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No More Masks

By Heidi Wilson, Sr. Vice President, General Counsel & Secretary, Tennant Company

This is the story of my journey through the practice of law—a domain I once described as populated by a bunch of guys in striped ties and a few women. Like the heroine in the old “Virginia Slims” ad, I’ve come a long way since law firm hiring partners looked me in the eyes and said, “I’m sorry. We aren’t hiring any women this year. We want to see whether the first one we hired works out.”

Despite making my way through a law school class of less than 10% women, I didn’t expect to encounter gender barriers as I started my career in 1976. Maybe I should have seen what was to come when I read my name on the office door, preceded by “Mr.”

I had only worked as a lawyer for a couple of months when I realized that I needed a mask. I began constructing the “I am neuter mask” shortly after the wife of one of my associates, who I had just met, told me that I had better not think of traveling with her husband. Her comment and being pinched on the behind by a lawyer as I approached the judge to argue a motion, led me to think that I could best succeed by hiding all evidence of femininity. Soon, my shoulder length hair was only inches long. My red dress became a navy blue A-lined skirt suit, complete with white bow-tied shirt. I clunked around in ugly wide heeled shoes and my make-up consisted of mascara and occasional neutral lipstick. That mask didn’t stop inappropriate behavior from other lawyers or clients but it assured me that I wasn’t doing anything to invite it.

I constructed my next mask about three years later. I had had a great “win-loss” record and yet my reviewing partner said he lacked faith in my ability to succeed. He said that all too often I voiced insecurity. In my effort to understand what he was talking about, I paid close attention to my male colleagues. I soon realized that the partner was right. When I tried a case and won, I came back and talked about what I wished I had done better. My male peers crowed about their victory and repeated the highlights of their closing arguments to anyone who would listen. That was the year I constructed the “I am hot-s#@t mask.” I started looking for opportunities where I could share victories with my partners, telling them of court wins or new cases from clients. Soon, I was regarded as a successful lawyer, well on her way to partnership.

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Those first two masks served me well until I had my first child. I found myself crafting a new mask, the “I don’t have a child mask,” after being warned not to even think about working part time, threatened with extra time-sheet scrutiny, and forced to argue a summary judgment motion two weeks after giving birth because no one would cover for me. I must have worn that mask well because my year-end review was simply that the group was “happy that my having born a child didn’t make a difference.” I had to go outside and kick snow to get over that statement.

Of course the “I don’t have a child” mask had to be taken off the moment I left the office. I thought it would be liberating to have a mask-free time when I was simply the mother of my child. Sadly, I learned that in the world of mothers, masks were also required. The critical words of stay-at-home mothers taught me to hide behind yet another mask, the “I don’t have a demanding job outside-the-home mask.”

As time passed and more women entered corporate and private practice, it became easier to drop some of these masks. By 1994, I was reporting to two vice presidents—both women. When one of them chewed me out for attending a staff meeting rather than attending my son’s soccer game, I knew the time had come to ditch the “I don’t have a child” mask. Who would have known that you could have a “both/and?”

Probably the last and most challenging mask I wore was in the years when I was General Counsel for a financially troubled public retail company. The enormous work pressure was manageable but not the rip in my soul as I struggled with my youngest son’s health challenges. The “I am ok, really, I am ok,” mask was the most flimsy one I ever donned.

More than a decade has passed since we sold that retail company. Looking back, I marvel that I survived. Of greater wonder is that the ensuing years have brought not only professional success, but healing and wholeness.

It is hard to pin-point exactly when I gave up masks. A two-year work hiatus, supported by a golden parachute, certainly helped. Spending that time with my children, doing volunteer work and taking time to be introspective helped me learn to be comfortable with being myself.

My current job and the incredible people who have befriended me and my youngest son, have also been transformative. Though I still work hard managing the legal needs of a global manufacturing company, I receive as much, if not more than I give. I work with a management team that appreciates what I do and makes me feel like I am “one of the guys,” even though I don’t golf. Friends and colleagues have mentored my youngest son and helped care for him when I jaunted off to distant countries. They also have supported me through a divorce, laughed with me as I navigated the world of internet dating in my late 50’s, and celebrated my re-marriage to a man who lights up my every day. I have had a few professional stumbles along the way, all of which—in hindsight—occurred when I tried too hard to please and wasn’t “just myself.”

At age 63, I like the unmasked me. My professional peers don’t think less of me because I love to dance or wear high heels or have to fly home from a meeting to attend to a family matter. I am privileged to supervise a fantastic team of lawyers, paraprofessionals and engineers. They are my legacy and I hope that they feel that they can be themselves and not the wearers of masks.

I am blessed.

This Special Supplement is a salute to women in our profession. It features articles from women who are enjoying long & successful careers despite the many challenges that they have faced. And to further support women, we are holding our 1st annual conference—“The Women’s 100 Conference” in Washington DC on June 2nd—a unique networking event for in-house, law firm, institutional investor & regulator female practitioners. To learn more, email Broc at broc.romanek@thecorporatecounsel.net.

A Fine Career: Becoming a Lawyer

By Roberta Karmel, Centennial Professor, Brooklyn Law School and the first female SEC Commissioner

I was married after my sophomore year of college, and after I graduated I thought I would like to work for a few years before having a family. I discovered that I was not prepared for a good job in the working world, so I considered whether to go on to graduate school and become a professor, to go to business school or to go to law school. Although my senior thesis adviser suggested graduate school, getting a PhD seemed too open ended in terms of the number of years this degree might take.

My father was a lawyer and so I thought this might be a good career for me also, and I could count on only a three year commitment to more schooling. So I decided that I would take the LSATs and if I did well I would apply to law school and if I was able to get a scholarship I would go to law school. This was a fairly arbitrary set of decisions, and most married women at that time (1959) became housewives and mothers, but my husband encouraged me to go to law school and I did.

My decision to become a lawyer was fortunate because I loved law school and I have had a wonderful career. I went to New York University School of Law and only about 4 per cent of my law school class was female. It was very difficult to get a job after law school even though I graduated near the top of the class and I was on law review and moot court and one of two students who started the Annual Survey of American Law.

Nevertheless, I was admitted to the honors program at the Securities & Exchange Commission and began working as an attorney in the New York Regional Office. I stayed there for seven years and was promoted up the line to Attorney Branch Chief and then Assistant Regional Administrator. One of the old time supervisors in the office once told me that I was hired over his objection (this being before the Civil Rights Act) but I had worked out okay. I was considered by my colleagues as “one of the boys.” How this could be—or what that really meant—I cannot explain since I had three children while I was working in that office and was almost continuously pregnant.

In 1969, I left the SEC to become an associate at Willkie Farr & Gallagher. I worked on some very exciting transactions, including the acquisition of Hayden Stone & Co., an old line brokerage firm by CBWL, an upstart firm, which included among its partners Arthur Levitt, who later became Chairman of the SEC, and Sandy Weill, who later became CEO of Citibank. I had my fourth child while I was an associate there—finally a girl after three boys.

But Willkie Farr was not then ready for a female partner, especially one who had been pregnant in the office. So I moved to Rogers & Wells as a partner. This happened through the good offices of a lawyer who was general counsel of a client of Rogers & Wells and who had formerly worked for me at the SEC. Also, Rogers & Wells and a number of other Wall Street law firms were being sued by the New York Civil Rights Commission for discrimination against women and when I became a partner, I was helpful to that litigation.

When I was young I was quite shy and bookish. I don't think I really understood the world around me or I probably would not have gone to law school. I always considered myself a misfit. Suddenly, in my late thirties I was admirable—a partner in a Wall Street Law firm and a wife and mother. I had not really changed but the world had changed.

In 1977, I became the first female Commissioner of the Securities & Exchange Commission. President Carter was looking for a woman for that position, and there was some political pressure for a New Yorker to be appointed. I was standing in the right place at the right time. This was an exciting and wonderful job for me and it opened many doors afterwards. I returned to private practice in New York, at Rogers & Wells and then Kelley, Drye & Warren. I went on to the board of the New York Stock Exchange and also two other corporate boards and I became a Trustee of the Practising Law Institute. These were interesting experiences which further broadened my horizons.

I had actually always aspired to become an academic and in 1986, I had the opportunity to join the faculty of Brooklyn Law School, where I have remained since. I have always taught Securities Regulation, but I also have taught a variety of other courses. I have written many law review articles and I have enjoyed the experiences of teaching and writing. As a securities lawyer, I believe I have had a window on to the business world in the United States and abroad. Law is the last generalist profession, although unfortunately it is becoming more and more specialized. I do not know that younger women or men will have all of the opportunities that were afforded to me.

Where Are All the Women M&A Dealmakers?

By Diane Holt Frankle, Partner, Kaye Scholer LLP

I am that rarity—a senior woman M&A lawyer. I began my M&A career in the late 1980s as a corporate associate in a Silicon Valley law firm. Today I still live for the rush of deal adrenaline when a deal is coming together! I love being a trusted advisor to the board and management, and the quarterback for the negotiating squad. From the moment I managed my first deal I was hooked—I was and am a deal junkie. Maybe you are too?

As I looked around the negotiating table back in my early days in the M&A trenches, I certainly noticed the lack of other women on the deal teams—my clients had only a handful of women in decision-making roles, and there were very few women senior advisors back then. Still I was drawn to M&A as a discipline because deal work plays to many of my strengths, especially my ability to gain the trust and confidence of both the client and the other side, my skills in juggling, multitasking and successfully managing a team and a deal process, and perhaps most importantly, my empathy, listening and collaboration skills. I prefer to build consensus. While these traits aren't uniquely feminine, my unscientific and entirely anecdotal observations suggest that a high percentage of women deal professionals have these skills and use them effectively. This would seem to make us natural deal mavens, right?

So while there were very few women at the senior levels of deal making in the late 80s and early 90s, I certainly had expected that our ranks would swell over time. After all, I have managed the wicked demands of the deal world with family from the very beginning of my career. The day after I closed the first M&A deal that I managed from start to finish, I went into labor with my first son! Many women have learned like me to balance demanding jobs and parenting. We all stretch ourselves to participate in roles that matter most to us. There is no getting around the fact that deal-making isn't for everyone, but I expected that by now the natural talents of women as deal makers would yield more women in senior deal roles.

Today, however, I don't see more women at the top of the deal than when I was launching my career, and my senior women colleagues in various law firms and investment banks tell the same story. Certainly there are more opportunities for women today. Every year our clients have more women senior executives, and women make up an ever-larger percentage of in-house legal and finance teams. Women are readily accepted as senior advisors and I see little gender preference in deal staffing. This makes sense—key skills that women are most known for, like empathy, listening, collaboration, and considering multiple outcomes, are critical to making deals happen. And don't we all really want to get more deals across the finish line?

Ironically, while diversity is valued more and more by our clients, professional firms struggle to deliver a diverse team. The chances that I will be the only senior woman on a deal team are as high or higher now than when I started to lead teams in the late 80s. Recent surveys bear this out—for example, out of the 37 ranked Corporate/M&A lawyers in the most recent Chambers USA survey for Northern California, only 4 were women; in New York, out of 142 ranked lawyers in the same survey, women made up only 10! On the investment banking side the situation is even worse. We see few women at the table or coming up behind us in the ranks.

Of course, the scarcity of senior women deal advisors has nothing to do with the relative talent of women—rather it is the result of a diminishing talent pool at the senior levels. Women M&A lawyers and bankers have myriad choices as they advance and we have to face the fact that they are voting with their feet to leave the ranks of deal makers. As part of my own legacy, I have been brainstorming ways to fill the pipeline of women eligible to move into senior M&A advisor roles. How can we entice these women to stick around? I completely agree with Sheryl Sandberg's advice for women to "lean in," but while it is certainly necessary to change the mindset of our talent pool to consider the possibility of staying and succeeding, these talented women need reasons to stay. Here are three practical actions we can take today to increase women in senior M&A ranks:

First, make it clear to younger women that it matters to us all that they succeed. Both men and women in the M&A deal ecosystem can be more intentional in making it clear to younger women that it matters to us all that they succeed. We can all make these women feel that they are valuable contributors and let them know that their retention matters. A personal welcome and message of inclusion is a powerful motivator. If more of us in the deal world gave younger women a strong message that they belong in this “club,” maybe more of them would stay when the going gets tough.

Second, direct more M&A deal flow to women advisors. As more women business leaders have the power to direct business to deal advisors these women can make a point to support great women M&A advisors with deal flow. Guys have been supporting guys for years! Now women are in a position to give M&A deal work to trusted women advisors. This phenomenon will offer our young women one clear path to success, and thus another powerful motivation for these women to stay in the game.

Third, collaborate, build strong relationships and help one another succeed. Women deal-makers can do what comes naturally—form strong supportive relationships with other women and help one another succeed with referrals and other support. Since 2012, Jennifer Muller of Houlihan Lokey, Christa Fancher of SRS and I have cosponsored quarterly dinners for a group of senior women M&A professionals in Silicon Valley with an ever-expanding group of women professionals from all corners of the M&A ecosystem in our region. We have two simple goals—to make sure active women dealmakers know each other, and to find ways to support each other so that we can expand the pool and the opportunities to succeed. We are learning from each other ways to encourage our women coming through the ranks.

To steal a phrase, it takes a village to build a talent pool! Collaborating to expand both the pool of talented women deal mavens and our seats at the deal table will leave an important legacy. I look forward to this collaboration model expanding across the US. As I look to my crystal ball, I can see that 20 years from now there will be many senior women dealmakers driving deals. I can't wait to celebrate!

My Career Reflections

By Cheryl Sorokin, Consultant, Veaco Group¹

I started out my professional career as a Spanish teacher, and though I enjoyed teaching very much, after nine years I decided I needed a change. But to what? It was 1975. Most career opportunities for women still centered on teaching or nursing. Furthermore, back in those days, it was pretty hard for married women with children who had been in the teaching profession to be seriously considered for other than teaching positions.

Law School Days

I knew I didn't want an MBA. I thought that might put me in some sort of awkward business career competition with my then spouse. Law school seemed like something that might be intellectually interesting even though my knowledge of legal careers was pretty much limited to watching Perry Mason. More to the point, I thought going to law school would help provide me with a new "ticket"—credentials that would move me away from those more traditional careers for women.

In the mid-70s, law schools were just beginning to get serious about recruiting women beyond token numbers. My class at Northwestern was almost 1/3 women, a record at the time. I was also lucky because Northwestern was open to recruiting "older women" as students. I think I was 29 when I applied. 29 doesn't seem so old to me now, but back then many people thought it incredulous that I was planning to start law school at such an advanced age and what's more with a child in elementary school.

Northwestern proved to be a great experience. I had wonderful teachers and enjoyed almost all the courses I took. Although at times it was a bit scary, it never was traumatizing. And best of all, it truly was the great intellectual stimulation I'd hoped for. Little did I know that the practice of law would not be quite so intellectually stimulating!!

Although I had graduated Order of the Coif and had stellar internships and recommendations, I nonetheless had some difficulty getting a job. Most law firms were still leery of women back then, and especially older women. I was 32. So I focused mainly on corporate law departments.

Starting In-House

Although, of course, not legal, I suffered through many corporate and law firm interviews in which I had to answer questions about how I planned to balance family and career obligations, whether I had plans for having additional kids, whether my spouse would be supportive of long hours and any required work-related travel, whether I was career-minded or just an over-educated suburban housewife. After several months of interviewing, and watching my younger male colleagues get job offers, Bank of America offered me a position as a junior attorney in their Chicago office.

Somewhat to my surprise, I learned to love corporate law. From the start I was involved in big loan and lease agreements and lots of negotiations in smoke filled rooms, often being the only woman on a deal and having to work hard to win over skeptical male businessmen, or opposing male counsel.

It was heady stuff for a new lawyer—and there was probably some malpractice on my part—but I had lots of support from the "old hands" in the BofA Legal Department out in California. I think I was known as the "early morning idiot" by a lot of west coast lawyers and bankers because of all the calls I placed to people in California bright and early their time each day asking for guidance or explanations: what is a Eurodollar? How do letters of credit really work? Can you really take a security interest in a cow?

¹ Cherie is the former Group Executive Vice President and Corporate Secretary of Bank of America, and was the first woman to hold this position at the bank. She is the former Chair of the Corporate Practices Committee of the Society of Corporate Secretaries, a member of the Society's National Board from 1991 to 1994 and the recipient of the Bracebridge Young Award, the Society's highest honor. She also is a member of the American Association of University Women and has served on several nonprofit boards. She is co-author of two books on corporate governance-related topics.

Facing the Gender Bias Headwinds

Working in a little outpost of a very big bank taught me to be resourceful and to find my way around that big institution on my own, by phone and, later, in person by just walking around. I was developing my network, in other words. I didn't realize it then, but that networking experience was excellent training for later on, as was the time and energy I spent in those early days learning to overcome, or at least mitigate and live with, unintended, and in some cases intended, gender bias.

In 1981, gender bias was front and center in my ill-fated appointment to serve as head of the Bank's small legal office in Mexico City. I arrived in Mexico only to be told in my initial meeting with the head of the banking office (to which the legal office was attached) that he objected to my gender. As far as he was concerned, running the legal office in Mexico was "an unsuitable job for a woman." Although Bank of America was under a consent decree at the time for failure to promote women to executive positions, I guess the news hadn't reached him.

Although I was disappointed and more than a bit discombobulated by this turn of events, I decided not to force the issue. I really didn't want to be put in a position in which I wasn't wanted and was likely to be undermined at every turn. But, I did ask for a transfer to SF—not a bad place to lick my wounds—and it certainly offered greater career growth opportunity than staying in Chicago and negotiating loan agreements day in and day out. My new job in SF was more or less invented for me as the General Counsel, who was ecstatic that he didn't have a lawsuit on his hands, wanted to be sure I was happy.

A New Start

My job in SF moved me from lawyering for the corporate side of the bank to the retail side. The position enabled me to use my teaching skills a lot, as I was in charge of developing the training program for branches on how to handle legal issues that crop up with some frequency, including sheriffs at the door ostensibly with orders to remove all the furniture in execution of some supposed judgment; process servers with subpoenas trying to get into safe deposit boxes; someone slipping on a banana peel and the occasional inadvertent locking up of customers in the vault.

I also worked on product development: some of the very first home banking systems, ATM products, money-market products, and those "you bet your house" home loan products, etc. Many of these were leading edge and highly controversial on many fronts. Almost all had incredibly tight development timeframes and were headed by difficult and demanding executives who never wanted to hear the word "no." The job was great education on the inner workings of a large retail bank. My network really expanded as well as my reputation for hard work and my skill in working with high-powered individuals.

Becoming Corporate Secretary (& Much More)

I can't say I was passionate about any of this, however, and after about two years, I started lobbying for a change in position. I really still dreamed of an international post, but I also mentioned to my boss that I might be interested in the corporate secretary position. I had heard that it was supposed to be a rotating position within the Legal Department, changing every 2-3 years, and the current incumbent's time was about up. That was about all I understood about it, but I thought, how bad could it be to spend 3 years hanging out on the executive floor and the board room?

This was the fall of 1985. The bank's head was barely above water at the time and there were big regulatory and shareholder issues to be grappled with in the job, about which I knew essentially nothing. But the main thing that I was concerned about in lobbying for the job was "the gender thing" again. The bank had never had a woman corporate secretary. As strange as it may seem now, there was grave concern in the Office of the Chairman about whether having a woman in the Managing Committee or at the board would be unsettling to the men, or whether I might faint if they swore or used bad language thereby inhibiting their ability to freely discuss corporate issues. Eventually, I was offered the job, though it probably took a year before members of the Managing Committee and the board finally stopped apologizing to me every time they said "s--t" or worse.

It's difficult to know what the deciding factor was in my selection. I suspect it had more to do with personality and my reputation of having the ability to take on difficult projects and to work easily with difficult people than anything else. It certainly wasn't because of my knowledge of corporate governance, or securities law. Those I would learn on the job. My earlier-honed "early morning idiot" skills stood me in good stead in that regard.

I was, however, surprised to find that "psychiatry" and "mothering" skills were also important attributes for a Corporate Secretary. That first year on the job I was often called upon to run interference between warring officers and board members. The board was divided over whether to continue with current management or to fire one or more executives (who were also board members). Members of the executive team had divided loyalties as well.

After several months, crazy stock fluctuations, public announcements and filings to help stave off a run on the bank, many special meetings, a number of "secret conference calls" among "old friends on the board" the board ended up firing the management team and bringing back the former CEO.

In the end, I served as Corporate Secretary at BofA for 12 years—being asked to stay on in the position by four very different CEOs. During my career, (though not necessarily related to anything I did!), the Bank:

- Came back from the almost dead,
- Expanded internationally and nationwide,
- Alternately delighted and infuriated shareholders,
- Acquired a zillion smaller institutions, swallowed another comparably sized CA institution,
- Survived major PR disasters,
- Struggled through regulatory and SEC investigations,
- Successfully defended numerous class action and derivative suits,
- Rode the stock market up and down, and up and down,
- Selected four new CEOs, disappointing several would be heirs-apparent, and
- Discovered that you can't always be the surviving culture in a "merger of equals."

In my last three years in the job, I also was given responsibility for Corporate Communications, Government Relations, and Investment Administration (the management of our investment in subsidiaries). These additional responsibilities came my way not only because of my knowledge of the business and these specific areas, but because I stepped up and asked for the additional responsibility. It continues to amaze me how often opportunities for additional growth are lost simply by not taking the step to ask for the job.

During my 12 years as Corporate Secretary, corporate governance concerns and legal and regulatory requirements placed on boards expanded dramatically. Each year, the job seemed to require ever more organizational skill and finesse, greater knowledge of legal and regulatory issues, and a much higher level of expertise in corporate governance. The number of women in the position of corporate secretary or assistant secretary also expanded dramatically during those years, and continues to do so. At least in part this is a reflection of the fact that overt gender bias has lessened and more women are achieving higher positions in the corporate world. But, it's a mistake to think that gender bias has been eliminated. Statistics show the "glass ceiling" still exists.

My List: How to Be a Good Corporate Secretary

I am often asked what combination of skills, expertise and personality traits are needed to be a corporate secretary and whether those traits have changed since the time I was in the job.

I don't really think the basic requirements for succeeding in the job have changed. In my case, lots of factors contributed to my success, including a fair amount of just plain luck. Never discount the importance of luck! But other factors were also important, and still are today. Let me highlight some overarching traits that might be helpful to anyone thinking about being a corporate secretary.

1. To excel at being a corporate secretary you need **self-confidence, empathy and leadership skills, focused on helping others, not self-aggrandizement.**
 - i. There are enough egos in the executive office and board room to go around.
 - ii. You need to be able to hold your own in the face of high-powered execs and board members.
 - iii. You need to inspire their confidence in your abilities.
 - iv. You need to understand where others are coming from—see things from their perspective.
2. To excel as a corporate secretary you need **integrity, discretion, grit and guts.**
 - i. You have to keep secrets.
 - ii. You also need to know when and how to deal with confidences that should be revealed.
 - iii. You need to resist pressure to change history.
 - iv. Sometimes you have to tell people, high-powered ones with the ability to fire you, things they don't want to hear.
 - v. You need to be able to accept the fact that your recommendations may not always be followed—at least not the initially.
3. To excel as a corporate secretary, you need to be sure your **organizational and networking skills are tied to the basic purposes you support.**
 - i. It's not about how pretty the package is, or how organized the files are, it's about how useful things are for the purpose needed.
 - ii. Networking is not just about how many people you know.

Networking within the organization is fundamental to helping you understand the business. It can improve your ability to make judgments about issues the board needs to deal with, or materials the board needs to see, or disclosures that need to be made.

Networking outside the organization—say as a member of the Society of Corporate Secretaries and Governance Professionals, or the American Bar Association—can help you learn how to handle things better and keep you from having to re-invent the wheel.
 - iii. Networking is also an excellent tool for planning your own career path, or finding ways to expand your scope of responsibility. It gives you the opportunity to learn from others and to see where or how a job might be better done if you were in charge.
4. To excel at the job of corporate secretary, you must have the willingness to **work really hard and stay flexible—to do what it takes to get the job done right.**
 - i. There's a lot of law that needs to be learned to do the job well and you have to stay on top of governance trends as well as legal issues.
 - ii. There are incredible time crunches and changes in plans, and they inevitably come right about the time you are ready to go home (at 9:00 pm or later), or attend a conference to make a speech, or have a baby. Flexibility has to be your middle name.
 - iii. No matter what, the CEO and/or the board chair are going to expect you to fix whatever needs fixing—whether it's running the freight elevator or drafting an 8-k
5. Finally, to excel at being a corporate secretary, it helps to **have a sense of humor.** God knows you'll need it when you are re-doing the board materials at 1:00 a.m. or the Chairman calls you and asks you to schedule a special board meeting just as you are walking out the door for what you thought would be a vacation!

Diversity One: One Step, One Action, One Impact

By Sylvia Groves, CEO, Governance Studio¹

The jury is still out on quantitative research that conclusively proves the economic value of increasing the number of women on boards. However, there is significant evidence on the qualitative side. First, women are exceptionally strong at keeping the best interests of the organization in mind in decision making and, second, the mere presence of women on the board increases the effectiveness of male directors and the whole board. From a simpler sociological standpoint there is extensive evidence of the effectiveness of diverse (heterogeneous) teams over similar (homogenous) teams.

The Diversity One Policy

The Diversity One Policy is very simple—a board commits (by voluntarily adopting the policy) to interview at least one diverse candidate for every board seat it seeks to fill. The policy allows boards to demonstrate their commitment to diversity to shareholders, stakeholders and regulators without ever being forced to select a less than ideal director candidate.

Diversity One is based on the same premises that underlie the Rooney Rule in NFL football—which initial results have borne out. It has been shown that when you make a commitment to interview at least one diverse candidate for an open position, more diverse candidates get hired.

The Rooney Rule and Its Impact

From the 1920s, when the NFL had one minority (ethnic) head coach, up through 2003 only six further head coaching positions were held by a minority candidate (an average of less than one per decade). This was despite the fact that the number of mainly African American, retiring players who were looking to coach was significant.

In 2003, the NFL adopted the Rooney Rule (named for Dan Rooney, the Chair of the league's Diversity Committee) that required at least one of the candidates interviewed for every head coaching job to (initially) be African American. The rule is now expanded on two fronts. It has been expanded to all ethnic minorities and now covers all senior operations positions in the league.

Part of the impetus for the creation of the Rooney Rule was a September 2002 study by Janice Madden, Ph.D., commissioned by attorneys Johnnie L. Cochran and Cyrus Mehri, titled "Black Coaches in the National Football League: Superior Performance, Inferior Opportunities." In her review of the statistics Dr. Madden found that although African-American coaches were more effective by every objective standard (including, more wins per season, more likely to reach the playoffs) they were often the "last hired and the first fired" regardless of their record. When the report was released, Cochran and Mehri noted that minority professionals were required to "significantly out perform their white counterparts to advance half as far."

From 2003 to the end of 2012 the total number of minority head coaches in the NFL increased to 13. That nearly doubles the results of the previous 70 years in less than ten years—significantly moving the needle.

Another significant milestone was reached in 2007, when Tony Dungy became the first African American head coach to win the Super Bowl. And, he was playing against a team who also had an African American head coach—another first in league history. In fact, the Rooney Rule has shown enough success that consideration is being given to expanding it into college football under the name the Eddie Robinson Rule.

¹ Sylvia Groves is the CEO of Governance Studio (governancestudio.ca). Join the list of Governance Studio's partners and supporters of the Diversity One issue today by contacting Sylvia at 403.991.2154 to become an official supporter and be included in the Diversity One team.

Other Evidence

A recently published study, “*Why Women Make Better Directors*”, co-authored by Dr. Chris Bart of McMaster University and Dr. Gregory McQueen of A.T. Stills University in Arizona found that female directors were more likely to use “co-operation, collaboration and consensus building” when facing complex business situations. That approach often contributed to the success of the organization.

Why Only One Action

Several organizations throughout North America and Europe support increased gender diversity and most give several options and five or ten point plans to increase boardroom diversity. However, recent research on how and why people and groups change (or don't) set out in “*Switch: How to Change Things When Change is Hard*” by Chip and Dan Heath presents compelling evidence that asking people to make one single, concrete change or take one single, concrete action is much more effective than giving them a range of options. More than one choice confuses the issue and makes it easier to decide to do nothing at all.

The most compelling information comes from a study of public education messages designed to help parents get their children eating healthier to reduce childhood obesity. In one US county they focused on the food guide pyramid—only five categories and a simple number of servings for each. In another county they took the radical approach of suggesting only one single change—switching from whole milk to 1% milk. The campaign with the “one simple change” more than doubled the sales (and, by inference, the consumption) of healthier, low-fat milk. Clearly, it is more difficult to take action when there are several reasonable options available.

Applying It to the Boardroom

The situation with boardroom diversity in many respects tracks the exact same story as the NFL, just with emphasis currently on gender (which is overly narrow as well) rather than ethnicity. Even though it has been talked about for years and even though more initiatives are being undertaken, and even though more stakeholders are becoming vocal, and even though regulators are beginning to respond, the needle on balanced gender representation in corporate America has been moving very slowly. Impediments include, among other things, a purported lack of qualified candidates (although this is more likely perception than reality), the CEO bias (discussed below) and some reluctance to challenge the *status quo*.

Currently, the only exceptions are jurisdictions where there are legislated quotas for female directors. Eventually, the regulators throughout North America are going to take it upon themselves (some already have—for example in Quebec where all crown boards must have a minimum of 50% female directors) to remedy the situation.

Gaining Exposure

One of the obstacles to directorships for diverse candidates is often familiarity to the board. Boards are, of course, merely large teams and want to ensure that they create a good working environment with appropriate chemistry. That leads to a desire on the part of boards to look at candidates who are known for how well they work with others. Ideally there is direct knowledge—perhaps the candidate worked for someone on the board earlier in their career or they took a course with a current director where they could be seen in action. Barring that, most boards will look to getting supplemental information from other people they know directly.

No different than in any other business relationship—we all want to work with people we know and trust. If we don't have direct experience, we want to work with people who are known and trusted by someone in our own network of known and trusted colleagues.

As was found after the implementation of the Rooney Rule, Diversity One will help overcome this obstacle by increasing the exposure of “unknown” candidates to boards through the required interview process. The policy serves to both expand the search pool and expose new candidates to boards. When you add in the effect of cross-pollination of boards, a diversity candidate can be noticed for service on upwards of a half a dozen boards when they are interviewed by a single one.

The CEO Bias

Another issue is the desire of many boards and particularly sitting CEOs for director candidates to be former CEOs. As most industries see a very small percentage of female or other diversity candidate CEOs, the ability of those candidates to obtain board seats is limited. The very notion of requiring CEO service is severely flawed if a board is truly looking for even just a diversity of viewpoints. CEOs tend to like other CEOs because the other CEOs are likely to think similarly.

Ralph Whitworth of Relational Investors LLC recently relayed a situation he faced. A sitting CEO was pushing for a new board member to be a former CEO so that he could approach that person for counsel and guidance. However, when the seven other former CEOs on the board were asked about their experiences, they indicated that the CEO had never once come to any of them for counsel.

Accordingly, diverse candidates can quickly and easily be disposed of on the basis of having no CEO experience. The perfect opt-out for boards as, on the surface, it seems to be entirely reasonable—a former CEO will understand the issues a current CEO is facing. However, the board's role is not merely to understand the CEOs issues, but also to challenge the CEOs assumptions. That is where truly diverse candidates and backgrounds can add significant value.

A similar issue was identified in the development of the Rooney Rule. The research prepared by Dr. Janice Madden found that NFL team owners expected far more from African-American coaches in order to be seen as competitive with their Caucasian counterparts. A quote from the report indicates that an African-American head coach would need to have “incontrovertibly dwarfed their competition” in order to be hired as a head coach. Women seeking board service currently face a similar uphill battle.

Senior Management Roles

Over the past several years, some progress has been made on the “CEO service” issue as companies broaden the parameter to include candidates that have had senior management roles, perhaps Vice President or higher. That is definite progress, but it remains to be seen whether more diverse viewpoints and value adds could come from candidates from mid to senior level management who are being newly exposed to board service.

After all, it is often people who are unfamiliar with a process or information who can more easily question it without “losing face”. With the ultimate responsibility of the board being the oversight of management, the most effective tool in a director's bag is her ability (and courage) to ask questions—sometimes, as in Ralph Whitworth's case above—the simplest questions.

The Rule of Three

Interviews with leading female directors indicate another, less obvious, issue—that of being a lone voice in the board room. Dr. Richard Leblanc found in his research, almost to a woman, female directors indicate that board rooms truly begin to change only when there are at least three women on board. In most cases, that will represent somewhere between 20% and 30% of the board seats.

This information, rather unfortunately, gives greater credence to the idea of pink quotas to ensure that an “effective” number of women are appointed to boards.

Implementing Diversity One

Implementing a Diversity One Policy is simple—a board voluntarily adopts a resolution stating that it has adopted the policy and is committed to interviewing female candidates when board positions arise. Board can also choose to add a target goal and other diversity aspects if they desire.

Sample Policy and Resolution Wording

RESOLVED that the board of directors of [Company] adopts a Diversity One Policy by which we commit to interviewing at least one female candidate for every open board position.

The Diversity One Registry

In support of this initiative in Canada and North America more broadly, Governance Studio is launching a public registry of Diversity One companies. All boards who adopt a policy will be included in the public registry at www.DiversityOne.org (currently in production). They will also be authorized to display the official Diversity One logo in their public disclosure documents and on their websites, as they see fit. The logo is an instantly recognizable symbol of their commitment to diversity and board effectiveness and an identifying visual cue to stakeholders. Please join us!

At the Printers!

1st Edition of Morrison & Romanek's "The Corporate Governance Treatise"

Wrapping up a project that Randi Morrison & Broc Romanek feverishly commenced two years ago, we are happy to say the inaugural 2014 Edition of Morrison & Romanek's "The Corporate Governance Treatise" is now at the printers. You will want to order now so that you can get your copy as soon as it's done being printed in a few weeks.

With over 950 pages—including 212 checklists—this tome is the definition of being practical. You can return it any time within the first year and get a full refund if you don't find it of value. Order on TheCorporateCounsel.net or via the enclosed flyer.

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Good news. Alan Dye just completed the 2014 edition of the popular "Section 16 Forms & Filings Handbook," with numerous new—and critical—samples included among the thousands of pages of samples (remember that a new version of the Handbook comes along every 4 years or so—so those with the last edition have one that is dated).

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Our Pair of Popular Executive Pay Conferences

We have posted the registration information for our popular conferences—"Tackling Your 2015 Compensation Disclosures" & "11th Annual Executive Compensation Conference: Say-on-Pay Workshop"—to be held September 29-30th in Las Vegas and via Live Nationwide Video Webcast on TheCorporateCounsel.net. Act now for phased-in pricing—which expires May 9th—to get as much as 20% off via the enclosed flyer!

The full agendas for the Conferences are posted on TheCorporateCounsel.net—but the panels include:

- The Latest from the SEC
- Preparing for Pay Ratio Disclosures: How to Gather the Data
- Pay Ratio: What the Compensation Committee Needs to Do Now
- Case Studies: How to Draft Pay Ratio Disclosures
- Pay Ratio: Pointers from In-House
- Navigating ISS & Glass Lewis
- How to Improve Pay-for-Performance Disclosure
- Peer Group Disclosures: The In-House Perspective
- In-House Perspective: Strategies for Effective Solicitations
- Creating Effective Clawbacks (and Disclosures)
- Pledging & Hedging Disclosures
- The Executive Summary
- The Art of Supplemental Materials
- Dealing with the Complexities of Perks
- The Art of Communication
- The Big Kahuna: Your Burning Questions Answered
- The SEC All-Stars
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