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## *Of Counsel Interview ...*

# **Battling Bullies: Chicago Litigator Takes on Power Brokers**

Big banks. Big tech firms. Big Pharma. The big business that is the NCAA. Plaintiff's attorney Jay Edelson wages battle against many of the nation's most fortified institutions. Not only does he refuse to back down to anyone, regardless of their stature or deep pockets, he welcomes the challenge.

The CEO and co-founder of Edelson PC, a 27-attorney, Chicago-based law firm, Edelson has been called a "titan of the plaintiff's bar" by law360; "public enemy No. 1. in Silicon Valley," by *Chicago Lawyer Magazine*; and a "cybersecurity trailblazer" by *The National Law Journal*.

Edelson earned a monumental victory in the US Supreme Court in what's been characterized as one of the most important consumer privacy cases of the last several years, *Robins v. Spokeo*. He and his team are leading the charge against the NCAA in representing former college football players who suffered concussions, and their families. And,

on behalf of labor unions and governmental bodies, he's elbow-deep in litigation against pharmaceutical companies and distributors for their pivotal role in the opioid crisis.

Simply put, he's a transformational lawyer.

Recently, *Of Counsel* spoke with Edelson about his career trajectory, running a law firm, challenges he faces, his first case in which he took on and defeated an insurance company, the concussion and opioid litigation, the career satisfaction he gets, and other topics. The following is that excerpted interview.

**OC:** Jay, what was it that motivated you to enter the legal profession? Was there a particular experience, or did it evolve from many experiences?

**JE:** It was actually a negative experience with the law that shaped my career path, and that involved my parents' divorce. My father was a doctor, and my mother was a social

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worker. It was a messy divorce, and my father hired a large defense firm to essentially bully my mom so he wouldn't have to pay much money to us kids. He got away with it. That experience imprinted on me; I never liked bullies. I thought that there was something really terrific about the law because as a lawyer you can really stand up to powerful interests, or bullies, however they come. Through the law, you get a fair shot. That was probably the motivating influence.

**OC:** How old were you at the time?

**JE:** My father left when I was five, but the legal battles lasted until I was 17. I was very frustrated because our lawyer wasn't doing a good job.

**OC:** Thank you for your candor; I appreciate that. After you graduated from Michigan, what did you do?

**JE:** I went to a defense firm, which is no longer in existence. And I went to Plotkin, Jacobs & Orlofsky about two and a half years later, with a stop in the middle.

### Joining the Other Side

**OC:** What made you want to move from the defense side of things to the plaintiff's bar via Plotkin?

**JE:** I think it goes back to why I wanted to be a lawyer in the first place. I wasn't terribly interested in working for a defense firm. I respected the clients we had because everyone has the right to their own attorneys. But I wasn't passionate about representing banks and large corporations.

The other part is what I tell young people. I say, "Look at people who are 10 or 20 years into their career, doing what you're doing. Do

you want to be those people?" I was doing a lot of class-action defense work, and I did not want to be the partner I was working for. The partners there didn't seem that they liked their life. I never liked the incentive on the defense side where you got paid to drag a case out. I've always been very focused on winning.

When I went to the plaintiff's side, they were loving their life. When they won, they'd celebrate. At the defense firm, when we won, we'd say, "Yea, we won but we just lost a bunch of money for the firm [because they didn't drag out the case]." That was a big influencing factor.

**OC:** When did you know that you wanted to run your own firm?

**JE:** I always knew that I was never going to be a lifer at any firm.

**OC:** What's been the biggest challenge for you in running your own firm?

**JE:** Well, I like and welcome challenges, but probably the biggest one that we have not nailed is the hiring process. I don't think the traditional ways of hiring people work very well, especially for summer associates. You meet with them for 20 minutes, and then they go on call-backs and six attorneys meet with these kids for another 20 minutes and you have to make a decision based on that. It's not a good way to do it. We don't yet know what the best way is, but we keep experimenting. We feel like we have a lot of other parts [of operating a firm] down, but not that one.

**OC:** What case or two really stand out as being important to you, satisfying in the sense that you made a difference? I know that *Robins v. Spokeo* is an important case, and you've handled a lot of very significant litigation. What comes to mind?

**JE:** The first case that I worked on was called *Ramlow v. Family Health Plan*. I was an associate, and one of the nice things about a plaintiff's shop is that you get a lot of autonomy, and it was my case to run with. It

was a difficult case emotionally because the health insurance company decided to terminate a pool of insurance, really the insurance of the sickest people. They all got letters saying that by the end of the month they would be uninsured. I believed that it was illegal to do what they were doing. We ended up filing a lawsuit and getting a preliminary injunction to prevent the cancellation of the health insurance.

I was speaking to class members every day. Our client was suffering from COPD and was on a respirator. She was literally wheeled into court with a big oxygen tank. It was very clear what the stakes were. I understood that our client was going to be in a lot of trouble and the class members were going to be in a lot of trouble too. So it was a very weighty case.

We got a great result. After we got the preliminary injunction we negotiated a settlement where they continued the insurance for everybody. That was my first experience in understanding first-hand the positive impact that class actions can make. It's very rare that you can help a large group of people like that. It was definitely a big moment for me.

**OC:** I'm sure that was very satisfying for you. How did the class members react?

**JE:** With relief. They were scared to death. And honestly, I was scared to death too.

## Tackling the NCAA

**OC:** What about another case, perhaps one that's been more recent?

**JE:** There are so many. The NCAA concussion cases are really important to me. We ended up doing something that we don't like doing, which was, we objected to a settlement. Another firm, a very good firm, had filed the concussion cases and then when they settled it they ended up getting no money for people. They just got medical monitoring

damages, which essentially meant people would get some free tests. As part of the deal they released everyone's right to participate in a class action.

We felt that that was wrong and we fought for a couple of years in the court, objected to the settlement, and ended up succeeding. The court said you can't release class claims. And then we ended up bringing all of these class claims. The cases are proceeding in the Northern District of Illinois.

Those are very important cases to us. The effects of concussions ruin people's lives. We're dealing with families where the former student-athletes committed suicide. I don't know if you know about this, but it's pretty gruesome: A lot of these football players commit suicide by shooting themselves in the heart because they want to preserve their brain so it can be tested for CTE. We have a number of clients who are families of the people who have done that. It's really chilling.

Then of course, there are other people who are living [but aren't functioning well]. They can't carry a job. Some are homeless. They're unable to remember basic details. If you asked them what years they played football, often they have no idea. They don't know what college they went to. It's really tragic.

**OC:** Where are you finding fault in what the NCAA did or did not do to prevent these tragedies?

**JE:** That's a great question. The whole premise of the lawsuit is that the NCAA had a duty to protect the student-athletes—that they had an incredible wealth of information about the effects of concussions and they concealed that from the student-athletes. Instead they allowed and encouraged a culture where athletes were pressured, if they got hurt, to keep playing, on the threat of losing their scholarships.

Things are getting better now. We all know that there are now concussion protocols. In

a recent New England Patriots game Ron Gronkowski had a concussion and had come out of the game and had to be cleared to play again. So things are improving, but for our class members it was a very bad situation. Nobody cared. They'd use smelling salts on the athletes and get them back in the game again.

## Opioids: "Clear Blame"

**OC:** You and your team are doing very important work on this front as you are on other fronts. Let's turn our attention to the litigation against drug manufacturers, Big Pharma, and the opioid crisis. Could you talk a little bit about what you're doing specifically? I know you're representing labor unions and governments. But what got you into that and what kind of strategies are you taking? I know those are big questions, but if you could summarize I'd really appreciate it and so would our readers, I think.

**JE:** Sure. We like taking cases where we feel that we can offer unique value. If it's the type of case that we feel another firm can do as well or better than we can then we'd rather turn our attention to something else. We looked at what was happening in the opioid litigation and thought that the strategy was fundamentally flawed. The cases were all going to federal court in massive, sprawling multi-district litigation. The cases were controlled by a small group of attorneys who were representing mostly rural clients.

We thought that, first of all, a lot of communities were being left out, specifically a lot of African-American communities. They were not part of these [legal] challenges. They didn't have a voice in the litigation. Also, we thought the cases weren't going to advance in an MDL [multidistrict litigation] setting. That's been proven to be correct. To us the MDL is kind of a mess. A judge who, by all accounts, is a terrific judge has decided that he's going to settle this case, and he made

some interesting comments at the beginning of the case that this is not the time for finger-pointing, that there's a lot of blame to go around. He said the public doesn't want discovery or trials; instead what the public wants is a solution where fewer pills go out to communities. It feels more like a legislative type of process than a court process.

Our view is that there is clear blame and that in order to get the value from these cases—because this has decimated communities—you've got to actually litigate them. You've got to take depositions and do the work. Our strategy is a state-court strategy where we keep the cases in jurisdictions where they cannot be removed so that our clients can have a much more active role in the cases and have them end up getting resolved.

**OC:** To what extent are there similarities, or differences, with the tobacco-related legislation against the tobacco companies several years ago?

**JE:** So the strategy is kind of flipped on its head. In tobacco, the state AGs were the ones who were driving it, and the counties and cities didn't do anything. At the end of the day, there was a great settlement of over \$200 billion, and states are still getting paid even now. But the cities and counties didn't really get money. It was only if the state decided to let some trickle down.

That's why, as kind of a reaction to what happened in tobacco, you saw cities and counties as the ones who were filing initially and trying to drive this. There are some positive elements to that but it's also made it a little bit of a mess. I think that the attorneys were looking for a way to file hundreds of cases without having to do the work the hundreds of cases require, which is why they wanted an MDL.

The cases are really so important that we think you really have to handle them individually.

## Look Before You Leap

**OC:** Thank you for that answer. You and your team are able to dig in and do the research and the work to get into many different types of litigation. That can't be easy. If a colleague from another firm came to you and asked for help and you wanted to help him or her, what would you say to that colleague about how best to get into a new area of litigation?

**JE:** For us, we've probably always been an overly strategic firm. I think that a lot of times when people are trying to get into new areas, they just file a lawsuit and then say, "I'll just figure it out as I go." I think that's completely backwards. If you're going to jump into a new area, you've got to do the real thinking beforehand and figure out what the right strategy should be and whether people are already effectuating that.

We did not need to get involved in the opioid litigation. We looked at it because it's a huge issue. When we looked at it we felt that these cases were not being handled correctly. That's what was motivating us. We just thought that there was a fundamentally better strategy out there, and that's what made us want to jump in with both feet. But that's not how people generally do it.

I see this happen all the time in privacy cases: A firm will file a privacy case, and they're not that thoughtful about it but they figure, "Oh, I'll take one and see where it goes." I think you're doing a disservice to your client and to the law when you do this. You end up just losing cases and getting bad rulings and not really helping anybody.

**OC:** Jay, what brings you the most satisfaction with what you do for a living?

**JE:** I love seeing our younger attorneys succeed. We think one of the things that we're really good at is training young attorneys. We don't believe in the fiction that you can't do real legal work until you've been out of law school for 10 years. We have countless examples of first- and second-year attorneys who are stepping up and doing huge things for us—winning cases in the Ninth Circuit and doing amazing things at the trial court level. That's the type of thing where I feel a lot of pride. We've created a new way of doing things in terms of how to litigate cases but also in how to train these attorneys. Seeing how empowered they are brings me terrific satisfaction. ■

—Steven T. Taylor