

On September 11, NACD Chicago Chapter members and guests filled the Sidley Austin Conference Center to discuss one of the most pressing and visible issues facing board rooms today—how to respond to **implicit bias in the workplace and the rise of the #MeToo movement**. Given the recent round of shockwaves created by the resignation of Leslie Moonves of CBS, there was palpable anticipation in the room as our moderator **Christie Hefner** introduced an outstanding panel: **Ami Wynne**, partner at Sidley Austin and global co-leader of its employment practice; **Sheila Talton**, CEO and founder of Gray Matter Analytics and currently serving on the boards of Deere & Company, Sysco Corporation, Wintrust Financial and OGE Energy Corp; **Dennis Chookaszian**, retired chair and CEO of CNA Insurance Corporation and currently a director on four public companies as well as an adjunct professor at University of Chicago Booth School of Business, teaching courses in corporate governance. Christie Hefner is well known for the advancement of women into key roles while Chair and CEO of Playboy Enterprises, a successful tenure making her the longest serving woman CEO of a U.S. public company. She continues her service on several boards and is a tireless advocate for women, high governance standards and strong and just public policy.

Christie began with opening remarks on the reputational damage inflicted on companies by leadership that has crossed the line. Accompanying a loss of trust and credibility, there have been major losses in shareholder value in public companies. Regardless of the potential impact and harm to the enterprise, surveys of corporate directors show that sexual harassment and implicit bias issues are rarely discussed at the board level. So Christie posed the first question, which led to a lively discussion.

### ***What should directors be asking to have a better line of sight into potential problems?***

**Request data that can give clues to patterns.** Board members can gain insight into their company by asking key questions around 1. Employee engagement surveys 2. Exit interviews 3. Turnover statistics around gender, race and age 4. Hotline reports 5. History of past settlements 6. Diversity/inclusion/pay equity studies. The absence of this information can also signal a potential vulnerability.

### **How should a board interact around these issues? What committee reviews them?**

The consensus was the first line of overview would be the governance committee and alternatively the risk committee if a company has one. Most thought the General Counsel would be the company representative in these discussions. There might be value in having HR report directly to the board, however...

**HR works to protect the company not employees.** HR should be restructured to eliminate conflicts of interest. Many issues are never surfaced to management out of fear of retaliation or the belief that the employee is powerless against the higher ranks. Hotlines are equally problematic based on the low volume of usage at most companies. One panelist noted that when a company changed its hotline to a "Speak Out" line, traffic really increased. This chat format encouraged a regular reporting flow that could be monitored for patterns.

**Does harassment training work?** This was hotly debated among the panelists. On one side, training could be effective if 1. It is in-person and tailored to the company, not an off-the-shelf online training program. 2. It focuses on awareness and communication. 3. The purpose is not to have all the boxes checked for compliance. 3. Execs are not exempt from the training and 4. It encourages accountability before the **ultimate triage**—more on this later.

**Don't rely on the carrot, you need a stick as well.** While everyone agreed that the tone is set at the top, saying that our company has zero tolerance is not the same as enforcing it. The **ultimate triage** is a series of very serious deterrent measures. For example, in Level One there are no second chances. Level One violations might be proven harassment of any kind, fraud, etc., and require immediate dismissal. Level Two gives you a second chance for situations like alcoholism, etc. Regardless of how a company constructs its playbook, it must be enforced without exception.

**All actions against employees must be thoroughly, quickly and independently investigated.** The consensus was unanimous with emphasis on an independent investigation conducted by professionals, and a due process in place.

### **Final Takeaways**

- Many discussions at our NACD meeting are not taking place in board rooms and they should be.
- The world is watching how boards respond to issues like never before.
- Boards must have conversations around what implicit bias looks like—is it reflected in compensation, hiring, the culture, the boardroom itself?