DIVERSITY AND THE HIGH-TECH INDUSTRY

Dorothy A. Brown[*]

"Here is the thing about these [high-tech] companies: When something is a priority, they move fast and break things."

Rachel Sklar[1]

INTRODUCTION

This symposium asks us to look at race and gender inequality fifty years after the Civil Rights Act of 1964. The twenty-first-century battle lines will not be about eliminating "Blacks need not apply" advertisements, or making obsolete separate drinking fountains. Given how that type of public and explicit discrimination is rarely tolerated, racism and sexism have mutated into subtler and more socially acceptable forms that may be eradicated, in part,[2] when we address implicit or unconscious bias.[3] Laws that were effective at eradicating explicit racism have proven to be quite ineffective at combating unconscious bias.

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[1] Claire Cain Miller, *Curtain Is Rising on a Tech Premiere With (as Usual) a Mostly Male Cast*, N.Y. TIMES (Oct. 4, 2013), http://www.nytimes.com/2013/10/05/technology/as-tech-start-ups-surge-ahead-women-seem-to-be-left-behind.html?pagewanted=all.

[2] I say in part, because one of the biggest domains where that explicit and public racist behavior is accepted is with anonymous Internet comments. No amount of training will help here as the users generally remain anonymous. For an example of a cyberspace bully where the tables were turned see Nancy Leong's experience. Nancy Leong, *Anonymity and Abuse*, FEMINIST LAW PROFESSORS (Nov. 19, 2013), http://www.feministlawprofessors.com/2013/11/anonymity-abuse/.

[3] Dorothy A. Brown, *Fighting Racism in the Twenty-First Century*, 61 WASH & LEE L. REV. 1485, 1489–90 (2004) ("Given that it is no longer acceptable to be overtly racist, the bulk of racism has gone underground. Unconscious racism is today's enemy."). *See also infra* Part II.B.1.

Litigation is largely ineffective at improving race and gender equality today.[4] Our civil rights laws were never designed with unconscious bias in mind.[5] Yet race and gender inequality still exist, and strategies for moving forward have never been more needed than they are in the high-tech industry in Silicon Valley.[6]

Recent newspaper accounts have highlighted the lack of Blacks and Latinos/as working in high-tech firms as well as serving on boards of directors[7] based on the firms' self-disclosure of such data.[8] Not surprisingly, those articles reach the same conclusion because they are based upon the

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[4] *See, e.g.,* Ellsworth v. Pot Luck Enters., Inc., 624 F. Supp. 2d 868 (M.D. Tenn. 2009); Jones v. Cont'l Cuisine, Inc., 353 F. Supp. 2d 716 (E.D. La. 2004); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 461 (2001); Girardeau Spann, *Disparate Impact*, 98 GEO. L.J. 1133, 1150 (2010).

[5] *See* Sturm, *supra note* 4, at 537-40.

[6] Another obvious example of an industry lagging in terms of race and gender inclusion is the legal profession. *See cf.* Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1080 (2011) ("In other words, not only is the legal profession lagging behind other occupations in achieving diversity and equality, but its quest is further frustrated by conceptual disagreement and confusion about the meaning of diversity, means of pursuing it, and responsibility for doing so. In sum, while minority underrepresentation and inequity constitute a serious problem, the diversity discourse is stuck in a state of counterproductive disarray.") (citation omitted); Dorothy A. Brown, *Tales From A Tax Crit*, 10 PITTSBURGH TAX REV. 47 (2012); Dorothy A. Brown, *Taking* Grutter *Seriously: Getting Beyond the Numbers*, 43 HOUS. L. REV. 1 (2006); Dorothy A. Brown, *The LSAT Sweepstakes*, 2 J. GENDER RACE & JUST.59 (1998); Dorothy A. Brown, *Faith or Foolishness*, 11 HARV. BLACKLETTER L. J. 169 (1994) (reviewing CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944 (1993)); James R. Silkenat, *Down, But Not Defeated*, NAT'L L.J., (May 12, 2014) http://www.nationallawjournal.com/id=1202654681592/down-but-not-defeated?slreturn=20140829162959; Dorothy A. Brown, Op-Ed., *A Reboot for Legal Education*, NAT'L L.J., Apr. 15, 2013; George Erb, *Level 3 Communications Inc.*, NAT'L L.J., (Apr. 14, 2014); Dorothy A. Brown, Op-Ed., *A Real World Approach to Diversity*, NAT'L L.J., (Nov. 19, 2012); Dorothy A. Brown, *Law School Without Borders*, 45 SETON HALL L. REV. (forthcoming 2014).

[7] When Twitter was criticized for lack of gender diversity on its board of directors, the CEO tweeted what many considered a dismissive response and was roundly criticized. *See* Sam Biddle, *Twitter CEO Takes Fire Over All-Male Board of Directors*, VALLEY WAG (Oct. 7, 2013), http://valleywag.gawker.com/twitter-ceo-takes-fire-over-all-male-board-of-directors-1441983747.

[8] *See infra* Part I describing workforce statistics.

same bleak facts: a majority of workers in the high-tech industry are White and male, as are the majority of those in executive or other leadership positions, or sitting on boards of directors.[9] As a general proposition, the executives of the high-tech companies express distress at their diversity employment data, and all desire to improve in the future.[10] They acknowledge the "pool problem" and the racial skills gap, both of which become obvious when looking at college graduates with the technical skills required by the industry. The industry argues that the pool of applicants with the requisite technical skills overwhelmingly comprises White males, which leads to very few Black and Latino/a graduates or White women who can code or have other skills that the high-tech firms need.[11] That, in turn, leads to non-diverse hiring pools for open positions, which merely perpetuates the lack of racial and gender diversity in the workforce.

What much of the commentary misses, however, is the fact that there is no pool problem when it comes to Asians. Nevertheless, Asians are still underrepresented in leadership positions. While Asians make up five percent of the United States workforce population, they represent almost thirty percent of employees at Google, Facebook, Yahoo, LinkedIn, and Twitter.[12] Yet none of those companies has Asians in leadership or board member

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[9] Gail Sullivan, *Google Statistics Show Silicon Valley Has A Diversity Problem*, THE WASHINGTON POST (May 29, 2014), http://www.washingtonpost.com/news/morning-mix/wp/2014/05/29/most-google-employees-are-white-men-where-are-allthewomen/; Martha Mendoza, *Google Admits It's Overwhelmingly While And Male*, HUFFINGTON POST (May 28, 2014, 8:46 PM), http://www.huffingtonpost.com/2014/05/28/google-diversity-white-male_n_5407338.html; Jessica Guynn & Elizabeth Weise, *Lack of Diversity Could Undercut Silicon Valley*, USA TODAY (August 15, 2014, 9:44 PM), http://www.usatoday.com/story/tech/2014/06/26/silicon-valley-tech-diversity-white-asian-black-hispanic-google-facebook-yahoo/11372421/; Elizabeth Weise, *Tech: Where the Women and Minorities Aren't*, USA TODAY (May 30, 2014, 12:55 AM), http://www.usatoday.com/story/tech/2014/05/29/silicon-valley-tech-diversity-hiring-women-minorities/9735713/.

[10] Laura Petrecca, *Sandberg: Lack of Diversity in Firms is "Pretty Depressing,"* USA TODAY (Aug. 15, 2014, 1:52 PM), http://www.usatoday.com/story/tech/2014/06/18/sheryl-sandberg-tech-diversity-depressing-cannes-france/10760591/.

[11] *Cf.* A similar "pool problem" argument is often made by elite law firms. In that instance the pool problem starts in law school with the limited numbers of Black and Latino/a law students on law review as well as at the top of the class with respect to grades.

[12] *See infra* Table 1.2.

positions in anywhere near that proportion. I argue that this is primarily due to the unconscious bias and stereotypes held against Asians. They are believed to be good at math but lacking in personality and therefore not ideal as leaders – including chief executive officers or board members.

One study[13] showed that Whites viewed Asian Americans as being suboptimal litigators because they are lacking in personality, uncomfortable taking the lead, shy, and have difficulty speaking English.[14] The study is equally applicable to the high-tech industry when we discuss leadership traits. As Asians attempt to move up the promotion ladder they run into a brick wall of unconscious bias. Internal solutions are required. The high-tech industry does not need to wait for states and local governments to solve the K-12 problem, or colleges to improve Black and Latino/a recruitment – all events outside the high-tech industry's control. While increasing the number of Blacks and Latinos/as in the high-tech industry is a laudable goal, it will require a multi-layered approach and can only be tackled in the long term with intentional and deliberate actions. The short-term solution would be to exercise leadership to retain and promote the Asians and Asian Americans already working in the industry.

Part I of this Article begins by discussing overall United States workforce composition by race and gender and shows the lack of a pool problem when it comes to Asian and Asian American workers (not true for Asian and Asian American women). It then provides information on the workforce composition of the following five high-tech companies: Facebook, Google, LinkedIn, Yahoo, and Twitter. In addition, Part I discusses board composition by race and gender for several high-tech companies in Silicon Valley. Workforce composition has recently become easier to obtain because several companies have voluntarily disclosed the data. Corporate board membership data was more difficult to obtain. Part I will conclude with the high-tech industry's varied responses to the published data and describe initiatives undertaken to make the high-tech industry a more inclusive environment. Part II describes how racism operates in the twenty-first century, namely, through unconscious or implicit bias. It then shows how the lack of Asian and Asian American workers in the executive suite is due to stereotypes and beliefs held about Asians and Asian Americans. Part III describes the extent of the problem concerning Black and Latino/a workers in the high-tech industry. It argues that focusing attention solely on Blacks and Latinos/as is really support for maintaining the status quo. The article concludes by noting that, if the high-tech industry capitalized on the racial

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[13] Jerry Kang et al., *Are Ideal Litigators White? Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD.886, 892 (2010).

[14] *See infra* Part II.B.2.

diversity currently existing in its workforce, its published numbers would tell a completely different story – a success story.

I. SELECTED EMPLOYMENT STATISTICS

Recent press accounts discussed the lack of race and gender diversity in the high-tech industry when several companies, including Facebook, Google, LinkedIn, Twitter, and Yahoo, released workforce data.[15] As the data show, none of the high-tech firms are doing well on race and gender inclusion.[16] There is a lot of hand-wringing and expressed sorrow, but with little real progress likely to occur.

Beginning with United States workforce data, Whites represent sixty-four percent, Hispanics represent sixteen percent, Blacks represent twelve percent, and Asians represent five percent of the labor force.[17] Next, we examine the individual workforce data for Facebook, Google, LinkedIn, Twitter, and Yahoo.[18] As you consider the data, they may paint an even more

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[15] Thomas Claburn, *Google Admits Its Workforce Lacks Diversity*, INFORMATIONWEEK (May 29, 2014, 3:25 PM), http://www.informationweek.com/strategic-cio/team-building-and-staffing/google-admits-its-workforce-lacks-diversity/d/d-id/1269290; *Diversity Data Shows Need to Focus on Women of Color*, HUFFINGTON POST, THE BLOG (July 9, 2014, 4:53 PM), http://www.huffingtonpost.com/allison-scott/diversity-data-shows-need_b_5571685.html; *see* Vindu Goel, *Facebook Mirrors Tech Industry's Lack of Diversity*, N.Y. TIMES BITS BLOG (June 25, 2014, 8:42 PM), http://bits.blogs.nytimes.com/2014/06/25/facebook-mirrors-tech-industrys-lack-ofdiversity/?_php=true&_type =blogs&_r=0.

[16] *See* Table 1.1, *infra.*

[17] Crosby Burns et al., *The State of Diversity in Today's Workforce*, AMERICAN PROGRESS (July 12, 2012), http://www.americanprogress.org/issues/labor/report/2012/07/12/11938/the-state-of-diversity-in-todays-workforce/.

[18] Without voluntary disclosure, this data is very hard to obtain. One enterprising reporter for the San Jose Mercury News, Mike Swift, requested information in 2008 from the Department of Labor on the region's 15 largest local employers. Mike Swift, *Blacks, Latinos/as and Women Lose Ground at Silicon Valley Tech Companies*, SAN JOSE MERCURY NEWS (Feb. 10, 2010, 4:00 PM), http://www.mercurynews.com/ci_14383730. His inquiry sparked a two-year legal battle. *Id.* He eventually received dated information on ten of the companies he targeted. *Id.* Five companies – Google, Apple, Yahoo, Oracle and Applied Materials – successfully blocked the request by arguing that releasing the data would infringe on their trade secrets. Mike Swift, *Five Silicon Valley Companies*

optimistic picture than is warranted. To the extent the EEO-1 forms provided were completed with a liberal interpretation of leadership positions, the data may not be consistent with what is actually happening in the various workforce environments.

Table 1.1 United States Workforce Data for Select High-Tech Companies[19]

Company	White Workforce %	White Leadership %	Asian Workforce %	Asian Leadership %
Facebook	57	74	34	19
Google	63	67	29.5	27
LinkedIn	53	71	39	23
Twitter	59	72	29	24
Yahoo	54	79	37	15

For each company depicted above, Table 1.1 reveals that there is a lower percentage of Asian workers in leadership positions than in the overall workforce. The smallest gaps are found at Google and Twitter. The largest gap is found at Yahoo, followed by LinkedIn, then Facebook. LinkedIn has just under forty percent of its workforce being Asian, yet less than a quarter of the leadership positions are filled by Asian workers. Alternatively, White workers are always represented in higher numbers in the leadership positions than they are in the workforce. Here, the greatest disparity is found in Yahoo with a twenty-five percentage point advantage for Whites, followed by LinkedIn (nineteen percent), then Facebook (seventeen percent), then Twitter (thirteen percent). Google has the lowest preferential for being White at four percentage points.[20]

Fought Release of Employment Data, and Won, SAN JOSE MERCURY NEWS (Feb. 14, 2010, 4:00 PM), http://www.mercurynews.com/top-stories/ci_14382477.

[19] Some have suggested that the data were made public in response to Rev. Jesse Jackson's call for disclosure. Robert Schoon, *Diversity in Tech: Jesse Jackson Calls for Government Action, Promises More Pressure on Silicon Valley for Diversity Reports*, LATIN POST (July 31, 2014, 9:48 AM), http://www.latinpost.com/articles/18292/20140731/diversity-in-tech-jesse-jackson-calls-for-government-action-promises-more-pressure-on-silicon-valley-for-diversity-reports.htm.

[20] *See* Table 1.1.

Facebook and Twitter did not disclose their workforce data by race and gender,[21] however Google, LinkedIn, and Yahoo each did.[22] The gender data released by Twitter was of global employees, not United States employees – something no other company did.[23] None of the high-tech companies that have released workforce data have failed to provide gender data for their United States workforce.[24]

Table 1.2 United States Workforce Data of Select High-Tech Companies by Race and Gender

Company	White Workforce Male Female	White Leadership Male Female	Asian Workforce Male Female	Asian Leadership Male Female
Facebook	N/A	N/A	N/A	N/A
Google	46% 17%	58% 8%	20% 9%	27% 0%
LinkedIn	34% 19%	53% 18%	26% 13%	15% 8%
Twitter	N/A	N/A	N/A	N/A
Yahoo	36% 18%	62% 17%	25% 12%	11% 4%

LinkedIn and Yahoo have similar percentages of White women in the workforce and in leadership positions. In contrast, Asian women's representation at LinkedIn and Yahoo is significantly lower in leadership positions compared with their workforce percentages. Particularly for Yahoo, the percentage difference is a hefty one, reporting almost three times as many

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[21] The data they did provide raised more questions, especially concerning women by race. How do White women fare when compared with other women of color? When compared with White men? Was the data not disclosed because it is even worse than we imagine?

[22] *See* Claburn, *supra* note 15; *see also Diversity Data Shows, supra* note 15; *Facebook Mirrors Tech Industry's Lack of Diversity*, *supra* note 15.

[23] Janet Van Huysse, *Building a Twitter We Can Be Proud Of*, TWITTER (July 23, 2014), https://blog.twitter.com/2014/building-a-twitter-we-can-be-proud-of.

[24] *See* Claburn, *supra* note 15; *Diversity Data Shows, supra* note 15; *Facebook Mirrors Tech Industry's Lack of Diversity*, *supra* note 15.

Asian women in the workforce as are represented in leadership or management positions.

Moving to Google, the percentage of White women in leadership positions is almost half of the percentage of White women in the workforce. Regarding Asian women, the data are even bleaker. While nine percent of Google's U.S. workforce is made up of Asian women, there are none in leadership positions.[25] Additionally, the Asians that are in leadership positions are men. However, the percentages of Asian men in leadership positions are far greater than their workforce participation representation.

Comparing this data with data obtained from the Department of Labor for the top-ten[26] Silicon Valley firms, however, it seems our five companies may be doing better than some of their peers. In the Labor Department data, sixty-three percent of the workforce is White and eighty-three percent of the top managers are White.[27] Twenty-five percent of the workforce is Asian and thirteen percent are top managers.[28] What the top-ten data does not provide is a company-by-company basis of who is doing better than twenty-five percent, which company still has zeroes in senior management, and how women are being treated.

To summarize the data, White men are consistently overrepresented in senior management and Asians are consistently underrepresented, except at Google. Asian women seem to have a much harder time breaking through the glass ceiling of senior management than men, although both Asian men and Asian women seem to have to contend with different glass ceilings. This may not be that surprising, given how race and gender interact in the workforce.

Even before making the data public, many leaders in the high-tech industry were aware of the lack of diversity and expressed interest in making progress. Twitter's Chief Technology Officer, Adam Messinger, said, "Half our customers, more or less, are women, and we want to have empathy for our customers, and part of that is having a wide variety of opinions in-house. … It's also something a lot of people here think is the right thing to do."[29]

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[25] Contrasted with Black men, who represent less than 1 percent of the US workforce at Google (.85) yet hold 2.77 percent of the leadership positions.

[26] They are: Apple; Google; Oracle; Cisco Systems; Intel; Gilead Sciences; eBay; Facebook; Hewlett-Packard; and VMware. *See* Josh Harkinson, *Silicon Valley Firms are Even Whiter and More Male Than you Thought*, MOTHER JONES (May 29, 2014), http://www.motherjones.com/media/2014/05/google-diversity-labor-gender-race-gap-workers-silicon-valley.

[27] *Id.*

[28] *Id.*

[29] Miller, *supra* note 1.

But he adds, "There is definitely a supply-side problem."[30] Sheryl Sandberg, Chief Operating Officer of Facebook, has called the lack of diversity in companies "pretty depressing."[31] She also said, "Lean in means we should all lean in for equality."[32]

Twitter released the data in a blog post and acknowledged that "it makes good business sense… to be more diverse as a workforce – research shows that more diverse teams make better decisions."[33] In addition, the post added, "companies with women in leadership roles produce better financial results. … [W]e are joining some peer companies by sharing our ethnic and gender diversity data."[34] The Twitter representative went on to state: "[a]nd like our peers, we have a lot of work to do."[35] "We are keenly aware that Twitter is part of an industry that is marked by dramatic imbalances in diversity – and we are no exceptions."[36]

Facebook's representative released the diversity figures on the "Facebook Newsroom."[37] In this post, Facebook conceded that "diversity is essential to achieving [its] mission."[38] Additionally, "[r]esearch . . . shows that diverse teams are better at solving complex problems and enjoy more dynamic workplaces."[39] However, the Facebook representative acknowledged that they "have more work to do" and "a long way to go" to achieve greater diversity.[40]

Yahoo's representative released the diversity figures through the "Yahoo Tumblr."[41] The Yahoo representative stated that Yahoo is "in the business of building products for hundreds of millions of users worldwide

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[30] *Id.*

[31] Laura Petrecca, *Sandberg: Lack of Diversity in Firms is "Pretty Depressing"*, USA TODAY (June 18, 2014, 5:52 PM), http://www.usatoday.com/story/tech/2014/06/18/sheryl-sandberg-tech-diversity-depressing-cannes-france/10760591/.

[32] *Id.*

[33] Van Huysse, *supra* note 23.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] Maxine Williams, *Building a More Diverse Facebook*, FACEBOOK (June 25, 2014), http://newsroom.fb.com/news/2014/06/building-a-more-diverse-facebook/.

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] Jacqueline Reses, *Workforce Diversity at Yahoo*, YAHOO (June 17, 2014), http://yahoo.tumblr.com/post/89085398949/workforce-diversity-at-yahoo.

and that starts with having the best possible talent – a Yahoo team that understands and reflects our diverse user base."[42] Despite recognizing that diversity is paramount to success, unlike its peers, Yahoo's representative did not acknowledge that they "have a lot of work to do."[43]

Google released its employment diversity data on its website.[44] Google stated, "Having a diversity of perspectives leads to better decision-making, more relevant products, and makes work a whole lot more interesting."[45] Additionally, Google admitted its statistics are "not where we want to be when it comes to diversity. And it is hard to address these kinds of challenges if you're not prepared to discuss them openly, and with the facts."[46] However, Google noted, "[a]ll of [its] efforts, including going public with these numbers, are designed to help [the company] recruit and develop the world's most talented and diverse people."[47]

Through a LinkedIn blog post, the LinkedIn representative released the diversity figures and stated, "We've experienced tremendous growth and have become a truly global company, but in terms of overall diversity, we have some work to do."[48] Further, "[t]rue inclusion is something that can only be achieved through a workforce that reflects the rich diversity of our member base, and this is something we strive to do in all of our hiring efforts."[49] LinkedIn affirmed that it would "consistently measure [itself] and look for ways to improve."[50]

By and large the "solutions" have been to work on improving the pipeline for White women as well as Blacks and Latinos/as in order to expand the pool of qualified applicants.[51] I was unable to find a single high-tech

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[42] *Id.*

[43] *Id.*; Van Huysse, *supra* note 23; Williams, *supra* note 37.

[44] *Making Google a Workplace For Everyone*, GOOGLE, http://www.google.com/diversity/at-google.html (last visited Aug. 18, 2014).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Pat Wadors, *LinkedIn's Workforce Diversity*, LINKEDIN (June 12, 2014), http://blog.linkedin.com/2014/06/12/linkedins-workforce-diversity/.

[49] *Id.*

[50] *Id.*

[51] Van Huysse, *supra* note 23. Twitter responses to the bleak data include: the creation of affinity groups for employees who are women, people of color, and LGBTQs. *Id.* They say they will recruit at women's colleges and historically Black colleges and universities (HBCUs). They have also supported Girls Who Code (where the Chief Technology Officer Adam Messinger sits on their board), hosted summer immersion programs, hired interns from Year Up, hosted Girl Geek Dinners, sponsored conferences, provided bias mitigation training throughout the

company that announced programs to increase the number of Asians in the pipeline.

BOARD OF DIRECTORS INFORMATION

Throughout Silicon Valley, start-ups tend to have all-male boards of directors because board members are generally the venture capitalists who invested in the start-up.[52] According to National Venture Capital Association, eighty-nine percent of venture capitalists are men.[53] Regarding race and ethnicity, eighty-seven percent are White, nine percent are Asian, two percent are African American or Latino/a, and two percent are of mixed race.[54] Venture capital professionals who had been in the industry less than five years were more racially and ethnically diverse – although that did not hold true for gender diversity. In that subset, seventy-seven percent were White, seventeen percent were Asian, three percent were African American or Latino/a and three percent were of mixed race.[55]

One 2013 study of high-tech companies provided the following data:[56]

Company Name	Ratio Female-to-Male Board Members	Non-White Board Members
Airbnb	0-4	1
Amazon	2-9	0
AOL	3-9	1
Apple	1-8	1
eBay	1-11	1
Fab.com	0-6	2

organization, and supported other initiatives aimed at helping women in STEM fields. *Id.*

[52] Miller, *supra* note 1.

[53] *Id.*

[54] Press Release, National Venture Capital Association & Dow Jones Venture Source, *Diversity Increases Among Newer Venture Capital Professionals While Gender Composition of Industry Remains Largely Unchanged* (Nov. 21, 2011).

[55] *Id.*

[56] Nitasha Tiku, *The Boards Are All White: Charting Diversity Among Tech Directors*, VALLEYWAG (Oct. 8, 2013, 3:56 PM), http://valleywag.gawker.com/the-boards-are-all-white-charting-diversity-among-tech-1442532538. The study noted that Apple, Amazon, Google, and eBay did not respond to repeated fact-checking requests, and Yahoo did not comment. *Id.*

Facebook	2-8	0
Foursquare	0-3	0
Gilt Groupe	2-6	1
Google	3-7	1
Groupon	1-7	1
LinkedIn	1-7	1
Microsoft	2-9	1
Twitter	0-7	0[57]
Yahoo	2-7	0
Zynga	1-9	1

If you look at the racial composition of our five companies' Board of Directors, we see that Facebook, Yahoo, and Twitter have no people of color and hence, no Asians on their boards.[58] Google[59] and LinkedIn[60] each have a single member of color out of seven, which, *if* those members are Asian, would represent fourteen percent, less than even their very low representation in leadership positions.

Often when a company goes public, it faces pressure for the first time to add a woman to its board.[61] Facebook and Zynga, among others, added their first women to their boards either within a year before going public or within the first year after going public.[62] Another example was Twitter. Last fall, when Twitter went public, it was revealed that its board was all White and all male.[63] Twitter CEO Dick Costolo was pummeled – ironically enough – on Twitter.[64] In early December, Twitter appointed its first woman director: Marjorie Scardino, former chief executive of Pearson, a British publishing

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[57] On December 4, 2013, Twitter finally appointed a woman to its board of directors. *See* Emily Senger, *Twitter Now Has One Woman On Its Board of Directors*, MACLEAN'S (Dec. 5, 2013), http://www.macleans.ca/authors/emily-senger/twitter-now-has-one-woman-on-its-board-of-directors/; Hayley Tsukayama, *Twitter Appoints First Woman, Marjorie Scardino, to Board of Directors*, WASH. POST (Dec. 5, 2013), http://www.washingtonpost.com/business/technology/twitter-appoints-first-woman-marjorie-scardino-to-board-of-directors/2013/12/05/531f8534-5dc3-11e3-bc56-c6ca94801fac_story.html.

[58] Tiku, *supra* note 56.

[59] *Id*. (noting K. Ram Shriram is the board member).

[60] *Id.* (noting David Sze is the board member).

[61] Miller, *supra* note 1.

[62] *Id.*

[63] *Id.*

[64] Sam Biddle, *Twitter CEO Takes Fire Over All-Male Board of Directors*, VALLEYWAG (Oct. 7, 2013, 11:09 AM), http://valleywag.gawker.com/twitter-ceo-takes-fire-over-all-male-board-of-directors-1441983747.

and education company.[65] There are still no racial or ethnic minorities on Twitter's board.[66]

While Sheryl Sandberg is currently a member of Facebook's Board of Directors, that was not always the case. When Facebook first went public, its board of directors was all White and all male.[67] It was not until about a month after going public that Facebook appointed Sandberg to the board.[68] In 2011, when Ken Auletta asked Mark Zuckerberg why his five-member board had no women, he replied: "We have a very small board. . . I'm going to find people who are helpful, and I don't particularly care what gender they are or what company they are. I'm not filling the board with check boxes."[69] The next board member he added was another White man.[70]

"Everyone is trying for diversity, both gender and ethnic diversity, on boards and in operating positions," said Rick Devine, chief executive of TalentSky, a Silicon Valley recruiting firm.[71]Additionally, he stated, "The issue isn't the intention, the issue is just the paucity of candidates."[72] However, Twitter (along with other high-tech companies) overlaps with other industries, such as media, entertainment, and advertising, with a much more diverse pool, and one of its recently appointed directors was Peter Chernin, a White, male, former president of News Corporation.[73]

Many of the companies contacted cited a "pipeline problem." There were simply not enough minorities and women graduating with technical degrees, they say, so companies are not able to choose from a diverse applicant pool. "The workplace begins to look like the classrooms for those majors: filled with men and not as many women."[74]

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[65] Tsukayama, *supra* note 57.

[66] *Id.*

[67] *See, e.g.*, Miller, *supra* note 1; Tiku, *supra* note 56.

[68] Ken Auletta, *A Woman's Place: Can Sheryl Sandberg Upend Silicon Valley's Male-Dominated Culture?*, THE NEW YORKER, (July 11, 2011), http://www.newyorker.com/magazine/2011/07/11/a-womans-place-3.

[69] *Id.*

[70] *Id.*

[71] Miller, *supra* note 1 (quoting Rick Devine, Chief Executive of Talent Sky, a Silicon Valley recruiting firm).

[72] *Id.*

[73] *Id.*

[74] Julianne Pepitone, *Tech Industry's Diversity Problem Starts in College – and Earlier*, CNN (Nov. 10, 2011, 2:34 PM), http://money.cnn.com/2011/11/09/technology/diversity_college_degrees/.

Based on the actual employment data, we should see a lot more Asians in high-tech industry leadership positions and serving on tech-industry corporate boards, but we don't. There may be a pipeline issue for Blacks and Latinos/as, but there is none regarding Asians in high-tech industries. As far as that group is concerned, there isn't the pool problem that the executives would have us believe.

Given the bleak numbers provided earlier, if these same companies tackled other problems this way on a regular basis, they would file for bankruptcy protection or, at the very least, a number of senior employees would be unemployed. Think about it: you have a goal but you never meet it, and all you do is wring your hands or become defensive. Yet many think these answers are acceptable. And as we've seen, there is no pool problem excuse regarding the pipeline of Asian workers and the industry knows it, which is why they are not engaging in outreach to Asian communities. Increased Asian presence on corporate boards and in upper management could change tomorrow – if existing leaders in the high-tech industry exercised some political will and leaned into equality. What the high-tech companies should do will be the focus of the next section.

II. MAKING DIVERSITY WORK

A. WHAT WORKS?

Dr. Robin Ely, renowned expert on organizational behavior and diversity, has stated that there is very little empirical evidence "to support the idea that if you bring a diverse group together you will necessarily get performance benefits from that group."[75] There are two competing theories about how diversity impacts workplace group performance.[76] One is optimistic and one is pessimistic.[77]

The optimistic view is that diversity increases the pool of available resources, whether we are talking about social networks, skills, and/or insights, in order to enhance the group's creative and problem solving abilities.[78] The pessimistic view says that diversity leads to social comparisons between in-groups and out-groups, with people having a preference for members of their particular in-group.[79] The latter can lead to

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[75] Martha Lagace, *Racial Diversity Pays Off*, HARV. BUS. SCH. WORKING KNOWLEDGE, (June 21, 2004), http://hbswk.hbs.edu/item/4207.html.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Id.*

stereotyping, miscommunication, and polarization – all of which create performance losses and not gains.[80]

More empirical studies support the pessimistic view, however. The few studies that do support the optimistic view have generally been simulations conducted in laboratories and not in the workplace.[81] Therefore, Dr. Ely (and her co-author) decided to study a real-life company with the goal of identifying when performance benefits occurred as a result of workplace diversity – with a specific emphasis on racial diversity.[82]

Companies tend to take one of the following three perspectives about diversity:

> 1. Discrimination and fairness perspective. The work groups aspire to being color blind, so conversations around race are limited…. They believe there is no connection between race and the work, but racial bias can end up being destructive in the work group.
> 2. Access and legitimacy perspective. There is diversity only in certain parts of the organization. People are effectively shunted onto segregated career tracks and told, 'This is what you're good at.'
> 3. Integration and learning perspective. Group members are encouraged to bring all relevant insights and perspectives to bear on their work.[83]

The discrimination and fairness perspective is really about assimilation. In other words, race is not an issue and everyone should get along because there are no differences based upon race. The organization does not see color. The employee of color who thinks race matters and raises it will be thought of as playing the "race card" because race is irrelevant. It's all about the work, and if you work hard everything will work out well for you. The employee of color is expected, perhaps required, to say that this is a colorblind workplace. Stated differently, the employee of color (and White peers who think similarly) are forced to conform and keep different views to themselves if they want to succeed and be promoted.

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[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*

The access and legitimacy perspective is about recognizing that race matters – but only in limited spheres. For example, if a company has (or is seeking to improve) a market share in a certain racial or ethnic community, a person of that same race or ethnic background would be the company's representative to that community. The employee's skill set beyond race and/or ethnicity is neither valued nor acknowledged.

The integration and learning perspective recognizes that race matters in the workplace and outside of the workplace. This perspective means that employees bring "the whole person to work."[84] Martha Lagace noted that "[o]penly discussing and learning from differences made it possible for the groups to create psychological safety."[85] The article continues and observes that "[t]he integration and learning perspective is a way of managing the fact of racial discrimination in the larger culture."[86]

Neither of the first two perspectives results in performance gains for the organization. When dealing with racial diversity, there are significant performance benefits, but only when groups actively acknowledge and engage the differences in a way that "fosters learning," which is only found in the third perspective.[87] While that perspective may also have more conflict along the way to creating performance benefits, it is the only way to get there. Ely and Thomas concluded from their study that "when work groups actively acknowledge and engage with their different members in a way that fostered learning, they performed better as well."[88]

The study shows that racial diversity in the workforce does not magically translate into better outcomes.[89] In order for a racially diverse workforce to result in "measurable performance benefits," leadership must be intentional and create a workplace where employees affirmatively chose to learn from their peers' differences rather than "ignore or suppress them."[90]

Assuming an organization decides that it wants to embrace the learning and effectiveness paradigm, what should its next steps be and who should lead the change management efforts? A recent study suggests that it should not be White women or people of color.[91]

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[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Women and Minority Corporate Executives Are Penalized for Fostering Diversity, Study Finds*, ACAD. MGMT. (July 14, 2014), http://aom.org/News/Press-

The study finds that "[n]onwhite and women leaders who engage in diversity-increasing behaviors in the highest organizational ranks are systematically penalized with lower performance ratings for doing so."[92] The study's authors suggest "that nonwhite and women leaders may increase their own chances of advancing up the corporate ladder by actually engaging in a very low level of diversity-valuing behavior."[93] The notion that when people of color get into positions of authority they may not engage in behavior designed to help other people of color is supported by the research of law professors Devon Carbado and Mitu Gulati.[94] In their article *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, they posit that the likely response is to not engage in that behavior.[95] Given the lack of commitment by their White peers, one would expect many people of color (as well as White women), once they arrive in senior leadership, to not be outspoken in terms of including others who look like them for fear of not being considered a team player or part of the inner circle.[96]

The research points to one solution: namely, that White males should play a larger role in diversifying the workplace and should be at the forefront of leading the changes necessary to make the workplace more welcoming of the whole self of every employee.[97]

Releases/Women-and-minority-corporate-executives-are-penalized-for-fostering-diversity,-study-finds.aspx [hereinafter ACAD. MGMT., *Diversity Study*].

[92] *Id.*

[93] *Id.*

[94] Devon W. Carbado & Mitu Gulati, *Race to the Top of the Corporate Ladder: What Minorities Do When They Get There*, 61 WASH. & LEE L. REV. 1645, 1647 (2004).

[95] *Id.* at 1646.

[96] *Id.* at 1654 ("Our central claim is that the corporation both selects for and produces racial types to win multiround promotion tournaments. These racial types, we contend, are unlikely to be invested in facilitating the promotion of other nonwhites. We should be clear to point out that this lack of investment does not derive from a normative commitment on the part of senior people of color to disidentify with other racial minorities. The disinvestment exists because of the institutional rewards of racial disidentification and institutional costs of perceived racial group association.").

[97] ACAD. MGMT., *Diversity Study*, *supra* note 91.

B. CHANGE MANAGEMENT AND THE HIGH-TECH INDUSTRY – NEXT STEPS

Two preliminary but crucial decisions need to be made. First, the high-tech industry needs to embrace the integration and learning perspective for all the reasons described above. In order to get performance benefits, each employee must be allowed to bring their whole selves to work. Second, the industry's White male leadership needs to decide that this is their issue and should take responsibility for implementing the approach. After those important decisions are made, the next steps must be considered.

Each organization has its own unique culture, which must be at the forefront of any change management; however, there are several steps that should be included or that can be adapted in some manner to fit the organizational culture. They are: (1) unconscious bias training for the entire workforce; (2) executive leadership training; (3) leadership development programs; and (4) valuing inclusion as part of the annual performance review process.

1. Unconscious Bias Training

First, unconscious bias training is a necessity. We do not live in a post-racial society, and the integration and learning perspective has, at the forefront, the notion that race does still matter and affects our experiences in society and the workplace. Duke sociologist Eduardo Bonilla-Silva writes in his seminal work, *Racism Without Racists:*

> Nowadays, except for members of white supremacist organizations, few whites in the United States claim to be 'racist.' Most whites assert they 'don't see any color, just people'; that although the ugly face of discrimination is still with us, it is no longer the central factor determining minorities' life chances; and, finally, that, like Dr. Martin Luther King Jr., they aspire to live in a society where 'people are judged by the content of their character, not by the color of their skin.'[98]

As a result, the workforce may very well include many Whites who think we are living in a post-racial society. The unconscious bias training will need to occur to help each employee understand that they have biases, too. Perhaps as part of the training, each employee should be required to take (or encouraged to take) the Race Implicit Association Test (Race IAT).[99]

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[98] EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 1 (4th ed. 2014).

[99] *See, e.g., Implicit Association Test*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/ (last visited Aug. 8, 2014); s*ee also*

Almost seventy-five of those who take the Race IAT reveal an automatic White preference.[100] The Race IAT shows that Asian participants (consistent with the majority of test takers) have an implicit preference for White people over Black people.[101] Roughly half of Black participants have a preference for White people over Black people.[102] The point of the Race IAT is to make the invisible visible. Once bias is acknowledged, steps can be taken to address the problems that stem from it, but the first step is to acknowledge that one has a problem.

2. **Executive Leadership Training**

Second, Executive Leadership Training should be created for the mainly White, male leadership with a focus on how stereotypes associated with Asians may prevent the advancement of roughly a third of the workforce. Professor Neil Gotanda argues that there are three primary stereotypes of Asian Americans: (i) foreignness; (ii) Model Minority; and (iii) 9-11 terrorist.[103] The latter does not really play a role here.[104] However, the

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MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE (2013); b*ut see* Jennifer Bosson et al., *Stalking the Perfect Measure of Implicit Self Esteem: The Blind Men and the Elephant Revisited*, 79 J. PERSONALITY & SOC. PSYCHOL. 631 (2000); Mandy Grumm & Gernot von Collani, *Measuring Big-Five Personality Dimensions with the Implicit Association Test: Implicit Personality Traits or Self Esteem?*, 43 PERSONALITY & INDIVIDUAL DIFFERENCES 2205 (2007); Melanie C. Steffens, *Is the Implicit Association Test Immune to Faking?*, 51 EXPERIMENTAL PSYCHOL. 165 (2004) (showing that Race IAT is not without controversy).

[100] BANAJI & GREENWALD, *supra* note 99, at 47 ("First we now know that automatic White preference is pervasive in American society – almost 75 percent of those who take the Race IAT on the Internet or in laboratory studies reveal automatic White preference.").

[101] *See Frequently Asked Questions*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/faqs.html (last visited Aug. 8, 2014).

[102] *Id.*

[103] Neil Gotanda, *New Directions in Asian American Jurisprudence*, 17 ASIAN AM. L. J. 5, 9 (2010) ("I argue that three different Asian American racial categories have emerged that correspond to the three dominant stereotypes of Asian Americans: foreignness, Model Minority, and 9-11 terrorist.").

[104] FRANK H. WU, YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE (2002); ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG & FRANK H. WU, RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERMENT (2001); Frederick T. L. Leong & Gregory Schneller, *White*

Asian American as foreigner stereotype, which has a long history,[105] and the Model Minority stereotype, which is a more recent vintage, are both stereotypes that will need to be addressed if the integration and learning perspective has any hope of taking hold.

The foreignness stereotype is relatively obvious. If management sees a person as a foreigner, management will be less likely to see that person as a leader of "their" company. Consider the following hypothetical question and answer between two strangers. Stranger A asks: where are you from? Stranger B responds: Texas. Stranger A asks a follow-up question: no really, where are you from? Stranger B again responds: Texas, and this time explains that she was born and raised in Texas. It is inconceivable to Stranger A that Stranger B, who happens to be Asian American, could be American. That is an example of the foreignness stereotype that allows people to look at Asian Americans and decide they are not real Americans, or not American enough. A similar and very recent example comes from Congressman Curt Clawson (R-Fla) who mistook two senior United States Government officials as being representatives of the Indian government.[106]

Americans' Attitudes Toward Asian Americans in Social Situations: An Empirical Examination of Potential Stereotypes, Bias, and Prejudice, 25 J. MULTICULTURAL COUNSELING & DEV. 68 (1997); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002); Mike Ahlers, *'Safest' Seat Remarks Get Muslim Family Kicked Off Plane*, CNN (last updated Jan. 2, 2009), http://www.cnn.com/2009/US/01/01/family.grounded/#cnnSTCText.

[105] Gotanda, *supra* note 103, at 39-40 ("The Chinese racial category is also posed in opposition to a culturally superior White nation. But the direction of the rationale–foreignness–is directed less at inferiority than at expulsion. The Chinese are inassimilable and therefore to be excluded from the body politic if not physically deported from the nation. This new racial category is therefore not a simple 'add-on' to White and Black. Although the Chinese racial category was based upon descent from original Chinese bodies (just as the Negro or Black racial category was based upon descent from original African bodies), the ascribed racial identities for Blacks differ sharply from the ascribed identities for the Chinese. The different racial profiles have very different qualities in relation to the American nation. Blacks are clearly part of the American nation, though in a subordinate relationship. The Chinese, by contrast, are only provisionally present on U.S. soil. Their foreignness makes them politically and socially suspect, and at best, tolerable economic participants as workers or traders. The Chinese are therefore ultimately excludable from the nation.").

[106] John Hudson, *Freshman Congressman Mistakes Senior Government Officials for Foreigners*, FOREIGN POLICY (July 25, 2014, 2:53 PM), http://thecable.foreignpolicy.com/posts/2014/07/25/exclusive_freshman_congressman_ mistakes/senior_government_officials_for_foreigners ("In an intensely awkward congressional hearing of the House Foreign Affairs Committee on

The model minority stereotype "portrays [Asian Pacific Americans] as superminorities. According to the myth, [Asian Pacific Americans] are racial minorities that have succeeded through education and hard work and whose income and wealth match or exceed that of White Americans. The model minority myth emphasizes the success of [Asian Pacific Americans], especially as compared to other people of color."[107] While it may seem favorable at first glance, like all racial stereotypes this one similarly hurts Asian Pacific Americans. Since the assumption is that Asian Pacific Americans are doing so well, when an issue arises pointing out their need for assistance, it falls on deaf ears.[108] Perhaps this is one potential explanation for why the newspaper articles have ignored the lack of Asian participation in senior level of management and board service given their high participation rate in the high-tech industry and have focused instead on Blacks and Latinos/as.

I am reminded of an encounter that I had with a White, male colleague regarding law school faculty hiring and whether it was appropriate to engage in affirmative action for Asian Americans. The colleague said to me that Asian Americans didn't need affirmative action in law school hiring because they were doing so well in society. I responded that, given that our faculty at the time had zero Asian Americans, it seemed to me that Asian Americans weren't doing so well on *our* faculty. After a few moments of awkward silence, the colleague walked away.

The model minority stereotype hurts in additional ways. Consider how traits such as ambition, assertiveness, and competitiveness are associated with White professionals, specifically White males.[109] Those attributes differ

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Thursday, freshman Rep. Curt Clawson misidentified two senior U.S. government officials as representatives of the Indian government. The two officials, Nisha Biswal and Arun Kumar, are Americans who hold senior positions at the State Department and Commerce Department, respectively. Although both Biswal and Kumar were introduced as U.S. officials by the chairman of the Asia and Pacific subcommittee, Clawson repeatedly asked them questions about 'your country' and 'your government,' in reference to the state of India.").

[107] Yet when the economy suffers, then hard work morphs into unfair competition. Gabriel J. Chin, Sumi Cho, Jerry Kang & Frank Wu, *Beyond Self-Interest: Asian Pacific Americans Towards A Community of Justice, A Policy Analysis of Affirmative Action*, 4 UCLA ASIAN PAC. AM.L.J. 129, 148 (1996).

[108] *Id.*

[109] Jerry Kang, Nilanjana Dasgupta, Kumar Yogeeswaran & Gary Blasi, *Are Ideal Litigators White? Measuring the Myth of Colorblindness*, 7 J. EMPIRICAL LEGAL STUD.886, 891-92 (2010).

significantly from characteristics associated with Asian Americans. Typical stereotypes associated with Asian Americans perceived as the "model minority" include: an orientation towards math and technical academic achievement.[110] Characteristics that are not associated with Asian Americans, however, are those previously described: "ambition, assertiveness, competitiveness, dominance, eloquence, and extraversion.[111] On the contrary, Asian Americans are typically "perceived to be quiet and deferential."[112] "Asian Americans are seen as cooperative and oriented toward interpersonal harmony, not dominance."[113] "Asian Americans are perceived as having difficulty with English."[114]

"In general, Asian Americans are stereotyped as being deficient in interpersonal and social skills,"[115] which are the precise skills that you would expect to see in those being groomed as managers, executives, and board members.[116] The stereotyping of Asian Americans is one potential explanation for why we see Asian Americans in technical jobs in high-tech companies but not moving up the corporate ladder or moving into board positions. Those in leadership positions need to become familiar with this problem in order to break down barriers that may be keeping the next generation of talented leaders of the industry.

3. **Leadership Development Programs**

Third, Leadership Development programs should be developed for promising Asian workers who are identified by those who have successfully undergone Executive Leadership Training sessions and will now evaluate their Asian workforce through less biased eyes. Within a short period of time, the executive suite should look and feel differently.

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[110] *Id.*

[111] *Id.*

[112] *Id.* at 891.

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.* While this comparison was made in the context of comparing White litigators to Asian American litigators, many of the traits found in successful litigators are found in successful chief executive officers, board members, and senior managers and it is therefore an appropriate reference point.

4. Valuing the Integration and Learning Perspective

Fourth, the company must include diversity and inclusion as part of the annual review and bonus process. To encourage progress, the company must measure and reward the degree to which people recruit and promote individuals demographically unlike themselves.[117] One study made a common sense observation: "Because white men currently hold a clear numerical majority at the highest organizational levels, rewarding such demographic unselfishness would naturally correct the demographic imbalances throughout organizations as members of demographic majorities would tend to hire and promote members of demographic minorities."[118] It is not uncommon in the corporate world to have racial diversity efforts included as part of the calculation of a manager's bonus. This would not only measure recruitment but retention, which will generally be a function of how well the manager is implementing the integration and learning perspective. How well the manager and the team are functioning under this perspective will also need to be assessed.[119] In addition, the input of all of the manager's direct reports should also be solicited as part of the assessment.

A workforce committed to the integration and learning perspective should be supportive of talented Asian workers being recognized, mentored, and promoted. Those who stand in their way should be looking for new jobs. Those who are successful change managers should be promoted. That is what leaning into equality looks like.

III. THE LONG GAME: BLACKS AND LATINOS/AS IN SILICON VALLEY

The workforce employment data described in Part I was primarily focused on statistical data for Whites and Asians. This section will document how very few Blacks and Latinos/as are currently employed in Silicon Valley and the high-tech industry generally. The greatest need is clearly with those groups. However, for reasons I will show, any company that places its racial and ethnic diversity focus on Blacks and Latinos/as is *supporting the status quo for the foreseeable future*. That is why in Part II I have argued that the short-term focus on racial diversity and inclusion efforts in Silicon Valley should be directed towards promoting and retaining the Asians currently in

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[117] ACAD. MGMT., *Diversity Study*, *supra* note 91.

[118] *Id.*

[119] Given that this perspective will necessarily require dissent and disagreement, perhaps specific examples where a dispute occurred and how the team worked through it would be required to be described in order to ensure that the approach was being implemented in more than a surface manner.

the workforce. This section shows some of the difficulties associated with recruiting more Blacks and Latinos/as to live and work in Silicon Valley. I will begin with the data.

Facebook[120]	Workforce by Race/Ethnicity	Senior Level by Race/Ethnicity
White	57%	74%
Asian	34%	19%
Hispanic	4%	4%
Black	2%	2%

Twitter[121]	Workforce by Race/Ethnicity	Senior Level by Race/Ethnicity
White	59%	72%
Asian	29%	24%
Hispanic	3%	0%
Black	2%	2%

Google[122]	Workforce by Race/Ethnicity Male Female	Senior Level by Race/Ethnicity Male Female
White	45.83% 17.02%	58.33% 8.33%
Asian	20.06% 9.44%	27.77% 0%
Hispanic	2.01% 1%	0% 0%
Black	.85% .80%	2.77% 0%

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[120] Williams, *supra* note 37.

[121] Van Huysse, *supra* note 23.

[122] *Making Google a Workplace for Everyone*, *supra* note 44.

LinkedIn[123]	Workforce by Race/Ethnicity Male Female	Senior Level by Race/Ethnicity Male Female
White	33.77% 18.51%	53.29% 17.96%
Asian	26.05% 13.38%	14.97% 7.84%
Hispanic	2.03% 1.93%	1.2% 1.2%
Black	.94% .80%	1.2% 0%

Yahoo[124]	Workforce by Race/Ethnicity Male Female	Senior Level by Race/Ethnicity Male Female
White	36.3% 17.96%	62% 17.09%
Asian	24.75% 11.73%	11.39% 4.43%
Hispanic	2.74% 2.27%	3.16% 0%
Black	1.24% .87%	0% 1.9%

The data speak for themselves. Very few Blacks and Latinos/as work in the high-tech industry and even fewer are in positions of leadership. The number of zeros (and near zeros) should be disconcerting to us all. Each of the companies that provided breakdown data for race and gender had categories where there were simply no Black or Latino/a workers. Facebook did not have any zero categories, I suspect because they failed to break out their racial data by gender.

Race and space often go together, and Silicon Valley is no exception.[125] Silicon Valley's 1,854 square miles includes the following

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[123] Wadors, *supra* note 48.

[124] Reses, *supra* note 41.

[125] *See, e.g.*, Keith Aoki, *Space Invaders: Critical Geography, the 'Third World' in International Law and Critical Race Theory*, 45 VILL. L. REV. 913 (2000);

counties: Santa Clara, San Mateo, Alameda, and Santa Cruz.[126] Silicon Valley has a population of just under 3 million (2.92 million) as follows: 36 percent White, non-Hispanic; 31 percent Asian, non-Hispanic; 26.5 percent Hispanic and Latino/a; 2.5 percent Black; and 4 percent other.[127] The racial diversity leans heavily towards Asians and Latinos/as and against Blacks. One problem with recruiting Blacks to Silicon Valley may be asking them to live and work in an area with very few people who look like them.[128] Given the small percentage of Blacks living in Silicon Valley, outreach efforts directed towards them will have to take into account the racial isolation they may feel when they return home from a long day's work– assuming their work environment includes many people who look like them, which is certainly not the case today. If they move to a more racially diverse area, then they will have a significantly longer commute than their peers. This is a structural problem that cannot easily be solved by Silicon Valley high-tech leaders no matter how committed they may be to hiring Blacks and other underrepresented minorities.

In addition to geography, there are structural pipeline issues as to why there are not more Black and Latinos/as in the high-tech industry. A greater percentage of Black and Latino/a students do not graduate from high school and never make it to college when compared with their White peers.[129] While the overall dropout rate is 6.6 percent, the White dropout rate is 4.3 percent, for Blacks it is 7.5 percent, and for Hispanics it is 12.7 percent.[130] Black men are now six times more likely than White men to be in prison.[131] Just under a third of Whites have four-year college degrees or higher, compared with just

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Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329 (2009).

[126] *2014 Silicon Valley Index*, JOINT VENTURE SILICON VALLEY & SILICON VALLEY COMMUNITY FOUNDATION 6 (2014), http://www.siliconvalleycf.org/sites/default/files/publications/2014-silicon-valley-index.pdf.

[127] *Id.*

[128] *Cf.* Brown, *supra* note 125, at 356 (describing how most Black homeowners like to live in racially diverse neighborhoods with other Blacks).

[129] *Digest of Education Statistics: Table 219.70*, NAT'L CENTER FOR EDUC. STAT. U.S. DEPT. EDUC. (May 2013), http://nces.ed.gov/programs/digest/d13/tables/dt13_219.70.asp.

[130] *Id.*

[131] Bruce Drake, *Incarceration Gap Widens Between Whites and Blacks*, PEW RES. CENTER (Sept. 6, 2013), http://www.pewresearch.org/fact-tank/2013/09/06/incarceration-gap-between-whites-and-blacks-widens/.

under twenty percent of Blacks.[132] Almost sixty percent of Blacks with four-year college degrees or higher are women.[133] In summary, compared with Whites, Blacks and Hispanics are falling behind in the measures of achievement including: NAEP math and reading test scores; high school completion rates; and college enrollment and completion rates.[134] In addition, the Center for Economic and Policy Research reported on the higher Black unemployment rates when compared with Whites for those with college degrees in engineering, math, and computers.[135] Is this because those Blacks were offered jobs in the high-tech industry and turned them down? I would suspect that is not a likely explanation. There should be something close to a zero unemployment rate for Blacks with these skills; but that is not the case. So to that extent, more could be done even without solving the myriad problems associated with the "pipeline."

These statistical disparities are just some of the issues requiring solutions if the "pipeline problem" regarding Blacks and Latinos/as in the high-tech industry is to be solved. It would require providing educational access, eliminating the achievement gap, eliminating poverty, and changing the way local schools are funded, to name a few solutions that would be prerequisites to addressing the "pipeline problem." As long as those problems remain intractable, the high-tech industry can wring its hands, express sincere concern, and, at most, effect change in a very limited way, and only on the margins. Nor do I mean to suggest that high-tech companies should be responsible for taking on this fight. They are ill-equipped to do so, as the recent Facebook/Newark partnership has shown.[136]

By focusing on the dearth of Blacks and Latinos/as in the high-tech industry, attention is diverted away from the fact that the current high-tech workforce is overrepresented (when compared to the population at large) by Asians and Asian Americans. There should be more Asian CEOs and board

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[132] *More Than 4.5 Million African Americans Now Hold a Four-Year College Degree*, J. BLACKS IN HIGHER EDUC.,
http://www.jbhe.com/news_views/64_degrees.html (last visited Aug. 18, 2014).
[133] *Id.*
[134] *The Achievement Gap Initiative: The Facts on the Gap*, HARVARD UNIV.
http://www.agi.harvard.edu/projects/thegap.php (last visited Aug. 18, 2014).
[135] Janelle Jones & John Schmitt, *A College Degree is No Guarantee*, CENTER FOR ECON. & POL'Y RES. (May 2014), http://www.cepr.net/documents/black-coll-grads-2014-05.pdf.
[136] *See* Dale Russakoff, *Schooled*, THE NEW YORKER (May 19, 2014),
http://www.newyorker.com/magazine/2014/05/19/schooled.

members in the high-tech industry, yet there are not. Perhaps the high-tech industry is not the meritocracy the industry would have us believe.

If this were a true meritocracy, one would expect far fewer White males in executive leadership positions in the high-tech industry and far more Asians. We might expect to see a near zero unemployment rate for Blacks with engineering, computer, and math degrees. We would also expect to see a bidding war for those Blacks with technical skills – but maybe not. Recently, Judge Koh rejected a proposed $324 million class action settlement of a lawsuit against high-tech companies who were alleged to have colluded to not "poach" each other's engineers.[137] If the market were leaning into equality, perhaps the unemployment rate for Black engineers would be zero and they would be selling their services to the highest bidder.

If the high-tech industry were not unconsciously biased, we might also expect the current leadership to think it is odd that so many of its workers do not look like them, yet the executive suite is largely homogeneous. Returning to my opening quote: why isn't the high-tech industry moving fast and breaking things to make its workforce more inclusive?

CONCLUSION

Much of this Article has focused on the importance of leaders promoting those who do not look like them. In the high-tech industry, we are talking about White leaders becoming champions for Asian workers. I want to conclude with one example from *Lean In* about mentoring – specifically cross-racial mentoring.

When Sheryl Sandberg worked at McKinsey & Company, a client wanted to fix her up with his son and kept talking about it at meetings.[138] She complained to her supervisor, who told her to ask herself what she was "doing to send these signals."[139] She was justifiably upset and took the courageous step to go to her boss's boss, Robert Taylor.[140] Here is her description of that conversation:

> Robert understood my discomfort immediately. He explained that sometimes those of us who are different (he is African

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[137] David Streitfeld, *Court Rejects Deal on Hiring in Silicon Valley*, N.Y. TIMES (Aug. 8, 2014), http://www.nytimes.com/2014/08/09/technology/settlement-rejected-in-silicon-valley-hiring-case.html?_r=0.

[138] SHERYL SANDBERG, LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD 75 (2013).

[139] *Id.*

[140] *Id.*

American) need to remind people to treat us appropriately. He said he was glad I told the client no on my own and that the client should have listened. He then talked to the client and explained that his behavior had to stop. He also spoke with my [supervisor] about his insensitive response. I could not have been more grateful for Robert's protection.[141]

Robert Taylor is African American. Sheryl Sandberg should tell that story to her fellow board members and her fellow executives. Facebook's lack of racial and gender diversity suggests that those in charge of recruitment, retention, and promotion are not protecting their people the way Robert Taylor protected Sheryl Sandberg.

That is not to suggest that this should be Sheryl Sandberg's fight alone, given her minority status as a White woman in the high-tech industry and the way that White women and people of color who lead the "diversity and inclusion" charge are perceived. If she chooses, she will need to partner with her White male peers in the executive suite and boardroom.

All of senior management, particularly the White males who are the overwhelming majority of senior leaders and board members, should understand that how they are treating their Asian workers is not reflective of how they were generally treated on their way up the corporate ladder. If they had received little to no mentoring, they would not hold the leadership positions they currently hold. That the mentoring in the high-tech industry will have to be cross-racial should not be a barrier or an excuse. It is time for the hand-wringing to end and the action to begin.

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[141] *Id.* at 75-76.