



Voir Dire is Like a Box of Chocolates

BY JERRY BUCHMEYER

The title “et cetera” this month is from **Crawford Long** of Waco, and the other contributions are from Brownsville (**Larry Warner**), Dallas (from the Buchmeyer Court), Kerrville (**Ilse D. Bailey**), Houston (**Donald D. Jackson**), League City (**Timora Sutton**), Liberty (**Judge J.C. “Zeke” Zbranek**), Marshall (**Judge Jim Ammerman II**), and San Antonio (**A.J. Hohman, Jr.**).

DEFERRED JUSTIFICATION

From **Timora Sutton** of League City (Cruise & Associates), this excerpt from the deposition of the defendant driver in an automobile accident case.

Q. Did you get a citation?

A. Yes, I got —

Q. A ticket?

A. Uh-huh.

Q. What were you charged with?

A. Running a red light.

Q. And what disposition did you make of that traffic ticket?

A. *Deferred justification* (sic).

Timora adds: “We can only guess that under this new and novel sentence — *if after a suitable period of time the defendant can think of a good reason for running a red light* — the ticket will be dismissed.”

BE CAREFUL WITH EXPERTS

From **Larry Warner** of Brownsville, these excerpts from the deposition of an expert with a very unusual career path.

Q. What information would be on

your updated C.V. that’s not on this?

A. It’s more, *I am board certified in neurosurgery*, that lists me as board eligible. The written publications are current, there is probably another dozen lectures that are not listed on this C.V.

Q. Okay. Now, Doctor, before you became a medical doctor, what did you do?

A. *I was a doctor of veterinary medicine* and went on to get a master’s degree in anatomy.

Q. Now, did you treat children with brain injuries on a regular basis?

A. Yes.

Q. You talked about the DQ Alfa type and also the DIS80 type, are those two specific tests or two separate tests?

A. That’s correct.

INTRODUCE YOURSELF TO THE COURT

From District Judge **J.C. (“Zeke”) Zbranek** of Liberty (75th Judicial District), this marvelous (!!!) story about the testimony given by the alleged victim in one of his recent criminal cases:

The young and competent assistant D.A. in my court broke in as a prosecutor in Houston so he uses a more urbane approach than the country boys who usually appear. Instead of asking a witness his name, he asks

the witness to introduce himself to the jury or court.

Recently at a bond hearing, the alleged victim of a shooting was called to testify. She was about 26 years old and appeared to be quite nervous. So, Mr. Assistant D.A. starts out, “*Would you please introduce yourself to the court?*” She paused for a moment, obviously confused. *Then she turned to me and, mustering the best nervous smile she could, said “Hi!”*

FROM THE BUCHMEYER COURT

Q. Did you take the defendant’s deposition?

A. Yes, I took his deposition here in the federal building in a room on the 13th floor.

Q. *And was the defendant present for that deposition?*

Q. Did your husband ever suggest that you answer my questions, “Not that I recall?”

A. *Not that I recall.*

At a detention hearing before *Magistrate Judge William Sanderson*:

Judge Sanderson (to witness): Do you wish to swear or affirm?

Witness: *I will affirm, so help me God.*

At a guilty plea hearing before me (in which the defendant, who was from

Mexico, was represented by *Gerald Goldstein* of San Antonio):

Judge: I'll ask the interpreter to take an oath.

Mr. Goldstein: My client can speak English; he doesn't need an interpreter.

Judge (to defendant): Is that correct? Can you speak English?

Defendant: Yes, I can.

Judge (to the defendant, *who does not have a right arm*): Okay. Please raise *your right hand* for an oath.

(The defendant stares helplessly at his empty right sleeve ... while Mr. Goldstein and others muffle their laughter.)

Judge (hastily): I mean, of course, raise *your left hand* for the oath, please.

District Clerk **Nancy Doherty** (Northern District of Texas) recently received this letter from a potential juror:

Dear Ms. Doherty:

Unfortunately, *I listened to too much rock music in my 20's*, and *my first husband bought me a pistol*, which he insisted on trying to teach me to use (with no ear protection worn by me), and *the first automatic typewriters at my legal secretary job were so loud*, that I now have a moderate hearing problem and wear hearing aids.

Maybe, someday, they'll be able to cure my nerve damaged hair cells, but I would have trouble hearing now.

DID THEY REALLY SAY THAT?

From **Ilse D. Bailey** of Kerrville (Ilse is an assistant county attorney of Kerr County), this exchange that took place after the defendant had entered a plea of guilty to a Class B misdemeanor theft charge — pawning a stolen Black & Decker drill for \$5.00 — before visiting District Judge Virgil Mulanax of Kerrville (115th Judicial District):

Judge Mulanax: Think you've learned anything?

Defendant: Yes, ... I'm burning the outfit I was wearing. I'm going to burn it. *I've been to jail four times*

in that outfit. Every time I wear it, I go to jail. *I'm burning it*.

From **Judge Jim Ammerman II** of Marshall (County Court-at-Law, Harrison County), who "was somewhat stunned to hear the [following answer] to what was apparently "intended to be a *soft question*."

Q. Was this during the period of your coverture of the power of attorney?

A. *My conversation with him was in the fall of 1988. And he got cancer and died. I didn't talk to him much after that.*

Q. I'm not trying to throw a hard question to you. Was this decision ongoing during the time you were holding the power of attorney from your mother?

A. Yes.

From **A.J. Hohman, Jr.** of San Antonio (Hohman, Georges & Gehring), this excerpt from an auto accident case in which the "plaintiff had suffered a neck injury ... and was administered injections as part of his treatment."

Q. Are there any plans at this point to have any — any more *object — injections* or — I hang around with the lawyers too much. I started to say objections. *I'll tell you, the profession warps you. What can I say*. Are there any plans currently to have any more injections?

FROM THE TWILIGHT ZONE

From **Donald D. Jackson** of Houston (McGinnis, Lochridge & Kilgore), this excerpt from his deposition of the plaintiff in a wrongful termination case — which begins after the plaintiff testified that he was receiving some income at "*psychic fairs*" sponsored by his church.

Q. *Are you clairvoyant*?

A. *Yes sir, I am*.

Q. What is — help me understand what "clairvoyant" is. What do you understand that to be?

A. Clairvoyant is an individual who has a very keen and very strong sense of visionary understanding of events or situations that has a

great possibility of coming into existence.

Q. Future events?

A. Correct.

Q. *Would you say that's the same as being able to tell the future?*

A. *Some would classify it as that, yes sir.*

Q. How long have you been able to do that?

A. In my early teens.

Q. *You're still able to do that?*

A. *Yes, sir.*

Donald adds: "After testifying ... that he was *clairvoyant*, the plaintiff sat down with my court reporter during lunch and told her that *my questioning was confusing him because he kept reading my mind before I could get the question out*. The case was resolved before trial, so I was not able to ask certain questions about the future that I was saving."

VOIR DIRE IS LIKE
A BOX OF CHOCOLATES:
YOU NEVER KNOW WHAT
YOU'RE GOING TO GET

From **Crawford Long** of Waco (Crawford is the first assistant district attorney of the Criminal District Attorney's Office of McLennan County), this excerpt from *voir dire* in a murder trial in the 54th District Court in Waco. The title to this contribution was also submitted by Crawford, who explains that the "prosecutor, who will remain nameless, *is said to have a distinctive southern drawl*."

JUROR: May I ask you a question?

PROSECUTOR: Sure you may?

JUROR: *Is Forrest Gump your brother?* You know you talk like him, don't you?

PROSECUTOR: You know I am never going to live this down. *All I can say if I am, as far as Forrest Gump Shrimp Company, I hope he leaves it in his will to me.*

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.