

*Depositions v. Trials:***Before a Certified *Short* Reporter**

This month's deposition and trial contributions are from Austin (**Manuel H. Newburger**), Dallas (**Carol L. Tacker**), Fort Worth (**Judge Jeff Walker**), Pampa (**Judge Lee Waters**), San Antonio (**John Clark Long**), South Padre Island (**Jim Sitgreaves**), Sugar Land (**J. Bradley Smith**), Sulphur Springs (**Larry Powers**), and Wichita Falls (**Judge Tom Bacus**).

And, the initial contributions to a new category of horrors¹ — *The Dreaded Typographical Error*² — are from Dallas (**Craig Hopkins**, **Gregory McCarthy**, **Judge John M. Marshall**, **Howard Tygrett**), Houston (**D'Anne Haydel**, **John Zavitsanos**), New Orleans (**Chris Reeder**), and San Antonio (**Jack Kaufman**, **Frank Rose**).

Penitentiary Stories

From **Judge Lee Waters** of Pampa (223rd District Court), this excerpt from "a divorce case where the elderly gentleman had recently discovered that his previous wife had not completed the divorce proceedings 20 years earlier":

Q. Is there any reasonable expectation of reconciliation between you and Mae Jean?

A. Not that I know of.

Q. Are there any minor children of your marriage to Mae Jean?

A. Three.

Q. *Are they minor children, or are they adult children?*

A. *They're all in the penitentiary or going to jail, so they've got to be grown.*

Q. Then are they all above the age of 21?

A. Yes, ma'am. The youngest one is 32.

From **John Clark Long IV** of San Antonio, this deposition excerpt where the witness is asked "if he told his prospective employer (Ms. Garza) if he had been in prison":

Q. Have you ever been convicted?

A. No.

Q. Did you ever tell Ms. Garza that you had spent some time in the penitentiary?

A. Yes.

Q. And is that true?

By Jerry Buchmeyer



A. No.

Q. Why did you tell her that?

A. Because I was *concealing my identity and I felt that it was just what I wanted to create ...*

Q. What do you mean you were concealing your identity?

A. *The type or the way that I was brought up, you know. It just seemed to fall right into place. I fabricated that.*

Q. You fabricated your background?

A. No. *I fabricated that I was in the penitentiary.*

Did He/She Really Ask That?

From **Judge Jeff Walker** of Fort Worth (96th District Court), this question "asked by a young trial lawyer on direct examination of his client":

Q. Now, Mrs. Roberts, did you recognize the "repo" man who was going to take your van to be the defendant sitting over here in the beard?

From **Manuel H. Newburger** of Austin (Barron & Newburger), this trial excerpt from a case involving an agreement that "as long as she [Manuel's client, the plaintiff] cares for and maintains the property, she can stay there as long as she wants to." During

direct examination, the plaintiff testified about improvements and repairs to the property by her and her husband; then, on cross-examination, the very first question was:

Q. Now, the fellow that you claim does this work *is your husband when he is sober*. Is that right?

A. Repeat the question, please, on that.

Did He/She Really Say That?

From **Larry Blount** of Sulphur Springs (Powers & Blount), this excerpt from a bond reduction hearing before **Judge Lanny Ramsay** (Eighth District Court). Assistant District Attorney **Al Smith** is cross-examining the defendant's wife — who has "just testified that, in spite of the DWI, her husband's drinking problem is not as bad as it used to be."

Q. Now, — you're telling this judge that your husband doesn't drink as much as he used to, yet he has been charged with his eighth DWI?

A. He doesn't drink as much as he used to. Why, he only has one case of beer in the refrigerator right now.

From **Judge Tom Bacus** of Wichita Falls (County Court at Law No. 2) — who notes that "mental patients sometimes offer some rather profound observations during commitment hearings" — this excerpt from a recent hearing in his court:

Q. What are your feelings about being placed in the state hospital?

A. This is the only place you can act like a lunatic and be accepted by your peers.

Q. How does the medication make you feel?

A. After I took that shot, I was catercornered on a compass. I couldn't decide north from south or east from west.

From **J. Bradley Smith** of Sugar Land (former district judge sitting by assignment), this voir dire excerpt from a drug case he was presiding over in Harris

County. Bradley explains that the defense attorney had questioned one juror at length about her feelings "if a police officer found cocaine in her son's room and whether she thought she could be charged" with intentional possession — but then asked this "one more question":

Q. What if they found an uzzi submachine gun in your house?

A. *That would be my husband's.*

Matters of Opinion

From **Jim Sitgreaves** of South Padre Island, this recent opinion by **Judge Robert Garza** of Brownsville (138th District Court):

The court is of the opinion that the claims being asserted by Mr. Donoho and Mr. Hiltzman are barred under the Statute of Frauds. Furthermore, *in my opinion both parties were not very credible and their respective stories on the transactions in question were incredible.* I will deny both parties' claims. Each side will bear their own costs.

From **Anonymous** this 1989 order entered by **Judge Donald E. Walter** (E.D. LA. — Monroe Division):

It is hereby ordered that defendant, Thomas A. Grant, III, is prohibited from introducing any evidence at trial concerning whether James C. Steele has an illegitimate child; *whether James C. Steele has burned a live cat; and whether James C. Steele has ever bitten the head off of a live frog.*

From **Carol L. Tacker** of Dallas (Southwestern Bell Telephone), this order entered in *Pool v. Missouri*, CV 380-119 CC (Circuit Court of Phelps County, MO):

Comes now John C. Brackman, Special Judge, and, feeling that the ravishing pits of hell are too good for this son-of-a-bitch, disqualifies himself from further proceedings in this case.

Classic Typos

A growing number of "et cetera" readers staunchly — *and correctly* — maintain that the horrors of trials and depositions are

often matched by the Dreaded Typographical Error. These examples are from pleadings, briefs, etc. I have received during the past few years.

- (1) From an amended complaint in Dallas: "the defendant was formerly the acting *chef* and deputy chief of the Dallas Police Department."
- (2) From an answer in Dallas: the plaintiff "should be required to prove each and every one [of its allegations] by a preponderance of all *incredible* evidence."
- (3) From a Houston intervention: Intervenor prays that "the court grant such other and further relief as may be *justly inequitable*."
- (4) From a brief in a discovery dispute in Houston: "Defendants would respectfully move for the entry of a protective order which precludes *the insemination* of confidential, personal information..."
- (5) From a mediation order in Dallas: "after *medication*, the court will be advised ... only that the case did or did not settle."
- (6) From a bankruptcy fee application in Houston: "a brief *biological* sketch of each [firm] attorney is attached."
- (7) From pleadings in Dallas and San Francisco: "To the *Horable* Judge of said court" — and "the search warrant signed by the *Horrible* Judge."
- (8) From a State Bar Consumer Law Section publication: "Although 83 percent of cases filed by individual plaintiffs alleged *darnages*"
- (9) From a San Antonio deposition notice: "... the deposition of Crown Distributors ... will be taken before a *certified short reporter* of the firm of Southwest Reporting ..."

Credits for these contributions go to (1) **Craig Hopkins** of Dallas (City of Dallas), (2) **Gregory J. McCarthy** of Dallas, (3) **D'Anne Haydel** of Houston (Porter & Clements), (4) John Zavitsanos of Houston (Ahmad & Zavitsanos), (5) **Judge John M. Marshall** (14th District Court), (6) **Chris Reeder** of New Orleans, LA (O'Neil, Eichin), (7) **Howard Tygrett** of Dallas, (8) **Jack Kaufman** of San Antonio (Kaufman, Becker), and (9) **Frank Rose** of San Antonio (Smith, Carter).

1. "Death is not the end; there remains the litigation." (Ambrose Bierce)
2. "Everything I did in my life that was worthwhile I caught hell for." (Earl Warren)

Index of Advertisers

Association of Trial Lawyers Of America	248
Attorney's Insurance Marketplace, Inc.	288
Automated Legal Systems, Inc.	260
Avis Rent A Car System, Inc.	242
Matthew Bender.....	241
Butterworth Legal Publishers	317
CCH-Legal Information Services	284,306
Capitol Services, Inc.	235
Curtis Hill Publishing Co.	219
Daniels-Head Insurance Agency, Inc.	227
Excelsior Legal, Inc.	228-229
GeneScreen	264
Global Tracing Services, Inc.	277
Government Liaison Serv., Inc.	272
Inter-Data Services Corp.	245
Int'l. Genealogical Search, Inc.	281
Knowles Publishing	285
Kornblum & Ferry, P.C.	253
Kreisner & Gladney	302
Lawyer's Aid Service, Inc.	237
Lawyers Cooperative Publishing	220,221,233
Legal Directories Publishing Co., Inc.	IBC
Lerner, Dr. Steven E. and Assoc.	325
Lione, Greif, Ross & Lee, P.C.	243
Lone Star Legal Services	263
M.R.S. Datascope, Inc.	273
Martindale-Hubbell.....	259
Mead Data Central.....	254-255, 290
Mediation & Negotiation Training, Inc.	250
Military Law Section	286
National Legal Research Group, Inc.	244
National Locators, Inc.	249
National Mediation Academy, Inc.	243
New Products/Services Forum	282-283
North American Legal Research	325
Owl Software, Inc.	299
Physicians for Quality.....	323
Smoot, Steven M.....	301
Specialization, Texas Board of Legal.....	326
Specialty Software, Inc.	250
State Bar of Texas Institute Schedule	300
State Bar of Texas Insurance Trust	IFC
State Bar of Texas Legal Forms	247
Stewart Title Guaranty Company	224
Texas Corp. Supplies, Inc.	231
Texas Lawyers Insurance Exchange.....	329
TransMedia	277
United Services Life	289
West Publishing Company	BC

Watch for Your April Bar Journal

The April Bar Journal will include more extensive information about Referendum '94. Ballots will be mailed April 14 and must be returned by May 16. For a State Bar Referendum to be valid, 51 percent of the membership must vote. Take time to know the issues and exercise your privilege of self-regulation: vote.