# Stakeholder Governance on the Ground (and in the Sky)

*Stephen Johnson and Frank Partnoy*

**Professor Frank Partnoy:** This is a marvelous gathering, and it is all due to Chuck O'Kelley and the special gentleness, openness, and creativity that he brings to this symposium. For more than a decade, he has been open to new and creative ways to discuss important issues surrounding business law and Adolf Berle's legacy. We also are grateful to Dorothy Lund for co-organizing this gathering.

In introducing Stephen Johnson, I am reminded of a previous Berle, where Chuck allowed me some time to present the initial thoughts that led to my book, WAIT: The Art and Science of Delay. Part of that involved my conversations with executives in the C-suite at Goldman Sachs and learning about their views of the role of delay in decision making, and I discovered that one of the most important people at Goldman, a kind of quiet "number two" executive, was John Rogers, a secret, silent, behind-the-scenes consigliere, whose eyes were on just about everything you can imagine at the company for a long time. In recent years, I've learned that American Airlines has a similarly extraordinary person in senior management, someone who is involved in virtually every important aspect of the business. Amelia Miazad met him while she was teaching at Berkeley and somehow persuaded him to become part of our academic community. It's been a joy to get to know Steve and to have him teaching and involved in our scholarly efforts. Steve is the John Rogers of American Airlines.

Let's start with Steve's background. He is a Berkeley alum, both JD and MBA, from 1982. And although his title is simply executive vice president of American Airlines, he really is a quiet number two. Steve, obviously you've done many, many things during your career, but let's go back to the beginning after you graduated and tell us about the parts of your background that would be particularly relevant to this audience.

**Professor Stephen Johnson:** Sure, sure. But before I start, I want to thank Dorothy and Chuck. Yesterday, one of Dorothy's colleagues who isn't here today, looked at my name tag and with a sort of suspicious, halfway sympathetic look in his eye, said, "you're the only member of corporate America here today." [Speaker and audience chuckle]. And that gave me a little pause, particularly for the Q&A. But it's a real privilege and this has been an enriching couple of days that I'll never forget. So, thank you very much for having me. And also, to you Frank, thanks for picking me as your side kick here.

After graduate school, I practiced law. I was a corporate and tax lawyer in the 1980s. Interestingly, in the 1980s there was a lot of overlap as the Reagan Administration used tax incentives to incentivize investment to jumpstart a moribund economy. In 1989, I went to work for my biggest client, a financial services company that caused me to move to Ireland, was a terrific highflyer, a really interesting place to work, and very international business. We got into financial trouble with the recession after the first Gulf War, but that turned out to be a huge career opportunity for me. The senior people at the company left, and I became general counsel, helped sort that all out, and we sold the company to GE Capital in '93. I worked for GE for about a year, didn't like that, and that led me to me leave Ireland and move to Phoenix, where I became the general counsel of a little airline called America West Airlines. Way back when, some of you may remember it.

**Partnoy:** I actually don't know the answer to this question, but you mentioned that I should interrupt you and ask you about Tempe in 1995. Was that during this time?

**Johnson:** In 1995 in Tempe, America West Airlines was a little airline, about $1.5 billion of revenue, 100 airplanes, hanging on by its fingernails. It had just emerged from bankruptcy and was the second TPG investment. The CEO, a guy named Bill Franke—you may know him, by the way—as W.A. Franke, the guy who endowed Joe Grundfest's chair at Stanford. Bill had set about to put together a new management team, and he did just that. Among those Bill hired in 1995 are six people who lead the airline industry today, five of them run American Airlines, and one of them is the CEO of United Airlines. So, a really interesting story over time about how we built that.

In any event, I was at America West for about eight years, and then I went with Bill to start a private equity firm called Indigo Partners. I worked there for six years, helping Bill to put together a very successfully set of investments, a lot of fun. And in 2009, my pals from America West, who after the merger now ran U.S. Airways, convinced me to come back. We immediately had to deal with the aftermath of the Lehman meltdown and its impact on the airline industry but quickly shifted to what was next. In 2011, American Airlines, the legacy American Airlines, filed for bankruptcy and we spent two years campaigning for a merger between U.S. Airways and American. And eventually, that was successful after a little run in with the Department of Justice, and I've been at American since late 2013.

To go to the point about what might be interesting here, I became a very senior executive at a public company at a very young age. And, as I joked to my boss the other day, I haven't ever been promoted. Not since 1997. But that run has given me an amazing experience. I had for the most of that time that big corporate job: all the lawyers, the corporate stuff, government affairs, labor relations, our significant real estate portfolio and development. In particular I have had responsibility for our relations with our board for twenty-seven, twenty-eight years. And, other than the CEO, I have had as close a relationship with our directors as anybody could have. Also, I have the privilege to be a director of a FTSE 250 LSE company located in Budapest, and I've been on that board for seventeen years now. So, a lot of experience in the board room, and a lot of responsibility on the ground and in the sky, as we said in the title of this. A lot of responsibility for these kinds of things.

**Partnoy:** Just in term of rounding out who you are as a person—I don't want to ask you every question about your childhood or anything. But we'll talk about Boeing later in our conversation, and you were in Seattle for a significant period of time, and Boeing was a significant presence there. Could you talk a little bit about that?

**Johnson:** I grew up in Seattle in the 60s, one of my first memories is watching, on a grainy black and white TV, the first flight of the 747. It was parked there, and we looked at it, and we looked at each other and said, "no way that thing can fly." So, I grew up having enormous respect for Boeing. Then I was in private practice in Seattle, a one company town before Microsoft and Amazon. I didn't work at Perkins Coie, which was then the Boeing firm, but I worked at the other big firm in town, and so I had lots of Boeing customers as clients. My next job was with a very big Boeing customer, the financial services company in Ireland, and after I was promoted, I took on the responsibility for our commercial relationship with Boeing. So, for three-and-a-half decades, I had wonderful view of Boeing. I couldn't imagine a better run, more positively impactful company.

**Partnoy:** If I go back in time and asked you then for some adjectives that you would use to describe Boeing, just throw a few out.

**Johnson:** You know, a remarkable company in every way. Just so focused on their customers, so focused on their product, so focused on their engineering. Just an unbelievably innovative place where every employee you met loved working, and loved their customers, and loved what it was they were making. So, just as amazing a corporate experience as I could imagine.

**Partnoy:** Does everyone feel the dramatic tension in the room? I want to ask you something kind of weird, which is could you rerun this story using the concepts that we're talking about today, and how you heard some of these terms that we're using as academics? The title of our conversation is, as you mentioned, stakeholder governance on the ground and in the air. Hopefully people like that title, it's kind of clever, I think. But I think it'd be helpful for the group to hear you talk about this term, "stakeholder governance," when it hit you, and then we'll talk about ESG later. But can you just retell the story that you just told us about your career from the perspective of that term?

**Johnson:** No, the term itself came to me later in life. But the concepts were there. I think early on, I was educated in college and graduate school in the 1970s and early 1980s. Shareholder primacy was black letter law when I graduated in 1982. So, that's what we learned. That's what we did. When you're sent off into the corporate world, that was your mission and your mantra, and I certainly was a believer. But I think what happened to me along the way is I started to realize that the way in which you created long-term shareholder value was by creating value for your stakeholders and taking care of your stakeholders. And it started for me, I think, when a couple of times in the 1990s in new jobs, I had to build entirely new teams, and both organizations turned out to be places where there were no women. It's hard to believe that only thirty years ago that was the case. But I thought that was weird and set about trying to change that. And was advantaged by the fact that in both cases, women were almost in every case the better candidates. And so, the team I built in Ireland was predominantly women, and the team I built at America West was almost exclusively women. And so that was the first thing I just realized that gender diversity mattered, and we needed diversity for a better team.

Also, early on, I recognized the need to focus on employees generally. That was the case early in the America West days for a couple of reasons that were related. First, we had a small airline, so we had a small airline network, and anybody who knows network businesses knows that's a problem. That manifested itself in America West having a very significant revenue generation disadvantage to the other airlines. But we had to pay the same as the other airlines paid for gas and for airplanes and for landing rights at airports and stuff, and something—really the only thing—we could manage was our cost of salaries and wages. And so, we had to make a deal with our employees in those days that they would be paid less than their counterparts at the other bigger airlines. But we were going to do everything we could to take care of our employees in ways that the bigger airlines wouldn't. Provide really exceptional benefits. Befriend our team members and show them respect. Make sure our employees had a career opportunity.

As a small airline with the small network, we had a pretty fragile business. It turned out that we ultimately did a really good job playing that out. But at the time as a really fragile business with uncertain standalone prospects, to say the least. And we knew that to be successful, and importantly to create real job security and upward mobility for our team, we needed to get bigger and that meant we had to engage in consolidation. Fortunately, one of my pals in this stakeholder effort was Doug Parker, one of those 1995 guys who was our CEO until a year ago, and our chairman until a week ago. He and I spent a lot of time talking about this and recognizing what we needed to do for our employees. It's a customer service business, a very employee centric business. We needed to find ways to give our employees purpose and a stable career. So, consolidation, growing, getting bigger, was one of the ways to do that.

We have a complicated value chain and maybe we can talk about that in a minute. But one of the things we learned early on, being one of the little guys in the industry, was that relationships matter and relationships with our vendors matter because we didn't have the same resources as the other airlines, and we needed our partners, vendors, and suppliers to like us better than they liked the other guys. We worked on those relationships, and it really did, I think, pay off in a number of cases. Most notably, we got ourselves into a sort of existential crisis after 9/11 and it was really the vendor community that helped us find a way out of that. And then in what was a hostile merger discussion for a very long time between U.S. Airways and American, the vendors and the community remembered us, had better relations with us, and that really helped a long way. We have a complicated relationship with our customers. But we've always tried to find ways to make that better.

My best reflection on the customer-stakeholder is the company—Wizz Air, the Hungarian Company that I'm a director of, is an ultra-low-cost airline, like Frontier or Spirit. Wizz was designed and invented by a brilliant guy who's still our CEO. HIs idea was that we could take the principles that Southwest had invented to deliver air travel to a much broader group of Americans to create an airline that would rise out of the Central European states that joined the E.U. in 2004, and it would be an airline that would compete in Europe by creating opportunities for Eastern European customers to have access to really low fares and be able to travel, and then to grow that airline to the East to the the Georgias, the Armenias, the Latvias, the Lithuanias, and ultimately, again, to bring really low-fare air transportation to places where it hadn't been before. And we've now taken that to Israel in the Middle East, etcetera. So, customers—really important.

**Partnoy:** Let me ask you to pause there. You've been giving us a narrative about your career focusing on various stakeholders and constituents, and it's very much consistent both with what you said interviewing Doug Parker at Berkeley and with the thread of conversation today. But you haven't used the term "ESG." We have the person in the room, Elizabeth Pollman, who has written the definitive history of ESG. The term is starting to be used at this point in time you are discussing, when your relationship and thinking about stakeholders and social issues was evolving. Tell us what role this term has had in your professional life, again from the beginning maybe until now. What you think of this term, ESG, that we've talked so much about during the past two days?

**Johnson:** Sure. I'm not a big fan of the ESG term. I don't always know what it means, and I am not convinced the others know what it means or think that it means the same thing as you or me. For me, the issues are about creating a sustainable company, for the very long run. American Airlines is going to celebrate its one-hundredth birthday in a couple of years. And we'd like to extend that for, you know, another several decades until people find a different way to get around. And for our company to be sustainable, we need to address the issues that typically are discussed as ESG. We need to have a diverse work force. We need to take care of our team members and make sure they have well paid, stable, and interesting careers. We need to solve our contribution to the climate crisis. We need to deal with inequality. We still focus on safety issues, even after twenty years of our industry of having an exceptional safety record. We need to compete—and compete fairly. But we talk about those issues at American Airlines using the sustainability label, not the ESG label, because ESG is confusing. Also, ESG has gotten a bit of a bad reputation in some corners. But no one can criticize us for wanting to have a company that we want to build and sustain and cause to be successful and cause to create careers and job opportunities and job security for many years.

**Partnoy:** There's some tension between how you think about that term, and how we've been talking about it the last two days. I want to ask you about legal scholarship, now that you, during the last several years, have become more versed in the literature, both as part of your teaching and as part of conferences. You have helped me look at and understand a bunch of papers and it's amazing how quickly you read papers—much more quickly than I'm able to. You wanted to read even more papers for this conference and you asked to give you a reading assignment. So, we've talking a lot about ESG, and you've read a lot and have become very immersed in the Berkeley community, so I wanted to just get a feel from you and ask you some questions about legal scholarship and what you think. Just to put you on the spot, would you talk about legal scholarship generally? And then, if you have thoughts that you want to weave in about the last couple of days. We've been using the term ESG a lot. I hope that doesn't offend you—

**Johnson:** Oh, no, no, no, no, not at all. I mean it's just, it's just not my favorite term.

**Partnoy:** I don't know what it means either. Even knowing Elizabeth and Amelia, the two leading people talking about ESG, I still don't really understand the term. But talk to us about your views of what we've heard today and legal scholarship, generally.

**Johnson:** I think I've always been interested—as I told Frank last night as we were walking to dinner—there was a long moment in my life back in graduate school where I thought about getting a PhD instead of finishing law school. And I have a son who's a PhD candidate, and I am sometimes jealous of him. But my interest was rekindled in 2015-2016 as I emerged from the stupor of doing the US Airways American merger. I started thinking about what I was going to do next, and how I could add value at the company. I'd gotten to a point where I had a fabulous team of people, and they didn't really need me anymore. So, anyway, I started thinking about some of these ideas, and coming across ESG which was becoming a popular concept, and climate change had gone from something that was evolving from a debate between scientists and Republicans to a real thing. And I was working at the biggest airline in the world. So, the biggest burner of petroleum products in the world. And I was looking around for some help. And I found my way to academia. I reached out to my pal Adam Sterling at Berkeley, and started talking to him, in part because I was interested in just learning more, in part because we needed to change the narrative at American, and in part because I was getting to a point where I thought I was going to retire, and wanted to see if I could get more involved in an institute that Adam was running at Berkeley at the time.

Adam introduced me to some stuff, and then introduced me to Amelia, with whom I had a really good conversation about a paper of hers that had a significant impression upon me. Then Adam offered me the opportunity to teach a class in the business school. And then, a year later when Amelia moved to Davis, I had the opportunity to teach a class in the law school that she had created. That has given me an opportunity to start really immersing myself in scholarship and academia. And I found it wonderful. First, it's very interesting. Second, it's been extraordinarily helpful to me in trying to understand the issues I was struggling with, but without the help of the framework, or the background, or the history. Thanks to

Amelia for the introduction that she gave me and to Elizabeth, whose papers I read early on, and several of you whose work I've had a chance to explore, before I had the chance to meet you, and for opportunities like the Berkeley Forum last fall. This has been incredible for me, in terms of just helping me think, understand, and help a company that is really very excited about these ideas, but couldn't articulate them particularly well.

**Partnoy:** Let me try to force you to be a little bit more specific about some of the concepts that you've been reading about and talking about. I know that when you talk about American and strategy, you often talk about economic growth. And Christina Skinner talked a lot about economic growth yesterday, and economic growth has been a thread running through a lot of our conversations. Our colleague, Bob Cooter, spent the last couple of decades writing about the importance of economic growth, and there's often a disconnect between thinking about business law generally and economic growth. It's obviously a topic that you care a lot about. Can you give us some of your wisdom on where economic growth fits into this conversation?

**Johnson:** Economic growth is the big piece of the issues we are discussing that I don't fully understand. You can call this ESG. You can call it sustainability. You can talk about it in these bite-sized pieces that we write papers about. But what we're really engaged in is trying to make the world a better place, right? And that's why I'm interested. It's what American Airlines thinks about. That is its mission. Capitalism has created an enormous amount of wealth and a high standard of living through economic growth. I look at population estimates that say we're going to go from 8 billion to 10 billion people on the planet over the next few years and that there's still billions of people in poverty. One of the big concerns I have, or one of the intellectual connections that I haven't been able to make is, if we abandon our focus on creation of long-term value at the company level, do we somehow disengage from and take away an engine of economic growth? I think about that a lot and talk about it with my students. It's a connection that I worry a lot about, and one that—unresolved—is keeping me from going further in my journey. But it's something that I look forward to spending more time on, reading about and having an opportunity to study.

**Partnoy:** I know that you had been familiar with Adolf Berle, some of his works and have been a student of the twentieth century history interested in the New Deal at various points. And obviously, you've heard a lot of references to Berle and his work in the last couple of days. Do you have any reflections about the important role of economic growth and its relationship to the role that Berle played? Can you give us some guidance as to how you'll approach these issues or how we should?

**Johnson:** Particularly in this room, I'm not going to say that I am a Berle expert [audience chuckles]. He's a guy that I met when I was an undergraduate. I had and have a deep fascination with twentieth century history, and in particular with what I consider to be one of the ultimate moments of twentieth century history, the New Deal. And I first met Berle as one of FDR's braintrusters. I don't remember talking about Berle in law school, in business associations. Maybe that's because we were so focused in those days on shareholder primacy. But then as I recently refocused, I was reintroduced and found the story to be fascinating and Berle to be a fascinating guy. As I think about this today, in my role, I go back to this idea that he had—that throwing the baby out with the bathwater is probably not a great idea. That we have institutions that do work, but are imperfect, and we need to find a way to make them more effective. And I really believe that the combination of this generation of academics, and particularly this generation of business leaders, can make the world a better place. It doesn't make any sense to me to throw the baby out with the bath water, but it does, you know, feel like we all need to take, as you all are doing, a really hard look at the extent to which business and corporations have both created value and been creators of our problems and how businesses and corporations in the future can continue to create value, but not be, or at least be, part of the problem to a much lesser extent going forward.

**Partnoy:** You just mentioned the importance of businesses and corporations, and there are some macroeconomics issues that we've talked about the last two days, including employees and retirement, that are important if you're talking about making the world a better place. Also, what role will corporations play in the future with respect to philanthropy? I wonder if you could just give us a few of your thoughts about those kinds of macro issues: retirement, philanthropy, and the role of corporations. And if you want to talk about American, that's fine as well.

**Johnson:** Certainly American is a very good example of this point. We talk at American not so much about creating shareholder value, but about creating value. And, as I said, you know my view, and I think it's shared by my colleagues, that we have an obligation to our shareholders. That's the world that we live in. It may be imperfect, but our shareholders are the only ones who vote. Our shareholders, when they talk to us, they talk to us about shareholder value. That's the law in Delaware, as far as we're concerned. So that's the world in which we live in. But at American we talk less about creating shareholder value than we talk about creating value because of our view that the best way to create shareholder value is to create value for all your stakeholders, and that creates a virtual circle that ultimately builds on itself over a long period time. Also, our employees fund their retirement. Many of them own American stock, and it's important to their retirement funding. More generally, creation of long-term shareholder value is the way, I think, retirement is funded in the United States today. If we're going to change that, we need to think about the consequences. Also, long-term shareholder value creation funds philanthropy in the United States to a great extent. That's the model we've chosen. And if we're going to change the paradigm, we need to think about the consequences. All of those issues are running through my mind as I continue this journey.

**Partnoy:** Since you, I think, very provocatively frame things in terms of value, would you spend a couple of minutes telling us how the airline value chain is different? What's different about the value and the value chain. You talked a little bit about some of the constituents that you think about differently when you think about generating value, but just sort of give us a picture of how—this is the parenthetical part of our title "and in the sky"—how is value creation different in the sky?

**Johnson:** It is complicated because, as I said, we live in this world in which the creation of long-term shareholder value is the mission we have. But in the airline industry that's a really tough thing to do. We operate in a very, very competitive business. It's a business that's labor intensive, and our employees are represented by really effective unions under a labor law that gives them lots of power. It's an industry that's very capital intensive, and most of our capital is spent on airplanes, which come from a duopoly. Our industry is very petroleum intensive, and we will talk about the climate impacts of that later. But we spend 12–13 billion dollars a year on jet fuel that we purchase ultimately from a cartel. Our facilities are at airports, each of which is a monopoly. We are very focused on our value chain, but I would say our most important value chain stakeholders are in a relatively benefited positions versus some of the stakeholders of other big businesses. As a result, it's an industry that's very, very hard to make money, but one that we continue to believe can prosper. We continue to try to find new ways to reinvent the business, to create value. But that value chain is very interesting.

**Professor Dorothy Lund:** I have a question that I wanted to repeat that we asked you last night at dinner that I thought you gave a really interesting answer to, and then I have a new question. So, the first question is, on a day-to-day basis, you're presented with all sorts of hard questions. There's a category where doing well for your consumers, your employees, is going to create value for the shareholders. But how often are you confronted with the other types of decisions, which are doing the right thing for the world is going to harm shareholder value in some way? And so that's question one: how often does that happen? And the second question is, you know, does how you view your duty, or does how you operationalize your duty to your shareholders change based on things like whether or not the company is in bankruptcy? Close to bankruptcy? Who your shareholders are at any given moment? What's going on in the world? I mean what kinds of external things that—you know, because you've been an executive for a long time through a lot of different things—what has caused maybe changes in the way you operationalize your duty on a day-today basis?

**Johnson:** On the first question, I don't really remember a circumstance where, in any meaningful way, we had to make a decision between shareholders or other stakeholders. So, we're doing the right thing. And I think that's because we think about this, we think about our shareholders as entitled to long-term value creation. And, as I said a couple of times now, we think, looking after our stakeholders and looking after the planet are part of that equation. And are not just helpful to our shareholders, but necessary to the sustainability of the company and to the creation of value over the long term. So, it never happens. We don't spend any time worrying too much about what this quarter's financial performance is going to be. Of course, we give guidance, and we feel like it's important for credibility to meet that guidance. We're conservative and try to be credible and generally, we deliver. So that's not a problem. But our focus always is and always will be on the longer term. And that means taking care of our stakeholders.

This is an industry that is prone to shocks. And there have been several of them. I think five real existential crises in the industry in my career. And it absolutely does change the way you manage. We've become a team of really expert crisis managers over the last thirty years, and it does focus the mind. But—if I could just very, very tightly summarize the way we approach a crisis—it's: we've gotta get through the crisis with our equity intact. Because if we get through the crisis with our equity intact, we have the ability to restore value over time, and that's, I think, always been our focus. And it's been one that has worked because it's something that you can get done in a world where you don't have very many options. And there, survival is key. It gives everybody something to shoot for, something to be excited about, and, you know, on five occasions, it's worked out really well for our shareholders.

**Partnoy:** Part of this question was about sources of capital. Could you tell us a little bit about what the changes in the capital structure at American have been like over time, and also what your relationships with investors have been like over time, given that you've been one of the principal people interacting with large institutions, including the big three or four in the last decade or so. Can you talk to us a little bit about that?

**Johnson:** Sure. Another reason that we think about creation of long-term value and stakeholders is that we think about our creditors as stakeholders. It's a leveraged business, and we're the most leveraged of the airlines. And so, having good relationships with our creditors, and continuing to focus on them and their outcomes is really important. I've been involved in the airline industry for a long time and aircraft finance for even longer than that—and the sources of capital have changed, and the way in which we tap capital markets has changed. It used to be that financing a single aircraft could take six or seven weeks to negotiate and sometimes longer than that. But today we can go out and raise a billion dollars in securitized financing in an afternoon. So, all of the things that you've seen, all the modernization of the credit markets in particular have benefited us. And have been hugely beneficial in terms of cost of capital. But also, more complicated in trying to maintain relationships with creditors as they cease to be the aircraft leasing company that we know and cease to be the bank that providing us the term loan, and it's become a more complicated set of creditors and bond holders. But we still work on those relationships, and we still consider our creditors to be very important stakeholders. Again, whose well-being is always, in our case, addressed by the long-term value equation.

**Partnoy:** And what about the large institutions? We talk about them a lot, and you've actually interacted with senior people regularly. What would we find surprising about your relationship with the largest institutional investors?

**Johnson:** The largest institutional investors, I don't think there's anything surprising. They own our stock because they have to own everybody's stock. We do have a lot of engagement with them. But the engagement with them is almost exclusively with their corporate governance teams about ESG-kind-of-issues, increasingly. They are in a position that they will own our stock forever, and so they care very deeply about how we feel about sustainability and creating value over the long run. And they, I think, recognize, as we've discussed this week in a very significant way, that the well-being of their investment is directly related to how we deal with some of these issues over the long term.

**Partnoy:** There's been a fair amount of academic work that suggests that a large concentrated share of ownership has led to increases in prices or oligopolistic behavior. And lots of us have read this work inside of that. Have you seen any evidence of that over the last decade or so?

**Johnson:** If there's a party going on, it's a party to which I have not been invited. No. [Audience chuckles]. And really, I've spent a lot of time over the last twenty-five years personally talking to investors who are among the people under suspicion. And the other thing is, as I was joking earlier, I had a lot of experience in Department of Justice antitrust investigations, and we've been through four really thorough deep dives, where every email ever produced has been reviewed. And there's never been any indication of anything.

**Professor Cathy Hwang:** I'm going to ask you the hard question that I get asked all the time, and I asked you. So, how do you balance the different—it's a version of Dorothy's question, really—how do you balance all the different, really important stakeholder-y things that you have to think about? Employees, obviously, you mentioned diversity. You mentioned the fact that you're burning dinosaurs basically to fly the machines. And obviously, you know, in your community, customers and safety and all that stuff maybe matters more than if you were selling, you know, this. So, how do you operationalize that? It's kind of the Dorothy question—are you having meetings? I mean you obviously have to have meeting with the union and labor and all that, but how do you operationalize like the latest stuff regarding climate change or diversity, or changes in cost of living that affect your employees, how does that work?

**Johnson:** First, we have a really great team of people. It includes subject matter experts on all of these things. And we have the luxury of having people who devote their entire life to these individual issues. And a management team that not only has been in the industry for a long time, but it's been in the industry together for a long time. A group of people that can, you know, finish each other's sentences and have lots of experience reading all of this together. It's not just that we've got to do all that, we've got to do all that and figure out a way to do it in a way that is profitable. So, it is a big challenge, but we rely on experts, we rely on experience, we rely on a commitment to these shareholders, these stakeholders that we focus on, constantly. And yeah, we have meetings. We talk about things; we talk to the stakeholders to hear what their concerns are. Sometimes candidly to tell them where the limits are, what we can't do. But again, we're really focused on trying to bring this all together in a way that works for everybody. I talked earlier about the impact on economic growth—one of the intellectual challenges for me with respect to the new world that we're certainly headed towards. Another is what is the right way to think about multiple stakeholders. How do you prioritize? How do you split the pie, if you will? All those are really, really interesting intellectual questions that I don't know that we have articulated answers to, but we have kind of a good feel for. And so far, we've managed to figure out a way to make it work and I think we have, as a result, a terrific relationship with our stakeholders, terrific relationships, importantly, with our team members and the unions that represent them. Terrific relationships with the communities we serve, I think, increasingly good relationships with our customers, all just through hard work and listening and talking and trying to figure out a way to bring it all together.

**Partnoy:** In addressing these competing concerns, how optimistic are you that you'll be able to do anything significant about carbon emissions?

**Johnson:** That's a really interesting question. My optimism about our ability to address carbon emissions in the airline is totally based on my belief in technology and innovation. There's no way that we're going to be able to say, "here's what American Airlines can produce as an organization, and we're going to have to take a big piece of that pie and devote it to climate change." That's not going to work. I mean, it's too much. There is no technology that produces sustainable aviation fuel at any scale. We love to brag that in 2022, we burned more sustainable aviation fuel that any other airline; something like 5 million gallons of sustainable aviation fuel. Out of the 4.2 billion gallons of jet fuel that we burned last year. So, we need technology. There's a whole bunch of really cool ideas that we support, and we invest in. But we're not going to get there without a breakthrough in technology. The other way in which we can solve this problem is different propulsion systems—electric, battery-operated propulsion systems, hydrogen propulsion systems. Those are all really cool, and there is lots of work being done on that. But they are a long way off. So, we believe that we're going to be able to solve the problem for the airline industry because we believe in innovation and technology.

**Jacob Simmons:** You briefly touched on a handful of DOJ investigations in the past, and you've talked a lot about other key stakeholder relationships. I was just wondering if you can speak more about how you approached this specific stakeholder relationship of dealing with the heavy regulation that American has to navigate as a corporation.

**Johnson:** Well, there's this rumor that I've been hearing for about forty years that the airline industry was deregulated in 1978 [audience laughs], but I haven't been able to verify, yet. But no, it's industry that is pretty heavily regulated. And I think of the regulation as really falling into two big buckets. The regulation by the FAA with respect to safety, which we'll put into one bucket. And then sort of everything else, which is DOT regulation, Department of Labor regulation, Department of State regulation, Department of Treasury regulation, all of that. The second group, we manage. It's the reality of our business. We know what the regulations are. We try to engage our regulators in the same way that we manage things with other stakeholders. We maintain those relationships. We work really hard. We have a fabulous team of people in Washington, D.C., who I think, to a person, are the kind of lobbyists and advocates that you'd be proud of. There are people who advocate only with a good idea, who advocate only with something that is part of this effort that we have to make American better and to make the world a better place. And they are, as a result, both successful, and able to keep us on the right side of regulation particularly when things become difficult. I don't know if you follow the news, but there's been a lot of stuff recently about the DOT Secretary trying to promote a passenger bill of rights. First, a dashboard for customer service and amenities—that airlines would make available to customers when there's, what we call, irregular operations, like a Southwest meltdown. And the other was his effort to persuade airlines to let families sit together without paying an extra charge for assigned seats. In both cases, we got straight As from the DOT because we had policies that were in place that we've been working with them on for a long time, and that are pretty customer friendly in comparison to some of our competitors. The safety regulation, I consider to be—and we can set the Boeing incident to the side for a moment because I'm talking about airline safety—the safety effort with the FAA I think, over the last twenty years, is one of the most phenomenal examples of the regulation of capitalism that you can find. I mean, it's just an incredibly safe industry. American alone flies 6,000 flights a day and carries 550,000 passengers a day, and we are just a little more than 20% of the U.S. industry—multiply that out. And over the last twenty years, dating back to 9/11, just a handful of fatalities in one crash that didn't involve a major airline. That is an outcome that doesn't just happen. That's hard work and collaboration between the airline industry and the FAA. A constant effort to incrementally make safety better. A constant focus on taking things that we learn from the super-rich data that we create and sort of roll that back into the system to continue to make it better. And importantly, a heroic group of people at the FAA and each of the airlines and at each of the labor unions that are engaged in the airline industry. They're focused exclusively on making safety better.

**Partnoy:** That's a good set up for us to talk about Boeing. And for you to tell us about what your class is like and how you teach this case.

**Johnson:** Well, I teach two classes. A class to business students, where I spend a little bit of time talking about issues like this, usually in the last class of the semester, and it usually creates an almost riot because we have been pent up and been thinking about the issues all semester long and then unleash some really strong views that have to be expressed in a two-hour timeframe. But the real opportunity I have is in the class that Amelia designed and left in my care, called "Business in Society." It's a class where I think that I went into having to deal with some realities. The first is that I'm not an academic. You probably find a thousand people who would be better able to teach the class as an academic class than me. So, to some extent, this is the class about experience and being on the ground and in the sky. The second thing is that it's a class called *business* in society. At Berkeley Law, we have classes on ESG. We have classes on corporate governance. We have classes that talk about a lot of the things we're discussing here today. So, this is business in society. We talk about the role that business has played—the historical role of business is played—in both creating what we see around us, but also in creating the problems that we're frustrated by, and the role that business can play in the future to make the world a better place.

**Partnoy:** And what do you say about incentives in the class?

**Johnson:** We talk a lot about incentives. I'm a big believer in economic incentives. I've seen them work. My best example is if you look back on the pollution that existed in this city in the 1970s, economic incentives, for a large part, got rid of that. I grew up as a lawyer in the 1980s when after ten years of really slow economic growth and a horrible recession with terrible inflation. You can say what you want about Ronald Reagan and his legacy, but his Administration did implement a bunch of economic incentives, mostly tax incentives to spur investment, that pretty dramatically applied a defibrillator to the economy and got it turned around pretty quickly. I believe in economic incentives. For instance, economic incentives can—I think must—play a significant role in addressing climate change.

There's no real prerequisites for my Business in Society class. The students tend not to have a business background or to have taken business courses as undergraduates. So, we spend some time with the students talking about what business is and isn't. We talk a lot about the role of business, what that role has been over time, and how that is changing. There are some students that are left-leaning and come with some preconceived notions about business and part of the class is helping them understand that not all business is bad. There are lots of bad apples in the barrel, but there's lots of good apples in the barrel, and that business can be accountable for change in business, properly charged and properly asked to lead. You know, good business can really help.

**Partnoy:** You now have an opportunity to tell several thousand 2Ls and 3Ls in the future, what, in addition to reading the Boeing case, they should know about Boeing, how Boeing has changed over time. The differences between manufacturers and the airlines themselves. Whatever you like to teach. Whatever you like to tell our future students, blank slate, whatever you're comfortable saying. There's a camera right there.

**Johnson:** I don't know everything that happened. What I do know is that there was a changing of the guard from the Boeing that I knew and loved and described. It is important to say that American Airlines remains a very significant Boeing customer, and Boeing is a stakeholder of ours that we care about, and we will be in business with Boeing forever. I also want to say that whatever happened at Boeing—the people at Boeing now are trying hard to get past that. Dave Calhoun and the fabulous group of people that he's recruited and put into jobs are doing everything they can, I think, to change Boeing and to reposition it, I hope, back towards the engineering and customer-centric company that it was.

But there's no doubt that at some point there was a changing of the guard. The "new guard" was outwardly more focused on creating short-term shareholder value and made one really, very bad decision and that very bad decision was made in a sales campaign that was, potentially extraordinarily valuable for them. After receiving feedback from their customers, they decided that they needed to build a new 737 to compete with a new Airbus jet, one with new and different aerodynamics. But they concluded that it needed to be designed in a way that minimized or maybe even eliminated training for pilots who flew the existing 737. They accomplished this by using automation to simulate the flying experience of the existing 737 and that automation was flawed and caused the tragic accidents. Boeing wanted to win that campaign and wanted to be able to sell an entire new generation of 737s, and they somehow convinced themselves that would be accomplished if they could do that and deliver an airplane that didn't require different any significant differences in training from the existing 737, and the result was the result that we saw. Importantly, they didn't tell pilots that they had made this change. And that was an extraordinary breach in our industry and in the safety compact that we have all made. But again, I do want to say that that this group of people—that "new guard"—are gone, and that's good. And Boeing's board has put in place a senior management team of are people that we like and respect, and we think are the kind of people who can take Boeing back to where it was, where it needs to be.

**Partnoy:** I knew that asking you that question would be an important moment. And it was and thank you for being willing to talk about that.

**Professor Kish Parella:** I teach a class on CSR and one of our three units is ongoing, so this is very interesting to hear you talk. So, I have two questions. One is the variation of the question that's already been asked, which is about trade-offs. And we realize that stakeholders are not a homogenous group, but I think there's an important distinction between two classifications of stakeholders. The first category that can affect the success of a business and the second category are those groups affected by that business. And I think that your response was really helpful in understanding managing the preferences of group one because they're easy to identify because they have a direct relationship. But I'm curious how a business goes about addressing the needs of group two because they're more difficult to identify, and they don't have clear resources. They trade with the company.

**Johnson:** Can you give me some examples of who would be in that second group for an airline?

**Parella:** For an airline, not a customer or a vendor, not an investor, but I mean like the global population, obviously because certain types of externalities. I mean that's a stretch, but it's a common problem for a bunch of different companies, which is stakeholder type two, that's not in a direct relationship, and therefore doesn't have the same kind of leverage, maybe, with the company. And the second question is really refining the business case for different types of things that are not heavily regulated. So, I work on particular topics where there is sort of a lack of regulations. What kind of arguments work in that space where we don't have a lot of regulation?

**Johnson:** First, I would say that one of the stakeholders that's hard to identify is the planet or society, or however you want to describe that or those who are affected by our impact on climate change. And we take that very seriously, but there is a tradeoff. We provide a fabulous service to that group of people in the form of transportation which is in great demand. And for us, that's an important tradeoff. We're committed to finding a way to solve our climate change problem. But we are providing transportation. In the meantime, the second point on your regulation point, that's a really interesting thing for us, and I think we, as a group, believe in regulation for a couple of reasons. Well, one we've been so successful at—of course, more regulation is not ideal—but we've been so successful in working with regulatory stakeholders. But also, it's hard for us in a super competitive business to be able to voluntarily do things when our competition doesn't. And so, if it's regulated, in that respect, we know we don't have to try it. We don't have to stick our neck out by ourselves and be in a situation where we become uncompetitive or can't raise capitals or whatever. So, regulation in that sense levels the playing field.

**Audience member:** There's one thing that lurks around ESG that didn't really come up very much here, and that is political involvement of businesses. So, you know, Disney got pressured in the last year to get involved and start taking positions on political issues and so forth, and I can't think of an airline example right now. But I suspect this is something that's going to increasingly come is that various stakeholders want businesses to actually start coming and getting involved in these political issues. I'm very curious how you think that's going to be navigated, if you think there's going to be more of that.

**Johnson:** We've been very outspoken, particularly during that period of time during the Trump administration, when corporations were speaking out. We were very outspoken particularly about issues around discrimination and voting rights. That corporate outreach seems to have quieted down, and I don't know where it's going to go, but we're going to be outspoken about things that matter, particularly to our employees and about things that matter to us as people that are trying to actually make the world a better place. There are some fights that we won't get into, but we'll speak out.

**Audience member:** I was wondering if you could give us examples of a reporting metric or something else that made you think differently and change your business in the sort of way we are thinking of. Does disclosure lead to change in business practice? Or is there anything that you were like, oh you know, "we'll just report it" and it doesn't change your business at all? I was also curious that your science-based emissions target is really ambitious. 45% reduction by 2050. But this index is assessed by intensity not revenue … and there's some controversy around that. I'm wondering if so, because I think if the example helps highlight this tradeoff between different types of stakeholders, like shareholders in the business versus shareholders in the environment. And finally, what you just said about sustainable aviation fuel, is it greenwashing for your stability report to rely so heavily on the forecasted use of sustainable aviation?

**Johnson:** I hope what we say about the use of sustainable aviation fuel over time is not greenwashing. What we say always takes into account our reality that it's going to take a while for SAF to be available at a scale and at a price that makes sense. And we try to be very serious about that. Are there any metrics that have caused us to change the way we behave? I think the answer to that is no. But our focus on the metrics and our objectives allows us to demonstrate to society and the raters and rankers that we're serious about climate change. In large part because we can't do a lot to reduce our carbon footprint right now, so we take the metrics and our objectives very seriously. Our SBTI target, is, I think, achievable in the context of technology, particularly technology that will be developed over time in the airline industry. And we wouldn't have made it if we didn't think that.

**Professor Amelia Miazad:** If you had a magic wand, and you wanted to get to the sustainability markets that you've set faster, what regulatory changes, or what would you do with that magic wand?

**Johnson:** Okay, as asked, if I was going to do one thing, I might pursue your pro-social antitrust, to allow the airlines to have antitrust immunity with respect to solving climate change, because I think we could actually do it much better much more successfully as a group rather than individually. And we're not just approaching climate change individually, we've gotten into this sort of stupid effort to compete with each other on sustainability. It's like a competition to put out press releases. But working together and pooling our brains and resources could make a significant difference. I don't know that it's a magic wand because I don't know how the airline industry will, eventually, solve the problem—but I think we could create an environment in which the necessary technology could happen faster if we could collaborate without worrying about antitrust.

**Partnoy:** Steve, let me just say it's extraordinary for you to be here with us for two days, and be so attentive and to answer all of these very difficult questions so openly and eloquently, and we're just thrilled to have you be part of our community at Berkeley. And I know everyone here is thrilled to have been able to have this opportunity to hear your wisdom in response to all these questions. And it'll be in print. So, thank you very much for all this. We appreciate it. Thank you.

**Johnson:** Thank you very much.