

## Do You Really Need Jury Research?

You are at the beginning, middle or even going to trial on an important case. The case may be large, medium or even small, but it is still very important. You have looked at prior cases in the venue to assess risk. You are now considering doing mock jury research to help you further identify and understand the risks. However, is a mock necessary? What are the alternatives to a mock?

Below are some questions to ask when thinking about whether to invest in jury research:

1. **What's the risk?** This is the first question I ask. Good jury research is expensive. Getting the proper facility, the proper mock jurors (ones who really reflect persons in the venue) and helping to develop excellent "mock presentations" takes time and commitment. Smaller cases, or frequently even middle-sized cases, might be able to forego this expensive process. Picking a good trial consultant who has researched similar cases in the past, who has a good grasp of trial strategy, and who has a good databank on prior cases, can be an alternative to a mock. Expertise acquired over the years of conducting researches can add invaluable insight into your case.
2. **Can jury research help assess risk?** Definitely. Good jury research, combined with seasoned outside trial consultants, can add a new dimension to assessing your risk. Research can help unlock the key vulnerabilities and strengths of your case, as well as your opponents' case.
3. **Does this case establish a precedent?** There are instances when "smaller" cases demand the expense and effort of a mock jury trial. If you know or believe that your pending case might set legal precedent for more cases to come, investing in good research may be an excellent decision
4. **Is jury research predictive?** Since a primary purpose of jury research is to identify the strengths and weaknesses of your case, and address those strengths and weaknesses, one hopes that your real trial is more successful than your mock! Furthermore, mock juries cannot duplicate real life circumstances.

A trial is a precarious “flow chart” with numerous intervening variables. However, a mock trial can help you identify problems that the team may not have even thought of, and hopefully solutions to those problems. Leave no stone unturned!

- 5 **What is the best timing for jury research?** This depends on risk. In effect, how much money or reputation is at stake? However, generally, the earlier the better. Since a primary goal of jury research is to assist in developing compelling themes, the closer one gets to trial, the less one can change these themes. Establishing cohesive themes early in the case helps craft discovery and witness preparation. We often see contradictory stories being presented to jurors (and judges). When this happens, there is no turning back. Your most important asset, your credibility, has been lost. My general advise is not to wait until discovery closes. By then, it can be too late to make even minor strategic changes.
- 6 **Does jury research create a reliable juror profile?** Maybe. Maybe not. This depends on the case. For many of our clients, the primary goal in conducting jury research is the hope that they can obtain a precise juror profile. Unfortunately, the small number of mock jurors involved in research exercises does not present a reliable statistical sample. However, some information can be obtained and used if reasonableness prevails. For personal injury/wrongful death cases, relatively accurate juror profiles already exist. For commercial/business cases, we rarely find a reliable juror profile.
- 7 **Can jury research help us tell a better story and test case themes?** Absolutely. While many lawyers and clients believe that juror selection is the most important component of a mock, developing a cohesive, sellable story is the most significant output. We rarely can control the panel we get, but we can control our narrative.
- 8 **Is a mock a good tool for testing witnesses?** Under the proper circumstances, yes. The best way to test your witnesses is through edits of depositions or re-creations of testimony (if such recreations are not discoverable).

However, these are best done in a two-day research exercise so jurors can see enough of a witness to form an impression. The focus, however, needs to be on style, not substance. Jurors rarely hear enough to form an opinion on substance but they certainly form strong opinions on the style of the witness. Is he/she: Honest? Likable? Believable? This information can be invaluable for witness preparation sessions.

9 **Is something better than nothing?** NO! I have heard this said many times. A poor research, such as one conducted without the proper mock jurors in the room, or a research with bad or uneven lawyer presentations, will render bad information. Bad mock jury exercises can lead you to make decisions based on poor, or even false, information. Mock jurors need to be carefully selected to reflect the cross section of the venue. Research participants, for instance, should not be just 20 or 30 unemployed persons sitting in a room. Furthermore, a research can be irrevocably ruined if the presentations given by the trial team are lacking in quality. This is particularly precarious if one side makes a much stronger presentation than the other. It is critical that plaintiff and defense presentations are balanced. In sum, garbage in, garbage out.

10 **What kind of consultant do you need?** One who is prepared, knows your case, reads case documents (including depositions), works with you as you craft your presentations, and gives honest feedback. A consultant who simply agrees with you adds little value to the process.

I will conclude with going back to point #1. **You do not always need a mock.** For instance, SLR has a product, "Situation Analysis", with a fixed fee of \$5,000, which can help when a mock might not be necessary. "Situation Analysis" entails meetings with the trial team, a review of case documents, and an SLR review of prior similar cases. This analysis can help you assess your risk, identify key strengths and weaknesses, and develop case themes. By the way, if the team then decides to proceed with a mock, the money spent on the analysis by SLR is deducted from the professional fee of the mock.

Have a great summer. I will write next from Oxford University in August!