

JULY 2018

# MAGNA FYI

## Battle of the Experts

Conference Photos

## Insuring the Headlines

Interview with Stefanie Milch  
of Hallmark Financial Services

## Shadow Juror Insights

by Ross Suter



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Magna Legal Services

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National Managing Director of Jury Consulting,  
Magna Legal Services



# EDITOR'S *note*

PETER HECHT | PARTNER AND EXECUTIVE VICE PRESIDENT SALES

## Friends of Magna,

**D**id you know you were an expert? That's right... you are special, intelligent, with big degrees up to your nose and everyone thinks you're just super talented in your area of expertise... so that must make you an expert. Right? Wrong! The reality check is, not many of us can be experts in the legal world. Nope, there are only a few that can lay claim to that title.

The truth is you are unique, even talented, but that's not enough. Not by a long shot. How do I know? Well I'm no expert, but I was watching and listening to some of the best in the biz at Magna's first ever "Battle of the Experts" in Miami this past May (*I was living out my dream as MC!*).

While watching the experts on stage trading shots with some of the best trial attorneys I know, it became clear that the ingredient missing from most of us is the ability to clearly and effectively communicate your expert knowledge under severe fire, not just to the judge but to us... the American jurors. That, my friend, is an expert that can make a real impact in your case.

Now for the Magna sales tie-in... Wait for it... Okay, here it is... Witness Communication Training or Coaching. You have to do it and Magna Legal Services is an expert at making your experts more effective at depositions and trial. Trust me,

the last thing you want your expert to do is leave behind a juicy sound bite to be kicked around by the jurors during deliberations. That's a nightmare scenario and it happens often. What to do? Call me and I'll get you scheduled for a free case consultation with someone much smarter than me.

Here's what's new and coming up at Magna LS:

- Welcome, Thais Cedeno, to the Magna South Florida Business Development Team!
- Have a dep in Broward County? Check out our new conference center across the street from the Courthouse!
- Get ready to celebrate the Grand Opening of our NEW Philly HQ Office and Mega Conference & Research Center this September!
- JuryConfirm 3.0 is on its way. Details to be announced soon!
- Save the date (11/7 & 11/8) for Magna's annual Chopped for CHOP fundraiser for Children's Hospital of Philadelphia in beautiful Atlantic City, NJ.

Enjoy your summer, take a break from the noise and think about Magna LS or me. And then call me at 866-624-6221. That's 866-624-6221. See you sooner than later. Thank you!

# SHOWDOWN OF SOUTH BEACH!

## BATTLE <sup>OF THE</sup> EXPERTS

DAY 1 - FIRST BOUT  
DAY 2 - FINAL ROUND  
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### Thoughts and Observations from Magna's Battle of the Experts Shadow Jury

Ross Suter, Vice President Litigation Solutions

*It's not often that attorneys get the opportunity to "pull back the curtain" and see how jurors analyze what they do at trial. Magna's recent conference, "Battle of the Experts," provided participants and attendees just that opportunity. Pitting seasoned litigators against technical experts in a cross-examination format, conference attendees were able to listen to a mock jury comprised of eligible individuals from Miami, "the Shadow Jury," provide their thoughts and interpretations of the cross, as well as how Shadow Jurors interpreted what was happening. Below are a few of the takeaways from the program. But first, some background...*

Shadow Jurors were provided with the background for the four cases that the attorneys and experts were referencing. The first case pitted a casino's frequent customer against the casino. The customer claimed that the casino was negligent in their failure to have proper security, in their failure to properly provide the assistance they originally promised, and in aiding and abetting in his false arrest, causing him both monetary and reputational damage. The issues become, in the expert's opinion: (1) what is proper security and (2) did the casino provide such to its patron.

The second case presented the question: How does one determine who the driver was, when a severe accident caused death to one passenger and injury to all of the other occupants. Physical evidence did not provide the answer and it was up to an accident reconstructionist to determine who the driver was.

The third case involved an explosion and fire at a popular restaurant, Meow-Ming, situated between Smell-No More pet grooming salon and Kohl's department store on Strip-Mall Road. A large explosion and fire ripped through the mechanical room behind the restaurant. A fire ensued activating the fire sprinklers. The water flow from the fire sprinklers continued to flow for 45 minutes after the incident causing extensive damage to merchandise at the Kohl's department store. The building owner settled with Kohl's and was suing Smell-No-More and a local HVAC contractor.

The fourth and final case involved a semi-truck accident near the Florida-Georgia state line that killed a mother and her newborn child. The case hinges on expert testimony of the trucking company which disputes that the driver was distracted by the use of his cellphone at the time of the crash.





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## TAKEAWAYS

1. Visuals were seen as helpful. Several times Shadow Jurors commented that it would have been good or helpful to see some of the things being discussed in order to make a better, more informed, decision. Visuals are shown to help shape people's perception and interpretation of the evidence.
2. Context: Jurors wanted as much context as possible in regard to how all the pieces of the puzzle fit together. How a witness's testimony related to another piece of evidence. Or how to define terms with which they might not be familiar. How the language of the instructions on applicable law relate and are defined. The more context they were provided, the better they felt they understood.
3. Experts: When it came to the experts, most jurors felt that experience in the topic area was most important. They preferred to see someone who had actually done the work and placed a higher weight on that factor than

credentials or where they were from. Overall, jurors felt positively towards an expert who provided services for the defense and plaintiffs. However, there was a fraction of jurors who felt it was not necessarily a bad thing to work predominantly for one side if the expert found they "worked better" with one side versus the other.

4. Jurors also spoke of liking to have the question that they are to answer defined early. "What are the issues?" "Why are we here?" Juror expressed that providing some framework as early as possible for them to make an educated decision was extremely helpful.

5. Paid experts? This was not seen as a negative. As discussed above, jurors set that aside and evaluated the experts on what they said and what experience they had in or on the subject matter.
6. Videotaping of Witnesses: Jurors expressed an openness to videotaped testimony. They had a mindset that watching a video versus live testimony would not change their ability to listen and be fair. I would point out that there was some confusion where jurors expressed concerns that there could be "several takes" before the video they got to see was finished. Therefore, the videotaped deposition process may be something to address with jurors.

As it was noted to me afterwards by one corporate counsel; the most important thing to a litigator is "what do the jurors think." It is always interesting to see just how quickly jurors form opinions. Only provided short vignettes of the case and a short bit of testimony, jurors made quick hypotheses, and in most instances, decisions based upon limited information.

Want to know what your jurors in your venue think about the particulars in your case? Call Ross Suter at **215.870.1226** or email him at **RSuter@MagnaLS.com**.





Peter and Staci Hecht



Courtney Tarsa, Dorsey Miller



Aileen Schwartz, Philip Helmes



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Peter Bourgeois, Adam Keating



Mark Calzaretta, Hannah Lim-Johnson, David Johnson,  
Ackerman Family, Hecht Family

# Insuring the Headlines:

## Stefanie Milch



*We've all seen the stories of mass shootings and other major crises that dominate the headlines. Stefanie Milch has insured those events, and in ways you might not expect.*

*Milch is now the Vice President of Claims at Hallmark Financial Services, Inc. in Dallas. Around 70% of Hallmark's work is commercial auto and Milch leads the primary and excess commercial auto groups.*

*Previously, Milch was Assistant Vice President of Excess Casualty Claims at Allied World in New York City. And that is where the headlines came in.*

---

### **How did Allied's insurance coverage work in these high-profile cases? It wasn't just about insuring damage to brick and mortar buildings.**

Allied's coverage, that we called "strategic response," handled items such as clean up of a crime scene, counseling for witnesses and victims, and funeral and burial costs.

One of Allied's clients, for example, was an owner of the Ghost Ship warehouse in Oakland where 36 people died in a December 2016 fire.

### **That is certainly a wide range of coverage to include counseling and burial.**

Strategic response is doing the right thing: It is good for the insured and the families suffering a loss. But it does not imply guilt.

### **You worked on a second component of crisis coverage that also goes beyond the things people might think of.**

Once or twice a month for very catastrophic events such as shootings and anything generating a lot of media attention. It was invoked not for every incident, but the Ghost Ship was one where it was.

It was almost always purchased on the excess level and it was something that separated us from other companies.

### **By speaking out and taking accountability, do you also end up admitting guilt?**

Taking accountability does not mean admitting fault. You can at least do things such as look to completing an investigation.

### **How often was strategic response and/or media relations coverage invoked?**

The insured would call an 800 number. A PR rep from that area would be found and immediately go to the scene. But the PR rep would not do the actual talking. That is still left to the head of the company, etc. And that way what is being conveyed is more heartfelt.



Even in cases where an insured is only going to make a brief statement – apologizing and noting that they will look into the matter - they will go through media training.

**Do you think Pete Hecht, Magna Legal Services Executive Vice President Sales, would be a good crisis communicator?**

Of course. His communication skills are phenomenal. He's clear, concise and convincing.

**How long have you been working with Magna?**

Since June 2015 when I was at Allied World.

**What type of work do you do with Magna?**

At Allied and now Hallmark, I use them for mock trials and jury evaluator – where they come up with a value on a case. In other words, if we are considering a trial, we need to know how much a jury thinks the case is worth.

**Why do you stick with Magna?**

I like the work product. They are accurate, professional and very thorough. They are spot-on when they do their mock trials: It's almost identical to when we try the case. And with exposures of up to \$25 million, you want to make sure you are accurate if you are taking a case to trial.

**You were involved with Magna's Miami Battle of the Experts this year. What did you do there?**

I served on the panel and gave my thoughts on effective cross-examination for expert witnesses. For example, just because an expert is good on paper does not mean they are going to be effective testifying in the courtroom. They may have a terrible personality and end up putting the jury to sleep. So, an expert witness may not always work out as intended.

**“ I like the work product. They are accurate, professional and very thorough. ”**

**You have a law degree from Pace University and have mostly worked in the insurance industry. You started working at Hallmark this year.**

My former boss recruited me to come to Hallmark and I went from an assistant VP at my old company to a VP at Hallmark.

I grew up on Long Island and recently lived in New Jersey and worked in New York City. Now I live in Texas.

**Greater New York City to Texas sounds like a big change.**

Texas is great, but definitely different. I miss New York a lot, especially my friends and family. I also miss the great bagels and pizza.

**Do you have any hobbies?**

For now, I'm too busy at work.





Michael Mazurczak, Erika Malady



Kopka Pinkus Dolin Crew



Peter Hecht



Diane Palumbo, Wendy Madevu, Erika Malady



Ellis Fernandez

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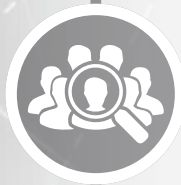
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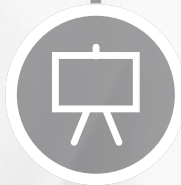
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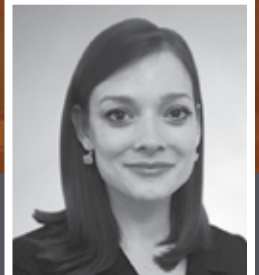
- Jurors:
  - Voir Dire
  - Monitoring
  - Appeal
- Plaintiffs
- Experts



# Jury Says

Test your Jury knowledge!

Rachel York Colangelo, Ph.D., National  
Managing Director of Jury Consulting



**1.** The list below identifies 4 levels of jury decision-making or the “cognitive roadmap” jurors follow when problem-solving a dispute. Rank the list in the order you believe is most influential by placing a number—1,2,3, or 4 in the blank to the right.

- a) Facts/Evidence/Story \_\_\_\_\_
- b) Witness versus Attorney Exchange \_\_\_\_\_
- c) Conduct and Character of the Parties \_\_\_\_\_
- d) Personal Life Experiences/  
Preconceptions/Beliefs \_\_\_\_\_

**2.** Considering some ethical concerns with witness preparation, which of the following is false?

- a) The thorough and proper preparation of a witness to testify under oath is the most important task a lawyer will undertake in the development of a case for trial.
- b) If the attorney displays ethical leadership, the witness ordinarily will respond by telling the truth.
- c) A lawyer has a duty to teach the witness what the facts are, not to learn what the witness already knows.
- d) Lawyers who fail to prepare witnesses for cross-examination most often refer to their clients as “appellants.”

**3.** The validity of jury research is dependent upon which, if any, of the following (select all that apply)?

- a) Mock jury recruit
- b) Presentation content
- c) Analysis
- d) Choice of cuisine for the client attendees
- e) a, b, and c

**4.** Which of the following would you consider an **INEFFECTIVE** communication technique for Generation ‘X’ and Generation ‘Y’ (Millennial) jurors?

- a) Authentic “straight talk” vs. hype
- b) Empower them as decision makers
- c) Emotional appeals
- d) Personal story vs. editorial
- e) Back it up
- f) Appeal to all sensory inputs

**5.** Goals of *Voir Dire* are:

- a) Build Rapport
- b) Assess Preconceptions and Life Experiences
- c) Desensitize (Inoculate) Jurors Against Bad Facts
- d) Indoctrinate Jurors on Key Case Themes
- e) All of the above

Answers: 1.) #1 – d; #2 – c; #3 – b; #4 – a; 2.) c. A lawyer has a duty to teach the witness what the facts are, not to learn what the witness already knows; 3.) c. a, b, and c; 4.) c. Emotional appeals; 5.) e. All of the above



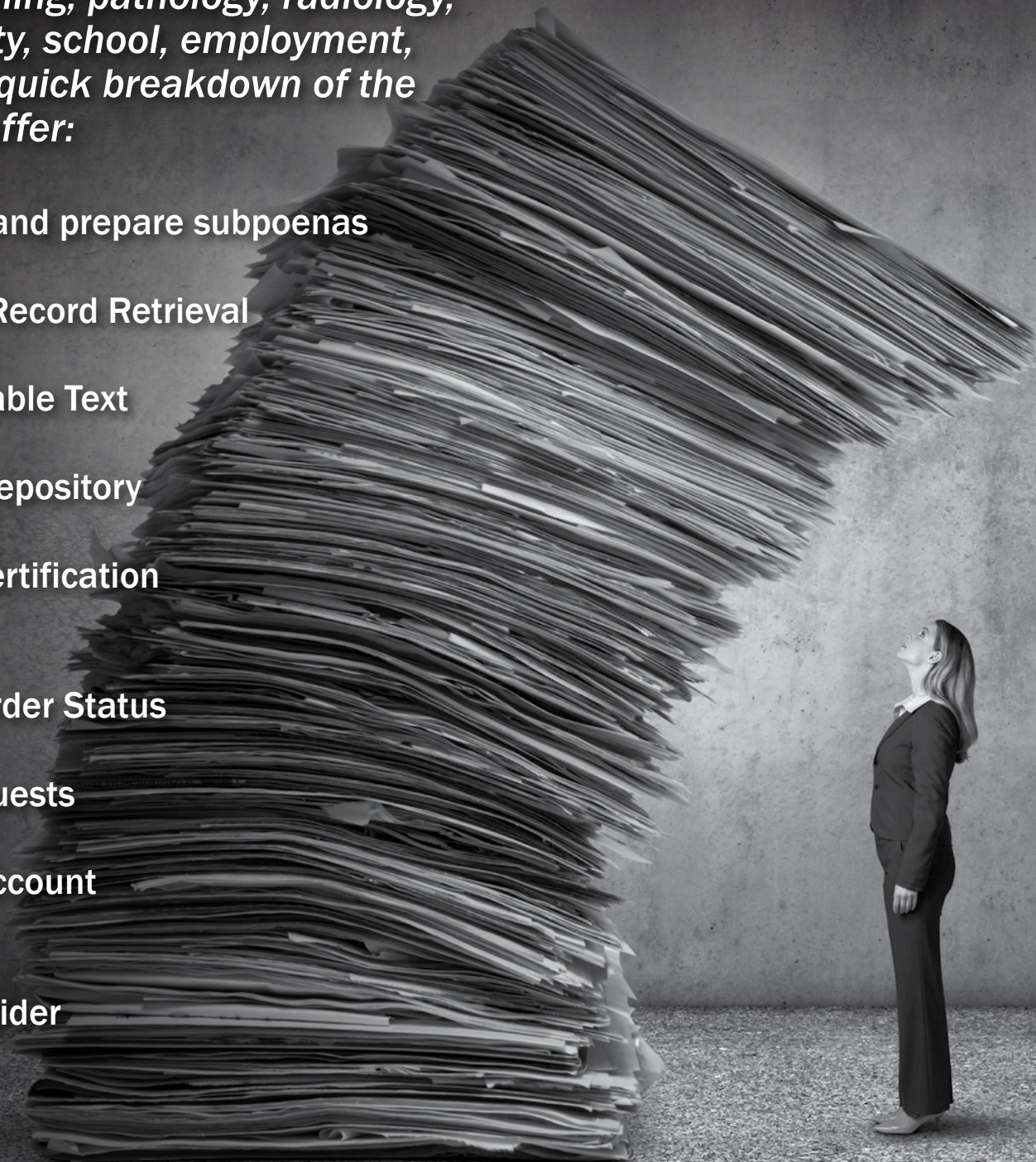
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