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By Brittany Cross | May 2018

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## Strengthening Your Case Through Rigorous Jury Research

The Focal Points' jury consultants, Jim Stiff and Brittany Cross, discuss research standards that result in truly valuable pre-trial information. They describe how using proven scientific methods ensures valid venue and jury analysis, mock juror recruitment, and research conclusions. This discussion will empower you to inform clients about the ways quality, analytical pre-trial research will benefit them.

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*Why is it important to have a rigorous research design for your jury research project?*

BC: When conducted properly, jury research provides the foundation for case strategy, issue development, and the formation of the juror profiles that will guide jury selection. The integrity of the jury research design, including the representativeness of the mock jurors, determines the reliability and validity of the research conclusions. Using quality research design, we can confidently distill the research findings into reliable, clear, and concise recommendations for the client."

*How do you know if your consultant has the expertise to appropriately design your research projects?*

JBS: It is essential for jury consultants to have a strong foundation in social science research methods. Ask potential consultants about their level of academic training in social science research methods and statistical analysis. Find out what conceptual knowledge your consultant has concerning the juror decision-making process. Will the consultant be able to provide insights about these decision-making processes that can be developed into case strategies? There are no



shortcuts, and jury consultants who suggest cost and time saving methods can be harmful to your case.

*Why is the recruitment process of mock jurors a crucial component to a well-designed jury research project?*

JBS: The cost of locating, screening, and providing a per diem for research participants varies widely across projects. Instead of using more scientifically valid recruiting processes, many consultants cut costs by using Craigslist, newspaper ads, or local temp agencies to locate research participants. Others rely on "professional" mock jurors who routinely participate in research projects to supplement their income. These cheaper alternatives result in research participants who may give the appearance of being a representative sample, but who, in actuality, are not a match with the experiences, attitudes, and demographic characteristics of jurors in the venire. The money you save on the research project may end up costing your client millions of dollars in bad advice.

BC: Matching the necessary demographic, political, social, and economic characteristics of the community where the trial will be held with the mock jurors is essential. We begin every engagement with an analysis of the venue that later informs our recruiting strategy. To recruit a representative sample, a consultant must know the attributes of likely trial jurors and develop procedures for recruiting mock jurors who possess those characteristics. The reliability and validity of juror profiles that are a product of the research is dependent on the quality of the research sample. Confidence in the sampling process begets confidence in the findings and recommendations that emerge from the research.

JBS: Ask your consultant how research participants are recruited and what steps are taken to ensure they are naive participants who represent the jury pool, not professional respondents or from a temp agency.

#### *Do you ever use surrogate venues for jury research?*

BC: Yes. If jury research is not permitted in the trial venue or when publicity surrounding a case makes it risky to conduct research in the trial venue, we find a suitable replacement venue, and we use the demographic characteristics from the trial venue as the template for recruiting mock jurors in the surrogate venue.

#### *You mentioned using a scientifically valid recruitment process can be costlier for clients. Why is that?*

JBS: Recruiting costs account for a large part of the variation in price and quality of jury research projects, but so does the sample size. Sample size is critically important: the larger the research sample, the smaller the sampling error. Sampling error is difficult to observe, unless you are a statistician, but procuring an accurate estimate of sampling error is key to producing reliable findings. Small-sample studies are cheaper to conduct,

but their findings are prone to a larger sampling error.

BC: I'll add, even when very small focus groups are assembled, valid sampling methods are all the more important. Only a small focus group that is composed of a valid sample can provide key patterns and trends to shape case strategy, and it can afford attorneys the opportunity to observe valuable affects and nonverbal juror reactions to case information.

#### *What if a budget can't accommodate the cost of a rigorous research design?*

JBS: Some cases do not warrant the substantial investment required for a focus group or mock trial. In such cases, we recommend focusing resources elsewhere. We believe that no jury research is better than bad jury research.

BC: For cases with limited exposure and budgets, we believe that allocating resources to case theme analysis, witness preparation, and consultation concerning opening/closing statements are good cost-effective alternatives.

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*Brittany has collaborated with trial teams across the country in both civil and criminal litigation. Notably, she successfully assisted plaintiffs' counsel in the Norberg v. Badger Guns case by developing a jury selection strategy, crafting a juror questionnaire, and aiding in jury selection. Brittany has also received successful outcomes for numerous clients including Hard Rock Cafe, Caterpillar, and SOLiD, Inc.*

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