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Jury research

Talk to jurors post-verdict to learn, improve, and evaluate the verdict


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The lawyer sat waiting, the thud-thud-thud of adrenaline-addled blood pounding into the lawyer's brain while the lawyer waited for the judge to review the verdict before handing it back to the clerk to be read. The clerk read it, one side uplifted and the other dejected. "Would either side like the jury polled?" asked the judge. Both sides replied yes.

Jury poll

Those not in the business might think a verdict means the case is done. Far from it. A verdict is simply another inflection point in the case's trajectory, albeit a significant one. Someone will be unhappy with the verdict. The goal, following a verdict, is to learn as much as possible from the jury about the verdict. This allows one to work to protect it if one likes the outcome or review it for misconduct if one does not. The process starts with jury polling. After the verdict is read, any party can request that the jury be polled on each question. This helps one identify whether the verdict was unanimous or whether there are individuals who voted against a particular outcome. Create a polling chart before the verdict gets read with jurors on one axis and questions on the other. Then note the yes and no votes.

Polling can provide gut-check moments, like the time someone mis-remembered how he voted, resulting in an 8-4 vote on a question for a moment before he realized his mistake. Polling also highlights *very* upset jurors when jurors demonstrate through forceful responses that the outcome was not to those jurors' likings. Note these on the chart with circles or asterisks, as upset jurors are lynchpins for undoing verdicts.

Talk to them at court

After the verdict, most judges will allow the jury and counsel an opportunity to talk in the courtroom or the hallway. Win, lose, or draw, take this opportunity to learn about the jury's thought process. Before the conversation occurs, make sure one's team knows how to approach it. Bring business cards. Some jurors will likely ask for them. Bring a notepad to jot down phone numbers and any critical points. Tell the client to hang back unless jurors seek the client out. Some won't be as candid with the client standing right there.

Once the conversations start, ask the foreperson (and as many others as are willing) for a phone number and permission to call to conduct a more detailed debrief later. One team member should be tasked with immediately seeking out any dissenters. Assuming the dissenters have voted against one's client, make sure to remind the dissenters about how one appreciates brutal honesty and how we want to learn from the case. The dissenters will provide the best information about where the opposing side may try to go with a Motion for New Trial as well as how to improve jury selection and evidence presentation in future cases.

Get permission to follow up in detail later rather than trying to get answers to everything in the thrum. If one likes the verdict, let the jurors know the other side may contact them and ask detailed questions, and that those detailed questions are likely aimed at finding ways to undo what the jury worked so hard to achieve. One can let the jurors know they are not obligated to speak to the other side, that the other side's investigators can get persistent, and that one is happy to participate in any call, video conference, or discussion should the jurors want to discuss the case in detail.

Post-verdict interviews

Reach out to any jurors who will engage and conduct post-verdict interviews. If one was unable to get contact information after the verdict was read, consider using one's detailed notes from jury selection to track down jurors to conduct detailed interviews. One can also consider having one's jury consultant conduct the interviews in a scripted way to get the most detail possible for future cases. This can also help correlate what one thought was a good (or bad) juror with how the juror voted. The interview should also cover what worked, what didn't, and how we can be better in future cases. These interviews are also where one tends to learn about potential juror misconduct. To the extent one feels the verdict was wrong, these interviews can help provide the information necessary for juror declarations to support a Motion for New Trial. Finally, consider adding past jurors to one's marketing outreach efforts, with their permission. Assuming one put on a solid effort, jurors can become wonderful referral sources.

Outro

Back to our lawyer getting the verdict. After the verdict everyone went into the hall. Jurors told folks what they found effective. They also listed factors they did not find persuasive. Always elucidating, as what we think is most impactful is not always the make-or-break issue we thought it to be. Useful information for the next trial.

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