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A woman with long brown hair, wearing a black long-sleeved dress and black high heels, is walking down a set of wide stone steps. She is carrying a black tote bag in her left hand. The steps lead down to a checkered tile floor. In the background, there are large stone columns and a wooden door, suggesting a formal building like a courthouse or government office.

**The New Lawyers
Division Takes on
Trial Practice**

Mock Juries:

When to use them and how to organize them

By Ryan Casey and Robert Glassman

What Is a Mock Jury?

Your case is not settling. Indeed, settlement is nowhere in sight. You are only a couple of weeks away from picking a jury, liability is hotly contested and your damages are uncertain. Your colleagues tell you that your case is strong, but you still want objective reassurance. At this point, you may want to consider utilizing a mock jury. Mock juries can be a trial lawyer's best friend if utilized properly. A mock jury is a type of group research that enables lawyers to assess how prospective jurors will evaluate the liability issues and, should it be necessary, calculate the damages in a case before it goes to trial. Unlike other types of group research, the mock jury is unique in that it puts the participants in a trial-like setting forcing them to play the role of the jury and, in turn, provides extremely useful feedback to the trial lawyer.

Mock juries are typically organized by a marketing firm that recruits a dozen or so ordinary people to act as "jurors" and listen

to a shortened version of both sides of a case. Once each side has presented its case, the participants are allowed to deliberate in a room while the lawyers observe and take notes of the group discussion behind a one-way mirror or through audio/video feed. Seems easy enough, right? Wrong. To truly realize the benefits of the mock jury, you must know when to use one and how to organize one effectively. Otherwise, you will be wasting valuable time and resources, that neither you nor your client can afford.

This article serves two purposes. First, to identify the types of cases in which the mock jury will provide the greatest benefit to you and your client. And second, to provide you with an outline to best effectively organize the mock jury to maximize its utility during your pre-trial preparation.

Why Is a Mock Jury Beneficial?

Before we begin our discussion about what types of cases are ripe for mock juries, it is important to understand the benefit we as

trial lawyers can gain from them. At its core, a mock jury is designed to predict the outcome of our case at trial. Of course, this is not an exact science. There will be instances in which your mock jury will rule in favor of your client and award enormous damages but, at trial, the jury evaluates the same set of facts and hears your exact same presentation and comes back with a defense verdict. If the mock jury is utilized for the right kind of case and is organized effectively, however, more often than not you will find that the "verdict" reached by the mock jury accurately foreshadows the success, or failure, that awaits you at trial.

Obviously, this alone is an invaluable benefit for you as you prepare your case for trial. For instance, if the mock jury finds your theory of the case implausible, you know you have your work cut out for you. On the other hand, if the mock jury votes 12-0 in your favor, you can focus on fine-tuning your presentation, which, as you have just learned, has already been proven to be effective.

There are many more benefits to utilizing a mock jury before trial, however, than simply as a tool for predicting your case outcome. For instance, a mock jury can help you answer a number of different questions as well as shed light on areas of your case such as:

- What issues and facts did the jury pay most attention to and why? Did the jury see the facts and the case as presented or take the evidence in a different way?
- Why did jurors reach the decisions that they made? Which arguments stuck with them the most? This can provide invaluable insight as to how to present



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your case most effectively to get any jury to reach the decision you want them to.

- What types of jurors are going to be most favorable to your case? What types of backgrounds, nationalities, occupations, and life experiences caused a juror to side with—or against—your client? This information will better help you select a jury that is most favorable to your case during actual trial.
- How did the jury perceive you as an advocate and your client as a party during the presentation? What did they like and what did they dislike? How did their emotions and bias factor in to their decisions? Getting the feel for the emotional aspect of your case is as important to manage the intangible aspects of a trial that have nothing to do with the law or facts.

When Should You Use a Mock Jury?

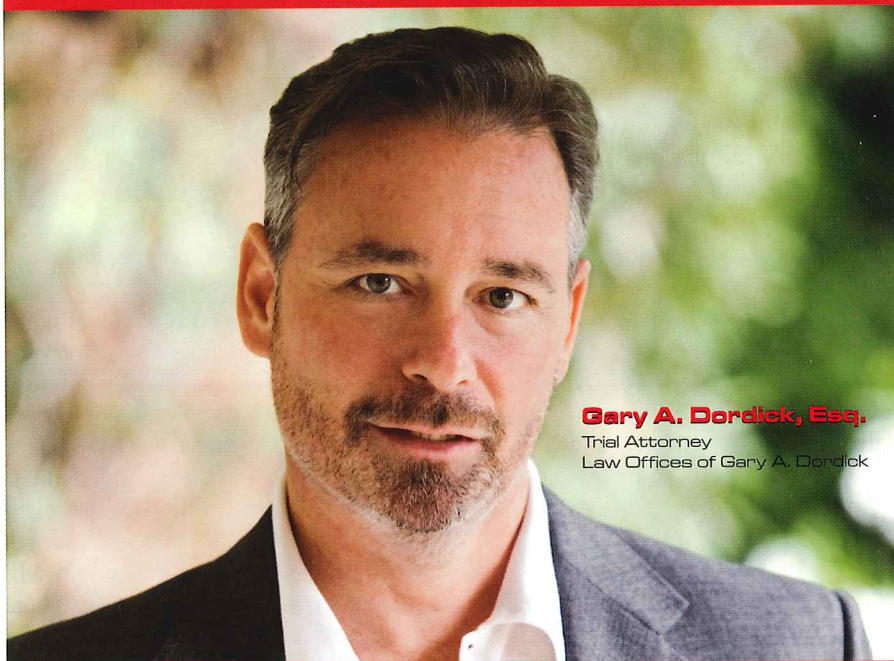
Mock juries are not intended for every case. Indeed, given the substantial costs associated with the process, which can be anywhere from \$3,000 to \$10,000, it is essential that you first identify your case as a candidate for a mock jury. First and foremost, mock juries are best utilized in cases where liability is contested. For instance, when liability is disputed, the participants have a greater universe of evidence to deliberate on which, in turn, will maximize the benefit of the process for you. Further, it has been our experience that the participants, when asked to evaluate liability and damages, spend far greater time discussing who is at fault and why instead of how much money the plaintiff deserves or does not deserve.

Similarly, cases involving product liability, complex scientific and medical testimony, dense legal theories and apportionment of liability among multiple parties are also instances in which trial lawyers will benefit from a pre-trial mock jury. If your case, on the other hand, concerns a simple car wreck or slip and fall, do not waste your resources going through the time-consuming and costly exercise of organizing a mock jury. Instead, look to utilize an alternative form of group research such as a focus group, round table discussion or just ask your friends how they would decide your case.



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How to Organize a Mock Jury

First, before you decide to use a mock jury in your case, hire a jury consultant. Having a competent jury consultant with a proven track record whom you can trust is essential in organizing a successful mock jury. In many ways, your jury consultant will be your quarterback before and during the mock jury by helping you plan your schedule from start to finish and by providing you with instructions to give to the participants to ensure that your time with them is best utilized. After the mock jury, the consultant can help you interpret and analyze the data you obtain which will better prepare you for picking a favorable jury during *voir dire*. While jury consultants can be quite expensive, if you have the resources, we highly recommend that you make the investment.

Next, you need a location. It is important to hold a mock jury in a location where you are able to obtain a sample of jurors representative of the demographic that would comprise the pool of jurors at trial. Consequently, it is best to hold the mock jury in the city where your case is to be tried or at the very least in an adjacent city nearby. Remember, the goal is to obtain a representative jury pool, so make sure to select a sample that is comprised of diverse demographics. A marketing firm that specializes in litigation matters and/or a jury consultant can help you pick the right location and recruit the proper jury pool.

Once you have a location and time confirmed, your next step is to set the schedule for the evening (typically, mock juries are held after work in the early evening to allow participants time to arrive and devote

4-5 hours to the process). The typical schedule will go something like this:

- 5:30-6:00: Arrive, Fill Out Demographic Questionnaire & Snack
 - 6:00-6:15: Introduction, Case Summary, Instructions
 - 6:15-7:15: Plaintiff's Presentation (Opening with Argument)
 - 7:15-8:00: Defendant's Presentation (Opening with Argument)
 - 8:00-8:30: Direct/Cross of Plaintiff(s)
 - 8:30-8:50: Fill Out Issues Questionnaire & Break
 - 8:50-10:00: Deliberations & Feedback
- You next want to appoint a "moderator."

The moderator is sort of like an emcee, and will welcome and greet the mock jury, provide an overview of the evening, explain the schedule to them and walk them through each stage of the process. A young associate with good interpersonal skills who knows the facts and legal issues in your case is a good candidate for the moderator role. The following excerpt was taken from a script we typically give to our moderator to use at the beginning of a mock jury:

Good evening. I'd like to thank all of you for coming. My name is ___ and I will be facilitating this session. I'd like to start off by giving you an overview of the evening and a description of what we will be talking about. I would like to remind you that you have agreed to keep what we discuss confidential.

You will be listening to two attorneys present a case. This is a real case, an important case and a case that will come to trial in this county very soon. Both sides have agreed to put a shorter version of their case before a group such as yourselves to learn how people respond to this legal case. Your feelings, thoughts and opinions will be important to decision-making for both sides. The attorneys will each represent one of the two sides in a civil case.

The actual presentations should be limited to 20-40 minutes each depending on the complexity of your case. Both sides of the case should be presented in equal strength and by attorneys with similar levels of experience and competency. Do not allow the attorneys presenting the case to interact with the jurors prior to the presentation. The jurors should not know which party, plaintiff or defendant, has organized the proceeding and should never

be told that the two attorneys presenting are from the same firm or the same side. Remember, your goal is to simulate a real life trial setting as much as possible. If the presentations are biased, your results will be too. Like in trial, utilizing a Keynote or PowerPoint presentation for the mock jury is always a good idea and will help keep the participants engaged.

If the presentations are biased, your results will be too.

Observation and analysis of the mock jury during the presentation and deliberation periods are perhaps the most important components of the process. The body language displayed by the jurors during the presentations can indicate what evidence they find persuasive, what parts of the case they find boring and whether they are upset, angry, sympathetic or unmoved by your client's plight. While this can be a fascinating experience, it can also be brutally honest. Fragile egos beware. Mock jurors may not pull any punches and can even appear downright mean.

Therefore, it is important to consider your clients' feelings before exposing them to the process. While proper client preparation may mitigate a potentially negative mock jury experience, it is always possible that a "defense verdict" by the mock jury may deter your client from wanting to take the case to trial. Good or bad, mock juries help manage your and your client's expectations about the case.

Finally, it is well established that patterns are more reliable than single occurrences. The larger the sample size the better the research. The same holds true with a mock jury. Accordingly, if you can afford to, and time permitting, it is best to perform multiple mock jury sessions.

Conclusion

When done properly, a mock jury can be an invaluable tool in preparing your case for trial. You need to know, however, when to use one and how to organize one in order to truly maximize its benefit to your client. Following the guidelines discussed above will help ensure that you do not waste your time and your client's resources. ■



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