

*Depositions v. Trials:*

## The Cheapest Chickens in Town

This month's contributions are from Austin (**Carol Bourgeois, CLA**), Dallas (**Blake Bailey, Kerry Fitzgerald, Jay David Hartnett**), Fort Worth (**Don Buckman**), Galveston (**Judge Susan Baker Olsen**), Houston (**Jaki Jones**), Sulphur Springs (**Larry Blount**) — and from Boulder, CO (**Norma Sierra**) and Reno, NV (**William Kendall**).

**Thanks for Shooting Me**

From **Larry C. Blount** of Sulphur Springs (Powers & Blount), this excerpt from a temporary custody hearing; the witness was the mother of the husband (represented by **Robert Newsom**) and Larry, by his cross-examination, was "trying to show the court that the mother was dangerous and should not be around the children."

Q. Ms. Crosby, you testified earlier that you keep these children while your son is working, is that correct?

A. That's correct.

Q. Ms. Crosby, *isn't it a fact that you are a violent and dangerous person?*

A. No, that's not true.

Q. Ms. Crosby, *isn't it a fact that you shot a man several years ago?*

A. *Well, that's true, but he deserved it, and not only that, but he thanked me for it later.*

Q. He thanked you for shooting him?

A. That's right.

(... After a very long pause)

Q. Ms. Crosby, I know I'm going to hate myself for asking this question, but why did he thank you?

A. Because when they dug the bullet out they found some cancer and removed it also. Not only did he thank me but he later hugged my neck.

Mr. Newman: *Buchmeyer will love this one.*

**Is That Clear?**

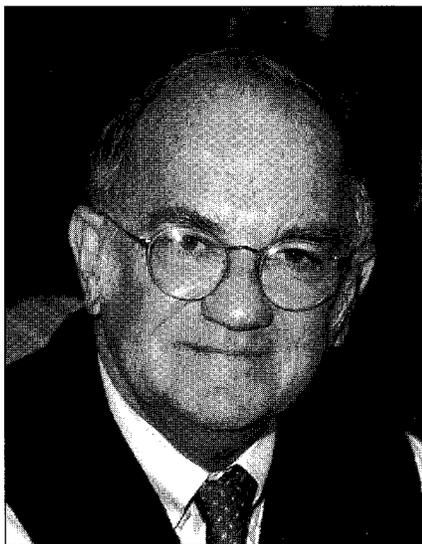
From **William R. Kendall** of Reno, NV (Laxalt & Nomura), this excerpt from his deposition of a safety engineer in a slip and fall case:

Q. Were you aware that Mr. Lowe testified that he slipped off of one of the stairs and fell down the stairs?

A. No, I don't know that.

Mr. Cole: He doesn't know what any of

By Jerry Buchmeyer



his testimony is.

The Witness: I have no knowledge of that.

Mr. Kendall: *I don't know that he doesn't know that.*

Mr. Cole: *He knows that, you don't know it.*

Mr. Kendall: *I don't know that he doesn't know that.*

Mr. Cole: Okay.

Mr. Kendall: Is that clear?

Mr. Cole: Clear enough. I'm not going to touch it again.

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From **Blake A. Bailey** of Dallas (Vial, Hamilton), this excerpt from a deposition taken in some kind of case by an attorney from somewhere ("the names have been changed to protect the innocent and comply with a protective order").

Q. Neither the names ABC Company nor DEF Company or their potential purchases was a big surprise, right?

A. Right.

Q. That's what lawyers call a compound question, because I threw in two different things, and *I want to be clear here*. ABC was purchasing certain assets was not a surprise, and DEF was purchasing certain assets was not a surprise, correct?

A. Correct.

**Classic Typos**

This month's Classic Typos are from 1) **Donald K. Buckman** of Fort Worth; 2) me, again; and 3) **Norma Sierra** of Boulder, CO.

1) From a pre-hearing notice by the California Department of Labor, these "truly onerous conditions for obtaining a continuance":

TO CHANGE DATE, TIME OR PLACE OF HEARING

Changes in date, time or place of hearing ordinarily will not be granted. The Hearing Unit may, in the exercise of *sound desecration*, grant a continuance upon a showing of extraordinary circumstances.

As Don wisely notes, any appeal from the denial of a continuance has to be for "abuse of desecration."

2) From a notice of appeal filed in my court by defendant Thomas Boozer, "In Propria Persona":

PROOF OF SERVICE

I certify that a true and correct copy of this Notice of Appeal was served by delivery upon Plaintiff on \_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
*Servant*

3) "In transcribing an unemployment compensation hearing, my secretary thought the oath" given to the witness was: "Do you *seldomly* swear..."

**A Three-Fer**

From **Jay David Hartnett** of Dallas (The Hartnett Law Firm), three deposition excerpts — the first two from will contests and the third from "the deposition of an attorney about a document" he prepared:

**Excerpt One: Where Did Miss Wilson Go?**

Q. Anybody else take Mr. Witte's place?

A. No, he's still there.

Q. Do you know where Miss Wilson went?

A. She went to heaven.

Q. She died?

A. Yes.

Attorney Two: Are you sure about where she went?

The Witness: Well, that may be a question that I am not expert to —

Q. Is that a statement of opinion?

- A. I'm not going to get into that.
- Q. (Wisely) Okay.  
(... Later in the same deposition)
- Q. Well, there are various trusts that will go on for a substantial length of time, aren't there?
- A. Well, really, there's Mrs. \_\_\_\_'s trust which runs for her lifetime.
- Q. *Do you know how long that is?*
- Attorney Two: How could he?
- A. I don't have a medical report on her as late.

#### Excerpt Two: Did He Receive a Raise?

- Q. How many weeks notice did Mr. Stone give Ed? Do you recall?
- A. Two or three. I don't remember.
- Q. *Did Ed receive a raise* during his tenure of employment?
- A. No, *he received Leo.*
- Q. Excuse me?
- A. I said he received Leo to help him.
- Q. Who was Leo?
- A. The farm boy.

#### Excerpt Three: The Lawyer-Witness

- Q. There's nothing ambiguous about exhibit three, is there?
- A. The English language and just about all other languages have ambiguities that are inherent in them but I don't think this is an unusually ambiguous document.
- Q. That wasn't my question. Is exhibit three, [the] document [you] prepared, ambiguous in its terms?
- A. And I said that all documents have some degree of ambiguity.
- Q. That doesn't answer my question.
- A. Then I'm objecting to your question as calling for an impossible statement on my part, because if you're asking me to say there's no ambiguity, all documents have some ambiguity.
- Q. Well, state to me, sir, the ambiguity in exhibit three.
- A. No ambiguity strikes me in looking at it.

### Man's Work Is Never Done

From **Judge Susan Baker Olsen** of Galveston (306th Family District Court), these two excerpts from a recent custody trial:

#### Excerpt One: Questions By Husband's Attorney

- Q. Has Mr. Jasper ever hurt you?
- A. He has shoved me.
- Q. What is that?
- A. Pushing.
- Q. He pushed you?
- A. Yes.
- Q. *Isn't that ordinary with people, I mean, that are married?* He didn't hurt you with

- his fist or hit you or bruise you, did he?
- A. No, he never hit me with his fist.

#### Excerpt Two: Closing Argument By Wife's Attorney

Who's going to take care of the child when he's off working? No plan. And I'm telling you I've taken care of children when my wife was in the hospital and trying to run around and try cases and work. It's rough. *You women don't realize how rough it can be on men.* You worry about your wife, worry about the kids. I've hired women to come in and take care of things. Once [the woman I hired] called me and said the dishwasher won't work ... I had to make a trip all the way out there to get that dishwasher working. It's a pain.

He's not set up to take care of this child. He has told us no plan.

#### Pleading of the Month

From **Carol A. Bourgeois**, CLA of Austin (Carol is a paralegal with Babb & Bradshaw), this jury demand filed in Travis County by **Eric Yollick** of The Woodlands:

COMES NOW M&M CONTRACTING, INC., Defendant, and states that, pursuant to the Constitution of our beloved United States of America and pursuant to the Constitution of the Great, Sovereign, and Mighty State of Texas, the Lone Star State and Home of the World Champion Houston Rockets, M&M CONTRACTORS demands a trial by a jury of its peers and declares that all fees, which the learned Rules of Civil Procedure and the laws of our beautiful State, Home of El Capitan in the West and Piney Woods of the East, have been paid.

#### The Cheapest Chickens in Town

From **Jaki Jones** of Houston (Jaki is the secretary of **Philip S. Gordon** of Gustafson & Venzke), these excerpts from the deposition of Mrs. Jimmie Johnson — the plaintiff's best friend, who saw her (Mrs. McCoy) being assaulted in a grocery store parking lot in Houston. Jaki explains that while the plaintiff's deposition was being taken (*in her home*), Mrs. Johnson was in the next room "chatting with the deponent and the attorneys about where to find the cheapest chickens in town." Then, after the other defense attorney had questioned Mrs. Johnson in her deposition, Phil Gordon just could not resist:

- Q. [Mrs. Johnson,] I represent the other defendants in this case and I have a few questions for you, okay?
- A. Okay.
- Q. If you'll bear with me. One of the questions I've been dying to ask you because I've been told you're an expert, is *where*

*can I find — well, where is the best place to buy chicken breast this week?*

- A. The best place to buy chicken breast this week? *Give me my purse.*
- Q. No. No. I'm teasing. Do you really have that list? We were told about your list.
- A. Uh-huh. I bet you if it's on sale, I got it.
- Q. You know? Okay. That's amazing.
- A. It's ninety-nine cents a pound somewhere.
- Q. Well, Mrs. McCoy was telling us about that earlier and I thought she was exaggerating when she said you had — you went for that list, didn't you, when I asked you that?
- A. *I go to college on the sale papers.* With all the sale papers, I get in the middle of my bed, I write down. My first is McBrides, Sellers, Kroger's and Milliton's is over on Clinton; and I write that down and then I compare.
- Q. No kidding?
- A. And the other day Fiesta had chickens on sale for 19 cents.
- Q. Well —
- A. [Mrs. Johnson, *like most experts*, continues at Great Length, with "the best prices" for coffee, eggs, potatoes, etc.] Plaintiff's Attorney: *You asked. You did it.*
- Mr. Gordon: I just asked about the chicken breast, but I got it.
- Plaintiff's Attorney (correctly): *You can't object as nonresponsive.*
- Mr. Gordon: I'm not. I'm loving this. This is great. We just pay for another page for it. I want to hear about this afterwards. She's working by the page.

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1. This "Who Said the Federal Sentencing Guidelines Were Tough?" contribution is from **Kerry P. Fitzgerald** for Dallas: DWI SENTENCES ABROAD

Australia: The names of the drivers are sent to the local newspapers and are printed under the heading, "He's Drunk and in Jail."

Malaya: The driver is jailed, and if he is married, his wife is jailed, too.

United Kingdom, Finland, and Sweden: Automatic jail term of one year.

South Africa: A 10-year prison sentence, the equivalent of a \$10,000 fine, or both.

Turkey: Drunk drivers are taken 20 miles from town by the police and forced to walk back, under escort.

Bulgaria: A second conviction results in execution.

El Salvador: Your first offense is your last. Execution by firing squad.

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

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