

## Of Counsel Interview ...

### **Cleveland Attorney Shines as a Go-To Litigator in a Range of Cases**

People in the legal community in Cuyahoga County, OH know who John Mitchell is.

As a partner at Cleveland's Thompson Hine, Mitchell has built a reputation as an experienced litigator in product liability matters, real estate and construction litigation, chemical and toxic tort cases, intellectual property disputes, breach-of-contract matters, and other civil actions. But it's his work in white-collar criminal litigation, including many high-profile cases, that has earned him the most extensive recognition.

With an impressive won-loss trial record, Mitchell can point to any number of victories he's scored for his clients when talking about his career. Interestingly, however, when asked to discuss a couple of his standout cases, he's quick to talk about a loss—a time when he couldn't win a complete acquittal for a client who was entangled in the largest public corruption scandal in Ohio history. Why does he bring up this case first? He says because it was "educational."

And that says a lot about the confident yet genuinely modest approach Mitchell takes as a legal professional, which is one reason he does so well litigating cases. "John is one of those lawyers who is liked by everyone, most importantly, juries," says his partner Robyn Minter Smyers, who manages the firm's Cleveland office. "He's very earnest and sincere and, when you combine that with being an extremely effective advocate, that explains a lot about his extraordinary success in the courtroom."

It helps that right after earning his law degree Mitchell spent almost a decade working

as a Cuyahoga County prosecutor. "John has built on that public-service experience to become a superstar, with one of the most dynamic and successful litigation practices at the firm," Minter Smyers adds. "If you or your company has a serious problem and you call someone for help, John's the guy you want to have on the other end of the red phone. He is an extraordinary problem-solver. And, he will drop anything to assist the client."

Recently, *Of Counsel* talked to Mitchell about his career, a couple of important cases—including that public corruption litigation—his likes and dislikes about the legal profession, and other topics. What follows is that edited interview.

*"What I appreciate most [about legal practice] is being able to help those who are in trouble, and bring justice into their lives."*

*John Mitchell,  
partner, Thompson Hine*

**Of Counsel:** John, what made you decide to become a lawyer?

**John Mitchell:** I decided to become a lawyer because when I was in high school for a civics class we went down to the local courthouse to watch a trial. It was a murder case. I don't think it was planned that way; that's just how it worked out. Our teacher took our

whole class into the courtroom and we all sat in the back row. Part of the examination consisted of some testimony about the use of a shotgun. Steve, I was absolutely mesmerized. I thought the drama and the effect that it had on human lives was something I found very compelling. So I guess I was hooked at age 16.

**OC:** Well, that's pretty sexy. Had that been a dry tax or accounting matter instead of a murder trial you might not have taken the career path you did. [Laughter]

**JM:** Well said. I don't know that I could dispute that.

## Serving the Public

**OC:** So that's pretty much when you decided that you would go to law school. First you attended Ohio State University for your undergraduate degree, and then you went on to Capital University Law School to get your law degree. I know that you had a lot of different experiences after law school and before private practice. What did you do immediately upon graduating—that is, after you took a deep breath?

**JM:** After taking a deep breath, I moved back to Cleveland and I began a career in the Cuyahoga County prosecutor's office.

**OC:** Why did you do that rather than joining a law firm?

**JM:** I wanted to be a trial lawyer. Part of the experience I had in civics class was the drama of the courtroom and that's where I really wanted to be. In Ohio, Cuyahoga County's the most populous county and has the biggest cases. This was an opportunity to work what I thought was the most fast-paced, most interesting prosecutor's office of the state. So I jumped at the opportunity. I was there eight and a half years. When I was 31, I was promoted into what's called the Major Trials Unit, which handled the high-profile

homicides, rapes, public corruption, sex crimes cases that you would typically associate with a busy community—we'll put it that way.

**OC:** It's good to get an understanding of your career trajectory. After your eight and a half years in government did you then go into private practice?

**JM:** I did. I went to Thompson Hine in December of 2004 and began my career in private practice.

**OC:** To what extent did those eight and a half years in the prosecutor's office inform you in the representation of your clients at Thompson Hine? How much do you borrow from that time you served?

**JM:** I think I borrow from it daily because in a fast-paced, criminal environment you learn very early on to view cases pragmatically. Working in either criminal defense or criminal prosecution is really a recession-proof industry. You have to learn to read your cases quickly. When you ask 12 jurors to hear a case you don't want to waste their time or the court's time or your own time presenting something that really isn't there. So I learned very early to get to the heart of the matter. I learned how to read people. And, I learned how to present things. I find that those skills, particularly learning how to deal with people and treat them with dignity and respect, regardless of what their position is, has served me up through today.

**OC:** Did you develop relationships with some of the judges and other officials that now serve you well as a private-practice defense attorney?

**JM:** I think that every lawyer in town makes their reputation fairly quickly. I don't believe that I made any special relationships because of my work as a prosecutor. I will say that the way I try to treat everybody with whom I come into contact is with respect and dignity. This also plays into how I treat court staff and the judges themselves and the defense attorneys and prosecutors I deal

with. I think that more than anything, the professionalism component, is why I have the reputation I have today.

## A Loss & A Big Win

**OC:** When you think about one or two of your more important cases that you have worked at Thompson Hine, what comes to mind?

**JM:** There were two pretty good ones.

**OC:** Let me guess. Was one of them the Coingate case?

**JM:** That's right. There you go. It was like nothing I'd ever seen before. I think it's probably still the largest public corruption case in Ohio history.

**OC:** So the name of that case is *The State of Ohio versus Thomas W. Noe*. Could you summarize this important case, John?

**JM:** Yes. It involved a rare coin dealer who was a Republican official in northwest Ohio, a very prominent official. He was managing two funds for the Bureau of Worker's Compensation that were funded with BWC money. These coin funds had received two grants of \$25 million, which were used and then reinvested in rare coins.

The idea was that the BWC was invested in mutual funds, real estate, and other investments so this was going to be a very small portion of the portfolio, a portion of the portfolio invested in the rare coin market. When the press learned of this investment there were all kinds of claims of corruption and favoritism. It was a very prominent trial, taking about six weeks. The entire case lasted about a year, and I spent virtually every waking minute of my time, up through when the case was tried, thinking about it and working it.

**OC:** What was the outcome, John?

**JM:** Noe was charged with something like 56 counts, and we got a number of them

dismissed before trial. He was acquitted of some and he was convicted of some—the most serious being the theft-related offenses that resulted in him going to prison for a long time. The message of that case was: You can do an outstanding job for your client but still sometimes the factors just don't break in your favor. Despite being called “brilliant” by the jury, we just couldn't get [a complete] acquittal for Mr. Noe. We tried that case in the most heavily publicized, negative-publicity environment that I have ever seen associated with a trial.

**OC:** And that conviction came down in 2006. You know, John, it's interesting to me that you chose that case first even though you didn't out-and-out win—yet you talk about it as if it were very satisfying.

**JM:** Yes, well, satisfying isn't the word I would use. It was very educational, as an attorney, to see how a trial can play out when there is such massive and pervasive negative publicity against you and the effect that that could have on a jury. I will contend that Mr. Noe did not receive a fair trial in Lucas County, where the case was tried. Despite our best efforts we couldn't obtain an acquittal and I think that was, in large part, because of the negative publicity.

**OC:** You and your team were obviously out front-and-center. Did that either directly or indirectly generate more work, more clientele?

**JM:** I would answer it this way: I think we demonstrated that Thompson Hine and our white-collar unit could handle any large criminal matter.

You asked about another case that was important. In 2011, we handled another notable case called the *United States of America versus Michael McMichael*, which was a nine-day public corruption trial in federal court in Akron. We obtained an acquittal, and to date, Mr. McMichael is the only defendant acquitted in the Cuyahoga County corruption scandal. The government has prosecuted

approximately 70 people, including sitting judges, county commissioners, county auditors, numerous public officials, contractors, and attorneys associated with the scandal.

So, as I said, he was the only acquittal, and I think what that demonstrated was that a well-prepared, knowledgeable legal team could defeat the United States of America.

**OC:** What was it like when the jury handed down that decision? What did Mr. McMichael say or do regarding you and the defense team?

**JM:** Mr. McMichael was very grateful for our work on his behalf. It demonstrated to everybody that at the end of the day you have to come and prove the case against an individual in order to attain a conviction. You can try a lot of things in the press, but ultimately it really boils down to the facts in court.

## Legal Profession Pros & Cons

**OC:** I want to ask you a big-picture, two-fold question. What do you appreciate about your job in the legal profession, and on the flip side, what is it about the legal profession that either upsets you, annoys you, or that you simply wish were different?

**JM:** Let's do the easy one first. What I enjoy most about my job is the ability to help people. When you find individuals or in-house folks who have found themselves with a problem that they don't know how to address, I derive the most satisfaction in my professional life from what I call pragmatic or even out-of-the-box solutions to their problems. I get satisfaction out of, for example in Mr. McMichael's case, sending him home to his family after a three-year investigation. That was one of the most rewarding days of my legal career. So what I appreciate most is being able to help those who are in trouble, and bring justice into their lives.

The least satisfying—I firmly believe that our criminal justice system, in large part, is

controlled by the amount of assets a person has to defend himself. Average Americans who find themselves subject to a state or federal investigation will never be able to afford the defense they would need in order to properly defend themselves. I don't think that is what our legal system was designed upon. I think the fact that cases are moving away from trial because of sentencing enhancement and charging decisions made by prosecutors is not good for our system.

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Too often today innocent people find themselves in a cost-benefit analysis, and that is, “Do I risk every nickel that I have ever made in my life [and face] sentencing guidelines that are off the charts? Or do I plead to something lesser in an attempt to limit my damage and perhaps serve a lesser sentence, and then come out and rebuild what's left of my life after that?” I don't think that is fair, and I don't think that was the way our system was designed. The fact that we are trying fewer and fewer cases is a byproduct of that and it's not good for the system.

**OC:** Thank you, John. Those are very good answers. What is keeping you and your white-collar criminal defense team busy these days?

**JM:** Well, I think the government is appropriately focused on public corruption and contract-related issues stemming from public money being used on government projects. Particularly with the Cuyahoga

County public corruption scandal I was talking about before, that influx of public money, wherever it takes place in the United States, has brought a significant amount of oversight and we're seeing a lot of activity. And that activity is not only in the public corruption arena but also the Foreign Corrupt Practices Act, the UK Bribery Act, and in making sure business is being conducted appropriately in the United States and throughout the world. So that's what's keeping us busy.

**OC:** How many attorneys work in the white-collar criminal defense group at Thompson Hine?

**JM:** About 15.

**OC:** That's a significant team for a practice that probably doesn't generate a whole lot of revenue for the firm but of course enhances the firm's overall reputation. I know that your group does have a very stellar reputation.

**JM:** That's nice of you to say. You always wonder what people in the general public say about you but apparently they're saying good things.

**OC:** Let's talk about the hiring that you help do for the white-collar group. When you are looking to bring in either a young

associate or a lateral is there anything that is distinctive to your team, an attribute that you want in an attorney?

**JM:** When I interview people what I'm looking for is someone who is confident about what they're saying. I believe that, when the client is sitting in your office and they're explaining to you the most important problems in their lives, they want to know that the people who are handling the problems are competent, that they know their abilities, that they could deliver on what they're saying, and are speaking from a position of knowledge. I want to make sure that the people I'm interviewing who may be working with me can sit down and relate to the clients and that the clients can feel that they can trust the person who is helping them.

**OC:** What does the rest of 2016 hold for you and your partners in terms of your workload?

**JM:** I expect we'll continue to be busy. We've had another successful year at the firm doing good, interesting, quality legal work. The reputation of the firm and our attorneys is something most people view very favorably. So I expect the rest of the year to remain very busy. ■

—Steven T. Taylor

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