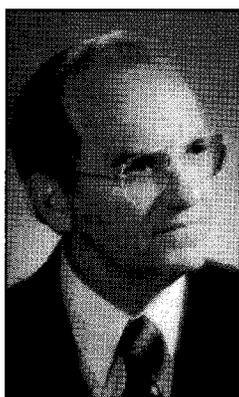


## Depositions v. Trials No Carnal Knowledge

By Judge Jerry Buchmeyer



Our “which is worse” odyssey continues, with entries from Alvin (Thomas Harlan) and Angleton (Jim Mapel); from Corpus (Judge Robert Vargas), El Paso (Jeffrey Alley), Houston (Stephan Barth and James P. Wallace), and Midland (Judge Lucius Bunton); and, of course, from Bellevue, WA (Karen Jones).

### Truth and/or Veracity

From U.S. District Judge Lucius D. Bunton of Midland (Chief Judge of the entire Western District of Texas), this “character testimony” from a “crack cocaine” case that Lucius tried. After one of the five co-defendants testified, he was followed by a “character witness”:

- Q. Are you familiar with the defendant’s reputation in his community (Ft. Worth) for truth and veracity?
- A. I guess that I am. . .
- Q. Just answer “yes” or “no.”
- A. Well, yes.
- Q. Okay. Is his reputation good or bad?
- A. It’s about medium — sometimes he tells the truth and sometimes he don’t.

### A Bit of Red Tape

From Jim Mapel, criminal district attorney of Brazoria County (Angleton), this excerpt from a deposition in a divorce case

involving one husband (Earl) and two wives — wife no. 1 (Fredel) and “wife” no. 2 (Kay); Fredel’s attorney is giving Earl the opportunity to explain why he married Kay without getting a divorce from Fredel.

- Q. Why did you do it? Why didn’t you get your divorce [from Fredel] first and then marry Kay afterward?
- A. It was the one request Fredel had made, but I decided I was going to continue my life the way I wanted to because in my mind [and for all practical purposes] I was divorced.
- Q. You know it’s a felony, what you’ve done, don’t you?
- A. Now I do. Actually, in some states I thought multiple wives was still legal, and at the time I thought it was just some little, kind of like red tape, paperwork type misdemeanor or, you know, some little third degree [offense]. I wasn’t aware that it was a felony.
- Q. Okay. (Obviously not too impressed with Earl’s “Mormon explanation.”) Then you had lied to [Kay, too]?
- A. It appears that way.
- Q. Where does Kay work?
- A. She works at Exxon, downtown Houston.
- Q. When is the first time that Kay realized you never obtained a divorce from Fredel?
- A. Approximately 10 o’clock yesterday [morning].
- Q. Okay. Was she surprised?
- A. I would imagine. Upset, angry, surprised — pick; probably all of them.
- Jim (did you forget he’s criminal district attorney?) ends his letter with this simple note: “Earl is under indictment for bigamy.”

### An Unprepared Witness

From Thomas M. Harlan of Alvin, this excerpt from a deposition he took in a child custody case:

- Q. Are you asking me to believe this undying mother’s love will spring forth. . .
- A. Mr. Harlan, I don’t want you to believe anything I say. That’s not what I’m here for. I’m Christopher’s mother, and I’ll be Christopher’s mother whether you or anyone likes it or not. I can give Christopher love and affection that other people cannot.
- Q. Have you ever cursed in front of Christopher?
- A. I’ve probably said “████████” or something; but other than that, no, I do

not swear. I make it a point not to swear around any kids that I’m around.

- Q. And you’ve never said anything but “████████”?
- A. I mean, I’ve never said — I probably have, but nothing that Christopher would even — as he got older, no, I didn’t. When he was a baby, maybe I have; but when he started talking, no.

### A Prepared Witness

From Stephan C. Barth of Houston (University of Houston), this excerpt from the deposition of his client, the debtor in a collection case, which was being taken by the attorney for the plaintiff bank:

- Q. You in fact received the \$250,000 loan from the bank?
- A. Yes.
- Q. And how did you spend that money?
- A. Quickly!

### A Really Prepared Witness

From Karen Jones of Bellevue, WA (Riddell, Williams, etc.) — who clerked for Chief Justice Barefoot Sanders of Dallas (N.D. Texas) — This reprise of a classic deposition excerpt:

- Q. . . . Do you recognize the person in [this photograph] Plaintiff’s Exhibit B?
- A. It is Mr. Edgington.
- Q. Do you recall approximately the time that you examined the body of Mr. Edgington at the Rose Chapel?
- A. It was in the evening. The autopsy started at about 8:30 p.m.
- Q. And Mr. Edgington was dead at that time, is that correct?
- A. No, you dumb ██████████. He was sitting on the table wondering why I was doing an autopsy.

### How Did that Guy Get on the Jury, Anyway?

From Jeffrey S. Alley of El Paso (Scott, Hulse, etc.), this marvelous (!!) excerpt from a criminal case tried by his wife, Marilyn K. Mungerson, who is an assistant district attorney in El Paso, and by defense attorney Enrique N. Medrano (also of El Paso.) Jeffrey explains:

“The trial involved injury to an elderly person, a felony in Texas. The complaining witness, a woman of some 85 years (who testified to being a “little bit over” 60),<sup>1</sup> claimed the defendant entered her house, demanded sexual liaisons, and when spurned, assaulted her. The defense countered that it was the octogenarian who wanted to know him in the biblical sense and any injury

occurred when he tried to fend off her advances.”

Q. Would you please state your name for the record?

A. Celia Nevarez.

Q. Is [the man who assaulted you] here today?

A. Yes, I am seeing him now.

Q. Can you tell me what he's wearing today?

A. A *stripped* (sic) shirt, and he is seated and I cannot see him there. I cannot see him very well there.

THE COURT (helpfully): Is that a *stripped* shirt or a *striped* shirt?

THE WITNESS: A striped shirt. There he is (witness indicates.)

MS. MUNGERSON: Your Honor, may the record reflect that the witness has identified the defendant?

THE COURT: It will so reflect.

MR. MEDRANO: Your Honor, I would object at this point. I would like to take the witness on voir dire if I could. I don't think that she has properly identified the defendant.

THE COURT: Ma'am, can I just have you point to [the defendant]?

THE WITNESS: He's right there (witness indicates.)

MS. MUNGERSON: I'm not sure —

THE COURT: Okay. Bailiff, what I'm going to have Ms. Nevarez do is direct you to the position where she is saying [the defendant] is.

THE WITNESS: He is right there. It looks like him (witness indicates.) The one with the striped shirt.

MR. MEDRANO: Your Honor, it appears that Ms. Nevarez is indicating one of the jurors or pointing to one of the jurors, if the bailiff might stand next to him and see if that is who she is referring to.

THE COURT: Bailiff, if I can have you go and stand next to Mr. Fullmore. (Whereupon the bailiff stands in front of Mr. Fullmore, a juror.)

Q. (By Ms. Mungerson): Ms. Nevarez, do you see the man standing up here?

A. Yes, of course, he is right next to [the defendant].

Q. Okay. Thank you, Ms. Nevarez.

THE COURT: All right. Let the record reflect that she has identified Mr. Fullmore, okay. Please proceed.

Q. (By Ms. Mungerson): Ms. Nevarez, how long have you known the defendant?

A. I don't remember more or less, but it has been some time ago.

Jeffrey adds: For “apparent reasons,” the jury, “after an hour of deliberations, returned a not guilty verdict.”

## I'm Glad We Cleared That Up!

From **Judge Robert J. Vargas** of Corpus Christi (County Court at Law No. 1, Nueces County), this testimony from a “car wreck” case:

Q. And do you recall generally what you did [on Dec. 15, the date of the accident]. . .not, I mean, we don't need every detail but generally speaking, what you had been doing that day?

A. I cleaned house and got ready to buy a Christmas tree and put it up, which I did.

Q. Did you decorate the tree that day?

A. I started to.

Q. And was — were you alone or did you have other than your dog, I don't know—

A. Yes, by myself.

Q. *There were no other humans helping you?*

A. *No humans.*

## No Knowledge, Period!

From **James P. Wallace** of Houston, this excerpt from the deposition of his client (Stephanie) in a personal injury case, and this explanation: Stephanie “was one of six teenage occupants in a car” that collided with a large sign in a shopping center parking lot; She “traveled some distance” to a very early deposition, where “she inadvertently raised the [collective] eyebrows of all the attorneys” with this exchange:

Q. Were you there when they put up the beam or the bar that connected the two poles that you-all ran into?

A. No, sir, *I had no carnal knowledge of it.*

Mr Wallace (helpfully): No knowledge, period.

A. No knowledge, period. *Just let me go back to sleep.*

1. Jeffrey Alley's transcript from the El Paso “rape” trial also includes this excerpt concerning the age of the 85-year-old prosecuting witness:

Q. What is your date of birth, Mrs. Nevarez?

A. [My daughter] has my passport there so I would not have to tell a lie. That's the only way not to tell lies. Beatrice has it.

Q. Can you tell me how old you are right now?

A. *I am 60.*

Q. Mrs. Nevarez, are you sure that you're 60 years old today?

A. Yes, *a little bit over — and a little bit over.*

Q. A little bit over, okay.<sup>2</sup>

2. The “Going Hence Without Day” controversy is still raging — that is, I have received several other contributions, that will receive footnote attention in future columns.

*Jerry Buchmeyer is a federal district judge in Dallas. If you have a contribution to this column, send it to him at U.S. District Court, Northern District of Texas, Dallas 75242.*

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