



GUEST ESSAYS

What the Design Professional Needs to Know about Jury Consultants

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Architects and engineers are increasingly involved in the litigation arena. Because there is no such thing as a "perfect building", architects and engineers are frequently asked to serve as expert witnesses on design and construction issues or they may testify as named parties in a courtroom proceeding concerning work they performed. Traditionally, there has been little overlap between the professions of architecture and engineering with the domain of psychological science. Beyond assisting design and construction professionals with human factors concerns, psychologists have, for the most part, remained distant from these fields. The area of litigation psychology, in contrast to other areas of psychology, represents a unique field in which psychology has direct applicability to both architecture and engineering.

Just as architects and engineers are experts in design and construction, and attorneys are experts on the law, jury consultants are experts on human dynamics. Human dynamics are key factors in the outcome of litigation, in all types and sizes of cases and in all phases of a lawsuit. An understanding of the "people factors" which influence the resolution of a case is crucial for any design professional who is faced with the possibility of mediation, arbitration, or trial. The information contained in this monologue represents a perspective with which most architects and engineers are unfamiliar. Reading its contents will provide

design professionals with valuable tools to enhance their performance in the maze of litigation. If there is even the slightest chance that someone in your firm will be required to be an expert or fact witness, this article will provide insight into the way in which jury psychology impacts the outcome of a case.

The main body of the paper will first define the field of jury consulting, review the basics of litigation research, describe various types of pretrial and premediation research, and finally, present a holistic approach to case management.

I. *Jury Consulting Defined*

Jury consulting is a relatively new field, having begun in the late 1970's. While the terms jury consulting, litigation research, and litigation psychology will be used interchangeably, please recognize that not all litigation researchers are psychologists. Litigation research is a hybrid of four areas: marketing research, social psychology, cognitive psychology and experimental psychology. Each of these areas has a long tradition of theory and research. The following section provides a brief overview of each of these fields.

Marketing Research

Marketing research, while not based exclusively on psychology brings a wealth of information to the field of jury consulting (Luck, Wales, Taylor, & Rubin, 1982). In fact, marketing research provides convenient analogies to educate people regarding the field of litigation research. One aspect of marketing research with direct applicability to jury consulting is consumer behavior. Consumer behavior studies examine how well a particular product will sell to a target market (Kardes, 1994). Products are designed to satisfy consumer demands. Considerable research is undertaken to ensure new products are designed and constructed to meet the needs of consumers. A lawsuit may be likened to a product. In many instances, the amounts contested in construction lawsuits are greater than for other types of litigation. Given that a lawsuit must be "bought" by the consumers/jurors, litigation research may be likened to marketing research.

Just as new products are tested prior to their release in the marketplace, a lawsuit must be tested before it is presented to the jury. Testing a product before its release in the market is the focus of all pretrial and premediation research, whether one conducts simple, exploratory focus groups or commission a large scale attitude survey.

Another significant element of marketing research is demographic analysis. Attorneys and their clients frequently use information on the composition of the population in the location where the case will be tried. Demographic analysis includes research about the trial venue and typical people who will be seated on the jury. Demographic analyses are founded upon census data, then customized to the needs of a particular client.

Social Psychology

Social psychology provides the true backbone of the jury consultant. Social psychology is the study of group behavior. It is solidly based in theory and research, all of which is applicable to juries.

A major area of social psychology is social influence. Social influence is the process in which each juror's behavior impacts another juror's behavior (Cialdini, 1988; Zimbardo & Leippe, 1991). It includes conformity pressures and the need to appear consistent to others. Conformity pressures influence juries in the same way as in other decision making groups. Often, jurors do not change their deeply held attitudes; they conform to others' expectations as a way of getting out of an uncomfortable situation. Jurors, like most people, want to get along with others. Consequently, they conform to the demands of the social situation.

Another important aspect to understand is group decision-making. Group decision making is not the same as individual decision making (Shaw, 1981). Bargaining and negotiation are key factors in the way groups reach decisions and juries reach verdicts. Jurors make deals with other jurors as they move through the verdict form. Because the verdict represents a group decision, it necessarily involves compromises on the part of individual jurors. If one juror compromises with others on percentages of responsibility, for example, he/she will expect concessions from others when it is time to award damages.

Social psychology is also concerned with the relationship between people's attitudes and behaviors. In contrast to common perception, attitudes and behaviors are not always related (Ajzen & Fishbein, 1980). Jury consultants assist attorneys and their clients in identifying instances where attitudes do not predict actual behavior. For example, a prospective juror who indicates during voir dire questioning that his/her attitudes typically favor defendants in lawsuits may behave differently upon hearing specific testimony. It is crucial in this instance to understand the characteristics of both the jurors and the case being litigated that may cause a juror to behave in a manner inconsistent with previously expressed attitudes.

A key component of social psychology, that is crucial to understanding the way that jurors decide construction cases, is attribution theory (Heider, 1958; Jones, 1979; Kelley, 1973). Attribution theory relates to how a juror perceives other people's actions, including dispositional (personal) and situational determinants of behavior. Attribution theory and the research it has generated shows that people prefer dispositional attributions to situational attributions. This preference has important consequences for the way that jurors perceive engineers and architects. For example, if an engineer is being sued for his/her role in a flawed building's design, the jurors are far more likely to believe the engineer was lazy, uncaring, and unprofessional than to believe the engineer was limited by situational constraints such as a limited budget of the owner. Because jurors' perceptions are ultimately the key factor in the outcome of a case, an understanding of attribution theory is essential to potential parties to a lawsuit.

Another area of social psychology with direct implications for jury consulting is persuasive communication (Petty & Cacioppo, 1986). Persuasive communication is a necessary part of litigation - and is what attorneys and their clients must do to achieve a favorable case outcome. Persuasive communication is involved in effective presentation of case facts, something jury consultants try to instill in their clients so that jurors will view the case with an open mind. Persuasive communication is the study of the factors related to the source (the attorney or

witness), audience (jury), and message (case presentation). The most important source characteristic is credibility, composed of trustworthiness and expertise (Eagley, Wood & Chaiken, 1981). Even if an attorney or witness has the facts and law on his/her side, the case may be lost if the jury finds credibility lacking. The attorney, as well as key witnesses, must often be instructed how to tailor arguments to fit the limitations of the audience and the jury. Considerable research in the area of persuasive communication provides the foundation for this facet of jury consulting.

Cognitive Psychology

Cognitive psychology relates to learning, thinking, and memory (Neisser, 1967). Understanding cognitive psychology helps attorneys and witnesses to be effective teachers of new information to their students/jurors.

One major way that cognitive science aids in the litigation process is by helping attorneys and witnesses present their case in a way that jurors can listen, then learn the facts. For effective learning to take place, close attention to the presented information is required. Methods of enhancing attention include priming (warning jurors about what is about to be presented) and presenting information that is consistent with jurors' schemas. Schemas are categorical representations of information contained within the human brain (Fiske & Taylor, 1991). Schema-congruent information will be heard, then, learned, more often than information, which fits no pre-existing category.

In a complex construction case, jurors will have no pre-existing information to aid them in making sense of what will take place at trial. Thus, attorneys and witnesses must develop schemas for the jurors, or risk total incomprehension. Learning must then be reinforced through repetition and rehearsal so that the facts will be committed to the memory of each juror. Jury consultants educate attorneys and witnesses on the fundamentals of memory so that they do not overload jurors' memory storage systems. Working within the limitations of human memory is a fundamental characteristic of effective trial strategy.

Experimental Psychology

The final area of study that defines jury consulting is experimental psychology. Experimental psychology provides the framework for the way in which litigation research is conducted. Psychological science is only as good as the research techniques it employs, such that the importance of experimental psychology may not be overemphasized. Experimental psychology relates to the design, implementation, and analysis of scientific research in accordance with the scientific method (Ray & Ravizza, 1988). The scientific method provides guidelines for the design of research studies of litigation so that there may be confidence in the results.

Experimental psychology provides the background for other key issues related to the science of jury research. Two important issues are the reliability and validity of research. Reliability equals consistency over time and across situations, and validity equals accuracy of results. Reliability and validity are necessary to ensure that research findings are generalizable to the courtroom context.

Understanding experimental psychology aids jury consultants in avoiding bias. Avoidance of bias is a key component of litigation research. Design professionals, as end clients, as well as attorneys

and consultants, must take precautions to avoid confirming what they want to hear. Proper experimental protocol serves to reduce biasing influences inherent in research.

Ensuring the appropriateness of the research method(s) selected for a particular case is the responsibility of the consultant and includes consideration of case complexity, risks involved and research budget.

II. *The Basics of Litigation Research*

The previous section acquaints design professionals with the diverse fields from which jury consulting has emerged. The present section will describe the basics of litigation research to provide design professionals the background necessary to pursue effective working relationships with a jury consultant.

The basics of litigation research includes the "why, when, and where" behind research. The "what and how" will be covered in the third section of this article. Finally, the "who" of litigation research may be a mock jury, arbitration panel, or judge; research methodologies may easily be adapted to fit the profile of the actual fact finders.

Why Pretrial and Premediation Research is Recommended

The primary reason pretrial or premediation research is recommended to attorneys and their clients is to reduce uncertainty. Past experience in winning construction lawsuits and the use of exceptionally skilled construction law attorneys may not accurately predict how citizens in a particular venue will view a given set of case facts. Jury research provides the certainty one needs to make the crucial decisions that will ultimately impact the future of a design firm.

More attorneys are using litigation research as a means to cover all possibilities to reasonably ensure everything possible is being done to help their clients. Clients often question their attorneys about key factors that may have been overlooked. If pretrial or premediation research are noticeably absent from litigation preparations, a design professional should have concern that everything possible was done in the firm's best interests. Jury research is increasingly common in high stakes litigation in which both sides seek to maximize their chances of prevailing.

There are many reasons to commission litigation research. Because each case is different, your attorney and your jury consultant should identify the purpose of the research to be undertaken. If damages are a greater concern than liability, make sure the research provides the necessary feedback to accurately estimate damages. Major construction cases with large potential damages may require several phases of research to guide the attorney from the beginning of discovery through trial. In some instances, attorneys may be less interested in fine tuning arguments than in determining how jurors will perceive their key witness. This may be true even if the design professional is the key witness!

Many attorneys utilize jury consultants to assess their case as a way to help convince a client their case may not be as strong as the firm would like to believe. Observing a mock jury deliberate often provides convincing feedback that settlement may be a more rational solution.

Here are the most common reasons in support of the research function:

- Assess Strength of Liability Arguments
- Test Various Arguments & Case Theories
- Determine Range of Damages
- Assess Effectiveness of Demonstrative Evidence
- Evaluate Attorney Presentation Style
- Evaluate Witness Credibility
- Familiarize Attorney With Venue
- Evaluate Settlement Posture
- Assess Public Sentiment in High Profile Cases
- Structure Discovery
- Rehearse Opening and Closing
- Provide "Reality Check" for Client
- Assess Comprehension of Jury Instructions and Verdict Forms
- Profile Juror Types
- Get Objective View of Case From Different Perspective

The type of research recommended in a particular case varies depending upon the information needed and the aspects of the case on which to focus.

When to Conduct Research

As to the question when litigation research should be conducted, the answer is "it depends". When to conduct research depends upon what the firm and its attorney want to accomplish. Some attorneys use research to decide whether to pursue a case; others, to structure discovery; others, to reveal to the opposing side at a crucial point during mediation; and others, to rehearse arguments before trial. Some attorneys commission litigation research at each of these stages to avoid overlooking information that may materially affect the outcome of a case.

These are the most critical phases for commissioning research:

- Before Case is Filed
- Before Discovery is Completed
- Before Key Depositions are Taken
- Before Mediation
- Before Settlement Offer is Made or Accepted
- Before Demonstrative Evidence is Finalized
- Before Changing Theory of Case
- Immediately Before Trial

It is advisable to discuss any budgetary restraints with your proposed consultant so that an acceptable agreement may be reached that is both adequate in scope and affordable.

Where Answers are Obtained

Most litigation research is conducted in the trial venue. It is a matter of fact that jury eligible citizens are different in different venues.

Proper mock jury recruiting techniques begin with a review of census information from the venue. The jury consultant should be familiar with the basic demographics of the area, including age composition, racial composition, major employers, occupation categories and from what source actual juries are recruited (for example, voters lists, drivers licenses, etc.). Each mock jury panel should resemble the actual venue as closely as possible. The jury consultant should retain the services of a reputable marketing research vendor for the telephone portion of the research. Attitude surveys are conducted almost exclusively by telephone. In addition, telephoning is the principle method used to recruit mock jurors for participation in mock trials and focus groups. Random sampling is essential to ensure the representiveness of the community. In no instance should a panel of "professional jurors" be utilized for any type of jury research.

Exceptions to non-venue specific research are acceptable when publicity about the case is high, or when the venue is so small that contamination of the venire is a great possibility. If either of these conditions exist, care must be taken to conduct research in as similar a venue as possible. Otherwise, one will have inadequate information as to how a real jury is likely to view the case.

III. *Pretrial and Premediation Research*

General Research Issues

There are as many types of litigation research as there are jury consultants (Vinson & Anthony, 1985). Litigation research ranges from exploratory focus groups involving 6 to 10 people, to community attitude surveys of 400 to 1000 people. Similarly, litigation research ranges in type from qualitative to quantitative. Qualitative research involves trained observation of group dynamics and analysis of factors involved in the fact finders' decision making. Group discussions are videotaped, then reviewed until the consultant completes the analysis. Quantitative research is at the other end of the spectrum; it often involves complex research designs and sophisticated statistical analyses. There are distinct advantages and disadvantages associated with each type of methodology, which will be covered in a later section of this paper.

Research studies may be performed both pretrial and premediation. Some attorneys retain consultants for premediation research, then, if efforts to settle the case at mediation are unsuccessful, the attorney will often request additional research before trial. Premediation research is becoming increasingly common as the majority of cases are resolved outside the courthouse. Often jury research is not revealed until a crucial point in negotiations, when the attorney uses it as a "club" to demonstrate the consequences of failing to reach an amicable agreement.

Here are examples of the most commonly used research methodologies:

- Community Attitude Surveys
- Community Profile Analysis (Archival Studies)
- Issue Identification
- Case Strength Evaluation
- Focus Groups
- Mock Trials
- Brainstorming Sessions
- Document Review/Analysis
- Order of Proof Analysis & recommendations
- Opening/Closing Statement Preparation
- Witness Preparation
- Expert Witness Coordination
- Jury Selection
- Supplemental Juror Questionnaires
- Media Analysis
- Settlement Brochure Development
- Post-Verdict Interviews
- In-Courtroom Assessment

Of all the types of jury research listed above, attitude surveys, mock trials, and focus groups are the most frequently requested.

Attitude Surveys

Attitude surveys, in a general sense, are large-scale studies that measure case specific attitudes in a quantitative, or statistical, manner. Surveys may be performed over the telephone or by inviting a large group of people to a research facility to complete a questionnaire. Clients retain consultants for attitude surveys for a variety of reasons including: image analysis, issue identification, community profiling, and opinion polling that may reveal the need for a change of venue. Each of these reasons is sufficient justification for commissioning an attitude survey, although some surveys serve multiple purposes.

Image surveys are utilized when a plaintiff or defendant has a strong presence in a community and/or is concerned that recent negative publicity concerning the case will impact citizens' views. Surveys performed for the purpose of issue identification are quite common; they provide a foundation for subsequent mock trial research. Community profile surveys are performed to provide a "snapshot" view of the trial venue and are usually conducted to familiarize an attorney and his/her client with citizens' attitudes regarding a wide range of issues. For example, in a recent case, jury research revealed that jurors were concerned about the environmental implications of the construction project. The design professionals and attorneys involved in the case had never considered that jurors' decision would be affected by their consideration of whether the defendant's design firm was "environmentally friendly". The research results revealed a need to revise the theory of the defendant's case.

Opinion polling for the purpose of determining the existence of bias in a venue is utilized to prepare a motion for the Court. Attitude surveys must be carefully worded so as not to lead the

respondents' answers. Comparative studies must also be conducted outside the trial venue so that a comparison can be drawn between attitudes of people in and outside the venue. Because surveys performed in anticipation of a venue change must hold up to scrutiny by the Court and experts retained by the opposing side, a great deal of consideration must be given throughout all phases of their administration and analysis.

Regardless of its ultimate purpose, a survey is devised by a jury psychologist to measure demographic, personality, and attitudinal variables that impact decision-making. Sometimes, a general description of a case is provided and respondents are asked to answer questions about key aspects of the case. The greater number of citizens who complete the survey, the greater the scientific certainty attached to the results. A sample size of at least 400 is recommended for a confidence level of 95%. A 95% confidence level means that one can be certain that the results are within $\pm 5\%$ range from a particular answer. Not all cases justify the cost and effort involved in conducting attitude surveys, but they are gaining popularity among attorneys who don't want to take risks in jury selection.

Mock Trials

"Mock Trial" has become a generic term used to describe a variety of qualitative or hybrid (qualitative and quantitative methods combined in one study) research projects. The customary purpose of mock trials is to test arguments, assess case strengths and weaknesses, and fine tune trial strategy based on the results of deliberations. A representative group of jurors is recruited from the trial venue to hear abbreviated case presentations. The attorney who has retained the jury consultant argues his/her side of the case and another attorney is retained to role-play the opposition. Mock trials can be relatively simple, involving opening statements presented by plaintiff and defense counsel, or they can be highly sophisticated involving witnesses who are subjected to a mock direct and cross examination in front of the jury. Mock trials may be used to evaluate both liability and damages arguments as jurors actually elect a foreperson and deliberate to verdict. Mock trials are particularly revealing and informative in construction cases. The design professional is often surprised at the "logic" with which the jurors derive their opinions.

Of all the services provided by jury consultants, mock trials are the most frequently requested. Although the majority of mock trials are utilized to evaluate issues important to juries, they may be easily adapted for use with other fact finders, including judges and arbitration panels. For example, for a mock bench trial, retired or former judges are recruited to hear the case facts, then render a decision. Usually more than one judge is recruited so that multiple opinions can be obtained, however, each judge is required to decide the case independent from the others.

Mock trials are particularly effective in shedding light on the weaknesses in a case as perceived by fact finders. Unlike asking someone who has prior knowledge about the case, parties, or attorneys, participants in mock trials remain objective about the issues. Another way in which mock trials provide attorneys and their clients valuable insight is in revealing issues that are difficult for fact finders to comprehend. In many construction cases, jurors have little experience with which to relate how various parts of a building are designed and built. Words and expressions commonly used by design professionals have little or no meaning to the average person, resulting in what psychologists call "cognitive distortions" or mistakes based on misinterpretation of information. Mock trials provide attorneys and their clients with a preview of the problems they are likely to face in trial as well as the knowledge needed to eliminate them.

Some attorneys use mock trial research to devise jury selection strategies. True profiling of juror types may not be accomplished because of the small number of mock jurors who participate (usually from 30 to 60 people), regardless, many attorneys believe they are able to make a reasonable assessment of the types of individuals who will and will not "buy" their arguments. If voir dire strategy is a focal point in mock trial research, many attorneys conduct a mock voir dire, then, with the jury psychologist's assistance, divide the group depending on who is selected and who is stricken. The groups hear the same case facts, then deliberate separately, allowing the attorney and psychologist to evaluate their theories about which witness was good and not good for the case.

Focus Groups

Focus groups are often the first stage in jury or fact finder research. In general, focus groups are informal discussions among the attorney, jury consultant, and fact finders. The absence of structure often leads to a candid discussion of troublesome issues in the case. Research participants aid the attorney in structuring the case around issues, which are the most compelling to them. Some of these issues may surprise the attorney who may have become deeply involved in the legal aspects of the case to the extent that the human factors are overlooked. Focus groups provide a convenient, cost effective way to learn about a case from the fact finders' point of view. Many attorneys utilize focus group research early in their case development to provide an efficient way to structure their discovery. Focus groups are typically the foundation for more structured research which takes place prior to mediation and/or trial.

Interpretation of Results

Jury Consultants Provide these Key Elements:

- Themes
- Effective Strategies
- Identification of Variables Affecting Decision Making
- Verdict:
 - Liability
 - Damages
- Juror Profiles
- Voir Dire Questions
- High Impact Demonstrative Evidence
- Attorney Evaluation
- Witness Evaluation

The jury consultant, utilizing a variety of analytical techniques, typically prepares a written report of the findings that emerge from the research. A multitude of statistical packages exist with which survey and other quantitative data are analyzed. Consultants often base their interpretations of the research results on a combination of information, including archival data from a database of similar cases, analysis of deliberations videotapes, evaluation of statistical output, and post verdict interviews of actual jurors on similar cases (in states where these interviews are permissible).

Certain methodologies, for example, attitude surveys, lend themselves to vigorous scientific interpretation better than other methodologies such as focus groups. The objectivity present in

statistical analyses is preferable to subjective analyses such as observations of mock jury deliberations, but both quantitative and qualitative research have their place.

Limitations of Research

Just as there is no one type of building design professionals would agree is "the best", there is no one type of research design that will answer all of a client's questions about the likely outcome of a trial. Limitations are inherent in all research designs. For this reason, combinations of methodologies are often utilized when damages are potentially sizable or issues are complex.

With regard to attitude surveys, limitations are the result of the presentation made to fact finders. For example, telephone surveys must be limited in duration. It is very unlikely that respondents will remain on the line for an interview lasting more than 15 minutes. A 15-minute period is too short to explore the complexities of construction litigation. As a result, only general issues are included in most attitude surveys. Another limitation of attitude surveys is they do not permit detailed probing into the reasons for the respondents' decisions. Interviewers must follow a prepared script that for the most part, does not allow for open-ended discussions. Responses must fit designated categories that have been predetermined by the consultant.

Mock trials and focus groups contain a very different set of limitations from attitude surveys. The primary limitation of these research methodologies stems from their relatively small sample size. Many attorneys become frustrated when they inquire about the generalizability of mock jury studies compared to likely results of actual deliberations at trial. If fewer than 100 citizens have participated in the mock trial, statistically speaking, there is little generalizability. It is virtually impossible to make an accurate prediction of the likely damages in a case based on observing deliberations of only 30 mock jurors.

Thus, attitude surveys, focus groups, mock trials, and other research methodologies should be used with cautious optimism. Each methodology provides a rich and unique form of information if results are kept in perspective. Design professionals need a basic understanding of the advantages and limitations associated with each methodology to be informed consumers of the results.

IV. *Consultants' Qualifications*

General Issues

Always check the qualifications of the consultant to be retained. Not all jury-consulting firms have the qualifications necessary for effective analysis of difficult and complicated trial work. Additionally, many consultants do not have expertise in construction litigation. Consultants need to understand the distinct responsibilities of the architect, engineer, contractor, subcontractors, and building owner in the final outcome of the project. Although consultants are typically not permitted to reveal specific cases when they have been retained because of confidentiality requirements, they should have a reference list of previous clients who will speak on their behalf. Allowing potential clients to contact previous client's limits disclosure of specific case details to those with which a past client is comfortable. Because preparatory work conducted for a specific case is the attorney's

work product and not open to discovery, many clients prefer to keep their use of a jury consultant confidential.

Ethics

Typically, better-qualified jury researchers have been awarded a doctorate degree in social psychology, industrial/organizational psychology, or sociology and will have considerable experience in the law arena. Some jury consultants possess dual degrees - a Ph.D. in psychology and a law degree. There are a relatively small number of jury consultants with backgrounds in communications and/or theater.

There are several organizations with ethical guidelines to which their members must adhere. These include the American Psychological Association, American Psychology - Law Society, American Society of Trial Consultants, and a variety of market research organizations. All of these organizations share an emphasis on client confidentiality, competence, responsibility, accurate representations, avoidance of conflicts, and protection of respondents. Qualified consultants will have membership in one or more of these organizations. Ask for a potential consultant's curriculum vitae prior to revealing details of your case.

Objectivity

The most important element of a consultant's service is objectivity. Jury consultants, unlike attorneys and the design professional as the end client, must have no vested interest in the outcome of the case. It is sometimes helpful for the consultant to act as a "devil's advocate" thereby providing the attorney and client with the worst case scenario of trial outcome. Jury consultants are usually not permitted to share in the proceeds of the case, thus, their monetary compensation does not depend on the resolution of the case. A design firm is best served by a jury consultant with the strength of character to tell clients truthful expectations rather than only the news they want to hear.

V. Holistic Approach to Case Management

Link to Ongoing Research

Most jury consultants do not conduct marketing research or organizational research. These consultants view litigation research as separate and distinct from other research contexts. Jury consultants who perform their research within the large arena of marketing and organizational concerns endorse a more holistic approach to case management. These latter consultants believe that "one thing leads to another". For example, if an organization has morale or other internal problems, employees will make mistakes because of a lack of concern. If a firm has an image problem, damages may increase when jurors seek to right past wrongs, which often are unrelated to the present lawsuit. These internal and external problems create a spiral effect - low morale = mistakes = litigation = poor community image = more low morale...

Here are the most frequently performed marketing research studies. Marketing research can provide a valuable first step to understanding the venire.

Types of Marketing Research:

- Advertising Analysis
- Competitor Analysis
- Customer Satisfaction
- Demographic Profiling
- Image Analysis
- Media Analysis
- Mystery Shopping
- Product Development
- Strategic Planning
- Target Marketing
- Training Program Evaluation

Marketing, public relations, or image problems prevent goodwill from having positive effects on litigation. The absence of "warm and fuzzy" feelings within a community will carry over to litigation, as the jury pool is made up of citizens with opinions about the organization. All design firms that conduct marketing research projects should provide the most recent results to their jury consultant. Marketing research will provide the consultant with the insight needed to understand the challenges faced by the design professional within an increasingly competitive environment. Design firms that do not conduct marketing research studies should consider retaining a jury consultant who can address litigation concerns within the larger context.

Just as marketing research provides an understanding of the organization's image in the external environment, organizational research provides valuable information about the firm's internal workings. Here are the most common types of organizational research:

Types of Organizational Research:

- Employee Assistance Program (EAP)
- Employee Testing
- Employee Satisfaction (Morale)
- Organization Development
- Wellness Program
- Workgroup Effectiveness

Happy, productive employees who do their jobs properly decrease lawsuit potential. When lawsuits are viewed in a larger context, the entire organization, including upper management and the risk management department, are working together to reduce risk and ultimately, lawsuits. Jury consultants who are knowledgeable about organizational issues are better prepared to assist their clients in the courtroom.

Communication Issues:

The role of jury consultants is to improve the decisions made by design professionals and their attorneys on complex construction litigation. Through communication, they can prevent future problems. Increased information about the perception of design professionals, their actions, and the organization as a whole goes a long way improving the chances of a favorable litigation outcome.

Consultants who endorse a holistic view to litigation work within the systems an organization has established to provide a specific assessment of risk so that better decisions may be made for case resolution. In this way, the consultant will help eliminate precedents. This often involves assessing seemingly small cases to prevent unexpected results in the courtroom and the potential of additional lawsuits and greater image damage that comes with bad publicity.

The way a jury consultant works within the multiple organizations involved in construction litigation is summarized in the following schematic representation.



The jury consultant is often a central source of communication among all of the individuals involved in a case, because the information provided by the consultant presents a "common ground" for discussion of the cases from an objective viewpoint. Conflicts between attorneys, insurance representatives, and end clients may be turned into productive case planning with the consultant's input and reports.

There are No Minor Details in Preparing a Case

Sometimes, minor details become stumbling blocks to a successful case outcome. An attorney can spend his/her time arguing about legal cause and the fact that there is no such thing as a perfect building. The jury may ignore those arguments if they discover an occurrence that could have caused the damage. It is a commonly accepted premise within social psychology that negative impressions provide a stronger influence on decision making than positive impressions (Jones, Davis & Gergen, 1961). Research indicates it is much easier to remember details that stand out. Jurors having had a negative experience with a design professional in their personal or business lives will utilize this experience to a firm's disadvantage in court. Jurors often view litigation as their opportunity to even the score against entities they perceive unfavorably. For this reason, jury consultants must work with the design professional and attorneys to identify the underlying issues that may lead jurors to behave in ways contrary to the case facts. Appeals to jurors' logic, common sense, or sense of fairness may not be enough to persuade them to change negative attitudes about certain members of the construction industry. The jury consultant must be diligent in focusing case preparations on the right path within the maze of litigation.

Cost - Benefit Analysis

Pretrial or premediation research is an investment in information. Information allows better decisions to be made about settlement or trial. Informed decisions have a direct impact on the outcome of a particular case with which the design professional has become involved. The cost of litigation research is relative to damages, case complexity, and the desire to "win at all costs" to avoid setting an undesirable precedent.

Before retaining a jury consultant, a firm should develop the ultimate goals it wants to accomplish with litigation research. Most consultants will work with their clients to develop a budget and a timetable to derive the maximum benefit from jury research. Jury consultants vary in their willingness to design customized services on a case specific basis; most, however, will conduct a needs assessment of the services required for a particular construction case.

Practical Tips For Making Psychological Science Work For Your Firm

Utilizing psychological research in litigation makes the process more effective and efficient for the design professional as well as his/her attorney. The ultimate goals of most jury consultants are to streamline the litigation process and provide the client with an objective view of the case. Consultants will work with their client to provide the information required to settle or try a complex construction case. To make the most of a relationship with a jury consultant, design professionals and their attorneys should do the following:

- Retain the jury consultant several months in advance of trial or mediation.
- Finalize experts' opinions and demonstrative aids after receiving the consultant's report regarding the jury's likely concerns, not before.
- Reveal to the consultant all of the potential weaknesses in your case, as well as the opposition's strong points, to ensure objectivity.
- Be willing to accept the consultant's recommendations.
- Be willing to completely modify the theory of the case based on the opinions and impressions of the fact finders.

Pretrial and premediation research provides information that may or may not back up the design professional's intuitions. It is a wonderful thing to know intuitions are on track. However, if they are not, it is much better to find out while there is time to modify strategies to avoid making costly mistakes. Jury research provides a forum to evaluate liability and damages and make necessary adjustments prior to mediation or trial. When pretrial or premediation research is conducted, a design firm can be certain everything possible has been done to prepare for a case. A jury consultant can make a difference in the future of a design firm.

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