



## **Jury Research**

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For over 40 years many litigating attorneys have successfully applied social science research methodology to risk management and tactical strategy. Small group qualitative research methods called focus groups and mock trials have allowed the attorney to gain an advantage in understanding the decision making process of potential jurors. This understanding can then guide the attorney's strategy and tactics during settlement negotiation or trial.

Conceptualization of the case, evaluation of potential damages, jury selection, witness preparation, demonstrative evidence, opening statements and closing arguments are all informed by the knowledge gained from the jury research.

Attorneys have learned to rely on results from focus groups and mock trials as a beacon for their cases, to illuminate a safe and more certain course for litigation risk management.

### **Benefits**

Focus groups and mock trials demonstrate comprehension of the case from the point of view of the prospective juror. The "focus" for a group of mock jurors can be the issues, facts, demonstrative evidence, witness testimony or any other aspect of the presentation of the case. Attorneys become much better prepared to match their

presentation to the jury in a manner that acknowledges and adapts to the ways in which jurors perceive the content and context of the case.

Jury research can answer the question: “Does this case have merit in the eyes of the jurors?”

Jury research can give the attorney the juror’s perception of the value of potential awards for that case and aid in decisions regarding negotiation and settlement should the case not go to trial.

Jury research can identify the salient issues of the case and advise the attorney of the strengths and weakness of that specific case.

Jury research can help the attorney make correlations between the jurors’ beliefs and attitudes and their subsequent verdict.

Jury research can instruct the attorney about ideal and undesirable juror profiles, and then guide the attorney through incisive voir dire questioning and jury selection strikes.

Jury research can direct the attorney’s strategy and tactics during the trial, thereby providing a sense of conviction and assurance about the potential effectiveness of each phase of case presentation such as opening statements and closing arguments, testimony of witnesses, and presentation of demonstrative evidence.

Jury research can motivate attorneys to prepare early and prepare well for trial. Trial research is test marketing, but also a great way to rehearse and practice the skills of presentation.

Jury research can unearth the counter-intuitive and unexpected responses of the jury, and confirm the attorney's best hunches and theories. The edge in the courtroom rests on the degree of certainty an attorney has in knowing what will be on the minds of jurors when they go to deliberate. In professional sports, teams of equal ability win a much higher percentage of games on their home court. It is important for the lawyer to get the home court advantage by presenting arguments best suited to the jurors sitting on that particular panel.

## **Formats**

### **Focus Groups and Mock Trials**

Focus groups and mock trials are not discrete entities but points along a continuum; they are scaled-down models of a trial which differ in length and scope. On one side of the continuum, the process can resemble a town meeting discussion of issues and bear similarity to jury deliberations. On the other side of the continuum, a highly structured mock trial might run the span of several days during which every aspect of trial is approximated as closely as possible. Somewhere in the middle is a moderately structured format in which groups of mock jurors might hear summaries of each side of the case, followed by deliberations.

The issue analysis focus group is one in which the evidence of a case is revealed to the mock jurors in a stepwise manner, with facilitated discussion of their reactions, opinions, beliefs and attitudes along the way.

In a witness evaluation focus group video-taped testimony of one or more witnesses under consideration might be shown to the group, with questionnaire responses and facilitated discussion. When experimenting with varied approaches to demonstrative evidence, different graphics, scale model representations, animations, or other materials might be tested by a demonstrative aid focus group.

As the methodology moves more towards a mini-mock trial, an arguments focus group permits opening/closing arguments to be presented by each side, with deliberations to follow. Questionnaires can be filled out after the plaintiff's argument, the defendant's argument, and/or deliberations as a way of assessing juror reactions as the process evolves and as deliberations influence their decisions. Final debriefing of the group, or individual exit interviews, can also enhance comprehension of juror responses.

In this type of format, research designs can be very flexible and creative. For example, the nature of the arguments presented can be modified and tested with groups of similar composition as a way of determining the effectiveness of a particular case theory. In another design, voir dire and selection procedures can be applied to a "juror pool" to "select" research groups with different degrees of anticipated hostility to the case. In such a design, research can explore which arguments work best with the jurors hardest to persuade.

With the mini-mock trial, the format can be expanded to include live or taped witness presentations, demonstrative evidence, and closing arguments, while in the full mock trial, a dress rehearsal presentation of the case is presented as full and realistically as possible under the constraints of time and resources.

### **Online Jury Research**

With the use of internet technologies, advanced survey software and professional sampling access to hundreds of thousands of mock jurors throughout the nation, it is now possible to perform powerful jury research with 100 or more mock jurors at a small fraction of the cost of traditional three group in-person projects.

Reaching 100 mock jurors allows the attorney to remove highly biased outliers from the analysis and get a clear picture of the central tendency of the results.

With online research, the attorney gets information from a larger sample population, with a greater ability to separate out and examine the group that is most likely to remain on the panel after jury selection.

### **Choosing a Method**

No form of methodology along the continuum is in itself better than another; rather, each presents different costs and benefits that allow for appropriate choices to be made at a particular time in preparation for a particular case.

### **Choosing the Mock Juror**

The mock juror is the center of jury research.

Though subject to debate on a case by case basis, the most important concern in choosing mock jurors is that represent a diversity of demographics, experiences, opinions, attitudes and beliefs within the culture of the case jurisdiction. If possible, persons who would clearly not make the panel in the courtroom should be removed before the research exercise.

Statistically speaking, sampling from a very large group to create a very small group is fraught with sampling problems unless many samples are drawn. For instance, if you deal one five-card hand of poker from a deck of cards, you may get four of a kind. This may be a correctly drawn sample, but it would not be representative of hands of cards in general and would not be a helpful way of understanding poker.

Imagine if a similar thing happened in a focus group of eight participants, where a correctly drawn sample resulted in four computer programmers. The sample might have been correctly drawn from the population of potential jurors, but the research might not be very useful. In doing qualitative trial research it is often more important to get a broad, representative sample of possible juror views, attitudes and beliefs than it is to put the entire emphasis on obtaining a sample that is drawn from the juror pool in a technically correct manner.

Online Research applies a more quantitative model, using a much larger number of jurors. This allows for diversity of jurors, using layers of gatekeeping in allowing jurors to enter or remain in the study, as well as the opportunity to remove outliers after the study without having had them influence other jurors.

From a scientific approach to random sampling, no mock jury panel, regardless of size, is going to be equivalent to the actual jury panel. An actual jury panel is the result of a progressive filtering process that begins with the partial response to court summons, and continues through hardship, cause and peremptory excusals. One could say that testing the entire jurisdiction would not speak to an accurate representation of the jury panel, since the final jury panel is a severely skewed distillation from the jurisdiction and the venire.

Therefore, generally speaking, the best approach to mock jury research is to draw upon a relatively large diverse group of mock jurors from the jurisdiction, in terms of demographics, experiences and attitudes. The research group should consist of people who are strangers to the case and each other, who have no obvious case prejudices or conflicts of interest, and who will not be asked to serve as part of the next juror pool.

In short, mock jurors should present as a diversified and reasonably objective group who can help us identify the features of the case that are good, bad, ugly and

indifferent. The purpose of jury research is not to applaud the case the attorney has created but to give the attorney perspective and needed criticism of its pitfalls. In a sense, the best reason to do focus group and mock trial research is to be prepared for the worst case scenario.

## **Investment**

The cost of trial research varies with consultant time, number of mock jurors utilized, and type of facilities employed. The cost of doing jury research can range from relatively inexpensive (e.g. \$3,500) focus group in a lawyer's office to extremely expensive (e.g. over \$30,000) for a three group mock trial at a professional facility.

Online jury research may be the best value for the dollar, reaching a far greater number of jurors in comparison to the three group mock trial for a small fraction of the cost.

The attorney can let case complexity and available budget for doing research direct the type of approach taken.

## **Conclusion**

The insights from jury research may result in significant outcome differences for settlement negotiation or trial. Attorneys would not consider entering the courtroom without taking depositions, hiring expert witnesses, researching the law recent for similar cases, or creating demonstrative aids. An increasing number of trial attorneys realize it may be equally or even more important to take a barometer reading of the potential jury before settlement negotiation begins.