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The Partners: Inside America's Most Powerful Law Firms

Carol Rasnic

BOOK REVIEW

THE PARTNERS: INSIDE AMERICA'S MOST POWERFUL LAW FIRMS

CAROL RASNIC*

The authenticity of nonfiction journalism depends significantly upon its source, and when the author's revelations have been drawn from his own first-hand experience, his work is all the more plausible. Such is the effect of James B. Stewart's *The Partners: Inside America's Most Powerful Law Firms,* which is a subtle exposé of the country's largest corporate firms. Unlike comparable internal commentaries on the legal profession and the judiciary, such as Joseph Goulden's *Superlawyers* and *The Benchwarmers,* and Woodward and Bernstein's *The Brethren, The Partners* is written by a former associate of one of the mammoth firms about which he writes. His portrait of the philosophy underlying the operation of the nation's largest and most prestigious firms is both credible and creditable, an effort comprehensible by both lawyer and layman.

Stewart was previously associated with the New York City law firm of Cravath, Swaine and Moore, which he describes as "the archetype of elite corporate firms."[1] As a graduate of Harvard Law School, class of 1951, he confides that graduates of law schools with "established reputations, e.g., Harvard, Columbia, and Yale, by reason of their distinguished faculties and rigorous curricula"[2] are usually recruited by the subject firms. Currently he has departed from the intense and aristocratic world of corporate law and is presently senior editor of *The American Lawyer.*

The author begins with an introductory disclaimer from any association with his former firm's work on the IBM litigation which provides the theme for Chapter Two. The reader is implicitly aware of Stewart's personal legal training and, although it is unstated, his adherence to the ABA Code of Professional Responsi-

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*B.A., University of Kentucky; LL.B., Vanderbilt University. Assistant Professor of Labor and Business Law, Virginia Commonwealth University. Member of the Tennessee (1965) and Virginia (1976) Bars.

1. J. STEWART, THE PARTNERS: INSIDE AMERICA'S MOST POWERFUL LAW FIRMS 366 (1983) [hereinafter referred to as THE PARTNERS].

2. *Id.* at 368.

bility's restriction against violation of a client's confidence. Indeed, exposure to the dominance and eminence enjoyed by the member lawyers of the firms of which he writes is the *sine qua non* of a realistic appraisal, precisely the element which lends such credence to his book. The uniqueness of the "elite blue chip corporate firms which occupy the pinnacles of the profession"[3] is repeatedly portrayed within each of the eight chapters, all of which are "novelettes" on their own. The separate chapters of *The Partners* consist of journeys through eight separate legal conflicts, and Stewart successfully humanizes the lawyers playing the leading roles. These are the same lawyers he characterizes as ones who "survey the rest of the profession with at least a touch of arrogance and disdain."[4] Many of the relatively small percentage of the lawyers who compose this elite group (approximately 3000 of the 500,000 attorneys in the United States) are partners or associates of the firms considered to be at the apex of the corporate practice.

These partners guilelessly draw six-figure salaries as a result of a simple formula applied to the legion of associates. By first taking a figure equal to twice an associate's salary (e.g., $50,000, the average salary which Stewart attributes to such associates) and then dividing that figure by 1000, one arrives at the hourly rate at which the associate's work is to be billed. Thus, with the average associate producing $100 per hour billed and working 2500 billable hours per year (which Stewart cites as a reasonable approximation of the average yield), income of $250,000 is generated annually. After the associate's salary and his overhead (estimated to equal his salary) are paid, the firm has a profit of $150,000. The practice of "pyramiding" (assuring that the number of associates far exceeds the number of partners) makes possible the inordinately high incomes routinely earned by the partners.

Before beginning to read the substantive portion of the book, one should read Appendix Two, "The Cravath Firm,"[5] which will provide a comprehensive grasp of the tenets which form the basis of the firms' operations. The appendix illustrates the member-selection and training process promulgated by the Cravath firm's dominant figure, the hegemonic Paul D. Cravath, associated with the Cravath firm from 1899 until his death in 1940. This appendix

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3. *Id.* at 14.

4. *Id.*

5. R. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS, 1819-1948 (1948). Chapter VII is reprinted in its entirety in THE PARTNERS, *supra* note 1, at 367-75 (entitled Appendix Two).

summarizes the homogeneity of philosophy characteristic of all the subject firms. The reference to Cravath is in the third person, and it is as though the great mentor himself were dictating sacred and unchallengeable mandates. Cravath's absolute minimum requirements for employment are scholastic excellence, both at the undergraduate and law school levels (most usually from one of the notable schools already mentioned), and pressure-resistant stamina, compounded with an aggressive and amiable personality, sort of a "Jack Armstrong-All-American-Boy"-Rhodes Scholar-Phi Beta Kappa-Law Review editor type. Preferred are recent law school graduates, not those tainted by years of experience with less exalted practitioners.

Secondary only to the maintenance of the excellence and prestige of the firm, the subsequent investment by the firm in exhaustive and detailed training of each associate has one goal, the attainment of partner status. An associate who has not been elevated to partner after six years' employment at Cravath is encouraged to seek employment elsewhere before his confidence and desire to advance have eroded. However, the individual welfare of the doomed associate is of considerably lesser import than the work he is expected to have produced. Cravath's reasoning is that "[t]he frustrated man will not be happy, and the unhappy man will not do a good job."[6] The principle feature of the so-called "Cravath System" is the insistence that the practice of law must be the primary and compelling interest of both the associate and the partner. An unconvincing side comment on the importance of peripheral activities so as to assure the lawyer versatility is treated almost as an afterthought, and is overshadowed by the emphasis already given to the requisite loyalty he owes to the profession and to the firm, which is quasi-religious in nature.

Each chapter details legal entanglements, but all are not focused on litigation. Exemplary of the involvement of the major law firms in controversies that do not primarily involve courtroom adversaries is the resolution of the crisis involving the fifty-two Americans held hostage by the Iranian government. Behind the scene was the financial crux on which the settlement leading to their return was negotiated by the major law firms representing large American banks holding deposits of Iranian assets, which were frozen by President Carter pending the hostages' release. The complexity of finance is made intelligible by Stewart's lucid explanation in Chap-

6. THE PARTNERS, *supra* note 1, at 372.

ter One of the effect of the crisis on the twelve banks' custody of some $5.3 billion in Iranian monies and the concurrent concern of American businesses of possible default on payments of the nearly $4 billion they had loaned Iran. The involvement of the several nations concerned and the complexity of the ultimate many-faceted settlement quite possibly portrays the corporate lawyer in his most attractive light.

The nobleness of the profession is thematic when it becomes obvious that one of the banks' counsel also represented a major creditor. Because there loomed the possibility of a creditor's attachment of the assets during the interim between the release of the assets by the banks per the terms of the settlement and their transmittal to the government of Iran, there was the ultimate conflict of interest. He describes the zeal with which the remaining firms protected their own clients' interests against this conflict by alerting U.S. Supreme Court justices, who were preparing to render a decision. This account allows the lawyers to assume hero-status. Further, their unblemished role in this chapter is carried through to the climactic statements of one of the Davis Polk[7] firm's spokesmen (there occurred numerous telegraphic errors in transmittal of amounts to be released, credited, and paid as interest on loans, impeding the transfer of the funds and, as a consequence, the hostages' release): "Who gives a damn about $300,000.00?"[8] and his dramatic instruction to the telex operator to disregard any error of less than one million dollars. All this makes even the most blasé reader appreciate the almost irreconcilable patriotic duty and concern for the fate of the hostages and the obligations to their respective clients. The "champions of justice" somehow succeed in accommodating both groups.

In contrast, the ugliness of professional conflicts of interest does not allow the corporate lawyer's image to fare quite as well in Chapter Four. The chapter relates Westinghouse's frantic effort to justify its unavoidable breach of contract to deliver processed uranium to utilitites in the United States and to Sweden at the agreed

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7. Davis Polk represents Morgan Guaranty, the bank which held the greatest portion of Iranian assets. (Appendix One, THE PARTNERS, *supra* note 1, at 366, is a concise summary of each of the 10 subject firms, indicating location, date of founding, size, major clients, and author's comments, and notes of Davis Polk that it is "long known as the top 'white shoe' firm," i.e., the firm boasting the greatest number of clients on the Social Register.) The other firm playing a major role in the Iranian settlement was Shearman and Sterling, whose client is Citibank. Shearman and Sterling, with 341 members, is the largest of the firms discussed in the book.

8. THE PARTNERS, *supra* note 1, at 52.

upon price, by reason of a drastic, unanticipated rise in the price of uranium. Although most of the book's subject firms are New York City-based, Westinghouse's counsel was the Chicago firm of Kirkland and Ellis.[9] That firm's disqualification by the Seventh Circuit Court of Appeals[10] resulted from prior work by a partner in Kirkland's Washington, D.C. branch office for one of the uranium producers then being sued by Westinghouse for allegedly having conspired to fix prices, necessitating Westinghouse's default. Although the lower court had found a violation of Canon Nine of the Code of Professional Responsibility[11] and had been "reluctant to exonerate Kirkland for what appears to be an error in professional judgment,"[12] it had not regarded such " error" as serious enough to warrant disqualification. By the time the appellate court had reversed, stating that "the two contrary undertakings by Kirkland occurred contemporaneously, with each involving substantial stakes and substantially related to the other,"[13] the dependence of Westinghouse on Kirkland's representation made the necessary change of counsel nearly disastrous for Westinghouse. Despite this highly publicized professional transgression, Stewart concludes that the ultimate effect was actually the enhancement of Kirkland's image among the members of the bar. Nonetheless, the author conveys the unmistaken message that the one who bore the costly brunt of Kirkland's indiscretion was the client.[14]

Another case is the much-maligned federal "bailout" of the Chrysler Corporation by its guaranty of the corporation's creditors' unified agreement to refinance loans on which Chrysler had defaulted. The bailout was the product of the firm of Debevoise, Plimpton, Lyons and Cates and it is not viewed by Stewart as an accomplishment the firm should recall with pride. Discussed in

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9. The only other non-New York City firm, Pillsbury, Madison and Sutro, of San Francisco, represented the Genentech Corporation in its preparation of a prospectus for public offering, the subject of Chapter Three.

10. Westinghouse Elec. Corp. v. Kerr-McGee Corp., 580 F.2d 1311 (7th Cir. 1978).

11. "A lawyer should avoid even the appearance of impropriety." MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 9 (1979).

12. Westinghouse Elec. Corp. v. Rio Algom Ltd., 448 F. Supp. 1284, 1304 (N.D. Ill. 1978).

13. *Westinghouse Elec.*, 580 F.2d at 1322.

14. It is interesting to note that there is an article which may be indicative of the lasting impression left on this firm by the Westinghouse fiasco and its realization of the need for professional diligence. This article details the recent ouster of a former FCC chairman as a Kirkland partner when the firm was retained by one of AT&T's divestiture offshoots because of a possible conflict by reason of his past affiliation. Warren & Kelly, *The Sting: Kirkland Style*, AM. LAW, May 1983 (Stewart's present employer).

Chapter Five, the "110%"[15] required of its members by the Chrysler effort is portrayed as such an exhaustive commitment that the firm consequently was unable to devote its resources to other clients, who suffered as a result. This blind allegiance to a major income-generating client is conveyed as the indispensable quality of the corporate law firm. The Cravath firm's opening of a separate White Plains, New York office to attend solely to the intensified series of anti-trust actions against their client, the prodigious IBM, as related in Chapter Two, epitomized this same consummate devotion. Cravath's chief litigator in the IBM litigation summarized it thusly: "I don't know any good lawyer who doesn't work his ass off. Until you've done everything you can to win, you're not free to stop."[16] Stewart even ascribes the coincidental high divorce rate among Cravath lawyers working on the IBM case to their obsession with the project.

Difficult subject matter throughout the book is made understandable by Stewart's introduction and definition of many corporate finance terms, and two such examples are found in Chapter Three with "tombstone,"[17] and "red-herring,"[18] which relate to the public listing of the genetic engineering corporation, Genentech. The portion on Genentech and the preparation of its prospectus unveils somewhat the mystery surrounding the statutory requirements of the Securities Exchange Commission, particularly the corporate underwriter's duty to exercise "due diligence" in including in its stockholder statement all pertinent information regarding a corporation aspiring to sell to the public.[19]

Other instances are the "white knight"[20] and "hostile takeover"[21] in Chapter Six, the fascinating story of Kennecott's attempted acquisition of Curtiss-Wright in its effort to rid the corporation of a board member (who was also the Chairman of the Board of Curtiss-Wright) then embroiled in a bitter proxy fight.[22] Chapter Six also includes a comprehensible explanation of the concept of federalism and its inherent problems in the event of concurrent state

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15. THE PARTNERS, *supra* note 1, at 243.
16. *Id.* at 111.
17. *Id.* at 131.
18. *Id.*
19. *See* 15 U.S.C. § 77a (1976).
20. THE PARTNERS, *supra* note 1, at 262.
21. *Id.* at 247-48, 261-62.
22. The Kennecott troubles netted almost $1.5 million in legal fees for Sullivan and Cromwell, but took a toll on its members similar to that suffered by the Debevoise firm in Chrysler and the Cravath firm in IBM.

and federal lawsuits,[23] as well as an explanation of the practice of "insider trading"[24] and its federal penalties. Also present is the classic biased and corrupt judge, almost a requirement in any critique on the profession of law. United States District Judge Edelstein, who presided over the government's anti-trust action against IBM,[25] serves to remind that among the fallible are not only members of the bar, but also occupants of the bench.

Stewart's colorful language facilitates an understanding of otherwise difficult material. For example, he compares the "all-hands meeting" which immediately precedes the filing with the SEC of a new public issue's preliminary prospectus with the "kickoff in football."[26] He designates the closing of the Chrysler deal with its multitude of signatories as the "corporate equivalent of the signing of the Treaty of Versailles."[27] He does not assume his reader to be well-versed in the law, and he succinctly explains the functions of the Shepherd's citator and the West system to the legal researcher.[28]

Perhaps the most readable portion is the intriguing account in Chapter Seven of the Rockefeller family's domination of the firm of Milbank, Tweed, Hadley and McCloy. Stewart here is critical of the common trust and estate practice of determining executors' and attorneys' fees by applying a percentage to the monetary size of the estate, and he commends the Milbank firm for its usual provision limiting these commissions in wills of its moneyed clients. A meaningful explanation of the now expanded marital deduction, the various will provisions used to amplify the amount of decedents' property which passes to beneficiaries because of tax savings, and brief explanations of the purposes of "generation-skipping" trusts and the rule against perpetuities gives this chapter a particularly practical application. Nelson Rockefeller's frequent alteration of his own will and the infusion of many of his personal traits and those of other famous Milbank clients (such as Jackie Onassis) make this chapter the book's highlight.

Even though the chapters could be read in a random order without detracting from the author's effort, his placement of the Kodak anti-trust litigation at the end (Chapter Eight) appears more than

23. THE PARTNERS, *supra* note 1, at 271.
24. *Id.* at 276.
25. *Id.* at 103.
26. *Id.* at 130.
27. *Id.* at 239.
28. *Id.* at 160.

coincidental, for it effectively depicts the danger of being an individual firm member in a large-scale lawsuit which has taken a negative turn with respect to the law firm, in this case the firm of Donovan, Leisure, Newton and Irving. The progression of events in the six-month trial,[29] both in and out of the courtroom, would provide resourceful material for a full-length movie. The perjury committed by one well-intentioned partner of the Donovan, Leisure firm and the various reactions of several other firm members involved culminate in irrevocable professional damage to the individuals involved, but the firm as an entity emerges relatively unharmed. This is Stewart's recurring theme throughout the book, and he concludes this chapter with the acknowledgment that "institutional self-preservation comes first."[30]

There are negative aspects, such as an occasional inaccuracy (e.g., Stewart's inadvertent reference to real estate "bequeathed"[31] by Nelson Rockefeller to his wife), and the inevitable tedious coverage of the cumbersome SEC requirements in the chapter on Genentech. Also, the intricacy of the federal anti-trust laws, although quite likely unvoidable by reason of the sheer complexities of the subject matter, at times makes continued reading a tiring effort. There is the rather blatant omission of any labor-management conflict that unquestionably must be one of the most time-consuming, lucrative, and litigious areas confronted by the corporate firm.

Further, Stewart fails to provide any true coverage of corporate leaders charged with white collar crime, though such would inevitably arise during a firm's representation of a large corporate entity.[32] Appendix Two[33] does state that the practice of the Cravath firm is essentially civil in nature, but the proliferation of criminal charges among the corporate hierarchy would cause such to emanate from upper-level corporate representation. Nonetheless, such is largely ignored with the exception of the dual criminal charges filed in the course of the Kennecott hostile takeover effort. In that case, a perjury charge was filed by the Sullivan firm against the opposing counsel representing Kennecott, mainly in retaliation for

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29. Berkey Photo, Inc. v. Eastman Kodak Co., 457 F. Supp. 404 (S.D.N.Y. 1978), *rev'd*, 603 F.2d 263 (2d Cir. 1979).

30. THE PARTNERS, *supra* note 1, at 365.

31. *Id.* at 304.

32. *See, e.g.*, United States v. Park, 421 U.S. 658 (1975) (corporate president was convicted of violating § 301(k) of the Federal Food, Drug and Cosmetic Act).

33. *See supra* note 5.

their having charged Sullivan's client, Kennecott, with a violation of federal criminal law regarding "insider trading." The perjury itself did not particularly bother Sullivan personnel, but the implication was that having to resort to defense of such a scurrilous crime was beneath the dignity of firms of such caliber.

The book, if measured by its novel-like style and realistic portrayal of matters of contemporary significance, is indeed an interesting and revealing work. Irrespective of Stewart's intermittent admirable and positive reflections on individual firm members, the overall picture of the elite corporate firm is not a laudable one. One is left with a definite and empathetic understanding of precisely why the author elected to abandon the pressure-motivated and progression-fixated life of the corporate attorney.