

Jury Workshop Helps Maximize Case Settlement

Part 1:

Introduction

As their court date rapidly approached, Attorney Bob Danzi¹ of the Law Office of Robert F. Danzi, in Westbury, New York pondered whether he should run a traditional mock trial or use a new online mock jury service to examine strengths and weaknesses of his client's case in preparation for trial.

Danzi's client was a young woman who has spent a lifetime wheelchair-bound with severe physical limitations.

Her story goes like this:

Once upon a time

At noontime, on July 31st, 1993, 25 year old Karen Rhodes, 29 weeks pregnant, began having contractions. At first, she thought they would pass. At 4:10pm, an ambulance was called and at 5:10pm, she was brought into the emergency room at XXXX Hospital. Over the next 1 hour and 38 min. she was examined **once** and was placed to the side. At 6:48pm, she delivered her first child, a 2lb 9oz girl named Arielle. Arielle had only a minimal heart rate, no muscle tone, irregular respirations and was blue.

And every day

Life is a struggle for Arielle and her mom, Karen. But they have managed to get by. From birth to the present and for the rest of her life, Arielle's **right arm and both legs** are severely contracted and useless. She cannot use her **right arm, legs, right hand** or fingers. She is wheelchair bound and relies on others for even her most personal care.

But one day

Karen started having pain. She went to the doctor. **An investigation of her condition led to the discovery** that the XXXX Hospital had covered up mistakes made at the time of Arielle's birth. The medical record was altered by someone on behalf of the hospital to hide the fact that Karen went untreated before delivery, thus depriving Arielle of oxygen before she was born, **exposing her fragile brain to the trauma of a breach vaginal birth**. The medical record was altered to make it appear that the baby was sick because she got it from her mother who was sick when she came into the hospital.

And because of this

Arielle's thin skull was forced to withstand the compressive forces that are exerted while passing **inverted** through the smallest part of Karen's pelvis, thus rupturing the delicate vessels in Arielle's brain, and thus causing a hemorrhage of blood resulting in the destruction of brain tissue.

And because of this

All of the muscles in Arielle's legs and in her right arm contract into knots, rendering them useless.

And because of this

Arielle's left arm, hand and fingers are all she can control.

And because of that

Arielle lives with her mother who alone has to provide care for her on a daily basis. There is one else to help.

Her motorized wheelchair needs repair, so she sits alone with her mother for days on end, waiting for the paper work to be done so that she can get the repair. She dreams of freedom. She dreams of love. She dreams the dreams of every young woman.

Until finally

Karen asks lawyers to investigate Arielle's situation and the truth is uncovered. The doctors and nurses failed to discover that Arielle was in a breach position, did not perform a Cesarean section, and allowed Karen to deliver vaginally causing Arielle's brain injury; and then they tried to cover it up. It almost worked. A law suit for medical negligence was brought.

So that forevermore

Arielle will have the ability to be independent of her mother, to be able to care for herself, to be free to live on her own, and go to school and pursue her dreams.

Why are we here?

Mr. Danzi wanted passionately to fix what could be fixed for his client, help what could be helped, and make up for what could neither be helped nor fixed.²

¹ Bob Danzi is currently President-Elect of the New York Trial Lawyer's Association www.nystla.org

² Story spine format courtesy of Stanley Brodsky, *Principles and Practice of Trial Consultation* (2009 Guilford Press)

What would the defense counter with?

Possibly the following:

Once upon a time

At 5:10pm, 25 year old Karen Rhodes, 29 weeks pregnant, began having contractions and was brought into the emergency room at XXXX Hospital.

She had a fever and elevated white blood cells which can be caused by infection.

Over the next 1 hour and 38 min. she was examined in accordance with XXXX Hospital policy.

At 6:48pm, she delivered her first child, a 2lb 3oz little girl named Arielle. Arielle had only a minimal heart rate, no muscle tone, irregular respirations and was blue.

Arielle became septic within several days of birth which could have been a contributing factor in the development of the brain injury that caused the paralysis.

And every day

The doctors and nurses at the hospital took very special care of Arielle who was so sick the doctors and nurses thought she was going to die.

But one day

Arielle's fever broke and then the doctors knew that she was going to live.

And because of this

Arielle was a born at 29 weeks, a premature baby. The kind of brain injury she suffered can occur from prematurity alone.

The brain injury she suffered can also be caused by infection in a baby 29 weeks old.

No one who actually treated Karen or Arielle is available to testify.

None of the doctors have given any testimony about what happened.

The delivering doctor is dead.

And because of that

The XXXX Hospital that saved Arielle's life has no one to come to its defense after heroically caring

for this tiny infected baby and, against all odds, saving her life.

Until finally

Almost 20 years later, this terribly injured young woman is trying to collect enormous sums of money from the Estate of this dead doctor and from this small inner city hospital that cares for a terribly under-served neighborhood in YYYY, NY.

So that forevermore

It will be known that the courageous doctors and nurses that worked tirelessly 24 hours a day for more than 2 months saved this girl's life and the thanks they get for the superb medical care they gave is to be brought into court and be charged with medical malpractice.

Why are we here?

We are here to clear the good name of Dr. Z, who is dead. He can't defend himself. We are here to stop the people from thinking they can win the lottery by suing for an unfortunate event that happened 20 years ago.

Bob Danzi believed that some type of pre-trial juror feedback would be beneficial given the complex facts and issues of his case. Medical malpractice cases like this can bring to life all the spectacle of *Law and Order* – what would the jury really think of his “story,” his “actors,” this “courtroom drama?”

Bob had experience running traditional mock trials for other cases and knew the efforts involved in securing a facility, a facilitator, a jury consultant, technical support, writing the attorney scripts, developing the visual presentation alongside his critical evidence, and obtaining mock jurors who would attend

in person. He also knew that the cost of such an event could run him upwards of \$75K and could take several weeks to put together. He had neither the time nor the money for this traditional mock trial method.

So, he decided instead to try a new online mock jury service – purportedly less expensive and time consuming yet fully capable of thoroughly providing raw juror data to inform his case strategies. He could find out what a jury from his venue really thought of his case from the comfort of his office for a fraction of the traditional price.

Part 2:

Online Mock Trial

Danzi contacted Connecticut-based Litigation Solutions, LLC for help. He had recently learned that they were developing Jury Workshop, an online mock trial and focus group service dedicated to helping their clients – attorneys like himself – evaluate their cases cost effectively. He has used their pre-trial and trial services for many of his complex and high profile cases over many years. He knew that he could rely on their extensive multi-media skills and courtroom experience. He was excited to give it a try.

Danzi initiated a Jury Poll and designated the state and county location from where he wanted to draw his online jurors.

The Jury Poll was offered to the Workshop's pre-screened and qualified jurors on a first-come, first-served basis.

The Jury Poll ran for 48 hours and responses were collected and posted to his online account at Jury Workshop. Results were displayed in dynamic and interactive reports, with options to filter the jurors' responses by selected demographics (e.g., age, gender, education, income, occupation, etc.). He also received a printed report of the online information.

Part 3:

The Jury Poll Design → Data

Danzi worked with Litigation Solutions' Jury Workshop team to construct his Jury Poll, ultimately settling upon 71 questions:

Part 1: Your opinions
Part 2: Your experiences
Part 3: Plaintiff's version of the case
Part 4: Defense's version of the case
Part 5: Questions about the case
Part 6: Questions about YOU
Part 7: Finish!

A carefully devised mashup of standard attitude scales³ was developed with questions targeting critical issues unique to Danzi's case.⁴

Because of the potential attribution of medical malpractice and the gravity of many facts in his case, a proposed question set was included to address underlying assumptions people may have about litigation and physicians, including how these assumption might influence how evidence is processed.

³ Many thanks to Stanley Brodsky, *Principles and Practice of Trial Consultation* (2009, Guilford Press) for sharing these scales, as well as his expertise and knowledge.

⁴ Examples include:

Q31. As you may have experienced in your life, when a conflict arises people involved often may have contributed some percentage of responsibility to the situation. In this case, please assign a percentage to each of the following people:

- The daughter, Arielle
- The mom, Karen
- The doctor who delivered Arielle (who is dead)
- The Emergency Room personnel
- The XXXX Hospital
- The person(s) who altered the medical records

Q39. If you were to learn that Arielle had to live in foster care when she was about 6 years old because Karen had difficulty caring for her, how would you feel? What would you think?

The Physician & Malpractice Scale in its entirety was embedded as Part 1 of the Jury Poll.⁵

Part 4:

What did the Data Reveal?

Mr. Danzi learned from the responses of his online jury that a real jury likely would have preexisting attitudes regarding where the responsibility of patients versus physicians lie, including perceptions of a physician's fallibility or not.

Next, a scale relating to individual juror's needs for cognition was included within the Jury Poll because of the tricky fact scenario Danzi faced in his case.⁶ He knew it would be helpful to learn what different types of thinkers thought and how deep the jurors would delve into his facts. What did the 'big picture' people think? What did the 'puzzle-solvers' think?

Interestingly, he learned that individuals (his jurors) with high NFC "like to process ideas deliberately ... even when the issues have little to do with them personally" and that they "like to think, to consider, and to deliberate."⁷ Low-NFC persons (jurors) typically "make

decisions quickly [] with minimal information."⁸

Brodsky suggests that both types of jurors can be good for attorneys depending upon their trial goals. He states that Low-NFC jurors could potentially be helpful when an attorney needs:

1. jurors who respond lastingly to first impressions
2. jurors who are emotional responders rather than rational arguers
3. jurors who prefer simple over complex issues.

The opposite can also be true, and Brodsky outlines how High-NFC jurors may be preferred if the attorney needs:

1. jurors who wait until they have heard all the evidence before making up their minds
2. jurors who see past emotional content and dramatic displays and flair by attorneys to get to the essential content
3. jurors who will stay with complex, conflicting and ambiguous evidence.

What else did Danzi learn? The Jury Poll results informed him of whether he had High or Low-NFC jurors. Given the unpredictable dimensions of his case involving a severely disabled baby-to young girl-to woman, a single mother who had struggled to raise her, a doctor who was dead, and a hospital staff that may have altered records, it was immensely

⁵ Physician's & Malpractice scale (Knowles, Cotter, & Herring, 1991) thanks again to Stanley Brodsky, *Principles and Practice of Trial Consultation* (2009, Guilford Press).

⁶ Need for Cognition (NFC) scale (Cacioppo & Petty, 1982; Cacioppo, Petty, & Kao, 1984) thanks again to Stanley Brodsky, *Principles and Practice of Trial Consultation* (2009, Guilford Press).

⁷ Ibid.

⁸ Ibid.

helpful to correlate juror feedback through the NFC lens.

Also included in the Jury Poll was a set of questions that would uncover juror empathy predispositions. It was important to identify whether individuals identified or not with the misfortune of others and how much. It was helpful to Danzi to identify whether jurors were more empathetic to Arielle and her mom or whether they affiliated psychologically with the doctor and/or the hospital. This final question set was adapted from the Perspective Taking and Empathetic Concern scales.⁹

Danzi discovered that the jurors in his judicial venue were markedly empathetic as a group. He found the information he received from his mock jury panel so compelling that it fueled settlement negotiations to a most satisfactory outcome for his client. Further, he avoided a lengthy, possibly risky, emotionally draining, and expensive trial for his client. He credits Jury Workshop and the Jury Poll for this time/cost efficiency savings and for a tremendous result for Arielle and her mom.

Part 5:

A Peek at the Results

Here are some examples of different types of questions and the results with all jurors responding:

⁹ Perspective Taking and Empathetic Concern scales from the Interpersonal Reactivity Index (IRI) (Davis, 1980, 1983) thanks again to Stanley Brodsky, *Principles and Practice of Trial Consultation* (2009, Guilford Press).

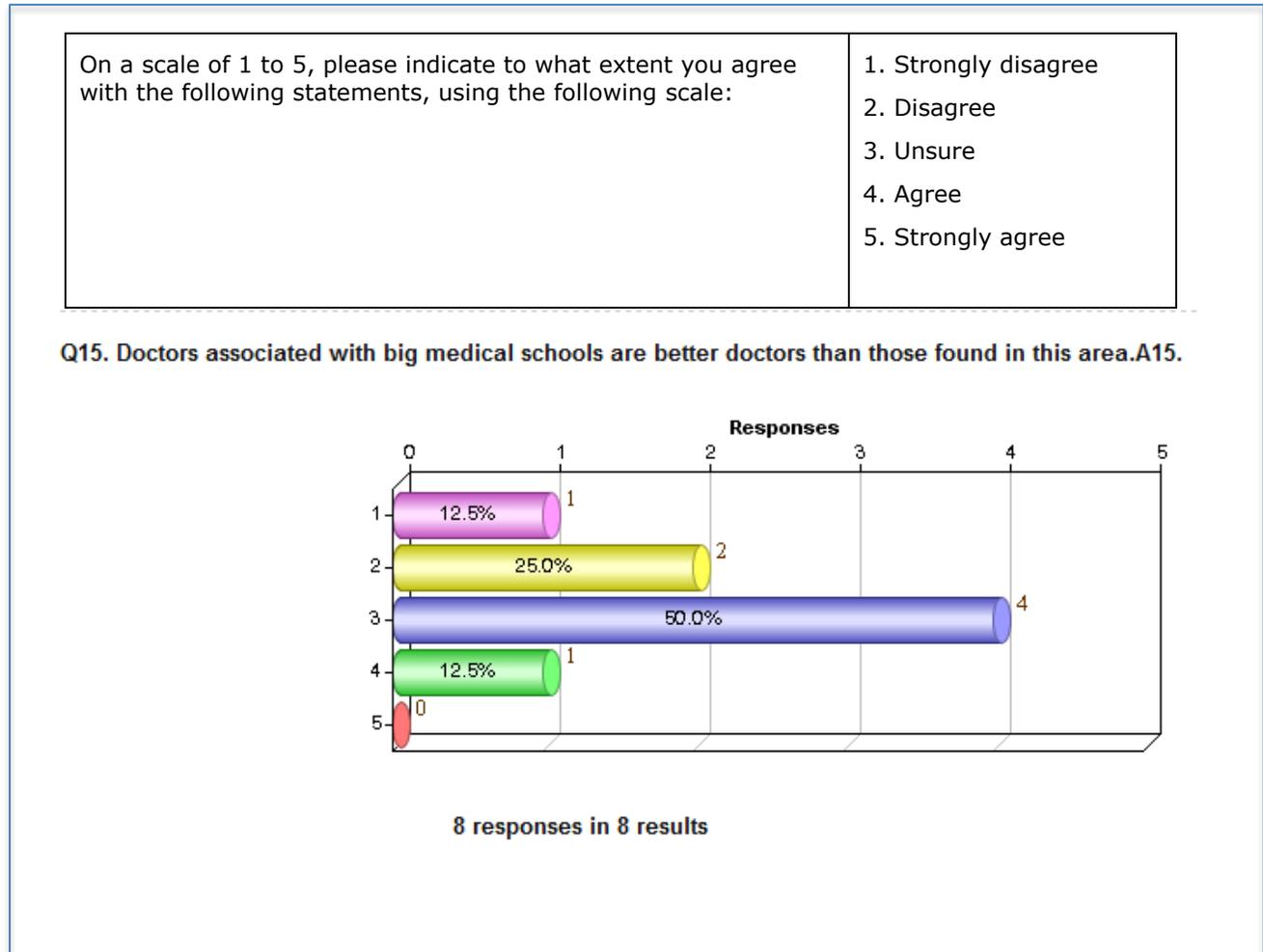
Jury Poll is an asynchronous online survey platform: whether from their mobile device or their desktop computer, attorneys or jury consultants initiate a survey to designated participants.

Survey responses are posted to an online account. The results are displayed in dynamic and interactive reports, with options to filter responses by individual juror and/or selected juror demographics.

Jury Pulse which is a recorded asynchronous analysis tool. Quickly upload video clips, photographs, documents, PowerPoint slides or audio clips, and receive recorded juror feedback, including the ability to instantly connect juror responses to their demographics.

Who are the jurors? The online jurors are pre-screened, pre-qualified, trained, paid participants in the online jury service. They reside throughout the United States and are profiled by various demographics, including location, age, gender, race, religion, political affiliation, income, employment, education, personality type, etc.

Example1: Scale with Question & Graphical Response:



Example2: Open-ended Question with Sample of Individual Text Responses:

Q28. Please explain why or why not you believe that Arielle deserves to be helped, including any ideas you have for how she could be helped.A28.

Reference #	Result
7594124	The hospital staff was negligent and covered up info
7594123	everyone deserves a fighting chance for life, proper care the hospital is at fault in some way
7594122	I am concerned that the mother was not examined more than once given the pregnancy situation. While the mother should not have waited so long to go to the hospital, the mother should have gotten more attentive care.

Example3: Question Requiring Percentage of Contributory Responsibility:

Q31. As you may have experienced in your life, when a conflict arises many people involved often may have contributed some percentage of responsibility to the situation. In this case, please assign a percentage to each of the following people:A31.

Result	Responses	Total	Percentage	Graph
The daughter, Arielle	7	0	0.0%	
The mom, Karen	7	45	5.6%	
The doctor who delivered Arielle (who is dead)	8	190	23.7%	
The Emergency Room personnel	8	180	22.5%	
The XXXX Hospital	8	185	23.1%	
The person(s) who altered the medical records of Arielle's birth	8	120	15.0%	
The people who knew that the medical records were altered and didn't speak up	8	80	10.0%	

8 responses in 8 results

Part 6:

Conclusion

In a follow-up interview Danzi was asked a number of questions about his experience using the online mock jury service to conduct this research. In comparison to his prior experiences, he rated Jury Workshop 4 out of 5 and was “satisfied.” He said that while it was not equivalent to running a traditional mock jury, that it was still very valuable. The one piece that was missing for him was that he was not able to interview the jurors.¹⁰

Mr. Danzi said it was likely he would complete another Jury Workshop and that he very likely would recommend it to his colleagues. He thought the value was exceptional – for those who are aware the costs of a traditional mock jury can run anywhere from 25K-100K+ so the price and subsequent results were a remarkable value. Given this cost efficiency, it would have been possible for Danzi to conduct multiple iterations of a Jury Poll and/or Jury Pulse to hone case strategies, witness approaches, planned use of evidence, settlement and damages analyses.

Most important for Danzi was that the information obtained from the Jury Poll was helpful in his settlement negotiations. He indicated that it changed his damages calculations. When asked, “[w]hat did you like about the Jury Workshop service?” Danzi

stated, “Portability. It was available on my iPad and phone so [it] was with me as I was negotiating the case. I was actually able to show select results to my adversary to counter his view on the percentage of fault he expected the jury to assign.”

Firm:

The Law Office of Robert F. Danzi, LLC
The Patient’s Advocate
900 Merchants Concourse, Suite 314
Westbury, NY 11590
(516) 228-4226
www.danzilaw.com

Practice Area:

Fighting for the rights of patients through Medical Malpractice and Personal Injury Litigation for the last 30 years.

Problem:

Need to conduct timely, cost effective and substantive research to capture feedback on complicated medical malpractice case before trial from venue-specific online mock jurors.

Implementation:

Conduct a Jury Poll containing 71 questions in 7 parts, including established sociologic scales.

Reports:

Interactive reports of juror feedback posted within 5 business days to online account with optional printed report.

Results:

Successful settlement negotiation due to juror insights and results of Jury Poll. “Strongly satisfied” (5 out of 5 rating) with Jury Workshop performance.

¹⁰ COMING SOON!