Doing Voir Dire

This month’s contributors are from Bellville (Daniel W. Leedy), Dallas (T. King Fifer, P.J. Putnam), Denton (Judge Darlene A. Whitten), Houston (Randy Schaffer, J. Todd Trombley), San Antonio (Edward M. Lavin), Wichita Falls (Matt Anderson) — with out-of-state contributions from Grand Canyon, Ariz. (F. Jules Lund, Jr.) and Jackson, Miss. (Robert M. Frey).

Did They Really Say That?
From J. Todd Trombley of Houston (Andrews Kurth), this excerpt from his deposition of the plaintiff and her “significant other” in a personal injury case.

Q. And what is your relationship with Mr. Williams? Are you guys married?
A. No.
Q. Are y’all just — are y’all living together?
A. Yes.
Mr. Williams: I mow her grass and she lets me sleep with her.

Words of Praise
Randy Schaffer of Houston (The Schaffer Firm) “unsuccesfully represented on appeal a man convicted of murder several years ago” and had not heard from him since that representation concluded.

In July 2004, he received a letter from his former client asking that he “invest in a women’s sportswear business that he and a free world friend want to establish” and “to help him find other investors.” Randy rejected his request “as quickly as the appellant courts rejected his appeal.”

However, this portion of his letter is worth repeating: “Mr. Schaffer, you are the most prominent businessman/professional that I know at this time. I know it’s sad on my part that the most prominent professional that I know is a criminal defense lawyer.”

From the Classroom
P.J. Putnam of Dallas (Thompson & Knight) recently spoke to a class of fourth-grade students at the Rosemont Elementary School as part of the Dallas Bar Association’s “Lawyers in the Classroom Program,” where he received a question about his background.

He explained that he flew helicopters for the U.S. Air Force for nine years before he attended law school. A little boy in the back of the classroom eagerly raised his hand. When P.J. called on him, the boy asked, “Did you fly during the Civil War?”

The Third Commandment
From Assistant District Attorney Dan Leedy of Bellville (Austin County), this contribution from the punishment phase of a jury trial for resisting arrest. The defendant was stopped for speeding and he refused to sign the ticket. The defendant began cursing and struggling with the officer as he was being placed under arrest.

The defendant was convicted, and during the punishment phase of the trial, he called his priest as a character witness. During Leedy’s cross-examination of the priest, the following occurred:

Q. Now, would it surprise you that during a traffic stop [the defendant] broke the Third Commandment?
A. What is the Third Commandment?
Q. The one not to use the Lord’s name in vain.
A. Describe how he did that. May I ask that?
Q. Okay. I can show you that, but would that surprise you to learn that he used that type of language?
A. No.
Q. Why would that not surprise you?
A. He is a normal human being.
Q. And so would it surprise you if other obscene language was directed toward a police officer?
A. Shock me, probably; surprise, no.

Did They Really Say That?
This contribution comes from Judge Darlene A. Whitten of Denton (County Court at Law No. 1). She explains: “We had just concluded a jury trial for indecent exposure — where the defendant’s attorney, Kimberly McCary of Lewisville, was questioning a law enforcement officer about the complainant’s excited utterance.”

The complainant claimed that the defendant’s erect penis was viewable through what she assumed was the opening created by an unzipped zipper. Her view was a profile perspective after he got her attention. The defendant claimed he was wearing low-slung jeans and boxer shorts visible above the waist band of the jeans.

The following exchange took place:
Q. Did she say she could see boxers?
A. She didn’t say.
Q. Belt line?
A. She was focused. She didn’t say.
Q. Belt?
A. She didn’t say.
Q. Just the penis through the zipper?
A. That’s what stood out for her.

Classic Typos
T. King Fifer of Dallas (Fisk & Fielder) found this “interesting comparison of the genders” in the “definitions” section of plaintiff’s first set of interrogatories:
“I. The muscular gender includes the feminine and vice versa.”

Two people sent in the next contribution — Edward M. Lavin of San Antonio and F. Jules Lund, Jr., of Grand Canyon, Ariz. It is from the “Disciplinary Actions” section of the June 2004 Texas Bar Journal:
“In a second matter, [the respondent] was retained in a wrongful extermination matter.”

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This contribution comes from Robert M. Frey of Jackson, Miss. (Butler, Snow, O’Mara, Stevens & Cannada). He explains:

In the mid-1980s I was sitting in a district courtroom in West Texas waiting to argue a motion as the judge addressed a sizable group of potential grand jurors. He explained to them, among other things, the qualifications for sitting on a grand jury.

As I recall, these were being of a certain age, being eligible to vote, and never having been convicted of a felony. The judge, sensitive to the nature of the last qualification, graciously endeavored to avoid any unnecessary embarrassment: “Now, if any of you have any questions about any of these qualifications,” he announced, “you can come up to the bench right now and discuss them privately with me.”

Two or three people went forward and spoke in whispers with the judge. After he finished with these, he momentarily forgot himself, and his good intentions, looked up, and asked, “Now, are there any other felons?”

Contributions to et cetera should be mailed to: U.S. District Judge Jerry Buchmeyer, U.S. District Court, Northern District of Texas, 1100 Commerce St., 15th Floor, Dallas, TX 75242.