



# SYMPATHY FOR THE DEVIL

Business lawyer and academic **SIOBHAN SWEENEY** says all boardrooms need a “contrarian” director to challenge the majority view

IT WOULD BE UNTHINKABLE for a prisoner to be sentenced without the defense being given an opportunity to speak. Only in the least fair, least open and least democratic states would such behavior be tolerated. And yet, across boardrooms in the most advanced economies on earth, such one-sided examination of issues is all too common, resulting in flawed verdicts and avoidable errors of judgment.

The reason for this sorry state of affairs may lie in one word: comfort. From the people they choose to surround themselves with, to the procedures that guide board meetings, leaders often go to great lengths to avoid being challenged in front of others. Knowing that dissent can be seen as disloyalty, many directors choose to remain silent (and employed).

The boardroom needs to become less cozy for directors. A good place to start would be for the principles of the courtroom – a balanced discussion and examination of facts – to find their way to the board table. To that end, every company board should appoint a “contrarian” director.

On any important recommendation, the contrarian would consider a complete range of outcomes, including “extreme” scenarios, investigate the issues without bias, and recommend a truly independent and impartial course of action. The contrarian would outline the case against the recommendation through a written report that would then become the basis for a board discussion.

To make sure the contrarian director was acting in the company’s best interests he or she would serve a non-renewable three-year



term. An institute should be established to help companies choose contrarians with the right experience and skills.

While the contrarian’s recommendations would not require action by the company, they would make leaders aware of ideas and risks they had not yet considered. At best, having a contrarian in the boardroom could institutionalize skepticism and improve a board’s ability to make decisions and manage risk.

Some may argue that independent directors play this kind of impartial role already. But they face the same pressures and incentives as other board members and are prone to the same mistakes. At Enron and WorldCom, 80 percent of the directors were “independent.”

Why should the position of contrarian director be any more effective? Because it makes uncomfortable discussions the product of a *position*, rather than a

*personality*. Instead of being regarded as troublesome or subversive for sharing concerns, contrarian directors would be understood to be doing their job.

There is precedent for this kind of role working successfully. The Advocate General of the European Court of Justice delivers impartial opinions on contentious cases. The ombudsman role serves a similar function, hired by a government to investigate on behalf of its accusers. Perhaps the best-known position is one which no longer exists: the “devil’s advocate,” a role created by the Catholic Church to argue against a candidate being canonized. The devil’s advocate identified any potential gaps in a case for sainthood – an unpopular duty, but one that was essential to the integrity of the canonization process.

The best leaders should welcome a modern-day devil’s advocate into the boardroom. Asking tough questions and challenging assumptions may be uncomfortable, but it is the price for informed decisions. A robust discussion on difficult issues is the hallmark of great leadership, not the work of the devil.

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Siobhan Sweeney spoke with **ROSHEEKA FIELD**, a Director in Brunswick’s London office.