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Cravath has advised clients in
their most important matters.**

The Firm recently won a complete defense victory for Qualcomm in antitrust litigation brought by the FTC, securing a unanimous Ninth Circuit decision that confirmed the lawfulness of Qualcomm's business model and set important precedent at the intersection of antitrust and intellectual property law.

For more on our history, please visit 200.cravath.com.

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Gary A. Bornstein, Partner—Litigation

Gary A. Bornstein is a partner in Cravath's Litigation department, where he handles a wide range of high-stakes commercial disputes, with particular focus on antitrust, M&A, and securities litigation. He has represented buyers, sellers, and lenders in contested M&A transactions, as well as corporations and directors in disputes with activist investors and other stockholders. He also regularly represents clients in antitrust litigation and investigations.

Gary was born in Merrick, New York. He received a B.A. in Architecture from Yale University in 1994 and a J.D. from Harvard in 1997, where he was a notes editor of the *Harvard Law Review* and a winner of the Ames Moot Court Competition. After graduation, he served as a law clerk to Hon. Amalya L. Kears of the U.S. Court of Appeals for the Second Circuit.

Gary joined Cravath in 1998 and was elected a partner in 2004.

Describe your practice area and what it entails.

Like most of us at Cravath, my practice is to tackle our clients' most important problems. For me, that tends to be critical antitrust cases and high-stakes M&A litigation. These cases usually require working closely with a client's senior management to navigate through strategic challenges as well as legal ones. That means being both a litigator and an advisor. In the courtroom, the job as a litigator is to take a dispute that is complex and turn it into a simple narrative with only one possible answer. Outside the courtroom, the job as an advisor is to understand all the complexity and help the client chart a course through it. At Cravath, our Antitrust practice is different from a lot of other firms because our antitrust lawyers are not just antitrust lawyers. Most of us also have extensive experience in other areas of legal practice and typically have active practices in those other areas. That gives us a unique breadth and depth of expertise to draw from in serving our clients.

What types of clients do you represent?

I represent clients across a wide range of industries, but what they tend to have in common is they turn to Cravath to solve their most complicated issues—and they often have longstanding relationships with the firm. One example of this is Qualcomm. I did my first matter for Qualcomm over 12 years ago and recently represented them in simultaneous fights against Apple and the Federal Trade Commission. The Apple case settled, with a big payment to Qualcomm right after opening statements to the jury, and the FTC case ended

with a complete victory for Qualcomm in the U.S. Court of Appeals for the Ninth Circuit. The court rejected every one of the FTC's challenges to Qualcomm's patent licensing and modem chip sale practices.

To spotlight an ongoing matter, I am part of the Cravath team representing *Fortnite* creator Epic Games in two separate antitrust actions against Apple and Google. Epic alleges that the companies are engaged in anticompetitive behavior in the distribution of apps on smartphones and in the processing of consumers' in-app purchases. I am also currently handling a variety of M&A-related matters, including a case for Johnson & Johnson relating to robotic surgery and a case arising from the merger of Viacom and CBS.

What types of cases/deals do you work on?

I work on antitrust matters as well as complex transaction-related disputes, such as hostile takeovers, M&A deals gone wrong, and corporate governance and fiduciary duty claims. On the antitrust side, my recent cases have related to fundamental challenges to key aspects of a company's business model. That was the issue in Qualcomm, as well as an antitrust case I did for American Express several years ago. That is also the focus of the Epic Games cases against Apple and Google, except we represent the plaintiff bringing the challenge. On the M&A side, the cases run the gamut. I tried an appraisal case in North Carolina last year, and I regularly work on a variety of Delaware law stockholder challenges to transactions as well as disputes between transacting parties.

ANTITRUST

Part of the M&A-related work is also giving advice to management and boards before transactions happen.

How did you choose this practice area?

Through most of college, I gave very little thought to being a lawyer. I did a lot of theater and actually turned down a job at a New York City repertory company to go to law school. But once I was at law school, I knew that I would be a litigator. The public-facing, on-your-feet aspects of the job were a natural fit.

I also love to write. Transactional lawyers use language as a tool, to build contracts and define the parties' rights and obligations. That didn't interest me. Litigators use language like real people—to communicate with another person. I recognize that litigation filings are not great works of literature, but they should still be compelling to read and, at their best, tell a persuasive story. That's what I wanted to do.

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

A typical day starts with a list of things I plan to get done that end up being pushed in favor of completely different things!

Although the pandemic has made teamwork more challenging, most of what I do is collaborative, working with the associates on the team—putting together a brief, preparing for argument or examination, or just thinking through strategy. No one can do this job alone.

I also have a standing dinner date with my family that I rarely miss unless I'm traveling.

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

There are certain building blocks I would recommend to all students, like Contracts, Civil Procedure, and Corporations—which are essential to most every litigation practice. But my real advice here is to find the opportunity to write as often as you can, and to speak publicly as often as you can. These experiences are crucial, and it almost does not matter what the subject is.

What misconceptions exist about your practice area?

One misconception is to view antitrust as all about economics or all about the expert witnesses. I think of antitrust as just like the rest of litigation in that you have to identify the key facts and arguments that will cut through the complications.

You need to master the markets and the economics, but then you have to present a comprehensible story to a judge or jury. The complexity of the subject matter makes the litigator's job of telling the story all the more important.

What kinds of experience can summer associates gain in this practice area at your firm?

Summer associates at Cravath participate in the same work that a first-year associate would, from drafting briefs to being involved in discovery and prepping for depositions, argument, or trial. Summers are treated no differently than our other younger lawyers and come away from their experience with relevant litigation experience. We generally staff cases more leanly than a lot of other firms do, and we do that because each member of the team really becomes a critical part of some aspect of the case.

There is no substitute for that kind of hands-on training for young lawyers who are looking for significant responsibilities early in their careers.

In what ways has the coronavirus pandemic affected your practice? How have you adjusted to lawyering in the wake of COVID-19?

The biggest change is no travel. So much of what we do required going somewhere to be with people—clients, witnesses, judges, and so forth. I have taken on new clients since the pandemic started, and it has been very strange not to have been able to meet them in person or share a meal. I have been in court many times now from my home office, even though my appearances were “in” California and Delaware. That requires adapting how you argue and how you interact with the court. Perhaps most important, I haven't seen anyone from my team in person since March, and that requires putting even more effort into mentoring, giving feedback, and staying in contact in other ways.

Given the breadth of antitrust, what must attorneys do to be successful in the practice?

Success requires being willing to learn an industry completely and thinking about it like a businessperson: how it works, what the competitive dynamics are, and how the relevant markets have changed over time. Each matter I have worked on has required me to master a new corner of the economy.

Antitrust cases are not like litigating a single contract dispute or the circumstances of a particular transaction. You are litigating the structure of an industry and a set of practices in which a company engages. There is a much broader range

of factual background, time span, and areas of expertise. These cases require you to do more than archeology about what happened at a specific point in time; they require you to

master an ongoing business. It's like jumping on a horse while it's already in full gallop.

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