

Jury consulting becomes more popular

By Jeff Zbar

Steven Osber is confident that he knows business law and how to try his cases. His skill is dissecting the components of complex commercial litigation and preparing the best case possible. Yet, where he may fall short is understanding how well jurors will get his case. Will they comprehend his arguments?

Has he winnowed the complexity down sufficiently for the pool to understand his point? Has he made what may be a simple concept for Osber and his client – equally simple for a jury of the “everyday layperson”?

“If you have to describe sophisticated business transactions and explain them to a jury in a way that they will understand, you want to make sure the favorable facts are understood,” said Osber, a partner with Kelley Kronenberg in Fort Lauderdale. “You can have the best lawyers, but if you don’t have the best facts, you’re going to lose.”

Few statistics are easily found regarding the use or growth of the trial or jury consultant industry. What is known is that their use “ebbs and flows,” said Ronald Matlon, a private consultant and executive director of the American Society of Trial Consultants in Timonium, Md. Their services can include jury consulting and selection, trial graphics, focus groups and mock trials. They’re not mind readers, but they can discuss impressions, he said.

“You cannot give feedback to what [jurors] are thinking,” he said. “But you can give feedback to an attorney on their questioning strategy or what might be going wrong with a witness.”

WHAT CONSULTANCY COMPRISES

Jury consulting is part social science and part strategic planning to build the right composition of jurors and present the



MARK FREERKS

Marshall Hennington, a trial and jury consultant, says his involvement in a case can include dealing with bad publicity.

best argument, said Marshall Hennington, president of Hennington & Associates, a jury consulting firm in North Miami Beach. When used in business cases, Hennington’s involvement can range from the initial damage control to limit bad publicity to selecting the right jury.

“There’s a number of internal issues that we flesh out together,” said Hennington, who also runs Diversity Enterprises, a workplace diversity, sexual harassment and leadership training and consultant firm. “You have to understand how to apply science and components of human behavior as they relate to business and human fields.”

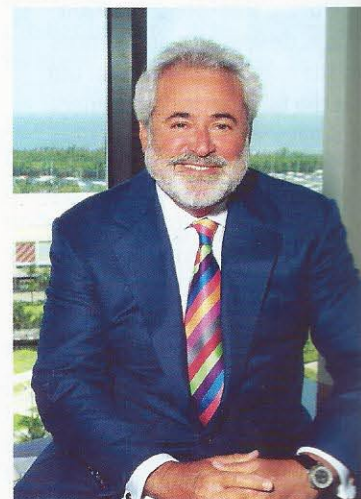
For Osber, a consultant will help him identify – and then eliminate or explain – sophisticated business language, legalese or terms of art that may confuse jurors. Even as jurors become smarter and savvier to

business concepts, attorneys should be keen to gauge their knowledge, and use that as a strength.

“How you portray your case depends on what type of jury you have in front of you,” he said. “Once you know, then you make the strategic decision on how you want to show it.”

ITS NOT FOR ALL ATTORNEYS

Stuart Grossman, founding partner with Grossman Roth in Miami, says he has no use for jury consultants. It should be no mystery who an “ideal” juror may be – especially to a trial attorney well versed in his or her case. Even without a consultant, skilled defense lawyers will keep Grossman from selecting his preferred jurors as much as he’ll keep the opposition from selecting theirs. The need for a consultant is more a reflection of a poor trial attorney than the keen insights into a pool of strangers.



Stuart Grossman, founding partner with Grossman Roth in Miami, says it should be no mystery who an ‘ideal’ juror may be.

“They make their living because of the insecurity of some trial lawyers,” he said. “When you start using a trial consultant, you’re buying into his instincts or version of what will motivate a jury. If you don’t have those instincts, then go use him. It’s better to have some instincts than none at all.”