

Depositions v. Trials: It's Against My Religion

The contributors this month are from Fort Worth (Sydney Beckman), Austin (Jo-Christy Brown, John Spurgin, David Young), Corpus Christi (Clayton Hoover), Dallas (Cynthia Buhr, John P. Lewis), El Paso (Al Weisenberger), Houston (anonymous), Mansfield (Robert Fugate) and San Antonio (Marvin Cook).

Classic Typos

(1) From Jo-Christy Brown of Austin (Brown, Carls & Mitchell), this incredible (!!) typo she uncovered in the contract involved in "a rather typical breach of contract suit."

This contract shall remain in full force and effect until terminated in *writhing*. Jo-Christy adds: "Please keep up the good work! As my mother always says, 'I'm in sympathy with the work you are doing.'"

(2) From Robert Fugate of Mansfield, this rather personal typo on a Fed Ex invoice received by his office:

Law Office of Robot Fugate
204 S. 4th Ave.
Mansfield, TX 76063

(3) From "anonymous" in Houston, a form from "a local nursing facility" which contained this handwritten explanation of the reason for termination of an employee:

Reason for Separation: *Miss Gross Conduct*.

Anonymous suggests that "perhaps there should be a 'Miss Gross Conduct' Pageant."

(4) Also from "anonymous," this typo from a document "filed by an accountant/attorney representing his accounting firm" in a securities fraud case in federal court in Dallas:

A certified public accountant's reputation for honesty, followed closely by its reputation for *carefull* work are the greatest assets an accountant can enjoy.

(5) From David B. Young of Austin (McGinnis, Lochridge & Kilgore), this typo in a brief filed in the Waco Court of Appeals:

Thus the trial court's refusal to grant TCA a new trial in the face of the jury's negative answer to Question 3 is erroneous. The judgment should be *revered*.

Who Else Was There?

From Clayton J. Hoover of Corpus Christi, this excerpt from a deposition he took in an oil and gas case:

Q. So, after the logging trip on the [Joiner] well, where you met Mr. Smith, what was your next contact with him?

A. Several months later I ran into him in Laredo.

Q. Can you tell us where you saw him in Laredo?

A. No, I can't.

Q. So, you ran into him in some undisclosed location in Laredo. And did you spend some time with him or did you just say, "Hey, how are you? Met you at the [Joiner] well. We'll see you later"?

A. We spent a little bit of time together.

Q. Okay. Was there anybody else there besides you and Mr. Smith?

A. Yes. But I don't recall who.

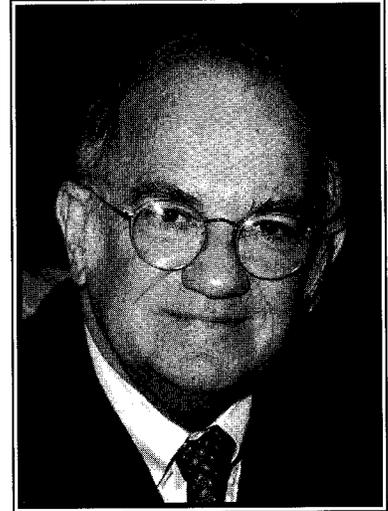
Q. You can't tell us her name, right?

A. No, no. It was a male, but I think it was a — Mr. Hanson: Strike that. Strike all that.

Q. (By Mr. Hoover) I'm sorry. *Was there anybody else from this side of the border who was there?*

A. *These are tactics here?*

Q. I'm sorry. It's late, and I'm getting punchy.



By Jerry Buchmeyer

Did They Really Say That?

From John H. Spurgin, II of Austin (McGinnis, Lochridge & Kilgore), this excerpt from his deposition of the plaintiff in a wrongful discharge case:

Q. Did Rusty White ever attack your person? Did he ever assault you?

A. Well, *he used profound (sic) language towards me.*

Q. You say he used "profound language"?

A. Uh-huh.

From John P. Lewis, Jr. of Dallas, this excerpt from the deposition of the female plaintiff in a tortious interference/breach of contract case — which was being taken by Sue Halpern of Dallas (Gardere & Wynne):

Q. Ma'am, isn't it true that what you wanted was to try to get some money out of Osteonics [the defendant]?

A. I wanted Osteonics to stand up to their end of the agreement they had.

Q. *What's economic damages?*

A. What's economic damages?

Q. Yes. What does that mean? What does that term mean?

A. *I think Clinton's put the country in economic damage.* I mean, is that what you're —

From Marvin L. Cook of San Antonio (Marvin is general counsel for Southwest Business Corporation), this excerpt from his deposition in a covenant not to compete suit filed by his client.

Q. Okay. I'm going to focus in on MacCurdy [the defendant] now. Why did you find MacCurdy — Let me start over again. Why, as a businessman, did you find MacCurdy — the thought of MacCurdy selling products for your company attractive? *What made MacCurdy attractive to you?*

- A. *Probably his mustache.* No.
 Q. As soon as I asked that question, I regretted it.
 A. Yeah, you knew it was coming. Sorry about that, ladies and gentlemen.
 Mr. Cook (wisely): Let's go off the record.

The Big Fight

From **Sydney Beckman** of Fort Worth (Law Offices of Gary L. Nickelson), this deposition exchange between **Gary Nickelson** and **William Kirkman**:

- Q. So you don't recall any big fight that happened [between you and your ex-wife] in either late December of '92 or January of '93 at all? I mean, if you don't, you don't.

Mr. Kirkman: But — okay. You say big fight, and, again, I am —

Mr. Nickelson: Okay.

Mr. Kirkman: — not sure what that means. A big fight to Jackie Gleason is different than a big fight to me.

Mr. Nickelson: *Probably so since he's dead.*

Can You Be More Specific?

From **Cynthia Buhr** of Dallas (Carrington, Coleman, etc.), this penetrating (sic) examination concerning the relationship between the witness and the female plaintiff, his "housemate:"

- Q. Are you in a romantic relationship with Ms. Smith?
 A. To me that's a personal question, even if you ask me if I'm ...
 Q. Are you having sexual relations with Ms. Smith?
 A. I don't feel I should answer that, *it's against my religion*, I don't answer questions like that, I'm sorry.
 (Counsel confers with witness.)
 Q. Can you answer that question now that you've discussed this with your attorney?
 A. What was the question? I'm sorry.
 Q. Do you have a romantic relationship with Ms. Smith?
 A. *We just friends.*
 Q. You're just friends?
 A. *I don't even know what romance is.* I mean, in that sense that you asking me.
 Q. Do you and Ms. Smith have a sexual relationship?
 A. No.
 Q. Have you ever?
 A. *What do you mean by sexual relationship?* I want to make sure I understand what you're asking.
 Q. *Do you and Ms. Smith engage in sexual intercourse together?*
 A. *Can you get more specific?*
 Q. [wisely] Well, I'd prefer not to at this point. I don't know how much more specific I can get.

To "Wayward in Port Arthur"

From **Al Weisenberger** of El Paso, this letter — sent to Al by his father, **Royce Weisenberger**, a retired state district judge in Hope, Ark. — which was written in 1927 by Hope attorney Luke F. Monroe "to an apparently wayward wife in Port Arthur, Texas."

To Mrs. E. Luther Smith, Port Arthur, Texas:

Your husband, the Hon. E. Luther Smith has arrived home and as his attorney, I have been instructed to notify you that if you are not at his home on or before Monday, Jan. 24th, 1927, mending his sox, shirts and other wearing apparel, cooking his meals, milking the cow, feeding the chickens, making his home brew and doing such other and further acts as a dutiful and faithful wife should, that some action may be taken by him to deprive you of his love, care, maintenance and support.

Please take due notice of this demand and govern yourself accordingly.

This 19th, day of January, (sic) 1927.

/s/

Luke F. Monroe
 Attorney

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

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 or to Rest With Confidence.

2. One that is relied on.

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