

# THE NATIONAL LAW JOURNAL

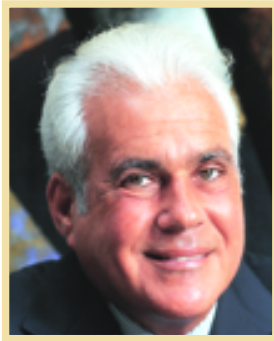
NLPIP CO.

WWW.NLJ.COM

MONDAY, JUNE 2, 2003



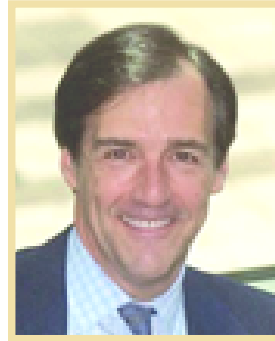
Philip S. Beck



Bruce G. Fagel



Thomas C. Green



Theodore M. Grossman



Roderick MacLeish Jr.

## Designs for winning

### Ten of the nation's top litigators tell how they prevailed in the 'Big Case.'

FIRST, A FEW WORDS about what this is not.

The 10 lawyers featured in the following pages were not chosen because they are the best or most successful in the country. We would be hard-pressed to define these terms, much less choose lawyers who qualify.

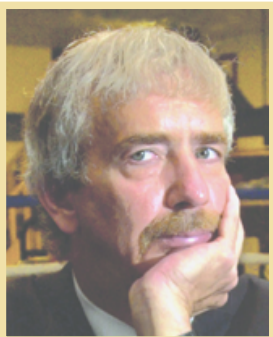
The attorneys recognized here have been successfully trying cases for years, and each had at least one big win over the past 15 months.

The articles are less profiles of the lawyers than stories of how they won their big cases. The cases themselves varied dramatically. A murder trial in Texas lasted two weeks, while a patent infringement suit in New York ran for seven months.

In spite of this diversity, a few common threads can be teased from these texts.

Though each story focuses on one lawyer, all of the lawyers featured were quick to credit the colleagues who made their wins possible.

And, as happens so often in the writing of history, the versions that are recorded are largely the ones told by the winners.



Jerry S. McDevitt



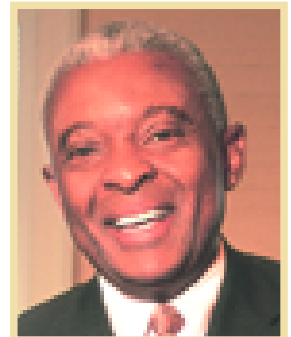
Barry R. Ostrager



Micheal J. Piuze



Kelly R. Siegler



Errol B. Taylor

## PHILIP S. BECK

# Wait for an opening, then counterpunch

By David Hechler

STAFF REPORTER

ATTORNEY: *Philip S. Beck*

FIRM: *Bartlit Beck Herman Palenchar & Scott, Chicago*

CASE: *Haltom v. Bayer Corp., No. 02-60165-2 (Nueces Co., Texas, Dist. Ct.)*

PHILIP BECK'S opponent in the first Baycol trial was plaintiffs' lawyer Mikal Watts, a homegrown prodigy from Corpus Christi, Texas, who played that local card right from voir dire. How could a defense lawyer from Chicago counter that?

"He lays it on thick with his local roots and family," Beck said. "I spent more time working on the voir dire than I did on the opening or closing or any of the other presentations."

He studied transcripts of Watts in voir dire and noted that he always mentioned his mother, a local judge. She taught him it was impolite to ask questions about people, Watts told jurors, unless he was willing to talk about himself. He then launched into family stories and asked if they'd ever been summoned to his mother's court.

Beck wanted to puncture what he considered a bald appeal to prejudice, but in a way that charmed the jury, he said.

"I'm not from Corpus Christi," Beck

told the panel, "but I can't let him say something about his mother and not say something about mine." The jurors laughed, he said.

They laughed louder when he told them that his parents owned a textbook store in Chicago and he asked whether any jurors had bought a textbook there.

### The counterpuncher

"I'm a counterpuncher," Beck explained. "That's a lot of what I do. You go in there and you wait for the other guy to take a big left hook, and then you duck and look for the opening."

Some openings require quick reactions, he said.

Then again, some reactions that appear impromptu are actually scripted in advance, like his voir dire zinger. And sometimes counterpunching means waiting for an opportunity.

The 52-year-old lawyer hasn't wasted much time waiting, and he hasn't missed many opportunities.

He was previously featured in *Winning* in 1997. That year he defended a pharmaceutical company accused of negligence when its blood products were contaminated with HIV-positive blood.

In 2001, he won \$15 million for an African-American wrongfully imprisoned for 15 years after he was set up for a murder conviction by two Chicago police detectives.

Beck was also on George W. Bush's legal team when attorneys for Bush and Al Gore conducted the last battles for the presidency in 2000.

Beck has continued to thrive in a variety of practice areas, as this sampling



PHILIP S. BECK: *In the Baycol case, he spent more time working on the voir dire than on the opening and closing statements.*

of cases suggests, but he doesn't hesitate to call *Bush v. Gore* the highlight of his career to date. It was, he said, "the most visible case I've ever been involved in." And his role, cross-examining Gore's experts, was a prominent one.

Representing the German drug company Bayer A.G. may not have been quite in that league, but the Baycol trial was particularly important because it was the first trial and nearly 8,000 lawsuits were waiting in the wings.

Watts alone represents about 1,500 Baycol plaintiffs, and he seemed to raise the stakes by publicly proclaiming before the trial that the internal documents he obtained in discovery were "the most damning documents I've ever reviewed."

### Drug withdrawn

Baycol was designed to reduce cholesterol, but Bayer withdrew it from the market in 2001 after it was found to cause serious side effects. Some patients were stricken with rhabdomyolysis, a muscle disorder, and about 100 deaths were linked to the drug.

The plaintiff in the month-long trial that ended in March was 82-year-old Hollis Haltom. Though Haltom fell ill with rhabdomyolysis, he appeared to recover before his health again declined. Beck elicited testimony that his weakened condition was attributable not to Baycol but to other ailments. After 2 1/2 days of deliberations, the jury cleared Bayer of all liability.

One danger in a highly publicized trial, Beck said, is that a lawyer can lose focus. Sometimes lawyers get carried away with their press clips, he said, and begin presenting evidence for the media. "I think it's important to keep your eye on the ball and focus on who's going to decide the case."

In this instance, he felt that the

plaintiffs' team lost focus and "overreached." By touting their documents, asking for \$550 million and suggesting that company executives had acted like criminals, the plaintiffs created an obligation to prove they weren't selling "a bill of goods," Beck said. And it created the kind of opening he looks for.

He contended throughout the trial that Watts and company quoted selectively from documents, and he countered by projecting them on a screen and reviewing the context. Many lawyers are assisted by technicians who handle the technology, but Beck believes it's a big advantage to do it himself.

"The reason I like to control it with the witnesses is I think it's distracting to listen to all those stage directions" when a lawyer cues a technician, "and it interrupts the flow of the examination."

If a witness contradicts a document on the screen, Beck can highlight the relevant passage even as the witness speaks, which can be highly unnerving for the witness.

During his closing statement, he seamlessly quoted deposition testimony by playing video clips. And he returned to a document that was much discussed during the trial. An unknown Bayer employee wrote in a memo: "Dig, throw the corpse, cover with sand."

"They tried to make you think that this memo reflected a view by Bayer," Beck said, "that you should just dig a hole and throw the patient in and cover them up with sand because we don't care about people, we don't care about safety and that was a big lie."

As he showed the jury the eight-page

memo, the lawyer reminded them that it was written months after the drug was withdrawn and the company was considering bringing it back. The writer thought this would be a mistake, he said. The corpse wasn't patients; it was Baycol.

Near the end of his closing, Beck referred to Watts with increasing frequency, personalizing the case in a way he usually avoids, he acknowledged. Defending the testimony

of a Bayer scientist subjected to withering cross-examination, he said:

"It's serious business to call somebody a perjurer. Do you think Dr. Posner came in here and committed perjury...or do you think maybe a lawyer who's asking for hundreds of millions of dollars in punitive damages got a little bit carried away?"

This was counterpunching with a twist, Beck said. "He had turned the case into Mikal Watts beating Phil Beck. I also thought he would rise to the bait and waste a lot of time talking about himself instead of his case."

Watts began his closing this way: "Today's an important day. Today is my wedding anniversary. It's also my 5-year-old kid's birthday." After asserting that Beck attacked him because the defense case was weak, Watts continued:

"And I want to talk to you about that, because frankly part of it's personal. I have a 5-year-old boy who just listened to his daddy being called a liar."

## TRIAL TIPS

■ **Try the case to the jury, not to the media.**

■ **Control your own technology.**

■ **Look for openings left by your opponent, then counterpunch.**

This article is reprinted with permission from the June 2, 2003 edition of THE NATIONAL LAW JOURNAL. © 2003 ALM Properties, Inc. All rights reserved. Further duplication without permission is prohibited. For information, contact American Lawyer Media, Reprint Department at 800-888-8300 x6111. #005-06-03-0020

# WINNERS PAST AND PRESENT

*One hundred fifty-three lawyers have appeared in Winning special reports. Here are their names and the year(s) in which they appeared:*

Floyd Abrams (1990)  
Guy H. Allison (1995)  
Thomas T. Anderson (1991)  
Stanley Arkin (1989)  
Thomas D. Barr (1985)  
**Fred H. Bartlit Jr. (1985, 1995)**  
Jere Locke Beasley (1995)  
David J. Beck (1998)  
**Philip S. Beck (1997, 2003)**  
Melvin M. Belli (1985)  
David H. Berg (1992)  
William O. Bittman (1989)  
Roy Black (1992)  
Edward Blackmon Jr. (2002)  
Maxwell M. Blecher (1988, 1996)  
Lisa A. Blue (2002)  
David Boies (2000)  
Brad D. Brian (1995)  
Aaron J. Broder (1996)  
James J. Brosnahan (1990)  
James E. Butler Jr. (1994)  
Ronald E. Cabaniss (1999)  
Ricardo G. Cedillo (1999)  
Helen Davis Chaitman (1995)  
Morgan Chu (1995)  
Michael V. Ciresi (1989, 1993)  
Robert A. Clifford (1993)  
Johnnie L. Cochran Jr. (1992)  
Vincent H. Cohen (1988)  
Roxanne B. Conlin (1989)  
Philip H. Corboy (1985)  
Joseph W. Cotchett (1992, 1993)  
Finis E. Cowan (1994)  
Morris Dees (1991)  
Thomas A. Demetrio (1990)

Elizabeth J. Du Fresne (1998)  
Bruce G. Fagel (2003)  
Larry R. Feldman (1999)  
James E. Ferguson II (1989)  
Geoffrey N. Fieger (1999)  
Peter E. Fleming Jr. (1988)  
Willie E. Gary (1994, 1996)  
Wendell Gauthier (1989)  
Susan Getzendanner (1992)  
Karen Gievers (2000)  
Thomas V. Girardi (1998)  
Oscar B. Goodman (1985)  
Judson Graves (2000)  
Thomas C. Green (2003)  
Browne Greene (1990)  
Marshall B. Grossman (1989, 1999)  
Theodore M. Grossman (2003)  
Robert F. Hanley (1985)  
David M. Harney (1985)  
Richard 'Racehorse' Haynes (1985)  
Joseph D. Jamail (1988, 1993)  
Alfred S. Julien (1985)  
Philip E. Kay (2002)  
John W. Kecker (1996)  
William L. Kirk Jr. (1996)  
Thomas Kline (2000)  
Peter C. Kopff (1997)  
Albert J. Krieger (1997)  
Ronald D. Krist (1990)  
Robert G. Krupka (1998)  
W. Mark Lanier (1998)  
Scott D. Lassetter (1997)  
William F. Lee (1996)  
Fredric G. Levin (1999)  
Arthur L. Liman (1990)  
James Paul Linn (1991)  
Jack T. Litman (1989)  
Judith A. Livingston (1993)  
Susan E. Loggans (1985)  
Martin London (1995)

Frederick A. Lorig (1994)  
Abbe David Lowell (2002)  
Joan A. Lukey (1999)  
Paul N. Luvera (1994)  
Roderick MacLeish Jr. (2003)  
Jerry S. McDevitt (2003)  
Pat Maloney Sr. (1991)  
Edward F. Mannino (1990)  
John S. Martel (1988)  
Richard Mithoff (2000)  
C. Barry Montgomery (1996)  
Robert M. Montgomery Jr. (1991)  
Thomas A. Moore (1992, 1998)  
Robert G. Morvillo (1988)  
R. Kenneth Mundy (1991)  
William H. Murphy Jr. (1998)  
James F. Neal (1985)  
Gustave H. Newman (1994)  
Raymond P. Niro (1997)  
William S. Ohlemeyer (1998)  
Jack H. Olender (1990)  
Brian B. O'Neill (1995)  
Vance K. Opperman (1992)  
John M. O'Quinn (1993)  
Dennis P. Orr (1997)  
Ronald M. Oster (1994)  
Barry R. Ostrager (2003)  
Henry F. Owens III (1995)  
Mary A. Parker (1990)  
Eugene G. Partain (1991)  
Cornelius Pitts (1993)  
Michael J. Piuze (2003)  
Debra E. Pole (1994)  
David B. Potter (2002)  
Joseph A. Power Jr. (1996)  
Howard J. Privett (1993)  
Thomas P. Puccio (1985)  
James W. Quinn (1993)  
Mary Beth Ramey (1991)  
Donald Re (2000)  
Roy L. Reardon (1991)  
Harry M. Reasoner (1992)  
Leonard M. Ring (1988)  
Larry R. Rogers Sr. (1999)  
Robert N. Sayler (1997)  
Ivan S. Schneider (1997)  
Christian D. Searcy (2002)  
William M. Shernoff (1996)  
Ron E. Shulman (2002)  
Kelly R. Siegler (2003)  
Harvey M. Silets (1992)  
William Slusser (2000)  
H.T. Smith (1997)  
Suzelle M. Smith (1997)  
Stephen L. Snyder (2002)  
Neal R. Sonnett (1993)  
Gerry L. Spence (1985)  
Deborah C. Stevens (1996)  
Brendan V. Sullivan Jr. (1988, 1992)  
Stephen D. Susman (1989)  
Lawrence A. Sutter (2002)  
Dennis Sweet (2000)  
Robert A. Swift (1995)  
Barry Tarlow (1988)  
Errol B. Taylor (2003)  
William V. Vaughn (1989)  
Harold M. Walter (2002)  
R. Lawrence Ward (1994)  
Dianne Jay Weaver (1988, 1998)  
Dan K. Webb (1991)  
Robert Weber (2000)  
Harvey Weitz (1994)  
Howard L. Weitzman (1985)  
Theodore V. Wells Jr. (1990, 1999)  
Malcolm E. Wheeler (1998)  
Edward Bennett Williams (1985)  
Sarah R. Wolff (1999)  
Kathleen Zellner (2000)



BARTLIT BECK HERMAN PALENCHAR & SCOTT

website: [www.bartlit-beck.com](http://www.bartlit-beck.com)