



Getting Value From Your Mock Trial

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MAKING A 'MOCK'ERY OF YOUR CASE: GETTING VALUE FROM YOUR MOCK TRIAL

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Product Development

- Coke® spends about \$3.6 billion a year supporting its brand.
- Proctor & Gamble spends over \$150 Million a year on focus groups and surveys alone in continuing development of its brands
- Knowing who you are selling to and what they are thinking is critical to a successful product launch



A Case is Like a Product

- Your jurors are your consumers
 - How you package your case is critical to get them to accept your case
 - A Mock Trial (the lawyers version of a focus group) an excellent way to help shape that package
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What is a Mock Trial?

- 30-45 people who share the same demographic as potential jurors in your venue
- 1 or 2 day truncated presentations from each side
- Deliberations in divided panels (Usually 2-3 panels)
- Moderated by a Jury Consultant
- Cost: \$40,000 to \$100,000

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Confidentiality of Mock Trials

- Generally, a mock trial conducted by counsel is protected attorney work product. *In re Jefferson Cnty. Appraisal Dist.*, 315 S.W.3d 229 (Tex. App. 2010).
- Jury consultant's work product is protected under consulting expert privilege. *In re Cendant Corp. Sec. Litig.*, 343 F.3d 658 (3rd Cir. 2003).
- However, a testifying fact or expert witness's knowledge of a mock trial is not protected and is discoverable. *See In re Jefferson Cnty.*, 315 S.W.3d at 236.

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Picking the Consultant

- Real time feedback vs. watching on closed circuit
- Be in your venue
- How big should your pool be?



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Who attends?


- Key Decision Makers
- Lawyers on the team
- Jury Consultant (for later help with jury selection)



Presentations

- Duration
 - Documents/physical evidence
 - Witnesses
 - Deposition vs. live witnesses
 - Who plays other side?
 - Lead lawyer
 - Outsider
 - Videotape the presentations – Not Typically
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Issues to present

- Test as many theories as possible
 - No clear winners -- you want a lively debate
 - Be honest to your case – garbage in/garbage out
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Deliberations

- Always video all jury deliberations
- Good mix of jurors on each jury – Lively debate
- Identify “High Impact” jurors and what drives them
- Damage numbers not to be taken too seriously



Report

- ID profile of jurors you want, and don’t want
 - Sample Voir Dire
 - Chart each juror, with relevant information, and track tendencies and final votes
 - Chart “Good and Bad” themes
 - More will unnecessarily drive up your cost
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Identifying the High Impact Juror

- Watch Deliberations as part of trial prep
- Determine what drives “Pro High Impact” jurors
- Tailor your themes to resonate with those jurors

Faculty Biography: Joe Krasovec

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Joe Krasovec works with a broad spectrum of companies to control and reduce their exposure to litigation risk. For 25 years, Joe has managed hundreds of cases to successful resolution, whether through a negotiated settlement, mediation, arbitration or jury trial. He performs early case assessments to determine the appropriate strategy and resources to deliver the most cost-effective outcome for his clients.

Joe has first-chaired a variety of cases, from the start of discovery to trial and through the appellate courts. He has tried many high-stakes jury trials to obtain favorable verdicts for his clients. Joe has also defeated several consumer product-related class action lawsuits by winning motions to dismiss or summary judgment, or through denial of class certification.

In addition to trying cases before juries in courtrooms across the country, Joe counsels product manufacturers regarding potential liability considerations, advising them on product labeling, instructions, testing and design. He also counsels manufacturers under investigation by the U.S. Consumer Product Safety Commission (CSPC), both in satisfying the clients reporting obligations and working with the CSPC in structuring appropriate corrective action measures.

Specifically, Joe serves as national product liability counsel for two large consumer product manufacturers. In this role, he has successfully managed a substantial number of cases to drive down new case filings and reduce the costs associated with resolving those cases that are filed.

"I work with my clients to understand their business objectives and to manage their cases in the most efficient and cost-effective ways possible," he says. "Having a winning track record at trial is critical to achieving negotiated settlements on favorable terms. My clients' business and litigation objectives are always top of mind."

Practice Areas

- Product Liability
- Litigation

Awards and Honors

- Leading Lawyer — Commercial Litigation; Product Liability Defense, Illinois Leading Lawyers Network

Education

- Northwestern University School of Law(J.D., 1989)
- University of Denver(B.S., Finance, cum laude, 1986)