



DANNIS WOLIVER KELLEY

Attorneys at Law

# **Governance - an abbreviated introduction Laguna Beach Unified School District**

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# Introduction

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Jon is a partner at the law firm of Dannis Woliver Kelley (DWK), the Managing Shareholder of the firm's San Diego office, and a member of the following DWK practice groups:

- Labor, Employment and Personnel (former Chair)
- Board Ethics, Transparency and Accountability
- Students and Special Education

Jon has worked with scores of governing boards, superintendents and district employees over the past 30 plus years

- Attended hundreds of board meetings 😞 😊
- Presented at dozens of statewide, regional and local conferences (CSBA, CASBO, ACSA)
- Presented to individual school boards and governance teams across the state

# Board Bylaw 9000 – Role of the Board

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The Governing Board has been elected by the community to provide leadership and citizen oversight of the district. The Board shall ensure that the district is responsive to the values, beliefs, and priorities of the community.

The Board shall work with the Superintendent to fulfill its major responsibilities.

For example:

- Setting the direction for the district focused on student learning and achievement
- Setting parameters for negotiations with employee organizations and ratifying collective bargaining agreements
- Establishing and adhering to standards of responsible governance
- Upholding Board policies

# Board Bylaw 9000 – Role of the Board

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There's "a lot" more to it as mentioned in BB 9000:

- personnel, policies, academic expectations, adopting the curriculum and instructional materials, budget priorities coordinated with the strategic plan, adopting the budget, setting parameters for negotiations and monitoring process, responsible governance, ensuring accountability to the public for the performance of the district's schools ...
- Providing community leadership and advocacy on behalf of students, the district's educational program, and public education in order to build support within the local community and at the state and national levels.

Note: Role of the Board is not to run the schools, but to see that the schools are well run.

# Board Policy 500 – Accountability

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“The Governing Board recognizes its responsibility to ensure **accountability** to the public for the performance of the district and each district school. The Board shall **regularly review** the effectiveness of **district programs, personnel, and fiscal operations**, with a focus on the capacity to improve student achievement. The Board shall establish appropriate processes and measures to monitor results and to evaluate progress toward accomplishing the district's vision and goals set forth in the local control and accountability plan (LCAP).”

# Opportunity for Innovative and Creative Leadership

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“The governing board of any school district may initiate and carry on ***any*** program, activity, or may otherwise ***act in any manner*** which is not in conflict with or inconsistent with, or preempted by, any ***law*** and which is not in conflict with the purposes for which school districts are established.” (Education Code section 35160.)

# Board & Superintendent Roles

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- Effective teams value and respect their essential roles, and are committed to operate within their respective roles.
  - School board "**trustees**" are the representatives of the people, elected to **ensure** the schools educate students in accordance with the wishes of the community.
  - The overarching role of the **superintendent** is to **lead** the district in the direction set by the board.
  - Prioritization, accountability, oversight, student-employee-community-focused.

# Board & Superintendent Roles

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- Board members have collective, not individual authority. Authority to make decisions is granted to the board as a whole.
- The full board gives direction to the superintendent, most commonly at board meetings. Individual board members do not have the authority to direct the superintendent or staff, unless otherwise agreed to by the board and superintendent.
- The role of the school board is not to run the schools, but to see that the schools are well run.

# Board Policy 2111 – Superintendent Governance

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Effective district governance requires strong collaboration and teamwork with the Superintendent.

Board and Superintendent each have their unique roles and responsibilities.

Both contribute to the responsible governance of the district and the quality of education provided to the community's students.

The Superintendent:

- Promotes the success of all students and supports the efforts of the Board to keep the district focused on learning and achievement ...
- Works with the Board as a "governance team" and assures collective responsibility for building a unity of purpose, communicating a common vision and creating a positive organizational culture ...
- Board/Superintendent governance relationship is supported by the management team in the district ...
- Understands the distinctions between Board and staff roles, and respects the role of the Board as the representative of the community ...

# Board Bylaw 9011 and Brown Act – Confidential/Privileged Information

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Confidential/privileged information shall be released only to the extent authorized by law. ...

- A Board member shall not disclose confidential information acquired during a closed session to a person not entitled to receive such information, unless a majority of the Board has authorized its disclosure.
- Confidential information means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session.

**Note:** Disclosing information that is not confidential is not a violation of the law.

# Board Bylaw 9010 – Public Statements

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- In their role as community leaders, Board members may participate in public discourse on matters of civic or community interest, including those involving the district, and their right to freely express their *personal views*.
- To ensure communication of a consistent, unified message regarding district issues, Board members are expected to respect the authority of the Board to choose its representatives to communicate its message and to abide by established protocols.
- Authorized public statements made on behalf of the Board are made by the Board president or, if appropriate, by the Superintendent or other designated representative.

# Board Bylaw 9010 – Public Statements

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- Board spokespersons shall not disclose confidential information or information received in closed session except when authorized by a majority of the Board.
- When speaking to community groups, members of the public, or the media, individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board.
- Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.

# Role of Individual Board Members

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- Whether in the boardroom, out in the community or at home, board members are always trustees for the district.
- The demeanor of governance team members sends an important message to the public.
- Board members have collective, not individual authority.
- Authority to make decisions is only granted to the Board as a whole.
- Individual Board members do not have the authority to direct the Superintendent or staff, unless otherwise agreed to by the Board and superintendent.

# Board Bylaw 9323 – Meeting Conduct

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- The Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority.
- The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned at 10:00 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date.

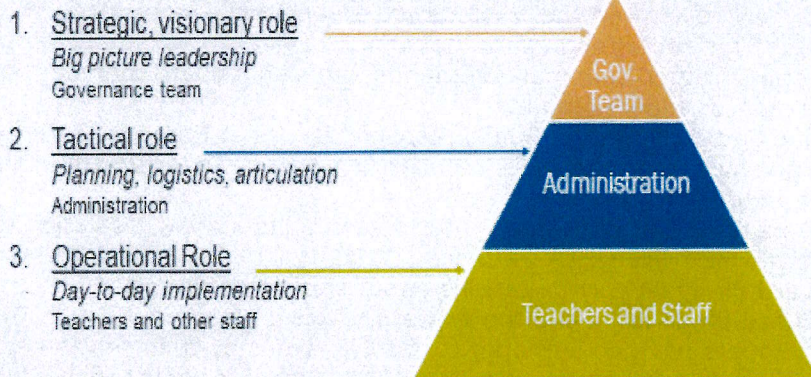
# Board Bylaw 9323 – Meeting Conduct

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## Public Participation:

- The Board shall give members of the public an opportunity to address the Board on any item of interest to the public that is within the subject matter jurisdiction of the Board, either before or during the Board's consideration of the item.
- Individual speakers shall be allowed three minutes to address the Board on each agenda or non-agenda item. The Board shall limit the total time for public input on each item to 20 minutes.
- With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.

## Three Essential Roles in School Districts

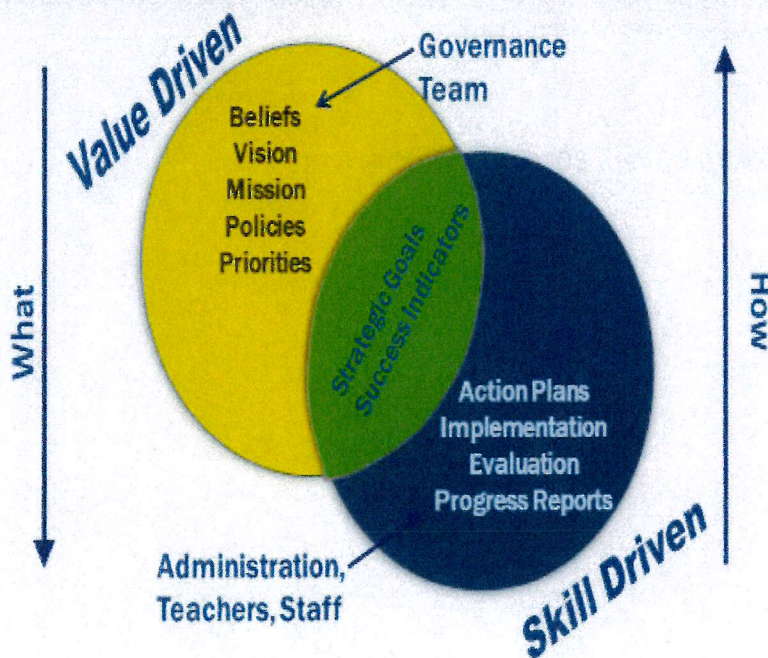


*The Schoolboard Fieldbook*

Mark Van Clay & Perry Soldwedel



## Understanding Roles



## **BOARD MEMBER REMINDERS**

1. The board works with the superintendent and business administrator as a team.
2. If a board member hears of issues from patrons or staff, take them directly to the superintendent. Do not take them to staff members.
3. There should be no surprises in public meetings for the superintendent, board president, fellow board members, or staff.
4. What you say reflects on the whole board and district—be prudent.
5. Be prepared for and attend your meetings.
6. Ask questions rather than make demands—no single board member has authority over the staff or superintendent.
7. Encourage and facilitate patrons in resolving issues at the most local level, working through the system to the superintendent if needed. Then get out of the way and let the staff handle it.
8. A board member that continually interferes inhibits a good resolution to the problem and undermines trust.
9. Don't ever talk negatively to patrons about staff or personnel.
10. Stay focused on an issue and the process to get it resolved.
11. Board members have no authority to resolve issues by themselves and are the court of last appeal as a full board. If a single board member gets too involved in the issue and its resolution, they could be asked to recuse themselves if it came to the board for review.
12. Check and read all board communications daily.
13. Hold in confidence personal conversations with the superintendent, fellow board members, staff and other school personnel.

## **PROMISES A BOARD MEMBER SHOULD NEVER MAKE**

1. Never promise to vote a certain way on an upcoming issue.
2. Never make a promise of employment to anyone.
3. Never promise to have an employee dismissed.
4. Never promise parents a specific result or circumstance for their child at their school.
5. Never promise vendors a contract.

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## **A ONE-PAGE SUMMARY OF BOARDSMANSHIP**

How a school board governs is as important as what steps the board takes to govern.

As board members fulfill governance responsibilities in the areas of vision-setting, human resources, policies, curriculum, finance, judicial appeals, collective bargaining and community leadership, the way in which boards perform the board role is critical.

It is as important as what boards do in providing effective public oversight of the public school systems responsible for educating children and preparing them to be productive citizens.

Whether in the boardroom, out in the community or at home, board members are always trustees for the district. The integrity of the school district's educational program is dependent upon responsible and professional manner in which each board member, and the board collectively, fulfills governance roles and responsibilities.

The demeanor of board members sends as important a message to the public as the actual decisions made by board members do about the quality of leadership of the community's schools.

**There are eight axioms which incorporate the boardsmanship principles essential to effective governance.**

**These are:**

- 1. Board members are members of a team.**
- 2. All children must be the priority.**
- 3. Perceptions of demeanor have dramatic consequences and board members must act accordingly.**
- 4. Diversity of perspectives and styles must be respected.**
- 5. Board members must understand the board's roles and responsibilities.**
- 6. Confidential information must be kept confidential.**
- 7. Board members must strive to know district policies and guidelines.**
- 8. Being effective requires a commitment of time and energy.**



## Ten myths of school board service

by Sandi Barry and Terry McCabe

Terry McCabe was president of the Maine School Boards Association and Associate Executive Director of Maine School Management Association. Sandi Barry is communications and marketing coordinator for the Maryland Association of Boards of Education and a school board member in Maryland.

Each election year, citizens decide to run for their local school board and some approach the job with preconceived ideas of what the job will be and what they want to accomplish on the board. Among those ideas are some persistent myths that veteran board members have learned are just not true.

**Myth #1: I can speak and write as a private citizen about school issues.** Be very careful if you think you can continue to speak or write as a private citizen on school issues once you are a board member. Even if you just sign a letter to the editor or an opinion piece with your name and town address (usually required for publication) the news media will pick up on who you are.

Your district may have a policy that outlines who may speak for the board. Usually that is the board president, but it can be a board member who has been designated because of expertise in a certain area. If you are saying anything that borders on slander of a staff member, you may be liable.

**Myth #2: I can stay involved with school related groups.** You may think you'll be a great reference for them, but it may inhibit interaction in the group. You're not just one of them anymore: you're a board member. Let them know you'll advocate for them, but you don't want to do the work of staff.

This also can become an issue of intimidation. Check with your board president regarding any potential issues of conflict.

When you're a board member and a parent, however, your parent hat always should come first. There's no reason you can't volunteer in your third-grade student's classroom if you've always been the one to help with cutouts and copying for the teacher. Just be sensitive to larger issues and let someone else "carry the water."

**Myth #3: No more 7-0 votes! I am here to "rock the boat!"** As long as they are reached independently, is there really anything wrong with a 7-0 vote? Of course not. Look at the process by which you reach a unanimous vote. Many boards have two or three readings on policies before adoption, which is plenty of time to make suggestions and changes.

So how do you convey your reasoning behind 7-0 votes? You can recap the process by which you reached your decision: "This item was vetted in committee and this was the recommendation." Try to engage the vocal minority voices in your community to diffuse the possibility of an issue "going viral" with misinformation.

Also remember, even if the vote is split, the board should stand together on the decisions that are made for the district.

**Myth #4: I have a mandate from the voters!** We hear this often. A board member had support from a group to gain election and then six months down the road a call comes from the leader of that group asking why the board member "hasn't done anything" regarding a specific issue.

It's easy to be vocal during a contested campaign and often said that candidates campaign in poetry but govern in prose.

Learn how to count. One member on a seven-person board is not a majority. Always do the math regarding the number of calls received versus the number of students affected by the issue. Your real mandate is to do what is best for all the children in the district.

**Myth #5: As a former teacher (or other role) I know exactly how the school system operates.** The learning curve for being a school board member is more like a steep grade, especially when it comes to understanding laws and finance.

Yes, you do bring an expertise to the board that has value, but you need to understand what your new role is. We knew a teacher/union president who ran for the board in order to get the superintendent fired. That person finally let go of the issues that came with being a union representative when she realized what the board was doing for children.

If you have difficulty understanding your new role as a board member, talk with your board president, superintendent or someone from your state school board association to gain clarity.

**Myth #6: I don't need to read or attend training to understand the issues.** Continuous learning is important. At one of our trainings, we met a woman who had been on a school board for eight to 10 years — she was the epitome of experience. She relinquished her seat on the board for a few years but missed it, so she got re-elected. We saw her at a new board member training session, and she said she knew she had more to learn and that things can change quickly, especially with laws and finance.

Find out what your association has to offer in terms of professional development. If others on your board are the ones resistant to training, report out what you have learned and lead by example. Ask someone to go with you the next time and tell them: We need to model continuous improvement for our teachers and staff.

Your board meeting packets are another area that needs to be read and understood. If you're not doing your homework, it slows things down at the meeting.

**Myth #7: I *have* all the new ideas!** New board members do provide fresh blood and a new sense of purpose for district work. But, please, be respectful of experience that your veteran board members provide. School districts have a collective history just as do communities. An orientation program that includes a component of district history (facilities, redistricting, busing, etc.) can help inform new board members so they can get up to speed.

**Myth #8: School staff can say "No" to my requests.** Often staff members are intimidated by board members. Be sure to use the chain of command for any requests, or you risk putting staff in an awkward position. They may think they could lose their job if they don't comply with your request.

Remember, it's not your job to direct day-to-day operations. The authority conferred on you by being a board member rests with the board as seven members sit to deliberate and vote. As an individual, outside of the meeting room, a board member does not have authority.

**Myth #9: School board service is my full-time job.** It may seem like that sometimes — especially at budget time. But you need to find that often delicate balance between your board/district life and your personal/family/professional life.

If you find yourself operating at helicopter level with policies that direct administration, you need to step back and start working at the board level. Revisit information you might have received regarding your role as a school board member!

**Myth #10: I'm the only one "in it" for the kids.** Give your fellow board members the benefit of the doubt. In their way, they are "in it" for the kids, too. Each of us may express that in a different way.

When we ask board members, they have plenty of "myths" of their own, including:

- We can do whatever we want regardless of the law.
- Being on the board will give me the power to change ... .
- Best of intentions aren't always visible.
- It's gonna be easy!
- I can advocate for my child.
- The community is going to support the board.
- Coming to a training conference is a vacation!

# School Board President Role and Responsibilities

This list of school board president role and responsibilities was presented by former Board President John Burton and Superintendent Sam Jarman of the Alpine School District at a workshop organized by the Utah School Boards Association. It was prepared with input from the board, especially former board member Debbie Taylor.

Jurassic Parliament is grateful for the opportunity to share this example with school board members and staff. Refer to your own district policies and guidelines for the specifics of your situation.

## 1. Represent the board of education

- a. Sign all warrants ordered by the board, to be drawn upon the business administrator for school money.
- b. Represent the will of the board to the superintendent.
- c. Represent the united voice of the board to the district, media, community.
- d. Prepare agendas with the vice president and the superintendent.
- e. Speak on behalf of the board at administrator conferences, new teacher orientation, new administrator luncheons, training, foundation meetings, etc.
- f. Attend legislative luncheons and other meetings with city officials.
- g. Represent the board at other meetings when requested by the superintendent.
- h. Be present at meetings or events that need board representation when no other board can attend.

## 2. Facilitate and protect board processes

- a. Ensure, protect, and facilitate board processes for decision-making.
- b. Protect and nurture the collaborative governance model.
- c. Preside at all meetings of the board to facilitate board processes and procedures.
- d. Conduct meetings of the board—study sessions, board meetings, closed sessions, and other meetings sponsored by the board, unless delegated otherwise.
- e. Facilitate board members' issues, concerns, etc.
- f. Ensure every board member has an opportunity to share their thoughts.
- g. With assistance of the vice president, appoint board members to staff committees, through board discussion.
- h. Be reserved (board president) in expressing his/her opinion until all board members have spoken—must listen, facilitate discussion or deliberation, and maintain order.
- i. Build a relationship of trust and collaboration with the superintendent.
- j. Follow Robert's Rules of Order to insure a fair process.

- k. Facilitate the evaluation, compensation, and reappointment process for the business administrator and superintendent.
- l. Manage the process of filling a vacancy on the board, if necessary, according to policy.

3. Board professional development

- a. Help each board member learn how to be an effective board member and feel valued.
- b. Help build trust between board members.
- c. Help build trust with the superintendent and board.
- d. Address inappropriate conduct of board members.
- e. Orient new board members with the superintendent.
- f. Ensure the board's commitment to the district's mission, vision, values and goals through review, understanding and when necessary, refinement or revision.
- g. Plan professional development activities including in-service, state and national associations, board trainings, site-visits, etc., with assistance of the vice president and other board members as needed.

## THE GOVERNANCE TEAM – Key Questions

### Key Questions:

1. Do members of the school board help each other work together as a team? Do we team well with the superintendent? The staff? The community?
2. Do members of the board understand how dependent each board member is on the others?
3. Are governance team members committed to overall district goals as opposed to focusing only on our personal goals?
4. Has the board established goals for itself?
5. Do board members have a positive, supportive attitude? Do we genuinely and publicly acknowledge the contributions of others?
6. Do members of the board exhibit respect for others?
7. Do we respect the superintendent's professional expertise?
8. Does the superintendent respect the board's governance role as elected trustees of the district?
9. Have we established an environment of trust within the board and the district or county office of education?
10. Is the communication among persons on the board honest and free from distrust?
11. Do we make sure we communicate our dedication to students?
12. Do we carry out our responsibilities with a high level of professionalism?
13. Does the board operate with fairness?

## THE GOVERNANCE TEAM – Agreements

### Agreements of the Board of Education and the Superintendent

1. Board members will prepare thoroughly before all meetings.
2. Board members and Superintendent will discuss in private any personal issues.
3. Board members and Superintendent will practice honest and open communications on all issues.
4. Board members and Superintendent will discuss and understand their respective roles.
5. Board members will direct all complaints to the Superintendent for appropriate follow through and processing.
6. Board members will advise Superintendent of complaints and concerns and expect that they will be handled effectively.
7. Board members and Superintendent agree that having different views and votes is healthy and essential to good decision making.
8. Board members will act in a manner that will allow them to be passionate about an issue while recognizing they represent all students.
9. Board members and Superintendent will keep matters of confidentiality-confidential.
10. Board members recognize that statements made in public by individual board members may be seen as the position of the Board. The Board will decide on issues where a single spokesperson might be in the best interest of the district.
11. Board members and Superintendent will set annual goals and strive to live with the goals without adding major activities during the year.
12. Board members will give the Superintendent prompt and constructive input on policies and curriculum.
13. Board members will participate in an appropriate self-evaluation process for the Board.

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## EDUCATION

- Chicago Kent College of Law (J.D.)
- University of Wisconsin-Madison (B.A.)

## ADMISSIONS

- State Bar of California

## ABOUT JON

Jonathan A. Pearl is the Managing Shareholder of DWK's San Diego office and a member of the Labor, Employment and Personnel (LEAP), Board Ethics, Transparency and Accountability, and Students and Special Education Practice Groups. He served as Chair of the LEAP Practice Group from 2017-2020.

Jon counsels and represents public school and community college district clients in all aspects of labor and employment law including certificated and classified contract negotiations, contract administration, PERB proceedings, mediations and arbitrations. His personnel practice focuses on hiring, recruitment, retention, employee remediation, progressive discipline, layoffs, harassment/discrimination prevention, interactive process and accommodation issues, technology-in-the-workplace and board policy/procedure development.

Jon is a well-known presenter and trainer on labor negotiations, progressive discipline, sexual harassment prevention, board governance and Brown Act compliance. He also trains governing boards, district bargaining teams and union bargaining teams on negotiations techniques including Interest Based Bargaining.



# ABOUT US

DWK provides exceptional legal representation and practical counsel on key issues related to your core mission—the education of students. Founded in 1976, Dannis Woliver Kelley was California's first law firm dedicated exclusively to public schools and education.

Our services address the full spectrum of legal needs for California's public schools, community colleges, and county offices of education. With seven offices across the state, our diverse team offers high-quality, innovative, and cost-effective legal services. Our experienced attorneys have deep expertise in addressing the unique challenges facing educational institutions.

## OUR IMPACT IN EDUCATION

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- Established in 1976, Dannis Woliver Kelley was the first law firm in California to devote its practice exclusively to public schools and education.
- We pride ourselves on using our expertise and depth of experience to provide boards with practical, creative and solid legal advice.

