

Comparing Criteria of Plaintiff and Defense Lawyers When Selecting Vocational Rehabilitation Experts in Civil Litigation

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Examining the literature over thirty plus years reveals very limited information about lawyers' perceptions in selection criteria when retaining vocational rehabilitation counselors to serve as expert consultants. Furthermore, the literature is silent on the subject between the differences of plaintiff and defense lawyers' preferences when selecting vocational rehabilitation counselors. The present study surveyed and interviewed thirty-one legal professionals from three plaintiffs and two defense firms to determine their selection criteria and any potential differences between these two groups when vocational rehabilitation professionals are chosen in civil litigation matters. The researchers determined minimal differences in preferences between plaintiff and defense attorneys when choosing vocational rehabilitation counselors. General themes of education, credentials, work experience, courtroom experience, demeanor/personality, appearance, presentation and communication skills were consistently favored by attorneys when they are tasked with the responsibility of retaining experts in civil litigation. The authors also discovered through qualitative lawyer interviews valuable information "between the survey lines" that expanded and uncovered new criteria that mattered most to the plaintiff and defense attorneys when selecting vocational counselors for consultation services in the courtroom.

Vocational counselors are often retained in civil litigation for forensic vocational rehabilitation assessments to determine an individual's employment and earning capacity damages resulting from personal injury, medical malpractice, sexual harassment, employment termination, and discrimination. Forensic rehabilitation consultants are also employed to determine the employability and earning capacity of persons receiving spousal support to establish income parameters in marital dissolution cases (Koobatian, 2011). While the state and federal courts have determined the basic qualifications for expert witnesses, the attorney will ultimately pre-qualify and retain the services of the most qualified vocational rehabilitation counselor to serve as a civil litigation expert (Koobatian & Campbell, 2015). An abundance of general information is available on the roles and functions of forensic expert

witnesses participating in civil litigation cases (Koobatian & Campbell, 2015). However, the literature does not currently address what lawyers are specifically looking for when they retain experts in the field of vocational rehabilitation to serve as forensic witnesses. Furthermore, the available literature does not provide evidence of the differences between plaintiff and defense attorney preferences when vocational counselors are selected in the litigation process. Thus, the present study seeks to remedy weaknesses in the present literature, which essentially misses the mark when addressing this important contemporary issue. The quantitative and qualitative research produced from this study focused on unscrambling criteria differences between plaintiff and defense lawyers and obtaining the most important vocational counselor

qualifications that attorneys seek when choosing experts for their cases.

In the universe of civil litigation, there exists a demonstrated need for competent vocational rehabilitation professionals who can offer expert witness testimony on behalf of the court (Johnston, 2005; Williger, 1995). Given this need, the researchers hoped to learn what attorneys are looking for when employing rehabilitation counselors, specifically qualities, characteristics, credentials, experiences, and practices that attorneys deem necessary for this particular area of expert testimony.

Literature Review

An exhaustive literature review spanning over 30 years was performed on this topic (Koobatian & Campbell, 2015). Beveridge et al. confirmed that despite the rapid growth and need in the field of forensic rehabilitation counseling services, there is little research done in this specific area of practice, and even less analysis on how to train competent and skilled forensic vocational rehabilitation professionals. (Beveridge, Karpen, Hadjiyane, Weiss, & Liu, 2014). Moreover, the literature does not currently address what lawyers are specifically looking for when they retain experts in the field of vocational rehabilitation to serve as forensic witnesses (Koobatian & Campbell, 2015). Most of the information provided in the literature related to this subject comes from professionals who are not attorneys. Even though the skills and attributes may have been specified by attorneys through these other professionals, the literature on attorney's perception on hiring vocational rehabilitation experts is currently limited.

While the literature on attorney perceptions of vocational expert witness qualifications proved limited, abundant information exists on what professionals who are not attorneys have to say on the topic of what generally contributes to making someone an effective and qualified expert witness, including rehabilitation counselors, professors, and practitioners outside of the field of rehabilitation counseling (Andersen, 1979; Brodsky, Neal, Cramer, & Ziemke, 2009; Field, 2011; Field, 2014; Field, 2014; Field, Choppa, Johnson, Fountaine, & Jayne, 2007; Field, McCroskey, Sink, & Wattenbarger, 1978; Janikowski, 1999; Johnston, 2005; la Forge & Henderson, 1990; McGaughey, 1998; Sleister, 2000; Weikel, 1986; Wolf, 1993; Younger, 2005). There exists a breadth of information on what attorneys themselves say about the most important qualifications for certain types of expert witnesses to have, but these are experts in fields other than vocational rehabilitation (Browne, 2005; Commons, Gutheil, & Hilliard, 2010; Dattilio, Commons, Adams, Gutheil, & Sadoff, 2006; Dobrish, 2005; Fried, 2013; Riley, 2012; Sapis, 2007; Taylor, 2004; Tirella, 2006;

Williger, 1995). A study 24 years ago was found on this topic. In his 1993 dissertation, Wolf gathered information via questionnaires from both attorneys and vocational experts on the most desirable characteristics of forensic vocational experts (Wolf, 1993). However, there is a need to collect more recent data on this topic, and Wolf, in his recommendations for further research, pointed to the need to survey more attorneys in different parts of the country, rather than just those practicing in New Jersey (Wolf, 1993).

The literature moreover revealed that the first and foremost qualification is a foundational level of education and training at either the master's degree or doctorate degree in rehabilitation counseling or a related field. Other essential qualifications that surfaced were rehabilitation counselor certifications such as the CRC (Certified Rehabilitation Counselor) certificate, and the Diplomat and Fellow certifications offered by the American Board of Vocational Experts. These certifications signify that an individual has acquired the minimal knowledge, skills and abilities of this profession (Koobatian & Campbell, 2015). Also, the literature revealed that having the needed education or credentials is just the starting point in hiring a vocational expert witness. Other factors taken into consideration are how the expert delivers testimony when in court. How well does the expert speak, their appearance, and their persuasion skills were highlighted as important attributes that are needed to influence the trier of fact. It is equally important that the expert's opinion be offered within their competence and expertise. An expert's testimony which is delivered outside of their field would be rendered invalid especially if it was not what the expert was brought into court to testify on (Koobatian & Campbell, 2015).

Other qualifications that were highlighted included membership in professional organizations and the expert participating in continuing education through conferences and workshops. In addition to the application of ethics for vocational experts through continuing education, it was emphasized that expert witnesses stay up-to-date on current case decisions and research in the field. Professionals have mentioned that the ideal expert would be one with impressive credentials along with extensive research in a specific field of practice (Koobatian & Campbell, 2015). Furthermore, attorneys in general had listed "teaching skills" as pertinent for expert testimony success. Other areas of consideration were the credibility or the believability of the expert, and while the believability of the expert was important, the emphasis of impartiality was listed as a top priority when choosing an expert witness (Koobatian & Campbell, 2015).

Koobatian and Campbell (2015) found an attorney listing four criteria's that are essential when retaining a competent expert witness as: (1) Being a practitio-

ner in the field, as an occupation, profession, or technique; (2) be published in periodicals or books; (3) be a professor; and (4) have presentation skills. Koobatian and Campbell (2015) discovered consideration of physical attractiveness and appearance as important expert witness criteria. In a survey of lawyers and experts from Dallas, Texas, the researcher found: qualifications/expertise, honesty/integrity, and appearance/attractiveness/demeanor, as the most sought after qualities of an expert witness (Champagne, 1991). "Attractiveness" included self-presentation. Wachtel (2012) noted "many studies have confirmed that people in the courtroom (jurors, judges, and attorneys) considered 'professional attire' to be important in their determination of the credibility of an expert witness" (p. 1). The author continued that while "professional attire" was not specifically defined, it was safe to assume that it "means a conservative suit and tie for men and a suit for women. It seems that the best rule of thumb would be to dress like an attorney" (p. 1).

A somewhat closer correlation to rehabilitation counselors was described in the dissertation completed by Browne (2005), who surveyed attorneys on what they desire in psychologists as good expert witnesses. Browne determined the following psychologist qualities to be most important (in order of importance):

1. Knowing the case well and being prepared.
2. Appearing objective and honest.
3. Having good integrity and a good reputation.
4. Good demeanor and appearance on the stand, and
5. Good communication skills.

Wachtel, reflecting on Browne's 2005 findings, wrote, "I find it fascinating that 'good communication skills' are important, but not as important as a number of other qualities. It seems that the data strongly supports 'being prepared' as one of the most important qualities a psychologist as an expert witness can bring to the courtroom. Being objective, prepared, working well with the attorney, and having integrity all seem to be just as (if not more) important as having good communication skills. And, apparently, attorneys may place a little too much emphasis on the appearance of the witness - although appearing is important, the data seemed to show that there are many other qualities that are more important than what the expert witness looks like" (Wachtel, 2012, p. 7).

Research Questions

The available literature provided excellent foundational information about what lawyers are generally seeking when they set out to retain expert witnesses. However, there is currently limited information related to attorney perceptions on what qualifies a per-

son to render expert opinions in the areas of vocational rehabilitation.

As such, the following research questions will be addressed in the present study.

1. What qualifications are plaintiff and defense lawyers looking for when retaining vocational rehabilitation counselors to serve in civil litigation matters as expert witnesses?
2. Furthermore, what are the differences between plaintiff and defense attorney preferences when selecting vocational counselors?

Methods and Data Analysis

Participants

The participants of this study came from a convenience sample of five different law firms: two defense and three plaintiff firms. The firms were recruited in the fall of 2015 through the professional network of the primary author. Established law firms with a long history of civil litigation experience were identified through this convenience sample. Three firms chose not to participate in this study due to time constraints. However, while engaging them over the telephone, they shared many impressions and opinions that were reflective of the actual attorneys that participated in this study. In hopes of developing a fair representation of attorney perceptions, lawyers specializing in plaintiff practices and those participating as defense practices were chosen. Law firms that had established practices with over 20 years of experience were selected. Well-seasoned and established lawyers, along with their younger colleagues participated in this sample which provided a nice cross section of experience in the data.

When arranging the research meetings, the lawyers were encouraged to invite their experienced/senior paralegals that also participate in the selection process of retained experts. Participation was encouraged by the firm's leadership, but voluntary. Overall out of the 17 defense participants, 10 were lawyers and 7 were paralegals. Out of the 14 plaintiff participants, 10 were attorneys and 4 were paralegals. Of the defense firms, one law firm (D1) had eight participants (one female attorney, three male attorneys, three female paralegals, and one male paralegal). The second defense firm (D2) had nine participants (three female attorneys, three male attorneys, and three female paralegals). With the plaintiff firms, one firm had seven participants (P1) (three male attorneys, three female paralegals, and one male paralegal). The second plaintiff firm (P2) had four participants (two female attorneys and two male attorneys). The last plaintiff firm (P3) had three participants (three male attorneys).

Measures

A quantitative survey instrument was developed and field tested (see Figure 1.) The 19 item survey was developed by interviewing lawyers as to their impressions of the most important qualifications they seek when selecting a forensic vocational rehabilitation counselor. This information was also cross-referenced in the literature review to define and select 19 key items that were relevant to this study. Participants used a 7 point Likert scale ranging from 1 "not important" to 7 "extremely important" to rate the importance of the various factors. After the legal professionals reached the end of the 19 questions in the survey, the 20th question asked them to write the top three in rank order the most important criteria they feel are essential when selecting vocational experts.

Procedure

The data collection process took place primarily during lunch sessions at the offices of the law firms. Out of the five law firms, two choose to meet during their "coffee break" times. After obtaining the consent from the leadership of the firms, the researcher set a date and went on-site to the firms. Each individual session lasted about one hour. Lunch was provided as a way to encourage the voluntary participation. During the first part of the session, the participants individually completed the survey instrument, and in the second part they participated in focus group discussions/interviews.

After the legal professionals reached the end of the rating questions in the survey, they were asked to additionally indicate in rank order, their perception of the top three most important criteria that the opposing attorney will choose when selecting a vocational expert. This additional question was used to promote further discussion during our qualitative focus group session, which took place once all participants of the group had filled out and returned the survey. The focus groups were semi-structured with open ended questions to elicit additional information beyond the 20 questions contained in the survey instrument. The legal professionals were free to discuss and exchange preferences in how they select vocational experts. Overall five focus groups were conducted, one for each firm.

Results

In our quantitative study from the attorney surveys, we found minimal differences in preferences between plaintiff and defense attorneys when choosing vocational rehabilitation counselors. In presenting this quantitative data, we also included some of the comments shared by the attorney focus groups during our

qualitative interviews to highlight the relevancy of this data.

Differences Between Plaintiff and Defense

In accordance with the analysis of the quantitative findings, the two attorney groups, Plaintiff (n=14), Defense (n=17) completed the first 19 questions in the scale survey of the instrument resulting in similar scores to nine out of the nineteen qualifications as being "extremely important" or "very important" (M=5.9 or higher) qualifications for a vocational rehabilitation expert (Table 1). The importance ratings were compared by calculating independent *t*-tests for the defense and plaintiff groups and because of the multiple comparisons, a Bonferroni correction was applied yielding $p = 0.05/19 = 0.003$. When comparing the two groups of attorneys, the *t*-tests indicated only one statistically significant difference among the 19 items, that is, the defense indicated a greater importance of the vocational experts balance/ratio of retentions between defense and plaintiff attorneys.

The Nine Very Important Characteristics

The first of the nine characteristics to which the attorney groups ranked as "very important" showed the plaintiffs (M=6.00, SD=0.88, Rank=7) ranked the vocational expert as holding a doctorate degree slightly higher than the defense (M=5.82, SD=1.13, Rank 9). However, both the plaintiff (M=6.29, SD=0.83, Rank=6) and the defense (M=6.29, SD=0.69, Rank=6) gave an equal score to a vocational rehabilitation expert holding a Master's degree. This suggests that even though it is a desired qualification for the expert to have a doctorate degree it is not necessary. There is an emphasis on the expert having the minimum of a master's degree in the related field. The plaintiff ranked (M=6.31, SD=0.75, Rank=5) certifications and/or licensure related to vocational expert credentials somewhat lower than the defense (M=6.53, SD=0.62, Rank=3).

The next two "very important" qualifications show the defense (M=6.24, SD=0.75, Rank=7) giving a higher score than the plaintiff (M= 5.92, SD= 1.32, Rank=9) in regards to the vocational rehabilitation expert being currently employed and performing vocational evaluations on persons with disabilities, where the plaintiffs (M=6.64, SD=0.63, Rank=1) scored a vocational expert's knowledge of the local labor market where the case is venued as higher importance than the defense (M=6.31, SD=0.48, Rank=5).

The last four out of the nine "very important" qualifications showed the defense (M=6.71, SD= 0.47, Rank=1) putting more of an importance on the expert's personality, demeanor, or likability than the plaintiff (M=6.43, SD= 1.09, Rank=3), which the attor-

WHAT DO LAWYERS LOOK FOR, AS MOST IMPORTANT QUALIFICATIONS, WHEN SELECTING A FORENSIC VOCATIONAL REHABILITATION COUNSELOR?

* Please rank your answer by checking one box according to this scale:

- 1- Not at all important
- 2- Low importance
- 3- Slightly important
- 4- Neutral
- 5- Moderately important
- 6- Very important
- 7- Extremely important

Questions	Not at all Important	Low Importance	Slightly Important	Neutral	Moderately Important	Very Important	Extremely Important
1. Doctorate Degree related to vocational expert credentials?							
2. Master's Degree related to vocational expert credentials?							
3. Certifications and/or Licensure related to vocational expert credentials?							
4. Membership in professional organizations related to vocational expert credentials?							
5. Publishing in journals, books or chapters related to vocational expert credentials?							
6. Currently employed and performing vocational evaluations on persons with disabilities?							
7. Vocational expert's knowledge of the local labor market where the case is venued?							
8. Geographical location of expert in close proximity to the court venue?							
9. Cost of services as compared between other vocational experts?							
10. Vocational expert's balance/ratio of retentions between defense and plaintiff attorneys?							
11. Past history of expert in which the jury/judge adopted the expert's vocational opinions?							
12. Personality, demeanor, or likeability of the vocational expert?							
13. Public speaking and communication skills of the vocational expert?							

Figure 1. Quantitative Survey Instrument (Page 1 of 2)

14. Teaching and educating skills to the trier of fact by the vocational expert?							
15. Availability of the vocational expert?							
16. Physical appearance of the vocational expert?							
17. Race/ethnic origin of the vocational expert? • Any particular race/ethnic origin most desirable in your selection criteria? Fill in _____							
18. Male or female gender of the vocational expert? • Any particular gender most desirable in your selection criteria? Fill in _____							
19. Age of the vocational expert? • Any particular age range most desirable in your selection criteria? Fill in _____							
20. Out of all of the categories, what are the top three in rank order as the most important criteria you feel are essential when selecting a vocational expert?							
1. _____							
2. _____							
3. _____							

Figure 1. Quantitative Survey Instrument (Page 2 of 2)

ney groups emphasized jury appeal as equally important even though it was not among the questions on the survey. The groups stressed the importance of the expert not being argumentative and being relatable to the jury, as well as the expert's skills in public speaking and communication, defense ($M=6.69$, $SD=0.48$, $Rank=2$), plaintiff ($M=6.50$, $SD=0.65$, $Rank=2$).

In terms of the expert's ability to effectively communicate to the jury, both attorney groups in the survey had listed ethnicity as a characteristic of non-importance when retaining a vocational expert. However, during further conversations between the researchers and the attorney groups, more of an emphasis was placed on language barriers than on race, and how an expert with a thick accent could be a hindrance in being able to communicate to a jury. The attorneys went on to explain that even though an expert might be a leader in their field, if there is a language barrier that created a difficulty for the jury to understand their

testimony, then the expert might not be considered as the best choice.

Both groups gave the same ranking for the expert having the necessary qualifications in teaching and educating skills, defense ($M=6.47$, $SD=0.51$, $Rank=4$) plaintiff ($M=6.43$, $SD=0.65$, $Rank=4$), as well as, the availability of the expert, defense ($M=6.12$, $SD=0.86$, $Rank=8$) plaintiff ($M=5.93$, $SD=1.14$, $Rank=8$).

The Seven Moderately Important Characteristics

Seven characteristics out of the 19 survey questions (Table 1) were ranked as "moderately important" qualifications when selecting a vocational rehabilitation expert. The geographic location of the expert in respect to close proximity to the court venue, received a higher ranking from the defense ($M=4.88$, $SD=1.27$, $Rank=13$) than the plaintiff ($M=4.29$, $SD=1.49$, $Rank=16$). The defense group favored an expert wit-

Table 1

Mean and standard deviations of the importance of the 19 characteristics (19 likert scale survey items) and results of independent samples t-test

Characteristic (likert scale survey items)	Plaintiff (n=14)			Defense (n=17)			.sig
	M	SD	Rank	M	SD	Rank	
Doctorate Degree related to vocational expert credentials?	6.00	0.88	7	5.82	1.13	9	
Master's Degree related to vocational expert credentials?	6.29	0.83	6	6.29	0.69	6	
Certifications and/or Licensure related to vocational expert credentials?	6.31	0.75	5	6.53	0.62	3	
Membership in professional organizations related to vocational expert credentials?	5.14	1.46	11	5.47	1.55	11	
Publishing in journals, books or chapters related to vocational expert credentials?	5.00	1.24	12	5.12	0.78	12	
Currently employed and performing vocational evaluations on persons with disabilities?	5.92	1.32	9	6.24	0.75	7	
Vocational expert's knowledge of the local labor market where the case is venued?	6.64	0.63	1	6.31	0.48	5	
Geographical location of expert in close proximity to the court venue?	4.29	1.49	16	4.88	1.27	13	
Cost of services as compared between other vocational experts?	4.57	0.65	14	4.77	0.90	15	
Vocational expert's balance/ratio of retentions between defense and plaintiff attorneys?	4.79	1.31	13	5.59	0.62	10	.003
Past history of expert in which the jury/judge adopted the expert's vocational opinions?	5.29	1.64	10	4.77	1.64	16	
Personality, demeanor, or likeability of the vocational expert?	6.43	1.09	3	6.71	0.47	1	
Public speaking and communication skills of the vocational expert?	6.50	0.65	2	6.69	0.48	2	
Teaching and educating skills to the trier of fact by the vocational expert?	6.43	0.65	4	6.47	0.51	4	
Availability of the vocational expert?	5.93	1.14	8	6.12	0.86	8	
Physical appearance of the vocational expert?	4.43	1.70	15	4.88	1.41	14	
Race/ethnic origin of the vocational expert?	2.29	1.54	18	2.59	1.54	18	
Male or female gender of the vocational expert?	2.29	1.54	19	2.53	1.50	19	
Age of the vocational expert?	3.14	1.83	17	4.41	1.46	17	

ness having familiarity with the local labor market as a high priority, as well as the importance of the expert being prepared in fully understanding the case material. Further discussion of the importance of the geographical location of an expert witness, the group agreed it is within reason to have someone from anywhere within the state the trial is in, but having an expert that resides within a certain city, for a case in that city, is not necessary.

Cost of services as compared between other vocational experts (Table 1) was given similar rankings between the defense (M=4.77, SD=0.90, Rank=15) and the plaintiff (M=4.57, SD=0.65, Rank=14). Continued discussion with the attorneys revealed that hiring an expert from out of town increases the cost of the services. This increase of fees has the potential of making the expert look like a "hired gun." Another attorney added to the discussion stating that he frequently uses experts from out of town and he explained to the jury that he needed to look for experts from out of town, because local experts were not available or they did not fit the case in order to justify the higher cost. However, one of the plaintiff attorneys viewed cost as being unimportant. He explained that it depended on the case, and that if the cost justified the size of the case, then the higher expenses may be needed for case resolution.

Also ranked as "moderately important" by both attorney groups, the defense (M=5.59, SD=0.62, Rank=10) rated a vocational expert's balance or ratio of retentions between defense and plaintiff attorneys (Table 1) statistically significantly higher than the plaintiffs (M=4.79, SD=1.31, Rank=13), whereas, the plaintiff rated (M=5.29, SD=1.64, Rank=10) the past history of the expert in which the jury or judge adopted the expert's vocational opinions (Table 1) higher than the defense (M=4.77, SD=1.64, Rank=16).

Both the defense (M=5.47, SD=1.55, Rank=11) and plaintiff (M=5.14, SD=1.46, Rank=11) gave an equal ranking to the expert holding memberships in professional organizations related to the vocational expert credentials, as well as the expert being published in journals, books or chapters related to the vocational expert credentials, defense (M=5.12, SD=0.78, Rank=12), plaintiff (M=5.00, SD=1.24, Rank=12).

In regards to the physical appearance of the vocational expert (Table 1) the defense (M=4.88, SD=1.41, Rank=14) gave a slightly higher rating than the plaintiff (M=4.43, SD=1.70, Rank=15). One attorney mentioned that race, age, or physical appearance was not as important as is the expert's ability to communicate and persuade the jury. However, the expert's appearance is mentioned when the topic of gender or jury appeal was discussed. One attorney expressed that it appears more "socially acceptable" when a male expert

"fights" with the attorney during cross-examination. But, for a female expert to do the same it usually does not sit well with the jury, unless the female expert is extremely knowledgeable and "attractive". Another attorney shared that he uses two female experts who are very bright and "attractive", which gives them great jury appeal. While the physical appearance of an expert was categorized as being "*moderately important*", it is clear the physical appearance of an expert could be included with personality, demeanor, or likability, which is rated by both attorney groups as being a "*very important*" (Table 3) qualification when selecting a vocational expert.

Not Important Characteristics – Race, Gender and Age

Out of the 19 questions on the survey three factors were considered as being "*not important*" qualifications for the attorney groups. Both plaintiff and defense gave equal ranking for the race or ethnic origin of the expert (Table 1) plaintiff ($M=2.29$, $SD=1.54$, $Rank=18$) defense ($M=2.59$, $SD=1.54$, $Rank=18$). However, as mentioned previously, while race is not a factor in selecting an expert witness, some attorneys emphasized the importance of the expert being able to communicate clearly. One attorney shared how he uses the phone as a screening tool to gage if the potential expert is able to communicate clearly. If the person has an accent that interferes with communication then they would not be considered as expert witness material. This attorney also stipulated that race had nothing to do with the decision to hire or not to hire an individual.

This same opinion was shared by other attorneys that race in itself was not an issue. If the person has a thick accent this can make it very difficult for jurors to understand the person and therefore the expert will not be as effective. Another attorney went on to conclude that race was not an issue, but it is the potential language barriers in being able to communicate to the jury, which again comes down to jury appeal.

In regards to the gender of the vocational expert (Table 1), both attorney groups gave an equally low ranking- defense ($M=2.53$, $SD=1.50$, $Rank=19$) and plaintiff ($M=2.29$, $SD=1.54$, $Rank=19$). The attorneys ranked on the survey that gender is not necessarily an important consideration when selecting an expert. However, we learned in our interviews, the issues around gender primarily involved dealing with stereotypes, role expectations and prejudices of the jury. Statements such as the attractiveness of a female expert, which contributes to jury appeal, and another attorney stating she likes to retain a female engineering expert, because when this expert discusses complex mechanical problems, the male jurors are often very impressed and interested in what she has to say.

Both the defense ($M=4.41$, $SD=1.46$, $Rank=17$) and plaintiff ($M=3.14$, $SD=1.83$, $Rank=17$) ranked age slightly higher than gender and race, however when it came to the age of an expert, some of the attorneys expressed caution when considering an individual who was over 70 years of age, because of the potential cognitive decrease, the individual's physical appearance of being too old, and that the individual might not be up to speed regarding the latest trends.

Other group members offered their opinions with regard to age stating that an acceptable age and minimum length of preparation for a person to be considered as being able to offer expert testimony was at least 10 years of experience in vocational rehabilitation. Another attorney mentioned that an expert should be at least over the age of 40. Furthermore, another attorney felt that an expert should be under the age of 65, which in her opinion after 65 a person's mental acuity may not be as sharp as a younger person. However, this same attorney shared that she had hired an expert orthopedic surgeon that was 80 years old, and in her words "*... is sharp as a tack and very effective.*"

Another attorney expressed his thinking on how a younger person with little experience would not be an effective expert. He felt that the "*ideal expert*" should be someone who has worked in many different types of jobs, which would make that person appear well rounded and experienced when addressing employment issues in vocational rehabilitation.

Top Four Characteristics of Each Group Based on Rankings of the Mean

The two attorney groups, Plaintiff ($n=14$), Defense ($n=17$) rated the top four characteristics for a vocational expert based on ranking on the mean of the 19-likert scale survey items (Table 2). The plaintiffs ranked a vocational expert's knowledge of the local labor market where the case is venued as the most important ($M=6.64$, $Rank=1$), where the defense ranked the personality, demeanor, or likability of the vocational expert ($M=6.41$, $Rank=1$) as theirs.

Furthermore, the vocational expert's personality, demeanor, or likability was included in the plaintiffs ($M=6.43$, $Rank=3$) top four.

The analyses revealed that both the defense ($M=6.69$, $Rank=2$) and plaintiff ($M=6.50$, $Rank=2$) gave equal ranking of importance to the public speaking and communication skills of the vocational expert. Teaching and educating skills to the trier of fact by the vocational expert received equal ranking with personality, demeanor, or likability of the vocational expert from the plaintiff ($M=6.43$, $Rank=3$). Certifications and/or licensure related to vocational expert credentials was ranked as the third most important characteristic by the defense ($M=6.53$, $Rank=3$) followed by teaching

Table 2

Top 4 characteristics of each group based on ranking on the mean of the 19-likert scale survey items

Group	Top 4 Characteristics	Rank	M
Plaintiff (n=14)	Vocational expert's knowledge of the local labor market where the case is venued?	1	6.64
	Public speaking and communication skills of the vocational expert?	2	6.50
	Personality, demeanor, or likeability of the vocational expert?	3	6.43
	Teaching and educating skills to the trier of fact by the vocational expert?	3	6.43
Defense (n=17)	Personality, demeanor, or likeability of the vocational expert?	1	6.71
	Public speaking and communication skills of the vocational expert?	2	6.69
	Certifications and/or Licensure related to vocational expert credentials?	3	6.53
	Teaching and educating skills to the trier of fact by the vocational expert?	4	6.47

Table 3

Percentage of participants who named the characteristic as one of the top 3 characteristics (item 20), (characteristic which was picked by at least 30% in each group highlighted in bold)

	Plaintiff (n=14) Percentage	Defense (n=17) Percentage
Doctorate Degree related to vocational expert credentials?	0.43	0.35
Master's Degree related to vocational expert credentials?	0.21	0.29
Certifications and/or Licensure related to vocational expert credentials?	0.07	0.12
Membership in professional organizations related to vocational expert credentials?	0.00	0.00
Publishing in journals, books or chapters related to vocational expert credentials?	0.00	0.00
Currently employed and performing vocational evaluations on persons with disabilities?	0.50	0.29
Vocational expert's knowledge of the local labor market where the case is venued?	0.29	0.18
Geographical location of expert in close proximity to the court venue?	0.00	0.06
Cost of services as compared between other vocational experts?	0.00	0.00
Vocational expert's balance/ratio of retentions between defense and plaintiff attorneys?	0.00	0.06
Past history of expert in which the jury/judge adopted the expert's vocational opinions?	0.14	0.12
Personality, demeanor, or likeability of the vocational expert?	0.36	0.35
Public speaking and communication skills of the vocational expert?	0.43	0.41
Teaching and educating skills to the trier of fact by the vocational expert?	0.29	0.18
Availability of the vocational expert?	0.00	0.12
Physical appearance of the vocational expert?	0.00	0.06
Race/ethnic origin of the vocational expert?	0.00	0.00
Male or female gender of the vocational expert?	0.00	0.00
Age of the vocational expert?	0.00	0.00

and educating skills to the trier of fact by the vocational expert, which was ranked as the fourth most important by the defense (M=6.47, Rank=4).

Top 3 Characteristics Chosen as Most Essential by Plaintiff and Defense Lawyers

Finally, the 20th item on the survey asked the lawyers to name their top three criteria out of the list as most essential when selecting a vocational expert. The following characteristics were picked by at least 30 percent in each group (Table 3).

Currently employed and performing vocational evaluations on persons with disabilities was at the top of the plaintiff's list with a 50 percent ranking. Followed by a doctorate degree related to the vocational expert credentials and public speaking and communication skills of the vocational expert tied at a ranking of 43 percent. Rounding out the plaintiff's top three, personality, demeanor, or likability of the vocational expert received 36 percent.

The defense's top three picks included public speaking and communication skills of the vocational expert at 41 percent, and a doctorate degree related to the vocational expert credentials and the personality, de-

meanor, or likability of the vocational expert tied at 35 percent.

These results also display the high degree of agreement between the plaintiff and defense preferences when selecting vocational experts.

Discussion

In accordance with this research, our quantitative analyses from the attorney surveys determined very few differences in preferences between plaintiff and defense attorneys when choosing vocational rehabilitation counselors. When comparing the two groups of attorneys, the *t*-tests indicated only one statistically significant difference among the 19 items, that is, the defense indicated a greater importance of the vocational expert's balance/ratio of retentions between defense and plaintiff attorneys. Furthermore, when the attorneys were asked to identify the top three criteria, the plaintiff and defense lawyers displayed a remarkable degree of agreement.

While the emphasis of this attorney research was on qualifying vocational rehabilitation experts, the lawyers tended to generalize their opinions in our interviews to all experts that they employ in the civil litigation process. There seemed to be a consistent methodology of thought and process when attorneys are choosing a variety of experts for their cases. The high agreement across the different groups suggest that results from this study are representative of the Californian context, a potential limitation is the transferability to States with different procedures and laws. The qualitative interviews helped identify additional information and perceptions outside of the 19 questions presented in the survey instrument. Examples in this discussion included the need for "honesty" and the "expert being fully prepared for the case" as well as "respect within the legal community" as very important criteria.

The answers to the research questions determined minimal differences in preferences between plaintiff and defense attorneys during the vocational rehabilitation counselor selection process. The preferred criteria found in the literature were similar to this study's current findings when attorneys need to retain vocational counselors. Criteria including education, credentials, work experience, courtroom experience, demeanor/personality, appearance, presentation and communication skills were consistently favored by attorneys when they engage in the task of identifying vocational experts to serve in civil litigation matters.

Valuable information was discovered that further delineated the dynamics that were involved in the minds of the attorneys when selecting experts. Nuances like the accent of an expert's voice or using gender as a tactical means for jury appeal revealed that this selection

process is both "art and science" that attorneys must employ in the courtroom to persuade the trier of fact.

Vocational rehabilitation counselors certainly face these selection issues when they are being considered by lawyers for expert retention in civil litigation. This study confirmed the multi-dimensional areas and characteristics that an expert often needs to possess to serve in forensic matters. While the expert's basic credentials and work experience are fundamental in the selection process, the person's "soft skills" and personal characteristics not included in one's Curriculum Vitae may be the most important criterion that ultimately is in the mind of a lawyer when a final expert hiring decision is made.

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