

Depositions v. Trials: 14 Miles From Nowhere

By Jerry Buchmeyer



This month's edition of the "Which Is Worse" Saga stretches from East Texas to Yuma, Arizona . . .

I Know Just What You Mean

From **Michael P. Setty** of Pittsburg (Texas, of course), this classic from the recent deposition "of a plaintiff with a long history of alcoholism and erratic speech and behavior;" Michael sets the stage by explaining that "The filed suit to cancel a conveyance that was signed in an attorney's office in Mt. Vernon, Texas. During the deposition he was asked how long it took him to travel from his home to the attorney's office in Mt. Vernon."

Q. Okay. How long does it take you to get from where you live to Hicks' office in Mt. Vernon?

A. It's from where I live it's to 14 miles to Mt. Pleasant, 14 miles to Pittsburg and 14 miles to Mt. Vernon, *I am 14 miles from nowhere any which way I go* and that's another 14 to come home, that's 28 miles thrown away.

I'm Glad We Cleared That Up!

From **R.K. Miller** of Uvalde (Assistant Attorney General, Child Support Enforcement), this marvelous (!) deposition excerpt which — as you will see — needs no explanation:

Q. As you know, Mr. *****, in the petition we are alleging that you are the father of this child and that Mrs. ***** has indicated that you had sexual relations with her. Do you admit having sexual relations with her?

A. Yes, sir. I've explained this to [my attorney], who is representing me here at this time, yes, I did. I'm not going to deny that.

Q. Do you recall when the first time was that you had sexual relations with Mrs. *****?

A. If you are looking for an exact date, no. I don't recall. I recall that I did it, but a date, no.

Q. Do you recall how many times?

A. Probably six times I guess within a six months period. Like I said, I was basically gone most of the time.

Q. *Where did you have sexual relations with her? Where was the physical location?*

A. *In my pickup.*

Q. In your pickup?

A. Yes.

Q. And that was the only place?

A. Yes, sir.

Q. *And was that parked? Were you parked? I assume that you were parked.*

A. Yes.

DEF. ATTN: Never assume anything.
MR. MILLER: I would think that would probably be a violation of a traffic ordinance there if he wasn't.

Is That Objectionable? Or What?

From **Michael M. Essmyer** of Houston (Essmyer & Handy), this excerpt from the deposition of his client taken by the defense attorney, **Andy Taylor**:

Q. What is it that you know about this lawsuit?

Objection [by Mr. Essmyer]: Object to the form of the question as being overly broad, object to it as being vague, and object to it as calling for a legal conclusion, and object to it as calling for speculation.

Response [by Mr. Taylor]: Other than that, it was a good question.

Did He Really Say That?

From **Judge John McClellan Marshall** of Dallas (14th District Court), this excerpt from one of his recent trials:

PL'S ATTN: Your Honor, at this time I would offer Plaintiff's Exhibit 17 under the Texas laws of business records.

DEF. ATTN: If it's a record, it's a record of the hospital, Your Honor. It's not his record. We still object to it as hearsay, also repetitious and also cumulative.

JUDGE MARSHALL: Overruled. The exhibit is received.

DEF ATTN: Your Honor, I have a couple of questions I'd like to ask on voir dire.

JUDGE MARSHALL: Very well.

DEF ATTN: *Your Honor*, are you the custodian of the records?

JUDGE MARSHALL: *No, I'm not.*

DEF. ATTN: I'm sorry.

From **Lynne M. Gomez** of Houston (Ross, Banks, etc.), this bit of "expert" testimony by a CPA "who had forecast the plaintiffs economic losses" — from a deposition taken by **Karen Heuer**, a corporate counsel with the defendant Control Data Corporation:

Q. And was that also based on the fact that [the plaintiff] told you he wouldn't quit before 55?

A. That's correct.

Q. And it's not based on anything else?

A. That's correct. I don't know what else I could have based it on except he indicated he would not have termi-

nated his employment prior to early retirement age. And, of course, now, *if he would have died during that period of time, he probably would have had to terminate his employment because he wouldn't have had any other alternative.* Since he didn't die, then I would have to assume he would have continued working.

The "Amen" Corner

From **Bryce J. Denny** of Tyler (Lawrence & Lawrence), excerpts from the closing argument made by his opponent — David J. La Brec of Dallas (Strausburger & Price) — in "a wrongful termination case tried earlier this year in Tyler:"

Ladies and Gentlemen, it is not the role of the Jurors in this case . . . to second-guess the wisdom of the decision of the Malakoff City Council. It is not your role to second-guess whether or not they were wise in deciding ultimately to terminate [the plaintiff] or for the Chief of Police [of Malakoff] to recommend that they do so. . . . It doesn't matter whether you are sympathetic with [the plaintiff's] plight. Anyone is sympathetic with the plight of someone who has lost their job, for whatever reason.

This case, as we told you at the outset, this case is about duty. This case is about public service. This case is about the duty of [the plaintiff] to the public. This case is about the duty of the Chief and the City Council to the public to provide them safe streets. And it also at this point involves the duty of you as Jurors to render a fair and impartial verdict.

The Chief did his duty. He may have made a mistake in the process, granted, but the Chief did his duty. The City Council, the elected officials, the policymakers of the City did their duty. Did [the plaintiff]? Think about the conduct, too, of [this police] Officer. He has a duty. He had a duty as a public servant. I need not tell you what *it says in the Bible, let he who is without fault, cast the first stone.* JUROR: Amen.

LA BREC (wisely): Thank you, your Honor.

Bryce Denny adds: "This was when I knew we should have settled the case."

Verbal Typo's (Sic or Otherwise)

From **Joe Riddles** of Dallas (Riddles, McGrath & Greenberg), this selection from a deposition taken by **Carroll Trout** of his firm; Carroll is attempting to get some information about the plaintiff's recent trip to Mexico:

Q. When you went to Mexico last week, how did you get there?

A. On the bus.

Q. Did anyone go with you?

A. No.

Q. Did someone pass away?

A. A family member.

Q. Who was that family member?

A. A non-related family member.

From **J. Patrick Gallagher** of Fort Worth (The Fillmore Law Firm), this excerpt from his deposition of the plaintiff — who was claiming that he sustained a groin injury "on-the-job" when he was hit by a forklift:

Q. When did you first experience pain after the accident?

A. Immediately. I was bruised and skinned pretty good, and I — *my right tentacle* (sic) had swollen to the size of a hard baseball.

Q. *Your right what?*

A. *Tentacle* (sic).

Q. Tentacle?

PLS. ATTNY: Testicle.

MR. GALLAGHER: Testicle. Okay.

THE WITNESS: *Whatever.*¹

Well, That's Understandable . . .

From **U.S. District Judge Tom Stagg** of Shreveport,² this colloquy from the deposition of the plaintiff in a personal injury case — with Tom's assessment that "This is the worst set of questions and answers yet!"

Q. Did you have any trouble answering the questions because you didn't understand the questions that I asked you?

A. No, sir. You rephrased them.

Q. So you understood every question that was asked of you; is that right?

PL'S ATTNY: Objection. The plaintiff said he didn't understand some of your questions. He may not have understood that he didn't understand the questions. You understand that there are two different levels here. I don't understand what you're asking. I think you understand what I think I understand what you're saying but in effect I don't understand.

DEF. ATTNY 1: You lost me about four understands ago.

PL'S ATTNY: Quote: "I would then be able to answer your question but I don't understand."

DEF. ATTNY 2: I want to know how he answers without knowing that he didn't understand it. That's ridiculous.

PL'S ATTNY: *I agree. That's a difficult thing to understand.*

DEF. ATTNY 2: How could he answer a question like that?

PL'S ATTNY: He didn't say that. You're trying to close off the gate and say that he understood everything. *But he may be able to say something and not understand that he didn't understand what you have asked.* Go ahead. It's late in the afternoon.

(BY DEF. ATTNY 1):

Q. Clifton, did I rephrase every question

that you didn't understand? Did I rephrase it in a manner that you could understand it, to the best of your knowledge?

A. Yes, sir.

. . . But Let's Take This One More Time, From the Top!

From **Vincent K. Foreman**, a Texas attorney who is currently on active duty with the Marine Corps — as deputy director of the Law Center at the Marine Corps Air Station in Yuma, Arizona — A hilarious (!!) contribution.

Vincent first sets the stage by explaining: "The enclosed verbatim transcript is from an Article 32, UCMJ, pretrial hearing. One of the charges was obstruction of justice in which the Marine was accused of influencing a complaining witness to change her 'story' to match his. According to the governmental counsel (trial counsel), *the lack of clarifying punctuation in the transcript is accurate as the witness never took a breath.*" Then:

Trial Counsel: You are saying, the night before PFC M. told you to what?

Miss A.: What I should have told them what happened.

Trial Counsel: I am sorry, say again.

Miss A.: *He told me that I told him what I told them what happened in the room.*

Trial Counsel: You told him that you made a statement saying that he hit you?

Miss A.: *Yes, I asked him what he told them and he told me what he said and that's what he wanted me to say what he said.*

Trial Counsel: What did he say?

Not being able to restrain himself, Vincent adds: "Amazingly, the witness eventually told us what he told her he told them so she could then tell them, too. Say again?!? (or in non-military terms, 'Huh?!?')"

1. **Patrick Gallagher** also enclosed, without comment, this definition from the American Heritage Dictionary: "**Ten-tacle** n. A flexible, unjointed projecting appendage, as of an octopus or sea anemone."

2. This deposition excerpt was sent to **Judge Stagg** by **Bruce R. Hoefler** of New Orleans (Milling, Benson, etc.); the deposition was being taken by an associate (**Mr. Daly**) of his firm.

More et cetera

Jerry Buchmeyer is a federal district judge 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 75242.