

Depositions v. Trials:

Without Probable Cause

This month: Contributions from Dallas (Todd Tinker); Fort Worth (Judge Catherine Adamski Gant, Don Buckman); Greenville (Joe Weis); Houston (Michael Sutton); Richmond, VA (Burke McCormick) — and from The Buchmeyer Court.

From the Trials of Buchmeyer

No one is safe from “et cetera”, it seems. These excerpts are from criminal cases (bank fraud, drugs, interstate transportation of stolen trucks) that I tried during the past six months.

Q. Let me show you these minutes of meetings of the board of directors. Is your name in there anywhere?

A. I don't know.

Q. Well, have you ever seen these minutes before?

A. I have now. You just showed them to me.

Q. As an expert, what steps do you take in making an appraisal of real property?

A. Well, first you make sure you're on the right piece of property.

Q. Did you build a house for her daughter?

A. Yes, it was a marginal home.

Q. What kind?

A. Marginal. You know, it came unassembled. And I put the walls together and then the roof. You know, marginal.

Q. Do you mean “modular”?

A. Yes, that's it. I've been having a little trouble with my wife being here.

A. The motels I took over from the Savings & Loan were not in good shape. They had bug drusts almost every night.

Q. You had ...

A. Drug Busts! I mean we had drug busts.

Q. How did Juan refer to Jose?

A. I believe he called him “El Cabaron.”

Q. What does that, “El Cabaron,” mean in English?

A. It means, The “Big Man” or The “Big Head.”

Q. So, did Juan call Jose that because he was the “Big Head” or “Big Leader” of the Ortiz drug organization?

A. No. I believe it was because he had a big head.¹

By Jerry Buchmeyer



Did He/She Really Say That?

From Judge Catherine Adamski Gant of Fort Worth (141st District Court), this excerpt from one of her recent trials:

The Court: You may stand down. Do you have any other witnesses?

Pro Se Plaintiff: No, I don't.

The Court: [As pro se plaintiff resumes seat at counsel table] Are you resting now?

Pro Se Plaintiff: I'm fine. Thank you.

Judge Gant adds: “The plaintiff seemed so impressed by my kindness, she didn't understand why I then granted the motion for directed verdict in my next breath.”

From Todd H. Tinker of Dallas (Nye & Associates) — who is “pleased as punch” to have been able to come up with an entry for “et cetera” at such a tender age — this excerpt from his deposition of the plaintiff in a personal injury case:

Q. Do you have children?

A. Yes, I do.

Q. I didn't ask. How many?

A. Two and a half.

Q. I don't think I'll ask the next question.

Life Imitates Lawyer Jokes

From Joe Weis of Greenville (Pemberton, Green, Newcomb & Weis), this excerpt from a recent slander trial before Judge Paul Banner of Hunt

County. Joe and his partner, Larry Green, represented the defendant, the chair of the board of a local bank. The plaintiff, a doctor, is testifying on direct examination by his attorney:

Q. What did he tell you that [the defendant] had been saying about you?

Mr. Weis: Objection. Hearsay.

Judge Banner: Overruled.

A. He said, “He has been saying the usual things about you that he says about everybody. He called you a lawyer — a liar, and a thief, and a crook.”

[laughter]

Judge Banner: Members of the jury, I want to instruct you to disregard anything about a lawyer. I am still a lawyer. Try again, Doctor.

A: I don't think I can recover from that.

Joe adds: “Remarkable as it may seem, the jury found that the defendant had not slandered the doctor.”

Did I Really Hear That?

From Donald K. Buckman of Fort Worth (Cantey & Hanger), this excerpt from his deposition of the plaintiff in an age discrimination suit:

Q. Was it permissible for you and your employees to use the 1065 photocopier if the others were busy?

A. We were told to use it as little as possible and only onesies and twosies when it was necessary. That's what I was told.

Q. Somebody told you to use the 1065 only on Monday and Tuesday?

A. No, no, no. I was told to use that machine for onesies and twosies. That's the way it was put to me, onesies and twosies.

Q. I misunderstood what you said.

A. I've got to have a drink.

Q. Let's take a break.

From J. Burke McCormick of Richmond, VA (Little, Parsley & Cluverius), this excerpt from a deposition he took “in a construction lawsuit between the developer of a large apartment complex (my client) and the general contractor on the project.” The witness, a vice-president of the defendant, is being asked about possible bribes of a county building inspector.

Q. Did you ever give anything of value to any of those inspectors that came out?

A. Yeah.

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- Q. What did you give him?
A. I gave a guy a refrigerator.
Q. A refrigerator out of one of the units?
A. Um-hum. No, not out of one of the units. Hell, no. I ordered it.
Q. Do you think that is proper?
A. That was the way they had to play with this guy.
[Later]
Q. Now, a little bit further, it says, "Pay-off for electrical inspector." Do you see that? "Pay-off for electrical inspector."
A. That's the same guy.
Q. The fellow that got the refrigerator?
A. Yes, that's the same guy that got the refrigerator. I bought him a six-pack of beer and he wouldn't take it. He said he wanted a refrigerator. So I drank the beer.

More From the Buchmeyer Trials

From an environmental criminal trial (the charges were illegal dumping of hazardous wastes):

- Q. Isn't it a fact that ABC Corporation converted to non-lead glaze in 1990 — two years before your company?
A. That is not a fact — and it's not true, either.

- Q. Now, who was the next supervisor you had at the [defendant company]?
A. Jerry ... Jerry ... I know it was Jerry something or other ... Jerry ... maybe Jerry Buchmeyer or something like that.

From a marijuana/cocaine trial:

- Q. Now, you testified that you never saw the defendant selling drugs or doing a drug deal?
A. That's right.
Q. Well, just how good is your eyesight?
A. I'm legally blind.²

From a criminal trial involving the interstate transportation of stolen industrial equipment (forklifts, frontloaders, etc.), where the defendant's father is testifying about their meeting at a restaurant with FBI agents:

- A. Well, James thought they were accusing me of stealing equipment, so he said, "We're just going to get up and leave."
Q. What happened then?
A. One of the FBI agents shouted, "We're going to get you."
Q. And ...
A. James stood up and dumped his glass of milk on the agent.
Q. Did James hit him with the glass?
A. Oh, no. He just poured the milk very carefully over the agent's head.

From a competency hearing in my court

concerning a defendant who was arrested while he was methodically breaking every glass door and window on the ground level of the federal courthouse in Dallas.

Def. Attorney: My client would like to inform the court of implants that have been put in his body...

The Court: Okay, Mr. Gatlin. What would you like to tell me?

Defendant: The reason I did what I did is for sometime I have been tortured. I've been mutilated. I've been extracted from God and justice. The government, the veteran's administration, the CIA, and various defense departments colluded in gross criminal improprieties against me. It came to a point that I couldn't stand it any longer. I brought a cease and desist suit in federal court in San Diego, but they gave me little or no due process....

Prosecutor: What were they doing that you wanted them to stop doing? Details, the judge wants to hear some details.

Defendant: I've been tortured, they were poisoning me, injecting caustic material in my veins. Excruciating migraine headaches, nausea, burning of the eyes, uncontrollable bowels, visceral eruptions all over my body. Electrical devices have been surgically implanted — all these are telemetrics — I've got leads right here with nuclear powered battery packs. I've got implants in my teeth ... I've got maxillary sinuses, I've got enormous wiring in there attached to my genital nervous system.

Prosecutor: Okay. And someone is transmitting a signal which causes your sinuses to act up and you get headaches. Anything else?

Defendant: Anything that they can do. They ... they, sometimes ... well sometimes they make me have an erection without probable cause.... And that's all I have to say, your honor, and I appreciate you giving me the floor to say it.

1. Also from my *El Cabaron/Big Head* drug trial:
Q. When did you first meet Raul?
A. The first time I met him was at the social security office.

Q. And that was the first time you ever saw Raul?
A. Yes, it was. But before then, I met Raul at the *La Retama Restaurant*.

2. From the same marijuana/cocaine trial:
Q. Will you answer my questions "yes" or "no", please?
A. Uh-huh.³

3. From another cocaine/marijuana trial:
Q. What did the DEA agent say to you after your arrest?
A. He told me there was marijuana in my truck.
Q. What did you say?
A. I said ____!!