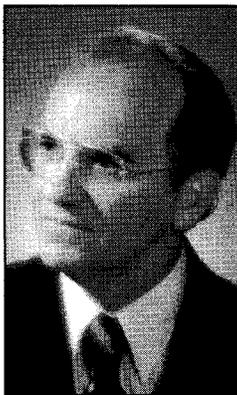


DEPOSITIONS VERSUS TRIALS: BEING EXONERATED

By Judge Jerry Buchmeyer



Which is worse, Depositions or Trials? Well. . .

I'm Glad We Cleared That Up— Depositions

From **March Lynn Rothmas** of Beaumont (Benckenstein, Oxford, etc.), this remarkable(!) excerpt from a deposition taken by **Mary Ellen Blade**, a partner at the same firm:

- Q. Did you die, as far as you know?
A. I don't know nothing.
Q. Has anybody told you that you died?
A. Yes, ma'am.
Q. Who told you that you died?
A. My cousins and my wife and the other people.
Q. What other people?
A. The—friends.
Q. Did any doctor ever tell you that you died?
A. Yeah, my doctor, too.
Q. But you don't remember it yourself?
A. No. How can you remember you're dead? You no can remember.
Q. I was kind of curious to see if you had any recollection of it. Do you know how long you were supposed to have been dead?
A. No, ma'am.¹

This excerpt comes from a deposition taken by **Barry S. Green** of Fort Worth (Camp, Jones, etc.)—an avowed male lawyer—of “a female workers' compensation claimant.”

(The plaintiff-witness has testified that she has severe pains in her shoulder, her back, and her hips.)

- Q. Let's break down the different problems that you're having. The shoulder pain itself, can you give me any words to describe what that feels like?
A. **Have you ever wore a bra that was too tight on you?**
Q. If I said yes my mother would be very astonished. No, I can't say I have.
A. Like something pushing down and then it's on fire, too.¹

Barry adds: “I want your readers to understand that my response to the witness's question should be interpreted as an **emphatic 'no'**, regardless of what my mother would think.”

I'm Glad We Cleared That Up— Trials

This trials excerpt comes from **Dana D. Jacobson**, captain, USAF, who is stationed in Panama. As area defense counsel, Jacobson defends “Air Force members in discharge boards and court-martials (*I*

also keep my head down a lot).” He explains that “the vast majority of those courts involve the use of cocaine”—and then he recounts “a recent trial [in which] the client (*not mine, thank goodness*) was pleading guilty to the use of cocaine, and had told the judge that, amazing as it might seem, [this] was *the only time he had ever used cocaine.*” This exchange followed;

JUDGE: So this one time you used cocaine, how did you use it?

A. (No response)

JUDGE: I mean, how did you get this cocaine into your system?

A. Oh—*sometimes* with a spoon, *sometimes* with a straw.²

Rodney M. Phelps of Richardson sent me the following from the husband's testimony in the trial of a divorce case in Harris County.

Q. Now, as you understand it, your children's intentions are to attend school in Texas; is that correct?

A. I think it's my daughter's intention to attend school in Texas if my wife does move to Texas.

Q. You at one time lived in Texas; the last time you lived in Texas was in 1973?

A. That's correct.

Q. Since that time you have been a resident of Panama as well as Germany and various other countries overseas?

A. **And Arkansas as well.**

Q. And you're telling this court that you have no intention of—

COURT: **Certainly can't leave out a foreign country like Arkansas.**

Did I Really Hear That— Depositions

From **Sandi Fudge** of Rowlett (Lyon & Lyon), this deposition excerpt from a workers' compensation case in Dallas— in which the plaintiff is being asked about doctors she has seen in the past.

Q. After delivery of your first child, did you see a gynecologist?

A. Dr. Matheson. She didn't pass away until like three or four years later. Brian is eight now.

Q. She passed away around 1983?

A. It may have been later, I just didn't—I can't give you an exact date.

Q. **After she passed away did you not switch and start going to a new gynecologist?**

A. **No, I continued to see her for probably two years after that.** I don't recall the exact dates.

Q. Without being concerned with the exact dates, once she passed away to

where you could no longer obviously rely upon her as your gynecologist did you switch to a new gynecologist?

A. No.²

John W. Donovan of Houston (Gano, Donovan, etc.) contributes this deposition excerpt—in which the witness, a friend who assisted the plaintiff during her recovery period, is rather patiently explaining why she “was asked by the plaintiff for more help than a certain relative” who had a “physical handicap.”

A. She was—She wasn't cooperative in helping—in helping [the plaintiff] get back and forth to the doctor.

Q. In your opinion, why was that?

A. If I say it you couldn't put it on tape. I mean, because, she is just one of those type people.

Q. Can you describe this aunt for us, just the physical description?

A. She was asshole. That's what—
PLAINTIFF'S ATTORNEY: That's physical?

DEFENDANT'S ATTORNEY: I asked for it, didn't I?³

Did I Really Hear That—Trials

From a labor arbitration hearing involving **Ralph Phinney** of Dallas and **Durwood Crawford**, also of Dallas:

ARBITRATOR: Do you wish to make an opening statement at this time?

PHINNEY: Was that an opening statement?

ARBITRATOR: That's what I thought it was.

PHINNEY: Presentation?

CRAWFORD: Was it that bad?

PHINNEY: Yea, it really was, Durwood. It rambled a little bit and it lacked substance in a place or two.

Q. Yes, sir. Steve, in your engineering course did—in preparing you to move into management, did you have any courses to relate to people?

A. I don't believe—no, I don't believe I took any specific courses in—in—other than a—I guess, I had one course related to how to get along with people.

Q. Bowling?

A. No. It was courtship and marriage. Probably the most valuable course I've had.

ARBITRATOR: He topped you on that one, didn't he?

PHINNEY: Well, it looked like he might've been a good bowler.

Ben F. McDonald of Corpus Christi closes out this month's column with “a little incident” that occurred several years ago in connection with the trial of a personal injury case. Ben explains that he was “representing the passenger truck making a left turn into a private driveway. The defense alleged the accident was the sole proximate cause of the driver of the car. The jury found to the contrary (that the sole cause was the truck driver). “Once the driver of the car testified, he left town—but he telephoned back several days after the jury verdict.”

CAR DRIVER: How did the case go?

ATTORNEY: The jury exonerated you.

CAR DRIVER: (Long pause) Yeah. . . well, I was scared of something like that. They was a mean looking bunch. Specially that slanty-eyed one on the end in the front. He didn't like me. He probably talked the rest of 'em into it.³

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1. Almost everyone who sends me a deposition or trial excerpt includes the actual pages of the deposition or the trial transcript—as “proof” that These Things Really Happened. In this column, I try to use only these Things That Actually Happened, but there are a few exceptions that warrant footnote treatment.^{2,3}

2. For example, this vaudeville came from **Al Ellis**, Dallas Bar Association president, with no supporting transcript:

Farmer goes to an attorney for a divorce.

ATTORNEY: Do you have any grounds?

FARMER: Yup, I got 30 acres.

ATTORNEY: No, that's not what I mean, do you have a case?

FARMER: Nope, I got a John Deere, that's what I farm them 30 acres with.

ATTORNEY: No, no, you're not understanding me, do you want to bring suit? Have you got a grudge?

FARMER: Well, I got a suit hanging in the closet, and the grudge—that's where I keep my John Deere.

ATTORNEY: Oh, we're not communicating at all. Let's talk about your wife for a minute, do you beat your wife up?

FARMER: Nope, she gets up about 4:30 a.m., 'bout the same time I do.

3. Footnote 3 appears in next month's column.