

In Trump Era, Weil's Millstein Sees Promise for Corporate Governance

By **Nell Gluckman**

December 28, 2016

Having just turned 90, Weil, Gotshal & Manges senior partner Ira Millstein still has an active practice advising nonprofits, including New York's Central Park Conservancy, while continuing his decades-long fight to reform corporate boards.

During Millstein's long and influential career at Weil, he counseled clients such as General Electric Co., General Motors Co., the Planned Parenthood Federation of America Inc. and New York City's mayor during its 1970s fiscal crisis. (Millstein prepared the papers for an aborted municipal bankruptcy filing by the Big Apple.)

Millstein's time at Weil, which began as an anti-trust lawyer, saw him become one of the godfathers of corporate governance. In a new book published this month by Columbia University Press—Millstein and his son Jim donated \$1.5 million their alma mater, Columbia Law School, in October—Millstein recounts some of the most consequential boardroom dramas that he witnessed during his long career and writes about what boards of directors can learn from his experiences.

The American Lawyer caught up with Millstein to discuss his book, "The Activist Director," as well as why he's still practicing law and the current state of corporate governance.

You could have retired many years ago. Why do you continue to practice?

I really like what I do. I feel I can't do it as much as I did before, but I can do a lot. With age comes a little wisdom and judgment, and I think that's what I supply.

How did you get into corporate governance when it was barely a practice area?



courtesy of Columbia Law School

Ira Millstein, senior partner at Weil, Gotshal & Manges

It was not at all a given practice. I like to say I had something to do with being there at the beginning. Actually, what happened was I was very active as an antitrust lawyer. I had been in the Department of Justice, in the antitrust division, before joining Weil. The Reagan administration, in effect, embargoed the antitrust laws and I began to wonder what was going to keep a check on these corporations if there

were no antitrust laws. I was doing antitrust work for General Motors at the time. They had problems with management. I happened to be there with the board. It was a great board, but they needed to upgrade their practice.

Together, with the board, we thought through what had to change in order to make them an active board. With people like John Smale of Procter & Gamble, we evolved board guidelines. The board was made up of highly experienced CEOs in other companies. It was out of their experience that we created a new form of governance where they could fire management. They could meet alone without management. They could create rules by which they could operate. We created the GM principles, which became the so-called Magna Carta of corporate governance.

Who do you hope will read your new book?

If I had a wish list, it would include every board member in the country. I think the people who will enjoy the book the most are directors of both profit and not-for-profit organizations. I'm talking to them and suggesting: You gotta up the game and here's how to do it. I would also like lawyers to read it and use it as a basis to give advice. I'm not talking from a textbook. I'm talking from where I was, with very nice people.

How would you characterize the state of corporate governance today?

I'm very proud of how far we've come. Directors understand they have a job to do. Investors are seeking long term gains. But corporate governance keeps evolving. We happen to be at one of the big [moments of] change. The biggest challenge I think we have is that the country has gone rather short-term. Today we have hedge funds and insurance companies and all the rest who profit by holding stock in corporations. The stock becomes almost a commodity. They go short-term and look for faster gains, rather than invest as if they were in it for the long-term.

You can't pass a law to say don't do that. Capitalism is capitalism. I believe in the market and I believe in capitalism. What you have to think about is, who can change this? The board is the last resort.

What do you hope from President-elect Donald Trump's administration when it comes to how they will regulate businesses?

Leave the antitrust division alone and let it do its job. I hope they'll let them do what they do best, which is to promote competition within the market. I know the administration is talking about things they would do to promote jobs and growth and I see such differences of opinion on whether taxing imports and lowering imports will improve life for everybody.

Do you foresee any way the new administration can impact corporate governance?

I don't think there's a lot they can do to change how boards operate. There is a big wave of discontent in this country. Trump caught it. The lawyers, media and banks missed it. Trump got elected by people who are not happy, because they're out of jobs and they can't find the work they used to be able to get. I'm now thinking that there is something boards can do about this. They should listen to the fact that, unfortunately, only a tiny piece of the American public trusts the corporate sector.

I've been thinking about what they could do to make it easier for people who are dispossessed. If competition requires them to move out of this country, then do it, but in doing it, why not think about how you can help the people who are dispossessed. Maybe you can start educating people about what's coming. I don't think we can, as a private sector, continue to disregard this. It's too important.

I think the private sector has a role to play here. I'm not urging companies to set aside a bundle of money to do good. I'm urging boards to think of this as a matter of reputation. I think that is good business.

The logo for the Weil firm, featuring the word "Weil" in white, bold, sans-serif font centered within a solid green rectangular background.