

Depositions v. Trials: **Who's on First?**

The contributions to this month's "Depositions v. Trials" controversy are from Dallas (**Robert Gilbreath, Tracy Pride Stoneman**); Fort Worth (**Judge Steve Wallace, Albon Head**); Houston (**William Weber**); Longview (**Edd Mobley**); Palo Pinto (**Judge David Cleveland**); and San Angelo (**Walter Pfluger**) — plus special contributions from Mobile, AL (**George Walker**) and Breckenridge, MN (**Michael McCartney**).¹

Did I Really Ask That?

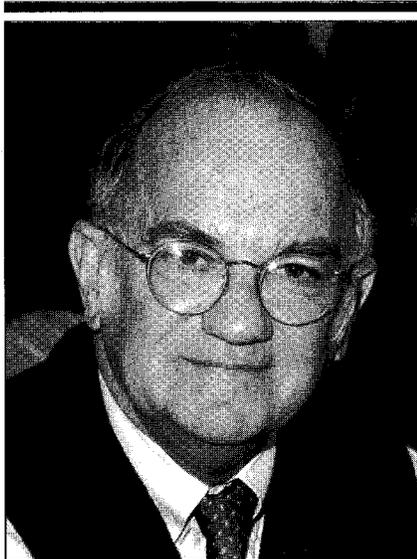
From **Albon O. Head, Jr.** of Fort Worth (Jackson & Walker), this deposition excerpt from a toxic tort case — with the "confession" that he would enjoy embarrassing one of their "young (and very bright, I might add) associates" who took this deposition.

- Q. Mr. Owens, we'd like to go over a little bit where you lived and some facts about your growing up. Can you tell us where you were born?
- A. Memphis.
- Q. Memphis, Texas?
- A. Yes, sir.
- Q. And when was that?
- A. Aug. 20th, 1953.
- Q. Did you — *did you live in Memphis, or did you move somewhere? Or did you go there just to be born* or —
- (Spontaneous and unrestrained laughter)
- A. I was — we were —
- Q. I told you I'd ask you some stupid questions.

From **Judge Steve Wallace** of Fort Worth (County Court at Law No. 2), this excerpt from a recent civil proceeding in his court.

- Q. And is that franchise under "Vandergriff Buick Company, Inc.?"
- A. Yes.
- Q. Now, Mrs. Deering, *were you the daughter* of W. T. "Hooker" Vandergriff [deceased], as we all knew him?
- A. Yes, I was.
- Q. *In what capacity?*
- A. Well, he sired me.
- Q. I'm not sure I got the answer.
- The Court: I'm not sure I understood your question. In what other capacity could she be his daughter?
- Attorney: We'll try it all over again.

By Jerry Buchmeyer



From **Judge David Cleveland** of Palo Pinto (29th District Court), this testimony from the trial of will contest involving two wills left by Walter Howeth:

- Q. When did you last see Walter?
- A. At the funeral.
- Q. *Did he make any comment to you at that time?*
- A. No, sir.
- Judge Cleveland adds: "I have wondered who might have been most relieved that the answer was no: the jury, opposing parties, mortician, or the doctor who signed the death certificate."

A Crop Failure

From **William D. Weber** of Houston, this deposition excerpt from a case in which his clients, the Greenwoods, were claiming title by adverse possession to a 50-foot strip of land adjacent to their property:

- Q. (By Mr. Weber) Mrs. Greenwood, are you aware that there were crops being grown out there?
- A. My uncle had cotton and —
- Q. Okay. What kind of crops? You already mentioned cotton. What else?
- A. Hogs, cows.
Mr. Greenwood: Crops, Honey.
The Witness: Crops, crops.
- Q. (By Mr. Weber) Wheat?
- A. Crops, no. When you said that, I said cotton because we picked cotton. I

don't know about no crops.

- Q. Are you saying that there may have been other crops grown out there, you just don't know what kind it was?
- A. Right. I don't know.
- Q. Listen to my question. Were there crops other than cotton out there being grown?
- A. Like?
- Q. Well, like anything. Were there crops being grown out there that you just don't know the name of, perhaps?
- A. For some reason, I've forgotten what "crop" means.
- Q. A crop is growing plants, like cotton, wheat, anything growing out of the ground.
- A. Corn.
Mr. Greenwood: Yeah.
- A. Corn....I remember my uncle having corn and mustard greens, and that's all I can recall.

Did He/She Really Say That?

From **George M. Walker** of Mobile, AL (Hand, Arendall, etc.), this excerpt from "one of the first depositions [he] ever attended" — of a "retired insulator from a local shipbuilding company in an asbestos case" (so there were, "as usual, 25 defense lawyers around a conference room table peppering [the witness] with questions:").

- Q. What was your father's name?
- A. I don't know, we always called him "Dad."

From **Michael J. McCartney** of Breckenridge, MN (McCartney Law Office), this excerpt from the recent trial of a divorce case in Wilkin County, MN (Eighth District Court). Michael represented the husband, and this took place on redirect examination of the wife by her attorney:

- Q. Mr. Ferguson testified that there were some various adult males around the house when you were married that he thought was inappropriate. Did that occur?
- A. Yes, there were males at the home and he was aware of who they were....He knew exactly who they were and the two friends that he referred to [were] male friends that came to the home, they came to fix the electricity because the fuses blew and he had wired the fuse box so bad that I couldn't fix it,

and so he knew that they were there and why they had come there, and he invited them over numerous amounts of time to play cards with him and cribbage with him, and when I'd come home from work they would be there. I never invited them over when he was not home by myself. *I did not in any way commit adultery with my husband during the whole time we were married.*

- Q. Okay...[after a "pregnant pause" of five minutes or so]...these bunk beds, Mr. Ferguson testified that they were older, but metal construction [and] didn't deteriorate. [Just] describe them...

Are You A Drinking Man?

From **Edd B. Mobley** of Longview, this deposition excerpt from a divorce case in which he represented the husband ("who had a reputation for a violent temper and a thirst for strong drink"). **Judge John Sharp** of the Gregg County Court at Law, was examining Edd's client — who had "successfully denied and/or explained numerous allegations of misconduct" until:

- Q. Mr. Anderson, are you a drinking man?
 A. Occasionally.
 Q. All right. How much would you say that you would spend on alcoholic beverages in a month?
 A. That all depends on the activities. She entertained the bridge club approximately two or three times per month.
 Q. Well, let me rephrase my question. How much would you spend for yourself?
 A. For myself?
 Q. Yes, sir.
 A. *I would say a half a pint would do me two days just as a nightcap.*
 Q. *That's all I have.*

Mr. Mobley: *Nothing further.*

Edd adds: "This exchange was the last in the deposition. *I am modestly proud of my final words.*"

Did I Really Hear That?

From **Walter W. Pfluger** of San Angelo (Shannon, Porter, etc.), this excerpt from the deposition of an architect employed as an expert witness "in a lawsuit brought by the homeowner due to structural damage in his home":

- Q. Did you inspect the entire home and —
 A. We went through virtually every room. We may have missed a closet or two, but went through most every room.
 Q. Okay. And did you inspect the outside of the home, also?
 A. Even looked in the attic above the garage. Above the entry.
 Q. Was there anything out at the [Plaintiff's] home that you wanted to see, but were not allowed to see or were not given the opportunity to see?
 A. Well, *there was one room where some*

javelinas were; but I didn't particularly need to see in there. That area had no evidence of cracks anywhere.

Chauvinism I & II

From **Robert B. Gilbreath** of Dallas (Vial, Hamilton, etc.), this excerpt from one of his first depositions taken in an auto accident case. This witness, a friend of the plaintiff Miguel Perla, is being questioned about how Perla has recovered from the injuries sustained in the accident:

- Q. Does Mr. Perla do work around the house?
 A. No, he doesn't work.
 Q. Does he help with the cleaning and upkeep of the house?
 A. No, he has a wife.

From **Tracy Pride Stoneman** of Dallas (Godwin & Carlton), this excerpt from a trial where she "defended a hotel [against] the plaintiffs' claim that their diamond ring had been stolen from their room." Tracy is cross-examining the plaintiff's expert witness, "an older gentleman from the old school":

- A. He told me his wife lost the ring.
 Q. It wasn't Mr. Buehring, was it?
 A. He said his wife lost the ring.
 Q. Well, I just was noticing that all of your testimony dealt with Mr. Buehring. But it was her ring. Didn't she ever talk to you about it?
 A. She was there. *But by nature she is like normal women, and they are mostly like my wife, and she keeps her mouth shut and lets the man talk.*
 Q. I see.
 A. I hate to say this, but that's the way my wife is, and it's just the way people are.
 Q. Okay. Well, you don't expect me to keep my mouth shut, do you?
 A. No.
 Q. Well —
 Plaintiff's Attorney: Well, Judge, I'll stipulate she won't keep her mouth shut.

1. And with a Very Special Footnote contribution from **Fred T. Bennett** of Dallas (Stillman & Bennett).²
2. Following a criminal trial before Senior Judge Gagliardi (M.D., Florida), **Fred Bennett** filed a written motion for new trial. This excerpt is from the government's request for an extension of time to respond to Fred's motion:

Additionally, government counsel is not a young woman. Since December, she has tried a series of complex and difficult to prepare lawsuits, during which she was either ill for the preparation and/or the trial. The far more vigorous court, and more importantly, its schedule, has worn down the undersigned, who respectfully requests the delay to respond to the motion herein.

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