

Depositions v. Trials:

You're Dead As We Sit Here Today?

The "et cetera" contributions this month are from Austin (**Earl Staelin**), Corpus Christi (**Fred McCutchon**), Dallas (**Martha Hardwick**, **David Kent**, and **Paul Purtha**), Houston (**Randy Wilhite**), and Orange (**Kevin Jordan**) — with classic typos from Alice (**Elizabeth Ellzey**) and Dallas (**Charles Chesnutt**, **Richard Hunt**, **Robin Kennedy**, and **Thomas Whelan**).

From the Trials of Buchmeyer

All of these excerpts are from criminal cases I tried during the past several months:

Q. How many times did you use GMHB and alcohol and go into a coma?

A. None ... *that I know of.*

Q. Can you identify this document?

A. Identify it as what?

Q. How could I have possibly told you that?

A. *With your mouth!*

Q. Did you have sex with her?

A. I'm not going to answer that. That's my personal business.

The Court (wisely): You do have to answer. That's one of the reasons we're having this hearing.

Q. Now, did you have sex with her?

A. Well, I did have sex with her ... *as best I recall.*

Q. When did you come to the U.S. from Viet Nam?

A. July 7, 1992.

Q. Are you related to Mia Tran, the defendant's wife?

A. Yes. She is my sister.

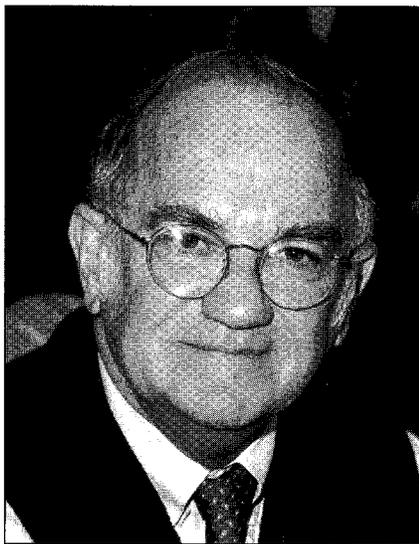
Q. *How old is she?*

A. *I don't know. I'm very busy with my work.*

Q. When did Ann move from Dallas?

A. I don't remember clearly.

By Jerry Buchmeyer



Q. Well, she was your dearest friend. And you were in business together. When did your business with her end?

A. *When Ann was murdered in Atlanta, I did not do business with her anymore.*

A Lawyer Term of Art (sic)

From **Frederick J. McCutchon** of Corpus Christi (Wood, Boykin & Wolter), this excerpt from the deposition of a witness "for a company that sells a certain blended product" — with this explanation: the witness is "being questioned by the attorney for the buyer company about the allegedly substandard quality of the blended product"; this exchange "may single-handedly inspire a new edition of *Black's Law Dictionary*."

Q. If somebody makes a complaint about a chemical they get and says, "This didn't work. It doesn't seem like what was in the test kit. It's not working."

A. Okay.

Q. Or, "It's taking a lot more. It seems to be more dilute than it should be. It looks more dilute. It acts more dilute. This isn't the way it worked when we had it in the test kit. ... So, we can't figure out what's going on, unless maybe y'all are *doodeedoing* with the product." If someone makes an accusation that specific, would you keep the product and retain it?

A. *Doodeedoing, can you define that?* That's apparently a —

Q. That's a lawyer term of art. It means —

it means altering, messing with it, diluting it without letting anybody know who should know.

Did He/She Really Say That?

From **David Kent** of Dallas (Hughes & Luce), this quote from a Dallas attorney who had driven to Denton to offer legal advice to three SMU students who had been arrested and charged in a highly publicized criminal case:

[The attorney] said he did not know how the students planned to post bail or who would represent them in court. "These are young men who are going to college without a lot of money," the attorney said. "*They're innocent until proven broke.*"

From **Earl Staelin** of Austin, this excerpt is from the deposition of his expert, "a bright young engineer [who] was giving one of his first depositions and [who] had never heard of being asked whether he intended to testify 'live' at trial."

Q. *Have you been asked to testify live in this case?*

A. Excuse me?

Q. Have you been asked to testify live at the time this case is tried?

A. Yes.

Q. Do you plan to do so?

A. *That's a frightening question.*

Mrs. Harrison: As opposed to dead?

The Witness: Sorry.

A. *Boy, you guys play hard ball.*

The Thinker

From **Martha Hardwick** of Dallas (Bauer, Rentzel, Millard & Hardwick), this deposition excerpt — with Martha's admission that she was "the obviously surprised questioner":

Q. What made you decide to do that?

A. I am thinking.

Q. That's all right.

A. That's a good question.

Q. I never had anybody stop to think in a deposition before.

The Password

From **Randall B. Wilhite** of Houston (Looper, Reed, etc.), this excerpt is from his direct examination of his client, the wife who "was requesting an unequal division of com-

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munity property based on her husband being physically abusive toward her during the marriage.”

Q. In April of 1993, did you and your husband have another altercation?

A. Yes.

Q. Describe to the court what happened.

A. He was trying to get into the computer where I had kept old records of our checking account for the company because he wanted to change them, and he couldn't — because I had it passworded.

Q. Did he ask you for the password?

A. Yes, but I said I wouldn't give it to him.

Q. What did he say?

A. *He said that if I didn't give him the password, he was going to beat me.*

Q. What did you say?

A. *I told him, "Go to hell."*

Q. What happened next?

A. He beat me.

Q. Why did you say a thing like that to him?

A. That was the password.

Q. What was the password?

A. *Gotohell.*

Q. Oh, that was the password?

A. Yes, that was the password.

Q. I see.

Are You Married?

From **Paul Purtha** of Dallas (Humphrey & Associates), this excerpt from a recent deposition in a nursing home liability case:

Q. Were y'all married at that time?

A. Yes, we were.

Q. Could you tell me what year y'all got married?

A. 1973.

Q. Was Mr. ___ your first and only husband?

A. He is not my first husband. *He is my only husband at this time.*

Q. Okay.

Classic Typos

(1) From a front-page article in the *Alice Echo-News* (March 7, 1995) about the arrest of a man who had been a fugitive for four years: The defendant “had been released on a personal *reconnaisance* bond.”

(2) From a response to a request for production of documents in a Dallas case: “Subject to and without waiving all applicable objections, defendant will produce the materials for the plaintiff's inspection at a mutually *inconvenient* time and place.”¹

(3) From the cover letter by the plaintiff's attorney forwarding the doctor a check for services from the settlement proceeds: “Enclosed please find a check for services rendered. Thank you for your *patients*.”

(4) From the other side's objections to

a motion for summary judgment affidavit: “Affidavits containing inadmissible *heresy* or legal conclusions unsupported by specific facts are not proper summary judgment evidence.”

(5) From the Greater Dallas Business White Pages (June 1994-95), this “sign of just how far the tort reform movement has gone”:

CMK Graphic Artist — 911-9111

Co-Defendants Anonymous — 911-9111

Co-Dependency Accredited 24-Hour — 911-9111

These classic typos are from (1) **Elizabeth Ellzey** of Alice; (2) **Robin Kennedy** of Dallas (Caron, Greenberg & Fitzgerald); (3) **Charles R. Chesnutt** of Dallas; (4) **Thomas M. Whelan** of Dallas (Novakov, Davidson & Flynn); and **Richard M. Hunt** of Dallas (Donohoe, Jameson & Carroll).

Are You Dead As We Sit Here Today?

From **Kevin M. Jordan** of Orange, this Twilight Zone excerpt from his deposition of the defendant in an automobile personal injury case.

Q. What were you doing [when you worked] at Texaco?

A. I was working as a laborer in the work gang in the grease plant.

Q. Okay. And you said that you had stress-related job problems at Texaco that led you to narcolepsy; is that right?

A. Yes, I did. *It was working to death.* You get in an atomic chemical facility and *they put big mind control on you*, you know, and you can't do nothing but work, work, work till you're dead, you know. *You just work and work and work and work and work.* There's no life. You can't get out of it. There's no air to breathe. Then you get hurt; and I got hit with a pipe on my head, cracked my skull, tore the top of my head off.

Q. Do you know what year that was?

A. Yes, 1976.

Q. Did you see doctors about that?

A. No. *I just died. I'm dead, see. I'm dead.* It's just that I'm a ghost, and I returned. I've already had my funeral. ... *God won't let me into Heaven because I'm not good enough yet. So, I've got to stay here on Earth; but I am dead.*

Q. You're dead as we sit here today?

A. I'm dead.

Mr. Jordan (wisely): Can we take a break?

1. And Robin adds, “By the way, this same case recently spawned a pleading entitled, “Plaintiff's Amended Motion to Amend Plaintiff's Second Amended Complaint”!