

On Tax—Dana Frenkel of JPMorgan

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City.

On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, we're joined by Dana Frenkel. Dana is the Global Head of Employment Tax at JPMorgan Chase. Dana, thanks for joining us. Welcome to the podcast.

Dana Frenkel: Hi, Len. Thanks so much for having me.

Len: It's great to have you. Dana and I met as associates in the Cravath Tax Department, back in the mid-2000s. But Dana, where do we start when we want to learn about your journey in the tax law? How far back do we go?

Dana: Not terribly far back from a professional perspective, although further back in years than I guess I realized. But my interest in tax probably began when I was a summer associate, between my second and third years of law school. So, I had summered at Davis Polk that year.

I spent most of the summer working on corporate projects—some litigation, but mostly corporate. And then at the end of the summer, they had a program that was like a mock trial for tax people. And you got an assignment, and it was a tax-based assignment, and they had their associates acting out the parts and everything.

And I basically just took a chance on it; it sounded like something fun to do. And I loved it. I loved the partner that I worked for on that assignment. But most significantly, I was really just motivated and interested in the tax analytical aspect of the assignment. And it felt more exciting to me than a lot of the other things I had worked on over the summer. And I said, "Hey, maybe this is something that I might want to do."

I went back for my third year in law school. I took basic income tax and corporate tax, and started thinking I might want to do this when I join a law firm full-time, which ended up being at Cravath the following fall.

Len: It's pretty remarkable how that's kind of the reverse of the story that people tell, even people who didn't know about tax before law school. They sort of fall into it in law school by taking basic tax, and then doing a summer associate where they're sort of curious about tax to begin with.

And you sort of fell into it as a summer associate and then went back your third year and backfilled the coursework for it.

Dana: And as a result, I didn't have the opportunity to do a lot of coursework. It was basically a basic income tax and corporate tax. Had I thought about it or been thinking about it earlier on, I probably would've started earlier, so I would've had the opportunity to learn some more in the school setting.

But fortunately, as an associate at Cravath, you learn a whole lot as a junior associate. So, I got to fill in my course load education with on-the-job education.

Len: At what point during your third year did you interview with Cravath? Or did you interview with Cravath at a different time?

Dana: So, I had interviewed at Cravath for a summer associate job and I had received an offer.

But right after the summer, the hiring partner at the time called me and said, "Hey, how was your summer?" I said, "It was really good." And he said, "Did you accept your offer for full-time?" And I said, "No, I haven't yet." And he said, "Well, would you consider coming to Cravath full-time?" And I said, "I would consider it."

And I'd love to talk to some people in the Tax Department, because actually I think that's where I'd like to join if I were to join."

And he made the arrangements. Steve Gordon, who was the head of the department at the time, reached out to me and invited me to come in and meet with some of the folks in the department. And that made my decision for me. It was a really gut feeling that I'd be very happy with that group of people doing the great work that they do.

Len: One of the things we've spoken about on a special recruiting episode we did in the summer was the unusual nature of Cravath's daylong callback interviews. So, I imagine that you came in as a third-year law student and you met with people over the course of the whole day. What do you remember about that?

Dana: So, I did that daylong process for the summer associate role. And when I came back as a third year, it was a more tailored experience. It may have been a day or two-thirds of a day. But it was specifically with pretty much everyone in the Tax Department, I think, to make sure that they'd be happy to have me. Because I was sort of focused at that point in knowing that that's the area I wanted to practice and for me to feel it out, see if I thought it would be a good fit.

I actually think the Firm is making an assessment of the candidate, right, but you also want to get a good feel as the candidate of where you want to jumpstart your career. You want to meet as many people as you can also. That's how I looked at it.

Len: And so, you start at Cravath after your third year of law school. As I recall, you were just a year after me, right? So, we were kind of junior associates almost exactly at the same time. What do you remember about those first days of practice when you were sort of thrown into deals and deal work, and the matters that Cravath touches?

Dana: I remember being remarkably impressed by the professionalism at Cravath. Even before I met the Tax Department, it was kind of like just walking into the room for the first time and seeing the group that greeted you by name and had everything so organized and streamlined. And the process of being sort of onboarded was very easy and welcoming. And that was an indication of the level of professionalism that Cravath had and sort of exudes.

I don't remember my first project, which is funny. But I just remember there was definitely a little bit of shock in the process of, OK, here's an assignment and sort of moments of self-doubt. Like do I really know what I'm doing?

And then knowing that actually, probably no one was in a better position than I am in this particular moment in time. And that's the process, and the folks here believe in me and believe that I can do it, so I probably can. And so, let me just give it a go.

Len: I want to react to what you said, because I remember the feeling too, of showing up at a firm like Cravath and feeling like I was out of place or they must have made some sort of mistake in hiring me in the first place. The sort of imposter syndrome.

And it's a natural feeling to say, well, like I'm working on this matter with Steve Gordon and he's a partner who's been doing this for 30 years. I'm just going to do what he asked me to do and try not to get in any trouble, basically.

And as I think I said on the recruiting podcast, that's a very natural feeling—but it's also very wrong. The best way to get the Cravath experience sooner is to take a different approach and a mindset that like: "I'm here for a reason. They're not expecting me to know all the answers. The process is that I figure out what I don't know how to do and treat something as my matter, and the partner is helping me."

And when you get into that mindset, it gives you a little bit more liberation to dive into something and accept that it's unclear to you or accept you don't understand it, accept that you have a lot to learn, and then you just show up every day. You let the deals wash over you and you learn about the law that way and you gather experiences.

So, tell me about the process of thinking about leaving Cravath. What do you think you were seeking and how do you remember that part of your life?

Because one of the things I talk to people about is, you only leave Cravath once basically. And so, you want to make a jump that you think is smart, it's well-timed, a good opportunity and the like. How did that work for you?

Dana: No, I couldn't agree more. And I actually remember saying that out loud at the time. "I'm going to leave Cravath once, so I want to do it right."

I think I had a little bit of a unique experience as a young lawyer in New York. You probably shared some of this as a young father yourself. I had my first child before law school and my second during law school.

So, when I came to Cravath, I was already a mom of two young children. And during my time at Cravath, I had two more children. So, I was juggling a lot.

Len: Full plate, yes.

Dana: Yeah, full plate, a very demanding career, a very demanding home life, but all things that I was really, really happy about and grateful for. And I remember reminding myself, when the going got a little tough, that these were all really good things. And it was a lot to juggle and it was hard when one of the balls fell out of the air. I didn't want to trade anything that I had. I was grateful for it.

But it did put me in a little bit of a tough position in terms of building a career at that time, because I did have needs at home and I did struggle a bit to manage all of that.

So, I had a really special opportunity that Steve and the other partners had helped me ease that work-life balance at the time, by giving me the opportunity to work on an 80% schedule and come into the office four days a week.

I mean, now that's, "Oh, everyone comes into the office only two, three, four days a week." But at the time, it was actually pretty revolutionary for a firm like Cravath to sort of acknowledge that there could be meaningful contribution from a junior associate without it being 110 or 120% of a workweek.

It was something that I was incredibly grateful for because, honestly, had the team not been amenable to that, I'm not sure that I would've been able to spend those years of my life when I had four young children at Cravath. But I was able to do so because of their flexibility and kind of foresight into thinking about my development.

I have a lot of gratitude to the partners at the time. I told Steve that recently, on reflection looking back on those days, as hard as it was, it could have been a lot harder. I was able to learn a lot and get great deal experience, but I wasn't necessarily the absolute typical junior associate at Cravath.

So, I think in my sixth year I started thinking about, "OK, is this really a forever place for me? Or do I need to think about moving on?" And as you said earlier, Len, I want to do it right because I'm going to do it once. And Cravath is obviously an incredible resume-building platform. I wanted to take that leap properly.

Len: Well, it's a great reaction to your remembrance of the time that we were associates together. We must have spoken about juggling parenthood and the responsibilities in our personal lives with our responsibilities in our work life.

So, what sort of opportunities came your way, then, when you started to look outside of Cravath and think about leaving?

Dana: So, I wasn't looking for a very long time. I had a friend who worked at JPMorgan, who a couple years before I was even thinking about leaving, had said to me, "JPMorgan tax department is really fantastic." He, himself, did not work in the tax department, but he had worked with the heads of the tax department in some of the planning work he was doing. And he thought it would be a great place for me.

And I said to my friend, “That’s really nice of you to think of me, but I’m not interested. I’m happy where I am now.” And he said, “OK, well, if you ever do get interested, it’s a really great group. You should give me a call.”

So, when I was shifting my mindset a bit, I reached out to that friend of mine and he said, “Well, I don’t know if they have any headcount right now, but let me reach out to the head of the department.” And he did. And he forwarded my resume along.

The head of the department at the time, who was Ben Lopata, called me and said, “I got your resume from this friend of yours. It’s really impressive. You have exactly the profile that we look for when hiring, but to be honest, we’re not hiring anyone right now. I just felt like I wanted to reach out to you and acknowledge it. And to say that I’ll keep this at the top of my pile because you never know what might change.”

And in the meantime, I started putting the feelers out for what was available in the market. And I kind of had an intuition that I’d want to go to an in-house role, but I wasn’t 100% sure. And I interviewed at a couple of law firms. Actually, I had a pretty easy time deciding that that was not the road I wanted to go down.

Len: Do you remember why?

Dana: I felt like if I wanted to be in a law firm, Cravath was the law firm I wanted to be in. Not to sound too corny about it, but it was a really impressive place.

And fortunately for me, I guess, Ben Lopata called me back not long after we had originally spoken, and said, “Guess what, a position opened. Like I promised, I kept your resume on my desk and I’d love for you to come in and meet with some people.”

Len: So, let’s stop right here. A lot of our podcasts have focused on happenstance or serendipity. I mean, in your case, you sort of made your own luck. First of all, you had a friend kind of reach out and volunteer to help you out. And that’s one aspect of it.

But you followed through, you took the friend’s advice that one day you might get interested so you should remember this. And then on the first phone call, when you are, for lack of a nicer term, rejected, because your resume’s very impressive, but they can’t hire you, or they’re not hiring you right then—you have a choice to make.

First of all, you have a choice to make in that moment to say to the person who’s calling you, something perfunctory like, “OK.” Or you can say, “Well listen, I understand that, I really appreciate your call. And it’s flattering what you said about me. And I’m very grateful for that. Please do keep me on the top of your list.”

And that moment is an interview. That moment is an opportunity to make an impression on this person and ensure that they do feel good about you and remembering to call you.

And then the second thing is after you hang up the phone, to try not to be too demoralized, to understand that life is long, things do happen, headcount does change inside JPMorgan and things often kind of work out in their own strange ways. And that’s the part of the story you’ve really gotten to now, isn’t it?

Dana: Yeah, and what was very appealing to me about joining this group was that it’s a group filled with really, really smart people who are very dedicated to their own professional development, but also to keeping this department first-in-class.

I felt similarly to how I felt when I originally met the Tax Department personnel at Cravath. I just had a strong intuition these are people that I want to surround myself with. I like the way they speak about their work. I like their passion and their commitment, but I also just—I like them. I feel good about spending my days here.

Len: Tell me a little bit more about what the group does. You’ve called it the JPMorgan tax group. Is it doing tax work for the bank itself or is it doing client-facing work? I think it’s the former, but tell us a little bit more about it.

Dana: So, this is the corporate tax department in JPMorgan, which rolls up into the CFO. So, it's actually a finance role and not actually a legal role, although the vast, vast majority of us are tax lawyers.

You're right. The purpose, our function in the department is to look after JPMorgan's own tax profile. And there are a lot of subgroups within our group.

So, we've got the U.S. tax planning group, and that's the group that I joined. There's international, which is basically everything outside of the U.S., and information reporting and withholding, compliance, tax accounting—that all sits within the corporate tax department, and looking out for JPMorgan's proprietary tax position.

So, everything from tax planning opportunities to managing our tax risk vis-a-vis our client work, although not client pitching, but JPMorgan side of the client work, as well as the accounting compliance aspects of JPMorgan's tax obligations.

So, I mentioned that I joined in the tax planning group, and that's where I continue to sit today, albeit in a very different role. And what the tax planning group basically does is it serves as a tax advisor to the various lines of business of JPMorgan. And that's what's really very cool about the job.

JPMorgan's a huge place and it does a lot of different things and it evolves over time. So, as the business has different needs and as the business develops different products, we have to react to that because we as the tax department, similar to the legal department or any other support function, need to be able to provide that advice to the line of business.

So, when I joined, I was covering a couple of the businesses and that has changed quite a bit over the last several years, as pretty much as the needs of the department have changed, as the needs of the bank have changed.

Len: Yeah, I think that's a little bit different than the Cravath experience that you and I had, and that I continue to have, which is the laws change. That definitely is true. And there are different ways that deals are done in certain aspects today, but I'm still doing M&A deals or financing deals.

And broadly speaking, the types of transactions I'm working on are similar. And even where the fundamental tax issues are different, they're still similar to tax issues I've dealt with for 15 years; is it capital gain or is it dividend? How do I know? Et cetera. What do I need to ask?

But for you, it sounds like your responsibilities and obligations with respect to tax are really changing as the commercial divisions change, as the business itself changes. And that's a different kind of shift.

Dana: Yeah. I think similar to your experience, Len, a lot of the tax issues are the same or very similar, but the facts are very different. There've definitely been a few more "first week at Cravath" kind of moments for me over the course of my time here, right? Because it's great to sort of be able to continue to be a generalist and learn a lot and be able to learn to adapt.

But the flip side of it is you have to kind of learn to stay uncomfortable and feel a little bit new to things for several years, as you shift around.

Len: That touches on a concept I wanted to ask you, which is, as you reflect back on it now, what do you think you were very well-prepared for as you started at JPMorgan? And what do you think you were totally unprepared for? The basis of your Cravath experience, or anything else?

Dana: One thing I should mention in terms of Cravath preparedness for my next step in my career is probably writing skills. Obviously, very critical skill for an attorney to have advising clients. Having the ability to take really complicated technical tax issues and distill them for people to be able to sort of consume and apply to real-life facts is something that I feel like was really honed in my days at Cravath.

And I recall specifically working on a series of memos for a client in connection with a couple of reorganization transactions I worked on with Steve, and I worked really hard on the writing and the analysis and expressing the technical view. And Steve had very significant comments to my writing and they were all so good. All of his comments really helped me get better. And I looked at the markup at first and I was like, "Oh my gosh." And then I was like, "Wow, these are amazing comments. This is my opportunity to learn."

And Steve actually said to me once, "Just tell me the story." And I've actually used that to help other people communicate better on some technical tax issues at work. And also, honestly, I've given that advice to my kids when they struggled with essay writing. I said, "Just tell the story. Say what you want to say. And then you can come back and edit it and you can come back and scrub it, but get the basic simple, straightforward story on paper."

And that is something that definitely helped prepare me for both writing deliverables that I've had here at JPMorgan and also, just being prepared to speak in front of senior management on technical tax issues.

Len: Two reactions I have to that is, I mean, if you want to be a lawyer, you need to be prepared to do a lot of reading and writing. But even in the last 15 years, a lot of the writing we do is less Microsoft Word expository writing, and more like preparing slide decks and try and communicate in that way.

But still, you have to go back and write paragraphs every once in a while in this job. And there's no substitute for practice and there's no substitute for plain old editing.

And the point you made about the advice Steve gave you to tell the story and the advice you give your kids, I try and apply that even for a writing assignment, like drafting a contract. I might have to draft a really hard, complicated provision and I'll step back and I'll say: "Well, what do I want to say? I want to say, 'We don't have to pay you unless you do these three things.'"

And so, sometimes I'll just type that: "We don't have to pay you unless you do these three things." And then I'll start turning each of those words into the defined terms of the contract or whatever. Because if you try and say it in like a normal human voice, then you can, one by one, try and figure out what legal particulars need to be added. But there's no substitute for sort of just saying it straight.

Dana: Yeah, exactly.

Len: You mentioned earlier that what you are doing now is very different than things you had done, certainly at Cravath, but also when you started there. What are you doing now?

Dana: Yes, a very different role. So, now I'm the Global Head of Employment Tax Advisory at JPMorgan. So, I continue to sit in the U.S. tax planning group, but I have responsibilities for our employment tax space globally.

So, what does that mean? Pretty much anything that we give to an employee, from basic compensation to fringe benefits, to vacation award trips, executive compensation, conferences—anything that may or may not have a tax impact to employees, I'm responsible for giving the appropriate tax advice to the line of business or HR that's responsible for providing that to the employees. The technical tax issues are not those that I spent the majority of my career building and learning.

I have often joked and reflected that I wish I had paid more attention to some of the executive comp discussions in our lunch meetings at Cravath. They sure would come in handy as the 409 CAFE regulations were like hot off the press in those years. And now, I need to know all the details of them.

So, certainly, being responsible for that advice regionally and globally is a whole new challenge for me.

Len: It seems to me too, that there's a lot of socially delicate dynamics involved in something like this, right?

Dana: Yeah. My team's responsibility is to advise JPMorgan in its capacity as an employer, not actually interact much with the individual employee, but obviously, in that capacity, JPMorgan is dealing with the individual employees. And so, there's a lot of sensitive and interesting questions that can arise from time to time.

With the outset of the pandemic, the technical tax questions that arose in this space exploded and became actually very sort of high-profile in that JPMorgan as a company, along with many other large employers, and all employers, had to face a lot of questions around how, if at all, to make changes to its payroll tax, withholding decisions and approach. There's a lot of judgment that had to be exercised in light of the fact that the facts were progressing a lot faster than the law.

And so, it became like a super interesting and exciting space—actually got a lot of, and continues to get a lot of attention, as we, along with other companies, are dealing with questions around remote work, hybrid work arrangements, flexibility and how to make sure that we have the tax compliance behind all those arrangements.

Len: Yeah. Every employer has been dealing with the productivity questions around where do we want people to be working?

But none of that has to do with tax. All the tax stuff flows from that. What are the tax consequences of having people sitting in 50 states, or what are the tax consequences of having people spend four months a year in a foreign country, or something like this?

And those can be extremely complicated to form the questions. And they can be maybe impossible to answer them. And so, I can imagine that that's been a big lift.

Dana: Yeah, it's been a big lift, but it's been fun to be at the forefront of the decision-making and judgment calls, hand-in-hand with senior management that are making the more HR type of decisions. They have to do that with all the pieces of advice that they need in order to make those decisions.

Len: So, in the few minutes we have left, Dana, I wonder if you'd tell us what you like to do when you're not doing tax. Outside of the world of tax, what occupies your time and what are your hobbies and interests?

Dana: So, I mentioned that I have four children that I had at Cravath; they're growing up. And so, they're still relatively young, but I have started to actually experience this concept of a little free time, which is sort of remarkable.

And so, I love to exercise. Actually, I use my Peloton very regularly. I'm a big fan of Pilates. So, I try to get a couple of Pilates sessions in during a week when possible. It's not always possible.

I'd say I used to spend all my free time or non-working time spending a lot of time with my kids, which I obviously treasured. But I actually remember somebody at a conference recently saying it's funny when people call it work-life; it's really kind of work-work because for a lot of us, we're juggling different types of work responsibilities.

But now that my kids are a little bit older, they're out a lot of the time, they're busy with their friends or they're doing their own academic pursuits or sports or hobbies. So, I do actually have some free time for the first time in many years.

A bunch of years ago, I sort of took on running a community event in my neighborhood that commemorates the Holocaust. Actually, it's something that my dad used to be involved in. And he felt that younger people needed to take on the cause to make sure that people can continue to pass the torch of responsibility to the next generation.

So, as like a granddaughter of four Holocaust survivors, it felt sort of natural to take that on. That's something that I organize for the community, pretty well-attended. We tend to get 1,500 people to come, it's one night a year.

Len: Interesting. All of that sort of touches on different aspects of community and being a part of a community. And it's a great rundown of how to do that outside of a demanding tax job.

We've been talking to Dana Frenkel, the Global Head of Employment Tax at JPMorgan Chase. Dana, it's been great to catch up with you. I was meeting with the tax partners a few minutes ago before we started recording and they were jealous that I was going to get to spend this time with you. They wanted me to send along their best wishes, and we'll be in touch for sure.

Dana: Thanks so much, Len, it's been great. And please send my regards back. I miss everyone.

Len: That's all for this episode of On Tax—A Cravath Podcast. You can find us online at cravath.com/podcast, and don't forget to subscribe on Apple Podcasts, Google Podcasts or Spotify.

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I'm your host, Len Teti—thanks for listening.