

DEPOSITIONS VERSUS TRIALS: THE COUNTY BASTILLE

By Judge Jerry Buchmeyer



And, as expected, still more examples. . .

I'm Glad We Cleared That Up!

Thanks to **Mark Wham** of Houston (Kain & Reedy) for this excerpt from his deposition in a products liability case of "the plaintiff, a woman in her twenties"—who was explaining how her injuries had "caused a lot of problems in her personal life."

Q. For example, what type of personal problems?

A. Well, I couldn't work, so **I had to make money the best way I could.**

Q. Okay, and how was that?

A. Um, I don't—I don't know how to answer the question.

PLAINTIFF'S LAWYER: Can I talk to her for just a minute?

MR. WHAM: Certainly.

(Brief recess)

A. Okay. Could you ask me that again?

Q. Yes ma'am. You said that you had to make money the best way you could. What do you mean?

A. **Well, I had to baby-sit.**

Mark adds: "Perhaps baby-sitting is the world's **second-oldest** profession."

This deposition excerpt is from **Peter Chantillis** of Dallas (Chantillis & Brousseau); it was taken in a case pending before U.S. District Judge **Barefoot Sanders**.

A. I'm trying to put a name to a couple of other faces that were Sunbelt people [at the meeting], but I—I don't recall who they were.

Q. **Where they men or women or both,** and I don't mean—never mind.

MR. JACKSON: **Or either, sir?**

MR. MONTS: Could you reask the question?

MR. CHANTILLIS: **I'm going to send that to Jerry Buchmeyer.** Make a notation on that one, I'm going to write Jerry a letter, seriously.

MR. JACKSON: Clarify that question.

Q. Was there more than on Sunbelt representative present?

A. Yes, sir, I think there were two of them.

Q. And do you recall if they were both men or both women, or one was a man and one was a woman?

MR. CHANTILLIS: **Mark that one, too.**

MR. JACKSON: **This is according to sexual orientation.**

MR. MONTS: **Humanoids.**

A. **I think they were both dressed as men, but I couldn't verify their sex.**

Q. Did you have any reason to believe that although they were dressed as men they were really women?

A. I believe they were both men.

Did I Really Hear That?

From **Barry C. Barnet** of Dallas (Susman Godfrey), this excerpt from a trial before federal Judge **Lucius Bunton**¹ of the Western District; the witness was an A&M graduate with an engineering degree—and the cross-examination had "elicited testimony on the 'sine' of a one-degree angle in a right triangle.

Q. All right. Well, another thing about one of these angles is the tangent, isn't it? Do you remember that from A&M?

A. Yeah.

Q. Huh?

A. I believe they've got sines, and they've got cosines, and they've got tangents, and they've got cotangents and things like that, yes.²

Q. Okay. The formula—

MR. WHITE: Your Honor, I object. I think we're getting off on a tangent.

THE COURT: He said the proper sine. . . But I'm going to overrule your objection.

Lew Dunn of Longview found this fascinating testimony in *Ex Parte Whatley*, 124 S.W.2d 357 (Tex. Crim. App. 1939)—an appeal concerning one "S.J. (Baldy) Whatley," who had been placed under a \$35,000 peace bond. The state's testimony showed that Whatley was injured when he got into a fight "with L.C. Barrow and others in a Beer Tavern"—and that: [Whatley] obtained a shotgun and went to the home of Henry Bar-

row. . . When [Barrow and the others] finally arrived and were in the act of going into the house, [Whatley] opened fire on them. After shooting six times; he was asked to stop. He replied that "he was going to kill every damned one over there." After making the statement, he shot six more times. Mrs. Barrow was shot in the head and lost one eye as a result of her injuries. Louis Francis was hit in the back by one of the shots. After the shooting, [Whatley] drove off in his car.

[However] on cross-examination, [Mrs. Francis] testified: "**I didn't take it he meant he was going to kill me until he threw the bomb in my window.**"

For the full appreciation of the fact that Mr. Francis was not one to leap to conclusions, check the *Whatley* opinion. However, I will reveal that Whatley was also under indictment for burglary, theft, and five cases of assault to murder—so the peace bond was "not excessive for the reason that [Whatley] is a **known police character.**"

Asking It Straight

From **David W. Biles** of Denton, this excerpt from the deposition in a divorce case of a third-party defendant who allegedly participated in a fraudulent transfer of community property. David explains the problems:

"The witness was Chinese. Language was a problem from beginning to end. However, I am not sure whether the difficulties arose from his incomprehension of the questions or his ability to act as though the difficulty arose from his incomprehension. . . The communication barriers were almost insurmountable when trying to satisfy the predicate for the 'business records' exception to the hearsay rule."

Q. What is the 80 percent?

A. Okay. The transaction, his interest is just that Yenshou Chung, me, Bor-shyy Chung and Yen-chih Chung own this motel. It's 80 percent ownership.

Q. So you three brothers only owned 80 percent?

A. Yes.

Q. Who owned the other 20 percent?

A. Ming Fon Lin.

Q. It's much easier to let—to just allow you to say this stuff than

me having to work around getting to the predicate.

A. **Yeah, or you just ask it straight and I can answer it.**

Q. I would love to ask everything straight. It would make life that much easier. Unfortunately, we have to follow a bunch of rules.²

Take Him to The Bastille

This "exchange" from a proceeding before **Judge Keith Nelson** of Wichita Falls (78th District Court) was sent to me by **John J. Schenk**, an investigator for the law offices of **Cletus C. Schenk** in Wichita Falls.

JOHN BOYDSTON: Your Honor, if it please the Court, may I interrupt just—

THE COURT: Out!

JOHN BOYDSTON: Your Honor, I've been trying to get justice. Would you please—

JACK SAMPLES: The Judge wants you to come out.

THE COURT: Out!

JOHN BOYDSTON: Your Honor, would you please sign this?

THE COURT: Call the Sheriff.

JACK SAMPLES: Maria, call the Sheriff.

JOHN BOYDSTON: By operation of law *expos facto*, I declare this county, this state, and whatever portions of this nation under martial law, of which I am chief and commander. . .

JACK SAMPLES: He's on the way.

JOHN BOYDSTON: . . . The President of the United States of America is hereby remanded to custody until further notice from me personally. Now, if there be any Americans in this country, stand up, and let's have justice, law, and order in our country under God. . . I stand and accept full responsibility of this action.

THE COURT: You are now officially in contempt of this Court, sir, and you are assigned a penalty of ten days in the County Jail. . . I do not accept and expect interruptions in a courtroom when a proceeding is in progress.

JOHN BOYDSTON: An emergency situation, your Honor—

THE COURT: You were advised not to come into the Courtroom, and you were sent out. And you are now in contempt

of this Court, period. . .

JOHN BOYDSTON: Very well. You are now under arrest, my personal arrest. . . It's just between you and I, Your Honor. You can come with me peaceably, or I'm going to come around there and get you bodily and carry you out of here, and we're going to the proper official. . .

THE COURT: Your attention is directed to the fact that you're in my courtroom, **and you are now going to the County Bastille.**

JOHN BOYDSTON: Your attention is directed to the fact that you are under arrest. Are you coming with me peaceably, or are you—or am I going to have to come around there and get you?

THE COURT: You may as well, if you think you are that big, get started.

JOHN BOYDSTON: I surely will, Your Honor. . . I just believe I'm that big.

(THEREUPON, A SCUFFLE ENSUES.)

THE COURT: Take him out.

JOHN BOYDSTON: Well, I'm not going to struggle any more. For heavens sake, I know I'm under arrest.

MR. BRUNETTE: I ask for a mistrial.

THE COURT: That's all right. **Take him to the Bastille. . .** We'll be in a brief recess, you all.

1. Barry did list "the players" in this trial excerpt: "my partner, **Bill White** of Susman Godfrey, as the objection maker; **Blake Tartt** of Fulbright & Jaworski, as the questioner; **Jack Brown** of Wagner & Brown, the plaintiff; and, of course, Judge Bunton"—who was recently referred to in a Jefferson County Bar publication as "**Judge Lucious Bunton.**"
2. According to Barry, the witness probably didn't "mean to imply that Aggies claim exclusive title to sines, cosines, tangents, and cotangents."
3. **Sudden Thought:** Has anyone ever established the necessary predicate under the "business records" exception to the hearsay rule **without asking leading questions?**