

Depositions v. Trials:

How to Use a Deposition at Trial

This month's "et cetera" comes to you from Andrews (**Dan Sullivan**), Dallas (**Jane Corley, Johnanna Greiner**), Fort Worth (**David Lowrance**), Houston (**Danny Tran**), Rowlett (**Robert Lyon**), San Antonio (**Bruce Anderson, Rob Ramsey**), and Blacksburg, Va. (**Jerry Cain**).

The Prepared Witness

From **Jane M. Corley** of Dallas (Corley & Corley), this excerpt from the testimony of a nine-year-old boy in a criminal case in the 203rd District Court:

Q. Henry, do you remember what I told you about testifying today? Do you remember I talked to you about being on the witness stand?

A. Yes.

Q. What did I tell you is the most important thing to do? You remember what I said about telling the truth?

A. Yes.

Q. What did I tell you about that? What did I tell you, Henry?

A. To sit up straight.

Did He/She Really Ask That?

From **Bruce E. Anderson** of San Antonio (Brin & Brin), this excerpt is from the deposition of his client in a personal injury case. The defense attorney, **Donald L. Crook** (Plunkett, Gibson & Allen), is asking the plaintiff to describe "how the elevator doors closed on him and caught his foot."

Q. Now, did you try to jump out and your leg caught and then you fell, or did you just fall?

A. No. I think I went straight like that.

Q. And then your leg caught?

A. Uh-huh.

Q. And then you went down?

A. Yes.

Q. And so you fell about three to four feet to the ground?

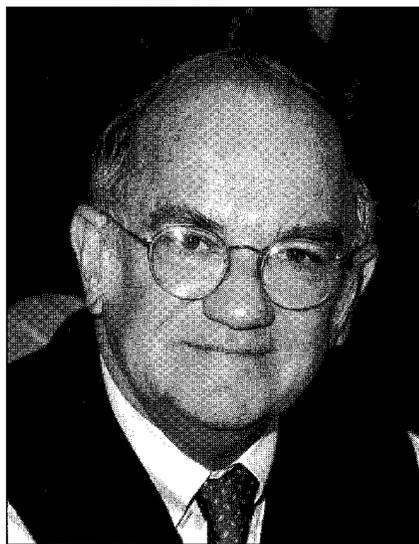
A. To the floor, yeah.

Q. And once you landed, did your leg stay up in the elevator or did it come with you?

A. It came with me.

From **David A. Lowrance** of Fort Worth (Kirkley, Schmidt, etc.), this excerpt from the deposition taken by **Kenneth P. Wise** (Liddell, Sapp, etc.) of the plaintiff in an asbestos case:

By Jerry Buchmeyer



Q. Has [your wife] had any specific health problems?

A. She has a flu now, but that's all. *She had a hysterectomy once years ago.*

Q. Why did she have that? *Was it for a medical reason?*

A. No, I don't know. I don't recall.

David adds: "I guess this was in contrast to recreational reasons."

Unaccompanied By My Awareness

From **Jerry D. Cain** of Blacksburg, Va. (Jerry is general counsel of Virginia Tech), this handwritten demand letter from a person who had never been a student at Virginia Tech — but who, because of his Obvious Flair With Words, deserved "to have his hospital bills paid, which the university did in exchange for a release of all claims":

Risk Management Office:

On the day of Oct. 28, 1988, just prior to 5 p.m., exiting Newman Library, turning left down the walk-ramp and coming out of underneath the overhanging face of the library, i [sic] experienced a very overwhelming sensation. A tremendous and sudden blow, perceived as a blinding flash, sent me flailing to the ground.

There seems to have been a slight blank out — several seconds I cannot recall. *I remember up to immediately following the impact.* Very next, I remember lying in bushes near the entrance area of the library, yelling out, wriggling with pain. By then several people had gathered around in concern. Since the crowd

could not have appeared there immediately, *at least several seconds had elapsed unaccompanied by my awareness; I cannot remember how long.*

Just as I had revived perception, I glanced on the walk what I consider to be a smashed flower pot, plant matter, and soil. When asked by a passer-by what had happened, I declared that something had fallen on me. I cannot rightly say with conviction the nature or exact location of the strike with regard to my form. At first I was sure I had been hit squarely atop the head; but this seems unlikely as no superficial injury to the head resulted. Because I was quite unsettled and dazed and then led directly away from the scene to the infirmary and then to the hospital, my recollection of details is vague.

Based on my own feeble understanding of culture as lived by this community, I see no reason that the wealthy university couldn't help, at least with the hospital bills, persons caused injury by the frivolous neglect of an employee.

Sincerely, etc.

Jerry adds: "I have never been certain whether *frivolous neglect* is more or less egregious than ordinary negligence."

I'm Glad We Cleared That Up!

From **Rob Ramsey** of San Antonio (Soules & Wallace), a trifecta — from a wrongful death case, a divorce case, and a murder trial.

The wrongful death case:

Mr. Kemp: I'm sorry. You know, as I told [you] from the start, if you don't understand my question, ask me. I thought it was clear.

Witness: *I guess there will be times when I don't understand the question, but don't know it.*

Mr. Kemp: I've always wondered when lawyers say, "Let me know if you don't understand my question," how they handled the situation where you think you understand, but you don't.

Witness: Well, I'm sure that happens relatively frequently, but that the witness and the person who's deposing don't know it. *It turns out I didn't understand; but now I do.*

The divorce case:

Attorney: I think what she's trying to say — *and I'm not trying to lead the witness,*

but I think what she is trying to say, is that the property she owns that is her community property would be liable for Tommy's indebtedness if it was done during the marriage.

Witness: Right.

Attorney: Is that what you're trying to say?

Witness: Uh-huh.

Attorney: When she says, "I'm responsible," *I think what she's saying is that the property we own together could be used to satisfy the indebtedness.*

Q. You want to try adopting that one?

A. Yeah.

The murder trial:

Defense Attorney: Doctor, isn't there a medically-recognized condition that affects people who are under sudden stress where they distort space and time? *Their perception of it is distorted?*

Prosecutor: Your Honor, I have to object at this time. I believe he's asking questions that are getting into the expertise area of psychology or psychiatry, and we have not qualified this doctor as an expert in this field.

Court: Sir, can you answer those questions?

Witness: Not really, Judge, because I say *I only do dead bodies. Those dead bodies don't have any more perception.*

Court (Wisely): Sustained.

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JANUARY 1, 1995

From the Gulf Coast Family Law Specialists

These two handwritten letters from divorce clients were given to me at the meeting of the Gulf Coast Family Law Specialists in Houston on Feb. 9:

Dear Attorney:

We are expected a children. So with this news we are going to stay married.

Ms. Lucido:

This letter is to request another hearing concerning the visitation of Ampur Lynn. *Attorney William Smith passed away without me having any notification* and without representation on the hearing of Nov. 30th. I would like to reschedule another hearing to have this case reheard. Thank you.

Well, That's Entirely Different!

From **Danny L. Tran** of Houston (Danny is a paralegal with Able & Monroe), this excerpt from the husband's deposition in a divorce case in San Angelo, being taken by **Levert J. Able** (who has been practicing law since 1934):

Q. Now, in addition to the money that you had with Turner, Eppler & Guerin —

A. It's Eppler, Guerin & Turner.

Q. Well, correct me every time I do that.

A. Okay.

Q. *Kick me every time I do it.* Well, no, don't. You'd probably kill me.

Q. I don't want to be personal, but was your father sent to jail for allegedly pushing dope?

A. No, he sure wasn't! And I resent you implying that. *My father was put into jail for money laundering.* That's what it says on his record.

Q. Okay. I see. Well, I'll withdraw the statement. I didn't know that.

A. Thank you.

Q. Well, do you agree that your wife can have a divorce? Non-contested by you.

A. Well, what does that mean, non-contested? I mean, you're making it sound like I said, yeah, you can have whatever you want, honey, just as long as you leave.

Classic Typos

From **Johanna Greiner** of Dallas (Johanna is an assistant general counsel with Dallas Area Rapid Transit), this excerpt from a recent suit filed against DART:

At the time of the collision, Defendant Richardson was an employee of Defendant DART and was operating the DART bus in the course and scope of his employment. Defendant DART is further liable to Plaintiff for the negligent acts of Defendant Richardson under the doctrine of *Respondent Supervisor*.

From **Robert C. Lyon** of Rowlett, this marvelous (!!) typo from *The Rockwell Texas Success* in a "guest editorial" by **Harlow Sprouse**, chair of the State Bar Texas Lawyer's Creed Committee:

Creed Eases Strain Upon Court System

"Lawyer bashing" seems to be a national pastime. It therefore seems appropriate to note that this is the fifth anniversary of "The Texas Lawyer's Creed — A Mandate for Professionalism."

... It is not surprising that lawyers are not always well-liked. Almost everyone who has ever had a legal dispute has known at least one lawyer who was, in their opinion, representing a party who was wrong. It should nevertheless be comforting to know that the State Bar and the Courts are working to minimize the cost and the stress to the public of our adversarial judicial system; and that for the past five years the commitment of thousands of lawyers to follow the dictates of the Texas Lawyer's *Greed* has helped in that effort.... (Harlow Sprouse is an Amarillo-based attorney who chairs the State Bar of Texas Lawyer's *Greed* Committee.)

Objection Sustained!

From **Dan Sullivan** of Andrews, this trial excerpt which he received from a friend in Alabama:

The Court: Next witness.

Ms. Olschner: *Your Honor, at this time, I would like to swat Mr. Buck in the head with his client's deposition.*

The Court: *You mean read it?*

Ms. Olschner: *No sir, I mean swat him in the head with it.* Pursuant to Rule 32, I may use this deposition for any purpose, and that is the purpose for which I want to use it.

The Court: Well, it does say that. (pause) There being no objection, you may proceed.

Ms. Olschner: Thank you, Judge Hanes. (whereupon, Ms. Olschner swatted Mr. Buck in the head with the deposition.)

Mr. Buck: But, Judge.

The Court: Next witness.

Mr. Buck: *We object.*

The Court: *Sustained. Next witness.*

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