



## A Slight Change of Pace

BY JERRY BUCHMEYER

THE CONTRIBUTIONS FOR THIS month's column come from Dallas (**Wes Loegering, Jeff Patterson**), Houston (**Donald D. Jackson, Thomas Houghton, Walter Taylor**), Lubbock (**Professor Brian Shannon**), Odessa (**Robert Hollmann**), San Antonio (**Nolan Welmaker**), — with out-of-state contributions from Roswell, N.M. (**Andrew J. Cloutier**), and Tokyo, Japan (**Nona Pucciariello**).

### DID THEY REALLY SAY THAT?

From **Jeff Patterson** of Dallas (Hartline, Dacus, Dreyer & Kern), this "very strange and humorous deposition" excerpt in one of his firm's cases.

Q. Tell me all the people that made the trip from ...

A. It was my mother, father, and my daughter.

Q. I'm sorry. Your daughter?

A. My daughter, uh-huh.

Q. *I'm not hearing you well. Are we saying daughter, or dog?*

A. *Dog. She's my daughter dog.*

Q. I'm sorry. I must have a hearing problem. *Is she your child or your pet?*

A. *Both ... she's a cocker-spitz mix.*

From **Donald D. Jackson** of Houston (McGinnis, Lochridge & Kilgore), this excerpt from the deposition of the plaintiff's son in a wrongful discharge case.

Q. Do you recall [your father] having pain in his feet?

A. I remember him having pain in his right foot — ankle, but I don't

remember this pain on both of his feet. I don't ...

Q. I don't mean ankle, I mean his foot.

A. Yeah, foot. *Well, I don't know the difference between the foot and the ankle.*

Q. All right sir.

A. I don't know what you mean by foot and ankle.

Q. *You don't know what the difference between a foot and an ankle is?*

A. *Not in the way you're asking the question.* By "foot" you mean the toes or the bottom part of the foot?

Q. I mean below the ankle when I say "foot."

A. Well, I'm not sure. *I don't know what the medical records say.*

### BEWARE OF EXPERTS

From **Walter L. Taylor** of Houston (Harris & Taylor), this excerpt from a deposition his partner, **Steve Harris**, was taking of a "fairly well-respected doctor at a major medical facility in Houston." Steve is trying to establish that the standard of care at the hospital "might be higher than that of Steve's client" who, "lets just say, practices in West Podunk."

Q. Okay. Now, of course, you have access to pulmonary angiography. Correct? Here in your hospitals?

A. Yes, sir.

Q. You also have board certified pulmonologists that you can consult with that are just literally down the hall. Correct?

A. If I wanted to, yes.

Q. And you have board certified cardiologists who you consult with literally just down the hall if you want to?

A. Yes.

Q. *Some of the finest minds in the world are right here within a stone's throw of you. Correct?*

A. *Conceivably in this room.*

Q. And I'm not here to debate that, by the way. And I think you're smart, too.

### AND NOW FOR SOMETHING COMPLETELY DIFFERENT

Frequently, I receive contributions that are neither deposition nor trial excerpts, but belong in *et cetera* because they are so funny. Here are several examples.

**Brian D. Shannon** of Lubbock (Brian is a professor of law at Texas Tech University School of Law) sends two contributions. First, Brian says that, as a Contracts teacher, he will "invariably have one or two students each year who would find a contract to be unenforceable because it involved *an illusionary* promise." Next, Brian shares his "all time favorite blooper," which involved "a student's response to a final exam question" about mediation:

In the summer of 1990, I taught a course in Alternative Dispute Resolution at the University of North Carolina School of Law. When we discussed family law mediation, I pointed out

that mediation may often offer *an opportunity for the parties to "vent" their frustrations*. On the final exam, I included a fact pattern involving a divorcing couple, and I asked the students to analyze whether mediation would be appropriate in the particular situation. One student wrote that mediation would be proper because it would give the divorcing couple the "*chance to bend their spleens!*"

**Thomas W. Houghton** of Houston submits this story:

Yesterday, I was trying to locate the full text of an ethics opinion that had been issued by the committee of the California State Bar that issues such opinions, and decided to look on the Web. When I used Alta Vista and searched for "*California Bar Ethics*," at least three or four of the first 10 entries included the word "*Oxy-moron*." (I did not do a search for "Texas Bar Ethics.")

**Robert E. Hollmann** of Odessa submits a copy of a completed jury information form from one of his recent trials, which contained these entries:

Your occupation: *landscaper*

Your employer: *Simpson Apts.*

Spouse's occupation: *housewife*

Spouse's employer: *house*

From **Wes Loegering** of Dallas (Davis, LeClair, Loegering & Daniel), this marvelous(!) letter which he refers to as "Yet Another Example of Those Razor-Sharp Minds at the IRS." The IRS letter, dated Sept. 5, 1996, was in response to an inquiry that had been made by his firm *six weeks earlier* on behalf of a client. "Apparently, it took from July 23, 1996, until Sept. 5, 1996, for the Internal Revenue Service, Austin" to determine what other "agency" had the responsibility for this tax matter.

Dear Taxpayer:

Thank you for the inquiry of July 23, 1996. *The agency named at the end of this letter has responsibility for handling matters of this kind, so we're sending your letter to them for reply.* We're sorry we couldn't be

more helpful. If you have any questions, someone at that office will be glad to help you. If you have questions about this letter, please write us at the address shown on this letter ...

And, of course, the "agency named at the end of this letter" was:

Internal Revenue Service

1100 Commerce St.

Dallas, TX 75242

**Andrew J. Cloutier** of Roswell, N.M. (Hinkle, Cox, etc.), submits a truly enjoyable, if provocative, classified ad that appeared in the Dec. 19, 1996 issue of the *Bar Bulletin* (a weekly publication of the State Bar of New Mexico):

HOUSE DIRECTOR

Transitional residential community of former prisoners and university students seeking energetic, dedicated director. *Legal background ideal* (esp. public defender work), as well as familiarity with addiction/recovery issues. Extremely rewarding job for the right individual. Mid \$20's. Phone immediately for application.

Andrew adds: "A lawyer would have to be extremely burnt out to consider a job as a 'House Director' for a 'transitional residential community' that includes 'former ... university students' in its population."

**Nona S. Pucciariello** of Tokyo, Japan — Nona is licensed in Texas under her maiden name, "Byington" — is an in-house counsel to a Japanese trading company (Nissho Iwai Corporation), where her work involves international projects and transactions. One of her colleagues in the Legal Department, who was drafting a Distributorship Agreement, showed her these comments he had received from an executive of the U.S. company:

Section 14.5: *Our attorney has told us that international contracts are governed by U.S. federal law, not by the laws of any state. I can include a reference to state law, but I cannot accept New York state law, since we are not registered to do business in New York. It would have to be Illinois law, but the attorneys says it*

*will not apply for international agreements.*

I will add a clause about arbitration, but by U.S. federal law, not New York state law.

This was Nona's reply: "*Advise the company they need new counsel.*"

*The Dog Bite Case:* A number of years ago, **Nolan Welmaker** of San Antonio (Welmaker & Welmaker) represented a "lady homeowner under her homeowners liability policy" after her puppy "made the mistake of biting the mailman on the ankle while he was delivering her mail." With the dates for her deposition and trial rapidly approaching, Nolan wrote several letters to his client — who had moved from San Antonio to Corpus Christi — about "her obligation to attend the deposition and trial." Finally, he received this reply from her dated Feb. 2, 1979:

Dear Mr. Welmaker:

Regarding your last two letters pertaining to the trial date and the deposition for this rotten dog bite case. ... I cannot afford to come to San Antonio, much less twice!

Now what can they do about it if I totally refuse to co-operate? Can they send me to jail, threaten my children, make me sell my home? ...

I have one regret. That I was ever concerned with [that nasty old man's] tiny tooth marks on his pale spindly little legs in the first place. And since I ... complied with his wishes to have my dog observed by a veterinarian — at my expense and trouble — *I wish I had knocked the creep's teeth down his throat, along with those of his ugly nasty tempered old bag of a wife.*

Very truly yours,

Nolan's letter ends with this confession: "The case settled, but I was afraid to tell her about it because *I thought she might sic her dog on me*, if she thought I paid the mailman any money."

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, Texas 75242