Out and Proud: Ethical and Legal Considerations in Retaining a Trial Consultant to Assist with Witness Preparation

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During cross-examination, a key witness in a recent securities fraud trial was grilled:

> Q. How about your jury consultant, the consultant that you described, the jury consultant, is he here now?
>
> A. Yes.
>
> Q. Where?
>
> A. In the back [of the] room.
>
> Q. Man with the gray beard?
>
> A. Sorry?
>
> Q. This gentleman right here?
>
> A. With the white ---
>
> Q. Has he been here throughout your testimony?
>
> A. No.
>
> Q. He has been here several times for your testimony, though, correct?
>
> A. Correct.[1]

This was not the first reference to the defense's involvement of a trial consultant[2] in witness preparation. Earlier questions were peppered across 100 or so lines of transcript and included inquiries into the duration of the witness preparation sessions, whether any non-lawyers were present, whether the witness met with a consultant – whose name the witness volunteered in response – and the purpose of the consultant's involvement in the preparation session.

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Given that witness preparation assistance is a staple trial consultant service offering, such outings are relatively rare.[3] But they dramatically raise the specter of the discoverability of a trial consultant's involvement in witness preparation and also the uncertainties regarding the perceived legitimacy of such involvement in the eyes of the judge or jury.

The American Society of Trial Consultants ("ASTC") prescribes that trial consultants have a duty to discuss the limitations on confidentiality in the provision of witness preparation services with their clients.[4] This article aims to shed light on this important topic for the benefit of trial consultants and the attorneys who retain them. First, we address ethical issues that have been raised when counsel retains a trial consultant to assist with witness preparation, and second, the legal protections and limitations on confidentiality in doing so.

The Ethics of Trial Consultant-Assisted Witness Preparation[5]

What professional guidance is provided to counsel and trial consultants to ensure that witness preparation is conducted ethically? The American Bar Association's Model Rules of Professional Conduct[6] is the primary source of ethical guidance for attorneys. The Rules broadly prohibit attorneys from falsifying evidence or assisting witnesses to testify untruthfully. But they do not provide specific guidance as to how to stay on the right side of the line between "discussing testimony and seeking to improperly influence it."[7]

The ASTC's Practice Guidelines on Witness Preparation describe the goals of a trial consultant in assisting counsel with witness preparation. These goals essentially are to increase the witness's understanding, comfort and confidence in the process of testifying, and improve their ability to present testimony truthfully and clearly.[8] In practice, trial consultants assist with various facets of counsel's preparation of a witness. These facets include going over case facts and reviewing relevant documents with the witness, conducting informal conversations about procedure and the process of testifying, advising on attire and behavioral presentation, reviewing the attorney's questions and witness's answers, explaining applicable law, explaining how a witness's testimony fits into the factual context of the case, clarifying important points, exposing or resolving misperceptions, and organizing the presentation of the case.[9] The potential benefits of using a trial consultant to prepare a witness include enhancing the accuracy of testimony and the efficiency with which it is conveyed, and minimizing the impact of negative stereotypes and mental shortcuts on jurors' evaluation of witnesses. Examples of the latter include mistaking general anxiety about testifying as signs that a witness is lying, or making false snap judgments about character from stereotypes about appearance.[10]

Ethical concerns expressed regarding the use of trial consultants in witness preparation liken to visions of the Wild West, where trial consultant-assisted witness preparation is an "anything goes" arena, where consultants are not bound by the same ethical rules as attorneys, and where the ASTC Practice Guidelines are vague, unenforceable, provide minimal controls and are not intended to define a standard of care.[11] These concerns, however, have tended to be potential rather than actual. In researching this article, no horror stories about unethical trial consultant behavior were unearthed. Although the underlying observations are arguably true, it is also true that witness preparation is typically conducted as an adjunct to counsel's own witness preparation and in counsel's presence to maximize protection against discoverability. Because of counsel's own ethical duty, motivation to achieve a good client outcome, and desire to preserve confidentiality, it would in practice be highly unusual for an attorney to create or turn a blind eye to a situation where a trial consultant could breach those same ethical duties. Moreover, the ABA Rules extend by way of principal-agent relationship the rules against attorney

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misconduct to non-lawyers retained by or under the direct supervisory control of the attorney.[12] Further, strong market forces inhibit unethical behavior by trial consultants. Trial consulting is an industry where there is a choice of providers, where information is easily exchanged via the Internet and attorney networks, and where business is won by reputation and word of mouth.

In sum, retaining a trial consultant to assist with witness preparation can enhance the accuracy and efficiency of the witness's testimony, and does not in practice open a door to unethical behavior as counsel is vicariously responsible for ensuring that the trial consultant follows the same rules of conduct as attorneys.

Legal Considerations: What Is Discoverable?

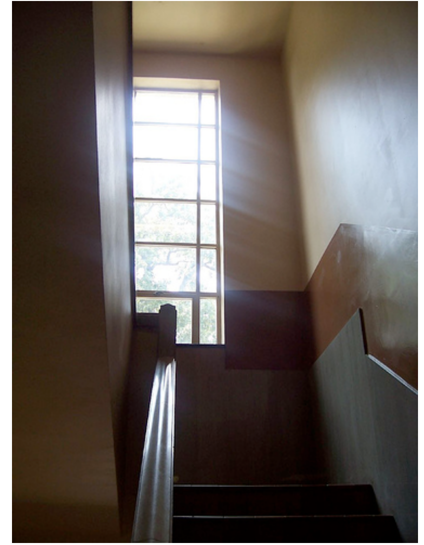
The fundamental answer to date regarding what is discoverable, with several caveats and nuances, is that the substance of a trial consultant's advice is strongly protected as opinion work product, but not the fact that a trial consultant was used. The leading authority on this point is the seminal 2003 decision of the U.S. Court of Appeals for the Third Circuit in the *In re Cendant*[13] matter. The Third Circuit encompasses Delaware, New Jersey, Pennsylvania and the U.S. Virgin Islands.

The backdrop to the discovery dispute in *Cendant* was a federal securities class action alleging fraud in Cendant Corporation's accounting. Dr. Phillip McGraw (aka "Dr. Phil") had assisted counsel with preparing a former Ernst & Young auditor for his deposition by Cendant's counsel. During the deposition, Cendant's counsel sought to explore details of Dr. Phil's deposition preparation process and advice. Ernst & Young's counsel asserted that this was privileged information under both the work product and attorney-client privilege doctrines, because the preparation work took place in the presence of counsel in the context of private communications between client, attorney and consultant, for the purpose of assisting counsel in rendering legal advice.[14]

In the first instance, the Special Discovery Master determined that the content of Dr. Phil's guidance was protected under the attorney work product doctrine. The work product doctrine's intent is to establish a "zone of privacy for strategic litigation planning and to prevent one party from piggybacking on the adversary's preparation."[15]

The Special Discovery Master's determination was overruled by the District Court, whose decision was then reversed by the Court of Appeals, which almost fully agreed with the Special Discovery Master's analysis that the attorney work product doctrine (specifically, Fed. R. Civ. P. 26(b)(3)) protected the content of the trial consultant's guidance as opinion work product, but not the fact that a trial consultant was used. Accordingly, opposing counsel would have to show "rare and exceptional circumstances" in order for the content of a trial consultant's witness preparation guidance to be discoverable. This is a far higher hurdle for opposing counsel to overcome than that to override the lower tier of protection accorded to factual work product (as specified in Fed. R. Civ. P. 26(b)(3)). Rather, this lower tier requires a showing of a substantial need for the materials for opposing counsel to prepare its case, and that opposing counsel cannot, without undue hardship, obtain their substantial equivalent by other means. The Court of Appeals in *Cendant* did not rule either way as to whether the doctrine of attorney-client privilege also accorded protection.[16]

Although the *Cendant* decision was based on Fed. R. Civ. P. 26(b)(3), there is another rule – Fed. R. Civ. P. 26(b)(4)(B) – that provides a "safe harbor" whereby the opinions of consulting experts who are not testifying are shielded from discovery, except upon a showing of "exceptional circumstances."[17] There is a distinction, both in practice and legal protection, between a "consulting" expert and a "testifying" expert. Following *Cendant,* the "consulting" expert is afforded the protection of the work product doctrine whereas this protection does not necessarily extend to a testifying expert. The "testifying" expert's reliance on any witness preparation session with a trial consultant may be discoverable to the extent the expert either relies on any of the information in forming an opinion or expressed any opinions publicly that may have been recorded in a videotape of the session or mock trial. The court in *Cendant* ruled that Rule 26(b)(3) provides work product protection independently of Rule 26(b)(4)(B), and did not make a determination as to the degree of protection accorded by Rule 26(b)(4)(B).[18]



What Opposing Counsel May Not Ask Your Witness

Following *Cendant*, specific elements of a trial consultant's assistance to counsel with witness preparation are protected as opinion work product:

- Documents given to the trial consultant by counsel that reflect counsel's mental impressions, opinions, conclusions and legal theories.
- The actual witness preparation advice given by the trial consultant (at least as in *Cendant*, while counsel was present).
- Whether the witness took notes during the preparation session, and the contents of those notes.
- Whether any part of the preparation session was audio- or videotaped.[19]
- Whether the trial consultant took preparatory notes or notes during the preparation session and the content of those notes (where those notes reflect the trial consultant's mental impressions, opinions or conclusions).
- Whether the trial consultant gave the witness any documents reflecting the trial consultant's mental impressions, opinions or conclusions (at least as in *Cendant*, while counsel was present).

Where documents given by the attorney or trial consultant to the witness do not contain genuine mental impressions, opinions, conclusions or legal theories prepared in anticipation of litigation or for trial, but are instead mere summaries of publicly available information (or information reasonably discoverable through independent means), those notes may be discoverable. For instance, in *Auscape Int'l , et al. v. National Geographic Soc'y, et al.,* 2002 U.S. Dist. LEXIS 19428 (S.D. N.Y. 2002), a summary of the complaint, which counsel prepared for and gave to witnesses to assist with their preparation, was ordered to be produced. Even though the summary contained attorney opinion, it did not contain information not already contained in the complaint. Similarly, although we have not seen a ruling on this issue, trial consultants should be cautious about providing a witness with documents containing practice pointers that are generic or already published elsewhere as they are arguably not mental impressions, opinions or conclusions prepared in anticipation of litigation or for trial. The more specific and tailored the recommendations are to the particular witness the more likely the recommendations will be protected.

What Opposing Counsel is Permitted to Ask Your Witness

Following *Cendant*, a witness may be asked:

- Whether the anticipated testimony was practiced or rehearsed (this questioning must, however, be circumscribed).
- Date and duration of witness preparation meetings.
- Names of others present during those meetings.
- Purpose of the meeting.
- Whether the deponent or witness met with a trial consultant.

What About When Counsel Is Not Present?

What protection is accorded to advice given directly by a retained trial consultant to a witness while counsel is not present (or not copied on an e-mail)? The *Cendant* court did not explicitly address this issue. In the case of oral communications between a trial consultant (acting as a party's representative, in anticipation of litigation or for trial) and a witness, as long as those communications are the trial consultant's mental impressions, opinions or conclusions, it is arguable that they should be protected following *Cendant*, even if counsel was not directly part of the communication. E-mail, documents or other "tangible things" a trial consultant gives to a witness outside counsel's presence but in anticipation of litigation or for trial, while acting as a party's representative, should arguably be protected as at least factual work product (following Fed. R. Civ. P. Rule26(b)(3)(A)).

This issue arose in Martha Stewart's trial,[20] where Martha forwarded her daughter an e-mail that she had previously sent to her attorney containing information about a stock sale that was relevant to the government's fraud case against her. The government argued this waived attorney-client privilege. The court agreed, but held that the communication was nevertheless protected by the work product doctrine as it was prepared for trial – Martha would not have forwarded the e-mail otherwise – and her daughter was acting as her confidential consultant.

Thus some protection arguably may be accorded to communications between a trial consultant and witness outside counsel's presence, but the issue is not settled – suggesting that it is prudent to avoid this scenario where possible. ASTC Practice Guideline III(A)(5) for witness preparation recognizes that counsel's presence during the trial consultant's communications with a witness may provide an extra layer of protection.

What About Jurisdictions Outside the Third Circuit?

The *Cendant* decision was issued by the Court of Appeals for the Third Circuit, so is binding precedent in those member districts, namely, Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands. However, the status of the protection accorded to witness preparation work performed by a trial consultant elsewhere in the U.S. is not resolved, in large part due to the paucity of reported opinions on this issue.[21]

One reported case subsequent to *Cendant*, in the Northern District of California, directly followed the *Cendant* ruling. In *Hynix Semiconductor Inc.* v. *Rambus Inc.*[22] the defendants moved to preclude questions regarding trial consultants, specifically to prevent counsel from asking a witness about meeting with trial consultants in preparation for trial. The court adopted the reasoning of the Third Circuit and held that the parties could only cross-examine the witnesses regarding whether a meeting with a trial consultant took place, the date, duration and purpose of such meeting, and whether the testimony was rehearsed. Further, the court specifically forbade questions regarding counsel's or the consultant's views on important facts of the case, trial themes or strategy, strengths or weaknesses of the witness, or advice to the witness regarding appearance or credibility.

A series of cases addressing the issue of whether a consultant can also serve as an expert witness and to what extent the work product privilege applies also appear to advocate the assumption that the substance of a trial consultant's witness preparation work is protected by the privilege. In *SEC v. Reyes*[23], also in the Northern District of California, the court was faced with the question of whether "a litigant forfeit[s] the privilege that would otherwise attach to a litigation consultant's work when he offers that expert as a testifying witness." The court relied on a series of decisions from the Southern District of New York, which acknowledged that the privilege as it applies to consultants may still be asserted, but only over materials

pertaining uniquely to the expert's role as consultant.[24] These cases presume that consultants do, at least in part, have the protection of the work product privilege.

What Protection Does Attorney-Client Privilege Accord?

Attorney-client privilege is currently a weaker basis for protection of a trial consultant's witness preparation work against discovery. In order for attorney-client privilege to be triggered, there must be a communication between counsel and client intended to obtain or provide legal advice confidentially and which is kept confidential.[25] The first thorny issue is that when a trial consultant is present, the communication between attorney and client becomes three-way, which arguably is inconsistent with the intent that the attorney-client communication remains "confidential." The second thorny issue is whether the purpose of the trial consultant's communication is to assist with provision of counsel's *own* legal advice, or to give the trial consultant's *own* advice.

The D.C. District Court[26] considered this issue in the context of a defamation action. This action was brought against Matt Drudge in 1996 by former White House Assistant Sydney Blumenthal and his wife for statements published about them in a Drudge Report. The court reasoned that attorney-client privilege may, within the narrowest possible limits, be extended to non-lawyers employed to assist counsel to render legal services where the communication was confidential and for the purposes of obtaining legal advice from the lawyer. But the court declined to apply the doctrine in the factual scenario before it, reasoning that the litigation consultant was instead retained for the value of his own advice.

In 2003 in *Cendant,* Judge Garth concurred with the Chief Justice's opinion in that case that the work product doctrine does provide protection. But, he went one step further and argued that the doctrine of attorney-client privilege also provided protection, on the basis that the three-way communications between attorney, client and trial consultant could not be parsed into privileged and non-privileged components.[27] At the same time, Judge Garth acknowledged that the doctrine of attorney-client privilege is narrower in scope than the work product doctrine. His opinion did not approach the issue from the context of whether Dr. Phil's communications were for the purpose of assisting counsel to provide legal advice versus for the value of his own advice. Rather, Judge Garth applied the analysis of Davis and Beisecker (1994)[28] that ordinarily in a witness preparation session, attorney-client communications that ought to be protected are inextricably intertwined with the client's responses to mock questions and the consultant's reactions thereto.

The case law in favor of protecting a trial consultant's involvement in witness preparation from discoverability via attorney-client privilege is thus considerably weaker than that for the work product doctrine. It remains to be seen whether Judge Garth's line of reasoning is adopted in future cases.

Practice Guidelines in Light of *In re Cendant*

In light of what *Cendant* does and does not protect, some extra precautions in using a trial consultant to assist with witness preparation include the following:

- Do not formally introduce the trial consultant to the witness by full name and title or exchange business cards; rather, just use first names and introduce the trial consultant as "part of the trial team" or "someone who is assisting counsel with preparing the witness for trial."

- Trial consultants should avoid giving the witness documents to keep (e.g., notes containing advice) unless necessary, and should avoid giving documents that contain information that is publicly available or published elsewhere (e.g., generic witness preparation pointers). If pointers or recommendations are given in writing, protection will be enhanced to the extent that they are positioned as mental impressions, opinions and conclusions that are specific and tailored to the witness.

- Caution the witness not to bring any notes taken during the preparation session(s) when they testify, unless they have been issued a subpoena *duces tecum* requiring them to do so.

- The trial consultant should minimize purely two-way communications with the witness, i.e., when the attorney is not present.

- At the end of the witness preparation session, review the witness's testimony related to questions that opposing counsel is permitted to ask regarding the trial consultant's involvement.

- Advise the witness that the purpose of the preparation session is not to practice or rehearse testimony, but to *review* the witness's testimony and *prepare* the witness for trial.

- If opposing counsel discovers that a trial consultant assisted with witness preparation, submit a motion *in limine* to exclude from trial evidence regarding this fact (i.e., the questioning *Cendant* would otherwise permit).

Does "Outing" A Trial Consultant Affect Witness Credibility?

Aside from the issue of opinion work product confidentiality, a common concern of counsel is the reaction of jurors at trial should they learn that a trial consultant assisted with witness preparation – as described anecdotally above. Given that the concept of "tampering with the witness" has been dramatized in courtroom movies and TV shows over the years, there is a sense in the legal community – fortunately diminishing -- in which using a trial consultant to assist with witness preparation is counsel's "dirty little secret" to be protected from the jury.

Empirical data suggest that these fears may be unfounded. A national survey of over 500 jury-eligible adults conducted by ASTC members found that almost three-quarters of respondents believed that preparing witnesses to testify is a good idea, with less than fifteen percent believing that witnesses who practice their testimony have something to hide.[29] More to the point, in a national survey of over 4,000 jury-eligible adults by TrialGraphix over the past five years, about 60 percent of respondents indicated (in the abstract) that it would have no impact on a witness's credibility if they learned that a communication expert helped prepare a witness prior to testifying. In fact, approximately a fifth of respondents said that knowing this would lead them to find the witness *more* credible, with only a fifth reporting that knowing this would decrease that witness's credibility.

Of course, there may well be a detrimental impact on credibility should jurors learn the fact of a trial consultant's involvement via a dramatic "outing" by opposing counsel during cross examination – especially where this is achieved by parading into the gallery to single out the "man with the gray beard" sitting in the back of the court. If you suspect that opposing counsel is very likely to exercise his or her "right" under *Cendant* in this way, the empirical data on jurors' bland reactions thereto imply it may be prudent to steal opposing counsel's thunder by pre-empting on direct the fact that a trial consultant was used, but in a circumscribed manner so as not to waive the opinion work-product privilege.

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Endnotes

[1] *In re Vivendi Universal, S.A. Securities Litigation*, 4551:23 - 4552:12

[2] We use the term "trial consultant" in this article instead of jury consultant, for consistency with the American Society of Trial Consultant's usage of that term to denote the profession. The terms are largely interchangeable, although "trial" consultant more readily encompasses the notion that the profession also assists with preparation of witnesses for bench trials and other nonjury hearings.

[3] A similar famous "outing" occurred a few years ago during the cross-examination of Jeffrey Skilling in the Enron-related fraud litigation, *United States of America v. Jeffrey K Skilling.*

[4] ASTC Professional Code, Witness Preparation: Professional Standard II(C), Practice Guideline 6, p.31.

[5] For purposes of this article, we use the term "witness preparation" to refer equally to preparing a deponent to be deposed and preparing a witness to testify at trial. There is no material distinction in terms of the ethical and legal considerations we discuss.

[6] For online version, see http://www.abanet.org/cpr/mrpc/mrpc_toc.html, especially Rule 1.1 Competence, Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client and Lawyer, Rule 3.3 Candor Toward The Tribunal, Rule 3.4 Fairness to Opposing Party and Counsel, Rule 4.1 Truthfulness In Statements to Others, Rule 5.3 Responsibilities Regarding Nonlawyer Assistant, and Rule 8.4 Misconduct. See also associated Comments to the respective Rules.

[7] *Geders v. United States,* 425 U.S. 80, 89 n.3 (1976), as cited in Small, D. (2004). Preparing Witnesses A Practical Guide for Lawyers and Their Clients. 2nd Ed. American Bar Association Publishing, p.134.

[8] ASTC Professional Code, Practice Area B Witness Preparation, p.30. (October 2008 version)

[9] *State v. McCormick*, 259 S.E.2d 880, 882 (N.C. 1979); Wydick, R. "The Ethics of Witness Coaching." *Cardozo Law Review* 17, no. 1 (1995): 12-13.; LeGrande, N., and Kathleen M. "Witness Preparation and the Trial Consulting Industry." *Georgetown Journal of Legal Ethics* 17 (2004): 947-960. Small, D. (2004). Preparing Witnesses A Practical Guide for Lawyers and Their Clients. 2nd Ed. American Bar Association Publishing. Note that explanation of the applicable law is somewhat a gray area, e.g., see *Ibarra v. Baker,* 2009 U.S. App. LEXIS 16753 (5th Cir. July 28, 2009), where an award of sanctions was upheld against counsel for allegedly using an expert witness to indirectly "plant" two new terms of art into the testimony of two fact witnesses, a communication which was not protected from discovery.

[10] New, C., Schwartz, S., and Giewat, G. (2006). Witness Preparation by Trial Consultants: Competitive Advantage or Invitation to Discoverability. Washington State Bar Association Bar New, May 2006 (http://www.wsba.org/media/publications/barnews/may06-new-schwartz-giewat.htm)

[11] LeGrande, N., and Kathleen, M. "Witness Preparation and the Trial Consulting Industry." *Georgetown Journal of Legal Ethics* 17 (2004): 947-960.

[12] See Rule 8.4 and Cmt. 1 to Rule 8.4; see also Rule 5.3. For online version, see http://www.abanet.org/cpr/mrpc/mrpc_toc.html.

[13] *In re Cendant Corp. Securities Litigation,* 3d Cir., No. 02-4386, 9/16/2003.

[14] ABA/BNA Lawyers' Manual on Professional Conduct – Current Reports, Vol. 19 No. 20, September 24, 2003.

[15] *United States v. Adlman*, 68 F.3d 1495, 1501 (2d Cir. 1995)

[16] As discussed below, however, the concurring opinion of Judge Garth did opine on this issue, finding that the doctrine of attorney-client privilege also accorded protection.

[17] Fed. R. Civ. P. 26(b)(4)(B); *Plymovent Corp. v Air Tech. Solutions, Inc.*, 243 F.R.D. 139, 143 (D.N.J. 2007).

[18] The full panoply of this discussion is beyond the scope and length of this article.

[19] The ASTC Professional Code Practice Guidelines for Witness Preparation III (Methods) (A)(3) suggests that if audio- or videotaping is used, that the attorney make a statement on that recording indicating that it is covered by the work produce doctrine.

[20] *United States v. Stewart,* 287 F. Supp, 2d 461 (S.D.N.Y. 2003).

[21] See, e.g., ASTC Professional Code, Practice Area B Witness Preparation: Commentary.

[22] *Hynix Semiconductor Inc. v. Rambus Inc.,* WL 397350 (N.D. Cal. 2008).

[23] *SEC v. Reyes,* WL 963422 (N.D.Cal. 2007).

[24] *B.C.F. Oil Refining, Inc. v. Consol. Edison co. of New York,* 171 F.R.D. 57, 61-62 (S.D.N.Y. 1997); *Grace A. Detwiler Trust v. Offenbecher,* 124 F.R.D. 545, 546 (S.D.N.Y. 1989).

[25] *Fisher v. United States,* 425 U.S. 391, 403 (1976); *United States v. Abrahams,* 905 F.2d 1276, 1283 (9th Cir. 1990).

[26] *Blumenthal v. Drudge,* 186 F.R.D. 236 (D.D.C. 1999).

[27] ABA/BNA Lawyers' Manual on Professional Conduct – Current Reports, Vol. 19 No. 20, September 24, 2003.

[28] David, S., and Beisecker, T. *Discovering Trial Consultant Work Product: A New Way to Borrow an Adversary's Wits?*, 17 Am. J. Trial Advoc. 581, 626-27 (1994).

[29] New, C., Schwartz, S., and Giewat, G. (2005). Lay Perceptions of Witness Preparation. Presentation at the Annual Conference of the American Society of Trial Consultants, Philadelphia, PA; as summarized in New, C., Schwartz, S., and Giewat, G. (2006). Witness Preparation by Trial Consultants: Competitive Advantage or Invitation to Discoverability. Washington State Bar Association Bar New, May 2006 (http://www.wsba.org/media/publications/barnews/may06-new-schwartz-giewat.htm)

Citation for this article: *The Jury Expert,* 2010, 22(1), 54-62.

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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:

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