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## Special consultants now take some doubt out of jury selection

By Kim Smith

ARIZONA DAILY STAR

When Jan Mills Spaeth started her business back in the early 1980s, people thought she used tea leaves and astrology.

How else could anyone know the blonde in the third row, second seat, would have a sympathetic ear for the prosecution, and the dark-haired gentleman in the middle of the back row would connect with the defendant?

The idea of a professional jury consultant was foreign, Spaeth said.

"There wasn't the realization back then that different personalities could influence juries," Spaeth said. "The thought was that if one side had a strong case, he would win and if he didn't, he would lose."

Twenty some years later, Spaeth counts among her occasional clients the Pima County Public Defender's Office, the Pima County Attorney's Office, and dozens of civil- and criminal-practice law firms.

In February, Spaeth helped defense attorneys Brick Storts and Maria Davila select the jurors in the murder trial of Dr. Bradley Schwartz. The Pinal County prosecutors office also hired a jury consultant for the Schwartz case, Paula Anderson of Mesa. She declined an interview request.

Jurors convicted Schwartz of conspiracy to commit murder but were unable to reach a unanimous decision on the first-degree murder charge.

According to the American Society of Trial Consultants, Spaeth is one of two criminal jury consultants in Tucson. Thomas Baggott, the other one, was not available for comment last week.

A jury consultant can charge anywhere from several hundred dollars up to six figures — depending on the services provided, Spaeth said.

Bob Hirsh, chief deputy public defender, said that if money weren't an issue, he would hire a jury consultant on every case. The more people you have making observations, the better off you are, Hirsh said.

"I'm getting worse and worse at picking jurors," he said. "I put more trust in what she says than my own views. Being older is a detriment now. I've lost touch. I've never even watched 'Law & Order.' "

Since there's an adage that 85 percent of jurors make up their minds during opening statements, jury selection becomes much more important, Hirsh said.

**She was drawn to idea**

### So you want to be on a jury?

- Don't wear outrageously bright or revealing clothing.
- Don't fall asleep during questioning.
- Don't state any strong opinions.
- Avoid being sarcastic, confrontational or emotional.

Source: Jan Mills Spaeth

*"Jury selection is a de-selection process. We're just trying to eliminate those people who could prove more damaging to a case. The other side does the same thing, so you end up with a relatively fair and unbiased panel."*

**Jan Mills Spaeth**

*Jury consultant*

Spaeth, a former social worker, was screening and hiring people for a Tucson company back in 1980 when an attorney asked her if she could use her skills in picking a jury.

She gave it a try, and it didn't work. The defendant was convicted.

Still, Spaeth was intrigued by the idea. She went back to school and got a master's degree in communications and an undergraduate degree in social welfare and psychology.

Defense attorney Storts said he's hired Spaeth five times.

In one of those cases, Spaeth recommended he eliminate a prospective juror. Storts only had a few "strikes" left, however, and overruled her, choosing to eliminate someone else. The juror Spaeth wanted to get rid of ended up being the jury foreperson and voting for a conviction.

When he first started out, Storts said, juries didn't have nearly as many minorities or young people on them.

"I've been picking juries for 44 years, and there's a whole lot more known about jury dynamics now that I probably never needed to consider before," Storts said.

Picking a jury is all about finding people with biases, closed minds, secret agendas and certain personality traits and weeding them out, Spaeth said.

"Jury selection is a de-selection process," Spaeth said. "We're just trying to eliminate those people who could prove more damaging to a case. The other side does the same thing, so you end up with a relatively fair and unbiased panel."

The perfect juror is someone who wouldn't represent an "uphill battle" for either side, Spaeth said.

"You want someone who is at least moderately intelligent, who pays attention, has no ax to grind, no agenda and who is objective and interested in the case," Spaeth said. "You also want someone with life experience, someone who doesn't have a strong ego who would try to sway the other jurors and someone who is even-keeled with common sense."

### **Lawyers have theories on jurors**

Some attorneys still prefer to select jurors on their own, defense attorneys Rick Lougee and Dan Cooper and prosecutor Rick Unklesbay among them.

Experienced attorneys can tell just as much from body language and personal interaction as a jury consultant, they said.

Over the years, they've each developed their own theories on who make the best and worst jurors.

For example, as a defense attorney, Lougee said he likes professors because they can "withstand the onslaught of emotions and look at the evidence." He also likes jurors with no prior experience because those who have served before often find it easier to convict someone, Lougee said.

Cooper tries hard to avoid teachers. In recent years they've become more judgmental than they used to be, he said. Engineers ought to be avoided, too, because many are conservative and tend to see things in "black and white," Cooper said.

Lougee said the key to picking a jury is getting a discussion going and watching for people who appear to be open-minded.

"If I can strike up that kind of interaction, I find that stands me in good stead," Lougee said.

One of the drawbacks of having a jury consultant sitting at the table with you is jurors might think you don't know what you're doing, Unklesbay said.

There have been times when he's picked a juror who has turned out to be "wacky," but who knows if the jury

consultant would have picked up on it, Unklesbay said.

Joe Guastafarro, a jury consultant from Albuquerque, said jury consultants are used to having to convince attorneys about their usefulness.

"Any jury consultant who is any good, though, can usually turn them around in one trial," Guastafarro said. "They'll say: 'Holy cow! I never thought about it that way.' "

### "Jury pools more varied"

Recently, Guastafarro was at a three-day seminar in Philadelphia sponsored by the National Association of Criminal Defense Lawyers. The topic was jury selection and how best to use jury consultants.

About 250 defense attorneys from across the country were there, Guastafarro said.

"It's gotten easier for jury consultants because lawyers have realized the days of stereotypes and homogeneous jury panels are gone," Guastafarro said. "Jury pools are more varied now than they were 30 years ago, and you need to do more probing to find out about their life experiences."

Spaeth said she is typically hired weeks or months before the trial even starts. She uses that time familiarizing herself with the case, getting to know the drawbacks and advantages of her client. She'll then determine what type of jurors should be picked and, in some instances, help formulate questionnaires.

During jury selection, she'll keep an eye out for people who have ties to law enforcement, strong communication skills, positions of leadership, reserved people and people with biases.

Spaeth said she doesn't usually choose jurors based on their race — unless race is an issue in the case. She really tries to focus more on people's life experiences and how those might affect their judgment.

If you're working for the defense, and the defense strategy is to question police tactics, you may not want someone who has a pro-law-enforcement viewpoint, Spaeth said. If you're representing a plaintiff in a medical malpractice case, you probably would choose someone who has had medical problems and sought the opinion of a second physician.

Attorneys find people who listen attentively, take notes and ask questions during jury selection attractive, Spaeth said.

One of the most important questions an attorney can ask during the *voir dire* process is, "Is there anything else we should know about you?" Spaeth said, adding she'll never forget one response.

An elderly woman, who had been crocheting throughout the day, stood up and said, "Your honor, I think you should know I'm not from this planet," Spaeth said.

**On StarNet:** *For more trial coverage and to read reporter Kim Smith's blog, go to [azstarnet.com/schwartz](http://azstarnet.com/schwartz)*

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