

Dave Kenney: *Briggs and Morgan, P. A.: The First 125 Years*^{*}

A REVIEW-ESSAY

BY

DOUGLAS A. HEDIN

A. A maligned and neglected genre

One afternoon several years ago, I hosted a settlement conference in the library of my old law firm. The defense attorney was a well known business litigator with Faegre & Benson. Also present was the general counsel of the defendant, a national accounting firm. As we chatted—actually sizing each other up in a ritual that dates back several millennia—the general counsel mentioned that he had once worked at Sidley & Austin. I happened to own a copy of the history of that firm.¹ I pulled it off a shelf and set it in front of him. He idly turned the pages when, suddenly, he stabbed his finger at a photograph. “See this man. See this man,” he repeated to us. “In the nineteen sixties he was one of the most powerful lawyers in the country. He was close to Newton Minow at the FCC and Adlai Stevenson in the UN. He knew the Kennedy’s. And today no one even knows who he was.” He was right and he was wrong. The man in the photograph was William H. Avery, a lawyer of great influence, who appears throughout the history of this firm, and because of that, he is not forgotten.

Law firm histories come in all shapes and sizes. Many are oversized and seem, from the moment of their publication, destined to sit unread on tables in the firm’s reception room. They are not held in high regard by historians or even by the bar itself. In the “Preface” to his history of Ropes & Gray, the great Boston law firm, historian Carl M. Brauer quotes the harsh judgment of firm partner Charles A. Coolidge: “There is nothing duller than histories

^{*} Dave Kenney, *Briggs & Morgan, P.A.: The First 125 Years* (Minneapolis & St. Paul: Sexton Printing Inc., 2008). (141 pages) The book is privately published. It is not for sale at retail booksellers. The firm holds the copyright to the book.

¹ Herman Kogan, *Traditions and Challenges: The Story of Sidley & Austin* (Chicago: R. R. Donnelly & Sons Co., 1983).

of law firms.”² Brauer concurred: “Few who have sampled law firm histories in any significant number could disagree with Coolidge’s opinion. Not infrequently they are written by an older partner who is proud of the many achievements and virtues of his firm and partners, and who is inclined to enumerate them all, page after numbing page.”³ There is some truth in Brauer’s observation—many law firm histories have been written by retired partners in a self laudatory style.⁴

Courts and who serve on them and what they do will always be the central focus of most legal historians but for a few, the bar holds a peculiar interest. For all their faults, law firm histories are valuable though neglected sources for the study of the history of the bar.⁵ Like the affidavits and testimony of individuals that “breathe life into the dry statistics” of class action litigation, law firm histories are reservoirs of information and stories about lawyers and their firms that illustrate broader changes in the profession—the transition from training by apprenticeship to education in law schools, the formation and transformation of bar associations, tightening of bar admission standards, the erosion of discriminatory customs that once excluded many lawyers from admittance to the ranks of elite firms, expansion of the membership of the bar, the rise of specialties and development of new areas of service, the merger movement among firms, and so on.⁶

² Carl M. Brauer, *Ropes & Gray: 1865-1990* v (Thomas Todd Co., 1991). Charles A. Coolidge is described as “one of Ropes & Gray’s leading partners.” *Id.*

³ *Id.*

⁴ E.g., Arthur Littleton’s “Foreward” to J. Tyson Stokes, *Morgan, Lewis and Bockius: Memoir of a Law Firm* viii (Privat. print., 1973): “From the beginning there has run through the fabric of the firm, like a golden thread in a silken tapestry, a creed of honor-keeping which is the breath of our thought, the secret of our courage, and the glory of the practice of our profession.” Littleton was “the firm’s most distinguished partner” who led it from 1957 to 1967, a “decade of growth and prosperity, with continuing distinction in the performance of its professional duties.” *Id.* at 33.

⁵ There is one firm history that is so important to historians of the bar that it is routinely classified a “classic”: Robert T. Swaine, *The Cravath Firm and Its Predecessors, 1819-1947* (New York: Ad Press, Ltd., 1946-1948)(3 vols.).

⁶ Thus far the only in depth study of the practice of law in Minnesota is George A. Palmer’s “The Frontier Lawyer in Minnesota After the Civil War” (np, 1931). Despite its title, it concentrates on the private practice of Knute Nelson, who later became Governor and U. S. Senator. A copy of this unpublished essay, apparently written for a seminar taught by Solon J. Buck, is on file at the Minnesota Historical Society. Securing the necessary authorization to post this article on the MLHP appears impossible.

Firm histories usually follow a loose chronological format. They trace their origins as far back as they can.⁷ They feature profiles of the founders, an account of transitions to later generations of leaders, sometimes chronicles of successful mergers with smaller firms, summaries of notable court cases and many references to prominent clients, more profiles, especially of lawyers who held public office or became judges, tributes to beloved partners who died prematurely, and explanations of how the firm has adapted to changes in the economy and profession.⁸ Each history embodies a sort of institutional memory, as my story about William Avery illustrates.

Until recently, the audience for a law firm history was rather small—it was written for firm members, especially the elders of the firm—and that was the author’s intent. To avoid the stereotype of being superficial and dull and, perhaps, understanding that the publication of a history that “lifts the lid” on the firm’s past will aid the public in realizing the importance of both the firm and the profession, some law firms have retained professional historians or independent scholars to write their histories.⁹

To commemorate the 125th anniversary of its founding, Briggs and Morgan commissioned Dave Kenney, a journalist by training, to write the firm’s history. *Briggs & Morgan, P.A.: The First 125 Years* was published last year. Oddly, the book contains no information about Kenney, his

A description of the important functions lawyers performed in the late 1840s and early 1850s can be found in my article, “Lawyers and ‘Booster Literature’ in the Early Territorial Period,” posted previously on the MLHP.

⁷ E.g., Deborah S. Gardner, *Cadwalader, Wickersham & Taft: A Bicentennial History, 1792-1992* (New York: Priv. print. by Cadwalader, Wickersham & Taft, 1994).

⁸ Fortunately, most are interspersed with funny anecdotes by and about lawyers who seem to take their profession seriously but themselves not too seriously.

⁹ E.g., Anne Hobson Freeman, *The Style of a Firm: Eight Gentlemen from Virginia* (Chapel Hill: Algonquin Books of Chapel Hill, 1989)(a history of Hunton & Williams via eight biographical studies); Kenneth J. Lipartito & Joseph A. Pratt, *Baker & Botts in the Development of Modern Houston* (Austin: Univ. of Texas Press, 1991); Ellen D. Langill, *Foley & Lardner, Attorneys at law, 1842-1992* (Madison: State Hist. Soc. of Wis., 1992); Harold M. Hyman, *Craftsmanship & Character: A History of the Vinson & Elkins Law Firm of Houston, 1917-1997* (Athens: Univ. of Ga. Press, 1998). Mention must be made of the publication of fifteen firm studies written for the most part by professional historians, and edited by Carol Wilton: *Inside the Law: Canadian Law Firms in Historical Perspective* (Toronto: Univ. of Toronto Press, 1996); it is Volume VII of the Osgoode Society’s famous series, *Essays in the History of Canadian Law*.

qualifications, or even his previous writings.¹⁰ Regardless, it is a book the author and the firm may take pride in.

B. Two histories

i. The Briggs line

Briggs and Morgan traces its origins to 1882, when Newell Clapp and Alvin Macartney opened shop along the St. Croix River. Fifteen years later they relocated to St. Paul. Macartney died in 1912. In the next three years, Clapp's son Augustus, and Macartney's son Grant, joined the firm, the first instances of nepotism at it, but a common hiring practice in many law firms at the time and in the following decades. In 1919, in need of a trial lawyer, the firm made an offer to Charles Briggs, recently mustered out of the army. Briggs accepted. Three years later Clapp died. It is tempting to speculate that because he was the firm's "top litigator" with a personality to match, the firm became Briggs' upon Clapp's death, but the consolidation of his control probably took another decade. Other lawyers were hired. At the outset of the depression, the firm was known as Clapp, Richardson, Elmquist, Briggs and Macartney. More changes ensued. At some point in the 1930s, it was known as Briggs, Gilbert and Macartney; around the outset of World War II, it was Briggs, Gilbert, Morton and Macartney; and by the end, it had become Briggs, Gilbert, Morton, Kyle and Macartney.¹¹ In 1960, the firm merged with the smaller Morgan, Raudenbush, Morgan, Oehler and Davis. The combination was renamed Briggs and Morgan, the Morgan being George W. Morgan who had died three years earlier. In 1983, the firm absorbed Levitt, Palmer, Bowen, Rotman and Share. This was its last merger. Through

¹⁰ The following information about Kenney is publicly available: he received a B. A. from St. Olaf College and an M.A. in journalism from the University of Missouri-Columbia. He apparently is a free lance writer, who specializes in popular history. His publications include: *Twin Cities Picture Shows: A Century of Moviegoing* (St. Paul: Minn. Hist. Soc. Press, 2007); *Plymouth Congregational Church, 1858-2007: Working Together in All God's Ways* (Minneapolis: Plymouth Congregational Church, 2007); *The Grain Merchants: An Illustrated History of the Minneapolis Grain Exchange* (Afton: Afton Hist. Soc. Press, 2006); *Minnesota Goes To War: The Home Front During World War II* (St. Paul: Minn. Hist. Soc. Press, 2005); *Twin Cities Album: A Visual History* (St. Paul: Minn. Hist. Soc. Press, 2005); *Northern Lights: The Stories of Minnesota's Past* (St. Paul: Minn. Hist. Soc. Press, 2003).

¹¹ Regrettably, Kenney disregarded two cardinal rules for writing law firm histories: he did not provide tables listing changes in the firm's name and the years each name was used, and the names of all partners and their dates of service.

internal growth and by hiring several lawyers who brought with them a “book of business,” the firm now has about 175 lawyers.

This is the synopsis of the story of Briggs and Morgan that most historians would write. It is not the one that Kenney tells. When they merged in 1960, the Morgan firm, though the lesser, brought with it a history that Briggs lacked. The roots of the Morgan firm can be traced to Davis, Kellogg and Severance, the greatest corporate law firm in the state’s history. Kenney does not overlook this celebrated past.

ii. The Morgan line

In 1887, Cushman Kellogg Davis, Frank B. Kellogg and Cordenio A. Severance formed a partnership in St. Paul.¹² From about the mid-1890s through the Progressive Era, their firm was, in terms of prestige, size of its clientele and, perhaps, financial success, equaled by few other law firms in the country.

Davis was a formidable trial lawyer, noted for his oratory.¹³ He also was a rising political figure in the Republican Party and already had served one term as governor.¹⁴ He was elected U. S. Senator in 1886, and reelected in

¹² Articles on these lawyers already posted on the MLHP include: George F. Hoar, “Cushman Kellogg Davis” (1903); and Cushman Kellogg Davis, “Cross-Examination” (1907). Davis is also mentioned in my “Foreward” to Charles E. Flandrau, “Contempt of Court” (1895). For sketches of the other partners, see James Grafton Rogers, “Frank Billings Kellogg” and “Cordenio Arnold Severance” (both 1932); and Roger G. Kennedy, “Frank Billings Kellogg” (1969).

¹³ Davis’s famous closing argument for the respondent in *In the Matter of the Impeachment of Sherman Page, Judge of the Tenth Judicial District*, delivered to a packed state senate on June 25 and 26, 1878, will be posted at a later date on the MLHP.

¹⁴ Kenney writes that most historians considered Davis’s term “undistinguished.” This conventional assessment may underestimate structural and ideological barriers to Davis’s attempts to combat the devastating effects of the grasshopper plague that struck during his term. It was the most prolonged natural disaster in the state’s history. Annette Atkins, *Harvest of Grief: Grasshopper Plagues and Public Assistance in Minnesota, 1873-78* 81-2 (St. Paul: Minn. Hist. Soc. Press, 1984) (“Neither Sibley nor Davis shared these views about the victims. The two may well have believed with typical Americans that most poverty resulted from personal failing but that such a judgment did not apply in these circumstances. These were people who battled a natural disaster and needed temporary help; above all, they might leave the state and thereby diminish its potential prosperity. The last fact alone constituted sufficient reason to act. The two men kept the plight of the suffering a public issue. They showed serious commitment to supplying

1892 and 1898. In 1900, while plotting a run for the presidency, Davis died in St. Paul. Keeping the firm name, Kellogg and Severance carried on. When Theodore Roosevelt began battle against the trusts, he enlisted Kellogg and Severance to represent the government in suits under the Sherman Act against the Union Pacific Railroad and the Standard Oil Company. They agreed and won two marathon trials that ended in landmark Supreme Court rulings.¹⁵ Succumbing to the pull of politics, Kellogg was elected to the U. S. Senate in 1916 but was defeated for reelection in 1922. He then served as Ambassador to Great Britain and Secretary of State in the Coolidge administration, and later was elected to the World Court. He received the Nobel Prize in 1929. Although Kellogg spent almost no time practicing law after his election to the senate in 1916, the firm, not surprisingly, maintains a vice-like claim to his legacy in international affairs.

Cordenio Severance, unlike his partners, is mostly forgotten today. It is likely that his contemporaries found him the most interesting and certainly the most congenial of the three. There is something about the bar that is never mentioned—it is almost embarrassing to remark about in public because it is so contrary to popular belief—but very few practicing lawyers want to go onto the bench. Severance epitomizes this sentiment in the profession. It seems that what he loved most in life was practicing law. Given his connections, he must have had many opportunities to be appointed a judge, but he preferred to practice law, make money and enjoy his many friends.¹⁶ He died in 1925.

In the 1920s, the firm was renamed Davis, Severance and Morgan, the Morgan being George W. Morgan. He had worked at the firm for two years after law school, but left in 1910 to work in-house at Oliver Iron Mining

assistance. It is doubtful that the legislators would have taken even the action that they did without the active intervention of Davis and, more significantly, Sibley”).

¹⁵ The Supreme Court ruled in favor of the government in both cases. *Standard Oil Co. v. United States*, 211 U. S. 1 (1911); and *United States v. Union Pacific Railroad Co.*, 226 U. S. 61 (1912), *later opinion*, 226 U. S. 470 (1913).

¹⁶ Severance had an extraordinary capacity to make lasting friendships. A brief account of visits with Cordy and Maidie Severance, as they were known to friends, at their palatial home in Cottage Grove called Cedarhurst, by Franklin K. Lane, Secretary of the Interior in the Wilson Administration, appear in Anne Wintermute Lane & Louise Herrick Wall eds., *The Letters of Franklin K. Lane: Personal and Political* 441 (Boston: Houghton Mifflin Co., 1922), and by the realist writer Hamlin Garland appear in his memoir *Companions of the Trail* 312-313 (New York: Macmillan Co., 1931).

At some future date, the MLHP will post these recollections of Severance.

Company, one of the firm's largest clients. In 1918, he rejoined the firm and worked there for the next 39 years. Other lawyers were hired and others left. From the early 1930s to its merger with Briggs in 1960, the firm underwent at least four name changes. During the depression, it was Kellogg, Morgan Chase, Carter and Headley; late in the 1940s, it was Morgan, Chase, Headley and Hoshour; by 1950, it was Morgan, Headley, Raudenbush and Morgan, the latter Morgan being Samuel H. Morgan; by 1960, it was Morgan, Raudenbush, Morgan, Oehler and Davis. From Severance's death in 1925, until his own in 1957, George Morgan was the dominant force within the firm.

iii. Clients

A law firm's existence depends on servicing existing clients and attracting new ones. Kenney, with commendable candor, connects the rise and decline of the two firms that eventually became Briggs and Morgan to the fortunes of their clients, new and old. If, at any time between 1900 and the 1920s, the clients of the two firms were placed on either end of a seesaw, the Davis, Kellogg and Severance side would carry a load far heavier than Clapp and Macartney's. The latter firm was so closely identified with its major client that it was known as "the Weyerhaeuser firm" whereas the former was renowned for its wide base of national corporations such as Cream of Wheat, Equitable Life Assurance Company, subsidiaries of U. S. Steel, railroads and meatpackers. As the decades passed, however, the imbalance was reversed. As the timber industry declined, the Briggs side cultivated local corporations such as 3M and prospered while the Morgan side was unable to attract enough new clients to fill holes made by the gradual decline of the iron ore and meatpacking industries. At the time of their merger, the Morgan side was, in the blunt words of one partner, "a declining firm...that didn't have much of a future." The merger was not of equals—but then no merger ever is.

iv. Lawyers and stories

Much of the work of a law firm such as Briggs and Morgan is routine, uninteresting and, once concluded, forgotten. Because of this, Kenney enlivens his history with vignettes of colorful or important cases and profiles of twenty-one lawyers. The sketches of the lawyers are particularly welcome inasmuch as some have not been heard of in years, even decades. Several, David Raudenbush and Neil Morton, for example, possessed

qualities not usually found in combination in practicing lawyers: they were hugely talented lawyers and uncommonly cultured as well. It must have been an exhilarating and perhaps intimidating experience for an associate, fresh out of law school, to be assigned to one their files. For inspiration, however, lawyers within the firm and outside may turn to the example of Sam Morgan. He became engaged in the modern conservation movement and helped create and preserve public parks and trails throughout the state.¹⁷

Throughout most of the book, Kenney alternates anecdotes about cases from one side of the firm's lineage with those from the other. He gives accounts of several cases the firm lost, including the litigation over the 1962 gubernatorial contest in which the firm represented Elmer L. Andersen.¹⁸ His selections are always interesting but sometimes puzzling.

In the early 1900s, the state dairy and food commissioner charged a meatpacker with adulterating its products. Severance negotiated a nominal fine and kept the client's name out of the newspapers. Robert Olds, a partner of Severance, achieved the same confidential result after a dead rodent was discovered in a canned good manufactured by another client. In 1919, George Morgan represented the Oliver Iron Mining Company which wanted to excavate ore beneath the town of Hibbing. It decided to move the homeowners, and persuaded many to sell. Some held out and filed suit, which Morgan successfully defended. By 1921, Morgan had cleared the way for Oliver to relocate the entire town and start digging. Few practicing

¹⁷ There is, however, another side of Sam Morgan that is only alluded to—his interest in the firm's history. A book such as this usually contains an "Author's Preface" which acknowledges the assistance the author received, sources, and sometimes ground rules. But there is no such acknowledgment from Dave Kenney in this history; instead there is a "Preface and a note on sources" by Alan Maclin, the current president of the firm, wherein he lists eight books and articles as being "helpful" in the making of the book (it is a misnomer to call this thin list a "bibliography"). While making a passing reference to "two Sam Morgan drafts," he does not cite Morgan's absorbing history of the early years of the firm, "Timber, Steel, Law, Politics: St. Paul's Pioneering Lawyers," 33 *Ramsey County History* 4 (Winter 1999). There must be a story behind this odd behavior—it is probably connected to the absence of any biographical information about Kenney in the book—but it is one a reader outside the firm will never learn. To this reviewer, there are at times resemblances between Morgan's article and Kenney's history.

At some future time, efforts will be made to secure consent to post Morgan's article on the MLHP.

¹⁸ This famous case is the subject of an entire book: Ronald F. Stinnett & Charles H. Backstrom, *Recount* (Washington, D. C.: National Documents Publishers, Inc., 1964).

lawyers today would not admire how these cases were handled—Severance, Olds and Morgan gave shrewd advice to their clients, out negotiated state regulators, beat the homeowners, and achieved the results corporate executives wanted. But the legal profession, more than any other, is the subject of negative stereotypes, and one wonders whether a few readers from outside the profession might find that these stories, and several others, confirm their worst impressions of the corporate bar.

Three pages of text are filled with back and forth correspondence between Severance and New York lawyers about two law suits filed in St. Paul after the sinking of the Titanic. In the end the cases were settled. Severance did no work on them and his bill reflected that fact: \$25.60. In a 1982 case Kenney calls one of the “most contentious First Amendment cases in recent Minnesota history,” the firm defended the University of Minnesota when the student newspaper challenged a new policy which made its funding voluntary. After the Eighth Circuit ruled in favor of the newspaper, the firm recommended appealing to the Supreme Court, but University President Peter McGrath wisely declined. The University settled by paying \$185,000 to the paper to cover its attorneys’ fees.¹⁹ It is not clear why, of the tens of thousands of cases the firm has handled in its “first 125 years,” these two were chosen to be recalled in its history.

v. Community service and pro bono work

One entry in most every law firm history concerns its public service or pro bono work. There are few social service organizations and colleges in Ramsey County that have not benefited from the generosity of this firm. In an “Introduction,” Kenney writes that the firm “has produced an impressive roster of lawyers whose dedication to the public good has inspired them to accept leadership positions with foundations, educational institutions, civic groups, charities, and professional organizations.” Missing from this list is another form of public service, to which numerous members of the firm gave years of their lives—service to their country by wearing its uniform. Though unfashionable today, special note might have been taken of those lawyers who served in the military, their branch, and their years of service.

¹⁹ The case is so insignificant that it is not even cited in Jeffrey Brandon Morris’s *Establishing Justice in Middle America: A History of the United States Court of Appeals for the Eighth Circuit* (Minneapolis: Univ. of Minn. Press, 2007).

At the end of the book, there is an “Appendix” listing “Briggs and Morgan High-Ranking Public Officials.” Three lawyers are listed under “Minnesota House of Representatives”: Cushman Davis, Peter Popovich and Paul Thissen (no firm member has ever been elected to the state senate). The first two can be scratched, Davis because he served in the state house two decades before his side of the firm was even founded, and Popovich because he served in that body forty years before he joined Briggs and Morgan. This leaves one lawyer. In 125 years, only one member of this prominent firm has served in the state legislature. While not serving in an elected capacity, firm lawyers nevertheless appear at the legislature as lobbyists. Charles Briggs, for example, turned from trial work to lobbying in the 1940s. But there is a considerable difference between serving the public as an elected representative and servicing the parochial needs of a corporate client. The intriguing question is whether this pattern is found in the histories of other major firms in the state and, if so, why.

vi. Billing and specialization

A future historian of the rise of elite law firms in this state will find Kinney’s revelation of some of the inner workings of the organization far more important than colorful case vignettes. One of the pleasures of this book is that it suggests areas of future research for those interested in the legal history of Minnesota.

As recently as the 1950s, Briggs billed its major clients only once a year. Its billing criteria were highly subjective. Around Thanksgiving each year, the partners met in a ritual known as “stuffing the goose.” They reviewed the work done for each client, and came up with a fair value of the firm’s services. Neil Morton had such a trusted relationship with 3M that in a phone call in December, he would ask John Connolly, the general counsel of the company, “What do you want to be charged this year?” They quickly arrived at a figure. But these habits soon changed. In the 1960s, Burt E. Swanson, known as “Cash Flow” Swanson within the firm, became its managing partner, and helped install modern business practices. Briggs and Morgan was incorporated in the mid-1960s.

The billing customs of large, urban firms in this period may be contrasted with the practices of smaller firms in cities and small towns throughout the state. The billings of small firms were guided by a “minimum fee schedule” published by the state bar association, in which lawyers from elite firms

played important roles. When the history of the minimum fee schedule—a classic price fixing scheme—is written, anecdotes from Kenney’s history will surely reappear in footnotes.

Every large law firm today is divided into specialized service areas. Using Kenney’s history, we can pinpoint the time this occurred at Briggs and Morgan. Shortly after the merger in 1960, the firm created eight departments, each with its own head: contracting (Clarence Hart), litigation (David Forsberg), estate planning and probate (Cole Oehler), public finance (Bernard Friel), public law (Michael Galvin), real estate (David Spencer), tax law (John Sullivan), and commercial law (Burt Swanson). More departments have been added over the years. It is interesting to note that a tax department was one of the originals. In a multi-specialty law firm, some groups rarely interact with others, as for example construction and estate planning. But the tax department is different: many times each year, every other department calls upon it for help. Someday, when the history of the rise of the large law firms of this state is written, we may learn more about the operations of these departments.

C. Drama

One of the vague recollections of those who have visited large law firms is the silence. These places are very quiet. If the carpet was rolled up, the fall of a paper clip could be heard. On rare occasions, however, the curtain of serenity lifts to reveal power struggles, drama, theater, the stuff of novels.

i. Power shifts

After being discharged from the army at the end of World War II, Charles Briggs returned to a firm that was bursting with new cases and clients. Two younger lawyers, Neil Morton and Richard E. Kyle, joined the firm, which was renamed Briggs, Gilbert, Morton, Kyle and Macartney. But Briggs still held the reins, and he held them tightly to his vest. Years later Kyle recalled, with evident exasperation, “Charlie Briggs was so damned conservative that he just wouldn’t hire anybody....Charlie had no idea what we were doing.” What he was doing was “working about 12 hours a day six or seven days a week.” Eventually matters reached a boiling point and, according to Kenney, “Morton and Kyle finally convinced Briggs to let them bring in help.” The moment Briggs acceded to the pleas of Morton and Kyle, an imperceptible degree of his power slipped away. The three lawyers them-

selves likely did not realize the significance of what was happening but at that moment the transformation of what Kenney calls “a sleepy, timber-dependent firm into a dynamic law practice” began. Over the next few years, the firm added six lawyers—Frank Hammond, Clarence Hart, Bernard Friel, Michael Galvin, John McNeely and John Sullivan. All stayed with the firm for decades, and several became president.

Variations of the changes in governance of the firm that Morton and Kyle set in motion in the late 1940s occurred in countless other firms in this country after the war. Throughout the nineteenth century and midway into the twentieth, law firms were typically small and patriarchal; at the helm was an autocrat who possessed a forceful personality and, like Briggs, resisted change. In the post war era, law firms became less personality centered as they grew by multiples to meet the needs of their clients. In fact, their management structure began to resemble that of their corporate clients. The successful transition from the founders to the next generation of leadership is critical to a firm’s survival. Law firms are fragile entities that have short life spans; not many last into a second generation of lawyers, even fewer beyond that. Briggs and Morgan is one of a handful of firms that was founded in the nineteenth century and, by transforming itself, still operates in the twenty-first.

ii. Friday afternoon, August 12, 1983

One afternoon in mid-August 1983, the firm was rocked by a crisis that had the plotlines of a novel by Louis Auchincloss or a play by David Mamet.²⁰

²⁰ The last two chapters Louis Auchincloss’ *The Partners* 225-254 (Boston: Houghton Mifflin Co., 1974), concern a proposed merger between a declining New York law firm and a larger, more prosperous one. One partner in the firm to be acquired opposes the merger. Interestingly, Auchincloss, who has written many short stories and several novels about large New York law firms, once considered writing a novel in the form of a law firm history. In an Introduction to a history of the Coudert Brothers, he wrote:

Because I once contemplated writing a novel in the form of one of those privately written histories, compiled by a revered and retired partner, of a great New York law firm, I made it my business to read all such as were available. I’m afraid that I found poring through them a sufficiently tedious business that, of course, was not the fault of their authors. They were not written for outsiders. They were written for those more intimately concerned with the litigations and corporate reorganizations involved and who would presumably not be put off by the hagiographic

It began in the fall of the previous year when Burt Swanson, then head of the Minneapolis branch of the firm, proposed a merger with a firm led by Matthew Levitt, a prominent lawyer with a dwindling stable of clients, but which included local Medici, the Curt Carlson and Carl Pohlads interests. Levitt, Palmer, Bowen, Rotman, and Share was the type of firm Briggs and Morgan once was—highly respected but small and dominated by one man. While Levitt was amenable to a combination, a sizeable contingent at Briggs and Morgan, led by Clarence Hart, the incumbent president, was not. To his credit, Kenney reveals the split within the firm, but he does not disclose what they disagreed about (we can assume it was money). The ensuing negotiations lasted the better part of a year. Though sharply divided, lawyers at Briggs and Morgan approved the merger, and in the second week of August 1983, the closing documents were signed. Suddenly, on Friday afternoon, August 12, 1983, a thunderbolt hit the firm—Hart, ten other lawyers and several support staff left to start their own firm.

Hart's departure shocked his colleagues—many were men he had worked with for decades to build the firm—and astonished the lawyers from Levitt, who wondered how such a rupture could happen without some warning. The unexpectedness of it all precipitated a grand gesture by Briggs and Morgan: Levitt lawyers could rescind the deal if they wished.

Now this is great theater. If David Mamet had written the script of this drama, the firm's offer would end Act II. The suspense and tension during the intermission must have been so thick it could have been cut with a letter opener. Act III opens with Levitt's announcement that they would remain, the merger would go through. This probably was not a close question—mentally the Levitt lawyers had left their old firm and were no more able to

treatment of deceased partners. But my project for a novel did not survive my research.

Louis Auchincloss, "Introduction" to Virginia Kays Veenswijk, *Coudert Brothers: A Legacy in Law—A History of America's First International Law Firm, 1853-1993* vii (New York: Truman Tally Books/Dutton, 1994). Coudert Brothers disbanded in 2005. See "Law Firm That Opened Borders Is Closing Up Shop," *New York Times*, August 30, 2005, at C1.

David Mamet has written several plays with legal settings, the most recent being his adaptation of *The Vosey Inheritance*, Harley Granville-Barker's 1905 suspenseful drama about a young solicitor's discovery that for generations his family lived off funds embezzled from trusts of clients of the family law firm.

return to it than Hart was to his. The combined firms prospered. Matt Levitt thrived in his new surroundings and became a revered mentor to many young lawyers at the firm. Curtain drops.

D. The “culture” of the firm

In a “Foreward” to the firm’s history, Michael J. Galvin, Jr., writes:

In reflecting on the 50 years I have been member of Briggs and Morgan—now a firm of 175 members—I cannot imagine practicing law with a finer group of lawyers. There has not been a day when I did not look forward to my continuing association with the firm. Briggs and Morgan has a culture and a history that are indeed unique. The firm’s commitment to legal excellence is foremost. All of us affiliated with it are proud of its heritage and traditions. Each of us will strive to preserve its principles. Looking forward, we cannot tell what the future holds for Briggs and Morgan; we can only conclude that its commitment to the highest legal standards of excellence will ensure its continuing success and leadership.

This is a genuine, even heartfelt comment. He is right, of course: his firm has a unique history and it also is unique because its lawyers and staff are individuals who have unique personalities and backgrounds.

What does it mean when a lawyer speaks about the “culture” of the law firm he has worked at for decades? While lawyers at the firm would give different responses to this inquiry, many would share a common feature, one that can be found in the following recollection of Neil Morton of the events leading up to the initial public offering of Minnesota Manufacturing and Mining Company:

All the preliminary work had been done and [John] Connolly [general counsel] and I were down at 30 Pine Street in the [New York] offices of Goldman Sachs. . . [It was] about ten o’clock in the morning, and we were putting the finishing touches on this thing, and they had no Xerox machines in those days and no Thermo-Fax™, but they had a printer and a press. They had a lot of typers working 24 hours a day, and they specialized in secured transactions.

Everyone would be sitting around a table down there and would begin arguing about the wordage, and there would be changes, and pretty soon somebody would say, “That’s enough, send it down to the printers,” and down it would go and half an hour later it would come back in print. . .

We walked out of there with the thing done, at least to all intents and purposes, at about three o’clock that morning.

3M was listed on the New York Stock Exchange on January 14, 1946. It is today one of the world’s greatest corporations. And it remains one of the firm’s most important clients. But what Morton recalled (at least in this excerpt from, presumably, a longer oral history) was not the eventual success of 3M but the grueling hours he, his client and the bankers worked to put the final registration papers in order. Variations of Morton’s story appear here and there in Kenney’s history—how the firm hurriedly marshaled a battalion of lawyers and staff to meet an emergency, plotted trial tactics, always working together. Here is Kenney’s description of an early chapter in the Rolvaag-Andersen recount litigation in 1962:

Over the next four months, the lights rarely went off in Briggs and Morgan’s offices on the 22nd floor of the First National Bank Building. Kyle, Morton, and a team of associates and support staffers scrambled to confront a string of legal challenges.

“Oh, we ran like maniacs all day and night,” Morton’s secretary, Edythe Iverson, recalled. “I got pneumonia.”

When speaking of the “culture” of this law firm, some lawyers may have in mind these recurring moments of collective practice. To put it in other terms, they may remember the making of a legal product more vividly than the final product itself, as excellent as that may be.²¹

²¹ What they may forget are the tensions, conflicts and disagreements that are inevitably present within a business-oriented law firm. One component of the “culture” of a large firm, in other words, may be an idealized past. A third year associate’s view of the “culture” of a large law firm may bear little resemblance to that of a senior partner reflecting backward on five decades at the firm.

E. Vanishing histories

George Morgan died in 1957. Charles Briggs died nineteen years later. For decades they were involved in the affairs of St. Paul. They were civic leaders as well as prominent members of the bar. But the catalogue of files in the archives of the Minnesota Historical Society does not list any records or correspondence of these men. How can this be? Part of the answer lies in a comment in the “Preface” to the firm’s history by its President, Alan Maclin:

The sources of this work are many, beginning with the Briggs and Morgan archive, which will hold an annotated copy of the manuscript. Primary sources include letters, case law, newspaper clippings, and two Sam Morgan drafts on the firm’s first century and George Morgan’s role in Kellogg, Chase, Carter, and Headley as well as secondary sources such as Pine and Mundale draft history (1982) and biographies of some of the firm’s more famous partners, such as Frank Kellogg and Cushman Davis.

It is evident that the management of the firm has no idea of the historic importance of these records. When records such as these are locked away in a private “archive,” conscientious scholars will not produce histories as thoroughly researched as they might have been. Conversely, to take an example, because files of St. Paul lawyer James Manahan had been deposited at the Minnesota Historical Society, Mary Lethert Wingerd, a first rate social historian, was able to weave accounts of his activities into her history of St. Paul from the 1890s to the Great Depression.²²

Worse, firm officers appear unaware of the precarious state of these records. In the last few decades, once prominent firms such as Dougherty, Rumble &

²² Mary Lethert Wingerd, *Claiming the City: Politics, Faith, and the Power of Place in St. Paul* 110-12, 293 nn.122, 123 & 128 (Ithaca: Cornell Univ. Press, 2001). She relies more often on Manahan’s published autobiography, *Trials of a Lawyer* (1933). *Id.* at 134, 193, 196-97, 200-202, 209, 239.

Simply because records of a law firm have been deposited with the Historical Society does not mean that they will be used. The records of Davis, Kellogg and Severance that have been deposited with the Historical Society, for instance, do not appear to have been used by many scholars, but that is almost certainly due to the complete lack scholarly interest in the legal history of Minnesota rather than any deficiency in the historic value of the records themselves.

Butler, Popham, Haik, Schnobrich & Kaufman, and Rider, Bennett, Eagan & Arundel have vanished without leaving written histories of their beginnings and growth, their contributions to the bar and to the community, and so much else.²³ The odds that Briggs and Morgan will live so long that a historian may write a commemoration of its 250th year of existence are infinitesimally small if not zero.

Every letter a lawyer writes, every document a lawyer drafts is not confidential, and there is no greater proof of this than Kenney's book itself. In it he quotes letters from firm lawyers to clients and conversations between them about a particular matter, but most important for historians of the bar, he provides a glimpse of changes within the firm itself that occurred over time. Someday, perhaps, copies of Kenney's manuscript, earlier histories, and interviews and recollections of firm lawyers will be donated to the Minnesota Historical Society, where they will be safe, secure and available, if only on a restricted basis, to legal historians and other scholars researching and writing monographs on the city, the state and occasionally even the nation.

Practicing lawyers have a narrow constituency for their work: clients, courts, regulators and other lawyers. To this should be added another: history. History too has its claims.

²³ While histories of these once prominent firms were never published, accounts of their death throes sometimes were. *E.g.*, Jim Parsons, "The Death of Rider Bennett," *Law & Politics* 6 (February/March 2008).

However, by far the greatest loss has been the records of a Minnesota corporation that influenced the course of American history, an enterprise that was managed by lawyers, staffed in large part by lawyers, and whose product was sold to lawyers—West Publishing Company. No less a scholar than Grant Gilmore once wrote, with typical exaggeration, that by establishing the National Reporter System, "West Publishing Company...thus made a contribution to our legal history, which, in its importance, may have dwarfed the contributions of Langdell, Holmes, and all the learned professors on all the great law faculties." Grant Gilmore, *The Ages of American Law* 59 (New Haven: Yale Univ. Press, 1977). One would have expected that when West was sold in 1996, a small sum would have been set aside to hire a law professor, a library scientist and a business historian to write the history of this extraordinary company, but, alas, nothing was. Had West's history been written and published, it would have been nominated for (and probably won) every history prize available, from the Pulitzer on down.

F. Conclusion

Dave Kenney's *Briggs and Morgan, P. A.: The First 125 Years* is not the first history of a law firm in this state,²⁴ but it is the best so far. Those interested in the legal history of this state, particularly the history of its bar, will finish reading it with one regret—that it is not three times longer. ■

²⁴ The reminiscences of Thomas D. O'Brien (1859-1935), who served as associate justice from 1905-1911, about his law firm and political activities in St. Paul were published in a limited edition a year after his death, *There Were Four of Us or, Was It Five* (St. Paul: St. Paul Dispatch and Pioneer Press, 1936). This memoir was reviewed by Helen B. Clapesattle, 19 *Minnesota History* 439-440 (December 1938).

An unpublished, eleven page "History of Leonard, Street and Deinard: The 'Scholarly Practice of Law'" has been deposited with the Library of the University of Minnesota Law School. It carries the history of the firm through the 1970s.

There may be others which I am unaware of. At some future time, attempts will be made to secure the necessary consents to post O'Brien's memoir and other firm histories, including George Morgan's history, on the MLHP.



Posted MLHP: May 2009

Revised: June 2009