The Economic Club of New York

115th Year
671st Meeting

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July 28, 2022
Webinar

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Introduction

President Barbara Van Allen

Good afternoon. Actually, it's good morning, excuse me. And welcome to the 671st meeting of The Economic Club of New York. I'm Barbara Van Allen, President and CEO of the Club. It's an honor to be here with all of you in our milestone year, our 115th anniversary. The Economic Club of New York is the nation's leading nonpartisan forum for discussions on economic, social and political issues. A special welcome to members of the ECNY 2022 Class of Fellows – a select group of diverse, rising, next-gen business thought leaders. We also have students joining us from various universities, including Rutgers University.

Today's very important and timely discussion will focus on corporations and the positions they may or may not take on social and political issues. The idea for this event came from a conversation with Club member Rodge Cohen, and we're honored to have him bring his thoughts to the topic and moderate our panel today.

As many of you know, Rodge is Senior Chair of Sullivan & Cromwell, having served as Chair from 2000 to 2009. The primary focus of his practice is acquisition, regulatory enforcement, cybersecurity and securities law matters for banking and other financial institutions, their trade associations, as well as corporate governance matters for a wide variety of organizations.

He's been engaged in most of the major bank acquisitions in the United States representing clients in transactions of strategic significance. Rodge also advises the financial services industry on the full range of matters. He's also a frequent advisor on the rise of strategic and corporate governance activism and its impact on institutions.

We're very fortunate today to have on our panel, Joele Frank, Tom Johnson, and Jeff Sonnenfeld. Joele is the Founder and Managing Partner of Joele Frank, Wilkinson Brimmer Katcher. For more than 25 years, she has been a trusted advisor to various clients. She counsels executive teams and boards of directors as they manage through some of the most complex and delicate situations in their company's history. Among her many professional accolades, she's been named to PRWeek's Hall of Fame and Inside PR's Hall of Fame as an All-Star for Investor Relations.

Tom Johnson is Chief Executive Officer of Abernathy MacGregor, where he's shaping a growth strategy that builds the firm's heritage as a trusted partner to leading organizations in times of change. Tom counsels CEOs, executive teams, and boards of directors on strategic communication matters with a particular focus on special situations such as transactions, activist investors, crises, management changes, and governance matters.

Jeffrey Sonnenfeld is Senior Associate Dean for Leadership Studies and Lester Crown Professor in the Practice of Management at the Yale School of Management as well as Founder and President of the Chief Executive Leadership Institute, a nonprofit, educational and research institute focused on CEO leadership and corporate governance.

Our panel discussion will end promptly at noon after some brief closing remarks. We'll be using the chat box for the conversation. You can enter your questions directly into the chat box and they will use them if time permits. As a reminder, this conversation is on the record. We do have media on the line. Rodge, if you're ready, I'm happy to pass this time over to you.

Panel Discussion:

Should Corporations Take Positions on Social and Political Issues?

H. RODGIN COHEN: Thank you very much, Barbara. I'm delighted to be a part of this very distinguished group – the three panelists who are joining with us today. I'd like to start with a fundamental question. Who should be making the decisions on whether a corporation speaks and who should be making the decisions on overall policy on this issue? Should it be the CEO, a certain group of the CEO and his trusted advisors, the board, board leadership? There are a variety of possibilities here.

I'm going to turn to the panelists to discuss this but I will start with my own view, which is in most cases, maybe all, this has to involve the board, whether to speak or not to speak. And if to speak, what to say. And it's a very simple guide. That decision could affect the corporation's reputation and anything which affects the corporation's reputation should be a board discussion matter. So, Joele, Tom, Jeffrey...

JOELE FRANK: It would be nice. It would be nice if they were able to get to the board. I'm not so sure all of it goes to the board or depending upon the corporations, that the board wants to be involved. I mean I think it needs to be discussed in advance. We've found that people, depending upon how the material is to be rolled out, I mean one of the things we haven't defined is what is a comment. I mean how do you comment? Do you comment externally by a press release? Do you comment externally by an internal memo? Do you comment by a statement in the media? I mean, so there's multiple avenues to make a comment and depending upon what's going on, my gut is just like investor relations should be a topic at every board meeting for a few minutes, maybe these kinds of social media stuff will become something the boards cover, but I'm not sure they do yet. Tom...

TOM JOHNSON: Yes, let me, I'll parse it in two ways because I definitely agree with Joele that the decision on whether to comment and what you're going to comment on, I think that's a board level discussion and I think it's a philosophical discussion that lots of companies and lots of executives are having rightly so right now. It started a couple of years ago when we had the pandemic and then the Black Lives Matter movement. But increasingly, companies are being asked by various stakeholders, and we can get in to that, to weigh in on certain things. And I think that is absolutely a conversation that the high-level board needs to be involved in.

But to Joele's point, there's not always time to run each individual comment or what you're going to weigh in on by the board. And so I do think executive teams and board members need to philosophically get on the same page about when a company is going to comment and how and what that threshold is. And then the executive team should be empowered to make those decisions based on the situation. And certainly the board has to be kept informed, but whether you're going to have a robust debate around each comment or each topic, I think there is not necessarily always time for that, to Joele's point.

JEFFREY SONNENFELD: Well, I hate to add to too much of feisty agreement when I promised Rodge that I would try to stir things up. So I'll try to do it, but I happen to agree with what Joele and Tom basically said. Except Rodge, I like the way you phrased it in opening the question. You said basically it was a consultative relationship. And I think too many have seen a media discourse on this recently, especially some who have taken a political point of view and attacking CEOs as being woke, and not having the importance of managerial discretion that, as Tom, you were saying that executive teams, and Joele, you were talking in particular about the CEO, have a closer read of what is of strategic significance to the firm. And they're making product decisions, financial market decisions, all kinds of things which put at risk the resources that Rodge is talking about, but we still have a delegated authority for that CEO to make those calls.

However, it isn't necessarily to surprise the board, and Rodge, you didn't say that there has to be a board vote or a shareholder referendum or a scripted text, unless you're Elon Musk, but it does raise the specter of Elon Musk. And you remember John Mackey, the founder of Whole Foods, back when he was still in office, and others who would be given to some sometimes-odd late-night tweets, and wandering off, drugged out on the Joe Rogan show as we've seen with Musk and others, if this is putting shareholder reputation and value at risk. And I think a board should know about what a CEO plans.

And if you think about the example, and I'm sure you're already going to turn to it, the Ken Frazier example in Charlottesville, where he made a decision to step off one of the President's Business Advisory Councils after the President's unfortunate equivocation of the Nazis were peaceful demonstrators after the violent killing and things. This is President Trump of course in 2017, August. Ken decided he would leave but he did tell the board, I can't speak for Merck, I can speak only for myself. And happily, the Merck board happened to unanimously agree with him. But he was going to step off regardless and make a statement about this and he similarly did so on voting rights issues and on a number of fronts.

And we have seen that Mary Barra or Michael Dell or others have taken positions, maybe without a lot of flamboyance, but taken positions that weren't scripted by shareholders voter referendum and wanted delegated authority to a board committee that could drown you in risk aversion and miss the moment. There are too many good reasons to say no, which is why I'm thrilled that the attorney on this panel who is our moderator – usually attorneys are the people that are the most risk-averse – he actually said consult rather than script. So I like that, Rodge.

H. RODGIN COHEN: Thank you, Jeffrey. I'd like to pick up with where you were near the end, the CEO speaking out. Can the CEO speak out and say this is my personal view, not the corporation's, and be credible in that? I think you used the phrase, isn't the CEO hyphenated? It's CEO or Ken Frazier–CEO of Merck. Is there a real difference here between the CEO saying I'm speaking personally and the corporation speaking or the CEO speaking for the corporation?

JOELE FRANK: I think it depends. I really don't think there's a straightforward answer on that, Rodge, because I mean, Ken, you know, his board agreed with him. He didn't check with them in advance but there are so many issues where there could be a split and, you know, depending upon how strong the CEO is. I mean that all goes into how pleased the board is with the CEO's performance. I mean I just think, it depends. Tom...

TOM JOHNSON: I think you're right. I think it's really difficult, though, right? If you're a CEO and you're going to preface your comment by saying this is my own personal view, not the view of the company, the problem with that is the way the stakeholders are viewing it in this day and age, particularly employees, and depending on their employee base, they're going to want to know what the company's position is, right?

And they're going to interpret what the CEO says as the company's position whether that preface is there or not. So I think it's a perfectly fine caveat to give, but I do think it will, it still paints the company with the same opinion. And particularly in this day and age where I think employees, in particular, are paying very close attention to the values of the companies that they're working for and interpret everything the company does and says, it's what falls into those values, right? So I think it's tough to parse that.

H. RODGIN COHEN: You know, I think that's right. I think if you come up with some examples. There are times where it's hard to separate the roles. There are plenty of CEOs who spoke out comfortably on the exit from Ukraine. As some of you know, I studied closely what was initially 12 and then became a stampede of 1,300 firms, multinational firms pulling out of Russia. Companies were pretty comfortable, if they were leaving, making a public position. If they were staying, they weren't taking anybody's calls, thank you. But those who left were pretty proud of it.

However, on the Roe vs. Wade reversal a few weeks ago, we saw companies who were very reluctant to speak out. And when CEOs did, they were trying to make that distinction that was hard for people to make. So what we saw the media do is regardless of what's being said, what's the company doing? Were they offering benefits to women to travel out of state? And is there a women's right to reproductive decisions covered in the insurance policies they have? In that weird case, Rodge, the CEO voice wound up becoming somewhat less ____. Even though activists are anxious to see more CEOs speak out, they want to see what are the companies actually doing.

I'll make maybe two enemies out of very good friends on this, Andrew Ross Sorkin and ____, who will both be very sorry I'm doing this publicly and while it's recorded. But after President Trump won in 2018...

JOELE FRANK: 2016...

H. RODGIN COHEN: ...there was a forum that the *New York Times* held at Lincoln

Center, a DealBook Forum. And she was asked by Andrew Ross Sorkin, who was the moderator, aren't you pretty upset about this week's election results? And she said, I'm excited that we have the election behind us and I encourage President Trump to solicit the American business community. We want to help him be the most successful president in American history. And Sorkin, of course, didn't buy that. He said, well, but he wasn't your choice. And ____ is friendly with Donald Trump and the Trump family and close to the Clintons but did publicly back the other guy.

And so they came back and said, well, is that really....so 15 minutes later, of course, he cycled back, as Joele and Tom would have warned her this was going to come. He said, well, are any of your people upset? She said, well, some of the people are upset. Uh, he's got her now. He said, who's upset? Oh, well, I don't know, some of the creatives. What did you do? We had a lot of Kleenex. Well, she thought that was the end of it. It was a clever out. It wasn't. Because Breitbart was there and they said, _____ trashes Trump's election. *Forbes* puts that on the cover. And they're asking the question, will the stock price plummet? Wait, what? There's a boycott. And sure enough, a non-issue became an issue and she was talking about her personal positions.

But to your point, it is really impossible to separate the role. And I don't think she did anything wrong. I think it's, shame on the media, in this case. But still, you can't separate the roles as much as we wish you could

JOELE FRANK: All she had to say, though, was the election is behind us and I'm glad that we get to move forward, period.

H. RODGIN COHEN: Yes, well, that's what she thought she did say. And then 15 minutes later, she got sucker-punched.

JOELE FRANK: Yeah, okay. But I mean what we're seeing, and a little bit about what Tom mentioned, is this split in age groups. I mean most, we brought this up, we were talking among ourselves. The consumer companies, for the most part, know where their constituents, what their constituents think. They know what their customers think. They know the age of their customers. They know how the customers shop and stuff. And they also do the same, through HR, the same kinds of surveys to their employee body. So they sort of know where the employee body stand. And then they can decide when and how to address social issues because of the heat map of what's important to the people. And I think that, that's going to spread because for, you know, industrial companies, they're going to have to start to do it.

TOM JOHNSON: That's a really excellent point. I think for those of you that are on the call here, right, so as you're evaluating when do we speak out? What do we say? You know, it's the age-old axiom with investor relations. Right? We'd go out and we'd talk to investors and we'd try to figure out what they were concerned about and then we could craft what the investor relations policy should be. It's no different here. And Joele is absolutely right, the consumer companies do it because they're set up to do it. They constantly are getting that feedback from their core audiences. That is really critical, I think, to not making these decisions in a vacuum. Know what your employees think. Know what your customers think. Know what your partners think. Find ways to get that feedback loop because you'll at least then make better informed decisions on what to speak out on and what not to.

JOELE FRANK: But, Tom, I think what they're missing is there are various ways to do it. We've been talking about the CEO saying it's personal for them. There are press releases for big items. There are employee memos from HR that could be used. In the old days, I'm old enough to remember, we used to go to the associations and say you deal with all this stuff. We belong to those associations so that we could say they're taking the responsibility for the industry and they're making the stand. I pay my money in, now they do it. You know let's have the association makes the stand and it relieves the politics of it. But that's no longer possible.

JEFFREY SONNENFELD: No, that was the theory of it and it broke down these last 20 years. Part of it is if you take a look at Sarbanes-Oxley, I went to the SEC's testimony at that time. And the trade groups across the board, even the Business Roundtable, which had been on the leading edge of forward-looking activity, had become a regressive, cynical group at that point, sadly, in a brief moment in its history. And they were like a bunch of kids throwing stones and ducking behind bushes. It was very cynical.

So when Sarbanes-Oxley went through, it was an imperfect law because CEOs didn't want to engage. No CEO spoke out. Nobody on this panel can name a CEO who spoke out other than Hank Paulson, who was then at Goldman Sachs, who was surprisingly in favor of it. But it was the retired CEOs from the conference board, Jack Vogel and Andy Grove and others, that spoke out in favor of getting it through. And there were some imperfect things like Section 404, some will remember, you have endless attestation and things like that. But, you know, I think it was good legislation but it could have been great, but because of the cynicism of the trade groups, not engaging with it.

The same with the Affordable Care Act, Obamacare, they couldn't even get the medical providers, what we would call hospitals and the healthcare finance organizations that would we call, insurance companies, and the device makers and the pharmaceutical companies on the same page with each other. There wasn't even a healthcare community, let alone the BRT or others. So there was such diffuse opinions.

JOELE FRANK: That was a long time ago, Jeff. You're dating yourself.

JEFFREY SONNENFELD: Well, it's hard to get a date sometimes. Even right now, we see that the staff is very discouraging of CEOs taking positions on the issues of the day. So they'll load you up with white papers. The more of them you read, the less you know, they actually subtract from your knowledge. And the CEOs are finding, if you survey them, as we've done, depending on which group we're talking about, 75% to 85% are frustrated with the trade groups not representing their voice as well.

JOELE FRANK: Well, they can't use them anymore, Jeff. I mean that was the old days. You can't use them anymore.

JEFFREY SONNENFELD: And too, the response, that I think you were starting out in the beginning, was looking at some generational issues here, Rodge. And here, this is our, what? 115th year of The Economic Club of New York, and as Barbara tells us, the 671st of one of these forums. Well, that does raise some age issues. I don't think any of you look a day older than 650, if you ask me, by the way, or 149th session. But as you do look at these millennials and especially Gen Z, where they shop, where they take jobs as employees and, of course, where they invest is overwhelmingly driven by the social image of the firm. We've seen a well-known firm, we won't mention today because they're not on the panel, but they do have a trust barometer they come out with annually, and they have about 20,000 people surveyed in that. And the general population of those surveys are showing 85% want the CEO to speak out. When you get to younger groups, it's pretty close to 100%.

H. RODGIN COHEN: So that raises, I think very importantly, what should be sort of the lodestar here. There are a number of people who talk about this issue. I would actually count myself as one of them who would say that on any of these issues, silence is the best policy if you can get away with it. Because no matter what you say, you will be attacked. That is easy to say. The problem is that silence is increasingly being interpreted by the groups that Jeffrey mentioned, the younger people particularly among the employees, who regard silence as its own statement. So I don't know where the three of you may be on whether silence, first, is the right policy, but is it increasingly less feasible?

JOELE FRANK: I always have a fight with my partners because I'm the oldest by far in the firm, and my perspective is silence, like yours, Rodge. And I do think that's generational. Whereas my partners will say it's up to the board to speak or the CEO's got to speak or this one's got to speak. It is a negotiation, even in my firm when we give advice, from the different generations of how and best to do it. Because others, the younger partners have a perspective that is different from mine. I mean they grew up; they're growing up in this very social media environment that's very familiar to them.

And me, I want to say I'm a Luddite. I can barely, you know, get Twitter on my stuff. I mean I get it. But they are aware of it. They know how to deal with it. They want the clients to do the advertising across the internet. They want the clients to have a social media platform. And there are ways to both, not be silent, but to, I mean it really depends upon the topic and the emotional content of what is going forward.

TOM JOHNSON: I think what Joele just said is really key, right, which is it depends on the topic. And this is the debate that's really going on in boardrooms and executive suites right now, which is we know we have to be vocal on some things because whether it's just our employees or our customers or what have you are asking us to be. You can even throw investors in there, particularly around topics of ESG and things like that. Right? We know we have to be vocal on some things. But where do we draw the line on where that is? And when do we choose to say something and when we don't.

And where I'm increasingly seeing companies and executives and boards go, which I think is the right place to be, is when does it impact our business? Right? What is the impact of speaking out on this have on our business? And that narrows the field somewhat. And then I think there's some wiggle room around there depending on, to Joele's point, employee bases in particular are increasingly making decisions on where they're going to work and which companies they're going to support based on the stands that they're taking.

Now, as an executive, you've got to run a company. Right? You can't just make decisions based on social issues, but you have to weigh that input from your employee base, particularly I think for some of these larger companies that have employees in different parts of the country. Some are red states. Some are blue states. Some are purple states. And you really have to figure out with some of these. And that's where I think companies are getting better about making those decisions, but it's still very difficult.

And if you trace the arc in this, right? Really started in force with Covid and it was all about, okay, what do our employees need to hear from us about protecting their health and safety? Then George Floyd happened and the Black Lives Matter movement happened and a lot of companies went out and said something. But then the follow-up wasn't there for a lot of them. Right? So what are you doing about it? So if you're going to say something, what are you actually doing about it? Which largely came from the employee basis, which I think was a justified means. And that gave a lot of companies pause.

And so as these political issues, these economic issues, these geopolitical issues come up, the question we always ask is, okay, if you're going to say something, and we understand the rationale for it, how are you going to back it up? Because you need to be prepared to answer those questions when they come up.

So Jeffrey, you mentioned the war in Ukraine before. I think for a lot of companies, it was safe ground to say something because that was something that, while there were real business implications to it, those that spoke out, it was pretty safe ground. They knew they had a lot of support from a lot of different constituencies to do so.

Roe v. Wade was a much harder one. And I think to the point Joele was making, that's where a lot of companies made the decision. We are going to do this. So our primary stakeholder there is our employees who are going to get impacted by this. So we're going to take the right steps to protect them and to ensure that they have equal access to healthcare no matter where they are in the country. But they made the decision to communicate that internally. I think I saw the numbers fell way off in terms of those that put out external statements. They decided we're going to communicate with the audience that matters here.

That, I think, is a debate that really needs to happen and occur, and I think companies need to come up with some sort of policy on when we're going to speak, what the parameters are, and how we're going to do that. And it's a very healthy debate going on right now. And to Joele's point, it really depends at the end of the day. There's not a hard and fast rule.

JEFFREY SONNENFELD: I think...

JOELE FRANK: Wait just a sec, Jeff, because I want to bring it to financial because I'm much more comfortable with financial. And it took us all of almost 30 minutes to get to ESG and all of that. So, Rodge, one of the things we have to discuss is the universal proxy, ESG, and what that can mean with this stuff. Because I mean Tom and I, I mean this is what we do for a living is corporations are going to face the universal proxy, which means everybody and their brother and my grandmother can run a proxy fight or run a nominee and they will have very narrow, potentially very narrow issues, and many of them may be social issues over what is said, what is done, wanting the company to comment. It may just be a comment. We don't even know what we're going to get. But it's going to be much easier to do.

And if you're listening and your company hasn't made a major decision about how to deal with the ESG rules which are coming into effect, what, October 1st or something, I mean you need to be prepared. This is coming. This is likely a landslide. I hope I'm wrong, but I'm not. I doubt it.

H. RODGIN COHEN: I mean clearly the efforts of the current Securities and Exchange Commission have been to expand access to the proxy whether it is nominations of directors or the ability to get issues to the shareholders. On the former, I do think corporations should shy away from engaging on the narrow focus issues which candidates may be advocating for and really talk about qualifications of the individual and the board's careful process as they go through the nomination and selection of directors.

On the latter, it really is going to be a difficult situation for many companies because even if you believe that silence is the best policy, companies are going to be forced to take a stance on some of these issues. I don't think they're going to be able to say in response to a proposal, no comment. I mean you can't.

JEFFREY SONNENFELD: I think that's right. And those two pieces, you opened with one, Rodge, and we morphed into another one, and then you addressed them both at the close, bringing it back to the opening. One of them being, of course, the CEO voice alone and then, as Joele opened the door to the positions taken about environmental, social and governance, ESG issues in general.

If I can comment on both as well, on the second one, on ESG, I got involved in it when it was being called corporate social responsibility. In fact, I turned around before, not to show you that the backdrop was real, but this book is my first book called, *Corporate Views of the Public Interest*, 1978. What's really pathetic is if you take a look at the jacket, I think I still look like that. But Reginald Jones, the CEO of GE, did a really nice jacket endorsement in there. Maybe nobody on this call, maybe Rodge remembers who Reginald Jones was, Jack Welch's predecessor. But he actually coined the term “corporate social responsibility.”

It became ESG and it became harder and harder to measure as we wound up putting a lot in there. I wrote a piece for *Corporate Board Member* recently just called, “You Need ESP to Figure Out ESG.” There are a lot of inconsistent, even if I’m a big believer in the concept, when it comes down to the measurement, there are problems between GRI and the Sustainability Accounting Standards Board on environmental metrics. There are problems between Glass Lewis and ISS and lack of agreement between them in correspondence and whether they or anybody else that’s entered their space has any predictive or preventive power. I’ve done the research on that for a couple of decades. There’s none there, none there.

Things that are easy to measure are of no consequence for preventing legal infractions, better governance or any of that. Separation of roles or the age of directors, all that, it’s easy to measure, it’s nonsense. Companies get scored on it. It’s truly problematic. And the ESPs, the ESPs has to do with what’s easiest and least controversial to measure – gender diversity and some a little bit more boldly, racial diversity on boards.
How about the kind of thing that we’re talking about with ___ or Ken Frazier of Merck or others, acts of courage, none of that is in any of these metrics. So I’m concerned about the metrics becoming like the Heisenberg Principle. You know, you start to confuse the tool with the phenomena itself. And so ESG as measured worries me. Conceptually I

think it's important. On CEO voice, Rodge, I wish the leaning you and Joele had was right, but I'm come down to where Tom is, is there are too many times where the CEO's voice being silent might be the easiest thing or the safest thing at least, the safest thing for the company and the board. But it's not the most responsible thing and it's not only not possible or pragmatic, as you warned us. It shouldn't be.

Joele, you think of what you – I'll out you – you were there with us in the earliest moments, we might not have a republic today if it weren't for CEO voices. Yes, Brad Raffensperger, a heroic, the Secretary of State in Georgia, or his counterpart, this guy Bowers, that we saw in Arizona, or Vice President Pence or General Mark Milley or others that jumped in above and beyond the call of duty. They did the right thing and preserved the republic.

But it was, before any of that kicked into gear, the elections were on November 3rd, I think, of 2020. And on November 5th, President Trump went on the airways at the news hour and declared himself President. And it was what many political scientists considered a coup d'état, which people recognize it as that now. At the time, it seemed overblown by CEOs. But my phone, emails, texts, and everything blew up, including yours, Joele, if you don't mind me mentioning it, saying you guys have to speak out on this.

And sure enough, Tim Snyder, the great political historian, and others said, we need to hear from civil society. It isn't just what it's the best interest of that particular enterprise, but the interest of our entire system. The people had to speak out because politicians didn't know what to do. Nobody knew what to do. Trump said something that wasn't true. And we gathered together on short notice, thanks to you and your client list and others that got on the phone with us. Between 7 pm and 7 am, we had 90 CEOs talking candidly. And we wound up grouping as these pop-up sessions four more times. And the messages that went out when the election was actually declared that Saturday, November 7th, when the Pennsylvania elections were finally called midday, the first message went out was from the Business Roundtable.

Who drafted that? It happened at our meeting. As you remember, it got hammered out by the CEOs. No staff involved. And there were five critical bullet points, which I won't reiterate now. But that became the storyboard, everything from Xi Jinping, Netanyahu, President Bush all used that to congratulate the winners and said let's move on, because otherwise there was going to be total confusion. The CEOs carried the day there and good for corporate America for not taking the easy path.

JOELE FRANK: But, Jeffrey, it was, they wanted to hear from each other to make sure that their own instincts were correct. And one of the things I think the audience may not know, there were a lot of Republicans and a lot of Democrats. It really was a cross-section of political perspective and a cross-section of CEOs across the United States. But one of the things that united them was they wanted to know what the others thought so that they could have a united front. And it was something else, it was very important, I think.

JEFFREY SONNENFELD: People were frightened, but it was very important to speak out. But then, as Tom reminds us, when you get to, say, the pandemic, we have to know what we're going to say if CEOs speak out. And there were a lot of CEOs in March of 2020 that were coming out saying things that were wrong. They meant well and they weren't trying to lie or mislead, but the CEOs tend to be problem solvers. They don't like to wallow in misery and complaints so they're coming out with their best estimates saying, okay, well, we won't meet in Singapore, we'll send our clients off to Hong Kong. We didn't know if this was true or right. And then tomorrow's another day, we'll get through this, and we'll take our lumps. And it's sounding like Scarlett O'Hara, you know, and that's kind of ridiculous. We didn't know that we were going to be out by Easter or what it was going to mean. You can't say what you don't know.

And I think Tom reminds us of that. CEOs need to speak out, I would argue, but they need to know what they're going to say. And you're right that the affirmation was very important. And that was true of the Russian exits too, that the CEOs who were the first movers were an unlikely set – big oil, big tech, and professional services, Rodge. They were the first to move. Whoever would see those three clusters on the leading edge of social justice? But they were on the Russia situation. But all the rest of American industry, the fashion industry, fast food, they're usually the first movers, didn't know what to do. And their board said we need affirmation, we need benchmarking. And that's what, you're right, what do others CEOs think, and they need to talk to each other.

H. RODGIN COHEN: So this has started down a road, and I'm just going to maybe even be more provocative. When a corporation is making a decision whether to speak, I think, to date at least, there is no evidence that at least in the vast majority of cases that shareholders seem to care. There has been little documentation of which I'm aware that customers seem to care. Employees certainly do, but there is not yet, I think, reliable data as to whether employees are lost, much less whether potentially great hires aren't made. But there is one area where there is predictably going to be a vigorous response and that's from the political arm. You will see executives and legislatures immediately take action. So the question really is, when you're planning whether to say something and what to say, how important a focus should be placed on the political blowback?

JOELE FRANK: You're heading right into Disney. That was a subtle way of bringing up Disney. One of the things I do want...

H. RODGIN COHEN: You weren't the only one.

JOELE FRANK: Oh, I know, but it's the poster child for political action or taking a stand. But one of the things I do want to take, say, the shareholders are beginning to take stands on ESG and stuff. I mean BlackRock does it all the time and they own everybody. So they have a particular perspective on various different things and they make everybody know it, between Larry Fink and the heads of governance. I mean it's pretty visible. So shareholders do take a stand. I don't think it makes necessarily the headlines in most newspapers the way the political does or the boycotts.

And then, Rodge, in terms of buying goods and services, the boycotts of products are huge in terms of, if the right or the left want, primarily the right, organizes a boycott because of a stance of a corporation, I mean it can make a big difference. I mean they exist. And many of our clients have had to face them. So that's there. Then we could go into, Tom, why don't you take us, why don't you start on what happened...

H. RODGIN COHEN: Joele, just for a moment, we can move to Disney. But the boycott, all of that, the predicate has to be a political reaction. If the political group is not saying anything, there's not going to be a self-generated boycott, I think.

JOELE FRANK: Right. But somebody is always going to speak up and then you just don't know where it's going to go with the social media response. It's very easy to organize. Even I understand how to do that, shockingly.

TOM JOHNSON: But that's the key. I mean if you're a business leader, it's no different than any other big decision you're going to make. I would think you're going to sit at the table. You're going to have your government relations folks there. You're going to have your HR folks there. You're going to have your customer folks there. You're going to get all those inputs and say if we take this action, if we say this thing, let's go around the table and you tell me how your constituencies are going to react. And then I ultimately, as the CEO, have to make that decision in consultation with the board.

So I think that there are ramifications and that is proven in Disney and in other situations. Again, we saw it way back in the Black Lives Matter movement where folks said things and they got hammered for not actually doing anything. Right? I think you have to; you have to get all those inputs as you're making that decision. I'm not sure it's any different than any other big decision that you're making. But ultimately you're going to have to weigh those pros and cons and then decide how to do it in the right way to achieve the end result. But to your point, Rodge, the political blowback is a real issue. I think we've seen it play out in a few situations. And if you're not taking those risks into account as a CEO, you're not doing your job well.

JOELE FRANK: But don't you think the experience level of dealing with this is not strong. I mean we haven't, I mean I don't think, you know, like we can all sit in a room together, but I don't know that the government affairs representative is going to be able to predict what's going to happen.

JEFFREY SONNENFELD: The well-functioning trade associations, which we do not have, could make a difference here. So CEO's own personal networks can be very effective. When we have seen selective taxation issues, reprisals, things which are patently unconstitutional but have been used to punish companies like Coke or Delta that spoke out at times on voting rights and things, what we have seen is that their peers stood by them. Just like ultimately all three of the business advisory councils stood behind Ken Frazier. There was a little bit of a delay, but they all walked out ultimately with him.

The first time in American history the American business community has said no to the Commander-in-Chief. That was very effective. He still didn't quite, you know, hadn't learned a lesson from earlier that spring. Soon in office, he was trying to divide Ford and General Motors. He was trying to divide Pfizer and Merck all throughout and the whole pharma industry. And he was trying to divide Boeing and Lockheed.

And the CEOs, let's just say of those companies and all the other companies he was trying to do that to, I was hearing from them. They were bewildered, like they're not used to having public spats. If they didn't mimic what the White House wanted to hear, the reprisals were there. The only way you break a bully, a political bully or any bully, is through collective action. And when this happened, the CEOs in the Disney case did not, they didn't stand behind Bob Chapek. They didn't know who Bob Chapek was. It was confusing.

However, when it happened to Delta, American Airlines stood behind them because they knew were taking the same position. They were next. Who else? I called the CEO of United Airlines, who I didn't know, and said, would you want to join this big Saturday event we're having, a day away? And he did, giving air cover, so to speak.

JOELE FRANK: Well, I mean considering he comes out of American, he's going, but, okay.

JEFFREY SONNENFELD: Yes, but they could be a frenemy. They're a rival. Instead of trying to capitalize on each other's attacks, they stood together. The same with Coke and Pepsi, whatever you think. They stood together on this to say that, if you're going to talk about cancel culture, don't say that the Citizens United decision gives corporations a political voice. And then if you don't mimic what a given politician wants to hear, then suddenly they get punished.

JOELE FRANK: But you don't you think the CEOs called each other, Jeff? I mean, I'm pretty sure there was communication behind the scenes on some of that to help each other.

JEFFREY SONNENFELD: There was less than there should have been, which is how we had a role as a broker. People were afraid on that one. You're right. Theoretically, we wouldn't have. These people, most of them, many of them know each other better than you or I know them, but not in all cases. But the sensitivity of these topics, they were afraid to talk. And boards were afraid. But CEOs did take positions, they did provide cover for each other. And I think that was very important.

TOM JOHNSON: That's the key, though, right? I mean every survey you read says that business leaders are, that the public at large, they've got more respect for business, the business community to take a stand and say the right thing and do the right thing than politicians, etc. and so on.

JEFFREY SONNENFELD: And unfortunately, it includes academics and clergy, that they tower over all of us. Despite the financial collapse of 12, 15 years ago, you're right, that business leaders are ascendant. There's a duty on them. They're the most trusted voices in society. And it's not the first time we've seen this. You remember, just by reading about it, back in 1840, when Tocqueville published *Democracy in America,* yes, we know about the spirit of altruism and things. He came to the U.S., of course, as a French legislator to see what made our democracy work in terms of the laws.

It wasn't the tightness of the laws, but it was the looseness of the laws that made it work. And the term that he referred to, it was our trust in institutional leaders, community leaders. He called it social capital and said it was just as important, if not more important, than financial capital. People think social capital is a new term coined two years ago. No, he created it and that's what these CEOs realize. So when somebody says, ah, you know, stay in your lane, I want to say this is their lane. What's your lane? The breakdown lane? This is their job is to make sure that we don't have hostile communities and finger-pointing shareholders and employees at each other's throats. And you can't run a very effective free enterprise system if we don't trust each other, and CEOs recognize that.

TOM JOHNSON: And that's why your election example is such a good one, right? Because, you know, to the point of Disney, if you don't have that backing, if you know you don't have that support, if you know others aren't going to speak out and take the same position, you do leave yourself really vulnerable and exposed to the counter-attacks from the political side. Whereas if you are able to go out as a group, if you're able to mobilize that support, much, much, much difficult because that's, again, the public is willing to invest their trust in you, but it's much easier when you have a number of you out there at once.

H. RODGIN COHEN: I think one lesson, listening to all of this, is that CEOs do need to be able to pick up the phone readily and talk, not only to leaders in their own industry, but in others as well because some element of collective action in these cases is invaluable. And not all CEOs really have those contacts.

JOELE FRANK: Well, but it doesn't necessarily have to be the CEO either, Rodge. It can be the general counsel, can call the other general counsels. I mean it can be a, you know, I've seen general counsels call other general counsels on various different topics and then they can lift it up if the CEO doesn't have the personal relationships or their personality doesn't fit that role. There is someone, there will be someone, either on the board, within the organization, who will have the EQ to call the people, other people to check, to gather info to help make a decision or get a consensus on a way to approach, I think personally.

JEFFREY SONNENFELD: I think that's a big lesson, Joele, is that they should use all those different boundary-expanding roles, whether it's public affairs, public relations, governmental affairs, general counsel, is to use those networks. But there's something you were talking about maybe a half an hour ago, which I thought we shouldn't end the call without circling back to. And that is for a company still knowing what its own priorities are, though. And I don't mean to diminish the importance of courage that I talked about on all these other fronts, but still there's companies like, I don't know, just between us, Dell. I understand, Michael Dell, he's tracking 100 issues at any one time, but they have a matrix to try to figure out what are the ones of greatest sensitivity to our different constituencies, our workers, our customers, our owners, our communities and all the rest and try to come up with judgments around that kind of a matrix.

H. RODGIN COHEN: And I think that leads to another issue which is the desirability of tabletop exercises by a corporation. This is, the issue of social and politically charged various issues that come up, they are so prevalent and they are so complex that I think within a corporation you're going to be better able to respond if you are working from a base which a tabletop exercise can provide. And I realize you can't foresee the future and the next issue will be one nobody anticipated. But having an understanding, having a commonality of references, I think is invaluable in this area.

JOELE FRANK: I love tabletop exercises as long as it's before dinner and I get alcohol. (Laughter) I mean my tabletops, usually if you do a good tabletop, we do them regularly. This is a new one actually. We're doing some of them now. I mean we do them on activism defense. We do them on cyber preparation and what a board should do. But this one, I think, is new and I think people are going to be doing more and more of them. But I do recommend that there's some facilitator. It's hard. They're hard because people come from different perspectives.

JEFFREY SONNENFELD: I think they are hard. I think it's a great idea to do them.

They're imperfect, but they're better than not doing them. I have a tragic example of one that failed. A friend of mine, Paul Bracken, in May of 2001 had led a tabletop exercise with leaders of downtown, truly downtown Wall Street at the World Trade Center, at Windows on the World, again May of 2001. And sadly, Paul was only a handful of people that survived, because their whole purpose is what if there's another attack on the financial community by terrorists, but they never imagined that the very building they would be in would be attacked, even though it had been once before. But they weren't thinking outside the box to imagine something so catastrophic, how you would think for 9/11. And most everybody in that meeting perished, and they had the tabletop exercise to try to anticipate such a horrible scenario. They didn't think broadly enough. Well, that's a real downer on the discussion. I'm so sorry.

JOELE FRANK: But I mean, like tabletops are, you know, like you never know who is going to come up with a great idea. And often we do tabletops with management and then after we get it sort of settled, then we bring the board in so that the management team is not as, you know, that the management team already sort of knows how to play, and then the board comes in. I mean it can be very challenging to have the board do a tabletop without the management sort of knowing what the ground rules are and how it could kind of work and make sure that they play their role and they look good and smart.

So the facilitator of the tabletops, and we do it with the bankers, we do it with the lawyers. And this one, I would think it would be a series of, I mean the social media stuff, it'll have to be government affairs people. I mean they may be able to bring in former legislators to help on the tabletops to get – the political viewpoint, I think, is very much missing from the boardroom.

JEFFREY SONNENFELD: Yes, definitely.

H. RODGIN COHEN: So I don't want to end this session without at least approaching the issue of political contributions as opposed to statements on specific issues. We've seen a fair amount of change and then a fair amount of reversion to the mean. So where do the three of you see this heading? Less? More? Because it's going to become public. People are scouring the records to see where the PACs are contributing. And this is not just the proxy issue of disclosure of political contributions. It will become known with whatever ramifications follow.

JOELE FRANK: I sort of think it's going to follow issues. I mean like the CHIPS Act, I think a lot of contributions went to people who would support the CHIPS Act which just passed, I guess it passed, I get confused on which House is which...it passed one of the houses and is going to the other. I believe, I mean I think that no good can come of something that's public that you can't control and other people have opinions on.

However, I understand that money talks and bull walks.

TOM JOHNSON: And then I think it's sort of like speaking out on issues, right? Because to your point, Rodge, the media is following it fervently. They are writing articles all the time about people, oh, you said you were going to pull your money from folks that refused to certify the election and now you're back doing it. Right? They're going to end up in articles no matter what you do.

JOELE FRANK: But they used to follow the golf scores and where people played golf. Then people got smart enough to know not to put the scores into the, you know, in the computer in the sky so that they couldn't tell that they traveled to play golf. So, I mean there will be a way, there will be ways to do it that will protect, I think, that if the companies do it right, there'll be ways to use it to protect, the PACs will be protected, to do it with a purpose.

TOM JOHNSON: I think that's right. And I think that's the answer you have to have. So if you're going to get called on it, you have to just be able to say, hey, you know, and most companies will say we don't need a corpus of political spectrum, which is smart for business at the end of the day, and that generally is the response.

JEFFREY SONNENFELD: Businesses have liked to give equally to both parties and things and a little extra if there are legislative issues as you're suggesting the CHIPS Act that have particularly important favorable strategic impact. However, after January 5th, the day before the insurrection – the media has it wrong – the day before the insurrection, and again, Joele, you were there to see this, is that we had a unanimous vote of 80 businesses, to my surprise, CEOs to withhold contributions to any of the 127 sedition-supporting objectors in Congress that were preparing to not pass, you know, confirm the certification of the electors.

And the media was very cynical about that soon afterwards. They wouldn't even wait until the first quarter. I studied it. And of those companies, it was 95% had held by the first quarter. By Q2, it was 80%. Now we're down to like about 50%. But that moratorium was only intended to be temporary. They never said how long it was going to be. A lot of companies never signed. But it was very impressive.

However, IBM was very vocal through this whole period. Arvind Krishna about his predecessor, saying throughout our history, we've never given money to any politicians and never needed it to have our voice heard. I think Arvind Krishna is right. And the amounts of money they're talking about in these PACs are not large anyway. It's very confusing. Why do it? Just stay out of it. Get your voice heard as being an employer and an investor and everything else, but don't get involved in these political contributions.

H. RODGIN COHEN: There is one other distinction we have not drawn, or I didn't draw, and that is between the views of a corporation and the accomplishments of a corporation. And there is a lot of advocacy for emphasizing the latter. The cautionary note I would offer is that when you talk about your accomplishments, make sure that you have due diligence carefully that those statements are accurate because you will otherwise wind up with both public sector investigations and private sector litigation. And just as a general view, I think you should be as careful when you talk about your accomplishments in the ESG issue as you are when you are talking about your financials.

JOELE FRANK: I think it's tough, Rodge, but I agree with you. It's really hard. I mean this is, to deal with this, it's going to take us three to five years to figure out how to, you know, to have a pattern. It's all new.

JEFFREY SONNENFELD: I agree. It's like where Tom was about 45 minutes ago where he warned, don't let your rhetoric get ahead of what you can execute on. I think that that's a good reminder.

JOELE FRANK: And here's Barbara...

TOM JOHNSON: Here comes the hook...

JEFFREY SONNENFELD: She's bringing lunch. It's lunchtime. Thank you, Barbara.

PRESIDENT BARBARA VAN ALLEN: You're right. It is that time of day. Many thanks, Joele, Jeff, Tom, and Rodge. This was just a terrific conversation. I know that our members have enjoyed it and we'll have the recording to share later. So, again, thanks to each of you.

I'm pleased to report that we do have many more distinguished speakers on the calendar for the fall. Just jumping through this, we'll be hosting in-person Senator Joe Manchin of West Virginia, David Malpass, the President of the World Bank, Loretta Mester, the President and CEO of the Federal Reserve Bank of Cleveland, Political Analyst Charlie Cook, and he will be interviewed by former U.S. Treasury Secretary, Bob Rubin. And then many more virtual events that will be on the calendar.

We also are going to celebrate that 115th anniversary at a special dinner on November 14th. So please do keep track of our calendar. And, in fact, one of the other late-breaking, we were hoping to confirm both nominees for the Republican and Democratic gubernatorial candidates in New York as well. So we're working on that right now.

And finally, I always like to take a moment to recognize those of our, members of the Centennial Society that joined us today, actually fully 347, who really, their contributions represent the financial backbone of the Club and help to make our wonderful diverse programming possible. So again, a special thank you to them. Thank you to all of you that attended. And again, thank you to our great panelists. And we do hope everyone enjoys the rest of the summer and we look forward to seeing you either virtually or in-person this fall. So thanks all.