

MARKET SEGMENTATION WITHIN THE COURTROOM:  
AN EXTENSION OF THE SOCIAL MARKETING CONCEPT

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The concept of social marketing has received much research attention in the last decade with the marketing literature now reflecting this extended perspective (Hunt 1976). Examples abound where the application of the marketing concept and its methodologies have improved both the programs and the financial support of non-profit and public organizations.

In spite of our expanded marketing orientation, the market analysis of the legal system has been largely neglected. Darden, Darden, and Kiser (1981) reviewed the marketing literature and found little evidence that marketing concepts were in application. This problem is one of the lack of a market planning process within the legal system.

The market planning process as applied to the legal system is important by merit of its breadth of impact, ranging from the distribution of services to the planning of services to be offered. Legal markets must be defined and segmented, positioning strategies must be developed for the services offered, and effective pricing distribution and communications strategies must be developed for the targeted market segments.

The purpose of this paper is to create an awareness of the domain for marketing applications within the legal system. This domain extends from the marketing of legal services to the analysis and identification of attitudinal segments present within the jury.

In order to gain perspective, we must recognize that firms have long gained competitive advantage through the use of market planning and evaluation techniques. The application of marketing techniques to the evaluation of legal problems and strategies produces a similar advantage. The identification of jury segments that are favorable to a client provides a considerable advantage in directing jury selection, argument formation, and trial strategy.

The interface between market analysis and legal planning occurs at several distinct points in the strategic decision making process. The representativeness of the prospective jury, as evaluated through the perceptions held by the prospective jury, underly each of these strategic decisions. The specific decisions that may be influenced by such a market analysis include:

1. The decision to settle a case out of court prior to trial, where a pretrial analysis of the behavioral intention of prospective jury members will aid in making this decision.
2. The determination of the most effective way to question and evaluate prospective jurors during the process of selecting the jury. Effective questioning creates a least favorable jury through the process of selectively excusing unfavorable prospective jurors. Given a disposition

to excuse a prospective juror, counsel may pursue a line of questioning that demonstrates bias in the prospective juror and leads to the judge dismissing the juror through the issuing of a "challenge for cause". In the event that a challenge for cause is not supported by the court, one of a limited number of preemptive challenges may be issued, where the juror is excused at the discretion of counsel.

3. The determination of the trial strategy that is most advantageous to the case. The detailed understanding of attitudes held by the impaneled jury is a necessary prerequisite for developing and presenting arguments that are maximally persuasive, but not so extreme as to be rejected by the jury as untenable.

4. The evaluation of the decision to appeal given an unfavorable verdict. If the jury is sufficiently non-representative of the community, jury analysis may show that prima facie evidence of bias exists.

The legal precedents surrounding the jury representativeness issue provide a basis for recognizing the concept of a jury segment. This concept has been discussed and demonstrated using a survey of 1,000 prospective jurors to demonstrate an application of market analysis techniques.

The application of market segmentation methodologies is of key importance in making a series of strategic legal decisions that are faced by the business community. These decisions extend beyond the evaluation and selection of the jury, to include determining the trial strategy most likely to result in attitude change, and the evaluation of the post trial decision to appeal a court decision.

Broadening the application of segmentation methodologies as detailed above, leads to an inventory of attitude and behavioral predispositions held by each jury segment. Effectively used, this information base provides the necessary details to plan arguments, to plan points of emphasis, and to form a logical progression of the case arguments. The strength of this approach is in the indication of which attitudes can be most readily changed, and the degree of attitude change that can be expected.

The application of these techniques that enhance legal decision making has produced a string of acquittals and hung juries that would have occurred with no more than a .00004 probability by chance (this assumes a 50-50 probability of a given verdict on each case). Such results mean that the firm will increasingly be confronted by these methodologies, especially where significant monetary settlements or ideological issues are at stake.

The identification of this information through segmentation of a jury has been shown to lead to the monitoring and to some extent the control of the jury selection process in that the representativeness of the impaneled jury is also impacted, raising serious ethical considerations.

#### References

Darden, D.K., W.R. Darden, and G.E. Kiser (1981), "The Marketing of Legal Services," Journal of Marketing, Vol. 45 (Spring), 123-134.

Hunt, S.D., (1976), "The Nature and Scope of Marketing," Journal of Marketing, Vol. 40 (July), 17-28.