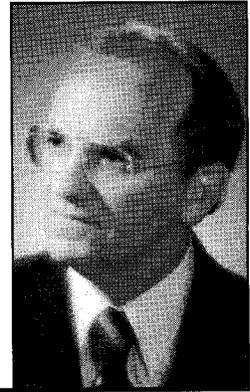


Depositions v. Trials: Lawyers Count More Points



Judge Jerry Buchmeyer

By Judge Jerry Buchmeyer

More which-is-worse (depositions or trials?) examples:

Did I Really Hear That?

Two contributions from Sterling W. Steves of Fort Worth (Simon, Anisman, etc.):

First, from a deposition that Steve Took:

Q. How far did you go in school?

A. Two or three miles.

Second, from the deposition of "a very attractive young lady who was the girlfriend of a debtor in a bankruptcy case" – taken by Steve's partner, Henry Simon, Jr. – because it "was suspected that the debtor had conveyed valuable assets to her" before the bankruptcy was filed:

Q. Had the debtor given you anything of value?

A. Yes, he has.

Q. What did he give you?

A. A Mercedes Benz.

Q. Was it free and clear?

A. No, it was green and white.

* * * * *

Judge John O'Keefe Barry of McKinney (County Court at Law Number Three) sends this excerpt "from the state's closing argument in a DWI jury trial in my court."

PROSECUTOR: I believe that the law is commonsensical and I believe this case can be based on common sense.

DEF. COUNSEL: Your Honor, I'm going to object to that; *I believe the court will instruct the jury what the law is and common sense is nowhere in the law.*

THE COURT: Objection sustained.

Is This Column Really Part of the Problem?

And, from James W. Paulsen of Houston (Liddell, Sapp, etc.) comes this excerpt from the deposition of a CPA:

Q. Did you inform [the defendant] at any point in the proceedings up to today that the dispute might possibly have some effect upon the estate?

A. Well, he . . . had the same awareness as I did. And we did not compute it, the amount. But he had that awareness, too.

Q. How do you know that [the defendant] had this awareness?

A. What awareness? You're going to have to restate it.

Q. Okay. Do you understand . . . that you're the one who used the phrase "awareness?"

A. I don't think that matters. *I'd like to have the word defined so I can know what I'm saying.*

MR. GIBSON: Tag that.

Q. [H]ave you ever heard of a person by the name of Jerry Buchmeyer?

You Can Take My Word for It

This trial excerpt comes from the Decker Lake eminent domain case tried *Years Ago* by Charles Dippel and Robert L. Burns of Houston (Sears & Burns).¹ After noting that this is the funniest thing he's ever seen in a courtroom – other than "some of my verdicts" – Charles explains:

As always, the landowner contended for a rapid increase in land prices just coincidentally peaking with the City's rash taking of the property. As always, the condemnor [their client, the City of Austin] had to prove that the sale and subsequent resale of allegedly comparable properties were somehow tainted, either because they were forced sales, did not happen, or no land existed.² We knew that a critical sale relied upon was tainted as to both the initial sale and subsequent resale – the buyer, a real estate broker who had been rendered dead broke because of his partner's advice, had told us that both his purchase and subsequent resale were not arms-length or free and open transactions.

After Burns completed the direct of *The Witness*, victory seemed assured for the Burns/Dippel Duo – "unless our opponent somehow destroyed *The Witness* on cross." In brilliant desperation, the Opposing Attorney decided "to divert the attention of the jury from the devastating testimony by making *The Witness his Witness*" – by having the witness stand on a chair "in front of a gigantic aerial photograph of the Decker Lake area, and write down" information on other sales that *The Witness* ("who had Lost Everything by relying on his ex-partner's advice") knew absolutely nothing about. And . . .

Q. Now *that* property is located right here. Would you step up in the chair and write, "October 1962 value –"

A. Well, now, let me see. Is this it?

Q. That's it. Yes, sir. You can take my word for it. That's it.

A. Okay. Now, well did it go over to here?

Q. No, it didn't come that far north. It is outlined in the black.

A. I would like it understood I am not sure it was October.

Q. I understand that. Put down "October '66."

[The witness wrote on Exhibit No. 1]

Q. If you will write it a little bigger.

- A. Okay. I'm sorry.
 [The witness wrote again on Exhibit No. 1]
 A. Is that all?
 Q. No. "\$160 an acre."
 A. What do you want me to write that up there for?
 Q. Because that's what you figured it was a trade.
 A. If I was going to go out and buy it. Is this all permissible to write that up there?
 Q. Yes. *It's permissible to take my word for it.*
 A. *I have gotten into trouble before by doing what people told me.*

(Laughter)

Q. I believe I pass the witness.
 Charles concludes: "The laughter lasted a full two minutes. The judge (Jerry Dellana, now an Austin District Judge) turned his chair to the wall he was laughing so hard. He had to excuse the jury, it was laughing so long. Our opponent turned red and almost had apoplexy. Of course, Burns and I did absolutely nothing to discourage the opponent's disaster."

Recalling & Recollecting

Terry L. Belt of Austin submits this excerpt from the deposition of the father who was seeking to modify the child custody terms of the divorce:

- Q. Do you remember the incident on the day that you came running up from the basement and explained to your wife that you were going to go kill yourself?
 A. No.
 Q. Have you blocked it out of your mind or are you saying that it never happened?
 A. *Never happened.*
 Q. You didn't go behind the shed there with your gun?
 A. No.
 Q. *Do you remember what year it was that it didn't happen?*
 A. *1980, I believe.*

Terry is still curious "as to how he could deny that it happened, but was able to remember the exact year that 'it didn't happen.'"

* * * * *

This excerpt comes from Judge Frank Andrews of Dallas (116th District Court) and from a trial in his court:

- Q. (By Mr. Flint) Mr. Tipton, is there any disagreement to your knowledge between the parties as to what portion

of Mrs. Williams' body or what part of her body or cell structure or whatever is injured?

- A. I don't recall.
 Q. *Would that be helpful to your recollection if you did recall?*

MR. KIZZIA: Excuse me. I object to the question as ambiguous. It doesn't make sense. It's unintelligible, really.

THE COURT: (wisely) Sustained.

* * * * *

Another trial excerpt, this one from Brian E. Cutbirth of Abilene (McDonald & Cutbirth); the witness is an attorney, Tom C. Massey of San Angelo, who is testifying about his attorneys fees in the case:

- Q. I believe earlier you stated that you were a witness in a bankruptcy hearing. Did you bill the bank when you were. . .
 A. Yes, I did.
 Q. How many hours was that?
 A. *I wouldn't know without recalling.*³ It would be my time to go to Lubbock, testify, and return to San Angelo.

Footnotes

1. This was when Charles Dippel was an Assistant City Attorney of Austin, and Robert L. Burns "was retained as special counsel for the City for trial of a series of eminent domain cases involving what was then known as the Decker Lake project, a cooling pond for a power plant and adjacent park land.
2. Charles makes a footnote admission that this is like "the patented Racehorse Haynes" defense to a dogbite case: My client's dog did not bite the complainant; alternatively, the dog was old and had no teeth; alternatively, my client didn't own a dog."
3. Brian adds that, at the time, "I felt that his testimony was amusing, but when looking back on it, I see that it reflects the typical circuitous reasoning used by attorneys when they either do not know the answer, or do not want to give the answer, but do not want anyone to know that is the case."

Jerry Buchmeyer is a federal district judge, Northern District of Texas, in Dallas.

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