**The Board’s Role in Shaping Corporate Culture**

*This is The Craft of Governance, a podcast providing insight into the boardroom.*

**Keith Meyer:** Welcome to the Directors Academy podcast series focused on the craft of governance, sponsored by allegis Partners. I'm Keith Meyer, the president and one of the founders of the academy. During this series of podcasts, we invite a number of our academy community members to share their unique insights and perspectives on key elements of corporate governance, board leadership, and key issues that are currently facing corporate boards.

Today I'm pleased to have with us Gail Golman Holtzman. Gail joins us from Florida, where she is with Jackson Lewis, and the topic today is a very timely one. It revolves around the board and the board's role in shaping the company's culture. So a very interesting topic. Gail, maybe you could start with just a few words about your background and experience in this area.

**Gail Holtzman:** I would be happy to. Thank you ,Keith. I've been practicing labor and employment law for 34 years. I'm proudly the past chair of the American Bar Association Labor and Employment Law Section, and I have spent my career working with employers in this area, addressing these issues that we're going to focus on today in labor and employment law, counseling employers, preparing policies, litigating cases, conducting investigations, and training, and also serving as a neutral mediator.

**Keith Meyer:** Fantastic. Well, let's just dive into this topic, Gail. So if we think about the board's role in shaping the company's culture, how do you look at this issue today? And how important it is?

**Gail Holtzman:** Well, I think it's critically important, and I don't think we can answer the question of "why is this issue so important now" without really looking at this moment in history and focusing on the dramatic and powerful impact of the global hashtag me too and times up women's empowerment movements. These movements have put the spotlight on corporate governance accountability and abuses of power, and they've dramatically affected the way business is conducted in our country and globally. Just by way of background, in 2006, civil rights African-American Activist Toronto Burke started using the phrase "me too" to raise awareness of the pervasiveness of sexual abuse and assault in society. And after the Harvey Weinstein allegations surfaced, more than 10 years later Actress Alyssa Milano popular popularized the movement on October 15, 2017, asking others to tweet #metoo if they also had been sexually harassed or assaulted, and thus the #metoo movement became a revolutionary, viral phenomenon with the support of journalists' investigative reports.

And then with regard to the Times Up movement, a group of more than 300 women in Hollywood, including high-profile actresses, began speaking out to change the entertainment industry with actions focusing on a safe workplace and equality. Interestingly, in 2017, *Time* magazine named The Silence Breakers the person of the year, focusing on the women who launched a movement against sexual harassment. The cover image accompanying the story features actresses and others who have spoken up against sexual misconduct such as Ashley Judd, Taylor Swift, and former Uber engineer Susan Fowler.

**Keith Meyer:** It's amazing isn't it, in some ways, Gail, how fast this this movement has taken shape? But if you look at 10 of the underlying factors and what's driving it, I think it would also be important to share: how does the body of law and, you know, if you think about workplace harassment and kind of the legal framework that underpins, you know, how we think about taking actions against individuals that are doing this, what do we have there to kind of give us council, I guess, or hope that there's something that we can rely on from a legal perspective as well?

**Gail Holtzman:** Well, Keith, Title VII of the Civil Rights Act of 1964 as amended is one of the major federal laws that prohibits discrimination in employment including discrimination based on gender. And more than 30 years ago in the case of Meritor Savings Bank versus Vinson, the U.S. Supreme Court in a unanimous decision held that sexual harassment that results in a hostile work environment is a violation of Title VII even in the absence of any tangible economic discrimination. The justices held that unwelcome conduct based on gender that is severe and pervasive constitutes sexual harassment and violation of title VII and found that Congress intended to strike at the entire spectrum of disparate treatment of men and women in employment.

**Keith Meyer:** So we've got a very fundamental legal ground here to work from, but also, let's talk about some of the policies, the EEOC, the commission and how you think about, you know, the broader federal mandates that are out there as well to protect employees.

**Gail Holtzman:** Right. Well, Keith, is the result of what we have seen with these movements and the development of waters and increased focus now on, and scrutiny of, a company's culture including how the company works to prevent and address harassment and abuses of power, and there's attention also focused on the gender gap, pay equity, and transparency issues as well as the call for diversity and inclusion in leadership including in the C-suite and boardroom.

**Keith Meyer:** Let's turn our attention to the board, Gail, and how if you're thinking about this issue as a board member. You know, what are the risks of not taking action? What are the implications of boards that may be passive to date on these potential issues that are potentially percolating up inside the organization?

**Gail Holtzman:** Well, Keith, the fallout as we've seen from news reports of sexual harassment claims can destroy a company very quickly. Information flow is immediate, and it's reputational impact can be catastrophic. We've seen examples of this occur in the tech, media, and entertainment industries as well as the financial services is industry. We've observed employee protests and walkouts; investors jumping ship; declining profits; employee turnover; lawsuits, including shareholder derivative suits; required public disclosures; and even interference with pending mergers and acquisitions.

Today, there's a responsibility for shareholders to be accountable and to ensure that the workplace is safe, compliant, and many would argue transparent. Interestingly, Keith, the equal employment opportunity commission, EEOC, is the federal agency that enforces Title VII, and even before the Harvey Weinstein and development of the #metoo movement in 2016, the EEOC developed a task force called, The EEOC Select Task Force on the Study of Harassment in the Workplace, and the task force developed a report, which can be accessed at the EEOC website www.eeoc.gov. And there are many findings and recommendations in this report, but one that is critical is, for purposes of our podcast today, is that the change of culture starts at the top, and leadership and accountability are critical.

**Keith Meyer:** As you think about, Gail, I know you've worked with a number of organizations around this topic in the exposure and potential liability, it's not just a legal I think perspective but also just a practical one. How does boards become more engaged and more aware of what's going on inside the ranks? And I think it's difficult because, you know, you want to toe the line between management and being a board member and governance and so you don't want to be intrusive into the company's operations or the organization's operations as a board member, but just how would you start to think about you know where this would land in a committee of the board? Where the board should start being more proactive and how that might work?

**Gail Holtzman:** Yeah...

**Keith Meyer:**  Any thoughts?

**Gail Holtzman:** Keith, I think the way you set up that question is a good one because there are boundaries there in terms of the role and responsibilities of management and the board, but I think what we've seen in with the development of these movements and the focus on company culture and practices, the board needs to take a more of an active role to ensure that management is complying with the laws. So, I think there needs to be today enhanced board stewardship and accountability, and the board should clearly understand, be knowledgeable of, and be able to articulate the culture of the company and its commitment to the principles we've discussed today. The board also should lead by example. There should be a diversity on the board, and the composition of the board should also include expertise of board members in areas beyond the more typical financial services role to those who are able to provide oversight to companies in areas that are the subject of the #metoo and Times Up.

I think it's very important that the board will review the committee structure to make sure that there are committees in place to focus on oversight of these issues, including issues of risk management, but even beyond that to ensure that the culture of the company. And I think it's also very important that the board undergo training, the board members undergo training, and they are knowledgeable themselves on the federal standard, statutes, and regulations. And I think it's also important that the board ensures that their effective reporting systems and the board members, you know, are aware of complaints that are coming into the company.

The EEOC task force report that I referenced earlier found that harassment in the workplace remains a persistent problem. It found that one-third of the approximately 90,000 charges received by the EEOC in fiscal year 2015 included an allegation of workplace harassment including on the basis of sex, sexual orientation, gender identity, and pregnancy included within that as well as race, disability, age, ethnicity, national origin, color, and religion, and the report found that employees who experience this often failed to report it because they feared disbelief of their claim in action, blame, or social or professional retaliation. So, I think it's really important that the boards today strive for a holistic approach in ensuring not only a compliant workforce with the statutes we've outlined, but also a culture that's going to encourage employees to stay with the organization, to be motivated to feel like it is a safe and respectful workplace.

**Keith Meyer:** Yeah, I wonder, Gail, you know, if you think about the way in audit committee's designed and works, and if there's any material exceptions or issues with the audited financials, the audit committee will always get a report on what those exceptions look like for an interim period of time to execute against those exceptions for management and to correct those issues.

Back to your point about reporting harassment and other types of bad behavior in the organization, I would imagine that, you know, they're in many companies. There's a process to distill down those claims and then at some point bring them forward potentially to the audit committee or maybe to the compensation committee depending on the board, but that's, you know, in and of itself I think just the tip of the iceberg, because to your earlier point, there could be a large number of individuals in the organization who are being harassed but are not coming forward to make the statement that, you know, something's wrong.

Is there any correlation you think between a board trying to be more transparent and with the management team and being more diligent around a process to at least evaluate and be aware of the claims that are coming through as you would think about financials and the fact that you have exceptions to the audit report? You know, you might have a portion of the organization that feels like the culture is dysfunctional in a way that leads to bad behavior, personal behavior, working out how far should that board or that committee take take that thought because, you know, you really can't unearth what's not being claimed, but yet if there are some claims out there of bad behavior, I think as a board, you want to know what that is, but where do you see, you know, a board kind of taking action and developing a process to be more open and transparent on this topic?

**Gail Holtzman:** Yeah, I think that it's very important for the companies to review their policies and to bring those policies to life, not just put in a handbook that maybe employees will not look at, but through employee orientation, through ongoing training, really communicate, through effective training, what those policies mean, that they are taken seriously. To have very robust reporting processes so that employees understand that there are various avenues for reporting the claims. I think it's very important for the company leadership to participate in training so employees see that the highest levels of management take these policies seriously, and I think employees need to see that when there are allegations that are corroborated that action is taken. And the company sends the clear message that there is not retaliation and that the company will enforce those policies. And the studies have shown that even if you have rainmakers within the company, highly productive individuals, if they are engaging in conduct that's in violation of these laws, ultimately it's going to do more damage to the company. So even if it's a high-performing employee within the company at at the executive level, the company and the board has to be willing to stand behind that and to ensure that action is taken to enforce the policy. And as the EEOC's task force points out, you need a holistic approach.

It's really important to look at the nature of the company, the size of the company, the resources, what's some of the history and problems and issues and challenges might be and tailor a program for that. So, I think it's really important for the boards to have the committees that are providing the necessary, and I'd say enhanced oversight from the way things have been done in the past to ensure, not just wait until an audited financial report comes through, but for the board members to really feel satisfied that the company is performing at the highest level of the standards with the principles were talking about today.

**Keith Meyer:** Let's talk about a couple of other aspects of this what I call transparency and open communication. How important do you think it is, Gail, to have a diverse board who then can bring their experience to the table relative to this topic of shaping the culture down in the company and all the elements of that? And then also could you comment on how important it would be to have an independent Human Resource function that would also feel empowered to help make a difference?

**Gail Holtzman:** Yeah. Well, I think that the diverse piece that you've mentioned, Keith, is really important. I think that's lacking on many boards. Because the employees within an organization are going to be diverse, the customers or clients that that organization is serving are going to be diverse. If you have a very homogeneous board that may not have the background, experience, sensitivity, perspective that align with those other constituent groups, I think, it's very challenging for the board to be able to do its job and its role. And I think that for example, you know, women being underrepresented on boards and a lot of the issues we've seen in the workplace involve gender, whether it's harassment claims, it can go both ways, there are abuses of power situations, and then on the pay equity issues and gender gap where we've seen a lot of attention to that. So I think having the diversity on the board really is critical and will make all the difference in the performance of the company and...

**Keith Meyer:** Yeah, go ahead, because I was gonna say very simplistic rearview mirror view of the board's performance in this area would be that there was more about the results and not how the company delivered the results. But I think going forward, boards need to also focus as much on how the organization is delivering results, how the organization is actually working together, working with external constituents as well as internal employees and associates. It's almost the how as much as the results of themselves. But anyway, sorry.

**Gail Holtzman:** I don't think you can separate the how in the end result. Because a high-performing company where it's a respected workplace, where there are transparency issues and a focus on equality, the company is going to going to be able to attract and retain the best employees. There'll be enhanced productivity and good publicity, good performance. So, I think it's difficult to separate, you know, those two aspects. And I think the board and a company that's performing well, where the company is not the subject of negative media, there's going to be less investor activist activism. I think the board will have greater control to show that it's doing its job, and we've seen that, you know, the values we've talked about today and these principles are very important to major investors today, and they want the corporate culture to align with the values that we're talking about. And I think there's going to be increased pressure on boards to make sure that that happens.

**Keith Meyer:** I am glad you brought that up, Gail, because I, we see the same thing which is the investor interest around ESG and how companies are socially performing as well as financially performing at the top of the list when they questioned and have interactions with with public company boards. I guess to carry this is one step further: Do you see any differences between private and public companies and how they operate and their and the thought process around culture and the board's leadership in this area? Are there any differences at all?

**Gail Holtzman:** I think that in the public arena, obviously, they're more disclosures, you have the reporting obligations, and so, there's perhaps that that greater government scrutiny if, if the entity is a federal contractor, they may be subject to some reporting, possible debarments, loss of government contracts that can affect, you know, company, a private company that's also the contracting. So, but these issues, Keith, I think affect both whether it's public or private. I think there's some of the same challenges and opportunities.

**Keith Meyer:** If you're a board member of the private company or a public company, your should have the same mindset on these issues. Right? There should be no difference. That's what you're saying.?

**Gail Holtzman:** I think that's right. Correct.

**Keith Meyer:** Let's just step back, Gail, and think about a senior executive, a person is entering the boardroom for the first time. How would you counsel them on being an effective director as it relates to helping push a positive, productive culture and an engaged and productive workforce? And you know, if you will, instilling the right leadership in the company relative to the company's culture?

**Gail Holtzman:** Well, hopefully by the time that director gets to the boardroom, those types of questions have been asked and the company can feel pretty confident that there is a support and commitment to the kind of values and principles were talking about today. And whether it's, you know, the kind of scrutiny of the background experiences that the person brings coming into the boardroom, I think it's very important to communicate, to have the board members understand and appreciate the culture of the company, and if there's something that is less than what the board member believes the way it should be, that board member should address that the the whole board should address that with with through the relevant committees.

I think that the training is a critical piece. I think it's really important that every board members go through orientation, not just about financials but also about these the laws we've talked about today, some of these issues, the potential land mines there, the importance of robust policies and procedures. The board members asking questions a lot of questions to understand and satisfy him or herself that the company is doing everything that it should be doing to ensure that if there are some conduct that's occurring that would be violative of the standards we've talked about that the company is it knows about it and is taking steps to address that conduct. So I think a lot of orientation training, due diligence in the selection process and you know of vigilance on the part of the board members.

**Keith Meyer:** Well, this has been great. Gail. Any final thoughts as we think about the...And I think it is definitely if you look at the top of any boards agenda now and as it goes into next year, this issue is right up at the top, if not at the top... Any final thoughts?

**Gail Holtzman:** I would just say that I hope this podcast is help to highlight and increase awareness of the best practices for corporate governance and accountability during this era of the #metoo and Time's Up movements. And I appreciate the opportunity, Keith, to share the benefit of my experience over the past 34 years and hope that this is helpful to those listening to the podcast.

**Keith Meyer:** Well, I wanted to thank you, Gail, for your time and your insights today. They've been wonderful. We'd like to invite everyone to come back in a couple of weeks for our next Craft of Governance podcast. And again, thanks to Allegis Partners for their support of the Academy and our mission to advance diversity in the boardroom.

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