St. Mary's Law Journal

Volume 1 | Number 2 Article 3

12-1-1969

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THE LAWYER'S FORUM

MOTIONS FOR PRODUCTION OF DOCUMENTS— TEXAS STYLE

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There are few attorneys who have not experienced difficulty in developing and establishing the facts of their case. While most attorneys will not announce "ready" until depositions have been taken and filed, many of these same attorneys will proceed to trial without even a thought of filing a motion for production of documents.

While requiring a little imagination and sometimes a great deal of hard work, a well prepared motion for production of documents and records can lead to the discovery of facts essential to the prosecution or defense of a civil action. Furthermore, in many instances a meaningful deposition can be taken only after a party uncovers some of the facts relied upon by his opponent.

Within certain limitations, a litigant can compel the opposite party to disclose documents, writings and other things in his custody and control that are necessary for the proper prosecution or defense of a cause of action. In the state courts of Texas, authority for this

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[1] As amended, Rule 167, TEX. R. CIV. P. reads as follows:

> Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to such limitations of the kind provided in Rule 186b as the court may impose, the court in which an action is pending may order any party to produce and permit the inspection and copying or photographing by or on behalf of the moving party, of any designated documents, papers (except written statements of witnesses), books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control; or order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action. The order shall specify the time, place and manner of making the inspection, measurement or survey and taking the copies and photographs and may prescribe such terms and conditions as are just, provided that the rights herein granted shall not extend to the written communications passing between agents or representatives or the employees of either party to the suit, or communications between any party and his agents, representatives, or their employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation or defense of such claim or the circumstances out of which same has arisen.

It appears that Texas courts have no inherent powers, either at law or in equity, to originate new process to enable parties to secure evidence in support of their claims or defenses. Hastings Oil Co. v. Texas Co., 149 Tex. 416, 234 S.W.2d 389 (1950).

procedure is found in Rule 167, TEX. R. CIV. P.[1] The federal counterpart (and the source of Rule 167) is Federal Rule 34.[2]

SCOPE OF DISCOVERY

The Texas Rules of Civil Procedure provide that a liberal construction should be given to rules governing discovery.[3] Consistent with the policy of those rules, the state courts encourage a liberal use of pre-trial discovery procedures.[4] The federal courts sitting in Texas also favor a liberal construction of discovery rules.[5] In a recent decision, the Texas Supreme Court stated that the purposes of the discovery rule are:

> (1) To narrow the issues, in order that at the trial it may be necessary to produce evidence only as to a residue of matters which are found to be actually disputed and controverted.
> (2) To obtain evidence for use at the trial.
> (3) To secure information as to the existence of evidence that may be used at the trial and to ascertain how and from whom it may be procured, as for instance, the existence, custody, and location of pertiment (*sic*) documents or the names and addresses of persons having knowledge of relevant facts.[6]

The moving party is certainly entitled to inspect the very documents, if any, upon which the respondent's cause of action or defense is founded. Since discovery under Rule 167 is a matter within the sound discretion of the trial court, the trial judge's decision will not be overturned unless there is a clear abuse of that discretion.[7] A case in

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2 As amended, Rule 34, FED. R. CIV. P. provides:

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30(b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 26(b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

3 TEX. R. CIV. P. 1.

4 Lucas v. Lucas, 365 S.W.2d 372 (Tex. Civ. App.—Beaumont 1962, no writ).

5 United States v. National Steel Corporation, 26 F.R.D. 603 (S.D. Tex. 1960).

6 Great American Insurance Company v. Murray, 437 S.W.2d 264, 267 (Tex. Sup. 1969).

7 Brown v. Lundell, 162 Tex. 84, 344 S.W.2d 863 (1961). In Neville v. Brewster, 163 Tex. 155, 352 S.W.2d 449 (1962) the court upheld a broad order requiring the parties to produce the "medical records which they have in their possession concerning the plaintiff, R. E. Neville."

point is *Blakely v. Howard*[8] where the party repeatedly but unsuccessfully sought production of the invoices and records concerning certain labor and material costs. In reversing the trial court's judgment, the Dallas Court of Civil Appeals stated:

> . . . Appellant was diligent in his efforts to obtain the evidence necessary to enable him to present his defense. Rule 167, which appellant sought unsuccessfully to invoke, expressly provides that designated books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in an action and which are in the possession, custody or control of a party, may be required to be produced for inspection, copying and photographing by the opposing party. The source of our State rule is Federal Civil Rule No. 34. In our opinion the rule is applicable here, and the court abused its discretion in overruling appellant's motion for discovery.

A distinct advantage of a motion under Rule 167 is that it can be used at different stages of the proceedings.[9] It is also free of the geographical limits imposed on the *subpoena duces tecum*.[10] While Rule 167 may not allow "fishing excursions,"[11] it does authorize a broad sweep of access, inspection, examination and copying of documents or objects in the possession or control of another party.[12]

Documents, Records and Objects Subject to Discovery

State and federal courts in Texas have ordered the production of a great variety of records, papers and other documents including: corporate records,[13] invoices and cancelled checks,[14] ledger cards,[15] intra-office reports,[16] correspondence with third parties,[17] banking commis-

8 387 S.W.2d 96, 98 (Tex. Civ. App.—Dallas 1965, writ ref'd n.r.e.).

9 Dunlap v. Chase, 336 S.W.2d 303 (Tex. Civ. App.—Waco 1960, no writ).

10 Franki, *Discovery,* 13 Tex. B. J. 447, 477 (1950).

11 Texhoma Stores, Inc. v. American Central Ins. Co., 424 S.W.2d 466 (Tex. Civ. App.—Dallas 1968, writ ref'd n.r.e.). This case was criticized by McElhaney, *Texas Civil Procedure,* 23 Sw. L. J. 177, 183 (1969).

12 If, in fact, the respondent does not have the designated items in his possession, custody or control, they would not have to be produced. Cutler v. Gulf States Utilities Company, 361 S.W.2d 221 (Tex. Civ. App.—Beaumont 1962, writ ref'd n.r.e.); Note, *Meaning of "Control" in Federal Rule of Civil Procedure 34,* 107 U. Pa. L. Rev. 103 (1958).

13 Uvalde Rock Asphalt Company v. Loughridge, 423 S.W.2d 602 (Tex. Civ. App.—San Antonio 1968, no writ).

14 Blakeley v. Howard, 387 S.W.2d 96, 98 (Tex. Civ. App.—Dallas 1965, writ ref'd n.r.e).

15 Western Guaranty Loan Co. v. Dean, 309 S.W.2d 857 (Tex. Civ. App.—Dallas 1957, writ ref'd n.r.e.).

16 United States v. San Antonio Portland Cement Company, 33 F.R.D. 513 (W.D. Tex. 1963).

sioner's reports,[18] medical records,[19] records of repairs,[20] income tax returns,[21] and revenue agent reports.[22]

In addition to documents, letters and other written papers, the courts have allowed the discovery and inspection of tangible objects such as a horse,[23] a valve,[24] a ship[25] and a vessel's logbook.[26]

The information obtained from documents and records can be very helpful in a given case. Corporate records such as the original minutes of the board of directors and shareholders often reflect major management decisions and indicate the general state of the corporation's business. Financial statements, tax returns and payroll records can be good sources of information where substantial loss of profits are in issue.

Attorneys who handle divorce cases often request production of cancelled checks, deposit forms, and bank ledgers in an effort to verify the amount of separate or community property. Daily diaries and long distance telephone logs can also be very revealing in a civil action.

The ownership and control of motor vehicles can often be established through certificates of title, operating permits or license receipts. Lease agreements, purchase agreements, and other contracts can shed light on the legal relationship between parties. Books of original entry, monthly inventory reports, invoices, freight bills and other business records can be invaluable in a suit for an accounting.

Inspection and Entry Upon Land

In 1957, Rule 167 was expanded to expressly authorize the court to

> order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property or any desig-

17 Gulf Construction Company v. St. Joe Paper Company, 24 F.R.D. 411 (S.D. Tex. 1959).

18 Benson v. San Antonio Savings Association, 374 S.W.2d 423 (Tex. Sup. 1963), *cf.* Falkner v. Gibralter Savings Associaion, 348 S.W.2d 472 (Tex. Civ. App.—Ausin 1961, writ ref'd n.r.e.).

19 Neville v. Brewster, 163 Tex. 155, 352, S.W.2d 499 (1961). *See also* Hastings, *Discovery and Evaluation of Medical Records,* 15 Am. Jur. Trials p. 373.

20 Stovall v. Gulf and South American Steamship Company, 30 F.R.D. 152 (S.D. Tex. 1961); Railway Express Agency v. Spain, 249 S.W.2d 644 (Tex. Civ. App.—Austin 1952) *writ dism'd* 152 Tex. 196, 255 S.W.2d 509 (1953).

21 Maresca v. Marks, 362 S.W.2d 299 (Tex. Sup. 1962); Martin v. Jenkins, 381 S.W.2d 115 (Tex. Civ. App.—Amarillo 1964, writ ref'd n.r.e.).

22 Frazier v. Phinney, 24 F.R.D. 406 (S.D. Tex. 1959).

23 Robb v. Gilmore, 302 S.W.2d 739 (Tex. Civ. App.—Fort Worth 1957, writ ref'd n.r.e.).

24 Carrillo v. Dickson, 421 S.W.2d 921 (Tex. Civ. App.—Houston [14th District] 1967) (mand. overruled).

25 Ferro Union Corporation v. S.S. Ionic Coast, 43 F.R.D. 11 (S.D. Tex. 1967).

26 Lester v. Isbrandtsen Co., 10 F.R.D. 338 (S.D. Tex. 1950).

nated object or operation thereon which may be material to any matter involved in the action.

The 1957 amendment added the changes that had been made to Federal Rule 34 and followed the holding of the Texas Supreme Court in *Hastings Oil Co. v. Texas Co.*,[27] that the trial court could, in a proper case, order the entry upon and inspection of land and photographing thereon. Attempts to gain entry to land have generally been unsuccessful. In *Brown v. Lundell*,[28] the plaintiffs brought suit for pollution of an underground water supply caused by open salt water pits. The defendant's motion to drill a water well on plaintiffs' land to show that there was good water under part of the farm was denied. In holding that there was no abuse of discretion, the court pointed out that the plaintiffs' expert witness substantially admitted everything that the defendants sought to prove by the drilling of the well. The court also noted that the motion was filed about two or three weeks prior to the trial of the case on its merits although it had been pending for almost a year.

In the case of *Gale v. Spriggs*,[29] Spriggs and his wife brought suit against the building contractor Louis Gale d/b/a Gale Builders Supply Company for breach of a written construction contract. In upholding the trial court's refusal to grant the contractor entry to the premises for appraisement, inspection and photographs of the work done by him, the court emphasized the fact that an appraisal could have been accomplished by visual inspection and by the use of hypothetical questions.

The apparent failure of trial courts to allow an entry upon land for the purpose of inspection can be attributed in part to the failure of the moving parties to show the necessity therefor under the circumstances present. This right does exist, however, in an appropriate case.[30]

Requirements and Limitations

The motion for production of documents has as its purpose the production of nonprivileged documents and tangible things that are material to some matter involved in the action. The claim of privileged communications can arise in a number of fact situations, the most

27 149 Tex. 416, 234 S.W.2d 389 (1950).
28 162 Tex. 84, 344 S.W.2d 863 (1961).
29 346 S.W.2d 620 (Tex. Civ. App.—Waco 1961, writ ref'd n.r.e.).
30 United States v. National Steel Corporation, 26 F.R.D. 603 (S.D. Tex. 1960) (Inspection of manufacturing plants allowed); *see also* Annotations—13 A.L.R.2d 657 and 4 A.L.R.3d 762.

common being those involving the attorney-client relationship or those involving a demand for records and/or reports maintained pursuant to state or federal law.[31] It is important to keep in mind that a claim of privilege must be affirmatively asserted and, in the absence of an objection seasonably made, the claim of privilege will be deemed to have been waived.[32]

Generally speaking, discovery under Rule 167 is limited to the parties to the case; however, the order may require production of documents, records and objects in the "control" of any party to the action. Under both state and federal practice the moving party must show good cause and designate the documents requested with sufficient particularity to enable the respondent to know what he is being required to produce.[33]

Although a showing of "good cause" is required for the production of documents, few courts have been able to define this particular element. Most courts agree that the determination of "good cause" depends mainly on the facts of a given case and that the matter rests largely in the discretion of the trial court.[34] In *Franks v. National Dairy Products Corporation*,[35] Judge Fisher stated that it is because of the fact that "good cause" is within the sound discretion of the trial court that there is as yet no settled understanding of what "good cause" means in the ordinary case.[36] Because of the inherent problems in attempting to define "good cause," courts frequently indicate what facts do not show "good cause."[37] One court has stated that the two prime ingredients of "good cause" are "(a) lack of independent means of discovery and (b) need for documents in their original form."[38]

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31 On the question of privilege, *see also* McGlinchey, *Sanctions Available to Parties in Texas Discovery Procedures*, 19 Sw. L. J. 740, 748 (1965); Burdick v. York Oil Co., 364 S.W.2d 766 (Tex. Civ. App.—San Antonio 1963, writ ref'd n.r.e.); and McCullough Tool Company v. Pan Geo Atlas Corp., 40 F.R.D. 490 (S.D. Tex. 1966).

32 On the matter of waiver, *see also* Branch, Rule 167—*Production, Privilege and Waiver*, 16 BAYLOR L. REV. 202 (1964); Dobbins v. Gardner, 377 S.W.2d 665 (Tex. Civ. App.—Houston 1964, writ ref'd n.r.e.); and Gass v. Baggerly, 332 S.W.2d 426 (Tex. Civ. App.—Dallas 1960, no writ).

33 Steely and Gayle, *Operation of the Discovery Rules*, 2 HOUS. L. REV. 222 (1964); Wright, *Discovery*, 35 F.R.D. 39 (1963).

34 Robb v. Gilmore, 302 S.W.2d 739 (Tex. Civ. App.—Fort Worth 1957, writ ref'd n.r.e.); United States v. National Steel Corporation, 26 F.R.D. 603 (S.D. Tex. 1960).

35 41 F.R.D. 234 (W.D. Tex. 1966).

36 The comment of two leading attorneys that the term "good cause is rather nebulous" would certainly seem justified in view of the decided cases. Steely and Gayle, *Operation of the Discovery Rules*, 2 Hous. L. REV. 222 (1964); Wright, *Discovery*, 35 F.R.D. 39 (1963).

37 Texhoma Stores, Inc. v. American Central Ins. Co., 424 S.W.2d 466 (Tex. Civ. App.—Dallas 1968, writ ref'd n.r.e.). If the moving party can obtain the information without resorting to the discovery process, "good cause" does not exist. Gill v. Col-Tex Refining Co., 1 F.R.D. 255 (S.D. Tex. 1940). Mere conclusions do not establish "good cause."

38 Uncle Ben's, Inc. v. Uncle Ben's Pancake Houses, Inc., 30 F.R.D. 506 (S.D. Tex. 1962).

Because of the confusion surrounding the requirement of "good cause", there has been a movement to eliminate the requirement except for discovery of trial preparation materials.[39]

An objection frequently raised in response to a motion for production of documents is that the motion does not designate the requested items with sufficient particularity. The answer to this type of objection is that the requests are sufficiently definite if they apprise a man of ordinary intelligence as to the documents required.[40] As stated in *Consolidated Rendering Co. v. State of Vermont*,[41]

> We see no reason why all such books, papers, and correspondence which related to the subject of inquiry, and were described with reasonable detail, should not be called for and the company directed to produce them. Otherwise the State would be compelled to designate each particular paper which it desired, which presupposes an accurate knowledge of such papers, which the tribunal desiring the papers would probably rarely, if ever, have.[42]

In addition to the requirements of "good cause" and "particularity", the moving party must satisfy the trial court that the documents requested are material to some matter involved in the action. In discussing the meaning of materiality it has been said:

> This means, as we have seen, material to the movant's case, as well as to his adversary's case. The court, in considering the motion for a discovery order, must pass upon the materiality of the designated documents or tangible things before making an order. Since materiality is not as easily determined before trial as at the trial, it has been said that the standard of materiality for purposes of inspection before trial should be considerably broader than at the trial. The liberality with which amendments of pleadings, even during trial, are allowed under our practice, would seem to lend force to this view. As you know, amendments, even trial amendments under our practice, are allowed practically, I would say, as a matter of right. In the light of that situation with the possibility of new issues being injected into the case at any time, it would seem that the word "materiality" as is used in Rule 167 ought to have a broader scope than "materiality" at the trial.[43]

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39 Wright, *Discovery*, 35 F.R.D. 39 (1963); *Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the United States District Courts*, 43 F.R.D. 211 (1967).

40 United States v. National Steel Corporation, 26 F.R.D. 607 (S.D. Tex. 1960); Camco, Incorporated v. Baker Oil Tools, Inc., 45 F.R.D. 384 (S.D. Tex. 1968); *see also* Roman, *Designation of Documents under Rule 34*, 25 INS. COUNS. J. 313 (1958); Newport, *"Designation" as used in Rule 34 of the Federal Rules of Civil Procedure on Discovery and Production of Documents*, 35 IOWA L. REV. 422 (1950).

41 207 U.S. 541, 28 S. Ct. 178, 52 L. Ed. 327 (1908).

42 *Id.* at 554, 28 S. Ct. at 182, 52 L. Ed. at 336.

43 Franki, *Discovery*, 13 TEX. B. J. 447, 477 (1950).

In holding that the amount of insurance coverage is not material to the issues in a tort action, the Texas Supreme Court has stated:

> The presence or absence of resources out of which a future judgment may be enforced is not material to the purposes for which discovery may be employed.[44]

Although materiality will vary upon the facts of each case, the moving party should designate documents and records which will narrow the issues and lead to admissible evidence. The inclusion of numerous items clearly not relevant to the subject matter of the law suit may cause the trial court to deny requests which would otherwise be granted.

A great deal of confusion and conflicting decisions have also arisen as to the right of a party to require production of reports of experts obtained by his adversary. One line of cases holds that reports of an expert witness are immune from discovery.[45] Another line of cases allow discovery of only the facts upon which the expert bases his opinion.[46] Still another group of cases allow discovery of both the facts and the opinions or conclusions of an expert witness.[47] The Texas state courts have generally held that the reports and work sheets of experts are immune from discovery.[48]

A major difference between Texas Rule 167 and Federal Rule 34 can be found in the investigative or work product proviso of Rule 167 which reads:

> [p]rovided that the rights herein granted shall not extend to the written communications passing between agents or representatives or the employees of either party to the suit, or communications between any party and his agents, representatives, or their employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with

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44 Great American Insurance Company v. Murray, 437 S.W.2d 264 (Tex. Sup. 1969); Wood v. Todd Shipyards, 45 F.R.D. 363 (S.D. Tex. 1968). *Cf.* Vetter v. Lovett, 44 F.R.D. 465 (W.D. Tex. 1968). In the *Wood* case the court disallowed discovery of policy limits. In the *Vetter* case the court held that the policy limits are subject to discovery.

45 Stovall v. Gulf and South American Steamship Company, 30 F.R.D. 152 (S.D. Tex. 1961).

46 Lee v. Crown Central Petroleum Corporation, 33 F.R.D. 11 (S.D. Tex. 1963).

47 Franks v. National Dairy Products Corporation, 41 F.R.D. 234 (W.D. Tex. 1966). The various views are ably discussed in Long, *Discovery and Experts Under the Federal Rules of Civil Procedure,* 38 F.R.D. 111 (1965); von Kalinowski, *Use of Discovery Against the Expert Witness,* 40 F.R.D. 43 (1966) and Friedanthal, *Discovery and Use of An Adverse Party's Expert Information,* 14 STAN. L. REV. 455 (1962).

48 Shirley v. Dalby, 384 S.W.2d 362 (Tex. Civ. App.—Texarkana 1964, writ ref'd n.r.e.); Hodges v. State, 403 S.W.2d 207 (Tex. Civ. App.—Texarkana 1966, writ ref'd n.r.e.); Lapsley v. State, 405 S.W.2d 406 (Tex. Civ. App.—Texarkana 1966, writ ref'd n.r.e.); *cf.* City of Houston v. Autrey, 351 S.W.2d 948 (Tex. Civ. App.—Waco 1961, writ ref'd n.r.e.).

the prosecution, investigation or defense of such claim or the circumstances out of which same has arisen.[49]

Because of this additional language, discovery of the identical item may be permitted in the federal forum while disallowed in the state courts.[50]

Penalties for Refusal to Comply

If a party fails to produce documents, records, etc., pursuant to a court's order on discovery, the consequences can be rather severe. The court may order (1) that designated facts be taken as established, (2) that a party be prohibited from introducing in evidence designated documents or testimony, (3) that pleadings be stricken, (4) that proceedings be stayed pending compliance, (5) that all or part of an action be dismissed, or (6) that a default judgment be entered.[51] In addition to the sanctions provided for in Rule 170, a party required to incur additional expenses making proof of facts may be able to recover these expenses from his recalcitrant opponent.[52]

On the other hand one does not have to obey a void order to produce documents and a party may refuse to comply and invoke the supervisory power of the courts for relief.[53] The methods normally used for obtaining review of discovery orders are habeas corpus proceedings[54] and mandamus proceedings.[55]

Conclusion

The value of a motion for production of documents, records and other objects is frequently overlooked because of several restrictions

49 Tex. R. Civ. P. 167; in *Ex parte* Ladon, 160 Tex. 7, 325 S.W.2d 121 (1959), the court held that the defendant's attorney was not required to disclose the names and addresses of passenger witnesses whose names were obtained by the bus driver *after* the accident. *See also* 38 Texas L. Rev. 642 (1960).

50 Burton and Smith, *Discovery of the Names of Witnesses and Potential Parties: A Critique of the Texas Rules of Civil Procedure,* 46 Texas L. Rev. 214 (1967).

51 Rule 170, Tex. R. Civ. P.; McGlinchey, *Sanctions Available to Parties in Texas Discovery Procedures,* 19 Sw. L. J. 740 (1965). *See also* American Central Ins. Co. v. Texhoma Stores, Inc., 401 S.W.2d 593 (Tex. Sup. 1966) which states that the sanctions of Rule 170 are applicable to pre-trial proceedings and do not necessarily apply to the enforcement of a trial judge's orders made in the course of actual trial.

52 Mims v. Houston Fire & Casualty Insurance Company, 362 S.W.2d 880 (Tex. Civ. App.—Texarkana 1962, no writ); Harrington v. Texaco, Inc., 339 F.2d 814 (5th Cir. 1964), *cert. denied,* 381 U.S. 915, 85 S. Ct. 1538, 14 L. Ed. 2d 435 (1965).

53 Saenz v. Sanders, 241 S.W.2d 316 (Tex. Civ. App.—San Antonio 1951, no writ).

54 *Ex parte* Ladon, 160 Tex. 7, 325 S.W.2d 121 (1959) noted 38 Texas L. Rev. 642 (1960); Powell, *Appellate Review of Interlocutory Order via Habeas Corpus,* 4 S. Tex. L. J. 394 (1959).

55 Crane v. Tunks, 160 Tex. 182, 328 S.W.2d 434 (1959); *see also* 38 Texas L. Rev. 638 (1960).

or limitations not found in other discovery rules. The failure of some attorneys to fully utilize this discovery tool may also be attributable, in part, to a reluctance by some judges to enter an order for discovery. Most objections to a motion for production of documents can be avoided by identifying the requested items with reasonable particularity and establishing the necessity or justification for the particular demand. In view of the liberal spirit of the rules, trial courts should be disposed to grant such discovery as will accomplish full disclosure of the facts, eliminate surprise and promote settlement.