

THE NATIONAL  
LAW JOURNAL

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# WINNING

SUCCESSFUL TRIAL STRATEGIES FROM 10 OF THE NATION'S TOP LITIGATORS

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..... DICK DEGUERIN



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..... R. PAUL YETTER



“ What the lawyers have in common, in addition to at least one big trial win within the past 18 months, is a track record of success over many years. ”

# WILLIAM C. PRICE

## A defender switches sides and wins big

ATTORNEY: *Bill Price*

FIRM: *Quinn Emanuel Urquhart Oliver & Hedges, Los Angeles*

CASE: *Buettner and von Blottnitz v. Bertelsmann A.G.*,

*No. 01038215 (Santa Barbara Co., Calif., Super. Ct.)*

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By Peter Page

SPECIAL TO THE NATIONAL LAW JOURNAL

THERE IS A CERTAIN sartorial style Bill Price prefers in court.

He favors the finest tailored blue suits of the sort worn in the boardrooms of the wealthiest corporations. Dress shirts are preferably of fine linen. Silk is even better. A neck tie costing more than a juror spends to take the family to Sunday dinner at a neighborhood restaurant makes an important statement. The shoes are, naturally, custom-made of exotic leather.

Yes, indeed, the trial is off to a good start when opposing counsel strides into court in peacock finery while Price politely sits at the defense table, “dressed friendly” in light colors, something like the trusted family accountant or insurance agent.

Price doesn’t claim the suit is more important than the facts, but it’s worth paying attention to courtroom fashion tips from a lawyer who’s won 35 consecutive jury trials without a loss (but with an asterisk, to be explained later).

“Juries do listen to evidence and put aside their biases, but you want them to forget their biases,” he said. “Most attorneys walk into court in dark, expensive suits that are the uniform of the stereotypical hotshot attorney. If you are representing a huge corporation you don’t want to come off as an arrogant big shot.”

Price typically defends huge corpora-

tions, often in cases brought by disgruntled employees, but in 2003 he switched for the first time to the plaintiffs’ side of a trial, winning a \$250 million verdict in *Buettner and von Blottnitz v. Bertelsmann*. He represented Jan Buettner and Andreas von Blottnitz against the giant German media multinational publisher Bertelsmann A.G. and its former chief executive officer, Thomas Middelhoff. The case, the first

Price has handled on contingency, has since settled for \$192 million.

The case stems from work the plaintiffs did for Bertelsmann on a joint venture creating AOL Europe. The plaintiffs alleged breach of contract when they were denied an equity interest in the new company. An admittedly vague contract was one challenge, Price said, but the larger one was that the original contract was written in



BILL PRICE: “Juries believe there is one set of facts known to both sides and their job is determine who is lying.”

ANNE FISHERIN

German, which threatened to bog down the plaintiffs' case in dueling translations.

### Building a theme

Price built his case, as he does all his cases, around a "theme," by which he means a narrative that connects all the facts of the case in a manner that the jury can accept both logically and emotionally. His winning theme was that Buettner and von Blottnitz are two ambitious, entrepreneurial operators who had turned down some very large business opportunities because they wanted a percentage of anything they worked on.

A wrench landed in the gears of Price's case when the plaintiffs' translator—who was necessary because the contract and other documents in evidence were written in German—quit in midtrial. Price took a gamble by retaining a college professor of German to compare the translations entered by both sides against the original documents. The professor found that the plaintiffs' version was credible but Price in his summary argued that the differences in wording was not the point.

"I asked the jury to throw out both translations and ask themselves why these plaintiffs would have joined this venture without a promise of equity if they'd already turned down deals, including one with Microsoft, because they weren't offered a percentage," Price said. "Our argument was it would make no sense for them to turn down those fabulous offers to take a job with Bertelsmann for a salary."

Price is a partner at the Los Angeles office of Quinn Emanuel and the head of its trial practice. The firm likes to point out at every opportunity that he's won 35 jury trials consecutively—about half of them criminal cases from his years as a federal prosecutor—but the boast makes him

uncomfortable. For one thing, in one of the cases the verdict went against him but was reversed later (thus the asterisk). More importantly, a winning streak is a lot of pressure to maintain.

"Half the time I get cases after they were worked up by somebody else or discovery was done and we have to just make the best of what we get," Price said. "As a defense counsel, the cases get harder. A successful plaintiff counsel can be picky. They get the best cases referred to them. The successful defense attorney just gets harder and harder cases from people who want miracles."

### A keen observer

Price has been a keen observer of plaintiffs' counsel for the past 20 years, and he is looking forward to working that side of litigation on more cases. Cash from the firm's percentage of the Bertelsmann settlement allows Quinn Emanuel to take whatever cases it chooses, including those of the most intriguing plaintiffs who need representation on contingency.

"I can't tell you how many times I wished I had the plaintiff to represent," Price said. "When you cross-examine the plaintiff you can't be superaggressive because the jury thinks your client harmed this person and you are a jerk. The plaintiff gets to play it as David versus Goliath, but on defense you're arguing that even corporations can be treated unfairly. It's tougher."

Most plaintiffs' attorneys make their first mistake the first time they open their mouths in front of the jury, Price said. The temptation to inflate the plaintiff

into a hero or victim, or both, is so great that the usual opening statement to the jury omits, twists or glosses over some otherwise undisputed fact.

"The plaintiff will always leave out some undisputed fact that doesn't help his case. I don't know what it will be until they give their statement but whatever it is, when I point it out in my statement the jury becomes much more receptive to my

story," he said. "Juries believe there is one set of facts known to both sides and their job is to determine who is lying. The biggest gift plaintiff counsel can give to the defense is to overreach."

Price comes across as a genuinely nice guy, but when it looks to the jury like he is turning the other cheek, it feels like a head butt to the plaintiff.

"You can't be a good litigator without knowing how to play the end game," he said. "A lot of attorneys get overbearing during depositions because they are thinking they will settle a case or go to arbitration. I'm always nice and polite."

"What you find is if you depose the witnesses early in the process, before they are tainted by their attorney's theories, they often make amazing disclosures. That videotape is invaluable at trial when they are telling the jury what their attorney told them to say but they can never claim I bullied them into contradicting themselves."

## TRIAL TIPS

- **Be nice. It could be a nice contrast to your opponent.**
- **Always be the helpful attorney (see above).**
- **Never exaggerate or omit an inconvenient fact.**

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