

On Tax—Lewis Steinberg formerly of BofA Securities

Len Teti: Welcome to On Tax—A Cravath Podcast. I'm Len Teti, a partner in the Tax Department of Cravath, Swaine & Moore, a premier U.S. law firm based in New York City.

On each episode of On Tax, I talk to professionals in the Cravath network about their life and work in the world of tax. We focus on the human side of tax law, highlighting the people, connections and stories that make the space such a fascinating and dynamic area of practice. I hope you enjoy this episode.

Today, we're joined by Lew Steinberg. Lew has recently retired from a long career in the law and in the investment banking world. Most recently, he was the Head of Structured Solutions at BofA Securities.

Lew, welcome to the podcast, and thanks for joining us.

Lewis Steinberg: Thanks, Len. Good to be here.

Len: It's great to be with you. Lew, I just looked it up that we first met on October the 17th, 2003. It was the morning after Aaron Boone hit a home run in game seven of the 2003 ALCS that sent the Yankees to the World Series.

I know that because I spent the night before my interview in the bleachers at Yankee Stadium before I showed up for my Cravath interview. And so, that particular week is seared into my mind. You interviewed me for Cravath, and then I was your summer associate the following summer. So, we'll get to all of that.

We normally ask our guests, where do we have to go in your past to think about how you got put on track to become a tax lawyer? But I know that in college and afterwards, you actually had a different academic focus or intellectual focus. So, you tell me, where should we start to learn about how your career developed?

Lew: So, that's a good question. So, my undergraduate degrees are in music theory and history. And then I went to a PhD program in early modern European history at Princeton. And let's just say, it was a shock. That's a professional school. I've been at a liberal arts undergraduate institution, and after a year it was like, "Oh my God."

So, I dropped out of that program and spent a year as a research assistant and the guard in the rare book room at Princeton looking at climate change, of all things. And then that was just meant to be a short-term stint.

And so, I needed a job. And I was going to go into academic book publishing, and I was waiting around to get an academic book publishing job. And so, I took a job as a litigation paralegal at a firm in Newark, New Jersey—what I thought was going to be a few months. During that stint, which lasted about 18 months, I decided I was going to go to law school.

Now, the reason this all connects is because when I went to law school and I started interviewing, I knew I didn't want to be a litigation associate. I thought I wanted to be a corporate lawyer. I didn't know anything about corporate law. I didn't have a corporate law background or finance background, but I thought there were basically only two types of law: litigation and corporate law.

And so, then I started interviewing, and I met a tax lawyer from out on the West Coast. And he was the first person I'd met during the interview process who really seemed excited about what he was doing.

He seemed thoughtful. He viewed his practice as kind of a win-win rather than an adversarial practice, and I was really taken with it. I knew nothing about tax, but in comparison to the corporate lawyers I'd met, he really seemed excited about what he was doing and made a pretty compelling case.

And so, without ever having taken a tax course—I knew nothing about tax—I went to these other firms and I said, “Can I do tax for the summer?” And the one firm that said “absolutely” was Cravath, Swaine & Moore. And Wayne Chapman, who was the Head of the Tax Department, said: “Absolutely. When do you want to start? So, I signed up to become a tax lawyer for the summer, not knowing what tax was and not hedging my bets—I was going to do it all summer. I wasn’t going to split. And luckily, I then took a tax course, the spring semester before I started as a summer associate, and I liked it.

And luckily, I came back as a full-time associate.

Len: So, you show up at Cravath after having taken some tax classes finally in law school. And we’ve had other Cravath lawyers from that era on the podcast. Of course, we had Mike Schler, who was a math major. We had Steve Gordon, who was in that era and generation.

You start in this period of time when the legends like Wayne Chapman, who you mentioned, are still here. What do you remember about those first couple of months, really, as a tax associate doing the work that the Firm was doing back then and the tasks that you were asked to do?

Lew: I was assigned to work on Eurobond offerings, which, if you don’t know what Eurobond offerings—you’re lucky. They were extraordinarily repetitive. They were very rote. They were kind of document intensive.

So, I did this for about a year. And it was, I will be honest with you, stultifyingly dull. And I had at that moment decided that I’d either made a mistake about tax law, or I’d made a mistake about Cravath. And so, I decided I wanted to do M&A.

And Cravath did have an M&A practice. It didn’t have as big an M&A practice as it does today, but it had one. And so, I decided that I needed to go to someplace where I could do M&A. So, I accepted an offer.

And I announced I was leaving, and I went in to tell Wayne that I was going. And then, I had done a little bit of work, not much work, with Mike. And so, I went in to Mike and I said, “It’s been great, wished I had an opportunity to work with you, but didn’t much.” And Mike said, “Why are you leaving?” And I said, “Because I want to do M&A, and I can’t do M&A.” And he said, “We can fix that like tomorrow.” And he did, and he fixed it.

They basically started giving me a larger and larger diet of M&A. I did other things, but I was out of the Eurobond cellar. And it was much more interesting to me.

It was structuring. I was learning new things. Over time, I did capital markets. I did derivatives while at Cravath. I did international. I did domestic M&A. I did securitization. I did ERISA and pensions for a while, when there wasn’t a dedicated ERISA group. I did some real estate. I did a lot of partnerships.

So, it was like a cornucopia. It was a firm where they really had a generalist approach, and it was fantastic. It was very, very enjoyable.

I’ve said to people, “Cravath is a fabulous place to be an associate, a tax associate, because you get to do everything.”

Basically, if there was something that I was interested in, I raised my hand, and after that first year, got to do what I wanted to do.

Len: It’s probably worth pausing here and observing something. I mean, you were dissatisfied with the work you were getting and with the kind of professional development that you had, and your solution to that at the time was to go find another job. Perfectly natural, you got another job.

And then when you made clear the reasons why you were dissatisfied and what had led you to do that, the Firm was able to fix it. I mean, that’s interesting.

And I think more and more today, in the modern day, there is more communication between the associates and the partners about how you're doing. "What are you working on?" There's even more discussion among the partners about: "How's this person doing? What are they working on? Should we get them working on different stuff? Should we get them working with different members of the Corporate Department?" These kinds of questions.

And it seems to me that associates now are probably better positioned to be vocal about what's going well and what isn't going well.

And so, I think I would encourage young people in really any profession who are struggling with the tasks they're being given, or the responsibilities they have, to try and figure out a constructive way to vocalize what you think is working or not working and to express some preferences.

Because in most organizations, most responsible managers will try and figure out a way to accommodate that. I mean, do you have a reaction to that, especially given the perspective as a manager that you had in the latter part of your career?

Lew: I think you're absolutely correct, and I think I probably was there on the cusp, the generational cusp. So, people like Mike who are older than I am, but not by a decade—I think they were the leading edge of that change.

And I think, certainly, I had management responsibilities at Cravath and at UBS; not management responsibilities, but senior responsibilities at Credit Suisse and BofA. And I would say, certainly, the idea that to keep talent, to nurture talent, to make them happy is more productive than just telling them: "We know what's best for you. Have fun at another organization or firm."

Len: And so, then you stayed at Cravath. You started getting the work that you were interested in, and—from my perspective, having entered onto the Cravath scene in 2003 and 2004—really made a name for yourself in the M&A space, in the world of structuring transactions, complex transactions, et cetera. And at some point in there, you made partner.

Do you remember developing that ambition? And do you remember how once you became partner, how the job met your expectations, and how it was different than you expected?

Lew: So, I have fallen into a lot of things. I fell into law. I fell into tax law. I fell into Cravath, because they would let me do tax and others wouldn't. And maybe it's different now. I've been gone from the Firm for almost 20 years. But nobody went to Cravath thinking they were going to make partner, and those who did think they were going to make partner often didn't.

So, the working assumption was you went to Cravath for a few years, and you got training. And then at some point you thought about what you would do. My original plan had been to stay in New York for a couple of years and then go to the West Coast. I never had a plan: "I'm going to be partner at Cravath." Because if you had asked me, probably up to the last year, I would tell you, "No, it's not likely." And my pessimism risk aversion, "Probably not going to happen." But that was fine. That was fine, because I was learning stuff. And I was building out a deal sheet, and I was getting a variety of useful skills.

When I made partner, there were a few things. I mean, first of all, the M&A practice had grown dramatically. I came to the Firm as a full-time associate in '84. I made partner in '91. And even with the ups and downs of '87, Cravath's M&A practice expanded dramatically. And so, by the time I made partner, there was a lot of M&A work. If the market was buoyant, Cravath was getting a lot of it.

So, the great thing was, I had a lot of M&A to do, and I had a lot of clients I liked, including international clients. The other thing is, I was interested in a variety of different things. I was interested in partnership stuff. I was interested in securitization and derivatives, kind of a lifelong learning stuff.

And as partner, I really could do what I wanted. So, being a partner gave me even more of an opportunity. It also gave me an opportunity to do things like the State Bar, the International Bar Association. I started teaching in '94 as an adjunct at NYU. I've been teaching for the last 30 years.

But anyway, the whole point about this is it gave me an opportunity to both expand my skillset, get new clients. And I found that as partner you had opportunities to deal with clients—to do things that were really, in a sense, kind of the same as you've done as a senior associate, but you did have a somewhat increased ability to pick what you were working on, to be introduced to clients as their senior tax person.

And so, I would say the first X number of years as a partner, the growth was pretty dramatic. Even though I had done a lot of growth, I thought, over the '84 to '91 as an associate and then a more senior associate.

Len:

So, when we met in 2003, you were very well established. You had been a partner for more than 10 years. We had a great conversation as I recall, and then, you may not remember this, but we actually shared a cab back up to the Upper East Side after you gave me my offer at the end of the day.

But in any case, I summered with you in the summer of 2004, and then I went back to law school for my 3L year. And I didn't start at the Firm until August of 2005. But sometime in the spring of '05 you called me in law school—this is highly unusual—and you told me that you were leaving Cravath to go to become a banker.

And we've had on the podcast folks I know you know like Dave Dubner, Darren Heil, Will Dixon—all of those guys were mid-level to senior associates at Cravath, folks who left the Firm as associates because the banks were essentially hiring out this function.

And you left, obviously, as a partner. And I just wonder if we can have your perspective on what was going on in the legal M&A deal-structuring banker industry back then that made these opportunities available for all of you all. And, particularly from your perspective as a partner, what drew you towards it at that point in your career?

Lew:

All right, so let's talk about the structural issues for the banks, and then we'll talk about my decision. Your timing, by the way, is pretty good; slightly off. I probably called you in the fall of '04, not the spring of '05, because my last day as Cravath partner was December 31, 2004.

But I think there were a couple of things going on. Goldman was the first. They thought there was a niche, which is that they would pitch M&A deals or whatever, and clients would say, "That looks great, but what are the tax consequences?" And they would say, "We don't know, and we'll have to talk to our tax director." And the tax director or tax counsel might or might not have a not-invented-here approach.

And so, the result of it was they thought they could get a competitive edge by creating a dedicated group of two professionals—only one of whom is a tax lawyer, the other of whom was a longtime regular-way banker.

Goldman was, I think, the early leader, and then everybody responded to it. I saw my practice at Cravath—and again, M&A is what I love doing and I love structuring. Coming out of the 2001 downturn, when deal volumes were very low, I saw increasing amounts of the structuring work had left the law firms and had gone to either the accounting firms or to the banks.

And I found some of the most interesting stuff I wanted to do—the deal was already baked. It had already been baked by the time the tax director knew about it, before I got the call. And we could play around the edges, but we weren't there at the front end to structure the deal. And that was a source of great frustration, because that's what I liked doing.

So, I foresaw this migration away, I thought, at least in my practice with my clients—not all of them, but some of them.

Then I got a call from UBS, which said, "Kenny Moelis, who runs the UBS investment bank, wants to talk to you." And I said, "Why does Kenny Moelis want to talk to me?" And he said, "We really want to create a group, and we want a senior person to run it." And I said, "I'm not that interested."

And they said—in retrospect, I'm sure it was a lie—which was: "Moelis is an important guy. I told him I could deliver you, so could you at least take an interview?" And I, of course, I'm like: "OK, OK, I don't want to get you in trouble. I'll take the interview." But I took the interview thinking there is no way that I'm ever going to take anything. I'm not going to go into banking.

And I have to say, Kenny and the other people at UBS—some of whom I knew, some of whom I didn't—were extraordinarily compelling.

And I remember when I told people that I was going to UBS, the question was always, "UBS, who are they? Why aren't you going to Morgan Stanley or Goldman?" And I said, well, there are two reasons. Those firms haven't offered me a job—that might be the most important pragmatic reason.

But the other reason is—if they did, they have established functions, so I can't build a function. I want to build a function. I want to hire people. I want to figure out strategically how the function should work, and UBS has white space and they'll let me do it.

Every bank does it a little bit differently. People have different views on where the touchpoint should be. Should you be talking to tax directors, or should you be talking to CFOs and boards and CEOs and business development people?

They have different views on whether it should be an M&A-focused function or a broader function. They have different views on whether it should encompass more than just tax and do other things, like ratings and stuff like that. And they also have a different view on whether it should be products driven or it should be structuring driven.

And what I wanted was—and UBS said, "Fine, that's great"—is, I wanted it to be primarily M&A-driven. There were other things that were adjacent, but primarily M&A driven, primarily tax driven, but most importantly, not product driven. Product driven is every client comes in, and you got the product; you sell the product. I wanted it to be more bespoke.

And the great thing about UBS is that Kenny Moelis said: "You're a professional. You've been in the business a long time. You've not been a banker, but you've got a lot of clients. If you think this is the way to do it, we'll give you the resources to do it." And that's the way, not completely, but that was my primary focus in building out that group. And that's the focus I also had at CS and at Bank of America.

Len: I'm going to ask you a question that I've asked many of our guests, but by virtue of your experience at these various banks and thinking about this way of advising on tax and structuring, I think maybe you have a slightly different perspective. The question is: What do the best tax advisors do well? What are the common traits or characteristics about good tax-advising?

Lew: Are you talking about lawyers, or are you talking about bankers?

Len: Well, I'm sort of talking about both. And on the client side, which I think you and I can both try and envision: What do we think clients react particularly well to from tax lawyers that is relatively rare or distinguishing for tax lawyers or tax advisors who are the most effective?

Lew: I'm going to start with tax lawyers. Obviously, good tax lawyers have to be technically able. I'm not sure that people who do what I do in banks have to be that technically adept; it's a much more strategic kind of approach. So, let me tell you what, in my experience, tax lawyers in private practice do quite well and what sometimes they don't do as well.

One of the things, and I think I'll just mention Steve Gordon as the exemplar of that: Steve is a great communicator. He can take difficult material, figure out what's important, and then give the advice simply.

So, a lot of tax lawyers are very good. They know all the code provisions, but they aren't able to tell a client: "There are 55 things I can tell you, but there are only two that are important. Here's what's quite important. I'm happy to drill down, but let me explain to you in simple terms that I think as a businessperson and a decision maker, you can understand."

If you're dealing with a tax director or tax counsel, you can talk tax to them. But if you want to have an impact with the CFO, and the business development head, and the CEO and the board, you need to be able to take difficult concepts and explain to them why these are the important and relevant issues and then put it in a language—they're smart people, they're educated people, but they're not necessarily tax people—that they can understand.

Sometimes that means dimensioning the issue. So, they often say, "If this goes wrong, what's it going to cost me?" Sometimes it's probability weighting it, "What are my chances of success?" Tax lawyers sometimes don't want to give that, but businesspeople want to know it. So, it's partially decision-making prioritization, but it's also, I think, presentation skills.

But there's also something else that I think is undervalued, and that is you have to have a gut. So, you're looking at something you've never seen before, and you have to have a gut that says, "This problem is soluble, or this problem is not soluble." Or, "It's soluble in a commercially executable and actionable way, or it's really not."

Now, sometimes you say to the client: "I can come up with solutions, but you're not going to do them. And I'll explain why."

There are people out there who—I used to call them hip shoot, and will say to you, "Oh yeah, we can solve this problem with an X, Y, Z." And you take a look and you say, "No way, that's not going to work."

But if you have a client who is a little less sophisticated, they'll go along for the ride. I remember when I was a banker, I'd had a conversation with a client. And I said: "This is the way to do it. It's not that attractive, but I'm telling you, you're not going to do the more complex ways. They're probably not going to work, and you're never going to do them."

And another bank sold them on a different approach, and I said, "I don't know what the approach is, but I will put money it's not going to work." And they went down that rabbit hole for six months, and I then later heard, "Yeah, it didn't work."

And so, I'm not saying, "I'm so smart." But what I am saying is, good tax lawyers kind of know what works and what won't work. They are creative. They can sometimes see things and put things together in a new and interesting way, but they have a good commercial sense, and they have a good sense of, again: "What's likely to be actionable? If I spend more time, will I come up with a solution, or I'm just beating my head against the wall—it isn't going to work, and it's better for the client to know that now?"

Len:

Well, on the point about, "Can I just think about this more and make it work?" I do think there are some consumers of tax services out there, whether they're bankers or clients or whoever, who say, "Well can't you just think about this more as a tax person and come up with a solution?" Like you're an iron or something. You got a really wrinkly problem, and if you just iron it enough, you'll smooth it all out.

And I think that often tax lawyers can come up with some ideas that might be workable, some ideas that might work for tax that don't work for commercial reasons or corporate law reasons or other reasons. And sometimes they can put a lot of brain power into it and solve a problem.

But other times, as you say, there are sort of insoluble problems, and tax lawyers have to function more like guardrails and say, "I've explained this to you the best I can. If I could give you all of the technical information I had, and you could absorb it all and apply your own judgment, I don't think you would do this. So, I'm trying to tell you, I just don't think this is prudent or safe."

And I think that sometimes clients misunderstand what we do. They feel like they want us to run through the guardrails, as opposed to explaining to them where the risk lies and giving them a sense about how we think they should proceed.

Lew: Look, I think as a tax lawyer, I always thought to quote Sy Syms: “An educated consumer was my best client.”

But I found that smart clients were ones who said, “Let’s get into a dialogue.” And at the end of the dialogue they either agreed, or if they didn’t disagree they were fully aware that it was a judgment call, and they understood where my judgment was. They might have a different judgment, but they certainly understood what the potential risks were, et cetera.

But they won’t just say no. They’ll hear you out. They might come to a different judgment—I get that. But they’ll at least understand where you’re coming from, instead of—the worst client is one who just shops around until they get the answer they want, whether it’s the right answer or the wrong answer. That puts you into the position of a gatekeeper.

Len: You’ve reminded me of a story. My wife and I have several children, and when our oldest child was, I don’t know, 3 years old there was some—

Lew: Seven, I believe.

Len: Seven children, that’s right. When our oldest child was 3 years old, there was a stomach problem. And I think we were on vacation, and we were visiting one of my college roommates, and his father was a pretty prominent doctor in D.C.

And so, I called him up, and I said, “I need your advice. We’re in the hotel and ... stomachaches,” and whatever. And he said to us, “Do you have a pediatrician?” I said, “Yeah.” He says, “Do you trust your pediatrician?” And I said, “Yeah.” He goes, “You should call your pediatrician and listen to what they say, and if you don’t like what you’re hearing from your pediatrician or you don’t feel like you trust it, you should just get a new one.”

The point is, you hire professionals who have lots of training, education, experience, judgment, growth. And, generally speaking, you ought to sort of trust what they say. And I think the point you’re making is the same one, where if you’re one of those people who’s shopping for the right tax answer or the right corporate law answer, your perspective on what it means to have an advisor is different than I think the perspective most advisors bring to the role.

Lew: You would have hired the advisor for judgment. And they owe you both zealously laying out the stuff and analyzing it and thinking creatively. And you may not agree with them, OK. But ultimately you’re paying for their judgment.

It’s the same with doctors and others. I’m a believer in professionals. So, I think clients can ask all the questions they want. They want to make sure you’re on their side. All of that’s fair game. They deserve that. But, at the end of the day, if they’re just shopping for an answer, that’s not a good use of professionals. That’s a slot machine.

Len: Right. So, Lew, at the end of all of our podcast episodes, we like to ask our guests what they do in their spare time when they’re not doing tax. Now, you’ve just retired, so I’m assuming maybe you’re still teaching, but you have a lot more spare time than you used to. What do you do now with your time that’s not spent on tax and structuring and things like this?

Lew: OK, so I have a problem with this question. Because I’ve been retired now for three months, and I get this question all the time. And the problem I have is, I can either tell you what I really do, in which case you’ll know I’m a nerd. Or I can lie to you, in which case you’ll think, “What’s he doing? He must be bored to tears.” OK.

Len: I’ll take the real answer.

Lew: Alright, first of all, my wife and I just came back from France. We bike in Europe a lot, and we’re going to Sardinia to bike in September. So, there’s lots of bike trips. I work out with a trainer. I do Peloton. I take long walks. All of which I love doing.

But I've always had a lot of academic interests. Some of them connect with prior life. So, for example, I told you I studied music theory, but I wasn't a very good music theorist. And so, one of the things I've done since I've retired is spend more time going back, relearning, relistening, et cetera. I don't have a STEM background, but I'm quite interested in things like astrophysics and physics, quite interested in history, et cetera. And I now have the advantage that I can start something.

So, if I read a book, and it's an academic book, and I look at the footnotes, and the footnotes say, "For further treatment of this point, go look at that," I can now do all of that. So, it's nerdy, but what can I tell you? I'm having a blast.

I have to say, when I told my wife that I was going to retire from banking, she said: "OK, I get it. You've been thinking about this for a few years. You've done things for law and banking for 38 years. I get it. But you need to be open." This was the thing. "You need to be open if interesting things come your way."

And so, I have to have the disclaimer, which is that I'm not interested in doing the same thing I've done in some shape or form for 38 years. But if people feel there's some skillset I can use, some things my skillset is good for, I'm always open to talk to people.

So, that's the story. I am retired from banking and from the law. I am a retired lawyer according to the Bar registration, the New York State Courts registration system. But if somebody has interesting ideas—for-profit, not-for-profit, et cetera—you know where to find me. And my wife hopes you know where to find me.

Len: Well, it's a great conversation with Lew Steinberg, who's just retired from a long career in the law and in banking. He was most recently the Head of Structured Solutions at "BofA" Securities, or B of A Securities, depending on how you're thinking about the brand.

Lew, it was really a pleasure to catch up with you.

Lew: Thanks, Len.

Len: And that's a wrap for Season 6 of On Tax—A Cravath Podcast. We'll be back in the spring with a full slate of new conversations with people in the world of tax. You can find us online at cravath.com/podcast, and don't forget to subscribe on Apple Podcasts or Spotify.

If you enjoy the show, please consider rating or reviewing us wherever you listen. We'd also love to hear from you directly. You can tell us what you'd like to hear on the show by emailing podcast@cravath.com.

I'm your host, Len Teti—thanks for listening.