



Profile: Brian Malloy

Trial lawyer and appellate specialist genuinely enjoys fighting for the little guy

By **STEPHEN ELLISON**

Fighting for the underdog is as gratifying as it is admirable if you ask Brian Malloy. It's a notion that drives him daily, with each and every case, each and every client, each and every thank you card.

The latter is mere icing on the proverbial cake, but he collects those cards for a reason: They signify memories that he'll cherish for a long time.

"In my office, I have kind of this thank you card section," he said. "Just from clients. Oftentimes, it's just a little (card) from a small case I did for someone, and they're just really grateful and send a thank you note."

Those badges of honor might not represent million-dollar verdicts or settlements, but they still denote success, something Malloy has become accustomed to – without letting it go to his head.

To be sure, he's earned his share of six- and seven-figure wins, and against some very big entities such as Ford Motor Co., The Hershey Co. and the state of California. Those victories have quite a lot to do with his success as well. The money in those results, however, represents so much more than the quantifiable revenue for the firm.

"We really are fighting for the little guy," Malloy said. "I know that sounds like a cliché, but it's true. And you're going up against big corporations and insurance companies a lot of the time. The big law firms, too. Most plaintiffs' firms are small – we have seven lawyers here – and sometimes you're going up against firms with 700 lawyers. So, there is that David-and-Goliath aspect of it."

"In my early law school years, then working here again," he continued, "I learned that you're trying to (help) people who are really experiencing their worst moments of their life – and you're



Malloy

trying to at least make some improvement on that."

Malloy is quick to credit the firm's principal, Tom Brandi, for setting the standard for trial lawyers, saying he's "learned from the best." Brandi showed him it really is all about preparation and putting in the time and doing the work.

Winging it simply is not an option when going to trial, Malloy said. He begins prep work as early as possible: determining what discovery is needed; identifying necessary witnesses; and obtaining video depositions, with testimony from defense witnesses, where he might have six hours recorded but ends up using only a good, 15-second clip, he said.

And, of course, finding intelligent, reliable experts.

"You're always thinking about it, you know, you're thinking about "how will this

play to a jury" even if your trial date is a year or so out," he explained. "I think the preparation and working up the case then leads to the other side knowing you're prepared. The other side knows you've done the work, you've hired good experts, you've put in the time. When you've done all that, it makes your settlement posture better because the other side just won't do it."

First impressions

Born and raised in Eureka, California, Malloy grew up around the law, watching and listening to his father, who worked as a family attorney in wills and trusts and probate. As a youth, Malloy was exposed to lawyers of varying skills from his dad's firm, including plaintiffs' lawyers, and he was fascinated by the work. His dad's colleagues not only were fantastic people in his eyes, he said, but they also were genuinely able to help their clients during what was one of the worst times of their lives. The young Malloy was impressed. And sold.

"It just seemed like a really interesting profession," he said. "That's what initially got me into it. They had plaintiffs' lawyers there and they had estate-planning lawyers there, they did everything. So, I got to see these different areas of the law."

"It just seemed exciting," he continued. "It seemed like they were always fighting for the underdog."

Malloy traveled north to attend the University of Oregon for his undergraduate studies, earning a bachelor's degree in political science. He then traveled south to San Francisco for law school at what was then UC Hastings College of the Law, now called UC Law San Francisco. During that time, he jumped at the opportunity to work for Tom Brandi a few hours a week in the summers, spending the next four years in that capacity. Brandi, he said, helped reinforce what Malloy already had been exposed to.



After he graduated from law school – as the valedictorian, no less – Malloy was fortunate enough to land a clerkship under Judge Melvin Brunetti with the Ninth Circuit Court of Appeals, a role that garnered him quite a bit of unsolicited attention.

“Tom always said, ‘Hey, when you’re done, there’s always a spot back here for you,’” Malloy recalled. “The interesting thing is, after working on the federal appeals court, for whatever reason, I was getting a lot of letters from big law firms, saying, ‘Think about applying here.’ They weren’t job offers, they were just ‘We understand you’re a court of appeals federal law clerk ...’ You know, they wanted to talk.

“So, I thought about it, and I just knew that’s not where I wanted to be,” he added. “I don’t want to be a big-firm lawyer. That just wasn’t where my heart was. I really enjoyed working as a law student with Tom, so I came back. I started back here in 2005 after my clerkship, and I’ve been here since.”

Appellate work

In terms of trials, Malloy said the firm has had a couple in the past year but isn’t getting out nearly as much as it used to or as much as it would like. He said it seems like the courts are still “a little clogged up” since reopening post-pandemic, but things appear to be moving in a better direction in 2023. Just recently, Malloy had a trial date set in federal court, and the earliest date it had was 2025.

While he has done his share of trial work, Malloy also takes pride in being an appellate specialist, certified as such by the State Bar of California. He said it’s an interesting juxtaposition because the appellate work requires a completely different mindset from trial work.

“Basically, you have to take your trial law brain out of your head, set it aside, and put your appellate law brain in because it’s two different skills, and it’s two different ways of looking at the law,” he said. “When you’re going to trial, there’s the fact part, but there’s also the

legal part, and the appellate part, too, regardless of if you win or lose. If you win, you’re going to have to defend your verdict on appeal. If you lose, you’re going to have to point out errors by the other side.”

Malloy said it helps him see where he and his colleagues need to make a record.

“You know, where we need to focus, just making sure that at the end of the day, when the verdict is in or when the judgment comes down, that you have a solid record,” he said. “You’ve made arguments on the record, you’ve made the right objections on the record. So, when it gets up to the appellate court, they don’t say we didn’t do this or didn’t do that at the trial court. I’m always thinking about that.”

The Hershey Co. case

One of the longer running cases Malloy worked on and considers memorable is a class-action, unpaid-overtime case against The Hershey Co. that ultimately became three separate cases. He and his team prevailed in summary judgment on liability, which he said was rare. That first case involving mostly former employees who had worked at the company’s San Francisco location resolved, but Hershey didn’t change its overtime policy. So, Malloy filed another case against the company and got a good number of angry current employees on board.

“In that second case, the employees were mad,” he explained. “You had a court declare your employment practice was unlawful but you’re not changing it. Then while that (second) case is going on, the company starts firing current employees who had joined the class for really dubious reasons. So, we filed a third case for retaliation. The whole thing spanned several years; we got really good results for the employees. And they (Hershey) finally did change their policy.”

The Oakland Ghost Ship

Of course, Malloy could never forget working on the Ghost Ship litigation, in which the families of 36 lost souls in a December 2016 Oakland warehouse fire

were able to get some semblance of compensation and closure after a horrific event that forever changed their lives.

“I was fortunate to work with an excellent group of lawyers,” he said. “It was such a great team effort, you know, where we were able to get a good result for the families.”

Time away

Malloy and his wife Amy recently celebrated their 16th anniversary, and when he’s not working, he enjoys spending time with her traveling, attending San Francisco Giants games and following the Oregon Ducks.

In August, his extended family will mark its 40th year on an annual camping trip, taking in the beautiful and less-crowded sights at Lassen Volcanic National Park.

“We’ll camp there, but we’ll go all over the park,” he said. “It’s such a beautiful place, and it’s like one-100th of the people you see at Yosemite.”

Becoming a lawyer for the right reason

When considering how he would advise young lawyers or law students, Malloy said passion, not tolerance, is the biggest key.

“If you’re going into this profession, you should be wanting to go into it because you enjoy the practice of law,” he said. “You don’t want to sign up for a profession that you’re going to hate, whether it’s the job you’re doing or where you’re working. You don’t want to say, ‘Well, I like the law, but I hate working in this particular place. But I’m going to do it anyway.’”

“Also, I think they shouldn’t be going into law because they can make a lot of money,” Malloy added. “I think that’s a bad decision. And I think that’s where a lot of problems can come from.”

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