

## Book Review:

### [Principles and Practice of Trial Consultation,](#) by Stanley L. Brodsky

written by Kevin Bouly

Kevin Bouly, Ph.D. ([krbouly@persuasionstrategies.com](mailto:krbouly@persuasionstrategies.com)) is a litigation consultant with Denver-based Persuasion Strategies. He applies his expertise in jury research, analysis, and persuasion to a variety of civil litigation types. Follow him and the Persuasion Strategies blog at [www.litigationps.com](http://www.litigationps.com).

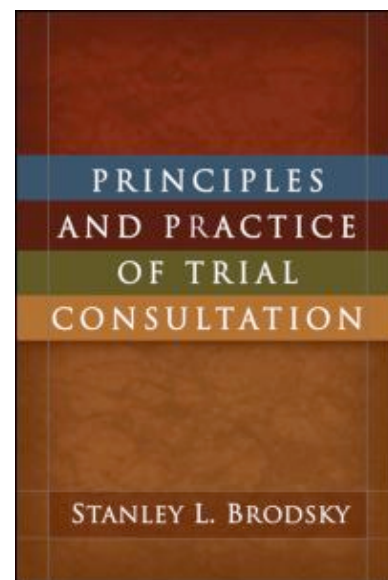
*“[Trial] consultants are best understood as allied with attorneys, avidly pursuing the goals of the side that has retained them.”*

Dr. Brodsky allies trial consultants and attorneys at the outset of this straightforward text in his attempt to discourage stereotypes and affirmatively describe who trial consultants are and (some of) what they do. Generally speaking, it works. Brodsky’s textbook-style exposition successfully disengages some of the stereotypical beliefs about trial consultation and addresses its critics, particularly those critical of the perceived unfairness trial consultation may help create. In his words, “Promoting a good adversarial position is what attorneys and consultants do.” It is a simple but apt observation given an insightful voice in this book.

Brodsky takes a unique approach to revealing the principles and practices of trial consultation that can impact trial outcomes – namely by purposefully omitting the outcomes of any and every case example he uses to demonstrate the value of three primary practices – witness preparation, jury selection assistance, and change of venue research. Brodsky walks the walk by arguing the value of consultant work is separate from trial outcomes and eliminating outcomes from his illustrative examples. This approach is more valuable than you might expect. Far from a stereotypical war story litany, Brodsky’s professional approach focuses the audience on the value of the practice and process rather than the outcome.

While undoubtedly strong, Brodsky’s framing of consulting work within a larger adversarial system is more complete than the array of consulting practices he describes in this text. The content focuses primarily on witness preparation, jury selection (supplemental jury questionnaires and oral voir dire) and community attitude research – and to a much lesser extent on case narrative and storytelling. Within each topic, Brodsky addresses applied principles as well as research foundations – usually in that order. (For instance, the witness preparation chapters are: Chapter 4, Witness Preparation for Testifying in Court; Chapter 5, Preparation and Examination of Expert Witnesses; and Chapter 6, Witness Preparation: Findings From the Lab.)

Brodsky’s governing principle is a gem, particularly for beginning consultants and attorneys looking to take a more jury-centered and strategic approach to each case. His distillation of a consultant’s “organizing construct” is “case conceptualization” – the application of theory, research and experience to specific and novel case challenges. In essence, the consultant applies hearty social science research and practical experience in similar cases in order to identify key polarizing issues and provide the attorney “clarity and sharp, explicit, well-defined



perspectives about what to do.” Be patient with “case conceptualization.” For many readers it may start out as a nebulous abstraction, but by the end of the text Brodsky has supplied sufficient examples to get a clear grasp of what it is and what it can mean for your next case. Experienced readers will be familiar with the concept even if they know it by another name.

Overall, *Principles* is a quick read, a great outlet for the consulting profession, and a useful reference. It may leave you wanting in only a few small ways:

First, the text only covers in any depth the topics of witness preparation, jury selection and change of venue studies/community attitude surveys. Case strategy employing Brodsky’s “case conceptualization” is not thoroughly explored outside these main areas. While it is done well in those areas – the concluding section on witness preparation states, “The practical knowledge is seated in the behavior science conceptualizations of problems in the witnesses’ self-presentation, and then developed by taking steps in the form of behavior rehearsals and direct feedback to correct those problems” – readers would benefit from greater application in more consulting areas – particularly in terms of strategic attorney argument. Other than a brief discussion of the importance of narrative and story, the text generally does not address case strategy and case conceptualization in opening statement and closing arguments. Be aware, oral argument is certainly one aspect of trial consultation that is not directly covered in this book.

Brodsky’s examples are plentiful and relevant, but the majority concern criminal cases and not surprisingly (due to Brodsky’s background) contain elements of psychology/psychiatry. While civil litigation is not ignored (Chapter 14 is dedicated to developing examples in eminent domain cases), the text highlights criminal cases and calls civil litigation an example of the “broad scope of trial consultation.” You will not find extensive application to civil litigation here. To be fair, Brodsky clearly articulates the fact that the covered techniques and approaches function across all types of litigation – criminal examples simply outnumber civil ones.

Importantly, much of this book is more appropriate for students and beginning consultants rather than experienced trial attorneys and consultants (particularly those with social science backgrounds). Many of the practices and resources (e.g. attitudinal scales) will be familiar to consultants with social science backgrounds and the text certainly has a bias toward social science paradigms. Attorneys without social science education may need a translator at times, and some approaches by consultants from other backgrounds – and there are many – are not sufficiently represented in this book. Still, Brodsky does us all a favor to include many useful scales and put so many resources in the same place.

Finally, Brodsky is open about his limited experience with small group research and appropriately resists the temptation to include much about small group research in this book. Simply put, you will not find much in the way of principles or practices for small group jury research – a significant part of at least some trial consultants’ work.

Despite the above, this book is a worthy read for trial attorneys and consultants. Some additional astute and useful highlights include the following:

- This book has a handful of excellent and practical insights into effective consultation. For instance citing Diane Wyzga’s useful [Story Spine](#) to help create case narratives, and a focus on “deselection” questions in both jury questionnaires and oral voir dire.
- Brodsky provides a unique but important chapter on “reversals” or non-obvious findings about potential jurors in a particular case that provide “compelling reasons to deselect exactly the jurors one would want to keep in conventional trials.”

- There are unknowns in trial consulting's future. This book includes an intriguing consideration of emerging consulting trends and challenges such as the impending difficulty of valid telephone surveys in the cell-phone age.
- Brodsky's tone is reflective and refreshing. You will appreciate his voice.

While attorney readers may not immediately recognize it, [Principles and Practice of Trial Consultation](#) is a valuable addition to the trial advocacy library. It clearly answers critical questions directed to the trial consulting field while simultaneously providing practical guidance for working consultants and trial attorneys. Whether you have personally fielded critics' questions and concerns about consultant roles in the system or not, consultants *and* attorneys should welcome Dr. Brodsky's thoughtful and clear address on the role of trial consultation in today's legal system. Consultants are lucky to have someone cover these criticisms so comprehensively and with such a credible and insightful voice.

Citation for this article: *The Jury Expert*, 2010, 22(1), 78-80.

## Editor's Note

Wow. Every issue I say to myself "This is our best issue yet!". I'm saying it again. It's amazing to watch an issue come together and I am grateful to all our authors, consultant-authors and consultant-respondents for contributing to yet another terrific issue of *The Jury Expert*.

We have articles on corporate defense strategies after a decade of corporate malfeasance, how to use simple rules for better jury selection, the legal and ethical implications of using trial consultants for witness preparation, specifics on how to prepare your witness to answer the "were you prepared" question, implications of the heightened use of images/graphics in the courtroom, skin color bias, and how defense attorneys can present damages issues effectively. Eighty-one pages of awesomeness!

I hope you find this issue useful AND if you do, please comment on our website. I know (courtesy of Google Analytics) how many of you read every issue. Comment! Or blog. And if you blog, let me know so I can link to your blog. Think of it as a small thing you can do to thank the authors who work hard to give us practical, relevant ideas to improve your litigation advocacy.

Happy January! And for those of you in snow-bound places--spring is a LONG ways away. So make some hot chocolate and hunker down and read *The Jury Expert*.

Rita R. Handrich, Ph.D., Editor

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The Jury Expert [ISSN: 1943-2208] is published  
bimonthly by the:

**American Society of Trial Consultants**  
1941 Greenspring Drive  
Timonium, MD 21093  
Phone: (410) 560-7949  
Fax: (410) 560-2563  
<http://www.astcweb.org/>

The Jury Expert logo was designed in 2008 by:  
Vince Plunkett of [Persuasium Consulting](http://www.persuasium.com)

## Editors

Rita R. Handrich, PhD — Editor  
[rhandrich@keenetrial.com](mailto:rhandrich@keenetrial.com)

Kevin R. Bouilly, PhD — Associate Editor  
[krebouilly@persuasionstrategies.com](mailto:krbouilly@persuasionstrategies.com)

Ralph Mongeluzo, JD--Advertising Editor  
[ralphmon@msn.com](mailto:ralphmon@msn.com)

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