North Carolina
Banking Institute

Volume 23 | Issue 1 Article 5

3-1-2019

A General Counsel's Perspective on the Importance of a Long-Term Focus and an Open Culture

John G. Finneran Jr.

A GENERAL COUNSEL'S PERSPECTIVE ON THE IMPORTANCE OF A LONG-TERM FOCUS AND AN OPEN CULTURE

JOHN G. FINNERAN, JR.*

The UNC Banking Institute continued a longstanding tradition of hearing after-lunch remarks from a bank counsel. John Finneran of Capital One shared his thoughts on maintaining a long-term perspective and the overriding importance of building an open and inclusive culture. The editors are delighted to publish these remarks so that they are available to a wider audience.

I. INTRODUCTION

Thank you to the University of North Carolina School of Law's Center for Banking and Finance for inviting me to address this audience. I am honored to be here.

In 1994, I had the good fortune to be picked by Rich Fairbank to be Capital One's first General Counsel. I served in that capacity until February of this year when I transitioned to the role of the Company's Chief Risk Officer.

Just last week marked the tenth anniversary of the distressed purchase of Bear Stearns by J.P. Morgan. That event came to mark for many the beginning of the Financial Crisis and the Great Recession that followed. Rather than discuss the regulatory response to those events and how the laws and regulations put in place in the last ten years affect our

---

*John G. Finneran, Jr. is Corporate Secretary and a Senior Advisor at Capital One Financial Corporation and leads its Corporate Governance organization. Mr. Finneran joined Capital One in September 1994 as General Counsel and Corporate Secretary, a position he held until February 2018, when he was named as Chief Risk Officer for a transitional period from February 1 through August 1, 2018, during which time he led the company's Risk Management organization and oversaw its credit, compliance, operational, market and liquidity, and enterprise risk management functions. Prior to joining Capital One, Mr. Finneran served for three years in progressively senior legal positions with the Federal Deposit Insurance Corporation. Mr. Finneran began his legal career with ten years in the Washington, D.C. office of Clearly, Gottlieb, Steen & Hamilton. He is a graduate of Georgetown University Law Center and the Pennsylvania State University.

industry and the financial marketplace today, I thought I would offer some thoughts on a few things that are enduring no matter what the economic or regulatory environment. The two things I will discuss are maintaining a long-term focus on business strategy and objectives, and building a culture that ensures an open, inclusive environment where every associate feels a sense of belonging and speaks up freely to help the business get the best results possible and avoid risks and surprises along the way.

II. TIME AS GENERAL COUNSEL

But before I get into those two topics, I should provide a little more context on my journey at Capital One—as whatever thoughts I have to share on keeping a long-term perspective on business strategy and building an open and inclusive culture are very much shaped by that journey.

My time as Capital One's General Counsel spanned from right before our initial public offering and spin-off from Signet Bank in 1994. I served in that role from those early start-up days through the periods of significant organic growth in the late 1990s and early 2000s, and during the transformation of the company through a series of strategic acquisitions from 2005 through 2012. Capital One is the only top ten Bank that is less than 100 years old—and we are only in our twenty-fourth year. And the only top ten bank that remains founder-lead.

In those twenty-four years, we went from a credit card company with $4 billion in assets to one of the largest banks in the U.S., with $360 billion in assets and over 70 million customers. And so we now enjoy all the privileges and challenges of a bank that is a "Systemically Important Financial Institution" or "SIFI" under the Dodd-Frank Act.

In addition to managing that growth and expansion of our business, like everyone else we had to manage our way through the Financial Crisis and the Great Recession, and like others, we have had our share of regulatory challenges to address along the way.

Although to the outside world, my job did not change in the years I served as General Counsel, what I actually did at work necessarily changed dramatically every few months to keep up with our growth and the changes in the external environment. We went from a department of four people who collectively were responsible for all legal and compliance work (as well as public relations) in 1994 to now a legal department of over 335 associates.

III. LONG-TERM FOCUS

To say I foresaw all of that when I accepted Rich Fairbank's offer to join Capital One in 1994 would be a bit of a fish tale (even in today's world where it is ever more challenging to discern truth from fiction). Yet I knew then that Rich had the vision to build a different kind of financial institution. It was Rich's focus on long-term value creation, his belief in creating a values and mission driven company, and his commitment to serve the broader set of constituents of a public company—customers, communities, and employees, as well as shareholders—that drew me to Capital One. And it is his unwavering commitment to those principles that keeps me here.

Rich's focus on the long-term strategic positioning of the company has been unrelenting. One of the biggest, unresolved questions in business is over what time horizon must value be created for its owners. That question is most challenging in a public company where the capital for the business is provided by many different investors, many of whom have different time horizons for their expected returns and different tolerances for risk.

There have been multiple studies in recent years that demonstrate that many investors in public companies have shorter time horizons now than they had in the past. The average holding period for a share of stock on the New York Stock Exchange today is only four months—down from eight years in the 1960s, and down from twenty-six months when I started as General Counsel. There are very few investments that a management team can make in its business that will pay back that quickly.

That makes it very challenging for management teams of publicly held financial institutions to satisfy investors' expectations in the short and intermediate term and still make the investments necessary in technology, talent, marketing, and resilience that will ensure the company's success in the long-term. I have been fortunate to work at a company where the leadership has had a long-term focus and the ability to explain the longer-term strategy sufficiently to keep investors simultaneously satisfied, or at least satisfied enough, with the short-term results and bought into the promise of the strategic destination of the company and the investments needed to get there.

We are beginning to see hopeful signs that large institutional investors are reemphasizing the need for companies to drive sustainable, long-term growth. As one example, Larry Fink, the Chairman and CEO of BlackRock, sent a letter earlier this year to the CEOs of all the major public companies it invests in encouraging them to "not only deliver financial performance, but also . . . benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate."[1]

In his letter, Mr. Fink goes on to say how important a purpose or mission is to the long-term success of an enterprise.

> Without a sense of purpose, no company, either public or private, can achieve its full potential. It will ultimately lose the license to operate from key stakeholders. It will succumb to short-term pressure to distribute earnings and, in the process, sacrifice investments in employee development, innovation, and capital expenditures that are necessary for long-term growth.[2]

I think Mr. Fink has it exactly right. The more investors have the patience to allow management teams of well-run banks to make the investments needed to prepare for the digital world of real-time delivery of compelling products and services to our customers, the better all financial institutions will be positioned for longer-term success and to meet the emerging competition from non-banks for the hearts, minds, and business of our customers.

IV. CULTURE

Turning to the importance of building the right culture: Rich set out to build a company where mission, strategy, talent and culture are the driving factors of long-term success and I tried to model the design of the legal department at Capital One on those same key elements.

We set out to build a legal department which represented the kind of place where I would want to work if I were *not* the General Counsel.

---

1. Larry Fink, *A Sense of Purpose*, BLACKROCK (2017), https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter.
2. *Id.*

That quickly brings one's focus to the kind of talent we wanted to attract and to how we would interact as a team and with our business partners throughout the company.

Your goals as a new general counsel become crystal clear when you accept the inescapable fact of serving as in-house counsel: the good news is that you have only one client (that being the company, of course); the bad news is that you have only one client. Thus, the cost of not doing great work and adding value on every issue can become magnified. And, of course, you cannot simply say yes to everything; you have a responsibility to make the right judgments, and to be able to push back on bad ideas. So, it became very clear how important talent and culture would be to building a successful legal department.

On talent, we set out to hire really great lawyers—yes, they had to have the expertise we needed for certain roles, but it was equally important that they be great athletes with the ability to grow and to build expertise in other areas as our business needs were constantly growing and changing. One test we constantly ask ourselves on talent is this: If our legal department were spun off from Capital One as an independent law firm, would we be viewed as among the best law firms in America?

And, of course, our lawyers had to have the emotional intelligence skills to match any legal expertise they had—the ability to influence, communicate, and problem-solve in a collaborative way. At the end of the day, the department's success rested on every lawyer doing great work every day and having all of our business partners actively seeking out the legal team because we could help in many value-added ways. The success of the department as a whole depended on the success of each and every individual lawyer.

We needed to partner with the business well, bringing broader context to every problem—not just legal advice, but thinking about all of the potential risks that might need to be addressed—business, financial, reputation, or regulatory. Indeed, we needed to recognize that legal issues are not always the driving factor in a particular problem. For example, it is often the case that solving the reputational risk is more important than minimizing the legal risk. We needed to know where the leverage was in solving every problem and to catalyze the action necessary to find the best solution.

Culturally, we, like many others, expect our lawyers to collaborate well, and to bring in their colleagues whenever they need their expertise. But there are a couple of other things that may very well be particularly unique about the culture at Capital One.

The first is the ability of any associate to challenge another no matter how many levels of management may be between the challenger and the challenged. We try to create a marketplace of ideas. It is the idea that matters much more than the person who puts it forward. It is not unusual for an associate at Capital One to challenge in an open meeting any senior executive (whether the senior leader of a line of business or a staff unit and even including Rich). It is not only welcomed, but actively encouraged. We believe that helps ensure we do not miss something important in any decision we might make.

We actively seek the "wisdom of the crowd"—drawing in many voices on all issues—again to make sure we are getting perspectives from a wide variety of people.

We actually try not to get to a final answer too early in any debate, although we will try to "answer the case" every day with what we know as of that date and time and then come back with more information and maybe even additional people to weigh in the next day to get to a better answer.

Second, we try to never dismiss the ideas of those who might be critical of anything we do. For example, as a company, we actually embrace the regulators and have deep respect for their points of view—this includes the Consumer Financial Protection Bureau as well as the prudential regulators at the Federal Reserve and the Office of the Comptroller of the Currency. We believe that their interests are very often aligned with ours—treating customers fairly and the long-term safety and soundness and success of our company. And they have the advantage of having seen how others have addressed certain issues from which we can learn and get better. That does not mean we do not have discussions with our onsite examination team about how to best manage a particular risk most effectively within our company, but we generally embrace the notion that if the regulators have a concern about how we might be managing a risk, we do not dismiss that concern. We look for ways to address it and build it into the fabric of our operations in the way we manage the business.

We obsess about our blind spots, recognizing that every human being and every company has them. We actively try to look for information and data that might contradict whatever our preliminary answer might be at the moment. We try to be conscious that all human beings can suffer from confirmation bias—that is, interpreting all new facts in a manner to confirm your then current belief or hypothesis.

V. JOURNEY ON DIVERSITY AND INCLUSION

This brings me to the critical role that having people with diverse backgrounds, perspectives and ways of thinking and problem-solving plays in the success of the legal department and indeed the company as a whole.

At its heart, the business of banking is the business of managing risk. We have to do it well and it needs to be embedded in everything we do if we are to succeed in the long run.

For a number of years, we have been focusing a lot of time on building a truly diverse team at all levels of the company and making everyone feel included and like they belong.

To do this well, I have found it first requires some introspection, especially for those of us who are not members of a group that historically has been underrepresented in corporate America.

As a white male, I recognize that I have enjoyed privileges that have helped me throughout my life. I believe that I could not begin to understand the perspectives of people of a different race or gender than me until I expressly acknowledge the privileged status I enjoy as a white man. Even though I did not grow up in a family with much financial wealth, I have nevertheless enjoyed the privilege and head start offered in life simply because of my race and my gender. Privilege comes in many forms and it takes an openness to examine the sources of one's privileges to truly understand the perspectives of someone who has a different racial or ethnic background or is a different gender than you. And it is only when we can get to that level of understanding that we will be able to treat all human beings as equal to ourselves.

That perspective has only been strengthened by the events over the last few years that have thrust issues of gender and racial equality back to the forefront of our national conversation. Whether we choose to acknowledge it or not, all of our employees are very much aware of these issues and how they affect the workplace and their opportunities to succeed in their jobs and advance in their careers. That fact alone should make diversity and inclusion a business imperative for all of our companies. We can only get the best talent if we attract and recruit peoples of all genders, races, ethnicities, and sexual preferences or identities. And, that talent can only do its best work if we have workplace cultures in which all people feel included, have a sense of belonging, and know that their voices will be heard and that their opinions matter.

There is tremendous power in large numbers of people doing the right thing, and what will move the needle most on workplace culture is to work toward a common goal where there are no longer any underrepresented groups—whether that means race, gender, background, experience, or any other characteristic that may distinguish any one of us. This change will not happen overnight, but that's our long-term goal—we should not rest until we get there.

Diversity and inclusion isn't only the right thing for our associates, but also it's the right thing to do for our business. It not only contributes positively to the creation of ideas and their implementation and, the innovation we can all drive in the industry—I have seen it play a significant role in managing risk.

Diverse perspectives, along with an inclusive environment, have been proven to be an incredible driver of success. In the construction industry, it leads to higher safety scores and fewer accidents; among emergency responders, there's better preparedness, crisis management, and disaster response; in the medical field, not only does it yield quicker, better outcomes for patients, but more lives are saved.[3] And the financial industry is no exception.

Different perspectives, backgrounds, and experience play a key role in identifying risk. Market trends and regulation continue to shape our industry to various degrees, but having diverse expertise—in an environment where all ideas are not only welcomed, but encouraged—embedded in our businesses enhances our ability to control or limit risks and reach better business decisions.

Successful risk management is about having the right balance of hard and soft skills. It's no longer sufficient to only have the technical knowledge in the law, or in risk and compliance. We need associates that have the experience, the perspective, and the leadership style to think collaboratively and creatively, to influence decisions, and to effect real change—all through the unique lens of their individual perspective.

---

3. *See Why Inclusion Is So Important for Safety*, SKANSKA (Nov. 10, 2015), http://blog.usa.skanska.com/why-inclusion-is-so-important-for-safety/; Sylvia Ann Hewlett, Melinda Marshall & Laura Sherbin, *How Diversity Can Drive Innovation*, HARV. BUS. REV., (Dec. 2013), https://hbr.org/2013/12/how-diversity-can-drive-innovation.

And so, it's the confluence of all these things that have contributed to whatever success Capital One and its legal department have had—the importance of a long-term focus, talent, open culture, and the role inclusion and belonging plays in having a great team—and the ability of that team to drive great results for the company to both advance the strategic objectives of the company and manage risk well.

Thank you again for inviting me today to share a few thoughts.