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## **The Who, What & Why of Jury Consultants**

**By: April J. Ferguson, M.S.**

Lawyers who represent clients in high-stake litigation matters leave nothing to chance when it comes to preparing their cases for trial. Not only do they staff their trial teams with the brightest lawyers, paralegals, and industry-leading expert witnesses, they also rely on the expertise and experience of jury consultants.

### **WHO ARE JURY CONSULTANTS?**

The field of jury consulting is specialized, comprised of social scientists, communication experts, psychologists, linguistics, and former trial attorneys.

Jury consultants, who are best known as trial strategy and human behavior experts, are appropriately credentialed, possessing a minimum of a Bachelor's Degree, although most have obtained a Masters, Ph.D., or Juris Doctor.

There is much diversity in the field of jury consulting as it relates to the services that are offered. Some consultants focus solely on pretrial research, while others spend the majority of their time in the courtroom assisting with jury selection, monitoring juries, and assessing case strategy. Some jury consultants work primarily on witness preparation and theme development, while their counterparts focus on graphics, demonstratives, and effective communication strategies.

The best jury consultants have a well-rounded practice which encompasses pretrial research, early case assessment, witness preparation, theme development, graphic/demonstrative design, and post-trial research.

## WHAT DO JURY CONSULTANTS DO?

Jury consultants provide a myriad of pretrial and trial services, including the following:

- **Jury Research.** Jury research is a generic term used to describe the research exercise(s) conducted pretrial, which are designed to assist with case assessment and trial strategy-- Everything from full-scale trial simulations to scaled-down mock trials, focus groups, online jury research, community attitude surveys, and change of venue surveys. The type of research utilized will depend on the client's exposure, budget, purpose, and the timing of the research that is being conducted.

At the end of a research project, jury consultants will summarize the results of the exercise for the client. Problem areas will be defined, persuasive evidence and themes identified; and depending on the type of research conducted, an ideal/non-ideal juror profile can be developed.

Small group research should not be used for predictive values, such as dollar amounts of verdicts. However, you can expect to find similar responses to hot-button issues, witnesses, and key evidence in the focus group panel as in the actual jury pool. For example, focus group results may show that hourly wage earners are more receptive to the client's case than business owners; or that females, on average, award higher damages than males. Presuming your focus group panel was demographically similar to the jury panel in your case, you can assume those same responses will translate.

**Case Assessment: Liability & Damages.** Among other things, consultants utilize jury research to assess liability and damages. Need to settle your case? Should the case be tried? A research exercise will help answer these questions. Based on the results of the research project, jury consultants will assist the trial team in assessing their client's exposure and work with them to develop an effective trial or settlement strategy.

- **Develop Case Themes.** Every case needs a theme. Jury consultants work with trial teams to develop a case theme in the early stages of the litigation process. They test them, tweak them, and perfect them long before stepping foot in the courtroom.

Case themes begin with *Voir Dire* and carry through to Closing Arguments. They are utilized in every step of the trial process and provide the framework through which the case is presented to the jury.

- **Evaluate & Prepare Witnesses.** Jury consultants are masters at witness preparation and are often utilized by trial team members to prepare key case witnesses for their testimony. Being in a courtroom is second nature to trial teams and expert witnesses; however, most fact witnesses have not been inside a courtroom. Pretrial preparation helps witnesses understand courtroom procedure and provides them with a roadmap for their testimony. Everything from communication techniques to specific case related information, demeanor, and dress code is covered in the prep session.

Jury consultants are also utilized to evaluate key witnesses in a case. They assist trial team members in assessing credibility, believability, and likeability. Based on the results of their evaluation, trial strategy may need to be modified.

- **Demonstrative Aids.** Most jury consulting firms have a team of graphic experts at their disposal. From crafting compelling demonstratives for expert witness testimony to developing a slide deck for Opening Statements and Closing Arguments, jury consultants and their team ensure that the presentation of evidence is both compelling and professionally presented.
- **Voir Dire Strategy.** *Voir Dire* is one of the most important parts of any trial. In fact, some experts believe it is the *single most important part* of trial. *Voir Dire* is the first opportunity jurors have to hear from the attorney and the first opportunity the attorney has to make a good impression. There is never an opportunity to make *another* good “first” impression. From the moment an attorney stands up to introduce themselves to the panel, they are on stage and being sized up.

Jury consultants assist trial lawyers in the development of a *Voir Dire* strategy that is designed to elicit the most information possible from jurors. Jury consultants use this information during the jury selection process to compare against their ideal/non-ideal profile that was compiled from the pretrial research conducted earlier in the case.

## **WHY USE A JURY CONSULTANT?**

Jury consultants are trial strategy experts, masters in understanding social dynamics, and know exactly how to present effective, cohesive, and compelling presentations to juries.

They understand the difference between individual case assessment and group think dynamics and work with both trial teams and case witnesses to ensure that the client’s message is clearly and cohesively presented to the jury. The goal of

any jury consultant is to ensure that the case is presented in such a way that jurors want to be advocates for the client in the jury deliberation room.

Utilizing a jury consultant adds depth and breadth to the experience of the trial team. They bring with them a diverse set of skills that complement the skills of lawyers and paralegals – putting the trial team in the best position possible to achieve a good result for their client.

The issues in the case, the scope of the pretrial research necessary, and the type of services needed will depend on the type of jury consultant needed for a particular case.

While most trial consultants conduct research and prepare cases for trial in different ways, all experienced consultants have the ability to synthesize the data that is collected in the research process and assist counsel with formulating an effective trial strategy.

When selecting a jury consultant, ask for references and case experience. Ask about research strategies, their approach to witness preparation and communication techniques, and ask about their success rate. With that information you can select the jury consultant that is right for your case.

## **PARALEGALS & JURY CONSULTANTS: A WINNING PARTNERSHIP**

Paralegals play an extremely important role on a trial team. In fact, many lawyers will tell you they cannot successfully try a case without their star paralegal. Jury consultants will tell you the same thing --- they cannot do their job effectively without a solid partnership with the case paralegal.

Trial preparation and case management is something akin to a three-ring circus and paralegals are nothing short of the circus masters. They are responsible for keeping attorneys on task, ensuring that case materials are kept updated and organized, preparing trial exhibits, coordinating case logistics, and being the primary point of contact for outside consultants and experts.

Jury consultants rely on paralegals to provide them with the information they need to design an effective research strategy, develop a case theme, design persuasive demonstratives, and prepare key witnesses for testimony. The information jury consultants need includes everything from case “hot docs” to transcripts and videos of key witnesses, expert reports, surveillance or site inspection videos, early drafts of demonstratives, and other pertinent information that the consultant needs to review in preparation for their work on the case.

Case paralegals can assist the jury consultant by helping them coordinate attorney and witness schedules, answering questions regarding case materials and/or rulings by the Court, and navigating the various personalities on the trial team.

During *Voir Dire*, paralegals can be indispensable to jury consultants. It is next to impossible to take down everything jurors say in response to attorney questioning *and* effectively observe jurors' demeanor, body language, and response to a particular attorney. Having an extra set of eyes, ears, and hands is crucial. The case paralegal can assist the jury consultant by taking good notes and providing feedback regarding what was observed by the paralegal during the jury selection process.

## THE TAKEAWAY

- **Find a jury consultant that is best suited for the needs of your case.** Don't hesitate to ask for references and don't hesitate to interview multiple consultants before making a final selection. Education, experience, communication style, and the ability to work with all levels of the trial team are equally important.
- **Engage a jury consultant early in your case.** A jury consultant can do much more than conduct pre-trial research. Depending on the client's exposure and budget, consider utilizing a jury consultant for theme development, prepping key witnesses, and crafting compelling demonstratives.
- Jury selection and trial strategy are both an art and a science. While there are never any guarantees in litigation, without question, **hiring an experienced jury consultant can improve your chances of obtaining a favorable result for your client.**
- **Paralegals can be an invaluable asset to a jury consultant.** A solid working partnership between the two will make the consultant's engagement more effective and give the paralegal an opportunity to learn a new skill set.

## **ABOUT THE AUTHOR:**

April J. Ferguson, M.S., is the President and a Senior Consultant for Opveon. For her clients she is a trusted partner, a team player, and an invaluable asset to their litigation team. She works tirelessly with trial teams to tell their client's story in a way that resonates with jurors and creates in them a desire to be an advocate for that client in the jury deliberation room.

April focuses her practice on theme development, mock trials/jury focus groups, and the use of technology in a litigation environment. Her case experience includes all types of complex commercial litigation, including medical and legal malpractice, products and premises liability, intellectual property, environmental litigation, criminal law matters, eminent domain, construction disputes, divorce and family law actions, Qui Tam litigation, oil and gas, and trucking litigation.

She has been in close to 150 jury trials and worked on thousands of cases throughout the course of her career. Her experience in the courtroom, combined with her jury research experience, gives April a unique perspective into the court and jury system that clients find invaluable. She is a member of the American Society of Trial Consultants, the Association of Litigation Support Professionals, Product Liability Defense Group, Trucking Industry Defense Association, and is an associate member of the Tulsa County Bar Association.