Finding Stability within Change:

NaCCRA's Role in Maintaining Hope as CCRCs Evolve

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(Slide Number 1: Title Page)

January 28, 1986 is a day we all remember. **(Slide Number 2: Challenger Launch).** On that day NASA launched the space shuttle Challenger. Public interest in the launch was intense because one of its seven crew members, Christa McAuliffe, a high school teacher from Concord, New Hampshire, was expected to become the first teacher in space. It was planned that she would carry out experiments and conduct two teaching lessons from the shuttle.

Seventy-three seconds into its flight, when it was at an altitude of 48,000 feet, the shuttle began to break apart. **(Slide Number 3: Challenger Breakup).** Hot gases intended to provide thrust as they emerged from the tail of a solid rocket booster escaped instead from a leak in its side, destroying critical structural elements of the vehicle. It is not possible to know how long the crew survived; it depends upon how long the cabin pressure was maintained after the initial explosion, which it has not been possible to determine.

I say that we all remember this day because, although the specific date may not be retained in memory, the entire nation was deeply shocked and saddened. It is estimated that 85% of the American people learned of the tragedy within one hour of its occurrence. Many schoolchildren had been enabled to watch the launch live on television. As with the death of President Kennedy, many people can remember the exact circumstances under which they heard the news of the *Challenger* disaster.

The fatal leak was caused by an O-ring failure, an O-ring being a device intended to seal a joint and prevent hot gases from escaping. That the O-rings were a problem was well known to NASA officials since 1981, or as early as the second space shuttle mission. Evidence of their erosion by escaping hot gases was clearly evident upon post-flight examination. The joints in question were even in the process of being re-designed, yet flights were not halted. Moreover, clear evidence existed that the erosion was related to ambient weather conditions, particularly to cold temperatures. **(Slide Number 4: Icicles on Launch Framework).** Yet on January 28, 1986 NASA managers decided to proceed with a liftoff on a day colder by far than any on which a launch was ever previously attempted.

When the shuttle program resumed after the *Challenger* disaster, NASA engineers began to notice that insulating foam meant to protect the rocket boosters from ice formation tended to break away from the vehicle during launches. The separation from the vehicle of debris during a launch is obviously dangerous, since such pieces can strike other parts of the shuttle and damage them. Such separating foam debris was clearly outside NASA's design specifications. On one mission separating foam **(Slide Number 5: Foam)** slightly larger than a loaf of bread striking a booster rocket had caused a dent four inches wide and three inches deep, although the shuttle itself returned safely. Yet, in a pattern of behavior remarkably similar to that which had preceded the *Columbia* disaster, launches were given the go-ahead in spite of the unresolved problem of foam debris separation.

On January 16, 2003 NASA launched the *Columbia* with a crew of seven, including two women aerospace engineers, one born in India, and an African-American physicist. During the launch a piece of foam insulation approximately the size of a small valise hit the leading edge of the wing of the shuttle. Studies indicate that it caused a six to nine inch hole in the wing, which is covered with special tiles to absorb the intense heat caused by re-entry into the atmosphere. But this was not apparent until twenty-four hours later, when films of the launch were developed and examined. On the day of take-off, Mission Manager Linda Ham declared to the press that this was a "picture-perfect launch," although the really significant pictures had not yet been developed.

Once the rather grainy photographs were available, there followed an intense and much-documented series of deliberations within NASA regarding how aggressively to explore the extent of the possible damage while the mission was in progress. NASA management adamantly refused to forward three requests by its engineers to the Department of Defense seeking help in obtaining high resolution photographs of the damage which could have been gotten from satellites. Management also refused suggestions that an astronaut take a space walk to examine the wing. The excuse used was that nothing could have been done about possible damage anyway, although this was not, in fact, true.

In any event, at 9:00 a.m. on February 1, 2003, as the *Columbia* was executing its re-entry maneuvers, mission control lost contact with the crew. This in itself is not a cause for undue alarm during re-entry. However, amateur space flight aficionados taking videos from the ground near Dallas, Texas immediately recognized as a grave abnormality the fact that the shuttle was leaving multiple contrails and had, in fact, broken up. **(Slide Number 6: Multiple Contrails).** Hot gases had entered the hole in the leading edge of the wing and had, in effect, melted the vehicle from the inside out. Shuttle debris and human remains were found at over two thousand sites scattered from Nacodoches in east Texas to counties in western Louisiana and southwestern Arkansas.

The *Challenger* and *Columbia* disasters are frequently used as case studies in the ethics and the pathologies of organizational decision-making. **(Slide Seven: Book).** One of the best-known studies, *The Challenger Launch Decision*, written by Professor Diane Vaughan, was published on the tenth anniversary of that disaster, which was seven years before the *Columbia* tragedy. She describes in vivid detail the dysfunctional decision-making culture which existed at NASA prior to the *Challenger* launch. Her book quickly became standard reading in universities around the world where business administration is taught. It won various prizes. It became apparent after the second tragedy, that is, after the *Columbia* disaster, that although the technical cause was different – foam rather than O-rings – the institutional causes were almost exactly the same. **(Slide Number Eight: Professor Vaughan).** Naturally enough, Professor Vaughan was asked if NASA had ever contacted her during the seven years which had elapsed between her book's publication and the second disaster. She responded that she had heard from the New York *Times,* from *NBC News*, and from *The Wall Street Journal,* and had even received a call from her high school boyfriend, but that NASA had never been in touch with her about a book which was being cited by scholars all around the world. She was, however, finally put on the commission which did the post-mortem study of the *Columbia* disaster.

We all know that there are many misfortunes besides the shuttle disasters which stem from errors of human judgment, in particular, human judgment functioning in organizations. **(Slide 09)** The Bay of Pigs invasion; **(Slide 10)** the invention of "new" Coke; **(Slide 11)** the 1994 friendly fire shootdown over northern Iraq of two U.S. Army Black Hawk helicopters by Air Force F-15 fighter jets; **(Side 12)** Polaroid's failure to comprehend the possibilities of the digital revolution despite its commanding lead in the field of instant photography; **(Slide 13)** the nuclear industry accidents at Three Mile Island and Chernobyl; **(Slide 14)** the 1996 Mount Everest disaster; **(Slide 15)** the Vietnam War; **(Slide 16)** the slide into second-class status of the American automobile industry; **(Slide 17)** the intelligence community's failure to "connect the dots" prior to September 11, 2001; **(Slide 18)** the Daimler/Chrysler merger; **(Slide 19)** the Mann Gulch (Montana) Forest Fire (1949) in which twelve smoke jumpers lost their lives, **(Slide 20)** and the South Canyon Fire (Colorado) of 1994, where fourteen fire fighters lost their lives, which many believe happened because the lessons of 1949 were gradually forgotten.

Some of these events, like the NASA tragedies themselves, may seem to outsiders to be "accidents," but to those who have studied them carefully, they are catastrophic failures with long incubation periods that stretch out over many years within the organizations involved. Moreover, the officials and staff members implicated in them were, for the most part, highly educated and competent, were attempting to be rational, and had the best of intentions. (I have deliberately omitted from the list of calamities such things as the Savings and Loan crisis of the 1980s and 1990s, the financial meltdown of 2008, the marketing of Vioxx and tobacco, Enron, Watergate, and the nuclear meltdown at Fukushima, where greed, dishonesty, and crime, whether prosecuted or not, were significant contributing factors).

Although there is no way to insure human and organizational infallibility, it is very possible to identify organizational practices and decision-making pathologies which greatly escalate the probability of catastrophic failure in spite of the good intentions of the people involved.

So the first responsibility of all of us is to learn to recognize decision-making pathologies when they take place in the organizations with which we are involved. While none of the enterprises with which people in this room are apt to be concerned will explode and burn in mid-air, most of our organizations, including our CCRCs, are probably quite vulnerable to the sort of decline which characterized those of Polaroid and General Motors. We owe it to our organizations and our organizational colleagues to be quite conscientious about avoiding decision-making pathologies. **(Slide 21: Aristotle).** For, as Aristotle wisely said: "We are what we repeatedly do. Excellence is not an act, but a habit."

So, let us look at the decision-making pathologies which are identified in books such as the one written by Diane Vaughan. These include:

> *Premature convergence.* **(Slide 22).** Settling on one view of a problem or situation without eliciting diverse views and defining several alternative approaches to it for honest consideration. Failure to encourage "brainstorming." Failure to stimulate constructive debate.
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> *Confirmation bias.* **(Slide 23).** Gathering and relying on information that confirms existing views, and downplaying or avoiding information that contradicts prevailing hypotheses.
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> *Enslavement to conventional wisdom.* **(Slide 24).** It is always important to surface and test underlying assumptions and orthodoxy. What does everyone in the field seem to believe? What is the conventional wisdom? Is it really true? It is important to recognize that things which once worked can become ineffective in changed circumstances.
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> *Inappropriate use of experts.* **(Slide 25).** Seeking outside consultants who will agree with prevailing sentiments among managers. Expertise should certainly be part of any decision-making process, but when the environment changes and new challenges arise, experts are at a disadvantage. Expertise, by its nature, is about the past.
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> *Secrecy.* **(Slide 26).** Making high stakes decisions behind closed doors, and presenting them as *faits accomplis* to the rest of the organization, de-motivating people who may have additional light to shed on the issue from sharing it.
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> *Groupthink.* **(Slide 27).** Allowing a desire for harmony to over-ride a realistic appraisal of alternatives. A retirement community, where it is natural to aspire to congeniality and amiability, is particularly vulnerable to a loss of the advantages of independent thinking, as people self-censor in the interest of preserving harmony.

Hierarchy. **(Slide 28).** Organizational leaders can use their status and power to exaggerate all of the above tendencies by dominating discussions themselves. Many of the calamities I have cited were ones where early forceful statements by high status individuals inhibited an honest and unbiased exploration of alternatives. Wise leaders facilitate a group process while deferring their own judgment, drawing out the quiet people, being sure every possibility is put on the table, and that every angle is explored. Vigorous debate makes for sound decisions, with the proviso that having been genuinely heard, everyone will rally around a decision which is fairly reached, and that conflict over the issue will not be institutionalized permanently.

Focus Groups and Surveys. **(Slide 29).** As everyone knows, the results of surveys can differ markedly depending upon how the questions are phrased and upon who analyzes the results. And focus groups, too, tend to mirror the biases of those organizing and running them. Outside consultants who conduct surveys and focus groups seem to have an unerring ability to sense the outcome desired by those who hire and pay them. And both surveys and focus groups tend to isolate community members in their role as individual survey responders, or as members of small sub-groups of the organization, rather than allowing broad and open discussion of a wide range of ideas. For this reason, some of the most successful firms disallow focus groups in the product-development process.

(Slide Number 30 – Rogue Valley Manor).

This is a picture of Rogue Valley Manor, a not-for-profit CCRC in Medford, Oregon. Some years ago (2011-2012) the residents of Rogue Valley Manor began to suspect that the management was using the funds collected from their entry fees and monthly fees, funds intended to support their future health care, as venture capital to start two new CCRCs, each over 300 miles away, one in Portland, Oregon and one in Seattle, Washington. Obviously, it was difficult to see how facilities over 300 miles away would be of benefit to the residents of Rogue Valley Manor. They felt their investment in Rogue Valley Manor, and their future health care, was being put at risk as their CEO used their funds like an entrepreneur starting a business venture, albeit a not-for-profit one. When the residents' appeal to have the exported funds returned to Rogue Valley Manor got nowhere, they felt they had no recourse but to go to court, even though the notoriety itself would have a further detrimental effect on their investment in Rogue Valley Manor.

(Slide Number 31 – Mirabella Portland). This is a picture of the Oregon CCRC, called the Mirabella Portland, which was started using venture capital from Rogue Valley Manor. And this is a picture of the Mirabella Seattle. **(Slide Number 31, second click – Mirabella Seattle).**

Regulations governing how managements use the funds invested by residents in CCRCs are very weak, and activists in the field of consumer protection for CCCR residents were following the Rogue Valley case closely to see if a court would, finally, establish some principle governing these transactions. But the Rogue Valley residents ultimately agreed to an out-of-court settlement in which some of the exported funds were clawed back to Rogue Valley Manor and its residents. Because of the out-of-court settlement, no precedent regarding the use of residents' funds was established.

(Slide Number 32 – Rogue Valley Manor with Net Assets). Today, ten years later, Rogue Valley Manor is reporting to the IRS positive net assets of approximately $32,751,886. **(Slide Number 33, click 3 times – Two Mirabellas with Net Assets).** However, the Mirabella of Portland and the Mirabella in Seattle, are reporting net assets of minus $61,930,090 and minus $113,663,275 respectively. That is, for each of these CCRCs, the known liabilities exceed the known assets by these very large amounts, amounts which would have clearly swamped the positive net assets of Rogue Valley Manor had the residents not gone to court.

Neither Mirabella has filed for bankruptcy protection, so they are somehow still managing to pay their bills from month to month. But this is not true for a similar CCRC on Long Island. **(Slide Number 34 – Amsterdam at Harborside).** Its most recently reported net assets were minus $206,596,315. Here is a recent news story reporting that the Amsterdam at Harborside has filed for bankruptcy protection twice in eight years. **(Slide Number 35 – News story about Amsterdam at Harborside).**

I do not want to sound alarmist; I am sure everyone here is in a financially secure CCRC. But it is difficult to know how sound the CCRC industry is overall.

A study published this Spring analyzed all the CCRCs in one state – the state of California. It revealed that 38 percent of California CCRCs are functioning with either negative net income as high as $90 million per year, or negative net assets as high as $317 million! Such numbers would be alarming for any other type of enterprise in any other industry. Is California unique, or are these numbers typical of the CCRC industry as a whole? If they are typical, are these 38% of underwater CCRCs the industry's equivalent of "O-rings?" Will the cold weather of a recession cause enough failures that the public loses confidence in the industry as a whole, so that even soundly financed CCRCs fail to enroll enough new residents to keep going?[1]

CCRCs made their first significant appearance in the 1970s and 1980s. Nevertheless,

[1] See *National Association of Elder Law Attorneys Journal,* e-Issue, Spring 2022. "Exercising Control or Giving It Up? What Elder Law Attorneys Need to Know About Continuing Care Retirement Communities," by Yvonne Troya, JD.

a few of them have histories which stretch back 100 years or more. **(Slide Number 35 – Exterior of "old people's home").** But before the 1970s, these earlier versions of our communities were often established to care for retired clergy persons or the widowed spouses of clergy people. They were funded by contributions from the larger denomination *outside* of the residents in the life care communities themselves. It was in the 1970s and 1980s that the concept took hold of life care communities fully funded by the entrance fees and monthly fees of the residents themselves. But one of the legacies of the early history is a pattern of governance throughout the industry which assumes **(Slide Number 36 – Interior of "old people's home")** that residents are the passive recipients of charity, rather than that they are financial investors in their community, investors to whom the management owes some accountability, investors who have both a right and a responsibility to ensure the good order of the community's operation and of its financial affairs.

80% of the CCRCs in the United States are not-for-profit entities in which the residents have banded together to provide each other with mutual support in a program fully funded by the own entry fees and monthly fees, and by the charitable contributions of the residents and their families. Yet they are asked to sign contracts upon entering the community which deny them any right to have a voice in the management or governance of the community, or to have any control over how the managements use their funds.

It is this governance anomaly, wherein residents fork over large sums of money to a management which is not legally accountable to them, which is at the heart of many issues facing the industry. Unfortunately, this governance anomaly almost guarantees that some of the decision-making pathologies described earlier will be at play in a typical CCRC.

NaCCRA has undertaken several initiatives to address these governance anomalies and financial issues.

After wide consultation among working parties at approximately 50 CCRCs, we developed and published a "Bill of Rights" for CCRC residents. **(Slide Number 37 – NaCCRA Bill of Rights).** This Bill of Rights is not intended to legislate – indeed, NaCCRA has absolutely no power to legislate anything. Rather, the document is intended to serve as a model of best practice which will hopefully be an inspiration both to providers and to residents. It is also intended to be a convenient resource for citizens and legislators as they guide the evolution of regulations and laws pertaining to CCRCs.

If you look over this model Bill of Rights you will see many unsurprising things. The first three provisions are fairly commonplace and in wide practice. They cover the right to organize a residents association and to hold meetings.

The fourth is the first which would be a novelty if implemented in many places.

(Slide Number 38 – Fourth Provision of the Bill of Rights).

It states that residents have a right to:

"Select and appoint, in accordance with the resident association's own by-laws, at least three members of the CCRC's corporate governing board, who, as full-fledged board members, have rights and duties commensurate with the other board members. CCRC residents have the right to receive regularly scheduled reports from the association-appointed corporate governing board members about the board's deliberations, actions and policies. Residents have a right to a corporate governing board every member of which acknowledges their fiduciary responsibility to the residents."

Thanks to the good work of ORANJ, New Jersey is well ahead of most other states with regard to this matter. A recent amendment to New Jersey's 1986 Law provides that the governing board of a CCRC shall include one resident as a full member with rights and responsibilities equivalent to all other members. Moreover, the law stipulate that the resident member should be nominated by elected representatives of the residents.

However, regarding how many ought to serve, it is useful to be aware of the risks of "tokenism." To have one resident only in a Board group can make it very hard for such a person to advance a perspective which may be absent from the prevailing dynamic. The entire point of the exercise of placing residents on governing Boards is to make the Board aware of ways of seeing things that may not at first be obvious to them, in spite of all good intentions. This will not be necessary with respect to every issue which may come before a Board, but in the ordinary course of events it will sometimes be necessary, and to leave the burden on the shoulders of a single "token" resident member of the group cannot ensure that this vital contribution will be carried out effectively. This is why NaCCRA believes it is useful to have three or four resident members of governing bodies, at least, depending upon the size of the overall group.

(Slide Number 39 – *Consumers Guide* Cover). The second initiative which NaCCRA has taken is the production of a *Consumer's Guide to Continuing Care Retirement Communities.*

Although people who seek a CCRC for their senior years ought to be interested in their long-term financial security and health care security, when shopping they usually focus entirely on the independent living amenities, and fail to examine carefully the financial condition of the CCRCs they are considering, and they also usually just assume, without checking, that the health care services are of high quality.

(Slide Number 40 – Consumers guide Introduction). The NaCCRA *Consumers*

Guide focuses on four issues which shoppers for a CCRC usually have difficulty assessing or understanding: **(Slide Number 41).** 1) Contracts – the *Guide* explains the differences between Types A, B C, and D and suggests ways to figure out which might be best for oneself; **(Slide Number 42).** 2) Health Care – the *Guide* offers a series of suggestions about what to check regarding the various levels of health care on offer in a given community; **(Slide Number 43).** 3) Long Term Financial Strength – the *Guide* helps those who consult it research the net asset balance of a community they are exploring; suggests the significance of the relationship between capital renewal and replacement expenditures and plant depreciation schedules; orients them to the importance of actuarial reports; and encourages them to examine the community's indebtedness and to determine their comfort level with such indebtedness; and **(Slide Number 44).** 4) the *Guide* reviews different types of ownership and governance of CCRCs.

(Slide Number 45). If any of you have friends who are shopping around for a CCRC, I hope you will make a copy of the *Consumers Guide* available to them. It is brief, just 20 pages overall, and easy to understand. Digital copies are available free-of-charge to anyone who is interested. In fact, we at NaCCRA believe the *Consumers Guide* is useful not only for shoppers, but also for any current resident of a CCRC who is interested in better understanding the perennial issues facing their community's management and the management's effectiveness in addressing them.

(Slide Number 46 – *Handbook* Cover). The third initiative NaCCRA has undertaken is a publication which was released earlier this year, that is, in January 2022. It is our *Financial Soundness Handbook.*

Most CCRCs have a Residents Association or Residents Council which works with management to maintain the best possible operations. Such Resident Councils often appoint a committee focused on monitoring the financial aspects of their community's operations. Residents willing to engage in this crucial and sometimes daunting area of their community's life make an invaluable contribution to the security and well-being of their neighbors and to the overall success of the CCRC industry.

Our *Financial Soundness Handbook* is designed to help such residents analyze the specific financial status of their own community and to learn to assess its associated challenges and opportunities, its financial position, performance, and long-term prospects for financial sustainability. It is a guide to the proper interpretation of financial statements and other key documents and tools useful in the financial management of CCRCs.

(Slide Number 47 – *Handbook* Table of Contents). Here is a copy of the table of contents. Earlier I commented that our *Consumers Guide* was brief and easy to understand. I am not certain I can say the same about the text of the *Financial Soundness Handbook,* alas. It is nearly 60 pages long, and covers details about such things as future service obligation calculations, actuarial reports, and entrance fee accounting. We have taken great pains to use only layman's language and to keep things as simple and direct as possible. But this is addressed to those residents who have an interest in serving on resident Finance Committees or who, as individuals, have a lively appetite for financial study and analysis.

(Slide 48 – NaCCRA description). The fundamental premise upon which NaCCRA is based is simply this – it behooves CCRC residents to engage in a process of collective learning. We will not thrive if we remain isolated from each other and reinvent the wheel again and again. And, in addition to collective learning, it behooves us to engage in collective action when proper defense of our interests calls for it. The purpose of NaCCRA is to serve as a vehicle working to preserve and strengthen the CCRC way of life by empowering those who have invested heavily in it, and by facilitating their actions of mutual support.

The 1,900 CCRCs in the USA are like an archipelago scattered across our land. Admittedly, these scattered communities represent a very small element in the vast and populous globalized society which surrounds them. But the mystical poet William Blake asserted that he could see the universe in a grain of sand. **(Slide Number 49 – Hubble image, butterfly).**

And indeed, as we contemplate this archipelago of CCRCs we see a panorama which is awesome, so long as each element does not remain an island unto itself.

We need collective learning and mutual support. We are interdependent, and our interdependence is an image or sign of the mutuality inherent in the Creation itself. As investors in the CCRC idea, we are custodians of something very precious which must be strengthened and preserved for future generations.

Let us have great respect for the responsibility we have taken on, and great compassion for ourselves and others as we seek to fulfill this responsibility. Things which are noble and beautiful inevitably begin on the scale of a mustard seed. Such a seed, if carefully nurtured, will show us once again that raw human nature, which sometimes can seem so noisy, self-centered and dangerous, can age into maturity and wisdom, the maturity and wisdom which makes community possible, indeed, a maturity and wisdom so excellent that it makes visible the fundamental truth of things.

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Fellowship Village

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I know this seems very radical to some people. But consider: since, as has been mentioned, approximately 80% of Continuing Care Retirement Communities (CCRCs) are operated as not-for-profit organizations with residents themselves providing all the funds which make operations possible, residents are stakeholders in their CCRC in every sense of the word, and they deserve a say in how the community in which they live is being managed. Their stake in the enterprise is even greater than that of a stockholder in an ordinary business enterprise. A business stockholder can sell her stock and cut her ties to the business if she does not like the management's policies; a CCRC resident can never leave without abandoning the investment she made in it via the entry fee and monthly fees. A CCRC resident has entrusted his future care at a most vulnerable stage in any person's life – his final years – to the CCRC he has elected to enter.

Yet, oddly, not-for-profit CCRCs tend to be operated as if owned by their administrations and boards, that is, by people who usually have no significant financial investment in the enterprise and who are not themselves dependent upon it for their future care. While, to the best of my knowledge, most not-for-profit boards of CCRCs operate with integrity and try very seriously to exercise a conscientious trusteeship on behalf of the residents, at the National Continuing Care Residents Association (NaCCRA) we are aware of a steady flow of information about initiatives by managements which it is hard to understand as being in their residents' best interests. Even when these actions do not fatally compromise the organization's financial soundness or its delivery of services, they can often be substantially annoying departures from the representations made to residents during the marketing process, and can seem to be advanced in a totally arbitrary manner. And there are, as we have seen, cases where CCRCs have become bankrupt, or are seriously impaired financially, due to unwise management initiatives and decisions.

As I mentioned, the idea of putting residents on CCRC governing Boards would be a novelty in many places, but there are some states which require that there be resident members of the Board of Directors of a not-for-profit CCRC.