

# LAWDRAGON

## Lawyer Limelight: Gary Bornstein and Kevin Orsini



*Photo by Nick Coleman.*

*By Katrina Dewey and John Ryan*

The challenge of finding a commonality in the work of Cravath's litigators is the dizzying array of industries and types of disputes the department touches. An obvious theme, perhaps, is the consistently high-profile nature of the cases for the firm's unparalleled client base, which in recent matters has included Qualcomm, Facebook, PG&E, American Express, Time Warner and too many others to name here. According to department Co-Heads Gary Bornstein and Kevin Orsini, however, what truly sets the team apart is its unrelenting approach to seeing past individual cases to grasp the broader business interests of clients whose needs are informed by deep histories and the daily demands of forward-planning. When having a great trial lawyer simply isn't enough – as is often the case these days – Cravath provides a deep bench where each member is expected to place the granular decision-making of complex disputes within the global picture of entire industries.

Of course, as Cravath lifers, Bornstein and Orsini do not credit themselves for the long list of recent achievements, instead placing them within the context of the firm's traditions from which they both emerged. Most prominent is Cravath's rotation system for associates, which

creates “generalists” by providing experience across several of the litigation department’s core practice areas. As they rise in their careers, Cravath’s more well-rounded group of young lawyers see themselves not only as emerging partners to one another but also with the clients who come to the firm with their most challenging and important matters.

**Lawdragon:** What attracted each of you to Cravath, and to become a litigator? The firm is no stranger to precedent-setting matters – was there a particular case, the chance to work with a specific lawyer, or something else that drew you in?

**Gary Bornstein:** Becoming a litigator was the only path I considered while in law school. Litigation was a natural fit for me, because it would give me opportunities to be on my feet and also let me focus on crafting persuasive writing and telling a narrative at trial. Compelling storytelling, backed by a meticulously assembled record, is key to successful litigation.

My decision to come to Cravath was simple: I wanted to be part of the litigation practice. As a law student, I saw the exciting clients who came to Cravath and the significance of the matters Cravath handled. It was obvious that clients placed immense trust in Cravath to handle their most complex and high-stakes work on matters that could impact the trajectory of the company’s business.

**Kevin Orsini:** I first became interested in litigation as an undergraduate, when I interned for an indigent defense clinic at a local law school. The issues involved and the passion of the law students I worked alongside solidified my interest in the legal system. In particular, I was fascinated by the trials and other hearings I was able to observe and quickly realized that I wanted to pursue a profession that would allow me to be in court as much as possible.

What ultimately drew me to Cravath was the promise of being trained as a trial lawyer by the best in the business. I was intrigued by the generalist model that would allow me to hone my skills in a wide range of litigations across diverse subject matters. Learning to become an expert in a variety of legal disciplines, while representing clients across a host of industries, really appealed to me.

**LD:** Could you each talk about some of your early experience as associates, and any mentors who helped shape your approach to litigation?

**GB:** My first mentor at Cravath was the first partner I worked with as an associate: the late Bob Joffe. He was an extraordinary lawyer who shaped my entire approach to litigation. I learned from Bob just how much of the job of a litigator is about dealing with people. He taught me that while you have to master the nuts and bolts, like writing briefs and examining witnesses, you cannot really succeed unless you also connect with and truly get to know the people involved at every step of a case.

Bob was an expert at consensus building and magically getting people to come together. It was his thoughtful guidance and patience as a mentor that set the foundation for everything else I learned in my other rotations.

**KO:** One experience as a young associate stands out to me, both in terms of my own development and in terms of explaining the Cravath model of training. My first year as an associate, I was assigned to work on a large accounting-related securities fraud litigation. It was fairly new to the firm, and not much work had been done on it. The partner to whom I was assigned suggested that I spend a few months learning everything I possibly could about the more than one dozen different accounting issues, so that is what I did. By the time depositions came around, I had become the in-house subject matter expert on all of the key factual issues, and this provided me a tremendous advantage in working with the witnesses and led to significant responsibility early in my career. That lesson – always be the most prepared – has always stuck with me.

**LD:** Can you remember the first time you appeared in court? Tell us a bit about the case, your preparation leading up to it and any lessons you took away from the experience.

**GB:** I'm not sure I recall my first time in court, but one of my formative memories is from when I was a young associate, still in my first rotation. I remember being at the Central District of California, in Los Angeles. We were representing Time Warner Cable in a consumer class action antitrust matter, and we were there on a motion for class certification. There were several other lawyers representing other defendants who argued before me, and by the time I got to the podium, I really had nothing more to add.

So I told the judge that unless he had questions for me, I would rest on the papers and the points that the other defense counsel had raised. Hours and hours of preparation led to a pretty anticlimactic hearing. But we won the motion, and the plaintiffs then dropped the case. No drama for me, but a great result for the client. I have since told people that sometimes the best thing you can do is nothing at all.

**KO:** I don't recall the first time I appeared in court, but I remember like it was yesterday the first time I put a witness on the stand at trial. When I was a mid-level associate, I was assigned to join a team for a jury trial in state court that was scheduled to begin approximately six weeks later. Our client was the plaintiff, and my first witness was an individual who had overseen key aspects of the business relationship at issue. My goal with the direct examination was to lay the foundation for our damages case, which involved walking through the financial details of nearly two dozen reinsurance contracts for the jury.

As I prepared for the examination, I spent hours picking the brains of the most seasoned trial lawyers at Cravath, who were incredibly gracious with their time and mentorship. Based on their advice, I formulated a direct examination built around a narrative of my witness' experiences relevant to the trial, and sprinkled the narrative with the various financial details that I had to be sure were in the record. This enabled me to turn what otherwise would have been a very dry examination into an opportunity to tell our story in a way that the jury would find interesting. It was a tremendous experience, and when I sat down, I knew that I was completely hooked on trying cases.

**LD:** Gary, you've worked on a number of high-profile matters, including, most recently, for clients Epic Games and Qualcomm. Tell us your process in partnering with a client facing such complex challenges – could you describe one of those cases, discussing some of the key issues involved and how you addressed them?

**GB:** When a case is important enough to affect the client's business model, it demands the attention of senior management. This adds another layer in your responsibility to the client, particularly as you become embedded with the company to deeply understand the business and its goals. For both Epic and Qualcomm, I needed to be able to explain the strategy and potential consequences of each outcome, not just to the legal team, but to the business leaders as well. As a litigator, sometimes you deal with cases that are financially very significant but do not have a major strategic component for the company. But the Epic and Qualcomm cases had the potential to impact the very core of their business models. Yes, there was a lot of money involved, but the clients were principally concerned with how a decision could fundamentally alter the way they were able to operate. This made the Cravath team more than just litigators, but more comprehensive legal advisors with an eye on the clients' broader and long-term interests.

A challenge we faced in working with Epic was that we were brought on during the pandemic, and we didn't know a single person there; as it turned out, we didn't have a chance to meet any of the Epic people face to face until we were at trial. We went from zero to 120 in a year – getting up to speed so fast and not having the opportunity to visit their headquarters in North Carolina was a steep learning curve, and we also had to face two sophisticated and well-funded adversaries. Our experience in previous bet-the-company litigation allowed our team to keep our eyes on the task at hand and really focus on achieving the best possible outcome for this client we had never actually met.

**LD:** Kevin, you have been counsel to household names such as Facebook, American Express and PG&E – could you describe some of your work for these clients? Similarly, would you also talk about some of the key challenges those clients had to surmount, and how you worked through those issues with them?

**KO:** Being counsel to well-known clients, such as Facebook (Meta), doesn't change any of the strategy or planning that goes into getting to know the client and its business, or determining what its idea of success might be. In Meta's case, I am representing the company in an antitrust MDL involving claims brought by various groups of plaintiffs. While the identity of the defendant may attract more media attention, it does not change the fundamentals of sound litigation tactics and advice.

For American Express and PG&E, the challenges that came with representing them were vastly different – but both matters exemplified the type of complex and high-stakes litigation that clients regularly bring to Cravath.

Representing American Express in a seven-week bench trial against the Department of Justice and subsequent appeal to the Second Circuit and U.S. Supreme Court involved a unique set of

issues and preparation. Its win before the Supreme Court was a major victory for our client and has fundamentally shaped the way in which antitrust law is being applied, particularly in cases involving tech platforms. The antitrust lawsuit was originally brought by the DOJ and 17 state attorneys general challenging certain provisions in its merchant agreements; from the start of the investigation to the Supreme Court decision, the action spanned nearly a decade and challenged the core of the company's business model.

Partnering with PG&E was also a tremendously complex effort. I represented PG&E in every part of its litigation response to the 2017 and 2018 wildfires, and served as lead trial counsel in hundreds of lawsuits, including numerous putative class actions. It was one of the largest and most complex sets of mass tort litigations in recent years.

Perhaps the most complex phase was the highly public Chapter 11 proceedings during 2019 and 2020. PG&E's bankruptcy was the largest utility bankruptcy in U.S. history, and we were tasked with resolving wildfire claims that the victims estimated to exceed \$50 billion. I worked very closely with the firm's Corporate Department, particularly my restructuring partner Paul Zumbro, on these matters. It was a true example of our multidisciplinary culture of client service, and I am proud that we were able to help lead the company out of Chapter 11 and ensure the victims were compensated.

**LD:** There is an intense focus on antitrust right now. Could you talk about your current work in this area, as well as the benefits of Cravath's rotation system in creating multidimensional litigation leaders?

**GB:** I didn't know anything about antitrust before coming to Cravath; it wasn't something I studied in law school. Bob Joffe was my introduction to antitrust during my first rotation, and I have worked on a number of antitrust matters since then, both as an associate and as a partner. Even now, antitrust is not the only thing I do; it is an important part of my practice, but not its entirety. It is a testament to the training we receive as associates that our lawyers, at all levels of seniority, have the ability to handle a wide range of complex issues across multiple practice areas – we think it's something that makes Cravath genuinely unique. Those of us who have grown up at Cravath learn how to become leaders and litigators through the rotation system.

**KO:** I also hadn't spent much time on antitrust before joining Cravath. I took a single course on it at NYU, and while I found it interesting, I had no idea I would end up spending so much of my time working on antitrust matters.

Like others in our antitrust litigation practice, I was trained as a generalist and have a broad base of expertise – this is key to how I and other Cravath attorneys are able to bring a big-picture perspective to matters. We can be creative and flexible in approaching these issues because our rotation system gives us a strategic advantage by exposing associates to a wide range of skillsets. I think it's also a big reason why clients trust us to handle these types of major matters: They know our lawyers bring a perspective that takes into account all aspects of potential litigation, as well as their fundamental business realities.

**LD:** Looking back on your careers, what would you say are the distinctions in being able to litigate a single case versus overseeing a multifront litigation? What sorts of skills do you need to handle complex litigation effectively?

**GB:** The strategy for preparing for a single battle is very different than the strategy for preparing for a broader war. When you are starting out and are working on one case, you can focus on finding the best outcome for maximizing success in that specific matter. But as you develop and become an advisor to the client on many fronts, the bigger picture may mean that the result of a single case is not the only end goal in a much deeper and broader relationship. As a partner to the client, you need to start thinking about how the actions you take in this specific litigation might intersect with other business goals.

**KO:** Widening your perspective from a single case to multiple matters with sometimes competing interests requires you to have a detailed understanding of the entirety of that client's litigation and regulatory portfolio, as well as a working knowledge of how they are defining success. In taking steps toward overseeing multifront litigation, you want to have the skills to be able to help manage and direct other aspects of a client's business goals as well. That shift requires a close understanding of the company itself, which brings us back to the deep trust that clients must have in you as a partner.

**LD:** Describe the relationship between the two of you as Co-Heads of the Litigation Department, and tell us some of your goals.

**GB:** By necessity, it's a good relationship. We came up in the same environment – as associates in Cravath's rotation system – which has helped tremendously in how we approach and solve the problems that come across our desks. Kevin and I spend a lot of time thinking about how to run and improve the Litigation Department, and I am very happy to have somebody to help balance the workload. I find that we often agree on the issues that require our attention, and we are, of course, sounding boards for each other if we ever have tough questions.

**KO:** We both agree that one of our main goals as Co-Heads is to work together on maintaining Cravath's historic commitment to building a strong platform of future talent. Cravath is its people, and our people create the culture. Our work-from-home experience throughout the pandemic has really demonstrated that the firm is much more than just a shared place of work – we want to continue fostering our culture of teamwork, collaboration and community. Particularly during these challenging times, I have been very grateful to have Gary as my partner in this important endeavor.

**LD:** Diversity and inclusion are considered priorities in the legal community in a fundamentally different way than a generation ago. What steps does Cravath take to ensure that diverse backgrounds are valued and respected?

**GB:** Everyone here has a distinct point of view, and we are taking steps to ensure that people who come to Cravath understand that their views and perspectives are valued, and that their

diverse backgrounds and experiences are integral to their success as lawyers. Diversity is also key to our successful representation of clients on complex matters requiring a variety of perspectives.

We know we are better as a firm when people can come to work as their full selves. To that end, we do our best to offer support to – and a platform for – their voices. To share just one example, I have served as the partner liaison to our LGBTQ+ Affinity Group since its inception, and we have a number of different affinity groups at Cravath where associates and partners are able to connect in the workplace and speak up about the matters most important to them.

**KO:** I agree completely with Gary. Diversity and inclusion are critical to making us all better lawyers and delivering the best service we can to our clients. We want to hire and retain law students who will grow to be outstanding lawyers, which means not only accessing the widest possible talent pool, but also cultivating an environment where our lawyers can receive the legal training, mentorship and support they need to be successful, no matter who they are.

**LD:** If you weren't a litigator at Cravath, what would you be doing?

**GB:** I have no idea. I was an architecture major in college, but I was not very good at it, so I doubt I would have lasted long there.

**KO:** At this point, I'm not sure I could see myself doing anything else. I truly love being a litigator.

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