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From Youthful Caddy to Elite Patent Trial Counsel

by Keith D. Picher



Edward A. Mas, II, the highly accomplished McAndrews Held & Malloy Ltd. patent trial lawyer, knows his career could have unfolded differently.

His modest Edison Park upbringing never foreshadowed a job quarterbacking patent litigation teams domestically and internationally. Nor did his Park Ridge Country Club work reveal what *Caddyshack* might dub his “Cinderella story.”

As a plaintiff’s attorney, Mas secures multimillion-dollar awards for clients, including \$166 million in patent damages for Advanced Cardiovascular Systems in a balloon angioplasty catheter and stent system case.

As a defendant’s attorney, he prevails on infringement suits where the accused products’ sales revenues sometimes reach the hundreds of millions and billions of dollars.

His secrets? Tireless preparation, understanding the audience and wanting to be the best.

“Nobody can outwork Ed,” says Thomas Curtin, a New Jersey-based litigator who has partnered with Mas and the McAndrews Held & Malloy team for more than 10 years.

“Ed sees the whole field. He can look at a situation from the point of view of the client, from the view of his team as the client’s lawyer, from how it will be received by the judge, and from how it will be received and responded to

by the adversary.

“He understands the need for teamwork, the need for preparation and the need for perspective. When you put that together with somebody who is articulate—and he’s clearly that—you can understand why I would send one of my young lawyers to watch him work.”

LEARNING HUMILITY ON THE LINKS

The son of a Chicago police officer and a stay-at-home mother, Mas grew up with three brothers and a sister on the Northwest Side. He excelled in math and science at Notre Dame High School in Niles. He also bussed tables, served as a waiter, bagged groceries, delivered newspapers and mowed lawns.

At 13, Mas started caddying and picked up many life lessons. He learned about relationships, respect, honor and humility. He tied people’s shoelaces, but he even learned from that.

“As in life, things don’t always go smoothly on the golf course. Adjustments are a part of the game. Immediate success is rare. It takes commitment, practice and a willingness to listen.”

He mastered every inch of the golf course to better advise golfers. Mas enjoyed establishing credibility and trust with members—and the empowering feeling when they listened to him.

“I figured out how to solve their problems,

and they appreciated it. I was much more than a boy carrying a golf bag. I was their adviser, their companion and their sounding board. Sometimes they didn’t follow my advice, and I admired their decisiveness.”

Caddying opened the door to his post-secondary education. A Chick Evans Scholarship allowed Mas to study mechanical engineering at Northwestern University. He enrolled as a co-op student with General Motors in LaGrange and worked there for two years as a design engineer.

After meeting a patent attorney there, Mas noticed the lawyer handled varied projects and advised many departments. Mas found that more appealing than an engineer’s long horizons.

“Patent law was a great way to continue working with technology, but in a more diverse and interesting way,” he says. So, he moved to Philadelphia in 1989 and enrolled in the University of Pennsylvania Law School.

“Without caddying and that Evans Scholarship, it would have been a very different path.”

OPENING HIS EYES

The Socratic method, debate and law school generally were eye-openers for Mas.

He took advantage of the school’s offerings. In moot court, his team made the national

semifinals. Mas moonlighted in the evenings and on weekends as a volunteer at Women Against Abuse, helping women in abusive relationships obtain restraining orders. He also represented individuals in Social Security administrative hearings. In his third year, he tried a case under a professor's supervision.

Mas helped represent a block of Philadelphia residents who wanted to shut down a neighborhood bar that enabled drug trafficking and other lewd activity. With the prosecutor's office, he obtained a permanent injunction under Pennsylvania's nuisance bar statutes.

"I remember how grateful the residents were for my assistance. I was hooked."

After graduating *cum laude* in 1992, Mas returned to McAndrews, Held & Malloy where he had clerked. He wanted to be a patent litigator there.

The firm was four years old. George McAndrews, Tim Malloy and John Held were an ideal match for Mas, who knew McAndrews and Malloy were amazing trial lawyers and Held was a brilliant transactional lawyer and patent prosecutor. This was a chance to get in on the ground floor and learn from the best.

"The energy was electrifying, and frequently I felt like I was drinking from a fire hose. The founders' practices were thriving, and we did not have enough attorneys to handle the workload."

In 1993, a dozen attorneys managed the firm's cases, compared to 80 today. Mas was before judges, juries and arbitration panels immediately. The hours were long, but he loved it.

His trial and appellate litigation practice now focuses on complex patent and technology-related litigation, frequently in the medical device, pharma and biotech spaces. Among the technologies: cardiovascular devices, pharmaceuticals, biologics, nutrition products, industrial equipment and automotive components.

Mas regularly serves as lead trial counsel in patent lawsuits throughout the country—many with corresponding European actions. He also represents clients in patent office post-grant proceedings and advises them on freedom to operate, licensing, due diligence, and strategic and global portfolio management.

INTERNATIONAL FLAVOR

Recently, Mas served as lead trial counsel in a series of patent infringement lawsuits in the District of New Jersey. Corresponding proceedings took place in the U.S. Patent Office with international suits in the United Kingdom, Germany, the Netherlands and the European Patent Office.

Large, geographically diverse lawsuits are not rare for Mas. "The knowledge I have gained is uncommon and very beneficial to my clients.

It's very exciting to coordinate strategies among jurisdictions, but it's also a challenge."

Curtin says anyone viewing Mas in the U.S. District Court in New Jersey would appreciate his manner. "I'd say, 'That lawyer is comfortable with the client, comfortable with the subject matter, and comfortable on his feet in this courtroom.' And I've only seen him in New Jersey, so he must be even more at home in Illinois."

Two London-based solicitors also have witnessed Mas far from home. Nigel Stoate and Simon Cohen of the leading European patent litigation firm Taylor Wessing LLP met Mas on the heels of his victory in significant U.S. litigation. Mas then prepared the client's European lawyers for parallel litigation. Within days they were briefed and ready.

"He is a no-nonsense operator who cuts to the chase and is a great motivator of his team," says Stoate.

"He is a world-class patent litigator," he adds. "Patent litigation is often very complex, both scientifically and legally. A lot of lawyers are good at the law. Some are good at the science. Ed excels at both.

"He is without a doubt one of the most effective patent litigators we have worked with. He is second to none when it comes to international patent litigation."

Cohen claims Mas is at his best when the chips are down. In one case, a client had been sued and its European lawyers were uncertain if an injunction would be ordered against the European hub. So, Mas came to London for a brainstorming session.

"He gathered the European lawyers around him and directed the team of lawyers and in-house scientists so that, at the end of three full days of meetings, a complete defense against the patent had been worked up," says Cohen.

The client launched a formidable counterattack in the United Kingdom, says Cohen, that allowed it to prevail in the litigation and forge an extremely favorable settlement. "It had to be seen to be believed," he adds.

PREVAILING IN BIG CASES

Mas is especially proud of three cases during his career. In a seminal patent law case in the Federal Circuit, *SciMed Life Systems, Inc. v. ACS*, Mas broke new ground on the doctrines of specification estoppel and disclaimer. His client was accused of infringing a patent relating to a medical device and had sales revenues exceeding \$1 billion.

The inventor's patent described the structure of a component of his device as the structure for "all embodiments of the present invention contemplated and disclosed." Mas showed the corresponding component in the client's product was different.

Mas used the inventor's statement from the specification against him in construing the patent claims and ultimately in obtaining summary judgment of non-infringement. The Federal Circuit affirmed and used the case to further develop the doctrines.

Another key case was *ACS v. Medtronic AVE, Inc.* in which Mas and his team secured \$166 million in patent damages for Advanced Cardiovascular Systems. The multiyear battle involved balloon angioplasty catheters and stent systems, a patent issued to Stanford cardiologist Dr. Paul Yock, and a related license agreement.

In the third case, *Wyeth and Cordis Corp. v. Abbott Laboratories*, Mas defended a client where the patent related to a pharmaceutical compound for preventing restenosis—a re-narrowing of an artery after implantation of a coronary stent. The plaintiff wanted hundreds of millions in damages. The McAndrews team persuaded the judge that the applicants claimed far more than they invented and disclosed in the patents. The patents were held invalid and the Federal Circuit affirmed.

"Ed has an overwhelming record of successes in the most important, most complex and highest dollar-value cases and related contract disputes," says Gary Schneiderman, a retired in-house counsel once responsible for a corporate division's patent litigation.

When Schneiderman was a director of



At the European Patent Office in The Hague, Netherlands, from left: McAndrews team of Dave Headrick, Jim Hafertepe, Mas, and Frank Salinas with Gary Schneiderman

research and development in the mid-1990s serving as an expert in patent litigation cases, working with Mas inspired a career change. Schneiderman went to law school, and the two became attorney peers.

“Many trial lawyers at big firms swoop in at the end of a case,” says Schneiderman. “Ed, by contrast, gets deeply involved from the beginning and through the long preparations for trial. It gives him a chance to gain and internalize the deepest aspects of the case, and he very often knows his case better than the opposition.”

“Over the years, Ed has put together teams of great lawyers, and I used the team over and over. They are great not only individually but also through Ed’s leadership, and they share the same work ethic Ed has.”

Mas has important firm responsibilities in Chicago, too. He serves on McAndrews’ executive committee and is one of its recruiting partners. “I truly enjoy interacting with our many talented associates and law clerks,” he says. “These folks are the firm’s future, and with them, our future is very bright.”

STYLE AND PREFERENCES

One size never fits all when resolving patent disputes. At times, Mas says, trials are the only practical option. Other times, licensing may be better. A careful review of a patent portfolio and a redesign might prove fruitful, he adds, or maybe a challenge to a patent in a post-grant proceeding.

“I often take early depositions and use them to support an early motion for summary judgment. That might not be suitable for every case, but in the right circumstance it can lead to an early, less expensive resolution.”

Parties sometimes overlook the possibility of early settlement because they are too busy fighting, he says. Rather than focusing exclusively on dollars, they should consider cross-licensing, creative royalty structures, phase-out agreements, or the acquisition or sale of the relevant intellectual property or entity.

When a settlement cannot be reached, Mas strives to make cases come to life. Plain English and carefully devised graphics help his legal briefs read like *USA Today* rather than a Ph.D. thesis, he says. He avoids repeatedly telling readers how to decide issues, pushing them instead to be detectives who reach favorable decisions on their own.

He employs demonstrative exhibits and models they can touch. Rather than hand a judge or jurors medical devices too tiny to see, Mas creates models scaled for the anatomy of, say, an elephant.

When a case involves a complicated technical process, Mas might simplify it with animations.

Mas realizes an approach that works well for a panel of patent examiners can fall flat



From left: Mas, daughter Melissa, wife Nancy and son Eric at Australia’s Great Ocean Road



Daughter Melissa and Mas volunteer, packing meals at Feed My Starving Children

for judges or juries. “You have a limited opportunity to convince your audience that your client is right, and you need to use that time wisely.”

He likes getting his “hands dirty” when preparing cases, becoming intimately familiar with the issues, underlying facts and documents to create a lucid story.

“I don’t want 1,000 exhibits, I want 100. I don’t want to be lost in the trees, I want to be on a clear path through the forest.”

Mas staffs cases lean so partners and associates have knowledge “a mile deep and a mile wide, instead of a mile wide and only an inch deep.” It helps control litigation costs, too, he adds.

FAMILY AND FUN

Mas wed his high school sweetheart, Nancy, as he predicted when first meeting her. They have been happily married for more than 30 years with two children, Melissa and Eric.

Melissa graduated from St. Norbert College in De Pere, Wisconsin. She recently completed an internship with Make-A-Wish Wisconsin in Appleton. Eric, a junior at the University of Iowa, studies journalism and mass communication.

“Nancy is the love of my life—my rock. She gave up so much for me and my career,” says

Mas. “I am ever so grateful for her sacrifice and the never-ending support she has given me.”

Mas coached youth baseball, and he co-founded Lake County Stealth Youth Baseball with a friend, Lance Khubchandani. The north suburban travel team competed in leagues and tournaments in Illinois and beyond. They once went to Cooperstown, New York, for the Dreams Park tournament.

The family is involved in Gurnee with their church and with local charities such as Feed My Starving Children, which packs meals for children in many countries.

“At a recent session, my children and I packed over 31,000 meals for children in Nicaragua. The sessions are energetic, fast-paced and even provide a great workout.”

His family enjoys exploring new lands and cultures. They attend Bears games at Soldier Field.

Life has been exceedingly good for Mas, and his career is a very important part. “I work with amazing people day after day, and my clients appreciate my efforts. My job brings me great joy and satisfaction.”

Remembering his former life as an engineer, a high school laborer and a caddy, Mas adds a grateful thought.

“It’s never dull, it’s intellectually challenging, and it’s a lot of fun.” ■