

SURVIVING CHANGE OF VENUE

*by Darrell L. Heckman
Champaign County Prosecutor (1989-1996)*

Change of venue is rare in a criminal case, but if there has been excessive pretrial publicity, the best course of action for the State may well be to consent to transferring the case to another county. The chief reasons for consenting to the change should be to expedite the process of jury selection, to assure a fair trial to all concerned, and to remove a needless appellate issue, although there is no known reported Ohio decision reversing a conviction for failure to grant a change of venue.

While it is contemplated that the court may attempt to impanel a jury before deciding to change venue, see State v. Surger, 5 Ohio St. 2d 151, it is certainly undesirable to have the change actually made after the selection process is begun. While there is no doubt in my mind that it is possible to find 12 jurors in any county in this state who know nothing about a given case, the protracted voir dire that is needed is not justified if there truly is excessive pretrial publicity.¹ An adjoining county recently was three weeks into voir dire of an extensively covered capital case when a plea bargain was struck. The longest known criminal trial in that County's history ended without a single witness being called.

We faced a defense motion for change of venue in the highly publicized capital case of State v. Simone. A co-defendant's trial had already been given thorough coverage and co-defendant's counsel elicited from a prosecution witness that Simone was a "well-paid hit man for organized crime." At that point, we felt compelled to agree to a change.

It is important to know the rules when dealing with change of venue. The basic law is set out in Criminal Rule 18 but there are other considerations as well. Some important points to remember include:

1. **The location of the trial and the jurors change, but the personnel do not.**
You are still the prosecutor, your judge still presides over the case, and, presumably, he will use his bailiff and court reporter.
2. **The case becomes the case of the other county.**
You will get a new case number and you will need to reflect the new county on your pleadings. You need to file all pleadings with the new clerk of courts, though you should send a copy to your judge since he isn't in the other county with the file on a daily basis. It is very important to realize that if the transferee county is in another court of appeals district, it is that district where your appeal will be heard. Since I am quite comfortable with our appellate district, I pushed hard for and won the concession that if the case were to be transferred, it should stay in our court of appeals district.
3. **Keep the case as close to home as possible where there is no adverse**

¹I question if jurors who don't read the local papers are desirable for the State.

publicity.

Don't forget that if you have a jury view, the jury will need to be transported to somewhere in your county.

4. **Don't pay expenses related to the change of venue out of the Furtherance of Justice (F.O.J.) account.**

Under Rule 18, the county commissioners must pay the expenses of change of venue. Stay in a hotel, eat your meals out, and bill the county. You will not have time to travel home during the trial, so don't even think about it.

5. **Meet with the local prosecutor's office.**

The Montgomery County Prosecutor's Office was fantastic to us and you can expect help wherever you go. The local prosecutor may be able to help you with certain local customs. Rule 18 contemplates local help if necessary.

6. **If you agree to a change of venue, think carefully about where you would like the case sent.**

Your judge chooses where the case will be transferred, but he will welcome input from you. Of course, the transferee county must accept the case, but you need to consider this carefully. Are there any local rules that affect the case?

Montgomery County had a very good jury questionnaire that was employed. I had never used one before, but since we used their jury commissioner, we used their questionnaire. I do not really believe that jurors in this state differ much in attitude, but you need to consider that issue.

Our experience in Montgomery County was a pleasant one. The actual presentation of our case was unaffected by the venue. Don't let the change of venue take your eye off the real issues of proof in your case.