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## Depositions v. Trials: The Razoo Rule

This month's title contribution is from **Chief Judge Ronald L. Walker** of the Beaumont Court of Appeals (courtesy of **Peter Chantilis** of Dallas). The other contributions are from Arlington (**Frank Gilstrap**); Corpus Christi (**Stewart Hoffer** and **Kay B. Walker**); Dallas (**Charles R. McConachie**); Houston (**Thomas B. Andersen**); McAllen (**A. Peter Thaddeus, Jr.**); San Antonio (**Jonathan B. Cluck**, **Dawn K. Gibbs**, and **Ted H. Roberts**); and Tyler (**Raymond W. Cozby, III**).

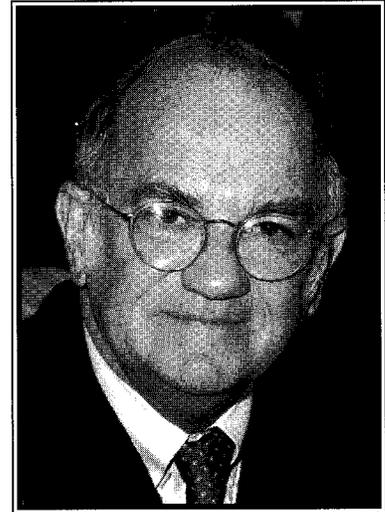
### Playing for Keeps

From **Peter S. Chantilis** of Dallas, this marvelous (!!!) excerpt from the opinion of **Chief Judge Ronald L. Walker** of Beaumont (9th District Court of Appeals) in *Mauriceville National Bank v. Zernial*, 880 S.W. 2d 282 (Tex. Civ. App. — Beaumont 1994). In his opinion, Judge Walker describes how the bank account of a general contractor — being held in trust by the bank for the benefit of the subcontractors — was seized by the bank and credited to amounts due on its loan to the contractor. In other words, Judge Walker observed, the bank "chose to unilaterally 'Razoo' the balance of the account" (880 S.W. 2d at 291). Then, fortunately for us, Judge Walker explains in footnote 1:

"Razoo" is a "real" word meaning: with influence of razzle-dazzle.... Webster's New International Dictionary 2069 (2nd ed. 1936).

"Razoo" was also used colloquially, meaning, "grab all you can, as quick as you can." The word was commonly used by marble playing youngsters in the 1940s and '50s. During the era, playing the game of marbles "for keeps" was morally unacceptable, for such constituted a form of gambling or gaming. To be caught playing marbles "for keeps" on school campus, subjected the catchee or catchees to corporal punishment. Nevertheless, certain youngsters, from time to time, would run the risk of punishment by indulging in this morally improper activity. In so doing, a virtually

fail-safe warning system was devised. One or more youngsters were designated "look-outs," whose sole function was to sound the alert should a teacher or principal approach the area. *Rather than yelling, "the teacher/principal is coming," the "lookout" would simply yell, "razoo" thus, was born the "Razoo Rule."* The word "Razoo" immediately triggered an unwritten legal concept known as "absolute and unquestioned ownership" of all the marbles which could be grabbed by any of the players. The fairness of the "Razoo Rule" was derived from the fact that all players "agreed" to the rule. (Whether the "Razoo Rule" was recognized nationally, the writer knoweth not, however, the rule was of common understanding at Pine Grove Elementary School, Newton County, Texas).



By Jerry Buchmeyer

### East Texas Slang

From **Raymond W. Cozby, III** of Tyler (Cowles & Thompson), this closing argument made by his brother, **Andrew J. Cozby**, the prosecutor in a criminal trial in Houston:

Mr. Cozby: Members of the jury, I appreciate your patience during this trial. I'm going to be talking quick because my time is limited. If you can follow this East Texas slang I appreciate it because I'm going to be going over some important points.

Number One: What we call in East Texas — if you've ever seen a dog chasing a rabbit, sometimes they will get off on some rabbit's trail. That's a false trail that leads off in a circle. And a dog will get off on a false trail from where the rabbit really is.

Defense Attorney: Your Honor, *I object to being called a dog.*

Mr. Cozby: Your Honor, I except to that, *I was calling him a rabbit.*

### What An Evil Person He Is

This deposition excerpt is from **Charles R. McConachie** of Dallas (Simpson, Woolley & McConachie). This witness (a judgment debtor) has testified that she has no stocks, bank accounts, art, or other non-exempt assets, so Charles asks about information given to him "that after the lawsuit was filed she bought two expensive dogs."

Q. One of the things we asked for somewhere here was anything about dogs. A year or so ago, did you acquire a couple of dogs?

A. *I find this the most disgusting question that's ever been posed by Mr. \_\_\_\_\_. I have a blind dog and a crippled dog that I got from the shelter, and this shows the evil person he is ....*

Q. Within the last two years, have you —

A. No.

Q. — picked up any more dogs?

A. No.

Q. Just the two?

A. '91. I got them because that's when my dog, —, that Mr. \_\_\_\_\_ threatened to kill, died.

Mr. McConachie (*wisely*): I'm going to object to all of this as being non-responsive.

## Classic Typos

- (1) From a letter forwarding a will to a client:

After you have read the enclosed draft of your Will, please give me a call to schedule an appointment *for your execution*.

- (2) From a transmittal letter submitting two orders concerning attorneys' fees and expenses to the Bankruptcy Court in Corpus Christi:

The second order was inadvertently granted after the first *greed* order had been submitted. The second order needs to be vacated by the Honorable Judge Schmidt.

- (3) From a letter transmitting a motion for summary judgment to the Tarrant County District Clerk:

By copy of this letter, all counsel of record are being provided with copies of this instrument. To avoid *duplicity*, only copies of those exhibits not filed with the original motion for summary judgment are being sent.

- (4) From a brief filed in a 1983 case before U.S. District Judge Hayden W. Head, Jr. of Corpus Christi:

*Webster v. City of Houston*, 735 F.2d 838 was decided by the U.S. Court of Appeals, 5th Cir., in 1984. Thirteen Circuit Court Judges heard the argument with five of the Honorable Circuit Judges *descending*.

- (5) From an answer to a counterclaim in a suit in the 57th District Court in San Antonio:

Defendant generally denies each and every, all and singular, the allegations contained in Southwestern Bell Telephone Company's cross action and hereby *lays itself upon the country*, requesting a trial by jury.

The contributors of these classic typos are (1) **Thomas B. Andersen** of Houston (Williams, Birnberg & Andersen); (2) **Kay B. Walker** of Corpus Christi (Kay is a law clerk for Bankruptcy Judge Richard S. Schmidt); (3) **Frank Gilstrap** of Arlington (Hill, Gilstrap, etc.); (4) **Stewart Hoffer** of Corpus Christi (Stewart is a law clerk for U.S. District Judge Hayden W. Head, Jr.); and (5) **Ted H. Roberts** of San Antonio.

\*\*\*

This deposition excerpt from **Dawn K. Gibbs** of San Antonio (Dawn is a legal assistant with Sparr & Associates):

Q. Don't remember his name?

A. I think his name is — he has kind of a hard name. It's hard.

Q. *Henry*?

A. No.

Q. *Rick*?

A. No.

Q. *Ted*?

A. No.

Q. *Tony*?

A. No.

Q. *Bill*?

A. No.

Q. *Mark*?

A. No. It's — I can't think of his — he has a real hard name. I can't even say it.

## Tell Us About Your Injuries

This deposition excerpt from **Jonathan B. Cluck** of San Antonio (Kampmann & Church):

Q. What type of injury?

A. I was hurt in jump school at Fort Bend, Ga.

Q. Okay. Could you tell me the nature of the injury?

A. I crushed one of my testicles, gangrene set in and they cut out the left one.

Q. Uh-huh. Have you recovered from that?

A. I didn't grow another one, no.

Q. If you do, let us know. Are you taking any medication as a result of that injury?

A. Oh, no. Never.

## What Color Was the Gun?

This deposition excerpt from **A. Peter Thaddeus, Jr.** of McAllen (in which life imitates Woody Allen's "*Take the Money and Run*"):

Q. Okay. Then, [your sworn statement to the police officer] says, "I remember there was one guy and he had a gun in front underneath his shirt." Do you remember that?

A. Yes, sir.

Q. And, then, it says, "The guy was black." Is that right?

A. *The guy was what?*

Q. Black, is what it says.

A. The guy was black?

Q. Is that right?

A. No, sir.

Q. Okay. You don't know where the police got that information?

A. No, sir.

Q. Okay. And, then, it says, "The guy is skinny."

Mr. Thaddeus: No, no. Let's confer. *Gun!*

Q. *Ah, I see.* Was the *gun* black? ... It looks like "*guy*." Well, let me ask you this ... Was the *gun* black?

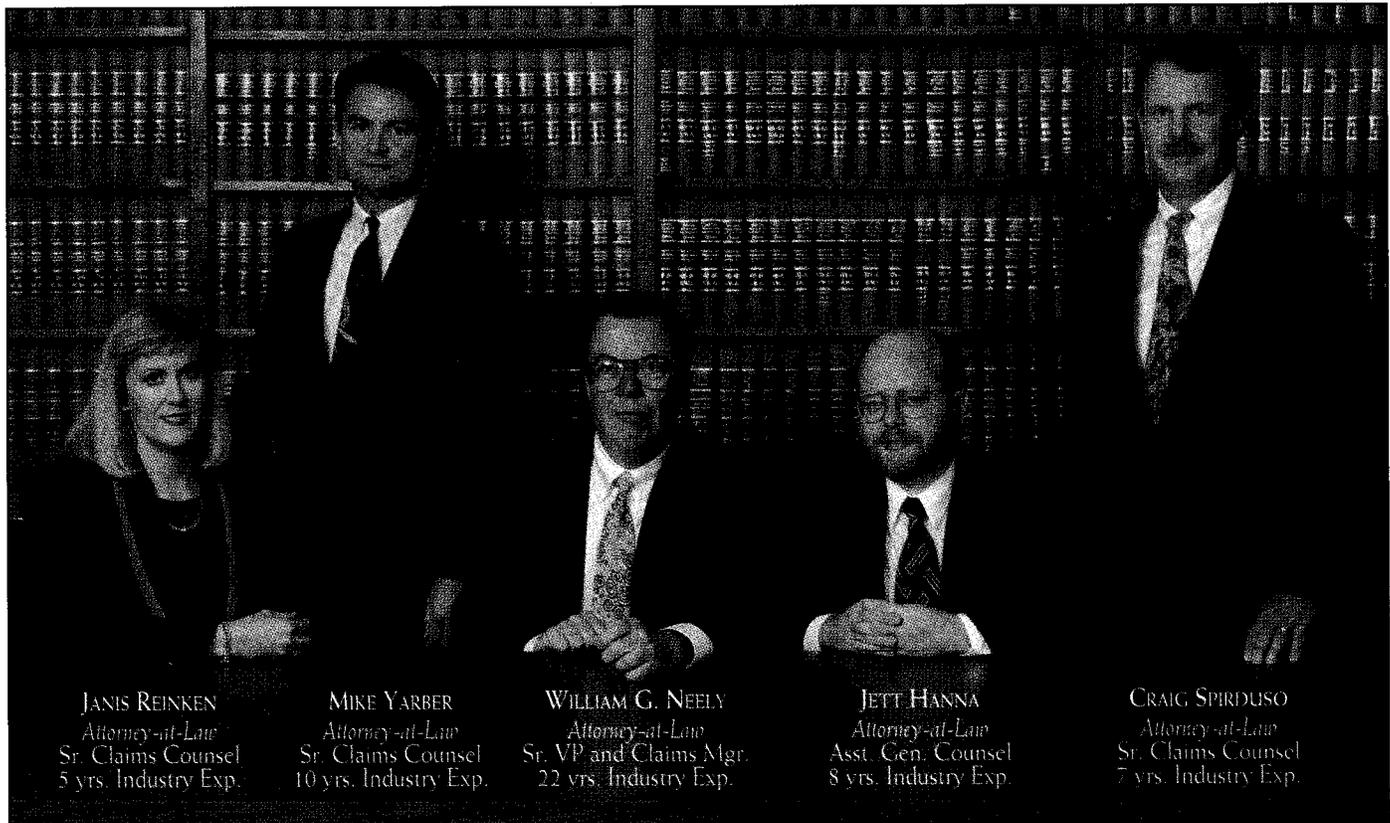
A. Yes, sir.

*Judge Buchmeyer is chief judge, U.S. District Court, Northern District of Texas.*

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