

Depositions v. Trials: Blind Justice And Damn Lies

By Judge Jerry Buchmeyer



Contributions to this month's "which is worse" column come from Albuquerque (Mark Giles, *again!*), Dallas (Faith Burk, Fred Gross, Mark Hansen, and Judge John McClellan Marshall), El Paso (Judge William Baskette, Jr.), Houston (Leslie Kiefer Amann and Christopher Stanley), Gilmer (Wayne Tolivar) and San Antonio (Darrell Smith).

Justice is Blind

From **Judge William L. Baskette, Jr.** of El Paso, this Truly Landmark Opinion from 1983 when he was working as a briefing attorney for the 12th Court of Appeals (Tyler): *Trahan v. State*, 354 S.W. 2d 478, at 480 (Tex. Civ. App. — Tyler 1983). The holding: Appellant attacks the sufficiency [of the evidence] on the grounds that *justice was blind*.¹ ... We conclude under the record that the evidence is sufficient to support the conviction, and we overrule appellant's first ground of error.

Did I Really Hear That?

From **Leslie Kiefer Amann** of Houston (Reynolds & Cunningham), this excerpt from a February 1992 deposition:

- Q. Okay. You are not an engineer?
A. No, sir.
Q. Not a chemist?
A. No.

- Q. Pardon me. I am sure it is in your prior deposition, but I have forgotten, *what is your educational background?*
A. *I really don't have any. I am a lawyer.*
Q. We can stipulate to that then.

From **Darrell F. Smith** of San Antonio, this excerpt from a 1988 deposition; Darrell was then in Midland and **John Steven Dwyre** of Lubbock was deposing Darrell's client — when "he established for all purposes *relativorium cognito uno, cognoscitur et alterum* involving [Darrell's] client":

- Q. Exhibit 7...seems to be a certificate of limited partnership...is that correct?
A. Seems to be.
Q. ... Are you in relation to any of these people that are on here?
A. Yes.
Q. Which people are you in relation to?
A. The principals of that trust.
Q. ... Well, you are on there as well, too, aren't you?
A. *I am related to myself.*
Q. I am not trying to get to that...

Just Gum It Out, Okay?

From **Christopher Stanley** of Houston (Gustafson & Venzke), this excerpt from the videotape deposition of the 71-year-old female plaintiff in a personal injury suit. Charles Browning of Houston (Browning & Associates) was questioning his client, "who kept covering her mouth" when she answered — until Charles finally told her to stop putting her hands over her mouth:

- Q. (By Mr. Browning) Let me get you to do two things. [First] let me get you to answer [my] questions.... And also *sometimes you put your hand up to your mouth because I think you left your teeth somewhere, didn't you?*
A. Yes, sir, I let a dentist talk me into leaving them there and they'll be ready in the morning at 9:30, but it's not helping me now.
Q. Well, it's real hard for us to take down what you say if you put your hands over your mouth.
A. Okay.
Q. I'm not offended at the fact that you left your teeth at the dentist and I don't think the folks on the jury will be. So, we need to be able

to listen to what you say. So, if you would, don't put your hand over your mouth. All right?

- A. All right.

Death and/or Taxes

From **J. Mark Hansen** of Dallas (Vial, Hamilton, etc.), this excerpt from "a deposition I took recently [which] comes under the heading "*If at first you don't succeed, try, try again.*"

- Q. *Have I named all the places you've lived in your life as best you can remember?*
A. *In this life, yes?*
Q. *What do you mean by that?*
A. *Well, my greatest fear is reincarnation. You think God's going to up my deal?*
Q. Do you think you're an older soul or a young soul?
A. I think this is my first try.
Q. So there wouldn't have been any other places you lived in your life before this, right?
A. I don't think so.

From **Fred. J. Gross** of Dallas, this excerpt from a *Texas Bar Journal* article² and this observation: "*Evidently some people will go to any extent to beat the IRS.*"

...You can, however, withdraw amounts from your IRA before age 59 and one half if you become disabled *or die* or treat the distribution as a form of annuity.

A Modest Proposal

From **Faith G. Burk** of Dallas (Tobolowsky & Associates), this excerpt from a deposition taken by "her beloved boss," **Ira E. Tobolowsky**, in a landlord/tenant case — during which Ira discovers "the perfect wife":

- Q. Do you and your husband [have a savings account or money market account]?
A. I don't know.
Q. Do you have your own checking account?
A. No, I don't.
Q. Do you write checks?
A. Yes.
Q. Do you have a joint account?
A. Yes.
Q. Do you know how much money is in that joint account?
A. No, I don't.
Q. Do you know how much money your husband makes?

- A. No, I don't.
- Q. Do you know what the name of your husband's company is?
- A. No, I don't.
- Q. Do you know how long your husband has been self-employed?
- A. No, I don't know how long.
- Q. How do you know if there's money in your checking account at the time you write a check?
- A. My husband tells me.
- Q. Do you ask your husband's permission before you write any checks?
- A. Yes, I do.
- Q. Will you marry me?
(Laughter)
- Q. No, strike that question, okay?

Owls of the Spotted Persuasion

From **John E. Farrow** of Albuquerque, NM (Fairfield, Farrow, etc.), this excerpt from a Chapter 11 Disclosure Statement, where the debtors explain the unprofitability of their logging business:

"During 1991 business was very slow for the corporation due to *low demand for timber and for the spotted owl.*"

John also noted: "While I am not sure about Dallas, there has been precious little effort to promote owls out here, let alone those of the spotted persuasion. I should think that with a bit of marketing, demand should improve. And just as Eeyore understood, even owls sometimes need a little help, if only finding a new Wolery."

I'm Glad We Cleared that Up!

From **Mark H. Giles** of Corpus Christi, this "response [which] caught me by surprise in a recent divorce case":

Q. Now Mr. Russell, Mrs. Russell said that you hit her so hard that you knocked her from the dining room into the kitchen. Is that true?

A. *That's a damn lie. I hit her so hard she dropped right where she was — out cold.*

Mark adds, "I'm not sure that the judge³ thought this was a very effective challenge to the wife's veracity."

Did I Really Ask That?

From **Wayne Tolivar** of Gilmer, this excerpt from an early 1992 deposition in which **James Moody** of Dallas (Strasburger & Price) is questioning Wayne's "client about the operation of the family dairy business."

A. No. You have cow records. You know when they have their calf and when they're put into the barn to milk, and when they turn dry and are put out to pasture...

Q. Turned dry, what does that mean?

A. They're ready to have their rest period before they have their calf.

Q. *Are all cows female?*

A. *I guess.*

Mr. Toliver: All cows are female, yes.

Mr. Moody: I mean all cows they have?

Mr. Toliver: All bulls are male, too.

Mr. Moody: I'm sorry, I think of cows as being...

Mr. Gage: Cattle.

Q. Cattle is the big group; cows are the females. You can't tell I'm from Dallas? Y'all didn't milk any bulls did you?

A. No, they came through the barn, but they didn't get milked.

1. Those who take the time to read this opinion will learn that the defendant Trahan had mur-

dered a blind victim named "Justice" — and that the evidence, although circumstantial, was sufficient to support his conviction.

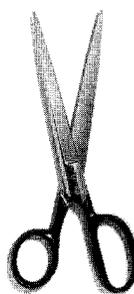
2. "IRAs in a Nutshell," By Benny Valek, *Texas Bar Journal*, February 1992, p. 130.
3. From **Judge John McClellan Marshall** of Dallas (14th District Court), this "truly astonishing event of modern judicial history" — which appears in the "List of Parties" section of a *pro se* petition for Writ of Mandamus (filed in the U.S. Supreme Court):

List of Parties

1. The Honorable John McClellan Marshall, Judge of the 14th District Court, Dallas County, Texas 75201.
2. *The justices of the Texas Supreme Court whose names are unknown as their names do not appear on any record and the clerk has indicated that their names are kept anonymous.*



YOU COULD GO AHEAD AND RENEW YOUR
NOTARY COMMISSION ON YOUR OWN.



OR CALL US.

If you want to avoid all the red tape that comes with renewing your notary commission, take the easy way out. With just one phone call to J. P. Everhart's Notary Insurance Hotline you can avoid the headaches of notary renewal. Firms with 25 or more notaries qualify for our special Gold Card status which enables you

to handle all your notary needs by phone. We even provide a full range of notary supplies. Plus you have the reassurance of dealing with the company that's been insuring notaries longer than anyone. Contact J. P. Everhart at 1-800-622-8575 to make sure your notary renewal doesn't get sticky.



J.P. EVERHART & COMPANY, INC.

Dallas, TX.