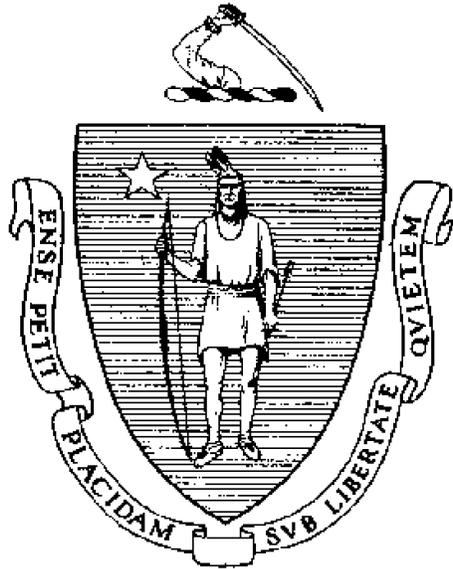


Commonwealth of Massachusetts



ADMINISTRATIVE DIRECTIVE #1-08 Uniform Transcript Format

Including
Sample Transcript

JUNE 30, 2008

Office of Transcription Services
Administrative Office of the Trial Court

FOREWORD

The Administrative Office of the Trial Court is pleased to present the Massachusetts Trial Court Uniform Transcript Format, Administrative Directive #1-08. The Uniform Transcript Format (UTF) is a major accomplishment of the Office of Transcription Services (OTS) within the Administrative Office of the Trial Court (AOTC). The recommendations of the Report of the Study Committee on Trial Transcripts, commonly known as the Green Report, provided the impetus for establishing a uniform format for all court transcripts.

The Green Report recommended that a Standing Order be created to standardize the transcript format. OTS sought public comments on proposed drafts from members of the bar, court reporters, and court transcribers, and revised many drafts before establishing the UTF. The Uniform Transcript Format provides formatting instructions for the production of all transcripts in all courts of the Commonwealth and ensures that court reporters and court transcribers prepare transcripts for the Massachusetts state courts in accordance with this UTF, Administrative Directive #1-08, effective June 30, 2008.

OTS has made great progress in improving the quality and timeliness of trial transcripts and I appreciate the dedicated efforts of that team. I extend sincere thanks to the AOTC Working Group on Trial Transcripts for its diligence in completing this project. In addition, I want to thank the SJC Committee on Time Standards for Court Reporters for its cooperation and guidance, as we have undertaken major modifications to the transcription process. Finally, I wish to acknowledge the vision of the late Alexander G. Gray, Jr., Esq., General Counsel and Director of the Legal and Support Services Department, who served as the first Chair of the AOTC Working Group on Trial Transcripts and initiated efforts to standardize the transcription process.

This transmittal on the Uniform Transcript Format includes a sample transcript. For your convenience an electronic copy of the UTF and sample transcript can be accessed at www.mass.gov/courts/admin/ots. For additional paper or electronic copies, please contact OTS at 617-878-0225 or at ots@jud.state.ma.us.

Hon. Robert A. Mulligan
Chief Justice for Administration & Management

May 12, 2008

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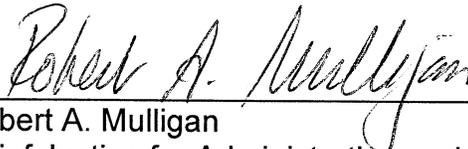
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INTRODUCTION

To promote the highest quality of transcription services and to assure fair and equitable treatment of litigants, members of the bar, court reporters, and court transcribers, it is ORDERED by the Chief Justice for Administration and Management that the following format be used for the production of all transcripts in all courts of the Commonwealth.

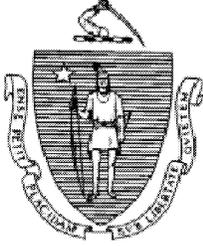
This Transcript Format shall be called the Massachusetts Trial Court Uniform Transcript Format. This standard format is modeled on Chapter 18, Transcript Format, 1944 Judicial Conference of United States Courts, January 1998 edition. This UTF requires that all transcripts produced for Massachusetts state courts, whether by official court reporters, per diem court reporters, or approved court transcribers, shall be in accordance with this Administrative Directive #1-08, unless otherwise ordered by the court.

The Uniform Transcript Format (UTF), Administrative Directive #1-08 is effective as of June 30, 2008.



Robert A. Mulligan
Chief Justice for Administration and Management

May 12, 2008



The Commonwealth of Massachusetts
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
Office of Transcription Services (OTS)
Two Center Plaza
Boston, Massachusetts 02108

Effective Date: June 30, 2008.
ADMINISTRATIVE DIRECTIVE #1-08

UNIFORM TRANSCRIPT FORMAT

1. PAPER.

1.1 Size. The size of the paper shall be eight and one-half inches (8 ½”) by eleven inches (11”) for both originals and copies.

1.2 Weight. The weight of the paper shall be at least twenty pounds (20 lbs.) for both originals and copies.

1.3 Type. The type of paper shall be of a chemical wood or better quality for both originals and copies.

1.4 Color. White paper shall be used for both originals and copies, except for real-time unedited transcripts. See 4.7 Real-time Unedited Transcripts.

1.5 Ink Color. Black ink shall be used for both originals and copies.

1.6 Copies, Paper and Electronic PDF. Certified original transcript, certified copies of the transcript, compressed transcript, and word indexes may be reproduced by any method of reproduction that produces black text on white paper. There shall be no markings on the original or copies, nor shall any type of paper be used that would hinder the clear reproduction by mechanical means for both originals and copies. Any paper product or computer software programs limiting the reproduction of a transcript (e.g., mylar strip/seal or copy-prohibitive paper) are prohibited.

A Portable Document Format (PDF) of the certified original transcript and CD (compact disc) copy of the PDF certified original transcript shall be provided to the Office of Transcription Services (OTS), Court Division, or ordering party. An electronically signed Certificate Page shall be attached to the PDF certified original transcript and CD copy of the PDF certified original transcript.

When requested by the Office of Transcription Services (OTS), Court Division, or ordering party, other formats (e.g., ASCII, American Standard Code for Information Interchange) are allowed. There shall be no charge for the CD copy of the PDF certified original transcript.

2. SPECIFICATIONS.

2.1 Margins. Typing shall begin on each page at the one and three-eighth inch (1 3/8") left margin and continue to the five-eighth inch (5/8") right margin. The distance between the left and right margins shall be no less than six and one-half inches (6 1/2").

2.2 Preprinted Marginal Lines. Preprinted solid left and right marginal lines shall be used, and placed on the page so the text begins one and three-eighth inches (1 3/8") from the left side of the page and ends five-eighth inches (5/8") from the right side of the page. Preprinted paper or computer software programs, which produce preprinted solid left and right marginal lines, are acceptable.

2.3 Top and Bottom Margins. Preprinted solid top and bottom marginal lines shall not be used. The top and bottom margins shall be at least one inch (1") and provide for twenty-five (25) lines of text.

2.4 Line Numbering. Each line of transcription on the page shall bear double-spaced line numbers one (1) through twenty-five (25), placed to the left of the preprinted solid left marginal line.

2.5 Number of Lines Per Page. Each page of transcription shall contain twenty-five (25) double-spaced lines of text.¹ The last page may contain fewer lines if it is less than a full page of transcription. Page numbers or notations are not part of the twenty-five (25) double-spaced lines of text.

2.6 Line Spacing. Each line of transcription and the Certification Page shall be double-spaced and formatted at no less than two point zero (2.0) line spacing.

Each line of transcription for the Title Page and Index Page shall be single-spaced and formatted at no less than one point zero (1.0) line spacing.

2.7 Time Stamping. Time stamping is preferred and shall be placed to the right of the left marginal line, using the specified twelve (12)-point font.

¹An exception to the requirement of twenty-five (25) double-spaced lines of text will be allowed when daily or hourly transcripts of a jury trial is produced and the exception is approved by the court. The exception allows a page break before and after sidebar, and hearings on motions. The page count shall be reduced for billing purposes by one-half (1/2) page for every page of transcript, which includes a sidebar, or a hearing on a motion that is marked by such a page break.

2.8 Page Headings, Headers. Page headings or headers are brief descriptions to assist in locating the testimony of witnesses or events in a transcript. The following page headings shall be used where appropriate in the body of the transcript.

Example:

OPENING STATEMENT FOR THE COMMONWEALTH

DIRECT EXAMINATION

CROSS-EXAMINATION

2.9 Type Size. The typeface shall be a monospaced font (such as Courier or New Courier produced by a computer software program) of twelve (12) point and shall not exceed ten point five (10.5) characters per inch.

2.10 Upper/Lowercase Letters. Upper and lowercase letters shall be used appropriately. Transcripts typed in all uppercase letters are not acceptable and will be returned for correction.

2.11 Capitalization. Capitalization shall be limited to: names, titles, dates, addresses, business names, countries, states, cities, races and nationalities, and acronyms (initials for organizational names, such as DSS, FBI, FID, or MBTA).

Example:

A Yes, I do. It's a photocopy of an FID card, firearm
(*See Sample Transcript, Page 1-7, Line 23*).

2.12 Hyphenation. Commonly accepted rules for proper hyphenation shall be followed. Proper hyphenation shall be used when words or names are spelled out so that if the word falls at the end of the line, it will not break at the hyphen, but the entire word will drop down to the next line. Hyphens shall not be used for word division, nor words hyphenated at the end of a line.

Example:

pass-port style photograph of the individual.
(*See Sample Transcript, Page 1-8, Line 5*).

2.13 Numbers. Most numbers, especially numbers under ten (<10), are expressed in words, and numbers over ten (>10) expressed in figures. The use of words or figures to express numbers shall be consistent.

Example:

three or four years.

(See Sample Transcript, Page 1-7, Line 17).

12 or 13 years.

- (a) **Compounds.** When two (2) numbers comprise one (1) item or unit, one (1) of the numbers (usually the first) should be expressed in words, and the other (usually the second) should be expressed in figures. If the second number is shorter, it should be expressed in words.

Example:

at 2:31 p.m., two 4-door units pulled up, No. 1148 and No. 2052.

(See Sample Transcript, Page 1-12, Line 7).

20 ten-drawer file cabinets.

- (b) **Short Numbers.** Numbers expressed in one (1) or two (2) short words shall be written as words, otherwise figures shall be used.

Example:

I interviewed two applicants.

I received 24 applications.

- (c) **Time.** Time of day is expressed in words when it is followed by o'clock or when o'clock is understood, and expressed in figures when it is followed by a.m. or p.m.

Example:

He left for the day at four o'clock.

He left for the day at 4:30 p.m.

2.14 Paragraphing. Reading transcript pages of solid, continuous text is arduous. Paragraphing makes reading easier, clearer, and smoother. Paragraphing shall be used for each question and answer, colloquy, lengthy discussions and responses.

Example:

A Yes. I just attended a course at the Springfield armory. I also subscribe to *Firearm Monthly*, and I just submitted an article, "Facts about Firearms," which will be published in this month's issue.

(See Sample Transcript, Page 1-10, Line 9-12).

- (a) **Speaker Changes.** A new paragraph shall be used each time the speaker changes.

Example:

A He says, "You can't come in without a warrant."
That's when you hear me enter the apartment, and I'm
yelling, "Police. Drop the gun."
And he goes, "Okay. Okay. Okay."
(See Sample Transcript, Page 1-11, Line 13-16).

- (b) **Idea Changes.** A new paragraph shall be used when an idea or theme changes.

Example:

I explained to him my lease would be up soon, and I would be moving in with my brother. I didn't want him to get caught up at the last minute with no place to go.

But moving into my brother's place was a lot easier than I thought it was going to be, and it was the right move for me.

- (c) **Point of View Shifts.** A new paragraph shall be used when an idea or theme remains unchanged, but the point of view shifts.

Example:

In that connection, let me show you a letter that appears to be over your name. It is dated November 15, 2004. It is addressed to Dr. Robert Wessling.

Now, I ask you to tell the court whether or not you can identify the letter, whether or not it refreshes your memory of your meeting with Dr. Wessling.

- (d) **Enumerations.** A new paragraph shall be used when enumerations are provided. Use a period (.) or semicolon (;) to end each item.

Example:

As to Indictment Number 2004-10658-001, the sentence will be for a term of not less than one (1) year and not more than ten (10) at the Massachusetts Correctional Institute.

As to Indictment Number 2004-10658-002, the sentence will be for a term of not less than one (1) year and not more than ten (10) to run concurrent with Indictment Number 2004-10658-001 at the Massachusetts Correctional Institute.

- (e) **Time or Tense Changes.** A new paragraph shall be used when the time or tense changes.

Example:

For as long as I can remember, the store had a reputation for honesty, fair dealing, and quality merchandise. Not once did we have any complaints or arguments of any kind.

Then last year, the O'Reillys sold the business, and everyone has had trouble with the new owners.

Paragraphing verbatim takes time. If everyone spoke according to the best rules and styles of grammar and organized his or her thoughts coherently, concisely, and thematically, paragraphs would have dynamic topic sentences, followed by logical and supporting sentences. Since this is usually not the case, paragraphing is necessary for the sake of the reader and the record.²

2.15 Phonetic. If the correct spelling of a word or name cannot be ascertained from available resource material, the word shall be typed as it sounds phonetically, followed by “phonetic” in parentheses after the word or name. Each time the word or name is transcribed, “phonetic” in parentheses shall be used. Phonetic means, “As it sounds.”

Example:

A Yeah, a Mr. William Padolsky (phonetic) gave us the master key to the building.

(See Sample Transcript, Page 1-12, Line 13-14).

2.16 Sic. If a speaker uses a non-existent word, the non-existent word shall be typed, followed by “sic” in parentheses after the non-existent word. If a speaker uses a term that is known to be incorrect, the term shall be typed as spoken followed by “sic” in parentheses after the term. Sic means, “As it is spoken.”

Example:

A I saw the defendant, Mr. Frankfurt (sic). He was standing next a small metal safe-y (sic) thing. It appeared he was

(See Sample Transcript, Page 1-13, Line 13-14).

²Montgomery County, Common Pleas Court, General Division, Manual of Transcript Procedures, August 2005.

2.17 Colloquialisms. Following is a brief list of colloquial terms, which shall be transcribed verbatim. Colloquial means, “Ordinary or familiar conversation.”

Example:

A Uh-huh. (*See Sample Transcript, Page 1-12, Line 16*).

Huh-uh

Unh-unh

2.18 Indentations.

- (a) **Q and A.** Testimony shall be identified using the letter “Q” to designate a question, and “A” to designate an answer. All the “Q” and “A” designations and the carry over “Q” and “A” shall begin at the left margin. There is no period after the Q and A. (*See Sample Transcript, Page 1-5, 1-7 to 1-16, .*)

Because depositions or testimony read at a trial have the same effect as oral testimony, the indentations for “Q” and “A” shall be the same as described above. In the transcript, each question and answer read shall be in quotation marks.

Example:

Q I am going to show you what you said at a different time.
Please follow along with me as I read from page 5, line 18.

“I responded to the scene at 1430 hours, but because our shift was scheduled to end at three o’clock, I called for an additional four officers as backup. Less than one minute later, at 2:31 p.m., two 4-door units pulled up, No. 1148 and No. 2052. When they arrived, we entered the first- and second-floor apartments in search of the suspect.”

(*See Sample Transcript, Page 1-12, Line 2-9*).

- (b) **Colloquy.** Speaker identification shall begin at the left margin followed directly by a colon. The statement shall begin on the third (3rd) space after the colon. The carry over colloquy lines shall begin at the left margin.
- (c) **Quotations.** All quoted material other than depositions shall begin on the fifth (5th) space from the left margin, with appropriate usage of quotation marks.

2.19 Two Dashes. Often a speaker will break speech mid-sentence. This shall be indicated in the transcript with two dashes (e.g., --) in one of several ways:

- (a) **Speaker Changes.** Two (2) dashes shall be used when the speaker changes or clarifies an idea mid-sentence at the point of interruption, and again at the point the speaker resumes speaking.

Example:

A Yeah. I was kinda working a lot back then. I thought I was gonna -- well, I considered taking the day off 'cause it was
(See Sample Transcript – Page 1-7, Line 9-10).

Q Didn't Mr. Franklin have facial hair -- strike that.
(See Sample Transcript – Page 1-14, Line 5).

- (b) **Speaker Continues Idea.** Two (2) dashes shall be used when the speaker does not cancel the idea mid-sentence, and continues the idea.

Example:

A I always work with Officer Jackie Lajoie. He's been my partner -- you couldn't ask for a better guy – for the last three or four years.
(See Sample Transcript – Page 1-7, Line 15-17).

- (c) **Speaker Interrupted.** Two (2) dashes shall be used when the first speaker is interrupted by the second (2nd) speaker and the first (1st) speaker resumes the original idea.

Example:

Q What did you see when you opened --
MS. WHYTE: Objection.

Q -- the door?
(See Sample Transcript, Page 1-13, Line 4-6).

Two (2) dashes shall be used when the speaker is interrupted but includes additional remarks before continuing with the original idea.

Example:

Q You say he's a brother, then --

A No, I didn't.

Q Hold it. -- you say he's a stepbrother. Which is it?

2.20 Punctuation and Spelling. Punctuation and spelling shall be appropriate standard usage. For example, if a question in "Q" and "A" is, indeed, a question, it should be followed by a question mark.

Example:

Q And by whom are you employed?

A The Boston Police Department.

(See Sample Transcript, Page 1-7, Line 6-7).

If the "Q" is a statement, it should be followed by a period.

Example:

Q Please tell us your name for the record, sir, and spell your last name.

A My name is Benjamin Miller, M-i-l-l-e-r.

(See Sample Transcript, Page 1-7, Line 3-5).

2.21 Spell Check, Proofreading. Computer software program spell checkers shall be used, and a spell check run on the entire transcript when completed. However, spell check shall not be the only method used.

Proofreading the entire transcript to identify spelling and typographical errors or misused words is required, because the computer software program spell checker can only identify spelling and not typographical errors or misused words.

Example:

Massachusetts "Trail" Court would remain a misused word since "Trail" is spelled correctly and spell check can only identify spelling errors.

Only after proofreading the entire document, could the court reporter or court transcriber identify "Trail" as a misused word and correct the transcript to read: Massachusetts "Trial" Court.

3. CONTENT.

3.1 Title Page. Each transcript shall include a Title Page, which shall count as a full page of the transcript and include:

- Volume, noted by a Roman numeral. Pages, noted by a numeral followed by a dash and followed by the total pages. Exhibits, noted by a numeral.

(See Sample Transcript, Title Page, Top Right Corner).

- Court division.
- Court department.
- Full case name.
- Civil or criminal docket number.
- Type of proceeding.
- Name and title of judge or presiding judicial officer.
- Names and addresses of each attorney and name of party represented; if pro se, state so.
- Courtroom number.
 - Date of proceeding.
- Name of court reporter, court recorder, approved court transcriber, or business.

3.2 Stamping of Original and Copy. The original transcript shall be clearly stamped ORIGINAL at the top center of the Title Page, and the copy of the transcript shall be clearly stamped COPY at the top center of the Title Page. Extra copies shall be stamped COPY at the top center of the Title Page. *(See Sample Transcript – Original, Copy).*

3.3 Word Index. A Word Index shall be included, unless otherwise ordered by the court. *(See Sample Transcript – Word Index).*

3.4 Complete Record. The transcript shall be verbatim and contain all words and other verbal expressions uttered during the course of the proceeding, except as noted below.

3.5 Private Communications and Off the Record Conversations.

Private communications and off the record conversations inadvertently recorded shall not be included in the transcript, nor be disclosed to any party, attorney, other individual, or entity.

Example:

(Off the record discussion at sidebar)
(See *Sample Transcript – Page 1-4, Line 20*).

3.6 Nonverbal Gestures. When attorneys and judges note for the record any significant nonverbal gestures on the part of a witness, the transcript shall include parenthetical phrases to indicate such nonverbal gestures.

Example:

(The witness nods his head up and down)
(See *Sample Transcript, Page 1-12, Line 20*).

3.7 Striking of Portions of the Proceeding. No portion of the proceeding shall be omitted from the record by an order to strike. Regardless of the requesting party, if material is ordered struck, that material, as well as the order to strike, shall all appear in the transcript. Nothing in this Uniform Transcript Format shall be construed to limit a court's authority to impound or make portions of a transcript confidential where the court is permitted to do so by statute, rule, or case law.

Example:

Q Didn't Mr. Franklin have facial hair -- strike that.
(See *Sample Transcript, Page 1-14, Line 5*).

3.8 Editing of Speech. The transcript shall provide a verbatim record of words spoken in the course of the proceedings. All grammatical errors, changes of thought, contractions, misstatements, and poorly constructed sentences shall be transcribed verbatim.

Example:

A Yeah. I was kinda working a lot back then. I thought I was gonna – well, I considered taking the day off 'cause it was
(See *Sample Transcript – Page 1-7, Line 9-10*).

Example:

A Well, sir – I mean, ma'am. Ma'am, I'd say probably downtown, yeah, downtown. Mostly, mostly I've worked there.
(See *Sample Transcript – Page 1-7, Line 19-20*).

If an attorney or the court repeats words or partial phrases, only the first (1st) repeated word or partial phrases shall be transcribed.

Example:

“Did – did you know” are transcribed as “Did you know –.”

3.9 Incomplete Sentences. Occasionally a speaker will be interrupted by another speaker before completing a sentence. If the speaker resumes the sentence after the interruption has ended, a dash should be used to denote the beginning of the resumed sentence. If a speaker fades out before ending a sentence, a dash should be used.

Example:

next a small metal safe-y (sic) thing. It appeared he was trying to close the bolt on it, but --
(See *Sample Transcript, Page 1-13, Line 14-15*).

3.10 Reporting of Audio/Video Recordings. Generally, audio/video recordings played in court are entered as an exhibit in a proceeding. A parenthetical notation shall be included if audio/video recordings are played in court. Because such recordings are under the control of the court, they do not need to be transcribed unless otherwise directed by the court.

Example:

(Audio played)
(See *Sample Transcript, Page 1-11, Line 7*).

3.11 Summary Phrases. Summary phrases shall be used for customary introductory statements such as the call to order of the court and the swearing in or affirmation of witnesses or jurors. Customary introductory statements shall not be transcribed verbatim. The summary phrases shall appear in parentheses.

Example:

(Court called to order)
(See *Sample Transcript – Page 1-3, Line 1*).

(Court recessed at 10:55 a.m.)
(See *Sample Transcript, Page 1-9, Line 8*).

(Court reconvened at 11:15 a.m.)
(See *Sample Transcript, Page 1-9, Line 20*).

3.12 Speaker Identification. All speakers shall be properly identified throughout the transcript, initially by their full name, thereafter by the following designations or courtesy titles, in capital letters at the left margin.

Example:

<u>Speaker</u>	<u>Identification</u>
judge	THE COURT
clerk	THE CLERK
court recording monitor	THE COURT RECORDER
court reporter	THE COURT REPORTER
court officer	THE COURT OFFICER
probation officer	THE PROBATION OFFICER
interpreter	THE INTERPRETER
attorney	MR., MRS., MS., WITH LAST NAME
plaintiff	MR., MRS., MS., WITH LAST NAME
defendant	THE DEFENDANT, OR MR., MRS., MS., WITH LAST NAME
witness	THE WITNESS, OR MR., MRS., MS., WITH LAST NAME

3.13 Event Identification. Throughout proceedings, references to events shall be properly noted in uppercase letters and centered on the appropriate line.

Example:

OPENING STATEMENT FOR THE COMMONWEALTH

(See Sample Transcript – Page 1-6, Line 5).

OPENING STATEMENT FOR THE DEFENDANT FRANKLIN

(See Sample Transcript – Page 1-6, Line 10).

OPENING STATEMENT FOR THE DEFENDANT HILL

(See Sample Transcript – Page 1-6, Line 14).

DIRECT EXAMINATION

(See Sample Transcript, Page 1-7, Line 1).

CROSS-EXAMINATION

(See Sample Transcript, Page 1-8, Line 19).

REDIRECT EXAMINATION

(See Sample Transcript, Page 1-14, Line 3).

RECROSS EXAMINATION

(See Sample Transcript, Page 1-14, Line 19).

VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NUMBER 1

(See Sample Transcript, Page 1-5, Line 12).

FURTHER DIRECT EXAMINATION

CONTINUED DIRECT EXAMINATION

COMMONWEALTH'S EVIDENCE

CLOSING ARGUMENTS FOR THE DEFENDANT HILL

(See Sample Transcript, Page 1-18, Line 10).

3.14 Court Interpreter Testimony. The court interpreter’s voice is the voice of record. When court interpreters are used, it is assumed that answers are made in a foreign language and interpreted into English unless a parenthetical "(in English)" is inserted after the LEP (Limited English Proficiency) individual’s response.

Transcripts shall reflect the speaker’s voice accurately and completely, as spoken by the LEP individuals giving testimony through a court interpreter. Court interpreters shall preserve the speaker’s use of first (1st) person. When referring to themselves, court interpreters should use the third (3rd) person, “the interpreter.”³

When a witness speaks no English, or only partial English, a court interpreter is used whose sole purpose is to literally translate the questions from English to the foreign language and the answers back to English.

Example:

Response in English

Q Will you please state your full name for the record?

A My name is Maria Santos (in English).

Q Do you speak and understand some English?

A Just a little (in English).

(See Sample Transcript, Page 1-15, Line 25 to Page 1-16, Line 3).

³ Standards and Procedures of the Office of Court Interpreter Services, promulgated pursuant to G.L. c. 221C, §7, published in Issue 973 of the Massachusetts Register, May 9, 2003, April 18, 2003.

The witness answered in English either before or after the court interpreter translated the question.

- (a) **Literal Translation.** A literal translation is when the attorney asks a question and the court interpreter answers the question for the witness in the first (1st) person.

Example:

Q How old are you, sir?

A I'm 29 years old.

The court interpreter translated the question from English to Spanish for the witness, waited for the witness to answer in Spanish, and then responded: "I'm 29 years old," giving the witnesses answer in English.

- (b) **Non-Literal Translation.** At times, an attorney will lapse into the third (3rd) person when asking questions or the interpreter will lapse into third person when translating a witness' answer.

Example:

MR. WALL: Ask her what her date of birth is.

THE INTERPRETER: She says October 15, 1978.

(See Sample Transcript, Page 1-16, Line 4-5).

The attorney asked the question to the court interpreter in the third (3rd) person, and the court interpreter, after putting the question to the witness in Spanish and, receiving the response in Spanish, relayed the answer in English in the third (3rd) person.

- (c) **Swearing In The Witness and Court Interpreter.** The clerk shall first swear in the court interpreter, and then swear in the witness through the court interpreter. At the beginning of the transcript, the court reporter or approved court transcriber shall indicate the witness' name, and include that the succeeding testimony was translated through the court interpreter.

Example:

JAMES JOHNSON, Court Interpreter, Sworn.

(See Sample Transcript, Page 1-15, Line 18).

3.15 Parenthetical Notations. Parenthetical notations in a transcript are a court reporter's or approved court transcriber's own words, enclosed in parentheses, recording some action or event, consistent with clarity and standard word usage.

(a) Proceedings Started, Recessed, and Adjourned, with Time of Day and Any Future Date Indicated where Appropriate.

Example:

(Court recessed at 10:55 a.m.)
(See *Sample Transcript, Page 1-9, Line 8*).

(Trial adjourned at 4:10 p.m. to resume
March 16, 2007 at 9:30 a.m.)
(See *Sample Transcript, Page 1-21, Line 21-22*).

(b) Jury In/Out. If a jury is involved, the parenthetical notation shall indicate whether the proceeding occurred in the presence of the jury, out of the presence of the jury, out of the hearing of the jury, prior to the jury entering the courtroom, or after the jury left the courtroom.

Example:

(Jury excused.)
(See *Sample Transcript, Page 1-9, Line 5*).

(Jury not present.)
(See *Sample Transcript, Page 1-9, Line 21*).

(Jury in at 10:35 a.m.)

(Jury out at 10:55 a.m.)

(c) Defendant Present/Not Present. In criminal trials, this designation shall be made if not stated on the record by the judge.

Example:

(Defendants present.)
(See *Sample Transcript – Page 1-3, Line 1*)

(Defendants not present.)

(d) Sidebar Conferences. This designation shall note whether the sidebar conference is on or off the record. If all the attorneys in court are not participating in the sidebar conference, state so.

Example:

(On the record discussion at sidebar with Ms. Whyte,
Mr. Wall, and Mr. Hill. Defendant Franklin not present.)
(See *Sample Transcript – Page 1-4, Line 13-14*).

Example:

(On the record discussion at sidebar with Ms. Whyte, Mr. Wall, and Mr. Hill. Defendant Franklin not present.)
(See Sample Transcript – Page 1-4, Line 13-14).

(End of discussion at sidebar.)
(See Sample Transcript – Page 1-5, Line 1).

(On the record discussion at sidebar with Ms. Whyte and Mr. Wall. Defendants not present.)
(See Sample Transcript – Page 1-5, Line 10-11).

- (e) **Discussions Off The Record.** This designation shall note where the discussion took place.

Example:

(Off the record discussion at sidebar.)
(See Sample Transcript – Page 1-4, Line 20).

- (f) **Lobby Conferences.** This designation shall note the presence or absence of parties in lobby conferences.

Example:

(On the record discussion in the lobby with Ms. Whyte, Mr. Wall, and Mr. Hill present. Defendant Franklin not present.)
(See Sample Transcript, Page 1-9, Line 9-10).

- (g) **Excerpt.** Sometimes only a portion of a proceeding is ordered. In this case, the Title Page shall indicate in quotations “EXCERPT,” and the portion requested indicated as well, “Testimony of John Smith,” or “Closing Arguments.”

3.16 Readback. All readbacks by Official Court Reporters or Per Diem Court Reporters, and the party requesting it shall be parenthetically noted.

Example:

(The reporter read back the last question.)
(See Sample Transcript, Page 1-13, Line 12).

3.17 Playback. All playbacks by Court Recorders, and the party requesting it shall be parenthetically noted.

Example:

(The record was replayed.)
(See Sample Transcript, Page 1-14, Line 14).

3.18 Previously Transcribed Portions (by Approved Court Transcribers). Occasionally, a transcript request may include a portion that has been previously transcribed. When this occurs, transcribe, “this portion previously transcribed” in parentheses, and identify by name (if available), the approved court transcriber who previously transcribed that portion.

- (a) Transcribe from the beginning point down to the previously transcribed portion.

Example:

(Voir Dire Examination previously transcribed by Elizabeth Grey, Official Court Reporter.)
(See Sample Transcript, Page 1-9, Line 24-25).

- (b) Starting after the previously transcribed portion to the ending point.

Example:

(This portion previously transcribed.)
(Starting time.)
(Begin transcribing.)

3.19 Interrupted Proceedings. If a proceeding is continued to a time later the same day, indicate off the record, in recess, court recessed to take up other matters, at the respective time, and then indicate on record.

Example:

(On the record at 12:00 p.m.)

(Court recessed to take up other matters at 12:10 p.m.)
(See Sample Transcript, Page 1-10, Line 25).

(On the record at 2:00 p.m.)

3.20 Testimony. The attorney who is conducting the questioning of a juror or witness under oath shall only be identified as Q. During examination, the juror or witness under oath shall only be identified as A.

The clerk’s instruction to please stand and raise your right hand shall be typed, but the administering of the oath shall not be typed. The witness’ response shall be typed.

Example:

MS. WHYTE: The Commonwealth calls Detective Benjamin Miller to the stand.

THE CLERK: Please raise your right hand.

BENJAMIN MILLER, Sworn

THE WITNESS: I swear.

THE COURT: Counsel, you may proceed.

(See Sample Transcript – Page 1-6, Line 18-23).

3.21 Types of Examinations.

- (a) **Direct Examination.** Direct examination is questioning by the attorney who has called the witness. Usually a witness is questioned only once on direct examination during proceedings of the same nature.

Exceptions include, if there is more than one (1) attorney representing a party, or if two (2) attorneys are questioning on the same type of examination, only the attorney introduction line is shown.

Example:

DIRECT EXAMINATION

BY MS. WHYTE:

(See Sample Transcript – Page 1-7, Line 1-2).

BY MS. JONES:

Both attorneys are on the same side, plaintiff/petitioner or defendant/respondent.

- (b) **Cross-Examination.** Cross-Examination is questioning by the opposing attorney. A witness is usually questioned only once on cross-examination with the same exceptions as noted for direct examination. “Cross-examination” is always hyphenated.

Example:

CROSS-EXAMINATION

BY MR. WALL:

(See Sample Transcript – Page 1-8, Line 19-20).

- (c) **Redirect Examination.** Redirect examination is questioning again by the first (1st) attorney re-examining the witness on matters raised on cross-examination.

Example:

REDIRECT EXAMINATION

BY MS. WHYTE:

(See Sample Transcript, Page 1-14, Line 3-4).

Example:

FURTHER REDIRECT EXAMINATION

BY MS. WHYTE:

(See Sample Transcript, Page 1-15, Line 3-4).

- (d) **Recross Examination.** Recross examination is questioning by the opposing attorney re-examining the witness on matters raised on redirect. Attorneys may question in turn several times on redirect and recross.

Example:

RECROSS EXAMINATION
BY MR. WALL

(See Sample Transcript, Page 1-14, Line 19-20).

- (e) **Voir Dire Examination.** Voir dire examination is used during jury selection when prospective jurors are questioned as to their qualifications as jurors. In this instance, the centered heading in uppercase letters for the examination shall be as follows:

Example:

BENJAMIN MILLER, Previously Sworn
VOIR DIRE EXAMINATION
BY MR. WALL

(See Sample Transcript – Page 1-10, Line 1-3).

Voir dire examination is used when the court questions a witness or when the testimony of a witness is interrupted by an opposing attorney who wishes to question the witness on a particular subject. The jury may or may not be excused.

- (f) **Continued Examination.** Continued examination is used in the following circumstances.

Example:

BENJAMIN MILLER, Previously Sworn
CONTINUED CROSS-EXAMINATION
BY MR. WALL:

(See Sample Transcript, Page 1-11, Line 3-5).

If an attorney has not completed his/her examination of a witness when court recesses for the day, and the examination resumes at the beginning of a new day, or if a witness' testimony has been interrupted by testimony of another witness, the entire witness setup is required, using words "previously sworn" in the witness line.

Example:

JOHN DOE, Previously Sworn
CONTINUED DIRECT EXAMINATION
BY MR. SMITH:

3.22 Exhibits. Exhibits are items admitted into evidence at trial. An attorney may ask a witness to identify an item. After the witness' identification of the item, the attorney may ask the court to admit the item into evidence. If there are no objections, or over objection, the court orders the item admitted, the court reporter or court recorder will mark the item and assign a number.

Example:

MS. WHYTE: May I have this marked as an exhibit, your Honor?

THE COURT: Yes. Please hand it to the court reporter.

(The court reporter marks the FID Card as Exhibit 1.)

(See Sample Transcript, Page 1-8, Line 6-9).

3.23 Identifications. Items may also be marked for identification. In the example above, if the Court ruled that the photograph was not relevant and sustained Mr. Jones' objection, the photograph would be marked as an item for identification, and assigned a letter.

Example:

MS. WHYTE: And the accompanying photo for identification only?

THE COURT REPORTER: One moment, please.

THE COURT: Let's keep on with the testimony. We'll ask the clerk to do that for us now.

(The clerk marks the photograph as A for Identification.)

(See Sample Transcript, Page 1-8, Line 10-15).

(The court reporter marks the tape as B for Identification.)

(See Sample Transcript, Page 1-11, Line 18).

4. ORGANIZATION.

4.1 Page Numbering. The pages of the transcript shall be numbered in a single series of consecutive numbers for each volume, beginning with page one (1). The page number shall be placed at the top right corner of the page above the first (1st) line of transcription. Page numbers are not part of the twenty-five (25) double-spaced lines of text.

4.2 Multi-Volume Numbering. Multi-volume transcripts shall be numbered in the following manner:

Each volume of the transcript is to be numbered consecutively. One (1) volume of a transcript shall be at least equal to one (1) day of court proceedings, unless the volume exceeds two inches (2") in thickness. If so, the volumes shall be divided in a logical place, and pages shall be numbered consecutively for each volume of the transcript.

Example:

1-10 (Volume 1, Page 10)

2-20 (Volume 2, Page 20)

(a) Multiple Volumes for Same Day. If there is more than one (1) volume for the same day, the volumes should be divided in a logical place:

The beginning of a new witness;

The end of one type of examination; and

The beginning or end of motions, arguments, or court instructions, or a recess.

Each volume must contain a Title Page, an Index Page for the first volume, the transcribed proceedings, and a Certification Page for the last volume.

(b) Volume Thickness. A volume of the transcript shall be no more than two inches (2") in thickness. Each day of trial will be a new volume, starting with page one (1), unless there are multiple pretrial hearings that can be incorporated into one (1) volume of less than two inches (2") in thickness.

(c) Volume Pages. Volume pages shall be counted and numbered consecutively.

4.3 Index Page. A transcript shall contain an Index Page whenever a transcript contains one (1) of the following:

- Any witnesses;
- Any exhibits admitted; and
- More than one day of proceedings of a different nature.

The Index Page shall follow the Title Page, and indicate the pages at which the impanelment, opening statement, direct examination, cross-examination, redirect examination, recross-examination, further redirect examination, and the recall of each witness.

A separate table in the Index Page shall indicate the page at which any exhibit was marked and/or received into evidence for identification, the closing argument, jury charge, and verdict. The Index Page is a list of important events in a transcript, with the volume number (e.g., 1, 2, 3), and the page number (e.g., 10, 20, 30) of the transcript on which they appear numbered consecutively.

If a witness testifies on redirect, recross, and further redirect, the first (1st) page number is shown, then a slash bar, then the second (2nd) page number, then a slash bar, then the third (3rd) page number (e.g., 10/20/30). The Index Page shall be included as a full page of the transcript. (*See Sample Transcript, Index Page*).

4.4 Cover. Originals and copies of paper transcripts shall be covered with front and back covers of good quality, consisting of white one-hundred and forty (140)-pound index paper, number one (#1) sulfite paper, heavyweight transparent plastic, or similar material, as the court approves. There shall be no charge for the covers.

4.5 Punched Holes. The transcript shall be punched with three (3) holes in the left margin. The distance between holes shall be four and one-quarter inches (4 1/4") center to center, with the middle hole centered on the page.

4.6 Fasteners. The transcript for each proceeding shall be secured separately with a suitable fastener, along the left edge, allowing ease of reproduction. Three (3)-ring binders and permanent binding (e.g., comb binding) are not allowed.

4.7 Real-time Unedited Transcripts. Real-time unedited transcripts shall be clearly marked as such with a header appearing at the top of each page of the transcript that states, "Real-time Unedited Transcript Only."

A Portable Document Format (PDF) of the real-time unedited transcript and CD (compact disc) copy of the PDF real-time unedited transcript shall be provided to the Office of Transcription Services (OTS), Court Division, or ordering party. The compact disc label shall be of a different color than that used on the compact disc containing the text of a certified original transcript and shall be labeled with the words, "Real-time Unedited Transcript Only."

4.8 Compressed Transcripts. For transcripts over one thousand (<1,000) pages, a compressed form shall be used (e.g., a thousand (1,000) page transcript which takes up four (4) volumes in the non-compressed form, only takes up one (1) volume in the compressed form). Compressed, single-sided format transcripts, with four (4) compressed pages of proceedings printed on each page, shall be bound together as long as they do not exceed the maximum two inches (2") in thickness. (*See Sample Transcript, Compressed*).

Compressed Layout. At least four (4) to a page arranged as follows:

Example:

1	2
3	4

The following pages must be full-sized: Title, Index, and Certificate Page. Compact disc form must be in the original, non-compressed form, in order to print a full-sized page of the transcript.

4.9 Compact Disc Labeling. Each compact disc shall be labeled and include the following information:

- Court division and department.
- Full case name.
- Civil or criminal docket number.
- Type of proceeding.
- Name and title of judge or presiding judicial officer.
- Date of proceeding.
- Name of court reporter or court recorder.

Example:

Suffolk Superior Court
Commonwealth v. Robert Franklin and Mark J. Hill
Docket SUCR2007-12245 and –12246
Jury Trial
Judge Robert A. Corey
March 15, 2007
Official Court Reporter Elizabeth Grey

4.10 Inaudible Reply. Occasionally, a witness may answer by a shake or nod of the head that obviously is not recorded. If the inaudible phrase is the first word in a sentence, it should be capitalized. If a question has clearly been asked but no sound is heard, it shall be indicated by inaudible reply in parentheses:

Example:

MR. HILL: (Inaudible.)
(*See Sample Transcript, Page 1-17, Line 9*).

If something is heard indicating that the witness may have responded, but there was no audible response, or if a question was clearly asked and nothing is heard in response, it shall be indicated by no audible reply in parentheses:

Example:

MR. HILL: (No audible reply.)
(*See Sample Transcript, Page 1-17, Line 18*).

4.11 Indiscernible. When a word or phrase is unintelligible and cannot be transcribed, it shall be indicated by the word indiscernible in parentheses. If the indiscernible phrase is the first word in a sentence, it should be capitalized. A description for why the word or phrase was indiscernible and the exact time stamp or index number shall be used:

Example:

(Indiscernible -- Simultaneous speech)
(*See Sample Transcript, Page 1-17, Line 12*).

(Indiscernible – Away from the microphone at 10:10:10)

5. CERTIFICATION.

5.1 Authentication. The original and each copy of the transcript shall be authenticated with a certification on the last page of each volume of the transcript, which shall include:

If court stenographer based, the official court reporter's name, business address, business telephone number, and e-mail address.

If court voice writer based, the official or per diem court reporter's name, business address, business telephone number, and e-mail address.

If court stenographer's note based, the court transcriber's name, business address, business telephone number, and e-mail address.

If court voice writer's recording based, the court transcriber's name, business address, business telephone number, and e-mail address.

If court recorder's recording based, the approved court transcriber's name, business address, business telephone number, and e-mail address.

If court clerk's recording based, the approved court transcriber's name, business address, business telephone number, and e-mail address.

Method by which the proceedings were recorded and the method by which the transcript was produced.

Example:

Proceedings recorded by mechanical stenography, transcripts produced by note reading and/or computer.

Proceedings recorded by shorthand, transcripts produced from dictation and/or computer.

Proceedings recorded by steno mask, transcripts produced by computer.

Proceedings recorded by court recorder, transcripts produced by computer.

Proceedings recorded by court clerk, transcript produced by computer.

If more than one (1) official court reporter, per diem court reporter, court transcriber, or approved court transcriber is involved in the production of the transcript being certified, then the certifications of each person involved shall be required at the end of each volume.

A rubber stamp may be used. If available, an electronic signature shall be used. The certification page shall be included as a full page of the transcript. (*See Sample Transcript - Certification Page*).

5.2 Court Stenographer/Voice writer Certification:

"I (we), _____(name), an Official Court Reporter or Per Diem Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the court proceedings in the above-entitled matter."

"I (we), _____(name), further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format."

"I (we), _____ (name), further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action."

_____(Signature)
Name of the Official or Per Diem Court Reporter

Date

Business Address

Business Telephone

E-Mail Address

5.3 Court Transcriber Certification for Court Stenographer's Notes:

"I (we), _____(name), a Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the stenographic notes provided to me by _____(court stenographer name) of the _____(court name), of the court proceedings taken on the date and time previously stated in the above matter."

"I (we), _____(name), further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format."

"I (we), _____(name), further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action."

_____(Signature)
Name of the Court Transcriber

Date

Business Address

Business Telephone

E-Mail Address

5.4 Court Transcriber Certification for Court Voice Writer’s Recordings:

“I (we), _____ (name), a Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording provided to me by _____ (court voice writer name) of the _____ (court name) proceedings in the above-entitled matter.”

“I (we), _____ (name), further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.”

“I (we), _____ (name), further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.”

_____(Signature)
Name of the Court Transcriber

Date

Business Address

Business Telephone

E-Mail Address

5.5 Approved Court Transcriber Certification for Court Recorder’s Recordings:

"I (we), _____(name), an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me by _____(court recorder name) of the _____(court name) proceedings in the above-entitled matter."

"I (we), _____ (name), further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format."

"I (we), _____ (name), further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action."

_____(Signature)
Name of the Approved Court Transcriber

Date

Business Address

Business Telephone

E-Mail Address

5.6 Approved Court Transcriber Certification for Court Recordings:

"I (we), _____(name), an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me by _____(court clerk name) of the _____(court name) proceedings in the above-entitled matter."

"I (we), _____ (name), further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format."

"I (we), _____ (name), further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action."

_____(Signature)
Name of the Approved Court Transcriber

Date

Business Address

Business Telephone

E-mail Address

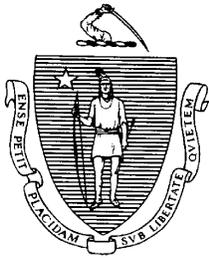
6. ASSESSMENTS.

6.1 Audio Assessment. The approved court transcriber shall include a completed Audio Assessment Form (AAF) for each volume of transcript. This form shall be furnished by and returned to the Office of Transcription Services (OTS). The Audio Assessment Form (AAF) shall appear on the next to last page of each volume of the transcript and include:

- the approved court transcriber's assessment of whether there were any problems encountered in producing the recording, including locating the time stamps or index numbers in question and noting any problems encountered which may have resulted in any “inaudible/indiscernible” sections; and
- the approved court transcriber shall submit a copy of the Audio Assessment Form (AAF) to the Office of Transcription Services (OTS), and comply with the Standards and Procedures of said Office (*See Audio Assessment Form-AAF.*)

6.2 Transcript Assessment. The ordering party shall include a completed Transcript Assessment Form (TAF) furnished by and returned to the Office of Transcription Services (OTS). The Transcript Assessment Form (TAF) shall include:

- the ordering party's assessment of whether there were any problems with the transcript; including the format, quality, and timeliness. (*See Transcript Assessment Form-TAF.*)



The Commonwealth of Massachusetts
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
Office of Transcription Services (OTS)
 Two Center Plaza
 Boston, Massachusetts 02108

AUDIO ASSESSMENT FORM (AAF)

Approved Court Transcriber: Complete one (1) Audio Assessment Form (AAF) for each volume of transcript, attach the original AAF to the next to last page of each volume of transcript, and FAX a copy of the AAF to OTS at 617-878-0762.

TODAY'S DATE: _____ TRANSCRIBER NAME: _____

CASE NAME: _____ DOCKET NO.: _____

JUDGE: _____ RECORDING DATE: _____

TRANSCRIPT VOLUME: _____ OF _____

QUALITY OF AUDIO:
(check one)

- excellent good fair poor

TYPE OF AUDIO:
(check one)

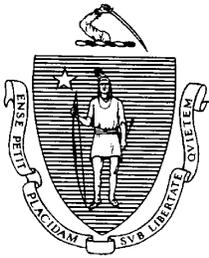
- CD TAPE

(check all that apply)

- background noise
- low audio
- low audio at sidebar
- simultaneous speech
- speaking away from microphone
- _____
- _____
- _____
- _____

TIME STAMP or INDEX NUMBER

COMMENTS: _____



**The Commonwealth of Massachusetts
 ADMINISTRATIVE OFFICE OF THE TRIAL COURT
 Office of Transcription Services (OTS)
 Two Center Plaza
 Boston, Massachusetts 02108**

TRANSCRIPT ASSESSMENT FORM (TAF)

Ordering Party: Complete one (1) Transcript Assessment Form (TAF) for each volume of transcript, and FAX the TAF to OTS at 617-878-0762.

TODAY'S DATE: _____ ORDERING PARTY NAME: _____

CASE NAME: _____ DOCKET NO.: _____

JUDGE: _____ TRANSCRIPT DATE: _____

TRANSCRIPT VOLUME: _____ OF _____

**QUALITY OF TRANSCRIPT:
 (check one)**

- excellent good fair poor

**TIMELINESS OF TRANSCRIPT:
 (check one)**

- <30 days <60 <90 >90 days

(check all that apply)

- inaudible
- inaudible
- indiscernible
- indiscernible
- spelling error
- typing error
- _____
- _____
- _____
- _____

PAGE NUMBER, LINE NUMBER

COMMENTS: _____

Volume: I
Pages: 1-22
Exhibits: 1

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS *
v. * Docket No. SUCR2007-12245
ROBERT FRANKLIN * SUCR2007-12246
MARK J. HILL *
* * * * *

JURY TRIAL
BEFORE THE HONORABLE ROBERT A. COREY

APPEARANCES:

For the Commonwealth:
Suffolk County District Attorney's Office
One Bulfinch Place
Boston, Massachusetts 02114
By: Janet S. Whyte, Assistant District Attorney

For the Defendant Franklin:
Wall, Lewis & Smith, LLC
200 Federal Street, Suite 330
Boston, Massachusetts 02108
By: Gerald A. Wall, Esq.

For the Defendant Hill:
By: Mark J. Hill, Pro Se

Boston, Massachusetts
Room 1017
March 15, 2007

Elizabeth Grey
Official Court Reporter

I N D E X

PAGE:

IMPANELMENT 4

OPENING STATEMENT:
 for the Commonwealth 6
 for the Defendant Franklin 6
 for the Defendant Hill 6

WITNESS: DIRECT CROSS REDIRECT RECROSS

BENJAMIN MILLER
 (By Ms. Whyte) 7 14/15
 (By Mr. Wall) 8/10 14
 (By Mr. Hill) 11
 Voir Dire
 (By Mr. Wall) 10

MARIA SANTOS
 (By Ms. Wall) 15
 (By Mr. Whyte) 16

EXHIBITS:
 1 FID Card 8

FOR IDENTIFICATION:
 A Photograph 8
 B 911 Tape 11

CLOSING ARGUMENT:
 for the Defendant Hill 18
 for the Defendant Franklin 18
 for the Commonwealth 18

JURY CHARGE 17

VERDICT 21

1 (Court called to order.)
2 (Defendants present.)
3 (9:05 a.m.)

4 THE CLERK: May I proceed, your Honor?

5 THE COURT: Yes.

6 THE CLERK: Docket No. 07-12245, Commonwealth v. Robert
7 Franklin and Docket No. 07-12246, Commonwealth v. Mark J. Hill.
8 Counsel, please state your names and who you represent.

9 MS. WHYTE: Good morning, your Honor. Janet Whyte for the
10 Commonwealth.

11 MR. WALL: Gerald Wall for Mr. Franklin.

12 MR. HILL: I don't have a lawyer. I'm representing myself.

13 THE COURT: Are we ready to call for jurors?

14 MS. WHYTE: Yes, your Honor.

15 THE COURT: Let's proceed then.

16 THE COURT OFFICER: The jurors are on their way, your
17 Honor.

18 (Venire present.)

19 THE CLERK: May I proceed, your Honor?

20 THE COURT: You may.

21 THE CLERK: The matters before the Court are Commonwealth
22 v. Robert Franklin and Commonwealth v. Mark J. Hill.

23 Does the Commonwealth move for trial?

24 MS. WHYTE: The Commonwealth moves for trial.

25 THE CLERK: Would the potential jurors please stand and
raise your right hands.

1 VENIRE, Sworn

2 THE CLERK: Please be seated.

3 THE COURT: Good morning, jurors. Welcome to the Suffolk
4 Superior Courthouse, and thank you for your willingness to serve
5 as jurors today. We will now impanel a criminal case charging
6 the defendants with the unlawful possession of a firearm.

7 Listen carefully as I read to you the names of the
8 prospective witnesses in this case:

9 Benjamin Miller, Boston Police Department.

10 Maria Santos, Everett Rod & Gun Shoppe, Everett,
11 Massachusetts.

12 Let me see counsel at sidebar.

13 (On the record discussion at sidebar with Ms. Whyte,
14 Mr. Wall, and Mr. Hill. Defendant Franklin not present.)

15 THE COURT: How long do you expect this trial to go?

16 MS. WHYTE: We should be finished with all the testimony
17 before lunch.

18 THE COURT: That's assuming that -- this can be off the
19 record.

20 (Off the record discussion at sidebar.)

21 THE COURT: Let's go back on the record.

22 Well, then we will do our best to get to arguments and
23 charge this afternoon. Thank you for your courtesy, counsel and
24 Mr. Hill.

25 Let's begin with the impanelment.

1 (End of discussion at sidebar.)

2 THE CLERK: When your juror number is called, please follow
3 the directions of the court officer.

4 Juror No. 1, Rosalie Mathers.

5 THE JUROR: Present.

6 THE COURT OFFICER: The juror wishes to speak with the
7 Court.

8 MR. HILL: I don't think I really need to be up there with
9 you guys. I'll stay here at the table and take notes.

10 (On the record discussion at sidebar with Ms. Whyte and
11 Mr. Wall. Defendants not present.)

12 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NUMBER 1

13 BY THE COURT:

14 Q Good morning, ma'am.

15 A I'm sorry, but I can't be here tomorrow, sir.

16 Q Well, we expect the case to conclude today.

17 MR. WALL: Would your Honor inquire as to the juror's
18 employment?

19 THE COURT: Yes. Thank you, Mr. Wall.

20 BY THE COURT:

21 Q I see here you list yourself as self-employed. What type
22 of work do you do?

23 A Graphic design.

24 THE COURT: This juror may be seated.

25 THE CLERK: Please take Seat No. 1.

1 (End of discussion at sidebar.)

2 JURY, Sworn

3 THE COURT: We will begin with opening statements.

4 Ms. Whyte, you may address the jury at this time.

5 OPENING STATEMENT FOR THE COMMONWEALTH

6 MS. WHYTE: Ladies and gentlemen of the jury, my name is
7 Janet Whyte, and I will be representing the Commonwealth at this
8 trial.

9 We ask you to return verdicts of guilty.

10 OPENING STATEMENT FOR THE DEFENDANT FRANKLIN

11 MR. WALL: This is a story about mistaken identity.

12 On behalf of Mr. Franklin, I thank you for your time and
13 attention.

14 OPENING STATEMENT FOR THE DEFENDANT HILL

15 MR. HILL: I am acting as my own lawyer on this case today.

16 Thanks for listening, ladies and gentlemen of the jury.

17 THE COURT: Ms. Whyte, you may call your first witness.

18 MS. WHYTE: The Commonwealth calls Detective Benjamin
19 Miller to the stand.

20 THE CLERK: Please raise your right hand.

21 BENJAMIN MILLER, Sworn

22 THE WITNESS: I swear.

23 THE COURT: Counsel, you may proceed.

24 MS. WHYTE: Thank you, your Honor.

25

DIRECT EXAMINATION

1
2 BY MS. WHYTE:

3 Q Please tell us your name for the record, sir, and spell
4 your last name.

5 A My name is Benjamin Miller, M-i-l-l-e-r.

6 Q And by whom are you employed?

7 A The Boston Police Department.

8 Q Were you so employed on the 16th of January, 2007?

9 A Yeah. I was kinda working a lot back then. I thought I
10 was gonna -- well, I considered taking the day off 'cause it was
11 a Friday, and I was looking forward to maybe having a three-day
12 weekend, but I was afraid they'd be shorthanded on the afternoon
13 shift.

14 Q Were you working alone or with a partner?

15 A I always work with Officer Jackie Lajoie. He's been my
16 partner -- you couldn't ask for a better guy -- for the last
17 three or four years.

18 Q Do you have a usual assignment?

19 A Well, sir -- I mean, ma'am. Ma'am, I'd say probably
20 downtown, yeah, downtown. Mostly, mostly I've worked there.

21 Q Detective, I show you this two-page document. First let me
22 ask you, do you recognize what I've handed you?

23 A Yes, I do. It's a photocopy of an FID card, firearm
24 identification card, issued on January 1, 1990 to Mr. Robert
25 Franklin of Boston, Mass. It appears to have expired on January

1 31, 2000.

2 Q And how many of these have you seen in your professional
3 career?

4 A Quite a few. They're usually accompanied by a
5 passport-style photograph of the individual.

6 MS. WHYTE: May I have this marked as an exhibit, your
7 Honor?

8 THE COURT: Yes. Please hand it to the court reporter.
9 (The court reporter marks the FID Card as Exhibit 1.)

10 MS. WHYTE: And the accompanying photo for identification
11 only?

12 THE COURT REPORTER: One moment, please.

13 THE COURT: Let's keep on with the testimony. We'll ask
14 the clerk to do that for us now.

15 (The clerk marks the photograph as A for Identification.)

16 THE CLERK: It has been marked with a sticker, A for ID.

17 MS. WHYTE: Thank you. No further questions of this
18 witness.

19 CROSS-EXAMINATION

20 BY MR. WALL

21 Q Now, sir, how long have you been a police officer?

22 A Five years.

23 Q And what's your current assignment?

24 A I'm a detective assigned to Area B-1.

25 Q How long have you been assigned to Area B-1?

1 A Approximately one month.

2 MR. WALL: Your Honor, may I request a voir dire of this
3 witness?

4 THE COURT: We'll excuse the jury.

5 (Jury excused.)

6 THE COURT: We'll take a brief recess, and let me see you
7 all in chambers in five minutes.

8 (Court recessed at 10:55 a.m.)

9 (On the record discussion in the lobby with Ms. Whyte, Mr. Wall,
10 and Mr. Hill present. Defendant Franklin not present.)

11 THE COURT: I asked my law clerk to do some research into
12 this issue. Let me have you take a look at this recent case
13 decided by our appeals court, *Commonwealth v. Hamilton*, 66 Mass.
14 App. 210, and also a 1998 Supreme Judicial Court decision,
15 *Commonwealth v. Couture*, 427 Mass. 59.

16 MR. WALL: I will read them over lunch, your Honor. Thank
17 you.

18 MS. WHYTE: I am aware of those cases, yes, Judge.

19 (End of Lobby conference.)

20 (Court reconvened at 11:15 a.m.)

21 (Jury not present.)

22 THE CLERK: Please retake the stand, Detective.

23 THE COURT: You remain under oath.

24 (Voir Dire Examination previously transcribed by Elizabeth Grey,
25 Official Court Reporter.)

1 BENJAMIN MILLER, Previously Sworn

2 VOIR DIRE EXAMINATION

3 BY MR. WALL

4 Q Am I correct that your firearm training began when you were
5 assigned to the Boston Police as a patrolman?

6 A Yes.

7 Q And have you continued to pursue training since attaining
8 the rank of detective?

9 A Yes. I just attended a course at the Springfield armory.

10 I also subscribe to *Firearm Monthly*, and I just submitted
11 an article, "Facts about Firearms," which will be published in
12 this month's issue.

13 Q Just so we are clear here, you have never before this case
14 testified at a trial in the superior court, correct?

15 A Correct.

16 THE COURT: Have you testified in any other courts?

17 THE WITNESS: Numerous times in district court.

18 THE COURT: I will allow him to testify.

19 The parties to this case may be excused for a moment or
20 two. I will take the opportunity with the jury out of the room
21 to speak informally with counsel on the next case just as to
22 scheduling.

23 Would counsel on McGill v. Express Trucking please
24 approach.

25 (Court recessed to take up other matters at 12:10 p.m.)

1 (Court reconvened at 12:20 p.m.)

2 (Jury present.)

3 BENJAMIN MILLER, Previously Sworn

4 CONTINUED CROSS-EXAMINATION

5 BY MR. WALL

6 Q At this time I will play a 911 tape recording for you.

7 (Audio played.)

8 Q Are you able to identify the two voices?

9 A It sounds like the voice of -- well, I believe it to be --
10 yes, I'm a hundred percent sure it is the voice of Mr. Franklin.
11 The other muffled voice is mine.

12 Q And what does he say?

13 A He says, "You can't come in without a warrant."

14 That's when you hear me enter the apartment, and I'm
15 yelling, "Police. Drop the gun."

16 And he goes, "Okay. Okay. Okay."

17 MR. WALL: No further questions, and I offer this 911 tape.

18 (The court reporter marks the tape as B for Identification.)

19 THE COURT: Mr. Hill, do you wish to inquire?

20 CROSS-EXAMINATION

21 BY MR. HILL

22 Q Sir, didn't you testify at an earlier hearing?

23 A Yes, sir.

24 MR. HILL: Can I show him this grand jury transcript?

25 THE COURT: Go ahead.

1 BY MR. HILL:

2 Q I am going to show you what you said at a different time.
3 Please follow along with me as I read from page 5, line 18.

4 "I responded to the scene at 1430 hours, but because our
5 shift was scheduled to end at three o'clock, I called for an
6 additional four officers as backup. Less than one minute later,
7 at 2:31 p.m., two 4-door units pulled up, No. 1148 and No. 2052.
8 When they arrived, we entered the first- and second-floor
9 apartments in search of the suspect."

10 A That's correct. That is what I testified to.

11 Q And later on you said the manager of the housing complex
12 let you in and gave you a key?

13 A Yeah, a Mr. William Padolsky (phonetic) gave us the master
14 key to the building.

15 Q Did you still use force to gain entry?

16 A Uh-huh.

17 Q Is that a "yes"?

18 A Sorry. I meant yes.

19 Q And then did you enter the apartment?

20 A (The witness nods his head up and down.)

21 MS. WHYTE: Your Honor, may the witness be instructed to
22 answer with words?

23 THE COURT: Officer, please respond with words rather than
24 nodding your head.

25

1 BY MR. HILL:

2 Q You alone, or were others present?

3 A It was me, my fellow officers, and Mr. Padolsky (phonetic).

4 Q What did you see when you opened --

5 MS. WHYTE: Objection.

6 Q -- the door?

7 MS. WHYTE: Withdrawn.

8 A Can you ask me that again?

9 MR. HILL: Judge, can you ask the reporter to read back the
10 question?

11 THE COURT: She may.

12 (The reporter read back the last question.)

13 A I saw the defendant, Mr. Frankfurt (sic). He was standing
14 next a small metal safe-y (sic) thing. It appeared he was
15 trying to close the bolt on it, but --

16 BY MR. HILL:

17 Q Do you see the Defendant Franklin in court today?

18 A Yes, I do.

19 Q Would you point him out for the Court and jury?

20 A (Witness points.)

21 Q And would you describe how he appeared on January 16, 2007?

22 A He was about 6 feet 4 inches, six-five; he was a skinny
23 guy, maybe 170 pounds; mid-40s; he was wearing a red hooded
24 sweatshirt.

25 MR. HILL: No more questions.

1 THE COURT: Any redirect?

2 MS. WHYTE: If I may, your Honor?

3 REDIRECT EXAMINATION

4 BY MS. WHYTE

5 Q Didn't Mr. Franklin have facial hair -- strike that.

6 Has Mr. Franklin's appearance changed since you saw him
7 that day?

8 A Not in any drastic way.

9 Q Earlier today did you say he had a medium build?

10 A I don't believe so.

11 MS. WHYTE: May the reporter play back the earlier
12 description?

13 THE COURT: Please do so.

14 (The record was replayed:

15 "He was about 6 feet 4 inches, six-five; he was a skinny
16 guy, maybe 170 pounds; mid-40s; he was wearing a red hooded
17 sweatshirt.")

18 MS. WHYTE: Thank you. That's all.

19 RECROSS EXAMINATION

20 BY MR. WALL

21 Q What caused you to travel to the scene?

22 A I received a BOLO, and I had an idea where Mr. Franklin
23 hung out.

24 THE COURT: A what?

25 THE WITNESS: Your Honor, a BOLO is shorthand for "Be on

1 the lookout."

2 MR. WALL: That's all. Thank you.

3 FURTHER REDIRECT EXAMINATION

4 BY MS. WHYTE

5 Q Did Mr. Franklin have facial hair that day?

6 A Just a little stubble.

7 MS. WHYTE: No further questions.

8 (Witness excused.)

9 MS. WHYTE: The Commonwealth rests.

10 THE COURT: The Commonwealth has rested. Do you wish to
11 proceed, Mr. Wall?

12 MR. WALL: Thank you, your Honor. The Defendant calls
13 Maria Santos.

14 Your Honor, Ms. Santos needs the services of an
15 interpreter.

16 THE CLERK: Has the interpreter been sworn?

17 MR. JOHNSON: Not yet.

18 JAMES JOHNSON, Court Interpreter, Sworn

19 MR. JOHNSON: My name is James Johnson. I am a Spanish
20 interpreter. Good morning, your Honor.

21 (Proceedings translated through the Interpreter.)

22 MARIA SANTOS, Sworn

23 DIRECT EXAMINATION

24 BY MR. WALL

25 Q Will you please state your full name for the record?

1 A My name is Maria Santos (in English).

2 Q Do you speak and understand some English?

3 A Just a little (in English).

4 MR. WALL: Ask her what her date of birth is.

5 THE INTERPRETER: She says October 15, 1978.

6 BY MR. WALL:

7 Q Are you employed?

8 A Yes. I am the owner/operator of Everett Rod & Gun Shoppe,
9 658 Oakdale Street, Everett, Massachusetts.

10 Q Did you sell a Colt .45 firearm to a Mark J. Hill of
11 Boston, Massachusetts?

12 THE INTERPRETER: May the Interpreter have the caliber
13 repeated?

14 MR. WALL: I said Colt .45.

15 A My records indicate that I did. He bought the one item.
16 He paid in cash, \$89.95. That was with the 20 percent discount.

17 MR. WALL: No further questions.

18 CROSS-EXAMINATION

19 BY MS. WHYTE

20 Q Did you conduct the transaction with Mr. Hill in Spanish or
21 English that day?

22 A We spoke in English to each other that day, but I am more
23 comfortable in front of the judge using an interpreter.

24 MS. WHYTE: Thank you, ma'am.

25 MR. HILL: No questions from me.

1 MR. WALL: Nothing further.

2 (Witness excused.)

3 THE COURT: Thank you, Mr. Interpreter. You may be
4 excused.

5 (Interpreter excused.)

6 MR. WALL: Mr. Franklin rests.

7 THE COURT: Mr. Hill, do you wish to call any witnesses on
8 your behalf?

9 MR. HILL: (Inaudible.)

10 THE COURT: Please stand when you address the Court.

11 MR. HILL: I said that I don't really have anything --
12 (Indiscernible -- Simultaneous speech.)

13 MS. WHYTE: He's indicating that he doesn't believe --

14 THE COURT: We can only have one person speaking at a time.
15 Are you resting, Mr. Hill?

16 MR. HILL: Sure.

17 THE COURT: Are we ready to go into arguments and charge?

18 MR. HILL: (No audible reply.)

19 MS. WHYTE: I am, your Honor.

20 MR. WALL: Certainly, your Honor.

21 THE COURT: Ladies and gentlemen, it is necessary for the
22 Court to confer with counsel outside of your presence. Although
23 it is not quite one o'clock, we will take our luncheon recess
24 now, and I ask that you return to your jury room shortly before
25 two o'clock. Thank you.

1 (Jury excused.)

2 THE COURT: Counsel, I understand that you wish my
3 instructions be provided to the jury at the close of my remarks.
4 I will approve that request.

5 You are now excused for lunch. See you at two.

6 (Court recessed at 12:55 p.m.)

7 (Court reconvened at 2:00 p.m.)

8 THE COURT: Thank you for your promptness. I now ask that
9 you listen attentively to the closing arguments.

10 CLOSING ARGUMENT FOR THE DEFENDANT HILL

11 MR. HILL: I'm no lawyer, but I did my best, so please find
12 me not guilty.

13 CLOSING ARGUMENT FOR THE DEFENDANT FRANKLIN

14 MR. WALL: I suggest you are left with a reasonable doubt.
15 I ask you to find my client, Mr. Franklin, not guilty.

16 CLOSING ARGUMENT FOR THE COMMONWEALTH

17 MS. WHYTE: We have proven our case beyond a reasonable
18 doubt. We ask you to find the defendants guilty.

19 JURY CHARGE

20 THE COURT: You are now about to begin your final duty,
21 which is to decide the fact issues of this case, and before you
22 do that, I must instruct you on the law.

23 Madam foreperson, I might indicate to you that these
24 instructions that I'm giving to you now will be prepared by the
25 court reporter, and copies will be available to you to refer to

1 in your deliberations, so you may take notes if you wish, but it
2 is not necessary.

3 My function as the judge in this case has been to see that
4 the case was tried in a manner that was fair and orderly and
5 efficient, to rule on questions of law, and instruct you on the
6 law that applies in this case. It is your duty as jurors to
7 accept the law as I state it to you whether you agree with it or
8 not.

9 MS. WHYTE: Your Honor, may I be heard at sidebar?

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1 (On the record discussion at sidebar with Ms. Whyte,
2 Mr. Wall, and Mr. Hill. Defendant Franklin not present.)

3 MS. WHYTE: I neglected to ask that you consider
4 instructing them on constructive possession.

5 MR. WALL: I strenuously object.

6 THE COURT: I decline to do so.

7 MS. WHYTE: Thank you, Judge.

8 (End of discussion at sidebar.)

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1 THE COURT: Madam foreperson, the clerk is going to give
2 you the verdict slips. A copy of the indictment will be
3 attached to each of them, and you will determine whether the
4 defendants are not guilty or guilty as charged. Let the court
5 officer know when you have reached a unanimous verdict, and at
6 that time you will be brought back into the courtroom.

7 Let's have the court officers sworn.

8 COURT OFFICERS, Sworn

9 (Jury excused to begin deliberations at 2:55 p.m.)

10 (Court reconvened at 4:00 p.m.)

11 VERDICT

12 THE CLERK: What say you, madam foreperson, has your jury
13 agreed upon a verdict?

14 THE FOREPERSON: Guilty as to the Defendant Franklin.
15 Not guilty as to the Defendant Hill.

16 THE COURT: You are now excused, jurors, with the Court's
17 thanks.

18 (Jury excused.)

19 THE COURT: We'll return on March 16 at 9:30 for
20 sentencing. Thank you, everyone. Court is in recess.

21 (Trial adjourned at 4:10 p.m. to resume
22 March 16, 2007 at 9:30 a.m.)
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C E R T I F I C A T I O N

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I, ELIZABETH GREY, OFFICIAL COURT REPORTER, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND
ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT
PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

I, ELIZABETH GREY, FURTHER CERTIFY THAT THE FOREGOING
IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL
COURT DIRECTIVE ON TRANSCRIPT FORMAT.

I, ELIZABETH GREY, FURTHER CERTIFY THAT I NEITHER AM
COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE
PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND
FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN
THE OUTCOME OF THE ACTION.

ELIZABETH GREY, OFFICIAL COURT REPORTER
PROCEEDINGS RECORDED BY STENOMASK. TRANSCRIPTS PRODUCED
FROM COMPUTER.

(SIGNATURE) (DATE)
3 PEMBERTON SQUARE
BOSTON, MASSACHUSETTS 02108
(617) 788-4321

Volume: I
Pages: 1-5
Exhibits: None

SUFFOLK, SS. COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS *
v. * Docket No. SUCR2007-12245
ROBERT FRANKLIN * SUCR2007-12246
MARK J. HILL *
* * * * *

JURY TRIAL
BEFORE THE HONORABLE ROBERT A. COREY
EXCERPT: Voir Dire Testimony of Benjamin Miller

APPEARANCES:

For the Commonwealth:
Suffolk County District Attorney's Office
One Bulfinch Place
Boston, Massachusetts 02114
By: Janet S. Whyte, Assistant District Attorney

For the Defendant Franklin:
Wall, Lewis & Smith, LLC
200 Federal Street, Suite 330
Boston, Massachusetts 02108
By: Gerald A. Wall, Esq.

For the Defendant Hill:
By: Mark J. Hill, Pro Se

Boston, Massachusetts
Room 1017
March 15, 2007

Elizabeth Grey
Official Court Reporter

I N D E X

WITNESS: DIRECT CROSS REDIRECT RE CROSS

BENJAMIN MILLER

Voir Dire

(By Mr. Wall) 10

EXHIBITS:

(None offered.)

1 (Court in session.)
2 (Defendants present.)
3 (Jury not present.)
4 (11:15 a.m.)

5 BENJAMIN MILLER, Previously Sworn

6 VOIR DIRE EXAMINATION

7 BY MR. WALL

8 Q Am I correct that your firearm training began when you were
9 assigned to the Boston Police as a patrolman?

10 A Yes.

11 Q And have you continued to pursue training since attaining
12 the rank of detective?

13 A Yes. I just attended a course at the Springfield armory.

14 I also subscribe to *Firearm Monthly*, and I just submitted
15 an article, "Facts about Firearms," which will be published in
16 this month's issue.

17 Q Just so we are clear here, you have never before this case
18 testified at a trial in the superior court, correct?

19 A Correct.

20 THE COURT: Have you testified in any other courts?

21 THE WITNESS: Numerous times in district court.

22 THE COURT: I will allow him to testify.

23 The parties to this case may be excused for a moment or
24 two. I will take the opportunity with the jury out of the room
25 to speak informally with counsel on the next case just as to
scheduling.

1 Would counsel on McGill v. Express Trucking please
2 approach.

3 (Court recessed to take up other matters at 12:10 p.m.)

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C E R T I F I C A T I O N

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(SIGNATURE) (DATE)
3 PEMBERTON SQUARE
BOSTON, MASSACHUSETTS 02108
(617) 788-4321

1 (Court called to order.)
 2 (Defendants present.)
 3 (9:05 a.m.)
 4 THE CLERK: May I proceed, your Honor?
 5 THE COURT: Yes.
 6 THE CLERK: Docket No. 07-12245, Commonwealth v. Robert
 7 Franklin and Docket No. 07-12246, Commonwealth v. Mark J. Hill.
 8 Counsel, please state your names and who you represent.
 9 MS. WHYTE: Good morning, your Honor. Janet Whyte for the
 10 Commonwealth.
 11 MR. WALL: Gerald Wall for Mr. Franklin.
 12 MR. HILL: I don't have a lawyer. I'm representing myself.
 13 THE COURT: Are we ready to call for jurors?
 14 MS. WHYTE: Yes, your Honor.
 15 THE COURT: Let's proceed then.
 16 THE COURT OFFICER: The jurors are on their way, your
 17 Honor.
 18 (Venire present.)
 19 THE CLERK: May I proceed, your Honor?
 20 THE COURT: You may.
 21 THE CLERK: The matters before the Court are Commonwealth
 22 v. Robert Franklin and Commonwealth v. Mark J. Hill.
 23 Does the Commonwealth move for trial?
 24 MS. WHYTE: The Commonwealth moves for trial.
 25 THE CLERK: Would the potential jurors please stand and
 raise your right hands.

1 VENIRE, Sworn
 2 THE CLERK: Please be seated.
 3 THE COURT: Good morning, jurors. Welcome to the Suffolk
 4 Superior Courthouse, and thank you for your willingness to serve
 5 as jurors today. We will now impanel a criminal case charging
 6 the defendants with the unlawful possession of a firearm.
 7 Listen carefully as I read to you the names of the
 8 prospective witnesses in this case:
 9 Benjamin Miller, Boston Police Department.
 10 Maria Santos, Everett Rod & Gun Shoppe, Everett,
 11 Massachusetts.
 12 Let me see counsel at sidebar.
 13 (On the record discussion at sidebar with Ms. Whyte,
 14 Mr. Wall, and Mr. Hill. Defendant Franklin not present.)
 15 THE COURT: How long do you expect this trial to go?
 16 MS. WHYTE: We should be finished with all the testimony
 17 before lunch.
 18 THE COURT: That's assuming that -- this can be off the
 19 record.
 20 (Off the record discussion at sidebar.)
 21 THE COURT: Let's go back on the record.
 22 Well, then we will do our best to get to arguments and
 23 charge this afternoon. Thank you for your courtesy, counsel and
 24 Mr. Hill.
 25 Let's begin with the impanelment.

1 (End of discussion at sidebar.)
 2 THE CLERK: When your juror number is called, please follow
 3 the directions of the court officer.
 4 Juror No. 1, Rosalie Mathers.
 5 THE JUROR: Present.
 6 THE COURT OFFICER: The juror wishes to speak with the
 7 Court.
 8 MR. HILL: I don't think I really need to be up there with
 9 you guys. I'll stay here at the table and take notes.
 10 (On the record discussion at sidebar with Ms. Whyte and
 11 Mr. Wall. Defendants not present.)
 12 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NUMBER 1
 13 BY THE COURT:
 14 Q Good morning, ma'am.
 15 A I'm sorry, but I can't be here tomorrow, sir.
 16 Q Well, we expect the case to conclude today.
 17 MR. WALL: Would your Honor inquire as to the juror's
 18 employment?
 19 THE COURT: Yes. Thank you, Mr. Wall.
 20 BY THE COURT:
 21 Q I see here you list yourself as self-employed. What type
 22 of work do you do?
 23 A Graphic design.
 24 THE COURT: This juror may be seated.
 25 THE CLERK: Please take Seat No. 1.

1 (End of discussion at sidebar.)
 2 JURY, Sworn
 3 THE COURT: We will begin with opening statements.
 4 Ms. Whyte, you may address the jury at this time.
 5 OPENING STATEMENT FOR THE COMMONWEALTH
 6 MS. WHYTE: Ladies and gentlemen of the jury, my name is
 7 Janet Whyte, and I will be representing the Commonwealth at this
 8 trial.
 9 We ask you to return verdicts of guilty.
 10 OPENING STATEMENT FOR THE DEFENDANT FRANKLIN
 11 MR. WALL: This is a story about mistaken identity.
 12 On behalf of Mr. Franklin, I thank you for your time and
 13 attention.
 14 OPENING STATEMENT FOR THE DEFENDANT HILL
 15 MR. HILL: I am acting as my own lawyer on this case today.
 16 Thanks for listening, ladies and gentlemen of the jury.
 17 THE COURT: Ms. Whyte, you may call your first witness.
 18 MS. WHYTE: The Commonwealth calls Detective Benjamin
 19 Miller to the stand.
 20 THE CLERK: Please raise your right hand.
 21 BENJAMIN MILLER, Sworn
 22 THE WITNESS: I swear.
 23 THE COURT: Counsel, you may proceed.
 24 MS. WHYTE: Thank you, your Honor.
 25

DIRECT EXAMINATION

1
2 BY MS. WHYTE:
3 Q Please tell us your name for the record, sir, and spell
4 your last name.
5 A My name is Benjamin Miller, M-i-l-l-e-r.
6 Q And by whom are you employed?
7 A The Boston Police Department.
8 Q Were you so employed on the 16th of January, 2007?
9 A Yeah. I was kinda working a lot back then. I thought I
10 was gonna -- well, I considered taking the day off 'cause it was
11 a Friday, and I was looking forward to maybe having a three-day
12 weekend, but I was afraid they'd be shorthanded on the afternoon
13 shift.
14 Q Were you working alone or with a partner?
15 A I always work with Officer Jackie Lajoie. He's been my
16 partner -- you couldn't ask for a better guy -- for the last
17 three or four years.
18 Q Do you have a usual assignment?
19 A Well, sir --I mean, ma'am. Ma'am, I'd say probably
20 downtown, yeah, downtown. Mostly, mostly I've worked there.
21 Q Detective, I show you this two-page document. First let me
22 ask you, do you recognize what I've handed you?
23 A Yes, I do. It's a photocopy of an FID card, firearm
24 identification card, issued on January 1, 1990 to Mr. Robert
25 Franklin of Boston, Mass. It appears to have expired on January

1 31, 2000.
2 Q And how many of these have you seen in your professional
3 career?
4 A Quite a few. They're usually accompanied by a
5 passport-style photograph of the individual.
6 MS. WHYTE: May I have this marked as an exhibit, your
7 Honor?
8 THE COURT: Yes. Please hand it to the court reporter.
9 (The court reporter marks the FID Card as Exhibit 1.)
10 MS. WHYTE: And the accompanying photo for identification
11 only?
12 THE COURT REPORTER: One moment, please.
13 THE COURT: Let's keep on with the testimony. We'll ask
14 the clerk to do that for us now.
15 (The clerk marks the photograph as A for Identification.)
16 THE CLERK: It has been marked with a sticker, A for ID.
17 MS. WHYTE: Thank you. No further questions of this
18 witness.

CROSS-EXAMINATION

19 BY MR. WALL
20 Q Now, sir, how long have you been a police officer?
21 A Five years.
22 Q And what's your current assignment?
23 A I'm a detective assigned to Area B-1.
24 Q How long have you been assigned to Area B-1?

1 A Approximately one month.
2 MR. WALL: Your Honor, may I request a voir dire of this
3 witness?
4 THE COURT: We'll excuse the jury.
5 (Jury excused.)
6 THE COURT: We'll take a brief recess, and let me see you
7 all in chambers in five minutes.
8 (Court recessed at 10:55 a.m.)
9 (On the record discussion in the lobby with Ms. Whyte, Mr. Wall,
10 and Mr. Hill present. Defendant Franklin not present.)
11 THE COURT: I asked my law clerk to do some research into
12 this issue. Let me have you take a look at this recent case
13 decided by our appeals court, *Commonwealth v. Hamilton*, 66 Mass.
14 App. 210, and also a 1998 Supreme Judicial Court decision,
15 *Commonwealth v. Couture*, 427 Mass. 59.
16 MR. WALL: I will read them over lunch, your Honor. Thank
17 you.
18 MS. WHYTE: I am aware of those cases, yes, Judge.
19 (End of Lobby conference.)
20 (Court reconvened at 11:15 a.m.)
21 (Jury not present.)
22 THE CLERK: Please retake the stand, Detective.
23 THE COURT: You remain under oath.
24 (Voir Dire Examination previously transcribed by Elizabeth Grey,
25 Official Court Reporter.)

BENJAMIN MILLER, Previously Sworn

VOIR DIRE EXAMINATION

1 BY MR. WALL
2 Q Am I correct that your firearm training began when you were
3 assigned to the Boston Police as a patrolman?
4 A Yes.
5 Q And have you continued to pursue training since attaining
6 the rank of detective?
7 A Yes. I just attended a course at the Springfield armory.
8 I also subscribe to *Firearm Monthly*, and I just submitted
9 an article, "Facts about Firearms," which will be published in
10 this month's issue.
11 Q Just so we are clear here, you have never before this case
12 testified at a trial in the superior court, correct?
13 A Correct.
14 THE COURT: Have you testified in any other courts?
15 THE WITNESS: Numerous times in district court.
16 THE COURT: I will allow him to testify.
17 The parties to this case may be excused for a moment or
18 two. I will take the opportunity with the jury out of the room
19 to speak informally with counsel on the next case just as to
20 scheduling.
21 Would counsel on *McGill v. Express Trucking* please
22 approach.
23 (Court recessed to take up other matters at 12:10 p.m.)
24
25

1 (Court reconvened at 12:20 p.m.)
 2 (Jury present.)
 3 BENJAMIN MILLER, Previously Sworn
 4 CONTINUED CROSS-EXAMINATION
 5 BY MR. WALL
 6 Q At this time I will play a 911 tape recording for you.
 7 (Audio played.)
 8 Q Are you able to identify the two voices?
 9 A It sounds like the voice of -- well, I believe it to be --
 10 yes, I'm a hundred percent sure it is the voice of Mr. Franklin.
 11 The other muffled voice is mine.
 12 Q And what does he say?
 13 A He says, "You can't come in without a warrant."
 14 That's when you hear me enter the apartment, and I'm
 15 yelling, "Police. Drop the gun."
 16 And he goes, "Okay. Okay. Okay."
 17 MR. WALL: No further questions, and I offer this 911 tape.
 18 (The court reporter marks the tape as B for Identification.)
 19 THE COURT: Mr. Hill, do you wish to inquire?
 20 CROSS-EXAMINATION
 21 BY MR. HILL
 22 Q Sir, didn't you testify at an earlier hearing?
 23 A Yes, sir.
 24 MR. HILL: Can I show him this grand jury transcript?
 25 THE COURT: Go ahead.

1 BY MR. HILL:
 2 Q I am going to show you what you said at a different time.
 3 Please follow along with me as I read from page 5, line 18.
 4 "I responded to the scene at 1430 hours, but because our
 5 shift was scheduled to end at three o'clock, I called for an
 6 additional four officers as backup. Less than one minute later,
 7 at 2:31 p.m., two 4-door units pulled up, No. 1148 and No. 2052.
 8 When they arrived, we entered the first- and second-floor
 9 apartments in search of the suspect."
 10 A That's correct. That is what I testified to.
 11 Q And later on you said the manager of the housing complex
 12 let you in and gave you a key?
 13 A Yeah, a Mr. William Padolsky (phonetic) gave us the master
 14 key to the building.
 15 Q Did you still use force to gain entry?
 16 A Uh-huh.
 17 Q Is that a "yes"?
 18 A Sorry. I meant yes.
 19 Q And then did you enter the apartment?
 20 A (The witness nods his head up and down.)
 21 MS. WHYTE: Your Honor, may the witness be instructed to
 22 answer with words?
 23 THE COURT: Officer, please respond with words rather than
 24 nodding your head.
 25

1 BY MR. HILL:
 2 Q You alone, or were others present?
 3 A It was me, my fellow officers, and Mr. Padolsky (phonetic).
 4 Q What did you see when you opened --
 5 MS. WHYTE: Objection.
 6 Q -- the door?
 7 MS. WHYTE: Withdrawn.
 8 A Can you ask me that again?
 9 MR. HILL: Judge, can you ask the reporter to read back the
 10 question?
 11 THE COURT: She may.
 12 (The reporter read back the last question.)
 13 A I saw the defendant, Mr. Frankfurt (sic). He was standing
 14 next a small metal safe-y (sic) thing. It appeared he was
 15 trying to close the bolt on it, but --
 16 BY MR. HILL:
 17 Q Do you see the Defendant Franklin in court today?
 18 A Yes, I do.
 19 Q Would you point him out for the Court and jury?
 20 A (Witness points.)
 21 Q And would you describe how he appeared on January 16, 2007?
 22 A He was about 6 feet 4 inches, six-five; he was a skinny
 23 guy, maybe 170 pounds; mid-40s; he was wearing a red hooded
 24 sweatshirt.
 25 MR. HILL: No more questions.

1 THE COURT: Any redirect?
 2 MS. WHYTE: If I may, your Honor?
 3 REDIRECT EXAMINATION
 4 BY MS. WHYTE
 5 Q Didn't Mr. Franklin have facial hair -- strike that.
 6 Has Mr. Franklin's appearance changed since you saw him
 7 that day?
 8 A Not in any drastic way.
 9 Q Earlier today did you say he had a medium build?
 10 A I don't believe so.
 11 MS. WHYTE: May the reporter play back the earlier
 12 description?
 13 THE COURT: Please do so.
 14 (The record was replayed:
 15 "He was about 6 feet 4 inches, six-five; he was a skinny
 16 guy, maybe 170 pounds; mid-40s; he was wearing a red hooded
 17 sweatshirt.")
 18 MS. WHYTE: Thank you. That's all.
 19 RECROSS EXAMINATION
 20 BY MR. WALL
 21 Q What caused you to travel to the scene?
 22 A I received a BOLO, and I had an idea where Mr. Franklin
 23 hung out.
 24 THE COURT: A what?
 25 THE WITNESS: Your Honor, a BOLO is shorthand for "Be on

1 the lookout."
 2 MR. WALL: That's all. Thank you.
 3 FURTHER REDIRECT EXAMINATION
 4 BY MS. WHYTE
 5 Q Did Mr. Franklin have facial hair that day?
 6 A Just a little stubble.
 7 MS. WHYTE: No further questions.
 8 (Witness excused.)
 9 MS. WHYTE: The Commonwealth rests.
 10 THE COURT: The Commonwealth has rested. Do you wish to
 11 proceed, Mr. Wall?
 12 MR. WALL: Thank you, your Honor. The Defendant calls
 13 Maria Santos.
 14 Your Honor, Ms. Santos needs the services of an
 15 interpreter.
 16 THE CLERK: Has the interpreter been sworn?
 17 MR. JOHNSON: Not yet.
 18 JAMES JOHNSON, Court Interpreter, Sworn
 19 MR. JOHNSON: My name is James Johnson. I am a Spanish
 20 interpreter. Good morning, your Honor.
 21 (Proceedings translated through the Interpreter.)
 22 MARIA SANTOS, Sworn
 23 DIRECT EXAMINATION
 24 BY MR. WALL
 25 Q Will you please state your full name for the record?

1 A My name is Maria Santos (in English).
 2 Q Do you speak and understand some English?
 3 A Just a little (in English).
 4 MR. WALL: Ask her what her date of birth is.
 5 THE INTERPRETER: She says October 15, 1978.
 6 BY MR. WALL:
 7 Q Are you employed?
 8 A Yes. I am the owner/operator of Everett Rod & Gun Shoppe,
 9 658 Oakdale Street, Everett, Massachusetts.
 10 Q Did you sell a Colt .45 firearm to a Mark J. Hill of
 11 Boston, Massachusetts?
 12 THE INTERPRETER: May the Interpreter have the caliber
 13 repeated?
 14 MR. WALL: I said Colt .45.
 15 A My records indicate that I did. He bought the one item.
 16 He paid in cash, \$89.95. That was with the 20 percent discount.
 17 MR. WALL: No further questions.
 18 CROSS-EXAMINATION
 19 BY MS. WHYTE
 20 Q Did you conduct the transaction with Mr. Hill in Spanish or
 21 English that day?
 22 A We spoke in English to each other that day, but I am more
 23 comfortable in front of the judge using an interpreter.
 24 MS. WHYTE: Thank you, ma'am.
 25 MR. HILL: No questions from me.

1 MR. WALL: Nothing further.
 2 (Witness excused.)
 3 THE COURT: Thank you, Mr. Interpreter. You may be
 4 excused.
 5 (Interpreter excused.)
 6 MR. WALL: Mr. Franklin rests.
 7 THE COURT: Mr. Hill, do you wish to call any witnesses on
 8 your behalf?
 9 MR. HILL: (Inaudible.)
 10 THE COURT: Please stand when you address the Court.
 11 MR. HILL: I said that I don't really have anything --
 12 (Indiscernible -- Simultaneous speech.)
 13 MS. WHYTE: He's indicating that he doesn't believe --
 14 THE COURT: We can only have one person speaking at a time.
 15 Are you resting, Mr. Hill?
 16 MR. HILL: Sure.
 17 THE COURT: Are we ready to go into arguments and charge?
 18 MR. HILL: (No audible reply.)
 19 MS. WHYTE: I am, your Honor.
 20 MR. WALL: Certainly, your Honor.
 21 THE COURT: Ladies and gentlemen, it is necessary for the
 22 Court to confer with counsel outside of your presence. Although
 23 it is not quite one o'clock, we will take our luncheon recess
 24 now, and I ask that you return to your jury room shortly before
 25 two o'clock. Thank you.

1 (Jury excused.)
 2 THE COURT: Counsel, I understand that you wish my
 3 instructions be provided to the jury at the close of my remarks.
 4 I will approve that request.
 5 You are now excused for lunch. See you at two.
 6 (Court recessed at 12:55 p.m.)
 7 (Court reconvened at 2:00 p.m.)
 8 THE COURT: Thank you for your promptness. I now ask that
 9 you listen attentively to the closing arguments.
 10 CLOSING ARGUMENT FOR THE DEFENDANT HILL
 11 MR. HILL: I'm no lawyer, but I did my best, so please find
 12 me not guilty.
 13 CLOSING ARGUMENT FOR THE DEFENDANT FRANKLIN
 14 MR. WALL: I suggest you are left with a reasonable doubt.
 15 I ask you to find my client, Mr. Franklin, not guilty.
 16 CLOSING ARGUMENT FOR THE COMMONWEALTH
 17 MS. WHYTE: We have proven our case beyond a reasonable
 18 doubt. We ask you to find the defendants guilty.
 19 JURY CHARGE
 20 THE COURT: You are now about to begin your final duty,
 21 which is to decide the fact issues of this case, and before you
 22 do that, I must instruct you on the law.
 23 Madam foreperson, I might indicate to you that these
 24 instructions that I'm giving to you now will be prepared by the
 25 court reporter, and copies will be available to you to refer to

1 in your deliberations, so you may take notes if you wish, but it
2 is not necessary.

3 My function as the judge in this case has been to see that
4 the case was tried in a manner that was fair and orderly and
5 efficient, to rule on questions of law, and instruct you on the
6 law that applies in this case. It is your duty as jurors to
7 accept the law as I state it to you whether you agree with it or
8 not.

9 MS. WHYTE: Your Honor, may I be heard at sidebar?
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1 THE COURT: Madam foreperson, the clerk is going to give
2 you the verdict slips. A copy of the indictment will be
3 attached to each of them, and you will determine whether the
4 defendants are not guilty or guilty as charged. Let the court
5 officer know when you have reached a unanimous verdict, and at
6 that time you will be brought back into the courtroom.

7 Let's have the court officers sworn.

8 COURT OFFICERS, Sworn

9 (Jury excused to begin deliberations at 2:55 p.m.)

10 (Court reconvened at 4:00 p.m.)

11 VERDICT

12 THE CLERK: What say you, madam foreperson, has your jury
13 agreed upon a verdict?

14 THE FOREPERSON: Guilty as to the Defendant Franklin.

15 Not guilty as to the Defendant Hill.

16 THE COURT: You are now excused, jurors, with the Court's
17 thanks.

18 (Jury excused.)

19 THE COURT: We'll return on March 16 at 9:30 for
20 sentencing. Thank you, everyone. Court is in recess.

21 (Trial adjourned at 4:10 p.m. to resume

22 March 16, 2007 at 9:30 a.m.)
23
24
25

1 (On the record discussion at sidebar with Ms. Whyte,
2 Mr. Wall, and Mr. Hill. Defendant Franklin not present.)

3 MS. WHYTE: I neglected to ask that you consider
4 instructing them on constructive possession.

5 MR. WALL: I strenuously object.

6 THE COURT: I decline to do so.

7 MS. WHYTE: Thank you, Judge.

8 (End of discussion at sidebar.)
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1990 [1] 7/24	always [1] 7/15	BOLO [2] 14/22 14/25
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3	appears [1] 7/25	called [3] 3/1 5/2 12/5
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4:00 [1] 21/10	ARGUMENT [4] 2/17 18/10 18/13 18/16	10/21 18/17 18/21 19/3 19/4 19/6 25/16 25/22
4:10 [1] 21/21	arguments [3] 4/22 17/17 18/9	25/24 3/16 3/22 3/24
5	armory [3] 10/9 25/12 3/12	cases [1] 9/18
59 [1] 9/15	arrived [1] 12/8	cash [1] 16/16
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	assigned [5] 8/24 8/25 10/5 25/8 3/8	charged [1] 21/4
		charging [1] 4/5
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