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Right-Sizing Bar Association Governance

DANIEL R. SUHR*

> [M]ost nonprofit organizations would benefit from a thorough review of their board structure and operations. The chief aim of such a review would be for the organization to determine the optimal size, composition, and operating procedures that would assist the board in fulfilling its oversight duties. The review should address several key questions—first, for example, is the size of the board conducive to effective oversight?
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> -ABA Coordinating Committee on Nonprofit Governance, 2005[1]

INTRODUCTION

The State Bar of California is the largest bar association in the nation, with 232,000 members, a staff of nearly 600, and a $62 million budget.[2] A unified bar, and thus an agency of the State of California,[3] it is currently governed by a board of 23 directors, with 6 public members and 17 attorney members appointed by the governor and legislative leadership.[4]

In September 2010, the governor and state legislature commissioned a task force to study governance reform for the State Bar.[5] Over the

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* LL.M., Georgetown University; J.D., B.A., Marquette University. The Author appreciates comments from Professor John Olson, Jud Campbell, Alex Gesch, and Matt Glover. The views expressed here are those of the Author alone and do not reflect any position of his current or former employers. He may be reached via email at daniel@danielsuhr.com.

1. ABA COORDINATING COMM. ON NONPROFIT GOVERNANCE, GUIDE TO NONPROFIT CORPORATE GOVERNANCE IN THE WAKE OF SARBANES-OXLEY 21 (2005).

2. *The State Bar of California: What Does It Do? How Does It Work?*, ST. B. CAL., http://www.calbar.ca.gov/AboutUs/StateBarOverview.aspx (last visited Jan. 10, 2012).

3. *See* Quintin Johnstone, *Bar Associations: Policies and Performances*, 15 YALE L. & POL'Y REV. 193, 197 (1996) (explaining that a unified bar association is one where state or court rule requires membership in order for a lawyer to practice in the state).

4. *Board of Governors*, ST. B. CAL., http://www.calbar.ca.gov/AboutUs/BoardofGovernors.aspx (last visited Jan. 10, 2012).

5. STATE BAR OF CAL., REPORT AND RECOMMENDATIONS OF THE STATE BAR OF CALIFORNIA

course of the next eight months, the task force collected commentary from the bench, bar, professoriate, and public. The task force looked at "the size of the governing board, the composition and terms of its members, the selection process for Board members and the President, the qualifications of Board members, transparency of Board meetings, and the overall fundamental purpose of the State Bar in making public protection the governing board's highest priority."[6] In the end, it issued a 77-page report: The majority opinion recommended reconfiguring the governing board's membership, though maintaining its size at 23, while the minority suggested shrinking it to 15 members.[7] In response, in June 2011 the California Senate Judiciary Committee chair introduced legislation with a 19-member compromise.[8]

This Essay evaluates both the task force's report and bar association governance nationally in light of best practices for corporate and nonprofit governance. It focuses on one discrete issue: the optimal size for a bar association board. The verdict of academic and practitioner opinion is clear: for understandable reasons, smaller boards make for better boards. Yet it is also clear that most bar associations currently operate with bloated, inefficient boards. California should pursue a smaller governing board, and other bar associations, particularly those with significant staff and budgets, should undertake similar self-studies.

I. Bar Governance and the California Report

As the California task force considered the optimal size and structure for a bar association board, it evaluated the structures of other state bars. Data collected by the ABA's Division of Bar Services indicate that the average unified state bar's board has 34 members; voluntary state bars average 60 members.[9] The largest board is New York with 260 members; the smallest is Idaho with 5 members. Large voluntary metropolitan bar associations have similarly large boards.[10]

In addition to state and local bar associations, there are a number of national bar associations. The ABA itself has 38 members on its board of governors, which meets quarterly to govern the $200 million organization.[11]

Governance in the Public Interest Task Force 1 (2011).

6. *Id.* at 1–2.

7. *Id.* at 3–4.

8. Kate Moser, *Senate OKs Compromise on Bar Governance*, Recorder (June 2, 2011), http://www.law.com/jsp/ca/PubArticleCA.jsp?id=1202496004478.

9. ABA Div. for Bar Servs., 2010 State and Local Bar Dues, Fees & Member Benefits Survey 4–6 (2011). Incidentally, bar associations historically had smaller boards. Glenn R. Winters, Bar Association Organization and Activities 13 (1954) (stating that at the time, bar association governing boards generally had 5 to 15 members).

10. The Los Angeles County Bar Association, which with 27,000 members is the biggest local bar in the U.S., has a governing board of 38 members that meets monthly to supervise its $13 million budget and 93 staff members. ABA Div. for Bar Servs., *supra* note 9, at 7. The New York City Bar Association, with 24,000 members, has a budget of $13 million, has 118 employees, and is supervised by a board of 22. *Id.*

11. Ernst & Young LLP, ABA Consolidated Financial Statements, Details of Consolidation, and Other Information 34 (2011), *available at* http://www.americanbar.org/content/dam/aba/

The ABA has 16 "affiliated organizations," which are traditional bar associations based on shared personal attributes, such as ethnic heritage, or specialized areas of practice.[12] Among these organizations, the largest governing board has 111 members and the smallest has 10; they average 33 officers and directors.[13]

Due to their size and importance, two other organizations warrant particular mention. The American Association for Justice, representing the plaintiffs' bar, has 187 members on its board of governors, which meets quarterly.[14] The Defense Research Institute, which represents the defense bar, has 45 officers and directors.[15]

The foregoing survey shows that bar associations almost universally have large governing boards: the 70 state and national bars included in this Essay's survey average around 40 officers and directors. These boards are asked to govern significant organizations, with multimillion dollar budgets, scores of staff, and programming in numerous areas.[16] How do these figures compare with best practices for corporate and nonprofit governance?

II. Why Academics and Organizations Agree

Over the past two decades, the for-profit and nonprofit worlds have been rocked by scandals at major institutions: Enron, WorldCom, the Red Cross, American University, and the Smithsonian Institution, just to name a few. At all of these organizations, boards of directors or trustees failed to exercise sufficient oversight while management ran amuck, resulting in tremendous damage.[17] In the wake of these controversies and

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administrative/aba/aba_financials/2010auditfinstatements.authcheckdam.pdf (reporting that the ABA's revenues for FY 2010 were approximately $205 million); *Board of Governors General Information*, ABA, http://www.americanbar.org/groups/leadership/governors.html (last visited Jan. 10, 2012).

12. *Affiliated and Related Organizations*, ABA, http://www.americanbar.org/utility/about_the_aba/affiliated_related_organizations.html (last visited Jan. 10, 2012).

13. These figures come from computations made by the Author and are based on data he compiled about the 16 affiliated organizations.

14. *AAJ Board of Governors*, Am. Ass'n for Just., http://www.justice.org/cps/rde/xchg/justice/hs.xsl/2282.htm (last visited Jan. 10, 2012).

15. *Board of Directors*, Def. Res. Inst., http://www.dri.org/About/Leadership/DRI-BD (last visited Jan. 10, 2012).

16. *See generally* ABA Div. for Bar Servs., 2009 Bar Activities Inventory (2009); Johnstone, *supra* note 3 (examining the organization and policies of bar associations). The average unified bar has a budget of $13.5 million and a staff of 84. The average voluntary state bar has a budget of $6 million and a staff of 37. ABA Div. for Bar Servs., *supra*, at 7–8.

17. *See generally The American Red Cross Governance Reform: Hearing Before the H. Comm. on Foreign Affairs*, 110th Cong. (2007) (statement of Rep. Tom Lantos, Chairman, H. Comm. on Foreign Affairs); Brian L. Carpenter, Nat'l Charter Sch. Inst., The Smithsonian Governance Debacle: Ten Lessons Charter School Boards Can Learn at Someone Else's Expense (2007); Reed Abelson, *Enron's Collapse: The Directors; One Enron Inquiry Suggests Board Played Important Role*, N.Y. Times, Jan. 19, 2002, at C1; *Senator Threatens Legislative Action Against American U.'s Board*, Chron. Higher Educ. (May 17, 2006), http://chronicle.com/article/Senator-Threatens-Legislative/37046; Dick Thornburgh, Counsel, K&L Gates, and Court-Appointed Examiner in the WorldCom Bankruptcy Proceedings, A Crisis in Corporate Governance? The WorldCom Experience, Address Before the Executive Forum at the California Institute of Technology (Mar. 22, 2004).

the legislation they engendered (particularly Sarbanes-Oxley[18]), academics have undertaken significant studies on organizational governance. These studies have sought best practices to ensure engaged, active boards that take their fiduciary duties seriously and perform their monitoring and management functions well.[19]

The conclusion of those studies, as far as this Essay's particular topic is concerned, is almost uniform: the ideal board has "between 10(ish) and 15 (or so)" members.[20] Unfortunately, "very few, if any, nonprofit organizations fit this pattern. Indeed, many have boards that are several times larger than any model of good governance would suggest. And, in fact, some—certainly more than a few—have boards that are so large as effectively to be unmanageable."[21]

In recent years, several major national nonprofit organizations have reformed their governing boards to better reflect these nonprofit best practices. For instance, in 2006 the Nature Conservancy reduced its board of directors from 40 members to 18.[22] The Conservancy hired Ira Millstein, Associate Dean at the Yale School of Management, as its counsel.[23] He reported that "a 40-member Board could not govern effectively, no matter how qualified the members were; there were simply too many of them to operate as a modern, hands-on board."[24] The United Way of America reduced its board by approximately half, from 50 members to 26.[25] The American Red Cross is in the process of cutting its board from 50 members to no more than 20.[26]

The Red Cross, in coming to this decision, commissioned an authoritative report that surveyed the field of nonprofit governance regarding board size.[27] That report quotes Dean Millstein: "Generally, the non-profit sector, like the commercial sector, has come to recognize that smaller boards—which meet more frequently and have standing committees focused on particular issues relevant to the organization—

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18. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 11, 15, 18, 28, & 29 U.S.C.).

19. *See infra* notes 20, 21, 25, 29, 32, and accompanying text.

20. Daniel L. Kurtz, *The Sarbanes-Oxley Act of 2002: Lessons for Nonprofits?*, *in* NONPROFIT ORGANIZATIONS LAW 2003: COPING WITH THE NEW ENVIRONMENT POST 9/11 & SARBANES-OXLEY 79, 120 (PLI Tax Law & Estate Planning, Course Handbook Ser. No. J0-009A, 2003).

21. *Id.* Though there is near uniform agreement on this point, there are still a few dissenters. Some argue that there is no ideal board size for nonprofits because organizations are so different. *See* PANEL ON THE NONPROFIT SECTOR, STRENGTHENING TRANSPARENCY, GOVERNANCE, ACCOUNTABILITY OF CHARITABLE ORGANIZATIONS 77 (2005); *see also* BOARDSOURCE, REPORT ON THE SIZE, COMPOSITION, AND STRUCTURE OF THE BOARD OF REGENTS 41–42 (2008). A few reports explicitly defend large board sizes. *See, e.g.*, FRANCIE OSTROWER, URBAN INST., NONPROFIT GOVERNANCE IN THE UNITED STATES 17 (2007).

22. *The Tax Code and Land Conservation: Report on Investigations and Proposals for Reform: Hearing Before the S. Comm. on Finance*, 109th Cong. 235 (2005) (statement of Ira M. Millstein, former chair of The Nature Conservancy's Governance Advisory Panel).

23. *Id.* at 231–32.

24. *Id.* at 233.

25. AM. RED CROSS, GOVERNANCE FOR THE 21ST CENTURY 44–45 (2006).

26. *Id.* at 55; *Governance*, AM. RED CROSS, http://www.redcross.org/governance/ (last visited Jan. 10, 2012) ("[B]y 2012, Board membership will range from 12 to 20 . . . .").

27. AM. RED CROSS, *supra* note 25, at i.

are more effective than overly large boards."[28] The report surveyed several expert sources recommending that nonprofit boards range from 3 to 15 members.[29] The report also looked at the trends in the for-profit sector and concluded that "[b]est governance practices in the for-profit context favor smaller boards" of approximately 9 to 12 members.[30]

The legal profession has produced several reports of its own that also recommend smaller boards for corporate and nonprofit organizations. Reflecting the "current recommendations for smaller, more effective 'working' boards,"[31] 5 different ABA publications recommend boards of directors ranging from 7 to 15 members.[32] Similarly, the American Law Institute's draft *Principles of the Law of Nonprofit Organizations* looked at recommendations from other board surveys: S&P 500 companies (10.7 directors); the Society of Corporate Secretaries and Governance Processionals (9 for manufacturing companies, 11 for financial companies, and 10 for service companies); and hospitals and health systems (13 for nonprofit acute care hospitals, 7 for government hospitals, and 15 for community hospitals and hospital systems).[33]

This move to small boards is based on empirical research comparing the different organizational and interpersonal dynamics on large boards versus small boards. Large boards tend to run on parliamentary procedure (particularly when the board comprises a group of lawyers!) where speakers are called on and identified, rather than the conversational style possible on a small board. This conversational style allows for consensus to emerge more organically, after a full and vigorous discussion, whereas decisions on big boards are almost always made by a formal vote after a stilted and often shortened discussion.[34] Moreover, large boards allow for free-rider members who may attend a few meetings but who do not contribute to the actual governance of the organization: in the memorable

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28. *Id.* at 43.

29. *Id.* at 42–46 (collecting six studies). The report also cited the 2004 Nonprofit Governance Index. *Id.* at 44 n.217. The updated 2010 Index found that the average nonprofit board of directors has 16 members, and said that 15 to 22 members was the "sweet spot" for nonprofit board size. BOARDSOURCE, NONPROFIT GOVERNANCE INDEX 2010, at 18–19 (2010).

30. AM. RED CROSS, *supra* note 25, at 45.

31. ABA COORDINATING COMM. ON NONPROFIT GOVERNANCE, *supra* note 1, at 21.

32. *Id.* at 20 (suggesting 9 to 12 directors); ABA CORPORATE LAWS COMM., CORPORATE DIRECTOR'S GUIDEBOOK 42 (6th ed. 2011) (suggesting 7 to 11 directors); GREGORY V. VARALLO ET AL., FUNDAMENTALS OF CORPORATE GOVERNANCE 14 (2d ed. 2009) (citing a study recommending 8 to 9 directors); William G. Bowen, *Inside the Boardroom: A Reprise*, *in* NONPROFIT GOVERNANCE AND MANAGEMENT 3, 5 (Victor Futter ed., 2002) (suggesting 10 to 15 directors); Martin Lipton & Jay W. Lorsch, *A Modest Proposal for Improved Corporate Governance*, 48 BUS. LAW. 59, 67 (1992) (recommending boards of 8 or 9, and not more than 10); *see* Sanjai Bhagat & Bernard Black, *The Uncertain Relationship Between Board Composition and Firm Performance*, 54 BUS. LAW. 921, 941 (1999) (reviewing literature arguing for small board size without delivering an independent conclusion).

33. AM. LAW INST., PRINCIPLES OF THE LAW OF NONPROFIT ORGANIZATIONS § 320 cmt. g(3), at 118 (Discussion Draft, 2006) (discussing a study of the board size and composition of S&P 500 companies); *id.* § 320 n.17 (same).

34. *See* VARALLO ET AL., *supra* note 32, at 14; Kurtz, *supra* note 20, at 120–121; Lipton & Lorsch, *supra* note 32, at 65.

phrase of William O. Douglas, "directors who do not direct."[35] By contrast, everyone on a small board needs to contribute for the board to complete its work.[36] Additionally, members of a small board have the opportunity to get to know one another, which fosters a sense of cohesion and collegiality. On a large board of 50 members, it is almost impossible to achieve this level of interpersonal intimacy among all the directors. Knowing one another as individuals helps directors operate more effectively as members of the board "team."[37] Finally, disengaged and unwieldy boards simply transfer power to the CEO and other staff, who manage the organization without effective oversight.[38] On a smaller board, however, the CEO must work with engaged directors who hold him or her accountable through regular meetings in which the directors can make prompt decisions based on good information.[39] In short, these small-board dynamics increase the productivity and cohesion of the board, making it more efficient, effective, and collegial.

III. The Future of Bar Governance Nationally and in California

The blue-ribbon Panel on the Nonprofit Sector makes the same recommendation as the ABA study quoted in the epigraph of this Essay: "Every charitable organization, as a matter of recommended practice, should review its board size periodically to determine the most appropriate size to ensure effective governance and to meet the organization's goals and objectives."[40] The first step for all bar

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35. In the relevant passage, Douglas discusses Horace Samuel, Shareholders' Money 119–120 (1933): "Mr. Samuel observes that many of the directorates are 'grossly swollen', numbering from twenty to thirty-five. He concludes that barely '50 per cent really pull their weight' at meetings . . . ." William O. Douglas, *Directors Who Do Not Direct*, 47 Harv. L. Rev. 1305, 1320 (1934); *see* BoardSource, *supra* note 29, at 19 ("In larger boards, individual shortcomings may be more easily overlooked and performance issues such as spotty attendance may appear to have less of an impact. As board size goes up, attendance goes down. 90% of small boards have average attendance of 75%–100%, compared to 73% of large boards. Only 29% of large boards are prepared 'to a great extent' for meetings, compared to 39% for small and medium boards. 47% of large boards have meetings that allow adequate time 'to a great extent' to ask questions, compared to 55% and 58% respectively for medium and small boards.").

36. *See* Bowen, *supra* note 32, at 5; Katherine O'Regan & Sharon M. Oster, *Does the Structure and Composition of the Board Matter? The Case of Nonprofit Organizations*, 21 J.L. Econ. & Org. 205, 208 (2005).

37. Lipton & Lorsch, *supra* note 32, at 65. For a discussion of boards as "teams," see Stephen M. Bainbridge, *Why a Board? Group Decisionmaking in Corporate Governance*, 55 Vand. L. Rev. 1 (2002).

38. Lumen N. Mulligan, *What's Good for the Goose Is Not Good for the Gander: Sarbanes-Oxley-Style Nonprofit Reforms*, 105 Mich. L. Rev. 1981, 1987 (2007) (citing O'Regan & Oster, *supra* note 36, at 216–19).

39. Kurtz, *supra* note 20, at 120; *see* Judith L. Miller, *The Board as a Monitor of Organizational Activity: The Applicability of Agency Theory to Nonprofit Boards*, 12 Nonprofit Mgmt. & Leadership 429, 439–42 (2002). This problem may be particularly pronounced in the bar association context, when the bar association president typically serves only a one-year term at the helm of the organization. *See* Johnstone, *supra* note 3, at 231 (discussing the limitations of the one-year term for presidents).

40. Panel on the Nonprofit Sector, *supra* note 21, at 75; *see* ABA Comm. on Nonprofit Corps., Guidebook for Directors of Nonprofit Corporations 233–34 (George W. Overton & Jeannie Carmedelle Frey eds., 2d ed. 2002) (recommending this sort of self-study on an automatic basis, every

associations, then—integrated and voluntary; national, state, and local; geographic, practice specialty, and shared heritage—is to undertake a self-study, as California has done.

When it comes to the size and composition of the board, the easy path is always to go bigger, to ensure that every type of firm and area of practice, every geographic region and stage of career, every section and division and county, is represented.[41] But representation of diverse constituencies is out of step with current best practices.[42] A focus on diversity stems from a belief that the main purpose of the board is to provide a forum for diverse perspectives and to pass resolutions through a representative assembly. But a more accurate understanding of the board's role recognizes that its primary responsibility is to govern—often to govern a large organization with tens or hundreds of thousands of members, millions of dollars, and scores of staff.[43] The counsel of the governance literature, which lawyers have helped produce, is clear: resist the temptation to go bigger, and instead move towards a smaller, "working" board.

Many boards deal with the problems inherent in a large board by transferring the actual power to govern to a smaller "executive committee" of the board.[44] The discussion draft for the ALI's *Principles of the Law of Nonprofit Organizations* cautions against such a move, recognizing it as a Band-Aid.[45] A better alternative would be to

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3 to 5 years).

41. *See, e.g.*, N.Y. State Bar Ass'n Special Comm. on Ass'n Governance, Report and Recommendations to the Executive Committee on Matters of Association Governance 7 (2003) ("We believe that the Association would benefit from expanding the size of the Executive Committee [from 24] to 30 members. This expansion would be designed to promote more diversity in its broadest sense as well as provide additional, meaningful opportunities for more members to serve the Association."); *Board of Trustees Report, July 16, 2010*, N.J. St. B. Ass'n, http://www.njsba.com/about/njsba-reports/board-of-trustee-reports/july-16-2010.html (last visited Jan. 10, 2012) ("[T]he Board of Trustees approved a measure to add seven seats to the body, bringing it to 51 members. . . . The proposal aims to foster diversity on the Board and give a larger voice to members of its sections and committees in governance and policy decisions by adding five at-large seats and two more representatives of State Bar sections and committees.").

42. *See* Bowen, *supra* note 32, at 6 ("The case for diversity should not be construed in this way. If individuals believe that they are on a board to represent a defined group, or a particular point of view, they will not be what Quakers call 'weighty' members."); Lipton & Lorsch, *supra* note 32, at 68 ("Some may argue that boards of this size will limit the range of viewpoints and ignore the need of our society for diversity in the boardroom. Our rejoinder is that five or six independent directors, who are carefully selected, should provide the breadth of perspective and diversity required."). The other reason that nonprofits often have large boards is for fundraising—either to include key supporters on the board directly, or to have a large number of ambassadors for the organization who can go out and raise money. *See* Bowen, *supra* note 32, at 4. But for unified bar associations, there is no real need to fundraise because the association has guaranteed income in the form of member dues, as every lawyer who wishes to practice in the state must join the association. *Cf.* Johnstone, *supra* note 3, at 197 ("Most bar association income comes from annual dues."). And for voluntary bars, this purpose can just as easily be accomplished by a membership or sponsorship committee that is not part of the governing board.

43. *See* Grant Thornton, LLP, Report on the Corporate Governance of the Utah State Board of Commissioners 7 (2007) (identifying governance as the primary purpose of the Utah State Bar Board of Commissioners).

44. *See* Am. Law Inst., *supra* note 33, § 320 cmt. g(3).

45. *Id.*

complement a small board of directors with an advisory board or policy board that represents the profession and develops the state bar's position on legal and legislative issues while the board of directors actually manages the organization.[46]

A few bar associations have taken steps to reform their leadership structure. In 1998, the Orange County Bar Association ("OCBA") undertook a strategic planning review that specifically asked whether the board's size was an "impediment to individual board member participation or an impediment to quick and decisive decisions."[47] OCBA decided to reduce its governing board from 39 to 25 members.[48] According to the president who pushed for the change:

> Our size, we believe, is the single biggest contributor to the lack of efficiency and meaningful participation of the board, and the single greatest impediment to our creating a more thriving and vibrant Board of Directors. . . . Our size is simply too large to have meaningful discussions and debate of policy.[49]

In 2004, The Minnesota State Bar Association reformed its entire governance structure, merging four layers into two: a 128-member Assembly that meets quarterly and a 15-member Council that meets more regularly.[50] Similarly, an ABA news report notes that after a significant reform by the Law Society of Manitoba, which halved its governing board and changed its responsibilities,

> [the Society's CEO] cites dramatic improvement and says the success of the new plan is measurable. The board operates in a way that is "more timely, better, and cheaper," he says. And since the reorganization six years ago, the society has saved so much money it has had the unusual luxury of *lowering* its dues every year.[51]

These examples illustrate the possibilities for reform. While numerous other major nonprofit organizations have undertaken fundamental governance reform, only a few bar associations have joined them and aligned their governance with best practices for nonprofits.

Conclusion

Major institutions in American society have been rocked by scandal in the past decade. Many of these fiascos stemmed from a failure of governance by the board of directors, which had ultimate responsibility for each organization. Either because of legislation (Sarbanes-Oxley) or

46. *See* ABA Coordinating Comm. on Nonprofit Governance, *supra* note 1, at 21.

47. *Strategic Plan*, Orange County B. Ass'n, http://www.ocbar.org/About/StrategicPlan.aspx (last visited Jan. 10, 2012).

48. Raymond T. Elligett, Jr., *Restructuring Governance of Your Bar Association*, Conf. Call, Fall 2005.

49. Kimberly Smith, *The Reorganized Bar: An Inside Look at Change*, B. Leader, Sept./Oct. 2004, at 10, 12, *available at* http://www.americanbar.org/publications/bar_leader_home/bar_leader_archive/2901.html.

50. *Id.* at 12–13; *see Assembly Meetings/Minutes*, Minn. St. B. Ass'n, http://www2.mnbar.org/governance/assembly/meetings.asp (last visited Jan. 10, 2012); *Organizational Structure*, Minn. St. B. Ass'n, http://www2.mnbar.org/governance/CommonFiles/OrgChart.pdf (last visited Jan. 10, 2012).

51. Smith, *supra* note 49, at 11.

pressure from shareholders and stakeholders, institutions ranging from the American Red Cross to American University have undertaken governance reforms to ensure effective management and oversight. Often these reforms included fundamental structural change, such as much smaller, working boards of directors.

Governance experts agree that boards should be small. These scholarly recommendations are confirmed by the experiences of many large nonprofit organizations and for-profit corporations. They are shared by several publications from different sections and committees of the ABA and American Law Institute. Yet these recommendations remain unimplemented in the vast majority of bar associations.

Thus far, no bar association has suffered the kind of scandal that has affected other sectors. However, many bars operate with ill-structured, hands-off boards that almost necessarily delegate significant power to management. These boards are unwieldy, ineffective, and out of step with best practices for corporate and nonprofit governance. This problem stems from a fundamental misunderstanding about the role and goal of the board. Contrary to the assumptions that lead to bloated boards, the role of a bar association's board is not to be a representative legislative assembly, but rather to be the governing body atop a significant organization with thousands of members, millions of dollars, and scores of staff. When bar leaders consider their role in that light, they may start to take their own advice and move to smaller, more effective boards that play a vital role in the organization's operations and strategic direction. Bar associations should follow California's lead by undertaking self-study evaluations. And the conclusion of those studies should be a course of action similar to that taken by Minnesota: a smaller board of directors that actually governs, and a larger representative assembly to speak for the profession on legal and legislative issues.

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