



Insights from Trial Analysts: Sampling Issues in Jury Research

Our jury research and consulting practice takes us to many different venues across the county. Regardless of the trial venue, our principal goal in conducting jury research is to sample research respondents who will provide an excellent match to the important characteristics of the likely jury panel. This paper describes three considerations - **Venue Analysis**, **Sample Size**, and **Surrogate Research Venues** - that routinely factor into the development of our sampling designs. These issues are discussed in an effort to enhance your understanding of the sampling process and recommendations are provided to increase the validity of your focus group and mock trial research projects.

Venue Analysis

A detailed understanding of the likely jury panel should be the foundation for developing case themes and damages arguments. Without a comprehensive venue analysis, it is difficult to tailor case themes to the personal experiences and relevant attitudes of the jury. A venue analysis also establishes the framework for sampling jury research participants. Without a thorough understanding of the important characteristics of the venire, it is impossible to obtain a rep-

resentative sample of respondents for focus group and mock trial research.

Informal assessments of the trial venue often begin with a consideration of the personal experiences of consultants and attorneys in the relevant venue. Although these experiences are critical to consider, they usually reflect the characteristics of jurors in the most recent trial, which may not be representative of the entire venire, or more important, the next jury panel. Thus, an objective venue analysis is a necessary supplement to the personal knowledge and experiences of the trial team.

Too often, objective venue analyses are limited to a cursory examination of demographic statistics that provide an inadequate assessment of jurors' abilities to process information and their motives in forming judgments about witnesses and evidence in the case. In this regard, a formal venue analysis should describe not only demographic characteristics, but also the employment experiences, economic conditions, and relevant social and political values that comprise the fabric of the community.

The limitations of a cursory examination of demographic statistics are revealed in an examination of two federal venues in Texas - the Southern District of Texas Houston Division and the Northern District of Texas Dallas Division. A review of demo-

graphic data leads one to conclude that Houston and Dallas Divisions are nearly identical.

Demographic Characteristic	Dallas Division	Houston Division
Ethnicity		
White	50.1%	47.0%
Hispanic	26.8%	29.0%
African American	18.4%	17.7%
American Indian	1.0%	0.8%
Asian	3.7%	5.5%
Education		
H.S. Graduate	75.4%	76.0%
College Graduate	25.1%	27.3%
Median Income	\$43,738	\$44,053
Median Age	31.7	31.5
Gender		
Females	50.1%	50.1%
Males	49.9%	49.9%
Unemployment	6.0%	5.3%

However, one *truism* that most Texas lawyers hold is that Dallas and Houston juries are different. And there is good reason to believe that important differences exist between these two venues. For example, there are important employment differences. The Dallas Division has one of the country's largest concentrations of telecommunications and computer



technology companies. The venue is also the site of a Naval Air Station and world headquarters for the U.S. Army and Air Force Exchange Service. These installations provide jobs for approximately 9,000 active military personnel whose dependents are eligible for jury service. Defense contractor Raytheon Company also has a significant presence in the venue.

In contrast to the Dallas Division, jurors in the Houston Division are more likely to be employed in blue-collar occupations, particularly the process industries that involve the refining and transportation of raw materials along the ship channel. Moreover, the demise of the energy trading business and the collapse of Enron and Arthur Andersen rocked the local economy and heightened the cynicism that was already prevalent among jurors in the division before those scandals occurred.

The important question in any venue analysis is how employment, educational, social, and political experiences of residents in the venue will affect the ability and motivation of jurors to process information and form judgments about the credibility of witness testimony. The answer to this question is not found in a cursory overview of demographic statistics, but rather in a more thorough understanding of the experiences of jurors in the community where the trial will be held.

Trial Analysts' Recommendation: Ask your trial consultant to develop a written, detailed analysis that will help familiarize you and your client with the important characteristics of a typical jury panel in the trial venue. In the early stages of case theme development, discuss the implications of the venue analysis on the identification of themes and issues that will be most easily understood and recalled by jurors during deliberations.

Sample Size

An effective venue analysis provides the foundation for developing the sampling procedures for focus group and mock trial research. One of the most important considerations in the sampling process is determining the size of the research sample.

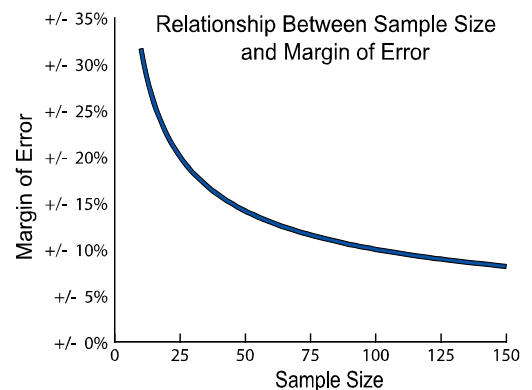
Most jury consultants accept the proposition that when survey research methods are employed to conduct a community attitude survey, the sample size should be relatively large (i.e., 200 to 400 people). However, there is considerable variation in the size of research samples employed in focus group and mock trial research. While the argument can always be made that the qualitative nature of the research enables consultants to draw meaningful conclusions with very small

numbers of research participants, larger samples can yield the same qualitative insights coupled with quantitative conclusions that can be held with much greater confidence and generalized to the trial venue.

We know of mock trials that have been conducted with as few as 10 to 12 respondents. More often, mock trials are limited to a sample of 24 respondents who are then assigned to two or three juries for deliberations. However, samples this small create important limitations for lawyers and clients who rely on the findings to assess the effectiveness of case themes, the probability of success, and likely damage awards.

What is the benefit of a larger sample? In a nutshell, a larger sample reduces the margin of error and enhances the precision of your findings.

The figure below depicts the relationship between sample size and the margin of error in the estimates.





To illustrate this relationship, consider a case in which mock jurors are asked to make individual judgments about comparative negligence for an accident or environmental problem among several parties and they assign an average of 50 percent of the comparative negligence for an event to your client.

If your sample included just 10 respondents, the margin of error would be +/- 31 percent. That is, the most precise estimate you could offer would be that the average for the trial venue would be somewhere between 19 percent and 81 percent of the comparative negligence being assigned to your client! Obviously, that result is less than satisfying and probably not worth the time and expense of conducting the research.

Assuming a more common sample size of 25 respondents for a two-jury mock trial, the margin of error would be +/- 20 percent. In other words, if 25 respondents assigned your client 50 percent of the combined negligence, then you could conclude that the average for the entire venue would be somewhere between 30 percent and 70 percent. However, if you increase the sample size to 50 respondents, the margin of error is reduced to +/- 14 percent. Thus, increasing the sample size from 25 to 50 respondents reduces the margin of error by 30 percent.

As you can see in the figure, there is a point of diminishing returns. The largest reductions in sampling error occur as you increase the sample size to about 45 or 50 respondents. Beyond that point, incre-

mental increases in sample size produce smaller reductions in the margin of error. Consequently, we typically conduct mock trial and focus group projects with samples of 45 to 50 respondents. If we are engaged in a large matter we may recommend conducting two research sessions with a total of 90 respondents, which will reduce the margin of error to +/- 10 percent.

With this in mind, why would anyone recommend a research project with only 25 respondents? Of course, one important reason is cost. The cost of respondents for a full-day mock trial may exceed \$300 per respondent (including recruitment, compensation of respondents, and food and refreshments). However, the cost of a larger sample should be considered in the context of the time spent by attorneys in preparation and the fees paid to the jury consultant. When these factors are considered, the marginal cost of a larger research sample is justified by the increased precision of the research findings.

A second reason why small samples are used in jury research is tied to the limitations of the research facilities where the projects are conducted. The two-panel mock trial with 24 respondents has evolved from the use of market research facilities that are simply too small to accommodate larger groups. Although it is much more convenient (though generally not less costly) for jury consultants to conduct research at market research facilities with one-way mirrors, these facilities often have severe space limitations for our purposes. We routinely conduct our research projects

in hotel facilities that have ample space for a larger sample, more deliberation groups, and a central observation room where the lawyers and clients can view the proceedings. Although the cost of a larger sample is an important consideration, the limitations of the research facility and convenience for the jury consultant should not be determining factors in the research design and sample size.

***Trial Analysts' Recommendation:** Give strong consideration to using larger samples in your mock trial and focus group research. The cost of increasing your research sample from 25 to 45 respondents will be offset by the enhanced precision in the estimates of the verdict preferences and damage awards. Most important, do not let limitations of the research facility dictate the size of the research sample.*

Surrogate Research Venues

One issue that frequently arises is whether the research should be conducted in the trial venue or whether a surrogate location should be used. Two prominent concerns are whether the research will have any effect on the likely jury panel and whether there is any risk of exposure to the media or opposing counsel if the research is conducted in the venue. Obviously, pre-trial media publicity along with the size and length of the research project add to these concerns.



If the research is conducted in a venue with a large population, then the statistical probability that a prospective juror will have been exposed to the research project is extremely remote. However, we conducted a jury research project in Corpus Christi, Texas several years ago only to find that when the case went to trial many months later, the spouse of one of our research participants was on the jury panel. With more than 275,000 residents in Corpus Christi at that time, the probability of this occurrence was extremely small, but the possibility always exists.

One rule-of-thumb we use is to consider a surrogate research location any time the population in the venue is less than 150,000. However, concerns about publicity and exposure of the research may warrant greater caution, even in venues with large populations.

The challenge with conducting research in a surrogate location is matching the characteristics of the research sample in one venue to the characteristics of a likely jury panel in another venue. While it is generally straight forward to replicate the basic demographic characteristics, it is more difficult to match the employment experiences and social and political values of the surrogate and trial venues.

We are often surprised to find clients who have conducted jury research in their “home venue” out of convenience. For example, an attorney from Dallas who has a case pending in Houston may be persuaded to conduct the research in Dallas, using a surrogate sample matched to the demographic characteristics of Houston because it is more convenient. However,

this convenience comes at a cost. As we discussed earlier, there are important differences between the two venues and replicating the attitudes and experiences of a Houston jury panel by sampling respondents from Dallas is much easier said than done.

Trial Analysts’ Recommendation: *Surrogate research locations should be given serious consideration when there is a legitimate risk of exposure, pre-trial publicity, or affecting the jury pool. However, the use of a surrogate research site should not be a matter of convenience.*

Summary

Jury research can provide valuable insights about the effectiveness of case themes and perceptions of key witnesses, as well as critical assessments of the liability and damages issues in a case. However, the validity of the research findings is dependent on the quality and size of the sample used to generate those findings. Although decisions about sampling and research design are generally the purview of the jury consultant, lawyers who are knowledgeable about the essential factors that affect these decisions can be more informed consumers of jury consulting services. In this regard, we summarize the following recommendations:

- **Have your jury consultant develop a detailed venue analysis that can be used for developing case themes and identifying an appropriate research sample.**
- **Conduct research with larger samples. Do not let the limitations of a research facility determine the size of the research sample.**
- **Conduct research in surrogate venues when it is necessary, not merely convenient, to do so.**

TRIAL ANALYSTS INCORPORATED

Please feel free to share this paper with your colleagues and clients. Please call us if we can be of assistance on a case.

James B. Stiff, Ph.D.
President, Trial Analysts

Dallas Office:
3015 State Street, Suite 119
Dallas, Texas 75204
214-953-3903

College Station Office:
3015 Coronado Drive
College Station, Texas 77845
979-696-6709

jstiff@trialanalysts.com
www.trialanalysts.com

