

**Ropes & Gray chairman R. Bradford Malt and Republican presidential nominee Mitt Romney have a two-decades-long friendship that has benefited both men.**

By Victor Li

*Romney's Lawyer*

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**SK ROPES & GRAY CHAIRMAN** R. Bradford Malt when he first thought that W. Mitt Romney could be president of the United States, and Malt will say that that impression was formed at one of their early meetings, 22 years ago.

In 1990 Bain & Company looked ready to become a casualty of a stagnant economy and its founding partners' hubris. Five years earlier, the eight founding partners had sold 30 percent of the consulting company to an employee stock option plan for \$200 million. The plan borrowed from four banks to fund the buyout. Then a recession and a scandal involving Bain & Company client Guinness p.l.c. struck, and the consulting firm ran into trouble repaying the loans. Consultants were fleeing from the sinking ship.

With insolvency looming, the consulting firm turned to Romney, then 43. He had worked there before leaving in 1984 to form Bain Capital Inc. Romney knew he had a tough task in front of him. He had to convince banks to forgive some of the company's debt. He had to persuade the founding partners to give back millions to the company. Most importantly, he had to inspire confidence so that the company's lifeblood, its consultants, wouldn't leave.

That's where Malt came in. Geoffrey Rehnert, then-general partner at Bain Capital, had met and befriended Malt through a mutual friend around 1988, and recommended him to Romney. Malt, just 35 at the time, recalls being immediately struck by how poised and confident Romney was. In a Saturday morning all-hands-on-deck meeting right after Malt came aboard, Romney gathered everyone in Bain's largest conference room and laid out his vision. Romney promised financial transparency, and vowed to arrive early and stay late every day. Romney implored everyone to give everything they had, Malt says, and offered to let anyone who didn't want to make that commitment leave with no hard feelings. Only one person left. "The rest of us," Malt says, "were ready to follow Mitt off a cliff."

From then on, says Rehnert, Malt, who had been selected largely for his experience in leveraged finance, was involved in every aspect of the

**R. BRADFORD MALT, ROPES & GRAY CHAIRMAN, AT RIGHT, WEARS TWO HATS: ADVISING ROMNEY AND MANAGING THE FIRM.**

PHOTOGRAPH BY SHAWN G. HENRY





restructuring. He helped convince the Federal Deposit Insurance Corporation to forgive nearly \$10 million in debt and persuade founding partners to give back nearly \$100 million to the firm, while implementing a recapitalization plan that in the end forced the founders to give up control of the company.



**LEFT: ROPES & GRAY OPENED A TOKYO OFFICE IN 2007. BELOW: LEFT TO RIGHT, THEN-LIEUTENANT GOVERNOR KERRY HEALEY, BRAD MALT, AND THEN-GOVERNOR ROMNEY.**



Bain & Company ultimately avoided bankruptcy. “Brad and his team did a terrific job on the restructuring,” says Rehnert, who left Bain to start Audax Group in 1999 and asked Malt to represent his new company. “He won Mitt’s confidence, as well as that of my colleagues.”

Malt’s confidence in Romney was likewise forged in the crisis. “Mitt is a true leader and is someone who can deal with the intractable problems this country has,” says Malt. But the rescue of Bain & Company was just the start. The bond between the two men helped propel Malt into the chairmanship at Ropes & Gray, while the Bain relationship has been a transformative one for the firm. In the past year the relationship has evolved still further, with Malt taking an increasingly public political role as the trustee for Romney and his family’s trusts. If Romney succeeds in his presidential bid, it’s likely that he would turn to his most trusted inner circle of advisers, where Malt has long been a mainstay.

**MALT’S SUCCESSFUL HANDLING** of the Bain crisis was a coup for Ropes & Gray, which had previously handled only low-level employment law work for Bain Capital. As the recession of the early 1990s eased, Bain Capital turned to Malt to handle a number of major deals. In his first leveraged buyout deal for Bain in 1992, Malt helped the firm take over cable television

parts company Gilbert Engineering Co. Inc. after Bain’s usual outside counsel, Kirkland & Ellis, had a conflict. Bain invested just \$3 million of its own money and partnered with Oak Industries Inc. to buy 85 percent of Gilbert in a leveraged buyout worth \$100 million. Four years later, Bain turned a hefty profit, selling its interest to Oak for \$125 million.

Within a few years of the Gilbert deal, Bain Capital had become one of Ropes’s most important clients. Ropes had been a Boston-centric, 288-lawyer firm with small offices in Washington, D.C., and Providence in 1992, according to *National Law Journal’s* NLJ 250. But by the mid-1990s, half of Bain’s deal work was going to the firm, and Ropes & Gray was on its way to becoming a national powerhouse. The firm opened offices in New York in 2001, San Francisco in 2002, Silicon Valley

experience growth in both profits per partner and head count between 2007 and 2011. (The others were Jackson Lewis, McGuireWoods, Paul, Weiss, Rifkind, Wharton & Garrison, and Williams & Connolly.) Ropes’s revenue increased every year during the recession except for 2009, when it declined by less than 1 percent. Today, the firm has nearly 1,000 lawyers; 2011 gross revenue (\$903 million) and profits per partner (\$1.54 million) were both at firm record highs.

“We could have *not* opened in new geographies, especially since it takes a while to ramp up,” says Malt. “We could have *not* hired laterals. We could have cut associates, and that would have resulted in a better number. But we chose to invest in ourselves. And it’s paying off now.”

**WHAT HAS BEEN THE PAYOFF** for Romney, as he has turned again and again to Malt? Romney declined to be interviewed for this article. Via a spokesman, he called Malt “a longtime trusted adviser to my family but, more importantly, a good friend to Ann and me. I value his friendship as much as his good advice and sound judgment.” But in a 1995 *American Lawyer* article highlighting Malt’s legal prowess [“45 Under 45,” December 1995], Romney said, “Brad could take out your liver, if he needed to save your life, and you’d never even know it.”

A hint of what Malt brings to the table comes from Peter Lamm, who was general partner of the investment partnerships managed by Butler Capital Corporation and a protégé of company founder Gilbert Butler. Lamm recalls that it was Malt who prevented Lamm’s departure from

Butler’s firm in 1994 from turning ugly. Lamm says Malt got them to realize that an acrimonious departure that played out in the papers or, worse, in the courtroom was not in their best interests. Instead, Malt helped them draft letters together to Butler’s investors and to finalize Lamm’s separation agreement. “It definitely could have gotten ugly,” says Lamm. “But Brad has an amazing but subtle gift of knowing how to manage a process to make sure it doesn’t get to that place where it gets ugly.” When Lamm looked for a private equity attorney to represent his new venture, Fenway Partners, he says there was only one name on the list: Brad Malt.

Butler, for his part, says that he trusted Malt to protect Butler Capital’s interests. In fact, when Butler sold Contech Construction

Products Inc. to Apax Partners L.P. in 2005, Ropes represented both Butler and Apax, with Malt making sure that each side was walled off from confidential information about the other. “That’s highly unusual,” says Butler. “But that’s how much we trusted him.” (Apax owns a majority stake in ALM Media LLC, publisher of *The American Lawyer*.)

Malt’s talents didn’t go unnoticed at the firm. At 39, Malt was the youngest Ropes partner to be tapped for the powerful policy committee. A decade later, he assumed the chairmanship. (Previously, the most senior position was managing partner; but Malt and John Montgomery split those duties, with Malt taking the more senior role as chairman and Montgomery becoming managing partner.)

**MALT SAYS HIS FRIENDSHIP** with Romney was really cemented in 2002, during a crisis that nearly derailed Romney’s gubernatorial bid. Massachusetts law requires that candidates for governor live in the state for seven years prior to running. Democrats had challenged Romney’s Massachusetts residency because he had spent three years in Utah in the late 1990s helping to turn around the troubled 2002 Salt

Lake City Winter Olympics. Things looked bad when it was revealed that Romney had filed his taxes as a part-time Massachusetts resident in 1999 and as a nonresident in 2000, and received a \$54,000 tax break on his Utah home because he classified it as his primary residence.

Malt and Montgomery worked round-the-clock to prepare for the hearing before the Massachusetts board of elections. “We basically had to encapsulate Romney’s entire life into three weeks and look at everything, including his money,” says Montgomery. He and Malt prevailed by arguing that Romney’s tax preparers at PricewaterhouseCoopers LLP had made a mistake. They produced mountains of financial records to make their case, and put Romney on the stand for four hours. Montgomery also prevented the state Democratic party from getting a full look at Romney’s finances, convincing the state Ballot Law Commission to limit the scope of the investigation to the 1999 and 2000 tax returns. “Brad helped plan the overall strategy and was the main person coordinating with Mitt,” recalls Robert White, a former cofounder of Bain Capital and chair of Romney’s transition committee after his election as governor.

Afterwards, Romney named Malt trustee,

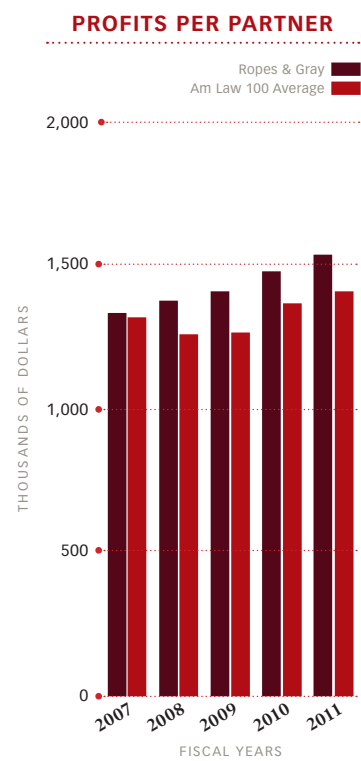
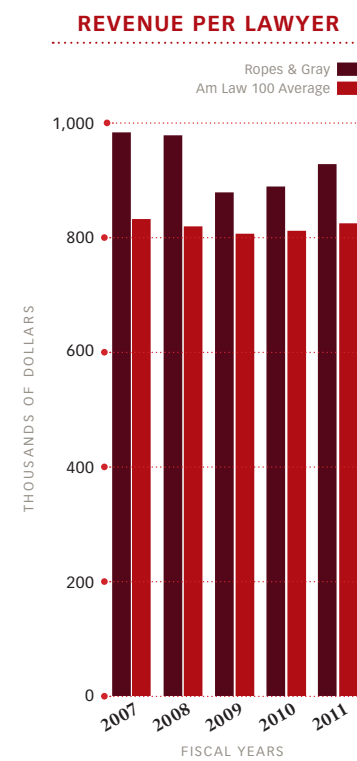
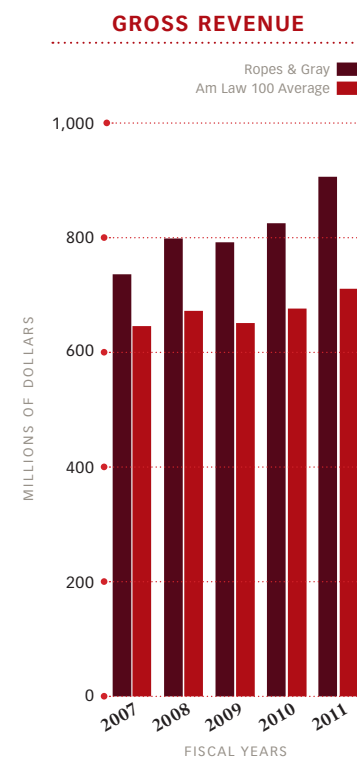
giving him sole discretion over investment decisions for his blind trust. (A blind trust removes investment decision making from officials’ hands, shielding them from conflict-of-interest allegations.) “Mitt and his wife have total faith and trust in Brad,” says White, now a volunteer on Romney’s presidential campaign. “Otherwise, they would not have given Brad full control over their finances.”

Still, Malt’s performance as trustee has come under criticism. In January, after the campaign released Romney’s 2010 and 2011 tax returns amid public pressure, Malt defended Romney’s Swiss bank account and Cayman Islands investments, among others, emphasizing that both were legal, standard components of a high-net-worth investor’s portfolio.

*The New York Times* also faulted Malt in January for what reporter Floyd Norris called a mistake in the Romneys’ 2010 returns. Norris said the Romneys’ capital gains were overstated, leading the couple to pay more in taxes than they owed. “It’s ironic that *The New York Times* can’t decide whether it thinks Governor Romney paid too much tax or too little tax,” says Malt. “I hired an expert team at a Big Four accounting firm to prepare the tax returns. They did a good job, and I relied on their work.”

## CONSISTENT STRENGTH

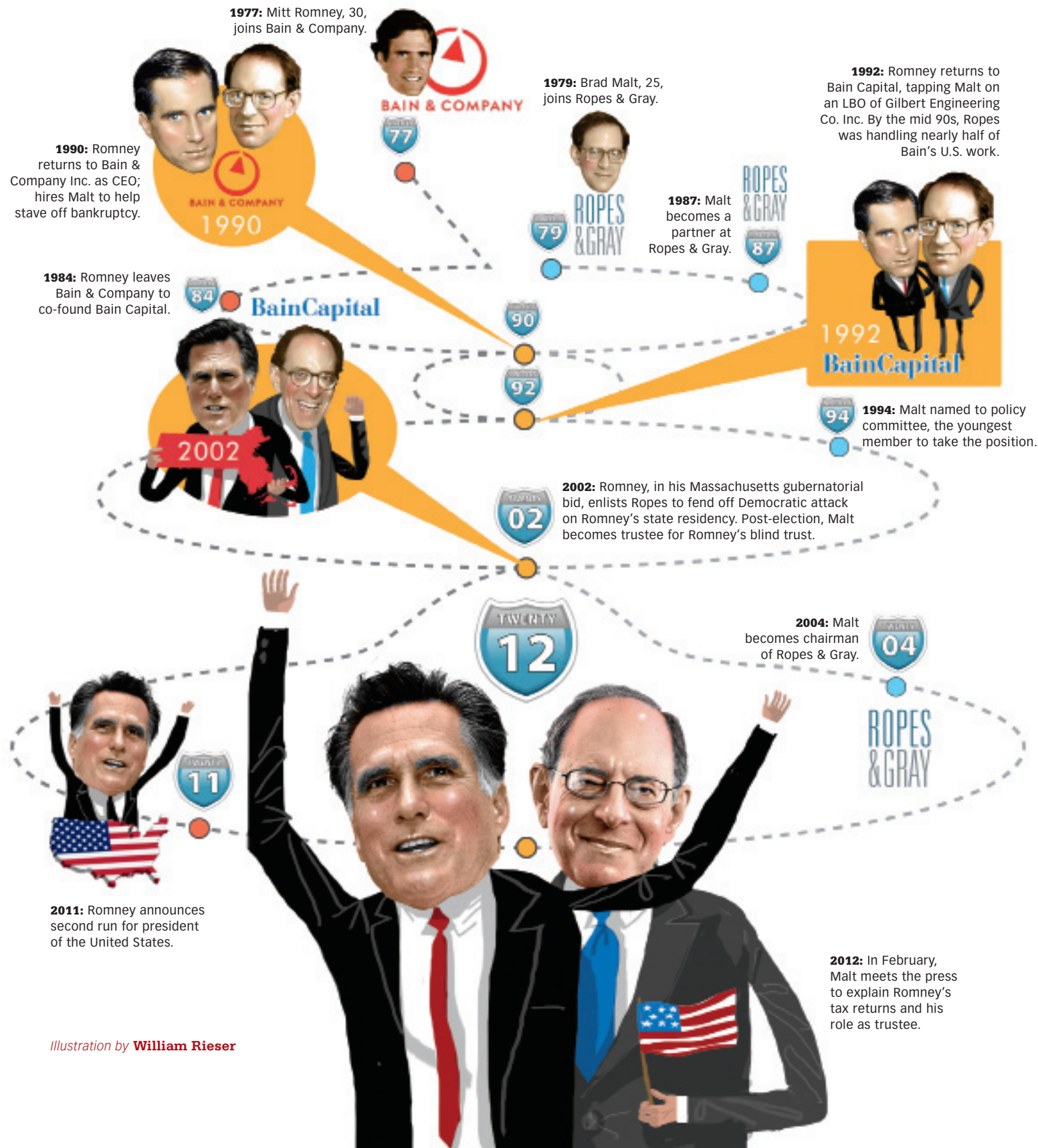
Since 2007, Ropes & Gray has been one of five firms to maintain growth in profits per partner and head count each year; gross revenue dipped slightly in 2009, but has otherwise been in an upward trend.





## ROAD TRIP

Since meeting in 1990, Ropes & Gray chairman R. Bradford Malt and Massachusetts governor and presumptive presidential nominee Mitt Romney's professional lives have been closely linked. Here's a look at some of their career highlights.



ROMNEY: 1977, ROMNEY FAMILY/CORBIS; 1990/92, JUSTINE SCHIANO/GETTY IMAGES; 2002, BRIAN SNYDER/CORBIS; 2011/12, RICK FRIEDMAN/NEWS.COM

Illustration by William Rieser

Daniel Feheley, the tax private equity leader at PwC who prepared Romney's tax returns, declined to comment on the returns, but he praised Malt's work as trustee. "Brad's not a tax lawyer, but he knows a lot about taxes," says Feheley. "I'd explain a tax issue to him, and he'd start asking me questions where, at first, I'd think he didn't understand, only for me to realize he understood and was actually five steps ahead. He was asking questions I hadn't considered yet."

Malt's closeness to Romney has also raised questions about a potential conflict of interest. ABC News pointed out in December that under federal law, only a financial institution that has not done business with the federal officeholder can serve as trustee. The Romney camp conceded to ABC that Romney's blind trust did not meet the federal requirement, but it pointed out that the trusts were okayed by Massachusetts's State Ethics Commission when Romney became governor. The Romney campaign confirmed that Romney will comply with the stricter federal rule, if elected. Malt, for his part, said that he would have to step down as trustee in that event.

Questions have also been raised about whether the trust is really blind when it comes to removing decision making from the Romneys. In April, the *Times* reported that Ann Romney's blind trust invested \$10 million in Solamere Capital LLC, a PE fund started by the Romneys' eldest son, Tagg, in 2008—months after Romney dropped out of the GOP presidential race. Malt told the *Times* that he invested in Solamere without the Romneys' knowledge and that he did it because he trusted the founders. "I had confidence in their talents, integrity, and intellect," he told the *Times*.

Malt says that he has done his job without any influence from the Romney family. "When Mitt wasn't in office or running, I felt my fiduciary duty was to make prudent, diversified investments," says Malt.

In the year since Romney announced his presidential bid last June, Malt has worked to keep his trusts free of politically toxic assets. "When [Romney] decided to run, I felt my duty was to make prudent investments that were consistent with his political views," he says. Malt has divested from pharmaceutical firms that make drugs related to birth control or abortion or that are engaged in embryonic stem cell research, and has unwound bets on Chinese currency. In early 2011, he sold investments related to Fannie Mae and Freddie Mac after they came under fire for their role in exacerbating the recent financial crisis.

Ironically, in shifting investments, Malt draws attention to one thing Romney has tried to deflect attention from: the fact that some of his positions on issues like abortion appear to

have moved to the right in recent years. Malt rebuffs the notion that Romney's political positions are a moving target. "The reason I have had to sell investments from time to time is because third-party discretionary asset managers bought new assets, or because companies in the portfolio have entered new businesses or geographies, or because Governor Romney has articulated a position on an issue," Malt says, "not because of any change in political views."

**AT FIRST GLANCE**, the two men would seem to be polar opposites. Romney, 65, is athletic and telegenic. Malt, 57, but looking the elder of the two, is the lanky and bespectacled lawyer who majored in applied mathematics at Harvard University. Romney has a reputation for being



ROMNEY AND MALT IN 2010.

awkward when he tries to be funny. Malt's sense of humor within his firm is so legendary that he's been compared to Ashton Kutcher during his *Punk'd* days. Romney and his wife have four cars, including a pair of Cadillacs. Malt doesn't own a car and walks to work every day, even when it rains. Malt is an oenophile, as well as a coffee drinker who tries to buy from Bain Capital-owned Dunkin' Donuts as much as possible. Romney, a devout Mormon, adheres to the religion's ban on both beverages.

Still, the two have a lot in common, starting with the way they approach problems. "Both Brad and Mitt are extremely intelligent and highly analytical, but they are also both very aware of human nature and what makes people tick," says Rehnert.

Malt declined to talk about his personal political views, except to identify himself as a traditional Massachusetts Republican. And he won't comment on Romney's shift toward more conservative views on hot-button issues like abortion, gun ownership, and gay marriage. He defends Romney's Massachusetts health care

reform law, which contains many of the same features that President Barack Obama used in his health care reform law, as an example of how Romney is good at solving the unsolvable. Within the firm, Malt is likewise low-key about his close professional and personal relationship with Romney. His forty-seventh-floor corner office inside Boston's Prudential Building is as full of tchotchkes as a flea market, but it contains just one piece of Romney memorabilia: a blue campaign placard from Romney's 2002 run for governor. Evidence of his relationship with Bain and other private equity clients, however, is readily apparent. Dozens of deal toys and trinkets from Bain Capital line the window sill.

Colleagues at the firm say they appreciate that Malt doesn't wear his political involvements on his sleeve. "Brad is incredibly respectful and understands that while we all have different opinions, we need to work together," says diversity committee head Diane Patrick, whose husband is Massachusetts Governor Deval Patrick, an unabashed Obama supporter. The two lawyers have never spoken about their politics, she says. Malt's coleader, John Montgomery, is also a Democrat.

In fact, Malt is known more around the office for his pranks than his politics. There was the time that Malt, then an associate, sent out a memo on managing partner's stationery listing everyone who failed to attend a firm event and castigating them for not showing up. "There was a line out the door of people who wanted to apologize to [then-managing partner] Truman Casner," recalls Malt. One time, as a partner, he hid a summer associate's suits so that the associate had to wear his biking outfit around the office for about half an hour.

What will happen if Romney wins in November? Presidents often bring lawyer friends to the White House as advisers: Obama tapped Valerie Jarrett, former president of a Chicago real estate development firm, as a senior White House official. George W. Bush brought lawyers Harriet Miers and Alberto Gonzales into his administration. Malt says he's not interested. "I have a stewardship obligation to leave the firm in the best possible position for the next generation of partners," he says. But if a President Romney asked Malt to come to the White House, would he really say no?

E-mail: [vli@alm.com](mailto:vli@alm.com).