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## TEACHING GENDER AS A CORE VALUE IN BUSINESS ORGANIZATIONS CLASS

Cheryl L. Wade\*

I teach a business organizations course that is typically a large class with up to ninety students. At some point in the first week of each semester, I talk about public companies and the *men* who lead them. I point out to my students that while it is appropriate in most contexts to use gender-neutral language, it would be inaccurate to do so when talking about big business. Only fifteen percent of the board seats at Fortune 500 companies are held by women, and only sixteen percent of Fortune 500 corporate officers are women.<sup>1</sup> I let my students know that when we talk about business organizations, particularly big business, we are talking about class, race, and gender—we are talking about affluent white men.

Most years, we also talked about people of color and women in my business organizations course. This was easy to do after two large class

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1. THE WHITE HOUSE PROJECT, THE WHITE HOUSE PROJECT REPORT: BENCHMARKING WOMEN'S LEADERSHIP 10 (2009), available at <http://www.thewhitehouseproject.org/documents/Report.pdf>. Several scholars have written excellent articles about women, people of color, and corporations. See, e.g., Janis Sarra, *Class Act: Considering Race and Gender in the Corporate Boardroom*, 79 ST. JOHN'S L. REV. 1121 (2005); Larry Catá Backer, *Director Independence and the Duty of Loyalty: Race, Gender, Class, and the Disney-Ovitz Litigation*, 79 ST. JOHN'S L. REV. 1011 (2005); Steven A. Ramirez, *Rethinking the Corporation (and Race) in America: Can Law (and Professionalization) Fix "Minor" Problems of Externalization, Internalization, and Governance?*, 79 ST. JOHN'S L. REV. 977 (2005); Thomas W. Joo, *Corporate Hierarchy and Racial Justice*, 79 ST. JOHN'S L. REV. 955 (2005); Adam J. Sulkowski & Kent Greenfield, *A Bridle, A Prod, and a Big Stick: An Evaluation of Class Actions, Shareholder Proposals, and the Ultra Vires Doctrine as Methods for Controlling Corporate Behavior*, 79 ST. JOHN'S L. REV. 929 (2005); Jayne W. Barnard, *At the Top of the Pyramid: Lessons from the Alpha Women and the Elite Eight*, 65 MD. L. REV. 315 (2006); Lisa M. Fairfax, *Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to Their Advancement*, 65 MD. L. REV. 579 (2006).

actions were filed in the 1990s against Texaco<sup>2</sup> and Coca-Cola<sup>3</sup> alleging race discrimination and as the huge sex-discrimination class action against Wal-Mart unfolded.<sup>4</sup> We talked about the power of shareholders to communicate with each other about discriminatory corporate cultures through the shareholder-proposal process. We also discussed communication between shareholder activists and corporate management through the process of demand in the derivative-litigation context. And, as the subprime debacle unfolded, we talked about fiduciary duty and the mortgage companies that targeted communities of color for subprime loans even when borrowers had good credit records. But, when there is no big news story involving women or people of color, it is difficult to bring the discussion into a survey course taken by students who want to learn the basics of business for the bar examination or for a career in the corporate world.

I also teach a corporate governance seminar where discussions about women and people of color are easier to have. We discuss male CEOs and their role in creating corporate cultures in which race and gender equity thrive. This kind of discussion is essential because there are not enough women CEOs and senior managers to make a meaningful difference in American corporate culture at this point. Men *and* women must concern themselves with equitable corporate governance and decision making. In the seminar, we discuss iconic CEOs who successfully established strong corporate cultures that reflected the CEO's philosophy and personality. The CEOs we discuss may not have worked to establish corporate cultures where racial and gender equity were explicitly articulated goals, but their tenure at their respective companies illustrates the CEO's ability to transform corporate culture in other respects. The transformation occurs because corporate managers and employees are blindly loyal to the CEO's vision. If corporate employees do not follow the CEO's vision, they will be forced out of the corporation. Corporate employees and suppliers must conform to the CEO's vision and agenda in order to work for and do business with a

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2. *Roberts v. Texaco, Inc.*, 979 F. Supp. 185 (S.D.N.Y. 1997). See generally BARI-ELLEN ROBERTS & JACK E. WHITE, *ROBERTS VS. TEXACO: A TRUE STORY OF RACE AND CORPORATE AMERICA* (1998); see also Cheryl L. Wade, *Racial Discrimination and the Relationship Between the Directorial Duty of Care and Corporate Disclosure*, 63 U. PITT. L. REV. 389 (2002); see also Jack E. White, *Texaco's High-Octane Racism Problems*, TIME, Nov. 25, 1996, at 33.

3. Wade, *supra* note 2.

4. Wendy Zellner, *No Way to Treat a Lady?*, BUS. WK., Mar. 3, 2003, at 63.

corporation. Our discussion highlights the importance of inspiring the men who run public companies to include racial and gender equity as an integral part of the corporate agenda.<sup>5</sup>

We also discuss some of the women and people of color who have led Fortune 500 companies. For example, for the first time in American history an African-American woman became CEO of a Fortune 500 company.<sup>6</sup> Ursula Burns took over a very troubled Xerox on July 1, 2009.<sup>7</sup> In an hour-long lecture at the Whitman School of Management in 2008, Burns talked about the need for good corporate citizenship, and she described Xerox as a great place to work.<sup>8</sup> Burns also discussed the fact that Xerox had been a troubled company, and she enumerated the ways the company has attempted to address those troubles.<sup>9</sup> She revealed that senior management “worr[ie]d about everything” related to some of the troubles the company faced in recent years.<sup>10</sup> At Xerox, “it’s all about the people,” she said.<sup>11</sup> “We love difference.”<sup>12</sup> She described the company’s corporate climate as a culture of diversity, mentioning the usual laundry list of diversity concerns—age, sexual orientation, gender, race, and religion.<sup>13</sup>

During her lecture, Burns talked very briefly and superficially about diversity, but she was careful not to mention the *D-word*—discrimination. This is surprising because she said that Xerox managers worried about the details that got them into trouble in recent years.<sup>14</sup> One of those troublesome details should have included the corporate climate that led over one-thousand African-American sales representatives to file a race discrimination suit that had been settled just months before Burns’ speech.<sup>15</sup> Even though Xerox *adamantly* denied

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5. See Cheryl L. Wade, *Transforming Discriminatory Corporate Cultures: This Is Not Just Women’s Work*, 65 MD. L. REV. 346 (2006).

6. *Ursula Burns: The First Black Woman CEO of a Fortune 500 Company*, THE DAILY VOICE (May 22, 2009, 10:19 AM), <http://thedailyvoice.com/voice/2009/05/ursula-burns-the-first-black-w-001913.php>.

7. *Id.*

8. Ursula Burns, Chief Exec. Officer, Xerox, Berman Distinguished Lecture Series: Ursula Burns, Xerox (Nov. 5, 2008), *available at* <http://whitman.syr.edu/video/video.aspx?vid=c2eb3a2b-9f24-4946-8222-f7f769374245>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. Stephen Singer, *Xerox Settles Lawsuit Over Race Discrimination for \$12M*, USA

wrongdoing, the company paid twelve-million dollars to eleven-hundred African-American sales representatives who alleged race discrimination in promotion, pay, and sales-territory assignments.<sup>16</sup> Some plaintiffs also complained about blatantly racist comments, and the plaintiffs' expert proved a "statistically significant disparity between the earnings of black and white salespersons at Xerox."<sup>17</sup> The company's response to this was that the disparity was the result of "inferior perform[ance]."<sup>18</sup>

Burns never mentioned the race-discrimination class action in her speech at Whitman. I cannot find any reports that include any comments she may have made about the litigation, the settlement, or the issue of race discrimination at Xerox. Perhaps Burns agrees with commentators who assert that the United States is now post-racial and that roadblocks or impediments that impede the professional advancement of people of color no longer exist. But disparities in income and promotion rates belie the conclusions that racism is no longer a problem and so do the number of complaints about race discrimination filed with the Equal Employment Opportunity Commission and the courts.<sup>19</sup> Everyday life in America for most people of color establishes that racism persists.

Xerox's response to the race-discrimination class action—adamantly denying *all* allegations and blaming pay disparities on the inferior performance of *hundreds* of African-American sales representatives—ensures that very little will change for the company's employees of color.<sup>20</sup> Because corporations are microcosms of society in which racism persists, it is very unlikely that there is no discrimination within a company that employs thousands. Even though a task force was established as part of the settlement, it is not likely that things will improve as far as discrimination is concerned if the discrimination problem is not discussed or even acknowledged.<sup>21</sup> Things certainly cannot improve if corporate leaders do not even mention the persisting problem of discrimination.

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TODAY (Apr. 11, 2008, 8:13 AM), [http://www.usatoday.com/money/industries/manufacturing/2008-04-11-xerox-discrimination-suit\\_N.htm](http://www.usatoday.com/money/industries/manufacturing/2008-04-11-xerox-discrimination-suit_N.htm).

16. *Id.*

17. Warren v. Xerox Corp., No. 01-CV-2909, 2004 WL 1562884, at \*9 (E.D.N.Y. Jan. 26, 2004) (quoting Dr. Leonard Cupingood's expert report).

18. *Id.* at \*10.

19. Charge Statistics FY 1997 Through FY 2010, U.S. EQUAL EMP'T OPPORTUNITY COMM'N, <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm> (last visited Oct. 23, 2010).

20. Warren, 2004 WL 15662884, at \*10.

21. Charge Statistics FY 1997 Through FY 2010, *supra* note 19.

Burns and other corporate leaders are willing to talk about diversity but are silent about race and sex discrimination. In a law-review article, I wrote about the important difference between discrimination and diversity.<sup>22</sup> To the extent it occurs, the discourse on race and gender in the business setting typically focuses on diversity efforts rather than the continuing problem of discrimination. The typical diversity discussion that takes place in the corporate setting obscures, rather than confronts, persistent discrimination issues. On their websites, and in other communications with shareholders and the general public, corporate spokespersons speak of equal opportunity, compliance with the law, and even affirmative action.<sup>23</sup> This empty rhetoric precludes consideration of discrimination issues and allows companies to avoid responsibility for enduring racism and sexism within the firm.

A company that focuses only on diversity efforts, without considering the persistent problem of discrimination, will inevitably and predictably face complaints from, and possibly litigation brought by, women and employees of color. This is so because American corporations are part of a society that has not eradicated race and sex discrimination. Increased diversity will only lead to an increase in the number of complaints from women and minority consumers, employees, and suppliers if corporate managers fail to monitor and deal with inevitable discrimination. The inevitability of discrimination in the corporate setting becomes evident when one considers the vast numbers of people who act for, or on behalf of, the typical public company.

In the business setting, the equitable treatment of women and people of color depends on the commitment of corporate officers, directors, managers, and senior executives, almost all of whom are white and male. In spite of the difficulties inherent in discussing racism and sexism, it is important that the discourse not occur among women and people of color only. Whites and men must participate, and the discourse should start in law-school classes about business and corporate governance.

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22. Cheryl L. Wade, "We Are an Equal Opportunity Employer": *Diversity Doublespeak*, 61 WASH. & LEE L. REV. 1541 (2004).

23. *Diversity: It's More Than a Commitment. It's at Our Core*, XEROX, <http://www.xeroxcareers.com/working-xerox/diversity.aspx> (last visited Oct. 22, 2011); *Diversity*, THE COCA-COLA CO., <http://www.thecoca-colacompany.com/citizenship/diversity.html> (last visited Oct. 22, 2011); *Diversity*, WALMART, <http://walmartstores.com/diversity/> (last visited Oct. 22, 2011).

