

# Depositions v. Trials: Skinny Chickens and Low Fat Eggs

This month's contributions are from Amarillo (Joe Marr Wilson, Jamie Vandivere), Austin (James Bannerot), Beaumont (Judge James Mehaffy), Dallas (Dan Cutrer, Clifford Friedman, Laura Heisz, Judge Jeff Kaplan, Scott Night, Melissa Ruman Stewart), Euless (Charles Curry), Fort Worth (Judge Catherine Gant, Judge Michael Schattman), Houston (David Bleisch, Richard Ellison), Longview (Ken Walker), and Shreveport (Bryce Denny).

## The Hoover Maneuver

From Dan Cutrer of Dallas, this excerpt from the trial testimony of a "Most Sincere witness [who] had been hired as a 24-hour 'nurse' to a gentleman with various medical problems."

Q. But you have no training?

A. I have no certificate to prove it.

Q. I'm sorry?

A. I have not — I guess they give certificates. I don't know how to do that, but I've saved lives.

Q. How did you save lives?

A. I've saved my children's life before.

Q. How was that?

A. One time, when one of my boys was choked on ice, I was behind him and give him — I guess it's called the Hoover, up under the rib cage to cough it up.

Dan adds: "The record doesn't reflect the lengthy pause during which the lawyers bit their tongues, covered their faces, and tried their best not to laugh out loud!"

## Blame It on the Lege'

Wow! The "there is no *unwritten oral agreement*" typo reported in the May 1996 "et cetera" resulted in a veritable Plethora of Protests from transactional attorneys — including (1) Clifford Friedman of Dallas (Smith, Stern & Friedman), (2) Scott Night of Dallas (Haynes and Boone — *Hi David!!*), (3) Melissa Ruman Stewart of Dallas (Donohoe, Jameson & Carroll), (4) Charles Curry of Euless (Shannon, Gracey, etc.), and (5) David Bleisch of Houston (Jackson & Walker).

As they all pointed out, my lampooning should be aimed at the Texas Legislature, not a bumbling transactional lawyer. As

Charles Curry explained:

It has always seemed funny to a lot of us, but the "no unwritten oral agreements" is the *handiwork of the Texas Legislature*, and not just some attorney who did not know any better. See *Texas Bus. & C. § 26.02(e)*. The language quoted in your column appears in virtually every "financial institution" loan document generated since Sept. 1, 1989.

So, as Molly Ivins would probably say, "let's *Blame it on the Lege'*, not on the transactional lawyers."

## The Oldest Profession

From Ken Walker of Longview, this excerpt from Ken's cross-examination in a January 1996 hearing before the Honorable C. Michael Ederer, special master.

Q. Where were you living in 1993?

A. I was living in Richfield, N.J., and Jersey City, N.J.

Q. What were you doing as far as employment when you were living there?

A. I was a prostitute.

Q. How long were you a prostitute in New Jersey?

A. I was a prostitute in New York City. New Jersey is about 10 miles.

Q. In New York City, how long?

A. Off and on for about a year-and-a-half. ...

Q. So, you were a whore in New York City —

A. No. I was a prostitute.

Q. Okay. Well, pardon me if I don't know the difference.

Ken adds: "Of course, this line of questioning sparked the *debate of the day* as to the difference. The general consensus was about \$75."

## Of Greeks and Gifts

From Judge James W. Mehaffy of Beaumont (58th District Court), this exchange from a case "involving the alleged failure of a tail-rotor bearing in a helicopter. The corporate representative of the bearing manufacturer testified that similar bearings sold to the government of Greece had been returned to the manufacturer because of a lubrication problem."

**The Court:** I understand, then, that the Greek government gave them (the bearings) back?

**Mr. (Ernest) Cannon:** Yes, your honor; and the moral is "*Beware Greeks' bearing greased bearings.*"

## Did They Really Say That?

From Judge Michael D. Schattman of Fort Worth (348th District Court), this exchange that took place as Clay Humphries (Cantey & Hanger) began his cross-examination in a wrongful discharge case:

**The Court:** Mr. Humphries, your witness.

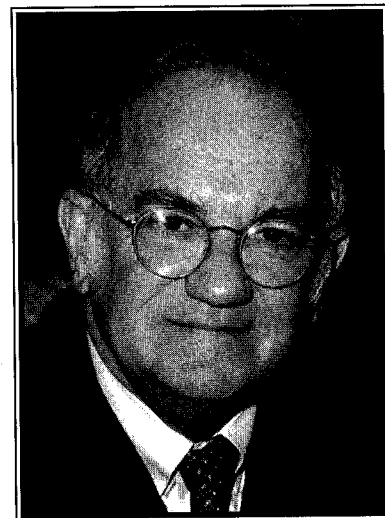
**Mr. Humphries:** Thank you, Your Honor. Is it all right if I stand up to ask questions?

**The Court:** Yes, sir.

**Mr. Humphries:** Is it all right if I use that (indicating movable podium)?

**The Court:** Yes, sir, that will be fine.

**Mr. Humphries:** *I think better standing up.*  
(Laughter)



By Jerry Buchmeyer

**The Court:** *You know, Mr. Humphries, that's a great opening for a contribution to Judge Buchmeyer, but I will restrain myself.*  
**Mr. Humphries:** *Oh, you mean now that I've gotten up off my brain.*

**(Even more laughter)**

**The Court:** You said it, Mr. Humphries, not me. I couldn't possibly comment.

\*\*\*

From **Laura A. Heisz** of Dallas (Pulley, Roberts, etc.) this excerpt from the deposition of "an independent contractor who leases his trucking rigs to trucking companies" — which, according to Laura, may give "a whole new meaning to the phrase 'holy roller.'"

Q. You indicated that these five trucks were under lease to I.T. at what time in January?

A. About the middle of January, around the 17th.

Q. Why was there approximately a two-week delay in leasing your trucks out?

A. They had a week of *ordination*, of schooling.

Q. Did all your drivers attend that?

A. Yes, sir.

\*\*\*

From **Richard L. Ellison** of Houston (Lorance & Thompson), this rather cutting deposition excerpt:

Q. Have you ever been the victim of a violent crime?

A. No, sir.

Q. And the reason I keep asking you [that] ... is that according to your medical records from Ben Taub Hospital in October '86, you were treated for multiple stab wounds in the abdomen. Does that ring a bell?

A. That's my hospital. ... I go to Ben Taub all the time. I have a gold card. That's my hospital.

Q. What do you mean by a gold card?

A. If you don't have the money to pay for any bills, you can go in a line, they give you a gold card and you receive your treatment free.

Q. *You were not stabbed?*

A. No. I haven't been to Ben Taub since 1989.

Q. [Your medical records from Ben Taub Hospital show] multiple stab wounds to the back and left flank. Don't know anything about that? Have you ever been there for multiple stab wounds?

A. *It was not a stab wound. It was a cut, but it's not a stab wound.*

## Classic Typos

From **Bryce J. Denny** of Shreveport (Cook, Yancey, King & Galloway), this marvelous (!) address on a letter to one

of the attorneys at his firm:

F. Drake Lee, Jr.  
 Cook Yancey Et Alabama  
 P.O. Box 22260  
 Shreveport, La. 71120

\*\*\*

From **Joe Marr Wilson** of Amarillo, this excerpt from a letter sent by the opposing counsel, **Jamie Vandivere**, in a divorce case:

Dear Judge McCoy:

Counsel and the parties have diligently attempted to settle the property and liability issues in the above-referenced cause, but *have been unable to do do*. Therefore, after speaking via telephone with opposing counsel, Mr. Joe Marr Wilson, yesterday morning, the attorneys would ask His Honor to please go ahead and render a decision dividing the assets and liabilities in a just and right manner.

\*\*\*

From "Anon" in Dallas, this excerpt from a motion filed in a security fraud class action before **U.S. District Judge Joe Kendall**:

A certified public accountant's reputation for honesty, followed closely by its reputation for *carefull* work are the greatest assets an accountant can enjoy. *Dilco v. Ernst & Young, supra*, page 1103.

\*\*\*

From **James A. Bannerot** of Austin, this typo hidden in a form letter of intent to sell a business in Section 22A.74 of Texas Forms — Legal and Business (p.375):

8. *Public Disclosure*. Prior to the closing, neither buyer nor seller shall make any press release or *pubic statement* concerning the matters covered or contemplated by this letter without the prior written approval of the other party, except as required by law or applicable regulation.

## Low Fat Eggs

From **U.S. Magistrate Judge Jeff Kaplan** of Dallas, this dietary excerpt from an administrative hearing in a social security case:

Q. Are you able to fix your own meals in the morning?

A. Yes. I usually just fry an egg.

Q. Okay. Are you supposed to be watching your cholesterol?

A. These are low fat eggs.

Q. Okay.

ALJ: *Low fat eggs?*

CLMT: *One of them skinny chickens.*

*Jerry Buchmeyer is the chief judge, U.S. District Court, Northern District of Texas.*

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