



Dilbert Strikes Back

BY JERRY BUCHMEYER

THE CONTRIBUTORS FOR THIS month's *et cetera* are from Austin (**Roger D. Hepworth, Paul Schorn**), Corpus Christi (**Jonathan Bonilla**), Dallas (**Judge David R. Gibson, Judge Jay Patterson**), Houston (**Kellye H. Hirtriter, John F. Luman, III, James A. Newsom, Dr. James M. Ziegler**), Longview (**Alvin Khoury**), Orange (**Judge Buddie J. Hahn**), Texarkana (**Jane Portis Davis**), Wichita Falls (**Mikal S. Lambert**), and Denver, Colo. (**J. Scott Bell**).

THE "BY GOLLY OBJECTION"

This contribution was sent to me by **James M. Ziegler, Ph.D.**, of Houston (Ncompass Research, Inc.) James, who is an expert in "biomechanics and injury causation analysis," found this rather unique objection made in a deposition by his client, an attorney who "had hoped to never be quoted in [the *et cetera*] of the *Texas Bar Journal*."

Q: I'm going to hand you what's been marked as Exhibit No. 4. This is an aerial photograph. Actually, it's a satellite photograph of the accident scene. I'll represent to you this street is Braeswood and this street is Gessner. Why don't I go ahead and mark these as my representations.

Mr. Hopeful: I'll object to that. I don't know why, but I will. It's not your deposition for one thing.

Mr. Miller: Yes, it is. It's not yours.

Mr. Hopeful: It's your testimony.

Mr. Miller: I understand.

Mr. Hopeful: *I don't know what the proper objection for that is under*

the new Rules, but I object, by golly. It's the by golly objection. Let's go off the record for a second.

THOSE JURORS

From **Judge Jay Patterson** of Dallas (101st District Court), this answer from a recent juror questionnaire:

20. How can we change or improve our arrangements, facilities, or procedures to make jury service better?

A: I'm not sure on the law here, but maybe make the counsel wear too-tight shoes to hasten things along?

From **Judge Alvin G. Khoury** of Longview (124th District Court), these answers by two different jurors to the same question in a juror questionnaire he used in a recent capital murder trial.

35. What is the highest grade you completed in school?

A: 100

36. What is the highest grade you completed in school?

A: A

LET'S ALL BOW IN PRAYER

From **District Judge Buddie J. Hahn** of Orange (260th Judicial District), this excerpt from the sentencing hearing in one of his cases:

Defense Counsel: And have you asked me for the opportunity to address the judge, the jury, and the court about this particular incident?

Defendant: That's correct.

Defense Counsel: What would you like to say about this particular offense?

Defendant: I would like to express my sincere apology to Mr. and Mrs. _____, and *at this time I would like to just bow in prayer before I start.*

District Attorney: Your Honor, I'm going to object to this. He can testify and answer questions but to — Judge Hahn: I'll sustain the objection. (Judge Hahn adds: "We don't know what the defendant would have prayed for if allowed, but I assume he would have asked that justice be done. I believe it was. *The defendant received 30 years.*")

DID THEY REALLY ASK THAT?

From **Jonathan Bonilla** of Corpus Christi, this excerpt from the deposition of Jonathan's client taken by the opposing counsel in an automobile accident case:

Q: *Do you have a vision that doesn't let you see in the future — do you have vision that doesn't allow you to see in the distance?*

A: No, sir.

Q: Is it up close? If you take your glasses off, can you read what's up there?

A: Yes. I have a very good vision without them also.

Q: Okay. But you need them to see in the distance?

A: Yes. That's correct. *You threw me off there.*

Q: All right. *Well, the comment about seeing in the future.*

DID THEY REALLY SAY THAT?

From **Jane Portis Davis** of Texarkana (Jane is the legal assistant for **J. David Crisp** of Crisp, Jordan & Boyle), this

excerpt from the deposition of an examining physician in an asbestosis case who gave this explanation of the plaintiff's shortness of breath:

"... putting on his pants when they are a little tight will make him short of breath."

From **Judge David R. Gibson** of Dallas (County Court at Law No. 1), this motion filed in his court by a *pro se* defendant:

Motion for Continenence

At this time the defendant comes before this court asking for a *continenence*. (Judge Gibson says he "politely suggested to the movant that the court could not provide the particular relief requested.")

WRITTEN IN BLOOD

From **Mikal S. Lambert** of Wichita Falls (Fillmore & Purtle), this excerpt from a deposition in a death case where a motorist had run over a pedestrian. Mikal is cross-examining the DPS trooper who had supervised the drawing of blood from the decedent for a blood-alcohol test.

Q: Is there any minimum volume of blood that you're attempting to extract or that you attempt to fill up?

A: They have told us in the years that I've been working that we need more than an inch of blood in the tube. *Now, that's not "written in blood"* anywhere in the manual, that's just the way we were told. And they say if we want to do a blood alcohol or drug screen on it, we need it just as full as you can get it.

And then they've always told us when we get the blood in it, to shake it up real good to mix that white powdery substance. And I'm sure they've told me what that was, *but, hey, I'm no chemist. I've got enough problems trying to remember what I did yesterday.*

CLASSIC TYPOS

From **Kellye H. Hirtriter** of Houston (Hughes, Watters, & Askanese), this typo from the response to a counterclaim:

Counter-Defendant further denies ...

that the claims asserted are based upon any contract, since no *frivolity* of contract existed.

From **Paul Schorn** of Austin (Rodriguez & Schorn), this typo discovered by their litigation assistant, **Kent Gregory**, in a file inherited by their office:

Dear Mr. Beavers:

My name is ___ and I have taken over Mr. Smith's *case loaf* after he left the firm ...

From **Roger D. Hepworth** of Austin (Henslee, Fowler, Hepworth, etc.), this typo in a Prehearing Order from the commissioner of education describing one of the defenses Roger asserted for his client, Groesbeck I.S.D.:

Further, Respondent's claims that the alleged violations are *de minibus* are rejected ...

(Roger thinks, quite correctly, that he should have tried the "*minivan*" or "*sports utility vehicle*" defense.)

From **John F. Luman, III** of Houston (Pravel, Hewitt, etc.), this typo — *a missing comma* — in a letter from opposing counsel concerning the production of documents by a witness:

Dear Bob:

During your deposition, there was discussion of one or more documents related to the patent ... that your wife retrieved at some time from a library in Aberdeen ... Mr. Smith has requested that we obtain copies of the documents. As I am not sure whether the documents *are in your files with your wife*, with your attorney, or somewhere else, could you please locate any documents relating to the patent ... and have copies forwarded to my office.

TRYING TO LOOK ON THE BRIGHT SIDE OF LIFE

From **J. Scott Bell** of Denver, Colo. (Hellerstein & Shore), this order entered by **Judge Thomas R. Ensor** of the Adams County District Court in Colorado, in a case in which the jury had returned a verdict in favor of Scott's client on five of the six claims for relief.

Although the jury had found for the opposing side on the sixth claim, a very minor one, the jury had even accepted the damage calculation of Scott's client as to the amount owed, rather than that of the plaintiff. As the "prevailing party," Scott submitted a Bill of Costs; the plaintiff's counsel also submitted a Bill of Costs on the theory that the jury verdict was a "split decision"; and Judge Ensor entered this marvelous (!!) opinion:

THIS MATTER comes before the Court on Plaintiff's Bill of Costs.

While this Court personally ascribes to the philosophy of trying to look at the bright side of things, calling the jury's verdict in this case a "split decision" is akin to saying that Custer won the battle at Little Bighorn.

The Motion is denied.

DILBERT STRIKES BACK

This contribution and its title are from **James A. Newsom** of Houston (Munister, Sprott, etc.). James explains that this excerpt is from "an utterly fascinating deposition of an engineer/hydrologist in a case in which plaintiffs' claim inverse condemnation due to flooding.

Q: I see handwritten notations toward the top of the graph showing approximately 14.4 inches and, below that, 12.14 inches.

Is it not true that if you use a HEC-1 discharge area of 78.2 square miles for the drainage area, that would correlate with rainfall of 14.4 inches, and if you use the FEMA drainage area of 92.7 square miles, that would correlate, for this time period, with a rainfall of approximately 12.14 inches in the Clear Creek Watershed?

A: For some reason, it's not calculating now ... [dramatic pause] ... *but this is an attorney's calculator.*

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