Forum Takeaways

2026 Berkeley Fall Forum on Corporate Governance

Note: These takeaways were prepared by the Berkeley Center for Law and Business (BCLB) to highlight selected themes and key points from the 2026 Berkeley Fall Forum on Corporate Governance. They are not comprehensive accounts of the discussions and should not be understood as official statements or endorsements by individual speakers.

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Fireside: The State of Corporate Governance
Prashant Yerramalli (CalPERS), General Counsel and former SEC Chief of Staff and Senior Officer.

1. CalPERS Will Focus on Structural Governance Changes That Weaken Shareholder Influence
Reflecting on his first year as CalPERS General Counsel, Prashant Yerramalli identified an increased emphasis on structural governance issues: voting rights, capital restructurings, and other changes that could diminish long-term investors' influence. He described proxy votes as an asset integral to CalPERS' investment strategy and a measured way to engage with companies without selling its holdings or launching a board contest. He emphasized CalPERS' opposition to recapitalizations that further entrench founder control through dual- or multiclass shares and its preference for one share, one vote. Changes in Delaware law and at the SEC are central to his monitoring of developments affecting CalPERS as a long-term owner.

2. Litigation Could Play a Larger Role in Governance Disputes and Regulatory Changes
Litigation offers CalPERS a way to address governance issues whose consequences extend beyond individual investments. While emphasizing that lawsuits are not CalPERS' core business, Yerramalli highlighted a challenge to a restructuring that would allow founders to retain control while reducing their economic ownership to a small, single-digit percentage. He suggested that Delaware's SB 21 could bring previously settled questions back before the courts and that CalPERS should participate in those disputes. He also identified a potentially new direction: challenging regulations or guidance affecting CalPERS' core business, an approach he said the organization would not have considered several years ago.

3. The Rise of AI Companies Heightens Concerns About Restrictions on Shareholder Voice
Preserving shareholder input was another central concern, particularly as powerful AI companies contemplate broad public ownership. Yerramalli argued that eliminating Rule 14a-8 would be especially ill-timed, questioning companies that acknowledge potentially profound societal risks while resisting input from the people who would own them. He described CalPERS' advocacy through letters to the SEC, public forums, and the press, and noted similar concerns among other institutional investors. He also expressed interest in retail shareholder voting programs and concern about reporting changes, questioning whether efforts to streamline public-company obligations could undermine rules that have supported prosperity and efficient U.S. capital markets.

The New Rules for Controlling Shareholders: Balancing Long-Termism and Minority Rights

Anthony Calvano (Bernstein Litowitz Berger & Grossman); Catherine Dearlove (Richards, Layton & Finger); Michael Mencher (Cooley); Yumi Narita (NYC Comptroller's Office); Andrew Baker (Berkeley Law, moderator).

1. Early Decisions Show Both the Reach and Limits of SB 21's Safe Harbors

Early judicial decisions provided contrasting examples of how SB 21 operates in practice. Catherine Dearlove described one decision applying the statutory safe harbor to a founder's equity award (*Ayers v. Foley*) and another withholding its protection after problems with information leaks and disclosures compromised the transaction process (*Dodiya v. Franklin*). In the latter, independent directors nevertheless remained protected by their exculpation provision. Dearlove viewed these outcomes as evidence that the statute preserves a safeguard for serious misconduct while rewarding sound procedures. Anthony Calvano emphasized that further cases will establish how courts apply equitable principles to different facts.

2. Fewer Cases Could Mean More Intensive Litigation

Controlling shareholder litigation may become less frequent, but the panelists differed on what that would mean. Dearlove expected well-advised companies with sound, documented processes to face fewer challenges, while acknowledging that litigation should remain available in genuine edge cases. Calvano anticipated that the cases proceeding past the new barriers could be larger, more intensely litigated, and more likely to reach trial. He emphasized thorough pre-suit investigation, pointing to the information leaks in *Dodiya* as one example of egregious facts that could overcome the statutory safe harbor, while expecting further cases to reveal other avenues for challenge.

3. Reincorporation Competition May Be Strongest Before Companies Go Public

The panel generally did not expect a mass departure of large public companies from Delaware, but Michael Mencher anticipated greater competition for pre-IPO and IPO-stage companies. Founders may feel pressure to choose a jurisdiction before going public if losing control would make a later move harder to secure. He also emphasized that prominent founders, peer behavior, and perceptions of being "cutting edge" influence these decisions alongside legal advice. Yumi Narita highlighted the investor perspective: restrictions on litigation and shareholder proposals make reincorporation consequential, and assurances that companies will preserve protections may carry little weight without binding commitments. A company's history of engagement and treatment of investors also informs that assessment.

CEO Succession and Leadership Pipelines

Jim Golden (Collected Strategies); Michael Hooks (Malibu Boats); Jae Kim (Lumentum); Beth Sasfai (Cooley); Rich Mullen (Wilson Sonsini, moderator).

1. CEO Succession Is the Board's Number One Job—and Requires Planning Before a Crisis

The panel described CEO succession as the board's number one job, emphasizing that it should be integrated into regular oversight and strategic planning well before a departure becomes imminent. Directors should develop a shared "CEO of the future" profile that reflects the company's evolving needs and revisit it annually. Building an internal talent bench requires giving directors opportunities to get to know potential successors through presentations and informal interaction. Asking candidates to articulate their vision and strategy helps the board assess their readiness and establish expectations for their leadership. Alongside long-term development, boards need an emergency succession plan for unexpected departures.

2. A Leadership Transition Requires Detailed Execution and Coordinated Communication

Even a carefully prepared succession plan can be disrupted by an unexpected departure, an uncooperative incumbent, or the absence of a ready successor. General counsel plays a central role in coordinating the legal, operational, and administrative steps before and after an announcement. Communications advisers should be involved early to align messages to employees, investors, customers, and other stakeholders, recognizing that internal communications can quickly become public. Founder transitions are particularly complex because of founders' strong attachment to the company, their control, and investors' loyalty to them. An aligned board and clear communication become especially important in managing the transition and limiting speculation about "palace intrigue."

3. Succession Planning Starts Again as Soon as a New CEO Takes Over

Naming a successor does not complete the board's succession work—it starts the next cycle. The panel emphasized revisiting the emergency succession plan immediately, particularly as departures and promotions change the internal talent bench. Directors must also support the transition: leadership changes can unsettle employees and prompt other executives to consider leaving, making retention and reassurance immediate priorities. New CEOs may need guidance on communicating change without creating unnecessary anxiety. Continued oversight includes monitoring stakeholder reactions and assessing progress against the strategy and objectives discussed during selection.

M&A in a Fragmented World: What Determines Whether Deals Close Today?
Selin Beceni (BTS&Partners); Tanner Kaufman (FTI Consulting); Jonas Marson (Salesforce); Paul Tiger (White & Case); Norman Armstrong Jr. (Cooley, moderator).

1. Greater Openness to M&A Does Not Eliminate Regulatory Uncertainty
The perception that the current administration is "open to M&A" and "business-friendly" is encouraging deal activity, while panelists described enforcement as returning to a more traditional antitrust approach. Preliminary investigations have declined slightly, but negotiated remedies have increased substantially, reflecting greater willingness to approve transactions with conditions, particularly structural remedies such as divestitures. Streamlined reviews are shortening timelines for less problematic deals, but complex transactions still face lengthy investigations and potential litigation. State attorneys general add uncertainty by bringing local priorities to broader transactions, creating risks that traditional closing conditions may not fully address.

2. The Time Between Signing and Closing Is a Central Deal Risk
The period between signing and closing exposes transactions to changing economic conditions and the possibility that one party will want to walk away. The panel discussed three contractual levers for allocating regulatory risk: the buyer's efforts obligations, reverse termination fees, and the outside date. Buyers may accept larger fees in exchange for more time to secure approval. Meanwhile, customary carve-outs in material adverse effect definitions generally allocate broader market risks to the buyer. For in-house counsel, uncertain timelines also complicate financing, integration planning, and interim operating covenants, increasing the importance of coordination among antitrust lawyers, corporate counsel, and business teams.

3. Closing a Deal Requires a Strategy Beyond Regulatory Filings
Political scrutiny and organized opposition can shape a transaction's prospects alongside formal legal review. The panel emphasized aligning antitrust, corporate, communications, and business teams early, with a clear understanding of potential objections from competitors, employees, investors, and political stakeholders. Disciplined messaging and timely responses matter, particularly when opposition develops through local media or social channels. Cross-border transactions require additional attention to local procedures and relationships: shareholder signatures, proxies, and other execution requirements can delay closing even where regulatory approval is relatively predictable. Effective local advice combines technical preparation with an understanding of how people negotiate and build trust.

The State of Delaware: Post-SB21 and the Road Ahead
Chancellor Kathaleen St. J. McCormick and Vice Chancellor Bonnie W. David (Delaware Court of Chancery); Frank Partnoy (Berkeley Law, moderator).

1. Delaware Is Responding to Competition by Emphasizing Stability and Balance
Chancellor Kathaleen St. J. McCormick described Delaware's corporate law environment as "steady as she goes," despite heightened competition from other states. Delaware can never win a race to the bottom, she said; its strength lies in an independent judiciary and a balanced system that inspires confidence among all stakeholders. She also noted the value of having Delaware courts interpret merger agreements. Both judges highlighted the court's growing workload, with filings on track to rise roughly 15% over last year. Vice Chancellor Bonnie W. David noted that 34% of new civil actions include a request for expedition, requiring immediate assessment and prompt decisions, while the court must distinguish genuine urgency from attempts to jump the queue.

2. Earnout Disputes Highlight the Importance of Clear Drafting and a Developed Damages Case
Earnout disputes are becoming an increasingly prominent part of the court's work, particularly where contingent payments bridge valuation differences or incentivize post-acquisition performance. The discussion emphasized that these disputes ultimately turn on contractual language, including the efforts the buyer must undertake to pursue earnout milestones. Unclear provisions can reveal ambiguities that were not apparent when the deal was negotiated. Vice Chancellor David cautioned litigators not to neglect the damages case: the court needs a clear explanation of the calculations, not just arguments about whether the buyer met its efforts obligations.

3. AI Raises New Governance and Litigation Questions Within Familiar Legal Frameworks
The discussion approached boards' oversight of AI through established fiduciary principles: acting in good faith and in the company's best interests, with the business judgment rule remaining foundational. AI may amplify business risks and introduce new compliance concerns, but directors should apply the same disciplined judgment used for other significant risks. Chancellor McCormick also discussed Delaware's AI Commission and a proposed legal framework for companies managed by AI agents. She emphasized that the approach remains theoretical and untested. The panel also discussed how AI use creates litigation issues. Prompts and responses may become discoverable evidence, as in *Fortis Advisors v. Krafton*, where an executive's interactions with AI about avoiding an earnout obligation became part of the evidence examined by the court. The discussion also highlighted questions about privilege and the potential importance of preserving AI interactions for litigation.

Documenting the Record, Analyzing the Law: The Jurist and the Journalist
Chancellor Kathaleen St. J. McCormick (Delaware Court of Chancery); Lauren Pringle (Chancery Daily, interviewer).

1. Equity Requires Judgment That Goes Beyond Applying Rigid Rules
Equity addresses situations in which rigid legal rules may fail to accomplish justice. Chancellor Kathaleen St. J. McCormick described a system grounded in precedent and analytical discipline, but attentive to factual differences that can justify different outcomes. Some degree of indeterminacy, she noted, is part of the system's value. Identifying what matters in a case requires extensive preparation: reviewing the record, working through competing arguments, and understanding what drives the dispute. She also reflected on the transition from advocate to judge, describing the privilege of approaching questions objectively alongside the responsibility to reach a decision rather than become immobilized by difficult choices.

2. AI Can Help Process Information, but Judicial Decision-Making Remains Human
AI offers significant potential to help a busy court manage extensive material and identify patterns, though the court currently uses it for little beyond processing large document volumes. Chancellor McCormick nevertheless distinguished those capabilities from the judgment, lived experience, and empathy needed to exercise equity. She expressed cautious optimism that human judges would not be displaced, suggesting that people may continue to want other people to hear their disputes. While acknowledging that the court has not fully explored AI's potential uses, she drew a clear boundary: tools may assist judicial work, but responsibility for deciding cases remains with the judges.

3. Heightened Public Scrutiny Reinforces the Importance of Judicial Restraint
High-profile litigation brings pressures amplified by immediate reporting and an attention-driven media environment. Chancellor McCormick described that visibility as an additional source of stress, reinforcing the importance of judicial restraint and staying focused on the issues that matter to the case. She also acknowledged the substantial work required to report accurately on complex corporate disputes. Her closing message emphasized the court's commitment to serving Delaware and the capital markets that depend on it. Even when readers disagree with an outcome, they should be able to understand the reasoning and recognize that the decision was reached earnestly and in good faith.

Fireside with Jim Moloney

James J. Moloney (SEC), Director of the Division of Corporation Finance; David Peinsipp (Cooley, moderator).

1. Rules Have a "Shelf Life," and the SEC Should Streamline Them

Longstanding securities rules are not "God-given" and should be revisited when they no longer serve their purpose, SEC director James J. Moloney argued. Speaking in his personal capacity and drawing on his experience at the SEC and in private practice, he emphasized that rules developed for earlier market conditions should not be assumed to remain appropriate indefinitely. He pointed to efforts to facilitate IPOs during the government shutdown, explaining that the agency's closure should not halt the capital markets. He described seeking public feedback before drafting proposals and making greater use of staff interpretations, no-action letters, and exemptive orders, rejecting what he called "regulation by enforcement." Many corporate governance questions, he argued, belong to the states, which can act faster than the SEC's multiyear rulemaking process.

2. Disclosure Should Prioritize Timely, Material Information Over Lengthy Checklists

Moloney questioned whether voluminous disclosure still protects investors. He acknowledged that today's requirements accumulated for good reason after corporate scandals and legislative reforms, but argued that 80 to 90 pages of generic risk factors, often copied from other companies' filings, tell investors what they already know. With trading accelerating and technology changing how markets operate, he advocated moving toward more timely disclosure and a substantially simplified Regulation S-K. He also discussed possible semiannual reporting and earnings releases containing the most important material information. Materiality, not checklists, should guide disclosure, he argued, and disclosure committees, lawyers, accountants, and boards should exercise substantive judgment about what matters.

3. Company Registration: Easier Access to Capital, Enforcement When Needed

Moloney endorsed moving toward a company-registration model: once a company has completed its IPO, it should be able to sell securities without repeated, lengthy SEC reviews, while remaining subject to antifraud enforcement. He questioned the value of holding companies in review while examining financial statements that may be years old. He described the typical retail investor as investing for the long term, often through index funds, and did not see those investors as being at risk from less frequent reporting. Institutional investors and analysts, he argued, should question management and draw out material information. Questioning companies is their job: they pick up the phone, ask management the tough questions, and press for disclosure. He also questioned shareholder proposals' effectiveness compared with direct engagement by large institutions.

The Rise of Private Capital and the Bridge to the IPO Market Return
Lalit Gurnani (Goldman Sachs); James J. Moloney (SEC); Emily Roberts (Davis Polk); David Peinsipp (Cooley, moderator).

1. The Private–Public Disclosure Gap May Be Smaller Than Companies Expect
Companies staying private longer are becoming larger, and many late-stage investors will remain shareholders after the IPO. Roberts noted that some companies are surprised that public disclosure is not that different from what they already share with private investors. Panelists urged companies to adopt consistent metrics well before listing, since investors remember earlier presentations, and to rehearse with mock earnings calls. Moloney went further, contrasting the substantive information in investor decks with boring, checklist-driven SEC filings that "nobody reads," and predicting that richer earnings releases will bring that information into public view. The stock, he argued, moves on the earnings release, not the 10-Q.

2. Going Public and Preserving Founder Control Need Not Be an Either-Or Choice
Many founders hesitate to go public for fear of losing strategic control, a concern that can weigh as heavily as disclosure burdens. However, public investors may now accept a much broader range of governance structures than twenty years ago, allowing companies to balance founders' long-term vision with investor influence. These arrangements involve trade-offs: some may affect valuation, and investors may seek sunset provisions or other limits. Panelists emphasized defining founders' objectives early and developing an economically acceptable structure for investors. Moloney rejected the view of the SEC as "the corporate governance cop": defining good governance belongs to states, institutional investors, and the market, while the SEC ensures that arrangements are disclosed. He cited executive compensation disclosure as overregulation that backfired, pushing pay up as companies benchmarked against peers.

3. Faster Financing After an IPO Could Make Public Markets More Attractive
Public-company status becomes more appealing when companies can raise capital quickly during favorable market windows. Panelists contrasted lengthy private financing rounds with public offerings completed within a day, while explaining how filing and review delays can cause companies to miss opportunities. Moloney described a direction toward eliminating Form S-3 seasoning requirements for newly public companies, subject to conditions such as remaining current in reporting. He also emphasized reducing unnecessary burdens for smaller issuers, whose compliance costs may discourage an IPO, noting that semiannual reporting, as proposed, would be voluntary. Earlier access to public markets, he argued, could allow ordinary investors to participate sooner in companies' growth.

Shareholder Democracy Evolution: Big Picture Impacts for Public Companies
Aaron Briggs (Gibson Dunn); John Christiansen (FGS Global); Bob Marese (MacKenzie Partners); Greg Taxin (Spotlight Advisors); Sean Brownridge (Cooley, moderator).

1. Shareholder Proposal Reform Could Redirect Activism Rather Than Eliminate It
The proposed rescission of Rule 14a-8 could shift proposals toward state law and company bylaws, creating uncertainty over eligibility, permissible subjects, and voting procedures. Briggs anticipated different forms of activism rather than necessarily more or less activity: targeted votes against directors, binding bylaw amendments, books-and-records demands, and litigation. Taxin called elimination "fantastic," noting that environmental and social proposals averaged 7% support last year and that boards need not fear those proponents gaining meaningful support elsewhere. Both urged reviewing advance notice bylaws, particularly business-proposal provisions. With Rule 14a-8 expected to remain operative next proxy season, Briggs cautioned against accepting "proposal access" demands for a 14a-8-like framework while state-law and market developments remain unsettled.

2. Fragmented Voting Could Weaken Some of Management's Strongest Defenses
Large asset managers remain influential, but voting-choice programs and divided stewardship functions make unified institutional votes harder to anticipate. Christiansen emphasized sophisticated shareholder mapping and continuous communication across more channels. Taxin argued that fragmentation "very clearly favors activists." He reported that BlackRock supported management roughly 80% of the time last year and that, since 2013, companies had won every proxy contest in which ISS recommended in their favor. With that support, activists have struggled: proxy contests fell to a 15-year low, only six reached a vote, and activists won only one board seat through those contested votes. Weakening those blocs, he argued, would help activists rather than strengthen corporate defenses. Marese added that retail shareholders are an untapped resource whose participation can prove decisive.

3. AI Changes How Activists Identify Vulnerabilities—and How Companies Should Communicate
AI is helping activists analyze company information, compare management's promises with subsequent performance, and develop campaign arguments more efficiently. The panel urged companies to examine themselves through the same lens, identifying weaknesses before an activist highlights them. AI is also becoming part of the audience for corporate disclosure as investors develop tools to analyze proxy statements and support voting decisions. Clear language, explicit explanations, and accessible context therefore matter increasingly. Panelists encouraged companies to treat proxy statements as substantive communication tools, explaining performance and governance choices in ways that both investors and AI systems can readily interpret.

Chairman's Corner
Penny Herscher (Lumentum and Penguin Solutions); Jamie Moser (Joele Frank, moderator).

1. Effective Chairs Lead by Listening—and Speaking Last
Drawing on her experience chairing Lumentum and Penguin Solutions, serving on Forvia's board, and co-founding the Chair Circle, Herscher emphasized that effective chairs lead by listening—and speaking last. A chair must ensure that every director contributes and is heard, rather than opening with an opinion that steers the discussion. This does not mean withholding judgment: consequential decisions require the chair to balance strong convictions with genuine consideration of others' views. Relationships outside the boardroom are equally important, enabling directors to question, disagree, and build consensus before a crisis. Her advice to new chairs was to remain humble and remember that they have two ears and one mouth.

2. Trust in the CEO Must Coexist with Willingness to Make a Change
Having played a leading role in four CEO replacements in twenty-four months, Herscher emphasized that transitions are rarely smooth or standard. A successful incumbent may not be the right leader for the company's next phase, and directors can disagree over timing, candidates, or whether change is needed at all. She recommended establishing explicit board principles so that personal friendships do not displace responsibilities to the company. Annual, externally supported 360-degree assessments should include the executive team, whose members often understand the CEO's effectiveness particularly well. Chairs must build trust while communicating candidly when their support changes.

3. AI Is the Whole Board's Responsibility, and Sleepy Boards Will Fall Short
Expertise in AI infrastructure does not necessarily mean knowing how to use AI within a business, Herscher cautioned. Boards need directors conversant with the technology, but companies also need executives capable of transforming business processes. She opposed delegating AI to a board subcommittee, describing its impact as pervasive as strategy itself. The full board should regularly challenge management on adoption across functions, resulting performance improvements, and costs. Distinguishing "sleepy" boards from actively engaged ones, she emphasized keeping directors relevant through continuing education and ensuring they can help leadership navigate technological change.

AI and the New Great Frontier: Corporate Governance, Innovation, and the Public Trust
Adam Badawi (Berkeley Law); Gaurab Bansal (Responsible Innovation Labs); Benjamin Lee (Reddit); Jon Avina (Cooley, moderator).

1. Speed Is Not Negotiable, and Neither Is Responsible Product Design
AI governance begins with decisions about what a product does and how it may affect users, rather than with a compliance review before launch. Bansal stressed that speed is not negotiable for startups and that responsibility should never be placed on the opposite side of speed. Because founders want to win and serve customers, not "work on compliance," he urged integrating responsibility into existing product sprints and commercial workflows. Shared principles across teams can make responsible development a collective commitment rather than leave legal counsel as the sole gatekeeper. Enterprise customers also create pressure for accountability: companies seeking to sell AI products increasingly need to demonstrate testing, documentation, and thoughtful consideration of product consequences.

2. What Counts as Mission-Critical AI Risk Depends on the Business
Badawi framed board oversight through Caremark, the Delaware doctrine requiring boards to oversee mission-critical risks through systems that bring significant risks and warning signs to the board. Which AI risks qualify depends on the company's products and operations. The AI alignment debate, he observed, is "essentially a Caremark debate happening in the public square." When a red flag appears, boards must respond. A first incident is the cue to design a system for addressing such problems; the real danger, Badawi argued, lies in boards that "bury their head in the sand" and dismiss it as a one-off. Lee likewise framed AI as a corporate governance issue, drawing parallels between the useful, actionable information needed by boards and by AI systems. The discussion also highlighted gaps in startup boards' expertise and the potential value of bringing independent perspectives into governance earlier.

3. AI Accountability Depends on More Than Corporate Form
Public benefit corporations and long-term benefit trusts have drawn attention as ways for AI companies to embed safety into their governance, but Badawi questioned how much difference they make. Conventional corporations, he noted, already have wide discretion under the business judgment rule to prioritize safety over immediate growth. The deeper problem is that frontier labs "want to keep being frontier labs," and that competitive pressure may push them in ways that "endanger the rest of us," regardless of structure. Meanwhile, external accountability is arriving through legislation. Bansal noted that over 1,200 AI bills have been introduced across states in the past year. Many are drafted with frontier labs in mind, but risk sweeping in startups, and common threads around documentation, testing, and ownership of the process are already emerging. Congress, he predicted, will "overreact" if a crisis occurs.

Agentic AI, Autonomy, Alignment and Legal Personhood
Travis LeBlanc (Cooley); Sarah Niyogi (Arena AI); Vineet Shahani (Harvey); Chris Hoofnagle (Berkeley Law, moderator).

1. AI Responsibility Depends on Who Builds, Deploys, and Directs the System
Developers, operators, and end-users bear different responsibilities depending on their roles, system design, and who authorizes AI actions. Contracts allocate risk through liability limits, warranties, and indemnities, while tort and product liability doctrines still apply; as LeBlanc noted, none of them contains an "except AI" exclusion. Europe's revised Product Liability Directive classifies standalone software and AI systems as products, exposing developers to strict liability for harm caused by defects. LeBlanc anticipated a possible "Brussels effect," though the U.S. may view heavy European regulation as discriminatory. Given the difficulty of establishing criminal intent when autonomous systems cause harm, the proposed AI Agent Accountability Act would impose liability for reckless deployments and inadequate safeguards. Niyogi, however, argued that civil liability and state attorneys general's consumer-protection powers already provide strong incentives.

2. Agentic AI Requires Testing That Can Support Contractual Commitments
As AI systems move from generating information to taking action, buyers and vendors need clearer ways to evaluate performance and allocate risk. The discussion highlighted testing for unauthorized actions, deceptive claims of task completion, false attributions, and other failures that conventional accuracy measures may miss. Evaluation benchmarks are beginning to inform service-level agreements, particularly where human supervision is reduced. Panelists also described the challenges of anticipating hallucinations across varied user inputs while protecting privacy. Sophisticated customers increasingly negotiate security, warranties, and indemnities alongside the practical question of how reliably an agent performs its assigned tasks.

3. AI Autonomy Does Not Eliminate Human Accountability or Professional Judgment
Panelists were skeptical that granting AI legal personhood would solve accountability problems, questioning whether it might instead create another liability shield. The discussion favored keeping responsibility connected to the people and organizations developing and using the software. In legal practice, AI agents could undertake more research, drafting, and routine associate work, changing staffing models and how firms deliver services. That operational transformation does not remove lawyers' responsibility for reviewing outputs and exercising professional judgment. California has reinforced the point: LeBlanc noted that SB 574 prohibits lawyers from delegating the practice of law to AI. The distinction was between delegating tasks to technology and delegating the judgment required to advise clients and make legal arguments.

Where Does the Power Come From? AI Infrastructure and the New Compute Economy
Mona E. Dajani (Cooley); Michael Hart (Meta); Kristen McVeety (CoreWeave); Steven Lipin (Gladstone Place Partners, moderator).

1. The Biggest Bet in U.S. History Needs More Than Real Estate Financing
The panel presented AI infrastructure as potentially the biggest economic bet in U.S. history, citing projected investment averaging roughly 3.6% of annual GDP between 2025 and 2032, above the historical infrastructure expansions shown for railroads, electrification, and telecommunications. Once financed as real estate transactions, data centers now integrate real estate, energy, and technology, requiring financing structures that address each component. Joint ventures, long-term customer commitments, and GPU-backed lending are expanding the available options. Meta's approach varies with project scale and timing: large developments call for direct oversight and long-term financing, while cloud providers offer additional capacity and faster access. CoreWeave described financing initially anchored in customers' creditworthiness, with lenders increasingly evaluating its cloud platform itself. Educating investors about the infrastructure and its underlying assets has been an important part of expanding access to capital.

2. Speed to Power Is the New Constraint on AI Capacity
Strong demand for AI infrastructure does not automatically translate into usable capacity: electricity availability and the time required to secure it are critical constraints. The discussion highlighted differences among regional grids, generation resources, utility structures, and existing infrastructure. Dajani argued that rising electricity prices do not track data center development, pointing to Texas and Virginia, which are open to all energy sources and where rates did not rise, in contrast to states such as Maine and Rhode Island that rely on aging gas infrastructure. Utilities are becoming active partners in development and financing, while some are encouraging projects in their service territories. CoreWeave described utilities as adapting to a surge in demand that had not been fully anticipated.

3. Community Acceptance Is Becoming a Financing and Execution Risk
Data center development increasingly depends on securing local confidence alongside permits, power, and funding. Panelists emphasized early engagement with communities, governments, and utilities to understand concerns and explain projects' effects. Meta's Louisiana development illustrated the potential for substantial employment and local tax benefits, while CoreWeave emphasized transparency and earning a social license to operate. Investors and lenders are also beginning to incorporate community opposition into risk assessments. The discussion acknowledged that objections may reflect broader anxieties about AI, including employment and societal change, requiring companies to address more than the physical characteristics of a proposed facility.

AI Safety Oversight Auditing: The Standards Gap and Who's Accountable
Marie C. Bafus (Fenwick & West); Téo Doremus (Advocacy); Fiona Tang (illumyn and illumyn Impact); Marleina Paz (Harness); Andrew D. Goldstein (Cooley, moderator).

1. AI Is the New Frontier for Caremark Claims
AI is "the new frontier" for Caremark oversight claims, Bafus argued, but whether it presents a mission-critical risk depends on its role in the business and the consequences of failure. She discussed examples ranging from consumer-facing generative AI to financial monitoring and healthcare compliance. Caremark liability concerns bad faith, not ordinary negligence: an utter failure to establish an oversight system or conscious disregard of red flags. Bad outcomes alone do not establish liability. Boards should determine where oversight belongs, establish regular reporting and escalation protocols, integrate AI into enterprise risk management, and ensure that management has relevant expertise. Because stockholders can use Section 220 books-and-records demands to investigate oversight failures, formal board materials should document how directors receive information, consider risks, and respond as those risks evolve.

2. "Shadow AI" Turns Employee Use into Corporate Risk
"Shadow AI," the unauthorized use of AI tools by employees, poses a serious risk: a single employee entering source code, personnel complaints, or corporate strategy into an unapproved tool can expose confidential information, jeopardize privilege, and undermine the company's litigation defense. At Harness, Paz explained, approved tools must be paired with approved uses, particularly for restricted data. Policies, training, and coordination among legal, security, and product teams are reinforced by endpoint controls that block unapproved tools and direct employees to seek review. Doremus explained why conventional safeguards fall short: unlike deterministic software, AI is "the first technology that reasons," so not every failure point can be anticipated. Companies should instead teach AI systems what "good" and "risk" mean for their business, rather than relying on after-the-fact investigations that turn into "archaeology."

3. AI Can Make Directors Smarter, and Their Records Riskier
Board education should equip directors to ask informed questions and understand management's reports. Asked whether boards need a designated AI expert, Tang answered, "Not one," urging multiple perspectives, such as an AI advisory council. Bafus noted that AI can help directors digest board materials, but warned that directors running their own analyses may second-guess operational decisions that belong to management. Directors should use corporate tools vetted by counsel, not personal consumer accounts. AI note-takers also warrant caution. In a recent Court of Chancery case, Vice Chancellor Will found that an AI transcript of a board meeting did not line up with the minutes. Minutes are crafted to record good oversight, Bafus observed, but "the AI transcript shows the sausage being made."

The Private Equity and AI Black Box: Governance, Valuation, and the New Deal Calculus
Amelia Runyan Davis (Cooley); Nate Harbacek (OpenAI); Dillon Joyce (Battery Ventures); Riaz Ladhabhoy (JPMorgan); Ken Ayotte (Berkeley Law, moderator).

1. The Bull Case Is Easy to Make; Capturing the Value Is Harder
AI's economic potential is enormous, but potential is not the same as value an investor can capture. Asked for the bull case, Harbacek described the possibility of curing many forms of cancer within a decade, extraordinary capital formation, and sustained productivity growth of 3% to 6%. For private equity and other investors, the harder question is whether companies have moats: if copycats can build something almost as good, who captures the value? Harbacek pointed to talent, access to compute and power, and continued demand for frontier models, which he said still capture most spending on AI tokens. Ladhabhoy offered a counterweight: financing the build-out will require trillions of dollars, and the hyperscalers, historically the world's largest cash-flow generators, are moving toward break-even as they pour cash into data centers.

2. When Cash Flows Are Years Away, Market Share Drives Valuation
Valuing fast-growing AI companies is difficult when future profitability remains uncertain and historical comparisons offer little guidance. In these "early days," Ladhabhoy explained, investors place greater weight on market share and revenue multiples than on long-term cash-flow projections, looking two to four years ahead to assess how much of the addressable market a company is capturing. Joyce agreed that "right now it is about market share," but emphasized examining long-term gross margins to test whether today's revenue can eventually become profit. That requires separating durable businesses from those merely reselling others' technology. For software investments, Joyce placed less weight on proprietary code. "Software really doesn't have IP," he argued, emphasizing customer relationships, domain expertise, and other barriers to entry as the basis for a company's "right to win."

3. AI Due Diligence Is Moving from Identifying Use to Assessing Governance
In private equity transactions, buyers' questions have shifted from whether a target uses generative AI to how effectively it manages that use. About eighteen months ago, Davis recalled, diligence focused on risks such as employees exposing code or introducing copyleft licensing issues. Today, buyers ask whether companies have systems to track fast-changing regulations and assess compliance, and whether their approach is appropriately calibrated. AI risks are increasingly folded into customary representations and warranties; Davis said she was not seeing specific AI exclusions in representations and warranties insurance. AI is also changing how diligence is done: investors can analyze a target's customers one by one to assess their health and generate further questions, while lawyers automate data-room review so junior associates can focus on analysis.