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## Splashy trials keep jury consultants busy

### Services go beyond picking jurors.

By Leonard Post

STAFF REPORTER

SOME LAWYERS say it borders on malpractice not to use a jury consultant if the money's there.

Not everyone agrees, but jury consultants have become fixtures in the recent spate of high-profile trials.

Those include Martha Stewart's recently concluded trial, Scott Peterson's murder trial, former basketball star Jayson Williams' manslaughter trial, developer Larry Silverstein's suit against the insurers of the World Trade Center and Adelphia Communications Corp. founder John J. Rigas' fraud trial, just to name a few.

Whether the money is worth it may well depend on the outcome. That's not always easy to see, though, especially in civil cases where jury research often leads to settlements, lawyers say.

But there was a clear winner in Martha Stewart's obstruction of justice trial in which both the prosecution and the defense used jury-consultant services.

The U.S. attorney's office hired Emeryville, Calif.-based Varinsky and Associates. Howard Varinsky didn't stay around for the guilty verdicts in the Stewart trial, because he headed back to California to work for the prosecution on the Peterson case. Pasadena, Calif., jury consultant Jo-Ellan Demetrius—a veteran of the O.J. Simpson case—is also working for Peterson's defense team. She was not available for comment.

DOAR Litigation Support & Trial Services of Lynbrook, N.Y., designed and produced the graphics for Stewart and is a part of teams working on the Silverstein and Rigas trials.

Varinsky and DOAR, constrained by privilege, would not comment on their work in particular cases. But most jury-consulting firms offer focus groups, mock trials, jury simulations (a one-day mock trial), shadow juries, community attitude surveys and graphics. Their role in a particular case depends both on a lawyer's needs and a client's ability to pay.

#### The dollars involved

Consultants refused to say what they charge, but Thomas Moore, a partner at New York's Proskauer Rose, estimated rates to be \$30,000 for focus groups, twice that for a mock jury trial, \$100,000 for a shadow jury and \$125,000 for a sophisticated electronic presentation.

Since voir dire is far more constrained by judges than it once was, jury selection is less central to the jury-consultation business.

"It has nothing to do with voir dire," asserted Varinsky, who has a master's degree in psychiatric social work. "It has to do with pretrial research."

And for those who can't afford that, "the understanding of jury behavior by the consultant becomes paramount," he added. "We get our lawyers intimately connected with how jurors think in real time—to anticipate what jurors' thoughts" will be about and what they're about to say or do. "I consider myself a persuasion expert."

While Varinsky brainstorms with lawyers on outsourced graphics, with DOAR, graphics are an integral part of its in-house package. It facilities include a digital courtroom for mock trials and wired focus-group facilities.

"There have been two paradigm shifts in the jury-consulting business," said James Dobson, DOAR's director of research and analytical graphics. "There's much less emphasis on jury selection and more emphasis on trial strategy and jury persuasion."

The second shift, Dobson said, is that, historically, lawyers came with the message they wanted to communicate and were looking for a scheme for getting it across.

"But in complex commercial litigation, our clients are asking us to help them identify the arguments....And then it's how you communicate those messages," Dobson said. "Jury consultants teach lawyers how to teach....It's the art and science of visual storytelling."

Julie Blackman of New York's Julie Blackman & Associates consulted throughout the Stewart case, although she would not comment on her role.

"Cases have different personalities that call for different strategies," said Blackman, who has a doctorate in social psychology. Blackman came to the field after serving as an expert witness for many years.

"I know what it's like to be in the witness box," she noted. In writing *Intimate Violence*, an analysis of family abuse, she "spent a long time listening, which gave her invaluable insights into how to prepare lawyers and witnesses to be clear and persuasive," she said.

#### 'Voodoo' focus groups

Renowned Jackson, Wyo., solo practitioner Gerry

Spence, 75, has been practicing for more than 50 years, largely without the aid of jury support services.

His successful defense of Randy Weaver against charges arising out of the FBI siege of his family's compound at Ruby Ridge, Idaho; the defense of Imelda Marcos; and the Karen Silkwood suit against Kerr-McGee Corp., were tried without jury consultants.

He asserted that one of his clients had once misspent \$25,000 on focus groups.

"I don't say they're useless," Spence said. "It depends on the consultant. Some are voodoo; some are competent."

He prefers running ideas by family, friends and "ordinary folks" such as waitresses.

Proskauer Rose's Moore asserted that civil practitioners or criminal defense attorneys who regularly try the same kind of cases probably wouldn't get much benefit from jury

consultants. But when it comes to complex civil litigation, it's a solid investment, he said.

Moore has used Blackman; DecisionQuest; DOAR; and Plantation, Fla.'s Amy Singer, whom he called the pioneer in the field. He's had good success with all of them, but favors DOAR because of its in-house team approach and its "incredible facilities."

He asserted that splitting responsibilities between various consultants makes no sense. He involves the team the moment he gets involved in a case.

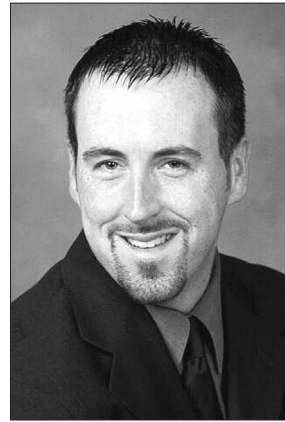
"It's really an art—the people who do it well," Moore said.

There's not much empirical research about the efficacy of jury consulting, said Steven Penrod, a professor at New York's John Jay College of Criminal Justice.

That's because "a lot of them are not very visible," he said. "And a lot of their work is proprietary. They don't want to be tipping their hands. The competition is intense. They're far more sophisticated" than they used to be. [NLJ](#)

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JAMES DOBSON: In complex litigation, consultants are asked to find the arguments.

