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**Editor's Note**

Steve Fromm  
Managing Editor

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."

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\* *Henry Asbill is a partner in the Washington, DC office of Dewey & LeBoeuf LLP.*

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

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

The ten 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 whistleblower'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 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."

## **Fighting On The Stand**

*An attorney's client testifies — for more than 40 hours — to connect with the jury.*

Julie Kay  
Staff Reporter

→ The night before a big cross-examination, defense lawyer Henry "Hank" Asbill always eats a medium-rare steak and drinks a glass of wine.

It's unclear whether that is the secret to his success as a trial lawyer. But young lawyers — those who are not vegans or teetotalers — may just want to try it.

Asbill, a partner in Dewey & LeBoeuf's Washington office, is one of the few lawyers to defeat both the U.S. Securities and Exchange Commission (SEC) and the Department of Justice (DOJ), handing them a bruising failure in the case of Kent Wakeford, a former AOL LLC executive charged with participating in a scheme to deceive investors and accountants.

The criminal trial lasted a grueling three and one-half months and was one of the longest trials in the history of the *Eastern District of Virginia*. *U.S. v. Wakeford*, No. 05-12 (E.D. Va.).

Asbill's civil and criminal wins during the past two years in the seven-year-long *Wakeford* case cap a long record of wins in some highly challenging cases.

Those wins include the acquittal of a client indicted in the early 1990s in a huge money laundering sting investigation targeting owners of a dozen car dealerships in *Maryland and Virginia*. *U.S. v. Geneva Enterprises* (D.D.C.). He is currently representing a Saudi Arabian citizen in a death penalty case. *Virginia v. Ajlan*, No. CR67600 (Prince William Co., Va., Cir. Ct.).

### ***The Biggest Challenge***

Asbill, 60, has spent three decades honing his skills as a trial lawyer in Washington, representing a variety of corporate and individual clients in federal and state court. He started out as an assistant public defender there. "I could never be a prosecutor, that was never my mentality," said Asbill.

The *Wakeford* case was one of Asbill's biggest challenges to date.

Wakeford was a former vice president at Internet service provider AOL who, along with two former lower-level AOL executives and four executives from PurchasePro.com Inc., were charged with participating in an elaborate scheme to deceive investors and accountants by inflating the revenue of the now defunct PurchasePro in the first quarter of 2001.

Wakeford faced 23 counts and the possibility of several years in prison. He refused to accept a plea deal and was indicted by the DOJ and sued by the SEC in January 2005.

DOJ and SEC representatives declined comment.

Asbill began representing *Wakeford* in 2004, when he worked at another law firm.

The government called more than 50 witnesses, introduced thousands of exhibits and produced tens of millions documents in discovery. As part of Asbill's intensive trial preparation, he focused on voir dire and the creation of a 50-page comprehensive jury questionnaire, which he persuaded the judge to give to all prospective jurors.

"I was looking for people who were fair, people who had some understanding that life is gray and things are complex," Asbill said. "And I was looking for a diverse group of independent people, diverse in age, race, job, sex, geography and life experiences."

But Asbill's biggest strength is in direct and cross-examination — and in taking the somewhat unusual approach of always putting his client on the stand. He did so in the *Wakeford* 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 said. "When your client testifies, his character becomes an issue by his demeanor."

The shaggy-maned lawyer — who was nicknamed "Wild Bill" by jurors — refused to tell his client all he planned to ask, preferring to keep some of his questions spontaneous.

As a result, when *Wakeford* was asked on the stand how the case has affected his life, his family and his reputation, tears began pouring down his cheeks — and those of jurors.

"He wanted to defend himself," Asbill said. "The criminal case was delayed two years, and this was his chance to tell the whole world that he had done nothing wrong."

Asbill said he knew he scored a home run when he learned that the scopist — who works with the court reporter to prepare transcripts of trial testimony — e-mailed the court reporter during the trial to say, "this guy doesn't need to bring a toothbrush. There is no way he is going anywhere."

After one day's deliberation, Wakeford was cleared of all criminal charges in February 2007. But there was no time for rest — it was on to prepare for the civil case, which was near his home in Washington federal district court.

This time, Asbill was facing even tougher challenges. The judge permitted only limited voir dire, and the SEC had a greatly reduced burden of proof. Also, the federal rules on character evidence had changed, throwing a wrench into Asbill's main strategy of putting numerous character witnesses on the stand.

Asbill again put Wakeford on the stand and tried to get across his client's integrity in "subtle ways." He said, "The character of my client and myself are very important to get across the jurors."

The seven-week civil trial ended in April 2008 with Wakeford cleared of all charges. The SEC has not yet stated whether it will appeal.