Morgan Stanley's Recipe for Disaster

Discovery abuses, a preoccupied GC and an overconfident law firm helped create a $1.6 billion fiasco for Morgan Stanley

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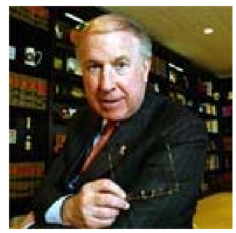

Donald G. Kempf Jr.
image: Louis Lanzano

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It had been a long day for Jeffrey Davidson. It was already past 5 p.m. on March 22, 2005, and the Kirkland & Ellis partner had spent hours questioning potential jurors. His client, Morgan Stanley & Co. Inc., was about to go on trial in state court in West Palm Beach, Fla., charged with defrauding billionaire Ronald Perelman. Perelman wanted $2.7 billion for being stuck with a bunch of worthless securities in Sunbeam Corp., the residue of a deal that Morgan Stanley had concocted. As the long day in court drew to a close, Davidson was surprised when his co-counsel from a local Florida firm stepped forward and handed the lawyers and the judge a three-page document. Davidson had not seen it before. It had been prepared in such haste that it was missing its attachments.

Davidson was stunned by what he read. Asserting that the trial judge had "lost all confidence in any statement" made by Kirkland, Morgan Stanley was firing the firm as lead counsel. Davidson kept reading, and it got worse. His client was also putting Kirkland on notice of a potential malpractice claim.

A man in the back of the courtroom stood to address Circuit Court Judge Elizabeth Maass. "Your Honor, I'm Don Kempf. I'm the general counsel of Morgan Stanley. Your Honor, I made this decision today. I didn't even talk to Mr. Davidson about it." Donald Kempf Jr. explained that he had no idea that the problems with Kirkland in the courtroom were so bad until he saw them with his own eyes. "There is nothing like real-time listening to the court and following the transcript, which I've been doing the last two days, to drive home reality in this situation," he explained.

Davidson listened to Kempf, dumbfounded. He certainly knew this case had not been going well. The judge had hammered Morgan Stanley in pretrial rulings, citing a plethora of discovery abuses by the financial giant. And Perelman's lawyers were demanding the harshest of sanctions -- a default judgment. But Davidson, who had tried more than 40 cases, never imagined this. Kirkland & Ellis is the kind of firm that replaces others on the eve of trial. And Kempf, the man shoving Kirkland over the edge, was one of Kirkland's own. He had been an important partner there for 34 years, and the firm had named a conference room after him before he left for Morgan Stanley.

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Kempf asked the judge to postpone the trial for six months to prepare new counsel. And he offered to pay Perelman's legal fees for the last four months, which were more than considerable. Maass said she would review the motion and adjourned the court.

It was a drastic, desperate move, but Kempf felt he had to do something to turn this case around. Turn it did, but in the wrong direction for him. The next day, Maass refused the six-month delay. She gave Kempf and Morgan Stanley one week to bring new counsel up to speed.

Even worse, she hit Morgan Stanley with a partial default judgment: The jury would be told that Morgan Stanley had defrauded Perelman; it would only have to decide whether Perelman had relied on Morgan Stanley's misrepresentations and, if so, how much money he should get. Morgan Stanley's defense had been eviscerated. If Kempf had feared that Morgan Stanley was heading for a ditch, now it was screeching toward the edge of the cliff.

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It didn't take long to get there. The *Wall Street Journal* highlighted Kempf's humiliation of Kirkland on page one. After a six-week trial, the jury awarded Perelman $1.6 billion in damages (including prejudgment interest), the largest verdict of 2005. (The company has put aside only $360 million.) And Kempf and his boss, Philip Purcell, Morgan Stanley's chief executive officer, would soon lose their jobs.

What happened here? On the professional level, a close examination of the record shows that Morgan Stanley and its lawyers made some horrendous miscalculations and engaged in discovery misconduct that even they struggle to defend. E-mail searches were completely botched; lawyers pushed the edge and beyond to conceal incriminating evidence; and they repeatedly told the court and their adversaries things that weren't true. To what extent these acts were deliberate deceptions, good-faith mistakes or errors of incompetence -- or some combination of all three -- is still not entirely clear. But the completely dysfunctional handling of this case turned a matter that could have been silently settled for under $20 million into a monstrous legal liability that generated more terrible publicity than Morgan Stanley and Kirkland could ever have imagined.

But this was more than a professional disaster. It was also personal. At 68, Kempf was at the peak of his career, running the legal department of the nation's second-largest financial institution and funneling enough important work to Kirkland that the Chicago firm was finally gaining the traction on Wall Street it had longed for. But Kempf wasn't paying close attention to this case until the trial date neared, focusing instead on a whirlwind of matters that at the time seemed more threatening. And he thought he had turned the case over to a trusted adviser, Thomas Yannucci, a protégé who now heads Kirkland's management committee. But Yannucci farmed the bulk of the work out to others. Compounding problems, Kempf's in-house lawyers made critical errors. Facing disaster, Kempf chose to lay the blame on Kirkland, an institution that he had helped build and says he still loves.

Some at Kirkland are not in a forgiving mood. On the 54th floor of Kirkland's Chicago headquarters, the Donald G. Kempf Jr., conference room has been stripped of that name and Kempf's portrait removed from the wall. Yannucci declined to comment. But for the first time, one influential Kirkland partner has decided to speak out. Litigator David Bernick, who served for years with Kempf on Kirkland's management committee and is one of the firm's most prominent trial lawyers, notes that he was not involved in the Perelman case and doesn't know all the details. But he believes that Kempf treated his former firm badly: "It's almost a grotesquerie that somehow -- where the information we had could only come from Don and his people -- we are on the hot seat on behalf of the client. To somehow say that we failed to meet the standard of care is a grotesquerie."

Kempf is a man who makes an impression. He possesses a confounding mixture of traits that inspire loyalty in some and enmity bordering on hatred in others. Kempf delights in this. As he sees it, his love-him-or-hate-him personality is a testament to his dedication. "I'm a passionate person," he repeatedly points out, as a catchall explanation for his behavior. He gleefully relates stories about yelling at subordinates. He volunteers that Harvard Law School students once voted him the worst on-campus recruiter because of his gruff bluntness. "People I work with," he says, "they either hate me or they end up like my children."

"He's very passionate, so it creates strong feelings," echoes David Elston, a former Kirkland partner who followed Kempf to Morgan Stanley. "I'm in the camp that loves him. He's a father figure for me," Elston says. "Don is very straightforward. You know exactly what he's thinking. At Kirkland, some partners say nice things to you and stab you in the back. Don's not one of those two-faced people." But Kempf's bluntness does have its drawbacks. "You always know where he's coming from," says Paul Cappuccio, a former Kirkland partner who is now executive vice president and general counsel at Time Warner Inc. "That's admirable, but not always advantageous."

Kempf succeeded in Kirkland's supercharged competitive arena in part through sheer persistence. Fueled by vending machine candy, he could toil through the night. "One of his greatest strengths -- and he's not without his flaws like all of us -- is his tenacity," says Philip Beck, one of the nation's best trial lawyers, whom Kempf considers one of his protégés. (Beck left Kirkland in 1993 to form Bartlit Beck Herman Palenchar & Scott.) "When other people would say, 'All these rulings have gone against us; I'm throwing in the towel,' he will think fiercely of some way to pull out victory or salvage something that would be a total defeat. ... He always thought outside the box before that was a cliché."

A few months after the Florida courtroom dramatics, Kempf is preparing to move out of Morgan Stanley's headquarters in Manhattan's Times Square. The company announced last June that he would retire, and he has stayed on for several weeks to wrap up some matters. For this interview in August 2005, he sat in a tiny windowless room, the sort of incidental space that a visiting investment banker might duck into to make a phone call. Gone is the spacious office just a short walk from Purcell's. Gone is the chauffeured car that he enjoyed. He bemoans not being able to show off the trophies and memorabilia he has personally constructed over the years to commemorate his court victories.

Kempf joined Morgan Stanley in late 1999, when he was three years from Kirkland's mandatory retirement age for equity partners. He was named chief legal officer and an executive vice president and sat on Morgan Stanley's 15-member management committee.

(His salary was not publicly disclosed.) He and CEO Purcell had been friendly for decades, since they lived near each other in the affluent North Chicago suburb of Wilmette, and Kempf coached some of Purcell's sons in a hockey league. ("We were state champs," the intensely competitive Kempf notes.) When Kempf joined, Morgan Stanley was two years into its merger with Dean Witter, Discover & Co. The melding of the two institutions was a cultural disaster. The Morgan Stanley folks frankly thought they were better than the down-market Dean Witter people. And the Dean Witter people resented the blatant snobbery. Purcell, from the Dean Witter side, and John Mack, who led the premerger Morgan Stanley, engaged in a classic power struggle. To the surprise of most Wall Street observers, Purcell triumphed, and Mack left Morgan Stanley in 2001 to become the CEO of Credit Suisse First Boston.

Kempf stresses that he wasn't Purcell's handpicked choice. He says Mack interviewed him at length and that Mack, then Morgan Stanley's president, was the "pivotal decision maker" for his hiring. Kempf, a former Marine, marched into this family feud with all the tact of a sergeant confronting raw recruits. He clearly identified with Purcell's side and the more rough-edged Dean Witter roots. Kempf says he grew up poor, the son of a Chicago fruit peddler. He was a rebellious, undisciplined student until he joined the Marines between the Korean and Vietnam wars. Against the odds, he was admitted to Harvard Law School. At Morgan Stanley, Kempf had no patience for the polished and out-of-joint noses of the Morgan Stanley crew. "I did a PowerPoint presentation. The caption was: 'So Dean Witter acquired Morgan Stanley. Get over it!'" Kempf recalls with a chuckle.

But during this initial four-hour interview, Kempf wants to talk mostly about his time at Kirkland. He recounts the details of his various court victories. He also quotes from the speech that he gave at Kirkland's partners meeting in May 1998, when he stepped off the management committee: "Be confident. Be bold. Don't be afraid to lose. And never give up. Never. I love this law firm." He tears up as he relates a farewell from a Kirkland secretary. "It was real. She had nothing to gain. You get so much bullshit and revisionist history." He adds, with his voice breaking, "I have this tough exterior, but I'm not that tough sometimes."

The cursed deal that morphed into the Perelman case took place before Kempf had even arrived at Morgan Stanley. In 1997 Morgan Stanley approached Perelman with an idea for a deal involving its client Sunbeam. (The defendant is the investment banking subsidiary of the parent company, Morgan Stanley.) The toaster and appliance maker was then headed by Albert Dunlap, dubbed "Chainsaw Al" for his ability to boost earnings by ruthlessly cutting costs. Perelman's holding company, MacAndrews & Forbes Holdings Inc., owned stakes in more than a half-dozen companies, including Revlon Inc., and camping gear maker The Coleman Co. Inc. In this deal, Perelman would merge his majority stake in Coleman into Sunbeam. Perelman would get 14 million shares of Sunbeam stock valued at roughly $600 million and $160 million in cash, and Sunbeam would also assume $500 million of Coleman debt. Although Morgan Stanley was working for Sunbeam, Perelman later testified that he trusted the investment bankers. They had done 27 deals for him, including advising him in his $2.5 billion hostile takeover of Revlon in 1986 -- for which he had paid them $30 million.

On March 19, 1998, less than two weeks before the deal was scheduled to close, Sunbeam issued a press release with some minor bad news. First-quarter net sales might be less than what analysts had predicted, though they were expected to exceed the first quarter of 1997. And the company remained "highly confident" of the year's outlook. Morgan Stanley, which helped prepare this release, reassured Perelman that Sunbeam was a good investment. Perelman closed the deal on March 30, 1998. If the deal collapsed, Morgan Stanley would have walked away empty-handed. Instead, it earned $33 million in fees from Sunbeam.

Four days later, on April 3, 1998, Sunbeam issued another press release with worse news. Contrary to what it had just announced, sales would fall short of the first-quarter 1997 level. Sunbeam's board conducted an internal investigation and found a host of irregularities. In June 1998 it fired Dunlap, and Sunbeam ended up restating its earnings for 1996-1998. In May 2001 Sunbeam filed for bankruptcy, and Perelman was left with worthless securities. In 2002 he negotiated a $75 million settlement from Sunbeam's auditor, Arthur Andersen.

Five years after the deal, Perelman decided to go after Morgan Stanley. In early 2003 Kempf got a call from Perelman's lawyer, Jerold Solovy, the 75-year-old chairman of Chicago's Jenner & Block. The two lions of the Chicago bar went way back and had a cordial relationship. In February 2003 Kempf met with Solovy and his younger partner Ronald Marmer. Marmer, 53, clicked through a slide presentation that outlined how Morgan Stanley had deceived Perelman about Sunbeam's financial condition. He stressed that an Arthur Andersen auditor had insisted to one of Morgan Stanley's investment bankers that the March 19 press release wasn't credible -- there was no way Sunbeam would match its 1997 first-quarter sales figures. Marmer argued that Perelman had a compelling case for fraudulent and negligent misrepresentation, as well as aiding and abetting Sunbeam and conspiring with it to deceive Perelman. Morgan Stanley, he concluded, should pay Perelman half a billion dollars.

Kempf was impressed with the presentation, but the general counsel wasn't too worried. New York law requires sophisticated investors to do ordinary due diligence. Perelman was as sophisticated as they come -- or at least they could make him appear that way. He was worth $6 billion, according to *Forbes*, and he had been represented on this deal by Wachtell, Lipton, Rosen & Katz and Credit Suisse. But Perelman and his pricey advisers didn't ask to see Sunbeam's interim financial statement for the beginning of 1998, although they had the right to see it. When Sunbeam issued its March 19 press release hinting at problems, Perelman's team didn't probe the details. It would be hard to paint Perelman as a sympathetic victim. Plus, Morgan Stanley had lost $340 million of its own money on the deal, through a subsidiary that had made a loan to Sunbeam -- hardly the actions of a company that knew that Sunbeam was a sham.

Despite the posturing, this looked like one of those litigation blips that would go away without much fuss. According to Kempf, Solovy called him soon after and admitted that this case wasn't very strong. "I'll give you the chance to settle for cheap, but not for free," is what Kempf says Solovy told him. (The Jenner lawyers declined to comment on settlement talks.) On April 22, 2003, Kempf and Solovy met for dinner at The Post House on Manhattan's Upper East Side. Perelman would be willing to settle for something between $10 million and $20 million, Kempf recalls.

Kempf thought this was a good deal, but he needed the approval of the head of Morgan Stanley's investment banking group, Tarek

Abdel-Meguid. Kempf didn't discuss this with Abdel-Meguid himself. He instructed Soo-Mi Lee, an executive director in Morgan Stanley's law department, to present the offer to the investment banker. Abdel-Meguid told her no, according to Kempf. Abdel-Meguid did not return calls; Lee declined to comment.

Why didn't Kempf talk to Abdel-Meguid himself? "I've got a million of these things going on," he explains. "We have lawsuits filed every day. ... Coleman was not high profile from the get-go. It was viewed as a nuisance case." Kempf oversaw a legal department of nearly 400 lawyers, who handled hundreds of cases at any given time. Also, in the spring of 2003, Kempf was focusing on a more important matter: an investigation by New York Attorney General Eliot Spitzer, the Securities and Exchange Commission and others into whether analysts at major financial institutions fraudulently promoted Internet stocks because they had conflicts of interest.

In the analyst conflict case, Morgan Stanley looked like it was in big trouble. It employed one of the most bullish analysts, Mary Meeker. "Was I a vigorous advocate of hers? You bet your ass I was," Kempf states. "If you read her stuff, she's a candidate for sainthood, not condemnation." In contrast, he maintains that Merrill Lynch rolled over when Spitzer targeted Henry Blodgett, its highest-profile Internet analyst. When regulators discovered a string of incriminating e-mails in which Blodgett privately belittled stocks he promoted, Merrill was formally charged with issuing fraudulent research. The company dumped the analyst, who paid a $4 million penalty. "I thought Merrill Lynch didn't start to fight until the game was over," Kempf says. "We won't sit on the sidelines like they did." (Audrey Strauss of Fried, Frank, Harris, Shriver & Jacobson, who represented Merrill, did not return calls.) For Meeker, no harmful e-mails surfaced, a fact that left some competitors and regulators wondering how complete the e-mail production had been.

In the end, Kempf, assisted by Kirkland partner Alexander Dimitrief, got a great result for Morgan Stanley in a settlement with all six banks, announced on April 29, 2003. Morgan Stanley emerged with a lighter penalty than all but one other bank. "Because of our advocacy, at the end of the day, only two firms were not found having done fraudulent or misleading research, us and J.P. Morgan," Kempf notes. And Meeker, who was not fined, still works at Morgan Stanley.

A week after that massive analysts conflict settlement, on May 8, 2003, Solovy surprised Kempf with a phone call. Perelman -- through one of his holding companies, Coleman (Parent) Holdings Inc. -- had filed a suit in Florida, where the billionaire had a home and where Sunbeam had been headquartered. (This litigation would become known as the Coleman case.) Florida was a bad venue for Morgan Stanley. Unlike New York, Florida does not require that a sophisticated investor do any due diligence to prevail on a fraud claim. Also, Florida allows a more generous calculation of damages. Morgan Stanley could still argue that the Florida court should apply the law of New York, where nearly all the dealmaking took place, but there was a risk the judge wouldn't agree.

Perelman, led by Solovy and MacAndrews & Forbes general counsel Barry Schwartz, made this case a high priority. At least 10 Jenner partners signed on at various points, including Marmer, Robert Markowski, 53, and Robert Byman, 60. Solovy was still remarkably active, but his age was taking its toll. His hips had so degenerated that walking was excruciating. He planned to get both hips replaced, but not until this trial was over. Perelman had also hired John Scarola, an experienced trial lawyer from West Palm Beach's Searcy Denney Scarola Barnhart & Shipley.

Kempf turned to Kirkland and called Yannucci. Kempf regularly hired Kirkland for important cases, displacing the legal department's long-standing relationship with Davis Polk & Wardwell as primary litigation counsel. Enhancing the Kirkland connection, Kempf brought in James Cusick, 49, a former Kirkland partner, as co-head of global litigation. (Kempf points out that Davis Polk continued to earn more in legal fees from Morgan Stanley than Kirkland, in large part due to all its corporate work.) This was the first big case, however, that Kempf had given to Yannucci.

Kempf considered himself to be Yannucci's mentor. With Kempf's backing, Yannucci, 55, had risen quickly at Kirkland and was selected as the chairman in 2001. Yannucci had taken Kempf's side in many an internal battle. When Kempf considered leaving Kirkland for Morgan Stanley, the only Kirkland partner he confided in was Yannucci. The Washington, D.C.-based partner had carved out his own niche as a litigator, including an active practice advising plaintiffs in First Amendment matters.

Kempf declines to name the primary decision maker on the Coleman case, although he says Kirkland was in charge. It's clear from the record that the following Morgan Stanley in-house lawyers were active: Cusick, the ex-Kirkland partner; Lee, 41, a former Wachtell associate, who had conveyed the settlement offer to Abdel-Meguid; and James Doyle, 36, a former associate at Willkie Farr & Gallagher. "No good purpose would be served by me publicly singling out anyone under the circumstances," Kempf says about his in-house team. "Ultimately, of course, they ... reported to me under the chain of command." Both Kirkland and Morgan Stanley declined to answer questions about who was making decisions. The Jenner lawyers do note that Kempf was not copied on correspondence and did not attend pretrial hearings until shortly before trial.

At Kirkland, Yannucci assigned much of the early discovery work to Thomas Clare, 35, a Kirkland lawyer in the Washington, D.C., office, who had made partner in 2001. As usual, the two sides pestered each other over document production. But this would turn into much more than the predictable tit-for-tat skirmishes. Perelman's lawyers were immediately suspicious when they asked for all correspondence about the Sunbeam-Coleman deal and got five e-mails. Clare repeatedly objected to searching for e-mails from 1997-1998, the deal's time frame, asserting that it would entail a "massive safari."

It's true that when Clare wrote those words, in November 2003, Morgan Stanley would have had to do an unwieldy search of thousands of cassette-type tapes on which the e-mails were stored. But what the Jenner lawyers didn't know is that in early 2003 Morgan Stanley had created an electronic archive that could quickly search for e-mails. This archive initially just captured newly created e-mails, as required under an SEC consent decree. But, under the oversight of Kirkland lawyers, it was being upgraded so that in early 2004 it would include older e-mails going back to the time of the Sunbeam deal. It's not clear how much Clare knew about this archive system or what efforts he made to inform himself about it. Clare declined to comment.

The Jenner lawyers didn't learn about the archive until eight months after the case was filed, in a February 2004 deposition of Morgan Stanley executive director Robert Saunders. Saunders is a computer specialist who was working on the archive. Even then, the Morgan Stanley team led them to believe, falsely, that the archive wouldn't contain the older e-mails. During the deposition Saunders was asked if the archive system had any "new capabilities" to retrieve e-mails from before 2001. "There are no new capabilities to search that e-mail," he replied. Saunders was represented by Zhonette Brown, then a Kirkland associate in the D.C. office. (She made partner the following October.)

In the strictest sense, Saunders was correct. The archive didn't have that capability at that moment. But he knew that it was being upgraded and would be able to retrieve those e-mails in two months. Maass would later discredit Saunders's testimony, calling it "so misleading as to be false," and would cite it among a host of reasons for imposing sanctions.

Finally, in April 2004, after nearly a year of Morgan Stanley objections, the company agreed to do certain searches on all its oldest backup tapes. This agreement was formalized in an order signed by Maass. The order also specified that Morgan Stanley had to submit an affidavit swearing that it had done this search. The following May the company turned over roughly 1,300 printed pages of e-mails, but failed to submit the affidavit.

Morgan Stanley had another problem on its hands. On June 7, 2004, three weeks after the e-mail production, Cusick, the co-head of litigation, and in-house lawyer Lee got an e-mail telling them that 1,600 tapes had been discovered in an office closet in Brooklyn, N.Y., and it was expected that they predated 2000. (The actual number of tapes was 1,423.) This e-mail was sent by Morgan Stanley executive director Arthur Riel, a technology expert overseeing the searches for the Coleman case. Riel wrote that his team had started reviewing the tapes for relevant e-mails, and he would keep them informed. How these two in-house lawyers reacted to this information remains one of the mysteries of this case. It's not clear if they told anyone at Kirkland about this discovery until much later or if they told Kempf, who declined to comment on this.

What is known is that Morgan Stanley didn't tell the Perelman lawyers about this discovery for five months. And when the company did inform the Perelman lawyers, in November 2004, it gave the wrong date for when its lawyers had learned about the tapes. Morgan Stanley initially insisted that its in-house lawyers didn't know about these tapes until October 2004, when in fact at least two of them had been told in June. Morgan Stanley also failed to mention the discovery of these new tapes when the company finally submitted its belated certification to Maass on June 23, 2004 (two weeks after the in-house lawyers had been notified of the Brooklyn tapes), swearing that it had done a complete search of tapes from 1997-1998. Riel, who signed this certification, would later maintain that he thought he was attesting that he had searched the archive. Riel, who isn't a lawyer, says he didn't mean to imply that he had searched the recently found Brooklyn tapes that hadn't yet been transferred to the archive.

At that point, Lee and Cusick should have known that Riel's certification couldn't be correct, since they had been told that hundreds of new tapes had been found that hadn't been searched. They should have known that the supposedly final e-mail production made to the Jenner lawyers in May didn't include anything on the newly found Brooklyn tapes. Yet, for months, neither of the two alerted the court or the Perelman lawyers about these stacks of unsearched tapes. None told the court or their opposing counsel that the Riel affidavit filed with the court was not true. Perhaps Riel's message to Cusick and Lee somehow slipped the attention of both. Or perhaps they thought they could make a clever argument that they didn't have to reveal the discovery of these tapes. In any event, this lapse in attention or judgment would become the fatal turning point for this case.

It's not clear if Kirkland was involved in these actions. Clare would later testify in February 2005 that it was his responsibility to make sure Morgan Stanley complied with the order, and he didn't learn about the Brooklyn tapes until November 2004, from in-house lawyer Doyle.Riel would continue to play a pivotal role in this case. In August 2004 Morgan Stanley put Riel on administrative leave, accusing him of snooping in the e-mail of others. The aggrieved Riel turned into a whistle-blower. The following October, SEC staffers contacted him at home, and he was eager to talk. According to a $10 million wrongful termination lawsuit that Riel has filed against Morgan Stanley, he told the regulators that Morgan Stanley was violating an SEC order by deleting e-mails. He also told them about the Brooklyn tapes.

Whether Riel's talk with the government prompted Morgan Stanley to come forward in the Coleman case about the Brooklyn tapes is unclear. But a few weeks after that session, on Nov. 17, 2004, Kirkland's Clare sent a letter to Jenner partner Michael Brody, telling him that Morgan Stanley had found some additional backup tapes.

Brody was astounded: Morgan Stanley had filed a sworn statement with the court back in June stating that it had searched all of its backup tapes. Discovery was scheduled to end in one week, and the trial was set to begin in two months. Two days later, Clare gave Brody 8,000 pages of e-mails, saying they came from "newly discovered" tapes. Brody wasn't satisfied. The 47-year-old Jenner partner demanded to know if all the tapes had been reviewed. And why had these tapes just been discovered? Clare was vague, and Brody kept pressing. The two partners battled by letter through December and January. Jenner would discover later that some of Clare's statements weren't true. For example, Morgan Stanley didn't begin searching the Brooklyn tapes until January 2005, which meant that the 8,000 pages of e-mails could not have come from those tapes.

At the start of 2005, as Brody and Clare were still haggling over the e-mail, the Jenner team came across some explosive information. On Jan. 25, with jury selection set to start in three weeks, they found an old article disclosing that William Strong, Morgan Stanley's lead investment banker on the Sunbeam deal, had been indicted in Italy in 1995 for his alleged role in a corruption scandal. Strong was then head of Salomon Brothers International Ltd. The authorities had dropped the charges in 2001 for technical reasons, but Strong was not absolved until 2003. That meant that at the time of the Sunbeam deal, Strong faced criminal charges in Italy.

This was the first the Jenner lawyers had heard about this episode, even though a year earlier Maass had ordered Morgan Stanley to produce all documents relating to Strong's "truthfulness, veracity or moral turpitude." Strong's Italian indictment had received little, if any, press coverage in the United States. (A Nexis search turned up no articles from that time.) Strong was still a powerful figure at Morgan Stanley, serving as vicechairman of its investment banking operations and enjoying prominence in Chicago social circles. Morgan Stanley explained that it withheld documents mentioning the indictment because they weren't in Strong's personnel file. Maass would later say there was "no excuse" for not turning them over. Soon after they found the article, the Jenner lawyers filed a motion asking Maass to sanction the investment bank for discovery violations, including the incomplete e-mail production.

The Jenner team took full advantage of the fact that they had a bright, hardworking judge. Maass dissected every issue down to the bone, taking careful notes during hearings and mastering the numbing and complex details of electronic discovery. "She's a smart judge," says one lawyer from Morgan Stanley's team. "She knew this stuff better than the Kirkland lawyers." Maass graduated in 1978 from Princeton University with a major in economics and from Columbia University School of Law in 1981. She took the bench in 1990, after nine years in private practice. At 49, she looks and sounds much younger. During lunch time she exercises by running through the streets holding weights in her hands.

The Kirkland lawyers didn't seem to have a clue how to deal with this judge, aggravating her at nearly every turn. In a February 2005 hearing about the mysterious Brooklyn tapes, Kirkland's Clare was maddeningly vague. Faced with pointed questions by Maass, he failed to explain how, when or where the tapes were found. He didn't want to reveal much to avoid waiving any attorney-client privilege, he explained. Maass wouldn't let it go. "Like, [were the tapes] in a corner? Was this with the dust bunnies, or where was it?" she pressed. "The ball is in your court to come up and give me some kind of coherent explanation as to why this stuff wasn't found until October. You've not offered anything." She continued, "I'm stunned that you guys didn't do more of an inquiry than this. And, quite honestly, it makes me wonder why you didn't."

After a lunch break, Clare was slightly more forthcoming. He told Maass that the tapes had been found in the summer of 2004, in a closet in Brooklyn. But, he added, Morgan Stanley's counsel didn't learn that these tapes existed until October 2004. Morgan Stanley repeatedly laid the blame on IT expert Riel, accusing him of failing to tell the lawyers. But that wasn't true, since Riel is known to have told at least two in-house lawyers at Morgan Stanley, including Cusick, the head of litigation, about the tapes the preceding June. Again, it's not clear what Clare knew when he made these misrepresentations.

The more that Morgan Stanley revealed, the deeper a hole it dug. In another February hearing, Allison Gorman, the IT executive who took over Riel's job in August 2004, testified that she assigned a low priority to processing the Brooklyn tapes. They languished for months without being added to the archive. No one told her that the tapes were needed for discovery in the Perelman case until January 2005. That's when she finally got around to running a search -- six months after they had been found. Morgan Stanley audaciously tried to spin this delay as a good thing, praising Gorman and her team in court papers for their "methodical pace" that "reflected the complexity of the problems they encountered and the care they employed." Maass was unpersuaded, to say the least.

"Morgan Stanley kept shooting itself in the head -- not the foot -- the head," says one lawyer on Morgan Stanley's legal team. "They gave [Perelman] a gold mine." Part of the problem was that the Morgan Stanley team didn't seem to have a strong leader. Yannucci had receded into the background. He had argued a motion to dismiss in the summer of 2003, which he lost, and defended one important deposition, of Morgan Stanley Vice Chairman Joseph Perella. Aside from this, the Perelman team saw little of the Kirkland partner. The most senior visible lawyer was Lawrence Bemis, 56, who had joined Kirkland in 1999 from Miami's Steel Hector & Davis. In contrast, Perelman's legal team didn't miss a beat. "They did a fantastic job," concedes one person on Morgan Stanley's legal team.

And Kempf was still focused elsewhere. His biggest concern now was the private plaintiffs IPO litigation -- the tsunami of cases targeting Morgan Stanley and other underwriters of more than 80 disastrous IPOs on behalf of investors. The defendants faced claims exceeding $1 billion, and Kempf was immersed in talks and strategy meetings. (Those cases are pending.)

In February 2005 Kirkland finally enlisted one of its heavyweights, Los Angeles partner Davidson, who flew to Florida to try to minimize the damage. Davidson, 58, is one of the firm's most experienced trial lawyers. He is used to parachuting into cases at the last minute, but he had never landed in such a minefield. The Brooklyn tapes were just the start of the e-mail problems. One day Davidson would find out that computer searches were botched and missing substantial data. Another day he'd learn that a new batch of tapes was found after an employee walked from office to office, searching people's desks and file cabinets. Davidson had to tell an increasingly angry judge about each discovery.

In early 2005, Kempf began getting reports that the case was going badly. Not one to hold back his feelings, he directed his ire at Kirkland. He fumed after watching Kirkland lawyers run a mock trial, according to one person on the Morgan Stanley team. He didn't think Kirkland was telling the story effectively. "He was pretty rough on them," says this lawyer.

On March 1, 2005, Maass issued her decision on Perelman's request for sanctions. Her anger radiated from the page. The problem wasn't just that Morgan Stanley had suffered technical snafus that caused the late production of documents. Most galling was Morgan Stanley's failure to be honest and forthright with its adversaries and the court about those problems -- repeatedly giving late, vague, misleading and downright false information about what had happened. She lashed the investment bank and its lawyers for their "willful and gross abuse of discovery obligations." She also let it be known that she was losing faith in anything Morgan Stanley said: "Throughout this entire process, Morgan Stanley & Co., and its counsel's lack of candor has frustrated the court." She still didn't know half the story.

Despite these transgressions, the judge didn't issue the default judgment the Perelman lawyers wanted. Instead, she imposed a lesser penalty by shifting the burden of proof. Morgan Stanley would have to prove that it didn't know about the fraud at Sunbeam. Perelman could also tell the jury about Morgan Stanley's discovery abuses to argue for punitive damages.

Back at Morgan Stanley's New York headquarters, Kempf was angry and critical of his old firm. He called two of the partners he was closest to -- William Pratt, 53, who headed the New York office, and New York partner Dimitrief, 47 -- and both agreed to drop other matters and jump into this case. Kempf packed his bags and flew to Florida to start working with the trial team. He also met regularly for dinner and drinks with Howard Gittes, the vice chairman of MacAndrews & Forbes, furiously trying to reach a settlement. (Gittes is a former trial lawyer who had been the managing partner of Philadelphia's Wolf, Block, Schorr and Solis-Cohen before joining MacAndrews & Forbes in 1985.) By that point the $10 million to $20 million settlement offer was long gone. Around this time Kempf also raised the possibility of a malpractice claim with Yannucci.

In court filings, Morgan Stanley complained that Maass was applying a double standard. It had received just 60 pages of e-mails from Perelman's side, while Morgan Stanley had produced more than 13,300 pages. But MacAndrews & Forbes, which did not have to follow the same strict e-mail retention rules as the heavily regulated Morgan Stanley, routinely deleted its e-mails after 30 days.

As bad as things were for Morgan Stanley, they were about to get much worse. On March 8, 2005, a week after Maass' sanctions order, Jenner's Byman met with Morgan Stanley's former IT executive Riel to take his deposition. Morgan Stanley had repeatedly blamed Riel in court filings and hearings for failing to tell its lawyers about the Brooklyn tapes. To Byman's amazement, Riel told him about the June 2004 e-mail he sent to Lee and Cusick, informing the in-house lawyers of those tapes. This flatly contradicted Morgan Stanley's repeated assertions for months that its legal department didn't know about the tapes until October 2004.

The Perelman lawyers marched back to Maass seeking harsher sanctions. This time they wanted a default judgment. In a two-day hearing beginning March 14, 2005, local counsel Scarola gave Morgan Stanley a fire-and-brimstone scalding. "Morgan Stanley is a litigant with $65 billion worth of corporate arrogance," he said. "We are dealing with a corporate defendant that has no conscience, that is morally bankrupt." He and Byman presented these new revelations to an increasingly astounded Maass and also reminded her of other transgressions, including the cover-up of the Strong indictment.

Davidson, who had just stepped into this case a month earlier, was at a loss to defend much of this behavior. He tried contrition: "Morgan Stanley and its attorneys made mistakes in this case and mistakes for which it sincerely apologizes," he began. But he simply couldn't explain why the legal department had failed to tell the court earlier about the Brooklyn tapes and that Riel's certification was false. Davidson tried to argue that this slip wasn't so bad because the in-house lawyers didn't know for sure there was any e-mail on those tapes until October. The tapes could have contained other data. As for Morgan Stanley's efforts to conceal the archive's contents, Davidson carefully parsed words to argue that Morgan Stanley hadn't technically lied, even if it knew it was being misleading. Nothing he said appeared to have any impact on the judge, other than to make her more skeptical. "I'm incredulous," Maass said at one point.

Davidson ended with an extraordinary plea. This was no time for the famed Kirkland bravado.

> "I've been practicing for over 30 years, I've tried over 40 cases. And when you do that, you have your ups and downs. Time has a merciful way of somewhat diminishing the memories of painful experiences, but even trying to account for that, at least right now, I can't remember a more painful one than the ones that I've been going through in this case. I am embarrassed about this case and the problems that it's caused with the court. Among other things, I'm embarrassed for our firm, which I've always been very proud of. What will happen at our firm and what will happen to our firm as a result of this has already begun and will be handled promptly and decisively at the conclusion of this case, which is the proper time and place for that to occur. But as for the court, you know, I regret it. I apologize. No excuses."

Kempf, true to his style, planned a more aggressive approach. He would make a last-minute appeal to the judge, fire Kirkland as lead counsel and ask for a six-month delay, during which he would try to settle the case. As a justification for this sudden substitution of counsel, he would threaten to file a malpractice claim against Kirkland. And so -- within hours of making this decision -- he stood up in Maass' courtroom on March 22, 2005, and, as he once exhorted his partners, proceeded to "be bold." Bernick says the firm was blindsided: "We had no prior notice that Don would come down and we would be withdrawn as trial counsel on a theory that a claim would be lodged against us."

In the end, neither contrition nor boldness worked. The next day Maass issued a ruling that made her March 1 order look like a playful slap on the wrist. Employing lengthy footnotes and bullet points, she rigorously cataloged Morgan Stanley's discovery abuses: the in-house lawyers' knowledge of the false Riel certification; misleading statements about the Brooklyn tapes and the archive; the Saunders deposition about the archive; the hidden Strong indictment. "In sum," she wrote, "[Morgan Stanley] has contumaciously violated numerous discovery orders. ... The judicial system cannot function this way," she snapped.

As punishment, she gutted Morgan Stanley's case. The jury would be told that Morgan Stanley had conspired with Sunbeam to defraud Perelman. That made Morgan Stanley liable not just for its actions but for things Sunbeam did. And Sunbeam had done a lot of ugly things. She also revoked Clare's pro hace vice admission to the Florida Bar (It's since been reinstated.). Six days later more bad news: Maass would apply Florida law to the claims. Because Florida had no special rule for sophisticated investors, the jurors would be told that Perelman had no duty to do any investigation of his own of Sunbeam.

Maass also made clear that she didn't blame Kirkland alone. "I did not intend to imply in that order that Kirkland & Ellis is now sort of the lone renegade who perpetrated what is almost a fraud on the court," she said in a hearing. "It was Morgan Stanley. The order is replete with references by Morgan Stanley personnel of misrepresentations."

How bad was this for Morgan Stanley? One hundred million dollars' worth of bad. On April 4, 2005, the company announced it had jacked up its reserves for this case by $100 million, to $360 million.

When the news broke that Kempf had fired Kirkland, law firms kept Kempf's phone buzzing to offer their services. He quickly hired lawyers from Shearman & Sterling, Latham & Watkins and Baker Botts, who converged on West Palm Beach to dig in and work around the clock in cramped quarters. From afar, Mayer, Brown, Rowe & Mawe focused on punitive damages issues. For lead trial counsel, Kempf chose Mark Hansen, an accomplished trial lawyer from Washington, D.C.'s Kellogg, Huber, Hansen, Todd, Evans & Figel. Hansen had already been working on this case, focusing on issues involving Arthur Andersen's culpability. (Because of Kirkland's relationship with the accounting firm, it could not handle that.)

Hansen pleaded with Maass for more time. "If we don't get a continuance, it will force Morgan Stanley to have ineffective counsel," he said. "I don't know the record. I swear to Your Honor I really don't know the record. ... I'm going to be stumbling, not finding documents."

Maass wasn't sympathetic, suspicious that this last-minute change of counsel was a ruse. "I saw no evidence of malpractice by Kirkland & Ellis. There was no evidence before me that Kirkland & Ellis did anything other than follow the directions of its client," she stated. "Morgan Stanley visited these consequences upon itself."

Hansen also argued that Morgan Stanley was handicapped because Kirkland had abandoned it. Somehow, Kempf thought that after humiliating his former firm, Kirkland would still be willing to continue as good soldiers and assist behind the scenes. It was not. Davidson and Pratt had left town and would not return, leaving just Clare, Bemis and a few paralegals behind. It was not a comfortable assignment for the two Kirkland partners. "They looked like death warmed over," says one member of the Morgan Stanley team.

Bernick insists that Kirkland fulfilled its ethical duties. "Kirkland never failed in its obligation to Morgan Stanley or its obligation to Don," he says. He explains that once Morgan Stanley raised the issue of malpractice, it created a conflict. A firm in this situation could be more concerned with protecting itself than vigorously defending its client. Although Morgan Stanley insisted to the court that it was willing to waive this conflict to keep Kirkland on board behind the scenes, Kirkland wanted to minimize its role. "We can't be involved in things where the conflict is material," says Bernick. "There was a continued Kirkland involvement to the maximum extent we were ethically permitted to do."

The debacle in Florida wasn't playing on an isolated stage. It fueled the insurgents launching bombs at Morgan Stanley's executive suites. The rift between the old Morgan Stanley people and the Dean Witter folks had flared again, with Purcell the target. On March 3, 2005, eight retired former high-level Morgan Stanley executives wrote the company's board and demanded that it replace Purcell promptly, citing the company's lagging stock price. (The letter was later leaked to the press.) The March 23 default ruling gave this "Gang of Eight" a potent firecracker. In an April 11, 2005, letter that they publicly released, they cited this case as further evidence of Purcell's poor judgment and leadership. They wanted to know if the board had conducted an investigation to examine the judge's findings of discovery abuse.

The trial, which started April 8, 2005, was a disaster for Morgan Stanley. Hansen, 49, is a dynamic trial lawyer. But he had been shoved into the driver's seat of a gas tanker screaming down a hill with its brake lines cut. The only question was how big the explosion would be. Jurors were told at the start that Morgan Stanley had conspired with Sunbeam to defraud Perelman. Hansen tried to argue that Perelman should have been smart enough to know better than to rely on the words of Morgan Stanley and Sunbeam. And he was able to get under Perelman's skin during the billionaire's cross-examination, revealing an unpleasant prickly side. But Hansen had little room to maneuver.

On May 16, as Perelman watched a live feed of the trial from New York, a jury awarded him $604,334,000 in compensatory damages. In the punitive damages phase, in which Perelman's lawyers presented evidence of Morgan Stanley's litigation misconduct, jurors zipped through those deliberations in four hours and tacked on $850 million. After adding prejudgment interest, the grand total topped off at $1,577,696,175.83 (which is collecting interest at a rate of more than $302,000 a day). To appeal, Morgan Stanley has had to post a cash bond of $1.798 billion.

Midway through the trial, Purcell called Kempf to tell him that David Heleniak, the head of Shearman & Sterling, had been hired as Morgan Stanley's vice chairman, in charge of legal and regulatory affairs. Kempf would now report to Heleniak, not Purcell. On June 3 the company announced that Kempf would retire. But Purcell's critics weren't going to be appeased with the head of a general counsel. The CEO announced his resignation 10 days later. In July, Mack returned to head the company, capping the coup.

Even after the trial ended, Morgan Stanley's bizarre e-mail saga wouldn't die. On June 17, 2005, the company filed a startling document admitting that -- contrary to what it had insisted for this entire case -- in-house lawyers Lee, Doyle and Cusick had been informed back in July 2004 that the Brooklyn tapes contained e-mail. It retracted dozens of statements from these lawyers and the company in which they'd insisted they hadn't known about e-mail on the tapes until October 2004. Continuing the confusion, Morgan Stanley failed to offer any explanation for this extraordinary error, other than to say that it had done a "new e-mail search." Perelman's lawyers certainly weren't going to sit back and let this go. They asked the court to hold the three lawyers -- and Kempf, too -- in criminal contempt. Maass has postponed ruling on this until a decision on the appeal.

Morgan Stanley's appeal, filed last December, is most striking for what it doesn't say. The institution doesn't even dispute that its lawyers engaged in misconduct. "The question presented by this appeal is not whether Morgan Stanley engaged in discovery misconduct or even whether discovery sanctions were warranted," the company candidly concedes, as the brief makes numerous, but vague, references to the misconduct in the case. There's an obligatory pass at the argument that Maass' partial default judgment went too far and that she should have imposed a lesser sanction, such as hefty fines. But the company glosses over the details of what happened. Who could blame it for wanting to stay clear of that messy ground? Instead, Morgan Stanley rests its hope -- and $1.6 billion and counting -- primarily on the choice of law issue, asserting that Maass committed a fatal error by applying the law of

Florida, instead of New York.

The company's counsel listed on the brief are West Palm Beach's Carlton Fields, which was Morgan Stanley's local counsel, and Fort Lauderdale lawyer Bruce Rogow, who teaches law at Nova Southeastern University and has argued often before the Florida Supreme Court. Behind the scenes Morgan Stanley has assembled an expensive team of appellate lawyers who are not named on the brief, from firms including Baker Botts, Mayer Brown and Shearman & Sterling. Kempf was not involved in preparing this appeal, which at press time did not have a hearing date.

Morgan Stanley has limited its comments about this case to the following: "Morgan Stanley, of its own initiative, acknowledged mistakes during the discovery phase of the Coleman litigation. That does not change the fact that there were serious flaws in the trial court proceedings. ... The court essentially prevented Morgan Stanley from presenting to the jury compelling evidence that it did nothing wrong."

Kirkland, officially, is also declining to say much about this case. (Bernick's comments were his own and not made on behalf of the firm.) "We respectfully disagree with the court's orders of March 1 and March 23, but client confidentiality obligations prevent us from discussing this matter further," the firm said in a statement. Kirkland did, however, want to show support for Clare, stating, "Our partner Tom Clare is a lawyer of the highest integrity and professionalism." Clare appealed Maass revocation of his Florida pro hace vice, and it's since been reinstated.

Morgan Stanley refuses to say if it's done any internal investigation into the handling of the Perelman case that could cost it hundreds of millions, if not billions, of dollars. The changing of the guard at Morgan Stanley's legal department is under way. Last October former Davis Polk partner Gary Lynch became the company's general counsel. Lynch had most recently worked with Mack as general counsel of CSFB and had headed the SEC's enforcement division from 1985 to 1989.

Former Kirkland partner Elston has been replaced by Stuart Breslow, the new head of compliance. Breslow had previously headed Morgan Stanley's compliance department, but clashed with Kempf and left for CSFB. Former Kirkland partner Cusick has been let go as head of litigation and replaced with Davis Polk partner Eric Grossman. Two of the in-house lawyers actively involved in this case -- Lee and Doyle -- still work at Morgan Stanley. Kirkland continues to represent Morgan Stanley.

And the fallout continues. In February, Morgan Stanley revealed in a public filing that it has reached an agreement with the SEC to pay a record $15 million fine for violating e-mail retention rules. If approved by the commission, it would be the largest fine ever for that type of violation.

Kempf has convinced himself that, given the severe pretrial rulings, the trial wasn't a total failure. "Let me tell you one way to look at Florida," he says. "It was a $2.4 billion claim, and they got a $1.4 billion judgment [not including interest]. ... $1.4 billion is a lot of money, but an awful lot less than $2.4 billion."

To at least one Kempf supporter, the Coleman case reflects Kempf's best qualities. "I think Don threw himself on a grenade and took one for the company and for Purcell. I think it was one of Don's finest hours," asserts this lawyer. "I think what he did took a lot of guts. Kempf could have stayed away from Florida and distanced himself from the mess." This person adds, "The Kirkland [decision] must have been very painful. He bleeds Kirkland."

Bernick doesn't view Kempf so nobly. "I think Don came down to West Palm Beach to throw himself under the bus and, as part of that, decided to say that Kirkland pushed him." Bernick emphasizes that any problems he and Kirkland have are with Kempf and not with Morgan Stanley the institution. "We're very gratified to have an ongoing and fruitful relationship with Morgan Stanley," Bernick says.

Kempf's duty was to Morgan Stanley, not to Kirkland. A change in counsel, even that late, may well have been the best choice. It's doubtful Morgan Stanley would have gotten a better result if Kirkland had tried the case. But did anything justify taking the extreme step of publicly threatening a malpractice claim against his former firm?

"It was an extremely ill-considered idea," says Bernick, who stresses how outrageous it was for Kempf to blame Kirkland. "Don is a hands-on guy. Morgan Stanley is not a passive client, and you can begin to imagine that Don is anything but a passive client."

Kempf declines to discuss his grounds for threatening malpractice claims. In court papers, Morgan Stanley has pointed to several instances in which Maass voiced skepticism of Davidson's credibility and at one point chastised Kirkland for not checking for relevant documents with other Kirkland lawyers working on an SEC investigation of Morgan Stanley. "This is not the time or occasion to discuss mistakes Kirkland may have made," Kempf says, carefully choosing his words. "I had no desire then, and I certainly have no intention now publicly to embarrass the Kirkland firm. Kirkland has rendered distinguished services to Morgan Stanley on many other matters."

Amid all the lingering questions about this case, what is clear is that Kempf has permanently marred the relationship with the firm he loved and called his home for 34 years. When asked what Kirkland's relationship is like with Kempf today, Bernick responds: "I don't think there really is a relationship at this point."

Bernick argues that Kempf represents an old Kirkland style that's outdated. "The litigation business has changed," Bernick explains. "When I came to the firm it was Fred Bartlit! And Donald Kempf! They were Kirkland gladiatorial trial lawyers. They were strong, and they were terrific." Bernick says Kempf may not have adapted to the new world. "Judges and clients and jurors don't necessarily like the idea of the trial lawyer as gladiator. They also expect trial lawyers to show appropriate modesty and, of course, judgment. ... It just doesn't sell as it used to."

A week before Christmas, Kempf is at his vacation condominium in Snowmass, Colo., near Aspen. It's decorated merrily for the holiday and offers stunning views all around of the mountains and bright blue skies. The head of an enormous deer, killed by Kempf, crowns the fireplace mantle. A black Labrador snoozes on a couch. Kempf has sold his apartment in New York, but still has his home in Chicago, along with another recently purchased vacation home near Palm Beach. He holds more than 153,000 shares of stock (valued at $9 million in mid-March) and has options for more than 375,000 additional shares. He also receives pensions from both Kirkland and Morgan Stanley.

Kempf lingers over some trial trophies he's created, just a small sampling of his overall collection, and reminisces about past victories. There's a toy red garbage truck to commemorate a hostile takeover by client Waste Management Inc. A latex block celebrates a patent case for client Kohler Co., a maker of bathroom fixtures. Kempf points to a miniaturized complaint on one side of the latex block, calling it "a declaration of geothermal nuclear war." The other side of the trophy shows various infringing devices being flushed down a toilet. He chuckles at his handiwork.

He pulls out a laptop computer to show a list of several things he'd like to do next. He's brimming with ideas. There's the article he's been meaning to write for years, "Rambo: The Ideal Role Model for Litigators." ("What I have seen of the Rambo movies, he's the good guy," Kempf insists.) And there's a dinner theater play he'd like to write about a takeover trial. He also will teach at the University of Colorado at Boulder Law School this summer, and he plans to work as a mediator.

In preparation for this article, Kempf compiled a lengthy list of names of colleagues, friends and opposing counsel who know him. It included several Kirkland partners he considers his protégés, including Yannucci. None returned calls requesting comment for the article. To this day, Kempf seems a bit baffled about why Kirkland is taking this so hard. Later, when told of Bernick's comments, Kempf says he's disappointed: "He was not involved in the Perelman case, and perhaps he was misinformed." He stresses that he didn't assign any blame to Kirkland as a defense during the trial itself, as if that makes everything alright.

It's clear that, despite everything that's happened, he believes he can mend fences with his old firm. "I have a deep affection and respect for the Kirkland firm. It is one of the world's premier legal institutions," he says, in a statement he's carefully crafted. "Over the years, it has produced many of the nation's best trial lawyers. I started at Kirkland in my 20s and left in my 60s. While I was there, I worked on exciting cases with wonderful clients. I was mentored by some truly great lawyers, and it was my good fortune in turn to have a chance to mentor some outstanding young lawyers."

It's a nice sentiment, but one not likely to play in Chicago. "If he has one weakness, he has a tin ear for how things are going over," says one former Kirkland partner. "There were times in cases where he didn't understand why the judge didn't love him as much as he thought." His attitude is reminiscent of an odd incident that took place years ago while he was preparing for a trial. Daniel Brockett, a former Davis Polk associate now at Quinn Emanuel Urquhart Oliver & Hedges, remembers working with Kempf on a case in which Kirkland and Davis Polk were co-counsel. Kempf was lecturing his trial team and furiously writing on a blackboard. "He was talking and writing on the blackboard, drawing these circles and stuff," Brockett recalls. But as people walked out, he kept talking, not seeming to notice that he was lecturing to an almost empty room.

To Kirkland now, he's talking to an empty room, a bare ruined choir, as Shakespeare wrote, "where late the sweet birds sang."

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