

Depositions v. Trials:

Classic Typos Meet a Curious Amigo

This month's contributions are from Austin (U.S. District Judge **Jim Nowlin**, **Jim Lombard**, **Hugh Lowe**); Brenham (**Steven Haley**); Dallas (**Al Ellis**); Fort Worth (**Judge Wallace Bowman**, **Bernard Whitney**); and Houston (**Thomas Berg**) ... with *Classic Typos* from Corpus Christi (**Sharon Emerson**); Dallas (**Scott Patrick Stolley**); Edinburg (**Edwin Cook**); and San Antonio (**Edgar Morrison**, **Bobby Myers**) ... and with *Verbal Typos* from Dallas (**Judy Stephens**, **David Herrman**) and San Antonio (**State Bar President Jim Branton**).

If You Don't Understand My Questions ...

From **Al Ellis** of Dallas, this excerpt from the deposition of a witness who knew "how to follow instructions to the letter":

Q. My name is Al Ellis. I represent the plaintiff in a lawsuit, and I am going to ask you some questions in regard to his fall that he had back in June 1990, and perhaps some surrounding facts. If you don't understand my questions or I am talking too much like a lawyer, or whatever, you ask me to repeat it. Will you do that?

A. Uh-huh.

Q. *You have to say "yes" or "no."*

A. *Yes or no.*

What's in a Name?

From **Judge Wallace Bowman** of Fort Worth (County Criminal Court No. 4), this excerpt from the trial of an assault/bodily injury case:

Q. All right. Well, let me stop you there. What were you arguing about?

A. It started more or less in the car after we left the Way Station. But the argument got started about a girl [who] came into the Way Station that Joanne and myself know that had been robbed; that she had opened up her home to somebody that we both know and he had come into the home and had stayed there for a number of days and when they'd left, and left him at the house by himself [sic], he had robbed them; stole money, jewelry, one thing and another. *And the man's name — it's "Useless," is what he goes by.*

By Jerry Buchmeyer



Did They Really Say That?

From **Hugh Lowe** of Austin (Osborne, Lowe, Helman & Smith, L.L.P.) this "example of judicial thoughtfulness for all to follow" from *Porter v. Kruegel*, 155 S.W. 2d 174 (Tex. 1913):

... Before the time set for hearing the motion [to reinstate] ... *Judge Nash adjourned the court and died...*

Hugh, of course, could not resist these observations: "As you probably know, many judges lack the courtesy to adjourn the court before dying, so that the trial goes on. It is usually not noticeable, but if discovered, it is reversible error and a complete waste of the litigants' time."

From **Jim Lombard**, CLA of Austin (Jim is a legal assistant with Small, Craig & Werkenthin), this excerpt from the medical records of a plaintiff who was claiming his head was injured in a "slip and fall":

Past History: As stated above, the past history is otherwise negative or non-contributory.

Family History: Likewise negative or non-contributory.

The patient denies any previous head injuries and only remembers the fact that *he was hit on the head as a small child with an ax.*

From **Steven C. Haley** of Brenham (Moorman, Tate, etc.), this answer to interrogatories in a will contest:

Interrogatory No. Six: Did you own any life insurance policies which you claim is [sic] not subject to descent and distribution in Decedent's estate? If so, with respect to each such policy, state ... whether or not the proceeds under the policy have been paid and to whom payment was made.

Response: I have no life insurance policies other than those accruing in my favor by virtue of my employment with the state school in Brenham. Refer to the material appended hereto "Exhibit G." *By the interposition of a kind providence, no proceeds have been paid on the policy to date.*

A Letter of Character

From **U.S. District Judge James R. Nowlin** of Austin, this marvelous (!) letter of recommendation the defendant submitted just before he was sentenced for food stamp fraud:

Dec. 2, 1994

Treasure Island Bingo

2410 E. Riverside Dr.

Austin, TX 78741

To whom it may concern:

We have known Tacho Bravo for about three years. He is a regular player in our hall and sometimes wins.

Sincerely,

Objections Sustained!!

From **W. Bernard Whitney** of Fort Worth, two trial excerpts involving objections. The first is from a plea in an abatement hearing before **Judge H. M. Lattimore** (who is now on the Fort Worth Court of Appeals);

Q. You transacted this business for her because she did not seem to have any capacity for it; is that correct, sir?

A. She just could not absorb it and she needed the money. Her husband is crippled.

Q. And that was the purpose in your deal-

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ings in all of these things that have her name on them; is that correct?

A. That's right, and *Mr. May said that was fine.*

Defense Attorney: Your Honor, I object to that last comment. Whatever Mr. May said is hearsay. Further, it is non-responsive to the question.

The Court: Yes, that is not a proper response.

Defense Attorney: I move that the testimony about Mr. May's comment be stricken.

The Court: What do you want me to do?

Defense Attorney: I am not sure I understand your question.

The Court: I can't take it out of the record. It is there forever. *I will try not to remember it and instruct myself accordingly.*

Defense Attorney: Thank you.

Bernard's second excerpt is from the trial transcript in a case he was asked to handle on appeal:

Q. All right. You have admitted to kissing Joanie Elliston on Christmas Eve of 1982; is that right?

A. I admit to giving her a little buss.

Q. A little what?

A. Buss.

Q. All right. What is a buss?

A. It's just like a little peck on the cheek.

Q. A meaningless asexual kiss? Is that a meaningless asexual kiss?

A. Well, it's not a sexual kiss at all. All kisses don't have to be sexual. This was just a little buss on the lips which —

Q. Okay. But using Mr. Curry as a model for Joanie, would you show the jury how that kiss was done?

A. *I beg your pardon?*

Mr. Curry: I don't believe we need to use me — Your Honor, what is all this? *I've never heard anything like this before. Certainly I'm not going to kiss the witness.*

The Court: Is that an objection?

Mr. Curry: Yes, it's an objection.

The Court: I'll sustain the objection.

Mr. Curry: *I can't believe this.*

Salvation Guidelines

From **Thomas S. Berg** of Houston (Tom is first assistant public defender, Southern District of Texas), this sentencing excerpt — with the explanation that “normally we are numbed by guideline sentencing,” but this one “put an interesting twist on the meaning of ‘Salvation’”:

The Court: Do you know what saved you?

The Defendant: Yes, sir. My Lord Jesus.

The Court: Your Lord Jesus. Well, eventually that may play a role. I mean in terms of this sentencing right now.

The Defendant: Yes, sir.

The Court: Do you know what saved you?

The Defendant: No, sir. Will you please tell me?

The Court: The sentencing guidelines. You know what I used to do before we had sentencing guidelines with persons with your criminal history who came to me?

Classic Typos

- 1) From a jury charge in a recent trial before **Judge Joaquin Villarreal** of Corpus Christi: “‘*Gross negligence*’ means more than *monetary* thoughtlessness, inadvertence, or error of judgment....”
 - 2) From a letter by a prospective client in California: “Also are you interested in representing me pro bono or on *consignment*?”
 - 3) From a letter by the California co-counsel in a complex federal court case: “**DICTATED BUT NOT THOUGHT ABOUT.**”
 - 4) From an advertisement for a law librarian for the Hidalgo County Law Library: “Salary *commiserate* with experience.”
 - 5) From a DTPA demand letter: “The plaintiffs are willing to *sing* a complete release for \$85,000.”
 - 6) From the caption in a pleading in my court: “Swinetta Marsh, by Her Next *Fried*, Stella Marsh Locke.”
- These classic typos were contributed by:
- 1) **Sharon Emerson** of Corpus Christi (Sharon is a paralegal with Kleberg & Head);
 - 2) **Bobby D. Myers** of San Antonio (Biery, Biery, Myers, etc.);
 - 3) **Edgar C. Morrison, Jr.** of San Antonio (Jackson & Walker);
 - 4) **Edwin J. Cook** of Edinburg (a regional attorney for the Texas Department of Protective and Regulatory Services);
 - 5) **Scott Patrick Stolley** of Dallas (Thompson, Coe, etc.); and
 - 6) **Linda LeNoir**, my attack secretary.

Verbal Typos

- 1) From **Judy Stephens** of Dallas (research assistant, Dallas Court of Appeals), this response by a trial lawyer to a hearsay objection: “No, Your Honor. I am taking it as a *present sense of pressure.*”
- 2) From **David E. Herrman** of Dallas (Herrman, Henley & Herrman), this response by his client to David's directions to the Dallas Courthouse: “I know where it is because I've been to the Texas School Book *Suppository* before.”
- 3) From **State Bar President Jim Branton** at the last board of directors meeting: “In the Florida State Bar's lawyer advertising case, we have filed a *curious amigo* brief.”

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