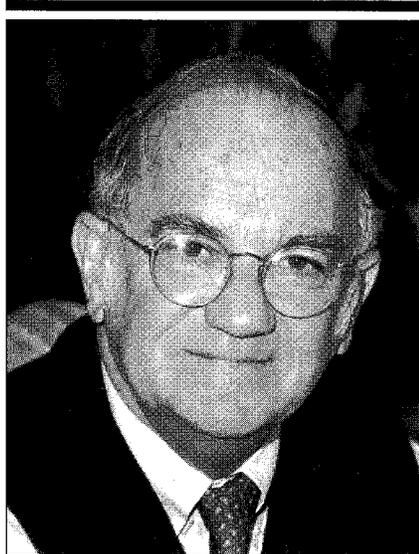


# Depositions v. Trials: Back to the Basics

By Jerry Buchmeyer



This month, the *Depositions v. Trials* controversy goes back to the basics — name, marital status, family history, trouble with booze or the law, etc. — with contributions from Dallas (**Scott Davis** and **Al Ellis**), from Houston (**Tim Headley**), from Lake Jackson (**Robert Newton**), from San Antonio (**Kris Taylor** and **Ray Weed**), from Texarkana (**James Halton**), and from **The Buchmeyer Court**.

## From the Trials of Buchmeyer

These things actually happened in cases I tried during the past six months. However, since appeals are pending, names of the witnesses and the attorneys will not be discussed *but the attorneys know who they are*.

### State Your Name

Q. What is your name?

A. Sam Kotun.

Q. How do you spell your name?

A. Kotun...(spelling)...K-O-T-U-N.

Q. And how did you pronounce that?

A. Kotun...like “*Coat un vest.*”

### Tell Me About Your Education

Q. How far did you go in school?

A. About 4 1/2 miles, both ways, every day.

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Q. Did you graduate from high school?

A. No, but I got right up to the 11th grade.

### Are You Married?

Q. Are you married?

A. No.

Q. So, what is your status?

A. Well, I’m single.

### What About Your Job?

Q. What were the duties of the vice-president of the Savings & Loan?

A. To help the president, I guess.

### Tell Me About Your Family

From **Tim Headley** of Houston (Baker & Botts), this excerpt from a deposition which also included questions about fertilized eggs.<sup>1</sup>

Q. How many children do you have?

A. One.

Q. And how old is that child today?

A. 20.

Q. Is it a boy or a girl?

A. Girl.

Q. She is full grown, I guess?

A. Yes.

As Tim noted, “Perhaps the changes in the age for drinking alcoholic beverages had confused the attorney as to what age meant the child was ‘full grown.’”

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From **Al Ellis** of Dallas (“Al Ellis, Lawyer”), this deposition excerpt which, as the saying goes, shows that while “everybody has to *be* somewhere, that doesn’t necessarily mean that they have to be *doing* anything”:

Q. All right, sir. You told me that your two children live with you; is that right?

A. My daughter and her husband are having problems, and she has been staying with me for about a month, just for the time being.

Q. I see.

A. My son has been with me always. He never married, and he’s been with me always.

Q. He’s lived with you from birth?

A. That’s right. I’ve kept him. He’s 28 years old.

Q. All right, sir. Is there anything wrong with him? Is he all right? He’s not sick or anything like that?

A. No. Lazy.

Q. Lazy? Okay. Thank you.

### Were You in the Military?

Also from **Al Ellis** of Dallas and also from the same deposition:

Q. How long did you serve in the Navy?

A. Four years and something....Nearly five years.

Q. Did you receive any medals, honors, distinctions?

A. Well, only just medals.

Q. What did you get?

A. They give them to everybody that....

Q. Campaign medals?

A. Just campaign, that’s all. I’ve never— No, Purple Heart or Bronze Star. I didn’t get wounded enough for that.

### What is Your Marital Status?

From **Scott L. Davis** of Dallas (Gardere & Wynn), this excerpt from the deposition of an officer of his client — being taken by **Doug Perrin** of Dallas (Brown McCarroll, etc.). Scott explains that his witness “was extraordinarily well-prepared” and that her answers about “her marital status were all that an attorney could hope for, succinct yet responsive, informative yet reserved.”

Q. State your name, please.

A. Charlotte.

Q. Full name?

A. Charlotte Johansen Franco.

Q. And where do you live right now?

A. In Clayton, MO.

Q. Your husband’s name?

A. I’m divorced.

Q. Okay. I’m sorry.

A. I’m not.<sup>2</sup>

Scott adds: The several minutes required for recovery “to allow the deposition to proceed gave us a welcome break from the tedious recitation of background facts with which all depositions seem to inevitably begin.”

### Working & Trouble with the Law I

From **Ray A. Weed** of San Antonio (Ball & Weed), these excerpts from the very first

deposition he took — some 28 years ago — in a personal injury case. Ray explains that the witness (the plaintiff) wore a “plastic name tag over his left pocket that simply said ‘Paul,’ much like you would find on an employee working in a retail establishment. *I knew it was a dead give-away that he was working somewhere.*”

Q. Have you worked any place since your accident?

A. No, sir.

Q. You’re saying you have not worked at all since your injury?

A. No, I haven’t been able to work.

Q. Then why are you wearing that name tag?

A. Oh, this? I wear it for purposes of identification.

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(Much later)

Q. Have you ever been arrested?

A. Yes, but I can’t be arrested anymore.

Q. Why is that?

A. Because I have a card that says I can’t.

Q. May I see it?

At this point, the plaintiff hands Ray a card “*issued by the San Antonio Police Department with the plaintiff’s name on it. Apparently this guy had been arrested on enough vagrancy charges that the police felt they had seen enough of him.*”

## Drinking & Trouble with the Law II

From **Kris Taylor** of San Antonio (Kris is officer administrator of Daniels & Daniels), these excerpts from the deposition of the plaintiff — in a case that was dismissed shortly after the deposition.

Q. Did you use any drugs or drink any beer this morning?

A. No. Only last night.

Q. Your mother says you have a drinking problem?

A. Yeah. *When I start drinking Budweiser, that is my problem. When I got mean [it] was the Budweiser. That is before I changed beer. I have problems with the beer. The Budweiser, when I drink, I get drunk fast and I get mad. If they told me something, I get mad and then I kick off. That’s why I left the Budweiser and started drinking the bottles.*

Q. You switched to the bottles of 44?

A. 44.

Q. When did you switch to 44?

A. About a year.

Q. A year ago you switched to *this type of beer called 44?*

A. Yes.

Mr. Frigerio: *Is it Colt 45?*

The Witness: It costs about 99 cents. Cheap.

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Q. The first time you were stabbed, though, that occurred while you were working for Mike’s Sprinklers?

A. Yes, sir.

Q. You don’t know the year?

A. I don’t remember the year, sir.

Q. Let’s go to the second stabbing. The second stabbing, you were stabbed in your neck?

A. Yeah.

Q. Who stabbed you?

A. It is a friend of mine.

## Will You Swear to That?

From **Robert J. Newton** of Lake Jackson (Davis, Newton & Davis), this excerpt from the deposition of a city official — who was being questioned about “the lease of city property and the official’s possible over-friendliness with business persons interested in leasing this property”:

Q. Have you ever had any business dealing with Mr. A?

A. No sir. I can answer the same question on Mr. B, Mr. C, and Mr. D also. I don’t think any of these people have even bought me a drink. They might have, but I don’t think they did. *I won’t swear to that, though.*

Q. I won’t ask you to swear to that.

A. *Because if they tried to buy me a drink, I would take it. And I will swear to that.*

Q. Okay.

## Tell Me About Your Injuries

From **James N. Haltom** of Texarkana (Hubbard, Patton, etc.), this deposition excerpt from a toxic tort litigation in East Texas:

Q. Did you ever have an X-ray of your brain on those occasions?

A. I got an X-ray on my head at one time.

Q. Was it negative?

A. Yes, sir.

Q. That was good news to you?

A. Oh, yes.

James adds:

“The questions seemed appropriate. The answers were dead solid in response. Amazingly, the deposition continued for an additional 200 pages.”

## From the Trials of Buchmeyer, Too

Again, these are Q & A’s that actually happened in some of my trials during the past six months:

Q. Now, shortly after this, Mr. F. drowned?

A. That’s what I understand.

Q. So he’s dead, now?

A. Yes.

Q. So he’s not here to tell his side of the story?

U.S. Attorney: Objection.

The Court (*wisely*): Sustained!

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Q. What did you do with the money you got from the land flip?

A. Bought a Mercedes 450 SL convertible.

Q. Why?

A. Well, it was a little less ostentatious than buying a Rolls Royce.

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Q. Is there a day in your life that you don’t remember what happened?

A. Yes.

Q. What day was that?

A. I don’t remember.

1. **Tim Headley’s** second deposition excerpt raises the question of whether the opposing attorney thought Tim’s client “might be in the business of selling fertilized *human eggs*”:

Q. What other new product lines have you developed at [the client]?

A. The — the product lines are — are just totally so varied and different. I think we have over 50 different — right now 50 different unique product lines from auto parts, to glassware, to ceramics, to fertilized eggs....

Q. Fertilized eggs, *are these animal eggs*?

A. Yes, correct.

Q. *Animal eggs*?

A. Yes, sir.

2. **Peter S. Chantilis** of Dallas asked why a couple, whose marriage “was sort of dead on the vine,” did not get a divorce. The response: “*the only reason one hasn’t given the other one a divorce is they were afraid it would give the other pleasure.*”

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*If you have a contribution to this column, write Judge Buchmeyer at: U.S. District Court, Northern District of Texas, 1100 Commerce St., Dallas 75242.*