

Depositions v. Trials Not for the Truth Of The Matter Asserted

By Jerry Buchmeyer



The Never Ending Saga continues. Which is worse — the diabolical dangers of *depositions* or the traumatic tribulations of *trials*? After the two-month break, let's ease back into our quest with a column of quickies.

I'm Glad We Cleared That Up

These trial excerpts are from cases tried before a certain federal judge in Dallas:

Q: Do you deny using amphetamine?
A: *To my knowledge*, I didn't use it.

Q: When did you last hear the "Stardust" music format on the radio?
A: I haven't heard it since the last time I heard it.

These deposition excerpts are from a marvelous (!) book¹ by **Richard Lederer**, *Anguished English* (Wyrick & Co. 1987), who found them in publications of The National Shorthand Reporters Association:

Q: Please state the location of your right foot immediately prior to impact.
A: Immediately before the impact, my right foot was located at the immediate end of my right leg.

Q: Where were you on the bike at that time?
A: On the seat.
Q: I mean where is the street.

Q: Have you ever beaten your wife?
A: No. I might slap her around a little, but I never beat her.

Q: Just what did you do to prevent the accident?
A: I closed my eyes and screamed as loud as I could.

Did I Really Ask That?

From **Jimmy Morris**, this trial excerpt from one of his criminal cases:

Q: Are you related to Johnny Darrell Bailey?
A: Yes.
Q: And what is the nature of that relationship?
A: I'm his mother.
Q: And *you have been all of his life*; is that right?
A: Yes, sir.

This deposition excerpt comes from **Sandra Givens**, secretary to **Berry Bishop** of Austin (Clark, Thomas); it is from a deposition that Barry took of an expert in an oil and gas case.

Q: So what you did then is reach a conclusion as to what would have happened if something that didn't happen did happen. Am I getting that right?

A: I did the calculations based on if West Texas complied with the contract. I didn't understand that question. You might try it again.

Q: You got a couple of if's in there that didn't happen.

A: The if's is a hypothetical called for in the contract.

Q: So it is just like I'm saying, you reached a conclusion of *what would have happened if what happened didn't happen*?

A: I think, if I got all of those if's right, I think that's probably correct.

Q: That's an interesting way of going about life. I was thinking about that last night. If I could fly, how far could I fly?

A: I don't think you could fly very far, Mr. Bishop.

Q: You have testified so much that I knew you would have an opinion on that too, Mr. Rhodes.

A: I didn't really mean that the way it sounded.

Q: I knew you would have an opinion. *I really wanted to know what your opinion was before I got airborne.*

And more deposition excerpts from **Richard Lederer's Anguished English**:

Q: At the time you first say Dr. McCarty, had you ever seen him prior to that time?

Q: I understand you're Bernie Davis's mother.

A: Yes.

Q: How long have you known him?

Did I Really Hear That?

Tom Whitlock of Denton contributes this trial excerpt from "a mental health probable cause hearing in which he represented the proposed patient." Tom is cross-examining the mother of his client:

Q: Has she ever [acted suicidal] or threatened to hurt anyone else?

A: No

Q: I believe you testified that she had

some kind of psychosis. What kind?

A: *Post-mortem psychosis.*

Q: Post-mortem psychosis.

A: Yes.

Tom adds: "I know that dying always makes me psychotic!"

From **Patrick C. Batchelor** of Corsicana (criminal district attorney of Navarro County) comes this trial excerpt from a motion for new trial hearing; **John H. Jackson**, first assistant district attorney is cross-examining the mother of the defendant (who had received an 80-year sentence for sexual assault):

A: The whole thing was crooked.

Q: My conduct was crooked?

A: Yeah, yourself, too; you threw in.

Q: How about your lawyer?

A: He didn't do like he supposed to do.

Q: You don't trust this court, either, do you?

A: No, I don't.

Q: . . . So you think it was just all a big railroad job?

A: Yeah, I do, I do here. I am straight and plain; you can get mad if you want because I don't care. Because I got angry. I'm going to tell you that's what I think about it.

Q: *What about all the other crimes he committed? Were these railroad jobs, too?*

A: He ain't going to work on no railroad.

Keith N. Uhles of Brownsville (Royston, Rayzor) sends this excerpt from a deposition he took of "a plaintiff who allegedly injured his left shoulder in a crane accident:"

Q: Let's talk about how you're doing today. Today are you having any problems with your left shoulder?

A: Well, the problem is that *I have problems because the doctor told me to take Pepto Bismol for it* and that is something I do in order to keep in condition and this is how I take care of it.

I Can Understand That

This deposition excerpt comes from **Robert E. Burns** of Dallas, with the explanation that although the deposition was lengthy and the subject matter complicated, the answers "were prompt, intelligent and succinct" and the witness had not smiled or given a humorous answer):

Q: (An "unusually long question.")

A: (After a brief hesitation.) That question reminds me of the little boy who dropped his bubble gum in the chicken yard; I'm confused.

From **District Judge James E. Morgan** of Comanche (220th Judicial District) comes these excerpts from a *pro se* divorce case he recently tried:

Judge Morgan: You may proceed.

Plaintiff: Okay. Well, as you know, I'm Gary Hatfield and I'm seeking a divorce from Debra Hatfield. . . We were married August the 20th, 1989 and separated July the 2nd, 1990 and I —. She's got what she wanted, and left me the rest and that suited me. And I guess I need this divorce on — I think you call it *unreconcilable differences. She reconciled with somebody else.*

Judge Morgan: Well, I think I understand what you're talking about Mr. Hatfield — she no longer wanted to reconcile with you?

Mr. Hatfield: No, I think she lost interest in me. Win a few, lose a few.

Judge Morgan: All right. I believe you. I believe she's got everything she wants.

Mr. Hatfield: Yeah. She's hooked up. She's off with this guy somewhere.

Judge Morgan: All right. I'll grant the divorce on the no fault basis. No child, the property will be awarded to the party in possession of the same.

1. Richard Lederer also gives equal grief to judges and juries in *Anguished English*:
Judge: I rarely do so, but for whatever purpose it may serve, I will indicate for the record that I approached this case with a completely open mind.

Judge: Well, gentlemen of the jury, are you unanimous?

Foreman: Yes, your Honor, we're all alike - temporarily insane.

The Court: Now, as we begin, I must ask you to banish all present information and prejudice from your minds, if you have any.

Just one more from *Anguished English* (a very funny book; buy it or order it at your local bookstore):

Q: As an officer of the Dodge City Police Department, did you stop an automobile bearing Kansas license plates SCR446?

A: Yes, sir.

Q: Was the vehicle occupied at the time?

More et cetera

Jerry Buchmeyer is a federal district judge, Northern District of Texas, in Dallas. If you have a contribution to the et cetera column send it to Judge Buchmeyer, U.S. District Court, Northern District of Texas, Dallas, TX 75242.

TEXAS BAR JOURNAL INDEX OF ADVERTISERS

Alamo Rent A Car	367
Ameritrust	398
Austin Services	341
Bancroft-Whitney	349
Boren Legal Software	379
Business Valuation Services . .	339
Bynum, Beck & Poe	327
Dallas Neuropsychological Institute	329
Daniels-Head Insurance Agency, Inc.	371
Dewberry Engraving Co.	329
Excelsior-Legal, Inc.	315, 385
Expert Resources, Inc.	387
Fiduciary Research, Inc. (Missing Heirs)	321
Global Tracing Services, Inc. .	365
Government Liaison Services, Inc.	332
Gruy Petroleum Management Company	332
Hanford Publishing Co.	375
International Genealogical Search, Inc.	339
Seminar—Jury Selection	321
Kaplan SMH Bar Review Services	343
Lawyer's Aid Service, Inc.	319
Lawyers Now	346
Lawyers Research, Inc.	303
Lawyers Title Insurance Corporation	354
Legal Directories Publishing Company, Inc.	IBC
National Legal Research Group, Inc.	374
Owl Software, Inc.	365
Parker-Griffin Publishing Co.	Insert
Physicians for Quality	392
Prescott Legal Search	393
Quest Attorney Investigations	377
Specialization, Texas Board of Legal	394
Specialty Software, Inc.	345
State Bar of Texas Institute Schedule	323
State Bar of Texas Insurance Trust	IFC
State Bar of Texas Legal Forms	333, 334
State Bar of Texas Professional Development Program	372
Stewart Title Guaranty Co.	304
Texas Corporation Supplies, Inc.	307
Texas Lawyers Insurance Exchange	397
Trimcost Consulting Group	320
West Publishing Company	BC