

Depositions v. Trials: The Nazi Moron & Other Clients

By Judge Jerry Buchmeyer



This month, clients join the *Depositions v. Trials* controversy — with contributions from **E.P. Hamilton, III** of Austin, **Paul Taylor** of Houston, and **David A. Wallin** of Dallas. The other excerpts are from Fort Worth (**Larry Cotten**), Irving (**Courtenay Bass**), San Antonio (**Judge Carolyn Spears** and **Tom Newton**), and Sherman (**Robert Richardson**).

Client I: The Nazi Moron

From **Paul Taylor** of Houston (vice president of Corporate Communications of Anadarko Petroleum), this marvelous (!) bit of “deposition-al humor” from the deposition of Anadarko’s CEO...who was being questioned about “an erroneous and immaterial statement in a photo caption in one of our quarterly reports to shareholders”:

Q. And your lawyers let you publish a statement like that?

A. Our lawyers looked at the draft report and no one had a problem with it.

Q. You must not have any good lawyers!

A. *Good lawyers...that's an oxymoron, right?*

Fortunately, Paul added What Happened

Next: “The bad joke should have stopped there, BUT, the deposition transcript didn’t say, ‘oxymoron’ — it read, ‘Nazi moron.’ The other side took exception to the misprint and offered the correct spelling. We strenuously objected to the exception and the fight went on from there.”

Voir Dire I: Right Down the Middle

From **Judge Carolyn H. Spears** of San Antonio (224th District Court), this excerpt from a personal injury trial in her court; the plaintiff’s attorney was **Ira L. “Shine” Morgan** (Kugle, Byrne & Alworth), and the defendant’s attorney was **Michael Black** (Burns & O’Gorman), also from San Antonio.

By Mr. Morgan:

Q. Mr. Padilla, I represent Danny Gonzalez in this case. I need to know if so far from what you’ve heard me talking about, or what you’ve heard Mr. Black talking about, if you are leaning towards one side or the other?

A. No, sir, I’m not leaning toward any side.

Q. Okay. *You’re just completely right down the middle?*

A. *Right in the middle, right. Yes, sir.*

By Mr. Black:

Q. Mr. Padilla, I’m Michael Black...Will you require Mr. Gonzalez [the plaintiff] to prove his case and his claims of whether it happened? And even if it did happen, whether we were negligent, and whether that was a proximate cause, or whether the other accident was a proximate cause of his injuries? Will you require him to prove all that?

A. Yes, sir, I sure would.

Q. Okay. And if he doesn’t prove that to your satisfaction, you’re not going to require Mendez [the defendant] to disprove anything, are you?

A. To — you know, I’m going to be neutral, you know. *Mr. Mendez has to prove what he’s trying to tell me, you know, so does this Mr. Gonzalez.*

Q. Right. *Well, who has to prove it? Mr. Gonzalez or Mr. Mendez?*

A. *Well, both of y’all, you know.*

Q. Okay. I believe the court —

A. Excuse me. You have to convince me, you know, that you’re — what’s the French word you were using?

Q. Voir dire?

A. *Voir dire, yes, and he’s going to voir dire, too, you know.*

Q. To tell the truth?

A. Right.

Did I Really Hear That?

From **Larry E. Cotten** of Fort Worth (Brown, Herman, etc.), these excerpts from the deposition of the plaintiff in “an asbestos exposure lawsuit”:

Q. Have you had any other health problems in the past that have required medical attention?

A. Okay. *One time I had to go to the hospital with acute diarrhea. I was in the hospital about three years — I mean, three days.*

Q. Let’s hope it wasn’t three years.

A. Oh, boy.

Q. Did that problem clear up?

A. Yes, ma’am. Thank goodness.

Q. [When] was the last time you saw Dr. Bryant?

A. 1953.

Q. And that’s when you lived in Bridgeport?

A. Yes, ma’am.

Q. What kind of things did he treat you for?

A. Tonsillitis and acute nosebleed.

Q. *What caused the nosebleed?*

A. *I don’t know, but it was a booger.*

From **Tom L. Newton, Jr.** of San Antonio (Plunkett, Gibson & Allen), this excerpt from a deposition being taken by **Craig White** of San Antonio (Watkins & Brock):

Q. Who is his probation officer?

A. Prasifka.

Q. I’m sorry?

A. Prasifka.

Q. How do you —

A. Russell Prasifka.

Q. How do you spell Russell’s name?

A. R-U-S-S-E-L-L, is my guess.

Q. R-U-S-S —

A. I don’t know exactly.

Q. No. The last name.

From **Robert Earl Richardson, Jr.** of Sherman (Richardson Law Offices), this excerpt from a deposition in a “sore back case” — where **Richard Harrison** of

Sherman (Henderson, Bryant & Wolfe) was "attempting to establish that the plaintiff, although unable to work, was capable of being [physically active] at church":

Q. What type of church activities have you been involved in since January of 1991?

A. Since 1991 I haven't had any physical activities.

Q. Play on the softball team?

A. No.

Q. Taken any church trips?

A. No.

Q. Are you the youth director?

A. No.

Q. *What do you do at your church?*

A. *Worship.*

Mr. Richardson: Mr Harrison doesn't understand that. He's an Episcopalian.

Mr. Harrison: As is your counsel, I might add.¹

Client II: That Sounds Like My Lawyer

From **David A. Wallin** of Dallas ("Illustrations & Designs"),² these "courtroom questions" by Canadian attorneys, as reported in a *Toronto Star* column by **Peter V. MacDonald**:

Q. And you are how old a woman, sir?

Q. And the youngest son, the 20-year old, how old is he?

Q. Was it you or your brother who was killed in the war?

Q. Were you alone or by yourself?

Q. Were you present in the courtroom this morning when you were sworn in?

David adds this note: "I think most of these quotes were from lawyers I had retained through the years."

Voir Dire II: May I Have A Little Longer, Judge?

From **Courtenay L. Bass** of Irving, this voir dire excerpt sent to her by one of her students from the National Institute on Trial Advocacy — which involves that "catch-all" type question "which would hopefully elicit any valuable information that we missed by our more specific questions to the panel." The excerpt is from a criminal trial in New York before **Judge Carol Berkman**; the name of the defense attorney is not used — for Very Obvious Reasons.

Def. Atty: Would anyone here take offense if I tried in a respectful manner perhaps putting a little pressure upon you,

because this is not a game of cricket we are playing here, to try to ascertain from you as best I can what would be your feelings in regards to this particular case or these particular charges. Would anyone take offense?

Miss Candid (Juror No. 5): I took offense yesterday. I thought your behavior was completely uncalled for.

Def. Atty: In what sense would you say as you sit here not charged with any crime, but cloaked with every degree of innocence that we can possibly give as a citizen of our society, in what sense would you say that my actions insulted either yourself or anyone in that room while we were here yesterday?

Miss Candid (Juror No. 5): *If I may be honest, you are a condescending [redacted]; I just don't like you.*³

Def. Atty: I have been called many other things, ma'am. You may be right, ma'am. You may be right. But does that

The Court: *Mr. Rojas, you only have two more minutes to be insulted.*

Mr. Rojas: Yes, ma'am.

Courtenay adds: "In an effort to avoid throwing gasoline on the fire, I will avoid any comments about how many [lawyers] might have responded with something generic (i.e. 'it goes with the job' or 'they teach that in law school.')

Client III: I'm Speechless

From **E.P. Hamilton, III** of Austin (a professional engineer, "E.P. Hamilton & Associates, Inc."), this excerpt from a trial in Santa Ana, CA involving a Toshiba T.V. which allegedly caused a house fire. First, E.P. sets the scene:

This was a *pro per* lawsuit brought by the homeowner (a former law student who had not passed the bar exam at the time of trial) against her own insurance company, Toshiba, the people who rebuilt her house after the fire, etc. It was tried last August... The trial was at the end of its fourth very tedious week and it was evident that the jury was really getting strained. Two of the 14 jurors had just been dismissed so they could go back to work. The plaintiff had just rested and I was on the stand as the third defense witness that morning when the following event occurred.

The trial judge (**Judge James P. Gray**, Superior Court of Orange County) "had been having the jury admonish themselves at every recess" about discussing the case, etc. — and when he called for a volunteer, several members of the jury "volunteered"

Miss Hawes, who made a Somewhat Unusual Admonition:

The Court: ...Again, may I pass along

the apologies and thanks for all of us for your patience and understanding, and even inconvenience. In the meantime, I need someone, I think, as we launch into the third round of our admonitions. I need a volunteer to do all of this. Do I have a volunteer? Miss Hawes, you have been volunteered.

Juror Hawes: With your indulgence:

As the days of August slip away,
Here we sit in the courtroom of
Judge James P. Gray.

We've had an earthquake, a heat
wave, now two jurors are gone,
Today, we came early, I got up
before dawn.

We each have been asked to
advise our group,
Not to discuss this case while eat-
ing our soup.

To beware of statements vague
and unclear,
And to keep in mind only facts are
held dear.

So take careful notes and stay
awake,

This is serious business, there is
lots of money at stake.

Keep an open mind, don't come to
conclusions,

Don't snap to judgments for fear
of delusions.

Try to be patient, all things come
to an end,

Someday soon we'll be home with
our family and friends.

So enjoy your time off, get some-
thing to eat,

Drive carefully, avoid trains, 'till
next time we meet.

The Court: I'm speechless.

E.P.'s letter ends: "*And so were the rest of us.*"

1. Robert added this footnote: "While it is true that plaintiff's counsel is Episcopalian, it should be noted that plaintiff's counsel was, for many, many years a Southern Baptist whose conversion therefrom occurred late in life when he learned that drinking was not a cardinal sin in the Episcopal Church. Further, it should be noted that Mr. Harrison did not deny plaintiff's counsel's assertion."
2. David was a high school friend and classmate of my cousin *Henry W. Buchmeyer, III*. His letter ends with this signature line: "David A. Wallin, PC, LLP, LLD, BYOB, RFD, OB GYN."
3. Courtenay added: "Although the 'colorful' language used in this transcript may make it difficult to publish, perhaps in this election year it would be appropriate to use the Barbara Bush method and say, 'It rhymes with tick.'"

Jerry Buchmeyer is a federal district judge in Dallas