University of Pittsburgh School of Law
University of Pittsburgh School of Law Working Paper Series

Year 2007 *Paper* 55

No Seat at the Table - How Corporate Governance and Law Keep Women Out of the Boardroom

Douglas M. Branson*

*University of Pittsburgh School of Law, branson@law.pitt.edu

No Seat at the Table - How Corporate Governance and Law Keep Women Out of the Boardroom

Douglas M. Branson

Abstract

Based upon substantial numbers of women enrolling in MBA and law programs, from the 1970s onward expectations have been high. With 25 and later 36% female MBA matriculates, and 33% and later 49-51% in law, by the 21st Century the expectation was that great numbers of women would populate the CEO suites and boardrooms in the U.S.

NO SEAT AT THE TABLE (NYU Press 2007) documents how the numbers lag badly behind the expectations, and how the reality lags further yet behind the numbers. Analyses of Fortune 500 proxy data, as the enclosed chapter demonstrates, produce scant reason to posit a reversal of the leaky pipe phenomenon any time soon. The number of women directors remains static, or grows only slowly, while the number of women trophy directors, those who 4 or more directorships, has increased rapidly. These and other factual findings support the proposition that the glass ceiling remains in place.

NO SEAT AT THE TABLE explores explanations for women's failure to advance in the number one would have predicted. Further, NO SEAT AT THE TABLE offers suggestions both for women who wish to advance and for corporations which wish to facilitate entry of more women into the pool from which corporate directors may be chosen.

Chapter Seven

The Road to the Top - the Evidence

Being patient but not passive, working one's way up through an organization internally may be the worst route to the top for women, at least when the top is defined as a board seat. In the *Fortune 500*, in 2001, excluding the five CEOs who sat on their own companies' boards, there were only nine women "inside" directors in 2001.[1] They held seats at United Parcel Service (52), PepsiCo (94), Pepsi Bottling Group (237), retailer Kohl's (293), Avon Products (310), Southwest Airlines (316), Security Pacific Life Insurance (354), Caremark RX (384), and Maytag (395), the appliance manufacturer.

In truth, as discussed in Chapter Two, the trend of the last 20 years has been decidedly away from inside directors. Publicly held corporations will have two or three at most. In a bygone era, but not so long ago (20 or 25 years), insiders would have been a majority, or at least a critical mass, of directors serving on the board.[2] This turn away from inside directors affects men and women alike. It also renders obsolete the advice to patiently work up vertically through an organization, at least if an ultimate objective is a board seat. Be that as it may, the evidence seems to show that more men are likely to gain a board seat through climbing the internal ladder than will women.

The Preferred Route

And the best way for a woman to become a director of a *Fortune 500* company?

Be a tenured professor at Harvard -- in law, economics, business, or even medicine. Thirteen women professors from Harvard held 21 *Fortune 500* board seats, according to proxy data filed with the SEC in 2001.

The other Ivies had six women professors altogether, each with one board seat, from Cornell, Columbia, Dartmouth, Penn, Princeton and Yale.

The women presidents of Penn and Brown, Judith Rodin and Ruth Simmons respectively, come on strong both as high salaried university presidents and holders of multiple board seats. Rodin, the second most highly compensated university president in the U.S., earned a corporate size $698,325 in pay and benefits in 2000.[3] When Rodin's four directorships (Aetna Insurance (63), American Airlines' holding company AMR (98), Electronic Data Systems (106), and Young & Rubicam) are added to Simmons's four (Goldman Sachs (42), Met Life (47), Pfizer (53), and Texas Instruments (163)), Rodin's income heads toward the $1 million mark and the rest of the Ivies pull closer to Harvard's total number of directorships.

The other significant competitors to Harvard are not close. In academe, they are lead by Georgetown with three women holding *Fortune 500* board seats, followed by University of California at Berkeley, University of Chicago, Cooper Union, and George Mason with two each.

Research Design

The methodology for my study entailed sending four law student research assistants into the Business School library and then online to the SEC's EDGAR (Electronic Data Gathering and Retrieval) database where they could access 2001 proxy statements.[4] One took 200 and each of the others 100 of the *Fortune 500*. They employed a seven column spread sheet: (1) Company Name, *(2) Fortune 500* Rank, (3) Board Size, (4) Number of Women Directors, (5) Name of Woman Director, (6) Background (Day Job) of each woman director, and (7) Other Boards. The collective effort took approximately 150 hours. In mid 2005, another group of students repeated the process, utilizing proxy data filed with the SEC in Spring, 2005. Chapter Six reports and analyzes that data for, among other things, changes and trends.

The 2001spread sheet totals show that there are 5821 director positions at *Fortune 500* companies, more or less. The number changes over time because, as noted earlier, very few corporations have boards of fixed size. Either the number of directors is fixed by the bylaws (the internal written governance rules every corporation must have) but the directors themselves have power to amend the bylaws, and thus to increase or decrease the number of positions. Or, the bylaws provide for a variable range board size, say, from 9 to 13 directors, within which the board allows the number of seats to fluctuate.[5]

Of those 5821 board seats, 678 of them, or 11.6 percent, were held by women in 2001. When one counts the names, however, the numbers are smaller. There are only

480 women holding board positions in the *Fortune 500* in 2001. This is because quite a few women, such as Presidents Rodin and Simmons, hold several directorships, and a few women, such as Anne McLaughlin, hold so many (9) that they may be classified as trophy directors.[6]

Specifically, just 30 of the 480 women hold 4 or more boards seats and collectively represent 151 board seats, or 22.3 percent, of the board seats women held. Some of them, such as Anne McLaughlin, are candidates for the appellation " super trophy director"

Ms. McLaughlin, now Anne McLaughlin Korologos, a former Secretary of Labor and former Chairman of the Aspen Institute, and Jackie Ward, identified by proxy material as CEO of Computer Generation, Inc., tie for the 2001 lead among *Fortune 500* women directors, each holding 9 directorships. McLaughlin Korologos sits on the boards of Fannie Mae (26), Microsoft (79), AMR (98), Kellogg (269), Nordstrom (324), Vulcan Materials (593), Host Marriott (882), Harmon International Industries, and Donna Karan International, Inc. Ms. Ward sits on boards at Bank of America (13), Sysco (105), SCI Systems (230), Flowers Industries (387), Equifax (707), Matria Healthcare, Premier Technology, Profit Recovery Group International, and Trigon Healthcare.

The runner up is Rozanne Ridgeway, a former Assistant Secretary of State for Europe and Canada with the rank of ambassador, who, according to 2001 proxy material, sits on 8 high powered boards: Boeing (15), Sara Lee (96), Minnesota Mining & Manufacturing (118), Emerson Electric (126), Union Carbide (284), Nabisco, New

Perspective Fund, and the Verizon subsidiary Bell Atlantic.

Number of Women Versus Number of Seats Held

Returning to the larger picture, the number of women holding prestigious director positions, 480, is about equivalent to the size of the senior class at a middle size high school. It seems a small number in a nation of 270 million. Moreover, the wealth, power, and prestige of corporate board membership are not distributed as much among the women as they are among the men who populate the director ranks

As mentioned, at least 72 *Fortune 500* companies, or 14.4 percent, have *no* women directors. Approximately 228, or 45.6 percent, have only one woman director, surely evidence of tokenism. There are 143 *Fortune 500* companies with two directors (28.6 percent), still seeming tokenism when one considers that many of these boards have 11, 13, 15 or 16 directors in total.

Forty three companies (8.6 percent) seem to be making an effort, with 3 women on their boards.

The 2001 honor list (4 or more women directors) includes only 13 of 500 companies. The leader is SBC Communications (14) with 6 women on a 21 person board. Next in absolute numbers (but with some higher in percentage) are Wells Fargo Bank (62) (5 of 18), Avon Products (310) (5 of 10), and Golden West Financial (429) (5 of 9). Significantly, both Avon and Golden West have women CEOs, Andrea Jung at Avon and Marion Sandler at Golden West Financial.

Rounding out the honor list are 9 companies with 4 women directors. They include Bank of America (13) (4 of 17); Aetna Insurance (63) (4 of 12); Walt Disney Company (67) (4 of 16); Xerox Corp. (109) (4 of 14); Eastman Kodak (141) (4 of 11); Principal Financial (215) (4 of 17); and Hasbro Toy (438)(4 of 13). A surprise was Boise Cascade, the forest products company. Ranked 241 in the 2001 *Fortune 500*, Boise has 4 women directors on its board of 14.

Worthy of note, too, is that Xerox is also one of the five *Fortune 500* companies with a woman CEO, Anne Mulcahy. Three of the 5 companies with women CEOs in 2001 (Xerox, Avon and Golden West) make the honor list of 13, reinforcing the conclusions of Catalyst and others that when women are at the very top there is a trickle down effect, on the board at least.[7]

Sources of Female Directors

My purpose here is to examine routes to directorships and not necessarily the trophy director phenomenon or the paucity of women directors and the tokenism on many boards of directors. Of women directors at *Fortune 500* companies, 84 (18.3 percent) come from positions as COOs, CFOs, Vice Presidents, or CEOs of subsidiaries at other companies.

Holding second place is the university professor category, with 79 women (17.2 percent) who hold one or more *Fortune 500* board seats. Seventy eight women directors (17 percent) are consultants of one sort or another (third highest category). In the fourth

highest category, 58 women directors (12.6 percent) come from the not-for-profit sector. Forty eight women directors (10.4 percent) may be classified as independent business women (fifth highest category). Thirty four women (7.4 percent) come to board seats from government service (sixth highest category).

In the male director demography, CEOs of other corporations would be overwhelmingly the number one director category, holding over half of the board seats.[8] In marked contrast, only 26 of the 480 women (5.7 percent) holding board seats are CEOs of other smaller corporations.[9]

Last of all, in the eighth category, 20 of the women directors (4.3 percent) are listed as practicing attorneys, barely surpassing the ninth category, women from Harvard, who have 13 members but hold 21 board seats.

Implications

What can be made of these numbers?

One, the glass ceiling still seems firmly in place. There are so few women CEOs serving on other corporations' boards of directors because there are so few women CEOs. There are few women CEOs because, even at this late date, as they rise within organizations, women bump into a still existent glass ceiling. CEO suites are the second lowest source of women directors, ranking only ahead of practicing attorneys.[10] In the larger world, CEO suites are by far the largest source of male directors. Executive recruiters who specialize in board placements note that "the typical search is for a chief

executive [who almost by definition will be male] who manages a complex and global company."[11]

Two, glass walls, at least inter-firm glass walls, are more permeable than glass ceilings. Chapter Three related Sheila Wellington's observations, that on an intra-firm basis, glass walls may prevent women managers from obtaining line positions and experience needed to rise to the very top within a firm. Glass walls between firms are more porous.

The most common phenomenon for women in business seems to be the "sidestep." Women rise up the ladder in other organizations. They then sidestep through the more permeable inter-firm glass wall on to the board of a prominent company.

Three, great sources of sidestepping women directors are the academic, not-for-profit and governmental spheres. True, the single largest source of women directors is the CFO/COO/VP category, with 18.3 percent. If the academic, not-for-profit and governmental sources of women on boards are combined, however, they account for 37.2 percent of women serving on *Fortune 500* boards of directors.

Among male directors at *Fortune 500* companies, one searches nearly in vain for directors who have sidestepped from a professorship onto the board of a major corporation. The picture in the not-for-profit sector is similar: few men move laterally on to board seats from the not-for profit world. Government service is different. Men move with frequency from government posts, especially at the cabinet or director level, to board

seats in the private sphere.

The latter observation about women directors (37.2 percent from the academy, and so on) may show that in the academy and not-for-profit sectors, and to a lesser extent, in government, the glass ceiling is more permeable or does not exist at many institutions in those sectors.[12]

Inconsistencies and Contradictions

In all of this, contradictions surface. One is that the comparison between low numbers of women CEOs moving into board seats and the high number of academics has to be qualified. Of the 79 women academics, 27 are college or university presidents with CEO-like responsibilities. They range from presidents at more humble institutions (Jefferson Community College, Madison Area Technical College, Cuyahoga Community College) to elites (Wellesley, Mount Holyoke, Penn, Brown, Smith, Cal Tech, University of Chicago, RPI). Between those extremes, women presidents of many middle level and regional universities serve on *Fortune 500* boards. They include presidents at University of San Diego, Detroit Mercy, University of Alabama Birmingham, Kent State University, University of California-Irvine, St. Mary's College (Maryland), and Appalachian State.

A similar contradiction surfaces in the not-for-profit sector. Many of the women serving on boards who sidestep from that sector have weighty bottom line type responsibilities but in the not-for-profit world. At least five are United Way executives. Farah Walters, who serves on the boards of LTV Corporation (352), Kerr McGee Oil

(405), and Poly One Corporation, is the CEO of University Hospitals of Cleveland, a major regional healthcare provider and research institution. Sarah Jewell, who serves on the board of Avista Corp. (239), a Spokane, Washington energy company, is the CEO of REI, the outdoor clothing and equipment cooperative that began in a vacant Seattle gas station but is now a nationwide retailer. Bernadette Healy, who serves on the boards of National City Bank (210), Ashland Oil (234), MBNA (240), Medtronic (349), and Invarcare, is, or was until being deposed late in 2001, the CEO of the American Red Cross.

These contradictions tend to show two things. One is that whether examining women's or men's backgrounds, search firms, nominating committees or, in satrapies in which the CEO still controls board nominations, the nominators frequently look for the same or similar package. That package, which includes weighty bottom line type responsibilities, may be found in university presidents' offices or not-for-profit executive suites.

Two is that, in order to find that package in women candidates for directorships, search firms and nominating committees have to go outside of the corporate sector to find it. What better evidence, then, exists to demonstrate that in corporate America the glass ceiling still is firmly in place?

Nepotism and Celebrity Status

A few observations. Nepotism works -- sometimes. Women directors Martha

Ingram at Ingram Micro (49), Shari Redstone at Viacom (101), Abigail Wexler at The Limited (185), Charlotte Temple at Temple-Inland (390), and Linda Jacobs at Jacobs Engineering Group (476) all are related to a company founder or controlling shareholder.

Celebrity works, albeit slightly less often. One actress, Dina Merrill, is a *Fortune 500* director as is one opera diva, Beverly Sills Greenough. They are directors at Lehman Brothers (65) and American Express (74), respectively. The celebrity winner is "Judge Hatchett" of afternoon television fame. Glenda A. Hatchett sits on three *Fortune 500* boards: HCA Health Care (119), GAP (147), and Service Master (300).

Sidestepping on to Corporate Boards of Directors

Examples of sidestepping women directors from academe include Laura D'Andrea Tyson, who is the Dean of the University California at Berkeley business school. From that position, she has moved on to boards at SBC Communications (14), Eastman Kodak (141), Fox Entertainment, Morgan Stanley (124), and Human Gnome Sciences, Inc. Wendy Gramm, spouse of Senator Phil Gramm, professor at George Mason University, and Director of the GMU's Regulatory Studies Program, sits on boards at Enron (then 7th but now essentially defunct), Iowa Beef Processors (117), State Farm Insurance (21), and Invesco Funds. Regina Herzlinger, a professor at the Graduate School of Business at Harvard, sits on boards at Cardinal Health (51), Deere & Co. (149), C. R. Bard, Inc., Noven Pharmaceuticals, Inc., and Schering-Plough Pharmaceuticals. Marina Whitman, a Professor of Business at the University of Michigan, sits on boards at J.P. Morgan Chase

(12), Proctor & Gamble (31), Alcoa (77), and Unocal (207).

Sidesteps from high level government positions are equally impressive. Gwendolyn King, who had been a Commissioner of the Social Security Administration, sidestepped from there on to boards at Lockheed Martin (69), Pharmacia-Monsanto (113), and March & McLennon (183). Constance Horner held a variety of political appointments, including Deputy Director, Health and Human Services (1989-91) and Director of Presidential Personnel under President George Bush (1991-93). From those positions she did a "double side step," first to a not-for-profit (The Brookings Institute) and then on to boards at Pfizer (53), Ingersoll Rand (205), Foster Wheeler (420), and Prudential Insurance.

Women who are Democrats "sidestep" from government to corporate boards as well, but not usually to as many. Charlene Barshefsky, the very capable U.S. Trade Representative (1993-2001) in the Clinton Administration, sits on boards at American Express (74) and Estee Lauder (389). Hazel O'Leary, Clinton's Secretary of Energy, sits on boards at United Airlines (UAL) (104) and AES (279).

One meets, as well, "double sidesteps." Bonnie Hill jumped from the academy (Dean, McIntyre School of Commerce, University of Virginia) to the not-for-profit sector (CEO, Times Mirror Foundation). Along the way she picked up a nice collection of board seats: Home Depot (23), AK Steel Holdings (372), Hershey Foods (398), and Niagra Mohawk Power (377).

Lynn Martin went from government (Secretary of Labor 1991-93) to the academy (Professor, Kellogg School of Business, Northwestern University) to a number of corporate boards: SBC Communications (14), Proctor & Gamble (31), Ryder Systems (333), Dreyfus Funds, Harcourt General, and TRW, Inc.

Bernadette Healy has covered all of the bases. She has been in government (Office of Science and Technology for the President in 1984-85 and Director, National Institutes of Health 1991-93). She has moved in and out of the academy (Professor, Johns Hopkins University School of Medicine, 1977-84, and Dean, College of Medicine and Public Health, Ohio State University, 1995-99). She has been in the not-for-profit sector (President, American Heart Association, 1988-89, and President of the American Red Cross, 1999-2001). Wholly or in part though her triple (quadruple?) sidestep she has picked up board seats at the five *Fortune 500* corporations recounted earlier in this chapter.

Distributional Concerns

What one returns to over and over again while examining the data is just how little the wealth is spread around and how prevalent sexism (companies with no women directors) and tokenism (companies with one or two that should have many more) may be. On the "boo" or "hall of shame" list are, of course, the 72 companies with no women directors, which include: General Dynamics, Bear Stearns, Apple Computer, American Standard, Micron Technology, Owens Illinois, Starwood Hotels, Avis Rent-a-Car, Ames

Department Stores, Dillards Department Stores, Harrahs Entertainment, and others.

The entire airline industry (one woman per board except U.S. Airways with 2 of 12 and Southwest with 2 of 11) and the financial services sector (no women or one woman on most boards) have very poor records, especially given the number of women they employ in important positions.

It may be sexist but it seems that, even though they possess a varied portfolio of skills and characteristics that could be of service everywhere, women directors could be of great or special value on boards in the retail, grocery, consumer products, drug and home products, and home appliance sectors. Nonetheless, those industries by and large evince only tokenism when it comes to women on boards of directors.

In retail, Walmart has but 1 woman on a board of 13, Sears Roebuck 2 of 10, K Mart 2 of 14, Target 2 of 11, J.C. Penny 2 of 10, Costco 1 of 11, and Kohl's 1 of 12. Women are asked to shop at Saks but out of Saks's 17 directors only one is a woman.

In grocery and food products, Kroger has 2 women of 17 directors, Safeway 1 of 9, Sara Lee 2 of 15, Tyson Foods 2 of 12, Kellogg 2 of 11, and Quaker Oats 2 of 9. Special mention on the "boo list" might go to Campbells Soup with 2 women of 16 directors and Hershey Foods with 1 of 11. Many a career parent feeds her child chicken soup or a chocolate bar. Enlightened self-interest, what mangement theorists denominate "market reciprocity," would seem to inform those companies in staffing their boards that if great numbers of women consume their products, then women should have significant, if not

ample, representation on the board of directors.[13]

In drugs and home products, Proctor & Gamble has 2 women of 16 directors, Walgreens's 1 of 10, American Home Products 1 of 10, and Newell Rubbermaid 2 of 11.

Pepsi (3 women) wins over Coca Cola (2 of 13) and Coca Cola Enterprises (1 of 13).

Contrast Hasbro (toys) (4 women of 13) to Mattel (1 woman of 11 directors).

Especially short sighted are Nike (1 of 11 directors) and McDonalds (1 of 15). Not only do those companies profess to being enlightened, they ask young parents to buy Nike shoes and apparel and McDonalds Happy Meals for both sons and daughters alike. Seemingly, they could do much better in staffing their boards of directors. Chapter Six examines whether they have done so in the four years since I analyzed the SEC proxy data for this chapter

Meanwhile, returning to the theme introduced in the Preface, the numbers lag greatly behind the expectations long held for women and minorities in the CEO suite and the boardroom. The point of this and the previous chapter has been that reality lags behind even the reported numbers. That double lag (numbers behind expectations, reality behind numbers) necessitates re-examination of the reasons advanced over the years for one step forward, one step back nature of progress on diversity issues in corporate boardrooms.

Endnotes

1. *Cf.* Deborah D. Zelechowski & Diana Bilimoria, "The Experience of Women Corporate Inside Directors at Fortune 1000 Firms," 18 Women in Management 376, 377 (2003)(preliminary finding of 36 firms with female inside directors but able to verify only 8 through responses to interview requests).

2. *See* the discussion of the modern governance model in Chapter Nine *infra*. As related in Chapter Nine, New York Stock Exchange (NYSE) and NASDAQ rules now require that a majority of directors be independent.

3. Chronicle of Higher Education, Annual President's Salary Survey, available at Chronicle.com/colloquy, Facts and Figures. *See also* Los Angeles Times, November 26, 2000, at B-2 (Rodin ranked second after L. Jay Oliva, President of New York University); Tamar Levin, "Survey Shows 27 Presidents of Colleges Top $500,000," New York Times, Nov. 17, 2002, at 22 (Judith Rodin at the University of Pennsylvania earned $808,021, ranking second again).

4. Obtaining information on mutual (member owned) organizations such as Northwest Mutual Life Insurance (116), United Services Automobile Association (USAA)(224), or Mutual of Omaha (394) was more difficult, because mutual organizations do not file annual proxy statements with the SEC. Information about those organizations' boards was obtained from their web sites, via email or by telephone. The only *Fortune 500* organization abut which no data could be obtained was the Aid Association for Lutherans, which ranked 477 on the *Fortune* list (2001).

5. The American Bar Association's Revised Model Business Corporation Act (1985) provides in section 8.03(c):

The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed from time to time, within the minimum and maximum, by the shareholders or the board of directors.

6. In 1996, Ann McLaughlin, a former Secretary of Labor, sat on 11 board of directors and was classified by the New York Times as a trophy director. At that time the Times estimated that she made $352,250 annually in directors' fees. Another woman trophy director, Lilyan Affinito, a retired executive of Maxxam Group, Inc., sat on 6 boards, making $397,000 per year. *See* Judith H. Dobrzynski, "When Directors Play Musical Chairs," New York Times Money and Business, November 17, 1996.

7. Professors Devon Carbado and Mitu Gulati tend toward the opposite conclusion for persons of color. "[T]here is reason to believe that the racial minorities at the top of the corporate hierarchy neither racially reform the corporation, nor engage in door-opening activities, for the minorities on the bottom." Carbado & Gulati, "Race to the Top of the Corporate Ladder: What Minorities Do When They Get There," 61 Wash. & Lee L. Rev. 1645, 1692 (2004)

8. *See, e.g.*, Deborah D. Zelechowski & Diana Bilimoia, *supra*, at 378.

9. There are 31 CEOs listed in the data but the number includes the five women CEOs in the *Fortune 500* in 2001.

10. It also has much to do with the method by which boards of directors conduct searches for CEOs. *See generally* Rakesh Khurana, " Searching For The Corporate Savior" (Princeton, N.J., Princeton University Press, 2002), discussed in Chapter Two *supra*.

11. Dobrzynski, *supra*, quoting Dennis C. Carey, co-director of boards services for Stuart

Spencer & Associates, Inc.

12. Nineteen percent of college and university presidents are women, compared to 1.6 percent of corporate CEOs. Twenty percent of U.S. university and college full professors are women, compared to 11.6 percent of corporate directors. *See* Rachel Smolkin, "Barriers Confront Working Women," Pittsburgh Post Gazette, June 3, 2001, at A-14. *Cf.* comments of University of Pennsylvania President Judith Rodin: "Clearly, there's still a glass ceiling in academia, although not in department chairman so much as there used to be," quoted in Sheila Wellington, *Be Your Own Mentor* at 14 (New York, Random House, 2001).

13. Carolyn Kay Brancato & D. Jeanne Paterson, "Board Diversity in U.S. Corporations: Best Practices for Broadening the Profile of Corporate Boards" at 8 (1999), cited in Marleen O'Connor, "The Enron Board: The Perils of Group Think," 71 U. Cinn. L. Rev. 133, 1308 & n. 436 (2003).