
CORPORATE COUNSEL

By Paul Roberts | October 3, 2014

Trial Consultants: 7 Tips to Maximize Value and Effect

Trial consultants add valuable expertise and depth to the skills and experience of your legal team during trial preparation. These professionals include people who specialize in trial strategy, jury selection, trial graphics, trial databases, and/or trial presentation equipment and operation. Consultants can be expensive, but a good consultant adds value to your legal case without incurring unnecessary costs. The following best practices will help you hire efficient and effective consultants while ensuring that you make it to—and through—trial fully prepared and on budget.

1. Gather great ideas early in the process

Conduct a brainstorming session with your consultants at the beginning of your case to allow your team to get valuable outside perspectives on the thematic and creative avenues that will help you tell even the most complicated story in a simple way. In a successful brainstorming session, your entire team spends a dedicated amount of time identifying images, narratives, and analogies that will resonate most deeply with your jurors. Adding these ideas at the beginning make it easier to organize your case and persuade your jurors.

Given the trend toward settling more and litigating less, lawyers are sometimes wary about taking time to brainstorm early in the case. However, the benefits of an early brainstorming session can pay dividends long

before the jury deliberation room. Exploring ideas early helps attorneys streamline their discovery efforts, sharpen their pretrial motions, and strengthen their position in settlement negotiations. Furthermore, if your case does end up reaching trial, the penalty for not investing early in idea generation can be costly. Teams that put off brainstorming sessions often find themselves in a costly scramble on the eve of trial, which can lead to disorganized and confused presentations that fall flat with the jury.

2. Involve your decision maker early

Nothing is more devastating to budgets than sweeping, last-minute changes. The best way to avoid this is to make sure your lead attorney meets with the trial consultants early on and agrees to the plans and presentation strategies as they are formulated. Changes on the eve of trial, when time is precious, can be very expensive or even impossible, and also run the risk of introducing errors. As general counsel or lead outside counsel, getting involved early and staying involved throughout trial preparation pays dividends for both you and your team.

3. Manage trial materials efficiently

When compiling documents digitally, you will likely end up with two databases. First, your paralegals or

consultants might create a pretrial database, which contains the evolving universe of everything that you gather in discovery, including documents, deposition videos and transcripts, and expert reports. As trial approaches, you will develop a separate trial presentation database, a subset of the materials from the pretrial database that you want to present as exhibits and evidence during the trial.

Due to the sheer volume of e-discovery in major litigation, trial database development and preparation can become a huge resource drain if not planned early and developed correctly. To avoid that drain, make sure that your team gathers, formats, and organizes your pretrial database materials with an eye toward trial from the beginning. This will prevent errors related to the naming, conversion, or duplication of files, which can cause havoc during trial by making it difficult to quickly locate the files you need. Having your outside trial tech collaborate on that process with your legal team's in-house paralegal staff is the best way to make sure the database is being prepared in the optimal way for trial. If the trial tech and paralegals do not confer, there is a risk of producing work that must be redone in the days (or hours) before trial—work that can involve an army of people and a deluge of materials that need to be reorganized in a very short amount of time.

4. Communicate clearly on scheduling

Trial budgets can often explode at the last minute, when the pressure of a looming trial means efficiency gets abandoned. To combat that tendency, schedule specific windows of time to work with your consultants so they can schedule the appropriate level of support. This will spare you the cost of paying for people who are on hold, waiting for your feedback or direction.

Another way to ensure clear communication is to select a point person to coordinate with your consultants. This person will help get consensus from your legal team on decisions and direction, and then relay the message to the consultants in an organized

communication. In the long run, this helps prevent conflicting or incomplete directives from your staff, which can also drive your consultants' costs higher.

5. Prevent scope creep

Most project budgets are developed early in a case, before all of the nuances and complications have become clear. If changes to the scope of work arise, as they often do in the form of an unexpected ruling, be sure to discuss their impact on the budget with your consultants and ask them to provide you with a revised budget estimate, if necessary. This allows you to make decisions on your resource allocation as circumstances change, and to avoid big surprises when the final bill arrives.

6. Avoid moving research event

Last-minute changes to the date of scheduled research events, such as focus groups and mock trials, can drive up your costs. In addition to deposits and travel costs that might be forfeited, changing dates can require increased recruiting costs if your jury consultant had already begun the search for participants. To avoid this, plan the dates of your event early and with care, then stick to them.

7. Avoid understaffing

If you're worried about the bottom line, it's easy to think that having fewer people at a research event or at trial will save you money. However, that approach can backfire dramatically. Understaffing your war room can jeopardize your case and hurt your team at the most critical time (i.e., when the workload can be overwhelming and your time and resources are already most constrained). Good consultants know how to schedule a team in anticipation of the surge surrounding trial and then staff down if work does not materialize. This is preferable to scrambling for resources and support at the last minute.

Consultants can be crucial to the development of a well-rounded and highly effective legal team. Good consultants understand the balance between budget constraints and the importance of winning your case, and will take both into account in their recommendations if they hope to earn your business again. To help them deliver that value, you need to get involved early and stay involved, communicate clearly, avoid overloading them late in the process, and allocate resources with your long-term goals in mind. Spending a little money when you still have time and mental energy to spare can save you the pain of spending lots of money when time is short and the stakes are the highest.

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