



## Please Repeat the Question

BY JERRY BUCHMEYER

THIS MONTH'S TITLE CONTRIBUTION was submitted by **Patrick Wright** of Dallas. The others are from Arlington (**Richard L. Wright**), Dallas (**T. Ray Guy** and **Robert E. Wood**), Houston (**Timothy R. Zinnecker**), San Antonio (**Clarkson F. Brown**, **Jason J. Thompson**, and **Jonathan B. Cluck**), Wichita Falls (**Caven Crosnoe**), and Berkeley, Calif. (**Paul Bernstein**).

### CLASSIC TYPOS

From **Caven Crosnoe** of Wichita Falls (Sherrill, Crosnoe & Goff), this "absolute pearl" of a typo he found in the "holdover clause" of a lease he was reviewing:

In the event that Lessee does not extend the terms of this lease ..., and holds over beyond the expiration of the term hereof, such holding over shall be deemed a *mouth-to-mouth* tenancy only. ...

From **Robert E. Wood** of Dallas (Winstead, Sechrest & Minick), this marvelous typo in the title of a motion to exclude an expert witness drafted by one of the firm's young associates:

Plaintiff/Counter-Defendant's Motion to *Execute* Defendant/Counter-Plaintiff's Expert

From **T. Ray Guy** of Dallas (Weil, Gotshal & Manges), this typo made by the court reporter in transcribing the testimony Ray gave "as an expert witness on class certification issues."

Q. What were you told about the defenses in this case?

A. I asked, frankly, if they would include such things as you commonly see in contract cases such

as waiver and estoppel, and I believe I was told that, yes, waiver and estoppel will be a defense; that *gratification* or modification might also be defenses ....

And, in *et cetera's* first triple submission — from San Antonio attorneys **Jonathan B. Cluck** (Kampmann & Cluck), **Clarkson F. Brown** (Brian L. Blakeley & Associates), and **Jason J. Thompson** (Thompson & Thompson) — this typo in a Jan. 5, 1999 letter sent by an "Attorney-Mediator-Arbitrator" to lawyers in San Antonio:

Dear Fellow Attorney:

After 41 years of litigation, I have decided to turn my attention to mediation and arbitration.

I have been an attorney since 1957, admitted to practice in New York. ...

In addition I have been a *faulty* member of the American Trial Lawyers Association. The Texas College of Trial Advocacy Affiliated with South Texas School of Law.

### CALIFORNIA VOIR DIRE

From **Paul Bernstein** of Berkeley, Calif., this excerpt from yet another trial before Judge Lance Ito.

The Court: What do you like to do in your spare time?

Prospective Juror No. 4: I like to travel and hike. I like the outdoors.

The Court: And how would you describe yourself?

Prospective Juror No. 4: *Easygoing, happy person, very friendly.*

The Court: Is there anything else you think we should know about?

Prospective Juror No. 4: Yes.

The Court: What is that?

Prospective Juror No. 4: *I'm on depressant medication. I suffer from severe migraine headaches, and they put me on Prozac for three months. Then they stopped that and now I'm on a new medication, you know, on trial, see if it works or not.*

The Court: Any problems today? Any problems presently with that?

Prospective Juror No. 4: *No. No. No.*

The Court: Good.

### THAT OLD

#### LOSS OF CONSORTIUM

From **Richard L. Wright** of Arlington, the following deposition excerpt which, as Richard observes, "speaks for itself":

Q. Are you going to be claiming a loss of ability to have sexual relations with your wife?

A. You try something with a bad back, and you get a pain in there, yeah, you're going to quit too.

Q. All right. We'll get into it. Are you still having difficulty in sexual relations you believe as a result of this auto accident?

A. Oh, yeah.

Q. Okay. And does that prevent you from having sex, or does that just affect the quality of the sex?

A. *Hell, it stops me.*

Q. Prior to the accident how often would you have sexual relations with your wife? How many times per week, month, or year?

A. *Hell, as much as possible.*

Q. Well, could you maybe a little bit more specific about that?

Mr. Wright: She's turning red. That's okay.

A. Oh, at least every day.

Q. At least every day?

A. A couple of times.

Q. Couple of times a day?

A. *You bet.*

...

Q. Okay. After the accident how has it changed? Are you doing it every day anymore?

A. Heck, no, I ain't doing it every day.

Q. Okay. Now, how often are you able to do it a week, a month?

A. And feel good about it? Haven't yet, to be real honest with you.

Q. First of all, let's just talk about doing it at all. And if it's not feeling good, then you can explain that.

A. Couple of times a month probably.

...

Q. Has it been that way since the accident, about two times a month?

A. Yes, sir. Yes, sir. It hasn't been even that much.

Q. Okay. So it's less than that? Once a month?

A. At least.

Q. *If it hasn't been two times a month and then I go to once a month and you say, "at least," I don't know if that — you know, one and a half is hard to conceive, I guess.*

A. *Well, one in a half is very possible. If I'm not — my back starts going, I'm off, you know.*

Q. Okay.

#### THE DEVIL MADE ME DO IT

From **Timothy R. Zinnecker**, associate professor, South Texas College of Law in Houston, this excerpt from the trial transcript in a drug case — which Timothy discovered when he was clerking for Fifth Circuit Judge Edith Jones in the mid-1980s.

Q. How did you all arrange on the code numbers (for the beepers)?

A. Well, everybody that has a beeper has a code that they go by so you know who is beeping you because ..., you don't want to answer every code in the world, so everybody generally has a number. So we kind of went through each other's numbers to make sure our

number wasn't being used. *And he said 666 was good for him.*

Q. Did you assign him that number?

A. Yes. I said, would 666 be all right for you?

Q. *Are you a student of the Bible?*

A. *Well, I knew what 666 stood for. If that's what you mean. Yes.*

Q. Okay. Did you believe that it fit Mr. Stickney?

Mr. Behnke: Objection. Your Honor.

The Court: I sustain objection to that question.

#### PLEASE REPEAT THE QUESTION

From **Patrick Wright** of Dallas, these excerpts from the deposition of his client, who was suing Kentucky Fried Chicken because he "had been beaten up at a KFC store *by another patron who was angry because of the slow service,*" allegedly because KFC failed to provide adequate security. Unfortunately, according to Patrick, his client had "a few personal problems that came to light" during the deposition — he was an alcoholic, he had "a terrible habit of exaggerating the facts," and could give President Clinton lessons in "evasiveness and obfuscation."

Q. And what was the reason that [your] marriage ended?

A. *Mutual descent.*

...

Q. Was that the first time you had been in that particular KFC restaurant?

A. No, sir.

Q. Just ballpark, how many times do you think you had been there before in your life?

A. *Probably 500.*

...

Q. Had you ever had any bad experiences on any of the other 500 or so times that you had been in that restaurant before your assault?

A. I had had very slow, incourteous service a few times, which was just natural for KFC, that restaurant, which you could get 400, 500 people to testify to, but no — no violence that I could particularly see, you know ....

...

Q. You're talking about gangs and things of that nature. Do you have any reason to believe that this is a particularly gang-oriented area where this restaurant is located?

A. I've been informed by the policeman that came to the scene of the accident.

Q. And what did that police officer tell you?

A. I don't remember exactly because I — you know, I had a bashed up head and nose and my eyes were both closed.

...

Q. From the very beginning, you smelled alcohol on Mr. Shedd?

A. No, not at the very beginning.

Q. When did you first smell the alcohol on Mr. Shedd?

A. I think the first time I really smelled it on him was when he was knocking my head up against the door of the car.

...

Q. Did you have any idea what might have given Mr. Shedd the idea that you had a bad attitude or were being difficult or disrespectful to him?

A. No. The only thing I can think of is personally, having no prejudice, I can't give any indication to that. He may have been — it may have been because I got my chicken first, you know, it may have been that he was already mad at his girlfriend and there was some scuffling going — had gone on somewhere in there. And I don't recall exactly where that went. But you know, that's about somewhere in there. That's all I can say. *Repeat the question.*

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