Diversity And Talent at The Top: Lessons From The Boardroom

Kimberly D. Krawiec, John M. Conley, and Lissa L. Broome*

This Article describes the results from fifty-seven interviews with corporate directors and a limited number of other persons of interest (including institutional investors, executive search professionals, and proxy advisors) regarding their views on corporate board diversity. Diversity challenges and successes in the boardroom make a useful jumping off point for the study of diversity in other professional fields, including law firms, for a number of reasons. First, corporate boardrooms remain remarkably non-diverse, representing a highly visible "old (and, we might add, white) boys' club." Second, this club has come under tremendous pressure in recent years, with criticisms ranging from simple business imperatives to social fairness—a debate that is strikingly similar to diversity debates in very dissimilar settings, such as higher education. And finally, the variety of responses around the world to this increased public pressure for boardroom diversity—from legally-mandated quotas in much of Europe to a reliance on market forces in the United States—allows a comparison of many possible approaches to diversity challenges.

Our interviews highlight numerous tensions in corporate directors' views on board diversity. Though nearly all of our respondents proclaim that diverse boards are good, few can articulate their reasons for this belief. Some respondents suggest that diverse boards work better than non-diverse boards, but give relatively few concrete examples of specific instances where a female or minority board member made a special contribution related to that director's race or gender. Many respondents noted the importance of collegiality and getting along in the boardroom, while simultaneously extolling the advantages of difference (including race and gender difference) in avoiding groupthink. And although all acknowledged the importance of fitting in with other board members and the prevailing corporate culture generally, few considered whether this impeded the role of "outsiders" providing a diverse perspective.

Finally, we explore directors' thoughts on why progress in improving board diversity has been so slow if most agree that board diversity is an important goal. Their answers range from a variant on "change is slow" to the scarcity of board seats (and the impediments to removing the—largely white male—current occupants), to the lack of qualified minority candidates. From there, we draw lessons from the board diversity experience for other professional fields and law firms, specifically, concluding that, if the American boardroom experience is any guide, other professional fields are likely to face continuing challenges on the diversity front.

.

I.   Introduction

We began this project with an interest in two related questions: Why do corporate boards pursue diversity (defined in terms of gender, race, and ethnicity)—even to the limited extent that they do—and what difference might diversity make to how boards work? There has been substantial quantitative research on the second of these questions, and the results can fairly be described as mixed.[1]

Our research has employed a qualitative interview strategy to pursue both questions. We have interviewed fifty-seven people with direct experience with corporate boards, as directors, executives, consultants, regulators, or proxy advisors. Fifty of these serve or have served as directors of publicly traded corporations. Using a method rooted in anthropology and discourse analysis, we have worked from a general topic outline and conducted open-ended interviews in which we encouraged respondents to raise and develop issues of interest to them.[2] The interviews have typically lasted forty-five to ninety minutes. With transcripts of the recorded interviews in hand, we then—as a group—listen to them again, analyzing them qualitatively with a focus on the themes that the respondents identify, the emphases that they give them, the stories (or narratives) that they tell, and the details of the language that they use. We are also thematically coding the transcripts and using sorting software in order to get another, complementary view of the frequency and distribution of the various themes.

Two overarching themes have been pervasive in our interviews: First, there is near-unanimous agreement (with only one clear dissenter) that board diversity is a good thing, a

valuable outcome that is worth striving for. But second, it is very difficult for our respondents to provide examples from their experience of when board diversity has made a tangible difference. We have heard abundant stories about when other kinds of diversity—what might be called functional diversity: different business backgrounds and skills, for example—have made a difference in how effectively boards do their work. But pressing respondents for comparable stories about demographic diversity has yielded very little beyond awkward silences. Respondents have sometimes commented on that very awkwardness, noting how difficult it is to talk about gender and—especially—race making a difference without engaging in essentializing or stereotyping.

But even if they have found it difficult to give concrete examples of the benefits of director diversity, our respondents have provided well-developed (and perhaps well-rehearsed) conceptual arguments. We have been repeatedly struck by the similarities between these arguments and those advanced by Justice Powell in his famous opinion in *Bakke* (which appeared to have injected "diversity" in its present sense into the public discourse). [3] Like Justice Powell, our respondents suggest that demographic diversity is a proxy for different experiences, sensibilities, and points of view. [4] Just as he argued that, as a consequence, the discourse in a diverse classroom would be broader and deeper, our respondents contend that diverse boards will engage in richer and more productive debate and examine business problems in more comprehensive ways. [5] For legal reasons, Justice Powell did not argue for diversity on remedial or compensatory grounds. [6] In an interesting convergence, only a few of our respondents made arguments for board diversity that were grounded in social justice and fundamental fairness.

Throughout the study, we have been struck by some connections to the parallel issue of diversity in the legal profession. These connections are particularly evident in the case of private law firms, which, like business corporations, are profit-driven entities. Study after study has reported that the legal profession has become much more diverse at the entry level over the past twenty-five years.[7] But the same data indicate that, especially in large private firms, women and minority lawyers have been less successful in reaching the senior partnership ranks and participating in firm management—in other words, in reaching positions roughly analogous to corporate directorships.

Like their counterparts in the upper reaches of the corporate world (the people we interviewed for this project), law firm partners are reported to be nearly unanimous in their endorsement of the principle of diversity.[8] Their reasons for believing in diversity are also similar to some the arguments made in favor of corporate director diversity: the firm functions better, the clients demand it, and competition requires that a firm leave no talent pool untapped. In explaining the relative lack of diversity at the senior and management levels, lawyers often gravitate to a version of the "pipeline" argument that we report in this study. With respect to minorities, big-firm lawyers often cite the relative paucity of entry-level candidates who meet their law school grade-centered selection criteria. Private-firm lawyers also emphasize factors that may lead women and minorities to lose or drop out of the never-ending law firm tournament, including family obligations, the lack of mentorship and sponsorship within the firm, the inability to get career-building high-value work from senior lawyers, the demands of public service, and the attractions of public-sector and in-house work.

In the remainder of this article we will set out and analyze the most important themes that have emerged in our director diversity research. In the Conclusion, we will also offer some

further thoughts about what light our project might shed, at least indirectly, on diversity in law firms.

II. Diversity Is Good, But It's Hard to Say Why

With the exception of one clear dissenter (and two "soft yesses," who said that diversity could not hurt), everyone we interviewed gave diversity an unequivocal endorsement. Almost everyone thus agrees that diversity is a good thing, and that corporate boards should pursue it. Just why diversity is good has proved to be a more complex question. In fact, we heard repeatedly that the value of diversity is simply taken for granted and rarely if ever discussed. This comment from a white female director is typical:

Text 1

> Q: Okay and as the Board and the committee has discussed this [the need to add diversity to the board], do they talk about why it's important to have some minority representation?
>
> A: No, never.
>
> Q: Really? But everybody seems to be on board with it.
>
> A: Yes, yes. . . . And this is exactly the same when we talk about women in higher management in the company, minorities in the company itself. There's an unstated assumption that we need to be doing better or we're doing better or whatever it is that we're looking at. Since it's not stated, I would hate to say what I thought other people were thinking in their heads. I mean I don't have any idea.[9]

An Asian American male director had a similar view:

Text 2

> Q: Why—what do people say about why you need a woman?
>
> A: You know, it's unspoken. It's interesting. It's an unspoken agreement that it's

just unseemly that we don't have one. And I think what drives it, to be honest
with you, is who our board members are, are—they are people who have—I don't
know, let's see. Why would that be?[10]

Despite their ambivalence, our interviews did yield many theories on why board diversity is
valuable. The theories that our respondents advanced include the following:

- Perhaps the most pervasive justification we have heard is that diverse boards engage
  in richer and ultimately more effective discussion and debate. This sentiment is
  expressed in a variety of ways: people of diverse backgrounds bring different
  perspectives, experiences, concerns, and sensibilities to the boardroom; people of
  diverse backgrounds are more willing to question and dissent from the status quo;
  and diversity in the boardroom minimizes what one respondent called "the danger of
  group think," which can ensue when everyone has had the same set of formative
  experiences.

- Directors of diverse backgrounds insure that the perspectives and concerns of often-
  ignored constituencies are represented in board discussions. These can include
  female and minority customers; rank-and-file employees (to whose needs female and
  minority directors are said to be better attuned than white males); female and
  minority prospects for executive positions and future board seats; and communities
  that a company's business may affect.

- A related theory is that the presence of female and minority directors sends signals
  to various constituencies about a company's values. Those constituencies include
  employees at all levels, customers, communities, regulators and other government

actors, and the public.

- Female and minority directors can help in unique and tangible ways with marketing, customer relations, and employee relations.

- A company that does not have a diverse board is failing to tap into a significant part of the relevant talent pool, and is therefore likely to be less efficient.

- Very rarely, our respondents have said that pursuing diversity is simply the right thing to do, as a matter of fundamental fairness and/or making up for the historical record of discrimination and exclusion at the highest levels of corporate management.

As we will emphasize repeatedly, concrete examples that validate these various theories have been very hard to find. In subsequent sections we will illustrate this point with reference to particular theories, and offer our thoughts on why examples prove to be so elusive.

III. Do Diverse Boards Work Better?

As we have noted, a frequent argument for diverse boards is a functional one: they work better, in the sense that a diverse membership brings different perspectives, sensibilities, and experiences to the table and, consequently, engages in a richer discussion of issues. Concrete examples of this richer discussion have proved elusive, however. With respect to the dynamics of discussion and debate, respondents struggle with the question of whether women or minorities behave differently than white men in the boardroom *because of their gender or race.* We have heard, for example, that women are more likely to be attuned to the human impact of board decisions—comments that evoke the cultural feminism of Carol Gilligan.[13] But, overall, questions about demographically correlated differences in interactive behavior tend to evoke

comments about the dangers of stereotyping, and sometimes self-evaluative remarks about what one can and cannot say.

Some respondents suggested that women bring a different style of discourse, discussion, and debate to the boardroom. Others made the point that women come to a board with different life experiences and, consequently, different "priorities." But, in each case, respondents often struggled for specifics, or equivocated or apologized for stereotyping.

We were told of specific instances where a director's gender or race might have led him or her to raise an issue or provide information that the board would otherwise have missed. Many of these seemed trivial, matters that should have been obvious to lower-level marketing people— and particularly trivial considering that they have been the first examples given in response to our request for illustrations of richer discussion. On two different occasions, respondents have told us of African American directors advising the board on the dining-out preferences of African American families. We have also heard instances of female directors explaining the difficulties faced by mothers out shopping with their children.

There were also dissenting views, as exemplified by the comments of a minority male director of a restaurant company:

> *Text 9*
>
> A: At least in the restaurant business I'm not so sure that's necessarily true. Yes, you need it at the company level so you can understand tastes and food preferences and things like that. But boards have nothing to do with helping restaurants figure out tastes and food preferences, right?
>
> Q: That's interesting, because I feel like we've gotten some anecdotes of that sort, and they surprised me, for that reason. It was sort of—wow, that's a board-level discussion? So in your experience that is not a board-level discussion.
>
> A: We go out of our way—I mean, of course, we kibitz and go, "I'll tell them I

didn't like the sandwich," or whatever, or, "I think they're missing something."
And the CEO goes, "Very nice for you to tell me that. Who are you? You don't
sell a thousand of these a day. You have no idea." . . . That's not our job. We
pay people to figure that out. If we thought we could figure it out, something's
wrong with our company. Right? If it becomes our job we made a big mistake.

Q: Right. Right.

A: Now, I could imagine like a Nike or whatever having some—because you
attract spectacular marketing genius-level people to your board, that they might
come up with a perspective or strategic perspective that is helpful, right? I could
see that. I could see that. But—I could see that. But, boy, is that going to be
rare. That shouldn't be a board's job, because it's kind of a once in a blue moon,
and it could've just as easily happened because of the comment card you got and
the CEO—so I think unless you have an agenda, right, some sort of macro agenda
that you want to see implemented through the board level, right, and you think
that agenda is going to be more likely to be implemented because of certain kinds
of people on the board. The idea that you're improving XYZ because of—I think
that's farfetched, and I don't think that's really the board's job. That's my
sense.[19]

Echoing the previously discussed argument about female empathy, some respondents

contended that female or minority board members are better able to empathize with corporate

employees, and were more likely to raise concerns about their welfare in the boardroom. Female

and minority board members were also said to aid in the recruitment, retention, and promotion of

women and minorities, especially at the senior management levels, and to argue for inclusiveness

in executive succession. A white female director, for example, said this (notice that, like many

other respondents, she "hate[s] this stereotyping"):

Text 10

Q: Do you think there are issues or kinds of issues that women or minorities are
more likely to raise or push in the boardroom than white men might be?

A: Boy I hate this stereotyping but I think, because I think there are some white
men who would do this too but I think issues related to human resources and how
people in the ranks are feeling and that kind of thing are much more likely to be

brought up by a woman. I'm still kind of a lone voice when it comes to considering your sales force of [thousands] as a potential strategic advantage or the opposite and, therefore, what are our strategies associated with that? I mean I'm like a broken record on that . . .

A: Well it means you've got [thousands of] people out there representing you as a company and if you don't invest in them, I mean they're touching the customer so they can either make you more effective or they can keep you from being as effective as your other strategies indicate because you have to do everything through them so I think they should be much more a part of the conversation. How are they compensated? How are they trained? How are they motivated? How do they feel? That's just not the kind of thing that I normally hear a board colleague bring up or make very important. When there's a problem, yes.

A final point is that some respondents have suggested that attention to board diversity is something of a luxury reserved for good—or at least normal—times. When a company is in crisis mode, fighting for its life, interest in diversity disappears. While diversity may be good, in other words, it seems not to be essential to survival. A question that arises by implication is whether diverse board members are fully in the loop in times of crisis, when, we are told, decision-making is likely to be in the hands of a few especially experienced directors. A minority male director summarized this theme succinctly:

Text 11

Companies go through good times, they go through great times and they go through times that are not so good through major transformations. Companies that are in textiles, furniture, tobacco are in major transformations and so I don't think those companies are going to be focused on gender issues or racial issues as much as they are some of the more operational type issues.[20]

IV. Getting Along Versus Avoiding Groupthink

Our respondents told a strong and consistent story regarding the importance of "getting along" and collegiality in the boardroom. All of our respondents emphasized – quite

emphatically—that the board could not properly do its job if it spent time on resolving tension or unconstructive arguing, or if one or more directors failed to conform to the prevailing corporate culture. Our respondents did not contend that boards should never disagree, but emphasized that such disagreement should be cordial and follow the prevailing corporate cultural norms of engagement.

For example, a white female director contrasted the collegial and cooperative atmosphere of the boardroom with the more competitive corporate working environment:

Text 12

And, in fact, one of the things I like about my board work, as opposed to working full time in a corporation at this point, is that the dynamics and the politics are very different than they are as an individual contributor or as an employee of the company. It's a much more collegial and, therefore, in my opinion, a much more pleasant experience because it's really all about the dynamics among the board. You're not really competing with them for position or the next promotion or for, you know, visibility. You're all in it together. And that's key to making these boards work.[21]

A white male director with many years of board experience, who is also a university professor, elaborated on boardroom norms of collegiality and consensus:

Text 13

The object is to reach an agreement to do something, so there's a kind of consensus norm, so there's a very strong pressure to get with the program. You're not supposed to hide what it is you have to say, but once you make an effort to persuade somebody and it's not going that way, you're supposed to think, "Well, there are reasonable positions on the other side by reasonable people," so there's no dissent norm. That would be totally bizarre in a company. Once you say your piece in a concise way, if it's not going to go that way, then when it comes to a vote, you're a yes unless it's a matter of conscience, which it hardly ever really is.[22]

Our respondents also emphasized the importance of collegiality and consensus in the

board's interactions with the CEO. Indeed, this relationship is so important that many of our respondents characterized the role of the CEO in selecting board members as something approaching a veto power, despite recent corporate governance interventions that emphasize the board's independence from the CEO.[23]

These stories of collegiality, consensus, and getting along are in some tension with two other, related, stories: about the importance of avoiding "groupthink," and the need for the board to act as an independent check on behalf of shareholders rather than simply rubber-stamping management actions. "Groupthink" has been defined by the psychologist Irving Janis as a mode of thinking that arises when a decision-making group is so cohesive that its members become reluctant to criticize, even in their own thinking, the judgments and ideas of their colleagues and leaders.[26] Members seek to be amiable and establish concurrence on important issues, with no conflict or in-fighting.[27] One proposed solution to the tendency toward groupthink is diversity within the group, either of observable characteristics (such as race, gender, and ethnicity) or of unobservable characteristics (such as ideology, experience, or viewpoint).[28]

Much research on group decision-making has focused on the problem of countering groupthink, with mixed results in the case of observable characteristics.[29] As we discuss in prior work, this significant body of research on heterogeneity in groups predicts both positives (more and better information, the consideration of more alternatives, and higher-quality decisions) and negatives (a reduction in group cohesion and an increase in member dissatisfaction and turnover) in the case of race and gender diversity.[30]

Our respondents frequently asserted both the avoidance of groupthink and an ability to facilitate board independence as rationales in favor of race and gender diversity. Yet, as noted,

these rationales are in tension with our respondents' even more frequently asserted contentions that boards must get along with each other and senior management, be collegial, and avoid confrontation.

For example, one respondent, a proxy advisor with substantial experience in board and corporate governance issues, told us that most of the investors whom his company advised did not take board diversity seriously, as they did not believe it improved shareholder value. Among those that did, however, the most important reason was likely the avoidance of groupthink:

Text 16

I think people know especially on the risk side that whenever you get anything involving sort of groupthink, everybody in the room having the same background, group of experiences and so forth that that is an absolute breeding ground for risk, for problems to occur. . . . and I think by and large the folks that believe that diversity is important put a very high value on it for that exact reason that they think this creates greater, frankly, psychological independence in the board room. It creates more viewpoints in the board room and that leads to better decision making I think and I think that's a change from certainly fifteen or twenty years ago when I think it was purely viewed in terms of sort of social equity issues about increasing participation by women and minority group members on boards of directors and I don't see that as much today.

I think the arguments in favor of board diversity are much more sophisticated today and that we're really talking about trying to help boards to provide stronger oversight. We're trying to help boards to eliminate the possibility of groupthink I think.[31]

A white female director specifically mentioned her own role in avoiding groupthink in connection with a CEO succession decision. A group of directors (the "real champions") seemed to be suppressing dissent and pushing the board toward a particular candidate until our respondent intervened and insisted on closer scrutiny. She characterized her proposal as one "that I don't think a white male would have suggested," and thus evidence of the benefit of board

diversity.

The white male respondent quoted above in Text 13, attempted to reconcile the seemingly

conflicting values of avoiding groupthink and fostering consensus:

Text 18

Q: Could you talk a little bit about the consensus norm? As you know, academics love to talk about groupthink and the like. Is this a productive norm or does it have costs? I'm not suggesting that people should sit around and argue all day the way they might in a faculty meeting, but does it, in your view, makes decision-making better, worse, no effect? . . .

A: I think it's helpful. Why would it be helpful? It's because you're doing more than reaching a decision. You're managing. If you look at the Delaware Corporation Code in Section 141, it says the job of the board is to manage the company, so that includes lots of things, like coming to a decision, but it's also an oversight role, a monitoring role and you're implementing something . . . .
The corporate analog is once we agree on a policy, I'm supposed to help implement it. I can't sabotage it ongoing. I think the consensus norm relates to that. If you don't feel censored, if you feel like you can talk, which in my experience people can talk and say what they think and then, it turns out that the company wants to go in a certain direction, then my job is to help make it work. So, what's the point of saying no then? It's going to go through. It should be 12-0 rather than 10-2. I mean, basically then what I'm signaling when I say yes is, "Okay. I had my shot. I couldn't persuade you people. Now I'm going to help make it work." That's my job. That's, I think, what unanimity norm does. It isn't total. I've seen it violated once or twice, but for the most part, you try to do it.[33]

To be clear, our respondents do not contend that boards should never disagree, only that

such disagreement should be cordial and follow the prevailing corporate cultural norms of

engagement. Nonetheless, we heard a number of stories of board members who did not work

out, due to "asking hard questions" in an "aggressive" manner, and of boards that were

ineffective, because of "unproductive" disagreement. According to our respondents, however,

such instances are rare – board members who find themselves out of step with prevailing board

norms of consensus either resign or are asked to leave the board.

V. Fitting In Versus the Outsider Role

The prior Part discussed stories of substantive agreement and disagreement in the boardroom. They highlighted the importance attached by directors to a collegial and productive boardroom environment (both among the board and between the board and management), and adherence to the consensus norm that pervades the boardroom. Related to those stories are narratives at another level, about the efforts of individuals to look, speak, and behave like a director. In other words, this Part discusses the pains taken by directors to "perform" the social role of director, in the sense of presenting oneself in a way that is appropriate to time, place, and audience.[34] All directors, regardless of race or gender, emphasize the importance of being perceived by board colleagues as competent and intelligent—that is, as a "real" director. Directors thus give careful thought to the way in which their questions, comments, behavior, and even their dress are perceived by other board members.

Though a few of our female and minority respondents reported feeling like an outsider, even after a long period of service on a board, most did not. Rather, most said that they were treated well and respected, although this sometimes had come only after an adjustment period during which the director observed the behavior, dress, and demeanor of others; learned the substance of the company's business and the work of the board; and gradually became integrated into the boardroom culture. Though this observation and adjustment period was mentioned more often by female and minority respondents than by white males, some white male directors emphasized that it would be normal for any new director to ease slowly into a new boardroom, spending more time at the beginning listening and learning than actively participating and asking

questions.

The white male director quoted in Texts 13 and 18 above, for example, discussed at some length his efforts to overcome his outsider status as an academic. According to him, it would be normal for any director to experience an adjustment period when joining a new board. However, his adjustment period, which he lessened somewhat by reading about boards and asking other directors about proper behavioral norms, was more difficult because of his new colleagues' preconceptions about professorial behavior:

Text 19

Q: Let me focus on the word behave [which respondent had just used]. You're talking about substantive positions on issues, but was there a behavioral side to this that they thought you'd act and interact in a particular way?
A: I think people were worried that I would be giving lectures. They thought I might be a little snobby because I was a [name of university] professor. There are very different norms in board meetings about how you talk and how much you talk and how you reach consensus. The difference between a faculty meeting and a board meeting is very, very large. I thought they were worried that I would mis-fit. But I'd read enough about what goes on and tried to pick things up and ask people I knew who were directors and so, I behaved like a director. That is, I thought my job was to behave like a director if I was a director, but they were initially concerned that I would behave like their view of what a professor would behave like.

Q: Were you able to jump right in behaving like a director or did you have to hold back for a while? How did that work?

A: I had to hold back forever compared to being on a faculty. . . . I had to essentially behave differently. Looking back, I don't think I screwed it up too much at the start, but I was very self-conscious at the start of how I had to behave. I talked much less at the start than I do now, so I was really trying to be careful about it.

Q: Is that common, do you think, for all new directors, meaning when you've just come onto a company or was it because you were coming from a different environment?

A: I think it is common for new directors to be a little reticent and I was like—I

wouldn't say I was doubly in any precise sense reticent—but I was conscious that it wasn't only that I didn't know the industry. It was that I also had to learn how to behave which other people didn't really have.[35]

Female and minority directors are especially likely to report working hard at managing the impressions of other board members, putting colleagues at ease, and fitting into the boardroom environment. For example, this white female director spent years adjusting to the male-dominated culture of one boardroom:

Text 20

Right. But I'll tell you something else. It took me several years to be comfortable at this board, partly because it was—the culture was so male—not just male dominated, but a particular kind of culture, and because I didn't know it.[36]

An African American female director whose professional and educational background was also quite different from those of most directors told the following story of her successful efforts to gain the trust and acceptance of her new board colleagues:

Text 21

[I]n being on the board at [company name], I've consciously forced myself out of my comfort zone because I knew I had to know these people and learn who they are and interact with them and so after the conclusion of the board meetings, I found myself looking around and I was saying why am I always the last person here and that was a conscious decision that I had made. I hung around and I talked to people and got to know them and that paid off because they felt comfortable with me. They felt comfortable calling me up and saying let me bounce something off of you. They felt comfortable saying I'm going to sit beside [name of respondent] at the meeting today and so that maybe my biggest success on that board was letting them know who I was and letting them know we're all on the same team and I wasn't that student who always raised my hand. I knew the answer. . . .

I would get there early because I realized that some of them got there early. If the meeting started at two, they were there at twelve. So I started coming early and have lunch with them in the cafeteria so I kind of developed my little group. I

knew they were going to be there and I would sit at the table and talk with them and understood what the rituals were. Then they would all go to another little area and read the papers and sit and talk. And so you talk about--you have a board meeting, but then they go out to the parking lot and talk. I began to understand that decisions were not only made in the board room but they're made somewhere else and so if I hadn't stepped outside of my comfort zone, I would never have known that.[37]

Notice, however, that this acceptance as part of the group came only with time, and only after continued efforts from our respondent. Though the other directors made no overt attempts to exclude her, neither did they inform her of unofficial group norms, such as arriving early to lunch together, despite the fact that informal board business sometimes occurred during these gatherings:

Text 22

Q: But nobody came up to you and said hey [identifying director information], come a little early next time because we have lunch in the [company cafeteria]?

A: Uh uh. They didn't. . . . Then after a couple of times they began to look for me and we're going to lunch and so we had our table that we sat at and so I just kind of learned how to click with the group.

Q1: Have you done that your whole life, worked hard to fit in to whatever group you're in?

A: I have.[38]

As in the discussion of groupthink in Part IV, our respondents' accounts reflect a certain tension. That is, female and minority directors are valuable in part because of their "outsider" status—their independence from management and other board members, by virtue of their demographic difference—which can reduce groupthink and increase board independence. Yet at the same time all board members are explicitly screened on the basis of their fit with the rest of

the group. As the evidence in this Part reveals, rather than embracing their outsider status on the board, female and minority directors report an understandable desire to fit in, to be perceived as just another board member who is competent and valued for her skill set and other substantive attributes, rather than for her gender, race, or ethnicity.

One white male respondent explicitly addressed this tension, in response to a question from us. As Text 24 demonstrates, there is no simple resolution; indeed, there is probably no resolution at all. One must be simultaneously similar and different. Similar enough to be taken seriously and to be able to work effectively in the particular board environment, yet able to maintain whatever distinct perspective might give diversity its salience:

> *Text 24*
>
> Q: One other thing that interests me is we've talked a little bit about people of different backgrounds, demographic backgrounds perhaps bring a different point of view but I wonder if there's pressure on a woman or a person of color when coming onto a board to act just like the white guys who have always been on the board. Do you think there's a conformity pressure that dilutes the value of difference?
>
> A: There probably is but it doesn't have anything to do with that it's a group of white guys or a group of older guys or a group of conservatives. It just has to do with if a Mormon goes into a biker bar [chuckle], nobody has to say a word and truly not mean anything but you're just there and everybody instinctively as a human take their cues. Culture is, the McKenzie definition is just how do we do things around here? So how do you disagree with a CEO? In some companies the director will go, "I think that's bullshit," and in some companies that would be like throwing mustard on his shirt. In other companies you'd say have you thought about this and pose it like that so that's where the pressure is, is to kind of find the way that things are done effectively and act in that. Now that then gets to this complicated question of well, why are they acting the way they're acting? Is it because they're all white men or whatever it might be? But that could be answered yes because they're all white men but the pressure is not to be like an old white man. It's just to adopt the norms of how things get done and that's no different than it is in the school or my seven year olds' kindergarten or wherever it is.[42]

VI. Critical Mass Versus The First And Only

Closely related to the problem of fitting in versus being an outsider in the boardroom is the issue of critical mass: the theory that women and racial or ethnic minorities are unlikely to have an impact in the boardroom until they grow from a few tokens into a considerable minority of the board.[43] In contrast to other recent qualitative research on corporate boards, we find limited support among our respondents for critical mass theory.[44]

Some female respondents expressed the view, consistent with Rosabeth Moss Kanter's original articulation of critical mass theory,[45] that having more women on the board increased their comfort level. We also heard stories of the stresses associated with being the first and only female or minority board member, including the pressure to work harder; automatic visibility, and the heightened scrutiny that comes with it; being viewed as the sole representative of an essentialized conception of female or minority interests; and anxiety about making it harder for future female or minority candidates.

One white female–and obviously well-read–respondent cited both Kanter and Vicki Kramer's Wellesley study[46] of critical mass in response to a question regarding what it felt like to go from being the lone woman on a board to one of three women directors:

> *Text 25*
>
> [I]f you hadn't seen [Vicki Kramer's] work, I wanted to be sure to mention it. But I would have figured that you would, and I'm glad you have. I think she's right: I think there is a feeling that when you have two or certainly three women on the board, then some of the pressure to represent all women, or some of your token visibility in the Rosabeth Moss Kanter sense goes away. I think it makes a difference, yes. . . .
>
> And I do recall, to go back to your earlier question that when I was the only one on the [identifying company information] board . . . it did feel like I was continually representing something, or being a token. And that didn't feel nearly

as good as being part of a group of two or three.[47]

Yet our respondents' critical mass narratives were often in tension with their professed comfort with their first and only status. Many of our respondents tend to view themselves as trailblazers—often the first and only female or minority at many important career stages. They exhibit pride in the notion that they are highly qualified corporate directors, accustomed to their outsider status, and needing no additional reassurance or support from the presence of other members of their demographic group. All report an ability to function as effective directors even when the sole female or minority in the boardroom. Moreover, with the possible exception of employee relations, our interviews do not support theories that a critical mass of female directors will produce different, or distinctly feminine, outcomes.

A white female director expressed the point well, in response to a question about how it felt to be the first woman on a particular board:

Text 27

Well that's been my journey so I didn't really feel any different than my entire career [laughter] because when you start your career in the late seventies and early eighties you're the first woman at anything. At [identifying company information] I was the first woman general manager, first woman brought into the management training program, first woman vice-president, you know, those types of things and so it kind of had been my journey so it didn't feel any different than the other things that I had done. I guess probably one of the things that I'm most proud of is that I haven't stayed the only woman on any of the boards that I've joined and that I'm very proud of because I think sometimes companies say well we've got ours and they don't pursue it so.[49]

Though both female and minority respondents provided insight on their first and only status, or about tokenism more specifically, very few of our texts address the issue of a critical mass of minority (as opposed to female) directors. In part, this reflects the simple fact that it is hard to

find a public company with multiple minority directors. And even when one is found, the minorities may be from different demographic groups, such as African Americans, Asians, or Hispanics.

VII. Signaling Versus Meaningless Public Relations

There are also stories that suggest that a diverse board may signal customers, employees, shareholders, and other constituencies such as communities, regulators, or activists about a company's values. When pressed, no one ultimately claimed to believe that customers are aware of who is on the board. However, some recognized that when others–perhaps particular activist groups–point out a lack of diversity, consumers in the underrepresented demographic group might decide to take their business elsewhere. This point was suggested by a white female director of a manufacturing company, when asked what she would say to a skeptical white male board member about the value of diversity. Her response referred to employees as well as customers as recipients of the signal:

> *Text 29*
>
> [I]f we can look like the people who are buying our products, it will show that we respect them and they will either work harder for us and say yup those people respect my opinion because look they have an African American on the board and he speaks for me because I'm an African American or they have women on that board or they have a Chinese person on that board and our public will look at us and say they're dedicated to making sure that all voices are heard at that company. The price is the same but company X doesn't have any women or any people of color. I'm going to buy from this company because they are showing that they respect global vision and they respect a lot of people's voices and that's what I would say to this man.[51]

A white male director made a similar point and also referred to employees along with customers.

Text 30

I think it's important for business reasons also because your customers and your employees look at the board and they would like to have representation on the board from their social climb or race or whatever so I do think it's important but it's not the determining factor. The determining factor is whether they're qualified to be on a public company board or not.[52]

We heard skepticism about the extent to which employees actually pay attention to the composition of the board. Nonetheless, some of our respondents are convinced that employees do pay attention and respond to board diversity, perhaps by taking away the message that the company offers opportunity to all. Senior executives who interact with the board on a regular basis are surely aware of the board's demographic composition and some board members believe that women and minority executives are heartened to see diversity in the body that selects the CEO. We have also heard stories about rank and file workers having a positive reaction to board diversity when they were made aware of it. Many of the companies represented in our interview sample did go to some lengths to inform employees of board composition, especially when there was some diversity on the board. Pictures of the board as a group or individually were displayed in the company's annual report, in announcements to employees, and in videos distributed to employees to tout board diversity. In several instances, the effort to connect board members and employees was direct, with the company arranging meetings between a female director and female employees or a minority director seeking to make contact with minority employees. A white female director reported on the effect one such meeting had on the female employees:

Text 31

Well, they at least had somebody who was listening. And I guess it had a good effect. It really took a regime change, though, for it to really begin to show up, that there really was interest in top management. I mean, the message came back

loud and clear, and everyone decided they were going to do something about making women feel that there was a place for them in top management. But it really took a while for it to come through and . . . . I was the messenger of that message.[53]

Another white male director observed, however, that the composition of senior management sent a much stronger signal to employees than the composition of the board:

Text 33

[T]he composition of our senior management is four times as important as the composition of the board. That's where the cue is taken is of the CEO and the CEO's direct reports so you could have the most diverse board in the world and if you've got a monoculture of CEO and direct reports, that board doesn't matter very much in the perception of employees.[55]

An Asian American male director, quoted earlier in Texts 7 and 9, discussed his company's store-level sales associates, but thought that the company had never considered them as recipients of a diversity signal:

Text 34

I would say that the majority of our store-level employees are African American, probably. And so that's interesting. I don't think anyone's ever viewed it as an issue, from that perspective, although you would think we ought to, right?[56]

In only a few cases was shareholder pressure regarding the board's diversity mentioned in our interviews, and in those cases the pressure came from institutional investors:

Text 35

Q: You said earlier that you thought investors might care. What type of investor do you think cares? I'm assuming it's not the hedge funds.

A: Well maybe. I mean it's institutional investors. Yeah. I think they're looking at these things. Probably it doesn't rank very high on their list of things they look

at but yeah.[58]

Regulators, communities, and specific interest groups may also be the recipients of the signals sent by diversity in the boardroom. There may be a sense in some regulated industries that the government regulator is aware of the demographic composition of each company's board and may look more favorably on a company with a demographically diverse board.

Signaling is a complicated phenomenon, however, and especially so in the case of board diversity.[61] In particular, signals must be credible: that is, recipients must be able to differentiate "cheap talk"–meaningless public relations–from meaningful information. Moreover, while such signaling could be a significant reason for and effect of board diversity, it says nothing about whether diversity affects how boards actually function. It is this improved board functioning— rather than signaling—that was most often raised by our respondents as the primary benefit of board diversity.

VIII. If Board Diversity Is Good, Why Isn't There More of It?

As we have repeatedly noted, almost all respondents said that board diversity was beneficial, and many expressed a desire to see more of it. When we asked why boards were not more diverse, the response almost always related to the talent pool. Many thought it was just a matter of time before more women and minorities gained sufficient experience at the appropriate corporate level to be qualified for and considered for board service. A white male respondent gave what seemed to be the standard explanation:

Text 38

> Well the easy answer is because there's not enough qualified people but I think
> that's a copout. I think that a lot of work needs to be done in educating boards
> and the CEOs to get on the ball here. It's frustrating to me at times that more

progress hasn't been made in the forty years that I've been doing this and I don't have an excuse for it other than there's not enough pressure, if that's the right word, being placed on CEOs for upper level management considered female or minority. I think we're getting a larger and larger pool of qualified talent every year. I mean it takes twenty to twenty-five years to get somebody to the level of experience of a [name of a white male director]. You don't get that in five years so it's an ongoing process and I would say probably we didn't wake up until the eighties in getting people educated and into first level management positions so that they could go further so I think maybe now we're starting to see the results of that and that's why there's more qualified people coming but I don't have any excuse for why there's fifteen percent of the people on boards or management.[62]

A few respondents acknowledged that boards would need to look beyond CEOs and retired

CEOs—the preferred background in many board searches—to find women and minority

candidates. These respondents suggested CFOs (for their financial expertise) or division

presidents, COOs, or others with significant responsibility for profit and loss as places to look for

candidates.

Some respondents assumed that the pipeline for female board members would fill faster

than that for minorities, perhaps by virtue of the fact that fifty percent of the population is

female. As a white female director put it:

Text 41

I would say there are fewer salient racial minority leaders who are brought to our attention, than women. And I'm not quite sure why that would be. But we had a harder time deepening our list of minority candidates than women, even though, in the end, I think we had some very strong minority representatives. So, it may be that there are just fewer people who come to mind, or it may be that as a woman I was more aware of the women I wanted to suggest.[65]

Only a few respondents appeared to have carefully considered why the pipeline was not fuller,

and whether those conditions would change in the coming years.

Perhaps the reason for the lack of increased board diversity is as simple as the perception by some board members that a board that has a woman or two and perhaps a minority is a diverse board, necessitating no further efforts to find female or minority candidates. In response to the question of why the level of board gender diversity is not higher, given the apparent support for greater diversity among board members themselves, a diversity advocate who participates in training programs for women seeking director positions stated:

Text 46

Well because I think diversity becomes like a check the box thing. You know what I mean?

Q: So one is enough?

A: One is enough . . . . [84]

A white male director who identified himself as a diversity advocate gave a similar response, but was optimistic about the future:

Text 47

I think we've stalled. I think we've gotten one of those, and one of that, and maybe we'll get two, but I think we're going to get over the hump, one, because I think the pool is so much larger today, which is all products of what is happening in society.[85]

But the notion of stalling may have another dimension: that is, the economy may be causing future directors to stall out on the preferred career path before becoming board-ready. In the words of another white male respondent:

Text 48

> One of the things that's holding [greater board diversity] back is the economy and companies aren't doing as well. Companies are retrenching. Management ranks are shrinking. They're not growing. You don't have the people going up in the organization that you did maybe five years ago so that certainly is not helping the situation at all. Also, boards are becoming smaller.[86]

There is also relatively low turnover on corporate boards. In the absence of a contest for control, the election of directors by shareholder proxy is largely a pro forma process in which boards are self-perpetuating. Thus, directors usually leave a board only when they decide to step down on their own or face a mandatory retirement age imposed by the board. This lack of board turnover leads to relatively few opportunities for new board members, including women and minorities.

IX. Conclusion: Why Are Race and Gender So "Dangerous"?

During the course of this project we have come to think of gender, race, and ethnicity as "dangerous categories" because our respondents have had so much difficulty talking about them. On the one hand, with only one or two exceptions, everyone we interviewed has agreed that attention to diversity along these demographic axes leads to a better boardroom. But on the other, just about everyone has struggled to articulate precisely why this is or should be true. A related manifestation of the danger is the awkwardness that so many respondents showed in discussing whether directors from diverse categories really *are* different. That is, many people argued—often strongly—that diversity produces different perspectives, sensibilities, and points of view. But many of those same respondents also stressed with equal vehemence that all directors are really the same, with their performance based solely on their personal abilities and professional qualifications. Significantly, we observed this phenomenon across the entire

demographic spectrum of the people we interviewed.

Perhaps this tension reflects a fear of saying that people of diverse demographic backgrounds are different in some meaningful way. Those who are not members of traditionally unrepresented groups do not want to be seen as stereotyping or essentializing by identifying particular unique attributes of members of those groups. At the same time, those who are members of the traditionally unrepresented groups have an interest in presenting themselves as being selected for board service because of their professional merit without regard to their gender, race, and ethnicity. Thus, neither group is comfortable discussing potential differences between men and women, between blacks and whites, or between Hispanics and non-Hispanics. As a result, though our respondents assert that diversity matters because female and minority directors bring something "different" to the table, they are uncomfortable with discussing in any detail what those differences are.

To illustrate, an African American female board member strongly denied that her contributions to the board were based on race or gender:

Text 49

Q: You talked before about reasons for diversity. In your time on the [name of company] board, can you think of any specific instances where you think you made a contribution that might reflect on the fact that you were a woman or a minority that somebody else with a similar skill set to you who was a white male wouldn't have made?

A: No. I don't. I don't think that I ever brought anything to the table where there were any social issues or other issues that I brought a different viewpoint to the table or a different perspective because I was a minority or because I was a woman. Every decision that I made had to do with it was a business decision in terms of strategy, exercising independent judgment, really evaluating everything to make sure that whatever vote that I cast, whatever way or the other, it had been weighed sufficiently.[87]

Another African American female director echoed the first woman's comments:

Text 50

Q: Can you give us any examples of where you think you made a particularly important contribution in the board room and that perhaps a white male would not have had that same insight or same contribution?

A: Well, I think that I make a contribution across the board on all aspects of the items we cover—strategy, finances, compensation, governance—really, all the big issues that we cover as a board. I'm not on any Audit Committees, but I think I make a contribution with respect to the financial state of the business, because I always have an option, very often I'm agreeing with that of management, or with that of other board members; if I disagree, I give them the reasons why. I would say that I don't think there are too many glaring examples, but I can say that I never forget two things—one, that my principal constituency base is the shareholders, and that is *all* the shareholders, so is this something that's reasonable for the shareholders. So, for example, I'm a person who's thoroughly opposed to tax gross-ups because that's just giving away corporate money, and I feel like we pay our executives well enough that they can pay their taxes like everybody else, like you and I do, which is out of our income—I'm just opposed to it. So across the board I vote against that. I have sometimes been voted down, so the vote will be 12 board members; it'll be 11 to 1. That's fine, just put it in the record. They don't want to put it in the record. That's not a *black* thing, you have to understand that.[88]

White male directors were similarly unwilling or unable to articulate unique contributions from female or minority directors:

Text 51

Q: Going back to when you got the two women on the board, are there any anecdotes or examples that you can think of, of specific contributions that either one of them made to board discussion that they had a different insight or a different way of looking at things?

A: You know, I don't really think so. I mean I can't really think of anything in specific. But the thing that I remember more about the two of them as females, they were just as vocal during board meetings and on certain issues, if not more vocal, than some of the male board members we had.[89]

But denying difference may be dangerous as well. If there are no relevant differences between women and minorities and white males in the board room, then why are women and minorities not more equitably represented on corporate boards?

A telling clue came in response to what was usually one of our last questions: "Are there other directors you know, that you think we should talk to?" In almost all cases, respondents provided the names of women or minority directors. Very few referred us to white men, even though they constitute the majority of directors, and even though we always mentioned that our study was not limited to female and minority respondents. Indeed, we often specifically requested the names of white males, in an attempt to garner a representative sample of directors. Are women and minorities assumed to be the only ones who have thought about diversity or who would be willing to take the time to talk about the impact of board diversity? If so, then this adds another tension to our respondents' stories: though almost all insist that diversity is good and important, the assumption is that only female or minority directors would have any interest in discussing it.

A final example that epitomizes just how dangerous—and incoherent—discussions of race and gender in board selection can be came from a highly experienced white male director. We discussed one board's perceived need to diversify by adding an African American director. He began by stating that the board in question had made a "conscious decision" to seek an African American candidate. Yet even though race was a "big, big plus factor" only one of three finalists was African American—and "not because of color":

Text 52

Q: And was this a fairness or responsibility argument again that we need to have an African American on the board?

31

A: Well it was a conscious decision by the board that we felt given equal qualifications we would prefer to have a minority and specifically if we could an African American.

Q: And was that more just sort of you felt it was the right thing to do or because of specific business imperatives?

A: No. It was the right thing to do.

Q: The right thing to do. Okay.

Q: Was the search limited by that as a factor or was it an open search with that as a big plus factor?

A: It was an open search with that as a big, big plus factor and we narrowed it down to ten people. I think half of them were African Americans and a couple of them were Hispanic. No. I shouldn't say that. Three or four were African Americans, two or three were Hispanic. There was one Oriental and I think there were a couple of females. We interviewed the top five and [an African-American male] came out on top. Incidentally, the number two person was a white male. The number three person in the whole thing was a female.

Q2: So despite the strong plus for an African American candidate, really only one of the top three was an African American.

A: Only because of qualification and not because of color.[90]

While pursuit of diversity may be fraught with ambiguity, the outcome of that pursuit is not.

The numbers are inescapable: boards are *not* diverse along gender or racial grounds. During the

course of our interviews we heard many concrete ideas for improving those numbers, including:

- Define qualifications more broadly. Include other C-suite executives besides the

  CEO as well as division presidents and leaders from government service,

  accounting, retired military, and academia.

- Do not require prior public company board experience.

- Limit some searches to women or minority candidates.

- Identify the skill sets needed for new board members and then look specifically for women or minorities who have that skill set, rather using diversity as a "plus" factor.

- Value different perspectives that could be provided by someone with different industry experience (e.g., technology or mining firms going outside of these industries), or from a younger person with experience with social media or other emerging technologies that older directors may not be familiar with.

- Work on structural issues that may impede the advancement of women and minorities in corporations.

- Consider ways to "refresh" the board, and create opportunities for new board members including women and minorities, by imposing mandatory retirement ages, rigorous board assessment, or some form of term limits, including deeming a long-serving director as no longer satisfying the requirements to be deemed an independent director.

It remains to be seen, of course, whether these ideas will be implemented to any significant extent and, if so, whether they will lead to greater diversity. If that does happen, the next—and ultimately most interesting—question will be whether and how increased diversity changes boardroom dynamics. Based on the evidence of this study, it could go either way. Perhaps diversity really will produce different perspectives that lead to richer discussion, less groupthink, and better-informed decisions. But it is also possible that the pressure to fit in and reach consensus, and the concomitant fear of contentious debate and divisive votes, will overwhelm the potential value of difference. If that happens, tomorrow's boards could look different while

continuing to reproduce yesterday's status quo.

As a final thought, we return to the law partnership-corporate director parallels we suggested in the Introduction. First, the topic of diversity is probably as dangerous in law firms as in the corporate context. The idea of diversity to satisfy the demands of corporate clients is broadly accepted, if cynically self-interested. It is also plausible that firms that represent individuals (small plaintiff's firms, for example) might want lawyers with obvious demographic connections to a diverse clientele. But beyond that, we suspect that is hard to say—in every sense of that phrase--why diversity should matter in a law firm, especially a large one that specializes in business matters. Do lawyers think that they work more effectively in teams with racial and gender diversity? Is groupthink a problem in handling mergers or intellectual property litigation? Do law firm partners think that female and minority lawyers have unique perspectives on legal problems? And if they did think so, would they say it?

Some of our bullet-point recommendations for improving director diversity might also be adapted to the law firm context. For example, the idea of defining qualifications more broadly has a clear analog: selective legal employers could almost certainly reduce their obsession with law school grades without any effect on the quality of their legal work. There is also no apparent reason why law firms could not limit some lateral searches to women or minority candidates, and identify the skill sets needed in a new lawyer and then look specifically for women or minorities who have that skill set, rather using diversity as a "plus" factor. Even more obvious is the need for law firms to "work on structural issues that may impede the advancement of women and minorities," in particular the lack of mentors and in-firm sponsors and the uneven distribution of high-value work.

The lack of turnover on boards may also be an issue in law firms. As economic forces

change the market for legal services, the traditional pyramid of one partner to three associates in law firms is under pressure. Many firms no longer hire large classes of incoming associates in favor of less and more targeted hiring laterally from other firms. As associate ranks dwindle, the number of new partners made by promotion from within is likely to decrease, with potentially detrimental effects on the ability of women and minorities to increase their relative representation in the ranks of law firm partners. Law firms may also need to address ways to make room for women and minorities at the highest level of law firms.

Just as in the director context, however, it remains to be seen whether these ideas will be implemented and, if they are, whether they will lead to greater diversity. If they do, it will be equally interesting to see if they lead to any material change in the dynamics of law practice and the quality of legal work.

* Kimberly D. Krawiec, Kathrine Robinson Everett Professor of Law, Duke Law School; John M. Conley, William Rand Kenan, Jr. Professor of Law, University of North Carolina School of Law; Lissa Lamkin Broome, Wells Fargo Professor of Banking Law, University of North Carolina School of Law. The body of this article was prepared for publication in the University of Illinois Law Review.

[1] We have reviewed this research in Lissa L. Broome, John M. Conley & Kimberly D. Krawiec, *Dangerous Categories: Narratives of Corporate Board Diversity,* 89 N.C.L. REV. 761, 765-66 (2011).

[2] For a lengthier description of our research methods, see *id.* at 768-77.

3. Regents of Univ. of of Cal. V. Bakke, 438 U.S. 265 (1978). The decision rejected a race-conscious admissions program at the UC-Davis medical school. But Justice Powell, in an opinion that only he signed, advanced the notion that race could be *a* factor in state university admissions, because of the value of diversity. He seems to have borrowed the concept of diversity from andamicus brief submitted by Harvard and other elite universities. *Id.* at 316, 322-23. For a discussion of the impact of the *Bakke* case on public discourse about diversity, see John M. Conley, Lissa Lamkin Broome and Kimberly D. Krawiec, *Narratives of Diversity in the Corporate Boardroom: What Corporate Insiders Say about Why Diversity Matters, in* DISCOURSE PERSPECTIVES ON ORGANIZATIONAL COMMUNICATION 201, 205-208 (Jolanta Aritz & Robyn C. Walker, eds.2012).

4. Justice Powell wrote that "[a]n otherwise qualified medical student with a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body." Regents of Univ. of of Cal. V. Bakke, 438 U.S. 265, 314 (1978).

5. Justice Powell argued that diversity would promote a "robust exchange of ideas." *Id.* at 313.

6. Because there was no evidence of then-current discrimination at UC-Davis, a remedial or compensatory rationale would have been constitutionally inappropriate. *See* Conley, Broome & Krawiec, *supra* note 3, at 206-208 (discussing this and other aspects of the Powell opinion).

[7] According to American Bar Association data, for example, female enrollment in J.D. programs broke the 30% barrier in 1978 and has held steadily in the high 40s since the late 1990s. Amaerican Bar Association Section of Legal Education and Admission to the Bar, Statistics, available at http://www.americanbar.org/groups/legal_education/resources/statistics.html (visited March 5,2013); the specific data we cite can be found at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf (visited March 5, 2013).

Yet according to a National Association of Women Lawyers Survey, female representation among large law firm partners has plateaued at or slightly below 20%--and at about 15% if the criterion is equity, or "real," partners. NATIONAL ASS'N OF WOMEN LAWYERS AND NAWL FOUNDATION, REPORT OF THE SEVENTH ANNUAL NAWL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (2012), available at http://nawl.timberlakepublishing.com/files/NAWL%202012%20Survey%20Report%20final.pdf (visited March 5, 2013). That survey also reports that women occupy only 20% of the seats on firms' highest governance committees, and only 4% of the firms have female managing partners. The ABA reports that minority enrollment in law schools reached 10% in 1982 and increased steadily to reach 25% in 2010. But according to the NALP, the national association for legal career advisors, minority representation among law firm partners reached 5% only in 2003 and has since increased to only 7.9*%. See* NALP, Minorities & Women, available at http://www.nalp.org/minoritieswomen (visited March 6, 2013)(our minority representation statistics are derived from individual yearly NALP reports, available through this website). For a review of earlier data, see John M. Conley, *Tales of Diversity: Lawyers' Narratives of Equity in Private Law Firms,* 31 L. & SOC. INQUIRY 831, 838-40 (2006).

[8] Studies addressing the issues discussed in this paragraph include Conley, *supra* note 7; Devon W. Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There,* 61 WASH. & LEE L. REV. 1645 (2004); Elizabeth Chambliss & Christpoher Uggen, *Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy,* 25 L. & SOC. INQUIRY 41 (2000); David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity Is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar,* 117 HARV. L. REV. 1548 (2004); David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers,* 41 HOUSTON L. REV. 1 (2004).

9. 79. We promised all of our interview subjects that we would not identify them, either directly or indirectly. Accordingly, the only citation we can provide for each quote is the number we have assigned to the particular speaker's interview. Any further descriptive information about the subjects that we are able to furnish consistent with our promise of anonymity can be found in the text surrounding the various quotes. We have provided the interview numbers in case readers are interested in tracking multiple statements by particular subjects. (For example, subject number 81, cited in the next footnote, is quoted and cited on five separate occasions.) Some readers may also be interested in when we did the various interviews, so we have provided the dates of each interview, by interview number, in the Appendix. When an ellipsis appears in an interview quotation, it indicates that we have deleted some material from the quotation, rather than a pause in the respondent's speech.

10. 81.

13. *See* CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

19. 81.

20. 81.

21. 23.

22. 95.

23. A board's nominating committee must be composed of independent directors, which means that the company's CEO may not be a member. NYSE LISTED COMPANY MANUAL § 303A.04(a) ("Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.").

26. IRVING JANIS, VICTIMS OF GROUPTHINK 9 (1972) (defining groupthink as poor decisions made by a group as the result of pressure from the group that resulted in reduced moral judgment and eliminated a reality check).

27. *Id.*

28. *See, e.g.,* Francis J. Milliken & Luis L. Martins, *Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups*, 21 ACAD. MGMT. REV. 402 (1996) (discussing this idea and analyzing studies on point).

29. Lissa L. Broome, John M. Conley & Kimberly D. Krawiec*, Dangerous Categories: Narratives Of Corporate Board Diversity*, 89 N.C. L. REV. 759, 765–67 (summarizing this research).

30. *Id.* at 765.

31. 36.

33. 95.

34. The performance perspective derives in large part from the work of the sociologist Erving Goffman, who thought about everyday social behavior by analogy to theatrical performances. That is, the social actor, like the skilled dramatic actor, takes on a role, develops a belief in it, and crafts a performance that is appropriate for the audience and mindful of the entire social context. *See, e.g.,* ERVING GOFFMAN, FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE (1974); ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959).

35. 95.

36. 41.

37. 43.

38. 43.

42. 45.

43. Lissa Lamkin Broome, John M. Conley & Kimberly D. Krawiec, *Does Critical Mass Matter? Views from the Boardroom*, 34 SEATTLE U. L. REV. 1049 (2011) (discussing critical mass in detail).

44. *Compare* VICKI W. KRAMER ET AL., CRITICAL MASS ON CORPORATE BOARDS: WHY THREE OR MORE WOMEN ENHANCE GOVERNANCE (Wellesley Centers for Women 2006) (concluding that a critical mass of women improves corporate governance), *with* Broome, Conley & Krawiec, *supra* note 40 (finding more limited support for critical mass theory).

45. *See* ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION 206–42 (1977).

46. *See* Kramer et al., *supra* note 41.

47. 60.

49. 57.

51. 50.

52. 93.

53. 55

55. 45.

56. 81.

58. 56.

61. Signaling is discussed in more detail in Lissa Lamkin Broome & Kimberly D. Krawiec, *Signaling Through Board Diversity: Is Anyone Listening?*, 77 U. CIN. L. REV. 431 (2008).

62. 93.

65. 60.

84. 49.

85. 69.

86. 93.

87. 43.

88. 59.

89. 87.

90. 93.

Appendix - Illinois

Transcript Number	Date
10	07/30/07
23	11/30/07
32	12/19/07
36	04/22/08
41	05/07/08
43	05/18/08
45	08/08/08
49	09/24/08
50	10/03/08
55	11/14/08
56	11/14/08
57	12/12/08
59	02/18/09
60	05/21/09
67	11/12/09
69	11/19/09
71	12/10/09
81	04/07/11
83	08/25/11
87	12/14/11
89	12/16/11
93	01/11/12
95	03/30/12