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l'École de Paris

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AMERICAN LAWYERS”**

**or How to Keep an Elephant and a Butterfly
in a House of Cards.**

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Report by
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This is the story of four young Jewish lawyers who got tired of America's conservatism in the sixties and decided to branch out on their own. Or how to start one of the biggest revolutions in American business since the end of the war and act the innocents!

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PRESENTATION BY WILLIAM H. STARBUCK

Once upon a time in the United States of America, there was a law firm quite unlike any other... Since you've kindly invited me to speak to you today, I've decided to tell you the story of this firm's success. Are you sitting comfortably?

First of all, let me fill you in on a bit of background information which will help you to understand the rest of the story. As we all know, the United States is a real melting-pot of immigrants from all four corners of the world. In terms of ethnic and cultural origins, the American population is much more heterogeneous than the population of countries like France or Germany. The best example of this is New York, which many people still consider to be the gateway to the New World: in the space of a few blocks you can happily walk from China Town, through the Italian quarter and into the Jewish quarter! Of course, the Big Apple (the symbol of New York) is an extreme case, but any trip through the United States will give a good feel of the country's great diversity of people.

America in the sixties: WASPs only

Although the American population has always had very heterogeneous roots, the country's major firms were for a long time very monolithic structures: up until the sixties, if you weren't a WASP - a 'White Anglo-Saxon Protestant' - you could hardly expect any job security, let alone a chance of getting to the top! Poor career prospects were the reason why communities like the Irish, Greek, and Polish often advised their younger generation against working for firms like IBM and General Motors. Many of these young people chose to study disciplines such as Medicine which, as professions, would allow them to get round the sort of problems they might face in a big firm.

However, let's not forget that even enrolling at university was difficult for a non-WASP student. It's certainly the case that students of Italian, Irish and Jewish origin had no problems getting accepted at a number of excellent state institutions in the Mid-West or the Pacific Coast. However, the East Coast universities were far less welcoming: some introduced a quota system that considerably lowered the 'minorities'' chances of getting in. This system went strong up until the fifties or sixties and paradoxically allowed many universities to prosper. I'm referring to those that had the bright idea of tapping the Jewish or Catholic niches! This was the case of my own university, which was founded during the last century on a policy of educating pupils regardless of race or religion. This approach turned out to be remarkably successful: New York University is today one of the leading American institutions in terms of the number of Chief Executive Officers it can boast among its alumni. There's a good reason for this: the students felt that they'd be doomed to do dead-end jobs if they joined the big firms, so more often than not they threw their energy into starting their own successful businesses! I'll let you work out for yourselves what an asset this is now for the university.

A world fraught with conservatism

Let's get back to the issue of the big American firms. As I said earlier, up until the sixties, these firms were generally dominated by WASPs. So what about the law firms that they worked with? Well, there was no difference there in terms of the ethnic minorities being hugely under-represented at the top levels of the firm hierarchy. To be accurate, we should remember that up until the post-war years, the American business community did not function at all like it does today. The blue-chip firms like IBM, Ford and General Motors, the big law firms and the major corporate banks made up a very closed circle. There, people went out of their way to avoid making waves or standing out by doing anything that would go against the grain. Relations between these different institutions were made easier by the feeling that they all belonged to the same set. These relationships were based on the long-term and were essentially built on trust. What this boiled down to was that a young lawyer who hoped to become a partner¹ in one of the big law firms would find

¹ We will keep to the American terminology. The staff of a large firm of lawyers in the United States were systematically divided into two categories: on the one hand there were the partners who held shares in the

his social skills more useful than his talent as a lawyer. But the way to the top was long and full of pitfalls: according to the statistics, it was very rare indeed for associates to become partners: only 10% of associates made it to the top of the most prestigious New York law firms, and even in other American states where the rate of success was slightly higher, more than one in two associates never made it to the ranks of the partners. It was a case of what we tend to call the “up or out” system, at least for the WASPs, since members of the ethnic minorities couldn’t even get past the starting post.

Today’s reader of the *Wall Street Journal* would no doubt have a shock if he were to travel back in time to the United States in 1960: at the time, there was no sign of hostile take-over bids or counter measures, no mergers ever took place unless both parties agreed entirely, and there were no gradual sell-offs. It’s certainly true that, as I said earlier, the C.E.O.s and their lawyers or legal advisors were more used to settling their differences on a golf course than before a tribunal. Things were different back in those days... So how did we get to where we are today?

Galanter and Palay published an excellent book on the subject in 1991. They explain the changes that the American business community has undergone since 1960 as due to its instability during these early days, although this is something that few people realised at the time. In fact, the American C.E.O.s of the sixties were firmly convinced that their rather soft-footed way of doing business was ingrained in the very heart of the nation, and that they thought that nothing would be able to come along and change it. However, the destabilising factors started to come to a head. I’ll support Galanter and Palay’s argument by mentioning three factors that affected the law firms and in turn the whole of Corporate America:

- There was an increased need for legal advice as firms expanded, and the law firms had to cater for the extra demand by expanding themselves. A large number of associates were automatically promoted to partner status, which meant that many new young lawyers had to be hired in order to swell the ranks. The law firms were still fairly small at the time and it’s possible that they were not really ready to take this kind of shock to the system. Their attempt to stay ahead of the game forced them to make major changes.
- The second explanation is that one day the associates finally realised that they were being exploited. Suddenly, the traditional way in which the law firms were being run seemed unacceptable to them, even though it had appeared natural up until then!
- Finally, the ethnic minorities also started to make a strong stand against a system which actually excluded them from the top jobs.

Change at last

This explains why a large number of new law firms were created, many by Jews. The legal sector was not the only one to feel the changes: in corporate banking for example, many new investment banks sprung up at the same time, rocking the boat with their methods. The new law firms and financial institutions sometimes developed hand in hand and were able to coax numerous clients away from the traditional establishments with their skilful positioning. They invested in niches which, strangely enough, had been neglected by the older law firms up until then: mergers and acquisitions, the tax system and labour laws, amongst others. This meant that the new law firms managed to establish themselves through sheer merit, rather than relying on the size or quality of their social networks. All it needed was for someone to come up with the idea! The result of this revolution was that legal disputes started to play an unprecedented role in American business life. In fact, it had been traditional for differences of opinion -presuming that there were any- to be settled quietly behind closed doors, certainly not in front of a court. This is how one of my lawyer friends

company and were therefore at the top of the hierarchy, and on the other hand there were the associates who were mostly young attorneys who worked underneath the partners. The partners generally had very high salaries, whereas the associates had to make do with salaries that were by no means poor but were nevertheless modest in relation to the work that they put in.

was able to avoid even once setting foot inside a tribunal during the first fifteen years of his career! There were changes also in this respect, and it became increasingly common for the parties at loggerheads to meet in the courtroom with their lawyers.

It was also around this time that take-over bids, especially hostile take-overs, became common practise in the United States. Up until then, American bankers and lawyers had been opposed to these schemes, considering them unfriendly and arguing that they could cause the breakdown of a system that was essentially based on long-term relationships of trust. However, the newcomers didn't have the same scruples and they managed to shake up these old habits. From then on, a firm that wished to make a take-over bid for one of its rivals could obtain the necessary finance from the new investment banks and seek appropriate legal advice from the new, decidedly modern law firms. The rest of American society jumped on the bandwagon, to the point where the scope of contracts widened. One of the notable features of the time was the increase in legally-defined financial and social relationships between firms and individuals. Increasingly, managers stopped behaving like the guardians of their firms and became more like mercenaries.

It's now 1995, thirty years after this major revolution in American business. Most of the law firms have naturally adapted to this new state of affairs, both in terms of their structure and their behaviour. All of them have expanded, whether this be external or internal growth. New associates have been recruited by the dozen, causing an increase in the ratio of associates to partners, which now stands at over three to one in the large majority of cases. Last but certainly not least, a young lawyer's membership (or non-membership) of an ethnic group is no longer considered to be a deciding factor for recruitment by a law firm. In fact, the most important thing these days is competence!

An elephant and a butterfly

Let's now focus on our case study: the Wachtell and Lipton firm. For me, this firm resembles both a butterfly and an elephant. On the one hand, it has all the grace and delicacy of the lepidopterous insect, flitting not from flower to flower but from opportunity to opportunity. Do Wachtell and Lipton also have the short life of the butterfly? Nothing could be less certain. Of course, for thirty years everyone has been wondering how on earth the firm has been able to survive. However, for thirty years, the firm has been one of the most successful around! There's no call for worry in this respect, since Wachtell and Lipton seem to take more after the elephant, with its long life and quiet strength. Another thing that Wachtell and Lipton have in common with the King of all animals is the image we might have of it. We all know the nursery rhyme where a number of people are summoned before an elephant and told to describe the animal. So huge is the mammal that each person only sees a small part of it and is unable to paint a true, complete picture! This could also be said of Wachtell and Lipton: rarely do people's descriptions of the firm match up and they are always interpreted differently! Unlike the elephant, it's not the size of the firm which confuses everyone but its complexity and originality.

Wachtell and Lipton was started by four young Jewish lawyers who claimed to be driven not by money but their interest in their work. They had started their careers as young associates, each in a different firm, but they all realised that the system as it was would hardly offer them the career satisfaction that they expected. It seemed that they were doomed to become partners of Jewish firms, which they felt were not up to their standards. This is how they came to start their own business. They were also driven by ideals. For example, one of them could state that he didn't at all like "the authoritarian behaviour of partners in the existing law firms, who were content to exploit the work of the associates instead of getting involved in expanding the business". The strict equality of all the members, both partners and associates alike, was one of the Wachtell and Lipton's main founding principles. Equal rights, but also equal duties: the partners as well as the junior lawyers had to do their own library research, and nobody else wrote their reports for them. This did not harm the firm's efficiency in the slightest, since Wachtell and Lipton had decided right from the word 'go' to invest in anything that would make its employees' jobs easier: ample documentation, technical back-up, etc. In short, their people were placed right in the centre of the action and although Wachtell and Lipton expected a lot from its employees in terms of their time and

competence, the firm also knew how to operate in a way that made this worth it for them. Each junior associate would be considered a potential partner and treated as such right from the moment he started.

The rest is history, as they say. Now, thirty years later, Wachtell and Lipton is one of the most successful law firms in the United States. Let me give you a few facts and figures to prove it:

- Wachtell and Lipton has the highest income per lawyer, nearly 50% higher than its closest rival;
- Wachtell and Lipton's margin, expressed as a percentage of turnover, is also higher than any other law firm, reaching nearly 70%;
- finally, if we look at the firm's profits divided by the number of its partners, Wachtell and Lipton rank second, which is remarkable when you consider that the firm's egalitarian policy means that it has relatively more partners for its size than any of its competitors. In fact, Wachtell and Lipton's policy is to limit the partner-associate ratio to equal numbers, whereas the other firms generally have three associates per partner.

How can this phenomenal success be explained? Three answers immediately spring to mind:

- More than any other law firm, Wachtell and Lipton has managed to foster a team spirit among its employees. Of course, the small size of the firm (only about hundred lawyers, far fewer than its competitors) makes this sort of thing relatively easy, but Wachtell and Lipton has genuinely made this into one of the cornerstones of its success. The firm's pay scheme, which is based solely on seniority, was also designed by Wachtell and Lipton to encourage this team spirit.
- The second reason is availability. In the corporate law business, where Saturday's game of golf and Sunday's regatta used to be sacred, Wachtell and Lipton had no qualms about making their services available to clients around the clock, seven days a week! This may be commonplace today, but it was rather more unusual thirty years ago and this enabled the firm managed to win a certain number of contracts.
- Finally, Wachtell and Lipton's success is based on its will to specialise and excel in a small number of fields, even if it has meant turning down business in other sectors.

So there you are: a quick summary of some of the main features that account for Wachtell and Lipton's success. What is even more striking about the firm's history is its amazing ability to innovate. How many times have we seen Wachtell and Lipton win an apparently hopeless case for one of its clients by inventing a new defence technique or coming up with something that nobody else had thought to use?

Spoilsports

One of the best-known Wachtell and Lipton discoveries is called the 'poison pill'. This is a special legal arrangement concerning the firm's shareholders, intended to protect the firm from a hostile take-over bid by fixing the entry cost at a level that will dissuade potential raiders. For a considerably long time, Wachtell and Lipton's competitors refused to offer their clients comparable solutions because they were convinced that the poison pill would never hold water in court. But it did! And in style too! Gradually, after a great deal of sarcasm, the entire profession ended up regarding the poison pill as the best possible preventative measure against hostile take-over bids. It was seen as an almost insurmountable barrier that would protect a firm against any sort of attack. The poison pill seemed infallible.

In any case, nobody managed to crack it for a long time. Couldn't anyone find a loophole? Two years ago one of Wachtell and Lipton's clients decided to launch a hostile take-over bid for a firm that was protected by a poison pill set-up. It seemed a hopeless case. Surprise, surprise! The only battles without hope are the ones that aren't given a fair try. Wachtell and Lipton set to work, its most eminent lawyers spending days and nights on the case and losing a lot of hair in the process!

Then one day, it suddenly became clear to them: yes, there was a way to get around the poison pill! Hardly having had time to catch their breath, Wachtell and Lipton gave its client the good news and shortly after the case came to court. Of course, the take-over bid was successful. The irony was that the law firm that managed to find a way to successfully counter-attack the poison pill was the very same firm that had designed it in the first place: Wachtell and Lipton! This was the start of a legend.

And there are no signs that it will end. The butterfly seems to be fending off every attack and coming out of every recession intact. During the recession that hit the United States hard at the beginning of the nineties, I met someone who had this to say about Wachtell and Lipton: "Mark my words, that firm is going to collapse! They've put everything into mergers and acquisitions, which just aren't happening any more. These days, the firms that aren't going bankrupt have got other things on the agenda." Certainly, the Golden Age of mergers and acquisitions did seem to come to an end after the Gulf War. So what do you think Wachtell and Lipton did? Having earned millions of dollars in mergers and acquisitions, the firm simply moved on to new pastures. It became the major specialist in two fields which the recession had helped to become strategic: bank reengineering and firm bankruptcy.

You don't need me to tell you that it's crucial for a firm to know how to react. No-one has quite mastered the art like Wachtell and Lipton, who give the impression of surfing on the various trends that periodically hit American business. In fact, mergers and acquisitions seem once more to have been the in thing for the last year or so. We can all recall some of the recent cases. But to go back to the start, which law firm do you think was the first in line when the first major case turned up after the recession? Wachtell and Lipton make me think of an ambulance crew that have a rare talent for spotting a city's most perilous crossroads; they then go there and wait excitedly for an accident so that they can go to the rescue and save lives. The only thing is, this particular ambulance doesn't mind occasionally fiddling with the red lights to give fate a helping hand!

As you can see, there's no lack of metaphors to describe a firm like Wachtell and Lipton. Does it take more after the butterfly or the elephant? It's hard to say: doubtless it's a bit like both. However the firm seems to operate in such an original and complex way that this sort of comparison could be made ad infinitum. I think of Wachtell and Lipton as a sort of house of cards, a myriad of parts that are assembled rather flimsily one on top of the other. It's as though the slightest breeze could make the thing fall down and yet it's holding up well. Its beauty all lies in the subtle combination of cards: taken individually, they wouldn't seem half as attractive. In fact, the firm's success derives from a strange alchemy which manages to destroy apparently conflicting forces. Amongst these, one of the most important is the fanatical individuality of the junior lawyers that are recruited straight after graduation.

An agency? No, Sir! An organisation!

I have no hesitation in saying that Wachtell and Lipton is, I believe, the first American law firm that can be called an organisation in the strictest sense of the word. In fact, Wachtell and Lipton's counterparts generally put the firm's success down to the individuals that work for it. Their human resources policy is quite simply to recruit the best possible lawyers and then to make sure that they won't be tempted to go and work for the competitors. Wachtell and Lipton no doubt work things out more carefully because the firm seems to have found a way to quickly and effectively 'produce' partners of an unbeatable calibre from a 'stock' of young graduates who at the outset must be no different to the people who join the rival law agencies.

In short, Wachtell and Lipton is one of its kind in the United States. Its success is due not only to the founders' outstanding personalities but also to circumstances. In fact, the firm began in the rather distinct environment of the sixties. This was a time still marked by the ostracism of ethnic minorities, and by the sort of underground revolution that was soon to break down some of the American businessmen's most conservative idiosyncracies. Did Wachtell and Lipton play a decisive role in the changes or did it simply go with the flow? The firm probably sensed the changes before anyone else, but there is no doubt that it also gave them a bit of a push!

DEBATE

Question: *Hearing your description of Wachtell and Lipton, I feel as though I'm dreaming. And inevitably, the things you have talked about - the way in which the firm was created, the personality of its founding members, etc. - reminded me of a similar case: the early days of Apple. They too were young and wanted to change the world. In your opinion, is it right to compare the two?*

William H. Starbuck: There are of course some similarities between Wachtell and Lipton and Apple. You mentioned them yourself: the unusual personality of the founders, their will to forge a different kind of firm culture and also their genius in setting up the right firm in the right niche before anyone else had caught on. But you also said "They too were young and wanted to change the world". In my opinion, this is where there's a key difference between the two firms. I don't know precisely what motivated Steve Jobs when he started Apple, but you're probably right: he wanted to change the world! On the other hand, this wasn't one of Wachtell and Lipton's concerns. The founders were simply striving for business opportunities that would allow them to combine a professional activity with a real passion for legal problems. This is why they started the firm, not for any of the effects that it might have on the outside world.

Q.: *You placed a lot of stress on what seems to be one of Wachtell and Lipton's key characteristics: teamwork. What does this mean in terms of organisation? What motivates people? Is it the current pay scheme? Are there any other secrets you can share with us?*

W. S.: You've just asked what I believe to be a key question. In fact it raises an issue that we really do need to understand. However, I'm afraid I have to admit that I myself haven't quite worked it out. As you know, in my research work, I'm very interested in the way people optimise knowledge and expertise at work. And according to Wachtell and Lipton, teamwork is crucial if you want to be at the cutting edge of expertise. But I haven't been able to put my finger on the secret alchemy that keeps it all running smoothly. There's no doubt that the best way to understand it would be to spend some time at Wachtell and Lipton and gain an insider's view of how the firm uses teamwork to develop its expertise.

Teamwork: a subtle alchemy

You also wanted to know about motivation and the pay scheme, and whether they're what makes the teamwork possible. Of course, they do play a role in its success. But I feel that the key issue is something else. Why do Wachtell and Lipton's lawyers work in teams? Simply because this type of organisation seems patently obvious to them. Strictly speaking, they haven't had any choice in the matter, since they just 'fell into it' as fledgling lawyers when they left university and joined the firm.

Q.: *The notion of teamwork keeps coming up in the discussion. But what does this mean, precisely? How is the work organised in practise at Wachtell and Lipton?*

W. S.: The teams are formed according to each case and the special needs of the business in hand. The teams are tailor-made, not routine, heavy structures. One of the lawyers 'leads' the team in a manner of speaking, although we have to be careful with the word 'leads' as the work is organised in a very relaxed manner. Each person's tasks are more commonly decided by consensus than imposed by a superior.

Q.: *You didn't give any mention to the legal reform of law firms that was brought in under Richard Nixon. And yet these changes have allowed firms like Wachtell and Lipton to bill their clients no longer on the basis of the number of hours spent on a case but on various other criteria, like the compensation awarded when a case is won. Don't you think that this law has played a big part in Wachtell and Lipton's success?*

W. S.: I have to say no. It's certainly true that this legal framework has allowed Wachtell and Lipton to manage their money like certain corporate banks, who for example bill their clients

according to the profit that the bank has allowed them to make. But you know, many American law firms would like to do the same. It's generally the clients who disagree. So why do they accept it from Wachtell and Lipton? Simply because they're excellent lawyers, who offer their clients considerable hope of winning! In short, it's not the law which has made Wachtell and Lipton successful: it's the firm's success that has allowed it to make the most of the law.

A firm of deviants?

Q.: *Much has been said about Wachtell and Lipton's 'deviancy', and because of this I imagine that many of the lawyers who work for the firm are also deviants. How does the firm select its young lawyers? And how does it manage to make them adopt its own particular brand of deviance?*

W. S.: The recruitment procedure is of course tough and rigorous: only a few people are chosen from among the thousands of unsolicited applications that the firm receives every year. And these chosen few undergo a sort of natural selection. In fact, only twenty-five are chosen to carry out a work placement in the firm, and only a dozen of these will be offered a job at the end. As you can see, the recruitment procedure is quite ruthless. But it's interesting to note that the balance swings both ways: the young lawyers appear to be just as careful when making their choice. It's not unusual for 50% of the twelve successful candidates to turn the jobs down! This isn't hard to understand when you consider that saying 'yes' to Wachtell and Lipton means saying 'no' to a social life, family life and leisure interests! It takes a particular type of person to accept such sacrifices. You asked me how the firm makes its own peculiarity rub off on its new recruits. The answer is that I don't think they really have to worry about it: when you consider the constraints of working at Wachtell and Lipton, wanting to join the firm is already proof of a certain peculiarity! So Wachtell and Lipton don't train people to become deviants: it's more a case of the deviants wanting to join them!

An entropic firm

Q.: *I'm intrigued by the mystery of Wachtell and Lipton's survival. Here's a firm that asks its employees to say goodbye to their private life, stay eternally young, and above all show a fantastic ability to innovate. I can't think of anything more unstable! So how does the firm keep things together in spite of everything? What stops a firm built on disorder and fly-by-night behaviour from getting lost in the general chaos? I can come up with one answer: doesn't Wachtell and Lipton's cohesion rest mainly on the shoulders of its great founders? Won't it be a case of the big problems starting once they've gone?*

W. S.: Of course nothing would have been possible without the four founding members. Each of them has left a lasting mark on the firm, bringing their own brand of genius to the organisation. Lipton is undoubtedly the most 'universal' of the four, which means that he is considered to be the country's most brilliant corporate lawyer. Wachtell isn't bad in this field either and as a result he has nearly become a Top 50 star! I'm not joking: his speeches were in fact recorded during a recent court case in the United States! I assure you that this cassette is currently one of the most popular tapes being listened to by young law undergraduates in the United States, beating even Michael Jackson and Madonna! The third man, Rosen, has made a name for himself as a specialist in bankruptcy cases. Unfortunately, the fourth member, Katz, passed away not long ago. However, his remarkable organisational skills were undoubtedly behind one of the firm's most original aspects: the effectiveness of its teamwork.

As you quite rightly pointed out, the Wachtell and Lipton organisation was for a long time built mainly around the four founding members. However, I believe that nowadays we wouldn't be mistaken in thinking that the firm has become perennial. Firstly, it has reached a certain critical size, and more importantly we can point to what is currently its greatest strength: its ability to 'manufacture' universally-recognised experts, even geniuses, in just about every field in corporate law that counts. For example, one lawyer who works for Wachtell and Lipton has become the leading expert in the banking reengineering process. I could give you many other similar examples. This is why I believe that the firm will still be around long after Wachtell, Lipton, Rosen and Katz have gone.

Q.: *Wachtell and Lipton was set up by four Jews, and ethnic minorities were strongly over-represented at the beginning. Is this still the case today?*

W. S.: No, not at all. The firm has a very open recruitment policy. The selection criteria are based solely on excellence, not on sex, race or religion. The firm just asks for one thing: a real taste for making personal sacrifices!