



# The Jury Expert™

Voir Dire Checklists and Jury Selection Strategies

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## Getting the Most “Bang for Your Buck” from Trial Consultants

by Tara Trask, SLI Consulting

Some cases are simply too small to justify the use of a trial consultant; others are simply too important *not* to use these critical advisors. Once you have made the commitment to hire a consultant, it is important to develop a working relationship that allows for maximum benefit of their many tools.

Attorneys are often unaware of the range of services that trial consultants offer and how this can improve jury selection and other aspects of trial work. For example, I recently worked with a seasoned litigator who hired me simply “to pick a jury.” He was unaware – and, ultimately, very pleasantly surprised – that I was able to help in other ways, such as shaping of the case theme, and more.

No matter what your level of experience, or past history working with consultants, the following

are key considerations to help make the relationship more productive, leading to better results at trial.

### 1. The Consultant is in Your Corner

Attorneys who have not worked with trial consultants often feel that the advisor is *treading on their territory*. Others are concerned about giving the impression to others that the attorney needs “help” to do his or her job. Often the busiest trial attorneys only try a few cases a year, and those that work on very high stakes civil cases may only see a case go to trial once every few years.

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Conversely, most consultants work on numerous trials each year and participate in many mock trials and focus groups. We spend most of our days studying jurors, generating themes, profiling prospective panels, preparing witnesses to testify in front of juries and analyzing data from mock and actual juror pools. Consultants simply see more jurors than most attorneys, and consequently have more experience with how jurors problem-solve cases.

Litigators who are familiar with the consultants’ arsenal of tools, often refuse to go to trial without one. Those that do, often tell me that their trial experience is enriched by having a consultant by their side. With an advisor in their corner, the attorneys project confidence, shrewdness and the willingness to do what it takes to win the case. Territorial feelings should simply never enter the picture.

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## 2. Consultants Do More Than Just “Pick Juries”

While some consultants specialize in certain areas, most provide a wide gamut of services, including: assessing the case from a thematic perspective; assessing and preparing witnesses; shaping strategies for the case; crafting jury-friendly opening statements and closing arguments; facilitating pre-trial research in the form of mock trials and focus groups; crafting effective *voir dire* questions; and, drafting and analyzing reliable and valid juror questionnaires. Seasoned litigators soon learn that adding a trial consultant to your team adds value in areas you never thought possible.

## 3. Consultants Understand Budgetary Concerns

Budgetary considerations are always an issue in today's litigation environment. Be open with your consultant about whatever budgetary issues need to be taken into account. Most consultants prefer to discuss a trial science plan, complete with budgetary projections at the outset of the engagement. Furthermore, many are agreeable to providing updated projections as the case progresses, thus keeping you constantly informed. Be up front with your consultant if you have had budgetary problems in the past. A good consultant should be dedicated to making sure there are no surprises when you receive the bill.

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#### 4. Retaining Consultants Earlier in the Litigation Saves Time and Money

I often find it very difficult to educate clients to the notion that small investments now sometimes pay large dividends later. I am too often confronted by attorneys and clients that seem to cling to a “let’s hope it goes away” strategy of preparing for trial. Setting aside even a small trial science budget early in the process can make a big impact on the direction of a case. An experienced consultant can offer a thematic analysis of the case, identify hot-button jury issues and help streamline argument strategy that will help

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***“A trial consultant’s assistance in preparing for a deposition saves time that might otherwise be spent ‘cleaning up’ poorly delivered testimony at trial.”***

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shape discovery and even early settlement negotiations. Consultants can also provide an experienced sounding board for attorneys.

Using a consultant, even for a few hours, to help prepare key witnesses for their depositions can save time at the deposition, and will likely improve the effectiveness of that witness’s testimony. A trial consultant’s assistance in preparing for a deposition saves time that might otherwise be spent “cleaning up” poorly delivered testimony at trial. With regard to pre-trial research, a compact, inexpensive focus group during the early stages of discovery can help identify weaknesses in a case that might not otherwise be found until much later in the process, when those weaknesses are much more difficult to remedy.

It is a mistake to assume that a consultant can only be retained for hundreds of hours on a case. While, in some larger cases, this is sometimes necessary, a consultant can provide benefit to the trial team even if retained for just a few hours at

a time. Retaining a consultant earlier rather than later can greatly reduce the overall costs of the litigation by saving the consultant, lawyer and client time.

#### 5. Waiting Until the Last Minute to Prepare for Trial Costs More Money

Another chief complaint of most trial consultants is that once attorneys do call, they want the work done *yesterday*, and they don’t want to spend a lot of money. Unfortunately, the reality is that last minute “rushes” cost more money. Not only is the time crunch tough on your consultant, and may cost you higher billing rates, most graphics, video and imaging vendors tend to charge higher rates and overtime for rush jobs as well. FedEx prices alone can take litigation costs through the roof.

Consultants appreciate the fact that litigators are so busy putting out fires and attending to cases that they can rarely plan for things weeks in advance. We also understand that you have better things to do than send page/line designations or damage numbers for graphics. Rely on your support staff to organize the materials you will give to consultants to develop graphics, edit videos or coordinate technology issues with the court.

If you are new to the world of trial consulting, or have used consultants only to “pick the jury,” the above suggestions should help you identify areas where an experienced trial consultant can add value to your case. Trial consultants can bring breadth and depth to your case and help save time, money and other resources in the process. Most importantly, you can increase your efficiency and effectiveness as a litigator, which should lead to better results at trial or more satisfying settlements.

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