How Long Have You Been Dead?

By Jerry Buchmeyer

Depositions v. Trials:

ET CETERA

This month, “et cetera” comes to you from Austin (Kenneth Law), Corpus Christi (U.S. District Judge Hayden Head), Dallas (Michael Brounoff, Jim Cowles, “Red Dog” Jones, Gregory McCarthy, and Ken Molberg), Fort Worth (Judge Steven Williamson), Houston (Marcus Faubion, Shessy Thomas Davis), San Antonio (John E. Clark), South Padre Island (P.T. Moore, Jr.), Texarkana (Robert Weber) — and from The Netherlands (Capt. John J. Siemietkowski).

Did He/She Really Say That?

From Municipal Judge Steven C. Williamson of Fort Worth, this excerpt from a guilty plea by “a man charged with discharging a firearm within the city limits (in his own backyard),”

Court: How do you wish to plead?

Defendant: Guilty.

Court: Do you want to tell me what happened?

Defendant: That’s the reason I escaped from Alabama, if they want to call it an escape. I just made arrangements to leave.

Classic Typos

And still more examples of classic typographical errors:

(1) From an Army court martial: the admission by the military judge, “That is really all I can tell you about the depravation of my authority” — and the prosecutor’s statement that he will introduce evidence “to challenge the velocity of the accused’s unsworn statement.”

(2) From the rough draft of a Dallas personal injury petition: the wife will suffer “loss of services, companionship and consortium ....”

(3) From interrogatories in a suit filed by the accused of doing the same thing, although the complaint was long since deceased, Judge Onion has written hundreds of appellate opinions and presided over trial benches all over the state. ... I saw Judge Onion this morning and he assured me that “rumors of his death have been greatly exaggerated.”

Says Who?

From Kenneth H. Molberg of Dallas (Wilson, Williams, Molberg & Mitchell), a memorable excerpt from his deposition of the pro se plaintiff in a racial discrimination suit against the East Dallas Community School (which Ken was representing pro bono). Ken begins with the explanation that, during his questioning, “the plaintiff spoke in tongues on several occasions. This did not perplex me, as I am frequently accused of doing the same thing, although the court reporter had some problems.”

Then, as Ken explains, because “the
plaintiff had brought employment-related suits against every one of her previous employers except one, I decided to make inquiry into the details of the lawsuits, some of which were workers' compensation cases. Specifically, I wanted to know the last name the plaintiff used in those cases, so I could have the jackets pulled.

Q. ... I would like to know what name you used in connection with these other cases.

A. I feel that it does not matter and I will not — I cannot tell you that.

Q. Okay. You're refusing to tell me?

A. No. I'm just saying I cannot tell you that.

Q. You're unable to tell me?

A. Yes, I am.

Q. Why?

A. Because I'm not allowed to tell you.

Q. Says who?

A. Says God.

Q. Okay. All right. And what else has God told you not to tell me?

A. Well, I can't go into that with you.

Q. Did God tell you to file those comp. cases?

A. I cannot go into that with you.

Ken concludes: "Well, I admit that I was dumbfounded. I had no idea at the time how to challenge the Deity Privilege. To what higher authority than the Supreme Being could I appeal to compel this critical testimony? Fortunately, this morning I remembered ... the case is in federal court!"

**The Jim Cowles Collection**

From Jim E. Cowles of Dallas (Cowles & Thompson), this from a plaintiff's deposition — one of the "3,032 plaintiffs ... in the infamous Lone Star Steel cases, pending in Morris County since 1987" — taken by Jim Harris of Beaumont (Holmes & Harris).

Q. What did your sister die of?

A. You would have to ask her — I would be speculating if I told you.

Jim adds suggested follow-up questions: from out Astute Attorneys include (1) Do you have her telephone number and is it long-distance? (2) So, then, would it be your suggestion that we contact Shirley MacLaine? (3) Would you mind if I sent this to Buchmeyer's column?

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And about Jim Cowles, from Gregory J. McCarthy of Dallas, this excerpt from a deposition taken by him and Stan Thiebaud (Cowles & Thompson).

Q. Did Mr. Thiebaud tell you which firm he was with?

A. Yes.

Q. What's the name of his firm?

A. What is it? Thompson — I'm sorry. Mr. Thiebaud: That's part of it. A. Thompson & God.

Q. You don't remember right now?

A. No, I don't.

Gregory adds: "It's good to know that Jim Cowles had finally gotten the recognition he so richly deserves."

**Matters of Opinion**

John E. Clark of San Antonio (Goode, Casseb & Jones) — speaking with authority, as "an ex-appellate judge" — quite correctly urges me "not to overlook the carefully chosen words of our Learned Appellate Courts when you need one more item (besides trials & depositions) for et cetera." So, lets begin this new (and obviously fertile) department with a gem that John found in Brooks v. Scherler, 859 S.W.2d 586, 588 (Tex. App. — Houston [14th Dist.] 1993), a suit filed by a city employee against several co-workers who had accused him of sexual harassment — where, in recounting the facts, the appellate court made this "intriguing observation":

...The summary judgment proof established that the city had instituted a sexual harassment program, consistent with federal and state law, that required the participation of all employees..."

1. **Real Life Problems of Personal Injury Lawyers:** A new client of Ralph C. "Red Dog" Jones of Dallas (Carter, Jones, etc.) called to leave this message:

   Wants to make sure you don't sue her boyfriend, the driver of car in which she was a passenger (in accident). "She's moving in with him and they've already fought about it.

2. **Caution — Puns Can Be Dangerous To Your Health:** One of Marcus E. Faubion's pending cases (in Houston) involves a homeowners' DTPA suit against the builder/seller — because the backyard, which had been laid over an old roadbed, was so hard it was "completely useless to the couple, whose hobby was gardening." The defendant-builder responded with a DTPA counterclaim, which alleged, "according to the literal language of the statute, that the plaintiffs' 'underlying' suit was 'groundless.'"

3. **Sherry Thomas Davis of Houston** (Hudgins, Hudgins & Warrick) was working with her doctor-client to answer some very lengthy requests for admissions. The client was tired and/or aggravated when they reached Request Number 50, which asked about "settlement agreements, Mary Carter agreements, and the like." And, he exploded: "Who the hell is Mary Carter?!! I don't know any Mary Carter!! I never met the lady!!"

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