

JUDICIAL ADVOCACY

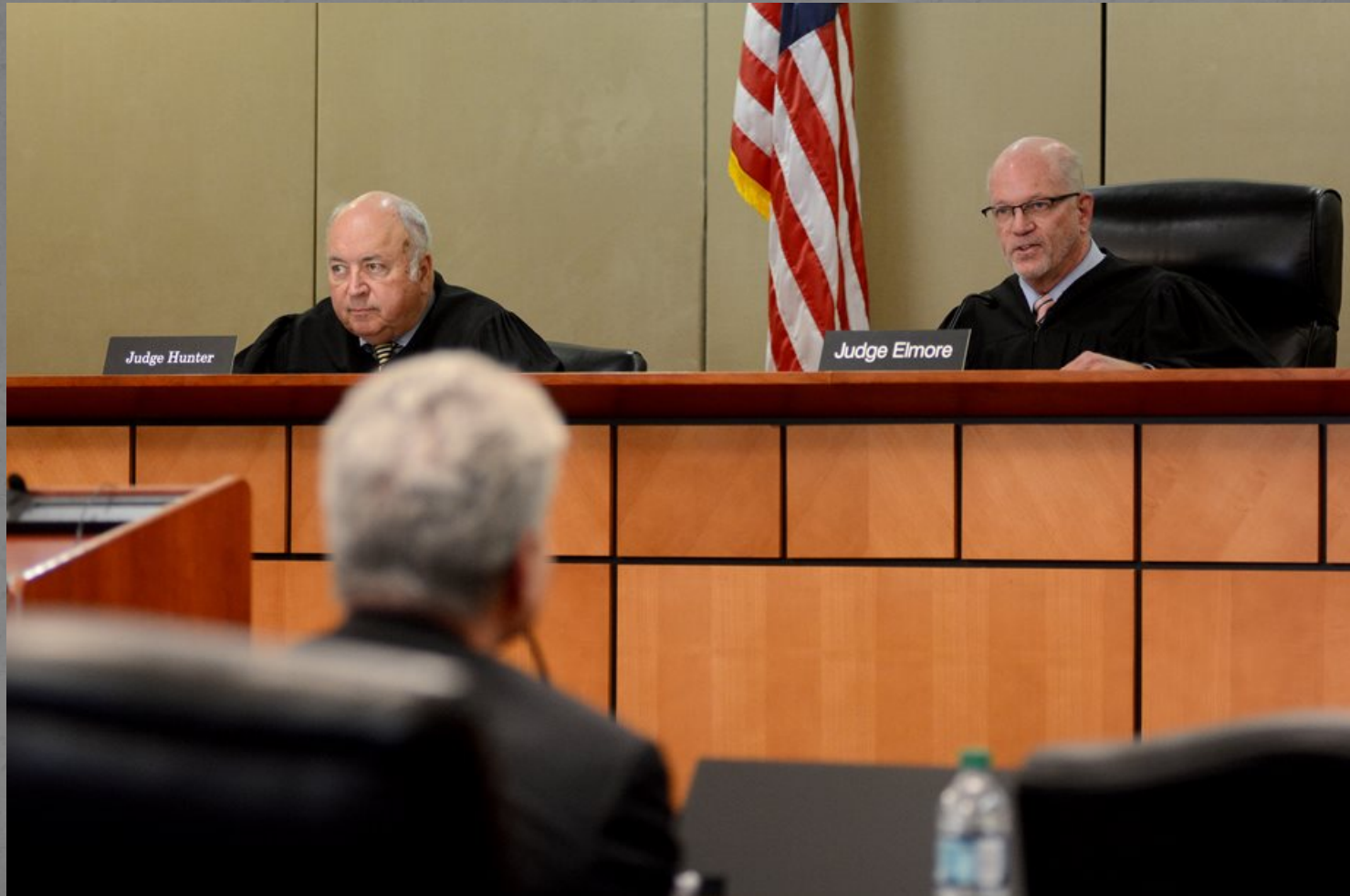
Leonard T. Strand
Chief U.S. District Court Judge

C.J. Williams
U.S. District Court Judge

Trial Advocacy



Appellate Advocacy



Judicial Advocacy



- Less than 1% of all civil cases are tried by a jury
 - In the last decade, civil trials have decreased from 1.98% of all cases to .84%
- Less than 5% of all criminal cases are tried by a jury
 - In the last decade, criminal trials have decreased from 3.41% of all cases to 2.34%

- In contrast, a significant number of cases are resolved by judicial orders
- Judges hold many hearings on both nondispositive and dispositive motions
- Judges preside over numerous evidentiary hearings and bench trials

- Premise: Persuading judges is different from persuading juries, and is different from persuading a panel of judges
 - A judge is unlike a juror
 - A judge is unlike a jury
 - A judge is unlike a panel of judges

- Differences between juries and judges as decision-makers

- Lawyers talk at jurors



- Lawyers question jurors only as to qualifications



"How is it, Mr. Crusoe, that you know nothing about this case?"

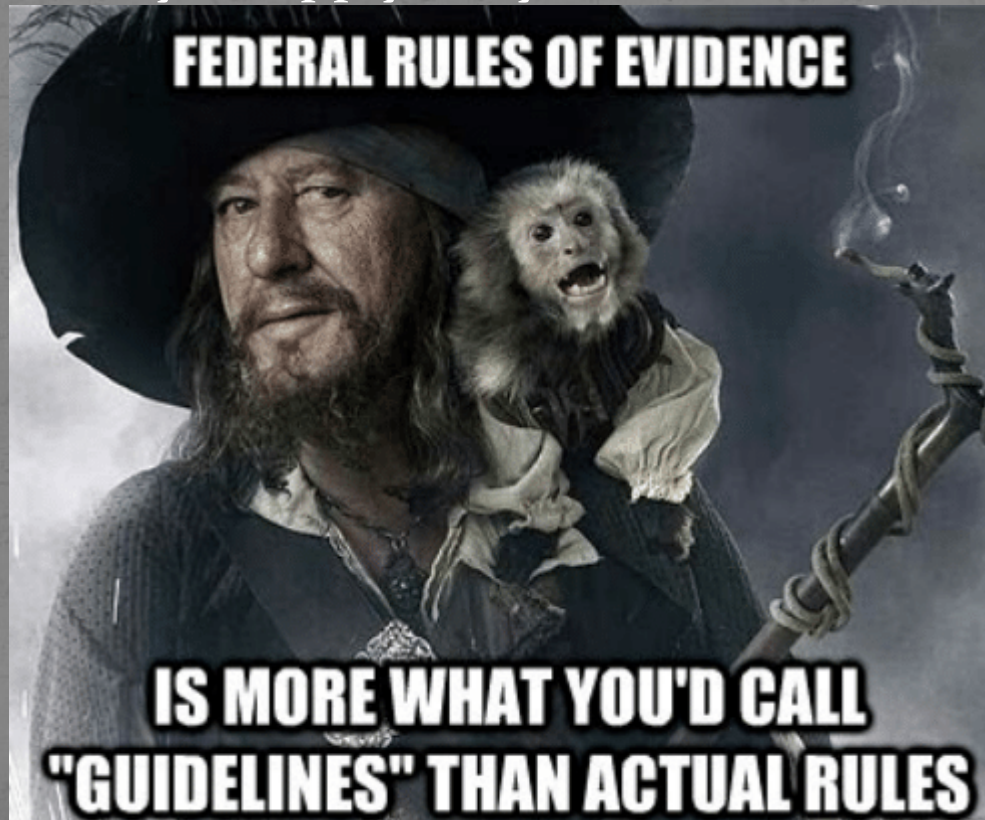
- Jurors cannot ask questions of lawyers



- But judges and lawyers can have conversations



- Rules of Evidence don't apply, or don't apply in full force
 - The rules of evidence do not apply in many proceedings where judges are decision-makers
 - When they do apply, they are "relaxed"



- Lawyers know little of jurors, but can know much about judges



- A judge's decision-making is different from jurors', different from juries, and different from a panel of judges.



- Judges and jurors process information similarly, but judges are trained to think deductively, dispassionately, rationally; jurors are not
- Judges also reason legally, thinking in terms of burdens and standards of review and elements and claims; jurors do not



- Judges reach decisions based on both written and oral advocacy; jurors do not



- A district judge reaches decisions alone; juries and appellate judges reach decisions as a group



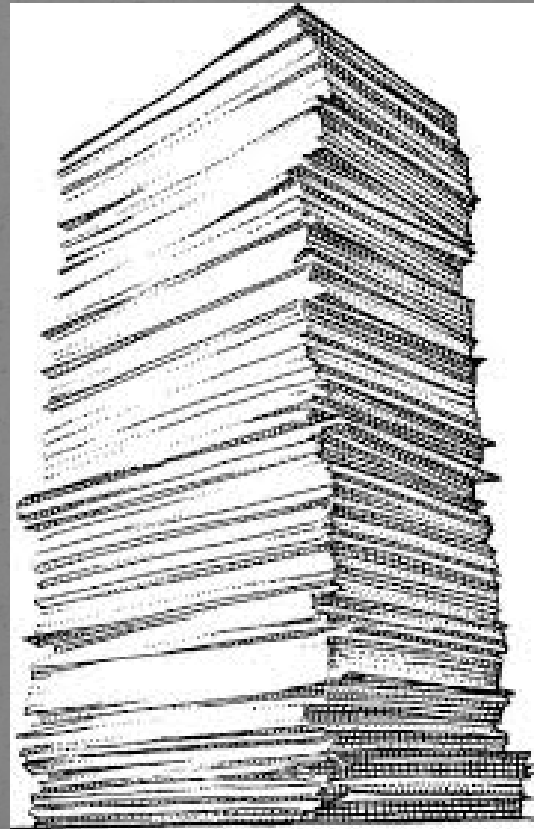
- Trial judges reach decisions under pressures not felt by juries and appellate judges



- Effective judicial advocacy

- Bench Trials
- Hearings
- Practice Pointers

- Bench Trials
 - Pretrial Briefs



- Bench Trials
 - Motions in Limine



- Bench Trials
 - Opening Statements



- Bench Trials
 - Presentation of Evidence
 - Order of proof
 - Deposition testimony
 - Use of prior testimony
 - Objections to Evidence



- Bench Trials
 - Judicial Questions of lawyers and witnesses



- Bench Trials
 - Closing arguments and proposed findings



- Hearings
 - Evidentiary Hearings
 - Know whether rules of evidence apply
 - Non-evidentiary hearings
 - Civil hearings on pleadings
 - Civil hearings on uncontested facts

- Practice Pointers for Effective judicial advocacy

- Emphasize logic over emotion, facts over fiction



- Weave facts and law together



- Weave written and oral advocacy together



- Feed only essential facts to judge



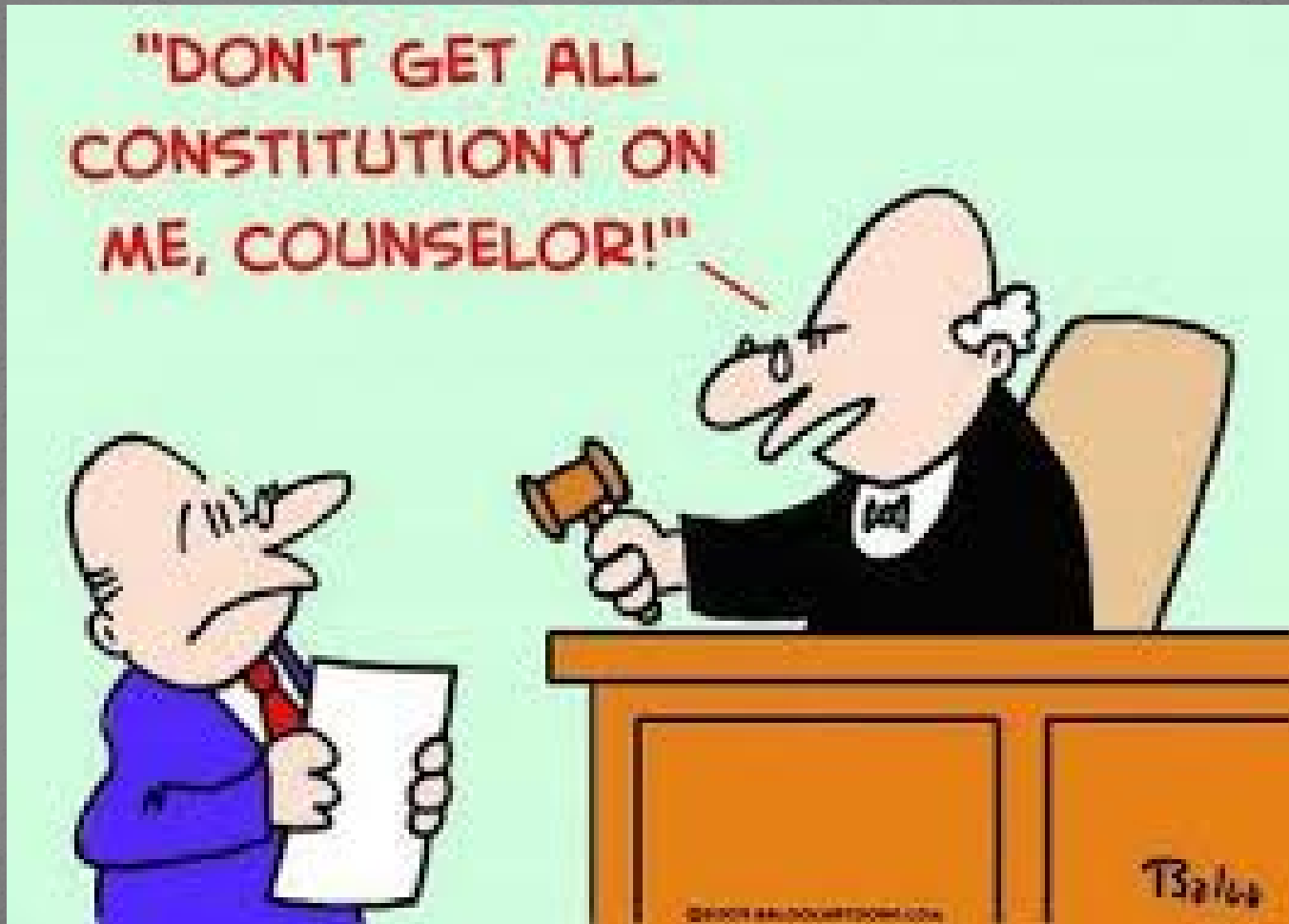
- Engage in a conversation with the judge



- Understand the applicability of the rules of evidence



- Learn about and advocate to the judge



- Tailor the presentation to the essentials



- Be credible; do not exaggerate



- Be professional



REAL ATTORNEYS

They will never be as awesome as this.

- Effective judicial advocacy
 - Emphasize logic over emotion, facts over fiction
 - Weave facts & law, written & oral advocacy together
 - Feed only essential facts to judge
 - Be brief; decrease repetition
 - Engage in a conversation with the judge
 - Understand the applicability of evidence rules
 - Learn about and advocate to the judge
 - Tailor the presentation to the essentials
 - Be credible
 - Be professional

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