

# VERDICT

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It's Elementary,  
My Dear Watson  
By Robin Frazer Clark

# Interview

## with Jim Butler

By Raymond J. Doumar

**Verdict:**

Tell me a little bit about your background and what type of work you did before becoming a lawyer.

**Butler:**

I grew up in Cumming Georgia and worked on Jimmy Bentley's campaign for the Republican nomination for Governor in 1970. I attended UGA and graduated in 1972 with a degree in journalism. While at UGA, I worked during the summers at the *Forsyth County News* and one fall and winter at the *Gwinnett Daily News*. After graduation, I was offered a job at the *AJC* and the *Gwinnett Daily News*, but I opted to build houses in Forsyth County. I started building homes under the Farmers Home Administration Rural Housing Program (for underprivileged people) – until Nixon shut down that program. Then I became a contractor. I built 43 houses, went completely broke, and paid off the last of my debts nine years after I started law school.

**Verdict:**

What made you decide to become a lawyer and particularly a trial lawyer?

**Butler:**

*To Kill a Mockingbird* had a lot to do with it. That planted the seed. Then Richard Neville, a lawyer in Cumming, a Superior Court Judge, and my Sunday school teacher all steered me in that direction. By the time I was nearing graduation from college, I had a fair understanding of government, politics, and business, and I wanted to serve. I anticipated getting in to politics. I really liked the idea of practicing law and helping folks, and it was an obvious avenue into government service.

**Verdict:**

What kind of work would you have done had you not become a lawyer?

**Butler:**

I would have accepted an offer from Neville and others to start a chain of newspapers in North Georgia, or the offer from

Bob Fowler, owner of the *Gwinnett Daily News*, to go to work for him (he wanted me to become a Publisher). And either would have led to what I always most wanted to do...write.

**Verdict:**

Tell me about some of the most interesting cases you have handled over the years.

**Butler:**

I don't know which are the most interesting, but the list would include the flooding cases in the early 80s; the Taylor County hazardous waste incinerator wars of the late 80s, early 90s (pro bono); the Elmyr Tompkins saga of the early 90s (pro bono); the GM sidesaddle pickup tank cases, especially Moseley; Six Flags; and the credit insurance unearned premium class action cases that are still in progress.

**Verdict:**

Tell me about some of your most memorable victories.

**Butler:**

We stopped the incinerator; we got cousin Elmyr's last will and testament changed back to leave her entire huge estate to charity (Scottish Rite and Lion's Club Lighthouse for the Blind); we hammered GM about its design defects and corporate misconduct, eventually winning an order which found GM's crimes and frauds had vitiated its attorney-client privilege. We won what is believed to be the largest collected judgment in US history (Six Flags – full amount collected as opposed to other cases where the amount paid in settlement was larger, but the entire judgment was not paid). We've won great orders and settlements in some of these credit insurance cases. We've won 4 verdicts over \$100 million; 5 or more between \$10 and \$100 million; 12-15 between \$1 and \$10 million; 40+ between \$100,000 and \$1 million. See [www.butlerwooten.com/toptenverdicts](http://www.butlerwooten.com/toptenverdicts).

**Verdict:**

Tell me about some of the cases you have had where you may not have gotten such a good result, but which helped you become a better lawyer.

Georgia Trial Lawyers Association



**Butler:**

Every case I lost in the early days; every case where I got less than the offer (4 over 32 years); and every case where I got less than I expected. We learn more from defeat than victory; the difficult thing is learning from victory.

**Verdict:**

Why do you think you did not get such a good result in those cases?

**Butler:**

In the early days, the cases weren't that good. Later, we just had some bad jurors. And in others, I wasn't as well-behaved as I should have been.

**Verdict:**

I understand from a mutual friend that the cavalry charges of Confederate General Nathan Bedford Forrest have been very instrumental in the way you handle cases. Tell me about that.

**Butler:**

Our friend misapprehends. I've studied Forrest ("General we're surrounded! What should we do?") Answer: "Attack in both directions.") But I've studied Lee's Army of Northern Virginia a lot more – since the 4<sup>th</sup> grade. That study teaches about management (good and bad practices), objectivity, preparation, acquisition, use of intelligence, when to take a risk and when not to, and such critical things as "the flank in the air" (Battles of Chancellorsville and the Wilderness). I try to be totally prepared, to press the attack, and to wait patiently for the great opportunity. It always comes, but only because I'm totally prepared and am pressing the attack.

**Verdict:**

What are your interests outside the law?

**Butler:**

Bird dogs, trout fishing, travel, reading, the environment, politics and policy.

**Verdict:**

Tell me how you deal with opposing counsel. I have heard that in some cases there is no friendly chit chat or fraternization with opposing counsel. Others have told me that this is not entirely true.

**Butler:**

I always try to be cooperative and cordial to opposing counsel. We almost never refuse a request for additional time, etc. – as a matter of policy. Some opposing counsel are among my best friends. For example, John W. Denney taught me much of what I know about how to deal with other lawyers and handle a case. I don't spend a lot of time 'chatting' with opposing counsel unless I know them or get to know them and like them. One thing I don't do, which a lot of plaintiff's lawyers do, is chat up opposing counsel in hopes of buttering them up to pay my client more money. That approach engenders only contempt, and is obviously counter-productive. I treat opposing counsel with respect, and expect the same from them.

**Verdict:**

I have heard that you do not negotiate your cases and instead simply submit a demand when asked to do so and try the case if your demand is not paid. Is this true?

**Butler:**

Of course not. We negotiate most cases. But we only take cases we are willing to and want to try, and we don't negotiate until we are far enough along in being ready to try the case so we know, very objectively, our strengths and weaknesses. We're pretty tough in negotiations, however. We think we know what the case is worth, and we don't take less. Billy E. Moore taught me two things long ago: 1 – try your good cases and settle your bad ones; and 2 – when you do, you will beat the offer nearly every time. He's right.

**Verdict:**

Tell me about the way you prepare for depositions. I have heard that you prepare what has been described as

a "deposition tree" where you have follow up questions (branches) for any type of response you may receive to a particular question.

**Butler:**

I learn the case. I learn the documents. Beyond that, it depends on the strategic purpose of the deposition. Is it a true discovery deposition? Is it a discovery deposition where you're trying to scare off an adverse expert, or scare the defendant into not using him/her? Is it a deposition for use at trial? The preparation and the taking of the deposition totally depend on the strategic objective. For the latter two, yes, I use a question tree. Questions matter just as much as answers.

**Verdict:**

I understand that you have a true love of history with a particular interest in the Civil War. Has any particular Civil War battle been instrumental in how you handle cases?

**Butler:**

I am a history nut. If more people shared my enthusiasm this nation would not be in such a mess today. Nearly every Civil War battle I have studied has taught me something. I've often said at seminars that all one needs to know about litigation is taught in Ernest Furgurson's book *Chancellorsville*. I'd add Gordon's discovery of Grant's dangling flank at the Wilderness, the confusion at Gettysburg, and Lincoln's "anaconda" strategy, which was utterly brilliant and was replicated by us recently in a case.

**Verdict:**

I heard that you were once trying a case in a rural county where a member of the venire, I believe it was a nurse, was a witness that you included on your witness list.

The defense never struck her, you called her as a witness from the jury box, and the jury gave you a pretty

significant verdict. Is this true? If so, can you give me some more detail?

**Butler:**

Yes, she was an EMT. She saw the accident, rushed to the scene, and held one of the ladies who died as she expired – thus she was key to proving conscious pain and suffering, which made punitive damages recoverable on the estate claim. She was on our witness list and we had disclosed her in discovery. The case was tried before Superior Court Judge Richard Story in White County Superior Court. She was in striking range in the jury pool. So there would be no confusion, after our fifth strike, we put on the record that we would be calling her, and that we would not strike her. Defense counsel did not strike her, so we called her as our second or third witness. She left the jury box, took the stand, took the oath, testified, and then returned to the jury box. The verdict was \$15,500,000.

**Verdict:**

I also heard that when trying a Suzuki rollover case in St. Louis, you beat up Suzuki's Japanese corporate representative pretty badly in the compensatory phase of the bifurcated trial. After the compensatory verdict was announced, I heard that Suzuki's representative literally ran out of the courtroom, presumably because he did not want to be subject to your wrath again during the punitive phase of the trial. Is this true and, if so can you expound on it?

**Butler:**

I had to ask George, as I couldn't specifically recall. We've had corporate representatives flee to avoid cross-examination in phase two of trials on more than one occasion (Stempel should have fled in Moseley). George's response was that once the verdict was announced in phase one, Kawashima ran down the side stairs and out of the building so we couldn't subpoena him for phase two. We sent Wes and Mac to his hotel and to the airport in St. Louis



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with subpoenas but they couldn't locate him.

**Verdict:**

**What are some of the biggest mistakes you see plaintiff's lawyers make?**

**Butler:**

You want me to write a book here, Ray? Begging for dollars, taking cases "for settlement," being afraid to try a case, not preparing, disclosing their thoughts about a case to defense counsel... We NEVER do that - we even refuse to make an 'opening' during mediation. Only two things can happen if you tell a defense lawyer about your case: he understands it, or he misunderstands it. Which is worse?

Engaging an expert in the minutiae of his expertise, trying to prove to the jury who knows the most, being a jerk, losing one's temper, failing to park your ego outside the courtroom, disrespecting the judge, talking down to jurors, failing to realize that if the judge does not rule with you, the only productive conclusion to reach is that either (a) you did a poor job explaining your position; or (b) the judge is ruling against you for a good reason you don't yet divine...

Not re-inventing the approach you will use for every case, not associating local counsel, letting defense counsel divert the case in to a personality conflict, asking the wrong judge to issue a ruling on an issue which may confront you in other cases, hubris about one's ability to persuade unpersuadable

jurors, not understanding people enough to be able to read prospective jurors...the list goes on and on.

**Verdict:**

**What are some of the biggest mistakes you see defense lawyers make?**

**Butler:**

Disrespecting and misleading judges, talking down to jurors, arrogance, attacking plaintiff's counsel, insinuating junk they're unwilling to outright accuse someone of having done...

**Verdict:**

**What are your plans for the future? Do you plan to continue practicing law? Would you ever consider running for office?**

**Butler:**

I plan to practice law until I can't anymore. I would love to figure out how to get more cases to trial. I want spend more time than I did in the past with my bird dogs, fishing, and traveling. I plan to keep fighting to do what I can to preserve this nation and state for all of our grandchildren. I'd like to do some writing. But this law practice is still a great deal of fun. As to running for office, this would have been a good year, but I wasn't ready to risk having to move to DC. 2010 is another year.

## Verdicts and Settlements

**Eunice Neal Tomblin**

vs.

**Chelsea Construction Middle  
Georgia, Inc.**

**State Court of Houston Co.**

**Civil-action-num: 2006-V-36998**

**Liability-facts:** Plaintiff drove to doctor's appt to get mammogram. She pulled into parking lot behind Defendant's truck. She waited almost 2 minutes for the truck to move. Defendant put the truck in reverse without looking and hit the front of her car. There was no visible prop damage to either vehicle. Defendant claimed that the accident was Plaintiff's fault because she was

following too close, although she wasn't moving.

**Injury-facts:** Carpal tunnel syndrome to Right hand (surgery on hand) 3.5 yrs after MVA; bulging discs in her neck and back.

Plaintiff was very credible and worked for Bellsouth for over 30 yrs before retiring with perfect attendance the last 15 years she worked there.

**Lost-wages:** None

**Med-expenses:** \$25,000

**Future-med-expenses:** Unknown

**Med-experts:** Dr. William Wiley (orthopaedic) & Dr. Rafael Aguila

(family practice)

**Offer:** \$5,000

**Demand:** \$25,000 (pay the med. bills)

**Result:** \$70,000 Jury Verdict

**Result-explanation:** Defending attorney told the jury to award Plaintiff zero that no prop damage means no injury.

**Date-of-outcome:** July, 19, 2008

**Plaintiff-attorney:** Jeffrey N. Powers, Macon & Eric K. Hunt, Macon

**Defendant-attorney:** Jon Christopher Wolfe, Macon