

Depositions v. Trials: I Plead - "Roe v. Wade"

This month's contributors are from Austin (**David Wahlberg**), Dallas (**Vic Cunningham**, **P. Michael Jung**, **Bryan Medlock**, **James V. Roberts**), Houston (**Dana LeJune**, **Harding Rome**), San Antonio (**Thomas Shute**), and Texarkana (**Robert Weber**).

Did They Really Say That?

This deposition excerpt from **Robert W. Weber** of Texarkana (Atchley, Russell, etc.):

- Q. His former wife, not his current wife, the one he was married to in Marshall and his son?
- A. Yes.
- Q. How did you happen to know them?
- A. *Okay, follow me, her father was married to my mother's sister.*
- Q. To your aunt.
- A. *They had twins, she died at child-birth, he remarried had other children, she was a half-sister to my first cousin and a half-brother to my first cousin. No relation to me.*

This expert witness excerpt from **P. Michael Jung** of Dallas (Strasburger & Price):

- Q. Let me ask you to do this. Read No. 1 on there, on the bottom of Exhibit 1, and read it out loud.
- A. "Any and all documents and/or things, including but not limited to depositions, testimony, books, reports, scientific journals, *learned testes* (sic), drawings ..."
- Q. No, that would be "treatises."
- A. Excuse me. "... treatises, drawings, graphs, charts, memos, data, notes, photographs, electronic and/or video recordings, and/or ..."

This sentencing excerpt from **Judge Vickers L. Cunningham, Sr.** of Dallas (County Criminal Court 8):

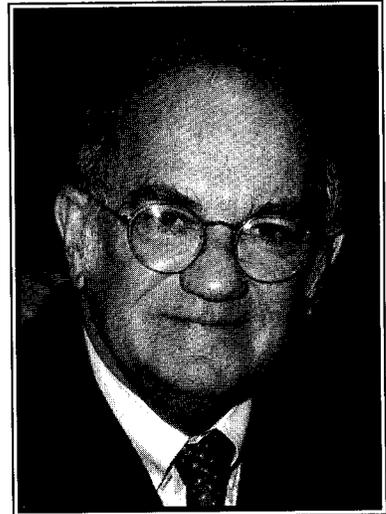
Judge Cunningham: Mr. Jones, I have checked the box on the probation

order which will allow you to be off of supervised probation once you have completed your fine, court costs, community service hours, and the family violence counseling. *What I have just done is put the ball in your hands.* So that if you can take care of your business in six months, you are off the reporting probation in six months. Do you understand what I'm talking about here?

Defendant: Yes.

Judge Cunningham: If you are going to drag it out, you are going to be on probation for two years. *So I put the ball in your court.* That means that you can get going and get your program done and you are off of probation as far as I'm concerned, unless you violate in the next two years. Do you understand?

Defendant: *What I don't understand is what you mean by getting the ball.* That's the part I don't understand.



By Jerry Buchmeyer

The Wonderful World of Pro Se

From **V. Bryan Medlock, Jr.** of Dallas (Richards, Medlock & Andrews), this "Notice" filed in the Eastern District of Michigan by a *pro se* plaintiff, a "delicate flower" who "has been in litigation with Ford, Chrysler, and American Motors for years over his patents [to the intermittent windshield wiper]."

To Whom It May Concern: Plaintiff's time period of litigation inactivity to assist his recovery from an emergency operation is over. His ability to urinate was unexpectedly blocked while he was visiting his brother in Baton Rouge, La. on 7 September 1991 ... [After] getting emergency assistance ... he subsequently was operated on there through the care of Dr. FitzGerald. Yesterday afternoon, Dr. FitzGerald informed him that he used up a lot of hormones and adrenalin during these experiences. ... His 'zip' and 'enthusiasm' will gradually return over the next six months as these hormones and adrenalin are restored in his body.

[The plaintiff] thanks everyone for their consideration and caring during the litigation inactivity time. He has never broken a bone; has all his teeth (except wisdom); had an operation on the other end 25 years ago, and so is a 'delicate flower' in such matters. [He] has pleading and discovery obligations ... [but] he will be in touch with each case to arrange for appropriate due dates so he can resume doing his best to accomplish them in an orderly manner.

Classic Typos

- (1) From **P. David Wahlberg** of Austin (Bender & Wahlberg), this paragraph from the Juror's Handbook given to him when he reported for jury service in Travis County:

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) From **James V. Roberts** of Dallas (Mankoff, Hill, etc.), this paragraph he discovered in a proposed contract drafted by the "other attorney":

"Notwithstanding anything to the contrary contained in this agreement, the covenants, warranties, releases, and agreements made in this agreement *shall survive the execution and delivery of this agreement.*"

- (3) From a 1994 CLE Calendar of the New Mexico State Bar: December

Domestic Money Laundering Training
Santa Fe

Sponsor(s): U.S. Attorney's Office

- (4) From **Harding J. Rome** of Houston (Harding is the general counsel of Southern Pacific Lines), this *classic typo* which "popped up in a brief [he] was preparing to file" concerning the plaintiff's *ex parte* contacts with railroad employees:

"To state that the railroad must consent to *tush* interviews, however, is not to say such interviews may be conducted in violation of state ethical rules."

- (5) From **Thomas E. Shute** of San Antonio, these *three classic typos*, all from "the findings of fact and conclusions of law and the appeal brief in an action attempting to restore retirement benefits of the former wife of an ex-Air Force officer."

The Court finds that the interrogatories inquired into property with a value of \$250 or more and accumulated retirement benefits and that responses to both *iniquities* properly failed to disclose an expectancy of military retirement reinstatement ...

The court finds that Mr. Jones was not a member of the *Untied States Military* retroactively and became an

"*Official Mistake*" with the reinstatement...

In *Baker v. Goldstein* the court held. ... That is exactly what the *fat finder* did in the instant case.

After a Fashion

From **Dana LeJune** of Houston (LeJune & Singer), this excerpt from the deposition of his client, "an elderly Cajun woman who was suing a jewelry store for switching the diamond in her ring while it was being worked on." Or, at least those were her claims "after a fashion."

Q. How did he identify the ring as yours?

A. He had it in his hands.

Q. Well, ma'am, what documentation did he prepare to show that he had received your ring?

A. Oh, *after a fashion*, yes. He put it in the little envelope and gave me a tag off of the envelope.

Q. Okay. What was the one word, *after a fashion*?

A. What is that?

A. He held the ring in his hands and kept looking at that ring — that stone.

Q. Ma'am, you've said that. *But what does "fashion" mean?*

Mr. LeJune: *She's telling you.*

A. The fashion is what he did.

Mr. LeJune: *It's a colloquialism.*

Defense Attorney: What's it mean?

Mr. LeJune: It means after he fidgeted with it and did what he wanted to do with it.

Defense Attorney: Okay.

Mr. LeJune: *After a fashion. Look it up.*

Defense Attorney: Well, you'll have to pardon my ignorance here: but I'm sorry. I'm just trying to make it clear for the jury. *They may not know what you mean either if that's a colloquially or something.*

Jerry Buchmeyer is the chief judge, U.S. District Court, 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.

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