Building the GC Role Webinar Series Part 3: Developing the Board Relationship

Tue, Sep 24, 2024 2:46PM • 1:00:29

**SPEAKERS**

Brett Pletcher

**Brett Pletcher** 00:00

And hello. Everyone who's going to give people another minute or So to come in and we'll get started. You. All right, so

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go ahead

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and get started, just like they have a number of people in the room already, and we'll let others join as we do some introductory remarks here. So good morning, good afternoon, good evening, everyone, depending on where you're at, my name is Brett Pletcher. I'll be the host today for the third and final webinar session for building the GC role. I want to get a couple of preliminaries out of the way. First is, we are recording this session, so if you don't want to be part of a recorded session, now would be the time to click off. We'll be making this recording available on our website and also on LinkedIn. If anyone wants to go back in and review it or send it to somebody else, you'll also have the ability to get CLE for this session in New York and California. During this session, I'll read a couple of codes that you'll need to be able to redeem that credit. And then we won't be able to have live question and answers today, but there is a Question and Answer button there, so feel free to drop your questions in there as we go through, and then we'll leave some time at the end to answer those questions. So can I go to the next slide? So

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just by way of introduction of Gunderson Dettmer as a firm, the firm is the leader for the innovational economy. And by that we think of, you know, the high growth companies who are largely venture backed, and we specialize in doing all that venture capital work, working with their IPOs, M and A debt financings, pretty much everything these small companies need in the early stages of their life and as they live on as public companies. So we have about 400 lawyers around the world in 11 different offices. For the last 10 years running, we've been the most active firm in the venture capital space. We have about 500 of the largest venture capital and well known venture capital firms around the world. We not only help them invest the capital into high growth companies, but we also work to form those venture funds and advise them as businesses as well. Since 2022 we've done 18, over 1800 venture financings, raising over $29 billion in capital for small companies, and then around the firm, we've got about 4500

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company clients that again, in that innovation economy, venture backed. And

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since 2022 we've also been involved in about 300 M and A.

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Transaction. So as you can see, we're very engaged in what we call the innovation economy. So we can go to the next slide.

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So just as a reminder, I've given a more broad introduction to myself in the last couple of sessions. But as a reminder, I was at gunners in Denver very early in my career. I went off to Gilead Sciences, where I was general counsel for 13 years, and left Gilead in 2022 and rejoined gunner centers of counsel in the middle of 2023

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and my current practice there is to provide in house perspectives on approaching legal and governance challenges for companies of any industry or any size, advising life sciences and public company that issues specific to them. Since I've been involved in those two areas for a very long time, pretty much nothing's happening there that I haven't seen before. And then also serving as a GC in residence, and that really means to help GCS and heads of legal think through their operational legal and governance issues, mentoring GCS on their own personal development and on the development of their legal team. I help a number of CEOs think through how to build their legal department and to evaluate their existing teams. I've worked with legal departments to evaluate their structure and their talent level and kind of what level of resource they should have, and then finally doing what I call a phone a friend practice. And that really means when your general counsel, particularly a more recent General Counsel, there are so many things that come across your desk that you've never seen before, and it's really just helpful to pick up the phone and call somebody and say, let's talk about how to approach this. So that's the practice that I have at Gunderson. Some of you may have seen in the press or saw on LinkedIn that I recently joined company called Cytokinetics as chief legal officer. Cytokinetics is a company that has a really exciting hypo hypertrophic cardiomyopathy drug that is right now in the process of being

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the NDA has been the process of being filed with the FDA as we speak, and that drug will hopefully be on the market sometime between May and this time next year, and so I've come on board to help them get ready to market that drug. But as part of me going back to an operational role, I wanted to keep the role that I had here at Gunderson. It's been a part time role. It's been a role that I've really enjoyed, and so with the consent and encouragement of both the firm and the leadership at cytofinetics, I'm staying involved in that. So that's why you'll continue to see me doing these types of things and continuing to be available to you all for different types of questions and advice that you may need.

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So let me go to the next slide. So for today, we're going to talk a bit about some small core cohort meetings that we're going to be putting together. I'll get to that in a second. And then we'll talk about what fully formed GC role looks like, what the GCS relationship with the board is and can be what directors are looking for from a general counsel, how to get exposure to the board, coexisting with outside counsel at the board level, and then I can share a few of the things that I'm talking to CEOs about when they call me and ask me what they should be looking for when hiring or promoting within the legal department. So next slide.

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So as I mentioned at the last webinar, we're going to be putting together some small group discussions if we have sufficient interest from folks, and we'll start those in November. And what we'll do is pull together about six or eight different GCS and heads of legal, and we'll get together over zoom for one hour and really have discussions around

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one creating a network, networking opportunity for people who attend people you can reach out to those folks after the sessions for different topics you want to talk about is to provide a safe space for people to have a discussion with their peers about some of the challenges that they're having and building their general counsel's roles.

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It's an opportunity to really hear how other people have tackled similar challenges to what you have, and get some good ideas and good feedback, and really a chance to see firsthand that you're not the only one out there having these issues. And I got involved in a lot of these kinds of sessions when I was in the General Counsel role at Gilead, and really found them to be really helpful. Chatham House rules are going to apply. So what happens in the session will stay in the session. You should have received an email invitation to register for these sessions already. If you missed that, we'll be sending out an email after this session where you'll have a link to this recording and you'll also have another link to be able to sign up for those sessions if you want to. We right now, we can't guarantee participation for everyone, because we don't know exactly how much demand we're going to have for these sessions. We're going to do our best to accommodate everybody, and we'll start those sessions off in November. And because I.

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Of we anticipate we may have a fair amount of demand for these and also because I've started a this rollover at cytokinetics, and in order to have us have just a bit of diversity in backgrounds and experiences, with

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the in house environment and with the kind of innovation economy company Melissa marks, one of the partners at Gunderson will be joining us in those small sessions, and wanted to give her a chance to introduce herself and then thank her for making herself available.

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Thanks, Brett. And thank you all for joining as Brett said, my name is Melissa. Marks. My pronouns are she her? And I'm a partner in Gunderson's corporate group in New York. I originally joined Gunderson in 2008

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as an associate, and after I had been here for a few years, one of my clients, a series B stage company recruited me to go in house as their general counsel. I was there for about three or four years. And you know, during that time, the tech and startup market in New York was not nearly what it is today. And so one of the things I found very valuable during my in house time, in addition to relying on my lawyers here at Gunderson, was having a small network of other general counsels who were in the similar position, and we would meet, you know, every other month or so, get a drink and talk about the challenges we were facing. So I was very happy having had that experience and having peer mentoring be very instrumental throughout my career, both as a general counsel and in private practice, when Brett reached out to me about helping to co-host the small group sessions.

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And so now I've been back at Gunderson for about 10 years. My practice here is a generalist corporate practice, like many of our corporate partners, but I would say, you know, after having that in house experience, I spend the majority, probably about 75 or 80% of my time working with founders and boards and general councils of our companies, and you know, only about 20% of my time or so on the investor side of our practice. So happy to bring all of those insights from my practice here, as well as my time in house, and be part of those discussions starting November.

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Great. Thank you. Melissa. So if you have the next slide, alright, so we'll jump into the substantive portion of today's session. And for the last two sessions, we talked about what relationships you need to make sure that you're developing

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in order to embed yourself as a general counsel, head of legal. Then we talked a lot in the last session about how to evaluate your legal team, even if your legal team is just you, how to evaluate you in terms of how you're performing. And today, I just wanted to go quickly over what is a fully formed GC role look like. And so what are you building toward? What kind of status and participation within the organization should you be looking to achieve over time? This is my view of what a GC role, fully formed GC role looks like. Others may look at it a little bit differently, but we'll kind of just walk through it. So the first thing that I would say is, in most cases, the General Counsel report directly to the CEO,

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or at the very least attend the company's executive meetings,

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because the GC kind of really to be embedded in the organization to be most effective, needs to be a part of that very strategic discussion. And those discussions happen at the highest level in those executive team meetings. And what that team needs, and what you need to be involved in is, you know, the strategic and operational and personal issues real in real time. So you can hear the CEO and the CFO and the other executives talking about, what are the issues? What are they thinking about? What are they trying to achieve? What obstacles might they see? And then it kind of view as a thoughtful and well informed member of the team, both from a business and legal perspective, can really provide some actionable commentary on both running the business and on the legal aspects of the organization.

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The other piece that the fully formed GC will have is GC role will have is the GC will be viewed by the CEO, the executives in the board as the go to person for, for you know, the all legal

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activities, and what you see in some companies,

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until relatively late stage, is that the CEO, other executives, will just pick up the phone and call somebody in an outside firm when they when they have a legal need, when but.

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You when you kind of know you've gotten to the point where you're at the fully starting to be at the fully formed level, is you are the go to person. People see you as the neutral, objective, direct, discrete advisor on all things legal and other matters, and that you bring in outside counsel when it's needed. That's not a decision taken kind of ad hoc by other executives, and part

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of a prerequisite to being that go to person, there's a lot of things that we've been talking about over the last couple of sessions, and that is, you know, to that people get what they come for when they approach you for advice, that they're confident that they're getting a practical they're getting practical, actionable, objective, neutral advice every time they approach to DC. And that's kind of where you graduate into that go to person level. Let's go to the next slide.

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The other aspect is that the GC will have a very visible role with the board. I'm going to go over that in a few slides. But you know that role will mean attending board meetings, taking minutes, advising the board on legal matters. Sometimes business matters is needed. Oftentimes it also means developing the agendas with the board chair or the leading has been a director, and with the committee chairs and the CEO, so being very involved in what's the content of these board meetings and these committee meetings, it'll include advising the chair and or lead independent director in the committee chairs on their duties. Sometimes you'll have folks who are very experienced on the board, and sometimes not so experienced, but even the most experienced directors on the board will run into issues where they really need the advice of somebody to help them think through process and governance steps that should be taken. Another aspect of it is soliciting feedback from directors on the board and committee meetings. How's the board functioning? Are they getting the information that they need? Are people participating at the way they should be? Sometimes that's the function that's undertaken by the chair and the CEO. But I have found in my roles that that's also something that the General Counsel tends to get involved in as well. You'll field questions from directors between meetings and maintaining dialog on various issues between meetings. That's very common to talk to each of the directors at least once between board meetings, and then you'll be participating in shaping the board composition. So who needs to be on the board? What skill sets do we have? What skill sets may have become stale on the board that we need to refresh, and being involved in interviewing and looking at different

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opportunities for talent that we could put on to the to the board

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next, and the fully formed GC role is being deeply understanding the business. We talked a bit about this in the last couple of sessions, and one of the benefits of that is because the legal team and the General Counsel is serving the entire company all the way. They kind of have this broad reach across the organization. The legal team and the general counsel will have very critical insights on operational issues, kind of deep into the organization, and they'll often have much better view of all of that, and how where the weaknesses are and where the strengths are, then even the CEO or the executives that are running some of those areas, and that can really give the GC an enormous amount of influence and value on operational and policy matters as the company thinks about, what should we doing next? Where should we putting our resources? Why are certain things not working. And the GCS ability to have that deep understanding the business can be can be very critical. The other piece of sitting around corners that that's one of our key value adds, is as general counsels, it gives us the ability to address the critical legal and compliance issues in see them coming and see those what's, what the implications are the company's strategic vision. So we've talked a bit about a number of things that we've already talked about, but one of the things we haven't really talked about is this kind of, what I call secretary of state role that a lot of times you'll see the board and the CEO and other executives send the General Counsel out into the community to really be the kind of emissary from the company on maybe political issues going on, or local

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issues with city or counties or states that you're in, going out to work with regulators, going over to smooth out issues with competitors, working with working out challenges you might be having with vendors. I've dealt a lot with prosecutors over time, and the pharmaceutical industry is constantly being investigated. And so you tend to see the GC just by the nature of the of the attorney role and by the nature of the personalities that you see in that role, kind of getting sent out into the community. And that, you know that takes a fair amount of trust from the organization to say, hey, let's send this person out and have those kinds of conversations. And so that's why I kind of put it into this kind of full of fully formed GC

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piece. All right,

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let's go to the next slide.

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Okay. Then we also talked about, you know, when you went, once you get to that fully formed role, the GC will be a consiglieri to the CEO. We talked about that a lot in the first session. How do.

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Develop that relationship, and now we've gotten to the point where we have developed that relationship requires a really deep understanding and trust of the CEO and from the CEO, and also what the company's execs.

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And so the GC oftentimes will carry messages to key constituencies, whether it's in the company or outside the company, on behalf of the of the CEO, and the CEO will be constantly stepping into the GCS office, asking, you know, for advice on a number of things, legal, business, internal personnel and other kinds of issues. And

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just becomes very much a right hand person to the to that CEO. If you're in a public company, many times that you'll see is the GC engaging with the stockholders on governance issues. That's not the same people who the investor relations team is talking to. That's this is the people who are in the proxy offices who are voting the shares. Once you become public, most many GCS will spend a lot of time there, making sure that those folks know who you are, that they trust you, that they understand the issues you're working through, that you're hearing, any concerns that they concerns that they have. I actually found that to be a very fun part of the practice that I had and but that is one that becomes a pretty active area for a fully formed public GC. The GC will be very involved in developing and leading compliance programs, and that kind of goes together with the next bullet, which is, oftentimes I've seen GCS used as the conscience of the company, like the GC needs their kind of moral compass needs to point due north, and their job is to make sure the company stays there, be very objective about things that the company wants to do, and really be thinking about you know, this may be legal, but is this the right thing to do? And oftentimes it's falls on the GC to play that role, and it does take, again, a fair amount of familiarity and trust within the organization to do that. And then sometimes you'll see a GC once they've kind of mastered the full

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kind of aspects of the role, and maybe not when they've fully

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mastered it. But a lot of times, you'll see GCS taken on other parts of the organization, such as public relations and Government Affairs. Have seen some GCS with HR or business development, and some even with kind of an operational role.

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You tend to see HR and business development drop out of that as the companies get bigger. But you will see general castles, particularly in the smaller companies, pick up more than just legal so hopefully that's helpful in terms of thinking about, what are you trying to build into, what are you trying to to achieve over time in your role, and happy to answer any questions on that

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either, I actually have a question, maybe, could you speak a little bit to the amount of time it might take, either from the perspective of a GC who's recently joined a company, or from the point of view of what stage of company, right? I would assume that if you're joining a Series A or Series B stage company, this view of a fully formed GC role may not actually be appropriate yet. And so, you know, at what point in a company's life and in a new GCS tenure, could you reasonably expect to achieve this? Yeah, so this is, this is what you achieve after your kind of years of being there. And you'll get parts of and depending on the company, you'll have parts of this early and parts of this later. I would say, you know, early stage companies are still training the CEO as to what they really need from a general counsel. So I would say early stage companies. And also, if you're coming in, you know, relatively junior as an attorney, it's probably going to take you three, four or five years to get to a point like this, and it also going to depend on is the company growing along with you, such that it's ready to have some of this. And I'll get to that in a minute. I can tell you at Gilead. You know, I was a partner at the firm at Gunderson before I got to Gilead, once I became General Counsel, it probably took me two, two and a half years to fully get to the point where I could say this is the role I was playing. And, you know, I was relatively senior at that point, and I the company for four years before I became General Counsel. So this is something you have to give yourself patience to get to.

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So we'll go to the next slide.

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All right, so let's talk a bit about what the GCS relationship with the board should be. And I talked about this a little bit, and this is going to, again, depend on the stage of the company and the composition of the board, because early stage companies are going to have a lot of venture capitalists that, most of whom are very experienced at being on the board. Most of those early stage companies are very much focused on what's their product going to be being financed? Maybe they're doing a couple of in licensing kind of things, but there's not a lot of legal activity going on early on in those companies.

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But as the company moves along, there's going to be more and more need for a GC to step into a role with the board. So when you think about what the board ultimately is going to want from the general counsel as it starts looking to the General Counsel for assistance, is there.

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And what's very similar to what we talked about with what the CEO is going to want, and that they want a trusted provider of practical, objective advice, and that means you'll be providing governance and company related legal and business advice. Many of them are going to want to discuss agendas and content of the board committee meetings like we discussed sometimes that's going to include discussion of how the board is functioning.

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They'll typically have periodic calls with the individual directors between the board meetings, talking about the status of a legal matter. They'll discuss, you know, what in the board meeting resonated, or what particularly concerned the director. I've had many calls with the director. I'll say, Hey, I tell you that conversation we had on

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issue XYZ is still bugging me. I really want to have more discussion about that. Are really disappointed in that. I wish I thought it could have been a better discussion. You'll hear a fair amount of that. Particularly once you become public, the directors will call you about their stock and option issues, terms of, when can they exercise, when can they sell? And then, you know, you'll you'll typically receive a lot of feedback on different types of issues. And then sometimes they'll provide direct feedback to the board and to the directors on some of the performance of the board, kinds of issues. So at a very high level, that's kind of the interactions you're typically going to see. And I'm going to dive into what does a Board want from the General Counsel to kind of gets really dig into that. So let's go to the next

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one. So what are the but what is it? What are they looking for?

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One of the things you have to know kind of going in is that the GCS relationship is not going to be as close to the board members as it is to the other executives, simply because you're not going to see them as frequently. So you're not going to have the deep personal and professional relationships that you'll have with the executives. But they are looking for most of the same thing as I mentioned, the trusted mutual executive advisor. But then you also have get to, you know, some directors are new to being a director, and they need help understanding and performing their roles. So

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down to, you know, what is the fiduciary duty? You know? What is the purpose of an audit committee? What is the purpose of a nominating committee? What are some of the processes that we go through and driving some of these. How deeply should I get involved in the company? How? How much should I know about a particular issue? Do I need to have an information at a operational level, or at some level of higher awareness of issues? Is something I need. So you'll spend a they need most directors, particularly when they're new, going to have a one have a lot of conversation about that piece. They have

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different risk tolerances and level sophistication. So you know, someone might

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have a very low risk tolerance around, say something like privacy, and they're going to be calling you all the time because they just don't quite know how to put it into context, or maybe they don't have a great understanding of side of cyber security issues, and so the lack of sophistication makes them nervous, and so they want to talk to you about that. And so there's a lot of work you'll be doing and trying to they want that they want from you, and helping them put contexts around that and calibrate it. And different directors are going to get focused on different issues and different risks, and they're going to want to comfort me that they're ultimately doing the right thing, although they may not fully understand why, and they're kind of looking for you, for that kind of bedside manner. Hey, I've been involved in this. I understand it. And then sometimes you'll find that boards have some either formal or informal camps, and the way they look at certain things or the way they want certain things to happen, and so each side of that camp is going to want to know that when they come to you, that they're getting objective advice, that even though you're talking to people on different sides of an issue, when they come to you, they know that the advice you're giving is an objective view of whatever issue is being brought to you. So those are some of the things that the directors are looking for from a general counsel advisor. Also, they're increasingly worried about managing the company's risk and their own personal liability, because they hear out there when they go to Director conferences that they need to be focused on risk management, they don't quite understand and know, what does that mean. And you know, do I have some kind of a risk meter, and I need to make sure it's in a certain level? And how do I figure that out?

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And then, you know, personal liability is one that they're focused on from the minute they sign up as a director, and want to be comfortable that what they're doing is the appropriate thing.

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And oftentimes, when you hire directors, you're hiring them for different expertise, so you're trying to fill in different buckets, and not everybody has knowledge about everything. And so again, you'll have to help those directors who have less expertise in certain areas. And a lot of times, what I do is, hey, why don't you go talk to Sam? That person's the expert in cyber security. They can kind of help you understand as how they're thinking about it. As a director, they

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some of them can be hyper aware of their kind of where their gaps are and their experience, and want some of that help. And then I and

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then the other reason, the thing you'll see is that, because they're not as deeply involved in the day to day operation of a company, they can over or under index on the level of risk of a particular issue or a series of issues that might pose to a company. So sometimes I've had to go to directors and say, I don't think.

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You're quite understanding the risk we're having here. Or sometimes I'll just say, Look, you know, that sounded worse than it actually is. Let me talk you through that.

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But because they, they're trying to, they're trying to walk this line between not being a operational person and kind of deeply understanding the company like an executive would, but trying to have a figure out where the fiduciary duty is in terms of how much do they step in and understand and be willing to know enough to know that I've addressed that, I've addressed this, or the company's addressing this properly, is a balance that a lot of directors are looking for help figuring out how to deal with.

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And so when the board ultimately sits back and says, Okay, CEO, you've come to me and you've proposed this person be the general counsel, or you propose to me that this person continue to be general counsel as we move into an IPO or somewhere else. One of the things that they're looking at is, what is in their interactions with that general counsel and all these different things I've been talking about now, are they getting that assurance? Are they feeling like they're being well advised. Are they comfortable? Is it resonating? And is the CEO getting that same level of advice and the other executives getting that same level of advice? And so very much, their view of this of the General Counsel candidate is going to be driven by kind of what their interactions have been, and their observations of those interactions between the general counsel and the and the CEO, let's go the next slide. And

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so that's what I mentioned, that they're looking at, that that first bowl is really just I just spoke about. And so the key things to keep in mind this regard, your the board members see you less than they see less than your colleagues see you. So you're going to have fewer opportunities to get them to see you as their advisor. And this puts a real premium on you performing at your best when interacting with the directors as a board or individually. So make sure that you're really Uber prepared when you meet with them. You're practiced for your known interactions. You thought through those questions. You practice the answers and for those impromptu interactions, if you know the answer in the moment, answer the question. If you don't say, let me take a few.

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Let me take some time to think about that, and I'll come back to you, because with the directors, it's very hard to recover from the wrong answer. And so if you can avoid doing that by saying, Let me, let me go back and think about this and call you back that that can be very beneficial to you. And

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just like with the CEO, I encourage you to work hard to develop your relationship with each individual director, because someday that the stuff is going to hit the fan, and it's going to be litigation or a product failure, an executive scandal is going to be a bad quarter. It's going to be something nasty happen. It becomes a crisis. You have to everyone is stressed out. There's a process you have to go through as general counsel. You're going to be right in the middle of figuring out what is that governance process that the Board should be going through, and you need to have spent the time before that crisis hits to earn the trust and the respect of the board, because that's not something that's just bestowed because they gave you the title of something you have to earn over time. So make sure you're working on that early. And

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then, particularly if the crisis involves a board member or member of the C suite, there's an even higher premium on the board, with the board in terms of having to establish the trust to believe that you are being that objective advisor to everybody on each side of a particular issue.

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And then, you know, kind of coming back to this issue. When the CEO is discussing that issue of, should this to the person be promoted to GC or kind of stay on as a GC role, they're looking at that. Do I want you in my foxhole? And they're looking at all those issues we talked about in the first session, about the relationship that you have with the CEO, and kind of wanting to confirm that you have that, and they're going to be judging that based on some, to some extent, the relationship they have with you. So let's go to the next slide.

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All right. First MCLE code, 50855085,

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all right. Let's go to the next slide. All

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right. So how do you get exposure to the board? And to give you a couple of pieces of caution to that before I go into it, and that would be, don't seek exposure to the board for the sake of exposure, like we talked about earlier, to Melissa's question, in early age, early stage companies, you know, legal may not be that central to the company's strategy or development. There's a lot of other things that's to go on before legal becomes a big issue. Um, you know, particularly for GCS that don't have a corporate background, and the outside law firms, corporate partners, senior partner, they're likely to have the skills that's most relevant to the board in those early stages. I mean, that's that being kind of experience with the financings, the IPOs M and A some of the governance issues. And so if you're not someone coming in from a corporate background, and you're having an outside counsel there at your board meetings, you know, ask that council to help you learn in areas where you'll have less experience, you know, let them know you're working toward playing a bigger role in these kinds of issues. Ask them what their advice is and why their advice is. That kind of where you can learn more about some of these issues. Most outside counsel that I know of.

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Be more than happy to help you learn those skills that you need to kind of sit in that chair, and

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then before you ask for exposure from the board, you know, make sure you're ready. Ask yourself, Do I know enough about governance and other issues that the board is focused on to risk sitting in the board meeting and having the board turn to you and saying, What do you think about this? You know, what's your advice?

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And then also, you know, think about as we talked about in our second webinar. Are we providing clear advice? Is it practical? Is strategic actionable? Is it resonating? You can get some of that feedback from your CEO and other executives. And you know, do I need to work on my legal presentation or communication skills before I step into something like that. So I would say, be very introspective before pushing to get in front of the board, because you have, like I said, you have much fewer opportunities that break that first impression when you're when you're going before the board. So let's go to the next slide.

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So getting exposure to the board. There is a governance role for lawyers in the boardroom. That's minutes at the minimum. That means minutes board of Gordon software, governance matters, addressing the board's risk issues, thinking through compliance matter early in the company, you don't have a lot of compliance to be dealing with, but there's always risk, there's always governance, there's always some form of legal question. They may not always lead to the board, but as the company gets more and more sophisticated, there becomes a bigger and bigger role in these kinds of issues. And one of the bigger, big issues that I find is that there's the advice just on how the process that the Board should take to make particular decisions and thinking through what the board should actually be focused on in particular points in its life, gives a real role for the lawyer and the board.

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So if there, I would say that if there are legal or compliance issues that require a board level discussion, you know, the heads of legal and GC should really advocate that they be the ones to lead that discussion.

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They can have outside counsel assistance with that. But what I find is that because the person that is in house is there every day, they have a much deeper understanding of the internal workings of the company, and can better provide context and explanations of what's actually going on inside the company, can help address the solutions at a deeper level, and then can augment that with the kind of the more kind of, the more legal expertise that you may get from the outside. But I would say that you should definitely advocate when there are those kinds of issues going on at the board level, to be involved with them to the extent you feel comfortable that you can do that in a confident way and communicate what it is that the board needs to hear.

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I would offer your assistance to the CEO and the executives when they're pulling together the board materials and they're reviewing those more board materials, do they make sense? Is it clear? Is it too much? Is it too little?

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I would work. I would advocate to work with the board and the CEO on what the agendas for the different committees should be and what should what the board should be focused on in any particular board meeting. That's often an area that gets left to the last minute, and so it's and not always as well thought through. And GC can it's a good spot to kind of try to plug in and provide some assistance there.

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And I would go back. At the talk about those things, look at those things I just talked about, and what is a board looking for? And kind of see what of those things that I talked about, can you bring to the board today, in your current situation, some of you are in really early stage companies, and you're not going to be much. Some of you are in later stage companies, or there can be more. And so I've kind of used that as a menu of things that you can be looking at to get more involved in those kinds of areas. And then one thing never to forget when you're dealing with the board as a general counsel is that the board is the CEO's boss. So if you're talking to the CEO's boss, you need to be telling the CEO that you're talking to them, like, hey, you know a CEO, I just had a conversation with Director y. Here's what I talked about, and along with just a heads up, most CEOs are going to be fine with that, but they don't want to be surprised to hear that you've been talking to them about substantive issues that they're not aware of.

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And the other thing to remember is that when that the performance of whoever the CEO puts in front of the board reflects on the CEO, so for the CEO to be willing to put you in front of the board, they have to be confident that you're going to provide accurate advice, practical advice, you're going to communicate well, and that you're not going to kind of ask, have the board thinking of what CEO doing, having this person involved, what is going on. And so they need to have confidence in you to be able to put you in front of, you know, a room full of their bosses,

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and that all goes back to that kind of trust and relationship building that we've been talking about since the beginning of the discussion. So let's go on to the next slide.

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All right, so in many companies, particularly in the innovation economy, the.

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From the time that they're incorporated until, you know, sometime after the public offering, outside counsel will be at the board meeting. And many, many, most of those cases.

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And why is that? That's because oftentimes, the outside counsel has been the one to incorporate the company, and they can provide advice on what the company is doing. You know, in that period of time, in terms of financing itself, the early stage governance, some of the disclosure matters that might come up that they need to go to investors during different types of financings, can help work through things like option plans and other things that, you know, a lot of us don't have a lot of expertise in coming into a company,

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and because of that, it can make it difficult for some of the in house counsel folks to get access to the boardroom, because the CEO may not want that many people, many lawyers sitting in the boardroom.

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And I would say that that that status of the outside council speaking or being at the at the board meetings, that's going to continue, like I said, largely until after the IPO, but really what it continues until, is until the CEO on the board sees a general counsel as being a capable or preferred substitute for the outside counsel.

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And that status is earned and it's not bestowed. You know, if you see, if you have general counsels who have been general counsel before and have a lot of experience in it, you may see that transition take place earlier, but I typically see it happening in, you know, a couple years after the IPO, when the board and the CEO finally look at the general counsel and say, Okay, I think we have what we need covered, and then we'll augment that person with outside counsel as needed. Going forward,

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this period of time, could be a bit of a fraught process for the General Counsel, because outside counsel they've typically been with the CEO since the incorporation, may even represented them in several prior companies. And so those relationships are very personal, and they're very deep. The venture capitalists and other board members on the board may be more comfortable with an outside counsel because they worked with an outside counsel for many years on many companies, so they're more comfortable with that than they may be with you until they've seen a lot from you.

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And then I've had situations where CEOs for some period of time want the General Counsel to still run all the advice by outside counsel, even if the outside counsel isn't in the room all the time, just because their level of comfort is still sitting with the outside counsel versus the inside counsel. And again, another reason why you won't see in house counsel sometimes in the boardroom is they don't want to crowd the boardroom with lawyers. So it's a process of a coexisting and just kind of getting a chance to to get to know the outside counsel and work with them. I think I got a little bit more on that on the next slide. So a

42:41

couple of strategies that I would say is, again, get to work on everything I talked about in terms of what the board's looking for. What are those? Can you help provide to get those relationships developed with the CEO, with the board members, and then spend some time discussing with the outside counsel that we want to play a larger role with the board over time. Have them mentor you ask them questions about their advice, don't turn over the major projects to them, Unless that's something that they're going to clearly have the most expertise on. Maybe you can lead the project with help from the outside. Council that can help you have been a little bit more visibility with the board.

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And then again, what you're

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really trying to do is kind of get yourself to the point where you get seen. Where you get seen as the go to person

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in the company and among the board. So let's go to the next slide. And I'm running out of time here. Alright? So last slide I have here is really just, you know, I get from time to time, CEOs calling me and saying, hey, you know, I have in house counsel, and I'm trying to decide whether this person's the right person to make into a general counsel, or the right person to kind of keep on as we as we grow, or as we get ready to go public. And so I've had people ask me, what, what am I saying to those CEOs when they call me?

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And really I'm not so much giving them advice as asking them questions, and really the answers to the questions help them really answer the question for themselves. And the question they ask is, How is your relationship with your counsel? Like, is this a close and trusting relationship? Is it a distant relationship? Is it someone that you can have an open and direct conversation with? Are your personalities meshing together? Is it somewhere, someone you want to spend a lot of time with, you know, day to day, working through a bunch of different types of issues. Or is it something that you can't really stand this person like this is stuff you really going to need to think

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about. Do you see that person as your go to lawyer, or do you see that person becoming your go to lawyer? And you know, if the answer to that is no, you need to think hard about it.

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Does, does the advice in your council resonate with you? Can I say some CEOs will say, hey, you know, my counsel comes in and I don't understand. We always understand what they're trying to tell me, or they're really telling me what to do, versus having a conversation with me about here are the parameters of the law, and here's, let's talk about what we can do within those parameters. CEOs get very frustrated that this they can.

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Comes in and just says, Here's what we have to do. And so that style will sometimes not resonate so much with them, or sometimes they'll say, you know, I sit there and other to my council for 15 minutes and I don't understand what they're saying. And so there needs to be ability to hear from a communication perspective among the general counsel then, and then the CEO, and then they'll ask them, is the advice you're getting? Is that actionable and practical? Like, can you actually put into place what is being asked of you, the advice that you're being given?

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Another big one is, do you trust your counsel to keep confidences and to give you objective and neutral advice? I've had CEOs say, No, you know, I lot of times I get, I tell my general counsel something, and then I hear that, hear that information come from somewhere else, and I know it had to come from

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the lawyer. You know, that's a, that's a that's a deadly thing for the lawyer, not to be able to be seen as having kept confidences, or to not having been objective or neutral.

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Uh, is the person a good athlete, like they may not have a good corporate background or deep corporate background, they may not understand governance or financing or SEC reporting or thinking through materiality disclosures. But if they're a smart, hardworking, capable athlete,

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and you've seen them learn new areas, you shouldn't have too much of an issue being confident that they can pick up this new area when it comes time to do that. And so think through, you know, How capable are they, just as, you know, as that, are they that good athlete? Um, do you have, do you believe they have the ability to learn and address the areas for which they're less familiar? And then the other last question I tend to ask is, you know, how is your council working with other executives? How they work? Executives? How they work with other departments? How do they work with the board? And typically, I don't have to give much advice to the CEOs. After we've gone through these lists of questions, it kind of starts to click with them. Of, okay, here are the areas where I have some concerns about whether this person can do this. Or, hey, gone having gone to that question, I'm fully confident that the person that I have, I can work through. And when we have concerns, we go to questions like, what do we need to do to have this person be ready two years from now, when you're going to go public or or, you know, two years from now, when you're going to have a product that needs, needs to come onto the market. So that's the conversation that I'm having. And with that, I think we can go to Q A, I think we actually may have one more MC code, next slide,

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MCLE, code, 1648,

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and

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then I think we can go to questions.

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I think there's already one question in the Q and A breath that I'd love to speak to, which is, do you see a conflict if outside counsel mentors you, and they lose executive contact or hours or fees, right? Should you be suspicious of your outside counsel's motives as you're asking them for that advice? So, you know, I can give my point of view on that, which

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absolutely not, right? I work with many companies where I've been outside counsel since before there was an in house legal function, and then when a general counsel or head of legal is starting and like I view my role as making that person look good, making that person be successful, helping them to be successful.

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And that's, I mean, it's not entirely self serving, right? It's because I know that as the company grows towards all of the things that Brett's been talking about, and as your role grows, you are increasingly going to become the person who is in charge of you know, if I'm getting those hours and fees are we're very much aligned. And so yes, perhaps I'm not having as much direct contact with the CEO as I did before there was an in house counsel. But that's all part of the natural trajectory of of a company's growth. And my goal, once you are in that seat and in the fully formed role, is to be your counsel and help you do all of the things Brett was saying about advising the board correctly. Yeah, and I'd agree, you know, with counsel that I've had, you know

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they want to see you succeed. They want to keep you as a client. They understand that the natural progression of companies is that they will get an in house team, and that in house team will become more and more capable, that they will eventually step back, but they want to keep you as the client going forward, and so they are definitely going to be very cooperative with you. And I have not questioned those, those motives, but it doesn't mean that there's not sometimes tricky, because there are definitely those personal relationships that can be long standing, but I don't have not seen that, you know, an impediment to being able to

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get their help and assistance.

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Like there's another question. I think this one would be great for you. Brett, about advice on how to build.

50:00

Trust with CEOs who maybe had not great experiences in the past, either with their boards or, you know, even with past general counsels. So I know you talked about this a good amount in the first session, but any thoughts specifically on the CEO who maybe has reason to be a little bit suspicious of you based on past experience.

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Yeah, these are really hard situations, because the CEO has been burned, and he doesn't know who to trust, and he's had a general counsel he doesn't need to doesn't know how to trust, or she doesn't know how to trust. And the only thing I really can think of here, Meg, is to work with that CEO on the you're in this role. This is the board you have. We can work on changing that board over time, to have people that you can trust more, but this is who you have today. So let's work on figuring out who do we need to work spend more time with to try to get some relationships. How do we build that trust? Is it team building as a board? Is it going out and meeting the board at their home and spending an afternoon playing golf or going to dinner, somehow building those personal relationships?

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The General Counsel, all the things I talked about in session, one can have a work cut out for them and developing that trust, there's really nothing you can do other than try to start building that trust, and also as general counsel, understanding you have a CEO of trust issues. So what can you do to you know, allay those trust issues as you're providing your advice. Can you give examples of what other companies have done in similar situations? Can you call other general counsels or executives and say, hey, you know, and when they had a particular issue, they came out with dissimilar kind of advice. So the CEO gets some comfort that you're just not, you're not just making it up, that you're that this is coming from somewhere, but you're just driving a very difficult situation. And I think the best you're going to be able to do is counsel that CEO is, you know, this is the role you're in. If you want to stay in it, then we have to figure out how to build trust over time and the CEOs that I've had who've had trust issues with their board, what we've talked a lot about is, let's make a plan for how do we change our directors over the next couple of years so that you have a more comfortable boardroom for you?

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What? One practical question for you, but Brett, and this one is not coming from the Q and A, we'll get back to that in a moment. But when you're in those situations and you're looking to speak with someone trusted, who's, you know, general counsel of another company, someone who is not your outside counsel and doesn't have that privileged relationship. How do you walk that line of

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what you are comfortable sharing given your duties as general counsel to the company, and what you need to get to effectively do your job?

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Yeah, a lot of times these issues of trust are not legal issues. They're just,

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I'm afraid this board is going to turn around and vote me out, or they're going to or they're going to put in an executive that I don't want, or they're going to cut my pay, or they're going to, they're going to cap my budget. So that's always a really illegal issue. So just calling and say, Hey, I just have relationship issues. How can you help me think through that? But I can tell you that, you know, general counsels will very much get close to that line on the on the privilege thing, just to be able to have that kind of conversation. But more often than not, I've not had to think so much about the privileged piece of that, or

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even the confident and then you also run into confidentiality, because like, hey, my CEOs having trust issues is also a confidentiality issue to be careful with. But most of the time, if you're in this good network of GCS, you all know that each going to call each other with confidential information you need to keep

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quiet. And can you speak to the responsibilities and what liabilities might apply to the corporate secretary role, separate from the GC role.

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So I'm not sure from this question. If we're thinking of someone who is a general counsel, who's serving in that role, I would guess so from the attendance here, or if we're talking about a different officer of the company serving in the corporate secretary role? Yeah, so I often had that

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title as corporate secretary. I've often, often delegated that title. I've not seen a lot of difference in the corporate secretary role. I mean, on the public company, you'll sign the proxy. In a lot of countries, they'll want the corporate secretary to sign various resolutions proving that the board actually adopted something. And they want the corporate secretary's signature on that. A lot of times, the corporate secretary is writing the minutes. And, you know, minutes have become are very much an art form of how to write them a.

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A detailed enough that when you get a 220 demand from stockholders that you don't that they don't say that's too big, you have to give me more documents and not so detailed that you kind of give a roadmap to

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litigants to kind of use against you. If I've seen Corporate Secretary spend a lot of time in that area there, I've seen corporate secretary, when you do have that as a split role, and particularly much larger companies, a lot of times, that corporate secretary will be the one that goes out and meets with the proxy offices and develops those very deep relationships. But in terms of a difference in liability between the two, I don't really, I don't really see much.

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There's a few couple questions here about additional resources. So one, generally, if somebody wants to dive deeper on any of the topics that you've been talking about across these three sessions, but also, specifically, if you're a new GC who doesn't come from a corporate or governance background. Ways to quickly, you know, get up to speed on those topics. On that latter one, I would say one of the best things to do is to talk to your outside counsel. Most firms, like Anderson has have resources on these things. But what would you offer there? Brett,

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I would say also, in addition to what the for all the firms have a lot of resources on this. So I think that'd be one that you can look to. And I also would say there's the NACD, National Association of Corporate Directors. They have a lot of great content on their website and in the programs that they put on, where they kind of work through some topics I was working through, like helping directors think about as they're working through risk management and their organization, what does that mean to what they have to know

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or

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on governance issues, or how to work through a how to be a compensation

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committee

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director, and what do you need to be thinking through? NACD does a great job of helping, putting lots of resources out there. There's also the

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Society for corporate secretaries. I think it's called. They changed their name a few years ago, and I never exactly remember which one is the old one or the new one. But they also have very similar kinds of materials. And they also have trainings you can go to and they'll have

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kind of conferences that I think you can go and learn from, and I think that and so beyond those two things,

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finding your network is another one. Just, you know, find a couple of GCS. Like Melissa said she had something she would get together

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with. Go have a beer, go have lunch, talk about some of the issues. They're some of the best folks to help think through. You know, call people like me and Melissa, who kind of seen and done a lot of this stuff, even other folks in the firm that can kind of help you, kind of point you in the right direction of your particular issue.

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Yeah, and I'll take that opportunity to maybe plug the upcoming opportunity for some of the small group discussions, again, because that is the kind of thing where, you know, in those groups will be able to work through, whether they're, you know, hypotheticals or just anonymized situations or or not anonymized. Right to talk about some of that, and getting a handle on how to think through those governance issues, I think does give you a real leg up

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in gaining the trust of the board members and being able to answer those questions when they come to you.

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Yeah, I agree.

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Looks like there's one more here. We've got two minutes left, so

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for a compliance officer a CCO in an interim GC role following the departure of the prior GC. Do you have any advice for establishing trust when the timeline is you know, both the timeline is shorter. This was, you know, got put in place, but also this person's available time is shorter because they're wearing two hats, yeah. Well, hopefully in that role as CCO, you've had time to already develop your brand as a trusted, objective, neutral advisor in your Chief Compliance Officer role, I think that'll give you some

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credibility just going into that. But what I would suggest you do, because you have short limited time, go meet with the with the stakeholders that you need to meet with immediately, whether it's on the board, on the on the

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on the executive team, ask them what their issues are, you know, give them your objective, direct feedback. And you're really just trying to do what we talked about in

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in webinar one on an accelerated basis, have that personal interaction, try to build that trust as fast as you can, and lean on as much of that credibility that you've created in the company already.

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Thank.

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That is it

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all right. Well, thanks everyone for your time. If you need to contact either of us, our

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our emails are on the website and always looking for feedback, you will be getting an email from us again shortly with Link to this replay and also to allow you to sign up for the

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small group session. So thank you all for your time and attention today.

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Applause.