

Depositions v. Trials:
A Matter of Translation

This month, contributions in the *deposition v. trials* saga are from Beaumont (**Bradley Randall**), Dallas (**Michael Box**, **Judge Ron Chapman**, **Robert Latham**, **Judy Stephens**, **Cindy Butler White**), Houston (**Steve Waldman**), and San Antonio (**Christine Campbell**) — with the second installment of The Dreaded Typographical Errors being contributed from Dallas (**Melvin Klein**, **Gordon Montgomery**), El Paso (**Ellis Mayfield**), Fort Worth (**Donald Buckman**, **Joyce Vardeman**), Houston (**Bruce Halstead**), and Phoenix, AZ (**Brian Moffatt**).

Of Lawyers and Halos

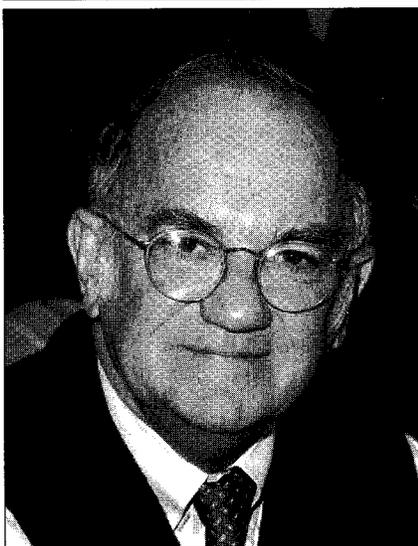
From **Judy Stephens** of Dallas (Judy is a briefing attorney with the Fifth District Court of Appeals), this eye-opening excerpt from the cross-examination of the eyewitness in a murder trial:

- Q. Ms. Victory, why do you wear glasses?
 A. Because I'm cross-eyeded [sic], but I've had three operations to correct it. But it just brings everything into focus for me.
 Q. Did you have your glasses on the morning [in question]?
 A. No, I did not.
 Q. I'm not an eye doctor, so your problem with being cross-eyed makes things not appear to be in focus?
 A. No. What cross-eyeded is, I had — my muscles were real long. So when I was a kid, I had to have my muscles cut back so that *it would keep my eyes straight instead of going underneath my nose*.
 Q. Okay. That went well over my head....
 A. It's like — okay, like an antenna — an antenna on T.V. It kind of just brings it into focus. *It's not that I can't see you clearly. It's just that you kind of got a little halo around you*.
 Q. My mother would be glad to hear that.

Did I Really Ask That?

From **Bradley N. Randall** of Beaumont (an assistant city attorney) — Bradley contributed the marvelous (!) “Neanderthal and Cretinous Yahoo” excerpt a few years back (see “et cetera,” June 1992)¹ — this segment from the deposition of a city driver in a car accident case. The questions are by

By Jerry Buchmeyer



Barry Bennett of Port Arthur (Gerald Eddins & Associates).

- Q. Were you ever counseled about this accident?
 A. It says I was. *I don't remember it*.
 Q. You don't recall that?
 A. *I don't recall it*, no, not right off.
 Q. You've never had any problems with your memory, have you?
 A. Just getting older.
 Q. *To your recollection, have you had any memory problems?*
 A. No.

Be Careful with Experts

From **Steve Waldman** of Houston (Waldman, Smallwood, etc.), this deposition excerpt from the cross-examination of a neurosurgeon by **William S. Jackson** of Houston (Leuders & Boanerges):

- Q. Is secondary gain a conscious phenomenon or can it in some cases be a subconscious type of phenomenon?
 A. It can be either, either/or, or both. It depends.
 Q. Doctor, as you sit here today, *there's no way for you to go inside the head of another individual* and to know for a fact whether or not those factors are present, is there?
 A. *Well, I'm a brain surgeon. I can go inside the head of an individual*; but unfortu-

nately, I don't have the techniques to make that determination.

Q. Okay.

Steve adds: At that point, Mr. Jackson asked to go off the record, and once he was certain we were off the record, responded to the doctor, “Touché.”

Did He/She Really Say That?

From **Christine H. Campbell** of San Antonio (Small, Craig & Werkenthin), this “List-The-Things-You-Used-To-Do-That-You-Cannot-Do-Anymore” excerpt from the plaintiff's deposition in a slip and fall case:

- Q. What did you used to like to do that you can't do now?
 A. Football, baseball. Running. Outdoor swimming.
 Q. Anything else that you used to do that you can't do now?
 A. *Can't pick up my kid any more*. Can't do any of that.
 Q. *He is 14 years old*. I don't know that I —
 A. *Can't pick him up any more*.
 Q. I don't know if that is a result of this accident.
 A. No.
 Q. Maybe because he is getting too old. Anything else?

From **Michael S. Box** of Dallas (Morgan & Weisbrod), this excerpt from the deposition of the plaintiff's husband in a medical malpractice case:

- Q. Angiogram?
 A. Yeah, angiogram. So we called — I called St. Paul's, and Dr. Rothkoph was available. *And I don't know why I called St. Paul's — yeah, I do, too. I wanted to — I was a Baptist, and I wanted to use a Catholic hospital and a Jewish doctor so I wouldn't — so I could cover all the exits, I suppose*.

From **Robert P. (Bob) Latham** of Dallas (Jackson & Walker), this excerpt from the deposition of the plaintiff-wife in a wrongful death case (in which Bob and **Michael L. Knapek** represented the defendant):

Q. Did you know that your husband [Hosea] was not reporting all of his income [to the IRS]?

A. No, I did not.

Q. When did you find out?

A. I didn't find out.

Plaintiff's Attorney: Hold on. Stop. Let's stop right there.... She's already testified that Hosea didn't report all the income. I don't know that any further testimony would be necessary.

Mr. Knappek: Why didn't they report all the income?

A. I reported all that — you now, I reported as far as what I knew.

Q. You've testified that Hosea brought home cash, about \$300 a week, right?

A. Yeah, approximately.

Q. So you would have known that when these tax returns were prepared, correct?

A. Correct.

Q. That tax return doesn't reflect that, does it?

A. No.

Plaintiff's Attorney: Don't answer anymore questions.... She's already said she didn't report all of the income. She had information as to what Hosea brought home. You and I both know that nobody ever reports all the income they ever make.

Mr. Knappek: I don't know that. I know it's a crime not to.

Plaintiff's Attorney: *We're not talking about crimes, we're talking tax evasion.* We're talking about the fact that people do it.

Classic Typos

More examples of The Dreaded Typographical Errors from pleadings, briefs, opinions, etc.

(1) From written interrogatories in an occupational disease case in Houston: "Have you ever been in the military ser-

vice? If so, state when and where you were abducted...."

(2) From proposed jury instructions in a Dallas state court trial: "You are instructed that *headless* disregard means...."

(3) From the draft of a deed in El Paso: "The property more particularly described by *leaps* and bounds as follows...."

(4) From a Houston general warranty deed "reserving unto the grantor all oil, gas, and other *carbohydrates*."

(5) From the page title given by West Publishing to a case involving San Jose, CA, 948 F.2d 1097 (9th Cir. 1991): *John Ward, Plaintiff-Appellant v. City of San Hose, et al, Defendants*.

Naturally, Don Buckman's handwritten note with this read: "*Do you know the way to San Hose?*" West Publishing does."

(6) From a 1991 Tarrant County Bar Association notice of a CLE luncheon speech on "Making and Meeting Objections, Particularly *Heresay*."

(7) And, finally, the Ultimate Typographical Error discovered in *In re Chemisphere Partners*, 90 B.R. 380 (Bankr. N.D. Ill. 1988): "Debtors retained defendant National Survey Service to perform certain survey and *typographical* work as to debtors' Illinois property...."

Credits for these contributions go to (1) **Bruce E. Halstead** of Houston (Jones & Granger), (2) **Melvin J. Klein** of Dallas, (3) **Ellis O. Mayfield** of El Paso (Mayfield & Perrenot), (4) **Gordon H. Montgomery** of Dallas, (5) **Donald K. Buckman** of Fort Worth (Cantey & Hanger), (6) **Joyce Vardeman** of Fort Worth, and (7) **Brian T. Moffatt** of Phoenix, AZ.

Some People Don't Think So

From **Justice Ron Chapman** of Dallas (Fifth District Court of Appeals), this excerpt from closing arguments in a burglary trial before **Judge Larry Baraka** of

Dallas (Criminal Court No. 2):

Prosecutor (in closing argument): I close with this. I am reminded of *that Elvis Presley song* when it talks about ... Santa Claus is coming to town....

Def. Attorney: Objection, just stop right there. Judge, I don't know anything that would permit the injection of Elvis Presley into this trial. *He is dead. Let him stay dead.*

Prosecutor: Common experience, Judge, common experience. He's got no....

Judge Baraka: I don't know what to do. I will overrule this. I want to hear this.

Def. Attorney: No, tell him to stop. *He is dead. Tell him to leave Elvis alone, he is dead.*

Judge Baraka (wisely): *Okay.*

A Big Difference

From **Cindy Butler White** of Dallas (Burford & Ryburn), this deposition excerpt from a personal injury case in which the plaintiff claimed she was injured by a falling can while grocery shopping. Cindy sets the stage by explaining that she is deposing the husband about his loss of consortium claim; that the plaintiff and her husband are both from Russia; and that a Russian interpreter was translating the questions and answers — but sometimes with the timely assistance of the wife.

Q. Have you and your wife had any marriage counseling?

Interpreter: He don't know what it is.

Q. Have you talked to a psychologist or a clergyman or somebody, some third party about your marriage?

Interpreter: He don't understand these questions.

Q. Okay. Well, never mind. What are the reasons that you separated from your wife?

Interpreter: "I was sick and tired, I don't have any sex and *I found another woman.*"

Wife: *That's a wrong translation.*

Interpreter: "*I want to find another woman with whom I can have sex with.*"

Q. *Wanted to find?*

A. *Yes.*

Q. *Big difference.*

1. So you won't have to look it up, Bradley Randall's June 1992 trial excerpt was from the pro se cross-examination of the victim's girlfriend in a theft trial that established new heights "in profanity-less name calling." She is being questioned by the defendant:

Q. But you've called me names, too.

A. Not in *that* language.

Q. You called me a Neanderthal.

A. That's right. I called you a Neanderthal and a *cretinous yahoo*.

Referendum '94

Referendum ballots will be mailed April 14 in conjunction with the president-elect and directors ballot. Ballots must be returned by May 16. The State Bar Act requires at least 51 percent voter participation of eligible attorneys for a valid rules referendum.

Your vote on *any* one of the eight referendum questions (not including votes for president-elect and directors) helps meet the minimum participation requirement in the rules referendum.

Take the time to know the issues and vote:
Exercise your privilege of self-regulation.