

On Tax—Steve Gordon of Cravath

Len Teti: Welcome to On Tax – A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City. On each episode of On Tax, I talk to tax professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make this space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

On this episode, we'll hear from Steve Gordon. Steve is a tax partner at Cravath, and for two decades, was the head of Cravath's Tax Department. Steve will tell us about the day he interviewed at Cravath, and we'll also hear about his philosophy for leading the Tax Department. Steve, welcome to the podcast, and thank you for joining us.

Steve Gordon: Thanks for having me here, Len. I am really happy to be here and looking forward to our conversation.

Len: Well, we're thrilled to have you. This is our first podcast. You're our inaugural guest, so thanks for doing this. So, Steve, tell us about your background in tax law, how you came to it and how you started.

Steve: Well, I'll try to tell a short version of this because there is a long version too that gets very boring except to me. When I went to law school, I thought I really wanted to be a corporate lawyer, and probably from there go into some sort of business. At my law school, basic tax was not a required course formally, but you basically had to take basic income tax, and I took basic income tax and, for a whole lot of reasons, I sort of fell behind, and you can't fall behind in a tax class. I really, really struggled with it, until right near the final. There were all these case names like Hort and Horse that all sounded the same, and I couldn't figure out how to reconcile the cases, and then I had a flash of insight—but it was too late, right before the final—that you couldn't reconcile these cases. So, look, I took the exam and I didn't do very well. But I thought, OK, I've done what I have to do in tax for my career.

Len: Do you remember what grade you got on the exam?

Steve: I do. It was ... I'm embarrassed to say this because it is the lowest grade I got in law school, except it tied with professional responsibility. So, if you roll all that forward and you think that it tells the future, I would become a very unethical, very bad tax lawyer. I hope I've become an ethical and reasonably good tax lawyer.

So, I was looking for a job. I'd had a great summer associate gig my 2L summer in one of the Los Angeles firms, but my wife and I decided we wanted to be on the East Coast. So, I was interviewing with New York law firms and they would ask, "Do you want to see litigators? Do you want to see corporate lawyers?" and so on. I said, "I'm interested in being a corporate lawyer." But it turned out—this was late in the first semester of my first year—it turned out that I was taking a corporate tax course at that time, much to my surprise. The reason I took it was because I told people I'm going to be a corporate lawyer. They said, "You should take corporate tax," and I said, "Why should I take corporate tax? Aren't there corporate tax lawyers who actually do that for a living?" They said, "Yes, but they speak their own language and taking corporate tax in law school is like getting the introductory French course. You're getting the introductory corporate tax course so you will at least understand their language because it can be very esoteric."

So, this next part is actually completely true even though sometimes I exaggerate for effect. It was a four-credit course and I just made sure, having this not so great experience the year before in basic tax—I opened my transcript to make sure that, in the unlikely event that I just failed the course and got an "F," because I wasn't going to understand anything, I could still graduate on time. So, I took the course, and I had an unbelievably talented—difficult, but unbelievably talented—professor, and what I found was that corporate tax was kind of interesting, to my surprise. It was interesting intellectually because in corporate tax there's a few first principles that all sort of make sense. But then as you develop the first principles through cases and the like, all these first principles eventually collide and you have to start making decisions about which first principle is going to trump which other first principle, and I was finding that interesting. So this was the fall of my 3L year.

When I went to law firms to interview, I said, “I’d like to meet corporate lawyers,” and, in a kind of embarrassed way, I said, “Taking a tax law was kind of interesting.” So, at Cravath I met a lot of corporate partners and associates during the day, all of whom I was very impressed by. You know, I always thought there was sort of a Cravath type, sort of a stuffy, white shoe, kind of person you’d expect to meet. Everyone was so different and so interesting, but at the end of the day they took me in to see the head of the Tax Department, who was a rather unique character, and I told him about this interest I had in corporate tax. And, to sort of cut to the chase here, he said to me, “Why don’t you try tax law here at Cravath for a year, and if you don’t like it you can switch to corporate. It’s very hard to switch the other way, but it’s easy to go from tax after a year to corporate.” And, after giving that a lot of thought, I decided to do that.

I ended up at Cravath, after I graduated from law school, in the Tax Department. I said then and I’ll say now, “As soon as I find something that I find more interesting or I’d enjoy more, I’m out of here in a flash,” but that was forty years ago.

Len: It’s interesting the way you talk about kind of coming to the tax law from a transactional interest, and an interest in even a summer practicing corporate law. One of the things I’ve started to think about more and more as I do more interviewing and hiring of our associates is exactly that kind of path versus other paths to the tax law, you know, accounting backgrounds or finance backgrounds or other sorts of professional experiences that might more naturally lend themselves to a tax career.

But I think your path at Cravath sort of matches the path that I think we are trying to identify in a lot of people, which is we’d like to hire tax associates who would function well in our Corporate Department. We want to hire people who have kind of transactional perspectives and ways of thinking. Can you tell us a bit about that?

Steve: Sure. I think what you said is very true. There are different paths into tax. We see some people who’ve been very interested in tax for a long time. Many of them were undergraduate accounting majors; some come from the finance world. Some are really, really, really smart and enjoy the intellectual qualities of tax law, and indeed what you’ll find when you interview people who are tax lawyers, or who would like to become tax lawyers, is, overwhelmingly, at some point if you ask them what they like to do, they say, “I like to do puzzles,” and that is true of almost everyone who ends up in this part of the profession.

But we also see people who could as easily be corporate lawyers. And for our particular kind of practice, where we have, for a firm our size, a relatively small Tax Department—and our practice is very, very much focused on corporate transactions, corporate finance, capital markets, mergers and acquisitions, and the like. That sort of natural inclination to thinking and enjoying the interpersonal hubbub of the corporate side of the practice is very useful.

I have found that there are many tax lawyers who come to tax because they are very intrigued by the deep intellectual quality of tax practice. It’s very both broad and deep. But they have been attracted to it because they don’t like what they perceive to be the interpersonal tension or conflict that is inherent in litigation, of course, and is also present in corporate law where you are negotiating for your client against someone else who is negotiating for their client.

So tax does attract a lot of people who don’t like that interpersonal tension. But what’s good for our particular practice, which is so corporate focused, is to find young lawyers who are interested in engaging with other people and trying to exert their will to get to the right answer for their client.

Len: Right, that’s right. So you come to Cravath after law school and you start your first day as a tax associate and you never go to corporate because you stay in tax. What do you think about when you think about your early days as an associate? What kind of experiences did you have and what sorts of things come to mind when you reflect back on what you were doing?

Steve: Well, I still think all these years later, that what I was really loving about my young experience, and now, being older, scares me, is how much autonomy and leeway they seemed to give me. I know the partners were looking over my shoulder all the time. I know that now. But I didn’t really know that then, and I thought they were a little crazy to be pushing me out doing work with clients, negotiating, dealing with other law firms.

I thought they were kind of crazy pushing me out there with that much autonomy and responsibility, and as a young lawyer, I reveled in that. I really, really liked that, and I ended up being good at it, somewhat to my surprise. So, I look back and that was the thing about the younger part of my career that really sticks with me now as I look back on it. Of course, I loved the substantive work. I learned so much, and every day I learn so much. But the feeling that these people must be really crazy or irresponsible to let me, a fourth-year associate, go out in the world and represent Cravath, Swaine & Moore in this transaction! Wow! If I were them, I wouldn't let me do this. But now that I'm a partner I'm pushing younger associates to do that, knowing there really is a safety net behind them.

Len: And you made partner as I recall in the mid-1980s. The tax reform in 1986 had just passed, I suppose, and there were many new, substantive things to learn, but can you talk to us a little bit about your career as a partner and then as the head of the Tax Department, what sorts of vision you've had for the department and what kind of atmosphere here you've tried to create.

Steve: It's a really good question, Len. I became a partner in 1987 and, in addition to being a tax partner, I had a number of administrative roles within the Firm. We have two hiring partners at all times, and for four years I was one of the hiring partners and then I became the partner in charge of administration in the 1990s, when we did a big overhaul of our administrative support for our legal work. And then, after that, around 2000, I became the co-head of the department, and eventually the head of the department. Now, as I'm older, I'm passing the torch and am again the co-head.

What I've really tried to do in the years that I've headed the department is to create a culture where smart people can collaborate with one another, feeling like they're in a safe environment, but are encouraged to really push themselves hard. As we've talked about already, we look for young lawyers who enjoy working on corporate transactions because that is what we do. We're not isolated in a library writing memos. We also look for—we try to train for, we try to select for—lawyers who work well with others. Some people are brilliant, but they're kind of lone rangers, and some people are just naturally collaborative. We look for people who will work well together, because the support that associates give to one another is an incredibly important part of each associate's experience. Both for their tax-learning, professional experience, and their growth as a person and as a lawyer, and I felt responsible for creating an atmosphere where people like each other. They like working with each other. They trust each other. No one is looking over their shoulder or behind their back to make sure that there's not someone coming after them, and I've tried to build that same feeling of—collegiality understates it, but that same feeling of warmth at the partner level because I think the way the partners treat one another is a very big determinant of how the associates learn to treat each other. So, I have tried to make this a place of the highest professional quality, but the highest personal quality too.

Len: The word that you used—safe—is an interesting word. I had never really thought of that in terms of the way that the department functions. But I can now, as you mention it, think back to two things you said to me when I was a first-year associate that I guess really reflect that.

One is, we had just finished your CLE about, basically, how to be a tax lawyer at Cravath. Not substantive things, but really just procedural stuff. And one of the things you touched on was what our hours should be, you know, when we should get into the office. And you said, "You don't punch a clock, but generally, clients are going to be expecting you around 9:00 in the morning—not necessarily right at 9:00 but around 9:00." Before we left the room, we all stood up walking out of the room, and you pulled me aside—at the time I had a five-year-old and I was living in the city and I was walking him to kindergarten every day—and you said, "Listen, Len, I just want to be clear with you. Even though I said try to show up around 9:00, that doesn't mean you shouldn't walk your son to school every day. If that's what you need to do and you're going to get in at 9:20 because of that, that's fine." I remember feeling, as a first-year associate, that that was really kind of going out of your way to take care of my particular situation. Number one, to be aware of it, and number two, to come up and say something about it.

The second thing was one night—I was living in an apartment on the Upper East Side with my wife and our four kids. One night I was working real hard on some issue that came up and it was after 11:00 and you were the supervising partner, but as you said, my experience was—wow, I was being put in a position to do a lot of stuff myself. A hard question came up that I wasn't familiar with, and I had to call you at home after 11:00 at night, and I think maybe even your wife answered the phone and she had to pass the phone over to you, and

it was clear that that didn't happen a lot. And I apologized sort of profusely for bothering you and before we got into the substance of the issue, you stopped and you said very clearly, "You know, we give you a lot of responsibility, and we cannot do that comfortably unless we know as partners that you are going to reach out to us when you need us." And that was another sort of teaching moment for me, not just as an associate, but as a professional, as a lawyer, as I grew into a senior associate, and as a partner, the sorts of ways to take care of the people who work for you. I never really thought about it as safety or security, but it really resonated with me when you mentioned that.

The question I have for you now, over the course of your career, you've seen a lot of different tax lawyers and tax professionals—people who've worked for you, people who have worked alongside you, tax partners at other firms, tax directors. What do you think the best tax lawyers, the best tax people do well? What are some skills that they all kind of have or attributes that mark solid performance?

Steve:

Well, everyone has a slightly different combination of ingredients. We're all like cakes and we don't all taste the same. There are a few things that are in common. First, and probably the most obvious, is a very deep knowledge of a broad portion of the tax law. You have to know your law. You also have to know your lore. There's law and there's lore, and you know lore is what people expect in the various markets we act in. In the M&A market, what's sort of the market norm for how you deal with pre-closing taxes or, in the capital markets area, what's the norm for when you do or don't have a gross-up in the event of withholding tax. People need to know the law and it's really important that they know the lore too.

I think the other really great qualities that I see in people who are really skilled are very good judgment and very good communication skills. Judgment involves knowing the law and knowing the lore, and then knowing how to apply it. You've heard me say, and others have heard me say that, as lawyers, one of our prime jobs is to help our clients figure out what they want to do, and then get other people to do what we want them to do without violence, by convincing them. The way you convince people to do what you want to do, the way you exert your will on behalf of your client is through judgment, thinking things through the right way, thinking them through from your perspective, thinking them through from the perspective of the person on the other side of the table, thinking about what's realistic, what the market norms are, what really is a problem, but it's only a small problem, or an opportunity that may be hidden someplace that you can find. All that comes from judgment and experience, and that's really important, and the ability to communicate.

I said earlier that there are people who are drawn to tax law because they like the hyper-intellectual quality of tax law, but they're in it because they don't enjoy all of the personal interaction that happens in negotiations or litigation. Well, your ability to communicate is really, really important and it takes you out of that category. Because, as I said, what you're trying to do is to use your judgment to help clients figure out what's best for them, and then how to achieve it. Communication is important in every aspect of that. Communicating with your client, who might be a tax VP, understands tax, but probably hasn't had as much experience in whatever sort of transaction you're doing is, how to talk to the CFO or the CEO or board members. You know, tax lawyers have a reputation for talking in code, and code section numbers—like Section 358, blah, blah, blah. That's not how you talk to people to get them to really understand what you want. You need to be able to communicate to your client first. What the issues are, what the opportunities are, what the risks are, and in language that any reasonably well educated, reasonably bright person without a tax background can understand. And you need to do that in a negotiation as well. You need to be able to convince through good communication skills, people on the other side of the table, why your proposal actually makes sense for them.

Now, not to belabor this too much, but the difficulty with developing good communication skills is this: there's a sort of irony or conflict. There's a conflict between accuracy and clarity. So the first thing we learn in law school, and it's reinforced to us as young associates, is you need to be accurate. And if things are complex, you need to think through the complexities ahead of time. You have to see everything that might apply and test whether it does or doesn't apply. You have to look to see where there's exceptions, and see if the exception does or doesn't apply. That's very complex. But when you're explaining this to someone who is not another tax lawyer, to make it clear, you have to actually overlook a lot of that complexity, because it's not important to the particular goal that you're trying to achieve with your client. You've ruled out odd exceptions already. So you don't have to communicate them. But the problem is, having been trained to be precise, to then take that and then try to be clear, is very hard because, basically, everything you're saying is wrong. It's wrong in some way if it were being tested for precision.

Len: Just on that point, sorry, one of the things I've noticed, in working with very, very sharp associates, is they have to be taught that this is happening, that this transmutation of really complicated stuff is getting put through some sort of process and it's going to come out in a way that sounds imprecise. And oftentimes very sharp lawyers, particularly young lawyers right out of law school, will try and stop me or you from saying it the way you're saying it because they know you're cutting a corner, and they don't want you to say something that's wrong.

On the other hand, over time, once they kind of realize that this is happening, then it's a very powerful moment, because then they can actually learn from it and they can develop their own style and practice this skill. And then, by the time somebody is a third- or a fourth-year associate, they are able to do that quite well. But the first thing is you've got to observe that it's actually happening.

Steve: You do, and I do observe when I'm working with tax lawyers from other firms, that the best of them are all really good communicators. They're good communicators to me, they're good communicators to my client. They turn to their client and they communicate things very well, all while we're in the room, and I have to say I really enjoy working with people like that because it's really a high professional quality, and it really facilitates getting things done.

Len: For sure. Well, Steve, we only have a few minutes left. I wondered if we could talk about something other than tax. Can you tell us what you like to do when you're not working on tax issues or tax matters? What are your hobbies?

Steve: Well, I don't really have any hobbies per se, but I like to ski in the winter, and I like to ski out west. Having grown up in upstate New York, I've been skiing since I was a little kid. But I'm very happy not to be skiing in upstate New York very often anymore. I feel very blessed about that. I like to play golf in the good weather. The ratio of effort to result that I have put into golf, it has to be record breaking, because there has been so much effort and so little progress. Nevertheless, I enjoy getting out where it's green and quiet and I don't look at my phone and it smells good, and I guess the one other thing I'd mention is that pretty much every night before I go to bed, I do a Sudoku puzzle, and I find it just focuses my mind on something meaningless, and takes some concentration, and lets everything else kind of go away and wait until tomorrow.

Len: Do you do those wicked hard Sudokus, like the ultra-challenging ones, you can work up to that?

Steve: I do. I do. It took a little while to do. Once in a while I fail, but I get more of them than I don't. So my effort to result ratio for Sudoku has been much better than it is in golf. Of course, that's a very low bar to get over.

Len: It's interesting. You know I have a long commute to get to the city, when we're working in the office anyway, and I find that from time to time I go back to crossword puzzles and I think I get the same kind of benefit, both going to work and coming home. It kind of resets my mind and still keeps it active, but it's active in different ways. That's very interesting.

Well, Steve, it's been a pleasure to have you join us. Thanks for being our first guest. I hope that you enjoyed the visit.

Steve: I did, Len. I enjoyed it very much.

Len: That's all for this episode of On Tax – A Cravath Podcast. You can find us online at cravath.com/podcast, and don't forget to subscribe on iTunes, Google Play or Spotify. I'm your host, Len Teti. Thanks for listening.