

MONTHLY
LUNCHTIME SEMINAR
SERIES

39TH Session:

A Penny for Your Thoughts
When Millions Matter:
The Use of Focus Groups &
Mock Juries

Judge Lynn M. Egan
Ms. Michelle M. Kohut
Mr. Conrad C. Nowak

April 25, 2016

"A Penny for Your Thoughts when Millions Matter: The Use of Focus Groups and Mock Juries in Litigation"

Michelle M. Kohut Corboy & Demetrio

Michelle Kohut joined the law firm of Corboy & Demetrio in 2004 and practices in all areas of personal injury law, including cases arising from automobile collisions, medical malpractice, construction negligence, premises liability, product liability and railroad negligence. Ms. Kohut has tried many personal injury cases to verdict and has obtained numerous multi-million dollar settlements on behalf of her clients. She is very active in local and national bar associations, including the Chicago Bar Association, the Illinois Trial Lawyers Association and the Women's Bar Association of Illinois, where she served as President for 2013-2014. In 2014, the *National Law Journal* honored Michelle for her accomplishments in law by recognizing her in "Two Steps Forward: Leading Women in Law." She was also honored with the designation of being an Illinois Super Lawyer in 2014 and was also named one of "40 Illinois Attorneys Under Forty to Watch" by the Law Bulletin in 2007.

Conrad C. Nowak Hinshaw & Culbertson LLP

Conrad C. Nowak is a Partner in the Chicago office of Hinshaw & Culbertson LLP. A trial attorney with a diverse national practice, Mr. Nowak frequently represents clients in high profile, sensitive litigation as well as transactional matters. He has successfully represented clients in a variety of practice areas, including commercial litigation, labor and employment, products liability, commercial transactions, alarm & security services, catastrophic occurrences and general litigation. He serves as Co-Chair of the firm's Alarm & Security Services Industry Group, and has represented clients in matters pending throughout the country, including California, South Dakota, Iowa, Missouri, Alabama, Michigan, Arkansas, New Jersey and others. He has been recognized as a *Rising Star* by Illinois Super Lawyers Magazine, a Leading Lawyer for 2014, 2015, and 2016, and also named one of "40 Illinois Attorneys Under Forty to Watch" by the Law Bulletin in 2012. Active in the community, Mr. Nowak is the former Chairman of the Board of the Polish American Association, a proud veteran of the U.S. Army, and active in national matters related to immigrant and veterans issues.

JUDGE LYNN M. EGAN

Judge Lynn M. Egan became a Cook County Circuit Court judge in 1995 and has served in the Law Division for over 18 years. She has presided over high volume motion calls, an Individual Commercial Calendar, an Individual General Calendar and bench and jury trials. She is currently the only Cook County judge assigned to a General Individual Calendar in the Law Division, which includes every type of case filed in the Division, specifically including personal injury actions such as medical & dental malpractice, product liability, infliction of emotional distress, defamation/slander, premises liability, construction & motor vehicle accidents, as well as commercial disputes such as breach of contract, fraud, conspiracy, breach of fiduciary duty, wrongful termination, employment discrimination and legal & accounting malpractice. She manages these cases from time of filing until final disposition, including all motion practice, case management, settlement conferences and trials. Additionally, Judge Egan is committed to assisting parties with the voluntary resolution of cases. As a result, hundreds of cases pending on other judges' calls in the Law & Chancery Divisions & the Municipal Districts are transferred to Judge Egan each year for settlement conferences and she has helped facilitate settlements totaling over 250 million dollars.

Judge Egan has also served as a member of several Illinois Supreme Court Committees, including the Executive Committee, Discovery Procedures Committee, Civil Justice Committee and Education Committee. She has also been a faculty member at dozens of judicial seminars throughout the state, including the annual New Judges' Seminar, regional conferences and the mandatory Education Conference. She has authored numerous articles on subjects such as discovery, requests to admit, restrictive covenants, Day-In-The-Life films, directed verdicts, jury selection & instructions, Dead Man's Act, Supreme Court Rule 213, expert witnesses, reconstruction testimony, court ordered medical exams, attorney-client/work product privileges, sanctions and damages. She also serves as a mentor for new judges and was recently appointed to the Illinois Courts Commission, a seven-member panel responsible for rendering final decisions on matters of judicial discipline.

Judge Egan has served on Bar Association committees and Boards of Directors and has been a frequent speaker at Bar Association seminars. She has taught law school classes and judged trial & appellate advocacy competitions. In 2012, she became a registered CLE provider through the Illinois MCLE Board and provides free CLE seminars for attorneys and judges every month. Since her monthly seminar series began in August 2012, Judge Egan has awarded over 7,500 hours of CLE credit to Illinois attorneys.

Prior to joining the bench, Judge Egan was an equity partner at Hinshaw & Culbertson, where she focused her practice on medical negligence cases. In addition to trial work, she argued before the Illinois Supreme Court on a matter of first impression in the country in *Cisarik v. Palos Community Hospital*. Similarly, during her earlier career in the Cook County State's Attorney's Office, she worked in the criminal and juvenile divisions and argued before the Illinois Appellate and Supreme Courts on matters of first impression in Illinois.

“A Penny for Your Thoughts When Millions Matter: The Use of Focus Groups & Mock Juries in Litigation”

April 25, 2016
12:00 p.m. – 1:15 p.m.
James R. Thompson Center
Assembly Hall Auditorium

- I. Introductions/Announcements (12:00 p.m. – 12:05 p.m.)
 - Michelle M. Kohut
 - Conrad C. Nowak

- II. Panel Discussion: Best Practices for When & How to Use Focus Groups & Mock Juries. (12:05 p.m. 1:00 p.m.)
 - Michelle M. Kohut
 - Conrad C. Nowak

- III. Debriefing the “Real” Jury (1:00 p.m. – 1:15 p.m.)
 - Judge Lynn M. Egan

**"A PENNY FOR YOUR THOUGHTS WHEN MILLIONS MATTER: THE USE OF
FOCUS GROUPS AND
MOCK JURIES IN LITIGATION"**

- The 12 (or 6) people that hold your client's future in their hands – who are they?
- Attorney and party bias in evaluating their own case – limitations, tendencies and concerns
- Utilizing mock juries
 - Different Methods
 - Mock juries (12, 24, 36 people)
 - Focus groups
 - How to present the evidence
 - Changing the evidence to forecast different outcomes
- What's the value, or for what case?
 - Dollar amount threshold?
 - More "objective" opinion?
- What do jurors think?
 - Jurors are people too
 - Backroom tips: What they say about us in deliberations, afterwards
- Elephant in the room
 - 6 person juries – better, worse or who knows



**A PENNY FOR YOUR THOUGHTS WHEN
MILLIONS MATTER: THE USE OF
FOCUS GROUPS AND MOCK TRIALS**

Michelle M. Kohut
Corboy & Demetrio PC

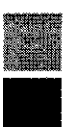
Judge Lynn M. Egan
Circuit Court of Cook
County

Conrad C. Nowak
Hinshaw & Culbertson LLP



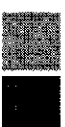
"I don't really care what you think."

- No Trial Lawyer, Ever



May I have your opinion?

- People are naturally curious
- People are naturally opinionated
- Not surprisingly, people like to satisfy their curiosity, and tell you their opinion



May I have your opinion?

- Lawyers tend to be naturally confident
- Lawyers also tend to be naturally anxious
- Being both confident and anxious sometimes intersects and can cloud our analysis
- Our biases can get in the way – "I've seen this case before;" getting caught up in technical/legal details
- Clients are no different



What kind of case benefits?

- There is not a single case, large or small, that would not benefit from one of these methods of assessment.
- There are a variety of methods available, from the simple to the complex, free to expensive, fast to lengthy, high-tech to low tech
- Options available for any size case

Purposes of Focus Groups and Mock Trials

- Case valuation
- Case evaluation (strength of evidence)
- Lawyer evaluation (evaluation of counsel's abilities)
- Presentation evaluation (manner and style)

Focus Groups



Focus Groups

- "Presentation Style." Lawyers present key evidence relative to both sides of a case to a group of individuals
- Formal vs. Informal. In a formal setting, would retain a company to hire participants and take place in a controlled, neutral environment.



Focus Groups

Informal: Assemble individuals which could be friends, office workers, etc.

Formal is generally preferred, but not necessarily because it is better *per se*, but because it can help reduce several bias factors such as knowledge of the case, the lawyer, or too much familiarity with the legal process.

Downsides of Focus Groups: results can be less reliable, less statistical value; less opportunity to assess witnesses, lawyers.



Mock Trials

- Mock trials tend to be more intensive, with a greater focus on the actual trial process
- Opening/Closing Statements
- Utilization of live witnesses (actual or actors), video depositions
- Multiple panels of jurors with monitored deliberations
- Can take several days

Mock Trials



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- Downsides:
 - Expense – can range from \$13,000-\$75,000
 - Preparation time/costs
 - Logistics (if high profile case, may need to travel to neutral jurisdiction to ensure confidentiality)



When to Undertake?

- Prior to discovery
- During discovery
- At close of discovery

Prior is for general knowledge, best for simpler cases (even if tragic)

During takes place after party depositions have taken place, key witnesses, but before experts

At close of discovery gives you the full case you will try or mediate.

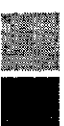


Tips for Success

- The goal of the entire process is to find weaknesses in your case – plan accordingly so that the worst-case scenario for your client is presented
- If permissible (time/cost), try to present several different versions of your case
- While there is value in conducting a focus group/mock trial after discovery is completed, there is more value in doing so when there is still time left to adjust one's case

Tips for Success

- It's all about the mock jurors/focus group members – ensure that the service you are using has a good methodology for selecting/screening them.
- Common mistake: allocating plenty of time for presentation, deliberation, BUT NOT for debriefing and feedback. Remember you are there for the feedback
- Ensure confidentiality – change party names, change your/firm's name, leave jurisdiction if sensitive/popular case
- Work Product/Discoverability – take necessary steps



Tips for Success

- Make sure your "opponent" reflects the ability of opposing counsel, even better
- Prepare a questionnaire with all key issues raised in advance to either present to "jurors" or discuss with them
- To ensure candor, a neutral individual, such as a facilitator, is the best person to meet and discuss the matter with "jurors"
- Videotaping your presentation and deliberations allows for better debriefing at a later date



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Course Evaluation Form

Title of Course: "A PENNY FOR YOUR THOUGHTS WHEN MILLIONS MATTER: THE
USE OF FOCUS GROUPS & MOCK JURIES"

Date of Course: April 25, 2016 Location: The Thompson Center Assembly Hall

Directions: On a scale of 1 to 5, (5 being the highest or best and 1 being the lowest or worst), please rate the program:

Rate how well this course satisfied your personal objectives 5 4 3 2 1

Comments: _____

Rate how well the environment contributed to the learning experience 5 4 3 2 1

Comments: _____

Rate how well the written materials contributed to the learning experience 5 4 3 2 1

Comments: _____

Rate the level of significant intellectual, educational or practical content 5 4 3 2 1

Comments: _____

Please rate the faculty using the same 1 – 5 scale:

Name: MR. CONRAD C. NOWAK

Comments: _____

Name: MS. MICHELLE M. KOHUT

Comments: _____

Overall Teaching Effectiveness					Effectiveness of Teaching Methods					Significant Current Intellectual or Practical Content				
5	4	3	2	1	5	4	3	2	1	5	4	3	2	1
5	4	3	2	1	5	4	3	2	1	5	4	3	2	1

SUGGESTIONS FOR FUTURE

SEMINARS: _____
