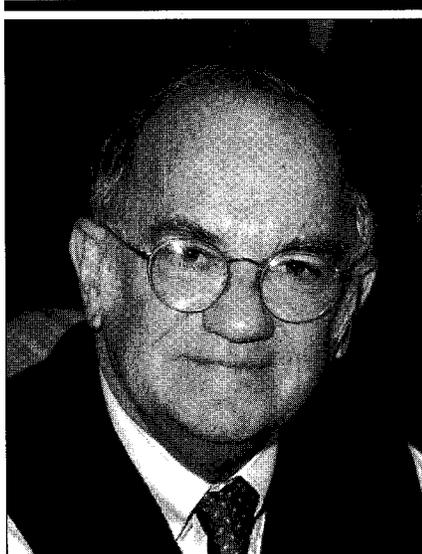


Depositions v. Trials:

Everything That Wanda Had

By Jerry Buchmeyer



This month's contributions are from Corpus Christi (**Douglas Mann**), Dallas (**Martin Randal Merritt**), Houston (**Keith Fletcher, John Sieger, L.A. Teehan, William T. Little**), Paris (**Carol Hammond**), Waco (**Crawford Long**), Fort Meyers, FL (**Barbara LaGrande**), and New Orleans, LA (**John Roper**) — with special footnote contributions from Austin (**John Greytok**)¹ and Anonymous.²

Who Lives With You?

From **L.A. Teehan** of Houston (Eric J. Hedemann & Assoc.), this excerpt from the deposition of his client in a "premises liability case" — which falls in the *they'll never get this guy for perjury* category.

- Q. And you have no other dependents that live with you at all?
- A. No.
- Q. You have no grandparents or relatives at all that stay with you?
- A. No, sir, *none that are living*.
- Q. Okay.
- A. *My mother is cremated, and she is in the closet.*

The Naked Truth

From **Carol Hammond** of Paris, this marvelous excerpt from a recent criminal trial before **Judge Deane Loughmiller**. Carol had presented a witness who attacked "the reputation of the complaining witness for truth and veracity"; then, the prosecutor, **Chuck Superville**, began his cross-examination.

- Q. Ms. Jones, what does veracity mean?
- A. It means somebody just picking at you all the time and calling you names and having their kids to pull their pants down and him holding a spotlight on them and letting them moon you and things like that at night. He does it. And he's thrown his little kids out in the street — out on the porch stark naked. And till his mama come in that day, he sat out there behind an old box, his oldest son did, naked as he could be, 'fraid to move, 'fraid somebody would see him ... and he does that, too, I've seen that done.
- Q. But you really don't know what veracity means, do you?

- A. I — well, yeah. I think it's picking and aggravating people all time.
- Q. That's not what it means.
- A. That's not what it means? Well, what does it mean?
- Q. It means one's propensity to tell the truth.
- A. I'm telling the truth, sir.

Did He/She Really Ask That?

From **Martin Randal Merritt** of Dallas, this excerpt from the plaintiff's deposition.

- Q. Have you ever been injured before?
- A. No. I'll swear on my mother's eyes to that.
- Q. Where is your mother?

From **Barbara LeGrande** of Fort Myers, FL (LeGrande & LeGrande), this excerpt from a murder trial; Barbara's client had been found guilty — and her partner and husband, J.L. "Ray" LeGrande, was examining a "mitigation witness," the defendant's brother.

- Q. What is your relationship with the defendant in this case, David Michael Hubbard?
- A. He's my brother.
- Q. How old were you when he was *originally born*?
- A. Fourteen.

Barbara adds: Ray later "defended his remark by saying that he was just preparing for introducing later that my client had been 'reborn' while in custody. *Sure!*"

From **Keith M. Fletcher** of Houston (Simmons & Fletcher), this excerpt from the deposition of his client in a personal injury/auto accident case.

- Q. When were you hospitalized?
- A. '83 at Memorial Southwest. I had my gallbladder taken out by Dr. Witt.
- Q. *Is Dr. Witt a surgeon?*
- A. *Boy, I sure hope he was.* Yes.

His Language, Not Mine

From **John A. Sieger** of Houston (Winstead Sechrest & Minick), this excerpt from the deposition of the plaintiff in a sex discrimination case, concerning the charges filed with the EEOC.

- Q. This sentence that he wrote, the EEOC — man wrote on both of these charges, about "I insist on filing this charge," was that his language?
- A. His language, not mine.
- Mr. Sieger: *I think that's a Reagan administration touch.*
- Ms. Cotropia: Sounds definite.
- A. I wasn't insisting on anything. I was just stating what I thought.

What's Happening in Waco?

From **Crawford Long** of Waco (Crawford is the first assistant criminal district attorney of McLennan County), two criminal trial excerpts. The first is from *voir dire* in a murder trial of a juror who "was rather large and [who] had on a tent dress that made her appear pregnant."

- Prosecutor: Mrs. Dunlap, you don't have any children at this time?
- Mrs. Dunlap: No.
- Prosecutor: All right. Are you fairly comfortable at this time?
- Mrs. Dunlap: Yes.
- Prosecutor: You don't have any problems sitting on a jury?
- Mrs. Dunlap: No.
- Prosecutor: I just found out last week my wife was pregnant. I'm still excited

about it. *Do you have any problems at all serving on this jury? How much longer before you're expecting?*

Mrs. Dunlap: *I'm not pregnant.*

Prosecutor: *I'm sorry. I thought ... I thought with that dress on...*

Mrs. Dunlap: *That's all right. It's the type of dress I have on.*

Prosecutor: *(Going from bad to worse): It's on my mind. Okay ... all right. You're a very big person. I appreciate that, ma'am.*

Crawford Long's second excerpt is from "a motion for new trial hearing before **Judge Bob Burdett** (184th District Court) in the ... Kenneth Allen McDuff case."

Q. Now, Doctor, let me show you the affidavit that has been filed by Windel Dickerson here in this case. I believe I showed it to you a little earlier. And there is a term in there, is there not, called *folie à deux*.

A. *Folie à deux*.

Q. *Folie à deux*. The only — is that a French term?

A. Yes.

Q. The only one I know is *menage à trois*.

Mr. Charlton: Would you care to explain how you know that? I think we should have some cross-examination on this issue.

Errata

Douglas Mann of Corpus Christi (Matthews & Branscomb), correctly notes that "little attention has been devoted to the hazard of the witness reviewing and signing his deposition" on the *Deposition v. Trials* saga. So, Douglas fills this gap with these corrections made to a February 1994 deposition:

Corrections in the Deposition of:
Floyd Wiley

Pg/Ln	Reads	Should Read	Reason for Change
11/6	R	Y	<i>Spilling</i>
13/20	Gomez	Garcia	<i>Spilling</i>
17/1	Orlando	Alonzo	<i>Spilling</i>
23/2	Pelas	Falas	<i>Spilling</i>

Everything That Wanda Had

From **John M. Roper** of New Orleans, LA (John is an attorney with Exxon Company, U.S.A.), this marvelous (!) petition filed in the 26th District Court, St. Mary Parish, LA (*Wanda Thompson v. Exxon*, Docket 67,695) in August 1992 — which John has "carried for years" as a "prime example of concise legal writing":

Petition for Damages

About June 2, 1982, a big boat of Exxon Company came along at a rapid speed and not reducing speed making wave wash and sucked Wanda into the bayou, sucked her car into the bayou, sucked everything she had into the bayou, injured her, bruised her, hurt her back, hurt her neck, ruined her car, and now they won't even pay for the wave wash damage.

Wherefore, plaintiff demands judgment against Exxon Company, USA, for ONE MILLION DOLLARS (\$1,000,000) plus legal interest and cost.

Respectfully submitted:
William P. Rutledge
Attorney for Plaintiff

(John adds: "It is noteworthy that one of the items included in everything that Wanda had, which was sucked into the bayou, was her catcher's mitt. We are given to understand that Wanda's catcher's mitt was damaged beyond salvage.")

A Tendency to Ramble

From **William T. Little** of Houston (Gilpin, Paxson & Bersch), this excerpt from the plaintiff's deposition in a personal injury case — with the warning that the witness was a "colorful older gentleman who had a tendency to ramble."

Q. (By Mr. Little) Mr. Blank, have you been in a deposition like this before?

A. Let me see. I believe about 15 years ago, I believe. It was maybe 15 or 20 years ago.

Q. What kind of case was that?

A. Let me see. It was — I believe it was — let me get my head together here now, if I remember. I believe I was in an accident because the guy run a stop sign or something like that.

Q. Were you injured in that accident?

A. I think — let me see now. I believe I injured my back for a while 'cause it didn't — there wasn't too much to it because I was back on track.

Q. Where did this accident occur?

A. Let me see. I believe it was on — no, wait a minute. Let me see because — 'cause I was on my way up home. That was on 290 because it was a guy that was driving an 18-wheeler, and he was asleep at the light and a guy hit him. He ran up and hit the guy, and then — yeah, that — because — yeah, because that lawyer kept my money. He went overseas. We didn't know he still had my fees. And he died on me before I could kill him. Yeah. Yeah. Yeah. His name was George — Yeah. That was a — yeah, I'll never forget that.

Plaintiff's attorney: Yeah, I know it, but try — Mr. Blank, but try and just answer the questions.

1. John Greytok of Austin (Fulbright & Jaworski), who was summoned for jury duty to a criminal case, found this *dreaded typographical error* in the juror handbook: Benefits of Jury Service
You may have had the responsible and difficult task of finding the needle of truth in a haystack of *convicting* evidence.
2. Anonymous of Austin was the first to spot the dreaded typo in the March 1994 "et cetera" — which moved **Frank Rose** and his entire firm (Smith, Carter, etc.) from San Angelo to San Antonio. Sorry Frank.

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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 Judge Buchmeyer at 15-E-6 Earle Cabell Federal Building, 1100 Commerce St., Dallas 75242.