Competing Truths in the Boardroom…
Confessions of an Independent Director

Being an independent outside director of a public company today is downright scary. Given the magnitude of the settlement outside directors of WorldCom reached with the New York State Comptroller ($18 million split 10 ways and not reimbursable through D&O insurance), prudent men and women are thinking long and hard about joining boards.

No thoughts or worries of this kind entered my head upon joining the board of a privately held educational materials publisher more than three decades ago. It was my first board experience; there were four of us; we met four times a year for four hours; and our fee was $40 plus a free lunch.

The Sarbanes-Oxley Act of 2002 ("SOX") was 30 years from enactment; the term "corporate governance" was not yet in wide use; and most so-called independent directors were <u>dependent</u> upon the chairman of the board/CEO for their appointments ("elections" were mostly perfunctory validations of the chairman/CEO's wishes). The drumbeat of change – *corporate governance* - was, however, starting to be heard in academic literature.

As *corporate governance* started to attract more widespread attention in the late 1980s/early 1990s, I became fascinated with the topic and with the delicate interplay between board members and the CEO. Eager to test my own independence and to put into action some of the recommendations by then appearing regularly in board literature, I started to challenge CEOs on issues where I was confident of my own position and doubted theirs'.

Unfortunately, in my haste to incorporate many of the principles that directors and chairmen/CEOs accept today without question, I overlooked some key *corporate governance* concepts:

- One - doing all your pre-meeting work and reading the "board book" hardly put you on an even footing with the CEO; you are at best a parachutist dropping in for a day's work to represent people (the public shareholders) you will most likely never meet.

- Two - even if a board meets as often as once a month, you are still an outsider charged with supervising a CEO who lives the company 24/7/365.

- Three - CEOs are inevitably bright, driven leaders used to getting their own way. Openly challenging them without prior warning introduces unnecessary tension into the process.

Having swayed below a director's parachute (white not golden) at a mutual fund group, a securities exchange and a number of public and private companies and not-for-profit organizations, I have learned the hard way that drawing a line in the sand over a big issue may sound heroic in a business school classroom, but it is unproductive in the boardroom and hazardous to your life expectancy as a director!

Experiencing this peril first-hand and struggling with how to uphold my responsibilities as an independent board member in today's litigious environment, I turned to a former college roommate, long-time student of management and currently an astute political commentator - R. Garrett Mitchell - for advice.

Mitchell introduced me to the concept of *competing truths*, a notion he attributes to the Danish physicist Niels Bohr, perhaps best known as a key member of the Manhattan Project that developed the two atomic bombs dropped on Japan. My roommate prefers the term *dueling truths,* which draws on Bohr's observation that the opposite of a "great truth" is most often another "great truth." Bohr's notion is so simple yet so profound: I could be "right" and so could the CEO!

For instance:

- Mutual fund group CEOs push to increase assets under management, while fund trustees/directors focus on fund performance and expenses…sometimes conflicting yet often intersecting issues.

- Headhunters recruiting a new CEO inevitably suggest a perk-laden "golden parachute" compensation package to make the offer competitive, while independent directors are under intense academic and media scrutiny to rein in this practice.

- M&A has become the "glamour" aspect of investment banking, and it is a CEO product. Doing deals is exciting, and their announcements have become global financial media events. Independent directors, however, must confront grim statistics documenting that more than three out of every four M&A transactions fail to produce predicted results.

Thus, to deal with such *competing truths,* I have learned to discard my old roulette - "It's either 'red' or 'black'" - style and, instead, bring up my differences one-on-one with the CEO before the board meeting "comes to order".

If I am doing my job as an independent director correctly, it is not important that I be "right" very often; nor is it essential that the CEO be "right" every time. It is, however, very important that the board always gets it right. *Competing truths* can clash loudly yet still produce a consensual, collaborative strategy, and I must confess that listening more and talking less does not prevent me from taking my SOX obligations seriously. Deep lines drawn in the sand disappear at the first lap of breaking surf; not so for well constructed sand castle communities.

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