



## I'm Just Not a Scholar

BY JERRY BUCHMEYER

THIS MONTH'S TITLE CONTRIBUTION was submitted by **Robert J. Malinak** of Houston. The others are from Austin (**Fred A. Helms**), Dallas (**Jim Rolfe**), Kermit (**Fred Swenson, CSR**), Lubbock (**Bankruptcy Judge John C. Akard**), and Sugar Land (**Victor L. Harris**) — with out-of-state contributions from Tulsa, Okla. (**Lance Houghtling**) and Salt Lake City, Utah (**Michael D. Wims**).

### BILL BOGLE IN BRONZ

From **Lance Houghtling** of Tulsa (Richardson & Ward), this excerpt from a deposition in a state case in Fort Worth; the attorneys are — in order of appearance — **J. Lyndell Kirkley** (Kirkley, Schmidt & Colton), **Marshall Searcy** (Kelly, Hart & Hallman) and, of course, **Bill F. Bogle** (Harris, Finley & Bogle).

Q: Do you find it to be shocking behavior?

A: It was behavior that I would not have done.

Q: No right-thinking human being would do it, would they?

MR. KIRKLEY: *Object to the form of the question. If you can find a right-thinking human being definitively, I'll remove the objection.*

MR. SEARCY: *I have one sitting right next to me. His name is Mr. Bill Bogle and he is the end of Diogenes search. He is the epitome of the right-thinking human being.*

We'll use him as the scale of any right-thinking human being.

Mr. Kirkley: *Then we should have him bronzed.*

Mr. Searcy: *We have.*

### HOW DEAD WAS HE?

From **Fred A. Helms** of Austin — Fred is staff attorney for **Judge Ernest Garcia** (126th District Court) — this incident from a pretrial hearing in a toxic tort case before Judge Garcia:

Plaintiff's Counsel (after handing Judge Garcia a sheaf of paper): Judge, if you will examine these cases, I think you'll see that *I'm entitled to disfigurement after death.*

[A pregnant pause, while Judge Garcia and Fred "stifle their laughter," and then the lawyer stammers ...]

*"Oh no, not Buchmeyer."*

From **U.S. Bankruptcy Judge John C. Akard** of Lubbock, this explanation he received from an attorney in San Angelo who was explaining why his client was not present for the hearing before Judge Akard:

*The first time he died was in the Brownwood hospital.*

### THAT'S A STUPID QUESTION

From **Michael D. Wims** of Salt Lake City, Utah (Michael is an Assistant Attorney General and Chief of the Special Prosecutions Section, Criminal Division), this excerpt from a pre-

liminary hearing in one of Michael's capital murder cases. The defense attorney, **Ron Yengich**, is cross-examining the deputy sheriff "about the conditions of the victims' house when the police arrived."

Q: There were a number of animals in the house?

A: Eleven cats.

Q: Did you see them when you were there?

A: Yes.

Q: A couple of dogs?

A: No dogs.

Q: No dogs at all?

A: Not that I saw.

Q: *The cats had not been asked to move out of the house?*

*That was a stupid question, although I had a cat that I used to ask to do that. The cats had not been moved from the house when they were there beforehand?*

A: They were given every opportunity to leave and kept coming back in.

From **Fred Swenson** of Kermit (Fred is a Certified Shorthand Reporter), this excerpt is from a deposition taken by **Rodney Satterwhite** of Midland.

Q: Do you have any other ranching properties in Winkler County other than this ranch?

A: Yes.

Q: *Where is that?*

A: *In Winkler County.*

Q: (Wisely) That's one of those ques-

tions that is going to wind up in Judge Buchmeyer's article.

#### TRULY MISCELLANEOUS

From **Jim Rolfe** of Dallas, this excerpt from the "Parting Shots" section of the April 1999 edition of the *American Legion Magazine*.

##### Headline-Making Headlines

Infertility Unlikely to be Passed On  
— (*Montgomery Advertiser*)

Study Finds Sex, Pregnancy Link —  
(*Cornell Daily Sun*)

Alcohol Ads Promote Drinking —  
(*The Hartford Courant*)

Teen-age Girls Often Have Babies  
Fathered by Men — (*The Sunday Oregonian*)

Low Wages Said Key to Poverty —  
(*Newsday*)

—Cited in *The Motivational Manager*, October 1998

#### DID THEY REALLY ASK THAT?

Also from Staff Attorney **Fred A. Helms** of Austin (126th District Court), this excerpt from the defense attorney's voir dire in a recent personal injury trial.

Q: You have two children. How old are they?

A: Eight and five.

Q: And which one is older?

#### PLEASE REPEAT AFTER ME

From **Robert J. Malinak** of Houston (Baker & Botts), this trial excerpt that was sent to him by "a credible New York lawyer."

CLERK: Please repeat after me: "I swear by Almighty God."

WITNESS: "I swear by Almighty God."

CLERK: "That the evidence that I give ..."

WITNESS: That's right.

CLERK: Repeat it.

WITNESS: "Repeat it."

CLERK: No! Repeat what I said.

WITNESS: *What you said when?*

CLERK: "That the evidence that I give ..."

WITNESS: "That the evidence that I give."

CLERK: "Shall be the truth and ..."

WITNESS: It will, and nothing but the truth!

CLERK: Please, just repeat after me: "Shall be the truth and ..."

WITNESS: *I'm not a scholar, you know.*

CLERK: We can appreciate that. Just repeat after me: "Shall be the truth and ..."

WITNESS: "Shall be the truth and."

CLERK: Say: "Nothing ..."

WITNESS: Okay. (*Witness remains silent.*)

CLERK: No! Don't say nothing. Say: "Nothing but the truth ..."

WITNESS: Yes.

CLERK: Well? Do so.

WITNESS: You're confusing me.

CLERK: Just say: "Nothing but the truth ..."

WITNESS: Okay. I understand.

CLERK: Then say it.

WITNESS: What?

CLERK: "Nothing but the truth ..."

WITNESS: But I do! That's just it.

CLERK: You must say: "Nothing but the truth ..."

WITNESS: I WILL say nothing but the truth!

CLERK: *Please, just repeat these four words: "Nothing" — "But" — "The" — "Truth."*

WITNESS: What? You mean, like, now?

CLERK: Yes! Now. *Please. Just say those four words.*

WITNESS: "Nothing. But. The. Truth."

CLERK: Thank you.

WITNESS: *I'm just not a scholar.*

#### GOD'S SAFE, BUT FIBROMYALGIA'S RISK

From **Victor L. Harris** of Sugar Land (Seymour & Harris), this excerpt from the plaintiff's somewhat theological cross-examination of the defendant's orthopedic expert — concerning the existence of "fibromyalgia."

A: [Fibromyalgia is] one of those things that you can't see, photograph, measure, taste, or prove. It's one of those — I'll call it *the snake oil thing*.

Q: All right. *So as far as you're concerned, it's kind of like proving or disproving the existence of God; it's just impossible?*

A: Oh, gosh, I wouldn't give it that kind of importance. Absolutely not. *No, I have a more, shall we say, leaning toward the existence of God than I do toward fibromyalgia.* I'll be glad to be on the record for saying that.

Q: But suffice to say that there's no, perhaps, objective way to show somebody that God exists?

A: Actually, there's some very interesting stuff now that's coming out with mathematical probabilities which far exceed the mathematical probability of fibromyalgia. *So I think we would be closer to proving the existence of God than fibromyalgia.* So I'm very comfortable with [the existence of] God being safe and fibromyalgia being at risk.

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

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