

THE PARTNERS

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Inside
America's
Most
Powerful
Law
Firms

THE PARTNERS

*(Inside America's
Most Powerful Law Firms)*

JAMES B. STEWART

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The following published sources were especially useful in my research: *The American Lawyer Guide to Law Firms*, 1981–1982 edition, Am-Law Publishing Company, New York, for statistical information about law firms and the identity of many of their major clients; *Martindale-Hubble Law Directory*, 1982 edition, Martindale-Hubble, Inc., Summit, N.J., for biographical information about many lawyers mentioned; and Peter Collier and David Horowitz, *The Rockefellers*, 1976, Holt, Rinehart & Winston, New York, for information about members of the Rockefeller family.

I am indebted to my family and friends, especially my parents; my sister, Jane Holden; my brother Michael; and Jane Berentson for their unflagging personal support and encouragement.

TO MY PARENTS

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Author's Note

The Partners is the result of two years of reporting, consisting almost entirely of personal interviews with the people involved in the cases and transactions that are the subject of the book, as well as a review of the many related documents. The book is not based on any other published sources.

Many of my initial interviews for each chapter were conducted on a not-for-attribution basis. Lawyers were concerned that their identification as sources for my book would adversely affect their careers, even if their quoted comments reflected favorably on their firms. The information I gathered from these interviews was used primarily to persuade others to discuss their work with me on an on-the-record basis. My policy was not to use information in the book unless it was confirmed on the record by someone directly involved in the matter.

Many of the sources who did speak to me on the record did so reluctantly. In some cases, lawyers were barred from disclosing client confidences by the Code of Professional Responsibility, and limited their comments accordingly. Although nearly all the principal lawyers involved eventually agreed to be interviewed, no one described in this book sought to be included or sought publicity.

Most quotations which do not come directly from my interviews are taken from court transcripts or from notes made by participants at the time statements were made. Otherwise, the quotes

represent the speaker's recollection of the statement or the recollection of someone who heard the statement at the time it was made. Similarly, the thoughts and states of mind of various participants described in the book are as they recall them.

I was an associate lawyer at the New York firm of Cravath, Swaine & Moore from 1976-1979. I did not work on the IBM antitrust cases or any other IBM client matter while I was employed by the firm, and the information about IBM and Cravath that appears in this book is based solely on reporting which took place after I left the firm.

Introduction

On December 12, 1980, lawyers from law firms representing America's richest and most powerful banks gathered secretly in the 32nd-floor conference room at the midtown offices of Shearman & Sterling in New York City's Citicorp skyscraper. For most of the lawyers attending, the circumstances were unique but the cast of characters familiar: the same senior partners from the same law firms they had been working with or against in major financial transactions for years. The meeting's host, John Hoffman, the Shearman & Sterling partner representing Citicorp, greeted his colleagues like old friends: Bruce Nichols, from Davis Polk & Wardwell representing Morgan Guaranty Trust; Frank Logan, from Milbank, Tweed, Hadley & McCloy representing the Chase Manhattan Bank; Richard Simmons from Cravath, Swaine & Moore representing Chemical Bank; and others, together representing the country's twelve largest banks.

Then Hoffman dropped a bombshell on the assembled bank lawyers: acting on behalf of his client, Citibank, he was secretly negotiating with the revolutionary government of Iran for the release of the American hostages. These negotiations were being conducted not by the State Department, not by the President, not by the Pentagon, but by John Hoffman—a partner in a New York law firm that most Americans had never heard of and, throughout the hostage ordeal, never would hear of. In his hands, and the

collected hands of the partners from the elite law firms gathered together that day, would ultimately rest the fate of American lives, power, prestige and money.

If Alexis de Tocqueville were describing American lawyers today as an "aristocracy," as he did more than 150 years ago, he would mean the kind of partners from the kind of law firms meeting at Shearman & Sterling that day. There are about 500,000 lawyers practicing in the United States today; among them are personal injury, criminal, divorce and real estate lawyers, practicing in towns and cities, alone and in small groups as partners. Only a tiny fraction of that number—roughly 3,000—practice in the elite blue chip corporate firms which occupy the pinnacle of the profession. From their plush offices high in skyscrapers in the nation's financial centers, these lawyers survey the rest of the profession with at least a touch of arrogance and disdain.

Binding together these lawyers and law firms and distinguishing them from all others is their representation of America's major banks, financial institutions and corporations, the country's greatest concentrations of economic power. Only such clients can afford the elite corporate law firms and the kind of law practice for which the firms pride themselves—one in which no stone is left unturned, no matter how seemingly insignificant, and with virtually no regard for time or money. Indeed, if pressed, this is the explanation most often offered by top corporate lawyers to justify their representation of wealthy clients: it permits them to perfect the craft of lawyering to an extent that poor clients cannot possibly afford. It is what makes them, in their own eyes, the best. The representation of such clients is concentrated in the hands of the partners in the elite corporate firms to an extraordinary degree. At nearly all of the largest, most important and most complicated financial transactions and conflicts which take place, partners from the same small group of elite law firms are present. It is no coincidence that such events are among the country's most significant economic, social and political events as well.

These law firms dominate the legal affairs of their principal clients, even though large banks and corporations always have lawyers within their corporate staffs, known as "in-house" counsel. The firms have developed the capacity to handle a very wide range of the kinds of specialized legal problems which arise in corporate and financial transactions, as well as the manpower to

handle very large and complex problems. As a result, the elite corporate firms are themselves large and diversified. None is smaller than 150 lawyers; the largest, Shearman & Sterling, is almost 350 lawyers. Most have at least 200, with a support staff at least as large.

At all such firms, lawyers are divided into partners, the more senior and experienced lawyers who share the profits and risks of the firm and make the management decisions; and associates, younger lawyers who are employed by the firm at an annual salary and may ultimately be tapped for partnership. Most of the legal problems handled by this kind of firm are so large that they require a number of lawyers, which gives rise to what is known as "pyramid" staffing—a single partner or small group of partners who preside over a larger pool of associates. Within the firms, as a whole, there are always more associates than partners. More than any other factor, it is the capacity of the firms to staff matters in such a fashion—and to bill clients for associates' work at rates that far exceed associate salaries—which produces the firms' immense profitability. Their partners earn incomes that rival and often exceed those of the top executives in their client corporations—upwards of \$350,000.

There is an aura about the elite corporate law firms that is not quite duplicated anywhere else. It makes itself felt in the tastefully conservative, even faintly shabby, office decor; in the oil portraits of the long-dead founding partners; in the prestige addresses; in the polite but cool formality displayed by the lawyers in the firm, who invariably wear dark suits and dignified ties. The firms project an image of unshakable prosperity and security, of tradition and excellence, of permanence. It is the image of the old-line WASP financial establishment, one that is carefully burnished and maintained.

It is a world for which lawyers are well prepared at the country's most prestigious law schools. At nearly all of the elite corporate firms, many of the partners have been educated at Harvard Law School, itself a bastion of the kind of values reflected in the blue chip firms. Harvard Law graduates have dominated the upper reaches of the legal profession to a far greater degree than any other school or college, and their similar professional training has in turn influenced other lawyers at their firms. As Robert Swaine, a partner in Cravath, Swaine & Moore, wrote

unapologetically in 1948, "The firm has taken most of its associates from the law schools of Harvard, Columbia and Yale, although . . . there was a conscious effort to take at least one man a year from other law schools of high repute such as Pennsylvania, Cornell, Virginia, Michigan and Chicago." To that list today would be added Stanford, California (Berkeley) and probably New York University. Despite occasional gestures of hiring an associate from a "lesser" local law school, graduation from one of the top ten law schools is almost a prerequisite for employment at one of the elite firms.

The similar educational background helps explain the homogeneity of the lawyers in the firms despite the absence of any overt discrimination in hiring and promotion. To interview at the prestigious law schools, all firms today sign statements that they do not discriminate on the basis of race, creed, ethnic origin, sex and, in many cases, sexual preference. Historically, there was discrimination, especially against Jews. (Virtually no blacks or women applied.) If there is discrimination today, it is extremely subtle, even unconscious, reflecting a generalized preference for people who will "fit in" and work well with clients. All of these firms now have lawyers who are Jewish, black, female; vestiges of discrimination are, ironically, most apparent in the degree to which some such lawyers have aped their WASP counterparts. There is little, if any, affirmative action at any of the most prestigious firms.

The elite corporate firms are also old; their traditions have been handed down from one generation of lawyers to another, and they have deep roots in the business and financial communities they serve. Most were founded before the turn of the century, with established clients who took advantage of the boom in the American economy which ensued. No firm founded since the Second World War has managed to enter these elite ranks; some old established firms have, however, slipped out of them.

Of these traditions, one of the most deeply rooted is secrecy. As Alexander Forger, a partner at Milbank, Tweed, Hadley & McCloy, explains: "Our clients tell us that one of our great attributes is an ability to cope with problems in a low-profile way. We *never* seek public attention. Discretion is essential. Clients never even have to ask for confidentiality. We assume that our clients don't even want it known that they are consulting counsel."