

Cravath, Swaine & Moore LLP

Benjamin Gruenstein, Partner—Litigation

Benjamin Gruenstein is a partner in Cravath's Litigation department and a member of its Investigations and White Collar Criminal Defense practice.

Ben's practice focuses on the representation of U.S. and multinational companies and their senior executives in government and internal corporate investigations in areas including the Foreign Corrupt Practices Act, health care fraud, insider trading, accounting fraud, trade sanctions, and accompanying civil litigation. He has handled both domestic and cross-border investigations, including in Latin America, Asia, and Europe.

Ben received an A.B., *summa cum laude*, in Philosophy and Mathematics from Harvard College in 1996, where he was elected to Phi Beta Kappa, and a J.D., *magna cum laude*, from Harvard Law School in 1999, where he was an editor of the *Harvard Law Review*. During law school, Ben was a summer associate at Cravath. After graduating, he clerked for the Honorable Stephen F. Williams of the U.S. Court of Appeals for the DC Circuit and for the Honorable David H. Souter of the U.S. Supreme Court.

Ben served as an assistant U.S. attorney in the Criminal Division of the U.S. Attorney's Office for the Southern District of New York from 2002-2008. He joined Cravath in 2008 and became a partner in 2012.

Describe your practice area and what it entails.

My practice area covers the full range of corporate crises, regulatory enforcement proceedings, and white collar criminal defense matters. I represent U.S. and multinational companies, as well as their boards and senior executives, in government prosecutions and internal corporate investigations. These investigations can arise when a company detects potential wrongdoing in response to whistleblower claims and shareholder demands or as a result of government inquiries. Clients will often retain Cravath to handle both investigations and related litigation, which means we can craft a comprehensive legal strategy for them. Much of my practice is international in nature, as cross-border issues—such as compliance with the Foreign Corrupt Practices Act and trade sanctions—are high priority, both for U.S. companies and U.S. government regulators.

What types of clients do you represent?

One of the things I enjoy most about Cravath's investigations practice is that I represent clients across all industries, whether they are companies or executives. This includes both longtime and new clients of the firm. I have represented clients such as Avon Products, Inc., IBM and NCR Corporation in government investigations relating to Foreign Corrupt Prac-

tices Act matters, as well as U.S. Securities and Exchange Commission investigations into alleged accounting fraud and disclosure issues for clients such as DreamWorks Animation SKG, Inc. and Computer Sciences Corporation.

What types of cases/deals do you work on?

My work encompasses government and internal investigations in any areas where our clients have issues, whether it is the Foreign Corrupt Practices Act, insider trading, or accounting fraud matters. I additionally represent executives in internal and government investigations to ensure that their rights are protected. Most of the litigation I work on is related to government investigations, whether criminal or civil. Of course, there is other litigation which I do, and I very much enjoy doing it, as it keeps up my trial practice and gets me into court.

How did you choose this practice area?

When I finished clerking on the DC Circuit and then at the U.S. Supreme Court, I started as an assistant U.S. attorney in the Criminal Division of the U.S. Attorney's Office for the Southern District of New York, where I worked for five years. Having that experience gave me perspective on how to conduct investigations and how prosecutors expect you to

conduct them. So it was a very natural fit to do this sort of work at Cravath. My experience back then as an organized crime prosecutor is, of course, substantively very different than the sort of work I do now, but it taught me transferable skills in how to conduct investigations and how to try cases.

What is a typical day like and/or what are some common tasks you perform?

I would divide a “typical day” into tasks that are external facing and internal facing. Externally, I spend a lot of time meeting and on the phone with clients: talking through their issues, advising them, and strategizing on how best to approach the problems that they’re facing. And internally, I’m working with my associates to figure out how to develop a strategy for our clients and then implement it. The work my associates do—preparing to conduct interviews in the course of investigations or drafting presentations to the government—is all to implement the strategy that I’m discussing with clients. At Cravath, our associates are a core part of how we represent clients, and we devote a tremendous amount of time both in training them and incorporating them into key legal work in meaningful ways.

What training, classes, experience, or skills development would you recommend to someone who wishes to enter your practice area?

All litigation skills are transferable to investigations work. Tasks like deposition-taking or cross-examining witnesses create a foundation that is very helpful in conducting sensitive interviews in internal investigations. Hands-on trial experience is extremely helpful in defending clients against potential claims by the government. Even though most government matters end in settlement, the ability to anticipate the strengths and weaknesses of the government’s—and my client’s—case is extremely helpful in setting strategy. So for students and lawyers who are looking to work in this field, I couldn’t stress enough the importance of developing fundamental trial skills.

What is the most challenging aspect of practicing in this area?

In corporate government investigations, the government has the power of prosecution, which creates significant leverage and, in turn, places pressure on companies to settle. And ultimately, the fight may center not on whether our client is guilty or innocent but over what type of settlement the company will enter into. That said, companies often come to Cravath when they’re not looking for a settlement or when they think that the settlement being offered to them is not palatable. As in all of our practice areas, those are the representations we look forward to: complex and fundamentally important to the client. The challenge is figuring out how to approach the investigation

in a way that, even if the cards are stacked against your client, you try and get a result that is acceptable and just to them.

What misconceptions exist about your practice area?

There is a misconception that you are not going to hone your litigation skills by doing white collar criminal defense because the cases settle—but it’s important to keep in mind that everything you do in investigations has a corollary in civil litigation. The skills you develop as a white collar lawyer are transferable to civil litigation and vice versa. For example, the skills you develop in conducting interviews in an internal investigation are the same skills you need to take depositions. And being able to synthesize complex facts and advocate for your client are skills you need just as much when you’re across the table from the government as when you’re talking to a jury at trial.

What is unique about your practice area at your firm?

Typically, clients don’t come to us with their run-of-the-mill matters. We usually handle the investigations that our clients think are the most important for them, whether because of the financial exposure to the company or the potential reputational risk. Because of the firm’s overall reputation, we bring a certain credibility to investigations that’s critical when dealing with the government. We approach investigations with the same seriousness and preparation that we handle all of our litigation and corporate matters, so that when we go before the government, there is no question that the representations we are making are accurate and credible. One thing that is different about our investigations group from other firms is that most of our partners began here as associates straight out of law school—this is a core part of our model, which puts immense emphasis on our training of associates. Like other firms, our investigations partners also served in the government, but we’re different because most of us worked at the firm before heading off to the government and then coming back.

What are some typical tasks that a junior lawyer would perform in this practice area?

Junior associates will handle the nuts and bolts of an investigation. That includes all facets of fact development: preparing to interview witnesses, interviewing witnesses, interfacing with the client on document review and analysis, creating fact summaries, and preparing for presentations to the government. These are all things that associates can do as soon as they get in the building. At the beginning of an investigation, I sometimes won’t know how significant the matter will become, and I typically staff the matter as leanly as possible, often with just me and a junior associate. As time progresses, a matter can require me to add resources, but often, that junior associate takes a lead role, as they know the case better than anyone, having worked on it from the outset.

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