

Trial Ace: McKool Smith's Mike McKool

By **Melissa Maleske**

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It's hard to establish yourself as a bankable trial lawyer without some blood, sweat and tears, and that's doubly true when you're simultaneously building an 11-lawyer firm into the 185-lawyer, nationwide litigation firm that McKool Smith PC has become since its 1991 launch.

Mike McKool, the Law360 Trial Ace who co-founded McKool Smith with Phil Smith, has experience with all three. There's the sweat of his unrelenting focus and preparation in the run-up to a trial, which is rare in its intensity, according to an attorney who has been opposing counsel against McKool. The blood may represent the opponents he has beaten in court throughout the years, although he wouldn't think of them that way — many of the opposing counsel he's faced in trial are among his closest friends.



Mike McKool

And the tears probably came when McKool was just four years out of law school.

How does one develop work ethic to prepare for trial the way McKool does? Judging by one of his formative experiences as a trial lawyer, you wouldn't want to do it the way he did. It happened in 1978, four years into his practice and a newly crowned partner at his first law firm. One of the firm's top trial lawyers had to stop practicing for health reasons and another left the firm. They left behind four significant cases and the relatively inexperienced McKool was left to try them all over a period of a year and a half.

"Talk about learning on your feet," McKool says. "It was grueling, and in some ways it was the worst time in my life, from the standpoint of working around the clock every day, getting ready to do this. But I think I emerged as a seasoned trial lawyer by the time I was about 30 years old."

In every trial since, McKool has been first chair, steadily building up a reputation as one of the country's top trial lawyers along with McKool Smith's reputation as one of the country's fiercest and most prestigious litigation firms in the country.

Over a long career, McKool has emerged as one of the best closers in the business — clients bring him in when a trial appears inevitable and they can't afford to lose. In preparation for those trials, one can still see remnants of that baptism by fire back in his early years.

Unsurprisingly, McKool says he's learned to work well under pressure.

"I basically go into hiding for 60 to 90 days before a trial and just learn everything there is to know about it," McKool says. "I pride myself in establishing complete command of the facts."

McKool tends to get involved in cases that may have been going on for two or three years and then spend the next few months learning everything there is to know about the facts and the law. He's driven mostly by his clients' expectations of him along with his own fear of failure in the courtroom — both tremendous motivators to him. Knowing anything less than every detail about a case seems to be unthinkable to McKool, no matter how arcane an issue or how entangled a set of facts.

Being clever helps too. "I like to think I have some of that," he says, "but it's so much easier when you're prepared."

Much of McKool Smith's prestige stems from a long string of successes in the intellectual property sector, but McKool himself takes trials in every area of the law. The only common factor is that they tend to be big, high-stakes cases.

"It's not like there's a particular case he excels at trying — the trials are his expertise, without regard to subject matter," says Courtland Reichman, whom McKool recruited three and a half years ago to launch and manage the firm's Silicon Valley Office.

McKool's exhaustive preparation for trial and his ability to try any type of case dovetailed during a case he **won for a client** in April. He calls it one of the most memorable moments of his career.

He was lead trial counsel for Alcoa Power Generating Inc. in a case in which the state of North Carolina was challenging Alcoa's rights to the land on which it had built four hydropower dams along the Yadkin River. The case hinged on the principle of navigable waters, an esoteric corner of property law that required McKool to delve into historical records to try to determine whether the segment of the river at issue was a navigable waterway when North Carolina became a state in 1789. If it was navigable for commerce at the time, the state could claim ownership of the segment of the river, along with Alcoa's dams — no small investment.

"I'd never even heard of [navigable waters]," says Reichman, who worked on the trial. "None of us at the firm had any experience in it, and that says so much about Mike and the firm and what we're all about. ... Mike was hired to be the trial lawyer; they already had true, honest-to-god subject matter experts on the team, people who had argued the seminal cases in front of the Supreme Court, the law firm that had handled the case ... and local lawyers. And they hired Mike to be the trial lawyer."

McKool is the guy to take complex subject matter, boil it down and present it in a credible way so you maximize your chances of a result, Reichman says, the ultimate translator of complicated facts and rarely invoked laws into information that is clear to both judge and jury.

McKool was cross-examining North Carolina's first witness, one critical to the state's case. He was a professor and expert in North Carolina history who had spent his career getting well acquainted with the knowledge that McKool only digested in one of his trademark unrelenting preparation phases.

"We had a big tussle during that trial about whether the maps we had for demonstratives were accurate," McKool says.

"Mike was steady and prepared. In contrast, he made this guy look like he was ... stretching and trying to persuade," Reichman says. "The guy is saying, 'No, the historical record's clear.' And then at exactly the right moment, Mike pulls out a book the guy wrote decades ago where he says that nobody thought the Yadkin River was navigable."

The witness responded that he had been young and naive.

"And Mike has the sense to say, 'No further questions,'" Reichman says. "At that moment, it was over."

McKool calls that shining moment the most satisfying cross-examination in his 41 years as a lawyer.

"It was a lot of fun," he says. "It was a lot of fun."

For McKool, it's not just standout moments like the cross-examination in the Alcoa trial that are fun — it's all trials. And befriending opposing counsel is one way he ensures they stay that way.

He considers many of his opponents among his best friends in the business, right alongside the lawyers in his own firm.

"I want to have a positive relationship because it makes it easier to do what we do. It wears on you to have a Hatfields-and-McCoys relationship where it becomes personal," he says.

McKool advises lawyers to turn the other cheek if they're met with animosity from opposing counsel. Give a little, he says, and before you know it, you're friends.

Ken Adamo, an IP partner at Kirkland & Ellis LLP, is one friend from across the courtroom aisle. They were already acquaintances in the early 2000s when they went up against each other in a trial that led to a lengthy appeals process and then a settlement.

"He's very sharp and a quick study ... and he's intensely prepared. Mike does the work," Adamo says.

But, Adamo notes, McKool also doesn't take himself too seriously. He's funny, he used to be into motorcycles, he plays guitar.

He's a person of "great breadth," says Vinson & Elkins LLP partner Harry Reasoner, who represented McKool Smith in an arbitration, over the course of which he got to know McKool and learned the inner workings of the firm.

"I think they take great pride in their work and really value making the best possible presentation for their clients, but at the same time they clearly care about each other," Reasoner says. "To me, one of the touchstones of whether a firm is great is the morale and the atmosphere. ... As the founder of the firm and the head of it, unless [Mike] has the right values and personality it just doesn't happen, so I think his leadership has been critical in creating that situation."

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