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A DIY Approach to Mock Juror Focus Groups

By Ross Todd

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Perhaps I spend too much of my time talking to Am Law 200 litigators.

When I hear the words “mock jury” and “focus group,” I start picturing hotel conference rooms, expensive video monitoring equipment, and pricey teams of jury consultants standing behind two-way mirrors.

But over the past 10 years or so, **Stuart Ratzan**, founding partner of South Florida plaintiffs firm **Ratzan Weissman & Boldt**, has developed a much more streamlined approach to gathering input from mock jurors about the key issues that could make or break his clients’ cases. The firm generally brings in seven to 12 residents from Miami-Dade and Broward Counties, feeds them and spends a few hours with them getting feedback on key elements of their cases—be it the overall theme, the opening statement, or the credibility of certain witnesses and their stories. The Litigation Daily caught up with Ratzan earlier this week to find out what his team of five lawyers and one of counsel gets out of what he calls “intensive adversarial focus groups.”



Courtesy photo

Stuart Ratzan, founding partner of Ratzan Weissman & Boldt in Miami.

“It was about 10 years ago that we started doing them routinely in our cases, and not just once but maybe a dozen different times,” Ratzan said. “We try to get a pattern—a more reliable data set of information than just one outlier.”

The focus groups become so integral to the firm’s approach that a room in its Coconut Grove office has been designed to accommodate them. Beyond the concrete costs of providing breakfast, lunch and compensation to the mock jurors for a few hours of their time, Ratzan says the process takes a lot of the firm’s “time and thought and energy.”

What follows has been edited for length and clarity.

Litigation Daily: How has the insight you've gained from these mock experiences changed your approach, be it to jury presentation, settlement talks or even what you look at when you take on a new client or new case?

So they definitely help us assess the true value of a given case. When we talk about settlement, we are much more sure of ourselves and what we think about the case than before. Some cases that we thought were so valuable and important before are not. Some that we didn't are. And some are the same as we thought. So it depends on the case.

But what we learned is that as lawyers our ability to estimate or assess a case is limited. We can mislead ourselves into what we think a case is really all about. And so what we've done with this is figure out that the real answer is with the jurors—the people that are likely to be on juries. And when they tell us what a case is about, what has meaning, and what is important about the case, then we learn how to believe that instead of putting our own egos or misguided understanding in front of that.

As lawyers we have a different view of the world and a different ability to appreciate a case than actual jurors. Our lens and our worldview is just different—corrupted, if you want to say that word. Words are changed by the fact that we went to law school and we've been in our heads and books of law, and statutes. We just look at the world a little bit differently, even though we live in the exact same one.



Courtesy photo

Plaintiffs firm Ratzan Weissman & Boldt designed a room in their Coconut Grove office to conduct focus groups and mock juror research.

The reason we do this is because we know that our lens is skewed and we need the lens of actual jurors. Once we get that, we become much more sure of what our case is about, what the value is of that case, what's important in that case. And so that changes everything. It changes how we negotiate a case. It changes how we try a case once we know what's important and what's not. It changes the entire approach that we have.

Well, what is your method for pulling together these focus groups? How do you find the folks who are able to do it, willing to

do it, and who fit the right demographics that you're looking for?

We have a variety of databases, social media sites, job posting sites. There are all kinds of ways today that you can reach people, and we use them all. Then we look at their application and invite them in based on what we get.

Can you talk about examples from this experience that have changed the way that you approached a particular issue?

It happens all the time. We'll put testimony on from a given witness in a case. Let's say it's a nurse and a doctor and they disagree about something. Or it's a construction site foreperson who's telling a story about what he says he did.

In the nurse/doctor example we don't know who the jury is going to believe. So we test the testimony and we put it through 12 different focus groups. Every single time in that particular case, the jury believed the nurse, not the doctor. So we knew going into trials that we didn't have to do too much. We just let the

testimony play out. And the jury would likely believe the nurse, not the doctor which helps us to not overstate anything. It helps us to be confident in what's believable and what's not. And we've approached the proof and the argument based on what we already understand the jury is going to probably do, which is to believe the nurse.

In the case of the construction foreperson who was telling this long convoluted story about where he went and why he wasn't present at the moment of the catastrophe, his story was his story. He gave it under oath. Not a single juror believed him. No one believed him. And so when we went to trial, we knew we didn't have to attack him. We just elicited testimony, let him tell his story, and the jury would probably not believe it. And they didn't.

Without our focus groups, our strategy would be different. Because we have the insight from a bunch of different focus groups of mock jurors, we already know that the testimony is either credible or not credible from a particular witness.