

Depositions v. Trials:

Hints from Heloise

This month's *et cetera* contributions are from Austin (U.S. Magistrate Judge Stephen H. Capelle and John Adams, clerk, Texas Supreme Court); Houston (David S. Curcio, Richard A. Hipp, and Robert A. Schwartz); Lufkin (District Judge David V. Wilson); San Antonio (Stephanie Strolle); Sherman (W. Anthony O'Hanlon); Tyler (Preston W. McGee) — with Classic Typos from Abilene (Vianei Lopez Robinson); Conroe (Stephen M. Schlacks); Richmond (J. Michael Lytle); and Midland (U.S. District Judge Lucius D. Bunton and Wesley B. Strain).

Classic Typos

- (1) From a brief filed with the Fifth Circuit: Judge Walter, in his reasons, noted that the reputation of plaintiff's attorney is formidable. Willie Gary is a *nationally renounced* attorney having a celebrity client list.
- (2) From the minutes of the 1962 organizational meeting of a corporation:
The First National Bank ... was designated as the company depository and ... the president was authorized to *borry* such money as he thought advisable.....
- (3) From a letter that, unfortunately, was not mailed:
I have been notified that the parties agree to submit the above-referenced case to *medication* on Wednesday, May 10, 1995.
- (4) From the medical report concerning "a very pleasant 28-year-old man ... who enjoys basketball and bowling":
On July 26 he was involved in a motor vehicle accident. A minivan made a right hand turn in front of him and they collided. He hit his jaw on the steering column. There was no loss of *conscientiousness*.
- (5) From an Application to Declare Heirship:
6. All children born to or adopted by decedent have been listed.
7. To the best of my knowledge, decedent died *interstate*.
These classic typos come from (1) Judge Lucius D. Bunton of Midland (W.D. Texas); (2) Wesley B. Strain of Midland (Woernole, Patterson, Strain & Miller); (3) Vianei Lopez Robinson, an attorney/"med-

icator" in Abilene (Wagstaff, Alvis, etc.); (4) Stephen M. Schlacks, of Conroe (Hope, Causey & Schlacks); and (5) J. Michael Lytle of Richmond (Lytle & Moore).

But How Dead Is He?

From Magistrate Judge Stephen H. Capelle of Austin (W.D. Texas), this excerpt from the plaintiffs' witness list in a products liability case — which, fortunately, was discovered by his law clerk, Shelli Wakefield, while she was reviewing a motion to compel.

Plaintiffs Witness List

The Plaintiffs Reserve the Right to Call One or More of the Following Witnesses:
David Neveu, *Deceased*
Route —, Box —
Bryan 77802

(Stephen adds: "Although I realize plaintiffs' lawyers need to cover every possible witness in their disclosures, this appears to be a bit excessive.")

Who's on First?

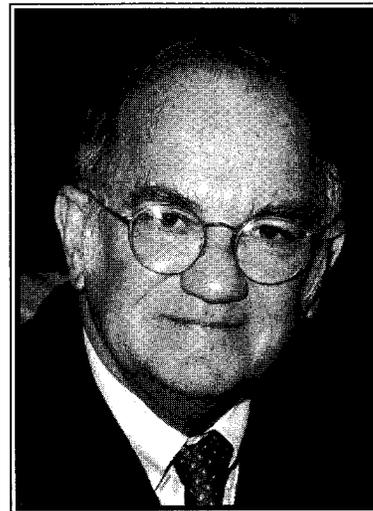
From David S. Curcio of Houston (Kirklin, Boudreaux, etc.), these excerpts from two depositions he took "... in a lawsuit relating to allegations of alleged light and alleged noise allegedly emitted from several alleged facilities, one of which was allegedly located to the right and another to the left of the alleging plaintiffs. (*Allegedly.*)"

- Q. Are you also familiar with the lights? Do you see the lights?
A. Just the ones to the left (indicating with right hand).
Q. Okay.
Mr. White: You held out your right hand.
A. I'm sorry, I meant to him, my left.
Q. My left?
A. My left ... I'm sorry, when I went like that I meant to my left, but (indicating) — the right is not the left.
Mr. White: That's not your left you are pointing to.
A. (Continuing) To me, it's to my right.
Q. (By Mr. Curcio) The light is to your right?
A. Right. ... *I'm a little bit nervous.*

- David's second excerpt is from the deposition of "a kind elderly gentleman":
Q. I believe you mentioned this last time. Do you have any sort of hearing impairment?
A. *Sir?*
Q. Do you have any sort of hearing impairment or do you have difficulty hearing?
A. *I don't — I'll ask you to repeat that question again.*
Q. Do you have any difficulty hearing?
A. *Yes, I do.*

Taking a Break

From Robert A. Schwartz of Houston, this excerpt from the deposition of his client, the plaintiff in a DTPA case, who contended that the defendant had falsely represented



By Jerry Buchmeyer

that a condominium unit, *including the roof*, was "new or virtually brand new" — but that the roof had to be replaced shortly after the purchase.

Q. (By defendant's attorney) That you were told that the unit you were purchasing was new or virtually brand-new.

A. Right.

Q. What I am asking is, in addition to ... the walls and the carpet ... is there anything else that you know now ... that tells you that the representation that the unit was new or virtually brand-new was not correct?

A. *I don't know of anything.*

Q. Okay.

Mr. Schwartz: *What about the damn roof? I am going to take a break and you come with me.*

(Brief recess)

Letters of Rejection

From **W. Anthony O'Hanlon** of Sherman (Sanders, Mumm, O'Hanlon & Morley), this classic rejection letter which a young friend of his recently received from a law school somewhere in Texas.

Dear no:

We have determined our initial acceptances for the summer term of 1994, and I regret to report that we are unable to include you in that preliminary list.

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Let us know in the meantime if we can be of any further assistance.

Sincerely,

The Wonderful World of Pro Se

From **Preston W. McGee** of Tyler (Potter, Minton, etc.), these two marvelous (!) *pro se* motions that were astutely denied by Magistrate Judge **Judith K. Guthrie**.

Come Now Henry W. ____, plaintiff in the above-entitled and numbered cause, to file this motion to personally conduct a deposition on each and every member for the grand jury *to see if their blood is not tainted*.

Come Now Henry W. ____, plaintiff in the above-entitled and numbered cause, to file this second motion *to allow media coverage in the courtroom during the trial*, of the following stations: 20/20, Hard Copy, Case Closed, Inside Edition, Dateline News, and 60 Minutes.

Did They Really Say That?

From **Stephanie Strolle** of San Antonio (Speiser, Krause, etc.), this excerpt from the deposition of her client, the plaintiff in a DTPA suit.

Q. Before you were in the business of designing angels, what did you do in San Antonio?

A. I was the administrative assistant to Linda Zufacht.

Q. *Is that a person?*

A. *No. It's an attorney.*

From **Judge David V. Wilson** of Lufkin (217th District Court), this excerpt from a temporary hearing to establish paternity. Judge Wilson sets the scene: "The attorney for the wife, without objection from the husband's attorney, brought out some evidence about the husband physically abusing her (which was totally irrelevant to the subject matter of the hearing). In rebuttal, the husband's attorney called him back to the witness stand" and asked:

Q. Mr. Jones, you heard the testimony from your wife in this matter, Ms. Smith, about physical abuse by you. Has there been physical abuse by you toward her?

A. Oh, sure; normal stuff. Anybody that's ever been married knows what that is.

Q. Tell the court about it.

A. Just her tempers and mine —

Judge Wilson: [muffled laughter] I'm sorry.

I'm sorry. I need to take a recess. Let's take about a five-minute recess.

From **John Adams** of Austin (John is the clerk of the Texas Supreme Court), this excerpt from a letter by an attorney requesting to be "placed on inactive status" because of a medical breakthrough.

Dear Sir:

I have been an active member of the Texas Bar Association since ____. In ____, *I moved to Virginia with my husband who is an officer in the U.S. Air Force and recently had twin boys*. As I do not anticipate actively practicing law in Texas any time in the near future, I request that my membership in the Texas Bar Association be placed on inactive status.

Hints from Heloise

From **Richard A. Hipp** of Houston, this excerpt from the deposition of one of the plaintiffs in a "termite case." Richard sets the scene: The plaintiffs discovered several colonies of termites in their newly purchased home; after filing suit, the plaintiff "removed the interior sheetrock from the two bedrooms where the insects were located," choosing to "peacefully coexist" with the termites untreated and with the sheetrock removed — "until these fateful events."

Q. When Terminix came out in March of '91, because you had a swarming problem, what did you ask Terminix to do?

A. Actually, I was just alarmed, and *all he said was, "Spray hair spray," and that's it*.

Q. That's what he told you to do?

A. That's what he told me. ... Well, naturally, he said — you know, they're always in sales, but I told him, "I'm not going to treat the termites. Just tell me what to do to get rid of the swarm." That's all.

Q. Did he ask you why you did not want him to treat the termites?

A. Yes. I think I may have said we were in litigation.

Q. Okay. And he told you to spray hair spray? Did you?

A. Yes.

Q. *Did that take care of the problem.*

A. It sticks their wings together.

Q. It does?

A. Yes.

(Richard adds: "I found the solution to be creative, and debated with my wife whether to send this to you or to 'Hints From Heloise.' My wife won, so here it is.")

Jerry Buchmeyer is the chief judge of the U.S. District Court for the Northern District of Texas.
