



Jury consultants and mock trials

Sometimes it pays to get the help of jury consultants and their stable of mock jurors.



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If all of your cases are such sure winners that you never need to battle-test your theories of liability, this column will prove useless to you. Of course, if you are that lucky, you probably have superhuman powers and are merely practicing law as a diversion before returning to your celestial home. The rest of us occasionally need the help of jury consultants and their stable of mock jurors to get a handle on our most difficult cases.

The value of a mock trial

When you first hire a jury consultant to arrange a mock trial, he or she will ask you for a case summary and the key jury instructions. The process of deciding what handful of jury instructions to give to the trial consultant is critical to your case because it forces you to identify key issues well before trial.

How mock trials work

Although different jury consultants have different arrangements, The Veen Firm has generally hired consultants for either full-day or half-day mock trials, with either one or two mock jury panels watching the proceedings. Obviously, the more time and people you use equals more money spent.

In a half-day trial, you will make a 45-minute to one-hour presentation for each side of the case. Putting on the defense's case is extremely educational because it forces you to critically evaluate your own facts and theories of the case. Although all lawyers try to do that constantly, nothing shoves your mind into the defense perspective better than actually crafting a cogent, persuasive argument for the other side. After all, if the defense didn't have a reasonable argument, you wouldn't be considering a jury consultant in the first place.

Once both presentations have been completed, the mock jurors deliberate behind a two-way mirror. You will be able to see and hear the mock jurors without their knowledge. If you are doing a half-day trial, you will be watching the mock jurors deliberate for about two hours.

The trial consultants will then draw on their experience with countless juries to help you evaluate your case in light of the jurors' responses. The kind of information you can glean from this process is impossible to predict, but it can sometimes provoke a dramatic shift in strategy.

For example, in one case involving a car crash where several members of the same family were killed, a mock trial confirmed our firm's suspicion that the people whose injuries were not extensive and were significantly at fault should be dismissed from the case. After the mock trial was completed, we adjusted our strategy and proceeded on behalf of the most innocent victim alone.

On the other hand, if the mock jury is thoroughly convinced by the plaintiff's case, you can use a video of the deliberations as a mediation exhibit to convince the defendant that your case is winnable. This is quite valuable when a case's tricky theory of liability has made settlement elusive.

When to use jury consultants

When you should hire a jury consultant is a subjective decision. However, there are a few constants. Obviously, the value of the case has to justify the considerable expense. Mock trials cost tens of thousands of dollars. Assuming the damages are high enough, a jury consultant will prove useful when you have a strong need to put your theory of liability to the test – for instance, when you have to maneuver around several affirmative defenses. To give you one exam-



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ple, The Veen Firm hired the National Jury Project to conduct a mock trial for an extremely complicated dangerous condition case that involved multiple defendants, two of which were government entities.

If you do choose to hire a jury consultant, make sure that your mock trial takes place well before the close of discovery. During the mock trial, it is common for the mock jurors to be eager for information that you had never considered. As a result, you must leave enough time after the mock trial is completed to propound additional discovery or do

some more investigation. If you discover that you have to restructure your entire trial strategy, you can avoid a frantic rush. . . or at least suffer nothing worse than the *usual* frantic rush.

Conclusion

Depending on the type of case, using a jury consultant and having a mock trial will enable you to put together your case well before trial, address areas of concern and ultimately achieve a successful result.

William Veen founded The Veen Firm as a sole practitioner in 1975, gradually devel-

oping it into a firm of more than 40 attorneys and staff who represent severely injured workers and consumers. He is a member of the American Board of Trial Advocates and he was honored as the Trial Lawyer of the Year by the San Francisco Trial Lawyers Association in 2003.

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