VIRGINIA RACING COMMISSION

OCTOBER 2, 2019

STATE CORPORATION COMMISSION
TYLER BUILDING
COURTROOM C
1300 EAST MAIN STREET
RICHMOND, VA 23219

HEARING OF
MS. SUSAN COONEY APPEAL FOR RACE #10
HELD ON AUGUST 10, 2019 AT COLONIAL DOWNS

In Attendance
Commission Members:
  D.G. Van Clief, Jr., Chairman
  Stuart Siegel, Vice Chairman
  J. Sargeant Reynolds, Jr.

Commission Staff:
  David S. Lermond, Jr., Executive Secretary
  Kimberly C. Mackey, Business Manager

Attorney General's Office:
  Robert N. Drewry, Esquire

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CHAIRMAN VAN CLIEF: Okay, everybody. I am going to call to order this session of the Virginia Racing Commission and we will convene the Commission as a public meeting pursuant to Virginia Code 2.2-3700.

The Commission stewards on August 10th with regards to the tenth race at Colonial Downs disqualified the entrant Speed Gracer from first, placing him fourth. That decision has been appealed and contested on behalf of Quest Realty, the owners of Cooney Racing Stables, LLC, and we will hear testimony and consider submissions in that regard today.

Before I go any further, I would like to ask our counsel, Mr. Drewry, if he would like to outline the conditions or ground rules for us that we need to keep in mind as we go through the process.

MR. DREWRY: Yes, sir, Mr. Commissioner. Thank you. So just as Mr. Chairman said, the hearing is being held pursuant to the Virginia Racing Commission regulations, but it's convened as a public meeting given that there are at least three commissioners.

Further, if any Commissioner determines
that he or she has a conflict of interest or cannot afford to bear an impartial view, that Commissioner shall not take part in the review. That's within the regulations of the Virginia Racing Commission.

Lastly, this is at the outset. 11VAC10-90-50 requires reviews of stewards' decisions involving the outcome of a race or riding/driving infraction to be conducted on the record of the stewards' proceedings.

Subsection Six of that same regulation limits presentations by both sides to arguments and comments regarding the record of the stewards' hearing which is before you.

CHAIRMAN VAN CLIEF: We do have one note here. Commissioner Nixon has advised me she feels she has a conflict of interest or at least a potential conflict of interest and would like to recuse herself. So with appreciation for that consideration, Commissioner Nixon, we'll accept that and release you from duty for the moment.

COMMISSIONER NIXON: Thank you.

CHAIRMAN VAN CLIEF: Thank you. All right. Our order of march today is we'll start
with whatever testimony the appellate would like to submit.

MR. QUINAN: Thank you, Mr. Chairman. My name is Mike Quinan. I'm an attorney with Thompson McMullan. I'm here representing Quest Realty, which is the owner of Speed Gracer. Here with me today is Alexis [inaudible], who is in-house counsel for Quest Realty and Susan Cooney, who is Speed Gracer's trainer.

My understanding as Mr. Drewry just explained is that what's before the Commission today is just the record of the stewards' hearing, and therefore, I don't plan to put on witnesses to testify outside of that. I'm simply going to discuss it and review it with you and offer comments on it.

Before I start doing that, I did want to join the chorus and address the silver lining here, which is the fact that this is arising out of racing at Colonial Downs which is, you know, a fantastic achievement by the Commission and by all the parties sitting in this room, many, many of the parties sitting in this room who worked very hard to make that happen, and by all reports it has just been an unmitigated
success, so congratulations to all.

I also wanted to make clear that we're not here today to criticize the stewards or to attack or contest their good will, their skill, their dedication. They've got a tough job and nobody gets everything right all of the time and in this one instance, we believe they didn't make the right decision in disqualifying Speed Gracer, but we certainly appreciate, applaud the job that the stewards do out there every day.

We are here to talk about the tenth race at Colonial Downs on August 10, 2019. That was a big race, the Edward P. Evans Stakes. The purse for that race was $100,000. Of that, $60,000 is to go to the first place winner, $6,000 is to go to the fourth place winner.

Those particular prizes, first and fourth place, are significant because Speed Gracer was the first to cross the finish line. But after the stewards' inquiry, Speed Gracer was disqualified and demoted to fourth place and we do believe that disqualification was undeserved and should be overturned.

So at the finish line what we had was
first place, Number 3, Speed Gracer. Second place, Number 6, River Deep, and third place, Number 7, Black Prong, and fourth place, Number 5, KD's Cat Bird. KD's Cat Bird is the horse that was interfered with one way or another.

As I've already noted, after the horses crossed the finish line, the stewards posted an inquiry and disqualified Speed Gracer, demoting him to fourth place, so that promoted River Deep to first, Black Prong to second and KD's Cat Bird to third. After the stewards did that, they did that after reviewing the video and based on their finding, Speed Gracer had bumped KD's Cat Bird and interfered with KD's Cat Bird's run.

Quest Reality filed a timely request for the Commission to review the stewards' decision and as we discussed, the stewards' review is limited to the record of -- the Commission's review is limited to the record of the stewards' hearing, which principally in this matter includes the stewards' report and the video that the stewards reviewed, and we're going to be looking at both of those, but the video is the best evidence of what really
happened and the stewards relied on the video. We won't delay too long in getting to the video, but first let me tell you what you should look for when you're watching the video.

One, there was some contact between Speed Gracer and KD's Cat Bird, but that contact did not interfere with KD's Cat Bird's race. There was a significantly greater contact shortly after between KD's Cat Bird by Black Prong. You'll see in the video that this is what caused KD's Cat Bird rider to check his mount and this contact with Black Prong is what really interfered with KD's Cat Bird's race.

By the time that happened, Speed Gracer was already effectively -- had already effectively passed KD's Cat Bird. In fact, that contact by Black Prong pushed KD's Cat Bird behind Speed Gracer, not in to Speed Gracer. Speed Gracer had nothing to do with any interference with KD's Cat Bird's race. The interference was fully the fault of Black Prong. That's what you'll see on the video.

Before I show you the video, I want to show you the two other Commission's regulations to make sure that we're focused now on the
correct one.

Rule 11 Virginia Administrative Code 10-140-210 is the interference rule. This is the rule that was cited in the notice that was given of the hearing today, but this is not the right rule. This rule provides that no jockey shall jostle another horse to interfere with that jockey or horse.

The rule that really applies to what is before you today is Rule 220, third party interference. That provides that if a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified unless the interference was wholly caused by the fault of some other horse or jockey. So it's really Rule 220 that you need to be looking at rather than Rule 210.

So let's see now if we can look at the video. To give you little bit of an explanation, I've got three different video files up here. One is at regular speed, one is slow motion and one is a bit of a zoom in on the horses at issue.

I think it's worth looking at all of them. In fact, I think you need to watch them a
couple times. I'll try to stop them at appropriate places to really make sure you see what went on, especially because there are going to be three split screens. There are three different camera angles that are all shown at the same time, as you'll see.

So this is the tricky part. Okay. This is why I practiced this. All right. The sound is -- this is the full-speed video. What you can see here is the yellow cap, orange cap and the orange side; that is Black Prong, Number 7. This jockey wearing the green cap, and you'll see over here the green saddle towel; that's KD's Cat Bird. That's the horse that was interfered with, KD's Cat Bird. Number 3, Speed Gracer, has the blue saddle towel here and the white cap; so right over here. I'm going to let it run at full speed once, then I'll pause it a little bit.

What you can see is that it was Black Prong here who really came over and not KD'S Cat Bird over behind and not in to Speed Gracer. Speed Gracer is here.

This is the moment where there was some touching. What you'll see here is, although I
don't even know if you could say it amounted to jostling, there was some touching but didn't interfere with KD's Cat Bird's race or run right at this point.

KD's Cat Bird is still coming full on and is not being interfered with, but watch the extent to which Black Prong here comes over onto KD's Cat Bird and pushes KD's Cat Bird over, and also watch how far ahead Speed Gracer is by the time that happens.

Okay. Coming over and from the front view it's a little bit difficult to see exactly how far Speed Gracer is in front of KD's Cat Bird, but if you look at this camera one over here, especially as we move on a bit, you'll see that Speed Gracer has substantially moved ahead and you can tell the moment when the interference happened and it's just about when the horses -- this white line is right in front of them.

You can see the reaction by the jockey sitting on KD's Cat Bird, but by the time it effectively happens, there's no way that Speed Gracer had anything to do with the interference that caused the jockey on KD's Cat Bird to check its mount.
I would ask you to watch this video one more time and then we'll look at the slow motion. Let's take a look this time at camera eight down here which shows a view from behind which also provides a good perspective.

It's a little blurrier, but you can certainly see green on KD's Cat Bird and you can see at this point how far Speed Gracer is pulling ahead. Now this is where Black Prong comes over and pushes KD's Cat Bird right behind Speed Gracer, not in to Speed Gracer.

Let me show you because I think it's helpful, the slow motion. All right. Let's give this a try. All right. Here is where we go into the real slow motion. This camera one is especially important in the slow motion.

You can tell. Look where Black Prong is at this point when Speed Gracer is already almost cleared past KD's Cat Bird and the interference has not happened yet. It is right about there or a little bit past, but you'll see the reaction by the jockey on KD's Cat Bird right there. Right there.

That's how far ahead Black Prong is when the real interference happened. It is not
correct to attribute that interference to Speed Gracer when Speed Gracer was that much farther ahead.

At the risk of showing you too much, I'm going to let you see what the third video on here. These videos are on a thumb drive here and I'm perfectly willing to make the thumb drive available to use as many times as you want during your deliberations.

If you need the laptop to view it, you all can use the laptop, but I think the more times you view this, the more times it's evident what was going on.

So this is just -- let me slow this down a little bit as well -- a little bit of a closer view. Once again, here is Black Prong. You'll see how far he comes over. He's over here now. He's coming over and we'll see how, you saw it on the other one, how far ahead Speed Gracer was. So again, I hope you'll take more time to look at the video during your deliberations if you need to.

What I want to show you now, we've offered a set of findings and conclusions and I found extra ones, but you may already have copies of
the findings and conclusions we submitted yesterday. I've got more if you'd like to have them.

What we're proposing happened is this, paragraph three on Page Two. The stewards' explanation is not supported by video footage. The video of the head-on and side camera angles conclusively shows, one: At the top of the stretch, River Deep is first on the rail with Black Prong second two paths over while KD's Cat Bird and Speed Gracer are advancing on the outside from the back of the pack.

Two: Across the track in deep stretch from the rail position out are River Deep, Black Prong, KD's Cat Bird and Speed Gracer.

Three: From the outside, Speed Gracer brushes KD's Cat Bird on the inside and then passes by a length, but in so doing does not cause KD's Cat Bird to lose momentum. That's exactly what that video showed.

Four: After Speed Gracer passes KD's Cat Bird, Black Prong on the inside veers sharply right, pushing KD's Cat Bird into the next lane and forcing his jockey to pull back on the reins and check to avoid running into Speed
Gracer, who is a length in front and five.

Because of Black Prong's interference, KD's Cat Bird lost momentum and finished behind Black Prong, River Deep and Speed Gracer. That's what we propose the Commission ought to make as a finding of fact in this matter.

Now, I just want to compare that to what the stewards' report says. I won't read the whole thing, but down in the far left highlighted there. After the stewards found that Speed Gracer bumped KD's Cat Bird twice in the deep stretch, the stewards found that the second bump forced KD's Cat Bird inward, causing the jockey to check his horse, Number 5, KD's Cat Bird, when in tight quarters.

I think we saw in the video that it was Black Prong, not Speed Gracer, that caused that to happen a few moments later. During the stretch run Number 7, Black Prong, drifts out a little but left plenty of room for the Number 5, KD's Cat Bird.

Again, clearly, in the video, Black Prong doesn't drift out a little; KD's Cat Bird does. Black Prong comes over significantly into the lane in which KD's Cat Bird was running and did
not leave plenty of room for KD's Cat Bird.

This says: If Speed Gracer had not bumped the Number 5, KD's Cat Bird inward, the Number 5 would not have had to check his mount. That's just not what the video shows at all.

So we think the video, which is part of the stewards' record and speaks for itself, and with all respect to the stewards who had a tough job and had a lot of races to look at that day and there was a lot going on, we just think they got this one wrong.

So what really happened out there was that the interference was wholly caused by the fault of some other horse, not Speed Gracer. We ask that the stewards' disqualification of Speed Gracer in the tenth race at Colonial Downs on August 10, 2019 should be overturned and Speed Gracer be restored to his rightful place as first place finisher.

We propose the findings and conclusions and I've got more copies of those if you need them. I would like to offer you the thumb drive if you want to review it during your deliberations. If you need the laptop, that's fine.
I also have a set of binders with the still photos that were just pulled from the videos if those would be helpful. I've got three binders with color photos. They're just still photos pulled from the video. To tell you the truth, I think the videos are the most significant evidence.

I'm not sure whether I need to offer into evidence in formality of this the video or any --

MR. DREWRY: I don't think it would hurt. It's going to be in the record anyway.

MR. QUINAN: Okay. Well, I do want to make sure I offered into evidence the video and of course the regulations are the regulations. They don't have to be, but the stewards' report, as well as we'd like to make sure that's in evidence.

The findings and conclusions are in the nature of a pleading, so I don't think those need to be made an exhibit, but thank you. If you have any questions, I'd be glad to try to respond.

CHAIRMAN VAN CLIEF: All right. We'll include both the copy of the video and the
ruling as evidence and I think we may take you up on your offer to utilize the materials you have there, including the still photos in your notebook if we could do that.

MR. QUINAN: That would be great.

CHAIRMAN VAN CLIEF: It might be useful.

At this point, Mr. Quinan, if there is nothing further you'd like to present?

MR. QUINAN: No. That's our case.

CHAIRMAN VAN CLIEF: Okay. Thank you very much. At this point then, I think it would be appropriate to call on our stewards, and Mr. Zimmerman, who represents the stewards, to present whatever they care to and make any comments both on their judgment and Mr. Quinan's argument.

MR. ZIMMERMAN: Thank you. Before we look at the video further, I'll let you know a little bit of how we operate. There are two stewards in the stand. Two of them are watching the race live with their binoculars. The third steward is at a video wall where we've got large screens, high definition. We're able to slow it down, speed it up.

In this case, all three of us saw the
incident. We hung the inquiry sign. Next, we get a phone call from the trainer of KD's Cat Bird claiming foul, specifically against the winner.

Next, we get a call from the outrider that the rider of KD's Cat Bird is claiming foul against the winner. Not against Black Prong, but against the winner.

So then we obviously are reviewing the video. We've got three pieces of evidence. We've got the testimony from the riders which we take later before we make a ruling. We have what we saw watching the race live and we've got the video.

Turning to the video, it's important, and Dave, maybe you could help me here, to back up and take a look at what happens before the video that we've just seen.

The horse on the outside is Speed Gracer. Look where they are on the race course and look how far they came across that racetrack. Bump. Another bump. Those horses clipped heels there. It's lucky that horse didn't come down in front of that field of horses.

That was careless riding on the part of --
let's take a look at it again. He makes no effort to correct -- the course's straightest path for that horse is straight to the finish line. There's no reason for him to drift all the way across -- halfway across the racetrack. He's swinging his arm instead of getting his horse turned and straightened out. Bumps a couple times.

That inside horse does come out. We've got testimony from that rider. That was not something that escaped our attention.

So before the race is made official, we spoke with three riders; the rider of KD's Cat Bird who made a claim of foul against the winner. We spoke to the jockey on Speed Gracer and we also spoke to the rider on Black Prong, who was to the inside.

Now, the rider claiming foul said he'd been fouled by the winner. We asked him what about the bump from the inside. He said that wasn't a problem. All the pressure came from the outside.

We talked to the rider on Black Prong. He said my horse did come out. He bumped the other horse. They were pretty much alongside
each other. KD's Cat Bird was moving well. Looked like it was gonna go past Black Prong, but the horse on the outside took away the room. There wasn't any room for that horse. He got pushed back, clipped heels and luckily nobody came down. The rider stood up, had to take back and get speed by the neck.

Now, the last thing that the stewards want to do is take a horse down. When you go to steward school and they talk about Keene Dangerfield -- DG, you probably knew Keene Dangerfield. He was a widely respected steward in Kentucky and he has a few guiding principles that they teach in steward school and about every other continuing education course you attend.

One of the most important principles is when in doubt, leave it alone. Well, the stewards were not in doubt in this case. It was unanimous. The rider got three days for careless riding. It was a dangerous situation and we disqualified the horse who we thought had caused -- you can see the rider belatedly cocks that horse's head to the outside, but he'd come four or five lanes over. Bump, bump,
bump.

    Now the horse heels got clipped that pulled in front. Wasn't Black Prong whose heels got clipped and it wasn't Blank Prong that the rider claimed foul against. It was Speed Gracer.

    So I think you may have some doubt in your mind, but I think when you look to substitute your judgment for the expert opinion of the stewards who listened to the riders' testimony, watched the race live and watched this video quite a few times, I would keep Keene Dangerfield's admonition in mind. When it doubt, you leave it alone. Any questions?

    CHAIRMAN VAN CLIEF: Could we see that video from the top of the stretch one more time, please?

    MR. ZIMMERMAN: Yes.

    CHAIRMAN VAN CLIEF: And don't stop it. Just play it.

    MR. LERMOND: Would you like to see it in slow motion or?

    CHAIRMAN VAN CLIEF: That's good.

    MR. ZIMMERMAN: That's Speed Gracer on the outside making a -- fortunately not straight.
CHAIRMAN VAN CLIEF: Let's do it one more time, please.

MR. LERMOND: Sure. We can do it as many times.

MR. ZIMMERMAN: Speed Gracer continues to drift in. Careless and dangerous.

CHAIRMAN VAN CLIEF: Do my fellow Commissioners have any questions for any of the speakers here?

MR. DREWRY: You all are not allowed to speak, unfortunately. Solely on the appeal between Speed Gracer and the stewards.

CHAIRMAN VAN CLIEF: For the record, the only admissible testimony is from the appellants that have appeared here.

MR. DREWRY: The parties. The other parties that received notice are required by regulation to receive notice of the hearing.

MR. QUINAN: Mr. Chairman?

CHAIRMAN VAN CLIEF: Mr. Zimmerman, anything further?

MR. ZIMMERMAN: No.

CHAIRMAN VAN CLIEF: Mr. Quinan.

MR. QUINAN: I was going to say if I could make a quick point. I don't have a lot to say,
but it appears that the stewards have a problem
with Speed Gracer moving over before the
interference happened, and to tell you the
truth, I'm not in a position to comment on that
because that's not what's before you today.
What's before you today is who caused the
interference.

Even if there was a problem, as I said,
I'm not prepared to admit that or address it,
but even if there was a problem with Speed
Gracer moving too far over from one lane to
another, even if that is a problem, when Black
Prong came over and knocked KD's Cat Bird
behind Speed Gracer, that was the interference
that was wholly caused by the horse or the
other jockey, which means it satisfied this in
the regulation and that means that the horse
that interfered or jostled the horse previously
cannot be disqualified under your own
regulation.

So that's my only point, is there may have
been a number of things that have gone on in
the course of that race, but once Black Prong
came over and pushed KD's Cat Bird behind Speed
Gracer like that, then Black Prong was the
aggressor for purposes of the interference.
Thank you.

CHAIRMAN VAN CLIEF: Thank you.

MR. ZIMMERMAN: May I speak again?

CHAIRMAN VAN CLIEF: Mr. Zimmerman.

MR. DREWRY: Then the attorney will get
the last word.

MR. ZIMMERMAN: There's no question that
Black Prong contributed to the situation. He
wasn't, as that regulation says, wholly and
solely responsible for what happened. There
were several bumps coming down the line.

KD's Cat Bird didn't clip heels with Black
Prong. The jockey and trainer didn't claim
foul against Black Prong. He contributed to
it, but he was surely, in the stewards'
opinion, not wholly responsible for what
happened.

CHAIRMAN VAN CLIEF: Mr. Quinan?

MR. QUINAN: I don't have anything further
to add. Thank you.

CHAIRMAN VAN CLIEF: Okay. Thank you. I
think it would be appropriate at this juncture
for us to go into closed session for purposes
of discussing with counsel.
So I would like to move that the VRC move into closed session for the purpose of consulting legal counsel on the administrative appeal matter before us, a matter lawfully exempted from the open meeting requirements under 2.2-3711(8)(7), which allows for consultation with legal counsel regarding specific legal matters or pertaining to actual or probable litigation.

I'll make a motion that we go into closed session.

COMMISSIONER SIEGEL: Second.

CHAIRMAN VAN CLIEF: Thank you very much. Dave, have we got a place we can go?

MR. QUINAN: If I can suggest, maybe the rest of us could clear the courtroom if you want to view the videos on these screens here, because I'm not sure I could effectively move it back into that conference room and make it work.

CHAIRMAN VAN CLIEF: Okay.

MR. QUINAN: If counsel wants me to, I can show them how to --

MR. DREWRY: I'd like to think I'm technologically savvy.
CHAIRMAN VAN CLIEF: That's a fair suggestion. Let's go ahead and do that if everybody doesn't mind and we'll let you know when we're done and we'll finish it up here.

NOTE: The hearing goes into closed session at 11:40 a.m. and further discussion is held in private; thereafter, the meeting resumes at 12:06 p.m. as follows:

CHAIRMAN VAN CLIEF: Okay, everybody. Thank you for your patience and bearing with us. The first thing we need to do is to take ourselves out of closed session.

So with that in mind, I move that the Virginia Racing Commission's closed meeting pursuant to 2.2-3711(a)(8)(7) be adjourned and that the VRC return immediately to open session and whereas, 2.2-3712(d) requires certification by the VRC that such closed meeting was conducted in conformity with Virginia law.

Now therefore, be it resolved that the VRC hereby certifies that, one, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting; and Number Two, only such public business matters as were
identified in the motion convening closed meeting were heard, discussed or considered by the Virginia Racing Commission.

We now need to take a roll call vote. Commissioner Siegel.

COMMISSIONER SIEGEL: Yes.

CHAIRMAN VAN CLIEF: Vice Chairman Reynolds.

COMMISSIONER REYNOLDS: Yes.

CHAIRMAN VAN CLIEF: I vote aye as well. Thank you very much. Motion passes. We are now back in open session. I'll briefly make a statement on behalf of my fellow Commissioners and then I'll ask them if they have anything to add to it. First of all, I'd like to point out that one of our most weighing and serious responsibilities as a Commission is to ensure the Commonwealth of Virginia that we enforce the highest quality, fairest sport with the greatest level of integrity that we can possibly ensure and we are doing our best to do that here today.

That having been said, we have reviewed the record on multiple occasions here today.
We've listened carefully to the comments and the arguments made by the parties. We have watched the video record that has been submitted to us today and we've done so, I want to point out, with particular attention to the totality of the stretch run beginning at the head of the stretch and carrying on throughout the race.

We feel from what has been submitted to us on the record today that we are prepared to uphold and that evidence upholds the stewards' ruling; therefore, I would like to entertain a motion from either of my fellow Commissioners to uphold the stewards' ruling with regards particularly or specifically I should say to the order of finish in the tenth race at Colonial Downs on 10 August 2019.

COMMISSIONER REYNOLDS: So moved.

COMMISSIONER SIEGEL: Second.

CHAIRMAN VAN CLIEF: Thank you. We have a motion and a second. All in favor, signify by saying aye.

NOTE: The Commission votes aye.

CHAIRMAN VAN CLIEF: Any opposed? The motion carries unanimously. The stewards'
ruling is upheld and we will issue a written
decision shortly. Thank you very much.

With that, I think we can go ahead and I'd
ask for a motion to adjourn. Before I do that,
any further comments from either of you that
you'd like to put on the record? Okay. Thank
you very much. We do need a motion to adjourn.

COMMISSIONER REYNOLDS: So moved.
CHAIRMAN VAN CLIEF: Thank you.
COMMISSIONER SIEGEL: Second.
CHAIRMAN VAN CLIEF: All in favor, signify
by saying aye.

NOTE: The Commission votes aye.
CHAIRMAN VAN CLIEF: Any opposed? No. We
are adjourned. Thank you all very much for
your patience.

NOTE: The hearing is adjourned at
12:10 p.m.
CERTIFICATE OF COURT REPORTER

I, Sandra G. Spinner, hereby certify that having first been duly sworn, I was the Court Reporter at the meeting of the Virginia Racing Commission at the time of the hearing herein.

Further, that to the best of my ability, the foregoing transcript is a true and accurate record of the proceedings herein.

Given under my hand this 30th day of December, 2019.

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Sandra G. Spinner
Court Reporter