

MILFORD DAHL JR.



ilford Dahl is sitting in his corner office on the 15th floor of a Metro Center tower with a clear view of

planes landing and taking off from John Wayne Airport and a broad sweep of Orange County to the west and south. He loosens his tie and talks about his day in court.

The former UCLA All-American miler smiles and says, "We had a good day today. We think we impeached their witness. In this job, one day you're on a high and the next day seems like you have no chance to win. You just hope the good days outweigh the bad ones."

Don't be fooled. Dahl, one of Rutan & Tucker's top litigators, the oldest and largest law firm in Orange County, works very hard to make sure the good days far outnumber the bad ones.

"Today proved one thing: Credibility is everything. If I have one piece of legal advice it's 'don't exaggerate.' I tell my clients not only do you have to tell the truth but you have to be able to perceive things accurately. We all come with limitations."

In their current trial, Dahl and his young associate Robert Marcereau are defending a man being sued by his former partner in a messy business divorce. Jordan Williams, the defendant, and his counsel take the position that the other partner, Glenn Veneracion, "exaggerated and lied" when telling police that Williams had taken furniture and equipment from the company. In their brief filed with the court, Dahl and Marcereau write: "Veneracion abused his position as financial manager of these companies" (CSS-NR Electronics Inc. and Abecs Electronics Inc.) "by failing to pay company debts, failing to pay Williams his rightful share of profits, and diverting company funds to his own personal use. Veneracion systematically funneled money away from these companies, quietly driving them to financial ruin and lied to Williams, Baldwin, and others about the companies' true financial status ... In an attempt to salvage what was left of his interest in the business, Williams thereafter took certain assets from Abecs, including office furniture and equipment, and some inventory."

One key to their defense of Williams

MILFORD DAHL JR.
(RIGHT) AND ROBERT
MARCEREAU OF
RUTAN & TUCKER
DURING A TRIAL.



PHOTO BY MARK SAVAGE

is to show that Veneracion grossly overstated the quantity and value of the assets taken by Williams.

On this day in Department 23 on the seventh floor of the Central Courthouse in front of Judge David Thompson, Dahl was able to impeach the veracity of the other side three ways.

First, the other side put on an expert witness to testify to the value of the inventory and his values were substantially below those touted by Veneracion. Sometimes the opposition helps you.

Second, when filing a police report Veneracion told the officer that Williams was only "a sales manager" and "that he did not have permission to write or cash any checks on behalf of the company." Veneracion claimed the "officer got it wrong," says Dahl, but the Costa Mesa police officer asked the question twice. Dahl asked the court to note this sentence in the police report: "It was at this point that I asked Veneracion to clarify once again the position that Williams held in his company. Veneracion said that he was only an employee with the title of sales manager."

Third, Dahl says that for about a year Veneracion has resisted a discovery request for an important piece of evidence claiming he could not find it and then told the judge that he finally found it in his office last week. Dahl says it appears he violated the discovery order and the court does not look kindly on this type of behavior.

Economics drives many civil cases to settle rather than go through a court battle. Dahl says, "This case costs \$750 per hour times 10 hours. That's \$7,500 a day to go to court. Most medium-size business cases cannot be done for less than \$100,000. The courts know the clients are cost conscious and push the

parties to settle. The cases that do go to court are usually emotional. In this case the ex-partners hate each other. Today in court they were making obscene gestures to each other."

Dahl has confidence in the process. "I think most cases settle right and 75 percent of juries get it right when the cases do go to trial. Not always for the right reasons, but juries have a collective sense of right and wrong."

When he is in front of a jury Dahl says it's his job to "put together the facts to tell a story that the jury will understand and hopefully believe. I've got to take a very complex business case and explain it to 12 lay people. Many attorneys don't connect. They get too complicated or they put on experts who talk right over the jury's head."

Dahl says he likes the trials as compared to settlement negotiations. "It's a different skill set. I'd much prefer to try a case than to see who can lie – I'm exaggerating here – who can outnegotiate the other guy. I'm pretty much a bottom-line person." Settlements are important because 90 percent of civil cases settle before the trial but if the case does go to trial it's good to have an experienced litigator handling the case.

"There's a lot to think about when you are in a trial. You have to be quick on your feet. I go home exhausted; it's very draining. You have to think about where you are going and how to set up the next piece of evidence."

Sometimes a trial attorney doesn't know how a piece of evidence will play with a jury. In a hang gliding tragedy, Dahl represented Jeep. The company had hired the world champion hang glider to appear in a commercial. The hang glider hired a helicopter pilot he had worked with and the filming went as planned with the hang glider swooping down to land next to the new model Jeep. The film

crew was satisfied with the footage but the hang glider requested to do one more flight. Caught in the helicopter down draft, "he was pushed to the ground and killed. It was all captured on film," says Dahl.

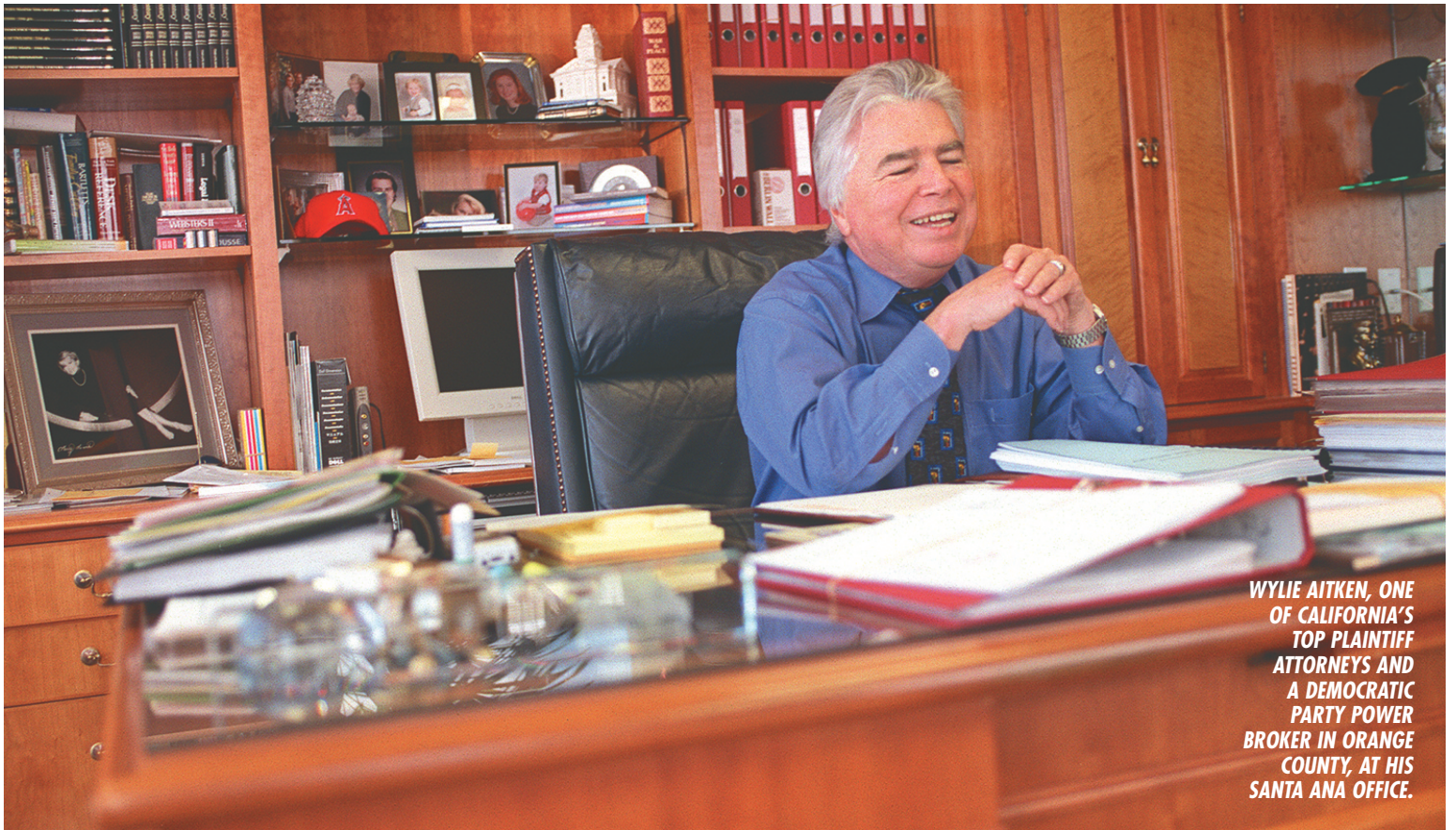
"It was a tragic case. The family had already lost another son hang gliding. The other side wanted to introduce a film of the hang glider flying in Hawaii. It was a beautiful, powerful piece of film and I was sure it would touch an emotional chord in the jury. I wanted to keep it out of evidence because I thought it would be prejudicial to our side but in the end it was allowed into evidence.

"My basic argument was: 'How were we (Jeep) negligent? We hire the world champion hang glider and the most experienced helicopter pilot and they had worked together before. We did not tell them how to fly, only the result we wanted.' The trial was very technical and emotional. Art Hughes was the plaintiff lawyer. In the end, for my summation, I said, 'In this world we always want to blame and find fault but some things just happen. The hang glider was doing what he loved most and working with a pilot he'd worked with before. We can blame him, us, the pilot, but things just happen.'

"It took me 45 minutes to present and then the jury ruled just that way. It was very emotional. I'd never made that argument before or since. When I talked to the jury afterward one of them told me what helped sway the jury was the Hawaii film. One of the jurors said, "If he was that skilled, he should have known."

As a kid in the 1950s, Dahl became an outstanding miler his senior year at Santa Ana High. Recruited by UCLA, he became one of America's top college milers. His best race came against Olympic champ Peter Snell of New Zealand. "I was right with him for three laps," says Dahl. "Then Snell took off running the last 220 as fast as I could when I was fresh. He ran 3:56 and I ran 4:02. I was bent over in pain and he was running up the stairs to get interviewed." After his undergraduate days, Dahl headed to UCLA Law School where he flourished, graduating fifth in his class.

There are similarities between good lawyers and championship athletes, says Dahl. "There are athletes who are naturally gifted and those who



WYLIE AITKEN, ONE OF CALIFORNIA'S TOP PLAINTIFF ATTORNEYS AND A DEMOCRATIC PARTY POWER BROKER IN ORANGE COUNTY, AT HIS SANTA ANA OFFICE.

PHOTO BY MARK SAVAGE

work really hard and the All-Americans are both. That was certainly the case with Rafer Johnson. The law is the same way; the really top attorneys have talent and work very hard. Trial work is very rigorous and not as glamorous as people think."

WYLIE AITKEN

Criminal attorney James Riddet says there are two phases to trial work – trial preparation and the trial itself and the outcome depends almost entirely on the preparation. If a trial attorney does succeed in a Perry Mason-like move it is usually the result of hours of preparation. Plaintiff attorney Wylie Aitken agrees with Riddet and Dahl on the overriding importance of solid preparation. Aitken says, "As someone once said, 'Before I was a genius I was a drudge.'"

Aitken has won a number of high profile cases during his career and is viewed as one of the top plaintiff lawyers in the state. He is regularly featured in "Best Lawyers in America." In one of his most recognized cases, Aitken represented Laura Small, the 5-year-old girl who was mauled by a mountain lion in Caspers Wilderness Park. The 1991 case, which sparked a national debate on public park safety, turned, in part, on the county's contention that mountain lions are very rare visitors to parks. Aitken, who has a flair for the dramatic, discovered during his research that another family on a hike in the park had taken a picture only to discover a mountain lion just behind them in the bushes. But because the photo was taken six months after the Small attack the photo was ruled not admissible. Hoping to get a chance to get the photo into evidence, Aitken had the photo blown up and kept it near his seat in court.

"I'm a big believer in demonstrative evidence," says Aitken. "Recreations, photographs, bringing in part of an aircraft, bringing in part of a railroad crossing signal. It all creates drama which makes it interesting for the jury vs. just dry, technical testimony."

In the Small case, Aitken had to wait until the county's expert witness got on the stand and argued that the lion attack that cost Laura Small an eye, permanent brain damage, some paralysis on her right side and severe facial scars was "a once in a lifetime event." He argued that if a mountain lion was in the certain vicinity, the next day that lion would be 20 miles away. Seeing his opportunity, Aitken asked the county's expert if he was sure of that. He said he was. At this point, Aitken asked to approach the bench and said, "Your honor, the time has come. I have that photo and it can impeach this witness. It was taken one day before a second mountain lion attack and fits with my argument that the county had a duty to warn the Small family that there was an element of risk in taking a hike in Caspers Park. Either the witness is sadly mistaken or else he is deliberately misleading the jury and that is for the jury to decide."

The judge turned to the other counsel and said, "You opened the door."

The Small case was difficult to win because most people's first reaction was "the mountain lion was doing what mountain lions do." But Aitken points out that the suit was brought not against the mountain lion but against Orange County for not adequately warning the Small family about the dangers of taking a Sunday afternoon walk in the park. In his research, Aitken discovered that O.C. rangers were not trained for a wilderness park; that the trails by the nature center and stream did not contain warning signs, thus giving family's a false sense of security; and that before the Small attack there had been multiple lion sightings including two "near attacks." Yet no public warnings were given, even after a park official had been instructed to do so by a state Department of Fish and Game wildlife biologist.

Still the case was an uphill battle because "there is a whole body of law protecting the government from being sued. The government expects us to do all sorts of things but they always exempt themselves."

On Christmas Eve, 1998, a tourist died and his wife was severely injured at Disneyland. Aitken represented the family in the wrongful death case where a metal cleat dislodged and flew off Disneyland's sailing ship Columbia, killing Luan Phi Dawson, a 33-year-old Microsoft computer programmer, and seriously disfiguring Lieu Vuong, his wife, in front of their 7-year-old son. Before this