



How Do You Know He Was Dead?

BY JERRY BUCHMEYER

THIS MONTH'S COLUMN consists of clever contributions collected by connoisseurs in Austin (**Shelli Wakefield**), Brownfield (**Frank L. Lacy**), Dallas (**John Lamonaco**), Fort Worth (**Paul A. Conner**, **Janet E. Miles**), Houston (**Sharon E. Conway**), Midland-Odessa-Pecos (Judge **Lucius D. Bunton**, **Russell D. Cawyer**), and Richmond, Va. (**Robert F. Redmond, Jr.**).

CLASSIC TYPO'S

The classic typo contributions continue to arrive in a Veritable *Flud* including:

- (1) From a delightful case involving the rights to proceeds from the sale of cattle and cattle semen, this statement in a motion for release of funds: "In the alternative, *in the interest of comedy*, this Court declined to review"
- (2) From a Terry County divorce pleading: "Response To Request For *Reproduction*" — "Respondent files this response to Petitioner's Request For *Reproduction* and states"
- (3) From a Tarrant County motion to quash;
 - I. Defendant is charged by *his* with an offense herein.
 - II. The *his* fails to allege an offense in plain and intelligible language.
- (4) From various pleadings typed by a young secretary/word processor, "*at law and iniquity.*"

These classic typos are from (1) **Shelli**

Wakefield, law clerk to magistrate Judge John Capelle, Western District of Texas, Austin Division, (2) **Frank L. Lacy** of Law Office of Frank L. Lacy, Brownfield, (3) **Paul A. Conner** of Paul A. Conner, Fort Worth, (4) **Janet E. Miles** of Heard & Wright in Fort Worth.

A KINDER, GENTLER OLD JUDGE

U.S. Senior District Judge **Lucius D. Bunton, III** — who bills himself as "a Kinder Gentler Old Judge" in the newsletter he writes for the district judges of the fifth circuit — had this report in his Sept. 17, 1996 newsletter:

All of us are familiar with the Pattern Jury Charge in criminal cases that has to do with reasonable doubt. The charge itself reads in part:

If you are convinced that the accused has been proved guilty beyond a reasonable doubt, say so.

If you are not convinced, say so.

This identical charge is given in the 11th circuit and, sure enough, *a juror in Judge Davis' court, in Miami*, when this portion was read, *stood up in the jury box, raised his hand and exclaimed loudly: "Guilty."* Judge Davis reported that this created quite a bit of consternation, particularly at the defendant's table.

PLUS A BUNTON TWO-FER

And **Russell D. Cawyer** sends these excerpts from the transcripts of two trials before Judge Bunton:

Q. And that medication was from her gynecologist, wasn't it?

A. Yes, sir.

Q. It wasn't from a psychologist or psychiatrist or anything?

A. No, sir.

Q. *From a female doctor?*

A. *No, sir?*

Q. A gynecologist is not a female doctor?

A. *It was a guy.*

Q. Well, I mean a doctor that works on women?

A. Oh, okay. Yes. I thought you meant person female.

The Court: Mr. Henry, two things.

Donna is a great court reporter, and I'm sure she got all that down, but I've told you before my hearing aids can just listen so fast.

Mr. Henry: All right.

The Court: And I was in Portland, Ore. last week, and I lost one of those things. So if you see me cocking my head to the right, it's not because I like to look at that jury over there in the box; it's because the only hearing aid that I have left is in my right ear. So if you'll just slow down a little bit, I think I can get most of it in that right ear.

Then later, in the closing arguments:

Mr. Mears: Your honor, if I appear to wink at you it's because I have got a problem. I lost a contact last night. So, like you. I'm working on half of what I need. And sometimes I have to blink in order to see through these glasses.

The Court: I'll turn my deaf ear to your blind eye.

Mr. Mears: I'm sure there are a lot of people who would think that would be progress.

DID THEY REALLY SAY THAT?

From **Robert F. Redmond, Jr.** of Richmond, Va. (McGuire, Woods, etc.), who is a member of the State Bar of Texas, this excerpt from his deposition of a personal injury plaintiff "who claimed soft tissue neck and back injuries subsequent to a very minor rear end impact."

Q. What's the longest you have been able to sit and read in the past year without pain?

A. *An hour.*

Q. After an hour, no matter whether you have flare-up or not, you suffer pain; is that correct?

A. No.

Q. *Well, what happens after an hour if you're not having a flare-up?*

A. *I usually don't read that long.*

From **Sharon E. Conway** of Houston (Evans, Kosot, etc.) This excerpt from the deposition of her client in a DTPA/fraud case, which involved the wrongful repossession of a truck purchased by her client.

Q. Has he been treated for any injuries in this case?

A. No.

Q. Has he seen a doctor or psychiatrist or health-care professional in this case?

A. No.

Q. Has he met with clergy or other counselors relative to the incidents of this repossession?

The witness: Clergy, is that you?

Ms. Conway: *No, I think I'm the opposite.*

Q. Pastor or minister or something?

A. No.

HE COULD BE OUT PRACTICING LAW?

From **John Lamonaco** of Dallas (John, a very successful businessman who admits to being friends, with past DBA President (*etc.*) **Louis J. Weber**), this deposition excerpt sent to John by

his son, a doctor in Houston — who thinks the witness is **Dr. "Red" Duke** of Houston.

Attorney: So, doctor, you determined that a gunshot wound was the cause of death in the patient?

Doctor: That's correct.

Attorney: Did you examine the patient when he came to the emergency room?

Doctor: No, I performed the autopsy.

Attorney: Okay, were you aware of his vital signs while he was in the hospital?

Doctor: Yes, he came in to the emergency room in shock and died in the emergency room a short time after arriving.

Attorney: Did you pronounce him dead at that time?

Doctor: No, I am the pathologist who performed the autopsy. I was not involved with the patient initially.

Attorney: Well, are you even sure, then, that he died in the emergency room?

Doctor: That is what the records indicate.

Attorney: But if you weren't there, *how could you have pronounced him dead, having not seen or physically examined the patient at that time?*

Doctor: The autopsy showed massive hemorrhage into the chest, and that was the cause of death.

Attorney: I understand that, but you were not actually present to examine the patient and pronounce him dead, isn't that right?

Doctor: No sir, *I did not see the patient or actually pronounce him dead, but I did perform an autopsy and right now his brain is in a jar over at the county morgue. As for the rest of the patient, for all I know, he could be out practicing law somewhere.*

Contributions to *et cetera* should be mailed to: Chief Judge Jerry Buchmeyer, U.S. District Court, Northern District of Texas, 1100 Commerce St., 15th Floor, Dallas 75242.

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