

*Depositions v. Trials:*

## How Long Have You Been Dead?

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**,<sup>1</sup> **Gregory McCarthy**, and **Ken Molberg**), Fort Worth (**Judge Steven Williamson**), Houston (**Marcus Faubion**,<sup>2</sup> **Shessy Thomas Davis**),<sup>3</sup> 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: I pointed it at the ground and pulled the trigger and it went “BOOM! BOOM!”

Court (startled): Why were you shooting it?

Defendant: I just wanted to see if it worked and I thought it would go “Click, Click” — But instead it went “BOOM! BOOM!” I didn’t know it was loaded.

\*\*\*

From **Robert W. Weber** of Texarkana (Atchley, Russell, etc.), this excerpt from a deposition taken by **Christy Patterson** of his firm, of an elderly plaintiff who “lived deep in the Piney Woods of East Texas and who was somewhat unsophisticated” about modern medicine in general and myelograms in particular.

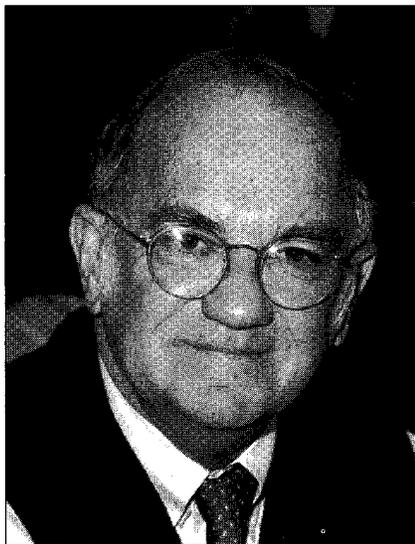
Q. So you think in August of 1993, you went back to Wadley?

A. August or September ... about three or four months ago ... *they pulled blood out of my back, and they pulled sperm out of my back and shot dye in there. I had that done for — Dr. Keith had it done to see how many vertebrae he was going to have to pull apart or something.*

\*\*\*

From U.S. District Judge **Hayden W. Head, Jr.** of Corpus Christi (Southern

By **Jerry Buchmeyer**



District of Texas), this excerpt from a sentencing hearing, when the defendant gave Judge Head “his view of an earlier Alabama state conviction”:

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 *contortion* ...”
- (3) From interrogatories in a suit filed by “a formidable adversary”: “Please state the name and address of each person having knowledge of the claims set forth in *Pontiff’s* original petition....”

This month’s Dreaded Typographical Errors are from (1) **Captain John J. Siemietkowski** (John is an Army JAG

attorney stationed in The Netherlands); (2) **J. Michael Brounoff** of Dallas (Bird & Skibell); and (3) **P.T. Moore, Jr.** (of South Padre Island).

**Long Since Deceased**

From **W. Kenneth Law** of Austin (the clerk of the court of appeals for the Third District of Texas), this excerpt from the argument of defense counsel in a sentencing hearing — who was objecting to the use of a previous judgment of conviction to enhance his client’s punishment:

One of the pen packets contains what is certified to be a true and correct copy of the original judgment in Cause No. S-63872. That copy is not signed by the district judge who entered that judgment. And under the best evidence rule where a question is raised as to the authenticity the original must be produced. So, we object to state’s exhibit number nine on that ground. I would ask in connection with that objection that we be permitted to have marked and made a part of the record the copy of that judgment that was originally furnished to me by Mr. Bryan showing that *there is no signature of Judge John F. Onion, Jr., of course, who is long since deceased*, on that judgment.

Kenneth adds: Since March 13, 1992, the date learned defense counsel found Judge Onion to be 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?*

\*\*\*

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. **Shessy 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.*

## Index of Advertisers

American Eagle Enterprises, Inc. ....	997, 999, 1001
Andrews Royalty .....	976
Attorney's Insurance Marketplace, Inc. ....	984
Automated Legal Systems, Inc. ....	947
Matthew Bender .....	979
Best Case Solutions, Inc. ....	1027
Budget Rent A Car Corp. ....	977
CDB/Infotek, Inc. ....	1008
Capitol Services, Inc. ....	971
Contingent Liability Services of America .....	1016
Daniels-Head Insurance Agency, Inc. ....	980
Data Trace Legal Publishers, Inc. ....	1020
Excelsior Legal, Inc. ....	954-955
Fountain Software Ltd. ....	968
Franchise Development Corp. ....	1006
Global Tracing Services, Inc. ....	996
Government Liaison Serv., Inc. ....	1010
Health Care Auditors, Inc. ....	1026
Int'l. Genealogical Search, Inc. ....	1007
Kreisner & Gladney .....	1024
Lawyer's Aid Service, Inc. ....	963
Lawyers Cooperative Publishing .....	961
Lawyers Research, Inc. ....	985
Legal Directories Publishing Co., Inc. ....	IBC
Lerner, Dr. Steven E. and Assoc. ....	1036
Lione, Greif, Ross & Lee, P.C. ....	1025
Little St. Simons Island .....	1026
Mead Data Central .....	948-949, 975, 1011
The Michie Company .....	989
National Legal Research Group, Inc. ....	970
National Locators, Inc. ....	998
National Mediation Academy, Inc. ....	968
New Products/Services Forum .....	1017
Oklahoma City University School of Law .....	1029
Osage Group, Inc. ....	969
Owl Software, Inc. ....	1002
Physicians for Quality .....	1035
ProTexn, Inc. ....	959
SEAL Corporation .....	988
Specialization, Texas Board of Legal .....	1038
Specialty Software, Inc. ....	970
State Bar of Texas Institute Schedule .....	1022
State Bar of Texas Insurance Trust .....	IFC
State Bar of Texas Legal Forms .....	967
Stewart Title Guaranty Company .....	950
Texas A&M University Tax Workshop .....	960
Texas Commerce Bank .....	1003
Texas Corp. Supplies, Inc. ....	957
Texas Lawyers Insurance Exchange .....	1041
Texas, The University of School of Law .....	974
TransMedia .....	988
West Publishing Company .....	BC
Zunker, Butler, Estes & Crane, L.L.P. ....	1035