

## Litigation Leaders: Munger Tolles Chair Brad Brian on the Virtues of the Firm's 1-1 Partner-to-Associate Ratio

By Ross Todd  
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Welcome to another edition of our *Litigation Leaders* series, featuring the litigation practice leaders of the biggest firms in the country.

Meet **Brad Brian**, the chair of Munger, Tolles & Olson based in Los Angeles. Brian is regularly called on to defend law firms in malpractice lawsuits and by Fortune 500 companies in high-profile matters. Brian, notably, defended Transocean in litigation arising from the Deepwater Horizon oil spill in the Gulf of Mexico and PG&E in litigation arising out of California wildfires. What follows is a portion of our exchange.

**Litigation Daily: Tell us a little bit about yourself—beyond what's in your law firm bio.**

Brad Brian: There are two things that you won't find in my bio, but had a significant impact on my success: baseball and ballet. Baseball ran in my family. My father was the longest-running high school baseball coach in the history of the State of California. As both a coach and a parent, he encouraged his players and his sons to work hard, strive for excellence, and respect your opponents—values I still carry today.

I came by my ballet experience a little differently. Early in my legal career, I joined the Board of the Joffrey Ballet largely because my wife, an investigative reporter at the Los Angeles Times, was an avid amateur ballet dancer. It was a very difficult time for the Joffrey. Its Founder Robert Joffrey had just died and, when half of the board resigned over the company's financial problems, I unexpectedly found myself running the company. I did this while practicing full-time at MTO. This meant that I ran the ballet in the very early morning hours; managed my client matters during the day; and spent my nights and many weekends negotiating with shoe manufacturers, truckers and even the dancers themselves. The organization was deeply in debt, so I also had to raise money. There were many times when I had to make tough financial and managerial decisions. During this time, I relied on a team of outside lawyers. This gave me a client's vantage point early in my career and helped me learn first-hand what high-quality client service truly means.

**How big is your litigation department and where are most of your litigators concentrated geographically?**

Our litigation department is the bulk of our firm. We don't assign lawyers to practice groups within the litigation department. We don't think that structure serves clients well, though informal groups develop over time as lawyers develop expertise and enjoy working together.

But if you are looking for numbers, I can tell you that about 90% of our lawyers handle litigation. This includes trials, arbitrations and appeals throughout the world. We have offices in only three cities – Los Angeles, San Francisco and Washington, D.C. – but we have a large geographic footprint and try cases all across the country. (For example, in the last ten years or so, in addition to Los Angeles and San Francisco, I have tried major cases in Seattle, Chicago, two in New Orleans, and one in Napoleonville, Louisiana.) In addition to our litigation in the U.S., we represent clients in cross-border disputes and investigations involving civil, criminal and regulatory matters. We've handled a large number of sensitive Foreign Corrupt Practices Act (FCPA) and other investigations throughout Latin America, Europe and Asia.

Perhaps our most important number, though, is our one-to-one partner/associate ratio, which tells our clients that if you hire us, you get an exceptionally talented team, from our newest lawyers to our most experienced partners. It also gives our more junior lawyers direct access to our clients and the opportunity to make meaningful contributions on cutting-edge work early in their careers. No other firm in the country replicates this while handling the complex cases that we do.



**Brad Brian, chair of Munger, Tolles & Olson.**

Courtesy photo

**In what three areas of litigation do you have the deepest bench?**

We are often called upon to represent companies facing large crises that could involve civil and criminal litigation, government investigations, regulatory work and challenging public relations issues. In those situations, we often find ourselves interacting directly with the company's most senior executives, the Board of Directors and communications experts, both inside and outside the company.

In addition to that, we serve a number of large, institutionalized clients – like Berkshire Hathaway, PG&E, Intel, Bechtel, and Southern California Edison – in a broad range of areas. But more often than not, we are called upon to navigate complex matters and novel issues that require innovative and creative solutions.

We have a very deep bench of trial lawyers. I'm honored to be a Fellow in the American College of Trial Lawyers and in the International Academy of Trial Lawyers. Four other partners are Fellows in the American College of Trial Lawyers, and about a dozen came out of the United States Attorney's Office. We have also managed to get other lawyers significant trial experience either at the firm or by loaning them out to the Los Angeles City Attorney's Office or the San Francisco District Attorney's Office, and we just launched a similar program with the federal public defender's offices in Los Angeles and the Eastern District of Virginia and the San Francisco Public Defender's Office.

At our core, we are trial lawyers. We try cases all across the country, in state and federal courts, and in arbitrations. Whether it's **John Spiegel, Greg Stone, Luis Li, Hailyn Chen, Martin Estrada, Bryan Heckenlively, Bethany Kristovich, Jonathan Kravis, Robyn Bacon, or Blanca Young**—to name just some of our trial lawyers—we are able to match up against the finest trial lawyers in the country.

We often get hired to partner with other law firms. That has happened a lot in recent years – including for MGM Resorts, Transocean, PG&E and others. We have terrific lawyers at our firm, but there are great lawyers at other firms as well, and sometimes these partnerships serve the clients very well. I personally enjoy working with great lawyers at other firms and have learned a great deal from some of the finest lawyers in the country. And when that partnership is right, the client benefits immensely.

On a number of occasions, we have been hired to take over a case as it's heading to trial. In the case for Rhonda Byrne, the author of "The Secret," my partner Luis Li and I were hired just six weeks before a jury trial in Chicago. It was stressful, but at the same time exhilarating and a lot of

fun — even more fun because we won. Trying cases is our firm's sweet spot and, with our deep bench of trial lawyers, we're perfectly positioned to play this role.

We have handled dozens and dozens of white collar criminal investigations anywhere in the country, as well as in Latin America, Europe and Asia. About 30 years ago, I co-edited a book on Internal Corporate Investigations with **Barry McNeil**, a wonderful lawyer in Dallas. Just a few years ago, the American Bar Association published the fourth edition, now co-edited with my partner **Lisa Demsky** and Barry, and it remains on the Top 50 list of all corporate law books on Amazon. We have been fortunate enough to be called upon to lead a number of complex investigations around the world. I have found that our ability to try cases often helps us persuade the government not to file criminal charges or bring other enforcement actions, or to achieve fair settlements.

We are very proud of our reputation as "lawyers' lawyers". Over the past 25 years we have managed to represent some of the country's best law firms when they unfortunately find themselves at odds with a former client or adversary. I love representing lawyers because they appreciate how hard this job is. I have been blessed to work on these cases with some truly special lawyers here, including **Bethany Kristovich, Mike Doyen, Stuart Senator, Mark Helm, Laura Lin** and **Jordan Segall**.

**What do you see as hallmarks of your firm's litigators? What makes you different?**

We are problem solvers who try cases. Clients often hire us for complex litigation matters that require creative, innovative, and out-of-the-box strategic thinking. We have developed this reputation by preserving principles that date back to our firm's inception in 1962, when our seven founders – including **Charlie Munger** – set out to create a different type of law firm. The architects of our firm's culture sought to build a nonhierarchical, democratic law firm with a shorter partnership track.

With that in mind, hiring the brightest legal minds has always been the most important decision the firm makes – and the whole firm makes it. We hire only top-quality associates who can provide clients with innovative thinking. Our unique hiring system helps us attract legal talent from the top 5% to 10% of law school classes and out of clerkships. About 85% of our lawyers clerked for judges before joining our firm and roughly 10% of our attorneys clerked for Supreme Court justices.

Having selected our associates with tremendous care in the first place, we entrust associates with early responsibil-

ity in matters. It is commonplace for associates to take prominent roles in trials and appeals. We also operate a free market system of staffing cases, which forces lawyers to provide opportunities to more junior attorneys. These principles have fostered an unparalleled density of legal talent and culture in which lawyers take ownership in solving their clients' problems from the moment they join the firm. This has also resulted in a low leverage environment – what we call our one-to-one partner-to-associate ratio – which means we do not over-staff cases.

**How many lateral litigation partners have you hired in the last 12 months? What do you look for in lateral hires?**

We have very high hiring standards for *all* lawyers. As I mentioned, hiring decisions are incredibly important to us and such decisions go to the entire firm before we extend an offer to any attorney.

We apply even more stringent standards when hiring laterals. We try to measure how they are going to fit with our clients and for other evidence they will succeed. Unlike other firms, we have never recruited laterals for their books of business, precisely because we think doing so is inconsistent with our firm's culture and does not necessarily serve our clients' needs. Many of our lateral hires are people that we knew beforehand: a former associate, a previous summer associate or a former government colleague. This reduces risk and helps us find people who can integrate easily into our firm.

The intentionality in our hiring process has allowed us to preserve the cultural cohesion and extraordinary quality that is central to our service model. Our most recent lateral litigation partners are excellent examples of the success of our strategy:

- **Jonathan Kravis** – former Chief, Fraud and Public Corruption Section at the U.S. Attorney's Office for the District of Columbia; former law clerk for Justice Stephen Breyer of the U.S. Supreme Court and for Judge Merrick Garland of the U.S. Court of Appeals for the D.C. Circuit.
- **L. Ashley Aull** – former Chief of the Criminal Appeals Section at the U.S. Attorney's Office for the Central District of California; former law clerk for Judge Sandra Ikuta of the U.S. Court of Appeals for the Ninth Circuit and for Justice Harriet O'Neill of the Supreme Court of Texas.

**What were some of your firm's biggest in-court wins in the past year, and can you cite tactics that exemplify your firm's approach to success?**

Since our firm's inception in 1962, our strategy has remained the same: We take on the toughest cases, hire the

brightest lawyers, and do it in a democratic environment where, from day one, lawyers are given early responsibility and treated like owners. While our approach runs counter to how peer firms operate, it has withstood the test of time and imbued an agile mindset among our lawyers.

This agility is central to our firm's success. We saw that first hand in 2020 in light of the disruptions caused by the COVID-19 pandemic. Our agility helped us pivot when litigation – including trials, discovery, and arbitrations – was upended and moved to digital platforms almost overnight. Our colleagues were seemingly unfazed by these disruptions and persisted on behalf of our clients, winning series of victories in closely-watched matters in virtual courtrooms across the country, including a precedent-setting antitrust case (*Steves & Sons, Inc. v. JELD-WEN*), a series of platform liability cases for major technology companies including Snap, Airbnb, and Facebook, and, of course, the litigation surrounding the 2020 election and the Affordable Care Act. Just two months ago, my colleagues Martin Estrada, **John Schwab**, **John Major** and I tried an in-person arbitration in which half of the witnesses appeared live and half appeared by Zoom. It was an experimental, hybrid procedure that worked very well. The case is confidential, so I cannot mention the parties or the issues. But I can say that our client was very pleased with both the process and the outcome. And **Mark Helm**, **Laura Smolowe** and **John Gildersleeve** just tried another confidential arbitration for long-time client DoubleLine Capital that is also confidential.

We were able to secure a tremendous trial victory shortly before the State of California was shut down for the pandemic. In *Michael Schaufler v. Wells Fargo Bank, N.A.*, we represented **Wells Fargo** in a case presenting the novel question of whether an employer can defend an employment lawsuit by using telephone calls recorded in California for regulatory reasons and without an on-call disclosure.

**Malcolm Heinicke** co-led the jury trial with one of our newest partners, Bryan Heckenlively, for over two weeks. After a mere one-hour deliberation, we received a unanimous jury verdict for Wells Fargo. This is an example of the types of complex cases we handle and how we give lawyers early responsibility.

Although it's hard to characterize the litigation arising out of the California wildfire as a victory for anyone, our work for Pacific Gas & Electric has been groundbreaking and historic. In mid-June 2020 in the middle of the pandemic, we gathered in a courthouse in Chico, California with the Company's outgoing CEO, as he entered PG&E's

guilty pleas with grace and respect for the victims who had perished in the Camp Fire almost two years before. Those days were some of the most emotional of my legal career. The proceedings served an important purpose for the community and for PG&E's leadership. As Transocean, MGM Resorts, Bechtel and so many other companies (e.g., Exxon Valdez, Salomon Brothers, Northrop Grumman, Shell, Phillip Morris) have in the past, PG&E turned to us when it faced its greatest challenge.

In addition to our stellar trial record, pro bono work is a core tenet of the culture at Munger, Tolles & Olson. The firm was one of the charter signatories to the American Bar Association's pro bono challenge and consistently devotes more than three percent of all attorney time to delivering needed pro bono legal assistance. Over the past year, MTO successfully partnered with the ACLU of Washington, D.C. and the D.C. Public Defender Service to obtain a preliminary injunction against the D.C. Department of Corrections to protect the rights and health of prisoners during the COVID-19 pandemic. The decision was one of the most substantial victories scored in COVID-19-related litigation on behalf of incarcerated individuals, and set an important precedent for many similar actions across the country, including cases handled by MTO in California.

**Where are you looking to build or expand in the next year?**

We are not looking to grow for the sake of reporting growth. We are committed to hiring only the most talented lawyers, which enables us to provide the best service to our clients.

We will continue to look for the best lawyers wherever they are located. Before we opened our D.C. office, we were not focused on building an East Coast office. We opened that location because we had the opportunity to invite into our partnership former Solicitor General, **Don Verrilli**, and to bring in lawyers with similar backgrounds and credentials. And even with Don's credentials, we vetted the opportunity the same way we would for any other lateral. Don interviewed with more than ninety (nine-zero) lawyers. We (and Don) still laugh about it to this day.

What I am saying is that we are not motivated by any particular growth trajectory or model. We will grow as we identify and hire the very best lawyers—lawyers who can make a difference in representing clients in their toughest

cases. It's a culture that Charlie Munger, **Roy Tolles**, and **Rod and Carla Hills** started, and that **Ron Olson** reinforced over several decades. It's really as simple as that.

**How have you and your litigators coped with disruptions caused by the pandemic?**

I have been in the office every day for the last five months – initially no one else was here, but there was no traffic, so it was great! In all seriousness, I think MTO adjusted very well to the virtual practice of law. We realized that much of what we do, we can do almost as effectively over video conference. We've prepared for trial, taken depositions, prevailed in arbitrations – all remotely by video. And in some instances, such as client meetings, we found that virtual meetings are easier to manage and more convenient since they do not require travel. Some people, particularly junior lawyers, feel less intimidated speaking on Zoom than in an in-person meeting. Similarly, I have now done three mock jury trials over Zoom that worked very well. In fact, we found that a higher number of jurors were comfortable expressing their opinions. We did not have one or two mock jurors dominating the conversation, which is what sometimes happens in-person.

Our two Co-Managing Partners Hailyn Chen and Malcolm Heinicke, as well as our Chief Operating Officer Kevin Posterro and Chief Administrative Officer Laura Michael, have done a great job supporting the well-being of our entire workforce during the pandemic. Recognizing the emotional toll on everyone, they and others worked incredibly hard to implement programming to meet the increasing need for connection, communication and support. This included frequent communications and introducing digital tools to help everyone stay informed, engaged and in touch. It was also important to keep our social traditions alive – albeit, virtually – including our twice-weekly firm lunches, Sherry Sips and Munger's Got Talent, to name a few.

We also continued to prioritize being impact players in our communities. In 2020, our lawyers devoted over 50,000 attorney hours in support of social justice and human rights matters, donated over \$1.3 million to organizations in support of social justice and human rights matters, and launched a task force focused on combatting racial injustice. Maintaining the values and connection that are so important to our culture has helped us feel a sense of normalcy during the most disruptive time of our lives.