

ZOOMORPHISM IN THE COURTROOM

ANNALS OF JUSTICE

By Steve LaCheen

“Back in the day,” specifically, during the early years of my practice, I handled a fair number of state criminal cases, generally minor felonies. In that dark age, prior to the emergence of “the Warren Court” and the decisions that we quickly familiarized as short-hand references for defense-friendly constitutional holdings – *Gideon*, *Mapp*, *Escobedo* and *Miranda*, and their progeny – most defendants pled guilty or were convicted at trial, and eventually stood for sentencing.

In most instances, the court would simply determine the nature and extent of the defendant’s prior criminal record, employment record and family situation, and then impose sentence immediately. And all too often the defendant was taken into custody forthwith, to begin service of sentence. It was only in more serious cases that the court ordered a pre-sentence investigation by the Probation Office. It is that particular circumstance, that particular interim period, between verdict and sentence, that gave rise to this anecdote.

Pre-sentence investigators, then as now, usually fall into one of two groups – detectives or social workers. As luck would have it, the particular probation officer assigned to the area of the city in which most of my clients resided actually had a Master of Social Work degree, and had more than a passing acquaintance with the various mental and emotional disorders that may be seen as contributing factors to criminal conduct. The problem was that he used that knowledge to bolster his own simplistic formula for criminal sentencing – “Commit the crime, do the time” – that he cleverly concealed from defendants until it was clearly visible, between the lines, as it were, of his pre-sentence report.

One of the ways he would disarm a defendant being interviewed was to ask, about halfway down the list of innocuous tell-me-about-yourself questions: “What’s your favorite animal?”

And then, as soon as answered, the fatal follow-up: “Why?”

No matter the animal, and no matter the reason, the P.O. interpreted the defendant’s responses to indicate anti-social behavior, and a serious risk for recidivism, clearly deserving

incarceration rather than non-custodial supervision. A few examples should suffice:

Q: What’s your favorite animal?

A: Elephant.

Q: Why?

A: Being so big, nobody messes with him.

Analysis: Defendant desires to bully others.

Q: What’s your favorite animal?

A: Bunny Rabbit

Q: Why?

A: He’s cute, and everybody likes him.

Analysis: Defendant is pretending to be non-violent.

Q: What’s your favorite animal?

A: Cat

Q: Why?

A: Because a cat always lands on all four feet.

Analysis: Defendant intends to commit new offenses.

Dozens of other examples come to mind; each scenario resulting in the carefully considered opinion in the pre-sentence report that the defendant had revealed himself, by his identification with whatever animal he had chosen, as someone who, even if demonstrating an acceptance of responsibility for prior criminal conduct, was nonetheless clearly capable, even likely, to commit further offenses.

After a number of such debacles, I advised a client not to respond. His refusal to provide an answer was interpreted as a refusal to cooperate with the pre-sentence investigator. Another defendant who explained why he declined to answer – because his response would be used against him – was written up as “paranoiac.”

Finally, after considering that even a letter from me to the court, confirming my advice not to respond, might win a battle for one client but guarantee never-ending antagonism from the P.O., I decided to try a different tack first. The Q & A session in the next encounter played out a little differently:



Q: What's your favorite animal?

A: The Sphinx.

Q: The Sphinx!? Why the Sphinx?

A: Because he keeps his mouth shut and don't have to eat his words.

Analysis: The defendant is a smart aleck; but the P.O. had to acknowledge some merit in defense counsel's argument that the defendant had obviously given the question serious thought and had considered the consequences of his answer.

Having made the point once, I wanted to avoid perpetual psychological one-upmanship, and I arranged a private meeting with the pre-sentence investigator, and offered him a deal: If he would forego asking those questions, he would not have to deal with successive clients of mine offering as their favorite animals a litany of mythological beasts, including the centaur, the cerberus, the Cheshire Cat, the chimera, the griffon, the hippogriff, the kraken, the manticore, the minotaur, the phoenix, the remora, the unicorn and the zaratan, all of whom chosen specifically for their mythological nature; the "why" for which would clearly be the specific purpose of avoiding the superficial negative psychological interpretation that had been the norm of so many prior encounters.

We came to an understanding that the prior line of questioning would be abandoned, and shook hands on the agreement. But, as I was about to leave, I couldn't resist one final question.

"By the way," I asked, "what's your favorite animal?"

He looked at me, and smiled. "The one I hoped every defendant I ever asked that question would have answered."

"What's that?" I asked.

"The human animal," he answered. ■

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Glossary from the *Book of Imaginary Beings,* by Jorge Luis Borges (1969)

Centaur: A naked man to whose waist the body and hindquarters of a horse are uncomfortably fixed.

Cerebus: The three-headed dog, doorman at the Gates of Hell, denoting the past, present, and the time to come.

The Cheshire Cat: Lewis Carroll's cat endowed with the faculty of slowly disappearing to the point of leaving only its grin without teeth and without a mouth.

Chimara: Tripartite animal; a lion in its foreparts, a goat in the middle, and a serpent in its hind parts.

Griffon: The head and body of an eagle and the hind parts of a lion.

Hippogriff: The head and body of a griffon and the hind parts of a horse.

Kraken: Scandinavian version of the sea dragon or sea snake of the Arabs; its back protrudes from the sea like a floating island.

Manticore: The face and ears of a man, the body of a lion, and a tail like a serpent; it has a triple row of teeth, which fit into each other like those of a comb.

Mitotaur: Half-man, half-bull.

Phoenix: An eagle-like bird of red and gold plumage, immortal, rising anew out of its own ashes.

Remora: A sucking fish, with the power to hold a ship fast by clinging to it; able to cast a spell to hinder litigation and delay premature birth.

Sphinx: Usually, a lion with the head of a man; otherwise, a winged bull with a man's bearded and crowned head, or the head of a ram on the body of a man.

Unicorn: A white horse, with the forelegs of an antelope, a goat's beard, and a pointed twisted horn projecting from the middle of its forehead.

Zaratan: A sea turtle (sometimes a whale), of such huge size that it is mistaken for an island, which sinks into the sea drowning sailors who have camped on its back.