

Litigation Leaders: What the ‘Cravath System’ of Talent Development and Generalist Approach Mean to Gary Bornstein and Kevin Orsini

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 **Gary Bornstein** and **Kevin Orsini**, co-Heads of the litigation department at **Cravath, Swaine & Moore**. Both are based in New York, as are all the firm’s litigators. But both also have spent considerable time in California in recent years. Bornstein has defended Qualcomm against a wide-sweeping anti-trust suit and represented Epic Games in its landmark challenge to certain charges and limits Apple places on third-party developers who use its App Store. Orsini has represented Northern California utility PG&E in a mix of complex litigation, bankruptcy proceedings, and government investigations—some related historic wildfires in the region in recent years.

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

Gary Bornstein: In college, I gave very little thought to being a lawyer. I majored in architecture and did a lot of theater, and I actually turned down a job acting at a repertory company to go to law school. But once I was there, I loved it—and I knew that I would be a litigator. Litigation is a different kind of theater than what I had previously done, but it too is about telling a story that connects with people. That’s true both in the courtroom and on the page. Litigation filings may not be great works of literature, but they should still be compelling to read and written with sensitivity to the fact that you are trying to reach and persuade another human being.

Kevin Orsini: I was first drawn to the law when I interned as a junior in college for an indigent defense clinic at a nearby law school. I was fascinated by the legal system and captivated by the passion of the law students with whom I



Courtesy photos

Gary Bornstein, left, and Kevin Orsini, right, with Cravath, Swaine & Moore.

was working. Ultimately, what drove me to become a litigator—and, in particular, a Cravath litigator—was the promise of a career spent tackling new areas of law and industry. I am privileged to represent some of America’s most prominent companies in a wide range of disparate litigations involving diverse subject matters. To deliver on the trust our clients place in us, we strive to become experts in their industries. To me, this is among the most rewarding parts of the practice. It makes each day incredibly interesting and fosters long-term, collaborative relationships with our clients.

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

Bornstein: Our litigation department comprises nearly half of our total firm headcount, and while we advise clients across the country and around the world, we do so with all of our litigators based in New York.

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

Bornstein: Cravath litigators are trial lawyers first and foremost, and our generalist training model supports our depth across all areas of litigation. Three areas in which we have recently been involved in particularly high-profile, landmark cases include antitrust, securities/M&A and general commercial litigation.

Our “depth of bench” in any particular area, though, is really driven by the needs of our clients, who come to us for their most complex, high-stakes, bet-the-company work. Under our model, Cravath lawyers are trained across practices with the broad-based experience to tackle complex cases from every angle, regardless of the area of law, industry or position of our client.

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

Orsini: Clients come to Cravath for their most consequential, cutting-edge matters, and the hallmark of a Cravath litigator is the ability to craft an individualized solution that achieves the client’s goals. That means having the experience and credibility to try cases through to judgment, together with the ability to identify other paths when appropriate. Our generalist approach to training provides our lawyers with the breadth of experience to be versatile across industries, nimble in working across various areas of the law, and deft in problem-solving no matter where our client stands on a particular dispute.

Our collaborative culture is also built around the client—we do not see individual partners as “owning” client relationships. Rather, the whole firm’s expertise is leveraged, and none of us is shy about seeking advice from one another. Clients come to Cravath for the resources and expertise of our whole firm, drawing on an unmatched reservoir of litigation experience.

Cravath rarely makes lateral hires. What does focusing on developing homegrown talent mean for your litigation teams?

Bornstein: What has long been referred to as the “Cravath System” is our model for developing talent, incentivizing collaboration and providing the highest quality of service to our clients. Because we promote almost exclusively from within, it is critical that we recruit the most promising talent and train our associates with the skills, creativity and legal expertise to take on the high-stakes, complex matters we are known for handling. For our litigation department, associates at all levels of seniority rotate through practice areas, building a broad base of experience, working with partners and clients

on various kinds of matters and across industries, and developing the agility that we believe is crucial to our lawyers’ ability to master new areas of the law throughout their careers.

This intense focus on training and cultivating our talent involves a combination of early responsibility and close mentorship. The rigor of our system is thoughtful and intentional—it involves collaboration with associates in determining what areas of law or practice they need exposure to, and among the partners as to how best to ensure every associate receives appropriate training. Within our teams, there is a genuine spirit of teamwork—lawyers at every level, having themselves gone through this system and relying on one another, are incentivized to continue helping each other learn and tackle new challenges.

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?

Orsini: In a year when trials were especially challenging and clients were faced with unprecedented business disruption, we continued to show up—albeit often remotely—for our clients in and out of court.

The firm won a years-long antitrust battle for Qualcomm, **securing a complete defense victory** at the Ninth Circuit that confirmed the lawfulness of Qualcomm’s business model and vacated a worldwide, permanent injunction against the company. We also worked alongside PG&E, handling the complex litigation, bankruptcy proceedings, government investigations, criminal probation and other legal issues required for PG&E to resolve historic wildfire litigation and emerge from the largest utility bankruptcy in U.S. history. Gary and I were personally part of those teams—Gary worked on Qualcomm and I worked on PG&E—and each of those matters required significant commitment from a number of Cravath lawyers over multiple years.

Bornstein: We also secured an important trial win for Reynolds American in the first judicial appraisal case of a public company to be tried to decision outside of Delaware. We defended the Boston Red Sox in its highly publicized sign-stealing litigation, secured back-to-back victories for Goldman Sachs in connection with its financing role in a \$3 billion merger, and secured multiple wins to wrap up litigation related to Occidental’s \$57 billion acquisition of Anadarko—the largest U.S. oil and gas merger in over 20 years.

We have stayed active in our pro bono practice as well. After nearly 40 years and contributions from generations of

Cravath lawyers, we brought to a close our representation of African American and female plaintiffs in litigation related to employment discrimination in Birmingham, Alabama. In December 2020, the court granted the parties' motion to terminate the last remaining piece of the litigation—a consent decree with Jefferson County—following years of negotiation and tangible strides by the County toward ensuring future hiring and promotion occur without discrimination.

Orsini: Looking ahead, we expect to try several more matters in 2021—not including two just-concluded trials for The Williams Companies, related to Williams' recovery of a \$410 million termination fee in connection with a failed merger, and Epic Games in its [landmark antitrust suit against Apple](#) with wide implications for the mobile industry.

In every case we have mentioned, our work required close collaboration and coordination among our teams and trial support staff, as well with our clients, who trust us to lead these critical matters. Through the challenging and often changing circumstances of the last year, the strength of both our client relationships and collaborative culture were integral to our success.

As department leaders, what are you focusing on this year?

Bornstein: As always, our principal focus is providing our clients with the best possible representation in their ongoing matters, as well as preparing them for the shifts associated with the reopening of our economy and potential regulatory and policy changes. The past year has demonstrated both the unpredictability of the business and legal landscape, and that clients' legal challenges will evolve and take on new and different forms. 2021 will be another transformative period for businesses, and these areas require our close attention in what is already a busy, and quite exciting, year for Cravath.

Within the firm, we aim to continue developing a strong platform of talent for the future. Our experiences working remotely during the pandemic have proven that Cravath is more than just a shared place of work—the core of our culture will always be teamwork and collaboration, an inclusive and collegial community, and a dedication to the pursuit

of excellence on behalf of our clients. As department leaders, we remain deeply committed to fostering an inclusive and supportive environment where all of our attorneys can thrive and receive the most rewarding professional experience possible.

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

Kevin: Lawyers and staff across the firm have been incredibly resilient in meeting client needs over the course of the last year. Like all businesses and firms, there were practical changes to how we were interfacing with our clients as the pandemic began, travel was restricted and courts closed down, but we were fortunate to have an IT infrastructure that allowed us to pivot quickly to virtual work. We were able to focus wholly on helping our clients as they were thrust into an unprecedented environment with new and varied legal challenges.

Less travel was also a major change in our own day-to-day routines. Having spent significant time over the course of preceding months and years in other states—in California, for example, where we were both spending quite a lot of time for our clients PG&E and Qualcomm—the shift to remote meetings and hearings was abrupt. Like everyone, though, our litigation department found a new rhythm to work together and support our clients. Looking back to 2020 and the myriad issues facing businesses as the pandemic set in, it was a privilege to be able to help our clients navigate such a critical period.

Bornstein: We also had to adjust to the many differences in working remotely—we have missed collaborating with one another in person, and while we are able to work together more now with trials back in full swing, we are certainly looking forward to a return to normalcy. As a firm, we remained as focused as ever on ensuring the best training possible for our lawyers, especially maintaining the same high level of mentorship and development while still remote. We have been able to do so with success, but we are excited for a return to the office and all the benefits of face-to-face mentorship.

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