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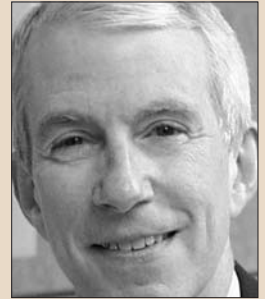
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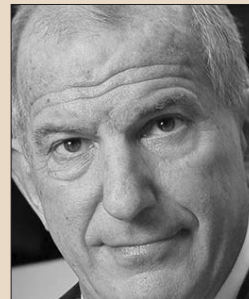
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Successful strategies from 10 of the nation's top litigators.

>>WILLIAM C. PRICE<<

A risky decision pays

Despite the case's complexity, an attorney doesn't call his own experts.

By Amanda Bronstad
STAFF REPORTER



ANNE FISHER

AT THE START of his biggest trial last year, Bill Price called to the stand one of his client's executives to tell the story of how he invented a business method that would allow a company to profitably sell pre-paid wireless phone service.

Then, Price switched gears.

He focused the rest of the case on disproving the testimonies of about a dozen of his opponent's witnesses, including the top executives and engineers at Boston Communications Group Inc. (BCGI) and Cingular Wireless LLC, two defendants in the case. One by one, he sought to discredit statements that their prepaid service wasn't the same as his client's patented method.

"The best trial strategy was to let them hang themselves," said Price of Quinn Emanuel Urquhart Oliver & Hedges in Los Angeles. He was named by *The National Law Journal* in 2004 as a top winner.

That strategy worked. In May of last year, a jury awarded Price's client, Freedom Wireless, \$128 million in damages after a months-long trial. *Freedom Wireless Inc. v. Boston Communications*

COOL CUSTOMER: "The best trial strategy was to let them hang themselves," said William C. Price.

Group Inc., No. 00-12234 (D. Mass).

The verdict, which is on appeal, is the second nine-digit verdict in the past three years for Price, who in 2003 obtained a \$250 million award on behalf of two executives who alleged German publisher Bertelsmann A.G. and its former chief executive breached a contract by denying them interest in the AOL Europe joint venture. That case later settled for \$192 million. *Buettner and von Blotnitz v. Bertelsmann A.G.*, No. 01038215 (Santa Barbara Co., Calif., Super. Ct.).

The right witnesses

Unlike in the *Bertelsmann* case, Price said, he couldn't depend entirely on his own witnesses' testimonies in the *Freedom Wireless* case.

"One of the key lessons from this case is you don't want to have to call witnesses you don't need to call," Price said. "Because every time you call a witness there is the opportunity for the other side to make them look bad."

A big problem was that one of the inventors, Douglas Fougny, had been convicted in the 1980s of a misdemeanor relating to car theft (which Price says was expunged from the record). Price chose not to put Fougny on the stand; instead, he had the co-inventor, Daniel Harned, explain their idea.

The case dated back to about a decade, when about 30% of consumers couldn't get cellphones because companies required credit checks, Price said. The only solutions on the market were phones with timing clocks and 800 numbers, neither of which allowed prepaid wireless consumers to receive phone calls, Price said.

Despite the complexity of the technology, Price didn't even call his own experts—a move he said stunned several patent lawyers. He said he made that decision after watching his opponent's expert lose credibility with the jury while on the stand.

"It's a risky decision," he said. "How could a client criticize when



TRIAL TIPS

- >> **Don't call unnecessary witnesses.**
- >> **Make sure that witness testimony matches the documents.**
- >> **Every step in trial, you have to ask yourself, 'How will this affect my credibility?'**

you put every witness up there who had something good to say about your case? But if you do that, you reduce the chances of winning your case."

Price said a big part of his strategy was comparing documents, such as client newsletters, company reports and court filings, with testimonies of the defendants' key witnesses. He said it's important for both sides to make sure witnesses' testimonies match the documents.

"We got them on the stand with another story," he said. "The documents were our case. And it was nice to contrast that with what witnesses were saying." For example, when the purported inventor of the pre-paid wireless method at BCGI displayed a diagram showing how he came up with the idea before Freedom Wireless obtained its patent, Price, on cross-examination, pointed out there was no date on the document to prove those statements.

Price, a long-time defense attorney, said defendants often make the mistake of tackling more than one battle in the courtroom. In this case, he said the defendants should not have contested the infringement claim, but instead focused only on whether the prepaid method was obvious and anticipated in the market. By losing even one battle, lawyers lose credibility with the jury.

"Every step in the trial, when you're doing something, you have to ask yourself, 'How will this affect my credibility?'" he said.

Philip Swain, a partner in the Boston office at Foley Hoag who represented BCGI in the case, disputed that Price's strategies ultimately convinced a jury to rule against his client.

"We don't know why the jury went the way they did, but we don't think the documents supported the verdict against our client," he said.

Cingular's lawyer, Denis Salmon, a partner in the Palo Alto, Calif., office of Gibson, Dunn & Crutcher, did not return calls for comment. **N.L.J.**

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