

Depositions v. Trials:

How Long Were You Dead?

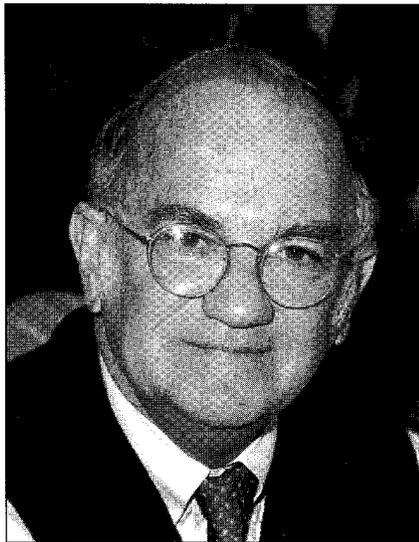
Contributions this month are from Dallas (**Stephen Gardner, William Parish, David Stone**), El Paso (**Richard Dulany**), Fort Worth (**Judge Michael Schattman**), Houston (**Charles Dippel, Judge Eileen O'Neill**), Lubbock (**R. K. Miller**), Lufkin (**Jon Anderson**), Midland (**Judge Lucius Bunton**), and San Antonio (**Ted Roberts**).

Did He/She Really Say That?

From **F. David Stone** of Dallas (David Musslewhite & Assoc.), this excerpt from a workers' compensation non-subscriber deposition being taken by **Jeff Nepl** of Dallas (Smith & Underwood).

- Q. Are you married, sir?
 A. No, I'm not.
 Q. Have you ever been married before?
 A. Yes.
 Q. Okay. Could you give me your previous wife's name.
 A. *I refuse to answer that on the grounds that it may incriminate me.*
 Q. You are trying to assert a privilege under the Fifth Amendment, sir?
 A. Yes, I am.
 Mr. Musslewhite (wisely): Why don't we go off the record for a minute? (After the break, the witness does state the name of his ex-wife, and the deposition continues.)
 Q. Do you recognize this document?
 A. No, I don't.
 Q. I'm going to tell you that this is the application of employment that you filled out when you went to work at [the defendant company] ... and ask you if you recognize the handwriting on that document?
 A. No, I don't. No.
 Q. Is that not your handwriting on the document?
 A. Could be. I'm not saying it is.
 Q. Are you telling me you can't recognize your own handwriting?
 A. *I'm saying it could be anybody's handwriting. My handwriting is very common.*
 Q. I'm asking you if you will — if you can recognize your handwriting.
 A. No, no.

By Jerry Buchmeyer



From **Richard B. Dulany, Jr.** of El Paso (El Paso County Public Defender's Office), this excerpt from a state court "Batson hearing."

- Q. Are you a Mexican, sir?
 A. Yes, sir.
 Q. You are an Hispanic?
 A. Yes, sir.
 Q. *Born that way, were you?*
 A. Yes, sir.

I'm Not A Mercenary Swine

From **William W. Parish** of Dallas, these end-of-deposition comments by a physician, who had just been cross-examined by the opposing attorney.

- Mr. Parish: Okay, doctor. Then you will waive the reading and signing of the deposition?
 Witness: Or maybe I shouldn't waive it until I get my check from you since this guy is calling me a mercenary swine. No, I'll waive it.
 Mr. Parish: All right.
 Witness: Oh, did that go into the record, that mercenary swine stuff? Oh, well.
 Mr. Parish: And agree that we can use ... an unsigned copy then, counsel?
 Witness: Well, I'm not a mercenary swine for the record.... I'm totally honest.

Birthdays, Happy or Otherwise

From **Ted H. Roberts** of San Antonio, this excerpt from his deposition of an eye witness in a personal injury case.

- Q. Your date of birth?
 A. 12 — 26 — 1949.
 Q. I bet that tends to cut down on birthday presents.
 A. Well, I don't know what it's like. Just like a person being born blind, you don't know what it's like to see, so

Doing Pro Se

From a pro se pleading recently filed with **Judge Eileen O'Neal** of Houston (190th District Court), the "friendliest introduction" that she's ever received:

Now comes Plaintiff Ronald Dwayne Whitfield, and says to the honorable judge of this court, "Hello."
 Judge O'Neill adds that she did not yield to the temptation to draft the following response:

Hello. Motion denied.

From **R. K. Miller** of Lubbock (assistant senior field attorney in the Texas Attorney General Child Support Litigation Division), this excerpt from a pro se answer by the alleged father in a paternity suit (who was later "excluded by genetic testing"):

Further, if [defendant] is determined to be the biological father, *this is news to him* and therefore, he has been denied the usual and customary visitation rights pursuant to the Texas Family Code. Therefore, the *Doctrine of Latches* to his situation and the court should enter and order denying reimbursement on that legal theory.¹

You Know Where This Is Going

From **Judge Michael D. Schattman** of Fort Worth (348th District Court), this crossover contribution — a deposition excerpt read during trial — by **Kyle Tatom** of Abilene, in an otherwise boring wrongful foreclosure/conversion of collateral case.

Mr. Tatom: So what you're saying is it could not be a possessory security interest created by this document if for no other reason than because it covers accounts conceivable as well as equipment.

A. That's correct. [twitters, giggles, and then laughter by everyone in court, including (of course) Kyle Tatom. Then ...]

Mr. Tatom: Judge, I swear I've read this a hundred times and never realized that is what it said.

Judge Schattman: Mr. Tatom, I'm sorry, but you know where this is going.

Doing Voir Dire

From **Jon L. Anderson** of Lufkin, this excerpt from the voir dire in a capital murder case in Angelina County before **Judge David Wilson** (217th District Court). Jon was the defense attorney, and the prosecutor was Angelina County District Attorney **Clyde Herrington**.

Mr. Herrington: Where they used the word "intentional," if you say, "yes, it's intentional," then it's not automatic that it's deliberate. You have to look and say, okay; they intended to do it, but did they make a conscious decision? Yes, they did. Yes, it's deliberate. Or, if you think, well, they intended to do it, but they did it without really making a conscious decision. It's like if I knock that cup over, I intended to do that. I intended for that cup to go over. But I really probably didn't think about it, because if I had of, I would have realized that there was water in the cup? Okay?

Judge Wilson: Excuse me just a second. Would you go get a paper towel to mop up the water on the table?

Mr. Herrington: I've got a handkerchief, Judge.

Classic Typos

From **C. Charles Dippel** of Houston, a "long ago filed" bill of reviews in which "the plaintiff claimed her cause of action was *truly meritricious* (instead of meritorious)."

From **Stephen Gardner** of Dallas, a Memorandum Opinion and Order which was "*singed* on Dec. 21, 1993" by an

unnamed federal judge in Dallas who writes a humor column for the *Texas Bar Journal*.

How Long Were You Dead?

From **U.S. District Judge Lucius D. Bunton** of Midland (Western District, TX), this excerpt from one of his recent criminal trials — a telemarketing case in which the defendants had cheated "old people throughout the country" of more than \$80,000 total, by "telling them they had won big prizes, but had to pay the tax." One of the victims, a "little wizened lady" from California who was about 80, took the stand — and, as he always does, Judge Bunton "inquired as to her name, her address, and her occupation." She gave her name and her California address, and then ...

Judge Bunton: And your occupation?

Witness: I'm retired.

Judge Bunton: And what are you retired from?

Witness: My husband and I both retired in 1977. We were in a very bad car wreck. I was dead for three months. I was brought back to life, and have not worked since that time.

Judge Bunton confesses: I didn't know exactly how to proceed, as this was the first time in my judicial ... or trial experience where anyone had testified they had been dead for three months. I couldn't think of a follow-up question." So, he wisely "turned the questioning over to the prosecutor."

Judge Bunton added that although some of the jurors did react to the lady's statement ("their mouths did drop and their brows did furrow"), the prosecutor "never asked a question about this lady being dead for three months, nor did any of the five defendants' attorneys ... [and] *the matter was never mentioned again.*"

1. After *R. K. Miller* "wonders if the *Doctrine of Latches* refers to door latches or maybe the old-time latches on dungarees?," he adds a second contribution — this portion from the "Comments" section on a form completed by one of their child support claimants:

Q. Is there anything else you need to tell us about this client or this child's father?

A. He is a frequent liar. (His own mother told me that.)

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

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