

Columbia Professor Defends Harvard Law from Wachtell Attack

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April 3, 2012

In the rarified interactions between elite law firm partners and elite law schools, the former usually fall all over themselves to shower the latter with praise, and, even more importantly, money. It's a heartwarming tale of romance between Mr. White Shoe Alumnus and Ms. Ivy League 3L (or vice versa). But even perfect -- and perfectly codependent -- relationships have their bumps, which is perhaps the mildest way to describe a post by Wachtell, Lipton, Rosen & Katz on [Harvard Law School's blog on corporate governance and financial regulation](#) on March 23. As you'll see, the Wachtell memo was no mash note. Of course, there's nothing that draws attention quite like a high-profile lovers' quarrel. On Tuesday, Columbia Law School professor Jeffrey Gordon rushed to defend his alma mater with a [response to Wachtell](#) at the HLS blog.

The original post, authored by Wachtell partners Martin Lipton, Theodore Mirvis (HLS '76), Daniel Neff, and David Katz, was entitled "Harvard's Shareholder Rights Project is Wrong." It detailed the Wachtell partners' dissatisfaction with a new HLS clinic in which participating students assist public pension funds "in improving governance arrangements at publicly traded firms." Wachtell highlighted two purported problems with the Shareholder Rights Project, or SRP. First, Lipton and crew took issue with the SRP's goal of persuading companies to move away from staggered boards to boards in which all directors stand for election at the same time. (SRP [has reported](#) that in the latest proxy season, it worked with five institutional investors to convince 42 companies to "declassify" their boards.) Perhaps not surprisingly, Lipton, who created the poison pill, disputed the notion that staggered boards are not consistent with good corporate governance.

Lipton, Mirvis and crew also said it's not the role of a law school clinic to promote an anti-corporate agenda. Well, that's not exactly what they said -- the precise language is "It is surprising that a major legal institution would countenance the formation of a clinical program to advance a narrow agenda that would exacerbate the short-term pressures under which American companies are forced to operate" -- but we think it's what they meant. Plus, they wrote, clinics are supposed to provide legal help for the underprivileged, a category that presumably doesn't include pension funds.

Columbia's Gordon, who also serves on the advisory board of the SRP, didn't take Wachtell's critique of his law school and its clinic lying down. "The Wachtell memo-writers' strongly held belief about the virtue of classified boards ... has spilled over into an unfair attack on the Harvard SRP clinic based on a straitjacketed conception of clinical legal education not followed by leading American law schools," he wrote in Tuesday's post.

Gordon pointed out what many parents frustrated with law school tuition bills have known for years: There's quite a variety of clinical training out there. At New York University School of Law (where Lipton is a trustee), students get class credit for a clinic that has promoted campaign finance reform and another that focuses on improving environmental, public health, and consumer protection, Gordon wrote. These and other clinical causes "are all neither universally supported nor focused on the protection of the underprivileged or impoverished," he wrote.

Gordon also notes a fact that did not make it into the Wachtell partners' memo: Harvard and other law schools operate clinics to give students hands-on experience, and many of those students will eventually pursue careers that are not dedicated to serving the underserved members of society. Gordon didn't say this, but perhaps instead of criticizing the Harvard shareholder project, Wachtell actually owes the clinic a debt of gratitude for teaching future Wachtell associates a little bit about real-world securities and corporate governance work.

For his part, the SRP's director, Harvard law professor Lucian Bebchuk, told Reuters that the clinic's "agenda is neither narrow nor mine" and said there is a "body of empirical evidence documenting an association between staggered boards and lower firm valuation." Investors, he said, find the evidence persuasive, even if the Wachtell partners do not.

We don't know what will happen with this quarrel, but universities don't generally pull coursework of any variety because someone disagrees with the content. Perhaps the school could do what law schools do best -- host a debate between the Bebchuk and a Wachtell partner on the pros and cons of board declassification, a debate that would probably end happily ever after with dinner in Harvard Square.

Wachtell partners Lipton, Neff and Katz did not respond to our request for comment; Mirvis declined to comment. We also did not hear back from Columbia's Gordon.