SEX, TRUST, AND CORPORATE BOARDS

Joan MacLeod Heminway[1]

Many have indicated, directly or indirectly, that the highly publicized corporate fraud at Enron, WorldCom, HealthSouth, Adelphia, and other public companies represents or reflects a crisis of trust in corporate America.[2] Directors of these corporations trusted their executives and each other, corporate executives trusted each other, and investors trusted both the directors and executives, in each case to their detriment. The result? Distrust of and among corporate constituencies.[3]

The Sarbanes-Oxley Act of 2002, related federal administrative rulemaking and market regulation, and informal corporate governance principles and guidelines all have been constructed as means of addressing this perceived crisis.[4] Among the specific

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[1] Associate Professor, The University of Tennessee College of Law; A.B. 1982, Brown University; J.D. 1985, New York University School of Law. This essay was presented at the 2006 Annual Meeting of the Law and Society Association and at the 2006 Annual Meeting of the Southeastern Association of Law Schools. The author thanks participants in these meetings for their helpful suggestions on this piece. Special thanks are owed to Jayne Barnard in this regard.

[2] *E.g.*, TAMAR FRANKEL, TRUST AND HONESTY 9-24 (2006); andre douglas pond cummings, *"Ain't No Glory in Pain": How the 1994 Republican Revolution and the Private Securities Litigation Reform Act Contributed to the Collapse of the United States Capital Markets*, 83 NEB. L. REV. 979, 1072 (2005) ("The litany of corporate fraud cases has undermined the public trust and generated support for more regulations.").

[3] *See, e.g.*, GfK NOP, Roper Public Affairs, *Trust in American 2005: The TIAA-CREF Report*, Sept. 2005, *available at* http://www.tiaa-cref.org/newsroom/pdf/2005_executive_summary.pdf.

> [S]igns of lack of trust and trustworthiness tend to be self-fulfilling. Once players in a social dilemma game come to believe that their fellows intend to defect, they themselves defect, and distrust prevails . . . .

Margaret M. Blair & Lynn A. Stout, *Trust, Trustworthiness, and the Behavioral Foundations of Corporate Law*, 149 U. PENN L. REV. 1735, 1776 (2001).

[4] *See, e.g.*, Laurie A. Morin, *Broken Trust and Divided Loyalties: The Paradox of Confidentiality in Corporate Representation*, 8 D.C. L. REV. 233, 240 (2004) ("As one story after another hit the press, lawmakers felt compelled to take action to restore public trust and confidence. The resulting legislation, the Sarbanes-Oxley Act of 2002 . . ., enacted sweeping reforms to reign in the corporate excesses exemplified by Enron." (footnote omitted)); Larry E. Ribstein, *Bubble Laws*, 40 HOUS. L. REV. 77, 86-90 (2003) (describing the regulatory reaction to the corporate fraud at the turn of the century); Larry E. Ribstein, *Market vs. Regulatory Responses to Corporate Fraud: A Critique of the Sarbanes-Oxley Act of 2002*, 28 IOWA J. CORP. L. 1 (2002) (describing both perceived problems involving trust and honesty and the regulatory and nonregulatory reforms); Tom D. Snyder, Jr., *A Requiem for Client Confidentiality?: An*

corporate governance reforms introduced in these initiatives are directives and suggestions relating to board composition. These reforms especially focus attention on the need for, and the role of, independent directors on public company boards of directors and board committees.[5] "Independence" is defined for these purposes in a narrow manner to include a lack of financial and other formal ties with the corporation outside the board room.[6] Independent directors commonly are perceived as being less automatically trusting of corporate management and incumbents. Moreover, independent directors may be perceived as more trustworthy than their insider counterparts. However, scholars are, at best, mixed in their assessments of the value of this limited form of independence in fully resolving the crisis of trust represented by the corporate fraud scandals of the late 20th and early 21st Century.[7]

Attributes other than this narrowly conceived variety of independence may be important in addressing perceived lapses of trust through the mechanic of the corporate board.[8] The possibility exists, for example, that sex—male or female status[9]—may be an

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Examination of Recent Foreign and Domestic Events and their Impact on the Attorney-Client Privilege, 50 LOY. L. REV. 439, 452 (2004) ("The Public Company Accounting Reform and Investor Protection Act of 2002, also referred to as the 'Sarbanes-Oxley Act,' was enacted, in part, to help restore trust in the U.S. financial markets").

[5] 15 U.S.C. § 78j-1(m)(3) (Supp. 2003); New York Stock Exchange Listed Company Manual § 303A (November 3, 2004), *available at* http://www.nyse.com/pdfs/section303Afinalrules.pdf; The NASDAQ Stock Market Inc., Corporate Governance, Rules 4200, 4200A, 4350, 4350A, 4351 & 4360 and Associated Interpretive Material (April 15, 2004), *available at* http://www.nasdaq.com/about/CorporateGovernance.pdf; American Stock Exchange Enhanced Corporate Governance Rules Approved by the Securities and Exchange Commission December 1, 2003, *available at* http://www.amex.com/?href=/atamex/news/amCorGov.htm; *see* Erica Beecher-Monas, Diversity in the Boardroom: Have You Come a Long Way, Baby? 1-2 (unpublished paper, on file with author); Ribstein, *Market*, *supra* note 4, at 11-12.

[6] Beecher-Monas, *supra* note 5, at 2, 6. *See also*, *e.g.*, Lisa M. Fairfax, *Sarbanes-Oxley, Corporate Federalism, and the Declining Significance of Federal Reforms on State Director Independence Standards*, 31 OHIO N.U.L. REV. 381, 389 (2005) ("Sarbanes-Oxley narrowly defines independence with respect to compensation and a director's affiliation with the company.").

[7] *Id.* at 4-5.

[8] A noted Delaware Chancery Court jurist intimates this in a 2002 article.

> Assuming that there are such things as truly "independent" directors, when and to what extent are we willing to trust their judgment? Is there some basis to believe that we should defer (i.e., give

attribute to consider when looking at restoring trust in and within the corporation. To explore this possibility, this essay first summarizes recent scholarly works on sex and trust, focusing most closely on three studies of populations within the United States,[10] then makes observations and suggestions about the impact of these works on overall corporate decision making, and finally draws conclusions about board composition based on those observations and suggestions.

I. RESEARCH ON GENDERED TRUST

Trust is a significant area for psychological study, in general and across cultural and gender-based lines.[11] This is not surprising. Trust significantly impacts and reflects economic and social interactions in a cultural context. A lack of trust can have serious deleterious effects on society.[12] Scholars have begun to explore the extent to which trust may be gendered. This part describes key elements of those scholarly explorations.

> business judgment rule deference) to decisions made by a board comprised of a majority of independent directors, but not those made by a board minority? Do we believe that deference should only be given if the independent directors are empowered to act on their own, with the active advice of financial and legal advisors, and without participation and involvement by insiders?
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> These issues raise interesting psychological and sociological questions. What are the motivations that drive most directors? Are independent directors likely to behave in a more trustworthy and effective manner when they are in the majority? Or specifically charged as a separate committee to act only for the minority?

Leo E. Strine, Jr., *The Inescapably Empirical Foundation of the Common Law of Corporations*, 27 DEL. J. CORP. L. 499, 505 (2002).

[9] The word "gender" (together with derivatives of that word), which is based on social construction, sometimes is used in lieu of the more strictly biologically referential term "sex" (or its derivative forms) in this essay.

[10] Some of the referenced supporting studies test populations outside the United States in addition to or instead of populations inside the United States. Because of cultural differences in trust behaviors, the author has not relied on the findings of these studies in drawing her conclusions in this essay about U.S. corporate directors.

[11] *See* Nava Ashraf at al., Is Trust a Bad Investment? 7 (Nov. 2003), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=478881; William M. Maddux & Marilynn B. Brewer, *Gender Differences in the Relational and Collective Bases for Trust*, 8 GROUP PROC'S & INTERGROUP REL'NS 161 (2005).

[12] *See* Kessely Hong & Iris Bohnet, Status and Distrust: The Relevance of Inequality and Betrayal Aversion 2 (Sept. 2004), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=600642.

A. Sex and Trusting[13]

Trust, although variously defined in the literature,[14] exposes the trusting person to vulnerability.[15] Both men and women manifest trusting behavior in their relationships with others. Research tends to indicate, to varying extents, that men and women exhibit trusting behaviors equally.[16] However, scholarly work in this area continues to be refined and expanded. Studies of sex and trust now are more nuanced, and the outcomes and interpretations of these studies therefore have become increasingly valuable.[17]

For example, a recent study (the "Maddux & Brewer study") indicates that men and women may differ in the bases for their trusting behavior.[18] Specifically, the Maddux & Brewer study indicates that men base their trust in others most prominently on shared group status (collective trust), while women base their trust in others on *both* shared group status *and* the existence of personal relationships (relational trust). This research follows on earlier work identifying two forms of "self"—collective and

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[13] So as to avoid confusion over the use of the word "trust," the author uses the term "trusting" to evidence a person's trust in another and "trustworthiness" to signify a person's capacity to engender the trust of others. The concept of "trust" encompasses both.

[14] *See* Blair & Stout, *supra* note 3, at 1745 n.16; Christopher R. Leslie, *Trust, Distrust, and Antitrust*, 82 TEX. L. REV. 515, 529-32 (2004); Susan P. Shapiro, *The Social Control of Impersonal Trust,* 93 AMER. J. OF SOCIOLOGY 623, 625-26 (1987).

[15] Ashraf et al., *supra* note 11, at 2; Hong & Bohnet, *supra* note 12, at 3-11. "We describe trust as a willingness to make oneself vulnerable to another . . . ." Blair & Stout, *supra* note 3, at 1739-40; *id.* at 1746.

[16] *See* Rachel Croson & Nancy Buchan, *Gender and Culture: International Experimental Evidence from Trust Games*, 89 AMER. ECON. REV. 386, 389-90 (May, 1999); Hong & Bohnet, *supra* note 12, at 24; Jana Vyrastekova & Sander Onderstal, The trust game behind the veil of ignorance: A note on gender differences 3-4, 11 (Aug. 2005), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=807724. Some studies find that men are more trusting than women or that women are more trusting than men. *See* Hong & Bohnet, *supra* note 12, at 24; Alessandro Innocenti & Maria Grazia Pazienza, Altruism and Gender in the Trust Game 2-3, 11-12 (May 2006), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=884378.

[17] Many of the empirical studies referenced in this essay use "trust games" as their principal tool. These tests admittedly may be limited in predictive value because of test parameters involving the sample. For example, most trust games are run in university research settings, so the subjects are students. Test subjects that have retired from the work force also are becoming more common. However, studies involving trust games using working middle class subjects, which may be the most relevant population for purposes of gauging director behaviors, are rare.

[18] Maddux & Brewer, *supra* note 11, at 159-71.

relational—that correlate with gender. The Maddux & Brewer study extends that earlier work further into the area of interdependent relationships by focusing on depersonalized trust.[19]

The Maddux & Brewer study involves the online decisions of 147 students at The Ohio State University.[20] Specifically, the students were asked to choose between receipt of a fixed financial payment ($3) from the researchers and receipt of an unfixed share of a larger amount ($11) from—and as allocated by—an unknown person. Each student was given this option three independent times. The difference in each case was the limited information given to the decisionmaker about the unknown allocator. In one trial, the allocator was described as another student at The Ohio State University. In another, the allocator was described as a student from another university at which the decisionmaker has an acquaintance (as indicated by previous responses to survey questions. As a third trial option, the allocator was described as a student from another university at which the decisionmaker has no acquaintance. The three trials were randomly ordered for each participant.

Confirming prior research,[21] men and women did not differ in the extent to which they chose the unknown allocation over the fixed payment.[22] Moreover, both men and

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[19] *Id.* at 159-61.

[20] The discussion in this paragraph is derived from the text *id.* at 163-65.

[21] *See supra* note 16 and accompanying text.

[22] Although Maddux and Brewer hypothesized that men would choose the fixed payment over the unknown allocation more often than women (which proved *not* to be the case), Maddux and Brewer theorize that male risk-taking preferences may have offset the expected result. Maddux & Brewer, *supra* note 18, at 168. Another set of researchers offers the same and other explanations for similar results in other studies, Vyrastekova & Onderstal, *supra* note 16 at 4, although not all research corroborates the existence of gender-related risk preferences. *See* Renée B. Adams & Daniel Ferreira, Gender Diversity in the Boardroom 11-12 (Aug. 2004), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=594506. The design and findings of studies indicating that men sometimes trust more than women may provide other answers. *See supra* note 16 and accompanying text. Moreover, it is interesting to note that a cross-cultural study found that a woman's decision whether to trust also may have a different basis than a man's decision whether to trust. Ashraf et al., *supra* note 11, at 24, 30 ("We find that women are motivated

women trusted the student from their own university about equally. However, women trusted the student from another university at which they had an acquaintance significantly more often than men did. From these outcomes, Maddux and Brewer conclude that "cross-group relationships had a greater impact on trust for women, while the categorical distinction between ingroup and outgroup was more important for men."[23]

B. Sex and Trustworthiness

Trustworthiness is variously defined and construed in the literature.[24] The term often has been seen as exclusively or primarily related to trusting behavior as a reciprocal trait.[25] (In other words, one trusts another who one believes to be trustworthy, and one who is trustworthy receives trust from another.) However, many scholars now believe that both trust and trustworthiness may be at least somewhat independently motivated.[26] Research has begun to bear out this belief; trustworthiness may, but need not, be correlated with trusting behavior.[27] Accordingly, this essay treats the concepts of trust and trustworthiness as conceptually, but not necessarily or always practically, linked.

Many scholars have focused on other-regarding preferences[28] (such as unconditional kindness[29] or altruism[30]) and risk-aversion[31] as determinants of

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differently than men when deciding about whether to trust or not, independent of their race or the country of origin: They trust conditional on their expectations of return.").

[23] *Id.* at 168.

[24] For a taste of this variety and related interpretations of trusting behavior, see Innocenti & Pazienza, *supra* note 16, at 1-5. "[T]rustworthiness . . . [may be seen as] an unwillingness to exploit a trusting person's vulnerability even when external rewards favor doing so." Blair & Stout, *supra* note 3, at 1740.

[25] *See* Ashraf et al, *supra* note 11, at 2; Innocenti & Pazienza, *supra* note 16, at 3-4.

[26] *See*, *e.g.*, Ashraf et al, *supra* note 11, at 2; Innocenti & Pazienza, *supra* note 16, at 3.

[27] Ashraf et al., *supra* note 11, at 2-5; Innocenti & Pazienza, *supra* note 16, at 13-14.

[28] In general these are decisions that take into account or otherwise involve other people.

[29] Unconditional kindness here means the derivation of personal satisfaction by benefiting others. *See* Asraf, *supra* note 11, at 2.

[30] Although researchers do not tend to define this term in their work, we may assume that they are referencing "unselfish regard for or devotion to the welfare of others." MIRIAM-WEBSTER'S COLLEGIATE DICTIONARY 37 (11th ed. 2005).

trustworthiness. Assessments of trustworthiness based on other-regarding preferences tend to be based on norms that

> are defined as valuations - internal to the strategic situation - of a certain choice. Women would tend to interpret the economic exchange more communally and empathically and thus to repay trust with trustworthiness in return more than men. Female behaviour would exhibit more trustworthiness because women's preferences are more other-regarding than men's.[32]

Risk-aversion derives meaning from behavioral economics[33] and is a self-protective, and therefore self-interested, behavior.[34] Although other-regardedness and risk-aversion are the focus of the trustworthiness observations made in this essay, trustworthiness also can be explained by other attributes of trust relationships,[35] including inequity aversion,[36] betrayal aversion,[37] and warm-glow kindness.[38] Significant ongoing work is being undertaken to better identify and define the bases for trustworthiness.

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[31] This term describes "a net effect—a person's willingness to accept the gamble of trust [that] depends on the costs she [a trustor] incurs if the worst possible outcome is realized and the benefits she derives from receiving the best possible outcome." Hong & Bohnet, *supra* note 12, at 5.
[32] Innocenti & Pazienza, *supra* note 16, at 5.
[33] As one group of researchers notes,

> Risk aversion plays a central role in economic theory. It helps us understand why individuals insure and save, why investors do not place all their eggs in the basket offering the highest expected payoff, and why entrepreneurs earn a generous premium. But risk aversion alone may not account for people's willingness to take risk when the chance event is the action of other people rather than nature, for then additional considerations may enter.

Bohnet et al., Betrayal Aversion on Four Continents 2 (Feb. 2006), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=902370.
[34] The perceived risks may include risks of legal or market sanctions. *See* Blair & Stout, *supra* note 3, at 1747-50.
[35] *E.g.*, Ashraf, *supra* note 11, at 2-3; Hong & Bohnet, *supra* note 12, at 4-7; Innocenti & Pazienza, *supra* note 16, at 1, 13-14.
[36] "Inequity aversion," also known as "inequality aversion," references a person's strength of preference against being treated unequally by another and contrasts with the self-interest generally assumed by economic rationalists. *See* Avner Shaked, The Rhetoric of Inequity Aversion 4 (Mar. 2005), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=675227. One researcher explains inequity aversion by way of an example: "a player feels guilty when his material payoff is above others' payoffs, while he feels envious when his material payoff is below others'. In other words, he dislikes either being ahead or being behind." Hideshi Itoh, Moral Hazard and Other-Regarding Preferences 3 (Sept. 2003), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=454500.
[37] "Betrayal aversion" represents a person's strength of preference against another's deceit or disloyalty. Iris Bohnet et al., The Elasticity of Trust: Evidence from Kuwait, Oman, Switzerland, the United Arab Emirates and the United States 13 (July 2005), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=779484 ("a hesitancy to take on a trust risk because the

In general, the literature fairly consistently indicates that women are more trustworthy than men in a variety of test situations.[39] Current studies provide additional evidence of this and other sex-based differences in trustworthiness.[40] For example, in a number of trust-based and other studies, women test as more altruistic and more risk-averse or risk-perceptive than men.[41] (It should be noted here, however, that the trustor's *perception* of the trustee's altruism or risk-aversion may be more important than the *reality*.[42]) These sex-based differentiations, when compared to a relative lack of sex differentiation in trusting behavior, reinforce the possibility of different (but potentially overlapping) motivators or biological, social, or psychological markers for trust and trustworthiness.

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agent may not be trustworthy."). "Betrayal aversion comes into play when the agent of uncertainty is another person rather than nature. That is, people may be more averse to being betrayed by another person than to losing in a gamble." Bohnet et al., *supra*, at 11.

> Be you Shamus or Shakespeare, betrayal is a central theme of human behavior. Whether in the modern era or the ancient world, agents at times betray their principals. The executives of Enron and Tyco betrayed their shareholders, and Cassius betrayed Caesar. The implications of our strong findings on betrayal aversion are that shareholders would prefer a 1% chance of losing half their value due to a natural catastrophe than an equivalent chance and loss due to the malfeasance of corporate leaders; similarly, that political leaders would rather risk a 1% chance of being killed by accident than by a subordinate. Betrayal costs are real and significant, and thus require attention in our understanding of decision-making.

Bohnet et al, *supra* note 31, at 14.

[38] "Warm-glow kindness," as a basis for trustworthiness, has been described as "psychological benefits that an individual derives from being kind to others." Ashraf, *supra* note 11, at 3.

[39] *See*, *e.g.*, Crosan & Buchan, *supra* note 16, at 390; Innocenti & Pazienza, *supra* note 16, at 3-4; Vyrastekova & Onderstal, *supra* note 16 at 2-3.

[40] Innocenti & Pazienza, *supra* note 16, at 11; Vyrastekova & Onderstal, *supra* note 16, at 11-12.

[41] *See*, *e.g.*, Gary Charness & Uri Gneezy, Gender Differences in Financial Risk-taking 14 (Dec. 2004), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=648735 ("In *every* study that uses these simple investment choices, women make smaller investments than do men, and so appear to be financially more risk averse."); Innocenti & Pazienza, *supra* note 16, at 14 (asserting that women are more altruistic than men); Dan M. Kahan et al., Gender, Race, and Risk Perception: The Influence of Cultural Status Anxiety 1-3 (Apr. 2005), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=723762 (describing research indicating that women are more risk-perceptive than men); Alexandra Niessen & Stefan Ruenzi, Sex Matters: Gender and Mutual Funds 3 (Mar. 2006), *available at* http://www.cfr-cologne.de/downloads/workingpaper/cfr-06-01.pdf, (finding that female mutual fund managers invest in "moderately less risky portfolios," "follow less extreme investment styles," and have lower turnover ratios); *id.* at 5-6 (citing to other research on gender-based risk-aversion and distinguishing the risk-aversion of female non-managers from that of female managers).

[42] *Cf.* Charness & Gneezy, *supra* note 41, at 1.

A psychological study reported in the late 1990s (the "Collins study") profiling women's psychological and biographical attributes supports the view that women have identifiable traits that may make them well suited to positions of trust and security.[43] Most importantly, the Collins study provides new profiling information about female white collar criminals.[44] The Collins study indicates that (a) women may commit white collar crimes for reasons that are different from those motivating men[45] and (b) women who commit white collar crimes have definable psychological traits that can be tested and vetted before they are called to corporate service.[46] Among other things, these differences and traits indicate other-regarding preferences consistent with the results of prior and subsequent research on trustworthiness.[47]

The Collins study analyzes the output from inventories administered to 243 women, 71 of whom were imprisoned for white-collar crimes and 172 of whom were high-level corporate administrators and managers.[48] These inventories measured various psychological and biographical variables, including socialization (compliance with social norms), self-control, empathy, responsibility, socioeconomic status, leadership activity, social involvement, parental relationship, sibling rivalry, and social dominance. The results of these inventories then were tabulated and assessed using statistical analyses.

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[43] Judith M. Collins & Michael D. Collins, Integrity in the Corporate Suite: Predictors of Female Fraud 7-25 (Nov. 1999), *available at* http://www.internationalmta.org/Documents/1999/Proceedings1999.pdf.
[44] Female offenders, in general are an understudied population about which reliable data and analyses are just emerging. *See* Michelle S. Jacobs, *Loyalty's Reward -- A Felony Conviction: Recent Prosecutions of High-Status Female Offenders*, 33 FORDHAM URB. L.J. 843, 848 (2006). This is particularly true in the area of white collar crime, where data is relatively scarce. NEAL SHOVER & ANDY HOCHSTETLER, CHOOSING WHITE COLLAR CRIME xv (2005) ("[T]he data available to investigators of white-collar crime pale in quality and comprehensiveness beside data available on street crime.").
[45] Collins & Collins, *supra* note 43, at 20-21.
[46] *Id.* at 21-22.
[47] *See supra* notes 29-32 and accompanying text.
[48] Except as otherwise noted, the description in this paragraph is derived from the text *supra* note 43, at 13-14.

Interviews also were conducted.[49] Among the findings are two key observations relevant to trustworthiness: female white collar criminals report criminal behavior that can be described as other-regarding in an altruistic sense; and female white collar criminals are empathetic.[50]

1. Female White Collar Criminals are Other-Regarding

Women in the Collins study who committed white collar crimes typically did so not to benefit themselves, but to benefit others.[51] Moreover, each of these female offenders, to a one, expressed remorse for her crime.[52] Although the Collins study does not involve a direct comparison of the attributes of female and male offenders, the researchers note that this female white collar offender profile is quite different from that for male offenders.[53] It is significant to note that the other-regardedness exhibited by the female white collar criminals in the study was directed toward constituencies outside the corporation (i.e., toward family members, rather than toward shareholders or other corporate constituencies).[54] Collins and Collins suggest that more work is needed to test sex-based differences in white collar offenders.[55]

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[49] *Id.* at 21.

[50] A recent law review article submits that loyalty to a male wrongdoer may play a role in white collar crime offenses committed by women at high levels in corporate America. Jacobs, *supra* note 44, at 874-75. This thesis provides an interesting, and consistent, corollary to the Collins study findings.

[51] Collins & Collins, *supra* note 43, at 21. One cannot help but contrast, from our vantage point in 2006, Martha Stewart's 2004 criminal conviction for obstruction of justice and false statements (which was based on actions taken by Stewart assertedly for her own benefit) with the convictions of the subject women offenders in the Collins study in this regard. *See* Jacobs, *supra* note 44, at 863-64.

[52] Collins & Collins, *supra* note 43, at 21.

[53] *Id.*

[54] *Id.* ("The structured interviews revealed a common theme for the commission of the crimes: husbands, parents, or children were in financial trouble. Several females said they committed the fraud because of health care and other problems for either parents or family.").

[55] Collins & Collins, *supra* note 43, at 21-22. Among other things, the authors note that the subjects of the study may not have responded honestly to the survey instrument. *Id.* at 21.

2. Female White Collar Criminals Exhibit Empathy

The Collins study also finds that certain distinct personality and biographical characteristics exist for female white collar offenders and female non-offender corporate executives. The researchers note that several of their findings relating to female offenders (notably, those regarding self-control and empathy) both deviate from the results reported in then existing literature focusing on male offenders and support a sex-based distinction in the profiling of white collar criminals.[56]

Especially important among these results is the finding that *both* female white collar criminals *and* female executives are empathetic.[57] (Previous research indicates that male offenders lack empathy.[58]) As previously noted, empathy is a possible source of trustworthiness.[59] The empathy manifested by female white collar criminals may lead others to deem them trustworthy, even in circumstances where that trustworthiness may not be warranted (based on other psychological and biographical traits of the woman).[60]

3. Bottom Line on Sex and Trustworthiness

Based on the foregoing and other related findings in the Collins study, the researchers express their view that, among other things, the results of their study provide employers with information that is useful in promoting and conducting the psychological and biographical testing of women to better ensure their suitability in positions of trust and security.[61] The traits predicting trustworthiness in female executives may be different from those predicting trustworthiness in male executives. Said another way,

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[56] *Id.* at 21-22.
[57] *Id.* at 21.
[58] *Id.*
[59] Specifically, empathy is an other-regarding trait associated with altruism. *See supra* notes 28-30 & 32.
[60] *See supra* note 32 and accompanying text.
[61] *Id.* at 22.

women and men may be untrustworthy for different reasons. In particular, although other-regarding preferences (including empathy) generally are labeled as determinants of trustworthiness, when taken alone, they may not be accurate indicators of trustworthiness in women.

C. Sex and the Overall Trust Relationship

If women generally test as more trustworthy than men and exhibit and can be tested for traits that would indicate trustworthiness, then why are there so few women in the corporate executive ranks and on public company boards of directors?[62] Of course, historical influences favoring homogeneous corporate boards persist.[63] Moreover, the pool of talent from which corporate directors typically are chosen includes few women.[64] Also, education of the relevant populations (corporate directors, in principle part) as to the positive attributes of female directors (identified in an emerging scholarly literature) likely has not occurred to the extent necessary to make an impact. However, the possibility also exists that there is a bias against women corporate leaders.[65] That bias is being observed and documented in current research.

A recent study (the "Bigelow & McLean Parks study") provides evidence that investors do not trust female corporate leaders.[66] Specifically, the Bigelow & McLean Parks study concludes that, despite evidence of the success of women in the corporate

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[62] Professor Lisa M. Fairfax summarizes the progress of women and people of color on corporate boards of directors in her articles entitled: *Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to their Advancement*, 65 MD. L. REV. 579, 581-89 (2006) [hereinafter *Mixed Data*], and *Some Reflections on the Diversity of Corporate Boards: Women, People of Color, and the Unique Issues Associated with Women of Color*, 79 ST. JOHN'S L. REV. 1105 (2005) [hereinafter *Reflections*].
[63] *See* Beecher-Monas, supra note 5, at 13.
[64] *See* Fairfax, *Mixed Data*, supra note 62, at 599-601 (2006); Fairfax, *Reflections*, *supra* note 62, at 1112-13.
[65] Fairfax, *Mixed Data*, *supra* note 62, at 601-02.
[66] Lyda S. Bigelow & Judi McLean Parks, Skirting the Issues: A "Green Ceiling" for Female Entrepreneurs (unpublished paper, on file with author).

environment, prospective investors in an initial public offering ("IPO") are willing to invest more in a corporation that has a male Chief Executive Officer ("CEO")[67]—and they also are willing to compensate that male CEO better than they would compensate a woman with the *exact* same qualifications for service in that *exact* same role![68]

The Bigelow & McLean Parks study involved a survey conducted with 222 students in a Masters in Business Administration program.[69] Participants were given background reading materials, including a variety of investment information, relating to the IPO of a fictitious corporation and were asked to respond to a survey regarding the CEO and the senior management team (referred to in the study as the "top management team" or "TMT"). Among the background reading materials was a summary of the qualifications of the CEO and other senior executives of the corporation. In materials given to certain of the test subjects, the CEO and some or all of the depicted management members were female, and in others, the CEO and some or all of the TMT were male.[70] In each case, the gender of the executives was indicated using photographs and gendered names. These sex differences were the only variables in the background reading materials; financial factors relating to the fictitious corporation, for example, were not altered in the materials.[71] The study tested a variety of reactions based on both the sex of the CEO and the sex distribution of the senior management team.

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[67] *Id.* at 24.
[68] *Id.* at 25.
[69] Except as otherwise noted, the summary in this paragraph is derived from the text *id.* at 18-19.
[70] Sex distributions within the TMT varied from homogeneous (all one sex), to skewed (85%/15%), to tilted (65%/35%), to balanced (50%/50%). *Id.* at 19.
[71] *Id.* at 30 & 31. To enhance the realism of the investment information offered to participants, the researchers used the financial statements from a real IPO in their test materials. *Id.* at 31.

The sex of the CEO was significant over all tested areas, including assessments related to the senior management team.[72] In each case, participant evaluations of the CEO and the management team were less favorable when the CEO was female. Among other things, the participants: would invest almost three times as much in the male CEO-led corporation;[73] more positively evaluated the skills of the male CEO than those of the female CEO;[74] allotted the female CEO only 86% of the compensation allotted to the male CEO;[75] and judged the management team more favorably when it was led by the male CEO.[76] "That gender stereotypes had such a significant impact on the amount that naïve investors were willing to invest; on the perceived qualification of the CEO, qualifications that were identical in every way; and, through the CEO, on perceptions of the TMT process, is more than a little troubling."[77]

Interestingly, the demographic mix of the senior management team did not test as significant to the participant investors. Participants did not isolate significant differences in strategic assessments, capabilities, or processes based on the sex composition of the

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[72] Bigelow and McLean Parks summarize the results in this regard as follows:

> Based on our data, we find that the sex of the CEO is the only salient evaluative component of the top management team to naïve investors. Our sample suggests that the market does not "see" sex as a predictor of potentially better performance (and, of course, once they do, the market will accommodate it in pricing, and the effect will disappear). Disconcertingly, they do pick up on sex as a marker, but their stereotypes overwhelm their interpretation of the marker, potentially causing them to make poor decisions.

Id. at 28.

[73] *Id.* at 24.

[74] *Id.* at 23-24.

[75] *Id.* at 25.

[76] *Id.* at 23-24.

[77] This conclusion and the related findings in the Bigelow & McLean Parks study are similar to the conclusion and findings of another recent study involving sex differences in mutual fund managers. *See* Niessen & Ruenzi, *supra* note 41, at 3-4 (noting that inflows to female-managed mutual funds are lower than those to male-managed funds, despite (a) the lack of a significant difference in average portfolio performance and (b) more persistent performance of female-managed portfolios, and attributing these findings to "stereotyping of fund investors who for some reason believe male managers do a better job in managing money").

overall management team (apart from the female CEO factor earlier noted).[78] These findings regarding the sex composition of management teams are, indeed, quite surprising when compared to the results regarding the sex of the CEO. However, Bigelow and McLean Parks caution that their manipulation of the demographics of the board may have unintentionally affected these results.[79]

II. SEX, TRUST, AND CORPORATE DECISION MAKING

The relationship of existing, general research relating to sex and trust to corporate decision making is not clear or conclusive. Moreover, trust games, inventories, interviews, and other testing devices represented in the literature are admittedly imperfect tools for measuring and classifying trusting behavior and trustworthiness, and study design or implementation in individual cases may be less than optimal.[80] For these reasons, one must be cautious about extrapolating too much from the few gender-based studies regarding trust that are summarized and cited to in Part I of this essay. However, even from this imperfect knowledge base, certain limited, preliminary observations and suggestions may be made. These observations and suggestions emanate from interpretations of the study results on sex and trust in light of existing empirical and theoretical corporate governance scholarship.

In general, existing trust research tells us that both men and women are trusting, and both men and women may be trustworthy. These general conclusions are important

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[78] Bigelow & McLean Parks, *supra* note 66, at 23.
[79] *Id.* at 29.
[80] *See*, *e.g.*, Blair & Stout, *supra* note 3, at 1777-78; *supra* note 79. In particular, it should be noted that the Maddux & Brewer study and the Bigelow & McLean Parks study involve student test subjects, which may limit the applicability of the results of these studies to other populations. Moreover, the Collins study involves self-reported traits and behaviors, which may give rise to nonobjective, inaccurate, or otherwise faulty data. *See* Collins & Collins, *supra* note 43, at 21. Finally, the Collins study does not differentiate among female white collar offenders by corporate position or crime, which may limit the applicability of its results in this context. *See* Jacobs, *supra* note 44, at 849-50.

in relation to corporate decision making. Trust—both trusting behavior and trustworthiness—is essential to the effective operation of the corporation in general[81] and the constitution and operation of a corporate board and corporate management in particular.[82] Trust is at the heart of the fiduciary relationships that characterize corporate governance and comprise the corporation.[83] Moreover, without trust, consensus would be difficult to achieve and decision making would be inefficient.[84] However, trust also has a negative side. Trust may be misplaced, both *by* board members or executives and *on* board members or executives.

Gender differences in the bases for trusting behavior are not apparently value-laden in a general sense; women are not necessarily better or less well suited to being directors or executives than men based on existing research on trusting behavior. Neither collective nor relational trust is *superior to* the other, taken in the abstract. They are merely different rationales for trusting. However, taken in a particular context, one form of trusting behavior may be implicated where another may not. Based on these

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[81] Blair & Stout, *supra* note 3, at 1757-58.
[82] *See*, *e.g.*, *id.* at 1738.
[83] *Cf. id.* at 1743-44.
[84] *See* FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 152-54, 341-42 (1995) (outlining reductions in transaction costs and other efficiencies occasioned by trusting behaviors in business); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 812-13 (2001) (exploring effects on board productivity of mistrust and trust between corporate boards and chief executive officers). *See also* Leslie, *supra* note 14, at 532-33 (describing the general relationship between trust and cooperative behavior).

> Where trust can be harnessed, it can substantially reduce the inefficiencies associated with both agency and team production relationships. Trust permits transactions to go forward on the basis of a handshake rather than a complex formal contract; it reduces the need to expend resources on constant monitoring of employees and business partners; and it avoids the uncertainty and expense associated with trying to enforce formal and informal agreements in the courts. Trust behavior also reduces losses from others' undetectable or unpunishable opportunistic behavior, losses that could discourage the formation of valuable agency and team production relationships in the first place.

Blair & Stout, *supra* note 3, at 1757.

observations, how, then, might collective and relational trust impact corporate decision making?

For one, if male or female board members view themselves as being in the same "group" as corporate management, they may be more likely to trust management, even where management is being dishonest or misleading. The same may be said of women who have relational connections with corporate management. Similarly, male or female directors or executives who view other individuals on the board or management team, respectively, as members of their "group"[85] may be more likely to trust the consensus of that group and engage in "groupthink"[86] or other herding behaviors[87] in their collective decision making that may be detrimental to the corporation and its shareholders. Similarly, female directors or executives with personal relationships connecting them to other directors or executives, respectively, may be more likely to trust those others in their collective decision making, even when that trust proves detrimental to the corporation and its shareholders. Either basis for trusting behavior, collective or relational, when unchecked by independent thought and inquiry, may lead to suboptimal monitoring and management. Facts and circumstances relating to each individual corporate director and executive and each distinctive set of corporate directors and executives determine whether, and if so, which, type of trust may operate. These facts

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85 There is evidence that board tenure is positively related to group status among board members. *See* Langevoort, *supra* note 84, at 811 ("[O]nce on the board, social ties build so that, as Cox and Munsinger demonstrated in their study of board structural bias, those members committed to the group gradually develop a sense of 'in-group' bias that colors how they evaluate claims by others (such as derivative lawsuits brought by shareholders) that threaten one or more group members.").

86 *See* Langevoort, *supra* note 84, at 810 ("That phrase, invented by Irving Janis, refers to the tendency of cohesive groups implicitly (indeed, subconsciously) to censor nonpreferred points of view and any information inconsistent with what is preferred." (footnote omitted)); *see also* Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1238-39 (2003).

87 *See* Stephen M. Bainbridge, *Why A Board? Group Decisionmaking in Corporate Governance*, 55 VAND. L. REV. 1, 27-29 (2002); Beecher-Monas, *supra* note 5, at 11; Reza Dibadj, *Reconceiving the Firm*, 26 CARDOZO L. REV. 1459, 1490-91 (2005); A. Mechele Dickerson, *A Behavioral Approach to Analyzing Corporate Failures*, 38 WAKE FOREST L. REV. 1, 28 (2003).

and circumstances necessarily will be fluid as board and management team membership and individual director and executive knowledge and experience change over time.[88]

The coexistence of both forms of trusting behavior—collective and relational—on corporate boards of directors and management teams, however, may create the opportunity and need for independent thought and inquiry. In a cooperative decisionmaking environment, where one board member is willing to trust an officer of the corporation or a fellow board member and another is not, decision making logically will require more reflection and deliberation than where all agree to trust. This reflection and deliberation improves the decisionmaking process and is likely to generate a more well-considered decisional output.[89] Therefore, the very fact that board members and managers trust differently therefore may be beneficial to corporate decision making. This

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[88] It is important to note that these effects may be time-sensitive. Studies on trusting and trustworthiness generally test trusting behavior toward and trustworthiness of "strangers"—those previously unknown to the trustor on an individual basis. After a time, directors and executives likely would become "known quantities" to each other, which may have the tendency to increase collective or relational trust.

[89] *Cf.* Beecher-Monas, *supra* note 5, at 7-8 ("In an information cascade, decisions are made by people following the decisions of those around them rather than relying on their own private information. . . . With a group that fosters the voicing of differing viewpoints and dissent, this effect should be minimized. That of course, is a strong reason to advocate diversity in the boardroom."); *id.* at 9 ("[D]iverse boards make better decisions. . . . It seems fairly intuitive that individuals with diverse perspectives and backgrounds will enlarge the scope of any discussion, considering alternatives and bringing more information to the table. People with different backgrounds ought to have not only different perspectives, but varied approaches to assessing information, which should, in theory at least, lead to better decisions." (footnote omitted)); *id.* at 10 ("Although a group of diverse dummies cannot be expected to reach better collective decisions than a single smart expert, a group whose members possess a variety of skills, knowledge, and aptitude will outperform a small group of experts. Collective decisions that are achieved through disagreement and contest are superior to those achieved through consensus or compromise." (footnote omitted)); Langevoort, *supra* note 84 at 810-11 ("The most productive boards are ones that have enough diversity to encourage the sharing of information and active consideration of alternatives, but enough collegiality to sustain mutual commitment and make consensusreaching practicable within the tight time frames in which boards must operate."). This assumes that the directors can engage in cooperative behavior that is conducive to informed decision making. *See* Adams & Ferreira, *supra* note 22, at 2 ("To increase board effectiveness it may not be enough to simply increase the number of female directors on the board; diverse boards may require additional mechanisms to ensure cooperation between directors").

argues for diversification on the basis of gender at the highest levels of the corporation as a means of diversifying trusting behaviors among corporate decision makers.[90]

Corporate boards and management also may benefit from gender diversitification because of differences in or relating to the trustworthiness of men and women. For example, because women typically are more other-regarding than their male counterparts, they may be less likely than men to take action for their own personal benefit and more likely to take action (lawful or unlawful) for the benefit of others, including the corporation and its shareholders. Accordingly, the presence of women on a corporate board or as corporate executives may help avoid the replication of certain perceived contributing causes of the fraud identified at Enron and other corporations (including especially the acknowledged possibility that corporate officers, many of whom also were directors, manipulated corporate financial and other disclosures in order to enhance their own equity-based compensation). Avoidance of these agency costs may help enhance the overall trustworthiness of boards.[91]

We also know, however, that other-regarding women may be white collar criminals. We do not know much from the Collins study about either (a) the nature of the positions these female offenders occupied at the time their crimes were committed or (b) the nature of the white collar crimes that these women committed. These facts would be helpful in assessing the applicability of the finding of the Collins study to gendered

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[90] *See infra* note 98 regarding arguments for board diversity. *Cf.* Beecher-Monas, *supra* note 5, at 9-10 (making this point about differences in male and female traits generally). It is important to note that any considerations weighing in favor of gender diversification on the basis of trust-related issues should be balanced against countervailing considerations, including any related costs. *See*, *e.g.*, Adams & Ferreira, *supra* note 22, at 19-20 (describing some of these costs, based on their findings). Among other things, "[d]iverse boards may require additional incentives to work cooperatively and may require additional time to digest different viewpoints and resolve disagreements." *Id.* at 17.

[91] However, the other-regarding and empathetic nature of women may not alone be an accurate indicator that women are more trustworthy than men, as the Collins study indicates. *See generally* Part I.B.3.

trustworthiness in corporate decision making. But we do know that these other-regarding women may take unlawful action to benefit someone outside the corporation. In other words, although not acting for herself, a female director or executive may make decisions on behalf of the corporation to benefit people or constituencies other than the corporation and its shareholders. This behavior has the potential of being as detrimental to the corporation and its shareholders as the self-interested behavior associated with the Enron debacle and other recent corporate scandals. Among other things, both behaviors may constitute breaches of the state corporate law fiduciary duty of loyalty—or, worse yet, criminal activity. Accordingly, the other-regarding nature of women may or may not be a positive gendered characteristic for a corporate director or executive.

Further, female trustworthiness may be based on more than mere other-regarding preferences. As the overall trust literature indicates, female trustworthiness also may be linked to risk-aversion.[92] To the extent that the trustworthiness of women is based on risk-aversion, women may be deemed *less* desirable as directors or executives. Investors desire and expect that corporate directors and managers will take some risks in their decision making—conscious, well considered risks for the benefit of the corporation and its shareholders. Further, managers may desire to take risks for the benefit of the corporation and its shareholders that risk-averse directors do not embrace. In short, female board members or executives may be less able than male directors or executives to meet the risk expectations of managers or investors.

However, even if female directors and executives are more risk-averse than male directors and executives, this different risk preference may add valuable diversity to a corporate board or management team by changing the presumptive risk profile of the

[92] *See supra* note 41 and accompanying text.

board or management. As with diverse trusting behaviors, diverse risk preferences may enrich corporate decision making. The risk-takers and the risk-averse will be required to discuss and deliberate to achieve consensus.[93] With different risk preferences, a corporate board or management team should have the capacity to engage in better quality decision making.

Yet, the research telkls us that directors and investors may have to overcome latent biases against female corporate leaders to accomplish any desired gender diversity.[94] Under current corporate law, securities regulation, and general practice, directors are identified and nominated by a committee or the whole of the existing board of directors.[95] The corporation's shareholders then have the right to vote on nominees selected by that committee or board. Similarly, corporate officers generally are elected or appointed by the board of directors. Accordingly, any anti-female bias that exists at the board or investor level—but especially, under current rules, at the board level—may handicap efforts to accomplish gender diversity on corporate boards and in corporate management teams, regardless of the benefits that may be achieved by that gender diversity.[96]

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[93] *See supra* notes 89-90 and accompanying text.

[94] This sex bias compounds a recognized general bias against diversity. *See* Langevoort, *supra* note 84, at 811. However, the literature does not uniformly support a bias against diversity. *See* Adams & Ferreira, *supra* note 22, at 3 (referencing the results of various studies in this regard). The results of the Bigelow & McLean Parks study as to senior management teams, for example, may provide some evidence that women are not the subject to bias when part of a larger group. *See supra* note 78 and accompanying text.

[95] Fairfax, *Mixed Data*, *supra* note 62, at 599.

[96] Gender diversity on boards has been increasing, and is predicted to continue to increase, at a slow rate. *See* Fairfax, *Mixed Data*, *supra* note 62, at 581-89.

> The number of women directors at Fortune 500 companies appears to have increased by at least 1% over the last five years. If these patterns persist, then within the next twenty years, virtually all Fortune 500 companies, and perhaps even most all Fortune 1000 companies, may have at least one woman on their boards.

Fairfax, *Reflections*, *supra* note 62, at 1109 (footnotes omitted). *See also* Robin Cohen & Linda Kornfeld, Women Leaders Boost Profit, Barron's, Sept. 4, 2006, at 37 (noting evidence of the positive relationship

III. CONCLUSION

Corporations are managed by or under the direction of their boards of directors. As corporate decision makers, directors are critically important to corporate governance. If there is a locus of trust in the corporation, it is the board. Directors are the macro-level corporate managers, making organization-critical decisions and monitoring the decision making of the corporations officers, the day-to-day managers of firm operations. The Board elects or appoints those corporate officers, and the board (or a committee of its members) identifies and selects, subject to shareholder approval, its own members. Accordingly, if trust issues are to be addressed in corporate America, the board should be the key focal point. The Sarbanes-Oxley Act of 2002 recognizes this, but narrowly takes aim at the perceived crisis in trust by using a restricted definition of director independence as a cure-all. Based on existing research in the social sciences, another possible and promising focus for further inquiry and activity is gender diversity.

This essay has a limited objective. It seeks not to add to or resolve the different findings and musings of empiricists and theoreticians on trust, sex, or board composition. Rather, this essay begins to tell a story about the relationship among sex, trust, and corporate boards based on interpretations of existing bodies of scholarly work in these areas. The purpose of telling this fledgling tale is to further illuminate legal issues surrounding board composition in the wake of our recent bout of corporate fraud and the legislation and regulation that followed. As yet, the "sex, trust, and corporate boards story" has a broad title, a meandering plot, missing pages, and a tentative narrative and conclusion. Truly, this essay is part of a larger volume of short stories still in process, as

between women corporate leaders and corporate financial success, but cautioning that "the road toward gender parity in Corporate America still is long.").

sex is only one of many factors that have been, or undoubtedly will be, identified as relevant to trust and the overall composition of boards of directors. The essential narrative of this nascent tale can, however, be simply stated in the few short sentences that immediately follow.

Recent scholarly work on sex-based differences in trusting behavior and trustworthiness may have utility in determining optimal corporate board composition. For example, the studies profiled and described in this essay indicate that men and women trust and are trustworthy on different bases. Accordingly, the inclusion of female members on boards of directors may positively influence board process and deliberations by diversifying the bases for trusting behaviors and trustworthiness in the boardroom. However, the benefits of gender diversity on boards of directors may be difficult to achieve based on underlying biases against women in corporate leadership positions.

What will it take to confirm and flesh out the components of this basic narrative? Among other things, more targeted empirical and theoretical work should be done to *directly* test and explore the effects of sex-based trust issues in the corporate decisionmaking context to permit more refined conclusions and solutions. Specifically, researchers should theorize and test the trusting behaviors and trustworthiness of male and female directors of varying tenures on various different kinds of corporate boards.[97] Moreover, female perpetrators of white collar crimes should be studied on a more detailed basis. In each case, the knowledge gained from these studies should enable directors and investors to better screen possible board nominees for psychological and biographical traits that best indicate trustworthiness and desired bases for trustworthiness.

[97] Studying directors of varying tenure will be important since the typical trust game conducted in the cited studies measures trust among relative strangers, not those with long-term, ongoing relationships. *See supra* note 88.

Also, directors' and investors' bases and capacities for bias against female directors should be more closely examined to ensure that optimal board composition is achievable, even as these constituencies gain increased knowledge of the potential benefits of gender diversity on corporate boards. In general, the results of these additional studies may expose corroborating or new evidence that will enable a more direct and nuanced assessment of the relationship among sex, trust, and corporate boards.

Even in the absence of this further targeted research, however, directors and investors may want to consider the impact of existing broad-based research on gender and trust in determining whom to nominate and elect to corporate boards. In particular, it may be advisable to further encourage gender diversity on corporate boards based on the apparent relationship between gender diversity and trust diversity. This suggestion emanates from the existing research on sex and trust, but it is consistent with proposals made by other scholars on different grounds.[98] Because of differences in their bases for

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[98] *See*, *e.g.*, Adams & Ferreira, *supra* note 22, at 19, 20 (noting that their "results suggest quite strongly that in boards with relatively more women, more directors participate in decision-making, which may enhance their effectiveness" and concluding that "increasing gender diversity may benefit firms in which performance-related pay is less costly."); David Carter et al., *Corporate Governance, Board Diversity, and Firm Value*, 38 FIN. REV. 33 (2003) (offering and analyzing data on the value of overall board diversity); Lynne L. Dallas, *The New Managerialism and Diversity on Corporate Boards of Directors*, 76 TUL. L. REV. 1363, 1383-87 (2002) (discussing gender diversity, among other things, and its various impacts on corporate management); O'Connor, *supra* note 86, at 1306-15 (regarding board diversity generally); Fairfax, *Mixed Data*, *supra* note 62, at 589-98 (summarizing and assessing arguments in this regard); Marleen O'Connor-Felman, *American Corporate Governance and Children: Investing in our Future Human Capital During Turbulent Times*, 77 S. CAL. L. REV. 1258, 1349-51 (2004) (illuminating her proposal that "[s]hareholder proposals to implement work-family policies should recommend nominating more women, and particularly mothers, to corporate boards."); Donald J. Polden, *Forty Years After Title VII: Creating an Atmosphere Conducive to Diversity in the Corporate Boardroom*, 36 U. MEM. L. REV. 67, 69 (2005) ("Improved gender and racial diversity of corporate governing boards would enhance SOX's fundamental policy of increased integrity in the management of large corporations through greater independence and competence of their directors."); Janis Sarra, *The Gender Implications of Corporate Governance Change,* 1 SEATTLE J. SOC. JUST. 457, 493-94 (2002) (setting forth certain benefits of diversity on corporate boards); Nina Smith et al., Do Women in Top Management Affect Firm Performance? A Panel Study of 2500 Danish Firms, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=780910 (Aug. 2005), at 2-4 (summarizing arguments in support of gender diversity of corporate boards); Hayley Buckridge, Note: *Merging Without Purging: Incentivizing Boards of Directors to Promote Diversity through M & A*, 20 ST. JOHN'S J.L. COMM. 443, 496-99 (2006); *see also* Fed'l Glass Ceiling Comm'n, *A*

trusting behavior and trustworthiness, female directors may exhibit trusting behaviors or trustworthiness in different circumstances or environments than male directors exhibit trusting behaviors and trustworthiness. As this essay argues, the very existence of a difference in trust on a corporate board may be beneficial. Among other things, varied bases for trusting and trustworthiness among board members should enhance thoroughness and caretaking in the boardroom, since not all directors initially will trust or be trusted by the same people. This thoroughness and caretaking should enhance trust in and among the various corporate constituencies.

In sum, both the examination of existing broad-spectrum research on sex and trust and the engagement of scholars in more specialized research involving sex and trust in the context of board decision making are important to ongoing debates in the area of corporate governance.[99] In particular, as legal and other scholars continue to theorize and test ways to increase trust in and among the constituencies comprising the corporation and as scholars and rule makers consider possible legal, regulatory, and other reforms targeted directly or indirectly at the same, more detailed knowledge of the bases for trusting behavior and trustworthiness will be essential.[100] Only with this further information will we best know how to effectively and appropriately address important

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Solid Investment: Making Full Use Of The Nation's Human Capital 5 (1995); Am. Mgmt. Ass'n, *1998 AMA Survey Senior Management Teams: Profiles and Performance* (visited June 30, 2006), *available at* http://www.amanet.org/research/pdfs/senior.pdf, at 1 ("Heterogeneity -- a mixture of genders, ethnic backgrounds, and ages in senior management teams -- consistently correlates to superior corporate performance.").

[99] *Accord* Blair & Stout, *supra* note 3, at 1810 ("A solid understanding of the social and economic circumstances that elicit trust behavior is accordingly vital to our understanding of a wide range of social and legal institutions, including corporations and corporate law.").

[100] *Cf.* Ashraf et al., *supra* note 27, at 6 ("If policy makers wish to raise the level of trust, they need to know the determinants of trust. If trust is mainly a function of expected trustworthiness, they should focus on the level of trustworthiness and on beliefs about that level. In contrast, if trust is mainly motivated by warm-glow kindness, they should focus on fostering of intrinsic rewards."); Hong & Bohnet, *supra* note 12, at 27 ("This paper suggests that anyone wishing to increase people's willingness to trust may benefit from taking the status differences in the relative importance of various motives into account and use the corresponding institutional devices to address them.").

unresolved questions relating to both trust and gender diversity relative to corporate boards of directors.