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Mock Juries, Shadow Jury, Community Survey Help

DOWN IN Louisiana, where tradition holds strong, Wendell Gauthier gladly breaks with convention. Rather than locating downtown in the heart of New Orleans' legal community, he set up shop in a northern suburb. And unlike the staid downtown corporate attorneys, Mr. Gauthier's 18-lawyer firm embraces a practice that makes headlines through its plaintiffs' personal injury victories.

Mr. Gauthier is a king among mass-disaster litigants. One of his first big cases was the Continental Grain disaster in Louisiana in the late 1970s, in which about two dozen people were killed. He won \$10.1 million for a plaintiff in a suit filed over the 1981 Pan Am airliner crash in New Orleans, then the largest aviation-related award ever granted by a jury.

Mr. Gauthier represented hundreds of clients injured in the Bhopal, India, Union Carbide Corp. gas leak before turning them over to Indian attorneys when the cases were transferred back

to that country. Today, he chairs the plaintiffs' committee in litigation stemming from the 1987 San Juan Dupont Plaza Hotel fire in Puerto Rico, with 2,223 claims pending against more than 200 defendants. That trial is set for March 15.

Mr. Gauthier also represents claimants who have been injured in smaller accidents. Such was the case of Bennie Ransom, a painter who was badly burned in an explosion inside the chamber of a ship. Originally a lawyer from a smaller general practice represented Mr. Ransom, but because the painter's injuries were so severe, that attorney asked Mr. Gauthier to help him find some way to recover more than workers' compensation.

Mr. Ransom had been painting the boat chamber with a special marine paint this is highly explosive. The fumes from the spray paint were so thick that the painters couldn't see their hands in front of them. As a result of the explosion, one man was killed and Mr. Ransom and another were badly injured.

Because Mr. Ransom was covered by workers' compensation, he could not file any action against his employer. He was not excluded, however, from bringing an action against a third party, such as the paint manufacturer or distributor.

The paint cans did carry a big warn-

**Wendell Gauthier, 45, Metairie, La.
Gauthier, Murphy, Sherman,
Chehardy & Ellis**

*Bennie Ransom v. Southern
Imperial Coating Corp., 79-16310,
(Dist. Ct., Parish of Orleans).*

ing — but it said “flammable” and carried a drawing of a flame. This, says Mr. Gauthier, meant that the paint would burn easily, but it did not warn that it could explode.

To test a theory and to prepare any case with a potential recovery of more than \$500,000, Mr. Gauthier relies on a three-pronged approach: a community survey, mock juries and a shadow jury.

First, New Orleans pollster Alan Rossenswag develops a questionnaire based on the facts and issues in Mr. Gauthier's pretrial order. The survey results, says Mr. Gauthier, point out two things: the key issues and the people best suited for a jury.

From Mr. Rossenswag's survey of 400 people, Mr. Gauthier learned that he would be most likely to get a favorable ruling on liability from working-class jurors in lower-paid jobs, who preferably were black (the plaintiff was black) and, if possible, had some history of working in a shipyard. Black females — preferably those with children and a mothering instinct — would be likely to give the highest award, because Mr. Ransom was still young.

More important, Mr. Gauthier learned whom he did not want on the jury — whites with management-level jobs. Because two people tend to control the direction of a jury in almost all trials, says the lawyer, it's important to keep out any who would look unfavorably on a plaintiff's case and who could exert leadership in reaching a verdict.

On the issues, Mr. Gauthier determined from the poll that he had to show, first, that the paint was inherently dangerous; second, that the manufacturer knew it was inherently dangerous from past experience; and, third, that the manufacturer failed to communicate this danger to the worker, the end user.

To practice his presentation, Mr. Gauthier stages three mock trials with juries selected by a company called Jury Systems. Mr. Gauthier set up the company himself to keep the mock jurors from knowing who hired them. A caller says something to the effect of, “We're preparing a civil trial in which a man was severely burned in a shipyard accident. We are looking for people to serve on a mock jury. We will pay you \$50 per evening if you would be willing to sit and hear the case presented, and afterward deliberate and reach a verdict.”

Philip L. King, who runs Jury Systems for Mr. Gauthier's firm, greets the mock jurors, asks them to complete forms about themselves and then explains the court system to them.

By the third mock trial, the victim was a 'great witness.' In the trial, 'he was super. I mean super.'

Of course, the lawyers' presentations and testimony are presented in summary form. From a three-hour videotaped deposition, for example, the firm will select and splice together the high points, both favorable and unfavorable. In the Bennie Ransom trial, the plaintiff's key expert witness — a chemist who was an expert in warning labels — appeared live. Actors played the parts of other witnesses.

Another lawyer in Mr. Gauthier's firm acted as the defense counsel. Because he knew the other lawyer and had observed him in court, he was able to imitate many of his techniques and mannerisms. "Defense attorneys, un-

Three-Pronged Approach Worked in Explosion Case

Continued from preceding page

like plaintiffs, usually have pretty standard opening statements and closing arguments," says Mr. Gauthier. "It's probably because they do more trials than plaintiffs' attorneys so they don't have the time to prepare a different approach every time and they use some basic sayings and cliches in each opening and closing."

But what makes the mock trial most interesting, says Mr. Gauthier, is actually having the victim there. "In the first mock trial, Bennie Ransom was all right as a witness. In the second mock trial, he was a good witness. In the third mock trial, Bennie Ransom

was a great witness, and in trial, he was super. I mean *super*."

After the "judge" reads the charges for the 18 jurors in each mock trial (based on Mr. Gauthier's knowledge of the case and on standard charges for this type of trial), they break into three groups of six to deliberate while the lawyers secretly videotape them.

After the first mock trial, Mr. Gauthier lost all three groups. That's when he realized that he needed to stress that the manufacturer must warn the actual user, not just the purchaser. He also learned that people differentiate in their minds between "flammable" and "explosive." One of the mock jurors commented, "There's a big differ-

ence between 'burning' and 'exploding.'"

"That's it, that's the key," thought Mr. Gauthier. As he pushed harder on this point in the subsequent mock juries, they started finding for the plaintiff.

During the trial itself, an 18-member shadow jury, also selected by Jury Systems, evaluates the attorneys and witnesses at the end of each day and reaches a verdict based on what they have heard at that time.

"In every case, the defense attorneys have rated better than I do in the opening statement," admits Mr. Gauthier. "I start coming back by the middle of the trial, and then I always eat them

up on closing."

After the closing arguments, Jury Systems selects 12 of the shadow jurors who most closely approximate the real jury and asks them to reach a final verdict. But they must do so within a time limit of 30 to 45 minutes. If the shadow jury's verdict is against the plaintiff, Mr. Gauthier then knows to settle while the real deliberations are still in progress.

But this wasn't necessary in the case of Bennie Ransom. The final October 1985 judgment: \$5.3 million.

The community survey, mock juries and shadow jury cost about \$35,000, with the survey accounting for about half of that. ■