

Diversity, Equal and Inclusion General Counsels Forum Discussion Highlights.

The participants who attended a recent Vanguard General Counsel forum on Diversity Equality and Inclusion comprised something of a legal dream team. But it was the ideas, insight and anecdotes—not just their mighty resumes—that made the discussion so compelling.

At the forum, GCs including Tom Sabatino (Tenneco), Bob Bailey (Datavant), Caroline Tsai (Western Union), Joe Hamid (Debevoise and Plimpton) and Mary Ann Hynes (Dentons) broke into groups with other attendees and shared strategies and observations about improving DEI. Then they reported back to the group at large.

The following transcript, edited for clarity and length, features highlights from the exchange.

Tom Sabatino: This is an incredibly important topic. It goes without saying it's an even more important topic, given the events of the last year or so. I think that having the collective wisdom of all the people in this moment, with the different angles and perspectives that they have, is really critical. There's no easy answer to all—it's going to be a whole lot of blocking and tackling and individual efforts by everyone. But if we all move in the right direction, and have the right mindset, and the right inclusive attitude, then we'll make progress. If we don't have an inclusive attitude, then we're going to struggle. And we should probably try to figure out if those of us whose teams don't have inclusive people on it, whether they should actually still be on the team.

Caroline Tsai: Collectively as a group, I would say that the GCs who chose to join this discussion, clearly are very committed and playing an important role and serving as C-suite leaders to impact not only momentum in driving change and inclusive environments in their companies but also more broadly. We actually spent some time talking about doing it in a thoughtful way. How do we balance driving that and making sure we strike a balance where we don't in any way create an environment where other stakeholders feel like the conversation is chilled because the executive team and or the board is there?....I think what works, generally, is having that open, transparent line of communication with your employees and stakeholders. One of the outcomes of having GCs and the law department engaged in this is that we find it to be incredibly positive for our employees in terms of their level of engagement and development. That's actually a nice outcome. When we lead DEI initiatives, and the employees see the difference we're making — not only in our law departments but more broadly to drive it within our companies—we're finding that it really motivates and inspires our employees.

Joe Hamid: We had a great discussion in my group. I'll try to pull in a couple of ideas into one big insight rubric. I think there was a recognition in the room that filling an open spot on the team is one of the most concrete and impactful actions that GCs can take to drive, D E and I. When you're doing that, it's very important to be, on the one hand, disciplined and explicit about the criteria that you're applying as a way of fighting implicit bias. But also doing what you can to open the aperture of people that you are considering. If you have measurable goals in that regard and are insisting on having diverse panels of people that are being considered for a position, giving that instruction to your search firms makes it more likely to get a diverse

candidate pool. Then the evidence is pretty overwhelming that if you are considering a diverse candidate pool, and you're applying objective criteria to how you evaluate the people in that pool, you're gonna get results.

One thing that seemed to be a consensus in my breakout room was that it's really hard to push your agenda if you don't have your own house in order first. To be a credible change agent and a credible leader, you do need to look at your own organization and have that in good shape before you can push things elsewhere. But the other insight that people talked about is the recognition that GC is naturally a part of the executive leadership team and sets an example. And the way you kind of function in that role — how you set your example, how you call things out when you see them, is a really important aspect of leadership.

Finally, participants at the forum heard from Ken Banta founder and president of the Vanguard network, about what his small group discovered,

Ken Banta: One very significant thing that I think got across from everybody was the criticality of rigor in this. For example, we heard one company has had a goal of having diverse slates for a good period of time, but now it's required. That has made a huge difference in what really happens. And so that rigor is kind of a leitmotif of what we talked about. Another element that I found really interesting was talking about the importance of sending the right signal through the suppliers that you use. When looking to hire law firms, one of the colleagues made a point of going to an all-women law firm, which had tremendous quality and tremendous output, but it was setting a stake in the ground. You could easily have done it differently and gone to a firm that had some women on the staff, but this was going to an all-women firm, and for a male GC, it probably sent a tremendously important signal.

Tom Sabatino: Getting the right people in the right seats, obviously, is a critical first step. But it's how you act when you think you have the right people in the right seats when you've got a very diverse organization. It's how you treat the participants who are there. And what I really focus on a lot is how do you make sure that those putting up barriers to full inclusion by all members of the team—either intentionally or unintentionally—are held accountable. You need to make sure that every participant has a voice in the process and is heard. And that, to me, is always been the biggest issue I've encountered — making sure that you hold people accountable to that and call them out when they give credit to the male member of the team and not the female one who actually came up with the idea in the first place. I've seen that happen hundreds of times in big and small ways.

Bob Bailey: As leaders, we lead our teams but we are also leaders within the organization. I think this notion of holding people accountable for those situations where they fail to operate in an inclusive way—that accountability can be achieved through actual correction, but also through education. I've had this happen to me, and I've seen it work well in situations where we engage in unconscious or less than thoughtful activities—like selecting a venue for a fun event that is sports related, which has the effect of excluding a group of people who, frankly, have less interest in that. And doing that on a repeated basis. I have been told, "Bob, you know what?"

That's something that other people notice." That has helped. I've always told my team that I want to know when my jokes aren't funny. And I don't just mean bad jokes. I mean, tell me the truth when I need to hear it. So I think opening yourself up as a leader in that regard helps tremendously because it puts you in a position to be held accountable through education. We should also do that with our peers, on the executive teams and also with our teams. I think the other point I had raised is that, in many cases, we as leaders get to make choices and decisions. And so focusing on the external counsel piece of it for a moment—there is just a subtle message that gets sent when we select an external counsel who is a “diverse” hire. We don't need to make a big deal of it, but just get it done.... Just doing it for the first few times is actually something that will help significantly.

And the last thing I'll say is, many of us are with big companies, and I should state the obvious even though it's not so obvious. When we try cases defending our companies, often having someone who is, just to be very clear, not a white male, defending the company in front of a jury is more advantageous to the company. So we as lawyers, and as general counsels can make decisions that favor diversity and inclusion that are in fact, significantly advantageous to the company and the way it presents itself in court.

Mary Ann Hynes: I think if we can feel a shared responsibility for the success of our minority colleagues and employees, that will make a huge difference. You never forget anyone who did something really nice for you. So, I think that goes a long way. And if we were to adopt that spirit, I think it would be very helpful. And we'd keep people a lot longer.