

Depositions v. Trials:

Oh, No ... I Just Did a Buchmeyer

This month's column comes to you from Austin (**Ellen Yeakle**), Childress (**Judge David McCoy**), Dallas (**Al Ellis**), El Paso (**Christopher Johnston**), Houston (**Cynthia Cline** and **Renee Lafont**), McKinney (**Dee Roessler**), Midland (**Judge Willie DuBose**), San Antonio (**Christopher Gale**) and Texarkana (**Judge Jack Carter** and **Judge Guy Jones**).

The Judicial Corner

This contribution was submitted twice, first by **Senior District Judge Guy Jones** of Texarkana — Guy and I were in the illustrious class of '57 at U.T. Law School — then on the following day by **District Judge Jack Carter** of Texarkana (5th District Court). It comes from a bench trial before Judge Carter, where Charles Hall of Texarkana was attempting to establish the existence of a common law marriage. His client, the lady, is on the stand.

By Mr. Hall:

Q. And I believe at some point you were made aware of the fact he was seeing another woman ...

A. ... right ...

Q. ... at the other end of the line?

A. Right.

Q. At which time you separated?

A. Right. *During this time we tried to have a child.*

Q. *Let's address that issue. What steps did you take to have a child?*

A. Well ...

Q. ... I understand that part ...

Judge Carter (*wisely*): *You don't have to go into that detail, Mr. Hall.*

From **District Judge Willie B. DuBose** of Midland (385th District Court), this excerpt from a cocaine possession case he tried earlier this year. Judge DuBose sets the scene: Tom Parker, assisted by Bob Stevens, was representing the defendant and Wayne Frost was prosecuting. The witness, a police officer, presented three sealed envelopes, one of which contained the cocaine. He opened the first two, but there was no cocaine, so he opened the third — but pulled out a syringe that had never been mentioned in connection with the defendant. The jury was removed from the court, and then ...

Mr. Parker: What was in the last [envelope]?

Mr. Frost: The evidence we have been looking for.

The Witness: Right here.

Mr. Parker: Well, you have already opened that one over there and said that was the one.

Mr. Frost: It wasn't the one.

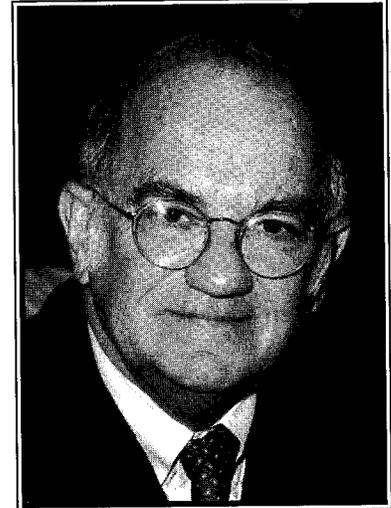
Mr. Parker: It wasn't the one?

The Witness: It wasn't.

Mr. Frost: Put this back in there.

Mr. Parker: *Stevens, think of something here. We have exhibited something to the jury [the syringe] that didn't come from him. It seems like I ought to make an objection. I'm just not sure what it is.*

Judge DuBose: *You figure it out, and I'll figure out how to rule on it.*



By Jerry Buchmeyer

Classic Typos

(1) From **Renee Lafont**, CLA, of Houston

(Renee is the case manager on a large toxic tort case), this title from the witness list filed by one of the defense attorneys:

"Notice of *Fat* Witness Depositions To Be Taken"

(2) From **Christopher R. Johnston** of El Paso (Studdard & Melby) these excerpts from the definitions in a discovery request:

"Said terms shall be construed ... to make the discovery request *inconclusive* rather than exclusive.

"'Files' shall mean and refer to any *complication* of 'documents' in a folder, box, binder, file, or other device used for the purpose of organizing or storing."

(3) From **Cynthia J. Cline** of Houston, this form which she received from a helpful "secretary for a divorce lawyer" and sent to her startled client for execution:

Statement Concerning Alternative Dispute Resolution

I am aware that it is the policy of the state of Texas to promote the amicable and nonjudicial settlement of disputes involving children and families. I am aware of alternative dispute resolution methods *including medication* ...

(4) From **P. Dee Roessler**, program coordinator, legal assistant professor, political science, at the Collin County Community College in McKinney, this typo from the 1996 report of the Family Law Section:

... The elements of a common law marriage are (1) an agreement to be married, (2) living together as husband and wife, and (3) holding out *to the pubic* that the couple is husband and wife.

(5) From an order submitted to me with a motion to reinstate a dismissed case:

Order Granting Relief From Court's June 26, 1996 Order of Dismissal for Failure to Obtain Service

Plaintiff's Motion for Relief from Court's Order of Dismissal for Failure to Obtain Service (hereafter referred to as "Plaintiff's Motion") came on for hearing before the Court, Honorable Jerry Buchmeyer, Chief District Judge presiding, and the issues having been *duly herd* and a decision having been duly rendered.

Al Ellis and the Deposition from Hell

Al Ellis of Dallas writes: "Often one has to take hundreds of depositions to find something worthy of print in *et cetera*. Occasionally, however, comes the "Deposition from Hell," in which almost the entire deposition is worthy of being printed in *et cetera* along with at least 35 separate footnotes."

The excerpts from Al's Hell include:

Q. Is your father the — does he have a title, like, president or partner or something of that nature?

A. *Boss.*

Q. His title was boss?

A. *Dad* was his title to me.

Q. What were you studying when you were going to college?

A. *Life.*

Q. Have you ever used marijuana?

A. Hasn't everyone?

Q. Where do you attend church?

A. Wherever I want to go.

Q. Aside from that loss of strength that you went through in the hospital, how did that accident change your life? What are you doing differently now since 1985 than you did before? How has your life changed?

A. *I know myself better.*

Q. When is the last time you saw him as a chiropractor?

A. I don't know. *Every time I see him he's a chiropractor.*

Q. Is Dr. Schwartz a psychiatrist?

A. I don't know.

Q. Well, did you have any kind of frustration or anger or anything going on at the time you saw Dr. Schwartz?

A. Maybe a little.

Q. What was that about?

A. *Having to go see him.*

Q. Do you have any other behavior differences? Any differences in your behavior after this accident besides the loss of sleep?

A. *Yeah. I think I went psychotic because something bad had to happen because I went off and got married.*

Q. Well, have you seen any medical treater, whether chiropractor, medical doctor, or anybody during the year 1995 or 1996 on account of injuries sustained in this accident?

A. I don't know.

Q. You don't know?

A. *I don't even know what you said.*

Did They Really Ask That?

From **Christopher J. Gale** of San Antonio (Low, Gale, etc.), this sterling paragraph from a request for production of documents he received from a "prominent San Antonio law firm."

11. All photographs, motion pictures, films, tapes, slides, recordings, videos,

still or motion pictures or "day-in-the-life" portrayals which relate or pertain, in any manner, to any matters relating in any way to any matter which relate or pertain to this case, or which relate or pertain to any potential issue in this lawsuit.

We Just Made Buchmeyer

From **Judge David M. McCoy** of Childress (presiding judge, 199th District Court), these two examples of "making Buchmeyer" — an invaluable and painfully descriptive phrase — that took place in two separate revocation cases he heard on the same day, with the same two attorneys: District Attorney Earl Griffin and defense attorney Randall Sims.

The Powell Case

By Mr. Griffin:

Q. Mrs. Powell, would you state your name for the court, please?

A. Marjorie L. Powell.

Q. Mrs. Powell, how are you related to Danny Powell?

A. I'm his mother.

Q. And you've known Danny, I guess all his life, right?

A. All of his life.

Mr. Sims: *Judge, I think we just made Buchmeyer.*

The Gonzales Case

By Mr. Sims:

Q. Where [are] your kids you keep referring to?

A. Well, with their mother, I guess. I haven't talked to her mother — well, my daughter was with my girlfriends' mom and —

Q. Where's she live?

A. In Paducah.

Q. How many children do you have?

A. I've got one and one on the way.

Q. Where is the one on the way at?

A. With her mom.

Mr. Sims: *I may have just made Buchmeyer, too.*

Of Love and Death

From **Ellen Yeakle** of Austin (Ellen is a legal assistant with Thompson & Knight), this deposition excerpt from a Travis County case.

Q. What was your father's name?

A. James Smith.

Q. And how old was he when he passed away?

A. 74.

Q. And did anyone ever tell you what caused his death?

A. Excuse me?

Q. Did anyone ever tell you the cause of his death?

A. I can tell you, but it will sound funny. *He choked on a wiener and died. He loved those things.*

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

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