

TRYING CASES IN RURAL GEORGIA

PRESENTED TO:

Institute of Continuing Legal Education in Georgia
General Practice & Trial Section
Trial Advocacy Seminar

November 9, 2012

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INTRODUCTION

Long gone are the days when candlesticks and kerosene lamps illuminated the courtrooms of rural Georgia. Tobacco juice no longer saturates the courthouse floor and attorney fees are not paid with livestock.¹ Jurors are summoned from their mailbox instead of the court crier's balcony and judges ride their circuits in cars as opposed to horse and cart. Despite these changes, the fine folks who live in rural Georgia remain much the same. If you want to successfully try cases in these rural counties, you must understand and respect their way of life and litigate your cases truthfully, honorably, and with integrity.

I. Rural Georgia Culture

Whether you are trying cases in Americus, Blakely, Elijay, Hartwell, Moultrie, Swainsboro, Tifton, or Waycross, you can be certain that most of your jurors are quite comfortable driving dirt roads and baiting a hook. Your jurors eat collards and black-eyed peas on New Years, watermelon on the fourth of July, and fried chicken on Sunday afternoon. Sweet tea is served on most occasions. They say "yes-ma'am" and "no-sir" and gentlemen hold the door for ladies. They root for the Braves during baseball season and their favorite college football team on Saturdays. Some are democrats and some are republicans but most are socially conservative. They generally distrust bankers, politicians, and lawyers and love God, family, and country. All agree that justice and forgiveness are important but they struggle with combining the two. Most believe in the constitution, although few take the time to read and understand it. Unfortunately, racial prejudice and gender inequality still linger (especially in the older generation) although few like to admit it. Rural Georgians enjoy music and, depending on their age, you will likely find a selection of country, bluegrass, gospel, blues, and rock and roll on their

¹ Arthur Gray Powell, *I Can Go Home Again* 11-12 (The University of North Carolina Press 1943).

record stand or iPod. Most believe in Jesus and attend a church of the protestant persuasion. They are an original group of people who have tremendous amount of pride in their way of life.

II. Preparing for Trial

In order to win cases in rural Georgia, there are some things you must do before trial:

A. Associate Local Counsel

Every judge I know in rural Georgia does his or her best to apply the law fairly to both sides of a case; however, they all overworked. They will not have time to shepardize every case and statute you cite and the word of a credible lawyer who appears before them on a regular basis is likely to carry more weight than the word of a rookie in their courtroom. Each judge, clerk, and staffer has personal preferences for the way things should be done and it behooves you to keep each of these individuals happy. When the time for trial arrives, you need local counsel to help you review the jury list. Nearly every person in the jury pool will tell you they can be fair and open-minded during the trial. Do not believe it. Every person in a courtroom brings their biases and prejudices with them. It is simply unavoidable. We are only human and we develop biases and prejudices based upon the things we encounter during our lifetime. Local counsel likely knows many of the members of the jury in some capacity. If not, he or she knows someone who knows the juror and can provide you with information that may not otherwise come to light during a traditional voir dire. If your judge limits voir dire, the knowledge local counsel can provide is simply priceless.

B. Interview Every Witness Close to Trial

Don't send your investigator to do conduct the final interviews before trial. Get your subpoenas ready and drive to each witness's house, with local counsel, hand the

witness their subpoena and pour them a glass of sweet tea. Sit, talk, and have a candid conversation about what the witness knows. This conversation should not take place over the phone because the front porch is more than a front porch in a rural community.

C. Spend Time With Your Experts

Although rural Georgians have plenty of practical knowledge, most do not claim to be “book smart.” For example, according to the U.S Census Bureau, the percentage of citizens in Lanier County who have a bachelor degree or higher is approximately 8.8 percent and the percentage of high school graduates is 67 percent.² Compared with the state-wide average of 24.3 and 78.6 percent³, it is evident that a large gap exists in the amount of individuals with advanced formal educations inside and outside the Atlanta area.⁴ Therefore, when you select your experts, you should place more value on experience than degrees. Spend a considerable amount of time preparing experts for their testimony because they must be prepared to use everyday terminology to explain very difficult concepts and educate the jury without “talking down to them.” If possible, hire experts that reside in Georgia. A southern draw and some “yes-ma’ams” from someone with a doctorate will help negate the impact that a \$350.00 per hour fee structure has on a jury composed of individuals making less than 5% of that amount. Make sure your expert’s presentation is quick, precise, and full of visuals. There is nothing worse for your case than forcing a jury to sit through days of engineering testimony. Do not let an expert overreach because you are in a conservative venue and any hint of dishonesty can kill your case. Experts should explain why their opinions are conservative and they should give the jury a range of possibilities that are favorable to

² <http://quickfacts.census.gov/qfd/states/13/13173.html> (last visited December 8, 2010).

³ <http://quickfacts.census.gov/qfd/states/13000.html> (last visited December 8, 2010).

⁴ The statistics from other south Georgia counties are similar. Consider the following examples: (1) Mitchell County – 9.1 and 65.3 percent; (2) Macon County – 10 and 63.2 percent; (3) Randolph County 9.5 and 62.4 percent; (4) Worth County – 8.6 and 68.3 percent; (5) Cook County 8.1 and 64.6 percent; (6) Bacon County 6.6 and 67.7 percent; (7) Telfair County - 8.3 and 63.6 percent.

your case. If they do make a mistake, they must acknowledge it and apologize directly to the judge, jury, and counsel. They must always be polite to opposing counsel. The nastier the cross examination, the kinder the expert becomes. A humble expert is always more effective than one who is unable to swallow his or her pride. The one and only exception to this rule is if opposing counsel challenges your experts' honesty. Calling someone a liar in rural Georgia is akin to spitting in their face and a quick rebuke is expected. Otherwise, kill them with kindness.

D. Explore the Courtroom

A critical, but often overlooked, aspect of trying cases in a rural venue is the courtroom logistics. Many courtrooms in rural Georgia are old and were not designed with microphones and audio-visual equipment in mind. During the pre-trial conference or a pre-trial motion hearing, take the time to test the acoustics of your courtroom. Do you need a microphone? Can the jury hear what is happening in the courtroom during a bench conference? Do the judges' chambers have speakers wired to the courtroom microphones? Ask the judge or clerk if there are any dead spots for audio and where you locate the video monitor. Find out if there is internet access available for quick access to legal research. Are there any special security measures you should be aware of? Are there rooms available for your trial team to meet during breaks? Above all, test the technology you intend on using during trial. Jurors do not pity those who waste their time. Remember, you are expected to present your case with the efficiency of major media outlets. Expectations are high and you will surely fall short if you are unprepared.

E. Pay Attention to the Little Things

If you are in the least populated counties of rural Georgia, you must remember that office supply stores are not located on every corner and decent hotel rooms are often hard to find. The last thing you should be doing when trying a case is driving

around the night before trial looking for a healthy meal and a store that can enlarge a photograph. So, at least 4-5 weeks prior to trial complete this checklist of essential tasks to avoid unnecessary headaches during trial:

- i. Arrange hotel reservations (making sure all client disabilities are accommodated and work space if available);
- ii. Follow up on service of subpoenas;
- iii. Arrange transportation for witnesses (where is the nearest airport, are taxis available, will the witnesses need lodging);
- iv. Meal reservations/orders completed;
- v. Locate all copying/office supply stores in area (24 hours);
- vi. Locate all drug stores;
- vii. Ensure your cellular provider services the area;
- viii. Organize your “tackle box” with pens, markers, highlighters, jump drives, clips, staples, post its, calculator, batteries, power chords, tape, extension cords, power strips, Tylenol, any other personal hygiene needs;
- ix. Make sure you have at least one backup of all your exhibits.

III. Trial

A. Leave the BMW at Home

The median household income in most counties in rural Georgia is significantly less than Georgia’s average of nearly \$51,000.00. For example, the median household income in Seminole County is approximately \$28,676.00.⁵ Incomes in many of the larger municipalities are just as low. For example, the median household income in Albany is approximately \$28,639.00 and over 27 percent of Albany’s residents live in poverty.⁶ Needless to say, BMW and Audi dealerships are not prevalent in these towns. If you are fortunate enough to own one of these cars, you would be well advised to leave it in your garage and lease a Ford or Chevy for your travels during trial. Your affluent clients should do the same.

⁵ <http://quickfacts.census.gov/qfd/states/13/13253.html> (last visited December 10, 2010).

⁶ <http://quickfacts.census.gov/qfd/states/13/1301052.html> (last visited December 10, 2010).

B. Voir Dire

The psychology of a small town juror is different than that of a metropolitan juror. Take a step back and imagine that you are from Swainsboro, a small town with barely 7,000 residents. You were recently summoned to jury duty and are now sitting in the courthouse that has been the center of town for over 100 years. Your Sunday school teacher is sitting to your left and your best-friend's brother is sitting to your right. There are at least 25-30 other people you know waiting to see whether they will be chosen and the judge is sitting on the bench in his regal black robe. The lawyers seem to be staring directly at you and examining your every move. You are nervous and intimidated. Will your ignorance of the jury system be revealed? Will any of your life's secrets be exposed in front of the whole town? Can you be fair? What will everyone say if you are on the jury that acquits someone accused of murder? Is this the trial of the man who raped the Smith's six year old daughter? What if someone is suing the medical center your brother works for that provides many jobs in your town?

These are all thoughts that run through the minds of prospective small town jurors and your primary and most difficult job will be to create a comfortable environment for discussion so that jurors are willing to engage in a candid conversation about their biases and prejudices. Reveal your fears before asking the jurors to do the same. Are you from Atlanta and scared the jury might hold that against your client? If so, tell them. Is this your first time trying a civil or criminal case? If so, tell them and acknowledge your fears. Help them understand the jury system and how the trial will proceed. Reassure them that they will not be required to reveal any secrets in front of the other prospective jurors. Remember that the jurors are deciding which lawyers they like at the same time the lawyers are deciding what jurors they like.

Although you must make the jurors feel comfortable, you must also learn about their biases and beliefs so you can exercise your peremptory challenges intelligently and allow the judge to strike biased jurors for cause. Remember that most people are impulsive decision makers and use their preexisting beliefs and attitudes to accept or reject information based upon whether it complies or conflicts with their core beliefs.

In my experience, rural jurors are not likely to divulge all information about their biases and beliefs in front of a room filled with their friends, co-workers, and church leaders. Therefore, you should start with a few assumptions about the jurors based on their culture and use your voir dire to see whether any individuals are the exception to the rule. Remember that most jurors are social conservatives that struggle with administering forgiveness and justice which presents a challenge for prosecutors, plaintiff's lawyers, and defendants alike.

Suppose you are representing the Plaintiff in a medical malpractice case/negligence in Albany against Phoebe Putney Memorial Hospital, one of Albany's area largest employers. You are in federal court because your client is an Alabama citizen who came to Albany to have surgery on his back and suffered severe kidney damage because the nurse administered too much pain medication following the surgery. The potential jurors reside in Albany and the surrounding towns like Americus, Bainbridge, Blakely, Colquitt, Donalsonville, and Leesburg. Most follow conservative media outlets and believe that tort reform will help reduce "out of control medical costs." They also believe in the "Constitution."

Be sure and ask whether any juror has any religious or moral beliefs that make them hesitant about awarding money damages in a civil case? You are likely to see a few hands go up. Watch the jurors' body language when you ask this question. Anyone who doesn't raise their hand but sighs, blushes, licks their lips, appears restless may be

nervous about this topic. Ask your follow-up questions away from the other potential jurors and making sure you ask the juror whether they think it is a sin to sue somebody. More importantly, ask whether they would feel guilty if they found against the hospital for money damages. Never embarrass a potential juror. Country folks are protective of each other and they will hold it against you if you embarrass someone else in the jury pool. Discuss sensitive subjects in private and listen intently to the jurors' answers.

Above all, pay attention to the jurors' body language. Jurors who turn sideways, cross their arms and legs, or look away when a lawyer addresses them have likely formed negative opinions about that lawyer even if their words are kind and polite. Rural Georgians are raised to be polite so body language is usually more telling than a kind word or friendly smile.

C. Opening Statements

Opening statements will be your last chance to show the jury that you should be trusted before they pick which "team" they are going to root for. It is also your first real opportunity to introduce the jury to your witnesses, theory, and theme. You must convey confidence without being cocky and avoid the temptation to overstate your case. Your presentation must be efficient, vivid, and thorough.

Southerners love stories. Most have childhood memories of sitting on their grandparents lap hearing the story of the Three Little Pigs and more recent memories of gossiping about the preacher's daughter cheating on her husband with her best friend's brother. They assign labels to the characters in the stories such as "the big bad wolf" and "she used to be such a good girl, but look at her now." The stories change depending on who tells it but certain themes are always present like "Beware of the big bad wolf" or "I just feel bad for their kids." The beginning of your opening statement must live up to

expectations by introducing the jury to your client, labeling the characters, and conveying a theme. For example:

Prosecutor in Murder Trial: Folks, this is a case of cold blooded murder.⁷ That defendant took a baseball bat and beat the victim, John Smith, until portions of his brain were scattered around the walls of the bedroom (show picture of victim). That defendant beat Mr. Smith with every intention of killing him and he did it for revenge. Revenge. Murder. That is what this case is about.

Defense Attorney Murder Trial: Ladies and Gentlemen, this is a tragic case. Stand up Jim. Folks, this is Jim Jones. Jim is a teacher at the elementary school. He has lived in our community for 25 years supporting his wife and two kids the entire time. On December 15, 2009, Jim became ill at work and returned home early to find his wife and John Smith naked in his bed. Overcome with rage, Jim grabbed the bat he keeps by his bed for protection and began hitting the adulterer he caught sleeping with his wife. Now, because of this adultery, Jim is on trial for his life and his kids are facing a life without a father. Ladies and gentlemen, we are here today because of betrayal and infidelity. Did Mr. Smith's punishment fit his crime? Probably not. Is this murder? Certainly not.⁸

Once the jury knows the basics, understands your theme, and has a label for the parties, paint them a detailed picture of the parties, scene (time, lighting, smells, sounds, etc.), legal issues, and damages. Use pictures and exhibits. Don't be afraid of southern dialect; use it, but don't force it. Ask them to visualize the scene as if they were standing in your clients shoes. If the jury can visualize your description of the facts, you are well on your way to obtaining a verdict for your client. Once you tell your story, educate the jury in simple and direct terms on what it needs to do.

Never hide from any bad facts in your case. Embrace them and explain why they are mere distractions from the important issues.

D. Direct Examinations

Despite what many of our colleagues believe, trials are not won or lost based on the words of a silver tongued lawyer. They are won based upon the strength of the

⁷ O.C.G.A. § 16-5-1 (murder)

⁸ O.C.G.A. § 16-5-2 (voluntary manslaughter)

evidence. On direct examination, you should be nothing more than a fly on the wall. The witness is the center of attention and you should spend a considerable amount of time preparing your witness for direct examination prior to trial. Southerners judge the credibility of witnesses based on their background, the substance of their testimony, and how they deliver their testimony so stick to the “who, what, when, and why” questions during a direct examination. Who is this witness? What do they know? When did they learn it? Why are they worthy of belief?

Remember that the jurors have already been told what happened during opening statements. Now they must be shown. In addition to showing what happened, southern jurors want to know who was involved and what the motivations were for participants’ actions. If allowed, swear your own witnesses then spend a few minutes allowing the witness tell the jury about themselves. Let the witness describe the scene before you move into the action portion of the testimony. This helps establish credibility by showing the jury that the witness is a normal person who just happens to know something about the case. Use exhibits to support the witnesses’ testimony to avoid disrupting the flow of the action. In civil cases, save damage testimony for last; otherwise, the jury will think you are being presumptions about your entitlement to damages.

Make sure your witnesses use “everyday” language. For example, police officers should avoid “legal talk.” Officers who testify “Subsequent to arriving at the scene, the suspect exited his vehicle and proceeded to batter the driver of the adverse vehicle” are less effective than “After the crash, Mr. Smith got out of his car and punched Mr. Lee in the face.” Finally, instruct your witnesses to speak directly to the jury. Rural Georgians are suspicious of those who will not look them in the eye during a conversation.

E. Cross Examination

All experienced trial lawyers know the basics of cross examination such as: (1) begin and end with a bang, (2) don't simply repeat the direct examiner's questions, (3) focus on the areas where you can be most effective, (4) listen to the answers, (5) don't ask open ended questions, (6) don't ask for an explanation, and (7) don't ask one question too many. These rules apply to any cross; however, additional guidelines should be followed when you are cross-examining a witness in a rural venue.

First, after your initial "bang", ask the witnesses some questions that he or she should admit. For example, during deposition, did the defendant train engineer testify that he failed to blow his horn before arriving at the railroad crossing? If so, ask him that question and see whether he is brave enough to change his story at trial. What if the crossing arms and lights weren't working? Ask the engineer whether the crossing is more dangerous when the warning devices aren't working? If the witness disagrees, the jury will probably not believe him anyway.

Next, before you attempt to impeach a witness, you better make absolutely sure it is going to work. This is especially true if the witness is female, elderly, a child, or otherwise sympathetic. Your cross-examination must hint at all of the impeaching facts but stop short of offending the jury, especially if you are impeaching the witness on his or her bias, interest, or motive. Southerners appreciate good taste and restraint and are capable of according the proper weight to the testimony on their own. The exceptions to this rule are when you are impeaching a witness who has destroyed or altered evidence, been convicted of a crime involving moral turpitude, or is clearly lying (not mistaken or confused). Each of these things involves blatant dishonesty and southern juries have zero tolerance for such antics.

Finally, unless you are a defense lawyer who is facing a cross examination of the widow of a dead preacher, ask something during cross-examination. Every now and then, there are witnesses who testify to matters which are harmful to your case but can't be effectively cross-examined. If you find yourself in this position, simply stand and ask a few of the following questions: (1) Who asked you to be a witness in this trial? (2) Have you discussed this case with any lawyers or other witnesses before today? (3) Have you read any materials to prepare for your testimony today? (4) Do you know any of the parties or other witnesses? (5) You understand that there are other witnesses whose recollection differs from yours?

F. Closing Arguments

The jury has heard the evidence and it is time for closing arguments. Despite the judge's instructions, most jurors have already formed strong opinions for or against your case. Few are undecided and this is the time to provide those who are on your side with the ammunition to be strong advocates for your case during deliberations. Stress the labels and themes from your opening statement. Key words like (i) revenge, (ii) adultery, (iii) responsibility, (iv) mistake, and (v) "Obamacare" are words that will be repeated during deliberations.

Despite how tired you are at the end of trial, you must ARGUE during your closing. Show your passion for the client and his cause. Show the jury you really care and aren't just sitting there to bill more hours. This doesn't mean you should argue opinions. Argue the facts and use the exhibits and testimony to support your argument. Incorporate the instructions into your closing and support each element of the tort, crime, or defense with your exhibits. Above all, don't waste too much time arguing undisputed facts because the jury's attention span is limited at this late stage of the trial.

The hardest part of any closing argument in a rural venue is asking for money damages in a civil case. Special damages like medical expenses and property damages are easy because they are rarely seriously disputed; however, pain and suffering, future care, and punitive damages are tricky. The best way to convince a rural Georgia jury to award a large verdict is by making a large verdict seem small. Imagine you have a wrongful death case where 40 year old man was killed in an automobile wreck. Calculate the value of his life in seconds and cents. Tell the jury that you have been struggling with putting a dollar amount on his life so you just decided to use the smallest amount of currency for the smallest amount of time one can live: 1 cent for 1 second of lost life. Get the easel and do the calculations in front of the jury. Assuming the decedent would live to 75 years of age, your calculations would look like this:

1 second = \$.01
1 minute = \$.60
1 hour = \$36.00
1 day = \$864.00
1 year = \$315,360.00
35 years = \$11,037,600.00

Tell the jury that the judge will instruct them that the law requires that damages for someone's wrongful death be calculated based on the full value of the life of the decedent and in order to provide full compensation, compensation must be provided for every second of lost life. Most juries will not award that amount but it gives them a place to begin negotiations during deliberations.

End your closing by telling the jury you are sure you made mistakes during the trial. Ask for their forgiveness and implore them to not hold your shortcoming against your client. Tell the jury exactly what you want them to do and thank them for their patience and hospitality throughout the trial.

CONCLUSION

If you forget everything listed above, remember that you are in God's country.
Conduct yourself accordingly.