

Monday, October 23, 2006

### **Trial courts: Often rough and tumble.**

At criminal bench trials, some judges seem more willing to overrule objections that they would sustain were a jury present. Sometimes the judges perhaps feel they are better able than jurors to filter out inadmissible evidence. In Maryland and Virginia, District Court judges know that an appeal means a de novo trial rather than an examination of any errors in the judge's evidentiary and procedural rulings. Sometimes criminal bench trials become so informal that judges refuse to entertain defendants' motions to suppress evidence until after the entire prosecution case has been presented. I present my best defense even when a judge contravenes evidentiary and procedural rules, but certainly do not like the situation. Judges are humans, and humans are not able to erase information from their memories. Consequently, it is better that judges sustain objections that should be sustained, and suppress evidence that should be suppressed, on a timely basis. On a related note about criminal bench trials, courts get so busy that they ordinarily would grind to a halt if no defendants entered guilty pleas. Perhaps it was in that context that a former Maryland District Court judge one morning during a particularly busy drug possession trial docket, brought all the lawyers to the hallway behind the bench, and firmly stated that any defendant who did not fold after losing a motion to suppress evidence (other than making a motion for judgment of acquittal and closing argument, I surmise) would be going to jail (but did not say how much jail beyond a few days). This clashed with my ordinary practice of challenging the testimony of drug chemists at drug bench trials. The judge advised that anybody who wanted the dignity of a full trial should demand a jury trial to Circuit Court. Although I very much disagreed with this judge's admonition, he perhaps was echoing what many other judges thought but did not express. This particular judge was more willing to deliver acquittals than plenty of other judges, and handed down some of the most lenient sentences; so he delivered the bitter with the sweet. His rule, though, was to keep the docket moving along. Another judge, now retired, also admitted that he would chase dockets at times. Nobody ever said, of course, that trial courts are elegant battlefields. Lawyers seeking elegant work might wish to think twice before doing trial work. This is where I thrive, because this is where so much justice can be achieved, even when the battle is not fair. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00