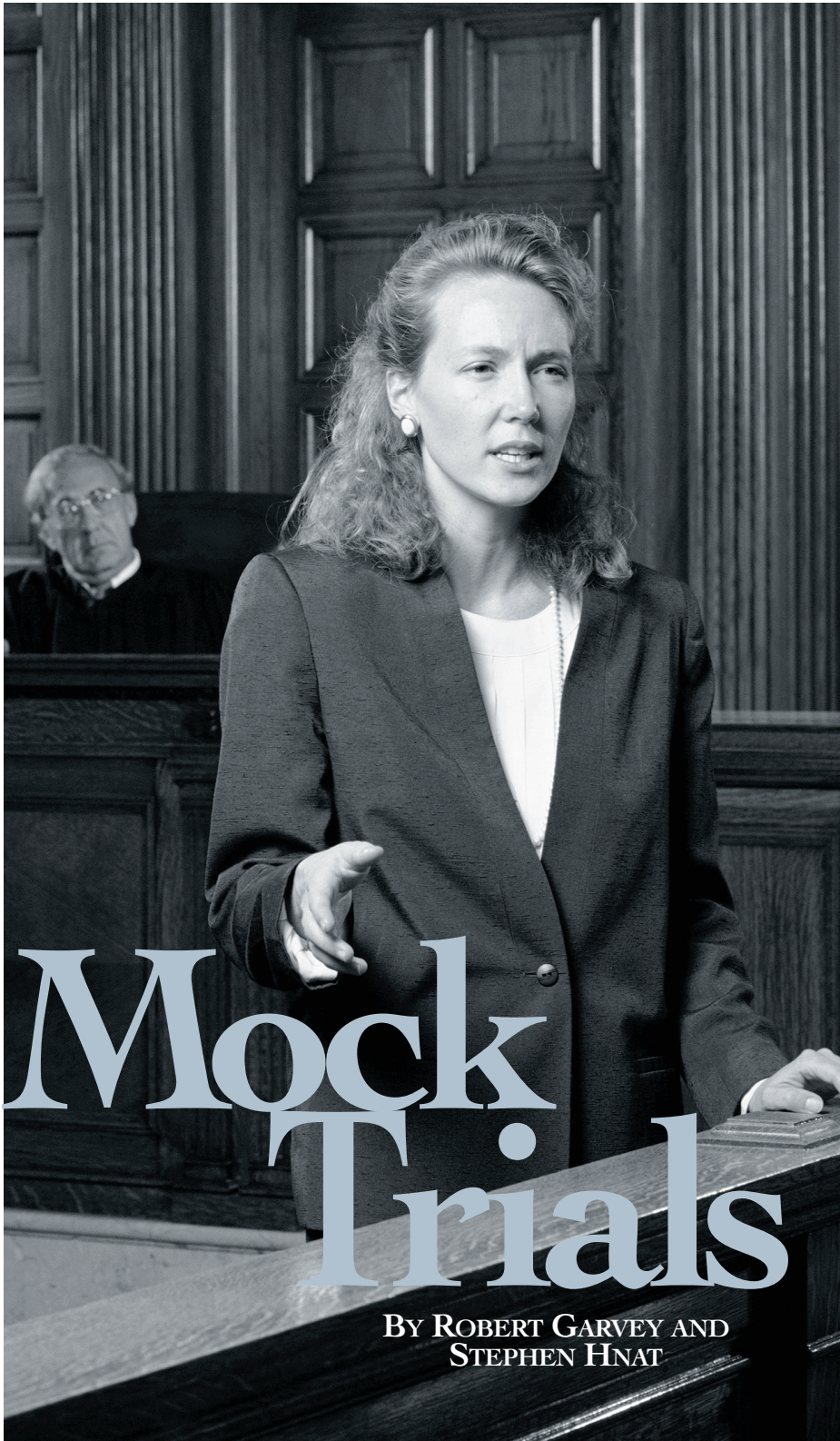


## Useful preparation



“It’s amazing really. Twelve people go into a room to decide the fate of another human being. Twelve people with twelve different sets of eyes, twelve different hearts, and twelve minds that are as different from the defendant as they are from each other. Yet somehow they usually manage to do the right thing.” (*Anatomy of a Murder*). Utilizing the techniques described in this article, the trial lawyer can improve the odds that the jury will “do the right thing” for a particular client.

### The Mock Jury

A well-run mock jury should provide, at a minimum, answers to the following inquiries:

1. What are the most persuasive arguments, strategies, and evidence?
2. What are the optimal juror characteristics and jury composition for your case?

In addition, a well-run mock trial should reveal a range of monetary damages and the factors that escalate or reduce those damages.

Albert Einstein once commented that “God does not roll the dice.” Neither should a prepared trial lawyer.

### How Should a Mock Trial Be Conducted

The most important consideration of any research exercise is the validity and reliability of the results. Improper selection of “jurors” resulting in a faulty participant pool is worse than a waste of time and money because it can lead the trial attorney in the wrong direction. A participant pool must be representative of the venue where the case will be tried. Jurors should be randomly selected after carefully screening out people who would never serve or appear in a jury pool normally.

The issue as to how many jurors should sit will be answered by a number of factors. The average “cost” for an individual juror for one day is approximately \$100. Once you have decided to commit significant resources to a jury consultant, a venue, etc., it is probably wise to have at least 12 to 14 jurors to deliberate in two groups.

# for taking your case to court

Generally, mock trials are limited in time to 6 to 8 hours. There is no necessity to voir dire the jury panels because a juror questionnaire will assess attitudes and beliefs. These questionnaires are filled out before the day of the "trial." The pattern of responses to this questionnaire, combined with the ability to view these jurors during deliberation, can later provide valuable voir dire questions. For example, in an auto negligence case one elicited fact predicted an outcome favorable to plaintiff on the issue of fault. Jurors who said they drove more than 15,000 miles per year consistently ruled favorably for plaintiff in the mock exercise. This became a key voir dire question in a trial that resulted in a favorable award.

Your opposition should be chosen carefully. We suggest that you hire a trial attorney of at least equal ability from outside the firm to represent your opposition. The need for confidentiality is minimized by the fact your opposition will not be viewing the results. You should try the "worst case" scenarios. Remember, you can learn as much from losing the mock trial as from winning it.

Questionnaires can be used in a creative fashion at any point during the "trial" to determine the effectiveness of key arguments, strategies, or witnesses. Forms can be utilized, if necessary, to force jurors to address specific issues during deliberation. Be creative.

Deliberation is the most important part of a mock trial and must be videotaped. Many mock trial jury rooms are set up with hidden cameras and microphones. The more you can recreate the feeling of a real court room and court experience, the better. University of Detroit Mercy Law School rents facilities for that purpose and is centrally located. However, mock trials are conducted in a variety of suitable venues.

We suggest that as much time as possible be allotted to jury deliberation. Remember, the goal of viewing jury deliberation is not always achieving a "no cause" or that large monetary verdict. The goal might be simply to test which arguments hit the mark and which arguments fail in terms of bringing the jury to a conclusion.

For example, for case evaluation purposes we "tried" an auto negligence case involving a young concert pianist. The fact that she was "disabled" for only two weeks held up negotiations after a \$650,000 mediation award. All doctors, including defendant's medical examiners, agreed she had suffered a mild brain injury that interfered with her ability to learn new, complex material. However, the plaintiff presented as perfectly normal, rode a bicycle, and was still an accomplished pianist.

How would a jury react to this young, attractive pianist who had little in the way of economic damages? We learned from the mock jury that the plaintiff would present very well and that she would be well compensated for her loss of potential and excellence. The results were used as a settlement tool at facilitation and the case resolved for \$1,400,000.

After case presentation, but prior to the deliberations, questionnaires can be used to assess the *individual* responses to the presentations of the plaintiff and defendant. During deliberations you assess *group* dynamics, characteristics, and responses.

Deliberations also provide you with common sense themes and arguments that may evolve into trial themes. For example, in the recent case of *Eslinger v K-Mart* during deliberations a mock juror summarized the entire plaintiff's case as "no I.D., no gun, no death." (It should also be noted that plaintiff did not fare well in three of four mock juries, but the results provided the keys to a record plaintiff's award). Trust the jury and listen to how they decide your case. This can be a frightening (as well as enlightening) experience to an attorney, because juries often use strange and unanticipated routes to a decision.

After the verdict is rendered, the work of the jury consultant is just beginning. Debriefing the jury after deliberations in a focus-group format can provide additional data. An important role of the jury consultant is to combine the comments of the individual jurors during deliberation, with personal information gleaned from the pre-trial questionnaires they filled out. It is from this information that juror profiles are developed.

Statistical analysis of data helps distinguish jurors and pinpoint demographic and attitudinal characteristics that can predict optimal juror characteristics. The results should be robust enough so that you can successfully adjust and argue your case, regardless of the composition of the jury pool, so long as you can identify the juror "type" who sits in the box.

For example, in the *Eslinger* and *Jenny Jones* cases the defendants (and plaintiffs for that matter) had concluded that male jurors were not favorable to plaintiff's cases. However a more detailed analysis of the data enabled the plaintiffs to identify certain types of males who were favorable. During voir dire, defendants concentrated on striking women, many of whom would have been helpful for their cases and enabled the plaintiffs in both cases to use their peremptory challenges more effectively to select the favorable males.

Each case is, by its very nature, the product of a series of variables. Each of these variables must be thought out in advance of trial in terms of how they will impact on the ultimate result. The trial lawyer who relies solely on his or her own perception of these variables in evaluating the case is missing out on a valuable resource that taps the perspective of a living body of 14 or 15 individuals. The mock trial provides the necessary multi-dimensional analysis needed to adequately evaluate one's case. ♦



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