



Mock Jury Trials and the Role of Jury Consultants in Complex Cases

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As court cases move toward trial, many litigators start thinking about conducting a mock trial or jury research of some sort or another. Deciding when, where and, most importantly, how to do the research is not as simple as it sounds. And the results may vary greatly based on these critical decisions.

When the stakes in a case are high and the issues are complex, retaining an experienced — and *qualified* — jury consultant can help trial lawyers effectively evaluate their case themes, witnesses, and evidence well before they set foot in the courtroom. Being “qualified” as a jury consultant does not require that the consultant be a former trial lawyer. In fact, many highly regarded jury consultants do not have a law degree at all. Rather, they often have degrees in psychology and research design, and they have experience studying human behavior and human communication, all of which helps them evaluate how and why jurors will decide your complex case.

Fundamentally, the goal of jury research is to test how the jurors who will eventually hear your case will react to the parties, their witnesses, the evidence, and issues that will be presented. In order to do that, you will need: (1) mock jurors who match up well with the citizens who will be summoned to the courthouse in the location where your case will be tried; and (2) a good idea of your themes as well as the critical witnesses and evidence you intend to present.

Picking six or twelve people off the street, or out of your administrative staff, friends, and family to test your themes may not be a fruitful predictor of jury behavior, especially when the trial and the “juror group” are from different localities. After all, the type of people likely to be called for jury duty in, say, Omaha, Nebraska is very different than the type of people likely to be called for jury duty in Brooklyn, New York. Personal background, values, education, job skills and experience, and life experience in general provide the framework for decision-making that every juror brings into the courtroom. Matching your mock jurors as closely as possible to the characteristics likely to be found in your trial location is essential to reap the benefits offered by conducting mock jury research.

This is where a qualified jury consultant is critical. With knowledge and/or research on demographic information from the trial venue, a consultant can help identify and sort through the backgrounds of potential mock jurors to match the likely jury pool. Often, the research can be conducted in the same venue. The consultant can design a questionnaire to identify people with potential conflicts and ferret out risky mock jurors without disclosing much, if anything, about your case or the parties involved. Not only does that protect the confidentiality of the research, it better simulates an actual jury by removing people likely to be struck from the jury either for cause or through preemptive challenges.

Long before the day your attorney presents your case to the mock jurors, the consultant will help formulate the presentations, select the evidence, and create graphics to convey the case themes effectively. She will help to distill the presentations in a manner that will help the mock jurors understand the points your attorney will want to make. And she will assist your attorney—or one of his or her colleagues—in stepping into the role of opposing counsel to make the same kind of effective presentation. After all, a one-sided presentation is worthless, since an actual jury will hear from both sides in a balanced format before deciding the case.

The extent and time taken with the presentation is up to you and your attorney. Too little preparation, and the exercise may not resemble the trial experience enough to gauge the strength of your case. On the other hand, the more preparation, the more expensive the jury research will be. Do you present a full opening statement or a limited version? Do you actually present mock witnesses and testimony with cross-examination? Do you introduce exhibits and let the mock jurors review them? A qualified jury consultant can help you assess the cost-benefit ratio inherent in these decisions.

Most importantly, the jury consultant will help analyze the data collected. By having the mock jurors fill out carefully constructed questionnaires at various stages of the proceeding, by observing their deliberations via video-camera or through a one-way mirror, and then by carefully questioning the jurors to explore the reasons for their reactions to the evidence and lawyer presentations, the consultant will help you gauge likely juror reaction to your case and your opponent's case.

At times, the jury research exercises we have conducted have told us we are on track to make an effective presentation, helped us hone our presentation of complicated issues, and let us know that things we, as lawyers, thought might be significant were less so in the hands of lay jurors. At other times, these exercises have alerted us to serious miscalculations about which piece of testimony or evidence will sway the jurors in our client's favor. Most importantly, and regardless of the "verdict," the mock jurors help us fine tune our cases to give us the best chance of success at trial.

The exercises also help identify the type of jurors who are most likely to be receptive to our client's position and to the opponent's position, which comes in handy when selecting a jury. In some respects, because you cannot always anticipate how the witnesses will testify and what evidence will be admitted, this is the most valuable information you may glean from the jury research. Do you need to seek out jurors with a business background? Avoid jurors who have a history of intense familial conflict? The jury consultant can help you target in on those juror's life experiences that may give you the best odds of persuading them.

In each case, the complexity of the issues and the ability to bear the expense of using a jury consultant—which can range from about \$25,000 to the mid-six figures (not including attorney time)—will determine the extent of the research project. Done well, however, the return can be invaluable.

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