

## Trial Ace: Morgan Lewis' Winn Carter

By **Evan Weinberger**

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Morgan Lewis & Bockius LLP partner Winstol D. “Winn” Carter is widely known for disarming juries through a mix of charm and smarts, a combination that often results in innovative strategies to help transform complex concepts into easily digestible ideas.

It is the ability to distill a trial down to its essence to make it easy to understand that has allowed Carter, 61, to amass a win-loss record that is the envy of any trial attorney, winning him a spot on Law360’s list of Trial Aces.

"Being in a courtroom, it’s a formal setting, especially for folks who are not used to being in the courtroom. My personality is a more informal type of personality, and so I take some of the formality out and take the edge off of it," Carter said.

This strategy was best exemplified last year on the first day of International Paper’s defense against a \$3 billion environmental claim from Harris County, Texas.

As Carter undertook his usually extensive preparations before the opening of the trial, he needed to figure out a way to get the jury to understand that the claims against International Paper related to pollution of the San Jacinto River took place more than 40 years before Harris County brought its claims against the company and two other defendants.

Rather than go through a technical analysis in his opening statement that could have put the jury to sleep or put them against International Paper, Carter decided to show them a picture — a picture of himself as a boy.

"So I said, that seems like a good idea. Why don’t we just go back in time, and maybe that will help the jury look at me today — I have a few years on me — but look at me today versus look at me then to try to take them to a different era to try and set the stage for it?" he said.

That picture from the 1960s illustrated just how old the claims were and gave Carter the chance to show



Winstol D. 'Winn' Carter

how the company had already paid its share to clean up the river. The jury eventually decided in favor of International Paper in November in a 10-2 verdict.

That victory on behalf of International Paper was one of three over the past year for Carter, but it was the first and only time that he employed a strategy of using childhood photos to make his case. Still, that photo was emblematic of the types of innovative strategies that have become Carter's calling card.

"The best litigators always try to take the complicated and try to make it simple and find ways to connect with the jury," said J. Gordon Cooney Jr., the leader of Morgan Lewis's litigation practice. "The best, however, really deliver on the commitment, and Winn really has a remarkable ability in part because of his personality, in part because of his creativity and in part because of his downright charm to absolutely be able to do that in a really remarkable way."

That commitment, and his ability to follow through on it, is something that Carter has honed throughout his more than 30 years of experience.

It's been at the forefront of Carter's many victories in 2014, including one for Stewart Guaranty Co. in a \$40 million verdict against Great American Insurance Co. over liability for fraud by a former Great American agent. Such technique also brought a victory for Toyota Motor Sales USA Inc. as it defended a trade secrets case from Dallas-based Rincon & Associates LLC over technology used for a multicultural study of minority car buyers.

"It's just a matter of being able to take a formal process and make it informal so that people believe that they are a part of the conversation, part of the story. That's what I try to do, is to bring the jury in as part of the conversation," Carter said.

Another clear example of this strategy at work came in a 2006 patent dispute with Global SantaFe Corp., in which Carter represented Transocean Offshore Deepwater Drilling Inc.

Carter realized that rather than focus solely on the damage to TransOcean's business from the alleged patent infringement, he needed a story to tell. So, he spent a great deal of time focusing on the inventors and designers of the drilling ships Transocean used in its oil and gas exploration.

"The jury really picked up on the direct examination of those witnesses and also some of the other corporate witnesses for Transocean as to how the invention had developed Transocean's deepwater capabilities," Carter said.

That 2006 victory set the stage for Transocean's repeated successful defenses of its groundbreaking deepwater drilling technology.

If there were ever an attorney who had an appropriate first name, it is Winn Carter, as evidenced by his more than 30-year career that began at then-Fulbright & Jaworski LLP. Carter has been a part of 130 trials, sitting first chair in 102 and second chair in another 20. And among those, he has a remarkable 117 wins.

"There is little question, when Winn is up on his feet in the courtroom, who is in command from an advocacy standpoint. He does so in a way that jurors like him and by extension like his client," Cooney said.

Carter, who was among Morgan Lewis's first hires when it opened its Houston office in 2007, has a way with jurors that makes them feel comfortable. He employs a conversational tone that allows jurors to relate to him, his witnesses and his clients, Cooney said.

At the same time, Carter maintains a level of command in the courtroom that is hard to match, he added.

"Oftentimes, in an effort to be in command, litigators can come across as being strident and run the risk of being found to be offensive by the jury or by the judge. I do think the best litigators find the way to both be in control and be attractive and likable representatives of their clients."

But that's not the only face that Carter can put forward in a trial. A licensed pilot with an instrument rating that allows him to fly in inclement weather, Carter said he knows how to turn off the total charm and get tough with a witness.

"Sometimes, you can get a little more out of a witness with a little sugar, and then other times, it takes some pain," he said. "You have to be quick to adjust to the particular situation. That's the hallmark of a good trial lawyer — being able to adjust, and sometimes that adjustment has to be quick."

Much like learning to fly, the ability to relate to juries and adjust to witnesses took practice. The most important thing for Carter was to learn how to be himself in court.

"I started trying cases within nine months out of getting out of law school, so it was trial by fire to develop a style. One of the things that my mentor said is, 'you've got to be yourself. People will see through it if you aren't yourself,'" Carter said.

--Editing by Christine Chun and Sarah Golin.