DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Steven M. Glick

Senior Vice President, Chief Legal Officer and
Corporate Secretary, Public Storage (2010–2015)

THE SPEAKERS

Steven M. Glick
Senior Vice President, Chief Legal Officer and Corporate Secretary, Public Storage (2010–2015)

Mark Pecheck
Partner, Gibson Dunn LLP

Michael Quigley
Partner, Kim & Chang (Korea)

Joshua Zielinski
Partner, McElroy, Deutsch, Mulvaney & Carpenter LLP

John Marzulli
Partner, Shearman & Sterling LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, www.directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor's personal accomplishments in his career and his leadership in the profession, we are honoring Steven M. Glick, General Counsel of Public Storage during 2010–2015, with the leading global honor for General Counsel.

Public Storage is a real estate investment trust that primarily acquires, develops, owns, and operates self-storage facilities. It is one of the largest real estate companies and landlords in the world. (The national and worldwide operations are described further below.) His address focuses on key issues facing the General Counsel of an international business during the course of his legal career, which includes 16 years of practice in Europe. The panelists' additional topics include international business and law; mergers and acquisitions; intellectual property; tax strategies; and litigation.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors including General Counsel.

Jack Friedman
Directors Roundtable Chairman & Moderator

Steven M. Glick

Senior Vice President, Chief Legal Officer and Corporate Secretary, Public Storage (2010–2015)

Steven M. Glick is believed to be the only U.S. lawyer to have served as General Counsel of major U.S. (Public Storage) and U.K. (Ladbrokes and Graseby) public companies, as well as for the Americas for a major French public company (Thomson). Mr. Glick also has held senior business positions in diverse businesses involving business development in the U.S., U.K. and Japan, licensing internationally, and general management in Asia Pacific and Latin America. His early career (1984–92) was spent in private practice with Shearman & Sterling, in their New York, London and Paris offices.

In recognition of his distinguished global legal career and in-house practice, the Directors Roundtable awarded Mr. Glick with its World General Counsel honor in March 2015. In 2008, the International Law Office, in conjunction with the Association of Corporate Counsel, nominated Mr. Glick as General Counsel of the Year. Among other awards and honors he has received is the inaugural Founders Award of the Association of Media & Entertainment Counsel ("AMEC"), an award which subsequently has also been bestowed on the head of the Media & Entertainment Group at Microsoft, the President of the Motion Picture Association of America, and the Founder of JAMS.

Mr. Glick is a graduate with honors of the University of Connecticut School of Law, where he served as Articles Editor on the *Connecticut Law Review*, of the London School of Economics, where he received an M.Sc. in Politics (with special reference to the Politics and Government of Russia), and of Elmira College, where he received a B.S. *magna cum laude* and was one of the graduating class' two commencement speakers at the college's Candlelight Ceremony. He was born and raised in the Bronx, is married with two children, and has lived with his family in Santa Monica, California since 2002, following nearly two decades in Europe.

Public Storage

Public Storage, a member of the S&P 500 and FT Global 500, is a real estate investment trust that primarily acquires, develops, owns, and operates self-storage facilities. The Company's headquarters are located in Glendale, California. As of December 31, 2014, the Company had interests in 2,250 self-storage facilities located in 38 states, with approximately 146 million net rentable square feet in the United States; and 193 storage facilities located in seven Western European nations, with approximately ten million net rentable square feet operated under the "Shurgard" brand. The Company also owns a 42% common equity interest in PS Business Parks, Inc. (NYSE:PSB) which owned and operated approximately 29 million rentable square feet of commercial space — primarily flex, multi-tenant office and industrial space — as of December 31, 2014.

JACK FRIEDMAN: Good morning. I am Jack Friedman, Chairman of the Directors Roundtable. Many of you have been to our programs, but for those who are not familiar, we started our programming in Los Angeles in 1991. Since then we have done 800 events in 14 countries. Our primary goal is to work with Directors and their advisors, who can include General Counsel and other members of the Bar.

Before I turn the program over to the Guest of Honor, I want to thank Deanell Tacha, the Dean at the Pepperdine University School of Law, for coming. She has been a speaker at our programs previously; her last position was as the Chief Justice of the 10th Circuit for the Federal Court of Appeals. It is a great honor for the legal community to have her here. One of our panelists is an alumnus of Pepperdine, Mike Quigley, who you will meet later.

Now I would like to give a brief background on Steve Glick, who is retiring from his current position after 30 years of service in the legal community. He most recently has been the Chief Legal Officer and Senior Vice President of Public Storage, as well as its Corporate Secretary. Earlier positions included General Counsel of the Americas for Thomson (Technicolor), Executive Vice President at Paramount Pictures, and General Counsel at Ladbrokes, a FTSE-100 U.K. public company. It is a distinguished career, from which he will draw some useful comments about being in private practice and in-house, both in the United States and overseas. Steve attended Elmira College, the London School of Economics, and the University of Connecticut's School of Law. I could spend the whole morning on just his accomplishments.

Instead, we will start with a welcome from Amy Forbes, Co-Partner-in-Charge of Gibson Dunn in Los Angeles. Then our distinguished Guest of Honor, Steve Glick, will make his opening remarks. He will be followed by our Panelists, who we will bring into the discussion as the morning goes along.

JACK FRIEDMAN: I would now like to introduce Amy Forbes.

AMY FORBES: Good morning. I'm Amy Forbes, the Co-Partner-in-Charge of the Los Angeles office, and I wanted to welcome you all here. Enjoy the view and enjoy the morning. We are very pleased to have this program here. Thanks very much.

JACK FRIEDMAN: And now our Guest of Honor.

STEVEN M. GLICK: Thank you, Jack, for those kind words. Let me also thank the Directors Roundtable for honoring me and organizing what I am sure will be, for all of us, an enjoyable and informative event today.

I wanted to first thank and introduce the panelists individually, as Jack mentioned. To my immediate left is John Marzulli, who is a partner at Shearman & Sterling in New York. He has been a partner for over 30 years. John and I worked together at Shearman's in both New York and in London in the early part of our careers, and we even played on the Shearman's basketball team together! John is a fine lawyer; he's a friend; and he was a much better basketball player than I was, as well!

Then I want to introduce, immediately on my right, Mark Pecheck, who is a partner at Gibson Dunn, here in Los Angeles. I first met Mark about ten years ago while I was at Thomson/Technicolor. Mark is a very highly accomplished and well-regarded real estate lawyer. He's been with Gibson for over 30 years, so he, too, is a member of the 30-year+ club.

Then, to my far left, as you all now know, is a graduate of Pepperdine Law School, Mike Quigley. Until the end of last year, Mike was the head of the Tax Controversy and Tax Litigation practice at White & Case in Washington, D.C. He is now based out of Seoul, Korea with Kim & Chang. I worked closely with Mike for several years on an important transfer pricing matter, and in that time, I came to respect his work immensely. Mike, I am glad that the event today gave you a chance, since you were raised in California, to come back to visit. Thank you.

Our final panelist, to my far right, is Josh Zielinski, who is a partner in the Commercial Litigation group at McElroy, Deutsch in Newark, New Jersey. Josh is a top-flight litigator whom I and my company have worked with on a large number of matters.

On behalf of everyone here, I would like to thank all the panelists, once again, for coming. I would also like to add my thanks to Gibson Dunn. I really do appreciate — as does the Roundtable — their making their facilities available and hosting the event today. Finally, I wanted to thank the friends and former colleagues and others whom I see here today. I know everyone's time is valuable, and I am truly grateful for your interest and your support.

My presentation today will be different than the usual Roundtable presentation by an honoree, as the Roundtable is really honoring my recent and past roles as General Counsel for both U.S. and U.K. public companies. Having just retired from Public Storage, shortly after celebrating my thirtieth year of law practice, I wanted to talk about something that was more personal and a bit more anecdotal.

In one's career, as in one's personal life, everyone needs some luck. I have certainly had my fair share of it, from landing a job straight out of law school with Shearman & Sterling in New York, to moving from there to their London and Paris offices — which in the 1980s, were quite small, with few opportunities for Americans to get posted over there. From there, I became the General Counsel of Ladbrokes, a FTSE 100 company. While I was there, they owned and operated the Hilton Hotels outside the U.S. It was a very interesting business with both hotels and betting and gaming.

Following that position, I went to work for Paramount Pictures in both London and Hollywood, and then for Thomson/Technicolor, which provided a broad range of products and services to the entertainment industry. Then I made the move to Public Storage. To go from Paramount and Technicolor to Public Storage, is about as dramatic a change in client as an in-house lawyer can experience.

Let me just say a few words about Public Storage. First, there is no business that I have been associated with that has a better business model than Public Storage. That is a model that its fine and experienced management team, and Board, really know how to support and exploit. At Public Storage, one of the things you often hear, in describing the business, is that "we just rent garage space" and "boring is good." Public Storage has grown to be a $35 billion equity capitalization, with over 150 million square feet of space rented to 1.2 million customers in the U.S. and Europe and 5,000 employees, with endless opportunity to continue to grow and expand in the U.S. and overseas. This just doesn't happen by being "boring" and "simple." There's a lot of work that goes into it. The legal team at Public Storage has — over the course of its 40-plus-year history — done a great job in protecting and helping grow the brand.

In my relatively short time at Public Storage, I saw some of the company's seasoned, excellent in-house lawyers bring their talents to bear. Lawyers like Tim Scott, who is here with us today, who is a real estate tax expert, and David Goldberg, their former General Counsel, who's "been there and done that." They are great lawyers and good people. That really helped me along the way, both at Public Storage and in the other positions I've had the privilege to work in over the last 30 years.

Luck has definitely played a part in whatever success I've achieved over the course of my legal career. Including the fact that when I joined Public Storage in early 2010, the stock was $80 a share, and when I left last week, a little over five years later, the stock was close to $200 a share.

As one city analyst said a few years ago — and it's still true today — looking at PS's stock chart, it's a Superman-like ascent. It's been true for me for at least the last five years and it's largely been true for the last 43 years. Luck and timing both really do matter.

I would like to go on with the show now, so to speak. For the next 15 minutes or so, I'm going to share with the audience — as a tribute to my favorite and soon-to-be-retiring late night host — my Top Ten list of lessons I've learned in unusual circumstances and unusual settings over the course of my career. Although I have a Top Ten list, there's only time for two today, so we'll focus on two.

The first lesson is, "Don't let a bomb get in your way: success and failure in the U.S. IPO markets." It was 1992, and I was a senior associate at Shearman & Sterling in London. It was Friday night, April 10th, and I was working with and leading a team of five lawyers and assistants on the final stages of a U.S. public offering, for a company called Orthofix. Their product was an external fixation device used to help in fracture treatment. Orthofix was headquartered in the Netherlands. It had a factory in Italy; its management was in the U.K.; and its main market was in the United States.

At 21:20 — 9:20 p.m. — that evening, an IRA bomb consisting of 100 lbs. of Semtex wrapped in a ton of fertilizer exploded in a van parked outside the office building I was working in, the Commercial Union building. At the time, four of the five members of the team were having dinner — Chinese food — and on a conference call with our client in the one conference room on the only side of the building that did not get the windows blown out in the bomb.

Tragically, when that bomb went off, three people that were in the building died, including a taxi driver who was waiting out in his car at the base of our building, and we think he was waiting for someone in our office. The bomb ripped through the Baltic Exchange and the Commercial Union building, which is pictured here — where Shearman's office was — and the buildings were rendered unoccupiable for at least three years.

Luckily, four of the five of us were in the conference room, and we were okay. After we picked ourselves up off the floor — and we were pretty confused — I led the team down the staircase and helped our one injured colleague. She had been hit in the head with a lot of glass and there was blood all over her head and body. It looked much worse than it was — but we escorted her down the stairs, out of the building, around some fires, and then into the safety, finally, of the streets of London and the awaiting emergency medical services. We handed our colleague off to an ambulance operator, and the remaining four of us just kept walking. We walked about a mile and then we realized, "What are we doing? We should just go home!" And so we went home.

Before I did, I found a phone booth — sounds very quaint now — and called the senior partner-in-charge of the London office to explain what had just happened: a bomb went off! From the tone of his voice and the tenor of the conversation, I could tell he thought I was raving mad and had exaggerated the extent of the destruction. He soon found out for himself.

In any event, the next day — which was a Saturday — a junior colleague and I went to Heathrow to catch a flight to New York, to the printer — I realize that dates me a bit — in advance of that Monday's planned SEC filing. Unfortunately, our British Airways business tickets were sitting on the window ledge in my office, and were blown up by the bomb. We had no tickets. I explained this to the airline rep, and she asked me to wait. The wait just seemed endless. Also, I think we were still edgy from the bomb the prior evening. The woman returned just in time, before I really lost my patience, and she handed me first-class tickets. British Airways had upgraded us due to the bomb. We thanked her and we went on our way to New York. We went straight from landing — this may sound familiar to people who've practiced for 30 years — to the printer on Saturday; we didn't see our hotel room until Monday, until after we had filed with the SEC. Then later that day, I got a phone call to see the senior partner at Shearman's. I was an eighth-year associate, but I had never really talked to the senior partner, although we had met and exchanged greetings. He wanted to see me in his office. I went to see him that Monday afternoon, and he thanked me for the leadership that I had demonstrated during the bomb evacuation, and he told me to take some time off — *after* the Orthofix deal closed! I underscore "after" only to emphasize, really, the degree of client service that was expected from, and generally delivered by, lawyers at Shearman & Sterling.

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We went back to London, closed the deal on May 1st, and that was that. Then I got a $500 bomb bonus from Shearman & Sterling! Okay? But I only got the bomb bonus after I agreed to sign a release! [Laughter]

The whole experience is very memorable. I look around and I think Gibson Dunn, Kim & Chang and McElroy would have made me sign a release, too — not just Shearman & Sterling! I was an eighth-year associate and really proud of getting that deal done. Not only because we didn't let the bomb disrupt us, but I had also helped persuade the company to go public at $12 a share, which was way below their initial offering price range. I had good reason to feel strongly about that. Then, as it turned out, the price didn't really hit $12 again for several years, and the window for these types of medical IPOs, shut down that year. We did well to go when we did. As Warren Buffett would have said, in an approving manner, I was being fearful at that time while others around me were being greedy. Partly as a result, the chairman and the CEO of the company became friends of mine, and they appreciated that I helped push them across the finish line with the SEC. I actually got the SEC working over a weekend and giving comments, and looking at our comments for the staff responses, before we even filed an amendment, which was unusual.

On that transaction, I managed to do what's important for all lawyers to do, which is to build personal relationships with my team, with the underwriters, with the underwriters' counsel, with the SEC staff and, most importantly, with my client.

After that, Orthofix actually offered me a position as their first General Counsel, which I reluctantly turned down. Ten years later, in early 2000, the stock traded at $48 a share, which was a four-bagger, and today the company has a market capitalization of about $500 million. It's actually the smallest

company that I ever took public. It really was the most memorable and enjoyable one, given the challenges and the results.

Before Orthofix, I was also involved in taking some of Europe's largest companies public in the United States as part of the French and British privatization movement in the 1980s and early 1990s. Such companies as British Gas, BP, Société Générale, were all clients that my firm and I represented in successful U.S. IPOs. As we all know, not all IPOs enjoy success. A few years later, in 1995, as head of Business Development and General Counsel at a small British public company called Graseby — which was FTSE-listed, based in London — we tried to take our environmental business, Graseby Andersen, public in the U.S. We failed for a variety of reasons. Some of the reasons were performance-related; the company's internal growth rate was really anemic, and its potential to grow by acquisition was quite limited. We also had some regulatory issues that hit us — some expected EPA changes, which would have forced people to purchase the type of particulate monitoring products that we manufactured, were never passed, and the prospects actually worsened during the leadup to the IPO.

At the end of the day, IPOs — at least in cautious markets — need a good story, and the Graseby Andersen one, alas, wasn't good enough. Perhaps that's something that I or our bankers, and the company, should have understood earlier than we did.

Lesson number two — the final lesson which I will share with you today! "Impossible is nothing — even in Japan." So Muhammad Ali said — and I don't know if you can all read this; I'll just read the first sentence or so — "Impossible is just a big word thrown around by small men who find it easier to live in the world they've been given than to explore the power they have to change it." You can read on with the quote.

While I've been involved in several transactions in Japan over the decades of my legal practice, there are three transactions in particular that I thought illustrated, at least on a small business scale, the "impossible is nothing" theme of Ali's remarks and, perhaps more famously, of the Adidas campaign.

The most recent transaction was in 2005, when the French company, Thomson, where I was General Counsel for North America, signed an agreement to acquire 33 ⅓ percent interest of the issued and outstanding shares of Canopus Co., Ltd., which is a Japanese-based leader in high-definition-disc desktop video software editing equipment. The shares were acquired through a private transaction with Canopus' chairman and CEO, Hiroshi Yamada, and members of his immediate family. That's the deal getting signed up.

At the same time we acquired that 33 ⅓ percent from the chairman and founder, Thomson also announced it would launch a public tender offer for the remaining Canopus shares. The value of this sort of combined transaction, the two steps, was a little over €90 million.

What made the transaction notable was that it was believed to be the first time that there was a tender offer for a Japanese company by a non-Japanese company that was successfully completed. That was done with me and the legal team at Thomson, and others, and with the outside support of Morrison Foerster — despite, again, many people saying that that sort of transaction could not be done.

Japanese investment in the U.S., at that time, had been extremely profitable. But U.S. investment in Japan was seen — and probably still is seen — as not really viable, for economic reasons or legal reasons or other reasons. In fact, one commentator had earlier stated that an acquisition of a Japanese company was undoubtedly the most difficult form of entry into the Japanese market. Another commentator observed that acquisitions and takeovers are simply not an effective device for Americans to enter the Japanese market. Again, "impossible" is nothing.

In 1994, a decade before that Canopus transaction, I completed a transaction in which Graseby licensed certain high-speed x-ray detection technology to Anritsu in Japan. Anritsu was looking for a solution to detect glass and other foreign body contaminants in glass bottles. Graseby's technology at that time was believed to be the only one of its kind in the world that could do that. Notwithstanding that, there still were a lot of people, a lot of naysayers, saying that a Japanese company would never license technology from a western company. This was in the '90s, and you have to remember, back at that time, you know, Japan was busy licensing its technology to the United States and Western Europe, and it was really one-way traffic. But our Board at Graseby, and particularly our CEO, were not among the naysayers. They were convinced, and my CEO, particularly, was convinced that Japanese companies would be prepared to take a license, and in the end, he was right — they were — and they were actually prepared, in this case, to largely pay for it upfront. The head of this product line and I, after a lot of groundwork, went to Tokyo twice in December of that year, and we got the deal done. So, "impossible" is nothing.

That's a picture of the equipment at the time.

Finally – I don't know if some of you noticed the Hollywood sign in the distance behind us, and I think that maybe one or two of you are waiting for some tale from my Hollywood days, so here it is!

Jackass: The Movie, you may remember, was a 2002 American reality comedy film, with the tag line, "Do not attempt this at home." It was a continuation of the stunts and pranks by the characters on the MTV show of the same name that had aired the prior year. The film was released by Paramount Pictures, and was really a surprise hit globally, both in the U.S. and overseas. Anyone here see it? Or are you afraid to acknowledge you've seen it? [Laughter]

Okay – we have three people who said they've seen it; I think there's a few more in the room! It wasn't released in Japan at the time of its international distribution, because it was feared that some of the scenes in the film were either obscene or there were faces of Japanese citizens being shown without having consented to be involved in the movie. Overall, it was felt that the film may not have been in compliance with local law, and it was never released in Japan.

At that time, I was the head of Business Affairs for Paramount's International Home Entertainment business. I wanted to get that film released in Japan, because I thought it would be successful. I spent some time lobbying within both Paramount and MTV to get the film cut and released in Japan, and eventually prevailed. We had a small theatric release there, where we edited out some bits, and then we had a DVD release which was very successful and well-received. Even subsequently, there was a DVD release with some of the footage that we had taken out put back in. In the end, we released more of the film than we had initially expected. That was an illustration of "impossible" is nothing.

These are just small-scale illustrations of transactions that supported that theme. At the same time, they are really good demonstrations of how an in-house lawyer, as a battery charger, can get things going; how positive, team-oriented, and solution-oriented results by engaged lawyers with management support and board support can be achieved; and how this can yield results that are really unprecedented.

> "...I managed to do what's important for all lawyers to do, which is to build personal relationships with my team, with the underwriters, with the underwriters' counsel, with the SEC staff and, most importantly, with my client."
>
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Thank you, everyone, for the honor today. Thank you, Jack. I've reminisced long enough, and I'll hand it back over to you. Thank you. [Applause]

JACK FRIEDMAN: Thanks, Steve. Next, the Distinguished Panelists will each introduce their topics. We have a series of very interesting ones today, and then I'll have some questions.

But first, I wanted to ask a question, and have Steve comment on it briefly. One of the things that's often said about young people who go into law is that they do it for justice; and they like the glamor and the idea that law offers an incredibly interesting and stimulating profession and a variety of opportunities. On the other hand, you talk to lawyers 20 or 30 years later, and they are sometimes demoralized by the billable hours system and the paperwork. Your presentation highlights the fact that all these things you were doing were done in a cultural context. Could you give us your perspective on the trend and how it's developed? Particularly, tell us about the glamor and interest of it versus the nitty-gritty of having to earn a living as a lawyer.

STEVEN M. GLICK: I was just chatting before the program with the Dean of Pepperdine, and she reminded me that applications are dramatically down for the law school again this year. If you thought the profession was ever glamorous, and I'm not sure many of us would think it's a glamorous profession – I think it's maybe slightly less attractive now because of the cost, the competition, and the difficulty of obtaining a job. But, over the years, it's become less glamorous as an in-house lawyer, because you're dealing much more – and the accountants are, as well – with pervasive regulation that really wears you down over time. There is a lot of form checking; there's a lot of auditing going on; and the overall regulatory and litigation environment are far worse in the U.S. now than it seems to have been when I started practicing. But there are also, of course, exciting, thrilling, challenging, and memorable moments, interesting people, and front-page business transactions.

JACK FRIEDMAN: Although we'll get more from each of the panelists later, I wanted to invite them to make comments on this. I remember the good old days, in the '90s, when I could call up a rainmaker partner, and tell him or her about a program which the firm would be interested in – and he would say, "Sounds good; we'll do it."

Now, inevitably, the conversation goes like this, "I like the idea, and I'll take it to the committee." What's this all about? How has the practice of law changed with more corporate committees, lateral hires, and people changing law firms throughout their career?

JOSHUA ZIELINSKI: I just have a quick comment on the idea that the legal profession is not glamorous. Being a lawyer is a lot of hard work, but it is also a privilege. The job is very exciting. You're never handling the same problem, even if you are practicing in a specialized field of law.

JACK FRIEDMAN: Lawyers have a chance, quite often with law firms now, to do *pro bono* work.

JOSHUA ZIELINSKI: Absolutely.

MICHAEL QUIGLEY: I don't think there's ever been a better time to be a lawyer than today. I think the opportunities are limitless, for reasons that each of the panelists will speak to, and I, myself, will speak to. The increasing regulation; the complexity of doing business cross-border; the fact that the world is flat — as Tom Friedman has taught us — and getting flatter, makes for very, very interesting times. Wise counsel, learned men and women who can be coaches and guides and bodyguards to the C-suite occupants who are running the major corporations of America and the world — for them business has never been better. The only thing I wish is that on my 30-year mark practicing law, if I could do anything, I'd be a third-year law student in Dean Tacha's law school or one of the other fine law schools around town, and start it all over again. I'm highly optimistic. But then again, I'm Irish!

JACK FRIEDMAN: Thank you very much! I'd like to have our next speaker come up. Mark Pecheck of Gibson Dunn will introduce his topic.

MARK PECHECK: Thank you, Jack. I'm going to talk for a few minutes about three case studies of transactions that I have been involved with over my career — some large, some small. I will, with one exception, keep the names out of the discussion.

The first case study involves 50 acres of surplus land in the Inland Empire — that's western San Bernardino and Riverside Counties, here in the L.A. Basin. In that transaction, we had a large Fortune 500 company that had 50 acres of land and it didn't know what to do with it. They didn't want it; didn't need it; and decided to get rid of it. It was in an A+ location — for those of you who have some experience in real estate, you know that the three important points of real

estate are location, location, and location. But two-thirds of the land was located in a 50-year flood plain, which made the land — at least for the time being — undevelopable. However, the Army Corps of Engineers had plans, eventually, to install infrastructure that would divert the floodwater and make the land completely developable.

The land was sold in 1995 for $900,000, which is about 45 cents per square foot. The developer promptly took the 13 or 14 acres that was immediately developable, built two buildings, recovered 100% of its invested capital, and made a nice profit. Over time, the Army Corps of Engineers did what it was supposed to do — eventually built the flood control channel — and, in 2012, the developer sold that land for almost $20 million. That's a nice profit.

When you consider the carrying costs for that land during those intervening years were just a few thousand dollars a year; it was nothing to hold onto it. You didn't have to maintain it; you had to bring out a crew to cut down the weeds once a year and remove the trash, but that was it.

When we finish these three case studies, we're going to consider what qualities a lawyer should bring to the table, and how these three transactions, perhaps, illustrate some of the characteristics or qualities that lawyers should be thinking about.

Case Study #2: The financing of an apartment portfolio. To set the stage, this transaction occurred in 2007. I think most people here have some vague and unpleasant memories of 2007 and 2008. Cracks in the subprime mortgage market began to show in 2007. In the fall of 2007, the economic storm clouds began to gather; they were very obvious, culminating in March of 2008 with the failure of Bear Stearns, and then in September of 2008, with the collapse and bankruptcy of Lehman Brothers.

Meanwhile, back in 2007, there was a borrower that was seeking to finance a large apartment portfolio. This borrower had been turned down by its go-to bank, for three reasons: Number one, the bank had lent it several hundred million dollars, and was concerned about its credit. Number two, the apartments that were being purchased were valued at a 3% cap rate; in other words, the apartments were being valued at about 33 times the net annual income from the properties, which is an extraordinary valuation. And number three, there were reputational issues with this borrower. The borrower was a defendant in numerous lawsuits, class action lawsuits with tenants; there were credible allegations of sleazy business practices. So the bank turned them down.

They went to another financial institution, which said, "Sure — we'll lend you the money," and made the loan in September of 2007. Sixteen months later, that same financial institution sold that $165 million loan to another buyer for $80 million — in other words, more than a 50% loss in 16 months.

By the way, in spite of what it may sound like, I'm not passing judgment on any decisions that were made at the time — hindsight is always 20/20 — but I think these transactions do illustrate some points.

The third transaction — and this time, I can't be anonymous about it and, in fact, no discussion of real estate would be complete without mentioning Donald Trump's name: Ocean Trails Golf Course in Palos Verdes. Somebody in this room has probably played golf down there. Weeks before the golf course was supposed to open in June of 1999, there was a landslide and the 18th hole fell into the ocean. You really don't have a golf course without 18 holes. The developer filed for bankruptcy; the project failed; and there was about three and a half years of litigation between the lender, the insurer, and the borrower.

Ultimately, at the end of that process, the lender wrestled control of the asset and got ready to sell it. The lender at that time had spent — from its loan proceeds and the cost of trying to get the golf course ready for reopening — about $150 million. The finish line was in view; they had done all of the work; they had rehabilitated the 18th hole. Institutionally, the lender said, "We want to get rid of this; we are so sick of this asset that we want to get rid of it." So they sold it to Donald Trump for $35 million. There were 90 residential lots that conservatively were valued, at the time, at approximately $1 million apiece. It's hard to understand what motivated that decision, other than somebody said, "We are so sick of this litigation, the bankruptcy court — we want out."

With those three brief thumbnail case studies, what qualities should real estate lawyers bring to the table? Number one, obviously, is foresight. Let's take the apartment example. Somebody really ought to have been asking not just what seems to be happening, but what was really happening in this case; what might happen in the future; what might we need to do. Again, it's obvious and it's easier said than done, but somebody should have stepped back with all of the problems that were facing this borrower, and instead of thinking, "Well, let's just go ahead and make the loan; we're going to get loan fees; we're going to be able to book

the transaction; we've got year-end quotas to make"; somebody needed to step back and ask the questions.

The next quality that I think is critical is patience. Let's take the Inland Empire land transaction. Yes, we had a Fortune 500 company with 50 acres of land that wasn't critical to their business; they didn't need it; they didn't want it. But the fact is, there was no real effort involved in holding onto that land. It didn't require management; it didn't require tenants; they could have simply sat on it. They chose not to. Again, it wasn't part of their core business — I'm not second-guessing the transaction, but for a lot of investors, patience is what really pays off.

I would also say that unfortunately, in our corporate culture — and this is something the other panelists may want to comment on at some point — there is so much emphasis on the short-term. Whether it is three years or more — five years is considered a very long time horizon. But if you take the long view in real estate, you're going to do very well.

A real estate lawyer needs discipline. Discipline is about not chasing the cat. Not doing the impulsive thing; not following the crowd. I'll let everyone make his or her own determination regarding how discipline did play a role — or perhaps should have played a role — in each of the transactions, but it's something that lawyers should be thinking about when they're advising their clients.

We also need creativity. The only point I'm going to make on creativity — again, everybody talks about wanting to be creative; I would simply say — and I'm seeing more of this — that if we take the Inland Empire land transaction, it would have been very easy to structure a joint venture arrangement where the Fortune 500 company that didn't need or want that land any more could have effectively contributed to a joint venture, gotten it off his books but retained an interest in the land and been able to participate in the upside. This wouldn't have fallen outside of their corporate customs, the way they do business; and it would have allowed them to retain a piece of the action.

Finally, just to state the obvious, know when to hold them and know when to fold them. Something may be a really good idea, but if it's not the right time, then the right idea is really not the right idea.

I'm just going to mention that interest rates have been low for so long that I think we've gotten used to this idea that interest rates will always be low. If you look at that chart, in 1981, the primary was at 21.5%. You see how quickly it rose to that level. It's been down at 3.25% for five years; it's not going to stay there forever, but there are a lot of companies, businesses, and real estate investors, that currently have the mindset that interest rates are not going to change, in spite of all the evidence to the contrary.

The same thing if you look at the one-month LIBOR chart, you'll see that it's down at about 0.15% right now; it's been there for a long time. But look at not that long ago, it was hovering at 5%, and I submit to you that if LIBOR rates went up even 100 basis points — 1% — it would wreak havoc in a lot of markets.

In the handouts, there are a list of some issues that I think are going to be coming up in the near term, including: efforts to change Proposition 13; dealing with the California drought; figuring out how to address and pay for infrastructure improvements; direct

democracy as a solution; and the inability to amend CEQA (California Environmental Quality Act).

Thank you very much for your attention.

JACK FRIEDMAN: Mark is not only a fine attorney, but he has the wisdom it takes to make a profit and not a loss in real estate.

JOSHUA ZIELINSKI: Thank you, Jack, for putting this program together, and thank you, Gibson Dunn, for hosting us in this spectacular setting. I'm going to speak this morning about litigation facing companies. I'm not going to speak about "bet the company" litigation. Instead, I'm going to speak about unglamorous litigation, what I'll call nitty-gritty litigation.

Before I begin, I would like to congratulate Steve Glick. I've had the pleasure of working with Steve during the past five years. I can't think of a General Counsel in the United States more deserving of the honor that Steve is receiving today. Steve, congratulations! [Applause]

We all know about the sexy litigation that companies face; it's in *The American Lawyer* every month. You can read about the latest trial in the *New York Times*, the *L.A. Times*, or *Bloomberg*. Those cases involve shareholder disputes, class actions, and government investigations. What you don't hear about is day-to-day, nitty-gritty litigation that companies in the United States face. You don't hear about premises liability cases, the slip-and-falls that occur every month, the more routine breach-of-contract cases or local administrative proceedings. In and of themselves, none of these cases are particularly important or unique. However, when you view these cases on an aggregate level, particularly tort litigation, nitty-gritty litigation becomes very important.

This slide shows the estimated cost of tort liability as a percentage of GDP in the United States. This slide shows that in 2011, the estimated total cost of tort liability

in the United States was 1.66% of GDP. To give you an idea of the magnitude of that value, the United States' GDP in 2011 was $15.5 trillion. Tort liability, and nitty-gritty litigation in the aggregate are significant and companies need to have policies for resolving the cases they encounter on a daily basis. Nitty-gritty litigation is not going away anytime soon.

To develop a policy for resolving these cases, it is helpful to look at how nitty-gritty cases are decided. We've all heard that statistically, most cases don't go to trial. A 2005 study of state court systems confirms this assumption. According to the study, approximately 3% of cases go to trial. The statistics become more interesting when you drill down on the 3%. Particularly, what types of cases are going to trial and how are they being resolved — jury or bench trials. What the statistics show is that most of the cases going to trial are tort cases and 90% of tort cases going to trial are being resolved by a jury. In contrast, only 36% of the contract cases that go to trial are resolved by a jury. If you're a company operating in the United States facing tort liability, more likely than not, you're going to face a jury at least once a year, maybe twice a year, maybe multiple times a year.

While these statistics show that there is a lot of nitty-gritty litigation and potential exposure, these statistics also show that there are a lot of smaller cases that need to be handled quickly and efficiently. How do companies develop a policy for resolving nitty-gritty litigation? In my experience, the policy is set by the company's General Counsel, the CEO and Board of Directors. The policy is then communicated to the in-house legal department, who will then communicate the policy to people like me — outside counsel — to carry out the policy.

In my experience, American companies like to use what I'll call the "tough but fair" policy. Companies want to have the reputation, in the legal and business community, that they are tough on claims and will not pay meritless claims. At the same time, companies also want the reputation that they are good public servants and will fairly treat someone if a mistake has been made.

The "tough but fair" policy, however, has some risks. If you're dealing with large volumes of litigation, statistically speaking, you are not going to be right 100% of the time. The danger is that if you are tough on the wrong case, and lose, you may viewed as taking money from widows and orphans. No one wants to be viewed as taking money from widows and orphans.

There are several strategies that a company can use to avoid the perception of taking money from widows and orphans. First, discovery in most jurisdictions is liberal and parties to a lawsuit will receive documents and information regarding liability, defenses and damages early in a case. Once that information is received, it can be used to determine whether a case should be litigated through trial or settled. Once discovery is completed and developed, you can review jury verdicts and determine, "Is this a case we want to fight? Or is this a case we want to settle because there is a risk that if we lose, we could be perceived as taking money from widows and orphans?"

If there is a risk of an adverse outcome, what can you do? If the case cannot be settled, you really only have one option: fight. However, is there an intelligent way to fight consistent with the "tough but fair policy"? ADR [alternative dispute resolution] can be very valuable in maintaining a "tough but fair" reputation, while also limiting the publicity of a bad outcome. Mediation is being used by more and more court systems in the United States. A majority of court systems have mandatory mediation/ADR programs. Mediation, however, only works with two parties willing to negotiate a resolution.

Another form of ADR that can be helpful is arbitration. One of the primary benefits of arbitration is that it is private. The witness testimony, evidence and outcome are not open to the public. If you have some nasty facts, harmful exhibits or a bad ruling, you should be able to keep that information from the public. Arbitration, however, has recently been criticized because it is no longer quicker or less expensive than traditional litigation. Judges, for lack of a better word, are free — they are paid for by taxpayers. Arbitration is expensive. A panel of three distinguished retired judges as arbitrators may cost more than $3,000 an hour. Further, the discovery disputes and motion practice will be just as complicated in arbitration, but much more costly to resolve at $3,000 an hour. Finally, your appellate rights can be limited in private arbitration.

A creative way to use arbitration is to use the court system to conduct discovery and narrow the issues to be resolved at trial. Then, when you're ready for trial, the parties can agree to arbitration and the rules for the arbitration: how witnesses will be examined (direct examination on paper and cross-examination conducted live), and what form the ruling will take (one line order or reasoned decision). On the other hand, trials are long and expensive — particularly jury trials. It can take a day or two to pick a jury and you are not going to be examining witnesses eight hours a day. I see that my time is close to running out, so thank you Jack, and thank you for the time.

JACK FRIEDMAN: I have a question on working with the business side. How do you, as litigation counsel, deal with the understanding, or lack of understanding, that business people have regarding litigation?

JOSHUA ZIELINSKI: You have to make them feel comfortable and simplify the issues, if possible. Going to court is a stressful, scary experience. Nobody wants to be there, and the business people sure don't want to be there. Also, no one wants to read a law review article for the answer to a question or feel like they are sitting through a lecture. You must recognize that each person's time is valuable and that your job is to make the litigation process simple and understandable, while also providing comfort that your advice and analysis can be trusted.

JACK FRIEDMAN: A current issue in litigation is that it used to be "we" — meaning the company, everybody at the company — versus people outside the company. And later it became "we" meaning the outside directors, separate from the corporation. Now "we" has become "I," which is every director worrying, "Should I have a lawyer?" This actually happened in a corporate board meeting, where the director asked the board, "If I pay for him, can I have my personal attorney come to every board meeting? Not just the meeting for critical issues, but every meeting. As a lawyer outside the company, how do you get a team of people working together, when in the back of their minds, they are worried about their personal liability?

JOSHUA ZIELINSKI: First, you have to be upfront and direct. Individuals will often ask questions like, "Am I personally liable here? Are you representing me?" You have to clarify that you are representing the company and cannot give personal advice. You may then direct the individual to speak with their personal lawyer or to seek a lawyer to advise them. You try to be as delicate as possible, while recognizing your professional responsibilities.

As far as making people comfortable, it helps to go through what is going to happen. You can do a rehearsal as many times as needed so that when you get to court, the examination is easy because they've been through the process with you.

JACK FRIEDMAN: Regarding litigation, how do juries typically view big companies versus the little person?

JOSHUA ZIELINSKI: There's a common perception in the United States that juries hate companies. That is probably a good starting baseline rule. America loves an underdog. Ultimately, what I've found is that jury trials are about white hats and black hats. If you know you have the black hat going into the courtroom, you've got to tailor your case, your witnesses, and your testimony to get that black hat off, or at least make it grey so that you are not the big, bad company, and maybe the case isn't as cut and dry as the opposing counsel claims it is.

JACK FRIEDMAN: Thank you.

JOSHUA ZIELINSKI: You're welcome. Thank you. [Applause]

JACK FRIEDMAN: Our first two Panelists focused on litigation and real estate. We have two more speakers whose specialties will include international elements, which Steve so eloquently discussed earlier. Also, we mention that three of the four panelists have flown thousands of miles to be here including Joshua from New Jersey who just spoke, Mike Quigley from Korea, and John Marzulli who flew in from New York.

JOHN MARZULLI: Thanks very much, Jack. Steve, congratulations, again. I'm actually delighted that you asked me to participate in this. As Jack mentioned earlier, Steve and I go way, way back, and I don't want you to think that the reason why I was not in the office in Shearman & Sterling on that Friday night was because I was a partner and partners didn't work late on Friday nights. My wife was in labor with our third child, so I had something else to do that weekend. [Laughter]

In any event, Jack has asked me to talk about cross-border M&A issues that we face on a regular basis. Steve and I must have the same taste in late-night talk shows, because I obviously have a "top ten" list as well. The difference is, whereas Steve cut off numbers three through ten, I am actually going to touch on all of them. But I'm going to do it at a really high level, and then if anybody is interested, when we get to the roundtable discussion, we can actually talk about them specifically, if you want.

All of these issues are in the context of the cross-border arena; obviously, these are issues that are faced in any M&A transaction, even entirely domestic ones; they just have a funny twist to them.

In responding a little bit to one of Jack's earlier questions about who should go to law school, what's in it for them, and things like that, from my perspective, passion about justice is an interesting thing, but the people who make really, really good lawyers are the creative puzzle solvers. You had "creativity" up on your slides. If you're somebody who

looks at a problem and says, "How do I solve this?", then you're the right person to be a practicing lawyer, whether it's litigation, corporate, tax, etc. because that's what we spend all of our time doing. If it's not a problem that's difficult to solve, you don't really need us and you go someplace else.

What do we do in a corporate M&A transaction? Well, we design and execute on transactions. We try as an important part of that to identify and allocate risk. Cross-border – the first thing that comes to mind, obviously, is that there are cultural differences. One piece of advice I always have for our young lawyers when they first start practicing overseas is, you can't succeed and be an American cultural imperialist. We have a way of doing things; everybody else has a way of doing things. Ours isn't necessarily right; theirs isn't necessarily wrong. The key is to sit down and develop a common understanding of all systems and plan a way forward. We walk into conference rooms; we meet people; we have assumptions on the way foreign laws work, and they have assumptions about the way our laws work. I think you all know the expression about never assume ... your assumptions are always wrong to a large extent; there's an education process. Boilerplate things that we deal with on a day-to-day basis whenever we're dealing with any contract – choice of law, choice of venue, choice of language, dispute resolution, litigation or arbitration (ICC or AAA, Paris or New York); are you going to trust the court system of some other jurisdiction? These are all things that you wrestle with every time you sit down at that very early stage of planning a transaction.

Dealing with foreign counsel is always a wonderful challenge. As a New Yorker, we tend to be a little high-speed, a little excitable, a little impatient; and sometimes the hardest thing in the world is to deal with your local counsel in – pick a jurisdiction – and discover that it's going to take him or her five days to do something that you would probably expect to get done in a couple of hours. Expectation management becomes awfully important.

One of my favorite transactions was when I was representing a Swedish pharmaceutical company buying a business from an Italian pharmaceutical company. I was based in London, the Italian pharmaceutical company also had a U.S. law firm – with a partner based in Paris taking the lead, and the business being sold was entirely in Europe. The business was entirely in Europe. The parties opted to have the language of the contract be English, because that was the common second language of both. But culturally, if the Swedes returned a phone call within an hour of it having been placed, they thought they were being polite. If the Italians returned a phone call – well, the third phone call – within a week or two, they thought they were being polite. Now, I can say that, because I'm of Italian-American heritage. But the expectations of the two sides were fundamentally different as to how people were going to behave during the course of the transaction.

Issue two is securities law compliance. If you're dealing with a public company, and publicly traded securities, trying to stitch together the competing and sometimes extraordinarily different methods of regulating securities across jurisdictions is, perhaps, one of the more technically difficult things that we do. This is a multi-stage problem, because you talk about rules

regulating tender offers, if you're going to do a bid for cash; and rules regulating the offer and sale of securities, for those of you who were involved in the capital markets and the public securities markets. Back in the days when Steve was doing cash IPOs, if he decided, "The French offering rules are too difficult, let's not sell our securities in France," you could just eliminate it. But, if I'm doing an M&A transaction, my target shareholders are wherever they are. If they are French shareholders, I have to deal with them, and I may not have the luxury of being able to design around their existence.

The other thing worth mentioning — again, since we're all here to honor Steve — is that Steve set the world record, I think, in getting an S4 from initial pen to paper to effectiveness; when we did one in London, you did it in 12 days. Now, this was a situation where the target company that we were buying made the mistake of calling the SEC and describing the nature of the transaction, where we were not going to register and we were going to deal with the U.S. shareholders in a very creative way. The SEC called back and said, "We don't like that solution, and we would like you to register." But at that point, we had already announced the transaction, and under U.K. rules, we had to launch within 21 days in those days. We had a regulatory gun to our head as to when we had to get the registration statement effective so we could launch. We luckily had a very cooperative SEC. Nevertheless, it's a good example of what you're driven to do sometimes on the securities law compliance side.

A lot of this is driven by the fact that — and you can view this on the tax side, too — the U.S. has a somewhat unique way of addressing securities laws. For most countries, they're going to apply their securities laws to their domestic companies, and companies listed on their domestic securities exchanges. The United States, on the other hand, focuses on "where's the shareholder located?" You're a French company and you're listed on the Paris Bourse; if you have significant stockholders in the United States, you're going to get stuck dealing with the U.S. securities laws, notwithstanding the fact that if the reverse were true, the French wouldn't really bother you.

> "...an in-house lawyer, as a battery charger, can get things going; ... positive, team-oriented and solution-oriented results by engaged lawyers with management support and board support can be achieved; and ... this can yield results that are really unprecedented." — *Steven M. Glick*

Issue three, again, in the public company arena, we're not going to spend a lot of pages here, but if you do a public deal in the United States, these are all standard things that you see, you read about in the newspapers — how do we try and lock up the deal; what do we do to protect ourselves. Needless to say, in some jurisdictions, these things just don't fly at all; in some jurisdictions, they fly a little bit; and in some, you can get reasonably close. But again, the task is to design and execute a transaction. What you need to do is figure out where you are, what the jurisdiction is, consult with your local counsel to the extent you don't really know it all already, and then move on from there. One thing that both Steve and I both suffered from: we get to London and all of a sudden all of our colleagues in New York start calling us because we must know something about English law, solely by virtue of the fact that we've been transported here! [Laughter] But, in fact, you're no smarter than the day you left the United States!

The next issue is diligence. In any transaction, diligence is extraordinarily important. On the cross-border side, it gets to be not less important, nor more important, but perhaps more difficult. The preliminary issue is always, "Is diligence permitted at all?" You can go into some jurisdictions, and sit down with the target company and you say, "These are the things I'd like to see," and they say, "We can't show you those things; we're a public company; we're not permitted to." You say, "We'll just sign a confidentiality agreement." "That's not good enough. We can't show it to you." Again, this is part Issue #1 — the cultural issue, part the legal issue, and then it all folds into how it deals with the practical impact of doing diligence.

Now, over and above the traditional business diligence issues, obviously, compliance has been mentioned before as maybe being one of the things that makes the practice of law less fun than it used to be. It certainly has significantly altered the nature of diligence in cross-border transactions. The need to do compliance-related diligence for FCPA, OFAC, sanctions, anti-money laundering, Sarbanes-Oxley, etc.; if you're in the financial services industry, Volcker Rule, cyber security, privacy legislation — all of these things are significant gotchas. They may not be significant issues in a non-U.S. jurisdiction, but once you're owned by a U.S. parent company, then all of a sudden, it becomes a significant issue. We all deal with the *Wall Street Journal* test: how is this going to look when the headline in the paper says, "Major U.S. company is charged with [something]"? Even though it happened not on your watch, but before you bought the company, you nevertheless get tagged with it.

Accounting matters are obviously critical. If you're acquiring a company which doesn't use U.S. GAAP, it probably uses IAS. There are significant differences between the two, and reconciliations may be required. Your CFO may find it difficult to provide the certifications he or she is required to give — all of these things are extraordinarily difficult in the cross-border arena.

The next topic is competition and antitrust. We all know that the competition rules are out there. In keeping with the opening comments, the identification and allocation of risk is a large part of what we do. The study of the relevant markets to identify antitrust risks and the contract negotiation to allocate who bears the risk — when do I get to walk away from the deal because the regulators are demanding too much; when am I forced to close, even though it means I have to eat a lot of pain as a result of complying with some remedy that's required by the antitrust regulators, is a crucial part of any significant cross-border transaction.

If my antitrust partners would identify one of the ways in which the world has changed over the years, it's going to be the extent to which regulators around the globe coordinate with each other. Once upon a time, they would say, "This is the story we're going to tell in the United States. And this is the story we're going to tell the EU, and this is the story we're going to tell someplace else." Nobody gets away with that any more. They all coordinate; they all communicate. If you're not selling a consistent theme across the regulatory environment, you're going to get sunk.

The next general topic is other regulatory regimes. This one we can do quickly, again, because it's not all that significantly different than on a U.S. domestic deal. Financial services, airlines, gaming, insurance — these are things which are heavily regulated as an industry, per se. On a cross-border basis, a lot of those same industries are similarly regulated in their home countries, but sometimes there are different industries that get regulated more heavily than you might expect. Again, a little bit of this is the flashback to Issue #1 on the cultural side — let's make sure we understand what it is we're buying, what it is we're selling, where they do business, what is the regulatory overlap of what we're doing?

Exchange controls have largely gone away as an issue across the world, but they do rear their head every once in a while, especially when you're working in the less-developed world.

Then there are foreign investment controls. Obviously, CFIUS [Committee on Foreign Investment in the United States] is here in the U.S., and when we're representing non-U.S. companies coming into the United States, especially if it's a state-owned company, then the CFIUS's concerns get to be extraordinarily difficult. Corresponding to that, many other jurisdictions have similar statutes, and a lot of them have much broader statutes about limiting foreign investment within their home countries, but a lot of times, those foreign ownership limitations are really designed to protect business within the jurisdiction. You may have seen, for example, a number of acquisitions in Canada, where the Canadian government and the provincial governments will negotiate agreements with the acquirer to maintain certain levels of employment and staffing and investment and things like that, in order to avoid the situation where the foreign company comes in and buys up everything that's valuable and basically takes the business outside of the country.

Number seven is litigation. You've learned a lot more about litigation already. What I can tell you about litigation is that I did a federal district court clerkship, and it convinced me that I was not competent to be a litigator when I grew up, so I went into the corporate side, instead.

JACK FRIEDMAN: You wanted an easy job.

JOHN MARZULLI: Yes, I wanted an easy job! [Laughter]

There are obviously multiple types of litigation to deal with. In my world, shareholder litigation is endemic, and the latest statistics are that in 95% or 96% of all cases you get sued. Jack asked the question of what do directors do about litigation. From my perspective, the most pernicious effect of shareholder litigation is the impact it's had on directors' behavior. I might say this more bluntly if I were off the record, but the bottom line is: directors, in theory, are protected; they're protected if they exercise good business judgment. Because they know they're going to get sued; they know somebody's going to spend time on the witness stand, having depositions — even if they're indemnified, there's a risk that somebody pulls a conflict of interest out of the hat that they hadn't realized was there. Therefore, their protection from monetary liability, if you're a Delaware company, may be lost. You can't blame them for the change in behavior, but there's no question that over the 20 years that I've spent in and out of boardrooms — because I didn't go to boardrooms when I was a young associate — directors' behavior has changed.

Litigation, class actions, discovery — these are things which non-U.S. companies making acquisitions into the United States typically fear almost more than anything else. Steve's work of taking non-U.S. companies and bringing them into the United States was big business for U.S. law firms in the '80s and '90s, but with changes in the regulatory environment and changes in the litigation environment, more recently, it's been companies going the other way. They've dropped their listings in the United States in order to try to avoid some of that exposure.

Concepts of attorney-client privilege are fascinating, to try and figure out whose rules about privilege govern. Is there a privilege

in Slovakia, or isn't there a privilege? These are very important things to us, because we're always in a courtroom; we're always having what we're going to do be the subject of litigation. In an environment where there's much less litigation, there's less sensitivity to it, but that doesn't make it any less important of an issue.

Number eight is tax planning. I'm not going to cover it thoroughly; but if you were to say to somebody, "What was the number one issue on hit parade on cross-border M&A in the last 12 months, it would be inversion transactions. In this process, you take a U.S. company and merge it with a non-U.S. company, and then use the transaction as a way of redomiciling the new parent company in a low-tax jurisdiction where instead of paying the statutory 35% here, you pay, say, 8% in Ireland. Obviously, it has been the subject of much political controversy in the United States. Nothing's actually happened in Congress; there are regulations that are designed to force people to pull back. People have pulled back, but the bottom line is it's a symptom of a bigger problem. Until our corporate tax regime is fixed, people are going to continue to try and figure out how to save more money for their shareholders, like becoming a REIT, for example. I mentioned this to Steve, I'm working on a transaction now involving one non-U.S. REIT trying to merge with another non-U.S. REIT. They have significant assets in the United States, and the entire thing is driven by tax planning. How do you do the transaction efficiently; how do you structure it so the dividend flows are tax efficient after the fact? Managers and advisors all want to generate the highest after-tax returns for shareholders.

Obviously, trapped cash is a significant issue in the United States these days. A number of companies have billions of dollars outside the United States that they can't bring back without paying significant tax penalties. In the M&A environment, it's a wonderful thing for a non-U.S. company to buy a U.S. company, because there's a lot of value in that trapped cash. Typically, if you talk about Basic-101 Capital Markets/Investment Banking for Lawyers, when you figure out the enterprise value of a company, it is plus cash; but the bottom line is that some cash is not as valuable as other cash. Because if it's offshore and you are going to pay 35% to bring it back to the United States and use it for something, then you don't really want to pay one cent on the cent for something like that.

Employee matters are extraordinarily significant in the sense that employees tend to have more protection outside of the United States. U.S. companies frequently — less so now than in the past — move into a non-U.S. market without realizing how limited their freedom of action is, in terms of protecting local workers. You may not be able to realize the synergies that you want in a transaction by letting people go.

It is also common throughout Europe now to have what's called the "works council" — you frequently have to go to the works council and appeal to them. You solicit their views, see whether or not they have objections to a transaction which you can then reflect in the way the transaction is designed and structured.

The French one is more militant than most. Number one, it's a criminal statute, so if you don't play by the rules, one of your local managers can go to jail. Number two, you can't actually — the French lawyers will advise you — sign a deal and then go consult with them; by then, it's too late. You basically give the French company the option to accept your offer to buy them, and they then go to the employee works council, and it's an extraordinarily uncomfortable position for traditional U.S. companies to be in.

On the other end of the spectrum is management retention — you want to get a deal, and you want to keep management, so you might want to incentivize management. Our Paris office is very active these days helping clients make stock-based compensation available to management teams scattered around the globe. As we've mentioned before on the securities law compliance, every jurisdiction has its own rules about offering securities, including offering securities to employees. To try to come up with the equivalent of a cross-border option plan can be extraordinarily complicated.

Number ten — and this is why this is actually 10.1 and 10.2 — financing is always, from a business perspective, a perennial issue in any transaction. Like, "Can I afford to pay for this?" Assuming I'm not using stock — but the ability to do something as simple as having a financing condition is not necessarily simple. In the U.K., if a bank assists a company in making a bid, the bank is on the hook for the money. If the client company actually shows up at the closing and says, "I don't really have the money," the bank, in theory, has to pay. Again, there are a lot of differences around the world about whether you can have a condition on financing, or what kind of financing you have to have in place. Obviously, foreign currency risk is an important part of any transaction. For those of you who work in the private equity-type world, where you're frequently doing financing based upon the assets, there are a lot of jurisdictions where there are financial assistance rules that basically preclude or limit that.

Lastly, because we're lawyers, remedies. You could put this back in the boilerplate position, but we all sign contracts, and perhaps the most difficult conversation you'll ever have with a client is, "But they signed the contract! The contract's clear — they have to do this! Why don't they do it?" The answer is, "Because they don't!" You don't necessarily know why, and the client is extraordinarily frustrated because you just told them it's going to take three years of litigation to get them to do what they're supposed to do or otherwise pay you damages. Nevertheless, breach of contract is always an interesting thing. Nobody goes to jail, necessarily, for breaching a contract. There is an efficient breach theory; I can decide to

breach, and pay you damages, because that costs me less money than performing on the contract.

We spend a lot of time figuring out what remedies work in the cross-border environment.

One of the more interesting things that's going on these days is this last one — and this is largely a trend that's coming out of Europe, and it's trying to move into the United States — which is: you go out and buy an insurance policy against breaches of rep and warranty. I won't say that it's common, but it's of increasing commonality — again, typically in Europe — the insurance companies have largely identified it as a new business line that they're really trying to grow, so they're heavily marketing it in the United States. That being said, the premiums are not insignificant, and because it's a relatively new product, we really don't know what their claims experience is going to look like over the years. They started doing environmental insurance, and they've slowly been broadening it out.

That's my top ten list, and I'll be happy to talk about any of it later on! [Applause]

JACK FRIEDMAN: Our next speaker is Michael Quigley from Kim & Chang in Korea.

MICHAEL QUIGLEY: I'm deeply honored to appear before this august body this morning. I'm humbled to be on a panel with Jack, Mark, Josh, John, and our honoree, Steve Glick. John taught me many things in his fine and just concluded presentation; prime among them is the folly of trying to get through ten meaty slides in the seven minutes Jack has allotted us. [Laughter] I think he taught us much, but he failed to watch the clock. Indeed, I saw Judge Tacha hit the red light! [Laughter]

I am hobbled this morning and ask for your forgiveness. I live and work in Seoul, Korea, and I arrived here about 5:00 p.m. yesterday to join these gentlemen for a sumptuous dinner last night. I slept for

about four hours and I'm badly jetlagged. So I'm honored, I'm humbled, and I'm hobbled! [Laughter]

I have 32 slides in the deck that each of you have before you. I will abide by the seven minutes Jack has allowed us, and I've used nearly one minute for introductory remarks. That leaves me about eleven seconds a slide. So I'm going to skip the slides entirely. Nonetheless, I commend them to you. It is a wonderful slide presentation. I wrote about 10% of it. [Laughter] Ninety percent of it was written by my brilliant tax partners and colleagues at Kim & Chang in Seoul, Korea. We are the largest law firm in Korea, with over 1,000 professionals all in Seoul. My tax colleagues did a truly fine job of setting out in the slide deck an intelligible and easily understood articulation of the U.S. transfer pricing rules and how they apply to cross-border transactions. I used this deck when I served as an instructor for an eight-hour seminar last month before Korea's National Tax Service — the Korean IRS — about international tax rules. Please take time to page through it, and should you have any questions, please feel free to ask me after the panel concludes today or, if there is not enough time, then call or email me. I will be happy to elaborate on any part of the presentation. For now, I'm going to talk with you about just two things in the few minutes that I have with you.

The first is my perception of the markedly changed role of the General Counsel — or, if I may use the modern term for this post, the Chief Legal Officer — in today's corporations. Second, I will illustrate the changed and evolving role of the CLO by using some of the most crucial international tax questions and issues that reach the C-Suite today.

I have practiced law for more than thirty years; mostly from Washington, D.C. and, more recently, from Seoul. My first job was as a trial attorney at the U.S. Department of Justice, Tax Division and, thereafter and for many years, as an associate and a partner in some of the finest law firms in the world: Cadwalader, Wickersham & Taft; Akin Gump; White & Case; and now Kim & Chang. From these points of view and over thirty years, I have witnessed a tectonic shift in the role of the trusted advisor. In my view, this vital role has largely moved from the senior partner in major law firms to the Chief Legal Officer within corporations.

Let me say a word about the concept of a trusted advisor. What CEOs and other chief officers of corporations — the occupants of the corporate C-Suite — need most is wise, prudent, smart, and informed advice. All corporations operating in the global marketplace confront labyrinthine rules and regulations on tax, competition and anti-trust, intellectual property, cyber-security, FCPA and anti-bribery, labor and human resources, health care, ERISA, litigation, and myriad other areas. Law firms and other external advisors provide superb technical experts in all of these areas. But no CEO has the time or the fortitude to evaluate which among these many issues present serious risks to the corporation's well-being. Thus, and for many years, CEOs and others in senior management sought out trusted advisors — wise counselors — to bring clarity and wisdom to the opaque maze with which the occupants of the C-Suites must wrestle.

The importance of the trusted advisor has been known for decades and has been written about. Years ago, David Maister's popular book described in helpful and smart ways the characteristics of a trusted advisor. The point I wish to focus upon is that the C-Suite now looks internally within the corporation for the trusted advisor rather than externally to senior partners in major law firms. So, I will, as others have done, label this trend as the rise of the role of the corporate General Counsel and the elevation of that role to that of the Chief Legal Officer; an occupant of the C-Suite. Put bluntly, I see the CEOs of America's — and, indeed, the world's — finest companies turning to their CLOs as their trusted advisor. No longer — or at least not as much — do they turn, in the first instance, to senior partners in major law firms — such as John, Mark, Josh and myself — as the trusted advisor.

Like all bold and sweeping announcements, mine is subject to exceptions and objections and qualifications. The trend is not uniform. But, I respectfully maintain that it is a gathering trend and it is highly likely to continue. Let me briefly offer a few reasons why I believe this to be so and then I will turn to my second point about the international tax law.

It takes great skill, intelligence, experience and training to be a trusted advisor. Professionals with such qualities are in high-demand and are mobile. Thus, to a high degree, these individuals will be offered and will find many opportunities for lucrative employment.

Major law firms of today are increasingly becoming unattractive places to work; particularly for senior partners. There are many reasons for this and a full exploration of the topic is beyond the few minutes we have together, but let me identify just one crucial factor making this so. Law firms remain addicted to the antiquated billable-hour model and many employ basic — even primitive — financial management tools to measure the productivity of their lawyers. So, let us suppose a hypothetical and hard-working senior partner in a major law firm. They might work 50 weeks per year and produce 40 hours per week of client billable time at $1,000/hour. This would yield $2 million in gross billable time. The law firm's billing department and accounting staff managers would easily and typically determine a client realization rate (the amount of cash paid by the client after discounts and write-offs). Let's suppose a 95% realization rate. Our hypothetical senior partner is hard-working (40 hours a week for 50 weeks year), at a handsome and top-of-market hourly rate ($1,000) with a very respectable realization rate (95%) and this Herculean effort produces $1.9 million in revenue.

Of course, the partner may also be recognized for "origination credit." That is to say, our hard-working partner may be paid, through a formula, some percentage of revenue attributable to the efforts of other lawyers in the firm on work that the partner brought to the firm or manages.

Major law firms often and typically spend one-third or so of their gross revenue on operating expenses (e.g., rent, IT, staff payroll) and one-third or so of their gross revenue on associate and non-partner professional salaries. For our hard-working senior partner, these assumptions would leave a "profit" of about $630,000. A quick look at the SEC 10-K filings or American Lawyer salary surveys reveal that Fortune 500 companies and many other international corporations pay their Chief Legal Officers very well by comparison.

Money is important but, beyond compensation, the professional quality of life for the in-house lawyer and the major law firm partner are very different and the trend favors the in-house lawyer. Let me just mention one point. Major law firm senior partners are often called upon to specialize in narrow areas of the law of keen and acute interest to key clients. Such specialization lends some support to the relentless pressure on law firm partners to increase their hourly rates. By contrast, the in-house lawyer is called upon to have diversified knowledge and expertise. A micro-focus on a narrow technical area of the law would be anathema to a senior partner with the skills and talents to become a trusted advisor.

I have not fully developed my first point but my time is running short and I must now turn to my second point. Indeed, our honoree, Steve Glick, specifically asked me to address international tax issues in the context of the CLOs duties.

As Steve mentioned in his remarks, we worked together to advise Public Storage on a significant tax dispute with the IRS in a highly complex area of the tax law known as transfer pricing. I will speak more about that general topic in a moment, but let me underscore one point now. Twenty years ago, in any case of similar magnitude and importance, I would have reported directly to the CEO and the CFO. To be sure, the client's tax director and in-house or General Counsel would be vital and important team members. But I would have, as outside counsel, been leading the dialogue with the C-Suite over the crucial strategic judgments and risk assessments of how to protect the company's reputation and earnings from adverse impact. In the tax case with Public Storage, Steve Glick was most ably in the lead every step of the way. So, my threshold point is that the role of the corporate

General Counsel has changed; the route by which senior management obtains advice from "trusted advisors" has changed and, indeed, the landscape on which the practice of law is conducted has changed. That's probably a good thing.

My co-panelists gave a superb catalog of the labyrinth of regulatory requirements and burdens — FCPA and anti-bribery acts, corporate governance, HR issues, litigation — that plague CEOs and impede them from driving shareholder value.

I will now turn to the second point and use my world — the international tax world — as a lens to illuminate the role of the General Counsel or CLO about which I have already spoken. I will do so with three concepts that are articulated in that fine and encyclopedic PowerPoint deck that you have before you.

The first is the arm's-length standard as that term is used in the context of "transfer pricing." I know that some of my friends from PricewaterhouseCoopers are here, and they are superb experts in this field. I, myself, know a bit about it. In a brief capsule it means that, for tax purposes, all intercompany transactions must be on the same or similar terms as would have been the case if the parties to the transaction were unrelated and acting at arm's length. So, for a global firm with cross-border transactions in multiple jurisdictions — e.g., a firm that manufactures in one jurisdiction; conducts R&D in another jurisdiction; and sells and markets the product in a third jurisdiction — the income, expense and profits must be apportioned on an arm's length basis. It's a challenging riddle for all multinationals.

The answer to the riddle is found in the U.S. tax law, in the law of every OECD country, and in bilateral tax treaties worldwide. The arm's-length standard and the power of tax authorities to reapportion income, deductions, credits, and allowances if a company fails to abide by the arm's length standard is a powerful and vexing tax enforcement weapon.

> "There is a lot of form checking; there's a lot of auditing going on; and the overall regulatory environment and litigation environment are far worse in the U.S. now than it seems to have been when I started practicing. But there are also, of course, exciting, thrilling, challenging, and memorable moments, interesting people and front-page business transactions."
>
> *– Steven M. Glick*

Let me illustrate with an easy case. A company like Samsung may manufacture its mobile phones in China, develop and design its phones in Korea, and sell and market them in the United States. How much profit should Samsung properly report in Korea, how much in China, and how much in the United States? The answer is determined by the arm's-length standard. It's a simple rule to articulate but it is immensely complicated to apply. The applicable regulations in the United States, under Section 482 of the Internal Revenue Code, are themselves more than 100 pages — just the regulations. And they are surely a model of clarity. [Laughter]

The second international tax concept I wish to raise is the significance of the presence of high-tax and low-tax jurisdictions worldwide and how this fact is connected to two tax concepts known as "source" and residence." Why do I raise that with you? Well, John alluded to the difficulty and burden of operating businesses in the United States because it is a high-tax jurisdiction with double-taxation of corporate earnings. First, our tax rates are higher than many other countries. Beyond this, the United States imposes two levels of taxes on corporate earnings: a corporate income tax at the corporation level and then a shareholder level tax on dividends paid and on gains realized upon the sale of appreciated stock in the corporation. If you're a shareholder in a corporation and you receive a dividend, that dividend has already been burdened by taxation when the corporation earned it. Not all countries impose two levels of tax on corporate earnings. Many exempt dividends and capital gains from taxation. Some countries entirely exempt corporations from tax. So our tax rates for corporations are quite high, compared to our trading partners. The key point here is that corporations must compete in a global market and competitors can and do arrange their operations to take best advantage of the fact of high-tax and low-tax jurisdictions.

Tax lawyers and tax enforcement agencies are adept at identifying the source country and the residence country of profits, income, and gains. Almost every taxpayer, whether an individual or a corporation, has a tax residence in some jurisdiction. To be sure, determining the residence jurisdiction may be difficult in some cases but most taxpayers are seen to reside in one jurisdiction for tax purposes. Also, all income has a source. So, if stock is sold on the NYSE, the source of the gain on the sale is the United States. If Apple sells a cell phone in China, then the source of the income on that sale is China.

I share these concepts with you to demonstrate how quickly they can become an important issue for discussion in the C-Suite. We think of Apple, founded by the great tech visionary, Steve Jobs, as being a U.S. company from Silicon Valley. But is that the whole picture? It has been widely discussed in the press and before U.S. Congressional and U.K parliamentary hearings that much of Apple's global profits are reported in Ireland. So one may ask (and many government officials do) why, when Apple (a U.S. resident company) sells its phones in Australia or China or other foreign countries (with those sales sourced in each of those countries), does most of the profit end up in

Ireland? Part of the answer is found in complicated tax structures with amusing names like "a double Irish with a Dutch sandwich."

But much more basically, it is because Apple chose to locate much of its intellectual property and market risk in Ireland. In so doing, Apple — and many other companies — lower their effective tax rates, improve earnings, and become more competitive and attractive in the equity markets. The large impact that these tax concepts have on corporate earnings and competitiveness make them a C-Suite issue.

The third concept I wish to raise with you, as we reach the end of our seven minutes together — is BEPS. Tax lawyers, myself included, love acronyms. What is BEPS? It stands for "Base Erosion and Profit Shifting." Why is it germane to my message? All of the major tax authorities of the OECD are now working diligently in that beautiful city of Paris on what is known as the "BEPS initiative." What brought them together is their collective concern that multinational corporations worldwide are avoiding fair and reasonable taxation by use of clever transfer pricing, placing highly valuable technology and intellectual property in low-tax jurisdictions, availing themselves of favorable treaties with low-tax jurisdictions and causing income to be reported and taxed (or not taxed) in other than the true source or residence country.

Many tax authorities worldwide, and notably those of the United States, the U.K., and Australia, accuse multinationals of improperly shifting profits to low-tax jurisdictions, such as Ireland, Bermuda, and Singapore, by use of evasive or tax-avoidance techniques. They don't like it, and through the BEPS initiative, they are publically and methodically studying the issue, devising enforcement tools to remedy the perceived problem, and establishing standards by which true evasion or abuses can be differentiated from proper and appropriate tax planning. The OECD is coming up with a playbook, if you will, for tax authorities around the world. In the view of these tax authorities, the rallying cry is the elimination of "stateless income" that is free from tax in any jurisdiction. In other words, income and profit that does not reside and is not sourced in any country but in some netherworld or limbo.

Let me conclude with one illustration, from pages 30 and 31 of the PowerPoint, to bring our conversation full circle and back home to the point I made about the role of the Chief Legal Officer in the C-suite. The essence of my point is that the CLO has assumed the mantle of the trusted advisor to the CEO and is part of senior management. To fulfill this vital duty, the most able CLOs must possess a command of a diverse range of areas in the law — my colleagues spoke of real estate, M&A and litigation. Even international tax falls under the purview of the Chief Legal Officer because all of these areas present clear and present legal and compliance risks to the vitality and well-being of global companies. I'll bring it full-circle with an example from the public reports of the battle Amazon now faces with the IRS.

Amazon is one of the many great companies founded and established in the United States as part of the high technology and e-commerce economy. Millions of people and businesses worldwide benefit every day from its amazing and efficient marketplace. There can be little doubt that Amazon's intellectual property is crucial to the success of its Internet-enabled e-commerce marketplace.

Amazon's intellectual property, like that of many high tech and IP driven companies, does not reside in the United States. Its IP is owned and resides in Luxembourg. It is probably not a country that you would immediately or directly connect with Amazon, even if, like me, you are of Irish descent and a huge fan of Amazon. However, using a well-accepted and completely lawful international tax technique known as a cost-sharing agreement, Amazon caused its Luxembourg affiliate to purchase the IP developed by Amazon U.S. The profit that attaches to Amazon's Luxembourg based IP is huge. The Internal Revenue Service doesn't like that and so they have challenged Amazon's cost-sharing arrangement.

Amazon maintains that it sold its IP to its Luxembourg affiliate on arm's length terms and for fair market value. That price was about $200 million. IRS disagrees; they argue that the IP was worth $3.2 billion.

The significance of this valuation and transfer pricing dispute is that Amazon Luxembourg must pay Amazon, in the United States, the proper arm's length price to "buy" the technology. The IRS argues that the transaction price was $3 billion short. If they are correct, that's additional taxable income in the United States. The United States Tax Court has the case and it is before U.S. Tax Court Judge Lauber. The case has been argued and will likely be decided later this year. It is a signature case.

I raise the Amazon case with you to illustrate that international tax issues, like the other areas my co-panelists addressed, present C-suite issues. Smart — albeit complex — tax strategies and tax planning are required for companies to be competitive, to produce attractive returns for shareholders and to be compliant with the law. Yet, the C-Suite doesn't need a 30-page PowerPoint presentation on the fine points of arcane and obscure international tax rules to chart the best course. They need wise and prudent judgment grounded in experience, knowledge, and training. These tax questions — as Amazon's case shows — frequently go to the core bottom line of company profits and shareholder value. Is that a C-Suite issue? You bet.

And that is what brings us here today. We celebrate and honor a great and distinguished General Counsel — a true trusted advisor — and a man who has our deep admiration. I am very honored to be here with you, Steve, and with all of you. Thank you for your patience and attention. It's been a great pleasure to be with you. Thank you. [Applause]

JACK FRIEDMAN: I have a question for Steve, and everybody can join in. Could you comment about the difference between domestic and international aspects of being a General Counsel?

STEVEN M. GLICK: I was General Counsel of two U.K. public companies in the '90s, and most recently have been General Counsel of Public Storage. My European or U.K. experience is a little dated now, but back then, I was one of only two Americans that were General Counsels at U.K. companies; the other was the General Counsel of Cadbury Schweppes.

JACK FRIEDMAN: Is it a requirement that a company can only be listed on the stock exchange if you, Steve, have been their General Counsel?

STEVEN M. GLICK: [Laughter] Yes! With these two — it was 20 years ago, or more — the situation was very different. One of them, Ladbrokes, the second one I was at, was one of the largest companies in the U.K. at the time, and as I mentioned, it had a very large betting business and owned and operated all the Hiltons outside the U.S. In that position, I reported to the CFO.

I think that is a reflection of the role that lawyers played at that time, generally, in the U.K., and more particularly with Ladbrokes. It was one of the things I didn't like, because it was much harder with that reporting structure, and the way the lawyers were used at Ladbrokes, to really find a meaningful way to have value at the board level and at a strategic level. That just wasn't expected at that time of in-house lawyers. That was a long time ago, and the model, as it generally exists today in the U.S., is also increasingly the model throughout Europe, where a lawyer does have a seat at the table, so to speak, in most large public companies. If there is an executive committee, the lawyer sits on it; the most senior lawyer attends board meetings. It has moved on a lot from when I was a GC of those U.K. public companies to now, and American approaches have recently been adopted by public companies overseas.

JACK FRIEDMAN: Why is the number of in-house counsel about one-tenth in the U.K. compared to the United States?

STEVEN M. GLICK: And Japan is one-fifth of the U.K. I'm not sure I really know the answer to that question, but I do think the litigation and regulatory environment that exists, and has always existed in the U.S., is a big part of the difference in the number of lawyers that are needed by a public company. Beyond purely the size of the U.S. population, I think it's directly related to the complex legal environment that companies have to operate in, in the U.S.

MICHAEL QUIGLEY: I have two reactions to that question. One is, the U.K. and Japanese companies are obviously badly under-lawyered, and they need to lawyer up! [Laughter]

But apart from that, I think that the evolution of the General Counsel's office, or the chief legal officer's role in a company isn't the same in every country. It's the most sophisticated, I would say, in the United States, and some of our EU trading partners.

I think Asia has lagged tremendously behind in terms of the role of the in-house lawyer or the General Counsel, compared to the United States — but it's rapidly catching up. In 1992, when I first visited Korea — now the country I live in — Samsung Electronics, a client then and now, did not have an in-house legal department. They had licensing lawyers in-house, but they did not have an office of General Counsel or an in-house law department. After about ten years, they developed an in-house law department, and then fairly recently, developed a true chief legal officer that has a seat in the C-suite and doesn't report to the CFO or the HR Department, but reports to the chief executive. It's different, for many reasons, historical and cultural.

STEVEN M. GLICK: GE really developed the U.S. model decades ago, and others have followed suit. I can remember — I don't believe John was involved — doing a deal for GE in London in the late 1980s in connection with their acquisition of Tungstrum, a prominent Hungarian light bulb company. We felt, as outside lawyers, that we were pure executioners — that we didn't have a seat at the table, because GE came to us with everything fully baked, and it was really just looking for us, as outside lawyers, as an additional resource to execute, but not for input on strategy or the development of the overall deal structure/terms.

JACK FRIEDMAN: Does anyone in the audience have a question?

[AUDIENCE MEMBER:] I have a question for Steve. I'm curious as to what you look for as a General Counsel in hiring outside counsel. Has that evolved at all over the last five, ten years?

STEVEN M. GLICK: What's really evolved over the last five or ten years is the fee arrangements. [Laughter] Which Frank is very familiar with having worked for us! But I think that's been the real area of change. What General Counsels look for, generally speaking, probably hasn't changed very much. We look for someone with the subject matter expertise and experience, and who is responsive, and as John and others have mentioned, is creative and a problem solver. It's really subject matter expertise, hard-working, responsive, solving your problems.

JACK FRIEDMAN: Have your firms ever had creative fee arrangements?

[AUDIENCE MEMBER:] We are asked all the time to come up with other arrangements.

JACK FRIEDMAN: Would you take a percentage?

[AUDIENCE MEMBER:] It is usually a flat fee arrangement.

JACK FRIEDMAN: They like the flat fee. That's like government contracting.

[AUDIENCE MEMBER:] There are really several ways to do it. But what people found is, as much as people hate the billable hour, it's predictable, and you know what to expect. If you try these alternative arrangements based on percentages, somebody can get burned badly, and that will, at the end of the day, hinder the relationship between the outside counsel and the in-house counsel.

JACK FRIEDMAN: Do the clients come in and say, "Would you take it on contingency?"

[AUDIENCE MEMBER:] Yes, we'll consider that. The overwhelming majority of our work continues to be on a billable hour arrangement, but we're constantly looking at, and we occasionally do come up with alternative arrangements, particularly for established clients looking at large matters.

JACK FRIEDMAN: In Silicon Valley, there are some law firms that will take a piece of a deal, like an IPO deal. They'll do the legal work, but they want a certain percentage of the stock as part of their compensation. Isn't that a conflict of interest for the attorney, who's supposed to be totally objective?

MARK PECHECK: I don't think alternative fee arrangements, where the lawyer takes a contingent fee are either unusual or unethical. Of course, a lawyer has professional responsibilities, duties and obligations not to be in business with his client, and there are significant and appropriate constraints on that. But beyond fee arrangements — alternative or the billable hour — are under increasing pressure. The essence of your superb question — at least my response to it — is a CEO, in hiring a General Counsel or a chief legal officer, looks for the same thing that a chief legal officer looks for when they're looking for a trusted advisor. It gets to the core of this labyrinth of regulations. It's a complex world in which we live, that Josh and the other panelists so expertly described. I would summarize it this way: A talented lawyer will hit the target that other lawyers cannot hit. But that's not good enough, because the innovative lawyer, the exceptional lawyer, the Steve Glick, will hit the target that the CEO can't see. Not just the other targets; not just the targets that other people can't reach — to see around the corner. Also, I think that's what Steve did in his years at Public Storage. I know — by reputation, even though we have not worked together — that's what John does, and the other panelists. It's seeing that danger that the CEO or the company does not see. If you do that it won't be a big issue.

STEVEN M. GLICK: Let me tell one story, if I could, about lawyers sometimes not really seeing things. When I was at Shearman & Sterling, on the offering of Racal Telecom in Europe and the United States — Racal Telecom was owned by Racal Electronics, but was its cellular phone arm, and it subsequently was renamed, and the operating group was called Vodafone, which is now a $400 billion cellular phone company. When we worked on the first public offering of the cell phone company in the late 1980s, in the prospectus, we included a statement that said, "Cell phone use is, and is expected to continue to be, primarily for business users." [Laughter]

We had Goldman Sachs, and we had Rothschild, and we had Davis Polk representing the underwriters, and we were representing the issuer; we had all the experts in the world in the room; and no one foresaw the development of the cell phone industry the way it has actually developed.

JACK FRIEDMAN: Should part of the compensation package of a General Counsel be in equity, whether it is options or some other form? How often is that done these days?

STEVEN M. GLICK: It's routine.

JACK FRIEDMAN: People don't worry that there is a conflict of interest?

JOHN MARZULLI: Conflicts are endemic and I don't mean that in a negative way; I just mean that it is the real world. Maybe use the example earlier about the CEO negotiating his or her own employment arrangement. It is a clear conflict and I think the key — and this is presumably what we're doing all the time, is to make sure they are identified and appreciated by the people who are otherwise involved in making the decisions involving the conflict. This truly disables it and conflicts are relatively few.

JACK FRIEDMAN: Disclosure is the key to controlling it?

JOHN MARZULLI: It's a combination of things. It's disclosure and making an analysis as to whether or not the conflict is really benign and what kind of impact the conflict is going to have on behavior. You see a lot of press, and it's all about investment banks and their success fees. They make nothing if the deal doesn't close, and if the deal closes, then they make $25 million. Plaintiffs have been saying for years that that's a conflict. Of course they're going to give the fairness opinion if they're going to get $25 million. But the bottom line is there isn't a CFO

or a CEO that wants to pay the bank if nothing happens. The real world prevents you from being as pristine as you might think is appropriate. It's a conflict. Every board knows it's out there. The board says, "We're going to hire Bank X and we know they have a success fee, but we know they're not going to give us a fairness opinion on a bad deal, just to make this happen." Boards make that decision all the time.

JACK FRIEDMAN: Let me change the subject. Steve, what are some of the *pro bono*, charitable corporate things that companies you have worked with have been involved with, either before or with Public Storage?

STEVEN M. GLICK: It varies greatly from company to company, and not all companies share the same role that others may have, in terms of their involvement in the community and giving back. For tax reasons, it's really not particularly effective for REITs to make charitable donations. There are other reasons they might want to do it. But some of the companies I've worked for have supported doing *pro bono* work, so that can be a component of it. A lot of the companies, themselves, have their own initiatives, distributed throughout the company; so it may not be something that's organized centrally, imposed on a large organization, but left — with some restrictions and controls — up to local management in various countries to decide what charitable enterprises or efforts they want to get involved with. It is prevailing that most companies are doing something.

JACK FRIEDMAN: In preparing for the event, I was told by someone who's nationally involved with the self-storage industry, that it's a very natural thing, in the self-storage industry, to provide help for the homeless. They may have food drives or different *pro bono* programs for people who may not have a home.

STEVEN M. GLICK: Within the Self Storage Association, which is the trade association for the self-storage industry, they do have some programs of this type.

JACK FRIEDMAN: Finally, in the five minutes a month that you had free for yourself when you were General Counsel, what did you enjoy, other than maybe taking a little nap?

STEVEN M. GLICK: A big nap! [Laughter]

I think the one thing I did mostly in the last few years — and a lot of people in this room may have done it as well, at different levels — is both my sons played soccer, so I got very involved in my free time in supporting their soccer club and high school soccer activities. I was the manager of the club team, and helped to raise money so that they could have scholarship players, etc. In fact, my youngest son is planning to play soccer in college at Colgate University.

JACK FRIEDMAN: The next Pelé!

I want to thank our Guest of Honor for sharing his wisdom and his time. I want to thank all of our Distinguished Panelists for joining us for this program.

I also want to thank the audience, because the purpose of the Roundtable is to be of use to the community and to the audience. Thank you for coming.

Mark Pecheck

Partner, Gibson Dunn LLP

GIBSON DUNN

Mark S. Pecheck is a partner in Gibson, Dunn & Crutcher's Los Angeles office. He joined the Firm in 1984 immediately after graduating from the University of California, Berkeley, School of Law (Boalt Hall). Mr. Pecheck received his undergraduate education at UCLA, earning a Bachelor of Arts degree in economics *cum laude* in 1979.

Mr. Pecheck is a member of the State Bar of California and the Los Angeles County Bar Association and is a member of the firm's Real Estate Department. He is an accomplished real estate finance lawyer, having structured, negotiated, and documented (on behalf of both lenders and borrowers) hundreds of complex transactions involving senior loans, mezzanine financing, CMBS loans, construction loans, participations and syndicated loans, and large multi-state and multi-property portfolio transactions. He also has significant experience and expertise in the area of mortgage loan remedies, including foreclosures and receiverships. Recently, Mr. Pecheck has been deeply involved in several of the residential mortgage servicer reviews undertaken pursuant to consent decrees mandated by the Office of the Comptroller of the Currency and the Federal Reserve Board.

In addition to his real estate finance expertise, Mr. Pecheck has broad experience in real property acquisitions and dispositions, joint ventures, development projects and commercial leasing. He has represented a wide range of clients, including major financial institutions, pension plans, high net worth individuals and families, and European, Asian and Middle Eastern investors.

Over the years, Mr. Pecheck has been involved in a number of high-profile projects, including:

- Representation of a major financial institution in a deed-in-lieu transaction involving $500 million in mortgage indebtedness secured by 51 multi-family apartment properties.
- Representation of Dillon Read Capital Management in $133 million senior and mezzanine financing secured by portfolio of 15 apartment buildings in San Francisco, California.
- Representation of UBS in bridge loan made in connection with the recapitalization of a major landowner in Napa and Lake Counties, California.
- Representation of CSFB in $165 million senior and mezzanine financing secured by portfolio of 24 apartment buildings in San Francisco, California.
- Representation of a Riverside County landowner in the long-term ground lease of a 35-acre site to an energy company for the construction of an 500 megawatt combined cycle power plant.
- Mr. Pecheck is involved in a number of community organizations, and recently completed service as Chairman of the Board of Trustees of Berkeley Hall School in Los Angeles. He is a native of Los Angeles and resides with his family in Sherman Oaks.

Gibson, Dunn & Crutcher LLP

Gibson, Dunn & Crutcher LLP is a full-service global law firm, with over 1,200 lawyers in 18 offices worldwide, including nine offices in major cities throughout the United States and over 100 lawyers in our London, Paris, Munich, Brussels, Dubai, Beijing, Hong Kong, Singapore and São Paulo offices. We are recognized for excellent legal service, and our lawyers routinely represent clients in some of the most complex and high-profile transactions in the world. We consistently rank among the top law firms in the world in published league tables.

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Michael Quigley

Partner, Kim & Chang (Korea)

KIM & CHANG

Michael Quigley is a foreign attorney at Kim & Chang. He specializes in representing clients in tax controversy and litigation matters. For more than 25 years, he has concentrated on the resolution of tax disputes by negotiation and, when necessary, litigation before the courts.

To achieve negotiated settlements with the IRS and foreign tax authorities, he works with examining agents and assessing officers to resolve disputes at the earliest possible stage. When this is unavailing, he appears before the IRS Office of Appeals or parallel organizations within foreign tax authorities, and has successfully represented clients in a multitude of appeals settlements, fast-track mediations, and post-appeals mediations.

Mr. Quigley has tried more than 50 civil tax cases before the U.S. Tax Court, the U.S. Court of Federal Claims and many U.S. federal district courts. His tax litigation experience is extensive and his advocacy skills before the courts have been recognized by his peers.

He is a leading authority on intercompany transfer pricing, tax treaties, permanent establishment issues and other tax matters affecting multinational corporations. He has negotiated advance pricing agreements with the IRS and the tax authorities of many foreign jurisdictions, including obtaining some of the very first APAs between the United States and Korea.

Mr. Quigley has extensive experience with the operations and practices of the global operations of multinational firms and, particularly, their interaction with the U.S. and foreign governments. He has represented clients in many business sectors and industries, including energy, pharmaceutical, aviation, broadcasting, vehicle manufacturing, consumer electronics, semiconductors, home appliances, defense, insurance, investment banking and private equity.

For many years he has studied the economic, business and political affairs of the Republic of Korea and the Korean Peninsula, with a particular emphasis on U.S.-Korea relations. He has a developed interest in Japan and its relations with both the United States and Korea and U.S.-India relations and the political and economic affairs of India. More broadly, Mr. Quigley is keenly focused on U.S. relations with Asia.

Kim & Chang

Kim & Chang is Korea's largest and most specialized law firm with a premier global practice. Since the firm was founded in 1973, it continues to advise the world's leading companies and financial institutions. Based in Seoul, Kim & Chang is a full-service law firm, with over 1,000 dedicated professionals including Korean, U.S. and European licensed lawyers, tax lawyers and accountants, patent and trademark attorneys.

Kim & Chang's success is founded on our commitment to meeting the needs of clients, no matter how small the issue, while upholding the highest standards of professionalism and integrity. Our valued clients are start-ups, small businesses to international conglomerates. We customize our legal advice, paying close attention to client details such as business size, business model, industry and market. Kim & Chang regularly solves the most complex and challenging legal issues for the world's largest multinational corporations and international financial institutions on cross-border transactions and in doing business in Korea. Our professionals at Kim & Chang see the world from the viewpoint of our clients, big or small, building lasting relationships.

The dedication to our clients is reflected in Kim & Chang's unique team-oriented approach and "one-stop" legal services. The firm leverages its multifaceted expertise and broad experience pooling together a team with the right mix of professionals for each client need. Drawing upon our strong practice areas across the board, legal specialization of our professionals with deep market knowledge and forward industry insight is invaluable to our clients in successfully navigating today's economic challenges. At Kim & Chang, we have the legal expertise, resources and team structure flexibility to provide a fully integrated one-stop legal service for our clients.

Joshua Zielinski

Partner, McElroy, Deutsch, Mulvaney & Carpenter LLP

Joshua A. Zielinski is a partner in McElroy's commercial litigation group in the Newark, New Jersey office. Mr. Zielinski advises a broad range of public companies, closely held businesses, individuals and municipal entities in complex civil litigation in state and federal courts.

Mr. Zielinski has successfully represented clients before state and federal trial and appellate courts in matters involving antitrust, commercial mortgage backed securities, commercial foreclosures, civil RICO, breach of contract, ERISA, and partnership and limited liability company disputes.

He received a B.A. in Political Science, with honors from Alfred University in1996 and a J.D., *cum laude*, from the Law School at Syracuse University in 1999.

He is admitted to practice in New Jersey and New York and was a Law Clerk to Honorable Ronald B. Graves, Justice of the Superior Court.

Mr. Zielinski is a member of the New Jersey State, New York State and American Bar Associations.

MDM&C

McElroy, Deutsch, Mulvaney & Carpenter LLP

A Diverse Practice

McElroy, Deutsch, Mulvaney & Carpenter, LLP ("MDM&C") is a diverse practice with lawyers who place the client first. MDM&C has approximately 300 lawyers in twelve offices in seven states, and offers a full range of legal services, including municipal and local government, litigation, labor and employment, healthcare, bankruptcy/restructuring, real estate, insurance, environmental, fidelity and surety, construction, corporate transactions, white collar crime and corporate compliance. MDM&C's philosophy provides clients with the critical edge they need to achieve their legal and business objectives. Clients who seek the assistance of MDM&C will discover lawyers dedicated to providing superior service and personal attention to clients' needs. The Firm has developed a national reputation and regional expertise without abandoning the focus on efficiency and client satisfaction that is oftentimes the hallmark of the best small firms.

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Why do clients turn to MDM&C? What is it about our Firm that has enabled it to sustain continued growth in a time of economic uncertainty? What is it about our Firm that generates such client loyalty that over eighty percent of our annual business comes from former or current clients and client recommendations?

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We respond to our clients' needs promptly and serve their interests efficiently. Effective communication with our clients marks the way we operate at MDM&C. We are determined to create successful and long-lasting relationships with the people and the business institutions we represent. The bottom line in our relationship with clients is, of course, "results" – the ultimate measure of the effectiveness of any law firm. Our lawyers at MDM&C are committed to overcoming difficult situations in achieving our clients' goals – and to doing it time after time.

The attorneys in our Firm have been recognized for their integrity and dedication to the highest level of professionalism. While we are proud of their personal achievements and professional contributions, our collective focus is always on providing legal services of superior quality and exceptional value in a manner that places the client first.

John Marzulli

Partner, Shearman & Sterling LLP

John Marzulli, a member of Shearman & Sterling's Mergers & Acquisitions Group in New York, focuses his practice on international corporate finance with an emphasis on cross-border mergers and acquisitions, defensive assignments, privately negotiated acquisitions and divestitures of stock and assets, joint ventures and on related corporate governance matters. His clients include financial institutions, strategic/corporates, private equity sponsors and their financial advisors. He is a past Chairman of the New York City Bar Association's Committee on Mergers, Acquisitions and Contests for Corporate Control. In 2009 Mr. Marzulli was named by *The Lawyer* as one of 25 "Transatlantic Elite." He has ranked for New York: Corporate M&A by *Chambers USA* 2011–2013, *Chambers Global* 2012-2013, *IFLR1000* 2011–2012, *Legal 500* and *Who's Who Legal* (Mergers & Acquisitions and Corporate Governance). Mr. Marzulli joined the firm in 1980 following a federal district court clerkship and became a partner in 1988. From 1990 to 1996, he was based in London as head of the firm's U.K. M&A practice.

SHEARMAN & STERLING LLP

Shearman & Sterling LLP

Shearman & Sterling has been advising many of the world's leading corporations and financial institutions, governments and governmental organizations for more than 140 years. We are committed to providing legal advice that is insightful and valuable to our clients. This has resulted in groundbreaking transactions in all major regions of the world, including:

Asia: In Beijing, we advised on the first successful transaction done under new Chinese M&A rules and, more recently, played a key role in the US$ 2.4 billion initial public offering of Metallurgical Corporation of China Ltd, one of Hong Kong's largest IPOs of 2009, and in Shiseido's acquisition of U.S. cosmetics company Bare Escentuals.

The Middle East: We participated in the first power project in the Middle East that included financing from Islamic banks and, also, in the largest oil and gas Islamic financing and, most recently, represented the project sponsor and project company of a major refinery just outside of Cairo, Egypt.

Europe: We participated in the first U.S. listing of a German company — Daimler Benz AG — on the New York Stock Exchange and remain front and center in transactions involving automobile manufacturers in Germany and with a broad range of companies across the continent.

Latin America: We represented the first Brazilian company to register an IPO with the U.S. Securities and Exchange Commission and, today, have played a lead role in many of the country's most significant IPOs to date, including Santander and VisaNet.

North America: We advised on the creation of the dual class stock when Ford Motor Company went public more than 50 years ago and today remain the company's underwriters' counsel, advising on Ford's debt and equity offerings and restructuring during Ford's continued turnaround.

We have also advised on some of the world's most notable transactions and matters, representing: the Yukos shareholders in their $100 billion compensation claim against Russia; Cadbury in its $19.4 billion acquisition by Kraft; Panama Canal Authority in its $5.7 billion canal refinancing plan; IntercontinentalExchange in its acquisition of The Clearing Corporation and formation of a credit default swap clearinghouse; The Dow Chemical Company in its acquisition of Rohm & Haas and sale of Morton International and its calcium chloride and Styron businesses; Suncor Energy in its $15.8 billion merger with Petro-Canada; Brazilian conglomerate JBS in its acquisition of U.S. poultry company Pilgrim's Pride through a bankruptcy proceeding; Société Générale in combination of its asset management operations with Crédit Agricole's; and Sterlite in its $500 Million Convertible Bond Offering in India.

Together, our lawyers work across practices and jurisdictions to provide the highest quality legal services, bringing their collective experience to bear on the issues that clients face. For example, underpinning the quality of our work firmwide are our shared values.

We take pride in the successes of our clients and in our contributions to them.