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Lisa M. Fairfax

Paula A. Monopoli

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Symposium

WOMEN AND THE “NEW” CORPORATE GOVERNANCE

FOREWORD: A SYMPOSIUM EXPLORING THE ROLE AND IMPACT OF
WOMEN IN A CHANGING CORPORATE ENVIRONMENT

LISA M. FAIRFAX*

PAULA A. MONOPOLI**

Enron, WorldCom, and similar corporate accounting scandals triggered a re-examination of our corporate governance regime and of the roles various actors play within that regime. Interestingly, the scandals not only highlighted the many different roles women play within the current corporate governance system, but also prompted discussion about their impact. For example, in 2002, *Time Magazine* named three women “whistleblowers” as persons of the year.¹ One was Enron vice president Sherron Watkins who wrote a letter to Kenneth Lay warning him of improper accounting practices at the company. Another was Cynthia Cooper who informed the WorldCom board about management practices that covered up billions of dollars in losses. The fact that these whistleblowers were women triggered significant debate about the role of women in the corporate arena. Some argued that women’s outsider status made them more willing to expose corporate weaknesses. Others maintained that women were more prone to “blow the whistle” because they viewed ethical issues

* Associate Professor of Law, University of Maryland School of Law; B.A., Harvard College; J.D., Harvard Law School.

** Associate Professor of Law and Founding Director, Women, Leadership & Equality Program, University of Maryland School of Law; B.A., Yale College; J.D., University of Virginia School of Law.

1. Richard Lacayo & Amanda Ripley, *Persons of the Year: Coleen Rowley, Cynthia Cooper, and Sherron Watkins*, TIME MAG., Dec. 30, 2002, at 30.

differently than men. Yet women also were on the other side of corporate misconduct. For example, Nancy Temple, the former legal counsel for Arthur Andersen LLP, gave advice to Arthur Andersen that a jury concluded tacitly encouraged the company to obstruct the SEC's investigation, and this obstruction ultimately triggered the fall of both Arthur Andersen and Enron.² Interestingly, the Department of Justice (DOJ) selected a woman, Leslie Caldwell, to lead DOJ's prosecution team against Enron. Martha Stewart, a prominent woman board chair and CEO, was prosecuted and convicted by that department. Hence, the recent corporate scandals revealed that women not only played central roles in the recent corporate governance debacles, but also were critical components of the corporate landscape.

The Sarbanes-Oxley Act of 2002 and other reform measures have sought to alter that landscape by requiring changes in corporate governance structures and imposing new responsibilities on corporate officers, directors, and agents. In April 2005, the Business Law Program³ and the Women, Leadership & Equality (WLE) Program⁴ of the University of Maryland School of Law co-sponsored a symposium entitled *Women and the "New" Corporate Governance* that explored the role and impact of women in this changing corporate environment. The Symposium not only sought to explore whether these changes will affect the ability of women to secure and successfully retain positions within corporations, but participants also analyzed whether hav-

2. In June 2002, Arthur Andersen was convicted of obstruction of justice in relation to the document destruction at Enron. The indictment and conviction triggered the demise of Arthur Andersen. Ironically, the Supreme Court overturned the conviction of Arthur Andersen in May 2005. *Arthur Andersen v. United States*, 544 U.S. 696 (2005).

3. The Business Law Program focuses on innovative teaching, practical experience, research, and scholarship in the fields of business organization law, securities regulation, intellectual property, tax, business transactions, and related areas. The Program provides students with the legal, practical, and ethical skills necessary to advise and represent for-profit and not-for-profit businesses, as well as the opportunity to engage in critical and innovative thinking about cutting-edge issues in business law. More information about the Business Law Program can be found at <http://www.law.umaryland.edu/specialty/business/index.asp>.

4. The Women, Leadership & Equality (WLE) Program is dedicated to exploring the gap between the large number of young women lawyers entering the profession (more than fifty percent of the graduating classes in American law schools) and the very small number of women lawyers in leadership positions in the legal profession. The WLE Program fosters research and scholarship through symposia and offers students selected as fellows the opportunity to work in women's policy organizations like the National Women's Law Center and the International Association of Women Judges. The Program offers its fellows an innovative curriculum that supplements their traditional legal training with professional skills training in communications, personal negotiation, networking, rainmaking, and other leadership skills. More information about the WLE Program can be found at <http://www.law.umaryland.edu/specialty/wle/index.asp>.

ing women in various corporate roles has any impact on the manner in which the corporation responds to these new changes and responsibilities. Thus, in addition to providing some data on the status of women in corporate America, panelists discussed the issues women confront in their various roles of monitoring, managing, and advising the corporation, and the extent to which they believe gender affects one's ability to successfully confront those issues.

The opening and keynote addresses reflected some of the different perspectives advanced at the Symposium. Sheila Wellington, the former president/chief executive officer (CEO) of Catalyst Inc., the nation's leading research and advisory organization regarding women and business, delivered the opening address. Catherine Kinney, president and co-chief operating officer of the New York Stock Exchange, delivered the keynote address. Kinney's address pinpointed the important role of women in today's corporations as well as the many women who have achieved success in those corporations by serving on corporate boards and obtaining some of the highest offices in their corporate structure. Wellington, who presided over Catalyst while it performed major studies on the position of women in corporate America, agreed that women had made progress over the years, but argued that there continues to be significant barriers to women's success in the business community.

The Symposium also featured more than thirty panelists from academia and the corporate world. Panelists brought a wide variety of viewpoints to the discussion. Panel topics included *Women as Executive Officers and Managers*, *Women on the Corporate Board*, *Women and Government Enforcement*, *Women and Counsel*, and *Women as Academics and Scholars*. This Issue of the *Maryland Law Review* includes some of the articles presented at the Symposium. This Issue should serve as an important resource for those interested in issues affecting women because many of the articles in this Issue present empirical evidence regarding the status of women in the workforce, in the executive suites, on corporate boards, in the legal profession, and as corporate law professors. Moreover, although the articles in this Issue reflect differing perspectives, they all embody a common theme that not only explores the role and impact of women in the corporate environment, but also assesses obstacles to their successful advancement while proposing some remedies to those obstacles.

More specifically, these articles focus on corporate executives from a wide range of different vantage points. Jayne W. Barnard's article seeks to explore whether there are differences between men and women executives (whom she terms "Alpha Women") by studying

the impact of such Alpha Women on their corporations. Her article evaluates the performance of such women-led companies along three metrics—the companies' sensitivity to stakeholder issues, their compliance with various corporate governance standards, and the extent to which women were able to turn around their financially troubled companies. Barnard concludes that even when there are differences between companies led by women and those led by men, it is difficult to pinpoint the precise reason for those differences given the limited number of women in such positions of authority as well as the differences among women executives and the companies they govern. Barnard notes that there has been insufficient research on women business leaders and how they achieved their success, and ends with a call for greater exploration of such women.

Cheryl Wade focuses on the impact male CEOs can have on changing corporate culture. Her article addresses the issue of changing corporate culture by inspiring men within the organization to change. She argues that corporations will not change unless both men and women advocate for gender equity. Her thesis is that the most effective way to achieve this goal is by inspiring change among chief executive officers. Wade explores the ways in which CEOs contribute to an organization's culture and norms by looking at three particular CEOs, Sam Walton, Jack Welch, and Henry Ford, in order to establish the connection between the corporate leader and the possibility of change. Wade concludes by examining the unique issues faced by women of color in the corporate setting and the nexus between those issues and the dominant model of a CEO, which is white and male.

Joan Heminway's article looks at one CEO in particular—Martha Stewart. Heminway's article addresses the prosecution of Martha Stewart and explores the propriety of the securities fraud charge against Stewart and her ultimate acquittal on that charge. After providing a thorough account regarding the novelty of the charges against Stewart and the manner in which they fit in current securities law doctrine, Heminway contends that the action against Stewart may reflect the outer limits of securities fraud doctrine and prosecutorial discretion.

Several articles examine the barriers to women's advancement in the workforce and to positions of authority. These authors propose solutions that draw on literature and mechanisms outside of the traditional corporate structure. Thus, Naomi Cahn's article, co-authored with her colleague Michael Selmi, offers innovative ideas that would enhance the wages of low- and middle-income working women in the

lower ranks of corporate organizations. The structural changes they propose would also enhance women's ability to better balance work and family. Cahn and Selmi's proposals focus on three areas, education as a means of enhancing economic choices for women, restructuring the school day and the school year to accommodate wage labor and integrating domestic violence issues into the workplace and carework literature to facilitate women's ability to feel safe in their workplace. They conclude that such innovations would provide women with greater control over their workplace choices and would result in increased economic security and a concomitant class mobility that would yield more opportunities for low- and middle-income working women.

Marleen O'Connor also focuses on the need for structural changes in the corporate environment. O'Connor's article draws on the social psychology literature to examine how societal norms and expectations govern the behavior of men and women in the corporate setting. O'Connor argues that gender-based behavioral dynamics negatively affect women's advancement opportunities. Specifically, she notes that corporate advancement is characterized by a "tournament" whereby employees battle to rise in the ranks and that such tournaments undermine women's ability to be successful. She also maintains that gender dynamics influence boardroom cultures in a manner that decreases women's willingness or desire to provide different perspectives in the boardroom and in the corporate arena more generally. O'Connor concludes that in order for women to advance in the corporate setting, there must be societal changes in gender norms and expectations regarding employment tournaments.

Cindy Schipani's article, co-authored with Terry Morehead Dworkin, Angel Kwolek-Folland, Virginia Maurer, and Marina Whitman, similarly draws on sociological and economic literature as well as other analytical frameworks to identify some of the major factors that both advance and impede women's ability to obtain positions of leadership in business and corporate governance. The article highlights several themes that emerge including those related to mentors and networks, the roles of class and social and cultural capital, the work-life balance, and the variety of leadership styles employed. In addition, the article pinpoints the need to gain a better understanding of the effect of globalization and economic development on women's opportunities for economic and business leadership. The article also examines the role of mentoring on women's mobility in the corporate setting and issues of gender and ethics, with a focus on whistleblowing. The article represents the first in a series of articles undertaking

a comprehensive study of the obstacles women face in business, which series will include an international component. The study's goal is to inform public policy, corporate practices, and the business decisions of women.

Another author who applies different analytical frameworks to traditional corporate issues is Theresa Gabaldon. She applies feminist analysis and critical race theory to the long-standing corporate governance debate over shareholder primacy. Based on that application, Gabaldon develops some proposals for reforming corporate law. Gabaldon posits that feminist analysis and critical race theory may enhance the corporate environment by offering different perspectives, values, and experiential accounts to the traditional corporate law analyses and structures.

Lisa Fairfax's article examines the data on women board members, revealing that while women have made considerable strides, they remain underrepresented in the boardroom when compared with the percentage of women in the workforce and the labor pool more generally. Fairfax discusses obstacles to their increased service and offers some solutions for overcoming those obstacles. Focusing on barriers for women in the legal arena, Lisa Nicholson addresses the issue of women ascending through the corporate ranks to the position as chief legal officer. Her article posits that while women account for thirty-one percent of all in-house counsel positions in the United States, the likelihood that they will ascend to the role of general counsel is slim. Currently, women only account for fourteen percent of the Fortune 500 general counsel. Nicholson describes the barriers to women in law practice generally and argues that diversity in the ranks of general counsel benefits the corporation as a whole. She concludes by offering proposals that will expand the limited diversity that currently exists in the upper ranks of corporate law departments.

Margaret Sachs's article addresses the fascinating history of women law professors teaching in the area of corporate law. She posits that the substantive area of corporate law is perceived as "male" and explores the early women pioneers in the area of legal academia. Sachs's research uncovered only twelve women who began teaching corporations or business associations prior to 1980 and who went on to become tenured, full professors. These women are the focus of her article. She observes that the number of women teaching corporations is actually declining while the number of women law professors as a whole is increasing. Sachs concludes on a cautious note that women who teach and write in this area must walk a fine line between

balancing their approach to corporate law with gender issues both in their scholarship and in the academy itself.

Providing a more personal perspective, Roberta Karmel describes her personal career path as an enforcement attorney in the New York Regional Office of the SEC and her unique experiences as one of the few women in the office during the late 1950s. She traces her upward trajectory through the ranks to become female branch chief and, later, the first female Commissioner of the SEC in 1977 at age forty. Karmel concludes that while her gender may have played some role in the independent stance she often took as a Commissioner, that diligence and intellectual acumen is more integral to career success within the SEC than gender.

Each of the articles in this Issue provides some insights into the status of women in corporate America and the barriers to their success. The articles illuminate the fact that women play a central role in shaping and participating in corporate governance matters from a variety of vantage points, including as employees, executives, board members, corporate counsel, and corporate law scholars. However, the articles also reveal the continued barriers confronting such women, while proposing some innovative solutions for dismantling those barriers.

One of the primary goals of the WLE Program is to foster research and scholarship in the area of gender equity. The Symposium authors have given us perspective on the role and impact of women in a changing corporate environment. The WLE Program is pleased to join with the Business Law Program and the *Maryland Law Review* to present these new articles on *Women and the "New" Corporate Governance* that make a significant contribution to the scholarly canon in corporate law and the impact of gender on this area of the law.