

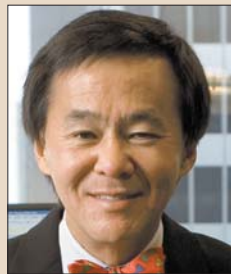
THE NATIONAL
LAW JOURNAL

MONDAY, JUNE 20, 2005

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CHARLA G.
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MORGAN
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JOHN P. "SEAN" COFFEY AND
MAX W. BERGER



MARTIN
FLUMENBAUM



SPENCER
HOSIE

WINNING

10 PROFILES OF SUCCESSFUL STRATEGIES
FROM SOME OF THE NATION'S TOP LITIGATORS



ROBERT G.
KRUPKA



WILLIAM F.
LEE



ANDREW J.
LEVANDER



STEVEN E.
PEGALIS



M. GERALD
SCHWARTZBACH

SPENCER HOSIE

His first step: Breaking it down for his son

ATTORNEY: *Spencer Hosie*

FIRM: *Hosie McArthur LLP, San Francisco*

CASE: *Louisiana v. ChevronTexaco Corp.,
No. 93658 (Lafourche Parish, La., Dist. Ct.).*

By Dee McAree
STAFF REPORTER

FOR A LAWYER who tackles tough opponents in sophisticated lawsuits over oil royalties and stolen software technology, you might expect Spencer Hosie to prepare for trial with a team of expert coaches.

Not quite.

“Before every trial, I take my 11-year-old out and talk to him about the case to see how he reacts,” said Hosie, who added that if he can’t explain a complicated subject in simple terms that his son understands, then he knows he won’t win over a jury. “You’ve got to keep it simple.”

But in Hosie’s area of litigation, simple is no easy task.

The caseload at his eight-lawyer San Francisco firm Hosie, Frost, Large & McArthur is divided about 40% energy and 60% antitrust. The common thread is that whether his cases are about fraud or price-fixing, they typically turn on economics—admittedly not a very sexy topic for most juries, concedes Hosie.

“The challenge is to reduce the case down to a simple story about right and wrong,” the lawyer said. Even the most complex case reduces to a story about someone being cheated, Hosie said. Juries are not cavalier, he asserted. Jurors are willing to work hard to comprehend a case and take seriously their ability to right a wrong. “If the case is about right and wrong and about fairness, then I can talk personally to the jury,” Hosie said.

Hosie Frost opened in 1999, but Hosie has been litigating on his own since



RUSS CURTIS

SPENCER HOSIE: *The challenge is to reduce the case to “a simple story of right and wrong.”*

leaving Heller Ehrman White & McAuliffe in 1985. His adversaries are the biggest kids on the block—from Exxon Corp. to Chevron Corp. to Microsoft Corp. Such companies have access to the best defense lawyers and possess the financial power that enables them to see cases to trial or to drag cases out long enough to wear down most plaintiffs.

For Hosie, that means he goes into every case fully prepared to go the distance and just as ready to go to trial. What's more, he said, "I think it's fun."

In March 2004, Hosie tried a case against Chevron (then ChevronTexaco Corp.), accusing the oil company of cheating the state of Louisiana out of royalties from land leased from the state between 1987 and 1999. *Louisiana v. ChevronTexaco Corp.*, No. 93658 (Lafourche Parish, La., Dist. Ct.).

The three-week trial took place in the Louisiana town of Thibodaux, in the Cajun delta. Hosie said that he had exhausted all his peremptory challenges during voir dire, yet still ended up with a jury with three alternates and two jurors who were oil company employees (not Chevron's).

Chevron lawyers immediately attacked the San Francisco lawyer as an outsider, but Hosie approached it head-on. "That's true that I'm not a local," Hosie told the jury. "But the case isn't about me." Hosie went on to try a case about failed schools and unfixed roads in a state rich with oil resources.

Ultimately, the jury returned a \$111 million verdict for the state. In all, the Hosie Frost firm has represented Louisiana in 22 cases against various defendants, recovering more than a quarter-billion dollars in verdicts and settlements, he said.

Chevron's counsel, G. William Jarman of Kean Miller Hawthorne D'Armond McCowan & Jarman in Baton Rouge, La., did not return phone calls seeking comment.

But knowing how to talk to the jury is worthless, said Hosie, unless you have the evidence to back it up. "No matter how pretty the words, if you can't show the jury the documents, you're gonna

lose," he said. That is where determined discovery comes in.

The lawyer describes his own discovery process as "dogged relentlessness." In representing Burst.com Inc. in a recent lawsuit against Microsoft, Hosie combed through 180 boxes of e-mails looking for key evidence that eventually paid off. "I read every page," said Hosie. "It took weeks."

Burst.com Inc. sued Microsoft in June 2002 for allegedly stealing technology for broadcasting sound and video over the Internet after plans for a deal between the two companies broke off.

"I started paying attention to mysterious gaps in the e-mail coverage," said Hosie. That discovery led to five motions against Microsoft, accusing it of systematically destroying evidence crucial to Burst.com's lawsuit. Hosie wanted the judge to instruct the jury that it could infer from the destroyed evidence that the documents were damaging to Microsoft's case. But that motion was still pending when the case settled in March 2005 for \$60 million.

Pushing hard

In taking on Microsoft, Hosie also pushed to be allowed to depose Chairman Bill Gates, arguing that Gates sets the tone for his company and knows every step it takes. In making his argument to the judge, Hosie quipped, "A sitting American president can be deposed, but Bill Gates cannot be?" He won the motion, and deposed Gates for three hours. The litigator said you need to push hard to get the discovery you're entitled to. "If you don't get the documents, then you file a motion and another and another and another," he says. "Part of the process is knowing what you have, so that you have a sharp sense of what you don't have."

Hosie said he often memorizes pages and pages of depositions. He will ask a company executive the same question repeatedly and then call key company executives as hostile

witnesses. It's a risk that can be disruptive, he admits, but it often pays off.

"If you pick the right people you can get them to lie," said Hosie.

He has laser clips of the video depositions with bar code labels for use during trial.

If Hosie gets a different answer than the executive gave in deposition, he shows the video clip to the jury.

"That is something we do a lot. Call executives as hostile witnesses and then bang them with the video impeachment."

Pictures, video and all kinds of graphics are essential to a trial, said Hosie. "People remember pictures." Witnesses often looked polished in the courtroom, so Hosie likes to show the jury another image on video. "I show them these executives and they look horrible on videotape."

But for all the punches Hosie may have

pulled with the other side, the lawyer says he has also been surprised by client referrals from opponents he has gone up against. He, in turn, admits to a "grudging respect" for his adversaries.

One such adversary is Mark Bennett, a former Honolulu defense lawyer who represented Chevron in litigation where Hosie represented the state of

Hawaii. Bennett, ironically, is now the attorney general of Hawaii who describes Hosie as a "hard-charging" lawyer.

Bennett added that now, as AG, he would look to hire his former adversary for the right kind of case. "If it was the kind of case, especially in an oil and gas arena, where you needed outside counsel, Spencer would give you that kind of vigorous representation." **NLJ**

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TRIAL TIPS

- Reduce the case to an issue of fairness.
- Call key executives as hostile witnesses.
- Use graphics. Jurors remember pictures.

PAST WINNERS

*One hundred seventy-seven lawyers have appeared in Winning special reports.
Here are their names and the years in which they appeared:*

Floyd Abrams (1990)	Edward F. Fernandes (2004)	Martin London (1995)	Donald Re (2000)
Charla G. Aldous (2005)	James E. Ferguson II (1989)	Frederick A. Lorig (1994)	Roy L. Reardon (1991)
Guy H. Allison (1995)	Geoffrey N. Fieger (1999)	Abbe David Lowell (2002)	Harry M. Reasoner (1992)
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Jere Locke Beasley (1995)	Susan Getzendanner (1992)	George P. McAndrews (2001)	William G. Schopf (2004)
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Philip S. Beck (1997, 2003)	Thomas V. Girardi (1998)	Pat Maloney Sr. (1991)	Christian D. Searcy (2002)
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David H. Berg (1992)	Judson Graves (2000)	John S. Martel (1988)	Ron E. Shulman (2002)
Max W. Berger (2005)	Thomas C. Green (2003)	Richard Mithoff (2000)	Kelly R. Siegler (2003)
William O. Bittman (1989)	Browne Greene (1990)	C. Barry Montgomery (1996)	Harvey M. Silets (1992)
Roy Black (1992)	Marshall B. Grossman (1989, 1999)	Robert M. Montgomery Jr. (1991)	Ellen S. Simon (2001)
Edward Blackmon Jr. (2002)	Theodore M. Grossman (2003)	Thomas A. Moore (1992, 1998)	William Slusser (2000)
Maxwell M. Blecher (1988, 1996)	Robert L. Habush (2001)	Robert G. Morvillo (1988)	H.T. Smith (1997)
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Ronald E. Cabaniss (1999, 2001)	Philip E. Kay (2002)	Vance K. Opperman (1992)	Dennis Sweet (2000)
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Helen Davis Chaitman (1995)	Thomas Kline (2000)	Ronald M. Oster (1994)	Errol B. Taylor (2003)
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Michael V. Ciresi (1989, 1993)	Albert J. Krieger (1997)	Henry F. Owens III (1995)	Harold M. Walter (2002)
Robert A. Clifford (1993)	Ronald D. Krist (1990)	Brian J. Panish (2001)	R. Lawrence Ward (1994)
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Vincent H. Cohen (1988)	Scott D. Lassetter (1997)	Steven E. Pegalis (2005)	Robert C. Weber (2000, 2004)
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Joseph W. Cotchett (1992, 1993)	Fredric G. Levin (1999)	Debra E. Pole (1994)	Theodore V. Wells Jr. (1990, 1999)
Finis E. Cowan (1994)	Arthur L. Liman (1990)	David B. Potter (2002)	Mark S. Werbner (2001)
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Larry R. Feldman (1999)		Mary Beth Ramey (1991)	