

Preparing for Trial in an Unfamiliar Small Town

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As trial lawyers, we often find ourselves traveling the country to practice our profession—or in my case, mostly traveling Texas, trying cases in a variety of small and medium-sized towns in addition to the big cities. Arriving in a new, remote, small venue to try an important case against locals is daunting. I arrive from Dallas knowing I will never know—let alone understand—the rivalries, history, and contribution various families in that town have made to advance the town’s prosperity and livability. As visiting lawyers, we are cast by the locals as the big city or “tall building” attorneys. In Texas, one favorite epithet is the “214 lawyer,” referring to the Dallas area code well known to the rest of Texas and meant to convey something foreign, exotic, and stuck-up.

Juries in Texas vary from place to place. East Texas juries are very different from west Texas juries, and the same could be said for juries from the Rio Grande Valley, who are substantially different from those in the panhandle. Some of these towns are only five or six thousand souls, and some have populations in excess of 500,000 or more, but each is intensely proud of their community and we, as outsiders, must navigate each new case in each new venue with care or risk losing our clients’ case. Having local counsel to convoy and protect us and our client does not end the “outsider” epithets. Depending on the local’s role, it may just be seen as pandering to the local bar. One issue that transcends almost every other issue in a small town is how a judgment against

the perceived local business will affect local jobs. Determining how to respond to this issue is critical to success.

Of course, I do all the usual things to learn as much as I can. I mock try each case with stand-in “jurors” mirroring the demographics I will see at trial, often moving the mock trial setting to another county to avoid accidentally contaminating the jury pool. Learning that the jury may be 75 percent Hispanic or 55 percent African American certainly may help in trying the case, but it is not as helpful as actually getting to know the community where the case is to be tried.

Approaching Research

Fortunately, with a little creative effort, there are additional steps to gain familiarity with a new venue, and I often take them in important cases to learn as much as I can about where the case will be tried. Most of my trials last two to four weeks, and most are large enough to support the time and thought it takes for me to learn what I can about my new trial home.

I approach my research with a good deal of curiosity and humility, having grown up in Arlington, Texas, now the home of the Dallas Cowboys and the Texas Rangers but once a small “cotton” town serving the surrounding farms. My upbringing there provided invaluable lessons.



When my family moved to Arlington, it had a population of about 7,000. By the time I left to attend college and thought I was headed north to the University of Virginia (only to discover I was actually moving south in spirit), Arlington had grown to about 45,000. My parents, particularly my mother, were very active in the town's civic life. She helped found the YMCA, the Boys Club, and the first hospital in Arlington, while undertaking a number of volunteer fundraising jobs such as organizing the citywide door-to-door efforts for the March of Dimes and United Fund. She ultimately became a civil rights activist and mayor *pro tempore* of Arlington, often riding deep into the night with the young police officers to learn their problems. My father was chief of research and development at Bell Helicopter and became the head of engineering there. He was also active in the community, helping to found Trinity Methodist Church among his many other activities. I am fond of recounting how I was 18 before I learned that a thermometer was for taking one's temperature and not for determining the progress a charity was making in approaching its financial goal.

While Arlington is midway between Dallas and Fort Worth, it definitely faces west and therefore falls within Fort Worth's orbit of influence. As youngsters in Arlington, my friends and I learned early that only snobs and rich people lived in Dallas and

that "real" people lived in Fort Worth, or at least in Arlington. And while Arlington was homogeneous with a large white population, it would be a mistake to assume everyone was alike or that there were not real divides in the community.

Small towns, maybe more than their large city cousins, have a tapestry of relationships and rivalries that are opaque to outsiders. They form powerful currents that anyone in a small town knows all too well but that outsiders would find hard to navigate, let alone exploit. Each community has its equivalent of a long-running civil war, or perhaps several.

For example, the main divisions in Arlington were between the old-timers and the newcomers. The newcomers, including my family, arrived to work in the large defense sector, which involved giant companies like General Dynamics, Bell Helicopter, and Texas Instruments. The engineers, machinists, and managers, including my Princeton-educated father, had no idea what being a Texan meant and largely didn't care because there was little of that life we knew or understood. Cotton farming, cattle ranching, and scratching out a living in agriculture were not things that any of those who lived on the blocks I moved into knew much about. Oil and gas almost didn't matter then, in part because energy was so inexpensive. Gas cost 15 or 25 cents a gallon. So when we attended the new schools and our parents

Illustration by Darren Gygi

enrolled us in Spanish or math—classes we preferred to shop or home economics—the old-timers necessarily and inevitably wondered about the newfangled education we favored. Our interests and what we wanted out of Arlington and life tended to unnerve them, and the feeling, I learned, was mutual. Thus, I came to know my first small town civil war in Arlington at a young age.

From that experience, I learned a lot about small towns, and I enjoy returning to them to try cases. I remember the outsider status even we, recent migrants, would assign to the next new folks who settled in our town. Today, I assume that in my new role as an outsider and a lawyer, I probably won't be accepted either. Of course, that's where we all begin each new case and why it is so difficult and frightening to try one in a small town.

Newspapers, Barbers, and Coaches

When I wish to learn about a new venue, I begin by ordering a subscription to the town newspaper and I read it every day. I enjoy reading the letters to the editor and the names of the boys on the football team or articles about the king and queen of high school. I cut out articles I like and make a list of the family names who recur in the paper, including the old families whose older members are often featured in the obituary section. Reading the sports page is insightful. I can usually tell the ethnicity of the town by the names of the players on the teams. Who is the quarterback? Who is on the line? How has the team done the past few years? What do residents think of the coach? All of these are important questions in the life of a small Texas town. Think *Friday Night Lights* and you can appreciate the importance of high school football in Texas.

If the town schedules a parade or a festival and I have the time, I go and walk around a good deal, often ending up in the barber shop. As anyone in Texas knows, this is where most real news is reported. Barbers know who is hiring and who is firing. Barbers know who is running for mayor and who is about to lose an election. And often barbers know the judge very well.

I also usually collect the sermons from the largest churches for about three months before trial. Sin is described in each town a bit differently, and sin's definition differs between congregations. There are also similarities, of course, as the same scripture is discussed. I am particularly interested in divorce workshops and programs at the churches and any mention of the Eighth Commandment—"Thou shalt not steal," for those of you who might have missed a few Sundays—because most of my cases are commercial and involve betrayal or some form of theft. I have on occasion engaged the local minister to act as an informal jury consultant. I let him know I am curious about the real divisions in the community—who has the power and who is an up-and-comer, and what makes sense in terms of right and wrong in the community. And if the preacher is talkative,

I learn who might be sleeping with whom. I certainly come to know what the community's fears are. Donating a small church organ is usually not too expensive a gift, and it sometimes pays real dividends. When the preacher shows up as my jury consultant at trial when picking the jury, I feel it may make me more acceptable to them.

I have on occasion also befriended the local football coach and asked him about the town and, of course, asked if we could contribute something to his program if he will take the time to meet with me. We may even agree to present a gift to the team during halftime at the game shortly before trial. Usually, I receive very good cooperation from the few locals I befriend; and, of course, my questions are general. I have no intent to (nor do I) violate confidences. There is no magic to picking a minister or football coach as a consultant. You may decide to attend the Rotary Club or visit the Chamber of Commerce. Even school teachers are helpful. After three months of research, I usually have a pretty good read on what the real issues in the community are, who I need to stay away from, and how local politics will inform my arguments. I also learn a lot about the judge, particularly if he grew up in the town. Most of the information is innocuous, but some of it is revealing and could be important, such as whether he is in debt or has tax liens on his property, and who he borrows money from.

In almost every instance, I return from my research with an incredible sense of trust in the jury I am likely to get, and I am quite certain that trust is revealed in my presentation and plays a role in my success. I also am humbled by the interest and work small town juries put into my cases. We often tell them that their work will tell us whether this courthouse they are now in, built by their parents or grandparents, will be considered a brick house or a house of justice. It is their choice, not mine. They can choose to honor what their parents wanted in this community or not.

I never change what I am wearing to conform to the small town. My clothes say that I still dress as if I am from a small town and am not that distinctive. I always find it funny when big city lawyers show up on trial day in cowboy boots that, from the way they walk, they clearly haven't worn for very long.

Getting to know the jury pool is thus more subtle, certainly more fun, and a good deal more rewarding than a simple mock trial and a short talk with local counsel. It always reconfirms my belief that trying cases throughout Texas remains a noble act of empowering regular people to make the most important decisions in our community. My job is to respect the community and to do my best to help define right and wrong in light of the history and culture of the town I am in. After all, I am just a visitor. ■