

*Depositions v. Trials:*

# Blah, Blah, Blah

By Jerry Buchmeyer

This month's contributions are from Beaumont (**Kent Chambers**); Dallas (**Bretton Gerard**, **Stephen Gugenheim**); Houston (**Thomas Paul**); Kerrville (**Thomas Terrell**); Waxahachie (**Ron Bunch**); Wharton (**Rob Ramsey**); and Wichita Falls (**Judge Tom Bacus**) — plus a special contribution from Orlando, FL (**Bryan Capps**).

## Did I Really Ask That?

From **Bryan L. Capps** of Orlando, FL (Bull & Associates), this excerpt from the deposition of a personal injury plaintiff in a premises liability case — who, as Bryan notes, “was quite cautious in her answers to my questions”:

Q. What else did they take X-rays of, other than your knees — or your knee or *your heads*?

A. *Heads*?

Q. Your head. *In fact, you only have one head; correct?*

A. Right. And that was — *I can't remember.*

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From **Judge Tom Bacus** of Wichita Falls (County Court at Law Number Two), this excerpt from a hearing to probate the will “of a client’s only remaining parent.” Judge Bacus explains that the attorney — whose practice consists primarily of family law — followed “the usual litany of questions necessary to prove the death facts and admission of the will to probate,” and closed with these questions:

Q. Now, Mrs. James, no other child was born to or adopted by the deceased?

A. No.

Q. *And no child is expected?*

A. *That's right.*

As Judge Bacus notes: “Sometimes it’s just hard to shift gears.”

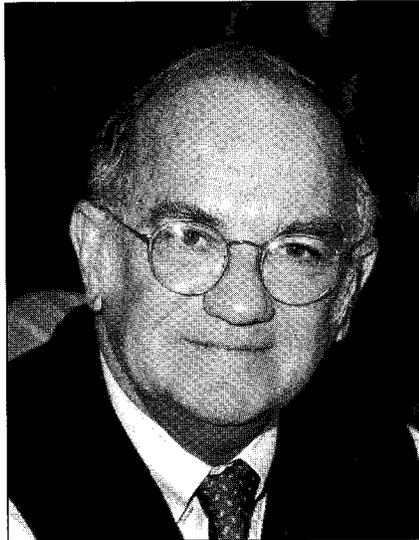
## Who Said Vaudeville Was Dead?

From **Ronald E. Bunch** of Waxahachie, this excerpt from a criminal trial: Ron is questioning the deputy sheriff about his appearance in a line-up.

Q. And do you remember how you were dressed [for the line-up]?

A. Yeah, dress slacks and a grey short-sleeved shirt, if my memory serves me correctly.

Q. Did you have a Texas Law Enforcement belt buckle on?



A. Yes, sir, I did.

Q. And it had the State Seal, so it’s some sort of law enforcement belt buckle; is that right?

A. Yes, sir.

Q. *You said you removed it prior to going in the line-up?*

A. Yes, sir.

Q. *I thought you said the other day you had to keep your hands in front of you?*

A. *I did. I had to hold my pants up, sir.*

## Did He/She Really Say That?

From **Bretton C. Gerard** of Dallas (Gerard, Myrin & Singer), this excerpt from the deposition of the defendant in a dispute involving ownership of an apartment complex: the plaintiffs (Bretton’s clients) had a contract to sell the apartments — but the defendant contended that he had an interest in the property and a contract to sell them to a third party for a higher price.

Q. Do you know what the property appraised for?

A. The only thing I know is there’s been an offer made on it for \$1.5 million.

Q. By who?

A. By an investor in Dallas. This is why I objected to the [plaintiffs] selling it for the \$500,000 — this has been the basis of the whole suit.

Q. What is the name of the investor in Dallas willing to pay \$1.5 million for a property that has been appraised for \$500,000?

A. My memory — I don’t have it, but my memory will increase if my equity position increases.

Q. What does that mean? What does that mean?

A. It means I cannot tell you right now.

Q. No. What does it mean when you say, “My memory will increase when my equity position increases”? *Explain that to me. I don’t understand what you’re saying.*

A. *Neither do I.*

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From **Thomas S. Terrell** of Kerrville,<sup>1</sup> this excerpt from the deposition of the wife in a custody case:

Q. Your husband says you smoke marijuana. Is that true?

A. I quit.

Q. Why did you quit?

A. My attorney told me I would have to, if I wanted to get custody.

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From **Stephen J. Gugenheim** of Dallas (Gardere & Wynne), two segments from the deposition “of the plaintiff in a bad faith case” — that was taken by **Michael Quinn** of Dallas (Zelle & Larson). Stephen notes: “The first segment adds new meaning to the word ‘literal.’”

Q. What about Dr. Swink? Do you think you were completely up-front with him?

A. Yes, sir.

Q. Though you didn’t tell Dr. Swink about the injury at Champion Auto Parts?

A. That’s right. I didn’t want to get fired.

Q. Do you remember whether Dr. Swink took a medical history from you?

A. I don’t remember.

Q. *Had you ever seen Dr. Swink before?*

A. *Yes, sir.*

Q. *When?*

A. *When he was playing football at TCU.*

Stephen admits that “the second segment, well, what else is there to say?”

Q. But you don’t go see Dr. Lee periodically, or now and again, for your back problem?

A. *There’s nothing he can do. He’s an M.D.*

## The Expert and the Tooth Fairy

From **Robinson C. Ramsey** of Wharton, this excerpt from the deposition of an econ-

omist — taken by **Darryl Carter** of Houston (Soules & Wallace):

Q. Well, let me ask you this: You've determined that in your best judgment to fully compensate Mr. White for the present value of his future loss of projected earning capacity, Mr. White would have to be paid approximately \$123,000 in cash today, true?

A. Yes.

Q. Now, if *the tooth fairy* flitted into the room and increased that number by 25 percent and sprinkled that additional \$35,000 on Mr. White as additional compensation for the present value of his projected future lost earning capacity, then according to your model and your calculations that additional \$30,000 would be overcompensation to Mr. White, wouldn't it?

A. If the tooth fairy gave him an extra \$30,000....If the tooth fairy did it, then that would certainly make him re-evaluate his belief in the tooth fairy.

### Bad Questions and Good Answers

From **Thomas D. Paul** of Houston (Fulbright & Jaworski), this excerpt from a deposition in a patent infringement case — where the questions are being asked by **Bryan Medlock** of Dallas (Richards,

Medlock & Andrews):

Q. Okay. What did you do to prepare for your deposition today?

A. Took a shower.

Q. Well, that's a good answer to a bad question.

Mr. Paul: Best answer we got all day, right?

Mr. Gatto:<sup>2</sup> We all appreciate it.

Mr. Medlock: Let me see if I can ask a better question.<sup>3</sup>

### "Blah, Blah, Blah"

From **Kent Chambers** of Beaumont (Strong, Pipkin, etc.), this "two-fer": an expert from the plaintiff's *deposition* in a car/motorcycle accident case that was used at *trial*.

Reporter's note: Whereupon there was an interruption, after which time the deposition continued as follows:

Mr. Chambers: What was his last answer?

Mr. Watson: Lighting conditions. He's saying no natural light.

Mr. Chambers: Right....Read me the rest of his answer.

Reporter's Note: Whereupon the following answer was read back by the court reporter as follows:

The Reporter: Answer: But the lighted streets, the buildings had lights on them, *blah, blah, blah*.

Mr. Chambers: But I didn't hear the rest of that.

The Reporter: That was it. That was the very end.

Mr. Chambers: "*Blah, blah, blah?*"

Mr. Watson: "*Blah, blah, blah.*"

The Reporter: "*Blah, blah, blah.*"

Mr. Chambers [to Plaintiff]: Is that what you said?

A. Yes, sir. Meaning, "*et cetera, et cetera, et cetera.*"

Q. Okay. I just wanted to make sure.

Kent, of course, couldn't resist this suggestion: "Based upon this excerpt, it appears that your column could be appropriately re-named '*Blah, Blah, Blah.*'"

1. **Thomas Terrell** (Kerrville) enclosed a *classic typo* as his second contribution — a pleading in a divorce case which reads: "These ledgers [to be used by the husband's accountant] are voluminous computer printouts....the best evidence of the transactions shown in the ledger are not the ledgers. The ledgers are mere *calculations.*"

2. **Jim Gatto** of Baker & Botts (Washington, DC office), who represented another party in this patent case.

3. **Thomas Paul** adds this sidelight: "After the deposition was over and we were off the record, Bryan again, in his inquisitive nature, asked the witness what he was going to do now that the deposition was over and the witness replied, "Take another shower."

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