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Titan Of The Plaintiffs Bar: Joseph Cotchett

By **Ed Beeson**

Law360, New York (September 30, 2014, 5:47 PM ET) -- Most attorneys want to be remembered for their greatest victories. Joe Cotchett, a lawyer who's notched \$1 billion-plus wins, wants to be remembered for his greatest loss.

A star of the plaintiffs bar, Cotchett has been in the limelight for so long that he could point to a number of high-profile assignments he's nabbed over a five-decade career, such as representing the National Football League and the outed Central Intelligence Agency spy Valerie Plame. He could brag about scoring the first interview with Bernard Madoff after he went to prison over his massive Ponzi scheme. Or he could boast of the commendations he's received on the floor of Congress, a testament to the friends he's made in the halls of power.



Joe Cotchett

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— Joe Cotchett

Founder, Cotchett Pitre & McCarthy LLP

Cotchett says the time he took on the Federal Bureau of Investigation is the case that gives his career the most meaning.

"I lost that case," the 75-year-old founder of Cotchett Pitre & McCarthy LLP says. "I lost that case, and I would try it 10 times over again, even knowing I would lose."

It was 1983. Cotchett was co-counsel to a suit brought by the family of Viola Liuzzo, a white civil rights worker chased down and shot to death in 1965 during an attack by four members of the Ku Klux Klan. But as it turned out, one of the Klan members was a paid FBI informant whose history of racial violence, including breaking the knees of African-Americans with a baseball bat, was well known to his FBI handlers, Cotchett says.

Liuzzo's family said the FBI was culpable in her death. But a federal judge presiding over the bench trial wasn't swayed. He dismissed the case after finding Cotchett and his co-counsel had not proved the informant was the triggerman or had egged on the violence, or that the FBI agent in charge of him was driven by anything other than a need to gather intelligence on the Klan.

Though the trial was a stinging loss for him and for Liuzzo's family, Cotchett said the publicity

it generated uncovered the truth about government actions during one of America's darkest chapters and helped change the way FBI informants were recruited.

"It opened the eyes of the American people," said Cotchett, speaking from his office in the San Francisco suburb of Burlingame. "It let the public know what was going on with the use of violent informants."

"That, in my own mind, was the most important case I ever tried."

And it speaks to the experience that Cotchett says steered him to the law in the first place.

Growing up in Brooklyn and later Long Island, Cotchett graduated from high school at age 16 and enrolled at North Carolina State University to study engineering. It was the mid-1950s, the height of segregation in the South, and the New York native inside him quickly rebelled against the social norms there.

"I had the audacity to drink out of a colored fountain," Cotchett recalls. A sheriff's officer looking on did not take kindly to his insurrection and carted Cotchett off to the station house for a stern lecture.

"That was my introduction to justice in the South," he said. The experience "led me to be who I am today."

Rather, say those who've litigated against him over the decades, it is his mastery of trying a case in open court that makes him such a force. A natural orator, Cotchett has the rare ability to take a commanding knowledge of law and blend it with an irrepressible, folksy flair that is impossible to ignore and difficult to defeat, attorneys say.

"He's a very, very formidable presence in court," said James Brosnahan, senior counsel at Morrison & Foerster LLP, who counts Cotchett as both a friend and an opponent over the past 40 years. "Joe is one of those people who can dominate a room."

"He's big. He's loud. He's prepared."

And he's had an impressive string of wins to show for it. In the 50 years since he earned his law degree from the University of California, Hastings College of the Law, Cotchett has convinced a jury to award a record \$3.3 billion — later halved to \$1.75 billion — to thousands of plaintiffs harmed by the collapse of the Lincoln Savings & Loan Association under the late financier Charles Keating.

He has netted other big wins as well, including a \$200 million jury verdict for investors in the collapsed San Diego investment firm Technical Equities Corp. He also helped save the public interest group Consumer Union from potentially devastating penalties when a jury relieved the group from paying damages to Isuzu Motors Ltd., over a disputed review its Consumer Reports magazine published about one of the the automaker's vehicles.

Earlier this year, he scored another monumental award, when a California superior court ordered paint manufacturer Sherwin-Williams Co. and others to spend about \$1.15 billion to remove lead paint from homes throughout the state.

And he is still winning. On Sept. 24, a California judge ordered Vinod Khosla, the billionaire co-founder of Sun Microsystems Inc., to reopen public access to a prized beachfront he purchased, following a six-day trial in a case a nonprofit surfers' organization

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brought against Kholza.

"This has national ramifications (private property rights vs. public rights) and will end up in the Supreme Court," Cotchett wrote in an email soon after the order came down, clearly girding for the next level of the legal fight.

Cotchett shows no sign of slowing down. The pull of trying another case is just too strong.

"A lot of my contemporaries are out of the golf course," he said in an interview. But he has zero interest in "chasing a little white ball on the grass," he added.

The real sport for him, instead, is getting in front of a judge and jury with no tools other than his quick wit, commanding voice and keen sense of the law.

He likens trial work to a football grudge match. "I love getting into the red zone," he said. "Getting to the goal line is what it's all about."

It was a passion he discovered early on in his career. Cotchett, who decamped to the West Coast in the late 1950s and founded his firm not long after graduating law school in 1964, came up during a golden era for trial attorneys.

"In the old days you were going to trial if not every week, every other week," he said. Doing so gave Cotchett not just the opportunity to develop his own craft, but the chance to study those who had mastered theirs, including the future San Francisco Mayor Joseph Alioto and Eugene Majeski, the late founder of Ropers Majeski Kohn Bentley PC.

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"You wouldn't want to copy their own style, but you'd want to learn from their strategy," Cotchett said. And much of what they were able to do came down to one fundamental thing: "It was all about connecting with people, connecting with jurors."

Defense counsel who have squared off against Cotchett have seen how he puts this exercise into practice.

"Everybody shows up in a suit. Joe will show up in a blue blazer, a tie and grey slacks. Kind of looking like the people in the [jury] box when they get dressed," said Robert Pringle, a partner at Winston & Strawn LLP. "They look at all the other stiffs in the courtroom, then they listen to Joe."

And what they hear is not the stilted speech of a stuffed shirt, but direct talk from a man who still bears more than a hint of his Brooklyn roots.

"He doesn't speak down to people. He has a way of communicating," Pringle said. "He knows how to speak in simple, direct and declarative sentences with a sense of earnesty that people grab ahold of."

Cotchett says he pines for the time when going to trial was an everyday thing. As more cases get hammered out by settlement, he recognizes his time in the courtroom will come to a close. But those who know him best say they see no chance of him hanging up his white hat anytime soon. There's too much fight left in him, and too many battles yet to be fought.

"There are people who are surprised that a warhorse like Joe would still want to practice, but that reflects their view of the world," said Brosnahan of Morrison & Foerster. "Joe has always had a larger view of the world."

--Editing by Kat Laskowski.

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