

Broadcast Three, ¶ 13: The information on the liquor control prosecution rate was obtained from TABC statistics based on county court records. Duncan Aff. ¶¶ 54-57 & Ex. 36; 3 Duncan Depo. 405-06.

[13] Tomorrow, state liquor control agents' complaints about McLennan County which they say has the worst prosecution record in Texas.

Exhibit 36 is a "Spot Check of Refused Criminal Cases," in the form of an inter-office communication from TABC Chief of Enforcement & Marketing Practices Joe C. Whittemore to Executive Assistant to the Administrator Joe Dornall.

The document is not a part of any judicial proceeding, regardless of whether it is "based" on county court records.

While the county court records ^{themselves} may be deemed to fall within the "fair accounts" privilege, this Exhibit 36 is not a privileged document.

Furthermore, Duncan has no ~~first-hand~~ personal knowledge of how the statistics were compiled. His affidavit testimony that the ~~statistics~~ "worst prosecution record" statement in the broadcast was "based on statistics the TABC collects for each county in the state is hearsay, and it conflicts with his deposition testimony at

(over)

INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION

DATE: June 4, 19 85

TO: Mr. Joe Darnall, Executive Assistant to the Administrator
(office)
FROM: Mr. Joe C. Whittemore, Chief of Enforcement & Marketing Practices
(office)
SUBJECT: SPOT CHECK OF REFUSED CRIMINAL CASES

The following information is from the Austin Enforcement records on cases Agents attempted to file and were refused by a prosecutor.

February 1984 through February 1985.

McClennan County:

County - 15 City - 0

Bell County:

County - 0 City - 0

Tarrant County:

County - 5 City - 1

One prosecutor in Tarrant County would not take making available charge if the person charged was a relative, (cousin, uncle, etc.)

Dallas County:

County - 1 City - 0

If bootlegger is charged, possession and sale, prosecutor would only take one (1) charge.

Travis County:

County - 0 City - 0

Taylor County:

County - 8 City - 0

Same reason as Dallas County

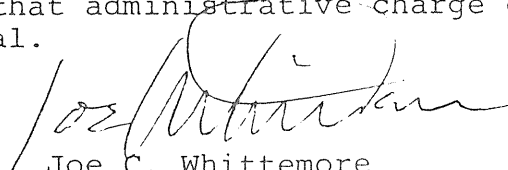
Brazoria County:

County - 0 City - 0

Brazos County:

County - 2 City - 0

New prosecutor and read that administrative charge could be filed, and not criminal.


Joe C. Whittemore

CMM/ges



The 68-year-old was named Mildred C. Smith. I obtained the information in this report from the court records of Ms. Smith's case and the Offense Report maintained by the Waco police department. A true and correct copy of the public records on which I relied is attached hereto as Exhibit 33. The pregnant woman was named Sandra Faye Bateman. I obtained the information in this report from the court records of Ms. Bateman's case and the Offense Report maintained by the Waco police department. A true and correct copy of the public records on which I relied is attached hereto as Exhibit 34.

53. I further report in Part 3,

"Often a driver is arrested for DWI while on probation for another DWI conviction. Terms of the probation are violated but seldom is the probation revoked and the defendant required to serve time in jail in McLennan County."

This information came from my review of McLennan County court records.

54. At the end of the broadcast, I introduce the next installment in the series by stating:

Tomorrow, state liquor control agents' complaints about McLennan County which they say has the worst prosecution record in Texas.

As I will describe in detail when discussing the next installment in the series, this brief introduction refers to the opinion of Texas Alcoholic Beverage Commission ("TABC") officers, including

Joseph Darnall, that McLennan County has the worst prosecution rate for liquor control offenses in the state of Texas based on statistics the TABC collects for each county in the state.

55. Part 4 of the series, aired on June 19, 1985, consists largely of an interview with TABC Officer Joseph Darnall. In preparation for the interview, I spoke to several officers at the TABC both in Waco and in Austin, including Officer Joseph Darnall and Officer John Bayes. Part 4 begins:

Duncan: "Texas Alcoholic Beverage Commission agents try to make it more difficult for minors to buy beer and liquor in Texas. When they catch an adult purchasing alcoholic beverages for under age youngsters, the adults go to jail. But state officials say they're losing their battle around Waco because District Attorney Vic Feazell refuses to prosecute more than 50% of their misdemeanor cases. Liquor control agents working out of Waco cover 11 central Texas counties."

Duncan: "And you're not having any trouble getting prosecution in any of those other ten counties?"

Darnall: "No. None whatsoever."

Duncan: "Just one county out of that entire district in central Texas?"

Darnall: "Yes, sir, that's correct."

Duncan: "Just one county in the entire state?"

Darnall: "Yes, as far as we can tell, I can't name another county that has this rate of rejection."

Duncan: "State officials evaluated each arrest made in McLennan County during the last two years and examined how the agents were operating."

Darnall: "Our case preparation standards for McLennan County are the same as throughout the rest of the state and the rejection rate is different. They're doing the same

things in the same way to prepare the cases and present the cases, and we've checked this out and it's the same standard across the state."

Duncan: "TABC figures for 1984 show only five cases were refused by the DA in Tarrant County. None of the liquor law violations was turned down in Bell, Travis, or Brazoria County. Only one TABC case was refused by the Dallas County DA. 26 cases out of 50 presented were refused for prosecution in McLennan County. Feazell has refused to talk with us and explain why his office turns down more state liquor cases than any other DA in the state."

"But records from Feazell's office spell out the reasons. On two consecutive days, state police purchased mixed drinks at the private club in this east Waco motel. Agents said they told the waitress they were not members. They were served scotch and water anyway. Feazell's office refused to prosecute because of problems in proving the violation."

Darnall: "This is a typical case of sale to a non-member of a private club. It happens every day across the state."

Duncan: "With successful prosecution?"

Darnall: "Yes."

The information reported above was provided by the TABC based on reported prosecution rates in Texas counties. I obtained the information on the reasons for the McLennan County cases not being prosecuted from the TABC. The TABC, in turn, obtained the information directly from the McLennan County District Attorney's Office.

56. The interview with Officer Darnall continues,

Duncan: "Agents made similar cases in Moody, a small town south of Waco. On two separate occasions the agents purchased beer in a restaurant located in a dry area. The owner and the waitress were both arrested. Neither

case was prosecuted."

"The reason given by Feazell's office 'case lacks jury appeal. Defendant is a 19 year old girl working as a waitress to put herself through college.' State agents caught a liquor store clerk selling to minors. Feazell's office refused to prosecute. The reason, the suspect sold to the minors because he had seen the proprietor sell to these minors previously."

"Other cases have been dismissed because a 19 year old girl had simply bought liquor for her underage boyfriend. Liquor agents say that's a reason to prosecute, not a reason to free the suspect. Agents also caught an adult buying a quart of beer for a minor, but the case was not prosecuted because the beer had not been opened."

Darnall: "The law makes no distinction between whether a bottle is open or closed."

Duncan: "These two girls, ages 13 and 14, were summoned to juvenile court after state agents caught them with alcoholic beverages. State officials say unless there is tougher prosecution in McLennan County, drinking and driving will increase, particularly among minors. And liquor will become even more available to youngsters."

The cases discussed above concerned suspects Teresa Lynn Johnson, Michael Timothy Cooper, and Cynthia Lynn Hofen. The information on their cases was quoted directly from reports issued by the McLennan County District Attorney's Office to the TABC, which were provided to me by Officer Darnall. A true and correct copy of the case disposition reports for the suspects discussed in the quoted broadcasts is attached hereto as Exhibit 35.

57. The information on disposition of cases from McLennan County as compared to other counties was, again, provided to me by the TABC, which had obtained the information directly from the

district attorney's offices in several counties. Each Texas county, including McLennan County, sends case reports to the TABC with disposition sheets attached explaining the disposition of each case. A true and correct copy of the memo I received from Officer Darnall entitled "Spot Check of Refused Criminal Cases" is attached hereto as Exhibit 36.

58. TABC officers also told me that there was a large increase in cases not prosecuted after Mr. Feazell took office. The information on the teen-age girls being summoned to court was obtained from the officers who summoned them, with whom I was riding the night the girls were observed with alcoholic beverages.

59. A large part of the above information was also confirmed by Officer Darnall in a videotaped interview, much of which was broadcast as part of my series. A true and correct copy of the videotape of my interview with Officer Darnall is attached hereto as Exhibit 37.

60. Part 5 of the series, which aired on June 20, 1985, consists primarily of an interview between Mr. Feazell and Ralph Webb, a reporter for Waco television station KWTX-TV, which I introduce:

"When you get arrested for DWI, it normally costs about \$600 to hire an attorney to handle your case. Last week we reported on six DWI cases in McLennan County where attorneys charged up to \$3,500 each. The cases were later dismissed or forgotten by the DA's office. - The FBI has been investigating whether there's a link between the high attorney's fees and the lack of prosecution."