

***The following is transcribed from an audio recording and is posted as an aid to understanding the discussion. Please excuse typos due to inaudible passages or transcription errors.***

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**Introduction:** Thank you for joining us on Reasonably Speaking. This episode features one of a series of interviews that ALI is conducting with long-time ALI members as part of ALI's Oral History Series. In this episode ALI Council Member Kenneth Frazier of Merck is interviewed by Alfred Putnam of Faegre Drinker Biddle and Reath. This interview was conducted on January 22, 2020. Ken Frazier has served as the Chairman of the Board and Chief Executive Officer of Merck since 2011, where he has substantially increased Merck's investment in research, including early research, while refocusing the organization on the launch and growth of key products that benefit society, including vaccines. Ken joined the company in 1992 and has held positions of increasing responsibility including General Counsel and President. Prior to joining Merck, Ken was a partner with the Philadelphia law firm of Drinker Biddle & Reath. Ken's contributions, especially in the legal, business and humanitarian fields, have been widely recognized. He sits on several boards, including Weill Cornell Medicine, Exxon Mobil Corporation, and Cornerstone Christian Academy. Ken received his undergraduate degree from Penn State and his law degree from Harvard Law School.

Interviewing Ken is Alfie Putnam. Alfie is Senior Counsel and Chairman Emeritus at Faegre Drinker. He is a trial and appellate litigator who served a 10-year term as Chairman of the firm from 2005 to 2015. He has served as both president and chairman of the University of Pennsylvania Law School American Inn of Court. He has also been active in the nonprofit health sector, currently serving as chairman of the Lankenau Medical Center Foundation. He earned undergraduate degrees from Harvard University and Oxford and his law degree from the University of Pennsylvania Law School. Alfie and Ken first met as summer associates at Drinker Biddle and Reath.

Alfred W. Putnam Jr.: We're here to talk about you, so, you grew up in Philadelphia, and tell us a little bit about that, where you came from.

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Kenneth Frazier: Well, I was born and raised in north Philadelphia, not very far from where we're sitting right now. A neighborhood that was a tough neighborhood, but was a tough, working class neighborhood, when I grew up. It's now, unfortunately, a much tougher neighborhood in the inner city of Philadelphia. I was very fortunate to come along at a time when the social engineers in Philadelphia were experimenting with the public schools, and I'm the eighth of my father's nine children, second of my mother's three children, but in any event, my younger sister and I were put on buses and sent to schools outside our neighborhood. Those schools turned out to be rigorous, or at least comparatively rigorous, with respect to what was available in the neighborhood. That explains my whole life thereafter.

Putnam Jr.: Well, you had older siblings that had, shall we say, different prospects in life and a young sister who, didn't she go to Springside or something?

Frazier: She went to Shipley-

Putnam Jr.: Shipley.

Frazier: And became a concert pianist.

Putnam Jr.: Yeah, well that's the [crosstalk 00:02:55]-

Frazier: Right? I was-

Putnam Jr.: You have studies talking about birth order and how it means something, but I don't know that the studies actually are quite the same as the example you're giving.

Frazier: Yeah. I mean, the reality of the world is that our society was grappling with some issues around equity in the early 1960s. Dr. Martin Luther King was, in some ways, trying to raise the consciousness of the country. My younger sister and I just happened to be in the birth order where what was clearly an experiment, a social experiment, was going on in school desegregation, which is different from integration. It's the concept that there are these very good schools, that they shouldn't be all white, and that we should allow a few poor black kids to get on a bus and go to the school.

Frazier: I hated that. I have to say, I absolutely hated that, because the kids that were on my block, the kids that I played with every day, they all went to school together. They walked to school. They came home together. They

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played basketball. I was on the bus for an hour and a half to go to school in a foreign place to me. Turns out, that was extremely beneficial.

Putnam Jr.: You ended up going to Penn State. How did that happen?

Frazier: Well, it's actually an interesting story. At least, I thought it was interesting. My mother's sister was a funeral director in north Philadelphia, had a very good friendship with Robert N. C. Nix, Senior, who was then one of the few black congressmen in the country.

Frazier: In those days, they had an appointment system for the military academies. My aunt said to Congressman Nix, "My nephew would be a good candidate for the service academies." Congressman Nix said, "That's great," because he hadn't been able to exercise his appointment recently, as it relates to someone living in his district.

Frazier: Long story short, my aunt came to sit with my father, and she impressed upon my father, who, by the way, had a third-grade education, that this would be one of the greatest things that ever happened in the history of the Frazier family, and chronologically, this was during the Vietnam War, so we're talking about 1970. I wasn't in a hurry to go into the military, but long story short, I was compelled to apply to the naval academy and to West Point, and I was admitted to both.

Frazier: In my senior year, I remember getting a letter from the commandant at West Point. It said something to the effect of, "Dear Mr. Frazier, in reviewing your records, we have discovered that you are 15 years old," because I had skipped several grades.

Putnam Jr.: Yeah, you were young, right?

Frazier: Right?

Putnam Jr.: Mm-hmm (affirmative).

Frazier: They said you had to go to a military finishing school for two years in order to be inducted to the army. I went to my father. I had never really wanted to go into West Point or into the service, at that time. I went to my father, and I said, "Changed circumstances. Do we owe it to Congressman Nix? Don't I get to go to college now?" He agreed. He said, "Well, where do you want to go?" At that time, in 1970, Penn State had won 33 consecutive football games under Joe Paterno.

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Putnam Jr.: Hard to argue with.

Frazier: That was the basis of my decision.

Putnam Jr.: A sound ground.

Frazier: Exactly.

Putnam Jr.: From there to the Harvard Law School?

Frazier: Yeah, but I got over Harvard Law School.

Putnam Jr.: I knew that. It seemed to leave no mark on you, by the time I walked [crosstalk 00:06:19]-

Frazier: Right, yeah. I went to Harvard Law School in 1975. It was a really fundamentally different experience than going to undergraduate school. Penn State had a lot of first-generation college students. When I arrived at Harvard Law School, it was just the opposite. In fact, one of the things relating back to the fact that I went to Penn State is that for many of my classmates, they couldn't understand what I meant when I said I went to Penn State. They said, "Surely you mean University of Pennsylvania."

Putnam Jr.: Right, right, right.

Frazier: Right?

Putnam Jr.: Of course.

Frazier: You didn't mean Penn State. It was a tough experience, for me.

Putnam Jr.: I was going to say, did you like it or not?

Frazier: No, I didn't.

Putnam Jr.: Not at all?

Frazier: No, I didn't like it. Yeah, you know, so, I didn't mind the academic part. I wanted to be a lawyer, and that was always something that I found the study of law to be fascinating. It was the social side of things. I was going to school with people, many of whom who had parents and grandparents who had gone there, had gone to prep schools, Ivy league schools.

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- Frazier: For me, that was a big social adjustment. It wasn't necessarily just a question of being from the inner city of Philadelphia or being black. It was just, that was a different group of people from a different part of society. It sort of prepared me for the law firm of Drinker Biddle & Reath, if you get my drift.
- Putnam Jr.: I was going to say, if it was one of those things that made you uncomfortable, it was a very interesting law firm.
- Frazier: Absolutely.
- Putnam Jr.: How did that come about?
- Frazier: AI was interviewing. When I went to law school, I should back up and say, my only conception of what it meant to be a lawyer was to look at the solo practitioners who practiced in my old neighborhood. They generally would do divorces, and wills, and criminal defense work. I didn't know that lawyers banded together collectively in large law firms. I didn't know that happened, and I didn't know that they represented large companies.
- Frazier: Shortly after getting to Harvard Law School, I was made aware of that, and I was made aware of the fact that I was expected to interview-
- Putnam Jr.: Interview.
- Frazier: ...with those kinds of law firms.
- Putnam Jr.: And [crosstalk 00:08:22]-
- Frazier: Exactly. Actually, it's a funny story. I didn't own a suit when I went to law school. I don't think I owned the suit from the time I was a little child, like an Easter suit to go to church on Sunday. When I learned that you needed to have a suit, I remember calling my dad and saying, "I need some money to go to [Filine's 00:08:40] Basement, in Boston, to buy a suit." I bought a suit to interview, and I interviewed with two people who became my law partners, Charlie Wolf and Amy Davis, and you knew those two people.
- Putnam Jr.: I certainly do.
- Frazier: Charlie Wolf was, of course, a jokester. Amy was as stern as you could possibly get. I didn't know how to handle the interview, because one

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person was cracking jokes over here, and the other person was looking at me like, justify your existence, and by the way, where are your grades?

Putnam Jr.: [crosstalk 00:09:08]-

Frazier: Where are your ... Exactly. What attracted me to the firm was, and you know this, it was the history of the firm in pro bono work. It always seemed to be a firm that was involved in the kind of work that made me want to go to law school in the first place. People like Henry Sawyer were giants. That's all there is to it.

Putnam Jr.: Yeah, and did you work with Henry when you were there?

Frazier: Yes, I did work with Henry.

Putnam Jr.: I thought you did. I thought you did. I worked with him, too, while I was there. He was a little left-wing for me, but maybe [crosstalk 00:09:40]-

Frazier: Well, he was a big hero for me. When you're in law school, and you're reading *Lemon v. Kurtzman* and *Abington v. Schempp*, and you know the lawyer who litigated those cases-

Putnam Jr.: Argued, argued.

Frazier: ...argued those cases, that made a big impression on me.

Putnam Jr.: You, I mean, I [crosstalk 00:09:57]-

Frazier: The Henry Drinker story, I loved that, the Bud company, was it?

Putnam Jr.: Yeah, no, that's right. Yeah, the company that wanted to fire, wanted Henry Drinker to fire Henry Sawyer, because Henry Sawyer was involved with the communists and [crosstalk 00:10:12]-

Frazier: The funny thing about the world is that that's flipped around, now, you know?

Putnam Jr.: Yeah, totally, [crosstalk 00:10:15]-

Frazier: I was on this-

Putnam Jr.: You try to fire law firms for the other reason, now.

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Frazier: Absolutely. I'm on the Dean's Advisory Board at Harvard Law School, which shows that I'm really old.

Putnam Jr.: Yes.

Frazier: Now, you have people that are saying firms should not be able to interview on campus, because they represent oil companies who are destroying the environment, or they represent someone who's been accused of rape, or they represent the United States government, and therefore the whole issue of deportation and ICE becomes an issue. It's fascinating.

Putnam Jr.: No, I know. I mean, just, people may not know the Drinker story, is that a client did come and ask that he stop Sawyer for doing this for the communists. Drinker said to him, said to the client that it's not the way it works, that you can pick your lawyers, but you can't pick our clients.

Frazier: Yeah, the story I was told is that he said, when the client said, "I'm going to move the work," I'm told that Henry Drinker said, "That, sir, is your prerogative. Good day."

Putnam Jr.: He did. He did. Indeed, I don't-

Frazier: They did move the work, by the way.

Putnam Jr.: What was interesting to me about that story is that Drinker never told Sawyer. Sawyer learned about it after the fact.

Frazier: He learned about it years afterwards, right?

Putnam Jr.: When Drinker was gone.

Frazier: Now, it's a big challenge for law firms. I saw-

Putnam Jr.: I think it's an enormous challenge. I mean, having sat in the seat where you fall under pressure for various reasons, and if people say they don't like, you have a tobacco client, or-

Frazier: Or oil company.

Putnam Jr.: Or a drug company.

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Frazier: A drug company, right.

Putnam Jr.: [crosstalk 00:12:00] if you can imagine anything so-

Frazier: People who sell drugs.

Putnam Jr.: People who sell drugs. You're right. The world changed in terms of how people think about things. I always say when we got to the, you know, women never lie about rape, and I said, "I knew it. I knew it. The Scottsboro boys were guilty."

Frazier: Touché.

Putnam Jr.: I always [crosstalk 00:12:22] always [crosstalk 00:12:24]-

Frazier: Touché. Well, but that's the issue, right?

Putnam Jr.: Right.

Frazier: On the Dean's Council, we were having this conversation. The dean of Harvard Law School doesn't know how to say that there's this ethos, this set of values that trumps whatever your personal political predilections are. That's the concept that everyone deserves representation. When you think about firms as large groups of people, thousands of lawyers, now, what's the likelihood that one lawyer won't take on a client that another lawyer disapproves of, right?

Putnam Jr.: Well, that's the thing, you get to, internally, I don't need to wait for the clients, right? You're going to have somebody internally who's going to say, "You can't possibly be representing ..." I end up saying, "Well, I'm not. It's your partner."

Frazier: I had a little bit of that when I was at Drinker Biddle & Reath.

Putnam Jr.: Yeah, sure, [crosstalk 00:13:12]-

Frazier: With the smoking and health cases, there would-

Putnam Jr.: Yeah, I remember the smoking cases. [crosstalk 00:13:14]-

Frazier: ...be a few virtuous people say, "How could you represent those people?"



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Putnam Jr.: You are not going to tell people you represent some cigarette [crosstalk 00:13:20]-

Frazier: Well, maybe I would.

Putnam Jr.: You may have.

Frazier: I won't have to admit that, because this tape won't be seen by anybody other than us. Then, there were people, as you know, we were doing the work for the prisoner on death row in Alabama. How can you represent murderers, right?

Putnam Jr.: Yeah, I had that. I think I asked you that.

Frazier: I think you did.

Putnam Jr.: That [crosstalk 00:13:37]-

Frazier: Trying to make the world safe for murderers, I think was your quote.

Putnam Jr.: Yeah, that's exactly what I said. I think that's right. No, you did do, it's sort of interesting. Well, go back for a little bit. You show up at Drinker. I met you in the summer of 1977 when we were both summer associates at Drinker Biddle & Reath. How did you feel about that? You talk about coming into Harvard. You got interviewed and so on. I mean, speaking for myself, I felt I was playing a home game for the last 50 years or so.

Frazier: It wasn't easy.

Putnam Jr.: Well, that's my question, yeah.

Frazier: No, it wasn't easy. As you know, each firm has its own culture, its own set of behaviors, and ways of thinking, and doing things. For me, coming into Drinker Biddle & Reath, the first couple of years were really, really hard.

Frazier: Let me give you an example of that. I think you might remember this, when I tell you this. My first year review, you helped me decipher. You may not remember this, but I was given a review by one of the senior partners, Vernon Stanton, and I came to Mr. Stanton's office. The thing that I remember most about this, of course, your heart is in your throat. You're thinking, is this the end of my legal career? My early, undistinguished legal career?

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- Frazier: I go into Vern's office, and he could not have taken the time to read the written reviews before I arrive, so I had to sit there-
- Putnam Jr.: Busy.
- Frazier: ...while he was reading the reviews in front of me, with this incredibly scary scowl on his face, as he looked at one, read it. Looked at the next one, read it. Then, he looked up at me, and here was, essentially, my first year review. He said, "Well, Kenny, you're doing all right, but you've yet to show that little spark that a boy needs to get into Princeton." Do you remember that story? Because I remember coming to you, and you said, "Well, if you went to the Chestnut Hill Academy, the really smart boys went to Princeton and Harvard, and the not-so-smart boys went to Penn."
- Putnam Jr.: [crosstalk 00:15:32] That's right.
- Frazier: Coming from north Philadelphia, I didn't know what to make of that.
- Putnam Jr.: What to think of that, yeah, yeah. Well, but you're, early on, at least it seemed to me, once we were full-time lawyers, you were getting chances in what I call real trials. That was interesting to me. You got to try some cases. I did, too, a little later, but I remember sitting around, and you got a call from some judge who said, "We're taking you off the list," and you hadn't had a trial yet, and he said, "That's all right, you're not going first," or whatever it was.
- Frazier: Right. Well, I got some really good opportunities. I can draw a connection between the job I have now as CEO of Merck and what you just said, because I was assigned to do a case for Bob Ryan, who was the senior partner of a very great lawyer at Drinker Biddle & Reath, who was the main lawyer for Merck.
- Putnam Jr.: Recently gone, sad to say.
- Frazier: I did not know. He passed away?
- Putnam Jr.: He did, yeah, it was earlier last year.
- Frazier: I did not know that.
- Putnam Jr.: Yeah, down in Florida, but anyway ...

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- Frazier: Bob Ryan had this case, and there were other lawyers on it, a lawyer by the name of Mike Floyd was on the case. Underneath him was a very junior partner named Jim [Sweet 00:16:43], and I was the associate. This was a case for-
- Putnam Jr.: You were doing the work.
- Frazier: Right? Exactly.
- Putnam Jr.: At that particular [inaudible 00:16:50].
- Frazier: This was a subsidiary of Merck which is no longer part of Merck called Baltimore Air Coil, which made those large cooling towers that you see on top of buildings. It was a longshoreman and harbor workers case. We were getting ready for trial in about a week or so, and I was working on the jury instructions, I remember. We were all sitting around in a conference room, and I think Mike Floyd was going to take the lead on the case, and I said to Bob Ryan that I'd love to have a chance to try the case.
- Frazier: I'd been at the firm maybe 13 months, at that point. He looked at me sort, of are you serious? He said, "Well, go home, Kenny, and come in Monday," This was a Friday afternoon, "and show us how you would open to the jury." I remember, I had a date that Saturday night, but I scrapped that, and I worked really hard over the weekend to try to prepare an opening statement.
- Frazier: I came in on Monday morning, and I told Bob Ryan what I would say. He got on the speakerphone. They used to have those things on the cradle. He got on the speakerphone with Bob [Bance 00:18:00]-
- Putnam Jr.: Yes, sure. I remember Bob.
- Frazier: ...who was the general council of Merck, at the time. I still remember the conversation. He said, "We have this young fellow who wants who try a jury trial. It's not a lot of money, and he's got to get his experience somewhere."
- Putnam Jr.: Somewhere, mm-hmm (affirmative).
- Frazier: Believe it or not Bob Bance thought that was great. He's like, "Well, give the young fellow a chance then," right?

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- Putnam Jr.: Right.
- Frazier: They said, "You can do this." I went down, and it was in front of the then chief judge, Judge [Luango 00:18:29]. They sent Jim Sweet with me, to make sure that I didn't pass out or throw up on myself, right?
- Putnam Jr.: Do something embarrassing, right?
- Frazier: We try the case. What I also remember was, the plaintiff's lawyer, I think this was unique to the Philadelphia Bar, maybe, at that time, was extremely solicitous of the fact that I was inexperienced. We were back in chambers, and Luango said, "This is his first trial. We're going to play it down the middle here, right?"
- Putnam Jr.: Right, right, right.
- Frazier: There'll be some things that he doesn't know, but we're going to play it down the middle. The jury gave a verdict for Baltimore Air Coil in the case.
- Putnam Jr.: Your career was made.
- Frazier: Actually, I think that that helped Bob Bance know who I was, and thereafter, he would request that I be put on cases of increasing size and complexity. I can draw a direct connection between that and ultimately becoming general counsel of Merck, and then ultimately becoming CEO. I guess what I'm trying to say is, Drinker Biddle & Reath, at that time, there were a lot of really great lawyers. The Henry Sawyers, the Pat Ryans, the Bob Ryans, the Mel Brooks of the world, and it had a pedagogical bent to it, I guess is what I'm trying to say.
- Putnam Jr.: Right, right, mm-hmm (affirmative).
- Frazier: You remember that, too.
- Putnam Jr.: I do, indeed. I do, indeed.
- Frazier: It wasn't all about billable hours. It was about professionalism. People cared about developing young lawyers. If you really wanted to become a good lawyer, people cared about that. I'll just say one more thing about coming from north Philly. I sometimes think about the absence of political correctness in that context, because I was from another world. I was a

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stranger in a strange land. People could have said, "Well, let's not offend him." Do you know what I'm trying to say, Alfie?

Putnam Jr.: Right, no, no, I do.

Frazier: They could have said, "Maybe we should treat him with kid gloves." I can still remember going to Henry Sawyer's office one day, where we had a case, a Penn's Landing case, and Mayor Good was the mayor, at the time. We were representing the Penn's Landing Corporation. I wrote a letter to the city solicitor and to the mayor on behalf of Henry. I made the godawful sin of splitting an infinitive.

Putnam Jr.: I saw you do that, yeah.

Frazier: I came in Henry's office, and he looked up at me, and he pushed the letter across the table to me, and he said something to the effect of, "Mr. Frazier, our clients pay us good money to practice the law. They have every right to believe that we are facile in our native tongue," which is the Drinker Biddle & Reath way of telling you off. In my own neighborhood, they would say, "Hey, dumbass, don't do it again."

Putnam Jr.: What is that? What is that? What is that? Well, you did, I mean, you were developing, I think, a reputation within the firm as a kind of a go-to trial lawyer. I should say, nowadays, for many years later, it's very hard for a young lawyer to get a chance to try anything-

Frazier: I think that's right.

Putnam Jr.: ...because people don't try much anymore.

Frazier: That's right.

Putnam Jr.: You got to see juries. I got to see some juries, when I was younger, but they're rare, if you're that age.

Frazier: Well, what, two percent of all civil action is tried in the federal courts, now.

Putnam Jr.: Right, you don't get the chances. I guess my question is, did you, because obviously you did end up leaving the firm, which no one could understand, and going to some other world. Do you ever regret not turning into, because you would have been a very successful trial lawyer.

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Frazier: I absolutely do regret it. I mean, first of all, I would never have left the firm if it was a decision that I made on my own. I'll come back to that in a minute. All I ever really wanted to be in my life was a jury trial lawyer. It's the reason I went to law school. I don't want to be corny or cliché, but I remember being a kid, and watching the movie *To Kill a Mockingbird*, and saying, "That's what I want to be. I want to be a lawyer for people in that way."

Frazier: I found myself with more and more opportunities. I was getting an opportunity to do the kinds of cases that I like, including a death penalty case, and that kind of thing. I only went to Merck because Andrea, my wife, was the placement director at NYU Law School. Her view of the legal profession was more from the headhunter side of things. When Merck made the offer for me to go, I was just going to be polite, and go and talk to Dr. [Vagilis 00:23:04], who's the CEO, and decline, because I didn't want to offend the client. Andrea said, "I think you might want to rethink this because," I remember her saying, "I don't think the next generation of lawyers will work as hard for you as you worked for Henry Sawyer."

Putnam Jr.: Mm-hmm (affirmative). Might well be true, more than anything. That transition, you probably ought to come back to the [Carper 00:23:27] case, but that transition, going from law firm to a business world, I've had some friends who have done it-

Frazier: Was boring.

Putnam Jr.: ...and they all have had some difficulties. I mean, I think-

Frazier: It was boring.

Putnam Jr.: Yeah, they find they're not sort of-

Frazier: Yeah. It was boring. Compared to the diversity of activity, the clientele, the opportunities that I had at Drinker, when I came into Merck, working at that time for what was then called Astra Merck, a small subsidiary of Merck. I found the legal work there to be what lower-level associates would do at a law firm. I was paid very well to do it.

Frazier: I also felt that the clients didn't really understand that they were asking the same question over and over again. They thought it was a different question, but they kept asking me the same question.

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Putnam Jr.: Same question, yeah.

Frazier: I thought it was incredibly boring. I intended to come back to the firm, because the understanding I had when I left with certain senior partners in the firm was that, Kenny if it doesn't work out, you can always come back. I was thinking about coming back. Then, I got hired by the then CEO of Merck to do something that was outside the legal field, which was a great job, representing the company, and it's sort of the public affairs arena, with Congress, and governments around the world, New York Times, and all that kind ... That, I found interesting, because it was a different form of advocacy.

Frazier: It was during the Clinton administration's first term, when we were going to change healthcare. The CEO of Merck felt that the company wasn't doing a very good job of explaining itself. I found that that was not unlike talking to a jury.

Putnam Jr.: You kept, well, let me go back for a minute and say, because it's just, I think, worth getting down on, that you did have a very big case, your most important case at Drinker Biddle & Reath would be, in your opinion, your death penalty case? I mean, I'm pulling out of the air.

Frazier: I mean, I had some good cases on the business side, but that case is the most important case to me, personally. What I tell people about doing that case is that when I first took that case on, my daughter was like five or six years old. It was something she understood. You know, when she talked about that case at the dinner table, she could identify with what the issue was. It was a raw issue of justice. It was a collision-

Putnam Jr.: You might say a little bit about the case.

Frazier: All right, so I took on a case when I was a partner at Drinker Biddle & Reath where we represented a man named Bo Cochran. James Willy Cochran was his given name. He had an execution date set for a crime in which, it was subsequent to a robbery, and one of the people who was searching for the robber was shot in the process of looking for the robber. Bo was sentenced to death.

Frazier: When the case came in, Esther [Lardin 00:26:20], who ran the ABA's post-conviction death penalty project, called me and she said, "You're basically our last chance, because the guy's going to be executed in a month or so, and we need somebody to do the case." To be honest, I was

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really busy. My wife had been sick for a while. I was not sure I had the time, but two young associates, Michael [Holsten 00:26:41] and [Seamus Duffy 00:26:42] learned about the case. They came to me and said, "If you'll take the case, we'll do most of the-"

Putnam Jr.: Work.

Frazier: "...work." To be honest, they shamed me into taking the case. I mean, I couldn't say no to these young, eager lawyers who thought this was ... They looked up to me and said, "This would be a lot of fun," so I took the case on. You don't want all the details of the case, but I will say a few things about the case that were eye-opening.

Frazier: First of all, he was convicted of a crime which under the Alabama penal code did not fit the facts of the case, as the state alleged, because he was convicted under a provision of the penal code that made it a death-eligible offense to shoot somebody during the course of a robbery. You used the classic, you don't want the robber to kill the witnesses kind of thing, right?

Putnam Jr.: Right.

Frazier: This happened as a part of the flight from the robbery, which, it was really clear from the legislative history, was not a part of the robbery.

Putnam Jr.: Not what they had in mind.

Frazier: Right, exactly. Yet, his lawyer didn't even raise that issue. By the time we got the case on post-conviction, we couldn't raise it, because it had been defaulted. I just, from an editorial standpoint, you and I try cases in the federal court. I assume that like me, you never won anything by default, right?

Putnam Jr.: That's pretty much right.

Frazier: Right? You couldn't even get a judge to bar certain testimony based on requests for admissions, right?

Putnam Jr.: Right, right.

Frazier: The plaintiffs didn't answer the request for admissions, and the judge would say, "Well, that's true, Mr. Frazier, but we're not going to do this by default."



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- Putnam Jr.: Just answer the question.
- Frazier: Right, exactly. It turns out in habeas, it's probably the only part of civil jurisdiction in the federal courts where you can lose on default, because of the procedural default rules set up by the Supreme Court. Some of the very best issues in that case, obvious issues, we couldn't even raise, and issues that went to factual innocence were in some ways barred or weighed.
- Frazier: Fortunately, the jury selection process was one in which, in Alabama, it was routine to strike black jurors in a case where the defendant was black and the victim was white. The federal judge had not allowed us to raise that issue. Then, unfortunately for him and his family, he passed away, and the case got given to Sam Pointer. Do you know who Sam Pointer is?
- Putnam Jr.: Yeah, I do.
- Frazier: Yeah, who chaired the Federal Rules Committee. Sam Pointer took a different point of view. When he started sniffing around and see that there was evidence of innocence in this case, and we were able to get relief on a Batson claim.
- Putnam Jr.: Right, right, yeah.
- Frazier: Right? Batson being the Supreme Court case where-
- Putnam Jr.: Striking jurors for race.
- Frazier: ...striking jurors on the basis of race was ruled to be unconstitutional. Anyway, it was a great case, because we knew we had a client who we could prove was innocent. In fact, when we first met the client in the state penitentiary at Atmore on death row, you go down there, and you say to the client, in effect, "I don't want to talk about the case, the underlying facts. We are litigating a stay," because the attorney general would not grant us a stay. "I'm only going to ask you a set of questions that go to the stay question. We'll get to the ..." He said, "I didn't commit the crime. Everybody knows that it was an accidental police shooting." I'm like, "Sure. There are not guilty men in this jail."
- Putnam Jr.: Never has been.
- Frazier: Right? Only innocent people are in jail, but three or four years later when we fought and got discovery, we actually found, not an eyewitness, but a

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near ear witness to the actual shooting who told exactly the story that my client told. By the time it got retried, by the time we got a new trial, the jury was out for less than an hour for a crime that he spent 19 years on death row in a cell that was 5 by 7, on a row where the electric chair, which was being used in Alabama, at the time, was right down the row.

Frazier: This man had this horrible, horrible life. Not to be too cliché about it, but you're living on death row in a 5 by 7 cell for 19 years, you believe you're in a place where there is no god. There can't be a god, if you're sitting there under those circumstances.

Putnam Jr.: Well, rather than leave people with the impression that you're somehow a really great person, let's just briefly talk about the tobacco case, okay?

Frazier: Okay, sure.

Putnam Jr.: I mean, you were local counsel for some tobacco companies.

Frazier: Yes.

Putnam Jr.: I remember when they used to come in, they'd take you to the most expensive restaurant in Philadelphia, because they wanted to show the plaintiff's lawyers that they were willing to spend some money. They didn't care.

Frazier: Yeah. I represented tobacco companies in what, in those days, were called, euphemistically, smoking and health cases.

Putnam Jr.: That's right.

Frazier: They were sort of diametrically opposed kind of concepts, right?

Putnam Jr.: So you say. [crosstalk 00:31:46]-

Frazier: I have to put this out there. When I had those cases in the late '80s, early '90s, it was before it was discovered that there were documents that weren't being produced, which I think really swung that litigation in favor of the attorney's general, right?

Putnam Jr.: Right.

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Frazier: Yes, we represented Philip Morrison, Laura [Lard 00:32:03] in those days. They were-

Putnam Jr.: You went to good restaurants.

Frazier: Yes.

Putnam Jr.: I was really trying to prove that psychology of the time.

Frazier: They were one of the few clients that would complain if your bills were not heavy enough, because they were worried that you were paying attention to other people.

Putnam Jr.: We have been looking for a client like that.

Frazier: Right. These cases, they thought of them as existential cases. I have-

Putnam Jr.: They hadn't lost any, right?

Frazier: No, they hadn't.

Putnam Jr.: [crosstalk 00:32:30]-

Frazier: They had lost a few, but not many, right?

Putnam Jr.: Right, and-

Frazier: Do you remember Craig Fuller, who worked for President Reagan?

Putnam Jr.: Yeah, mm-hmm (affirmative).

Frazier: Craig Fuller ran public affairs at Philip Morris, and he had two strategies. One of which was to encourage reasonable taxation of tobacco, because he said state legislatures, which have these balanced budget requirements, would become more addicted to nicotine than smokers actually would.

Putnam Jr.: Good, yeah, that's working for me.

Frazier: Right? Right? That was the first thing. The second was to stress this issue of liberty. When you would try those cases, you would never try those cases, essentially, on just the facts. You would talk about, do people have the right to make a choice to smoke with a warning on the package?

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[Joey 00:33:17] sort of believed that you did. I learned a lot, which became helpful to me, later on, because when I became general counsel at Merck, we had some 60,000 Vioxx cases.

Putnam Jr.: I remember that.

Frazier: Right?

Putnam Jr.: As I recall, not to probe, but Merck was accused of adopting what is called the junkyard dog strategy in dealing with Vioxx cases.

Frazier: Yeah, which I learned from smoking and health cases.

Putnam Jr.: Right, and if the junkyard dog strategy, for those who don't know it, really is to make it very, very hard for the plaintiff, and to make sure you're going to try every one, so it's just not a big payday, and make them prove their cases.

Frazier: Yeah, right, which they hate.

Putnam Jr.: Plaintiff's lawyers, some of them speak highly of you, but that's just because they think they better.

Frazier: Well, you know, it's fascinating, because, going back to the smoking and health cases, what I learned in those cases is that time is on the defendant's side, and that in some ways, you're not just litigating individual cases. You're litigating against a business model, right?

Putnam Jr.: Right, mm-hmm (affirmative).

Frazier: A business model that advertises on television for a bunch of cases, many of which are not being screened in any meaningful way.

Putnam Jr.: And sometimes borrows money.

Frazier: Exactly, right.

Putnam Jr.: I need that payday, and if the payday doesn't come in until September, I've got some problems.

Frazier: We took the position that we were going to try these cases. We tried, I think, 18 of them. We won something like 8 of the last 10 jury verdicts.

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We were able to get, I thought, a good global settlement. The big part of that case was convincing our board that it wasn't individual cases that they should focus, it was on the long game.

Putnam Jr.: On the long run, right.

Frazier: Because you might recall, our first case, we got a horrible verdict against us in Texas.

Putnam Jr.: Hammered.

Frazier: \$253 million.

Putnam Jr.: Sounds like a lot of money then.

Frazier: Right, exactly. The good news was, the board knew that was going to happen, that the first trial was going to be in a jurisdiction where they had runaway juries, and we had a runaway jury. Fortunately, ultimately, we were actually, in that one case, able to get the Texas Supreme Court not only to reverse the jury verdict, but to instruct that verdict be actually entered for the defendant based on the lack of proof in that case.

Putnam Jr.: Well, I asked you earlier about wanting to be a trial lawyer and what kind of trial lawyer you've been, but your reputation, to some degree, among people who know, is that maybe the trial of the Vioxx cases was your success as a great trial lawyer, that it had a big difference for the company and for the major. Do you think that that decision, because you were general counsel, at the time, I mean, how did you become CEO? Just asking, was Vioxx [crosstalk 00:36:00]-

Frazier: Last man standing.

Putnam Jr.: That's the way I became CEO.

Frazier: You know, I can't draw a direct connection between Vioxx and becoming CEO, because I had to have a number of other jobs between general counsel. I ran our marketing and sales division for four years. There were lots of opportunities to fail at that and show that you couldn't run a business, because inside businesses, people think that lawyers are too conservative, and you got all of those stereotypes that you have to overcome. Then, I was president for a while before I became CEO. I do think the board had a lot of confidence in my ability to make judgments

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after the Vioxx thing, because there are people who said the company was going to go bankrupt.

Putnam Jr.: A lot of people. I mean, it was in the newspapers, anyway. You were taking a stand, or the decisions of Mr. Frazier, and so on.

Frazier: If you think about it, what that case was mostly about inside Merck was the allegation that the company sold a product it knew to be dangerous, and put profit before patient welfare. Our scientists couldn't live with that being-

Putnam Jr.: With that.

Frazier: They couldn't live. It wasn't even a litigation strategy. We couldn't let Vioxx be a verbal shorthand for corporate greed the way, for example, Enron has become, right?

Putnam Jr.: Right. Right, right.

Frazier: If that ever happened, how could we recruit the next generation of scientists, right?

Putnam Jr.: Mm-hmm (affirmative).

Frazier: I was at a lunch the other day with the new dean of Harvard Medical School, and I had never met him before, and he said, "What you need to know is that there was a period of time in the faculty of Harvard Medical School when the name Merck was-

Putnam Jr.: Not a good thing.

Frazier: "... was not a good thing. By defending yourselves, not just in the courtroom, but in the court of public opinion, you've now fought back to a point where people now just consider that one isolated thing, and it doesn't define you any longer."

Putnam Jr.: How have you found being a captain of industry, a CEO? You get in the newspapers, from time to time. So disrespectful of our president, wrongly.

Frazier: I can say that it's a overrated experience, being the CEO of a big company. The benefits of it, I will say to you, and I don't want to sound sophomoric, Alfie, but what my company can do to alleviate human

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suffering on a mass scale is important. We talked about the death penalty case. That was like eight, nine years for one person's life. I can now allocate capital, to use a recent example, because the government of the United States and the World Health Organization came to us a few years ago, after the Ebola outbreak in West Africa, and asked us to invest our human talent and our resources in developing an Ebola vaccine, which we've been very successful in doing.

Frazier: You can save thousands of lives with a signature in this position, by allocating capital to something like that. I mean, the Corona virus thing is now in the newspapers right now. We're getting calls now, because now, people remember, it's important to have a vaccine company. Merck is the only real US-based vaccine company.

Putnam Jr.: Vaccine company.

Frazier: Right? Most pharma companies left vaccine many years ago-

Putnam Jr.: You can't make any money.

Frazier: ...because of...You got liability. You got sued all the time, right?

Putnam Jr.: Right, right.

Frazier: Which we thought was okay, as lawyers. My point, coming back to it, is there's an aspect of this business that's really tough, because shareholders are making demands on us for how we run the company. We have to run it efficiently. We have to create shareholder value. At the same time, the fundamental purpose of the company is medicine. While we don't take the Hippocratic Oath or anything like that, we have to recognize that the costs and the complexity of healthcare in this country is something that we have an obligation to help solve, while making money for our shareholders.

Putnam Jr.: While making money, no, while making money.

Frazier: I think a lot of CEOs just think they have to make money for their shareholders. If you're in the business of making medicines and vaccines, there is another constituency. Patients are important, as well as shareholders. It's a tough balance.

Frazier: Linking back to coming to Drinker Biddle & Reath, it reminds me a little bit about how pleased I was to join a company, a firm, rather, that cared

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about pro bono. There was the billable work you did, and there was the work you did in service to others. We saw those as complimentary and consistent with one another. I think we try to do that at Merck.

Putnam Jr.: Yeah, well, and I think you, certainly, having risen to the top of Merck, you're also a public figure, in a number of ways. I want to talk a little bit about things you've done outside of just being the head of Merck, but now that you have a public figure, you were active at Penn State, you were active at the ALI, and indeed, since we're here at the ALI, we might even discuss-

Frazier: [crosstalk 00:41:03]-

Putnam Jr.: ...I don't know, what your view of the ALI is and [crosstalk 00:41:05]-

Frazier: It's a very positive view.

Putnam Jr.: Well, good answer. I'm glad you got that one right. In terms of that kind of, not pro bono in the sense that we've been discussing it, but the activity of being involved in a public eye, trying to make-

Frazier: Well, you mentioned the Trump thing. That's-

Putnam Jr.: Yeah. Yes, I did mention the Trump thing. It seemed to me, I got all these calls when you resigned, saying, "I do have his email. I do have his email. I want to tell him what a great thing ..." I said, "Don't tell him that." It'll go to his head.

Frazier: Well, that's the challenge. That was not an easy decision, because you, again, you have two sides to it. There's your own personal set of values and your own conscience, which led very much in one direction, after Charlottesville, and after what I interpreted to be the unspoken support that those early comments from the President gave to certain people who were out in the streets in Charlottesville, saying things that I thought that were counter to what we, as a country, believe in, right?

Putnam Jr.: Mm-hmm (affirmative).

Frazier: On the other hand, I'm the CEO of Merck. We're a publicly traded, highly regulated company. The reason I was on the President's business council in the first place was because, notwithstanding my own personal views of the political situation, I had an obligation to represent my company.



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- Frazier: Those things were in conflict. What's best for Merck in the short run would be to be quiet. I didn't feel like I could do that. I thought we needed to not only withdraw, but I needed to say publicly why I was withdrawing. Of course, the President knew how to respond immediately, with a tweet. Two tweets, actually.
- Putnam Jr.: That's my boy.
- Frazier: Right? Those are challenges, when you're in that public situation, or even something like the Ebola vaccine. There will be shareholders who say, "Tell me how we monetize that."
- Putnam Jr.: Right, right.
- Frazier: Right? I have to say to them, that was actually a question I got at the JP Morgan conference, just last week. I said, "We can't monetize all human suffering. We could monetize enough of it."
- Putnam Jr.: We'll be fine.
- Frazier: We'll be ... Not all of it.
- Putnam Jr.: Not everything. Not everything's an opportunity.
- Frazier: Right? Right?
- Putnam Jr.: Yeah.
- Frazier: Those are challenges, you know? The Penn State thing, probably the hardest thing I've ever dealt with in my entire life.
- Putnam Jr.: Yeah, and well, in what respect? I can see why it might be, but do you want to elaborate on that, or do you want to just not talk about?
- Frazier: Well, I'll simply say that Penn State has the largest alumni association of any school. It's got more graduates than any other school. There's a lot of pride in what Coach Paterno stood for. There will never be another coach who coaches at one school for 60 years. For this to happen at the end of his career was a very sad-
- Putnam Jr.: Very sad.

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- Frazier: ...and in some ways, an unfair thing. Yet, on the other side, there was children, all right? There were children, and the question was, are we going to take a stand here for children? Too often, around our society, people look the other way. Not necessarily because they approve of what's happening, but because it's hard for people to actually deal with-
- Putnam Jr.: They don't want to deal with it.
- Frazier: They don't want to deal with it. It's really hard. When it came to the board's level, we had to make a decision of whether we were making a stand for the university, and the football program, and Coach Paterno, his reputation on the one hand, or we were making a stand for certain values that we said were core to the university, including looking out for children. We decided to do the latter, but it was painful. It was one of those decisions, there was no good decision to make.
- Putnam Jr.: Right, right. A lot of flack to come in.
- Frazier: Right.
- Putnam Jr.: Let me go to the ALI for a minute or two, because they're-
- Frazier: Great. That's why we're here.
- Putnam Jr.: Well, I don't know [crosstalk 00:45:06]-
- Frazier: We're on their dime.
- Putnam Jr.: ...but we're on their dime. The ALI, over the years, has done quite a lot, in terms of bringing together very prominent lawyers and academics.
- Frazier: And a few misfits, like me.
- Putnam Jr.: And you, for reasons that are not clear, to discuss what the law is.
- Frazier: And should be.
- Putnam Jr.: That's the question I want to ask, is to what degree, I mean, looking at what the ALI has been, and is, is going to become, how do you perceive it, as looking forward to the future? Because I think there's some tension sometimes-

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- Frazier: There is tension, absolute tension.
- Putnam Jr.: ...where people [crosstalk 00:45:47]-
- Frazier: Our insurance project, for example, has become extremely controversial, right now. I think the traditional concept of clarifying and simplifying the common law is not the controversy. The question is, how does the common law apply, or how should it apply to changing facts, right?
- Putnam Jr.: Mm-hmm (affirmative).
- Frazier: Every time you go there, I'll give a couple of examples, with the model penal code, and the question of how does a judge preside of a death penalty case? ALI took a position that given the way in which death penalty cases are tried that they didn't want to be in the business of creating the false precision that if you follow the model penal code, you've had a fair trial, because there's so many exogenous factors that go into it, right?
- Putnam Jr.: Right, right, right.
- Frazier: That was extremely controversial, to take a position on something like that. Right now, corporate governance. We're now having to take a position, now, we have a project on corporate governance. We have a project on policing, right?
- Putnam Jr.: Mm-hmm (affirmative).
- Frazier: How should police deal with something like, what inferences can be drawn from a defendant's race? These are not easy decisions. We're going to be criticized, or sexual offenses.
- Putnam Jr.: The sexual offenses stuff, I must tell you, just having spent some time looking at that one, because it had the defense bar, that people who defend criminals, as we say, and then-
- Frazier: Accused criminals, anyway.
- Putnam Jr.: Yeah, or accused criminals is what I meant to say, on the one side, and feminists on the other side. They were at war with each other. I just [crosstalk 00:47:22]-

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- Frazier: Over consent, the definition of consent, right?
- Putnam Jr.: I became fascinated. I got popcorn, and I...
- Frazier: In all seriousness, you know, the way I think about this is, these are issues in our society. They are issues that are going to be resolved through the legal system. If the ALI, with the kinds of people that you just alluded to, doesn't try to grapple with them, how do we grapple with them? I mean, it's not like we created the issues around policing and race. It's not like we created the issues around Me Too and the evolving sense of what it means to provide consent in the context of a sexual encounter. We didn't create those issues. We didn't create the issues around, what's the purpose of a corporation, and how many constituencies does the corporation really serve?
- Frazier: We didn't create those issues. Those are issues that are in society. If the ALI decides not to speak to those issues, what we get out of that is we become non-controversial. At the same time, I believe we become completely irrelevant on the issues that really matter. I think lawyers do have a role to play in a lot of these incredibly contentious societal issues.
- Putnam Jr.: I think, well, my own sense is, of course, on any of the issues, what starts to happen is, you see three states, suddenly, judges in the Supreme Court of Oregon says something, and it's either a good idea or a bad idea, but it starts to be said, and it becomes the minority view or the majority view. I think the question that people sometimes struggle with on ALI issues is, to what degree is an ALI report discussing what is a minority view, and a majority view, and [crosstalk 00:49:10]-
- Frazier: Yeah, but it always did.
- Putnam Jr.: ...describing both sides, [crosstalk 00:49:11]-
- Frazier: It always did.
- Putnam Jr.: It always did. It's always been that way.
- Frazier: We talk about cigarette cases, right?
- Putnam Jr.: Right, mm-hmm (affirmative), mm-hmm (affirmative).

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- Frazier: The Restatement that you and I learned in law school, cigarettes were unavoidably-
- Putnam Jr.: That you learned.
- Frazier: ...unavoidably unsafe products. Right?
- Putnam Jr.: Right, mm-hmm (affirmative).
- Frazier: They had a real strong defense, right?
- Putnam Jr.: Mm-hmm (affirmative).
- Frazier: Then, there became a point in time where we asked ourselves, really, is that a social good? Do we want the law to provide a barrier to these cases? Over time, I think in a Restatement Third, we took a slightly different position about how strong a defense that should be. In my own business, there's issues around preemption, right?
- Putnam Jr.: Mm-hmm (affirmative).
- Frazier: We ought to think about those issues. Those tend to be less controversial than the social issues, but the common law has evolved, anyway, over time. You and I both know, this concept that we call stare decisis, it just means the law is what it is until a clever lawyer makes an argument for why it should be different, or at least different in a different set of facts, right?
- Putnam Jr.: Right.
- Frazier: That's the way the law has always been, right? I think the ALI has always had to have that distinction between what's the majority view and what's an evolving view. I think it becomes controversial when you get into some of these social issues.
- Putnam Jr.: Well, I mean, and the question is, to what degree when you now have defined the two views, and everybody thinks I'm more or less right, am I now saying, "Yeah, but the evolving one is really much better."?
- Frazier: Yeah, but again, the ALI has always taken a position about what's the better view.

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- Putnam Jr.: The better view.
- Frazier: At the end of the day, judges still decide these cases, right?
- Putnam Jr.: Right.
- Frazier: The Restatement of Contracts, or the Restatement of Torture, or whatever isn't binding on a judge, right? I mean-
- Putnam Jr.: Right, no, absolutely.
- Frazier: What we're trying to do is we're trying to say, "We've thought about it. We've looked at the logic of the cases. We believe the better view, the evolving view is the better view in this situation," but it's not binding. What you see is, now, you've got people going into legislatures and passing laws, for example, insurance companies say that judges cannot look at the Restatement anymore.
- Putnam Jr.: Really?
- Frazier: Right? Because they should not be influenced by the fact that some scholars, and practitioners, and judges think that this is the better view. Again, it's not binding. I don't think ... As a young lawyer, it helped me to read the Restatement, when I was doing defending contract cases or defending tort cases. It helped me to formulate my arguments about why a particular provision should apply or not apply to my facts.
- Putnam Jr.: Do you think that in the actual process that the ALI uses, as they consider whether they should have a new Restatement or a modification of a ... At least, my own sense is, sometimes the scholars that show up are, in fact, partisans of a point of view. That's not evil, but you find yourself, when you go to some of those meetings, you'll find it. There's some, I don't know, part, the insurance industry's there, and the plaintiff's bar is there, and/or the Me Too people are there, and the defense lawyers are there. You're there saying, it's almost quasi-legislative. It's not scholars, I'm saying to you. It's not. The old vision of the senate, where they sit around and-
- Frazier: Yeah, but the Reporters are scholars, generally.
- Putnam Jr.: Yes, I think that's true.

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Frazier: The Reporters.

Putnam Jr.: I think that's fair.

Frazier: They're actually trying to decipher all these conflicting views, and perspectives, and try to come up with something that makes sense.

Putnam Jr.: They do indeed respond to, I mean, you send in a bunch of comments, I know from having participated on one side or another, but usually one side, the comments, they respond, and they generally all [inaudible 00:53:02] you have a good point, they all know what they're doing-

Frazier: Yeah. The process isn't perfect, but I think it's a net positive, especially for lawyers who are not spending all their life in a field, to have people who do spend their life in a field wrestle with these things and say, "This is my opinion." At the end of the day, you were the editor in chief of the Penn Law Review. The same argument could be made about the Penn Law Review, at the end of the day, right?

Putnam Jr.: Right, right.

Frazier: Maybe people should never read the Penn Law Review.

Putnam Jr.: I'm not sure that they really did, but that's [crosstalk 00:53:38]-

Frazier: You get my drift, right?

Putnam Jr.: Yeah, I do.

Frazier: Someone could look at the Penn Law Review or Harvard Law Review, which often takes a position on an area of law, and say, "No, no, no, judges shouldn't read it," right?

Putnam Jr.: Mm-hmm (affirmative), mm-hmm (affirmative).

Frazier: Then, after a while, then the law no longer has any chance to reexamine itself, over time. It's just a question of, stare decisis becomes rigid, after a while. I don't know that that's what we want.

Putnam Jr.: No, that's not, and I think that's right. I think that people, the idea that judges shouldn't read other sources, I think, is ... I understand the idea that

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they shouldn't read anything written by a foreigner. I believe that  
[crosstalk 00:54:12]-

Frazier: You and Scalia. You and Scalia believe that.

Putnam Jr.: I read that somewhere. I said, "I never had thought of that, but you just said it, so I'm with you, now." Got to think of my own.

Putnam Jr.: You are, I don't know, maybe this is not the good place to ask the question, but we're joking before, you're getting towards the end of your present career, anyway, because that's just the nature of things. Do you have a plan? How do you see yourself in 10 years?

Frazier: First of all, retirement, to me, is a bad word.

Putnam Jr.: I'm not allowed to use it with my wife, because that has to do with jewelry.

Frazier: I want to go on past this Merck career and do something in public service, probably back in the field of advocacy. I would love to do that. I feel young. I feel strong. I feel like I can do something to make a contribution. Something in the field of public service is what I'm hoping to do, that my ideal job would be one that's filled by a very able lawyer, Sherrilyn Ifill, who runs the Legal Defense Fund, I think that's a great organization. The work that's done by Legal Services, I think that's great work that could be done on behalf of people who can't afford lawyers. There's a lot to be done with a law degree.

Putnam Jr.: Yeah, no, it's to be said. Maybe towards the last question, but as a CEO, or for that matter, the president, you became more of an administrator. That probably started even before, as a general counsel. You hadn't really been trained for that.

Frazier: No.

Putnam Jr.: By all accounts, you're pretty good at it, but that may well be that that's just what people say. Do you have any-

Frazier: No, I'm really good at delegating, Alfie.

Putnam Jr.: Okay, well, that's-



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- Frazier: I'm really good at delegating.
- Putnam Jr.: Get someone else to do that.
- Frazier: Yeah. I think anyone who's successful in business has assembled a good team. If you have a team around you, you have to know your own flat spots. I have a lot of flat spots. I make sure that there are people on my team who compensate for them. Those administrative issues, financial issues, in Merck, scientific issues-
- Putnam Jr.: Yeah, I was going to say.
- Frazier: Right?
- Putnam Jr.: Right, right.
- Frazier: I want to make sure that I have world-class people thinking about those issues. I think my job is very simple. I try to do three things, in my job. Number one is to set the course for the company, which for us is, at a time when other drug companies were not investing in research, we invested more in research, right?
- Putnam Jr.: Mm-hmm (affirmative).
- Frazier: That's the direction of the company. The next thing is, you get to allocate scarce resources. I get to decide whether we're going to spend money on an Ebola or not. I try to listen to the arguments for and against different opportunities to invest, and invest in those things that I think are going to be best for patients and best for the company, in the long run.
- Frazier: The last thing, and the most important thing that I get to do, is I get to decide who the people will be who will be in the important jobs. I always think, I think, they said about President Reagan that his genius is putting really good people in the important jobs, and then getting out of their way. I think if I have been successful at Merck, it's because I tried to put really good people in those jobs, and get out of the way.
- Frazier: When you're the CEO of a company, a lot of people will tell you you're at the top of the pyramid. I think that's not true at all. If you're successful, it's because you've been lifted up by all these other really talented people.

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Putnam Jr.: If you were, thinking back, now, and approached for advice by, I don't know, some college student, about what career path to follow, what advice would you ... The world's changed since we were young, in terms of what's a promising place to go and what's not. I've stayed at the same place for 40 years. No one does that anymore. What do you think young people ought to be doing with their lives, now?

Frazier: Well, I think it depends on where their passion is. I'm very fortunate that I knew I wanted to be a lawyer, and it was everything I hoped it would be and more. I know there are a lot of young people who go into law firms and practice law who are miserable.

Putnam Jr.: Hate it, yeah.

Frazier: They absolutely hate it. I think the key is to find something that you're passionate about that makes you feel good, when you get up in the morning. I know it sounds like a cliché, but when I was practicing law, it didn't feel like work, to me. When I came over to the business side, I realized I was working, because it wasn't natural to me. People ask me, "Do you enjoy being CEO of Merck?" I say, "No, I don't enjoy it one bit," but you know what? I do have a sense of satisfaction and contribution that I'm making in this role.

Frazier: I think you should try to find the things that you're passionate about, and you should seek some adventure. I mean, Drinker Biddle & Reath. Do you remember, you guys let me go to South Africa?

Putnam Jr.: Yeah, I do remember that. What was that about?

Frazier: During Apartheid, right?

Putnam Jr.: Yeah.

Frazier: You could go to South Africa and teach in black law schools during Apartheid. What I loved about that firm-

Putnam Jr.: Did you bill for that?

Frazier: No, I didn't. What I loved about that opportunity was, a senior partner, now, God rest his soul, named John Ballard, said to me, "The only thing we ask is that you come back with good stories. That's all we ask."

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Putnam Jr.: That would be John.

Frazier: Right? Find some adventure, I say, and a sense of purpose. That would be my only advice.

Putnam Jr.: Well, I'm pretty much done asking this man questions. He seems to have gotten very few of them right.

Outro: Thank you for tuning in to Reasonably Speaking, visit [ALI.org](http://ALI.org) to learn more about this important topic and our speakers. Don't forget to subscribe so you never miss an episode. Reasonably Speaking is produced by The American Law Institute with audio engineering by Kathleen Morton and digital editing by Sarah Ferraro. Podcast episodes are moderated by Jennifer Morinigo and I'm Sean Kellem.