

Fordham Law Review

Volume 57 | Issue 6

Article 6

1989

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Recommended Citation

Fern S. Sussman, *The Large Law Firm Structure—An Historic Opportunity*, 57 Fordham L. Rev. 969 (1989).
Available at: <https://ir.lawnet.fordham.edu/flr/vol57/iss6/6>

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The Large Law Firm Structure—An Historic Opportunity

Cover Page Footnote

Executive Secretary, The Association of the Bar of the City of New York.

THE LARGE LAW FIRM STRUCTURE— AN HISTORIC OPPORTUNITY

FERN S. SUSSMAN*

In the then unambiguously all-male legal world of New York in the first few years of this century, Paul Cravath initiated on a wide scale a revolution in the structure and operation of the large law firm.¹

When he joined what was known as the Seward firm in 1899, it operated in the prototypical law firm organizational structure; many good men, each working independently. Each had their own assistants with whom they sought to handle all of the problems of the particular clients they represented.² The assistants, or associates, were pleased to receive “desk room” and showed their gratitude by working on a partner’s matters compensated only by the privilege of working with and learning from the distinguished partner. The only way they earned money was by developing their own clients and handling their own business, which they were encouraged to do. Some of these associates were still in law school; most were lawyers of varying ages and backgrounds. They would stay on until they sufficiently developed their own practice or were offered another position.³

Cravath then refined and provided the large firm model for what quickly came to be known as the “Cravath System.”⁴ Its major components were the hiring of new associates only from graduating law school classes, providing a salary for all new associates in lieu of their handling their own business (which was banned), and instituting an “up-or-out” policy which initially involved virtually no one being permitted to stay in the office more than six years (later lengthened to 8 and then 10 years) unless the partners had decided to admit him into the partnership.⁵

Virtually all “lateral hiring,” hiring of attorneys who had been working on their own or at other offices for varying periods of time, was eliminated. This uniformity meant that partnerships were bestowed only upon associates who were trained at that firm and who were recruited only upon graduation from law school.⁶ Occasionally an exception was made; in the case of partnerships there might have been a well known man from the world of politics or business, or a specially-trained lawyer

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1. See Nelson, *Practice and Privilege: Social Change and the Structure of Large Law Firms*, 1981 Am. B. Found. Res. J. 95, 121.

2. See *id.* at 121-22.

3. See 2 R. Swaine, *The Cravath Firm* 6-7 (1948). Earlier, in 1860, Walter S. Carter had pioneered a recruiting policy that led to his being labeled “the collector of young masters.” E. Smigel, *The Wall Street Lawyer* 38 (1964). It was his usual practice to choose only the best students from the best law schools to take into his office.

4. See 2 R. Swaine, *supra* note 3, at 7.

5. See Nelson, *supra* note 1, at 122.

6. See 2 R. Swaine, *supra* note 3, at 8.

to help expand the firm's expertise in a particular area.⁷ At the associate level, there might also have been a specialist, or someone brought in to do routine work, such as cataloging or indexing materials, who was at the firm for the duration of that particular case only.⁸ However, it was clear that these were only occasional exceptions to the norm.⁹

The Cravath system was accepted and emulated so avidly by other large firms of the day that there soon developed, in the early decades of this century, competitive bidding for those graduates from the top ranks of the best law schools.¹⁰ After strong objections—particularly by the law school faculties—to the very high beginning salaries, “the evils of the practice were admitted by the offices,”¹¹ and a uniform, stable salary was instituted by the firms.

The Cravath system remained the model for big firms until very recently. What was perceived as a progressive organizational structure in 1899 stayed relatively unchanged despite the increasing complexity and scope of the law, as well as the spiraling size of law firms. One author of a study of large law firm structure in 1981 marveled that attorneys engaged in the most sophisticated legal practice were working in organizational structures that were so remarkably unsophisticated, when compared to the upper tiers of corporations or even the leading organizations of other professionals, such as universities or accounting firms.¹² That same study was seeking the answer to the apparent incongruity that law firms had been able to accommodate rapid changes in the law and in the legal profession “while maintaining relatively stable structural arrangements within the firm.”¹³

In the short time period since 1981, the structure has begun to crumble at an accelerating rate, both within most firms and between otherwise comparable firms.¹⁴ Firm breakups, lateral hirings, part-time and flex-time opportunities, contract attorneys, temporary attorneys, senior associates, staff attorneys, and other new categories of attorneys make any assessment of conditions within “the law firm environment” much more difficult. The growing variety of different attorney employment models is so elusive of characterization that they were lumped together in a recent article under the heading “unpartners”.¹⁵ As might be expected, the wide variations springing up in titles and compensation schemes are matched by varying assumptions in billing rates and future prospects for

7. *See id.*

8. *See* E. Smigel, *supra* note 3, at 41.

9. *See id.* at 42.

10. *See* Nelson, *supra* note 1, at 121.

11. *See* 2 R. Swaine, *supra* note 3, at 6.

12. *See* Nelson, *supra* note 1, at 98.

13. *Id.*

14. *Id.* at 130-34.

15. *See* Jensen, ‘Unpartners’ Proliferate in the Firms, Nat'l L.J., Nov. 14, 1988, at 1, col. 3.

these attorneys.¹⁶

The only common thread apparent in most contemporary large law firms, beyond the breaking apart of the rigid lines adhered to for most of this century, is that for those following the traditional associate track (as well as for many partners), there are increasing demands to work growing numbers of billable hours. An analysis of the operations of large law firms in 1988 by accounting experts included the reported observation of "a bumping-up against the maximum number of billable hours that can be squeezed out of associates," with almost all law firms well exceeding 2,000 hours per year.¹⁷ Another recent article reported that some New York firms are budgeting associates for 2,500 billable hours.¹⁸

The organizational pendulum is still in motion, having swung from a loosely joined group of independent entrepreneurs, to a rigidity in structure, recruitment and advancement. There exists right now a period of opportunity in the variation of demand and inclination toward experimentation.

Into this very fluid environment come, for the first time ever in the profession, large numbers of women who are approaching or who have reached partnership age.¹⁹ It is probable that the recent changes in the structure of law firms would have happened without this influx of women. Most observers have cited the need for flexibility in assignment of work and in rates of billing (coupled with the attraction of not having to share partnership profits) as the major motivations for managing partners or committees to launch these new experiments.²⁰ Indeed, one of those root causes—the need for flexibility in billing rates, caused at least in part by the tremendous increase in starting salaries—may logically be seen as the most significant determinative factor.²¹

Whether or not the influx of women had a significant impact on the advent of changing law firm patterns, the availability and quality of these opportunities will have a significant impact on the professional lives of many of these women. The "mommy track" of reduced hours is much more relevant to today's young professional women with children than the similarly situated group of male parents. This despite reported studies showing that female lawyers are twice as likely to be unmarried and childless as their male counterparts.²²

16. *See id.* at 34.

17. *See Wise, 1988 Another Good Business Year for Firms*, Nat'l L.J., Jan. 3, 1989 at 1, col. 6.

18. *See Marcotte, Hours Way Up*, A.B.A. J. 18 (Dec. 1988).

19. *See ABA Report: Women in Law Face Overt, Subtle Barriers*, N.Y.L.J., Aug. 19, 1988, at 1, col. 1 (for past ten years, women have comprised 25 percent of entering associates).

20. *See Jensen, supra* note 16, at 34.

21. *See id.*

22. *See Jensen, Female Lawyers Getting Raw Deal?*, Nat'l L.J., Feb. 29, 1988 at 9, col. 1 (survey of 2,500 Boston attorneys). *See also Male Culture Still Dominates the Profession*, Nat'l L. J., Dec. 19, 1988, at 13, col. 3 (firms need to modify career model to enable women to have both career and family).

Whether or not male parents will, in time, seek such opportunities and whether or not more men and women will seek a more varied lifestyle than 2,500 billable hours makes possible, the important focus should be the historic opportunity now present for large law firm managers to creatively restructure employment opportunities. Only in the recent history of the profession has "the Cravath System" made rigidity and uniformity of models a virtue; in today's environment it will likely be flexibility and diversity that will be not only fairer to attorneys but will, in the long run, be most productive for the firm.

In this period of reshaping relationships and structures, leaders of the profession should concentrate on providing the means for individuals—both men and women—to be able to choose the model that suits their individual needs, responsibilities and priorities. A variety of different tracks of opportunities within each office is undesirable only if the tracks become segregated unfairly. Least desirable for the firm, its lawyers and society would be a full-time "tenure" track of mostly men, whose future will include the management and a disproportionate share of the profits of that firm, and a part-time, trivialized track, made up mostly of women.

A good number of the females who comprise forty percent of the associates now being hired²³ will surely become the superstars of firms that are able to provide them with the flexible and/or part-time opportunities for the limited period of time necessary to get past their child-rearing years. There are daily reminders of the importance to a law firm's future of holding on to this wealth of talent, including the abundance of announcements heralding the appointment of female corporate vice-presidents. The future of today's exclusion of many females from rainmaking opportunities because of the "old boy" network involving law firm partners and corporate decisionmakers is very limited indeed.

Increasing questions concerning the availability and quality of flexible opportunities by law school graduates to law firm recruiters will, in the not too distant future, establish for some firms a reputation of consideration and flexibility. All should join in Judge Kaye's call for visionary leadership by the large law firms. Now is the time to fashion opportunities that will not only allow flexibility in hours but will be supportive of other "untraditional" arrangements, such as periodic work at home, made more productive with the availability of fax and computer transmissions, and day care support at the largest firms, or at clusters of firms, at least for emergency situations. Creative managers should do more than tolerate a few months of parental leave; they should actively encourage alternative opportunities without the present severe penalties of loss of prestige, withdrawing of important assignments, and derailment from the partnership track.²⁴

23. See Report to the House of Delegates, ABA Comm'n on Women in the Profession 5 (1988).

24. Some firms are acutely aware of the need for change. A partner at Davis Polk & Wardwell in New York was recently quoted as saying, "If we want to recruit the best

Increased efforts in this direction might save the profession from the kind of embarrassment caused by a recent article reporting on the "Rising Stars" in major law firms, in which not one of the 29 junior partners mentioned as future leaders of the bar were female (nor, it should be noted, were any minority lawyers mentioned).²⁵

Most people who become lawyers do so out of a real commitment to the principles of justice and fairness. This attitude, coupled with healthy doses of self-interest, will provide the major motivations for the special efforts necessary to provide a meaningful place for all lawyers in all segments of this profession.

lawyers and keep them, then we must be flexible." *Firms Must Make Room for Women*, Nat'l L.J., Dec. 12, 1988, at 13, col. 3. This new-found flexibility, however, comes too late for many women who stepped off the partnership track in order to have children. See Zeldis, 'Rainmaking' at Law Firms: *The Last Hurdle for Women*, N.Y.L.J., May 1, 1989, at 1, col. 3 (one woman's move to a flex-time job left her with no partnership opportunities and the perception of being "a member of the B-team").

25. See *'Rising Stars' Shine in Major Law Firms*, N.Y.L.J., Jan. 23, 1989, at 1, col. 3.

