CORPORATE BOARDROOM DIVERSITY: WHY ARE WE STILL TALKING ABOUT THIS?

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ABSTRACT

What exactly is board diversity and why does it matter? How does diversity fit in an attempt to build the best board for any organization? What attributes and skills are required by law and what mix of experiences and talents provide the best corporate governance? Even though most companies say they are looking for diversity, why has there been such little progress? Are required director attributes, which are a must for all boards, consistent with future diversity gains and aligned with achieving high performance and optimal board composition?

My goal is to provide answers to these questions, and to discuss how a nominating committee and board can define their needs, explore their options, and provoke radical thinking about how corporate governance might be improved by reexamining the demographics and fundamental assumptions about diversity, the attributes of board standing committees, and international board diversity profiles. Hopefully, constructive thinking about diversity, board composition, and a productive dialogue among all in the corporate governance community will result.

Keywords: Board Diversity, Corporate Governance, Directors, Director Selection, Discrimination, Diversity, Entrepreneurship, Ethics, Gender, Gender Diversity, Glass Ceiling, Law, Minorities, Minority Directors, Organizational Behavior, People of Color, Race, Racial/Gender Diversity, Sex, Strategy, Women
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CORPORATE BOARDROOM DIVERSITY:
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I. OVERVIEW

What exactly is board diversity and why does it matter? How does diversity fit in an attempt to build the best board for any organization? What attributes and skills are required by law and what mix of experiences and talents provide the best corporate governance? Even though most companies say they are looking for diversity, why has there been such little progress? Are required director attributes, which are a must for all boards, consistent with future diversity gains and aligned with achieving high performance and optimal board composition?

My goal is to provide answers to these questions, and to discuss how a nominating committee and board can define their needs, explore their options, and provoke radical thinking about how corporate governance might be improved by reexamining the demographics and fundamental assumptions about diversity, the attributes of board standing committees, and international board diversity profiles. Hopefully, constructive thinking about diversity, board composition, and a productive dialogue among all in the corporate governance community will result.

II. WHAT IS DIVERSITY?

*Diversity* means different things to different people. Among the types of diversity commonly described are: gender, national origin, race, sexual orientation and viewpoint. In her article, *Board Diversity Revisited: New Rationale, Same Old Story?*, Professor Lisa Fairfax defines board diversity as “the portion of women and people of color on a corporate board,”¹ and

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“focuses on gender, racial and ethnic diversity… [Using] the term ‘people of color’ to refer to African Americans, Hispanic Americans/ Latinos, Asian Americans, and Native Americans as a group.\(^2\) J. Robert Brown, Jr. observes “Diversity encompasses gender and race, two categories heavily represented among consumers but not among directors. It also includes persons with views and backgrounds at variance with management.”\(^3\)

**Benefits of a Diverse Board**

Brown, Buchholtz, Stewart and Dennis note that “a diverse board of directors brings a variety of benefits to the firm through their expertise, skill sets, knowledge base, reputation and networks.”\(^4\) Bohdanowicz reports that “the literature on corporate governance suggests that diversified boards better fulfill their conformance and performance roles, because diversity is

\(^2\) Id.
seen as a way to combat the group-thinking problem." Trautman observes, “Diversity of viewpoints and experience are key attributes for directors. It seems highly desirable to have a diverse board composed of individuals’ representative of its customers, employees, and stockholders. Approximately half of the population in the United States is men, not seven-eights!”

Moreover

If a company's major product line consists of selling feminine hygiene products in India, it just seems logical that there are better choices for board candidates than males who don't use the products, have no particular understanding of the cultural, marketing channels or religious backdrop of these markets, are not physicians, etc. These considerations seem obvious. Yet, I remember vividly having friends in New York years ago who served on the board of a major company in the feminine hygiene industry; yet, no women served on their board at that time. How can this possibly be rational?

Professors Richard, Murthi, and Ismail conclude that “Race Does Matter for Firm Performance! As the demographic landscape continues to change, it is those companies that proactively acknowledge, value, and exploit diversity that will profit most.”

Alternative
perspectives “that stimulate creativity and innovation” result from racially diverse groups.\textsuperscript{9} Moreover, “firms with racially diverse management are likely to consider more options and generate more ideas for launching new competitive moves. They should also be better equipped to detect, interpret, and respond to various environmental cues and market trends and thus respond more rapidly to competitive challenges.”\textsuperscript{10} Therefore

Racially diverse firms perform better than homogeneous firms because they can launch new competitive actions more frequently . . . compared to firms led by homogeneous management, firms with racially diverse management can create more temporal advantages and increase market share and profits…. Racial diversity in management enhances the capacity to develop new competitive environments with high potential growth.\textsuperscript{11}

Carter et al., (2002) note that “one of the most significant governance challenges that managers, administrators, and shareholders of the modern company face is establishing an optimal mix within the board of directors in terms of gender, race, and culture.”\textsuperscript{12} Indeed, much has been written where diversity is presented “as an ethical complement to statutory governance aimed at improving FRQ [financial reporting quality] and ultimately at creating value.”\textsuperscript{13}

\textsuperscript{10} Id.
\textsuperscript{11} Id. at 17 & 21.
July 16, 2002 recommendations regarding internal corporate governance, the preliminary report of the American Bar Association Task Force on Corporate Responsibility recommended that procedures be instituted “for periodic evaluations by the directors of… the diversity of experience of individual directors…”14 Significantly, Professor Brown writes that the board’s “advisory function must be accompanied by… increased emphasis on diversity as a criterion for board membership. Only with broad viewpoints that emanate from differences in background, experience, gender and race, will the board be able to provide the feedback necessary to make the advisory function meaningful.”15 Brown continues that “the institution of a meaningful advisory function, including greater board diversity, will likely result in a more effective board.”16

Research Findings Inconclusive

What about the issue of whether a linear relationship exists between board diversity and performance? Professors Ben-Amar, Francoeur, Hafsi and Labelle suggest that “this is questioned by both logic and extant research.”17 Unfortunately, “the complexity of board heterogeneity effects may explain that results of extant research on the relationship between board and top management gender diversity, and financial performance, are mixed and

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15 J. Robert Brown, Jr., supra note 3 at 22.
16 Id.
inconclusive.”  

Overall, empirically, gender diversity is found to be either positive or neutral vis-à-vis performance.  

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19 Id. citing Adams, Id. (finding no difference in firms’ financial performance around the appointment of a woman or a man as a CEO in the U.S.); Haslam, Id. (findings no association between women’s board representation and accounting-based performance measures but finding a negative correlation with stock-based performance measures); Francoeur (2008) supra note 13 (documenting a positive relation between gender and financial performance in the case of firms operating in riskier environments. Contending the presence of women on boards appears to help deal with more complex strategic issues); See generally Adams & Ferreira (2009), Id. at 308 (finding that female directors have a significant impact on board inputs and governance. More specifically, gender diverse boards allocate more effort to monitoring management, but the true relation between gender diversity and firm performance is complex. For instance, these authors find that the relation between gender diversity and firm performance is contingent upon the quality
“In what ways do women corporate directors, as a unique group, serve in the governance of large corporations?” asks Professor Diana Bilimoria. She reports that as of 2006, “a substantive case for women corporate directors has yet to materialize….” partly due to the difficulty researchers have had in isolating the impact of a single director, or a very small group of directors, on corporate performance, although recent studies have begun to make strides in this direction.” An additional research challenge offered by Bilimoria results from the difficulty in finding “a measure of corporate performance that would be relevant to the specific contributions of women at the governance apex.”

of governance. ‘We find that diversity has a positive impact on performance in firms that otherwise have weak governance, as measured by their abilities to resist takeovers. In firms with strong governance, however, enforcing gender quotas in the boardroom could ultimately decrease shareholder value’: Nor Raihan Mohamad, Shamsui Abdullah, Mohd Zulkifli Mokhtar & Nik Fuad Kmil, The Effects of Board Independence, Board Diversity and Corporate Social Responsibility on Earnings Management, (Finance and Corporate Governance Conference 2011 Paper), available at http://ssrn.com/abstract=1725925 (suggesting that firms having board diversity tend to have lower earnings management); Maria Strydom & Hue Hwa Au Yong, The Token Woman, 25th AUTRALASIAN FIN. & BANKING CONF. (2012), available at http://ssrn.com/abstract=2136737 (finding that firms with at least three women directors significantly outperform others); Seletha R. Butler, A Critical Mass of Women on the Board of Directors as Critical Influencers, (forthcoming).

22 Carter, supra note 18 at 38.
23 Id. But see E-mail from Ya-wen Yang, Assistant Professor of Accounting, Wake Forest University, to Lawrence J. Trautman (July 10, 2014, 11:00CST)(on file with author), citing Maretno Agus Harjoto, Indrarini Laksmana & Ya-wen Yang, Board Diversity and Corporate Risk Taking, (forthcoming)(preliminary results and subject to change measuring board diversity in multiple dimensions, including gender, race, age, experience, tenure, and expertise; and finding that firms with more diverse boards are more risk averse, spending less on capital expenditure,
SEC Diversity Statement Requirement

During late 2009, the SEC adopted a rule “to assess a company’s commitment to developing and maintaining a diverse board. In summary, public companies are now required to disclose whether diversity is a factor in considering candidates for nomination to the board of directors, and how the company assesses how effective the policy has been.”

SEC Commissioner Luis A. Aguilar puts the case for boardroom diversity this way,

Because of the importance of boards of directors, investors increasingly care about how directors are appointed, and what their background is. This is especially true as American businesses compete in both a global environment, and in a domestic marketplace that is, itself, growing more diverse. In this ever more challenging business environment, the ability to draw on a wide range of viewpoints, backgrounds, skills, and experience is critical to a company’s success.

Thomas Lee Hazen and Lissa L. Broome write “The amended proxy disclosure rule regarding board diversity is a positive step that may increase discussion of diversity issues in board nominating committees.” Moreover, “It supplements ongoing efforts by various groups focused on increasing board diversity, but does so in a way that is far less intrusive than the quota approach adopted in several other countries.”

It is obvious, however, that companies and the SEC are interpreting the new rule differently. The vast majority of companies do not seem to equate ‘consideration’ of diversity with having a diversity ‘policy,’ although the SEC’s comments on several proxies and Commissioner Aguilar’s public statements seem to conflate the two. Many companies have parsed the rule’s language and view consideration of diversity in nominating directors as different and distinct from R&D, and acquisitions, and exhibiting lower volatilities of stock returns and accounting returns than those with less diverse boards.

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27 Id.
having a formal diversity policy. Many even affirmatively state that they do not have a diversity policy so that they do not then trigger the rule’s requirements of discussing implementation of the policy and how the company assesses the effectiveness of the policy.

We urge the SEC to issue interpretive guidance on the amended rule to explicate that any consideration of diversity in board nominations reflects a policy to consider diversity whose implementation and assessment must then be discussed. This would be preferable to the piecemeal proxy comment process which is now the only guidance companies are receiving about the SEC’s interpretation of the rule.28

Diversity Justified on Moral or Social Grounds

Professor Darren Rosenblum contends that “private corporations and international financial institutions (‘IFIs’) benefit from promoting and managing gender equality.”29 He continues

These institutions derive moral legitimacy from the introduction of gender equality into their policy calculus. Corporations attempt to develop similar legitimacy through Corporate Social Responsibility (‘CSR’) efforts. Women, men, and capital all benefit from this change, fortifying the corporations and IFIs that steer the world economy. A productive public/private symbiosis requires ‘public’ values, such as economic empowerment for women and men, to institute rules and regulations like the CBQ in the ‘private’ sector.30

Law professor Barbara Black asks the fundamental question “is it really necessary to make a business case to justify efforts toward board diversity?”31 She contends that “given the poor performances of many leading financial institutions during the recent financial crisis, it is hard to believe that the presence of more women in the boardroom would have a deleterious effect on risk management oversight…”32

28 Id.
30 Id.
32 Id.
The numbers of women, including professional women, in corporate America, should put the onus on the business community to explain their failures to nominate more female candidates for board positions. Title VII has been the law of the land since 1964, and a ‘business justification’ for increased female representation on corporate boards hardly seems necessary. This is an issue of equal opportunity.  

Professor Fairfax observes that “in commenting on directors’ role, Ira Millstein, who drafted one of the first OECD Principles of Corporate Governance, has stated that directors must be “people whom shareholders, employees, suppliers, customers and communities trust to ‘do the right thing.’” Moreover, “Professors Henry Hansmann and Reinier Kraakman… note that today’s corporate form ‘enhances the probability that [board members] will respond in a principled fashion to the interests of all corporate constituencies simply through moral principles and social pressure.’” Fairfax contends, “This broader notion of the corporation means that corporate actors do not have to justify their actions in terms of market returns, but can pursue actions that have a valuable impact on the corporation and the community it serves.”

Along these lines, courts have sanctioned corporate actions that appear to stem from this broader understanding of corporate responsibilities. Hence, even when they do not advance short-term profits, courts will not overturn director actions so long as they can be tied to the long-term health of the corporation. For example, courts have upheld charitable giving by boards based on the notion that such giving enhances the community image of the corporation, which benefits the corporation, if only intangibly. Like charitable giving, promoting board diversity for its own sake may serve to enhance the public image of a

33 Id.
36 Id.
37 Id. citing Shlensky v. Wrigley, 237 N.E.2d 776, 780 (Ill. App. Ct. 1968) (allowing directors to forego profits to advance the long-term concerns of the corporation).
38 Id., citing Theodora Holding Corp. v. Henderson, 257 A.2d 398, 405 (Del. Ch. 1969) (noting that the overall benefits of charitable giving outweighed the loss of income to shareholders).
corporation. Also, courts have allowed corporations to forgo profits in order to preserve the integrity of the community in which it serves. Similarly, courts have enabled corporations to prevent shareholders from taking advantage of the lucrative returns available in connection with a takeover, so that corporations can protect their employees and society. Courts sanction these actions based on a corporate governance paradigm that contends that corporations have an obligation beyond maximizing shareholder profits and returns.

Certainly, diversity efforts justified on moral or social grounds would fit into this paradigm. Thus, rather than fitting their arguments into the shareholder primacy framework, diversity advocates should seek to push this broader concept of the corporation. This effort not only appears more consistent with the modern understanding of corporations’ role within society, but also encourages people to view the corporation in terms other than its market viability. Such a view makes it easier to justify efforts on social appeals, a justification for diversity that may be more honest and valid than business ones.

**Gender Dynamics**

Professor Diana Bilimoria reports that “recent empirical research on WCBD [women on corporate boards of directors] continues to study the participation, characteristics and effectiveness of women board members and their differences from male corporate directors and..."
the country, organizational and board characteristics and practices impacting the representation and effective utilization of women” directors.

Professor of Law Joan MacLeod Heminway believes that the board’s fundamental obligations under the duties of care and loyalty require (especially the subsidiary duty of good faith) that the board,

Must endeavor to understand how women may – not merely individually, but also as a group and as part of a group—add value to the executive team and overall corporate team in that firm. To gain this knowledge, the board must be familiar with, among other things, the results of relevant research studies.

George Washington University Professor Gelaye Debebe describes the importance of gender by observing that “gender reflects a socialization process that begins at birth.” She continues

This process inculcates a masculine identity and worldview for men and a feminine one for women. These orientations are deeply embedded in societal

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culture, such that members view them as inherent to the sexes. Although there are different types of masculinity and femininity, an ideal type within both domains shapes cultural narratives. The ideal feminine involves nurturing and serving others whereas the ideal masculine involves agency and individual achievement. Although individuals rarely embody the ideal for their sex, men are expected to and typically exhibit masculine behaviors whereas women typically exhibit feminine ones.

For most men, the career is a central life preoccupation that progresses in an upward trajectory. For women, careers are constructed in a fluid balance between private and professional roles, resulting in widely differing career trajectories. Women face pressure in balancing work and life demands since they still have primary responsibility for household responsibilities. This limits their participation in career-critical networking opportunities. Many women compensate by developing parallel networks—with other women for support and with men for instrumental benefits. Unfortunately, women’s efforts to manage the incongruity between organizational practice and their multiple roles is seen as evidence that they are not serious about their careers and not that organizations have failed to adapt to their needs.

Professor Debebe describes the plight of women aspiring to top management roles by acknowledging that “as women advance into leadership roles, they face challenges exercising leadership. Consistent with societal gender-role expectations, they are expected to exhibit

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48 Id. citing J. Lorber, supra note 47.
50 Id. citing Miller supra note 46.
53 Id.
54 Id. citing Lorber supra note 47.
55 Id. citing Catalyst, Women and Men in U.S. Corporate Leadership: Same Workplace, Different Realities? (New York 2004).
56 Id. citing D.J. Brass, Men’s and Women’s Networks: A Study of Interaction Patterns and Influence in an Organization. 28 ACAD. MGMT. J. 327 (1985).
feminine behaviors, but when they do, they risk being regarded as ill-suited for leadership.”

It is these “conflicting expectations of women [that] produce organizational resistance to their leadership.”

Women not only learn that feminine behaviors restrict their career mobility but also experience pressure to conform to organizational role expectations. However, when they respond by adapting masculine behaviors, they violate gender-role expectations. Thus, women are seen as weak and incompetent, or rendered invisible if they enact feminine behaviors, but seen as unfeminine if they use masculine ones.

The conflict between societal and organizational expectations can reflect tensions between espoused beliefs that women can do men’s work and actual concerns that they may not be suitable for it. Research on women’s work experiences demonstrates that this tension is not isolated to a particular country.

Professors Manolova, Brush and Edelman observe that “social learning theory argues that as a result of women’s different socialization experiences, they may lack strong expectations of personal efficacy in relationship to many career related behaviors, and therefore may not fully attain their potential.”

Bussey and Bandura argue that a variety of factors influence gender development (e.g. peers, media, educational practices, occupational systems) and explain differences in women’s and men’s socialization. In the entrepreneurial context, performance accomplishments and vicarious learning are two major sources of differences... Vicarious learning includes role models, sex role and

58 Id. citing A.H. Eagly, SEX DIFFERENCES IN SOCIAL BEHAVIOR: A SOCIAL ROLE INTERPRETATION (Hillsdale, NJ: Lawrence Erlbaum 1987).
62 Id.
64 Id. citing K. Busey & A. Bandura, Social Cognitive Theory of Gender Development and Differentiation, 106 PSYCH. REV. 676 (1999).
65 Id. citing Hackett & Betz supra note 63.
occupational stereotypes that can increase efficacy expectations from observing others succeed. A few empirical studies in entrepreneurship have tested these ideas. Early social learning experiences are related to career decisions, with males having higher preference for entrepreneurship. In a national study of entrepreneurial tendencies among youth, Kourilsky and Walstad found that females were less interested in starting a business and less confident in their abilities.

Professors Philipp Koellinger, Maria Minniti, and Christian Schade state that “some studies have suggested that differences in perceptions, attitudes, or preferences may provide an explanation for at least part of the observed difference in labor market behavior between men and women.” Koellinger, Minniti, and Schade find research evidence that “men and women see the world with ‘different eyes,’ and perceive the existence of opportunities and their ability to exploit them successfully in very different ways… men and women perceive and interpret information differently and that, as a result, they make different choices.”

Further evidence of the differences between men and women in small group decision making is offered by Nancy McInerney-Lacombe and Diana Bilimoria. Their research shows that “the level of trust at the board moderated the difficulty of the reception to the issue.

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66 Id.
Underpinning this trust was how well board members knew each other and what they had been through together.”\textsuperscript{71} Significantly

Women spoke of trust differently than men, with women describing a professional trust that their colleagues would do their homework on the issue and ultimately vote to do the right thing. Trust for men was more relational. They knew these guys. They knew which way they would vote. Men described trust in a more personal, almost familial, way.

Inclusion verses exclusion at the board was very important to women. Women were not part of the ‘in crowd.’ Some women did not care. Not being invited to join the men for drinks after the board meeting was a non-event. The big worry for women over exclusion meant not being acknowledged or listened to.…

Influence came with success. All directors came to the board with a track record, some more prestigious than others. This counted, particularly for the men. One male board member said, ‘We know who the good board members are and they get listened to.’ For women, influence was more tactile. It was about the issue on the table. They worked hard and methodically to influence their board on important issues, and with each success their influence grew. It was, however, more about making a difference than making friends.\textsuperscript{72}

Professors Debebe and Reinert observe that although Warren Bennis “did not explicitly explore how identity influences and shapes leadership development, he acknowledged that the challenges are different for men and women.”\textsuperscript{73} Bennis contends “that, traditionally, it has been easier for men to make choices about their lives and define a self. Some have suggested that this may be more accurate in the case of white, upper class men, who have been encouraged and supported by society to advance in life…”\textsuperscript{74} Moreover,

As Bennis pointed out, even these ‘privileged’ men may be thwarted from defining themselves if their inner desires are not aligned with social


\textsuperscript{72} Id.


\textsuperscript{74} Id.
expectations…. Men who are members of minority groups encounter even
greater challenges because they have to overcome negative social expectations
and cultural barriers to excel in domains that they have been traditionally
denied….75

Personal Identity and the Leadership Role

Tajfel defines social identity as “that part of an individual’s self-concept which derives
from his knowledge of his membership of a social group together with the value and emotional
significance attached to that membership.”76 Debebe and Reinert observe that

Some of the most important social identities are based on race, gender, sexual
orientation, class, nationality, ethnicity, religion, and physical ability… Identity is
multifaceted and complex, comprised of many identities which are interrelated in
ways that are unique to each individual. A personal identity emerges from this
multiplicity, reflecting not how society has defined the individual on the basis of,
sometimes conflicting, sociopolitical identities, but on the basis of the meaning an
individual has made of these identities…. Professional identity itself is gendered
and favors men and masculinity, especially in some professions and in the
leadership role.77

Debebe and Reinert explore race gender and sexual orientation, the “three major
dimensions of sociopolitical identity in the context of the United States.”78

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75 Id.
78 Id. For those wanting to know more about Identity-development models, please see Debebe & Reinert at Id. (Describing several models of identity development that have been proposed to grapple with the problem of how people define themselves as members of sociopolitical groups, addressing several dimensions of identity including: (gender) citing J.H. Block, SEX ROLE IDENTITY AND DEVELOPMENT (San Francisco: Josey Bass 1984); Daryl Costos, GENDER ROLE THEORY FROM AN EGO DEVELOPMENT PERSPECTIVE 22 SEX ROLES 723 (1990); Nancy E. Downing & Kristin L. Roush, FROM PASSIVE ACCEPTANCE TO ACTIVE COMMITMENT: A MODEL OF FEMINIST IDENTITY DEVELOPMENT FOR WOMEN, 13 COUNSELING PSYCHOLOGIST 695 (1985); Bonnie Moradi, ADVANCING WOMANIST IDENTITY DEVELOPMENT: WHERE WE ARE AND WHERE WE NEED TO GO, 32 COUNSELING PSYCHOLOGIST 225 (2005) (sexual orientation) citing Vivian C. Cass, HOMOSEXUAL IDENTITY FORMATION: A THEORETICAL MODEL, 4 J. HOMOSEXUALITY 219 (1979); Janna Horowitz & Michael D. Newcomb, A MULTIDIMENSIONAL APPROACH TO HOMOSEXUAL IDENTITY, 4 J. HOMOSEXUALITY 1 (2001); S.R. McCarn & Ruth E. Fassinger, REVERSING SEXUAL MINORITY IDENTITY FORMULATION: A
Interviews conducted by Professor Debebe with women who attended a women-only leadership conference, are believed to have benefited from “recognition of shared experience along with a sense of belonging and acceptance… [And] participants felt they could open up and share without fear of rejection or negative self-presentation… and a sense of freedom to talk about gender-related concerns, concerns that are typically risky to address.”

There was a board chair there. She was obviously a highly connected, powerful person, but she was really open about the sort of issues she faced as one of the only female board chairs at that time and working in a predominately male center. She never would have done that in a mixed-gender situation. She instantly felt comfortable. She wasn’t speaking to us as ‘I’m the board chair and you’re just whatever.’ She was speaking as a person. I think women tend to be less conscious of their levels of influence. At least in this context, she certainly was… And I think that in a mixed situation, you would never have that level of honesty.

A… related aspect of uniqueness was the willingness to broach gender-related concerns, concerns that women find threatening to raise in mixed-gender settings for fear of being seen as weak or uncommitted. This was directly attributed to the all-female nature of the setting. Being freed up to talk about these concerns enabled women to hear from others that they had valid concerns and that their experiences were shared.

Urmia Ashar observes that Fromburn and others have pointed out that reputation is a source of equity value. Good reputation can drive customers to buy more at higher prices, employees to bid up multiples, and regulators to cast a more benign eye. It is thus

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*Debebe *supra* note 46 at 695.

*Id. at 694.*
an epiphenomenon of the interplay between culture and operational matters, oversight and governance practices and its perception by stakeholders.

Put another way, corporate reputation isn’t just about creating a nebulous branding statement that is associated with trustworthiness, reliability, honesty, product quality, or community responsibility. It’s about a firm actually embodying all of those things, and setting up management and governance practices to ensure that the firm lives up to the values and investing truly "Diverse Board" is a key tactic. 81

III. DEMOGRAPHICS OF DIVERSITY

Spencer Stuart reports that “diversity is on the agenda, but the reality seems to suggest otherwise,” noting that “90% of proxy statements discuss whether the board considers diversity among its current and potential members.” 82 Moreover

These boards have reported their commitment to achieving a diversified board in terms of age, race, gender, geographic origin, viewpoints and experience. Many boards also express a desire for the board to reflect the company’s business footprint, customer base and shareholders. Despite this stated commitment, the share of minority directors has scarcely budged in many years, while representation among women has inched up. 83

Progress Lags

Professor Douglas M. Branson notes that while U.S. law, medical and graduate business schools have been graduating women “since the mid-1970s at a 30% rate, escalating to well over 40% in the 1990s, women constitute only 3.5 percent of the corporate CEOs, 14 percent of the executive managers, and 12.5 percent of the corporate directors, holding approximately 16

81 E-mail from Dr. Urmi Ashar, Adjunct Faculty, Carnegie Mellon University to Lawrence J. Trautman (Mar. 5, 2012) (on file with author), citing Charles Frombrun & Cees Van Riel, The Reputational Landscape, 1 CORPORATE REPUTATION REVIEW, 5 (1997); See also generally Toyah Miller & Maria Del Carmen Triana, Demographic Diversity in the Boardroom: Mediators of the Board Diversity – Firm Performance Relationship, 46 J. MGMT. STUD. 755 (July 2009).
83 Id.
percent of the board seats in the *Fortune 500.*"\(^\text{84}\) Branson continues that “so, obviously, no pipeline carries women smoothly from entry level to executive positions. Women are now approximately 50 percent of the middle managers and 50% of the U.S. workforce overall but in scant evidence near the top in business organizations.”\(^\text{85}\)

According to Professor Lisa Fairfax, “As one might expect, there are many similarities between the circumstances of women directors and directors of color, which include African Americans, Latinos, and Asian Americans.”\(^\text{86}\) She observes that “both groups began appearing on corporate boards in significant numbers during the same period – right after the civil rights period – pursuant to which the push for racial equality throughout society precipitated efforts to achieve greater representation of people of color, as well as women, on corporate boards.”\(^\text{87}\) Westphal and Milton found that “Partly in response to pressure from institutions, boards have increased demographic diversity across a range of characteristics.”\(^\text{88}\) In addition

TIAA-CREF and several other major pension funds have filed blanket resolutions with companies that require them to create boards ‘composed of qualified individuals who reflect a diversity of experience, gender, and race’. For instance,


\(^\text{87}\) Id.

a large chemicals firm was pressured to add directors with experience in other industries and a background in marketing or finance rather than engineering, while also appointing more women and ethnic minorities. It is routinely claimed or assumed that such demographic diversity should lead to less insular decision-making processes and greater openness to change. According to the president of TIAA-CREF, ‘people with diverse backgrounds contribute unique perspectives that greatly enrich discussions of critical issues’… Many boards made up largely of industry insiders, or individuals with a particular functional background have appointed directors from outside the industry with experience in other functions, and the representation of women and racial minorities on boards has also gradually increased in recent years.  

Moreover, “Despite the progress women and people of color have made over the last thirty years, the total number of board seats held by women and people of color are relatively small.” Korn/Ferry finds, “While women and members of ethnic minorities are no longer strangers to board service, analysis of the proxy data show that participation by these groups has reached a plateau, however temporary.” Moreover

The recent lack of progress has been similar across the three minority groups detailed in the proxy filings: African-Americans, Latinos and Asians. With the U.S. Census Bureau projecting that minorities will represent more than half of the U.S. population by 2050, it would seem that increasing ethnic diversity would, like gender diversity, offer a strategic benefit in reflecting the makeup of customers, shareholders and employees.

Deborah Rhode and Amanda K. Packel report that “Some of the most encouraging numbers on board diversity may conceal less promising trends.” Accordingly

Much of the increase in women and minority directors over the last decade may reflect the same individuals sitting on more boards rather than the appointment of new individuals as directors. In addition, the Sarbanes-Oxley Act led many corporations to reduce overall board size, which means that the same number of

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89 Id.
90 Fairfax, supra note 86.
91 Korn/Ferry Institute, 34th Annual Board of Directors Study 6 (2009).
92 Korn/Ferry Institute, 34th Annual Board of Directors Study 7 (2009).
women and minority directors may comprise a greater percentage of a now smaller board.\textsuperscript{94}

Proxy data from the 2007 season as depicted in Table 1 is, unfortunately, dated since this survey was last published during 2009. However, it discloses a valuable look at historical trends.\textsuperscript{95}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Retired executive (other companies)</td>
<td>96%</td>
<td>95%</td>
<td>95%</td>
<td>95%</td>
<td>94%</td>
<td>94%</td>
<td>93%</td>
<td>75%</td>
</tr>
<tr>
<td>Investor</td>
<td>93%</td>
<td>94%</td>
<td>94%</td>
<td>91%</td>
<td>91%</td>
<td>89%</td>
<td>91%</td>
<td>73%</td>
</tr>
<tr>
<td>CEO/COO (other companies)</td>
<td>78%</td>
<td>79%</td>
<td>80%</td>
<td>82%</td>
<td>83%</td>
<td>83%</td>
<td>82%</td>
<td>82%</td>
</tr>
<tr>
<td>Women</td>
<td>85%</td>
<td>85%</td>
<td>84%</td>
<td>82%</td>
<td>80%</td>
<td>79%</td>
<td>78%</td>
<td>69%</td>
</tr>
<tr>
<td>Former government official</td>
<td>52%</td>
<td>53%</td>
<td>55%</td>
<td>58%</td>
<td>59%</td>
<td>59%</td>
<td>56%</td>
<td>54%</td>
</tr>
<tr>
<td>Ethnic minority member</td>
<td>78%</td>
<td>76%</td>
<td>76%</td>
<td>76%</td>
<td>75%</td>
<td>71%</td>
<td>68%</td>
<td>47%</td>
</tr>
<tr>
<td>African-American</td>
<td>47%</td>
<td>46%</td>
<td>47%</td>
<td>47%</td>
<td>47%</td>
<td>44%</td>
<td>42%</td>
<td>34%</td>
</tr>
<tr>
<td>Latino</td>
<td>19%</td>
<td>19%</td>
<td>19%</td>
<td>18%</td>
<td>19%</td>
<td>17%</td>
<td>16%</td>
<td>9%</td>
</tr>
<tr>
<td>Asian</td>
<td>11%</td>
<td>10%</td>
<td>10%</td>
<td>11%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>4%</td>
</tr>
<tr>
<td>Academician</td>
<td>52%</td>
<td>55%</td>
<td>56%</td>
<td>58%</td>
<td>60%</td>
<td>59%</td>
<td>59%</td>
<td>53%</td>
</tr>
<tr>
<td>Commercial banker</td>
<td>26%</td>
<td>27%</td>
<td>27%</td>
<td>29%</td>
<td>30%</td>
<td>31%</td>
<td>30%</td>
<td>28%</td>
</tr>
<tr>
<td>Non-U.S. citizen</td>
<td>14%</td>
<td>14%</td>
<td>14%</td>
<td>15%</td>
<td>15%</td>
<td>16%</td>
<td>15%</td>
<td>17%</td>
</tr>
</tbody>
</table>

Source: Korn/Ferry Institute, 34\textsuperscript{th} Annual Board of Directors Study.

**Women**

Research conducted by Catalyst, Inc. finds that “there is a clear and positive correlation between the percentage of women board directors in the past and the percentage of women corporate officers in the future.”\textsuperscript{96} In addition, “women board directors are a predictor of women corporate officers: the more women board directors the company has in the past, the more


\textsuperscript{95} Korn/Ferry Institute, 34\textsuperscript{th} Annual Board of Directors Study 18 (2009).

women corporate officers it will have in the future.” Catalyst contends that “these findings are significant because companies with more women board directors are more likely to select leaders from a broader, more inclusive talent pool that values skills and results regardless of gender…” Moreover, “the analysis indicated that companies with two or more women board directors in 2001 would have 28 percent more women corporate officers in 2006 than companies with one woman board director in 2001.”

Spencer Stuart reports a large disconnect between the number of boards in their 2013 survey who say they are looking for women directors (54%) and the percentage of new S&P 500 directors who are women (24%). Overall, 7% of S&P 500 boards have no women, down slightly from 9% reported in the 2012 survey. The number of S&P 500 companies having two or more women on their board reached two-thirds during 2013, up from just 41% of boards a decade ago and 61% during 2012. The S&P 500 data shows that while nearly 93 percent of boards have at least one female director, women make up only 18 percent of all S&P 500 directors during 2013 compared with 17 percent a year earlier. The average number of women serving on these larger-company boards during 2013 is 1.9, a slight increase from 1.8 during 2012. Please note that the percentage of women serving as directors is much less for companies smaller than the S&P 500.

97 Id.
98 Id.
99 Id. at 6.
101 Id. at 17.
102 Id. at 5.
103 Id.
104 Id. at 17.
Trophy Directors

Professor Branson is critical of the numbers of women directors reported by Catalyst (15.7% in 2010; 16.1% in 2011). He believes that “Catalyst consistently fudges the number upward by reporting the number of directorships held by women as the number of women directors. Actually, [he claims] the latter number of (actual female bodies) is smaller.”\(^{105}\) What accounts for the total number of directorships held by women being significantly larger than the number actual women who serve as directors? Professor Branson explains this phenomenon as due to “the prevalence among women of ‘trophy’ directors in the U.S., women serving on 4, 5, 6 or 7 boards of directors.”\(^{106}\)

Trophy director status is an almost non-existent phenomenon among male directors, most of whom are CEOs, many of whose boards today limit their outside involvement to one other board or no other boards at all….\(^{107}\) The fastest growing segment of U.S. board members has been women trophy directors: the number rising from 19 to approximately 80 just between 2001 and 2006.\(^{108}\) U.S. public companies appoint the same women over and over.\(^{109}\)

David H. Zhu, Wei Shen & Amy Hillman provide a possible answer explaining this phenomenon by observing that

While prior studies on new director selections have emphasized that a candidates prior social ties to incumbent directors tend to help the candidate obtain board appointments, our theory and findings suggest that such prior ties help incumbent


Advocacy groups such as Catalyst, Inc., broadcast statistics about women’s increased presence in business that seem misleading… Catalyst, as well as journalists and others, report that 11.2 percent (in 1999-2000) or 13.6 percent (in 2004) of directors are women. What the statistics really say is that women hold 11.2 or 13.6 percent of the board seats, not that 11.2 or 13.6 of the directors are women.

\(^{106}\) Branson, Id. citing Branson, NO SEAT AT THE TABLE at 77-86 (Trophy directors are ‘those who hold seats on four, five, or even a greater number of corporate boards of directors’).

\(^{107}\) Id. at 12.

\(^{108}\) Id. citing NO SEAT AT THE TABLE, supra note 105 at 97.

\(^{109}\) Branson, supra note 105.
directors recategorize a minority candidate as an in-group member even when the candidate is more different from them. In contrast, a minority candidate without such ties has to be more similar to the incumbents along other salient demographic dimensions to obtain the board appointment.\textsuperscript{110}

Racial Minorities

During 2011, 36.2\% of the U.S. population consisted of people of color \textasciitilde (13.1 percent black, 5.0\% Asian, 16.7\% Hispanic or Latino Origin, 1.2\% American Indian and Alaska Native Persons, and .2\% Native Hawaiian and Other Pacific Islander Persons).\textsuperscript{111} Citing 2010 census data, Catalyst reports that during the decade between 2000 and 2010 the Hispanic population accounted for the majority of total U.S. population growth; and \textquote{the Asian population grew faster than any other major race group between 2000 and 2010; [and] the populations of California, the District of Columbia, Hawaii, and New Mexico are \textquote{majority-minority,\textquoteright meaning over 50\% of the population was a \textquote{minority}.\textsuperscript{112} Among S&P 500 boards, 56\% of the boards\textsuperscript{113} report seeking minorities, yet only 18\% of \textquote{new independent directors are minorities (defined as African-American, Hispanic/Latino and Asian) an increase of over 12\% in 2012. In all S&P 500 boards added 60 directors with these profiles.\textquoteright\textquoteright\textsuperscript{114} Spencer Stuart observes that the representation of ethnic minorities

- among directors in the top 200 companies remained relatively stable from 2012
- 8.9\% of directors are African-American, versus about 8.7\% last year . . .
- 4.6\% of directors are Hispanic/Latino, the same as in 2012. However 46\% of boards today have at least one Hispanic/Latino director, up from 35\% in 2008.

\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Id.
• 1.9% of directors are of Asian dissent, and 19% of boards have one or more Asian directors, up from 12% in 2008.\(^{115}\)

The Alliance for board diversity finds that between 2004 and 2010 the total number of board seats among the Fortune 100 remained relatively flat “with only 16 seats added.”\(^{116}\) By gender, “Women gained 16 seats – a total increase of 1.1 percentage points over six years – while the number of seats occupied by men remained unchanged.”\(^{117}\) Furthermore, “Within the minority groups, Asian Pacific Islander men and women gained 12 and three seats, respectively, and African-American men and women lost five seats and one seat, respectively. The three seats gained by Hispanic women offset the three seats lost by Hispanic men.”\(^{118}\)

**Women of Color: A Particular Concern**

When measured against their percentages of the labor force and within professional schools, women of color account for a disproportionately smaller percentage of available board seats. Fairfax notes that “in 2003, women of color accounted for only 3% of the total available board seats at Fortune 500 companies.”\(^{119}\)

**IV. ATTRIBUTES, QUALITIES & SKILLS REQUIRED OF EVERY DIRECTOR**

Let us now turn to examining the backgrounds of those who are newly elected to serve on boards. Based upon responses from directors of S&P 500 companies, Spencer Stuart’s 2013

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\(^{115}\) *Id.* at 19; Ruth Mateos de Cabo, Jens Hagendorff & Ricardo Gimeno, *Jobs for the Boys? The Glass Ceiling and the Market for Corporate Control*, available at [http://ssrn.com/abstract=2458545](http://ssrn.com/abstract=2458545) (observing that Hispanic directors are less likely to be appointed to the board of a merged firm).


\(^{117}\) *Id.*

\(^{118}\) *Id.* at 4.

\(^{119}\) Fairfax, *supra* note 86.
Board Index, as illustrated in Table 2, provides the following snapshot of the backgrounds of new independent directors.

### Table 2
New Independent Director Backgrounds

<table>
<thead>
<tr>
<th>Background</th>
<th>2003</th>
<th>2008</th>
<th>2013</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEO/chair/president/COO/vice chair</td>
<td>44%</td>
<td>47%</td>
<td>46%</td>
<td>53%</td>
<td>24%</td>
</tr>
<tr>
<td><strong>Active</strong></td>
<td>32%</td>
<td>31%</td>
<td>23%</td>
<td>26%</td>
<td>12%</td>
</tr>
<tr>
<td><strong>Retired</strong></td>
<td>12%</td>
<td>16%</td>
<td>23%</td>
<td>27%</td>
<td>12%</td>
</tr>
<tr>
<td>Other corporate executives</td>
<td>12%</td>
<td>19%</td>
<td>21%</td>
<td>18%</td>
<td>34%</td>
</tr>
<tr>
<td>Division/subsidiary presidents</td>
<td>4%</td>
<td>10%</td>
<td>11%</td>
<td>11%</td>
<td>13%</td>
</tr>
<tr>
<td>Line and functional leaders</td>
<td>8%</td>
<td>9%</td>
<td>10%</td>
<td>7%</td>
<td>21%</td>
</tr>
<tr>
<td>Financial backgrounds</td>
<td>23%</td>
<td>18%</td>
<td>18%</td>
<td>16%</td>
<td>21%</td>
</tr>
<tr>
<td>Financial executives/CFO/treasurers</td>
<td>10%</td>
<td>9%</td>
<td>6%</td>
<td>5%</td>
<td>9%</td>
</tr>
<tr>
<td>Bankers/investment bankers</td>
<td>4%</td>
<td>4%</td>
<td>2%</td>
<td>2%</td>
<td>4%</td>
</tr>
<tr>
<td>Investment managers/investors</td>
<td>4%</td>
<td>4%</td>
<td>8%</td>
<td>7%</td>
<td>4%</td>
</tr>
<tr>
<td>Public accounting executives**</td>
<td>5%</td>
<td>1%</td>
<td>2%</td>
<td>2%</td>
<td>4%</td>
</tr>
<tr>
<td>Academic/nonprofit</td>
<td>10%</td>
<td>6%</td>
<td>4%</td>
<td>2%</td>
<td>9%</td>
</tr>
<tr>
<td>Consultants</td>
<td>4%</td>
<td>3%</td>
<td>3%</td>
<td>2%</td>
<td>6%</td>
</tr>
<tr>
<td>Lawyers</td>
<td>2%</td>
<td>3%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>Others***</td>
<td>5%</td>
<td>4%</td>
<td>6%</td>
<td>7%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Source: 2013 Spencer Stuart Board Index, p.10.
N= 257 men and 82 women in 2013.
* Except where noted, all include both active and retired executives.
** All former partners or executives of accounting firms, except for one director who is currently active as the founder of a public company firm.
***Includes retired government/military and physicians/medical research executives.

### What Boards Are Looking For in Director Candidates

What personal characteristics and attributes are nominating committees looking for in the recruitment of new directors? According to Spencer Stuart’s 2013 Board Index, based upon responses from directors of S&P 500 companies, (see Table 3) at the top of boards wish-lists are
active CEOs and COOs, with 54% of respondents seeking current top executives, while 34% look for retirees from CEO/COO roles. Because the demand for these groups outstrips supply,

Table 3  
Wish List for New Director Backgrounds

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minorities</td>
<td>56%</td>
</tr>
<tr>
<td>Women</td>
<td>54%</td>
</tr>
<tr>
<td>Active CEO/COO</td>
<td>54%</td>
</tr>
<tr>
<td>Financial expertise</td>
<td>47%</td>
</tr>
<tr>
<td>International expertise</td>
<td>44%</td>
</tr>
<tr>
<td>Industry expertise</td>
<td>38%</td>
</tr>
<tr>
<td>Retired CEO/COO</td>
<td>34%</td>
</tr>
<tr>
<td>Risk expertise</td>
<td>25%</td>
</tr>
<tr>
<td>Computer /information technology expertise</td>
<td>22%</td>
</tr>
<tr>
<td>Marketing expertise</td>
<td>22%</td>
</tr>
<tr>
<td>Regulatory/government expertise</td>
<td>20%</td>
</tr>
<tr>
<td>Digital or Social Media Expertise</td>
<td>12%</td>
</tr>
</tbody>
</table>

Source: 2013 Spencer Stuart Board Index, p.11.  
N= 107 survey respondents  
Percentages add up to more than 100 as respondents could select more than one category.

they represent just 23% and 23% of new directors added during 2013.120  As to actual results for minority and women recruitment efforts, the actual number also falls short of expressed demand by boards. While 56% of [S&P 500] boards surveyed say they seek to bring on minorities, only 18% of new independent directors added in 2013 come from diverse ethnic backgrounds.121 The same disparity holds true for women: 54% versus 18%.122

Each Board Has the Same “Core” Fundamental Needs for Talent

While the full board is responsible for approving nominees for election as directors, it is the Nominating and Governance ("N&G") Committee, which is usually responsible for reviewing and recommending nominees to the board. The N&G Committee should be comprised

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120 Spencer Stuart, supra note 100.  
121 Id. at 19.  
122 Id. at 17.
solely of independent directors as defined by the rules of the New York Stock Exchange (NYSE) and the board’s corporate governance guidelines.\textsuperscript{123}

*Desired Personal Attributes*

Best practice dictates that every board should agree on a clear statement of desired personal attributes of all board members to provide guidance to the nominating and governance committee as they search for director candidates. As a starting point, most boards have determined that each director candidate should possess the following necessary core personal attributes: high standards of ethical behavior; availability; outstanding achievement in the individual’s personal and professional life; possession of strong interpersonal and communication skills; independence; and soundness of judgment.\textsuperscript{124}

*Experience Attributes*

Trautman observes that company-specific variables will determine the best mix of director skills and experience. Some of the most important of these variables will include, but are not limited to: (1) the company’s need for access to financial and capital markets; (2) the enterprise’s unique technology dependence; (3) company lifecycle stage; and (4) extent to which

\textsuperscript{123} See Trautman, *supra* note 6, citing Disclosure Required By Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Release Nos. 33-8177; 34-47235 (Jan. 24, 2003), available at \url{http://www.sec.gov/rules/final/33-8177a.htm}. See also Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto Modifying the Exchange’s Independent Director and Audit Committee Corporate Governance Standards; *See also* Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NASDAQ Listing Rules to Reflect Changes to the Rules of the Commission, Release No. 34-60094.

\textsuperscript{124} See generally Trautman, *supra* note 6.
international markets are ‘mission critical’ to the company’s future (therefore, requiring a
detailed understanding of target culture, markets and business risk).  

Trautman also recommends that “Every board should also set forth a statement of desired
experience attributes for each director candidate. These might include such characteristics as:

- **General business experience**- Possess a general understanding of elements
  related to the success of a company like ours in the current business
  environment;
- **Specific industry knowledge**- Possess a reasonable knowledge about our
  businesses;
- **Financial acumen**- Should have a good understanding of business finance
  and financial statements;
- **Educational and professional background**- Should possess a
  complementary set of skills within a framework of total board knowledge
  base;
- **Diversity of background and viewpoint**- Bring to the board an appropriate level of diversity; and
- **Other attributes**- Provide those special attributes identified as needed.  

*Formal Education*

What about formal education requirements for directors? Professor Douglas M. Branson
contends that “women who aspire in business need not major in accounting or finance…
Managers uppermost in the hierarchy too will have lawyers, accountants and financial people
around them who can help answer the questions, or seek out responses and answers.”

However, “the top dogs need to evaluate what underlings are saying as well as have a certain feel

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125 Id. at 77; *See also* Joseph A. McCahery & Erik P.M. Vermeulen, *Understanding the Board of
Directors after the Financial Crisis: Some Lessons for Europe*, 41 J. L. & SOCIETY 121 (2014),
available at [http://ssrn.com/abstract=2398141](http://ssrn.com/abstract=2398141); Suzanne M. Le Mire & George Gilligan,
*Developing a More Complete Understanding of the Independence of Corporate Directors*, U. of
126 Id. at 87.
127 Branson, *supra* note 84.
for and confidence in their understanding of markets, share prices, accounting numbers, projections, and the like.”

I tell aspirants that they should at least have a course in a managerial accounting (not debits and credits but what are financial statements, what do they demonstrate and, more importantly what do they not tell you); a course in finance (corporate, not personal…); economics 101 (to develop a feel for supply and demand, for markets, and for how they work); and perhaps a course in stocks, commodities and investments… After that, major in French (Laura Sen, CEO at BJ’s Wholesale Club did, as well as did Mary Sammons, CEO at Rite Aid), or geography (Christina Gold at Western Union), or psychology (Irene Rosenfeld at Kraft Foods). Literacy and feel, not necessarily deep expertise, are the goals.

The Must Have: Audit Committee "Qualified Financial Expert"

First, we look at the skill and experience requirements every board needs -- absolute "must haves"--- (1) independent directors to populate the audit, compensation and nominating and governance committees, and (2) qualified individuals who meet the definition of "financial expert" to serve on the audit committee. By having three individuals who qualify as financial experts, one to serve as chairman of the audit committee, a back-up designated as vice chairman for succession planning purposes, and preferably a third qualified "financial expert" to serve while gaining in-service experience over-time and gaining an increased familiarity with the company’s pressing audit issues. New York Stock Exchange and SEC Rules require that audit committees consist of "independent" directors, at least one as chair deemed to be qualified "financial expert." Professor Seletah R. Butler contends that recent SEC audit committee requirements

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128 Id.
129 Id. at 15.
With the designated term—‘audit committee financial expert’—and its expansive definition diluted the focus on accounting, auditing, and internal controls experience on the audit committee… [And] at the same time turned the page backwards on the potential for a greater number of women serving on the audit committee and in such expert role (and ultimately public company boards in general).\textsuperscript{131}

Just as the fulfillment of each director's "duty of care" requires that a succession plan be in place to assure that the enterprise will be able to adapt with minimal disruption when a CEO unexpectedly dies or is incapacitated; so too, it seems that all audit committees should have preferably more than one experienced, qualified financial expert replacement waiting in the wings should the audit committee chair fall open unexpectedly. Information technology plays an increasingly critical role for almost every enterprise. Accordingly, the board's responsibility to govern information technology should also dictate that one or more audit committee members have relevant skill and experience.\textsuperscript{132}

\textit{Prior Business/Corporate Governance Experience}

Corporate governance is a legally-intensive endeavor. Directors are required to understand and adhere to numerous rules and regulations which come from: state law, evolving case law and an increasing trend toward federalization of corporate governance (33 Act.\textsuperscript{133} 34


\textsuperscript{133} 15 U.S.C. §77a.
Act, Foreign Corrupt Practices Act (FCPA), Sarbanes-Oxley, and more recently Dodd-Frank. Accordingly, those minority candidates with a legal education are likely best suited to corporate governance work. Fanto, Solan and Darley observe that “a board member with numerous connections can be a valuable resource to a firm. A typical director, it must be remembered, may be the CEO of another firm, a director of several other firms, and a director of nonprofit organizations.” Accordingly, “these connections can be useful to the firm, for a director with them brings along knowledge of practices and strategies at other firms and can identify acquisition targets and financing options.”

The number of years of previous public board service is probably a good indication of the likelihood of directorship skills having been acquired. This assumes that the company where a director served previously benefited from skilled legal counsel so that directors without legal training have had an opportunity to pick up an understanding of director duties and

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139 Id., citing generally Christine Shropshire, The Role of the Interlocking Director and Board Receptivity in the Diffusion of Practices, 35 ACAD. MGMT. REV. 246, 246-47 (2010) (discussing from a theoretical perspective, the characteristics of directors that promote diffusion of practices among firms as a result of interlocking directors).
responsibilities as they go. A strong resume of attending NACD sponsored education and training is also a good indication that a candidate understands the legal pressure points of directorship.\textsuperscript{140}

\textbf{Government and Regulatory Relations}

Fanto, Solan and Darley state that “a particularly important networking characteristic today comes from a director’s government ‘connections,’ which can arise from government service, generally in the executive branch. These connections can be particularly significant for firms in highly regulated industries or for those doing considerable business with the government. For example, a director within a network of existing and former government officials can assist executives with regulatory issues and advise them and the board on relevant legislative and regulatory changes, and she may even act as an indirect lobbyist for a firm.\textsuperscript{141}

This function can be an avenue to the board for women and ethnic and racial minorities who have not had the typical experience as a CEO to qualify them for board service.\textsuperscript{142}

\textsuperscript{140} See generally NACD Education, National Association of Corporate Directors, available at http://www.nacdonline.org/Education/?navItemNumber=527.

\textsuperscript{141} Fanto, \textit{supra} note 138, (observing that recently, a U.S. firm, Amerilink Telecom Corporation, decided to market telecommunications equipment made by a Chinese manufacturer); See Spencer E. Ante & Shayndi Raice, \textit{Dignitaries Come on Board to Ease Huawei into U.S.}, \textit{WALL ST. J.} Sept. 21, 2010, at B1. (Amerilink brought on its board of directors former House majority leader Richard Gephardt and former World Bank head James Wolfensohn to help the firm overcome security concerns by U.S. government officials over the use of Chinese telecommunications equipment in the United States. \textit{Id.} Amerilink’s founder and CEO is a former vice chairman of the Joint Chiefs of Staff. \textit{Id.”}).

\textsuperscript{142} Fanto, \textit{supra} note 138 at 902, (observing that examples come to mind, such as Vernon Jordan, who started his career as a civil rights lawyer, served as senior advisor to former President Bill Clinton, and now is an ultimate corporate insider with numerous directorships), See Vernon E. Jordan Jr., AKIN GUMP STRAUSS HAUER & FELD LLP, \texttt{http://www.akingump.com/vjordan}. For a brief biography of Mr. Jordan, see the website of Akin Gump Strauss Hauer & Feld, \textit{id.}, where he is a senior counsel. \textit{Id.} (last visited July 10, 2014).
International

International sales play an ever increasing role for U.S. based companies. Yet many American boards lack the benefit of directors who are experienced in the culture, market channels and the substantial legal, economic and governmental risk associated with doing business abroad. For these reasons, Governance and nominating committees are increasingly seeking to add directors having knowledge and experience in the international markets where they are either now doing business or expect to look for future growth.\textsuperscript{143}

V. THE POOL OF QUALIFIED CANDIDATES ISSUE

We have seen previously that most boards are looking for (1) prior CEO experience, (2) industry experience, and (3) prior directorship experience.\textsuperscript{144} Fairfax observes

When viewed against their percentages in the labor force and among degree candidates, people of color appear to be under-represented at the corporate board level, though not to the same extent as women based on their portion of the labor force and school population.

While there may be a variety of explanations for this lack of adequate representation, one factor appears to be that corporate boards draw their members from the corporate executive ranks where women and people of color occupy relatively few positions. Studies suggest that the most common occupation of board members is executive or retired executive.\textsuperscript{145} Women hold a relatively small percentage of such positions. Thus, in 2002, 15.7\% of corporate officers in \textit{Fortune 500} companies were women.\textsuperscript{146} Then too, [as of 2002] … only about 1.8\% of women CEOs of \textit{Fortune 500} companies.\textsuperscript{147}

By 2013, data indicates that of the S&P 500 boards, only 24 percent are women.\textsuperscript{148}

While 93\% of US companies have at least one woman director, this compares to 100\% in

\textsuperscript{143} Lawrence J. Trautman, \textit{American Entrepreneur in China: Potholes and Roadblocks on the Silk Road to Prosperity}, 12 WAKE FOREST J. BUS \\
\textsuperscript{144} See generally 2013 Spencer Stuart Board Index, \textit{supra} note 100.
\textsuperscript{145} Fairfax, \textit{supra} note 86, citing KORN/FERRY INT’L, 31\textsuperscript{ST ANNUAL BOARD OF DIRECTORS STUDY} 12 (2004).
\textsuperscript{146} \textit{Id.}, citing CATALYST, 2002 CATALYST CENSUS OF WOMEN CORPORATE OFFICERS AND TOP EARNERS IN THE FORTUNE 500, 1 (2002).
\textsuperscript{147} \textit{Id.}, observing The 2002 study lists six women CEOs.
\textsuperscript{148} Spencer Stuart Board Index, \textit{supra} note 100.
Sweden (which has a mandate) and 10% in Japan. Sweden has 56% of their companies with three or more women on the board, compared with only 10% of US companies, and none for Japan. A study of gender diversity and women’s presence on the boards of European Union banks found that cultural differences “explain part of the heterogeneity in the presence of women on the boards, since we find significant differences among European countries.”

So what’s the Disconnect?

Many currently sitting directors believe their role is to “serve as advisors to the CEO and other major executives on significant, often strategic, issues related to the firm.” Accordingly this function could limit the range of those who appear eligible for board membership. Individuals who could offer advice on such issues based upon their experience must generally be those who are current or former CEOs, or who have had other significant executive responsibilities (e.g. president of a nonprofit). Too much should not be made of this experience, because it is conceivable that individuals without executive experience, such as a management scholar, might also be qualified to give good advice. What appears to matter for board selection on this point is that CEOs are believed to take seriously the advice only of those who have had this executive experience and whom they consider to be their peers… Indeed, a possible reason for the smaller representation of women and racial and ethnic minorities on public company boards is that members of these groups have not had the necessary executive experience to qualify them for the advisory function.

[My emphasis added]

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149 PwC Center for Board Governance, Continuing the Conversation: Board Renewal (Fall, 2011).
152 Id. at 909 citing Colin B. Carter & Jay W. Lorsch, BACK TO THE DRAWING BOARD 67-68 (2004) (discussing three key functions of a board; monitoring performance, making key decisions, and giving advice); Daniel P. Forbes & Francis J. Milliken, Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups, 24 ACAD. MGMT REV. 489, 492 (1999) (discussing activities that a board may participate in that increase the effectiveness of both the board and the company).
153 Id. at 910 citing Nancy M. Carter & Christine Silva, Women in Management: Delusions of Progress, HARV. BUS. REV., Mar. 2010, at 19, 19-21 (discussing the difficulties of women in advancing in management ranks); Herminia Ibarra et al., Why Men Still Get More Promotions than Women, HARV. BUS. REV., Sept. 2010, at 80, 82-85 (discussing the lack of appropriate mentoring for women that will take them into top management).
Diversity Fatigue

Professor Douglas M. Branson provides a plausible reason for why the number of U.S. women on boards has remained “virtually unchanged since 2004 (a maximum variation of .05 since that year.”  Branson contends that “some observers attribute this stall to ‘diversity fatigue,’ as U.S. boards and managements have been under severe pressure to add women, African American, Hispanic and other diversity group members to their numbers.” Moreover, “others mention as a reason for diversity fatigue the necessity for directors and managements to deal with the financial implosion of 2007-09 from which companies have yet fully to emerge.”

Recently, however, the U.S. literature reflects a renewed interest (academic at least) in women as corporate directors.” He continues

[diversity in governance is a subject which receives short shrift, as opposed to women as judges, or as law firm partners, or as elected officials. Women in corporate governance often is limited to no more than 10-15 minutes, in a two day meeting, consigned to the smallest meeting room, in the most distant corner of the hotel, or not discussed at all. The subject begs for exposition because I strongly

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155 Id. at 14, *See, e.g.*, Judith Dobrzyski, *Female CEOs Still a Rare Sight*, CHICAGO TRIBUNE, March 28, 2007, at 21 (‘diversity fatigue’ plagues efforts to put more women on boards and in executive positions).

156 Id. at 14, *See, e.g.*, Susan Vinnicombe et al, “The Female FSTE Report 2010 (12.5% figure in the UK represents ‘barely perceptible change’).”

believe that women’s increased participation in the upper echelons of corporate America is the most promising pipeline to power existent.¹⁵⁸

Professor Seletha R. Butler observes that “public company boards historically consisted of many current or retired CEOs of other public companies. Given the few women, currently and historically, in such top positions, the pool of women public company directors will not and cannot come from such [a] shallow pool.”¹⁵⁹ Therefore

It is imperative that nominating committees of public companies look to other qualified board candidates. Public company stakeholders must demand and keep consistent pressure on the nominating committee and other internal board composition decision makers to expand its pool of director candidates . . . Nominating committees should look among other qualified professionals such as senior attorneys, academics, consultants, nonprofit executives, accountants and auditors.¹⁶⁰

VI. GLOBAL APPROACH TO DIVERSITY

Recent regulatory requirements in several European countries have fostered considerable debate and interest about board diversity. The appropriate framework for corporate governance has been the focus of recent reforms in many countries.¹⁶¹

¹⁵⁹ Butler, supra note 131.
¹⁶⁰ Id. at 31; See also Steven A. Ramirez, Games CEOs Play and Interest Convergence Theory: Why Diversity Lags in America’s Boardrooms and What to Do About it, 61 WASH. & LEE L. REV. 1583 (2004), available at http://ssrn.com/abstract=1549062 (contending that because board diversity can improve corporate governance, racial reformers may find many allies that can serve to facilitate reform. The challenge is to find economic and political interests that can gain either from enhanced diversity or from improved corporate governance and to educate and mobilize those interests).
Europe

Of particular interest in the recent European experience is that some European jurisdictions have instituted gender quotas for boards. “Regulators have begun promoting broad diversity for societal and good-citizenship reasons (e.g. equal opportunity, equity, inclusiveness and recognition of systematic barriers to designated groups), and in the belief that diverse boards may produce more effective decision-making and mitigate group-think within boardrooms…,” observes Richard Leblanc.162 The European Professional Women’s Network in conjunction with Russell Reynolds Associates reports during 2010 that “women make up 11.7% of boards at the top 300 European companies up from 9.7% in 2008 and 8.5% in 2006… Of a total 4,875 board seats, women occupy 571.”163 As a result of quota legislation, Norway remains at the top of the table in having 37.9% women on boards. Portugal, Italy, Greece, Spain, Belgium and France have more than doubled the number of women on boards; the introduction of Corporate Governance Codes together with equal access legislations currently under discussion in a few countries is having a significant impact, as well as increased shareholder and media scrutiny of board membership. Professor Darren Rosenblum believes “Norway’s Corporate Board Quota

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Law (‘CBQ’) exposes the opportunities and complexities in rethinking the public/private relationship through gender.”

Moreover, “The CBQ mandated that all publicly-listed corporations in Norway repopulate their boards to include at least forty percent women by January 1, 2008. Norway’s dramatic intervention sought to feminize corporate leadership in one fell swoop, and it succeeded in doing so. Noncompliance would result in dissolution of the corporation.”

Tineke Lambooy reports that “in France, a new Act became effective on January 2011, requiring 20% female directors within the next three years in all companies listed on the Paris stock exchange and 40% within six years (as from 2011). In 2007, Spain introduced quotas of 40% female directors in the board.”

Courtesy of Catalyst, Table 4 presents the most recent data available for board seats held by women, by country.

164 Rosenblum, supra note 29; Aleksandra Gregoric, Lars Oxelheim, Trond Randøy & Steen Thomsen, Changing the Corporate Elite? Not so Easy: Female Directors’ Appointments onto Corporate Boards, (Sept. 19, 2013), available at http://ssrn.com/abstract=2328151 (sampling 387 publicly-traded Nordic corporations during 2001-2008 and finding that new female appointments will not only depend on the current share of women on board but also on the current (minority) share of board positions held by male directors who are not prototypical of the established elite).

165 Id.


Table 4
Board Seats Held by Women, by Country

<table>
<thead>
<tr>
<th>Countries</th>
<th>% Women</th>
<th>Countries</th>
<th>% Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norway</td>
<td>40.9</td>
<td>Switzerland</td>
<td>10</td>
</tr>
<tr>
<td>Sweden</td>
<td>27</td>
<td>Thailand</td>
<td>9.7</td>
</tr>
<tr>
<td>Finland</td>
<td>26.8</td>
<td>Spain</td>
<td>9.5</td>
</tr>
<tr>
<td>France</td>
<td>18.3</td>
<td>Hong Kong</td>
<td>9.4</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>17.3</td>
<td>Belgium</td>
<td>9.2</td>
</tr>
<tr>
<td>Denmark</td>
<td>17.2</td>
<td>Ireland</td>
<td>8.7</td>
</tr>
<tr>
<td>South Africa</td>
<td>17.1</td>
<td>Italy</td>
<td>8.2</td>
</tr>
<tr>
<td>Netherlands</td>
<td>17</td>
<td>China</td>
<td>8.1</td>
</tr>
<tr>
<td>United States</td>
<td>16.9</td>
<td>Malaysia</td>
<td>7.8</td>
</tr>
<tr>
<td>Israel</td>
<td>15</td>
<td>Brazil</td>
<td>7.7</td>
</tr>
<tr>
<td>Germany</td>
<td>14.1</td>
<td>New Zealand</td>
<td>7.5</td>
</tr>
<tr>
<td>Poland</td>
<td>13.6</td>
<td>Indonesia</td>
<td>6</td>
</tr>
<tr>
<td>Turkey</td>
<td>12.7</td>
<td>Mexico</td>
<td>5.8</td>
</tr>
<tr>
<td>Australia</td>
<td>12.3</td>
<td>Russia</td>
<td>4.8</td>
</tr>
<tr>
<td>Canada</td>
<td>10.3</td>
<td>India</td>
<td>4.7</td>
</tr>
</tbody>
</table>


Professor Charlotte Villiers compared approaches taken by various European countries to address the corporate governance gender inequality problem.

For instance, the United Kingdom chose a voluntary approach without quotas that proved unsuccessful.\(^{168}\) Norway, on the other hand, has a system that is prepared to impose sanctions on companies, that is, a company may be dissolved if it does not comply with board composition rules as laid down in the Norwegian Public Limited Liability Companies Act.\(^{169}\) Professor Beate Sjåfjell reported that this measure was enacted as a corporate governance initiative, ‘based on the hypothesis that companies would not always get the best qualified board members when they, for reasons of path-dependency, restrict their selection to the male half of the population (and just a select part thereof)’. However, the general opinion is

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\(^{168}\) Id. citing Charlotte Villiers, Women on Boards: Report from the UK, European Company Law no. 2/3, 94-99 (2011).

that the reasoning behind the regulation is to increase gender equality in the board rooms.\(^{170}\) This Norwegian measure turned out to be effective: in 2009, Norwegian public company boards comprised, on average, 44% females. In the United Kingdom, this figure is still lagging, according to Villiers . . . \(^{171}\)

Mijntje Lückerath-Rovers contends “It is surprising that so little attention is given to diversity in corporate governance codes when a homogeneous board poses a direct threat to an independent board, and independency is a key message in each corporate governance code.”\(^{172}\) As in the United States, “although the discussion about greater diversity in the Board has intensified internationally, this has not yet led to changes in international corporate governance codes (with the exception of Spain and the Netherlands).”\(^{173}\) The five countries studied by Professor Lückerath-Rovers, France, Germany, Spain, The Netherlands and the UK deal differently with the issue of the presence of women on corporate boards. Accordingly

In three countries (France, Germany and UK) the demographic characteristics of directors is not a subject in the relevant corporate governance codes. In The Netherlands this has changed only since January 2009 and some guidance is given on the importance of obtaining a diverse board. Spain has installed both a law that obliges companies to adopt a more diverse composition of the board as the corporate governance code especially addresses the issue.

Most countries (except for the UK) do have a voluntary charter to increase diversity which has been signed by numerous companies in the relevant countries including the major listed companies. However, these charters have different background and often do not only focus on gender but address diversity from a


\(^{173}\) Id.
very broad perspective (ethnicity, disabled persons) and with very broad societal intentions (including discrimination in general).

United Kingdom

Lord Davies of Abersoch reports that in just three years, the 2014 Cranfield Board Report shows that “women now account for 20.7% of board positions in the FTSE100 up from 12.5% in 2011 and 17.3% in April 2013.” Maria Miller, Minister for Women and Equalities states, “Women don’t need special treatment they just need a modernized workplace that gives them a level playing field. Supporting women to fulfill their full potential should be a core business issue . . . for the long term sustainability of our economy.”

Minister Maria Miller observes further that

As of 3 March 2014, in the FTSE100:
- women now account for 20.7% of overall board directorships, up from 17.3% in April 2013;
- of this, women account for 25.5% of non-executive directorships and 6.9% of executive directorships;
- women account for 231 of the 1,117 FTSE100 board positions;
- women account for 28% of all board appointments in 2013/14;
- there remain 2 all-male boards – Glencore Xstrata and Antofagasta; and
- fewer than 50 new women appointments need to be made to reach the 25% target.

In the FTSE 250 the figures show:
- women now account for 15.6% of overall board directorships, up from 13.2% in 2013;
- of this, women account for 19.6% of non-executive directorships and 5.3% of executive directorships;
- women account for 33% of all board appointments in 2013/14; and
- there remain 48 all-male boards.

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174 Id.
176 Id.
177 Id. See also Ian Gregory-Smith, Brian G.M. Main & Charles A. O’Reilly, Appointments, Pay and Performance in UK Boardrooms by Gender, 124 ECON. J. F019 (2014).
Table 5
FTSE 100 and FTSE 250 Comparisons

<table>
<thead>
<tr>
<th>March 2014</th>
<th>FTSE 100</th>
<th>FTSE 250</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female held directorships</td>
<td>231 (20.7%)</td>
<td>310 (15.6%)</td>
</tr>
<tr>
<td>Female executive directorships</td>
<td>20 (6.9%)</td>
<td>29 (5.3%)</td>
</tr>
<tr>
<td>Female non-executive directorships</td>
<td>211 (25.5%)</td>
<td>281 (19.6%)</td>
</tr>
<tr>
<td>Companies with female directors</td>
<td>98</td>
<td>202</td>
</tr>
<tr>
<td>Companies with at least 25% women directors</td>
<td>36</td>
<td>51</td>
</tr>
</tbody>
</table>


As shown in Table 5, the percentage of women directors is smaller among the FTSE 250 companies.178 Vinnicombe, Doldor & Turner report that during the twelve months ended March, 2014, “we have seen three major breakthroughs on FTSE 100 boards: the percentage of women on them has broken the 20% level (20.7%), the number of women on them has exceeded the 200 mark (205) and the number of all male boards has dropped to two.”179 In their foreword to the Cranfield University report, the Rt Hon Maria Miller MP and Rt Hon Vince Cable MP state that

The UK’s voluntary approach to Women on Boards is under intense scrutiny, with several countries in Europe – France, Italy and Germany – introducing legislative measures to tackle this problem. The world is watching to see whether British business can deliver real change by voluntary means that create a lasting cultural shift. Failure to achieve the goal would again bring EU pressure to enact their compulsory measures.180

Report from Canada

Aaron Dhir reports that “In terms of diversity, the corporate governance landscape in Canada is grim. The statistics on board composition reveal a culture of widespread gender and racial homogeneity.” Moreover

179 Id. at 4.
180 Id. at 1.
The evidence does not appear to fully support businesses’ perception of a widespread pool problem. Instead, it seems that a more fruitful explanation can be rooted in the cognitive processes and structures that inform corporate decision-making. Attempts by Canadian civil society organizations and others to advance the market-based argument that board diversification will improve organizational performance can to some degree be grounded in the empirical literature to date. However, Canadian firms may be perpetuating environments that actively stifle factors which might otherwise enable them to successfully leverage diversity. Further, the market-based approach is not without its disadvantages. Despite its attractiveness as a political strategy, it should be treated with great caution. In assessing avenues for reform, consideration should be given to particular features of the legal culture and practice that shape the director nomination process, shareholder proposals and existing governance principles. As currently formulated, these features may facilitate board homogeneity and undermine future efforts at diversification. It is my hope that progress on these fronts will be the first step in building a more inclusive and equitable edifice of corporate governance.181

Pacific Region

Professor Douglas M. Branson reports that “on the Pacific Rim, Australia leads among the countries from which statistics are available [for females serving on publicly held company boards], with 13.8%182 New Zealand follows with approximately 10%.183 Others in the queue include Hong Kong (8.9%),184 and Peoples Republic of China (7.2%)185 The caboose is Japan (1.4%).”186

185 Id. citing Michelle Webster, Women on Corporate Boards in Japan, China and Hong Kong: Their Roles and Prospects at 8 (Research paper, Diversity in Corporate Governance Seminar, School of Law, University of Washington, 2010) (on file with Professor Branson), citing Catalyst, Inc., Women in the Labor Force in China (2010).
186 Id. at 2; See also Niroshe Hewa Wellalage & Stuart Locke, Women on Board, Firm Financial Performance and Agency Costs, 2 ASIAN J. BUS. ETHICS 113 (2013), available at
Poland

Professor Leszek Bohdanowicz observes, that “according to Hofstede’s cultural dimension theory, Polish culture is a rather masculine one. In such cultures, women encounter more barriers in their professional carriers, but, at the same time, they reveal more masculine traits such as assertiveness and goal achievement, which help them, overcome the obstacles.”

In addition, Polish women have difficulty advancing “to management and director positions. As a result, the number and share of women on supervisory and management boards in Polish listed companies is low, and Polish companies are not able to utilize the advantages of board diversity.”

VII. UNCONSCIOUS RACIAL BIASES AND DIRECTOR SELECTION

We are indebted to Professor Aaron Dhir for his review and analysis of the literature of psychological science. He suggests that barriers to the advancement of women and people of color to the corporate boardroom include “implicit cognitive biases.” Dhir notes that “Implicit social cognitions are a form of ‘unconscious’ cognitive involvement.”

http://ssrn.com/abstract=2115263 (finding that gender board diversity has an effect on Sri Lankan listed companies’ agency costs and financial performance; that as board gender diversity increases, so does firm agency conflict while decreasing firm financial performance).


188 Id.

189 Dhir, supra note 181; Joan MacLeod Heminway, *Sex, Trust, and Corporate Boards*, (Aug. 11, 2006), available at http://ssrn.com/abstract=924590 (finding that (1) men and women trust and are trustworthy on different bases and (2) that there is a bias against women in corporate leadership positions. Based on this research and current legal scholarship on corporate governance, the essay asserts that gender diversity on corporate boards may be desirable but difficult to attain); Lissa L. Broome, John M. Conley & Kimberly D. Krawiec, *Dangerous Categories: Narratives of Corporate Board Diversity*, 89 N.C. L. Rev. 759 (2011), available at http://ssrn.com/abstract=1679775 (observing that while "diversity" evokes universal acclaim in the abstract, our respondents’ narratives demonstrate that it is an elusive and even dangerous subject to talk about concretely).

continues to explain that “Judgments are instinctively and unintentionally generated, and may even contradict the individual’s explicit philosophies and beliefs.” Levels of implicit bias can be measured through a social psychology tool known as the ‘Implicit Association Test.” Accordingly

With respect to race, a study analyzing the results of 2.5 million completed tests reveals that almost 70 percent of participants exhibited white-positive, black-negative biases. Applying these concepts to the sphere of corporate governance, a recent U.S. study in the field of applied psychology examined the issue of race and corporate leadership through the lens of leadership categorization theory. Whether an individual is given a leadership position was found to be partly contingent on an evaluation of his or her leadership competencies, which will be most positive if the individual is thought to demonstrate characteristics that fit within an overall leadership organizing principle or prototype. Startlingly, the authors found that ‘being white’ was viewed as a characteristic of the leadership prototype. [My emphasis added] Consequentially, decision makers are more apt to prefer whites, who are judged as being ‘more effective leaders’ and as possessing ‘more leadership potential.’ Whites, therefore, ‘may be more likely to be promoted to leadership positions more frequently…’

The findings of this study resonate with the robust body of work on inter-group relationships. This work has inevitably revealed a human tendency toward in-group favoritism. The predilection for one’s own kind is ‘overwhelmingly’ demonstrated in groups that enjoy social privilege. Wade discusses a similar idea within the context of empathy. She cogently argues that white male

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191 Ibid.
192 Dhir, supra note 181 at 579 citing Anthony G. Greenwald & Linda Hamilton Krieger, Implicit Bias: Scientific Foundations, 94 CAL. L. REV. 945, 951 (2006). See also Kathleen A. Farrell & Philip L. Hersch, Additions to Corporate Boards: Does Gender Matter?, (Nov. 2001), available at http://ssrn.com/abstract=292281 (observing that the probability of adding a woman is substantially increased whenever a woman departs the board relative to the departure of a male outside director and suggests that the overall increase in female board representation during the past decade was due to a greater demand for diversity, rather than simply an increase in the pool of qualified female board candidates).
196 Id. citing Rosette, The White Standard, Ibid. at 773.
198 Ibid. at 435.
corporate managers and directors customarily promote white males, with whom they can more easily empathize. The idea that monolithic institutions will reproduce themselves with monolithic inheritors has also been explained as a function of trust. Life in the corporate sphere is inherently unpredictable and therefore pressure-inducing. Appointing a trusted person to a leadership position creates a sense of predictability and order. However, because meaningful personal relationships are not always present in the firm hierarchy, trust is based less on interpersonal awareness and more on outward indicia of similarity, such as race. In other words, like heuristics (psychological shortcuts or intuitive judgments that may result in patterns of mistake), subconsciously held biases can be abrogated and individuals left ‘debiased.’ What is the implication of this for corporate governance? The cognitive biases of the predominantly white and male class of directors can be alleviated as they become better acquainted with candidates that fall outside of the existing leadership paradigm, and as they engage in cross-racial/gender learning. [My emphasis added]

Making Your Board a “Safe Place”

A key problem for every board is to create an environment where “individuals faced with an identity conflict feel safe enough to engage in ‘meaning making.’” While a comprehensive exploration of how personal identity shapes leadership development and organizational behavior is beyond the scope of this paper, the need to create a psychologically safe environment for all directors merits mention. The literature suggests that “in the context of leadership… individuals surrender to context [and] mastering context involves figuring out how to act in consonance with personal identities without diminished agency and with a sense of belonging to the

199 Id. citing Cheryl L. Wade, Corporate Governance As Corporate Social Responsibility: Empathy and Race Discrimination, 76 TUL. L. REV. 1461, 1473 (2002).
201 Ibid. at 742-43.
204 Debebe & Reinert, supra note 73, citing G. Debebe, supra note 46.
Psychological safety is fostered “in safe environments, [where] participants are more likely to articulate and explore their complicated feelings related to identity conflict and do the difficult internal work of self-examination, introspection and soul-searching to build a sense of self that is positive, energizing and enabling.” Further to all directors needing a “safe environment,” Debebe and Reinert observe

A cognitive shift called a transitional state is crucial to progress from the discomfort of an identity conflict to meaning making. A transitional state involves the suspension of habitual patterns of perceiving, thinking and acting accompanied by receptiveness to new possibilities. This state emerges when the individual feels safe. Winnicott’s notions of holding environment and transition object help us understand how psychological safety is created.

VIII. ACHIEVING INCREASED BOARD DIVERSITY

What is the most likely path for achieving increased board diversity? The answer to the promise of increased boardroom access seems to lie in penetrating the board skills most in demand by governance and nominating committees. An examination of the following pathways to the boardroom includes: business schools; entrepreneurship; auditing, accounting and finance; the legal profession; academia and non-profits; and a brief comment about the “glass Cliff” phenomenon. While specifically about women, Professor Seletsha R. Butler’s comments appear to apply equally to all underrepresented minorities when she writes that “women early in life need exposure to careers and the skills needed for successful opportunities in quantitative areas, such as accounting, finance, and mathematics, especially given that the quantitative skills require years of development.”

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205 Id. at 29.
206 Id. at 31, citing W. Bennis & J. Goldsmith, LEARNING TO LEAD: A WORKBOOK ON BECOMING A LEADER (New York: Basic Books 2010).
207 Id. at 30, citing D.W. Winnicott, PLAYING AND REALITY (New York: Routledge (1989), and G. Debebe, supra note 46 at 679.
208 Butler, supra note 131.
Public companies and other organizations, as the SEC has done to some extent, can start programs to expose and train the education community—to illustrate public high schools or female private schools—on ‘financial literacy,’ including financial accounting, financial reporting, auditing, internal controls methodology, corporate finance, and risk management. Also, organizations can even develop a program that fosters the interest and development of girls in accounting and finance in addition to existing focuses of girls in the science, technology, engineering, and mathematics (STEM) area. Because many girls and women often are not exposed or encouraged to pursue or develop their interests and skills in the quantitative fields, primary and secondary educational institutions, community educational enhancement programs, and higher educational platforms must invest resources in getting girls and young women involved in programs and curricula that focuses on quantitative skill development.209

Business School Enrollment

What do we know about women who have actually become CEOs of major corporations? Professor Douglas Branson reports that “of 22 female CEOs analyzed in 2010, 16 had MBAs, 1 and MSEE (Ursula Burns at Xerox), and 1 a JD (Angela Braley at Wellpoint).”210 As we learn from Table 3, the “Wish List for New Director Backgrounds,” 54% of board searches during 2013 seek active CEO/COO experience.211 Since boards have a decided preference for CEOs, the movement of more women into top leadership positions, may likely produce an ever larger group of women directors. Professor Diana Bilimoria contends that the greater presence of women “in positions of visible power and legitimacy may help break down the barriers that constrain top corporate women from effective representation and recognition. In these ways, the visible presence of women corporate directors may indirectly encourage and support women’s effective representation in high-level corporate executive teams.”212

209 Id.  
211 Spencer Stuart, supra note 100.  
212 See Bilimoria, supra note 43 at 47.
How then can women and people of color reasonably expect to find board positions if they lack CEO and high level executive experience? To what extent does the business school route suggests that more diversity in the boardroom is on its way? What percentage of business school and MBA students are women and people of color? Table 6 presents data regarding business and management degrees awarded by level and gender.

### Table 6
**Degrees Conferred in Business and Management**
*By Level & Gender – U.S. (1995-2009)*

<table>
<thead>
<tr>
<th>Year</th>
<th>BACHELOR’S DEGREES</th>
<th>MASTER’S DEGREES</th>
<th>DOCTORAL DEGREES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Males</td>
<td>Females</td>
</tr>
<tr>
<td>1995–96</td>
<td>226,623</td>
<td>116,545</td>
<td>110,078</td>
</tr>
<tr>
<td>1996–97</td>
<td>225,934</td>
<td>116,023</td>
<td>109,911</td>
</tr>
<tr>
<td>1998–99</td>
<td>240,947</td>
<td>122,250</td>
<td>118,697</td>
</tr>
<tr>
<td>1999–2000</td>
<td>256,070</td>
<td>128,521</td>
<td>127,549</td>
</tr>
<tr>
<td>2000–01</td>
<td>263,515</td>
<td>132,275</td>
<td>131,240</td>
</tr>
<tr>
<td>2001–02</td>
<td>278,217</td>
<td>138,343</td>
<td>139,874</td>
</tr>
<tr>
<td>2002–03</td>
<td>293,391</td>
<td>145,075</td>
<td>148,316</td>
</tr>
<tr>
<td>2003–04</td>
<td>307,149</td>
<td>152,513</td>
<td>154,636</td>
</tr>
<tr>
<td>2004–05</td>
<td>311,574</td>
<td>155,940</td>
<td>155,634</td>
</tr>
<tr>
<td>2005–06</td>
<td>318,042</td>
<td>159,683</td>
<td>158,359</td>
</tr>
<tr>
<td>2006–07</td>
<td>327,531</td>
<td>166,350</td>
<td>161,181</td>
</tr>
<tr>
<td>2007–08</td>
<td>335,254</td>
<td>170,978</td>
<td>164,276</td>
</tr>
<tr>
<td>2008–09</td>
<td>347,985</td>
<td>177,862</td>
<td>170,123</td>
</tr>
</tbody>
</table>

Table 7
Degrees Conferred in Business and Management

<table>
<thead>
<tr>
<th>YEAR</th>
<th>WHITE</th>
<th>BLACK</th>
<th>HISPANIC</th>
<th>ASIAN/PACIFIC ISLANDER</th>
<th>AMERICAN INDIAN/ALASKA NATIVE</th>
<th>NON-RESIDENT ALIEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995-96</td>
<td>77.8</td>
<td>7.9</td>
<td>5.0</td>
<td>5.5</td>
<td>0.6</td>
<td>3.2</td>
</tr>
<tr>
<td>1996-97</td>
<td>76.8</td>
<td>8.0</td>
<td>5.3</td>
<td>5.9</td>
<td>0.6</td>
<td>3.3</td>
</tr>
<tr>
<td>1997-98</td>
<td>76.1</td>
<td>8.3</td>
<td>5.6</td>
<td>6.1</td>
<td>0.7</td>
<td>3.3</td>
</tr>
<tr>
<td>1998-99</td>
<td>75.6</td>
<td>8.5</td>
<td>5.8</td>
<td>6.2</td>
<td>0.7</td>
<td>3.2</td>
</tr>
<tr>
<td>1999-2000</td>
<td>75.1</td>
<td>8.7</td>
<td>6.1</td>
<td>6.3</td>
<td>0.7</td>
<td>3.2</td>
</tr>
<tr>
<td>2000-01</td>
<td>74.5</td>
<td>8.9</td>
<td>6.2</td>
<td>6.3</td>
<td>0.7</td>
<td>3.2</td>
</tr>
<tr>
<td>2001-02</td>
<td>74.2</td>
<td>9.0</td>
<td>6.4</td>
<td>6.4</td>
<td>0.7</td>
<td>3.2</td>
</tr>
<tr>
<td>2002-03</td>
<td>73.7</td>
<td>9.2</td>
<td>6.6</td>
<td>6.5</td>
<td>0.7</td>
<td>3.2</td>
</tr>
<tr>
<td>2003-04</td>
<td>73.3</td>
<td>9.4</td>
<td>6.8</td>
<td>6.6</td>
<td>0.8</td>
<td>3.2</td>
</tr>
<tr>
<td>2004-05</td>
<td>72.9</td>
<td>9.5</td>
<td>7.0</td>
<td>6.8</td>
<td>0.7</td>
<td>3.2</td>
</tr>
<tr>
<td>2005-06</td>
<td>72.4</td>
<td>9.6</td>
<td>7.2</td>
<td>6.9</td>
<td>0.7</td>
<td>3.1</td>
</tr>
<tr>
<td>2006-07</td>
<td>72.2</td>
<td>9.6</td>
<td>7.5</td>
<td>6.9</td>
<td>0.8</td>
<td>3.0</td>
</tr>
<tr>
<td>2007-08</td>
<td>71.8</td>
<td>9.8</td>
<td>7.9</td>
<td>7.0</td>
<td>0.7</td>
<td>2.8</td>
</tr>
<tr>
<td>2008-09</td>
<td>71.5</td>
<td>9.8</td>
<td>8.1</td>
<td>7.0</td>
<td>0.8</td>
<td>2.9</td>
</tr>
</tbody>
</table>


Note from Table 7 that degrees conferred on students listed as Black, Hispanic, or Asian/Pacific Islander have made very slow but consistent gains since 1995. At the Bachelor Degree level in the United States, The Association to Advance Schools of Business (AACSB) observes in Table 7 that during school year 2008-09, fully 71.5 percent of degrees conferred were to students classified as White; 9.8 percent Black; 8.1 percent Hispanic; 7.0 percent
Table 8
Degrees Conferred in Business and Management
Degrees Conferred By Level & Gender – All School
(2008-09 to 2012-2013)

<table>
<thead>
<tr>
<th>Year</th>
<th>UNITED STATES</th>
<th></th>
<th></th>
<th>GLOBAL (EXCLUDING U.S.)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>UNDERGRADUATE</td>
<td></td>
<td>56.4%</td>
<td>43.6%</td>
<td>49.9%</td>
<td>50.1%</td>
</tr>
<tr>
<td>2008-09</td>
<td></td>
<td>56.5%</td>
<td>43.5%</td>
<td>49.3%</td>
<td>50.7%</td>
</tr>
<tr>
<td>2009-10</td>
<td></td>
<td>56.7%</td>
<td>43.3%</td>
<td>49.3%</td>
<td>50.7%</td>
</tr>
<tr>
<td>2010-11</td>
<td></td>
<td>57.1%</td>
<td>42.9%</td>
<td>49.2%</td>
<td>50.8%</td>
</tr>
<tr>
<td>2011-12</td>
<td></td>
<td>57.3%</td>
<td>42.7%</td>
<td>49.6%</td>
<td>50.4%</td>
</tr>
<tr>
<td>2012-13</td>
<td></td>
<td>63.7%</td>
<td>36.3%</td>
<td>65.5%</td>
<td>34.5%</td>
</tr>
<tr>
<td>MASTERS’ GENERALIST</td>
<td></td>
<td>63.4%</td>
<td>36.6%</td>
<td>63.9%</td>
<td>36.1%</td>
</tr>
<tr>
<td>2008-09</td>
<td></td>
<td>63.4%</td>
<td>36.6%</td>
<td>63.9%</td>
<td>36.1%</td>
</tr>
<tr>
<td>2009-10</td>
<td></td>
<td>63.8%</td>
<td>36.2%</td>
<td>63.4%</td>
<td>36.6%</td>
</tr>
<tr>
<td>2010-11</td>
<td></td>
<td>64.1%</td>
<td>35.9%</td>
<td>61.2%</td>
<td>38.8%</td>
</tr>
<tr>
<td>2011-12</td>
<td></td>
<td>63.8%</td>
<td>36.4%</td>
<td>61.9%</td>
<td>38.1%</td>
</tr>
<tr>
<td>2012-13</td>
<td></td>
<td>63.8%</td>
<td>36.4%</td>
<td>61.9%</td>
<td>38.1%</td>
</tr>
<tr>
<td>SPECIALIZED MASTERS</td>
<td></td>
<td>52.7%</td>
<td>47.3%</td>
<td>53.4%</td>
<td>46.6%</td>
</tr>
<tr>
<td>2008-09</td>
<td></td>
<td>52.8%</td>
<td>47.2%</td>
<td>52.7%</td>
<td>47.3%</td>
</tr>
<tr>
<td>2009-10</td>
<td></td>
<td>52.4%</td>
<td>47.6%</td>
<td>50.8%</td>
<td>49.2%</td>
</tr>
<tr>
<td>2010-11</td>
<td></td>
<td>53.5%</td>
<td>46.5%</td>
<td>51.1%</td>
<td>48.9%</td>
</tr>
<tr>
<td>2011-12</td>
<td></td>
<td>53.3%</td>
<td>46.7%</td>
<td>49.5%</td>
<td>50.5%</td>
</tr>
<tr>
<td>2012-13</td>
<td></td>
<td>63.3%</td>
<td>36.7%</td>
<td>66.8%</td>
<td>33.2%</td>
</tr>
<tr>
<td>DOCTORATE</td>
<td></td>
<td>65.4%</td>
<td>34.6%</td>
<td>63.5%</td>
<td>36.5%</td>
</tr>
<tr>
<td>2008-09</td>
<td></td>
<td>62.5%</td>
<td>37.5%</td>
<td>62.3%</td>
<td>37.7%</td>
</tr>
<tr>
<td>2009-10</td>
<td></td>
<td>61.7%</td>
<td>38.3%</td>
<td>61.7%</td>
<td>38.3%</td>
</tr>
<tr>
<td>2010-11</td>
<td></td>
<td>62.9%</td>
<td>37.1%</td>
<td>63.6%</td>
<td>36.4%</td>
</tr>
</tbody>
</table>

Asian/Pacific Islander; 0.8 percent to American Indian/Alaskan Native; and 2.9 percent Non-resident alien. 213

At the graduate level, Table 8 shows that in the United States, 63.6 percent of Master’s Degrees (Generalist) granted during school year 2012-2013 were to males, while 36.4 percent were conveyed to females. Women did a little better in the (Specialized) category, with 46.7 percent of Master’s degrees conferred, versus 53.3 percent for men. 214 What about the role models of U.S. business school faculty? The AACSB data show that 71.1 percent of full-time business faculty is reported as White, Non-Hispanic; 14.5 percent as Asian or Pacific Islander; 3.8 percent as Black, Non-Hispanic; 2.3 percent as Hispanic; 0.3 percent as American Indian or Alaskan Native; and 2.2 percent as Race/Ethnicity unknown. 215

At some university business schools, women directors have made an effort to facilitate increased board representation by women. For example, the Stanford Women on Boards initiative and the George Washington University On The Board program are both discussed more fully later.

What About the Entrepreneurs?

Research studies show “significant differences in motivations for starting a new business, with men being motivated by financial gains, self-realization and autonomy where for women status is a significant motivating factor.” 216 Data from the period 2008-2009 show that: “10.1

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215 Id. at 32.
216 Manolova, Brush & Edelman, supra note 63.
million firms were 50% or more owned by women;\textsuperscript{217} these firms employed over 13 million people;\textsuperscript{218} and over $1.9 trillion in sales were generated from these firms.”\textsuperscript{219} Research suggests that differences between men and women-owned firms include: human capital,\textsuperscript{220} social capital,\textsuperscript{221} access to debt or equity financing,\textsuperscript{222} strategy,\textsuperscript{223} industry sector\textsuperscript{224} or personal motivations.”\textsuperscript{225} Koellinger, Minniti, and Schade find that across all 17-countries sampled, “the number of women’s owned businesses is significantly lower than that of men.\textsuperscript{226} Moreover, consistent with prior studies

Men tend to be more optimistic, self-confident and less deterred by fear of failure than women. We also find some evidence that women who are more self-confident and undeterred by fear of failure have a greater probability to start a business than men with similar characteristics. Our results show that socio-economic and perceptual differences together explain the differences in prevalence rates of business start ups across genders in 14 of the 17 country samples included in our data…. The existence of some interaction between gender differences and countries suggest that cultural differences do have some influence on gender-specific perceptions….

\textsuperscript{218} Id.
\textsuperscript{219} Id.
\textsuperscript{221} Id. citing L. Renzulli, H. Aldrich & J. Moody, Family Matters: Gender Networks and Entrepreneurial Outcomes, 79 SOCIAL FORCES 523 (2000).
\textsuperscript{224} Id. citing Robb & Wolken supra note 222, A. Anna, G. Chandler, E. Jansen & N. Mero, Women Business Owners in Traditional and Non-Traditional Industries, 15 J. BUS. VENTURING 279 (2000).
\textsuperscript{226} Koellinger, Minniti & Schade, supra note 69.
However, the persistence of perceptual differences between genders across countries makes it hard to believe that such differences are entirely the result of culture, upbringing and socialization. Rather, our results may suggest that at least a part of the perceptual distinctions between men and women may be inherited rather than learnt as suggested by recent works on cognition and neuroscience. If women perceive, even if incorrectly, not having sufficient skills, knowledge and ability to start a business, the results will be analogous to those of a situation in which these beliefs are based on actual differences. For example, confidence in one’s ability and optimism has been shown to be significantly related to academic performance.

Overall, we interpret our results to suggest that perceptions have important economic effects and explain a very significant portion of the observed gender difference in startup behavior.

Catalyst (2012) reports women leaving companies to start their own businesses because of: more flexibility (51%), glass ceiling (29%), work environment (28%) and unchallenged by one’s job (22%). Also, “during 2008’s down economy, “5% of high potential women and 4% of high potential men left their companies to start their own businesses.”

Women of Color Entrepreneurs

Future research in the area of entrepreneurial governance may contribute much to our understanding of women and people of color on corporate boards of directors. Catalyst reports

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228 Id. citing Gneezy, supra note 69.
229 Id. citing Martin Chemers, Li-tze Hu and Ben Garcia, Academic Self-Efficacy and First-Year College Student Performance and Adjustment, 93 J. EDU. PSYC. 55 (2001).
230 Id.
232 Id.
233 Id.
234 Id.
that during the period 2008-2009: “women of color were the majority owners of 1.9 million firms;\(^{236}\) these firms generated $165 billion in revenue;\(^{237}\) and 1.2 million people were employed by these women of color-owned firms.\(^{238}\) Regarding African-American women, Catalyst reports that “as of 2008, there were an estimated 650,309 majority-owned, privately-held firms owned by African-American women in the U.S., and they generated almost $26 billion in sales; and 34.2% of minority-women-owned firms were owned by African American women.”\(^{239}\)

Regarding Latinas, Catalyst reports that “as of 2008, there were an estimated 642,458 majority-owned, privately-held firms owned by Latinas in the U.S., and they generated $45 billion in sales. 33.8% of minority-women-owned-firms were owned by Latinas.”\(^{240}\) We learn from Catalyst that “as of 2008, there were an estimated 496,413 majority-owned, privately-held firms owned by Asian-American women in the U.S., and they generated over $86 billion in sales, [while] 26.1% of minority-women-owned firms were owned by Asian-American women.”\(^{241}\) Also as of 2008, Catalyst reports “there were an estimated 100,453 majority-owned, privately-held firms owned by Native American and Alaska Native women in the U.S., and they generated $6.6 billion in sales, [and] 5.3% of minority-women-owned firms were owned by Native American and Alaska Native women.”\(^{242}\)


\(^{237}\) Id.

\(^{238}\) Id.

\(^{239}\) Id.


\(^{240}\) Id.

\(^{241}\) Id. (observing that the total equals more than 100% because of mixed racial heritage).

\(^{242}\) Id.
Bilimoria notes that “while data on these smaller firms is more difficult to obtain, these may reveal illuminating insights about the presence and utilization of WCBD [women on corporate boards of directors].

In addition, the types of firms studied should also be expanded to include entrepreneurial and private equity firms, as well as technology start-ups. Recent research has indicated that the percentage of women on the boards and top management teams of technology firms is lower than that of Fortune 500 firms. By focusing research attention on smaller, more entrepreneurial, and agile companies and industries, media and public interest in the board compositions of these firms may also be spurred.

Auditing, Accounting and Finance

During 2012, Catalyst reports that “women are 61.3% of all accountants and auditors in the United States; [but only]…. 49.4% of all auditors accountants and investment professionals in Canada.” Every board is required to have a “financial expert” for audit committee chair and directors with appropriate skills and experience to populate the audit committee.

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243 Diana Bilimoria, Directions for Future Research on Women on Corporate Boards of Directors, supra note 43 at 233, 238.
245 Id.
247 Id. citing Statistics Canada, Occupation—National Occupation Classification for Statistics 2006 (720), Class of Worker (6) and Sex (3) for the Labour Force 1 Years and Over of Canada, Provinces, Territories, Census Metropolitan Areas and Census Agglomerations, 2006 Census—20% Sample Data, 2006 Census (2006).
The AICPA of college enrollment and demographics of the accounting profession discloses the following:

- Enrollments by gender have almost reached an equality of 50% male, 50% female, at both the BA and MA levels. Ph.D. programs are still overrepresented by males.
- There were increases in the number of Hispanics at the BA level and the number of African-Americans at the MA level. However, despite substantial efforts by the AICPA, CPA firms, universities, state CPA societies and other professional organizations that have focused on diversity in the CPA profession, the survey data show a slight percentage decrease in minority representation at the BA and MA levels.
- For the first time in more than 10 years, the percentage of male graduates was larger than female graduates with 52% of the total graduates being male.
- Hiring by ethnicity has seen an improvement in both the Hispanic population and total minority hiring overall. Hispanic hiring rose from 4% to 7% of total hires, while the total minority hiring increased from 22% to 25%. Hiring by gender has reached parity of 50% male and female, although it previously had been predominantly female.
- The overall ethnic diversity has increased from 17% minority to roughly 21% minority since 2009. This increase was evenly spread across the Hispanic, Asian and multi-ethnic populations.

**Profession Staff**

Catalyst reports that “in a 2011 study, women were half of newly hired accounting graduates at CPA firms, and 40% of all CPAs.” As shown in Table 9, Professional Staff Demographics by Firm Size, the AICPA reports the following professional staff demographics by firm size for ethnicity.

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Audit Firm Partners

Catalyst reports that “women are 21% of all partners at firms, although they are 45% of all accounting employees at accounting firms.” Another (2010) study “examined the number of women partners at the Big Four accounting firms in 2009 [disclosing that] women were 18.1% of all equity partners at Big Four firms.” The best news is that “hiring by ethnicity is on the rise — [with] total hiring of people of color [in accounting] for 2011 reached 25% of total hires.” However, the pipeline for board access via accounting does not appear very promising since “women of color earned [only] 14.6% of all bachelor’s degrees in accounting in [the] 2009-

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>All Firms</th>
<th>&lt;10</th>
<th>10-49</th>
<th>50-200</th>
<th>&gt;200</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>79%</td>
<td>87%</td>
<td>91%</td>
<td>96%</td>
<td>72%</td>
</tr>
<tr>
<td>Black/African-Americans</td>
<td>3%</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>5%</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>4%</td>
<td>4%</td>
<td>3%</td>
<td>1%</td>
<td>5%</td>
</tr>
<tr>
<td>Asian/Pacific Islander</td>
<td>11%</td>
<td>5%</td>
<td>2%</td>
<td>2%</td>
<td>16%</td>
</tr>
<tr>
<td>American Indian/Alaska Native</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Multi-ethnic</td>
<td>0%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Unknown</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Source: AICPA.

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251 Id.
2010 school year;\textsuperscript{254} [and] women of color are 15.8\% of all those employed in industries of accounting, tax prep, bookkeeping, and payroll services.\textsuperscript{255}

Professor Seletha R. Butler provides a look at the Gender of the ‘Audit Committee Financial Expert at Table 10, finding that only 12\% of S&P 500 company audit committee financial experts are women—while the numbers for women of smaller companies are even less.\textsuperscript{256} Table 11 provides a view of the Professional Experience of ‘Audit Committee Financial Experts.’\textsuperscript{257} Since many boards of director audit committee members and chairs are retired partners of large accounting firms, the likelihood of significantly bolstering boardroom participation with people of color during the near future appears bleak. They are simply not represented in the higher ranks of the auditing profession in any meaningful numbers.

\begin{table}
\centering
\begin{tabular}{|l|c|c|c|}
\hline
& \textbf{S\&P 500 Firms} & \textbf{Small Firms} & \textbf{Total Firms} \\
\hline
\textit{Number of Women “Audit Committee Financial Experts”}\textsuperscript{,} & 82 & 12\% & 6 & 5\% & 88 \\
\hline
\textit{Number of Men “Audit Committee Financial Experts”}\textsuperscript{,} & 608 & 88\% & 125 & 95\% & 733 \\
\hline
\textit{Total “Audit Committee Financial Experts”}\textsuperscript{,} & 690 & 131 & 821 \\
\hline
\end{tabular}
\caption{Gender of ‘Audit Committee Financial Experts’}
\end{table}

\textsuperscript{254} \textit{Id.} citing National Center for Educational Statistics, \textit{IPEDS} (2011).
\textsuperscript{256} Seletha R. Butler, \textit{supra} note 131 at 35.
\textsuperscript{257} \textit{Id.}
Table 11
Professional Experience of ‘Audit Committee Financial Experts’

<table>
<thead>
<tr>
<th>Professional Experience Type</th>
<th>S&amp;P 500 Firms</th>
<th>Small Firms</th>
<th>Total Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer</td>
<td>51.1%</td>
<td>30.5%</td>
<td>47.9%</td>
</tr>
<tr>
<td>Chairman</td>
<td>51.7%</td>
<td>16.0%</td>
<td>46.0%</td>
</tr>
<tr>
<td>President</td>
<td>25.7%</td>
<td>45.8%</td>
<td>28.9%</td>
</tr>
<tr>
<td>Executive or Senior Vice President</td>
<td>14.9%</td>
<td>17.6%</td>
<td>15.3%</td>
</tr>
<tr>
<td>Chief Financial Officer</td>
<td>10.9%</td>
<td>26.0%</td>
<td>13.3%</td>
</tr>
<tr>
<td>Certified Public Accountant</td>
<td>13.8%</td>
<td>30.5%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Chief Operating Officer</td>
<td>6.1%</td>
<td>12.2%</td>
<td>7.1%</td>
</tr>
<tr>
<td>Other *academics, venture capitalists, lawyers, independent consultants, and private investors</td>
<td>10.9%</td>
<td>22.9%</td>
<td>12.8%</td>
</tr>
</tbody>
</table>

Table 12, “Audit Firm Partners: Demographics by Firm Size 2010,” shows very minimal representation among the ranks of audit firm partners by people of color.

Table 12
Audit Firm Partners: Demographics by Firm Size 2010

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>All Firms</th>
<th>&lt;10</th>
<th>10-49</th>
<th>50-200</th>
<th>&gt;200</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>94%</td>
<td>94%</td>
<td>98%</td>
<td>100%</td>
<td>93%</td>
</tr>
<tr>
<td>Black/African-American</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Asian/Pacific Islander</td>
<td>2%</td>
<td>2%</td>
<td>1%</td>
<td>0%</td>
<td>4%</td>
</tr>
<tr>
<td>American Indian/Alaska Native</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Multi-ethnic</td>
<td>1%</td>
<td>1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Other</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Unknown</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Source: AICPA

**Financial Services**

A clear answer to the question of exactly “How many women work in financial services” is illusive, because no agreement exists as to what exactly constitutes financial services. Catalyst states, “Instead, we must look at different occupations that fall within the field of financial services.”
services.” The “Catalyst Census of Women Executives and Top Earners, which counts the number of women in upper management in Fortune 500 companies, [reports that] women are 18.4[%] of executive officers in the finance and insurance industries.” Figures for 2010 show that in the Financial Post 500 companies, “women were 24.3% of all senior officers in the finance and insurance industries. While “women are 18.3% of board directors in the finance and insurance industries in Fortune 500 companies; similarly, in Financial Post 500 companies, women were 22.2% of all board directors in the finance and insurance industries in 2011.” Catalyst observes that the U.S. Equal Employment Opportunity Commission collects information from private employers with 100 or more employees or federal contractors with 50 or more employees.” Accordingly, during 2010, according to the EEOC

- Women made up 40.5% of all employees and 17.7% of executive/senior level officials and managers at the 1,275 companies that fall into the category ‘Securities, Commodity Contracts and Other Financial Investments and Related Activities.’

- Women made up 35.2% of all employees and 15.0% of executive/senior-level officials and managers at the 227 companies that fall into the category ‘Investment Banking and Securities Dealing’ (which is a subcategory of ‘Securities, Commodity Contracts & Other Financial Investments’). And

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261 Id. citing Soares, et al., supra note 259.
262 Id. citing Mulligan-Ferry, et al., supra note 260.
• Women made up 59.5% of all employees and 29.6% of executive/senior-level officials and managers at the 4,236 companies that fall into the category ‘Commercial Banking.’

Legal Profession

Corporate governance is a legally-intensive enterprise. For example, in a survey including many smaller Texas corporations, Trautman found that approximately 27 percent of directors sitting on Texas boards reportedly have a legal background. Looking at the pattern of slow admittance to America’s law schools, this avenue of potential entrance to the corporate boardroom has not historically been available to women and people of color. For example, the practice of law in Maryland was restricted to white males until 1888. “Thus, both race and gender posed insurmountable barriers to black women, white women, and black men who wanted to practice law in Maryland.” It wasn’t until 1869, when “Bell Babb Mansfield, commonly believed to be the first woman lawyer of any race in the United States, was admitted to practice law in Iowa.” Three years later, a black woman named Charlotte E. Ray became the first known black woman lawyer when she was admitted to practice law in the District of Columbia.” Fast-forwarding to the 1940s, Texan Louise Raggio recalls the difficulty she

267 Lawrence J. Trautman, TRAUTMAN’S GUIDE TO CORPORATE DIRECTORS: TEXAS (unpublished manuscript, on file with author).
269 Id.
271 Id. at. 146, See also Jon D. Hanson & Kathleen Hanson, The Blame Frame: Justifying (Racial) Injustice in America, 41 HARV. CIVIL RIGHTS-CIVIL LIBERTIES L. REV. (2006), available at http://ssrn.com/abstract=1209742.
experienced enrolling as the first female law student at Southern Methodist University in February, 1947. “If ever there was a persona non grata, in Southern Methodist University’s night law classes, I was it!” she recalls.\(^\text{272}\) Moreover,

\[\ldots\text{[W]as dean of the law school, and he was, indeed, of the old school. His bearing, behavior, and ideas were those of a male of the Civil War era. His standards for females were a throwback from the 1870s instead of the 1940s… [The admissions director] did not believe there was a place for any woman in law school, and he almost choked when I presented myself as a likely candidate. Everybody in a position of authority at SMU discouraged me. I was reminded that law was a male profession, that the rough-and-tumble charges and countercharges of the courtroom was no suitable contest for a lady, that if I were admitted (and my qualifications were better than any other candidate) I would only be taking up space that could be occupied by a man who would do something with his degree.}\(^\text{273}\)

We have already observed that approximately 27% of directors sitting on Texas boards report having a legal background.\(^\text{274}\) We’ve also observed that it has only been during relatively recent years that women and people of color have been admitted to law schools in any meaningful numbers. For the 2011-2012 academic year, 46.8 percent of first-year law students are women, 46.7 percent of total J.D. enrollment are female, and 47.3 percent of J.D.s awarded that year went to women.\(^\text{275}\) The class of 2009 also resulted in 51 percent of judicial clerkships being obtained by women.\(^\text{276}\) Women account for 30.2 percent of judges at the Circuit Court of

\[\text{272}\text{Louise Ballerstedt Raggio, with Vivian Anderson Castleberry, TEXAS TORNADO: THE AUTOBIOGRAPHY OF A CRUSADER FOR WOMEN’S RIGHTS AND FAMILY JUSTICE, 111 (Citadel Press 2003).}\]
\[\text{273}\text{Id. at 113.}\]
\[\text{274}\text{Lawrence J. Trautman, TRAUTMAN’S GUIDE TO CORPORATE DIRECTORS: TEXAS (unpublished manuscript, on file with author 2012).}\]
\[\text{276}\text{Id. at 5.}\]
Appeals, but only 22.3 percent of Federal Court Judges are women. Maria Pabon Lopez writes that

[F]emale lawyers continue to be ensconced in the ‘50/15/15 conundrum where it has been 15 years since women comprised 50% of law students but only constituted 15% of law firm partners. Neither the passage of time nor the slowly trickling pipeline has resulted in women reaching higher levels of advancement in the legal profession.

While women comprise 31.6 percent of all members of the American Bar Association, they account for 39.3 percent of Section/Division Chairs during the 2010-2011 Bar Year. Catalyst reports that by 2011, “women made up 31.9% of all lawyers, women were 45.4% of all associates, 47.7% of summer associates, [and that] given the same rate of change, Catalyst estimates that it will take more than a woman lawyer’s lifetime to achieve equality.”

From a diversity standpoint, while strides have been made as shown by the fact that women now

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277 Id.
278 Id.
280 See Lopez., Id. at 101.
284 Id.
285 Id. (unpublished calculation 2011).
outweigh men in the population of many law schools, people of color are still not represented in meaningful proportions.

The Director Diversity Initiative is a joint project of the Center for Banking and Finance and the Center for Civil Rights at the UNC School of Law. A working group of academics and business professionals provides guidance and advice to the Initiative. The objective of the Initiative is to encourage boards of directors of public companies to increase their gender, racial, and ethnic diversity. In addition, The Diversity Initiative at the UNC School of Law “maintains a computerized database on which diverse directors and potential diverse directors may register.”

Headquartered at the University of California Hastings College of the Law, The Project for Attorney Retention found that a survey of the 2009 law firm partner classes showed “little progress for women lawyers. The good news is that at 23 of the 100 firms surveyed…. were at least 40 percent female. The bad news is that the gain is offset by the failure of 14 firms to make any female partners.” Joan C. Williams, distinguished professor of law at Hastings and Co-Director of the Project for Attorney Retention, says “These numbers show which firms need to work harder at promoting women lawyers…. They provide valuable information for women law students who are choosing their future employers and for clients who are interested in retaining law firms where women lawyers can succeed.” Any substantial discussion of differences in law firm compensation between men and women is beyond the scope of this paper. However, many of the structural issues that result in a “$66,000 annual gap between male and female

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288 Id.
equity partners,” is also indicative of roadblocks facing women attempting to advance in the legal profession. Joan C. Williams and Veta T. Richardson list barriers such as “women partners’ compensation continues to be negatively impacted by their exclusion from rainmaking opportunities and receipt of a proportionate share of the financial benefits associated with a successful client pitch.” In addition, the report highlights that “subjectivity is inevitable in setting partner compensation but it introduces significant risks of gender bias.”

The Minority Corporate Counsel Association and Association of Law Firm Diversity Professionals report from their recent survey of mostly larger law firms that “Most law firms (79%) have a law firm diversity professional… as more and more law firms hire or retrain full-time professionals entrusted with primary responsibility for advancing diversity efforts within the firm.”

Data released during March 2011 for the U.S. News law school rankings and separately for African American enrollment available for 196 ABA-approved law schools provides a picture of African American law school enrollment. Accordingly, “The highest percentage of African American students in the 196 schools was 79.7 (at Howard) and the lowest was 0.2 (at Gonzaga). The median is 5.65, the 75th percentile is 7.47 and 25th percentile is 3.02. The mean is 7.05 (SD=8.78).” Historically black schools comprise the largest percentage of black enrollment with the law schools having the largest black enrollment: Howard (79.7);

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290 Id. at 7.
291 Id.
Southern U (57.0); North Carolina Central (48.8); Texas Southern (44.5); Florida A&M (42.3); District of Columbia (30.7); Atlanta’s John Marshall (20.3); Rutgers Newark (15.7); Loyola New Orleans (14.5); and Cooley (13.3).\textsuperscript{294} Some of the top rated schools have the following percentages of black student enrollment: Harvard (11.3); Stanford (10.2); Yale (6.5); Columbia (7.7); Chicago (5.8); NYU (7.7); UC Berkeley (4.8); Michigan (2.8); Penn (7.5); and Virginia (6.1).\textsuperscript{295}

\textbf{Academia and Non-Profits}

Professor Branson contends that for at least the \textit{Fortune 500} companies, the most likely route for a corporate directorship may be to “side step from a position as professor or dean at a university. The leader in that regard, at least in 2001, was Harvard University. Thirteen women professors from Harvard held 21 \textit{Fortune 500} board seats.”\textsuperscript{296}

In order to reach the prestigious position of corporate director, a woman may have to leave business, make her way upward in academe, the not-for-profit sphere, government or consulting, or smaller corporations, areas in which women fare far better, and then re-emerge in the business world’s main arena as a director. Approximately 67.3 percent of women directors have reached the corporate board of directors by ‘side stepping’ in this fashion, sometimes with 2 or 3 sidesteps, rather than ascending vertically in business organizations.\textsuperscript{297} A woman’s best chance of becoming a corporate director may be to be a tenured professor in business, engineering or the health sciences at a prestige university rather than having patiently worked her way up through corporate organizations.\textsuperscript{298} By contrast, in business, the male’s ascent seems to be a decidedly more linear one.

Professor Seletha R. Butler recommends that “in for-profit, not-for-profit, government, and academic environments, dedication to promoting diverse talent beyond middle management

\textsuperscript{294} \textit{Id.} at 11.
\textsuperscript{295} \textit{Id.} at 15.
\textsuperscript{296} \textit{Id.} at 103-104.
\textsuperscript{297} \textit{Id.} at 87 & 91.
is essential to building the diverse director pipeline.”

Butler states that “the goals of talent development and enhancement are (1) to identify the top talent; (2) to develop and to implement a tailored training program focusing on the person’s skills and interests and then-current industry needs; and (3) to push the individual out of his or her comfort zone to encourage growth.”

Dr. Melvin Stith, Dean Emeritus of the Whitman School of Business at Syracuse University, says “Faculty fail to present teaching… as a viable career path for business school students.”

Dr. Carolyn Callahan, director of the School of Accounting at the University of Memphis remembers “It became obvious to me that the way to effect change in programs was to be an administrator… They are role models for our minority students and they enrich everyone’s experience.”

Syracuse Dean Stith continues

We always tell students about going to school and rising through the corporate ranks. We never talk to them about the academy itself being a viable career path. We never say to students, ‘You’ll be a great university professor.’ Business school salaries are pretty good. But it’s not just about the finances. It’s about the quality of life and how you want to spend your time.

Technology and Computer Science

The need in the boardroom for deep understanding of computer science and information technology has never been greater; unfortunately, the pipeline and outlook for women is far from encouraging. This realization is particularly disappointing, since “High tech career opportunities are expanding, and this sector is where we can expect the largest job growth for years to

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300 Id. at 85.
302 Id. at 3.
303 Id.
Professor LaVonda Reed-Huff observes that “As the United States transitions to the digital age, it is imperative that we position our country and each of its citizens to effectively compete in the global economy. Training and hiring a diverse work force are significant components in achieving such global competitiveness…” Caroline Simard and Shannon K. Gilmartin observe that “A growing body of research has documented the underrepresentation of women in technical positions in U.S. companies.” And while women are half the population and workforce, only 24 percent of technology jobs in the U.S. are held by women. Surprisingly, “This underrepresentation persists even though the demand for technical talent remains high: [with] computer occupations expected to grow by 32 percent between 2008 and 2018.” Moreover, factors offered to explain the lack of technical positions held by women include: “A shortage of women graduating with degrees in technical fields. Women earned 18.6 percent of computer science degrees in 2007, and 18.5 percent of engineering degrees. For


305 Id.


307 Id. citing National Center for Women in IT, *By the Numbers* (2009).

computer science, this represents a sharp decline from the 37 percent of women graduating with a bachelor’s degree in 1985.”  

Cultural Barriers in Technology

The Anita Borg Institute for Women and Technology concludes that five main components prevent the creation of inclusive environments:

1. **The Existing Technical Culture is Biased Against “Those Who Don’t Code.”** The majority of positions that involve coding are held by men, and these positions are more valued than other roles by the prevailing culture…. In many companies, technical women are more likely to be engaged in positions that involve large scale project or product management, acting as catalysts across multiple groups to drive organizational action… Whether this is because organizations tend to put women in ‘non-coding’ roles, whether coding roles are not welcoming to women, or whether women are more attracted to project management positions is not well understood. However, executives emphasized that the globalized, collaborative, and matrixed organizational structures of today’s companies have a critical need for positions and skills involving program management…. The prevailing attitude, characterized by ‘if you aren’t doing coding, you’re not doing real work,’ is limiting organizations’ ability to hire and retain talent for a diversity of skills needed for organizational success.

2. **The Existing Technical Culture Rewards ‘Hero’ Behavior and an ‘In Your Face’ Communication Style.** [This appears to result from] the prevalence of a ‘Hero’ mindset in technical organizations, which impedes diversity of work styles and fails to recognize those who work to prevent problems. This impedes gender diversity in that it rewards a ‘last minute’ crunch where 24/7 work becomes necessary to ‘save’ a project, failing to acknowledge family responsibilities and flexibility needs. A pattern develops where an organization poorly defines requirements and project management. The engineer who comes in to try and ‘save’ such a project gets rewards and recognitions for solving problems at the ‘11th hour,’ while those who work to prevent problems from happening in the first place are not adequately recognized . . .

3. **Risk-aversion is Embedded in Recruiting and Advancement Practices.** Most companies’ recruitment and advancement practices are structured to mitigate risk in hiring, which can significantly impede diversity. In recruitment, some companies favor people with similar backgrounds and levels of experiences, which reinforce workforce homogeneity… In advancement practices, standards are set that reflect the backgrounds of those already at the top, again valorizing similar career backgrounds, accomplishments, values, and work and communication styles . . .

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4. **The Individual Contributor Track Lacks a Development Culture.** The individual contributor technical track, especially at its highest level, lacks basic principles to broaden the pool of candidates . . . The individual contributor work culture does not include mentoring the next generation of fellows/architects . . . [and]

5. **The Existing Reward Structures Built Around the High-tech Culture Do Not Encourage Rapid Change Around This Issue.** The state of research on the barriers and solutions for technical women has taught us a lot about the issues facing technical women and how to fix them. However, cultural change is difficult—talk does not equate action, and companies are looking to change reward structures to foster needed change in organizational practices.\(^{310}\)

**People of Color in Technology**

Dorrissa Griffin and Kristal Lauren High report that “Minorities, particularly African Americans, Hispanics, and women, remain sorely underrepresented across the high tech sector and in the ranks of some of the sector’s biggest companies.”\(^{311}\) “Significant disparities in the employment of African Americans, Hispanics, and women in ten of the 15 largest firms located in Silicon Valley, the leading high tech region in the country,” was discovered from a 2010 investigation conducted by the *San Jose Mercury News*.\(^{312}\) Moreover

According to U.S. Census Bureau data, the proportion of African Americans employed in computer and mathematics occupations increased from 6.8 percent to 7.1 percent between 2000 and 2008. Similarly, the proportion of Hispanics in these occupations rose from 4.4 percent to 5.3 percent over the same time period. African Americans in computer manufacturing faced a 7.3 percent unemployment rate by August 2010, down from 23.6 percent in 2009 and 11.9 percent in 2008 . . . By contrast, Asian Americans are generally over-represented in the U.S. high tech workforce. Comprising just 4.8 percent of the total U.S. population, this demographic group has secured 15.5 percent of computer and mathematics jobs, up from 11.8 percent in 2000. Similarly, Whites, who comprise 63.7 percent of the population, are also overrepresented in the high tech sector, representing 70.3 percent of jobs. But this group’s share of high tech employment decreased from 75.1 percent in 2000.\(^{313}\)


\(^{311}\) Griffin & High, *supra* note 304 at 3.

\(^{312}\) *Id.* citing Mike Smith, *Blacks, Latinos and Women Lose Ground at Silicon Valley Tech Companies*, *San Jose Mercury News* (Feb. 13, 2010).

\(^{313}\) *Id.* at 6.
Table 13
Workers in Computer and Mathematical Occupations by Demographic

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>65.6 %</td>
<td>70.3 %</td>
<td>39.9 %</td>
</tr>
<tr>
<td>Asian</td>
<td>4.5 %</td>
<td>15.5 %</td>
<td>30.4 %</td>
</tr>
<tr>
<td>Black</td>
<td>12.8 %</td>
<td>7.1 %</td>
<td>2.9 %</td>
</tr>
<tr>
<td>Hispanic</td>
<td>15.4 %</td>
<td>5.3 %</td>
<td>24.3 %</td>
</tr>
<tr>
<td>Female</td>
<td>50.7 %</td>
<td>27.4 %</td>
<td>23.8 %</td>
</tr>
</tbody>
</table>


Candidate Nurturing, Recruitment and Retention Strategies

Caroline Simard and Denise L. Gammal report that “Research shows that targeted diversity recruitment efforts are a significant predictor of diversity in companies.” Moreover, “Companies that aim to increase the pool of women candidates for technical positions should start by seeking out new recruitment venues and opportunities, engaging young women as students, or employing networks to reach a broader range of women.” Simard and Gammal offer the following strategies to expand recruitment avenues and reach more and diverse women candidates:

1. Build strong ties to conferences, colleges and universities, and professional organizations where there are high proportions of women from diverse backgrounds.
2. Build a gender-balanced internship program for technical positions.
3. Use social networks strategically to increase the number of female candidates for technical positions and minimize homogeneity in referrals.
4. Apply broad individual and institutional criteria to the recruitment effort.
5. Re-think the meaning of ‘cultural fit’ to broaden the talent pool under consideration and limit the effect of hidden bias.

315 Id. at 5.
6. Revise job descriptions to reduce gender stereotypes.
7. Institute a blind resume screening process to reduce the potential for unconscious bias.
8. Build gender-diverse hiring teams and showcase technical women during the interview process.
9. Set targets to hire technical women.
10. Require that every open technical position has a viable female candidate.
11. Support and reward hiring managers’ open hire practices.
12. Adapt the interview process to be welcoming to diverse candidates.
13. Train hiring teams and managers to reduce implicit biases.
14. Implement dual-career support mechanisms when relocating is involved.
15. Hold executives and managers accountable for reaching diversity goals and targets.
16. Develop, maintain and project a welcoming culture.
17. Refine the pipeline—create alternative pathways and establish mechanisms to bring women back to technical roles.
18. Measure and evaluate your efforts to increase the representation of women.
[and]
19. Fund or create K-12 initiatives around the world and advocate for computer science education to encourage a bigger pipeline of technical women for the future.  

When asked “Why does it matter that we have more girls interested in the sciences?,” Maria Klawe, president of Harvey Mudd College and former dean of engineering and professor of computer science at Princeton University says “These are amazing careers. Particularly right now in computer science, the job opportunities are incredible. And it doesn't matter -- I mean it's not just about going to work for a place like Google or Microsoft or Facebook. She continues

It's about doing computer science in medicine, or doing computer science in arts, or doing computer science in languages, or doing educational software….

[T]he careers are out there that pay really well. They're very flexible, great opportunities to combine a career with family. So I hate that young women don't get that opportunity… [also] What gets created in technology today depends on who's doing the creation. I'll talk about computer games for a moment. So, for a very long time, virtually all the computer games were built by young men and

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316 See generally Id.
somewhat older men, and played by young men and somewhat older men. And so we had shoot-'em-ups, we had lots of violence, we had sports.

Now, all of a sudden, what has happened is, the game publishers and the game developers and the Nintendo and Sony and so on have realized that the market for video games has plateaued. And so now they're going after young women and older women. And, all of a sudden, we're seeing games that are really different. So the first example is "The Sims," which came out of Electronic Arts and became the most popular computer game ever played. A lot of the people associated with "The Sims" were female.  

While speaking to a group of corporate directors interested in the topic of increasing diversity among board members, Maria Klawe observes that “Attracting more young women to the STEM (science, technology, engineering and math) subjects is something that I am very passionate about.” When you think about where the economic opportunities are…. it completely demands that we have to have a work force that is skilled in science, engineering and mathematics,” says Harvey Mudd president Klawe. Unfortunately

We do not have a future unless we achieve that. And, unfortunately, we graduate many fewer scientists and engineers and mathematicians than our competitors do. So, I truly believe that, if we are to have the kind of future that we have had in the past, we have to address getting more young people to major in those areas. We have to improve our math and science teaching in our schools…. We get lots of young women going into chemistry and biology. Many of those think they're going to go to med school afterwards. But we get very few young women going into computer science and physics and areas of engineering. And we even know the reason why it's the case. It's because, number one, they think it's not interesting, and, number two, they think they wouldn't be good at it. And, number three, they have an image of the people in those fields that they don't think is attractive.

And what we encourage our young people do in this country is follow your passion. Well, if you don't think it's interesting and you don't think you'd do well at it, would you go there? Probably not. If you do a program at the middle school level, and you get girls interested, they've got another four years of high school for peer pressure to get them disinterested again. And it mostly happens. So my recommendation is you actually do it right when they enter college. You get them into an intro computer science course that is absolutely fascinating and

318 Id.
320 PBS Newshour, supra note 317.
fun and creative. And you have them have so much fun, that they just can't believe that this is really computer science.

And that's actually what we have done at Harvey Mudd College, because we have all kinds of students who arrive saying, I hate computers. But they have to take a computer science course in the first semester. And halfway through the semester, I'll be asking them, what do you think? What's your favorite course? And probably 90 percent say C.S.-5. I hate computers, I hate computing, but, oh, my God, that's the greatest course ever…. and if there are some male students in the class who seem to know way more than you do, ignore it, because they tend to show it off more. Look for an instructor who is encouraging, because that makes a huge difference. And I have had so many female students in my life who I talked into taking their first computer science course. And they're so grateful. They're [believing that]…. I have these great career opportunities. I can do anything. I can travel around the world. But they had to take the first course.321

Dr. Klawe reports that “as recently as 1985, 37 percent of graduates [in computer science] were women; by 2005 it was down to 22 percent and sinking. And the situation at [Harvey] Mudd was even grimmer.” When she became Harvey Mudd president in 2006, “of the college’s 750 students, about a third were women (the figure is now closer to half), but for years the percentage of computer science graduates has been hovering around the single digits.” Elsewhere, “At Carnegie Mellon, the percentage of incoming women enrolled in the computer science program has risen since 2008, and is at 32 percent. M.I.T.’s figure is 30 percent.”

**Glass Cliff Phenomenon**

Professor Diana Bilimora observes that the “recently conducted glass cliff research has provided a contemporary twist to the glass ceiling phenomenon, where instead of being systematically blocked on the way to the top of corporations, women are appointed to the top (corporate boards or TMTs [top management teams]) when the company is in dire straits.”

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323 Id.

324 Id.

Professor Douglas M. Branson describes this phenomenon as follows, “that corporations are more likely to turn to a female for an officer or CEO position [presumably a director also] when events magnify the risk of failure.”

Psychologists Michelle Ryan and Alexander Haslam found that businesses appoint women to corporate leadership positions “in problematic circumstances.” Their appointments ‘[hence] were more precarious than men’s appointments.’ If she succeeds, of a woman CEO, directors and senior executives say ‘we expected nothing less.’ If she falls from grace, many will say ‘I told you so,’ leaving unstated that failure must have been due to gender.

Using U.S. Fortune 500 female CEOs as the sample, the glass cliff theory seems to bear up under examination. Patricia Woertz became CEO after Archer Daniels Midland had reached a nadir, with the former CEO’s son beginning a term in prison for price fixing on AMD’s behalf. Susan Ivey became CEO at Reynolds American when the $246 billion settlement with 46 states and other adverse judicial outcomes had laid the tobacco industry low. Brenda Barnes got the reins at Sara Lee after over-diversification and lackluster returns had driven the company down. Ann Mulcahy got the top job at Xerox only after a sea of red ink flowed and the company’s future was uncertain. Mary Sammons became the CEO of Rite Aid in the midst of deeply troubled times, with former CEO Martin Grass beginning a prison term and the share price reduced to a few dollars and cents. Patricia Russo became CEO of Lucent after it had laid off over 1000,000 employees and the shares price flirted with the $1.00 barrier. Carol Bartz came to the CEO suite at Yahoo! After a badly botched response to a takeover proposal from Microsoft and continuing losses had caused previous management to resign. In fact, a near majority, 10 of 22, of the female CEOs my book portrays came to power only when the corporation faced telling and uncertain circumstances, or worse.

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326 Branson, supra note 84 at 15.
327 Id. citing Ryan & Haslam, supra note 325 at 81, and Jayne W. Barnard, At the Top of the Pyramid: Lessons from the Alpha Woman and the Elite Eight, 65 Md. L. Rev. 315 (2006).
328 Id. citing Douglas M. Branson, THE LAST MALE BASTION—GENDER AND THE CEO SUITE AT AMERICAS’ PUBLIC COMPANIES, supra note 210 at 73.
329 Id. at 66.
330 Id. at 81-82.
331 Id. at 52-53 (Xerox’s market share had gone from 90% to 13%).
332 Id. at 100-101.
333 Id. at 58-59.
334 Id. at 111.
335 Id. (Professor Branson observes “Those women CEOs who came to power in precarious corporate settings (10) include: Jill Barad at Mattel; Andrea Jung at Avon; Ann Mulcahy at Xerox; Patricia Russo at Lucent; Susan Ivey at Reynolds American; Patricia Woertz at AMD; Brenda Barnes at Sara Lee; Mary Sammons at Rite Aid; Christina Gold at Western Union; and Carol Bartz at Yahoo. Those female CEOs of whom the same thing cannot be said (12) include Carleton Fiorina at Hewlett-Packard; Marion Sandler at Golden West Financial; Paula Rosport Reynolds at Safeco; Angela Braly at Wellpoint; Indra Nooyi at Pepsico; Carol Meyrowitz at TJX; Meg Whitman at Ebay; Lynn Elsenahns at Sunoco; Ellen Kullman at DuPont; Irene Rosenfeld at Kraft;
However, Alison Cook and Christy Glass in their study of the 28 women Fortune 500 CEOs during the period 1990 to 2011 find “little evidence that women are more likely to be promoted CEO in firms that are struggling.” In addition

We do find evidence that institutional diversity significantly impacts women’s mobility and tenure. First, women’s integration on boards of directors significantly increases the likelihood that a woman will be appointed CEO. Second, there is a significant positive relationship with the proportion of women on the board of directors and women CEOs’ length of tenure. Taken together these findings suggest that diversity among decision makers plays a strong role in women’s ability to overcome the barriers posed by the glass ceiling. While previous research has shown that gender integration among managerial ranks increase women’s odds of being hired and promoted, this study shows that this impact holds for promotions at the highest level. Furthermore, diverse boards increase the duration of women leaders’ tenure, allowing them a greater opportunity to demonstrate their leadership capacity. Conversely, our findings also suggest that all-male boards or predominantly male boards are much more likely than diverse boards to appoint male CEOs.

Searching for the Diverse Director

The quest to achieve greater board diversity may require a diligent search in non-traditional places. Professor Seletha R. Butler observes that “some companies are expanding their candidate searches to rising talent that is not recognized by name in the board network. Such companies have begun tapping into the ranks below the C-suite for qualified talent.” Professor Butler suggests that

By recruiting corporate board candidates outside the C-suite, such as leaders of corporate divisions and middle management leaders, boards increase their

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Ursula Burns at Xerox; and Laura Sen at BJ’s Wholesale Club. See generally The Last Male Bastion supra note 210 at 1-117.
337 Id. at 17.
338 Seletha R. Butler, supra note 299 at 72 (offering a 7-tier strategy to promote inclusiveness and a continuous evolution of diversity, consisting of: (1) preparing early; (2) post-secondary governance study and training; (3) promoting from middle management; (4) establishing an inclusive nominating committee; (5) utilizing available diversity information; (6) being intentional; and (7) understanding international actions on board diversity, Id. at 82).
diversity options. Furthermore, recruiting such talent outside the C-suite can improve the boards’s understanding of the company’s internal operations, since such employees are closer to the organization’s day-to-day operations, and thus, are likely to bring a different perspective to the boardroom.\textsuperscript{339}

Certain industries (energy, infrastructure, electronics, and technology) have notably less female directors than in other industries.\textsuperscript{340} Professor Butler believes “a greater focus should be placed on exposing females to these underrepresented industries and on providing them with training and advancement opportunities within these industries.”\textsuperscript{341} A former CEO of U.S. Bank of Washington, Phyllis J. Campbell is the chairman, Pacific Northwest for JPMorgan Chase. She also currently serves as the lead independent director for the Alaska Air Group; serves on the boards of Nordstrom, and others. With regard to refreshing the board, Ms. Campbell recommends that all boards should “make diversity a focus of the Nominating and Governance committee.”\textsuperscript{342}

\textbf{Diversity Mentorship Opportunities}

Professors Orlando Richard and Goce Andrevski find that “formal mentoring programs should strengthen the relationship between management crosscutting diversity and firm performance by facilitating positive interactions across race and gender.”\textsuperscript{343} Moreover, “we

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id. at 85.
\item Phyllis J. Campbell, Keynote address before the NACD Meeting on “Diversity in the Boardroom: A Competitive Advantage, Seattle Marriott Waterfront (Sept. 11, 2012).
\end{enumerate}
\end{footnotesize}
expect that companies with formal mentoring for minorities will be more able to benefit from crosscutting diversity in management, which in turn will lead to superior firm performance.”\textsuperscript{344} Richard and Andrevski state, “Our results show that only when organizations provide a context where both diverse managers and board of directors can experience high quality task and social interactions within and between their respective groups can organizations move towards accruing a ‘sustainable diversity-based advantage.’”\textsuperscript{345} Moreover, “The board of directors plays an integral part in facilitating strategic changes within the firm. In fact, recent research uses upper echelons theory coupled with demographic faultline logic to argue that background board of diversity influences discussion of entrepreneurial issues.”\textsuperscript{346} Recognizing the crucial importance the role of mentoring plays in assisting women and minorities to reach organizational leadership, Schipani, Dworkin, Kwolek-Folland and Maurer provide a valuable review of the literature on networking and mentoring from the various academic fields of economics, law, social psychology and sociology.\textsuperscript{347}

Catalyst reports that for high potential executives “the people with whom they discuss important work matters, from bouncing ideas around to getting advice on key decisions,

\begin{itemize}
\item \textsuperscript{344} Id.
\item \textsuperscript{345} Id.
\item \textsuperscript{347} Cindy A. Schipani, Terry M. Dworkin, Angel Kwolek-Folland & Virginia G. Maurer, Pathways for Women to Obtain Positions of Organizational Leadership: The Significance of Mentoring and Networking, 16 DUKE J. GENDER L. & POL’Y. 89 (2009), available at http://ssrn.com/abstract=1281466; See also David H. Zhu & James D. Westphal, How Director’s Prior Experience With Other Demographically Similar CEOs Affects Their Appointments Onto Corporate Boards and the Consequences for CEO Compensation, 57 ACAD. MGMT. J. 791 (2014)(suggesting that CEOs are influenced in appointing new directors by whether candidates have experience working with demographically similar CEOs); Bernali Choudhury, Gender Diversity on Boards: Beyond Quotas, __ EUROPEAN BUS. L. REV. (forthcoming 2015), available at http://ssrn.com/abstract=2442040 (discussing quotas and mentoring programs).
\end{itemize}
strategizing projects, evaluating options, or discussing career goals.” Various types of important career development identified by Catalyst include:

- **Job or Career Advice:** The person provides advice on specific tasks, offers coaching, or provides general information about navigating the organization.
- **Sponsorship:** The person opens doors for you, has power and/or an influential position within the organization and uses it in your favor to advocate for you and help you get projects and assignments that can enhance your position and visibility.
- **Support:** The person provides friendship, empathy, or caring beyond the job.
- **Role-Modeling:** The person sets an example you aspire to emulate.

Catalyst found “when asked about the trusted people with whom they discussed important career matters, high potentials who received development support from others are more likely to now be developing the next generation of leaders.” Those who have benefited from the help of others (mentors) are “providing others with the same help that they themselves received along the way.” Key findings include:

- **Being developed matters:** A higher percentage of high potentials who had received developmental support in the past two years were more likely to be offered similar support to a protégé. 59% of those who received developmental support were now, in turn, developing others compared to 47% of those who hadn’t received this type of support.
- **Numbers matter:** The more people high potentials received developmental advice from, the more likely they were to pay it forward to others.
- **The type of development received matters:** If high potentials had received sponsorship, they were more likely to be paying it forward. 66% of high potentials who were sponsored were developing others vs. 42% who hadn’t been sponsored.
- **High potentials are more likely to develop future talent if others have similarly invested in their advancement.**
- **Developing others pays off in greater career advancement and compensation growth.**
- **Women were more likely than men to be developing women.**

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349 Id.

350 Id. at 3.

351 Id.

352 Id.
During March, 2010, the Australian Institute of Company Directors (AICD) launched a program to mentor/sponsor women directors.\footnote{Branson, supra note 105, citing Ruth Williams, Crunching the Gender Numbers, Sydney Morning Herald, Oct. 11, 2011 (August 2011 statistic of 13%) (‘The Australian Institute of Corporate Directors… has a well-publicized new mentoring and scholarship program in place, which it says has contributed to a recent surge in the ranks of women on boards, from 8.3% in early 2010 to 13 per cent at August [2011].’).} Professor Douglas M. Branson reports that Mentee applicants must attend either the AICD’s “Directors’ Course in Mastering the Boardroom” or its “International Company Director’s Course.”\footnote{Id. at 27, citing ACID, “ASX Chairmen’s Mentoring Program 2011 Q & As,” at 2 (March 7, 2011).} Once they have become “ASX 200 board ready,” through attendance at the course, and their experience as lawyers, accountants, corporate managers, or non-profit entities,\footnote{Id. (Formal prerequisites are that the applicant “already have 5 years’ board experience (either on a listed or non-listed company board, NFP [Not for Profit] board, or large proprietary [private] company board.) Id. at 3. In addition, applicants for the AICD mentoring program should have “at least 10 years’ experience as a senior executive” with a large company, or “at least 10 years’ experience as a professional advisor to the boards of large companies,” or “at least 10 years’ experience in a senior position within Government.” Id.} women candidates join with a mentor. Initially 63 women qualified. The mentors are company chairmen, or experienced directors of ASX listed companies.”\footnote{Id. at 1.} At the program’s inception, 56 of the chairmen of the ASX 200 had signed on. They pledge not only to mentor the candidate for a year but at the end of the year place that woman on a public company board of directors.\footnote{Id. citing Amanda Saunders, “AICD Program Aims to Get More Women on Boards,” THE WESTERN AUSTRALIAN, April 23, 2010 (Perth, Western Australia launch of AICD mentoring program).} Between April 2010, and November, 2010, the percentage of women directors on Australian corporate boards increased 2%, from 8.5% to 10.4%, and has continued to increase thereafter.\footnote{Id. citing Catherine Dunn, Global Increase in Women on Corporate Boards, LEGAL INTELLIGENCE, March 12, 2012.} The percentage reached 13.8% by March 2012.\footnote{Id.} A news article recounted that in 2010 alone, ASX 200 corporations added 59 women to their boards, compared with 10 in 2009.\footnote{Id.} At first blush the number may seem small but one must remember that corporate boards are smaller in Australia (5-7 directors) than in many other nations (in the U.S. approximately 10.6) and that the Australian sample is smaller (ASX 200 versus, say Fortune 500 in the U.S.).\footnote{Id. (In the U.S. there were 5,161 director positions on 496 boards of directors in the 2006 Fortune 500, NO SEAT AT THE TABLE at 97 & 88, n. 4, for an average board size of 10.4. In}
Whistleblowing

Contending that “organizations tend to pay attention to whistleblowers who have more bases of social power,” the assertion that women managers tend to be more effective whistle blowers seems to be supported by evidence based on a “more inclusive coalition-building” management style.\textsuperscript{362}

When whistleblowing concerns incidents such as discrimination and/or harassment, women are disproportionately likely to be victims or perceived to be personally involved and therefore not be as readily believed. Mentoring (discussed above) can also affect credibility. If the whistleblower has a powerful mentor, that indirectly gives the whistleblower power. As stated, power is positively correlated with credibility. If the mentor backs up the mentee (and that may be a big if) then the whistleblower is likely to be more effective.\textsuperscript{363}

IX. PARTNERS ADVOCATING GREATER BOARD DIVERSITY

A number of organizations are helpful in advocating greater diversity among corporate boards. Many public pension funds have become activist investors during recent years to protect and enhance the value of their investments. Including all such organizations is beyond the scope of this paper; however several of the more prominent are described here. Organizations or identifiable groups of individuals who have been particularly active in promoting diversity in corporate governance include: the Alliance for Board Diversity, Boardroom Bound, Catalyst,

\begin{footnotesize}
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\item 2007, ASX 200 corporations had 1479 board seats, for an average of 7.4, \textit{citing} Frances Anderson, \textit{Women Directors on Corporate Boards in Australia} at 7 Research Paper, School of Law, University of Melbourne, Victoria, Australia (on file with author)(2008).
\item 363 Schipani et al. \textit{supra} note 347 at 130.
\end{itemize}
\end{footnotesize}
Inc., CalSTRS and CalPERS, the Diverse Director Data Source, Direct Women, influence of fathers with daughters, the National Association of Corporate Directors, and TIAA-CREF and Women Corporate Directors (WCD).

**Alliance for Board Diversity**

Founded in 2004, The Alliance for Board Diversity is a joint effort of four leadership organizations: Catalyst, The Executive Council, Hispanic Association on Corporate Responsibility, and Leadership for Asian Pacifics, Inc. committed to the proposition that shareholder value may be “enhanced by promoting inclusion of women and minorities on corporate boards.”

The members of the Alliance for Board Diversity are committed to the following as they pertain to women and minorities within the boardrooms of corporate America:

- Offer referrals of qualified candidates through its member and partner organizations that can help facilitate boardroom diversification.
- Conduct research to measure changes in the demographic makeup within Fortune 500 boards and raise awareness of these findings.
- Ally with and/or support like-minded organizations that are committed to the issue of diverse boardroom composition as a vital shareholder concern, as well as with organizations that affect boardroom diversity.

**Boardroom Bound®**

Founded by Linda K. Bolinger, Boardroom Bound®’s stated mission is to “Foster quality governance through inclusive leadership in America’s boardrooms.” The organization states that their Three cornerstones in fostering quality corporate governance involve:

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365 Id.
1. Advancing new standards for board candidacy in preparing and sourcing prequalified candidates
2. Building a premier diverse and inclusive board service pipeline that promotes public service as a core value and responsibility
3. Championing corporate governance preparedness through progressive board service experience and opportunities…

[And that this] system has three central elements that are sequentially related to moving individuals through [their] pipeline. They are: training and education; repository of pre-qualified candidates; and [candidate] referral/promotional service.  

Catalyst, Inc.

Felice Schwartz founded Catalyst in 1962, dedicated to promoting social equality for women in the workplace. Now, with offices in Canada, Europe and India based in New York City, the organization has expanded globally and is the source of considerable data, research and community.

CalSTRS and CalPERS

The California State Teachers' Retirement System (CalSTRS), has an investment portfolio recently valued at $154.6 billion, and is the largest teacher pension fund in the United States. CalSTRS administers a hybrid retirement system, consisting of a traditional defined benefit, cash balance and defined contribution plans, as well as disability and survivor benefits. CalSTRS serves California's 852,000 public school educators and their families from the state's 1,600 school districts, county offices of education and community college districts.  

During “recent years, the issues of board of director leadership and oversight roles have taken on increased significance to long-term investors, such as CalSTRS. Today's economic challenges highlight the importance that board diversity plays in enhancing value and providing companies

367 Id.
with a full range of fresh talent and experience.” \(^{370}\) Anne Sheehan, Director of CalSTRS Corporate Governance says We've advanced the ball in the name of board diversity and are committed in our conviction that corporate boards and their nominating committees consider diversity in the larger context of improving shareholder value… One lesson from the financial crisis was the role corporate board group-think played in fostering management of short-term priorities that proved detrimental to sustainable value creation. We think improved board diversity will address that problem…. The California State Teachers’ Retirement System withdrew all eight of its board diversity shareholder proposals filed during the 2011 proxy season after successfully engaging companies to consider diversity in director searches. \(^{371}\)

Following the SEC filing for the Facebook IPO, Ms. Sheehan wrote the following letter to Mark Zuckerberg, Facebook Chairman and Chief Executive Officer, stating (in relevant part)

CalSTRS is currently invested in Facebook through its Private Equity allocation in two partnerships and we will most likely be a common stock investor once the IPO is completed. We are pleased with the appreciation that the fund has enjoyed from its investment in Facebook, but as a long-term investor, we engage portfolio companies on a variety of issues.

I write to you today because of the reported composition of the Facebook board of directors. We are disappointed that the Facebook board will not have any women members. This is particularly glaring in view of the fact that Facebook is going public at a time when there is clear evidence that companies with diverse boards perform far better than the companies with more homogeneous boards. We also note that the Facebook COO, Sheryl Sandberg has been very supportive of increasing the diversity on corporate boards, particularly gender diversity, and in the senior management of corporations.

The Facebook board is relatively small for a company with its estimated market capitalization. We believe that investors and the company would benefit from a larger, more diverse board and urge you to expand its size. We realize that Facebook will be a controlled company in which the public stockholders will have little influence, but when the company’s mission and subscriber base are considered, a diverse board makes good business sense.

\(^{370}\) Id.
\(^{371}\) Id.
On behalf of CalSTRS and our beneficiaries, the teachers of the state of California we strongly encourage you to increase the diversity of your board prior to the IPO.372

The Diverse Director Data Source

Anne Sheehan previously announced that CalSTRS has partnered with The California Public Employee Retirement System (CALPERS) to provide a database of “board-ready candidates…. a resource to these companies that we are large shareholders in. And this is the way we feel like we can provide some value add – and contribute to getting more diversity on the boards.”373 Diversity is important at CalSTRS, as reflected in the following statement from their recent semi-annual report on the topic of Diversity in the Management of Investments

While maintaining a financially sound retirement system, CalSTRS seeks to honor the philosophy of inclusion, long reflected in California educators. Diversity in the management of investments is interwoven in the investment business goals and is consistent with the objective of investing to enhance the returns at a prudent level of risk, in accordance with CalSTRS Investment Policies, the California Constitution, and the Education Code.374

In October 2001, the CalSTRS “Investment Committee adopted a Policy on California Investments to engage in diversity efforts within the investment portfolio.”375 The Director DataSource, known as ”3D,” will offer shareowners, companies and other organizations a facility

373 Pablo Schneider, The Diverse Director DataSource: Conversations with Anne Sheehan of CALSTRS, Nell Minow of the Corporate Library, and Anne Simpson of CALPERS, 12 LATINO LEADERS, July-Aug. 2011 at 20.
from which to recruit individuals whose experience, skills and knowledge qualify them to be a candidate for a director's seat.  

The California Public Employees’ Retirement System (CalPERS) “manages retirement benefits for more than 1.6 million California public employees, retirees, and their families.”  

CalPERS provide pension benefits to 1,116,044 active and inactive members and 513,623 survivors, beneficiaries, and retirees as of June 30, 2010.  

Moreover

As a global investor, public employer, and provider of retirement and health benefits services within the nation’s most ethnically and culturally diverse state, CalPERS recognizes diversity as a competitive advantage that calls for the broadest possible pool of talent, experience, and perspective. The CalPERS Board of Administration acknowledged this by including diversity as an element in [their] Strategic Plan.

DirectWomen

DirectWomen is a program “specifically designed to identify, develop, and support a select group of accomplished women attorneys to provide qualified directors needed by the boards of U.S. companies, while promoting the independence and diversity required for good corporate governance.”  

The organization states its goals and objectives as


\[378\] Id.


• Providing strategic career development and networking opportunities to women exiting the active practice of business law who wish to continue contributing to the corporate world;
• Reinforcing the merits of gender diversity in the minds of corporate directors, and enhancing their appreciation for the tremendous reservoir of seasoned talent that senior women business law practitioners represent;
• Facilitating access of executive search firms to well-qualified women attorney candidates for independent director positions;
• Recognizing and honoring women attorneys who serve on the boards of public companies, lead corporate America and epitomize the value of diversity in the boardroom with the Sandra Day O’Connor Board Excellence Award.\[382\]

**Influence of Fathers with Daughters**

My review of the literature produced a surprise worthy of mention. It appears that one of the most receptive groups to the promotion of women to the boardroom may be fathers who have daughters. Professor Douglas Branson states

….. [T]he father of two daughters, both of whom are university educated, each with a master’s degree [recalls that] in my research and travels on the subject, I find that a principal exception to the ‘good ole boy’s club’ attitude comes from corporate directors and officers who are, like me, the fathers of daughters. When a study group upon of which I am a member interviewed company chairpersons (all male) in Australia, the group asked each chair why he took time out of his undoubtedly busy day to meet with our group researching pathways women directors actually have taken in their careers. With no prompting whatsoever, every company chair replied that he was the father of daughters. They regard it as essential that women have the same opportunities as men, in the arts, in sport, or in business. Many (most) fathers are not overly protective of daughters as they may once have been. Instead, they regard their daughters as equal to and in many respects the same as sons would be.\[383\]

**The InterOrganizational Network (ION)**

The InterOrganizationNetwork (ION), founded in 2004, consists of 16 regional organizations in the United States representing more than 10,000 women in business across a wide range of industries. Through ION, these women combine their energies in advocating the

\[382\] *Id.*  
\[383\] Branson, *supra* note 84 at 4.
advancement of women to positions of power in the business world, especially to boards of directors and executive suites. In the U.S., the number of women advancing to the senior ranks—the executive suite and boardroom—remains stagnant. The ION message and mission are significant, by developing corporate leadership that includes the talents of all and better reflects the composition of today’s workforce—consumers, society, and business will benefit.\textsuperscript{384}

National Association of Corporate Directors

Founded in 1977, the NACD now has more than 14,000 members and is focused on creating more effective and efficient boards through director-led education and peer forums to share ideas and leading practices based on over thirty years of primary research. Highlighting NACD’s ongoing commitment to advancing diversity in the boardroom, Ken Daly, president and CEO of NACD recently observed that “Diverse insights are essential components to exemplary board performance…. At a time when companies are facing more challenges than ever before, having a wide range of opinions is crucial to developing innovative corporate strategies.”\textsuperscript{385} The inaugural Board Composition: Opportunities for Women in the Boardroom Summit (the Summit) was attended by over one-hundred women directors and C-Suite executives during September 2011. Co-sponsored by the NACD and PwC’s Center for Board Governance, the Summit “successfully fostered a dialogue about the challenges women face getting on boards and the business challenges facing directors in today’s environment. The women at the Summit shared advice and anecdotes about their experiences and challenges getting and sitting on boards.”\textsuperscript{386} Spencer Stuart’s Julie Hembrock Daum contended that rigorous board evaluations

\textsuperscript{384} The InterOrganization Network website, available at http://www.ionwomen.org/.

\textsuperscript{385} Press Release, National Association of Corporate Directors, NACD Convenes Group to Move the Needle: Diversity and Women in the Boardroom as a Strategic Business Imperative: More than 120 Corporate Directors and Executives Attend NACD Forum in New York City to Reinforce the Importance of Strong, Diverse Corporate Boards of Directors (Sept. 22, 2011).

\textsuperscript{386} PwC Center for Board Governance, Continuing the Conversation: Board Renewal (Fall, 2011).
result in more diverse boards, observing that “If we allow boards to think about who is in the room, we’ll get much better boards…. If you’re on a nominating and governance committee, you should be pushing for serious board evaluations.”

The NACD announced its Blue Ribbon Commission on diversity in corporate boardrooms, consisting of experienced public company directors and leading corporate governance experts. The work and commission recommendations, “discussing the benefits of boardroom diversity, the barriers that exist, and action steps to advance greater diversity” are available in the REPORT OF THE NACD BLUE RIBBON COMMISSION ON THE POWER OF THE DIVERSE BOARD.

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387 Judy Warner, Acting on What We Know: Lack of board turnover is seen as one impediment to women’s advancement in the U.S., NACD Directorship 76 (Sept. 2011) (Participant’s included: Patricia (Tosh) Barron, Catherine Bromilow, Janet Clarke, Julie Hembrock Daum, Denise K. Fletcher, Patricia Flynn, Virginia Gambale, Holly Gregory, Leslie Heisz, Cynthia Jamison, Steve Kalan, Reatha Clark King, Catherine Kinney, Olivia Kirtley, Lynn Krominga, Ellen Odoner, Kalpana Raina, Henry Stoever, Bettina Whyte, Rosalie Wolf and Phoebe Wood).


389 Id. (The NACD Blue Ribbon Commission is led by four co-chairs from across the corporate governance spectrum, including Curtis Crawford, Ph.D. (president and CEO of XCEO Inc., director of DuPont, ON Semiconductor, and ITT Corporation); Cari Dominguez (director of Manpower, Inc); William McCracken (CEO of CA Inc.); and Kathi Seifert (director of Eli Lilly and Company, Lexmark International Inc., Revlon Inc. and Supervalu Inc.). Other 2012 Commissioners: Aida Alvarez (Wal-Mart); Orlando Ashford (Chief HR Officer & Communications Officer at Marsh & McLennan Companies); Roger Barker (head of corporate governance at the Institute of Directors (UK); Sandra Beach Lin (director for Wesco International); Reatha Clark King (former director at ExxonMobil); Kenneth Daly (president and CEO of NACD); Roy Dunbar (Humana); Denise Fletcher (Unisys Corp.); Charles M. Elson (HealthSouth); Barbara Hackman Franklin (former U.S. Secretary of Commerce, director for Aetna and chairman of the board for NACD); Raymond Gilmartin (General Mills); Peter R. Gleason (managing director and CFO of NACD); Holly J. Gregory (Weil, Gotshal & Manges); Bonnie Gwinn (Heidrick & Struggles); Michele Hooper (United Health Group); Jill Kanin-Lovers (Heidrick & Struggles); Richard Koppes (NutraCea); Alex Mandl (Dell, Inc.); Mary Pat McCarthy (former Executive Director of KPMG’s Audit Committee Institute); Irene Natividad (chairman of Corporate Women Directors International); John Olson (Gibson, Dunn & Crutcher); Richard Rivera (Winn-Dixie Stores, Inc.); Michael Rochelle (MDR Strategies, LLC); Anne Sheehan (director of corporate governance at CalSTRS); and Solomon Trujillo (Target).
On The Board (George Washington University Business School)

*On The Board*, an initiative of the George Washington University school of business and the International Women’s Forum, is designed to prepare women leaders to become successful candidates for, and directors on, corporate boards. Established by a generous gift from GW Trustee Linda Rabbitt, the year-long fellowship program provides advanced training in board-level leadership knowledge and practice, including corporate strategy, crisis management, ethical and responsible decision-making, corporate finance and value creation, compliance and many other issues germane to effective corporate governance. The *On the Board* program provides valuable corporate governance mentors who provide guidance and help create personal networks. Maria M. Klawe, president of Harvey Mudd College and a director of both Microsoft and Broadcom serves as an *On the Board* mentor.

**Stanford Women on Boards Initiative**

The Stanford Women on Boards initiative provides guidance to those wishing to enhance their board service qualifications and has established a community forum for prospective women board candidates. In addition, a clearinghouse has been established to identify Stanford alumnae board-qualified candidates.

**TIAA-CREF**

We have previously noted that the Teachers Insurance and Annuity Association (TIAA) and College Retirement Equities Fund (CREF), New York, (commonly known as TIAA-CREF

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390 See *On the Board: Advancing Women’s Corporate Board Leadership*, available at [http://business.gwu.edu/ontheboard/](http://business.gwu.edu/ontheboard/) (describing an excellent elite fellowship program under the direction of Professor Susan L. Kulp).

391 Elizabeth Olson, *Focused Effort to Narrow the Gender Gap on Corporate Boards*, N.Y. TIMES, Oct. 24, 2013.

and several other major pension funds have filed blanket resolutions with companies that require them to create boards “composed of qualified individuals who reflect a diversity of experience, gender, and race.”\textsuperscript{393}

**Women Corporate Directors**

WomenCorporateDirectors (WCD) is a global membership organization and community of women corporate directors. The WCD seeks to expand the WCD community through leadership, diversity, education and by fostering corporate governance best practices. WCD membership (over 1,400 members serving on over 1,550 boards) is a resource for networking, education and community. The WCD website is a resource for relevant news, speaking opportunities, open board positions and a member directory.\textsuperscript{394}

**European Professional Women’s Network**

The European Professional Women’s Network (EuropeanPWN) is a network for “professional international women, organizing over 600 events a year in 17 major cities in Europe. With 3000 members from more than 90 nationalities and from all business sectors across Europe, [their] pan-European networking activities are a testimony to the fact that diversity is a source of strength and creativity.”\textsuperscript{395} The organization’s stated mission is to “promote the professional progress of women through all their career phases, from potential through the pipeline to power by mentoring, training and networking… [and to] encourage companies to recognize the necessity of diverse and innovative management approaches by

\textsuperscript{393} Westphal & Milton, \textit{supra} note 88.  
\textsuperscript{394} See WomenCorporateDirectors website, \textit{available at} \url{http://www.womencorporatedirectors.com/displaycommon.cfm?an=1&subarticlenbr=28}.  
\textsuperscript{395} European Professional Women’s Network, website, \textit{available at} \url{http://www.europeanpwn.net/index.php?article_id=6} (last viewed July 10, 2014).
promoting women’s success stories.” EuropeanPWN initiatives regarding corporate governance includes: (1) a European-wide Women on Board programme (with events in several cities); (2) listing of Women on Board Club members (not public); and (3) a best practice Think Tank gathering. In addition, the EuropeanPWN conducts and makes available valuable research about participation rates for women and other important corporate governance topics.

X. CONCLUSION

Analysis of proxy data finds that while women and members of ethnic minorities are no longer strangers to board service, the total number of board seats held by women and people of color remain relatively small. Among S&P 500 boards, only 18% of new directors added during 2013 are minorities, although 56% of these boards report desiring minorities for board service. The SEC now requires public companies to disclose whether diversity is a factor in considering candidates for nomination to the board of directors, and how the company assesses how effective the policy has been.

What are boards looking for in director candidates? Active CEOs and COOs reportedly remain at the top of boards’ recruitment wish-lists. Next, most boards are looking for: financial and international expertise; industry experience; retired CEO/COOs; risk expertise; computer and information technology skills; marketing; regulatory/government; and digital or social media expertise. The answer to the promise of increased boardroom access seems to lie in penetrating those board skills most in demand. Accordingly, the most likely pathways to the boardroom for women and people of color are from the executive suite, from auditing careers, government, or from the law. An absolute “must have” set of skills for every board includes independent

396 Id.
397 Id.
398 Id.
directors to populate the audit, compensation and nominating & governance committees. In addition, every board needs one or more financial experts to serve on its audit committee. Because corporate governance is a legally-intensive endeavor, those minority candidates with a legal education may have an advantage in gaining access to the boardroom. Another needed set of directorship skills where women and ethnic minorities may compete on a merit basis includes government and regulatory relations. A director with a network of existing and former government officials can assist executives with regulatory issues and advise them and the board on relevant legislative and regulatory changes. Finally, the benefit of diverse approaches to problem solving and broadly different career experiences seems highly desirable when seeking to engineer the optimal people mix for productive small group decision making.