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Byron Egan:
Failed auto mechanic

Lord Byron *An Irish Hammurabi out of Texas*

THE WAY THAT BYRON EGAN TELLS IT, he simply fell into the practice of law. Although Egan's grandfather, Almonte Byron Flanary, was a well-known Dallas attorney, his father owned a wholesale auto parts distributing company. While young Byron was in junior high school, his father encouraged him to enroll in the General Motors Dallas training school for auto mechanics. "I was a failure," Egan says today. "Thus I had to think of another career, and most seemed daunting. Former Supreme Court Justice Felix Frankfurter once remarked that 'Many come to the law through default in another endeavor.' That was certainly my case."

And it's a good thing. Since those early frustrating days at the GM training school, Egan, 62, now the chair of Jackson Walker L.L.P.'s Corporate & Securities Group, has become one of the most preeminent corporate and mergers and acquisitions attorneys in the country. Jackson Walker is a Dallas-based general practice firm with over 300 lawyers and offices also in Austin, Fort Worth, Houston, Richardson, San Angelo and San Antonio. Approximately one-third of Jackson Walker's lawyers do M&A, corporate and securities work.

Egan's partner, Cullen (Mike) Godfrey, the former general counsel of both FINA, Inc. and The University of Texas System, is one of many colleagues who describe Egan as the quintessential corporate lawyer. "And by that I mean that, as much as anybody I have ever known, he under-

stands the regulations and the case law," Godfrey says. "For example, what the rules are with respect to director's conflicts of interests, what is required in order to be properly capitalized in order to commence doing business. He can quote the Delaware corporation law probably as well as anybody I've ever known or heard of."

Says Jeffrey Sone, a corporate partner at Jackson Walker who has known Egan for some twenty years: "What is terrific about Byron as a partner is obviously his incredible knowledge. He is such an excellent resource and sounding board. I am one of many who have learned a great deal from him."

The Shrine of Succinctness

After graduating from The University of Texas Law School in 1968, Egan clerked for Justice Irving L. Goldberg of the U.S. Court of Appeals for the Fifth Circuit, who became an early mentor to him. Recalls Egan: "Judge Goldberg was a brilliant jurist whose opinions were scholarly and intended to educate the bar as well as resolve the disputes before the court. Judge Goldberg said that he 'did not worship at the shrine of succinctness.' He had a successful practice as a lawyer, but his judicial appointment was due to his connections in the Democrat party. He car-pooled with Lyndon Johnson in Washington during World War II. They remained friends with a common interest in Democrat politics. When President John F. Kennedy was shot in Dallas on November 22, 1963, LBJ called Irving Goldberg, at the time an attorney practicing law in Dallas, for advice on what to do. His immediate response was, 'Mr. President, if I remember the Constitution, you are president and have been since the death of President Kennedy.' He suggested that Judge Sarah Hughes administer the formality and ceremony of his swearing in as president. LBJ thereafter nominated him to serve on the Fifth Circuit."

Egan's clerkship was a seminal experience, one
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Famous Eganisms

- Pigs get fat and hogs get slaughtered.
- Never let go for a better grip.
- Humor can help a lot when you're at the licklog.
- Don't cry down my back, you'll rust my spurs.
- The first law of holes: When you're in one, stop digging.
- He who keeps his desk is kept by it.

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continued

that convinced him to pursue corporate and securities law, rather than litigation. “My clerkship was a career-shaping experience,” Egan says. “In addition to learning how judicial decisions are forged, I worked on a variety of kinds of cases. Judge Goldberg encouraged his former law clerks to come to his chambers and keep in touch with him and his current and former law clerks, who got to know and respect each other. Those associations have helped shape my professional career.”

After his clerkship, in 1969 Egan joined the Texas law firm that became Ritchie, Crosland & Egan, which, in turn, in 1982 became the Dallas office of Andrews & Kurth L.L.P. To this day, Egan recalls feeling overwhelmed as a young associate, which led him to hone his now famous work ethic. “As an associate I had feelings of constantly being in over my head. Later I would realize that being denied cookie-cutter work and given more difficult assignments than I was prepared for was really a good thing, flatteringly called ‘the curse of competence.’ In any event, I recognized that the best way to get over it was to get experience as fast as I could. This, of course, led to late nights and being in the office every weekend. As I bemoaned my outcast state, I remembered Judge Goldberg remarking that ‘there are two classes of lawyers in the office on weekends: partners and those who want to be partners.’ I also remembered my grandfather’s saying: ‘He who keeps his desk is kept by it.’ That has been one of the things that has always made sense to me, the idea that, basically, if you tend to business, your business will keep you. And you can make money at it.”

Over the years, Egan has worked on “more M&A deals than I have hairs on my head,” as he puts it. In his first such transaction in 1969, Egan represented SEDCO, the world’s largest offshore drilling company, in its acquisition of Houston Contracting Company, a large pipeline construction company. After that, Egan handled numerous significant SEDCO deals, including public offerings, joint ventures for offshore drilling rigs and other M&A transactions. “In addition to doing transactions all over the world,” he remembers, “there were challenges resulting from the political activities of William P. Clements, SEDCO’s chairman of the board and largest shareholder, who became deputy secretary of defense and later governor of Texas.”

Egan’s relationship with SEDCO culminated in the company’s 1984 merger with Schlumberger Ltd. Says Egan: “The merger occurred as the oil

business was going into one of its severe droughts. Within a year after closing, most of the SEDCO folks were gone, and Schlumberger wrote off an amount that approximated the purchase price. A big component of SEDCO’s value in the merger was SEDCO’s joint ventures with major oil companies that featured ‘hell or high water’ non-cancelable drilling contracts with the major oil companies, and the buyer wanted us to opine that the merger was not an assignment that would give the other parties the right to terminate the contracts. While we were able to conclude that this merger would not affect these joint ventures, the analytical difficulty led me to pursue amendment of the Texas statutes to expressly provide that a merger in Texas is not an assignment unless the contract provides that it is, and this has proved a helpful and distinguishing feature of Texas law.

“From this merger,” Egan muses, “I observed that there are three great lies in the M&A world: ‘The check is in the mail’; ‘I am from the government and here to help you’; and ‘We are buying this business for its people, not for its customer base or tangible assets.’ You can substitute your own first two lies, but repeatedly in deals there is no up-front discussion of the social issues—where target company personnel will fit in the organization chart of the acquiring company. Often there is a group that does a merit selection process from the two companies to put names with job descriptions, but a year after closing, the organization chart of the surviving company often looks a lot like the way it was before the acquisition and there has been an exodus of target company personnel. Directors’ fiduciary duties require that the focus must be on what is in the best interests of the shareholders and what maximizes the value the shareholders receive, and that the officers negotiating the deal must work out the economics of the deal for the benefit of the shareholders before focusing on the social issues. However, the reality is that the social issues lurk below the surface of most deals, and influence the timing and outcome. History tends to repeat itself.”

In addition to SEDCO, Egan also worked on numerous public and private transactions while at Andrews & Kurth, including the merger of Hughes Tool Co. with Baker International Corporation and the merger of Southwest Forest Industries with Stone Container Corporation.

“In 1991 I moved from Andrews & Kurth to Cohan, Simpson, Cowlshaw & Wulff, L.L.P., a firm which, after I joined it, had the world’s largest concentration of former Judge Irving L. Goldberg clerks,” says Egan. “Williams & Connolly in Washington had previously had a larger number of former Goldberg law clerks.

While representing Southwestern Electric Service Company, an electric utility, in its 1993 merger with TXU Corp., an integrated energy company principally in the electric utility business, I saw the value of a buyer working out the social issues first and thereby allowing economics to follow easier. The lawyer, of course, needs to communicate to the players that their fiduciary duties require them to put the interests of the shareholders first. An M&A lawyer needs to recognize this dynamic and educate the client as to their fiduciary duties and the M&A maxim that 'pigs get fat and hogs get slaughtered.' "

Rust My Spurs

With his strong Texas roots—in 1836 his great-great-grandfather was one of the signatories of the Declaration of Independence from Mexico—Egan supports Jackson Walker's philosophy of maintaining full service offices only in Texas. "If you can't fly there in an hour or drive in a morning or an afternoon, it is too far for our Texas-only branch office model," he says. "Expanding further would probably involve some cultural issues, as well as efficiency of operation issues. So we've elected not to have branch offices in other states. Which is not to say that we haven't considered it. And we have relationships with firms in other cities and countries." In 2001 Cohan, Simpson, Cowlshaw & Wulff, L.L.P. combined with Jackson Walker. "Now Jackson Walker has the world's largest concentration of former Irving Goldberg law clerks."

Since 2000, Egan has served as the head of the firm's M&A practice. "While I have worked on numerous public company M&A transactions while at Jackson Walker, I have also handled many private company deals," Egan points out. "The private company deals can be challenging because the size often limits the amount that can be spent on transaction costs and yet does not allow the dismissal of many issues as immaterial. From private deals I have observed: Pigs get fat and hogs get slaughtered; Never let go for a better grip; Humor can help a lot when you are at the 'licklog'—an important point of contention over an issue that must be resolved before the deal can go forward. Rather than saying 'What part of NO don't you understand,' try 'Don't cry down my back, you'll rust my spurs.' And, lastly, the importance of the first law of holes—'When you are in a hole, stop digging.' "

One of the more interesting and challenging private transactions, says Egan, has been a film project for the University of Texas at Austin. UT has a radio-television-film program that is both large—approximately 1,000 undergraduate majors and another 150 graduate students—and

consistently regarded as one of the top programs in the country. Many of these students are interested in entering the commercial film or television industry. To give its students the opportunity to get hands-on film making experience, UT needed a vehicle to tap into the film making talent already in the Austin community, as well as UT alums in the film and entertainment industries elsewhere.

"We assisted UT in achieving this goal through the organization of UT Communication Foundation, a Texas non-profit corporation organized for the benefit of UT's College of Communication. The UT Foundation in turn formed two limited liability companies to facilitate the raising of investor capital for movie making that would involve students and the making of the films. Burnt Orange Productions, LLC was organized to produce the films in close cooperation with the UT Film Institute, an organized research unit within its College of Communication, and thereby provide film making experience for students and faculty in projects intended for the commercial marketplace. A second Texas limited liability company was organized to be the general partner of Town Lake Films, LP, a Texas limited partnership, which sold limited partnership interests to a limited number of accredited investors, most of whom had close ties to UT, in a transaction exempt from SEC registration. The organizational and financing steps have been successfully completed, and the movie making has begun."

A Bone To Pick

Egan has been extremely active with the State Bar of Texas. "In bar work," he says, "one thing leads to another. One new idea can make a lot of difference in my practice, and I have gotten a lot of them over the years from my bar activities."

Some of those activities brought him into close contact with the corporate raiders of 1980s M&A. "As the 1987 regular session of the Texas Legislature was coming to a close," Egan says, "the U.S. Supreme Court revisited the area of state anti-takeover legislation and upheld a state statute intended to deter hostile takeover attempts. Recognizing that our efforts to modernize Texas corporate laws to make Texas a domicile of choice would be frustrated without a comparable Texas statute, I organized a group that drafted such a law for Texas. We ran into strong opposition in the legislature from Boone Pickens and others who were profiting from such forays, and were frustrated until the needed protection was added in 1993 as Part 13 of the TBCA, proving that it is eas-

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continued

ier to block legislation than to pass it. Boone Pickens once told me that he spent over \$1 million in one session of the legislature fighting the bill.

“Texas has a long tradition of its business entity statutes being conceived, drafted and proposed to the Texas Legislature by committees of the State Bar’s Business Law Section. Due to a growing tendency of the State Bar Board of Directors to deny support for legislation drafted by the Business Law Section, in 1988 a group of us organized the Texas Business Law Foundation, or the TBLF, a privately funded non-profit corporation, to support in the legislature the section’s legislative efforts designed to make Texas a better place to do business and oppose proposed legislation that could have the opposite effect. I was one of the incorporators of the TBLF, am a former chairman of the TBLF, and currently serve as a director and member of the Executive Committee of the TBLF. I am also a former chairman of the Business Law Section of the State Bar of Texas, and former chairman of that section’s Corporation Law Committee. On behalf of these groups, I have been instrumental in the drafting and enactment of many of Texas’ business entity and other statutes.”

These experiences often remind Egan of Otto von Bismarck’s maxim: “Laws are like sausages. It’s better not to see them being made.”

Using ideas developed from contacts he made through ABA committee work, Egan came to understand the relationship between state business corporation laws and the accounting for financial reporting by companies. With this background, he wrote the financial provisions of Texas Business Corporation Act.

Later he served as chair of the Corporation Law Committee and coordinated a major revision of the TBCA to address issues and trends that had arisen in the economy and needed to be addressed in the TBCA.

He had a significant role in the development of the registered limited liability partnership and the limited liability company as entities in Texas and the U.S. This all started in 1991 when he was chair of the Business Law Section of the State Bar of Texas and working with the section’s committees and Texas Legislature in modernizing Texas’ business entity statutes.

In 1991, the Texas Legislature passed the world’s first statute permitting the creation of a “registered limited liability partnership,” referred to commonly as an “LLP”. An LLP is a general partnership in which the individual lia-

bility of partners for partnership obligations is substantially limited by the partnership (1) making a filing with the secretary of state, (2) including at the end of its name “registered limited liability partnership” or “LLP”, and (3) arranging at least \$100,000 of insurance or a special deposit to cover its tort liabilities.

Says Egan: “William Safire once referred to the LLC as an entity with the “camaraderie of a partnership and the limited liability of a corporation.”

Egregious Enron

In addition to handling deals and changing Texas law, Egan advises boards of directors and their audit, compensation and special committees with respect to fiduciary duties, Sarbanes-Oxley, special investigations and other issues.

Not surprisingly, Egan has much to say about the effect of Enron and the other corporate scandals that have plagued the country in the last several years.

“There is no question that the impact of Enron is dramatic,” Egan says. “And it’s a trickle-down effect. Enron was a particularly egregious situation. But some of the court decisions that have come out of Enron have had some very expansive wording in them. And the result is that the duties of lawyers and other folks have come under enhanced scrutiny. And so people are spending a lot more time looking over their shoulders.”

Egan pauses. “But what it does is force other people, who are trying to do honest transactions, to jump through more hoops than they otherwise would have to in order to get a transaction done. Which makes them take longer and be more expensive. And this reaches down into the private companies and non-profit corporations, as well. So the impact of Sarbanes-Oxley, which, in turn, is the impact of Enron, is really reaching companies far smaller than were originally targeted by the federal legislation.”

At Jackson Walker, Egan is considered something of a prize resource, not just to clients, but his colleagues, as well. As such, he is famous for unparalleled accessibility and generosity, so much so that his colleagues like to refer to him as the professor. “For one thing, he helps you to keep from perhaps incorrectly convincing yourself of the rightness of your client’s position,” observes Jeff Sone. “We all run the risk of coming up with a clever argument and convincing ourselves that we’re right and not perhaps assessing the situation from a strategic sense. And Byron is an incredible resource in that regard. Because you can go in and he will play the devil’s advocate very aggressively from the other side out of the sheer joy of doing so.”

"In an hour, Byron will walk you through an argument through the Socratic method, show you the weaknesses and strengths of your position and suggest ways to go," Sone continues. "And it's just a wonderful client resource."

Sone and others stress that Egan's curiosity and depth in his field know few bounds. "You can ask him about everything from questions regarding the record-keeping responsibilities of a registered broker dealer, all the way down to the riparian rights—the rights to water that flows through their property—of ranchers in West Texas," Sone says. "From the different application of the business judgment rule in various states to the difference between the ethical duties of lawyers under Sarbanes-Oxley when compared to the historic ethical duties of lawyers under the Texas rules."

"Every piece of paper that's of interest to Byron gets filed in a personal set of files, and there are always two copies of it," Sone laughs. "And he knows where everything is. It's all filed. There is a kind of series of decimals, and everything is organized in some fashion that I don't understand. Probably nobody does but Byron."

"What's interesting," Sone continues, 'is that when you go into his office, you can tell if he is too busy to talk to you. That usually means that he's on the phone, and he's clutching his head because he's so intensely listening to whoever is on the phone. So then you just go away. But if he can talk, you sit down and present him with all of the relevant papers. Depending upon how complex the issue is, you'll give him the papers and say, 'I want to talk to you about this tomorrow.' And then when you come back the next day he will have read the relevant papers and have 50 questions."

Says his partner, Brad Whitlock: "We kid him that he invented the law. That he was involved in drafting the Code of Hammurabi and, you know, all other kinds of ancient statutes. We don't think that he was involved with the Ten Commandments, because they're too simple and short for him to have been involved with. Byron

has a really nice self-deprecating sense of humor. He doesn't take himself too seriously. But he takes the law very seriously and that's what's so great about him."

Egan also mixes up a mean annual Christmas party. "Usually the week before Christmas Byron and his wife, Nancy, have an open house," says Jeff Sone. "And they invite just a vast number of people, because they know everyone. In fact, they invite so many people that the invitation says comes from seven to nine, but really, the party starts at 4:30. And there are shifts, overlapping shifts, but shifts nonetheless. I mean, it's the only way you can deal with it. And it's amazing the people you see at that party. I mean, I ran into my seventh grade history teacher there last year whom I had not seen probably since then! And I'm trying to think how that was because that's half the game at the party is to say, you know, 'Why the devil are you here?' "

There is another event that Egan would never miss: the convening of the Egan clan of Ireland, which over the years has been held in Australia, Ireland, and even Salt Lake City. Next year, Egan will be hosting the gathering in Dallas. "Mike Godfrey and I have been invited as honorary Egans, if you will," smiles Brad Whitlock. "And I swear, once a day we get an email from Byron that says, 'To the Clan,' and it's about some new development with the Texas Egan meeting. It's funny. And away from the office he's just a tremendous amount of fun. And as an Egan, he loves to have a good taste of Irish whiskey or scotch."

Says Egan: "In Warren Buffet's words, 'I plan to retire about five years after I die.' " It doesn't look like retirement will happen any time soon. This summer, Egan was presented with the prestigious Burton Award for Legal Achievement in a ceremony at the Great Hall of the Library of Congress.

An Irish Hammurabi straight out of Texas. Now that, as they say, is an original.

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