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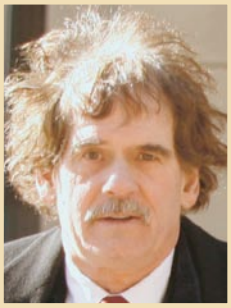

HENRY 'HANK' ASBILL


EUGENE F. ASSAF


JERE L. BEASLEY


JAMES P. BENNETT


LORI G. COHEN


JAMES J. CULLETON

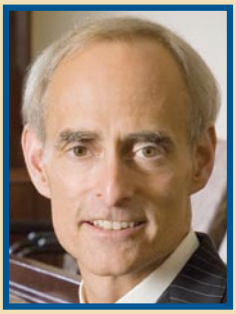
>WINNING<

Successful strategies from some of the nation's top litigators.


CHRISTOPHER M. CURRAN


J. MARK GIDLEY


ERIC R. HAVIAN


RONALD J. SCHUTZ


MICHAEL G. YODER

>>WINNING<<

Litigators with a habit of winning have this thing about golden rules: They've developed their own set, which they use to artfully sway judges and juries, or they'll break the established rules if they think it will give them a better shot at coming out on top.

Case in point: Henry "Hank" Asbill, who represented an AOL LLC executive accused of deceiving investors.

Asbill's biggest strength is in direct and cross-examination—and in taking the somewhat unusual approach of, in many instances, putting his client on the stand. He did so in the AOL case, for more than 40 hours, against the advice of co-defendants' counsel.

"In white-collar cases it's exceptionally important to get across to the jury the clients' character," Asbill explained.

Eugene F. Assaf employs a strategy of giving witnesses greater rein to speak, and extends it to the unorthodox practice of occasionally lobbing an open-ended question at a witness.

"If you're asking the jurors to figure out a person and whether they are truth-tellers, then every once in a while you have to ask an open-ended question and let them show themselves to the jury," Assaf said. "It's a sort of calculated risk."

James J. Culleton—who represented one of the New York City police officers charged in the Sean Bell shooting case—took a different tack. He went against one of his own golden rules: Try the case before a jury.

"We didn't think that in New York City, based on the publicity, that we could get a fair trial because of the sympathy factor. It would just overwhelm jurors."

He went with a bench trial, with good results for his client.

The ability to determine when to follow golden rules, and when it break them, is one good reason why these litigators, and eight more, are featured in *The National Law Journal*'s 2008 Winning section.

The 10 cases featured here were chosen from scores of nominations offered from firms of all sizes from just about every state in the union. The basic criteria required that nominees have at least one significant win within the past 18 months, and a history of noteworthy wins during the past several years.

For the purposes of this section, "significant wins" includes large monetary awards or, from the defense side, winning a decision in which there is the risk of substantial damages. Just as importantly, unique courtroom strategies and actions that scored with judges and juries also swayed our decisions.

Jere L. Beasley did plenty of swaying of his own, winning a multimillion-dollar verdict against AstraZeneca Pharmaceuticals L.P. in a Medicaid drug case.

His secret?

"I learned that lawyers better be straight with that jury. Don't mislead 'em, don't con 'em. Don't be too slick. Don't be slick at all."

James P. Bennett successfully defended JDS Uniphase Corp. in the largest securities class action to go before a jury. He used a blowup of the complex 17-page jury form that he filled out for the jury in his closing arguments.

"It was a little presumptuous, but it was a good idea," he said.

Defense counsel Lori G. Cohen had to work hard at convincing the jury that her client, pacemaker manufacturer Medtronic Inc., was not the "bad guy" in a case involving a young woman in a vegetative state for the past nine years.

"You have to have genuine empathy in the plaintiff's plight," she noted.

Litigators Christopher M. Curran and J. Mark Gidley's client, Stolt-Nielsen S.A., faced a possible $250 million criminal fine for price-fixing.

The government revoked an amnesty agreement, leaving Curran and Gidley with the overwhelming task of taking on the federal government. They took the offensive, suing the government to obtain an injunction against prosecution.

Eric R. Havian had to overcome his own skepticism about a whisteblower's claim that the Los Angeles Department of Water and Power had overcharged customers millions of dollars. He neutralized that skepticism with two years of intense discovery, which included painstaking reviews of dozens of boxes of memos and correspondence from the department's warehouse.

Sometimes, you've just got to go with mom.

That's what Ronald J. Schutz did when he capped his closing argument and cinched a $66 million verdict in a patent infringement trial by telling the jury of his mother's advice to compare words with actions

The veteran litigator also used his deep knowledge of juries. "If you don't step back and put yourself in the jury's position, you end up drinking your own bathwater," he said.

Michael G. Yoder, in two bet-the-company infringement cases, maintained a delicate balancing act of not asking for too much.

"[W]e we needed to keep the jury on our side and not lose them by being overly aggressive, yet we knew the judge would decide exactly what relief would be issued." NLJ

—STEVE FROMM

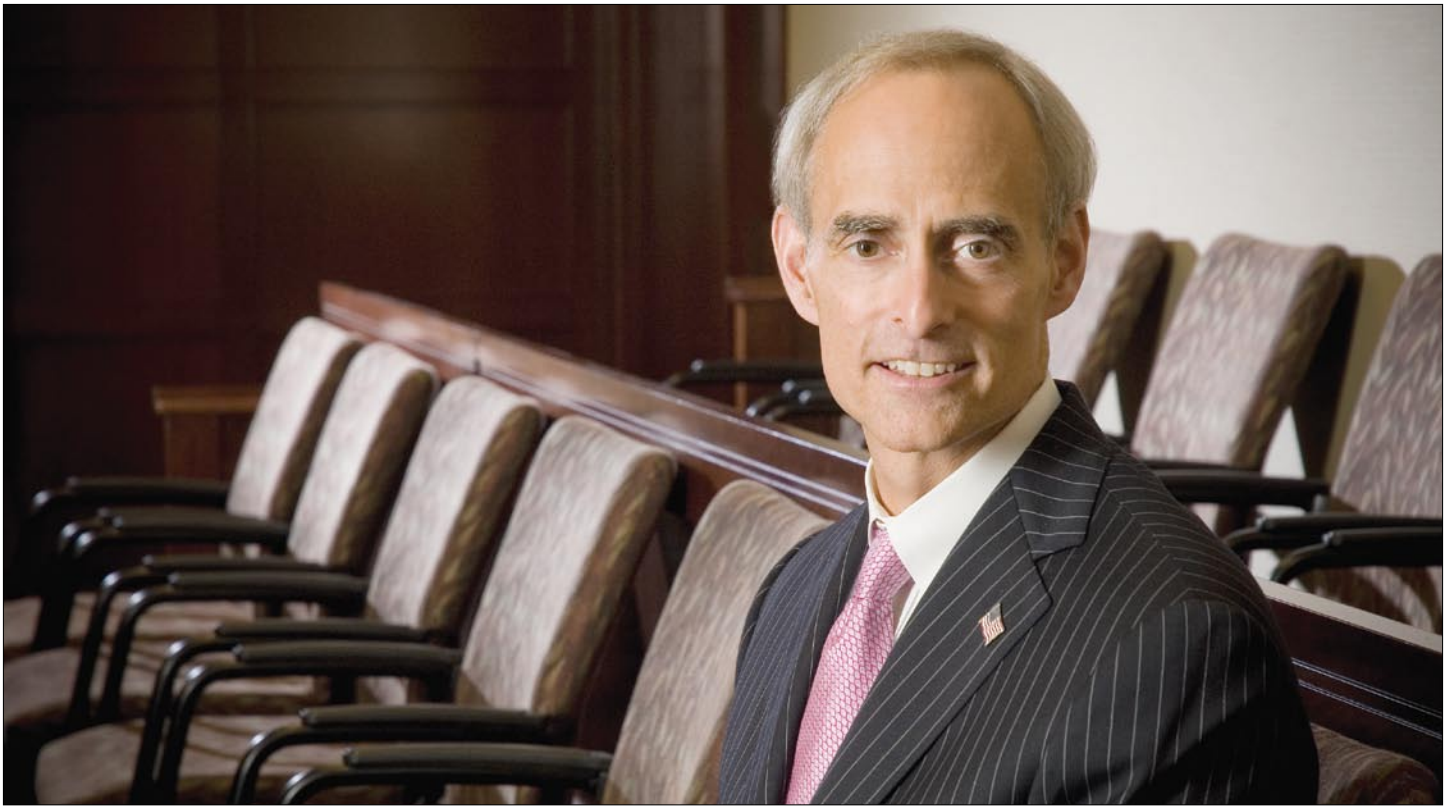
>>WINNING<<

Successful strategies from some of the nation's top litigators.

>>RONALD J. SCHUTZ<<

Mom's advice wins

A jury listens to advice about words and action, returns a $66M verdict.



DAVID KERN

By Peter Page
STAFF REPORTER

BRILLIANT AND costly experts are standard fare in big-money civil cases, but Ronald J. Schutz finds that nothing persuades a jury like the wisdom of his mom.

Schutz, chairman of the intellectual property litigation group at Robins, Kaplan, Miller & Ciresi in Minneapolis, capped his closing argument and cinched a $66 million verdict in a patent infringement trial by telling the jury of his mother's advice to compare words with actions. *Grantley Patent Holdings Ltd. v. Clear Channel Communications Inc.*, No. 06cv259 (E.D. Texas).

The jury entered its verdict on April 22. Judge Ron Clark upheld the verdict at a hearing on June 4 and awarded an additional $22 million in enhanced damages and interest.

The seven-day trial centered on allegations by Grantley Patent Holdings that Clear Channel, which operates 1,000 radio stations nationwide, willfully infringed four Grantley patents covering various aspects of its technology for billing radio advertising to process $15 billion worth of ad revenues.

RONALD J. SCHUTZ: *"[T]he only reality that exists for the jury is what happens inside the courtroom," he advised.*

Clear Channel is appealing the verdict. Its attorney, Jerry L. Beane of Houston's Andrews Kurth, declined to comment on the case, but praised Schutz.

"Ron does what good trial lawyers do, takes small amounts of evidence and builds a story," Beane said.

Murder and millions

Schutz began his career as a litigator both defending and prosecuting felony cases with the U.S. Army Judge

Advocate General's Corps. "I am the only guy I know who has a murder acquittal and a $100 million verdict," Schutz said.

The big-money verdict, which actually was $110 million—of which $103 million was affirmed on appeal—came in 1997 representing Fonar Corp., a medical technology company, against General Electric Co. for patent infringement. *Fonar Corp. v. General Electric Co.*, 107 F.3d 1543 (Fed. Cir.), cert. denied, 118 S. Ct. 266 (1997).

Between then and the April verdict in the *Clear Channel* case Schutz won four other verdicts for amounts ranging from $2.2 million to $34.7 million.

Those verdicts are dwarfed by his success in a 2003 case defending against a $500 million claim against Robert Peterson, CEO of the meat packing company IBP Co., now known as Tyson Fresh Meats Inc., for alleged theft of trade secrets, breach of fiduciary duty and breach of contract. Schutz succeeded in getting the case dismissed on summary judgment. *Luigino's Inc. v. Peterson*, 317 F.3d 909 (8th Cir. 2003).

Attorneys routinely come to trial loaded with dozens of depositions and years of discovery, making it all too easy to forget that jurors don't have that information, and the context it provides, unless it is presented in court, Schutz said.

"I stress, especially to younger lawyers, that the only reality that exists for the jury is what happens inside the courtroom," he said.

"Lawyers who have lived and breathed a case for two or three years too often forget the jury will only know what they have been told and what they see, and then only if you do that two or three times to drive it home," he said. "If you don't step back and put yourself in the jury's position, you end up drinking your own bathwater."

The deep knowledge lawyers bring to court about whatever is being litigated can sometimes backfire when cross-examining an opponent's expert witnesses, Schutz said.

TRIAL TIPS

- **Keep cross-examination of experts short and focused.**
- **Treasure your credibility with the judge; jurors will pick up on it.**
- **The only reality that exists for jurors is in the courtroom.**

An aggressive cross-examination that fails to reveal any inconsistencies can make the attorney look like a bully, while bolstering the expert's credibility.

"When you are dealing with experts, unless you have something that will absolutely box them in, you have to be careful taking them on with just your wit and good looks," he said.

"Keep a very short, tight cross-examination in which you get them to concede or agree with some point that you are going to argue helps you, even though they are probably agreeing to things that are relatively noncontroversial," he added. "The jury will see that you are getting the expert to agree with you on a few points. Sometimes you can carve up an expert but a lot of times you have to be very careful."

Schutz recognizes a fine line between giving jurors the facts they need to agree with you and telling them the right answer.

In the *Clear Channel* case he filled in a copy of the verdict form the jury completes at the conclusion of deliberations, but he left blank the space for the dollar amount of the judgment.

"Juries are perceptive and don't need to be told what to do," he said. "You lead them to the edge but they come to the decision themselves." NLJ