

Practice meets theory: Academia

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The Harvard Law School Program on Corporate Governance brings together leading thinkers on all sides of the shareholder rights divide. Its 2009 roundtable on proxy access attracted Delaware Court of Chancery Vice Chancellor Leo E. Strine Jr.; senior Securities and Exchange Commission adviser Kayla Gillan; Dean Shahinian, senior counsel for the Senate Committee on Banking, Housing and Urban Affairs; and AFL-CIO associate general counsel Damon Silvers, among others.

The program is best known, however, as the base of Harvard Law professor Lucian Bebchuk, a prolific researcher, writer and occasional investor activist. Bebchuk sports a near-perfect record on a flurry of bylaws he proposed in 2007 and 2008 at companies including Home Depot Inc., FedEx Corp., Safeway Inc. and CVS Caremark Corp. "It's very useful for academics to be more exposed to issues of practitioners and for practitioners to be exposed to empirical research that can resolve some issues they wrestle with," he says.

Bebchuk's activism, particularly on pay, has been buoyed by the Harvard Law School corporate governance blog he co-founded in 2006 with Strine, who has written and spoken extensively on his own nuanced, and hardly Bebchukian, views on governance. The site has become the leading online hub for lawyers, academics, practitioners, regulators and others, many of whom regularly contribute. Wachtell, Lipton, Rosen & Katz's Martin Lipton and his partners often post on the site.

Ensnared 3,000 miles away at Stanford University is Bebchuk's frequent sparring partner Joseph Grundfest, who co-directs the school's Directors' College and founded the Stanford Securities Class Action Clearinghouse, which provides online information about securities fraud litigation. Grundfest -- a frequent contributor to Harvard's blog -- often opposes Bebchuk on issues such as proxy access. The former SEC commissioner (1985 to 1990) says it's likely activist investors will run candidates as a way to get attention for their agendas, which is why he isn't surprised that access is an SEC priority. "Lots of people say Democrats are politicizing the process. Well, in Washington, everybody politicizes everything," he says. "When Republicans control the White House, the corporate side of the story tends to be dominant. When Democrats control the White House, the side of the story that's more aligned with unions and state pension funds tends to predominate."

Back on the East Coast, the Millstein Center for Corporate Governance and Performance at the Yale School of Management brings together governance academics, executives and investment managers to conduct research and disseminate work to policymakers and practitioners. "I wouldn't say we're out there beating the drum for anything in particular. We want to keep the subject of corporate governance alive," says the center's namesake, Weil, Gotshal & Manges LLP's Ira Millstein. "What we're trying to do is focus on what are the problems and how do we go about solving them," he says.

The financial crisis introduced new problems, admits Millstein, and spotlighted the challenges boards face in overseeing management and mitigating risk. "It has to do with being too complex. I believe some boards of these financial services companies wanted to know what the risks were and tried very hard to find them. But either they didn't come up to their level, or they were using outmoded formuli, and they didn't have their hands around the whole thing."

As director for the University of Delaware's John L. Weinberg Center for Corporate Governance (named for Goldman, Sachs & Co.'s Weinberg), Charles Elson has a front-row seat on Delaware jurisprudence. Elson recruited Delaware Supreme Court chief justice Myron Steele and Chancery's William Chandler for the center's advisory board; they join AFSCME corp gov director Richard Ferlauto and National Association of Corporate Directors CEO Ken Daly. A lawyer long active on board issues (of counsel at Holland & Knight), Elson gained prominence in the 1998, when as a Sunbeam Corp. director he helped sack CEO "Chainsaw" Al Dunlap.

The contributions of a less-visible, less-activist group of researcher academics are no less meaningful. A prime example: Bebchuk's Harvard colleague and former Columbia Law School professor Mark Roe, who teaches bankruptcy and corporate law. Roe has written extensively on Delaware law, finance and politics over two decades. His objective is not to prove or disprove some piece of doctrine but to study outcomes of rules and regulations. "Much more often than we usually think, the legal outcomes come from the political muscle behind interest groups and public opinion," he says. "Whether it's good governance or bad governance often isn't determinative."