

Pace International Law Review

Volume 26

Issue 1 Spring 2014

Symposium Edition

Article 3

April 2014

A Difficult Conversation: Corporate Directors on Race and Gender

Kimberly D. Krawiec

Duke University

John M. Conley

University of North Carolina School of Law

Lissa L. Broome

University of North Carolina School of Law

Follow this and additional works at: <http://digitalcommons.pace.edu/pilr>

 Part of the [Business Organizations Law Commons](#), [International Law Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Kimberly D. Krawiec, John M. Conley, and Lissa L. Broome, *A Difficult Conversation: Corporate Directors on Race and Gender*, 26 Pace Int'l L. Rev. 13 (2014)

Available at: <http://digitalcommons.pace.edu/pilr/vol26/iss1/3>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace International Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpittson@law.pace.edu.

A DIFFICULT CONVERSATION: CORPORATE DIRECTORS ON RACE AND GENDER

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

I. INTRODUCTION

This symposium essay summarizes our ongoing ethnographic research on corporate board diversity.¹ This research is based on fifty-seven interviews with corporate directors and a limited number of other persons of interest (including institutional investors, executive search professionals, and proxy advisors) regarding their views on race and gender diversity in the boardroom.

Using a method rooted in anthropology and discourse analysis, we have worked from a general topic outline and conducted open-ended interviews in which respondents are encouraged to raise and develop issues of interest to them.² The interviews range from forty-five minutes to two hours in length and each interview is taped and transcribed. As a group, we then listen to each taped interview at least once with transcript in hand, analyzing each interview qualitatively with a focus on the themes that the respondents identify, the emphases given to these themes, the stories (or narratives) that they tell, and the details of the language that they use. We also thematically code the transcripts and use sorting software to get another,

* Kathrine Robinson Everett Professor of Law, Duke University; William Rand Kenan, Jr. Professor, University of North Carolina School of Law; Wells Fargo Professor of Banking Law and Director, Center for Banking and Finance, University of North Carolina School of Law.

¹ See, e.g., Kimberly D. Krawiec et al., *The Danger of Difference: Tensions In Directors' Views Of Corporate Board Diversity*, 2013 U. ILL. L. REV. 919 (2013); Lissa L. Broome et al., *Dangerous Categories: Narratives of Corporate Board Diversity*, 89 N.C. L. REV. 759, 765–66 (2011).

² For a lengthier description of our research methods, see Broome et al., *supra* note 1, at 768–77.

complementary view of the frequency and distribution of the various themes.

As we discuss at length in other published work, there are numerous tensions in directors' accounts of race and gender in the boardroom.³ In this essay, we discuss what we view as the central tension in our respondents' views on corporate board diversity—their overwhelmingly enthusiastic support of board diversity coupled with an inability to articulate coherent accounts of board diversity benefits that might rationalize that enthusiasm.

It is worth noting at the outset that the justifications for board diversity put forward by our respondents fall into the general category of “diversity is good for business.” Most often, our respondents' business justification for board diversity emphasizes changes in the way that the board operates or interacts with each other, or improvements in board processes or decisions. Some respondents, however, also assert that board diversity improves the corporation's dealings with employees and other constituencies, such as shareholders, regulators, or the general public. Respondents only rarely provided ethical, fairness, or other social policy justifications for board diversity and, even then, often also emphasized the business case for board diversity.

II. A DIFFICULT CONVERSATION

Our respondents expressed nearly universal support for board diversity in the abstract. Most respondents found it difficult, however, to articulate clear reasons for that support. For example, many respondents, when pressed for specific accounts that illustrate the benefits of board diversity invoked what we term “trivia”—stories of contributions by female or minority board members that seem far removed from typical board decision-making areas. For example, we heard stories about the restaurant habits of black families,⁴ about women's safety concerns regarding the location of bank ATM machines,⁵ about fe-

³ Broome et al., *supra* note 1.

⁴ See *infra* note 8 and accompanying text.

⁵ Interview, Transcript No. DS300013 (Aug. 30, 2007) (discussing the fact that women care about the placement and lighting of ATM machines for safety reason as an example of the unique perspective a woman might bring to

male diners' preferences for low-calorie foods,⁶ and about the use of gender-neutral language in corporate reports.⁷ Each of these topics seems far removed from the strategic planning and oversight that is presumably the normal stuff of boardroom discussion. All this is information that could have been provided by lower level marketing or consulting professionals.

For example, one African-American male respondent offered the following example of the unique perspective that a minority director might bring to the boardroom:

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.⁸

One white female respondent offered the following account of a unique perspective brought to the boardroom by the female directors:

Q: Do you have any recollections of anything like that where you would say, "Yeah, because there was one or more women on the board we thought about X whereas it might not have been thought of?"

A: I don't know for sure but I think that both [the other female director] and I were somewhat more sensitive about the need to think about some vegetarian options on their menu. . . .⁹

One minority male director shared our skepticism that such mundane conversations could -- or should -- occupy significant board time

A: At least in the restaurant business I'm not so sure that's necessarily true. Yes, you need it at the company level so you can understand tastes and food preferences and things like that. But boards have nothing to do with helping restaurants figure out tastes and food preferences, right?

Q: That's interesting, because I feel like we've gotten some anec-

the boardroom).

⁶ See *infra* note 9 and accompanying text.

⁷ See *infra* note 11 and accompanying text.

⁸ Broome et al., *supra* note 1, at 790 (citing Interview, Transcript No. DS300071 (Dec. 10, 2009)).

⁹ Interview, Transcript No. DS300056 (Nov. 14, 2008).

dotes of that sort, and they surprised me, for that reason. It was sort of—wow, that's a board-level discussion? So in your experience that is not a board-level discussion.

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

Q: Right. Right.

A: Now, I could imagine like a Nike or whatever having some—because you attract spectacular marketing genius-level people to your board, that they might come up with a perspective or strategic perspective that is helpful, right? I could see that. I could see that. But—I could see that. But, boy, is that going to be rare. That shouldn't be a board's job, because it's kind of a once in a blue moon, and it could've just as easily happened because of the comment card you got and the CEO—so I think unless you have an agenda, right, some sort of macro agenda that you want to see implemented through the board level, right, and you think that agenda is going to be more likely to be implemented because of certain kinds of people on the board. The idea that you're improving XYZ because of—I think that's farfetched and I don't think that's really the board's job. That's my sense.¹⁰

Finally, one story from a white female director about the unique perspective she brought to the boardroom as a woman held promise, as the story initially appeared to involve a meaningful change in workplace demographics. Ultimately, however, her woman's perspective led to nothing more than a shift to gender-neutral language in corporate reports:

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 of subject] 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

¹⁰ Interview, Transcript No. DS300081 (Apr. 7, 2011).

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 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].

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.¹¹

Another set of stories focused on more substantial contributions of female and minority directors, yet the contributions were unrelated to race or gender. These narratives praise the abstract value of race or gender diversity. But the ultimate focus turns out to be a particular skill set or background experience, not necessarily connected to the director's race or gender, that proved valuable. Examples we heard included organizational skill gained through high-level military service (an African American male), an engineering background (a white female), and regulatory expertise (an African American female).¹²

Some respondents invoked examples strongly reminiscent of Carol Gilligan's *In a Different Voice*,¹³ arguing that female directors were especially valuable because they are more caring, patient, or motherly than their male counterparts. These respondents often then backtracked, chastising themselves for invoking such clichés. Other respondents insisted that they could not provide specific examples of the benefits of board diversity without essentializing or stereotyping.

To illustrate, a white male respondent elaborated on a common theme among our respondents—the different styles and sympathies of men and women, and women's other-regarding tendencies:

¹¹ Broome et al., *supra* note 1, at 790-91(citing Interview, Transcript No. DS300050 (Oct. 3, 2008)).

¹² Broome et al., *supra* note 1, at 782-84 (discussing these and other examples).

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

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.¹⁴

Yet when asked to elaborate on specific ways in which another director's race led to a different viewpoint in the boardroom, the same subject seemed uncomfortable, contending that such examples would amount to stereotyping:

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.¹⁵

Another respondent, 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 Gilligan—a specifically feminine approach to problem-solving. She backtracked immediately, however, and wondered whether this was more of a legal skill than a gender-based attribute. In another demonstration of the difficulty of such conversations, she characterized her initial suggestion as “really terrible to say”:

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.¹⁶

Another white female respondent also raised the dangers

¹⁴ Broome et al., *supra* note 1, at 781 (citing Interview, Transcript No. DS300045 (August 8, 2008)).

¹⁵ *Id.*

¹⁶ Broome et al., *supra* note 1, at 782 (citing Interview, Transcript No. DS300029 (Dec. 17, 2007)).

of stereotyping in answer to the question of whether the boardroom seemed different with more women in it:

I think so although you're going to ask me about specifics, and I don't know that I can pull one up, but I'm always aware that I'm the only woman -- and I don't think, *I mean I hate to think that I'm the victim of stereotyping my own gender. . . .*¹⁷

Said the same respondent later in the interview:

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

A: *Boy I hate this stereotyping* but I think—because I think there are some white men who would do this too—but I think issues related to human resources and how people in the ranks are feeling and that kind of thing are much more likely to be brought up by a woman.¹⁸

Many respondents simply could not recall any anecdotes or examples to illustrate the professed benefits of board diversity. Some respondents fell silent, while others became angry or frustrated as we pressed for specifics that they could not provide.

One white female director recalled being asked to speak with the women employees of the company. But later, when asked whether she could think of examples when having a woman's perspective on the board mattered or lead to a different decision than if the room had been only men, she replied:

I'm not sure that we've had many issues like that. We've had other issues that have been front and center for us in the last period of time and I'm not sure that that kind of thing has really had an opportunity to come to the forefront. Really nothing comes to mind at this point. I'm sorry.¹⁹

Said another white female director:

I think because of socialization, I don't believe it's biological; most women have different experiences in our culture and bring to it something different. African Americans, Hispanics, Asian Americans—I mean, I think people have different experiences, and they

¹⁷ Krawiec et al, *supra* note 1, at 926 (citing Interview, Transcript No. DS300083 (Aug. 25, 2011)).

¹⁸ Krawiec et al, *supra* note 1, at 929 (citing Interview, Transcript No. DS300083 (Aug. 25, 2011)).

¹⁹ Interview, Transcript No. DS300016 (Sept. 21, 2007).

bring it to the board meeting, and different knowledge.

Q: Can you think of any anecdotes or concrete examples of I, [identifying information], said this, and maybe that was a contribution that I could make that my male counterpart could not make or would be unlikely to make?

A: Well, I don't—I can't think of a bold example.²⁰

As our respondents' reactions make clear, frank dialogue about race and gender -- even a seemingly benign discussion of diversity's benefits -- can be a difficult conversation. Such conversations involve pointing to ways in which people are different because of their race or gender, and that is not a conversation with which most of our respondents—indeed, most people—feel comfortable. Perhaps that is, in part, because advocates for equal workplace opportunities have invested in precisely the opposite argument—that women and minorities are *not* different from white males in ways that matter from a business perspective.

As Don Langevoort has noted, this muddle is likely also due in part to the lack of a coherent, overarching explanation for how boards themselves add to firm value.²¹ Moreover, as Langevoort explains, much of the value added by the board is likely to occur in response to some exogenous crisis and, in any event, outside of the formal boardroom setting.²² If so, then the “real action” of the board will be unobservable by the group and unlikely to display much that is attributable to gender or ethnicity.

Langevoort's description of the relative unimportance of demographic diversity in a board's response to crisis situations is consistent with our respondents' suggestions that attention to board diversity is something of a luxury reserved for good—or at least normal—times. When a company is in crisis mode, fighting for its life, interest in diversity disappears.

Said one minority male director:

A: Companies go through good times, they go through great times and they go through times that are not so good through major transformations. Companies that are in textiles, furniture, [and]

²⁰ Interview, Transcript No. DS300041 (May 7, 2008).

²¹ Donald C. Langevoort, *Commentary: Puzzles About Corporate Boards and Board Diversity*, 89 N.C. L. REV. 841, 842 (2011).

²² *Id.* at 846□47.

tobacco are in major transformations and so I don't think those companies are going to be focused on gender issues or racial issues as much as they are some of the more operational-type issues.²³

A Hispanic female director echoed that sentiment when discussing her time on the board of a company in deep financial distress:

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.²⁴

In other words, while diversity may be good, it seems non-essential to survival.

III. CONCLUSION

In conclusion, perhaps the conversation about race and gender diversity in the boardroom is difficult because it reflects a fear of saying that people of diverse demographic backgrounds are different in some meaningful way. Those who are not members of traditionally unrepresented groups do not want to be seen as stereotyping or essentializing by identifying particular unique attributes of members of those groups.

At the same time, those who are members of the traditionally unrepresented groups have an interest in presenting themselves as being selected for board service because of their professional merit without regard to their gender, race, and ethnicity. Thus, neither group is comfortable discussing potential differences between men and women, between blacks and whites, or between Hispanics and non-Hispanics. As a result, though our respondents assert that diversity matters because female and minority directors bring something "different" to the table, they are uncomfortable with discussing in any detail what those differences are.

However, denying difference may prompt a difficult conversation as well. If there are no relevant differences between women and minorities and white males in the boardroom, then

²³ See Kraweic et al., *supra* note 1, at 930 (citing Interview, Transcript No. DS300081 (Apr. 7, 2011)).

²⁴ See Broome et al., *supra* note 1, at 807 (citing Interview, Transcript No. DS300019-21 (Nov. 7, 2007)).

why are there so few women and minorities on corporate boards?

While conversations about diversity in the boardroom may be fraught with ambiguity, the numbers are not; the corporate boardroom remains an overwhelmingly white, male club.²⁵ Whether or not the representation of women and minorities on boards will increase in the future remains to be seen. Many of our respondents were optimistic that times were changing, but—perhaps not surprisingly—had few concrete predictions regarding when, and how, that change would come.

²⁵ Catalyst, *2012 Catalyst Census: Fortune 500 Women Board Directors*, <http://www.catalyst.org/knowledge/2012-catalyst-census-fortune-500-women-board-directors> (16.6% of Fortune 500 board seats were held by women in 2012); Hispanic Association on Corporate Diversity, *Missing Pieces: Women and Minorities on Fortune 500 Boards, 2012 Alliance for Board Diversity (ABD) Census*, available at http://www.hacr.org/images/2012_ABD_Missing_Pieces_Report.pdf (13.3% of Fortune 500 board seats were held by minorities and 73.3% of Fortune 500 board seats were held by white males in 2012).