

## THE BLACK BOX



*"We can never be sure the corporate work will last."*

John Francis Hunt, Jr., talkative and ebullient, was telling poor-boy stories. The two of us, in a small, windowless conference room at my new law firm, Wachtell, Lipton, Rosen & Katz, could have been in a booth of a barroom. We were experiencing the glow of good fellowship that sometimes comes only after three rounds of beer. John Hunt waved his hand to embellish a point, a large gesture that drew me into his tale as a friend and peer.

He was a senior partner at Cravath, Swaine & Moore and, on this occasion, IBM's lawyer. If IBM had a corporate problem of any magnitude, they called John Hunt. Facing an antitrust challenge by the federal government in the mid-1970s that could have forced the breakup of IBM, John Hunt worked out various contingency plans for the possible breakup. Short, barrel-chested, beer-bellied, and aggressive, he looked like a workman who could wield a shovel in a ditch more effectively than he could parse a sentence. As if to match his rugged appearance, he was the legal

architect for major projects that developed extractive mines requiring the creation of towns, railways, bridges, and the construction of deep-water ports to service them. If you heard his resonant, baritone voice, you could see him as a construction foreman, but if you listened to him, you would hear a man of native shrewdness, a corporate lawyer of great depth and solid accomplishment.

I pulled at my soda can as he told me about Frank Carey, John Opel, and Paul Rizzo, the triumvirate that managed IBM. Tomorrow he would be in the inner chamber at their headquarters in White Plains making his recommendation about the deal we'd been working on together, and they would listen.

They would be advised by the same John Hunt who didn't have enough money after graduation from Columbia Law School to buy a suit to start working at Cravath, a maverick with great drive who had become a success. That level of penury was twenty years before, when he took a job in a brewery as a laborer loading beer kegs on delivery trucks. After two weeks he'd made enough money to begin working as a lawyer. At the time of his admission to the New York bar, he was questioned by one of the members of the Character and Fitness Committee as to why he'd taken the job. With calculated modesty, he explained that he needed a suit; otherwise he couldn't begin work. The old gent examining his qualifications did some fine cross-examination on whether he'd expressed his intentions as to seeking temporary or permanent employment.

"Can you believe that?" he asked. "That was a test of my character."

"The Character Committee is always difficult," I said. "They have relatively little to look at."

"No sense of reality," he said.

John's annoyance was lasting and his common sense firmly grounded. When he became Cravath's managing partner (and took care of such odd matters as making sure that partners were appropriately seated at the dinner dance), he had Cravath adopt a policy of providing loans to all entering associates, so that their characters couldn't be similarly questioned.

I'd been at Wachtell, Lipton, Rosen & Katz for only two months (starting in mid-February 1975) when John Hunt had called to tell me that IBM was making its first acquisition in over ten years. IBM

wanted to acquire a small high-tech company appropriately called Neotec, which was publicly traded, and wanted able counsel on the other side of the transaction to dispel claims that IBM had taken advantage of a small company. The transaction was complex and John had recommended my firm to do the job. IBM would pay the costs of the transaction, including our fee. He asked if we would take the matter.

I was flattered to the point of distraction, but before I could say anything, he issued a cautionary note.

"It's a very difficult deal," he said, "hard to discuss on the telephone. You should come down to our offices, if you're interested."

I heard the admonition but ignored it. If it were a wasp, I'd have swatted it bare-handed to extinguish its sting. I told him that I would have to clear the matter with Martin Lipton, the senior partner of the firm, but I thought that we would take it.

Lipton had told me upon my joining the firm that there was no need for me to bring in clients or to seek out business. The firm at nine years of age (consisting of twenty-four lawyers, of whom sixteen were partners) was small enough to be busy in a sluggish economy. Lipton had hired me at the end of 1974, because he felt that there was a need for another corporate lawyer in the firm who could do deals, and asked no more from me. No one contemplated the merger wave which was about to change American business and the practice of law.

The firm was markedly different from Cravath. The reception area of the firm's office on Park Avenue in midtown Manhattan offered the first sharp contrast. It expressed spartan professionalism: too spare and dimly lit to be cozy and too new to reflect any history. The one decorative embellishment, besides a flower centerpiece set on a black granite coffee table, was a new Persian rug, used as a wall hanging, hung about where Cravath had placed the chart of its history. The single suggestion of the energy of the firm came from an overworked young woman who ran the switchboard and acted as a receptionist. To all calls, she responded, "Wachtell Lipton. Please hold," while she juggled calls and visitors.

Beyond the reception area, the disparity with Cravath was even

more pronounced. No one wore their suit jackets, and everyone was on a first-name basis. Each associate had his own office. The commodious space suggested privacy, which was an illusion. All office doors were always open, fostering a communal workplace. Everyone treated the office like home, and no one felt any need to knock on doors or to hesitate to cross a threshold. Lawyers would walk into your office, demand attention (almost always bringing cookies and coffee or soda from the small kitchen), and begin talking about what was bothering them, while offering you food, even though you were with someone else or on the phone. The larger your quarters, the more visitors. Communal work habits began at the top, with the founding partners, who had all been classmates at NYU Law School and remained friends.

Without any privacy, everybody knew what everyone else was doing, which meant that knowledge was shared, making the informality more effective than seminars or luncheons arranged for dissemination of information. George Katz, one of the founding partners, embodied this family style. He visited all the offices almost every day, bringing encouragement or news or gossip, a practice which he continued until his premature death in 1989. Always optimistic, George would report on current matters and ask for advice from everyone on thorny legal questions, giving even the new junior associates the sense that their participation was valuable.

I began my affiliation with the firm on a Saturday before my first working Monday to organize my office (this was the first time that as a lawyer I had my own office), and I couldn't locate any of the cartons of papers that I had sent from Cravath. One of the new partners, a law school classmate of mine, had his children with him at the office and his young son went around to all the empty offices, which were many, to find my books and papers. In six years at Cravath I had never seen a child at the office.

For organizations like Cravath, my new firm was the equivalent of a storefront. Joining Wachtell Lipton was viewed by my former colleagues as a retreat from center stage into the dimness of an obscure practice. Proof of their conclusion lay in my failure to

take my Cravath secretary with me when I left. Wachtell Lipton had a sufficient number of secretaries and didn't encourage lawyers to bring their own.

But at the time I left Cravath, the outlook for young corporate lawyers there was disheartening. IBM's defense of antitrust cases brought by the government (followed by cases brought by private parties) alleging monopoly practices in the computer industry were consuming much of the firm's energy and manpower. Contrary to the firm's policy of distinguishing between corporate practice and litigation, corporate lawyers were being taken off deal transactions to do depositions for trial preparation of the IBM cases. There were so many depositions that, for a stretch of over six months, Frank Randolph spent his full time coordinating them, largely a routine task and a waste of his talent. Cravath's commitment to the IBM litigation precluded it from accepting takeover matters, and it took the firm many years to make up the ground then lost. Ironically, a number of the lawyers trained in doing deals at Cravath later left to do takeovers elsewhere and became the professional cadre for the merger wave.

In the winter of 1974, however, the pace of corporate law practice everywhere reflected the recessionary economy. During my interview, George Katz had asked me if I could do house closings and matrimonials. Strange as the question was, I had taken it seriously because he was a founding partner.

"Well, I've closed two houses for friends." I paused, trying to come up with something else. Finally I did. "And I handled a custody proceeding," I said, not mentioning that it was also done without fee.

He nodded approvingly, but was he crediting my frankness or my experience?

"Why do you ask?" I queried.

"We can never be sure the corporate work will last," he said. "We want lawyers who can do other things."

To Katz's credit, he was always interested in lawyers doing more than one specialized task, even when the business of the firm didn't require it, for he was the master of many specialties. Still, they had almost lost me then, but Lipton had never intimated any doubt. I relied on Lipton's confidence, which was the genius of the firm.

When I joined the firm as an associate in February it was with the expectation that by year end I would be made a partner, if everything worked out. That is a euphemism for “if everyone likes you and respects you.” It was a risk I was willing to take, since I felt at home with these people. I thought, however, that the outcome would be assured if, in addition to doing the work, I could attract desirable clients.

At the time I left Cravath, John Hunt gave me some unsolicited words of advice, since I was entering a different environment from Cravath’s with all its institutional clients. I knew him only casually, but he was aware that I was eager to prove myself by finding my own clients. He told me, “Be careful, and don’t take poor business. It’s unproductive, time-consuming, and doesn’t pay.”

Although this was practical advice, the problem was that it offered no guidelines for proper judgment. That can only be learned from experience. From the beginning I found myself working on matters that didn’t justify the time. I began doing a small amount of business with U.S. Trust Company, largely routine trust indenture work, which I would have avoided doing at Cravath. On the bright side, USAir (then Allegheny Air Lines), which I had on occasion represented while at Cravath, now asked me to do some corporate work, and there were a few other small matters as well. While all the fees just barely covered my salary, it made me feel secure to know that I was carrying my own weight.

When John Hunt approached me, then, I was eager to take on the IBM matter he offered. Attracting Cravath and IBM would be independent verification of my ability. Also, the IBM deal would be important for the firm, a deal with visibility in the marketplace. Fair warning or not that the deal had problems, John Hunt knew that we would take the matter. I asked myself, “Why me?” Although there was no ready answer, I accepted the flattery and the opportunity, and went down to Cravath’s offices to see John.

In his own environment, John Hunt was a prince of the law. His office was spacious, with a southern exposure viewing the Battery. Arranged in bookshelves behind him were numerous bound volumes of the deals he’d done, and around him were mementos and tombstones of the various projects he had helped to develop. He sat behind his large desk in a broad, high-back chair that gave him

command of the room, and I sat in a small chair on the associate's side, facing him. So positioned, I was again a Cravath associate, or at least that's the arrangement he chose. A shelf pulled out of his desk so that you could lean on it to write, and I was given a pad for note taking. He was going to tell me all the information necessary to get started.

Neotec made a device that could measure the protein content of foods through the use of nondestructive light analysis. "Call it a black box," he said. IBM was primarily interested in the black box to measure the protein content of wheat, although there could be other uses. Wheat was graded and priced worldwide on the basis of its protein content. Analysis of wheat by chemical means was time-consuming. Neotec's black box allowed for rapid measurement and could be coupled to an IBM computer. Then not only would the wheat's protein content be measured, it would also be graded and priced. Used in grain elevators around the country and even around the world, the computer would also keep inventory and shipping schedules. For IBM's computers, the Neotec device could be a seeing eye.

IBM had scoped out at least one market, the world grain market, and there might be other uses for which the black box could be adapted. Intriguing as it was to them, IBM was reluctant at the time to make an acquisition. Buying technology undermined the argument it was using to oppose the government's monopoly charges: that its growth had been largely internal. But a small acquisition could be managed.

John told me that IBM wanted to buy Neotec for \$5 million. A purchase at that level wouldn't be considered meaningful by the government. Nonetheless, it was a problem acquisition because Neotec was a failing company, on the edge of bankruptcy, and its debts exceeded the \$5 million purchase price. Its million shares of stock, however, were trading at about a dollar a share, and if the company was sold and its debts paid off, the shareholders wouldn't be entitled to anything. It's usually not possible to get the required shareholder approval for a sale of the company without paying shareholders at least a premium over the trading price of the shares.

"That's what we face," he said.

He stood up, as if freeing himself from his chair. Energetic and physical, he found it hard to be seated for very long. He lit a cigarette and walked around me, and I turned my head to follow him as he paced around the room.

“We’ve checked Neotec’s patents and believe that they are challengeable: they won’t stand a real test. There’s no new art, only know-how, which can be duplicated. We want the black box and the know-how, but aren’t willing to pay more than \$5 million for it. That’s all it’s worth to us.” He paused to see if I accepted his valuation. My sense was that his challenge to the patent position was mere posturing for the purpose of improving his bargaining position. I didn’t commit myself, wanting to hear everything that he had to say, and he continued.

“The company has marketed its black box in supermarkets for customers to check the protein content of cheese and other things.” He frowned to let me know that he thought it was an unfortunate use of the technology. “That hasn’t been successful, and the company’s failing. But if IBM were to acquire the company and give the shareholders relatively little, we’d be sued.

“IBM has approximately \$3 billion in cash sitting on its balance sheet. We’re a very deep pocket, and no matter what we do we’ll probably be sued by the Neotec shareholders for overreaching and stealing the technology.”

He returned to his desk, rocked in his commodious swivel chair, and gave me time to absorb all that he’d told me. Putting out his cigarette, he lit another and continued.

“We want to head off any argument that we’re overreaching or that Neotec wasn’t properly represented. That’s why we brought you into the picture.” With that statement, he gave me his welcoming smile.

“How do you expect to deliver money to the shareholders, John, if you’re not paying enough to cover the debt?” I asked.

“Squeeze the lenders,” he said, his face tightening as if it was a physical act and he was doing it himself. “We’d like to see the shareholders get about \$2.00 a share. That would give them a premium over the trading price of the stock.”

“Two dollars a share is about \$2 million of the \$5 million,” I said, looking at a financial statement. “That doesn’t take into ac-

count payables, and winding up expenses, including termination of employees. That means that the lenders will take a very substantial discount on their loans.”

“Precisely,” John said.

“Are the banks secured?” I asked.

“Yes,” he said. “They have liens on everything.”

“Why would the banks take less than 100 cents on the dollar?” I asked, getting uncomfortable with the situation.

“Because if they were to foreclose there really is nothing for them to take. The assets they would get wouldn’t be worth that much and they would probably not get more than \$0.30 on the dollar. There is a lot of debt junior to the bank debt as well, and they would probably get nothing.”

“If \$5 million covers all the debts and that’s what you’re prepared to pay, the lenders will want the \$5 million for themselves,” I said, making an obvious but necessary point, risking being tedious.

He stood up and took another turn around the room.

“We won’t pay it all to them. If they won’t discount the debt, we’re prepared to walk away from the deal. We want to make sure that the shareholders get some money, so there are no recriminations or credible accusations.”

“Are you really prepared to walk and not do the deal? The technology sounds too interesting.” I shook my head to show him that his position wasn’t credible.

He found his chair, vigorously rocking, telling me by his action that I was on a sensitive issue.

“Your job is to convince everybody that we’ll walk, and not do the deal, unless they take sharp discounts. Your job is to compromise with the lenders and provide a benefit to the shareholders.”

“They will all smell the pork cooking.” I shook my head again, this time to let him know the degree of difficulty of the undertaking. “For a small amount of additional money, you needn’t have such a complicated transaction.”

“We’re not prepared to pay any more.”

John Hunt stopped rocking in his chair and stared fixedly at me to show me his resolve and that of his client. I could tell that he’d worked out the strategy with IBM, based on their determination

of a reasonable purchase price, and he'd assured the executives at IBM that they wouldn't have to pay more. Aloof in White Plains, New York, they were all committed to that price, and were prepared to tell the marketplace the same thing, irrespective of how much they desired the black box.

In addition to the bank debt, the company's borrowings were complex. Living from hand to mouth for many years, the company had borrowed against everything it could conceivably claim to be an asset. In all, there were about twenty different arrangements, involving almost a hundred people, artfully put together like a homemade rickety raft to keep the company afloat. Each one of those parties would have to abandon large parts of their rights. Compromises would of course be difficult when the parties realized that IBM would be making the acquisition. The sums involved, minuscule to IBM, were significant to everyone else.

"The company has granted IBM an option to purchase it and its assets," John said. He produced an option contract that contained the definitive arrangements between IBM and Neotec. "This is the deal that the company has agreed to work out. It sets out the level of compromises that have to be achieved with most of the lenders and the agreed-on purchase price for the shares. In no event will IBM be required to pay more than \$5 million."

He handed the contract to me across the desk. It was poorly copied and hard to read, copied on IBM's machines because IBM insisted on using only its own machines. John Hunt held up his hand to quiet any protest, thinking that I was bothered by the poor quality of the copy, and told me that IBM's use of its inferior copying machines was something we'd have to live with.

"Who represented the company on this portion of the transaction?" I asked, getting to what was on my mind.

"Local counsel," John said. Neotec was located in Silver Spring, Maryland.

"Let me understand this," I said. "You have already entered into a definitive arrangement with the company and you're asking us to represent the company so that there can be no criticism of IBM." I now understood one of the reasons why I had been called. His native shrewdness was at work. "Isn't it too late to get us on board?" I asked, as if seeking his advice.

He smiled, sat back in his chair, and relaxed. "No," he said. "There's a lot that has to be done."

He wanted to play it out, make me work at making my point, to see if I'd persist.

"To implement the transaction, but not to set it up," I said. "The structure has already been determined, John."

"Implementing is the transaction," he said.

"That may be, but that's not your reason for engaging us."

"There are securities act problems, tax problems, and accounting problems. They are going to need your expertise. Neotec won't be able to do the transaction without your help."

"That may be," I said again. "But you've already struck a deal. You're asking us to work within the framework of the deal. That might not be the best deal for the shareholders."

"If you need some latitude, we'd be prepared to consider what you have to say."

"From the point of view of amending the contract?"

"We're prepared to be flexible."

"How flexible, John?"

"We would like to get the transaction done."

I stood up to show John that I wasn't pinned to my spot, making the office as much mine as his, and walked over to the window to look out. I always enjoyed the harbor view from Cravath, where I could see the changing colors of the water and the boat traffic. A Staten Island ferry plied its way back to the Battery with enviable ease and certainty of purpose. I turned to face John.

"Flexible enough to renegotiate the contract now?"

"No," he said, leaning forward in his chair, forearm and elbow resting on the desk, ready to spring up. "These arrangements have been publicly announced. And we paid Neotec \$50,000."

I turned to him. "You didn't get what you bargained for."

"We did. It's in the contract."

"You want to be able to say that the company has been adequately represented. If you want that contract, you don't need us."

"Why would you take the contract away from the company?" John asked.

I walked over to his desk, pleased now that I was standing because

I stood over him, and took the contract in my hand. I thumbed through it, confirming that IBM was not bound to buy the company.

"It's not a contract, John. It's an option on your part. The company has to perform by making its lenders write off the loans. After months of effort, it's probably not going to be able to do it to the degree you demand. It's a straitjacket. And you are Neotec's keeper. But you can walk away whenever you want."

"You're not serious about this," he said.

"It should be a two-way street," I said. "Either we're both bound on reasonable terms or neither of us is bound."

"I told them that you would do this to me," he said, laughing.

"Whom did you tell?"

"The people at IBM. I told them you wouldn't accept an option. If you want, you can set aside the contract," he said. "It's up to you."

"Fine," I said. "Then we'll be prepared to take on the representation of the company."

"Now I'm getting what we bargained for, is that it?" he asked.

"Yes," I said, sitting down, again face to face.

"Good." He laughed. He was full of life and his face lit up with his energy. Even without the contract, he controlled the game. Neotec wanted to sell and IBM would decide whether it wanted to buy. Our economic positions meant that IBM still had an option, and he'd given up nothing. I'd gained some flexibility for the client, but it was more cosmetic than real.

Watching him in action, I discovered why he'd chosen me as counsel. He knew that in my six years of apprenticeship at Cravath I had witnessed innumerable instances of deference to Cravath partners. That training doesn't wear off quickly. Astutely, he saw that his achievements were a substantial part of my aspirations. In a question of judgment, he could expect me to defer to him. He was a master strategist.

"Even if there's no option, I want to get this deal done," he said.

"So do I," I said.

"We're not paying more than \$5 million. That price does everybody a favor." He was earnest, making the point that the price hadn't changed, even under these new rules.

"I hear you."

"Believe me," he said. "Squeeze the lenders, not us. We're prepared to walk, Larry."

"I want to meet my client."

"They want to get this done too. It has become too much of a burden, trying to run it without any money," he said, finishing our meeting.

IBM had collected a significant number of documents in White Plains that I needed to review. I was told that I'd be given copies promptly, that the deal had the attention of the chairman and the highest priority. After a week elapsed, I called John Hunt.

"What's taking so long?" I asked.

There was a long pause. Then he said, "Only authorized people can copy papers at IBM. It's a bottleneck. They worry about losing their trade secrets. We have expedited the matter, but it will take at least two or three more days." And then he paused again. "Also, their copying machines are very slow."

"I thought this was a top-priority item."

"It is," he said, "but there's a powerful bureaucracy. Be patient."

The papers came about a week later.

Finally, I got to see my client. Robert Rosenthal was the president and chief executive officer of Neotec. He was a small, energetic man who was an engineer and applied scientist. He had novel and interesting ideas, but had trouble implementing them in this business. For all his energy, each year there was a question about whether the business could survive and he spent the largest part of his time being a salesman, promoting the business. Each year he found people to put up some money to enable the business to limp along. The business also occupied the attention of his immediate family: his wife worked there, as did one of his sons, and although it supported them, the rewards were not much compared with the amount of time and effort expended.

Rosenthal was open and warm, making me feel that I was a part of his family. Liking him, I became troubled by the consequences of the sale of the business. Rosenthal had committed to work for IBM for one year after the sale to facilitate transition. But I knew that his employment at IBM wouldn't last. Entrepreneurial, he had

no sense of how to work within a large organization and wasn't used to all the people one had to see before anything was taken seriously. He was a creative man, and IBM found his form of creativity disconcerting. For example, the IBM staff found, in the back of a Neotec filing cabinet, ten to fifteen sketches for instruments related to the Neotec device that measured protein content in various foods. The drawings were not included in the list of assets being sold to IBM, and that made them think Rosenthal was being devious. Rosenthal belittled the sketches, saying that he didn't believe any of them would work and explained that they had been done over a couple of weekends, without any chance to explore their practical capabilities. I explained to John Hunt that the drawings had no value, but Hunt wanted them included in the list of assets sold, to which I agreed. Grinning, Hunt told me to have Rosenthal stop doodling until we got the deal done.

Bankers Trust was Neotec's lead bank, and that's where Rosenthal and I started in our effort to work out the deal. The bank's loan of approximately \$2 million was secured by all the assets. If the bank was willing to take a significant discount, then all the other creditors would have to follow. The issue was the credibility of IBM: whether IBM was firm in its resolve not to acquire Neotec if the bank wasn't willing to take a discount. In preparation for the meeting, I spent a fair amount of time doing an analysis of the likely proceeds if the company were liquidated. It wasn't much: probably \$0.20 or \$0.30 on the dollar. Whatever it was, Bankers Trust could take everything, and none of the other creditors (or the shareholders) would be entitled to anything.

In meeting with a loan officer to announce that his bank won't be paid the money it's owed, you have to forgo embarrassment. Bob Rosenthal had borrowed money from Andy Forester (and not really from the institution called Bankers Trust), who had been willing to take some business risks. Rosenthal was now coming back to tell Forester that everything had gone flat and there was a little something in it for the bank as long as the bank allowed something in it for junior creditors and the shareholders, including Bob Rosenthal. Without the junior class of securities getting something, there would be inordinate delay while the junior securities asserted claims that would have to be adjudicated, and no deal would get

done. This is not an easy message to deliver: it contradicts the banker's sense of order. My job was to keep the embarrassment from impeding the deal.

The bank, of course, called IBM and was told that IBM wouldn't buy Neotec unless the bank met Neotec's terms. With that information, the bank took its time, testing IBM's determination, but finally went along. With \$2 million set aside for shareholders, and only \$3 million available to all other creditors (when \$5 million was needed), the bank as a secured creditor insisted on about \$0.70 on each dollar of the \$2 million it had lent. The other creditors were pared down in accordance with the priority of their claims. Satisfactory compromises took two months of negotiating, involved dozens of people, and were delayed because everybody wanted access to the deep pocket of IBM.

Then it was time for reassessment and renegotiation of the Neotec deal with IBM. IBM was taking only a small portion of the employees of the company, although it was taking all its technology. Rosenthal wanted to find some way to utilize all his employees, even if it meant starting a new business. Finally, we came up with a strategy.

Having torn up IBM's option, we had turning room to try a novel approach. And so I met with John Hunt to renegotiate the deal, beginning by telling him the status of all the creditor compromises, which I thought would satisfy him. Then I told him we needed an additional \$250,000. He nodded. We were meeting in the small conference room of our firm. He knew that there was more to our proposal, and he wasn't about to acknowledge what he would do until he heard everything. We'd all been trained to negotiate that way.

"What we'd like, John, is to sell you the business, the trade names, the patents, and the know-how just as you've requested, pay off the debt, and have you license the devices and know-how back to Neotec, royalty free, so that it remains in business."

"Wait a minute," he said. "What am I buying?"

"You're buying the business. You own everything."

"Then I'm not licensing it back. If I license it back to you, you'll compete with me."

“It’s not possible for us to compete with you. We don’t have the capital or the computers or the marketing ability.”

“Then what will you do with the business?”

“You’ll be selling to grain elevators, big-ticket items. These are large operations that will require a number of black boxes, all with computers. We want to sell a small, less sensitive device, without a computer, to farmers so they can measure the protein content of their wheat crop and thereby estimate the prices they will be receiving. You will be creating a market for us. And you’re not going to want to develop the market that we can sell to.”

He sat back and looked at me with his piercing blue eyes.

“What’s going to happen with the shareholders?”

“We’ll be able to pay out to them the \$2.00 a share at capital-gains rates,” I said, “and they’ll still own their shares in the new business.”

“You worked that out?” he asked.

“There are a number of ways we can do it,” I said.

“This way no one loses their jobs, do they?” he asked. He didn’t wait for an answer. “Where will you get working capital?”

“The bank has agreed to give us working capital,” I said.

“After you cut them back?”

“We’ve found some good business people at the bank,” I said. “The extra \$250,000 will help also.”

“Will they be able to run the business this time?”

“In the wake of your business,” I said, “they’ll have an excellent chance.”

“I like it,” he said. “I’ll recommend it. Let me look through these papers.” There was a stack of papers before him that represented all the compromises of all the creditors. He went through them carefully, asking questions, piecing together the layers of rights and obligations to see that they had been properly compromised, all with the steady care of a knowledgeable lawyer.

“You like it here?” he asked, meaning: Did I like my new firm?

“Yes,” I said.

“I like your offices,” he said. The offices were new and spacious compared with Cravath’s. Being a large organization with leases dating to a time when the firm was smaller, Cravath had to carefully

account for the use of all its space. It was almost like the difference between eastern and western cities: starting later, it was easier to plan.

"They've allowed me freedom, which I need. Small firms aren't departmental," I said, telling him how I felt after he showed his receptivity to the firm.

"Good. I'll be seeing Carey, Opel, and Rizzo tomorrow," he said, referring to IBM's leaders. "I'm going to tell them to do the deal."

He smiled broadly and loosened his collar, enjoying the idea of a failing business becoming two functioning businesses. That was something worth promoting, the creative part of being a corporate lawyer. He said, "You did a good job." He paused. "You did as good a job as I could have done."

That was the best compliment I would ever get from him. It was not meant in a vain way. He knew himself, and was pleased. After that he told me poor-boy stories, assuming that the deal would get done, for even a purchasing agent in the bowels of IBM could make a \$5 million purchase without spending as much time on the matter as we had.

The next day he went up to White Plains to see Carey, Opel, and Rizzo. They listened to his recommendation and decided not to do the deal. Within a few hours of that meeting, I saw John Hunt in his own office at Cravath. He was ashen and uncomfortable.

"What if we change it?" I asked.

"It doesn't matter," he said. "They decided not to buy the company . . . under any circumstances. They understand all the problems have been worked out. That's not the point. It's a business decision." His manner let me know that he was a Cravath partner, and there was no hint of the camaraderie that we had shared the evening before. The barriers of status between us, which demanded deference, were his personal defense.

"There are a lot of dashed expectations," I said, fighting for my client.

"I know," he said. "But they made their decision."

It was over. I walked out of his offices, called the company, and spent the next few weeks helping them get started again. The compromises we made with the banks and the lenders while trying to

do the deal with IBM made it easier for the company to stay in business.

In the weeks that followed, John Hunt never offered an explanation. Despite his momentary embarrassment before me, his client fared well, for IBM was able to withdraw from the deal completely, without incurring any obligations. I first speculated that IBM's decision may have been a rejection of the technology and later came to believe that IBM was not prepared, at that time in its history, to be seen as needing to buy technology. In the end, their action in rejecting the Neotec deal was like the working of the black box itself, an enigma. I took away from the rejection the knowledge that no matter how powerful a lawyer may be, he cannot commit to deliver his client. The lawyer advises and the client decides.

Within two months I got another call from Cravath. This time it was from Richard Simmons, the partner in charge of representing Chemical Bank. The Russians were going to be buying heavy farm equipment in the United States, he told me, and they needed counsel for the transactions. Cravath had been asked to represent the Russians but had a conflict.

"We don't have a lot of experience in that area," I said.

"No one does," he said. "But the people that know you say that you and your firm would be perfect."

"I'll call you back," I said. "Let me clear it at the firm."

I told Lipton about it by phone. He said, "Let's talk."

I went to his office. A large, round conference table served as his desk. There were no papers in sight, for as soon as a matter arrived at his table, he took care of it. While the amount of work that he did was prodigious, he always worked with a clean desk, as if he had no work. To achieve that level of order, he was constantly on the phone or reviewing documents, always occupied, meticulous about all details.

He looked like he'd been born in a dark suit. His clothes closet, one of the young partners had once remarked, was probably one of the darkest places in Manhattan. A large man, heavysset, his bulk diminished you when you sat next to him, especially at the round table without corners to give a sense of physical separation. His thick-lens glasses hid his eyes. When he changed his reading glasses to talk to me, I momentarily saw his eyes, soft and warm.

“Are you busy?” he asked. He knew all the matters I was working on.

“Yes,” I said.

“Can you handle this?”

“Yes,” I said, satisfied that I could make the effort to fit it in, although it would be an effort.

“Are we doing them a favor?” he asked. I hesitated, knowing where the question was leading. It was a very shrewd question, raising issues of incursions on our independence, even if they were light-years away. He had worked at a small firm for an exceptionally able corporate lawyer, trained in a father-and-son relationship, and then had broken away to be independent. Once having started the firm—ten years before with only seven lawyers—he’d never taken favors, even when he could have used them.

“No,” I said. “They are doing us a favor.”

“We don’t know that, do we?” he asked, offering me a cookie, which I declined. He had a stack on his desk, which fueled his day.

Although he could be gruff, he tried to nurture young lawyers, and understood my need to be independent. Now he was being gentle and careful, letting me see the way he saw the matter, without being judgmental. I had been accepted as a partner in the firm, effective as of the first of the year, and there was no pressure on me to prove myself by taking more business.

“They think they’re doing us a favor,” I said.

“Do what you want,” he said.

“I’ll ask them,” I said.

“You don’t have to,” he said. “If you want to represent the Russians, go ahead.”

I had to decide whether I would be willing to do Cravath’s spill-over business. Lipton had given me complete freedom of choice, which was complete trust, and in that trust I found great confidence in myself. I was satisfied that taking one or two deals from Cravath was not corrupting, and we could turn them down if we felt it was necessary.

I went down to Cravath’s offices to see Richard Simmons, prepared to take on the matter. But when I sat down in the small chair opposite his desk, my position in his office gave me the immediate and unshakable sense of being a Cravath associate again, and I

changed my mind. I told him we were busy. If Cravath needed help, however, and wanted a favor from us, we were prepared to help them. Otherwise, we'd prefer not to take on the matter because of our heavy work load.

There was silence, for it was obviously a strange statement, made without forewarning. As a shy man presented forcefully with something he hadn't expected, he darted his eyes to look at me and then nervously looked down at his desk as he tried to understand the reason for what had turned out to be a confrontation.

"We thought we were doing you a favor," he said.

"I don't think we'll be able to take the matter, then," I said. "I appreciate your interest." I left his office. The conversation was so short, and my change of mind so abrupt, that I didn't have a chance to fully appreciate what I'd done.

I left him and walked down to the fifty-sixth floor, where there was a firm cashier available to cash personal checks, a convenience that Cravath provided to its employees. About three people were ahead of me on that Friday afternoon. Check cashing had been a Friday routine for me at Cravath. The cashier, whom I'd known for six years, was a small, wizened man who compulsively counted and recounted the cash before he handed it to you. On my turn, I pushed the check under the glass to him and waited while he examined the check and then began to count out the cash. Suddenly, he stopped. He'd recognized my name on the check. He looked up.

"Mr. Lederman," he said. "Good to see you."

"Same here," I said.

He gave me a shy smile. "All is forgiven. Please come back." It was a spontaneous statement of friendship.

I smiled. "It's over," I said. "I won't be coming back." My words were also spontaneous.

On saying that, I realized that in Richard Simmons's office I had finally freed myself of Cravath. It had been almost a year since I had left the firm, but it took that unexpected moment to make me understand. I'd declared myself a peer, whether or not they recognized it, not fully appreciating what I'd gained and how my practice would change.

Cravath called again, within three months, and this time it was for help in a takeover matter. Wachtell Lipton had started to

become recognized as expert in mergers and acquisitions. I went to a meeting on the new matter with Lipton, and afterward he asked me if the man that Cravath had sent was a partner in the firm. I told him he was. He seemed surprised and asked me why the firm had sent that man, since he seemed to know relatively little about mergers and acquisitions.

"It's his client," I said, telling him how Cravath worked, and seeing no fault in it.

"That's a funny way to run a law firm," he responded.

Wachtell Lipton was structured in accordance with the expertise of the partners. And seeing that contrast, I realized that the firm was uniquely set up to do deals. Not everything, however, about the structure was practical. The people in the firm were committed to being close and intimate, and as the merger boom came, the structure affected the number of matters the firm could take and how they were handled. The firm would ignore all advice about the necessity of growth. It would watch its competitors set up offices in multiple cities, merge with or acquire other law firms, and grow to upward of a thousand lawyers as Wachtell Lipton remained tightly knit, shunning the hierarchical corporate structure of other firms. Resisting change while being instruments of change for clients and others, everyone at the firm would be surprised at its success. To outsiders the firm looked eccentric in the path it had chosen. And George Katz could rightly say in wonder, "If we didn't exist, no one would believe we could exist."

THIRTEEN YEARS LATER, John Hunt closed the circle for me on the Neotec transaction. I met him by chance in the executive offices of Macmillan, Inc., when he'd stepped out of a conference room into the reception area to be alone with a client to discuss some nettlesome issue. I saw him through the glass doors to the reception area as I emerged from the elevator. I hadn't seen or talked to him in those thirteen years. As I opened the glass door, he finished with his client and turned in time to see me, giving me a warm, affectionate greeting.

We looked each other over for the changes that time brings. He

hadn't changed: we could have been meeting a few weeks after I'd left him at his office at Cravath.

"You here on this thing?" he asked, meaning: Was I involved in the restructuring of Macmillan?

"Yes," I said.

Macmillan was in the process of attempting to be divided into two companies—the publishing company and an information services company. In restructuring the company, the board would be declaring a dividend of approximately \$1.6 billion. John Hunt was representing the First Boston Corporation, which was making a loan of \$400 million for a portion of the dividend, and I was representing the board of directors, overseeing the corporate restructuring.

"What was the name of that company we worked on together?" he asked.

"Neotec," I said.

"That's right," he said. "Neotec." When he said the name, his memory of it seemed to come back to him.

"It's a good thing we didn't do that deal," he said.

"What makes you say that?"

"It wasn't a very good company." He scowled to reflect his view.

"The company was good. The financial structure got out of hand."

"It all turned out for the best," he said. "You got paid, right? And we got paid. So it ended well." Strange statement: it didn't end well. Why bother to tell me that in such an unconvincing way, almost making a parody of our effort?

"That's not the only reason why we do these deals, John." While pleasant, my words had an edge, correcting him firmly, the way I would do with a student, which didn't sit well with him.

"It's over," he said. Still the strong physical man, he illustrated his point with a quick chopping motion of his hand. But something was on his mind, bothersome enough to open the subject for discussion.

"What ever happened to the company?" he asked, loosening up.

"It survived. Rosenthal got it back on an even keel and left about three or four years later. The company was sold in 1980 and is no longer public.

Looking at me the way he did years earlier when he'd told me that IBM wasn't going to do the deal, he hesitated, as if debating with himself. As I watched him, his face became the mask of the poker player with an interesting hole card. All of mine were out, and knowing what I knew, he turned over in his mind what he knew.

"Do you know why IBM didn't do that deal?" he asked. It was an invitation, direct and satisfying, to share the secret, unlock the past.

"No," I said. I thought to myself: This is a man with a first-rate mind and a conscience. Whatever is bothering him, it has rankled him for all these years, and he's still embarrassed. His statement about our both being paid told me that.

Satisfied that I was properly receptive, he said, "IBM had recently been sued by a New England manufacturer for over \$200 million. It had to do with some purchases they made of display terminals. The suit had become bothersome. And of course the government antitrust litigation was demanding enormous resources. When I went up there to see Carey, he asked me only one thing: 'Will we be sued?' I told him yes, and he said, 'Let's not do it. It's not worth it to us.' And that was that. He didn't want another lawsuit."

His large shoulders shrugged as he turned away.

Every day helps to illuminate the days before. John Hunt had given me the lesson of Neotec. Carey was too remote: not being personally involved in the deal, he was able to act cavalierly. John confirmed what I knew: it never works if there's no emotional commitment. On my part, IBM's power deceived me. They weren't prepared to use it.