

# Arizona Notes

Arizona Court Reporters Association

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## 2011 Distinguished Service Award Winner - Julie Ottmar

*Presented at the 2011 Annual Convention in September*

Presented by Leslie Foldy

I feel like I should say, "Ready, begin." Well, it's my honor and my privilege to present the Distinguished Service Award this year, and this will be the 25<sup>th</sup> person who has won this award. Or I guess I should say received it. It's not like there's a contest that you get to win. It comes from years of hard work and accomplishment.

This year's winner has served our profession in a spectacular way, and more so than almost anyone I know, this person demonstrates the forward thinking, the vision, and the courage to do what needs to be done. This person is not from Arizona. He or she is from somewhere cooler. Well, that doesn't really help us very much, does it?

This person has been a reporter for over 30 years and has worked mainly as a freelancer. He or she has been both a solo reporter and a firm owner. This person, this woman, has been a member of the ACRA Board of Directors and has been President of ACRA. She led ACRA during a time – I'm tearing up because I was there in the trenches, and I saw the work this person did. It was just amazing.

Okay. Okay. She led ACRA during a time of great uncertainty. As one of the highlights of her presidency she headed the search for a new lobbyist. Many, many candidates were interviewed. This resulted in the hiring of John MacDonald, our present lobbyist, who is so wonderful and so effective. As you all know, back in the mid-2000's the Supreme Court started up the Keeping the Record Committee. This committee met monthly for two – count it – two years. So there would be the pre-planning, the day of the meeting, and the dissection later. So you can imagine the countless hours of work that were involved.

As you can imagine, this person spent countless hours on these projects to the detriment of her own business. I have – this does make me laugh, because reporters that were involved in the process would never be surprised to get a 10:30 p.m. or 6:30 a.m. phone call from her. She always had a position paper to write or an Arizona Judicial Council meeting to attend.

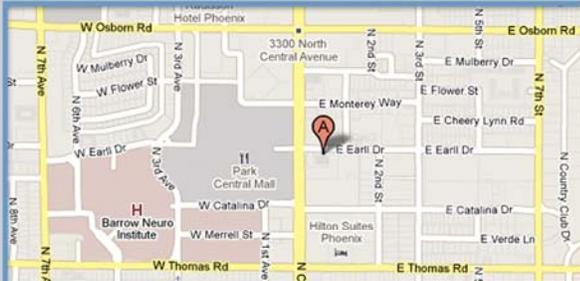


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## **This is a great victory to be celebrated by us all.**

### **President's Message**

I want to thank you all for allowing me the honor to serve as your President. Even though it has not been for very long, I am very proud and honored to be part of our great association and our great profession.



As many of you know, the proposed grand jury legislation was voted down at the Arizona Judicial Council meeting on October 28, 2011. While I would love to take the credit for that, I know that this was not my accomplishment alone. If it weren't for the many letters that were written last year, the hard work of many court reporters behind the scenes, our Past President Doreen Borgmann, and for our lobbyist John MacDonald, this would not have happened. This is a victory to be celebrated by us all.

As I stated in my speech at the Annual Convention in Prescott, we are all in this together. We all went through a court reporting theory class, and we all learned how to put our machines together the same way. It is because of this that I believe we need to be supportive of each other, whether we are students, officials, freelancers, CART providers or closed-captioners.

I know that many of you spoke to judges, lawyers, teachers, police officers and anyone else who would listen about the proposed grand jury legislation. Even though we defeated that battle, there is still more work to be done.

We still have the issue about the third-party contracting. I know this is a heavily debated topic among many of us. The reality is, though, that as certified court reporters, we are bound not only by our certification, but also by Arizona statutes to be ethical, neutral and impartial. That's right, we have a statutory obligation. I sent to everyone the recent opinion that was obtained from attorney J. Scott Rhodes, and it is also on our website. While it does not state unequivocally that it is a violation of our certification to enter into contracts with the national court reporting firms, there are some areas that we as professionals need to be aware could be a violation. One important factor to be aware of is our obligation to remain neutral in that deposition room. If we contract with the attorneys even in the loosest terms, we are no longer perceived to be neutral and impartial.

Not only are the ethical violations apparent, there are also possible violations with the Internal Revenue Service. Could someone view you as an employee of that national firm? Should that firm be paying taxes? If you file as an independent contractor and it turns out that you are indeed perceived to be an employee, there could be tax fees that you would be responsible for. These are important things to consider.

As members of ACRA, we need to be educating the attorneys, also, of their ethical duties to their clients. Are they adhering to their obligations by contracting with the national firms and obtaining gifts for the number of depositions they schedule?

### **BOARD OF DIRECTORS**

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*DSA Winner, continued from page 1*

This person worked not only on existing problems, but anticipated upcoming concerns and strategized ways to get far ahead of the curve.

For instance, at that time ACRA was placing advertisements in local attorney magazines highlighting the problems that were occurring with electronic recording transcripts. This person developed many of the ads that were placed.

My favorite incident: She had heard that an attorney had received a poor-quality ER transcript. So, of course, she went to him, got him to give her some pages from the transcript, and she got a quote from him. So here was the full page ad that went in:

Picture it now. Here's the page of transcript littered with mistakes. And at the top, in big bold letters, was the quote from the attorney: "Who knows what they'd do with a medical transcript?" Pretty awesome, huh?

To this day this person continues to be a fantastic ambassador for our profession. She works hard to keep the Bar aware of the fact that our skills, our impartiality, and the unquestioned integrity of the certified reporter makes us the best record makers.

She has attended countless meetings at the Certified Reporter Board to advocate for our positions. I – really, I've lost count. 10, 15, 20? They must think that she's a fixture down there.

Last year she served on the subcommittee that was tasked with revising the Code of Conduct. Anyone who knows this person knows that at any time you can expect the phone to ring; it will be this person saying, you know, I've got an idea. Well, you can bet that that idea will be a good one.

She and her husband, Tom, have two handsome boys, Clint and Cole. She is expecting her first grandchild in December. Join me now in saying a huge "THANK YOU" to this year's Distinguished Service Award winner, Julie Ottmar.

#### **JULIE'S ACCEPTANCE**

Oh, she had to bring up the grandbaby, didn't she? This is so sweet. Thank you very much. It's unexpected.

She made me sound like a saint. I'm not a saint. I'm just doing what everybody else does. But it's kind of ironic, actually, that you honor me, because I've always felt like I was the one that was honored by – I mean this group of court reporters, they're so bright and fun, and it's just been my honor to advocate for this group.

Did it get hot in here all of a sudden?

But, I encourage you all to join in the fight of whatever it is of the day. There's always something that we're fighting against in trying to save our jobs. And, gosh, thank you very much. I appreciate it.



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*President Message, continued from page 3*

This is where our team effort comes in. Whether we are officials, freelancers, students, CART providers or closed-captioners, we can be educating our “customers.” If you’re an official and you’re covering civil matters, you could be informing the attorneys about the possible ethical violations of gift giving. As officials, we don’t have to worry about losing that client. What a great way to show support for the freelance reporters.

As students, we can discuss this topic with our teachers. The teachers may know an attorney who engages in this activity. What a great way to spread the word. We are all able to help the freelance reporters in this endeavor through our ability to be professional around our “customers” at all times.

As members of ACRA, it is our responsibility to help each other and to support each other. We also need to remember that we are the official record. We are the only neutral and impartial person in the room. We are the only ones who do not have an interest in the outcome.

Let us continue to be that professional reporter. Let us continue to be the official record. Let there be no question that we are protecting the rights of everyone in that room. This is the only way we will defeat electronic recording and third-party contracting. Let us continue to uphold our ethical and legal obligations so we can continue to share in many more victories in the future. We are the guardians of the record.

Karen Kahle, President

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## Legislative Update

*By John McDonald, ACRA Lobbyist, Policy AZ, LLC*

Yesterday, November 9, 2011, was an historic, as well as tumultuous day, in Arizona politics and government. The following are a few highlights of events, including some opinion as to their effects on the business and government outlook in Arizona in the near future.

### Recall of Senate President Russell Pearce

Perhaps the biggest news, both in national scope and potential effects, was the recall of Senate President Russell Pearce, the most well-known legislator in decades and architect of Arizona’s recent stringent immigration laws. Pearce was defeated rather easily (about 53% to 45%) by political newcomer Jerry Lewis, a conservative-but-pragmatic Republican who campaigned on being a problem-solver rather than political firebrand. The results of this recall, the first of a sitting legislator in Arizona history, were surprising in a vacuum — recall efforts on elected officials rarely succeed — but most insiders sensed in the last few weeks that Pearce was in serious danger of losing. Lewis will take office after the election results are certified, probably in the next few weeks (since the election is without Arizona precedent, the procedures are still being discussed).

There are a few things to remember about this result: First, in a normal Senate legislative race, voters would be choosing between a Republican and a Democrat, each of whom emerged from their respective primary races. Not the case here: this pitted one Republican against another in a “general” election, and allowed, essentially, Democrats and Independents (and a few moderate Republicans) to decide this race. In other words, the next election in District 18 will likely again favor a conservative Republican since, presumably and as usual, most

Republicans in this district (which greatly outnumber Democrats) will vote for the Republican candidate. Look for President Pearce to make a strong bid to get his seat back next November.

Also, it appears the new President of the Senate will be current Majority Leader Andy Biggs. He has been a close ally of Pearce for years, and they are philosophically aligned. However, and quite ironically, a recall election that supposedly removed the most conservative senator (Pearce) will likely cause him to be replaced by, basically, a Libertarian (Biggs), making the body function as more conservative than before. For all his conservative bona fides, President Pearce was malleable on certain issues. Biggs will not be any such thing: he is a rigid lawmaker, sometimes the lone dissenting vote out of his entire extremely conservative caucus based on his conservative/libertarian principles. He often feels his caucus isn’t conservative enough, and votes accordingly. This will have the likely effect of lengthening the legislative session, as Biggs seems relatively immune to heavy criticism, even from within his own party and caucus — he would shut down government in a budget dispute, for example, without hesitation. His Presidency will also empower Rep. Eddie Farnsworth, a somewhat conservative Republican “caucus of one” in the House, but a very close friend and political ally of Biggs; Farnsworth is to the House what Biggs is to the Senate. Farnsworth may have the ability, through his close friend Biggs, to severely disrupt Speaker Tobin’s agenda. This will be a key, if so far unnoticed, effect of the recall election.

*Continued on page 6*

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*Legislative Update, continued from page 5*

What does this mean for business? The recall of Pearce means the Arizona Legislature became functionally more conservative, not less. While this bodes well for business in the area of taxes and regulation (there simply will not be increases in either area, though what constitutes “regulation” is a moveable feast), it could mean trouble on other issues that have a direct or indirect effect on business: immigration, health care policy, insurance, firearms, transportation funding, etc. The main focus of the 2012 legislative session will still be economic development and job creation, but other, less business-friendly issues are likely to creep into the mix, as well.

#### Phoenix Mayor Greg Stanton

Former Phoenix City Councilman Greg Stanton defeated lobbyist/consultant Wes Gullett with relative ease (53%-46%) to win the Mayor’s race. This result was generally expected, since Stanton was favored and funded heavily by many of the traditional groups — firefighters, teachers, law enforcement — in power within the City. Gullett ran as an “outsider,” but in the end could not overcome Stanton’s somewhat-better name ID, and the support of the traditional groups.

The City of Phoenix is, of course, a “council-manager” form of government in which the Mayor has little direct power, other than the bully pulpit and a limited ability to set Council agendas. As a former Council member, Stanton is well-versed in this dynamic, and unlikely to make some of the same missteps as current Mayor Phil Gordon, such as trying to enact ordinances to strengthen the power of the mayor. His political history suggests he will be a risk-averse Mayor, tending to stick to the general views and philosophies of those entities with whom he is allied.

Stanton is pragmatic, both personally and politically. From a business standpoint, he will have pros and cons:

On the pro side, he will likely not be a mayor prone to drastic changes in city policy, lending to a fairly stable climate for businesses. He also tends to be politician genuinely interested in hearing all sides, including those of business.

On the con side for business, his political strength comes from aligning himself with traditional Democratic constituencies: labor, education, neighborhoods, firefighters and police. It is inevitable that his leanings in this direction will come in conflict with sound business principles. He is likely to be careful about tax or fee increases, but certainly won’t rule them out as a practice.

#### Redistricting Commission

Lost in the news about the election results was the decision by the Arizona Supreme Court yesterday to not temporarily reinstate the ousted Chair of the Independent Redistricting Commission (IRC), Colleen Mathis. The IRC filed the Special Action in the Court to temporarily reverse the action of Governor Jan Brewer and the State Senate last week to remove Mathis from her seat. The court denied the IRC’s request, and has set oral arguments in the case for November 17.

The non-action by the Court keeps the IRC in a state of limbo for the time being. This has the enormous effect of (1) creating even greater uncertainty about the shape, size and location of congressional and legislative districts, (2) causing great delay in final decisions on those districts and (3) keeping a number of potential congressional and legislative candidates guessing about whether, and where, they might run.

This matter will ultimately be resolved, of course, but the delays could have a long-lasting ripple effect on business and government throughout the state, as uncertainty in the political world tends to make for caution in the business world.



## Michelle Elam Received Service Award

Marty Herder, member of the Chandler Horizon Rotary Club, presented a Rotary Vocational Service Award to Michelle Elam, CCR, Registered Professional Reporter, for outstanding excellence, ethics and integrity in her vocation; sharing the moment with her husband Jim and their daughter.

Historically, Rotarians have promoted the practice of high ethical standards as part of their commitment to vocational service. Two tools developed by Rotarians — [The Four-Way Test](#) and the [Declaration of Rotarians in Businesses and Professions](#) — provide a road map for practicing ethical behavior in the workplace and other areas of life.

## Circle the Wagons!

By Jim Barker

By way of introduction, my family has been involved in the reporting business for an unbroken string of 86 years, stretching back to 1925. My grandfather was a Pitman shorthand reporter, my mother a stenographic reporter, and my wife a stenographic reporter. Though never a reporter myself, I have been, at one time or another in the past 45 years, a transcriber, a scopist, a proofreader, a reporting office manager, and an English teacher at a court reporting school. Since 1997, I have been the developer of [SearchMaster](#).

In cowboy movies, when the Indians attack the wagon train, we hear the urgent cry of "Circle the Wagons!" The wagons are hastily arranged in a circle, the inhabitants pointing their weapons outward, toward the *attackers*, and the battle begins in earnest. Now think for a moment how ludicrous it would be if, once the wagons were properly circled, the inhabitants pointed their weapons *inward*. Oh, yes, the circling attackers would be falling off their horses, all right, but only because it is exceedingly hard to ride a horse while one's eyes are filled with tears caused by hysterical, rib-busting laughter.

In *this* movie, the members of the stenographic reporting community are the inhabitants of the wagon train, the Indians having been replaced by FTR, CourtSmart, and the like. The enemies circle around us, whooping, firing their weapons in the air, probing, searching for weaknesses in our defenses while, in far too many cases, we have turned our weapons *inward* rather than outward. Now all our enemies have to do is wait us out as we annihilate each other and bring a screeching halt to our journey to the Promised Land.

As members of the reporting community wagon train, what is the most destructive weapon that we have turned against ourselves? That weapon has a cumbersome name: "Lack of Language Skills" -- hereinafter referred to as "LoLS."

LoLS is the proverbial elephant in the living room, the one that everyone tries to ignore, the one about which no one wants to speak, but the one that is there nevertheless -- right smack dab in front of us. Unfortunately, not only will ignoring the ponderous pachyderm not make it go away; ignoring it will allow it to grow even larger and more fearsome than if we were to acknowledge its presence and call it by its proper name: "LoLS." Only at such time as we acknowledge that, "Yes, there *is* an elephant in our living room!" can we then ask the next question, "What are we going to do about it?"

Frankly, the quality of the punctuation and spelling in transcripts produced by the human court reporting community is falling precipitously, setting the stage for a day of reckoning that will be dark indeed.

At the warp speed of modern technology, does anyone out

there really believe that, in a hundred years, court reporting (as we know it) will still be around? (Keep in mind that in the *last* hundred years or so, we've gone from Kitty Hawk to the moon, and far, far, beyond.) Technology is on the march, my friends, and it's not proceeding at a leisurely, mathematical pace; it's proceeding at a supercharged exponential pace, one that will bring more technological advancement in the next 10 years than has been witnessed in the entire history of the human race. (And that *includes* the ability of computers to process the spoken word *much* more effectively than is currently the case.)

So, then, we are agreed that at some point in the future what we now think of as court reporting will have become something else entirely. What that something else will be is not really the issue. For the moment, the issue is, How do those in the reporting community extend the life of their marvelous craft for as long as is humanly possible? Or to put it differently, what are the things, today, that the reporting community is doing (or not doing) that will inevitably affect, for better or worse, the future of court reporting?

Allow me to suggest here and now that unless the LoLS issue is acknowledged and addressed head-on, much gnashing of teeth is a'comin', my friends. When the day comes that voice-to-text computer technology reaches the point where it can generate a transcript that even *remotely* rivals the quality of transcripts produced by human court reporters, the party will be all but over.

Yeah, yeah, yeah, everyone ignores the shabby fellow on the corner proclaiming, "The sky is falling!" So what do I offer in defense of my argument that if LoLS is ignored, the sky may very well fall? Transcripts. I can go to the Internet right now, click a few buttons, and download transcripts generated by stenographic reporters. In fact, I've done precisely that; and I'm here to tell you that a lot of 'em ain't pretty.

Were I an FTR or CourtSmart salesperson, I would carry a couple of those transcripts with me on every sales call. And when the subject of transcript quality came up, I'd simply open my briefcase, hand the court administrator the transcripts, and ask, with a big grin on my face, "Any more questions?" The second exhibit in support of my argument that the stenographic community has lost track of its responsibility to maintain a professional level of language skills within its ranks is the NCRA's *Journal of Court Reporting (JCR)*.

The *JCR* is often filled with the kinds of punctuation errors one might expect to find in the writings of an inattentive 6th-grader. Now, that comment may seem to you a bit harsh. Given what I contend is at stake, though -- the court reporting craft itself -- I can think of no kinder way to say what must be

*Continued on page 8*

*Circle the Wagons, continued from page 7*

said: Court reporting is in trouble. Big trouble. And in this case, "trouble" is spelled L-o-L-S: "Lack of Language Skills."

When all is said and done, it is *the words on the page* of legal transcripts that testify as to whether the one who put those words on the page (and who spelled and punctuated those words) is a professional court reporter or a mere stenographer. (You didn't think "stenographer" and "court reporter" were synonyms, did you? They're not, and they never have been.)

The NCRA is the organization that sets the standards that must be met by those who seek certification as court reporters. The *JCR*, then, within its pages, should be expected to set an example of the same high standards that it requires of those who seek NCRA certification -- should it not? Sadly, that is no longer the case, as can be verified beyond any doubt by clicking the link above and seeing for yourself the types of egregious errors typically found in the *JCR* these days. Do they not have a professional proofreader on staff? My goodness, the esteemed Margie Wakeman Wells writes language articles for the *JCR*. Why not pay MWW to *proofread* the *JCR* before it's sent out to dues-paying members?

The NCRA says of itself the following: "NCRA chooses to adhere to the highest standards established by nationally and internationally recognized accrediting and credentialing authorities for its certification, certificate, and continuing education programs."

Given the statement above, why is the *JCR* so often filled with typos and egregiously erroneous punctuation? How is that *possible*? See page 9 for examples.

I am an associate member of the NCRA, and I have been for many, many years. I appreciate greatly all that the NCRA does for the reporting community; but the kinds of errors of which this article speaks, all found in just *three* issues of the *JCR*, separated by nearly two years' time, serve as confirmation that unless there is a dramatic turnaround with respect to the language skills of human court reporters, the day when stenographic court reporting dies, *at its own hand*, is much closer than some may think.

So what am I saying here? Primarily, I am saying two things:

1) Court reporters, scopists, and proofreaders who are not in possession of a professional level of language skill are killing this honorable craft.

2) If the organization that administers certification tests to court reporters (the NCRA) can't put out a professional periodical without embarrassing the entire reporting community with the kinds of errors that would cause certification testtakers to fail in their efforts to obtain NCRA certification, something is terribly amiss.

Computers are getting smarter every day, my friends. On the

other hand, young reporters now entering the business (*who are, of course, no less intelligent or motivated than those who preceded them*) are the products of an educational system that, in far too many cases, has robbed them of a proper education and actually allows young people to graduate from high school (even college!) without being able to punctuate a simple sentence. Put those two factors together, and -- can we spell "nightmare"?

Now, if you have been in this business for over a month, you already know that getting court reporters to act in unison -- on *any* issue -- is extremely difficult. That being the case, I am not here asking you to act *collectively*; I am asking you to act *individually*. You, dear reader, are in the wagon train. The wagons have been circled. The smell of gunpowder and the whooping of the enemy are in the air. What will *you* do? At the bare minimum, I suggest the following:

1) Prepare your transcripts as though they are going to be used as exhibits *at your* trial, the only question being whether, on an LoLS charge, you will be convicted or exonerated. In other words, don't let your transcripts testify against you or serve as marketing tools for ER salespeople.

2) If you are a member of the NCRA, let them know that the standards to which *you* are held accountable when you test for certification are the same standards that you expect to see upheld and in evidence when you read the pages of the *JCR*.

In other words, you are representatives of an ancient and honorable craft, an integral part of the finest legal system (despite its obvious flaws) ever devised by the human race. Defend your ground with the most powerful weapon at your disposal: **quality**.

*Disclaimer: When referring to ER in this article, I have used the words "enemy" and "enemies" because those are the words typically employed by stenographic reporters and voice writers to characterize the electronic reporting industry, its salespeople, and its practitioners. In no way have I used those words to imply that ER folks are unintelligent, unprofessional, or unskilled in what they do; just like steno and voice reporters, some are, and some aren't. When all is said and done, look at the **transcript**. Regardless of the reporting method, you'll quickly be able to discern whether it was prepared by a professional or by the true enemy of all court reporting methodologies: those afflicted with LoLS and who couldn't possibly care less.*

## JCR Examples

From Circle the Wagon Article

Text below is shown *exactly* as it appeared.

I have made no changes to the *punctuation* or to the *wording*.

Red identifies the errors in the text.

Text in *green italics* and in [brackets] identifies the few comments I have made.

### January 2009:

- "... you are **certain find rich discussions** going on in the hallways . . . "
- "... a **round-robin style** seminar . . . "
- "... **nominees** must be registered NCRA members in good standing and may not be **an** officer or director of NCRA."
- "Students love it, because it supports them financially."
- "NCRA loves it, because it because it ensures . . ."
- "Nominations may be submitted **by only voting members**."
- "You won't hear about **them though**."
- "**husband and wife** teams."
- "I don't believe we are reaching the majority of those we can **help because** we stay in our circles."
- "Is there a problem with court reporting students offering CART services in the education setting in your **area**; and if so, what are your thoughts on how we end that practice?"
- "... a **right** of passage . . ."
- "... exciting new career opportunities for **you both** inside and outside the legal arena."
- "... **word for word** conversations . . ."
- "... and you never know from what unlikely source the next, gamechanging new idea is going to emerge."
- "... their **Members of Congress**."

### November-December 2009:

- "**14 minute** depo."
- "During the spring of 2009, the *JCR* asked the members of the Captioning Community of Interest **some question** about the current status of the industry."
- "**Not** Automated Transcription System Can Replace Court Reporters."
- **During the 2008-2009 year**, more than 3,300 individuals took NCRA certification **in the past year** . . . "
- "... **hard of hearing** consumers."
- "... **gift giving restrictions**."
- "Directors may be **reelected only previous** if at least one year has elapsed since the end of their term."
- [The word "**fundraising**" in one sentence, **fund-raising**" in another -- *on the same page*.]
- "... whether the biological mother or foster parents **were would** be given parental rights to a child . . ."
- "In the October 4, San Antonio *Express-News* . . ."
- "... a \$971,000 stimulus grant in **September which** will be used to hire **seven-and-a-half** new positions . . ."
- "The Board discussed and reviewed the proposed FY 2010 budget, which was later approved at **the post convention** board meeting."
- "... operational **cost cutting**."

□ "The goal of the pilot is to see if students can reach a speed of 225 words per minute in one year's time by **immersing** themselves on the machine."

□ "Both seminar programs and testing opportunities will be regularly repeated **through out** the year."

□ "Mike Miller, RDR, CRR . . . presented the **day and a half** seminar that focused on realtime hookups . . ."

□ "Presenters included Brian, Clone, CLVS, Joe Cerda Jr., CLVS, J. Dax Perise, CLVS, and Brian DiGiovanna, RPR, CRR, CMRS." [*Good grief*.]

□ "Attendees must attend the workshop and then take a **75 question** written test covering all the material covered in the **day and a half** workshop."

□ "A CLVS . . . works with the **Court Reporter**."

□ "NCRA will keep you ahead of the curve, so you'll be ready to expand your services -- and your horizons."

### September 2011:

- "Running the **One Person Shop**."
  - "**Written Knowledge Tests**" and "written knowledge tests." [*On same page*.]
  - "Skills test" and "skills test" [*throughout the magazine -- referring to the same test*.]
  - "**Set-up** of your computer."
  - "115 **multiple choice** questions."
  - "**NCRA certified** court reporters."
  - "CLVSs are required to keep **up-to-speed** on the latest developments . . ."
  - "Are you providing CART **full time** or **part time**, and if **part-time**, what else do you do for work?"
  - "How would you describe yourself; a reporter, a CLVS, a business owner, all of the above?"
- Trying to reach the deadline for this article, this is where I stopped with the September 2011 issue of the *JCR*. (And it's a darn good thing, as my head was about to explode.)

## Task Force on Contracting (TFOC) holds in-person meeting

November 4, 2011

### *Major plans to be announced soon*

NCRA's Task Force on Contracting (TFOC) held a meeting in Chicago, Ill., from October 29 to 30 to discuss plans for the 2011-2012 year. The task force is making progress toward assisting our affiliate associations with enforcement of existing legislation of third-party contractual relationships across the country. Additionally, resources will be developed for state leaders to take advantage of with regard to passing third-party contracting legislation and regulations and enforcing existing legislation and regulations.

Members of the task force include Chairperson Toni Pulone (Calif.), Marianne Cammarota (N.J.), Laurel Eiler (Tenn.), Mary Meyer (Ariz.), Lisa Migliore Black (Ky.), Rick Paone (N.J.), Lori Urmston (Nev.), and NCRA Board Liaison Bruce Matthews (Ohio). The TFOC will be providing regular updates on its changes to NCRA membership throughout the coming year. Stay tuned for more information coming very shortly. Please contact [NCRA's Government Relations Department](#) with any questions regarding the Task Force on Contracting.

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## Harry Gin Dies, 'Ran a Great Courtroom'

*By Reporter Kim Smith*

Retired Pima County Superior Court Judge Harry Gin died Wednesday, November 9, 2011. He was 84.

Gin was born in Tucson and spent many years helping out in the Gin Soo Dung & Co. grocery at 701 S. Third Ave., a store his father opened in 1921, said his wife of 55 years, Bernice.

He received his undergraduate degree at the University of Arizona before going on to obtain his law degree from Harvard University. He passed the Arizona state bar in October 1952 and spent several years in civil practice, at one time partnering with former Arizona Gov. Samuel P. Goddard.

Gin, a one-time city magistrate, spent more than 20 years on the Pima Superior Court bench, serving at various times as court commissioner, judge pro tem and judge. He retired in 1995.

Retired federal magistrate Jim Carruth and Gin were Superior Court judges at the same time for many years.

"He was one of the sweetest, nicest human beings I ever met and he was also a darn good judge," Carruth said. Although he could be as "tough as a boot" when necessary, Gin was also able to use humor to defuse tense situations, Carruth said.

Attorney Walter Nash remembers winning a significant civil judgment in a 1970s-era case that was presided over by Gin. The judge thought he should have lost and for years referred to him as "Lucky Pierre," Nash said.

"Some judges are very formal, but he was very at ease with attorneys," Nash said. "I learned a lot from him as a very young lawyer."

Pima County Attorney Barbara LaWall fondly remembers Gin's annual staff picnics. Although she wasn't a staff member, he would always invite her and her daughter, then a toddler, to the event.

"He ran a great courtroom," LaWall said. "Everyone had to be on their toes, they had to be prepared. He didn't brook any nonsense."

Pima County Public Defender Bob Hirsh recalled Gin as an "affable, humorous" man who treated lawyers fairly. He recalled how he and Gin received a lot of criticism over the Mark Alan Austin case.

Austin was acquitted in the brutal slaying of his wife by reason of insanity in 1991 in a case that received national attention.

Instead of prison, Austin spent 124 days in a state mental hospital before being freed by Gin with court-enforced conditions.

The law at the time said a person acquitted by reason of insanity must be released after 120 days in the state hospital if he can prove he no longer suffers from the mental defect established at trial or is no longer a danger to himself or others.

Thanks to the furor over the case, the Legislature adopted a bill, called "Laura's Law," which repealed the state's insanity defense in 1993.

Bernice Gin said her husband gave much of his time to the community, serving on a long list of boards and committees,

*Continued on page 11*

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*Henry Gin, continued from page 10*

including the Southside YMCA, the Chinese Chamber of Commerce and Arizona State Board of Governors.

Gin spent a great deal of time woodworking and following UA sports, his wife said. In addition to his wife, Gin is survived by four children and seven grandchildren.

"He was one of the sweetest, nicest human beings I ever met and he was also a darn good judge." Jim Carruth, retired federal magistrate.

## What's the Secret?

### Two Very Important Questions to Ask the Court Reporter at Your Next Deposition

*Michigan Bar Journal November 2011*

Can you walk into your next deposition assuming that the court reporter will be an impartial keeper of the record, or that the reporter will charge you in accordance with statute, or that the reporter will not create a database including the testimony of your expert witnesses for use by the defense, or that the transcripts will be delivered to you in the same way they are delivered to opposing counsel? You could assume all of the above, but given the exclusive contracts often executed between court reporting firms and insurance companies or corporate litigants, such an assumption could prove to be a mistake.

Over the last decade or more, an increasing number of insurance companies and corporate litigants have entered into long-term agreements with court reporting agencies. These agreements require counsel to use a particular agency for every deposition they conduct. In return, the insurance agency or corporate litigant benefits by receiving reduced fees.

MCL 600.1491(1)(a) provides that a court reporter may not "[e]nter into or arrange for any financial relationship that compromises the impartiality of court reporters . . . or that may result in the appearance that the impartiality of a court reporter . . . has been compromised," and MCL 600.1491(1)(b) provides that a court reporter may not "[e]nter into a blanket contract with parties, litigants, attorneys, or their representatives unless all parties to the action are informed on the record in every deposition of the fees to be charged to all parties for original transcripts, copies of transcripts, and any other court reporting services to be provided."

In turn, MCL 600.1490(1)(a) defines a "[b]lanket contract" as "a contract under which a court reporter...or court reporting firm agrees to perform all court reporting or court recording services for a client for 2 or more cases at a rate of compensation fixed in the contract." Accordingly, if such a blanket contract exists, it must be disclosed on the record and the court reporter must also advise each party of the fees it will be charged under the contracted rate.

Have you ever heard a court reporter make such a disclosure on the record during a deposition? I haven't. This statutory requirement is not being followed. The decision not to disclose

the existence of these blanket agreements creates a multitude of questions that must be answered.

For example, is a non-contracting litigant being charged fairly? Or are the fees that are lost by charging lower rates to contracting insurance companies or corporate litigants actually being recouped by charging increased rates to non-contracting parties?

MCL 600.1491 goes on to state that a court reporter shall not charge more than two-thirds of the price of an original transcript for a copy of that transcript. In simple numbers, if the ordering counsel is being charged \$2.25 per page for the original transcript, opposing counsel can only be charged two-thirds of that contracted price, or \$1.50 per page.

These statutes governing the execution of contracts with court reporters and court reporting firms<sup>1</sup> have been in effect since 1998, and as explained previously, such exclusive contracts are often executed between court reporting firms and insurance companies or corporate litigants.

However, I have yet to hear a court reporter make a statutorily required "disclosure" on the record, let alone an announcement concerning the price I will be charged per transcript page. If the practice of entering into blanket contracts is legal in Michigan, and only requires that the court reporter disclose the contract on the record and advise the attorneys of their charges, why are the statutory requirements not being followed?

Michigan's statutory laws exist for a reason. Arbitrarily disobeying a statute is a grave concern, and those who choose to not play by the rules create questions in one's mind that are limitless. Now that I understand MCL 600.1490 and MCL 600.1491, if there is no disclosure on the record by the court reporter at my next deposition, I will be certain to ask whether a blanket contract exists and, if so, what price each party will be charged for the transcripts.

As a plaintiff's attorney, I would obviously prefer that no financial relationship exists between the court reporter and the defendant or corporate litigant. But as long as Michigan allows

*Continued on page 13*

## Ask Mr. Modem! – November 2011

[www.MrModem.com](http://www.MrModem.com)

### Destroy Old CDs

**Q.** I have an old magnetized eraser for 5.25-inch floppy disks. Can I run some old CDs I want to destroy through it or is there a better way to destroy CDs?

**A.** The best way to destroy old CDs or DVDs is to physically destroy them. I usually give them one slash across the playing surface with a box cutter or a quick snip with pruning shears. It's very fast, but very permanent.

**Q.** I notice that you have been responding to a number of questions in your last few columns about the Apple iPad. Thank you for providing this information. I've been thinking of getting one, but wasn't quite sure. Do you have one and is it everything that it's cracked up to be?

**A.** Yes, and yes. I do have an iPad 2, with the optional 3G (wireless) service, and it definitely lives up to the hype. Mrs. Modem, who isn't a big computing enthusiast (she's 5' 1"), recently purchased one and her impressions are typical of most users:

She is particularly impressed with how easy it is to use, how simple it is to install programs (called applications, or apps for short), and she loves that she doesn't have to fuss with anti-virus or anti-malware protection. While she replaced her desktop computer with the iPad, that's not something every computer user will want to do, but in her case, she primarily used her computer for email and visiting Web sites, so the iPad was an excellent replacement.

A free app also allows her to read Kindle and other ebooks, so she also saved the price of a Kindle. In fact, her enthusiasm for her iPad is the reason I wrote the Pulitzer-lacking ebook series, "Mr. Modem's Top 50 iPad Tips" available on amazon.com.

To view all my humble-yet-fabulous literary offerings, go to amazon.com and search for "Mr. Modem." Behold the miracle of the ebook!

**Q.** In the upper right-hand corner of my keyboard is a key marked "PrtSc/SysRq." Someone told me if I want to print a map, for example, to put it on the screen, press the F11 key, then hold down the other key and the Shift key to print a full-sized map. Can you elaborate on this? I don't understand it at all.

**A.** F11 switches into full-screen mode for most browsers, allowing more of a page to appear. Pressing the Print Screen (PrtSc/SysRq) key captures the current screen and places it on the Windows Clipboard. You can then use any graphics editor (Paint is fine, located within Windows, under Accessories) or word processor and paste (by pressing CTRL + V) the saved image onto the screen and print from there.

Historical Footnote: The SysRq or SysReq key, which shares your PrtSc key is a relic from another era -- not unlike Mr. Modem. Short for "System Request," unless specifically programmed for a particular application, today the SysRq key is as useless as a Kardashian at a MENSA meeting. The SysRq key doesn't appear on most new keyboards.

**Q.** This may be a silly question, but can you tell me the difference between a CD and DVD?

**A.** Other than the spelling (sorry, I couldn't resist), there are a number of technological differences between the two, but from a user perspective the primary difference is capacity. DVDs can hold far more data than CDs.

A typical CD can hold 700MB (megabytes), while a single-layer DVD can hold 4.7GB (gigabytes), more than six times the amount of data. While CDs are primarily used for data and audio, DVDs are primarily used for video.

## Mr. Modem's DME (Don't Miss 'Em) Sites of the Month

### Answers.com

A free, online reference guide with information covering more than a million topics. It's enough to make your head explode. The site's editors draw their data from a myriad of sources, including dictionaries, thesauruses (thesaurii?), encyclopedias, and atlases. [www.answers.com](http://www.answers.com)

### Bookshare.org

Provides access to more than 125,000 digital books for the visually impaired. Works that are out of copyright are available to anyone; books that are still under copyright are available exclusively to Bookshare members. Individual, all-you-can-read, subscriptions are \$50 per year and you must provide proof that you have a "print disability" that prevents you from reading regular books.

[www.bookshare.org](http://www.bookshare.org)

### Compendium of Lost Words

Philologists and lexicographers will love this collection of hundreds of obscure and rare words. In order for a word to qualify for inclusion, it must be found in the Oxford English Dictionary, but it must not appear anywhere on the Internet -- except, apparently, on this Web site. A few minutes perusing Forthright's Phrontistery will transform visitors from humble wordsmiths to knowledgeable, hypenemious aretalogers -- and you can quote me on that.

<http://phrontistery.info>

**"Mr. Modem's Top 50 Computing Tips," a life-altering five-ebook series, is just a download away on amazon.com at <http://amzn.to/mUNgAN>. Each volume features 50 of Mr. M.'s greatest**

*What 's the Secret, continued from page 11*

such financial relationships and blanket contracts with court reporting firms, then it is critical that all parties follow the law.

### FOOTNOTE

1. MCL 600.1490 through MCL 600.1494. *Craig E. Hilborn is the president of Hilborn & Hilborn, P.C. Since 1993, the firm has concentrated on representing persons seriously injured as a result of defective products and others' negligence. Craig is a member of the Michigan Association for Justice, the American Association for Justice, and the Attorneys Information Exchange Group. He is currently on the Executive Board of the Michigan Association for Justice and has purchased many transcripts over the past 20 years.*

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## Happy Places

By Doreen Borgmann

A happy place can be as far away as a distant vacation destination or as near as one's favorite armchair. It can be a place, a time, or merely a state of mind. Absence of a happy place can be detrimental to one's health; and, conversely, having one or more happy places can preserve one's sanity and keep one on an even emotional keel.

I'm looking forward to one of my happy places - my favorite leather recliner at 5:00 on Friday afternoon. Another work week has been completed, e-mails answered, items on my to-do list have been checked off, and it's just me and my honey hashing over the events of the day/week, a sparkling glass of my favorite adult beverage at my side, feet up, cares set aside.

Another of my happy places is my time share at Channel Islands Shores, California, just steps from the beach, the surf viewable from my second-floor bedroom balcony, the beach never crowded but always peopled with interesting types, some tide surfers, some early morning surf fishermen, a few sunbathers, a few dog walkers (why do they always seem to have pairs?), and the gorgeous multistory private beach mansions stretching up and down the beach as far as the eye can see. The surf roars in with a vengeance sometimes; the pelicans tour overhead; the gulls and terns stand sentry hoping for a handout, and the sandpipers scurry in and out of the surf looking for a meal washed up by the tide. Drinking a toast to the sunsets over the beach/ocean each evening is a treasured ritual.

This brings to mind another happy place - Sedona, Arizona! The red rocks are awe-inspiring - downright spiritual! The incredible vistas sweep away the petty issues of the day (or is it the magic of the vortex?), and one feels the Supreme Being smiling down on His world. It is a retreat from the searing heat of the desert summer and occasionally

a delightful fairyland of frosting of snow on red rock peaks in winter. It is a haven of wonderful artists and art galleries that cause the creative juices to start flowing. And a drive up Oak Creek Canyon in fall or spring gives one pause to reflect on the beauty of the changes in life.

There are also so many little happy places, passing moments that bring joy if we only pause to appreciate them.

- Walking outside to get the paper in the still of early morning, dawn just beginning to pinken the horizon, still crisp air nudging the senses alive, serene silence belying the busyness of the day that is sure to come.
- Sitting at my painting station, various art books at hand, paints and brushes laid out, an expanse of white watercolor paper full of possibilities in front of me, an expanse of existence without time or conscious thought, and finally a new creation, one's impressions and imagination set out in physical form, without words, without judgment.
- Sitting outside on the patio in the warm lingering glow of the day, sipping a cold glass of Chardonnay, listening to the tinkle of the fountain, admiring the roses and the newly planted geraniums, marigolds, pansies, watching the hummingbirds swoop around the bird feeder, admiring the original watercolor being painted in the sky as the Arizona sunset takes place.
- Driving through the gorgeous mountains of northern Arizona and feeling the vastness and variety of God's handiwork.

These are refuges from the stress of daily life, necessary for the rejuvenation of the spirit and the preservation of the soul. We must be mindful to seek out these happy places and consciously appreciate them; otherwise, they may slip by us unnoticed.



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**Drawing will be on December 9th.**



## Dates to Remember...

**December 9, 2011**

**Happy Hour Get-Together**

Locations in Phoenix & Tucson TBD

Look for an email soon.

Drawing for the Holiday Raffle

**January 21, 2012**

**ACRA Board Meeting**

Tucson

**February 10, 2012**

**Spring ArizoNotes Deadline**

Contact Karen Kahle at (520) 740-3015 / hvymtlccr@juno.com for submissions, and Robin Hirth at (480) 496-4010 / acra@saminc.org for advertising information.

**April 28, 2012**

**ACRA Midyear Seminar**

Mesa

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### DEADLINES

Spring Issue - February 10, 2012  
Summer Issue - May 10, 2012  
Fall Issue - August 10, 2012  
Winter Issue - November 10, 2012



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