

THE VON BRIESENS -- WISCONSIN SYNOD ATTORNEYS

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I Question Presented

In the six years between 1978 and 1984 the Wisconsin Evangelical Synod paid an average of \$35,000 per year for legal services to the law firm of von Briesen and Redmond, S.C. The yearly amounts range from a low of \$17,700 in fiscal 1983-84 to a high of \$51,000 in 1982-83. It is recognized that these are small figures when viewed in light of projected synodical budget figures of over fifteen million dollars. Nor do these amounts for legal services compare in size with those paid by business corporations of comparable size.

However small the dollar amounts may be, though, the role of legal counsel for the Synod is an extremely important one. Competent advisors are needed for the many business, taxation, and real

property questions which result from the Wisconsin Synod's expansion in an increasingly complex society.

The relationship between the von Briesen lawyers and the Wisconsin Synod dates back to the early years of synodical growth and expansion in Milwaukee and Wisconsin, and spans three generations of von Briesen lawyers. Eventually their law firm became the exclusive legal counsel to the Wisconsin Synod. How this relationship came about and its implications for the Synod are examined in this paper.

II Introduction

On March 3, 1981, the United States Supreme Court convened to hear oral arguments in the case of St. Martin's Evangelical Lutheran Church and Northwestern Lutheran Academy v. the State of South Dakota. The Wisconsin Synod was represented at argument by attorney E. Thomas Schilling, a partner in the Milwaukee law firm of von Briesen and Redmond, S.C. Of counsel on the brief and present at argument was senior partner Ernst J. von Briesen, a member of the State Bar of Wisconsin, who is himself admitted to practice before the United States Supreme Court. This dispute, in which the Wisconsin Synod eventually received a favorable decision, involved the application of the Federal Unemployment Tax Act to Wisconsin Synod institutions in South Dakota. This dramatic day for the Wisconsin Synod in the

nation's highest court was far from being the first time the von Briesen name was associated as legal counsel for the Wisconsin Synod.

Fifty two years earlier the same Ernst J. von Briesen, then a young man in his twenties, sat with his mother on a wooden plank bench under a hot August sun for the dedication of the new Wisconsin Lutheran Seminary in Thiensville, Wisconsin. On the platform along with President G. E. Bergemann and Professors August Pieper and J. P. Koehler, the young Ernst J. von Briesen saw his father, Attorney Ernst von Briesen of Milwaukee. The elder Ernst von Briesen had, by 1929, established himself as a prominent spokesman for the German Lutheran church and a tireless worker for its many causes. This day in 1929, although a most memorable one in Wisconsin Synod history, was far from being the first time the von Briesen name was associated with the Wisconsin Synod.

The story begins even a generation earlier.

III The Beginnings of a Relationship

Sometime in the late 1860's Ernst von Briesen came to the United States. Leaving his homeland in Prussia after completion of a term of compulsory military service, the first Ernst von Briesen settled in Chicago and learned bookkeeping. Following the great Chicago fire von Briesen and his wife moved to Wisconsin, living first in Cambria and then in Columbus. In Columbus, von Briesen sold tickets

for steamship passage and eventually sold insurance. All five of his children were born and raised in Columbus, including a son also named Ernst.

At this time in our nation's history, law schools were scarce on the frontier. It was possible, however, to become an attorney by studying or "reading" law with an established member of the bar. The first Ernst von Briesen read law with firms in Milwaukee and Madison and was admitted to the state bar of Wisconsin in August, 1882. Ernst then practiced law for thirteen years in Columbus, Wisconsin, while continuing his insurance agency until his death in 1895 at the age of sixty five.

While residents of Columbus, von Briesen and his family were active members of Zion Evangelical Lutheran Church. The church's records from that era are incomplete; it is safe to surmise, however, that it was in these years--1882 to 1895--that the first Ernst von Briesen somehow, on some subject, no matter how insignificant, gave legal advice or counsel in connection with the affairs of Zion Evangelical Lutheran Church. Thus, almost one hundred years before the oral arguments in *St. Martin's and Northwestern Lutheran Academy v. the State of South Dakota*, a professional relationship can be inferred between a von Briesen attorney and a Wisconsin Synod congregation.

IV The Second Generation

Of the five children born to Ernst von Briesen in Columbus, Wisconsin--Elisabeth, Henrietta, Ernst, Richard, and Dora--only Dora, age 103 in October, 1984, remains alive today. Her brother Richard died at age sixteen in a swimming accident. The other brother, Ernst, born in 1877, was destined to carry on the family tradition.

The young Ernst von Briesen was raised in Columbus and there attended German language grade school and high school. At one point in the early 1890's he actually attended one year of instruction at Northwestern College in Watertown, Wisconsin. Shortly thereafter, in 1895, he enrolled at the University of Wisconsin in Madison. After only a few weeks of instruction, however, young Ernst was called back to Columbus because of the death of his father.

Ernst was a bright and diligent student and had, even at a young age, helped with his father's insurance business and legal practice. Surviving samples of his excellent penmanship show why the elder von Briesen engaged young Ernst to copy pleadings and draft correspondence. But it was young Ernst's ability in the insurance business which became evident after the death of his father. Ernst knew the insurance business well and handled affairs so expertly that he was appointed as an agent while yet in his twenties.

He returned to the University of Wisconsin, graduating with the class of 1900. Deciding to follow in his father's profession, Ernst

enrolled at Harvard Law School. During the next three years, he worked for the Graustein Dairy to pay for his education. While at Harvard, Ernst became acquainted with the eminent legal scholar Burr Jones whose treatise, Jones on Evidence, is still in use today. Burr Jones had been an 1870 classmate of Ernst's maternal grandfather Klappenbach, and his advice to the young Ernst von Briesen later proved to be highly beneficial to the Wisconsin Synod.

Burr Jones, commenting on Ernst's ability to speak, read, and write German, suggested that Ernst return to the midwest and set up his practice in Milwaukee where many German immigrants had settled. Ernst followed the advice of Jones, opening a law office with Harvard classmate Arthur Churchill on January 1, 1904, in George Brumder's Germania Building, home office of the Germania Herald, a widely circulated German language newspaper.

V The Milwaukee Law Practice Begins

Thanks to printed records extant today, it is possible to gain insights into Ernst von Briesen's professional life in his beginning years as a Milwaukee lawyer. The records are of particular interest in themselves because of the method by which they were reproduced.

In 1904 not only were photostatic copiers unheard of, but even carbon paper was non-existent. Copies of correspondence were made

by hand or with the use of a letter copying book. A letter copying book was merely a bound volume of blank copying paper, similar to tissue paper. The letter to be copied was typed on bond paper with a special ribbon and was put on top of a moistened, blank page in the copying book. One sheet of oiled paper was placed under the moistened page and another on top of the original to be copied. The book was then closed and placed into a book press. In a few minutes part of the ink in the original had "bled" onto the moist copy paper. The book was then removed from the press, and the original letter was dried and mailed. Successive blank pages in the copy book were used until the volume was filled.

The letter copy book used by Ernst von Briesen during his first two years of practice in Milwaukee is in existence today. A review of its 469 pages gives a clear picture of the practice of law in the early 1900's and sheds a small ray of light on von Briesen's legal work in behalf of the Wisconsin Synod and its pastors.

The young attorneys Churchill and von Briesen had a varied practice. In the course of over five hundred letters written between January, 1904, and December, 1905, a surprisingly active general civil law practice is evident. They dealt with such matters as estates and probate, real estate transactions, the sale of stock, insurance, corporation formation, taxation, general business law, lost heirs, and the collecting of money owed to clients.

There were many collection cases in the early years. As with

most young attorneys beginning a law practice, collection work probably paid the bills. The young von Briesen could be tough when the occasion demanded. Witness his letter of September 20, 1904:

Dear Sir:

We are utterly disgusted with your faithless disregard of your numerous promises and shall proceed to garnishment on the first opportunity. If this proves disastrous to yourself, you have only yourself to thank for it. We are willing to go any reasonable length with a man but there comes a time when patience is not a virtue. Nothing but cash between now and the 1st will avail you. Promises will have no effect.

Respectfully yours,

(signed) Ernst von Briesen

The above letter, harsh and unsympathetic as it seems, was followed four days later with the following letter to the same debtor:

September 24, 1904

Dear Sir:

Yours of the 22nd at hand. We have no desire to cause an honest man trouble unnecessarily but we do not like to be trifled with. Your letter this time seems to have the right sort of a ring and we are willing to give you one more trial.

Respectfully yours,

(signed) Ernst von Briesen

A business contact important to the growth of the practice is

evident in the 1904-05 correspondence. The international firm of Knauth, Nachod and Kühne, with offices in several European capitals, began to assign its Milwaukee legal work in the German language to the young firm. As a result, the firm's prominence rose in the German-speaking community.

In all of the correspondence from 1904-05 there is only one letter definitely involving the Wisconsin Synod or its pastorate. The following legal opinion was written to Pastor E. C. Fredrich of Helenville, Wisconsin, on October 14, 1904:

Rev. E. C. Fredrich
Helenville, Wis.

Dear friend Fredrich:-

Your letter regarding your difficulty has just been received and the advice of the 'Rechtsrat' is as follows.

Of course I have only your facts to go by and am relying on them when I give you this opinion. This agreement that was made 30 years ago was merely a license and either party could revoke the same at any time - the fact that you had your barn there 30 years would not give you a right to keep it there as it was always kept there with and not against the consent of the owner of the land.

She certainly has no right to demand the rent for this time for the agreement was that it should be gratis; she can, however, demand that you remove the barn and that within a reasonable time. In your letter you say that she demands rent or that you remove the barn. I should think the better way out of it to be that you remove the barn, stone foundation and all and have nothing more to do with her unless for about the expense of removing and building a new barn, you can purchase this land from the woman.

I can't see how the payment of the \$5.00 would in any way affect her or your rights as this was paid for the time, pending settlement.

My charges for this opinion are \$25.00 which you may contribute to your salary.

Shall be very glad at any time to do anything I can for you or any of your congregation. Thanking you for the inquiry and with best wishes, believe me

Very truly yours

(signed) Ernst von Briesen

The above letter evidences not only free legal advice to a Wisconsin Synod congregation, but also a friendly relationship between the Reverend Fredrich and Ernst von Briesen, and a willingness to provide professional services to the congregation as needed.

In 1905 Arthur Churchill left Milwaukee for Washington, D.C. Ernst von Briesen practiced without a partner for the next thirty-seven years.

VI Rise to Community and Church Leadership

When Ernst von Briesen moved to Milwaukee in 1903, he became a member of Grace Evangelical Lutheran Church. Grace congregation was over fifty years old at this date and was the spiritual center for such famous Milwaukeeans as George Brumder and Julius Andrae.

Between 1905 and 1918 the sources of information about Ernst von Briesen are scarce. Two sons were born to him during these

years, Ernst J. in 1907 and Ralph in 1913. It is evident from later material that this decade saw a rapid rise in the fortunes of Ernst von Briesen.

Following World War I there was a burst of misguided patriotism throughout the United States. "Americanization" programs were in full swing and the German language used in Wisconsin Synod parochial schools was the target of attack.

Several bills were introduced in the Madison statehouse which would have outlawed the use of the German tongue in the training of young people. Milwaukee Journal articles from 1918 and 1919 chronicle an attempt by Assemblyman Axel Johnson to win passage of such a measure and, when that was defeated, a compromise attempt followed, led by Senator Fons.

Representing the Lutheran Synodical Conference in repeated appearances before the various state committees to defend the synod's position was Ernst von Briesen. In an undated news clipping from among von Briesen's personal papers, entitled "State and Church Union Feared," he is quoted:

"Since the war broke out, the Lutheran church has been the goat--accusations have been made against it and the feeling seems to exist that the Lutheran church is interested in the perpetuation of the German language," Mr. von Briesen said. "This is far from the fact. The Lutherans preach in seventeen languages in this country and endeavor to promote none of them. It has been claimed that the Lutheran church is associated with the state church of Prussia. This is not true. Its only association is

with a small synod of 10,000 in Germany, which is opposed to the state church."

Mr. von Briesen said compulsion is not needed, because German as a commonly-spoken language will disappear in fifteen years. He cited Milwaukee as a striking example of the change, stating that without compulsory legislation, German had been dropped from the schools. A like transition is in progress in the churches.

This issue of Americanization seems to have pushed von Briesen into prominence as spokesman for the German Lutheran community. Additional support for this conjecture is a handwritten letter from President A. F. Ernst of Northwestern College to Ernst von Briesen, dated March 21, 1919. (See Figure 1, page 13) President Ernst looks to von Briesen to do "everything necessary to be done to save our schools."

It is during these years that von Briesen began to handle some litigation matters for various Wisconsin Synod entities. He successfully obtained exemption from real estate taxation for ten acres of Northwestern College property in Watertown. He also obtained a tax exempt status for Northwestern Publishing House.

During this time von Briesen began his thirty-year term as president of the Grace Evangelical Lutheran Church Council. But perhaps the greatest contribution he made to the Synod came in his work as a member of various boards and committees during especially crucial times. He was a member of the Northwestern College Board of Trustees during the crisis years of the 1920's and 1930's. His careful thought can be seen behind the compromise document which allowed the faculty

Figure 1

Northwestern College
 Watertown, Wis.
 March 21, 1919

Mr. E. von Briesen,
 Milwaukee.

Dear Sir:-

I just read in the Capitol Times (Madison) that Mr. Axel Johnson introduced a new school bill. In the hearing yesterday of the Foss bill Mr. Foss stated that both Rev. Oberlie, who represented the Catholic schools, and Mr. E. von Briesen, who appeared for the Lutherans, had endorsed the provisions of his measure. He said the endorsement had been given at a conference in the Park Hotel and that he took the next morning the bill to Mr. von Briesen who placed his O. K. upon it. He now was surprised that parochial school representatives should now appear to fight it.

Is that true? This will cause a great alarm among our people and should immediately be attended to. Please let me know how matters are. I received letters from all parts of the state, inquiring what was done in the matter. Many good people were wild. I tried to quiet them and told them that everything necessary to be done would be done to save our schools. Everything was going on nicely. And now everything seems to be lost.

Yours truly,

A. F. Ernst.

of Northwestern College to retain the right to discipline delinquent students. Von Briesen was a long-standing member of the Wisconsin Lutheran Seminary Board of Control. In this capacity he served from 1925 until 1928 on the site selection committee for the new seminary and for this reason was on the podium for the dedication ceremonies in August, 1929. He was also on the original board that established Graceland Cemetery and was instrumental in starting the Lutheran Hospital and the Lutheran Home for the Aged in Milwaukee County. Although none of this service brought with it financial gain, it required large donations of time and effort which von Briesen freely gave.

VII Exclusive Counsel

Von Briesen was not the only Milwaukee attorney who was a member of a Wisconsin Synod congregation. In discussing the development of the von Briesen law firm as sole legal counsel for the Wisconsin Synod, it is necessary to mention the names of Albert Dammann and George Affeldt. With the synodical presidency of John Brenner, pastor of St. John's, Milwaukee, and the increasing work load on Ernst von Briesen, the Synod on occasion looked to Dammann, a member of St. John's, and sometimes to Affeldt for legal assistance. Attorney Albert Dammann was the grandson of a Wisconsin Synod pastor. He worked on amending the Synod Articles of Incorporation in addition to

other projects. Attorney George Affeldt handled even more matters for the Synod, including the "sale" of the Northwestern Publishing House to make room for the Milwaukee Arena and the purchase of the new publishing house at North 37th Street and North Avenue.

One of the most important factors connected with the consolidation of legal work into the von Briesen law firm was the growth of the firm in the 30's and 40's. The third generation of von Briesen attorneys arrived on the scene with the graduation from Harvard Law School of Ernst J. in 1932 and Ralph von Briesen in 1938. Both men began working for their father after graduation, but their practices were interrupted by military service. The senior Ernst von Briesen died in August, 1943, at the age of 65.

It was believed at one time that the von Briesen law firm advised the Synod without charging for its services from the early 1900's up until the time the firm incorporated and became von Briesen and Redmond, S.C. in the 1950's. Various pastors recall such services as the drafting of Articles of Incorporation, done without charge to their congregations. Records from the von Briesen files do indicate, however, that legal time was computed and billed out to the Synod even in the 1940's. Ernst J. recalls that in the 1950's and 60's he thought he was pretty busy for the Wisconsin Synod. At no time, though, did the Synod's work require the complete attention of one fulltime attorney.

The Synod records prior to 1953 merely show payment in a category designated "legal and audit." It is only from 1953 onward that the records specify payment to the von Briesen firm. All sources, both in the way of extant records and personal recollections concur on one major point. Prior to 1953 a great majority of the professional services rendered to the Wisconsin Synod by the von Briesen lawyers was done without charge.

An interesting item of correspondence dated January, 1952, provides an appropriate bit of information. A routine letter from the Wisconsin Synod pastor in Goodhue, Minnesota, addresses the von Briesen law firm several times as "the Synod's legal advisor." It can be argued that the von Briesen law firm was the Synod's exclusive legal advisor prior to 1952, but that date has the support of evidence and is probably the latest date to which the development can be fixed.

VIII The Third Generation

Brief mention must be made of the continuing contributions of the von Briesen attorneys to the welfare of the Wisconsin Synod. Ernst J. and Ralph followed in the footsteps of their illustrious father, serving on various boards and committees not only for their home churches but also for the Synod. The most recent Book of Reports and Memorials for the 48th Biennial Convention lists Ralph von

Briesen as a member of the Committee on Constitutional Matters and Ernst J. as assistant secretary and treasurer of the WELS Foundation.

IX Conclusion

The von Briesen law firm's achievement of the position of exclusive legal counsel for the Synod was a development. What began as the generous donation of time and talents freely given developed into a paying proposition with the increased complexity of society and the increased sophistication of Synod's operations.

Knowledgeable insight tells us that even with its largest annual payment the Synod did not provide income large enough to pay the cost of one attorney's annual salary and the annual overhead attributed to the position of one attorney. Thus we can probably conclude that although an important source of income in some years, the Synod was not indispensable to the von Briesen law firm. The converse of this cannot be said. Von Briesen commitment, von Briesen professional advice, von Briesen guidance in critical times and during difficult problems has been and continues to be a blessing to the Synod and more.

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