



ADVOCATUS #2

The Criminal Code: Using Language ¹

If one aspires to silken success in Phillip St, it is essential to have a familiarity with more than just the English language. *Prima facie*, there is Latin. There is also French, not only useful for summers in Provence, and winters in Chamonix, but also in statutory construction, when one may need to resort to the travaux préparatoires. While those of us who practise in the criminal jurisdictions of Sydney's western suburbs are unlikely to require one's French either in court or on vacation, we do need to master at least one other language.

Members of the civil bar may be surprised to know that 'pig Latin' is still very much utilised as a communication method between persons wishing to keep their activities secret from the police. Pig Latin is, of course, a 'secret' language formed from English, by transferring the initial consonant or consonant cluster of each word to the end of the word and adding a vocalic syllable: i.e., *Igpay atinlay*.²

Thus, from a covertly recorded telephone call tendered in a trial on charges of robbery and attempting to influence a witness, we receive the following transcript of a conversation:

Male 1: Oi, listen closely my bra.
My ownfay is aptay right cuz?

Male 2: Yeah

Male 1: There's Ds at my houseThe night of them two ingfays right ... I was with ouyay and your adays ... sweet?

Male 2: Yeah

For non-criminal barristers, the conversation reveals that Male 1 is asking Male 2, his trusted friend, to attend closely to what he is about to tell him. First, he suspects that the police have obtained a warrant to lawfully intercept his telephone, and are therefore recording his conversation. Second, there are police officers, possibly designated detectives, currently at his home investigating a crime. Next, he is requesting his friend to provide him with a false alibi. He is directing Male 2's attention to a particular night when Male 1 carried out two alleged robberies, and asking him to advise any detective who may inquire, that Male 1 was in the inno-

cent company of Male 2 and Male 2's father on that date.

Regrettably for Male 1, while he was correct about the telephone intercept warrant, he was incorrect in his assumption that the investigating police were unable to decipher his use of the only Latin that police can typically speak.

In our experience, would-be criminals are undeterred in their use of what they believe to be impenetrable codes. They show an impressive facility with them, even in spontaneous and somewhat stressful situations. For example, in the middle of a violent brawl in a public place:

Q. When you saw [A] put his hood up, what happened then?

A. We were sort of like moving towards them still and then and when [A] put his hood up and put his hands behind his back, [F] yelled out, 'He's got a nug.'

Recently on Twitter, the following transcript extract was published with the caption 'Mr Walker, you appear to have swallowed my dictionary [The Macquarie, 7th Ed]'.³

Mr Walker: It did seem to be a rather elaborate saraband. I am not quite sure it needs to be broken up as much as it was. Can I try to attempt now some portmanteau submissions in that spirit?⁴

Reading this prompted a recollection that the other language with which criminal barristers require a facility is Exceedingly Plain English. On occasion a witness or client is able to remind one that a few inelegant words can conjure a powerful picture.

A suspect of very large Pacific Islander build had been apprehended with another man's mobile phone. He maintained there had been no violence. Questioning by police resulted in the following exchange:

Q: Well, how did you rob him?
Did you push him, did you use a knife or anything?

A: Nothing. I just went up and asked him to hand over his phone and he did.

Q: Well, what did he look like?

A: Like a skinny bogan.

Rarely would one expect to encounter a better Exceedingly Plain English description

than the one provided by Breanna, our potential witness in a home invasion case, who commenced her account thus:

'I know everyone that lives in the street. The main boys I have met in the street are Paul, Luke and Ronald. Ronald is only about 20. I know this because he has only done one lagging. Ronald is about 170 centimetres tall. He always dresses in Canterbury and Henleys. Ronald looks like Matt Damon the actor but has scabs on his face.'

Unfortunately for those who may have been prepared to overlook the scabs, Breanna had a little more to say about Ronald:

'He is also very dumb. I know this because he couldn't even do a scratchie. If you can't do that I think you are pretty dumb.'

At times, one's clients are even able to proffer some Exceedingly Plain English advice as to the skills involved in criminal practice at the bar. In some recorded gaol calls we discovered the following wisdom concerning trial preparation techniques:

Girlfriend: I thought you said your lawyer was getting you out soon.

Accused: I don't know what's going on out there... I haven't even got, you know the paperwork, I haven't even got nothing here.

Girlfriend: OK so if I was your lawyer right, I would have demanded and subpoenaed the brief so that I have it in front of me on my table when I'm at work. Ok? Not jacking off to porn, I'm actually working, and I would sit at the table and I would read through the paperwork and have a look at what the opposition has. Then I would evaluate. How do I discredit the other side?

And to that, I plead *nolo contendere*.

ENDNOTES

- 1 All quotes used in this column have been sourced from briefs in the author's practice. The names and any other identifying information have been changed.
- 2 Collins English Dictionary online.
- 3 Twitter account William Gummow@shitjudgessay.
- 4 *Paige & Ors on behalf of the Barnagala People v State of South Australia* [2018] HCATrans 216.