Depositions v. Trials:

We Have Met The Enemy And...

By Jerry Buchmeyer

This month, contributions come from Abilene (Bob Lindsey); Amarillo (James Durham); Buda (Steve Collins); Galveston (U.S. District Judge Sam Kent); Georgetown (J. Neill Wilkerson); Houston (Arthur Almquist); Lufkin (John Fleming); McLean, VA (Hunter Harrison); and Spokane, WA (Leslie Weatherhead).

Who's On First?

From James D. Durham, Jr. of Amarillo, this deposition excerpt — the questioning is by Dennis Burrows of Lubbock — which proves without a doubt (reasonable or otherwise) that "Abbott and Costello are alive and well in West Texas": Q. Why did you decide to quit? A. Why? Q. Why? A. When or why? Q. Why? A. When? Q. When? Chiao, who is on first? We have established that you don't when. A. When? Q. We don't know what date or what time you decided to quit. A. No.

It Was Probably Nerves

From Arthur R. Almquist of Houston (Mehaffy & Weber) — who begins, "I guess sooner or later every lawyer gets around to writing this letter" — this excerpt from a recent deposition in a products liability suit (alleging that the plaintiff's cancer was caused by exposure to chemicals). Arthur is questioning the plaintiff "about when he first became aware of his illness": Q. When had you first begun to feel ill or notice that something was wrong? A. Somewhere, I would say, November, maybe, of 1976, my senior year, October, November. Q. What were the problems that you first started experiencing? A. Loss of weight, severe stomach pain, and tiredness.

Did He/She Really Ask That?

From John C. Fleming of Lufkin (Zeleskey, Cornelius, etc.), this question from the deposition of the plaintiff in a deceptive trade practices case: Q. You indicate in your petition that you are suing for actual damages in an amount in excess of the mental jurisdictional limits of this court. Would those actual damages be what is outlined in this letter?

Perplexed in Galveston

From U.S. District Judge Samuel B. Kent of Galveston (Southern District of Texas), this excerpt from a recent nonjury trial in which the plaintiff — in Sam's words, "a 41-year-old 'country boy,' who has a simple approach to life, to say the least" — is being cross-examined by Chris Lorenzen of Houston (Crain, Caton & James). Q. I'm not sure I understood your answer as to [how often] you actually saw Dr. Khatri. You go to see him at two-week intervals? A. I've been seeing him at monthly intervals. I had an appointment with him. He had back surgery, and I missed. He
was in the hospital with back surgery the day I had an appointment.
Q. Dr. Khatri himself had back surgery?
A. Dr. Khatri himself had back surgery.
Q. All right. Now, you understand he is not a surgeon? You do understand that, correct?
A. Yes, sir. He didn’t do it to himself (sic).
Judge Kent adds: “The funniest part was that after he said it, and the courtroom erupted, the plaintiff looked genuinely perplexed, having no earthly idea what it was he said that could have amused anyone.”

Did He/She Really Say That?

From Leslie R. Weatherhead of Spokane, WA (Witherspoon, Kelley, etc.), this ‘gem from a Secret Service ‘Q and A’ of a guy who designed an impressive scheme to defraud banks through the use of phony checks to fictitious payees such as ‘Robin Banks’ and ‘E. Z. Mooney’.”

Q. You were the planner of everything?
A. Ah...
Q: Take it city by city, might make it easier.
A: There was other people, like I say, in the beginning that was involved. When the bank fraud started and it was brought to my attention, I said that’s wrong. From then on, I guess I become the ring leader.
Q: You said it was wrong, but yet, even though it was wrong...
A: It was wrong the way they was doing it.
Q: Oh, they weren’t doing it correctly. OK.

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From Bob Lindsey of Abilene, this rather candid letter from one of his clients who was in jail:

My crimes were neither violent nor drug-related. They all occurred within a one month period of my life when I was scared, confused, and foolish. Prior to that month I served in the Army with a spotless record. I can verify that with documents from my court martial which I have in my possession.

We Have Met the Enemy — And He Is Us

From Steven R. Collins of Buda, who is general counsel for the Texas Legislative Council, this marvelous (!!!) deposition excerpt from an election contest proceeding before the Texas House of Representatives. Steve first explains that “the Democratic candidate was Donald Fogo and the Republican candidate was Robert Talton;” then he adds that the deposition, taken on written interrogatories from a lady who voted in election at issue, “challenges your faith in democracy.”

Q. If you voted in the House District No. 144 race for state representative (Harris County), for whom did you cast your ballot?
A. I hate to tell you how I chose.
Mr. Ables: Then it’s up to you, ma’am. You don’t have to say.
A. Only a woman would do it. I didn’t know one thing about the race. I hadn’t read anything on it. All I’d seen was their names on signs here and there: Fogo, Talton. And I didn’t — no one came to the house. I didn’t see any kind of literature on him. I didn’t even read up on him because, you know I was just more interested in the presidential race than I was anything else.

Anyway, when I went up there to vote, I saw Robert Talton and Fogo and I looked at Robert Talton and I said that sounds like — that name sounds too much like Robert Tilton and I don’t like him, I was thinking to myself. And I see Fogo and I think that sounds like Polo the opossum, a cartoon character, and so isn’t that a heck of a way to judge who you vote for? I think I put down Fogo.

Mr. Ables: You think, but you’re not sure?
The witness: I’m not sure. I don’t know. It came down to whoever’s name I decided I disliked the most.

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