

## The Jury Selection Survey Teaching Notes

### *What Are the Relevant Facts?*

1. John's firm has accepted an engagement to conduct a telephone survey, and he has been assigned an important task on the project.
2. This assignment gives John the opportunity to work more independently, to have more responsibility, and to become involved in a project that is quite different from those he normally deals with.
3. The financial planner, if he in fact engaged in fraudulent activities, seriously affected the lives of many people.
4. John thinks the planner is probably guilty.
5. The use of surveys in the jury selection process is not illegal.
6. There is no time for John to engage in extensive deliberations about what to do.
7. Apparently John was not given the choice of accepting or rejecting the assignment, nor was he consulted about his feelings about working on such an assignment.
8. John voiced no objections about the project when he was given the assignment.

### *What Are the Ethical Issues?*

1. Should John participate in such a study if he feels "uncomfortable" about it?
2. Can John do an adequate job--that is, meet the marketing researcher's ethical code of providing accurate, objective data--if he feels that the financial planner is "probably guilty"?
3. Issues beyond John's personal feelings and apparent bias against the financial planner can be raised, specifically:
4. Should the marketing research firm engage in a project that may give the defense an advantage over the prosecution and could result in a potentially guilty person's being found innocent?
5. Should the survey data be made available to the prosecution attorneys?
6. Does the prosecution have funding available to pay for a similar survey to help it select a jury that is more likely to convict?

7. Should John share with his supervisors his misgivings about the project in general and/or about his personal belief that the defendant is "probably" guilty?

### *Who Are the Primary Stakeholders?*

- John
- John's firm, his superiors and coworkers, and the owners of the firm
- The defense attorney
- The financial planner accused of fraud
- The victims of the allegedly fraudulent investment plan
- The prosecuting attorney and his/her staff
- The community at large

### *What Are the Possible Alternatives?*

1. John can ask to be taken off the project because of his personal bias and/or his concerns about the appropriateness of conducting such a study.
2. John can discuss his feelings with his superiors and let them decide whether the company should conduct the survey. (Note: Although the company may be liable for breach of contract, it is doubtful that the attorney would want a firm that has reservations about working on such a potentially important project for the defense.)
3. John can develop the questionnaire without saying anything about his concerns.

### *What Are the Ethics of the Alternatives?*

- Consider the utilitarian model:
  1. Which alternative yields the greatest benefit to the greatest number of stakeholders? To what extent should the relative importance (financial and emotion/personal costs) be considered?
  2. How are costs and benefits measured in this case?
  3. Assuming John can develop an unbiased questionnaire in spite of his personal bias, what price should be placed on his feeling that he may be assisting a guilty person to be found innocent? Consider this relative to the legal rights of the defendant to have the best

- possible defense--which in the attorney's view includes doing research for jury selection.
4. If found innocent when in fact he is guilty, would the financial planner engage in similar activities in the future?
  - Consider the rights model:
    1. What does each of the following stakeholders have the right to expect, and why?
      - The marketing research firm owners and John's superiors
      - The defense attorney
      - The defendant
      - John
      - The victims of the alleged fraud
      - The prosecution
      - The community
    2. For each possible alternative, determine whether any rights of each stakeholder (stakeholder group) are violated.
    3. Are some rights, or the rights of some stakeholders, more important than others?
  - Consider the justice model:
    1. Do some stakeholders carry a greater burden than others in this case? For each possible alternative, explain which stakeholder (or stakeholder group) endures a greater burden
    2. For each stakeholder or stakeholder group, state which alternative you would want if you were that stakeholder or belonged to that group.

*What Are the Practical Constraints?*

1. As an employee of the marketing research firm, John is not free to work only on those projects he feels comfortable with or likes.
2. If John refuses to work on the study, he may create a problem for his employer. He may be the only employee currently available to develop the questionnaire.
3. The marketing research firm has agreed to conduct the survey. Even if a formal contract has not been signed, it appears that there may be an implicit contract. Refusing to do the study may violate a legal contract and result in damages to the attorney and her client.
4. The defendant is entitled to the best legal representation available.

5. Given the short time period before jury selection will begin, the attorney may be unable to secure the services of a firm to conduct the project. This could put the attorney at a disadvantage and possibly jeopardize her case.
6. The use of such surveys is not considered illegal, nor is it considered unethical in the legal profession. In fact, it is possible that the prosecution is also doing a survey or some other form of research for jury selection.

*What Actions Should Be Taken?*

1. Are there other alternatives available to John and/or the marketing research firm?
2. What action(s) can John take? Why?
3. Which ethical theory--utilitarian, rights, justice--makes the most sense in this instance? Why?
4. Which alternative should be selected? Why?

*Additional Readings*

The instructor may suggest the following sources to those students who get especially interested in the issue of marketing research ethics or the jury selection topic:

Alder, Stephen J. "Consultants Dope Out the Mysteries of Jurors for Clients Being Sued," *The Wall Street Journal*, October 24, 1989, pp. A1, A10.

Lisa and Jane Naida Saginaw. *Jury Selection: Strategy and Science* [?]. Wilmette, Illinois: Callaghan & Company, 1986.

Churchill, Gilbert A. *Marketing Research: Methodological Foundations*, 5th ed. Chicago: The Dryden Press, 1991. See Appendix 2A, "Marketing Research Ethics," pp. 44-65 (especially Table 2A.1: A Personal Code for Practicing Market and Opinion Research, pp. 46-48).

Clendinen, Dudley. "Telephone Survey Preceded Selection of the Jury for Von Bulow," *The New York Times*, January 25, 1982, p. A12

Forte, Lowell. "High Costs Deter Extensive Jury Research," *Los Angeles Daily Journal*, November 13, 1989, p. S8.

Schulmann, Jay, et al. "Recipe for a Jury," *Psychology Today*, May 1973, pp. 36-44, 77-81.

Zeisel, Hans, and Shari Seidman Diamond. "The Jury Selection in the Mitchell-Stans Conspiracy Trial," *American Bar Foundation Research Journal*, 1976, pp. 151-174.