



Let the Record Reflect

BY JERRY BUCHMEYER

DISTRICT JUDGE JUAN R. PARTIDA of Edinburg sent me this month's title contribution. The others are from Austin (**Randall D. Terrell**), Denton (**Gregory P. Propes**), El Paso (Assistant District Attorney **Richard B. Dulany**), Fort Worth (**V. Wayne Ward**, **Donald R. Pierson, II**), Greenville (**Judge Joe M. Leonard**), Houston (**Nancy E. Friedman**, Assistant District Attorney **Jane Starnes**), and Tulsa, Okla. (**Louis Abraham III**).

USING THE FACULTIES

From **Gregory P. Propes** of Denton (Gregory is an appellate attorney in the Denton County District Attorney's Office), this excerpt from a DWI trial before **Judge Jim E. Crouch** (County Criminal Court No. 1). **Assistant District Attorney Debra Bender** was the prosecutor and **Joshua Webber** of Dallas was the defense attorney.

The excerpt begins at the end of Mr. Webber's cross-examination of the state's witness, who was testifying about his contacts with the defendant on the day of the offense.

By Mr. Webber:

Q: Okay. And you don't know whether or not he had the normal use of his faculties that day, do you? You don't know one way or the other, correct?

A: Correct.

Q: Okay. So you're not telling the jury that he did not have the normal use of his faculties, are you?

A: Okay.

Q: Is that correct?

A: Correct.

Mr. Webber: Okay. Pass the witness.

Redirect Examination by Ms. Bender:

Q: *Do you know what faculties are?*
It's kind of a legal term we throw around. The jury heard a little bit about it yesterday, but do you know what we're talking about?

A: *Restroom?*

Q: No. I just wanted to clear it up. Do you know what he means when he's asking you, did he appear to have his "faculties"? What did you think he meant?

A: *I thought he meant using the faculties of the restroom.*

Q: *You didn't see the defendant go to the bathroom?*

A: *No, of course not.*

Q: Did the defendant appear to be out of it?

A: Yeah. Yeah, you know, like when Bob was talking to him, like he didn't know what was going on.

DID THEY REALLY SAY THAT?

From **Jane Starnes** of Houston (Jane is an assistant district attorney for Harris County), this "hysterical" excerpt from a possession of cocaine case she tried last year.

Q: Now, you've admitted that you were pretty hysterical out there?

A: *Calm.*

Q: *Oh, I thought a little while ago you said you were hysterical?*

A: *By my being hysterical meant being calm. I wasn't rowdy or anything like that.*

Q: Hysterical means calm, to you?

A: Yes, it do.

Q: You weren't upset by seeing your mother sitting in the police car?

A: Yes, I was.

Q: And you weren't upset by seeing your brother being kept in the front yard there?

A: Yes, I was.

Q: *But you are saying you were calm?*

A: *Yes, I was.*

Q: *Which is the same thing as hysterical, to you?*

A: *Uh-huh.*

From **V. Wayne Ward** of Fort Worth, this excerpt from the testimony of his client, the husband in a divorce case — in which the trial had been delayed because the wife, on several occasions, managed "to get herself committed to a psychiatric hospital."

Cross by Ms. Jones:

Q: You know she has had some severe mental health problems; is that correct?

A: Yes. Her mother advised me to put her in the *psychic* ward.

From **Donald R. Pierson, II** of Fort Worth, this excerpt from a demand letter sent to his client, "a veterinarian who had a contract to treat guard dogs for a local security company."

Dear Dr. [Name]

Please be advised that I represent [PLAINTIFF] in connection with injuries received by her when *she was viciously bitten on the left breast by a security guard* being treated at your facility ...

From **District Judge Joe M. Leonard** of Greenville (196th District Court), this excerpt from a murder trial.

Q: Are you friendly with Pat Byrd?

A: He's one of my neighbors. I'm friends with all my neighbors.

Q: *Are y'all social friends?*

A: Well, what is a social? I don't — I don't — *I don't have a social life, so I have no social friends.*

From **Richard B. Dulany** of El Paso (Richard is assistant district attorney — Appellate Section, 34th Judicial District), this trial excerpt from the deposition of a female police officer.

Q: Okay. As a police officer, what are your duties?

A: To protect and defend and to serve.

Q: The citizens of El Paso?

A: Yes.

...

Q: On April 28th of 1997, were you employed as an officer?

A: Yes, ma'am. Patrol.

Q: Okay, *And what does it mean to be on patrol?*

A: You answer all the calls that go out *and you can also pull people over and stuff.*

BUT HOW DEAD IS HE?

From **Louis Abraham III** of Tulsa (Jarboe & Stoermer), this excerpt from a deposition he took in a case pending in Dallas County. The opposing attorney was **Michael A. Miller** of Dallas, and the witness was **Judge Dan Gibbs**.

Q: Says here: We view with equal concern your indication that employees of our management company are well aware of this defiance without having advised their employer.

Likewise, Judge, was that a concern of yours?

A: Who is "we"?

Q: Well, in this context, did "we" include you?

A: I don't know.

Q: Okay.

Mr. Miller: He didn't write the letter.

Mr. Abraham: I understand, but Mr. Collins is responding on behalf of the board.

We've seen that —

Mr. Miller: *You can ask Mr. Collins that.*

Mr. Abraham: *He's dead, Mike.*

Mr. Miller: You deposed him.

Mr. Abraham: Uh-huh.

From **Randall D. Terrell** of Austin

(Hill, Gilstrap, etc.), this excerpt from a deposition in which "John C. Wilson was questioning [and] George Thompson was attempting to elevate the discussion."

Q: Did you see a doctor at that time?

A: Yes.

Q: Do you remember who that was?

A: I believe it was Dr. Santos, if I'm not mistaken.

Q: Where is Dr. Santos located?

A: At that time he was located near St. Mary's Hospital. I'm not certain what the address is.

Q: Is he still practicing medicine here in Lubbock?

A: I'm not sure.

Mr. Thompson: We'll have to get — *I don't know whether we need the area code for heaven or hell, but Dr. Santos died about two years ago.*

Mr. Wilson: *Are you trying to say, Mr. Thompson, he's no longer practicing medicine here?*

Mr. Thompson: And I don't know that.

Mr. Peterson (Helpfully): *Not on earth.*

METAPHORICAL SEX

From **Nancy E. Friedman** of Houston (David, Black & Associates), these excerpts from the deposition of a male plaintiff in a personal injury automobile accident case.

A: ... I was unable to have any sort of sex or sexual activity for months. For several months afterwards I was sexually dysfunctional and that caused a great deal of pain and anguish in my personal life.

Q: Prior to the accident *how often were you having sex?*

A: *I would say regularly, once or twice a week.*

Q: *Well, being married, regularly doesn't mean that to me; maybe once a year; but by regularly what do you mean, once or twice a week?*

A: Yes.

...

Q: Okay. In your answers to Ms. Friedman's questions about the problems you're having and the claims you're making you testified that was one of the problems you're having, sexual dysfunc-

tion, inability to have sex, right?

A: Yes.

...

Q: Prior to the accident, who were you dating?

A: I wasn't dating anyone necessarily.

Q: Okay. Who were you having sex with then?

A. Well, I wasn't having sex with anyone regularly. *When I said I was having sex once or twice a week, I meant that metaphorically. I meant I would have sex more regular than I would after the accident.*

Q: *Who were some of the metaphors you were dating?*

Mr. Salvato: Don't answer that question.

LET THE RECORD REFLECT

From **Judge Juan R. Partida** of Edinburg (275th District Court, Hildago County), this marvelous (!!!) excerpt from testimony in an aggravated robbery case tried before Judge Partida.

(Direct Examination)

By Mr. McPherson:

Q: So you had him picked up for failure to identify?

A: Yes, sir.

Q: The person we're speaking of, do you see him in the courtroom today?

A: Yes, sir.

Q: Would you point him out?

A: Be the defendant right there (indicating).

Q: If I'm number one, he's number two, she's number three, he's number four, which one would he be?

A: Be number one.

Mrs. Miller: *Judge, let the record reflect he's identified the prosecutor.*

The Witness: *My mistake.*

Contributions to et cetera
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