

The Ongoing Evolution of Governance, Control and Decision-Making Responsibilities

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My Objectives

- Examine the forces that are driving the evolution of governance/control/decision-making responsibilities
- Examine the current state of these responsibilities
- Focus on today's governance/control/decision-making challenges

Forces at Work in The Areas of...



***Personal
Governance***



***Corporate
Governance***



***Political
Governance***



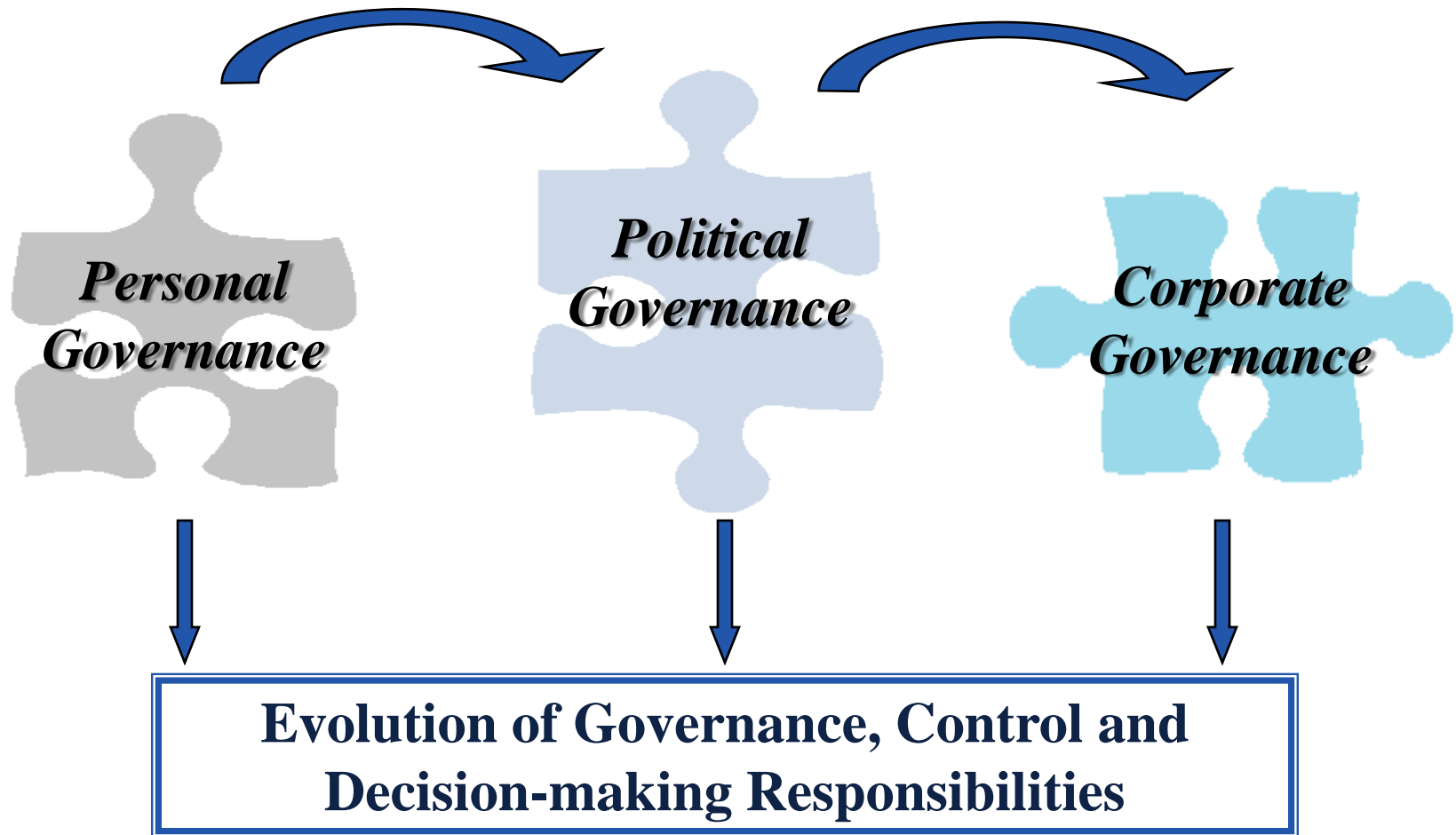
***Evolution of
Governance,
Control and
Decision-Making
Responsibilities***

Governance, Control and Decision-Making Responsibilities: The Framework for Change

- An explicit and unequivocal demand for an increased level of responsibility from boards, board committees and senior management
- An explicit requirement that board and management positions be understood to be positions of service and not of entitlement

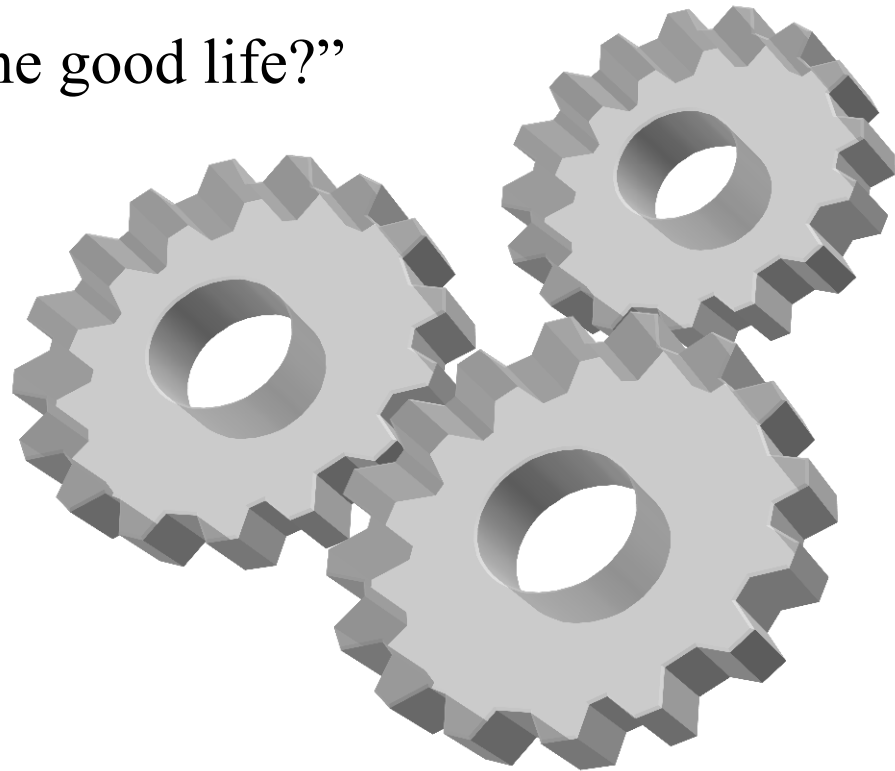
Forces at Work :

in Sequence... ... And in Parallel



The Forces of Personal Governance

- Forces driving people's lives
- Forces driving how people govern themselves
- Socrates: "What is the good life?"



Aristotle ...

“... there is the greatest pleasure in doing a kindness or service to friends or guests or companions, which can only be rendered when a man has private property.”

... Politics, Book Two, Chapter Five

Isaiah ...

Thus says the Lord:

Share your bread with the hungry,
shelter the oppressed and the homeless;
clothe the naked when you see them,
And do not turn your back on your own.

If you bestow your bread on the hungry and satisfy the afflicted;
Then light shall rise for you in the darkness, and the gloom shall
become for you like midday.

... 58: 7-10 (74)



Tao Te Ching ...

The Master has no possessions.

The more he does for others, the happier he is.

The more he gives to others, the wealthier he is.

Immanuel Kant ...

“ Two things fill the mind with ever new and interesting admiration and awe: the starry heavens above and the moral law within... I see them before me and connect them directly with the consciousness of my existence.”

“Conclusion”, the Critique of Pure Reason, 1788

Carl Jung ...

“Among all patients in the second half of life—that is to say over 35 - It is safe to say that every one of them fell ill because he had lost that which the living religions of every age have given to their followers, and none of them has been really healed who did not regain his religious outlook. This of course has nothing whatever to do with a particular creed or membership of a church.”

... “*Psychotherapists or the Clergy,*” *Modern Man in Search of a Soul*

Mother Teresa ...

The Simple Path

The fruit of Silence is *Prayer.*

The fruit of Prayer is *Faith.*

The fruit of Faith is *Love.*

The fruit of Love is *Service.*

The fruit of Service is *Peace.*

Robert W. Fogel ...

- Profound Long-term trends
 - Reduced “Earnwork”: wages, material possessions
 - Increased “Volwork”: personal time, “nonmaterial” and “spiritual goods”
- Not Moralizing
- Basic Economic Principles
 - Individuals seek to maximize their utility and satisfaction (NOT financial wealth)
 - Economic well-being \neq Financial well-being

... “THE FOURTH GREAT AWAKENING: THE FUTURE OF EGALITARIANISM IN AMERICA”

Personal Governance ...

- Economists tell us what people do:
 - Maximize Utility/ Personal Satisfaction
 - Adam Smith - Professor of Moral Philosophy
- Spiritualists and philosophers tell people how to maximize utility:
 - Recognize the moral law within
 - Recognize and respect the rights of others
 - Lead a life of service
- A common message coming from all sides

THE FUTURE OF EGALITARIANISM IN AMERICA

- Sense of Purpose
- Vision of Opportunity
- Sense of the Mainstream of Work and Life
- Strong Family Ethic
- Sense of Community
- Capacity to Engage with Diverse Groups
- Ethic of Benevolence
- Work Ethic
- Sense of Discipline
- Capacity to Focus and Concentrate one's Efforts
- Capacity to Resist the lure of Hedonism
- Capacity for Self-education
- Thirst for Knowledge
- Appreciation for Quality
- Self Esteem

Fogel's Non-Material/Spiritual Resources ...

Political Governance ...

George Washington

Service to his country

Abraham Lincoln

“Four score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.”

“...that we here highly resolve that these dead shall not have died in vain, that this nation, under God, shall have a new birth of freedom, and that this government of the people, by the people, and for the people shall not perish from this earth.

Political Governance ...

Martin Luther King

“I have a dream...” – Human dignity, creation, redemption, forgiveness, brotherhood...

John F. Kennedy

“Ask not what your country can do for you, ask what you can do for your country.”

Courtney C. Brown ...

“Members of governing boards have a prestigious status in society—more prestigious than the present nature of their activities can support. It is a status that reflects the popular belief and expectation that governing boards do indeed govern. ...Building on that popular belief and expectation, the work of governing boards can and should be clarified and strengthened to the ultimate benefit of corporations of all kinds and of society at large.”

... ***PREFACE, PUTTING THE CORPORATE BOARD TO***
WORK

Corporate Governance ...

- Democracy is a continuing experiment. The evolution of corporate governance within a democracy is a subset of that experiment.
- Just as the ideas of freedom need to be thought through and given fresh expression, the ideas of corporate governance must be continually reexamined.

CORPORATE GOVERNANCE ...

- History has taught us that monarchies and dictatorships have consistently failed to get the “tone at the top” correct.
- Is the call to improve “the tone at the top” overlooking history?



CORPORATE GOVERNANCE ...

Lord Acton

“Power corrupts, and absolute power corrupts absolutely.”

Ovid

“The better things of life I see and approve, the worse things of life I follow.”

A Critical Turning Point in Corporate Governance

- From Defined Benefits to Defined Contributions
- What Organizations have Emerged as Lead Plaintiffs

Governance and Controls – Process Driven

- Tone at the Top v. Checks & Balances
 - Statement v. Process
 - Walgreen's – Theranos
 - State Public Employees Retirement System
- The Division of Labor is specific to a firm at a point in time
 - Governance, Control and Decision-making structures are specific to a firm
 - Best practices may be worthless
- Good decision-making processes may experience bad outcomes

Tone at the Top Statements

- “We are offended by the perception that we would waste the resources of a company that is a major part of our life and livelihood, and that we would be happy with directors who would permit that waste. ...So as a CEO, I want a strong, competent board.”
- “It’s more than just dollars. You’ve got to give back to the community that supported you.”
- “You’ll see people who in the early days... took their life savings and trusted this company with their money. And I have an awesome responsibility to those people to make sure that they’ve done right.”
- “Boards should be absolutely certain that the company is run properly from a fiduciary standpoint in every degree. I am a great believer in the audit committee having full access to the auditors in every way, shape, and form.”
- “People have an obligation to dissent in this company.”

Tone at the Top Statements

- “We are offended by the perception that we would waste the resources of a company that is a major part of our life and livelihood, and that we would be happy with directors who would permit that waste. ...So as a CEO, I want a strong, competent board.” – **former Tyco CEO Dennis Kozlowski (sentenced to 8.33 to 25 years in state penitentiary)**
- “It’s more than just dollars. You’ve got to give back to the community that supported you.” – **Adelphia founder John Rigas (convicted in February 2005 on 18 counts of fraud)**
- “You’ll see people who in the early days... took their life savings and trusted this company with their money. And I have an awesome responsibility to those people to make sure that they’ve done right.” – **former WorldCom CEO Bernard Ebbers (convicted in March 2005 on nine counts of fraud sentenced to 25 years in Federal penitentiary)**
- “Boards should be absolutely certain that the company is run properly from a fiduciary standpoint in every degree. I am a great believer in the audit committee having full access to the auditors in every way, shape, and form.” – **former Sunbeam Chairman Al Dunlap**
- “People have an obligation to dissent in this company.” – **Former Enron CEO Jeffrey Skilling (sentenced to 24 years, four months in Federal penitentiary)**

Deal with Theranos Haunts Walgreens (WSJ, May 26, 2015)

- “Didn’t Fully Vet Blood Test Technology”
- “Very Strange Situation”

Today's Challenges:

The Courts (v. The Business Roundtable)

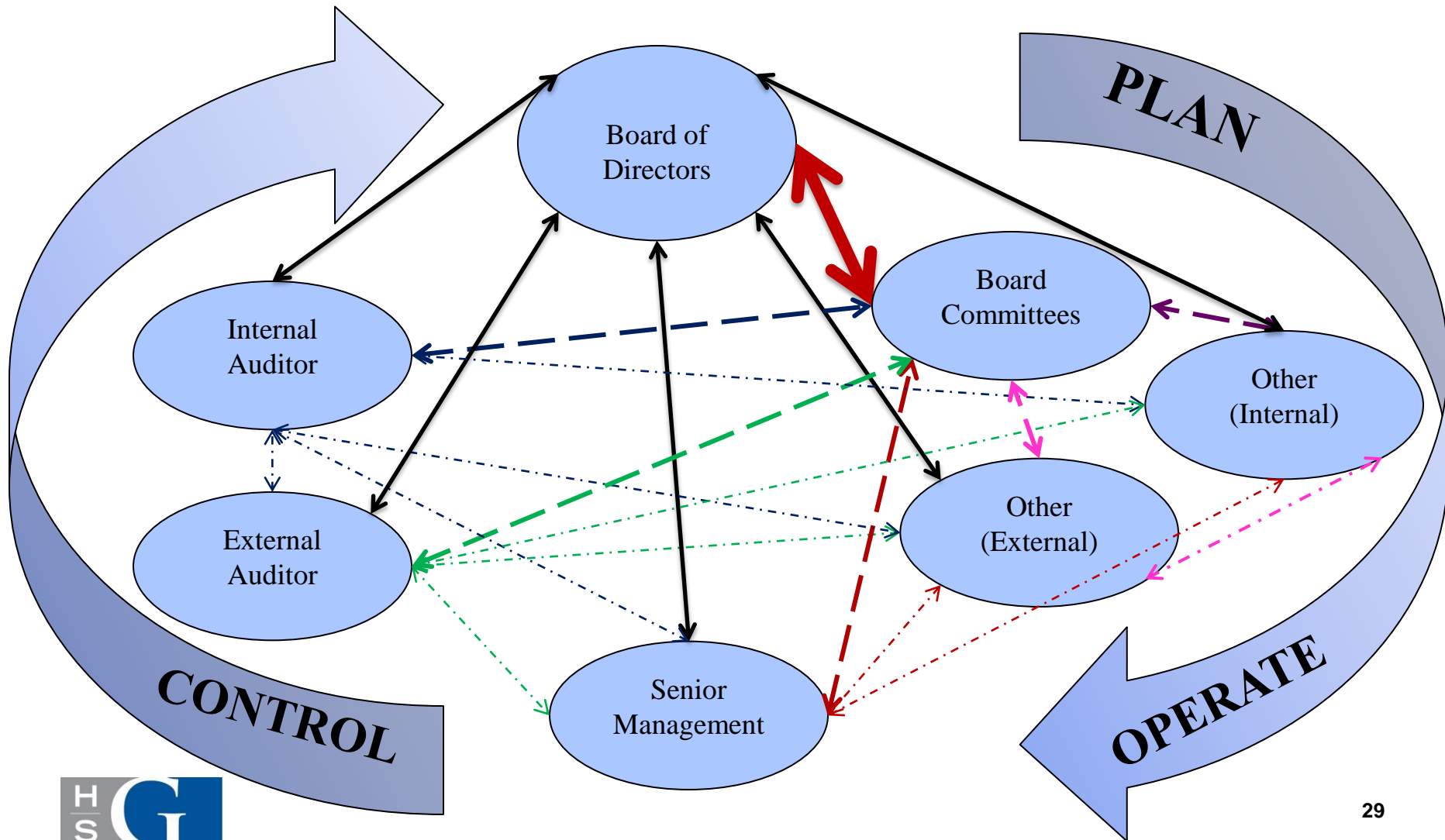
The Role of the Board – Two Views

- The Delaware Courts
 - Retired Delaware Supreme Court Chief Justice E. Norman Veasey, in his Pennsylvania Law Review article, states that stockholders should have the right to expect that “the board of directors will actually direct and monitor the management of the company, including strategic business and fundamental structural changes.”
 - Chancellor William B. Chandler, in his highly regarded Disney Opinion, states, “Delaware law is clear that the business and affairs of a corporation are managed by or under the direction of its board of directors. The business judgment rule serves to protect and promote the role of the board as the ultimate manager of the corporation.”
- The Business Roundtable
 - “Business Roundtable supports the following guiding principles: First, the paramount duty of the board of directors of a public corporation is to select a chief executive officer and to oversee the CEO and senior management in the competent and ethical operation of the corporation on a day-to-day basis...”

Today's Challenges

- The SEC
 - Targeting Individuals along with Organizations
 - Wall Street Journal, April 4, 2016: “China’s ZTE to replace three Senior Executives”
- Indexers
- Activists

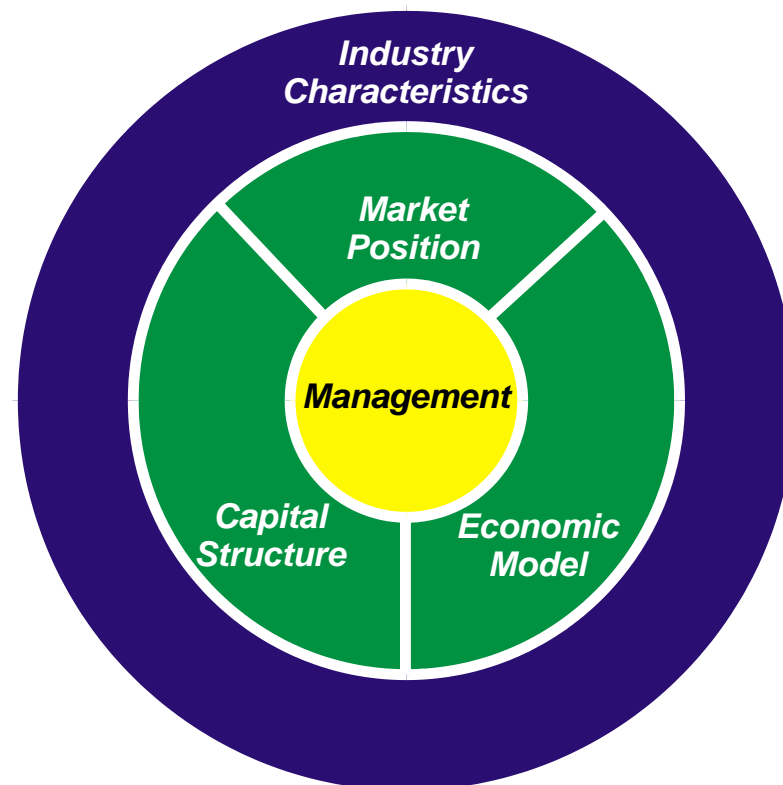
Today's Challenges: Positioning the Board and Board Committees



Today's Challenges:

The Board's Oversight & Control System

- Addressing Board Responsibilities
 - It is not all about adopting a set of best practices.
 - Corporate Governance structures and processes are specific to a firm at a point in time.
 - ▶ Fundamental Economic Principle: The division of labor is specific to a firm at a point in time.
 - ▶ Are Board members knowledgeable of their Business Units.
- The Board as the ultimate Decision-maker



Today's Challenges

- Accessing “Cheap” Debt
- Activists as Board Members – A Conflict?
- $A+B \neq B+A$; the Move from Balanced Diversification
- Declassified Boards
- Cyber Security (R.T. Jones)

Today's Challenges

- Long-term v. Short-term
- The Case of the Missing Management Model
 - Proliferation of Performance Improvement Options
 - A High % of These Initiatives Fail

Performance Improvement Loop – An Example





Ethics

- Volkswagon
- Mitsubishi
- Whole Foods



An Effective Ethics Program

- Encourage
- Support
- Deter

Concluding Remarks

- Process trumps people
- Is the Board the ultimate source of continuity and stability?
- Is the Day of the CEO-Chair behind us?
- The Continuing Challenges
 - The prosperity of the enterprise
 - The successful perpetuation of the corporation