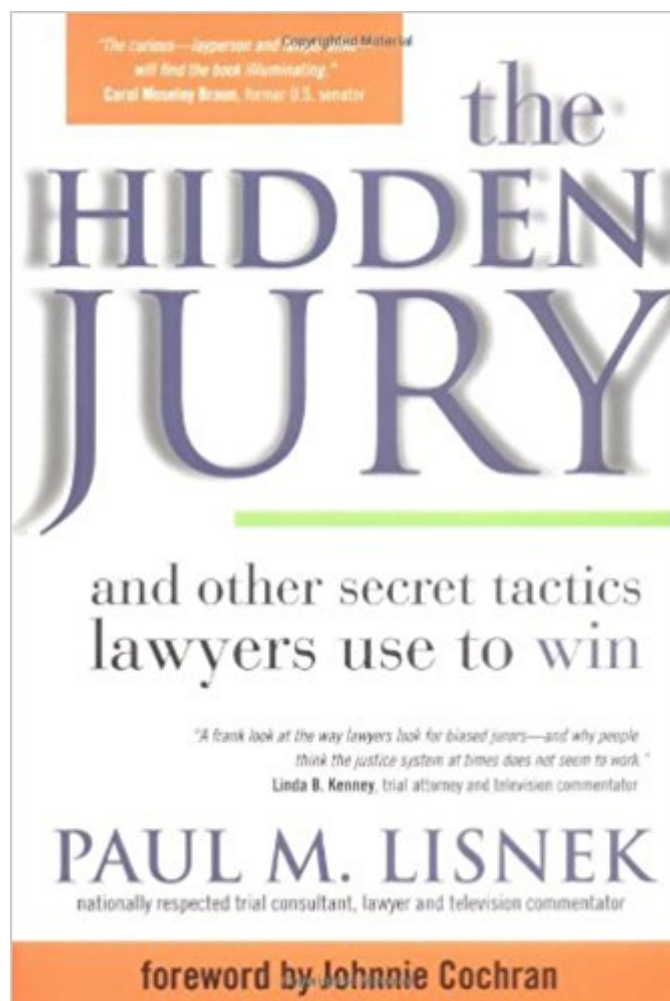


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# The Hidden Jury: And Other Secret Tactics Lawyers Use To Win



## Synopsis

"The Hidden Jury couldn't be more timely or more urgently needed."--from the introduction by Johnnie Cochran  
Why do guilty defendants go free? Why do juries award huge sums for ridiculous lawsuits? Who really controls the verdict of a trial? The most powerful people in today's jury trials aren't lawyers, judges, plaintiffs or defendants. Their names don't even appear on the court record. Yet their presence and opinions shape the way that court cases are fought, and can even change the outcome of a trial. They are the hidden jury, the most influential new force in the American legal system. For the first time, *The Hidden Jury* exposes the truth about mock juries and other tactics that lawyers and trial consultants use to mold a trial to their benefit. Drawing on experience gained from such high-profile cases as the O.J. Simpson trial, Whitewater and the Heidi Fleiss trial, leading trial consultant and jury expert Paul M. Lisnek reveals goes behind the scenes of the American justice system to reveal:  
--How lawyers get the juries they need to win--  
The mock trials that really decide the fate of the verdict--  
The trial services wealthy clients can afford to buy

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## Customer Reviews

Paul M. Lisnek is one of the most sought-after and respected lecturers and keynote speakers on the continuing legal education and corporate circuits today. He is the cofounder of Decision Analysis, a leading trial-consulting firm that has worked in the Whitewater, O.J. Simpson, and Heidi Fleiss cases, among many other complex and multi-party litigation matters. He is past president, serving two terms, of the American Society of Trial Consultants. He has an extensive background as a communications expert, trial lawyer, educator, author, and trial consultant. Formerly the assistant

dean of Loyola Law School in Chicago, Lisnek is executive director of BAR/BRI's Law School Prep Program and serves as a commissioner and inquiry-panel Chairperson of the Illinois Attorney Disciplinary Commission. He has authored twelve books, including The Paul M. Lisnek Trial Communication series for PESI, Quality Mind, Quality Life, and Winning the Mind Game. Lisnek has served as the jury expert for NBC News, appearing regularly on NBC, CNBC, MSNBC, and Court TV. He has been featured on numerous national television shows, including The Today Show, Nightly News with Tom Brokaw, Rivera Live, and Court TV's Cochran and Company. Lisnek was host and associate producer of an award-winning Chicago-area cable-television newsmagazine for more than a decade. He currently anchors Political Update, seen in the Chicagoland area.

From the Introduction Should We Really Kill All the Lawyers? Lawyers have a bad reputation. As a lawyer and a jury consultant, I live with jokes, insults, and questions. I have lost track of how many times I heard someone try to wow me with: "What do you call a hundred lawyers at the bottom of the ocean? A good start!" Or, someone might wander over to me at party and blurt, "How do you live with the fact that you represent guilty people?" Some people want to relive the O.J. trial and always start with, "But O.J. did it! Why is he free?" Even the relatively sophisticated crowd might ask, "Isn't the voodoo you do to help other lawyers pick juries unethical?" The reality is that most people do not understand how the system works. Famous lawyers write books about the cases they have tried so they can talk about how great they are (and I am not saying they are wrong). However, you probably read those books with some hope of gaining insight about what happens behind the scenes; you might want to learn a little about how the system really works, but instead you get memoirs. It is time to pull the curtain back on the process in order to help you understand what lawyers and trial consultants are really trying to accomplish behind the scenes and in the public courtroom. It also is time to get the age-old nagging questions about guilt and innocence, civil liability, and damages addressed and answered. That lawyers represent "guilty" people has always triggered distaste in the American experience. These questions have been around for a long time, and we see them tweaked every week on The Practice or Court TV. The reality is that most people do not have their first encounter with a real lawyer (and "lawyerly" behavior) until they find themselves embroiled in an unfortunate divorce, an unexpected auto accident, or perhaps something as simple as the need to draft a will. It is no secret that lawyers are not highly rated on the scale of public trust, but oddly enough, surveys about lawyers and trust often note an important exception: people think their own lawyers are terrific. So, if you have not had a need for lawyers, then you probably do not think too highly of them. If you have worked with a lawyer, you probably

like your own, but you think others are unethical. I want to dispel that myth. It is true that lawyers can be intimidating; they speak a language all their own. In addition, it is difficult to overcome the perception that lawyers make money from other people's troubles. However, many lawyers and jury consultants make their living in whole or in part by serving the public interest and working to represent those without financial resources. In reality, most lawyers recognize the law as a public calling and act accordingly. In recent decades, a group of professionals called trial consultants, jury consultants, and jury psychologists—all mean about the same thing—have added their expertise to the courtroom drama. While I am a lawyer, I am also a trial consultant. It is my job to help my trial-lawyer clients do the best possible job of representing, which means advocating for, their clients. We are a relatively new profession, but trying to choose jurors that reach a verdict that pleases one side or the other is as old as the jury system itself. The difference is that now we have scientific tools available to help guide our work with trial lawyers. This book is my attempt to explain where trial consultants fit into the big picture of criminal and civil trials, thereby providing a better overall understanding of the legal process itself...

I bought "The Hidden Jury" because I'm a criminal attorney who likes to try cases. Although I have a strong background in the social sciences (2 M.A.s), I knew little about trial consulting and was hoping to learn something useful. I should have bought a different book. Mock trials and focus groups are certainly good ways for a lawyer to practice and hone his presentation prior to a trial, but as you can tell from the book, these tools mostly help lawyers avoid screwing up, they don't hand over some magic key to the mind of a specific jury. Opinion research has limited value, also. Lisnek is happy using samples of only 50 people (the bare minimum for statistical significance) which reduces reliability overall and for particular subgroups w/in a population. For example, among 50 respondents, only 2 may have college degrees, making the sample worthless for predicting how college educated individuals will actually behave. In fact, as the author admits, bad cases can't be fixed by using any of these tools, even under the best circumstances (unlimited money). The author's observations about non-verbal communication are limited in scope and usefulness. More useful hints could be extracted from rhetoric and persuasion texts, including "On Rhetoric" by Aristotle. There is nothing new here. In the end, I think Lisnek's value is that he brings together some services that lawyers without a social science background (or who lack advanced trial training) may not be able to use on their own. But any trial lawyer worth his salt should already have access to these tools without having to pay the premium that Lisnek demands. It really isn't that tough, for example, to get a group of people together to watch some lawyers practice for a trial, especially if

you're paying them. Heck, at my law school students volunteered to watch mock trials. The customized opinion research is tougher, but there are lots of hungry grad students in this world who will work cheaper and who could do at least as good a job as Lisnek describes. A good local trial attorney should already have a feel for local opinion and would be cheaper to hire than Lisnek. The book, then, is eye opening only to someone who has never taken a decent look at our justice system. For lawyers, it will serve as little more than a prolonged (and often redundant) advertisement for trial consultants. For lay people, it will provide little insight into how these tools really fit into the process. Generally, it is a poor argument for either the jury system or trial consulting. Bottom line: If you want to learn about how juries work, you need to go elsewhere, as I must now do. Sadly, even if you are just looking for a very basic intro to trial consultancy, this book is poorly edited, often redundant, and stupifyingly boring in parts. Skip it.

Good book eye opening

Very disappointed in this title, which would have benefited from greater editorial oversight, including substantial redaction and re-writing. While the book contains a promising organizational structure, the text is wordy. One has to wade through paragraphs that are redundant or void of specific meaning in order to glean the author's point. I don't think the author is purposefully padding, but half of the book could have been cut without harm done. The author's constant use of anecdote is frustrating. His point seems to be that his personal experience is instructive of what happens before and during jury trials at large. While that may be the case, he doesn't persuade me of that. I am not sure I would agree with his logical argument either. His premise is shaky, and I found myself unpersuaded that the use of jury consultancy services is either sincere or honest. Instead, it appears to be merely another weapon in the arsenal of persuasion -- a weapon that takes advantage of jurors' fallibilities -- and eschews an understanding of the higher purpose of judgement by jury. The assumption is that jurors come in with biases. Naturally, we all have them. But instead of asking jurors to put aside these biases to the extent possible, the author would rather play to their biases and exploit them since no one, as he states, can possibly be objective. Why? Because no one can have sufficient knowledge of all facts and potentialities to allow objectivity (the "God" theory, one might call it). (Is this true? Can no one recognize and put aside for the moment, in the judgement of others, those ideas and values they hold dearest?) Contradictorily, he also claims that community research conducted by jury consultants, such as he is, is objectively believable, even if limited to phone interviews with as few as 50 targets. One simply can't have it both ways. Well, what

of the biases of the jury researchers? If jury research can be made "objective," or nearly so, then surely jurors surely can be asked to put aside whatever bias they may have for the length of the jury trial. This is the logical failure of Mr. Lisnek's argument, one that detracts from the overall effectiveness of the book.

This book didn't give much new insight. I thought it might have a lot of information about what typical jurors think and which tactics work best. It was mostly a book about telling you you need to use jury consultants.

I'm not ordinarily a big fan of legal books, but I strongly recommend this one. I walked away with an in-depth knowledge of what goes on behind the scenes in the life of a jury consultant. Lisnek sprinkles his book with enticing stories of what happened with real life normal cases, as well as famous trials such as the O.J. Simpson trial, Heidi Fleiss trial and Whitewater. It's amazing, and sometimes unsettling, to see how the preparatory work can influence the outcome of a trial. Nevertheless, it is not sneaky or underhanded, but extensive research, hard work and common sense. Lisnek is a decent and intelligent man. He recognizes the importance of understanding human nature, and the powerful impact of perception with potential and real jurors. It's a refreshing and unusual look at the jury system from someone who knows it inside and out. Even if you are remotely interested in law, you would enjoy this book. And, if you need to go to court, make absolutely sure your lawyer has a copy. A terrific read!

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