

Depositions v. Trials:

We Have Met The Enemy And...

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. Why?

Q. Why?

A. When?

Q. When? *Chiou, 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.¹

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”:

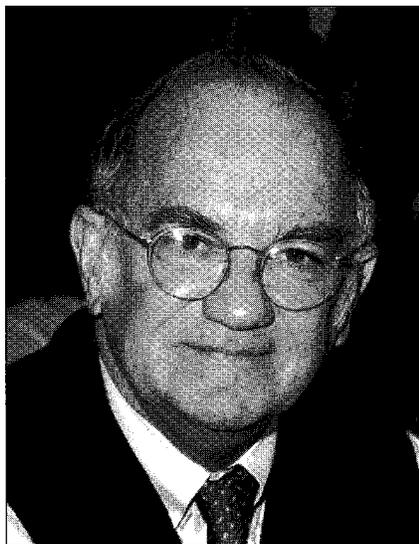
Q. When had you first begun to feel ill or notice that something was wrong?

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,

By Jerry Buchmeyer



and tiredness.

Q. When did you first seek medical care?

A. At that time.

Q. Who did you go see?

A. Dr. Smith.

Q. And what did Dr. Smith tell you at that time?

A. Well, actually, he told me it was probably nerves. We were in the play-offs. It was pretty intense. *He said he felt the same way when he ran around on his wife.*

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?

From **J. Neill Wilkerson** of Georgetown — who serves as an appellate judge on the

U.S. Army Court of Military Review during his annual active duty in the Army Reserve — this excerpt from a court martial. The charges involved use and distribution of marijuana; the defendant soldier had admitted frequent use of marijuana.

Trial counsel/prosecutor: Do you think that marijuana is *conducive* with service in the military?

A. Conducive? What does that mean?

Trial counsel: I'm sorry. I don't even know what that means.

From **Hunter C. Harrison, Jr.** of McLean, VA. This excerpt from a hearing “to determine if the state was liable for the blood tests” given to the handicapped child of the witness, an IRS employee:

Q. [By Mr. Harrison] When blood is drawn from Jimmy, and I gather that is done on a regular basis, is that done for treatment or diagnostic purposes?

A. Diagnostic.

Mr. Jordan: Objection. Mr. Ashley has testified he works for the Internal Revenue Service, he is not a medical doctor.

Hearing Officer: I am going to sustain that objection.

The Witness: But we do have a certain expertise in drawing blood from people at the IRS.

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? From the very beginning? I mean from the beginning when you went into the bank fraud business?

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.

From **Bob Lindsey** of Abilene,² 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 come 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 Pogo 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.³

1. Didn't anyone wonder about the title to the May 1993 et cetera?
2. Bob Lindsey had another client who wrote on the back of an envelope from out of town: "Please call me because I don't have a phone or money to pay to use the phone. Thanks."
3. But, despite her well-reasoned, concerned vote, Robert Tilton — I mean Talton — was declared the winner.

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

et cetera

If you would like to submit a contribution to this column, write Judge Buchmeyer at 15-E-6 Earle Cabell Federal Building, 1100 Commerce St., Dallas 75242.

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