



## Important Guidelines for Opposition Attorneys

Because of the unique structure of the Case Overview Research, Case Strength Evaluation Research, or Mock Trial research process, Magnus strongly recommends that whomever is enlisted to roleplay the opposing attorney be prepared to put on a **strong** presentation for that side. The following suggestions are offered to maximize the effectiveness of the role playing attorney.

### The Role of the Opposing Attorney

The goal of mock jury research is to evaluate your worst case scenario. Therefore, the opposing argument must be as strong, or stronger than, the argument on behalf of your client. If you will be securing the services of an attorney to portray the opposition, please keep the following details in mind:

1. Objectivity. The role of the opposition attorney is that of "devil's advocate." Be sure that the "opposing counsel" is objective and approaches the case from the perspective of your real opposition. The role playing attorney must appear to the mock jurors as the actual attorney for the party. He/she must want to win the case.
2. Balance. It is crucial that the arguments be balanced, that is, not weighted toward one side or another based on the skills, experience, or abilities of the presenters.
3. Client Issues. The nature of mock jury research is that your client often observes the arguments and statements made by the "opposition." If a member of your trial team is an effective advocate for the opposition, clients may become uncomfortable seeing him/her in this role; you will need to explain this role to your client, prior to the research.
4. Style. There are differences in the way individual attorneys argue cases, but we have observed that plaintiff's and defense attorneys have a general style, or approach, to cases that tends to naturally suit the sides they most often represent. Be sure that the style of your "opposing counsel" is as similar as possible to the style of the real opposition.
5. Law Firm Politics. Be sure that the dynamics of "beating a friend" or senior attorney do not hamper the presentation. Participating attorneys must be able to accept constructive criticism so that performance concerns do not hinder the goal of the mock jury research: to objectively evaluate the client's case.

If you choose to use a member of your trial team to argue the opposition's case, we request the following:

- 1) Inform us of who will make this argument, as soon as possible after your research has been scheduled, and provide us with a brief account of his/her trial experience; and
- 2) A telephone conference with the "opposition" attorney to discuss the presentation.

## **The Role of the Opposing Attorney, continued**

Additionally, please be sure that the “opposing attorney” is aware that he/she is to refer to other attorneys in the case by first name only for confidentiality reasons.

One last caveat, if you, your firm, or the person presenting the “opposing” case are high profile or highly visible in your community, please speak with us at Magnus to discuss how this may impact your research.

### **General Guidelines**

1. The goal is to win. Therefore, if the opposition attorney is subordinate to the attorney presenting your client’s case, there must not be any coercion or intimidation, however subtle, to compromise the opposition attorney’s effectiveness.
2. This is not the time for a new associate or inexperienced attorney to learn how to be an advocate.
3. Establish one, possibly two themes, to establish and anchor your case.
4. Be passionate but not theatrical.
5. Simplify the important points of your case.
6. Repeat important points.
7. Use plain English. If technical terms are necessary, explain them simply.
8. Maintain a pleasant demeanor and give jurors plenty of eye contact.
9. Use analogies, rhetorical questions, anecdotes, and other persuasive devices.
10. Maintain your own style.
11. Summarize the background and qualifications of expert witnesses. Include photos of fact and expert witnesses when they are available.
12. So long as both sides maintain parity, the use of demonstrative aids, handouts, exhibits, PowerPoint, computer animations, and models is encouraged. Parity of exhibits and demonstrative evidence gives jurors a more realistic presentation of your case and makes it more difficult for jurors to discern which side has retained Magnus.
13. Do not tell jurors, “You will hear,” “You have heard,” or “The witness will tell you.” Instead, use the present tense: for example, “The witness reports \_\_\_\_\_.”