

Depositions vs. Trials: Summer Clerking And the Twilight Zone

By Judge Jerry Buchmeyer



Did I Really Ask That?

From **U.S. District Judge Tom Stagg** of Shreveport, LA, this excerpt from one of his "trials" (so to speak):

- Q. Has Mr. James Madden ever been in your office?
A. Yes, he has.
Q. Has his father, Grady Madden, ever been to your office?
A. Yes, he has.
Q. *Prior to his death?*
A. *Yes.*¹

From **Judge Joseph H. Hart** of Austin (126th District), this passage from an early 1991 hearing:

- Q. What happened to this man she was taking care of [at the home care facility]?
A. He's deceased now.
Q. Was he taken out of the home when he had to go to the hospital — he had to be admitted to the hospital?
A. Yes.
Q. And he died and he didn't come back?
A. *Yes.*²

The Animal Farm

From **Scott Nichol** of Dallas (with the Law Offices of Tom Blakeley), this excerpt from the deposition of one of his workers' compensation claimants — which was being taken by **Tim Stanford** of Dallas:

- Q. Did you ever hurt yourself while working for Hensle-Phelps construction?
A. Yes.
Q. And what happened?
A. Got bit by a bobcat.
Mr. Nichol: No.
The Witness: Serious.
Q. I take it that's a wild animal?
A. It was when I found it.
Q. What were you doing with a bobcat?
A. Removing it from the underground storage tunnel.
Q. A wild animal got down in there, and they sent you in to get it out?
A. Well, they told me there was a cat in the tunnel.
(Later in the same deposition)
Q. Okay. Are you seeing anybody, an ear specialist?
A. I saw one about a month and a half ago.
Q. Who was that?
A. Dr. Ripp.
Q. Doctor — how do you spell his last name?
A. R-i-p-p.
Q. *Does he have a first name?*
A. *Probably.*

Scott adds, "The last question was answered with one of those 'ask a stupid question' smiles from the witness."

The Old "Limited Purpose" Ploy

From **Larry Warner** of Harlingen, this exchange occurred during the testimony of an expert witness during a criminal trial:

- Q. Did you do an examination of the [cotton] swabs pertaining to [the wounds] of Sally Jane?
A. Yes, I did.

Q. What were the results of that?

Def. Attorney: Judge, I would object to him going into any results of any test. The swabs or whatever, have not been accepted into evidence, Your Honor. I would object to any test results or testimony about those matters.

Prosecutor: Your Honor, we have not made an offer of the paraffin test. We are still trying to complete the chain of custody on this matter...

The court: You are asking for results now, not custody.

Prosecutor: Well, *we feel that we need to go into the results in order to develop our prosecution.*

Larry ends with the observation that the prosecution was simply attempting to utilize the well-known rule: "*Judge, we only want to get it in for the limited purpose of getting a conviction.*"

From **Al Ellis** of Dallas, who after finishing his year as Dallas Bar Association president is now (apparently) specializing in personal injury cases involving ostriches, sent this contribution from a recent deposition:

- Q. Are ostriches kind of mean?
A. Well, that is what they keep telling me, but I haven't met one yet that is terribly mean.
Q. Okay.
A. Of course, I haven't pushed the issue either. They are real nice from outside the door.

Did I Really Hear That?

From **Olivia F. Dirik**, a legal assistant with Busch, Ryan & Seib of Dallas, this excerpt is from a deposition taken by **Faith Bruner** of a defendant who had counterclaimed for damages:

- Q. Have you actually sat down and added up the figures to come to this amount, \$125,000?
A. No, I haven't.
Q. You haven't made any charts, any calculations?
A. No.
Q. How did you arrive at that number?

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- A. Well, *I wanted to be fair, so I just figured that they owed me double that and I'll just take half of it.*
- Q. How did you figure they owed you double that?
- A. *Because you just had to be there.*

* * *

From **Ruth A. Kollman**, a briefing attorney with the Fifth District Court of Appeals in Dallas, this Instant Classic from a trial transcript:

- Q. [D]id you hear the instructions that [the judge] gave you at that time about not talking to anybody about the case or any witness in the case [other than the lawyers]?
- A. Yes, sir.
- Q. Do you understand the rule?
- A. Yes. He said don't talk to the witness ahead of time.
- Q. *After [another witness] left the stand did you cuss him out in the hall on the way to the elevator?*
[various objections by other attorneys]
- The court: It's overruled.
- Q. Did you, sir?
- A. No, sir.
- Q. You did not?
- A. No, sir.
- Q. Did you have any conversation with him?
- A. Yes, sir.
- Q. *Did you use any profanity in the conversation?*
- A. *Is "crap" profanity?*
- Q. I'm asking you, sir.
- A. Well, I don't think I did.
- Q. *Did you use the common colloquial expression for large male bovine excrement?*
- A. You want me to say what I said to him?
- Q. Yes.
- A. I was getting on the elevator, and he came up to me, and I said that was, in my judgment, the most *amateurish*³ pile of crap I'd ever heard.

From the Twilight Zone

From **Brenda K. Smith** of San Marcos, this "time warp" moment from "the deposition of the mother in a child custody modification suit:"

- Q. Okay. Where is [your daughter's] *placenta*, now?
- A. Her *placenta*?
- Q. Yes.
- A. It's in a bag in the freezer.
- Q. At your home?
- A. Uh-huh.
- Q. Why is it there?
- A. Well, we would like to use it — it's not uncommon to use that as — to put it under — like if you are going to plant a tree in the name of your child, to use that as like — I don't know. Fertilizer or whatever. As a special kind of — make it special.
- Q. Okay.
- A. And we haven't done that yet.
- Q. When you say, "it's not uncommon,"

among what group of people is it not uncommon?

- A. Oh, I don't know what group. It's an idea that was given to me by different people.

Summer Clerking At McLeod, Alexander, et. al.

Finally! The first *et cetera* contributions from summer clerks. And, both from the same firm: **McLeod, Alexander, Powel & Apffel** of Galveston (and Houston).

First, from **Jennifer E. Patton**, excerpts from a deposition in a real estate dispute — with Jennifer's explanation that the plaintiff's attorney is depositing the owner of some adjoining property (a doctor); that the defense attorney "had been objecting 'almost continuously,'" and that, after this went on "for quite some time" the good doctor "decided to strike back:"

Def. Attorney: I object to the responsiveness of the answer.

Q. Doctor...

The Witness: Am I qualified to state my name?

Def. Attorney: You certainly are qualified to state your name, and I didn't object to that part of your testimony.

The witness: I'm surprised.

Next, from **Kelly P. Forester**, a student at South Texas College of Law. This excerpt from the testimony of "A Mexican immigrant who was giving his deposition through a translator" — With Kelly's astute observation that "obviously there was a breakdown in communication:"

Q. What doctor did you see next?

A. Babu

Q. What did Dr. Babu do for you?

A. *He already wanted to operate. He wanted to take my heart out.*⁴

Q. I don't have to ask why you didn't go back to him.

1. The only note from **Judge Tom Stagg** that accompanied this contribution was his standard: "I hope this finds you sitting up and taking nourishment."

2. **Judge Joe Hart** adds: "I suppose that the question leaves open the possibility that he died, *but did come back*. Just think of the legal and medical, to say nothing of religious, implications if that had happened."

3. Ruth, fortunately, added this footnote: "I can scarcely imagine a *professional* pile of large male bovine excrement; that's probably where lawyers come in handy."

4. I am, of course, compelled by this "heart" excerpt to repeat one verse from a classic **Mason Williams** (whatever happened to him?) C&W parody:

I sent my sinuses to Arizona

I sent my liver to Peru

I put my spleen and kidney on a boat to Sidney

But I'm saving my heart for you