

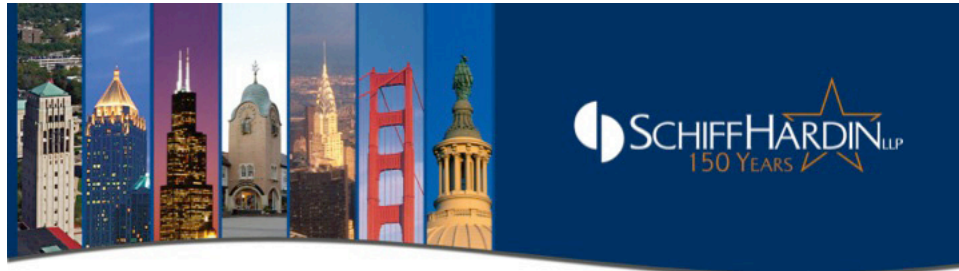


Making a 'Mock'ery of Your Case: The Pros and Cons of Mock Trials

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Brand Development

- Coca-Cola 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
 - The Mock Trial (the lawyers version of a focus group) an excellent way to help shape create that package
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Rachel Barton and her \$500,000 Violin



What is a Mock Trial?

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

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

- Number of jurors/juries
- 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
 - Tweak the facts if necessary
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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
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Report

- ID profile of jurors you want, and don't want
 - Sample voir dire
 - Key themes
 - Success and failures
 - Chart each juror, with relevant information, and track tendencies and final votes
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About Joe Krasovec

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Joseph J. Krasovec concentrates his practice on the defense of manufacturers in product liability matters. He also represents a variety of businesses in commercial disputes. He practices in state and federal courts, at the trial and appellate levels.

Mr. Krasovec has managed cases from the beginning of the discovery phase, through trial, and to the appellate level. He also is experienced in structuring settlements in cases involving multiple parties and complex issues. In addition to trying cases in courtrooms around the country, Mr. Krasovec also counsels manufacturers in the product development phase regarding potential liability considerations, advising them on product labeling, instructions, testing and design.

Specifically, Mr. Krasovec serves as national product liability counsel for two large consumer product manufacturers.

Practice Areas

- Product Liability
- Litigation

Publications

- “Defending Product and Service Providers Overseas,” (co-author) Windy City Litigation Management, Network of Trial Law Firms (June 15, 2012)

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)