On the Ground: Nonprofit Governance—Theory Meets Reality—An Executive Director's Perspective

Jonathan A. Small
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I hope you will find entertaining this undertaking by a governance amateur to discuss issues of nonprofit governance before a group that includes many luminaries in the field (not all of them academics). I am prompted to take on this task by my own experience, now nearly two years "on the ground", as an executive director of a small nonprofit—the Nonprofit Coordinating Committee of New York (NPCC). NPCC is an "umbrella" organization having roughly 1,100 nonprofit organizations as its members.

In my new role, I have had the opportunity to focus on a number of governance issues facing our members, as well as NPCC itself, from the perspective of the staff responsible for the day-to-day operations of the nonprofits involved. I believe that Peter Swords and I are the only people in the Nonprofit Forum who have been executive directors of a small non-grantmaking nonprofit, particularly one trying to help other small nonprofits with governance issues. (Grantmakers have their own governance issues but they do not, in my view, have the same particular pulls and tugs that confront fundraising nonprofits, although they may have some and, to the extent they do, this paper will speak to them as well.)

I believe that the realities facing those of us on the ground have not been given sufficient attention, or perhaps the better word is “weight”, in thinking about norms for nonprofit governance, about how not-for-profit corporation law has been formulated to date, and about how it might be modified to deal with those realities.

My impression is that there are three altitudes from which nonprofit governance is observed and critiqued:

1. <u>40,000 Feet</u>

This is the altitude at which academics study and analyze the conceptual issues relating to nonprofit governance. The work at this altitude is done by those with top-flight intellectual credentials and has a profound impact on how nonprofit governance is perceived and evaluated. This work is also predominant in affecting the substance and text of the state and federal laws dealing with nonprofit governance.

2. <u>20,000 Feet</u>

This is the level of the practicing lawyer. The practicing lawyer knows the law and probably has a good grasp of nonprofit governance theory, but is ordinarily asked to grapple with specific fact patterns presented by clients. In this role, the practitioner is called upon to blend theory and practicality in advising on courses of action consistent with applicable law. While many of the questions asked and issues raised are difficult, they tend to be quite fact-specific and not to involve the broader issue of how the board, as a whole, is functioning. Hence, in my view, the

practitioner ordinarily does not have to think about some of the overarching issues affecting the functioning of any given board.

3. Ground Level

On the ground are the executive directors, and in some cases an in-house lawyer, who are trying to run their organizations successfully, while meeting governance standards imposed by law and, to the extent understood, imposed by theories of good governance. Unlike those at 40,000 feet who focus on theory and those at 20,000 feet who focus on advising on the law in the context of specific factual situations, those on the ground desire from their boards a number of qualities that have little to do with meeting the legal standards of being a good fiduciary. Of course, diligent board members themselves experience the constraints and pressures discussed below, but they are ordinarily at a remove from the organization, compared to staff, and so are less likely to feel those constraints and pressures as intensely as staff. For example, board members' exhortations to the executive director to "raise money" are likely to be felt more intensely than the executive director's request to them (uttered gently if at all) to "please help."

My starting point for this discussion is the stipulation that, under current legal standards, a good board member is one who meets the duties of care, loyalty and obedience. My focus is on the requirement and expectation of current law that each and every director must and should meet her duty of care. (I deal briefly at the end of this paper with the

duties of loyalty and obedience.) In particular, I am focusing on questions of failure to meet the duty of care through inattentiveness to board meeting materials, poor board meeting attendance records and other acts (if that's the right word) of nonfeasance. The question I have been wrestling with is how we might best reconcile (a) the concept of the duty of care familiar to all of us with (b) the conflicting realities and necessities of board composition.

In thinking about how that reconciliation might occur, it is important to think first about what we are looking for, fundamentally, when we think of good governance in terms of the duty of care. My own view is that the essence of what we seek is a board which, though comprised of individuals, functions as a whole to perform its duties effectively so that the nonprofit it serves is well governed and prudently overseen.

In the corporate world, having 10-15 individuals actively engaged on a board is thought to be about right in terms of achieving good governance. That range strikes me as reasonable as a norm for nonprofits as well. The particular focus of my attention is a board that has 10-15 "good" board members who, together, assure that the nonprofit is well governed and prudently overseen, but that also has a number of other board members, perhaps as many, or more, who do not meet their duty of care. Such a board is, I believe, very common in the nonprofit world.

Let us review briefly some of the constraints on a typical executive director in trying to achieve an A+ as to having all the members of her board satisfy the duty of care.

From the standpoint of the executive director—who is responsible for the day-to-day existence and functioning of the nonprofit in performing its mission--the overarching concern is often survival as an organization capable of performing its mission. It is very important, for example, for executive directors to have on their boards people willing to write, or get others to write, big checks to their organizations. An executive director needs those people for the organization to function, regardless of whether those people comport themselves as board members in a manner consistent with meeting the duty of care. Attracting money (or in kind contributions) is the *sine qua non* for the existence of virtually all unendowed nonprofits. Good governance is only important, or even relevant, if there is an organization to govern.

Similarly, executive directors may well want some "big names" on their boards with a view to attracting funding and other support and visibility for the organization. Again, "big names" may be viewed as essential, regardless of whether the "big names" individually are meeting classic board standards of fiduciary conduct as to the duty of care. (The New York Times obituary of March 31, 2002 for Elizabeth, the Queen Mother, noted that "she served as either president or patron of 312 British organizations." While we don't have the number for which she was

officially "on the board", we can wonder whether it was even possible for her to meet her fiduciary obligations for those she did serve as a board member, even though this effective, caring, engaged individual probably contributed something to each. Future biographies probably will shed little light on this particular issue.)

A third category of desirable board members from the executive director's standpoint consists of those with special expertise critical to the well-being of the nonprofit, such as individuals with extensive experience in dealing with real estate. A board member who is a real estate expert, for example, can be truly invaluable to an organization when real estate issues arise (e.g., the need to negotiate a new lease, a problem with the landlord), regardless of whether that board member attends properly to meeting the standard of care required of board members by law.

Another category of "desirables" consists of one or more individuals with good ideas about what the organization should be doing and how it should do it. These people are often at 40,000 feet themselves, and are not very interested in the niceties—or details—of classic fiduciary conduct as to meeting the standard of care. But such individuals are often vital to the creation or ongoing success of the nonprofits with which they are affiliated.

I am sure that those in the Nonprofit Forum can think of other examples of special categories of board members who can be extremely important to an organization regardless of their willingness to meet the

legal standard of care. The point, of course, is that they are very important. Their help is sorely needed. (Please note that I am speaking here only of the duty of care. If these desirable board members are breaching their duty of loyalty or duty of obedience, that simply cannot be countenanced as they are affirmatively impeding the nonprofit's performance of its mission instead of "merely" (not an ideal word choice) failing to perform their duty of care. The duties of loyalty and obedience are discussed briefly below.)

Accordingly, an executive director, and thus the organization she serves, desperately wants and needs people of the types described above on the organization's board.

Now, we all know that an executive director having board members of the types described above (i.e., those who are not fulfilling the duty of care, as legally defined) should work assiduously to educate them as to their fiduciary responsibilities and to encourage them to fulfill their duty of care. I am sure that many executive directors do just that, often with help from the board members who are good fiduciaries. Nonetheless, as a practical matter, many of the most valuable people in the categories described above simply do not move readily towards meeting their duty of care. Also, pressuring the "desirables" described above to meet their duty of care can be counterproductive to the overall well-being of the nonprofit. An organization can, for example, impose requirements for continued board membership. But neither the board nor the executive director would

be eager to do that if the effect of those requirements would be to toss off the board many of the people described above who are considered so necessary in making the organization succeed. The most prevalent example of such a requirement is attendance at a specified percentage of board meetings.

A somewhat remote analogy that has occurred to me regarding requirements to stay on a board lies in the emphasis of U.S. foreign policy on fostering democracy in many of the countries we aid. Some commentators have noted that maybe we should push for stability first and then, once stability has been achieved, seek to encourage democracy (i.e., "good governance"). In the nonprofit context, if we insist that every member of a nonprofit board meet her duty of care, effectively causing those who don't to be fired from the board, won't we risk destabilizing an otherwise stable nonprofit by depriving it of help it vitally needs. In short, won't we be creating a nonprofit that is (a) perfectly governed by current standards but (b) going out of business?

A disconcerting thought in this vein is that lawyers may best fit the description of "good fiduciaries" under applicable legal standards, because they know those standards and understand what meeting them entails. On the other hand, they may well be lacking in talent and inclination as to the special characteristics—such as fundraising—described above. Thus, a board composed solely of lawyers, while perhaps terrific in meeting legal

duties, may prove highly detrimental to the overall well-being and success of a nonprofit.

In thinking about the desirability of having board members with the special skills described above, it should be noted that New York's Not-for-Profit Corporation Law requires that a board have a minimum of only three directors. Section 702. Furthermore, the N-PCL provides that, in the case of a three-member board, a quorum for most purposes may consist of a single person. Section 707. Under Section 707, the general rule is that, absent a contrary provision in the certificate of incorporation or by-laws, or in the N-PCL, a quorum consists of a majority of the "entire number of members" (a phrase defined to include vacancies). Accordingly, under the N-PCL, a three-member board having a quorum requirement of two members is fine and a requirement of two is one more than is legally required for most purposes. Section 707 also provides that the certificate of incorporation or the by-laws can set a quorum requirement at a minimum of one-third of the "entire number of members" in the case of a board of fifteen seats or fewer, and a minimum of five members plus one additional member for every ten seats (including vacancies, as noted) or fraction thereof, in excess of fifteen. In short, a quorum can be very few in the case of a small board, or a modest percentage of the board in the case of a larger board (e.g., 7 of 35, or 20%, in the case of a board with 35 seats). Thus, on a closer inspection, the NY N-PCL, while imposing the duty of care on all board members, does not

actually require many members to show up for the nonprofit to conduct a board meeting.

It is interesting to note in this regard that the New York Attorney General has proposed legislation, in response to the Adelphi case, that would effectively increase quorum requirements for many nonprofits as to votes on officer compensation. The proposal would require a vote of a "majority of the entire board". Thus, for a board having, say, 40 members and having, say, 3 vacancies, 21 of the 37 current board members would need to be present and vote to approve officer compensation. The proposed legislative changes do not, however, otherwise affect requirements as to the minimum size of a board. Thus, the proposal would have the effect of making a vote of 2 people be entirely satisfactory in the case of a 3-person board and a vote of 20 people be unsatisfactory in the case of the board described above having 40 members.

I believe that such a proposal, if enacted, would have a significant impact on board composition by effectively necessitating, in many cases, the firing of a number of "desirables" described above from the board in order to enable it, as a practical matter, to meet the "majority of the entire board" requirement for approving officer compensation. This is a good example of a potential development that, while legitimately responding to a situation of bad governance, would do so in a manner that would only exacerbate the clash between legal requirements and the "realities" described herein. Enactment of the proposed officer compensation voting

requirement would intensify the problems described above as to the desirability of retaining on the board a number of individuals having poor records of board meeting attendance. (I should note that section 715 of the N-PCL already requires a vote of a "majority of the entire board" unless the fixing of salaries of officers is "done in or pursuant to the by-laws." By-laws, however, ordinarily provide a procedure that avoids a vote of the "majority of the entire board.")

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Given the state of current law, what solutions are there for a board and its executive director wishing to meet the requirement that every board member satisfy the legal standard of care, but not wishing to lose the support and zeal of the individuals described above who are, by definition, not meeting the standard of care but who perform vital roles for the organization? Only a few potential solutions are available.

One option is the "Advisory Board" model, in which the individuals who are vital but who are not meeting the standard of care are put on an Advisory Board, having been demoted from, or never promoted to, director status. This leaves the board with fewer members but, under New York law, that doesn't matter from a legal standpoint as long as three are left. The problem with this solution lies in the loaded, but I believe fair, words I used to describe the relative status of an Advisory Board role -- "demoted" or "not promoted." Basically, the Advisory Board isn't "The Board." Since most human beings (and probably animals too) desire a

measure of status and recognition, having those vital individuals serve "only" on the Advisory Board, or, more likely, refuse to serve "only" on it, is not likely to make them as useful to the nonprofit as they would be if they enjoyed the status of "being on the Board." (As years pass and I find I know more and more people without full-time jobs, I am struck by how important being on one or more "boards" (and I don't mean "Advisory Boards") seems to be to their senses of self-worth, importance and relevance). So, from the standpoint of the executive director I've been referring to, Advisory Board status for individuals who are vital but do not satisfy the standard of care may be good governance, but is not a good solution.

A second and more subtle approach that I personally have not seen in operation is the one using the executive committee as "the board" for most purposes and having, say, one full board meeting each year. Boards are, of course, free to create board committees (N-PCL § 717(b)), and such committees may include an executive committee. Section 717(b) provides as follows:

> "(b) In discharging their duties, directors and officers, when acting in good faith, may rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by: . . . (3) a committee of the board upon which they do not serve, duly designated in accordance with a provision of the certificate of incorporation or the bylaws, as to matters within its designated authority,

which committee the directors or officers believe to merit confidence, so long as in so relying they shall be acting in good faith and with that degree of care specified in paragraph (a) of this section. Persons shall not be considered to be acting in good faith if they have knowledge concerning the matter in question that would cause such reliance to be unwarranted. Persons who do perform their duties shall have no liability by reason of being or having been directors or officers of the corporation."

The executive committee may, if authorized by the full board, exercise all the powers of the full board except those enumerated in section **712** of the N-PCL, as follows:

"(1) The submission to members of any action requiring members' approval under this chapter.

(2) The filling of vacancies in the board of directors or in any committee.

(3) The fixing of compensation of the directors for serving on the board or on any committee.

(4) The amendment or repeal of the by-laws or the adoption of new by-laws.

(5) The amendment or repeal of any resolution of the board which by its terms shall not be so amendable or repealable."

This system focusing on the executive committee contemplates that board members not otherwise meeting the standard of care will do so

for one meeting each year -- basically for the purpose of ratifying the work of the executive committee and confirming that it "merits confidence," in the words of section 717(b) of the N-PCL permitting delegation to committees.

Since the N-PCL does not specifically require a minimum number of board meetings per year but contemplates at least an "annual meeting", this use of the executive committee to function as the board seems to be clearly permissible (assuming some minimal number of full board meetings occur, say one each year, and assuming that the executive committee does not exercise the powers enumerated above that are reserved to the full board).

In this model too, however, there are problems as to achieving the desired sense of stature and involvement for the board members not meeting the standard of care (except as to delegation to the executive committee). Since these individuals are not on the executive committee, they only go to a board meeting (or are invited to one -- which may be more important, since attendance rates for our group not meeting the standard of care are not high) once each year. Thus, their ties to the organization aren't as strong as they might be. Perhaps this is dealt with somewhat through board committee meetings at which this group is active, such as the Development Committee or the Real Estate Committee. I expect, however, that a sense of two tiers -- board "insiders" and "others" -- is inevitable in this structure focused on the executive

committee. For those on the Development Committee or the Real Estate Committee, but not on the executive committee, non-"insider" status may be particularly grating because their expertise and efforts seem to them to be at least as vital to the nonprofit as the routine oversight functions they perceive being performed by the executive committee.

A third option that has occurred to me, but that I have not seen discussed, is that of a combined board meeting/executive committee meeting. Having articulated this concept, I have to admit to being unclear as to how it would "work" in terms of its relationship to the N-PCL. If the meeting is technically an "executive committee" meeting to which all board members are invited, there are some obvious infirmities as to achieving our goal of making the group not meeting the standard of care feel like first-class board members. First, they would be well aware of not being members of the executive committee. Second, as non-members, they could not vote at the meeting. Nonetheless, the invitations to regular meetings and the ability to attend regular meetings, for those willing to do so, would offer more involvement and potential involvement than would meetings of the executive committee to which non-executive committee members were not invited. Also, as a practical matter, votes are rarely close or contentious and so having those running the meeting act as though the non-executive committee members "counted," i.e., not emphasizing that their votes didn't "count," could be helpful in making all attendees

feel involved, even though, in fact, only the executive committee members counted.

A possible refinement to this model that might help as to the sense of involvement (or perhaps more importantly as to the sense of not being excluded) would be to include on the executive committee any board member who wanted to be on it. Board members would be told that if they signed up for the executive committee they would be expected to attend meetings regularly, review financial data regularly and perform other tasks expected of the good fiduciaries of the organization. A person not electing to joint the executive committee would know that she or he <u>could</u> join at any time and might prove to be grateful for having board member status while not feeling inadequate or inappropriate by reason of missing the executive committee meetings, attendance at which, for non-executive committee members, would be described as, and would be from a legal standpoint, truly optional. Such a board member could feel good about her board service (and free of guilt, in the case of those inclined to feel guilty) by reason of (a) performing her specialty function (e.g., fundraising, helping with real estate, etc.) and (b) attending one board meeting per year. Nonetheless, I would remain concerned that at least some of those not on the executive committee would feel more like "outsiders" than would be desirable.

The fourth approach to our problem -- of reconciling (a) the legal duty of care with (b) the necessity of having those not meeting it have a

role they would want to describe as being a “board member”-- takes a different course. Instead of trying to circumvent the problem while remaining within the current legal context, we might change the law to reflect the realities described above. My research on this topic has not been extensive, but I have not seen it dealt with anywhere. Mr. Bowen certainly recognizes the problem posed by the inattentive director and Mr. Kurtz refers specifically to the possibility of changes in the law to deal with this problem, but, tantalizingly, he goes no further. William G. Bowen, *Inside the Boardroom,* John Wiley & Sons, Inc. (1994); Daniel L. Kurtz, *Board Liability*, Moyer Bell Limited (1988). Specifically, Mr. Kurtz writes (at p. 30):

> “The law, however, does not distinguish among these types of directors [those meeting their fiduciary duties and those who do not]. All are subject to the same duties; all are potentially subject to the same liabilities.
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> “Nevertheless, such board service, almost always gratuitous and frequently involving substantial commitments of time and money, is a widespread phenomenon in the nonprofit world and may account for the implicit sympathy with which courts seem to view the conduct of directors when challenged, at least when no conflicting interest is present. However, until the law clearly recognizes this legitimate need of nonprofit organizations, nonprofits should strive to avoid the dilemma of the passive

donor/director by finding or creating suitable alternatives for recognizing and rewarding individual service and generosity."

Other materials I have seen articulate very well the obligations of fiduciaries and the importance of having good ones on the board, but those texts assume (as well they might since that is the law) that every director must be a good fiduciary.

Inherent in some of the options described above for doing an "end-run" around the inattentive board member is the implicit recognition that a board having a number of members meeting the standard of care, and also having a number of members who do not, may still be considered a "good" board. This could be made explicit by modifying the law to permit it to happen without putting in place the awkward "end-runs" described above.

As is apparent, I think this is an important issue in terms of having the law reflect reality because I believe that a vast number of nonprofit boards are bifurcated in this fashion. There is a core group performing well as classic fiduciaries and there is also a substantial group not performing in this manner. As noted, the options described above for dealing with this issue under current law all have infirmities as to causing some board members to feel "second class."

It seems important to note, however, that the situation I've just described of some good board members and some inattentive ones isn't a problem as a practical matter. It's very common, as noted, and we all

know that board members are rarely called to account for bad conduct. In the situation where there are 10-15 “good fiduciaries,” there is only a tiny likelihood that the inattentive board members will be called to account because it is posited that the nonprofit in question is adequately or even well governed and overseen by the good board members. As noted, low quorum requirements implicitly accept a form of disobedience to the standard of care (i.e., non-attendance at board meetings) but, nevertheless, the legal standard of care is supposed to be met by every board member.

In terms of trying to address the noncompliance with the duty-of-care problem under current law, a first cut at an answer might look to the concepts of delegation already embedded in the N-PCL. Section 717(b) permits delegation to a board committee that “merits confidence” in it by the delegating board member in question. In lay terms, existing law contemplates a thoughtfully made delegation, but leaves those delegating responsibility with a general and limited oversight responsibility for those to whom the delegation is made. Presumably, this oversight obligation can be met under current law by thoughtful, prepared attendance at the annual board meeting contemplated by the “delegate-to-an-executive-committee-except-for-an-annual-full-board meeting” model described above.

Keeping this in mind, might there be a revision to current law that required each director either (a) to meet the prudent person standard of section 717(a) of the N-PCL (still chauvinistically articulated as the

prudent "man" standard) or (b) to determine that the board contains a sufficient group of other directors who are meeting that standard on an ongoing basis (i.e., a group that "merits confidence"). A director not meeting the prudent person standard would be required to make this determination—i.e., that there was a good fiduciary group that did "merit confidence"--to be relieved of responsibility for meeting the requirements of the prudent person standard currently imposed on regular board members in non-delegation situations. The "merits confidence" determination would be required to be revisited from time to time to see that it still held true. For example, the good fiduciary group might send minutes and other reports to those directors not in the group. Thus, this proposal would resemble the "executive committee/one-full-board-meeting-a-year" proposal but without having specified "ins' (the executive committee) and specified "outs" (the rest). Everyone would just be a "board member." Some would serve as prudent board members under current standards involving regular attendance at board meetings and other indicia of meeting the standard of care. Others would determine that those so serving "merited confidence." All board meetings would be just "board meetings." Accountability would exist for those not actively participating (except at one meeting per year) because, in the event of a problem involving potential board liability, they would need to demonstrate that they had taken steps to establish that the board, as it had been functioning, "merited confidence." Their risk would be that of nonfeasance. Perhaps it

should be necessary for each board member to formally elect and notify the board of his status of regular board member or delegating board member, but a member could change that status at any time, with notice of the change being given to the other board members. This would recognize in a legal context the reality that is widespread today -- inattentive board members effectively counting on other board members to fulfill the fiduciary obligations of the board as a whole. Viewed in a positive light, it might serve to increase the sense of fiduciary responsibility by those directors who now largely ignore it. Instead of imposing a burden they refuse to meet, and thus ignore, it would offer a measure of risk reduction for them, and exoneration, provided they attended to minimal "merit confidence" responsibilities as to those they considered to be the good fiduciaries. From a governance standpoint, if that occurred, nonprofits would gain a bit more oversight and the current unattractive situation of widespread violation to statutory fiduciary obligations would be somewhat ameliorated (i.e., some board members would face a lower fiduciary standard than that provided by current law, but they would meet it).

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I'll close by seeking to distinguish the standards I would change regarding the duty of care from the standards I would not change that are applicable to the duties of loyalty and obedience.

The duty of loyalty and the duty of obedience are different from the duty of care when analyzed in terms of nonfeasance. Ordinarily, a

breach of the duty of loyalty involves an act which the director knows involves putting some interest (often his own financial interest) ahead of the best interests of the nonprofit he serves as a director. For example, he might persuade the organization to buy insurance though him, as a broker, knowing that the cost of the insurance is greater than the best price available for comparable coverage. A violation of the duty of loyalty is inherently harmful to the nonprofit if it is permitted to occur, as may well happen even with a vigilant board because the violating director does not reveal the conflict (e.g., does not reveal his financial interest in the insurance brokerage firm he is encouraging the nonprofit to use to buy its insurance). (It is certainly possible, however, to violate the duty of loyalty through ignorance, as when a board member pursues a course of action directly contrary to the interests of the nonprofit he serves, without knowing that the action is in conflict with the best interests of the nonprofit (e.g., bidding to buy real estate for which the nonprofit, unbeknownst to the director in question, who has missed the relevant board meetings, is also bidding). One could also characterize such an inadvertent violation of the duty of loyalty as more in the nature of a violation of the duty of care. My point here, though, is simply that violations of the duty of loyalty tend to be knowing and intentional acts, whereas violations of the duty of care are inherently sins of omission.)

Similarly, a violation of the duty of obedience tends to be in the nature of a knowing act. The director may be unaware of the duty of

obedience, but he would be aware of the act that violated it (e.g., voting to use the funds of a cancer research organization to provide after-school sports programs). A violation of the duty of obedience is also inherently harmful, assuming that it results in an act of disobedience to the organization's purposes.

What is interesting and different about a violation of the duty of care by a director is that it doesn't matter IF other directors are on the job carrying out their duties of care in a manner that assures the prudent functioning of the nonprofit.

Thus, while I would advocate changing the standard of care by letting inattentive directors off the hook as to meeting their regular duty of care—where the acts of other board members are causing the board as a whole to meet its overall duty of care, there is no comparable logic for letting directors off the hook for violating their duties of loyalty and obedience. As a practical matter, this means that an otherwise inattentive director must know enough about what is going on at the nonprofit on whose board he serves to be confident that his acts on his own behalf, or on behalf of others, are not in conflict with the interests or mission of the nonprofit.

To conclude, I hope that, as you ready your objections to the lowering of the standard of care for some board members suggested by this paper, please bear in mind that such a change (a) would do no ill to the nonprofit, on the assumptions stated above, whereas lowering the

standards of loyalty and obedience would, and (b) would bring the law into sync with the necessities and realities of board composition described above, as viewed from the perspective of seeking to foster truly successful nonprofits. My hope is that the proposal here will stimulate discussion that will serve to improve it from its current nascent state.