

TEN KEY QUESTIONS: *Evaluating the Quality of Mock Trial Research¹*

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There is no doubt that the use of mock trial research has increased dramatically. Clients use research to assess liability, causation, damages, and allocation of responsibility. In addition, research is used to assess settlement value, inform the client about the strengths and risks inherent in a case, and to prepare for the actual trial (i.e., testing the case theory when the stakes are low and when adjustments to strategy can still be made).

It is important to recognize that research projects come in all shapes and sizes and that not all are created equal. This article offers *Ten Key Questions* to help you assess the quality of mock trial research. It is essential to remember that the quality of the findings—the output—is wholly dependent upon the quality of the methodological choices—the inputs.

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Q1: *What is the sample size of the research?*

In short, sample size is key to determining how much weight to ascribe to research results. A larger sample size increases the *confidence* that the data accurately reflects the strengths and weaknesses of the case, and serves as a *control* to make sure particular findings are not a product of atypical jurors or panels. The best research findings are derived from testing the case with three or more panels comprised of eight to twelve jurors each. Data from one, or even two panels should be interpreted with caution since the panel's particular characteristics may have been the primary cause of the outcome.

Q2: *How were the participants recruited?*

Randomized recruiting methods, such as random digit dialing (*RDD*), result in a more *representative* sample than other methods. *RDD* sampling involves computer-generated lists of random phone numbers from a specific geographical area, which allows optimum coverage of the venue and includes people that are unattainable in list-based sampling. Not all recruitment is conducted this way.

Widespread methods of recruitment include obtaining participants through newspapers, or Internet ads, or from market research databases. These methods are particularly vulnerable to *self-selection bias*, which is the concept that participants who voluntarily respond to ads have different characteristics than the population as a

whole. Additionally, reusing participants can degrade the quality of the sample. As individuals gain experience as research participants, they tend to develop opinions about what a researcher wants from them and how a “proper” participant should behave. They may say things they believe the researcher wants to hear to increase their chances of being used in later projects. Ultimately, these sampling limitations lead to results that are *less generalizable* to the population of interest.

Q3: *How are the participants screened or qualified?*

At a minimum, research participants should be *screened* to ensure they are

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qualified to serve as jurors in the trial venue. Participants who would be obvious cause challenges should be excluded. Mock jurors should mirror the jury pool in terms of age, ethnicity, sex, education, and other objective indicators. Again, the goal of meaningful research is to have results that come from people who are *representative* of the jury pool. For this reason, the most accurate results come from projects fielded on weekends as this increases the chance that employed members of the jury pool are included in the research.

Q4: How is the case presented to participants?

Attorney presentations, whether live or videotaped, are effective ways to present case facts to participants. However, other methods (e.g., facilitator-read scripts) can be useful, depending on the goals of the research. Presentations should be more argumentative than most opening statements and should explicitly argue the appropriate application of jury instructions to the verdict form questions.

Q5: Are the presentations balanced?

Ensuring balanced presentations is essential to a good and reliable test. Beware of opponents who may, either consciously or unconsciously, be engineering particular results to use in settlement. Questions germane to the issue of balance include:

- Is the evidence shown to the participants the most important evidence, and is it evidence that will actually make it through *motions in limine*?
- Were actual witnesses used (as opposed to actors)? If so, how were the witnesses represented?
- Since video depositions are a common stimuli for jury research, are both good and bad portions of depositions included?
- Are the presenters equally experienced, skilled, or knowledgeable?

Q6: Is the case presentation identical for all groups?

Case presentation should be identical for all groups if the findings are to be *reliable*. The best way to ensure identical presentations is either to record the presentations in advance, or to have all participants simultaneously view a live presentation. You want to make sure that particular findings are not the result of delivery *variables* rather than the essence of the case facts, theories, and themes. If the goal is to test alternative case strategies (e.g., to assess the impact on damages of admitting liability versus disputing liability), then it is important to test each approach on multiple jury panels.

Q7: Is the data derived from deliberation or discussion?

A facilitator can have substantial influence on the conclusions of a group. Leading questions, actively engaging or arguing with participants, or reframing or paraphrasing testimony or evidence can influence the research findings. If the goal is to understand how a jury will likely assess and evaluate two opposing case theories in light of the evidence, themes, and jury instructions, it is best to let them deliberate for a good deal of time unimpeded by the facilitators.

Q8: Do the participants know which party is conducting the research?

Quality research takes care to prevent participants from discovering which party is conducting and funding the research. If the research participants know who they are working for, the “good subject” *phenomenon*—the phenomenon of research participants attempting to give the answers they think the researcher wants to hear—could influence the outcome.

Q9: Who conducts the research?

Quality of *insight* and *execution* can vary greatly between practitioners. Most trial consultants have advanced degrees in social sciences (e.g., psychology or communication). There are certainly those without advanced degrees who can offer exceptional service; however, quality of findings may depend

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CONQUERING THE INVASION OF THE BULLET POINT

You've all been there – a boardroom presentation, lunchtime CLE, keynote speech at an awards banquet. The lights go dim, the screen comes down, and here it comes – the predictable march of the bullet points. You hope for just one slide with visual interest – something to grab and hold your attention. But alas, you're inundated with bullet point after bullet point after bullet point.

Microsoft Office PowerPoint® has become one of the most user-friendly visual presentation tools on the market. The problem is that, more times than not, PowerPoint® is not used as a visual tool – it's used as speakers' notes. Slides have replaced the memory prompting 3x5 note cards we all used in our college speech classes. This wouldn't be so bad if the bullet-point approach to speechmaking didn't bore audiences to tears.

Problems with PowerPoint

1. Audience frustration: Audiences have become so frustrated by PowerPoint presentations that it is not uncommon for someone to quietly slip out of a meeting knowing that they can just request the slides later. In today's time-crunched business world, many people would rather read the slides on their own time than sit through a lengthy presentation.

2. Text is verbal, not visual communication: Let's face it, no matter how pretty your background is, words on a slide are simply that – words. Making your bullet points fly in from the right or fade in from the back does not render your presentation “visual.” Additionally, words (even if taken to the fourth bullet level) are not visual communication.

3. Bullet points are inconsistent with audience-centered speaking: Text, no matter how dramatically displayed, actually impedes your effectiveness as a speaker. Dynamism is a component of credibility, and entertainment is crucial to an effective speech. Text followed by more text is counterproductive to those needs. Bullet points inhibit your natural style because of the tendency to read the content on the screen. Essentially, your slide presentation becomes an inferior alternative to you.

Creating a Visual Aid, Not a Verbal Replacement

Admit it – much of the time the creation of your

“visual” presentation begins by taking your outline and applying it to a PowerPoint design template. Don't. When you are ready to create your presentation, remember that visual aids should be just that – “visual.” PowerPoint has many untapped design capabilities that allow you to create a powerful, visual supplement to your message. Your goal should be to create a presentation that is interesting to your audience, organizes your information, and makes your presentation memorable. The following are some guidelines to help you do this.

1. Limit text: It should be obvious by now that you should reduce the amount of text on your slides. Richard Mayer's book *Multimedia Learning* theorizes that, “People understand a multimedia explanation better when the words are presented as verbal narration alone, instead of both verbally and as on-screen text.” Reading slides not only inhibits your audiences' ability to process and retain your information, it also reduces your ability to express confidence, be yourself, and connect with your audience.

2. Use photographs to provoke interest: Think about how a simple theme-oriented photograph can be a backdrop to your message. For example, in our Gender Communication presentation we show a picture of a woman walking a tightrope in her business suit. The title of the slide is “Walking a Thin Line.” Using the conventional approach we could list the following bullet-points:

- Women must make a special effort to establish credibility.
- Women who adopt a male presentation style of drama are generally perceived negatively by the jury.
- Women are in a double bind.

Instead, we let the picture capture attention while we educate with our verbal message. Hundreds of free downloadable photos are available at <http://office.microsoft.com/en-us/clipart/default.aspx>.

3. Use the notes pages function of PowerPoint. Cliff Atkinson's book *Beyond Bullet Points* suggests creating slides by using the notes page view. Doing this allows you to keep text hidden (but still available for your use while speaking) as opposed to the slide area (the part the

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on the researcher's understanding of the nature of communication, advocacy, social science, small group research, and juror behavior. If the opposing party did the research themselves, then it is difficult to know whether they executed the design and interpreted the findings with the benefit of an informed understanding about the nature of human communication, argument, and small group dynamics.

Q10: *How are the results of the research presented?*

A good report should provide enough information to allow you to judge the quality of the research methodology. At a minimum, it should include sample size, participant recruitment procedures, an overview of how the project was conducted, and an explanation of the data analysis. If any of these are missing, it could be for a reason. Collecting and looking at raw data can be valuable; assigning others to take care of logistics can be helpful; but the bottom line is that meaningful data comes from well-conducted research, well-analyzed data, informed interpretation and assessments, and practical strategy recommendations based on the principles of human communication and social psychology.

Conclusion

In short, the quality of your research findings depends upon the quality of the methodology and the quality of the assessment and interpretation of those findings. Whether you are considering doing research for your client or assessing the findings of opposing counsel's research, asking these *Ten Key Questions* provides a good starting point for making informed decisions about conducting mock trial research and informed evaluations of the jury research findings.

¹In August 2007, an extended version of this article was published in *DRI's For the Defense*. For a copy of the original, contact Tsongas. Additionally, if your firm is interested, Tsongas conducts a seminar on this topic.

(Conquering the Invasion of the Bullet Points continued)

audience sees). Your slide should be mostly visual with a few key words.

4. **Keep clip art in the same "family."** If you use clip art on your slides, try to choose art within the same style family. You should be able to spot inconsistent art by simply looking at all of your clips at once. But if you are visually challenged, Microsoft clip art on-line has a simple tool you can use. When you right click on a picture in the clip art gallery, you will find a style "family" number that will link you to the art within that "family." Having said that, don't be afraid to use variety. Consistency is important, but it is not necessary that every slide use the same design template. For example, use a different background color to separate "chapters" or sections of your presentation.

5. **Buy (and read) Cliff Atkinson's *Beyond Bullet Points: Using Microsoft® PowerPoint® to create presentations that inform, motivate, and inspire* (Microsoft Press, 2005).** Atkinson's book is a must-read for anyone who uses PowerPoint. *Beyond Bullet Points* provides a step-by-step process for creating high-impact, engaging, and memorable presentations.

For help creating a presentation or for feedback on one you have created, contact Laura Dominic at laura.dominic@tsongas.com.

Beyond Bullet Points: Using Microsoft® PowerPoint® to create presentations that inform, motivate, and inspire. Atkinson, Cliff. (Microsoft Press, 2005).

Multimedia Learning. Mayer, Richard E. (Cambridge University Press, 2001).

