

Trial Pros: Munger Tolles' Brad Brian

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Brad D. Brian is a national trial lawyer and co-managing partner of Munger Tolles & Olson LLP. A fellow in the American College of Trial Lawyers and International Academy of Trial Lawyers, and, according to Chambers USA, one of the top 20 trial lawyers in the country, Brian has obtained major trial victories for large corporations, individuals and multinational law firms. The American Lawyer named Brian “Litigator of the Year” in 2016 and in 2015, he received a California Lawyer Attorneys of the Year Award for his victory on behalf of Transocean. He is also consistently named to the Daily Journal’s “Top 100” list of lawyers in California.



Brad D. Brian

A former assistant U.S. attorney in Los Angeles, he is also the co-editor of Internal Corporate Investigations, the fourth edition of which will be published by the ABA in 2016.

Brian served as president of the Legal Aid Foundation of Los Angeles, chairman of the RAND Institute for Civil Justice’s Board of Overseers and chairman of the ABA Section of Litigation.

Q: What’s the most interesting trial you've worked on and why?

A: Hands down, United States vs. Svetlana Ogorodnikova. The government charged my client, Svetlana Ogorodnikova (and her husband, Nikolay) with criminal espionage. This was the height of the Reagan era Cold War. (Think of the current TV show *The Americans*.) The case had (allegedly) everything a young lawyer would want — sex, espionage, fascinating personalities and national press attention. The indictment claimed that Svetlana exchanged sex for classified documents from an FBI agent and then passed them on to the Soviet Consulate. Unfortunately, some of the evidence consisted of audiotapes — listening to them probably counts as my most awkward in-court experience. We tried the case for two and a half months before Svetlana pled guilty to lesser charges and a lower sentence. She later recanted her confession and testified in support of the defense of the FBI agent at his criminal trial.

Q: What’s the most unexpected or amusing thing you've experienced while working on a trial?

A: The most unexpected had to be the collapse of the government’s key witness in United States v. Thomas Spiegel. I was defending Tom, the former chairman of Columbia Savings & Loan Association, in defense of 65 criminal counts of embezzlement, bank fraud and the like. One of the key government witnesses Howard, had pled guilty to submitting a false financial statement in support of his loan application to Columbia. Howard testified on direct examination by the government that my client knew

the financial statement was fraudulent, but let it go because he had an undisclosed interest in the luxury car dealerships the loan was intended to finance. In my cross-examination, I needed to prove not only that the witness was a liar, but that he was a sophisticated liar capable of conning a sophisticated businessperson like my client. We had worked on the examination for months and developed an long list of lies, scams, forgeries and frauds.

When I got back to my office after the first half-day of cross-examination, I had a message from someone I'd never heard of before who claimed he had read about the case in the paper, he knew Howard and he could be helpful. I called him and asked him to meet one of my partners the next morning. I went back to court to continue the cross-examination. During the lunch break, my partner arrived with the interesting news that the informant had a secret tape-recording — and the amazing news that in the recording, Howard could clearly be heard bragging: "I pride myself on ... being the best thief there is," and "I never met anyone I can't con out of something. Never." I thought I had died and gone to trial lawyer's heaven.

Needless to say, I finished my cross-examination that afternoon with questions like:

Q: "Isn't it a fact that you pride yourself on being the best thief there is?"

A: "Absolutely not."

Q: "Isn't it a fact that, as far as you are concerned, you never met anyone you couldn't con out of something? Isn't that a fact?"

A: "Absolutely not."

Q: "Do you know [the informant]?"

[Pause]

A: "Yes."

Q: "Didn't you tell [the informant] that you pride yourself on being the best thief there is?"

A: "Absolutely not."

Q: "Isn't it a fact, sir, that you told [the informant] that you never met anybody you couldn't con out of something? Isn't that true?"

A: "I don't recall such a statement."

I then played the tape and the witness's own voice directly impeached the testimony he had just given. I paused and asked quietly: "That was you talking to [the informant], wasn't it?" He answered, "Sounded like me." I waited 30 seconds and then said, "no further questions."

The government's case collapsed. Tom Spiegel was acquitted on all counts.

Q: What does your trial prep routine consist of?

A: This might sound strange, but the first thing I do is to exercise like a fiend. Trials require a lot of stamina and physical strength. Before starting a trial, I try to get in shape. As for the actual trial work, I remember things I write down. I never read anything in the courtroom, but I write almost everything down in preparation. Once I have written out a cross-examination, I close my eyes and imagine doing it in the courtroom. I visualize where I'll be, how long I pause between questions and how to speak each phrase or question — softly, loudly, slowly or quickly. It never actually happens the way I imagined it, but having written out the questions and thought through the actual presentation in the courtroom, it's very easy to adjust and respond to what the witness, opposing counsel, the judge and the jury actually do as the cross unfolds and heads to its planned culmination.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: Be yourself. Don't try to adopt someone else's personality or manner. You won't come across as genuine. Jury trials are about credibility. You want the jury to believe you and your witnesses, and not believe the other side's witnesses. To accomplish that, you have to be genuine.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Robert (Bobo) T. Cunningham was one of the principal plaintiffs attorneys in Phase One of the BP oil spill trial in New Orleans in 2013. I was lead trial counsel for Transocean, the off-shore oil drilling company. Bobo's cross-examinations were focused, strategic and precisely executed. He didn't ask unimportant questions. He had clear goals and he stuck to them. He chose his targets carefully, and when he went after a witness on some point, the witness was not going to get away. It was wonderful to watch a master at the top of his game.

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