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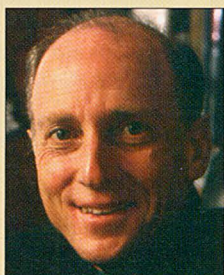
MONDAY, JUNE 10, 2002



Blackmon



Blue



Kay



Lowell



Potter

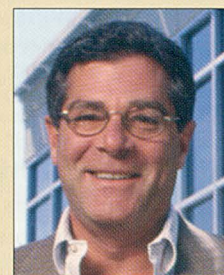
WINNING 2002

## The art of the win

Ten of the nation's  
leading litigators  
describe strategies  
from key cases of the  
past year.



Searcy



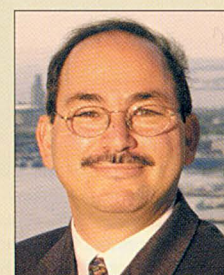
Shulman



Snyder



Sutter



Walter



# A look at 10 impressive winning streaks

**A** TRIAL BEFORE a jury can often be seen as a battle for credibility.

In a products liability action, for instance, the plaintiff may seek to portray the defendant as a corporate outlaw, a rogue who values profits over safety, who would rather lie to cover up transgressions than pay the injured plaintiff just compensation.

In a products defense, the defendant may seek to portray itself as a responsible citizen, beset by plaintiffs and their paid experts, who are overreaching in an attempt to extort money from a deep-pocketed, but wrongly accused, party.

Who wins the case depends greatly on whom the jury trusts.

## The first moments

The best trial lawyers have learned how to establish credibility—for themselves and their clients—starting in the first moments of trial. They make no claims in opening statement or throughout the trial that they cannot back up with evidence. They do not put on experts at trial who can be impeached with contradictions in testimony from earlier trials or hearings.

They admit weaknesses in their own cases early on, in voir dire and opening statement. They explain abstruse or complex matters in down-to-earth, bias-free language so the jury looks at them as the objective source of knowledge in the trial.

Each year, *The National Law Journal* selects and profiles 10 trial attorneys nationwide who have established themselves as among the nation's best at establishing credibility with jurors. The profiles concentrate on how each attorney handles a lawsuit, using a recent major win as an example.

The list of attorneys profiled each year is governed by two factors—the attorney has created a long record of wins in the courtroom and has

won at least one recent high-profile jury trial.

Most of the lawyers profiled this year have not lost a jury trial in years; nearly all have won more than 90% of the trials during their careers. Each has won one of the nation's biggest trials over the past 18 months.

Stephen L. Snyder of Baltimore's Snyder, Slutkin & Lodowski won a \$276 million verdict in March in a breach of contract and fraud claim against First Union National Bank.

Ron E. Shulman of Palo Alto, Calif.'s Wilson Sonsini Goodrich & Rosati won a patent infringement defense in December against Intel Corp., where a loss would have put into grave jeopardy the corporate life of his client, Broadcom Corp.

Philip E. Kay of San Francisco won one of the largest-ever punitive awards in a sexual harassment claim in April—\$30 million for six plaintiffs in the claim against Ralph's Grocery Co.

David B. Potter of Oppenheimer Wolff & Donnelly in 2001 won the first case to trial in a toxic torts action against Montana Rail Link over a train derailment that caused a toxic spill and the three-week evacuation of a town.

Lisa Blue of Dallas' Baron & Budd won one of the largest-ever jury verdicts for a single plaintiff in an asbestos case—\$55 million in a Texas trial last year.

## Variety marks cases

The cases tried by the attorneys selected this year vary considerably. Five of the trials were won by plaintiffs in claims ranging from consumer fraud to personal injury, asbestos and breach of contract.

Five were won by defendants, in civil cases on toxic torts, products liability and patent infringement, and in one white collar criminal trial covering charges of racketeering, fraud and conspiracy.

The practice areas vary greatly as well. Some of the attorneys are specialists. Shulman handles only patent infringement litigation, usually for the defense. Kay concentrates solely on employment litigation, representing only plaintiffs.

While almost all of the attorneys represent only one side in litigation, Edward Blackmon Jr. of Canton, Miss.'s Blackmon & Blackmon represents plaintiffs and defendants.

Blackmon, in fact, has represented corporate defendants in certain cases while he was suing them as plaintiffs' counsel in others.

## Boutiques and giants

Some of the attorneys, like Shulman or Abbe David Lowell of Los Angeles' Manatt, Phelps & Phillips, are from big, multipurpose, traditional law firms. But most are from smaller litigation boutiques.

Kay is the lone solo practitioner of the group.

Each of the profiles covers only one attorney. But few worked alone. Christian D. Searcy of West Palm Beach, Fla.'s Searcy Denney Scarola Barnhart & Shipley, for example, split duties with several attorneys from his firm, primarily partner Darryl Lewis.

Potter's co-lead counsel, Randy Cox of Missoula, Mont.'s Boone, Karlberg & Haddon, was critical during the trial and in the pretrial motions practice phase, where the defense narrowed the issues for trial.

It should be noted that these are the views of the trials as told by the winning attorneys.

Several of the cases are in post-trial motions or on appeal and the results may yet be overturned. But, for now, the juries in these trials have rendered their decisions.

On the following pages are how the winning attorneys believed they won those victories. **NLJ**

ARTICLES BY MARGARET CRONIN FISK



# CHRISTIAN D. SEARCY

## Secret weapon: listening for hours

ATTORNEY: Christian D. Searcy

FIRM: Searcy Denney Scarola Barnhart & Shipley, West Palm Beach, Fla.

CASE: Jenkins v. Ranger Construction Industries Inc., nos. 98009025AN and CL0000169AN (Palm Beach Co., Fla., Cir. Ct.)

**T**HE FIRST THING you do in any lawsuit," says plaintiffs' attorney Christian D. Searcy, "is sit down and have a very deep, intense conversation with your clients. You begin with a detailed interview, lasting several hours or several days. You're assessing them as witnesses. You're trying to learn as much as possible about them."

He doesn't confine his questions to the incident that spurred the suit.

"I want to find out who they were before this catastrophe," he says. "To show the loss to the jury, you have to know what they lost."

In the opening moments of a recent lawsuit over a traffic accident that killed one child and crippled two others, the first time he met his clients Kathy and Torrey Jenkins, he spent the entire day interviewing them.

The information he received in those interviews provided the foundation for the biggest jury verdict of his career—\$256 million.

Listening to his clients has clearly paid off for Searcy, who represents plaintiffs exclusively in a variety of actions involving catastrophic injuries or deaths. He won his first million-dollar verdict in 1977, when he was only 30, and has since won dozens more, including \$133 million in an aircraft crash lawsuit. He has had several hundred settlements of seven figures or more.

Searcy's life experiences spurred his desire to handle only plaintiffs. "When I was 13 years old, I saw my 6-year-old brother get killed." When he was 25, his son sustained brain damage during birth.

In the Jenkins case, the suit grew out of a two-car collision in Riviera Beach, Fla. On the night of May 7, 1997, Kathy Jenkins was driving westbound on Blue Heron Boulevard. She began to turn left onto Congress Avenue when her car was broadsided by an off-duty Riviera Beach police officer going east on Blue Heron.

Kathy Jenkins' injuries were minor, but her daughter Jasmine, age 6, was killed; her son Landon, 3, sustained a spinal cord injury leaving him quadriplegic; and her son Jordan, also 3, suffered a brain injury that left him paralyzed on one side. Both boys also sustained mild mental retardation.

In his initial interviews with Kathy and Torrey Jenkins, Searcy began organizing the case by element of damages.

As he listened to Kathy Jenkins recount the accident, Searcy says, he determined why the accident had happened. The intersection was under construction and "she was already into the intersection when she saw the other car," he notes. "There had to be some kind of view obstruction." He realized as well, he adds, "if she was unable to see the car just before the collision, the other car might not have been able to see her."

This conclusion determined the next step, Searcy says. "I had to find out who was responsible for that intersection."

Palm Beach County had hired Ranger Construction Industries Inc. to widen Blue Heron Boulevard to a six-lane divided highway. The roadway continued to be open to traffic while the construction project was under way.

To ensure that traffic could move safely through the construction zone, Searcy notes, the project needed a maintenance of traffic (MOT) plan. "The best and safest way is to bid out the MOT plan contract separately from the road construction contract," Searcy says. To cut costs, Palm Beach County "bid the whole thing together and Ranger was the low bidder."

But, he adds, Ranger did not have a professional engineer do the MOT plan, which is required by state law. The Ranger employee "did not draw the plans to scale or measure the elevation of the roadway in various places."

The Jenkins family sued Ranger Construction, Palm Beach County, Riviera Beach and the driver of the other car, Andrew Cohan. The plaintiffs charged, among other things, that Ranger developed and instituted an inadequate MOT plan and that Palm Beach County was negligent because it did not follow proper procedures in bidding out the MOT plan. The plaintiffs contended that Cohan was negligent as well. Cohan said he was driving at the speed of traffic.

In the investigation of the case, says Searcy, he learned that on several occasions "Cohan had been stopped without a license or registration or for speeding. But he always got off the hook because he was a cop." While this provided evidence for the claims against Riviera Beach, it hurt the case overall, says Searcy.

"We now had evidence to cause anyone to hate this cop." But the jury could "load all the negligence on Cohan," and clear Ranger and Palm Beach County, leaving the Jenkins family with little or no compensation. Cohan had no insurance and Riviera Beach had only \$1 million.

Searcy dismissed the negligent hiring and retention claims against Riviera Beach.

In pretrial focus groups, Searcy learned that the timing of his witnesses could be critical. It was essential, he says, to start with witnesses and evidence supporting the plaintiffs' contention that failures in the maintenance of traffic plan caused the accident. "So we did not put the drivers on until very late in the case."

The reasoning? If the drivers testified first, the jurors in the mock trials focused on the drivers' actions and were more likely to blame them for the accident. They also tuned out when the experts on roadways and traffic plans appeared. By putting the drivers on last, he says, "the motorists became passive players, someone to be protected." The jurors then focused on the plaintiffs' primary point—that defects in the MOT system had created an unsafe intersection and led to the accident.

Although a common strategy is to call representatives of the defense in the plaintiffs' case-in-chief, Searcy decided to put them on only through depositions. This prevented the defense from cross-examining these witnesses at trial, Searcy notes. In addition, the personnel charged with supervising, monitoring or devising the MOT plan did not have any training in such work, he says.

Searcy would read the questions in the depositions and his co-counsel Darryl Lewis would read the answers. "We would try to breathe as much life into it as possible, using the same cadences and inflections" as the speakers. But, he says, he was not concerned about the jury finding this portion of the trial dull. "These are the defendants' witnesses. If the jury finds them boring, is that so bad?"

One of the best witnesses for the plaintiffs, Searcy says, was a paid expert for the defense. During Searcy's case-in-

chief, he had called the accident reconstruction expert for the city of Riviera Beach to the stand as an adverse witness. "The city had him do an examination of the intersection with the original barricades," Searcy says.

"He didn't want to help us, but his eyewitness testimony was so important."

Searcy called this witness, Don Moore, only on one discrete point—his eyewitness account about the visibility in the intersection when the barricades were up. He didn't want to have the witness go through his entire planned testimony. "His lawyer could have led him," Searcy says. Searcy asked the witness what happened when Moore drove his own vehicle through the intersection

while the original barricades were in place. The witness answered, "It was virtually impossible to see approaching vehicles from a point approximately 350 feet away from the intersection."

On Jan. 24, 2001, a West Palm Beach jury assigned liability at 50% to Ranger, 43% to the county and 7% to Cohan. The jury found no responsibility for Kathy Jenkins and Riviera Beach. Two months later, Ranger and the county settled for \$57 million. Cohan had not settled so the damages portion was still tried. But the result, while extraordinary, was anticlimactic. On July 11, the jury awarded the Jenkins family \$256 million, leaving Cohan liable for \$17.92 million.

### TRIAL TIPS

- **Begin case with detailed interview with client.**
- **Drop claims if they'll hurt your overall case.**
- **Test timing of witnesses through mock trials.**



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