

TRIAL SOLUTIONS INC.

New York



TSI's Standard Research Trial Designs

I. JURY VIEW

DESCRIPTION – Ten to twenty research jurors from the jurisdiction view 20 to 50 minute live or videotaped summaries on behalf of plaintiff and defendant. The summaries provide the facts of the case and present each side’s verdict and damage arguments. Jurors deliberate in one or two juries.

The Consultants:

- Help prepare the presentation
- Recruit a jury-qualified panel matching jurisdiction demographics
- Secure the research facility and necessary equipment
- Serve as moderators during the research
- Prepare a verdict form for the deliberation groups
- Conduct a focus discussion at the end of each group’s deliberation
- Videotape the discussions for later review by counsel
- Provide immediate analysis of the deliberations and case recommendations

ADVANTAGES

1. Gives a first-hand look at how jurors react to the central case facts and arguments
2. Identifies the main case themes and story lines jurors impose on the case facts
3. Distills the essential facts and arguments each side will offer at trial
4. Immediate feedback
5. Low-cost

II. DELIBERATION ANALYSIS

DESCRIPTION – Same procedure as Jury View, but the Consultants also:

- Review the deliberation videotapes
- Content analyze the deliberations to determine the force and direction of discussion on the critical case issue
- Write an executive summary giving analysis and recommendations

ADVANTAGES – All advantages of Jury View Advantages and:

- Moderate protection against observer bias
- More detailed and organized analysis and recommendations

III. VERDICT ANALYSIS

DESCRIPTION – Same procedure used in the Deliberation Analysis, but now with at least twenty jurors who also complete a research questionnaire after each component of the research trial and after the deliberations. Jurors deliberate in two panels. The questionnaire measures:

- Pre-existing case related attitudes
- Reactions to plaintiff's and defendant's presentations
- Individual verdict and award decisions
- Relative importance of various case issues
- Conclusions about important case issues
- Responses to special verdict questions

In addition to the activities performed in a Deliberation Analysis, the Consultants:

- Prepare, score and statistically analyze a closed-ended questionnaire
- Content analyze open-ended questions from the research questionnaire
- Formally present results and recommendations to the trial team
- Complete a written report summarizing the results and recommendations

ADVANTAGES

Gives a first-hand look at how jurors react to the central case facts and arguments

- Identifies the main case themes and story lines jurors impose on the case facts
- Distills the essential facts and arguments each side will offer at trial
- Immediate feedback
- High protection against observer bias
- Oral and written presentation of analysis and recommendations
- Confident description of the jury's "collective mind," including:
 - Estimation of verdict and award
 - Identification of the case issues of greatest importance to the jurors
 - Identification of the story structure the jurors will impose on the case facts
 - Identification of the reasoning process the jurors will employ when deciding verdict and award

IV. WITNESS PREPARATION AND EVALUATION

DESCRIPTION – Same procedure as Verdict Analysis and one, two or three witnesses testify live or on videotape. If the witness testifies live, we maximize the opportunity for the witness to learn how to speak directly to the jurors through the seat arrangement and by allowing jurors to ask questions. The questionnaire includes items that assess aspects of behavior that make an effective witness.

In addition to the activities performed in a Deliberation Analysis, the Consultants:

- Provide witness training as needed to prepare the witness for the research
- Summarize the jurors' evaluation of the witness
- Design a training program tailored to the individual needs of the witness

ADVANTAGES – All advantages of Verdict Analysis and

- Assessment of witness strengths and weaknesses
- Production of individualized plan for witness training

V. TRIAL STRATEGY RESEARCH - EXPERIMENTAL

DESCRIPTION – This is the classic experimental design in which a Control Condition is compared with an Experimental Condition, defined as one identical with the Control Condition in all respects save one, the variable of interest. Both conditions should include at least 15 jurors. Applied to trial research, this design consists of two repetitions of a trial presentation containing case statements and/or evidence presentation, the second repetition different from the first only with respect to a key question of trial strategy. For example, an attorney may wish to determine: the effect of calling versus not calling a particular witness; or introducing some specific evidence; or the effect of different possible outcomes of a pending evidentiary ruling; or of making Argument A versus Argument B.

ADVANTAGES – All advantages of Verdict Analysis and:

- True experimental evaluation of the efficacy of two different approaches to the case or the effect of different evidentiary rulings or instructions

VI. TRIAL STRATEGY RESEARCH - INCREMENTAL

DESCRIPTION – We recommend this design when there is a strong expectation that the case will go to trial. On three consecutive days, an attorney from our side and an attorney playing opposing counsel conduct voir dire and make case statements, and possibly present evidence and or a live witness to a panel of nine to 12 jurors. Jurors provide verbal feedback to each element of the trial. Pre-trial and post-trial questionnaires are administered. Evening conferences revise and progressively improve the presentation.

ADVANTAGES – All advantages of Verdict Analysis and

- Clearest identification of trial themes
- Greatest improvement in the presentation of themes and greatest improvement in the methods for countering the opponent's case.

VII. PRE-TRIAL RESEARCH

DESCRIPTION - This design is often used in the weeks before the trial, after considerable discovery but perhaps not before the cut-off of discovery. This design serves as both case research and dress rehearsal. Twenty to forty jurors view live or videotaped opening statements, followed by live, videotaped, and/or read-in testimony from essential witnesses and then closing arguments. Jurors complete sections of a research questionnaire before and after each segment of the research trial. This design requires greater customization, more time to develop simulation segments and prepare research questionnaire instruments.

ADVANTAGES – All advantages of Verdict Analysis; and

- Greater replication of full trial dynamics
- Evaluation of witness credibility and impact
- Recommendations for witness preparation/ordering of witnesses
- Recommendations for graphics and demonstratives
- Confident identification of facts and arguments relied upon by jurors favoring plaintiff as compared with those favoring defendant
- Confident identification of the alternative or minority story lines employed by the crucially important moderate or swing jurors
- Identification of most pronounced characteristics of unfavorable jurors