

# DEPOSITIONS VERSUS TRIALS: PUT A SMILE ON YOUR FACE!

By Jerry Buchmeyer



Which is worse? The diabolical dangers of depositions—or the terrible traumas of trials. The saga continues. . .

From a deposition taken by **Matthew M. Julius** of Dallas (Adair, Morris & Julius), in a federal court case pending in Fort Worth:

- Q. Ms. Russo, what is your address?  
 A. My home address is—oh, God, I can't remember my home address. What the heck is it? Do you believe this? I will give you that information. I can't remember my home address. I had no idea you were going to ask me that question.  
 Q. You didn't prepare for that one, huh?  
 A. No.<sup>1</sup>

\* \* \*

### That's Clear Enough, Thank You!

From **Judge Weldon S. Copeland** of McKinney (Collin County Court At Law No. One), this trial excerpt from testimony & a witness who just answered that he "was a high school student":

- Q. How are you classified?  
 A. Just a normal student. Just trying to get by.

\* \* \*

### And From The Court Reporters Who Were There

From **Shawn McRoberts** of Lubbock (the court reporter for federal judge Sam Cummings), this trial excerpt which needs no explanation:

- Q. Did Mr. [REDACTED] tell you that he told Mr. [REDACTED] that he and Mr. [REDACTED] could sell 250 condoms [SIC] a month, rather than what your market report said, and that is that only 60 to 70 could be sold a month?"

Shawn noted, parenthically, that he "didn't know whether to put *sic* or *sick*" in the transcript.

\* \* \*

From **Melissa J. Carson** of Dallas (Court Reporters Associated, Inc.), this deposition excerpt came with Melissa's explanation that this "deposition started late, the attorney talked like the guy in this Federal Express commercials, continued on and on and on, and finally ended before I strangled him.":

- A. Counsel.  
 Q. Who counsel? In-house counsel or

out-house counsel?

A. Memory serves me correct, it was out-house counsel.<sup>2</sup>

### And Now For A Quickie. . .

From **William J. Wade** of Lubbock (Crenshaw, Dupree & Milam), this "allegedly" true story about a young lawyer in the Lubbock area who "was trying his first jury case. He worked very hard on his final argument. He took the time to *write it out in long hand* and revise it and then the next day, he stood before the jury and in a most serious voice began his summation:

"Ladies and Gentlemen of the Jury COMMA."

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### Is That Objectionable or What?

This contributed by **Roger C. Davie** of Fort Worth (Cox & Smith). Here is the excerpt, with Roger's explanation:

"I recently had the misfortune of trying a property damage case in J.P. court against attorney **Steve Pierret** of Arlington. Steve was attempting to get into evidence a document when I objected because of hearsay. Steve pronounced boldly (and probably rightly) that this was not hearsay because it was not offered for the truth of the matter asserted. Immediately after saying this the J.P. scolded Steve and stated:

"listen here mister . . . in my court you may only introduce matters which are the truth and *you better not be trying to introduce matters which are not for the truth of the matter asserted.*"

Despite the fact that the judge would not let Steve introduce any evidence, he was ultimately given a verdict. We settled on appeal."

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### . . . And The Big Finale To Put "A Smile On Your Face"

From **Randall R. Moore** of Dallas (Hyatt, Crabtree & Moore), this deposition excerpt "from an itty bitty accident case" in which Randall's client—"an attractive, young, blonde woman," who "suffered soft tissue injury to her back." Randall adds that, in answers to interrogatories, he had "truthfully *revealed* that [his attractive] client had earned money dancing at most of the topless bars in Dallas." Randall also sets the stage, so to speak, with this explanation: "The dependants

were ably represented by four attorneys, three of whom were male. It became apparent during the deposition that two men were required just to wipe the drool from the other man's mouth and chin."

Q. And in order to receive the tips, you need to bend down or squat down or something to get the tips; is that right?

A. That's right.

Q. So the normal course of your dancing required you, for example, to bend down and to squat down; is that right?

A. Yes.

Q. I guess when you're dancing, you're supposed to be doing it with a smile on your face. Would that be correct?

A. Yes.

Q. I assume when you accept a tip, you have a smile on your face?

A. Yes.

Q. So you're able to at least bend down and squat down with a smile on your face; is that correct?

A. That's correct.

MR. MOORE: You realize that each of these questions that you asked will be submitted to Judge Jerry Buchmeyer for publication, so be very careful.

DEF. ATTNY: (Turning "beat red".) *No more questions.*<sup>3</sup>



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1. **Matthew Julius** added this Sage Observation: "I think every lawyer, once or twice in his career, has the opportunity to ask that Really Devastating Question which leaves the opposition destroyed. *I hope this one doesn't count as mine.*"
2. **Melissa Carson** (CSR, RPR, CPR) adds this perceptive note: "His referral to 'out-house counsel' struck me as somewhat true in my mind, and I feel I exercised great control when

punctuating the deposition. I was very tempted to put 'outhouse counsel' instead of 'out-house counsel,' even though my feelings were quite to the contrary."

3. **Randall Moore** adds: after "no more questions," the defense attorney "remained speechless for approximately five minutes, then resumed questioning the plaintiff. . . I suppose I could have objected to his questions about the "smile," but the fact of the matter was that the plaintiff had an outstanding smile."

## Resolutions To Be Considered

*The following resolutions proposed by attorney Steve Fischer of Huntsville, will be considered for adoption by the State Bar Resolutions Committee at the Annual Meeting. Resolutions adopted by the committee will be considered by the general assembly at the annual meeting. If adopted by that body, the resolutions express the majority opinion of those attending the general assembly, not the State Bar membership.*

### RESOLUTION A

Whereas 1991 has been called the "Year of Inclusion" and whereas except upon the nomination of a select bar committee, a member can only run for State Bar president if he or she collects signatures of 5 percent of the bar membership which is approximately, 2,500 signatures, and whereas the average member cannot afford the time and money it requires to collect such a large number of signatures, be it resolved that the General Assembly request the State Bar to include on its next referendum this proposal to reduce the signatures to 100 and thus further democratize the State Bar.

### RESOLUTION B

Whereas in the recent statewide "Vote Yes for the Profession" referendum, the state bar establishment budgeted \$479,000 to influence our vote with a one-sided campaign paid for out of the dues of each member, including the dues of those who disagreed with that position, be it resolved that the following resolution, known hereafter as the Clean Bar Campaign Practices Referendum be approved to be placed on the next statewide referendum;

- (1) That no bar dues be used for the printing of campaign material in a state bar referendum unless an equal amount of funding be allowed for those members who wish to propose an alternative point of view and/or,
- (2) That no campaign materials be placed in the same envelope or mailing as the voting ballot itself and/or,
- (3) That any position argued by the Bar establishment in the *Texas Bar Journal* allow for equal space and as equal placement as possible, for article(s) containing opposing viewpoints.

### RESOLUTION C

That the *Texas Bar Journal*, supported by, and written for, its members, the practicing attorneys of Texas, initiate a section entitled "Letters to the Editor" where members can express their opinion on any issue concerning the practice of law, or the State Bar of Texas.

### RESOLUTION D

Whereas MCLE started out as an experiment and all attorneys have received required extra education be it resolved that the next statewide referendum include the following:

- (1) The sanctions against those who do not voluntarily comply with MCLE be discontinued, and/or
- (2) That once a member has achieved a minimum of 100 CLE hours in any five year period, that the continuing requirements be modified to require 15 CLE hours every three years.

### RESOLUTION E

In regards to the State Bar Poll which seeks the opinion of attorneys on judicial races, be it resolved by the General Assembly that whereas the bar poll is an expensive operation requiring the preparing, printing, mailing and tabulating of ballots at member's expense, and whereas the bar poll is presumptuous in that attorneys feel the general public needs to be guided by our unbiased and professional opinions, and whereas the majority of Texas Bar members do not bother to cast their bar ballots, not even in a contested bar poll for the Chief Justice of the Texas Supreme Court, that this foolish and annoying waste of money be permanently dismissed and expunged from State Bar practice.