



## A Jury of His Peers

BY JERRY BUCHMEYER

THIS MONTH'S TITLE CONTRIBUTION is from **U.S. District Judge Carol Amon** of Brooklyn, N.Y. The others are from Alvin (**William Neumann**), Austin (**Roger Bartlett**, **Melanie Sims Campbell**), Dallas (**Toni Dinh**), Fort Worth (**Ann Diamond**, **Michael Wallach**), Greenville (**Judge Joe M. Leonard**), Liberty (**Michael Mark**), and Waco (**Stuart Smith**) — with other out-of-state contributions from Shreveport, La. (**David Szwak**) and **U.S. District Judge William Osteen** of Greensboro, N.C.

### I LOVE AN HONEST MAN

From **Stuart Smith** of Waco (Naman, Howell, Smith & Lee), this excerpt from the deposition of an eye witness to an accident.

Q. Did y'all ever go out and do anything together?

A. Yeah, a time or two.

Q. Did he seem to be having trouble with his hand?

A. Yeah. His hand hurt tremendously when we were up there.

Q. When y'all went out a time or two, what were y'all doing?

A. Well, *I was making a slobbering idiot out of myself drinking*, but I don't recall what Junior was doing.

Q. Fair enough.

Mr. English: *I love an honest man.*

### DID THEY REALLY SAY THAT?

From **Ann Diamond** of Fort Worth (Ann is Chief of Litigation — Civil in the Tarrant County District Attorney's

Office), This excerpt from the deposition of the plaintiff — who claimed that, when he was arrested, the officers used handcuffs that “were a bit too tight.”

Q. Okay. Of course, loose handcuffs aren't real helpful, are they?

A. No, especially on my bony wrists.

Q. Okay. Was there anything defective about the handcuffs, as far as you could tell?

A. *They worked.*

Q. Okay. Good.

From **D. Michael Wallach** of Fort Worth (Wallace & Moore), the excerpt from the deposition of one of the defendant's experts, a cardiologist, in a medical malpractice case involving the death of a woman after surgery.

Q. Are you saying it is impossible for there to be a heart attack that has no evident tissue damage afterwards?

A. The tissue change does not occur for six to 12 hours. So if you give me less than 12 hours the — I mean, as long as you're saying — is it more than 12 hours before the person died?

Q. Well, I'm just — I'm asking you a question now. *I have a friend who had a heart attack, and his doctor told him two months later that there is absolutely zero damage to his heart.*

A. *But he didn't have an autopsy.*

From **Anon.** of Somewhere, this deposition excerpt:

Q. Was your vehicle involved in this accident at all?

A. No.

Q. Were you injured or hurt in this accident at all?

A. No.

**U.S. District Judge William Osteen** (M.D.N.C.) writes that “a robber entered the Wachovia Bank, Durham, N.C., on Feb. 10, 1998, walked up to a teller and handed her” this handwritten note:

I've A Gun  
Do As I Say  
Do Not Give Me  
A Dye Pack.  
Give Me All  
20's-50's-100's  
And No One  
Will Get Hurt.  
*Have A Good Day.*

### Classic Typos

1. From an e-mail message that **Roger Bartlett** of Austin (Hilgers & Watkins) received from a client “in response to [Roger's] inquiry whether the borrower was married.”

“Per Ed Shaw, Ms. Sanders' son here in Austin, Ms. Sanders is married. Her husband's name is Albert E. Sanders. However, he is a *noncompetent menace* and is in a home due to an accident that he was in.”

2. From an affidavit sent to **District Judge Joe M. Leonard** of Greenville (196th District Court):

“My name is Christopher \_\_\_\_\_.”

I am the joint managing conservator and father of the child, the subject of this action, Corey \_\_\_\_ who] is living with "Heath," the *punitive* father of her upcoming child."

3. From **Toni Dinh** of Dallas (Vinson & Elkins) — Toni was one of my law clerks during 1997-98 — these typo's from the transcript of the cross-examination of an "expert" on one of our trials.

Q. Did you do the *dispirit analysis*.

A. I didn't do the *dispirit analysis*. I was the one that testified on the land use policies. ... No, I have never done a statistical *dispirit impact* analysis.

4. From **Michael Mark** of Liberty, who is an assistant district attorney in Liberty County, this excerpt from a "Request for time cut" filed by a state prisoner.

Because of these reasons (attending church, completing Bible correspondence courses, etc.), I am hoping that the necessary trial officials *En Blanc*, will discuss the possibility of a favorable recommendation in my case.

5. From **David A. Szwak** of Shreveport, La. (Bodenheimer, Jones & Szwak), this excerpt from a deposition notice served upon David for the deposition of his client.

PLEASE TAKE NOTICE that the undersigned counsel for the plaintiff ... will take the telephone deposition of ... Mr. Jay Morton ... before a qualified officer authorized to administer oaths ... pursuant to the Louisiana Code of Civil Procedure. You are *incited* to attend and participate as you deem necessary.

ANATOMY 101  
WAS NEVER LIKE THIS!

From **William G. Neumann, Jr.** of Alvin (Hagood & Neumann), these excerpts from the deposition of one of his clients in a personal injury case. William notes that his "client was not the only one who was confused *about what goes where*. The defense attorney also was not clear on a couple of things. *Anatomy 101 was never like this.*"

Q. What other injuries have you had that have required you to seek out

medical treatment in the past 10 years?

A. I had chronic ear infections. *And I had fallopian tubes put into my ear drums*, ear surgeries to stop the earaches three times. One in 1990, two in 1991.

(Later)

Q. They made an incision and stuck a device in there and looked with a camera?

A. Yeah. And they went down my throat with a camera, also.

Q. *So, they made an incision in your stomach and they also put something, an endoscope, into your eustachian tube, down the trachea and took a look in your stomach;* is that right?

A. Yes, sir.

Q. Did they do any cutting or remove anything when they cut into your belly?

#### A JURY OF HIS PEERS

**U.S. District Judge Carol Amon** (E.D.N.Y., Brooklyn) found this marvelous (!!) newspaper story about the alleged exclusion from grand jury service of a very distinctive (but not "distinct" group) — *the Bleecker People*.

ALBANY — Rejecting a creative "hillbilly" defense in a rural murder case, a Fulton County Court judge has ruled that people living in a pocket of pastoral poverty do not constitute a "distinct group" for purposes of challenging the composition of a grand jury.

Timothy Morgan, who is charged with first- and second-degree murder in the death of a cab driver, grew up poor in the Fulton County town of Bleecker. His lawyer moved to dismiss the indictment on the ground that "*Bleecker People*"

had been improperly excluded from the grand jury.

"*Bleecker People*" is a derisive term for residents of the town, who are also called "Hicks" and "Hill People" among other names, according to Albany defense attorney Thomas J. Neidl. In his motion, he said interviews with county residents show the people of Bleecker are "viewed with suspicion and commonly believed to be sexual deviates, of lower intelligence, lazy (and) shiftless." He argued that their apparent exclusion from the grand jury violated his client's Sixth Amendment right *to be judged by a jury of his peers*. ...

The stereotypical Bleecker person, according to the motion, holds a menial job or none at all and depends on some kind of public assistance check for sustenance. "This group has a high rate of alcoholism, criminal histories and generally ... little education," Mr. Neidl wrote. "There are claims of [a] high incidence of physical abuse, sexual abuse and incest and mental disorders in this subculture," whose members are ridiculed or even "shunned by other members of the community."

Without addressing the defense contention that *Bleecker residents* have been excluded from jury pools, Judge Giardino found the defendant had failed to identify "a distinctive group within the community" as required for any due process, equal protection or Sixth Amendment challenge to jury composition.

According to the story, this motion has "aroused a public furor in Fulton County and particularly in the town of *Bleecker* ... [where] town officials are growling about filing a libel suit."

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