KEEPING PEACE

Experts have the assurance of ready answers and closed minds.

Stokely had tested the limits of leveraged buyouts by management, and its lesson didn't need renewal. So in 1985 when representatives of Multimedia, headquartered in Greenville, South Carolina, told me that they wanted to do a buyout, I recited all the difficulties to them in exhaustive detail. Countless times before I'd listed the obstacles. Rote telling had apparently made my rendition pale, and nothing I said discouraged them. I decided that more graphic details were needed, loss of job and station, the corporate equivalent of blood. Vigorously and with passion, I used my best material. Still, they stood their ground. What were they seeing?

The only situation that justified attempting a buyout, I told them, was the one in which management faced a hostile tender offer for control, and the company had to be sold. Buying the company in that situation was trying to save it. If the attempted purchase failed, management was no worse off. Trying the buyout at any other time was foolhardy. I avoided using stronger words, although I was tempted.

Wilson Wearn, chairman of the board, headed the management team, and he was accompanied by David Freeman, counsel to the company. They were a study in contrasts. Wilson, the older man, was thin and quick and decisive, while David Freeman was a large bearish man, slow-moving, as if every step and turn were thought through. Freeman, once his mind turned the matter over, was equally decisive. They were of one mind on these matters, having worked out all aspects before coming North to deal with strangers. Wilson Wearn was a thoughtful and proud man who had a vision for Multimedia: he wanted it to grow independently and remain in Greenville. Multimedia was a diversified communications company, operating largely in the Sun Belt. It published ten daily and twenty-nine nondaily newspapers, owned and operated television and radio stations, ran more than a hundred cable television franchises, and syndicated television programming, including the Phil Donahue show.

There was depth of management in the company and its prospects were excellent. Wilson Wearn and David Freeman feared that it would become, like many fine companies, a victim of the takeover frenzy. They didn't like my attitude because it was unexpected. I'd become an obstacle for them. Multimedia's circumstances were different from Stokely's, they told me. And the time was ripe for a buyout.

I explored the differences. Four families (the Peace, Jolley, Furman, and Sisk families from Greenville, South Carolina) owned about 42 percent of Multimedia's stock, a powerful block that excluded others from control. That was the principal point of departure from Stokely that made a strategic difference.

Would the families, I asked, be prepared to buy an additional 9 percent of the shares to get to 51 percent? The answer was that the families were sellers of stock and couldn't be expected to buy additional shares. What's more, the families didn't participate in the management of the business. They were a loose confederation at best, willing only to get together in a transaction like a buyout that would make their holdings liquid, expecting for all the families about $300 to $350 million from the deal. From that information, I concluded that the 42 percent block of stock was insufficient to exclude someone else from getting control. Nothing less than owning a majority assured control.

What about, they asked, using the corporation's money to buy back shares from the public if someone else attacked Multimedia before the buyout was completed?

That was a thoughtful question. If Multimedia repurchased about 16 percent of its outstanding shares, thereby reducing the outstanding number of shares, the families' ownership would increase to a majority. But the quick answer was that the approach wouldn't work. In a leveraged buyout transaction, the family members would be relegated, along with management, to the status of bidders. The corporation would be in the hands of independent directors appointed to evaluate all offers. If a competing bidder made a more favorable proposal, the independent directors would have to favor the better bid, irrespective of any sentiment toward the various founding families and the management. Corporate money wouldn't be permitted to purchase shares and defeat the competing bid.

There was, however, they told me, another element that favored a buyout. They were impatient with me now. Multimedia was a South Carolina corporation, and a merger required a two-thirds vote. The four families acting together held more than one-third of the shares and had a veto over any merger, putting them in a position that certainly barred others.

Again, I examined the assertion. The veto, while imposing-looking, worked only if the families were prepared to continue to hold their shares. If a raider bought a majority of the shares, then the families would lose their representation on the board. With no voice in corporate affairs, they'd find that the majority stockholder had cut the dividend, shutting off economic benefits, much like an embargo. Inevitably, the families would capitulate and sell. There was no effective veto.

Looked at realistically, I told them, announcing a leveraged buyout was attempting to bluff everyone into thinking that the families would buy additional shares up to 51 percent of Multimedia stock and would stick together. While 42 percent looked formidable, it wasn't much different from Bill Stokely's 20 percent interest. Knowledgeable advisers to a raider would see all the vulnerabilities.

For those advisers the only question would be whether the families were prepared to spend their own cash for additional shares, and they would test that proposition. If the raider worked at gathering intelligence, it would be able to pull enough information together to know that the families would collapse under pressure. Someone on the raider's side would know one or more members of the various families and there are no secrets. Even if the families were tight-lipped, after the first two probing moves in the game, all the other turns would be known. After the probing moves, family advisers would have to tell the family members not to wait for the embargo, subjecting their shares to substantial price discounts, and all defenses would collapse.

Was there any way to arrange the pieces in the game so that the positions would be better? The answer was no. The state of the art hadn't advanced since Stokely.

"What about the so-called poison pill?"

Martin Lipton had recently conceived and developed the "poison pill," which was a major and innovative advance in takeover defense. The pill worked by giving shareholders a right to buy shares at half price in the event of hostile purchases of the target's stock, a right that the raider couldn't acquire. It was novel at the time, and controversial. Only at the end of 1985 did the Delaware Supreme Court validate the defense technique in a case involving Household International. But Multimedia's objectives, a buyout of the public, rendered the device unavailable to it and the management.

Just when I thought I'd discouraged them, they turned the question around on me. Was there anything to be gained by announcing a buyout?

It depended, as always, on what you wanted. For the family members who weren't involved in the management, the buyout offered enticing opportunities. If the buyout was successful the families would wind up owning approximately one-third of the outstanding shares (while pulling out of the company approximately $350 million). That result would be achieved by setting up a new company in which they would take their desired ownership position, while selling their Multimedia shares, along with the public, to that company. If a higher offer was made by a third party, they could cash out their entire stock position at a price in excess of the buyout price, perhaps $400 million or more. Announcing a buyout was an invitation to an auction, with the families prospering in all events. But for the management, it was a significant risk. Winning, management would acquire a hefty stock position of 15 to 20 percent with job security equivalent to tenure. Losing, they would be replaced. Losing was more likely than winning.

What management currently faced, however, was immediate erosion of control, they told me. Various family members were looking to sell their stock. As their aggregate interests fell below 40 percent, the illusion of control would disappear. And it wouldn't be long before the sales of stock reduced ownership to less than one-third. Selling shares couldn't be contained, because everyone needed some cash. Once anyone got a good price, others would be induced to sell, and there would be no stopping the flow. Control would be lost in a year or two at the most. This situation was the direct opposite of Stokely's. From that perspective, the risks associated with a buyout weren't great. Indeed, they knew what they were doing and brought me around.

Shortly after our meeting and before everyone was fully prepared, the volume of stock buying in Multimedia increased sharply on rising prices, which indicated a possible leak of the proposed buyout. I counseled prompt action, and on the first morning of active speculation, I tried to get the company to close down stock trading. But the company wouldn't act without talking to Dot Ramsaur, a member of the Peace family, who spoke for all the founding families. Southern sensibility was at work. Good manners, I was told, required prior notification to Dot before any action, regardless of the exigencies. And then, to my dismay, no one would call Dot before 3 p.m. My arguments for an earlier call were ignored in favor of the human dimension, the scope of which I couldn't fathom. My Southern gothic musings were ended when I was told that Dot suffered from back problems, which gave her sleepless nights and made her a late riser. Only late in the day, after the market closed, did they speak to Dot and get her approval. For the first time I had an intimation that Wilson Wearn and David Freeman were only a part of the leadership team.

Three years after Stokely, in mid-1985, Multimedia announced its leveraged buyout, with the price eerily like Stokely's, about $55 a share, part cash and part subordinated debt, now widely known as junk bonds. But I didn't bother myself about reminders of failed deals. If there was to be a confrontation with a competing bidder, it would happen soon enough. The antagonist would wait until the buyout price had been found to be fair by the independent directors. Knowing that an ambush was likely didn't make the preparatory work easy, but I lived with my misgivings.

After the announcement, I was invited to Greenville to meet with Dot Ramsaur and members of the founding families at Dot Ramsaur's home. The meeting, of course, would be late in the afternoon. I didn't know what to expect. A few years before, a lawyer in Columbia, South Carolina, had driven me into the countryside surrounding Columbia to show me the foundation of an old mansion belonging to his family that had been burned by General Sherman on his march to the sea in 1865.

"That's what you Yankees did to us," he said. "My family's never been the same." I had to explain to him that although I might seem to him to be a representative New Yorker, I couldn't take even remote responsibility for his family's woes since I was a first-generation American. But for him, I was still a Yankee.

What I found in Greenville was that the considerable wealth of the families was largely locked up in Multimedia. Dot's house was a modest brick colonial, much like you would find in suburban New Jersey. The living room was barely large enough to accommodate representatives of the Peace family (by far the largest stockholders), which produced about thirty people. Dining-room chairs had been brought into the living room and set up in rows to give everyone a seat, and I at first had a sense of being present at an old-fashioned Tupperware party, and then at a makeshift adult education class. Dot Ramsaur was the instructor and I was a guest speaker. She ran a disciplined meeting. People raised their hands when they had questions and wanted to be recognized, and the young people deferred to their elders. They asked me to go over the timing of the transaction and the risks. There was no doubt that they wanted to unlock the treasure from the company, especially to alleviate pressure from the young people. Dot Ramsaur was gentle and kind and shrewd, wanting to take care of everyone's needs, which the money would do. After the meeting we went into the library for tea and pimento cheese sandwiches on thin, crust-free white bread. I felt a long way from home, but was treated like family. Dot, I found out later, had community concerns and interests. Contemplating a successful deal, she would make arrangements with Betty Stall (another Peace family leader), all with David Freeman's help, to assess the Peace family members for a substantial contribution toward a performing arts center in downtown Greenville across the street from Multimedia's offices.

Soon after the family meeting, the committee of independent Multimedia directors approved the $55 bid. Within days, William Simon, timing his actions perfectly, thereafter made a bid for Multimedia on behalf of his company, Wesray, at $60 a share. Wesray, formed to do leveraged deals, had experienced great success in the buyout of Gibson Greeting Cards in 1982. Gibson had been purchased by Wesray from RCA in a leveraged buyout for about $80 million. Only eighteen months later, Wesray sold Gibson in a public offering of its stock for about $290 million. That quick turnover and remarkable gain got Wesray a lot of backers. Drexel Burnham would be acting as Wesray's banker and would finance the Multimedia takeover. As Simon intended, Wesray's bid halted all progress on management's buyout. But even before management could put pen to paper to see if they could raise their price, Lorimar Pictures made a copycat proposal, duplicating Wesray's offer in all respects except the per share price: Lorimar upped it to $62. Both bids were invitations to the independent Multimedia directors to negotiate. Lorimar said that it too would be backed by Drexel Burnham.

None of us had ever seen competing bidders backed by the same investment banker. Why were they stepping all over each other? Bill Simon belatedly met with us and attempted to explain. Drexel would act for anyone making a deal with Multimedia. Wesray was prepared to acquire Multimedia only on a friendly, negotiated basis. Drexel had its doubts about whether Wesray would be able to convince management to do such a transaction. Lorimar, on the other hand, had told Drexel that, if necessary, it would make a hostile tender offer. Simon smiled broadly and said that with management's cooperation he could negotiate a better deal than Lorimar could offer. He made Lorimar the common enemy, and before our eyes repositioned himself as a White Knight. He seemed to have forgotten that he'd initiated the hostile takeover bidding.

What we'd seen exposed, as if the lights in the theater had been turned on too soon, was the raw machinery of Michael Milken's business. As head of Drexel Burnham's junk-bond operation, he was the force behind the firm. Not until 1984 had Milken sought to finance mergers with his junk bonds. Subordinated debt had been used in the early leveraged buyouts, the source for such financing being insurance companies. Once Milken turned to financing mergers, he displaced the insurance companies as direct suppliers of the debt and they ultimately began buying the bonds from Milken, leaving him to originate the loans. This bid for Multimedia was early for Milken in the merger field, and while he was very formidable, all his deftness hadn't yet been developed. Before mergers, he'd furnish capital to ventures that couldn't raise money from banks or in the public debt markets where the bonds most readily bought were usually investment grade, rated as such by rating agencies like Moody's or Standard & Poor's. Working with small companies, Milken had developed a loyal following and a network of savings and loan and insurance companies and managers of pension funds and investment companies as well as other institutions investing money. Their attraction was to the high yields on the bonds and the conviction that the yields more than compensated for the risk of default.

Calling the debt instruments that Milken dealt in "junk" was no accident. He preferred calling them "high yield" securities, but junk (if not garbage) they were because most of the securities industry disdained dealing in weak securities from third-rate companies. Drexel Burnham was a third-tier investment banking firm, without clout. The firm entered the marketplace by functioning where it could, shouldered out of better opportunities by stronger competitors like Goldman Sachs, Morgan Stanley, First Boston, and Salomon Brothers. The debt instruments of once strong companies that had fallen on hard times were known as "fallen angels" and then just "junk." In that marketplace for junk bonds, largely without competition, Milken made Drexel Burnham the major player and then lifted it into the first rank of investment banks.

Milken was a man in the service of an idea: that junk was gold because a balanced portfolio of junk bonds yielded better returns over time than any other debt. He had a book which stated that conclusion, *Corporate Bond Quality and Investor Experience* by the economist W. Braddak Hickman, an analysis of all U.S. bonds issued from 1900 to 1943. Junk in Milken's hands became special, accumulating new meaning from his commitment, as he extended the boundaries of the term "junk" to include subordinated debt of good companies.

Milken was able to cultivate interest in the junk debt because savings and loan companies were competing with banks and money market mutual funds to capture deposits based on the interest rates they offered. The savings industry and the insurance industry had become highly competitive, and high-yield junk bonds helped aggressive savings institutions offer attractive yields to their customers and enabled insurance companies to offer favorably priced insurance products to theirs. Once these savings institutions and insurance companies found junk debt as a way to get a competitive edge, they became "junkies," needing high-yield securities to stay in business. The need Milken created gave him substantial power. But despite a large network of institutions committed to these high-yield securities, Milken and Drexel Burnham were outsiders, without the clients necessary to participate in the merger market. Their corporate clients didn't fit the profile of target companies and were not capable of acquiring large companies. Milken sought, and found, entrepreneurs who had some success in making acquisitions, such as T. Boone Pickens, who in 1984 made a bid to acquire Gulf Corp.; Nelson Pelz, who acquired National Can; Ronald Perelman, who took over Revlon; and William Farley, who outbid Don Kelly for Northwest Industries. For target companies, Milken often looked to those that were in the process of doing a transaction, such as Multimedia. What Milken was doing was selling companies he'd never seen because he could arrange financing from institutions. By placing junk bonds he could get as fees for his firm as much as 6 percent of the principal amount of the bonds plus a portion of the equity of the company being acquired. Also, he could demand and get the merger advisory fees paid to investment banking firms. The upstart Milken had positioned himself so that he didn't need large corporate clients, and the merger market had become his playground, like the various oceans for freebooters of an earlier time. After 1984, few takeover transactions did not involve Milken in some direct or indirect way.

His presence was so potent, and the fear he engendered in the corporate community so real, that Martin Lipton chose not to represent him (leaving that to Joe Flom of Skadden Arps and a host of other takeover firms). Opposing Milken positioned Wachtell Lipton as primarily a defense firm. The choice was not a necessary one. Skadden Arps flourished representing both sides. But limiting representation to target companies was a choice that Goldman Sachs had made years earlier, and it had proved very profitable for them, expanding their defense business. The early decision of Lipton to say that the firm would not join with Skadden Arps in raids (remaining available for the corporate target) had also proved very successful and encouraged Lipton to reject Milken and his firm as clients. When the poison pill defense was developed by Lipton and validated by the courts at the end of 1985, just about the time Milken had become a factor in the marketplace, Wachtell Lipton's place as the premier defense firm was assured.

We now had our Multimedia board game set up with all the players positioned and the anticipated problems ready for confrontation. If the families and management didn't come forward with a better price than Lorimar, the independent directors would be obligated to negotiate with the high bidder. Even if the families stated that they weren't prepared to sell their shares and refused to negotiate with either bidder, that stated position would induce a hostile tender offer. If Lorimar announced a tender, in my view all family resistance would collapse. The only thing that hadn't been foreseen was the names of the contestants.

We called a meeting at our firm to work out a counterstrategy. Wilson Wearn, David Freeman, and members of management came to our offices for the session. For them the higher bids were storm warnings, signs of impending disaster. They were looking to navigate through this dirty weather. To me the situation was one in which there was no chance of winning. The course they should follow was to sell the company. Attempting to defeat higher bids through litigation or other tactics would only waste precious time.

The Greenville contingent complained about the structure of the transaction and not our imminent failure. On their minds was criticism of friends in Greenville shut out from participating in the leveraged buyout. Multimedia had started in Greenville, and there was a significant shareholder population locally. What management and the families had heard at home was that there was no reason for the four families to get a different deal, and a better one besides. Everyone should be treated equally. Why did they have to sell out to the families and a group of New York investors? Various family members had pooled their information and found that the local stockholders had been uniformly harsh and insistent in their condemnation.

For me this criticism was totally irrelevant. It was elementary to me that the leveraged buyout structure couldn't accommodate friends and friends of friends. The purpose of the transaction was to cash out all the public stockholders. Then the risks of high leverage would be borne by a small group of sophisticated investors. But somehow the Greenville group seemed to think that the buyout could go forward despite the bids from Wesray and Lorimar. That was where the failure of communication lay. Although I didn't want to explain the limits of the buyout structure, I would have to do just that. We were so far apart in our thinking that it would take a full day to explain the difficulties we faced. Had I gone wrong at the first meeting? Hadn't I described precisely this impasse when I told them about all the risks? Higher bids always win. Why did they want to tinker with the structure when it couldn't work?

Everyone took coffee and Danish from the sideboard, and fueled with refreshments, they ignored my consternation. They wanted me to listen to them. The outcry of their friends had been enough of a reproach to deeply affect them and the families. They all had to have a chance to express themselves. Only when they had fully vented their concerns would we be able to get back to the real issue: a $55 bid wouldn't be able to defeat a $62 tender offer. The committee of independent directors would take the sale of Multimedia away from the families and sell it to the highest bidder.

I listened—nodding politely, annoyed at our cross-purposes. Wilson Wearn and David Freeman thought that they were addressing my problem—that $55 was not as good as $62. People in

Greenville don't care, they told me. They would take $55 if they could also reinvest in Multimedia like the families. I knew that the simple and irrefutable answer was: "They can't." The leveraged buyout structure was as tight and as demanding as a sonnet. There was a strict limit to the number of investors in the same way that there was a set number of lines in a sonnet. If you changed it, you had something else. I was short with them, filled with the ardor of my own expertise. Experts have the assurance of ready answers and closed minds.

They didn't care if they changed the form. "Leveraged buyout" was a Wall Street term. I could hear Dot Ramsaur saying that. My off-the-rack answer was that everybody in Greenville couldn't be satisfied. Otherwise, there wouldn't be a buyout. The essence of the transaction was the people would be bought out. The incontrovertible truth of the proposition was right in the name—"leveraged buyout."

Taking a new tack in a further effort to be convincing, I reassessed the shareholder base for them. What percentage of the Multimedia stock do you think is held in Greenville by people other than the founding families? About 15 percent, I was told, in the hands of about a hundred or more people. With the founders' 42 percent, another 15 percent was a very hefty percentage—enough to block a tender offer, but not sufficient to buy out the rest of the company. For that, a two-thirds vote was required, and the directors would never approve a $55 price against a $62 bid, whether or not offered by a majority of the shares. At best, even with an additional hundred or more friends recruited in Greenville to join the families, we'd be stymied without a chance for a payout. The families wanted liquidity, and for them, $350 million in cash was part of the buyout package. Without the possibility of getting the cash, the families (and their friends) would sell to Bill Simon at $62.

I'd restated the problem and had come up with the same answer, like footing a column of figures from the bottom up rather than the top down. At least I'd proved the point to myself.

They asked: Why couldn't the public be offered the same thing as the family, $55 per share and a chance to invest, say, $10 of that amount for a share in the leveraged buyout company. They were back to the same question. They wanted me to go through the complexities and legal impediments to prove that it couldn't be done.

Fred Eckert of Goldman Sachs joined us then. He had been orchestrating the deal and was an experienced banker. They asked him the same question. He turned to me and asked: "Why not?" He was never put off by complexity and saw that we had a losing position. Against taking a loss, he wanted another approach. "Suppose we offered the public the same deal as the family," he said, reframing it as a statement.

I shook my head. "If I took you through all the steps, you'd see that it isn't worth trying." And then I had another idea, which arose out of the pressure of the situation. "You could give shareholders a dividend of $45 and let them keep their shares," I said.

"Can we do that?" everyone asked. I had a very attentive and interested group. What would the shares be worth, they wanted to know, after all the shareholders were given $45? Fred Eckert understood and articulated the answer immediately: "Whatever the company was worth after it had incurred the debt to make the payment." If shareholders were given $45 as a dividend on each share and the company was worth $55 per share, then each share was worth $10. Logic didn't require that the analysis stop at that point, and Fred spelled it out further. "If someone was prepared to pay $62 a share, and if the shareholders were given $45 in cash, then the share should be worth $17. And if someone wanted to pay $65, then the share should be worth $20."

The question was whether the shareholders would prefer to take $45 a share from Multimedia and keep their shares, maintaining their relative ownership interest in a highly leveraged company, or take an all-cash deal from a third party. We would be leveraging Multimedia, but the company would continue to trade publicly. We were, in effect, turning the leveraged buyout vehicle inside out. In that meeting, prepared to resign, we'd found a winning strategy. It was only then that we realized that we were on to a new structure. It had to be called something other than a "public leveraged buyout." We chose to call it a "recapitalization" to get away from any hint of a buyout. Naming what we'd done made it different from a mere idea; it gave it substance. Finally, the newness of the form didn't bother me, if it would defeat Wesray and Lorimar.

In the recapitalization structure the company wasn't being sold. On the contrary, it was being mortgaged. We could tell the independent directors that all shareholders would participate on the same terms, including the families. The shares (which we referred to as the stubs because their value had been significantly reduced by the dividend) would continue to be publicly traded. Highly leveraged, the Multimedia stock would find its own trading value. There was no limit to what it would trade at. It could sell at $10 a share or $17 a share or $20 a share or more. What was strongly in our favor was Bill Simon and Lorimar tripping over each other to buy Multimedia. Who knew what Multimedia could be worth? Most telling was Bill Simon's desire to buy Multimedia, for he was known for uncovering hidden treasure. The stories of the successes of leveraged buyout entrepreneurs had probably made the public ready for leveraged equity.

Fred Eckert endorsed the approach as financeable with the banks. His assessment was that the public would favor the deal over Simon's or Lorimar's offer. No one thought of the new form as a radical innovation, only as a necessary tactic. Everyone liked the idea that the company was no longer for sale. That turn of events would check, if not cripple, all buyout proposals for Multimedia.

And as anticipated, the new approach frustrated Lorimar and Wesray. For them, there was no attractive or foreseeable route to victory. Cohesive holders of shares now blocked their approach. So confronted, Bill Simon and Lorimar withdrew.

Before victory could be toasted, yet another bid was made, this time by Jack Kent Cooke, owner of the Washington Redskins. First, in the wake of Simon's and Lorimar's withdrawal, he'd bought about 10 percent of Multimedia's stock in the market, showing seriousness of purpose and committed capital. Then he offered the directors and the shareholders $65 a share for the company. Where had he come from? What was the source of his interest? All the questions were answered when we learned that his banker was Drexel Burnham. Milken was a banker in search of a client. Each time one lost heart, he found another more intent than the last on acquiring the company. For Milken, money was no object. With him behind the bidders, the price could be raised again.

While Milken attacked on the basis of price, Jack Kent Cooke, advised by Milton Gould, the senior partner of the law firm of Shea & Gould, determined to attack the underpinnings of our defense. Their assessment was that the only way that a $45 dividend could be sustained against a $65 bid was the coercive decision of the founders not to put their shares up for sale. Cooke, advised by Milton Gould, brought an action in the state court in Greenville, South Carolina, charging the families with breach of fiduciary duty and improperly using their dominant stock position to thwart more favorable bids.

Milton Gould's legal theory, which had merit, was that once the families offered to buy the company and set a fair price, they couldn't back off when someone offered a higher price. There are numerous situations in the law where there is no duty at the outset, but if a task is undertaken it must be completed. Here was one of those cases, Milton argued. No one could have asked the families to sell initially, but now they had to sell their shares to the highest bidder.

There was also an appealing public relations aspect to the attack. Milton Gould contended that the families had wanted Multimedia solely for themselves at an absurdly low price. Now suddenly it wasn't for sale and they were blocking a stellar price. Either it was their game or no game. The families looked entrenched and infinitely greedy. Milton Gould could call up the spirit of American fair play, exposing the families as selfish and domineering. If anybody could dramatize that theme it was Milton Gould. He was a great trial lawyer, one whose talent had matured and flowered over the years. At seventy-five he was still fully active. His most recent notable trial victory was the winning of a major libel case on behalf of Ariel Sharon against Time Inc. Passionate and vital, he could make any courtroom come alive, and arguing a case in a South Carolina country courtroom was to his advantage, although he was a big-city lawyer. Milton had striking ivory-white hair and the ragged cragginess of men who have spent their lives seeking justice, reminiscent of Clarence Darrow. He commanded unbounded respect, which absolved him of his urbanity.

Milton's adversary was my partner, Bernie Nussbaum. Also a trial lawyer of great experience, Bernie knew that he had the tougher side of the case, especially with Milton as his opponent. And without doubt he'd be taken for the New York lawyer in the courtroom. Bernie had a cherubic face and a balding head with tufts of curly gray hair, much like a friar's, which he kept closely cropped. He exuded warmth and was charming, but his speech and suits and clipped, precise style would all say "big city." Bernie had on his side that he was representing the local establishment. But often that is resented, looked on as an aspersion on indigenous talent, and is expressed as: Why did Multimedia go to New York to get a lawyer? What also made his case hard was its complexity. It had changed from a leveraged buyout to a new form, only recently labeled by us as a recapitalization. In New York the judges would probably understand it, but this case was going to be argued in a small-town courthouse where such matters were never heard. He had to distill out all the perplexing elements and reduce them to a simple theme that a country judge could understand. The more he explained, the greater the likelihood of offending all the locals, including the judge.

The process of arguing involves taking the opportunity to educate the court. And there is never much time. There would be an hour for opening argument, then the presentation of one or two witnesses by both sides, and finally short closing arguments. The case would be fully presented for decision in one day. Unfortunately, in mid-1985, financial technology had advanced beyond common understanding.

And if all that wasn't hard enough on Bernie, I'd made arrangements with arbitrageurs to enhance the chances of approval of the new recapitalization plan. Only once before had such arrangements been attempted, on behalf of Cooper Industries, and Stanley Sporkin had managed to strike them down. But Stanley had left the SEC, and the SEC under Ronald Reagan, despite memory of past matters, was no longer actively interfering with ongoing transactions (except for insider trading), leaving the challenges to the parties and the courts. I'd overcome my reluctance to make arrangements with arbitrageurs because no one on our side was certain that we'd be able to withstand a tender offer at $65 or more. We wanted to have at least another 8 to 10 percent of the outstanding shares tied up and committed to the recapitalization transaction. The means we used was to contract to sell shares in Multimedia at $10 a share after the recapitalization to about seven arbitrageurs. The agreements bound the arbitrageurs to buy the shares and to vote for the transaction so long as there was no bid by Jack Kent Cooke over $70 a share. We picked $70 because we thought that he wouldn't bid above that amount. The arrangements were then publicly disclosed.

Bernie, of course, wasn't happy with the agreements, for they gave Milton further evidence to show how the deal had been wired together against the interests of the public stockholders. Bernie had been served with Milton Gould's trial brief just as he got on the plane to Greenville, South Carolina, the evening before the trial. He intended to read it on the plane and make responsive revisions to his argument during the flight and in the hotel room. There would be no time in the morning for preparation. On the plane Milton Gould and his assistant, also in transit to the courtroom, were sitting across the aisle from Bernie. Milton was reading a novel and enjoying himself. Nothing in his demeanor indicated that there was a demanding trial about to take place. His apparent absorption in the book was complete, and he had the kind of carefree attitude of a man on the way to watch his college football team, as if he were going to be a spectator judging the performances.

Milton and Bernie acknowledged each other and exchanged warm pleasantries across the aisle. Bernie, a compulsive man, wanted more than anything to be able to open up Milton's papers and go through them with care. But with Milton sitting there relaxed, reading his novel, Bernie reached into the pocket of the seat in front of him and took out the airline magazine. He wasn't going to show Milton that he was still in the process of preparation or let an unguarded moment on the plane indicate to Milton how difficult the issues were for him. All through the flight he thumbed and rethumbed the magazine, left finally to reading the advertisements for the distraction they offered. Only after the flight, in the privacy of his hotel room, did Bernie begin his final preparation and fully develop his theme at an hour much later than he would have liked.

The courtroom was packed and many of the family members came to hear the argument, seeking some vindication. Milton Gould had the benefit of being the first to speak at opening argument and the last to speak at closing argument. Bernie was sandwiched in between. Milton masterfully wrung out the spirit of unfairness that he saw as inherent in the families' actions. Like a surgeon, he used his words incisively to peel away what he considered cant, and he pointed out what he regarded as the meanspiritedness of what the family was trying to accomplish.

On Bernie's turn, you could see all the effort that he'd put into trying to make complex ideas simple. "Your honor," he said. "A man has a house, which he discovers is worth a lot more than he paid for it." Bernie paused to let everyone know that this was going to be homespun, radiating a warm smile that rarely failed to charm. The judge nodded for him to proceed, not acknowledging the blandishment. "The man goes to the bank and asks them how much they would let him borrow on the house, and they tell him that even though he paid, let's say, $25,000 and has a mortgage on the house for $15,000, they'd lend him another $85,000, your honor. The bank thinks that the house is worth $125,000 in this market. And so, your honor, the man borrows against the house and puts an additional mortgage on it. Now that's not a sale, your honor. He's still going to live in the house. He's still going to take care of it. All he did was borrow money against it. He can use the money any way he likes. The bank is not telling him what to do with the money."

Bernie paused and walked to the side of the room, letting everyone digest his story and apply it. "Brokers may come around and say, 'Gosh, we could get you more for the house. Let us put it on the market and let's see what we could get.' Probably $125,000 is a low figure. But if he sells the house, your honor, he can't live in it. And more importantly, if that house is going to become more valuable over time, he can't get the growth in the value the property may experience if he sells it. That's our case, your honor. This is a mortgage case, not a sale case. What's all the fuss about? The fact that we thought about selling the house doesn't matter. We didn't sell it, your honor. We went back to the banks and said, 'We're not selling. We want to mortgage it.' "

Bernie went over his theme, waiting for the court to nod and nod again. The court nodded for his benefit, giving him every assurance of understanding. And then Bernie switched themes. "What kind of offer is Mr. Cooke making, your honor? He's asking us to interrupt our stockholders' meeting and consider his offer. He's not making a tender offer to the shareholders. He's not taking his case to the marketplace. He's playing a public relations game, your honor. There's always time to consider his offer after the shareholders have had a chance to decide whether they want to mortgage Multimedia. If they want to mortgage it, that's what we'll do. If they reject our mortgage proposal, then there's time enough to consider Mr. Cooke's offer. If Mr. Cooke wants immediate attention, he should make a tender offer. He knows that at $65 the shareholders are not interested in selling and that's why he's in court, your honor. But how can the shareholders be ordered to sell to him? All the court can do is make sure everybody has a fair hearing. If Mr. Cooke wants a hearing in the marketplace, let him make a tender offer."

Milton, of course, had a chance to deal with Bernie's obfuscation, and he pressed his points, getting the nods from the judge. He too was assured that he was fully understood. After closing argument the judge reserved the right to decide and indicated that he would have an opinion in a day or two on this matter. The parties would be called into court when the opinion was ready for the court to read it to them.

True to his word, the judge decided the case promptly. To our good fortune, he decided in favor of the founding families. Reading the opinion afterward, I felt that the court chided us, the lawyers, on too simplistic a presentation. The opinion begins with two critical words, "Simply stated," and the court, in two sentences, neatly lays out the issues in all their complexity with more precision than we did in our briefs.

The court found bedrock law in the proposition that no shareholder need be required to sell his shares. Even if they had put the company up for sale, the founding families couldn't be forced to sell their shares if they didn't want to do so. They could change their minds even if the implication of their actions was to put their shares up for sale. That was a proposition without exception in the law, and the court adhered to it. The court, however, said that Jack Kent Cooke was free to address all the other shareholders by making a tender offer. The court indicated that it was up to Jack Kent Cooke to find the price at which everyone would sell, and it wasn't the court's role to require sales or influence the market.

The joy of victory was relatively brief. With the kind of energy and intensity that only the fully committed can command, Jack Kent Cooke made a tender offer at $70.01 per share. Having exceeded $70, he freed up all the arbitrageurs bound by contracts to favor the recapitalization and picked a price that was higher than any price thought achievable. With Mike Milken in his corner, he was formidable. We were in a situation reminiscent of the Stokely–Van Camp buyout. This time, however, there was no Quaker Oats or its equivalent to act as a White Knight.

It was an interesting situation: on the one hand, Jack Kent Cooke was offering $70.01 a share, and on the other, Multimedia was offering $45 and a chance to retain your stock certificates. Was each stock certificate now worth $25? The stock had stretched from $10, but was it infinitely stretchable or did all the elasticity snap by $25. What we knew was that the families were still committed with their 42 percent, but they weren't truly economic players. The $45 a share would give them as much liquidity as they wanted (an aggregate of $350 million) and they would continue to control Multimedia. The swing vote was the arbitrageurs and the coterie of people in Greenville who had earlier indicated that they wanted to be in the same position as the families. No one knew what they would now do.

A tender offer takes twenty business days to close, and opinions can change and so can the marketplace during the course of the period. The outcome wouldn't be known until it was all over. We called all the arbitrageurs, but no assurance from them would be final. They would all act in their own economic interest as they saw it in the last minute. At the outset, some arbitrageurs said that they favored the family recapitalization, which put pressure on Jack Kent Cooke to raise again. With Mike Milken behind him, they thought that they could extract more money. Cooke wisely indicated that he'd gone as far as he could go, or would go. Then the pressure turned back on Multimedia. Was there more money that could be distributed to the shareholders? Why limit the payment to $45? In this kind of give-and-take it was very difficult to determine where everything would come to rest. A fulcrum point had been reached, and the outcome could swing either way.

The legal case between Jack Kent Cooke and Multimedia continued on other grounds. Each side took the other's depositions, like boxers sparring, as if they would mix it up again in court. At one of those depositions it was suggested by a lawyer for the Cooke team that perhaps the parties should talk. That was the kind of signal that couldn't be ignored, and we all met to see how to proceed.

Looking at the situation from the perspective of Cooke's signal, it looked as though he was worried and would be prepared to be bought out. Buying him out would end the tender offer. With Cooke out of the way, the family recapitalization could go forward without mishap and the shareholders, offered no alternative, would vote for it. Although buying out Cooke was desirable, we didn't have access to the corporate treasury. It seemed unlikely that the committee of independent directors or its counsel would approve a buyout that looked like a raw form of greenmail and eliminated the shareholders' option of choosing the $70 cash tender offer. Whether it was unlikely or not, we had to ask the question, and I called Morris Kramer at Skadden Arps, who was representing the committee. I called him while everybody in the room waited. Morris listened and expressed his sympathy and told me that he would have to recommend against a buyout of the shares. No cash was available.

"What if we offered Cooke $60 to $70 cash per share, payable on closing of the recapitalization?" I asked the group. In that deal, Cooke would withdraw his tender offer and wait for the recapitalization to be approved. It would take about sixty days for him to get paid.

"That's not cash," everyone said. "It won't work."

"We don't know that it won't work," I said.

"In the same way you knew that the committee wouldn't give us the money, you can know that this won't work."

"It depends on Jack Kent Cooke's assessment of the situation," I said.

"He's not getting anything out of waiting."

"He has a chance of losing if he continues his tender," I said.

"Losing is not so bad. He gets $45 and a share of stock."

"That's not what he wants," I said. "That's why he put out the signal to talk. He probably wants $70 a share."

"Are we prepared to give him $70 a share?" someone asked.

"Let's start at $65," someone else said.

"There's no point in negotiating if he wants cash," someone else said.

"We could agree to indemnify Cooke if he waits for shareholder approval," I said. "There's bound to be legal actions by some Multimedia shareholders to force him to disgorge his profits. Greenmail is not favored by the courts. An indemnity could be attractive to him."

Everyone felt that an indemnity would be appealing to him and it was agreed that we ought to find out what he had on his mind. It was thought best that I call Milton Gould, since the inquiry had come from Gould's firm.

Milton Gould was waiting for my call, and he promptly told me, without hesitancy, that his client was a seller at the right price. I started at $62 a share, and there was an offended grunt at the other end of the line.

"Sixty-five," I said, and added, "The Multimedia stock is trading at $62 despite your tender at $70."

"There's a premium there," he acknowledged, "but it's not enough. Look," he said, "we're buyers at $70 and a penny, and we're sellers at $70. You can forget the penny."

"I may be able to go that far," I said, "but the terms have to be right."

"Cash," he said.

"Cash at the closing of the recapitalization," I said.

"That's not cash," he answered. His response was prompt. He'd anticipated the exchange.

"You want cash immediately?" I asked, expressing my disbelief, as if that would change his position.

"That's what cash is," he said firmly, his voice sharp enough to dispel further pretense.

"I'd have to check with my client," I said. "I'm not sure we would do that. In any event, we wouldn't give any indemnity."

"We need that," he said.

"Only if the shareholders approve the transaction, including the purchase of your shares. Then it's clean. Otherwise, it's your risk."

"I have to talk to my client," he said. He knew he'd heard all I had to say.

"I understand," I said. "Get back to me when you can."

"I'll call you after lunch," he said.

After the conversation, I felt exposed, for there was no doubt that he understood everything, including the tenuousness of our position. He knew that we didn't have the money, and he understood full well that we were afraid that he'd win if he persisted in the tender offer. The settlement discussions had shown us in our underwear. When he hung up, he could take all the time he wanted, analyze the positions and options, reassessing his interest in doing the deal. Interestingly, he'd given relatively little away in the conversation. He was prepared to buy or sell. In our conversation, he was a seller, but he could very well change his mind.

Settlement discussions offer the opportunity to talk to the other side and canvass their strengths, and the result may not favor settlement. Starting out, I felt that there was nothing to lose, but now I saw that we could have eroded our position. I reported my conversation to the group, and everybody began to speculate on what Jack Kent Cooke would do. How solid was our position? Speculation about our weaknesses occupied us until we were depressed.

In midafternoon Milton called back, his voice gruff and curt. "We'll do it," he said. "We'll take $70 cash per share at the closing of the recap and we get indemnified."

"Agreed," I said. From his voice I couldn't tell whether he was satisfied or dissatisfied with the result, and I couldn't ask.

What made him do it? Again it's speculative. But I always assumed that Jack Kent Cooke wanted Multimedia; otherwise he wouldn't have fought as hard as he did. Selling out under those terms meant that he saw the family and the arbitrageurs holding firm and thought he couldn't win.

And with that we created and completed the first recapitalization. In all these corporate machinations, were the shareholders overlooked? How well did they fare? To our amazement, within a short time the stub stock went over $25 a share and continued its upward rise. Within a year the stub was trading at over $45 a share. The technique of recapitalization, created out of necessity to achieve Multimedia's objectives, was immediately duplicated in other major transactions. That kind of success bred more deals—more leveraged deals.

Multimedia, having successfully recapitalized, emerged with its management and shareholders unified, committed to pursue an independent course. Aware of the difficulties of fending off a raider, management adopted carefully thought-out long-range plans fortifying the course of independence. Given Multimedia's unique situation, its defenses continue to be state of the art. In addition, the South Carolina legislature, shortly after the recapitalization, adopted strong anti-takeover legislation, designed to protect native businesses from takeovers.