



## TRIAL TIPS FOR THE “CITY” LAWYER WHO VENTURES OUTSTATE

Lawyers who usually practice in major metropolitan areas are sometimes fearful of getting “homered” or “home-towned” by the jury when they travel to a rural courthouse. Recent changes in Missouri’s venue statutes make certain that trips by “city” lawyers to rural courthouses will be on the rise. Several judges with rural-Missouri trial experience (both as lawyers and judges) indicate that getting “homered” is rare if you avoid a few pitfalls.

Here are a few tips – from some who know – about mistakes not to make.

### DON’T USE LOCAL COUNSEL THAT JUST SITS THERE

Sometimes “city” lawyers will take a local lawyer to trial with them. In many instances the local counsel serves no purpose that is apparent to the jury. Local counsel may be there for jury selection, pre-trial, or because your client wants them present, but the jury won’t know. Jurors will wait patiently for the local lawyer to serve some useful purpose. Often days pass as the local lawyer poses as a potted plant. Somehow the “lead” counsel thinks this helps the odds of a favorable verdict. How could it? The thought that a local lawyer’s presence will sway a jury is naïve. Such a cavalier attitude greatly discounts the jury’s strong desire to be fair and do what is right.

Before appointment to the federal bench, The Honorable United States District Judge E. Richard Webber tried cases as a practicing attorney in rural Missouri for twelve years. Judge Webber then sat as a State Circuit Court Judge in Northeast Missouri for seventeen years, often trying cases by special assignment of the Missouri Supreme Court in rural counties throughout the state. Judge Webber advises that local counsel who is just there to help pick the jury should be kept in the back of the courtroom, largely out of sight. The same is true of jury consultants. Judge Webber has seen many times that “it is ineffective to have local counsel sit at counsel table throughout a trial and do nothing.” “The jury is left wondering why the local lawyer just sat there for days without doing anything; or

worse, a juror may be thinking ‘Why isn’t the local lawyer working on my cousin’s case, he hasn’t heard from the lawyer for weeks?’” Further, Judge Webber believes non-participatory local counsel sitting with you “makes you look like you are trying to pull one over on the jury.”

If your local counsel plays an active role in a trial, the opposite is true. Judge Webber observes that he has seen local counsel play an active part in the trial, and that “can be very effective.” He notes, “It can add to your credibility to try a case using a team approach with a well-respected attorney in the local community.”

*If you are going to have local counsel at counsel table, make certain they meaningfully participate.*

### DON’T ASSUME COURT ENDS AT 5:00 P.M.

In outstate counties it is not uncommon for a trial to last until nine, ten or eleven o’clock at night or later. The wrong time to find out that the judge plans to work late is at 4:45 p.m. when you finish with your last witness for the day. The judge’s command to “call your next witness” will leave a hollow feeling in your stomach if you are flat footed and have no one to call. Such a disaster undermines your credibility and makes you appear unprepared to your client, the judge and the jury.

The Honorable William L. Syler practiced in trial courts in Southeast Missouri for eighteen years. He is presently serving his sixteenth year as Circuit Court Judge in the Thirty-Second Circuit. Judge Syler advises that you should check with local attorneys about how trial days are handled. “Lawyers should know that many circuit judges are booked all over their circuits,” advises Syler. “It may be necessary to continue your trial until late evening so the judge can start another trial or hold a law day two counties away the next morning.”

*If you are facing long court days, know it before you arrive and plan accordingly.*

## DON'T LEARN ABOUT A JUDGE'S IDIOSYNCRASIES THE HARD WAY

Some judges don't want you to place paperwork on their bench; some don't want you to approach a witness without asking permission; some will not hear pretrial motions the day of trial; some are casual about starting times; some are obsessively punctual; etc. Transgressing a particular judge's unwritten rules may cause the judge to express his or her dissatisfaction, or, in courtroom slang, the judge may "dress you down" in front of the jury. Your client and the jury will be unimpressed and you will lose credibility if you are "dressed down" at trial.

The Honorable James R. Hartenbach sits on the St. Louis County Circuit bench. Prior to becoming a judge, he tried cases in many rural Missouri Counties as a prosecutor. In addition to his St. Louis County duties, he sits regularly by special assignment to preside over cases in Salem, Rolla, Hannibal, along the Iowa border, and elsewhere. Judge Hartenbach aptly advises, "Rural jurors know and respect Judges. If you don't find out a judge's idiosyncrasies before trial, you risk offending the Judge – and that will offend the jury." Judge Hartenbach also advises to be sure to know local customs on pre-trial, jury instructions and motions and that, "A few calls to local lawyers – and simply asking the judge about his or her preferences – can help you avoid delay, embarrassment and loss of credibility."

*Do your homework about your judge before trial and play by the judge's rules.*

## DON'T TALK DOWN TO JURORS

A recurring theme among judges is that it is a colossal blunder to talk down to jurors or to talk to them in a manner that makes them feel as though you are talking down to them.

They may be rural but they are smart, well-educated, and they have a strong sense of what is right and wrong. Don't try to be a local if you are not. You will have little credibility if the jury thinks you are play acting. Judge Hartenbach says: "Don't try to 'countrify', jurors will see through it." Judge Webber says: "Don't try to work country things you know little about into your jury selection, the jury will see right through you."

Judge Webber advises that instead of resorting to hollow gimmicks, "Get on-line, read local papers, learn about the area, learn what is going on locally, what is important to the community and understand the demographics of the county."

*Be familiar with the local area and talk "to" the jurors, not "down to" them.*

## THE "RIGHT" WAY

Judge Max Price, now a senior Judge, practiced twenty-four plus years in rural Missouri and sat on the Circuit bench in mid-Missouri for fifteen years. He sums up the "right" way to try a case in a rural courthouse: "Be yourself, no sharp practice, be on time, get along with the clerk and sheriff's office, always speak to the bailiffs, be prepared, be pleasant and kind during voir dire, don't be too fancy, be polite and be professional." ■

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