I. INTRODUCTION

In this article, we report and analyze the results of forty-five lengthy, wide-ranging interviews with corporate insiders—including directors, executives, regulators, and consultants—on the general topic of whether and how the racial, ethnic, and gender composition of corporate boards matters. In particular, we explore the contrast between two aspects of their views. On the one hand, our respondents were clear and nearly uniform in their statements that board diversity was an important goal worth pursuing. Moreover, those respondents serving on boards with some level of race and/or gender diversity (which is nearly all of our respondents) suggested that the race and gender of board candidates had been a relevant consideration in selecting directors. Many female and minority respondents noted that the firm’s desire to diversify the board had been explicitly mentioned as a consideration in their selection, and others suspected that it had been a relevant consideration, even if not overtly presented as such. Elements of various diversity rationales appear in their narratives, many of which are standard fare within the broader literature on work group diversity as well as the subset that deals specifically with board diversity.

Yet when asked to provide examples or anecdotes illustrating why board diversity matters, many subjects acknowledged difficulty in illustrating theory with reference to practice. In particular, some subjects, when asked to elaborate on the ways in which particular female or minority directors have contributed, digressed into examples that had
little to do with race or gender, and in fact distanced themselves from these demographic variables.

The rationales that corporate insiders advance to justify board diversity as an important goal fall into a few broad categories. Most are functional, and at least loosely associated with corporate performance. In particular, we heard repeatedly that boardroom discussion is richer and more productive with a diverse group of directors. Some respondents put the same point in a negative way, saying that board diversity reduces the likelihood of uncritical “group-think” and its attendant risks. In either its positive or negative form, this rationale was strikingly evocative of Justice Lewis Powell’s original explication of the value of diversity in his 1978 Bakke opinion.1 Respondents also told us of instances where non-white-male board members were able to offer specific suggestion about doing business more effectively with “their” respective constituencies. Very few respondents articulated a social justice claim that it is simply right to take affirmative steps to include demographic groups that have been historically excluded from the boardroom.

With a few exceptions, however, the purported contributions of a diverse board were at a level of detail that we would not expect to be the subject of boardroom strategizing. In addition, when pressed for evidence that would support performance-related arguments for diversity, respondents tended to back away from their initial assertions that demographic differences have functional correlates, frequently providing

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examples of contributions from female and minority board members related more to their skill sets than to any differences stemming from race, ethnicity, or gender.

This expressed reluctance to come to specific terms with general claims about the value of director diversity inspired our title phrase: *dangerous categories*. That is, 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. The fundamental reason for this awkwardness is readily apparent: to argue that diversity matters in some specific way is to argue that diversity is a proxy for difference. Yet to suggest group-based difference is to open the door to both stereotyping and invidious comparison. Everyone in the debate has a vested interested in not walking through that door. Those who are not members of the excluded groups do not want to be heard to say that “they” are all alike, whereas those who are members do not want to acknowledge fundamental differences that might be translated as “less qualified” or “needing assistance.” So we are left with narratives that simultaneously extol difference and express embarrassment with it.

One narrative that ran counter to this general trend relates to the corporation’s relations with employees. Some respondents argued that corporate board diversity sends an important signal to a company’s employees about the value it places on diversity, and about the availability of role models and mentors at the top of the corporate hierarchy. Others posited more direct benefits to employees. Some female and minority directors reported that they are more readily able than their white male counterparts to empathize with lower-level employees, and that they use this empathy to improve employee relations. Some also said that diverse boards aid in the recruitment, retention, and
promotion of women and minorities, and in particular with succession issues in senior management. Respondents have reported instances of diverse board members taking a personal interest in these issues, and insuring that they are a subject of board attention.

The categories of race and gender appeared less dangerous to our respondents in the context of employee relations. Both female and minority directors discussing their own role on boards and white male directors discussing the contributions of their female and minority colleagues seemed more at ease with a narrative of difference here. Why this may be, we can only speculate. Perhaps when race and gender categories are invoked as a means to indirectly (through signaling or role modeling) or directly (through substantive action) benefit the professional prospects of other women and minorities, such categories seem to lose their historically dangerous trappings.

In Part II we review the relevant literatures, including the business and social science literature that expounds various theories of board diversity and the sociolinguistic literature that underlies our research method. Part III then explains that method in detail. In Part IV we report the results of our analysis, focusing on our respondents’ never-resolved tension between an abstract commitment to diversity and the difficulty of justifying it as it works on the ground. In Part V we discuss our results against the background of the existing literatures and offer some tentative conclusions.

II. LITERATURE REVIEW

A. Theories of Diversity

The literature offers a range of theories to explain the need for board diversity. One rationale is simple fairness: corporate boards should be more diverse because it is
the morally correct outcome. This argument has an obvious appeal. It seems only fair that the highest levels of corporate America—including boards of directors—should represent the nation’s demographic diversity. Moreover, women and minorities in positions of prestige and influence can serve as important role models for younger members of groups traditionally underrepresented at the highest levels of business enterprises.

Such fairness-based arguments have limited appeal within the U.S. shareholder welfare-focused paradigm, however, and were rarely invoked by our respondents. If the impact of board diversity on corporate performance is neutral (or, even worse, negative)

\[\text{______________________________} \]

\[\text{2 See infra notes __ and accompanying text (discussing the dearth of social welfare arguments posited by study respondents). Other cultures appear more comfortable with a reliance on fairness rationales for board diversity. Norway, for example, which legislatively mandates that roughly 40% of board seats be allocated to women, explicitly invokes both fairness and business justifications in the enacting legislation. Kenneth R. Ahern & Amy K. Dittmar, The Changing of the Boards: The Value Effect of a Measure of Exogenous Shock, draft of March 28, 2010 (discussing gender fairness rationales motivating Norway’s law). Cite. Recent Canadian Senate Bill S-238, which would mandate gender parity on certain boards, invokes no business rationale in the legislation’s preamble, other than a brief allusion to the talent pool, relying instead on broader representational arguments for the inclusion of women. Senate Of Canada, Bill S-238, Second Session, Fortieth Parliament , 57-58 Elizabeth II (2009). However, the bill was tabled after a first reading. Cite.}

The proportional board representation movement has gained ground also in other countries. Spain enacted a law in 2007 recommending that females occupy 40% of corporate board seats by 2015. Tara Patel, Bearded Women Challenge French ‘Boys Club’ Boards in Paris, Bloomberg.com, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aGgklHI.W6eo. France is also considering a 40% female representation requirement with companies failing to meet that mark within six years losing the ability to add any additional male members to the board. Id. Similar initiatives are under discussion in Britain (half of the director nominees need to be female, and boards where women occupy less than 30% of the seats would need to detail the steps being taken to improve female representation) and the Netherlands, while in Germany companies such as Deutsche Telekom and Daimler have set their own gender diversity goals based on specific percentages. Sylvia Ann Hewlett, What the U.S. Can Learn From Europe About Gender Equality in the Workplace, http://blogs.hbr.org/hbr/hewlett/2010/05/wake_up_obama_gender_equality.html.
and entails implementation costs, then the normative case for “doing the right thing” becomes more difficult to justify. Why should current public shareholders incur the costs of providing a public good in the form of greater board diversity?

Not surprisingly then, debates about the value of board diversity tend to revolve around corporate performance. We have identified six rationales posited in the literature as business justifications for board diversity. As elaborated in the following section, some are relevant to issues of group or workplace diversity more broadly, whereas others are specific to the corporate board context.

(a) Firms seeking board diversity are accessing an untapped talent pool;³

(b) Female and minority board members reduce agency costs -- by virtue of their status as outsiders, they may be less likely to defer to management, thus reducing costs stemming from the separation of ownership from control;⁴

(c) A more diverse board possesses more and better information;⁵

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³ Interview, Transcript No. DS300056, at 20 (Nov. 14, 2008) (all transcripts on file with authors at University of North Carolina) (arguing that if companies do not consider diverse candidates they will “overlook really talented people” and will not be “making the best use of the best human capital that’s available”); Interview, Transcript No. DS300069, at 11 (Nov. 19, 2009) (arguing that the “pool is so rich if you look beyond the traditional.”) The talent pool argument has another side -- that there are few women and minorities qualified for board service so there is only a small pool of diverse director candidates from which to pick. See, e.g., Interview, Transcript No. DS300069, at 6 (Nov. 19, 2009) (“if you require prior board experience, well, guess what? That really limits your pool.”).
⁵ See infra notes 4-5 (discussing research on heterogeneity in groups).
(d) Diverse boards operate differently; for example, they may be more likely to engage in constructive dissent, or women may engage in problem-solving and/or questioning in a different manner than men;\(^6\)

(e) A diverse board conveys a credible signal to relevant observers of corporate behavior;\(^7\) and

(f) Board diversity is a meaningless public relations maneuver, designed to quiet vocal critics, but generating no real costs or benefits for shareholders.\(^8\)

**B. Previous Diversity Research**

Theories regarding diversity’s impact on corporate boards build on a significant body of research on heterogeneity in groups.\(^9\) That research is largely indeterminate with respect to race and gender diversity, predicting both positives and negatives. On the positive side, diverse groups may possess more information, consider more varied alternatives to any given course of action, and generate higher-quality decisions.\(^{10}\) On

\(^6\) See *infra* notes 4-6 (discussing research on heterogeneity in groups); part IV. B. (discussing the “Mars versus Venus” perspective).


\(^8\) See *infra* Part IV.D. (discussing the “rare dissenters”).


\(^{10}\) Milliken & Martens at 403 (reviewing studies on point).
the negative side, race and gender diversity may reduce group cohesion and increase
member dissatisfaction and turnover.\textsuperscript{11}

Consistent with the research on group heterogeneity more generally, the empirical
literature on corporate board diversity also yields largely indeterminate results. This is
not terribly surprising, given the mixed empirical findings on the impact of other board
characteristics on firm performance.\textsuperscript{12}

Quantitative studies primarily test for a relationship between board diversity and
various measures of corporate performance.\textsuperscript{13} Although some studies find evidence
consistent with the theory that board diversity positively affects firm performance, they
often do not fully control for endogeneity.\textsuperscript{14} This problem arises when two variables –

\textsuperscript{11} \emph{Ibid.} See also, Dobbin, et. al. this volume (reviewing the literature on race and gender
diversity in groups and considering its application to board diversity).

\textsuperscript{12} Researchers have sought to analyze the impact of numerous board characteristics on
firm performance, with conflicting results. See, Sanjai Bhagat et al., The Promise and
Peril of Corporate Governance Indices (European Corp. Governance Inst., Working
on this point). See also, Dobbin, this volume (“Our analyses support previous studies
suggesting that board characteristics long championed by agency theorists, such as the
percent of outside directors, chair independence, and board size, do not affect
performance.”)

\textsuperscript{13} In addition, a few qualitative studies address the topic of board diversity. See, e.g.,
Vicki W. Kramer et al., \emph{Critical Mass On Corporate Boards: Why Three or More Women
WCW 11, 2006) (interviews and discussions with fifty women directors, twelve CEOs,
and seven corporate secretaries from Fortune 1000 companies).

\textsuperscript{14} See, e.g., David Carter, et al., The Diversity of Corporate Board Committees and Firm
Financial Performance (Mar. 15, 2007) (unpublished manuscript), available at
http://ssrn.com/abstract=972763 (reporting the results of a cross-section fixed-effects
procedure with lagged variables and a three-stage least-squares estimation that support
the hypothesis that board diversity positively affects financial performance as measured
by Tobin’s q); David Carter et al., Corporate Governance, Board Diversity, and Firm
Value, 38 FIN. REV. 33 (2003) (finding that Tobin’s q is positively related to both the
percentage of female directors and the percentage of minority directors); Niclas L.
Erhardt et al., Board of Director Diversity and Firm Financial Performance, 11 CORP.
such as board diversity and company performance—appear to be causally related, but the
direction of the causation cannot be determined. In other words, a positive
relationship between board diversity and firm performance might be evidence that
diversity causes better performance. But it could also indicate that better performance
leads to diversity in one or more of several ways, including: (1) that more successful
firms have greater resources to dedicate to the pursuit of board diversity, (2) that more
successful firms are under greater public scrutiny and pressure as regards board diversity,
or (3) that female and minority directors are scarce commodities who can choose to serve
only on the boards of more successful firms.

Studies employing robust endogeneity controls generally have found no evidence
that board diversity impacts corporate performance. A few have concluded that gender

GOVERNANCE 102 (2003) (finding that the percentage of Caucasian females plus
ethnic minority directors on the board is positively related to both Return on Equity
(ROE) and Return on Assets (ROA)).
15 Sanjai Bhagat & Bernard Black, The Non-Correlation Between Board Independence
composition could affect firm performance, but firm performance can also cause the firm
to change its board composition.”); Adams & Ferreira, supra (referencing studies finding
a positive relationship between board diversity and corporate performance, but
concluding that they do not fully address problems of endogeneity and reverse causation,
rendering causal interpretations difficult).
16 See, e.g., Kathleen A. Farrell & Philip L. Hersch, Additions to Corporate Boards: The
Effect
Of Gender, 11 J. CORP. FIN. 85 (2005) (finding a significant, positive relation between
ROA and the likelihood of adding a woman to the board, but failing to detect a
significant market reaction to the addition of a female board member, thus undercutting
the case for causation); Dobbin et. al. this volume; Caspar Rose, Does Female Board
Representation Influence Firm Performance? The Danish Evidence, 15 CORP.
GOVERNANCE 404, 412 (2007) (finding no effects of board gender diversity on
corporate performance in a sample of Danish firms and urging case studies to shed light
on the role played by female directors in board decision-making); Charles B. Shrader et
al., Women In Management and Firm Financial Performance: An Exploratory Study, 9 J.
MANAGERIAL ISSUES 355 (1997) (finding no relationship between the percentage of
female directors and profit margin, ROA, or ROE).
diversity on boards reduces firm performance, though some attribute this finding to other factors, such as institutional investor bias or differences in the talent pool.17

Finally, researchers have begun to turn serious attention to diversity’s potential impact in another arena with similarities to the boardroom environment—the judiciary.18 This research explores both whether men and women reach different rulings in similar cases (referred to as “individual effects”) and whether female members of multi-judge courts influence their male colleagues’ decisions (known as “panel effects”).19 As with studies seeking to measure the impact of diversity in other settings, the results here are mixed, with some studies claiming to show significant panel or individual effects, some finding mixed results, and others finding no significant differences.20 Recent studies

17 Adams & Ferreira, supra note [x] (stating that “although the correlation between gender diversity and either firm value or operating performance appears to be positive at first inspection, this correlation disappears once we apply reasonable procedures to tackle omitted variables and reverse causality problems” and concluding that, on average, firms with greater gender diversity on the board perform worse); Øyvind Bøhren & R. Øystein Strøm, Boards and Politics (Aug. 21, 2008) (unpublished manuscript, on file with authors) (finding a negative association between corporate performance and board gender diversity in a sample of all non-financial firms listed on the Oslo Stock Exchange from 1989–2002); Ahern & Dittmar, supra (finding that the Norwegian mandate had a significant negative effect on firm value, but attributing the decline to youth, inexperience, other characteristics of the new directors, and concluding that gender diversity has no effect on firm value).


20 Id. at 392. Some studies also report efficiency effects from gender diversity on courts. See John Szmer, et. al., Diversity and Judicial Efficiency: An Examination of Federal Appellate Court Decisions, Paper presented at the annual meeting of the Midwest Political Science Association 67th Annual National Conference, The Palmer House Hilton, Chicago, IL, Apr 02, 2009, available at http://www.allacademic.com/meta/p364553_index.html (noting that “panel diversity seems to decrease efficiency unless the circuits have reached a critical mass of gender diversity.”)
employing a different methodology have found both individual and panel differences with respect to only one substantive legal area, sex discrimination cases.21

III. METHODS

The indeterminateness of the quantitative research on board diversity led us to begin our qualitative study involving interviews of corporate board members and other relevant corporate actors. Our principal objective has been to learn what impact, if any, these respondents thought board diversity might have on board processes and corporate performance. We conducted confidential,22 semi-structured interviews of forty-five to ninety minutes in length with forty-five individuals. All interviews were tape recorded, transcribed, and reviewed for accuracy.23 In addition to being asked to discuss their board experiences, respondents were asked to verify biographical information such as race, ethnicity, and board service.

A. Finding Respondents

We began by contacting and interviewing public company board members with whom one of the co-authors had direct or indirect personal or professional contacts. At

21 Id. (finding neither individual nor panel effects in 12 of 13 substantive areas of the law).

22. Respondents were promised that their names, the names of the companies with which they were associated, and any other information that might lead to their identification would not be reported in any publications resulting from our study.

23. Seven interviews were conducted by telephone. For three interviews, one interviewer participated by telephone while the other interviewer was physically present with the interview subject. With the exception of one telephone interview, in which all three co-authors participated, all other interviews were conducted by two of the three study co-authors. One of the co-authors (Lissa Broome) participated in every interview but one.
the conclusion of each interview, the respondent was asked to name other potential interview subjects (or to contact them on our behalf), meaning that many respondents were found using the “snowball” sampling method. Snowballing is a commonly employed methodology (particularly in interview-based research) for reaching difficult to access populations, such as the homeless, the socially stigmatized, or the elite. As stated by Atkinson and Flint, the main value of the snowballing methodology:

[L]ies as a method for dealing with the difficult problem of obtaining respondents where they are few in number or where higher levels of trust are required to initiate contact. Under these circumstances, such techniques of “chain referral” may imbue the researcher with characteristics associated with being an insider or group member which can aid entry to settings in which conventional approaches have great difficulty.

Snowball sampling is particularly useful in recruiting corporate director respondents for a variety of reasons. Directors of public corporations are a relatively small population. Moreover, they are busy people who may be reluctant to devote time to a person or project not recommended by someone they already know and trust. This may be especially true when, as here, respondents are asked to comment on sensitive topics

24. In a sample based on the snowball method respondents are asked to suggest other potential study subjects according to some inclusion criteria defined by the researchers. Because the sample selection is nonrandom, samples generated through the snowballing method present problems of sample bias.
ranging from the performance and behavior of board colleagues to their own and others’
views of the contributions of female and minority board members.

B. Characteristics of Respondents and Firms

Figure 1 details the racial and gender breakdown of respondents. As of March 15, 2010, our sample contained a total of thirty-eight directors who serve or had served on public company boards, six of whom had also served as a chief executive officer. Due to multiple board service, these interviews represent 128 corporate board experiences at 115 different public companies. Seven additional respondents (three white males and four white females) brought our total interview pool to forty-five. These seven respondents had no public company board experience but fell within other categories of interest—regulators, board advisors, diversity advocates, proxy advisors, and institutional investor board members.

1. Respondent Characteristics

Of the thirty-eight interview subjects with public company board experience, twenty-three (or 61%) are female, and nine (or 20%) are non-white. Males are underrepresented in the sample, compared to their percentages on Fortune 500 boards

27. The number of “public company board experiences” is larger than the number of distinct public companies represented in the sample because several director-respondents served with each other on at least one board. To illustrate, assume that two respondents, Mary and John, both serve on the board of Alpha Corporation and, in addition, John serves on the board of Beta Corporation. The result is: two individual respondents (Mary and John) and three board experiences (Mary’s experience on Alpha Corporation, John’s experience on Alpha Corporation, and John’s experience on Beta Corporation) at two distinct firms (Alpha Corporation and Beta Corporation).

Women, in contrast, are overrepresented, relative to their numbers on Fortune 500 boards (61% in our sample versus 15% of Fortune 500 board seats). The overrepresentation of women may be a function of the snowball sampling method (female respondents seemed more likely to identify other females as potential respondents); a response bias triggered by the two female co-authors who conducted thirty-three of the interviews (female directors may be more inclined than males to speak to female researchers, leading to a higher response rate among women); or of the subject matter (women and minority directors may naturally be more interested in diversity research).

Figure 1

Race and Gender of Respondents

As indicated in Figure 2, our sample of thirty-eight directors is diverse in terms of their board experience. The least experienced director in our sample has only one year of public company board service and has served on only a single board, while each of the four most experienced directors has more than fifty years of total public company board experience at multiple public companies. Of our director respondents, eight (or 21%) have served fewer than six years as a public company director, ten (or 26%) have served

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30. Id.

31 The third co-author, John M. Conley (a white male) joined the study and participated in twelve of the interviews.
six to fifteen years, ten (or 26%) have served sixteen to twenty-five years, and ten (or 26%) have served more than twenty-five years.

Figure 2

Board Experience
Years Served on Public Company Boards

[insert figure 2 here]

2. Firm Characteristics

A diverse group of 115 firms are represented in our sample. Because some of the respondents serve on the boards of the same companies, our respondents reported 128 board experiences. For six companies, there were two respondents from the same company’s board, for two companies there were three respondents who served on that company’s board, and for one company there were four respondents from the same company’s board, although all four did not overlap in their service. Figure 3 details the breakdown of board experiences by size of firm. Eighteen (or 14%) of the board experiences are in the Fortune 100 companies, thirty (or 23%) board experiences are in the Fortune 500 companies, fourteen experiences (or 11%) are in the Fortune 1000 companies, and sixty-six (or 52%) board experiences are in publicly traded corporations not listed in the Fortune 1000.

Figure 3

Firm Size
Figure 4 details the breakdown of board experiences by the region where the firm is headquartered. Thirty-two board experiences (or 16%) represent firms headquartered in the Northeast, twelve (or 9%) represent firms headquartered in the Midwest, seventy-five (or 59%) represent firms headquartered in the South, and twenty-one (or 16%) represent firms headquartered in the West. Firms headquartered in the South are over-weighted in the sample since it was easiest for the researchers to find respondents and conduct interviews with directors from companies located in the same area as the researchers work. It is possible that attitudes towards female and minority board members may be different for companies located in this part of the country than in other areas.

Figure 4

Firm Headquarters

Figure 5 details the breakdown of board experiences by industry, using broad standard industrial code (SIC) classifications. The four digit Standard Industrial Classification (SIC) Codes that appear in a company’s disseminated EDGAR filings are assigned by the U.S. government to indicate the company’s type of business. The number of total SEC registrants in each broad industry category is available at http://www.secinfo.com/$/SEC/SIC/.asp?Start= (last visited Mar. 12, 2010).

32. The firm’s region is defined by reference to its corporate headquarters as disclosed in SEC filings. The regions are those employed by the U.S. Census Bureau. See U.S. Census Bureau, Census Regions and Divisions of the United States, http://www.census.gov/geo/www/us_regdiv.pdf (last visited Mar. 12, 2010).

(manufacturing, transportation and public utilities, wholesale and retail trade) and underweighted in others (mining; finance, insurance and real estate; and services).

Figure 5

Industry Breakdown

[insert figure 5]

C. Discourse Analysis

We have used the methods of qualitative discourse analysis in evaluating the interview transcripts. Discourse in its basic linguistic sense refers to connected segments of speech or writing, in fact to any chunk of speech or writing larger than a single sentence or utterance. It includes conversations, interviews, stories, question-and-answer sequences, and so forth. But discourse can also refer to more abstract social phenomena. Under the influence of Foucault, discourse has come to mean not simply talk itself, but the way that something gets talked about—the broad range of discussion that takes place within a society about an issue. Well-known examples from Foucault include the discourse of punishment and the discourse of sexuality, to which we now add the discourse of director diversity.

We use the term discourse analysis to refer to the qualitative, fine-grained, interpretive study of recorded discourse. Our approach to discourse analysis has its roots

in the ethnomethodological perspective inspired by Goffman\textsuperscript{38} and Garfinkel\textsuperscript{39}. Its defining characteristic is a bottom-up approach to the discovery of social structure and meaning. Prescinding from the search for top-down, rigid, or otherwise “real” rules and meanings, a broad range of language scholars (including linguistic anthropologists, conversation analysts, sociolinguists, and business discourse analysts) have focused instead on the patterns that appear in the course of actual interactions.\textsuperscript{40} Rules, structures, and meanings are thus seen as emergent rather than exogenous.

Much recent work in discourse analysis focuses particularly on the stories, or narratives, that people tell. Stories have been defined as “everyday communication devices that create interpretive contexts for social action.”\textsuperscript{41} They are significant because “[i]n everyday social situations people use stories as a means of conveying selective interpretations of social behavior to others.”\textsuperscript{42} In the words of the sociologists Ewick and Silbey, “stories people tell about themselves and their lives both constitute and interpret those lives; the stories describe the world as it is lived and understood by the storyteller.”\textsuperscript{43} We focus in this paper on the stories that corporate principals tell about director diversity.

\textsuperscript{38} \textsc{Erving Goffman}, \textit{The Presentation of Self in Everyday Life} (1959).
\textsuperscript{39} \textsc{Harold Garfinkel}, \textit{Studies in Ethnomethodology} (1967).
\textsuperscript{40} \textit{See.}, J. Maxwell Atkinson & Paul Drew, \textit{The Organisation of Verbal Interaction in Judicial Settings} (1979)(explaining and demonstrating this approach in study of courtroom speech).
\textsuperscript{41} W.L. Bennett & M.S. Feldman, \textit{Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture} 7 (1981).
\textsuperscript{42} W.L. Bennett & M.S. Feldman, \textit{Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture} 7 (1981).
Specifically, our approach has followed the model of conversation analysis. The collection and transcription of the interviews is an ongoing process. We meet regularly as a group to discuss individual interviews, listening to the recording with transcript in hand. We comment on and discuss whatever issues any of us notices and raises. While the interviews themselves follow a broad topical outline, the analysis sessions are open-ended, with an agenda emerging only as the session proceeds. The whole approach is unapologetically interpretive. It is rigorously empirical, in the sense that every inference is rooted in specific textual evidence, but it is not positivist and makes no claims to be so. Moreover, discourse analysis is agnostic on the question of what people “really” think or mean. Even if that were knowable, because the method focuses on the meanings that emerge in social interactions, the text of those interactions is the only relevant evidence, both necessary and sufficient to the purpose.

The fact that a member of a cultural group analyzes and interprets the world in a particular way does not, of course, permit one to generalize about what other members are thinking or doing. Yet by the same token, aggregate data about a group as a whole do not allow one to say anything about any particular individual. Discourse analysis, though, creates a set of firm data points grounded in actual members of the group. Unlike any aggregate method, discourse analysis permits a researcher to say, “This is what a set of real people actually report about their thoughts and actions.” At a minimum, it offers “native” hypotheses for subsequent testing. In addition by revealing the messy realities

of the interview process, discourse analysis can provoke a critique of quantitative techniques that are based on the categorization of subject responses.

IV. RESULTS

In this section we review and analyze our results, organizing the material thematically. Several major themes dominated the interviews. One was the subjects’ nearly universal endorsement of the proposition that board diversity is an unmitigated good and worthy goal. There was less consensus, however, on the reasons why this is true. Especially prominent was the contention that demographic diversity produces a diversity of experiences and sensibilities and thus promotes richer discussions, though examples were hard to come by.\(^{45}\) Other narratives emerged as well, including those about directors’ skill sets, employee relations, succession planning, and moral imperatives.

A. Diversity of Perspectives

Almost every respondent was a diversity enthusiast to a greater or lesser extent. Moreover, many indicated that diversity currently plays a role in the selection of board members.\(^{46}\) Many female and minority respondents noted that the firm’s desire to

\(^{45}\) We have pointed out elsewhere the similarity between this narrative and Justice Lewis Powell’s seminal argument for diversity in Regents of University of California v. Bakke, 438 U.S. 265 (1978). See Conley, Broome & Krawiec, supra n. 1.


Discussion of diversity of board nominees may increase. On December 16, 2009, the U.S. Securities and Exchange Commission (SEC) amended Item 407(c)(2)(vi) of Regulation S-K to require disclosure, effective as of February 28, 2010, of (a) whether or not the nominating committee considers diversity in identifying nominees for director;
diversify the board had been explicitly mentioned as a consideration in their selection, and others suspected that it had been a relevant consideration, even if not overtly presented as such.\footnote{E.g., Interview, Transcript No. DS300029, at 6 (Dec. 17, 2007) (“[the CEO called me up] and said, ‘You know, we’d really like to have more women on our Board.’”); Interview, Transcript No. DS300030, at 5 (Dec. 18, 2007) (diversity was “absolutely” a factor in the nomination of female and minority board members according to white female board member); Interview, Transcript No. DS30031, at 2, 10 (Dec. 19, 2007) (white female director discussing two separate director nominations: “they wanted diversity” and “[t]hey were looking for diversity”); Interview, Transcript No. DS300010, at 3 (July 30, 2007) (the fact that respondent was a female “was absolutely a factor” in both of her board nominations and “was positioned to me that way”); Interview, Transcript No. DS300024, at 2 (Dec. 4, 2007) (African American male reported that when he was selected for his first corporate board seat, the company “wanted to diversity the board”).} An exchange with one female respondent is representative:

He [the CEO] wanted to have a woman, he was looking for a woman, and it just needed a little bit of acquaintanceship around there to make sure I didn’t have three heads or something. . . .

Q: Were there reasons articulated as to why they were looking for a woman for the board at that time?

A: Not articulated, no. I just think they thought it was time or something.\footnote{Interview, Transcript No. DS300032, at 4 (Dec. 19, 2007) (transcript on file with authors at the University of North Carolina).}

In explaining their own support of diversity, our respondents most often advanced functional arguments, prominent among them that demographic diversity yields a diversity of perspectives, which in turn leads to more productive boardroom discussion. In the succinct phrasing of an African-American man who had been a trailblazing minority director: “It means different experiences,
different perspectives. That you can bring something to the table that they hadn’t thought of before.” 49 In a parallel reference to the “table” that was simultaneously literal and figurative, an African-American female executive and director said that boards “would be well served by a voice that may have had a different path to get to the board table than some of the others at the board table.” 50

A white woman with substantial experience as an academic and a board member elaborated on the perspective argument, at the same time warning of the risks inherent in what some have called “group-think”:

As a former CEO said, "I hate to see a board that has only on it the people I went to prep school with." And it's exactly true. Diversity in gender and race I think of as a proxy for different perspectives. And if you don't have different perspectives on a business, you're really missing a lot. Business case for it. It adds something. And it clearly does at [the company’s] board meetings. . . . African Americans, Hispanics, Asian Americans-- I mean, I think people have different experiences, and they bring it to the board meeting, and different knowledge. 51

A very experienced white male director similarly claimed that diversity brought “an entirely new perspective” to the board, with attendant “creative vibes.” 52

Q: . . . What do you see as the advantages to a company of a other-than-white-male board?

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49 Interview, Transcript, No. DS300070, at 14 (Nov. 25, 2009).
50 Interview, Transcript No. DS300059, at 9 (Feb. 18, 2009).
51 Interview, Transcript No. DS300041, at 4-5 (May 7, 2008).
52 Interview, Transcript No. D3300046, at 4 (Aug. 18, 2008).
A: Well I think it brings an entirely new perspective to the thinking of a board. It creates a very positive dynamic and [laughs] you’re right; I’ve sat on boards where all of us were silver haired males and the dynamic is different from when you have minorities and women on boards so I guess I just feel that there’s more creative vibes going on [laughs] if you’re on a board where there’s different thinking and different channels of thinking.53

He, too, warned against the limitations of the pre-diversity status quo, emphasizing that “the base experience level of most of the males, the seasoned males, has been channeled in a similar direction.”54 He characterized that direction as “an old, classic hierarchy of organization, which is, I think, rapidly becoming outmoded.”55

An African-American male respondent echoed the point. In answer to the question of whether he would consider it problematic if boards were not diverse at all and whether “we could still pursue the agendas that are important to corporate America without diversity on boards,” he responded that “you could probably pursue the same agendas, but I think that you would lose some of the flavor, if you will, that comes from having people of different backgrounds on the board.”56

B. Perspectives from Mars and Venus

A specific instance of the different perspectives argument focuses on the benefits of gender diversity (although it also has a race and ethnicity variant). This rationale invokes the allegedly different sensibilities, reasoning processes, and interpersonal skills of men and women. Several respondents generalized about women and the ethic of care in ways

53 Interview, Transcript No. D3300046, at 3-4 (Aug. 18, 2008).
54 Interview, Transcript No. D3300046, at 4 (Aug. 18, 2008).
56 Interview, Transcript No. DS300024, at 13 (Dec. 4, 2007).
that were strongly reminiscent of Carol Gilligan’s feminist classic, *In A Different Voice*.  

A white man with years of experience as both an executive and a director made the point in especially colorful terms:

[W]omen are a lot better dealing with egos of other people than men are and they’re a lot more patient and they’re a lot more team oriented and they’re a lot about let’s do this together. Men are, the New York Times article said and I happen to believe this; just because it’s in the New York Times doesn’t make it true but the average male in America according to this in depth research is lucky to have one and a half friends and the average woman in America typically will have nine to ten to eleven friends because men are so competitive and they’re so blustery and they don’t stay until the diapers are pinned down. They just have a tendency just to go flying off and so there’s a huge personality difference and it worked at [names company]. The women were extremely good in human relation issues . . . .

Some of our subjects made explicit reference to men being from Mars and women from Venus, but tended to back away from those generalizations when asked for specifics. A white man who has been a director, an executive, and an academic said this in responding to a request for an example of “where you think because there was a woman or a person of color that you heard a point of view that was different than you would have otherwise heard or that was helpful in making a decision”:

58 Interview, Transcript No. DS00061, at 6 (June 18, 2009).

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There are other instances where in that spirit of men are from Mars and women are from Venus that and probably after we’re all dead it will be accepted and okay to talk about the differences between the sexes and not pretend that everybody is exactly alike but there will be discussions about how do the typical employees feel or react in the organization and I don’t know that may be slightly more than average, women will comment on issues of culture and staff acceptance or staff issues and by staff I mean at all levels.\textsuperscript{59}

Yet when asked to elaborate on the extent to which “somebody’s race or somebody’s gender predicts a different kind of point of view,” the same subject admitted that he could not go beyond stereotyping. By doing so, he seemed to be acknowledging the “dangerousness” of the gender and race categories:

Well you can’t other than to say stereotypically you might see some of that fulfilled but when people of color are on a board, part of the reason they’re on a board is to represent the point of view of people of color so I don’t know whether that’s stereotyping. I mean that’s why they’re there. You know? You don’t want me to represent them. I can’t. So I’m not sure quite how to answer your question.\textsuperscript{60}

A very senior white male with long experience as a director also used the Mars/Venus language in responding to a question about the integration of men and women into boards:

\textsuperscript{59} Interview, Transcript No. DS300045, at 6 (Aug. 8, 2008).
\textsuperscript{60} Interview, Transcript No. DS300045, at 5 (Aug. 8, 2008).
I mean women are not different from men on a [names industry] board. I mean I don’t see any difference. Sometimes their sensitivities are different.

Q: In the sense that—

A:--I mean, you know, Mars and Venus [laughter]. But I mean their sensitivity is different but they don’t come to a different conclusion as a rule. I don’t see it.61

Seconds later, he recycled the reference to sensitivity. Now, however, he used “sensitive” to mean “thin-skinned” rather than “aware” or “attuned to” and rejected the notion that men and women were fundamentally different after all. Responding to an interviewer’s suggestion that having multiple women on a board might “give them some comfort with one another,” he said:

Well we don’t room together so I don’t know. I think it probably does. I think they, but I don’t sense that. I don’t sense that any of these women are at all uncomfortable with who they are. I don’t see them as, they don’t occur to me to be oversensitive.62

A third subject, a white female lawyer with extensive board service, also suggested that there might be gender-based sensitivity differences that derive from different experiences. She mentioned—echoing Gilligan63—a specifically feminine approach to problem-solving. Immediately, however—in another demonstration of how

61 Interview, Transcript No. DS300007, at 16 (July 27, 2007).
63 See GILLIGAN, supra note 57 (advancing the thesis that men and a women, as a consequence of their different socialization experiences, develop fundamentally different processes of moral reasoning).
dangerous a category gender can be-- she backtracked and wondered whether it was more of a legal skill than a gender-based attribute. :

I think sometimes women bring a different way of solving problems, a different, I think sometimes what I bring, I mean it’s really terrible to say, but it’s sort of their motherly skills in a way, you know, they’re sort of trying to get people to figure out how to agree and how to find a common solution, and how to cut through all the arguments and synthesize. I mean they may really be lawyer skills rather than motherly.64

Several other subjects also suggested that the value of difference derived not so much from gender and race as from specific professional experience and skills. While their narratives extol the value of race or gender diversity, they turn into praise for a particular skill set or background experience, not necessarily connected to the director’s race or gender, that proved valuable--for example, organizational skill gained through high-level military service (an African-American male),65 engineering (a white female) skill,66 or financial expertise (another white female), or regulatory expertise (an African-American female).67

64 Interview, Transcript No. DS300029, at 10 (Dec. 17, 2007).
65 Interview, Transcript No. DS400050, at 10 (Oct. 3, 2008) (“[name deleted] has had a different kind of leadership experience,” the “qualification of being an African American” has not necessarily made him “more effective but it makes the conversation different”).
66 Interview, Transcript No. DS400050, at 22 (Oct. 3, 2008) (reflecting on how a hypothetical senior woman engineer might add value to one of the boards on which the white, female respondent serves: “she’d add value from a different side of the table. She might not have the business acumen or the international experience but golly she’d have a lot to say about the research and engineering piece and that might be a big added value . . .”).
67 Our diversity skeptic, see supra note x, praised the substantive expertise of an African American woman with whom he served on a board: “[Name of African American female
An African-American male director who came to board service from higher education began by focusing on race and gender, but then verged into the value of having someone, like himself, who was an outsider, a “novice.”

But I think we're much better off because we do have, not only diversity from the standpoint of race and gender, but diversity from the standpoint of experience. My experience is quite different from a lot of other people on these boards but when you have someone that's got a different point of view, a world view, if you will, for whatever reason I think it strengthens the board to have those kinds of people interacting. Because lots of times, even on the [company name] board I feel like kind of the novice on that board, there are things that either I don't understand or they don't seem quite right. If you bring them up you get a more fulsome discussion than if everybody is kind of a like mind and says well, you know that's the way it's always been or yeah, we can go ahead and do that, sort of thing. So, I

director] doesn’t have a tremendously strong background in business of having run a business and faced all the problems that you face in trying to make one, you know, how do you make payroll and how do you make a right decision over a twenty year period, but her [regulatory] credentials were just phenomenal and so I thought she was very strong.” Interview, Transcript No. DS300014, at 6 (Aug. 30, 2007). He added, “the fact that she was a woman and minority didn’t make a hill of beans of difference. I mean the votes came out the same; there was nothing that happened that would make a difference.” Interview, Transcript No. DS300014, at 6 (Aug. 30, 2007). Although, he acknowledged later that the diversity aspect was important in the diverse candidate’s selection to the board: “It [her race and gender] was an absolute plus. Had there been someone else; let’s say it was a white man with exactly the same characteristics and the same background and the two of them were there they would have picked her because she would have fulfilled the diversity characteristic.” Interview, Transcript No. DS300014, at 12 (Aug. 30, 2007).
think that we're better off having diversity of experience and all the other kinds of diversity represented on boards.\textsuperscript{68}

Another respondent praised the contribution of a female board member as the product of a combination of skill sets and gender diversity:

When you think about [one of the company’s products] particularly and its relationship to women’s health and appearance, we needed a marketing, a women who, a person who looks at women’s health and who has a marketing background. [Name of white female director] fits both of those.\textsuperscript{69}

An exchange with a white female director prompted a similar example of the contributions of a Hispanic female director that appeared to stem from a combination of ethnicity and expertise:

She is right now really interested in the whole immigration issue, immigration reform, and so yes, she certainly does, but I don’t know if that’s because she’s Hispanic. I think it’s because of what her background is, and her knowledge base, and her area of business research, and she lectures and gives and has a television talk show from time to time.\textsuperscript{70}

The woman who made the “motherly skills” comment quoted above also downplayed the implications of the gender difference argument in other ways. In common with many other subjects, she emphasized the importance of fitting in, of learning how to perform the role of board member, and emphasized that this was a gender-neutral task. The point

\textsuperscript{68} Interview, Transcript No. D5300024, at 13 (Dec. 4, 2007).
\textsuperscript{69} Interview, Transcript No. DS300035, at 12 (Mar. 3, 2008).
\textsuperscript{70} Interview, Transcript No. DS300029, at 4 (Dec. 17, 2007).
seems to be that if, at the outset, men and women are indeed from different planets, their distinctive qualities erode as women learn and adopt appropriate board behavior. Early in the interview, for example, this subject commented on the issue of being the only woman in a boardroom:

Well, I’m sure I spent my life being the only woman in various rooms and so you get used to it, so it was, you know, I think there was an awkwardness in there, a period when everybody’s sizing you up and you’re sizing them up and trying to establish the right tone and the right role, and establish your credibility, but I’m not sure it’s that, I mean I’m sure it’s somewhat different than male and female, but I think there are overlaps and I think you learn to not talk too much at the beginning, and then you know, try to ask one or two smart questions each time, so a certain formula.  

She later stressed the same point—learning how to fit in--in the context of using other women as mentors and role models:

So I think in a boardroom, each boardroom, as you said, has very different culture and in some boardrooms a really spirited conversation; in other boardrooms it’s a much quieter conversation with everybody being super-polite and complimenting each other back and forth, you know, their comments and nobody ever cutting each other off, and so, you know, you don’t want to come in and be totally off the page in how you interact, and

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71 Interview, Transcript No. DS300029, at 3-4 (Dec. 17, 2007).
so I think watching other women is particularly useful, too, to me, but I
don’t do it exclusively with women, but just seeing how they interact. 72

Elsewhere, in response to a question about corporate cultures, she emphasized the
role of dress and appearance in mentoring and fitting in, including what to wear to board
meetings.

A: It’s really pretty funny, and if there’s another woman on the board, you
kind of gauge how you dress based on how they dress, and so you go to
the first board meeting and you don’t really know what to wear, so
basically you dress pretty conservatively, and then you see kind of, do
people wear pants, or do they all wear skirts and you know, do they
wear—

Q: Colors?

A: --colors, exactly. At [company], not this last one, in the shareholders’
meeting before there were three women, we talked about how we all kind
of went to the back of our closets and got sort of our dowdiest things. 73

We also heard accounts of female and minority directors who did not learn to fit
in. Sometimes, the different point of view and approach that are argued to be the primary
benefit of diversity can cause a director to fail. An African-American male director of a
national company told the story of a female colleague who “didn’t work out” even though
he thought she was “wonderful”:

72 Interview, Transcript No. DS300029, at 27 (Dec. 17, 2007).
73 Interview, Transcript No. DS300029, at 25 (Dec. 17, 2007).
She was exceedingly competent and assertive and asked a lot of questions and pressed a lot of issues and I think some people got uncomfortable. I don’t know whether they got uncomfortable with her because of the issues she was raising or because she was raising issues and was a woman. I don’t know for a fact but she wasn’t around very long.74

But it is not always a case of minimizing one’s distinctiveness in order to succeed. The same black male subject noted forcefully that a lack of social and stylistic fit has never impeded him as a director. He described his board colleagues—bluntly—as “all in these gated communities . . . comfortable talking with people who are just like they are.”75 The night before the meeting “they go out to dinner with each other” and do not invite him.76 But he claims not to care. He went through a “a year as a fully paid, non-voting aspirant” before being confirmed.77 During his tryout year, he reported, “I talked. I got involved.”78 Now, “I like to push the envelope . . . and they’re just reminded that I am black.”79 Yet he has survived and, in his view, been taken seriously.

C. Different Perspectives in Action?

In most interviews, we followed up on respondents’ statements about the value of diversity with requests for examples. Where a subject claimed that diversity would yield new perspectives or produce better boardroom dynamics, we asked for instances where the theory had been borne out. The results were remarkably consistent: with some exceptions, many subjects usually could think of nothing, or offered examples that

74 Interview, Transcript No. DS300070, at 7-8 (Nov. 25, 2009).
75 Interview, Transcript No. DS300070, at 25 (Nov. 25, 2009).
76 Interview, Transcript No. DS300070, at 25 (Nov. 25, 2009).
77 Interview, Transcript No. DS300070, at 3 (Nov. 25, 2009).
78 Interview, Transcript No. DS300070, at 6 (Nov. 25, 2009).
79 Interview, Transcript No. DS300070, at 24 (Nov. 25, 2009).
seemed trivial in the sense of unrelated to the strategic planning that is presumably the province of boards. Some subjects, when asked to elaborate the ways in which particular female or minority directors had contributed, digressed into examples that had little to do with race or gender, and in some cases, distanced themselves from demographic variables.

There were a few exceptions, which might broadly be categorized as statements about the heightened sensitivity of minority and female directors to issues of fairness, social welfare, and “empathy with the little people,” generally employees or customers (this last with attendant profitability benefits). But overall, these narratives are at a level of daily corporate detail far below the strategic planning and attention to big picture issues that are presumably the primary function of boards, or appeared unrelated to board processes or business imperatives – the primary justifications advanced by our respondents in favor of board diversity.

In one of the most notable exceptions, a white woman with more than ten years of board experience described the role of two African American directors in helping a board analyze a major and potentially controversial industrial facility expansion. It is long story, but well worth quoting. (Note, by the way, that when she refers to “black and white” she seems to be talking about quantitative data, not race):

It’s tense a lot of times but I think it’s a healthy discourse. [Name of African American woman] is a really bright woman, a [names elite college] graduate in like microbiology or something and she is Chair of the [relevant] Committee and she really pushes the conversation. We’re in
the process of preparing to build a new [facility] and I’ve been so impressed with her willingness to really push the conversation and to push the envelope beyond the financials. . . . What I think I’m observing at [name of company] and what I hope that I am bringing to the boards where I was the first minority member is there is a willingness to talk beyond the numbers. What is happening here? What are the implications for the company? What are the implications for the culture of the company? How are employees responding to these things? What is the community response to it and to the [facility] construction? . . . [T]here was heavy board discussion about that process of change. Support for it because financially it made sense short term and long term so you kind of get the black and white out of the way but that board tends to spend a little more energy beyond the nuts and bolts and so we were heavily engaged in the process of how would we communicate it politically, how would we share it with the community, what would we do to support downtown when we were gone, what were the implications for our employees, those types of things and some of that comes out of [names African American male director] who has been as a minority very active in community redevelopment in [names city] and so he had a particular sensitivity to that as a minority.80

80 Interview, Transcript Nos. DS300057 & DS300058, at 14 (Dec. 12, 2008).
A second narrative also illustrated strategic thinking by a diverse board, but in an enigmatic context. A white male who has been an executive and a director told this story of an African-American board member’s enhanced sensitivity to fairness:

There was a person that was, and this unfortunately happens in a lot of board rooms, that was accused of sharing inside information with a not for profit company. It was about the value. They were going to make a donation to their stock to a not for profit company and they gave what they thought the stock was worth in an email. Well, that technically is something the SEC would, that’s inside information because you’ve got a director giving the value of the stock. So everybody was really down on this particular director and there was a movement afoot to get him off the board immediately. It was a he and one of the blacks put it in perspective in about how it A, wasn’t intended and B, the no harm consequence and C, that we could do it by talking this through and making sure that that’s understood that that shouldn’t happen again and he won the day but he won the day by sheer determination. He knew that it wasn’t fair because he had been subject to things that weren’t fair and he wasn’t going to let it happen.81

This is a striking example in a couple of respects. First, it is a rare instance of a subject recalling a specific instance of a minority director’s contribution and, moreover, specifically relating that contribution to the board member’s unique experience as an African American. But it is unclear how this purported

81 Interview, Transcript No. DS30061, at 7 (June 18, 2009).
contribution relates to the diversity rationales advanced by our respondents. Given the legal complications associated with this story— involving as it does an impermissible transfer of inside information and the board’s after-the-fact acquiescence in that transfer—one might reasonably question how this example illustrates the benefits of board diversity.

Other subjects illustrated the value of board diversity with stories about specific marketing insights, often driven by heightened sensitivity to customer needs. Some of the suggestions were said to translate directly to the bottom line, providing at least anecdotal support for the elusive “business case.” But while the stories are persuasive, the insights are of the sort that a company might expect from its lower-level retailing specialists. For example, a white female director of a retail store that catered to lower-income consumers described her role in urging the store to adopt a product mix that would get “people in the store more often and to spend more money each time they come.”

She attributed her insight to her understanding of the hassles of having to stop at multiple stores, park, and get in and out of a store with kids in tow. As she said, “That’s very appealing to me as a female. The guys aren’t paying any attention to that.”

The same director also advocated undertaking the investment necessary to allow the retail outlets to accept food stamps “because I’m a woman and I understand the plight of the single female head of household who’s only feeding and caring for her family adequately because she has access to WIC or she has access to groceries through food stamps and if she can’t use those in our store she’s not going to come to our

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82 Interview, Transcript Nos. DS300057 & DS300058, at 6 (Dec. 12, 2008).
83 Interview, Transcript Nos. DS300057 & DS300058, at 7 (Dec. 12, 2008).
store.” She added, “Well obviously I wasn’t the only one in the company with that kind of voice but for that voice to also be heard at the board table is very, very important.”

The respondent had not herself been a single mother on food stamps, but attributed her empathy to a time early in her career when she had had direct customer contact with this population segment, and to “it is just kind of where my heart rests to be sensitive to the people in communities that have need.” She also commented that her African-American colleague on the board “is not so quick to speak up on those issues but when I speak up he will then follow and agree.” She surmised that her black colleague might be asking, “should I use my capital there?” while women may have become “a little bolder about supporting each other.”

A white male director of a home health services company also invoked the ability of a woman board member to put herself in the place of the customer. A female board colleague, he told us, recognized that “often times our delivery person was the highlight of the day for our shut-in customers” and made suggestions based on that insight that affected the company’s bottom line. According to his account, the woman board member said our employees should look around and see how else we can “help the patient-client and what other referrals” for the company’s products and services the employee—the customer’s trusted friend—could make. The female board member

84 Interview, Transcript Nos. DS300057 & DS300058, at 6 (Dec. 12, 2008).
85 Interview, Transcript Nos. DS300057 & DS300058, at 6 (Dec. 12, 2008).
86 Interview, Transcript Nos. DS300057 & DS300058, at 8 (Dec. 12, 2008).
87 Interview, Transcript Nos. DS300057 & DS300058, at 7 (Dec. 12, 2008).
88 Interview, Transcript Nos. DS300057 & DS300058, at 7 (Dec. 12, 2008).
89 Interview, Transcript Nos. DS300069, at 4 (Nov. 11, 2009).
90 Interview, Transcript Nos. DS300069, at 4 (Nov. 11, 2009).
also suggested that for services covered by health insurance, the employee could collect the co-pay by credit card charge at the time of delivery instead of the company billing for it later and encountering the inevitable collection challenges. As the male director commented, “once we established a good relationship with our customer-client-patient, we started getting a credit card to pay the bill on the spot. Man, boy! That was really helpful.”\textsuperscript{91} He concluded that women board members “tend to be more sensitive to what’s going on.”\textsuperscript{92}

Examples that focused on racial diversity also tended to focus on marketing contributions that might be expected well below the board level. A white male director offered this “classic example” of the “new value system” that diversity brings:

[S]o [name of an African American female director] was a classic example. She actually brought us new ways of thinking about how to approach the minorities where we had in many instances, some of the [company’s restaurants] were located in predominantly African American areas [identifying information deleted] and she just gave us a lot of great insight into what stimulates an African American family to experience [the company’s style of restaurant]. It was very valuable.\textsuperscript{93}

Female and minority directors themselves added little by way of specific examples. In another story from the restaurant business, an African-American male director and executive offered this illustration of “what point of view means and looks like”:

\textsuperscript{91} Interview, Transcript Nos. DS300069, at 4 (Nov. 11, 2009).
\textsuperscript{92} Interview, Transcript Nos. DS300069, at 4 (Nov. 11, 2009).
\textsuperscript{93} Interview, Transcript No. DS300046, at 4 (Aug. 18, 2008).
Well I mean if you look at African Americans, I mean in our world the dining habits are different and so seeing those differences we can pick up a lot of them. We have that conversation in the boardroom about what those are and there are a lot of questions . . . . African Americans eat later in our restaurants so if we’re in a place that has a pretty high population, are we changing our operating hours. Groups are bigger.94

Other narratives promised more depth, but rarely delivered. In the middle of a long and rambling narrative about her experience as the sole woman on a board, a white female with lengthy board experience began what seemed like a significant story about enhanced sensitivity to language portending a change in practice. She talked about expressing her concern with the use of the word “salesmen,” only to learn that it reflected reality:

At my second board meeting there was a senior management person doing a slideshow on work in Europe and he was running through this and he had a slide up there that said eighty-two salesmen Europe wide and he flipped through it and I asked him to go back and I said you know can you talk about the typo on this page and he looked at it and he goes no Miss [name deleted] I don’t think there is and I said well it says salesmen. You must mean salespeople and he said no actually I do mean salesmen. There aren’t any women and I said than that’s a deeper problem then that we have here that if this company does not use language that opens up positions like salespeople where there is lucrative to be in that role then

94 Interview, Transcript No. DS300077, at 7 (Dec. 10, 2009).
women will never feel comfortable even aspiring to that and they will only
get your coffee and only be the assistants and the secretaries on the C suite
and that’s inappropriate for a company of this size in this decade and all
my colleagues on the board looked at me with huge eyes and thought to
themselves what have we done to ourselves I’m sure. [Laughter].  

Yet when we followed up to see if a change in the underlying reality followed the
language change, she surprised us. The language change she fought for turned out to be
nothing more than that:

Q: Have things changed since that remark?
A: My board colleagues are better about language. . . .

Q: How about on the ground? Has the workforce changed?
A: No. 

A male African American bank director provided a somewhat more substantial
instance, based on his own contribution to a board. He was asked, “Does the experience
of someone who is a racial minority or is a woman, does that experience, in and of itself
add something?” He immediately responded in the affirmative, and then launched into
an example that had little to do with perspective, point of view, or thought processes. It
did evidence differential knowledge, but in a limited way—he knew specific people who
were helpful to the bank on one occasion. His value as a minority director, in other
words, came not from a unique intellectual approach to issues, but from his ability to

95 Interview, Transcript No. DS 300050, at 4-5 (Oct. 3, 2008).
96 Interview, Transcript No. DS 300050, at 5 (Oct. 3, 2008).
97 Interview, Transcript No. DS300024, at 13 (Dec. 4, 2007).
function as a local-level intermediary on a single occasion—a valuable contribution, no
doubt, but not a basis for a broad argument about superior board functioning:

Yeah, I think it does. When [a large bank on whose board I serve]
acquired [a local bank in a city with a large African American population]
there was considerable concern across the community that [the local bank]
had been the "family bank" that everybody knew and if you wanted to
start a business you went to [the local bank] and you could get some
money and that kind of thing. So people were very comfortable but there
was an awful lot of concern about what was gonna happen when the
marquee no longer said [the local bank] and it changed over to [the large
bank]. And [an African American female director] and I were both able to
be helpful to [the large bank] because we knew people in that market who
[the large bank] folks could go talk to, to allay those kinds of fears. And
that worked well. I think that given the skill sets of everybody are the
same, the experience and background and kind of things you know that
you can bring to the table are beneficial to boards.98

D. Employee Relations

The single narrative that gave the most coherent and specific account of the value of a
diverse board concerns the corporation’s relations with employees. Some respondents
proposed indirect benefits to employees stemming from a diverse board: that corporate
board diversity sends an important signal to a company’s employees about the value it
places on diversity, and about the availability of role models and mentors at the top of the

98 Interview, Transcript No. DS300024, at 13 (Dec. 4, 2007).
corporate hierarchy. Others suggested more direct benefits. For example, diverse boards were said to aid in the recruitment, retention, and promotion of women and minorities, and in particular with succession issues in senior management. Moreover, echoing the previously-discussed argument that women empathize with customers, some contended that female or minority board members are better able to empathize with corporate employees.

1. Sending Signals to Employees

As used in economics, signaling refers to the communication of information from one party to the other in order to convey information about the party sending the signal.\textsuperscript{99} A job applicant, for example, might obtain and advertise an education credential to send a signal about his or merit as a potential employee.\textsuperscript{100} Several respondents told signaling stories: that is, stories that portrayed board diversity as a credible means of conveying relevant, but difficult to observe, corporate traits – in this case, that the company cares about the interests and welfare of female and minority employees, and that the organization is one in which members of these groups can rise to the highest ranks.\textsuperscript{101}

An experienced white female board member emphasized that the presence of female board members had been important to her when she was an employee, saying, “I think this is more recognition that, you know, people, that women or minorities are

\textsuperscript{99} Signaling theory is in fact far more complex. For a fuller discussion see Broome & Krawiec, supra note.
\textsuperscript{100} This example comes from the seminal work in the field, Michael Spence, \textit{Job Market Signaling}, 87(3) QUARTERLY J. ECON. 355 (1973).
\textsuperscript{101} Board diversity is also claimed to signal other relevant audiences, including customers, shareholders, regulators, or the general public. See generally Broome & Krawiec, supra note 7, at 443-46 (discussing and critiquing signaling theories of board diversity in depth); Gulati & Shin, this volume (critiquing signaling theories of workplace diversity as little more than “showcasing”).
competent, capable and can be in leadership positions, to give you a sense of pride, and a little bit of comfort.\textsuperscript{102}

Another white female respondent told us that having women on board mattered to the senior women management at the company, by providing them with “a comfort level”:

[T]here were senior women in the company and they made a point of – not in the middle of the meeting, but part of board service is spending time, sometimes through dinners or other events that would be arranged with senior people of speaking to me and I assume they did to [the other female director] as well about how much it meant to them to have a woman sitting there.\textsuperscript{103}

Here and in other interviews, our respondents echo the refrain of many researchers and diversity advocates that signaling is a potential benefit of board diversity. As we have discussed at length elsewhere, however, the complexity of signaling theory cautions against blanket assertions about its significance in the board context.\textsuperscript{104}

\textbf{2. Empathy with Employees}

Some female board members also commented about their attention to and empathy with the concerns of lower-level employees of the company. A white female director stated that women “tend to be more sensitive to the people issues within the company” and “tend to deal with the softer side and understand the workers more” than

\begin{footnotes}
\item[102] Interview, Transcript No. DS300029, at 12 (Dec. 17, 2007)
\item[103] Interview, Transcript No. 300031, at 6 (Dec. 19, 2007).
\item[104] See Broome & Krawiec, \textit{supra} note 7, at 443-46.
\end{footnotes}
their male counterparts. Her specific examples included thinking through communicating “various things within the organization when you’re dealing with something like selling the company.” The company wasn’t “putting enough emphasis on that piece of it. And so I think I was able to make an impact from that standpoint.”

A Hispanic, female board member also mentioned being sensitive to employee concerns because as a woman:

You feel it. You’ve seen it. You’ve experienced it. You’re sensitive to it. You understand it and when you make a decision whatever that decision is whether it’s about an acquisition, whether it’s about anything it just makes you more sensitive to everyone that’s involved, everyone that’s involved; their health care, their retirement, all their benefits. If one of our employees becomes very ill, making sure that their family is going to be taken care of; that you have an appreciation for the contribution that they’ve made to the company.

This same board member talked about recognizing that she has a great appreciation “for the worker bees in a company.” “I feel like part of my role is to represent the worker bees, not to lose sight of those people and to make sure that they’re remembered and not forgotten because that’s where the rubber meets the road” and you cannot run a successful business without them.

105 Interview, Transcript Nos. DS300067-68, at 17 (Nov. 12, 2009).
106 Interview, Transcript Nos. DS300067-68, at 17 (Nov. 12, 2009).
107 Interview, Transcript Nos. DS300067-68, at 17 (Nov. 12, 2009).
108 Interview, Transcript Nos. DS300019, at 9 (Nov. 7, 2007).
109 Interview, Transcript Nos. DS300019, at 7 (Nov. 7, 2007).
110 Interview, Transcript Nos. DS300019, at 8 (Nov. 7, 2007).
It was obvious, however, that this empathy did not emerge from her own experience. Rather, she talked about the company’s workers as being different from herself, referring to the workers as “they” or “them.” “I understand how they think. I understand how they process information. I understand what’s important to them and what’s important to them may not be important to you and me.” She gave an example of conversing in Spanish with workers from one company on whose board she sits while on a plant site visit. She explained that she used this contact to try to find out what “troubles” the workers, and felt that they often opened up to her and identified with her.

And you ask them about their lives and about their families and what they’re doing here and how they like working here and what do they need that they don’t have, what’s important to them, what do they worry about every day. You know when you get down inside of them what is it that troubles them.

Although these examples typically did not emerge in response to our requests for specific illustrations of the “Mars-Venus” distinction, they seem to be variations on that theme. That is, the women who asserted a special empathy for lower-level employees appeared to be making a claim about their sensitivity as women. That claim is—to repeat the quote with which we introduced this section—that women “tend to be more sensitive to the people issues.”

3. Vigilance on Employee Retention and Promotion
Another specific narrative relates to attempts to recruit, retain, and promote women and minorities in the organization. Although some of the most salient stories in this genre related to the women and minorities in management (discussed in the next section), the narrative was not limited to this, and in some cases extended to other employee training and retention programs as well.

For example, one respondent argued that a diverse board was important, among other reasons, because most companies have a diverse workforce. When asked whether this primarily impacted management-level employees or also lower-level employees she responded:

I think it’s probably about management, in the management area, but I think with the rank and file women who’ve been in the workforce realize how difficult it is sometimes for women to move from secretarial or administrative assistant employees up through the workforce, you know, and [Company X] would be the exception where they were very focused on trying to train women and trying to move them into higher level positions.

Q: So does that ever sort of play out with the board being involved? Does that?

A: I think perhaps in some situations where there are discussions about training programs. Actually I think boards do now talk about how to get more diverse people higher up in the ranks, you know, trying to get them out of entry level jobs and trying to move them through the ranks. In fact, I was just reading basically, I think it was [Company Y] about, yeah, I’m
sure it was because I’m on the [Name of] Committee, about mentoring programs, about retention rates with women and minorities sometimes being lower, and about basically if you have more mentoring and more job satisfaction, people will tend to stay longer, and programs to try and facilitate that, so that would be where it would come up.\textsuperscript{114}

Another white female respondent also discussed the role of the board in demanding that management report on gender and racial diversity within the company:

At [the only African-American director’s] insistence we started getting data on both gender and racial diversity at levels in the company. The company would not have brought it. It's not that you make it change but the very fact that the company has to report on it highlights it as a positive. I thought that was a very clear example of the difference.\textsuperscript{115}

An African-American male respondent told a similar story in response to a question of how diversity issues come up in the boardroom. He discussed one company where the board on which he served had taken two steps related to diversity: (1) the CEO’s performance metrics included employee diversity, and (2) the CEO was asked to recruit at historically black colleges and report to the board on such recruitment efforts. He concluded:

\begin{quote}
But we pretty much hold the CEO's feet to the fire on these things and it's one of the metrics as far as his MIP [Management Improvement Plan] and his bonuses and all this sort of thing so it's pretty direct and the conversations we have with him are direct conversations. The HR folks
\end{quote}

\textsuperscript{114} Interview, Transcript No. DS300029, at 11 (Dec. 17, 2007).
\textsuperscript{115} Interview, Transcript No. DS300031, at 5 (Dec. 19, 2007).
will give us a chart that goes all the way down through the company down
to even the people on the floor that are putting widgets together and we
take a look at that overall picture. It's something that it's to the CEO's
benefit to make sure that everybody in the company understands that we
want to have a diverse workforce here at [company name].

Q: So that was not a goal that the CEO came to you with, it's one the
board went to him with?

A: Right. 116

4. Succession

Perhaps the strongest claims for the value of board diversity involved the recruitment
and promotion of managers and succession planning for the “C-suite.” In response to a
question about how board diversity affected boardroom dynamics, some directors pointed
to succession planning. A male African American director on several large company
boards put the point succinctly: “I think the pressing them on the real diversity issue in
the staff, the senior level staff, I think that is something that has happened.” 117

Later in the interview, the same respondent noted that both the former and current
CEO of a Fortune 500 company had pushed to increase senior management diversity.
When this director was asked whether he thought his encouragement and perhaps that of
other board members had played a role in this focus, he replied, “Yes. I know I’m not the
only one but for awhile I was the only one, only black on the board so the only one I
think was really pushing that was me and they’re doing it better.” 118

116 Interview, Transcript No. DS300024, at 9 (Dec. 4, 2007).
117 Interview, Transcript No. DS300070, at 14 (Nov. 25, 2009).
118 Interview, Transcript No. DS300070, at 17 (Nov. 25, 2009).
Said another:

When we talk about succession planning which every board does, it’s in the boards that I’ve been on where there was a person of color, that person always spoke up about the need for greater progress in the management ranks for people of color and that would be, that kind of gets to your point too. That’s not unexpected. It’s welcomed that they do it.119

A white male board member reported that a female board member frequently questioned management about women in the senior ranks. “She drew our attention to it. She didn’t make a big stink about it, but she was constantly bringing it up in a nice way. And then, when someone would be promoted, she would again recognize that.”120 He noted that “it made a difference. It enriched our pool within.”121

A white female who formerly served for almost twenty years on the board of a Fortune 100 company noted that although she “didn’t raise gender questions very often,” she did several times raise questions about how realistic it was, when we would do our performance analysis each year, of the people who were up and coming in the firm, and there would be a number of women each year, but the expectation that in order to make it to the very top, you were going to have to be available to work 24/7 and travel whenever it was needed. And so I

119 Interview, Transcript No. DS300045, at 6 (Aug. 8, 2008).
120 Interview, Transcript No. DS300069, at 13 (Nov. 19, 2009).
121 Interview, Transcript No. DS300069, at 14 (Nov. 19, 2009).
would several times ask a question about how realistic that was, as a pattern of life for a young woman with a family.\textsuperscript{122}

At the time of this board service, however, she did not think that her questions made much of an impact. There was a sense that the company was “family-friendly” and “a very good place to work for women,” but that “if you were going to get to the top, you had to be willing to play by the same rules, and show that you were dedicated and show that you had it in you, and that was more important than changing the game somehow, so that a young woman with a family might have a chance to make it some day.”\textsuperscript{123}

A white female director emphasized that it is the board’s “job to let the CEO know that part of his job is to bring a diverse workforce to this organization.”\textsuperscript{124} She described the board’s review of succession planning for the most senior thirty or so managers in the organization. “[W]e have the visibility to see where there are women and where there are people of color and those are identified” in the matrix that is presented to the board, and if “there are no women on this page at all” ask where are they. If “there’s no people of color anywhere on this, where are they? And we ask those very pointed questions and so this is entirely different than it was a decade ago when I joined” the board.\textsuperscript{125}

In sum, succession issues, more than any other, seemed to be an area in which our respondents did not struggle with “dangerous categories” or strain for relevant, concrete examples. Important as this issue may be, however, it says little about board dynamics. “Different perspectives” seems to mean, in its strongest sense, attention to the prospects

\textsuperscript{122} Interview, Transcript No. DS300060, at 6-7 (May 21, 2009).
\textsuperscript{123} Interview, Transcript No. DS300060, at 7 (May 21, 2009).
\textsuperscript{124} Interview, Transcript No. DS300050, at 12 (Oct. 3, 2008).
\textsuperscript{125} Interview, Transcript No. DS300050, at 12 (Oct. 3, 2008).
of historically excluded people within a company. This is a powerful argument for board diversity—that diverse directors will try to protect people like them—and probably a sufficient one. But it is not fully consistent with the theories of diversity that our subjects advanced. That is, attention to the specific issue of promotion and succession is not evidence of a fundamental difference in the board process, the way that boards consider strategic questions, evaluate options, and arrive at decisions.

E. The Moral Imperative

Among the diversity enthusiasts, straightforward moral arguments were rare. Less than a handful of our respondents justified diversity on grounds of fairness and social justice, and most of those also raised functional justifications for board diversity. One of them, a white female consultant, was openly skeptical about the different perspectives rationale but was nonetheless a diversity advocate, commenting that fairness is the real argument for diversity. In her view, boards do not really function better with diversity, because female and minority board members tend to be people who are known to other board members and have been vetted as able to fit in.¹²⁶

A second fairness advocate, a white man who has been a business executive, a board member, and an academic, piggybacked the moral imperative on top of the perspectives argument:

Q1: You mentioned the right reasons [for diversity]. What are the right reasons?

¹²⁶ Interview, Transcript No. DS300062 & DS300063 (Aug. 3, 2009). A second white woman who was an academic gave two justifications for board diversity—“one, because it's justice, and two, most importantly, it makes sense for business.” Interview, Transcript No. DS300041, at 4 (May 7, 2008).
A: Well that you appreciate that different points of view collectively will get to a better overall answer. That you appreciate that there are points of view that you wouldn’t have because of your race or your economic status or your industry background that you wouldn’t have that you need to have and that you need to take into account so and then just it’s the morally right thing to do so I think boards get it on all those counts. Many of them do.127

A white male regulator told us that “diversity is a good thing” for “reasons of equity and justice.”128

The infrequency of the “morally right thing to do” argument is striking, though not surprising, in relation to the ubiquity of various functional and performance-based justifications—justifications which, as discussed, usually break down when probed in concrete detail. From a moral perspective, diversity could be justified on any number of bases: as reparation or remedy for past wrongs, as essential to create a level contemporary playing field, or as a necessary corrective to subtle yet deep-seated and persistent biases.

But our respondents’ narratives reflect a near-obsession with making a complex (and frequently unpersuasive) business case for what an outsider might view as a matter of simple justice. This is not particularly surprising, given the dominance (as a legal, social, and business matter) of the shareholder-value theory of the corporation in this country.

127 Interview, Transcript No. DS300045, at 5 (Aug. 8, 2008).
128 Interview, Transcript No. DS00033, at 3 (Feb. 5, 2008).
As a legal matter, that theory grants wide discretion to corporate decision-makers over how to achieve the ends of shareholder value, though not over the end itself.\textsuperscript{129} In other words, though courts would likely view with skepticism assertions that the pursuit of corporate board diversity is necessary for social justice reasons, attempts to diversify the board would almost certainly be upheld when justified as a matter of the long-term economic interests of the corporation, regardless of any uncertainties surrounding the empirical case. For people who think in these terms, major changes in company policy must be justified in terms of corporate performance. Other rationales are seen as out of order, irrelevant at best, and illegal at worst.

\textbf{F. The Rare Dissenters}

A few dissenting voices did emerge amid our respondents’ overwhelming support for diversity. A senior white male was the only person we have interviewed thus far who was openly hostile to diversity, commenting that “when you start talking about women and minorities there’s always a politically correct answer to every question and then there’s a real honest answer.”\textsuperscript{130} He added:

We felt pressured to have a diverse board and I think the regulators, everybody wants to see that and you want to publish those pictures and we couldn’t get them. We tried to go out. We tried both in the black community and we tried both in finding women to go on our board.\textsuperscript{131}

A few others also had reservations about diversity, though none was so negative. A white male respondent expressed skepticism about the impact of board diversity on the

\textsuperscript{129} Citations. Dodge v. Ford; Darley, et. al., this volume.
\textsuperscript{130} Interview, Transcript No. DS300014, at 4 (Aug. 30, 2007).
\textsuperscript{131} Interview, Transcript No. DS300014, at 4 (Aug. 30, 2007).
bottom-line, stating that, if he were faced with outside pressure to diversify a board, he would demand evidence of the superior effectiveness of diverse boards.\footnote{132 Interview, Transcript No. DS300042, at 18 (May 8, 2008).} Another, an experienced white female director, characterized the value of board diversity as somewhere between good corporate governance and meaningless.\footnote{133 Interview, Transcript No. DS300056, at 20 (Nov. 14, 2008).} Her account rejects notions that diverse boards operate differently from nondiverse ones.

Another white female respondent with over fifty years of board experience, while endorsing the benefits of board diversity throughout much of the interview, ultimately told a similar tale of board diversity’s ranking in the priority hierarchy. When asked for her opinion on why larger companies tended to have more diverse boards she responded:

A: I think because they’re higher visibility profile. I think it's that simple. I think maybe there's a little more recognition that diversity does bring some benefits, and it brings some different points of view, and that’s what you really want, particularly if you're a large public company, and you also want to represent to your workforce that you have diversity as a value, and you want that reflected to your other stakeholders, too, so I think that’s really why. I have been on boards of far more entrepreneurial companies, like [company names omitted], where that kind of concern is not raised because the concerns are so different. They're trying to stay alive, basically. It’s businesses, so diversity is down the line someplace in

\footnote{132 Interview, Transcript No. DS300042, at 18 (May 8, 2008).}
\footnote{133 Interview, Transcript No. DS300056, at 20 (Nov. 14, 2008).}
terms of a value, not that anybody would be precluded, but it just - it doesn’t come up in the same way it does.\textsuperscript{134} Similarly, a white male director characterized board diversity as “not critical,” or, at least, “not the most critical thing,” emphasizing:

It’s an issue that people have on their radar screens, but the question always is, how critical do you think it is to having a well functioning board and an effective governance? And I guess I’d be a little, I guess I’m not totally persuaded that what you do is that you start off and say I’ve got to have three women, one minority, and no more than three white males on my board. Now I’m going to form my board. That is not the way I would have it. And I formed the [company name omitted] board. And what I wanted was certain skills. And the people I looked to seemed to have those skills to a greater degree than any women or minority that I knew that would be interested in serving.\textsuperscript{135}

We cannot overemphasize that these negative comments were outliers, exceptions that prove the rule.

**G. How Deep Is the Commitment to Diversity?**

\textsuperscript{134} Interview, Transcript No. DS30032, at 9-10 (Dec. 19, 2007). A Hispanic female respondent, while overall endorsing the value of board diversity, echoed this sentiment about the relative unimportance of board diversity for firms in crisis. When asked about diversity concerns on one of her prior boards, a company that had experienced severe financial distress, she invoked a lifeboat analogy:

If you could for a moment imagine yourself in a fast flowing river drowning looking for a life boat, you wouldn’t care what color it was and you wouldn’t care who was in the life boat. All you need is a life boat.

\textsuperscript{135} Interview, Transcript Nos. DS300019-21, at 20 (Nov. 7, 2007).

\textsuperscript{134} Interview, Transcript No. DS300022, at 10 (Nov. 29, 2007).
One final narrative of diversity casts doubt on just how deeply people in the corporate world actually think about diversity. We were struck by some respondents’ references to the visual impact of a non-diverse board. Many cited the negative impression that an all-white-male board might leave on outside audiences, invoking visual images of photographs, annual meetings, and the like.

The one respondent (a white male) who rejected outright the notion that race and gender diversity should matter to corporate boards136 contended that the racial and gender composition of the board had a powerful visual impact:

No board wants to show pictures -- and they all want to put it in their annual report or something -- they don’t want all twelve white men. You know? It looks very bad. You want to have a woman in there. You want to have a black in there. It’d be great if you could have a Hispanic in there but there’s just not that pool of talent .137

A highly experienced white female director recalled the annual meeting at a large public company on whose board she had served, noting, “But I think it's that kind of external viewership, and something that’s grassrootsy in the community, too, you know, who’s on the board. I think people do notice.”138

Finally, another white female respondent provided an anecdote that invoked the photographic image of the board and then used ironic humor to emphasize just how problematic the category of diversity can be. In response to a question about the demographic make-up of a particular board, she laughed:

136 See Part IV.B. supra.
137 Interview, Transcript No. DS300014, at 5 (Aug. 30, 2007).
138 Interview, Transcript No. DS300032, at 10 (Dec. 19, 2007) (emphasis added).
Oh, it was so funny. They were all white males. But one day, they had all their pictures in the board book. And the CEO said . . . . look at all that diversity. . . . Catholic from Southern Ireland (laughter), Catholic from Northern Ireland, Protestant from Southern Ireland, Protestant from England (laughter). . . . And, you know, it’s just a different way of counting the world.139

Comments like these, taken in the context of our entire interview corpus, raise questions about how well-thought-out the corporate world’s rhetorical commitment to diversity really is. In concluding our review of the interview data, we give the last word on that subject to a white female director who also has years of experience providing legal advice to corporate boards. The specific topic was why one particular board had sought diversity. Her account suggests that the business world may not have a well-reasoned diversity rationale—in fact, the question of rationale is never even discussed:

Q: When you guys were looking for another director and came up with [a diverse director] and diversity was one but not the only metric [according to the subject], why was that on the list of metrics? What was articulated about what benefit might come to [the company] from having some more diversity in terms of race or gender on the board?

A: I suspect you haven’t gotten many introspective answers on that because, in fact, you’re never going to have a board that will honestly question whether or not there is a value associated with that. And people will accept it and move on. Everybody says the same thing because,

139 Interview, Transcript No., DS300030, at 9 (Dec. 18, 2007).
again, I’m in board rooms a hundred times a year and I hear the same discussion. And what they say is we have skill sets that we want and if we can find a diverse candidate who fulfills them without sacrificing the skill sets that we’re looking for that would be terrific. And the analysis doesn’t go any further. It just isn’t discussed. So anything I tell you about why I think diversity adds value is going to by [my] thoughts not because it was a topic of discussion. [Sentence that identifies company deleted.] So to the extent we’re talking about sort of that wide swath of middle America then it’s nice to have a board that is in some respects emblematic of that but we’ve never discussed it.140

V. CONCLUSION

The literature posits many theories regarding the benefits of board diversity, but the quantitative research is contested and largely indeterminate on whether increased board diversity results in improved corporate performance. This led us to question those in the boardroom about the issue.

What, from their perspective, are the advantages and disadvantages of board diversity? Are American corporations purposely seeking to diversity their boards along race and gender lines and, if so, why? Does board diversity result in tangible benefits and, if so, what? Have they witnessed any negative impacts of board diversity and, if not,

140 Interview, Transcript No. DS300039, at 6 (May 7, 2008).
why hasn’t board diversity advanced beyond the apparent tokenism that seems to characterize many boards?

Our research suggests a strong buy-in among corporate elites to the abstract theory that board diversity results in functional improvements to board or corporate operations – the “business case” for board diversity. As the respondent quoted at the end of the paper said “you’re never going to have a board that will honestly question whether or not there is a value associated with that [diversity]. And people will accept it and move on.”

Perhaps this reluctance to critically examine the benefits and drawbacks of board diversity is because of the dangerousness of the categories associated with diversity – gender, race, and ethnicity. Those not members of the diverse groups do not want to be accused of stereotyping by identifying particular unique contributions of members of the diverse groups, and members of the diverse groups have a vested interest in assuming that they are not tokens, but have been selected based on their own merit.

Nevertheless, when we pressed our respondents we did find a few concrete examples of how contributions of particular diverse board members may have benefitted the corporation. Several women board members advised on ways to improve corporate performance based in part on their empathy with the company’s customers. Similarly, female and African-American board members were credited with positive contributions in improving employee relations, and causing the corporation to focus more deliberately on the diversity of its workforce, as it considered retention, promotion, and succession issues.

141 Supra note 140. Interview, Transcript No. DS300039, at 6 (May 7, 2008).
Perhaps these contributions were cited because as a society we are comfortable with the wide acceptance of the notion that women, as a group, may be more empathetic, and maybe we are more comfortable discussing the importance of diversity in the workforce because of legal restrictions on workplace discrimination. A board member who is attention to this latter issue is performing a traditional board role of overseeing risk management, by helping to ensure that the company is not at risk of an adverse action based on employment discrimination. In the end, however, our respondents offered fewer insights that we had hoped on the business case for board diversity.

As Don Langevoort notes in his commentary to this article, this muddle is surely partly due to the lack of a coherent over-arching explanation for how boards themselves add to firm value. Professor Langevoort suggests that board meetings are “routine and ceremonial . . . with a few minutes set aside for questions and discussion by the board” which may be “intelligent and interesting” but probably have “no effect whosoever in terms of changing anything about how management behaves after the meeting adjourns. If one is looking for the value of diversity in that kind of setting, it won’t be found.” Indeed, we have noted some of the seemingly “trivial” contributions to board discussion that our respondents cited as evidence of the value of diversity. Perhaps these are the best examples respondents can offer because there are so few examples of any particular contribution from a board member.

Further, Professor Langevoort suggests that if the board does need to respond to a significant event, “much of the coalition building that leads the board to take control is done over the phone, in breakfast or dinner meetings, etc. among the key players on the board—what happens later at the formal meeting may announce the result, but certainly
not determine it.”  Langevoort concludes that in this “kind of focused response to pressure, it is unlikely that board members will display much that can clearly be attributed to gender or ethnicity.”  This latter point is consistent with a comment from one of our respondents--a female, Hispanic --who when asked about diversity concerns when she served on the board of a company experiencing deep financial distress said: “If you could for a moment imagine yourself in a fast flowing river drowning looking for a life boat, you wouldn’t care what color it was and you wouldn’t care who was in the life board.  All you need is a life boat.”142  In other words, this crisis demanded action rather than introspection about diverse perspectives.  Another possibility, of course, is that the diverse board members are not invited to be part of the out-of-meeting conversation about how to deal with the crisis being faced by the company.  Although we do not have direct evidence of that, one African-American male told us that he knew that some board members went out in the evening for meals and did not invite him to join them.143

As we conduct additional interviews, we will attempt to explore in more detail how boards contribute to firm value, and whether diverse members participate in discussion with the senior management and other board members outside of scheduled meeting time, particularly in times of stress or crisis.

Professor Langevoort’s observations, however, lead us back to the paradox noted earlier.  That is, if boards by their very nature have such little influence on corporate performance and if there is near universal acknowledgement of the value of diversity on boards, why is there not additional diversity beyond the tokenism found on most boards?

142  *Supra* note 134, Interview, Transcript Nos. DS300019-21, at 20 (Nov. 7, 2007).
143  *Supra* note 76. Interview, Transcript No. DS300070, at 25 (Nov. 25, 2009).