

# American Legal History – Russell

**Robert Taylor Swaine, *The Cravath Firm and Its Predecessors* (New York: Ad Press, 1946-48).**

## Chapter VII THE CRAVATH FIRM

Since 1906

The dominant personality of this volume is Paul D. Cravath. He was the authoritative head of the firm until his death in 1940, and his conceptions of the management of a law office still control its operations. Henderson and de Gersdorff in corporate work, and Wood in litigation, were long active with him in developing the "Cravath system" and the Cravath tradition; they have now passed on, leaving the firm to new generations of partners.

The firm's practice, even in litigation has dealt primarily with corporation and financial problems, and the character of the work from year to year has been increasingly determined by national economic conditions. Cycles of security issues in boom times have been followed by cycles of receiverships and reorganizations in times of depression, while, without letup, problems arising from the constantly heavier impact on business of Federal taxation and regulation have pre-empted more and more of the time of partners and staff.

### **Cravath, Henderson & de Gersdorff**

**(May 1, 1906--January 31, 1913)**

#### **The Cravath System.**

Cravath had a definite philosophy about the organization of his law firm, its partners, its practice and its relation to its associates.

*As to recruiting the legal staff:*

Cravath believed that a staff trained within the office would be better adapted to its methods of work than a staff recruited from older men who, in practice elsewhere, might have acquired habits inconsistent with Cravath methods, and hence he insisted that the staff should be recruited, so far as possible, from men just out of the law schools.

He believed that these men should have had a thorough preliminary education in the arts as well as in the theory of the law. Cravath believed that disciplined minds are more likely to be found among college graduates than among men lacking in formal education; that mastery of the fundamental theories of the common law is a *sine qua non* of legal competence; and that such mastery can better be taught in the law schools than by practitioners in a busy office. The best men, too, are most likely to be found in the law schools which have established reputations by reason of their distinguished faculties and rigorous curricula, and which, by that very fact, attract the more scholarly college graduates.

Cravath believed in seriousness of purpose--a man with a competent mind, adaptable 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 "gentlemen" 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. Cravath himself had not made an unusually distinguished college record. As the playboy traditions of college life became obsolete in the stern realities of the depression of the '30s, however, college records of applicants came to have added importance. For a poor law school record Cravath never had tolerance. He believed that a man 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; in either case, the man was not for the Cravath office.

The scholastic standards of the "Cravath system: thus made a Phi beta Kappa man from a good college who had become a law review editor at Harvard, Columbia or Yale the first choice. Such standards are commonplace today among New York offices; when Cravath came to the Seward firm in 1899 they were regarded as

somewhat eccentric--not to say stuffy. As other offices have adopted the same standards, the supply of the theoretically first-choice men has not equaled the demand, and from time to time quite a number of B-men, and occasionally C-men, have been employed. Experience has proved the reliability, for the purposes of the Cravath office, of the scholastic standards to which it endeavors to adhere. Few of the B-men and none of the C-men have been able, within the office, to equal the accomplishments of their contemporaries of higher scholastic achievement. Of the 23 partners on May 31, 1948, 15 are Phi Beta Kappa and 15 were law review editors.

Cravath did not, however, want colorless, narrow-minded bookworms. From applicants who met his standards of scholarship, he wanted those who also had warmth and force of personality and physical stamina adequate to the pressure to which they would often be subject because of the rugged character of the work. It is, of course, difficult to judge these qualities in the brief interviews which the partners are able to have with most of the many applicants. This was especially true during the conventional "rushing season" of December which prevailed prior to World War II, when applicants came to the office in scores in a concentrated period of a few weeks. Despite the care taken in interviewing and checking the men finally chosen, misjudgments have sometimes been made in taking men not adapted in their personal qualities to the Cravath practice; probably many more mistakes have been made in adversely judging men on inadequate contact.

There were two exceptions to Cravath's general standards during his active leadership. Because he found that most of the more brilliant young men strongly preferred handling concrete matters to library research, he thought the office should always have at least one associate of mature experience with capacity and preference for legal research. He also believed that for real-estate work and litigation it was well to have a few men who had been trained in other organizations where there was more of such work than in his own office. There was some reason for such exceptions in the first decades of the Cravath firm, when its legal personnel numbered less than forty. But as the organization has grown to more than a hundred lawyers and the fields of its practice and its own expertness have become more comprehensive, Cravath's early exceptions have tended to disappear, and the same standards are applied to all the men in the office, whatever their work.

*As to training associates:*

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 even be assigned to one partner for any undue length of time.

At the outset of their practice Cravath men are not thrown into deep water and told to swim; rather, they are taken into 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, on the theory that a man best learns how to handle cases by actually handling them. 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 the 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. Matters involving small amounts often involve difficult, complicated law problems, and a man may be misled, perhaps made careless, by being allowed to handle such a matter without adequate analysis and supervision.

Cravath's insistence that the legal staff be recruited from men just graduating from the law schools, rather than from older, experienced lawyers, was based not only upon his desire for a Cravath-trained staff but also upon his belief that the office and its clients would get the best service from men confident of unimpeded opportunity for advancement. When a former associate asked, in 1916, whether there might be an opportunity for him to return to the office and make it his career, Cravath referred to the "office policy of filling advanced positions from the ranks of the young men who enter the office as beginners," and added: "I feel that if our office has been successful it is very largely because of our adherence to this plan, which has enabled young men to feel that if they remain with us during the year of preparation they will have the first chance when opportunities for responsible positions from time to time develop."

It is a fundamental part of the Cravath training that a man's responsibility shall be increased as his growing competency permits. There are partners in the firm today who, after only two years in the office, handled effectively as associates, with little supervision from partners, matters involving millions of dollars. On the other hand, there have been men of the finest scholastic records and personalities who could not acquire capacity for independent responsibility.

As the men grow in professional stature, those who evidence capacity for delegation are given opportunity to expand their own activities by the use of younger assistants to whom they can in turn give the same kind of training they have enjoyed. The art of delegation in the practice of the law is difficult, requiring nicety of balance which many men with fine minds and excellent judgment are unable to attain. There have been many cases--some even among the partners--of inability to find the happy medium between doing all of a job personally and turning it over completely to an assistant. The more nearly he attains the right compromise between these two extremes, the greater the amount of effective work a man can turn out, and hence the greater his value to the firm.

*As to compensation:*

Before Cravath came to the firm, law students in the office and several of the admitted associates received no compensation. Those associates made their living by doing what business they could develop for themselves and paid for desk room by assisting in office business. Cravath could not tolerate the inefficiency and divided loyalty implicit in such an arrangement. He abolished the study of law within the office, and every associate, including the man fresh from law school, was put on salary. Because its demands in time, energy and competence are heavy, the Cravath offices tries to keep annual advancements and ultimate compensation at least as high as those of any other office in the City.

Adoption by other City offices of many of the same principles on which the "Cravath system" is based led, about 1910, to competitive bidding for the highest-ranking men of the leading law schools. This gave a few men inordinately high beginning salaries, sometimes double those of the generally applicable scale. The discrimination among the men just coming out of law school became unfair and made the initial salary offered too important a criterion in the choice of offices. Within a few years the evils of the practice were admitted by the offices and

strongly objected to by the faculties of the law schools; on their suggestion it was abandoned after World War I, following a conference among the managing partners of the larger offices. Beginning salaries thereafter tended to become uniform, and at increasing rates, until the disruption of education during World War II and elimination of the regular annual crop of law school graduates made it impossible to apply uniform standards to men of widely varying ages who had spent years in Government service.

*As to tenure:*

Every lawyer who enters the Cravath office has a right to aspire to find his life career there--but only by attaining partnership.

Men 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. Cravath used to say that, except for a few research scholars and specialists, no one should be permitted to stay in the office more than six years unless the partners had determined to admit him into the partnership. Most of the partners admitted up to 1926 had been in the office for five or six years. As the work of the office, the complexity of the problems, the number of partners and the size of the staff increased rapidly during the '30s, the period of apprenticeship for the partners admitted in 1940 lengthened to about eight years. The dislocations due to World War II further lengthened the period; the partners admitted in 1946 all graduated from law school before 1936.

Ten years is too long for a man to remain a Cravath associate under normal conditions unless he has been told that the chances of his being made a partner are still good. A man who is not growing professionally creates a barrier to the progress of the younger men within the organization and, himself, tends to sink into a mental rut--to lose ambition; and loss of ambition induces carelessness. 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.

Under the "Cravath system" of taking a substantial number of men annually and keeping a current constantly moving up in the office, and its philosophy of tenure, men are constantly leaving. Where do they go? Associates with good records have

no difficulty in finding promising and profitable opportunities if they do not stay too long, causing potential connections to question their success and hesitate to gamble on advanced age or salary levels. 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 law firms of their own; and quite a number have become members of law school 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. Because among the many called to the staff only a few can be chosen as partners, even good men are likely to feel that the odds against them are so great that they should accept flattering offers from others.

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 the alumni. Business which such men have been doing while with the firm has frequently been encouraged to continue with them; new business is often referred to former associates.

*As to choosing partners:*

The "Cravath system" has given the firm a multiplicity of talent from which to choose its partners. While recognizing the risks of too much inbreeding, Cravath insisted that new partners should be chosen within the office, unless special requirements otherwise compelled. Young partners and young associates are seldom subjected to the discouragement of seeing someone come in over them from the outside. During the four decades of the Cravath firm there have been but three exceptions: the two advocates, Walker D. Hines and Frederick H. Wood, and the present senior tax partner, Roswell Magill.

Obviously not all the men competent to be partners can be taken into the firm--for that would make the firm unwieldy. The choice is difficult; factors which control ultimate decisions are intangible; admittedly they are affected by the idiosyncrasies of the existing partners. Mental ability there must be, but in addition, personality, judgment, character. No pretense is made that the ultimate decisions are infallible.

Only infrequently have mistakes been made in taking men into the firm; more often, mistakes not so easily remedied have been made in not admitting others.

*As to interests outside the firm:*

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 must be the primary interest and that that practice shall be solely as a member of the Cravath team.

This is not to say that the great advantages of interest outside the law are not recognized. On the contrary, Cravath himself gave much time to charitable, educational and artistic activities. He 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. Neither partners nor associates, however, are encouraged to have outside business interests, and they may not have any such interest which would impair their work at the office. There are no half-time partners or associates. Nor is there any such thing as the business of individual partners or associates: all the business in the office must be firm business. This means that there is no division of fees between the firm and its associates, as there is in many other offices. The problem of the firm is to do effectively the business which 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, as contrasted with family or social connections.

Cravath early came to believe that in most cases the client is best advised by a lawyer who maintains an objective point of view and that such objectivity may be impeded by any financial interest in the client's business or any participation in its management. Accordingly, he made it the policy of the firm that neither its partners or its associates should hold equity securities of any client, or serve as a director of a corporate client, or have a financial interest, direct or indirect, in any transaction in which the firm was acting as counsel. Occasionally, more frequently in recent years, clients have insisted upon exceptions permitting partners to occupy directorships and own qualifying equity securities, but the exceptions have been few.



*As to the relations of the partners inter se:*

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 Guthrie, would not be allowed today.

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 works so that they continue with the firm, who 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 rise, and indeed often has risen, within the firm more rapidly than some of his seniors. The partners are judged *inter se* just as are the associates, and adjustments are made to reflect the evaluation of the younger partners by their seniors. Complete objectivity in such appraisals is not easy, for the most companionable man is not always the best, or the most effective, lawyer.

*As to the scope of the practice:*

The practice of the office is essentially a civil business practice. Cravath desired a staff equipped to serve corporate and banking clients in any of their legal problems.

After the withdrawal of Guthrie, the office work in litigation did not attain standards fully acceptable to Cravath until Wood joined the firm in 1924. With the assistance, first, of Bruce Bromley and later, also, of William D. Whitney, Alfred McCormack and Albert R. Connelly, Wood was able to build that practice up to the standards of the rest of the office and the traditions of Blatchford, Seward and Guthrie.

As the importance of tax questions increased, a partner was delegated to become an expert in taxation. First it was Hoyt A. Moore, then Hugh Satterlee, then

Charles A. Roberts, then Maurice T. Moore; and in 1943 Roswell Magill was brought into the firm.

Anomalously, only in the fields of patents and admiralty, in which the firm was once premier, has it failed to provide expert service within its own staff. As early as the Seward era the specialized patent practice was almost wholly superseded by the nearly equally specialized corporate practice, and patent law specialists have been brought in as co-counsel in most of the patent work developed by the office. The partners have, however, handled patent-licensing problems, as well as those involving the impact of the antitrust laws upon patent licenses. In recent years this work has greatly increased, and currently several cases primarily involving patent law problems are being handled by the litigating staff.

The firm has a substantial practice in the administration of estates and personal trusts; but domestic relations cases are not encouraged.

*As to "influence":*

Not since the retirement from practice of Richard Blatchford has the firm trafficked in political influence. While Cravath recognized that acquaintance of the partners with judges and administrative officials, commanding their confidence, was an asset to the firm, he followed the tradition of Clarence Seward in never purporting to have special influence with a judge or governmental officer, or ability to produce a magic result, which could not be exerted or produced by anyone else of equal legal ability and diligence. It was Cravath's philosophy that the politically "right people" are transitory, hence that political influence is evanescent, and that a practice based or dependent upon such an approach to legal problems is unlikely to have permanence. He also believed that those (of whom there have been so many in recent years) who purport to have special connections enabling them to accomplish results not capable of being accomplished by any other skillful lawyer usually oversell their wares; that most courts and administrative bodies decide cases on the merits rather than by favor; and that, notwithstanding the frequent gullibility of clients, skill and diligence in developing the law and the facts are much more important than "influence." That is still the firm's policy.

*As to the firm's management:*

Cravath believed that a law firm, like any other successful organization, must have strong executive direction, and until the mid-1930s his firm was under a dictatorship in his person. Details of office management were, of course, left to the conventional managing clerk, and there has always been a managing partner, chosen from the younger partners, charged with supervision of managerial detail and, in effect, the liaison between the senior partner and the staff.

Cravath never completely delegated to anyone ultimate determination of office policy or evaluation of associates and partners. However, as the legal and clerical staffs began to increase rapidly after World War I, he relied more on the judgments of his partners. Weekly firm meetings started about 1923, where matters of general policy and of management, as well as current law problems, are discussed. Today every partner has a voice in the decision of every important question, as well as the benefit of the views of all his partners.

EOD