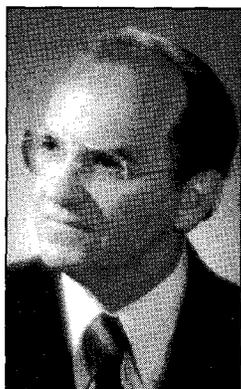


DEPOSITIONS VERSUS TRIALS: READ MY LIPS

By Judge Jerry Buchmeyer



A few more examples. . .

Does That Have One "T" Or Two?

This deposition excerpt—of the plaintiff who fell when his “loaner crutch” allegedly broke—comes from **Louis M. Scofield, Jr.** of Beaumont (Mehaffy, Weber, etc.), with this explanation: “‘Rambo Tactics’ on depositions are not commonplace in South-east Texas. Instead of fighting bitterly over definitions of common words used in deposition questions (Q. Where do you work?; A. Could you define “work” for me?), *we strive mightily to voluntarily provide definitions (and spellings) during the course of depositions so as to assure complete understanding.*”

Q. You didn’t strike any person as you fell?

A. No, Sir.

Q. You have told us that *you did a Pratt fall*. In other words, you fell right directly onto both buttocks?

A. Yes, Sir.

Q. Not more one side than the other?

MR. JENSEN: *What fall?*

MR. MORTON: *Pratt*. I don’t know who Pratt was, but I have heard Pratt.

MR. WEINBERG: *Three Stooges do it a lot.*

MR. MORTON: I think it describes when you fall on your buttocks.

MR. WEINBERG: It does in California.

MR. MORTON: You got me. I never could spell it.

Louis ends with this testimonial: “P.S. Our client was dismissed from the suit *without our asking a single question on depositions: a strategy learned from careful monthly review of your column.*”

Working Undercover

Thanks to **George G. Cooper** of Houston for this deposition excerpt from a case in which he represented a Houston policeman who “had been shot with a .45 pistol in the course and scope of his employment.” The policeman was explaining why he did not earn as much even though he had returned to work—and, as George notes, the defense attorney either “was (too) faithful to his list of questions

and didn’t hear the answers or had a tickle box made of stone.”

Q. And after your injury, you were able to return to work, eventually; is that correct?

A. About nine months later.

Q. And when you returned, do you recall where you returned to?

A. I went to the Vice Bureau which is the Vice Squad and I am presently assigned to the Vice Squad right now.

Q. And you still have your position as detective investigator?

A. Yes, sir.

Q. What are your duties there now?

A. We mainly check liquor violations, you could say minors in possession of alcoholic beverages, or check beer joints that they have all the city licenses and pay their taxes. *Another function that we do, we work on prostitutes.*

Q. Is that something similar to the work you did in the Narcotics?

A. Not necessarily, It’s not—Well, if you’re asking for my opinion, it’s not as dangerous.

Q. As far as the type of work, is it undercover, also?

A. *In some cases you have to work undercover. If you are working on prostitutes, you go in an undercover role.*

George then describes the muffled “non-reaction” by both he and the court reporter—and ends: “The case was later well settled and everybody came out happy. *I just love this profession.*”

Taking the Fifth

John G. Gilleland of Houston was representing a client in a murder prosecution and in a related wrongful death action. During the deposition in the civil case—taken before the criminal trial—John advised his client not to answer any questions about the facts of the killing, and to claim his rights under the Fifth Amendment. Then, “when the appropriate moment came,” the client tried his best.

Q. Robertson, during his lifetime did you know Bobby Joe Richardson, Jr.?

A. I (Mr. Robertson) decided to answer the question on the

grounds that anything that I might say would tend to *irrigate* (sic)—incriminate me.

Taking the Fifth for God

Charles E. Johanson of Austin was taking the deposition of the leader of an anti-abortion group; this excerpt "after the deponent had claimed the Fifth Amendment privilege about 75 times (and . . . more than 100 times in the deposition)."

- Q. On page seven you were asked, Well, don't you recognize yourself as the leader of Austin Rescue? [And your answer was] "No, I do not." Now, what do you mean by [that]?
- A. I mean I do not experience myself as being the leader of Austin Rescue.
- Q. You don't recognize yourself as a leader of Austin Rescue, [yet] you are taking the position that Austin Rescue is a sole proprietorship?
- A. Yes, I am.
- Q. Can you reconcile that for me, please?
- A. Oh, sure, I consider God to be the leader of Austin Rescue in the same way as if I was an attorney who owned a law practice I would consider God to be the leader of my law practice and my law practice may still be a partnership or a professional corporation or sole proprietorship. . . .
- Q. So you are saying that God is the one that directs what happens in Austin Rescue, God is the one that signs the checks, God is the one that makes the plans, God is the one that lays out the stuff like *The Welcomer*?
- A. No, I didn't say that. You asked me does God do those five things. God hasn't signed any checks, but neither have I. Would you go ahead and give me the other list?
- Q. Well, preparing newsletters like *The Welcomer*?
- A. *I respectfully decline to answer that question based on the Fifth Amendment.*

But Harboring No Ill Feeling

From James W. Lessis of Dallas (an attorney with District Counsel's Office of the IRS, Southwest Region), this deposition excerpt quoted in a Tax Court opinion in which James represented the IRS—and in which the "petitioner discusses his general phil-

osophy with respect to federal tax administration, and then suggests a very practical approach which would have cured him of his tax problems."

- . . . When asked his feelings about the Internal Revenue laws and their administration, petitioner responded:
- A. . . . The way that I felt was . . . that the whole Internal Revenue code. . . is probably the basis for most of our social ills because it encourages lying and cheating and stealing particularly from our government . . . that. . . the codes was wrong. . . I felt that the. . . idea of making every individual his own tax assessor. . . was built in trouble because people lie and cheat, we all do. (Pause) It's always in our favor, unfortunately.
- Q. You harbor no ill feelings to anyone in the Internal Revenue [Service]?
- A. *Oh, heavenly days, no. No. I always felt the IRS was doing their job. . . [T]he only thing I resented was the fact that they didn't come after me thirty years ago when I started this foolishness. I'd quit it. I really would of, cause it. . . was obstinacy and. . . hardheadedness and so forth. And I think if somebody had just taken a two by four and hit me on the head to get my attention that I'd quit.*
- John A. Garcia, §89, 106 PH Memo TC at p. 89-507 (March 1989).

Don't You Tell Anyone About This!

From Steven C. Copenhaver of Austin (*Davis v. Davis*), this deposition excerpt from a probate case "in which my client, a private charitable organization, was alleging that a sizeable sum of money was supposed to be bequeathed" to it "instead of another organization with a similar name." Steve was deposing a friend of the deceased (the witness was represented by David F. Beale of Houston).

- Q. Have you had an opportunity to talk with your attorney concerning what a deposition is?
- A. Yes sir, he told me what a deposition was.
- * * *
- Q. I'm sure your attorney has instructed you to answer the question I ask.

- A. Yes sir. *Did he tell you I'm incompetent?*
- Q. No he didn't tell me that.
- A. Well, I am.
- Q. What makes you say that?
- A. The doctor says that. I don't get my money. My wife gets my money. She's my guardian.
- * * *
- Q. Have you understood everything you and I have talked about up to this point in time?
- A. You told me your name, but I forgot it.
- Q. *Have you understood everything I've said so far?*
- A. *You ain't talked much.*
- * * *
- Q. Do you remember having a conversation with me?
- A. This if the first time I met you, right here.
- Q. I mean over the phone.
- A. I talked to somebody on the phone. *I don't know who it was because I couldn't see through the phone.*
- Q. Good point. Do you remember hanging up on the telephone conversation?
- A. Yes sir. Some guy called, and I didn't, you know, want to talk to him so I hung up.
- Q. *Do you know why you hung up?*
- A. *We finished our conversation.*

1. Glen Van Slyke of Houston (Hagans & Sydow) found this "excerpt while summarizing the otherwise routine deposition of a treating doctor"; he suggests that Frederick I. Lewis—who, "rather than objecting to a painfully leading question," countered with a "clever riposte"—should receive the Credit He Richly Deserves.
- Q. All right. So, as a doctor, would you basically tell her to just use good judgment about how much activity you're using and when it starts to hurt you slow down a little bit?
- A. By and large, yes.
- MR. LEWIS: I thought the doctor was going to say she should use bad judgment. (Laughter)

More et cetera

Jerry Buchmeyer is a federal district judge, Northern District of Texas, in Dallas. If you have a contribution to the et cetera column send it to Judge Buchmeyer, U.S. District Court, Northern District of Texas, Dallas, TX 75242.