

# Art & Science of Jury Trial



The logo of the Texas Municipal Courts Education Center is a circular emblem. It features a central shield with a yellow quill pen resting on an open book. The shield is surrounded by a green laurel wreath. The outer ring of the emblem contains the text "TEXAS MUNICIPAL COURTS" at the top and "EDUCATION CENTER" at the bottom, separated by two stars. The entire emblem is set against a dark blue background.

# Part 1: Pre-Trial Practice

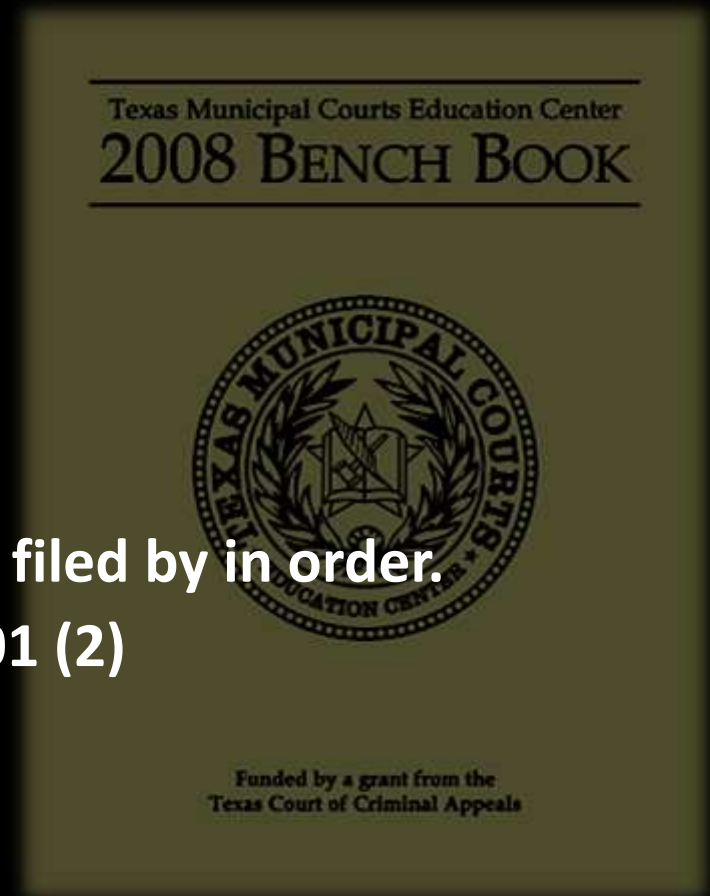




# CCP 28.01

## *Bench Book 101*

- Court may direct pre-trial hearing.
  - Advantages
    - Docket Management
    - Dispose of Issues
    - Streamlined Trials
    - Facilitate Settlement
  - Make an Order
    - Include date motions must be **filed by in order.**
    - Must give 10 days notice. 28.01 (2)
- Can wait till date of trial.



# What do you do with motions filed on date of trial in violation of your order?

- **Application of discretion.**
- **Ineffective assistance and due process.**
- **Special issues in Motions to Quash**
  - **CCP 45.019 (f)**
  - **Sanchez V. State**
  - **Since when the trial starts is in your discretion the statute is meaningless.**

# Determine Issue

*Bench Book 101-102*

- Motions are often not labeled properly.
- Read Motion to determine relief sought.
- Three basic kinds of motions whatever they are called.

# Issues of Fact Only

- This is a motion that does not have to be considered.
- If the relief is an issue of actual guilt or innocence, that is what trials are for.
- Exceptions under 27.08 CCP
  - Barred by Limitations
  - No Offense ALLEGED
  - Court has no jurisdiction of offense ALLEGED



# Issues of Law Only

- No hearing required
- Court may request briefs or argument
- Best practice is to make ruling in writing.
- Motion in Limine, Discovery Motions, Motion to Quash, Motion for Appointment of Attorney/Interpreter/Expert, Motion to Reveal Experts

# Issues of Law and Fact

- Best Practice is to have a hearing.
- Court may require affidavits
  - Motions for Continuance
- Suppression Motions, Speedy Trial Motions, Other Constitutional Bars to Prosecution
- No Venue Motions in Municipal Court

PRE-TRIAL DATE NOTICE

CAUSE NUMBERS: MC 01-07, MC 02-07, and MC 03-07

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF DRIPPING SPRINGS

CHARLES O'DELL

§

HAYS COUNTY, TEXAS

COPY

5

**NOTICE IS HEREBY GIVEN** that a pre-trial date has been set of the above numbered and styled cause for the 02 day of August, 2007, at 4:00 o'clock p.m.

The purpose of the pre-trial hearing is to allow the court to consider all matters related to the cause(s) that might help expedite a resolution. All challenges based on statutory or constitutional grounds must be brought before the court by written motion presented to the court prior to the date of the pretrial hearing.

If there is nothing to be presented at the pre-trial hearing, the court will go directly to trial.

Failure to Appear for this court date may result in a Failure to Appear charge being filed against you and warrants issued for your arrest.

COPY

9

CAUSE NUMBERS MC-107, MC02-107 AND MC 03-07

|                |   |                                 |
|----------------|---|---------------------------------|
| STATE OF TEXAS | § | IN THE MUNICIPAL COURT          |
| V.             | § | OF THE CITY OF DRIPPING SPRINGS |
| CHARLES O'DELL | § | HAYS COUNTY, TEXAS              |

DEFENDANT'S RESPONSE TO NOTICE OF PRE-TRIAL HEARING  
TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Charles O'Dell, Defendant, and files this response to the notice of pre-trial hearing signed by the Court on July 18, 2007.

**A. OBJECTIVES**

**3. Defendant objects to the requirement that he raise, in writing, at least one day before trial, all his statutory and constitutional defenses to the charges against him. There is no requirement under law that he do so.**

3. Defendant objects to the requirement that he raise, in writing, at least one day before trial, all his statutory and constitutional defenses to the charges against him. There is no requirement under law that he do so.

**B. CHALLENGES**

Subject to his objections set out above and without waiving same, Defendant raises the following challenges:

RECEIVED  
 AUG - 1 2007  
*Erin R. R...*



# Is this:

1. Issue of Fact
2. Issue of Law
3. Issue of Fact & Law

Cause Number:  
2008010034

THE STATE OF TEXAS

v.

SAM ALLEN MILLER

MUNICIPAL COURT

CITY OF PLANO

COLLIN COUNTY, TEXAS

NOTICE OF ABATEMENT

In accommodating an erroneous position that was disclosed, my name is Sam Allen Miller a flesh and blood living being. I reserve all my rights at all times. I waive none of my rights at any time for any cause or reason without prior written consent bearing my signature.

I have entered no plea, nor waived any of my rights. The Notice of Hearing and Scheduling Order for cause 2008010034, delivered to me, bears a likeness to my name. For my time and effort I charge \$325 per hour. If you choose to do business with me, please send a retainer of \$5,000, or I will consider this matter dismissed, and no contract has formed.

If it is me you seek then respond with a pretrial order properly stating my name as Sam Allen Miller and the required retainer. Upon receipt of the retainer, I will appear at your pretrial to enter a plea knowingly, willfully, and voluntarily.

# Is this:

1. Issue of Fact
2. Issue of Law
3. Issue of Fact & Law

1 Charles Grant Lochte  
2 c/o POB 760  
3 Castroville, Texas. by [78009]  
4

RECEIVED  
NOV 30 2007  
CS Municipal Court  
SP

5 CITY OF COLLEGE STATION MUNICIPAL COURT

7 THE STATE OF TEXAS,  
8 Plaintiff-in-Error,  
9 vs.  
10 CHARLES GRANT LOCHTE,  
11 <sic> <misnomer>  
12 Aggrieved Defendant  
13

Case No. 07027770  
MOTIONS TO DISMISS  
Date: 4TH Day of December, 2007  
08:30 A.M. , Traffic Court

14  
15 **MOTIONS TO DISMISS**  
16

17 I, Charles Grant Lochte, having appeared under threat, duress, and coercion, only to  
18 protect Aggrieved Defendant's interests, without any appearance of an adverse party, where the  
19 Judge was not an impartial party, but also prosecution, which is a conflict of interests and gives  
20 rise to violation of due process rights of the alleged defendant, who is now aggrieved because of  
21 such impartiality, and as such this court has lost immunity and any preconceived jurisdiction.  
22

23 Further investigation shows that there was **no probable cause** for the arrest and seizure at  
24 the time of such arrest and seizure. There was no disturbance of the peace, felony, or warrant for  
25 such action, and **no commission of a crime** leading to another cause of action against the  
26 Plaintiff and Officer for harassment and obtaining a signature under threat, duress and coercion.  
27  
28  
29  
30



1 The Aggrieved Defendant is fully aware of and does not surrender or waive Rights  
2 guaranteed in the federal and State Constitutions, or his free exercise of those Rights. SEE:  
3 *Brady v. U.S.*, 397 U.S., 742 at 748. **“Waivers of Constitutional Rights must not only be**  
4 **done voluntarily, they must be knowingly intelligent acts done with sufficient awareness of**  
5 **the relevant circumstances and consequences.”** Further, the exercise of a Constitutional Right  
6 cannot be converted into a crime. SEE: *Miller v. U.S.* 230 F, 2d 286, 489. “The claim and  
7 exercise of a Constitutional Right cannot be converted into a crime.” However, that is exactly  
8 what the State of Texas has done by converting Aggrieved Defendant’s claim and exercise of  
9 Constitutional Rights into a crime. The State opposes and contradicts those Rights and brings  
10 action against Aggrieved Defendant for his exercise of those Rights, and in so doing, denies and  
11 defies the Constitutions, including defying Constitutional provisions against Bills of Attainder  
12 and pains and penalties. For such charges to be brought by the State against a Citizen in any  
13 court constitutes treason by those who bring and prosecute the charges. For the court to hear  
14 such charges demonstrates that the court fails to honor Constitutional Rights and fails due  
15 process of law. The presiding judge has taken an oath to uphold the Constitutions, and pursuant  
16 to that oath and his/her duties to the Constitutions, and not to fraud and color of law, the judge  
17 has the discretion to dismiss the unlawful charges, uphold his/her oath, the Constitutions and  
18 dismiss this case.

19  
20  
21 **In the interest of justice and to preclude further injury to the Citizen and Aggrieved Defendant:**

22  
23 **MOTION # 1**

24 Aggrieved Defendant hereby motions the court to dismiss for failure to establish probable  
25 cause for the traffic stop, and a contested hearing within ninety days under the Constitution of  
26 the United States therefore any jurisdiction is lost in the matter.  
27  
28  
29  
30

1 MOTION # 2

2 Aggrieved Defendant hereby motions the court to dismiss for lack of prosecution at  
3 hearing. Prosecution failed to invoke jurisdiction, wherefore this court has lost any alleged  
4 jurisdiction and has denied an adversarial proceeding amounting to lack of due process.  
5

6 MOTION # 3

7 Aggrieved Defendant hereby motions the court to suppress all evidence unlawfully  
8 obtained by the traffic stop "arrest" by the arresting officer who comes with unclean hands. The  
9 Constitution of the United States forbids that a standing army may be maintained in peace time.  
10 Such constitutional abuse of WAR POWERS, if not rebutted by some superior law, will be  
11 evidence of such willful intent to injure the rights of peaceful Citizens.  
12

13 MOTION # 4

14 Aggrieved Defendant hereby motions the court to dismiss for failure to obtain and correct  
15 the true name of the Defendant at hearing. The Defendant has never been known as  
16 CHARLES GRANT LOCHTE or any other nom de guerre, and comes into this court under the  
17 American Flag of Peace, and municipality has no express authority to use marshal war powers  
18 upon this Citizen without lawful declaration. This Citizen also declares that the venue is  
19 improper, in that the alleged infraction did not occur upon any municipal property and as such  
20 must be dismissed.  
21

22 MOTION # 5

23 Aggrieved Defendant hereby motions the court to dismiss the charge for failure to  
24 explain the nature and cause of the accusation, thereby leaving the Defendant in ignorance and  
25 without aid of knowledge to prepare a knowledgeable defense, and amounts to denial of due  
26 process.  
27  
28  
29  
30

MOTIONS TO DISMISS

MOTION #6

Further investigation shows that there was no probable cause for the arrest and

MOTION #1

MOTION #2

MOTION #3

MOTION #4

MOTION #5

MOTION #6

The Aggrieved Defendant further motions the court to dismiss for statutory lack of authorization of officer to issue a "NOTICE TO APPEAR", or provided such statute that authorizes such form to be issued by a member of the executive branch.

24 the Court Clerk (for filing in the Court Record) a true and correct copy of the Motions to Dismiss  
25 on this 7<sup>th</sup> day of November, 2007 via USPS Certified Mail RRR. 7006176000356959244

26  
27  
28 Affiant, Charles Matt Scott  
29 (signature)  
30

# Is this:

1. Issue of Fact
2. Issue of Law
3. Issue of Fact & Law

# Big Picture Issues in Pre-trials

*Bench Book 104*

- Party making motion must raise and explain relief sought
- Testimony and evidence is by its very nature limited in scope. (No Fishing)
- Rules of Evidence generally do not apply.

# Continuance

*Bench Book 106-107*

- In Record Courts must be in writing.
- Good Cause
- Prosecution Continuance should name missing witnesses.
- Seek agreement
- Encourage filing before trial date.

# Motions to Dismiss Case

*Bench Book 108-111*

- Double Jeopardy
- Limitations
  - Must be on face of complaint.
  - Tolling periods must be on complaint's face.
  - Complaint tolls Statute of Limitations
  - Citation may toll Statute of Limitations
- No Offense on Face of Complaint

# Motions to Dismiss Case

- Jurisdiction
  - Place of offense is a trial issue.
  - Offense stated is not in jurisdiction of court
- Constitutional Bars
  - Vague Statute or Ordinance
  - Due Process
  - Equal Protection
  - Speedy Trial
  - Prosecutorial Misconduct



# Motions to Dismiss Case

- Motions raising factual innocence are really a motion for trial.
- Many Motions to Dismiss are Actually Motions to Quash the Complaint

# Motions to Suppress

*Bench Book 115-118*

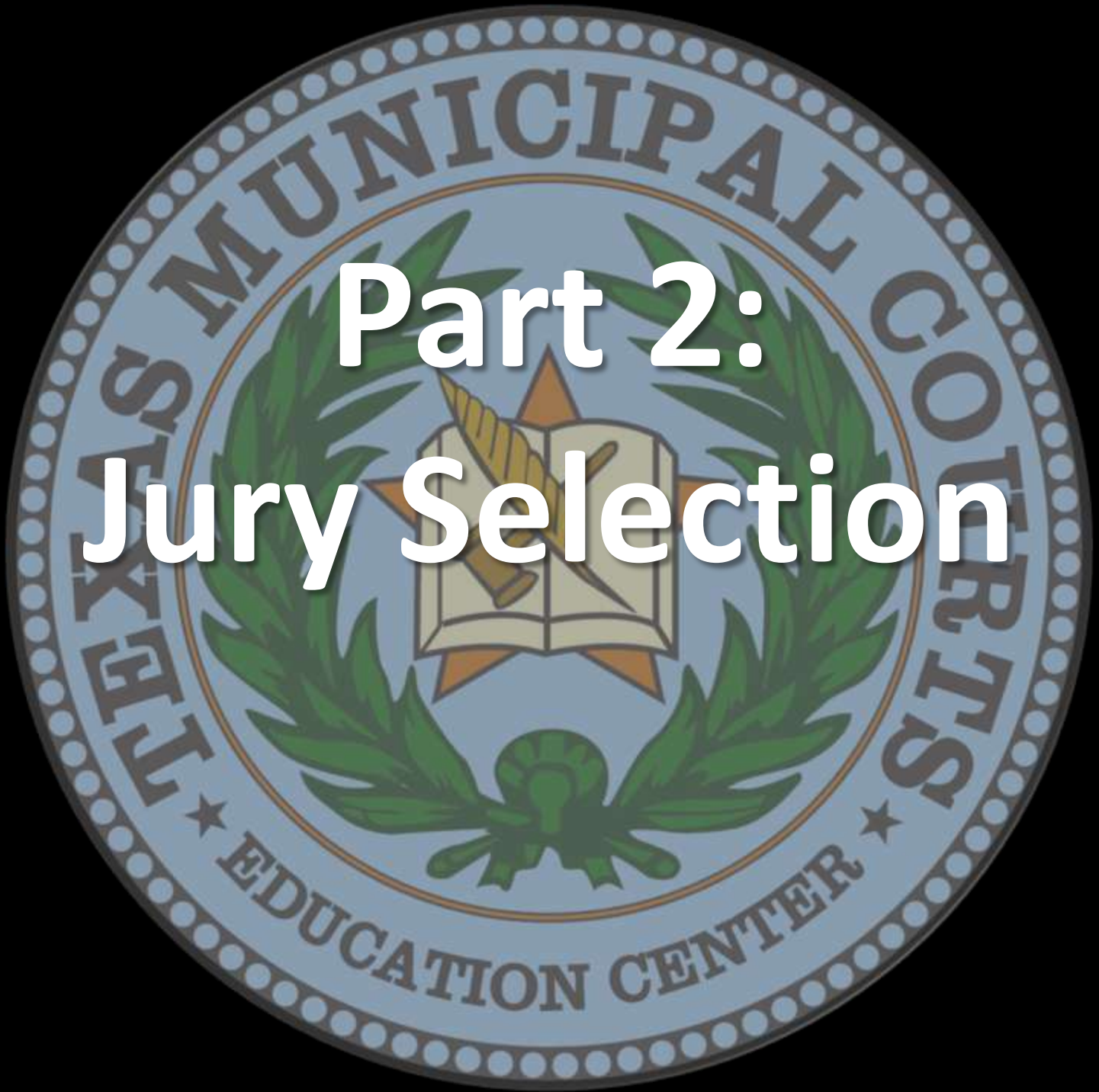
- Fourth Amendments Exclusionary Motions
  - Defendant must first establish standing.
  - Testimony or affidavits are essential.
  - Court may rule or hold over for trial.
- Fifth Amendment Motions on Statements
  - If voluntariness is an issue the court must rule pretrial.
- Due Process In Court Identification

# Motions in Limine

*Bench Book 119*

- Not a final Ruling
- Best Practice is to have motion and order be in writing.
- Order is to approach the court before mentioning or questioning on the issue before the jury.





# Part 2: Jury Selection

# JURY SELECTION

HOW DO WE GET THEM  
IN THE  
COURTROOM???????



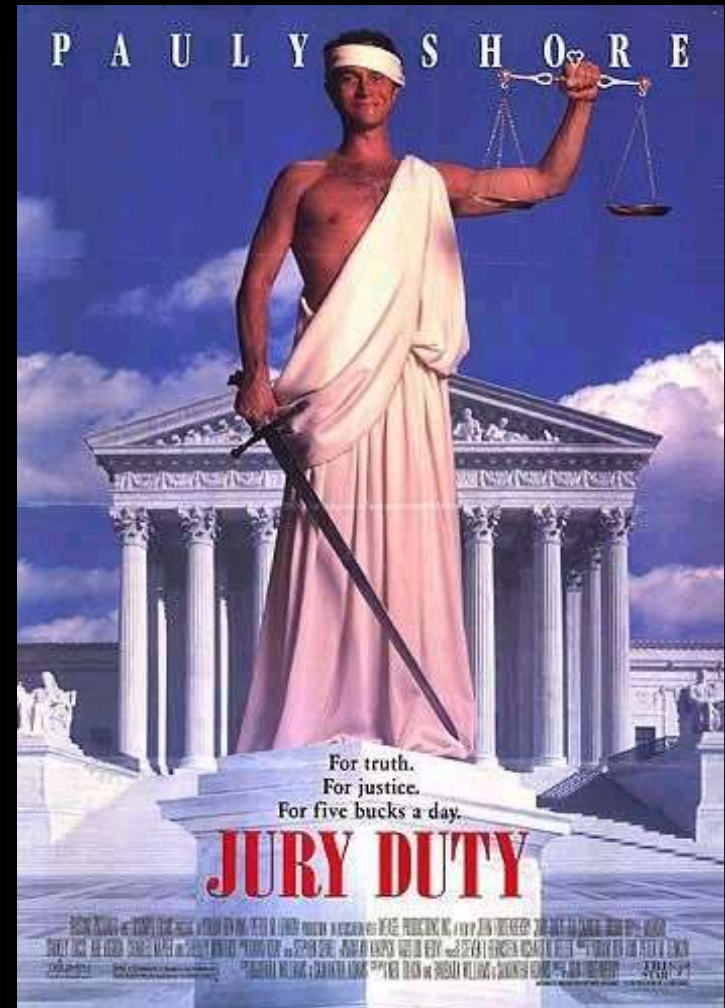
# NOW THAT THE JURORS ARE IN THE COURTROOM

- WHERE ARE WE GOING TO SEAT THEM??????
- HOW MANY?????
- See Bench Book p.126
  - Checklist 7-2
- AG Opinion GA-0336:  
June 28, 2005



# NOT PRESENT

- WHAT DO WE DO WITH JURORS WHO HAVE IGNORED OUR SUMMONS?
- See Bench Book
  - p. 128, Checklist 7-3





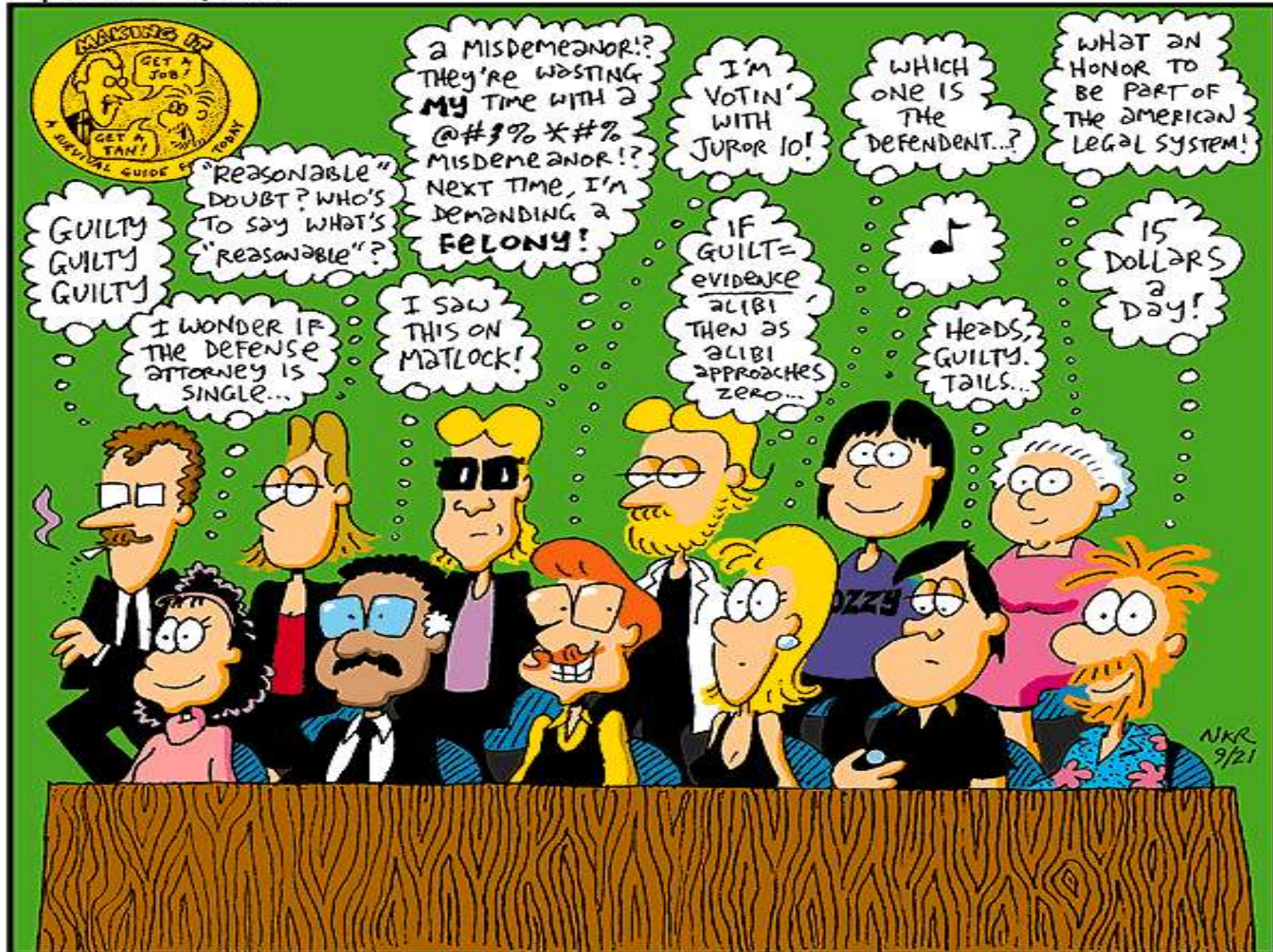
# OPENING REMARKS

- OATHS Art. 35.02  
CCP
- ARTICLE 35 TEXAS  
CODE OF CRIMINAL  
PROCEDURE
- See Bench Book  
p.129, Checklist 7-3



# IF JUROR DECLINES OATH

- **Ask Juror to Affirm**
- **Ask Juror to Promise**
- **Ask Juror to Answer Truthfully**
- **Ask Juror if he or she understands the penalties for giving false answers**



# QUESTIONNAIRE

- Juror Questionnaires
- Tell them how long they will be there
- Where to go during the break
- See Bench Book pp. 130-131 (checklist 7-3)



# BREAK TIME

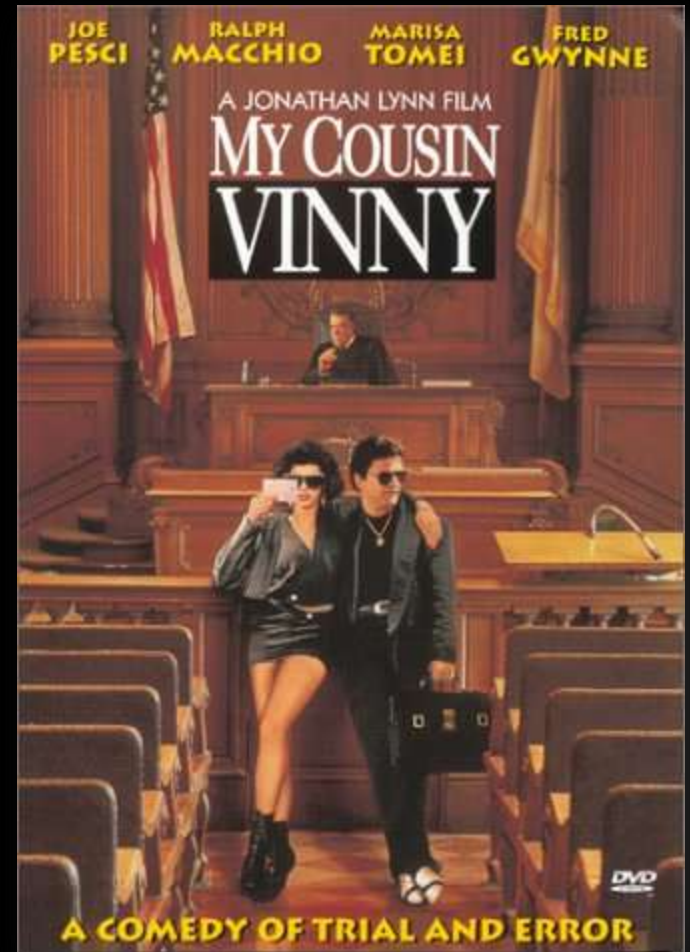
- Final questions for the defendant and prosecutor
- Go through questionnaires/exemptions
- Jury Shuffle
- Challenge to the Array
- See Bench Book pp. 132-133, Checklist 7-3



# VOIR DIRE

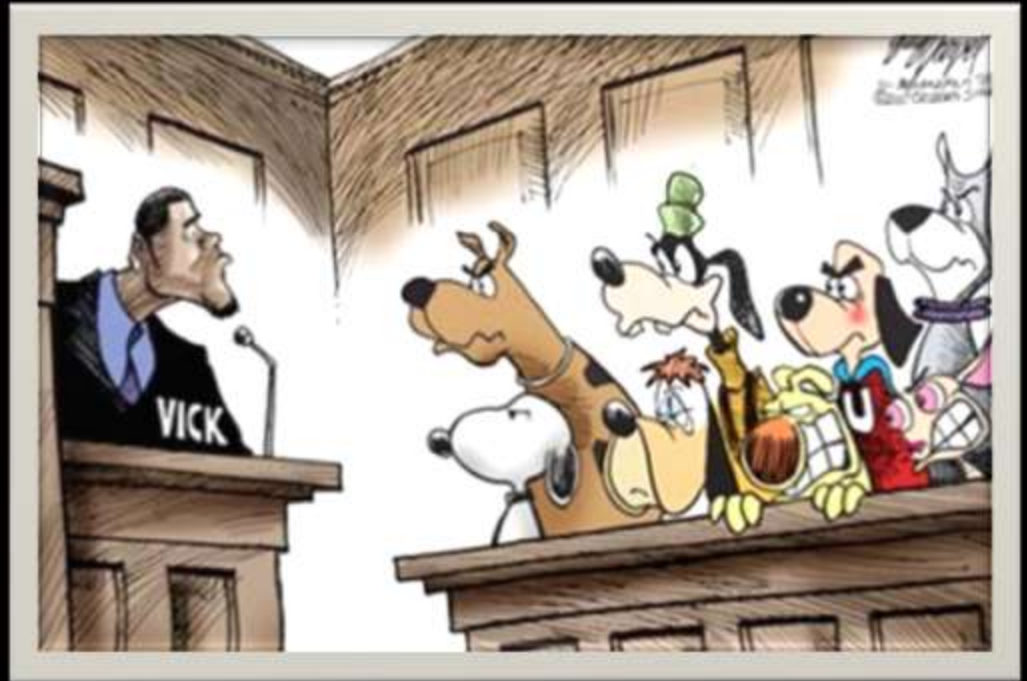


- 1:02:23 – 1:03:03:  
Questioning of lady as  
to whether she could be  
fair
- Bench Book p. 136 (7-3)



# VOIR DIRE

- Opening Remarks
- Time Limits
- Seating Chart
- Bench Book
  - pp. 138-139
  - 7-3



# VOIR DIRE

- Objections, objections, objections
- Pro Se



# POST VOIR DIRE

- Bench Book p. 139 (7-3)
- CHALLENGES FOR CAUSE 35.16 CCP
- PEREMPTORY CHALLENGES
- BATSON CHALLENGES
  - Bench Book p.148
  - Checklist 7-4



# SEATING THE PANEL

- Final Oath
- Taking Notes  
Art. 35.22 CCP
- Bench Book
  - p.140
  - 7-3





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# Part 3: Jury Trials

On average, how many jury trials are held  
in your court each month:

1. Less than one
2. 1 to 5
3. 6 to 10
4. More than 10
5. none

Having survived preliminary hearings and pre-trial conferences, you now have an opportunity to involve citizens in the criminal process and to introduce yourself to the citizens of your city.

# **JUDGE'S ROLE**

**Control Proceedings**

**Set Pace of Trial**

**Maintain Decorum**

**Direct Conduct of Parties**

- **Limit side bar comments**
- **Prevent badgering of witnesses**
- **Control movement of Parties**

# **UNCOOPERATIVE DEFENDANT**

- **Place on record (if court of record) at every instance: lack of response to instructions and opportunities given to participate**
- **Proceed with jury trial**
- **Enter plea of “Not Guilty” for defendant**
- **Offer opportunities to cross-examine, call witnesses, and make arguments**

**KEEP YOUR COOL**



**Read complaint to Defendant  
(Defendant may waive reading)**

**Defendant enters a plea**

**Or**

**If defendant refuses to enter a plea,  
Judge may enter a plea of *Not Guilty***

**SWEAR IN ALL WITNESSES**

**See Bench Book pp. 141-142 (7-3)**

# What if all witnesses are not present?

1. Reset the case for trial another day
2. Delay start of trial until witness arrives
3. Admonish witness's party
4. Hold witness in contempt
5. **Proceed with trial and bar testimony by witness**
6. **Proceed and require notice when witness arrives**

# Invoking the “The Rule”

Rules of Evidence 614

See Bench Book p.142 (7-3)

Who may request?

Prosecution

Defense

Judge

When may request be made?

Texas Municipal Courts Education Center  
2008 BENCH BOOK



Funded by a grant from the  
Texas Court of Criminal Appeals

See Ch. 7, Pg. 122

# Exceptions to “The Rule”

**Expert Witnesses**

**Victims**

**TRE 613**

# **VIOLATIONS OF “THE RULE”?**

**Who can report a violation to the Court?**

**Court Staff**

**Party**

**Juror**

**Witness**

**Judge**

# **PENALTIES FOR VIOLATIONS**

**Contempt**

**Exclude testimony**

**Reasonableness of sanction?**

# **OPENING STATEMENTS**

**See Bench Book p.142 (7-3)**

**Prosecution first  
(State may waive)**

**Defense second  
(Defense may reserve until  
after State's case-in-chief)**

**Time limits set by Judge**

# **PRESENTATION OF EVIDENCE**

**Prosecution's Case in Chief**

**Defendant's Case**

**Rebuttal Evidence**

**Sur-Rebuttal Evidence**



# EVIDENCE

- **Oral Evidence**
- **Physical Evidence**
- **Demonstrative Evidence**
  - **Establish Predicate**
  - **Label and offer**
  - **Publish to Jury**
  - **Handling by Jurors**

**“How do I get this into evidence?”  
Should Judge advise Pro Se  
Defendants?**

- **1. Yes**
- **2. No**
- **3. Depends on the question**

**Should the parties be allowed to mention plea bargains or other options?**

**No – TRE 410**

**Was this addressed in pre-trial or motion in Limine?**

# JUDICIAL NOTICE

**When may Court take Judicial Notice?**

**Is a motion required?**

**Of what may the Court take notice?**

- *Bench Book* 16-4; TRE 201-204

# Motion For Directed Verdict

- Bench Book p.144 (7-3)
- When may it be made?
- Grounds for granting?
- Specificity required
- Court's Ruling and Order

# **JURY CHARGE**

## **Who is responsible for preparing the Jury Charge?**

- 1. Prosecution**
- 2. Defendant**
- 3. Judge**

**See Bench Book pp.144-145 (7-3)**

**Judge**

# **JURY CHARGE**

## **General Instructions**

**State the law that applies to the case**

**Application to Allegation**

**May be oral or in writing**

***Bench Book, Page 154 (7-6)***

# **CLOSING ARGUMENTS**

**Bench Book p.146 (7-3)**

**Prosecution argues**

**(State may waive)**

**Defense argues**

**State Closes**

**Give equal time to each side**

**Previously established time limits**



# **VERDICT FORM**

**Bench Book p.147 (7-3)**

**Judge to set punishment – by default**

**Jury may set punishment – if requested**

**State range of punishment NLT \$ - NMT \$**

- **FMFR**
- **Handicap Parking**
- **Seat Belt Violations**
- **City Ordinances**

# **JURY DELIBERATION**

**Should Court allow juror notes in jury room?**

1. No
2. Yes
3. Don't know

**If allowed, admonish that notes are for personal memory aids and are not evidence.**

# DISABLED JUROR

- **Delay trial for brief period**
- **Continue trial to another day**
- **Excuse juror and declare a mistrial**

# DEADLOCKED JURY

- 1<sup>st</sup> Call jury back to courtroom to determine progress
- 2<sup>nd</sup> Return jury to jury room to try to reach unanimous verdict
- 3<sup>rd</sup> May give additional Allen charge
  - Bench Book p.151 (7-5)
- 4<sup>th</sup> Poll each juror and declare a mistrial
- 5<sup>th</sup> Reschedule 2<sup>nd</sup> trial as soon as practicable

# **VERDICT RETURNED**

**Read to Defendant in open court**

**Poll jurors if requested**

**Bench Book p.147 (7-3)**

# VERDICT RETURNED

**Advise Defendant of:**

- **Fine**
- **Court Costs**
- **Right to Appeal**
- **Time Frames for payment or appeal**
- **Motion for new trial**

