

HOW LAWYERS SELECT A JURY TODAY

“I want barbers, beauticians, and cab drivers on my jury,” explained criminal defense lawyer Percy Foreman, “because they understand people’s imperfections. I reject bookkeepers and accountants because they expect everything to fit into place and balance perfectly.” Clarence Darrow tried to pick Irishmen and Jews for his juries “because they have hearts,” and to exclude Englishmen and Germans because they don’t.

We live in a bottom line society and the bottom line of a trial is the jury verdict – guilty or not guilty in criminal, for plaintiff or for defendant in civil. The jury is all important: guilty or innocence, riches or poverty, freedom or prison. Many believe that the whole trial is decided once those six or twelve jurors are selected from the panel of prospects called randomly from voter rolls to the courthouse to serve jury duty for the week.

Jury selection is the elimination of potential jurors whose prejudices interfere with their ability to accept either side of the case or to decide fairly. Any prospective juror who discloses a bias is excused, but a good trial lawyer has a sixth sense about what type of juror will be most receptive to the way he presents his case, and believes he can gain an edge in the jury selection process. Like magicians, some never reveal their secrets; others are like tabloid newspapers and tell all. Johnny Cochran would agree with Darrow that ethnic criteria are best, but would disagree with his choice of Irish and Jewish Americans because they are too likely to trust police today. The country has changed and so have its jury panels; African and Mexican Americans fit Cochran’s anti-police profiles. Basically, defense attorneys want what Miami lawyer Jake Lassiter looks for: “a dozen open-minded people with mistrust of authority and a feel for the underdog. Prosecutors seek twelve people with cops for cousins or who have been victims of crime, or who think anyone that gets thrown in jail must have done something wrong.

The truth is that most trials are not for murder but much more mundane matters. The majority of trial lawyers try civil cases dominated by insurance issues. Ethnic rules and jury selection secrets are of little help in these cases. That’s why so many lawyers today turn to trial consultants – most of them nonlawyers. Before trial they prepare jury selection profiles, community attitude surveys, and pretrial jury questionnaires. At the trial they evaluate jurors, draft questions for jury selection, and conduct mock trials to prepare lawyers and witnesses. With millions of dollars at stake, clients are willing to go to any expense to remove the uncertainty inherent in jury trials.

Profiles and surveys are used to draft questions for prospective jurors to help decide which to exclude. A community attitude survey tests prevailing feelings of the jury panel for and against the two sides. Voir dire questions are tailored by consultants to elicit juror sympathy or hostility toward a party. Some lawyers even use psychologists as consultants to sit in on voir dire questioning and evaluate prospective jurors on character traits like candor and hostility.

Clarence Darrow would never have used a jury consultant, but then the typical American trial, as well as juror, have changed since the early 1900s. Courtroom surprise is a thing of the past. A lawyer’s sixth sense is no longer enough guidance to pick a jury in a complex civil or criminal

case. It takes a team of experts to predict a prospective juror's views on product liability, pollution responsibility, or age discrimination. So jury consultants are now a permanent part of the legal profession's approach to picking juries, and more likely to predict biases than a trial lawyer's "sixth sense".