

Q&A With Robins Kaplan's Ronald Schutz

Law360, New York (July 14, 2011) -- Ronald J. Schutz is a partner in the Minneapolis office of Robins Kaplan Miller & Ciresi LLP. He is chairman of the firm's intellectual property litigation group and serves on the firm's executive board. He began his career in the United States Army Judge Advocate General's Corps, where he tried 20 criminal jury trials, including trials for murder, rape, assault and drug dealing. He is a fellow of the American College of Trial Lawyers.

Q: What is the most challenging lawsuit you have worked on and why?

A: It was actually a series of cases for the same client: St. Clair Intellectual Property Consultants. I tried three cases to verdict on the same set of digital camera patents and won verdicts of \$37 million (against Canon), \$25 million (against Sony) and \$3 million (against Fuji). These cases also had a lot of satellite litigation, including a year-long sanctions proceeding against Canon for its failure to produce documents until after we had rested our case at trial and a three-year detour in California state court over ownership of the patents.

We collected over \$240 million during the course of the litigation, but six years after the Fuji verdict the Federal Circuit reversed our \$3 million judgment against them on a claim construction issue in a 2-1 decision. We faced every issue imaginable in that case and some that we could not imagine. During the many bizarre twists and turns of the litigation we would often say to ourselves "you can't make this stuff up."

Q: Describe your trial preparation routine.

A: My trial preparation begins the first day I begin working on a case. When I've assembled a team to work on a case, the first question I ask is: "Why should we win?" We focus on what will compel a jury to vote in our favor. This is a question we ask throughout the course of discovery as the answer may change depending on how the evidence develops. It is an iterative process. And we work hard to make sure we don't "drink the Kool-Aid."

As trial draws near we will do a highly scripted mock trial on some select issues. We want to ensure that we get valid feedback. Most of my trials are out of town, and I like my trial team to be in place about a week before the trial starts. Trials are hectic and stressful, and I want all of the logistical kinks worked out with our war room setup and procedures well before trial starts. And it is important to get away from the distractions of the office.

As I write this, I am sitting in the lobby of the Holiday Inn & Suites in Beaumont, Texas, preparing for a trial that begins in a few days. It is Saturday night, which means it is a team dinner of beer and pizza, and the movie "Gladiator."

Q: Name a judge who keeps you on your toes and explain how.

A: Judge Ron Clark of the Eastern District of Texas. He is always extremely well prepared. In fact, he is frequently better prepared and more knowledgeable on issues than the lawyers appearing before him. He's read the briefs and all of the important cases. He also works extremely hard. He tried a lot of cases before going on the bench, so he appreciates what trial lawyers go through. During trial he never misses a word. You need to be on your toes at all times.

Q: Name a litigator you fear going up against in court and explain why.

A: I would fear going up against several of my partners, specifically Marty Lueck or Jan Conlin. They are superb trial lawyers with national reputations and great results.

In terms of lawyers at other firms, Don Dunner [of Finnegan Henderson Farabow Garrett & Dunner LLP] on any appeal. I've known Don for many years, and he is the epitome of a scholar and a gentleman. His sterling reputation is well deserved. He is the toughest opponent one can face at the Federal Circuit. Every time I see him I ask him when he's going to retire, and he always replies, "Never." But I keep hoping that one day he will.

Q: Tell us about a mistake you made early in your career and what you learned from it.

A: I began my career as a lawyer in the Army Judge Advocate General's Corps. I got a lot of great trial experience, but I took my charge to be a zealous advocate a little too seriously at times. I learned that tact and understatement are usually better trial tools than bluff and bluster.

When I was a prosecutor I also learned never to let the evidence custodian go to lunch during trial without taking back possession of the evidence. I was trying a case where the charge was selling a large amount of marijuana. The seized drugs filled a large grocery bag. I had signed for the evidence in the morning when the detective came to court and had it at counsel table.

When the judge recessed for lunch I looked behind me, and the detective was gone. I was hungry and needed to get something to eat so I had to take the grocery bag of contraband with me. It was all in sealed plastic bags with evidence stickers but I would not have wanted to explain what was in the bag if I got stopped on the way to McDonald's.