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## 2008, After the Hearing and The Appeal

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### Judge Wisser Comments on Memory in Old Age

Barbara Coplin D\* 2<sup>nd</sup> grade teacher and one of our witnesses told me that she knew Judge Wisser. She said their kids played together. Barbara Coplin was not a legal sort so I didn't fault her for not mentioning it earlier, but I thought that Judge Wisser should have disclosed it, so I wrote him to ask why he didn't. Mrs. Coplin had talked like it was recent, but then after I copied her on the email she pointed out that it had been 25 years prior. However, Judge Wisser's reply turned out to be more generally interesting the the original question:

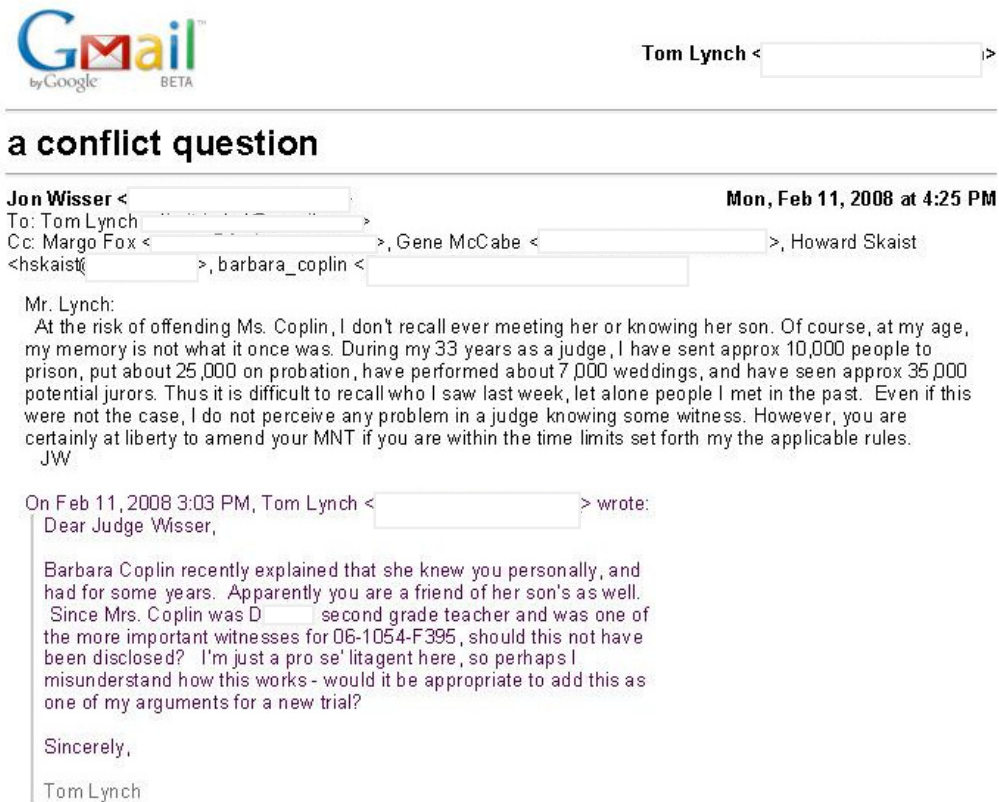


Figure 94: Judge Wisser Email on Conflict

Though he didn't do it for the child conferral, here the judge was respectful of my request not to bring up death penalties in the context of a divorce modification and didn't put these in. For discussion sake lets not consider these for now, they are probably only in the hundreds relative to the thousands of jail sentences. Now lets do the math. There are 52 weeks in the year. Four weeks are for holidays. The judge also gets vacation, personal time for sick leave, conferences, continuing education, running for election, and other obligations. Lets suppose another five weeks during the year for these things. I suppose that judges are typically on the bench 7 hours a day, so:

33 years \* (52 wks/yr – 9 wks not on bench) \* 5 days/wk \* 7 hours/day = 49,665 hrs

Wow, that is almost 50 thousand hours sitting on the bench. Doing weddings and selecting jurors could be quicker than hearing crimes. Suppose these averaged 30 minutes each, then hours left over with the judge on the bench hearing criminals is:

$49,665 - (\frac{1}{2} \text{ hour}) * (35,000 + 7000) = 28,665 \text{ hours hearing crimes}$

Now we can divide this by the number of crimes the judge has heard to get the time he spends on average on a case. We don't know the total number of crimes, as he didn't tell us how many people he found innocent. He only reports the ones he sent to jail or put on probation. I think this fact by omission is interesting by itself. This plus his comments in court about doing death penalties, and his explicit pointing only his death penalty hearings in his email when talking about schedules, leads me to think the judge is rather proud of having found so many people guilty. On the topic of the scheduling email, it is possible that all that he had on his calendar were death penalties. Suppose he found %30 of the criminals not guilty relative to the ones he found guilty, then we can calculate an hours spent per criminal case by:

$28,665 \text{ hrs} / (10,000 + 25,000) * 1.3 = .63 \text{ hrs per criminal case}$

.63 hours is 37.8 minutes. That is less than 40 minutes per case. Some criminal hearings would last for days, so that pushes the others down even further in order to keep the average.

I suspect there is a two part explanation for Judge Wisser's efficiency. Firstly, as the Judge brags about his record perhaps his 'golf score' is missing a few strokes. One of my assistants suggested a second reason. Judge Wisser may be using a heuristic to determine outcomes rather than deriving the outcome from testimony and evidence. We hypothesize that his heuristic is to look at the stability of employment of the parties. Supporting this hypothesis is the fact he mentioned 'stability of employment' in his findings of facts against me. We hypothesize that Judge Wisser saw my irregular income due to sales of my patents and the wire payments from an overseas broker, didn't understand, and concluded that I made money illicitly. Perhaps I'm more cynical than my assistant, I bet that many of these greedy people actually think I have a large offshore account that I pull money from when I want and if they make me uncomfortable enough he money will come pouring out.

I'm not very happy to hear the Judge Wisser is having difficulty remember people he saw last week, as we presented a lengthy case and there was more than two weeks lapse between the final hearing and his ruling. I wonder how he could notice and then remember important testimony. Fueling this concern is the fact he completely left out some important witnesses, including the school principal, from his findings of fact. I would imagine the folks sitting on death row as a result of the death penalty hearings we were working around to schedule our custody modification would be even less happy to hear Judge Wisser explain he is having difficulties remembering people.

### ***Findings of Fact of Facts and Conclusions of Law***

Judge Wisser provided his ruling without any explanation as to how he derived it. As a first step towards an appeal I filed a request for an explanation. This is known as a request for findings of facts and conclusions of law, or FOF for short. He replied to Margo Fox and me asking us to provide proposed FOF. I was surprised, as I thought that a judge had to derive

his or her ruling from the findings, and that it would only be a question of text formatting to provide the FOF. Instead, it was to be a laborious process to draft FOF derived from the ruling instead of the other way around. Not surprisingly Margo Fox's proposed FOF read like her case, what else could be expected? The ruling did not follow at all from my proposed FOF, and it only stood as a guide of what *not* to write. The findings arrived nearly on the last day available for the FOF schedule.

The first thing Judge Wisser put in the FOF is the list of attorneys that Margo Fox claims I have had. Attorneys must officially place their names on record to be part of the case. There are three attorneys of record for my case, each occurring in succession. Felix Rippey, Mark Roles, and Tim Whitten. The judge lists two more attorneys, Steve Copenhaver and Glynn Turquand, who had considered taking the case but had not. The reason this is important to the judge as a long list of attorneys helps him justify his large attorney fee amount. He needs the extra attorneys because H\* had three attorneys of record also, and there were at least six people listed in her correspondence, so there wouldn't be an imbalance without the extras. In addition the judge did not list H\*'s attorneys, so the reader would assume there was a ratio of 5 to 1, rather than a ratio of 1 to 1.

Judge Wisser notes that H\* has exclusive right to determine the geographic location of residence of the child with no restrictions.

He finds that my pleadings were amended on December 15, 2006 to ask for supervised visitation, but he has it backwards. H\* amended *her* pleadings and asked for supervised visitation in an emergency hearing that occurred during D\* and my vacation to visit Grandma and Grandpa. We had to say in Georgetown wondering if we would ever have a vacation again, yet Wisser puts the blame this on me. Judge Wisser may have misled the court here by error, or he may have done it on purpose. It is considered very bad form for an attorney to declare an emergency hearing for immediate supervised visitation, lose the hearing, and then later have Judge Wisser award her attorney's fees. FYI, my pleadings were amended in 2007 requesting a shared parenting arrangement.

He writes:

- A. Both the child's therapist, Caryl Dalton, and the child's pediatrician, Samuel Mirrop, who were treating the child at the time of the Final Decree of Divorce in 2001, have since discontinued their services to the child due to the actions of Thomas Lynch.

I find it particularly insulting that I am being blamed for Dr. Mirrop's quitting. Dr. Mirrop himself has refused all phone calls and contact, even go so far as to hire a law firm to protect himself. When grandma wrote him a letter, he sent the law firm, and had them reply and provide a copy to the judge. I gather he has become defensive so that his mis-diagnosis and refusal to even allow a nurse to check won't cause him a lawsuit. In my opinion, it is unfortunate that he is more concerned about this inconvenience than about his patient. Anyway, there was nothing I could do to contact him and have him come explain. Caryl Dalton was in deep with a dual role ethics violation playing both custody evaluator, mom advocate, and therapist. Yet, it is my fault for her quitting.

Here is an interesting FOF point for you home schoolers. I never said in my testimony that I wanted to home school D\*. This issue was raised by the other side and then pushed. My plan was to have D\* tested and to figure out what the best next course would be and I said as much. I had not ruled out homeschooling is all that I said, and I took issue when they said home schooling was asocial as some places, like Austin, have communities. Here is Judge Wisser's FOF on this point:

- N. Tom Lynch expressed an interest in home schooling D\* Lynch in opposition to testimony of expert witnesses who claimed that D\* Lynch needed social interaction with peers and authority figures other than Tom Lynch.

So you home schoolers should note that having the opposing attorney say you “expressed an interest” in home schooling is now a justification for taking away a father's parental rights if an anonymous “expert” thinks a child needs social interaction.

However, the most repugnant part of Judge Wisser's point “N” here is his authority figure comment. I'll have to go back over testimony, but I don't recall anyone saying this. But who is an authority figure in a child's life? It is his father. I have long been saying that one of the reasons that judges are willing to rule against fathers is that they are threatened by the father as an authority figure. The judge wants to be the only authority figure. Here it is in black and white. D\* is to have other fathers than Tom Lynch.

The FOF is in general a damnation of dad that is only loosely based on the case. Everything that did not fit the ruling was thrown out, including testimony. Here is Judge Wissers comments on the witnesses, this is the entire list:

5. The Court makes the following findings of fact regarding witnesses:
  - A. Caryl Dalton was a credible witness.
  - B. Sally Rae was a credible witness.
  - C. Pam Wacholz was a credible witness.
  - D. April Perry was a credible witness.
  - E. Margo Fox was a credible witness as to attorneys fees.
  - F. The testimony of Annie Truitt was of limited value.

The first thing to notice is that Jannie Veach the school principal who suggested that D\* should be with dad and have mom's influence, and who said that seeing D\* dad was the highlight of D\*'s day, is not listed at all. Nor is D\*'s second grade teacher, Barbara Coplin, who said that D\* aspired to be like his dad listed. Annie Truitt the only expert who talked on topic, and talked about how much D\* loved his dad and needed to be listened to is “of limited value.” Why? Her degree is just as credible as the other experts. The only logical reason any of us can figure is that it is because her conclusions did not fit those the judge's ruling.

In contrast, the woman who steadfastly refused to work with the whole family, who D\* said hated his dad, who violated dual role ethics, who is the most likely candidate of using hypnosis (which Judge Wisser condoned), who had never formally spoken with dad, and who did not comment on child parent relationships, is listed as a credible witness. Sally Rae who violated regulations of the APA in giving testimony on someone she had never met and had no evidence against, who admitted that she had her facts wrong, and who didn't talk about the parent child relationship is a "credible witness." Pam Wacholz who's hysterical testimony even raised a comment from the judge, and who backed off of her testimony in cross examination, who did not talk at all about parent child relationships, is a "credible witness." April Perry who is a biased party due to being a legal assistant for the opposition, who's sole meeting of either party was to say she didn't want to talk spoken through a cracked open door, who said nothing of parent child relationships is in Judge Wisser's view a "credible witness."

### ***Post Judgment Hearing***

The new order, and the child rights, say that phone calls are to be allowed, and that mom is not to interfere with them. She hadn't allowed phone calls since 2003. I listed unanswered calls since the order in the Motion For New trial (which was denied). She still didn't answer calls. So I filed a Motion for Sanctions with my subpoenaed telephone bill. The opposition answered the motion complete with documentation that they were running all of D\* calls through a computer. She started allowing calls just before and after the hearing. The quality is horrible. It appears that her boyfriend who has a hobby of audio mixing has arranged a Skype line to go through the computer where apparently he records, and listens to the call in real time as we are cut off if I say something they don't like. For example, tonight I asked D\* if he was still watching TV everyday. He said he was. I asked him if it was a problem, cut, no more talking. There are also drop outs where the line just goes silent. This happens about 30 minutes into a call. The opposition counter sued saying I hadn't paid child support, though I was late, I had paid it. I had a third motion which I had provided to the opposition saying I was preparing to file it, but had not filed it yet.

I came out of Kinkos on the way to the hearing to discover my keys were locked in my truck. Someone at Kinkos offered me a ride, and I was running about 20 minutes late. I called the court house, but the judges office didn't answer as they were at a hearing. Glynda had not forwarded her phone to a receptionist. The clerks office initially said there was nothing they could do, but called back and told me that they had all left.

Judge Wisser ruled that I had purposely blown them off. Even though there were 30 missed calls, and the answer to my motion was complete with pictures of the computer system and an explanation, and I wasn't there yet, he ruled against my motion for sanctions. He was OK with the idea that the opposition would violate the order and the Child's Bill of Rights, and in fact he ruled that it was frivolous that I would even complain about it, and awarded the other side attorneys fees of a total of three thousand dollars for the twenty minutes.

## ***Birthday Surprise***

The weekend before I had not noticed the school schedule had D\* out on Thursday instead of Friday, and I was late to pick him up. I called her on the phone and apologized. D\* and I went to the Starbucks for the drop off on Sunday April 6<sup>th</sup> on schedule, but mom was not there. So this was going to be her tit for tat thing. I didn't mind, I can spend a long time with D\*. We waited about half hour, and H\* came in and told D\* to come and she went back to the car. I stepped out the door with D\*. H\* was sitting in the drivers seat while D\* was getting in the back. It was unusual that her boyfriend was not lurking around behind her somewhere. While H\* was sitting there in the drivers seat she looked at me and grinned big, as I hadn't seen since the temporary orders after she got off the stand. I wasn't the least bit upset, and for a split second I was glad to see her smiling, but I was curious.

April 10<sup>th</sup> was D\* birthday. H\* was to drop him at 6:00 at the Starbucks, and I was to return him at 8:00. I checked my bank account to see where things were at, and found that it had been frozen. H\* had filed a "write of garnishment" for attorney's fees in the amount of \$36,000 against the account, but here was \$3000 dollars in the account, but it is frozen. I spent most of the day trying to figure out what that was and how serious it was. I was told by the attorney who did my bankruptcy in 2002 that this can be done in Texas, and that there is nothing I can do about it. All the money in my account will be given to H\*.

As D\*'s account has me as a co-signer, and they were able to file the writ against it also. The remaining \$100 profit from D\* fortune cookie business will go to pay Margo Fox. This will become the basis of a lesson to D\* on how poor think kills initiative.

I went over to the consignment store where I had put D\* and my hockey gear. The gear had been over there since before we went sailing and they hadn't sent anything. Most of it had sold, and they gave me a check for \$140. This is the same amount as it costs to put gas in my suburban. I had the suburban because I used it to haul stuff for the boat and as an onshore sail locker. Now I'm just stuck with it. There was still a quarter tank of gas, and that lasts a couple of days. I went to the sporting goods company's bank, Bank of America, to cash the check. Bank of America said they required a \$5 fee to honor checks presented to their bank. I refused to pay it, and they waived the fee. I bought D\* a book for a gift.

At the Starbucks we met, and I told D\* about a good Mexican restaurant I had found, and we went and had dinner. We returned to the Starbucks at 8:00.

Fortunately I have a patent sale pending, though as of April 21 it hasn't paid. I am now late on child support, and the apartment rent bounced. Last week they gave me ten days notice to leave or pay. Today the management was knocking on the door, or perhaps that is service from H\*. I was indisposed at the time of the knock, and when I got there they were gone. It probably wasn't service as there was an envelope with a letter from the manager left at the door. Last time the child support was late H\* sued me over it and got another \$3000. I'm back on a forced diet of one meal a day, mainly beans and rice. For some reason the knowledge that I can not afford to eat whatever and whenever makes me all that much more hungry, though on the other hand I am accustomed to long passages.

I managed to feed D\* well this last weekend. We splurged and added hamburger and organic spinach. We even had a drink at Starbucks after the soccer game and did a math lesson. H\* arrived ten minutes early this time, and interrupted. She had done this once before. We were eating at the restaurant down the mall when she came in early insisting he leave early. We were doing a math lesson that time also. That time she told him that it was

important to go right away because she was grocery shopping next door. I guess it was an emergency grocery shopping trip. I suggested she come back after shopping, but she said she couldn't. This time her reasoning for him leaving a little early was that I should be flexible. After all she had been flexible two exchanges prior when I was late. I really don't mind about ten minutes here or there, but what I do mind it being by design. The first time she could have gone shopping and come back, or this time gotten in line and gotten a drink, indeed that is what her boyfriend was doing. H\* and D\* sat in the car waiting while he got his drink.

## ***Court Reporters***

What is actually said in a courtroom does not matter afterwards as much as what the official court reporter says was said. Court reporters work for judges or they are independent contractors who work for themselves, though they may be assigned work through a firm. Reporters depend upon attorneys and judges to give them work, and especially so in small communities. They typically set their rates and their bill collection policies. I have now met a dozen court reporters, and all have all been women. Court reporters work with the same group of people day in and day out. As we saw for Judge Wisser, over a career this amounts of tens of thousands of hours spent with the same people. Surely at some point relationships develop. When something goes wrong chances are that the court reporter will have allegiance to those who find her work.

Court reporters in Texas take dictation to paper tape, so we must depend on the court reporter to correctly transfer obscure dictation from a paper tape. Everyone involved admits this is a difficult and error prone process. But who will the errors facilitate? A reporter may optionally make an electronic recording. It has been my experience that if someone requests to have the electronic recording reviewed, the reporter will tell the person that she has recycled the tape for another hearing. She has no obligation to keep the electronic recordings.

At the April 24<sup>th</sup> hearing I noticed some errors in the transcript. The main one was that the Judge telling Jim Wallace to sit down was not transcribed. I gave the recorder Paula Jones an errata sheet, and she said she "did not have time" to fix the errors. After I pestered her she fixed only one and said she didn't have time do do any more. Her tone was as though I was being greedy as though I didn't appreciate the one errata repair. After all how many could I want? Typically I spoke with her, but after I asked for the statement for Jim Wallace to be fixed in email, she blocked her email address to me.

In my own deposition there was a point where Margo Fox was trying to make me look bad over doctors, and I pointed out the game saying that she had really got me going. My comment was not in the final transcript. I complained about this. The deposition has not been mentioned since.

The first thing Margo Fox did after the Janie Veach deposition was to offer the court reporter a job. I thought the message there was clear enough.

An individual who wishes to appeal is obligated by law to pay the reporter to transcribe the paper tape dictation for the appeals court and to do so in a timely manner. All the reporters who worked for me requested money up front against an estimate of the cost of transcribing. They all exceeded their estimate, some significantly, except Paula Stone. The two reporters who did the final hearing made it clear that nothing would be filed with the court until they were paid in full.

Here is an email from Joan Wilson, who did the first two days of the final hearing, a transcript which is mandatory for the appeal:

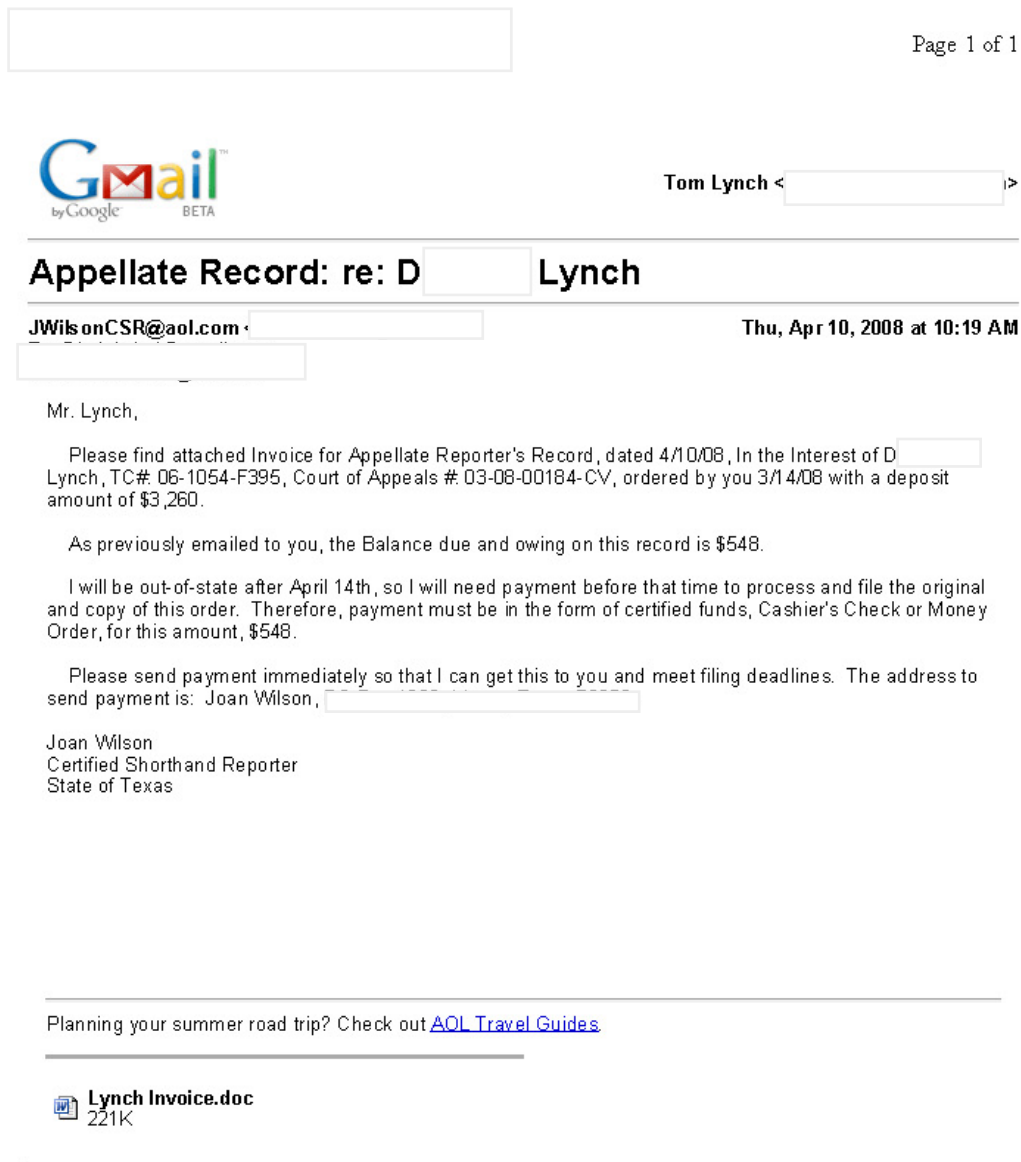


Figure 95: Court Reporter Ultimatum

Our appellate deadline for filing transcripts is the 24<sup>th</sup> of April. Joan had prior told me that she would not file the transcripts until the \$548 was paid, and I had taken note of that. She had originally notified me on April 2 that there would be a \$548 fee for the index, which I had asked her to do. This is not a cost overrun, but an index required by the court and it is work she needs to be paid for. However, now on the Thursday she tells me she needs payment by Monday, not the 24<sup>th</sup>, because she will "be out-of-state", and she provides no contingencies. She tells me I will miss my appellate deadline for the transcripts if I don't pay her by Monday.

My bank account had been frozen by H\* and I knew this timing not to be possible. I told Joan it would be next week until I could get her the money, and requested she send the material to Affiliated reporting to have it filed when it was paid for, to make corrections, and to verify the work. She refused. As of the time of this writing Joan has made no indications that she will file the transcripts, nor has she arranged to get them to me. I spoke with another reporter who knows her. She says Joan left for family reasons and thinks she thinks Joan has arranged for someone else to file the transcripts with the court while she is gone. If this is the case, then the court will get the transcripts before I can see them or have them verified.

Joan Wilson already has the \$3200 some dollars I paid her up front. Another reporter charged \$1800. Another asked for around \$500, and then came back for \$550 more. The Janie Veach deposition was expensive as well. I will probably have a couple thousand more due to another pretrial hearing and the recent post trial hearing. All of this had to be paid as part of the appeal.

### ***Appeal Brief***

I am currently drafting the appeal brief. I'm told that an appeal process may take two years. I think I have a fairly strong grounds for appeal, but the most that can be hoped for is that the prior order is struck and we get a new trial and get to go through it again. I take no joy in learning law and trials. I law find it sad and taxing. When I walk down the hall of the courtroom and see all the people waiting to be judged, perhaps because they did mean things, and perhaps they will go to jail, I feel like Dante walking the 7 levels. It doesn't seem like a very good place for divorces.