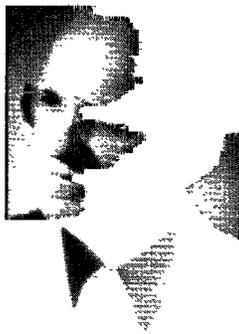


DEPOSITIONS VERSUS TRIALS: WHAT WAS THAT?

By Judge Jerry Buchmeyer



The Saga Continues . . .

Did I Really Hear That?

Q. From **Rob Ramsey** of Wharton, this excerpt from the “deposition of a party whose record is tentatively clean”:

Q. *Do you have any criminal convictions?*

A. *Not right now.*

Q. *Are you planning on having some?*

A. *I’ve been charged with a couple of crimes.*

Q. *All right. What are those?*

A. *Assault, disorderly conduct, and possession of prohibited weapon.*

* * *

From **Judge Joseph Hart** of Austin (136th District Court), this marvelous (!) exchange from a recent hearing before him:

Q. *How many clients did she have when she was operating the home care facility?*

A. *One.*

Q. *She only had one. That’s the only one she ever had?*

A. *Yes.*

Q. *What happened to this man that she was taking care of?*

A. *He’s deceased now.*

Q. *Was he taken out of the home when he had to go to the hospital—he had to be admitted to the hospital?*

A. *Yes.*

Q. *And he died and he didn’t come back?¹*

A. *Yes.*

* * *

From **Larry Warner** of Harlingen, this voir dire excerpt from *Mendoza v. State*,² with the “hope that this woman’s spouse has been rehabilitated”:

MR. MENDOZA: *Anybody else [have a relative who is in custody]? I’m sorry?*

JUROR #1: *My brother-in-law at Bayview.*

MR. MENDOZA: *Bayview detention center?*

JUROR #1: *Uh-huh.*

JUROR #2: *My husband is with the Border Patrol and my cousin is at the Brownsville Police Department.*

MR. MENDOZA (wisely): *Did I skip someone?*

* * *

From **Tod Phillips** of Galveston (McLeod, Alexander, etc.), this excerpt from the deposition of the plaintiff in an asbestosis case—where the plaintiff is being questioned about his past use of cigarettes and his present use of chewing tobacco:

Q. *Are you still using any tobacco products of any kind?*

A. *Skoal.*

Q. *Skoal. What is that? Can you tell me what that is? Is that a chewing tobacco? Or a smoke—chewing tobacco?*

Plaintiff’s Attny: *Worm Dust.*

Q. *Is that basically what that is, tobacco? How long have you been using that?*

A. *I’ve did this all my life. I’m not trying to be smart or anything. I don’t have any idea.*

Q. *So, at times you were smoking and using the Skoal products; is that correct?*

Plaintiff’s Attny: *It’s called dipping.*

Defendant’s Attny: *Dipping. Okay. All right.*

Plaintiff’s Attny: *Are you from Texas?³*

That Abba-Daba Deposition Honeymoon

From **Donald Buckman** of Fort Worth (Cantey & Hanger), a deposition excerpt with the teaser that “Some newlyweds go on their honeymoon. But others . . . well, see the enclosed transcript”:

Q. *You are unable to read it?*

A. *Yes, sir.*

Q. *Without your glasses?*

A. *Yes, sir.*

Q. *Are you married?*

A. *Yeah, I got married this morning at 9:30.*

(The title page of the deposition shows that it began at 1:15 p.m.)

Did I Really Ask That?

From **Colbert Coldwell** of El Paso (Guevara, Rebe, Baumann, Coldwell & Garay), this “dream question” asked by **Wayne Windle** of El Paso—with Colbert’s introduction:

“Wayne [was defending] a civil case against an apartment manager who shot a tenant’s boyfriend who was causing a fracas after a baseball game. The plaintiff produced his wife to testify [about] his pain and physical disability, which opened up questions on cross-examination that revealed that plaintiff often drank after games, often came home drunk, and often beat her when he came home drunk. This prompted the dream question [by Wayne]:

Q. *Is your husband always drunk when he beats you?*

As Colbert notes, this was the “furthest permissible extension” of the mythical “when did you stop beating your wife” question—“and, the beauty was that it was not objectionable. The sheer perfection of the question clouds Wayne’s and my recollection of the answer. The only choices to the witness were:

A. "No. He is sometimes sober when he beats me." or B. "Yes." or the old standby, C. "I don't remember."

Well, You Still Better Not!

From **Dean Kilgore** of Austin (McGinnis, Lockridge & Kilgore), this excerpt from a deposition in a personal injury case—where the plaintiff's attorney, **John Howie** of Dallas is trying to give Dean "some assistance in getting an accurate description of the injury":

Q. And the tenderness would be down below the belt?

A. Yes.

Q. In the upper part of the buttocks? A. In and around that area.

MR. HOWIE: Is it in the part that you sit on or the vertical part?

THE WITNESS: I guess the vertical part, but not totally underneath.

Q. Okay. So, as you are sitting in a chair, you would be able to put your hand on it without sliding your hand under your hip?

A. But it doesn't feel so from the outside, you know.

MR. HOWIE: But we're just trying to figure out physically where it is located. *We're not trying to feel it.*

THE WITNESS: *You better not.*

MR. HOWIE: I know that. *For the record, I am a good 18 inches or two feet away from you, Susan.*

The Gray Trilogy

From **W. Lawrence Gray** of Houston, a "bipartisan" entry in the depositions vs. trials saga. First, from the deposition of an orthopedic surgeon about "It is examination of x-rays depicting the Plaintiff's dislocated coccyx":

Q. What's the medical significance, Doctor, of that 1-inch angulation from the tip?

A. Not very much. You can take x-rays of tailbones in a normal population and you'll see all sorts of configuration. But with an injury one might surmise that there may have been some injury to that area and it caused some angulation, *but I couldn't certainly hang my hat on it.*

* * *

Next, from an aggravated assault trial "some years back" in which **Larry** was defense counsel, "the complaining witness had used a Polaroid camera in taking photographs of the defendant actually committing the offense":

Q. What kind of camera did you use in taking these photographs?

A. It was a camera that takes pictures with it's own mind.

* * *

And last, from the same assault trial, this exchange when "a prosecution witness was

asked to estimate the distance from two points of a diagram drawn on the blackboard":

Q. How far was it, sir, from point A to point B?

A. *Lay me down twice.*

Q. How tall are you, sir?

A. About 6 feet.

Q. You are then saying that the distance was about 12 feet?

A. Yes.

1. **Judge Hart** adds: "I suppose that the question leaves open the possibility that he died, but did come back. Just think of the legal and medical, to say nothing of religious, implications if that had happened."
2. **Mendoza v. State**, 804 S.W.2d 954 (Tex. Civ. App.—Houston 1991).
3. **Tod Phillips** wisely observed: "Apparently, [the Plaintiff's attorney] feels that if one is from Texas, knowledge regarding Skoal is imputed."

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.

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