

Depositions v. Trials:

Famous At Too Young An Age

Contributions for this month's "et cetera" are from Arlington (**Bonnie Cade**); Atlanta, GA (**Jeffrey Bramlett**); Dallas (**John Martin**); Fort Worth (**Judge Catherine Adamski Gant, Larry Cotton**); Houston (**Lois Watson**); Port Lavaca (**Charles Hood**); Beaumont (**Weller, Wheelus & Green**); San Antonio (**Dan Rutherford, Judge Houston Abel, Kevin Lippman, Edward Marty**), plus a special *TV Guide* lawyer footnote contribution¹ from Dallas (**Bill Kuhn, Tom Mills**) and Fort Worth (**Rick Disney**).

There Goes Our Man

From **Edward J. Marty** of Tyler (a briefing attorney with the 12th Court of Appeals), this excerpt from a hearing on the defendant's motion for new trial in a criminal case. The jury foreman, "**Mutt**" **Mallory**, is being questioned about the allegation that the jury's verdict of guilty had been based upon some information obtained "outside the courtroom":

Q. Now, Mr. Mallory, do you remember the events that occurred on Nov. 30th after the jury returned the guilty verdict?

A. Pretty well.

Q. Okay. Did the jury go back into the jury room for a recess at that time?

A. Yes.

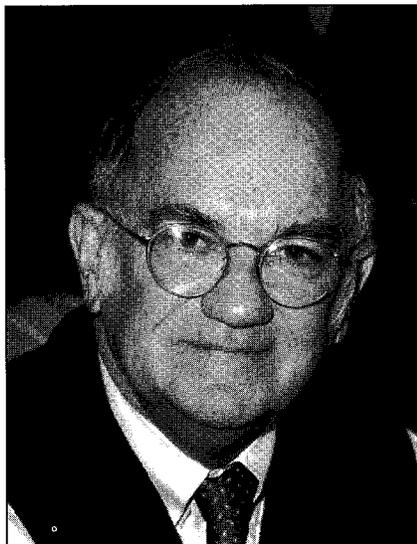
Q. Okay. Now, while you were in the jury room, did anything unusual occur?

A. Well, yes, I believe it did.

Q. Could you tell the court what that was?

A. Well, one of the jurors went to the coffee urn sitting in the window and he said, "*There goes our man*" and of course, a lot of them got up and looked, you know, and Richard [the defendant] was running down the street, they said. *Now, I didn't see him. He was already behind the building when I saw him.*

By Jerry Buchmeyer



Q. Okay.

A. They said he could outrun cars.

Did He/She Really Say That?

From **Dan Rutherford** of San Antonio, this excerpt from a personal injury case; the witness, Dan's client, is a boy who was hit by "something protruding from a train" while he was walking alongside the railroad tracks:

Q. Mike, your lawyer's given us three photographs and you've looked at them, haven't you?

A. Yeah.

Q. Who's the person in the picture?

A. Me.

Q. There are three photographs and you're in each one of them,

weren't you?

A. Yes.

Q. Were you present when these were taken? Obviously you were.

A. Yes.

Mr. Rutherford: I want that typed up separately and I'll pay for it separately.

Defense Attorney: *As soon as I said it I knew that that's what you were going to do.*

Lois Watson Redux

From **Lois Watson** of Houston (Watson, Watson & Hlavinka), this excerpt from a deposition she took in a will contest; the witness is a neighbor lady who is being asked about members of the decedent's family:

Q. And what kind of contact would you have with *Tusha Pinta*? [NOTE: In Romanian, "tusha" means "aunt."]

A. Oh, she lived across the street from me, catercorner, uh-huh; and my kids used to go over there when they were little. And Frances said, "Mama, I'm going over to Tusha's." And I said, "Okay. Go ahead. Watch for the cars." So she was a very wonderful person. *If she had lived one more month, she would have been 100 years old.*

Q. I understand that.

A. And she used to get out and cut her lawn with a push mower. And my son would go over there, my oldest son would go over there and say, "Let me do it." And she said, "No, I think I can make it." *And she'd fall in the ditch, and my son would pick her up.*

Q. Oh, my.

Lois adds: This description seems to fall "somewhere between 'Benny Hill' and 'Laugh In's Twenty-Fifth Anniversary.'"

But The Title Was Just Fine

From **Charles A. Hood** of Port Lavaca (Hernandez & Hood), this excerpt from a hearing on motions in a DWI case before **District Judge Clarence Stevenson**:

The Court: Now, on the [motion to quash the indictment, your concern] is that it doesn't give the name, kind, number and ownership of the vehicle he was alleged to be driving.

Mr. Hood: That's the first one, Your Honor.

The Court: Right. And that the street and highway is not alleged by general location. The manner and means of driving or operation is not specified. And that there's no allegation that this occurred in a public place. It is duplicitous.

"It's just a bad old indictment, Judge."

Mr. Hood: It's just a bad old indictment, Judge.

The Court: Doesn't allege how the substances were introduced into his body. The statute doesn't give fair notice of the proscribed activity and the caption on the bill was bad. Doesn't give him notice of what the State intends to prove, fails to allege whether the alcohol concentration was .10 percent grams of alcohol per 100 milliliters of blood or per 210 liters of breath or per 67 milliliters of urine. Fails to allege .10 percent grams. And the per se violation is unconstitutional. Anything else wrong with the indictment?

Mr. Hood: I think that about covers it.

The Court: You like the color all right?

Mr. Hood: I'm not too crazy about that shade of pink.

The Court: Okay. Motion to quash is denied.²

Did I Really Hear That?

From **Bonnie Cade** of Arlington, this testimony taken by her daughter, **Betty Lynn Cade**, who is a court reporter in Nashville, TN — "Where reporters follow their clients through discovery into the courtroom where they take the testimony":

Q. Where were you at the time of the accident?

A. In my car.

From **John H. Martin** of Dallas (Thompson & Knight), this excerpt from the deposition of an expert in a case involving the crash of a commercial airplane:

Q. Now, this [page of notes] came out of the body bag for case number 531, which you later assigned to Mr. Smith?

A. Yes, sir.

Q. And it says, "Multiple fragmented body parts in this bag?"

A. Correct.

Q. Reading on, "Four feet; three right, one left?"

A. Correct.

Q. Were you able to determine whose feet they were?

A. Was I able to determine? I didn't make that attempt.

Q. Do you know if all or any of these feet belonged to Mr. Smith?

A. I can't tell from these notes, nor do I have independent recollection of that.

From **Jeffrey O. Bramlett** of Atlanta, GA (Bondurant, Mixson & Elmore), this

excerpt from a deposition in which Jeffrey's partner, **Emmet Bondurant**, was cross-examining an ophthalmologist with a rather "demanding work schedule":

Mr. Seigel: Could we take a break at some point? He was operating all night and—

The Witness: *And I'm being beeped or vibrated.*

Mr. Bondurant: *If you're being vibrated, I want to disclaim any responsibility for that on the record.*

The Witness: I mean, I may need to answer a phone call. I might need to make another phone call.

All In A Name

From **Kevin M. Lippman** of Tyler (Kevin is a law clerk for **Bankruptcy Judge Houston Abel** of the Eastern District of Texas), this excerpt from the very long cross-examination of an expert witness in a five-day trial before Judge Abel.

Q. *Ms. Grimmer, you — is it Grimmer? Am I saying that right? I want to pronounce your name right.*

A. Yes, sir.

The Court: *And she's getting more and more so, Counsel, as time goes on.*

[general laughter in the courtroom]

The Court: She is not as happy as when she got up here, Counsel. Go ahead.

The Law — Civil and Otherwise

From someone at **Weller, Wheelus & Green** in Beaumont, who kindly furnished the subtitles for the excerpts from the same deposition in an asbestos case:

Civil Law

Attorney One: We're not even discussing those documents at this point.

Attorney Two: Okay. As long as you're — as long as we're clear on that, that's helpful. But *I'm like the piano player...I'm just doing the best I can and [I'm] asking you, without much confidence in the result, not to shoot me.*

Attorney One: *You must have forgot who you're asking.*

Uncivil Law

Attorney Three: I'm going to object to that. That continues to assume facts not in evidence, it's argumentative and it's vague. And I would ask you to specify which "manufacturers" you are referring to specifically.

Attorney Four: It's not your deposition. Just make your objection.

Attorney Three: I'm making it and I'm asking—

Attorney Four: Are you going to disrupt it? Attorney Three: No. I'm asking him if he'll specify it.

Attorney Four: No. We're not answering your questions. You can make your objection and take it up with the court if you feel it's necessary.

Attorney Three: That's fine.

Attorney Four: *Good. Shut up.*

Well, That's An Entirely Different Matter

From **District Judge Catherine Adamski Gant** of Fort Worth (141st District Court), this excerpt from a hearing "about a severance between the dental malpractice case and the negligent referral case of the oral surgeon," — with the explanation that "this excerpt has been on my desk for seven months while I have been trying to get up the nerve to send it for 'The Column.' I am ready."

Mr. Alexander: Plaintiff's counsel takes the position that in a negligence case, and in this case in particular, that if Dr. Ryan ever learned anything, *he should have learned that he was not able to perform oral sex.* Let's take that situation—

The Court: Excuse me?

Mr. Alexander: *I'm sorry. Oral surgery.*

Mr. Getchell: I'm so glad we're having a record today.

Mr. Alexander: I've got it written down as SX. I'm sorry, Judge. Thank you. I didn't even know I said it. *I'm getting famous at too young an age.*

Judge Gant adds: "The case settled soon after the hearing. Was there a connection?"

1. An "et cetera" first!! Three different attorneys — **Bill Kuhn** (Tobolowsky & Assoc.) and **Tom Mills** (Mills, Presby & Anderson), both of Dallas, and **Rick K. Disney** (Douglas, Kressler & Wuester) of Fort Worth sent me the same contribution; this excerpt from a law firm ad in the *Dallas Morning News TV Magazine* (Feb. 14, 1993):

DON'T SETTLE YOUR PERSONAL INJURY CLAIM FOR MORE THAN YOU DESERVE.

FREE 24-HOUR INFO TAPE

2. During this same motion hearing, **Charles Hood** examined the arresting officer about his failure to take a videotape — and the officer conceded he would have done that if the defendant had been a "VIP like a lawyer." Judge Stevenson denied that motion to suppress based on "failure to videotape," but stated: "Although I should give you some consideration for not suggesting to the officer that a VIP might be somebody like a judge. That's what I was afraid you were going to do."

Jerry Buchmeyer is a federal district judge for the Northern District of Texas.
