

GEORGE GEIS: Good evening, everyone. I think we're going to go ahead and get started.

Thank you very much for being with us this afternoon. I'm really pleased to welcome David Leitch to the law school-- or I should say back to the law school. David is a graduate of, I think, the class of 1985, and has had a very distinguished career-- and a very interesting career-- that I'm looking forward to hearing more about this evening. After graduating from law school, he clerked first with Judge Wilkinson, and then he went off to clerk on the US Supreme Court with Chief Justice Rehnquist. After that he has had a, I think it's fair to say, three part career.

Several years ago, some of you may know, we started something called the Tri-Sector Leadership Program, which is a group of students that come together from Darden-- the business school-- from the law school here, and also from the Batten public policy school, where students are selected, and they get together in a variety of different settings to try to bring insights from business, law, and public policy together to work on leadership challenges. I think David could do all three of those at the same time because his career has really spanned all three corners of that triangle.

After his clerkship, he worked at a law firm, became partner at what is now Hogan Lovells. He's also spent time in government service, working with the George W. Bush administration, with the FAA, and also with the Department of Justice. And more recently, he's moved over to the world of business. And he spent 10 years with Ford, and then a little under five years ago moved over to Bank of America, where he is now the Global General Counsel at Bank of America, which basically means he's responsible for all of the legal functions related to the bank.

Please join me in welcoming David Leitch.

[APPLAUSE]

So we thought it would be fun to do a little bit of a more informal question and answer setting and give all of you a chance to ask some questions. I've got some questions that a number of students have pre-submitted. So I'm going to start to work through those. But if there's something we're talking about that sparks another question, or topic, or insight that you want to do you want to bring up, don't feel compelled to wait until the end of the discussion. I will try to reserve about 15 minutes or so near the end for your questions. But if there's something we're talking about that, you know, is very relevant to what's on your mind, then please feel

free to just throw up your hand and we're happy to get your questions earlier if you like.

David, I want to start by asking you about your favorite job. You've clearly done a number of different things at many different types of organizations. Can you tell us a little bit about what your favorite position has been and why?

**DAVID LEITCH:** Well, thank you. I guess there's no chance that my current boss will ever listen to this, so I can be completely honest. Now, look, I've had some great opportunities. I think I'd have to say the favorite, best, most exciting job was working for the Bush administration as Deputy White House Counsel. I had an office in the West Wing, I had meetings in the Oval Office. I mean, it's sort of hard to top that, in terms of being interesting every single day, and presenting you the opportunity to work on the issues that you're reading about on the front page of the paper every day. So, while there are a lot of things to like about a lot of the jobs I've had-- clerking was certainly a wonderful experience, got me more deeply into thinking about the law than my more recent jobs. But in terms of day-to-day excitement, I think working in the White House would be hard to top.

**GEORGE GEIS:** I want to ask you a little bit about transitions, because I think moving from one area, to another area, to yet another area, and even within business-- and within government service you've spent time at several different organizations-- how did all these transitions happen? I mean, as you've moved sort of from one chapter professionally to another chapter, was this part of a plan that you had, or was this something where each of these experiences just sort of came along? I mean, talk us through, if you could, a little bit about the transition progression and how this all happened.

**DAVID LEITCH:** Yeah. It was not part of a master plan. I think one thing I would say is-- and I had a master plan, by the way. It just didn't include going to any of the places that I ended up in. So I think one of the most important things to keep in mind is to be open to the opportunities that come your way, even if they don't appear to be exactly what you thought you were going to do next. And the transitions took place really just by virtue of having mentors, and colleagues, and people that I trusted and who cared about me suggest that I do things along the way that planted seeds in my mind or opened up doors for me.

You know, we talk a lot about-- at the bank, and elsewhere we talk about sponsorship and mentorship of younger attorneys and other professionals, and I think I've been very fortunate to have sponsors and mentors along the way. So, for example, when I was working as a very

young lawyer at Hogan and Hartson after I'd clerked for two years, I had a partner who, at the time, felt like a senior partner, but he wasn't older than I am now. But he, when George H. W. Bush was elected, this partner-- you know, he knew I was Republican, he knew I'd clerked for conservative judges, and he was a liberal Democrat, and he was a great friend of mine.

And he came to me and he said, look-- he said, I think you should think about going in to the government because, he said, when I came to Washington I thought I was going to be able to go work for the government. And in the time I've been in Washington, he was saying, there was only one period of time when there was a Democratic administration over the course of the past, whatever it was, 16 years, and it was the four years of the Carter administration. He said, and I wasn't really in a place in my life when I could do it, and I wasn't really wild about the Carter administration, he said. And I feel like I've just never had the chance to do what I really wanted to do. And he said, you should seize this opportunity if you find the right position to go in. And, you know, you can always come back. But look for something that's good in the administration, and take advantage of it.

And, you know, I like to think that was against his self-interest, because he was losing an associate that was working for him. But he was thinking about me as a kind of a younger him, and what he felt he had missed in his career, and had the opportunity to offer me that advice. And so I listened.

Sometimes things just happen by sheer circumstance. When I was working in the White House in early 2005 after the president was re-elected, an old colleague of mine who had gone a year or so earlier to Ford Motor Company to head their government affairs office called me out of the blue and said, hey, we're going to be looking for a general counsel. Would you have any interest? And, you know, there was no headhunter involved, there was no-- there wasn't really even a long process, because the guy whose name is on the building-- Bill Ford-- interviewed me and had his head of HR interview me, and they offered me the job.

So it was very fortunate. Just this colleague of mine, who had left, liked what he was doing, saw an opportunity, thought of me, could have thought of a hundred other people, and it worked out. So I think there's a lot of right place, right time, and there's a lot of being open to opportunities that you didn't necessarily expect to come along. But to say, OK, is this the right thing for me? I don't think I'd ever been in the state of Michigan before. I went and interviewed, but, you know, I moved my family based on the opportunity that was there. So I think it's just a question of being open to what comes along.

**GEORGE GEIS:** And would you attribute your transition to your current position as being in a similar vein? Was it an opportunity that came through, or was it based on some past relationships that you had built, or a combination of both?

**DAVID LEITCH:** I got a cold call from a headhunter that I'd never met before. And, you know, I was kind of ready and open to it. I had been at Ford for a little more than 10 years at that point, and I was turning 55. And I thought, OK, I can do this for 10 years, I can do it 15 years, I can do it for 20 years. But do I have another sort of fun transition in me? And this call came along, and I explored it, and it worked out.

**GEORGE GEIS:** I want to ask a little more about your day-to-day life in your current position as well-- sort of continuing on that. One of the things that I think a number of students think about and wonder about is, when and if they were able to move into some sort of a general counsel role, how would their life change? Especially as--

**DAVID LEITCH:** No time sheets.

**GEORGE GEIS:** Especially as you move up the seniority. I mean, said definitely, can you give us a little bit of insight into what you're doing on a day-to-day basis? Are you working with different banking regulations? Are you working with general corporate matters? Are you working with corporate strategy? Or all of the above? I mean, how does your day-to-day, and even your week-to-week, schedule change?

**DAVID LEITCH:** Yeah, it's really all of the above. And to some extent, the role that I have as general counsel at Bank of America, or at Ford Motor Company, is much different than the role that somebody would have at a small, recently public, or not quite public, company. If you're in a shop with-- you know, you're the general counsel and you have 10 lawyers reporting to you, you're doing a lot of day-to-day legal work. You have to know what's coming through, and you have to be expert in certain areas of the law that are germane to that particular client that you have.

I have 500 lawyers that are in my legal department, so I'm relying on their expertise. I am a general counsel in the truest sense of the word. And that doesn't mean that I don't dig into legal issues, but the day-to-day sort of decision-making and legal advice-giving is done by all those arms and legs of the 500 lawyers spread around the world.

So what I spend my time doing is really-- I think of it in three buckets. One is what you would think of-- looking at hard legal issues, making judgments, giving advice, strategizing about

litigation, thinking about transactions, thinking about where the risks are and working with the other management team members to identify and mitigate those risks. So, for example, this morning before I came up here, I was on the phone for about an hour with two of my lawyers and our outside counsel handling a major piece of litigation. We were talking about the discovery, how it was going, what the motions practice was like, what we thought the settlement prospects were, et cetera, et cetera. Just, you know, core basic litigation advice.

The second part of my job-- and it's a bigger part of my job than I would have expected-- is being a manager of a department. I have, as I said, 500 lawyers, probably an equal number of other professionals, whether they be investigators, legal assistants, administrative support staff. And so I'm running a thousand-person department with a sort of greater than half a billion dollar budget. So I do personnel matters, reorganization, budget meetings, law firm relationships, just being a manager of a big department.

So, again, today before I came up here, I had a meeting with one of my lawyers, one of my deputies, and two of my HR partners, where we talked about reorganizing one of our practice groups because one of our attorneys is retiring. And so, OK, we had a lot of moves to make, and it was time to make them, and we went through them, and he spent the day announcing to people what their new roles were going to be. So that was another part of it.

And then a third part is being a member of the management team of Bank of America. And that's everything-- so the rest of my day today was sitting in a five-hour strategic planning meeting where we didn't talk about-- I mean, we talked about anything that you would call a legal issue. We might have talked about things that had legal implications. I, obviously, had to be listening, and aware, and issue-spotting in case anything came up. This is not to say that I was silent because there were no pure legal issues. My boss expects me, as a member of the management team, to be another voice in the room, not just staying in my lane recognizing what my lane is, but also being willing to offer my thoughts about, gee, I don't think this makes sense, or I think this would be received poorly by our directors, or whatever it might be.

So those are the big buckets-- practicing law, managing the legal department, and being a member of the management team at the bank.

**GEORGE GEIS:** So that's a perfect transition to a question that I wanted to ask. As some of the students here may know-- and David may be too modest to say this-- Bank of America has done really, really well strategically over the last four or five years. There was a article even today, I think, in one

of the newspapers that put a graph up of three of the big four banks. It was Bank of America, it was Wells Fargo, and it was JP Morgan Chase, showing both the revenue growth and the net earnings growth over the last three to four or five years. And it really it was very, very striking to see-- especially on the earnings front-- how strong Bank of America has been performing for its investors.

Some of you may have seen in the news, I think it was just last week or the week before, there was a very positive earnings announcement for, I guess it would be the third quarter. And the stock was up, I think, last I checked, like 2, 3% even today. Right on sort of sustained growth prospects. So I guess I'm curious, given your involvement, especially on the corporate strategy side of things, what do you attribute this recent success, or maybe it's a continuing of longer-term success, but what's the strategic reason that you think explains the performance of the bank in recent years?

**DAVID LEITCH:** Yeah, it's a good question. I think-- so a little bit of history-- in the financial crisis, Bank of America was one of the banks that got itself into a lot of hot water, for lack of a better term. Just before the financial crisis, the bank bought Countrywide Home Loans, which was a very troubled-- as it turned out-- a very troubled mortgage originator. In the midst of the financial crisis, in September of 2008, sort of that one weekend when all the big decisions were made, the bank bought Merrill-Lynch, which was about to fail by all accounts. It was asked to come in and look at rescuing Lehman Brothers. So like-- I might have this wrong. I wasn't there. But I think, literally, like on a Friday, the government said can you come look at rescuing Lehman Brothers and by, like, Sunday night they said, well, no, but we'll take Merrill-Lynch. Which is a lot to swallow, right?

So I think for the first five years after the financial crisis, sort of the crisis passed, there was just a lot of cleanup to do, just a whole lot of cleanup to do-- big settlements with the government, big settlements with private litigation, and, frankly, poor relationships with many of our customers through things like policies on overdraft fees and other things. And, of course, Dodd-Frank was passed. It was a huge regulatory burden that came about on the bank. So there was just a lot of work to be done. It costs a lot of money, a lot of systems to be updated, a lot of systems to be merged, and all these things that got pushed together in the financial crisis. So some of it was just-- some of the more recent success was just kind of not having all that to do.

But I think, more importantly, our CEO, Brian Moynihan, who is also a lawyer, he's been there,

he's been the CEO for 10 years. So he's been there kind of through most of this. He established, really, a mindset-- and I don't know when it started, because like I said, I've only been there four years, but it was certainly in play before then-- that he called responsible growth. And he has kind of for tenets of responsible growth. First, we grow and win in the market, no excuses. Second, we grow within our customer-focused framework. So we're going to think about the customer first. Second, we're going to grow within our risk framework. So we have a very well-articulated policy on what risk we'll take and what risk we won't take. And, fourth, we have to grow in a sustainable manner. We don't just want to kind of make a dollar today and have it pay three to the government five years from now, because it's not sustainable.

And I think we really-- that has permeated all the decision-making at the institution. People will now say, look-- our head of investment banking, he's famous for saying, we used to think that every dollar was a good dollar." And now we know that not every dollar is a good dollar. We don't necessarily want every dollar that we can make, because it's not consistent with the way that we want to grow.

And it has driven a mindset where there are risks that our competitors are willing to take that we're not willing to take. And sometimes you do leave profit on the table. But over the long run, our customer satisfaction has gone up, our business is growing, we spend a lot of time thinking about reducing costs. Frankly, that's a big part of the equation. Which is-- there is opportunity to do that when you bring together all those businesses. So I think it's really this mindset that says we want to grow-- I mean, that's what businesses have to do-- but you have to grow in a responsible, sustainable, customer-focused way.

**GEORGE GEIS:** There's been a lot of talk lately about technology, and financial technology, and how some of the recent developments might be revolutionizing some areas of the financial services sector. Is that something that you spend a lot of time thinking about, or is that not front and center for you?

**DAVID LEITCH:** Oh, yeah. We spend a lot of time and money thinking about and developing technology. The bank will spend \$3 billion a year on new technology. And we're-- I mean I don't want to sound like a walking advertisement for Bank of America-- but we've won lots of awards for best mobile app and all that kind of stuff for banking. There is a lot of new entrants and fresh competitors in the market. You know, you all probably know them better than I do-- Betterment, and SoFi, and even Venmo, which is old by now. But, you know, it challenged the

way payments are done. So we're constantly looking at that. We have the ability to deploy things that scale. So the things that we can spend money on and deploy them at scale, we can spread the costs through a much bigger base.

So, no, I think there's a lot that's going to continue to develop in the technology space. Even, you know, how do you use the cloud, for example. Do you use a private cloud, do you use somebody else's cloud? Is it a shared public cloud? What are the protections around that? We keep some of people's most important information, other than I think your health information, you want your financial information to be rock solid. As solid as you want the money that you put into a bank, you want the information that you've entrusted us with to be in that vault in the same way. And so we do think about it a lot and pay a lot of attention to what's going on in the marketplace.

And interestingly enough-- this may be of interest-- we have developed a huge patent portfolio having to do with financial services technology. And so I first noticed this when I was at Ford Motor Company, which you can imagine an automotive company spends a lot of time and effort protecting its intellectual property. We would go every year and look through what our competitors were doing and what else was happening in the marketplace. And five or six years ago, our team said to me, Bank of America seems to be getting a lot of patents. They're coming up high on the list-- higher than Amazon, Google, whatever, in terms of patents granted in a given year. We should look at what's going on over there, because they're really spending a lot of time on inventing and protecting the IP. So it's a concerted effort to make sure that we stay ahead of the game.

**GEORGE GEIS:** That's interesting. I wouldn't have expected that.

We were talking a little bit before the session about how the law school has changed since David was a student here. He said this building wasn't here. That was still the business school over there, and we hadn't connected it yet. But one of the other things I think that's changed since you've graduated is the creation and the growth of our law and business program. As you may know, we have hundreds of students every year now that are taking courses in accounting, and corporate finance, in corporate strategy, in various leadership areas. I don't think any of that was offered here when you were a student. So I guess my question is, to what do you attribute your business knowledge and your business acumen? Was that something that you sort of picked up on the job, or how did you get to the level of expertise that you have now in the business world?



**DAVID LEITCH:** Well, as a former litigator I have to say you're assuming facts not in evidence. But they may have offered some of those courses. I certainly didn't have any interest in them at the time. And that JD MBA program existed, and all that kind of stuff. So, look, I think one of the fun things about that job progression that you outlined at the beginning is I get to learn something new every day. And one of the really, I think, the keys to being able to go into a new job, and, frankly, just to stay in jobs and continue to grow and develop, is to admit what you don't know. It's OK not to know everything.

When I went into Bank of America, when I went to interview, the CEO, Brian Moynihan, we had a great conversation. And I said to him, look-- at the end I said, look, I don't really know that much about banking regulation. I don't know the basic structure of federal banking statutes. I mean, I can learn all that. He says, we have a lot of people who know banking law inside and out. And you can rely on them, and, you know, you bring what you bring to the table.

So I think that's really key. And a lot of what you do in corporate America, in big public companies, a lot of the legal issues are common. Like, you know, SEC filings-- well, what does your 10-Q have to say? What does your 10-K have to say? What's fair disclosure? What are the insider trading rules? What's the Delaware corporate law? What's your board have to do? What are the routines of shareholder meetings? All those things. It doesn't matter what your business is, there's a lot in common, too. So once you learn those skills, they're transferable to other contexts.

**GEORGE GEIS:** One of the premises, I think, of our law and business program here is that over the last couple decades, the world of law and the world of business have become much more interconnected. In order to be a successful executive, you need to know some law, and in order to be a successful lawyer, you need to know some business. And so I think that's a premise that we've been operating on. And I think that it's an especially interesting time to be working in this area, because there are a number of highly visible and important general trends in this space that I'd like to ask you about a little bit and see if you have any insights, or comments, or suggestions, or thoughts.

One very notable development that's been going on now for a couple of years, but has really accelerated, I'd say, in the last few months, is a question about what's the role and the purpose of the corporation itself? I think students of mine that have taken corporations, or if you've taken corporations here, you probably remember the case of Dodge versus Ford Motor

Company, which really asked should corporations be run for shareholder profit, or are there other values, or other constituencies that we should be focusing in on?

And I think, in some ways, corporate history is a bit of a sine wave, and it rises and it drops as time passes. But I think we're clearly at a crescendo moment where a lot of policymakers and businesses are trying to rethink what exactly should a corporation be run for, and is it OK to just run the corporation for shareholder profit maximization? Or, for a variety of reasons, do we really need to start thinking about some other groups that are also part of the corporate ecosystem?

So I'm wondering if these are issues that catch your attention at the bank. And if so, how you think about this, and whether you have personal thoughts on what is the role and purpose of the corporation.

**DAVID LEITCH:** Yeah. It's obviously an area that's getting a lot of currency for several different reasons. I took corporations here from Ernest Folk, who wrote the Delaware Corporation Code. So my basis of knowledge is, you know, very traditional. Corporation exists to maximize the return to shareholders.

And then, of course, over the past-- really, I think, because of the financial crisis, because of some other things that have happened in the past 20 years, whether it be Enron or other corporate scandals, and because, I think, government is not functioning as well as any of us would hope it would to address big problems, and therefore things like climate change, and income inequality, and other things that should be front of mind are not, corporations are being asked to step up into-- I'll call it a gap-- and play a more active role.

So, for example, after one of the mass shootings-- and I can't remember which one it was-- Andrew Ross Sorkin wrote a column in *The New York Times* saying, look, if Congress won't act to enact stricter gun control measures, we should put pressure on those who are financing the manufacture of guns, i.e. banks. And all of a sudden, we were, along with our other partners in banking, were in the spotlight because we-- the question is, it's a perfectly legal business, whether or not all aspects of it should be or not. So are we now in the position of saying, perfectly legal business, but we're not going to go there? And how does that interact with our duty to our shareholders?

Delaware corporate law hasn't changed, right? Your duty is to your shareholders. Other states and other regimes have-- public benefit corporations are a possibility, even under Delaware

law. Other states-- Pennsylvania, for example-- has a statute that lets you recognize the interests of other constituencies. And so this debate has taken place about what is the role of the government. And we have institutional shareholders and activist shareholders who say, we think you should not finance private prisons. You should get out of guns. You should-- you know, all the various things. And you should be more involved in helping us transition from fossil fuels and all of those things.

So this has taken place under the umbrella of what we call ESG-- environmental social governance issues-- and we have lots of debates back and forth, or, you know, conversations with big shareholders about what their interests are and what they want us to do in terms of these things.

So the Business Roundtable a couple of months ago put out-- Business Roundtable is a group that is comprised of large companies' CEOs. The CEOs are actually the members. So it's my boss, and Jamie Dimon, and the head of J&J, and the head of Apple, and, you know, that kind of collection of people. They put out this statement saying that they were-- I think they said redefining, or restating, the purpose of the corporation, and that it was not just to maximize short-term shareholder value, but the interests of other stakeholders should be taken into account. And by stakeholders they meant employees, communities, society at large, the environment, all of the things that might be touched by the way you do business.

And I think what that really meant was, look, they didn't change the law of Delaware or any other place where companies are incorporated. But I think what they really were saying is, in order to maximize the long term interests of shareholders, we really do have to take all these other things into account. You can't ignore the interest of your employees and say-- in fact, I don't even know how you would do that kind of under the old model of a corporation, right? You have employees-- suppose you're General Motors, and you're thinking about how to maximize shareholder value. Well, you can't have your employees out on strike for six months, or shareholder value is not maximized.

So we've got to figure out what's the right way to treat employees? How do we intersect with the community where the plant is, or where we sell vehicles? So you really do have to take all those things into account when you think about the long term value that you're creating. And short-term thinking just ends up hurting you in the long run. Because it's a little bit like I said before, that thing that says not every dollar is a good dollar. You get the dollar in the short term, and in the long term you're going to pay it back many times over because you've put

yourself in a position where your reputation is harmed, you have enforcement actions against you, your employees are unhappy, your customers are unhappy, you've mistreated everyone along the way because you seized an opportunity you thought was in the short-term interests of the enterprise.

And so it's really just a more holistic way of thinking about how you maximize the value of the enterprise and do it for the benefit of society. Those things can happen at the same time. They're not necessarily competing narratives. And so we like to say you can maximize shareholder value and do the right things for all those other stakeholders.

**GEORGE GEIS:** One other global question that I wanted to ask-- and I've only got a couple more that I want to get through, so please feel free to start formulating growing questions, because I'd love to turn this into more of a conversation as well.

But I do think there's another really important trend in this space that's been going on for a while now, but really has accelerated over the last few years, and that's a bit of a shift in the balance of power in the world of corporate governance. And, of course, institutional investors have been rising and growing for several decades now with mutual funds. But I think the move to ETFs and to more concentrated forms of intermediate ownership has really started to lead to a situation where you might have three or four large entities that are responsible, say, for 25% or 30% of a corporation's stock.

And I'm wondering what, if anything, you've seen that do to corporate governance itself? Either at Bank of America, or maybe from your time at Ford. And I'm not necessarily talking about just activist shareholders, although that's part of the phenomenon, too. But even supposedly neutral index investors, for example, can accumulate very large positions and serve in some really interesting swing positions in the world of governance. I mean, have you seen this play out in different or interesting ways over the last several years?

**DAVID LEITCH:** I have. So Ford is not a great example of that because Ford had dual class ownership. So the Ford family-- Ford Motor Company went public in 1956-- the Ford family, under the agreement to issue shares to the public, retains a 40% voting interest. So shareholder meetings were not real nail-biters, because they had 40% of the vote. And then employees owned a great deal of the stock, and they're pretty loyal to the company.

But what has happened over-- so you talk about concentration-- we just had-- this is public.

We have made a filing. Berkshire Hathaway now owns 10% of the stock of Bank of America. There are a couple large fund complexes that are approaching that. So you end up with, say, 25% of Bank of America owned by two, three, four entities. You know, we're talking about a \$300 billion market cap company. So a lot of concentration.

But even among folks who have 1%, or 2%, that's still a lot of money. And we spend a lot of time intersecting with them and talking to them about their interests, about our policies, about what we're doing to run the company under the principles that I mentioned before of responsible growth, and how we treat our employees, and what our views are on the environment, and what we fund, and what we have declined to fund. And they are increasingly active and interested.

So we will offer, to the top 100 shareholders that we have, face-to-face meetings twice a year to talk about kind of what's on their mind. And that gets you down to some folks with some pretty small interests, but we believe it's important. And it's not just some investor relations person. We have our lead independent director from the board go to the meetings, our head of HR goes to the meetings to talk about human capital issues. Our head of investor relations does go, our corporate secretary. So we offer them a broad view, our ESG people, public policy.

And it's a good dialogue. We've learned a lot from them, they've learned a lot about us. They want to know that they're investing their money, whether it be a pension fund-- the big players' pension funds-- or some of the investor complexes. They want to know they're investing their money in a company that they believe-- not only believe is on the right track, but believe that they're doing the right things. It's a big source of influence.

**GEORGE GEIS:** I mean, you really do get the sense, I think, that, unless you proactively manage this engagement, that you run the risk of getting to a situation where something arises and you need the support of a number of people. And if you haven't built that relationship up over time, it might be difficult, right, or too late to get at some of that.

**DAVID LEITCH:** Exactly. Right.

**GEORGE GEIS:** So I want to ask one last question, and then I'll hand the mic over to the audience. This is more of a career advice question. You've seen a lot of different aspects of business law, government, policy. What advice would you have towards a second, or third, or first year law student sitting in the audience here that might be interested in building a career, or thinking

about building a career, that could span one or more of these different areas that you've spent time with?

**DAVID LEITCH:** So my advice is more universal, I think, because-- it's not particular to being a general counsel, because I think the advice I'm going to give you-- because, as I said before, I wouldn't try to plan exactly what the steps are. So I think the skills or the activities I'm gonna tell you about are-- even if you end up being, God forbid, a litigator, an ERISA lawyer, or whatever it might be-- write. Learn how to write clearly and concisely. I cannot tell you how important good writing is. I just can't overemphasize it.

And the lawyers who do well-- and don't think that you don't need to write just because it's all in email. I've seen really poorly drafted emails. Back when I was a young lawyer, there were all these memos people did-- long memos to the partner and all that. They had to be well-written. But even a short email, if it's not well written, can just set things back. Just really learn how to think through each and every sentence, each and every word, make sure it's not ambiguous, make sure there aren't extra words. Practice, practice, practice writing.

Practice standing up in front of people and talking. I worked with a famous old appellate lawyer named Barrett Prettyman when I first got to Hogan and Hartson. And his advice at the time was, he said, whenever somebody invited me to speak in front of a group, I did it. Whether it was the nursing home, or whatever-- in the elementary school class-- just get comfortable being on your feet and talking to people. Because, again, no matter what situation you're in, you're going to have to go into a boardroom or whatever and make a presentation. And don't make it relying on the PowerPoint. Learn how to make it even if the technology fails.

I think always keep your integrity. Your reputation for honesty and candor is easy to lose and hard to win back. And so I think that's just absolutely critical that people know that you're an honest broker, you're going to give them the right information-- not necessarily what they want to hear, but what they need to hear. That's really important.

And then learn your client's business. Listen to their earnings calls. Read their 10-Qs. I can't tell you how many people come to try to pitch a business and they say something that you're like, you really don't know anything about my business. You just want to tell me about yours. Which is fine, but I'm going to pay a lot more attention if I feel like you've invested in learning a little something about what's important to me, as opposed to having you come and tell me how great you are at something that I may not need.

So just learn your client's business. And that applies whether you're an in-house or not. I mean, that's really important for me. My internal clients really want to know that I understand their business, not just that I'm a lawyer who's going to kind of give them legal advice, but I know what they're dealing with on a day-to-day basis, when they try and run their business, when they're trying to run a PNO, or they're trying to run an HR department. Here are the real practical issues, and I get it. I don't just sort of spout legal advice and walk away.

So those are some of the things that occur to me. But learn how to write really well. In case you can't tell, that's my passion.

**GEORGE GEIS:** So let me ask the audience, what's on your mind? I'm happy to run around and hand you the mic, or just stand up and shout it out if you want. But what questions do you have listening to this conversation?

**AUDIENCE:** Where do you see the legal profession going from here for the next five, 10 years? What kind of areas are opening up, and so forth?

**DAVID LEITCH:** Yeah. My crystal ball gets a little cloudy sometimes, but I think privacy is going to be an area that continues to develop, because we have in Europe the GDPR-- General Data Protection Regulation. California now has its version of some broad privacy laws. I think we can hope that Congress adopts a national privacy law here that kind of preempts the 50 states and all those cities and everything so that we don't have a multiplicity of different regimes. I have said-- this is only me, not necessarily my company-- I have said I almost don't care what the rules are, just make them national. Have them be as tight and extreme as you want, but just let's have one that we can go out and comply with. So I think that's a really important area.

And then artificial intelligence. I don't even know quite where that's going or what it means, but there's a lot of talk about bringing big data machine learning, artificial intelligence, predicting behavior. And there are a lot of, obviously, legal issues embedded in that. Those are two that I think about a lot. And then just to continue the technological advance of things like blockchain. What is that going to mean? You know, all those kinds of new technologies that are coming along.

So I think it's the things that you see that are changing in society-- another one for us, which is a really interesting one, is what's going to happen with marijuana laws, for example? We cannot bank, we cannot accept money, from people who make it selling marijuana, because it

is an illegal activity. Now, everyone says, you know, it's legal in Colorado. There is this thing called the supremacy clause. It is illegal in all those places, and as a national bank, we cannot accept. So what do you do?

OK, there's somebody selling pot-- you know, they've got a little store in the corner of a shopping center that's owned by a guy who owns 800 shopping centers. Does that mean we can't take any of his money because money is fungible? Lots of issues around that. That's particularly banking. But, you know, financial crime is also another one where we see a lot of developments. Sanctions law, money laundering, all that kind of stuff.

**GEORGE GEIS:** Speaking of career transitions, I was just talking to a friend whose husband is a lawyer and he just started a new job as corporate counsel. It's out in California and it's Mike Tyson's marijuana company.

[LAUGHS]

**DAVID LEITCH:** I wonder where they're going to bank.

**GEORGE GEIS:** Yeah, I don't know.

[LAUGHS]

Other question.

**AUDIENCE:** So you mentioned when you first got to Bank of America you didn't have much knowledge-- or as much, I guess, as you do now-- in banking regulation. So I was wondering, in your day-to-day job today, how much is banking regulation involved? And is any part of that kind of keeping track of where that regulation may go in the future and making sure your business is still amenable to that if it does change?

**DAVID LEITCH:** Yeah. So, look, a lot of what we do day-to-day has to do with banking regulation. In particular because we are a national bank, we are regulated by the Office of the Comptroller of the Currency, the Federal Reserve, the CFPB, those organizations spend a lot of time in the bank. They do examinations and audits. And a lot of it is how are you complying with the regulation.

We have a very large compliance organization that fortunately doesn't report to me. So it reports up to risk. But we're the people who are responsible for saying what the law is, what it means, what it requires. And then they try and make sure it's executed properly within the



organization. And regulation changes a lot, particularly as you get-- you know, you kind of had Dodd-Frank and the Obama administration with one set of rules coming out of Dodd-Frank, and now you have kind of some reexamination of some of those things. Volcker has just been changed a little bit. Living will laws have been changed a little bit. And so there's always going to be that pendulum that swings back and forth, and we have to make sure we're paying attention to it.

**AUDIENCE:** You mentioned that you were working at a law firm, in a big law firm, and also as an in-house lawyer. In your opinion, what are the advantages and disadvantages of working in a law firm and as an in-house lawyer?

**DAVID LEITCH:** I think I already mentioned one that springs immediately to mind, which is I don't have to bill my hours. And I don't have to originate business. It comes to me.

[LAUGHS]

But look, I think there's a lot of advantages-- particularly when you're young-- to working in a law firm. You get a lot of that mentoring and teaching. I mean, I worked very closely with some absolutely fantastic lawyers. Not that there aren't fantastic lawyers in-house, but I think it's more of the culture of a law firm, where you're working for a partner. You're a young associate. Part of their job is to mentor you, to teach you things.

I was fortunate enough in my law firm-- so when I left the Justice Department in 1993, and before I went back into government, for the eight years that I was there I was working for a guy named John Roberts, who you know now is the Chief Justice. So we would work on briefs together. And talk about learning how to write, I mean, I had someone who would sit me down, and we'd go through briefs, and we'd talk about how to make arguments. And so there's a lot of advantage, when you're young and learning some of the skills, to having those kinds of really bright lawyers around.

I think being in-house, you feel more a part of an overall enterprise. You're sort of part of-- not that a law firm isn't an enterprise, but a law firm can be individual people with their practices kind of coming together collectively to form a law firm. Whereas in a corporation, you're kind of all rowing in the same direction, hopefully, and you're working together for the good of the enterprise. And so there's that sense of commonality that sometimes is lacking in a law firm.

And there's a continuity to it. I think one of the things that was frustrating about practice was, you'd be working on a problem for a client-- I was an appellate lawyer-- and so you'd be working on a problem for a client, your case would be done, and you'd never have-- you'd maybe go three years before you have another case with that client. And so you're kind of continually working with different people, which can be good if you don't like the people you're working with. You know, it's a short-term thing. But when you get into the overall enterprise, you're working with the same people over and over again on a common set of issues, and you form those deep relationships that I think are more lasting than sometimes law firm lawyer-client relationships are.

**AUDIENCE:** So I heard that lawyers can be quite litigious, and one of the things I was wondering is if, in your day-to-day job, whether at Ford or at Bank of America, you encounter problems that are better solved through corporate strategy, or negotiating, as opposed to going down the litigation route?

**DAVID LEITCH:** Yeah, absolutely. All the ones that we're sued about.

[LAUGHTER]

We are, you know, far more likely to be defendant in lawsuit than we are to be a plaintiff. So we wish people would bring their problems to us in a strategic way. But it's our responsibility, too, to try to solve problems short of litigation, whether it be with a customer, an employee, or a commercial issue. We had a case-- I don't think I can tell all the details-- but there was a significant issue involved. And we, rather than taking it all the way to litigation, we decided to change our policy and work out a settlement with the plaintiffs where we said to them, OK, we're going to change this policy that you've complained about. Now let's talk about how we resolve the lawsuit. Because we looked at it and we said, you know, this is not worth the fight.

So you look at each situation and decide, what's worth the fight, what's not worth the fight, and then sometimes it obviously depends on the other side and how much they're insisting on to end the fight. But I think you're right-- solving things through litigation is usually-- almost never-- the best way to resolve a situation.

**AUDIENCE:** Yes. What do you see in a project in order to give a loan in this project?

**DAVID LEITCH:** Where do I see what?

**AUDIENCE:** What do you see in a project-- what do you review in a project-- in order to give a loan of this

type of project? I don't know, maybe an energy plant, or a highway? I can't help it. Maybe, I don't know the guarantees? Because I don't know, but I understand the bank gives finance to the project, for different projects?

**DAVID LEITCH:** Oh, project finance? Yeah. So we have a large project finance operation. And, you know, it's important-- and, again, we look at it through this environmental social governance lens that we have-- we're looking for project finance, for example, we do a lot of green bonds to finance whether it be solar, wind, whatever alternatives to fossil fuel. So each project is viewed-- you have to look at it through the credit risk side. You have to look at it through kind of the reputational risk side of things, what the business is that we want to be in. So there's a broad analysis done for each of those things.

And reputational risk is a really big one, actually. We have this thing we call rep risk committee, where if there's something that's likely to be in the news, or be potentially controversial, we'll take it through what we call the reputational risk committee and there'll be a decision.

So, for example-- this isn't project finance necessarily, but-- vaping. OK. Are we gonna-- Juul comes to us for financing. What are we going to do about it? Are we going to be involved in that business, or not involved in that business? You know, that kind of thing. So there are a lot of considerations that go into each of those decisions.

I think we have one right here in the front.

**AUDIENCE:** Hi, David. I have a question of-- may I know that during your daily work, do you usually have some contact with non-US lawyers, or non-US legal counsels? Because I think you must have a lot of legal counsels in different region.

**DAVID LEITCH:** I do.

**AUDIENCE:** Yeah. So may I know, if you want to hire someone, what's the most thing that you value the most, no matter the personality or technical skills?

**DAVID LEITCH:** Yeah. I have a lot of contact-- so we have lawyers in London, some of whom are now moving to Dublin and Paris because of this thing that might happen someday, Brexit. We'll see if it ever happens. A short story-- when I first was with the bank and I first visited my team in London, it was early-- it was spring 2016-- and they brought me this big thick deck on what they were going to do in the event of Brexit. And I thought, wow, that's really impressive.

They're fully prepared for something that's never going to happen. But of course that deck's been sitting there for three years waiting for something to happen. But we have fully Brexited, as our CEO likes to say. I mean, we can't wait to see what they're going to do.

But we have a huge contingent of lawyers in Hong Kong, in Brazil, and then scattered around other places in the world-- Japan, Singapore, Paris, as I said. A bunch of other places. But I have pretty routine contact with the senior lawyers in each of those places. And we're looking for people who have all those skills that I said before, and with great integrity, because I think sometimes practicing in a, quote, unquote, remote location can be very challenging because you might be a one-person-- like, we have one lawyer in Milan, right? So that person might be under a lot more pressure to kind of do what the business wants. They sit there-- she sits there all day long every day with the business team and there's no one else there to kind of back her up.

So I think it's really important for me to have contact, for my senior lawyer in Europe to have contact, so she knows there is a place to go. You're not just out there in an outpost by yourself. But she's got to have some fortitude to be willing to stand up and bring the issues to our attention when they need to be raised.

So I think it's challenging for those folks who are in kind of one-off places, or two or three of them together in a place, and they really need to be able to raise the alarm on issues when they see them, or even just a call and say, hey, I'm not sure how to deal with this. Do you have advice, or can you talk to my business client about why I'm right about this? Or just to back them. So it's kind of complex, but we try and really support them.

**GEORGE GEIS:** Before we break, I'd like to thank Julia and the Virginia Law and Business Society for helping to organize this event. Thank you to all of you for joining us. And David, thanks most of all to you. We really appreciate your willingness to give us your time and to share some of your lessons, and wisdoms, and experiences with us as well. So thank you very much.

[APPLAUSE]