

## Jackson Walker's Chip Babcock Seems to Merit His Ubiquity

Let's say that you have a need for a First Amendment lawyer. Or maybe you're a publisher of a newspaper or producer of a broadcast news program and you need a media-law attorney. In both instances, there are short lists of top-shelf lawyers, and Charles "Chip" Babcock is at or near the top of both lists.

You can find the name of this Jackson Walker partner, who is also a business litigator and has spent more than 28 years with the 303-attorney Dallas firm, on other lists as well, most notably *Texas Lawyer* newspaper's "Texas' Go-To Lawyers"; *D Magazine's* "Best Lawyers in Dallas"; for more than 10 years "Best Lawyers of America"; and most recently Babcock was inducted into the International Academy of Trial Lawyers.

Cable TV viewers will often see Babcock as an expert talking head on the MSNBC program *The Abrams Report*. And he's been the profile subject or news source for numerous publications in both the mainstream media and the trade press, including *Of Counsel* (as a source).

In case after victorious case, Babcock has served clients with the his vast knowledge of

the law, soaring courtroom litigation style, keen insight, close attention to detail and all with guy-next-door humility. He's also served his law firm well, bringing in a significant book of business, both directly and indirectly, and teaching younger attorneys the ins and outs of the legal profession.

"Over the years, Chip's shown a lot of leadership in the firm and has done that by example," says Jackson Walker managing partner Michael Wilson. "He's a very talented lawyer but as great as he is as a lawyer, he's even a better partner and friend. Of course, I'm a little biased because Chip and I have been practicing together since the earth cooled."

Babcock started his career in journalism, as a sports reporter for newspapers in Miami and Philadelphia. He thinks that this experience helps when he represents media-related clients. He says that, usually when he walks into a newsroom to talk with clients, the reporters tend to connect with him because of his early journalism career and his insider knowledge of their profession. This rapport gives him an advantage.

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## Of Counsel Profile

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While Babcock's most important case may be the 1980 *Miller v. Transamerican Press Inc.* in which the Fifth Circuit ruled that reporters have a First Amendment privilege to protect confidential sources, it was his successful defense of Oprah Winfrey that thrust him into the spotlight.

That celebrated case centered around an episode of *Oprah* during which the famous talk show host interviewed Howard Lyman, an author and vegetarian activist, discussing the cattle industry, the practice of feeding ground-up animal parts to cattle, and its possible link to mad cow disease. The cattlemen sued, claiming that the show helped drive down beef prices, costing them \$11 million.

Babcock won the case, and after the jury handed down the 1998 verdict, he was quoted by several news agencies about the First Amendment ramifications of the victory. "[This case is] about robust debate and the unfettered interchange of ideas," he said at the time.

Recently, Babcock talked to *Of Counsel* about that case and others, his career, issues in the various areas in which he practices, trends in the profession, and other topics. The following is that excerpted interview.

### Revelation: Can't Do Sports for Life

**Of Counsel:** As many people know, your first career was journalism, sports journalism. You were a sportswriter for the *Philadelphia Inquirer* and the *Miami Herald*. What made you want to change careers and enter the legal profession?

**Charles "Chip" Babcock:** Well, I broke my father's heart. He had been at the *New York Herald-Tribune* until it folded, in the book review section, and he always wanted to be a sportswriter. When I became a sportswriter at a pretty good newspaper, he was very jazzed.

I had started going to law school part-time while I was at the *Inquirer*, so I had an idea about [pursuing the law]. My first class was on constitutional law, and I really got fired up about that. Still, I really enjoyed what I was doing for the newspaper.

Then I had an epiphany. I was sent to interview a guy who had been traded by the Los Angeles Rams, which shows you how long ago it was, to the Philadelphia Eagles, a quarterback by the name of Roman Gabriel. I remember being in this mini-press conference with eight or nine writers talking to him. I stepped back from it all and saw all of these 40-year-old sportswriters, which at the time seemed ancient but, of course, doesn't anymore. They were just hanging on every word that the guy said. I thought, "Do I really want this to be my life's work? When I'm older and have a family, do I want to depend on guys like this for my livelihood?" I decided no [and went on to pursue the legal profession].

**OC:** You clerked for awhile for Judge Robert Porter in Dallas and went to work for Jackson Walker. How did you make the leap from the East Coast to Texas?

**CB:** It was total serendipity. There was a woman who was a year ahead of me in law school and had clerked for the Fifth Circuit. She told me, "There are two judges in Dallas who are younger, love sports, and are very energetic. I think that you'd love them and they'd love you, and I think you should apply to them." I did, and she was right. These guys [Porter and Judge Robert Hill] were unbelievably cool. They both asked me down for an interview. They told me later that they had flipped a coin to see who I'd clerk for, but they never told me who lost.

**OC:** [laughs] Let's talk about your most celebrated case, *Texas Beef Group v. Winfrey*, which involved Oprah when she had activist Howard Lyman on television who said some critical things about the cattle industry. It's been eight years since the case was decided. When you look back on it, what sticks in your mind as the most satisfying element of the case?

**CB:** What was most satisfying is that when all was said and done probably one of the most important voices in America was not chilled,

was not reprimanded, was not sanctioned by our legal system.

**OC:** This couldn't have gone over well in the state of Texas. Have you had any fallout? What reactions have you seen or heard when you've traveled the state of Texas?

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**CB:** Well this is a story that maybe I've never fully told. A couple of years after the case, Jackson Walker merged with an Austin firm by the name Small Craig [& Werkenthin]. Ed Small had for years represented the cattle industry all the way from ranchers to cattle feeders to the end-of-the-production-line guys. He was a little worried that my representation of Oprah might irritate his client base. So he made inquiries. The word that came back, which was flattering to me, was that “if you can hire this guy [Babcock], you should do it because he's a terrific lawyer and conducted himself in a way that would make us proud to have him as our lawyer.” [Babcock has provided legal service to the cattle industry since then.]

**OC:** What sort of benefits did Jackson Walker, and more specifically your practice, get from all that celebrity? Could you see that it generated clients?

**CB:** I don't think that I could pick out a client and say, “This client is here because of Oprah.” I think what it did was that, after that case, there was never any question about my ability. If I was getting interviewed for a case by a prospective client, no matter what the area was—a media or non-media area—it was just a given that I knew how to try a lawsuit. So I had hopped up a couple of steps on the ladder and no longer had to persuade anyone that I know how to try lawsuits.

**OC:** Of course, Oprah retained you again.

**CB:** Yes, in fact, she turned over all of her litigation to me after that.

**OC:** Not a bad client to have. You don't have to worry about getting paid.

**CB:** [chuckles] She does pay her bill.

### Fighting Libel Charges Against the Trib

**OC:** One of your more recent cases was *Knight v. Chicago Tribune* [in which the plaintiff brought libel charges against the newspaper], which was decided last year.

**CB:** Yes, we tried in May for three weeks and got a verdict for the defendant. Interestingly, just yesterday [February 27] we got an opinion from the trial judge denying the plaintiff's motion for a new trial.

**OC:** What turned that case in the *Tribune's* favor?

**CB:** I don't want to be facetious, but I think hard work did it. We took over the case not even in mid-stream but in late-stream. When we got it, every one knew that a mistake had been made in this article that Mr. Knight was complaining about. But nobody had figured out how the mistake was made. We sat down with the reporter and essentially did what a journalist would do. We pieced together how the mistake was made and at what stage in the editorial process it had been made.

The case had been going on for four years, and they hadn't figured this out. We conclusively determined what had happened; it was an editorial thing that happened in one of the final drafts, probably 24 hours before this lengthy piece went to bed.

**OC:** You determined, and proved, that the mistake was not malicious.

**CB:** Right.

**OC:** Chip, many of our readers are law firm leaders or practice group leaders who have to manage a lot of people. You manage several peo-

ple in your areas of practice: First Amendment law, media law, and commercial litigation. What's the challenging part of managing in your areas?

**CB:** One of the most important things that I do is manage large trial teams. We just had a case that we settled where we were representing a small British cell phone manufacturer against Microsoft. I don't know how many lawyers Microsoft had on the case, but we had 20 or 22; I suspect that they had quite a few more than that. Trying to organize the case and delegate tasks to people and have trust in them and do it in an efficient way so that we could get this case to trial without the passage of time deciding the lawsuit, that's a huge management issue.

You need to make sure that the people on the team work well with each other, like each other, are symbiotic in the sense that you check your ego at the door, that nobody's better than anyone else. We just play off each other. Being able to develop those kinds of teams is harder than it might sound. This team worked like clock work, and we had mutual respect and admiration for everybody. I think we provided great service to our client, and at the end of the day we got them a great result.

**OC:** Obviously, you've represented a lot of media outlets, but you also use the media. It seems that, increasingly for high-profile cases, attorneys are stepping forward and becoming spokespeople for their clients in the media. If an attorney were to come to you and ask what he or she needs to know when using the media to win in the court of public opinion, what would you tell that person (presuming that you liked that person and wanted to help)?

**CB:** Presuming that is wasn't my opponent in a case, I think the first thing that I'd tell him is that the court of public opinion is important to your lawsuit because, if the publicity about your case and your set of facts is so pervasive and is so bad, the venue that you're trying this case in may have already been seeded with thoughts, feelings, concerns by *people on the jury* who are going to decide the issues.

If your opponents have been doing all the seeding and taking all the media's time and space and airwaves, you may be way behind before you

even make your opening statement. So, the first thing that you have to recognize is that the court of public opinion is important.

**OC:** Good. What else?

**CB:** You need to see what your message is and analyze how that message fits in to your litigation. You also have to tailor that message so that it certainly doesn't work against your litigation needs and hopefully would promote your litigation needs. Then you have to get that message out to the public. Finally, you have to do it all in an ethical way.

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**OC:** It's tempting to take shortcuts isn't it?

**CB:** Yes.

**OC:** Because the news cycle often happens pretty quickly.

**CB:** Yes. Shortcuts will often get you in trouble. Right before we started this phone conversation, I was consulting with a client who is about to be embroiled in litigation. I think that I trained this client well because the client got one question from a reporter about this and was right on the horn to the in-house lawyer and me. It would have never occurred the client [before the training] what would have been important in answering that question.

**OC:** You might aggravate the reporter, but it's better to do that than say something stupid.

**CB:** That's where I think I can add some value because I'm pretty certain that I know what aggravates reporters, and in almost all instances,

you can not aggravate the reporter and at the same time advance your client's interest.

### Journalism Experience Pays Dividends

**OC:** Your experience as a journalist at the *Inquirer* and the *Miami Herald* has helped you hasn't it, especially when representing media outlets?

**CB:** Yes, it gives you certain street credit when you've worked in some of the best newsrooms in journalism. It also helps with non-media clients because almost universally the in-house counsel hasn't had any experience dealing with the media on a sustained basis. I think that I can give them good, sound advice about how the media's going to react to particular circumstances.

**OC:** A lot of people point to an increase in the media-related litigation because of the current administration's policies and practices. Do you think that's a major reason why we're seeing an increase in such litigation?

**CB:** If you mean litigation against the media, I think right now that that is pretty much confined to the Washington, DC area. The government has been pursuing sources primarily in Washington, and I don't think that it's spilled over to the rest of country in any large degree. I wouldn't be surprised if it *does* spill over in the next few years.

Now, this domestic spying business; they are going after sources to find out who leaked that to the *New York Times*. In my opinion, that's extraordinarily dangerous not only for the press but also for the public who relies on the press to reveal things like that.

**OC:** On another note, and not to get too political here, do you think that the Bush administration knows that it often costs media outlets a lot of money to successfully pursue access to closely guarded government information and so consequently, they can hold this cloak of secrecy around information the way they've done?

**CB:** Yes, I think that at some level the administration is very insightful into how things work and will use that to advance what is a very tight

secrecy- and security-conscience administration. I think even if media organizations had gazillions of dollars to spend on access that the administration would have the same approach.

### Data Management: Emerging Trend

**OC:** Finally, a wide open question: In any of the areas in which you practice what trend is an important one that's emerging?

*"This domestic spying business; they are going after sources to find out who leaked that to the New York Times. In my opinion, that's extraordinarily dangerous."*

**CB:** I think data management, information management, data publishing is going to be an area of the law that is going to explode over the next 10 years. That should be evident but it isn't.

If you think about it, anybody who has a Web site is a publisher. Anybody who has a Web site is [often] publishing information on a daily basis. There is going to be contention about what is being published over the Internet—Web sites are one thing, blogs are another, email's another. Much like when there was this movement from newspapers to radio and then to television, you're going to have the law struggling to fit into this new information age. So do the traditional rules of libel apply to a Web site? You're going to have issues. You're going to have more people who will feel aggrieved by what happens on the Internet, hiring lawyers to figure out ways to compensate them for their grievances.

The other thing that you're going to see is that this management of data is going to affect people's privacy and that's going to become more apparent as time marches on. You're going to see reactions from people against that, and the legal system is going to be called upon to figure out what the right rules are and are not.

Finally, there is so much data right now that is preserved that it's almost impossible to catalogue and review information that is called for in dis-

covery and provide it to the other side and then reciprocate by getting information from the other side and be able to catalogue, review, digest, and make meaningful that information.

There are lots of cases out of the Southern District of New York that are beginning to come to grips with those issues. I know that there's a task force chaired by Judge Rosenthal in Houston that's trying to come to grips with those concerns. A committee that I chair, the Texas Supreme Court Advisory Committee, is trying to as well. All of this information explosion is going to lead to more business in traditional torts, creative lawyers will try to figure out new areas to expand into. I think that there will be a lot of people interested because it touches everybody. Some people feel aggrieved by what's touching them, and that finds expression in the legal system.

**OC:** How are you preparing your fellow attorneys at Jackson Walker for this explosion, this trend?

**CB:** We have a group of lawyers who are already trained and thinking about these kinds of

issues and are getting documents from our clients and organizing them. We have partnered with a software provider [CHS Workflow Solutions] that has a product [Ringtail] that very few people even know about, much less know how to use. We have three years of experience using the product, which will organize data, put it on the Internet in secure way so that our clients, without having to come down here and plod through nine millions boxes, can deal with the data that the other side is producing for us and that our client's producing.

In terms of the new information torts, we're learning a little bit as we go because we're getting hired by clients who have these issues to deal with. We have a group of about 20 lawyers who sit down and talk about these problems and think about approaches to take to this encroaching storm of legal disputes. It's interdisciplinary so the team's not just litigation. It's corporate, real estate, transactional, and oil and gas. We're trying to bring our various expertise to bear on the problem to find solutions. ■

—Steven T. Taylor

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