TAKEOVER ENTREPRENEUR

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"Pressure is often more effective than reason."

I was looking at Thomas Mellon Evans in repose. A rare moment. Dozing in the aisle seat opposite mine, he was on his corporate Gulf Stream jet flying to St. Louis for a board meeting of the Missouri Portland Cement Company. His sleep was untroubled, the kind that you would expect from someone without guile. He looked like Santa Claus in a well-tailored blue suit, his pleasant moon face resting on a small, round body.

Appearance belied reality. Awake, he was restless and mercurial, often scowling, engaged in projects that made him too busy on some days to get a haircut, and willing to eat sawdust-tasting sandwiches on his plane in order to pack two days of work into one. On that August 1976 trip to St. Louis he was sixty-seven, and one of the most persistent and voracious acquirers of companies in America. In four decades he'd bought and sold over eighty companies. I thought of him as the "old man," for he was the same age as my father. I called him Tom.

The old man was the first prominent corporate raider that Wachtell Lipton represented. Attracted by the firm's participation in a few takeovers, he came to see Martin Lipton in 1976, who asked me to represent him.

It was no accident that Tom Evans had engaged the firm. The establishment firms were not yet actively involved in takeovers. Such work threatened many of their corporate clients, interfered with their corporate financing activities, and didn't seem lucrative enough to them to be worth the effort. In contrast, we sought to do hostile takeovers. For Wachtell Lipton, then a small group of about twenty-five lawyers with few large corporate clients, hostile corporate takeovers were a way of gaining new clients. Like Tom Evans, the new clients were individual entrepreneurs, creative people pursuing personal visions, often demanding.

Just by working with Tom Evans our reputation as takeover lawyers would be enhanced and others would seek advice. But the contested transactions they wanted to do were more demanding than negotiated ones and more complex. Indeed, there was something sweetly simple about the friendly transactions that I'd learned to do at Cravath. In this new era I had much to learn, but few lawyers were experienced in takeovers, and if I was to master their intricacies, my training would have to come from Lipton and men like Tom Evans and the experience they offered in high-stakes contests. Since the firm was small, I worked on many of the matters largely by myself. Curiously, the stress of learning while doing was lost in the excitement of the work.

The old man woke, asked me a question, listened to the answer, and then fell back to sleep, going into and out of sleep with ease. Never academic, the questions were sparked by neither intellectual curiosity nor restless intelligence. They were practical and precise, always related to matters at hand, posed to solve real problems. In their solutions, he would make money.

Our trip to the Missouri Portland headquarters represented the end of a fourteen-month battle for control of the company. We would be attending Evans's first board meeting of Missouri Portland more than a year after he'd acquired 52 percent of the stock and paid $25 million for it. In all that time, the old man hadn't met any of the directors or the management, unusual even for a hostile takeover. In this case the Missouri Portland directors had locked out their new majority shareholder. To end the protracted battle for control and get access to the boardroom, he'd agreed to appoint only three out of the twelve directors and wait two years before he elected a majority of the board members.

Knowing that we'd be outnumbered at the board meeting, I told him that they would be evaluating him, and if he became difficult, he would have trouble with them in the future. Their control of the boardroom would allow them to ignore him or even be vindictive. Holding his temper was not easy for him. In order to prepare him, I tried to anticipate the kinds of questions that would be asked at the meeting. I'd never been through a situation like this before and felt uncomfortable, as if shadowboxing. The old man looked at me with his eyes twinkling and told me not to worry, he'd be charming, then smiled mischievously, making me feel like a pedantic and ill-prepared schoolteacher faced with a difficult pupil. Of course, he was the teacher and I the pupil.

He was one of the country's richest men and had made the money himself. Although distantly related to the Mellon family, he grew up without personal wealth. After training in economics at Yale, in 1931 he went to work for Gulf Oil, a Mellon-controlled company. In 1936 and 1937 he made about $30,000 on trades of Gulf Oil stock and from that stake built two major American companies—H. K. Porter Company and Crane Co.—reflections of his acumen. Without doubt, he was a financial genius.

We were flying on the corporate jet of H. K. Porter. Tom had acquired control of H. K. Porter in bankruptcy when it was a manufacturer of small steam locomotives. Buying businesses that were losing money, and finding value where others failed, was part of his style. In 1937, he bought Porter's defaulted bonds, which were converted in bankruptcy to the common stock of the company, and with a majority of the bonds, he got control of the company. Under his guidance, it turned profitable and became a major New York Stock Exchange company. Control of Crane Co., his other corporate vehicle, was acquired in 1959, when he bought about 15 percent of the company in the open market. At the time the company was a poorly performing manufacturer and distributor of plumbing products.

The two companies, initially in different businesses, made many parallel investments. Porter owned a steel company, Connors Steel, and Crane owned Colorado Fuel & Iron. The two companies acquired cement companies; Porter took on Missouri Portland Cement, and Crane acquired Medusa Cement. Both companies were in the manufacturing, distribution, and warehousing businesses for various valves and pipes and other metal-bending items. For all the similarities that developed over time, the old man kept the two separate. Each had its own corporate jets, its own offices, personnel, and managerial staffs. His personality, however, was imprinted on both. They were equivalent to the right and left halves of his brain and he was their central nervous system, their only means of communicating. Separate enterprises usually reflect different facets of a personality, but his singular personality was mirrored in each of them.

The old man had relaxed on the plane, and I took some comfort from that. But still uneasy because I didn't know what to expect of him at the board meeting, I turned to talk to Edward P. Evans (called Ned), the second of Tom's three sons, who was then thirty-four years old and president of H. K. Porter. Ned, a graduate of Yale College and Harvard Business School, was usually patient and calm under stress, even in the face of his father's impatience. Our small talk revealed that Ned wouldn't speculate about what his father might do, for he knew the old man would do what he wanted and there was nothing we could change. Expressing his stoicism by turning to his business reading, he left me with my concerns.

I held myself available to answer the old man's questions and tried to assess from them how he would handle the board meeting, but I couldn't anticipate his strategy. I told myself that I was prepared for anything, but knew, as we approached the Midwest and the moment of reckoning, that I was not.

After landing at the private jet airport in St. Louis, the three of us squeezed into a run-down cab for the fifteen-minute ride to the company in Clayton, a St. Louis suburb. Not having a limousine waiting was typical of the old man. He didn't pamper himself: if it was utilitarian, it would serve. It was hot in the cab and I could feel my clothes beginning to stick to me. The heat didn't seem to bother the old man or affect his energy. He barked orders at the cabdriver, telling him to turn off his radio since we wanted to talk.

At the Missouri Portland offices, along with John Kountz, the general counsel of H. K. Porter, who had arrived separately from Pittsburgh, we were ushered into the boardroom and introduced to all the members of the board. Ordinarily, it's hard to keep the names and the faces straight, especially after only a cursory introduction, but this time it was different. I'd sued each of them in the fight for control and I was eager to assign faces to names at last. Relatively old men, they didn't seem to embody, individually or collectively, the indomitable spirit that had fought to keep the company independent.

Coffee in cardboard cups and doughnuts on paper plates had been set out for us. As with most well-run industrial companies that didn't deal with the retail public, no frills were to be seen. The austerity was mirrored by the people in the room, with few smiles in evidence. Everybody was on good behavior, however. While holding coffee cups, we exchanged pleasantries: largely banal remarks about the weather. Tom, at least, talked about his horses. He was soon to have a Kentucky Derby winner with his horse Pleasant Colony. His charm was abundant, but the social mixing was as tentative as that at a prom, where everyone feels a little ungainly.

While the businessmen tried to chat, I met our legal adversaries for the first time, the corporate lawyers from Davis, Polk & Wardwell: William Tucker, a senior partner of the firm, about sixty years old, and his associate. Tucker, a large good-spirited man, tried to make me feel at home, taking seriously the role of host since he and his client controlled the boardroom. In the end, the good manners had a telling effect: they made me feel the nastiness of displacing his clients.

Soon the social adhesives wore thin. People grouped around those they knew, and the old man and Ned wound up on one side of the room, while the directors were on the other, finding the polar extremes. The professionals banded in the middle. The start of the meeting was welcome.

Moss Alexander, the president of Missouri Portland, called the meeting to order, as if it were an ordinary meeting, one of the many since the business had been founded by his family in 1907. He'd been a director for twenty years, holding the longest tenure of any director in the room, and had presided over the board for many years, as had his father before him. This was a place of many triumphs for him. That history must have buoyed his confidence, for he appeared tall and commanding seated at the head of the board table. Once he began the meeting, showing perfect authority over its rituals, he looked comfortable with his continued control of the board and fell into a routine.

MOST OF THE old man's Missouri Portland shares had been acquired in a hostile tender offer, which is an offer to buy shares made directly to the public through an advertisement in national newspapers (and through a printed offer) without first seeking management's approval. Accustomed to shrugging off other people's disfavor, he didn't mind management's opposition or the opprobrium associated with hostile takeovers. Further, he delighted in this process which did away with any pretense of friendliness. By making an offer directly to the shareholders, he gained the advantage of being able to select companies on the basis of his own analysis of their performance and assets and to buy those not otherwise for sale. Moreover, he could acquire control for prices set by him, remove management to whom he had no obligations, and put the assets to better use or sell them at a profit to someone else who would operate them.

He didn't follow the conventional rules with respect to buying companies, and began his career out of phase with the merger cycles in American business. The first great merger wave began before his time, at the turn of the century, producing such business giants as U.S. Steel and International Harvester. The second wave began in the 1960s and produced conglomerate companies such as ITT, large holding companies managing diverse and unrelated businesses. It was assumed that professional management could operate any business, and diversity was supposed to supply financial balance to offset the effects of business cycles. By 1960, controlling both Porter and Crane, Tom Evans looked like a conglomerateur. But he was following his own economic principles. He didn't worry about modifying the effects of business cycles. Interested always in hard assets—minerals, basic steel, industrial products, and commodities such as cement—he bought companies with assets that were inflation-proof. These kinds of companies would keep their value, would require little marketing or advertising of their products, and were not subject to fashion or taste. As to price, he looked to buy at less than the carrying value (or "book value") of the assets on the financial statements. But to buy at such prices he often had to consider marginally profitable companies or those losing money because they weren't efficient enough to meet competition. These businesses were often neglected, with high costs and low productivity. Operating them profitably meant pruning deadwood by selling nonperforming businesses, laying off people who were expensive and not fully productive, and generally cutting costs sharply.

When he bought companies, he therefore changed them, which is necessarily disruptive, and his actions were often regarded as ruthless. After he'd closed down—over a five-year period ending in 1973—five facilities of Crane and Porter in New Jersey, including John A. Roebling & Sons, the steelmaker for the Brooklyn Bridge, and laid off over 3,400 people, Congressman Frank Thompson, Jr., from New Jersey called him the corporate equivalent of Jaws. The impression of Tom Evans in the business community was that he was an American original: a nineteenth-century buccaneer capitalist, unencumbered by altruism. Spooked by his reputation, the Missouri Portland board had stiffened their resistance to his takeover bid.

Compounding his difficulty with the board was his discomfort with negotiating. He didn't like adjusting differences and wasn't a good listener. Intransigence seemed inherent in his style: when alternatives were offered, most often they were rejected. Buying or selling for him was strictly a matter of setting the price, without emotional attachment to any business or its parts. In the takeover battle, he characteristically didn't try to negotiate a settlement, which prolonged the fight.

The quality of Missouri Portland, which excited him and kept him fighting for control, could be seen in its thoughtful business design. Each of its three cement plants, as well as its distribution terminals, was located on a major river to facilitate shipment by water, making transportation inexpensive. And the plants were low-cost producers of cement, using relatively cheap coal as fuel, with raw materials obtained from nearby quarries owned by the company. With these advantages, Missouri Portland maintained a dominant market share within its geographic area.

In August 1975, at the time of the old man's first purchase of a block of stock at $24 a share, Missouri Portland's book value was over $28 a share, and the replacement cost of its assets was approximately $129 a share. Replacement cost was what it would take to build those facilities at that time. In actuality it would have been nearly impossible to duplicate such well-planned facilities. Tom Evans had found value for H. K. Porter.

Unlike many of his other acquisitions, this one was an efficiently functioning business with able management, which he was buying at bargain prices. This was possible because the stock market was depressed (as it was for most of that decade) and the everyday trading prices of the Missouri Portland shares didn't reflect the value of control of the company. The old man was entering (and introducing me to) a new era, the acquisition of undervalued companies, often well managed. He knew a truth that would eventually fuel an explosion of mergers and acquisitions in this country: it's cheaper to buy going companies than to build them.

Tom Evans's presence in the boardroom also meant a new era for the company. By asserting the rights of majority ownership, the old man was turning the passive public stock into an assertive force, diminishing management's power. In trying to take any action, he would cause a confrontation with the board because they shared management's vision of the company.

At the board meeting, with Moss Alexander presiding, the board members clung to their procedures, the housekeeping details that made up the routine of their meetings. They called the roll to determine if there was a quorum, asked for approval of the minutes of the previous meeting, followed *Robert's Rules of Order* with respect to the procedures for making motions, seconding motions, and voting on them, and had a detailed agenda which they followed meticulously. The board meeting was to continue from 10 a.m. until noon, at which time they would all have lunch together.

It was one of those meetings where within the first few minutes you believed it was going to be endless. Everybody was extraordinarily polite and no one was prepared to be assertive or to advance the meeting. Strangely, the old man sat there with a smile on his moon face, an uncharacteristic pose, and it made me suspect that peace wasn't going to last long. All the others in the room knew that the agenda was pedestrian, and had nothing to do with the monumental fact that the new owner was on the premises. They were all working at making the meeting deadly dull, hoping that this meeting would signal the kinds that they would experience for at least two years: quiet, polite, noncontentious, and without substance. They may have even believed that their majority of the board positions would ensure that.

They didn't know Tom. His mind didn't tolerate the insipid, and he wasn't about to be lulled to sleep. He would allow about a half hour to pass before he said anything.

The old man had realized that the battle for control would alienate the directors, but for him, it was part of the cost of doing the deal. He hadn't expected, however, to find himself in a minority position on the board while holding a majority of the stock. This unfortunate circumstance was the result of the way he'd conducted the tender offer.

The tender offer for control turned out to be more costly than he had anticipated. He had H. K. Porter make the tender offer for 48 percent of the stock, initially at $24, then raised it to $26 a share to ward off competition. The old man chose the 48 percent figure so that he would be seeking less than majority control (and thus not look voracious), although with that stock position he could demand a majority of the board. Unfortunately, the tender for less than a majority turned out to be a major tactical error.

When Porter closed its tender offer he had them buy all the shares that had been tendered, which put Porter's ownership at 54 percent. Missouri Portland claimed that if Tom wasn't seeking majority control, then he shouldn't have bought more shares than he'd been seeking. They accused him of misleading the public and claimed to have caught him in a typical maneuver: the change-of-intention gambit, trying to look like a sheep while being a wolf. The old man contended that since the excess shares were tendered he was doing everyone a favor by buying them at $26 per share, a significant premium over the market.

Possession was the law for him. If he held the shares it would be hard to take them away. If they tried, it would take time to do so. He knew that the process of the law is slow. Missouri Portland would see the power of his majority block and settle. But the Missouri Portland directors were incensed by his tactics and felt that Tom Evans's lack of candor was a fatal defect. Angrily, they locked him out, wouldn't count his shares as validly owned, and thus turned the tables on him by using the slow process of the law against him.

There had never been a situation in a public company where someone had purchased over a majority of the outstanding shares of the company and then hadn't been allowed to enter the corporate premises and exercise control. The Missouri Portland directors were doing to the old man what he did to everybody else, stalling and trying to tire him out. He came to our firm at a moment of deadlock.

I told Tom Evans that he had to be patient, that the court case could take as long as a year. He wasn't willing or able to accept the advice.

He told me, "I don't have to wait for them. I can sell my stock. If I sell my stock, what are they going to do?" He was satisfied with the alternative, as if a sale was an easy answer, when it was no answer, since he didn't want to sell the stock.

"They're going to claim it was illegally acquired," I said, following through on his argument.

"You mean I can't sell my stock?" he asked, boldly challenging me.

"You're not going to get a reasonable price for the block if there's a dispute over whether you properly acquired it." I'd sidestepped a collision.

"I can't wait." That was why he'd come for advice, to avoid delay. He was used to having people listen to him, and getting his way. The members of his staff, who were highly competent, were like amoebas: they would incorporate his position and reshape themselves. That daily obedience had not prepared him to accept intransigence in others for very long.

"You have little choice," I said.

"The problem," he said, "is that they have nothing to lose. If we sue them personally and threatened their personal assets," he said, "then they'd have something to lose. Pressure is often more effective than reason."

He understood the art of corporate warfare.

We sued the Missouri Portland directors personally, and within a short time I was called by their lawyers at Davis Polk and asked if the old man wanted to settle. He allowed me to negotiate for him, grumbling thereafter at the proposed settlement, under which he would have to wait two years to get control of the board. Settling was attractive to him, however, because he could then sit in on board meetings.

Surprisingly, the Davis Polk litigators wouldn't meet to discuss the drafts of the settlement. Rather, they sent typed comments by courier. The battle had been so difficult and prolonged that they seemed to have become almost as emotionally involved as the Missouri Portland directors. That was a new experience for me. Since we didn't meet, and they were meticulous, the process dragged on. The old man expressed his impatience, which I had to absorb but couldn't do anything about.

Finally, the last barrier was Missouri Portland's insistence that H. K. Porter guarantee that the minority shares (the other 46 percent that he didn't own) wouldn't be acquired by Porter at a price less than $26. While it was of great concern to the Missouri Portland directors, Tom didn't like setting a floor on the stock price for the public, but assumed, like them, that the company would grow more valuable over time. To get the matter done with, he agreed that if he bought any additional shares they would be purchased for at least $26 a share. Almost as an afterthought, he had me add in the agreement that securities valued at $26 a share could be used instead of cash, which turned out to be a critical addition.

With the settlement complete, we set out for the first board meeting. I knew that the old man still wasn't resigned to waiting two years to get control, but it appeared that the only way out of his minority position on the board was to buy the whole company. Such a purchase didn't seem possible. He didn't have ready funds to buy out the other shareholders because of H. K. Porter's other commitments. Given limited funds, he didn't have any cards to play. Nevertheless, I reminded myself of his determination to seize control and guessed that he would probably make his move at the board meeting.

MOSS ALEXANDER WAS talking about capital expenditures for two new barges to ship cement produced in the plants to the distribution terminals. He was proceeding to allocate the capital of the company for the next fiscal year. At last, something of substance.

The management had obviously held off deciding on some of these capital items until the old man had joined the board, giving him an opportunity to pass on the expenditures. It was the first suggestion that the board would entertain his point of view, although they didn't seem to be seeking it. There was an anticipatory stillness as paper shuffling and chair scraping diminished.

The old man didn't address the issue on the table. Seemingly distracted, he asked, "Why do we own a furniture company?" His voice was not loud, but it was demanding, as always, and came out as harsh because the question was irrelevant.

Missouri Portland owned a small institutional furniture company that was worth less than $2.5 million and was barely holding its own. A relatively recent acquisition, it had troubled the old man because it didn't fit with the business or make any operating sense. But why bother to argue over something so small when they had given him a chance to discuss the capital budget?

"It's a good financial investment," Weldon Rogers replied. He was the chief financial officer and the youngest of the Missouri directors, but powerful because he was financially sophisticated. The question had flushed out that buying the furniture business was Rogers's decision. Weldon Rogers was fair-skinned and had a hint of red in his hair. You could see that he had a temper.

"It takes away from management's time," the old man answered, not minding the flush in Rogers's cheeks. "And it's too small and marginal to matter," he added, taking the ground Rogers could have used.

"It'll contribute to our earnings," Rogers said sharply. He was reminding everyone in the room why they had bought the business, assuring them it was right, and keeping his group cohesive.

"Not enough to justify the time," the old man retorted. "The next thing you know we'll be buying a brassiere company because you say it's a good financial move. Cement is our business, not rags or furniture. What do we know about those businesses?" His voice had risen slightly to counter Rogers's temper, letting his scorn come through. He was driving a wedge between Rogers, the professional manager, and the old men on the board like himself who knew and appreciated the cement business. For him, Rogers's attempt to diversify the business was an aberrant move.

"There's no point in stripping assets from the company," Rogers snapped. That was a rallying cry to the others on the board, telling them, in effect, that Tom Evans would even sell the chairs they sat on to turn a profit.

"We'll put the money back in the business," the old man said. He paused, and then decisively made his point. "Where it belongs."

"Do you think we should sell it, Tom?" Moss asked, intervening, showing his concern over the confrontation.

"Yes," he said.

Moss said in a conciliatory tone, "A number of us have also thought that it doesn't make any sense for us to own a furniture company." He looked around at his fellow board members, making eye contact with each, as if polling them on their position. "You're right," he said. "Cement is our business. We should sell it."

"We ought to spend more money on barges," Tom said, not giving anyone a moment to contemplate the change he'd just effected in the company. His voice had lowered. The tone wasn't as sharp but it was still commanding. Also, he'd shifted in his seat and turned away from Weldon Rogers, in that move dismissing him, concentrating solely on Moss Alexander.

"That was our plan, Tom," Moss said.

Tom said, "Not enough. We have to transport all our cement by river, and we're not fully capable of using our production capacity and meeting our delivery schedules."

"That makes a lot of sense," Moss said, not sounding as sure as his words.

"We should invest more money in the plants," Tom lectured, almost as if from a pulpit. "The dividend we pay out is too high. Some of it should go back into the business."

Now, with the full message starkly stated, Moss Alexander looked at him forlornly. Moss Alexander and his family had a relatively large stock position and a cut in the dividend would sharply decrease their income. Although he could oppose it now, a dividend cut seemed inevitable, making Moss Alexander squirm. The old man's image as a takeover entrepreneur had confused them, for they hadn't seen him as interested in operations, willing to improve plant and equipment. They were familiar with his recent takeover of Anaconda, a mining company, and that battle seemed to define his abilities and interests. Showing no interest in running Anaconda, Crane (the old man's other company) had acquired about 18½ percent of Anaconda's stock in an exchange offer for Crane's debentures (which were becoming known as "junk bonds"), giving Crane a control block, which the old man promptly sold to Atlantic Richfield. Crane, in a six-month contest, had made an $80 million profit, much more than the total value of Missouri Portland.

In 1975 the purchase of control of Anaconda for debentures and the subsequent sale was one of the all-time successes in arbitraging control of a company. It pointed the way for all the other takeover entrepreneurs who followed, such as Carl Icahn, Irwin Jacobs, T. Boone Pickens, and Asher Edelman. The Anaconda takeover also signaled the beginning of the third and longest merger wave in the twentieth century. Even then the Missouri board members could recognize the takeover as innovative and could conclude that Tom Evans wasn't interested in building businesses, just in dismantling or selling them.

The old man's total concentration on the business and economics of Missouri Portland panicked Moss Alexander and then the board. Although Moss Alexander sat at the head of the board table, he wasn't presiding. Anyone could see that there would be no restraining the old man, who couldn't be stroked or petted into docility. The old man had to be dealt with on business terms. What no one anticipated before this moment was that the board and management would all be looking to him for business direction.

A role reversal had occurred. Tom was taking the long view, and they, contrary to their own prior business judgments, were interested in the short term because their tenure expired in less than two years. With that change of status and their sense that he'd want to cut the dividend when he got total control, the management felt that it would be best for them and the other shareholders who relied on the dividend income if the old man bought out the public shareholders. In fact, where control has passed, it's quite common for the board to seek to have the public shares purchased. The principal reason is that minority positions have depressed trading values because there is little chance of a takeover premium and the stocks do not appreciate as well as those where there is no controlling stockholder.

It was no surprise when Moss Alexander asked, "Tom, why don't you buy the rest of the company?"

He said, "I haven't thought about it."

"Why don't you think about it?"

"I don't have enough cash at H. K. Porter to do it," Tom said. "I also don't want to put additional debt on H. K. Porter's balance sheet." He reminded them that the profit he'd made on the sale of Anaconda was Crane's and not money that H. K. Porter could spend. It was as if his left pocket was full, his right pocket empty, and he couldn't switch money between pockets. Although unusual, the situation existed because there were different public shareholders in each of his companies. He smiled and let them understand the difficulty of the problem they had presented to him.

There was a long silence. He could be comfortable not saying anything, letting everyone contemplate what they faced if he didn't buy out the public shares, all the time waiting as if he were thinking of his alternatives. In that moment I almost believed that he would let the opportunity pass. His timing, however, was impeccable. Just as I shifted in my chair, he floated a novel idea in a soft voice. "If you are interested," the old man said, "we could use the debt of Missouri Portland to acquire the stock."

Ned Evans looked over at me to see if it was possible. Highly unusual, it hadn't been done before. I nodded to show him that it could be done, telling him only later that it was one of the questions that the old man had casually asked me on the flight to Missouri. The effect of the maneuver was that a major public company, Missouri Portland, would be completely buying out the public ownership for its own bonds. If the debt swapped for its common stock was worth at least $26 a share, there was no reason why it couldn't be done. It was something the board wouldn't have seriously considered before this meeting.

Tom said, "I'm prepared to use a $30 debenture [which was a note for the $30] of Missouri Portland and put a 10 percent interest rate on it. We'll have it listed for trading on the New York Stock Exchange. That would permit you and the public to sell the debenture and get at least $26 and maybe $30 [or whatever the trading value of the security was after it was issued] or hold it and get $30 [at maturity] at 10 percent interest [until maturity]."

"Would you seriously consider that?" Moss Alexander asked.

"Yes," the old man said.

Missouri Portland was paying an annual dividend of $2.50 a share, which was not tax-deductible to the company. The $30 debenture at 10 percent interest would pay the shareholder $3.00 rather than $2.50, but the company would be getting a tax deduction, which meant that the company would be paying only $1.50 a share. In other words, shareholders like Moss Alexander got more and the company paid less, which was possible when the government, through deductible interest, subsidized the acquisition. Missouri Portland's buying its common stock for its debt was a bootstrap transaction, with the company buying itself. The old man was initiating one of the first leveraged buyouts for subordinated debt, later commonly known as junk bonds.

Bill Tucker whispered in Moss Alexander's ear. Moss nodded and then addressed the old man:

"We'll need an opinion from an independent investment banker that the debentures are worth at least $26 and that the deal is fair. That may not be easy to do, Tom." Moss, while indicating that the task was formidable, was smiling, encouraging the old man. Such an opinion was necessary before the Missouri Portland board of directors could recommend the transaction to its shareholders.

"I'll take care of it," the old man said, "as soon as I get back to New York."

AFTER THE MEETING broke up, Tom was in a hurry to return to New York to follow through. Knowing that he wouldn't truly control the company until he bought out the management, he acted as if he'd mesmerized them, and needed to get the deal done before the spell was broken. There was no convincing him that it was appropriate to have lunch with them. There were sandwiches on the plane, he told me, and that would save time. In the rush of ending the meeting, I got Tom to agree to take Bill Tucker and his associate back to New York on the H. K. Porter jet. Taking them with us would give me the opportunity to talk to Tucker to set in motion with him the arrangements for implementing the exchange of Missouri Portland debentures for public stock.

We set out for the airport in two separate cabs: Tom, Ned, and I in one, Tucker and his associate in the other, and we arrived first. After the old man sat down in his seat and buckled himself in, I stepped outside to make some telephone calls while we waited for Bill Tucker. I was on a public phone in the hangar when the old man came out of the plane looking for me.

"Let's go," he said.

"We're waiting for Bill Tucker," I said.

"He's not here. I don't want to wait any longer," he said.

"I'm in the middle of a call," I said, "and we can't go without Tucker."

"He's not here," he insisted.

"His driver probably took a wrong turn. He'll get here."

The entrance to the private jetport of the St. Louis Airport was hard to locate, but I stressed to Tom that the driver would soon find it. Tom Evans didn't care. Every fiber of his being seemed inflamed by the irritation of waiting.

"Wheels up in five minutes," he snapped.

"That may not be enough time."

"I'm leaving, with or without him," he said.

"I won't go without him. I have to work with him, and it's not right. We told him we would take him," I said, thinking the commitment would end the discussion.

"You told him we would take him. I'm leaving in five minutes."

"Then you're going without me."

He stopped, looked at me. His moon face showed little emotion while he calculated his next move. I had expected him to erupt in full fury. Instead, he turned back to the plane without a word. I finished my call to my office and stood by the public telephone looking out at the airplane, not prepared to board it. If I boarded, he might leave without Tucker, and so I stood by the telephone and waited.

Soon, however, I grew restless and stepped outside to look for Tucker. I could see the planes taxiing in the distance, preparing for takeoff. I watched the other planes leaving and arriving and let myself become involved in the activity of the airport. The sun's stark reflection from the concrete runway hurt my eyes, and waves of heat, visible and shimmering, baked me. I suddenly ached. I expected the plane to start its engines to pipe cool air to the passengers and then to taxi away from me into the broad field leading to the runway. I avoided looking at it, as if by so doing I could make it stand still.

Let him leave, I told myself. That was the proper attitude, indifference. Without concern, I could easily wait, even in the heat. But I was angry and couldn't express it, which made waiting all the more difficult. Finally, Tucker arrived. As endless as it felt, I'd waited only ten minutes. The cab pulled out to the field near the plane and I walked to meet him. If Tom makes any remarks, I said, let them slide, don't take him on, since the old man and I had already had it out.

We boarded the plane. The old man, immersed in his papers, said nothing to us. I sat down, buckled myself in, and looked at him. He was as relaxed as he had been on the way going out. It was as if the incident had never happened. I was upset from the confrontation and wet from the heat. Not until the plane was in the air, well along toward New York, was I able to relax.

THE KEY TO the deal now was the engagement of an investment banker, who could value the debentures and render an opinion on the fairness of the exchange of debentures for stock.

Tom called Goldman, Sachs & Co. and asked them to act for Missouri Portland. A representative of Goldman Sachs had recently been to his office looking for investment banking business. The old man felt that if they were looking for business, they would do anything he asked. He had a jaundiced view of investment bankers.

To his surprise, Goldman Sachs turned him down, telling him that they were too busy to take the matter.

When I heard the reason Goldman Sachs had given him I said, "Large investment banking firms are rarely too busy to take on a matter. There must be something else bothering them." He agreed that the reason didn't make sense. I felt the transaction was too sensitive to rely on such a superficial statement. If there was litigation, Goldman Sachs's records would be checked, which made it necessary to pin down the real reason for declining the invitation. With the old man involved, there was always a possibility of litigation, and I didn't want to be in a position of being surprised in the discovery process when private records were inspected.

After some telephone calls, I found the person at Goldman Sachs that the old man had talked to and discovered that Goldman had concluded that the firm shouldn't take on the matter because they believed that they couldn't "render an opinion that Tom Evans's junk would trade at the $26 level." The old man's reputation as an aggressive corporate raider who would take every advantage had probably made them skeptical of the value. In a memorandum to their files they reflected that decision and consistently referred to the bonds that Missouri Portland would be exchanging as "junk." While the term "junk" was gaining currency for bonds that weren't investment grade (not rated as such by rating agencies such as Moody's and Standard & Poor's), it was a characterization, at that time, which severely denigrated the value of the debentures to the uninitiated, including the courts. I told Tom that we had to tell whomever else we asked to act as an independent banker about Goldman Sachs's negative reaction. The stockholders also would have to be told.

Goldman's action also raised the possibility that the old man might not be able to get someone else to act favorably. He made a few telephone calls and told me that he'd found some people at Lazard Frères & Co., a prominent investment banking firm, who seemed interested in the business. He sent Ned and me to Lazard to work out the arrangements. Investment bankers usually charged a percentage of the value of the transaction, from ½ of 1 percent to 1 percent (from $125,000 to $250,000, in this case) depending on the services performed. Bankers often helped select target companies (as appropriate acquisition candidates) or helped defend against a takeover raid by finding other bidders to buy the company at a price higher than the takeover offer. In this case, however, the investment banker's role would be limited to valuation (making an appropriate study of the company's earnings and assets to fix a value on the Missouri Portland bonds), and thus Tom was looking to pay the low end of the fee range.

Before we went to Lazard's offices, we discussed the fee negotiation. Tom felt that we should pay the fee only after we got the favorable opinion. I told him that, given the one misstep, it would be wrong to put ourselves in a position where Lazard's independence could be questioned or, worse, where it could be said that we had coerced the opinion. Therefore, he had to pay the fee irrespective of whether they rendered a favorable opinion. He was irritated by my advice. It ran counter to his business sense, which was: if you don't control them through the payment of the fee, they control you.

The Lazard Frères partners were Frank Pizzitola and Peter Jaquith. They had their sense of the dignity of Lazard and weren't about to let it appear that Lazard could be influenced by the fee or the opportunity for future business. Tom Evans's reputation as a knowledgeable and voracious acquirer of companies had followed us into the room, as if he were present and about to control the meeting. In response, the two men were stiff-necked and wary.

The conference room was bleak, with no thought of comfort reflected in its furnishings. There was one table that looked as if it had been bought fifty years before and had never been moved from its original position. The chairs looked like the original chairs, aged by the compulsive restlessness of hundreds of obsessed men.

It was my job to tell the Lazard partners all the facts and assure them that they weren't being asked to compromise themselves. I told them about how Goldman Sachs had refused to render the opinion. The protocol of the meeting called for their deciding whether to take the engagement before we discussed the fee. They proceeded to ask all the relevant questions to the point of tedium. They were letting us know that they intended to be uncompromising. We all fidgeted in our chairs, aging them further.

Ned's stance was that he had an engagement to offer, but he didn't have to offer it to them. His diffident manner left no doubt that he could easily find other, equally qualified, independent investment bankers. Accordingly, Ned asked about Lazard's experience—how they handled such matters, the kinds of approaches they would take to test the value, and so on.

They, of course, had more practice, and after forty-five minutes Ned had run out of steam, while they still had further questions. It was clear he wasn't going to get an answer. Finally I attempted to direct the discussion to end the meeting.

I said, "We believe the debentures are worth at least $26 a share."

"Yes," they said. They were acknowledging our belief, nothing more.

"Is there anything that we've said that leads you to a different conclusion?" I asked.

"We haven't begun our review," Peter Jaquith said.

"We know that," I said. "But sometimes it's easy to see that you may not be able to confirm our opinion." I was now close to the point.

"That's true," Peter Jaquith said.

"Well, is this one of those cases?"

"Whatever we say now may have no bearing on what our ultimate opinion may be."

"I see," I said. They would say nothing, which was the correct posture, and allow no concessions.

Ned stood up, for they had made their point.

"We'd like you to do the job," he said.

Everybody smiled.

"What will your fee be?" Ned asked.

As quick as a shot, Peter Jaquith said, "Two hundred fifty thousand dollars." Without a pause he said, "The payment is for the opinion, whether or not favorable."

Ned sat down. "Two hundred fifty thousand dollars? That's a lot of money. There are a lot of bankers who would do it for less."

"This is a difficult opinion to render," Jaquith said.

Then Ned stood up again. "Let us think it over," he said.

▾

WHEN WE RETURNED, the old man called me into his office. He'd already worked himself into a state of annoyance, letting me feel its force as he told me that he didn't like the position we'd gotten ourselves into with the investment bankers.

His office was spartan, with his desk the focal point. Near his desk was a TV screen flashing stock quotations and news from the Dow Jones wire. He gave the market activity most of his attention, even when you were talking to him. A conference room adjoining his office was rarely used. Ned Evans's office, much smaller but in the spartan style of his father's, was nearby.

"They have us over a barrel," he said. "We don't know what they're going to say." His deep voice seemed larger than his body.

"There isn't much choice," I said.

"And they're charging us too much money. They've made this into a high-risk situation. It's something that a kid in business school can do."

He turned away from me to watch his TV screen with the latest stock quotes, not looking at me while I talked, and I had the impression that he didn't care about what I said. That made my speech pedantic.

"Their opinion is necessary to do the transaction. The debentures have to be priced by someone who is independent, not by us, and it's only reasonable for the Missouri Portland board to require an opinion of independent bankers that the transaction is fair to their shareholders."

"Don't lecture me," he said, letting me know he was not seeking advice.

"I may be repeating the obvious," I said, "but it seems to bear repeating." I'd become testy.

He looked at me now.

"Listen," he said. "The problem is that we have to disclose Goldman Sachs's nonopinion. All I did was make a telephone call."

The meeting at Lazard had gotten him to reflect. If his request for an opinion by Goldman Sachs didn't have to be disclosed, then the whole process would be much more relaxed. Without disclosure no one would be in a position of having their judgment tested against

Goldman Sachs's judgment, though of course there was a question whether Goldman Sachs had made the kind of analysis that could be reasonably characterized as an opinion.

My view was that Goldman Sachs's position had to be disclosed. Everything the old man did received publicity and was carefully examined. The perceptions that others had of him, with all possible subjective distortions, were a reality that affected reactions to him.

"The disclosure of Goldman Sachs's position is the problem," I acknowledged. "You're right."

"I know I'm right. I don't want to do it," he said. His eyes were now small and threatening, totally focused on me.

"It has to be done," I said, meeting his stare.

"Is it illegal?" he asked, knowing that was not the issue.

"No, it's not illegal," I said.

"I'll take the risk," he said.

"You don't know the risk you're taking," I said. I saw the possibility of an investigation by the Securities and Exchange Commission, which would be disruptive.

"I've been taking these kinds of risks from before you were out of diapers. I know the risks I can take," he said.

I hadn't presented the issue properly to him. My role as counsel was to persuade him. How much easier my job would be, I thought, if I could just read a rule to him that told him what he had to do.

"You have to look at this situation the way others will look at it," I said, changing my tone, suppressing the hard edge, as I tried to suggest for the first time that he should understand the effect of his reputation.

"What do you mean?" he asked, responding to the softness in my voice.

"The Missouri Portland board will find out about Goldman Sachs. They'll have to report it to their stockholders. There are no secrets. You could be damned for trying to cover up. People are willing to believe that it's the kind of thing you would do."

"If the importance of the Goldman Sachs nonopinion is exaggerated, I could lose the deal," he said, rejecting my contention with a bellow. "I don't want to be at that board's mercy ever again."

"No matter how they find out about it, the opinion's importance will be exaggerated anyway. Everybody will be afraid that you'll outsmart them. They will be very cautious and suspicious. Your success has done that to you," I said. I tried to take on a conciliatory tone, seeing him on the edge of erupting. "You won't lose the deal. Let's understand what we are talking about. We're talking about money. It may mean that you'll have to pay another dollar on the debentures and make them $31."

"That's a million dollars. If your advice is going to cost me a million dollars, I don't need you." He was angry. "I don't want it disclosed."

"If you don't disclose, you'll likely lose the deal," I said. "That's the risk you take."

"I make the decisions. No disclosure . . . I won't lose the deal," he snorted. "I don't need you for disclosure."

He was fierce, totally self-possessed, not seeing that the same misconceptions of him that had disarmed the Missouri directors and given him his deal could also undermine him and lose it for him. There was no reasoning with him. As was his practice, he was using pressure, where reason wasn't working, to manipulate me.

"You'll have to get yourself another lawyer," I said, and walked out of his office.

Crossing Park Avenue I felt the discomfort of a young first-year partner who had just lost a large client. I would have to explain it all to Lipton. Lipton would listen, ask astute questions, and draw out all the facts. I didn't want to make it a long story, but I didn't know where to begin the explanation, and could see that the process would be painful. Everything turned on the meaning of a short telephone conversation. I had to be careful not to be perceived as overly high-minded and arrogant, and involuntarily winced at the complexity of getting appearances to reflect reality. Although I was sure Lipton would back me, as he always did, my discomfort swelled like a bruise that was beginning to throb. I groused to myself: dealing with the clients can be more difficult than confronting adversaries, for there at least you could express anger and even enmity.

When I got back to my office, the old man called me. "Okay," he said, "let's do it your way."

From that, I had learned something more about him. The old man fought only when there was something at stake. He'd waited for me at the airport because there was nothing to win, except a few minutes. In this case we had tested the limits in the only way that counted for each of us: for him, over money; for me, over the exercise of judgment. I'd found that he was prepared to reassess even his view of the way others saw him if that was necessary to get his deal done. Although difficult to contend with, he was an exceptional man.

He made his deals. Missouri Portland was completed without having to raise the price. I learned from them. The lessons learned on offense taught defense. As major corporations entered the lists to become corporate acquirers or acted to defend themselves against takeovers, they looked to those lawyers who were familiar with complex adversarial transactions. As a result, Wachtell Lipton's major corporate practice began to develop. But the firm was small and had to learn how to do intricate deals against much larger competitors.