

Depositions v. Trials: My Brilliant Career

The contributions for this month's column came from Austin (**Kelli Carlton, Darla Sadler**), Dallas (**Kelly Bickerstaff, Sharon Kiel, James Lancaster, Lewis Sifford**), El Paso (**Al Weisenberger**), Houston (**Christopher Joe**), Lubbock (**Magistrate Judge J. Q. Warnick**), and Midland (**U.S. District Judge Lucius Bunton**).

Driving for Sex

From **Kelli A.N. Carlton** of Austin (Naman, Howell, etc.), this excerpt from the deposition of a truck driver/plaintiff "who was giving his work history to counsel for a co-defendant."

- Q. And then where did you go after Snyder?
 A. I went to work for this company out of Fort Worth called SEX.
 Q. SES?
 A. SEX, Southeastern Express.
 Q. And what did you do for SEX?
 A. I drove trucks.
 (Discussion off the record)
 Q. And how long did you drive for SEX?
 A. I'm not sure. It might have been six months. I'm just not sure.

A Christian in El Paso

From **Al Weisenberger** of El Paso, these excerpts from the deposition of his client in a discriminatory termination/workers' compensation case — which was being taken by **James Carroll** of El Paso (Spurgin & Carroll).

- Q. What kind of social background interests do you have? Do you belong to any clubs or churches or other organizations of that nature?
 A. I'm a Baptist.
 Q. Southern Baptist?
 A. No. I'm — no. *Christian*.

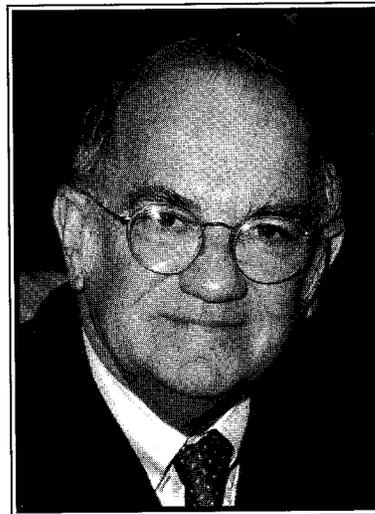
- Q. And as I recall from the information your attorney has provided me, for health reasons, you had to leave Abilene and come back to El Paso; is that correct?
 A. Yes, sir, it is.
 Q. Would you explain this for the ladies and gentlemen of the jury?
 A. My little boy, the one that is nine years old right now, got sick from a skin disease, a skin infection. He was born premature at birth. And it caused him to get like real bad bumps all over his

body. And they told me that the reason was that he had to go to a dry climate, that Abilene was too humid for his body. So we moved to El Paso.

Truth is the Light, Brother

From **Lewis R. Sifford** of Dallas (Sifford & Anderson), these two excerpts from his deposition of the plaintiff — a landscaper and a minister of the gospel — who claimed that he had been injured when a gun accidentally discharged in a pawn shop (represented by Lewis).

- Q. Mr. Bradford, what type of injuries did you have [in a previous accident]?
 A. Head injury, back fracture, wrist, nose broke, jaw broke, head busted.
 Q. Were you hospitalized?
 A. Yes, sir. Parkland.
 Q. How long were you there?
 A. About a month.
 Q. And, how long were you off work [after the accident]?
 A. I don't remember, I can't remember right off. ... This happened in '79 — let me see here. July the 24th, 1979. I was off maybe about a year and a half or two years as far as I remember. *I was just a vegetable*. I can't exactly remember. I just know —
 Q. You say — I'm sorry. *You say you were a vegetable?*
 A. *I was just about a vegetable to nothing.*
 Q. *What kind of vegetable?*
 A. *Well, I mean — what I mean is that, unable to do anything.*



By Jerry Buchmeyer

- Q. Now [about the accident in the pawn shop] you're saying that you had been leaning over the counter talking and horse trading...
 A. Leaning over the counter? No, no.
 Q. That's what you testified to earlier.
 A. No. No. *I didn't say leaning over*. I said I was *leaning on* the counter.
 Q. Well, isn't that leaning over?
 A. No, sir. Leaning over is meaning I'm hanging over towards you. That's over. That's what the over means.
 Q. All right. Well, I don't want to split hairs with you.
 A. Well, I mean, that's the truth. *Truth is the light, brother. That's it. Leaning over. Leaning on.*

Did They Really Say That?

From **Christopher M. Joe** of Houston (Holtzman Urquhart & Moore), this marvelous(!) excerpt from "a deposition taken in a debt collection harassment case by **D. Faye Caldwell** of my office."

- Q. If a collection agency thinks they need to take a look closer at the letter, does American Express want to know about that letter?
 Mr. Parr: *Objection. It calls for testimony —*

From **Darla Sadler** of Austin (Darla is an assistant to **Justice Greg Abbott** of the Texas Supreme Court), this excerpt from oral arguments in a mandamus action con-

cerning "which groups would be allowed to have a booth at the Republican Party State Convention":

Justice Hecht: Could they deny [a booth] to the Democratic Party?

Mr. Wiseman: I don't know the answer to that, but I don't think they could do it with the rules they have now.

Justice Gonzalez: They could not deny a booth to the Republicans for Clinton?

Justice Abbott: Is there such a group?

From **James R. Lancaster** of Dallas (Akin, Gump, etc.), this excerpt from a deposition in a wrongful termination case:

Q. Have you had your deposition taken before?

A. No, sir.

Q. Basically, what a deposition is, it is testimony under oath. We have a videographer here. The reason that we have that is I understand you're from Arkansas?

A. Yes.

Mr. Bickel: Ha, ha, ha. Go ahead.

Q. (By Mr. Gugenheim) And —

A. Do you only videotape people from Arkansas? If I were from Texas we wouldn't have to do that, huh?

From **U.S. Magistrate Judge J.Q. Warnick** of Lubbock, this excerpt from a civil rights jury trial in his court — in which the pro se plaintiff claimed he was assaulted by several corrections officers. Texas Assistant Attorney General **Bruce Garcia** was questioning the male plaintiff:

Q. Did you receive any injury as a result of this alleged assault?

A. Yes, I did.

Q. What was the injury?

A. I suffered a broken uterus.

The Wonderful World of Pro Se

From **Sharon Kiel** of Dallas, who recently heard the following announcement in a Dallas municipal court when the case against John Jones, defendant was called: Defendant: *Here, and I will be appearing as myself.*

From **Kelly Bickerstaff** of Dallas, (Bickerstaff & Marshall), a letter/continuance motion sent by a pro se plaintiff to **Judge John R. Lindsey** of Jacksboro (271st District Court):

Dear John Lindsey:

I, Bob Brown, am asking for protective order in the above and foregoing motion for continuance for these reasons. I have been unable to contact my wife from the sixth day of October. I have been informed that she was men-

tally sick and tired of opening and closing three gates because the locks were constantly switched and moved which caused time consuming and aggravative efforts to open and close three gates. The defendants attorney's wrote Judge Bobby Owens a letter and asked that the road not to be maintained, after the county had been maintaining for the past 80 years. My wife stated that the past winter had been very difficult because of the heavy snow and mud. She also stated that she would have to change her shoes at the barber shop every morning. Life was very enjoyable, she liked to pick pecans and work in the garden before the defendants moved in and erected a new gate and started locking them. Now I have lost 30 years of marriage that can never be replaced. We are both now going through a devastating time. I pray that the court will give me the days to get myself back together and find counsel.

Sincerely,

Bobby R. Brown

A Matter of Opinion

In *Greenhalgh v. Casey*, 67 F. 3d 299 (6th Cir. 1995), the Sixth Circuit grappled with a familiar "rhetorical hyperbole" in a slander case, wisely concluding:

It was during plaintiff's deposition in the state court action that Casey, an observer at the deposition, allegedly slandered plaintiff by calling him a "lying asshole."

The district court also ruled that being called an "asshole" was not actionable because the term was merely "rhetorical hyperbole" which could not be interpreted reasonably to state an actual fact. While the term may be considered crude or uncouth, it cannot be considered slanderous. Moreover, an action for slander does not contemplate compensation for wounded feelings alone; rather, an action lies only when one's reputation is injured or impaired. As a matter of law, referring to plaintiff as an "asshole" is not actionable; it simply is, as the district court concluded, "rhetorical hyperbole." We also agree with the district court's conclusion that "lying asshole" cannot be referring to an actual fact, based on plaintiff's own characterization of the phrase — "[T]hat the plaintiff's anus was making untruthful statements."

U.S. District Judge Lucius Bunton is, of course, the one who called this scholarly opinion to my attention in the newsletter that he authors for the Fifth Circuit District Judges' Association.

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

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