LITIGATION DEPARTMENT OF THE YEAR

FINALIST

BY BRUCE LOVE

FOR WILMER'S LITIGATION DEPARTMENT, SUCCESS IS A COMPLETE TEAM EFFORT

Wilmer's litigation strength is bolstered by its collaborative, cooperative approach.

From left to right: Howard Shapiro, Sonal Mehta, Felicia Ellsworth, Ronald Machen and Anjan Sahni, partners at Wilmer Cutler Pickering Hale and Dorr. Photo: Ryland West/ALM

Anjan Sahni knew he and his team were taking a risk.

The New York-based litigator was defending Michael Carroll, the prominent CEO of a real estate investment trust, in a high-profile prosecution. Prosecutors at the storied U.S. Attorney's Office for the Southern District of New York had charged Carroll with six counts of securities fraud. But Sahni and his team at Wilmer Cutler Pickering Hale and Dorr had come to a startling conclusion.

There was no fraud whatsoever. The prosecutors had made a rare mistake.

The realization raised a question: Should Wilmer's litigators and their co-counsel at Cleary Gottlieb Steen & Hamilton tell the prosecutors before the trial had even begun, or use the information to bolster their defense at trial?

"We had a strategic choice to make: Save what we had determined would be a very effective strategy to deploy at trial," Sahni says, "or do something pretty unorthodox—be transparent with our adversary. Lay our cards on the table and trust in the process, believing that the government would come to the same conclusion."

The Wilmer and Cleary team chose the latter, and in a virtually unheard-of move, the Southern District prosecutors confessed the error, dismissed the case and dropped the prosecution.

"We almost certainly would have won at trial. The story we would have been able to tell at trial would be very compelling to a jury," Sahni says. But having spent a decade as a prosecutor at the Southern District, Sahni knew it as an office committed to doing the right thing and reaching the right result.

United States v. Carroll is a good example of how Wilmer litigators are able to modulate their approach to each particular case. Saving the revelations until trial likely would have afforded Sahni and his team a dramatic victory. But it would have cost their client more time and money. The case also shows the esteem with which government attorneys hold the firm's litigators.

"We are fortunate to have credibility in government-facing matters, having dozens of partners and attorneys who come from the most senior levels of government," Sahni says, adding that while Wilmer zealously advocates for its clients, it does so in a way that reflects the firm's values and principles.

"In these sorts of cases, that goes a long way, because our adversaries understand we will only make arguments that are credible and accurate," he says.

It helps that Wilmer has a strong reputation in many of the most important practice areas for a Washington, D.C.-based firm: public policy and legislative affairs, regulation, antitrust, intellectual property and international trade. And it's home to some of the most well-known appellate and Supreme Court litigators in the country, including Seth Waxman, who served as solicitor general from 1997 to 2001.

For Sonal Mehta, a trial lawyer and partner in Wilmer's Palo Alto, California, office, part of the strength of the firm is not just its world-class litigators, but the ease and frequency of cross-practice cooperation that exists at the firm. That collaboration has been key to a number of recent intellectual property litigation victories, she says.

Mehta and her team represented video game company Activision Blizzard in a patent infringement lawsuit brought by Worlds Inc. The deeply complicated case involved complex technological and software programming details, amid asserted claims connected to Blizzard's popular "Call of Duty" and "World of Warcraft" games. Wilmer took over the matter in 2020, eight years after litigation began, and in April 2021 secured summary judgment.

Mehta says what eventually won the day was Wilmer's ability to cut through the complexity and provide the court with a clear understanding of the issues at hand, "which is a hallmark of Wilmer's litigation practice more broadly." To turn complexity into simplicity often requires close collaboration and the expertise of multiple practice areas at Wilmer.

"We have matters that can be very complicated and wide-ranging in terms of jurisdictions, substantive legal issues, and challenges for the client," she says, adding that one of the firm's strengths is its ability to think about the overall picture—the client's goals and how to position for short-term and long-term wins.

Another recent IP litigation case—*VLSI Technology v. Intel*—proved the power of cross-practice collaboration even further, Mehta says. In that case, Wilmer successfully defended Intel when a federal jury in Texas found it didn't infringe two microprocessor patents and rejected VLSI's claim for more than $3 billion in damages.

"We brought together expertise from across the firm, including [litigation and controversy department vice chair] Felicia Ellsworth, who wouldn't traditionally be thought of as an IP litigator, and appellate specialists," Mehta says. "The result for the client is an ability to leverage substantive trial expertise, appellate expertise and subject-matter knowledge across a wide range of areas to bring a story to life for the judge and the jury in a really thoughtful way."

Ellsworth is familiar with work in the national spotlight for her clients. She's part of the Wilmer team defending Harvard's race-conscious admissions policy. The firm's litigators secured a district court ruling in favor of the university after a 2018 bench trial, then convinced the U.S. Court of Appeals for the First Circuit in 2020 to uphold the policy's lawfulness. It is now awaiting Supreme Court review.

While the case has made for sensational headlines and had implications for all elite schools, Ellsworth says her team remained focused on how they could help their client.

"The broad-ranging implications were clear and were always on our mind, but at the same time, we had a specific plaintiff who was attacking a specific school and how they did things, so we needed to make sure we didn't let the potential broad implications interfere with our ability to effectively represent a particular client," she says.

At trial, Wilmer used expert witnesses (including 2021 Nobel Prize-winning economist David Card), personal testimony from Harvard's admissions officers and students to great effect, showing the court how the plaintiff's statistics on test scores told only a small piece of the full story.

The firm kept in mind during trial the potential for the case to go all the way to the Supreme Court, and Wilmer tapped its deep appellate bench to help craft arguments that would not only win in the short term, but also set them up for victory down the line.

"Many practice areas—civil litigation, appellate, education—contributed to the work we have done for Harvard," Ellsworth says.

Diane Lopez, the university's general counsel, says often the most a client can hope for in a law firm is that it will handle litigation well.

"But Wilmer goes beyond that in terms of understanding all facets of the case—the political dimension, the national conversation, a perspective in terms of regulatory matters, and the public relations implications," Lopez says. "It really is a full service that works seamlessly together." ∎