

LAWDRAGON

Lawyer Limelight: Brad Brian



Photo by Amy Cantrell.

By Katrina Dewey

Brad Brian had a choice early in life. The star baseball player could join the Baltimore Orioles Class A minor league team or go to Harvard Law School. He decided to become a lawyer.

He chose the courtroom over the baseball field, and has had a grand slam career, winning an acquittal for Tom Spiegel, CEO of the failed Columbia Savings & Loan; representing MGM Resorts in massive litigation from the largest mass shooting in U.S. history; PG&E in connection with the fire that wiped out Paradise, Calif.; and Transocean Pipeline in the BP oil spill disaster.

He recently became Chair of Munger, Tolles & Olson, one of the country's rarefied law practices, which he hopes continues its egalitarian practice noted for its democracy and top-tier clients.

Lawdragon: Can you tell us a bit about your path to the law – from being an all-star baseball player to attending Harvard Law School? What was your inspiration to become a lawyer? Was professional baseball ever a possibility?

Brad Brian: Baseball was a huge part of my life. My father, who died last year, was the longest-running high school baseball coach in the history of the State of California. I played baseball at Berkeley, made All-Pac 8 and played for the United States team in what was then known as the Baseball Olympics. The Baltimore Orioles offered me a contract to play with their Class A minor league team. I was tempted. I told them I would love to do it, but I needed a \$5,000 bonus to pay for my first-year law school tuition. They said they weren't going to pay a bonus to someone who wanted to be a lawyer, so I gave up my dream of playing pro baseball and headed to law school.

Why did I make that choice? I really wanted to be a lawyer. I liked the idea of helping clients. And the love of competition drew me to trials.

LD: You clerked after law school for the revered former federal judge John Gibbons. What lessons did you learn from him?

BB: Judge Gibbons was my idol and mentor. He was a brilliant judge – one of the appellate giants in this country over the past 50 years.

He taught me so much: how to think like a lawyer, how to write clearly, how to be efficient. That year, he published twice as many opinions as any other judge on the Circuit. Yet he managed to live a balanced life by focusing on what matters in law and in life. He urged his clerks to do the same.

I owe him a lot. He passed away just a few months ago. I saw him a few months before he died, and I'm very grateful for that. I'll miss him.

LD: Why did you join Munger Tolles after your stint as a U.S. Attorney and how has it changed from the firm you joined?

BB: I went to the U.S. Attorney's Office in Los Angeles because Andrea Ordin, the first woman U.S. Attorney, was working hard to build something special there. When I interviewed firms in Los Angeles and told them I was considering joining the U.S. Attorney's Office, only Munger Tolles thought it was a good move. All the other firms told me that the office would teach me bad habits and they wouldn't be interested in me when I was ready to leave the Office. The lawyers at Munger Tolles totally disagreed. They said it would be a great job for me because I would learn how to build cases, get trials, and broaden my over-all experience in the law and the community.

The other firms changed their minds and recruited me later, but when it was time to leave the U.S. Attorney's Office, I felt like the people at Munger Tolles were trying to do what I wanted to do. Like Andrea Ordin, Ron Olson was trying to build something special. He told me the firm wanted to hire the best, handle clients' most difficult cases, give back to the community, and govern itself democratically. It was a pretty intoxicating mix.

In the most important ways, Munger Tolles is the same today. We try to hire only the best lawyers. We try to focus on clients' toughest cases. We're still a democracy, making all major

decisions in a collaborative, consensus-driven fashion. And we're still committed to giving back to the community, both in pro bono work and in the huge investments our lawyers make in local organizations of every sort.

We're not perfect, and sometime collaborative decision-making can be frustrating to a bunch of A-type personalities. But it's been 38 years and I still love practicing here.

The changes have created great opportunities for the firm. We're now in three cities – Los Angeles, San Francisco and Washington, D.C. And we have 194 lawyers – there were 49 when I joined the firm in 1981. But we're all still operating within the same founding principles that have guided the firm since it was founded in 1962.

LD: Who were your early mentors at the firm?

BB: Ron Olson has always been a mentor. He taught me about building relationships, being responsive to clients and their needs, and the irreplaceable value of building and maintaining a reputation in the legal community. Like Judge Gibbons, Ron believed in the importance of working hard *and* maintaining a family life. Ron and his wife, Jane, have been role models for my wife Claire and me for most of the four decades we've been married.

Other early mentors were Alan Bersin and Carolyn Kuhl, now Judge Kuhl. Alan taught me how to build a team, how to work with others – lawyers, paralegals, staff – how to treat people fairly and give them the opportunity to shine. Carolyn taught me – and everyone she worked with – about integrity and the importance of maintaining the highest ethical standards.

And, of course, Charlie Munger and Roy Tolles – two of the firm's founders – were important mentors. Charlie taught me to answer a client's questions directly and honestly, even when the answers are unhappy ones. Roy taught me not to be distracted by my own issues and obsessions and to focus on what matters to judges, juries, clients.

LD: Do you remember your first trial – did you win or lose and what lessons did you take from it?

BB: I will never forget my first trial. After about two months in the U.S. Attorney's Office, I tried a heroin case against a major drug dealer – by myself. I wrote the trial brief, organized the exhibits, prepared the direct and cross-examinations, drafted the jury instructions, and wrote and delivered the opening statement and closing argument. It was a great experience before a terrific judge, the Honorable David Williams. And, yes, I won. Either way, I'd remember.

I also remember the most important lesson I took from that case. About two weeks before trial, my supervisor came into my office and saw a bunch of papers all over the office – on my desk and the floor. She opened the desk drawer, swept everything into the drawer, and said: "Now get ready." Her point – and I never forgot it – is that trial lawyers need to focus on what's important. Don't get distracted by all the things that have come up along the way but actually don't matter.

LD: Munger Tolles & Olson is an iconic firm in Los Angeles. You served as its co-managing partner for three years, you've been one of its rainmakers for decades, and now you're Chair of the firm. What are the challenges of being one of the firm's top trial lawyers while managing the firm?

BB: It was an honor and privilege to serve as Co-Managing Partner with Sandra Seville-Jones. Her passing earlier this year was a tragic loss to the firm and was devastating to me personally. She led our firm for a decade; she set an extraordinary example of unassuming dedication; she taught me much of what I know about the life and needs of the firm; and she will be missed by all of us.

Being in "management" at Munger Tolles is really a misnomer. First, I've kept practicing law at the same full-time, 100% level. More importantly, our firm still makes decisions by consensus, so everyone in the firm – from the newest associate to the most senior partner – participates in decision-making. And we're blessed with some amazing business leaders outside our lawyer ranks who have made my job so much easier.

I'm thrilled to be working now with Hailyn Chen and Malcolm Heinicke, our new Co- Managing Partners. Both joined the firm right out of their clerkships and have been with us their entire careers. They love the firm and are committed to maintaining our culture and values.

LD: Do you think Munger Tolles will be able to maintain its brand in the current environment of global firms, tiered partnerships and cutthroat competition for laterals? If so, on what do you base your opinion?

BB: I don't have a better crystal ball than anyone else, but I do think we can maintain our brand, as you say. We will do that by staying true to our firm's values: We hire the best. We don't over-staff cases. We try not to do work that is unnecessary and instead focus on what needs to be done to win cases. We try to focus on what matters to judges, juries, and clients.

We have developed a national and global practice without dozens of offices and thousands of lawyers. We know each other and we can rely on our colleagues to do the highest quality work. All the internal work of building consensus and passing down values to the next generation helps us work together on teams without excessive competition and tension among team members. I think it helps us dedicate our efforts to our clients.

So I think our brand will only get stronger as more and more firms merge and grow through aggressive lateral hiring.

Having said that, I have enormous respect for many law firms around the country. One of the great rewards of my practice has been the opportunity to work with so many fine lawyers at other firms. We don't have a monopoly on talent or clients, and I always look forward to opportunities to learn from the terrific lawyers at many other firms.

LD: What is your philosophy on being a lawyer?

BB: Everything I do begins and ends with the client's needs: the time I dedicate to them, the advice I give, the way I fight for them. Lawyers sometimes say, as something of a joke, that the practice would be so much easier without clients. I've never felt that way. I don't fight to fight, I fight *for them*.

At the same time, fighting for a client does not mean being rude or endlessly aggressive. It's not only possible to be civil and cordial, there are real rewards in doing so. When we tried the BP oil spill case in New Orleans before Judge Carl Barbier a few years ago, I was struck by the remarkable level of civility among the lawyers on all sides. The court worked hard to promote that, but I think that effort was mirrored by the lawyers. At the same time, all the lawyers fought enormously hard for their clients. The experience confirmed that it is possible – even pleasant and personally rewarding – to maintain the highest level of civility and professionalism, while at the same time dedicating yourself to doing the best you possibly can for your client.

As I've gotten older, I've also emphasized the importance of providing opportunities to younger lawyers at the firm. It is the greatest obligation of senior lawyers and also one of its greatest rewards. I was lucky to have mentors like Ron Olson and others who saw it as their job to introduce me to clients and help me to develop my own practice. The future success of every law firm depends on senior partners' passing along cases and relationships and commitment to legal ethics to the next generation.

Finally, I strongly believe, as the firm believes, that lawyers are great beneficiaries of our communities, and it's critical to recognize the debt and pay it back. I've tried to do that throughout my career.

LD: You have been the go-to litigator for many of the nation's elite businesses for a long time. How have you seen the demands on top trial lawyers change over the years, whether from judges, clients or opposing counsel?

BB: Some things change, and some things don't.

The revolution in communication technology now requires trial lawyers to be available around the clock, seven days a week. And that same technology has multiplied exponentially the number of documents that must be reviewed *and mastered* in every case.

In other ways, the demands on trial lawyers are the same as when I started 40 years ago. A lead trial lawyer must know every fact, witness, and document. Lead trial lawyers must know the record cold so they can react nimbly and quickly during trial. Perhaps most importantly, a lead trial lawyer must be able to listen intently all the time – to a witness's answers, your opponent's questions, and the judge's comments. Lead trial counsel must constantly assess how all of that is affecting the judge and jury.

That's always been so, and it always will be so.

LD: What cases are you working on now, and what trial is next for you?

BB: I'm handling a number of investigations – some of which can't be mentioned here. Of the cases I can talk about, I'm representing MGM Resorts International in a large number of lawsuits arising from the 2017 Las Vegas shooting, the worst mass shooting in recent American history. Fifty eight people died, and hundreds were shot. I'm fortunate to work alongside fabulous colleagues like Bethany Kristovich, Mike Doyen and John Gildersleeve on this matter.

I am also representing PG&E in the investigations by the California Attorney General's Office and the Butte County District Attorney's Office arising from the 2018 Camp Fire that devastated the city of Paradise, California, and tragically took the lives of more than 80 people.

I'm continuing to represent some of the country's largest law firms in cases around the country. I have always enjoyed representing lawyers and law firms, and I have several coming up for trial within the next year or so.

Finally, a case I tried – and won – for Fortress Investment has come back. We tried the case in the Fall of 2017 in state court in Los Angeles. The judge in that case enforced a choice-of-law provision in the parties' contract that specified the application of New York law and the waiver of any jury trial right. A couple of months ago, the appellate court in California ruled that the jury trial waiver violated California's fundamental public policy in favor of jury trials, so the case has been sent back to the trial court for another trial.

I could have as many as four trials over the next 14-15 months. It's going to be a busy time.

LD: Of your many cases over the years, of which are you most proud and why?

BB: My view on this changes over time. Right now, there are three. The first was a death penalty case I handled many years ago pro bono. It was a direct appeal to the California Supreme Court. Unlike most death penalty briefs, we decided to focus on only two issues. We thought they were strong and didn't want to undermine our credibility or distract the court from the winning arguments. We were right. The California Supreme Court reversed the conviction and remanded the case for retrial. I thought the retrial was deserved, and I was proud of what we did and of what the judges did. Our client was retried and not convicted.

The next case was the criminal case I handled for Tom Spiegel, the former CEO of Columbia Savings & Loan Association, a very profitable financial institution that had a portfolio largely of junk bonds. Tom took a chance on me when I was a pretty young trial lawyer. We worked extremely hard. We got a call halfway through the trial from someone who had a tape-recording of the government's main witness bragging that he was "the greatest thief there is" and someone who "never met a man I couldn't con." It made for great theater in the courtroom, and both the witness and the Government's case unraveled. Tom was acquitted on all counts after 2-1/2 months of trial.

I was also privileged to represent Transocean, the offshore drilling company, in the BP oil spill trial down in New Orleans. Eleven men died, and, when the spill could not be capped, it became one of the largest in history. After negotiating a criminal plea to one count of a negligent Clean Water Act violation (as compared to BP's plea to 13 felony counts, including manslaughter), we

tried the civil case before a great judge in New Orleans, Judge Barbier. Judge Barbier ruled that BP was grossly negligent but Transocean was not, and that BP was required to indemnify Transocean for the almost limitless damages caused by the spill. It was the winning ruling we were looking for, in a “bet-the-company” case for Transocean.

LD: What do you view as your style as a trial lawyer, and why do you think so many clients hire you for their toughest battles?

BB: I like to think we win by working hard – usually harder than our opponents. And by figuring out what’s important – where working hard will pay dividends. I have also learned that being a top trial lawyer requires assembling a top team. I have been blessed to have worked with some of the best lawyers at our firm – people like Judge Carolyn Kuhl, Alan Bersin, Greg Stone, Mike Doyen, Luis Li, Mark Helm, Judge Carl Moor, Lisa Demsky, Judge Greg Weingart, Jerry Roth, Susan Nash, Bethany Kristovich, Dan Levin, Martin Estrada, Hailyn Chen and Laura Smolowe. All of them have made me a better trial lawyer. And I like to think that I helped them shine.

LD: I’ve read that attending all four Grand Slams in tennis is on your bucket list. How many have you attended? Do you play tennis and are you any good?

BB: I had to give up playing tennis because of my lower back. I was never a very good player; my wife can beat me handily. But I still love watching. Last year, my wife and I went to the finals of the French Open. That was spectacular. I’ve been to the U.S. Open finals, and we’re hoping to go to Wimbledon next year. That leaves the Australian Open. I hope to get there sometime soon.

LD: Is there anything we’ve not covered that you would like to discuss?

BB: Two things. First, I love being a lawyer and I love the legal profession. That’s why I really enjoy representing lawyers and law firms when they are accused of doing something wrong.

Second, I’m optimistic about the future of the profession. At our firm, we are blessed with some outstanding lawyers in the next generation. The legal world will probably change in ways I haven’t imagined, but I’m confident that lawyers will continue to provide clients with the highest quality legal services in their most challenging problems.

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