RAMSEY COUNTY
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The signing of the Briand-Kellogg Pact in Paris on August 27, 1928. Frank B. Kellogg is seated at the table. This copy of a painting of the historic event is from the Minnesota Historical Society. See article beginning on page 4.

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RAMSEY COUNTY
History

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A Message from the Editorial Board

The winter issue of Ramsey County History opens with a fascinating account of how some pioneering lawyers who were involved in cases relating to the timber and steel industries helped shape and change the practice of law and politics in Minnesota. Written by Samuel H. Morgan, a retired St. Paul attorney, this article ranges from President Theodore Roosevelt persuading Frank B. Kellogg and Cordenio A. Severance to represent the government in key anti-trust cases in the first decade of this century to the great 1962 election recount involving incumbent governor Elmer L. Anderson and his challenger, lieutenant governor Karl F. Rolvaag.

David Riehle's article examining the reaction of the African-American community in St. Paul to the fighting in Cuba in 1898 reminds us that the struggle of African-Americans in Minnesota to obtain full civil rights didn't begin in the 1960s. By using information culled from the pages of St. Paul's articulate and influential African-American newspaper, *The Appeal*, Riehle demonstrates that the decision to go to war with Spain in 1898 brought out complex reactions from the local African-American community. What Riehle finds in the coverage of the pageant in *The Appeal* is clear-cut ambivalence as to the meaning of the war for the civil rights of African-Americans in St. Paul.

John M. Lindley, Chair, Editorial Board

Timber, Steel, Law, and Politics

St. Paul's Pioneering Attorneys and Their More Interesting C

Samuel H. Morgan

In 1882, two young lawyers, Newell Clapp and Alvin Macartney, teamed up to practice law in Hudson, Wisconsin. In 1887, three other lawyers, Cushman K. Davis, Frank B. Kellogg and Cordenio A. Severance, began a practice together in St. Paul. The story of the careers of these pioneering lawyers and their successors, who eventually came together as the firm of Briggs and Morgan, provides a snapshot of the legal profession when Minnesota was growing up. The story also reflects a tumultous eighty-year period as the state grew from the age of natural resource mining to the era of technology.

Clapp, Macartney and Weyhaeuser Timber

It's scarcely surprising that in the early 1880s Clapp and Macartney realized the economic potential of the timber industry as they watched millions of logs float down the St. Croix River from the Minnesota and Wisconsin pineries to the north. Shortly thereafter, they moved their office to Stillwater, where the logs were sorted among the owners at the boom site north of town, and they began representing the Weyerhaeuser, Laird Norton, Denkman and Musser timber interests.

When the Weyerhaeuser offices were established in St. Paul in 1893, Clapp and Macartney moved their offices there. Before long they were performing legal work not only for the burgeoning business but also for its founder, Frederick Weyerhaeuser, and his family. The young lawyers were among Weyerhaeuser's most trusted friends and they acquired modest interests in the Weyerhaeuser companies. When they bought their first shares in a new Weyerhaeuser venture, Northern Lumber Company of Chippewa Falls, Wisconsin, Macartney announced: "I now have the best lumbermen in the country working for me."

Not long after their move to St. Paul, Clapp and Macartney were joined by another Clapp family member, Newell's cousin, Moses Clapp, but his association was brief. Upon the sudden death in 1900 of Senator Cushman K. Davis, the senior partner of Davis, Kellogg and Severance, Moses was elected by the Minnesota legislature to fill Davis's unexpired term. He remained in the Senate until 1916, when for the first time senators were elected by popular vote. Then he was defeated by Frank B. Kellogg, who would move on to an illustrious career in the international arena.

Because of their representation of the expanding Weyerhaeuser timber empire, Clapp and Macartney soon were involved in such important legal matters of that era as taxation, land use, acquisition and financing (which multiplied geometrically) and the spin-offs from new legislation. For example, in 1887 when the Interstate Commerce Act placed the United States government in control of railroad rates, implications of that decision were felt keenly in all industries, and particularly the timber industry. Three years later, when the 1890 Sherman Antitrust Act imposed new controls on trade and commerce, the lumber industry and the Weyerhaeusers again were affected.

In February, 1912, Alvin E. Macartney died unexpectedly and Newell Clapp turned for help to his son, Augustus Wilson Clapp, then practicing in Oklahoma. Augustus immediately returned to St. Paul to help his father. The transition from first to second generation was completed in 1915 when Alvin Macartney's son Grant also joined the firm.

A similar transition was taking place in the Weyerhaeuser offices after the death of seventy-nine-year-old Frederick Weyerhaeuser in 1914. Of his four sons, Charles, Rudolph, John and Frederick (F. E.), it was F. E. Weyerhaeuser who became the leader among his brothers. F. E. already had begun standardizing audit procedures and had initiated plans for a common sales effort by all interests involved. A. W. Clapp worked closely with F. E. in organizing the Weyerhaeuser Sales Company. By this time, most of the big timber had been cut in Minnesota and Wisconsin and Weyerhaeuser's major timber resources now lay in the Far West. The company's headquarters were moved to Tacoma, Washington (where they remain to this day), but the sales company stayed in St. Paul for another generation.

A. W. Clapp's most significant contribution to his profession was in providing the foundation for the law of timber taxation that followed enactment in 1913 of the federal income tax law. Clapp, and others representing the the timber industry, persuaded Congress to include in the law the section that permitted the timber owner to treat the cutting of timber as a sale, thereby recognizing it as a long-term capital gain instead of ordinary income at the time of cutting. This made it economically feasible for companies like Weyerhaeuser to replant their timberlands, as they have been doing in Oregon and Washington, instead of leaving their holdings unplanted, as they had done with the pinelands of Minnesota, Wisconsin and Michigan.

More Help Needed

As the Weyerhaeuser interests and other clients of Clapp and Macartney

g Cases

were faced with more litigation, it was apparent the two men needed more help. They found it in a young Iowa lawyer, Charles Briggs, who had grown up on an Iowa farm and graduated from Harvard Law School in 1913. After a few months on a New Mexico ranch, Briggs became district attorney of Louisa County, Iowa, trying both civil and criminal cases. Although he soon became an experienced trial lawyer, he also found time to go hunting, often with several Weyerhaeuser directors from Burlington, Iowa. On one occasion, when the ducks weren't flying, the directors sat in a courtroom watching Briggs prosecute a man for robbing railroad boxcars. As Briggs recalled: "The directors were there and when I made my final arguments to the jury, I predicted a guilty verdict, and I was right."

Following service as an officer with combat experience in World War I, Briggs was urged to run for Congress in Iowa as a Republican. Instead, Weyerhaeuser's directors persuaded him to come to St. Paul to join Clapp and Macartney. "I've always said," Briggs noted later, "that my being a good shot had a lot to do with my landing in St. Paul."

During his years with Clapp and Macartney, Briggs handled every kind of lawsuit. These ranged from a widow claiming that her attorney had impersonated her dead husband in a fake séance to gain control of her fortune, to thorny antitrust cases and confrontations with labor Wobblies. However, the experience he most liked to recall was set in London in the High Court of Judicature, Kings Bench Division. A client had died of an infection from a punctured pimple while on a cruise. Was this an accidental death entitling the estate to recover some million dollars under a Lloyds of London policy? When Briggs attended the trial as an observer, one of the judges asked him:

The Merchants National Bank Building, still standing as the McColl Building at 366 Jackson Street in downtown St. Paul. Here Davis, Kellogg and Severance practiced law between 1887 and 1915. Minnesota Historical Society photo. Unless otherwise noted, all photographs are from the Briggs and Morgan archives.

"Do you know of any American cases on this issue—perhaps one decided by your eminent Justice Cardozo?" Briggs recalled that "I did indeed have just such a case favorable to our position to cite to the court. However, we still lost the case, though I have from that experience always had a high opinion of the British judicial system."

A new era began when Briggs invited J. Neil Morton into partnership in 1942. Morton, a graduate of Harvard Law School, was an intellectual and a scholar who brought with him substantial work for Minnesota Mining and Manufacturing (3M).

With the nation involved in World War II, the lawyers' docket was full. Younger attorneys either were in service or handling war-related legal work outside of Minnesota, and often in Washington, D. C. Those remaining frequently worked overtime, sometimes eighty hours a week. While Morton was devoting substantial time to 3M's corporate affairs, Briggs began to shift his emphasis from litigation to protecting the timber industry's capital gains tax treatment. He became vice chairman of the Forest Industries Committee on Timber Valuation and Taxation in 1942, a role that required much travel to Washington—travels he continued right up to his death in 1978 at the age of ninety-one.

The end of the war also brought new faces to St. Paul's legal fraternity, includ-

Newell Clapp

ing Richard E. Kyle, who had served as a colonel and was known affectionately as "the general." The story of his work in developing municipal finance law in Minnesota illustrates how new legal specialties evolve. Back in the 1930s municipalities were financing their own power plants. Fairbanks, Morse and Company was a builder of diesel-engine plants that provided power for municipalities. Because there were no laws directly affecting revenue certificates issued by municipalities, Fairbanks, Morse and its customers were the subject of multiple lawsuits. Kyle had represented the company. In 1932 the Minnesota Supreme Court finally approved revenue financing, but Kyle's experience in towns like Kenyon and Minneota taught him much about municipal law and finance. His role in developing that municipal law specialty led to his listing as a bond attorney in the Directory of Municipal Bond Dealers of the United States, and formed the basis for the firm's municipal finance specialty.

Davis, Kellogg, Severance and U. S. Steel

Never in the state of Minnesota has one group of lawyers made such a mark, not just on its own community but nationally and internationally, as did the founding partners of the firm of Davis, Kellogg and Severance. Davis, the senior partner, was a former state legislator (1866), United States district attorney for Minnesota (1867), and governor of Minnesota from 1873 to 1874. Before he was thirty, Davis was considered Minnesota's leading trial lawyer. He was known as a strong adversary, "impatient, sarcastic and given to classical illusions" when he addressed a jury. He also was a distinguished scholar, spending long winter evenings in scholarly reading and writing. He published a small book titled *The Law in Shakespeare.* His largest work was *The Treatise on International Law.*

In 1866 he was elected to the United States Senate and subsequently became chairman of the Senate Committee on Foreign Relations. He was a key figure in the diplomatic and political moves that led to the Spanish-American War of 1898. Outstanding lawyer that he was, Davis nevertheless once said, "If I were able, I would take my law books into Bridge Square, make a bonfire of them, and then devote myself to literature."*

Davis recognized that, with much time spent in Washington as one of Minnesota's two senators, he would need two additional lawyers full-time to help with his thriving law practice back in St. Paul. So, on October 1, 1887, Kellogg and Severance joined him.

Kellogg, a distant cousin of Cushman Kellogg Davis, was different from Davis in many ways, although his career paralleled Davis's in some respects. Kellogg also served in the United States Senate and was involved in foreign affairs. He eventually became ambassador to Great Britain, secretary of state and finally, a justice of the World Court. In 1929 he was awarded the Nobel peace prize for his co-authorship of the Kellogg-Briand Peace Pact to outlaw war as an instrument of policy. His name is perpetuated today in St. Paul's downtown boulevard and mall overlooking the Mississippi River.

(For more about Frank B. Kellogg, see the accompanying article, Frank B. Kellogg, His Life and Times, *by John M. Lindley.)*

**Bridge Square once marked the north end of the Wabasha Bridge at Wabasha Street and today's Kellogg Boulevard in downtown St. Paul.*

Alvin Macartney

Kellogg's career had an inauspicious beginning. This writer recalls a day in 1936 when he was preparing for his state Bar examination. Kellogg stopped by and asked what this writer was doing. I told him. Kellogg said:

> Well, Sam, I am sure your experience will be very different from mine. My family was desperately poor. I read law in a Rochester firm for two years and when I felt I was ready I went to Winona for my examination. That long arduous day I will always remember. I knew I did not have all the answers. Finally, one of the three examiners spoke up: "Mr. Kellogg, we don't believe you know enough law yet. We feel you should go back and read law further, then come back for re-examination next year." My face fell. I couldn't face having to spend another year of study. At that point, the examiners put their heads together. One of them, Judge Mitchell [later a justice of the Minnesota Supreme Court] then spoke up. We have all agreed that you really don't know enough law, but we have concluded that you can learn law as a member of the Bar just as well as not a member of the Bar. You stand admitted."

Limited though his legal knowledge was at that point, Kellogg soon was representing two Minnesota townships seeking to recover principal and interest on $90,000 in bonds issued for railroad construction. This was a large case for a fledgling at-

Cushman K. Davis

Cordenio A. Severance

torney in 1887. Both Kellogg and his clients realized that he could do with a little help from a more experienced counsel. Kellogg turned to Davis for advice, then spent months in meticulous preparation, an effort that paid off. His clients won the case, and Kellogg began his association with Davis and Severance.

Although he never held public office, Cordenio Severance was a "prominent citizen *par excellence* of St. Paul's legal community, so much so that the *St. Paul Pioneer Press* headlined his death in 1925 across its front page: "Cordenio Severance Dies in West." As a lawyer, Severance had worked closely with Kellogg on nationally important antitrust cases, and had argued several iron ore tax cases before the United States Supreme Court.

Severance, like Kellogg before him, had served as president of the American Bar Association, but he was best known in St. Paul for entertaining the famous at his beautiful home, Cedarhurst, in the St. Paul suburb of Cottage Grove. Among his many guests were the president's wife, Grace Coolidge; Queen Marie of Romania; and United States Supreme Court Justice Charles Evans Hughes.

Severance also became known as someone who could be counted on to lead community causes. He saved the day for Archbishop John Ireland's effort to raise enough money to complete the dome of the St. Paul Cathedral. When a fundraiser was held at the St. Paul auditorium, in that moment of silence that so often follows a presentation, Severance, a Protestant, got up and said, "I pledge $5,000." From that moment on, everyone there, regardless of religious affiliation, would help to see the dome arise.

When Davis, Kellogg and Severance practiced law around the turn-of-the-century, they did so in an office that would seem singularly quaint today. Between 1887 and 1915 when the three lawyers moved their office to the then-new Merchants National Bank building, they held forth on the top floor of the old Merchants National Bank building, now known as the McColl building, at the corner of Fifth and Jackson Streets in downtown St. Paul. They had a working fireplace and spittoons in every office. Bookkeeper Withee was famous for missing the spittoon and adding tobacco juice to the reception room's well-worn carpet. Twelve-year-old Fred Desch stood on an orange crate to reach the wall telephone when the attorneys were off trying a case. Refusing to go back to school, he rose to bookkeeper, librarian, assistant receptionist, travel arranger and keeper of the lawyers' personal checkbooks. He was the group's entire business office in those halcyon days when there were no income taxes, social security payments or any other paperwork that consumes so much of any firm's gross income today. Expenses were paid out of each partner's account with appropriate periodic adjustments. All legal firms in Minnesota were small until mid-twentieth century. Davis, Kellogg and Severance never had more than nine lawyers at any one time.

After Davis's unexpected death in 1900, just as he was beginning his third term in the United States Senate, Robert E. Olds joined Kellogg and Severance. He was the first of his colleagues to possess a Harvard Law School education. The three men were supported by a staff of five: Withee on finances; Kay Healy, Davis's former clerk, on collections; Guy Chase, later a partner, as Kellogg's secretary; a Mrs. Treadwell as receptionist; and Desch as office manager. There was no bank account. Desch kept the books and paid the bills at the end of each month. All letters, bills and memos were copied into tissue books, the precursor of carbon paper, that required reproduction by an elaborate procedure involving wet cloth and rubber. Old files were stored above the rafters, accessible only by scrambling up a ladder and crawling amid dirt and plaster.

When the firm moved to its new quarters in 1915, new furniture was purchased, including three magnificent desks, one of which later found its way to the office of the president of Carleton College in Northfield, Minnesota. (Carleton once expelled Severance for smoking.) The wall telephone was replaced by a switchboard. The library held prized volumes of English law reports which were brought out for book-lovers.

Small though it was, the firm was unique in its national practice, due in part to its early representation of the Minnesota Iron Company, and that in turn led in 1901 to its involvement with the United States Steel Corporation. A large part of U. S. Steel's operation was the mining of ore, high grade hematite, through its subsidiary, Oliver Iron Mining Company. The ore was transported to mills in the east through U. S. Steel's railroad subsidiaries, the Duluth and Iron Range and the Duluth Mesabe and Northern, and its steamboat line, Pittsburgh Steamship Company. For nearly fifty

years, Davis, Kellogg and Severance handled so much important U. S. Steel litigation, and the company became such a key part of their practice that until nearly mid-century U. S. Steel's annual retainer fee went far toward covering all of the lawyers' annual expenses.

It was, however, Kellogg's representation of the federal government in this nation's early antitrust cases that attracted national attention. His fame as a trustbuster began when the *St. Paul Pioneer Press* charged that its paper supplier, General Paper Company, was violating the new Sherman Antitrust Act. On Kellogg's advice, the newspaper sought enforcement of the law. In 1906 he was designated a special assistant attorney to try the case. The prosecution was successful, and General Paper was declared illegal and dissolved. Kellogg's "trustbuster" annointment came in an era when the nation's robber barons believed that the Sherman Act was mere verbiage without muscle.

That same year—1906—President Theodore Roosevelt also named Kellogg special counsel to the Interstate Commerce Commission, an appointment with an ironic twist since the partners long had represented railroad interests in Minnesota, including those of James J. Hill. However, the assignment as special counsel involved the ICC's investigation of Hill's competitor, Edward H. Harriman, presiding genius of the Union Pacific Railroad. Often portrayed as one of the most sinister figures in American business, Harriman was under investigation for financial manipulations and railroad consolidations.

Harriman balked when he learned that Kellogg and Severance were assigned to the case. He suggested to Judge Gary, chairman of U. S. Steel, that "it could be improper or at least embarrassing for both of us, for two of the Steel Corporation's leading attorneys to serve on the other side of the trust issue."

When Gary asked Kellogg if he thought his service in the ICC case would prove embarrassing, Kellogg asked for a sheet of paper and wrote, "I would not like to embarrass any of my old friends, nor is there any occasion to do so. It is the simplest thing in the world to avoid in this case." He had resigned as counsel for U. S. Steel. His shocked client picked up the paper, tore it into pieces and said, "Your firm will continue as our counsel." Six years later, the federal government won its case against Harriman.

There was more antitrust work ahead. The year Kellogg and Severance took on Edward Harriman, Kellogg was asked to lead the federal government's prosecution of the Standard Oil Company of New Jersey. Although there was more lucrative work in St. Paul, Kellogg was committed to this public service on behalf of his friend, Theodore Roosevelt. In 1905, Roosevelt had dashed off a note to Kellogg:

> My dear Mr. Kellogg. I wish to thank you most heartily for all that you have rendered—it is not often that a busy man whose time really is money—and a great deal of it—will give time with such disinterestedness for the good of the public. Believe me, I appreciate it. Very sincerely yours, Theodore Roosevelt.

The government's case against Standard Oil was the most important action taken during Roosevelt's second term. Oil was becoming a primary factor in the industrial life of the country, and the Rockefellers of Standard Oil had amassed fortunes. There was unpleasant talk about Standard Oil's enormous profits and attendant tactics, and Kellogg immersed himself in the Standard Oil cases. Testimony began in August, 1907, in New York City. The opening sentences of his argument revealed a courtroom style that was both mannered and caustic.

"I shall tell you the story of the Standard Oil Company," Kellogg began with decorum. This story, he continued, "is not the short and simple annals of the poor." Two years later there were 14,495 pages of testimony from 444 witnesses

Cordenio Severance's Cedarhurst mansion at 6940 Keats Avenue S. in Cottage Grove.

Frank B. Kellogg's residence on Fairmount Avenue, as it looked around 1910. Photo by Illingworth, Minnesota Historical Society collections.

and a mass of exhibits, pleadings and motions which filled twenty-three volumes.

Kellogg emerged as a master of detail and a genius at untangling the complicated mass of financial devices used by Standard Oil to dominate the market and eliminate competition through selective pricing. When the lower court's decision was appealed to the United States Supreme Court in 1910, Kellogg joined the attorney general of the United States in arguing the case. The lower court's decision was sustained in language that described Standard Oil's actions as not merely restraint of trade but "unreasonable" restraint of trade.

Not long afterwards, Kellogg received this message from Roosevelt:

> I congratulate the country most. I congratulate you next on what you were able to accomplish. It was one of the most signal triumphs for decency which has been won in our country.

More than a legal triumph, the Standard Oil case represented the victory of a philosophy Kellogg had developed over the years—one that advocated individual enterprise unencumbered by monopolistic abuse and freedom from excessive power based on wealth. Writing about Kellogg after the Standard Oil victory, one American journalist observed that "there is not a lawyer in the country whom criminal wealth more fears today."

Frank B. Kellogg

While Kellogg and Severance were spending most of their time on landmark cases, Robert Olds focused on matters of importance for St. Paul. Amherst H. Wilder, a successful St. Paul businessman and entrepreneur, had provided in his will for the creation of a charity in his name. Shortly after Wilder's death, his wife and daughter also died, leaving similar provisions in their wills. The daughter's husband contested the wills and years of litigation resulted. Eventually Olds, who represented the Wilder estate, was successful. The Amherst H. Wilder Charity, now the Amherst H. Wilder Foundation, came into being as the first operating foundation in Minnesota, with its income to be used to care for the poor, sick and needy within St. Paul.*

A Decade of Change

The years from 1910 to 1920 were a period of great change for Davis, Kellogg and Severance as the leadership passed from a generation that had been in its prime during the latter part of the nineteenth century to a new generation rooted in the twentieth century. Warren Carter joined the firm in 1913 and Cleon Headley in 1917 after Kellogg had defeated Moses Clapp in his campaign for re-election to the United States Senate. There were new clients, too: the Pullman

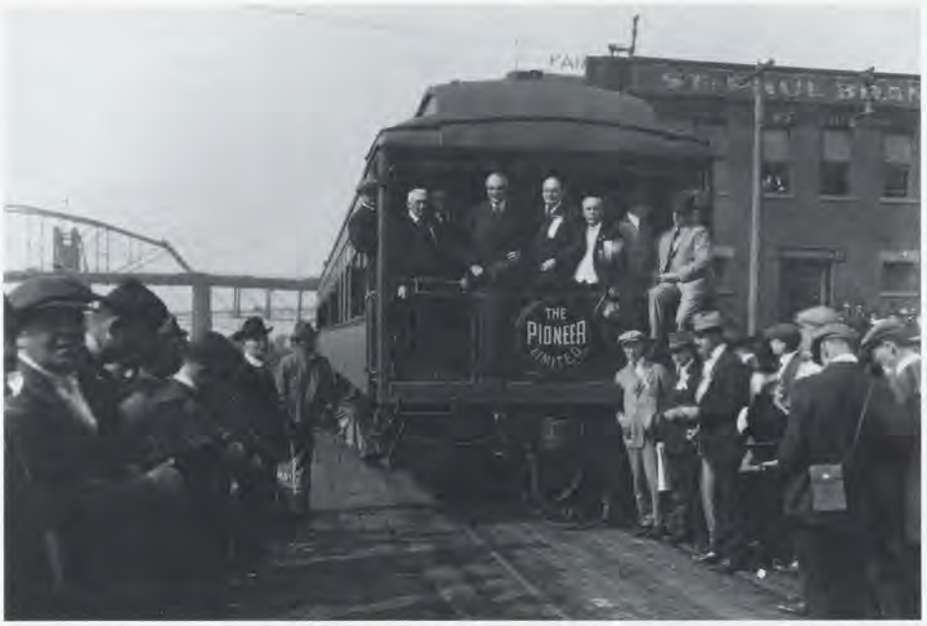
**As a footnote to this story, among the first structures the charity erected was the handsome Wilder building at the corner of Fifth and Washington Streets. It was for many years the home of the Wilder Foundation, the Community Chest and other social service agencies. (It eventually met the wrecking ball to make way for the Ordway Music Theater.) The Wilder building's architect was Clarence Johnston, a prominent local architect who was state architect for almost thirty years and designed many of the University of Minnesota's buildings. Naturally, Johnston was retained by Olds when Olds built his home on Linwood Place, a house that later became the home of George W. Morgan.*

Company, United Shoe Machinery Company, the Swift and Armour packing companies and Mackay Telegraph and Cable Company. The effects of the war in Europe were increasingly felt as Olds left for France to serve as European commissioner in charge of Red Cross operations, and Severance engaged in relief work in eastern Europe.

More help was found in Duluth in the person of George W. Morgan, who had started as a clerk in the firm in 1908 after graduating from Harvard Law School. He remembered how he had been at work in the library for six months when Severance came by and asked, "George, what are we paying you?" "Nothing," Morgan replied. "I'm sure that is an oversight," Severance replied. "Will $50 a month be acceptable?" "Yes," Morgan said, but it still was not enough to support a family, even in that day. So in 1910 when he was offered the then-munificent salary of $3,000 a year by the Oliver Mining Company, he immediately accepted, married, moved to Duluth and sired this writer.

By 1918 Morgan had become experienced in mining law and thus was the logical choice to replace Olds. Morgan moved to St. Paul, moved into Olds's office and into Olds's house at 710 Linwood Place, which he purchased a year later when Olds decided to stay abroad. A few years later, when Severance's health declined and he died in Santa Barbara, California, in 1925, the leadership already had passed to Morgan. He would be there to welcome Kellogg back in 1929 when he concluded his service as secretary of state. The firm's name then became Kellogg, Morgan, Chase, Carter and Headley.

The Great Depression, which followed the stock market crash of 1929, generated more legal problems for a great many people. The Equitable Life Assurance Society of the United States had issued policies with total and permanent disability clauses paying cash benefits to disabled policyholders. This resulted in many disability claims, as well as fascinating experiences trying cases around the state. There was, for example, the plaintiff who hobbled into court with a cane. Cleon Headley asked, "When did you begin using the cane?" The plaintiff replied, "This morning." There were other cases when insurance company investigators had seen plaintiffs, who claimed to be incapacitated, hard at work chopping wood. Generally, however, juries rendered verdicts favorable to the policyholders.



President Warren G. Harding's campaign train in St. Paul in 1920. Senator Frank B. Kellogg is on Harding's right; Governor J. A. A. Burnquist on Harding's left. Minnesota Historical Society photograph.

Clients during the next few years included such national corporations as American Radiator Company, American Can, International Harvester, Railway Express and Koppers Company, and there continued to be significant litigation involving U. S. Steel. For example, the 1921 Hibbing "North 40" case, *Reed vs. The Village of Hibbing,* enabled the Oliver Mining Company to have much of Hibbing moved south so that the corporation's Hull-Rusk-Mahoning Mine could be enlarged to reach the ore under what had been the center of town.*

There also was an important case involving income taxation of U. S. Steel's railroad subsidiaries, the Duluth and Iron Range and the Duluth Mesabe and Northern. The Minnesota Supreme Court held that the Minnesota income tax was a tax on franchises of corporations so that railroads were exempt from it because of their gross earnings tax. The attorneys also represented several local firms. One, in 1926, was Cream of Wheat in litigation that established that a seller might lawfully choose its own customers and fix the terms of the sale.**

When Floyd B. Olson became governor, the Farmer-Labor party attempted to tax the intangible assets of corporations doing business in Minnesota. Enforcement of this tax, generally known as the corporate excess tax, was a potential calamity for many firms such as Cream of Wheat. The Kellogg, Morgan firm was

**This writer vividly recalls a trip with his parents to Hibbing by rail in the Duluth Mesabe Road's business car to visit the "new Hibbing" rising out of a sea of red mud while the "old Hibbing" was becoming a ghost town. Even today some of the empty streets in parts of the "North 40" still can be seen.*

***In 1929 Morgan learned that you didn't have to eat Cream of Wheat just because you were its counsel. Meeting with Cream of Wheat executives in New York City, at the time the corporation reorganized as a Delaware corporation and listed its stock on the New York Stock Exchange, Morgan discovered that he was the only one present who ordered Cream of Wheat for breakfast. It might have been the only time he did.*

George W. Morgan

J. Neil Morton

Charles W. Briggs

Richard H. Kyle

the lead counsel on the test case entitled *Bemis Bro vs. Wallace.* While George Morgan and Cleon Headley, supported by others, including Neil Morton, looked for every possible ground for defeating the tax, Kellogg kept saying, "Implied repeal, implied repeal, that is the ground on which the court will decide the case." Kellogg was right, for that was the ground on which the court threw out the tax.

In 1941, Morgan's close friend and neighbor, Harvey B. Fuller, decided to sell his adhesives company to his young salesman, Elmer L. Andersen. Fuller asked Morgan to review the sale and draft an appropriate agreement. On the day of the sale, Fuller and Andersen entered Morgan's office together. "Elmer, who is your attorney?" Morgan asked. Andersen replied, "Well, George, I have no attorney. We agree on everything." Morgan said, "But I can't represent both of you; that is a clear conflict of interest." They replied, "We see no need to get *two* attorneys involved. Don't you see, we do agree." So the agreement was signed and the firm functioned as the company's general counsel for many years thereafter. What had started as a small St. Paul-based wallpaper paste company grew into a Fortune 500, world-wide adhesives corporation.

A Union of Strengths

Following the deaths in the 1950s of Cleon Headley and George W. Morgan, David W. Raudenbush became the senior member of the firm which for so many years had borne the name, Davis, Kellogg and Severance. At the same time, Davis's close friend, Neil Morton, had become a senior member of the firm that originally was named Clapp and Macartney. It became apparent to Raudenbush and Morton that here were two groups of lawyers who knew each other well but who were entering an era when law firms needed to grow if they were to handle complex business and other litigation.

So, on April 1, 1960, the two firms became an eighteen-member firm under the name of Briggs and Morgan. It soon was clear that additional talent was essential. The early addition of Richard H. Kyle and Jonathan H. Morgan marked the beginning of a series of recruitments that would the carry the firm into the final decades of the twentieth century. Hardly, however, had the firm become fully integrated than a unique political event occurred which demonstrated the value of this new assemblage of legal talent.

The Famous Recount

The Andersen-Rolvaag gubernatorial election contest of 1962 led to one of the longest and most comprehensive election recounts in United States history. The controversy began when the polls closed at 8 p.m. on November 6. Minnesotans had cast their ballots for incumbent Governor Elmer L. Andersen, a one-term Republican (and president of the H. B. Fuller Company) and Karl F. Rolvaag, the state's Democratic-Farmer-Labor lieutenant governor. Here were two Scandinavians squaring off in a heavily Scandinavian state, two candidates who—until the final days—had waged a generally quiet, polite campaign without burning issues. Then, during the last week of the campaign, an alleged highway scandal in the Andersen administration was introduced into the race by the DFL.

Hostilities ran high on election night, but the vote was not conclusive. First, Rolvaag was found to be the winner by fifty-eight votes statewide. Then, ten counties amended their returns after delivering them to the secretary of state. Those amendments awarded Andersen a second term by 142 votes. Candidate Rolvaag would have none of that total and demanded a recount. Richard Kyle, Neil Morton and this writer were called to handle Andersen's side of the recount. Kyle recalled that there were no lawyers specializing in election law in Minnesota, but he and Morton were knowledgeable about venue and extraordinary writs in supreme court practice. "That case lasted from November, 1962, to the following March," Kyle remembered. "We worked twelve-hour days, seven days a week handling it."

Early in their assignment, the attorneys met with Rolvaag's attorneys to determine who in the state judicial system might guide the recount, decide ballot disputes and supervise points of procedure. Neither political party wanted the other to have an advantage with a particular judge or a favorable venue. There was much speculation and maneuvering among party strategists regarding this issue. Fortunately, lawyers for both sides found a solution: A three-judge panel selected from fifty-eight district judges would handle the recount. All three judges had to be fully acceptable to both parties. One Minnesota historian has pointed out that "To achieve that in this highly explosive and inflammable situation was a distinct honor as well as a great responsibility."

The three chosen were District Judges Sidney Kaner, J. H. Sylvestre and Leonard J. Keyes. The choice was applauded around the state. "We are all very happy to see this solution," Minnesota Chief Justice Oscar Knutson said in December, 1962. "The task of completing the recount may now proceed expeditiously, as it should." He praised the attorneys for resolving a major controversy "in harmony and a spirit of fairness." As another historian recalled, "From this point on, the fumbling, the confusion, the searching, the tripping and uncertainty were beginning to cease . . . ."

Kyle, Morton and this writer remained on the recount case for another three months until the final count was certified and a new governor was sworn in at noon on Monday, March 25, 1963. He was Karl Rolvaag, winner by ninety-one votes out of 1.2 million cast in November, 1962—the winner by .0007 percent.

The Famous Recount. Samuel H. Morgan, carefully analyzes ballots during the five-month-long recount of 1962–3. Photo from Recount *by Ronald F. Stinnett and Charles H. Backstrom, National Document Publishers, Inc., Washington, D. C., 1964.*

There are, of course, what ifs. What if the checkmarks or x's issue in the case had gone to the state Supreme Court before the court handed down its decision in *Sperle vs. Wegwerth* on February 27, 1963? This was the decision that established that any ballot having a combination of these checkmarks and x's was invalid. Might not the court then, seeing the scores of such ballots marked either with an x or a checkmark, and with no evident difference in handwriting, have adopted the following rule that the legislature did adopt after the end of the recount? "When a voter uses two or more distinctive marks in expressing his vote on a ballot such as x and some other mark, the vote shall be counted for each candidate so marked." Would a saving of all ballots thrown out because of the checkmark and x rule have made a 100-vote difference?

What if Elmer Andersen had then become the first Minnesota governor to serve a four-year term? Would he have had a distinguished national career as a moderate progressive Republican with political consequences that might still be evident? But then would the H. B. Fuller Company have become the internationally prominent company it is today? What a difference a few checkmarks and x's might have made.

Financial Falsehoods

Another demanding assignment surfaced in August, 1965, when the American Allied Insurance Company was found to be insolvent, leaving its creditors and many of its auto casualty policyholders without financial support. The discovery and the behavior of its officers sent a shockwave throughout Minnesota. Not only were the American Allied principals charged with fraud, but responsible sources claimed the company had been insolvent from the beginning and that its officers had misrepresented American Allied and its affiliate to Minnesota insurance inspectors. When the principals fled Minnesota, the company was placed in receivership.

"It was one of the most unusual series of events any of us had ever seen," attorney Frank Hammond recalled. "Overnight, we found ourselves officers and directors of American Allied, out of necessity. We had to either run the company or close it, collect all its assets and deal with claimants." An insurance company insolvency was rare in Minnesota and it touched the lives of many residents.

Initially, Kyle, Morgan, Hammond and David Forsberg tackled the case, with Ronald Sorenson and Samuel Hanson added to the team later. "We had daily meetings at 8 a.m. because events were breaking so fast and taking so many tasks at once," Sorenson remembered. "The case had more sections than a rattlesnake."

Their task was to collect all assets and pay creditors, most of them policyholders who had been involved in auto accidents and had been sued. American Allied was supposed to have covered their costs but was insolvent. It was a nightmare, one of the attorneys observed. They finally succeeded in paying every claim, 100 cents on the dollar, but only after litigation had dragged on for twelve years. The princi-

pal litigation was directed toward the Exchange National Bank in Chicago, which was found to have been involved in the company's financial manipulations. The suit, which was successful, produced $1.25 million, which went a long way toward repaying policyholders and creditors.

A Romantic Ending

The Lost Creek case was a seven-year marathon involving a contractor who claimed his firm was owed an equitable adjustment for building a dam in the Wasatch Mountains of Utah for the United States Bureau of Reclamation. It became known as the case that consumed the longest trial period in the Bureau's history and filled more than 17,000 pages in five volumes. Finally the contractor was awarded some cash adjustments, but the case was not without its romantic ending. Working with Clarence Hart on the case, Jonathan H. Morgan, a third generation Morgan lawyer, became a principal in a romance with Hart's secretary, Martha Rolloff. She became Martha Morgan at a ceremony in Montevideo, Minnesota, home of her parents, Judge and Mrs. Clarence Rolloff. A special bus brought Jonathan's colleagues from St. Paul to the ceremony. Never let it be said that a dam case can't have a romantic ending.

Iron Ore and Legal History

Beginning in 1973, a complex case occupied as many as fourteen lawyers for more than eight years and capped Neil Morton's legal career. A Ramsey County District Court order had terminated a trust established by James J. Hill in 1906. Certificate holders of Hill's trust were entitled to royalties from iron ore reserves on the Mesabi Range in northern Minnesota. When the trust expired, ownership of the land was to revert to the Great Northern Railway, now part of the Burlington Northern Santa Fe.

However, representatives of the trust's certificate holders, now numbering in the thousands, sued to establish that they not only were entitled to royalties but also to the trust itself when it expired. The district judge agreed that the trust should be terminated immediately. At issue was ownership of large taconite reserves on the Mesabi Range. Although the iron ore and taconite had been depleted by mining, the land still held deposits of other minerals of inestimable value.

Morton and Richard Kyle handled the appeal of the court's decision for Burlington Northern. Morton built his argument on his knowledge of the history of law. There were the statutes of Gloucester and Marlborough, and the Bishop of Winchester's in the original French. Morton recalled references to Sir Edward Coke and others long forgotten by most twentieth century lawyers. There also was his sense of the political realities at the time Hill established his trust, as well as Morton's own experience with trusts and estates. His conclusion: "This is a superb legal document cast in a classic style, apt in its handling of technical problems, confident in its reliance upon settled legal doctrine, and free of excess verbiage."

The first draft of Morton's brief was a scroll of papers taped together and rolled on two round sticks from his summer home in Wisconsin. In another draft, he addressed the issue of when the trust should be "wound up." A footnote explored the differences in "winding up" a clock, a romance, a trust or a corporation. Although in the final brief he deleted the reference to winding up a romance, the footnote was paraphrased by the Minnesota Supreme Court in an opinion delivered several rounds later in which Morton's position prevailed. Even then there was more work to do. Attorneys for both sides began a two-and-a-half year discussion regarding the settlement of fees, a matter that also went to the state Supreme Court. Finally, in 1981, the case was put to rest.

Pro Bono Cases

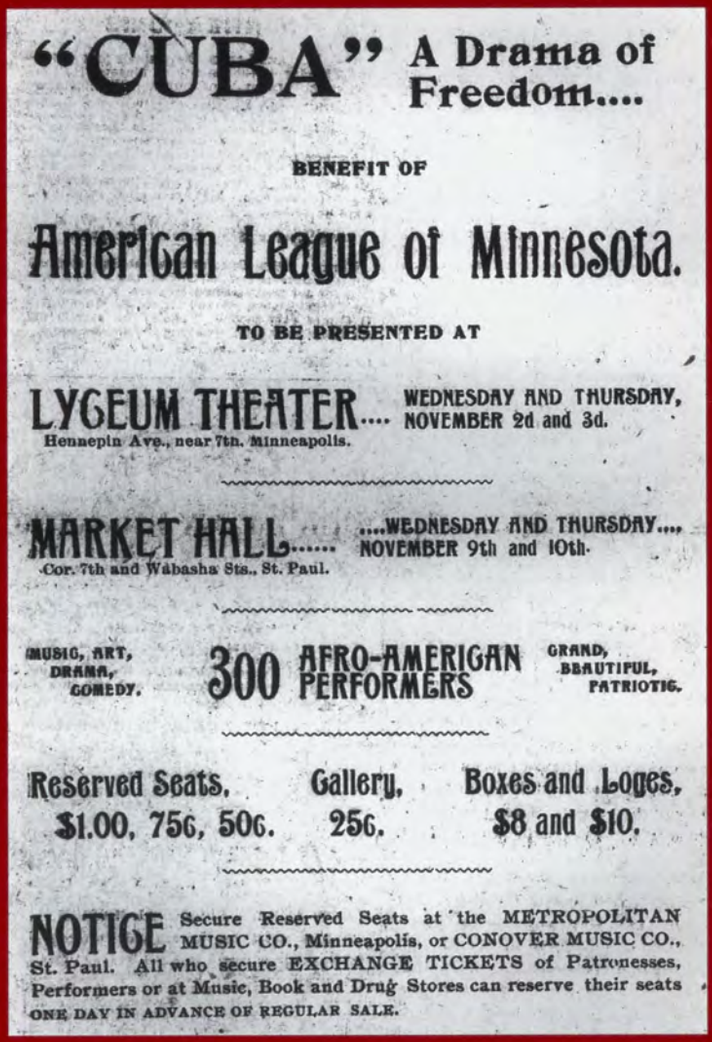
While a lawyer generally expects to be compensated for his work, there are times when belief in a cause is all the compensation that is needed. This writer was involved in two *pro bono* environmental cases. In one, *State by Washington Wildlife Preservation vs. State and Its Department of Natural Resources,* A. W. Clapp, III, who was in the attorney general's office (and grandson of the first A. W. Clapp) collaborated with me in persuading the Minnesota Supreme Court to hold that a railroad easement was for public travel and could continue as such after that right-of-way had been changed from railroad use to public trail use.

In the other case, *County of Pine vs. State Department of Natural Resources,* the state Supreme Court heard oral arguments at the University of Minnesota Law School because of its public interest. The court held that the state had the power, through its police power zoning, to preserve the Kettle River as a state wild and scenic river, thus avoiding the great expense of purchasing perpetual scenic easements (as has been done, for example, by the federal government on the St. Croix River).

Profession or Business?

For centuries the legal profession has been considered one of the learned professions, but there has been a change. For many, the law has become more of a business than a profession, its economics competing with a dedication to serving clients and the enjoyment of the challenge of a new legal problem. One factor has been the emphasis on billable hours; another is client expectations. A large corporation with its own in-house counsel tends to seek the best buy for outside legal services instead of always turning to the law firm with which it has had a long-term relationship. If the time comes when a history of the next hundred years of the legal profession is written, may it be said that lawyers still consider themselves members of a learned profession and are regarded as such not only by their colleagues but also by the public at large.

Samuel H. Morgan is a retired St. Paul attorney and a frequent contributor to this publication.



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The four-act pageant presented as a benefit for the American League of Minnesota in November, 1898. See Dave Riehle's article about St. Paul's African-American community and the Spanish-American War beginning on page 15.

R.C.H.S.
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