

LAWYERS WEEKLY USA

A chance to improve your game

The value of post-verdict juror interviews

By Edward Schwartz

Although the most important work an attorney performs takes place before and during the trial, litigators have an important opportunity to learn about their effectiveness after the trial is over. Did the themes you chose to emphasize resonate with the jury? Did the jurors find your witnesses credible? Did they understand the technical information that was critical to your case? What can you do better next time?

The best way to answer these questions is to conduct post-verdict interviews with jurors, a practice that is currently allowed in about a third of the federal courts and a significant percentage of state courts.

The post-verdict interview responses will be most useful to a firm in the long run if they can be aggregated and compared across cases over time. To this end, I would recommend that your firm's litigators jointly develop a standard set of interview questions, as well as descriptive characteristics of the cases that will be kept on file. It will, of course, be necessary to amend these standard questions with case-specific ones, but uniformity in structure and response type (sliding scales, multiple choice, short answer) is helpful.

The jurors' verbal responses will likely be helpful for an immediate "post-mortem" of your case, but they will be hard to compare and generalize down the road. As such, it is important to develop a coding scheme for storing the data in a way that will permit statistical analysis in the future. One example of such a system is to develop a list of possible influences on the jury (opening arguments, exhibits, expert testimony, etc.) and record how often each is mentioned by jurors in their responses. Another strategy is to record how often certain "buzzwords" come up during the interviews (believable, aggressive, nice, defensive, etc.)

Timing

While it might be most convenient for *you* to assemble the jury immediately after the verdict to conduct interviews, this is rarely the best approach.

First, jurors are often eager to return to their families and jobs. They won't be most forthcoming with their time when they have already been away from their normal lives for weeks. Second, it is wise to take a few days after the trial to decompress and figure out what you really hope to learn. If you lost at trial, this also gives you some time to cool down. Don't chase jurors down the hallway after the verdict is read.

Finally, juror interviews are usually most illuminating when conducted individually, rather than in a group setting. If a juror is uncomfortable with something that happened in the jury room, she may be unwilling to share those feelings with the others jurors present.

A good strategy is to let a few days go by before first contacting the jurors. Try to schedule the actual interview within a couple of weeks of trial so the experience is still fresh in the jurors' minds. If possible, ask the judge to inform the jurors before dismissing them that someone might be contacting them to discuss the case.

Most jurors are happy to discuss their experiences, provided that they are approached in a respectful way. Be accommodating to the jurors' schedules, keep the interview short and tell them in advance how long it is likely to take. Make sure you provide them with an opportunity to discuss their concerns, even if they don't relate directly to what *you* want to learn about the case.

In her initial instructions to the jury, the judge has undoubtedly emphasized the enormous responsibility of jury service and expressed the court's appreciation for the jurors' efforts. You should leverage this idea in speaking with jurors. You are providing them with the opportunity to voice their opinions about the experience of serving on a jury.

Methodology

There are a few different ways to conduct post-verdict research.

The simplest and cheapest method is to ask jurors to complete a written questionnaire. There is actually a lot to be said for a questionnaire if you want both candor and easily coded results. It is difficult, however, to read nuance into a written questionnaire and you can't learn anything about topics you didn't think to ask about.

A telephone interview allows for a somewhat more organic experience. Some people feel more comfortable with the anonymity of a telephone call, as opposed to a face-to-face interview. But it's hard for an interviewer to read emotion or attitude into a phone interview, so it might be difficult to know when to follow up. Many people are only willing to talk on the phone for so long. They become tired, bored or distracted. As a result, it might be preferable to conduct an interview in person. An interviewer can develop a rapport with a subject if they meet in person. As trust grows, a juror can become more expansive with her answers, increasing the yield of the interview.

In-person interviews can be conducted either in groups or individually. A group interview feels a lot like a focus group session. One concern is the willingness of jurors to be totally candid about deliberations in each other's company. On the other hand, the group discussion that sometimes develops can provide insights into the group dynamics of the actual jury deliberations. If certain jurors speak up to answer most of the researchers' questions, those jurors probably dominated deliberations as well.

The final method of conducting post-verdict interviews is to meet with each juror individually. This method provides the greatest flexibility in formulating questions and adjusting the interview focus on the fly. Individual sessions also obviate the need to reassemble the entire jury at the same time. On the other hand, this method can be quite expensive, as many person hours are needed to conduct the actual interviews. This is probably the method most likely to yield "secrets" about the jury deliberations. That is, a juror is most likely to confide in the interviewer in the context of a private face-to-face interview.

Who should do it?

The final question to be resolved is whether you should conduct the interviews yourself or hire a consultant to do it. A large firm might find it cost-effective to develop and administer interviews in-house, but most attorneys would benefit from hiring a trial consulting firm to design, administer, code and analyze post-verdict interviews.

The less a lawyer is interested in the long-term value of the data collected (caring only about what worked and didn't in the present case), the more of this preparation and analysis she can perform herself. Jurors might be reluctant to make negative comments about trial strategy or presentation style if the trial attorney is conducting the interview herself. If you are uncomfortable with the expense of hiring a consultant to conduct your post-verdict interviews, you might consider asking another attorney in your firm to conduct them for you.