

“A SEAT AT THE TABLE” - THE EFFECTIVE CORPORATE BOARD
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This paper contains some observations and comments about Boards – hopefully food for thought in a discussion of the “Effective Corporate Board” at the April 18 Conference Session of the National Bar Association. It is a pleasure and an honor to be able to attend this Session of the meeting and be able to talk with such an important source of Board talent. On a personal note, I took the opportunity to research Gertrude E. Rush - a life that would encourage anyone through her example of helping others, her energy, vision, and accomplishment.

My Board experience is with public and private for-profit companies as well as not-for-profit companies. I have also served on start-up Boards and Boards of very large companies. Presently, I am non-Executive Chairman of the Midwest ISO – a not-for-profit company that manages the electric generators and transmission facilities and manages markets to buy and sell electricity in 15 Midwest states; as well as other for-profit and not-for-profit companies.

These comments relate to my Board experiences and preferences in the areas discussed. These are my own thoughts and should not be interpreted as the policy or thinking of any of the Boards I presently serve, or have served in the past. I use the term “Chairman” to apply to both women and men who are elected to lead a Board.

Board Structures

For-profit Boards are most often led by a Chairman that is also the CEO. However, a better model is emerging where there is a Director - who is not in management - functioning as Chairman (i.e. a non-Executive Chairman or Lead Director).

Not-for-profit companies have both these models and a wide variety of other structures. Many not-for-profits include a Chairman that is not part of daily operations. Daily operations are often led by a member of Management with the title *Executive Director* - who may or may not be an actual member of the Board of Directors.

My preference and main experience is with Boards – both for-profit and not-for-profit - where the Board elects a Chairman from among the Directors – i.e. the Chairman is not the CEO or lead management person. My comments will align with that model. I will also refer to the head of Management generically as the CEO – even though many non-profits use other titles. Finally, I will refer to Stakeholders as the fundamental reason the Board exists. In for-profit companies Stakeholders are

clearly the Stockholders. In not-for-profits other Stakeholders are usually a very well defined group and the reason for the not-for-profit company to exist in the first place. For example, the Midwest ISO exists to serve its 100+ voluntary members by performing certain functions (generator dispatch, transmission optimization, and market making) spelled out in tariffs approved by the Federal Energy Regulatory Commission – the FERC.

I prefer a model where the Chairman is not a member of Management – i.e. a non-Executive Chairman – because I believe it provides a balance at the top of the organization. Boards have a role and Management have a role – but Management should not be running or dominating the Board. There should be healthy, open debate between Senior Management and the Board – which I believe is facilitated by having the two entities have separate heads. I agree that it can get tricky at times – but the benefits are worth the extra work.

Environment and Responsibilities

My view of a Board member's responsibility is to debate issues, make critical strategic decisions for the company, and ensure management is doing its job. By "critical" I mean decisions that are fundamental to the long term appropriate survival of the entity – decisions that could possibly sink the ship or be absolutely fundamental to success. The Board should not be doing Management's job, and the analogy "noses in – fingers out" is often used to portray the right balance. As a side note – my view is that a Board should be able to accomplish this mission without antagonism or a negative relationship with Management – and that often needs a lengthy discussion of the "trust but verify" tactic – which I highly recommend as good Board governance.

The more complicated and less defined role of a Board member relates to responsibilities for participation at Board meetings. Board members need to be well informed about the subjects at hand, engage when needed, with the highest level of integrity, with full disclosure, treating others with respect, focusing on facts, and applying informed judgment. Some rules of thumb that I find useful are: speak when you have something to say, and you only need to say the same thing once. Board members should not be trying to win debates as much as use the debate to surface and air alternative views for consideration by the group.

The key boardroom dynamic is how a Director treats other Directors. For example, one specific learning that I personally have repeatedly observed relates to the Golden Rule – "do unto others as you would have them do unto you." I find it totally the wrong approach. My experience is that people don't want that – they want to be done unto as THEY want to be done unto. To understand how someone wants to be treated requires active listening – especially when the opportunities to be together are so few for a Board of Directors. Finding good Board members that can heavily contribute AND are good active listeners is not always easy – but a Board cannot settle for less.

Of course – no one can have an unreasonable expectation of how they want to be treated – but the point is that different people do have different expectations on how they want to be treated and there is a wide range of acceptable modes.

A good starting assumption is that all Board members are equals – and in the model I like – that includes the Chairman who just happens to have a set of additional responsibilities. I also like the model where the Chairman serves a limited term – say 2 to 4 years – with an expectation of turning over the responsibility at the end to another Board member elected by the Board. That process allows a Board to mature over a number of years and more easily pursue and adopt best practices.

The need for civility, cooperation, and respect on a Board is not the same as having all the Board members have the same views on every – or any – matter. The key is to have an environment that encourages exploration of diverse views. Even to the point of significant debate – which is possible without qualifying the word “debate” with “heated” or “emotional” – although these are also possible on a good Board. There is a story about Alfred P. Sloan (Chairman of General Motors in the 1930s) that during a Board meeting when all the members were in total agreement on a difficult issue – Sloan asked for a postponement of discussion so the Board members could develop some disagreement – and that’s probably a good practice.

Board members are on the Board to fulfill a purpose. They serve based on the skills they bring to the table and the functions they must perform once there. A board member must keep at least current with happenings and advancements both within their areas of expertise, and in the areas where they perform specific roles (e.g. committees). It should be clear that a great deal of time must be invested by each Board member to stay current and in a position to actively contribute.

Regardless of structures, the Chairman is responsible for setting the tone for the Board, and the CEO is responsible for setting the tone for Management. For me, tone means the song that people are hearing that guides decision making relative to acceptable and unacceptable behavior. Is it OK for a VP and a direct report to have lunch and the VP to ask the direct report to vouch for it? Is it OK to hire a relative as a direct report? Are decisions being made in the interests of the Stakeholders or in the interest of Management? Does the company value open dialog about issues, or require support for the CEO’s views without discussion? Are people valued in a hierarchal fashion or as individuals. Is there competition between Departments/Functions or cooperation? Some elements of tone are obvious – proper valuing of gender, race, and religious differences. However, many elements of tone are legitimate debates that should be had, decided for the present, and clarified through supportive action.

In my opinion, there is every reason to have the Board and Management “tones” be the same. Both should be balanced on the Values, Charter, and By-Laws of the Company – and should be based on a shared-view platform of best practices – including best practices in managing groups. The tone should be initially set after a full discussion and consensus - and then periodically reviewed to help ensure it is both currently appropriate and being closely followed. A good role for the Governance Committee is to lead the Board in ensuring the tone is properly set and evolved as needed.

Ultimately, the people at every level in the organization will decide the tone by virtue of their many separate, informal discussions about how the Board and Management act. I equate tone with culture.

The Chairman is ultimately responsible for the quality of the Board meetings and therefore the work of the Board itself. Members of the Board are elected through various processes and are often very successful in their own lives – and bring with them the knowledge gained from past experiences. Many will have a very high level of self-confidence and be powerful thinkers, debaters, and position/decision advocates. These skills must be productively managed for the good of the Company, and that job falls ultimately to the Chairman.

The Chairman must utilize a style appropriate to the Board and the issues before the Board. Many styles can be successful – but all need to have some common purposes: full participation by each Board Member, a real airing of views, a search for the facts as appropriate, and decision making in the Stakeholder's best interests.

Board Problems

Board members may exhibit traits that are offensive to other Board members – a problem that may be on both the sender and receiver side – or either side entirely. Examples might include jokes in poor taste, attitudes of superiority, mild profanity, intolerance for diversity of viewpoints, not being prepared, working on other business during Board meetings, etc. The Chairman must work with the Board to minimize these inappropriate distractions in a productive fashion – ignoring them is not an option as it can seriously hamper the ability of the Board to perform. Of course, each person should police themselves, but absent that – the Board should have an expectation that the Chairman should address the issue – either real-time or off-line depending on the issue. Having this overt expectation both positions the Chairman to act in such cases as well as avoids Directors policing one another which could deepen any conflict.

A good practice for any Board member is to informally check with other Directors on how you are being heard – the answer to the question often does not match your intent. Typically, Board members will not have the time to become friends or know one another in real depth, and therefore being on your best behavior at all times is the best rule.

I have seen circumstances where Boards have moved from situations where members were totally distracted, likely to leave, and not serve another term – move to where members were heavily contributing and in for the long pull – even having fun. To make that movement the issues had to be actively worked, and the process was not always easy.

In cases where progress cannot be made quickly and seems to be out of reach – the trickier question of moving a Board member out may need to be addressed. If the focus remains on: “What is the right thing for the Stakeholders?” the right answers often flow although they may be painful to implement.

The main problem I have seen on Boards relates to egos. People don’t get on Boards without a history of major accomplishment and that often comes with an ego that is best checked at the door. If you can’t check your ego, or see yourself as an equal part of a team – then resign. Of course, that might be considered vacuous advice – given that those with unchecked egos and feelings of superiority are less likely to ever consider resigning. Anyone with ego problems will not do well on a Board.

One tool that I have found effective is cutting a deal with 1 or 2 other Board members that you can highly trust to provide you with honest feedback. The deal might go like: “I really want to succeed on this Board and to contribute effectively. Will you tell me – privately – when you think I am out of line, not treating someone appropriately, or pressing too hard in any area?” You can usually find a fellow Board member willing to play that role – and that person will invariably ask for the same favor in return. Then all you have to do is be receptive to feedback.

Another tool that I have found to be effective is having a discussion at the end of the Board meeting about how the Board functioned during the meeting. The Chairman may not be in the best position to kick-off this discussion, and when I have been Chairman I have asked the Vice Chairman to act as a “fly on the wall” during the meetings and observe the functioning of the group and individual Board members. I ask someone to take that role because the Chairman is often too highly engaged (hopefully in active listening) to step back and watch and therefore can miss things that an “official watcher” may notice. Of course, the “official watcher” still must participate like any other Board member – but it is still possible to get in a little watching. Outside counsel can also be asked to play this role – but there is an inherent conflict in getting straight feedback from hired advisors to the Board.

A Board Chairman should never let the debate in the Boardroom become personal – for when it does it can become toxic fast as shown by the HP Board scandal of last fall.

There are many ground rules that a Board might adopt in an off-site meeting with an Agenda that includes a significant block of time to discuss ground rules which could prove to be a very useful exercise. Some of my favorites are: no interruptions (except by the Chairman for cause), respectful debate without confrontation, think then talk, talk when you have something to say, say it just once, no bad questions, agree to go along if it won’t potentially sink the ship, lengthen the debate if it will potentially sink the ship, trust but verify. The more dysfunctional the Board, the more they can benefit from outside facilitation in sorting through the rules – but the best of Boards have the level of interaction, participation, and respect to go it alone.

I also want to say a few words about what I will blatantly call integrity. I’ll give a couple of examples that relate to how money is spent. First, let me say that when a Board spends money – especially on itself – things to consider are: “Is this how I would spend my own money?” and - even harder - “Is this how the Stakeholders would want the money spent?” There is not always an easy answer – but that

doesn't mean the questions should not be asked. How money is spent is part of the organizational tone discussed above.

I will provide a couple of examples that I personally witnessed and think are indicative of outstanding performance in the area of appropriate cost consciousness. First, I was at a Board function where the dinner for the Board was paid by virtue of the total charge we were incurring for the facility – and I might add that the dinner planned and already paid was at a top notch hotel. Instead, the Board chose to go somewhere else to eat because they “wanted to get out.” Who pays for the extra dinner charges? In this case – Board members reimbursed the company for the extra charges. Therefore the company paid for 1 meal for each Director – not 2. It is possible to come out with a different answer and defend it – but I was very impressed with this cost consensus view and sent in my check as well.

A second example, is at a Board dinner where a Director wanted an expensive wine – I forget how much, but it was over the limit that a Board member was comfortable with the Company (Stakeholders) paying. I was impressed when that Board member sent in a check to the company for the difference between the actual price and what was reasonable. Again, it is possible to come out with different answers to this overpaying dilemma – but this one impressed me and I have trusted that person and valued their opinion because of that action to this day.

A rule that I always try to impose on Management (and the Board) is that the highest level at any company function pays the bill. It is a best practice seldom used, but helpful in focusing on appropriate decision making.

And a few final words on the general theme of Board behavior. The Board should follow that same expense practices that it expects management to follow, as well as the same Code of Conduct. A good rule of thumb here and in all areas of Board decision making is the Wall Street Journal test. If you would not like to see a decision outlined in the Wall Street Journal the next day – perhaps you ought to revisit the decision. Thinking a few moves ahead is always helpful.

Finally, one value that seldom gets discussed is Courage. In a Board context it is simply having the courage to do the right thing – and the right thing almost always can surface for all to see if there is participation, respect of viewpoint, good debate.

Preparation for Board work

One topic I hear quite often is “How do I get on a Board” although the people asking usually know the answer – through your network. Many Board positions are still filled by the time honored “who you know” process. However, a new set of best practices is emerging – largely because of past scandals, stakeholder activism, and a wide-spread renewed focus on Best Practice implementation. Many Boards are proactively determining what they need, asking Search firms to find a slate of candidates, interviewing the candidates, and then picking the best one. My preference is for the Board to tell the

Nominating or Search Committee what is needed, for the Nominating Committee to interview and find the right person – and then bring the recommendation to the full Board, and also to have a well qualified second choice. Personally, I believe that the head of Management (only if on the Board) should be a member of the Search Committee.

So I would advise both networking and making yourself both known and qualified as activities to pursue. There are lots of books on networking and I can't offer any more than that set of books can provide. In terms of making yourself known and qualified however, it may not be as obvious or documented.

One place to make yourself known are search firms where you know someone and can just let them know of your interest. Most Board searches are given to the large Search Firms - and virtually all of them have an online capability to enter your resume – with the claim that your skills will be matched against future searches and you will be notified. Most also allow you to specify Boards as your target. Personally, I would not put all my focus on this single approach which probably accounts for less than 10% of all Board placements. It is similar to raising your hand or buying a lottery ticket for those that have heard the parable of the man who prayed to win the lottery but never bought a ticket!

Two places where Boards do look – and Search firms look – are the National Association of Corporate Directors (NACD) Directory and the NASDAQ Directory – both of which are only for Board Searches and where you can store your resume in searchable form – for a fee. The NACD is at: www.nacdonline.org/ and the NASDAQ Directory is at: www.boardrecruiting.com. There are some other resources that I have collected and can be accessed from my website at: <http://www.paulfeldman.com/Boards.htm>.

And then there is the question of being qualified – which – thankfully – is migrating more to mean having certain needed skills/abilities than close friends on the Board. Best practices in this regard are tending towards a Board understanding what they need in terms of skills, and then finding a person with the skills and experience that is needed. The key then becomes having the skills that they need. By skills I mean specific areas where a Board member can exert leadership of the Board. My opinion is that a Board is an engineered blend of abilities – and different members assume leadership in the sense of advising the Board (leading) depending on the issue at hand.

On the issue of skills and abilities, I would like to observe that it is unethical to even interview for a Board seat for which you are not qualified. I would also encourage prospective Board members to work on being specifically qualified rather than generically qualified. By that I mean having deep expertise in one or more areas rather than being a generalist. My experience is that Boards go looking for skill sets (experience) they may be lacking rather than people with general expertise.

Various Boards need different skills, and asking the question “What do they need?” is a place to start. Take inventory of what your skills and interests are, match them against what is needed, and then think about how to make your skills better known. There are various ways to do that – but they include publishing papers, blogging, attending additional training, conferences, etc.

For those with a legal background – expertise in Governance seems an obvious area of focus – to develop governance expertise that is needed in virtually all Boards. I am not talking about the level of governance expertise that is automatically collected by virtue of being an attorney or judge – I am talking about a level of expertise and authority developed through overt study and participation in appropriate forums. Virtually, the ability to teach the skill/ability/subject matter. Prospective Board members must differentiate themselves to be noticed. Governance is the hottest topic in the Boardroom today and probably the area that holds the greatest opportunity for progress. While not-for-profits are not subject to many of the rules and regulations of for-profit companies – that doesn't mean that some of those rules and regulations and best practices and should not be adopted as good governance in not-for profit companies.

Advisory Boards

Advisory Boards are a way to get some experience in a “Board” forum as a precursor to actual Board of Director's work – and without the personal risk and responsibility. For all practical purposes – Advisory Boards are consultants. Advisory Boards are more common in smaller companies, and are generally made up of individuals with skills that are needed in the company itself rather than at the Board of Director level. Advisory Boards are also very diverse in their purpose as opposed to Boards of Directors that have a more defined legal role.

Ways to get on Advisory Boards are similar to actual Boards – networking, etc. However, the skill you bring to the table may not need to be as specific or as great as to a Board of Directors. For example, you may be able to get on a Board of Advisors because of your relationships in an Industry that would help the company market its product by virtue of your introductions – which happens somewhat less at the Board of Directors level. An Attorney can be a valuable Advisory Board member without much in the way of additional skills – for a small company that does not have its own counsel for example.

Of note, compensation of Advisory Board members is most often in the form of stock or options with a far less focus on cash – where Boards of at least public companies most often have both elements as compensation. Many not-for-profits see Board and Advisory Board work as a personal contribution toward the Mission of the company and are unpaid positions.

Another path to larger Boards is smaller Boards. Angel Investing Clubs are sometimes a good way to join a network that can expose an executive to deal flow (emerging companies) – and therefore opportunities to become involved in Boards for small companies. There is a great list of Angel membership opportunities at: http://www.angelcapitalassociation.org/dir_directory/directory.aspx. In general Angel groups are geographically focused.

One step up from Angel Investing is Venture Capital (VC). By building relationships with a few Venture Capital Organizations – executives can expose their potential value and opportunities for Advisory Boards and Board of Director service often arise. A good place to start is researching and building a list

of VCs that invest in the area of specific interest to you. For example, a list of VCs that invest in energy related companies is at: <http://www.paulfeldman.com/Energy-Capital.htm>

Summary

Although I have discussed Board issues quite a bit in the above comments, it would be wrong to leave anything but an impression of how rewarding Board service can be. While there may be monetary rewards, it is truly an honor and a privilege to be selected to represent the interests of a Stakeholder group – and a responsibility that should not be taken lightly. In the end Boards are hired hands just like everyone else with a role to play.