

### *A few words from Il Presidente*

We hope everyone had a wonderful summer. Those who were in town and able to attend our general meetings were treated to two more events in the fine tradition of fabulous speakers at IALA, as we were pleased to host outgoing City Attorney Rocky Delgadillo in July and District Attorney Steve Cooley in August.

With summer behind us, we now head into the last quarter of 2009. Marco Polo Night – our annual bash with our Japanese and Chinese colleagues – is set for October 21, followed by Wine Tasting Night on November 18. Then, as always, we round out the year with our trademark grand finale: Supreme Court Night on December 8. Note also that at 10:00 a.m. on Saturday, October 24, all members are invited to participate in the Board's Long Term Planning meeting at the Casa to share ideas about issues and goals to address in coming years.

See you at the Casa!

-- Emilio Varanini

### **Web Sites of Interest**

**IALA:**

<http://www.iala.info>

**National Italian American Bar Association:**

<http://www.niaba.org>

**National Italian American Foundation, Inc.:**

<http://www.niaf.org>

### **“CARMENUCH” ROCKS THE CASA!**

*New City Attorney pulls no punches in passionate speech at IALA September General Meeting*



New Los Angeles City Attorney Carmen “Nuch” Trutanich was the guest of honor at the IALA September General Meeting on September 15, 2009, giving a tremendous speech summarizing the work done thus far in his three months in office.

Trutanich opened his speech by resolving the mystery of how he acquired the nickname, “Nuch.” In the tightly-knit, Italian neighborhood in San Pedro

where Nuch grew up, two family members, and a neighbor all also named Carmen lived just within a couple houses of one another. “Every time someone called for Carmen, four people would turn around,” Trutanich explained. “So since I was the youngest one I had the diminutive suffix attached to my name, which then became ‘Carmenuch,’ so ‘Nuch’ basically means ‘Junior.’”

Trutanich then set the tone for his speech by directly addressing the controversial photo that appeared in the *Los Angeles Times* in August, showing him giving a “high five” to one of his colleagues after the City Attorney’s Office secured a dismissal of a wrongful death lawsuit filed by the family of a 19 month old girl killed when police stormed an auto shop in Los Angeles and returned fire on her father, who was using the girl as “a human shield” as Trutanich described the facts.

“I’d do it again!” Trutanich declared of the high five, using the episode as a springboard into a thorough explanation of his attempts to “change the culture” of the City Attorney’s office and turn it into an organization viewed with the same respect as an elite litigation firm, committed to impressing would-be plaintiffs that the City of Los Angeles will consistently employ the “porcupine defense – you may eat me but I ain’t going to go down easy.” Trutanich viewed the case as a great victory for

his office and a lost opportunity for the *Times* to inform the people of Los Angeles that in the circumstances of that case the police had acted properly.

Trutanich emphasized that notwithstanding what is sometimes a vast disparity in resources, his office is “winning cases on the sheer talent” of the litigators he proudly leads, in whom he has a great deal of confidence. “At the end of the day, if I don’t have the faith to give my litigators the ball and have them march into court, I’m not being a very good manager,” Trutanich elaborated.

Trutanich also used his IALA speech as a platform for explaining his aggressive approach against graffiti artists whose “tagging” exploits generate over half a million citizen complaints in Los Angeles each year, not to mention assaults and even homicides when their vandalism is disrupted. Perhaps worst of all, Trutanich explained that “taggers come here to advertise” their abilities to entertainment contacts who might hire them to create gang art for movie sets. “Not on my property, they won’t,” resolved Trutanich.

Trutanich also showed that he retains his sharp litigator’s edge, getting the better of questioners who asked some pointed questions during the Q&A session following the speech. One questioner in particular asked whether the emphasis on trying cases would result in economic inefficiencies and whether

anyone in the City Attorney’s Office had the training and background to provide the viewpoint of a business manager answering to shareholders. “Yeah, me,” quipped Trutanich. “I made a payroll [leading my firm] for twenty-one years. I know how to analyze risk.” Trutanich also emphasized that others in his Office also had similar experience and that ultimately it is the City Council that is the client, making decisions based on attorney advice just like in any litigator’s practice.

At the end of the evening, President Varanini presented Trutanich with the traditional set of speaker’s gifts, and we all hope that Nuch will again speak before IALA soon.

### **USING REAL-TIME TRANSCRIPTION TECHNOLOGY IN DEPOSITIONS**

In civil litigation, depositions serve a variety of ends, including assessing a witness’s personality, information gathering, authenticating documents or extracting admissions for motions practice, grilling a witness to enhance settlement value, and/or preparing for trial cross-examination. Litigators of varying levels of seniority may disagree on relative priorities of those ends, but in all cases real-time transcription and deposition transcript management applications can be very helpful to accomplish whatever goals one has in a given deposition. Attorneys who have not yet at least tried

to incorporate real time transcription into their deposition practice would be well-advised to do so, as there are significant advantages both during and after the deposition. Technophobes are especially advised to confront their fears – they owe it to themselves and their clients not to let more technologically savvy opposing counsel have the upper hand.

**What is real-time transcription?** After decades of working in the presence of court reporters in court and at depositions, litigators generally assume they will later be able to have an accurate written transcript of exactly what was said. “Later” can vary from “the daily” that evening during trial to a couple weeks later under standard delivery if there is no particular urgency to generating a transcript, and of course the length of the proceedings and the price counsel is willing to pay also play a role in the turnaround. But in recent years advances in technology have made it possible for the court reporter’s transcript to be displayed on counsel’s computer during a deposition (or even during trial if the court will allow it) with words being displayed as they are spoken, much like closed captioning on television, for example. While the integrity of the transcript in raw, real-time form is not one hundred percent accurate and will still need to be edited by the reporter before it is certified as final, the integrity is generally quite good and in almost all instances sufficiently solid to be useful at the deposition.

**At the Deposition.** Deposing counsel's line of questioning is often subject to repeated speaking objections and subtle (or blatant) witness coaching. A clever witness can make things worse by picking up on the objections by defending counsel and adjusting his or her answers to match. Such behavior can effectively disrupt the questioning attorney. Relatedly, asking the court reporter to stop and find previous questions destroys momentum, and chews up what may be precious time. But if the questioning attorney has available at his or her fingertips a real-time transcript, which is perhaps the most fundamental advantage that real-time transcription programs offer, the questioning attorney can quickly obtain the upper hand in such situations by term-searching the transcript for the critical pieces of testimony.

Moreover, a deposing attorney with real-time transcription can term-search not just the current transcript but all transcripts previously taken in the case (provided they have been loaded onto the deposing attorney's laptop computer). This can be helpful when a deponent gives an answer that opens an unexpected area of inquiry that had been addressed by previous deponents. A few quick term searches can give the deposing attorney the precise questions and answers from the previous depositions so that the questions in the current deposition can match up verbatim and in subsequent motions practice or at trial there

will not be any wiggle room in the questions for the other side to use to try to explain away harmful discrepancies.

**Between the Deposition and Trial.** The ideal time to draft a deposition summary for the file and to circulate to team members is on the airplane home or in the solitude of your office immediately after the deposition while memories of intangible elements of the deposition are still fresh. With a good reporter certified in real-time transcription, the integrity of a rough real-time transcript available as soon as the deposition ends (usually after the reporter has spent a few minutes at the end cleaning up some of the most obvious errors) will be more than sufficient for working purposes where the goal is to digest and transmit information quickly. The deposition transcript can be immediately reviewed for important issues that would otherwise be overlooked when attempting to review hours of deposition testimony from memory. And quotes can be reviewed for precise language to be sure one got the admission one remembers before crowing to clients or colleagues in that regard. In summary judgment or other motions practice, it is important to get the details right. Judges and clerks frequently disregard counsel's characterizations of the evidence and examine the source material for themselves. It is crucial to cite deposition testimony that supports the propositions asserted, each and every time, as credibility can unravel through only one

mischaracterization of evidence. Extracting the relevant deposition passages from the library of deposition transcripts in the case is usually a burdensome chore.

Real-time transcription applications offer two solutions. First, term-searching again comes in handy. With the better programs it is possible to term-search the entire deposition database in a couple keystrokes, often finding the important testimony in seconds. Second, some programs provide the ability to mark passages of testimony for coding by issue any small or large piece of deposition testimony. If applied consistently throughout the case by all members of the litigation team, reports of the coded testimony will provide a helpful set of questions and answers bearing on whatever issue has been established to capture that information. Both of these features can greatly speed up the process of drafting effective motions.

**At Trial.** At trial it is critical to be able to locate impeaching material immediately. With an effective electronic deposition database at his or her fingertips, the examining attorney (or more likely his or her assistant at counsel table) can instantly term-search all the depositions (and perhaps even trial testimony if appropriate arrangements for getting electronic daily transcripts have been made) to find cross-examination material that may only have become important when the witness took the stand. And many real-time deposition

transcription programs pair with companion video programs to potentially allow for immediate video playback of impeaching deposition testimony, compounding the damage to the credibility of the witness.

**A Few Words on Costs.** In general, a seven hour deposition will generate roughly 250 pages of transcript, the cost of which (for regular delivery of the original and one copy) will be in the neighborhood of \$1,200. Video will run another \$1,000 for a full day. So viewed against those numbers, the roughly \$300 additional cost for real-time transcription (usually between \$1.00 and \$1.50 per page extra) already seems marginally small. Then consider the costs of the fees incurred in preparing for the deposition, traveling to the deposition, etc., and the costs of real-time transcription become a drop in the bucket. In almost all circumstances, if a deposition is worth taking at all, it is worth paying for the advantages of real-time transcription.

**Final Thoughts.** Real-time deposition transcription programs may seem intimidating to lawyers who have practiced for years or decades “the old fashioned way”: by frantically scribbling notes on a yellow pad. But the truth is that they are as easy to use as many other applications that are now part of a litigator’s daily life, such as Lotus Notes or Microsoft Word, and the average litigator (even the ones who have grown long in the tooth) can quickly figure out the particular features and shortcuts

which will be most valuable for him or her. Counsel should also always remember that the real-time transcript is a means to an end (a successful deposition) and not an end in itself. Counsel should take care not to become distracted by the words cascading down the screen or view the program as a substitute for listening carefully to the deponent’s answers and asking the appropriate follow-up questions.

*Article by IALA Board Member  
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of the Technology Team at  
Epstein, Becker & Green, P.C.  
The EBG Technology  
Team counsels both public and  
private technology-based  
companies through a  
multidisciplinary approach that  
provides clients with  
comprehensive legal services,  
across a broad spectrum of  
specialties.*

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**UPCOMING MEETINGS**

**October 21 – Marco Polo Night**

**October 24, 10:00 a.m. – Long  
Range Planning Meeting**

**November 18 – Wine Tasting  
Night**

**December 8 – Supreme Court  
Night**

***FOR ADDITIONAL  
INFORMATION VISIT:  
WWW.IALA.INFO***