



Somewhat Criminal

BY JERRY BUCHMEYER

THE CRIMINAL CO-CONSPIRATORS in this month's column are from Austin (**Cathy Talley**), Dallas (**Anonymous, Wes Loegering**), Houston (**Gerald Culver, John Mustachio**), San Antonio (**Edward DeWees, Michael Valicek**), Wichita Falls (**Versel Rush**) — and Albany, N.Y. (**Kathryn Kase**) — who explains her submission, "I used to be a Texas lawyer, but now I am a New York lawyer and every month when I read *et cetera* I resolve to try to make up for it."

THE ARREST

From **Weston C. Loegering** of Dallas (Davis, LeClair, Loegering & Daniel), these "descriptive blocks" in the Arrest Report form of McLennan County:

Speech

- | | |
|---|--|
| <input type="checkbox"/> 1. Northern Accent | <input type="checkbox"/> 8. Polite |
| <input type="checkbox"/> 2. Foreign Accent | <input type="checkbox"/> 9. Rude |
| <input type="checkbox"/> 3. Other Accent | <input type="checkbox"/> 10. Profanity |
| <input type="checkbox"/> 4. Fast | <input type="checkbox"/> 11. Stutters |
| <input type="checkbox"/> 5. Slow | <input type="checkbox"/> 12. Lisp |
| <input type="checkbox"/> 6. Loud | <input type="checkbox"/> 13. Slurred |
| <input type="checkbox"/> 7. Soft | <input type="checkbox"/> 14. Other/ |

Unknown

Wes adds these *astute* (after all, he is one of my former law clerks) *observations*:

I guess if you don't have a Texas accent, you either have 1. Northern Accent, 2. Foreign Accent, or 3. Other Accent. *I also wonder why the form includes a box 1 for "Northern Accent," as well as a box 9 for "Rude," since people with Northern accents are always rude.*

FINDING AN ATTORNEY:

THAT SILVER-TONGUED DEVIL

A criminal defense lawyer in Dallas

— one Who Prefers To Remain Anonymous — received the following "unsolicited letter from one of the shut-ins at what used to be called the Texas Department of Corrections." The names have been changed, of course, to protect the truly guilty.

Mr. Lawyer:

For sometime now I have been going to the law library reading the Books with the lawyers in them and I ran across some good lawyers. *But out of all of them I couldn't find a lawyer that could match your knowledge in the law.* I was very impressed on all the things I read about you. And I said to myself if I ever wanted a lawyer to do anything for me it would be you, Mr. Lawyer. *Mr. Lawyer, sir, I would like to have you as my lawyer. The only problem is, is the money, which I haven't got any.* As a matter of fact I've got nothing at all as of now.

Mr. Lawyer, sir, I want you as my lawyer, and as I've said my only problem is the money. It's a problem for me being locked up, but it wouldn't be if I was out. I feel I know for a fact if I had you as my lawyer I wouldn't be here in TDC.

THE TRIAL:

STATE YOUR NAME, PLEASE

From **Kathryn M. Kase** of Albany, N.Y. (who "used to be a Texas lawyer"), this excerpt from a murder case tried by her and **Terence L. Kindlon**, who is conducting cross-examination:

- Q. Ernest Horge is your name.
A. Yes.

- Q. Michael Sanders is also your name.
A. Yes.
Q. Michael Johnson is also your name.
A. Yes.
Q. Donald Horge is also your name.
A. Yes.
Q. Ernest Carey is also your name?
A. Yes; I used that name before, too.
Q. And Daniel Stevens is also your name?
A. Yes.
Q. How many other names do you use, Mr. Horge, Sanders, Johnson, Carey, Stevens?
A. *You have to look at my rap sheet to figure that out. I don't know. I can't remember myself.*

DO YOU SPEAK ENGLISH?

From **Gerald T. Culver** of Houston (Gerald is a certified fraud examiner, Special Crimes Bureau of the Harris County District Attorney's office), this marvelous (!!) excerpt from a motion for new trial hearing in a criminal case:

- Q. Did all of them speak English or did some of them speak Spanish or what was happening?
Q. Spanish and English.
Q. Okay. At the same time people were speaking Spanish and English?
A. Yes.
Q. *And were they crying in Spanish and English?*
A. *Well, crying.*

From **John Phillip Mustachio** of Houston, this excerpt from the trial testimony of "the plaintiff, whose first language is Greek."

Q. What I'm trying to do, Mr. Emmanouil, is to show that you have quite a bit of experience in owning and operating real estate, do you not?

A. No. The only one experience I have is just to — to know how is the valuable of the land is going to go up or down. That's I'm good only. But legal phrase like this one, I'm zero. Like I say earlier, I have gift know when is good piece of land or not. *The rest of this stuff, it's English to me.*

BUT I'VE GOT AN ALIBI

From **Cathy Talley** of Austin (Cathy is a staff attorney for the Texas Court of Criminal Appeals), this statement in an application for writ of habeas corpus which alleged ineffective assistance of counsel due to the lawyer's failure to interview possible witnesses:

Petitioner had alibi witnesses to testify on his behalf that he was alone at the time of the offense.

SENTENCING: CRUEL AND UNUSUAL PUNISHMENT

From **Edward E. DeWees, Jr.** of San Antonio (DeWees & Spence), this excerpt from the sentencing of his client in County Court at Law No. 6 — in which the judge, after giving the defendant 15 days in jail, granted Edward's request for home confinement with electronic monitoring. But then ...

Judge: You stated that the only telephone that you had access to was at your ex-mother-in-law's house where you stay occasionally. You have to be near a telephone at all times when you're on electronic monitoring. You, therefore, have a choice of staying with your ex-mother-in-law for 15 days, or to stay in jail. Which one do you want to do?

Defendant: I'd rather be in jail for 15 days than with my ex-mother-in-law for 15 days.

THE PLEA: PROMISES, PROMISES ...

From **Michael D. Valicek** of San

Antonio, this paragraph in a not-so-standard plea agreement in a criminal case in Comal County (22nd Judicial District).

3. My plea is entered without any persuasion, and *I have not been promised nothing* for entering this plea.

AND YOU, SIR, ARE ADIOS

From **Versel Rush** of Wichita Falls (Versel is the first assistant public defender), this exchange that took place in a competency trial before **Judge Keith Nelson** (78th District Court). The client believed that he spoke to Elvis and animals (especially a certain rooster); he claimed to have been, among other things, "a lawyer, judge, doctor, porno producer/director/star, parapsychologist," etc. He actively and frequently "participated in the trial," beginning when he asked Judge Nelson, "*What was the origin of the words, 'voir dire'.*" Then, as Versel was presenting his closing argument concerning his client's incompetence, suddenly:

Defendant (standing up): Ladies and gentlemen of the jury, *get me a real lawyer.*

Judge Nelson: You ... sit down and be quiet.

[defendant gets louder and louder]

Judge Nelson: I said sit down and be quiet.

Defendant: You, sir, are an [REDACTED].

And you, sir, are a jerk.

Judge Nelson: *And you, sir, are adios.* [Bailiff removes the defendant kicking and screaming from the courtroom.]

The jury found the defendant incompetent in less than 10 minutes. After the verdict, Versel says, "*the jury members came up to me, hugged me, and said I didn't get paid enough, but it would be all right.*"

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 75242.

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