

Depositions v. Trials:
Shades of Dorian Gray

This month's contributions in the "Depositions v. Trials" saga come from Amarillo (**Vicki Lorenzen**), Dallas (**Durwood Crawford**, **John Neuhoff**, **Barrett Stetson**, **Pamela Schoch**), El Paso (**Chief Judge Max Osborne**), Houston (**Bertrand Moser**, **Richard Tindall**), Kingsland (**Jerry Kirby**), and San Antonio (**Dan Rutherford**) — plus a special contribution from **Linda Watkins** of the Idaho State Bar.

The Man of Truth¹

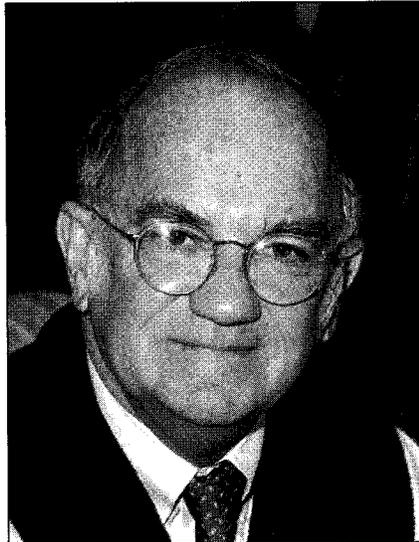
From **Linda Watkins** of Boise, ID (Linda is the communications coordinator of the Idaho State Bar), this marvelous (!) excerpt from the *deposition* of Bhagwan Shree Rajneesh — which won the coveted "Plain Speaking Award" in the April 1992 issue of *The Advocate* (The Idaho State Bar publication):

Lawyer: Would you swear the witness, please.

Clerk: Yes. I take an oath on the sacred book of our religion of Rajneeshism that I only speak the truth and will only speak the truth, now, under the pains and penalties of perjury.

Witness: Your Honor, before I take the oath, I have to say a few things. Otherwise, the oath will be a fraud. The first thing, I have always been against the ritual of oath-taking, for the simple reason that if a man is capable of lying, he can lie even while he is taking an oath. His oath can be a lie. And if a man is a man of truth, the oath creates a dilemma for that man. For the man of truth to take the oath means that he is capable of lying. Without the oath he will lie, and with the oath he will say the truth.... [But] I will take this oath, just to play the game of this deposition. I will follow the rule. But, I would like you to remember that by taking the oath, I am lying in the first place. It is against my philosophy of life, and you are forcing me to take the oath. That means you are freeing me; giving me the freedom to lie later on, although I am not going to lie. But, in spite of that freedom, I will only say the truth because I am

By **Jerry Buchmeyer**



incapable of lying. That is impossible. That is against my being and my existence. Now, just to play the game, I will take the oath. You can repeat what you want.

Clerk: Would you raise your right hand. [The witness is given the oath again.]

Witness: I take the oath on the book of Rajneeshism that I will speak only the truth. It is good that you allowed me to take the oath on the book of Rajneeshism, because these are my own words. But, this is such ridiculousness that I am taking an oath on my own words.

(Credit is also due **John Sahlberg**, a Boise attorney with Boise Cascade Corp., who contributed this deposition excerpt to *The Advocate*.)

Did I Really Hear That?

From **Barrett W. Stetson** of Dallas, this *proposed* answer to an interrogatory from a "young lady that I represented...in a personal injury lawsuit":

Q. Did you have any other expenses or suffer any other pecuniary loss because of defendant's alleged negligence not asked about in prior interrogatories?

A. Yes. I've lost friends and boyfriends

over this accident. *How do you put a price on that? Maybe \$16,400.*

From **Bertrand C. Moser** of Houston (Pannill & Moser), two "profound questions in depositions from cases in which I'm presently involved":

Q. Before the first meeting you had with Mr. X., had you ever met him before?

A. Never.

Q. Can you tell me how you make a profit off that? How do you make money once you get ahold of scrap?

A. We buy it at one price and sell it at a higher price.

From **John D. Neuhoff, Jr.** of Dallas (Neuhoff & Johnson), this excerpt from a hearing conducted by his partner, **Jody Johnson** — who "was serving as a visiting court master" for the 256th District Court in Dallas. The matter involved spousal support, and the litigants were "a 25-year-old man and his attractive 16-year-old wife."

Q. (To the wife, by Johnson) Now, were you employed prior to your marriage?

A. No, I was a cheerleader.

From **Durwood D. Crawford** of Dallas (Goins, Underkoffer, etc.), this excerpt from "a deposition taken in connection with an asset case":

Q. How about firearms? Do you own any firearms?

A. Not anymore.

Q. Okay. Your spouse own any firearms?

A. God, I hope not.

Do You Have A Criminal Record?

From **H. Pamela Schoch** of Dallas, this addendum to the "Back to the Basics" column (January 1993): the question which is always asked after the "name, address, marital status, and employer's name" series — "Have you ever been convicted of a crime involving moral turpitude?" When Pamela

was a Mere Law Clerk for a San Antonio firm, she found this unexpected response during her deposition-summarizing tasks:

- Q. Please give your full name for the record.
- A. John Q. Public.²
- Q. Do you reside in San Antonio?
- A. Yes, I've lived here most of my life.
- Q. What is your marital status?
- A. I'm married.
- Q. How long have you been employed by X Corporation?
- A. About two years.
- Q. Are you a licensed driver in the state of Texas?
- A. Yes.
- Q. Has your licensed ever been suspended or revoked?
- A. No.
- Q. *Have you ever been convicted of a crime involving moral turpitude?*
- A. *Who?*³

Pamela adds, perhaps unnecessarily, that "it probably took me 30 minutes to quit laughing and it has stayed with me all these years."

From the Trials of *Pro Se*

From **Richard A. Tindall** of Houston, this contribution — "both an excerpt from a deposition and the ensuing trial" — from a divorce case in which Richard represented the wife. The husband, who is the witness in this Q & A, was appearing *pro se*.

- Q. How much education do you have?
- A. About three semesters at Lon Morris Junior College.
- Q. Do you remember giving your deposition in my office several weeks ago?
- A. Yes I do, you threatened me that we might have to take it in front of the judge.
- Q. Do you remember me asking you about your education at that time?
- A. I think so.
- Q. Do you remember your answer?
- A. I'm not sure.
- Q. Well, let's take a look at it.
- A. Okay.
- Q. You stated you had a master's degree in geophysics from The University of Texas, didn't you?
- A. Yes, sir.
- Q. Mr. Chappell, when you gave that answer, were you mistaken or was it just a barefaced lie?
- A. *It was just a barefaced lie.*

Richard adds: Later in the trial, the *pro se* husband put the teenage daughter on the stand and asked:

- Q. Who do you think is the craziest, me or your mother?
- A. (perceptively) *I don't think either one of you is crazier than the other one.*

Prayers & The Lord

From **Chief Judge Max N. Osborne** of the El Paso Court of Appeals (Eighth Judicial District), this excerpt from the trial of a domestic relations case in Midland County:

- Q. Mr. Thornton, when you discovered that Jackie was pregnant with Audrey, did you tell Danny that you thought that would solve all their problems?
- A. I said that might help, and *Danny said it was an answer to a prayer, and I figured, you know, something else caused it myself.*

* * *

From **Vicki A. Lorenzen** of Amarillo (a legal assistant with Hoffman, Sheffield & Sauseda), this excerpt from a deposition taken by an attorney with the Underwood, Wilson, etc. firm (Vicki's former employer) submitted as "an example of the calm, cool, and control (and ability to keep a straight face and not discredit an honest answer by a witness, no matter how misunderstood the question), so often exhibited by attorneys."

- Q. Okay. Do you know of any expert witnesses that you intend to call at time of trial? Do you know what an expert witness is?
- A. I don't know just who.
- Q. Okay. Well, we will ask your daughter.
- A. *I've got the Lord.*
- Q. *Okay. That's fair.*

It's About Time!

Finally, to **Jerry W. Kirby** of Kingsland, the award for the first — and most appropriate — response to the new "et cetera" photograph:

Thank you for upgrading your photo in the *Bar Journal*. I have not seen you since 1956 at U.T. Law School and I was beginning to wonder if you were pulling a *Dorian Gray* job on us.

1. For instructions on how to connect this "Man of Truth" testimony with the title of last month's "et cetera," just call **Melinda Smith** at the *Texas Bar Journal*.
2. Not his real name!
3. According to Pamela, "There was no indication in the record that the participants in the deposition had to take a break before they could proceed. The examining attorney did not miss a beat, however, and went on to give examples of such crimes, such as theft or perjury, and the witness eventually answered no."

Jerry Buchmeyer is a federal district judge for the Northern District of Texas. If you have a contribution to this column, write 1100 Commerce St., Dallas 75242.

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