

Trial Aces: Gibson Dunn's Randy Mastro

By **Caroline Simson**

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Gibson Dunn attorney Randy Mastro, who's notched wins in high-profile trials throughout the past few decades, always sought to advocate for causes he believes in, but as a college undergraduate he wasn't sure he would do it as a lawyer.

While attending Yale University in the 1970s, the Law360 Trial Ace's love of advocacy initially attracted him to journalism, and upon graduation he spent a summer working at the Washington Post in its young writers program.

But once he began attending the University of Pennsylvania Law School, he knew he'd found his calling. It wasn't that much of a stretch from journalism, he felt, and since then, he's tried to incorporate his love of advocacy into his practice.

"As a lawyer, I always knew I wanted to be a litigator ... whether it was Atticus Finch or Perry Mason, either way, I knew that I wanted to be in the courtroom, and that's really what I've pursued throughout my legal career," he said.

Litigate he did: Over the course of that career, Mastro has amassed a 90 percent win rate in the 40 trials he's taken on, 38 of which he worked on as first chair. And during his 30-plus years in law, Mastro said, he's taken pride in representing clients who need a wrong to be righted.

"He's very idealistic, actually," said Gibson Dunn partner Richard Mark, who met Mastro in 1985 when the two were working at the U.S. Attorney's Office for the Southern District of New York. "The Southern District ... for more than 100 years has been guided by the principle of merit and not politics. The attitude really was: You're going to get up in the morning, and how are you going to improve life for the people in the Southern District of New York? He really brought that to work every day."

After obtaining his undergraduate degree from Yale University in 1978 and his law degree in 1981 from the University of Pennsylvania, Mastro began his career as a law clerk to Justice Alan B. Handler of the New Jersey Supreme Court. In 1982, he joined Cravath Swaine & Moore LLP as a litigation associate



Randy Mastro

under the tutelage of David Boies.

Mastro said he knew the preeminent office to become a trial lawyer for the government was in the U.S. Attorney's Office at the Southern District of New York, so early on during his tenure at Cravath he began applying.

When then-U.S. Attorney Rudy Giuliani accepted his application, the timing wasn't exactly fortuitous. It was 1984, and Mastro was just about to begin working with Boies to defend CBS in a trial stemming from a \$120 million libel lawsuit brought by General William C. Westmoreland over a 1982 news program, which examined whether military leaders had conspired to undercount the size of the enemy in Vietnam. But Giuliani agreed to let Mastro delay the start of his position as a prosecutor at the Southern District.

Westmoreland eventually agreed to drop the suit — which was later recognized as one of the 10 biggest cases of the decade — just before closing arguments, in exchange for CBS issuing a statement that it had not meant to suggest he'd served dishonorably in the military. Mastro, who called the trial a "smashing success," said the case has remained memorable as one of his favorite trials over the years.

After Mastro joined Giuliani's office, he helped the U.S. attorney take on and eventually reform the International Brotherhood of Teamsters in the 1980s. There, he led the prosecution team that targeted the influence of organized crime in the union, obtaining a consent decree that enforced election reforms.

After leaving the Southern District in 1989, Mastro found himself unexpectedly back in the public sector after Giuliani called on him to act as his pro bono election counsel in 1993. Once Giuliani was elected, Mastro — whom Giuliani made his chief of staff and eventually, his deputy mayor — made it his business to help the mayor take on the seedy underbelly of New York City's organized crime that had penetrated many of the city's industries and markets.

As an Italian-American, Mastro said, he felt it was important, necessary work to eradicate a "stain" on his people, despite the risks of taking on such a well-rooted and powerful structure. Enduring death threats as he became known as a symbol of the crackdown, Mastro — who, as deputy mayor, could not argue the cases himself — nevertheless spearheaded the legislative and regulatory efforts to crack down on organized crime.

He said it was that same urge to right a wrong that played a part in him agreeing to take on one of the biggest cases of his career, a landmark racketeering case brought by Chevron Corp., which Mastro represented, against attorney Steven Donziger.

In 2009, Chevron sought Mastro's help in a matter involving claims from indigenous Ecuadoreans, who alleged that Chevron predecessor Texaco Inc. had dumped crude oil in the Lago Agrio region of the Amazon decades ago. The plaintiffs were able to obtain a \$19 billion judgment in Ecuador, though the amount was later reduced to \$9.5 billion.

Chevron said it was the victim of fraud and asked Mastro to uncover it.

In early 2010, Mastro and Gibson Dunn began implementing a strategy in the case that involved invoking a seldom-used federal statute permitting U.S. discovery in aid of foreign litigation. They then began to go after the U.S. experts working for Donziger, who was the Ecuadorean plaintiffs' lead U.S. lawyer.

Mastro convinced U.S. District Judge Lewis Kaplan to allow Chevron discovery in the case, setting the stage for a series of revelations culminating in Mastro's brutal cross-examination of Ecuadorean Judge Nicolas Zambrano, who'd been accused of allowing Donziger and his team to ghostwrite the \$19 billion judgment. Under Mastro's questioning, Judge Zambrano was unable to remember key components of the ruling he'd allegedly written.

A few months later, Judge Kaplan declared the unprecedented \$9.5 billion judgment against Chevron to be the product of an "egregious fraud."

Mark, who worked with Mastro on the case, called Mastro's performance that day and in the depositions that preceded it a "tour de force."

Judge Zambrano "came in [to the deposition] wearing a black jacket, a red shirt and an enormous gold watch and gold ring. It was not the best impression," he said. "But really, the substance of that deposition and the strategic planning of it, and how using those materials just made the fraud manifest — as Judge Kaplan found — was just a masterful exercise."

Mark said Mastro's steering of that case wasn't unusual given Mastro's tireless and meticulous preparation for every case he works on. While most observers of the case focus on the trial as its defining point, Mark said what made that case work was actually Mastro's emphasis on doggedly chasing down every lead during discovery.

For his part, Mastro reflected on the case as an "extraordinary experience, and for me a genuine sense of doing justice, and righting a wrong."

Mastro's strategy on that case wasn't unique, and, in fact, he relied on many of the methods he had used at the Southern District to flip witnesses into testifying for Chevron. It was all part and parcel of his overall strategy of ensuring he retains credibility by presenting a coherent narrative that rings true because it's based on fact.

"You win the trust of the court and the jury by doing that," Mastro said. "When you overstate your case or you misstate the facts, you lose your credibility with the judge and the jury, and that's the death knell for a case."

That desire to obtain and hold onto credibility in the courtroom has helped him to gain the respect of his colleagues and opposing counsel alike, who uniformly characterize him as an intelligent bulldog of a litigator.

"I will say without hesitation that Randy is one of the smartest lawyers I've ever met," said Gerald Shargel of Winston & Strawn LLP, who went up against Mastro when he was a prosecutor in the Southern District in the 1980s. "He was self-confident, and often prosecutors ... sweat the small stuff, and nothing's too small to escape their notice. Sometimes they miss the big picture. But Randy wasn't like that at all. Randy was someone who at a relatively early age got it."

Blank Rome LLP partner Les Corwin, who's also faced Mastro before in court, echoed Shargel's comments, characterizing Mastro as a "worthy opponent" possessing trustworthiness and integrity.

"When you litigate, you've really got to really understand the overall picture and what's in the best

interest of your client ... and I think he gets that," Corwin said. "He's tough, but he's the ultimate professional."

And Mark, his longtime colleague, remembers the remarkable litigation intelligence Mastro displayed during the Teamsters case they worked on together back in the 1980s.

"A lot of lawyers who go to the big law schools and end up in the big defense firms ... think of law in defensive terms, and avoiding risk, and Randy has that completely, but what he also has is a mind that questions 'Why can't we go here?' and 'What are the obstacles?'" he said. "He thinks of where he wants to go, and comes up with a way within the framework of the law and with complete attentiveness and fidelity to law that brings those two together."

--Editing by Jeremy Barker and Philip Shea.

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