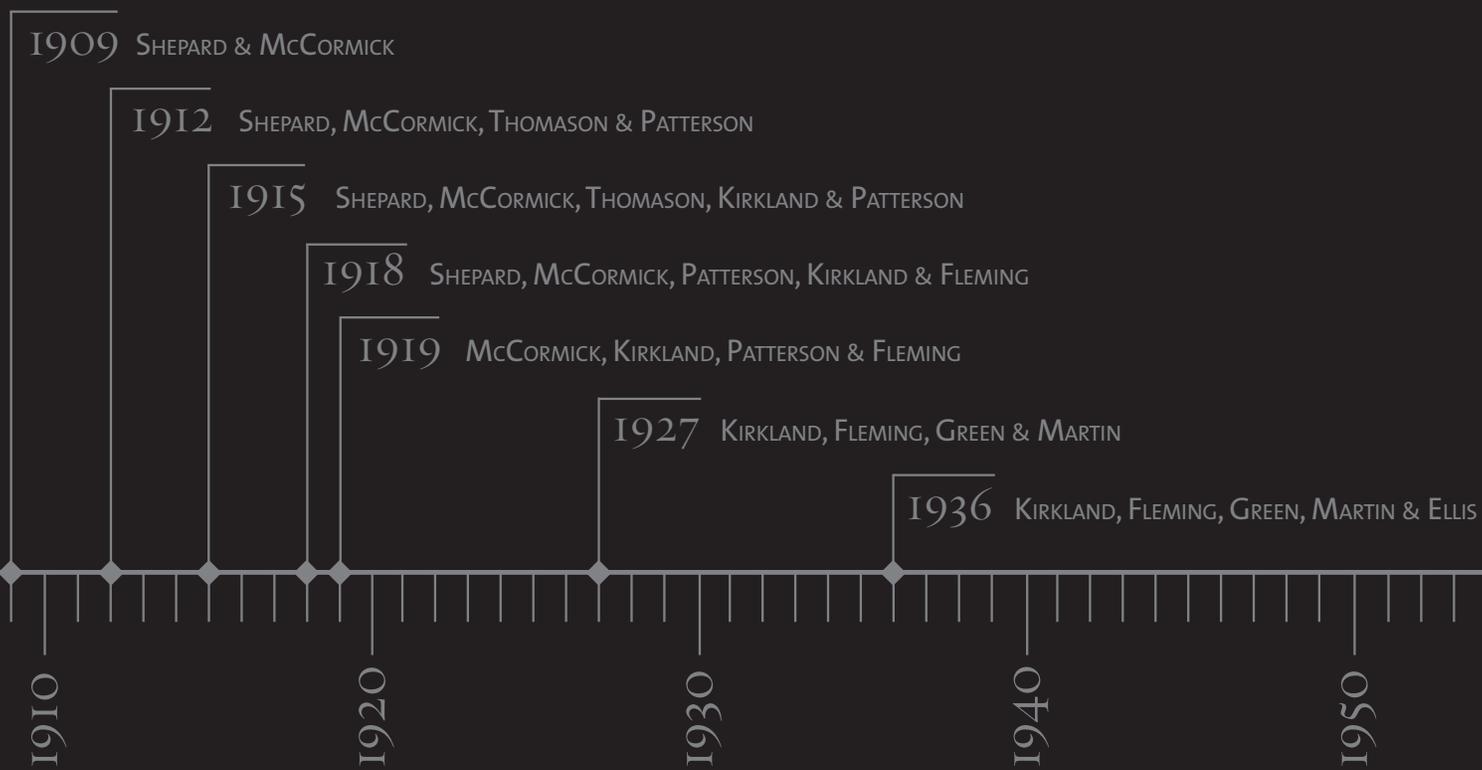


100

KIRKLAND & ELLIS

YEARS

Kirkland & Ellis
A Time Line



1958 KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS

1969 KIRKLAND, ELLIS, HODSON, CHAFFETZ, MASTERS & ROWE (WASHINGTON, D.C. ONLY)

1972 KIRKLAND & ELLIS
KIRKLAND, ELLIS & ROWE (WASHINGTON, D.C. ONLY)

1994 KIRKLAND & ELLIS INTERNATIONAL

2003 KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS
INTERNATIONAL LLP

1960

1970

1980

1990

2000

2010

I O O

KIRKLAND & ELLIS

YEARS

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KIRKLAND & ELLIS AT 100

One hundred years is a milestone for any institution, but especially so for an institution as fragile and idiosyncratic as a law firm. To not only last but to thrive, on what is now a global scale, Kirkland has relied on its distinct and vibrant culture, the recruitment of top talent, advancement based solely on merit, and a sustained record of success wherever we practice.

Kirkland's success today was largely foretold by its auspicious beginnings. Sited in Chicago — the “City of Broad Shoulders” with a “can do” attitude — and founded by Robert R. “The Colonel” McCormick — a truly outsized personality — who left the Firm to run the *Tribune's* publishing interests, Kirkland handled high-profile, high-stakes matters from the start. At the beginning of the twentieth century, newspapers were at their zenith in influencing politics, business and culture, and McCormick, never afraid of controversy, used the law firm he founded

as a key strategic partner in both protecting and advancing the *Tribune's* influence throughout the country. Whether it was taking on Henry Ford's libel suit against the *Tribune*, fighting Chicago Mayor "Big Bill" Thompson as part of political reform, or underwriting the cost of press freedom in the landmark *Near v. Minnesota* case in the U.S. Supreme Court, Kirkland delivered outstanding results, under great pressure, time and again.

In turn, these early achievements gave rise to a professional ethic at the Firm: Kirkland lawyers handled the biggest and most difficult matters, whatever the odds. Many lawyers — including very good ones — build successful careers by mastering an area of the law and then expertly "playing the averages" in representing their clients. At Kirkland, we strive to get results that move the average. For exactly 100 years, Kirkland lawyers have been unafraid to take matters that others often shy away from and through skill, hard work and, many times, sheer force of will, we come up with a win for our clients. Just this year, the Firm obtained a complete defense verdict in the largest and most aggressive criminal prosecution in environmental enforcement, tried to a jury in a very challenging forum.

Of course, this tradition required that the Firm attract and promote hardworking and highly skilled lawyers. Weymouth Kirkland's recruitment of Hammond Chaffetz in 1938 is a prime example of hiring based on merit. Even though Chaffetz was a young government lawyer who wanted to remain in Washington, D.C., the Firm nonetheless recognized the value he could bring with his expertise in antitrust and he was hired to work in our Washington office. Chaffetz, in turn, went on to lead the Firm as it grew to handle large complex commercial cases and built a premier tax and corporate practice as well. And, like those before him, Chaffetz put in place a group of younger talented lawyers who were deeply committed to making Kirkland a lasting institution. By adding expertise and offices where needed, and changing the Firm's management to include more partners

and points of view, they created the platform which has served the Firm so well over the last several decades.

The matters described in this book are but a small part of what has made our Firm so successful. The cases and deals that reflect the same level of creativity, hard work and success as those described in this book are too numerous to recount. We focus here primarily on our past achievements, knowing that our current lawyers' results will be chronicled later and confident that our work today reflects the same level of achievement that has distinguished the Firm for a century.

It is said that success has a thousand authors and that is certainly true for Kirkland. We thank not just the many fine lawyers who have built the Firm, but also the thousands of individuals who serve, and have served, the Firm and its clients in staff and para-professional positions with great dedication and skill and with a full share in our ethic of striving to be the best. We also acknowledge the benefits we receive from Firm alumni, many of whom have gone on to do great things in their careers outside the Firm, often in arenas beyond the law. And because talent is diverse, a meritocracy must be diverse. We are proud that the 3,300 individuals who make up the Firm today reflect the rich diversity of talent available on the three continents where we practice.

But more than anything else, our continued success is due to the confidence our clients have placed in the Firm. Kirkland's client base has always been dynamic and varied, ranging from large iconic companies, both in the United States and abroad, to indigent members of our communities represented *pro bono*. The one constant among them, over the years, is the expectation that Kirkland will always rise to the occasion and provide the best representation available. As long as we remain true to our core principles, we can look forward to remaining successful, in the broadest sense, for many years to come.

THOMAS D. YANNUCCI
CHAIR, FIRM COMMITTEE



1909 — 2009

CHAPTER 1

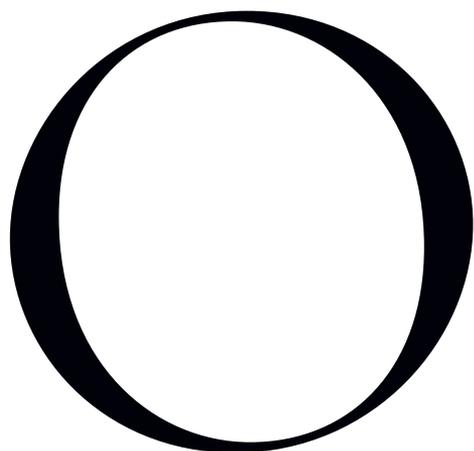
THE FOUNDATION

(Left) The Firm's first office, 7 South Dearborn Street in Chicago, which was also the home of the Chicago Tribune newspaper.

R. R. McCORMICK IN LAW FIRM.
President of Drainage Board Opens Offices with Stuart G. Shepard and S. E. Thomason.

Robert R. McCormick, president of the drainage board, has opened an office for the practice of law with Stuart G. Shepard and S. E. Thomason. Mr. McCormick was admitted to the bar last June and has been practicing law in addition to his other duties since then. The new firm will be known as Shepard & McCormick, with offices at 1306 Tribune building.

In addition to the *Chicago Legal News* announcement, the Firm's opening was also featured in the *Chicago Tribune* on March 28, 1909.



Our story begins with a notice buried in a dusty ledger, the March 27, 1909, issue of the *Chicago Legal News*. For it was then that the local legal trade newspaper carried this brief news item:

“Stuart G. Shepard, Robert R. McCormick and S.E. Thomason announce that they have formed a partnership for the general practice of law under the Firm name of Stuart G. Shepard & Robert R. McCormick, with offices at 1306 Tribune building. Telephone Randolph 2929.”



Robert R. McCormick

1909 — 2009

Of Stuart Gore Shepard, we know little, save that he was the son of a well-known Chicago judge, he was active in local Democratic party politics, and he withdrew from the Firm in 1917 to go to Washington as general counsel of the federal agency that eventually would become the U.S. Department of Veterans Affairs.

Of Robert McCormick, we know a great deal. As colorful as he was imposing — standing 6 feet 4 inches in his stocking feet — he was the Groton- and Yale-educated scion of one of Chicago's most prominent families. His



Founding partner Stuart Gore Shepard

grandfather, Joseph Medill, had been one of the early leaders of the Republican Party, and his newspaper, the *Chicago Tribune*, trumpeted an Illinois native son, Abraham Lincoln, in his rise to the presidency.

The Chicago of Robert McCormick's youth was a rowdy, raucous menagerie of humanity. On the one hand, it was a hardworking, immigrant city. On the other, Chicago was a city of great fortunes — of meatpacker millionaires like the Swifts and the Armour, department store magnates like the Fields, real estate moguls like the Palmers and publishing tycoons like the Medills.



The World's Columbian Exposition, or Chicago World's Fair, was held in commemoration of the 400th anniversary of the discovery of America by Christopher Columbus. The exposition covered 600 acres on the south side of Chicago, attracting exhibitors from 72 countries and more than 27 million visitors.

As a 13-year-old boy, Robert McCormick had witnessed the luminous 1893 Chicago World's Fair, the handiwork of the brilliant architect Daniel Burnham. "The White City," as it was called, was an unforgettable spectacle with its acres and acres of attractions, all lit by Thomas Edison's new form of illumination. By then, the Medills were already an institution in the bustling metropolis known as "America's Second City."

1909

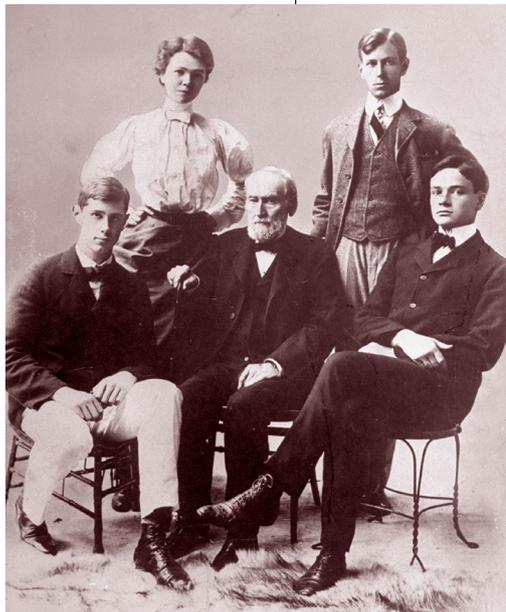
Office of Shepard & McCormick
opens in Tribune Building

1910

Tribune Editor
Robert Patterson dies

1909 — 2009

The second son of the McCormick side of the Medill clan, Robert “Bob” McCormick saw his path at the *Tribune* blocked not only by his uncle, publisher Robert Patterson, but by his older brother,



Joseph Medill and his grandchildren in 1898. (From left) Robert McCormick, Eleanor Medill Patterson, Joseph Medill McCormick, and Joseph Medill Patterson.

Medill McCormick. And so, having graduated from the Northwestern University School of Law, he turned to a legal career and politics. But when Bob Patterson died suddenly in April 1910 — and brother Medill chose to follow a political career that would take him to the U.S. Senate — Robert McCormick and his cousin Joseph “Joe” Medill Patterson were thrust into new and unexpected leading roles at the Tribune Company. McCormick’s

succession to the editorship of the newspaper ended his political career; and though his name remained on the door of the Firm, it also effectively ended his legal career.

Which brings us to “S.E.” Slightly younger than his partners, Samuel Emory Thomason (popularly known as “S.E.”) was born in 1883, the son of a Chicago patent attorney. Like Stuart Shepard and Robert McCormick, he was a graduate of Northwestern’s law school. And, like Robert McCormick, he would achieve his greatest fame in the newspaper business as vice president and business manager of the *Tribune* and later as part owner and publisher of the rival *Chicago Daily Times* (the precursor of today’s *Chicago Sun-Times*).

Still, it was neither Robert McCormick, nor Stuart Shepard, nor S.E. Thomason who would make the law firm they founded famous. It was, instead, two other men — one older, one younger. The first and foremost was Weymouth Kirkland. By the time he joined Robert McCormick in 1915, he had already built a successful 14-year track record as a litigator defending the Chicago Street Railway System and a number of insurance companies. Weymouth Kirkland

1911

Road Amundsen leads expedition to South Pole

1911

Robert McCormick named acting president of Tribune Company

1912

Summer Olympics held in Stockholm

1912

Ontario Paper Company, the *Tribune*’s newsprint subsidiary, founded

1909 — 2009



Utility baron Samuel Insull



Newspaper magnate
William Randolph Hearst



Chicago Street Railway System cars running along Randolph Street, which was the financial and legal hub of the city at the turn of the century.

Howard Ellis' University of Chicago Law School class portrait, 1915



1912

Firm name changes to Shepard, McCormick, Thomason & Patterson

1913

16th Amendment to United States Constitution ratified, authorizing income tax collection

1914

World War I breaks out in Europe

1914

Robert McCormick and Joe Patterson draft agreement dividing duties at the Tribune Company

1909 — 2009

had also made a name for himself battling with a longtime *Tribune* nemesis, utility baron Samuel

Insull of Commonwealth Edison.

He cemented his relationship with Robert McCormick when he represented the *Tribune* and its staff in trumped-up political prosecutions arising from the vicious 1910 circulation war with rival newspaper magnate William Randolph Hearst.

That Weymouth Kirkland made a favorable impression on McCormick is obvious from what happened next.

According to biographer Richard

Norton Smith, “without ever discussing the matter with Weymouth Kirkland,” Robert McCormick began introducing him to friends as “his latest legal acquisition.”

The year 1915 would bring Weymouth Kirkland’s name and another, Perry Patterson, to the letterhead and the Firm became Shepard, McCormick, Thomason, Kirkland & Patterson. This year there would also be a new face in the 13th floor hallways of the Tribune Building at 7 South Dearborn: a bright graduate of the University of Chicago Law School named Howard Ellis.

The critical pieces of a lasting and great partnership were now in place.



Daniel Weymouth Kirkland was born June 4, 1877, in Fort Gratiot, Michigan. Kirkland graduated from the Kent College of Law and was admitted to the bar in 1910. His first practice was the partnership of Symmes & Kirkland.

1915

Weymouth Kirkland
joins the Firm

1915

Firm name changes to
Shepard, McCormick, Thomason,
Kirkland & Patterson

1909 — 2009

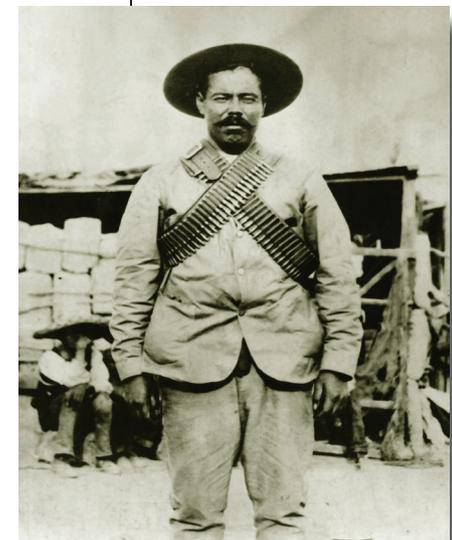
CHAPTER 2

WITH PERSHING IN FRANCE

6

On March 9, 1916, forces of the Mexican Revolutionary bandit leader Francisco “Pancho” Villa crossed the Rio Grande onto American soil and raided the small border town of Columbus, New Mexico. In response, President Woodrow Wilson ordered General John J. Pershing and 6,600 soldiers (among them, Illinois National Guard Major Robert McCormick) to Mexico to carry out a “Punitive Expedition” in search of Villa.

Mexican guerrilla leader Doroteo Arango spent his adolescence as a fugitive after he murdered a landowner for assaulting his sister. He later joined a gang led by Francisco “Pancho” Villa and when Villa was killed, Arango adopted his name and his gang. The new Pancho Villa battled against dictator Porfirio Diaz and became a hero of the poor.



1916

President Wilson orders
“Punitive Expedition”
led by General Pershing

1916

Tribune runs editorial
“Henry Ford Is an
Anarchist”

1916

Louis Caldwell joins
the Firm

1916

Henry Ford files suit for libel
against the *Tribune*, claiming
\$1 million in damages

1909 — 2009



Howard Ellis

The wealthy pacifist industrialist Henry Ford, no stranger to controversy, spoke out against the deployment — and incurred the wrath of Robert McCormick. Henry Ford soon found himself under attack for his “ignorance” in the pages of the *Tribune* under the headline, “Henry Ford Is an Anarchist.” The curmudgeonly multimillionaire fired back, suing the *Tribune* for libel and claiming record damages of \$1 million (\$20 million today).

For the next three years, a legion of lawyers — Henry Ford’s and Robert McCormick’s (led by Weymouth Kirkland) — jostled over discovery and venues. Detective agencies were engaged on both sides, witnesses deposed — in Michigan, the borderlands of New Mexico and Texas, and within Revolutionary Mexico itself — and the “facts” probed. A central issue in discovery was the alleged ill treatment by Ford of returning workers who had been called



Major Robert McCormick with members of the Illinois National Guard in Mexico.

up for service in the National Guard and ordered to Mexico with Pershing.

By 1918, America was engaged in a World War, and many of those same

Ford workers were called up again to serve with General Pershing’s American Expeditionary Force (AEF) in France.

In the spring of 1918, Weymouth Kirkland gave junior associate Howard Ellis, only a few years out of law school, the opportunity of a lifetime when he was sent to depose the former Ford employees serving in the trenches of France. Remarkably, the correspondence between the two men survives — typewritten pages from Weymouth Kirkland in Chicago, and the longhand of Howard Ellis, written on Parisian hotel paper.

Almost 14 years Ellis’ senior, the debonair Kirkland adopted the tone of the world-weary older brother: “I have been intending to write you

1917

United States declares war on Germany

1917

Robert McCormick serves in First Division

1917

Chicago Mayor William Hale “Big Bill” Thompson sues the *Tribune* for libel

1909 — 2009

ever since we received word that you had landed [in France], but have been in court nearly every day, as you can imagine. We are beginning to think in the office, that the German efficiency is not what it's cracked up to be, else they would have nailed your boat and had you sleeping on the bottom of the briny deep by this time."

In his reply, passed by army censors and dated June 27, 1918 (Hôtel Continental, 3 Rue Castiglione), Ellis wrote, "Well, everything has turned out O.K. Have received permission & pass to go to a certain town where the troops are billeted and to remain there ten days." His time in France proved quite the eye opener. There were journeys to the front lines and meetings at Pershing's AEF headquarters. There was even a trip with the now Colonel Robert McCormick to the hospital bedside of the war correspondent Floyd Gibbons, the victim of a German machine gunner who had shot out one of his eyes.

Over the next few months, Ellis watched as railroad-car-sized Big Bertha shells screamed overhead by day and the slow-moving Zeppelins

motored over Paris by night, dropping bombs on the populace. Writing to his colleagues in Chicago, Ellis recalled the experience: "It is a real sight when there is no moon ... When the searchlights are playing around and the shrapnel is making red streaks through the air, and you can hear the angry hum of aero motors, and there is lot of cannon [fire], like a 'giant heating a carpet,' and now and then there is an especially reverberating boom caused by a bomb, and you realize that there actually are Germans above you trying to blow you to pieces, well, I'll say there is a thrill."

Despite his inexperience and the many distractions of Parisian life, Ellis got the job done. After all, General Pershing hadn't forgotten Ford either. The requisite passes and orders were signed. The Ford workers-turned-soldiers were rounded up, treated to a hot meal and a bath, and meticulously deposited by Howard Ellis.



Handwritten correspondence from Howard Ellis in France to Weymouth Kirkland in Chicago.

8

1918

Howard Ellis sent to war-torn France to depose former Ford workers serving overseas

1918

Robert McCormick and Joe Patterson hatch plans in France for *New York Daily News*

1918

Armistice is signed, ceasing fighting in World War I

1918

S.E. Thomason leaves the Firm to become business manager of the *Chicago Tribune*

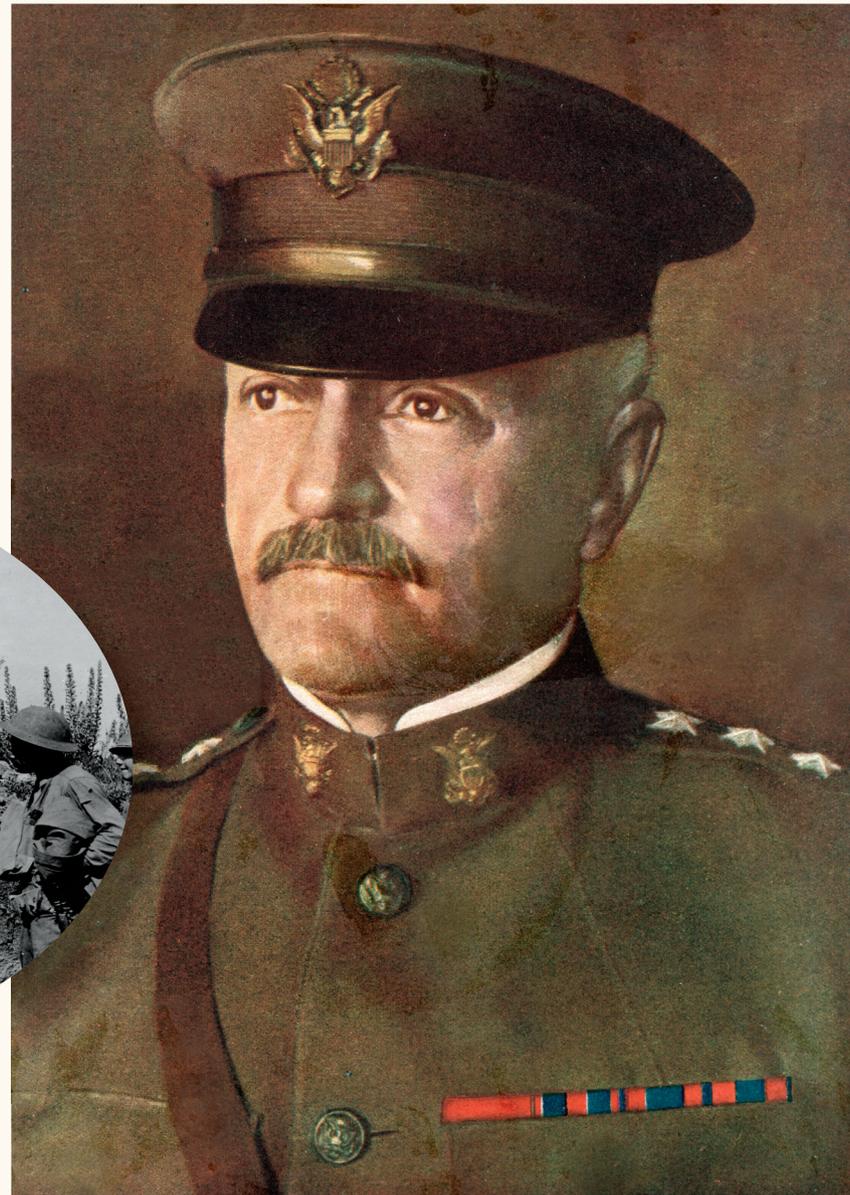
1909 — 2009



Illinois National Guard recruiting poster featured in the Chicago Tribune



American troops in the trenches of France during World War I



John J. “Black Jack” Pershing graduated from West Point in 1886 and served in the Spanish-American War, the Philippines Insurrection and as the overall American Commander in Europe during World War I. In 1919, he was promoted to General of the Armies of the United States.

1919

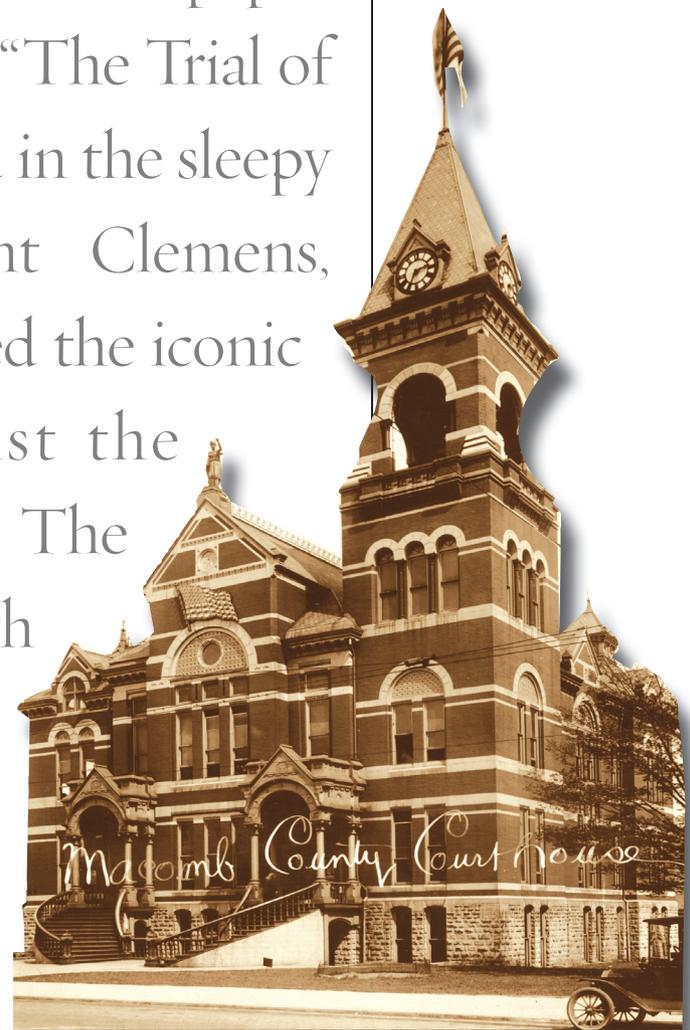
Ford Trial begins in Mount Clemens, Michigan

THE TRIAL OF THE CENTURY

10

One of the most closely watched trials of its day — described in newspaper accounts at the time as “The Trial of the Century” — opened in the sleepy little town of Mount Clemens, Michigan, in May 1919. The libel trial pitted the iconic car manufacturer Henry Ford against the newspaper publisher Robert McCormick. The cast of characters ranged from Weymouth Kirkland and Howard Ellis as lawyers for the defense, to the only son and heir to the Ford fortune, Edsel Ford, appearing lost in his father’s shadow.

(Right) Members of the Kirkland Defense Team, including Weymouth Kirkland, second from right, and Robert McCormick, standing in center.



Macomb County Courthouse



Then there was the one-eyed war correspondent Floyd Gibbons (who had also covered Pershing's Mexican incursion) and the witnesses the newspapers labeled the "Bad Men from Texas," sporting their Stetson hats, boots and gun belts around the Midwestern town.

Weymouth Kirkland's former partner, Robert McCormick, wasn't the easiest client in the world. He was voracious in his reading, quick with ideas (both good and bad) — and opinionated in the extreme. Years later, a *Tribune* reporter would recount how Robert McCormick, during the course of the Ford trial, thought nothing of barging into Weymouth Kirkland's hotel room at any time of day or night: "At 3 o'clock in the morning ... the Colonel [McCormick] would stride into the room, snap on all the lights, and toss a sheaf of papers on the table. 'Here are some suggestions I've typed up,' he would say. 'I want them to go into the case tomorrow.'"

Like anyone who had crossed paths with him, in business or in life, Weymouth Kirkland

had long since learned to tread lightly with the bumptious publisher. As the reporter put it: "When [Weymouth] Kirkland had rubbed the sleep out of his eyes, he would say [that] they looked like darn good suggestions" — all 40 or 50 of them. "Several" of the Colonel's [McCormick] ideas, the *Tribune* reporter noted, "would be excellent." Most, of course, would not be so excellent, and Weymouth Kirkland would then have to "persuade the Colonel [McCormick] to compromise and concentrate his fire on the few good points."

It was not for nothing that Weymouth Kirkland was known for his personal skills with clients, particularly with his most important and challenging client.

Henry Ford and his lawyers had made much of the argument that the Pershing expedition had been launched not merely to subdue Mexican revolutionaries, but to open that vast and mineral-rich country to American imperialism. The whole business about "Mexican atrocities" was, according

Floyd Gibbons started as a reporter with the *Tribune* in 1907, getting his big break in 1916 covering Pershing's "Punitive Expedition." Gibbons lost his eye to German gun fire while covering World War I in France. In the 1920s and 1930s, he was widely known as a narrator of newsreels and as a radio commentator.



1919

Weymouth Kirkland begins to supervise legal affairs for *New York Daily News*

1919

18th Amendment to the United States Constitution establishes Prohibition

1909 — 2009

to Ford, nothing but a trumped-up excuse for economic exploitation. Among the would-be exploiters, Ford further claimed, were none other than the various members of the extended Medill/McCormick/Patterson clan.



The “Bad Men from Texas” weren’t so bad after all. They were a group of cattlemen that were brought up to testify to the Mexican atrocities they witnessed along the Rio Grande during the Pershing Expedition.

Weymouth Kirkland set that matter straight when he called on Floyd Gibbons to testify. On the stand, Gibbons related the harrowing tale of some African-American soldiers of the 10th

U.S. Cavalry. In an engagement near the Northern Mexico town of Carrizal, a small detachment of cavalymen were surrounded by a much superior force of Villistas. The unit was devastated by enemy machine gun fire and forced to surrender.

Eventually, the men were freed in an exchange for captured revolutionaries, but not before having been subjected to brutal treatment. Weymouth Kirkland had Floyd Gibbons describe

the scene when the cavalymen were returned to Juarez, Mexico, for exchange: The first to step off the train was “a giant” of a man “over six feet; he was perfectly bare to the waist ... he had a bullet hole in one arm that had been unattended to; I mean, the wound was still gaping. It did not appear to have even been washed, just the round hole of the bullet.”

The man was naked, save for an old white tablecloth around his waist, and barefooted. He was covered in dust. So were the other survivors, all 15 or so of them “dressed pretty much the same way,” — all without shoes and hardly any clothes.



Henry Ford

1919

Einstein's Theory of General Relativity is confirmed

1919

Black Sox Scandal

1919

Howard Ellis becomes partner of the Firm

1909 — 2009

The men were then marched through the streets of Juarez while crowds of people jeered at them before they were allowed to cross into El Paso, Texas, and freedom. It was not a pretty story that Weymouth Kirkland elicited — but it was a powerful one.

Both Robert McCormick and Henry Ford took the stand at trial. McCormick appeared smooth and well-versed in the facts surrounding the case. Ford, on the other hand, fell apart under questioning. “Do you know anything about the



Ever-dapper Weymouth Kirkland enjoys a celebratory cigar after a long day in the courtroom.

Revolution?” Ford was asked. Finding himself at a loss for words, “What?” he replied, haltingly. “What do you want to know about it?” Giving a date to the American Revolution would help. “1812,” said Ford. Unfortunately for him, the actual date of the Revolution was 1776. He also remembered Benedict

Arnold as a “writer,” not an infamous traitor. These answers destroyed his credibility as an expert on political affairs and proved to be the capstone of an exhausting three-month trial.

In the end, the jury ruled in favor of the plaintiff; however, Ford was only awarded six cents in damages. In protest, Robert McCormick never paid the sum. A humiliated Henry Ford, knowing he had been bested by the courtroom maneuvering of Weymouth Kirkland and his team, gave up the fight.



Onlookers who gathered in the small town of Mount Clemens, Michigan, to witness the “Trial of the Century.”

14

1919

Louis Caldwell becomes partner of the Firm

1919

Firm name changes to McCormick, Kirkland, Patterson & Fleming

1919

New York Daily News publishes first issue

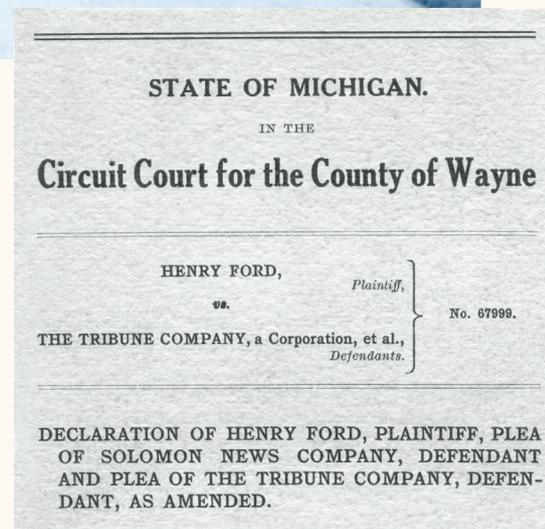
1909 — 2009



(From left) *Tribune* editorial writer Clifford Raymond, S.E. Thomason, Floyd Gibbons and Howard Ellis “pitching pennies” during a break in the Ford trial.



Judge James Tucker



Cover of the official complaint

1920

Colonel McCormick formally retires from the Firm

1920

First commercial radio station in the United States begins

1920

American women gain the right to vote



1909 – 2009

CHAPTER 4

BIRTH OF THE TABLOIDS

(Left) New York Daily News reporter pounding out a story for the next edition of the paper.

After 10 years of representing the interests of the Tribune Company in Chicago, Weymouth Kirkland was given a new challenge that would take him to New York. Strange as it might seem, considering the family's conservative roots, Robert McCormick's cousin and business partner, Joe Patterson, was what used to be called a "millionaire socialist." Ironically, it was Joe's devotion to the "Little Man" that was about to make the Tribune Company many millions of dollars richer.



Art Deco frieze above the New York Daily News building's grand entrance.

1909 — 2009

Joe and his sister, Eleanor Medill Patterson, better known to the world as “Cissy,” led lives every bit as complex as their cousin Robert McCormick. But in the insular world of newspaper publishing, they all somehow managed to thrive: Robert as publisher of the *Tribune*, Cissy as proprietor of the *Washington Times-Herald* and Joe as founding editor of the *New York Daily News*.

Like his cousin, Joe Patterson had entertained hopes of a political career, but in 1910, the death of his father, Bob Patterson, transformed the lives of both cousins. Born with newspaper ink in their blood, the cousins would put their personal ambitions on hold and share the helm of the company their grandfather had built.

The two cousins — vastly different as they were — shared a taste for military adventure. Both served with Pershing in Mexico and in France. While the egalitarian Joe Patterson had been an enlisted man and his cousin a major during the Mexican Revolution, in World War I Patterson was named a captain and McCormick was now a

lieutenant colonel.

At the war’s end, “Captain Joe,” as he was thereafter known, and his cousin found themselves reunited in the small village of Mareuil-en-Dôle to celebrate Robert McCormick’s promotion to full colonel. As McCormick’s biographer, Richard Norton Smith, tells the tale: “Borrowing a helmet and gas mask from the flamboyant Colonel Douglas MacArthur,” McCormick tracked Patterson to a noisy regimental command post. Apparently unable to hear themselves talk, the voluble cousins climbed out a window at the chateau and into the quiet of the French countryside. It was there that the *New York Daily News* — “the picture-filled offspring of Joe Patterson’s gritty imagination, Tribune capital and the urban populism” of the London penny press — had its beginnings.

Less than a year later, on June 26, 1919, the Chicago Tribune Company — counseled by Weymouth Kirkland — gave birth to the tabloid



Eleanor “Cissy” Patterson, also known as the Countess Gyzicki thanks to her brief, ill-fated marriage to a minor Polish count. Professionally, Patterson was known for her spectacular news presentation at the *Washington Times-Herald*. She also authored two books.

1921

United States signs
the Treaty of Berlin

1921

Albert Einstein awarded
Nobel Prize in Physics

1921

Weymouth Kirkland represents
Peggy Upton Archer Hopkins Joyce in sensational divorce case,
which settles for \$800,000 and jewels

1909 — 2009



New York City newspaper vendor.

The *New York Daily News* eventually proved to be a hugely successful venture for cousins Joe Patterson and Robert McCormick.



Midtown Manhattan skyline with the New York Daily News building in the center.

1922

Fascist leader Mussolini forms government in Italy

1909 — 2009

New York Daily News. Combining “enough sex, mayhem and violence to gratify the taste of working-class New Yorkers,” the first issue of the *Daily News* featured photographs of the playboy Prince of Wales and a notice about a \$10,000 beauty contest to be judged by Broadway producer George M. Cohan and Hollywood director D.W. Griffith. The prognosis for the *Daily News*’ survival was not encouraging. By the time the paper turned its first profit more than a year later, in October 1920, the Tribune Company had lost more than \$1 million on the venture. However, by decade’s end, the *Daily*



Hollywood director D.W. Griffith on the set of one of his motion pictures.

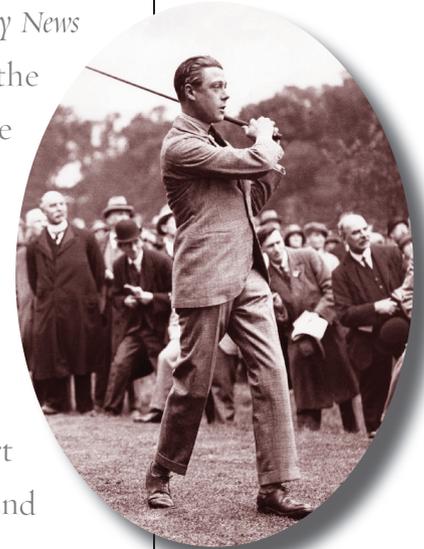
News was New York’s leading tabloid newspaper – and the country’s biggest newspaper, with a circulation of more than one million.

“New York’s Picture Newspaper,” as the *Daily News*

billed itself, soon became famous for its racy celebrity gossip and lurid headlines. When the *Daily News* obtained an exclusive photograph of the execution of murderer Ruth Snyder, the front page headline fairly shrieked: “DEAD!” And when the Dodgers – beloved by Brooklynites as “Dem Bums” – finally won a World Series, the headline roared, “WHO’S A BUM!”

The *Daily News*’ landmark 1929 Art Deco skyscraper, located at 220 East 42nd Street, was as brash and exclamatory as its paper. Its lobby became famous for its enormous concrete globe, the prototype for Superman’s *Daily Planet*, which seemed to surge heavenward, almost in spite of the Depression.

The newspaper claimed to be “the Eyes, the Ears, the Honest Voice of New York.” For many readers, it was. Looking back years later, Weymouth Kirkland could truly say that he had been present at the beginning of an era, “The Birth of the Tabloids.”



Prince Edward of Wales was one of the most popular royal figures of all time. When he became King Edward VIII, his marriage to an American divorcée became a source of great controversy. After an 11-month reign, he abdicated the throne in 1936, stating that he could not perform his duties without the support of the “woman I love.”

1922

Tomb of King Tutankhamen
discovered in Egypt

1922

British Broadcasting
Company is formed

1922

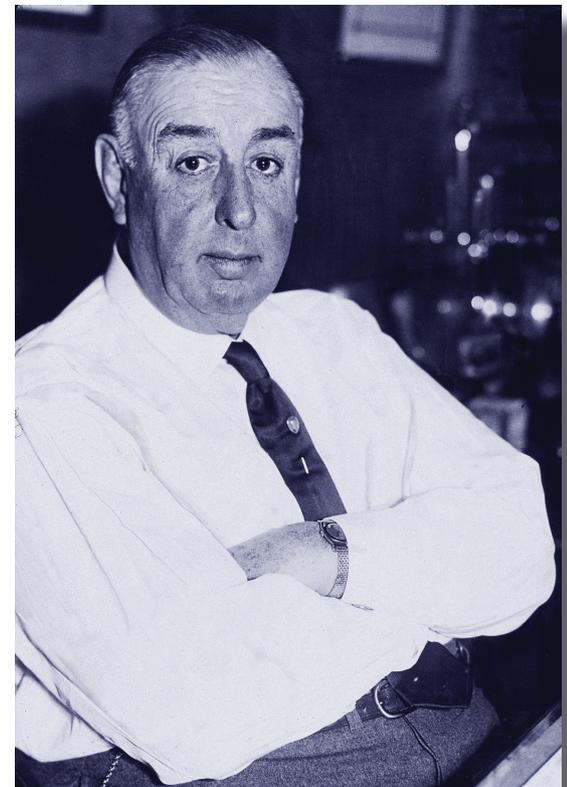
Teapot Dome Scandal

BRINGING DOWN “BIG BILL”



Notorious Chicago gangster Al Capone was known to be a supporter of Big Bill Thompson, and his ill-gotten gains helped pay for Thompson's election campaigns.

Flamboyant Mayor William Hale “Big Bill” Thompson ran Chicago like his personal fiefdom and made it a “wide open city” for the likes of Al Capone. Once the most popular electoral draw in Chicago history, Thompson would ultimately be brought down by his own hubris — and by a hard-working team of lawyers led by Weymouth Kirkland.



Mayor William Hale “Big Bill” Thompson

1909 — 2009

Between 1915 and 1931, Big Bill Thompson was elected mayor of Chicago three times. He was known for his wild antics such as conducting a political debate with a pair of caged rats and leading a safari in search of a tree-climbing fish. To most, he symbolized the Roaring Twenties in Chicago.



Big Bill Thompson in his City Hall office



Chicago's City Hall, built in 1911, was designed by Holabird & Roche in the classical revival style. Today, this historic building features a rooftop garden that served as a test for other "green" roofs that would be installed throughout the city.



Senator Medill McCormick

1923

Hyperinflation in Germany reaches its height

1923

Time magazine hits newsstands

1923

The Walt Disney Company founded



Ruth Hanna McCormick was a leader of the women's suffrage movement in the United States during the early 1900s and was elected to the U.S. House of Representatives in 1929.

Big Bill, as he was known, had been a boxer, sailor, water polo star, and the captain of the Chicago Athletic Association's national championship football team. Tough, charming, and hot-tempered, Big Bill looked the part, wearing a cowboy hat and boots. He was proud of the fact that he'd once been a cattle rancher. What he preferred not to dwell on was the fact that he'd been born in Boston and had grown up as the privileged son of a wealthy New England blue blood who had made a fortune on Chicago real estate. That kind of thing played less well with the voters.

Standing 6 foot 4 and weighing 225 pounds, Thompson was one of the few politicians in the city who could literally go nose to nose with Colonel McCormick. Therein, the similarities ended.

Thompson had won office as mayor in 1915 behind a campaign of pure theatrics. Big Bill promised to wipe out crime, attract two million new visitors a year to the city and lower the streetcar fare to a nickel. But mostly what he offered voters was drama. His campaign featured circus parades and calliope music, beneath a banner that proclaimed,

“All for Chicago and Chicago for All.” And, at the head of the pack was Big Bill himself. New York's famously corrupt Tammany chieftain William Marcy Tweed had nothing on Big Bill. In his three terms as mayor, Thompson, the *Tribune* charged, added much to the city's reputation for “moronic buffoonery, barbaric crime, triumphant hoodlumism, unchecked graft, and a dejected citizenship.”

Not surprisingly, the *Tribune* consistently refused to support Thompson for mayor — or for any other office. Its editorial page dismissed his gambit for the 1916 Republican presidential nomination as laughable; and, two years later, Medill McCormick, the Colonel's older brother, defeated Thompson for the Republican nomination for U.S. senator from Illinois. Payback time came six years later when Thompson helped defeat Senator McCormick in his effort to be renominated; and, again in 1930, when he worked with the opposition Democrats to defeat Republican candidate Ruth Hanna McCormick, Medill's widow, for the same Senate seat. The *Tribune*, Thompson sneered, was nothing

1924

Vladimir Lenin dies; Stalin comes to power in the USSR

1924

WGN Radio's first broadcast from the Drake Hotel

1924

France hosts Summer and Winter Olympic Games

but “the trust press,” the toy of the wealthy McCormicks and their in-laws.

All the while, graft thrived in the city of Chicago. In their prime, Thompson and the “Chicago Machine” he headed controlled an estimated 30,000 jobs, including the board of education, library system, the sanitary district and the state’s attorney’s office. The innocuous-sounding sanitary district was a particular source of lucre, with authority over land, water, contracts and jobs — thousands of jobs and millions of dollars worth of contracts.

Throughout 1920 — at the very height of the Machine’s power — the *Tribune* ran a series of exposés that laid out a tale of graft and corruption. Thompson struck back, filing suit on behalf of the City against the *Tribune*, seeking a staggering \$10 million in damages from the *Tribune* for having impaired municipal credit by its negative coverage.

McCormick responded in kind, launching a *Tribune* investigation into the way the City of Chicago handed out its lucrative real estate appraisal contracts. The paper subsequently filed suit against Thompson and various of his cohorts for having

bilked taxpayers. Dubbed “The Experts Case,” the *Tribune*’s suit came to trial in March 1926 and would last another two years. In the course of the trial, Weymouth Kirkland, seconded by Howard Ellis, provided the evidence that eventually doomed the Machine. The seemingly interminable trial — involving more than 100 witnesses, 11,000 pages of testimony and 3,000 exhibits — eventually ended in a complete victory for McCormick, the *Tribune*, Kirkland and the civic reform movement.

On June 20, 1928, a judge ordered Thompson and six of the other leaders of the Machine to pay the City of Chicago a staggering \$1,732,279.23 in damages — \$2,245,604 with interest (about \$25 million today). On appeal, damages were later overturned, but in the meantime, Thompson suffered a nervous breakdown. By the end of his third term in 1931, Thompson was finished.

A young lawyer who had been involved in the case later imagined Big Bill delivering this epitaph: “In conclusion I want to point out [that] the *Tribune* always gets their man, and I am afraid it has finally got me.”

1925

Beginning of the Firm’s
Intellectual Property Practice

1925

Scopes “Monkey Trial”

1925

Minnesota enacts “Gag Law”

1909 — 2009

CHAPTER 6

RADIO DAYS



The crystal radio receiver, or crystal set, was one of the earliest forms of radio. Receiving power from radio waves rather than a typical battery, the crystal set was an easily made device.

Radio was in its infancy when, in 1924, Colonel McCormick, with his name still on the door at the Firm, launched a 1,000-watt station perched atop the Drake Hotel in Chicago. This was the beginning of today's WGN, its call signal reflecting the *Tribune's* claim to be the "World's Greatest Newspaper." In those early days, eager listeners tuned in via crystal sets. Still, the commercial prospects for radio were about as fuzzy as the static-filled airwaves.



WGN Radio's first studio was located atop Chicago's glamorous Drake Hotel.

1909 — 2009



Big Ten football game broadcasts were some of the most popular programs featured on early radio stations such as WGN.

Just as he had with the tabloid *Daily News*, Colonel McCormick again rolled the dice. After losing \$1.5 million during its first few years, WGN began its march to profitability. By then, the flimsy “cat’s whiskers” radio sets had given way to the bulky

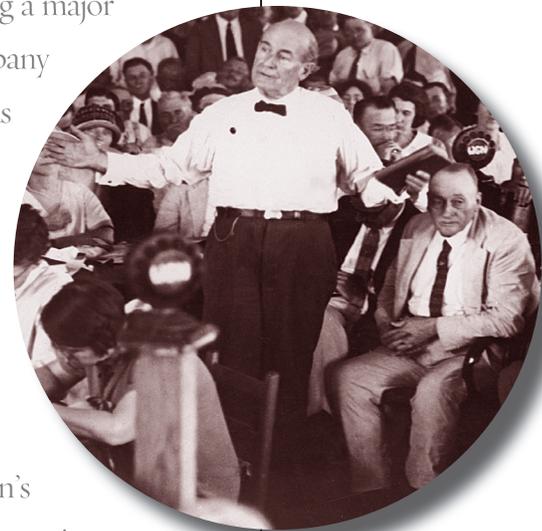
wooden cabinets that now occupied a central place in living rooms everywhere. America had become addicted to the radio.

WGN helped make the revolution happen, with its coverage of the Scopes “Monkey Trial” in Tennessee, where Clarence Darrow and William Jennings Bryan crossed swords over the teaching of evolution, and its live broadcast of Big Ten and Notre Dame football, Chicago Symphony concerts and national political coverage.

With the newfound popularity of radio came competition. Businesses everywhere, newspapers

in particular, wanted a piece of the action. Soon, anarchy reigned over the airwaves, with radio stations jumping from their assigned frequencies to new ones, ignoring the interference caused to other stations. Congress came to the rescue by enacting the Radio Act of 1927, which created the Federal Radio Commission (FRC) and provided a legal framework for allocating and licensing radio frequencies. Louis Caldwell, a Firm attorney, was chosen as the first general counsel of the FRC (today’s FCC).

By 1930, with radio becoming a major part of the Tribune Company empire, the decision was made to open a Washington, D.C. office of the Firm in the National Press Club Building. Louis Caldwell returned via the “revolving door” to the Firm’s Washington office, where, for the next two decades, he would be known as the nation’s preeminent authority on communications law.



When a high school teacher named John Scopes was put on trial for teaching the theory of evolution, he was defended by famed litigator Clarence Darrow. Another giant of the bar, William Jennings Bryan, was the lead prosecutor. Jennings Bryan is shown below at trial speaking into WGN microphones.

1926

Hirohito becomes
Emperor of Japan

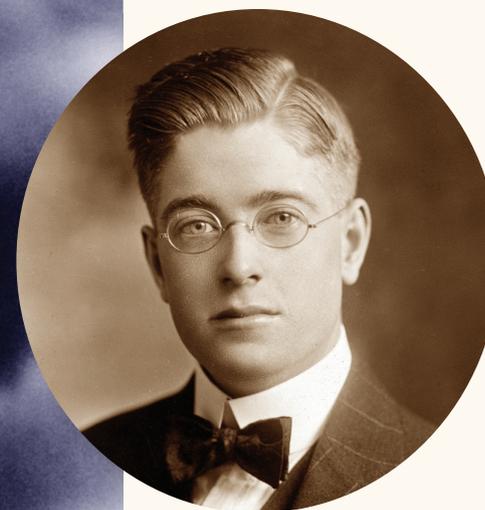
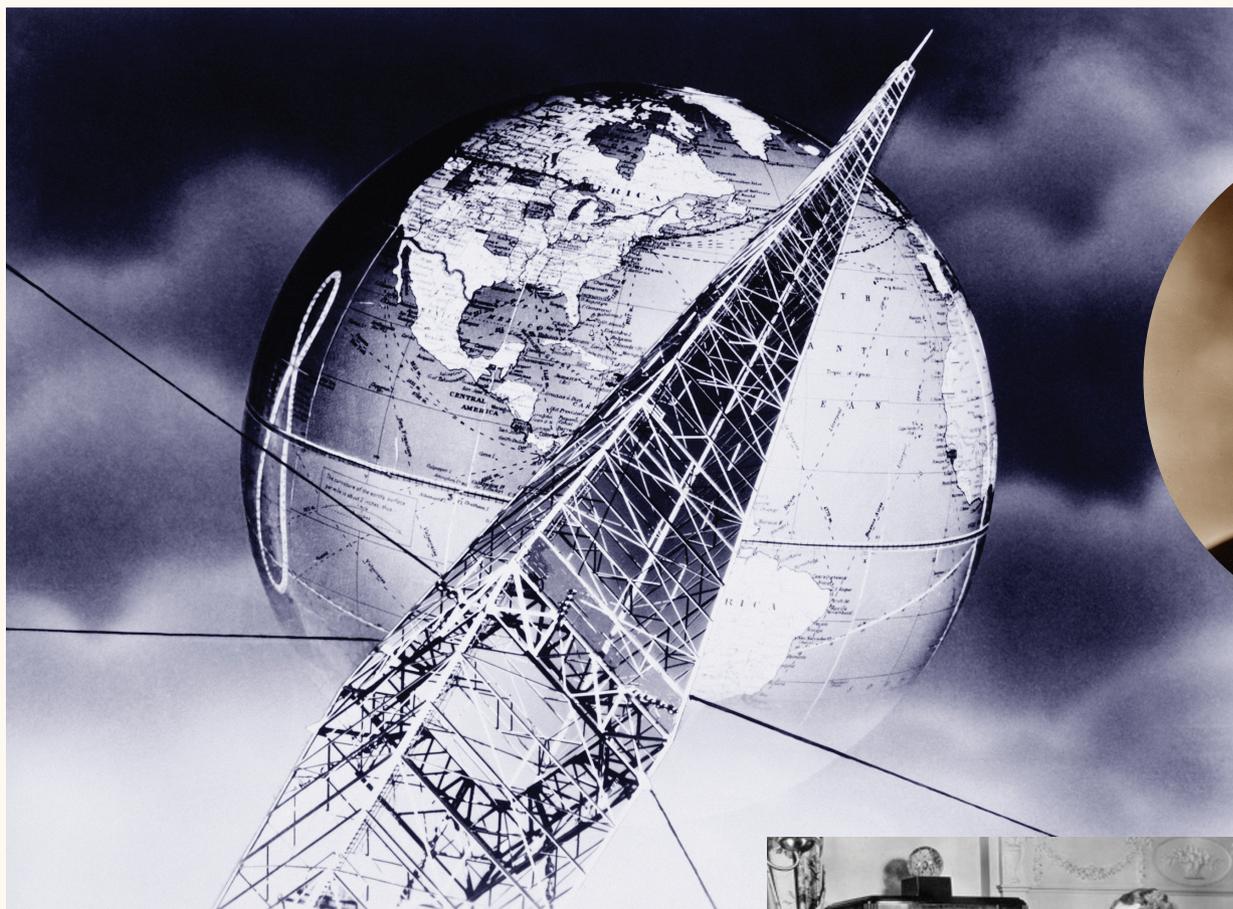
1927

Firm name changes to Kirkland,
Fleming, Green & Martin

1927

Radio Act of 1927 creates
Federal Radio Commission

1909 — 2009



Louis Caldwell

By the late 1920s, radio was the dominant form of home entertainment. The Golden Age of Radio featured a wide variety of programming, including classical music concerts, farm reports, news, commentary, weekly dramas and mystery shows. Millions tuned in every week to hear their favorite broadcasts.



1928

Amelia Earhart becomes first woman to fly solo across the Atlantic

1929

U.S. stock market crash

1929

S.E. Thomason launches *Chicago Daily Times*

1909 — 2009

28

Louis Caldwell, now a partner of the Firm, was an active participant in the September 1929 international radio conference called at The Hague to try to solve the “acute crisis” over the allotment of transoceanic shortwaves. As Caldwell saw it, his job was to protect “the rights of American communication interests.” The problem, he wrote to Colonel McCormick, was simple enough to explain, but hard to solve. The demand “for what are known as the transoceanic shortwaves (suitable for long-distance communication)” was “very much greater than the supply.” As a result, wrote Louis Caldwell, “all the important wireless interests of the United States” — among them, RCA and AT&T — were expected to send representatives to The Hague. Corporate officials, government regulators and technical experts would be there, all vying to have a say in the regulation of the airwaves.

In the story of The Hague conference, the pattern for the next 80 years of broadcast regulation can be found. This would involve overlapping governmental, technical and corporate interests in

a state of constant competition and contention — and it would put a premium on specialist lawyers of the highest caliber to mediate the differences between the various factions.

In the process, Weymouth Kirkland and Louis Caldwell, in particular, would develop reputations as leaders in the much larger field of administrative and regulatory law.

Thus, long before other firms ventured from their original location and it became fashionable for firms to have “a Washington office,” in the ’70s and ’80s, Kirkland recognized the need to practice in legal markets which were important to its clients.



The principal judicial body of the United Nations is located at The Hague in The Netherlands. Its jurisdiction is limited to settling disputes between nations willing to accept its authority on international law. While there is no enforcement power of this court, its decisions are binding.

1930

Louis Caldwell opens
the Firm's Washington office
in the National Press Building

1931

Weymouth Kirkland
argues *Near v. Minnesota*
before U.S. Supreme Court

1931

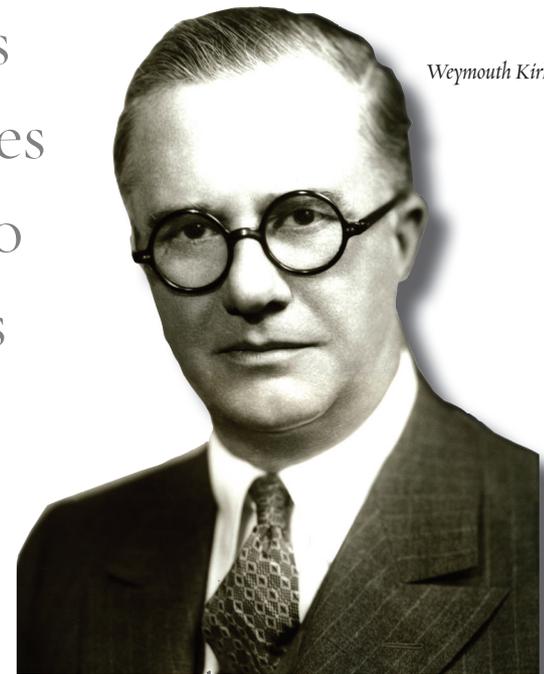
Gangster Al Capone
sentenced to 11 years
in prison for tax evasion

THE NEAR CASE: SUPREME COURT ADVOCACY



Famed litigator Clarence Darrow was born in Ohio and moved to Chicago to practice in 1887. Darrow spent his life defending the “under-dog.” Some of his more notable defendants included Eugene Debs battling the Pullman Company, notorious murderers Nathan Leopold and Richard Loeb, and John Scopes in the “Monkey Trial.”

Weymouth Kirkland had a reputation for being a superb courtroom lawyer. Along with Clarence Darrow, he was considered one of the best around. His advocacy was legendary in Chicago, where Weymouth Kirkland’s courtroom arguments regularly drew attentive audiences — many of them lawyers eager to witness a master at the top of his game — and garnered page-one treatment from the *Tribune* and its competitors.

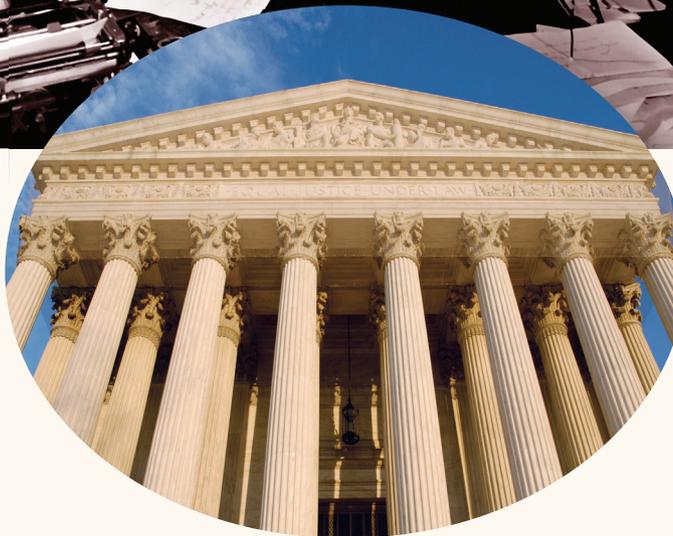


Weymouth Kirkland

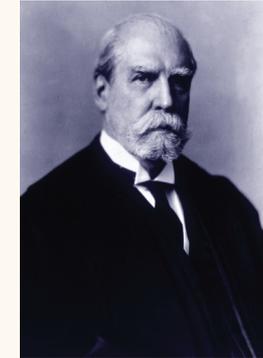
1909 — 2009



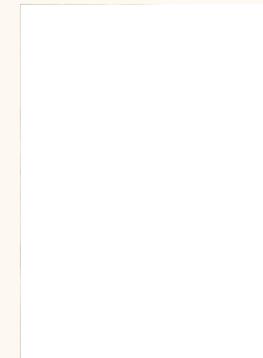
A busy newsroom filled with reporters working on their latest “scoops.” The *Near* case made lives easier for all members of the press, not just Jay Near and his *Duluth Review*.



U.S. Supreme Court Building in Washington, D.C.



Chief Justice Charles Evans Hughes



Howard Ellis, author of the *Near* brief

1933

21st Amendment to the United States Constitution repeals Prohibition

1933

President Roosevelt launches the New Deal

1909 — 2009

The “Near” made famous by the celebrated case was, in fact, a small-time publisher named Jay M. Near, whose publication, the *Duluth Review*, had been suppressed under Minnesota’s infamous

“Gag Law.” Enacted in 1925, Minnesota’s Public Nuisance Law empowered any state judge to suppress, without recourse to jury trial, any publication deemed “lewd and lascivious” or “malicious, scandalous and defamatory.” Thus was Near’s *Review* “gagged.” Weymouth Kirkland played a vital role in convincing Colonel McCormick to champion

Near’s case. “The mere existence of the Gag Law,” Kirkland said, “makes my blood boil.” His line of reasoning was a powerful one, explains McCormick’s biographer Richard Norton Smith, “To allow prior restraint of a newspaper, accurate or not, by a judge acting on his sole authority was ‘unthinkable.’”

And in defending Near, Weymouth Kirkland

was to achieve his crowning glory, the ultimate test of his courtroom advocacy. For the judges in the *Near* case were none other than the nine distinguished justices of the U.S. Supreme Court.

On January 30, 1931, the 53-year-old Weymouth Kirkland — now at the peak of his career — distilled Howard Ellis’ 67-page brief into a tight 54-minute oral argument before the Court. Judgment day came on June 1, 1931, the last day of its 1930-1931 term, when the Supreme Court ruled, 5-4, that Minnesota’s “Gag Law” was unconstitutional. Speaking for the Court, the bewhiskered Chief Justice Charles Evans Hughes wrote, “The fact that liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official conduct.” This decision is still controlling precedent today. It prevents the “prior restraint” of patently offensive or defamatory statements, leaving the aggrieved with the sole remedy of damages.



Nine justices of the
1930-1931 U.S. Supreme Court

1933

Chicago, Rock Island
and Pacific Railway goes
into bankruptcy

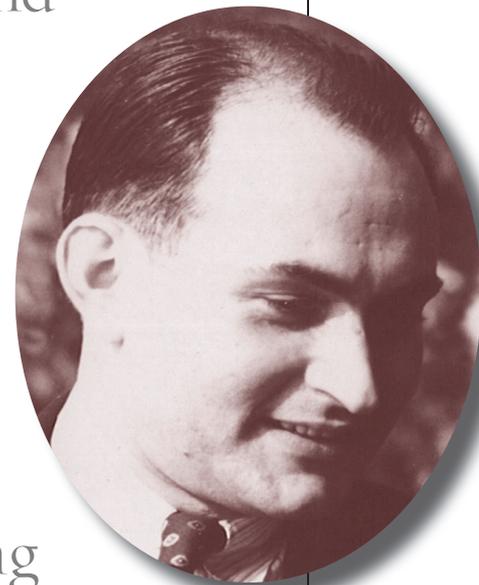
1933

Japan and Germany leave
the League of Nations

THE SOCONY-VACUUM CASE

32

After Iowa Senator Guy M. Gillette and other members of Congress complained of alleged price-fixing by oil companies in the Midwest, the U.S. Department of Justice opened an investigation of the matter, assigning a young Harvard Law School graduate named Hammond Chaffetz to handle it. It would be the case that made Chaffetz's career—and that brought him to the attention of Weymouth Kirkland.



U.S. Department of Justice attorney-turned-partner of the Firm, Hammond Chaffetz.

1934

Joseph Fleming
named to the Board of the
Chicago Public Library

1934

Adolf Hitler becomes
Führer of Germany

1909 — 2009

William “Wild Bill” Donovan, born in 1883, led the Office of Strategic Services, the predecessor to the CIA, during World War II and later founded the old-line New York law firm of Donovan, Leisure Newton & Irvine, which closed its doors in 1998.



After six years with the Antitrust Division, Chaffetz had tendered his resignation to the Department, effective January 1, 1936, expecting to go into private practice. Instead, he was asked to stay on for another “30 to 60 days” to investigate the price-fixing complaints.

As he would later write in his memoirs, “No crusade was contemplated,” but when “the lower echelon of sales personnel of the oil companies, although given immunity, stonewalled when called ... before the grand jury ... we became convinced that we were uncovering a real conspiracy.”

After a several months-long investigation, the federal grand jury brought charges against 27 oil companies and 56 individuals, including the companies’ chief executives.

The Socony-Vacuum case — Socony, the former Standard Oil Company of New York, was the lead defendant — opened in October 1937 in Madison, Wisconsin, with Chaffetz opposed by two titans of the national bar, Weymouth Kirkland and Colonel William “Wild Bill” Donovan. The trial lasted almost four months, with closing arguments beginning in January 1938.

On the advice of the trial judge, an elderly Wisconsin attorney named Crawford had been engaged to advise the other government lawyers. As Chaffetz recalled many years later, Crawford’s “pugnacious and theatrical style proved embarrassing to us.”

Mortified, Chaffetz knew that it was up to him to save the day. By now, Chaffetz had become friends with at least one of the lawyers at the defense table. When the DOJ lawyer got up to give his closing arguments, Weymouth Kirkland whispered to him, “Hammond, give them hell!”

The jury voted to convict, and, while Weymouth Kirkland lost a trial (although the convictions were later overturned on appeal), he gained a partner. After the trial ended, Chaffetz received a phone call from his former courtroom foe. Weymouth Kirkland asked, “How about going to work at my Firm?” Chaffetz demurred. The man who eventually became a quintessential Chicagoan thought the city too provincial. Kirkland had a ready answer, “Well how about Washington then?” and with that, the deal was done.

1936

Firm name changes to Kirkland,
Fleming, Green, Martin & Ellis

1936

Spanish Civil War starts

1936

Robinson-Patman Act
passed



RESCUE SOCIETY DOVE

OLD

GOSPEL

TRIUMPH THROUGH THE GREAT DEPRESSION

(Left) Victims of the Great Depression waiting in line at a soup kitchen.



Margaret Middlekauff, a Northwestern Law School graduate, was the first female attorney hired by the Firm and was made a partner in 1937.

By the mid-1930s, the Firm had come a long way from its beginnings. What had started as a small law firm was by now one of the Midwest's dominant legal institutions. Not even the Great Depression could bring down this dynamic firm with its strong roots. In becoming co-principal of the Tribune Company, Colonel McCormick vastly expanded the scope of his former law firm's business. This now included serving as counsel to the McCormick-Patterson Trust, and as communications lawyers for WGN and the Mutual Broadcasting Network.

1909 — 2009



Joseph Fleming was not only a talented litigator, he was also a civic reformer, serving 30 years as president of the Chicago Public Library (1935–1965).

36

The Firm also served as corporate and libel lawyers for the *New York Daily News* and international lawyers for the Tribune Company's vast Canadian newsprint operations.

Just as McCormick's leave-taking had opened the door for Weymouth Kirkland, the loss of Stuart Shepard in 1917

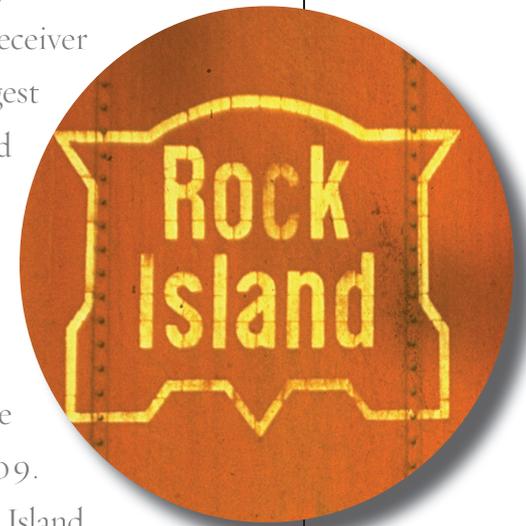
made way for former chief assistant U.S. Attorney Joseph B. Fleming to become a name partner. But while McCormick and Shepard had been active political candidates, Kirkland (a Republican) and Fleming (a Democrat) were, above all, outstanding trial lawyers and institutional builders. For the next 30 years, these two men were the public faces and the leading figures within the Firm.

Among the best-known partners, Howard Ellis specialized in appellate work and libel law,

while Mel Martin handled the Tribune Company's complicated cross-border work, and Washington partner Louis Caldwell attended to an array of communications and regulatory issues spawned by the advent of radio and the New Deal.

But it was Kirkland and Fleming whose photographs dotted the pages of the newspapers. Fleming, in particular, was hailed for his work as a civic reformer — a record 30 years as president of the Chicago Public Library (1935–1965) — and as receiver for 15 years in one of the biggest and most heavily reported bankruptcies in the Midwest.

When, in June 1933, the Chicago, Rock Island and Pacific Railway went into bankruptcy, its cash balance stood at exactly \$955,609. Chartered in 1847 as the Rock Island and La Salle Railroad Company, the Rock Island, as it was known, ran from Colorado to Illinois.



1937

Attorney Margaret Middlekauff becomes the Firm's first female partner

1937

Socony-Vacuum Trial in Madison, Wisconsin

1937

FDR's Court-packing plan fails

1937

Patent issued for nylon

1937

War breaks out between Japan and China

1909 — 2009

Famed for its high-speed passenger train, the Golden State Limited, the Rock Island was headquartered in Chicago, with its terminus at the old La Salle Street Station.



Head of the Annenberg defense team, Weymouth Kirkland.

The Black Monday Crash of 1929 and the “Dust Bowl” had taken their tolls on the historic railway, with its worn-down tracks and out-of-date shops and its fleet of increasingly antiquated steam engines.

Under receiver Fleming, the Rock Island instituted a comprehensive plan to modernize its fleet and infrastructure. So successful was the program that by the time the Rock Island emerged from bankruptcy in January 1948, the railway had increased its cash in hand to nearly \$21.5 million (\$200 million today) on record gross revenues of \$141 million.

When the day came, Fleming was lavishly

praised from the bench and in the press for his deft hand in rescuing the Rock Island from ruin.

While Fleming was reforming the Chicago Public Library — during the Big Bill Thompson years, it reeked of patronage — and working to bring the Rock Island Railway back to financial health, the by-now almost 65-year-old Weymouth Kirkland was entering into one of the most difficult cases of his long career.

Philadelphia Inquirer publisher M.L. Annenberg had made his name as a circulation wizard at the turn of the century amidst Chicago’s brutal newspaper wars. His brother, *Tribune* circulation director Max Annenberg, had nearly gone to jail for his part in the wars — and had been spared jail by the courtroom work of a young lawyer named Weymouth Kirkland.

Now, almost four decades later, M.L. was a multimillionaire publisher and the owner of a fabulously lucrative racing track wire service. He was also in serious legal trouble. The federal government charged that Annenberg owed more than \$3 million

1938

Orson Welles’ *War of the Worlds* radio drama is broadcast

1938

Weymouth Kirkland argues *Madison* case before U.S. Supreme Court

1909 — 2009

Rock Island Railway Conductors



**Chicago Public Library's
Main Branch, now the
Chicago Cultural Center.**

Child of the Dust Bowl



Ambassador Walter Annenberg



1938

Germany annexes
Austria

1938

Hammond Chaffetz
joins the Firm

1909 — 2009

in unpaid taxes — along with nearly \$6 million in interest. Among the co-defendants in the case was Annenberg's only son and heir, Walter.



Moses "M.L." Annenberg began his career in the publishing industry as a newspaper salesman for the Hearst Corporation in Chicago. He built his fortune when he founded the Triangle Publications Company. He went on to purchase the *Philadelphia Inquirer*, the third-oldest surviving daily newspaper in America today.

The case played itself out from August 1939 until July 1940. Photographs of M.L. Annenberg and his playboy son Walter could be seen on newspaper front pages from coast to coast. But so could the image of a still-dapper Kirkland at the head of a pack of 50 or more defense lawyers.

The deal that Weymouth Kirkland and his partner Hammond Chaffetz hammered out with the government was, Chaffetz always believed, the best that could have been hoped for. Annenberg agreed to plead guilty and pay a record \$9.5 million in taxes, fines and interest.

In return, the younger Annenberg was dropped as a defendant. It was a hard bargain.

The elder Annenberg died shortly after his release from federal prison. The son, however, was able to walk the long road that would lead him to become a billionaire media baron, the founder of *TV Guide*, ambassador to the Court of St. James's in London and close confidant of two presidents, Nixon and Reagan.

1939

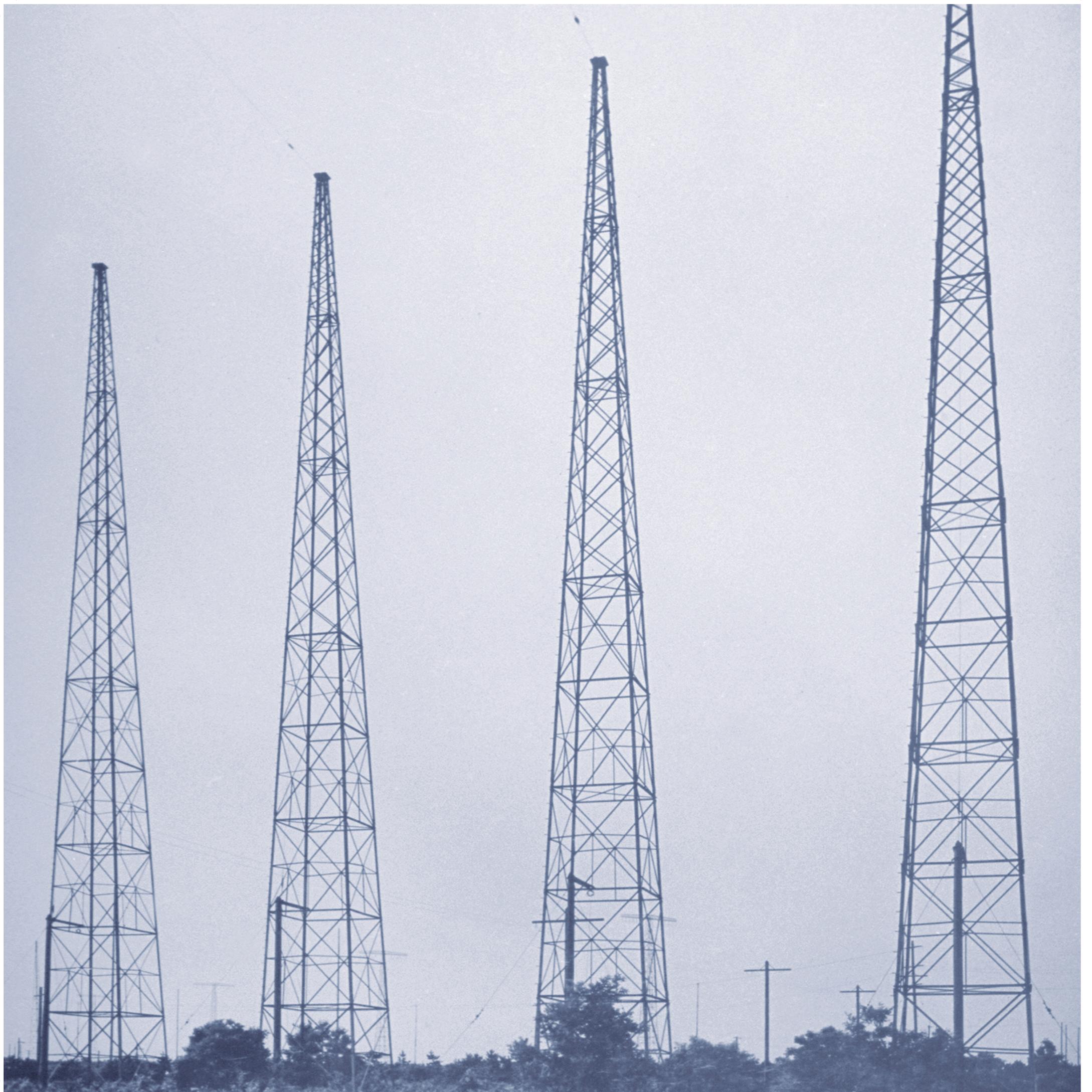
Germany invades Poland

1939

Britain and France
declare war on Germany

1939

M.L. Annenberg
indicted for tax evasion



1909 — 2009

CHAPTER 10

NAVIGATING CAPITOL HILL

The Secretary of the Interior, Albert Fall, a personal friend of President Warren G. Harding, was accused of taking bribes from oil executives to drill at Teapot Dome in Wyoming.



(Left) Radio transmission towers

Not all legal battles take place in the courtroom. Back in Washington, Louis Caldwell was discovering just how tough an enemy a determined politician could be — especially one as combative as Burton Wheeler. The fiery Democratic senator from Montana was known for his crusading spirit. Wheeler had made his name investigating the Teapot Dome scandals and making a run for the vice presidency on the Progressive ticket.



Burton K. Wheeler

1909 — 2009



Colonel McCormick's defender in the halls of Congress, Louis Caldwell

Returning to his Democratic roots, Wheeler rose through the ranks of the Senate to become the chairman of the powerful Interstate & Foreign Commerce Committee. Along the way, Wheeler had achieved a reputation for fierce independence — a reputation that largely went unchallenged.

Since the Commerce Committee had legislative oversight of the nation's airwaves, Wheeler was in a position of significant influence as far as the Tribune Company was concerned. In the mid-1930s, Senator Wheeler had focused on an issue of particular importance to the *Tribune*: opposing the “cross-ownership” by newspapers of radio stations. This made the senator, in the eyes of Colonel McCormick and his lawyer Louis Caldwell, a formidable opponent.

Fortunately, Senator Wheeler was too preoccupied with opposing President Franklin Roosevelt's plan to augment the size of the U.S. Supreme Court and the U.S. involvement in World War II to focus on cross-ownership. It was not until 1948 that the now former Senator Wheeler, having been turned out of office in 1946, began to stir the pot again, but over a different issue this time. A bill pending before the Senate in 1948 aimed to enact as law what Wheeler had been working at for more than a decade. Provisions of the bill would do away with clear channel stations (of which Tribune's WGN was one of the most prosperous) and allow lesser stations to increase their power.

As Louis Caldwell explained to Colonel McCormick, “Senator Edwin C. Johnson of Colorado, who introduced the bill, claims he did it for unnamed Colorado broadcasters. This may be true on the surface, but, if it is, I am sure such broadcasters acted only as intermediaries.”

Radio was the “central medium” of Depression-era America. In 1935, two out of every three homes had radio sets.



1940

Battle of Britain

1940

M.L. Annenberg sentenced to three years in prison

1941

United States enters World War II

1909 — 2009

Edwin C. Johnson, a Democrat, is the only politician to have served three terms as Governor of Colorado and three terms as a U.S. Senator. He was instrumental in the creation of the G.I. Bill of Rights, Lowry Air Force Base and the Air Force Academy.



The person “chiefly responsible for the bill,” Louis Caldwell noted, was in reality none other than former Senator Wheeler, who, it turned out, was caught in a classic “conflict of interest.”

But if Wheeler still had friends on Capitol Hill, he also had a skilled and determined adversary in Louis Caldwell, who was on to Wheeler’s big secret. Caldwell knew that the legendary former senator was also the controlling owner (through various members of his family) of a chain of radio stations in Montana that would have been free to increase their power as a result of the breakup of the clear channel system.

In the ensuing battle over the Johnson Act, Caldwell made sure that senators understood what was really at stake — and who benefitted and why. The senators got the picture.

In a valedictory letter to Colonel McCormick, Caldwell noted, former “Senator Wheeler is a puzzling combination. In many respects he has had admirable courage and wisdom. In federal radio regulation I must say he has almost constantly been on the wrong side and has done more harm than almost any other one man in Congress.”

Powerful no more, Wheeler’s ability to do harm to the nation’s communications network was at its end. The Johnson Act was dead.

1942

Hammond Chaffetz
joins the Navy

1942

Battle of Midway

1942

Howard Ellis fights
for the *Tribune* after
Midway article published

THE MIDWAY CASE

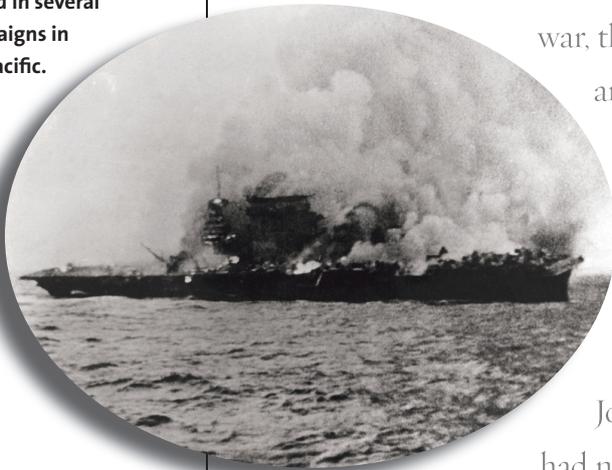
The Battle of Midway is rightly seen as the turning point in the naval war in the Pacific during World War II, but it was almost also the turning point in the history of Colonel McCormick and the *Chicago Tribune*. Midway, the world's first great carrier-fleet battle, resulted in a crushing defeat for the Imperial Japanese Navy. The *Tribune's* reporting of Midway almost sent McCormick to jail and could have spelled economic disaster for the paper.



The flag of the Imperial Japanese Navy, used from 1889 to the end of World War II.

1909 — 2009

The USS Lexington, or "The Blue Ghost," served in several campaigns in the Pacific.



Prelude to Midway was the Battle of the Coral Sea, the gateway to New Guinea and Australia. Tipped off in late May 1942 by cryptographers who had broken the Imperial Japanese Navy codes, the dispirited post-Pearl Harbor American naval forces had managed a desperately needed draw. The cost, however, had been high: The carrier Lexington, badly damaged in the attack, had to be scuttled.

With firsthand reporting from the Pacific still hard to come by so early in the war, the *Tribune* had scored an exclusive when its ace war correspondent Stanley Johnston, a hard-charging Australian, suddenly showed up stateside. Johnston, it turned out, had not only been at the Battle of the Coral Sea, he had also been aboard the Lexington.

Back in Chicago at the *Tribune*, Johnston began pounding out his first-person account of the life and death of the Lexington. The story alone would have been a sensation, for the fearless Johnston had not only witnessed the Japanese air attack, he had made a daring attempt to rescue badly burned sailors trapped in the ship's hold.

Working to make the paper's 11:30 p.m. deadline, Johnston made a last-minute check of the clacking press association teletypes. A bulletin flashed across the wires: The U.S. Navy had scored a smashing victory at Midway, some 1,000 miles west of Hawaii and 3,500 miles east of Tokyo.

If the late edition had simply gone to press with Johnston's account of the Coral Sea Battle,



Colonel McCormick testifying before the U.S. Senate Foreign Relations Committee.

1944

D-Day Invasion

1944

G.I. Bill signed

1944

President Roosevelt becomes first United States president elected for fourth term

1909 — 2009



President Roosevelt and his Cabinet, including Attorney General Francis Biddle and Secretary of the Navy Frank Knox (far right), assembled at the White House.



Admiral Ernest J. King



Secretary of the Navy Frank Knox



Battle of Midway in World War II

1945

Germany surrenders

1945

Japan surrenders

1945

United Nations founded

1945

28 countries sign agreement to create World Bank

1945

Nuremberg Trials begin

all would have been well. But now, faced with putting out an extra edition, *Tribune* editors turned to Johnston to help their readers understand



Survivors escaping from the USS Lexington during the Battle of the Coral Sea.

the magnitude of Midway. Therein lay a danger that none of them yet perceived.

Johnston had left vague the source of much of his Coral Sea information — he had become fast friends with the ill-fated Lexington's captain, who had told the reporter far more than he should. With deadline fast approaching and the stakes high, *Tribune* editors slapped a phony Washington, D.C. dateline on Johnston's follow-up

Midway story, incorrectly attributed much of what he had to say to "reliable sources in the naval intelligence," and, worst of all, implied that the Allied forces had broken the Japanese codes. The banner headline said it all, in lurid bold-faced type: NAVY HAD WORD OF JAP PLAN TO STRIKE AT SEA.

Navy brass were furious at what was perceived as a costly leak of classified information. The fiery U.S. Chief of Naval Operations Admiral Ernest J. King vowed revenge. Even worse, Colonel McCormick's political enemies in the Roosevelt administration — Secretary of the Navy Frank Knox was the owner and publisher of the rival *Chicago Daily News* — now saw their opportunity to destroy the New Deal's biggest and loudest press critic.

When Attorney General Francis Biddle named a special prosecutor to go after Colonel McCormick and the *Tribune*, the Colonel knew where to turn. Mobilizing the forces at the Colonel's disposal, Howard Ellis set to work to save the Colonel and the *Tribune*. Ellis rightly understood



U.S. Attorney General Francis Biddle

1909 — 2009



Mailbags stopped by government censors during World War II.

48

that “The Midway Case,” as it was soon dubbed, was as much about politics as it was about war, and he led the *Tribune* in a very public campaign to expose the Roosevelt administration’s long-standing plans “by one sly means or another” to destroy the *Tribune* and its owners. “We have said and proved that we cannot be intimidated,” the *Tribune* proclaimed in an editorial that had been carefully edited and approved by Ellis.

On the offense now, Ellis prepared witnesses to take a tough stand with the special prosecutor and his questioning before the grand jury. Ellis’ strategy worked. On the afternoon of August 19, 1942, the grand jury dismissed all charges against the *Tribune* and its employees.

The Colonel, with his bristling moustache

and imperious carriage, would go on to fight more battles in his war against the New Deal. The commander in this ongoing battle to save the *Tribune*, though, was slender, clean-shaven and wore thick glasses — the mighty Howard Ellis.



Painting of Howard Ellis.

1947

International Monetary
Fund begins operations

1947

Marshall Plan
announced for Europe

1947

Chuck Yeager breaks the
sound barrier

THE CHAFFETZ TOUCH



Hammond Chaffetz served as a flight control officer during World War II aboard the aircraft carrier USS Essex in the Pacific. One of Chaffetz's closest friends and fellow officers was none other than John B. Connally, the future Texas governor and U.S. Secretary of the Treasury.

For most of its first 50 years, the Firm had been known as “the *Tribune*’s law firm.” That began to change with the rise of Hammond Chaffetz and his work on behalf of Standard Oil of Indiana. The broadening of the Chaffetz/Standard relationship would lead ultimately to the Firm’s emergence on the national stage.



Hammond Chaffetz

Chaffetz's relationship with Standard began in 1947 when he was called into Weymouth Kirkland's big corner office and was asked for his advice on a draft opinion. The draft concluded that Standard's proposed acquisition of an Arkansas refinery would violate antitrust laws. Chaffetz not only disagreed, he told Kirkland that, in his opinion, the acquisition wouldn't even be challenged by the government.

Weymouth Kirkland asked Chaffetz to present his views to Standard's top executives and with "a little trepidation," he did. However, his nerves did not hold him back. As he later recounted, "I established a pattern I was to follow throughout my career. When I was convinced that I was right, I said so ... I was never afraid to stick my neck out." That day, he was confident, stating "unequivocally" that the acquisition would be deemed lawful by the U.S. Department of Justice. Chaffetz's bold prediction proved true: the transaction was cleared promptly.

After winning over the Standard Oil executives, he went on to spearhead "The Detroit

Case," a long-running Federal Trade Commission proceeding against Standard Oil of Indiana that required 17 years of litigation and went twice before a U.S. Circuit Court of Appeals and twice before the U.S. Supreme Court.

The FTC complaint, filed way back in 1941, characterized Standard's gasoline prices for its Detroit customers as discriminatory under the Robinson-Patman Act. The crux of the matter was that Standard sold gasoline in tank-car quantities primarily to retail gasoline dealers, who, in turn, sold it to the public. However, Standard also sold to three recognized independent wholesalers, known as "jobbers," who sold to retail dealers as well as their own retail stations. Standard also supplied a large retail customer, Ned's, with gas that was then sold only through its stations.

Standard Oil was established in part by John D. Rockefeller in 1870. Before it was broken up by the U.S. Supreme Court in 1911, it was one of the world's largest multinational corporations.



1909 — 2009



Thomas Campbell Clark was the U.S. Attorney General from 1945 to 1949 and an Associate Justice of the U.S. Supreme Court from 1949 to 1967.

The FTC found that the discount prices given to the jobbers and to Ned's gave them a competitive advantage over other retailers. Chaffetz argued that Standard would have lost Ned's, the three jobbers and their various retail stations if it hadn't sold to them at lower prices — a valid defense of a good faith meeting of the competition's price.

Finally, after countless FTC hearings, "The Detroit Case" came down to an argument before the U.S. Supreme Court. The Office of the Solicitor General appeared for the FTC and Hammond Chaffetz for Standard. In years past, in *Near*, for example, it would have been a role played by Weymouth Kirkland. Now, the torch had been passed.

His moment had come, and Chaffetz, being "characteristically optimistic," did not disappoint. But given the way the argument went — with the justices asking a series of pointed questions — it was clear even to this most-confident of advocates that

the case would be decided by a very narrow margin. **W**hen the 5-4 decision was announced, the Firm had carried the day. What was not known to the Firm's lawyers was that the justices, voting in private, had initially awarded the victory to the government. A few years later, Hammond Chaffetz learned from a friend — who had gotten the inside story from Justice Tom Clark — that the original vote had been 5-4 against, with Clark as the swing vote. But Clark, who had been assigned to write the majority opinion, later decided to rehear the oral argument on tape. What he heard changed his mind and what had begun as a majority opinion for the government had been turned, thanks to the eloquence of Hammond Chaffetz, into a majority opinion for Standard.

1950

U.S. goes to war in Korea

1951

Color television introduced

1951

President Truman signs peace treaty with Japan

FROM GOLDEN STAIRCASES TO MODERN SKYSCRAPERS

Fresh from his studies at the University of Michigan Law School, young Bill Jentes arrived at the offices of Kirkland, Fleming, Green & Ellis in the spring of 1956. Pausing on his way to a job interview with Howard Ellis, Jentes took note of a gleaming brass staircase. He didn't know it at the time, but this was the famous "Golden Staircase," so-called by opposing counsel, who frequently asked witnesses whether or not they had seen the golden staircase at the Firm's offices.

On April 24, 1956, the *Chicago Daily Law Bulletin* ran a front-page story describing the "completely modern manner" of the Firm's new space in the Prudential Building.

Firm Moves to New Quarters in Skyscraper

Kirkland, Fleming make it in 19 hours

The firm of Kirkland, Fleming, Green, Martin & Ellis opened their new offices in the Prudential building yesterday. They had occupied offices at 33 N. LaSalle st. since 1929.

Attorneys are being notified that on and after April 30 the firm's new official address will be "Room 2800, 130 E. Randolph dr., Chicago 1."

1909 — 2009



Firm partners, including Keith Masters, Les Hodson, Weymouth Kirkland and Hammond Chaffetz, with their wives in 1960 at Colonel McCormick's estate, Cantigny.

The offices, Jentes remembers thinking, were very old-fashioned. The American National Bank Building had been home to the Firm since 1929. But by the time Jentes returned to work full-time that summer, change had come to Kirkland. Most importantly, the Firm had moved from its quaint old offices to two of the upper floors in the soaring new Prudential Building on Randolph Drive.

While the move to modern offices was accompanied by a new crop of talented young lawyers, the geography of the new floors told a familiar story. Weymouth Kirkland, just shy of his 80th birthday, was ensconced in what Jentes recalls as a “fantastic paneled office, very much the largest of the offices,” with a panoramic view of Lake Michigan. Kirkland was still the dominant figure in the Firm, though by now Ellis was directing much of the day-to-day work.

Ellis' office was next to Kirkland's, and Fleming's was next to Ellis'. Next came Les Hodson's, one of the Firm's finest trial lawyers, and,

after him, that of partner Keith Masters. The official pecking order was clear.

But the pecking order didn't tell everything. Nor did geography. For up on the 29th floor, at the far end of the hall, away from his elders, was the smaller office of Hammond Chaffetz. It was here, and in his office in Washington and his other office in Chicago's Standard Oil Building, that Chaffetz worked. And while Weymouth Kirkland may have remained the face of the Firm, and Howard Ellis the top manager, Chaffetz was fast becoming the inspired leader, the change-agent, and the rainmaker.

He did this, first of all, by bringing in business — not only Standard, but a host of major new corporate clients, among them Westinghouse. This was complicated, time-consuming litigation, much of it antitrust in nature.

For this, Chaffetz was superbly prepared, not only from his time at the U.S. Department of Justice in the *Madison* case, but from his service with the American Bar Association's Antitrust Section. As Jentes observed, many of the chairs of the Antitrust Section went on to become leading figures in the

1954

Brown v. Board of Education
declares public school
segregation illegal

1954

First successful organ
transplant completed

1956

Suez Crisis

1909 — 2009

nation's bar throughout the 1950s and 1960s. Or as Chaffetz's son Peter, himself a distinguished litigator, put it, "My father's timing could not have been more perfect."

Chaffetz was also an institution builder. For this, he put on another hat, that of the inspired recruiter. Jewish himself, Chaffetz was determined to turn aside issues of race, religion and other past sources of discrimination in recruiting fresh talent. When Fred Bartlit, a West Point graduate and former Army Ranger, interviewed at the Firm, he says he was asked pointedly by the recruiter, Robert Bork, whether he had "any contacts at all in Chicago" and if he had "any family money or any family business." When he admitted that he had neither, Bork told him, "Good, then this is the place for you. It's the place for people that have nothing but ambition and talent."

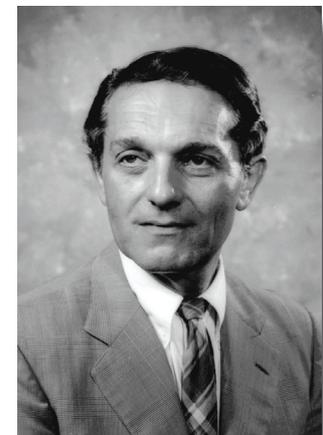
Bork, the future Yale law professor, U.S. Court of Appeals judge and nominee for the U.S. Supreme Court, also recruited Howard Krane, a recent graduate of the University of Chicago Law School. Like Chaffetz, Krane was Jewish. Bork told him that wasn't going to be an issue. "If they don't

take you," Bork said, "I won't stay. It's that simple." Krane would go on to become the chairman of the University of Chicago board of trustees — and a longtime member of the Firm Committee, the governing body of the Firm.

With the addition of former U.S. Supreme Court clerk Frederick Rowe, the Washington office, too, was poised to expand to include antitrust and litigation. Later, with the arrival of a youthful Ed Warren, a Yale Law honors graduate — and the future architect of a major Supreme Court victory for a Firm client in the Benzene case — a significant environmental practice developed there as well.

Dallin Oaks was a Mormon and a graduate of Brigham Young University. That didn't matter either. The former clerk to Chief Justice Earl Warren would later become a Firm partner, interim dean of the University of Chicago Law School, justice of the Utah Supreme Court and president of Brigham Young University. Along the way, he would twice be considered for the U.S. Supreme Court.

In sum, meritocracy was alive and well at the Firm.



Former U.S. Supreme Court clerk and partner in the Firm's Washington, D.C. office, Frederick M. Rowe.

1956

Elvis Presley appears on
The Ed Sullivan Show

1956

Firm's Chicago office moves
to Prudential Building

1957

Sputnik launches
the Space Age

1957

European Economic
Community established

1909 — 2009



William Symmes in the Firm's library in the American National Bank Building office.



Robert Bork, former Firm partner and legal scholar, served as Solicitor General, acting Attorney General and judge for the D.C. Circuit. Bork's writings on antitrust law have been influential in the rulings of the U.S. Supreme Court since 1971.

Golden staircases and old-fashioned offices were things of the past when the Firm moved to the new Prudential Building overlooking Lake Michigan.



1958

NASA founded

1958

Firm name changes to Kirkland, Ellis, Hodson, Chaffetz & Masters

1959

Castro becomes dictator of Cuba

CORPORATE & TAX: “BUT IF YOU DO A GREAT JOB ...”

56 **W**hen Elmer Johnson graduated from the University of Chicago Law School in 1956, he thought he wanted to return home to his native Denver to practice corporate law. But then an inspiring professor gave him some advice that changed his life: “Why don’t you interview here first. You’ll learn more in Chicago, and it will make you a better corporate lawyer. If, after three years, you still want to go home to Denver, fine.”

Elmer Johnson would later play a key role in the Firm’s Denver business relations.



1960

Lasers invented

1960

Cassius Clay wins Gold Medal in Olympic Boxing

1909 — 2009



*Elmer Johnson and
Hammond Chaffetz*

After interviewing at various Chicago firms, Johnson found himself confused as to what to do. The professor had an answer to that, too: “You know, if you really want to grow as fast as possible in responsibility, you should go to Kirkland. But if you just want to live a comfortable life...”

Recalling the conversation some 50-odd years later, Johnson remembered, “That really got me going.” That was just the first of a series of challenges for the young Elmer Johnson.

Johnson’s career would be profoundly shaped by what happened next. At one of his first meetings with Hammond Chaffetz, Johnson found, to his surprise, that the famous senior lawyer had already begun to take a personal interest in his career.

Always a shrewd judge of character, Chaffetz had noticed that his new protégé was a self-starter. He’d also noticed that Johnson was carrying a particularly heavy load for a first-year associate. One day, Chaffetz took Johnson aside and warned him:

“Well, I’ll tell you one thing, if you mess up on this, it’s going to be a long time before we call on you again for anything this important.” When Johnson gulped audibly, Chaffetz burst out laughing: “On the other hand, if you do a great job, we’ll be calling on you even more often.” In fact, it proved the beginning of a stellar career at the Firm and in the law for Elmer Johnson.

There was, however, one downside at the Firm in those days for an ambitious young corporate lawyer like Johnson. The litigation practice was strong — and had been from the beginning — but corporate and tax were not as robust.

That all began to change when Elmer Johnson teamed up with fellow University of Chicago graduate Howard Krane and the two helped propel the corporate and tax practices of the Firm to national distinction. The two — who had not been close in law school — now found themselves in the same boat. As Johnson explained, “Our future was that I couldn’t be a great corporate lawyer without

1961

Bay of Pigs Invasion

1961

Berlin Wall constructed

1909 — 2009

knowing an awful lot about corporate taxation, and Howard couldn't be a great tax lawyer without knowing an awful lot about corporate taxation."

And so it was that these two self-starters came up with a plan of action: They would take a night course on complex financial transactions.

As Johnson recalled, "We went out there in the worst of weather and the worst neighborhood and wondered if we'd ever make it from the Elevated train over to the University of Chicago." Lessons were learned, a close personal and professional friendship was developed and Kirkland's corporate and tax practices were remarkably transformed.

Krane and Johnson — although only in their late 30s — were fortunate enough to have had the Firm's blessing in their endeavors, receiving particular support from Hammond Chaffetz. "Hammond," Johnson recalled, "was a first-rate lawyer, with supreme self-confidence and the ability to take chances on young people." As Kirkland litigator Jeffrey Davidson — who spent several years

in both the Chicago and Washington offices before heading up the Firm's Los Angeles office — remembers, "Hammond Chaffetz was very proud of his Harvard law degree. So if Hammond thought you were a great lawyer and you'd gone to Michigan or Chicago or whatever, well, you were nonetheless a Harvard lawyer in his mind and he introduced you as such to clients."

There would be many others who would help shape the modern corporate and tax practices at Kirkland but none would put their mark so indelibly on the Firm culture as these "Harvard lawyers" — who just happened to have degrees from the University of Chicago.



The University of Chicago Law School is among the highest ranked law schools in the United States. It is also known for a distinguished member of its faculty, President Barack Obama, who taught constitutional law at the school for 12 years.

1962

Cuban Missile Crisis

1962

First Wal-Mart store
opens in Arkansas

Building on the work of these pioneer Kirkland corporate and tax lawyers, the Firm has come to be known as a leading corporate adviser to clients — from mid-size private companies to multibillion-dollar public enterprises — cutting across every major industry from information technology to healthcare providers, to defense and aerospace companies, to entertainment and hotel groups worldwide. The groups have been at the forefront of some of the most innovative and sophisticated corporate transactions in recent decades. For example, in the 1980s, the Firm’s corporate and tax attorneys, working as lead counsel for General Motors, were present at the creation of “tracking stock,” a financial vehicle involving the issuance of stock by a parent corporation where the stock’s dividend is based on the earnings of a subsidiary.

The tax group has gone on to achieve a series of prominent legal victories, including one — also for General Motors — before the United States Tax Court in a case involving the tax treatment of low

interest rate loans. At issue was some \$2 billion, making this one of the largest tax disputes ever to go to trial. The Tax Court subsequently ruled that the IRS position was wrong and granted a complete victory to General Motors. The matter, which generated significant press coverage (including a front page story in *The Wall Street Journal*), is today often used as a case study in many corporate and income tax courses across the country.

Just as Johnson and Krane teamed together in the early days, their successors in the corporate and tax groups continue to work together to help our clients navigate the often-murky waters of today’s business environment.

1963

Martin Luther King, Jr. delivers
“I Have a Dream” speech

1963

U.S. President
Kennedy assassinated

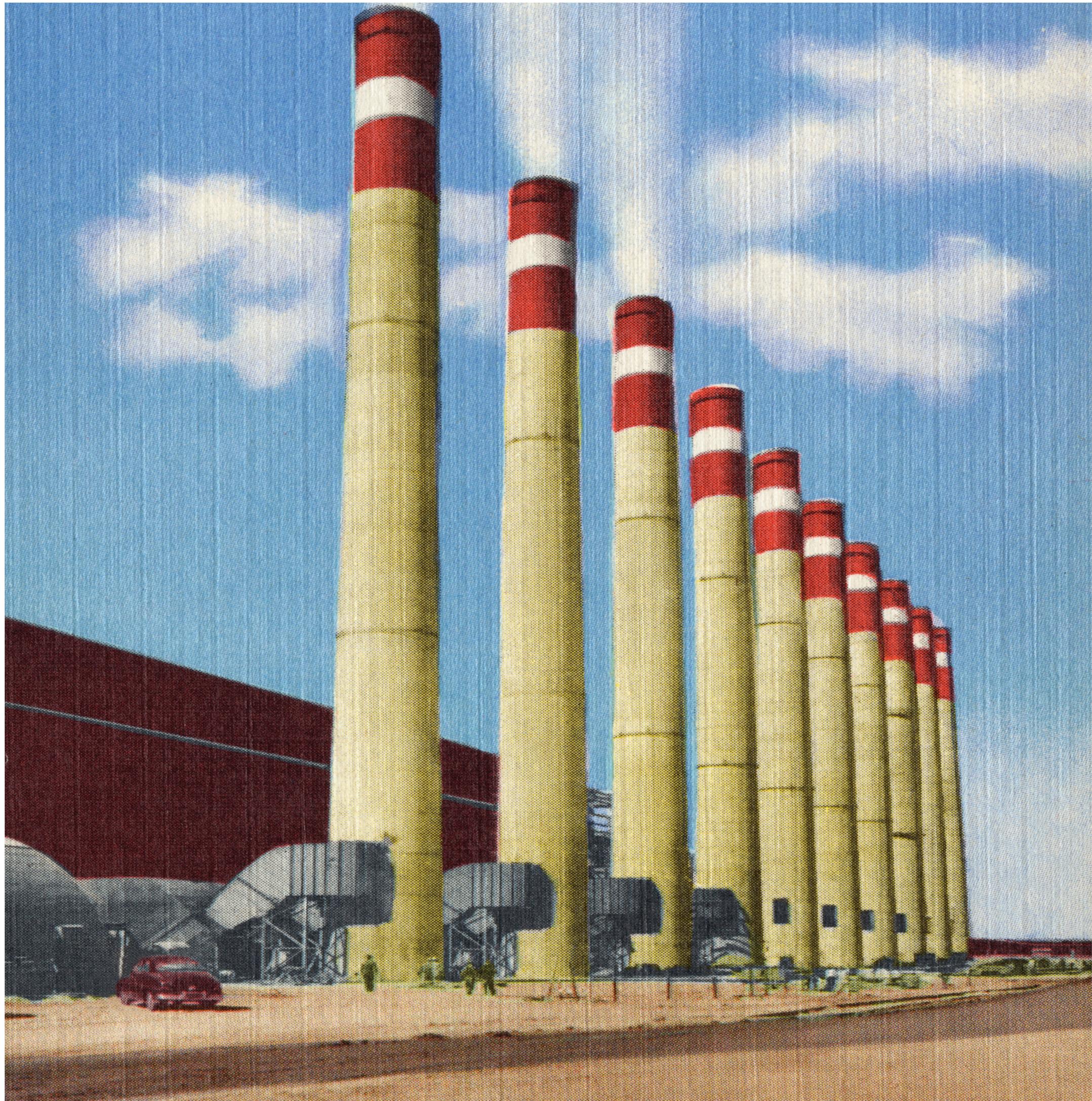
1963

Betty Friedan publishes
The Feminine Mystique

HARVEST MOON: THE ELECTRICAL CONSPIRACY CASES

60 **T**he editors of *Time* magazine labeled it “The Great Conspiracy” and made it the cover story of their February 17, 1961 issue. This case, once again, established Kirkland as the “go to” firm for handling the largest and most complex cases. From 1959 to 1961, dozens of junior Kirkland litigators cut their teeth on the hardest-fought and most widely publicized antitrust case in more than a generation. It was a turning point in the Firm’s evolution from a midwestern law firm into a national legal institution.

(Right) Postcard of smoke stacks
at Tennessee Valley Authority Plant
near Paducah, Kentucky.



1909 — 2009

62

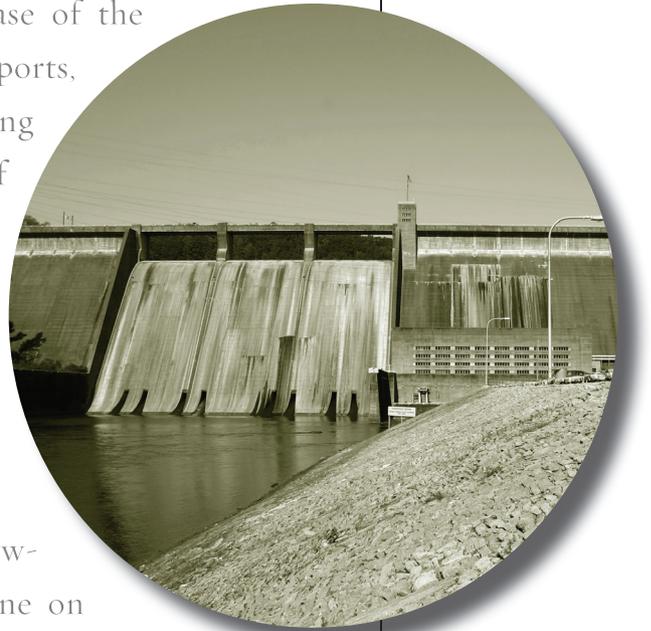
The page-one headline in *The New York Times* reported, “5 Big Electrical Concerns Charged with Bid Rigging.” U.S. Department of Justice correspondent Anthony Lewis enumerated the charges. Along with several of their executives, America’s five electrical manufacturing giants, led by General Electric and Westinghouse, had been charged by a federal grand jury in Philadelphia with a criminal conspiracy to fix prices in deals involving \$7 billion (more than \$50 billion today) worth of electrical equipment, from power transformers to turbine generators to switchgear assemblies and circuit breakers.

“The Electrical Conspiracy Cases,” as they became known, eventually ensnared 29 electrical manufacturers and 45 executives in a wide-ranging federal criminal investigation.

The story caught the public’s attention — not only because of the big name corporate defendants and the staggering price tag, but also for its details. As the *Times* reported, the electrical manufacturing companies were alleged to have “allocated among themselves the percentage of ... business each would

get on specific products.” They then reportedly “took turns on sales to private utilities [based on] a formula which they called ‘phase of the moon.’” According to reports, electrical manufacturing executives met dozens of times between November 1958 and October 1959 in cities all over the country in order to arrange their prices and bids.

The game, however, had gone on for much longer — perhaps as long as 25 years, according to investigators. The tipping point came when officials at the Tennessee Valley Authority (TVA) became suspicious over a succession of almost identical bids, specifically one for a \$16.1 million, 500,000-kilowatt-hour turbo-generator at the Widows Creek steam plant in Alabama.



The Tennessee Valley Authority was created by Congressional charter in May 1933 to provide navigation, flood control, and electricity generation in the Tennessee Valley.

1964

United States Federal
Civil Rights Act passes

1964

First Ford Mustang
rolls off assembly line

1964

New York
World's Fair opens

1909 — 2009

TVA officials found that, since 1951, the price for such large turbo-generators had risen more than 50 percent, while the average wholesale price of all commodities had risen only five percent. Between 1950 and 1956, the principal makers of the generators had increased prices six times, with one company copying the other's prices within days. A Senate committee subsequently found 24 instances of matched bids — some within the nearest hundredth of a cent — in just over three years at TVA alone.

The conspiracy, government investigators alleged, had “directly or indirectly affected almost

every dam built, every power generator installed and every electrical distribution system set up in the U.S.”

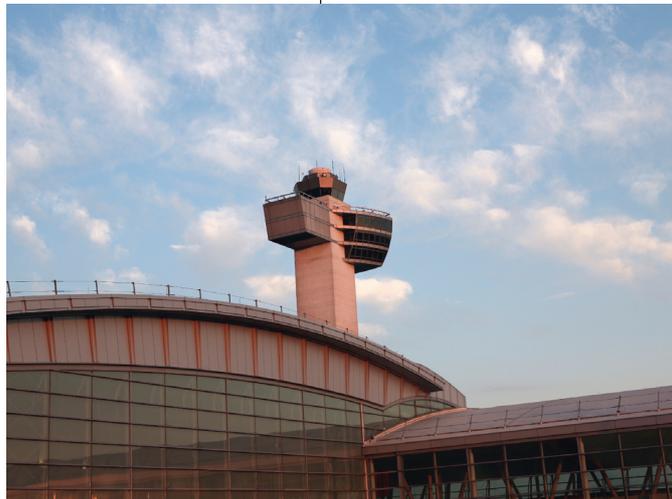
Damaging as the criminal charges, fines and publicity were for the companies and their

executives, the situation worsened when 16 public utilities, among them some of the nation's biggest, sued the electrical manufacturers under the Clayton Act, seeking treble damages.

In anticipation of the civil suits, Westinghouse turned to the Firm. More precisely, Westinghouse turned to Chaffetz, already known as the leading antitrust lawyer of his generation, to coordinate its defense. As he would do over and over throughout the next two decades, Chaffetz turned to other, more junior lawyers. Among them was Bill Jentes, who, barely into his early forties, found himself the de facto team leader.

For Jentes, this meant getting up before the crack of dawn every Monday for months on end, taking a jet into New York's Idlewild Airport, as JFK was then known, and a helicopter down to Wall Street in time for a 9:00 a.m. meeting in the Chase Manhattan Bank Building with his older, more seasoned counterparts at Cravath. There, the strategy for this enormous undertaking — discovery, motions, briefs, courtroom appearances — was plotted.

John F. Kennedy International Airport, known as Idlewild Airport during the time of the “The Great Conspiracy.”



1965

United States sends
Marines to Vietnam

1965

Malcolm X assassinated

1909 — 2009



The Chase Manhattan Bank Building in New York was designed by the architects Skidmore, Owings & Merrill and was modeled after one of their earlier works, the Inland Steel Building in Chicago, which pioneered the use of an exterior column system along with a glass wall facade.

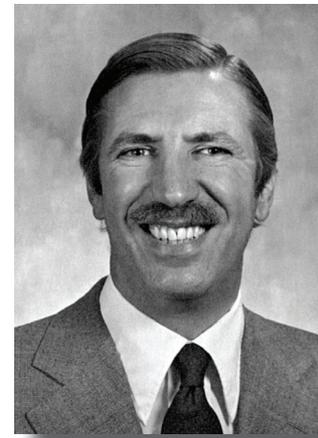
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There was nothing quaint or Midwestern about the endeavor. Too much was at stake for that: careers, reputations, dollars. This was, by definition, bet-the-company litigation.

It would also be an enormous undertaking, with roughly 1,900 cases filed individually in nearly every federal district court in America. This was, Jentes recalls, “the first time that anybody said, ‘Oh, my God, the judicial system in the United States is going to break down.’” But it didn’t. The “Electrical Equipment Manufacturers Cases,” as they were also known, “eventually changed the whole complexion of the law — and not just in the antitrust area.”

Indeed they did, for the sheer numbers of cases and the vast geographic span of the courtrooms in which those cases were heard led Chief Justice Earl Warren to set up a Judicial Panel on Multidistrict Litigation.

Thus was born the MDL. Thus, too, was Kirkland transformed. On behalf of client Westinghouse, Kirkland lawyers tried cases in venues ranging from San Antonio to New York in the so-called “power generator matters.” In trying these immensely complicated cases, a generation of young Kirkland lawyers received hands-on courtroom experience, often finding themselves up against some of the nation’s top litigators.



William R. Jentes, longtime member of the Firm Committee.

1966

Mao Zedong launches Cultural Revolution in China

1967

Thurgood Marshall is sworn in as first black U.S. Supreme Court Justice

1967

First human heart transplant surgery performed

1909 — 2009



Westinghouse Building at the New York World's Fair.



U.S. Supreme Court
Chief Justice Earl Warren



Steam generation plant

1968

Tet Offensive

1968

Dr. Martin Luther King,
Jr. is assassinated

1968

Robert Kennedy is
assassinated

1909 — 2009

CHAPTER 16

THE VENETIAN ARISTOCRACY

66

Chaffetz, of course, had been one of the top antitrust lawyers in the country. As the wave of anti-trust gave way to a tide of class actions, Chaffetz found himself involved in a potentially huge multibillion-dollar class action that had arisen out of an earlier antitrust complaint. “The Air Pollution Cases,” as they were known, essentially served as the transitional phase between these two eras of the law.



Taking a page from history, *The American Lawyer* magazine would label Kirkland's new leadership the “Venetian Aristocracy” because it was a council of more-or-less equal princes rather than the court of an all-powerful king.

1969

Neil Armstrong becomes first man to walk on moon

1969

Concert at Woodstock

1969

Firm name changes to Kirkland, Ellis, Hodson, Chaffetz, Masters & Rowe (Washington, D.C. only)

1970

Kent State Shootings



Los Angeles, California, has long been known for pervasive smog blanketing its cityscape.

In the fall of 1968, the U.S. Department of Justice filed a complaint against the Big Three auto giants, including General Motors — an important Kirkland client — charging them with having violated the antitrust laws when they agreed to exchange information on pollution control devices and entered into a cross-licensing agreement for any successful patents in the field.

Shortly after the automakers agreed to a consent decree, various states, including California, sued, claiming injury to their economies and the health of their citizens. The new MDL rules resulted in the cases being transferred to what was thought to be a very tough venue indeed: federal district court in Los Angeles — the city that was the poster child for automobile pollution.

“The Los Angeles Smog Cases,” as they were also known, proved to be Hammond Chaffetz’s last triumph. Where other prominent lights of the national bar counseled their clients Ford and Chrysler to settle the damage claims, Kirkland insisted on going forward. This strategy turned out

to be an astute move, and when Judge Manuel Real ordered summary judgment against the states, GM’s faith in Kirkland was richly rewarded.

As Kirkland emerged as one of the most prominent firms nationally, it necessarily relied on the recruitment and development of talented lawyers. From the time he arrived in Chicago in the early 1950s, Chaffetz personally saw to the recruiting and promotion of talented associates.

The next generation of lawyers were expected to be recruiters, too. In this, the Firm was consistent in keeping with an overarching theme: In order to build an institution that would last, Kirkland leaders had to be willing not only to groom successors but also to share with them Firm clients and matters. Kirkland lawyers received their baptism by fire early and often, with the knowledge that the Firm was observing their progress intently.

Chaffetz’s semi-retirement in 1978 brought significant change to the Firm — with the leadership being handed over from a 72-year-old who was long

1972

Beginning of Firm’s
Private Equity Practice

1972

Watergate Scandal
breaks

1972

Firm name changes to
Kirkland & Ellis

1909 — 2009

accustomed to guiding the destiny of the Firm to a group of his protégés, almost all of whom were in their mid-40s.

The new leadership, labeled “The Venetian Aristocracy” by *The American Lawyer* because it was made up of a council of more-or-less equal princes rather than the court of an all-powerful king, spanned the various practices, from litigation to tax. But what all the Firm’s youthful leaders had in common was their belief in a meritocracy. Kirkland had closed the door on nepotism, family connections counted for naught, and fancy addresses didn’t figure in the picture either. What mattered most was delivering first-rate work on challenging matters.

68



Kirkland prides itself on being a true meritocracy. Seniority is determined by achievement, not by age or personal relationships.

1975

Altair 8800
is released, sparking the
microcomputer era

1976

Apple Computers
founded

1977

Star Wars movie
released

BIRTH OF PRIVATE EQUITY

Wall Street was the first permanent home of the New York Stock Exchange and, over time, it became synonymous with the surrounding financial district.



Today we take for granted the presence of powerful private equity players in our global financial system. Like Wall Street itself, private equity seems as if it has been with us forever. But it hasn't — and it didn't originate solely on Wall Street. A significant part of private equity's birth can be dated to a near-precise time and a surprising setting: the mid-1970s, Chicago, Kirkland & Ellis. That's when senior partner Les Hodson took a call from an executive at First Chicago. The banker told Hodson: "We need your best venture capital lawyer over here tomorrow at 10 o'clock."

1909 — 2009

Kirkland partner Jack Levin recalled that 35 years ago, “Nobody — or almost nobody — had ever heard of venture capital. They were not two words that fit together. Nor private and equity — the phrase hadn’t yet been invented — neither did leveraged and buyout nor fund and formation. Those phrases were simply not in the lexicon of the American language.”

The perplexed Hodson turned to an equally perplexed junior partner and said, “What in the world is venture capital?” And the junior partner said, “The heck if I know.” But then, thinking swiftly, Hodson came up with an inspired solution: “I’ll send Levin. He’s switched from department to department — from litigation, to tax, to corporate — so although he doesn’t know much about anything, he knows a little about a lot of things.”

That’s how Jack Levin came to be around at the creation of private equity in America. As it turned out, no one could have been better equipped for the task. For as young as he was, Levin already had an extraordinary track record. The son of a restaurant owner on Chicago’s West Side, Levin had

worked his way through Northwestern University, graduating summa cum laude, and Harvard Law School, graduating first in his class.

After that had come a stint in public service as Assistant to the Solicitor General of the United States, first under Archibald Cox and then under Thurgood Marshall. Eight times, Levin argued cases before the U.S. Supreme Court.

In short, Levin was just the sort of confident and hard-working guy that prospered at Kirkland. He’d been hired to be a litigator — and he was a fine litigator — but then he turned himself into a tax lawyer and then a corporate lawyer. Much to his surprise, he was now about to become a private equity lawyer, and his life was about to change.

The next day, Levin found himself in the offices of First Chicago meeting with banker Stan Golder. “In that other room, we’ve got an entrepreneur and his CFO and a couple of his executives,” Golder explained, “and we’re going to talk about a \$500,000 investment in his small



Jack Levin (second from left, back row) pictured with Thurgood Marshall (center, front row) and his colleagues from the Office of the Solicitor General of the United States.

1978

**First test-tube
baby born**

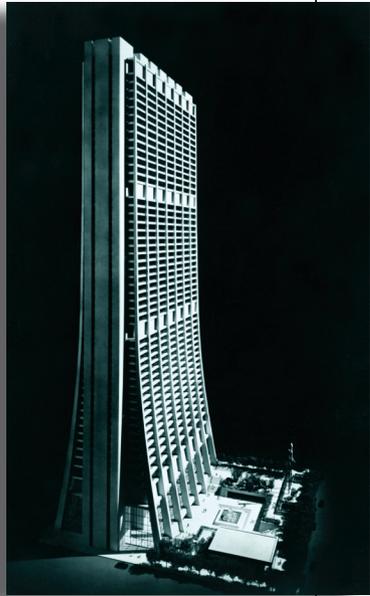
1978

**One Love Peace Concert
held in Jamaica**

1978

**Hammond Chaffetz
semi-retires from the Firm**

1909 — 2009



Model of the First National Bank Building built in 1969. The building and the bank have gone through a number of name changes throughout the years, but the building remains a fixture of the Chicago skyline.

start-up company.”

Before Golder could go any further, Levin interrupted him. “Let me just ask you one question, Stan. What is venture capital?” Golder looked at the wunderkind and said, “Oh, God! How could I have been so unlucky? I call for a lawyer and I get a dummy!”

Levin was told to go into the other room with Golder, but not to say anything. “Anything!” Golder emphasized. “I don’t want you to embarrass us.” Golder then handed Levin a preprinted form two or three pages long that looked like a lease, “with a bunch of blanks in it.” This, Golder explained, is “the contract form we always use for venture capital deals.”

For the next two hours, Levin listened intently as Golder and his opposites discussed the nature of the deal. As Levin listened, “the shape of the deal” formed in his mind. Over lunch, alone again with Golder, Levin made his case. “This form,” he told Golder, “is garbage. If this is the form you enter into, you couldn’t really be that smart yourself.”

It was, in retrospect, a Kirkland kind of moment. Absolutely sure of himself, Levin carried

the day. Taken aback — and impressed with Levin’s reasoning — Golder agreed, “Okay, maybe we will try it your way.”

Inspired venture capitalism had found its match in powerful legal reasoning. From then on Levin handled all of First Chicago’s venture capital deals, and when First Chicago co-invested with Continental Bank’s venture capitalist unit, Levin also ended up representing them. And when First Chicago and Continental Bank helped to finance the birth of KKR: Kohlberg Kravis Roberts & Co. Levin was there to represent them, too. Then, when Golder spun off from First Chicago to form one of the world’s earliest private equity funds, Levin handled that transaction as well.

Ultimately, Levin had the opportunity to work on the groundbreaking legal, tax and structuring issues that are today basic to the venture capital, private equity, LBO and fund formation industry, changing not only Levin’s life but the make-up of the Firm and helping to turn one attorney’s obscure specialty into a trend-setting practice of nearly 400 attorneys on three continents today.

1980

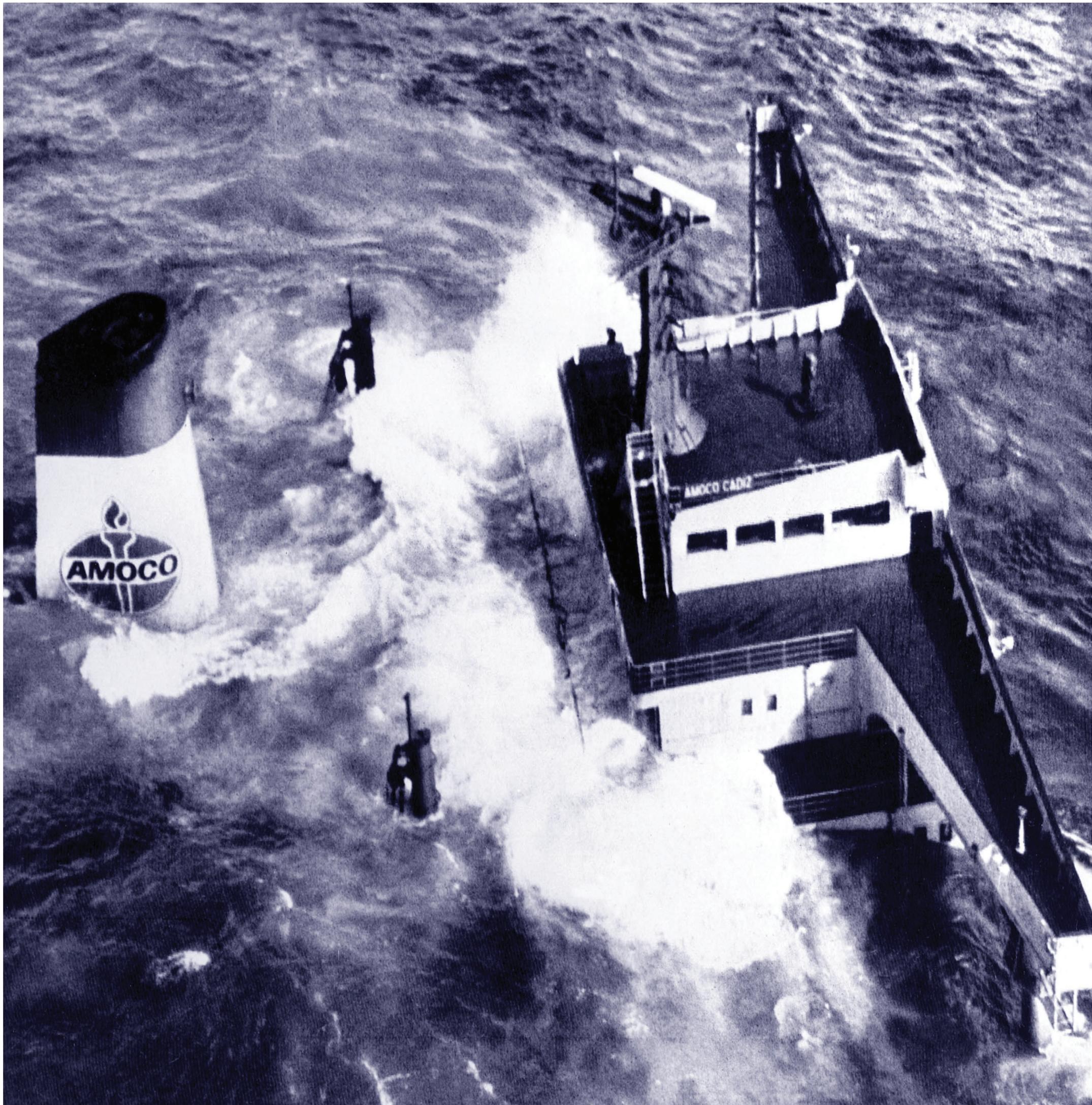
Polish Government
recognizes Solidarity

1981

Sandra Day O’Connor
first female appointed to
U.S. Supreme Court

1982

E.T. movie released



THE CASE OF THE AMOCO CADIZ



The damage on the beaches of Brittany was enormous: 30,000 seagulls killed, prized oyster beds destroyed, seaweed plantations wiped out and 230,000 tons of crabs, lobsters, sole and other fish destroyed.

The story began in the darkness of a foul spring night in mid-March 1978. On that fateful evening, the 15-foot sea waves were crashing on the Atlantic Coast shores of Brittany at the northwestern tip of France. It was then that the 233,000-ton supertanker cargo-ship Cadiz breached on the rocky shores, unleashing what *The New York Times* reported as a “huge slick of oil [that] leaked for days from the tanker, a mammoth structure the size of three football fields. The sweet Iranian crude created a slick 18 miles wide and 80 miles long across the white beaches of Brittany.”

The damage was enormous: “The Black Tide,” the French called it. Among the casualties were 30,000 seagulls, countless prized oyster beds and 230,000 tons of other sea life that were destroyed by the oil slick. The cleanup required more than 40 French naval vessels, with 4,100 sailors, at sea for more than 600 days; and some 40,000 soldiers ashore.

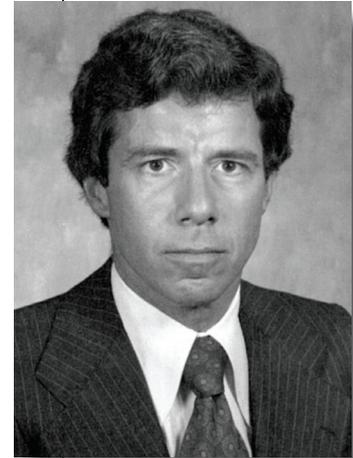
The French Government responded by suing Amoco, formerly known as Standard Oil of Indiana. In 1982, U.S. District Judge Frank McGarr in Chicago heard the case, which also included as plaintiffs nearly 100 Breton communities and small businesses and more than 400,000 individual French citizens. Cumulative damages sought were in the range of \$5 billion.

Once again, a major client turned to the Firm’s lawyers, led by Frank Cicero, to defend its interests in a high-profile, bet-the-company case. Cicero’s team argued that under terms of a 1969 treaty signed by France, the French claimants were entitled to substantially less than what they were now seeking. Cicero and his team also argued that France itself was at fault for not having prevented the casualty.

The 1982 bench trial before Judge McGarr was followed by a second bench trial to determine damages. That trial began in April 1986 and included more than a year of testimony.

Judge McGarr was hailed as a hero by the French in 1984 for his “courageous” decision to try the case. However, in 1988, he would disappoint his fans when, in a 459-page ruling, he determined the damages to be only a small fraction of the billions sought by the claimants.

On appeal, a panel of the Seventh Circuit essentially affirmed the district court’s decision — including Kirkland’s cross-claims against the ship’s Spanish builder, Astilleros. As stated in the court’s decision, the outcome was largely favorable to Amoco since, “Exxon reportedly spent \$2 billion to clean up the oil the Exxon Valdez spilled off Alaska; ... another \$1 billion as damages and ... a criminal fine of \$125 million. Amoco will only be called on to pay \$61 million plus interest to redress a spill that was not only larger but also occurred in a more densely populated area.”



*Leader of the Kirkland team,
Frank Cicero.*

1982

Vietnam Veterans Memorial
opens in Washington, D.C.

1983

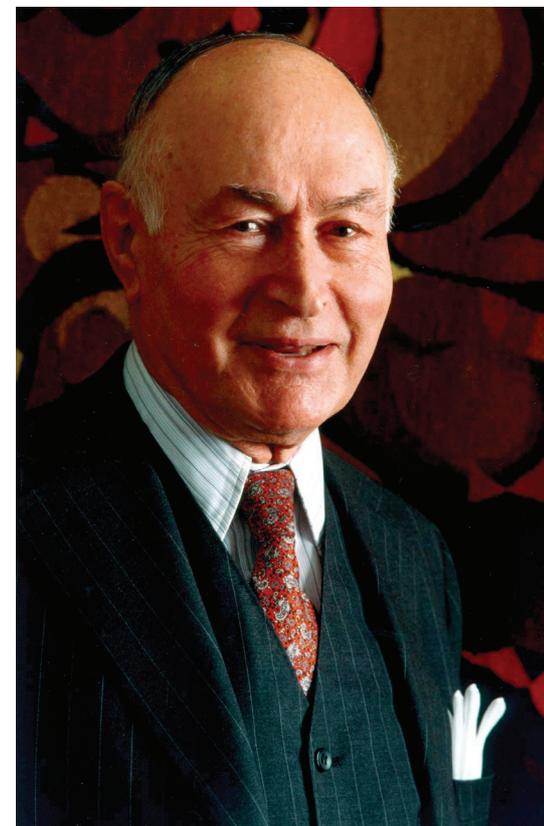
United States Embassy
bombed in Beirut

1985

Hole in ozone layer
discovered

NATIONAL LAW FIRM

Expansion: For years, the very idea prompted the keenest soul-searching among Firm leaders, especially as other law firms expanded nationally and even internationally. Would Kirkland, in turn, break out of its Chicago and Washington axis and go truly national? This was the overriding question facing Firm leadership throughout the 1980s.

*Hammond Chaffetz*

1909 — 2009



Library in Kirkland's New York office

Chaffetz himself had been decidedly wary of expansion. Writing in his memoirs shortly after the decision had at last been made to go forward, he remained agnostic: “I was never keen about opening new branch offices.”

Chaffetz believed that the growth possibilities in Chicago and Washington were “by no means exhausted,” and was worried about the possibility of client conflicts between branch offices. His chief concern, however, lay in his anxiety that in “branching out,” the Firm’s lawyers, “even including the partners, may not even get acquainted with one another.” The practice, he feared, might then “come to resemble big business.”

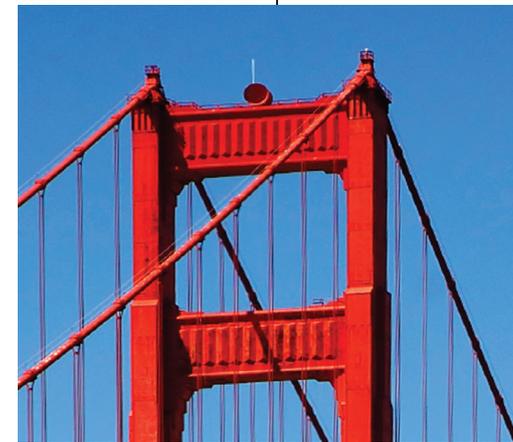
Chaffetz was not alone in worrying about what effect expansion would have on the Firm. One of his successors, senior tax attorney Howard Krane, shared Chaffetz’s fear that sheer size would

somehow diminish the distinct Kirkland culture — “edgy, creative and, above all, a meritocracy.” Krane imagined a law firm of the first order, but rooted in a place and a culture.

Ironically, Krane’s closest comrade among the Venetian Aristocracy, senior corporate attorney Elmer Johnson, was one of those Firm leaders who disagreed most strongly with him on this point. It was not that there was no truth to Krane’s arguments, Johnson recalled years later, but “if you want to prepare for the age of global capitalism and be one of those few firms that is in that market, you better have the right bases in the United States, and there was one right base above all and that was New York.”

Senior litigator Bill Jentes remembers hammering home the point to his fellow Firm Committee members: “My speech was, ‘We’re either up or we’re down. We can’t stay where we are.’”

The San Francisco office was opened in 2003 by a core group of Kirkland attorneys who chose to relocate to the area and has grown to approximately 95 attorneys.



1986

Chernobyl nuclear
accident occurs

1987

World population
reaches five billion

1987

The Simpsons
cartoon “short” first airs
on the Tracy Ullman Show

1909 — 2009

We really need to expand, and I strongly urge that we need to go to the West Coast and the East Coast — and beyond that.”

Real expansion — and the immense test that it put the Firm to — began in 1989 in Los Angeles, and a year later in New York. There would be more to come: Offices in San Francisco in 2003, Munich in 2005, Hong Kong in 2006, and Palo Alto in 2008.

Each of these offices would be founded by partners from established offices and would continue the Firm’s core practice areas of litigation, corporate and tax, intellectual property and restructuring. New offices would be fully integrated into the Firm’s culture and would not be viewed as mere “branches.” As a senior member of Firm management, litigator Frank Cicero put it, at Kirkland, “We didn’t merge. We seeded new offices by putting our people there who were going to be leaders.” Among those trailblazers that led the way

to expansion were Jeffrey Davidson in Los Angeles and Glen Hess and William Pratt in New York.

By remaining true to this formula, Kirkland has distinguished itself from other law firms. Where the typical law firm with national aspirations expands through the acquisition of a practice group or even an entire firm in a new location, Kirkland has chosen to grow “organically,” by ensuring that each office was led by a partner or partners steeped in the Firm tradition.

As Kirkland’s first century came to a close, the Firm further cemented its national presence by opening its ninth office, located in Palo Alto, California, a Silicon Valley town that barely existed when the Firm opened.



1988

Iran-Iraq War ends

1989

Firm opens
Los Angeles office

1989

Exxon Valdez spill

THE *DATELINE* NBC CASE

The heart of the matter was a mere 57 seconds of film footage appearing in “Waiting to Explode,” a segment that aired on *Dateline* NBC’s November 17, 1992, edition. Brief, but by no means innocuous. And though the then-president of NBC News would lament, “We cannot let ourselves be defined by 57 seconds,” those seconds of airtime eventually led to an apology broadcast live on the same program, a costly settlement, a scathing internal review and the network president’s own resignation.

(Right) Car crash simulation from *Dateline* NBC.

Fifty-seven seconds of film footage resulted in a three-and-a-half-minute on-air apology made by the anchors of *Dateline* NBC, Jane Pauley and Stone Phillips. In fact, this was the first retraction to be nationally broadcast.





1909 — 2009

What began as a startling claim, seemingly backed up by sensational film footage, that nearly five million General Motors trucks were prone to having their gas tanks explode during a side-impact collision, turned instead into a legal controversy over doctored evidence.

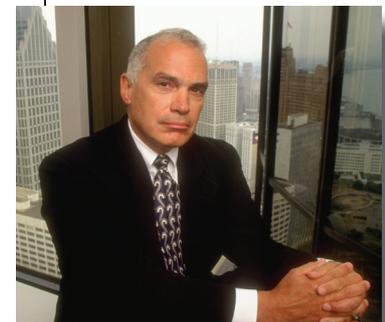
In the crash tests shown on television, vehicles were shown colliding broadside into GM pickups. Viewers of *Dateline NBC* watched in horror as the GM trucks exploded in flames, but what they didn't know was that the tests had been rigged. *Dateline's* consultants had placed incendiary devices underneath the trucks in order to make them explode.

The New York Times television critic Walter Goodman described the rest of the segment as such: On the one hand, GM spokespersons were seemingly “drained of color and emotion as though mannequins”; on the other, “sorrowing parents of children, shown in family snapshots, who had died in fires from crashes,” and scenes in which “the screen erupted now and then with garish bursts of fire and pictures of smashed cars and corpses.”

The broadcast of “Waiting to Explode” quickly spawned a wave of lawsuits directed against GM. Four days after a jury in Atlanta awarded \$105 million to the parents of a 17-year-old boy killed in a fiery crash, the automaker, represented by the Firm's lawyers, led by Tom Gottschalk, struck back at the network with a lawsuit of its own.

Some industry analysts, *The New York Times* reported, warned that GM was “taking a significant risk by aggressively defending itself and attacking its critics.” GM and its Kirkland team believed they had no choice but to fight NBC's allegations.

At a February 8, 1993, news conference in Detroit, GM's vice president and general counsel Harry J. Pearce — who would later become GM's vice chairman — delivered a masterful performance. Pearce, a former Bismarck, North Dakota, trial lawyer, had marshaled his evidence over a long weekend, with the help of a team of the Firm's lawyers. And, with graphics, film footage and a GM truck for show-and-tell, Pearce led reporters through the true facts of the case.



General Motor's Vice President and General Counsel, Harry J. Pearce, worked with the Kirkland team of lawyers to negotiate the terms of surrender for NBC and GE.

1990

Firm opens
New York office

1990

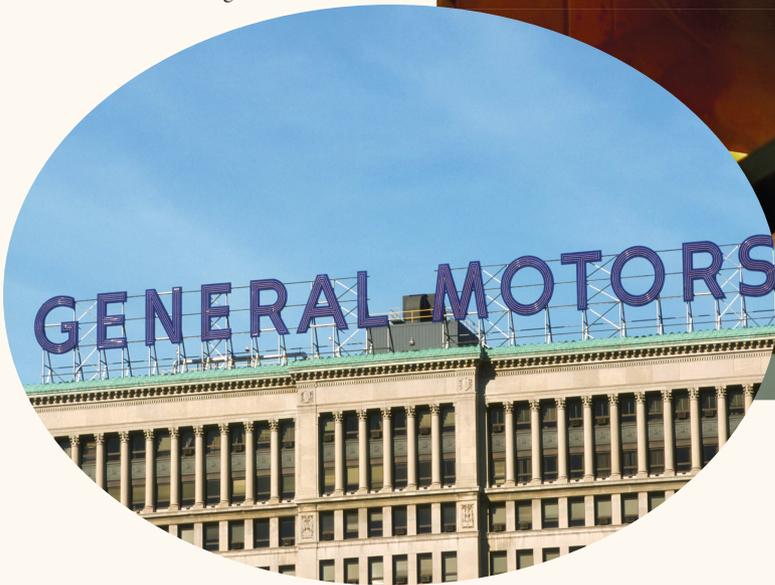
Nelson Mandela
freed from prison

1909 — 2009

After the *Dateline NBC* scandal, television journalism became subject to intense scrutiny.



GM headquarters
in Detroit, Michigan



1991

Bronze Age man
found in glacier

1991

Operation Desert Storm
commences

1992

Dateline NBC airs
"Waiting to Explode"

1993

First all-elected
Firm Committee

Executives at General Electric, the parent company of NBC, now knew that their company was in serious legal peril. Throughout the next day and well into the evening, GE's general counsel and GM's Pearce negotiated the terms of the surrender.

The final settlement was reached at 10:32 p.m. — midway through the *Dateline NBC* broadcast. Less than a half-hour later, in what news accounts described as an “extraordinary” three-and-a-half-minute apology at the end of *Dateline*, co-anchors Jane Pauley and Stone Phillips called the crash footage inappropriate and admitted that “unscientific demonstrations should have no place in hard-news stories on NBC.” It was the first nationally televised broadcast retraction in the history of electronic media. The three-and-a-half-minute apology was, a newspaper columnist wrote later, “an eternity by the fast-paced standards of network television.”

NBC also agreed to pay GM's legal fees and the cost of its investigation. But it was the network's image that suffered the most. *The New York Times'*

Elizabeth Kolbert wrote, “At the networks last week, many journalists worried out loud that *Dateline NBC* had undermined not just its credibility, but that of all network news programs.”

Worse was to come — for NBC and for the president of its news division. In an editorial, *The New York Times* noted, “Michael Gartner, president of NBC News, defended the show until it became clear that General Motors had the goods.” For “any reputable news-gathering institution,” the *Times* concluded, a “fabricated event” is “intolerable.”

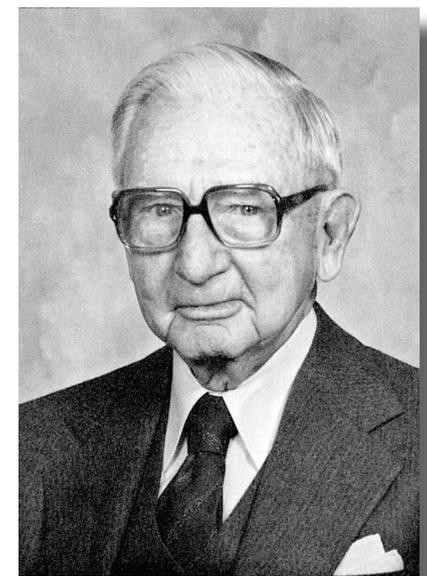
This case is the other bookend for the Firm's earlier work fighting for freedom of the press. Any champion of free speech knows that false and rigged reports are not entitled to legal protection. Today, the *Dateline* case is widely taught in journalism schools, and it has led to reforms in reporting, such as a ban on unscientific simulations or testing by media organizations and the installation of ombudspersons at major networks and newspapers to monitor the media's own conduct.



Tom Gottschalk left the Firm to become General Motors' General Counsel for 13 years (1994–2007). He has now returned to Kirkland and runs the Firmwide *Pro Bono* program.

MEETING OF THE MINDS

In 1925, a group of partners who recognized the need for a more specialized approach to litigation — one involving engineering and scientific-related issues — took the first steps on the long road that led to the formation of Kirkland’s intellectual property practice group. That’s when the Firm hired its first patent lawyer, Carl S. Lloyd. More than 60 years later, their foresight was rewarded by the recent worldwide explosion in intellectual property-related filings.



The Firm's first patent lawyer, Carl S. Lloyd

1909 — 2009

Intellectual property law has always been about the next frontier. A pioneer in every sense of the word, Carl Lloyd grew up on the Ute Indian Reservation in Utah where his father was a U.S. government doctor. Lloyd, who lived to be nearly 100 years old, stood as a perennial witness to the waves that changed the face of intellectual property law.

The Kirkland IP clients that Lloyd worked with in the first half-century of his career were America's traditional brick-and-mortar industrial giants. The explosion of the personal computer industry and the rapid growth of Silicon Valley — so-called for the heavy concentration of silicon semiconductor makers located there — changed all that. Lloyd, though long retired as a senior partner, still came into the office through his early 90s and lived to see this explosion.

Pioneering wave followed pioneering wave. The vast expansion of international telecommunications, the evolution of the computer industry, and the advent of the Internet Age all

led to significant growth and change at Kirkland. And so it went.

With the formation of the U.S. Court of Appeals for the Federal Circuit, established by Congress in 1982 to hear all patent-related appeals, Kirkland's long-standing practice of recruiting attorneys with undergraduate and graduate engineering and science degrees (in addition to their law degrees) put the Firm in a strong position to capitalize on the IP boom. After handling a number of precedent-setting cases and transactions, the group soon established a reputation as one of the best in the business.

Deep roots in the area of patent litigation allowed the Firm to set precedents that have become hallmarks of patent infringement strategy. In 1995, for example, Kirkland lawyers were among the first to participate in a "*Markman* hearing" — so named after the Federal Circuit's decision in *Markman v. Westview Instruments*, which placed the duty of construing disputed patent claim terms in the hands of a judge. Today, *Markman* hearings are

1996

Motorola releases the
first clamshell mobile phone,
the StarTAC

1996

Dolly, the world's
first cloned sheep, born

1909 — 2009

an everyday part of IP practice.

In the past 10 years, Kirkland has played a pivotal role in some of the most significant intellectual property matters in the world.

In 2004, the intellectual property group secured a jury verdict worth more than \$580 million for clients Dr. Gary K. Michelson and Karlin Technology.

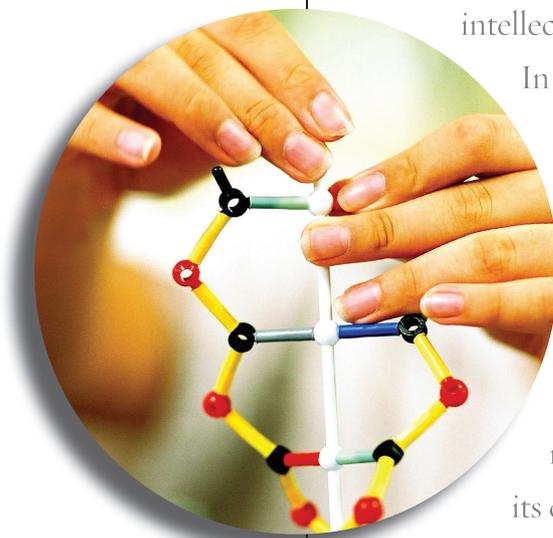
Following the victory, which was the highest award actually recovered in 2004, Kirkland helped its clients negotiate a \$1.35 billion settlement that essentially sold more than 500 of Dr. Michelson's and Karlin's patents to the defendant company, Medtronic Sofamor Danek, the largest manufacturer of medical devices in the world at the time.

In recent years, Kirkland lawyers obtained a \$226 million jury verdict for Biedermann Motech — the largest jury award in Massachusetts history — and secured the third defense verdict ever

granted in the historically plaintiff-friendly “Rocket Docket,” the Eastern District of Texas, for Charter Communications.

During the winter and spring of 2008, Kirkland client Lucent Technologies scored two major victories in its ongoing battle with Microsoft Corporation. In the first trial, Kirkland prevailed on two early mid-1980s patents dealing primarily with user interfaces. The second trial involved Microsoft's counterclaims against Lucent. Of the original 10 patent claims, one was dismissed on summary judgment, Microsoft dropped four claims and five were tried, with Kirkland securing a complete victory for the client. The cases were among several split from a suit originally filed by Lucent against Gateway Inc. and Dell in 2002, claiming infringement of 15 patents.

The intellectual property group has also played a large part in shaping the practice of IP transactional law. Among the most prominent of the many outsourcings, strategic alliances and joint ventures that the group's transactional specialists



Today, the Firm has nearly 300 intellectual property lawyers who are experienced in a variety of technical disciplines and registered to practice before the U.S. Patent and Trademark Office. Approximately 75 percent of the lawyers are engineers and scientists.

1997

DVD players introduced
in the United States

1997

Hong Kong
returned to China

1997

Pathfinder spacecraft
transmits images of Mars

1998

Nuclear testing
in Pakistan and India

have negotiated was its representation of General Motors in the worldwide transfer of all its computer functions to EDS, the electronic data systems firm founded by Ross Perot. The deal remains one of the highest-valued computer service outsourcing agreements in history.

In 2006, Kirkland lawyers negotiated a deal for biotechnology company Myogen, Inc. At the time, Myogen didn't even have a single drug on the market; but it did have a promising experimental drug for the treatment of pulmonary disease in development. When Gilead Sciences, Inc., a San Francisco-based biotechnology company best known for HIV and flu-fighting drugs decided to acquire this promising company, Kirkland lawyers negotiated the \$25 billion deal — the second largest in value of that year in the biotechnology industry.

With a rich history that comes with being one of the oldest intellectual property practices in the country, Kirkland's IP group is internationally recognized for its ability to perceive the true value, nature and importance of all forms of intellectual

property rights — and to understand how those rights affect its clients. That commitment to clients has not gone unnoticed and has resulted in numerous awards and other recognition from peer reviews and industry surveys.



1909 — 2009

Kirkland's IP group represents a wide range of companies, from small manufacturers to the world's largest pharmaceutical companies.



Holding a *Markman* hearing has been common practice since *Markman v. Westview Instruments, Inc.* was argued before the United States Supreme Court. *Markman* hearings are pretrial hearings in a U.S. district court in which a judge examines evidence from all parties on the meanings of relevant key words in the patent claim.



2 0 0 0

Millennium celebrations held around the globe

2 0 0 0

Billionth person born in India

TO THE ENDS OF THE EARTH

88

As the needs of Kirkland's clients with global operations and concerns expanded, so did the Firm's footprint of offices. In 1994, Kirkland London opened its doors with the goal of providing clients with coordinated cross-border legal advice. The nucleus of that office was formed by two Kirkland-trained partners who carried with them the Firm's strong focus on quality control, thereby ensuring the continuity of the Firm's unique culture and commitment to excellence.

In 2006, the Firm moved from its first London office on Old Broad Street to the 30 St Mary Axe Building, better known as "The Gherkin." Completed in 2003, the building's top level features a 360-degree view of the city.



2001

World Trade Center
terrorist attack

2001

Anthrax attacks
through U.S. Mail

2001

World's first self-contained
artificial heart implanted

2001

Operation Enduring Freedom
launches in Afghanistan

1909 — 2009



Victoria Harbour is situated between Hong Kong Island and the Kowloon Peninsula. The harbor's deep, sheltered waters were instrumental in Hong Kong's establishment.

Over time, as practice areas grew, the Firm's visibility overseas increased. The London office now boasts a strong reputation in private equity, private funds, banking and finance, insolvency and restructuring, international litigation and arbitration, and intellectual property.

In 2005, an opportunity for growth presented itself again, and Kirkland continued its European expansion by opening an office in Munich. Anchored by a partner who relocated from Kirkland's London office, and by one of Germany's leading private equity lawyers, the Munich office quickly became successful. With an initial focus on private equity and mergers and acquisitions work, an international area of strength for the Firm, the team was able to present this expertise — and the convenience of an additional location — to major clients located in Europe. The Munich office now offers in-depth restructuring expertise.

It wasn't long before Asia became the next target for the Firm's expansion. Beginning in

2001, Kirkland invested in developing its Asian resources by hiring attorneys with extensive Asian deal experience and cultural ties. The Firm also developed a widespread network of relationships with local counsel throughout the region.

By 2006, as more and more of the Firm's private equity clients expanded into Asia, Kirkland took advantage of the opportunity and opened an office in Hong Kong — its eighth worldwide. A partner from the London office led the Firm's first Asian endeavor and was soon joined by several other Kirkland attorneys, who possessed both private equity experience and fluency in Mandarin Chinese. And, in this our 100th year, the Firm has announced that it will open an office in Shanghai. The Firm truly has come a long way over the last 100 years and is well-positioned to continue servicing clients around the globe.

2002

United Airlines files
for bankruptcy

2002

Homeland Security Act
signed into law



RESTRUCTURING THE ECONOMY

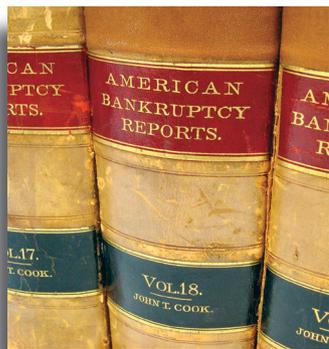
While Joseph Fleming handled the Firm's first major bankruptcy case in 1933, a formal bankruptcy practice was not established until some years later. With the success of Kirkland's litigation, antitrust and corporate practices, attorneys at the Firm were eager to take on the formidable challenge of representing distressed companies in the throes of complicated bankruptcies. In 1984, the U.S. Bankruptcy Code was overhauled, making Chapter 11 bankruptcy more complex, but more helpful for large corporations.

(Left) Since United Airlines' filing in 2002, 12 major carriers have filed for Chapter 11 bankruptcy protection.

1909 — 2009

Previously considered useful only for liquidations and “quickie sales,” Chapter 11 was now a tool of restructuring, a way to help distressed companies reorganize and get back on their feet, rather than sell or dissolve.

In 1990, the bankruptcy practice at the Firm was poised to take off with a group of young lawyers who saw new possibilities in the revamped Chapter



In 1984, amendments to the U.S. Bankruptcy Code improved the treatment of landlords and institutions that lend money, made certain pre-bankruptcy transfers more difficult to unwind, and changed the way that collective bargaining agreements between a debtor and a union were treated in a bankruptcy.

11 law. The practice was small, but the ambitious lawyers were eager to see how they could use Chapter 11 law to develop a new and more effective kind of corporate restructuring.

Using Chapter 11 as a tool, the Firm’s attorneys implemented reorganization strategies to give distressed organizations new

opportunities to emerge as viable companies. In 2005, the Firm’s bankruptcy practice group was officially renamed the restructuring practice group, reflecting the Firm’s goal to get clients back on their feet and functioning at a higher level.

The strength and success of the restructuring group can be illustrated best in the Firm’s work for United Airlines. In December 2002, United filed for Chapter 11 protection in U.S. Bankruptcy Court in Chicago. Kirkland’s approach to the case was to encourage United to continue to develop its business, even in the midst of a major overhaul. This “business as usual” approach to restructuring, combined with an aggressive Chapter 11 strategy that reduced annual



Founded in 1926 as Boeing Air Transport, United Airlines operates nearly 3,000 daily flights to more than 200 U.S. and international destinations from its hubs in Chicago, Denver, Los Angeles, San Francisco and Washington, D.C.

costs by \$7 billion and restructured billion-dollar pension agreements and municipal bond obligations, pulled United out of bankruptcy on February 1, 2006.

The United restructuring stands as one of the largest in U.S. history, and the largest in the history of the aviation industry. During this three-year restructuring process, the Firm's restructuring group expanded with the addition of new attorneys needed to work through the complexities of such a daunting case.

The success of the United bankruptcy demonstrated not only that an airline could emerge from bankruptcy stronger than before (a seemingly impossible notion just a few years earlier), but also that the restructuring group was a force with which to be reckoned.

The Firm's restructuring practice has continued to grow. It has several senior lawyers, handles numerous matters out of the Firm's New York office and is widely acknowledged to be one of the most formidable practices in the country, with no signs of slowing down. In 2008, the Firm handled

six of the 12 largest restructurings in the United States alone, taking on more complex restructuring cases than any other law firm in the country.

And now, in the midst of the sobering financial downturn of 2009, the practice remains active, with echoes of Joseph Fleming pulling Rock Island Railway out of distress in the midst of the Great Depression.

2004

Tsunami
devastates Asia

2004

Groundbreaking ceremony
for Freedom Tower at the former
World Trade Center

2004

Facebook
social networking
site founded

1909 — 2009

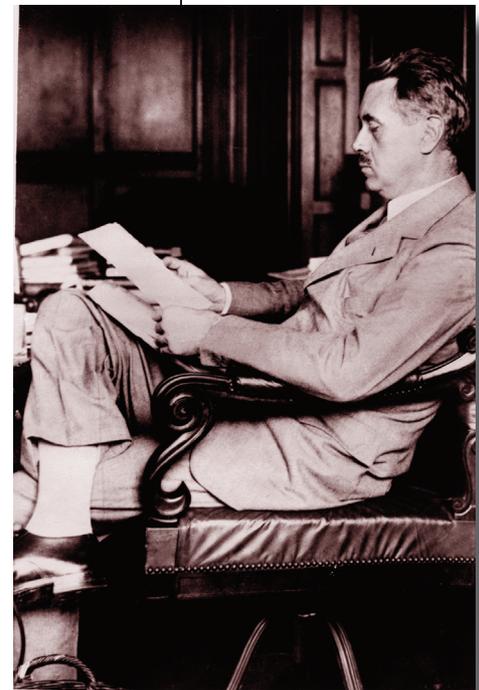
CHAPTER 24

THE KIRKLAND WAY

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If the Firm's founders could see Kirkland & Ellis today, they might be surprised by the sheer size of the Firm and its diverse makeup, but they would recognize instantly the same guiding principles they put in place more than 100 years ago. We still represent clients in their most challenging, bet-the-company matters. We still believe in seeking out the best and brightest attorneys, training them thoroughly and allowing them to prove themselves by trusting them with early responsibility.

Robert McCormick accomplished many things during his life, but one of his most enduring legacies was founding a small law practice with Stuart Shepard that would become one of the largest and most-recognized firms in the world.



2005

Hurricane Katrina
hits New Orleans

2005

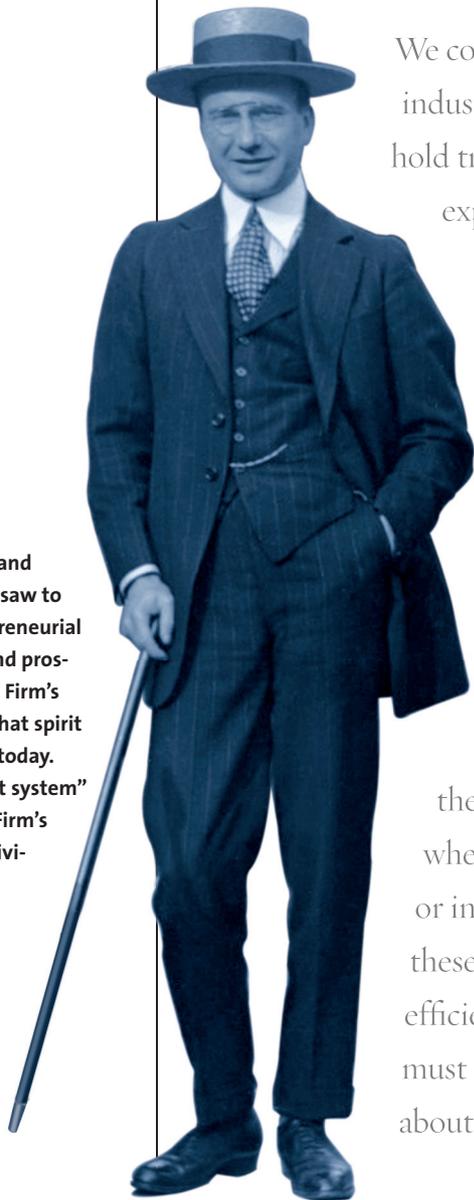
Firm opens
Munich office

2005

Pope John Paul II dies

1909 — 2009

Weymouth Kirkland and his partners saw to it that an entrepreneurial spirit survived and prospered during the Firm's early years and that spirit is alive and well today. Our "free-market system" exemplifies the Firm's emphasis on individual initiative.



We continue to serve iconic and industry-leading clients. We still hold true to the idea of sensible expansion driven by our clients' needs. We still believe in institutional commitment. And, we continue to be committed to serving the communities in which we live and practice.

Like Weymouth Kirkland and Howard Ellis, we remain dedicated to helping clients overcome their most daunting challenges, whether it be in the courtroom or in the boardroom. To face these challenges effectively and efficiently, we have learned that we must never become complacent about honing our attorneys' skills

and developing their talents. Our approach to attorney training, which used to be an informal word-of-mouth process where one lawyer mentored another, has evolved into a regimented program that has received national attention and acclaim. While the process may have changed, the objective remains the same. We still believe that recruiting the best talent and providing them with the tools to succeed is the best way to ensure the Firm's future. Our constant pursuit of the brightest legal minds has brought an exciting diversity to the faces of Kirkland, and it has the added benefit of providing a steady stream of fresh, innovative ideas to keep our storied century-old Firm vivacious and new.

The Firm continues to represent the world's elite businesses and business leaders. And because of our resolute commitment to promoting our clients' interests, we have held on to the philosophy of conservative, organic growth. We open new offices to improve service to our clients.

2006

United Airlines emerges
from bankruptcy

2006

Winter Olympics held
in Turin, Italy

2006

Firm opens Hong Kong office

1909 — 2009



Portrait of Howard Ellis. Ellis' wife, Maud Martin Ellis, was a skilled artist whose illustrations were featured in the pages of the *Chicago Tribune*.

While we are many times larger today than we were even 30 years ago, and everything we do is on a much larger scale, we have maintained the Firm's original collegial and entrepreneurial spirit.

Kirkland and its lawyers have been honored

for their commitment to diversity, *pro bono* outreach and philanthropic work. The Kirkland Foundation provides financial support to charitable and law-related organizations that serve a wide range of initiatives and people.

The world has changed and the Firm has changed with it, but we still hold true to our founders' unshakable commitment to excellence. With the continued support of our clients, Kirkland looks forward to operating at the top of the legal profession for many years to come.

2007

Live Earth concerts are held in nine major cities

2007

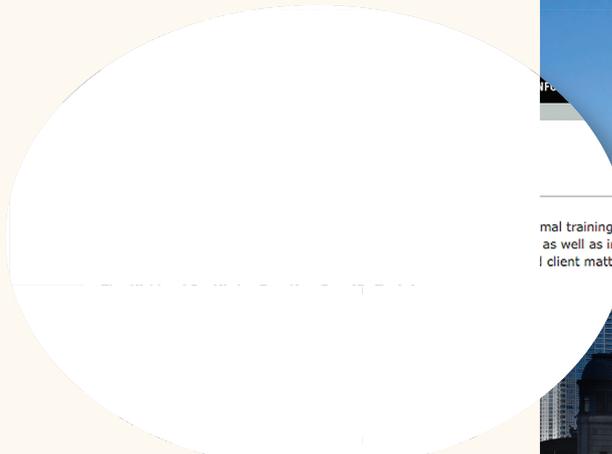
Refurbished Millennium Dome, now called O2, reopens in London

1909 — 2009



A photo of Weymouth Kirkland addressed to his "Best Friend," Howard Ellis.

Once again, the Firm has found a home on LaSalle Street in Chicago. Just as the move to the Prudential Building in 1956 signaled the coming of a modern age at Kirkland, the move to the Firm's latest, state-of-the-art home is an indication of continued growth.



mal training
as well as info
I client matter

Kirkland trains its junior lawyers not only by giving them substantial responsibility on sophisticated client matters, but also through extensive formal training programs.

2008

Firm opens
Palo Alto office

2008

Barack Obama elected
President of the United States

2009

Kirkland & Ellis
celebrates its
100th Anniversary



Kirkland & Ellis Firm Committee

Standing, From Left

Jay P. Lefkowitz (2007–present), **David M. Bernick** (1993–present), **William H. Pratt** (1996–present),
John T. Hickey, Jr. (1997–2009), **Kevin R. Evanich** (1995–2009), **Richard C. Godfrey** (1999–present),
James L. Learner (2005–present), **Frederick Tanne** (2005–present), **John M. Desmarais** (2004–present),
James H.M. Sprayregen (2003–2006, 2009–present), **Jeffrey C. Hammes**, Vice Chair (2004–present),
Douglas O. McLemore (Executive Director)

Seated, From Left

Stephen L. Ritchie (2009–present), **Jeffrey T. Sheffield** (2000–present), **Thomas D. Yannucci**, Chair (1995–present),
Emily Nicklin (1995–present), **Richard M. Cieri** (2007–present), **John A. Weissenbach** (2007–present)

A c k n o w l e d g m e n t s

SPACE DOES NOT ALLOW US TO MENTION BY NAME
THE NUMEROUS CLIENTS WITH WHOM WE HAVE WORKED
OVER THE LAST 100 YEARS. TO OUR PAST, PRESENT AND
FUTURE CLIENTS, WE DEDICATE THIS BOOK.

MANY PEOPLE HAVE CONTRIBUTED TO THE CREATION OF
THIS BOOK, BUT THE FIRM WANTS TO THANK, IN PARTICULAR,
JOHN ANDERSON, AUDRA SIMEL AND MARIA BLACK FOR
THEIR DILIGENT WORK RESEARCHING AND WRITING
THIS RECORD OF THE FIRM'S HISTORY.

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