

## Trial Ace: Steptoe's Michael Dockterman

By Jeff Overley

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During nearly 40 years in the courtroom, Steptoe & Johnson LLP partner Michael Dockterman has nimbly blended old-school and new-school techniques, at times deploying his towering 6-foot-4 persona during blistering cross-examinations and charming judges with testimony from stuffed animals.

The Law360 Trial Ace got his start as a summer clerk in 1977 at Wildman Harrold Allen & Dixon LLP, the Chicago firm founded by storied trial lawyer Max Wildman. He stayed aboard during various mergers, recently decamping to Steptoe when Edwards Wildman Palmer LLP's merger with Locke Lord LLP created a client conflict.

Over all those years, he's used natural gifts, such as Ivy League intellect and an intimidating physical presence, while not hesitating to embrace opportunities to lighten the mood in high-stakes litigation.

"When you combine being smart as hell and being fearless, the combination is devastating in a courtroom," Steptoe partner John E. Frey said. But Dockterman also "knows when to put a smile on his face," added Frey, a colleague of Dockterman's since the late 1970s.

In an interview, Dockterman acknowledged the intangible benefits of being big while also cautioning that it comes with liabilities.

"I'm physically a big guy, so that means I have to be careful with where I walk in the courtroom," said Dockterman, a graduate of Yale University and the Duke University School of Law. "You don't want to tower over the jury and make them kind of cower."

Dockterman's peers point to a 2006 trial pitting Toys R Us Inc. against Amazon.com Inc. as embodying his skilled balance of power and playfulness. The four-month trial featured a wide range of dramatic moments, from a grilling of Amazon founder Jeff Bezos to the pivotal introduction of a stuffed animal — Toys R Us mascot Geoffrey the Giraffe — as a star witness.



Michael Dockterman

But there have been plenty of other show-stopping arguments over the years, during which Dockterman has led 70 trials, scoring full or partial wins in all but two of them.

One example came in 1984, when he represented the city of Chicago in litigation over a \$100 million-plus contract to build a people-mover at O'Hare International Airport. Westinghouse Electric Corp., a losing bidder on the project, had sued the city and charged that the winning bidder was using prototype tires, violating a requirement to use tried-and-true technology.

At trial, Dockterman confronted an expert witness for Westinghouse and repeatedly posed a simple question: Does this tire exist? And the answer, time and again, was no, it does not.

"I asked him every which way if the tire existed, and he said a million times it didn't," Dockterman recalled.

But Dockterman knew that the witness was wrong — the tire really did exist, and he just needed to prove it. And so, around the time that the witness was testifying, one of those tires was being loaded onto a jet in France and shipped to the courthouse. The next morning, Dockterman triumphantly wheeled the 5-foot-tall tire into the courtroom and went back over the prior day's testimony.

"I got the guy on the stand, and I started reading him his answers. And I read him all five or six times where he said it couldn't exist," Dockterman said. "I just started petting the tire. I just said, 'Can we agree that there's no existential question here that the tire exists?' That was the difference in the case."

In a much different setting, Dockterman in the early 1980s defended a Chicago-area police officer accused of civil rights violations. The officer had interrupted a drug deal, been met with gunshots and then returned a blaze of bullets that ended up paralyzing the suspected shooter, and the shooter alleged excessive force.

To convey the officer's fear, Dockterman called a witness who went into the jury box and re-enacted the shooter's reloading of a firearm in compelling fashion. That witness unlatched a revolver, dumped empty shells onto shelf, loaded bullets into the cylinder and then clicked the cylinder back into place.

"The minute the jurors realized there was a man with a loaded revolver in the box with them, they scattered," Dockterman recalled. "It was pretty clear that they understood how scared our deputy must have been when he saw the plaintiff click that cylinder into place and start to point the gun at him again."

In a verdict that didn't take long, the officer was cleared of wrongdoing.

Yet another dazzling delivery occurred in 2010, when Dockterman represented advertising giant Publicis Groupe in New York federal court to compel the release of banner-ad software from a business partner that was holding the software hostage because of allegedly unpaid bills.

In a hearing on Publicis' request for a temporary restraining order, U.S. District Judge Colleen McMahon quickly made clear that the request was doomed, adding that Dockterman shouldn't have even bothered traveling from Chicago for the hearing.

"Let me say that I'm not granting a TRO in this case. I wish you hadn't flown in from Chicago," Judge

McMahon told Dockterman, according to a court transcript.

“There is no way that I would grant ... a temporary restraining order,” she said later. “There is no way that, based on the bare bones allegation of irreparable harm, I would grant a TRO.”

But then Dockterman chimed in: “Your Honor, if I may?”

Minutes later, after he had explained the urgency and promised to place funds in escrow to cover allegedly unpaid bills, Judge McMahon reversed herself, granting the TRO and ordering the banner-ad software released within six hours.

“Within 20 minutes, Dockterman had actually convinced the judge to change her mind. I’ve never seen that,” said Joshua Goodman, deputy general counsel at Publicis Groupe. “Once a federal judge says something in open court, it can be very difficult for her to change her mind without new facts.”

Dockterman’s record is not blemish-free. In the late 1980s, he experienced one of his two trial defeats. In the case, Dockterman defended against a personal injury suit involving a worker’s serious head injury, but his client didn’t send an official representative to the trial, leaving a pitiable plaintiff on one side and a faceless corporate entity on the other.

“The client did not want to spend the time to have an engineer or a businessperson sit through the trial, so they had an attorney sit there as a company representative, and the jury knew nobody was interested,” Dockterman recalled.

Ultimately, the jury awarded “a bunch of money” to the worker, and Dockterman came away knowing he could not rely solely on cold, hard facts in future litigation.

“It was a very important lesson for me,” he said. “It’s important for juries to personalize the parties to the case, and if they see a lack of a commitment and care on the part of one side, they’re going to hold it against that side.”

And maybe that lesson was in the back of Dockterman’s mind in during the Toys R Us trial, which featured not only hard-nosed litigation tactics but also innovative efforts to make a judge sympathize with the company.

At issue was an agreement under which Toys R Us would redirect its online sales to Amazon in exchange for being Amazon’s exclusive retailer of certain toys. According to Toys R Us, Amazon was cheating by selling competing versions of the same products.

At an important moment, the trial featured an intense interrogation of Bezos, whom Dockterman cross-examined by presenting live Amazon search results for competing toys.

“He had Bezos doing searches, [and] he just wore him down,” Frey said. “[Bezos] said something like, ‘I’d prefer not to do any more searches.’”

When it came time to wrap up the case, Dockterman switched from fierce to fun. He strolled into the court carrying a 4-foot-tall stuffed version of Geoffrey the Giraffe, then softly stated that the plush toy was unable to find his home on the Internet and needed the court’s help.

Toys R Us general counsel David J. Schwartz described the use of testimony from the toy giraffe as simultaneously endearing and effective.

“It was a humorous moment that made the point without distracting from the seriousness of the matter,” Schwartz said.

New Jersey Superior Court Judge Mary Margaret McVeigh seemed to agree.

“Conceptually and artistically, this was an interesting visual,” Judge McVeigh wrote in an opinion that sided with Toys R Us and led to a \$51 million settlement.

That outcome, Schwartz said, was “better than anything we had planned for.”

Looking back, Dockterman laughed when recollecting the courtroom’s amusement. But like any litigation pro, he was most happy to recollect the verdict that followed.

“I think everybody smiled,” he said. “But the more important thing was they got the point.”

--Editing by Christine Chun and Mark Lebetkin.