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SUMMARY KEYWORDS

board, director, ceo, company, board meeting, shareholders, board members, corporate governance, boardroom, questions, ratner, eagle, commandment, chair, mandatory retirement, employees, gordon, meeting, executive, number

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Hello and welcome to the buck stops in the boardroom empowering today's directors, today's topics, board composition 10 commandments for the board and the director Bill of Rights. But first, a story I like to call a bird in the hand. Well, it's not my name. It's the name of the Wall Street Journal gave it it's a true story about Gordon Jory corporation that appeared in 1989, and much less detail than I'm going to give you. It was in a 1989 article entitled A bird in the hand. At the time, Gordon's was the second largest retail jeweler in the country. With 660 stores in 44 states in Puerto Rico. We had 500 million in annual sales. In 1905, my grandfather started the company in Houston, Texas. My father and uncle expanded at after World War Two. Gordon's had been a public company on the New York Stock Exchange since 1963. But was family managed and controlled. In 1989. I was a board member and executive vice president of Gordon's when the board decided to sell the company xhale jewelers, the largest retail jeweler in the United States, and Ratner's jewelers, the largest retail jeweler in England, were the final two bidders after a three month public auction sale process. And our upcoming board meeting the two bidders were going to make their final and best offer to buy Gordon's the critical issue inside Gordon's board meeting that late evening in February 1989. Turned out to be price versus certainty. With our board having a legal duty to maximize the purchase price for our shareholders. We basically had two choices. We could pick Ratner's conditional, conditional $39 per share offer, but it was conditioned only on a rubber stamp approval from its board. Or we could accept Zales unconditional 3750 Take it or leave it offer. Both offers were all cash based on assurances from Gerald Ratner Ratner's chair and CEO that his board approval would be a rubber stamp. And based on the recommendations of our counsel, and advisors, Goldman Sachs and our wall street lawyers. The board unanimously chose Ratner's at $39 per share, and the Board Meeting adjourned at three in the morning. I went home to bed for a short sleep that night or that morning knowing that when we reconvene the board meeting later that afternoon, we would have the rubber stamp from Ratner's. However,

when I walked into the board room at the start of our reconvened meeting, I saw a lot of glum faces on my fellow board members and saw our wall street lawyer sprawled on his back on the floor of the board room. never a good sign. He said his back pain was bothering him again and I soon discovered why the rubber stamp was a dead duck. Ratner's board had rejected the deal. The $39 offer was history. Goldman Sachs now called xhale, who say they're still interested in the acquisition, but only at $33 per share. Not there 3750 Take it or leave it offer that we had rejected the night before. For me, it was so frustrating to learn that we had let 3750 a share slip through our fingers and now we're at 33 the difference of $38 million dollars to our shareholders. But fortunately, the story has a happy ending. Thanks to the negotiating skills of Goldman Sachs. Our deal close with xhale at 3675. Only 75 cents less than Zales Take it or leave it offer of 3750 the moral of the story, a bird The hand is worth two in the bush and the buck stops Up in the boardroom,

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we made an unfortunate choice in initially picking Ratner's over xhale. And had things turned out differently. Our choice would have really hurt our shareholders. The buck stops in the board room on President Truman's desk. He had a sign that said the buck stops here. Probably just like mine, except they probably didn't have Lucite in the 1950s. This buck stops here sign or one like it should be in every boardroom in America to make sure that directors understand that the buck stops in the boardroom. directors have to blame themselves for mismanagement or fraud, or ignoring shareholders. If something bad happens, the first question anybody's got to ask, Where was the board. And most importantly, boards need to know how powerful they are to prevent mismanagement, and fraud. They're actually more powerful than anyone. They're more powerful than the accountants and the auditor's the company attorneys, the SEC, the stock exchanges, the stock analysts, the media, and the stockholders and even more powerful than the plaintiffs attorneys. So now that we all know that the board is the most powerful force, let's talk about board composition. You may have heard the phrase independent directors who are their independent, well, their paper test for that their legal test for that. But there are no psychological tests for that. So you may well qualified to act, excuse me to be independent on paper. But if you go in the boardroom, you want directors are going to they're going to act independently in the board room. So how do you act independently in the board room? Well, first of all, you're a helpful skeptic, a helpful skeptic. Well, what does that mean? Well, you use words that actually work in the boardroom. Like, I don't know, somebody brings something up and you're not sure. I don't know, three of the most important words in the in the boardroom context. Other words that work you couple with it? I helpful six skeptic says, I don't know. But let's let's talk about it. That's what a helpful skeptic does in the board room. They assume nothing. They question everything. They encourage discussion, they suggest alternatives. They be respectful of other opinions. They bring constructive friction to the boardroom constructive frictions, probably about the best way to describe it. In addition to being unhelpful skeptic, you want all board members to have courage to

ask the necessary questions, and to admit that you really don't know. And that you need to understand, and that you will not be intimidated intellectually in the boardroom. And also really to be the crab the courage to be a lone wolf. And we'll talk more later about this lone wolf. And finally, if you're going to act independent in the boardroom, you want a director to trust your gut or trust their gut their intuition. Of course, we'll have more on that later. So we just talked about the criteria that we'd love all directors to have, well, what about some of the directors, everybody doesn't have to have all these these are just we want some of the directors to have? Well, one is a track record of contributing and implementing a successful corporate strategy, either as a board member or an executive. Some directors we want at least to have an extensive extensive knowledge of the business and the industry. And we also want diversity with regard to skills and operational experience, as well as race, gender, age, and other characteristics.

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This is my Eagle award. This is the first one I'm going to share with you. This one's called give HR a chance eagle and the eagle award is simply awards I give to companies and boards and individuals for excellence in corporate governance. The winner of the give HR a chance eagle is us two companies select comfort and our pharma they're both in the $1 billion revenue range. The excellent that one excellence that won the award. They named top human resource officers at General Mills and Avon to their respective boards. The rationale is human resource professionals are experts in talent assessment, leadership development, compensation, organizational change, and effectiveness and employee motivation, and retention. These HR professionals add diverse experience and skills to the board. But what about females on the board? Well, female financial experts have inside track for board positions. Governance reforms have put a premium on financial expertise, requiring boards to recruit directors from finance and accounting, where high level women are represented in larger numbers than at the CEO level. financial experts typically are someone with the CFO, or audit partner experience of our largest 500 companies. 7% or so of the CFOs are women versus less than 2% of CEOs

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at Deloitte

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16% of the audit partners are women. So the point is finance and auditing career tracks have been more favorable to women for board positions. What about current CEOs as directors, everybody wants current CEOs as directors. And because of that, it's difficult. They have minimal time for outside activities. Typically, a board would not want their CEO to sit on more than one outside board and typically put in a limit on the CEO. The CEO is going to need to ask his or her

current board for permission. And oftentimes it's denied. And there is a risk to the CEOs reputation if you've joined the board and something goes wrong on

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that board.

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How are you looking for for directors? Typically, these are gross generalizations but breaking it down into C titles. The Chief Executive Officer, CEO, CFO, CEO, CTO will you get the point? division titles, the D titles, divisional president divisional CFO, HR directors and V titles vice president typically you'd want them if they're going on your board from a larger company, possibly also financial accounting and legal experts. And what about the professional directors, those folks who are retired CEOs and definitely want to do more than just play golf. Everybody else is in the candidate pool of university presidents, retired military, brass hospital administrators, you name it, they're out there. The only concern I would have and it's not a big concern. But trophy directors, trophy directors are those folks. People with very high name recognition and a great reputation and you want them on your board and you don't, you don't care. You just want them on the board. You don't expect them to do any work. And you don't expect them to be qualified. That's a dangerous that's a dangerous thing to do in today's world. So trophy directors are fine, but they need to be qualified and they need to be willing to do the work. the right reasons to get on board. So Daniel Burnham, who was the former chair and CEO of Raytheon said, quote, We owe it to America to take the job in quote. Also some quotes from well known directors quote, it's the hottest game in town played by top professionals, he learned from and exchange ideas with the best other quote, satisfaction of applying my accumulate accumulated experience, not using it anymore would be a crying shame. CEOs say CEOs get better perspective and ideas from serving on other boards, see how other CEOs do it. fascinated with the company and want to be associated with it. And finally, According to USA Today, it's the ultimate networking opportunity. So if you're being asked to join a board or considered to be joining a board, what should you do? What due diligence should you do? Well, they're going to do some on you. But let's talk about what you're going to do on them. Well, first of all, you better find out for sure how much time this is going to take how many board and committee meetings Do they have are the meetings in town and they add a town, all that kind of thing. So the the number of hours can be incredible 500 hours at big companies if you're the chair of Audit Committee, in an in a year, sometimes two to 300 hours a year for for regular directors, what's the financial legal health of the company, you can actually hire your own accountant or attorney it kind of company expensive Of course they've got to approve of that. But to check out the legal The financial perspective from your side what control systems and procedures are in place? Are there investigations or shareholder litigation within the last five years? Are the CEO and senior

management are the folks in place the right people? Where you're going to have to replace the CEO fairly soon FDA come on board. Has the board been responsive to shareholder concerns, especially public boards? And they've been responsive to shareholder requests and proxy initiatives? What about director protections? What about their DNO insurance? They have enough directors and officers insurance? Are the corporate indented indemnities of you as director? sufficient? Do they have enough general liability insurance? Do they have a director orientation program? Do they pay or at least encourage you to attend director education programs? The most important is really what they're expecting from you. Because you've got demand is their expectation. So just make sure that you know exactly what they expect of you.

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Who should you meet in your due diligence process where you'd like to meet as many people as you can, and I'm going to list them all. And some people, you know, it's up to the individual situation. But here are some of the people to consider the chair course the chair of the board or lead director and Orly, director, CEO, CFO, CEO, other senior officers chairs of the audit and other committees, other directors, former directors, external auditors, internal auditors, outside counsel, legal counsel inside legal counsel, couple of examples of due diligence by prospective directors, one director wouldn't accept the board seat until he sat in on two board meetings, to convince himself that the board was up to snuff. That's a really good idea. I think it's very difficult, I would think, in practice. To get that a lot. One director sent a team of his financial experts to the company recruiting him, they took over a week to examine its accounting procedures before he was satisfied, and agreed to join. Okay, so now we've got you, we know what kind of director we're looking for the directors on board? How do we get him or her off the board? What's the exit strategy? Well, the board's got discretion here, just some things that boards have done or continuing to do. They would require that the director offer his or her resignation, if there's a change in personal circumstances. So for example, if there's any significant change in the directors personal health that would inhibit him from carrying out his duties as a board member, is there a change in the directors principal job responsibility, where, where they work, and at least once every three years, corporate governance committee should formally review each directors continuation on the board. And during the review, you want the director, if they want to be up, again, to commit in writing or commit to you that yes, they do want, they want to be proactive, they do want to continue on the board. Some board members want to get often. This is a good time with during that review, peer evaluation. So same thing, every one to three years, individual directors basically rank each other and share information without using the names of who write to. So depending on how things come out, if you're if you need to convince somebody to get off the board, the chair or the presiding director or the lead director, should have a one on one with that underperforming director and give them some give them some serious heads up, that they're not carrying their weight. And if they don't improve, they won't be put up again, for reelection. And lastly, on director exit strategy, what we talked about just before the exit strategy was all

board discretion? Well, there are, if have been adopted by the Corporation, there are mandatory retirement limits and term limits, and the reasons for and against mandatory retirement and term limits. Well, let's take the reasons for Well, first of all, it refreshes the board with new people and new ideas and it's that's going to happen. Another good thing is it removes all underperforming directors. So as far as that conversation, hurting somebody's feelings or worried about it or whatever feelings are gone, you're, you're either hit that retirement age or your terms over and you're out so there's no feelings. So those are the reasons for now what about the reasons I get At least Well, as you get on a board you gain experience at the company shifts are going to get better and better and better as a board member. So as your value increases, you come up against this arbitrary artificial boundary of age or, or a number of years your term, and you're gone. So just is really hitting your maximum productivity sometimes are really getting where you're given the best value, you're gone, you're out of there. And frankly, it forces you to remove your best directors. And I had one director Tell me the story. He was a shareholder in a big company that Warren Buffett was on as a director and one of the proxy, the proxy materials were sent out. And one of the questions that the shareholder needed to vote on was whether to put in mandatory retirement for H at 75.

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And so the director, who was filling it out, he looked at the board composition and looked at their agents, and he was a big believer in mandatory retirement ages. But as he looked down, and he saw Warren Buffett, and his age was 82. So he said, No way. So just remember that the mandatory retirement and term limits going to force you to get rid of Warren Buffett or all your best directors. So now we're into our second topic of the day, and that's the 10 commandments for the board. These are the tools of the trade and they actually fit. They fit on the back of a business card. I know you can't see this, but trust me, they do. So commandment number one, number one, know your job and then just do it. So what's a board members job? exercise your duties of care and loyalty to the company and its shareholders to maximize long term shareholder value? All right, well, what's this duty of care all about? Well, the duty of care is to maximize long term shareholder value. We just mentioned that. So how do you do that you maximize corporate profits, and treat the stakeholders well. And the stakeholders who are the stakeholders were the stakeholders are the employees, the customers, the suppliers, the creditors, and the community. And the idea is if you treat your stakeholders, well, then your shareholders will benefit. However, how do you treat stakeholders in the sale of a Delaware company where the stakeholder interest and the shareholder interests are in conflict? here's a here's an example. Offshore buyer comes in $40 a share all cash offer to the Delaware company. But offshore buyer says look, you know we can pay you $40 a share which is premium price, nobody else can pay you that money. And the reason we can pay you that money is we are going to fire all your employees. We're gonna move all the operations offshore. And this beautiful company town of you name it is going to basically be decimated and dry up because the company is gone.

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Haha.

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Board says Well, we now have white knight buyer. So we've got an offshore buyer we've got now white knight buyer. And White buyer says, Look, I'm going to keep everything the same. I'm going to keep your employees I'm keeping operations, the town's going to be fine. We're everything's going to be good. But I can only pay you $30 per share all cast. So you've got the $40 offshore buyer, the company's gone or the $30 share. White not buyer, the company stays course the stakeholders they want that $30 a share the shareholders want the $40 board decision choose offshore at $40 per share shareholders when stakeholders lose in this Delaware company transaction but stakeholder protection laws in some other states, so be careful what state law applies. So that's the duty of care. What about the duty of loyalty very simple company comes first? No no. No exceptions. key term here conflicts of interest. What's a conflict of interest? It's a director officer employee. Their private interest interferes with a corporate interest in any way or even appears to interfere. Here's an example. The Chief Executive Officer, his real life example, Chief Executive Officer of a very well known licensing company, receives equity from the licensee that they're granting a license to, so he's getting an equity stock in the deal. But when the audit team discovers this, he says, well, but the board knew about it.

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Well,

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that's a problem, because it wasn't in writing had the board known about it, that was a different story. But they would have had to put something in writing that can backup his case. But if it's not in writing memories tend to get fogged over time. So that's an example of a conflict of interest where the CEO of the license or is also an equity owner, basically, in a customer. Now, we mentioned just briefly, there is a safe harbor in this conflict of interest deal, so you don't breach your duty of loyalty. So you just get written Board approval, but it's got to be just and reasonable to the company. And the interested director, or officer, excuse me, interested director doesn't participate in the discussions or the voting. Simple example, if the company wants to rent space from office building that happens to be owned by the director, well, if they get a good deal, or at least a fair market value deal, then that's a good deal for the company and they should go ahead and use the Safe Harbor and get it in writing. The other key phrase besides conflict of interest is misappropriating a corporate opportunity. So the idea here is no director officer or employee may

personally exploited an opportunity that they found out about by using company property or company information or their position. They can't compete with the company. One real life example a CEO would steer customers potential customers coming in, he would steer them to his personal company that competed with the company. That was a really blatant example. The other thing that you can't do to misappropriate a court misappropriated a corporate opportunity is use corporate property or information or position for personal gain. Or the typical example here is there's an unauthorized borrowing of corporate funds buy by CEO for personal use. Alright, so now we're on to commandment number two, exercise ultimate authority, the buck stops in the boardroom. All boards have the ultimate authority and responsibility at the company. If something bad happens, ask, Where was the board you oversee, but you don't manage day to day operations belong to senior management. commandment number three, oversee by establishing controls systems and procedures, I call them csps. So the whole idea here is make sure csps are in place for every area of your company and make sure they're not only in place, but they are emphasized and enforced. For example, in the financial area, the cyber area, everybody's talking about cyber today. operations, compliance emergency response plans or conflicts of interest. Make sure csps are periodically evaluated and updated. And here's an example for real life example we'll get into did Yahoo. have proper control systems and procedures in place? Well, I give them my failure to communicate ostrich and the reason I call it an ostrich is these are four dubious distinctions in corporate governance. The ostrich motto is never attribute to malice, what can adequately be explained by dubious decision making? Okay, well the winner of the fail failure to communicate ostrich. The winner here is CEO Marissa Mayer and the entire Yahoo board. Here's the situation. Russian hackers stole over 1.5 billion billion with a B, Yahoo personal accounts and all the personal information that goes with it. In 2013 and 2014. CEO Mayer inexcusably claimed she didn't learn to the attacks until two years later. The board claims it was left in the dark about breaches. The board cancelled, mayor's 2016 bonus and 2017 equity award. Well, what's the dubious distinction here? The Yahoo board declared quote, failures in communication management, inquiry and internal reporting contributed to the 214 2014 hack. The two breaches cost Yahoo shareholders $350 million, the reduction in the Verizon purchase price, the best practice, the board is ultimately the board is ultimately responsible for making sure adequate control systems and procedures are in place.

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And Yahoo's board may have likely failed to do so in this instance, commandment number four delegate duties and rely on outside experts. You rely on reports and advice for Management Council auditors and other outside experts. You can't you shouldn't try to do everything yourself, ie delegate the day to day operations to officers, you hire accountants, attorneys and technical, technical people compensation folks in cybersecurity experts is needed. But what about these outsiders that come in and make reports to the boardroom, for instance, or prepare written reports to you? Are they biased? Do you think about that when they come in? Do you think? You

know there are all kinds of questions to ask a couple of questions is, do they they're concerned about losing the company's business if they speak their mind? lawyers sometimes don't necessarily want to tell you the whole truth and nothing but the truth if they think CEO is going to fire him. So I've heard what about personal relationships with management is reserved? Does this outside expert have any personal relationship? It's just something that the director should do to qualify. You need to be prepared, you need to probe you need to ask questions about their assumptions, processes and substance. And if you don't understand or agree, don't approve it. Very simple. You just trust your gut. And to explain this trust your gut concept. You may have seen the movie 12 Angry Men. Well, it was the 1957 Best Picture Oscar nominee was in black and white. Basically, Henry Fonda's character, trust his gut in this movie. And what you've got is you've got basically a murder trial. The whole movie takes place in a jury room, which is pretty much like a boardroom. And Henry Fonda is one of the 12 jurors. And on the first vote, the the vote 11 to one guilty and Henry Fonda is the only holdout. So the following quote is from the movie, we have found his character talking to his fellow jurors in the jury room during deliberations in this murder trial. He's criticizing the defense lawyers performance, quote. I began to get a peculiar feeling. Everybody sounded so positive. Nothing's that positive. The defense led to many things go by little things. It's possible for a lawyer to be just plain stupid. They're only people and people make mistakes. Could they be wrong? This is not an exact science and quote, The rule trust your gut. Even lawyers can be just plain stupid. Can I add the number five act only as a full group at a meeting or by unanimous consent? If you're not having a meeting, telephone meetings are great. But be careful about discussing something that's hard to really follow on the phone don't do a big merger on the phone in 30 minutes like they did in WorldCom. You know accounting issues, mergers whatever it is, if it's complicated you need to have a telephone records face to face meeting. The business judgment rule does apply and that basically legally protects board decisions provided there's proper process was followed in the decision making. So you know before you made a decision Did you get input from everybody you needed to the council your employees you know who's ever involved otherwise board members proper deliberation, all that kind of thing. So you basically use written consent, it's basically a piece of paper, you send everybody that they sign and say they unanimously consent to some kind of board action. And you do that for just simple board matters that don't need discussion or confirming prove, or if you could use it just to confirm, confirm, previously agreed action. Unlike officers, individual board members have no authority to act for the board

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or the corporation unless they're deputized. So if the board wants a board member to go represent the company and bind the company, they can do that they would just need proper authorization to this person say your this is your authority for this ag. commandment number six on the strategic plan and the annual operating plan, you give input to you review it, you revise it, you understand it, and you approve these plans. And these plans are prepared by the CEO and

senior management and in your job is to help them have the best plan and hope but hold them responsible. You know, there's so many questions asked, we can't even really begin to broach the subject. But some of the questions you ask typically are the primary risks to the business plan identified and prioritize? And who monitors the risks on a current basis? Also, are you as a director, are you committed to the plan? Are you committed? Are you just involved? We all know the story of bacon eggs. Well, if you love breakfast, as much as I do, breakfast and eggs is bacon and egg, excuse me is my favorite meal at breakfast. And if you look at your plate, and you see the bacon and you see the eggs, you can see the chicken is involved, but the pig is committed. So as a director, be committed to the plan, just don't and not be just involved with the plan. The whole idea is you help them get the best plan, and you help them stay on track and make adjustments to the annual plans and budgets as needed. commandment number seven take cradle to grave responsibility for key executives, the CEO, maybe some other Chief, you know, Chief titles, but certainly the CEO, basically, cradle to grave means you find them, you hire them, you compensate them, you evaluate them, you plan for their successors, and if necessary, you terminate them. And a lot of people believe selection, compensation and evaluation of the CEO is the single most important function of the board. Now, of course, the war has absolute right to terminate an employment contract of the CEO. But the company could be liable for damages. Basically boards, we don't expect board CEOs don't expect boards to be compassionate. The moment the board decides that somebody else can get get the job done for them. There. They're pretty much out the next day. That was basically what Harry Stonesifer says who was the former president of Boeing. All you really ask as a board is just to make sure that if you can, there's a due process before you terminate somebody. So there's a fair, reasonable basis for what you're doing. commandment number eight, consider setting limits on the CEOs authority. This is a controversial thing. I don't really know why. And it's not really implemented at any very few companies implement this. I've seen he's either small, early stage all the way up to fortune 500. Well, why should you consider setting limits on the CEOs authority? Why should the board do that? Well, first of all, nature abhors a vacuum, and so to CEOs. So if you don't set limits, you have no one to blame, but yourself. Now, the issue is, as a board, how much do you or do you trust the CEO? Or you do the President Reagan trust and verify or how much trust you give a CEO? Or do you say, Yeah, I trust you up to this point. But after this point, we're going to have to draw a line here and we're going to have to have Board approval. Well, it's nobody knows exactly where to draw that line. legally. The line is, you don't have to come to the board magic just set for the basics. issuing stock for instance, declaring dividends, hiring and firing and hiring and firing officers and things like that.

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But Perhaps if you were to consider setting limits on the CEOs authority, you might consider setting a limit and saying, well, no acquisitions beyond X dollars or no commencement or settlement of major litigation without Board approval, or what about major strategic alliances

without Board approval? What about commitments of more than X number of years or y number of dollars? What about material changes to the operating plan in the budget? What about insurance coverage? Can you can the CEO just delete a whole type of insurance coverage without Board approval? What about selection of the legal counsel for the corporation and for the board if necessary, and therefore a committee if necessary? And what about this? What about preliminary indications of interest? versus a formal written offer to purchase? let's let's let's find out about that. This is a gatekeeper ostrich. This one of my ostrich awards. The winner here is Joseph Magglio Chetty, who is the CEO of autoparts, I believe company called Dana Corporation. The dubious distinction here the Dana CEO, Mr. Magglio Chetty, he refused to consider a 2 billion that's B with a billion with a B, he refused to consider a $2 billion buyout proposal from a competitor, which was made during a telephone conversation he was having. He was having it with the competitor, CEO. Now the Dana CEO, Mr. Magglio Chetty, he did not inform the Dana board the Dana Corporation board his board about the proposal over the phone the $2 billion buyout proposal. Well, the company explained, Dana, explain the proposal was just casual suggestion that did not require him to form to inform the board. Well, the best practice. Best practices, really, I think, different than the law here are significantly different than the law. Basically, the law is pretty simple. The Dana corporation is right, a preliminary indication of interest. The CEO is not required to take that to the board. Well, what is the preliminary indication of interest? Well, a preliminary indication of interest is everything. That's not a formal offer. So until you get to the formal offer stage, everything else is a preliminary indication of interest. Once you get a formal written offer, that formal written offer has to go to the board until you get in that room, until you get from a legal perspective until you get that formal written offer. Board does it does doesn't have to know about it? Uh huh. But what about the best practice? Well, forgetting the legal part, even though the CEO legally may not be required to inform the board of a preliminary indication of interest?

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Why not? Why?

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Why would you not want the board to know if you're a shareholder? Why would you not want the board to know? Why would you not want the board to know so best practice, it's a good idea for the CEO to tell the board. But if the board says, Hey, don't waste time, don't wait, you know, don't waste our time. If it's some bio proposal that's, you know, not even x or y or whatever, don't even bother with us, or whatever. So anyway, it's up to the board. But if you leave it up to the CEO, this basically legally they're not going to get any information about preliminary indications of interest. And I don't think that's a good idea. commandment number nine, get unfiltered information for decision making. Are you getting the whole story or just the CEOs input? And what's it like at the

top there at the CEO? What is the CEO think of the board? Does the CEO consider the board an adversary subordinate or a nuisance? Or a strategic asset? You know, really, does he think he or she, of course, does he or she think it's a mushroom boards, a mushroom board and then the board should be kept in the dark and pile stuff on them? like mushrooms? And what about a southern board? That you the board should be on the southbound in the northbound donkey? That's a southern board? Well, it just depends what kind of relationship and hopefully it's a strategic relationship and contend the the board excuse me the CEO appreciates is this board's a strategic asset, just like every other asset, and if they're not used properly, then you're wasting the asset or you're under using it. And so the question comes up, are you getting the whole story or just the CEO as input, the CEO can be a gatekeeper. And as a gatekeeper, he or she has the obligation to be truthful. But you know what comes to the board, if the CEO is gatekeeper is pretty much up to the CEO. So that's up to the board, how they want to deal with things. But the whole idea about unfiltered information, hopefully the board's excited about getting unfiltered information. And so they want to get the facts, they want to get all the facts and they just don't want to get them just from the CEO. So of course, they talk to other management, talk to outside counsel auditors and other experts, analysts and media reports. And basically, the Corporate Governance Committee in your bigger companies, or the board chair should be responsible for overseeing the information pipeline to the board so that it's not squeezed by gatekeeper unless that's the way the board wants it. And the last commandment is commandment number 10. And that commandment is evaluate each director and evaluate the board and its committees. You don't keep kept. We wouldn't keep slackers on the Salesforce. Why would you keep slackers in the board room board positions not permanent in the Corporate Governance Committee is responsible for overseeing the annual evaluations of whether it's the whole board or the the individual board members and the idea being that you want the right mix of skill and experience. Our next topic is the director Bill of Rights. Now the director Bill of Rights. Basically, this is for the individual directors, the 10 Commandments were for the board as a whole. Now these are for the individual directors. And of course, there's subject common sense, limitations. Director, right. Number one, you have a right to participate in board and committee meetings and make informed decisions. You have a right to put items on the board meeting agenda. You can have key employees and advisors, make presentation and presentations and answer questions at your meetings. But what about if the chair objects to your request? Well, what do you do? Well, you ask for rehearing with the chair or talk to the other directors try to get them on your side to help you persuade the chair. But you know, if it's important, please don't give up. You have a right to get information really at least a week of possible in advance of a board meeting to have enough time to prepare and to request in for more information. So you get the you get the information a week ahead of time, it gives you a chance to read it, understand it and ask for additional information or ask questions in the meantime. And also your right to participate includes your right to speak up in the board meeting. So please do not be a potted plant. In the board meeting. Please tell him what tell him what's on your mind. And

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you can even challenge Warren Buffett as strange as it sounds, yes, you can challenge Warren Buffett, you're in the boardroom and Warren Buffett is sitting next to you. He's no more equal than you are you are all equal. You everybody's equal in the boardroom. Now, speaking of Warren Buffett, now's a great time to present the belching in the boardroom Eagle. In the winter. Here is Warren Buffett. Remember, this is an eagle now situation in his annual shareholders letter. buff. Buffett stated that the problem with corporate boards is the boardroom atmosphere in which board members want to be accepted as part of the group and avoid asking tough questions. The result is passive boards. The excellence here in his letter to shareholders Buffett goes on to say that for a board member to question a mega grant of stock options to a CEO would be quote, like belching at the dinner table, close quote. So best practice, it's okay to belch in the board room. Figuratively, of course. Director right number two you have a right to inspect you have a right to inspect anything and everything you have a right to inspect corporate documents, corporate property, nothing sacred you hardcopy soft copy, electronic copy, plant and equipment. And it doesn't matter where it is. If it exists, you can see it. If you've ever been to a board meeting, I went to one board meeting and I was getting up and they said leave your leave your board package here. No, no, no, no, no, no. I took the board package with me all directors are entitled to everything at the company and certainly what they get The board meeting. So anybody that says, Give me the papers, you don't have to give them the papers, but you may decide to give, give the papers, but I certainly recommend you keep the papers when at all possible. Now, of course, the limitation here on this right of inspection is you need to give management reasonable time to comply. Director right, number three, you can talk, you have a right to communicate, you can talk to anybody with or without management present, including employee shareholders, accountants, attorneys, or any outside advisors or consultants. Now, when you do this, you're an engineer, just an individual director, but remind the other party that as a director, you're, you're there to ask questions, listen and learn, and that you have no authority to bind the company, or to advise or instruct these people. Also, you know, if you get out and communicate with people beyond the board meeting, you're going to help minimize that information disadvantage, and you have a huge or every director has a huge information disadvantage, to the inside, management and CEO, of course, there, those folks are probably spending 3000 hours a year, and you're probably spending no tops to 300 hours or 50 hours or 20 hours, whatever it is. And you got to get out there and get different opinions and learn what you don't know. And slow learners are, okay, it's black and white issues are rare. So try to infer minimize that information disadvantage, by getting out there and communicate, communicate. And of course, the limit here, you can't be disruptive. And also, you want to advise the CEO of significant contacts with senior management. Director right, number four, you have right to do extra work between board meetings, have a right to do extra work. That's excellent. And some examples here. You could contact senior management and visit offices and plants without corporate executives present. You could review competitors, SEC filings or just doing Google searches on your competitors and doing some research of some kind. You can review best corporate governance practices and other similar

companies. I mean, there's a lot you can do, between board meetings that can help you minimize that huge information disadvantage we mentioned. And

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what this does is between board meetings, the board's role in overseeing the company, between the board meetings if you're actually doing something in contact, for example, with the company that maximizes the board's oversight, or increases the board's oversight between meetings, the new information or information that you gain between board meetings, if you think it's relevant and appropriate at a board to share with the board either at a meeting or in advance of the meeting. But the whole idea is you want to get information outside of board meetings and away from management's influence. Director right. Number five, you have a right to dissent and resign to set and board meetings is good. And the words of General George S. Patton, Jr. Our illustrious World War Two leader nobody's thinking if everybody's thinking alike, according to general patent. Now the board can decide they can make a decision required to be unanimous or they could require to be a majority. In the rule that I like to tell folks is tell them who tell them who you are and what you stand for. And if they won't cooperate, get the heck out of Dodge, so it's okay to resign. Now, speaking of the lone wolf Eagle The winner is one outside director for the company Medtronic. They're a company based in Minneapolis, there are six and a half billion dollar company that makes medical parts. The excellence here that got done the lone wolf Eagle. One director was the lone dissenting vote among 12 directors to approve a big acquisition. Now this one dissenting door director calls the chair and chair CEO after the meeting to re argue his case. And as a result, believe it or not, the chair CEO convenes a new meeting to discuss the acquisition again the next day over the phone. So after discussion at the new meeting, all the other directors switch sides and vote against the acquisition so they went from 11 to one in favor of the acquisition. To 12, and oh, against the acquisition, and this all took place within the span of 24 to 36 hours. The best practice here is one man with courage is a majority according Thomas Jefferson, because really this chair CEO, I think, said it best he said, later I told this director, the lone wolf director, that's my term later, I told him how much I admired his courage and willingness to stand against the board. And is Thomas Jefferson says one man with courage is a majority. And this is a perfect example of the lone wolf. And last, we're going to touch on board management relationship, and I've got some few eagles and ostriches that are a lot of fun. The winner here is the group of General Motors outside board members now this is now we're talking 1990 to a group of outside board members, they were upset with all the Jim's billion dollar losses and shrinking market share and they voted to house the CEO and chairman of GM and that move in 1992. And they they asked him out of the split position of chair CEO so they got him out of the CEO so became just the chair. So they split the chair CEO big deal back then that move splitting the chair and the CEO, considered a groundbreaking event in corporate governance was the first time since the 1950s that the GM executive chief executive did not hold the chairman's job. How about this the good intentions Eagle at Charles Schwab, who is the founder and chair of we all

know Charles Schwab Corporation. Excellence here is he gave up his CEO title he he wanted to be in line with the new standards of corporate governance where the chair and CEO were split. And it's interesting to see who's who's got a combined CEO chair these days.

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All for one eagle and this is jamie diamond. Now this is back when he was CEO of bank one, he can see how sharp this guy was in so many different respects. The excellence here is he eliminated much of the special treatment of executives, by canceling perks, such as company provided life insurance, and most notably their supplemental executive retirement plan. Diamond told employees those managers who receive much of their compensation and options in restricted shares will be very well rewarded. If the company does well. They do not need entitlements, or special treatment. Here's one that I thought was pretty impressive. Baxter International. They're a $7 billion Medical Products Company. I call this the back to school Eagle. The excellence here is they put their audit committee members through a financial literacy test to make sure they were up to snuff, then to fill in the gaps. The company's finance and tax draft staff train them on such matters as deferred taxes, revenue recognition and new disclosure rules. The CFOs comments where the rules have become increasingly complex. it's incumbent upon us to ensure that our audit committee is prepared. And it's incumbent upon the Chairman of the Board and the Corporate Governance Committee to ensure that the audit committee is prepared. Here's one that's kind of interesting and accounting question I call to hear come Santa Claus ostrich. This was the winner here was the board of the Union Pacific company Corporation excuse me, situation. The Board approved a long term bonus plan for some company executives and a lower level employees if the company's cumulative earnings exceeded a minimum. Well, the dubious distinction here is company wanted to exceed the minimum so the Comp Committee decided to add earnings from an from a IPO of a subsidiary that that had nothing to do with operations. It was a non recurring loss, but it got them over the minimum and the CEO and the CEO got a couple million dollars in cash and 30,000 more shares. The company's explanation was since cash from an IPO or funds from discontinued operations, they're appropriate to add earnings. Well, best practice company shareholders were very unhappy that a non recurring gain from an equity deal will help executives reach their incentive targets. As much as we respect management believe they should earn salaries and bonuses based upon good work done. We prefer them to get their bonuses the old fashioned way which is on operating earnings, not one time events. That was what the shareholders said. Here's one feel better Eagle This was chairman CEO Robert Whitman of Franklin Covey. He had a seven year contract and a $500,000 annual salary and bonuses up to 750. But partway through one year, a drop in sales led to a whole bunch of losses. And Mr. Whitman asked the Comp Committee to stop paying his salary, and not pay him a bonus for that year. So in the words of our famous Will Rogers, even if you're on the right track, you'll get run over if you just sit there. And like I said, early when I started the program, on the back of my business card are the 10 commandments and the director Bill of Rights. Please let me know if

you'd like the business card or if you have questions, comments, suggestions. My name is Doug Gordon. My mobile number is 619-208-8811. And I can be reached at dB G, delta Bravo, golf, db G, my initials at dB gordon.com. So thank you for listening. And just one quick comment about Enron, I'm from Houston, and I was in California when Enron exploded, and before Enron, exploded, corporate governance. Even in San Diego, we had a special chapter of Corporate Directors focused on corporate governance. Corporate Governance was a term that the layman didn't know. And then just most folks didn't know even a lot of directors didn't know about corporate governance. But after Enron, everything changed, and fortunately, corporate governance became not only a word that people have heard, but that some boards really have taken to heart and we hope that that continues. It's been many, many years after Enron and we've made an incredible amount of progress. But there's still lots of lots of work to be done. So thank you for listening and let me know if if you have any questions. Thank you.