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Trial Technique

*687 APPROACHING THE BENCH: TRIAL TECHNIQUES FOR DEFENSE COUNSEL IN CRIMINAL BENCH TRIALS

John N. Sharifi [FNd1]

Abstract

Though rarely taught in clinical advocacy settings, statistics show that bench trials comprise the majority of criminal trials in the United States. Therefore, defense counsel should recognize the unique characteristics of these trials and learn how to capitalize on them. The author does not advocate the use of bench trials, but rather, recognizes their prevalence and the need to conduct them effectively. Several bench trial techniques are explored, and the author provides a template that should be used to assist in the continued development of these techniques.

Introduction

Although there are two types of criminal trials, bench trials and jury trials, training in trial advocacy almost universally focuses only on the jury trial. Rarely, if ever, are trial advocacy techniques taught in the context of bench trials. The conventional wisdom seems to be that good jury trial skills suffice in a bench trial, so there is no need for instruction tailored specifically for bench trials. As a practicing criminal defense lawyer, this author disagrees, at least in part, with that proposition. Although effective bench trial advocacy requires a mastery of conventional □□jury□□ trial skills, it also requires a separate and distinct set of trial techniques designed specifically for application in bench trials. This Article addresses some of those techniques, [FN1] by first evaluating the □□terms□□ of a bench trial, how those terms affect the trial, and how a criminal defense lawyer can ***688** capitalize on those terms for the benefit of the defendant. The trial techniques that are addressed here are not exhaustive; instead, the discussion seeks to provide a template analysis that students and practitioners alike can use to develop many other bench trial techniques.

This Article is geared toward criminal defense lawyers for a reason. It is, after all, these lawyers who find themselves in bench trials everyday, defending the liberty of individuals across the country. Criminal trials are often held in lower courts in front of judges, not juries. [FN2] Ironically, although training in trial advocacy focuses on jury trials, there have been more criminal bench trials than criminal jury trials every year from 1976 to 2002. [FN3] In addition, despite the fact that the majority are misdemeanor cases, bench trials also comprise approximately one out of every three felony trials. [FN4] If sound legal reasoning emphasizes □□probabilities, not possibilities,□□ [FN5] then it should go without saying that effective bench trial advocacy is a very precious commodity in the criminal defense arsenal. Therefore, it is imperative that criminal defense lawyers be effective bench trial advocates.

I. The Terms of a Bench Trial

An effective bench trial advocate must already be an effective trial lawyer. As previously noted, effective bench trial advocacy is comprised of traditional trial advocacy skills combined with trial techniques specifically designed for bench trials. The latter, of course, is the subject of this discussion.

***689** The first step in the development of bench trial techniques is to understand that the process begins, and does not end, with recognizing that the difference between a jury trial and a bench trial is the finder of fact. In a bench trial, a judge is the finder of fact. But what does this mean? [FN6] What does this imply? It implies a number of components characterized in terms, which establish the starting point for developing bench trial techniques. Specifically, effective bench trial advocacy begins with recognizing that (1) the judge is a public figure, (2) the judge wants the bench trial to move quickly, [FN7] and (3) the judge is a lawyer. [FN8]

These are the terms of a bench trial. Once they have been identified and accepted, counsel needs to evaluate their implications: How do these terms affect the trial? More importantly, what can counsel do to benefit from them?

II. The Judge is a Public Figure

The judge's status as a public figure is important in that it allows counsel the unique opportunity to learn extensively about the judge before the trial even begins. This is a luxury that counsel does not have in a jury trial, and counsel must take advantage of it. Naturally, learning about the audience that will preside over the trial is vitally important to making a persuasive trial presentation. [FN9] Judges, like lawyers, differ. They have ***690** different styles, demeanors, and approaches. [FN10] In essence, counsel should be familiar with the judge before the trial begins.

There are a number of ways of getting to know a judge. First and foremost, counsel should speak to colleagues [FN11] that have appeared before the judge. Fellow members of the criminal defense bar are often more than willing to provide advice. In addition, counsel should make every effort to watch the judge when court is in session, in the hopes of catching a trial. If counsel is fortunate enough to watch a trial, careful attention should be paid to what the judge expects of the lawyers when they advocate.

A familiarity with the judge prior to trial will reap many benefits. Imagine a jury trial where the defense knows in advance the likes and dislikes of the jurors, including what they expect from an advocate. The information that can be obtained is invaluable, and is only made possible by the fact that the judge is a public figure. Therefore, take full advantage of the opportunity to learn about the judge.

III. The Judge Wants the Bench Trial to Move Quickly

Practitioners know that judges want cases to move and do not want to waste any time. Often, the interests of the bench in this regard are at ***691** odds with the interests of a criminal defense lawyer. The lawyer's interests are to make the arguments, protect the record, and leave no stone unturned. As a result of these clashing interests, judges and defense counsel may at times find themselves in a legal tug-of-war. This does not have to be the case in a bench trial.

The judge, most certainly, will want to move the case along quickly. In fact, in a bench trial, it will be one of the top priorities. Since judges frequently sit through trials, they have enough experience to know what evidence they are looking for when it comes to a particular criminal charge. Therefore, excessive argument or the introduction of peripheral evidence is frowned upon. This can be a good thing; facilitating the movement of the trial can help the

defense significantly, and there are several ways to accomplish this.

A. Stipulate if Possible and Waive Pre-Trial Motions [FN12]-Rely on Objections Later

Counsel should avoid making evidentiary pre-trial motions in a bench trial (usually made through a motion in limine) unless, of course, the motion is dispositive. Motions that are not dispositive will not be helpful. Generally speaking, a judge is likely to reserve ruling on the issue until trial. Therefore, an argument to be presented in a motion probably will be more effectively made through an objection. An objection will not only preserve the exception, but is also more likely to be granted. This is because, after an effective opening statement, the court has hopefully narrowed its focus to the dispositive issue. A pre-trial motion, on the other hand, takes up time and draws the court's attention to harmful evidence before the trial has even begun. Although judges are expected ***692** to come to verdict based solely on the evidence they hear during the trial, quite naturally, what they hear in motions will give them a first impression of the case. [FN13] A record must be made; counsel just needs to know when to make it. [FN14]

Unlike pre-trial motions, stipulations are generally very welcomed by the court. In jury trials, criminal defense lawyers are very hesitant to stipulate to anything, and for good reason. In bench trials, however, counsel should consider stipulating if possible. [FN15] Stipulating will also lend credit to future □□relevance □□ objections that will be made by the defense during the course of the trial. More importantly, stipulations by defense counsel will demonstrate to the judge a confidence in the defense theory, which will be clearly presented in the opening statement.

B. Narrow the Issue in a Clear and Exciting Opening Statement

Judges in bench trials sometimes subtly urge lawyers not to make opening statements. Notwithstanding, counsel should always insist on making an opening statement. [FN16] It is a very important part of any criminal ***693** trial. The opening statement in a bench trial gives counsel the opportunity to narrow the issue for the judge from the beginning, enabling the judge to distinguish between relevant and irrelevant evidence, thereby allowing the trial to proceed expeditiously.

Judges prefer that defense counsel stick to one or two strong arguments during the course of a trial, similar to an appellate argument. Generally, judges do not appreciate □□machine-gun litigation □□ (numerous, sporadic defense arguments). Therefore, counsel should stress one or two arguments in the opening statement, which should incidentally lay the groundwork for the objections that will be made by the defense. [FN17] The result is an increased likelihood that tangential, yet damaging, evidence will be excluded through sustained objections.

Although not directly related to the terms of a bench trial, it is also worthwhile to note that, despite popular opinion, the opening statement in a bench trial does not need to be boring. In fact, judges appreciate energy, passion, and excitement. A common misconception is that judges are legal computers. This is not the case. Judges are human and often are persuaded by the same things that persuade juries. Therefore, in the opening statement, counsel should demonstrate to the judge that the case is an important one. If possible, visual aids should be used to illustrate any significant points.

C. Consolidate the Motion for Judgment of Acquittal and the Closing Argument

One clear disadvantage for defense counsel in a criminal jury trial is the procedure for closing argument. The prosecutor in a criminal trial, in almost every jurisdiction, has the opportunity to address the jury both first and last in closing argument. This is a disadvantage for defense counsel, as research has shown that a person remembers

better what they hear first and what they hear last (the concepts of primacy and recency). [FN18] ***694** As a result, arguments made by the defense in closing, wedged between the prosecutor's opening argument and rebuttal argument, may be quickly forgotten in the jury deliberation room. In a jury trial, the defense must deal with this reality. However, during a bench trial, counsel has the unique ability to rectify it by combining the motion for judgment of acquittal with the closing argument.

The motion for judgment of acquittal is made at the close of the government's case, before the defense presents evidence. However, in many criminal trials-jury and bench trials alike-the defense has no evidence. When this is the case, defense counsel argues the motion, the government responds, and the government then proceeds directly to closing (assuming the motion was denied). In a bench trial, however, there is often no point in making a motion for judgment of acquittal. [FN19] Therefore, it is more effective for counsel to turn the motion for judgment of acquittal into the closing argument. By consolidating the arguments, defense counsel usurps the prosecutor's opening argument and suddenly gains the advantage of the principle of primacy.

How is this done? Remember that the judge prefers to move the trial along quickly. By consolidating the motion for judgment of acquittal with the closing argument, defense counsel has essentially shortened the trial by three arguments (defense motion, government's response, and the government's opening argument). Many judges prefer this procedure to the traditional one because it saves time. Therefore, defense counsel should make such a request at the close of the government's case. For example, defense counsel may inquire of the court in the following way: □□Your honor, if it is alright with the Court and the Government, I will make my motion, and in the interests of time, I would ask the Court to accept it as my closing argument.□□

The prosecuting attorney will usually accept the offer. After all, they too want the trial to move along quickly, and less argument means less work. Most judges will allow defense counsel to proceed in such a manner.

Defense counsel should take caution, however, when consolidating the motion for judgment of acquittal with the closing argument. For ***695** instance, it should not be utilized in cases in which there will be appellate review of the record, for counsel will have waived any sufficiency argument by not making a motion for judgment of acquittal. [FN20] However, when there is a de novo trial on appeal, counsel should always combine the motion with the closing for cases in which there is no defense evidence. Furthermore, in cases where there is a de novo trial on appeal and there is also defense evidence, counsel should make the motion for judgment of acquittal, and then combine the renewed motion with the closing. [FN21]

IV. The Judge Is a Lawyer

As discussed in the previous section, effective bench trial advocacy begins with accepting the terms of a bench trial, identifying the implications of those terms, and then capitalizing on the opportunities that the implications provide. The best illustration of this concept comes through the simplest term; that the judge is a lawyer, and defense counsel in a criminal case should recognize that a lawyer does not perceive certain defense tactics the same way that a juror might.

A. Do Not be Afraid to Make Objections

Those who have experienced any type of clinical trial advocacy training have been cautioned to use objections sparingly. The jury will likely perceive the objections as aggravating interruptions, and lawyers will lose credibility after creating the impression that they are □□hiding something.□□ A lawyer need only watch a jury's reaction to continuous objections and endless bench conferences to confirm this. But jurors are lay people, and judges are not. During a bench trial, counsel need not be concerned about creating the impression that they are hiding something ***696** by objecting. Lawyers understand that there is an obligation to object. They understand that the record must be

protected, and that objections can be very helpful in disrupting their opponent's case. Accordingly, lawyers (judges) have no objection to objections.

Bench trials actually give a criminal defense lawyer the freedom to object. Making valid objections may have the opposite effect in a bench trial than in a jury trial. It may actually enhance credibility, depending on how the objections are made. For example, if counsel is able to quickly and articulately cite the basis of the objection, the judge will be impressed with counsel's knowledge of the rules of evidence (i.e., the law). [FN22] All judges appreciate a trial lawyer that is well versed in the law.

Moreover, counsel's rapid-fire objections may also rattle an unprepared or inexperienced prosecutor. Even objecting to leading questions during direct examinations [FN23] may create confusion that can cause a prosecutor to abandon a line of questioning altogether. This, in turn, will result in the prosecutor losing credibility in front of the judge. Flustering the prosecutor can be very helpful. If counsel has managed to do so through the use of objections, it greatly increases the likelihood that the prosecutor will forget to establish an important fact, or better yet, an element of the criminal offense charged.

When making objections, counsel should again keep in mind that one of the judge's priorities is to move the trial quickly. Frivolous objections should never be made; if counsel gets the sense that the court is becoming frustrated, the objections should be limited. However, if the main issue was clearly identified in the opening statement, then the judge will undoubtedly focus solely on that issue, and will only want to receive evidence on that issue. Accordingly, counsel should object on relevance grounds whenever appropriate. [FN24]

Federal Rule of Evidence 403 [FN25] can also be very useful in a bench trial, but not in the traditional sense. The prejudicial-versus-probative argument***697** rarely succeeds in a bench trial. [FN26] Instead, whenever counsel feels that tangential, yet damaging, evidence is being offered by the prosecutor, a Rule 403 objection should be made on the grounds that the offered evidence would waste time, [FN27] since its admission would open the door to the defense's response to the evidence. The last thing that a judge wants to do is to have a □□trial within a trial.□□ Therefore, if the objection is made persuasively, it will be sustained.

Making valid objections during a bench trial only helps, and never hurts, the defense in a criminal case. This is a distinct tactical difference from jury trial litigation. However, this technique would lie hidden beneath the surface if the criminal defense lawyer did not evaluate the implication of having a lawyer sit as the finder of fact.

B. The Defendant's Silence Will Not Be Used Against Him

One of the most difficult decisions that criminal defense lawyers have to make in preparing for criminal trials is deciding whether or not the defendant will testify. [FN28] Juries want to hear from the defendant. In their minds, it is illogical for a person that is innocent of a crime to stand silent in the face of accusation. As a result, notwithstanding the judge's instructions, [FN29] juries inevitably consider the defendant's silence as evidence of guilt, even if subconsciously.

In a bench trial, however, the finder of fact is a lawyer. Lawyers understand the value of the Fifth Amendment, and realize that there are ***698** many reasons that a defendant may choose not to testify, some of which may be consistent with innocence. Moreover, the court will follow the holding of Griffin v. California. [FN30] Therefore, counsel should be less inclined to have the defendant testify in a bench trial than in a jury trial, unless, of course, it is in the best interests of the defendant to testify. If the defendant does choose to remain silent, that silence will not, in any way, be interpreted to mean that the defendant is guilty.

[redacted]

C. In Closing Argument, Entertain Questions from the Bench

Lawyers, whether practicing or sitting as judges, appreciate discussion and thoroughly enjoy argument. Defense counsel in a criminal bench trial should take advantage of this, especially during closing.

Throughout the course of a jury trial, counsel is essentially left to speculate about what the jurors are thinking. In a bench trial, counsel need not speculate, because they can simply ask questions, especially in closing. Closing argument in a bench trial can be similar to an appellate argument. Counsel may ask the court if there is any particular issue that the court wishes counsel to address. Often, the court will engage counsel and ask questions. This technique is especially effective when there are multiple counts against the defendant. Counsel can go through each count individually and literally discuss the evidence with the judge. The opportunity to answer the court's questions is invaluable, because it allows counsel to directly answer a question and even expand on the answer, rather than leave the answer to the court's conjecture.

Finally, counsel should be sure to object to the prosecutor's closing argument anytime there is a misstatement of the evidence. In a jury trial, counsel's objection is met with a familiar response: the jury's memory of the evidence will control. In a bench trial, however, the court is likely to immediately review its own notes in response to such an objection. If counsel has caught the prosecutor misstating the evidence and it is confirmed in the judge's notes, then the prosecutor suffers a serious blow to their credibility, which is always helpful to the defendant.

***699** Conclusion

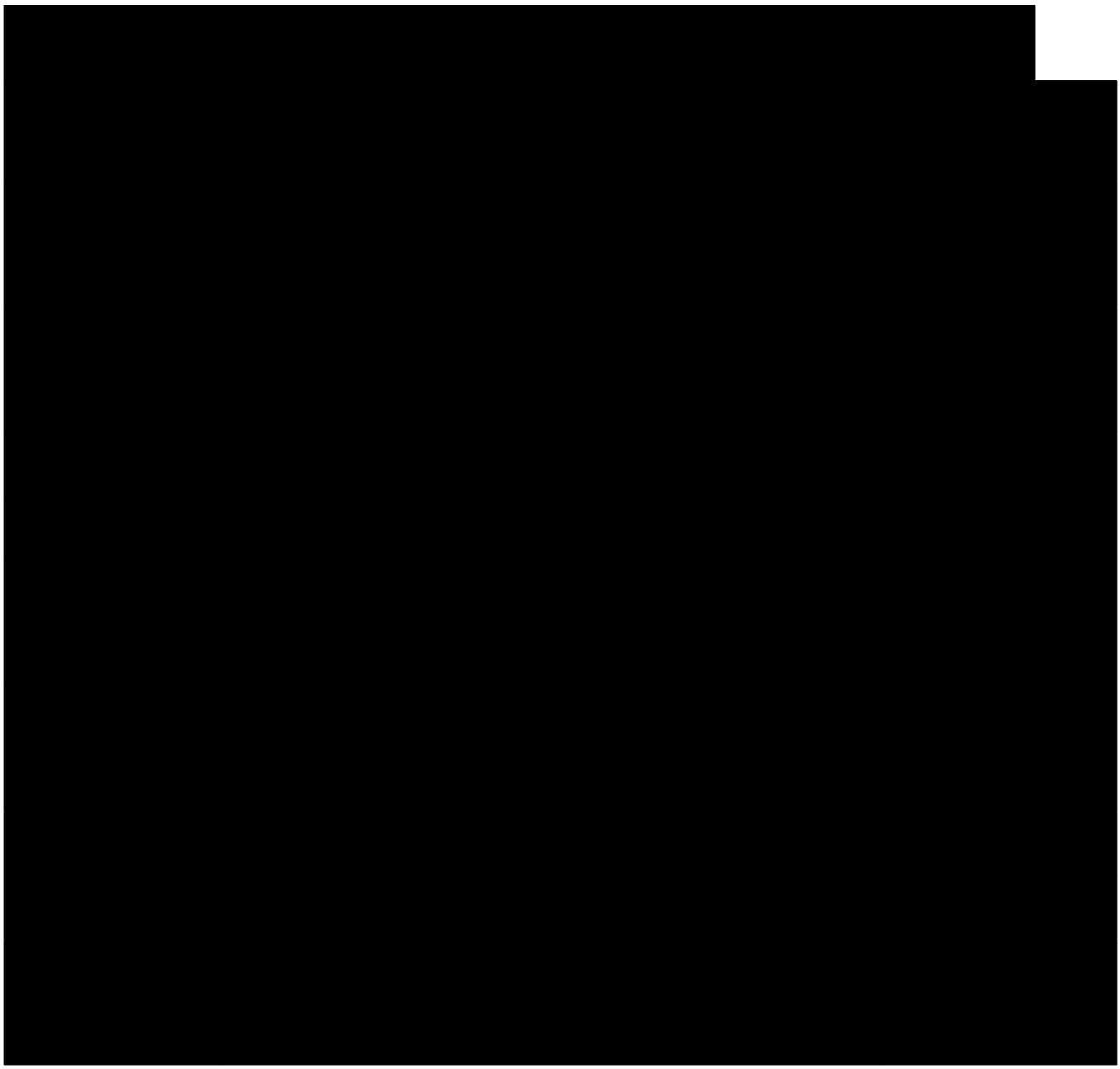
Effective bench trial advocacy is a hugely important tool for any criminal defense lawyer. Statistics clearly show that most criminal trials are bench trials, not jury trials. [FN31] Notwithstanding such statistics, training in trial advocacy almost exclusively focuses on jury trials. Unfortunately, the application of jury trial skills alone does not suffice for effective bench trial advocacy. The features of a bench trial warrant the application of a combination of traditional trial advocacy skills with a separate and unique set of bench trial advocacy skills, which are effectively developed after a careful analysis of the terms of a bench trial. Some of those bench trial advocacy skills have been discussed herein. However, the development of these skills is limited only by the creative intellect possessed by the many criminal defense lawyers who hone their craft on a daily basis. Indeed, this discussion is designed to merely provide a template analysis that others can use to develop many other bench trial techniques. That, of course, is the art of advocacy.

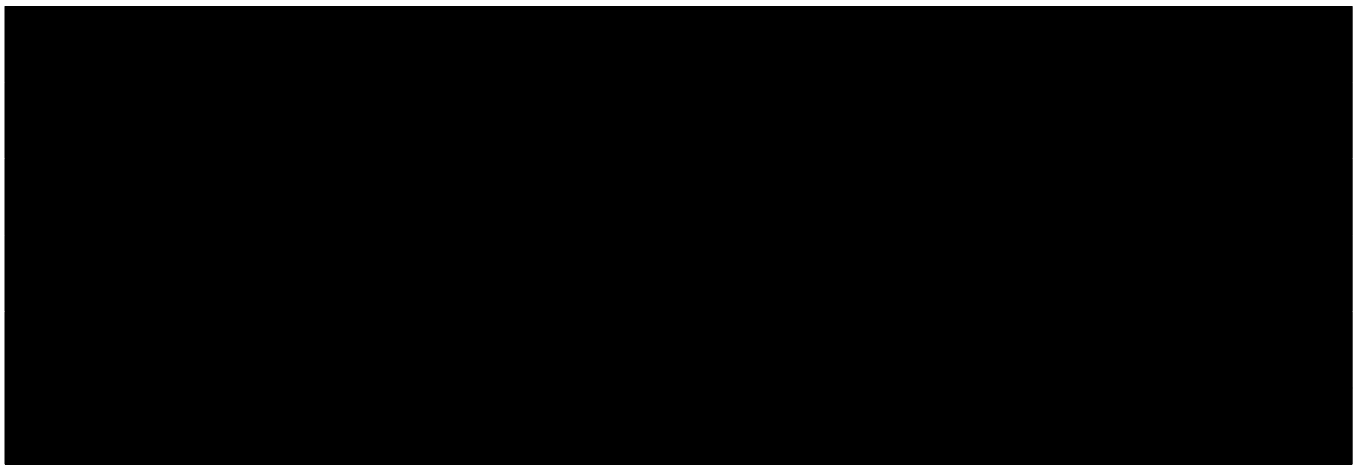
In the end, counsel must remember that they are representing a defendant in a criminal case. Nowhere in the law are the stakes higher than when the government threatens to deprive an individual of life, liberty, and freedom. The overwhelming responsibility that results should make any criminal defense lawyer feel an absolute obligation to become as effective of an advocate as possible. That includes mastering the art of trial advocacy in any forum, before any audience. Therefore, given the overwhelming prevalence of bench trials in the criminal courts, effective bench trial advocacy should be a top priority for any criminal defense practitioner.

***700** Appendix A

Criminal Trials in Twenty-Three General Jurisdiction Courts, 1976-2002

[redacted]

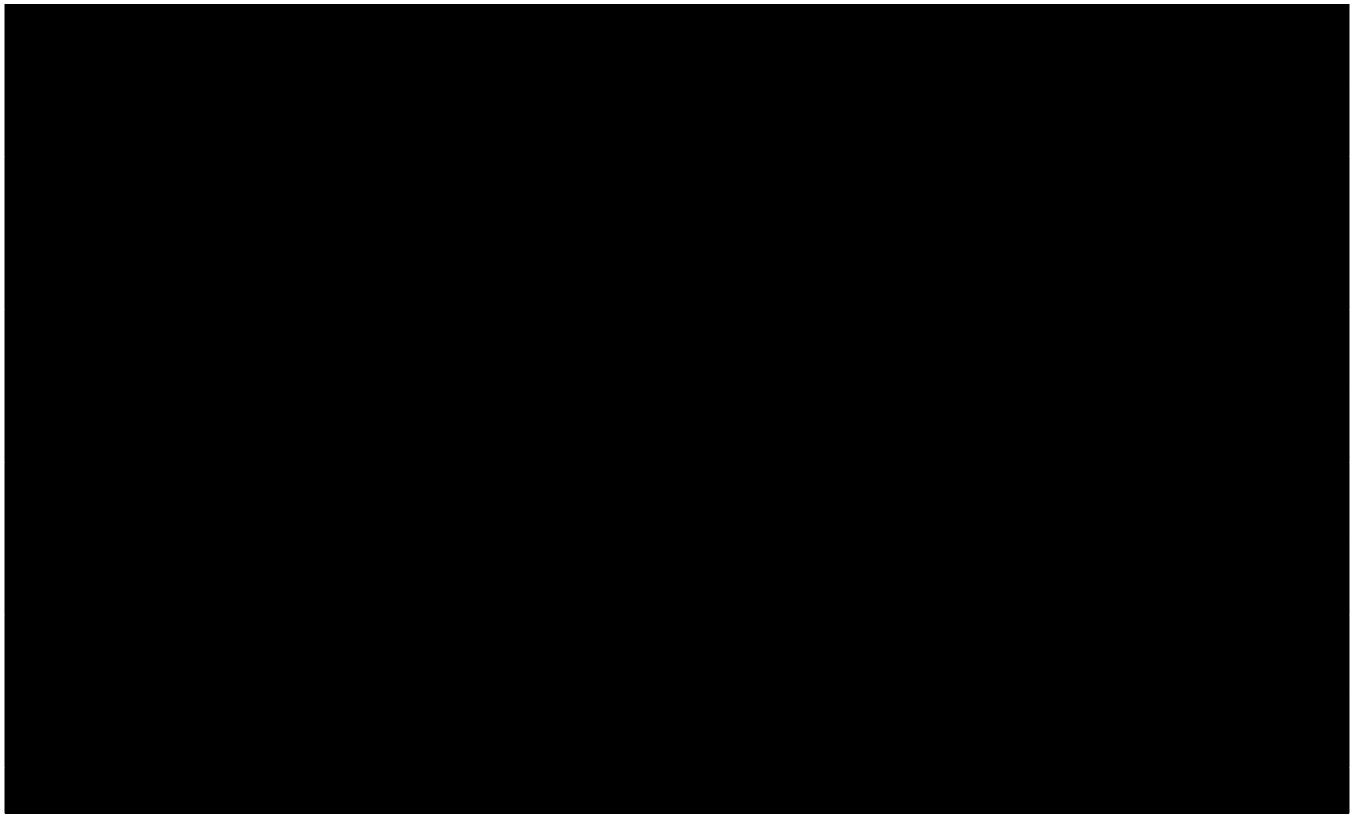


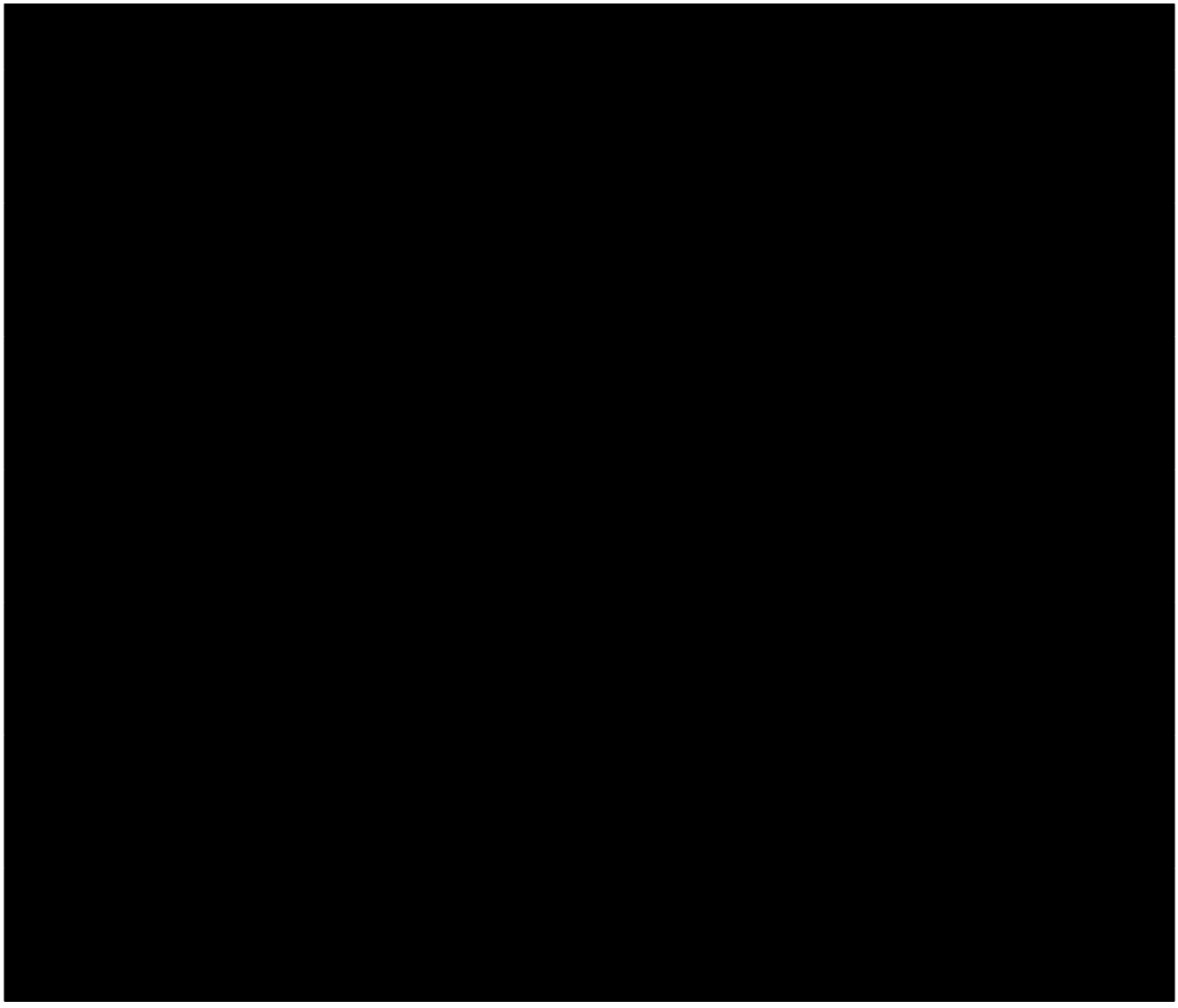


***701** Appendix B

Felony Dispositions in Thirteen General Jurisdiction Courts, 1976-2002

Felony Trials Per Year





[FNd1]. B.S. (1998), Purdue University; J.D. (2002), The Catholic University of America, Columbus School of Law; LL.M. (2005), The George Washington University Law Center. The author has been an adjunct professor of law at The Catholic University of America, Columbus School of Law, and is a member at Gergely & Sharifi, LLC in Rockville, Maryland.

[FN1]. Basic tenants and proven methods of trial advocacy are not addressed; instead, the focus here is solely on methods unique to effective bench trial advocacy.

[FN2]. Although these courts are described as □□lower□□ courts, defendants often risk a substantial possibility of months, or even years, of incarceration upon conviction.

[FN3]. See Appendix A, infra (all data in the tables herein were compiled by the National Center for State Courts as part of the Court Statistics Project (CSP)). Suffice it to say that these statistics make it incumbent upon all trial lawyers to be staunch advocates of the jury trial system.

[FN4]. See Appendix B, infra (all data in the tables herein were compiled by the National Center for State Courts as part of the Court Statistics Project (CSP)).

[FN5]. United States v. Eads, 191 F.3d 1206, 1211 (10th Cir. 1999); Foreman v. Tex. & New Orleans R.R. Co., 205 F.2d 79, 82 (5th Cir. 1953).

[FN6]. Many lawyers believe that all it means is that they should proceed without emotion in a bench trial, since emotions have no effect on a judge. That approach is ineffective. Judges appreciate passion, and, contrary to popular belief, they actually find listless and drab deliveries counterproductive. See Laura Castro Trognitz, Bench Talk, 86 A.B.A. J., Mar. 2000, at 56, 59 (federal judge noting that lawyers in bench trials often make a big mistake by not making the case interesting, fun, and exciting).

[FN7]. It is a judicial obligation to □□dispose promptly of the business of the court.□□ See Model Code of Judicial Conduct Canon 3 cmt. (1999).

[FN8]. There is, however, a minority of jurisdictions that allow non-lawyers to sit as judges. Standing alone, a bench trial before a non-lawyer judge is not a violation of due process. North v. Russell, 427 U.S. 328, 96 S. Ct. 2709, 49 L. Ed. 2d 534 (1976).

[FN9]. It is understood that there may be times when counsel may not have advance notice of which judge will be presiding over the trial. If this is the case, counsel should learn as much as possible (where practical) about every judge that may preside over the trial.

[FN10]. For example, some judges do not allow lawyers to enter the well. Other judges encourage movement in the courtroom. Some judges demand specific objections (e.g., hearsay). Other judges will object sua sponte. There are judges that have been known to take frequent recesses, whereas others try not to take any. To further illustrate the point, consider the following examples of judges' different reasonable doubt interpretations (which, incidentally, have been clearly defined in the criminal pattern jury instructions of most jurisdictions). Cage v. Louisiana, 498 U.S. 39, 40, 111 S. Ct. 328, 329, 112 L. Ed. 2d 339 (1990) (holding that reasonable doubt is a doubt that would give rise to a grave uncertainty-an actual substantial doubt); Commonwealth v. Hardy, 575 N.E.2d 355, 356 (Mass. App. Ct. 1991) (explaining that there is no reasonable doubt when his conscience is satisfied as to the defendant's guilt); State v. Keffer, 281 S.E.2d 495, 498 (W. Va. 1981) (instructing that jury can convict defendant even if they believe it is

possible that defendant is not guilty); Commonwealth v. Ferreira, 364 N.E.2d 1264, 1272 (Mass. 1977) (explaining to jury that determining reasonable doubt is tantamount to deciding □□whether to leave school or to get a job □□).

[FN11]. Colleagues, in this context, are members of the criminal defense bar.

[FN12]. This section discusses pre-trial motions (other than motions to suppress) that are generally made on the trial date, before jeopardy has attached. The procedure for litigating pre-trial motions varies depending upon the rules applicable to a particular court. In some courts, pre-trial motions are litigated weeks before the trial date. In other courts, they are litigated on the trial date, just before jeopardy attaches (jurisdictions differ as to when jeopardy attaches in bench trials). Some courts hear certain types of motions before the trial, and entertain other motions during the course of the trial, itself. Of course, counsel must be thoroughly familiar with the law pertaining to motions well in advance of the trial date.

[FN13]. This is known as the theory of primacy, discussed infra. Notwithstanding, expect the prosecutor to mention the damaging evidence that may have been the subject of a pre-trial motion in the government's opening statement. The defense is better off, however, having only to deal with the mention of the evidence in the opening, rather than having the judge hear it first in motions and then again in opening.

[FN14]. One significant difference between bench trial advocacy and jury trial advocacy is that jury trials are always held in a court of record, and jury trials are always subject to appellate review (which may be discretionary if the jury trial is a result of a de novo appeal). This is not the case with bench trials. Bench trials are sometimes not in a court of record, and the proceedings are often not subject to appellate review. If the trial court is not a court of record, then the appeal will likely be a trial de novo. If the bench trial is in a court of record, it will be subject to appellate review or a trial de novo on appeal, depending on the court. Regardless, a record must be made. If the bench trial is not in a court of record, counsel should have a court reporter present. If that is not possible, counsel, if permitted, should tape record the proceedings.

[FN15]. The results of a judicial survey indicated that judges disliked when lawyers failed to stipulate on minor issues and □□overlitigated.□□ See 55 Am. Jur. Trials 443 Results of Judicial Survey § 5 (1995).

[FN16]. One administrative law judge has noted that he prefers for lawyers to waive their openings; however, if the lawyer still insists on opening, the judge figures that the opening will probably be a good one. See James W. McElhaney, Judge Trials: Litigation Techniques for Trying the Case to the Court, 78 A.B.A. J., Mar. 1992, at 69.

[FN17]. See infra subsection IV(A).

[FN18]. Thomas A. Mauet, Trial Techniques 43 (Richard A. Epstein et al. eds., 4th ed. 1996).

[FN19]. If the trial is not in a court of record, there is certainly no point; if the court feels that the government has not established a prima facie case, then there is no proof beyond a reasonable doubt.

[FN20]. E.g., United States v. Herrera, 313 F.3d 882, 884-85 (5th Cir. 2002), cert. denied, 537 U.S. 1242 (2003); United States v. Belardo-Quinones, 71 F.3d 941, 945 (1st Cir. 1995); United States v. Dandy, 998 F.2d 1344, 1357 (6th Cir. 1993), cert. denied, 510 U.S. 1163 (1994).

[FN21]. To preserve a sufficiency argument on appeal, the defense must renew its motion for judgment of acquittal

after the defense has introduced evidence. E.g., United States v. Sherod, 960 F.2d 1075, 1077 (D.C. Cir. 1992).

[FN22]. This is assuming that the majority of the objections are getting sustained. If the objections are getting overruled, then making frequent objections may backfire. Therefore, the objections must be valid.

[FN23]. See Fed R. Evid. 611(c).

[FN24]. See Fed R. Evid. 401.

[FN25]. Most states have a similar, even identical, rule. See e.g., Md. Rules, Rule 5-403.

[FN26]. Although Rule 403 does not specifically limit the exclusion of prejudicial or confusing evidence to jury trials, it is generally considered inapplicable to bench trials. Judges are trusted to segregate in their minds the probative component of evidence from its prejudicial, confusing, or misleading features. William W. Schwarzer & Alan Hirsch, The Modern American Jury: Reflections on Veneration and Distrust, in Verdict 399-413 (Robert E. Litan ed., 1993); see also Gulf States Util. v. Ecodyne Corp., 635 F.2d 517, 519 (5th Cir. 1981).

[FN27]. □□Waste of time □□ is often an overlooked basis for a Rule 403 objection.

[FN28]. For an interesting discussion of this topic, see Henry B. Rothblatt, The Defendant-Should He Testify?, The Trial Masters 35-40 (Bertram G. Warshaw ed., 1984).

[FN29]. See Griffin v. California, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233, 14 L. Ed. 2d 106, 110 (1965) (holding that no inference of guilt can be drawn from the defendant's refusal to testify in a criminal trial).

[FN30]. 380 U.S. 609, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965).

[FN31]. See Appendix A, infra (all data in the tables herein were compiled by the National Center for State Courts as part of the Court Statistics Project (CSP)).

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