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Large law firms have become immensely fragile institutions. As large firm lawyers, many of them young and connected to clients, flood the streets over the next several months, look for a new model of corporate law practice to emerge that is modest, thrifty, and more sustainable.”

From “**Selling BigLaw Short**,” **Empirical Legal Studies Blog**
(December 16, 2008)

http://www.elsblog.org/the_empirical_legal_studi/2008/12/selling-biglaw-short.html

The “Cravath System” Excerpts from The Legal Profession Blog

... The “Cravath system” ... purports to hire the best graduates from the best law schools and provide them with the best training.

The New York firm of Cravath Swaine & Moore created and refined this system during the early 20th century. The emphasis on educational credentials was initially an attempt to establish a distinctive brand of legal services that could differentiate the firm from other Wall Street competitors. Now, ironically, it has become a uniform industry practice utilized by every large law firm that claims to provide first-rate services.

Virtually all firms mimic the Cravath system without understanding its logic. [In my working paper, [“Are We Selling Results or Résumés?: The Underexplored Linkage Between Human Resource Systems and Firm-Specific Capital”](#)] ... I draw upon a unique study of engineers at the renowned Bell Labs to suggest that Cravath's superior client service has less to do with credentials than with an organizational structure and ethos that aligns the interests of associates, partners, and clients. ...

On one level, law firms' reluctance to tinker with the Cravath system makes perfect sense--it has produced large incomes and huge profits margins for decades. Further, 30 or 40 years ago, the vast majority of firms that would eventually become the Am Law 200 were, in fact, “white shoe” firms within an overwhelmingly regional corporate legal market. In particular, places like Cleveland, Detroit, Pittsburgh and St. Louis garnered their share of elite law school graduates. In the early 1960s, sociologist Jack Ladinsky found that 73% of Detroit lawyers working in law firms (i.e., not in solo practice) went to one of five national schools: Harvard, Yale, Columbia, Chicago, or University of Michigan. See Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 *Am. Sociology Rev.* 47, 49 (1963). You can bet this pattern is radically different today.

As these regional law firms morphed into the Am Law 200, their partners remained psychologically wedded to their own perceptions of eliteness. In the ensuing salary wars, these firms slavishly paid the prevailing rate rather than signaling to the market that the firm had become “second rate” (a term used by a Proskauer Rose partner in rationalizing the higher pay). In turn, the laws of supply and demand produced the bi-modal distribution.

The Results or Résumés paper draws upon two pieces of market data to demonstrate that a

large proportion of large corporate law firms have to re-evaluate their business models: (1) stunning uniformity of associate entry level salaries amidst large, growing disparities in profits per partner; and (2) evidence that firms are becoming stratified by premium versus non-premium practice areas. ...

From

http://lawprofessors.typepad.com/legal_profession/2008/07/how-the-cravath.html

In my last post, I ... stated that most law firms misunderstood the internal logic of the original Cravath model and promised to elaborate in a subsequent post. This is the promised entry.

One note of context: this post is not a history lesson. The Cravath system reflects a profoundly powerful method of developing human assets. Cravath started with very good associates/inputs and turned them into truly exceptional lawyers who were in high demand by clients and other firms. Moreover, the Cravath system required lawyers to work together collaboratively to further the clients' interests. This resulted in efficient and highly effective legal services that engendered the abiding loyalty of clients and more demand for the firm's services. [See Results or Résumés at 4 & n. 13 (discussing concept of firm-specific capital).] In other words, under the true Cravath system, everyone comes out ahead. Two caveats: (1) the first-mover--here, Cravath 108 years ago--garners the most benefit; (2) if a firm neglects a key element--e.g., investing in associates--the model generates no competitive advantage.

Cravath History

[Sources: The Cravath system described below come primarily from Robert Swaine's 1948 history of the firm and other contemporaneous sources from the 50s, 60s, and 70s, which I will cite as appropriate.]

Recruiting Elite Law School Graduates

One of the hallmarks of the Cravath system is the recruitment of elite law school graduates. As of 1948, Cravath, Swaine & Moore and its predecessor firm had employed a total of 454 law school graduates as associates. Of this total, 67.7% attended Harvard (128), Columbia (124), or Yale (54). According to Swaine, "in recent years there has been an increasing number from the law schools of the Universities of Virginia and Michigan." These two schools rounded out the top five : (UVA 30, Michigan 26).

Cravath's emphasis on credentials, however, had a clear economic logic that was designed to compensate for the deficiencies of early 20th century legal education. During this period, most law schools required little or no college education. In contrast, Harvard, Columbia, and Yale grads typically had a college degree before entering law school. Swaine writes,

Cravath believed that disciplined minds are more likely to be found among college graduates than among men lacking in formal education ... Cravath believed in seriousness of purpose--a man with a competent mind, adapting to practicing law according to Cravath standards, should have made a good scholastic record at college. But he recognized, without full approval, the tradition of the early decades of this century--that "gentleman" went to college primarily to have a good time and make friends. Hence, while a good college record was always a factor in favor of an applicant, lack of such a record was not necessarily an excluding factor. ... [I]n the stern realities of the depression of the '30s, however, college records of applicants came to have added importance.

Yet, "[f]or a poor law school record Cravath had no tolerance." Candidates who "had not attained at least the equivalent of a Harvard Law School 'B' either had a mind not adapted to the law or lacked purpose and ambition" Thus, the "first choice" was a "Phi Beta Kappa man from a good college who had become a law review editor at Harvard, Columbia or Yale."

Note, however, that Cravath's emphasis on credentials had a clear business purpose designed to compensate for the limitations of legal education. During the first half of the 20th century, going to an Ivy League law school did not guaranteed legal aptitude. Prior to advent of the LSAT in 1948, college grades were the only predictors of success in law school. In 1955, The "LSAT Handbook" included cross-tab tables of LSAT scores versus law school performance for several individual law schools. At Harvard Law, roughly 1/3 of the class scored below the 50th percentile. On the west coast, UC Berkeley had a similar wide range of LSAT scores. See The Law School Admission Test and Suggestions for Its Use (ETS 1955). The clear relationship between LSAT and grades subsequently encouraged law schools to revamp their admissions criterion. But that process took decades. See Lunneburg & Radford, The LSAT: A Survey of Actual Practice, 18 J. Legal Educ. 313 (1965).

In a talk at Harvard Law School, Cravath stated that a successful "lawyer of affairs" (aka corporate lawyer) assumed "the fundamental qualities of good health, ordinary honesty, a sound education and normal intelligence." On top of these attributes, a candidate must have "character, industry and intellectual thoroughness, qualities that do not make for charm but go far to make up that indefinable something that we call efficiency. Brilliant intellectual powers are not essential."

Developing Human Assets

Under the Cravath system, the inputs themselves (i.e., qualified associates) had little value to clients. Rather, they needed to be trained by the investment of intensive training. Over a period of years, that investment created the remarkable efficiencies and superb quality that bonded clients to the firm.

The Cravath system was build upon an incentive structure that encouraged young lawyers to acquire skills at an optimal pace. Further, the firm was intent on inculcating its superior work habits. "Cravath believed that a staff trained within the office would be better adapted to its methods of work ... and hence he insisted that the staff be recruited, so far as possible, from men just out of the law schools." Cravath also ended the practice of associates having their own clients and working on firm's matters in exchange for a desk room. "Cravath could not tolerate the inefficiency and divided loyalty implicit in such an arrangement. ... [E]very associate, including the man fresh from law school, was put on a salary."

Once in the firm, associates where placed on matters in a way that rounded out their professional training. According to Swaine,

Cravath preferred that men should not specialize in such branches of the law as real estate or administration of estates or, later, taxation, until they had attained a general experience over several years. This objective required that a man should not be confined to the work of one client or be assigned to one partner for any undue length of time. At the outset of the practice Cravath men are not thrown into deep water and told to swim; rather, they are taken into the shallow water and carefully taught strokes. The Cravath office does not follow the practice of many other offices of leaving small routine matters entirely to young men fresh from law school without much supervision Under the "Cravath system" a young man watches his senior break a large problem down into its component parts, is given

one of the small parts and does thoroughly and exhaustively the part assigned to him--a process impracticable in the handling of small routine matters. **Cravath believed that a man who learns to analyze the component parts of a large problem involving complicated facts, and to do each detailed part well, becomes a better lawyer faster than the man who is not taught in such detail.**

As the professional competencies of associates grew, their level of responsibility increased. Ideally, these competencies included the ability to effectively delegate, supervise, and train other lawyers. Swaine observed, "The art of delegation in the practice of the law is difficult, requiring the nicety of balance which many men with fine minds and excellent judgment are unable to attain. ... The more nearly he attains the right compromise between [doing all the work himself or turning everything over to an assistant], the greater the amount of effective work a man can turn out, and hence the greater his value to the firm."

Obviously, the Cravath system as conceived by Paul Cravath envisioned a process that spanned several years. Therefore, "[m]en who are willing to stay only a year or two are not desired, for the 'Cravath system' cannot train a man in that short time. They are expected to remain as long, but only as long, as they are growing in responsibility." In today's high attrition environment, this temporal component has been completely disrupted at most firms.

Another tenet of the Cravath system was up-or-out after six to ten years, primarily because a "man who is not growing professionally creates a barrier to the progress of younger men within the organization It is much better for the man, for the office and for the clients that he leave while he still has self-confidence and determination to advance. The frustrated man will not be happy, and the unhappy man will not do a good job."

Sustainability

The genius of the Cravath system was the interlocking incentives that made the model sustainable: every person involved in the process--associates, partners, clients--was made better off. In the case of associates who were not destined for partnership, Swaine reported:

The firm constantly has requests from clients and other leading industrial and financial organizations to supply men for legal and executive positions. Other high-ranking law firms of the City and elsewhere have taken Cravath men as partners; many Cravath men have formed successful firms on their own [many of which are now Am Law 100 firms]; and quite a number have become members of law faculties. **It is often difficult to keep the best men long enough to determine whether they shall be made partners, for Cravath-trained men are always in demand, usually at premium salaries.** Almost without exception, the relations between the Cravath partners and the men who have left the office to compete professionally have remained friendly, and often intimate. Cravath partners take great pride in the success of alumni. ... [N]ew business is often referred to former associates.

One such Cravath alumni was Charles Reich, a Yale law professor who gained fame for the influential book, *The Greening of America* (1971). One of Reich's close friends recently took a job at Cravath, Swaine & Moore, and Reich used the occasion to reminisce on his own experiences. In a letter to his friend's daughter, which was subsequently published in *The American Lawyer* in December 2007, Reich's relates impressions strikingly similar to Swaine's account:

In the Cravath of 1952, I felt no pressure whatever concerning billable hours. ... The

only pressure was to complete an assignment on time. ... We were all told that while few associates could expect to remain permanently at the firm itself, we could all count on well-paid future employment at one of the many corporate legal offices or regional law firms that had ongoing relationships with Cravath. The message was: Excellent work is expected, but the pressure is off. Associates were safely and comfortably on the inside for life. Inclusion was more important than competition.

In the terrific book *Lions of the Street* (1973), journalist Paul Hoffman quoted another former Cravath associate, who observed, "The [Cravath] fraternity takes care of its own. ... Nobody starves." Going to work for Cravath and following the program guaranteed a certain minimum level of professional success. And that minimum was, in the bigger picture, pretty darn high. Further, with some luck, you could become partner at Wall Street's most renowned firm.

Interlocking Incentives for Partners

It is noteworthy that the Cravath system reflected a business philosophy that encompassed the entire firm, including the partnership. According to Swaine, "Probably the most rigid feature of the 'Cravath system' has been insistence that for every man in the office, from the senior partner to the neophyte law clerk, the practice of law much be the primary interest and that that practice shall be solely as a member of the Cravath team." Associates and partners were trained in the tradition that:

All the business in the office must be firm business. ... The problem of the firm is to do effectively the business that comes to it; by so doing that business, more comes in. Hence, business-getting ability is not a factor in the advancement of a man within the office at any level, except in so far as that ability arises out of competence in doing law work ... Every partner is expected to cooperate with every other in the firm's business, through whichever partner originating, and to contribute to all the work of the firm to the maximum of his ability. The formation among the partners of cliques practicing independently of each other, which developed under Gurthrie [a partner who left the firm in 1906], would not be allowed today.

To maintain this interlocking system of incentives toward high quality work product, Cravath very rarely hired lateral partners or associates. Thus, "Young partners and young associates are seldom subjected to the discouragement of seeing someone come in over them from the outside." [A Cravath tenet broken by most law firms today.] Swaine also claimed that the firm discouraged work habits that crushed interests outside the law. "Cravath wanted his partners and associates to have such interests, and believed that the few who allowed office work to pre-empt all their energies were harming themselves and the firm."

The Cravath firm history has an interesting passage on the the firm compensation system. Today, Cravath Swaine & Moore is often cited as one of the few remaining examples of lockstep compensation, in which a partner's profit share is a function of years with the firm. See, e.g., Paul C. Saunders, *When Compensation Creates Culture*, 19 *Geo. J. Leg. Ethics* 295, 296-97 (2006) (partner at Cravath Swaine and Moore discussing deleterious effects of eat-what-you-kill compensation system and noting "[m]y firm's model for partner compensation is, and has been for a very long time, completely based on the lockstep approach."). Yet, the passage excerpted below suggests, at best, a modified lockstep approach:

Attainment of partnership does not mark either the limit of potential growth or accession to any automatic hierarchy. The younger partner who evidences capacity to win the confidence of clients with whom he or she works so that they continue with the firm, or impresses others who come into contact with his work so that other

business comes to the firm through him, and who takes responsibility for a number of varied matters, at the same time supervising the work of members of the staff and sometimes of other partners, may well raise, and indeed often has risen, with the firm more rapidly than his seniors. The partners are judged inter se just as are the associates, and adjustments are made to reflect the evaluation of the young partners by their seniors.

My co-author, Marc Galanter, tells a story -- possibly apocryphal -- that the Cravath partners approached Paul Cravath about the possibility of moving to a pure seniority-based compensation system. Cravath stated that he had no objection to the proposed plan, "as long as I get my half." I have no idea if this story is true, but it is (a) amusing and (b) consistent with idea that rules required to build a franchise may be very different than those required to maintain it. Certainly, the lockstep system may be the best way to preserve a cooperative ethos at a firm that has earned the top position in the market.

Conclusion

One objection of my above characterization of the Cravath system is that I have been too willing to accept, at face value, the words of Robert Swaine and Paul Cravath--that these lawyers are spinning the history to show themselves in their desired light. I understand the criticism but I think it is premature and possibly misguided. The best way to ascertain the reliability of Swaine's historical account is to examine the various pieces of the Cravath system and ask ourselves if it holds together as a theoretically coherent model. I think it does. Occasionally an accurate historical account is going to be the most flattering.

In a future post, I will discuss how the logic of the Cravath system mirrors the findings of the famous Bell Labs study, which documented that organizational productivity was a function of teachable work strategies rather than the credentials or innate abilities of individual engineers. Further, under the Bell Labs system, women and minority engineers tended to post the largest gains--a finding that should give the legal profession pause. See Results or Résumés.

From

http://lawprofessors.typepad.com/legal_profession/2008/07/part-ii-how-mos.html