



APRIL 2022

Avoid being “small towned” in a small town

“I hate small towns because once you’ve seen the cannon in the park there’s nothing else to do.”

— Lenny Bruce

BY DAN KELLY

Not every county seat is a burgeoning metropolis. A partial listing proves the point: Quincy, Markleeville, Willows, Alturas, Hollister, Downieville, Susanville, Weaverville, etc. Many attorneys want nothing to do with trying cases in such venues. While getting plaintiffs’ verdicts in small towns can be challenging, it is not impossible to do so. But, it takes work and a little luck.

The county seat of San Benito is Hollister. Its population is approximately 35,000. When I tried a case there it was less than 20,000.

I well remember arriving in Hollister on a Saturday in August with the trial set to start on Monday. My reservation was at the Cinderella Motel. It was quite warm on my arrival and the motel room was even warmer. I went to the front desk and was told to open both the bathroom window and the front door and “a cross breeze will cool the room down.” Bottom line, there was no air conditioner, at least not in my room.

It may sound strange, but my trial preparation later that Saturday afternoon involved going to the Ford dealership, an appliance store and then a drugstore. I did so at the suggestion of an Arizona trial lawyer who had successfully tried cases in smaller communities. He predicted that defense counsel in final argument would dub me as “a big city lawyer” who is talking damages based on San Francisco values and not Hollister values.

Sure enough, in final argument the defense lawyer called me “the San

Francisco lawyer” with “extravagant thoughts on damages.” At final argument and throughout the trial defense counsel had dressed like he was an undertaker. My suits and ties had a bit more life.

In my rebuttal I stressed that the value of my client’s case should not depend on whether the case was in Hollister or San Francisco or any other city. I then told the jury that I went to Tiffany Ford and found the price of the Ford Escort was the same in Hollister as the price in San Francisco. I also told them that at their appliance store the cost of a Frigidaire refrigerator was no different and at their Rexall drugstore the Visine eye drops I bought were similarly priced. In short, there was no “Hollister discount” and that we were certainly not trying this case in a “discount courthouse.”

My response to the “San Francisco lawyer” label was to tell the jury I was born and raised in Santa Rosa when it was about the same size as Hollister.

With only two hours of deliberation the jury found for the plaintiff and awarded over three times what the defendant had offered in settlement.

As I was packing up my briefcase, I noticed an older female juror had remained in the courtroom. It was obvious she wanted to talk to me and had waited to do so. She was most pleasant and some of her comments were priceless. She resented the way defense counsel had dressed in such miserly fashion and said he must have insultingly assumed “we don’t watch TV and don’t know what people wear.”

In short, she felt he was trying to act “small town” and appreciated that I didn’t do so. She said as a retiree she was acutely aware that there were few or no bargains in Hollister. She also told me she loved that I was from Santa Rosa. She and two of the other jurors had at various times lived there. According to her, they felt like I “was one of their own.” As always, it is better to be lucky than good.

I guess there are three lessons from all of this:

1. Do your own homework (and legwork) to avoid “discount” courthouses;
2. Be yourself because everyone else is already taken; and
3. You can take the boy from Santa Rosa but you can’t take Santa Rosa from the boy.

Dan Kelly is a retired partner from the San Francisco firm of Walkup, Melodia, Kelly & Schoenberger where he specialized in representing plaintiffs in personal injury litigation and the mediation of

personal injury cases. Mr. Kelly is a past president of the San Francisco Trial Lawyers Association and a member of the American College of Trial Lawyers, the American Board of Trial Advocates, the International Academy of Trial Lawyers and in 2003 was President of the International Society of Barristers. For years he co-authored the Rutter Group’s three volume Personal Injury Practice Guide.



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