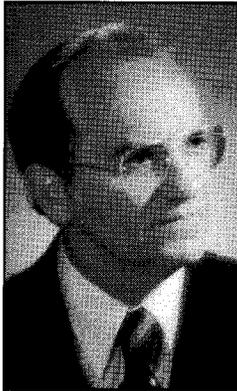


Depositions v. Trials Neanderthals & Cretinous Yahoos

By Judge Jerry Buchmeyer



The “Which is Worse” saga continues, with contributions from Austin (**William Reid**), Beaumont (**Bradley Randall**), Corpus Christi (**Jon Muschenheim**), Dallas (**Ben Krage**), Fort Worth (**Lloyd Scurlock**), and Houston (**Rockne Onstad**)—and of course, from Little Rock (**Brad Hendricks**)¹ and Honolulu (**Robert Finlay**).²

A Bill Reid “Two-fer”

From **William (Bill) Reid** of Austin (assistant district attorney, and chief of appellant division), this excerpt from a sentencing hearing before **Judge Jon Wissner** of Austin (299th District Court).

The Court: *The State of Texas v. Nathaniel Brown*, before the court today for sentencing, the defendant having been found guilty by a jury of the offense of burglary of a habitation.

The Defendant: Can I say something now? Excuse me your honor, I would like to say something.

I want you to know that I feel like it wasn't no fair trial and I would like to have another trial because I don't feel like I've been treated right on this case. You know, really I do have a drug problem and the night that occurred, I did not burglarize the woman's house, you know, and when I first got out of TDC I was asked to get into some kind of treatment and I couldn't get in there. Your honor, I stayed sober for 10 years in Alcoholics Anonymous in the state of Texas. The only thing I can say [is] I did not do it and the *good Lord in Heaven know I didn't*.

The Court: *The good Lord may know you didn't do it, but he didn't speak to the folks on the jury, I'm afraid. They all thought that you did it.*

Also from Bill Reid, this contribution to my still-growing “Unbelievably Dumb Questions” files — which Bill discovered in the portion of the record quoters in *Combs v. State*, 643 S.W.2d 709,718 (Tex. Cr. App. 1988).

Q: Okay. After he got her out of the bathtub, was she alive or was she dead?

A: Dead.

Q: And after she was dead, was she saying anything like that?

A: No.

Bill adds: “The court was merciful enough not to disclose who asked this question.”

Beware of “Experts”

From **Lloyd Scurlock** of Fort Worth, this excerpt from a malpractice case in which Lloyd represented the plaintiff, whose broken hip had been treated by the doctor-defendant. Lloyd explains: “The doctor had put the plaintiff in a one-and-a-half hip spica, which is a cast that goes from the armpits to the ankle on the side where the break is and to the knee on the other side. The doctor had tried to blame the plaintiff for the bad result by claiming that he had wiggled too much in the cast and had “played with his toes.” On cross examination, he admitted that you can not bend at the waist in a one-and-a-half hip spica. Then Lloyd asked:

Q: *Can a person touch his toes without bending at the waist?*

A: (After some thought) *He could if his arms were long enough.*

Of the Rankest Sort

From **Robert Finlay** of Honolulu, HI, this testimony from “a hotly contested murder trial” involving a difficult, albeit zoological, point of evidence:

Prosecutor: On the photograph, what are on the brown, blood-like smudge?

Mr. Heu: From my zoological background, I keyed in on it because it had ants on it. [This was significant because it] indicated to me that it was fresh material rather than something that was days or weeks old.

Prosecutor: First of all, is there a difference between worker ants and soldier ants?

Mr. Heu: Yes. The soldier ants have large heads and the worker ants have small heads. The worker ants go out to forage — to find something. If it's a large find, the word will go back to the ant nest. The ants will send out more workers and if it's a big find, they'll send soldiers along.

Defense attorney: I object to the materiality of the witness' statement.

The Court: Your objection is on the grounds of relevance?

Defense attorney: Yes, sir. *It's also hearsay as to what the ants tell each other.*

The court (wisely): Objection overruled.

Did He Really Ask That?

From **Brad Hendricks** of Little Rock, AR (The Haskins Law Firm), this excerpt from the deposition of a nurse in a medical malpractice case. Brad explains that this deposition was taken by his co-counsel, who, over the course of the “many medical malpractice

cases" they have handled, had "developed a revoltingly sexist habit of commenting upon the relative physical attractiveness of the many nurses" they happen to depose, in spite "of my many warnings that these comments would come back to haunt him."

Q: The nursing staff had a hierarchy or structure of supervisors, did it not?

A: I don't guess I understand what you mean.

Q: Well, there was somebody who was your boss, and somebody who was their boss —

A: Yes, sir.

Q: And up the line until you got to *the head dog*?

A: Yes.

From **Ben L. Krage** of Dallas (Kasmir & Krage), this deposition excerpt for "The Buchmeyer Collection," submitted under the condition that the "examiner will remain anonymous."

Q: Where did you stay in Acapulco?

A: At the Princess.

Q: Other than you and your husband who else stayed — went on the trip with you?

A: Our children.

Q: *Your two daughters.*

A: *Yes, and their husbands.*

Q: *And their two husbands?*

A: Yes.

The Muschenheim Trilogy

From **Jon Muschenheim** of Corpus Christi (Law Offices of Douglas Tinker), this marvelous excerpt from a Hidalgo County murder case tried before **Judge Juan R. Partida** (275th District Court) in August 1989. The defendant is being examined by his attorney:

Q: Now, when is your birthday, Mike?

A: My birthday? July 13th.

Q: *Of what year?*

A: *Every year.*

Also from Jon Muschenheim, these excerpts from a felony guilty plea for possession of methamphetamines, before **Judge Manuel Banales** (105th District Court):

Judge Banales: (establishing the factual basis for the plea) "Did you take those pills?"

Defendant: "Yes, Judge, *all of us girls take diet pills because it helps us work faster and we do piece work and are paid by the piece.*

(Later in the same plea)

Judge Banales: How quickly can you pay the fine? Let's see, the pre-sentence report says you make \$1,400 a month....

Defendant: Oh, you can't go by that, Judge. I won't be getting as many pieces out now that I can't take those diet pills.

Jon adds that this methamphetamine defendant, who had tested positive for both "meth" and marijuana on the day of the guilty plea, explained to the court that she smoked a joint on the way to the courthouse because every time she goes to court the judge yells at her.

Did I Really Hear That?

From **Bradley N. Randall** of Beaumont (assistant city attorney), this excerpt from an assault by theft trial in which the victim's girlfriend established new heights in *pro-fanity-less name-calling*. She is being questioned by the defendant, and has just testified in detail about his "off-color language."

Q: But you've called me names, too.

A: Not in that language.

Q: You called me a Neanderthal.

A: That's right. I called you a Neanderthal and a cretinous yahoo.

Bradley adds: "The defendant was found guilty, but his sentence was probated due to these mitigating circumstances."

1. "Going Hence" Arkansas footnote: **Vic Fleming** of Little Rock (Gill, Wallace, etc.), who writes a humor column for the Arkansas Bar publication (*Arkansas Lawyer*), first protests poetically ("How I do hate to get into the fray ... about the inception of 'Go Hence Without Day,'"*) but then offers this contemporary groaner:

And when Arkansas departed from the Conference Southwest, all of the Texans did say to Coach Nolan Richardson: "Be on your way. Go hence with Day.*"

And now that the first year in the Conference Southeast is ended, many others did say

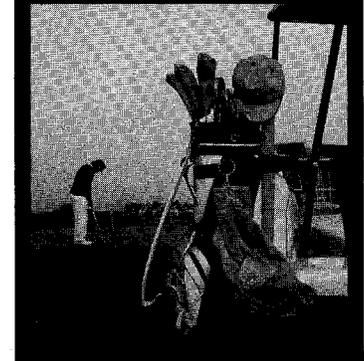
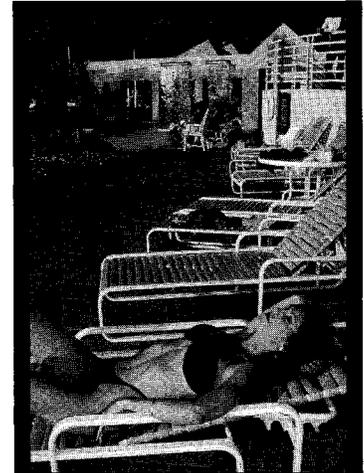
how glad they would be when next year the Razorbacks *will come hither* without Day.

* Vic adds this asterisk explanation: "Todd Day, all-American basketball player who has now finished his last year of eligibility."

2. "Going Hence" footnote: **Robert A. Joyce** of Baton Rouge (vice president-general counsel of Barnard and Burk Group, Inc.) begins by forthrightly agreeing with every "Going Hence" theory ever advanced: "I just read 'et cetera' in the March 1992 *Texas Bar Journal*, and subscribe to all of the theories advanced! Whichever one the hoped for task force settles on, I am sure there will be unanimous support of that theory throughout the bar association." Then he adds: "The 'Going Hence' articles reminded me of a property description I saw for some property in Newark, NJ. A ditch on that property was influenced by the tides and the Hackensack River and, therefore, had to be reported on the property description. The name for that ditch was: 'Lawyer's Ditch.' No one thought anything about that — other than looking for lawyers with cement boots at the bottom of the ditch! — until some enterprising soul decided to check back about the property and found that it was originally named 'Sawyer's Ditch' — and somewhere along the line a scrivener either made an error or expressed his beliefs as to where lawyers should be planted."

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