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SYMPOSIUM INTRODUCTION: A TRIBUTE TO ROBERTA KARMEL

James A. Fanto

This issue memorializes the recent Brooklyn Law School symposium celebrating the career of our retiring colleague, Professor Roberta Karmel. The two-day symposium, entitled “A Life Navigating the Securities Markets: A Celebration of Professor Roberta Karmel’s Work, Teaching, and Mentorship” and held as a Zoom conference on May 13-14, 2021, was sponsored by the school’s Center for the Study of Business Law and Regulation and its Dennis J. Block Center for the Study of International Business Law, and by this journal. The symposium was composed of five substantive panels on securities and corporate law topics and a school-oriented celebration of Roberta by BLS administrators, faculty, alumni and others.

The organizers of the symposium (Professors Miriam Baer and Ted Janger, and I) thought that one of the best ways to honor so prolific a scholar as Roberta was to have a conference where other scholars would reflect upon her many contributions to her fields of corporate and securities law. Moreover, because Roberta had such a rich career as a securities regulator and practitioner and always maintained a close connection to securities and corporate law practice, we thought that it would be valuable to have noted former regulators and current practitioners—many of whom had worked with her—discuss her contributions from their perspective.

Accordingly, we identified five general panel topics to which Roberta had devoted her most well-known articles and books: in the conference order, these were Regulation through Prosecution; International Harmonization of Securities Regulation; Corporate Governance; Securities Market Structure; Financial Services and Financial Intermediaries. We then found scholars who were experts on those topics, familiar with Roberta’s work on them, and willing to do a presentation at the conference (and, in some cases, to contribute an essay to this issue). We next identified noted former regulators and practitioners who would comment on the academics’ presentations and offer their own thoughts on the panel topic. It is tribute to Roberta that everyone we asked was excited to participate in the symposium, which was a great success.¹ Roberta’s writings were the subject of the panels, but conference participants had the added benefit of listening to Roberta offer her comments at each session and her own retrospective thoughts on the issues raised in it.

1. The symposium brochure with a biography of Roberta, the description of the panels and the list of presenters and commenters on each is available at <https://www.brooklaw.edu/-/media/Brooklaw/News-Events/Events/Files/2021/Final-Roberta-Karmel-Symposium-Materials.pdf>. A video of the conference is available at <https://www.youtube.com/watch?v=C3IQDJ0KKu8>, and <https://www.youtube.com/watch?v=GN-ts7F32PI>.

Thus, the essays in this issue of the *Journal* are the academic contributions to Roberta's symposium. The first essay by Professor Jim Park is based on his presentations made during the Regulation through Prosecution Panel I and dealt with a topic, securities enforcement, that was and is close to Roberta's heart. Indeed, the panel's title was taken from her well-known book dealing with how federal government regulation can occur, often inappropriately, through the actions of enforcement officials and prosecutors. In his article, "Karmel's Dissent: The SEC's Use and Misuse of Section 21(a) Reports of Investigation," Professor Park appropriately takes up Roberta's criticism of the SEC's use of Section 21(a) reports of investigation that in her view expanded inappropriately its jurisdiction. He finds that, using a recent report, this criticism may still be valid.

Roberta was always interested in and wrote about the influence of U.S. securities law and securities regulation on other jurisdictions, the development of this law elsewhere, and efforts at transnational harmonization of this law and regulation. Indeed, she helped found our Center for the Study of International Business Law to develop a forum for work on this general area at our school. It made sense then to have Panel II on International Harmonization of Securities Regulation. Professor Howell Jackson's "The EU Challenge to the SEC: A View from 2021" was the scholarly contribution in this panel. In it he reviews Roberta's articles on developments in securities regulation in the European Union and on efforts on harmonization and convergence of securities laws. He then considers her insights in relationship to present day securities market circumstances, finding them still to be useful, albeit in an international context where the SEC and other U.S. regulatory agencies have a less significant role.

During her academic and practicing career, and as a director of several public companies, Roberta closely followed developments in corporate governance, particularly the rise of institutional investors at the end of the last century. Accordingly, Panel III on Corporate Governance featured presentations by three well-known academics and specialists in this subject. In his essay, "The Coming Shift in Shareholder Activism: From "Firm Specific" to "Systematic Risk" Proxy Campaigns (and How to Enable Them)," Professor John Coffee explores the new activism ("systematic activism") of the largest institutional investors that is motivated by their ownership of the public securities market. According to him, these investors may well focus their proxy voting attention on risks (e.g., environmental) that can affect the entire market, even if their voting orientation might have negative effects on a particular company. Professor Jill Fisch's "Mutual Fund Stewardship and the Empty Voting Problem" offers a useful counterpoint to Professor Coffee's position insofar as, inspired by Professor Karmel's writings, she considers the problems that occur when the major institutional investors exercise their voting power on the non-economic, systemic risk issues discussed by Professor Coffee. The main problem that she identifies

and to which she proposes solutions is that the fund advisers vote on these matters in accordance with their own preferences, not necessarily those of the owners of the funds. Professor Joan Heminway then treats a subject dear to Roberta in her essay, “Federalized Corporate Governance: The Dream of William O. Douglas as Sarbanes-Oxley Turns 20.” Through the lenses of Roberta’s own consideration of this topic, Professor Heminway considers inroads into corporate governance, a longstanding subject of corporate law and jurisprudence, that, in the first two decades of the twenty-first century, the SEC has made through its regulation and that Congress has accomplished through the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Panel IV dealt with Securities Market Structure, an arcane subject to which Roberta had devoted considerable scholarly, regulatory and practicing attention throughout her career. My essay, “Looking Forward: Professor Roberta Karmel’s Prescient Views on the Transformation of Self-Regulatory Organizations and of the Securities Market Structure At the Turn of the Last Century,” surveys her major works on the transformation of these organizations and securities market structure, explains how she identified key problems arising from this transformation, and considers the continued validity of her insights. The final Panel V dealt with Financial Services and Financial Intermediaries, a subject on which Roberta focused in her writings later in her academic career when she paid special attention to investment companies and investment advisers. In an essay based upon a presentation in that panel, entitled “Full of questions and wonder: Roberta Karmel’s legacy,” Professor Alan Palmiter offers a personal tribute to Roberta for her significant scholarly influence on his work, particularly on his recent ambitious project on sustainable corporations. Like other authors in this issue, he shows through citations to her past articles how Roberta’s articles continue to provide useful insights on current corporate and securities market issues.

We thus offer this issue as an tribute to Roberta that memorializes several academic presentations made at the symposium. We understand that the essays here can do only partial justice to all the scholarly and other work that Roberta accomplished through her long and productive career. However, we believe that they demonstrate the contributors’ and others’ gratitude to Roberta for being a source of inspiration and mentorship to them and to a generation of scholars. In this spirit of a fond thank you, we offer the issue to her.