

GETTING WHAT YOU WANT FROM JURY RESEARCH

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Verdict Success

Determining Your Goals.

The first step in making decisions about using jury research is identifying the research goals. Jury research gives the trial team an advantage in developing case strategy, jury selection, and settlement decision-making. One goal may test different case strategies, another goal may test which jurors to strike, and another goal may evaluate potential awards and damages. Some trial lawyers want practice trying the case in front of a mock panel. Inhouse lawyers may want to evaluate who should try the case.

Jury consultants identify the trial team's needs and determine what is feasible. Trial lawyers who call for jury selection assistance the night before the trial obviously will not have the benefits of testing the case. Jury selection can be done with

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reliance solely on the expert's intuition and knowledge base, if the trial team's goal is to limit the expenses. Below are more decision-making steps for getting the right research for your case.

Developing Case Strategy.

Matching the correct research design (e.g., focus groups, mock trials, case scenario research) to the research goals is a critical decision-making step. Developing case strategy is a process which has many concepts to consider in measuring the issues or comparing trial tactics or strategies. There are many ways of conducting jury research. Planning and conducting the research carefully will give more targeted feedback for strategy decisions.

Jury Selection.

What if the opposing side has requested to use a jury questionnaire for jury selection, should you agree to using it? The key to using jury questionnaires is to be more prepared than your opponent, especially if there is a lengthy questionnaire or a large number of jurors responding.

Adhering strictly to stereotypes can lead to incorrect peremptory challenges. In developing a juror profile, empirical research assists in determining factors readily seen such as demographics and those that are not so readily seen, such as attitudes and past experiences. Trial lawyers need to be wary of challenges that pertain to a particular class such as race or gender. A competent jury consultant can guide you through *Batson* and *Wheeler* challenges.

Damages and Settlement Decision-Making.

Should this case be settled or ultimately tried? What is the liability risk? Are punitive damages at stake? Is this a bet-the-company case? What do jurors think the case is

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worth? When is it better to suggest a dollar amount to the jurors and when is it not? Testing jury instructions and verdict forms can aid settlement decision-making. It is better to discover jurors' perceptions in the research phase than at trial.

Time & Money.

Scientific jury selection takes ten to thirty days from inception or development of the initial study to the report and can cost from \$10,000 to \$100,000. Jury profiles from the research can be used by the trial lawyers or the jury consultant at trial. Hypothesizing about jury profiles without testing the case is less costly, but has more guesswork. In less complex cases a couple hours of case strategy consultation will suffice.

Litigation continually changes as summary motions are won or lost. Some trial teams use jury research to help shape discovery. Other trial teams choose to wait until all discovery is completed. Decisions need to be made early if jury research is to be

used for mediation or settlement purposes. Time constraints are placed on the new trial team when they get into the litigation late.

Trial lawyers take valuable time from the litigation battles to brainstorm and discuss case strategy with the jury consultants. Trial teams also allow adequate time for the consultants to develop the research and recruit the jurors. Jury research costs time and money. Jury research also saves time by helping clients understand perceptions of the issues earlier and saves costly mistakes at trial.

Trusting the Results.

Confidence in the jury research results is critical. Properly conducted jury research can give great insights for developing case strategy and jury selection. Jury research conducted with friends, family or employees can mislead the strategy development and produce the wrong result at trial. The best decision-making strategy for jury research and trial is to ask the right questions early in the game.