

*Depositions v. Trials:*

## My Red Bull Air Mity Dam Blew

This month's contributions are from Austin (**Joan Judy, Judge Pete Lowry**), Beaumont (**Milton Shuffield**), Dallas (**Martha Hardwick, Mark Kolitz, Jo'anna Snowden**), Fort Worth (**Judge Wallace Bowman, Julie New**), Houston (**Craig Clendenin**), Lubbock (**J. Edwin Price**), and Temple (**Donna Heatherley, Debbie Hyndman, Judge Byron Skelton**).

**How Many Lawyers Have You Employed?**

From **Martha Hardwick** of Dallas (Bauer, Rentzel, Millard & Hardwick), this excerpt from a recent deposition that she took "of a particularly recalcitrant, well-heeled, hostile, and apparently litigious physician":

Q. Dr. X, how many attorneys have you employed over the last five years?

A. I don't know. Jeez, I just — I don't know how many. *Is there a limit?*

Q. No. Have you — there'd better not be.

A. *Are you talking about attorneys on my side or the other side when you say how many I employed?*

Q. Well, that's good.

**The Verdict**

From **Judge Wallace Bowman** of Fort Worth (County Criminal Court No. Four) and his court reporter, **Julie A. New**, this conclusion to an assault/bodily injury trial:

The Court: Would you please hand the verdict form to the bailiff for inspection by the court. At this time, I'll ask the defendant to please rise. The verdict form is signed by Becky Summer Stroope as presiding juror. At this time, I'll read the verdict to the defendant. "We, the jury, find the defendant *not guilty* as charged."

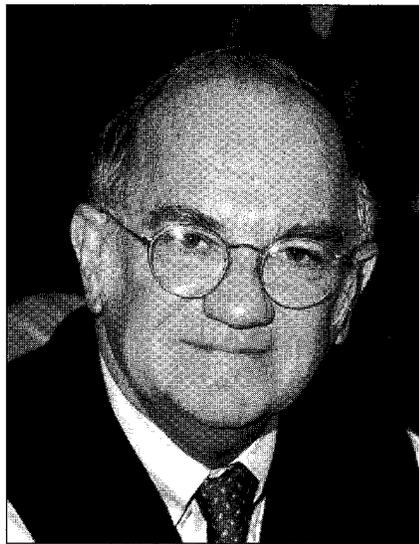
Presiding Juror: *Damn! I signed the wrong one.*

**Maybe This Is All a Dream**

From **Craig H. Clendenin** of Houston (Benckenstein, Norvell & Nathan), this excerpt from the deposition of Craig's client, a bank officer, being taken by **Gus Pappas** (Dabney, Theis & Pappas):

Q. Okay. Is there any reason that you know of right now that would have caused you to not be able to give your testimony in the best possible way you can? For example, are you taking any med-

By Jerry Buchmeyer



ications that might make you less than at your best?

A. No, sir. I don't think my sinus medicine makes me —

Q. And I'm not insinuating there is. I know that sometimes people come back later and they say, "You know, I was suffering from delusions that day and I just didn't know what I was saying because I was medicated, and under codeine or something." And so anyway —

A. No, I am pretty sure I'm coherent.

Mr. Clendenin: *Maybe he has delusions that he's coherent.*

Mr. Pappas: Well I guess.

A. (Wisely) *Maybe this is all a dream.*

**In Search of the Rosetta Stone**

From **Judge Byron Skelton** of Temple (who is a senior circuit judge of the U.S. Court of Appeals for the Federal Circuit in Washington, DC), this memorable quote from an appellate brief:

The invention is readily understood from reading one of the appealed claims:

3. A solid elastomeric copolymer of ethylene and propylene having from about 25 mole percent to about 60 mole percent of repeating units derived from propylene, a reduced specific viscosity of at least about 1.3, a Mw/Mn ration of at least 2.0 and less than about 3.0, a solubility in n-heptane at -15 degrees

Centigrade of at least about 93 percent weight and a solubility in a mixture of equal volumes of n-heptane and acetone at 20 degrees Centigrade of less than about six percent by weight, wherein at least 90 percent of the total copolymer has a propylene content within four percentage units of the average composition.

As Judge Skelton notes, "This statement may be readily understood by anyone having a Ph.D. in chemistry, but to one unskilled in that subject it might as well have been written in Chinese."

**Did He/She Really Ask That?**

From **Milton G. Shuffield** of Beaumont (Bernsen, Jamail, etc.), this excerpt from "the deposition of a risk manager for [his] client," being taken by the plaintiff's attorney in a slip and fall case:

Q. What did Ms. Broadway tell you at the scene of the accident?

A. She kept telling me her head was hurting.

Q. Okay.

A. And I asked her if she hurt anyplace else and she just kept saying her head was hurting.

Q. I'm not asking you this in a medical term. This is as layman as possible. *In your opinion, when you arrived at the scene, was she still laying down?*

A. Yes, she was. That's not a medical question. You're right. That's a nonmedical question.

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From **Mark R. Kolitz** of Dallas (Liechty, McGinnis & Kolitz), this question from a recent set of interrogatories served on Mark by a "rather respected personal injury defense attorney" who shall, of course, Remain Nameless.

Q. Please state the content of *any conversations between you and the vehicle operated by David Gonzalez at the scene of the accident made the basis of this lawsuit.*

**If You Drink, Don't Medicate**

From **Judge Pete Lowry** of Austin (261st District Court), these excerpts from the father's testimony in "a trial in which the state sought to terminate [his] parental

rights." Assistant District Attorney **Ann Foreman** of Austin asked the questions.

Q. You told Dr. Zamorski you could drink about two six-packs a day?

A. Yes.

Q. Is that about right?

A. Yes.

(Later)

Q. Can you please sort of tell us where you've been employed in the last three years?

A. Well, I worked at Church's Chicken and then I worked at the Finish Line on Bee Caves Road.

Q. Why did you quit?

A. Well, the reason why I quit was because my high blood pressure was getting next to me on the job and they said that I should take my medication, but I wasn't taking it.

Q. Why weren't you taking it?

A. Because they said it is not good to drink and take that medication that they had me on, so I just said — you know, *I didn't want to be bothered by taking the medication if I was going to be drinking.*

A. Okay. So you chose to drink instead of taking the medication?

Q. Yes.

### Did He/She Really Say That?

From **Joan Judy** of Austin (Joan is a legal assistant with the Texas Commission

on Human Rights), this excerpt is from a hearing on motions to compel the Texas Knights of the Ku Klux Klan — which was being investigated for violations of the Texas Fair Housing Act in Vidor — to disclose certain business records and membership lists. **Bill Conover** of Austin, as counsel for TCHR, is questioning the grand dragon of the Texas Knights of the KKK about the distinction between "open" members and "secret" members of the Klan.

Q. Do you have membership applications that you provide people?

A. Yes sir, I do.

Q. And when a person fills out that application, where do those applications go?

A. They are sent to the national office, sir.

Q. So you never see them?

A. Sometimes I do and sometimes I don't. Like say you're a member, well, people join up, and then they'll fill out applications and send it to national and I will not know about this. *Now, like say you joined up right now, I would have your name and —*

Q. Really.

A. If you would, you would be a bad member. But then I would know who you are. (Joan adds that shortly after this exchange, the grand dragon used **District Judge John Dietz** and his court reporter as other examples.)

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From **Donna Heatherley** and **Debbie Hyndman** of Temple (Donna is a legal secretary and Debbie is a legal assistant to **Matthew Witt** at Cowles & Thompson), come these two recent deposition excerpts. First, from a medical malpractice case where the plaintiff's daughter is being questioned about her mother's surgery, "the removal of the uterus due to a diagnosis of cancer."

Q. And what was your understanding about why the uterus was to be removed, if the cervix showed that it did not have cancer?

A. The doctor told us that the cervix showed to be good, but that if she did not have the surgery now, she would die in a couple of years of cancer.

Q. What kind of cancer?

A. I guess, female, down there. He just said she would die in a few years of cancer. He didn't say of colon or prostate or nothing...."

Their second deposition excerpt is from a legal malpractice suit; the plaintiff has frustrated the defendant's attorneys by stating that he could no longer continue the deposition.

Q. Let's just — are we going to see if we can start this deposition back this after-

noon, or do you know we can't?

A. I don't think I'll be able to get back. *I think I'm twisting into a pretzel right now.*

Q. Is there a possibility? I don't want you to later on use that as an excuse that you weren't —

### Wearing Oxygen

From **J. Edwin Price**<sup>1</sup> of Lubbock, this deposition excerpt "which may explain all of the problems (both real and perceived) of our legal system in Lubbock County. My client, the husband of the lady injured at a bowling alley, is being deposed by former State Bar President **Joe Nagy** and **Jay Weatherby** (Crenshaw, Dupree and Milam). Mr. Nagy is attempting to investigate the witness' medical history and breathing difficulties."

A. I use Dr. Karkoutly for my heart [and] Mark Johnson is supposed to have treated me for my lungs ... and another one treated me ... for sleep apnea.

Q. You've got one of those machines they give you to make you sleep?

A. Yeah. *And I'm supposed to wear oxygen. There's buildings that you can't go into, like the courthouse. There's not enough oxygen in the air.*

### The Demand Letter

From **Jo'anna Snowden** of Dallas (Jo'anna is a paralegal with **Woody Henderson**), this marvelous (!) demand letter, which was handwritten (i.e., *scrawled*) and sent to Humble Exploration in June 1979:

Mr. Ferguson:

Duwn on my place on creek where yo have boxes with a lot of wheels my bull fell in one and the gas blowed him out Wensday. And he air not ded but he mount as well be. I want your straw boss repot him ded and pay me. He mash out bofe his seeds leafing mity little of his bag. His tared out his skin for a feet square twixt his seeds and nabul. He air totally onqualified to be a bull and he air to dam tuf for beef — so I want him repote ded and pay for me.

You Sincerely,  
■■■■ ■■■■

P.S. He air a red bull but he stand around looking mity dam blew these days.

1. J. Edwin Price adds: "Later in the deposition, this same gentleman testifies that he believes part of the measure of his 49-year-old wife's damages lies in the fact that she had just started bowling, and can no longer bowl and has therefore lost the potential income of developing into a professional bowler."

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



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