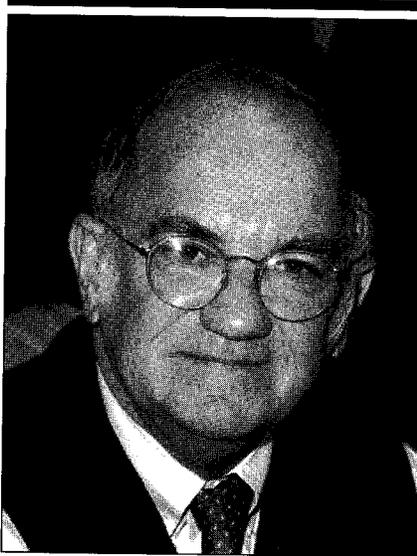


Depositions v. Trials:

et cetera Happens

By Jerry Buchmeyer



This month, the “et cetera” contributions are from Amarillo (**Paul Williamson**), Conroe (**Stephen Schlacks**), Dallas (**Pamela Muehlberg** and Bankruptcy Judge **Steven Felsenthal**), Fort Worth (**John Penn**), Grand Prairie (**John Wright**), Houston (**David Willis** and Anonymous at **Williams, Blizzard**), and Atlanta, GA (**Kenneth Horton**).

Do You Swear to Tell the Truth?

From **Kenneth T. Horton** of Atlanta, GA (Phillips & Reid) — Ken was a 1983-85 law clerk for U.S. District Judge Robert Porter in Dallas — this “*Attempted Deposition*” taken by “lawyers with a total of more than 75 years legal experience between them, who had never seen” anything like this before:

Mr. Morgan: Will you swear in the witness.
The Court Reporter: Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Green: No.

The Court Reporter: No?

Mr. Morgan: Will you affirm that you will tell the truth?

Mr. Green: No.

Mr. Morgan: Any particular reason why not?

Mr. Green: I don't like this business.

Mr. Morgan: I've never had this happen before.

Mr. Tanner (wisely): Let's go off the record a moment.

(Later)

Mr. Stancil: For the record, would you just repeat what you just told us in your own words for the record as to why you will not cooperate today.

Mr. Green: *Because my experience has been that judges are all crooks and lawyers are all crooks and the whole law system is crooked.*

Mr. Tanner: Do we need to go further now?

Mr. Morgan (wisely): I don't think so.

From the Bankruptcy Court

From **John Wright** of Grand Prairie (Wright & Associates), this excerpt from a hearing before U.S. Bankruptcy Judge **Steven Felsenthal** (of Dallas) — involving

the question of whether or not the bankruptcy had filed a supersedeas bond in a state court action:

Debtor's Attorney: This matter was heard by the court in November, and the court announced its order concerning the establishment of an escrow account and the monthly deposits to that escrow account of a sum of money to act as adequate protection to the creditors in this case in lieu of a *supercilious bond* being posted in the state court....

Judge Felsenthal: When this case was filed in August, as I recall, the primary reason was because of posting of the *supercilious bond* would have rendered the debtor insolvent. ...[But] there was no *supercilious bond* filed.

John Wright added: The *supercilious bond* created by this Classic Typo would, presumably, prevent the debtor from being “haughtily contemptuous in character or demeanor [or from] having an air of contemptuous superiority or disdain.”

And from Bankruptcy Judge **Steven Felsenthal**, this poignant prayer for relief from the response of the debtor, the *Mucky Duck* Restaurant, to a motion for relief from the automatic bankruptcy stay:

WHEREFORE, PREMISES CONSIDERED, MUCKY DUCK (ADDISON), INC., prays that this Court not snap the neck of this ugly duckling but allow it to develop into the swan it was meant to be by granting it the additional time necessary to explore the new candidates for knighthood; for mercy; and for such other relief to which it may be justly entitled.¹

Did He/She Really Say That?

From **Stephen M. Schlacks** of Conroe (Hope & Causey), this excerpt from the plaintiff's deposition in a slip and fall case:

Q. Okay. Your feet went out from under you when you hit a slick spot, correct?

A. My one foot went under the cabinet and the rest of my body just kept going, and that's what broke my foot.

Q. You broke your left ankle?

A. Broke both ankles and broke the center bone. You got the medical report, didn't you?

Q. *I thought you only broke your left ankle.*

A. *Well, there's two ankles on the left foot, inside ankle and outside ankle.*

Q. Okay. Let me get this straight, then. Your right foot did not get anything —

A. Didn't hurt a thing on the right foot.

Q. Broke your left foot?

A. Broke my left foot. Broke the center bone and busted two ankles, the inside ankle and the outside ankle.

Q. All right. *So your testimony is you have four ankles, correct?*

A. *That's right.*

From someone at Williams, Blizzard & McCarthy in Houston, this excerpt from the youngest four-star admiral in U.S. history (and the youngest chief of Naval Operations):

Q. *You were the youngest officer ever to be promoted to a rear admiral?*

A. *Yes, ma'am.*

Q. *What does a rear admiral do?*

A. *In the ancient navy the rear admiral was the one who brought up the rear.*

Q. *Is that why he was called the rear*

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admiral?

A. *But it's really not — the baby rank among admirals. Don't ask me what a vice admiral does.*

From **David A. Willis** of Houston (Willis & Associates), this excerpt from the deposition of the defendant in a rear-end collision — with the explanation the defendant's "overall attitude helped get this case settled for probably more than my client's injuries would have dictated":

Q. Now, all three lanes as you came on top of that hill were blocked, weren't they?

A. No.

Q. Only yours?

A. The right lane was congested with traffic. The other two lanes were still flowing.

Q. Okay. And you never tried to move over?

A. I couldn't, there were cars beside me. What am I supposed to do, push the other cars out of the way?

Q. I don't know; what were you supposed to do? *Is that what you'd do today if the same occurrence happened?*

A. *No. Today I believe I'd drive over the guardrail and kill myself.*

Q. That's your answer —

A. That's it.

Q. — under oath?

A. Right.

God Only Knows

From **Pamela Muehlberg** of Dallas (Pam is a legal assistant with Touchstone, Bernays, etc.), this excerpt from a personal injury deposition being taken by her boss, **Webber W. Beall, Jr.:**

Q. (By Mr. Beall) See, I want to know what Mr. and Mrs. Goodnight did or did not do that caused an injury to your child.

A. I don't know.

Q. Well, if you don't know what Mr. and Mrs. Goodnight did or did not do that caused injury to your child, who would know?

A. *God's the only one.*

Q. *Well, I can't take God's deposition.*

Doing Voir Dire

From **John D. Penn** of Fort Worth (Haynes & Boone),² this voir dire excerpt from a criminal trial before **Judge John Creuzot** of Dallas (Criminal District Court No. 4):

Q. Now, this is the definition of *voluntary manslaughter*: An intentional killing that occurs while the defendant is under the immediate influence of sudden pas-

sion arising from an adequate cause ... such as when a spouse's mate is found in a compromising position.

A. Juror: See, I have a problem with that passion business. During my first marriage, I came home and found my husband in bed with my neighbor. *All I did was divorce him. I had no idea I could have shot him.*

et cetera Happens

From **Paul H. Williamson** of Amarillo (Burdett, Morgan & Thomas), this is an excerpt "from the deposition of an elderly non-party witness;" **David Lobingier** of Fort Worth was the opposing attorney.

Q. (By Mr. Williamson) Mrs. Bradshaw, I want to impress upon you the formal and legal significance of what you are doing today. You have just been placed under oath and the testimony you give today is just as binding as if you are sitting in the courtroom, in the witness stand, and testifying in front of the judge and the jury. Do you understand that?

A. *Yes, I have watched Perry Mason all of my life.*

(Later)

Q. Is [this] the subpoena and notice of deposition which you received requiring your appearance here today?

A. Yes, uh-huh.

Q. Are you a plaintiff or a defendant in this lawsuit, so far as you know?

A. A plaintiff, I guess. *What am I?*

Q. Are you a party to this lawsuit?

A. No, I am not. I am not a party to the lawsuit.

Q. You are simply a witness?

A. A witness *or something.*

(Later)

Q. And also, will you speak up loudly enough so that the court reporter can hear what you are saying?

A. Okay.

The Witness: Am I speaking loud enough?

Court Reporter: You're fine.

Q. (By Mr. Williamson) You're doing real well.

Mr. Lobingier: *You're doing so well, I think that part of this ought to be submitted to Judge Buchmeyer in Dallas for inclusion in the Bar Journal!*

1. The *Mucky Duck* pleading was filed (respectfully, of course) by **Herman A. Lusky** of Dallas (Johnson & Steinberg).
2. He was the first one to send me this clipping from the Oct. 31, 1993 "Weathervane" column of the *Dallas Morning News*.

Jerry Buchmeyer is a federal district judge for the Northern District of Texas.