30 a.m.**

**Refreshment Break - Exhibits/Marketplace Open**

**10:30 a.m. - 12:00 p.m.**

**You Want me to Use a Comma There? Part 2 (1.5 hr CE/.15 CEU )**

*Presenter: Margie Wakeman Wells*

See above part 1

**12:00 p.m. - 1:30 p.m.**

**Business Meeting Luncheon (No CEU credit)**

We will hear from outgoing ACRA President Marty Herder and incoming ACRA President Pam Griffin with the installation of the 2014-15 ACRA Board of Directors and the presentation of the 2014 Distinguished Service Award.

**1:30 p.m. - 3:00 p.m.**

**Software Vendor Breakout Sessions - Part 1 (1.5 hr CE/.15 CEU )**

Software vendor representatives for CaseCatalyst, ProCat, and DigitalCat will be on hand to share tips, tricks, and the latest updates available as well as answer questions for attendees. We want to encourage attendees to bring their

*Continued on page 4*

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*President Message, continued from page 2*

Is every minute a game-changer? Oh, hell no.

But each and every session, seminar and convention is a new opportunity for that welcomed "aha" moment that, "Hey, there's something new." Or, "I had that person all wrong."

Each day is a new opportunity to be invigorated and interact with so many talented, informed and passionate peers in our chosen field. This unique

opportunity is a specialized environment and diversity that can only be found in ACRA involvement.

I know that, personally, due to my ACRA participation and board involvement that I am a better mentor, a better businessman, a better court reporter, and a much more understanding and patient peer.

It is not that I am doing something special, it is that I'm allowed to be part of something special, the Arizona Court Reporters Association.

Thank you for your trust, and for this amazing opportunity to have served you.

Marty Herder

*Convention, continued from page 3*

questions regarding software and extend the conversation to briefs used, electronic filing and backup, anything you'd like to discuss. A non-vendor related class on court reporting related topics will also be offered for those whose software is not participating or don't wish to attend a vendor class.

**3:00 - 3:30 p.m.**

**Refreshment Break -  
Exhibits/Marketplace Open**

**3:30 – 5:00 p.m.**

**Software Vendor Breakout Sessions -**

**Part 2 (1.5 hr CE/.15 CEU )**

1. CaseCatalyst class
2. ProCat class
3. DigitalCat class
4. Non-vendor class

## **Merger Announcement: Griffin & Associates, LLC with Lea, Sherman & Habeski**

**F**or the past 37 years, Lea, Sherman & Habeski has provided outstanding court reporting and related services to the legal profession. For the past 27 years, Griffin & Associates have also provided the highest quality reporting services to the legal community. So much so, that through the years, both firms frequently called upon each other's reporters to cover reporting assignments to ensure the highest level of reporting expertise was provided at all times.

Our shared commitment to this long-standing standard of excellence continues as we move into a new era. We are pleased to announce the merger of Lea, Sherman & Habeski and Griffin & Associates, effective January 13, 2014. Operating as Griffin & Associates, 2398 E. Camelback Road, Suite 260, Phoenix 85016, 602-291-9334, our combined strengths and resources increase our ability to provide the finest court reporting and related services, while utilizing the most current litigation support technologies available.

Together, we have an unprecedented 597 years of reporting experience provided by professional court reporters holding the highest certifications recognized by the National Court Reporters Association. We are experienced in all facets of reporting, including depositions, trials, hearings, meetings, conventions and administrative proceedings. We provide realtime reporting as well as video and audio transcription services. We are also GSA Certified by the Federal Government. We have videoconferencing capabilities and more than 27 professional reporters, support staff, plus a secure document depository.

Our location is convenient, our staff is friendly and helpful and we enthusiastically invite and encourage your referrals with the assurance that your clients will be treated as courteously and as professionally as we treat our own clients. Please visit [arizocourtreporters.com](http://arizocourtreporters.com) for additional information.

Jean L. Lea, RMR, FAPR  
Ellen M. Habeski, RMR

Richard A. Sherman, RDR, FAPR  
Pamela A. Griffin, RPR, CRR

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## **News from NCRA—Varallo urges action from the Small Business Administration's National Ombudsman on HIPAA regulations**

In June, NCRA President Nancy Varallo testified at the National Regulatory Fairness hearing before the National Ombudsmen at the U.S. Small Business Administration on the potential impact new compliance regulations regarding HIPAA, or Health Insurance Portability and Accountability Act, pose to court reporting professionals. These HIPAA regulations came into law specifically under the Health Information Technology for Economic and Clinical Health Act, commonly known as the HITECH Act. In addition to her testimony, Varallo has formally requested action from the SBA's National Ombudsman on behalf of court reporters. She requested that "the Department of Health and Human Services exempt court reporters from provisions of HIPAA regulations, specifically the HITECH Act effective

as of Sep. 23, 2013, when they are hired to provide verbatim court reporting services in the courtroom or in litigation-related forums, such as depositions, administrative hearings, arbitrations."

Varallo's letter to the National Ombudsman explains that court reporters have long been accustomed to keeping impartial confidentiality, and that protecting private information, including health information, is "a matter of routine business practice." She further warns that since most court reporters are self-employed, and even most agencies which employ the services of court reporters are smaller than the SBA's definition of a small business, "compliance with these regulations would be unduly burdensome" not just for court reporters, but also for subcontractors

like proofreaders, production assistants, and scopists. The role of these subcontractors is also unclear under the current regulations. Varallo also expressed concern over a potential "abuse of intent" from lawyers or law firms who hire court reporters, who could each draft their own versions of a compliance document, "enabling the proliferation of a minefield of conflicting obligations."

Varallo concluded her letter by saying, "With regard to court reporters, the HITECH Act will not ensure the sort of outcome envisioned by the law." Compliance may be feasible for big business that "can undertake the cost and assign the manpower necessary," but the nature of the court reporting field would make compliance a "significant burden."

## The Emergency Motion to Stop Execution... From the Eyes of the Court Reporter

By Laurie Adams

**I**t was very warm in the courthouse that day. The federal courthouse has a large atrium that, in the summertime, is extremely balmy. The whole feel of the building was a bit somber as we were getting ready for the memorial service of the late Judge Robert C. Broomfield, Senior District Judge. I had been running around helping with some of the setup for that, and I had to cover a visiting judge all morning for a sentencing calendar.

On top of all that, chambers had a birthday celebration, so the judge and all of his staff were sitting around the table shortly after noon. It was briefly mentioned that today was July 23<sup>rd</sup>, the day the execution of Joseph Rudolph Wood, III, would be carried out after the appeal process had been exhausted.

Judge Wake had been assigned this particular case, so he conducted a hearing on July 9<sup>th</sup> on a Motion for Preliminary Injunction. The inmate's attorneys were concerned that they did not have all the information regarding the two drugs that would be used during the lethal injection, and they wanted nothing to go forward without that information. Having been no stranger to the information of drug protocols of execution by lethal injection, Judge Wake had heard cases in the past regarding the three-drug protocol that was previously employed by the Department of Corrections in Arizona.

As the day went on, it was time for the memorial service to begin. There was a full house, so I was standing upstairs overlooking the Special Proceedings Courtroom to allow seating for Judge Broomfield's family, friends, and close colleagues. All the district judges and magistrate judges entered the court-room, all in their robes, and took seats on the Bench and in front of the Bench. The Chief Judge began the proceedings

and we heard the invocation and watched the Honor Guard from Luke Air Force Base. It was very moving to see everyone pay such close attention and giving such high esteem to their colleague.

Just as we started to watch Honorable Sandra Day O'Connor start to speak, I saw Judge Wake being whispered to, and then he got up and left immediately. I thought to myself, "That's strange. I have never seen a judge leave a proceeding like this. I hope there is nothing seriously wrong with someone in his family." As I was thinking this, I saw out of the corner of my eye the death penalty law clerks, who were also standing upstairs watching, turn around and run down the stairs to leave. It hit me, oh my gosh, that's right. The execution is supposed to be happening.

I turned around and ran downstairs and I asked what was going on. Someone said, "The inmate is not dying." I made eye contact with Judge Wake, and I said, "Should I get my machine?" He said, "Yes. Get your machine and come to chambers." He himself was running to head up to chambers. I knew every second was crucial. The inmate's attorneys were on the phone waiting for the judge to hear an emergency motion to stop the execution. I ran to my office, grabbed my machine, and ran as fast as I could to our chambers.

As the judge was trying to gather as much information as he could in a very urgent manner, you could feel a tension in the room that I have never felt in the 28 years I have been a court reporter. The inmate's attorney and the state's attorney were on the speaker phone, and the state's attorney was updating the judge minute by minute. The procedure had been going on for almost two hours. The words just flowed to my machine

like I have never felt before. I remained calm, focused, and the only muscles that were moving were the ones in my fingers. It seemed as though everything else was frozen.

As the judge was recapping the information, rubbing his forehead, he took a sip of his tea to get ready to rule on the emergency motion. Just then the state's attorney announced that Mr. Wood had expired.

*THE COURT: And again, I want to confirm, the heart rate is dropping. It's not stable at a low rate, but it is dropping.*

*Is that your understanding, Mr. Zick?*

*MR. ZICK: That's my understanding. When the motion was filed, I believe his heart rate was above 20, but I can't verify that. All I know is that I was told his heart rate was 20 when I called the director based on the Court's wish. Wait. I just -- I'm sorry, Judge.*

*THE COURT: Go ahead.*

*MR. ZICK: I just learned that the IV team leader has confirmed Mr. Wood's death.*

I will not opine regarding the death penalty one way or the other. I will just say the feeling in the room at that time was filled with emotions as I looked around the room at one law clerk, the other law clerk, and the law clerk sitting across the office. I could not begin to tell you what the judge was thinking. All I know is that is a day in federal court I will never ever forget.

## Court reporter vs court recorder

By Dolly A. Butz, *Journal Health Reporter*  
From SiouxCityJournal.com

Court reporter Misty Bubke is the gatekeeper of the record, the official written record of every word said during a court proceeding. She takes that responsibility seriously.

Bubke, who works in Iowa's Third Judicial District, and other state court reporters could at some point be replaced by digital audio recording technology, or DART, in an effort to save Iowa's judicial system money.

The state, which is in the midst of its greatest financial crisis since the 1930s, laid off 12 percent of all judicial branch staffers in December due to declining revenues.

"We were talking about all kinds of ways to save money. That was one of them," said deputy state court administrator John Goerdt.

Alaska, Kentucky, New Hampshire, Utah and Vermont use electronic recording instead of court reporters. Twenty other states and the District of Columbia use a mix of court reporting and court recording.

The Iowa Court Reporters Association, Iowa Judges Association and Public Defenders Association of Iowa oppose the use of DART in lieu of court reporters.

The Iowa Judicial Council appointed the DART committee, composed of judges, court administrators, a former court reporter, private attorneys and a public defender, in May to examine the accuracy of the technology and the cost of acquiring, installing, operating and maintaining it. The 18-member committee concluded in its report, released to the public Tuesday, that it is "not feasible" to replace court reporters with DART equipment.

The committee, however, did find that DART can reliably record words spoken during court proceedings with a high-quality multitrack digital recording system that has been professionally installed and is operated by a certified courtroom recording manager.

The report, received Dec. 30 by the Iowa Judicial Council, is under review.

Not a simple cost comparison

Goerdt said he doesn't know where the state would get the money to fund DART equipment up front.

Software and hardware for a high-end DART system would cost an estimated \$25,000 for each of Iowa's 316 courtrooms. That doesn't include installation and annual maintenance expenses or the \$390,000 needed to create a central location to manage backup and archiving of the digital recordings.

Iowa employs the equivalent of 151 full-time district-court reporters at an average \$90,074 a year in salary and benefits. But making the move to DART would not eliminate the need for trained, qualified support staffers.

"We still have to provide courtroom assistance to judges, secretarial assistance outside of the courtroom," Goerdt said, "It is more complicated than just comparing the cost for capturing the verbatim record."

In a separate letter addressed to the Iowa Judicial Council, 10 members of the DART committee wrote that they believe that DART "will not achieve a reduction in costs" but will instead require more spending on personnel. The letter, dated Jan. 11, said a certified court reporter must be responsible for the record in a felony, juvenile or civil jury trial in order to maintain the "high standard" demanded for Iowa appellate review.

The Iowa Supreme Court will have the final say.

### BREAKOUT

Human versus machine?

Court reporter Misty Bubke said she is often District Court Judge John Ackerman's only support staffer.

In addition to writing what is said in court on her steno machine, Bubke acts as a referee, stopping attorneys from speaking over one another and reminding witnesses to talk into the microphone.

If Ackerman needs testimony reread or to be reminded of a ruling, Bubke can provide him with that information instantly at the bench.

Bubke said audio-syncing software, which she owns along with her steno machine, allows her to write while recording what is

*Continued on page 8*

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*Court reporter vs court reporter, continued from page 7*

being said in real time -- a capability she said gives her an edge over digital audio recording technology, or DART, equipment.

"With a person not being there, if a book was dropped in the microphone or people are talking over one another, you may have inaudibles, indiscernibles, places in the record where you just don't know what was said," she said. "If I was a defendant, I wouldn't trust my freedom to a machine. I want a person there to be responsible for it."

Bubke earned a degree in 1998 after three years of studying at a court reporting school in Sioux Falls that has since closed. She gained certification in Iowa after passing a rigorous test.

Bubke said the steno machine itself sparked her interest in the profession. A steno machine has 24 keys, and the user simultaneously presses multiple keys to form different letters, words and phrases.

"Not everyone can do it," Bubke said. "I looked at it as a challenge."

The National Court Reporters Association estimates that there are approximately 35,000 court reporters in the United States. But while the demand for court reporters is on the rise, the nonprofit organization reports that the numbers of practicing and student court reporters continue to dwindle and that certified training programs declined from 106 in 1996 to 62 in 2006.

Sheryl Culver, president of the Iowa Court Reporters Association, credits the American Institute of Business in Des Moines for continuing to produce qualified court reporters. The college offers Iowa's only court reporter training, with two- and four-year programs.

This fall, Jane Weingart, a court reporter and member of AIB's board of trustees, said 100 of the school's 1,000 students were pursuing a degree in court reporting. AIB's graduates have not had any trouble finding court reporting jobs, she said.

## Important Contact Information

**ACRA Office:** (480) 496-4010 (Robin Hirth), [office@acraonline.org](mailto:office@acraonline.org)

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**CR Office:** (602) 452-3878

**CR Website:** [www.supreme.state.az.us/cr](http://www.supreme.state.az.us/cr)



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## DEADLINES

Spring Issue - March 10

Summer Issue - August 10

Fall Issue - November 10



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## ACRA 2014 ANNUAL CONVENTION ATTENDEE REGISTRATION FORM

**REGISTRATION INFORMATION:** Returned checks will be assessed a \$25 processing fee. Confirmation will be sent via email so be sure your email is noted below. Cancellations must be received by **September 8, 2014**, and are subject to a \$15 cancellation fee. All cancellations must be received in writing. **There will be no refunds after September 8, 2014.** Please duplicate this form as needed.

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*Check appropriate registration type*

**A. Full Two-Day Registration:** Includes all seminars, continental breakfasts, Saturday business meeting luncheon, and exhibits.

- ACRA Member\* - \$240
- In State Non-Member incl. ACRA membership thru 2015 - \$365
- Out of state non-member - \$375
- Student - \$50

**B. Saturday Only Registration:** Includes business meeting/luncheon

- ACRA Member\* - \$190
- In State Non-Member incl. ACRA membership thru 2015 - \$315
- Out of state non-member - \$315
- Student - \$35

I will be attending the following sessions on Saturday:

**C. Friday Only Registration**

- ACRA Member\* - \$125

- CaseCatalyst
- ProCat
- DigitalCat

- Non-Vendor
- I will NOT be attending any

**PAYMENT INFORMATION**

Registration	\$ _____
Saturday Lunch Only or Extra _____ @ \$25	\$ _____
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Raffle Donation	\$ _____ <i>Please complete donation form</i>
Student Sponsorship _____ @ \$50 ea.	\$ _____
Saturday Marketplace _____ @ \$75/table	\$ _____
Late registration fee of postmarked after September 4	\$ 30.00
Total Amount Enclosed:	\$ _____ Check # _____

Pre-Registration Deadline: September 4, 2014 postmark  
Late & On-site registrations will include an additional \$30 to the fees above.

- I would like the vegetarian option for the Saturday Business Luncheon.

We encourage you to go to the ACRA website online store to register if paying with a credit card but we can process it for you if you fax it to 480-858-1802.

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**Out of State Reporters ~**  
*\*Reporter from another state?*  
 You can receive the ACRA member registration fee if you are a member of your own state association. Please indicate your current state association membership number here \_\_\_\_\_ to receive the

**ACRA member rates.** To get the member rate, you CANNOT register online but must submit this form to the ACRA office via mail or fax.

**Mail completed registration form with check payable to ACRA by September 3, 2014 to:**

**Arizona Court Reporters Association**  
 7225 W. Oakland St., #1  
 Chandler, AZ 85226-2433

Questions?  
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