

## Skadden's David Zornow on Top Talent, 'Walking Through Walls for Clients' and Joe Flom's Legacy

**'Approach every problem in partnership with the client; think outside the box, don't take the obvious solution; outwork your adversary; act according to the highest ethical standards; and tell your client what you really think.'**

By Jenna Greene  
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Welcome to the latest installment of our *Litigation Leaders* series featuring the litigation practice heads of Am Law 200 firms.

Meet David Zornow—the global head of the litigation and controversy practice at Skadden, Arps, Slate, Meagher & Flom and a member of the 1,700-plus lawyer firm's policy committee.

A former federal prosecutor and part of the trial team in *United States v. Oliver North*, Zornow founded Skadden's much-lauded white collar practice in 1989.

In a Q&A with *Lit Daily*, he discussed the firm's litigation strengths, achievements and direction.

**Lit Daily: Tell us a little about yourself – beyond what's in your law firm bio.**

David Zornow: I try to balance the practice of law with other interests. For the past seven years, I've taught a course at Yale Law School called "White Collar Criminal Defense: Critical Issues and Strategies," which seeks to provide a window into the practical challenges facing defense lawyers through a series of case studies.

We invite as guests defense lawyers, prosecutors, judges, jury consultants, reporters and even criminal defense clients. This semester, for example, a session included one of my former clients, Fred Schiff, who is the former CFO of Bristol Myers, along with the prosecutor in his case—which made for an interesting discussion given that the government ended up dismissing the securities fraud indictment. The opportunity to interact with the students is great fun,



David M. Zornow partner with Skadden, Arps, Slate, Meagher & Flom. and thinking rigorously about what we do as defense lawyers benefits my practice.

As my law firm bio hints, I developed a late-in-life obsession with Bob Dylan (after watching Martin Scorsese's 2006 documentary *No Direction Home*). Like many late-in-life converts, I have fallen hard (more than 30 concerts since then). On a less happy note, I am a diehard New York Knicks fan.

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

We have lots of lawyers in our litigation/controversy practices in lots of different places. There are approximately 600 of us throughout the firm's 22 offices worldwide.

While most of our litigators are located in our domestic offices, we have made a concerted effort to expand our litigation/controversy capabilities in Europe, Asia and South America, where we have thriving arbitration, commercial litigation, government investigations and antitrust practices.

Our clients are increasingly faced with cross-border issues and Skadden's global litigation footprint, coupled with our culture of teamwork across offices and an ability to draw on the expertise of our transactional and regulatory practices, enables us to deliver a formidable offering to clients.

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

It is difficult to single out three areas because of the breadth and depth of our litigation coverage. We are extremely proud of our practices in securities litigation, government investigations and white collar crime, commercial litigation, mass torts, insurance and consumer litigation, international arbitration, antitrust, IP and tax controversy.

We have in our ranks an array of former government officials from the DOJ, including three former United States attorneys, as well as from the SEC and CFTC. We have experienced a noticeable increase in the number of our cases going to trial across all of these areas, and over the last several years have invested in a superb, one-of-a-kind in-house jury and trial consulting team that works with our lawyers from the early stages of a matter in crafting winning strategies.

Our litigation/controversy practices have been recognized frequently as best-in-class, including by [Lit Daily-affiliated] Law.com publications, where we were recently named the overall winner of the New York Law Journal's 2018 Litigation Department of the Year competition. We also were named a finalist in The American Lawyer's 2018 Litigation Department of the Year competition and winner of the White Collar/Regulatory Litigation Department of the Year category.

**As head of the department, what are some of your goals or priorities?**

The principal goal is maintaining our reputation of providing outstanding client service and delivering great results in an increasingly competitive environment.

Where I think we particularly excel is in fielding teams to handle crisis situations that cross geographic and practice boundaries.

Recently, we handled a challenging crisis facing a global company. [Zornow declined to disclose the name of the client.] The matter involved investigations in the United States by the DOJ, SEC, FDA and Congress, as well as regulators in the United Kingdom and class action litigation in the U.S. We fielded a team from across our offices and practices that worked together seamlessly and delivered home-run results for the client.

That is our competitive advantage—that is what we work hard to maintain. It hinges to a large extent on our culture of teamwork and collegiality, and we perpetuate it in large part by constantly cross-pollinating new ideas and insights among the various practices and offices, and teaming up to provide cutting-edge thought leadership. When a matter hits, we've all worked together and know how to execute efficiently.

Our success also depends on recruiting the best legal talent and investing in their growth and development through training and by giving them a great deal of responsibility. We are also keenly focused on diversity and inclusion. Our mindset of walking through walls for clients permeates our teams no matter the level of seniority.

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

I think it begins with the legacy of Joe Flom, who built our firm on a number of simple but powerful precepts: approach every problem in partnership with the client; think outside the box, don't take the obvious solution; outwork your adversary; act according to the highest ethical standards; and tell your client what you really think. If we can continue to live Joe's ideals in every case, every day, we will continue to do well.

Joe's legacy of creativity can be found in the firm's unique investment in an in-house trial and jury consulting team that helps give our clients a meaningful edge in our litigated cases and sets us apart in a tangible way. Joe also had the foresight to open our office in Wilmington, Delaware, in 1979, which has positioned us perfectly to offer the Delaware-specific expertise that helps differentiate us from our peers.

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

We always keep an eye open for top talent, but we are very selective and put a high premium on identifying individuals who will fit into our “one-firm” culture. Unlike many other firms, we don’t bring in groups of laterals or entire practice groups. We place our emphasis on homegrown talent, coupled with outstanding laterals who we believe will do well as part of our platform.

Last year, Jay Neukom joined our Palo Alto office. He has litigated more than 100 intellectual property and patent disputes and recently secured a preliminary injunction for a client to stop a competitor’s use of a trademark and also defeated a temporary restraining order and preliminary injunction request for another client also facing competitor litigation.

We also welcomed Bill Batchelor, who practices out of our Brussels and London offices. He has over 20 years of EU and U.K. competition law experience and focuses his practice on conduct investigations, including abuse of dominance, cartels and vertical agreements. Bill recently represented Dyson before the EU courts in successfully challenging labeling regulations favoring competing vacuum cleaners.

**What were some of your firm’s biggest in-court wins in the past year?**

We represented BlackRock Inc. in one of the biggest cases involving claims against mutual funds, defeating, with prejudice, a \$1.55 billion excessive fee claim following a two-week bench trial in New Jersey. As a result, Eben Colby, Jim Carroll and Scott Musoff were honored as Litigators of the Week.

We persuaded federal prosecutors in Southern California to abandon criminal insider trading and perjury charges against medical device executive James Mazzo. Rich Marmaro and his team succeeded in obtaining two hung juries. After the second one (10-2 in favor of acquittal), we resolved the matter with a favorable no admit/no deny SEC settlement.

David Herlihy, Karyl Nairn and George Zimmerman represented two subsidiaries of NextEra Energy in a landmark arbitration in which the tribunal upheld claims that Spain’s actions violated Energy Charter Treaty standards. The roughly \$300 million award is the largest-ever against Spain.

For Sellas Life Sciences Group, Inc., on the eve of trial, Jay Kasner, Chris Malloy, Scott Musoff, Noelle Reed and Paul Lockwood secured dismissal and judgment on the pleadings in bet-the-company securities and breach of contract litigation in the Southern District of New York.

And Rob Saunders and Jennifer Voss secured the affirmance of a post-trial judgment for Sprint against claims arising from its \$3.6 billion buyout of Clearwire. The Chancery Court found the fair value of Clearwire’s stock was more than 50 percent below the deal price—the most dramatic downward departure from a deal price in the court’s history.

**Can you give an example or two of tactics that exemplify your firm’s approach to litigating cases?**

Leaving no stone unturned: In the case for BlackRock mentioned above, the plaintiffs’ case rested on the testimony of a highly respected expert witness. Our trial team left no stone unturned in unearthing devastating impeachment material, including physical copies of prior publications that were unavailable electronically. Skadden’s cross-examination demolished the witness’s credibility, helping to achieve a complete victory in the case.

Keeping an open mind and maintaining flexibility: As mentioned above, federal prosecutors abandoned criminal insider trading and perjury charges against medical device executive James Mazzo after a California trial ended in a mistrial as a result of a hung jury—the second hung jury in the case. When the co-defendant “tippee” was found guilty in the first trial and became a cooperating witness in the second, the Skadden team adapted their trial strategy to an entirely different prosecution theory, rethinking the use of previously admitted evidence.

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

We are always open to building on our strengths as opportunities present themselves and we expect to continue enhancing our international capabilities. But maybe it’s best not to lay all of our cards on the table!

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