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### **Branson, No Seat at the Table: How Corporate Governance and Law Keep Women Out of the Boardroom**

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## Wanted: Female Corporate Directors

NO SEAT AT THE TABLE: HOW CORPORATE GOVERNANCE AND LAW KEEP WOMEN OUT OF THE BOARDROOM. By Douglas M. Branson. New York: NYU Press. 2007. Pp. vii, 238. \$45.00.

*Reviewed by Joan MacLeod Heminway\* and Sarah White\*\**

Each year, increasing numbers of women enroll in top law schools and MBA programs, with matriculation rates for women in law schools nearing fifty percent of each new class.<sup>1</sup> Increases in female enrollment in MBA programs have been slower, with matriculation rates hovering around thirty-five percent, but the trend exists nonetheless.<sup>2</sup> With more and more

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\* Associate Professor, The University of Tennessee College of Law; A.B. 1982, Brown University; J.D. 1985, New York University School of Law. I am grateful to Karl Okamoto, who asked me to sit down and think hard about this book for a conference on Women and Corporate Boards at Drexel University in November 2007. However, this book review may never have been written were it not for the interest, aptitude, and energy shown by my coauthor, Sarah White. Working with Sarah on this project has been a great joy.

\*\* B.S. 2002, University of Houston; J.D. expected 2009, The University of Tennessee College of Law. I would like to thank Professor Heminway for her guidance, patience, and invaluable contributions to this project and for sharing my passion for women's issues.

1. DOUGLAS M. BRANSON, NO SEAT AT THE TABLE: HOW CORPORATE GOVERNANCE AND LAW KEEP WOMEN OUT OF THE BOARDROOM 1, 151-52 (2007). According to the American Bar Association, in 1981, 32.8% of the Juris Doctor (J.D.) degrees awarded were earned by women. Of the J.D. degrees awarded in 1991, 42.7% were earned by women. By 2001, the percentage of J.D. degrees awarded to women rose to 47.5%. While percentages generally have increased slightly over the past few years, the percentage of J.D. degrees earned by women in 2007 fell to the 2001 level of 47.5%. Am. Bar Ass'n, Legal Education Statistics: J.D. and LL.B. Degrees Awarded, <http://www.abanet.org/legaled/statistics/charts/stats%20-%207.pdf>.

2. BRANSON, *supra* note 1, at 1, 39, 151-52. In 2006, 35% of students enrolled in MBA programs were women. Nisha Ramachandran, *Looking for Ms. MBA: The Ratio of Women to Men in Graduate Business Programs Lags Behind*, U.S. NEWS & WORLD REP., Apr. 10, 2006, at 52, available at [http://www.cbsnews.com/stories/2006/03/29/grad\\_schools/main1453461.shtml](http://www.cbsnews.com/stories/2006/03/29/grad_schools/main1453461.shtml). This represents an increase from 2003, when female enrollment in MBA programs was only 30% (although, as the authors note, this represents a substantial increase over the previous thirty-five years). Janet Marks & Rachel Edgington, *Motivation and Barriers for Women in*

women entering and emerging from legal and business education programs, one would expect to see a larger number of women serving as partners in large corporate law firms and holding executive and board positions in major corporations.<sup>3</sup> Unfortunately, vast numbers of women never reach the point in their careers where they are even considered for—much less attain—these partner, executive, or director positions.<sup>4</sup> This is a phenomenon denominated as the “leaky pipe.”<sup>5</sup> While descriptive, this metaphor falls far short of reality. There are not just a few women slipping out of the pipe that leads to the upper echelons of corporate management. Rather, *many* women are leav-

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*the Pursuit of an MBA Degree*, GMAC RES. REP., Aug. 1, 2006, at 1, available at [http://www.gmac.com/NR/rdonlyres/2D881F31-42CB-4365-9A34-00DA2441908C/0/RR0612\\_MotivationsBarriersforWomen.pdf](http://www.gmac.com/NR/rdonlyres/2D881F31-42CB-4365-9A34-00DA2441908C/0/RR0612_MotivationsBarriersforWomen.pdf).

3. BRANSON, *supra* note 1, at 151 (“The scarcity of women in corporate governance roles is curious, because women have been entering the professional and managerial ranks in great numbers for nearly three decades now.”). See also Ruth B. Mandel, *A Question about Women and the Leadership Option*, in *THE DIFFERENCE “DIFFERENCE” MAKES* 66-67 (Deborah L. Rhode ed., 2003).

4. See Erica Beecher-Monas, *Marrying Diversity and Independence in the Boardroom: Just How Far Have You Come, Baby?*, 86 OR. L. REV. 373, 393-94 (2008) (summarizing data on female and racial minority corporate directors); Lisa M. Fairfax, *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, 1110-14 (2005) (providing data on women and people of color in the pipeline and on boards of directors). According to recent estimates offered by Catalyst Inc. (a nonprofit research organization focusing on inclusiveness in the workplace), “women will not achieve parity with men in law firm partnerships until 2088. . . . In a survey of the 50 best law firms for women, 18% of the firms had women managing partners.” Catalyst Inc., *Women in Law in the U.S.*, <http://www.catalyst.org/publication/246/women-in-law-in-the-us> (last visited Apr. 3, 2009). Catalyst also reported that only 15.7% of Fortune 500 corporate officers are women, women occupy only 15.2% of Fortune 500 corporate board seats, and only 3% of Fortune 500 Chief Executive Officers are women. Catalyst Inc., *U.S. Women in Business*, <http://www.catalyst.org/publication/132/us-women-in-business> (last visited Apr. 3, 2009). In addition, citing survey data collected by Korn/Ferry International, Professor Jayne Barnard remarks that women’s progress in acquiring board memberships between 1995 and 2004 only marginally increased. Jayne W. Barnard, *More Women on Corporate Boards? Not So Fast*, 13 WM. & MARY J. WOMEN & L. 703, 705-06 (2007). Professor Barnard also notes that while Catalyst’s survey of female representation on corporate boards reports slightly different figures than Korn/Ferry International, the overall depiction of slow progress is the same. *Id.* at 706. See also BRANSON, *supra* note 1, at 146-48.

5. BRANSON, *supra* note 1, at 39. Crucial to the “leaky pipe” phenomenon is the lack of women in the pipeline where it matters: many directors of Fortune 500 and Fortune 1000 companies are drawn from directors serving on the boards of public companies that are not yet in the Fortune 1000, and precious few women are serving as directors on those boards. Barnard, *supra* note 4, at 713.

ing prime law and business positions only a few short years after entering them.<sup>6</sup> By doing so, they are forfeiting opportunities to participate in senior management positions and sacrificing opportunities for coveted board seats, which often are awarded to chief executive officers (CEOs) and other leaders of professional and business firms.<sup>7</sup> This mass exodus may be detrimental to individual women and women as a whole, but it most certainly impacts firms, which continue to appoint partners, executives, and directors from a depleted pool of candidates. One might say that the pipe is not merely leaking; it has a large rupture.

In his book, *No Seat at the Table: How Corporate Governance and Law Keep Women Out of the Boardroom* (“*No Seat at the Table*”), Professor Douglas M. Branson proposes a novel, if somewhat unsettling, solution to the problem: he recommends ways for women to advance to the upper ranks of management in large public companies through paradigm shifts, while encouraging those already in upper management to acknowledge the direct benefits that female traits may provide to corporate governance.<sup>8</sup> Yes, women deserve to be promoted through the ranks with men because they are equally capable and worthy of advancement.<sup>9</sup> But as important, corporations deserve the opportunity to hire the best-of-the-best to manage their day-to-day business and ensure that managerial decisions are made in the best interest of the corporation. Moreover, investors deserve to have their trust in corporate America renewed through

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6. BRANSON, *supra* note 1, at 39. This workforce exodus includes women at all levels of education and employment, and not all of the departures are voluntary. See STAFF OF JOINT ECON. COMM., 110TH CONG., EQUALITY IN JOB LOSS: WOMEN ARE INCREASINGLY VULNERABLE TO LAYOFFS DURING RECESSIONS 1 (Comm. Print 2008), available at [http://www.jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord\\_id=4aaaa4af-e9c5-429e-7fab-4a700496c4f4&Region\\_id=&Issue\\_id=](http://www.jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord_id=4aaaa4af-e9c5-429e-7fab-4a700496c4f4&Region_id=&Issue_id=). See also Louis Uchitelle, *Women Are Now Equal as Victims of Poor Economy*, N.Y. TIMES, July 22, 2008, at A1, available at [http://www.nytimes.com/2008/07/22/business/22jobs.html?\\_r=2&ref=todayspaper&oref=slogin&oref=slogin](http://www.nytimes.com/2008/07/22/business/22jobs.html?_r=2&ref=todayspaper&oref=slogin&oref=slogin).

7. BRANSON, *supra* note 1, at 90-91, 102-03 (setting forth the primary sources of female directors); *id.* at 148 (“A primary source of [director] candidates is the roster of CEOs of publicly held companies.”).

8. See *id.* at 161-85.

9. Professor Branson does not question this in his book. He notes, near the end of the book, some advantages that women, as an element of diversity, may bring to the boardroom, including viewpoint diversity, stereotype negation, and cooperation among historical minorities. *Id.* at 176-79.

the development and maintenance of morally conscious and trustworthy boards of directors. Finally, consumers of corporate products and services, a group comprised increasingly of women,<sup>10</sup> deserve to be adequately represented in the corporations that draw large revenues from women's pockets.<sup>11</sup>

*No Seat at the Table* aptly describes how patterns of male dominance, which are inherent in the legal structures of corporate governance, reproduce themselves again and again to keep women out of the executive suites and boardrooms and offers a practical way to break this cycle of dominance.<sup>12</sup> A central value of Professor Branson's book derives from his gendered corporate governance thesis, as well as his use of nontraditional empirical data and interdisciplinary literature (in addition to more traditional decisional law and legal scholarship) to support the positions he takes. Yet, *No Seat at the Table* is also an invaluable resource because it collects, in one volume, varied research materials and related information at the intersection of women and corporate boards and because it offers further support for the diversification of boards of directors as part of the overall effort to strengthen corporate governance practices and promote more productive, efficient, and trustworthy corporations.<sup>13</sup>

This review is designed to explore these strengths—and a few related weaknesses—in Professor Branson's approach.<sup>14</sup> Specifically, Part I of the review highlights three key strengths

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10. See Ann Bartow, *Likelihood of Confusion*, 41 SAN DIEGO L. REV. 721, 777 (2004) ("Women are perceived to do most of the shopping, and this perception is accurate."); Stacie A. Furst & Martha Reeves, *Queens of the Hill: Creative Destruction and the Emergence of Executive Leadership of Women*, 19 LEADERSHIP Q. 372, 379 (2008) ("[W]omen are being catered to by automobile dealerships, mutual fund companies, home improvement stores, and healthcare companies because these businesses understand that women make the majority of purchasing decisions for the family.").

11. BRANSON, *supra* note 1, at 106-08.

12. *Id.* at 161-75.

13. *Id.* at 176-79. See also Joan MacLeod Heminway, *Sex, Trust, and Corporate Boards*, 18 HASTINGS WOMEN'S L.J. 173, 196 n.117 (2007).

14. We note at the outset that Professor Branson's description and analysis sometimes meander a bit and that there are some obvious redundancies in the text, deficiencies that are easily cured by more efficient structure and organization in places. Having made the point, there is no need to dwell on it. The substance of the book deserves more explication and therefore is the focus of the remainder of this review.

of Professor Branson's work: his thorough and useful report on 2001 and 2005 proxy data from public company filings with the U.S. Securities and Exchange Commission ("SEC"),<sup>15</sup> his account of the effects of tokenism in the boardroom,<sup>16</sup> and his analysis of the obstacles women face in climbing the rungs to the top of the corporate ladder.<sup>17</sup> Part II then evaluates the strengths and weaknesses of his proposed paradigm-shifting as an effective way to procure female advancement to executive ranks and board positions.<sup>18</sup> Finally, Part III examines the potential shortcomings of Professor Branson's observations that the differences between men and women are inconsequential and should be minimized,<sup>19</sup> and further, how these observations (when taken out of context) conflict with his efforts to keep women in the pipeline toward upper management. The review then ends with a brief conclusion.

#### I. Overall Descriptive and Analytical Strengths: Proxy Data, Tokenism, and Obstacles to Advancement

As a business law teacher and scholar, Professor Branson anchors the material included in *No Seat at the Table* in corporate governance law and practice. In particular, throughout the book, he notes factors and trends in corporate governance that may support increased participation by women on corporate boards of directors. The legal role of the corporate board of directors, the means of selection of directors, legal and practical movements toward increasing numbers of independent directors, the structure and function of board committees, and other related matters are addressed in the text and help contextualize the gender consideration at the heart of the book.<sup>20</sup> Yet, Professor Branson brings significantly more to bear in illuminating the issues. His supporting sources range from the traditional cases and law review articles that underlie much of legal schol-

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15. See BRANSON, *supra* note 1, at 97-108.

16. See *id.* at 109-23.

17. See *id.* at 77-96.

18. See *id.* at 161-75.

19. See *id.* at 184-85.

20. See, e.g., *id.* at 136-37, 145-46.

arship<sup>21</sup> to more innovative legal and non-legal sources (including literature from other disciplines).<sup>22</sup> This Part highlights three particularly strong elements of Professor Branson's description and analysis that reflect on or build from these varied source materials.

#### A. 2001 and 2005 SEC Proxy Data

Professor Branson aptly notes that although the percentage of women serving on boards in 2005 increased when compared to the percentage of female directors in 2001,<sup>23</sup> the use of percentages in reporting this data is often misleading. For example, many corporations responded to the adoption of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley")<sup>24</sup> by reducing the size of their boards;<sup>25</sup> so an increased percentage of women on boards may be explained, at least in part, by a smaller number of directors overall.<sup>26</sup> Additionally, the number of women serving on multiple boards increased between 2001 and 2005;<sup>27</sup> thus, the increased percentage of women directors reported is likely a reflection of the same women filling multiple board positions and not evidence of more women being appointed as directors.<sup>28</sup> In sum, when female representation on boards in 2005 is reported in percentages, the values may mislead because they do not necessarily indicate that more, different women are being appointed to corporate boards.<sup>29</sup>

In an effort to fill in the gaps in the data, Professor Branson devotes two entire chapters, Chapters 7 and 8, to the findings of his thorough review of the 2001 and 2005 SEC proxy data.<sup>30</sup> The information contained in these comparatively small chapters of the book is invaluable because it depicts the representa-

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21. See, e.g., *id.* at 13-14 (describing case law); *id.* at 178 (citing Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1259-60 (2003)).

22. *Id.* at 193-231 (comprising the endnotes and bibliography for the book).

23. *Id.* at 97, 99.

24. Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).

25. BRANSON, *supra* note 1, at 144-45.

26. See *id.* at 97, 101, 145.

27. *Id.* at 100.

28. *Id.* at 97, 144.

29. *Id.* at 99.

30. *Id.* at 87-108.

tion of women on corporate boards in simple, absolute numbers using a public data set. For example, Professor Branson's data set reveals an increase in the number of female directors from 480 in 2001 to 568 in 2005.<sup>31</sup> In addition, based on Professor Branson's study<sup>32</sup> in 2005:

- 568 of 5,161 directors were women;<sup>33</sup>
- of those 568, 79 women served on four or more boards;<sup>34</sup>
- 59 corporations in the Fortune 500 had no female directors in 2005;<sup>35</sup> and
- 183 corporations in the Fortune 500 had only one female director.<sup>36</sup>

These are but a few of the interesting points of information that emerge from Professor Branson's review and categorization of the 2001 and 2005 SEC proxy data.

Professor Branson's presentation of hard facts in the style of a statistical report, undiluted by opinion or speculation, makes the reality of the figures impossible to ignore. Professor Branson further solidifies his point (and adds meaningfully to the overall available information on the gender composition of boards of directors) by reporting the numbers of women on the boards of directors of corporations for which the consumer base is largely female.<sup>37</sup> For example, in the retail drug industry (where a majority of shoppers are women), Professor Branson reports that industry leaders like Walgreen's, Rite Aid, and Long's each had a single female director in 2005.<sup>38</sup> CVS followed with only two female directors.<sup>39</sup> Grocery store chains Kroger and Whole Foods had only two female directors.<sup>40</sup> Retail corporations also had surprisingly few female directors. Professor Branson reports that, in 2005, Dillards had no female direc-

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31. *Id.* at 97.

32. Although we refer to the study and data as Professor Branson's (since he directed the data gathering and publication), he notes in the text that the data collection was done by four law student research assistants. *Id.* at 88.

33. *Id.* at 97.

34. *Id.*

35. *Id.* at 102.

36. *Id.*

37. *Id.* at 106-08. Professor Branson also presents other data on numbers and percentages of female directors by industry and company. *Id.*

38. *Id.* at 106.

39. *Id.*

40. *Id.* at 107.

tors, and Walmart, Kmart, Kohl's, and Family Dollar Stores each had only one female director.<sup>41</sup> Professor Branson is most surprised by the lack of women on the boards of Procter & Gamble, Coca-Cola, Nike, Whirlpool, Gillette, Kellogg, Campbell's Soup, and Mattel Toys, each of which had two female directors in 2005.<sup>42</sup> He had expected these numbers to be higher, given these corporations' seemingly great need to appeal to female consumers.<sup>43</sup>

The utility of a report on annual proxy data of Fortune 500 boards before and after the enactment of Sarbanes-Oxley, compiled in one resource in a comprehensible and well-organized format, is very useful. Because public corporations must comply with widely available, uniform, and consistent SEC filing requirements,<sup>44</sup> the 2001 and 2005 proxy data reported by Professor Branson is transparent and easily cross-checked and compared.<sup>45</sup> There is a significant and unfulfilled need for updated, comparative data like that Professor Branson presents in Chapters 7 and 8 of *No Seat at the Table*. We hope that Profes-

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41. *Id.*

42. *Id.* at 108.

43. *Id.*

44. 15 U.S.C. § 78n(a) (2006); Solicitations of Proxies, 17 C.F.R. §§ 240.14a-1 to -104 (2008).

45. Professor Branson relies on proxy data obtained from Schedule 14A filings with the SEC instead of data reported by Catalyst or other research firms. *See* BRANSON, *supra* note 1, at 2. The requirements of Schedule 14A are, in relevant part, the same for each company and consistent for the two years of his study. *Id.* at 88 & n.4, 89 & n.5. Professor Branson also cites to research firm reports in the book, but he distinguishes his study from those reports. *See id.* at 143-44. As Professor Lissa Lamkin Broome notes, Catalyst's data is obtained by surveying Fortune 500 corporations by letter, phone calls, and examination of the public records. Lissa Lamkin Broome, *The Corporate Boardroom: Still a Male Club*, 33 J. CORP. L. 665, 668 n.16 (2008). Professor Broome critiques both the Branson and Catalyst presentations, to some extent. *Id.* at 667-69. While Catalyst data is invaluable in evaluating female representation on corporate boards within a given year, the data is not easily compared across years, because the data collection and reporting methods are not transparent (e.g., it is unclear that the questions asked during telephone conversations are precisely the same from year to year). Those citing Catalyst results often cite to data for a single year and not for longitudinal or comparative analysis. *See* Val Singh et al., *Newly Appointed Directors in the Boardroom: How Do Women and Men Differ?*, 26 EUR. MGMT. J. 48, 48 (2008) (citing the 2004 Catalyst report to highlight the scant representation of women on corporate boards); Vicki W. Kramer et al., *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, (Wellesley Ctrs. for Women, Working Paper Series, Report No. WCW 11, 2006) (citing to the 2005 Catalyst report for percentages of Fortune 500 board seats held by women).

sor Branson undertakes to provide (or arrange for the provision of) those updates on an annual or other periodic basis.

### B. *Tokenism*

As Professor Branson's research shows, almost forty percent of corporations in the Fortune 500 have only one female director.<sup>46</sup> While this represents progress in comparison to the all-male boards of the past, the benefits of gender diversification may not be fully realized due to the effects of tokenism.<sup>47</sup> Professor Branson defines a token as a "solo, one of a kind (woman, black, Hispanic) in a smaller work group, job classification, or organization."<sup>48</sup> Sole female directors are vulnerable to heightened visibility and performance pressures that inhibit their potential contributions to boards.<sup>49</sup> Dominant male members of the group become aware of the communal attributes among the men in the group and how those commonalities distinguish them from the token female board member, thereby isolating the woman from the rest of the board.<sup>50</sup> The token member's decisions and input are scrutinized, not only for merit and substance, but also because they are perceived to represent

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46. BRANSON, *supra* note 1, at 102.

47. *Id.* at 109. See also Reneé B. Adams & Daniel Ferreira, *Women in the Boardroom and Their Impact on Governance and Performance* 11-12 (Ctr. for Econ. Insts., CEI Working Paper Series, No. 2008-7, Apr. 2008), available at <http://cei.ier.hit-u.ac.jp/Japanese/database/documents/WP2008-7.pdf>.

48. BRANSON, *supra* note 1, at 110.

49. *Id.* at 111. See also Kramer et al., *supra* note 45, at 4-5. As Professor Mary Becker explains:

The first women who enter into previously all-male groups feel these barriers particularly acutely. In addition, they feel considerable pressure to perform well so as not to hurt the chances of the women who will follow them, yet they lack any intra-group support system analogous to that enjoyed by men. Internalization of sex-specific behavioral norms, by the women breaking in and those around them, makes finding an effective and comfortable style in a male environment difficult.

Mary E. Becker, *Barriers Facing Women in the Wage-Labor Market and the Need for Additional Remedies: A Reply to Fischel and Lazear*, 53 U. CHI. L. REV. 934, 945-946 (1986) (footnotes omitted).

50. BRANSON, *supra* note 1, at 113. Introduction of a token female to a male-dominated group may result in men becoming more aware of their common characteristics (e.g., they are "outdoorsmen, like sports, talk about cars and women") and recognizing their shared differences from the token (e.g., they are rational and unemotional, while the female group member exemplifies opposite characteristics). *Id.* at 111.

the sentiments of the entire gender or race.<sup>51</sup> Moreover, Professor Branson notes that women bear a heavy burden as a result of normative perceptions about appropriate behavior.<sup>52</sup> A token female director walks a fine line between performing equally to her male counterparts in board discussions and decision-making (to prove her worth to the corporation and show she is deserving of her position on the board) and not outperforming her male board colleagues (or risk being regarded as too “aggressive, pushy, and overly ambitious”).<sup>53</sup>

Because of these constraints on the behavior of token woman directors, the efficacy of adding a sole female director to the board is questionable—mandating token female participation in the boardroom may not improve the board’s effectiveness, and in the case of boards that already govern well, it might actually reduce effectiveness.<sup>54</sup> Ideally, the diversification of corporate boards should mitigate or eliminate the observed “groupthink” problem that likely plagues many ill-advised board decisions.<sup>55</sup> In a letter to the editor of the *Wall Street Journal*, Sun Oil CEO Robert Campbell states that “[o]ften what a woman or minority person can bring to the board is some perspective a company has not had before—adding some modern-day reality to the deliberation process. Those perspectives are of great value, and often missing from

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51. *Id.* at 113-14. See also Kramer et al., *supra* note 45, at 4-5.

52. See BRANSON, *supra* note 1, at 118-19.

53. *Id.* at 114.

54. In instances where a female director is chosen solely to fill a gender role on the board of directors of a well governed corporation, the resulting monitoring and decision making may be counterproductive and actually reduce the board’s effectiveness. However, results of Adams and Ferreira’s study suggest that female directors *are* able to impact board governance in firms where additional monitoring is needed. See Adams & Ferreira, *supra* note 47, at 5.

55. Irving Janis proposes application of the groupthink label when three antecedent conditions and eight symptoms are met. See IRVING L. JANIS, VICTIMS OF GROUPTHINK (1983). The three antecedent conditions include: a cohesive group; structural faults in decision making; and situational context. *Id.* at 176-77. Janis’s eight symptoms of groupthink are: (1) a sense of invincibility; (2) a belief in inherent morality of goals; (3) collective rationalization; (4) the stereotyping of out-groups; (5) the appearance of unanimity; (6) self-censorship; (7) pressure on dissenters; and (8) self-appointed mind-guards. *Id.* at 174-75. See also Marleen A. O’Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1257-60 (2003). The presence of female directors may disrupt cohesion or the presence of other predicate conditions and may prevent the appearance of the identified symptoms. See BRANSON, *supra* note 1, at 178-79.

an all-white-male gathering.”<sup>56</sup> However, those perspectives may be lost in boardrooms with token female or minority members.<sup>57</sup>

In his chapter on tokenism, Professor Branson describes several coping strategies that tokens adopt in response to performance pressures exerted by their positions on the board.<sup>58</sup> He posits that, on one extreme, tokens may “revel in the notoriety of token status,”<sup>59</sup> enjoying the perceived advantages of being the only woman in the group and “excessively criticiz[ing] potential women peers.”<sup>60</sup> The benefit to a token female director of turning against other women is two-fold: it ensures her place as “Queen Bee”<sup>61</sup> in the boardroom, while also demonstrating her loyalty to the male-dominated group by conforming to male biases and portraying herself as “not a typical woman.”<sup>62</sup> The existence of groupthink on a corporate board is not

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56. David A. Carter et al., *Corporate Governance, Board Diversity, and Firm Value*, 38 FIN. REV. 33, 34 (2003). See also Kramer et al., *supra* note 45, at 42-44 (noting observations about differences that women make to corporate boards of directors).

57. See *supra* notes 47-54 and accompanying text.

58. See BRANSON, *supra* note 1, at 115.

59. *Id.*

60. *Id.*

61. *Id.* at 67, 115. According to Branson, “[t]he Queen Bee syndrome occurs when the first woman to reach a certain job classification or management level tries to exclude other women from the same level, status, or job classification.” *Id.* at 67. See also *infra* notes 125-28 and accompanying text. We note that the “Queen Bee” moniker has been variously invoked and refuted in various contexts in the academic literature and in life. See Edward S. Adams, *Using Evaluations to Break Down the Male Corporate Hierarchy: A Full Circle Approach*, 73 U. COLO. L. REV. 117, 170-71 (2002); Cynthia Fuchs Epstein, *Women’s Attitudes Toward Other Women: Myths and Their Consequences*, 34 AM. J. PSYCHOTHERAPY 322, 326-27 (1980) [hereinafter Epstein, *Women’s Attitudes*].

62. BRANSON, *supra* note 1, at 118. This seeming repudiation of female status is a common adjunct or alternative to Queen Bee status. Professor Deborah Rhode describes the two phenomena as they operate generally in the workplace.

It is, of course, not only men who are responsible for patterns of exclusion and inequality. As recent reports make clear, some workplaces have what sociologists once labeled “Queen Bees”: women who believe that they managed without special help, so why can’t everyone else? By contrast, other women leaders are more sensitive to gender-related problems but reluctant to become actively involved in the solution. Some of these women are hesitant to become “typed as a woman” by frequently raising “women’s issues,” by appearing to favor other women, or by participating in women’s networking groups.

Deborah L. Rhode, *The Difference “Difference” Makes*, 55 ME. L. REV. 15, 18 (2003).

likely to be mitigated or eliminated by the addition of a woman who exhibits these behaviors; rather, the addition of yet another director who will conform to pre-existing group biases and beliefs is likely to perpetuate, or even strengthen, groupthink.<sup>63</sup>

A token female board member may compensate (and demonstrate loyalty to her fellow male board members) by allowing her male board colleagues to “encapsulate her in a role that represents a stereotype but one to which the majority is receptive” in order to make her presence in the boardroom more comfortable.<sup>64</sup> Negative consequences of permitting encapsulation resonate from the token female to the women in middle-management attempting to climb the ranks.<sup>65</sup> The price of encapsulation is diminished recognition of the token’s individual productive activity, thereby hindering her advancement and proffering support for the argument that women bring no significant advantage to the boardroom over men.<sup>66</sup> It follows that if the token female member does not seem to be of any real benefit to the board, there is little incentive to appoint more women directors.<sup>67</sup> The negative effects on middle management are also important, since, as Professor Branson and others note, most corporate directors come from the ranks of corporate executive officers, who typically are groomed for the job through middle management positions.<sup>68</sup> The price paid by a token female director who allows herself to be stereotyped as a “mother

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63. See BRANSON, *supra* note 1, at 117.

64. *Id.* at 118. Professor Susan Estrich analogizes the phenomenon of women striving to make men comfortable with their presence in the boardroom to fitting into a vise. SUSAN ESTRICH, *SEX & POWER* 134 (2000). Women tailor their management styles to be more in line with their male counterparts, learn to play golf well (but not too well), and consistently exceed expectations to prove their contributions to the boardroom are needed. *Id.* at 119-24, 126-28. However, as women climb the ranks, the vise grows tighter and many women are eventually squeezed out. *Id.* at 134-38.

65. BRANSON, *supra* note 1, at 119.

66. *See id.*

67. *See id.*

68. *See, e.g., id.* at 91-92, 98, 148. *See also* Jayne W. Barnard, *Sovereign Prerogatives*, 21 J. CORP. L. 307, 318 (1996) (book review) (“Most directors are themselves CEOs . . . .”); Assaf Hamdani & Reinier Kraakman, *Rewarding Outside Directors*, 105 MICH. L. REV. 1677, 1709 (2007) (“[M]ost directors are wealthy executives . . . .”).

figure”<sup>69</sup> or “group pet”<sup>70</sup> is her marginalization and stigmatization in board deliberations and the possible diminished recognition of her accomplishments as a member of the board.<sup>71</sup> The token is valued for fulfilling the characteristics expected of the assigned stereotype—no more, no less.

To procure the continued, actual diversification of boards, current predominantly male boards need to appreciate the unique, but equally valuable, contributions of individual women and minority directors—not as “one of the boys” or as a representative of a particular stereotyped set of viewpoints, but as individualized inputs. The benefits of a diversified board are lost if female and minority board members are appreciated solely because of their conformity to existing group behaviors or perceived stereotypical character traits.

Conversely, on the opposite extreme of Professor Branson’s coping strategies is the token woman director who attempts to make herself socially invisible to avoid disrupting perceived group harmony and alleviate discomfort felt by the rest of the (all male) board.<sup>72</sup> The invisible token remains on the periphery of the board’s activities, reluctant to dissent from the opinion of the group for fear that she may rock the boat.<sup>73</sup> Thus, the invisible woman’s contributions and accomplishments are unlikely to be recognized, and any benefits of a diversified board go unrealized, negatively reinforcing antiquated beliefs that a woman brings nothing new to the table.<sup>74</sup> Moreover, like the token that prizes being the only woman in the room, the invisible token

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69. BRANSON, *supra* note 1, at 119. Token women stereotyped as mother figures are relied upon for support, but as long as they are in the minority, it is unlikely that they will be rewarded for “critical, independent, task-oriented behaviors.” Rosabeth Moss Kanter, *Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women*, 82 AM. J. SOC. 965, 982 (1977).

70. BRANSON, *supra* note 1, at 119. While men may be praised for the substantive contributions they make to the group, token women stereotyped as the group pet are celebrated for superficial attributes, such as “speech-making ability;” this characterization of token women prevents “them from realizing or demonstrating their own power and competence.” Kanter, *supra* note 69, at 983.

71. BRANSON, *supra* note 1, at 119.

72. *Id.* at 115.

73. *Id.*

74. *Id.* at 119.

woman director does little to alleviate the effects of groupthink, since her independent voice is never heard.<sup>75</sup>

While the coping behaviors comprising social invisibility do not include overt attempts to prohibit potential female peers from rising to the token woman director's level, the result for the female director is, in effect, the same as if overt tactics had been used.<sup>76</sup> Regardless of whether women allow themselves to be encapsulated into female stereotypes so that male directors feel more comfortable with their presence in the boardroom or avoid recognition altogether in favor of blending in with the group, the benefits of any new perspectives are lost.<sup>77</sup> The obstacles before a female middle manager must appear insurmountable through Professor Branson's eyes: before her lies the glass ceiling, broken in a few places by a handful of sole female directors who either conform to a male-dominated board or an expected stereotype or make themselves undetectable. In fact, Professor Branson attributes both the shortage of women reaching the upper ranks of corporate management and the premature departure of these women from upper-management positions (representing additional loss from the "leaky pipe") to the undesirability of these coping strategies, together with dominant group behaviors and an overall lack of recognition.<sup>78</sup> Through each coping strategy, the behavior of the token female director may prevent her from achieving her full potential as a manager and a board member and devalues any contribution she in fact makes to management or the board.<sup>79</sup>

Sadly, Professor Branson's prognosis for a board with two female directors is equally grim. He posits that when two female directors are in the boardroom, they may easily be turned against one another.<sup>80</sup> In fact, he suggests there is a strong incentive for the male board members to encourage this divisiveness.<sup>81</sup> Although the underpinnings of Professor Branson's statements regarding tokenism proffer empathy for sole and

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75. *See id.* at 115.

76. *See id.*

77. *Id.*

78. *Id.* at 122-23.

79. *See id.*

80. *See id.* at 121.

81. *Id.* ("Two are few enough for the dominants easily to divide. Larger numbers may be necessary to relieve stresses and for supportive alliances to develop.").

dual female directors, he somewhat contradicts his objective of promoting women's place in the boardroom by highlighting, in a way that makes it seem like a unique female trait, the vulnerability of token female directors to the manipulation and puppetry of their male counterparts. In fact, this susceptibility to manipulation is borne of deeply discounted minority status, regardless of gender.<sup>82</sup> Under Professor Branson's view, it may seem that the boardroom is indeed better left an old boys' club and that there is no way to change it in any case. One is left to wonder (and this is Professor Branson's point) whether, for women aspiring to upper management, there is any reason to strive for key executive officer positions and board seats.

A study published in the same year as *No Seat at the Table* offers a brighter picture of the boardroom with two female directors, however. After surveying a number of female directors, CEOs, and corporate secretaries, researchers reported that the addition of two women to an all-male group resulted in less stereotyping by male members and a decrease in female members' feelings of isolation, because each woman had a perceived ally in the group.<sup>83</sup> However, the study's results lend support to Professor Branson's premise that the benefits of boardroom diversification only may be fully realized when there are more than two women on the board: researchers found that "with three women on a board, a critical mass is formed. If the three women strongly and unwaveringly support a particular issue, they may create a 'majority influence dynamic' that causes their views to prevail."<sup>84</sup> The existence of a "critical mass" of women on a corporate board influences the way female directors feel

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82. While being in the numerical minority can be difficult for anyone, research suggests that minority status is particularly detrimental for women and racial and ethnic minorities because these groups have historically been attributed lower social status. See Kramer et al., *supra* note 45, at 5. See also Steven A. Ramirez, *A Flaw in the Sarbanes-Oxley Reform: Can Diversity in the Boardroom Quell Corporate Corruption?*, 77 ST. JOHN'S L. REV. 837, 852 n.88 (2003) (suggesting that both gender diversity and racioethnic diversity may introduce a different perspective into the boardroom because women and nonwhites are not members of the good old boys' club and observing that "[i]ndividuals offering either type of diversity . . . have been historically deprived of the ability to actualize their full potential.").

83. Kramer et al., *supra* note 45, at 5-6, 22.

84. *Id.* at 6.

about their place among fellow directors.<sup>85</sup> When there are enough female directors to comprise a critical mass, both women and men feel more comfortable with female presence in the boardroom, thus enhancing female directors' abilities to contribute and be heard regarding matters that come before or impact the board.<sup>86</sup> The end result is not only a favorable experience for both male and female members of the diversified board, but also a positive impact on corporate governance in the firm.<sup>87</sup>

### C. *Obstacles in Women's Paths to Advancement*

Although portions of *No Seat at the Table* are not expressly targeted to an audience of women attempting to remain in the pipeline to the boardroom—it is certainly not merely a “how to” book for women aspiring to upper management positions and board seats<sup>88</sup>—Professor Branson's descriptions and discussions of obstacles in the paths of women's advancement are exactly that.<sup>89</sup> These portions of the text also help inform existing executives and directors. As a result, they are among the most useful part of the book for readers other than academics and researchers. In this respect, the book represents a crossover between an academic offering and a trade book.<sup>90</sup>

After covering generally accepted aspects of the struggle associated with women's advancement to senior corporate management positions in the first two chapters of *No Seat at the Table*, in Chapter 3, Professor Branson briefly reviews the all-too-familiar effects of the glass ceiling, manifested in hostile work environments, targeted “reductions in force,” and the stereotyping of women as either too feminine or lacking in femininity.<sup>91</sup> He then describes the effects of motherhood on career

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85. *See id.* at 44-45.

86. *Id.* at 34-39.

87. *Id.*

88. BRANSON, *supra* note 1, at 3.

89. *See id.* at 9-74.

90. This is both an advantage and a distraction in the book. The variety of audiences to whom Professor Branson directs his text sometimes confuses the message. This attempt to do something for everyone is the likely genesis of many (if not most) of our significant critiques of the book.

91. *Id.* at 23-32.

advancement, a seemingly unsolvable problem.<sup>92</sup> As Professor Branson notes, although the percentage of married couples with both spouses in the workforce has steadily increased for several decades, child-rearing responsibilities continue to be disproportionately borne by mothers.<sup>93</sup> Some women are “opting out” of their careers because it seems impossible to balance a job that demands long hours with child care, soccer practices and games, and PTA meetings.<sup>94</sup> The mother who leaves work early to tend to children continues to be viewed, in many workplaces, as undedicated to her work and undeserving of promotion.<sup>95</sup> Yet, the mother who misses the school play to negotiate the details of a merger is cast as cold and uncompassionate.<sup>96</sup> Cumulatively, these burdens and attitudes amount to a lose/lose proposition for many working women. As a result, many women committed to achieving their career ambitions choose to have only one child (minimizing the potential conflicts) or no children at all.<sup>97</sup> Meanwhile, in many cases, men with families at home are praised for working late hours and given the “good assignments” that lead to promotion after promotion, paving the way to upper-management.<sup>98</sup>

Professor Branson’s accounts of the plight of specific women who attempted to balance motherhood and a career are not particularly novel.<sup>99</sup> Most women either have had a similar experience or know someone who has. The valuable purpose of these somewhat unremarkable accounts in the book is to instill in readers both empathy and a desire to fight for change. After igniting those feelings, Professor Branson cleverly constructs a

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92. *Id.* at 35-39. See also Barbara Kellerman, *You’ve Come a Long Way Baby—And You’ve Got Miles to Go*, in *THE DIFFERENCE* “DIFFERENCE” MAKES, *supra* note 3, at 55.

93. BRANSON, *supra* note 1, at 35.

94. *Id.* at 38.

95. *Id.* at 37.

96. See ESTRICH, *supra* note 64, at 17.

97. BRANSON, *supra* note 1, at 36.

98. See, e.g., Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733, 751-52 (2001) (“[M]any women report increasing their efficiency in order to be as productive as possible during the work day in order to spend evenings with their children while many men, they claim, often only work to full capacity in the afternoons and into the night. This nighttime work often ‘counts for more,’ because it is regarded as more heroic.”).

99. BRANSON, *supra* note 1, at 45-51.

distinct platform on which readers may stand in making the argument for corporate change toward mother-friendliness: the business and economic reasons why motherhood matters.<sup>100</sup>

In this brief part of the book, Professor Branson cites the potential effects of inadequate human capital for the future of the United States, as evidenced by the consequences of falling birth rates for the past few years in Spain and the Netherlands.<sup>101</sup> An argument for change rooted in the linkage among childbearing, childrearing, and human capital—supported by foundational work authored by, among others, Professor Marleen O'Connor<sup>102</sup>—tugs less at the heartstrings of mothers than at those of businessmen planning for the future of corporate America. This argument offers both women *and* men a reason to value motherhood and all of the temporary inconveniences that accompany it. Both women and men desire a secure labor force for the benefit of businesses and the nation's economy.

Chapter 4 of Professor Branson's book notes differences in the communication styles of men and women that may stigmatize women and advises women to make modest changes in their language usage, assertiveness, and inflection as a means of furthering themselves professionally.<sup>103</sup> He references the work of criminal law professor Janet Ainsworth, which posits that men and women use different linguistic registers, thus exhibiting characteristically distinct ways of speaking.<sup>104</sup> Professor Branson cites particular female speech characteristics that may play a role in women's advancement in corporate governance structures, including: "(1) avoidance of imperatives and the use of indirect interrogatories instead; (2) increased use of modal verbs; (3) use of hedges; (4) rising intonation in declara-

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100. *Id.* at 52.

101. *Id.*

102. *See, e.g.*, Marleen O'Connor-Felman, *American Corporate Governance and Children: Investing in Our Future Human Capital During Turbulent Times*, 77 S. CAL. L. REV. 1258, 1316 (2004) ("[E]conomic growth is strongly determined by the intergenerational transmission of human capital. Thus, equality of income assures that more families can afford to educate their children in a manner that will contribute to the economy in the future.").

103. *See* BRANSON, *supra* note 1, at 55-64.

104. *Id.* at 57-58 (citing Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 274 (1993)).

tory statements; and (5) silence or quiescence in the face of adversaries or aggressors.”<sup>105</sup>

Professor Branson explains that the use of imperatives, or an overt order, conveys assertiveness and superiority.<sup>106</sup> By substituting indirect interrogatories (e.g., “Should we hire him?”—instead of “Hire him.”), women may relinquish a portion of their decision-making power and place themselves in a subordinate position to their male colleagues.<sup>107</sup> Women who adopt this speech pattern in male-dominant groups may appear to lack confidence and may find it difficult to receive full credit for profitable managerial decisions.<sup>108</sup>

Similarly, Professor Branson notes that a woman’s insertion of modal verbs into imperative statements (e.g., “You *might* hire him.”) and use of verbal hedges (e.g., “I think” or “I suppose”) may make her appear less confident and assertive.<sup>109</sup> These linguistic patterns, coupled with women’s rising intonation in declaratory statements,<sup>110</sup> lend favor to the stereotype that women are overly emotional and may be a possible reason for women’s relative absence from upper management and the boardroom.<sup>111</sup> Additionally, women’s cooperative nature often leads them to be silent during conflict or acquiesce to mollify tensions.<sup>112</sup> This behavior bolsters the perception that women do not meaningfully contribute to the tug-of-war negotiations that take place in corporate executive suites and boardrooms.<sup>113</sup>

In addressing these verbal presentation observations, Professor Branson effectively points to small, but significant, changes women may make to improve their presence in the boardroom, without forcing a change in their nature.<sup>114</sup> At the

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105. *Id.* at 58.

106. *Id.* at 58-59.

107. *See id.*

108. *Id.* at 57-59.

109. *Id.* at 59-60.

110. *Id.* at 60-61.

111. *Id.*

112. *Id.* at 62.

113. *Id.* at 62, 63.

114. Professor Branson expressly cautions women to avoid the extreme, becoming “Bully Broads” and adopting overly dominating and power-driven behaviors commonly associated with male managers. *Id.* at 63. *See also infra* notes 117-21 and accompanying text. Bully Broads are characterized as “intense intimidating dynamos.” BRANSON, *supra* note 1, at 68. While their drive and productivity

very least, women should be aware of the ways in which their communication style may be perceived and may be well advised to occasionally use imperatives and reduce their frequent use of modal verbs and verbal hedges. Regrettably, readers are left with no detailed guidance on how to make these changes successfully. For this, a woman desiring advancement must use other resources.<sup>115</sup>

Professor Branson principally turns his attention toward another audience (those responsible for hiring and placing women in business careers) to tender his most pointed advice regarding the differences in communication styles of women and men. In this part of the book, he asks for quite a bit—perhaps too much—from employers and head-hunters in terms of the acknowledgement and accommodation of difference. For example, while his advice to lengthen interviews with women (to allow them time to feel comfortable opening up about their talents) and to avoid automatically placing women only in the “pink-collared” jobs in human resources departments is well taken and rooted in the research he cites,<sup>116</sup> blind implementation of these changes may be an over-reaction. Certainly, greater sensitivity to the observed gender differences in communication is a sensible first step. Also, firms should adopt hiring and retention evaluation systems that minimize the possibility that these differences will be misinterpreted in employment, placement, and promotion.

In Chapter 5, his final chapter devoted to obstacles in the path of advancement, Professor Branson describes four stereotypes that women fulfill to their detriment as they climb the corporate ladder.<sup>117</sup> First is the “Bully Broad” stereotype, characterized by a “harsh command-and-control style” that is often acceptable for men but disfavored in women.<sup>118</sup> Bully Broads are often viewed as confrontational and possessing an excessive sense of entitlement; they are brash and insensitive in their

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may initially serve to advance their careers, it eventually serves only to handicap their progress. *Id.* at 68-69.

115. Public speaking experts may be of help in making these changes. *See, e.g.,* HANNAH WOOD, *Communication Expert Gives Speech Advice*, BI-C. NEWS ONLINE, Feb. 1, 2005, <http://www.biconews.com/?p=1666>.

116. BRANSON, *supra* note 1, at 63.

117. *See id.* at 65-74.

118. *Id.* at 65-66.

dealings with everyone, from the waiter or doorman to their colleagues and subordinates.<sup>119</sup> Women who fall into the Bully Broad category are often labeled as abrasive, tyrannical, or sharp-tongued by supervisors.<sup>120</sup> Professor Branson believes this strong, domineering management style prevents women's advancement because Bully Broads are viewed as lacking the diplomacy and strategic skills requisite of successful corporate executives.<sup>121</sup>

Next is the "Iron Maiden" phenomenon, observed when a token female is reluctant to assimilate to the stereotypical roles imposed upon her by the dominant male members of the group.<sup>122</sup> Women labeled Iron Maidens are viewed with suspicion and kept at a distance; dominant male members of the group often respond to Iron Maidens as though they are tough and dangerous.<sup>123</sup> Here, Professor Branson reiterates the perils of the token female who resists encapsulation by a male-dominated group, distances herself from female peers, and nevertheless insists on her full rights as a member of the group; she is ultimately left to flounder on her own with no sympathy from the women she alienated on her rise to the top and no in-group status with her male colleagues.<sup>124</sup>

The third stereotype Professor Branson introduces is the "Queen Bee,"<sup>125</sup> which is observed in women who have reached upper-levels of management but prevent other women from doing the same, fearing loss of status or power.<sup>126</sup> The Queen Bee

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119. JEAN HOLLANDS, SAME GAME, DIFFERENT RULES: HOW TO GET AHEAD WITHOUT BEING A BULLY BROAD, AN ICE QUEEN OR "MS. UNDERSTOOD" 164-65 (2002).

120. *Id.* at xxiii.

121. BRANSON, *supra* note 1, at 66.

122. *Id.* at 66-67. *See also* Kanter, *supra* note 69, at 982-84 (suggesting that token females are commonly cast into one of three roles: Mother, Seductress, or Pet; and when the token female refuses to assimilate to one of these roles, she is viewed as an "Iron Maiden").

123. Kanter, *supra* note 69, at 984.

124. *Id.*

125. Graham Staines et al., *The Queen Bee Syndrome*, PSYCHOL. TODAY, Jan. 1974, at 55. *See also* Epstein, *Women's Attitudes*, *supra* note 61, at 326-27.

126. BRANSON, *supra* note 1, at 67. *See also* Adams, *supra* note 61, at 170-71 (arguing that the Queen Bee syndrome is uncommon, but acknowledging that female managers who do engage in "Queen Bee behavior" are likely resented by female subordinates and, as a result, are further isolated as they climb the corporate ladder).

female manager, rather than making the road easier for the women behind her, erects roadblock upon roadblock to the advancement of these women, in an effort to retain her position as the sole female member of the group.<sup>127</sup> Negative effects of tokenism (e.g., isolation by the male-dominated group and resentment by female peers) are associated with Queen Bee status.<sup>128</sup>

Finally, the woman who is judgmental, rigid, and inflexible in her managerial style and who also remains silent for fear that revealing her feelings will be perceived negatively, is characterized as the “Ice Queen.”<sup>129</sup> “The Ice Queen is reserved and steely.”<sup>130</sup> She can be seen as a Bully Broad that infrequently engages in verbal bullying.<sup>131</sup> However, when she does speak, it is often sharp and damaging.<sup>132</sup> Professor Branson credits women who fit this stereotype with exhibiting externalizing behaviors, always placing blame on others for problems that arise.<sup>133</sup> Much like the other stereotypes, the Ice Queen tends to isolate herself from her female peers and the other members of a male-dominated group.<sup>134</sup>

Professor Branson’s observation that these stereotypes persist in corporate management and his assessment that women who exhibit these stereotypical behaviors find themselves unable to advance past middle management are both candid and, at least as to some women in the pipeline, on point. Relying on the work of others, Professor Branson calls attention to small modifications that women may make to these behaviors that could greatly improve their chances of reaching the boardroom.<sup>135</sup> In this chapter of *No Seat at the Table*, Professor Branson’s advice for board-aspiring women is more pointed than it is in Chapter 4.

Professor Branson realizes that male or female candidates for upper-management and board-level positions undoubtedly

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127. BRANSON, *supra* note 1, at 67.

128. *See supra* Part I.B.

129. BRANSON, *supra* note 1, at 67-68.

130. HOLLANDS, *supra* note 119, at 5.

131. *See id.* at xxvi.

132. *Id.*

133. BRANSON, *supra* note 1, at 67.

134. *See id.*

135. *Id.* at 69-74.

must possess some level of control and combativeness to advance above the competition and into leadership positions.<sup>136</sup> As he and other authors have noted, the levels of assertiveness and determination that may be required for corporate advancement varies for men and women because of the different obstacles they face in their respective journeys.<sup>137</sup> Arguably, each stereotype Professor Branson identifies includes characteristics women must have in order to be successful leaders—the dominant authority of the “Bully Broad,” the independent strength of the “Iron Maiden,” the solitary ambition of the “Queen Bee,” and the dogmatic fixation of the “Ice Queen.”

But those characteristics must be moderated. A question therefore becomes, “How much is too much?” In this chapter, Professor Branson helpfully guides women to recognize behavioral attributes that may be holding them back. This is an undoubted value of the book. However, women cannot fully realize the potential value of this information because, at the end of Chapter 5, they are left to their own devices in determining how to employ and modulate the necessary behaviors effectively in their climb to the top.

## II. A Mixed Bag: Shifting Paradigms in Advancing to Upper Management

With apparent (although largely unstated) recognition that he has set forth many issues and yet only some piecemeal or preliminary suggestions in earlier parts of the text, Professor Branson pragmatically turns, in Chapter 13, to the task of addressing how he believes women can use the information collected in the book in a systematic way—as part of a process—to more effectively advance in the corporate management tournament.<sup>138</sup> Specifically, Professor Branson offers a practical plan that involves a female manager engaging in shifting paradigms

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136. *See id.* at 74. *See generally* Marleen A. O'Connor, *Women Executives in Gladiator Corporate Cultures: The Behavioral Dynamics of Gender, Ego, and Power*, 65 MD. L. REV. 465 (2006) (describing the tournament through which women in corporations progress to executive and board positions).

137. *See* BRANSON, *supra* note 1, at 74 (appreciating the complexity of women's advancement in corporate America and suggesting the need for personalization and flexibility in implementing any “how to” advice). *See also* Estrich, *supra* note 64, at 145-48.

138. *See* BRANSON, *supra* note 1, at 161-75.

several times over the course of her career to emphasize behaviors and characteristics that may be most effective at each advancement level.<sup>139</sup> The advice Professor Branson gives here is novel and has both advantages and disadvantages.

### A. *Paradigm One*

Professor Branson's first paradigm is "the tightrope," where he advises women to be aggressive in seeking achievements but cautions them on the perils of appearing too aggressive.<sup>140</sup> Professor Branson notes that aggression may be perceived differ-

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139. *See id.*

140. *Id.* at 161-62. In describing paradigm one, Branson frequently uses the word "aggressive." *Id.* "Aggressive" is defined as "marked by combative readiness" or "tending toward or exhibiting aggression." Merriam-Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary/aggressive> (last visited Apr. 3, 2009). Aggression is defined as "a forceful action or procedure (as an unprovoked attack) especially when intended to dominate or master." Merriam-Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary/aggression> (last visited Apr. 3, 2009). *Cambridge Advanced Learner's Dictionary* defines aggressive as "behaving in any angry and violent way towards another person" or "determined to win or succeed and using forceful action to achieve victory or success." Cambridge Dictionaries Online, <http://dictionary.cambridge.org/define.asp?key=1637&dict=CALD> (last visited Apr. 3, 2009). As one can see from these myriad definitions, the word "aggressive" can have either not enough or too much content, depending on its usage; moreover, it has pejorative, stereotypical overtones in a feminist context that Branson may intend to invoke. *See* Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 *CARDOZO L. REV.* 1487, 1493 (2008) ("Common sex stereotypes include the expectation that men are strong, independent, reasonable, and aggressive, while women are weak, dependent, emotional, and passive; these stereotypes can be used to rationalize male violence against women."). One scholar succinctly describes these connotations in a criminal law context:

Women are, and therefore ought to be, passive, fulfilling their primary sexual role as wife and mother. Men, in contrast are naturally competitive and aggressive, justifying their place on the battlefields, in boardrooms, and bedrooms. As a result of this long line of deterministic arguments, two images of women emerged: good/normal/nonaggressive/noncriminal women and bad/abnormal/aggressive/criminal women.

Cheryl Hanna, *Ganging Up on Girls: Young Women and Their Emerging Violence*, 41 *ARIZ. L. REV.* 93, 104 (1999). These stereotypes interface with race as well as gender. *See* Carol Jacobsen et al., *Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency*, 18 *HASTINGS WOMEN'S L.J.* 31, 39 (2007) (noting "pervasive stereotypes, reinforced by the media, that black women are dominating, sexually aggressive, assertive, hostile, immoral, and physically stronger than white women"). We do not desire to invoke these stereotypes and instead choose other words to convey an equivalent meaning where possible.

ently in men and women. When applied to men, the word “means that he’s bold and forceful, that he has the strength and capabilities to achieve his goal.”<sup>141</sup> But when applied to a woman, it means she is “pushy, argumentative, [and] domineering.”<sup>142</sup> On the other side of Professor Branson’s tightrope are stereotypically feminine characteristics centered largely on women’s oral presentation behaviors, including the pitch of women’s voices and the assumed emotion and attributes underlying their speech patterns.<sup>143</sup> Professor Branson advises women navigating the contours of this paradigm to lower the pitch of their voices, be assertive, and speak forcefully to espouse the confidence typically seen in their male counterparts.<sup>144</sup>

Based on our reading of *No Seat at the Table*, the key to successfully mastering the tightrope seems to turn on self-confidence, and maintaining that self-confidence across subsequent paradigm shifts is arguably just as necessary as it is in the first paradigm. However, the need for women to confidently distinguish themselves from their colleagues by consistently exceeding expectations is particularly unique to this paradigm.<sup>145</sup> Professor Branson only touches on the necessity that women not blend into the crowd at this level (seemingly a critical point),<sup>146</sup> and the reader would likely benefit from further elaboration. The text implies that, in order for women to advance

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141. BRANSON, *supra* note 1, at 161.

142. *Id.* See also PHYLLIS CHESLER, WOMAN’S INHUMANITY TO WOMAN 347 (2003) (describing a female manager in an accounting firm denied partnership: “[S]he acted like a man, ‘an aggressive go-getter,’ and she was judged as a ‘dragon lady’ (i.e., overly masculine).” (quoting W.J. Camara, *Supreme Court Reviews Case of Sex Bias in the Workplace*, 26 INDUS.-ORGANIZATIONAL PSYCHOLOGIST, 39-41 (1989))); Barbara Reskin, *What’s the Difference? A Comment on Deborah Rhode’s “The Difference ‘Difference’ Makes”*, in THE DIFFERENCE “DIFFERENCE” MAKES, *supra* note 3, at 61 (stating that culturally acceptable behaviors in women differ from those behaviors that are acceptable in men, so “women may be punished for assertiveness or failing to be nurturing, just as men may be punished for being nurturing and failing to be assertive.”).

143. BRANSON, *supra* note 1, at 161-62.

144. *Id.*

145. *Id.* at 162 (“Wellington tells her readers that these timid behaviors [women being overly democratic and concerned about appearing too assertive] do ‘nothing to establish you as a confident, competent person at a meeting table.’” (quoting SHEILA WELLINGTON, BE YOUR OWN MENTOR 91 (2001))).

146. *Id.*

past entry-level and lower-management positions, they must exhibit distinctive leadership qualities bolstered by the individualized assertiveness and confidence recommended by Professor Branson.<sup>147</sup> In this regard, Professor Branson highlights the potential shortcomings of women's overly democratic behavior (i.e., letting everyone have their say),<sup>148</sup> but the repercussions of his recommended assertiveness and confidence also deserve further explication.

As Professor Branson notes at the end of this section, advice is mixed as to whether women should adopt normatively male characteristics in negotiating this first paradigm to ensure they remain in the pipeline.<sup>149</sup> But the resounding theme the text conveys, regardless of the approach chosen, is that a woman should remain "true" to herself.<sup>150</sup> Although it is a refreshing and intuitively appealing undercurrent in this part of the book, this theme is largely unexplained and is relatively unsupported by Professor Branson's text. In a number of cases, he points out specific areas of the female persona that may be altered to increase the opportunity for corporate advancement,<sup>151</sup> but in Chapter 13, he seems to retreat from his own advice about women's need to change—at least to the extent that this advice could be construed to require a woman to be *untrue* to herself (and this may be the key point).

Helpfully, Professor Branson does caution the female reader against developing a masculine "work persona" and a relaxed, feminine persona outside of work to avoid the perception of appearing duplicitous.<sup>152</sup> However, he principally advises balancing on the tightrope and leaves the reader to sort out the details of how to successfully find the balance. Although this is a frustrating aspect of the book (here in Chapter 13 and elsewhere), our assessment is that this tension may be inevitable, because there is no fixed formula for success applicable to every woman in every situation. Professor Branson may necessarily need to paint a picture of success in broad brush strokes in or-

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147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *See, e.g., supra* note 136 and accompanying text.

152. BRANSON, *supra* note 1, at 162.

der for all readers to interpret the effective impressionistic image he conveys.

### B. *Paradigm Two*

Once a woman has reached middle-management, Professor Branson asserts that the behaviors by which she distinguishes herself from the rest of the group (in paradigm one) are less valued.<sup>153</sup> At this stage, Professor Branson recommends that a woman focus less on placing herself in the spotlight as an individual leader and more on being an effective and efficient team player.<sup>154</sup> The democratic female behaviors that may hinder women in conforming to the behavioral attributes of the first paradigm are a vital tool in paradigm two.<sup>155</sup> Professor Branson notes that the aggressive behavior that served to advance women in traversing the tightrope of paradigm one may be seen as antagonistic in paradigm two and should be avoided.<sup>156</sup> Professor Branson advises women in this stage to begin thinking three or four paradigms ahead and create diplomatic strategies that will take them through those future paradigms.<sup>157</sup> He offers valuable suggestions for women to consider, including developing an area of expertise useful to the team enterprise, learning the art of the “humorous comeback,” and being approachable and generous with praise.<sup>158</sup>

However, twice within this section he expressly advises women to develop a style “with which men will be comfortable” in order to blend seamlessly into the male corporate culture and successfully steer through middle management and advance to upper management.<sup>159</sup> This recommendation apparently undermines his previous mantra that above all, women should be true to themselves. While much of the advice in this section focuses on attributes of team formation and appears to concretely benefit women’s advancement, it is harder to see how pandering to men’s behavioral comfort zones establishes more

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153. *Id.* at 163.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* at 164.

159. *Id.* at 163-64.

than superficial collegiality and trust. Moreover, we are concerned that Professor Branson's advice in this regard may be misread as advice to act like "one of the boys," which poses the risks associated with tokenism.<sup>160</sup>

In essence, we believe Professor Branson overstates his case in certain respects in mapping out paradigm two. Apart from non-threateningly demonstrating valued expertise, simple non-gendered relationship skills and tools, like effective listening, courteousness, empathy, sensitivity, tolerance, supportiveness, and responsiveness, should be sufficient to create a mutually comfortable, productive team management environment (the effect Professor Branson may well intend to achieve). The critical message we take away from Professor Branson's description of paradigm two is that women implementing its wisdom should treat others as they would want to be treated, while, at the same time, conveying the utility of their talents.

### C. *Paradigms Three and Four*

Professor Branson's third paradigm proposes a partial, contextual return to the more antagonistic, differentiating behaviors of paradigm one.<sup>161</sup> In paradigm three, he posits that a woman's focus should turn from being a team player to a team leader.<sup>162</sup> The key seems to be continuing to show one's value and expertise, while establishing oneself as the boss in a manner that does not ruin productive working relationships cultivated in paradigm two.

The fourth (and final) paradigm is a combination of the diplomatic, team-oriented behaviors of paradigm two and the forceful leadership qualities suggested in paradigms one and three.<sup>163</sup> The good news for female readers is that, once the basic behaviors of paradigms one and two are mastered (as well as the method for achieving the accompanying shifting between them), they need only to toggle their behavior between the two

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160. See Marina Angel, *Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context*, 45 BUFF. L. REV. 779, 827-828 (1997) ("Token women are usually prevented from exerting influence and often do so only at the cost of becoming 'one of the boys.'"); Kanter, *supra* note 69, at 979.

161. BRANSON, *supra* note 1, at 165.

162. *Id.*

163. *Id.* at 165-66.

paradigms as they advance through levels of management. In fact, Professor Branson's four paradigms may actually identify two extremes on a specialized communication or behavioral continuum, and a basic method through which women deftly adjust their behaviors between the two poles as they navigate through the corporate management structure.<sup>164</sup> The culture of corporate management is an embodiment of this continuum.<sup>165</sup>

#### D. *Observations about Professor Branson's Paradigm Shifting Framework*

There is undoubted substance and value in Professor Branson's paradigm-shifting model. The framework offers a way to use and respond to the vast research on tokenism and female stereotypes cited and described in the book. Moreover, Professor Branson offers three useful examples of well known female CEOs to illustrate the complexity of operating under paradigm four.<sup>166</sup>

We have a number of critical reactions (positive and negative) to, and other observations about, Professor Branson's concept of paradigm shifting. First, we note that the question of how women should negotiate the shift from paradigm to paradigm is left largely to each woman to determine. At the extreme, one might picture a female manager abruptly (and unnaturally) shifting from one paradigm to another in a manner similar to a shift from forward to reverse gear in a car. This type of shifting would be too artificial and is not apparently what Professor Branson has in mind. While working with the earlier-mentioned concept that the paradigm shifting may represent movement along a continuum, we think the manner of shifting is more like the gradual shift in a vehicle from first

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164. See CLIFF RICKETS, LEADERSHIP 46 (2001) (urging aspiring leaders to "[t]hink of passive, assertive, and aggressive as points on a continuum"); Robert Tannenbaum & Warren H. Schmidt, *How to Choose a Leadership Pattern*, 36 HARV. BUS. REV. 95, 96-97 (1958) (illustrating and describing a "Continuum of Leadership Behavior" not unlike Professor Branson's paradigm shifting). Cf. Dirk C. Gibson, *The Communication Continuum: A Theory of Public Relations*, 17 PUB. REL. REV. 175 (1991) (describing an analogous type of communication continuum with three "conceptual dimensions": information, persuasion, and argumentation).

165. See FERNANDO POYATOS, NONVERBAL COMMUNICATION ACROSS DISCIPLINES 3 (2002) ("Culture . . . is made up of a complex mesh of behaviors and of the active or static results of those behaviors . . . . [C]ulture is communication.").

166. See BRANSON, *supra* note 1, at 167-75.

gear to second gear (and back). This fluid approach to Professor Branson's paradigm shifting is supported by foundational, influential work in leadership theory published fifty years ago in the *Harvard Business Review*.<sup>167</sup>

We also note that Professor Branson's program for paradigm shifts may be seen as an analog to a well established model of group dynamics.<sup>168</sup> Specifically, the paradigm shifting Professor Branson describes can be seen as partially correlated to the four stages of group dynamics (forming, storming, norming, and performing) proposed decades ago by Professor Bruce Tuckman,<sup>169</sup> even though the members of a management group may change over time as a woman progresses through the management structure and related paradigm shifts.

A woman's initial corporate employment phase—which precedes the first of the paradigms described by Professor Branson—would roughly correlate with the forming stage of Professor Tuckman's model. Professor Tuckman finds that “[g]roups initially concern themselves with orientation accomplished primarily through testing. Such testing serves to identify the boundaries of both interpersonal and task behaviors. Coincident with testing in the interpersonal realm is the establishment of dependency relationships with leaders, other group members, or pre-existing standards.”<sup>170</sup> This stage of group dynamics is the “getting to know you” phase.

The next three stages of group dynamics are where paradigm shifting correlates. The antagonistic individualism comprising Professor Branson's paradigm one conforms, in many ways, to the storming stage of Professor Tuckman's theory. Both models are “characterized by conflict and polarization around interpersonal issues . . . [that] serve as resistance to

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167. See Tannenbaum & Schmidt, *supra* note 164, at 163 (“[T]he successful leader is one who is keenly aware of those forces which are most relevant to his behavior at any time [and] is able to behave appropriately in light of these perceptions.”).

168. Erica Beecher-Monas's linkage of diversity to actual independence on corporate boards expressly relies on theoretical and empirical work in the area of group dynamics. See Beecher-Monas, *supra* note 4, at 396-408.

169. See generally Bruce W. Tuckman, *Developmental Sequence in Small Groups*, 63 PSYCHOL. BULL. 384 (1965) (articulating these four stages of group development).

170. *Id.* at 396.

group influence. . . .”<sup>171</sup> Paradigm two shares attributes with Professor Tuckman’s norming stage of group dynamics, which Professor Tuckman describes (in relevant part) as a phase of group behavior in which “ingroup feeling and cohesiveness develop, new standards evolve, and new roles are adopted. . . . [I]ntimate, personal opinions are expressed.”<sup>172</sup> Lastly, the blending of behaviors that Professor Branson describes in paradigm four resembles the performing stage of Professor Tuckman’s framework, in which “[r]oles become flexible and functional, . . . group energy is channeled into the task. . . . and structure can now become supportive of task performance.”<sup>173</sup> Seen in the light of Professor Tuckman’s foundational work on group dynamics, Professor Branson’s approach, while still novel, roots itself in elements of well-accepted social science research and scholarship.

Finally, we admit to some confusion and concern about the descriptive and predictive nature of Professor Branson’s proposed paradigm shifting and the attendant possible effects on women and corporate boards of directors. We begin with two questions that establish a (perhaps false) dichotomy, to motivate our salient points. Are Professor Branson’s proposed behavioral shifts analogous to those that men climbing the corporate ladder engage in naturally, such that women replicating their behaviors will more easily and successfully join men at the board table? Or, is this a strategy through which women may modify their behaviors in order to make men in the existing male power structure more comfortable with their presence as they ascend the corporate ladder? Although Professor Branson ultimately does not directly tie his paradigm shifting to men’s comfort,<sup>174</sup> his recommendations arguably stem from this nexus. In his introduction, Professor Branson states that “women, unlike men, have to make several significant, conscious paradigm shifts as they advance upward in their ca-

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171. *Id.*

172. *Id.*

173. *Id.*

174. See BRANSON, *supra* note 1, at 175 (attributing the need for paradigm shifting to the fact that women have to “cope with stereotypes” and “build up a reservoir of tangible successes as they advance”).

reers.”<sup>175</sup> Also, as noted earlier, Professor Branson mentions several times, in describing his paradigm shifting, ways in which women may make men feel more comfortable.<sup>176</sup>

To the extent that the success of paradigm shifting depends on creating a comfortable, secure environment for men in corporate management, the underlying message would be that women may successfully advance in their careers if, at each stage, they take care to make men feel secure in their positions by adopting conformist behaviors and managerial styles. We are concerned about this message, regardless of whether Professor Branson intends to convey it. As Professor Susan Estrich argues, by striking an aspirational perfect balance between masculinity and femininity in order to make men feel more comfortable, women reinforce existing power structures and stereotypes and “end up tightening the vise” around them.<sup>177</sup> Moreover, if the women who reach the boardroom do so by convincing their male colleagues that they are not like other women, but rather are more similar to men, will the benefits of gender diversification—including the potential for an actual diversity of viewpoints—on corporate boards of directors ever be truly realized?<sup>178</sup> As Professor Estrich remarks, “squeezing into the vise will only get you so far. And as long as it is a vise, many women will lose out to the competition.”<sup>179</sup> If Professor Estrich is right, Professor Branson’s paradigm shifting may not achieve its objectives.

We also are concerned about the overall message in Chapter 13, read alone, that women need to alter their predominant

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175. *Id.* at 5. *See also id.* at 175 (contrasting men’s and women’s need for paradigm shifting in corporate advancement).

176. *Id.* at 163-64.

177. ESTRICH, *supra* note 64, at 134-35.

178. Erica Beecher-Monas addresses this question in a recent article:

Having women and minorities on the board who mimic white male traits and attitudes will do little to achieve diversity. But people who replicate the attitudes of existing board members are the most comfortable choices of the CEOs and other directors responsible for nominating new directors, because people tend to choose others who share social and economic backgrounds and who will fit in with the group. Moreover, those chosen must be perceived as able to manage white males—who still make up the vast majority of upper management—without making these white males uncomfortable.

Beecher-Monas, *supra* note 4, at 405-06.

179. ESTRICH, *supra* note 64, at 138.

sex-based or gender-driven attributes to conform to existing male-oriented corporate governance structures and composition (rather than that corporate governance or management needs to change to accept women). Institutional failings or impediments, as well as attributes of individual women in the workplace, play a role in the slow advancement of women within the executive ranks and as corporate directors. These institutional barriers come in many forms. They may be substantive or procedural, structural or individualized, intentional or accidental. In many (but not all) cases, these institutional issues interact with female characteristics to impede women's progress through the pipeline.

For example, the process of electing board members plays a key role in moving women to the pinnacle of corporate America. It is one thing to advise a woman on how to behave to move through the management ranks, and another to leap that last hurdle onto a board of directors. Since nominating committees comprised of independent directors are responsible for naming the candidates for prized corporate board positions,<sup>180</sup> it is important that women and other underrepresented groups are attractive in the eyes of those nominating committee members. As Professor Branson notes in Chapter 15, this may be difficult if a CEO controls the process or diversity is not a high value of the nominating committee.<sup>181</sup> Groups in and outside the United States are focused on identifying, training, and promoting qualified female board candidates and getting their names in front of nominating committees, but it is unclear whether these efforts will make a difference in the long run.<sup>182</sup>

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180. See BRANSON, *supra* note 1, at 179-80.

181. *Id.* at 180. See also Beecher-Monas, *supra* note 4, at 406, 411.

182. In the United States, these efforts include DirectWomen, "[a]n innovative initiative of the American Bar Association, the ABA Section of Business Law, and Catalyst, Inc., . . . specifically designed to identify, develop, and support a select group of accomplished women attorneys to provide qualified directors needed by the boards of U.S. companies, while promoting the independence and diversity required for good corporate governance." DirectWomen, <http://www.abanet.org/buslaw/directwomen/mission.shtml> (last visited Apr. 3, 2009). New Zealand apparently has a number of databases of female director candidates. See Rosanne Hawarden, *New Zealand Woman Directors—Many Aspire But Few Succeed*, (Women on Boards, Diversity on Boards Conf., Sydney, Austl.), May 28-29, 2008, available at <http://www.womenonboards.org.au/events/diversity2008/papers/hawarden.htm>. Networking sites and related conferences also have become more common. See, e.g., Board of Directors Network, Inc., [33](http://www.boarddirec-</a></p>
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Interestingly, there is evidence that women who make their way to key executive positions are being appointed to corporate directorships.<sup>183</sup> This is why Professor Branson and others focus their attention on getting women into the executive ranks of corporations. But, as noted in the preceding paragraphs, we must ask ourselves to identify and quantify the cost of conforming women's behavior to that of men—or that with which men are most comfortable—if that is what it takes to rise through the institutional structures of corporate management. We may lose important diversity elements associated with women's participation on corporate boards by asking women to conform to existing institutional structures and prevailing corporate culture.<sup>184</sup>

“Diversity fatigue” within a firm also may be an institutional barrier to a woman's advancement to upper management and the board of directors, regardless of her perceived or actual roles or behaviors in the workplace.<sup>185</sup> Definitions and common understandings of diversity fatigue may vary,<sup>186</sup> but in general, the term refers to the weariness felt by the few individuals who bear the responsibility of leading diversity initiatives within their firms.<sup>187</sup> Efforts to diversify institutions are difficult in that they may be seen by some as a threat to existing structures, and in that progress is bound to be incremental and

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torsnetwork.org/ (last visited Apr. 3, 2009); Women on Boards, <http://www.womenonboards.org.au/index.htm> (Australia) (last visited Apr. 3, 2009). And many organizations other than Catalyst Inc. publicize and promote research that may encourage women to seek corporate board positions, while at the same time helping to locate female directors for those boards who desire to increase diversity. See, e.g., InterOrganization Network (ION), <http://www.ionwomen.org/index.htm> (last visited Apr. 3, 2009).

183. See BRANSON, *supra* note 1, at 108 (“[T]here has been an increase of women who achieve in business . . . and then side-step from a VP/COO/CFO position at one corporation to a director's seat at another large company.”); Fairfax, *supra* note 4, at 1113 (“Indeed, the number of women corporate officers is fairly consistent with the number of women board members.”).

184. See *supra* notes 180-82 and accompanying text.

185. See Hannah Hayes, *Is Your Firm Suffering From Diversity Fatigue?*, PERSPECTIVES, Fall 2008, available at [http://www.abanet.org/women/perspectives/enews/fall08/enews\\_fall08\\_fatigue.html](http://www.abanet.org/women/perspectives/enews/fall08/enews_fall08_fatigue.html).

186. *Id.* For example, diversity fatigue may also be used to refer to the exhaustion felt by the few token female directors asked to serve on multiple boards.

187. *Id.*

slow.<sup>188</sup> Janet Love, a co-chair of the diversity committee at a large, Chicago-based law firm, cites the pressure of constantly inventing new approaches to implement diversity initiatives in order to engage a repeat audience.<sup>189</sup> A firm's efforts to repeatedly and effectively "reinvent the wheel" in promoting diversity are even more difficult in tough economic times, creating a greater propensity for diversity fatigue among those slated with the task of diversifying their firms.<sup>190</sup>

Why do we need these kinds of efforts to attract and retain women to the positions that will best ensure their nomination and election to corporate board positions? Women may value different things in the workplace, and they may not find those things in some workplaces.<sup>191</sup> Moreover, women may be more desirous of balance between their work lives and their lives outside work than their male counterparts.<sup>192</sup> The tried, true, and time-tested institutional structures and cultures that attract men to positions and keep them there, may not attract women to, and keep women in, the same positions. Diversity initiatives within firms can identify these disconnects between women and the workplace and help minimize or eradicate them.

Since law firm partnerships are among the positions in the pipeline to prime corporate directorships,<sup>193</sup> the effect of diversity fatigue on women's progress to leadership within law firms (as well as its effect on progress in other business associations)

188. See Donald C. Langevoort, *Overcoming Resistance to Diversity in the Executive Suite: Grease, Grit, and the Corporate Promotion Tournament*, 61 WASH. & LEE L. REV. 1615, 1642-43 (2004).

189. Hayes, *supra* note 185.

190. *Id.* See also O'Kelly E. McWilliams III & Nimesh M. Patel, *Diversity Management in an Economic Downturn: Diversity & Risk Mitigation in Corporate Restructuring*, BUS. L. TODAY, Jan./Feb. 2009, at 59, available at <http://www.abanet.org/buslaw/blt/2009-01-02/mcwilliams.shtml> (describing "how diversity can be lawfully incorporated into the restructuring process" in businesses in the current down economy).

191. See SUSAN PINKER, *THE SEXUAL PARADOX* 180 (2008) (exploring workplace and job characteristics that motivate women to accept and keep certain positions).

192. See *id.* at 180-82 (describing gender-based differences in the capacity of work to generate happiness).

193. See BRANSON, *supra* note 1, at 91 (listing "practicing attorneys" as the eighth most prevalent way that women made it to boards of directors in the Fortune 500 based on 2001 proxy data); *id.* at 103 (listing "attorneys" as the sixth most prevalent way that women made it to boards of directors in the Fortune 500 based on 2005 proxy data).

plays a role in women's failure to advance more quickly into key corporate director positions. Commentators note that law firms' efforts to recruit women and racial minorities is often a "numbers game," and once the numbers are met at the entry level, little is done to ensure diversity up the ladder.<sup>194</sup> Susan Pinker profiles two successful female lawyers who have left private practice and, in delving into their reasons for leaving, exposes institutional failings.<sup>195</sup> Professor Joan Williams, the director of the Center for WorkLife Law at the University of California Hastings College of Law, points to the stigma associated with part-time programs in law firms as a reason for women's continued departure from these firms.<sup>196</sup> Professor Williams's observations in this regard link the lack of proper institutional values to Professor Branson's observations, in Chapter 3, regarding the prices of motherhood in a woman's journey through the pipeline.<sup>197</sup> In fact, Professor Branson cites to Professor Williams's work in support of a number of points he makes in Chapter 3.<sup>198</sup>

However, the thought that institutional practices and environments affect women's advancement to board positions (not to mention other important social values) gets lost by the time a reader of *No Place at the Table* reaches Chapter 13. In Chapter 13, Professor Branson assumes an indefinite continuation of the *status quo*. He reinforces this point through his use of three historic examples of women who have risen to the top and fallen from grace.<sup>199</sup> Although he does pick up on some important institutional prescriptions in Chapter 14,<sup>200</sup> these prescriptions have the appearance of mere window dressing after the in-

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194. Hayes, *supra* note 185. See also Karen R. Britton, *The Landscape Around the Diversity Pipeline*, TENN. BAR J., Feb. 2009, at 14, 14-19 (highlighting data relating to the advancement of racial minorities into and in law schools and law firms); Karen Neal & Cynthia Sellers, *The Advancement of Women in the Private Practice of Law and Why Guys Should Care*, TENN. BAR J., Feb. 2009, at 20, 20-22 (citing data on the advancement of women in law firms and offering reasons why law firms should be concerned about the documented loss in female "human capital").

195. See PINKER, *supra* note 191, at 157-79.

196. Hayes, *supra* note 185.

197. See BRANSON, *supra* note 1, at 35-54.

198. See, e.g., *id.* at 38 n.13 (citing JOAN WILLIAMS, UNBENDING GENDER 11 (2001)).

199. See *id.* at 167-75.

200. See *id.* at 176-85.

volved prescriptions for changes in women's behavior in Chapter 13.<sup>201</sup>

Many advise that we need to change corporate culture instead of simply changing the numbers.<sup>202</sup> Successes in this area have been documented.<sup>203</sup> Professor Branson's advice that women eschew "Bully Broad," "Iron Maiden," "Queen Bee," and "Ice Queen" behaviors and adopt paradigm shifting may succeed in advancing some women into the management levels of corporations and law firms, but changes in corporate structures and a receptive corporate culture will improve the likelihood of women's advancement and may better preserve women's capacity to add real diversity to a board of directors. In this regard, the literature on diversity fatigue indicates that corporations and law firms should move away from separate diversity programs and toward a comprehensive firm culture in which diversity objectives are embedded and integrated throughout the firm.<sup>204</sup> The responsibility of understanding the effects of difference in the workplace and successfully diversifying firms should not fall on the shoulders of a few diversity "task managers" but instead should be the stated and unstated duty of each member of the organization.

As we note above, in much of *No Seat at the Table*, Professor Branson focuses on why corporations, as well as women, may need to change behaviors. However, his suggestion that corporate executives and directors also should alter the *status quo*<sup>205</sup> is omitted completely from his chapter on paradigm shifting (Chapter 13). Moreover, the integration of paradigm shifting with the summary corporate prescriptions in Chapter 14 is minimal, consisting of a single paragraph of text.<sup>206</sup> A more comprehensive integration of Professor Branson's various recommendations would provide readers with a more complete picture of his vision for the future of female leadership in corporate

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201. *See id.* at 161-75.

202. *See, e.g.,* Hayes, *supra* note 185.

203. *See* Beecher-Monas, *supra* note 4, at 410 (citing Deloitte & Touche, Intel Corporation, and Home Depot as examples); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 491-519 (2001) (same).

204. *See, e.g.,* Hayes, *supra* note 185.

205. *See, e.g.* BRANSON, *supra* note 1, at 62.

206. *See id.* at 180-81.

governance—one that would help us to better assess prospects for the success of his ideas.

### III. A Significant Point of Disagreement: The Call to Minimize Difference

In concluding the book, Professor Branson states that “[t]here may be differences between men and women, but by and large they are small and overrated. In the workplace or on the job ladder, we must strive to ignore those differences, except when they are absolutely undeniable or inescapable.”<sup>207</sup> We fundamentally disagree with these statements (especially the last one about ignoring differences), and we believe that—coming as they do at the very end of the final chapter of his book—they have the propensity to take away from the overall value of the book and undercut powerful and positive elements of Professor Branson’s research findings and analysis. At worst, Professor Branson’s conclusion and prescription regarding gender difference (a) are antithetical to the notion that female directors may, by virtue of their sex or gender attributes, bring unique contributions to the table and (b) dogmatically contradict research findings (including those in studies Professor Branson presents and endorses in other parts of the book<sup>208</sup>) that women, whether by nature or through socialization, behave differently from men in significant ways. At best, Professor Branson can be accused of talking out of both sides of his mouth, since he indicates in other places in the book that he in fact recognizes, understands, and values both diversification efforts and gender difference.<sup>209</sup>

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207. *Id.* at 184.

208. *See, e.g., id.* at 57-62.

209. *See, e.g., id.* at 142 (“Subconsciously, corporate CEOs and nominating committee members may be influenced by the governance-culture mismatch, deselecting women otherwise qualified for board service.”); *id.* at 177 (“Men in business still get away with consigning women to lesser roles on the basis of notions that stereotypes exist and that stereotypical behaviors indicate more than just a manner of speaking or a different way of acting.”); *id.* at 177-78 (explaining that “diversity of viewpoints, which results from a diversity of race and gender backgrounds, is essential to the task of monitoring senior managers’ behavior” and discussing the positive effects of gender diversity on “groupthink”); *id.* at 184 (chastising corporate America for being “short sighted” about the economic and social value of childbearing).

One of us has researched and written about observed behavioral differences between men and women in contexts related to corporate governance;<sup>210</sup> the other has sought funding to conduct research on sex and gender differences in this same context.<sup>211</sup> We find empirical evidence of important differences in behavior based on sex and gender—including differences that are not addressed by Professor Branson’s book but may make a difference to women’s behavior as members of a corporate board of directors.<sup>212</sup> For example, “[w]omen communicate and make decisions differently than men in ways that may be more compatible with the complexity and uncertainty inherent in turbulent environments.”<sup>213</sup> In addition, “[a] vast literature in social psychology suggests that women demonstrate self-sacrificing behaviors more often than men and also are perceived to be more self-sacrificing and ‘other-directed’ than men.”<sup>214</sup> And, although evidence is somewhat mixed, women may react differently to the same sex-related or gender-related workplace behaviors.<sup>215</sup> One author, in summarizing the unexpected and

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210. See Joan MacLeod Heminway, *Female Investors and Securities Fraud: Is the Reasonable Investor a Woman?*, 15 WM. & MARY J. WOMEN & L. 291 (2009) (noting and citing to observed differences in male and female investment behaviors and analyzing the legal effects of those differences in the securities fraud context); Heminway, *supra* note 13 (noting and citing to observed differences in trusting behavior and trustworthiness based on sex and analyzing possible corporate governance implications of those differences).

211. Robert M. Lloyd, Sarah White & Robert M. Walters, *Gender Influence on Trust and Reciprocity Behavior: Why the Old Boys’ Club is Preventing Effective Corporate Governance Reform* (unpublished manuscript on file with authors).

212. See sources cited *supra* notes 210-11, *infra* notes 213-16, and accompanying text. See also Adams & Ferreira, *supra* note 47, at 15 (“Our conclusion is that even after controlling for director characteristics such as independence, age, tenure, retirement status[,] and number of other directorships, female directors appear to behave differently than male directors.”).

213. Furst & Reeves, *supra* note 10, at 379.

214. *Id.* at 380.

215. See Elizabeth L. Shoenfelt et al., *Reasonable Person Versus Reasonable Woman: Does It Matter?*, 10 AM. U. J. GENDER SOC. POL’Y & L. 633, 649-50 (2002) (“While most research indicates a gender difference in perceptions of sexual harassment, some researchers have found that there are little or no gender differences.”) (footnote omitted); Richard L. Wiener & Linda E. Hurt, *Social Sexual Conduct at Work: How Do Workers Know When it is Harassment and When it is Not?*, 34 CAL. W. L. REV. 53, 66 (1997) (“Although there are some exceptions, the empirical research supports the view that men and women workers hold divergent perspectives concerning what constitutes hostile work environment harassment.”); *id.* at 75-97 (describing and assessing the legal ramifications of the results of a study on sexual harassment conducted by the authors).

non-obvious nature of some of these differences, notes that “[t]he science of sex differences is clearly a grab bag of surprises.”<sup>216</sup>

We believe there is value in acknowledged elements of behavioral difference exhibited in women and men, and we are not alone. Yet, we acknowledge that corporate directors and executives, among others, must be careful about how these differences are interpreted and used in corporate workplaces. “Statistical differences do exist between men and women. But statistics should never speak for individuals, restrict their choices, or justify unfair practices.”<sup>217</sup>

Both the nature and fact of sex or gender differences may be valuable in corporate governance.<sup>218</sup> In an attempt to explain why some women advance beyond middle management, for example, two business scholars hypothesize that “women may be viewed as especially attractive candidates to lead organizations under turbulent, uncertain conditions because they bring a fresh approach to leadership, varying skill sets, and diverse life experiences.”<sup>219</sup> Other researchers conclude:

In order to achieve a critical mass [of women on boards of directors], nominating committees should *not* try to be gender-blind when filling board vacancies . . . . Gender-blindness also means being blind to the value of board diversity in and of itself for bringing various perspectives to the table, bringing knowledge about key constituencies, and enhancing the quality of discussion. To gain these advantages and improve governance, companies must establish a recruiting approach that acknowledges the value of diversity and deliberately seeks to build diversity into the board.<sup>220</sup>

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216. PINKER, *supra* note 191, at 254.

217. *Id.* at 266.

218. *See, e.g.*, Beecher-Monas, *supra* note 4, at 411 (“[I]ncreasing board diversity significantly to achieve a critical mass of diverse board members should bring new views and perspectives to the board, along with improved communication and better decision making.”).

219. Furst & Reeves, *supra* note 10, at 377.

220. Kramer et al., *supra* note 45, at 53. *See also* Beecher-Monas, *supra* note 4, at 405-06 ([T]his brings us to an important caveat on the role of diversity on corporate boards: it must be true diversity. Neither race nor gender are necessarily a proxy for diversity of viewpoint. Having women and minorities on the board who mimic white male traits and attitudes will do little to achieve diversity.”).

Thus, difference based on sex or gender may be an advantage to be cultivated rather than a shortcoming to be minimized.

In fact, Professor Branson's statement about the limited nature of perceived and actual differences between men and women may be borne of some unease about facing the consequences of those differences. Psychologist Susan Pinker addresses this possibility and explains why this apprehension is misplaced.

[T]here's a fear that if we recognize the existence of sex differences we'll become part of a conservative backlash that will send women back to the kitchen. I'd argue that a more nuanced understanding of the average differences between men and women can lead to progress instead. In fact, several problems arise from *not* acknowledging that sex differences exist. Workplaces and career schedules designed for a single, standard male approach to competition and success now discourage many women, notwithstanding their native smarts, their educational opportunities, and their impressive accomplishments . . . .<sup>221</sup>

We think that Pinker gets this right.

The only way we can harmonize Professor Branson's observation that differences are minimal and his suggestion that differences should be minimized with his overall coverage of sex-based and gender-based behavioral differences in *No Seat at the Table* is to read this observation and suggestion in the greater context of the book. In truth, reading between the lines of Professor Branson's concluding statements in this way, he may well be trying to argue that women are enough like men in important ways that, where women's qualifications match or exceed those of men, they should be afforded the same level of deference, respect, and standing that men have in the candidacy process for executive and director slots. This may be an accurate assessment, but if this is what Professor Branson means, then he should more clearly reference or establish the

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221. PINKER, *supra* note 191, at 258 (emphasis in original). Pinker goes on to state (among other things) that "[i]gnoring sex differences also has the unintended effect of devaluing women's cognitive strengths and preferences," that "[e]xhorting women to make 'male' choices is more pernicious than simply encouraging them to earn more," and that "a lack of attention to basic sex differences means that biological frailty in boys will continue to get short shrift." *Id.* at 261, 263.

supportive facts (e.g., to what differences is he referring and why should they be ignored?) and tie his statements to those facts.

When read in its most favorable light, the book, as a whole, compellingly contributes to and argues for “a more nuanced understanding of gender differences”<sup>222</sup> that “reveals the benefits of certain traits, and pinpoints exactly where we might direct our efforts for change.”<sup>223</sup> Ultimately, we prefer to view Professor Branson’s book in that more favorable and consistent light.

### Conclusion

Scholars from a variety of fields continue to explore questions related to the “glass ceiling”—the often impervious barrier that enables women to see but not succeed to senior management and board positions. Advice to businesses and the women who aspire to lead them abounds. The emerging picture is one of complexity—no one “formula” exists to ensure women’s ascendancy to senior management and the board positions that may follow.<sup>224</sup> A recent paper observes, among other things, “that individual perceptions and group or organizational structures emerge over time making it difficult to point to a particular practice or unit to be changed to reduce gender bias and potentially negating the intended effects of formal top-down organizational pressures.”<sup>225</sup>

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222. *Id.* at 255.

223. *Id.*

224. See, e.g., Furst & Reeves, *supra* note 10, at 382 (“[T]he women we profiled and existing empirical data suggest that women need to be aggressive, unpredictable, and develop a complex set of skills and behaviors to ascend to leadership positions. . . . Further, given that transformational leaders tend to be effective in turbulent industries such as financial services, consumer products, and technology/media, women may be advised to develop those leadership skills. Perhaps more controversial, women may be encouraged to embrace rather than eschew the stereotype of women as socially facilitative, nurturing, and relationship-oriented leaders.”); Mary Hogue & Robert G. Lord, *A Multilevel, Complexity Theory Approach to Understanding Gender Bias in Leadership*, 18 LEADERSHIP Q. 370, 387 (2007) (setting forth, in tabular format, practical tactics for the advancement of women in corporate management).

225. Hogue & Lord, *supra* note 224, at 386. The coauthors also conclude “that monitoring changes [in leader gender bias] will require more than simple monitoring of numbers of women in leadership positions” and “that . . . it is not possible to fully understand complex systems or how to change them.” *Id.*

Through *No Seat at the Table*, Professor Branson contributes usefully to this growing body of literature in several ways. Importantly, he publicizes new data and related observations, collects and synthesizes disparate research in a single volume, and offers his own recipe for success. He contextualizes these contributions in a larger, recognizable clash between culture and governance.<sup>226</sup> Moreover, by provocatively suggesting that sex and gender difference is overstated and largely should be disregarded, Professor Branson (perhaps unwittingly) challenges readers to reevaluate the evidence and desirability of sex and gender difference in a corporate leadership context. In sum, Professor Branson recognizes and takes account of the complexity of the sex and gender issues impacting corporate leadership and, based on wide-ranging research, makes interesting and constructive (even if not wholly satisfying or complete) suggestions on how to resolve some of these issues.<sup>227</sup> For all of these reasons, despite some relatively minor organizational and analytical lapses, *No Seat at the Table* is a valuable resource for women or men in or aspiring to positions in senior management or on boards of directors, for existing corporate management and directors, for corporate governance and other scholars, and for other researchers studying leadership in corporate America.

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226. BRANSON, *supra* note 1, at 39-42.

227. Professor Branson's introduction to *No Seat at the Table* provides readers with an accurate description of the book.

[T]his book documents, and explores in some depth, the explanations advanced for why women may not have progressed in the boardroom and the CEO suite in the numbers we would have expected. Those explanations require exploration of law . . . social psychology, linguistics, sociology, and other fields, to assess the state of America's boardrooms and to make suggestions on how the relevant actors might accomplish needed changes.

*Id.* at 2-3.