DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Anne Robinson

& The Vanguard Group's Office of the General Counsel

THE SPEAKERS

Anne Robinson
General Counsel,
The Vanguard Group

Natasha Kohne
Partner, Akin Gump Strauss
Hauer & Feld LLP

Pamela Marcogliese
Partner, Cleary Gottlieb Steen
& Hamilton LLP

Grace Speights
Partner, Morgan Lewis
& Bockius LLP

Jerome McCluskey
Partner, Milbank, Tweed,
Hadley & McCloy LLP

John Baumgardner
Partner, Sullivan & Cromwell LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor and her colleagues, we are presenting Anne Robinson and The Vanguard Group's Office of the General Counsel with the leading global honor for General Counsel and Law Departments.

Vanguard is one of the largest providers of mutual fund and exchange-traded funds (ETFs) investment management. Her address focused on key legal issues facing the General Counsel of an international investment corporation. The panelists' additional topics included legal issues with investment management; corporate governance; cyber security and data privacy; diversity and employment; and leveraged finance. Karen Todd, Executive Director and Chief Operating Officer of the Directors Roundtable Institute, moderated the program.

The Directors Roundtable Institute is a 501(c)(3) which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Anne Robinson

General Counsel

Anne E. Robinson is Managing Director, General Counsel and Corporate Secretary of Vanguard and serves as Secretary of the Vanguard Funds. Anne leads Vanguard's Legal, Compliance, Investment Stewardship and Government Relations departments.

Anne joined Vanguard in August of 2016, bringing over 20 years of legal experience in the financial services industry where she has counseled senior executives on a wide range of legal, regulatory and business issues.

Prior to joining Vanguard, Anne was a Managing Director & General Counsel in the Citigroup Global Legal Department.

Before joining Citi, Anne was a Managing Counsel at American Express and during her more than 10 years there served in a wide range of senior legal positions. Prior to joining American Express, Anne was division counsel to Deloitte Consulting's Venture Capital Firm and its Global Outsourcing organization. Anne started her legal career in private practice with the law firm of Milbank, Tweed, Hadley and McCloy.

Anne received her Bachelor of Science from Hampton University and her Juris Doctor from Columbia University Law School.

Vanguard

The Vanguard Group

From its start in 1975, Vanguard has stood out as a very different kind of investment firm. Headquartered in Valley Forge, Pennsylvania, Vanguard was founded on a simple but revolutionary idea – that a mutual fund company should not have outside owners. Founder John C. Bogle structured Vanguard as a client-owned* mutual fund company with no outside owners seeking profits.

This framework has enabled Vanguard's leadership team and crew to put our clients first in all of our decisions and to continually lower investment costs. Our low costs have been an important factor in the consistently strong performance of our funds over time.

Vanguard's structure remains unique in the industry. Today, we are widely recognized as a leader in low-cost investing and a steadfast advocate for the interests of all investors.

Navigating a multitude of investment choices and maintaining focus amid unpredictable markets can be difficult. Investors and advisors have come to trust Vanguard and our unwavering commitment to our mission and, as of Oct. 31, 2018, Vanguard manages $5.0 trillion in global assets and offers more than 400 funds to its more than 20 million investors worldwide.

*Client-owned means that fund shareholders own the funds, which in turn own Vanguard.

KAREN TODD: Good morning and welcome. My name is Karen Todd, and I'm the Executive Director and Chief Operating Officer of the Directors Roundtable.

We're very pleased that you're here today. I want to especially thank the people of The Vanguard Group, the outside law firms, the Bar groups, the university law schools, local chambers and other organizations who made a point to be here today. We're very appreciative that you're here.

The Directors Roundtable is a civic group whose mission is to organize the finest programming on a national and global basis for Boards of Directors and their advisors, which include General Counsel. Over the last 27 years, this has resulted in more than 800 programs on six continents. Our Chairman, Jack Friedman, started this series after speaking with corporate directors, who told him that it was rare for a large corporation to be validated for the good they do. He decided to provide a forum for executives and corporate counsel to talk about their companies, the accomplishments in which they take pride, and how they have overcome the obstacles of running a business in today's changing world. We honor General Counsel and their law departments so they may share their successful actions and strategies with the Directors Roundtable community via today's program and the full-color transcript document that will be made available to about 100,000 leaders worldwide.

Today, it is our pleasure to honor Anne Robinson, General Counsel, and The Vanguard Group's Office of the General Counsel, most of whom are here today. Thank you!

I would also like to introduce our distinguished panelists: Natasha Kohne, of Akin Gump Strauss Hauer & Feld; Pamela Marcogliese, with Cleary Gottlieb Steen & Hamilton; Grace Speights, from Morgan Lewis & Bockius; Jerome McCluskey, with Milbank, Tweed, Hadley & McCoy; and John Baumgardner, of Sullivan & Cromwell.

Now, as a special surprise for Anne, I have a letter from the Dean of Columbia Law School, which is her alma mater. I'm going to read it to you.

> Dear Anne:
>
> I am delighted to learn that you are to be honored by the Directors Roundtable for your work at Vanguard. In just two short years since you became Vanguard's General Counsel and first African American senior executive, you have clearly excelled. This recognition of your expertise and leadership is not only a credit to yourself, but a source of pride for your alma mater.
>
> On behalf of Columbia Law School, I congratulate you and wish you continued success.
>
> Best regards,
> Gillian Lester
> Dean and the Lucy G. Moses Professor of Law

Let's give Anne a round of applause. [APPLAUSE]

Now I'm going to turn it over to Anne for her presentation.

ANNE ROBINSON: I wish you'd done that after I gave my remarks! [LAUGHTER]

I feel a little flustered now! Thank you! Welcome. Thank you so much for being here this morning, and I'm really excited and so honored to represent Vanguard's General Counsel's Office.

One thing I will say is I noticed you all filed in quietly, and most of you dressed in black – but this is not a funeral! [LAUGHTER]

While we are here to talk about serious topics, I would love some life in this room. Okay?

I thought I would share with you, this morning, my thoughts on about four topics of interest. The first is diversity; the second is globalization; the third is Vanguard's role as both corporate actor and investor; and then, finally, our commitment to giving back.

We are talking, first though, about the changing role and expectations of General Counsels and inhouse legal departments.

In the past, many inhouse legal teams functioned like internal law firms, but the bar has been raised by people like my own former General Counsel at American Express, Louise Parent.

General Counsels now are expected to be key members of the corporate and decision-making team. Inhouse lawyers are expected to be business partners who just *happen* to be lawyers.

I developed my views on how a General Counsel's office should operate by watching the relationship between Louise and our former CEO at American Express, Ken Chenault. I watched how she influenced the organization. Louise was not just a highly-regarded General Counsel; she was not *just* a business partner; she was a business person, who just happened to be a lawyer.

As a result of the shifting expectations, the role of the General Counsel is actually expanding beyond the oversight of legal departments. It routinely includes compliance, and we are seeing GCs and Chief Legal Officers lead functions that were historically led by the businesses: corporate philanthropy at Microsoft; social innovation, and even people at PayPal.

At Vanguard, I am responsible for Legal, Compliance, Government Relations, and Investment Stewardship. And, like the General Counsel, lawyers and inhouse legal teams are becoming strategic partners to the business. We expect lawyers to be able to work across *multiple* specialties. We expect them to be relationship-focused and outcome-oriented. Some of our lawyers are embedded and colocated with the business, and perhaps the biggest shift in the industry is the expectation that lawyers *look for* ways to drive economic value.

An example of that at Vanguard is our affirmative shareholder litigation strategy. It seeks to recover value for our shareholders, by pursuing litigation claims in new and innovative ways. We selectively opt out

of certain class actions to pursue recovery independently, and that has increased our funds recoveries by over $100 million. We have expanded the geographic footprint of where we pursue litigation, producing claims in the hundreds of millions of dollars. We've leveraged this strategy to foster competition among law firms and litigation funders, driving down the costs of pursuing those claims in foreign jurisdictions, sometimes by as much as half.

But consider other examples, like the development of a business unit at American Express designed to monetize the value of their extensive patent portfolio through patent licensing. That originated out of the Intellectual Property Group in the General Counsel's office. We've seen this from technology companies, but not as often from financial services companies.

Consider also MasterCard's leadership in the development of a trust that allows companies to conduct data analytics while complying with GDPR [General Data Protection Regulation]. As many of us know all too well, GDPR places additional restrictions on companies who wish to use consumer information to conduct data analytics. Truata, the name of this trust, takes de-identified data from its customers and provides data anonymization and analytics services to assist customers with tools, data insights, algorithms and reports that customers can use in their own products and services. This innovative new business permits MasterCard, as well as other unaffiliated and unrelated companies, to benefit from analytics they may not otherwise be permitted to use.

Let's pause and think about the introduction of regulation – onerous regulation leading to the creation of a business, a *revenue-generating* business, by MasterCard. The landscape is shifting.

We also have the added complexity of operating in 19 markets. That creates the challenge of overseeing issues across multiple time zones, regulatory regimes and cultures.

In some instances, the legal regimes are moving more slowly than the business world, and that requires us to think beyond what the legal requirements are in a particular jurisdiction. Divergent national requirements can create opportunities for firms who wish to exploit national differences, but for many firms, multiple competing rules and regulations create undesirable friction that increases resource and administration requirements. It reduces economies of scale, and it increases the costs borne by our clients.

In these cases, firms can choose to do more than just apply specific national requirements, and instead apply the highest national standards across their global businesses in order to drive consistency.

Vanguard attempts to operate on a truly global basis, and we adopted the approach of applying the highest global standard, especially when it comes to how we manage our clients' assets.

For example, we make investment decisions with respect to our clients' assets in the U.S., the UK, and Australia. The rules that apply, that ensure those decisions are being executed in our clients' best interests,

actually differ. Rather than trying to deal with the complexity of determining which rules apply to which decisions, when the decision is being made out of one country versus the other, we decided that our clients would be best served by applying the combined highest standards of the U.S., the UK, *and* Australia; in other words, we apply our gold standard in each instance, in every jurisdiction.

International expansion also often involves development relationships with local partners and taking geopolitical considerations into account.

In periods of intense globalization, it still remains challenging for companies to have local coverage in all of their desired jurisdictions. Sometimes the best way to enter a market is with a local partner who has an existing local presence, a distribution chain, and an appreciation of the local regulatory, political and cultural considerations.

While this approach can increase a firm's speed to market, it can also introduce challenges – especially when the regulatory and business practices of partnering firms diverge. For example, Vanguard starts with the premise that paying intermediaries for distribution gives rise to potential conflicts of interest that may not be in our clients' interests. In some countries, commission-based sales remuneration is very much the common practice; but for Vanguard, cultivating distribution partnerships in these countries has, therefore, been difficult – and in some jurisdictions, it's just made it inaccessible.

Even successful partnerships, on the other hand, are not immune from challenges, including challenges resulting from geopolitical developments. Another example might be to highlight the investments by U.S. firms, including ours, in developing robust, multi-year partnerships with UK firms in order to access the EU's single market. But with the UK population recently electing to leave the EU in 2019, these same U.S. firms have found themselves, overnight, exposed to a political situation where a relationship that was expected to unlock the *entire* European Union could be reduced to a single country – the UK – in a distribution partnership. These firms, including ours, are spending meaningful time and resources adjusting their strategies and business models to ensure continued access to the EU markets – *not* because of a change in business strategy or strategic development, but because of the geopolitical consequences of Brexit.

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>
> *– Anne Robinson*

As General Counsel, one of the most effective tools to manage and navigate this increasingly complex environment is recruiting and retaining the best talent. I'm fortunate to have a *lot* of my best talent here today [LAUGHTER], but it leads me to talk a little bit about why diversity and inclusion is so important.

A 2015 *Washington Post* article noted, in its headline, that law is the least diverse profession in the nation, and *lawyers* aren't doing enough to change that. When you hear the statistics, it's actually pretty disheartening. Women are more than 50% of current law school graduates, but only 20% of equity partners in law firms. In the corporate world, we are doing only a little bit better, with 28% of GCs of Fortune 500 companies being women. Only 11% of General Counsels at Fortune 500 companies are people of color, even though minorities make up a third of the legal profession as a whole.

But at Vanguard, we *are* doing something to change those statistics. We are recruiting; we are hiring; and we are retaining lawyers representative of our communities.

Year-to-date, 50% of our external hires have been women, and 45% have been people of color. It can be done.

We are also making progress in increasing the numbers of LGBT attorneys.

Just as importantly, we are providing our diverse attorneys with rich *development* opportunities, both internally and externally. We belong to the Leadership Council on Legal Diversity [LCLD]. It's an organization made up of more than 300 Chief Legal Officers and law firm managing partners, including most of the managing partners of the firms represented here with me today. They're working to build a more open and diverse legal profession.

You can't *hire* diverse talent if you don't start with a diverse pool. So, we are also helping to increase the pipeline. We participate in the Philadelphia Diversity Law Group (PDLG) Fellows Program, which offers diverse first-year law students summer employment opportunities at law firms and corporations. All of these efforts are helping us move the needle for Vanguard and the profession.

To illustrate our comprehensive approach, one of our current attorneys first worked with us as a PDLG fellow. Then, she worked at a law firm. Following that, we

hired her to join our litigation team; and now, she's participating in the LCLD Pathfinder Program.

It can be done.

The *Washington Post* article made an important point, that our profession is a source of leadership outside of the law. Lawyers become legislators, regulators, heads of corporations and governments. We have an opportunity not to just diversify our profession, but to diversify leadership more broadly.

One of the hallmarks of leadership development at Vanguard is our rotational culture. We encourage our crew to move around the company, and around the country, and around the world. We are facing complex challenges all over the globe, and we need the broadest perspectives in order to solve them. We have to not only respond, but anticipate what's coming next, and prioritize.

We have trading desks, as I mentioned, in the U.S., Europe and Australia. Vanguard funds hold stocks in more than 13,000 companies worldwide. Not surprisingly, in different regions, we face different expectations as corporate actors and investors, both as a result of regulatory differences and cultural differences. These differences have become more acute. They've come into sharper focus since we expanded our investment stewardship team to Europe. As stewards of holdings in those 13,000 companies, it is our responsibility to share our perspectives with those companies on how they are governed.

In the U.S., there have been a great deal of external pressures placed on Vanguard from clients, advocates and government officials to take action on social problems, like gun control and the opioid epidemic.

As a company that cares about our communities and employs 17,000 community members, we have responded the way we always have – with open hearts and compassion.

Our role as a mutual fund manager, however, is a separate matter. We steward the assets of some 20 million people who have a wide range of personal beliefs, and we recognize that it's not our role to use our shareholders' investments to forge social change. The one thing those 20 million clients have in common is that they trust us. They've asked us to protect their money and help it grow.

We recognize, however, that in order to do just that, we have a responsibility to understand how their business activities that pose a risk to society may also pose a risk to the long-term value of our funds. We do that through proxy voting; but we do that more effectively through the conversations that we have with leaders and directors of the companies we invest in. We hold companies to high standards of corporate governance, and those principles are reflected in our own approach to the governance of Vanguard and the Vanguard funds. This plays out most clearly in the expectations we have for Boards of Directors. We believe that good governance starts with a great Board of Directors.

When it comes to board composition, we want to see highly effective, independent directors who bring diverse perspectives to the table. We look for a mix of experience, professional expertise, tenure, and personal characteristics such as gender, age and ethnicity. But more importantly than what *we* think, boards must continuously evaluate themselves and evolve their board composition and *align* their board composition with the long-term needs of the business. That's what we look for in companies we invest in, and that's what we seek in Vanguard's own board. It's one of the reasons why we joined the 30% Club, and we recently added Deanna Mulligan and Sarah Bloom Raskin to our Board of Directors.

When it comes to board oversight of risk and strategy, where you focus at the heart of some of the convergence of those social issues and long-term value creation, the board serves as the eyes and ears on key risks. At the same time, they can be the company's most important asset when it comes to the oversight and the accountability of that strategy.

When it comes to orientation to the long-term, they can encourage management to be courageous. Boards sit above the day-to-day pressures of management and leadership of a company, and they play an important role in making sure that the company is being managed in a way that benefits long-term shareholders.

This is reflected in a variety of ways, from succession planning, the long-term incentives for leadership, and simply making sure that they listen to the perspectives of their shareholders in order to maintain ongoing alignment of interests.

At Vanguard, we *do* care passionately about our communities. Even though we don't necessarily use our investors' assets to influence that change, we attempt to influence change on our own. One of our signature charitable initiatives, the Vanguard Strong Start for Kids Program, provides funding,

the volunteering of time and talent, and other non-financial assets in order to give children growing up in poverty in Arizona, North Carolina and Pennsylvania the opportunity to grow, thrive and learn, with a focus on kindergarten readiness.

As lawyers, we have a *special* obligation to give back. The ABA's Model Rule 6.1 says that every lawyer – and I include non-practicing lawyers – has a professional responsibility to provide legal services to those unable to pay. There is a special call to action. Most law firms are actually pretty good at this, and some inhouse legal departments have made it a priority, as well. But inhouse legal departments have work to do here – it's work to integrate this professional obligation into the day-to-day changing and rising expectations of the inhouse legal counsel.

This year, Vanguard's General Counsel's office established a formal *pro bono* program. We've already provided much-needed support to those in our community, including supporting several FEMA clinics to assist the victims of hurricanes that struck Puerto Rico last year.

We partnered with the Senior Law Center to assist older Philadelphians in the preparation and execution of life-altering and empowering planning documents – simple wills, living wills, and powers of attorney.

We've partnered with the Legal Aid of Southeastern Pennsylvania to provide individuals an opportunity to meet with attorneys who can request birth certificates on their behalf. Without a birth certificate, access to health care, public benefits, and even a driver's license, can be impossible.

We have upcoming projects. We will be partnering with the Widener Law School and one of our partner law firms to help veterans – a *really important* part of our community. We will be helping the veterans apply for VA disability benefits and appealing denials of benefits. Applications prepared by lawyers are four to five times more likely to succeed than ones prepared by veterans alone.

> "... like the General Counsel, lawyers and in-house legal teams are becoming strategic partners to the business. We expect lawyers to be able to work across multiple specialties. We expect them to be relationship-focused and outcome-oriented."
>
> – *Anne Robinson*

We will also be helping veterans challenge their discharge status. A number of veterans leave the service with less than honorable discharges. This is often due to behavior that's attributable to their wartime service – PTSD. It's a derivative of serving, and sometimes it's used for dishonorable discharges, which compromises their ability to reintegrate into the rest of society. We'd like to help with that.

With the help of Morgan Lewis, we're putting the finishing touches on a program that will allow us to expand our Foundation's support of the local non-profit community, by also including *pro bono* services to those organizations that are part of our Community Stewardship organization. That's a natural extension, and another opportunity to integrate giving back.

On behalf of the Vanguard's Office of the General Counsel, I am honored that our department has been recognized by the Directors Roundtable. I deeply appreciate the work and participation of some of our key law firm partners who are here today. Additionally, I hope that you've been able to gain valuable insight in hearing more about what our department does to help Vanguard change the way the world invests. I'm really looking forward to the conversation with the panel, and I hope that you bring lots of questions and engage in a fruitful discussion for the rest of the morning.

Thank you so much for inviting us to be here today. [APPLAUSE]

KAREN TODD: Before we move on to the panel, I wanted to ask Anne a couple of questions. One that came up at our dinner last night was, "How has the evolution in technology changed operations at Vanguard?"

ANNE ROBINSON: It's actually interesting. The technology advancements have not just enabled the business, but we've actually leaned very heavily into technology at Vanguard to help enable our compliance program, making sure that we have efficient ways to monitor and oversee activities by the business. It enables reporting; it makes sure that reporting is easier to produce and accurate. It takes the risk out of manual processes that sometimes can lead to errors that have meaningful consequences. It also allows us to focus more on the work that adds more incremental value. By taking out some of the manual, more routine exercises, professionals can focus on strategy and areas of business enablement, so that we are really deploying our highest, best thinking against the biggest opportunities and challenges that the business faces.

KAREN TODD: Great. In the area of diversity, can you tell us a little bit more about the mentoring that goes on in Vanguard with your diverse colleagues?

ANNE ROBINSON: Vanguard, like many organizations, has crew resource groups, and there is formal mentoring available through that. When my team recognized that we were planning to focus on diversity as an area of opportunity for the Office of the General Counsel, every single person on my leadership team committed to identify diverse crew outside, including outside of the General Counsel's office, and

informally mentor them. I believe that some of the most effective mentoring programs are actually those that are informal and are born more out of an organic identification of common interests and values. You can be intentional about making sure that you are focused on identifying those opportunities and seizing them when they present themselves. My leadership team signed up to do that, and every single person has honored that commitment and identified a diverse crew member to help bring along.

KAREN TODD: Wonderful! Our next speaker is Natasha Kohne, and she's with Akin Gump.

NATASHA KOHNE: Thank you. Thank you, Directors Roundtable, and I cannot think of a more deserving, thoughtful and eloquent person to honor today. I'm grateful to be here to celebrate Anne and Vanguard, and to celebrate what Anne stands for as an individual, and what Anne and Vanguard are doing in the legal industry.

Now, before I launch into my topic of privacy and cyber security, I thought it would be fun to capture, in a one-minute video, the state of privacy in cyber today, particularly in the U.S. Can you play the video?

[VIDEO PLAYS]

When Intel's CEO declared "data is the new oil," what do you think he meant? It's not a perfect analogy, but he likely meant the unprecedented power of using, analyzing and leveraging data and artificial intelligence to improve business intelligence, operations and efficiency at nearly every level of an organization.

Imagine a world where basic procedures, like getting an MRI, may soon be able to predict signs of disease years before the human eye can. Or, imagine a world where driverless car technology enabled by artificial intelligence will reduce traffic fatalities by around 90%, saving tens of thousands of

lives per year. Or, when it's commonplace for drones to deliver household goods to our homes on a daily basis.

Now, with this great promise comes a mountain of uncertainty, cultural hurdles preventing harmonization of laws, and a sense of responsibility about what we are doing. It's those three things that I'd like to talk about today.

First, is uncertainty. For those of us who assess risk for a living, we all know that when the law lags behind technology, as it does in the areas of privacy and cyber, we are confronted with tremendous uncertainty. Perhaps the most timely example is what happened in my home state of California this past summer. Many of you know that the U.S.'s first truly comprehensive privacy statute was passed in California – the landmark California Consumer Privacy Act, or as we refer to it every day as, the CCPA. That's a statute that cuts across all industries and impacts all but the smallest businesses that collect personal data of California residents.

What many of you may *not* know is the catalyst that gave life to the CCPA. One evening, at a cocktail party, a tipsy tech engineer told a wealthy real estate developer, "If people knew what we really had on them, they would flip out." The tech engineer might have regretted that statement [LAUGHTER], because the real estate developer was so struck by the comment that he spent $3 million of his own money and gathered over 600,00 signatures. He succeeded in putting a data privacy measure on the ballot for California voters to vote on in November – just two days ago, had this happened, this would have been on the ballot. Recognizing that this ballot initiative was extremely popular among California voters, polling at over 70%, the legislature and the industry stakeholders were able to cut a deal with privacy advocates to create a legislative solution instead. That's when the CCPA was born.

So, where is this uncertainty I'm talking about? It's apparent in every question I get every day from clients. First, there's operational uncertainty. The CCPA was enacted within a short timeframe, and suddenly, companies that do business across the country may soon have to comply with a statute that requires them to know where all California resident personal data is within their company. There is also ongoing legislative uncertainty, as the CCPA was passed so quickly. Will it change in 2019 by the California legislature, or will other states roll out their own version of the CCPA? What will that look like? Will Congress get its act together and pass a federal data privacy law to preempt these state measures?

If there's one thing that *is* certain, California's actions spurred federal debate and attention. We've had two major privacy congressional hearings just within the last two months; and the FTC is hosting four days of privacy and security hearings this December and in February of next year.

My second issue is culture. Admittedly, data and oil are very different. Data can be replicated indefinitely; it can be transported at the speed of light; it's highly personal and closely connected to culture. You can see this in how the regulators in the U.S. and elsewhere are grappling with this important topic. In fact, the cultural factor, more than almost any other dimension of privacy, reflects the complexity and the unpredictability of this field.

I'll give you a simple example of this complexity. In some jurisdictions, drones outfitted with cameras are often used for site inspections and are sometimes considered extensions of public safety. In some other cultures, the very act of taking someone's picture without consent is considered deeply offensive and invasive. Of course, perhaps the most glaring example of this is in the EU, where data protection is considered a fundamental human right. Not surprisingly, Europe produced the most comprehensive data protection statute that we've seen, reflecting European skepticism of government overreach that they experienced in the period leading up to World War II.

Which brings me to my third issue: responsibility. As we navigate this great promise of the data science revolution, we are faced with the responsibility to be more inclusive of all of our differences, and to be cognizant about those who are underrepresented. Let me be specific about this.

Take race and ethnicity. Do the data scientists and engineers creating these algorithms that can drive business accurately reflect the diverse makeup of the population of our country? Are there enough female engineers to represent the different perspectives involved in decision making? What about socioeconomic differences? How can we ensure that those from disadvantaged backgrounds or communities will still be offered health insurance, education, and financial services at reasonable costs, if data analytics suggest that servicing them will cost companies or institutions more money? What is the right level of oversight and transparency in developing these formulas? These are questions we, as a community, must contribute to, work through, and not overlook.

Where does that leave us? What do you, as a director, officer, or advisor of a company need to know?

First and foremost, we need to be aware of the speed at which privacy and cyber regulations are being passed, and how fast companies need to adjust. Just in the past two years alone, we've seen the passage of the New York State Department of Financial Services Cybersecurity Regulation; we've seen the implementation of the EU's GDPR; and Vermont recently passed the U.S.'s first law regulating data brokers. California didn't just simply pass the CCPA, but enacted a law imposing data security requirements for the Internet of Things (IoT) devices sold in the State.

Second, in addition to a more complex regulatory environment, these laws are becoming more specific. Just as an example, under the New York Cybersecurity Regulation, regulated companies must conduct risk assessments, penetration testing, and vulnerability assessments. They must designate a CISO [Chief Information Security Officer]. They must use multi-factor authentication, or the equivalent, for certain internal networks or systems. The GDPR is another example; it's quite specific. It seeks to impose organizational change. It requires some businesses to hire data protection officers, and to undertake data protection impact assessments. We are moving away from a system of general principles and self-regulatory regimes, to more specific rules around the collection, use and security of our personal data.

Finally, government-mandated fines and company litigation costs have increased and look likely to continue to increase. Many of you know that the GDPR-related fines can reach up to 4% of global revenue, but the SEC recently fined a major company $35 million for delayed disclosure. The Anthem data breach litigation, just an example, settled for about $115 million.

As the guardians of our own organizations, we should be aware of the details of these new rules, understand where our highest risks in the organizations are, ensure proper governance and reporting structures are in place in establishing that right tone at the top to support the budget, implementation and maintenance of these cyber and privacy programs. Although we are really only in the early adolescence of this data science revolution, if we take the right steps *now* to develop creative solutions, we are going to prime our society to benefit from this revolution in far-reaching and meaningful ways. I hope everyone in this room can help make that happen. Thank you. [APPLAUSE]

KAREN TODD: Obviously there are a lot of different regulatory regimes that you have to deal with if you have a company in more than just one location, but is there also some adjustment in terms of scale for companies for implementing all of these new regulations?

NATASHA KOHNE: What Anne said was interesting, and I'm learning more about Vanguard's approach in applying that gold standard. Do you want to, when you're implementing a hodgepodge of different regulations, find that commonality, and raise the bar to implement rules that may not even be required within that jurisdiction? That's one way to approach it. Companies need to take a step back and say, "What is our philosophy? We're going to look at 10 different frameworks. What are the commonalities among these frameworks? Where are the risks? Do we want to reach for the ceiling or do we want to implement a different approach?" You have to think about that on a case-by-case basis.

KAREN TODD: Okay. Do you foresee any convergence in the regulatory regimes in different states, or even the U.S. government, in terms of what's actually going to be regulated in this space?

NATASHA KOHNE: The CCPA woke up the U.S. and, as I mentioned, the number of congressional hearings on privacy has increased exponentially. To answer your question directly, we're already seeing a divergence of statutes. The big question is, will Congress step in? That's the main question we're getting – will we see a federal preemption?

I'm terrible at predicting the future, but I would say that if we have additional states that pass statutes like the CCPA, Congress will be forced to act. The privacy advocates, as well as industry stakeholders, will *have* to get together to deal with the different statutes. You can bet that Vermont or Massachusetts will likely not implement a statute exactly like the CCPA.

In addition, with the Democrats now taking control over the House, then the other question that I often get is, "Is the CCPA the floor or the ceiling?" With the recent congressional change, we could probably safely say that they are not going to pass a law that is less stringent than the CCPA.

ANNE ROBINSON: When I first met Natasha, she exclaimed from a podium, "Privacy is everything!" [LAUGHTER]

KAREN TODD: Thank you. Our next speaker is Pamela Marcogliese from Cleary Gottlieb.

PAMELA MARCOGLIESE: Good morning, everyone, and thank you to the Directors Roundtable for having me here, and congratulations, Anne, on a much-deserved honor.

Today, I would like to focus on the role of institutional investors and the impact that they've had on the social and governance agenda, which has really been unprecedented. In many ways, we're living in a new reality, and this affects my practice greatly, because I spend a lot of my time advising companies and boards and management on all sorts of governance issues. This is a really exciting time to be working in this space.

As we'll discuss, it's really impossible to overstate the impact that these long-term investors have had on the governance landscape across corporate America. Vanguard has been consistently at the forefront of those issues, as Anne mentioned earlier.

What's particularly interesting about this movement is that these changes have come with only minimal changes to state corporate law. Rather, what we've seen is that there has been a private ordering of sorts, one that has propelled companies to make changes, even in the absence of regulatory or statutory requirements. Also, as Anne alluded to, we have seen a corresponding evolution in the boardroom, with boards now almost universally composed of highly qualified individuals united in their oversight responsibilities and in the exercise of their fiduciary duties to shareholders.

The pace of change has been steady, but it has also been quick. Indeed, we see the involvement of institutional investors in some of the more significant issues affecting our social fabric, because of the recognition of the impact these issues have on the success of corporate America.

These issues include equality in the workforce and the glass ceiling; climate change; gun control; the opioid epidemic; and so many more. This represents a sea change in the way that investors view their role – not just focused on the bottom line (although, of course, that continues to be a prime concern), but also as stewards of companies with a responsibility to their shareholders more broadly.

Investors have been empowered in a number of ways to create this change. First, shareholder proposals on what was once a fringe topic but is now referred to as ESG, which stands for "environmental, social and governance" issues, have come to the forefront of nearly every public company in the United States. Starting only in the spring of 2017, significant institutional investors – and Vanguard was prominent among them – were largely responsible for a small but significant wave of passing proposals on climate change. This was practically unheard of before this, and forced these companies, primarily in the oil and gas industry, where this is a significant concern, to disclose the impact of climate change on their business.

Incidentally, this also happened at a time when the federal government had just indicated that it was planning to exit the Paris Climate Accord.

These passing proposals instantly catapulted environmental issues to the top of board agendas across the country, as boards focused intently on the risk that these changes in climate and other environmental trends could pose to their business.

Similarly, in the less than two years since then, the average level of shareholder support for proposals on all sorts of social issues has been increasing.

Second, institutional investors have been holding directors personally accountable through voting. The lack of women or minorities on the board has been identified. This has resulted in some institutional investors voting against some of the directors on the board.

This is in stark contrast to prior expectations, where directors were largely assured of receiving significant shareholder support if the company performed well and the director had no record of egregious behavior, such as failing to attend most board meetings. Unsurprisingly, this phenomenon has brought swift attention to diversity in boardrooms, with women and minorities gaining a record number of board seats over the last few years.

Third, institutional investors have become far more active. As funds have moved from active investors to passive investors, the passive institutional investors found themselves in a position to be a fiduciary for an unprecedented amount of funds and number of people. They've been exercising this leverage. Internally, investors are putting significant resources into these areas, building governance teams and staff to take a more deliberate and professionalized approach to governance and social decision making. Externally, institutional investors have put out much-anticipated letters, reports and whitepapers, sponsored awareness campaigns, and joined coalitions. All of these communications are very carefully reviewed and considered by companies.

In some ways, as the industry comes together on these topics, it has still not yet fully coalesced into a cohesive strategy. More shareholder proposals does not always mean more accountability, more results, or even more progress.

As the SEC gears up for its much-anticipated proxy roundtable next week, high at the top of its agenda are issues concerning shareholder proposals and some of the key players involved in making voting recommendations, such as the proxy advisory firms. This area is in need of reform, and management, boards and shareholders alike are eagerly anticipating the outcome of the SEC's efforts.

Before I end, let me touch on one more trend that shows no signs of subsiding, and that is the increasing threat of shareholder activism. For a little context, $54 billion in new capital was deployed by activist hedge funds in the first three quarters of 2018. There have also been 188 campaigns waged through September 30 of this year, compared to 194 in all of 2017. Activists filled 130 board seats this year, which is more than all seats gained by these activists in all of 2017.

While it would be unfair to generalize, the risk is that this activism brings with it a focus on short-term results at the expense of long-term sustainability and investment for the future. In many ways, this is the area where long-term investors can provide the greatest support. For example – and I'm quoting here from Vanguard's 2018 Investment Stewardship Annual Report, where Glenn Booraem, as Vanguard's investment stewardship officer, wrote in a letter to shareholders, "Central to our approach to these topics is our unwavering commitment to the long-term economic value of your funds investments. While

we recognize that our shareholders have a wide range of ideological perspectives, our decisions on these matters are grounded in long-term economic value."

To wrap up, what has become clear – to me, at least – is that the influence of institutional investors is not going to fade anytime soon. That's why I strongly believe that now, more than ever, companies and shareholders alike are relying on the guidance and stewardship that these institutional investors can provide to protect the sustainability of America's greatest corporations into the future. [APPLAUSE]

KAREN TODD: It's obvious that the activists versus the institutional investors is somewhat of a push-pull situation. In terms of the social responsibility areas, do you see activists actually making progress?

PAMELA MARCOGLIESE: The trend that we're seeing is that activists will often focus on those kinds of issues as a way of bringing about the change that they're ultimately striving for, and so it is not uncommon for activists to focus on diversity issues in the boardroom. They'll claim that the board is not sufficiently diversified, and that's what's being tied to the underperformance of the company.

The other thing that we're seeing, which is a new trend, is that activists are also creating their own sustainability-type funds, or funds focused on these various governance issues. It's in recognition of the fact that there *are* a lot of governance-related investment strategies out there that they can deploy and are focusing on. It's a really big deal and I can see from my own practice that there isn't a day that goes by that I don't have a conversation with at least one company about how to deal with a shareholder proposal or how to deal with an incoming call from an investor. What's even more interesting is that, whereas you may have had this in the past, this was really focused at the shareholder level; that's no longer the case. This is spilling into the halls of the company – employees are talking about gender pay issues; customers are talking about environmental factors – we talk about plastic straws versus paper straws – this is not just confined to the shareholder level anymore.

KAREN TODD: Thank you. For the institutional investors, do you see them emphasizing global initiatives versus local initiatives for companies, or is it dependent on scale?

PAMELA MARCOGLIESE: It depends on scale; it depends a little bit on the company, and also where the leverage is, and the significance of the issue to the company. These days, when a lot of businesses are global, I don't think changes are just localized, but it really just depends on the issue and the company.

KAREN TODD: Thanks very much. Our next speaker is Grace Speights from Morgan Lewis.

GRACE SPEIGHTS: Good morning. Thank you to the Directors Roundtable for inviting me to participate today. I also want to congratulate Anne on this wonderful award. It is a pleasure and an honor for me and my colleagues from Morgan Lewis to be here with you today as you get this recognition.

Anne spent time talking about diversity in the legal profession during her remarks. I plan to spend my time this morning following up on Anne's remarks and talking a little bit about diversity and inclusion in law firms. It's something that I am passionate about and would like to share with you. I'm not just going to talk about it; I want to offer at least a few best practices for increasing diversity and inclusion in law firms.

There's no question that law firms are past the discussion of *if* firms should have a more diverse workplace. Many law firms – and I might even say most law firms – are struggling with how to create an inclusive and welcoming environment which, in my opinion, goes a long way in retaining diverse talent at law firms.

The #MeToo movement, which has engulfed my life over the last year, has shown us that just having policies, initiatives and training, which most of my clients had for years, does not, by itself, make a workplace safe, inclusive and respectful. Rather, law firms and other workplaces must create a culture of inclusion in order to move the needle on diversity and inclusion.

How does a law firm go about creating a culture of diversity and inclusion? Law firm culture starts at the top of the firm, with the chair or managing partners. They have to be committed beyond words to diversity and inclusion within their firms. That starts by not considering diversity and inclusion as an initiative or a program. Diversity and inclusion have to be incorporated into every aspect of firm life in order to create a culture of diversity and inclusion. In other words, they have to be ingrained in what I call "the fabric" of the firm.

Unconscious bias training, starting at the upper management of firms and then cascading down throughout the firm, will go a long way into starting a culture of diversity and inclusion. Regular communications to partners and firm personnel from the chair or managing partner on the importance of diversity and inclusion can also have a significant impact on firm culture. Such communications should include successes of diverse lawyers in the firm, and diversity-related events and activities in which the firm and clients have been involved. There are many firms that are now partnering with clients on diversity and inclusion.

For too long, the law firm pool for diverse candidates has been too shallow. Too often – and I hear it from many of my clients – I happen to have many law firm clients, in addition to corporate clients – we hear that the numbers are low because "we can't find qualified talent." But firms may not be looking in the right places. Firms have to be proactive in recruiting diverse talent. You can't just sit back and think diverse talent is going to come to you. For example, rather than waiting for diverse talent to express an interest in your firm, reach out to deans, professors and others whom you respect to determine if they are aware of diverse candidates who might be interested in working at your firm. Firms can also begin to create a pipeline of diverse talent. You don't have a pipeline? Help create one. Pipeline programs present a wonderful opportunity to partner with clients.

As we heard from Anne this morning, there is a great desire to increase diversity inside legal departments. Anne and Vanguard have been doing a great job on that. We can also look for diverse laterals at job fairs. We can also look to our clients – since many of them seem to be doing a better job than we are – for wonderful talent to join our firms.

Another important issue is that firms must focus on inclusion and not just diversity. The first call to action in the legal profession about diversity asked law firms to diversify their ranks in terms of race, color, national origin, gender, sexual preferences and the like. Naturally, firms focused on differences among people in their recruiting. However, standalone diversity initiatives that only focus on the numbers or percentages of various diverse lawyers in the firm, without efforts to make sure that such lawyers feel included in every aspect of firm life *and* that they can be successful at the firm, do little to advance the ball. Diverse lawyers need to have experiences and exposure within the firm that provide them with opportunities to advance and grow professionally.

Diversity and inclusion is hard work – there's no question about it. It requires a great deal of focused, continual attention and energy. Many law firms have created diversity committees and diversity councils. While those things are important, most of those committees and councils are made up of busy lawyers who practice full-time. When faced with diversity or a client call, we know what wins out. For diversity and inclusion to be built into the fabric of the firm, someone at the firm needs to be waking up every morning and spending every minute of his or her day at the firm thinking about and working on diversity and inclusion. Hiring a dedicated and experienced professional who can focus on inclusion and ensure that the firm's diversity strategy is implemented and woven into all aspects of firm life is crucial.

Finally, accountability is key. All partners, from the highest level of the firm to the most junior partner, should be responsible for and held accountable for supporting and advancing diversity and inclusion within the law firm. Too often, the responsibility for diversity and inclusion falls on the shoulders of the diverse partners. Diverse partners, however, also have a practice, and it's more important for them to be developing their practice. The burden cannot fall on them alone.

Some firms have come up with ways to hold *all* partners accountable for assisting the firm in diversity and inclusion efforts. For example, some firms tie a portion of a partner's compensation or bonus to their efforts on diversity and inclusion at the firm. Partners are asked, in their partner compensation questionnaire – and you note that I'm linking it to compensation – to identify the efforts that they have taken to advance diversity and inclusion within the firm over the last year. On those questionnaires, partners are also asked to identify other partners within the firm who have made contributions to the firm's diversity and inclusion strategy over the last year.

Some firms have implemented a process of upward reviews of partners by associates, in which associates are asked to rate partners on, among other things, their contributions to diversity and inclusion at the firm. Examples of questions that are sometimes included in those upward reviews ask associates to rank partners on their efforts at building diverse and inclusive client teams and their respect for flexible work arrangements, just to name a few. The responses to those questions are considered when evaluating partners at the end of the year and determining bonuses as part of compensation.

In closing, it is clear that diversity and inclusion at law firms is a journey; it is not a destination. Quick fixes, even with good intentions, will not create the inclusive environment needed for long-term systemic changes. For law firms to be successful on this journey and to create the right culture, they must ensure that diversity and inclusion are rooted in the entire fabric of the firm, and that all partners are held accountable for making the journey successful. Thank you. [APPLAUSE]

KAREN TODD: Grace, what do you see as some of the biggest obstacles in taking a diverse pool of initiates into a law firm, all the way up to partner status?

GRACE SPEIGHTS: That's a big question! [LAUGHTER]

There are a lot of obstacles, and the biggest one is the fact that although many diverse lawyers who join firms were at the top of their law school classes and, are *clearly* capable, they get lost in the law firm. Getting lost, a lot of times, arises from the whole issue of unconscious bias. We react and do certain things based on our own life experiences. If we don't check those views and broaden our perspectives, some diverse lawyers can have a challenge. I'm fortunate; I've been at Morgan Lewis 35 years. I obviously had people who were open and willing to mentor and sponsor me. Making people feel included in all aspects of firm life is important. It is an issue that comes up in exit interviews of diverse

lawyers. Many say that they "didn't feel like [they] were a part of the firm." That really is one of the biggest obstacles.

KAREN TODD: Thank you. In terms of enlarging that pool, how far down in the educational system do you think lawyers need to reach in order to provide young people with the idea that they can aspire to be a lawyer?

GRACE SPEIGHTS: It starts very early, even with little kids. We have lawyers in our firm, for example, who go out to elementary schools. Many of these kids grow up in underrepresented and underprivileged populations in communities. I do believe that if you don't see it, you can't achieve it or you won't achieve it. The earlier they can see diverse lawyers, as well as other lawyers educating them on the law; letting them know it *is* possible; telling them what it's about – there are many kids who don't know what it means to be a lawyer. They may see the old Perry Mason movies or something, but there's so much more to law than being in the courtroom. It's exposure; it's knowledge; and it's encouragement.

KAREN TODD: Thank you. Our next speaker is Jerome McCluskey from Milbank.

JEROME MCCLUSKEY: Good morning, everyone. It's great to be here, and thank you to the Directors Roundtable for the invitation. Thank you, Anne, for the invitation, as well. We really could be here every day of the week celebrating Anne Robinson in everything she's doing, and frankly, the office of the General Counsel at Vanguard and all the innovative practices that they're implementing – it's really amazing to see.

I first spoke with Anne maybe a year-and-a-half ago. I called her up because she is an alum of my firm, and one thing I'm working on is trying to tie our associates to our alumni, to focus on building that mentorship relationship. I invited Anne to come by for lunch, and she was gracious enough to spend time with us in our offices and speak with some associates. At that moment, after she had finished her speech, it was crystalized in my mind the power of Anne Robinson and the power of riffing off of what Grace just mentioned. Having actual role models who associates can see in the flesh, who are achieving or scaling to the very heights of the profession, is really irreplaceable. Anne, I want to thank you for all you do in that regard. You're truly inspiring a generation when it comes to lawyers. [APPLAUSE]

Less inspiring is my talk on leveraged finance. [LAUGHTER]

Sorry to change gears here! I'm a leveraged finance attorney, and I felt I would spend a few minutes talking about my life's work and, in particular, the leveraged finance market. There are a lot of headlines recently around the very heated leveraged finance market. In particular, the Fed is on record publicly for stating their concerns; the Bank of England is on record for stating their concerns. It really points to issues that have revolved around lax underwriting standards and loose documentation terms.

I felt it would make sense at the Directors Roundtable to talk about what directors are thinking about and what they should be focused on when they look at their debt capital structure.

There are two areas I want to focus on. One is around the idea of leverage – the Fed has come out and said, "There's too much leverage in the system"; too many borrowers, too many companies are borrowing above what's traditionally seen as manageable leverage levels." The second area is asset stripping, which is something we're seeing more.

When people talk about leverage and we see headlines about it, it's very simple, folks are talking about the ratio of the debt to the earnings. On the debt side of the equation, in recent years, that number has just gotten higher. Banks have gotten more comfortable lending at a higher debt multiple than in previous eras. The debt markets are very cyclical markets, so that happens and this is not the first time.

In addition to that, when a borrower borrows money at closing, they have a certain set leverage level. What's been more pernicious in recent times is that in addition to the closing date leverage, which is already high, baked into these documents as credit agreements and bond indentures that we see on a regular basis, there is additional capacity to borrow even more debt on top of the debt that's already borrowed at closing. There are all sorts of different debt baskets that have been expanded within the documentation, and that gets lost on a lot of folks. It's not really the closing date leverage that people need to be concerned about, it's also what's baked into the document.

A second aspect of leverage ratio is the earnings. What regulators have focused on in recent times is what are called the "earnings before interest, taxes, depreciation and amortization" (EBITDA). Add backs; in particular, when a borrower has an earnings definition for purposes of a credit

agreement, they are able to add back or normalize their earnings, to show the lenders how financeable they are on a normalized basis.

For example, if you have your GAAP [generally accepted accounting principles] earnings, you can add back one-time events. You may have one-time expenses around investing in a new factory or a new acquisition. The costs around those one-time events, are added to your earnings, to the denominator in the ratio of the leverage to debt ratio.

In recent times, what has been more astonishing, is that borrowers in almost any leverage or credit agreement that I pick up today are able to project these one-time events. It's not that they actually built a factory out-of-pocket and expended funds on a project and then added that back to the earnings. Further than that, the borrower can say, "Within the next two years, I plan on building a factory in Malaysia" and they can then add those projected costs to the earnings. Beyond that, they can add the projected cost savings to those earnings.

All together, when you add it up, between the higher debt levels and the inflated earnings, the leverage ratio in the system is actually fairly high, and higher than most people would realize.

The second aspect of leveraged finance that I want to touch on is around asset stripping. That's the concept that borrowers often, under current documentation, are able to, in effect, play shell games with the collateral assets that lenders have to lend against.

For example, there's been some very high-profile cases in recent weeks and months, where, for example, J.Crew had taken its trademark – a very valuable asset – within the group of borrowers and subsidiaries that were providing collateral support for the loan. Through the documentation flexibility, that trademark was able to be transferred to a subsidiary that actually was outside of the covenants of the credit agreement. That allowed J.Crew to incur additional debt secured by the trademark that was now outside the scope of the initial collateral.

The next time you're shopping for khakis [LAUGHTER], think about the inventive and creative ways that J.Crew has looked at this current documentation. They're not alone – PetSmart and Nieman Marcus are two other high-profile cases in recent times. This all goes to looking at how directors and companies should be thinking about this. Directors would be remiss and not fulfilling their fiduciary duties if they are not taking advantage of the unprecedented liquidity and loose terms in the market, in terms of improving their capital structure.

There can be "too much of a good thing,"; and, on the flip side, Directors must be cognizant of the fact that if they also increase the leverage levels of their businesses, they can also incur debt that's unsustainable for the business. That's an issue for them to keep in mind.

With that, I'm going to wrap up. Thank you, again, Anne, and thank you to the Directors Roundtable for inviting me. I appreciate the conversation. [APPLAUSE]

KAREN TODD: People are concerned with the change in the Fed's policy of keeping the interest rate strategically low for a long period of time. How do you see this changing what you're doing, as they continue to inch it up?

JEROME MCCLUSKEY: The real concern is that with rates rising, there will be additional increasing amounts of revenue and cash that will be sent to debt service rather than investment in the business. It's not controversial to say there likely will be more frequent restructurings and bankruptcies in the near future, for businesses that have been just over-leveraged.

In terms of today, how it's impacted in practice and deals today, it really hasn't. The economy is going at full strength,

and businesses are continuing to borrow. In recent months, you've seen some slight correction in the debt markets around investors who have looked at the documents and understand that we're a year or two away from a real correction. We still are in a frothy market, so day-to-day, it really hasn't changed a whole lot.

KAREN TODD: Okay. Thinking back to the financial crisis of 2008 and the things that were occurring at that point in time, what do you see that the financial institutions should be looking at so it doesn't happen again?

JEROME MCCLUSKEY: The regulators have laid out the red flags to keep in mind, which would be the leverage levels. In 2013, the Fed, FDIC and the Comptroller all came out with Leveraged Lending Guidance. One point of that was when they are doing their biannual reviews, they were annual – in recent years, they've made that change – and when they're poring over the loans that regulated banks have been making, they're expecting leverage levels to be infrequently above six times total leverage, and also defensible add-backs. If a business has a borrower that has added to their EBITDA these projected cost savings, for example, the regulators expect those to be

defensible. They really need to drill down and understand the story. Financial institutions have been reacting to that, but the other aspect of the debt markets is that a lot of the debt has moved to unregulated entities. The unregulated market is going to be something to keep focused on, and how big that has become.

KAREN TODD: Thank you! Our next speaker is John Baumgardner with Sullivan & Cromwell.

JOHN BAUMGARDNER: Good morning. Congratulations to Anne and her legal department for her terrific team.

I'm going to talk more about Vanguard itself in the financial services industry and world that it has done so much in the last 35 years to create, and some of the challenges that I see today and moving forward. Of course, in honor of the occasion itself, how Anne and her colleagues will help to meet those challenges.

My own personal association with Vanguard started in 1985, when I came down to Vanguard, which was then in Chesterbrook, on an underwriting of a closed-end company. Vanguard used to have a couple of closed-end companies – not only just open-ends. The Vanguard team on that project was Jack Bogle, Jack Brennan, Jeremy Duffield and Ray Lapinski, who I believe was the very first General Counsel of Vanguard, and for many years thereafter.

Most memorably for me, personally, when my parents lived in Valley Forge as a result of that IPO my father asked me for a recommendation for financial services. I called Jack Brennan and asked if he would meet my father, which he did, in the lobby in Chesterbrook. Of course, there are lots of ways to create loyalty to an organization, but I've got to tell you, that was mine! [LAUGHTER]

Consider that, in the 1970s, total assets in open and mutual funds had just crossed $50 billion and, in fact, in 1975, it was below $50 billion. With relatively few exceptions, mutual funds were sold with an 8½% sales charge, and some funds charged – some distributors charged – 8½% sales charges on reinvested dividends, which is really remarkable.

Commercial banks were not in the mutual fund business, except possibly as sub-advisors. Enter the 1980s, with Rule 12b1, back-end loads, which changed distribution practices quite dramatically. Back then, the primary object of litigation was money market mutual funds, and nearly every fund over $1 billion was sued for excessive management fees. This resulted in some of the strangest management fee schedules that you're ever likely to see and will probably never see again.

Now, Vanguard was very different, of course, with a unique combination of attributes – no sales loads; cost-based expenses; an index fund for retail investors – oh my goodness! [LAUGHTER]

The funds owned the manager or service company – that was essentially unprecedented, although TIAA-CREF had not an entirely dissimilar set of arrangements. The funds' trustees and the management company's trustees were the same natural people.

That was an extraordinary event in the mutual fund business and, as you know, there was a contest at the SEC over the regulatory relief required. Intervenors who thought that that was a bad idea – both Fidelity *and* Academics, separately, thought Vanguard was pressing the edge of the '40 Act.

Here we are today – Vanguard, more than 200 registered funds, more than $5 trillion assets under management – just think, $5 trillion versus $50 billion, in the whole business – and robust retirement platforms. Substantially all products and services accept a depositary institution. Global operations, as Anne so eloquently described, with the complexities of operating in 19 different jurisdictions.

What's a legal department have to do with this? One of the core objectives of legal departments are to enable the achievement of enterprise aspirations, to collectively understand the limitations on behavior, and to protect reputational values. These skills require, where the skills required are being a *consiglieri*, being a confessor, being a manager, and being a role model. In my experience, the Vanguard legal team has *all* of those. Core competencies include enterprise and industry experience and insightfulness; communication skills; *very* importantly, reliability; and subject matter expertise.

There are serious challenges for Vanguard and its peers arising from the current size of the business, both in aggregate and individually. Corporate stewardship, which Anne spoke about very eloquently. As beneficial owners of substantial portions of the voting securities of U.S. and non-U.S. public companies, Vanguard funds' views on corporate governance, corporate transactions, and other matters of shareholder concerns,

and how the funds vote, matter. It's important to recognize that what matters often matters differently to different people and to different constituencies. It matters to regulators; it matters to the issuers and their customers and suppliers; it matters to fund shareholders; and it matters to market participants generally. When you exercise the franchise on the level and in the magnitude that Vanguard funds do, all of these constituencies are interested in outcomes.

For example, issues that we are going to be grappling with probably for a long time yet – certainly, many of them will be addressed in the SEC roundtable on shareholder voting next week at the SEC, are how are the interests of beneficial economic owners affected taking into account the views of account holders of others who have voting authority but no economic interest.

Consider whether there's a structural difference in approach between fiduciaries, which are, themselves, publicly traded companies, and fiduciaries which are not public companies. I understand that there are some companies in that situation, including some of Vanguard's largest peers, where there are information barriers between the fiduciary side and the investor relations side.

Another issue, that has to be addressed in this context is whether the data and information infrastructure exists to make refined judgments on different approaches to corporate governance. For example, is there reliable data on whether an independent chair has value, and not just the consequence of historical development in different cultural contexts? Or, are the structures in the United Kingdom and in Europe different because they're performing different services rather than they're contributors to corporate governance?

As has been increasingly reported, millennial shareholders vote their values and not necessarily their wallets. This seems to me to be directly relevant to many of the important subjects we've been discussing today. If more investors shift to a values focus, what are the implications for fiduciaries in voting shares on their behalf? That strikes me – and I have a daughter who's 34 who will never own fossil fuels. I had to convince her that you can't get them out of an index fund! [LAUGHTER]

Are there differences in the interest of actively managed equity funds with high turnover, those which have lower turnover, and those of passively managed equity index funds, which *must* own the shares – how long is long-term?

Vanguard is the beneficiary, of course, of fishbowl scrutiny in 19 jurisdictions. I'm not so sure that's such a wonderful thing to address, but it's certainly a hard one, because when you operate in every securities market every day, there is nowhere to hide. As we have discussed, and as you know, the Vanguard structure is unique. One of the, if not the greatest, challenges for the legal department – having observed it for a long time – is both enabling the enterprise to live within its unique structure *and* to extend its reach, its capability, its competence, its products and its services.

Of course, reputational risk is important, and it's not only for law departments, but law departments, with their nimbleness and their reach throughout the enterprise, are active and critical participants in avoiding and mitigating regulatory and reputational risks.

What do I see as some of the industry's challenges today? These involve not just Vanguard. "Inexpensive," "cheap" or "free" have become core investor values in themselves. This has resulted in, among other things, zero fee funds; share classes of highly competitive products with expense ratios lower than half of the fingers on my hand; extreme pressures on fees in the retirement platform business, at the same time as the levels of service sought or demanded by plan sponsors has increased; commission-free securities transactions, particularly

on ETFs from the major broker-dealers, and as a strategy to capture market share; and the advent of low-cost robo-advice for a wide swath of novitiate investors.

Of course, mutual funds and their sponsors *do* have expenses – even Vanguard. As a result, the expectations of profitability for most, and for Vanguard, the covering of costs will require substantial attention and imagination in the years ahead.

The other competitive part here is that customer expectations are rising, and the ability to deliver consistently is getting more and more difficult as the competition rises to meet those expectations.

Finally, it is really not the subject for this conference alone – is data infrastructure and information security which pose all of their own risks, and it will be important to figure out, to accommodate *all* of the other commercial issues that have to be addressed in this and other financial services businesses.

As I noted at the beginning, by the end of the '70s, mutual funds had just exceeded $50 billion and today they exceed $20 trillion. Defined contribution plans have largely succeeded in becoming the corporate retirement arrangement of choice. Banks

have consolidated and are major fund suppliers, and competition at every level has intensified dramatically.

Are we to see further transformation arising possibly from a recognition and exploitation of deep and unrecognized synergies, like Aetna-CVS, and Whole Foods and Amazon? Transactions like that, in this business haven't yet occurred, but we may see evidence of the exploitation of deep and unrecognized synergies.

I don't know, and I'm not sure anybody else does, either, but I'm certain that Vanguard will be in the mix, and that Anne and her legal team will be as effective as anyone in meeting those challenges in the future.

Many thanks, and, again, congratulations to Anne and her legal department. [APPLAUSE]

KAREN TODD: John, what changes do you see coming out of this upcoming SEC roundtable?

JOHN BAUMGARDNER: Nothing! [LAUGHTER]

They're going to be grappling with a large number of questions. But that doesn't mean that something will come out of it. I think they will be grappling with the disconnect between voting authority and economic interest. That is coming up in a lot of different contexts, and this is going to be a forum for that. They will be grappling with – this is fairly amusing – having withdrawn the two proxy advisory firm letters but not the Staff Legal Bulletin No. 20, which relies on those letters as authority. In the interests of moving the debate forward, they withdraw the letters – that's going to continue to be a subject of conversation.

One of the really difficult problems for shareholder voting is effectively, that retail investors tend not to vote at all. There are a lot of reasons for that. As a fiduciary for some trust accounts, I do vote, but for my own personal account, I don't – I just throw them away. I don't think I'm alone in doing that. [LAUGHTER]

> "Rather than trying to deal with the complexity of determining which rules apply to which decisions, when the decision is being made out of one country versus the other, we decided that our clients would be best served by applying the combined highest standards of the U.S., the UK, and Australia; in other words, we apply our gold standard in each instance, in every jurisdiction." – *Anne Robinson*

The broker-dealer customer application tends to make you an objecting beneficial owner as a matter of default, unless you *elect* to get communications from issuers. That will be a conversation; it has been, for a long time now, because the current chairman is very interested in the views of Main Street on just about anything, and that's an important subject for him.

Those are going to be very significant topics at the roundtable, but that doesn't necessarily mean that anything will happen. The first report in 2010 about OBOs and NOBOs (objecting beneficial owner, non-objecting beneficial owner) was nine years ago. Nothing's happened about that. The level of retail investor participation in shareholder voting has gone down.

There's another issue that will probably get some conversation, and that's the question as to whether or not mutual funds should flow through to *their* owners the vote on proxies of shares, securities that the mutual fund owns. I don't think that is within the realm of practicability, myself; others would have a better view, but I don't believe they disagree with that. [LAUGHTER]

Whether that would encourage more retail voting would be up in the air. You might just throw those away, too.

Those are the four principal things about which I would foresee there being a discussion.

KAREN TODD: Is there anything that financial institutions can do to increase the level of retail investor participation?

JOHN BAUMGARDNER: If the account documentation did not have a default to be objecting, then we would all be getting a lot more irritating phone calls from proxy solicitors, "Why haven't you voted?" It might go from 25% participation to 40%, particularly when you match it with the ability to vote by phone. If the solicitor could say, "Did you get the one-page piece in the mail? Here's what they are; just type in your number and vote right now." That might work better.

KAREN TODD: Thank you. The next questions will be for the entire panel. Let's start with Anne. Can you tell us a little bit about your interaction with the board at Vanguard?

ANNE ROBINSON: We have, as one would expect and as we recommend, a highly engaged board. We currently have a bifurcated structure where we have a board chair and a CEO and a lead independent director. I spend quite a bit of my time with the board chair and the lead independent director, making sure that we have a robust agenda that covers the topics that the board feels are most important from an oversight and strategy standpoint.

We also are very involved with the board through the audit committee, making sure that, with respect to certain, more specific matters, that there is meaningful engagement and reporting from management to our audit committee members. Finally, I am very involved in making sure that our board's self-assessment process is comprehensive – and provocative, where appropriate.

One of the qualities or characteristics we think is really important to making sure that you have a great Board of Directors is having a continued emphasis on making sure that in addition to the other elements of diversity that boards should reflect, that there's cognitive diversity, and that there's an appropriate reflection of the skills needed reflected on the board in order to influence the way companies think about their strategy and risk management.

We spend a good amount of time working with the board on whether or not they think that the current composition reflects the appropriate skills, expertise and background needed to provide the insight and guidance to Vanguard.

This is particularly important because, as John mentioned, the Vanguard Board of Directors is also the same group of people that serve as our fund trustees. We have to be particularly thoughtful about making sure that you have the appropriate skills needed to oversee strategy and risk at Vanguard, but also to have the appropriate technical expertise to provide oversight with respect to the funds themselves.

KAREN TODD: Thank you. Pam, from your practice area, what issues should boards prioritize currently?

PAMELA MARCOGLIESE: The big one that comes to mind is risk, and that's already pretty broad. Boards should always have a very good understanding of what the unique risks of the company are, and make sure that they have the dialogue with management in terms of understanding how management is evaluating those risks and what the plan is for tackling those risks. It's a big job, because it's unbelievably dynamic. We had this conversation about privacy in cyber, and that, in and of itself, is a very big deal. There isn't one board across America or the world generally that isn't, at times, consumed about this. They need to make sure that the board is exercising the proper oversight on the ever-evolving risk landscape.

KAREN TODD: Great. John?

JOHN BAUMGARDNER: Following on Anne's comments, the board's self-evaluation, which was resisted very strongly 15 years ago when it first came out, has profoundly changed how boards think about themselves, and how they are actually now consciously thinking about the skill sets that are necessary as the businesses they oversee evolve. There isn't anything much more important than boards taking responsibility, themselves, for overseeing management. I don't think boards *should* manage the business, but they should make sure that they are prepared through the assembly of skill sets and responsibilities to oversee in a thoughtful and useful way. It's very different, depending on what kind of a business it is.

KAREN TODD: Thank you. Grace?

GRACE SPEIGHTS: I would also say it's risk, but given that I do employment law, boards have to be awake at the wheel; they can't be asleep when it comes to risk-related to employment-type problems.

We have seen in the #MeToo movement and, prior to that, there were many boards that did not ask about employment internal claims. For example: sexual harassment claims; how many were substantiated, not substantiated; what actions were taken? The board – especially in this area – has to be asking more questions and requiring management to report more about the risks associated with various employment-related issues.

KAREN TODD: Thank you.

ANNE ROBINSON: Can I jump in on this, as well?

KAREN TODD: Yes, of course!

ANNE ROBINSON: Just piggybacking off of the comments around the board's role with respect to employment-related matters – two things that we do both at Vanguard, and also share with our portfolio companies when we engage with them, is have boards focus on the culture of the company. They really do play an incredibly important role in defining the culture and

holding management accountable for the culture that creates #MeToo movements, and a culture of compliance, as well.

The second component that we ask boards to focus on, including our own, is the role that talent plays from a succession planning standpoint – making sure that there's an orderly transition of leadership in any company is incredibly important for its sustainability. That will also inform how the board thinks about employment and talent-related matters.

KAREN TODD: Great! Jerome?

JEROME MCCLUSKEY: I would point to two things. First, would be the increasing role of activists in the market these days. We live in a time, now, where activist funds are taking out ad campaigns and running commercials. Boards that aren't proactively thinking about the strategy of dealing with the activists and understanding the activist world and their incentives. It's at your own peril to not be strong about that.

Secondly, would be the cultural aspect of things. Grace can speak better to this than anyone up here, but the boards who may have found themselves flat-footed around the #MeToo movement and around some other issues like those, point to what Anne just mentioned. They were not focused enough on culture and returning to that on a regular basis at every board meeting. They should be asking, "Are we really doing right by not only our shareholders, but also the broader community?"

KAREN TODD: Okay. Natasha?

NATASHA KOHNE: I agree with what everybody said here. [LAUGHTER]

Try to diversify, but with respect to cyber, certainly, the recommendations are to have a cyber expert on the board or a cyber committee; make sure that the board members are trained in cyber incidents. Budget is a big issue and is a concern for management and chief technology officers, whether they have the budget to implement the controls that they need to protect the organization. Then, of course, with culture and tone at the top, it is extremely important to support not only that budget but also the cyber and privacy programs that hopefully are being revisited on a regular basis.

KAREN TODD: Thank you. Can each of you share with us how your firm or company is approaching the diversity initiative?

NATASHA KOHNE: A lot has been said today about diversity not necessarily being approached in one direction. You have to address diversity on many levels, and any firm who is tackling this issue and trying to make improvements has to make sure that it starts with the schools. You start with hiring and then retaining and mentoring and making sure that you have formal *and* informal mechanisms in place to see outcomes.

One thing that our firm has done is we hired a Chief Diversity Officer, and we made her a firm leader. We were hoping that would send a message to everyone within the firm and also, to the outside world, that she was on the same level as our Chief Operating Officer, and our Chief Marketing Officer. This is an issue that we are taking very seriously.

KAREN TODD: Great. Jerome?

JEROME MCCLUSKEY: It's not saying anything controversial that firms are rational actors, and partners at firms are rational economic actors. The way I think about this is that if you don't have, as a firm, an argument to how diversity helps the business and improves the business, then it's really an uphill battle. At the end of the day, rational actors are not committing time and resources and effort unless they see it as a competitive advantage to the firm. I spend a lot of work focusing on stories from clients who are talking to our partners and demanding movement on this issue. That's an issue that I infiltrate

and send throughout the firm – that people need to be aware that you can ignore this at your own peril. Soon enough, your client base will be demanding that you improve. The folks who do their work, who they're seeing at pitches, need to be diverse. You need to get ahead of this. That's a business imperative.

Then, we try to do a workaround, how it fits in the larger picture. Frankly, no law firm, should be a silo on this, and we should all, as much as possible, work with our clients, go hand-in-hand with our clients to figure out mentoring. We have a cross-mentorship program with several financial firms on Wall Street and Milbank and other law firms, and work with other firms to mentor, sponsor and organize.

KAREN TODD: Thank you! Anne, I'd like you to address how Vanguard looks at the outside law firms in terms of this issue.

ANNE ROBINSON: It's not an accident that this is my panel. [LAUGHTER]

Making sure that we have partners that also understand the value of diversity and reflect that in their leadership, and the professionals that they engage to support Vanguard initiatives is important. Again, the composition of the partners that we choose is not an accident.

I would also share that Vanguard has an opportunity to leverage our voice. The business case has been made, and it is part of how we both lead Vanguard, as well as engage in the marketplace. There is research that demonstrates that companies that have diverse boards of directors do better. Cognitive diversity results in better performance. Where we believe the data proves the case, we expect, like in any other area, that our organization, as well as those with whom we engage that are in our portfolios, will act on the information that suggests this is the best chance to give your company ongoing success.

We do focus on both diversity and inclusion, diversity being representation and inclusion meaning welcoming diverse perspectives. Too often we don't spend enough time on creating the inclusive environment – "we" meaning the collective "we" – that makes sure you get the benefit of diversity.

When you say, "I need to have diversity because it leads to better decision making," if you don't also focus on creating an environment that allows people to bring those different perspectives to bear, all you have are numbers – and that's not enough.

KAREN TODD: Grace?

GRACE SPEIGHTS: I'm happy to say that we practice what we teach. [LAUGHTER] A lot of what I talked about today are things that we are doing at our firm. The other thing that I'd like to point out, we are fortunate to have a woman as chair of our firm, and she is the mother of four kids, and a lifer. She knows what it is like to go through from beginning to end in a law firm, and she is passionate about this. There isn't a day that goes by without her having some discussion with someone at the firm about diversity.

A couple of things that I did not mention, we have a good sponsorship program, and that's distinct from a mentorship program. We deliberately have selected senior partners who have significant books of business and asked them to sponsor some of our diverse associates. Each of our practice groups has a diversity partner, who is responsible for those sponsorships, and those diversity partners are people who are senior partners in the firm, and they are held accountable.

> "... at Vanguard, we are doing something to change those statistics. We are recruiting; we are hiring; and we are retaining lawyers representative of our communities. Year-to-date, 50% of our external hires have been women, and 45% have been people of color. It can be done."
>
> *– Anne Robinson*

We've also put some other things into place, like an official remote working policy; a rampup program for moms and dads, to help them ramp back up when they return to work – it is work! [LAUGHTER]

For a period of time after returning to work from any kind of leave – the expectations in terms of what they need to be doing at the firm are much lower to allow them an opportunity to ramp up.

It's all part of what I said earlier about the culture of the firm being, how do we get the best out of the people that we have hired.

KAREN TODD: Great. John?

JOHN BAUMGARDNER: I don't think we're quite as organized as Morgan Lewis. [LAUGHTER]

We, for many years, have had diversity and inclusivity training, and I agree completely. Inclusivity is a vastly harder project to engage. We now have mandatory unconscious bias training in small groups for partners and associates. It really is mandatory. They call you up, and if you don't go, you have to reschedule and then you have to go.

We have regular meetings between the chairman of the firm and associates of diverse backgrounds, to make sure they are comfortable in the way that they are being mentored, the work that they're getting. We try to do the same thing on recruiting.

Now, I don't know about your class at Columbia, Anne, and I don't know about Whitney's, but mine had 260 people, and there were 52 women – which is exactly 20% – in my class. By the end, it was about the same. We've come a long way from that in the law schools and elsewhere.

PAMELA MARCOGLIESE: I could spend hours talking about this, because I am one of the cochairs – we have two – of the committee at Cleary Gottlieb that's called "the leadership development committee," and it is the new incarnation of what used to be called "the women's committee."

The firm, for years, has had all sorts of committees, and we've had policies and training and mentorship and sponsorship and different sensitization initiatives. While all of those things have been unbelievably important and played a big role in getting us to where we are today, it's hard to not recognize that progress hasn't been quite as great as people would have liked. The mandate came from on high at the firm. The executive committee at the firm said that the firm wasn't doing enough, and we needed to do better. We rebranded our women's committee, because people acknowledged that there were shortcomings there, into this leadership development committee. We are partnering with two professors – one from Harvard and one from Yale – who essentially spent the majority of their research time focusing on these issues and helping us make improvements in this area.

In terms of improvements – we've moved away from programmatic issues; we still have the committees and the programs, but we've gone way beyond that. Now what we are focusing on is leadership. We are focusing on leadership because there is now recognition that these issues don't come from doing day-to-day improvements that don't go beyond the mere action of it. This translates into the entire fabric of the firm.

There is also a related recognition that the senior lawyers and, in particular, the partners, are responsible for the culture and the leadership at Cleary Gottlieb. We now have this work that's being done in connection with these two professors, where every single partner, on a rolling basis, is going through both group coaching sessions and individual coaching sessions. We're all thinking about the kinds of things we do that are both promoting diversity and inclusion initiatives, but also getting in the way of us making the progress that we want.

The idea is creating this culture change at Cleary Gottlieb, where it is no longer a matter of focusing specifically on diversity but is completely permeating the way in which we conduct ourselves across the board. It starts to become more about the way we do business, the way we interact with one another. The benefits there are great, in the sense that whenever people have focused this directly on diversity initiatives, you always have this concern about spotlighting. We've tried to destigmatize a lot of that, and now, instead, we focus across the board on the role that everybody plays in these efforts.

The one thing, also, I wanted to say is that it is very important for us for the partners to be involved in this. We also have a Chief Talent Officer who brings a lot of experience in these areas. We all acknowledge that we're lawyers and may not have the best sense of how to do this correctly, so we work very closely with our Chief Talent Officer, and we're very excited by his arrival. Across the board, people unquestionably want to make sure that the partners are

involved in this. We do not want to delegate this, because the firm thinks that this is too important an issue, and the partners will continue to be the stewards of this exercise.

We're hoping that we will make progress, but so far, it's been a very interesting experiment.

ANNE ROBINSON: Can I make one last comment, particularly in light of the way you presented the question to me initially, and that's that there are practical realities for in-house legal departments in attempting to achieve greater diversity and inclusion. That includes the fact that law firms are often our pipeline for talent. It's not simply an issue of making sure that you have what is traditionally considered supplier diversity, but it's also a practical enabler or barrier to our ability to achieve diversity and inclusion in our respective organizations, if law firms don't have and cultivate diverse talent in their populations, as well.

One of the things we do, in addition to making clear our expectation that our partner firms have diversity, is that we partner with them. This isn't *their* problem to solve or *our* problem to solve, but it is our *collective* problem to solve, and to make sure that the *industry* reflects diversity and inclusion, and celebrates the achievements of diverse lawyers and engages diverse lawyers, because it makes the industry better.

No constituent can do it alone, and we look to our law firms as partners in making the change across the board.

KAREN TODD: Thank you. Does anyone in the audience have a question that they would like to ask?

AUDIENCE MEMBER: What is your view of two practices at firms that are lagging in terms of diversity, one is mandating that a certain percentage of the management or board will have a diverse composition, or the number of people that serve at the board level, must have diverse candidates. Do you think that's a productive practice, or is it ultimately counterproductive?

GRACE SPEIGHTS: I think it's counterproductive, and it may be illegal, but I'm not here to give legal advice.

However, there is nothing wrong with and I encourage what we call "diverse slates." The Mansfield Rule – I'm sure the law firms here know about the Mansfield Rule – and what that is asking you to do is to broaden the pool of people that are considered. Making sure, or hoping, that you at least have diversity in the pool that you are considering. If you continue to broaden the pool and get people ready for that pool, you should see some improvement in hiring and promotions over time.

ANNE ROBINSON: I'll also just add, with respect to board composition, that while we have joined the 30% Club, which suggests that boards really should have 30% gender diversity on their board, we focus on equality through our engagement. I mentioned in my earlier remarks that the most effective way to influence the boards

of directors in our portfolio companies is to sit down and talk with them about what we think reflects good governance practices.

Year over year, the biggest exercise goes back to that self-assessment, and making sure that they are looking at where they need different skills, different backgrounds, and different characteristics that will enhance the effectiveness of that board. We believe that there is a direct correlation to gender diversity, but what we focus more on is the quality of the conversation and the willingness to really engage in deep self-exploration at the board. We don't vote against board slates unless we feel like the real exercise from a self-assessment process isn't there.

If companies year-over-year are really doing the work to look at the skills and backgrounds that will most effectively allow them to provide the right kind of oversight, we think that it will yield 30% gender diversity. It's really when we aren't having a good-quality conversation, and they're not producing the results, that would result in the more direct voting behavior.

The last thing I would say about that is that recently, California passed legislation requiring boards to have gender diversity. I don't know what and whether that will withstand legal challenge. It was a reflection of the frustration, less around the outcome, but the quality of the conversations with the companies headquartered in California, on the need and the value of gender diversity.

Again, as long as boards are pursuing having the best, most comprehensive skills needed for oversight, we continue to work with them.

GRACE SPEIGHTS: I would just add on that with respect to the California statute, in signing that bill, the governor questioned the legality of it. [LAUGHTER]

KAREN TODD: Do we have another question from the audience?

[AUDIENCE MEMBER]: How many of you brought your HR people with you? Good job. [LAUGHTER]

I believe that the three most important departments in an organization are finance, legal, and HR. Why? The finance people take the money. The legal people make sure that contracts and things are being kept at a great stature, and HR people take care of the people.

We talked about affinity groups. How many of you have affinity groups that involve yourself in the business? Can you explain how they do it?

PAMELA MARCOGLIESE: From the law firm perspective, our affinity groups, first of all, are voluntary, so anybody can participate – you need not be an actual member of that affinity group – it's open to all. Secondly, they are across the board, so they include the people from the highest ranks of the organization all the way down to the lowest ranks of the organization. They are focused on issues of daily life, and that includes your experience at Cleary Gottlieb, but that also includes how we interact with our clients and other experiences. Across the board, it depends a little bit on your definition of the business, those issues are completely integral to how the business of Cleary Gottlieb runs.

JEROME MCCLUSKEY: Yes, at Milbank, we view the affinity groups – all law firms have this same structure – as a platform for all of the diverse members of the affinity group to develop the skills they need to be successful in the firm. There are a couple of ways we do that. The affinity group, obviously, is a support network for the internal associates to share best practices, to just be helpful and be allies for one another.

Our affinity group is also a platform or a way to engage with clients, so we have lots of affinity group events with clients. As Anne mentioned, we try to partner with our clients and go hand-in-hand because the partners in the firms have the same goals that we have. We just need to break down the silos and try to collaborate that way.

As a matter of fact, we invited a Vanguard internal counsel to meet with some of our affinity members recently and sit one-on-one and have that conversation. That's where you have the most impactful exchanges.

The affinity groups need to be more than internal focus. We try to drive the mission, using the platform of the affinity groups, in making sure that they have the investment and the skills and the resources and support to build up their skill set as lawyers.

[AUDIENCE MEMBER]: That's exactly what I wanted to hear. [LAUGHTER]

I wanted the group to hear that you're going beyond the internal focus – that the affinity groups can also bring dollars and cents to your organization. Thank you very much.

KAREN TODD: Thank you for that question.

[AUDIENCE MEMBER]: Good morning. I wanted to get your thoughts on the #MeToo movement and that being a cultural setting that we're in, in terms of power dynamics and who's representative at the top. You're talking about different diversity initiatives such as internally fostering an environment where you are culturally shifting paternity leave to match the amount of maternity leave that individuals are able to take, and that you're meaningfully giving them the tools they need to continue to not get – "mommy tracked" is the term – it's used because that directly feeds into who is at the top and is able to change the culture in an organizations. Your thoughts in terms of initiatives that you're doing?

GRACE SPEIGHTS: All of that. [LAUGHTER]

The biggest shift has been making sure that there is no "mommy track" and we've also made improvements in terms of leave. The biggest issue, and the reason why maternity leave and the mommy track were issues is that everybody looked at it as a woman's issue. Men have children too and can be just as involved in the lives of their kids. Trying to make sure that our men feel comfortable taking leave when they have new kids or need time off to do certain things is important. Then convincing them it's *okay* to do it,

because it is a real issue. Fortunately, we're starting to see situations where the men are doing the exact same thing. Getting rid of the mommy track is crucial. There cannot be a stigma associated with taking time to care for your children and then coming back. Fortunately, we are at a point where we have women who work less than a full-time equivalency, but they are still on track. They make partner; they're promoted into partnership; then they work as partners on less than a full-time equivalency.

KAREN TODD: John, can you tell us how that's changed at your firm? What is the evolution you've seen?

JOHN BAUMGARDNER: The initial evolution started with the recognition that people can have a 40-year career and be productive lawyers if they take nine months or a year-and-a-half off. That was a gating issue for a lot of big law firms which were very demanding on their associates. The second one was the stigma associated with taking time off for paternity leave. I'm not sure we're out of that problem yet. As we get bigger and more institutionalized, we hope that we're doing that, but the gating issue was the non-recognition that you can have a long career and be a very productive partner-level lawyer with a young child/pregnancy time-out. That was the hardest issue.

KAREN TODD: Natasha?

NATASHA KOHNE: I would say, also, along the lines of maternity leave, the dialogue that we've been having is, it takes time to ramp up and ramp down. It's not really about the maternity leave; it's the time beforehand and afterwards. When the company or the law firm is evaluating performance, they have to take this into consideration. Obviously, you have to consider how that absence from the workplace might impact future work down the line. That's an issue that we're discussing and we're tackling.

Another issue that is probably not talked about as much is the reaction to the #MeToo movement. Our chair is a woman, as well; she's a powerhouse; she's championed all of these issues. She wanted to address the pendulum when it swung in the other direction, which is individuals who in reaction to the #MeToo movement, decided that saying nothing was better than saying anything, because there was a fear that whatever that was going to come out of their mouths would be misinterpreted. That was something that our chair addressed and discussed, that we understand that there is a reaction to every movement and staying quiet is not the right approach.

Those are some of the unique aspects of the issues that we're tackling.

ANNE ROBINSON: I would make one last comment from the perspective of directors going back to that, to the overall focus on succession planning and talent and making sure that management is looking to shore up deploying the best talent against the increasingly global and complex issues presented to most companies. If you really focused on identifying the best talent, then you're going to put in place strategies and

support vehicles to make sure that you have the broadest set of talented employees, and that they have the support that they need.

I would cite examples in the pursuit of identifying and supporting that broad talent base by Chase, for example, who, some years ago, implemented a return-to-work program. They wanted to ensure that they could identify talent in the population that had skills that they didn't have internally. It happened that a number of the resources in that population were women who had taken substantial time off to either care for their parents or their children, and so they created a program to reintegrate those women into the workforce. It was carefully curated to identify people that they thought would be really value added to the organization, but was structured to care for some of the specific requirements that they needed, including acclimating yourself with technology on day one and making sure that you were part of a team where the flow of work was more flexible and could accommodate your reintegration.

> "One of the hallmarks of leadership development at Vanguard is our rotational culture. We encourage our crew to move around the company, and around the country, and around the world. We are facing complex challenges all over the globe, and we need the broadest perspectives in order to solve them."
>
> *– Anne Robinson*

Law firms and companies should be focused on the acquisition and support of the best talent, and the programs and strategies needed to do that will flow from there.

GRACE SPEIGHTS: On the Chase return-to-work program, that is a great program, and, in fact, we have hired several associates from that return-to-work program at Chase.

KAREN TODD: I want to thank our panel today for not only sharing their expertise, but their views on how we can change things in the corporate area, as well as in the law firms and the legal departments. I want to thank the audience for coming. It's very appreciated. I want to give a final round of applause to everybody up here. [APPLAUSE]

Natasha Kohne

Partner

Akin Gump
STRAUSS HAUER & FELD LLP

Natasha G. Kohne serves as a co-leader of Akin Gump's cybersecurity, privacy and data protection practice which was named among the top cybersecurity practices in 2017 by BTI Consulting. Ms. Kohne's practice also focuses on investigations, litigation and international arbitration often involving complex multi-jurisdictional and international problems. Ms. Kohne has been recognized by the *Daily Journal* as one of California's top women and top cyber/artificial intelligence lawyers and serves on the firm's management committee and innovation committee.

Spearheading the cybersecurity groups' international efforts, Ms. Kohne represents clients in the U.S., the Middle East and other international markets in cybersecurity related matters, including risk assessments and the mitigation and management of cyber intrusions and related privacy and security incident response preparation. She advises on data breach investigations and enforcement, Securities and Exchange Commission (SEC) cybersecurity compliance, legislative and regulatory requirements and processes, privacy and data protection compliance, as well as related litigation. Ms. Kohne is heavily involved in U.S., international and cross-border litigation, arbitration and investigations across various industries including technology, financial services, investment funds, retail, health care, energy and infrastructure. More generally, she is regularly engaged in disputes, risk management, compliance and corporate advisory work on behalf of public entities, multinational clients, high net worth individuals/family offices and private companies.

Ms. Kohne routinely serves as an international arbitrator and has extensive experience over the years in government and regulatory investigations and in complex commercial disputes before an array of courts and international tribunals in various countries in the Middle East, Europe and North America.

Furthermore, Ms. Kohne has led several reform projects for governments, including in emerging areas such as cybersecurity, privacy and data protection, asset recovery, judicial procedure and construction. She has experience in both civil law and common law jurisdictions.

Ms. Kohne is a Certified Privacy Professional (CIPP/US) with the International Association of Privacy Professionals.

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Akin Gump pursues excellence by anticipating client needs, by shaping the playing field, by innovating solutions.

Akin Gump has, in the span of a single generation, grown to become one of the world's largest firms, with more than 900 lawyers practicing in an array of practices and industries in offices around the globe. Our firm has available a short film that is a journey through the history of Akin Gump, featuring stories of those whose hard work, dedication and commitment helped transform the firm into the global presence it is today.

Our vision is to be a recognized leader in diversity, known in the business community and the profession as an exceptionally inclusive organization. Our commitment to diversity is steadfast. We strive to create a culture of inclusiveness, where differences are seen as strengths, where varied perspectives are welcomed and where our workforce reflects the diversity in our world. Diversity is consistent with our goal to become a highly successful firm and essential to achieving that success.

Akin Gump's *pro bono* commitment to serving clients in need irrespective of ability to pay is unequivocal, from asylum applicants fleeing persecution to U.S. servicemen and –women, from the indigent in our nation's largest cities to disadvantaged schoolchildren working to better themselves.

Our commitment to environmental responsibility reflects Akin Gump's connection to the issues affecting the community in which we work as well as our clients. In 2012, Akin Gump joined an elite group of Am Law 100 firms actively committed to reducing the impact of our office operations on the environment by joining the ABA-EPA Law Office Climate Challenge.

Pamela Marcogliese

Partner

CLEARY GOTTLIEB

Pamela L. Marcogliese's practice focuses on corporate and financial transactions, particularly capital markets matters, along with work on a range of corporate governance matters.

She has considerable experience in initial public offerings and other public and private capital markets offerings, representing both issuers and underwriters. She has played an integral role in a number of high-profile capital markets transactions over the past few years and has been recognized for her work on behalf of clients. Notably, *Law360* named Pamela one of its "Rising Stars" in 2015 for her leadership "at the forefront of complex offerings."

Pamela also has considerable experience in corporate governance matters and has recently been noted for her corporate governance work by *The Legal 500 U.S.* She regularly advises boards of directors and management on a variety of topics, including disclosure and compliance matters; stock exchange listing requirements; board composition and director independence; shareholder engagement, shareholder proposals and proxy season trends, including charter and bylaw amendments; environmental, social and governance (ESG) issues; and proxy access.

In addition, Pamela does considerable work as part of the firm's Cybersecurity and Privacy practice, regularly advising clients on a variety of governance and compliance issues, including best practices, preparedness and risk mitigation, disclosure and crisis management; and the firm's Financial Technology practice, focusing on the U.S. securities law implications of blockchain technology and the issuance of digital securities.

Pamela is a frequent contributor to the *Cleary M&A and Corporate Governance Watch* blog and regularly lectures and writes on corporate governance, cybersecurity and blockchain topics.

Pamela joined the firm in 2006 and became a partner in 2013.

Cleary Gottlieb Steen & Hamilton LLP

Cleary Gottlieb is a pioneer in globalizing the legal profession. Since 1946, our lawyers and staff have worked across practices, industries, jurisdictions and continents to provide clients with simple, actionable approaches to their most complex legal and business challenges, whether domestic or international. We support every client relationship with intellectual agility, commercial acumen and a human touch.

Clients know Cleary for our signature approach to serving their needs:

- Skilled resolution of high-profile, complex legal and business challenges
- A sharp focus on the issues that matter most
- A commitment to addressing our clients' immediate needs and advancing their longer-term strategic goals

One World, One Firm

We have 16 offices in major financial centers around the world, but we operate as a single, integrated global partnership. All Cleary clients enjoy access to the full resources provided by our offices and lawyers worldwide.

Partnership and Firm Culture

Our firm's organization and governance emphasize democratic and participatory ideals. To promote the full application of Cleary's resources in the best service of our clients' needs, we operate on a seniority-based compensation system. We strive to admit to our partnership lawyers with demonstrated qualities of character, leadership and intelligence, who have the proven legal skills that will enable them to contribute significantly to our practice over the long term.

Grace Speights
Partner

Morgan Lewis

Grace E. Speights handles high-profile and high-stakes workplace matters for many clients and is often called upon by clients for crisis management assistance. She defends clients against employment discrimination claims – particularly class claims – and claims of discrimination in public accommodations. Grace represents clients in systemic investigations and litigation brought by the Equal Employment Opportunity Commission (EEOC). She also counsels on best practices for corporate diversity initiatives. Grace is the leader of the firm's labor and employment practice, managing more than 250 lawyers across the firm. Grace leads the firm's multidisciplinary workplace culture consulting team of more than 30 lawyers across offices and practices. Combining employment and workplace law experience with investigative expertise, this team helps employers effectively investigate, defend against, and develop advance plans to avoid or minimize workplace crises stemming from claims of sexual harassment.

Grace has worked with clients in the financial services, media and entertainment, sports, retail, nonprofit, and legal services industries to manage serious internal investigations, conduct workplace culture assessments, and advise on crisis management and remediation of potential workplace issues. Grace has also conducted independent investigations of allegations on behalf of special committees of boards of directors and is counseling boards of directors and high-level executives on their responsibilities in connection with providing a sexual harassment-free workplace.

In the legal services industry, Grace is recognized as the "lawyer to the law firms," skilled in identifying trouble spots and implementing solutions, identifying areas of workplace risk for law firms before they reach the tipping point, and in defending law firms in employment-related litigation.

With litigation and trial experience, Grace has represented clients before U.S. federal courts nationwide and local courts in the D.C. metropolitan area.

Morgan Lewis & Bockius LLP

At Morgan Lewis, we work in collaboration. We work around the clock and around the world—always ready, always on – to respond to the needs of our clients and craft power in North America, Asia, Europe, and the Middle East, we work with clients ranging from established, global Fortune 100 companies to enterprising startups.

We provide comprehensive litigation, corporate, finance, restructuring, employment and benefits, and intellectual property services in all major industries, helping clients address and anticipate challenges across vast and rapidly changing landscapes. And we approach every representation with an equal commitment to first understanding, and then efficiently and effectively advancing, the interests of our clients and arriving at the best results.

Our team encompasses more than 2,200 legal professionals, including lawyers, patent agents, employee benefits advisers, regulatory scientists, and other specialists. If a client has a question, we'll immediately find the person in our global network with the answer. If there's a shift in the legal landscape, we're on top of it, and our clients will be, too.

We focus on both immediate and long-term goals with our clients, harnessing our resources from strategic hubs of commerce, law, and government across North America and in Asia, Europe, and the Middle East. You'll find us everywhere from New York to Dubai, San Francisco to Beijing, and London to Washington.

Founded in 1873, we stand on the shoulders of more than 140 years of achievement, but we never rest on our reputation.

Jerome McCluskey

Partner

Jerome McCluskey is a partner in the New York office of Milbank, Tweed, Hadley & McCloy and a member of the firm's Leveraged Finance Group. Primary Focus & Experience

Mr. McCluskey focuses his practice on representation of banks and other financial institutions in senior lending transactions. Recognized as a noted practitioner by *The Legal 500*, Mr. McCluskey has extensive experience advising clients from a wide range of industries in connection with domestic and cross-border financing transactions, including leveraged buyouts, recapitalizations, bridge and mezzanine financings, and DIP and exit facility financings

Mr. McCluskey is the co-author of *The LSTAs Complete Credit Agreement Guide*, Second Edition, an industry-leading guide for the global syndicated credit market. Mr. McCluskey is a former member of the Commercial Law and Uniform State Laws Committee of the Association of the Bar of

the City of New York. He is a member of the Stanford Law School Board of Visitors, the Audubon Alaska Board and the Board of Trustees of the Boys Club of New York. Mr. McCluskey was also selected as a David Rockefeller Fellow for the Class of 2015-2016 by the Partnership for New York

Milbank

Milbank, Tweed, Hadley & McCloy LLP

Driven to deliver exceptional results for our clients, we push boundaries and challenge assumptions. That's been core to our ethos since our founding in 1866. It fuels how we work and define ourselves, and it informs our growth and evolution as a firm.

We keep impressive company. Our clients are market leaders, global innovators and paradigm-shifting entrepreneurs that advance emerging industries. Surrounding ourselves by the best inspires and challenges us to constantly reimagine what's possible.

Around the world, in industry after industry, Milbank's outstanding record of making great things happen for clients has earned us consistently high rankings and myriad top awards. Accolades from publications like *The American Lawyer*, *Chambers* and *International Financial Law Review* attest to the firm's well-deserved reputation.

We know that unique perspectives and diverse life experiences combine for powerful results. At Milbank we celebrate our individuality and the commitment to excellence that we all share.

Fostering an inclusive environment—one where everyone feels valued—is a priority for our firm. Through our affinity groups, mentoring program, and other initiatives, we help our attorneys develop professionally and build lasting relationships.

"As a global firm, we recognize that a diversity of perspectives strengthens our teams and benefits our clients." - Jerome McCluskey, Diversity Committee Chair

For over 100 years, Milbank has helped those unable to pay for legal assistance, and we were among the first law firms with a partner dedicated to our pro bono practice. We help individuals and organizations overcome overwhelming challenges and we're honored to do so as often as we can.

John Baumgardner

Partner

SULLIVAN & CROMWELL LLP

John Baumgardner is engaged in a wide variety of corporate and securities matters and coordinates the firm's practice in the investment management area. He is also a member of the firm's Financial Services, Investment Management, Broker-Dealer and Commodities, Futures and Derivatives Groups.

Mr. Baumgardner has represented issuers, independent trustees, advisers and underwriters of dozens of U.S. -registered, publicly offered open- and closed-end investment companies, and currently concentrates on independent trustee engagements, including those sponsored by Fidelity Fixed Income Funds and Pioneer Investments. He has represented the Investment Company Institute, the principal trade association of the mutual funds industry, on some of its most important projects. Mr. Baumgardner's practice also includes representation of private equity and alternative investment funds and various U.S. -registered broker-dealers.

Mr. Baumgardner has been a frequent speaker or panelist at conferences sponsored by the Practicing Law Institute , Investment Company Institute and the New York City Bar Association. He was former chair of the Committee on Investment Management Regulation of the Association and is the Chair of the Association's Committee on the Investment of Funds.

Mr. Baumgardner has been named in *The Best Lawyers in America* for more than 15 years. He has also been recognized as a leading lawyer by numerous publications.

Sullivan & Cromwell LLP

Sullivan & Cromwell LLP provides the highest-quality legal advice and representation to clients around the world. The results the firm achieves have set it apart for more than 130 years and have become a model for the modern practice of law. Today, S&C is a leader in each of its core practice areas and in each of its geographic markets.

S&C's success is the result of the quality of its lawyers, the most broadly and deeply trained collection of attorneys in the world. The firm's lawyers work as a single partnership without geographic division. S&C hires the very best law school graduates and trains them to be generalists within broad practice areas. The firm promotes lawyers to partner almost entirely from among its own associates. The result is a partnership with a unique diversity of experience, exceptional professional judgment and a demonstrated history of innovation.

Clients of the firm are nearly evenly divided between U.S. and non-U.S. entities. They include industrial and commercial companies; financial institutions; public and private funds; governments; educational, charitable and cultural institutions; and individuals, estates and trusts. S&C's client base is exceptionally diverse, a result of the firm's extraordinary capacity to tailor work to specific client needs.

The outstanding professional quality of Sullivan & Cromwell's lawyers and work is evidenced by both our repeated selection by some of the world's most demanding clients for their most important legal matters and by our regular top ranking in independent surveys of our principal practice areas. Our multi-disciplinary approach distinguishes S&C from other global firms and allows us to provide clients with efficient and effective legal advice.

S&C comprises more than 875 lawyers who serve clients around the world through a network of 13 offices, located in leading financial centers in Asia, Australia, Europe and the United States. The Firm is headquartered in New York.