

## *Depositions v. Trials:* The Man of Truth

This month's *Depositions v. Trials* contributions are from Amarillo (Ed McConnell), Beaumont (Cheryl Olesen), Dallas (Tom Pappas), Houston (Grady Randle, Steven Rosen, Lois Watson), Orange (Judge Buddie Hahn), and Wichita Falls (Mikal Lambert, Robert Pace).

### I Wasn't Watching, I Was Seeing

From **Thomas G. Pappas** of Dallas (Burleson, Pate & Gibson), this excerpt from the examination of an eye witness in a criminal case he tried "some time ago":

Q. Now, Mr. Augustine, while you were watching, at this time you didn't know of anything unusual going on, did you?

A. No, not —

Q. Okay. So you were just sitting in your yard casually watching what was going on — in the neighborhood?

A. Well, I wasn't watching, but I was seeing. I was just seeing what was going on, because it was all in front of my eyes and I could remember what I seen is what I saw. I won't say what I didn't saw. What I seen is just what I saw. *Whatever I say I see is just what I did saw.*<sup>1</sup>

### Show Me An Honest Man

From **Robert K. Pace** of Wichita Falls, this excerpt from a case he tried "in the early 1960s" in Wichita County involving an oral agreement for the sale of material to the defendant, a contractor. Robert's client testified that the agreed price was \$1.60 per yard, and the defendant testified it was only 50 cents per yard. On cross-examination, Robert asked the defendant "about problems he had with city inspectors checking on his construction jobs":

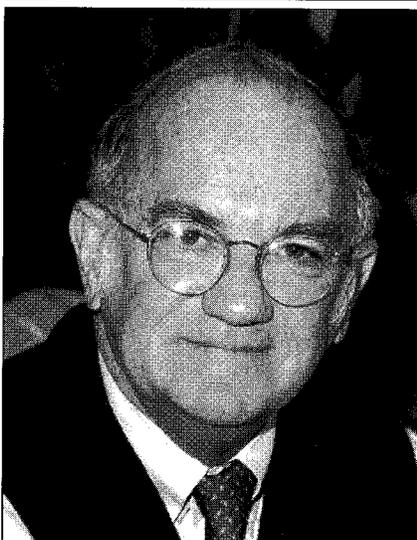
A. That's what inspectors are for, to make honest men of us.

Q. If it wasn't for inspectors, you wouldn't be an honest man?

A. I'm a contractor. You figure it out. If you can show me an honest one, I would like to hug his neck.

Q. You are sitting on the witness stand saying that if you can get by with paying 50 cents a yard for material

By Jerry Buchmeyer



you agreed to pay \$1.60 for, you would do that?

A. Sure; wouldn't you?

Mr. Pace: No, sir. That's all.

\* \* \*

From **Judge Buddie J. Hahn** of Orange (260th District Court), this marvelous (!) excerpt from the cross-examination of an "alibi witness" in a drug possession trial:

Q. You would not have any reason to tell a lie about your meeting with him, would you?

A. Not unless I get something for it.

### The Drunk Chemist Case

From **Ed McConnell** of Amarillo (Smith, Jarrell & Associates), this excerpt from the trial of a workers' compensation-death case — which Ed and the defendant's attorney, **Phil Johnson** of Lubbock (Crenshaw, Dupree & Milam) still refer to as "The Drunk Chemist Case."

The insurance company's defense was that the decedent was intoxicated ("just because he had a 0.26 blood alcohol test and was coming home from a Christmas party"). Phil's "expert" was the DPS chemist, "who actually ran the blood alcohol test." However, on cross, this "expert" testified that he had been requested to "resign" from the DPS, and that "for a per-

son to have an 0.26 blood alcohol level after three hours, that person would have had to consume at least 20 beers." On redirect, Phil tried to rehabilitate his expert just a bit:

Q. [Now] another question: How much do you drink on a regular basis, alcohol?

A. Well, to tell you the truth, it's been a little bit more here lately.

Q. Do you find...I'm sorry.

A. Well, my wife didn't like me to drink and —

Q. I'm not trying to get into — personal stuff.

A. You know...I went a long time without drinking any beers at all, you know.

Q. I don't want to get into your personal stuff and I'm not.

A. And so, here lately I — you know, she's gone and this — this weekend I — I had a pretty good little party for myself. I — I got a pint of Jack Daniels and a half a case of Budweiser Tallboys and I went at it and I woke up Saturday about 11:30, maybe it was in the afternoon because I went to sleep pretty late, and I had a lousy hangover and I think I just, you know, kind of tapered back a little bit because I don't like hangovers.

Q. ...Does your familiarity as a chemist, does the amount of alcohol over a period of time change a person's tolerance to the alcohol or do you have any knowledge to that?

A. Oh, I — I think I have some first-hand knowledge to that.

Ed concludes: "The jury found that the deceased was not intoxicated, and judgment was entered for the plaintiffs. Since that time, Phil and I have referred to the case as the 'Drunk Chemist' case."

### Child's Play

From **Steven R. Rosen** of Houston, this excerpt from his closing argument in a capital murder trial in the 268th District Court of Fort Bend County. Steven explains that "I often quote philosophers during many of my final arguments" and that "when I read the transcript...I was quite surprised that Ed

**Meaux**, court reporter (and one of my closest and dearest friends) did not understand that I meant to quote *the famous Greek philosopher, Plato.*"

...This is not a barbaric society. This is not a society that has been based on anger and violence and hatred. I have suffered just like you have suffered the past two weeks, and I'm no great philosopher, but I went back because I wanted you, as Mr. Felcman said, to think about what the argument is on. What in the world is this attorney talking about, where could I say something that will have some influence and it was *Play-Dough* that I found...

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From **J. Grady Randle** of Houston (Ross, Banks, etc.), this excerpt from "a very tense and technical multi-day, multi-volume deposition of an oil and gas expert on cash flow reports with present values and regression analysis." Finally, the defendant's attorney asked:

Q. Now, the 16.22.10, what does that mean? Is there any kind of code or what does that refer to?

A. We're still on V000292. If falls after evaluated by, my initials, 6-7-91. *It must be in code, and I didn't get the decoder ring.* I don't know. I do not know. They're just numbers on the page for me.

### Did I Really Hear That?

From **Lois Watson** of Houston (Watson, Watson & Hlavinka), this excerpt from the deposition of her client in a civil case.

Q. All right. Do you know what the legal concept of *alter ego* means?

A. Well, yes, I think so.

Q. What is that?

A. Well, *I think a person that has a very high opinion of himself.*

Mr. Hirtz: At this point may I ask for a short break.

(Whereupon a brief recess was held.)

Lois adds: "The aplomb with which my client displayed her complete understanding of the legal concept, *alter ego*, can only be fully appreciated by viewing the video; however, you will note that a "short recess" followed the subject testimony, while one and all attempted to regain composure."

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From **Mikal S. Lambert** of Wichita Falls (Fillmore & Purtle), this excerpt from the deposition in a personal injury-auto accident case, that was being taken on the second floor of the Wilbarger County

Courthouse:

Q. As a part of personal injury damages, you have claimed some damages for what the law calls mental anguish damages. Could you please describe and I know that it sometimes is hard to put into words what exactly is mental anguish as a result of an accident, but you understand that I don't —

(Court Reporter's Note: *Car screeching outside.*)

(Lambert's Addendum: "Car screeching outside" does not really do justice to the sound...It seemed that a car was about to crash through the windows of the second floor conference room.)

A. That's one thing that drives me nuts.

Q. Speaking of mental anguish.

### Oh, Shucks! Oh, Lord!

From **Cheryl D. Olesen** of Beaumont (Wells, Peyton, etc.), this excerpt from the deposition of the owner of a construction company — with the explanation that "the questioning attorney was apparently attempting to establish that part of the delay [in completion of the job] was occasioned by company employees performing side jobs for adjoining landowners."

Q. All right. One quick last line of questions. During 1986 when you were working on Highland Avenue...was there ever any time that people would come out and hire you or Earl to do small little construction projects for them along the way?...I'm talking about moving driveways or installing culverts or anything to that nature?

A. No, Clint. Never happened.

Q. Have you talked to Earl about that to see if that happened?

A. Well, they would have said something to me, you know, I mean, *they would not have done that. I'd kill them.*

Q. *Is that common in the industry, though?*

Ms. Stanley: What, to kill employees?

A. Oh, shucks.

Mr. Cooper: That was on the record.

A. Oh, Lord!<sup>2</sup>

1. Tom Pappas adds: "The [I was watching, but not seeing] eye witness was an elderly gentleman from Jamaica. When I went to interview him prior to the trial, he was sitting in a lawn chair in the front yard across the street from the scene of the offense. He was drinking a Heineken (he referred to Heineken as a 'Jamaican' beer), and had three or four empties around him."
2. Cheryl Olesen footnotes: "The last I heard, the death rate among employees of the construction company did not exceed the norm."

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