HARVARD BUSINESS SCHOOL CASES

MBA核心课案例教学推荐教材

Leadership and Corporate Accountability

(Reprint)

领导学

（英文版）

中国人民大学出版社

HARVARD BUSINESS SCHOOL

CASES

MBA核心课案例教学推荐教材

Leadership and Corporate Accountability (Reprint)

领导学

（英文版）

中国人民大学出版社

图书在版编目（CIP）数据

领导学＝Leadership and Corporate Accountability—影印本.
北京：中国人民大学出版社，2005
MBA 核心课案例教学推荐教材
ISBN 7-300-06672-0

Ⅰ. 领…
Ⅱ. 领导学-研究生-教材-英文
Ⅲ. C933

中国版本图书馆 CIP 数据核字（2005）第 076215 号

MBA 核心课案例教学推荐教材
Leadership and Corporate Accountability (Reprint)
领导学（英文版）

出版发行	中国人民大学出版社		
社　　址	北京中关村大街 31 号	**邮政编码**	100080
电　　话	010－62511242（总编室）		010－62511239（出版部）
	010－82501766（邮购部）		010－62514148（门市部）
	010－62515195（发行公司）		010－62515275（盗版举报）
网　　址	http://www.crup.com.cn		
	http://www.ttrnet.com(人大教研网)		
经　　销	新华书店		
印　　刷	北京画中画印刷有限公司		
开　　本	890×1240 毫米 1/16	**版　　次**	2005 年 7 月第 1 版
印　　张	15.75 插页 1	**印　　次**	2005 年 7 月第 1 次印刷
字　　数	306 000	**定　　价**	38.00 元

策划编辑 费 小 琳
于 波
责任编辑 唐 奇
封面设计 李 亚 莉
版式设计 王 坤 杰
楠竹文化

出版说明

随着MBA教育逐渐走向成熟，人们对于案例教学已不再陌生，很多院校，特别是首批MBA试点院校已经比较普遍地采用案例教学这种模式。案例教学、案例编写也成为全国MBA教学指导委员会十分重视并大力推广的重要工作。为满足教学需要，中国人民大学出版社与哈佛商学院出版公司达成了引进出版哈佛商学院案例的协议，围绕MBA教学选择了十门课程，包括：战略管理，人力资源管理，营销管理，公司财务管理，领导学，组织行为学，供应链管理，技术与运营管理，财务报告与控制，企业、政府与国际经济，中文版和英文版同时推出。先由哈佛大学教授从其数千个案例中进行选择、推荐，再由中国教授从推荐的案例目录中遴选，在翻译的过程中又作了进一步的调整，最终确定了目前的案例。

多年来，中国人民大学出版社一直在不懈地打造经管类图书的品牌，特别是，作为高等教育教材出版的市场领先者，我们一直希望能为中国的管理教学和实践提供更多、更好的产品。随着中国MBA市场规模的扩大，学生人数的增加、素质的提高，教师队伍的成熟，我们发现，案例教学教材的数量不足及质量不高成了一个比较大的问题，基于大量的市场调研，哈佛商学院的案例便成了我们针对MBA教学引进案例的首选。毕竟，哈佛大学是最早开始MBA教育的，其MBA学位计划有近一百年的历史。哈佛案例每年能销600万份，其案例教学法也在逐渐为世界上各大学校所熟悉和借鉴。作为一家以为高等教育服务为己任的大学出版社，我们深感哈佛案例的引进对于我国工商管理教育理论和实践的提升具有十分重要的意义，事实上，我们在2002年曾引进出版了一套哈佛商学案例，分商务基础系列和实务系列，共21种，在当时引起了很大的反响，只是囿于条件，案例没能根据课程设置选取，不便于教师在教学中使用，基于此，便有了我们这套针对MBA核心课程的案例。

在运作这套案例的过程中，我们广泛听取了老师们的意见和建议，我们发现，单是引进一些案例并出版不能满足教学的实际需要，对于很多老师来说，如何讲授哈佛案例才是一个难点。同时，我们在前期调研和筹备工作中也深感案例的推广不再局限于传统意义上的图书推广工作，它已超出了传统单纯出版图书的概念，变成了一种教学理念和教学方法的推广，它需要我们提供更多、更长期的后续服务，并改变传统的出版模式。

就在我们策划出版这套案例书之际，哈佛商学院酝酿已久的PCMPCL (Program on

Case Method and Participant-Centered Learning) 培训计划正式启动。为配合 PCMPCL 项目，哈佛商学院出版公司邀请包括中国大陆、香港、台湾等地区和新加坡在内的 16 所大学的商学院选派一些教授到哈佛商学院参加哈佛案例教学的培训。首次培训定于 2005 年 8 月，同年 12 月还将在中国举办第二期有关案例教学与写作的培训。

同时，为帮助广大教师更好地使用哈佛案例，中国人民大学出版社还将配套引进案例的教师用书、教学录像等辅助资料（出于授权限制，仅向使用本案例教学的教师提供）。在案例出版后，我们还将提供教学支持，帮助中国教师更好、更便利地使用案例。

运作案例出版的过程是艰苦的，但结果是美好的、令人难忘的。在和哈佛商学院出版公司的合作中，我们一次又一次地听到他们虔诚地谈及他们的使命：改善管理实践。在案例出版的过程中，很多人做了辛苦的工作，我们感谢哈佛商学院高级副院长、贝克基金教授史蒂文·C·惠尔赖特（Steve C. Wheelwright）先生，他为我们的案例出版写了序，他在这套案例书 10 门课的选择中起了决定性的作用，没有他的努力，这套书的出版是不可能的。感谢 John Quelch、Michael Tushman、Debora Spar、Pankaj Ghemawat、David Hawkins 以及 David Upton 等教授，他们在我们初选案例的过程中给予了建议和指导；感谢哈佛商学院和哈佛商学院出版公司的下列人员，他们为案例的挑选做了许多工作：Paul Andrews、Tim Cannon、Tad Dearden、Mike Derocco、Pat Hathaway、Amy Iakovou 和 Carol Sweet；感谢哈佛商学院出版公司国际部总经理陈欣章先生，他促成了案例最终出版协议的签订和执行，并完成了整个过程中的协调工作。最后，也要感谢所有参加案例中文版翻译的教授，他们都有自己繁重的教学任务，在出版时间紧迫的情况下，各位教授都保质、按时地完成了翻译工作。

我们希望这套案例书的出版以及后续的培训工作能影响几百、几千乃至上万个 MBA；我们希望他们能用一种新的视角，适应国际化的大趋势，理解现代企业的管理方法，理性地接受信用经商的理念，推动中国经济的更大发展；我们希望能通过我们的出版物来引导中国的管理实践。如能做到此，那么其间的各种辛苦努力也就值得了。

感谢您选用或关注我们的这套案例书，对您的任何反馈我们都十分珍视。我们的联系方式：010-62510566 转 551 或 541；E-mail: rdcbsjg@crup.com.cn 或登录：http://www.rdjg.com.cn。

中国人民大学出版社

2005 年 7 月

序

“培养世界上有影响力的领导人”是哈佛商学院的使命。1908年，哈佛商学院正式成立。为实现这一使命，哈佛商学院通过实施各种项目，影响众多不同的人。哈佛商学院最出名的可能是其MBA项目，但同时我们也通过开展高级管理人员培训项目(Executive Education Program)（包括AMP项目以及其他逾100个为职业经理人开设的各种培训项目）和通过哈佛商学院出版公司的出版物追求我们的使命。我们的出版物包括《哈佛商业评论》、哈佛商学院图书、网络课程，以及哈佛商学院案例研究。

为杰出院校提供建议也是我们使命的一个重要方面。在过去的60年里，哈佛商学院为世界上许多院校不仅提供了教学案例，还通过各种项目帮助他们及其教师提升了自己的案例教学能力。包括：国际教师项目（ITP)、以参与者为中心的教学法培训项目（CPCL)、案例教学与以参与者为中心的教学法培训项目（PCMPCL)。其中，PCMPCL项目发起于2005年8月，其目的在于帮助中国大陆、香港、台湾等地区和新加坡的主要商学院提升其在MBA项目、高级管理人员培训项目以及以管理实践为导向的研究中，熟练运用案例教学和启发式教学的能力。

通过多年的实践，哈佛商学院发现案例教学的应用通常需要经历三个阶段。第一阶段，案例在管理学课堂上是作为概念或原理的例子、说明来使用的。第二阶段，将案例研究作为主要的学习方法，依靠案例讨论。第三阶段，教授开始把他们在案例研究和课程发展上取得的成果大量应用于教学，以便更好地理解和传授如何做决定。

为实践我们的使命，哈佛商学院和哈佛商学院出版公司很高兴与中国人民大学出版社携手帮助中国商学院及其教授实现从第二阶段向第三阶段的跨越。我们的努力包括：为来自中国大陆、香港、台湾等地区和新加坡的教授提供为期10天的PCMPCL培训；出版一套根据MBA核心课编辑的案例书（分中文版和英文版)；组织一系列后续服务的案例教学和案例写作的培训班；建立一个服务于中国教师的案例服务中心。

我们这样做的目的有两个，并且这两个方面都与哈佛商学院的使命紧密相连。一

个目的是通过帮助全球教育机构——正如我们在中国发现的那些机构一样——发展他们自身的、着眼于管理实践的案例教学能力，从而促进全球管理教育水平的提高。另一个目的是帮助这些机构培养一些能够在他们的学校中起到带头作用的教师，使他们能够写出新的、能够与世界分享的案例研究和教学资料。这种既符合国际标准，又与中国具体管理实践相关的案例研究正是中国管理教育机构所急需的。

我们很高兴中国人民大学出版社和中国许多优秀的商学院加入我们的队伍。我们希望哈佛案例书在中国的出版能对中国的教育机构、教师及其培养的未来职业经理人有所帮助，帮助他们实现在全球经济中扮演重要角色的梦想。

史蒂文·C·惠尔赖特（Steven C. Wheelwright）
哈佛商学院高级副院长，贝克基金教授
2005 年 6 月

PREFACE

The mission of the Harvard Business School (HBS) is "to educate leaders who will make a difference in the world." Founded in 1908, when Harvard University was already more than 250 years old,HBS achieves this mission by reaching a wide range of audiences through a variety of programs. While HBS is perhaps best known for its MBA Program, it also pursues this mission through its Executive Education Programs (including the Advanced Management Program as well as over 100 additional programs for practicing managers)and through the publishing activities of Harvard Business School Publishing (HBSP) which include Harvard Business Review, HBS Press (books), E–Learning products, and HBS Case Studies.

Providing guidance for leading academic institutions continues to be an important aspect of the HBS Mission.Over the past 60 years,HBS has not only made its case studies available throughout the world, but has assisted other Universities and their faculties in developing their ability to teach by the case method.This has included the offering of such courses as The International Teachers Program (ITP), Colloquium on Participant Centered Learning (CPCL) and the Program on Case Method and Participant Centered Learning(PCMPCL). The PCMPCL Program initiated in August of 2005 is aimed at helping leading Business Schools in Greater China and Singapore to develop excellence in the use of the case method and participant centered learning in both MBA and Executive Programs, as well as in practitioner–oriented research.

HBS has discovered over the years that adoption of the case method often proceeds through three stages. The first stage is where cases are used as examples and illustrations of principles and concepts being taught in a Management Course. The second stage is where cases become a primary means of learning, with a majority of the class sessions in a program relying on field–based cases. The third stage is then where the faculty begin doing significant amounts of their case –based research and curriculum development to better understand and teach about decision making.

Consistent with our mission, we at HBS and at HBS Publishing are pleased to offer—in conjunction with our partner, China Renmin University Press—a comprehensive approach to Chinese Business Schools and their faculty, that is focused on helping them progress through the second stage of participant–centered learning and into that third stage. This overall effort consists of offering the 10–day PCMPCL Course to teams of business school faculty from Greater China and Singapore, providing a series of case books (through China Renmin University Press) tailored to the Ministry of Education's MBA curriculum recommendations, offering a set of follow–up case teaching and case writing seminars in China, and establishing an academic support center to assist faculty with their unique course and case requirements.

Our purposes in doing this are two–fold, but both are directly tied to the HBS Mission. One purpose is to facilitate better management education throughout the global economy by assisting leading educational institutions—such as those found in China—in developing their capabilities in practitioner focused, case based teaching. The other purpose is to help the leadership at such institutions to develop a critical mass of faculty who can lead the efforts of their own institutions in creating additional case–based teaching and research materials that can be shared with other parts of the world. Such China–specific management materials of a world class caliber are anxiously needed by academics elsewhere in the world.

We are pleased that China Renmin University Press and so many leading Chinese Management Schools would join with us in pursuit of these purposes. We anticipate that this series of case books will be a significant contributor to the pursuit of the important role that Chinese Educational Institutions, their faculty, and the practitioners they serve will have in the global economy.

Steven C. Wheelwright
Baker Foundation Professor
Senior Associate Dean, Publication Activities
Harvard Business School
Harvard University
Boston, Ma 02163
June 2005

出教材学术精品　育人文社科英才

中国人民大学出版社读者信息反馈表

尊敬的读者：

感谢您购买和使用中国人民大学出版社的图书，我们希望通过这张小小的反馈卡来获得您更多的建议和意见，以改进我们的工作，加强我们双方的沟通和联系。我们期待着能为更多的读者提供更多的好书。

请您填妥下表后，寄回或传真回复我们，对您的支持我们不胜感激！

1. 您是从何种途径得知本书的：

❑书店　❑网上　❑报刊杂志　❑朋友推荐

2. 您为什么决定购买本书：

❑工作需要　❑学习参考　❑对本书主题感兴趣

❑随便翻翻

3. 您对本书内容的评价是：

❑很好　❑好　❑一般　❑差　❑很差

4. 您在阅读本书的过程中有没有发现明显的专业及编校错误，如果有，它们是：__________

____

____

____

5. 您对哪些专业的图书信息比较感兴趣：____________________

____

6. 如果方便，请提供您的个人信息，以便于我们和您联系（您的个人资料我们将严格保密）：

您供职的单位：____________________

您教授的课程（教师填写）：____________________

您的通信地址：____________________

您的电子邮箱：____________________

请联系我们：

电话：62510566 **转** 551 **或** 541

传真：62514775

E-mail：rdcbsjg@crup. com. cn　　http：//www. rdjg. com. cn

通讯地址：北京市海淀区中关村大街 31 号　100080

中国人民大学出版社工商管理出版事业部

CONTENTS

9-904-023
REV: AUGUST 5, 2004

BRIAN J. HALL
CHRISTOPHER ROSE
GUHAN SUBRAMANIAN

Circon (A) (Abridged)

Capitalism is not only about Wall Street's focus on short-term shareholder value. It is also about the factories, the customers, the employees, the government, and the innovation and hard work of the people who make the products and build the companies.[1]

—Richard Auhll, Chairman and CEO, Circon Corporation

The night of Friday, August 2, 1996, like most summer nights in Santa Barbara, California, was a beautiful one. Richard Auhll (pronounced "all"), founder, chairman, and CEO of medical device maker Circon Corporation, was holding his annual Fiesta party at his house overlooking the Santa Barbara harbor. In attendance, along with approximately 500 other "mostly single" guests, was George Cloutier, a longtime friend and Harvard Business School Class of 1969 sectionmate.

To an outside observer the party would seem like any other thrown on Fiesta night in Santa Barbara, if perhaps more extravagant and better-attended. Yet a cloud hung over the festivities, unmentioned by Auhll or his guests. The previous day Auhll had received a call from Leon Hirsch, chairman and CEO of U.S. Surgical Corporation, informing him that Surgical was launching a hostile takeover bid for Circon. The call had come as a shock to Auhll, particularly since Hirsch owned a vacation home in Aspen a few doors down from Auhll's, and had been an occasional skiing companion of the Circon leader.[2] "I thought about putting up a sign at the party, saying 'Please don't ask!'" mused Auhll in retrospect, "but I didn't, and nobody did ask."

Auhll retired early that night, since he had to leave early the next morning for Palo Alto to meet with his takeover defense advisors. Cloutier stayed on, hounded by guests who wanted to know whether to buy or sell the Circon stock. As an outsider to the company, Cloutier was perhaps ideally situated to advise his old HBS sectionmate on how to respond to the bid. Originally his advice was combative: "I told Richard to [forget] 'em. We're not giving up here. We're staying until the last gun is fired." Over the following two years, Cloutier would become increasingly enmeshed in the longest-running takeover battle in U.S. corporate history. With the benefit of hindsight, one wonders whether he would have given the same advice on that warm night in Santa Barbara, had he known how events would eventually unfold.

Professor Brian J. Hall, Christopher Rose, J.D. (MBA 2001), and Professor Guhan Subramanian prepared the original version of this case, "Circon (A)," HBS No. 801-403, with the assistance of Research Associate Jonathan P. Lim. This version was prepared by Professor Brian J. Hall. HBS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

Background

Richard Auhll graduated from the University of Michigan with a bachelor's degree in aerospace engineering in 1963. He began his professional career as a rocket engineer at United Technology Corporation's Rocket Division Advanced Decision Group in Sunnyvale, California. Auhll spent five years at United Technology, eventually moving up to program development manager. While working full-time, he also earned a master's degree in aerospace engineering from Stanford University.

After working his way into management, Auhll became concerned about a possible glass ceiling for engineers. All of his managers had MBAs, and Auhll became convinced that in order to advance to the top management levels, he would need one too. He applied to Stanford and Harvard business schools, and decided to attend Harvard, where he had been awarded a fellowship. When he arrived at HBS he realized quickly that he was different from most of the other students:

> I was married at the time and was over at married student housing at Peabody Terrace. I had a child and a wife and I had quit a very good paying job. At that time it was fairly unusual to have an MBA student with five years experience. I was actually one of the older students there and I was interested in pursuing a career very directly. George was a single guy, just out of Harvard College. So he was a *bon vivant* and at the time he was interested in exploring various options in his social life, etc., more important probably than school. Myself, I was at the other end of the spectrum.

George Cloutier graduated *magna cum laude* from Harvard College in 1967 and went straight to HBS. He recalled their HBS experiences:

> When I was in college, I founded Operation Match, which was the first computer dating company. I was going to go to law school, but I thought, gee, this business thing was fun—you can have a very aggressive, active social life. Richard and I were in the same class and in the same section and actually were friendly. We were among three or four guys who were a bit, as I would like to call it now, a bit eccentric, a bit roguish, who didn't take the business school quite as seriously as arguably we should have. While I was studious in college and did well academically, the undergraduate experience was more loosely structured than the business school. And since I was fresh out of college, I just kept up my less structured existence.

Cloutier became one of only four students in his graduating class who immediately started his own business. Based on Cloutier's HBS thesis, Innovative Management provided implementation-based consulting services for small and midsize companies. After six years at Innovative Management, Cloutier spent the next ten years (1976–1986) as an independent "hired gun" to struggling businesses. He eventually founded American Management Services (AMS), a management consulting firm in Waltham, Massachusetts.

Auhll, meanwhile, was looking for options outside of aerospace, because he saw the window opened by the Apollo project as rapidly closing. He wanted to find a company, preferably on the West Coast, where he could run his own technology enterprise. He interviewed for a position as assistant to the chairman of the board of Applied Magnetics, a high-tech company on the West Coast. At the interview Auhll was given a tour of Applied Magnetics' businesses, and took notice of a small eight-person division called Circon.

Auhll declined the offer to be assistant to the chairman, but told the chairman, Harold Frank, that he would be interested in running the small Circon subsidiary. Frank accepted the offer and Auhll joined Applied Magnetics in the fall of 1969. He rapidly changed the product mix from miniature tools for industrial use to high-tech surgical products. He explained:

> We transformed Circon from having an industrial base, to primarily being a medical company, by taking miniature tools and converting them to surgical instruments. We started making television microscope systems for industrial inspection, and we converted that over to television systems for surgery. In fact, we were credited with inventing the use of color video systems in surgery at the beginning of 1972. It was written up in the *New York Times*, the *L.A Times*, and other papers. From there we took off, though by today's standards it sounds small.

In 1976, Auhll took the momentous step of making an offer for Circon. Using $55,000 of his own money, a Small Business Administration guaranteed loan, additional funding from private investors and family members, and leveraged buyout money, he bought Circon from Applied Magnetics for $1.1 million. Circon was chartered as a California corporation in January 1977. Auhll owned 55% of the equity; a private investor named Rudi Schulte owned 15%; Auhll's former boss at United Technology Corporation owned another 10%; an uncle owned 5%; and miscellaneous small investors owned the remaining 15%.

The next six years were demanding but heady times for Richard Auhll and Circon. "At the time we had extraordinary margins," recalled Auhll. "We commanded the major share, almost a monopoly, on this new market of video systems for surgery—all the things that were used in knee surgery and arthroscopy. We were on the ground floor of all that." Sales grew from $1 million to $9 million from 1977 to 1984. All of this growth was funded internally, with the exception of a $7 million private placement in 1982 that reduced Auhll's stake from 55% to approximately 40%. On July 7, 1983, Circon went public, opening at $21 per share and going up to $26.75 on the first day, yielding a price/earnings ratio of 83 to 1. Suddenly, Auhll's net worth was $50 million, an astronomical sum in the days before the Internet. **Exhibits 1A, 1B,** and **1C** show Circon's stock price performance from 1983 to 1998. **Exhibit 2** shows Circon's income statement and balance sheet from 1988 to 1997.

On the other coast, Cloutier continued to build AMS as its president and CEO. Since graduation Auhll and Cloutier had lost touch, occasionally running into each other "like ships passing in the night" at airports. Cloutier rekindled his friendship with Auhll at their HBS 10-year reunion in June 1979. Cloutier recalled:

> I remember at the reunion, he was really running around having a good time meeting with people. We all had our moments of exuberance, and he had his fairly regularly. In the mid-1980s, he was out here a lot for business, and I used to have him over. I saw how hard he would work. A couple weekends I had him come out to Nantucket where he slept for two days straight because he was so tired. And that's when we became more friendly. We traveled two or three times to Greece and a couple of times to Venice. We even chartered a yacht for a few of these trips. So we picked up our friendship in the mid to late 1980s.

In 1986 Auhll made the bet-the-company decision to acquire ACMI Corporation, the leading maker of urological endoscopes, which was four times as large as Circon at the time. Auhll lent Circon $2 million of his own money and Circon borrowed another $13 million in order to finance the $28.5 million deal. Auhll then worked harder than he ever had before to re-engineer ACMI's aging product line. After three years of losses, *Forbes* declared in January 1992 that Auhll's "shrewd gamble" had "paid off." In the same year Auhll was named "Entrepreneur of the Year" by the Institute of American Entrepreneurs.

Despite their growing friendship during this time, Auhll and Cloutier rarely discussed business. In the early 1990s, however, Cloutier got to learn more about Circon when AMS was hired by Circon to create a penetration strategy for Circon's salesforce.

The Initial Attack

In April 1995, Auhll made another bold gamble by bidding for Cabot Corporation: "Cabot was kind of a parallel company to Circon, with Circon focused on urology and Cabot focused on gynecology," said Auhll. "We thought Cabot's products were a bit obsolete and needed upgrading, and they did not have a clear strategy within their own company. We thought that Cabot fit beautifully within Circon and that the Circon/Cabot strategy was very coherent and an outstanding program." Circon won the bidding contest for Cabot and, though the identity of the other bidders was unknown at the time, Auhll later learned that he had beaten out Leon Hirsch of U.S. Surgical.

As with ACMI, Cabot proved to be a net drain on the company at the outset. **Exhibit 2** shows that Circon experienced net losses as a result of the Cabot acquisition, and **Exhibit 1A** shows that Circon's stock price fell dramatically in the aftermath of the acquisition, from a high of $22 to approximately $15 per share. In February 1996, Circon stock plunged further, to $11.25, following a negative earnings announcement for the fourth quarter of 1995 that was largely related to Cabot. Despite this performance, Auhll believed that, with time, he would be able to turn around Cabot in the same way that he had turned around ACMI: "We had done it once, we felt that we could do it again. We had confidence that we could repeat that performance."

But Auhll would never get that chance. On August 1, 1996, around 6:00 p.m., Auhll took a call from his acquaintance and occasional ski partner Leon Hirsch, chairman and CEO of U.S. Surgical. Hirsch had a "terrifying reputation in the business" according to Auhll. "He was the 800-pound gorilla. Well, he was at least a 600-pound gorilla, and Johnson & Johnson was an 800-pound gorilla, and we were a 100-pound gorilla." Hirsch informed Auhll that U.S. Surgical would be announcing a tender offer for 100% of Circon's shares at $18 cash per share, or approximately $230 million in total value, the next morning. Hirsch also informed Auhll that Surgical had already purchased an 8% stake in Circon through open-market transactions. Auhll owned 11.5% of Circon, and company insiders (employees and directors) held roughly another 13%.[3]

"I was rather stunned," said Auhll. "I guess it became clear that it was going to be a hostile attempt. He didn't make any friendly overtures at all." Though the bid was not announced publicly until after the close of the market, Circon's shares jumped 16%, to $12.125 on the Nasdaq that day. At $18, the bid represented almost a 70% premium over the pre-announcement price of Circon. U.S. Surgical's shared closed at $34.375, up $0.125 on the New York Stock Exchange.

After detailing the terms of the offer, Hirsch asked Auhll what he thought about the bid. Auhll deadpanned: "Well, it certainly was not in our strategic plan." The siege had begun.

Raising the Drawbridge

The day after receiving the U.S. Surgical offer, Auhll flew to Palo Alto to meet with Larry Sonsini. Sonsini was a law professor at the Boalt Hall School of Law at the University of California (Berkeley). He was also a name partner with the large and rapidly growing law firm of Wilson, Sonsini, Goodrich & Rosati. Sonsini and his firm had gained fame and wealth over the previous decade by representing the many venture capital firms and start-up companies founded in Silicon Valley. According to some observers, Sonsini hoped to use his representation of Circon to help his firm gain prominence as a merger advisor.

In his meeting with Auhll, Sonsini urged Auhll to bring before his board a resolution authorizing a shareholder rights plan, also known as a "poison pill." The pill would make it prohibitively expensive for Surgical to acquire more than a 15% stake in Circon without the approval of Circon's board.[1] In addition, just two weeks before the bid was launched, Circon's general counsel had filed a shareholder resolution (approved a year earlier) that prohibited shareholder action by written consent and shareholder action through special meeting. Auhll speculated that Surgical's advisors might have perceived this as a weak link in Circon's defensive armor:

> We suspect that when their lawyers checked out the bylaws and things in the Delaware records, they found out that the shareholder resolution had not been filed, and therefore was not in effect. I believe that they thought they could launch a hostile takeover, have a tender offer out for 27 days, and they could get the proxies and hold a shareholders' meeting and own Circon in 27 days. I am suspecting that this was their strategy.

The poison pill did not require a shareholder vote and was therefore adopted in a matter of hours by the Circon board. Filing the amendment to the bylaws was equally quick since the shareholders had already approved it. In addition to these defenses, Circon had adopted a staggered board (or classified board), whereby only one-third of the directors stood for re-election at each annual meeting. Gaining control of the board, therefore, would require two proxy contests over two years (to get two-thirds and therefore majority control), rather than just a single contest.

Circon also announced an Employee Retention Plan ("silver parachutes"[2]) that would be triggered by a change in control of the company. A Circon spokeswoman said the plan covered approximately 300 employees (25% of the total Circon workforce), from sales people to "key professionals." Circon officials declined to elaborate publicly on its retention plan, which had both single trigger and double trigger payouts in place for its top management.[3] A spokesman for Surgical, commenting on the employee-retention plan, said U.S. Surgical was committed to its takeover attempt and accused Circon management of "doing everything it can to entrench itself and preclude shareholders from making their own decision."[4]

All of these defenses were facilitated by Delaware court decisions in cases such as *Time v. Paramount*[5] and *Moore v. Wallace Computer*.[6] These cases held that a board is not required to accept an all cash bid for a company, regardless of support by stockholders in the form of shares tendered, as long as the board determines that its "strategic plan" will deliver more value to stockholders over the long run. In *Time*, the Delaware Supreme Court held that "[d]irectors are not obligated to abandon a deliberately conceived plan for a short-term shareholder profit unless there is *clearly no basis* to sustain the corporate strategy."[7] [Emphasis added.] Circon management received the benefit of these rulings because Circon had changed its state of incorporation from California to Delaware when it went public in 1983.

---

[1] A poison pill works by distributing to all shareholders warrants to buy more common stock from the company at substantially less than the market price. These warrants become exercisable only in the event that a shareholder ("the acquiring person") buys more than a certain percentage of the company. These warrants are explicitly *not* exercisable by the acquiring person, so the resulting dilution in his voting power and economic stake may make the acquisition of the target through market purchases too expensive to pursue. In the roughly 15 years since the pill was invented, no bidder has "broken through" (triggered) a poison pill. In Circon's case, the poison pill was triggered at 15% and allowed all shareholders (other than the acquiring shareholder) to pay in $70 cash and receive in return $140 worth of Circon common stock for each share owned (valued before the takeover attempt).

[2] "A silver or tin parachute functions like a golden parachute, but covers more employees." Bruce Wasserstein, *Big Deal* (New York: Warner Books, Inc., 1998), p. 711.

[3] A "single trigger" payout is one that is paid automatically on the closing of a change of control transaction. A "double trigger" payout is one that is paid only when an employee is terminated within a specified period (usually one year) after a change of control has occurred.