

Depositions v. Trials:

Were You Present When You Heard That?

Contributions this month are from Amarillo (**Charles White**), Austin (**Jack Eisenberg**, **Scott Ozmun**), Dallas (**Durwood Crawford**, **Sidney Davis**), Houston (**Scott Vasquez**), McKinney (**Judge Weldon Copeland**), Sugar Land (**Veda Moore**) — and from Matthew Bender in Oakland, CA (**Fred Nation, Jr.**).

The Fred Nation Collection

Fred D. Nation, Jr. is the publishing director of Matthew Bender & Co. in Oakland, CA — but in his former life, Fred was a trial lawyer in Fort Worth (Garrett & Nation). During Fred's "annual desk-cleaning," he ran across his "laughs in the law" file, and sent the following three contributions:¹

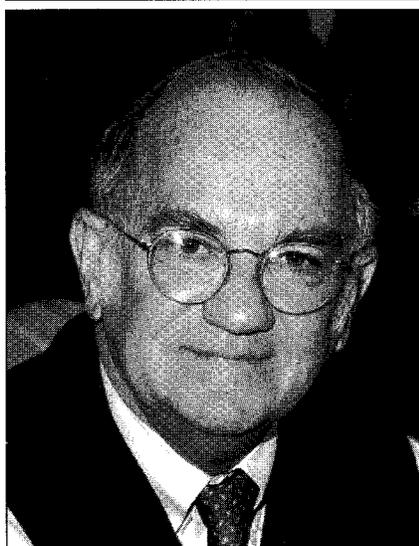
From the deposition testimony of a "city hit-and-run investigator" regarding The Scene of The Accident:

- Q. Was the roadway closed at the time you got out there to do this measuring work?
- A. Not at the time that I got there because I called uniformed **elephants** to shut the freeway down.

From the deposition of the plaintiff in some-kind-of-a-case, this classic exchange between two Dallas attorneys, **Kent Hofmeister** (Vial Hamilton Koch & Knox) and **James Gruben** (Law Office of James Gruben):

- Q. [By Mr. Hofmeister] Do you refuse to answer any questions about this supposed very private matter between you and Dr. Fein, that caused a disagreement between you ... over the payment of approximately \$46 in copying costs?
- Mr. Gruben: She refuses to answer that one question, not just any questions about it.
- Mr. Hofmeister: *To answer what question, Mr. Gruben?*
- Mr. Gruben: *To what you just posed, that we've read in the record about three times, that nobody understands.*

By Jerry Buchmeyer



Mr. Hofmeister: Well, *you seem to have understood it, because you objected to it.*

Mr. Gruben: *That was one of the reasons why I objected to it.*

Mr. Hofmeister: Because you understood it?

Mr. Gruben: Absolutely!

And, from the voir dire examination of expatriate **Fred Nation** himself, who was on the jury panel in a San Francisco murder case (the two defendants, prisoners at Duel Vocational Institute, were accused of stabbing a prison guard). After voir dire revealed that Fred had practiced law in Texas before moving to California, the young prosecuting attorney "bored on":

Q: Have you ever represented anyone who was in the penitentiary?

A: *Not before* I represented them!

Fred adds: The onlookers giggled, the judge chuckled and banged his gavel, "but the assistant D.A. — ignoring the time-honored adage about wise-acres on the jury — still didn't use his strike" (so Fred served on the jury "for three whole weeks, doing [his] part to further justice in the state of California").

What Kind of a Doctor Is He?

From **Jack C. Eisenberg** of Austin (Byrd, Davis & Eisenberg), this excerpt from the deposition of a personal injury plaintiff:

Q. Do you know a Dr. Parker?

A. Yes. It was — the 9th is when I had an appointment with Dr. Parker...

Q. *What kind of a doctor is Dr. Parker?*

A. *He is a — Well, he is a gentleman. He is not real old. He is kind of thin.*

Q. Is he a medical doctor?

A. Yes, he's a doctor.

From **Scott S. Vasquez** of Houston (Mallia & Jacobs), this deposition excerpt from a suit alleging that someone in an attorney's office had forged a client's name on insurance checks and a release:

Q. Do you know who Dr. Alex Melvin Wade, Jr., is?

A. Yes, I do.

Q. Who is he?

A. He — he worked for me about — maybe about a month in 1991.

Q. In what capacity?

A. As a paralegal.

Q. *He was a doctor of what?*

A. *That was his first name, "Doctor."*

Q. *He wasn't an M.D.?*

A. *No. Nor a Ph.D., nor a J.D.*

Q. *Are you saying that "Doctor" was his first legal name?*

A. *According to him.*

Q. And did you put Doctor Alex Melvin Wade, Jr.'s name on your letterhead?

A. Yes.

Doing Voir Dire

From **Charles E. White** of Amarillo (Conant, Whittenburg, etc.), this excerpt from voir dire in a case before **U.S. District Judge Halbert O. Woodward** of Lubbock: Juror: Judge, if I have to serve on this jury, my watermelon business in Muleshoe will be ruined.

Judge Woodward: After conferring with the attorneys, I have decided to excuse

you from jury service in this case.
 Juror: Oh judge, thank you so much. I will certainly vote for you at the next election, and I will get all of my friends to vote for you.
 Judge Woodward: Well, I appreciate that. I need all of the help that I can get.

From **Judge Weldon S. Copeland** of McKinney, this bit of voir dire from a DWI case:

Q. Have you ever in your life personally seen people who were drunk or intoxicated?
 A. Oh, yes sir. I went to college.²

Did He/She Really Say That?

From **Scott Ozmun** of Austin (Whitehurst, Harkness, etc.), this excerpt from the deposition of a *pro se* defendant — who is “being asked about his ability to pay a judgment”:

A. I have a checking account, which I know for a fact has less than \$100 in it, and I have a savings account...
 Q. How much is in the savings account?
 A. Savings account, I haven't checked it since I guess about six months now. I probably have maybe \$13, \$14 in there, I think.
 Q. Where do you bank?
 A. I bank at First National Bank of Granbury.
 Q. And is that the same place for the checking and savings?
 A. The savings is at Community Bank and the checking is at First National Bank.
 Q. *That's good to spread your assets around like that.*

From **Durwood D. Crawford** of Dallas (Goins, Underfofler, etc.), this excerpt from a trial in Big Spring. Durwood explains that the witness — an inmate in federal prison — had not hired an attorney to represent him in a prior suit ... with the result that a summary judgment was entered against him.

Q. Why didn't you hire an attorney to represent you ... did you know any attorneys at that time?
 A. Yes, I knew plenty of them ... there were a lot of attorneys in where I was, but they had all lost their licenses to practice.

But Is that a Definite “No”? Or What?

From **Veda Moore** of Sugar Land (Moore & Moore), this excerpt from her

“deposition of a trustee of a pension plan who had fired [Veda's] client because of alleged inadequate work performance”:

Q. (By Ms. Moore) Answer the first one. Did you ever have a discussion with Ms. X about inadequacy of performance in any respect?
 A. Oh, I'm sure I have. I can't specifically recall any particular one.
 Q. Would you say it was a formal conference where you called her in to discuss her — a problem?
 A. *Oh, no, no. No, no, no, no.*

From **Sidney H. Davis** of Dallas (Touchstone, Bernays, etc.), this deposition excerpt from a personal injury case involving an accident allegedly caused by an intoxicated driver:

Q. Can you remember anything that Cathy may have said to you that evening?
 A. Not specifically. But I do know there were several people that had said something to her about the fact that, you know, “Cathy, you're just drunk,” or something like that. And she got really defensive about it.
 Q. Okay. *And you think you were present when you heard that?*
 A. *Yeah, I'm pretty sure that I was.* I know I heard that. I don't know if it was — who it was that said it specifically. But I do know that I was there when it was said.

1. Actually, **Fred Nation** sent *four* contributions, the last one being this excerpt from the complainant in a sex discrimination case against Kaufman County:

“Plaintiff was hired by the defendant's police department on or about Oct. 1, 1985 and began work as a police officer patrolman in the defendant's police department. *She performed her duties as a police officer patrolman in a competent and proficient manner when she became pregnant.*”

2. At the request of **Judge Copeland**, the answer to the “follow-up question” — Q. *What college was that?* ... is not being printed for fear of offending some readers. However, you are right: it was the college you attended!

Jerry Buchmeyer is a federal district judge for the Northern District of Texas. If you would like to submit a contribution to this column, write him at 15-E-6 Earle Cabell Federal Building, 1100 Commerce St., Dallas 75242.

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